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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,
Plaintiff,
v.
KNOWLTON,
Defendant.

Case No. 1:18-cv-00851-JLT-BAM (PC)
ORDER DENYING PLAINTIFF’S MOTION
FOR SANCTIONS
(ECF No. 36)
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S MOTION
FOR SANCTIONS, CONSTRUED AS A
MOTION TO COMPEL DISCOVERY
(ECF No. 48)

I. Procedural History

Plaintiff Lawrence Christopher Smith (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Knowlton for excessive force in violation of the Eighth Amendment. This case has a long procedural history, but the Court provides the following background as relevant to the motions addressed by the instant order.

On July 12, 2019, the parties participated in a settlement conference. (ECF No. 27.) As the settlement conference was not successful, the Court issued a Discovery and Scheduling Order on August 5, 2019. (ECF No. 33.)

On August 16, 2019, Plaintiff filed a motion for sanctions. (ECF No. 36.) Defendant filed an opposition, (ECF No. 38), Plaintiff filed a supplemental brief in lieu of a reply, (ECF No.

1 41), and Defendant filed an opposition to the supplemental brief, (ECF No. 42).

2 During briefing on the motion for sanctions, Defendant filed a motion for summary
3 judgment on the ground that Plaintiff failed to exhaust administrative remedies. (ECF No. 37.)
4 Following an extension of time, Plaintiff filed his opposition on October 24, 2019, (ECF No. 43),
5 and Defendant filed a reply on October 31, 2019, (ECF No. 44). That motion is pending and will
6 be addressed by separate findings and recommendations.

7 After the motion for summary judgment was fully briefed, Plaintiff filed another motion
8 for sanctions on January 16, 2020. (ECF No. 48.) Defendant opposed the motion on February 7,
9 2020, (ECF No. 51), and Plaintiff did not file a reply.

10 Plaintiff's motions for sanctions are fully briefed and before the Court.¹ Local Rule
11 230(1). The August 16, 2019 motion for sanctions is denied and the January 16, 2020 motion is
12 granted in part and denied in part, as discussed below.

13 **II. Plaintiff's August 16, 2019 Motion for Sanctions**

14 Plaintiff seeks sanctions pursuant to Federal Rule of Civil Procedure 37, because
15 Defendant and defense counsel caused Plaintiff to miss the deadline to file his confidential
16 settlement statement when they did not forward Plaintiff's legal mail to him following his transfer
17 to another institution. (ECF No. 36.) Plaintiff did not receive the Court's order scheduling the
18 settlement conference—and setting forth the requirements for filing a confidential settlement
19 statement—until four days before the settlement conference, prejudicing Plaintiff before the
20 Court. Plaintiff also alleges that the defense was involved in the destruction of Plaintiff's legal
21 property by correctional staff, though he does not specify further details about this incident.
22 Plaintiff seeks a monetary fine assessed jointly against Defendant and the defendants in Plaintiff's
23 other cases and copies of the Court's local rules and other statutes lost.² (*Id.*)

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25 ¹ These motions were dropped inadvertently by the Court's CM/ECF reporting/calendaring system resulting in the
26 prolonged delay in resolution.

27 ² To the extent the motion raises other arguments going to the merits of this action, allegations regarding the actions
28 of parties or attorneys involved in Plaintiff's other lawsuits, or Plaintiff's belief that all of his cases should be
consolidated, those arguments have been repeatedly dismissed by the Court and will not be reconsidered here. (*See*
ECF Nos. 8, 62.)

1 Defendant argues in opposition that Plaintiff’s motion for discovery sanctions is frivolous
2 because Plaintiff has not identified any discovery or disclosures that Defendant has failed to
3 produce, and such failure would be impossible because the Court’s Discovery and Scheduling
4 Order was issued less than thirty days prior to the filing of Plaintiff’s motion. (ECF No. 38.)
5 Defendant seeks sanctions in the form of reasonable costs for opposing Plaintiff’s frivolous
6 motion and to deter Plaintiff from engaging in such litigation tactics in the future. (*Id.*)

7 In his supplemental brief filed in lieu of a reply, Plaintiff again argues that defense
8 counsel censored Plaintiff’s legal mail, preventing him from receiving the Court’s order
9 scheduling the settlement conference in this action, and destroyed Plaintiff’s legal records relating
10 to this action and Plaintiff’s other litigation. (ECF No. 41.) As relief, Plaintiff seeks monetary
11 sanctions “for the theft and/or destruction of [his] legal manuals” and that defense counsel bear
12 the costs of the Court providing Plaintiff with copies of various federal and state statutes, case
13 files for his other pending lawsuits, and the Court’s local rules. (*Id.*)

14 Defendant opposed Plaintiff’s supplemental brief, arguing that defense counsel have not,
15 and could not, engage in the alleged conduct, and to the extent the Court considers the
16 supplemental brief as an additional motion for sanctions, the Court should also award Defendant
17 reasonable costs for opposing Plaintiff’s second frivolous motion. (ECF No. 42.)

18 **A. Legal Standards**

19 Broad sanctions may be imposed against a person or party for failure to obey a prior court
20 order compelling discovery. Rule 37(b)(2) of the Federal Rules of Civil Procedure provides that
21 if a party fails to obey an order to provide or permit discovery, the Court may issue further just
22 orders, which may include prohibiting the disobedient party from supporting or opposing
23 designated claims or defenses, or from introducing designated matters in evidence. Fed. R. Civ.
24 P. 37(b)(2)(A). The Court also may dismiss the action or proceeding in whole or in part. *Id.*
25 Dismissal and default are such drastic remedies, they may be ordered only in extreme
26 circumstances—i.e., willful disobedience or bad faith. *In re Exxon Valdez*, 102 F.3d 429, 432
27 (9th Cir. 1996). Even a single willful violation may suffice depending on the circumstances.
28 *Valley Eng’rs Inc. v. Elec. Eng’g Co.*, 158 F.3d 1051, 1056 (9th Cir. 1998) (dishonest

1 concealment of critical evidence justified dismissal).

2 Courts also have the “inherent power to levy sanctions, including attorneys’ fees, for
3 ‘willful disobedience of a court order . . . or when the losing party has acted in bad faith,
4 vexatiously, wantonly, or for oppressive reasons.’” *Fink v. Gomez*, 239 F.2d 989, 991 (9th Cir.
5 2001) (quoting *Roadway Express, Inc. v. Pipe*, 447 U.S. 752, 766 (1980)). Under the court’s
6 inherent power, sanctions are only available “if the court specifically finds bad faith or conduct
7 tantamount to bad faith.” *Id.* at 994. Conduct that is tantamount to bad faith includes
8 “recklessness when combined with an additional factor such as frivolousness, harassment, or an
9 improper purpose.” *Id.*

10 **B. Discussion**

11 The Court finds that sanctions pursuant to Rule 37 are inappropriate where, as here,
12 Plaintiff has not identified any failure by Defendant or defense counsel to comply with any
13 discovery order, much less an order compelling discovery.

14 Plaintiff has also presented no evidence of bad faith on the part of Defendant or defense
15 counsel that would support the imposition of sanctions pursuant to the Court’s inherent authority.
16 Plaintiff presents nothing more than his own conclusory allegations regarding Defendant or
17 defense counsel’s involvement in the processing of Plaintiff’s legal mail or legal records, while
18 defense counsel have submitted declarations signed under penalty of perjury asserting that they
19 did not and could not have had any involvement in the processing or control of Plaintiff’s mail or
20 records. (ECF Nos. 42-1, 42-2, 42-3.) Plaintiff’s unsupported assertions to the contrary are not
21 sufficient to demonstrate the required bad faith necessary to warrant the imposition of sanctions.

22 With respect to Defendant’s request for sanctions, the Court finds that while Plaintiff’s
23 motion is not supported by existing law, it is not clear that it was brought for an improper
24 purpose, and therefore does not rise to the level of bad faith conduct. However, Plaintiff is
25 warned against filing future motions, unsupported by law or fact and raising issues that were
26 already previously decided, that would unnecessarily expend the Court’s scarce judicial
27 resources. Such motions may be subject to sanctions, up to and including terminating sanctions.

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1 **III. Plaintiff's January 16, 2020 Motion for Sanctions**

2 In this motion for sanctions, Plaintiff again asserts that the failure of defense counsel or
3 CDCR officials to forward the Court's order regarding the July 12, 2019 settlement conference
4 resulted in a violation of his right to access the courts. (ECF No. 48.) Plaintiff also argues that
5 defense counsel did not adequately respond to Plaintiff's August 28, 2019 discovery requests,
6 specifically Requests for Production Nos. 1, 5, 7, 9–12, and 15. (*Id.*)

7 In opposition, Defendant contends that the motion for sanctions is premature, if not
8 improper, because Plaintiff has yet to file a motion to compel and therefore Defendant has not yet
9 failed to comply with any order compelling discovery. (ECF No. 51.) Further, even if the Court
10 construes Plaintiff's motion for sanctions as a motion to compel further responses, Defendant's
11 objections and responses to the requests for production at issue are proper. (*Id.*)

12 The Court finds it appropriate to construe Plaintiff's motion for sanctions as a motion to
13 compel discovery. The motion to compel is denied, as discussed below.

14 **A. Legal Standards**

15 Under Rule 37 of the Federal Rules of Civil Procedure, "a party seeking discovery may
16 move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P.
17 37(a)(3)(B). The court may order a party to provide further responses to an "evasive or
18 incomplete disclosure, answer, or response." Fed. R. Civ. P. 37(a)(4). "District courts have
19 'broad discretion to manage discovery and to control the course of litigation under Federal Rule
20 of Civil Procedure 16.'" *Hunt v. Cty. of Orange*, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
21 *Avila v. Willits Env'tl. Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011)).

22 The moving party bears the burden of informing the Court: (1) which discovery requests
23 are the subject of the motion to compel; (2) which of the responses are disputed; (3) why the
24 response is deficient; (4) why any objections are not justified; and (5) why the information sought
25 through discovery is relevant to the prosecution or defense of this action. *McCoy v. Ramirez*,
26 2016 WL 3196738 at *1 (E.D. Cal. 2016); *Ellis v. Cambra*, 2008 WL 860523, at *4 (E.D. Cal.
27 2008) ("Plaintiff must inform the court which discovery requests are the subject of his motion to
28 compel, and, for each disputed response, inform the court why the information sought is relevant

1 and why defendant's objections are not justified.").

2 In responding to requests for production, a party must produce documents or other
3 tangible things which are in their "possession, custody or control." Fed. R. Civ. P. 34(a).
4 Responses must either state that inspection and related activities will be permitted as requested or
5 state an objection to the request, including the reasons. Fed. R. Civ. P. 34(b)(2)(B). A reasonable
6 inquiry must be made, and if no responsive documents or tangible things exist, Fed. R. Civ. P.
7 26(g)(1), the responding party should so state with sufficient specificity to allow the Court to
8 determine whether the party made a reasonable inquiry and exercised due diligence, *Uribe v.*
9 *McKesson*, No. 08cv1285 DMS (NLS), 2010 WL 892093, at *2-3 (E.D. Cal. Mar. 9, 2010).

10 Actual possession, custody or control is not required. "A party may be ordered to produce
11 a document in the possession of a non-party entity if that party has a legal right to obtain the
12 document or has control over the entity [that] is in possession of the document." *Soto v. City of*
13 *Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995); *see also Allen v. Woodford*, 2007 WL 309945, at
14 *2 (E.D. Cal. Jan. 30, 2007) ("Property is deemed within a party's possession, custody, or control
15 if the party has actual possession, custody, or control thereof or the legal right to obtain the
16 property on demand.").

17 **B. Requests for Production of Documents ("POD") Nos. 1, 5, 7, 9-12, 15**

18 POD No. 1:

19 Copies of all correspondences submitted by me to the warden of CCI at Tehachapi K.
20 Holland from the period of August 19th, 2013 until September 25, 2015 (To include staff
21 complaints etc;)

22 Response to POD No. 1:

23 Defendant objects to this request because it is vague, ambiguous, compound, overbroad,
24 and unduly burdensome as to time, scope, and content. Defendant further objects that this request
25 seeks information that Defendant has already produced to Plaintiff with his motion for summary
26 judgment and information that is contained within his central file and, therefore, equally available
27 to him. Without waiving the objections, Defendant produces copies of the correspondence
28 between Plaintiff and the Warden's Office between August 19, 2013, and September 19, 2015,

1 and the Inmate/Parolee Appeals Tracking System (IATS) report for Plaintiff's inmate appeals
2 submitted at CCI during the relevant period.

3 Ruling on POD No. 1:

4 Plaintiff's request is overly broad, unduly burdensome as to time, scope, and content, and
5 not proportional to the needs of this case. This case proceeds *only* on Plaintiff's claim that
6 Defendant Knowlton used excessive force against Plaintiff on September 9, 2013. (ECF No. 2.)
7 In spite of Defendant's proper objections, Defendant provided responsive documents covering the
8 relevant time period, and Plaintiff has not described how those responses are insufficient.
9 Defendant's objection to POD No. 1 is sustained.

10 POD No. 5:

11 A copy of the complaint Smith v. Becerra 2:19-cv-00287 KJM-DB-D to include the
12 documents filed in support of motion for a TRO/Prelim Injunction i.e., all exhibits and motions.

13 Response to POD No. 5:

14 Defendant objects to this request because it is vague, ambiguous, overbroad, unduly
15 burdensome, irrelevant to any claims or defenses in this action and not proportional to the needs
16 in this case. Defendant further objects that this request seeks information that is equally available
17 to Plaintiff.

18 Ruling on POD No. 5:

19 Plaintiff's request is overly broad, irrelevant to any claims or defenses in this action, and
20 not proportional to the needs of this case. This case proceeds *only* on Plaintiff's claim that
21 Defendant Knowlton used excessive force against Plaintiff on September 9, 2013. (ECF No. 2.)
22 Despite Plaintiff's repeated assertions to the contrary, filings from Plaintiff's other cases are not
23 relevant to this action. (*See* ECF Nos. 8, 62.) Furthermore, these documents are not within
24 Defendant's custody or control, and are equally available to Plaintiff. Defendant's objection to
25 POD No. 5 is sustained.

26 POD No. 7:

27 Copy of DOM (Dept Operations Manual) (for 2013) subsections governing use of
28 pepperspray/prohibited use of pepperspray, regulation concerning inmate holding food port/cuff

1 port hostage,

2 Response to POD No. 7:

3 Defendant objects to this request because it is vague, ambiguous, overbroad, unduly
4 burdensome, and seeks information that is equally available to Plaintiff in the law library.

5 Without waiving the objections, Defendant produces non-confidential portions of the DOM
6 including sections 51020.15 through 51020.15.2, in effect on September 9, 2013. (*See*
7 Defendants' privilege log for a list of documents not produced.)

8 Ruling on POD No. 7:

9 Defendant produced responsive documents to POD No. 7, including the non-confidential
10 portions of the DOM in effect at the relevant time. Plaintiff's only argument is that the
11 regulations are not confidential and are readily available to him or any inmate within the custody
12 of the department upon request. (ECF No. 48, p. 7.) Accordingly, any relevant portions of the
13 DOM that Plaintiff believes are responsive to this request are equally available to Plaintiff.
14 Defendant's objection to POD No. 7 is sustained.

15 POD No. 9:

16 Copy of the Civil Docket for Case No. 1:10-cv-01814 DAD-JLT i.e., Smith v Allison

17 Response to POD No. 9:

18 Defendant objects to this request because it is overbroad, unduly burdensome, irrelevant
19 to any claims or defenses and not proportional to the needs in this case. Defendant further objects
20 that this request seeks information that is equally available to Plaintiff.

21 Ruling on POD No. 9:

22 Plaintiff's request is overly broad, irrelevant to any claims or defenses in this action, and
23 not proportional to the needs of this case. This case proceeds *only* on Plaintiff's claim that
24 Defendant Knowlton used excessive force against Plaintiff on September 9, 2013. (ECF No. 2.)
25 Despite Plaintiff's repeated assertions to the contrary, filings from Plaintiff's other cases are not
26 relevant to this action. (*See* ECF Nos. 8, 62.) Furthermore, these documents are not within
27 Defendant's custody or control, and are equally available to Plaintiff. Defendant's objection to
28 POD No. 9 is sustained.

1 POD No. 10:

2 Copies of any citizens complaints and/or staff complaints submitted against Officer D.
3 Knowlton

4 Response to POD No. 10:

5 Defendant objects to this request because it is vague, ambiguous, overbroad as to time and
6 subject matter, and unduly burdensome. Defendant also objects on the ground that this request
7 seeks irrelevant information not proportional to the needs in this case; seeks inadmissible
8 character evidence; and potentially calls for documents protected by the official information
9 privilege, California Government Code section 6254, and California Evidence Code sections
10 1040, 1041, and 1043. Defendant further objects that this request also seeks documents that may
11 contain confidential and private information about other inmates' medical conditions, custody
12 classifications, and other sensitive information, the disclosure of which would create a hazard to
13 the safety and security of the institution and violates the inmates' rights to privacy and
14 confidentiality. Without waiving the objections, Defendant produces the Inmate/Parolee Appeals
15 Tracking System (IATS) report for Staff Complaints filed against Defendant with third party
16 inmate information redacted. (*See* Defendants' privilege log for a list of documents not
17 produced.)

18 Ruling on POD No. 10:

19 Plaintiff's request is overly broad, geared towards obtaining inadmissible character
20 evidence, and not proportional to the needs of his case. Generally, evidence of a person's
21 character is not admissible to prove they acted in conformity with that character on a particular
22 occasion. Fed. R. Evid. 404(a). It is well established that blanket requests for all grievances
23 against defendants in order to establish a pattern of misconduct may be considered overbroad and
24 burdensome. *Valenzuela v. Smith*, Case No. CIV S-04-0900 FCD DAD P, 2006 WL 403842, at
25 *2 (E.D. Cal. Feb. 15, 2006). In light of the breadth of Plaintiff's request and Defendant's
26 production of responsive documents, with appropriate redactions, the Court finds it unnecessary
27 to address Defendant's assertion of the official information privilege. Defendant's objection to
28 POD No. 10 is sustained.

1 POD No. 11:

2 All secondary reports generated in concern to Officer Knowlton’s use of force against me
3 i.e., CDCR forms 3010, 3011, 3012, 3034 and 3036

4 Response to POD No. 11:

5 Defendant objects to this request because the phrase “secondary reports generated in
6 concern to Officer Knowlton’s use of force against me” is vague, ambiguous and overbroad in
7 time and subject matter. Defendant also objects to this request on the ground that it seeks
8 irrelevant information not proportional to the needs in this case. Without waiving the objections,
9 Defendant produces copies of the CCI Rules Violation Report, log number CCI-FB-13-09-0002,
10 and the Incident Report, log number CCI-FB-13-09-0220.

11 Ruling on POD No. 11:

12 Although POD No. 11 is not specific as to time, the Court finds that in light of
13 Defendant’s production of the Rules Violation Report and Incident Report relevant to the use of
14 force incident on September 9, 2013, the request is not vague and does not seek information that
15 is irrelevant or disproportional to the needs in this case. Defendant does not address Plaintiff’s
16 request for secondary reports, which he specifies as CDCR forms 3010, 3011, 3012, 3034, and
17 3036, in either the objections to POD No. 11 or the opposition to the motion to compel. Nor does
18 Defendant assert whether he engaged in a reasonable and diligent search for any other responsive
19 information aside from the Rules Violation Report and Incident Report produced, whether the
20 specified forms exist with respect to the September 9, 2013 use of force, and if they exist,
21 whether they are subject to any form of privilege. As such, Plaintiff’s motion to compel with
22 respect to POD No. 11 is granted.

23 However, the Court finds it appropriate to stay any supplemental response to POD No. 11
24 pending resolution of Defendant’s motion for summary judgment on the issue of exhaustion of
25 administrative remedies. The Court granted Defendant’s motion for a protective order relieving
26 him of the obligation to respond to Plaintiff’s November 20, 2019 discovery requests until the
27 pending motion for summary judgment is resolved, as those requests are related to the merits of
28 this action rather than the issue of exhaustion. (ECF No. 54.) The Court finds that POD No. 11 is

1 similarly related to the merits of this action, rather than exhaustion. Accordingly, Defendant is
2 relieved of the obligation to serve a supplemental response to POD No. 11 until after resolution of
3 the summary judgment motion.

4 To the extent Plaintiff believes sanctions are appropriate with respect to Defendant's
5 original response to POD No. 11, any such request is denied. Defendant has not failed to obey an
6 order to provide or permit discovery, Fed. R. Civ. P. 37(b)(2)(A), and the Court does not find
7 evidence of bad faith, *Fink*, 239 F.2d at 991.

8 POD No. 12:

9 Copies of any reprimands demotions or adverse actions initiated against Officer Knowlton
10 by CDCR based on improper conduct

11 Response to POD No. 12:

12 Defendant objects to this request because it is vague, ambiguous and overbroad as to time
13 and subject matter. Defendant also objects to this request on the ground that it seeks irrelevant
14 information not proportional to the needs in this case; seeks inadmissible character evidence; and
15 potentially calls for documents protected by the official information privilege, California
16 Government Code section 6254, and California Evidence Code sections 1040, 1041, and 1043.
17 Defendant further objects that this request also seeks documents that may contain confidential and
18 private information about other inmates' medical conditions, custody classifications, and other
19 sensitive information, the disclosure of which would create a hazard to the safety and security of
20 the institution and violates the inmates' rights to privacy and confidentiality. Without waiving the
21 objections, Defendant responds: there are no documents in Defendant's custody and control
22 responsive to this request.

23 Ruling on POD No. 12:

24 Plaintiff's request is overly broad, geared towards obtaining inadmissible character
25 evidence, and not proportional to the needs of his case. Generally, evidence of a person's
26 character is not admissible to prove they acted in conformity with that character on a particular
27 occasion. Fed. R. Evid. 404(a). It is well established that blanket requests for all grievances
28 against defendants in order to establish a pattern of misconduct may be considered overbroad and

1 burdensome. *Valenzuela v. Smith*, Case No. CIV S-04-0900 FCD DAD P, 2006 WL 403842, at
2 *2 (E.D. Cal. Feb. 15, 2006). In light of the breadth of Plaintiff's request and Defendant's
3 assertion that despite engaging in a diligent and reasonable search for any responsive information,
4 no responsive documents were located, the Court finds it unnecessary to address Defendant's
5 assertion of the official information privilege. Defendant's objection to POD No. 12 is sustained.

6 POD No. 15:

7 Copies of all CDCR 1083 forms generated in my name and signed by me from the period
8 of January 1st, 2018 until present date

9 Response to POD No. 15:

10 Defendant objects to this request because it is irrelevant to any claims or defenses and not
11 proportional to the needs in this case because the time period between January 1, 2018, and the
12 current date are not at-issue in this case. Defendant further objects that this request is vague,
13 ambiguous, overbroad, compound, and unduly burdensome.

14 Ruling on POD No. 15:

15 Plaintiff's request is overly broad, irrelevant to any claims or defenses in this action, and
16 not proportional to the needs of this case. Plaintiff's argument that the documents are relevant to
17 supporting his August 16, 2019 motion for sanctions is unpersuasive in light of the Court's denial
18 of the motion by the instant order. Defendant's objection to POD No. 15 is sustained.

19 **IV. Order**

20 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 21 1. Plaintiff's motion for sanctions, (ECF No. 36), is DENIED;
- 22 2. Plaintiff's motion for sanctions, construed as a motion to compel discovery, (ECF No. 48),
23 is GRANTED IN PART and DENIED IN PART, as follows:
 - 24 a. Plaintiff's motion to compel with respect to POD No. 11 is GRANTED; and
 - 25 b. Plaintiff's motion to compel with respect to POD Nos. 1, 5, 7, 9–10, 12, and 15 is
26 DENIED; and

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3. Defendant is relieved of the obligation to serve a supplemental response to POD No. 11 pending resolution of the motion for summary judgment on the issue of exhaustion of administrative remedies.

IT IS SO ORDERED.

Dated: February 2, 2024

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE