

1 complaint, the Court issued an order for Defendant Tur to show cause as to why he failed to file a
2 responsive pleading. (ECF No. 50.) On October 18, 2017, Defendant Nguyen filed a response to
3 the show cause order. (ECF No. 52.) Defendant Nguyen stated that Defendant Tur no longer
4 worked at Department of State Hospitals-Coalinga or for the State of California. In addition,
5 during August and September 2017, defense counsel was unable to contact Defendant Tur by
6 telephone or through personal service. (Id.)

7 In light of this information, on October 30, 2017, the Court issued an order directing the
8 Clerk of the Court to re-serve the September 20, 2017 show cause order on Defendant Tur at the
9 confidential address used by the U.S. Marshal Service on July 6, 2017. (ECF No. 53.) On
10 November 1, 2017, Plaintiff filed the instant request for entry of default and a declaration in
11 support. (ECF Nos. 54, 55.)

12 On November 21, 2017, Defendant Nguyen filed a notice of suggestion of death of
13 Defendant Tur, pursuant to Federal Rule of Civil Procedure 25(a)(1). (ECF No. 56.) Defendant
14 Nguyen, through the Department of State Hospitals, stated that upon information and belief,
15 Defendant Tur passed away on September 19, 2017. (Id.) The Court issued an order notifying
16 the parties that the notice was deficient, due to Defendant Nguyen's failure to provide proof of
17 service of the notice on Defendant Tur's successor or representative. Therefore, the ninety-day
18 period for Plaintiff to file a motion for substitution had not yet been triggered, and the Court
19 granted Plaintiff's request for entry of default as to Defendant Tur. (ECF No. 57.)

20 On December 5, 2017, Plaintiff filed a motion for substitution of an unidentified personal
21 representative or successor of Defendant Tur. (ECF No. 59.) The Court denied the motion as
22 premature, given that there was no properly served notice of suggestion of death on the docket,
23 and also for Plaintiff's failure to use the correct name of the legal representative of Defendant
24 Tur. (ECF No. 60.)

25 **B. Pending Motions**

26 Thereafter, Plaintiff filed a series of motions relating to service on Defendant Tur's
27 successor as well as discovery issues with Defendant Nguyen. (ECF Nos. 61, 62, 63, 64, 65.)
28 Defendant Nguyen did not file a response or opposition to any of the motions. The motions are

1 deemed submitted.

2 On December 18, 2017, Plaintiff filed a request that the United States Marshal Service
3 serve a notice of suggestion of death on Melanie Varner, who Plaintiff alleged was the personal
4 representative or successor of Defendant Tur. Plaintiff also attached copies of various filings
5 from the docket in this action, to be served on Ms. Varner. (ECF No. 61.)

6 On December 22, 2017, Plaintiff filed a motion for an order holding counsel for
7 Defendant Nguyen in contempt for misuse of the discovery process. Plaintiff also apparently
8 seeks sanctions against defense counsel in a different case currently pending. Plaintiff appears to
9 allege that defense counsel did not provide appropriate responses to Plaintiff's first demand for
10 production of documents. (ECF No. 62.)

11 On January 4, 2018, Plaintiff filed three motions. (ECF Nos. 63, 64, 65.) All three
12 motions allege that counsel for Defendant Nguyen and defense counsel in Case No. 1:14-cv-
13 00706-DAD-SAB (PC) sent combined discovery responses, and the more than 9,000 pages of
14 documents were mixed up to interfere with Plaintiff's discovery. Plaintiff further contends that
15 Defendant Nguyen's responses to his document requests consisted only of boilerplate objections.
16 Plaintiff therefore requests sanctions against defendants in both actions. (Id.)

17 Most recently, on September 25, 2018, Defendant Nguyen filed a renewed notice of
18 suggestion of death of Defendant Tur, including a copy of a certificate of death for Defendant
19 Tur. The notice was served on Plaintiff and L. Tur, who is alleged to be the representative of the
20 estate of Defendant Tur.¹ (ECF No. 74.)

21 **II. Discussion**

22 **A. Notice of Suggestion of Death and Substitution of Successor**

23 As discussed in the Court's prior orders, Rule 25(a)(1) provides for the dismissal of
24 Defendant Tur from this action if a motion for substitution is not made within ninety days after
25 service of a statement noting Tur's death. Fed. R. Civ. P. 25(a)(1). Two things are required of a
26 party for the running of the ninety-day period to commence: a party must 1) formally suggest the

27 ¹ The Court notes that a motion to set aside the entry of default against Defendant Tur was filed on September 27,
28 2018. (ECF No. 75.) As Plaintiff has not yet had an opportunity to respond to the motion, the Court will not address
the motion in this order. Defendant Tur has also filed an answer. (ECF No. 76.)

1 death of the party on the record, and 2) serve the suggestion of death on the other parties and the
2 nonparty successors or representatives of the deceased. Barlow v. Ground, 39 F.3d 231, 233 (9th
3 Cir. 1994). In order for the ninety-day period for substitution to be triggered, a party must
4 formally suggest the death of the party upon the record, Fed. R. Civ. P. 25(a)(1), and must serve
5 other parties and nonparty successors or representatives of the deceased with a suggestion of
6 death in the same manner as required for service of the motion to substitute, Fed. R. Civ. P.
7 25(a)(3). Thus, a party may be served with the suggestion of death by service on his or her
8 attorney, Fed. R. Civ. P. 5(b), while non-party successors or representatives of the deceased party
9 must be served the suggestion of death in the manner provided by Rule 4 for the service of a
10 summons. Fed. R. Civ. P. 25(a)(3); Barlow, 39 F.3d at 232–34. Rule 25 requires dismissal
11 absent a motion for substitution within the ninety-day period only if the statement of death was
12 properly served. Unicorn Tales, Inc., v. Bannerjee, 138 F.3d 467, 469–71 (2d Cir. 1998).

13 By his motion for service, (ECF No. 61), Plaintiff appears to be attempting to serve a
14 notice of suggestion of death of Defendant Tur combined with a motion for substitution of
15 Melanie Varner as Defendant Tur’s representative or successor in interest. However, Plaintiff has
16 provided no evidence or indication that Ms. Varner is, in fact, the representative or successor in
17 interest of Defendant Tur. As noted above, Ms. Varner apparently accepted service of process on
18 Defendant Tur’s behalf, but she is listed only as a “caregiver.” The Court is not persuaded that
19 Ms. Varner is the correct successor or representative of Defendant Tur, and therefore denies
20 Plaintiff’s motion for service and substitution.

21 Furthermore, Defendant Nguyen’s recently-filed notice of suggestion of death indicates
22 that Lisa Tur is the representative of the estate of Defendant Tur. This is supported by the
23 certified copy of the certificate of death attached to the notice. (ECF No. 74, p. 3.) Finally,
24 service has properly been made on L. Tur. (ECF No. 74-1, p. 1.) Thus, the ninety-day period has
25 only recently been triggered, and a motion for substitution of the proper party may be made by
26 any party or by Defendant Tur’s successor or representative, before the expiration of that
27 deadline. Fed. R. Civ. P. 25(a)(1).

28 As noted above, L. Tur has also filed a motion to set aside entry of default and an answer,

1 (ECF Nos. 75, 76), indicating to the Court an intent to proceed in this action as the representative
2 of Defendant Tur's estate. As such, the Court requests that she file a **brief** motion for
3 substitution, in compliance with Rule 25(a)(1).

4 **B. Motions for Sanctions and to Compel Discovery**

5 All of Plaintiff's remaining motions generally allege that defense counsel has engaged in
6 improper discovery tactics such that sanctions are warranted. (ECF Nos. 62, 63, 64, 65.)

7 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
8 party's claim or defense," and information within this scope "need not be admissible in evidence
9 to be discoverable." Fed. R. Civ. P. 26(b)(1). An interrogatory may relate to any matter that may
10 be inquired into under Rule 26(b), and an interrogatory is not objectionable merely because it
11 asks for an opinion or contention that relates to fact or the application of law to fact. Fed. R. Civ.
12 P. 33(a)(2) (quotation marks omitted). Parties are obligated to respond to interrogatories to the
13 fullest extent possible under oath, Fed. R. Civ. P. 33(b)(3), and any objections must be stated with
14 specificity, Fed. R. Civ. P. 33(b)(4); Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981)
15 ("objections should be plain enough and specific enough so that the court can understand in what
16 way the interrogatories are alleged to be objectionable"). A responding party is not generally
17 required to conduct extensive research in order to answer an interrogatory, but a reasonable effort
18 to respond must be made. Gorrell v. Sneath, 292 F.R.D. 629, 632 (E.D. Cal. 2013). Further, the
19 responding party has a duty to supplement any responses if the information sought is later
20 obtained or the response provided needs correction. Fed. R. Civ. P. 26(e)(1)(A).

21 A party may serve on any other party a request within the scope of Rule 26(b) to produce
22 and permit the requesting party or its representative to inspect, copy, test, or sample the following
23 items in the responding party's possession, custody or control: any designated documents or
24 tangible things. Fed. R. Civ. P. 34(a)(1).

25 Plaintiff generally argues that Defendant Nguyen did not adequately respond to his
26 requests for production of documents. Although his motions are difficult to understand, it
27 appears that Plaintiff believes that the documents he received were intentionally mixed together
28 by defense counsel to hinder Plaintiff's litigation of this action. Plaintiff further contends that

1 Defendant Nguyen’s responses consisted only of boilerplate objections. (ECF Nos. 62, 63, 64,
2 65.)

3 Upon review of Plaintiff’s requests and Defendant Nguyen’s responses, the Court finds
4 that Defendant Nguyen’s objections have merit, and that Plaintiff has failed to meet his burden in
5 demonstrating otherwise.

6 Plaintiff’s requests are, as Defendant objects, “incomprehensible, vague, and ambiguous.”
7 (ECF No. 65, pp. 21–25.) While Plaintiff argues that Defendant failed to produce items “on
8 point,” and instead directed him to review his entire medical record, Plaintiff’s requests are
9 themselves not “on point.” (*Id.* at 10.) For example, Plaintiff’s first production request seeks
10 “from Defendant’ Dr. Tur and Dr. Nguny, all the medical record’s from around about April 2012,
11 throughout 2015, a scaphoid fracture of x-ray’s photo’s, readed out of the right hand of patient-
12 806-0, Gregory Ell Shehee, under color of state law.” (*Id.* at 21 (unedited text).) This request is
13 nearly unintelligible, and provides no true guidance as to the particular documents Plaintiff seeks.
14 At best, Plaintiff has provided a date range of approximately three years during which he may
15 have had an x-ray performed of his right hand. Plaintiff’s remaining production requests are
16 similarly vague. (*See, e.g., id.* at 22 (Request No. Two for “all written note’s medical report’s –
17 medication report’s treatment report’ of a scaphoid fracture of the right from April 2012,
18 throughout 2015, on patient 806 Gregory Ell Shehee”; Request No. Three for “all right hand a
19 scaphoid fracture from 2013 throughout 2014. Dr. Smith surgeon records of ex-patient C00-806-0
20 Gregory Ell Shehee all x-ray’s all handnotes. All report’s dealing with conditions and treatment
21 while in the department of state hospital...”.)

22 Defendant Nguyen’s provision of Plaintiff’s entire medical record is not an unreasonable
23 response to the broad and vaguely-worded requests from Plaintiff. In fact, Plaintiff’s Request No.
24 Three did, in fact, appear to request his complete medical records from the time he was confined
25 in the department of state hospitals. Plaintiff’s motions and Defendant Nguyen’s responses
26 confirm that Plaintiff received more than 9,000 pages of his medical records. While Plaintiff
27 argues that the documents were mixed up, given the nature of his requests, the Court declines to
28 find that Defendant or defense counsel should be sanctioned for failing to sift through several

1 years' worth of Plaintiff's medical records to find documents potentially relevant to Plaintiff's
2 claims.

3 With respect to Plaintiff's motion for sanctions, as an initial matter, the Court notes that to
4 the extent Plaintiff seeks sanctions against an attorney who has not appeared in this action, such
5 sanctions are not appropriate. While Plaintiff may be litigating in several different cases
6 simultaneously, the Court will not impose sanctions or otherwise order counsel to take any action
7 in a case not currently before the undersigned.

8 As to Plaintiff's request for sanctions against counsel for Defendant Nguyen, based on the
9 above discussion, the Court does not find that sanctions are warranted or that counsel has failed to
10 comply with any of the Court's orders.

11 **III. Conclusion and Order**

12 Accordingly, IT IS HEREBY ORDERED as follows:

- 13 1. Plaintiff's motion for service, (ECF No. 31), is DENIED;
- 14 2. Plaintiff's motions for sanctions and to compel discovery, (ECF Nos. 62, 63, 64, 66), are
15 DENIED; and
- 16 3. Defendant Tur, or the representative of Defendant Tur's estate, shall file and serve a **brief**
17 motion for substitution, in compliance with Federal Rule of Civil Procedure 25(a)(1). It is
18 not necessary to set the motion for a hearing.

19
20 IT IS SO ORDERED.

21 Dated: September 28, 2018

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28