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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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9 TONY ASBERRY,

10 Plaintiff,

11 v.

12 C. RELEVANTE,
13 R. LOZOVOY,
14 A. FERRIS, and
P. GODFREY,

15 Defendants.

Case No. 1:16-cv-01741-LJO-JDP

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL

(Doc. No. 110.)

16 Plaintiff Tony Asberry, a state prisoner, proceeds without counsel in this civil rights
17 action brought under 42 U.S.C. § 1983. Plaintiff previously moved to compel defendants
18 Ferris and Godfrey to produce the “White Transfer Envelope” and its contents prepared for his
19 transfer between two prisons. (Doc. No. 110.) Defendants Ferris and Godfrey opposed the
20 motion, stating that they had produced the contents of the envelope, a CDCR 7371 form.
21 (Doc. No. 118.) The court previously found that defendants had not conducted a reasonable
22 inquiry in search of the envelope and its additional alleged contents, and the court directed
23 defendants to conduct further investigation. (Doc. No. 139.) Defendants complied, and they
24 have filed a response detailing their efforts to locate the materials requested by plaintiff.
25 (Doc. No. 144.) Plaintiff has filed a reply, arguing that defendants’ efforts to find the
26 requested materials were inadequate. (Doc. No. 147.)

27 A party must conduct a reasonable inquiry before claiming that it does not have
28 possession, custody, or control of a requested document. *See* Fed. R. Civ. P. 26(g)(1);

1 *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 189 (C.D. Cal. 2006). A reasonable
2 inquiry includes, “at a minimum, a reasonable procedure to distribute discovery requests to all
3 employees and agents of the defendant potentially possessing responsive information, and to
4 account for the collection and subsequent production of the information.” *Nat’l Ass’n of*
5 *Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556 (N.D. Cal. 1987). On the other hand, the
6 Federal Rules of Civil Procedure “do not demand perfection,” and a court assesses the
7 reasonableness of an inquiry by an objective standard. *See Reinsdorf v. Skechers U.S.A., Inc.*,
8 296 F.R.D. 604, 615 (C.D. Cal. 2013). The court considers whether the producing party
9 conducted an inquiry “objectively reasonable under the circumstances,” taking into account
10 “the burdensomeness and importance of the discovery requested” and the court’s obligation to
11 secure “the just, speedy, and inexpensive determination of every action.” *Id.* (quoting
12 Fed. R. Civ. P. 1).

13 Here, defendants Ferris and Godfrey have conducted a reasonable inquiry. Prison
14 employees whom defendants asked about the contents of the envelope—the nurse who
15 completed the CDCR 7371 form for plaintiff’s transfer, the litigation coordinator at plaintiff’s
16 old prison, the nurse who received the CDCR 7371 form, and the litigation coordinator at his
17 new prison—all confirmed that the only item contained in the envelope was the CDCR 7371
18 form, which defendants have already produced. (*See* Doc. Nos. 144-1, 144-3, 144-4.) The
19 litigation coordinators at both prisons indicated that having only a CDCR 7371 form in the
20 envelope was typical. (*See* Doc. Nos. 144-3, ¶ 6; 144-4, ¶¶ 3, 6-7.) Defendants state that the
21 envelope, which is now empty, could not be found. (Doc. No. 144-3, ¶ 8.)

22 According to plaintiff, standard procedures require the envelope to contain other
23 materials, such as a Disability Placement Program Verification form, a Patient Summary Sheet,
24 and Active Physician’s Orders. (Doc. No. 147, at 2 (citing Doc. No. 147, at 15).) But even if
25 prison staff are required to include additional materials in the envelope, this does not guarantee
26 that they did so. Indeed, plaintiff says he does not recall having a “pre-boarding medical
27 check” as required. (*See id.* at 4.) At a later point in this case, plaintiff may wish to inform the
28 court of the significance of the absence of a medical check or of the prison staff’s failure to

1 include additional materials in the envelope. As regards the White Transfer Envelope, the
2 undersigned is satisfied that defendants Ferris and Godfrey have fulfilled their discovery
3 obligations.

4 **Order**

5 Plaintiff Tony Asberry's motion to compel (Doc. No. 110) is denied.

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7 IT IS SO ORDERED.

8 Dated: September 2, 2018

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UNITED STATES MAGISTRATE JUDGE

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