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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,

Plaintiff,

No. CIV S-06-0791 FCD GGH P

vs.

DIRECTOR OF THE DIVISION
OF ADULT INSTITUTIONS, et al.,

Defendant.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the undersigned is plaintiff's motion to compel filed July 14, 2009. For the following reasons, the motion is denied.

Plaintiff objects to defendants' responses to requests for production nos. 1-5. Request no. 1 sought a copy of defendant Hunt's job duty statement. Request no. 2 sought a copy of defendant Peterson's job duty statement. Request no. 3 sought a copy of the guidelines regarding memorandum, circular or bulletin by Dr. Ritter or other R. J. Donovan and CDCR Medical Officials concerning the denial of medical chrono's for treatment for new style pants and shirts, for January 14, 2004, or date before. Request no. 4 sought copies of all documents which mention or discuss *current* guidelines for diagnosis and treatment of skin rashes.

1 In their original response to these requests, sent to plaintiff on June 15, 2009,
2 defendants made several objections. Defendants also stated that they did not currently have any
3 responsive documents in their possession, custody or control. Defendants stated that their
4 investigation had just commenced and was continuing, and if they came into possession, custody
5 or control of responsive documents, they would supplement their response.

6 In their opposition to the motion to compel, defendants state that they have since
7 come into possession of most of the requested documents and have produced them to plaintiff.
8 Defendants argue that there is nothing to compel. Attached to defendants' opposition is a
9 declaration by defense counsel stating that on July 22, 2009, her office served plaintiff with an
10 amended response to plaintiff's request for production of documents. In the amended response,
11 defendants provided plaintiff with copies of documents responsive to request nos. 1, 2,
12 3 and 4.

13 Plaintiff has filed no response to defendants' opposition suggesting that the
14 supplemental responses to request nos. 1-4 are adequate. Accordingly, the court deems the
15 motion to compel regarding these requests resolved. However, if defendants were able to obtain
16 these documents by July 22, 2009, it is unclear why they were not in their possession, custody or
17 control when they served their original response on June 15, 2009. Defendants' suggestion that
18 they were not required to produce documents because their investigation had just commenced is
19 not well taken. It appears that plaintiff should not have had to file a motion to compel regarding
20 request nos. 1-4 and the court should not have had to prepare an order addressing these requests.

21 Request for production no. 5 sought, '[c]opies of any and all DOCUMENTS other
22 than those described in request No. 1 and 2 which contain, mention or discuss previous
23 guidelines (within the past 10 years) for the diagnosis and treatment of skin rashes or
24 inflammation for California state inmates.'" Defendants initially objected that the request was
25 vague, ambiguous and overbroad.

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It appears that request no. 4 sought copies of all documents discussing the current guidelines for treatment of skin rashes, whereas request no. 5 seeks copies of “previous” guidelines for the treatment of skin rashes.

In this action, plaintiff alleges that on January 14, 2004, he was forced to wear state issued pants and shirts. Request no. 5 seeks guidelines for the treatment of rashes going back ten years. It is not clear how guidelines regarding treatment of skin rashes prior to 2004 are relevant to plaintiff’s claim. Accordingly, the court finds that request no. 5 is overbroad.

Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel (no. 36) is denied.

DATED: December 16, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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