

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ERIK ARELLANO,	)	Case No.: 1:17-cv-01235 - LJO-JLT
Plaintiff,	)	
v.	)	ORDER GRANTING DEFENDANTS’ MOTION TO COMPEL FURTHER DISCOVERY (Doc. 34)
CHAD HASKINS, et al.,	)	ORDER DENYING PLAINTIFF’S MOTION FOR AN EXTENSION OF TIME (Doc. 33)
Defendants.	)	ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL (Doc. 35)

Erik Arellano asserts Bakersfield Police Officers Chad Haskins and Frederick Martinez used excessive force after he surrendered to their arrest. (Doc. 9) Defendants report Plaintiff failed to provide proper responses to their interrogatories and Requests for Production of Documents. Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Defendants seek to compel Plaintiff to provide further discovery responses. (Doc. 34-2) Plaintiff sought an extension of time to supplement his responses (Doc. 33) but did not otherwise oppose the motion.

For the reasons set forth below, Defendants’ motion to compel discovery is **GRANTED**, his motion for an extension of time is **DENIED** as moot and his request for appointment of counsel is **DENIED**.

**I. Relevant Background**

The Court held a scheduling conference on January 8, 2019, at which it set deadlines related to discovery. (Doc. 24) The Court ordered the parties to exchange their initial disclosures no later than

1 January 28, 2019. (*Id.* at 1, 3) In addition, the Court ordered the parties to complete all non-expert  
2 discovery no later than February 18, 2020. (*Id.*)

3 Defendants served Plaintiff with interrogatories, a request for admissions, and a request for  
4 production of documents on February 13, 2019. (Doc. 28-1 at 2-3) Although responses were due no  
5 later than March 18, 2019, Plaintiff failed to respond. (*Id.*) On March 28, 2019, Defendants' Counsel,  
6 Heather Cohen, notified Plaintiff through a letter "that his Initial Disclosure and discovery responses  
7 were delinquent and requested that he provide his Initial Disclosure and responses to the discovery  
8 requests on or before April 15, 2019." (*Id.* at 3) Plaintiff failed to respond to the letter, either by  
9 providing the discovery requested or seeking an extension of time to respond. (*Id.*)

10 On April 18, 2019, Defendants filed a motion to compel discovery, reporting Plaintiff failed to  
11 comply with the Court's Scheduling Order to make his initial disclosures pursuant to Rule 26 of the  
12 Federal Rules of Civil Procedure, and that he failed to respond to Defendants' discovery requests.  
13 (Doc. 28) The Court granted the motion and directed Plaintiff to serve his initial disclosures. (Doc. 30  
14 at 6) Plaintiff was also directed to "respond to Defendants' Interrogatories-Set One and produce  
15 documents responsive to Defendants' Request for Production of Documents- Set One no later than May  
16 31, 2019." (*Id.*, emphasis omitted) Further, Plaintiff was advised "failure to comply with this order or  
17 any other order of the Court—including the scheduling order—may result in the Court imposing  
18 sanctions on him which could include dismissal of the action as authorized by Local Rule 110." (*Id.*,  
19 emphasis omitted)

20 On May 23, 2019, Plaintiff served a document entitled "Appendix" upon Defendants, which  
21 included his initial disclosures, a notice of change of address (indicating the same address on the  
22 Court's docket), Responses to Interrogatories, and Responses to Request for Production of Documents.  
23 (Doc. 34-2 at 43) In response to several requests, Plaintiff indicated he was "not prepared to produce  
24 the documents...due to a lack of making copies." (*Id.* at 51) He also indicated some documents were  
25 "not prepared (sic) at [the] moment." (*Id.* at 52) Defendants' counsel, Heather Cohen, wrote to  
26 Plaintiff on June 3, 2019, "and requested that he provide proper verified responses and documents by  
27 June 14, 2019." (*Id.*)

28 Plaintiff that he is currently housed away from his property, including "all of [his] legal

1 documents that pertain to this case, thus making [him] incapable of properly accommodating the  
2 defendants (sic) requests of making the corrections and amending [his] responses for the time being.”  
3 (Doc. 33 at 1) Thus, Plaintiff requested an extension of time to amend his discovery responses. (*Id.*)

## 4 **II. Defendant’s Motion to Compel Discovery**

5 Under the Federal Rules, “[a] party seeking discovery may move for an order compelling an  
6 answer, designation, production or inspection” when “a party fails to answer an interrogatory  
7 submitted under Rule 33; or . . . a party fails to respond that inspection will be permitted – or fails to  
8 permit inspection – as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B).

### 9 **A. Scope of Discovery and Requests**

10 The scope and limitations of discovery are set forth by the Federal Rules of Civil Procedure  
11 and Evidence. Fed. R. Civ. P. 26(b) states:

12 Unless otherwise limited by court order, parties may obtain discovery regarding any  
13 nonprivileged matter that is relevant to any party’s claim or defense – including the  
14 existence, description, nature, custody, condition, and location of any documents or  
15 other tangible things...For good cause, the court may order discovery of any matter  
relevant to the subject matter involved in the accident. Relevant information need not  
be admissible at the trial if the discovery appears reasonably calculated to lead to the  
discovery of admissible evidence.

16 Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that  
17 is of consequence to the determination of the action more probable or less probable than it would be  
18 without the evidence.” Fed. R. Evid. 401. Relevancy to a subject matter is interpreted “broadly to  
19 encompass any matter that bears on, or that reasonably could lead to other matter that could bear on,  
20 any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

#### 21 **1. Interrogatories**

22 A party may propound interrogatories relating to any matter that may be inquired to under Rule  
23 26(b). Fed. R. Civ. P. 33(a). A responding party is obligated to respond to the fullest extent possible,  
24 and any objections must be stated with specificity. Fed. R. Civ. P. 33(b)(3)-(4). In general, a  
25 responding party is not required “to conduct extensive research in order to answer an interrogatory, but  
26 a reasonable effort to respond must be made.” *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, at \*9  
27 (E.D. Cal. Aug. 24, 2010) (citing *L.H. v. Schwarzenegger*, 2007 U.S. Dist. LEXIS 73753 (E.D. Cal.  
28 Sep. 21, 2007)). Further, the responding party must supplement a response if the information sought is

1 later obtained or the previous response requires a correction. Fed. R. Civ. P. 26(e)(1)(A).

2 2. Requests for Production of Documents

3 A party may request documents “in the responding party’s possession, custody, or control.”  
4 Fed. R. Civ. P. 34(a)(1). Similarly, a party may serve a request “to permit entry onto designated land  
5 or other property possessed or controlled by the responding party, so that the requesting party may  
6 inspect, measure, survey, photograph, test, or sample the property . . .” Fed. R. Civ. P. 34(a)(2). A  
7 request is adequate if it describes items with “reasonable particularity;” specifies a reasonable time,  
8 place, and manner for the inspection; and specifies the form or forms in which electronic information  
9 can be produced. Fed. R. Civ. P. 34(b). Thus, a request is sufficiently clear if it “places the party  
10 upon ‘reasonable notice of what is called for and what is not.’” *Kidwiler v. Progressive Paloverde Ins.*  
11 *Co.*, 192 F.R.D. 193, 202 (N.D. W. Va. 2000), quoting *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D.  
12 408, 412 (M.D.N.C. 1992)).

13 The responding party must respond in writing and is obliged to produce all specified relevant  
14 and non-privileged documents, tangible things, or electronically stored information in its “possession,  
15 custody, or control” on the date specified. Fed. R. Civ. P. 34(a). Actual possession, custody or control  
16 is not required. “A party may be ordered to produce a document in the possession of a non-party entity  
17 if that party has a legal right to obtain the document or has control over the entity who is in possession  
18 of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620 (N.D. Cal. 1995). In the alternative, a  
19 party may state an objection to a request, including the reasons. Fed. R. Civ. P. 34(b)(2)(A)-(B). When  
20 a party resists discovery, he “has the burden to show that discovery should not be allowed, and has the  
21 burden of clarifying, explaining, and supporting its objections.” *Oakes v. Halvorsen Marine Ltd.*, 189  
22 F.R.D 281, 283 (C.D. Cal. 1998) (citing *Nestle Food Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101,  
23 104 (D.N.J. 1990)).

24 **B. Discussion and Analysis**

25 Under the Federal Rules, “[a] party seeking discovery may move for an order compelling an  
26 answer, designation, production or inspection” when “a party fails to answer an interrogatory  
27 submitted under Rule 33; or . . . a party fails to respond that inspection will be permitted – or fails to  
28 permit inspection – as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B).

1 Defendants assert Plaintiff failed to properly respond to (1) interrogatories from defendants  
2 Chad Haskins and Frederick Martinez and (2) Defendants' First Request for Production of Documents.  
3 (Doc. 34-1 at 4) Ms. Cohen wrote to Plaintiff on March 28, 2019 to request the initial disclosures and  
4 the discovery responses. (Doc. 34-2 at 61) Ms. Cohen informed Plaintiff that his interrogatory  
5 responses must be verified, and identified the manner in which she believed the responses were  
6 deficient. (*Id.*) She noted Plaintiff did not adequately respond to the Requests for Production with  
7 either a response or an objection thereto. (*Id.* at 63-64)

8 As Plaintiff was informed by defense counsel, his responses to interrogatories must be  
9 accompanied by a verification signed under oath. Thus, Plaintiff's responses to the interrogatories  
10 failed to comply with Federal Rule Civil Procedure 33(b)(3). In addition, Plaintiff's responses to the  
11 Request for Production—namely, that he was not prepared to produce the documents because he did  
12 not have copies—was insufficient for the Court to determine whether responsive documents exist, or  
13 the extent to which Plaintiff is refusing to engage in discovery. For example, Defendants requested  
14 Plaintiff produce all documents related to medical treatment he received as a result of the underlying  
15 incident. (Doc. 34-2 at 37) To the extent Plaintiff has control over any medical records, he may  
16 execute a release for Defendants to obtain the records. Defendants also requested Plaintiff produce any  
17 photographs of his injuries from the date of the incident. If Plaintiff is aware of such photos, he should  
18 inform Defendants. Plaintiff's response that the documents requested were "not prepared" is  
19 insufficient.

20 Given Plaintiff's failure to properly respond to the discovery requests, Defendants' motion to  
21 compel additional responses to the interrogatories and requests for production of documents is  
22 **GRANTED**. In light of the deadline ordered below, Plaintiff's request for an extension of time to  
23 respond to the discovery requests is moot.

24 Finally, as the Court previously informed him, he has no constitutional right to counsel but the  
25 Court may request an attorney to represent indigent persons in limited circumstances that don't exist  
26 here. 28 U.S.C. § 1915(e)(1). The fact he is incarcerated is a circumstance experienced by numerous  
27 litigants in this Court and alone is not basis for appointment of counsel. *Rand v. Rowland*, 113 F.3d  
28 1520, 1525 (9th Cir. 1997). Moreover, despite the plaintiff's claim, this case does not involve complex

1 questions of fact or law. Further, the Court continues to be unable to determine that the plaintiff is  
2 likely to succeed on the merits. Therefore, the Court does not find the required exceptional  
3 circumstances. Thus, the plaintiff's motion for appointment of counsel (Doc. 35) is **DENIED**.

4 **III. Conclusion and Order**

5 Based upon the foregoing, the Court **ORDERS**:

- 6 1. Defendants' motion to compel discovery (Doc. 34) is **GRANTED**;
- 7 2. Plaintiff **SHALL** serve supplemental responses to Defendants' Interrogatories-Set One  
8 and produce documents responsive to Defendants' Request for Production of  
9 Documents- Set One no later than **October 18, 2019**; and
- 10 3. Plaintiff's request for an extension of time (Doc. 33) is terminated as **MOOT**;
- 11 4. Plaintiff's motion for appointment of counsel (Doc. 35) is **DENIED**.

12 **Plaintiff is reminded that his failure to comply with this order, or any other order, of the Court**  
13 **may result in the Court imposing sanctions on him which could include dismissal of the action as**  
14 **authorized by Local Rule 110.**

15  
16 IT IS SO ORDERED.

17 Dated: September 27, 2019

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE