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

GERALD WILSON,

Plaintiff,

No. 2:10-cv-0721 JAM JFM (PC)

vs.

M. McDONALD, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a complaint filed pursuant to 42 U.S.C. § 1983. Pending before the court are two motions to compel filed separately by defendants Lopez and Diaz. Both defendants seek an order compelling plaintiff to further respond to their Requests for Admission (“RFA),” Requests for Production of Documents (“RFPD”), and Interrogatories.

DISCUSSION

The court has examined the motions filed by defendants and finds that they jointly challenge plaintiff’s responses to RFA Numbers 1, 2 and 3; RFPD Number 1; and Interrogatory 6. In addition, Diaz individually challenges plaintiff’s responses to RFPD Number 2 and Interrogatories 1, 3 and 7; and Lopez individually challenges plaintiff’s response to Interrogatory 4.

1 A. Requests for Admissions

2 Defendants jointly challenge plaintiff's responses to RFA Numbers 1, 2 and 3.

3 1. Requests and Responses

4 RFA Number 1: "Admit that you did not have a valid lower bunk chrono covering
5 the timeframe of June 11, 2007 through September 18, 2007."

6 Plaintiff's response to Lopez: "Without objecting, Plaintiff will response
7 to this question. Plaintiff will call Johnny Dang M.D. that issue plaintiff
8 lower bunk chronos at CSP-Corcoran for 2004-2007. And the lower bunk
9 chronos was reviewed by LVN [illegible], [illegible] at H.D.S.P. and
10 plaintiff will call Dr. Kim, to testify about the lower bunk chrono issue."

11 Plaintiff's response to Diaz: "Without objecting, Plaintiff will response to
12 this question. Plaintiff will call Johnny Dang M.D. that issue plaintiff
13 lower bunk chronos for 2004-2007, at CSP-Corcoran. And lower bunk
14 chrono for lower bunk issue at CSP-Corcoran was review by [illegible] on
15 5-13-08."

16 RFA Number 2: "Admit that, after falling from your bunk on July 8, 2007, you
17 did not turn in a Health Care Service Request Form (CDC-7362) for medical
18 treatment until September 2007."

19 Plaintiff's Response to Lopez: "Without objecting, Plaintiff will response
20 to the question. Plaintiff was not issue CDC-7362 forms by the defendants
21 in September 18, 2007, but there should be a priority pass for September
22 18, 2007, to see Dr. Kim on record at CSP-Corcoran."

23 Plaintiff's Response to Diaz: "Without objecting, Plaintiff will response to
24 the question. Plaintiff was not issue CDC-7362 forms by the defendants in
25 September 18, 2007, but there should be a priority pass for September 18,
26 2007, to see Dr. Kim in the records at CSP-Corcoran."

RFA Number 3: "Admit that Defendant Diaz [Lopez] did not deny your request
for medical treatment during the timeframe of June 11, 2007 through September
18, 2007."

Plaintiff's Response to Lopez: "Without objecting, Plaintiff will response
to the question. The defendant had the authority to move plaintiff from a
low risk of harm to a high risk of harm. Defendant Lopez deny plaintiff
medical care when he force the plaintiff to move to a upper bed out of a
lower bunk, which was a part of medical care, so yes the defendant did
deny the plaintiff medical care when he force the plaintiff to move."

Plaintiff's Response to Diaz: "Without objecting, Plaintiff will respond to
the question. Defendant Diaz is not in the complaint for giving me
medical treatment, but for not make sure that plaintiff was care for and
health was taking care of. Both defendants had the authority not to put the
plaintiff in harms way but did."

1 2. Discussion

2 Defendants object to plaintiff's responses on grounds of ambiguity,
3 unresponsiveness, and failure to admit or deny. Generally, Federal Rule of Civil Procedure 36(a)
4 requires one of three answers: (1) an admission; (2) a denial; or (3) a statement detailing why the
5 answering party is unable to admit or deny the matter. FRCP 36(a)(3); Asea, Inc. v. Southern
6 Pac. Transp. Co., 669 F.2d 1242 (9th Cir. 1981).

7 Examination of plaintiff's responses reveals that plaintiff did not strictly comply
8 with the Federal Rules. Nonetheless, the substance of plaintiff's responses clearly indicates an
9 admission or denial. See Harms v. Parker-Hannifin Corp., 2010 WL 4269570 (D. Ariz. 2010).
10 For example, in response to RFA Number 1 wherein plaintiff is asked to admit that he did not
11 have a valid lower bunk chrono during the time period in question, plaintiff responded by stating
12 that he will call Dr. Dang to testify that plaintiff was issued a lower bunk chrono. This is
13 obviously a denial of the RFA.

14 Similarly, plaintiff's response to RFA Number 3 is also a denial, albeit a qualified
15 one. Plaintiff states that defendants are not named in this action for failure to provide medical
16 treatment, but instead for failing to provide elements of the medical care prescribed for plaintiff.
17 Parties should "admit to the fullest extent possible, and explain in detail why other portions of a
18 request may not be admitted." Marchand v. Mercy Med. Ctr., 22 F3d 933, 938 (9th Cir. 1994)
19 (internal citation ommitted). Thus, plaintiff's response to RFA Number 3 is also sufficient.

20 However, plaintiff's response to RFA Number 2 is not adequate. The substance
21 of the response does not constitute either an admission or a denial. Accordingly, defendants'
22 motions to compel will be denied as to RFA Numbers 1 and 3, and granted as to RFA Number 2.
23 Plaintiff shall supplement his response to RFA Number 2 within twenty-one days of the date of
24 this order.

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1 B. Requests for Production of Documents

2 Defendants next jointly challenge plaintiff's response to RFPD 1, and Diaz,
3 individually, challenges plaintiff's response to RFPD 2.

4 1. Requests and Responses

5 RFPD Number 1: "Produce any and all medical and hospital records and
6 documents related to your injuries as a result of the alleged action by Defendant
Diaz [Lopez] as described in your complaint."

7 Plaintiff's response to Lopez and Diaz: Plaintiff did not respond to this
8 request.

9 RFPD Number 2: Produce any and all valid lower bunk chronos issued to you and
in effect between July 8, 2007 through September 18, 2007.

10 Plaintiff's response to Diaz: "Without objecting, see attached lower bunk
11 chronos issue in 2008 and plaintiff will call Johnny Dang M.D. to testify
12 about issueing plaintiff lower bunk chronos at CSP-Corcoran between
2004-2007."

13 2. Discussion

14 The court takes note of plaintiff's failure to respond to RFPD Number 1 and will
15 order a response accordingly. As to RFPD Number 2, it is evident that plaintiff did not respond
16 to the RFPD concerning chronos issued in 2007. Accordingly, plaintiff will be ordered to
17 supplement his response and/or produce responsive documents within twenty-one days of the
18 date of this order.

19 C. Interrogatories

20 Finally, defendants jointly challenge plaintiff's response to Interrogatory 6.
21 Additionally, Diaz individually challenges plaintiff's responses to Interrogatories 1, 3 and 7; and
22 Lopez individually challenges plaintiff's response to Interrogatory 4.

23 1. Interrogatories and Responses

24 Interrogatory 1: Please state each and every fact upon which you base your
25 contention that Defendant Diaz was responsible for the incident that allegedly
caused your injury on July 8, 2007.

26 Plaintiff's Response to Diaz: "Without objecting, plaintiff will response to
the question. All facts that defendant Diaz place the plaintiff in a upper

1 bed that cause plaintiff to be a risk of harm is in the avertments which are
2 the facts.”

3 Interrogatory 3: Please identify each and every document supporting your
4 response to Interrogatory Number 1.

5 Plaintiff's Response to Diaz: “Without objecting plaintiff rely upon the
6 avertment in the claim, and on the testimony of witnesses.”

7 Interrogatory 4: Please identify each and every fact upon which you base your
8 contention that Defendant Lopez denied you emergency medical treatment after
9 you allegedly fell from your bunk on July 8, 2007.

10 Plaintiff's Response to Lopez: “Without objecting, plaintiff will response
11 to the question. Facts are I did not see the Doctor upon the orders of the
12 defendant and the defendant does not admit that I seen the Doctor upon his
13 orders. But the defendant does admit that I fall out of the upper bed he
14 force me into.”

15 Interrogatory 6: Please identify each and every document supporting your
16 response to Interrogatory Number 4.

17 Plaintiff's Response to Lopez: “Without objecting, plaintiff will response
18 to the question. Plaintiff will rely upon the documents in the complaint,
19 and witness that will testify to the facts of the [illegible], and why medical
20 at the time of the fall would have help.”

21 Plaintiff's Response to Diaz: “Without objecting, plaintiff will response to
22 the question. Plaintiff will rely upon the medical documents in the
23 complaint that shows the defendant did not request medical care for the
24 plaintiff after the fall.”

25 Interrogatory 7: Please describe each specific act by Defendant Diaz, including
26 dates and times, which you claim caused you to fall from your bunk on July 8,
2007.

Plaintiff's Response to Diaz: “Without objecting to the question, plaintiff
will response to the question. Plaintiff will rely upon the fact that the
defendant put the plaintiff in the risk of harm that cause the plaintiff to fall
out of the upper bunk in cell-[illegible]. These facts are in the avertments
in the complaint.”

2. Discussion

Defendants object to these responses as unresponsive. Federal Rule of Civil
Procedure 33(b)(3) provides that “[e]ach interrogatory must, to the extent it is not objected to, be
answered separately and fully in writing under oath.” A responding may also object: “The
grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in

1 a timely objection is waived unless the court, for good cause, excuses the failure.” Rule 33(b)(4).

2 Here, plaintiff’s responses are clearly unresponsive. Plaintiff will be granted an
3 opportunity to supplement his responses so that they are responsive to the Interrogatories and in
4 compliance with the Federal Rules.

5 Accordingly, IT IS HEREBY ORDERED that defendants’ motions to compel are
6 partially granted:

7 1. Defendants’ motion to compel further responses to RFA Numbers 1-3 is partially
8 granted: plaintiff shall supplement his response to Lopez and Diaz’s RFA Number 2 within
9 twenty-one days of the date of this order;

10 2. Defendants’ motion to compel further responses to RFPD is granted: plaintiff shall
11 supplement his response and/or produce responsive documents within twenty-one days of the
12 date of this order; and

13 3. Defendants’ motion to compel further responses to Interrogatories is granted: plaintiff
14 shall supplement his challenged responses within twenty-one days of the date of this order.

15 DATED: June 20, 2011.

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18 UNITED STATES MAGISTRATE JUDGE

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