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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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6	TIMOTHY DEMOND BARRY,)	
7)	Case No. 2:08-cv-01722-PMP-GWF
	Plaintiff,)	
8	vs.)	<u>ORDER</u>
9	T. FELKER, <i>et al.</i> ,)	Motion to Compel (#36)
10)	
	Defendants.)	

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12 This matter is before the Court on Plaintiff’s Motion to Compel F.R.C.P. 37 for Defendants J.
13 Bishop and N. Albonico to Produce the Names of Officers Named in the Incident Reports on July 23,
14 2007 also Documents Pertinent to the July 23, 2007 Incident (#36), filed August 30, 2010 and
15 Defendants Bishop and Albonico’s Opposition to Plaintiff Barry’s Motion to Compel (#38), filed
16 September 14, 2010.

17 **BACKGROUND**

18 In his Complaint (#1), Plaintiff alleges that he was subjected to cruel and unusual punishment
19 by Defendants in violation of his Eighth Amendment rights. Plaintiff alleges that on July 23, 2007, the
20 correctional officers at the High Desert State Prison (“HDSP”) demanded that Plaintiff and other
21 inmates submit to a strip search. After refusing to be strip searched, Plaintiff alleges that he was
22 handcuffed and placed on his knees by a correctional officer acting under the direction of Defendants J.
23 Bishop and N. Albonico. Plaintiff complained that the asphalt was too hot after ten (10) minutes of
24 kneeling. Plaintiff states that he could no longer take the pain and fell over. The correctional officers
25 again placed him on his knees and left him in that position for almost an hour. Plaintiff alleges that RN
26 Flaherty examined Plaintiff and told Plaintiff that he had second degree burns on his knees.

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1 **DISCUSSION**

2 Plaintiff Timothy Barry requests that the Court order Defendants to further respond to
3 interrogatories and requests for production that Plaintiff served on June 16, 2010. (#36). Defendants
4 argue that they raised valid objections to many of Plaintiff’s discovery requests and fully responded to
5 the requests after raising the objections. (#38). The Court will now examine the discovery requests at
6 issue and Defendants’ responses to determine whether Defendants should be compelled to supplement
7 their responses.

8 **1. Interrogatories Served on Defendant J. Bishop**

9 **Interrogatory No. 1: Objection upheld as vague.**

10 Plaintiff requests that Defendant state High Desert State Prison’s approved policy for how to
11 deal with “an incident” in Facility C’s exercise yard that involves a weapon. (#36 at 7). Defendant
12 Bishop objects to the phrase “an incident” as vague.¹ (*Id.*)

13 The Court upholds Defendant’s objection as to vagueness. Plaintiff’s phrasing requests
14 information on the policy for dealing with “an incident” involving a weapon. However, it is not clear
15 whether “an incident” refers to the possession of a weapon, the use of a weapon, threatening someone
16 with a weapon, the mere finding of a weapon on the ground, etc. Each “interrogatory should consist of
17 a brief, simple, direct, and unambiguous question, dealing with one point only.” *Hilt v. SFC Inc.*, 170
18 F.R.D. 182, 187 (D.Kan. 1997) (citing William W. Schwarzer, *et. al.*, CIVIL DISCOVERY AND
19 MANDATORY DISCLOSURE: A GUIDE TO EFFICIENT PRACTICE, 4-5 to 4-7 (2d ed. 1994)). Interrogatories
20 “should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be
21 written so that the question and the expected answer can be understood easily when read at trial.” *Id.*
22 In this instance, it is unclear what type of incident is being referred to in Plaintiff’s interrogatory and it
23 is not specific enough for Defendant to be able to identify the information sought. Therefore, the

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25 ¹ Without waiving his objection, Bishop identified several written policies that would pertain to
26 incidents in an exercise yard that may or may not involve a weapon, including sections of the High
27 Desert State Prison (“HDSP”) Operation Manual and California Code of Regulations. (#36 at 7-8).
28 Defendant then declined to state the relevant contents of the Department Operation Manual and HDSP
Operational Procedures because the sections “are confidential to inmates”. (*Id.*) As the Court has
upheld Defendant’s vagueness objection, it will not address the confidentiality question.

1 objection is upheld as Defendant is unable to identify what specific policies for High Desert State
2 Prison (“HDSP”) are requested by Plaintiff.

3 **Interrogatory No. 2:** Objection overruled.

4 Plaintiff requests information on High Desert State Prison’s approved policy for how to handle
5 an incident in Facility C when a weapon is located in the exercise yard while inmates are still present.
6 (#36 at 8). Defendant objects to the interrogatory as vague. (*Id.*) While Plaintiff’s phrasing may not be
7 precise as to the term “incident,” the Court finds that the interrogatory is specific enough for Defendant
8 to identify the information sought. The interrogatory is limited to a request for a statement of HDSP’s
9 policies where inmates are present in the exercise yard and the guards have detected a weapon. As a
10 result, the Court will overrule Defendant’s vagueness objection.

11 After raising the vagueness objection, Defendant identifies several sections of the HDSP
12 Department Operation Manual and Operational Procedures as responsive to the interrogatory, but states
13 that Defendant will not provide the information as it is confidential to inmates. (#36 at 8). According
14 to Bishop, certain sections of the Department Operation Manual and HDSP Operational Procedures are
15 confidential and may not be released to prisoners as it “would compromise the safety and security of the
16 institution”. (#38 at 3-4). However, Defendant has failed to cite any official policy, regulation, rule or
17 statute that prohibits prisoners from viewing sections of the HDSP Operational Procedures. Through its
18 own research, the Court determined that the California Code of Regulations allows for information
19 “which would jeopardize the security of the institution” to be classified as confidential. 15 CA ADC §
20 3321(a)(2). However, state agents and corrections institutions may not merely refuse to respond to
21 discovery requests by raising the allegation that a response would compromise the safety and security of
22 the institution. *See Jacobs v. Scribner*, 2009 WL 3157533, *3-*4 (E.D.Cal. Sept. 25, 2009) (partially
23 overruling the defendants’ objection to producing confidential sections of the Department Operational
24 Manual). Defendant must sufficiently demonstrate how allowing Plaintiff to view an official prison
25 policy or procedure creates a specific safety or security threat for the institution.

26 Defendant’s opposition fails to state any specific manner in which the prison would be
27 compromised by providing Plaintiff with sections of the Department Operation Manual and HDSP
28 Operational Procedures. In the opposition and the attached affidavit, Bishop recites the regulatory

1 standard that “providing inmates with information contained in the specified sections would
2 compromise the safety and security of the institution.” Mere recitation of the regulatory language
3 without any further explanation is not enough for the Court to find the materials at issue to be
4 confidential. As Defendant has offered no description as to how disclosure of these specific sections
5 could pose a safety or security threat, the Court finds that Defendant has not met his burden of showing
6 that the materials requested are confidential. Bishop will be ordered to produce the specific sections of
7 the Department Operation Manual and HDSP Operational Procedures requested by Plaintiff.

8 **Interrogatory No. 4:** Objections overruled.

9 Plaintiff requests that Defendant Bishop state High Desert State Prison’s approved policy for
10 how to handle an incident in Facility C where an inmate yells “my cellmate is down, man down” to the
11 officer in the guard tower. (#36 at 9).

12 Defendant identifies HDSP Operational Procedure No. 102 as responsive to the interrogatory,
13 but states that Defendant will not provide the information as it is confidential to inmates. (*Id.*) As
14 discussed above, Defendant has not demonstrated to the Court how allowing Plaintiff to view an
15 official prison policy or procedure would threaten the institution. Defendant will be required to produce
16 the specific sections of the Department Operation Manual and HDSP Operational Procedures requested
17 by Plaintiff.

18 **Interrogatory No. 6:** Objection overruled.

19 Plaintiff asks Defendant to state the approved policy in place on July 23, 2007 for guards when
20 the asphalt temperature in the exercise yard is above 100 degrees and inmates are ordered to lay down.
21 (#36 at 10). Defendant objects that the interrogatory is an incomplete hypothetical because it assumes
22 that such a policy exists. (*Id.*; #38 at 5). Without waiving his objection, Defendant then states that
23 “HDSP Operational Procedure No. 102, Alarm Response” would apply, but the HDSP Operational
24 Procedure is confidential to inmates.

25 While Plaintiff’s interrogatory is phrased in a way that assumes that such a policy exists, the
26 Court will overrule Defendant’s objection. As Plaintiff is proceeding *pro se*, inartful drafting of an
27 interrogatory is not a valid basis for objecting if the information sought by the discovery request is
28 reasonably clear. Therefore, the Court will overrule Defendant’s objection.

1 To the extent that Defendant did respond after raising his objections, the Court finds that
2 Defendant has not sufficiently demonstrated to the Court how allowing Plaintiff to view an official
3 prison policy or procedure would threaten the institution. Bishop will be required to produce the
4 specific sections of the Department Operation Manual and HDSP Operational Procedures requested by
5 Plaintiff.

6 **Interrogatory No. 7:** More information required from Defendant.

7 Plaintiff asks Defendant to state the approved policy in place on July 23, 2007 for guards when a
8 correctional officer deploys their panic button. (#36 at 10). Defendant responds that several policies
9 within the Operational Procedure and Department Operation Manual would apply, but that these
10 policies are confidential to inmates. (*Id.*) As discussed above, the Court finds that Defendant has not
11 sufficiently demonstrated to the Court how allowing Plaintiff to view an official prison policy or
12 procedure would threaten the institution. Bishop will be required to supplement his argument that
13 responding to Plaintiff's request would jeopardize the security of the institution by offering further
14 explanation for how responding to this particular interrogatory would impact the safety and security of
15 HDSP.

16 **Interrogatory No. 8:** Objection overruled.

17 Plaintiff asks Defendant to state the approved policy in place on July 23, 2007 for guards when
18 inmates complain to corrections officers that the asphalt is too hot to sit on during an alarm in the
19 exercise yard. (#36 at 10-11). Defendant objects that the interrogatory assumes facts not in evidence
20 because Plaintiff's interrogatory offers no proof that inmates complained about the asphalt temperature
21 during the subject incident. (*Id.*; #38 at 6-7). Without waiving his objection, Defendant then responds
22 by citing and attaching sections of the California Code of Regulations. (#36 at 11).

23 Plaintiff's interrogatory does not require Defendant to admit or accept that an inmate
24 complained about the temperature of the asphalt on the day of the subject incident. Instead, the
25 interrogatory asks what policies in place on July 23, 2007 would pertain in a hypothetical incident
26 where inmates complained during an alarm in the exercise yard that the asphalt was too hot to sit on.
27 As a result, Defendant's objection is overruled.

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