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

DAVID WESLEY BIRRELL,
aka BELLA-CHRISTINA BIRRELL,

No. 2:10-CV-1707-GEB-CMK-P

Plaintiff,

vs.

ORDER

KEITH HARLAN KNAUF, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are: (1) plaintiff’s motion for an order deeming matters admitted (Doc. 80), and defendants’ opposition thereto (Doc. 82); (2) plaintiff’s motion for issuance of subpoenas duces tecum (Doc. 84), and defendants’ opposition thereto (Doc. 87); and (3) plaintiff’s motion to postpone consideration of defendants’ motion for summary judgment (Doc. 88), and defendants’ opposition thereto (Doc. 90).

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1 Doc. 80

2 Plaintiff seeks an order pursuant to Federal Rule of civil Procedure 36(a)(6) that
3 matters be deemed admitted. Plaintiff also seeks sanctions. At issue are defendants' responses
4 to plaintiff's requests for admissions, nos. 65-75, 130, and 140. As to request nos. 65-75,
5 defendants argue in their opposition that plaintiff's requests fail to comply with Rule 36 because
6 they reference outside documents. Defendants state, however, that they treated the requests as
7 requests under Rule 36(a)(2) about the truth or accuracy of the referenced documents rather than
8 objecting on the basis of failure to comply with Rule 36.

9 The court finds that defendants' responses to plaintiff's request nos. 65-75 were
10 sufficient. In request nos. 65, 66, 69, and 70 plaintiff seeks to determine the accuracy of events
11 described in an October 20, 2008, memorandum. In request nos. 67, 68, 71, 72, 73, 74, and 75,
12 plaintiff asks about the accuracy of a March 13, 2009, "informational chrono." Defendants
13 reasonably construed the requests as inquiring about the "genuineness of a document" under Rule
14 36(a)(2). Moreover, as to both documents, defendants admitted that they are true in their
15 entirety.

16 As to request no. 130, plaintiff asked: "ADMIT that the filing of a civil action in
17 any court of law is a legally 'protected conduct.'" Defendants objected on the ground that the
18 question calls for a legal conclusion. The court finds that this response was sufficient because
19 the request sought a legal conclusion about whether certain conduct was considered
20 constitutionally protected conduct without regard to application of any facts of the case.
21 See Tracchia v. Tilton, 2008 WL 5382253 at *2 (E.D. Cal. 2008).

22 In request no. 140, plaintiff again referenced the March 13, 2009, "informational
23 chrono" and asked defendants to admit that, when the chrono was written, "Plaintiff had been
24 cleared, and was actively visiting a patient in the CMF Hospice." Defendants objected on the
25 grounds that the request is vague, ambiguous, compound, and unintelligible. The court agrees
26 with defendants' characterization of the request. It is not clear what plaintiff means by "had been

1 cleared.” The request is also compound in that it asks defendants to admit: (1) that plaintiff has
2 been cleared; and (2) that plaintiff was actually visiting a patient in the hospice. Moreover, the
3 request is ambiguous in that it is not clear whether plaintiff is referencing visits to a hospice
4 patient in the hospice, a non-hospice patient in the hospice, or a non-hospice patient somewhere
5 other than the hospice. For these reasons, the court finds that defendants’ response to request no
6 140 was sufficient.

7 Doc. 84

8 Plaintiff seeks issuance of subpoenas by the Clerk of the Court pursuant to Federal
9 Rule of Civil Procedure 45(a)(3). In particular, plaintiff seek production of documents by the
10 warden of the California Medical Facility, who is a party to this action. In opposition, defendants
11 argue that plaintiff’s motion is an untimely discovery request. The court agrees. On October 16,
12 2012, the court issued a scheduling order permitting the parties to conduct discovery through
13 January 15, 2013. Plaintiff’s motion was signed on January 7, 2013, and filed on January 17,
14 2013. The motion requested issuance of subpoenas for production of documents within 30 days
15 of service. Even assuming that the motion had been filed the same day it was signed, and that
16 subpoenas had issued that same day, and the subpoenas had been returned to plaintiff that same
17 day, and the subpoenas had been served that same day, it would have been impossible for
18 plaintiff to have obtained responses to the subpoenas by the January 15, 2013, discovery cut-off
19 date. Simply put, plaintiff waited too long to seek issuance of subpoenas.

20 Doc. 88

21 Plaintiff seeks an order pursuant to Federal Rule of Civil Procedure 56(d)
22 (formerly Rule 56(f)) to “postpone Defendants’ motion for summary judgment.” Plaintiff cites
23 the following grounds in support of his request:

- 24 1. An outbreak of Norovirus at the prison has resulted in a quarantine and
25 cessation of all normal institutional programs.
- 26 2. Additional discovery is anticipated if plaintiff’s discovery motions
(discussed above) are granted.

