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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,
Plaintiff,
v.
M. VEAL, et al.,
Defendants.

No. 2:09-cv-2907-GEB-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On December 4, 2012, the undersigned issued findings and recommendations recommending that summary judgment be granted in favor of defendants. ECF No. 57. The district judge adopted those recommendations on February 21, 2013, and judgment was entered in favor of defendants. ECF Nos. 63, 64. Plaintiff appealed. ECF No. 66. The U.S. Court of Appeals for the Ninth Circuit held that plaintiff had not been provided adequate opportunity to conduct discovery and vacated the judgment and remanded the case for further proceedings. ECF No. 70. In accord with the opinion of the Ninth Circuit, the court issues the following discovery and scheduling order.

I. Background

This action proceeds on the amended complaint filed December 14, 2011. ECF No. 16. Plaintiff claims that defendants Andreasen and Veal were deliberately indifferent to his serious medical needs while he was in administrative segregation under “contraband surveillance watch”

1 from July 30, 2006 to August 7, 2006. ECF No. 16 at 5-6. Specifically, plaintiff alleges that he
2 “was placed in leg restraints and leg irons” in a locked cell without a working toilet, “left in full
3 restraints and denied all medical attention for six days,” even after his hemodialysis access
4 became clotted. *Id.* at 5. Plaintiff alleges that he was forced to remain in chains and under a
5 bright beam light, 24 hours a day. *Id.* at 5-6. Plaintiff alleges that it was defendant Veal’s
6 “action” to leave him shackled in the cell without medical treatment. *Id.* at 6.

7 Plaintiff alleges that defendant Andreasen ignored his serious medical needs during this
8 period when he “knowingly kept me in restraints and shakles [sic] for” six days without medical
9 treatment. *Id.* Further, plaintiff alleges that defendant Andreasen delayed the necessary
10 declotting treatment after his access became clotted on August 1, 2006 until August 7, 2006. *Id.*

11 On November 10, 2011, plaintiff filed a motion to compel, complaining that defendants
12 had unreasonably refused to respond to his interrogatories, requests for admission, and requests
13 for production of documents. ECF No. 35. Defendants had responded to each request with the
14 objection that it was “procedurally defective” because it was addressed to more than one
15 defendant. *Id.* at 7-33. They pressed the same argument in opposing the motion to compel. ECF
16 No. 38. The court accepted the argument after noting that defense counsel had given plaintiff
17 instructions on how to provide separate discovery requests and offered plaintiff a 45-day
18 extension of time in which to reformat and reserve the requests. ECF No. 44 at 2-4. Plaintiff had
19 not taken defendants up on this offer and argued that he had access to only 20 sheets of paper per
20 week. ECF No. 40 at 2. The court concluded that this fact did not justify the granting of the
21 motion, because in the 45 days defendants offered to plaintiff he would have had access to 120
22 sheets of paper and would have needed at most 31 sheets to serve reformatted discovery requests.
23 ECF No. 44 at 3-4. Plaintiff did not attempt further discovery.

24 Defendants moved for summary judgment. ECF No. 45. In opposing the motion, plaintiff
25 stated that he “diligently did all that could be reasonably expected as a pro-se prisoner” but that
26 his efforts at discovery had been thwarted. ECF No. 55-1 at 9. He also declared that he “received
27 no discovery despite my request for a motion to compel being denied [sic].” ECF No. 55-3 at 7.
28 Plaintiff complained that he had diligently requested records he needed “to prove that the orders

1 to chain me up on 7-30-06 was directly from M. Veal [sic]" and that he "was not able to obtain
2 the CMF Operational Procedure Contraband Surveillance Watch" policy. *Id.* at 7-8.

3 The district court granted summary judgment, adopting the assigned magistrate judge's
4 findings and recommendation concluding that plaintiff had produced no evidence showing that
5 defendant Veal was responsible for plaintiff's alleged harm. The findings and recommendations
6 noted that plaintiff had produced no evidence: (1) showing defendant Veal's personal
7 involvement in plaintiff's placement on contraband surveillance watch; (2) showing that
8 defendant Veal knew that placing plaintiff on contraband surveillance watch would subject
9 plaintiff to harm but failed to act to prevent that harm; or (3) showing a policy authored or
10 enforced by defendant Veal requiring that inmates be placed on contraband surveillance watch
11 regardless of medical condition. ECF No. 57 at 7. It was further found that plaintiff had
12 produced no medical evidence supporting his claim that his placement in restraints while on
13 contraband surveillance watch had caused his AV graft to become clogged or otherwise caused
14 him serious harm. *Id.* at 8.

15 It was further found that plaintiff had produced no evidence showing that defendant
16 Andreasen's response to his medical needs was unreasonable. *Id.* at 8-9. After summarizing the
17 evidence, the court concluded that:

18 [P]laintiff has produced no evidence supporting his general assertion that
19 defendant Andreasen denied him all medical care while he was on contraband
20 surveillance watch or, more specifically, that the declotting procedure needed to
21 be performed immediately on August 3rd and that it was not medically reasonable
for the procedure to be scheduled four days later. Indeed, the evidence shows that
the graft was successfully declotted 12 days later, after plaintiff consented to be
treated

22 *Id.* at 9. The court further found that plaintiff lacked evidence that defendant Andreasen had been
23 deliberately indifferent in releasing plaintiff back to administrative segregation, noting that the
24 evidence before the court showed that plaintiff had received regular care and that plaintiff had not
25 presented evidence that more frequent or otherwise different care was medically necessary or that
26 defendant Andreasen was responsible for providing such care. *Id.* The district judge adopted the
27 findings and recommendations and judgment was entered in favor of defendants. ECF Nos. 63,
28 64.

1 In vacating that judgment, the Ninth Circuit concluded that summary judgment was
2 entered without providing plaintiff with “an appropriate opportunity to conduct discovery.” ECF
3 No. 70 at 2. The appellate court faulted this court for providing “a mere three-and-a-half months
4 from the filing of the answer to complete discovery,” denying plaintiff’s motion to compel “even
5 though he explained that the prison’s copying quota prevented him from making enough copies to
6 serve his discovery requests on time,” and failing to address plaintiff’s statements in his summary
7 judgment opposition that he had been unable to obtain the discovery he wanted. *Id.* at 3.
8 According to the Court of Appeals, these statements should have been treated as a request under
9 Rule 56(d) of the Federal Rules of Civil Procedure. *Id.* at 4. The appellate court further
10 concluded that defendants’ argument in opposing the motion to compel – that joint discovery
11 requests may not be served on more than one defendant – was without merit as unsupported by
12 both the language of Rule 33(a)(1) of the Federal Rules of Civil Procedure and case law. *Id.* The
13 appellate court concluded that plaintiff’s discovery requests

14 appear relevant and narrowly tailored. For example, Calloway requested—but
15 apparently never received—his complete medical records. Calloway requested
16 the California Medical Facility’s (CMF) contraband surveillance watch policy so
17 that he could determine precisely what the written policy was and whether warden
18 M. Veal was responsible for it. [Footnote omitted] Calloway also requested
19 production of other prisoner’s claims against the warden and Dr. Andreasen,
20 which might lead to discovery of relevant evidence.

21 *Id.*

22 **II. Future Proceedings**

23 The essence of the opinion of the Ninth Circuit is that defendants’ objection to plaintiff’s
24 joint discovery requests was without merit, that defendants should have substantively responded
25 to those requests, and that the court should have granted plaintiff’s motion to compel those
26 responses. Accordingly, the (1) the order of March 19, 2012 (ECF No. 44) as it pertains to the
27 motion to compel; (2) the findings and recommendations of December 4, 2012 (ECF No. 57); and
28 (3) the order of February 21, 2013 (ECF No. 63) adopting those recommendations, are all
necessarily vacated by the Ninth Circuit’s ruling. Further, in light of the analysis by the court of
appeals, this court now orders the defendants to respond to plaintiff’s discovery requests.

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1 Further, within 30 days of this order, the parties shall file statements indicating what, if
2 any, specific additional discovery they intend to pursue and a proposed schedule by which they
3 propose to complete that discovery. The statements shall be specific as to the type of discovery
4 and the nature of the information that will be sought. Defendants may then renew their motion
5 for summary judgment or file a new motion for summary judgment within the time provided
6 below.

7 **III. Order**

8 It is hereby ORDERED that:

- 9 1. The order of March 19, 2012 (ECF No. 44) as it pertains to the motion to compel is
10 VACATED;
- 11 2. The findings and recommendations of December 4, 2012 (ECF No. 57) are
12 VACATED;
- 13 3. The order of February 21, 2013 (ECF No. 63) is VACATED;
- 14 4. Within 30 days of the date of this order, defendants shall respond to plaintiff's
15 discovery requests of September 13, 2011;
- 16 5. Any motion to compel with regard to defendants' responses shall be filed within 30
17 days of the service of those responses;
- 18 6. The parties shall, within 30 days of the date of this order, file statements indicating
19 what, if any, additional discovery they intend to pursue and a proposed deadline by
20 which that discovery shall be completed;
- 21 7. If no further discovery is sought, defendants may renew their April 16, 2012 motion
22 for summary judgment or file a new motion for summary judgment within 60 days of
23 the date of this order;
- 24 8. Plaintiff shall have 30 days from service of such summary judgment motion to file an
25 opposition to the motion; and

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9. Defendants shall have 14 days from service of plaintiff's opposition to file a reply.

Dated: July 30, 2014.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE