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

MICHAEL BAKER,

Plaintiff,

No. 2:09-cv-2757 MCE KJN P

vs.

PEREZ, et al.,

Defendants.

ORDER

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the amended complaint filed April 5, 2010. Plaintiff alleges that he was repeatedly denied access to pain medication, as a result of which he suffered pain and symptoms of withdrawal.

On March 21, 2011, plaintiff filed a motion to compel alleging, in part, that prison officials refused to copy his 140 page motion to compel. On May 20, 2011, the undersigned ordered the Warden of Pleasant Valley State Prison to copy the motion to compel. The undersigned further ordered plaintiff to serve defendants within this motion within seven days thereafter, and ordered defendants to file a response within fourteen days.

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1 On June 20, 2011, defendants filed their opposition to plaintiff's motion to
2 compel. While plaintiff did not file a copy of his motion to compel with the court, defendants'
3 opposition adequately describes the outstanding discovery disputes. Plaintiff did not file a reply
4 to defendants' opposition. For the following reasons, plaintiff's motion is granted in part and
5 denied in part.¹

6 II. Discussion

7 A. Request for Admissions, Sets One and Two

8 In request nos. 3-13 (set one) and nos. 1-2 (set two), plaintiff asks defendants to
9 admit that various documents are what he claims them to be. For example, request no. 4 asks
10 defendants to admit that attached 602HC, page 298-99 is a genuine copy of a document that
11 requests copies of his medical file due to court action.

12 In their opposition to the motion to compel, defendants state that plaintiff sent
13 defendants a large set of disorganized documents that were impossible to identify. Defendants
14 state that they were unable to recognize many of the documents. Defendants state that because
15 plaintiff did not organize the hundreds of pages of documents attached to the request for
16 admissions, defendants could not admit their genuineness. Defendants also object that plaintiff
17 failed to lay the foundation to establish the genuineness of the documents. Defendants state that
18 it is unknown what these documents indicate or where they came from. Defendants also state
19 that plaintiff has other means to verify the documents, such as by asking the custodian of records.
20 Defendants observe that in the motion to compel, plaintiff concedes that he is asking the
21 custodian to verify his records.

22 Defendants objections have merit. Defendants cannot be ordered to verify
23 documents that they cannot identify. Similarly, defendants cannot be asked to verify documents
24 when plaintiff has failed to lay the foundation for their genuineness. In addition, it appears that

25 ¹ Plaintiff's failure to comply with the court's order is grounds to deny plaintiff's motion.
26 Nevertheless, in an abundance of caution, the undersigned addresses the merits of the motion.

1 plaintiff is capable of verifying the documents on his own through other means. Accordingly, the
2 motion to compel as to these requests is denied.

3 B. Request for Production of Documents, Set One

4 *Request Nos. 1-5*

5 Request nos. 1-5 sought various log books from 2008 and 2009. The log books
6 contained records regarding the administrative segregation unit (request nos. 1, 2), receiving and
7 release building (request no. 3), and log books regarding nurse and doctor schedules (request nos.
8 3, 4).

9 In their original responses, defendants stated that after a reasonable search and
10 diligent inquiry, no documents responsive to the requests could be located. Defendants stated
11 that if they gain possession, custody or control of these documents, they will supplement their
12 answers. In their opposition to the motion to compel, defendants further state that they are
13 medical personnel at High Desert State Prison (“HDSP”), so they do not have access to the log
14 books for various buildings at HDSP. Defendants state that they asked HDSP for the requested
15 log books, but HDSP has not been able to produce any of the logbooks at this time. Defendants
16 state that log books are only kept for a couple of years and then they are moved to storage, over
17 which defendants have no authority or access. Defendants state that logbooks are not stored
18 electronically, as plaintiff argues.

19 The reach of Federal Rule of Civil Procedure 34, which governs requests for
20 production, “extends to all relevant documents, tangible things and entry upon designated land or
21 other property.” Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472–73 (1998), citing 8A C.
22 Wright & A. Miller, Federal Practice and Procedure § 2206, at 381. Rule 34 does require that the
23 party upon whom a request is served “be in possession, custody, or control of the requested
24 item.” Id., at 473, citing Estate of Young v. Holmes, 134 F.R.D. 291, 293 (D.Nev. 1991). Under
25 Rule 34, “[c]ontrol is defined as the legal right to obtain documents upon demand. [Citation.]
26 The party seeking production of the documents ... bears the burden of proving that the opposing

1 party has such control.” U.S. Int’l Union of Petroleum and Indus. Workers, AFL–CIO, 870 F.2d
2 1450, 1452 (9th Cir. 1989).

3 As employees of the medical department, it is clear that defendants would not
4 have “possession, custody or control” of stored records regarding administrative segregation and
5 receiving and release. As the Chief Medical Officer, defendant Swingle is most likely to have
6 access to the stored records regarding doctors and nurses schedules. However, defendants state
7 that they requested these documents from HDSP and HDSP was unable to produce them. The
8 court cannot order defendants to produce documents that they are unable to access. For these
9 reasons, the motion to compel as to these requests for production of documents is denied.

10 *Request Nos. 6-9*

11 Request no. 6 sought all documents located in plaintiff’s “114” file. Defendants
12 responded that these documents are in plaintiff’s central file, which is available for plaintiff’s
13 inspection. In the motion to compel, plaintiff argued that prison officials told him that they could
14 not find these documents in his central file. In their opposition to the motion to compel,
15 defendants state that plaintiff’s central file is the only location where the “114” file would exist.

16 According to defendants, plaintiff’s “114” file is in his central file. Plaintiff has
17 been informed that the “114” file is not in his central file. Defendants are not obligated to
18 conduct a search in order to determine where plaintiff’s “114” file is located, assuming it exists.
19 Accordingly, the motion to compel as to this request is denied.

20 Request no. 7 sought all documents regarding a hunger strike that occurred in the
21 HDSP Z-Unit that began on February 28, 2009. Defendants responded that this request sought
22 information not reasonably calculated to lead to the discovery of admissible evidence.

23 Defendants also objected that most of the requested information was not within their possession,
24 custody or control, although defendants produced to plaintiff the documents within their control.

25 Because defendants have produced to plaintiff all documents regarding the hunger
26 strike within their possession, custody or control, the motion to compel as to this request is

1 denied.

2 Request no. 8 sought all formal and informal written complaints against any
3 defendant alleging any medical misconduct, failure to perform assigned duties, negligence,
4 deliberate indifference, etc. that occurred prior to February 28, 2009. Request no. 9 sought the
5 same information against “any CDCR HDSP Medical Personnel” from January 1, 2005, to the
6 present.

7 Defendants objected that these requests were irrelevant, overbroad and may seek
8 confidential information. These requests are clearly overbroad. Not every complaint made
9 against every defendant or HDSP Medical Personnel during the time periods sought alleging
10 medical misconduct is relevant to this action. Accordingly, the motion to compel as to these
11 requests is denied.

12 Request no. 10 sought all documents regarding medication/distribution policies in
13 effect at HDSP. In response, defendants initially produced several documents. Request no. 11
14 sought all documents regarding policies concerning inmates receiving medication when they are
15 transferred. In response, defendants initially informed plaintiff that no documents responsive to
16 the request could be located. Defendants stated that if they gain possession of responsive
17 documents, they would supplement their response. In the opposition to the motion to compel,
18 defendants state that in addition to the documents originally provided, they have supplemented
19 their answers with hundreds of pages of additional documents. Defendants state that they have
20 nothing more to add.

21 It is unclear whether defendants supplemented their response to request no. 10 or
22 no. 11, or both. In any event, plaintiff has not demonstrated that the documents produced did not
23 adequately respond to this request. Regarding request no. 11, the court cannot order defendants
24 to produce documents that do not exist. If defendants did supplement their response, plaintiff has
25 not demonstrated how the supplemental response did not adequately respond to his request.
26 Accordingly, the motion to compel as to these requests is denied.

1 Request No. 12 sought all documents regarding the training of medical personnel
2 at HDSP, including policies concerning medication distribution and “man down” procedures.
3 Defendants objected that this request was overbroad, vague and not reasonably calculated to lead
4 to the discovery of admissible evidence. Request no. 12 is overbroad as not every policy
5 regarding the training of medical personnel at HDSP is relevant to this action. Accordingly, the
6 motion to compel as to this request is denied.

7 Request No. 13 sought all records stating how many Registered Nurses and
8 Licensed Vocational Nurses were employed at HDSP from 2000 to the present. Request no. 14
9 sought all records stating how many inmates were housed at HDSP each year starting from 2000
10 to the present.

11 Defendants objected that request nos. 13 and 14 were overbroad and sought
12 information not reasonably calculated to lead to the discovery of admissible evidence.
13 Defendants state that plaintiff’s complaint does not contain a claim alleging overcrowding or a
14 lack of medical care due to overcrowding. Without waiving objection, defendants produced
15 documents in response to request no. 14.

16 Plaintiff has not demonstrated that the documents defendants produced did not
17 adequately respond to request no. 14. In addition, the undersigned has reviewed the complaint
18 (Dkt. No. 1) and it does not appear that plaintiff is claiming that the alleged inadequate medical
19 care occurred as a result of overcrowding. For this reason, the motion to compel as to these
20 requests is denied.

21 Request no. 15 sought all documents regarding plaintiff’s MAR activity sheets.
22 Defendants responded, in part, that the request was overbroad in that not every MAR activity
23 sheet was relevant to plaintiff’s claims. Defendants additionally objected that the documents
24 plaintiff requested were kept in his unit health record, which is available for plaintiff’s inspection
25 and copying. Because the request is overbroad and because plaintiff himself has access to the
26 MAR activity sheets, which are contained in his unit health record, the motion to compel as to

1 this request is denied.

2 Request no. 16 sought the California Department of Corrections and
3 Rehabilitation (“CDCR”) numbers and housing addresses of three inmates identified by name
4 and two inmates identified by where they were housed in 2008. Defendants objected that this
5 was not a request for production of documents but, rather, an interrogatory. Defendants also
6 objected that they do not have possession, custody or control of any documents regarding these
7 inmates’ locations and CDCR numbers. Request no. 16 is denied as it is not a request for
8 production of documents. The request is also denied because defendants state that they do not
9 have access to the requested information.

10 Request no. 17 sought all documents regarding plaintiff’s Institutional
11 Classification Committee hearing from November 14, 2008, including the 128 G chrono.
12 Without waiving objection, defendants responded that the requested documents were equally
13 available to plaintiff in his central file. Because plaintiff has equal access to the documents
14 requested, the motion to compel as to this request is denied.

15 Request No. 18 sought the CDCR numbers and current housing addresses of four
16 inmates, identified by plaintiff only by where they were housed in January 2009. Defendants
17 objected that request no. 18 was not a request for production of documents, but an interrogatory.
18 Defendants also objected that the request is vague and overbroad, and that they should not be
19 forced to subpoena the requested information on plaintiff’s behalf. All of defendants’ objections
20 to this request have merit. Accordingly, the motion to compel as to request no. 18 is denied.

21 C. Interrogatories to Defendant Medina

22 At issue are interrogatories nos. 1, 2, 3, 12-16.

23 Interrogatory no. 1 asks defendant to “state all facts upon which you based your
24 contention to not have the plaintiff treated for his serious medical need on November 10, 2008
25 when you chose to discontinue (D/C) plaintiff’s medication of Tramadol 50 mg 4 x day without
26 seeing or talking to the plaintiff.” Defendant objected that this interrogatory lacked foundation

1 because defendant Medina did not contend that he did not have plaintiff treated for his serious
2 medical need. Interrogatory no. 3 asks defendant to describe each document that supports his
3 “contentions as answered above.” Defendant objected that he does not contend that he did not
4 have plaintiff treated for his serious medical need.

5 In the opposition to the motion to compel, defendant argues that interrogatories
6 nos. 1 and 3 assume facts that are not in evidence and expect defendant to answer questions
7 based on a scenario that did not occur. The undersigned agrees that these interrogatories are
8 improperly framed for the reasons stated by defendant. Accordingly, the motion to compel is
9 denied as to these requests.²

10 Defendants’ opposition to the motion to compel contains defendants’ response to
11 interrogatory no. 2 but inadvertently omits the interrogatory. Plaintiff did not file a reply to
12 defendants’ opposition addressing this issue. Because it is plaintiff’s burden to demonstrate that
13 defendant did not adequately answer this interrogatory, and he did not file a reply clarifying
14 interrogatory no. 2 addressed to defendant Medina, the motion to compel as to this request is
15 denied.

16 Interrogatory no. 12 asks defendant to describe any CDCR policy regarding
17 prescription narcotics to inmates that differs from how he would treat a free citizen. Defendant
18 objected that this interrogatory was irrelevant. Defendant argues that how narcotics are
19 prescribed outside of prison is not relevant to whether defendant failed to treat plaintiff. The
20 undersigned agrees that how non-prisoners are prescribed narcotics is not relevant to whether
21 defendant acted with deliberate indifference to plaintiff’s serious medical needs. Accordingly,
22 the motion to compel as to this request is denied.

23 Interrogatory no. 13 asks defendant to detail why “various treatments such as
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25 ² Plaintiff may be seeking information limited to why defendant chose to discontinue
26 plaintiff’s prescription to Tramadol, but that is unclear from the interrogatory, and, as noted,
plaintiff failed to comply with the court’s order or file a reply explaining why he contended
defendant’s response was inadequate.

1 physical therapy, pain management, acupuncture, etc. why surgery (in general) should remain the
2 last possible choice.” Defendant objected that the information sought was irrelevant and not
3 reasonably calculated to lead to the discovery of admissible evidence. Defendant also objected
4 that the interrogatory was based on an incomplete hypothetical. The undersigned agrees that this
5 interrogatory is based on an incomplete hypothetical. Accordingly, the motion to compel as to
6 this request is denied.

7 Interrogatory no. 14 asks defendant to describe the effects a body goes through
8 when “on a narcotic one year straight is suddenly stopped and why? Please use Tramadol as the
9 reference for this interrogatory of 200 mg a day use.” Defendant objected that this interrogatory
10 was vague and irrelevant as to whether defendant refused to give plaintiff medical treatment.
11 Defendant further objected that the interrogatory was an incomplete hypothetical and impossible
12 for defendant to answer. Defendant also stated that Tramadol is not a narcotic, so it is not
13 possible to describe the withdrawals that the body would go through when Tramadol is
14 discontinued.

15 The undersigned agrees that defendant cannot answer this interrogatory based
16 upon defendant’s response that Tramadol is not a narcotic. As such, request no. 14 is an
17 incomplete hypothetical. Accordingly, the motion to compel as to this request is denied.

18 Interrogatory no. 15 asks defendant to describe how many training courses he has
19 taken about narcotic use and to state the year the course was taken. Defendant responded that he
20 “received general physicians assistant training but does not recall how many, when, or which
21 courses he was enrolled in. Medina did not take any training specifically on narcotics.” In the
22 opposition to the motion to compel, defendant states that he answered the interrogatory to the
23 best of his ability. The undersigned finds that defendant Medina adequately answered
24 interrogatory no. 15. Accordingly, the motion to compel as to this request is denied.

25 Interrogatory no. 16 asks defendant to describe all civil lawsuits brought against
26 him by a prisoner or their family “in the course of you treating inmate patients at any state

1 prison.” Defendant objected that this request was irrelevant and not reasonably calculated to lead
2 to the discovery of admissible evidence. Not every lawsuit filed against defendant Medina by an
3 inmate or their family is relevant to this action. Accordingly, the motion to compel as to this
4 request is denied.

5 D. Request for Admissions to Defendant Medina

6 At issue are request nos. 68-73, 76, 82, 88, 90-93, 96.

7 Request no. 68 asks defendant to “admit the last time you saw plaintiff prior to his
8 transfer to Corcoran SHU in July 2008 you prescribed Tramadol 50 mg 2x day.” Defendant
9 objected that this request was vague and ambiguous. Without waiving objection, defendant
10 responded that after a reasonable investigation he lacked sufficient knowledge or information to
11 admit or deny this question. In the opposition to the motion to compel, defendant states that he
12 does not remember the treatment he gave to plaintiff and that a review of plaintiff’s medical
13 records offers no “clarity.”

14 Plaintiff is clearly asking defendant to admit that he prescribed Tramadol for
15 plaintiff the last time he treated or examined plaintiff prior to plaintiff’s transfer to Corcoran in
16 July 2008. It is unclear why plaintiff’s medical records would not provide “clarity” on this point.

17 If a request for admission is not admitted, the party may state in detail why the
18 answering party cannot truthfully admit or deny it. Fed. R. Civ. P. 36(a)(4). A party may assert
19 lack of knowledge or information as a reason for failing to admit or deny only if the party states
20 that it has made a reasonable inquiry and that the information it knows or can readily obtain is
21 insufficient to enable it to admit or deny. Id. Accordingly, defendant is directed to file with the
22 court a further response to request no. 68 addressing why plaintiff’s medical records cannot
23 provide clarity regarding this request.

24 Request no. 69 asks, “Admit once plaintiff left HDSP in July 2008 you did not
25 check on his health while he was housed in Corcoran SHU.” Defendant objected that this
26 request was vague and ambiguous, and that he lacked sufficient knowledge to admit or deny this

1 request. While this request is vague as to what plaintiff means by “check on,” defendant should
2 be able to admit or deny whether he obtained any information about plaintiff’s medical condition
3 while plaintiff was housed in the Corcoran SHU (or state in detail why the answering party
4 cannot truthfully admit or deny it, i.e. he has no recollection and there are no documents that
5 could refresh his recollection). Accordingly, defendant is directed to file with the court a further
6 response to request no. 69.

7 Request no. 70 asks defendant to admit that he did not see or talk to plaintiff from
8 the point of his transfer in July 2008 through November 2008. Defendant objected that this
9 request was vague and ambiguous. Defendant also responded that after reasonable investigation,
10 he lacked sufficient knowledge to admit or deny this request. The defendant should be able to
11 admit or deny whether he had any contact with plaintiff while plaintiff was housed in the
12 Corcoran SHU (or state in detail why the answering party cannot truthfully admit or deny it, i.e.
13 he has no recollection and there are no documents that could refresh his recollection). While
14 defendant may be responding that he does not recall whether he had any contact with plaintiff
15 during the requested time period, that is not clear from defendant’s response. Accordingly,
16 defendant is directed to file with the court a further response to request no. 70.

17 Request no. 71 asks defendant to admit that he was aware of plaintiff’s medical
18 complaints on November 10, 2008. Defendant objected that this request was vague and
19 ambiguous. Defendant also responded that after reasonable investigation, he lacked sufficient
20 knowledge or information to admit or deny the request.

21 While the request may be vague, defendant is directed to respond to request no. 71
22 to the best of his ability.³

23 Request nos. 72 and 73 ask defendant to admit that he discontinued plaintiff’s
24

25 ³ In his declaration submitted in support of defendants’ summary judgment motion,
26 defendant states that, “[i]n November of 2008, I was extremely familiar with Baker’s medical
history...” (Dkt. No. 71-3 at 2.)

1 prescription of Tramadol 50 mg 4 x day on November 10, 2008. Defendant responded that after
2 a reasonable investigation, he lacked sufficient knowledge to admit or deny this question.

3 Plaintiff's medical records should reflect whether or not defendant discontinued
4 plaintiff's Tramadol prescription on November 10, 2008. Accordingly, defendant is directed to
5 provide a further response to these requests for admission addressing why plaintiff's medical
6 records cannot provide clarity regarding these requests. Fed. R. Civ. P. 36(a)(4).⁴

7 Request no. 76 asks defendant to admit that nerve damage to "ones leg may effect
8 his normal movement, making it very painful to walk and do normal activities." Defendant
9 responded that this request was vague and ambiguous. Defendant also responded that upon
10 reasonable investigation, he lacked sufficient knowledge or information to admit or deny this
11 request. This request is vague and overbroad. Plaintiff does not describe the nerve damage on
12 which he bases his hypothetical. Accordingly, the motion to compel as to this request is denied.

13 Request no. 82 asks defendant to admit that Dr. Nepomuceno was his superior in
14 December 2008. Defendant responded that he lacked sufficient knowledge or information to
15 admit or deny this request. It is unclear why defendant Medina could not discover through a
16 reasonable inquiry whether Dr. Nepomuceno was his superior in December 2008. Accordingly,
17 defendant Medina is directed to inform the court of the reasonable inquiry he conducted prior to
18 responding to request no. 82.

19 Request no. 83 asks, "Admit December 17, 2008 you told plaintiff in regards to
20 not getting his medications, 'Problem fixed, I'll re-order them.'" Defendant responded that after
21 a reasonable investigation, he lacked sufficient knowledge to admit or deny this statement. The
22 undersigned accepts defendant's representation that he lacks sufficient knowledge to respond to
23 this request. Accordingly, the motion to compel as to this request is denied.

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25 ⁴ In his declaration submitted in support of defendants' summary judgment motion,
26 defendant Medina states that, "I initially stopped Baker's prescription for tramadol in November
of 2008..." (Dkt. No. 71-3 at 2.) Based on this statement, the undersigned is troubled by
defendant's inability to respond to these requests.

1 Request no. 84 asks defendant to admit that on January 21, 2009 he told plaintiff
2 that he would re-order his “all his medications.” Defendant responded that after reasonable
3 investigation, he lacked sufficient knowledge to admit or deny this request. This request is vague
4 because it is not clear what plaintiff means by “all” of his medications. It is unclear whether
5 plaintiff is referring only to those medications at issue in the instant action, or other medications
6 prescribed to him. For these reasons, defendant is not required to provide a further response to
7 this request.

8 Request no. 85 asks defendant to admit “plaintiff explained to you there were two
9 MARS, one showing Tramadol 3 x day the other 3 x day.” Defendant responded that after
10 reasonable investigation, he lacked sufficient information to admit or deny this request. This
11 request is vague as it does not identify when plaintiff allegedly made this statement to defendant.
12 Accordingly, the motion to compel as to this request is denied.

13 Request no. 88 asks defendant to admit that he never reordered plaintiff’s
14 medications on December 17, 2008. Defendant objected that after reasonable investigation, he
15 lacked sufficient information to admit or deny this request. Because plaintiff does not identify
16 the medications defendant allegedly failed to re-order, the motion to compel as to this request is
17 denied.

18 Request no. 90 asks defendant to admit that he read at least one memo from
19 CDCR Administration addressing guidelines for prescribing inmates narcotics. Defendant
20 responded that this request was vague and ambiguous. Defendant further responded that after
21 reasonable investigation, he lacked sufficient knowledge or information to admit or deny this
22 request. This request is neither vague nor ambiguous. It is unclear why, after a reasonable
23 investigation, defendant cannot admit or deny whether he has ever read a memo from the CDCR
24 Administration addressing guidelines for prescribing inmates narcotics. Accordingly, defendant
25 is directed to file a further response describing the reasonable investigation he undertook
26 regarding this request.

1 Request no. 91 asks defendant to admit that there are differences in how he
2 prescribes pain killers to inmates vs. non-inmates. Defendant objected that this request was
3 vague and ambiguous as to time and place. Defendant further responded that after reasonable
4 investigation, he lacked sufficient information to admit or deny this request.

5 The undersigned agrees that request no. 91 is vague and ambiguous. Accordingly,
6 the motion to compel a further response to this request is denied.

7 Request no. 92 asks defendant to “admit the differences in how you prescribe
8 narcotics to inmates vs. non-inmates are from policies set forth by CDCR.” Defendant objected
9 that this request was vague and ambiguous as to time. Defendant further responded that after a
10 reasonable investigation, he lacked sufficient knowledge to admit or deny this request. The
11 undersigned agrees that the request is vague and ambiguous. Accordingly, the motion to compel
12 as to this request is denied.

13 Request No. 93 asks defendant to admit “you find added restrictions placed upon
14 an inmates eligibility to be prescribed narcotics ethical.” Defendant objected that this request
15 was vague and ambiguous as to time. Defendant further responded that after a reasonable
16 investigation, he lacked sufficient knowledge to admit or deny this request. The undersigned
17 agrees that this request is vague and ambiguous. Accordingly, the motion to compel as to this
18 request is denied.

19 Request no. 96 asks defendant to “admit in your medical opinion a person on pain
20 management for IBS taking Tramadol 50 mg 4 x day stopped suddenly and goes through
21 withdraws, that the combination of experience both could be too much pain for one to handle.”
22 Defendant objected that this request was vague and ambiguous as to time. Defendant further
23 responded that after a reasonable investigation, he lacked sufficient knowledge to admit or deny
24 this request. The undersigned agrees that this request is vague and ambiguous. Accordingly, the
25 motion to compel as to this request is denied.

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1 E. Interrogatories to Defendant Swingle

2 At issue are defendant Swingle's responses to interrogatories nos. 10, 15, 21 and
3 23.

4 Interrogatory no. 10 asks defendant,

5 Using MAR's (attached) as a reference please state the LVN or RN
6 who was supposed to deliver medications in Z-Unit where the
blank spots are without a signature.

- 7 a. January 1, 4, 6, 11, 20, 24 of 2008.
8 b. February 1, 2, 3, 6, 7, 12, 21, 27 of 2008.
9 c. April 18, 26 of 2008.
10 d. November 12, 26, 27 of 2008.
11 e. December 7, 22, 25 of 2008.
12 f. January 1, 11, 16, 20, 21 of 2009.
13 g. November 2, 3, 11, 25 of 2007.
14 h. December 12, 14, 25, 29, 30 of 2007.
15 i. May 1, 2, 3, 6, 7, 12, 21, 27 of 2008.
16 j. June 1, 2, 3, 4 of 2008.

17 Defendant objected that this interrogatory was compound, overly burdensome and
18 exceeded the permitted 25 interrogatories without leave of court. In the opposition to the motion
19 to compel, defendant further argues that plaintiff is asking her to review countless documents
20 spanning nine months. Defendant states that she does not handle nursing issues so she does not
21 know who was supposed to deliver medications nearly three years ago.

22 Federal Rule of Civil Procedure 33 provides that "[u]nless otherwise stipulated or
23 ordered by the court, a party may serve on any other party no more than 25 written
24 interrogatories, including all discrete subparts." Fed. R. Civ. P. 33(a)(1). Interrogatory no. 10
25 violates Rule 33 because, with subparts, it contains more than 25 interrogatories. Based on
26 defendant's representations in the opposition, the undersigned also finds that the request is
burdensome. Accordingly, the motion to compel as to this interrogatory is denied.

Interrogatory no. 15 asks defendant to describe in detail all civil lawsuits brought
against her by a prisoner or his family in the course of her "treating" inmate patients at any state
prison. Defendant objected that this request was irrelevant and not reasonably calculated to lead
to the discovery of admissible evidence. The undersigned agrees. Not every lawsuit filed against

1 defendant by an inmate or his family regarding medical care provided by defendant is relevant to
2 this action. Accordingly, the motion to compel as to this interrogatory is denied.

3 Interrogatory no. 21 asks defendant to describe in detail her knowledge of and the
4 circumstances surrounding her involvement with the inmate hunger strike that occurred in Z-Unit
5 starting on March 1, 2009. Defendant responded,

6 Swingle received notice from Norma Acquaviva, Health Care
7 Manager, that 120 inmates were on a hunger strike started on
8 March 1, 2009 in Z unit. Swingle then worked with Doug Peterson
9 and Lori Cooley to determine what action needed to be taken. She
gave instructions to her subordinates and the Director of Nurses of
how to treat and monitor inmates.

10 Interrogatory no. 23 asks defendant to identify each document that refers to any of
11 the facts stated in her response to interrogatory no. 21. Defendant responded, “Attached as
12 exhibit A.”

13 In the opposition to plaintiff’s motion to compel, defendant states that she
14 answered interrogatories nos. 21 and 23 to the best of her abilities and has nothing further to add.
15 She provided plaintiff with the documents that she had in her possession. Plaintiff has not
16 addressed how defendant’s responses to these interrogatories are inadequate. The undersigned
17 finds that defendant adequately answered interrogatories nos. 21 and 23. Accordingly, the
18 motion to compel as to these interrogatories is denied.

19 F. Request for Admissions to Defendant Swingle

20 At issue are request for admissions 28-38 and 57.

21 Request for admission no. 28 asks defendant to admit that HDSP did not have
22 enough nurses working at various times during 2007 through 2009 to cover all yards efficiently.
23 Defendant objected that the request was vague and ambiguous. Without waiving objection,
24 defendant responded that she did not have enough information to answer this question.
25 Defendant responded that since she has been at HDSP, Z-unit has not been understaffed from a
26 medical provider perspective. As Chief Medical Officer, defendant has control over medical

1 providers and has no authority over nursing.

2 The undersigned agrees that the time period plaintiff is asking about, i.e. “various
3 times,” is vague. On this ground, the motion to compel as to this request is denied.

4 Request no. 29 asks defendant to admit that between July 2007 and March 2009,
5 only one nurse was assigned to work in Z-Unit which was Mondays through Fridays second
6 watch only. Defendant’s response to request no. 29 is identical to the response to request no. 28.
7 This request is neither vague nor ambiguous. While defendant may have had no control over
8 nursing, this does not necessarily mean that she has no knowledge regarding nursing staff.
9 Accordingly, defendant is ordered to provide a further response to this request for admission
10 addressing in detail why she cannot address this request. Fed. R. Civ. P. 36(a)(4) (if party cannot
11 admit or deny a request, the party must state in detail why the answering party cannot truthfully
12 admit or deny it.)

13 Request no. 30 asks defendant to admit that someone failed to process plaintiff’s
14 prescription order of Tramadol ordered November 3, 2008, attached as reference page 176.
15 Defendant objected that the request was vague and ambiguous. Defendant also responded that
16 she did not have enough information to answer this request based on the information that she has
17 before her.

18 The reference to “page 176” renders request no. 30 vague and ambiguous.
19 Accordingly, the motion to compel a further response to this request is denied.

20 Request no. 31 asks defendant to admit that from July 2007 the quality of medical
21 care given to inmates in Z-Unit did not improve through March 2009. Defendant denied this
22 request. Plaintiff has not addressed how this response is inadequate. Accordingly, the motion to
23 compel as to this request is denied.

24 Request no. 32 asks defendant to admit that nurses did not show up to Z-unit to
25 deliver medications on many occasions from July 2007 through March 2009. Request no. 33
26 asks defendant to admit that a nurse assigned to deliver medications to Z-Unit, who does not do

1 so, has then failed to properly to do his or her assigned duty. Request no. 34 asks defendant to
2 admit that nurses or psych techs who failed to deliver medications to Z-Unit were not counseled
3 from July 2007 to March 2009. Request no. 35 asks defendant to admit that nurses or psych
4 techs who failed to perform their assigned duties repeatedly (i.e. deliver medications) were not
5 reprimanded. Request no. 36 asks defendant to admit that nurses or psyc techs who failed to
6 perform their assigned duties repeatedly (i.e. deliver medications) were not fired. Finally, request
7 no. 57 asks defendant to admit that from July 2007 through March 2009, she did not take
8 reasonable measures to improve the manner/methods in which nurses were to deliver
9 medications to inmates in Z unit.

10 Defendant objected that request nos. 32-36 and 57 were vague and ambiguous.
11 Defendant further responded to these requests that she did not have enough information to
12 answer these questions. Defendant stated that as Chief Medical Officer, she only has control
13 over medical providers and has no authority over nursing. Regarding request no. 36, defendant
14 further responded that she does not have access to confidential employee personnel information.

15 The undersigned agrees that all of these requests are vague and overbroad. For
16 example, the use of the term “many” in request no. 32 is vague. Request no. 34 is vague because
17 it does not clarify, for example, whether plaintiff is asking whether nurses who failed to deliver
18 their medications once versus more than once were counseled. Request no. 57 is vague because
19 it is unclear what plaintiff means by “reasonable measures.” Accordingly, the motion to compel
20 as to these requests is denied.

21 G. Interrogatory to Defendant Miller

22 Interrogatory no. 12 asks defendant to describe “every policy, procedure, and
23 practices that governs oversight of subordinates.” Defendant objected, in part, that this
24 interrogatory was over broad. The undersigned agrees. Not every policy regarding the oversight
25 of subordinates is relevant to this action. Accordingly, the motion to compel as to this request is
26 denied.

1 H. Request for Admissions to Defendant Miller

2 At issue are request for admissions nos. 29, 31, 32, 40, 41 and 47. Defendant
3 responded to all of these requests that, after reasonable investigation, she lacked sufficient
4 knowledge or information to admit or deny the question.

5 Request no. 29 asks defendant to admit that between July 2007 and March 2009
6 only one nurse was assigned to work in Z-unit Monday through Friday on the second watch. It
7 is unclear why defendant Miller, a Supervising Registered Nurse, would not be able to obtain this
8 information after a reasonable investigation. Accordingly, defendant is ordered to provide a
9 further response to this request for admission addressing in detail the investigation she undertook
10 prior to responding to this request. Fed. R. Civ. P. 36(a)(4).

11 Request no. 31 asks defendant to admit that from July 2007 through March 2009
12 the quality of medical care given to inmates in Z-unit did not improve. Because defendant is a
13 Supervising Nurse, rather than a medical doctor, the undersigned finds that defendant is not
14 required to provide a further response to request no. 31.

15 Request no. 32 asks defendant to admit that nurses did not show up to Z-unit to
16 deliver medications on many occasions through July 2007 to March 2009. The undersigned
17 accepts defendant's representation that she lacks sufficient knowledge to respond to this request.
18 Accordingly, the motion to compel as to this request is denied.

19 Request no. 40 asks defendant to admit that on or about January 10, 2008, RN
20 John Clark notified defendant that a nurse, or nurses, did not pass out medications to inmates in
21 Z-Unit on January 1st and 6th, 2008. The undersigned accepts defendant's representation that
22 she lacks sufficient knowledge to respond to this request. Accordingly, the motion to compel as
23 to this request is denied.

24 Request no. 41 asks defendant to admit that she spoke to plaintiff "for first level
25 interview on February 26, 2008 on a 602." Defendant should be able to respond to this request
26 by reviewing plaintiff's grievances. Fed. R. Civ. P. 36(a)(4). Accordingly, defendant shall

1 provide a further response to this request.⁵

2 Request no. 47 asks defendant to admit that she never counseled the “two nurses
3 in question of January 1st and 6th of 2008 for failing to deliver medications to Z-Unit.”
4 Defendant responded that she could not answer this request because she lacked sufficient
5 knowledge after a reasonable investigation. The undersigned accepts defendant’s representation
6 that she lacks sufficient knowledge to respond to this request. Accordingly, the motion to
7 compel as to this request is denied.

8 I. Interrogatories to Defendant Bowers

9 At issue are interrogatories nos. 8, 9, 14 and 15.

10 Interrogatory no. 8 asks defendant to identify all positions, with corresponding
11 dates of employment, that he has held as an employee at any state prison and to describe his job
12 responsibilities. Defendant responded, “Bowers is a psychiatric technician at High Desert State
13 Prison. He has been a psych tech for over 20 years in various state hospitals.” In the opposition
14 to the motion to compel, defendant states that he does not remember the specific dates of his
15 employment and that these dates are not relevant. Defendant has adequately responded to this
16 compound interrogatory.

17 Interrogatory no. 9 asks defendant to describe the training he received, with
18 corresponding times, “in the procedures of providing medical care to inmates ... including but not
19 limited to ‘man down’ responses, medication distribution ... and the processing of 7362 sick call
20 forms.” Defendant responded that he has participated in ongoing training programs, some of
21 which discuss “man down” responses, medication distribution and the processing of CDCR 7362
22 forms. In the opposition to the motion to compel, defendant states that he answered this
23 interrogatory to the best of his ability. He states that he does not recall in detail all the training he

24
25 ⁵ In his declaration submitted in support of this request, defendant states that, “[o]n
26 February 26, 2008 I interviewed Michael Baker with respect to his 602 inmate appeal (HDSP-Z-
08-00140.)” Based on this statement, the undersigned is troubled by defendant’s inability to
respond to request no. 41.

1 received and the corresponding dates. Defendant states that he has admitted that he has received
2 training in the past and that is all that is relevant to plaintiff's claims. The undersigned finds that
3 defendant has adequately answered this interrogatory.

4 Interrogatory no. 14 asks defendant to describe the effects the "human body goes
5 through when on a narcotic for one year straight is suddenly stopped and why?" Defendant
6 objected to this interrogatory on grounds that it was irrelevant, not reasonably calculated to lead
7 to the discovery of admissible evidence and based on an incomplete hypothetical which is
8 speculative and vague. The undersigned agrees that this request is a vague and an incomplete
9 hypothetical.

10 Interrogatory no. 15 asks defendant to describe how much training or courses he
11 has taken regarding prescription narcotic use and to state each courses corresponding year.
12 Defendant objected to this interrogatory on grounds that it was vague and ambiguous. Without
13 waiving objection, defendant responded that he did not remember. In his opposition to the
14 motion to compel, defendant observes that the term "prescription narcotic use" can involve
15 numerous training and courses. Defendant argues that plaintiff needs to be more specific
16 regarding what types of training he is looking for. The undersigned agrees that the request is
17 vague for the reasons stated by defendant.

18 K. Requests for Admissions to Defendant Bowers

19 At issue are request for admissions 33, 35, 36, 112-28. In response to all at-issue
20 requests, defendant responded that after reasonable investigation, he lacked sufficient knowledge
21 or information to admit or deny the question.

22 Request no. 33 asks defendant to admit that a nurse assigned to deliver
23 medications to Z-Unit, who does not do so, has then failed to properly do his/her assigned duties.
24 In addition to stating that he lacked sufficient information to respond to this request, defendant
25 further objected that this request was vague and ambiguous. The undersigned agrees that this
26 request is vague and ambiguous.

1 Request no. 35 asks defendant to admit that nurses or psych techs who fail to
2 perform their assigned duties repeatedly (i.e. deliver medication) are not reprimanded. Request
3 no. 36 asks defendant to admit that nurses or psych techs who failed to perform their assigned
4 duties repeatedly (i.e. deliver medications) are not fired. The undersigned accepts defendant's
5 representations that he lacks sufficient knowledge to answer these requests.

6 Request no. 112 asks defendant to admit that on November 4, 2008, he conducted
7 rounds in D6 to dispense medication. Request no. 113 asks defendant to admit that on
8 November 4, 2008, he told plaintiff that he was supposed to get Gabapetin and Tramadol.
9 Request no. 114 asks defendant to admit that on November 5, 2008, plaintiff told him that he was
10 unable to eat, and had stomach pains as well as diarrhea. Request no. 115 asks defendant to
11 admit that on November 5, 2008, plaintiff handed defendant a 7362 sick call slip. Request no.
12 116 asks defendant to admit that plaintiff told him that he was "man down" on November 6,
13 2008.

14 The undersigned presumes that plaintiff's medical records would reflect whether
15 defendant saw plaintiff on the days in question in the above requests. The undersigned presumes
16 that defendant reviewed the relevant records in order to assist him in responding to these
17 requests. Under these circumstances, the undersigned accepts defendant's representations that he
18 lacks sufficient knowledge to answer these requests.

19 Request no. 117 asks defendant to admit that Officer Brown escorted him during
20 his rounds on November 6, 2008. The undersigned accepts defendant's representation that after
21 a reasonable investigation he cannot answer this request.

22 Request No. 118 asks defendant to admit that on November 6, 2008, he never
23 examined or treated plaintiff. The undersigned presumes that plaintiff's medical records would
24 definitively reflect whether or not defendant examined or treated plaintiff on November 6, 2008.
25 Accordingly, defendant is ordered to provide a further response to this request for admission
26 addressing the investigation she understood in order to address this request. Fed. R. Civ. P.

1 36(a)(4).

2 Request no. 119 asks defendant to admit that on November 6, 2008, plaintiff told
3 him that he could not eat or sleep and his gut was killing him. No further response to this
4 interrogatory is required unless defendant determines, in supplementing his response to request
5 no. 118, that he examined or treated plaintiff on that day.

6 Request no. 120 asks defendant to admit that on November 7, 2008, plaintiff gave
7 him a 7362 sick call slip for still being in extreme pain, etc. Request no. 121 asks defendant to
8 admit that when plaintiff handed him the 7362 sick call slip plaintiff asks him, “Where are you
9 going?” Request no. 122 asks defendant to admit that he told plaintiff that you turn the 7362
10 forms in to his boss and that’s all he knows. Request no. 123 asks defendant to admit that he told
11 plaintiff that St. Laurent is your boss. The undersigned accepts defendant’s representation that
12 after a reasonable investigation he cannot answer these requests.

13 Request no. 124 asks defendant to admit that plaintiff told you that he was “man
14 down” on November 10, 2008. The undersigned presumes that defendant reviewed all relevant
15 records in determining that he could not respond to this request. Accordingly, no further
16 response is required.

17 Request no. 125 asks defendant to admit that Officer Boutler was with him when
18 plaintiff stated “man down” on November 10, 2008. The undersigned accepts defendant’s
19 representation that after a reasonable investigation he cannot answer these requests.
20 Accordingly, no further response to this request is required.

21 Request no. 126 asks defendant to admit that on November 10, 2008, he never
22 treated or examined plaintiff. The undersigned presumes that plaintiff’s medical records would
23 definitively reflect whether or not defendant examined or treated plaintiff on November 10, 2008.
24 Accordingly, defendant is ordered to provide a further response to this request for admission
25 addressing in detail why he cannot address this request. Fed. R. Civ. P. 36(a)(4).

26 Request no. 127 asks defendant to admit that on November 10, 2008,

1 approximately two hours after plaintiff went “man down” defendant came back to D6 housing
2 unit and saw plaintiff on the floor of the holding cage. Request no. 128 asks defendant to admit
3 that on November 10, 2008, while plaintiff was on the floor of the holding case, defendant told
4 him his prescription for Tramadol was found. The undersigned presumes that defendant
5 reviewed all relevant records in determining that he could not respond to these requests.

6 Accordingly, no further response is required.

7 K. Interrogatories to Defendant St. Laurent

8 At issue are interrogatories nos. 6, 9, 11, 12, 14, 15 and 16.

9 Interrogatory no. 6 asks defendant to describe “why you feel in your scope of duty
10 as a psych tech, you are able to make decisions over the phone of whether an individual warrants
11 any medical treatment when not a single person has evaluated or examined him.” Defendant
12 objected that this interrogatory lacked foundation, was not reasonably calculated to lead to the
13 discovery of admissible evidence and was based on an incomplete hypothetical. Defendant’s
14 objections have merit. Accordingly, no further response to this interrogatory is required.

15 Interrogatory no. 9 asks defendant to describe in detail “the nature of what and
16 how many medical emergencies were called or radioed in to “D” yard clinic from 6 a.m. to 2
17 p.m. on November 6, 2008 and November 10, 2008.” Defendant responded that she did not
18 recall. The undersigned finds that defendant has adequately answered this interrogatory.

19 Interrogatory no. 11 asks defendant to describe the training she received, and
20 corresponding dates, “in the procedures of providing medical care to inmates including but not
21 limited to ‘man down’ responses, medication distribution (of transferring inmates as well) and
22 the processing of 7362 sick call forms.” Defendant responded that she did not recall specifically
23 what training she received or when, but that she has participated in an ongoing training program,
24 some of which discusses “man down” responses, medication distribution and the processing of
25 7362 forms. The undersigned finds that defendant has adequately responded to this
26 interrogatory.

1 Interrogatory no. 12 asks defendant to describe “every” policy, procedure and
2 practice governing inmate medical care including but not limited to “man down” responses,
3 medical distribution, etc. Defendant objected, in part, that the request was overbroad. Without
4 waiving objections, defendant responded that policies and procedures regarding “man down”
5 responses, medical distribution and processing of 7362 are found in the High Desert State Prison
6 Operating Procedures. The undersigned agrees that this request is overbroad in that not every
7 policy regarding inmate medical care is relevant to this action.

8 Interrogatory no. 14 asks defendant to describe the circumstances surrounding her
9 involvement with plaintiff on November 6, 2008, and November 10, 2008. Interrogatory no. 15
10 asks defendant to identify each document that refers to her response to interrogatory no. 14.
11 Interrogatory no. 16 asks defendant to state the name and phone number of all persons with
12 knowledge of the facts stated in response to interrogatory no. 14. Defendant responded to
13 request nos. 14-16 that she did not recall. The undersigned finds that defendant has answered
14 interrogatory nos. 14-16 to the best of her abilities.

15 L. Request for Admissions to Defendant St. Laurent

16 At issue are request for admissions nos. 34, 35, 36, 99, 100, 101, 103, 104, 105
17 and 106.

18 Request no. 34 asks defendant to admit that nurses or psych techs who fail to
19 perform their assigned duties repeatedly (i.e. deliver medications) are not reprimanded. Request
20 no. 35 asks defendant to admit that nurses or psych techs who fail to perform their duties
21 repeatedly (i.e. deliver medications) are not fired. Defendant responded to both requests that
22 after reasonable investigation, she lacked sufficient knowledge to admit or deny the request. The
23 undersigned accepts defendant’s representation that after a reasonable investigation she cannot
24 answer these requests.

25 Request no. 36 asks defendant to “admit a rule or policy/procedure” not enforced
26 is ineffective. Defendant objected that this request is vague and ambiguous. The undersigned

1 agrees.

2 Request no. 99 asks defendant to admit that Officer Brown called defendant on
3 November 6, 2008, about plaintiff being “man down.” Request no. 100 asks defendant to admit
4 that Officer Boutler called defendant on November 10, 2008, about plaintiff being “man down.”
5 Request no. 101 asks defendant to admit that she did not see or talk to plaintiff on November 6,
6 2008. Defendant responded to these requests that after reasonable investigation, she lacked
7 sufficient knowledge to admit or deny the requests. The undersigned accepts defendant’s
8 representation that after a reasonable investigation she cannot answer these requests.

9 Request no. 103 asks defendant to admit that she did not instruct anyone to treat
10 plaintiff on November 1, 2008. Request no. 104 asks defendant to admit that she did not instruct
11 anyone to treat plaintiff on November 10, 2008. Defendant denied these requests because it is
12 not her job to instruct staff to treat inmates. Defendant has adequately answered these requests.

13 Request no. 105 asks defendant to admit that “nobody every treated or examined
14 plaintiff on November 6, 2008.” Request no. 106 asks defendant to admit that “nobody every
15 treated plaintiff on November 10, 2008.” Defendant responded to both requests that after
16 reasonable investigation, she lacked sufficient knowledge to admit or deny these requests.

17 In request nos. 105 and 106, plaintiff is asking defendant to admit that plaintiff did
18 not receive medical treatment from anyone regarding any medical problem on these dates.


19 Plaintiff’s medical records should reflect whether plaintiff received any type of medical treatment
20 on these dates. Accordingly, defendant is ordered to provide a further response to these requests
21 for admission addressing in detail why she cannot address this request. Fed. R. Civ. P. 36(a)(4)

22 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel is
23 granted in part and denied part; within fourteen days defendants shall file a further response to
24 defendant Medina’s request for admissions nos. 68, 69, 70, 71, 72, 73, 82, 90; defendant
25 Swingle’s request for admissions nos. 29; defendant Miller’s response to request for admission

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1 nos. 29, 41; defendant Bowers' response to request for admission nos. 118, 126; defendant St.
2 Laurent's response to request for admissions 105 and 106.

3 DATED: August 24, 2011

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5 KENDALL J. NEWMAN
6 UNITED STATES MAGISTRATE JUDGE

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