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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFREDO GOMEZ,
Plaintiff,
v.
MIKE McDONALD et al.,
Defendants.

No. 2:11-cv-0649 KJM DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion to compel. Defendants have filed an opposition to the motion, and plaintiff has filed a reply.

For the reasons discussed below, the court will not require defendants to provide further substantive responses to plaintiff’s discovery requests. However, the court will require defense counsel to re-serve defendants’ responses to plaintiff’s document requests with the properly verified signatures.

BACKGROUND

Plaintiff is proceeding on an amended complaint against defendants Davey, Domondan, Gower, Sanders, and Van Leer. Therein, plaintiff alleges as follows. On October 6, 2009, defendants placed him in a Single Cell Unit/Special Purpose Segregation Unit (“SCU/SPSU”) and retained him there for eight months because they believed he was a member of the 2-5

1 disruptive group. While segregated, plaintiff alleges that defendants refused to inform him of any
2 disciplinary charges being brought against him or of their reasons for holding him in segregation
3 and did not provide him with an informal non-adversary hearing to allow him to present his
4 views. While plaintiff was held in segregation defendants also denied him outdoor exercise,
5 forced him to stay in a cell in which the temperature averaged only 35 degrees, and refused to
6 provide him with personal hygiene necessities. On May 25, 2010, defendants asked him to sign a
7 document stating that he had no intention of participating in any 2-5 activities. Plaintiff signed
8 the document, and two days later, he was returned to the general population at the institution
9 where he was incarcerated. (Am. Compl. Attach. at 6-32.)

10 At screening, the court found that plaintiff's amended complaint appeared to state
11 cognizable claims for relief against defendants Davey, Domondan, Gower, Sanders, and Van Leer
12 for denial of plaintiff's right to due process under the Fourteenth Amendment in connection their
13 alleged involvement with his placement and retention in an SCU/SPSU. In addition, the court
14 found that plaintiff's amended complaint appeared to state a cognizable claim against defendants
15 Davey, Gower, and Van Leer for cruel and unusual punishment under the Eighth Amendment for
16 their alleged involvement in denying plaintiff outdoor exercise, placing him in a cold cell, and
17 refusing to provide him with personal hygiene items. (Doc. No. 9)

18 **PLAINTIFF'S MOTION TO COMPEL**

19 Plaintiff has filed a motion to compel in which he broadly argues that defendants'
20 boilerplate objections to his discovery requests are unsupported and that the court should
21 therefore overrule them all. In this regard, plaintiff contends that: (1) defendants' burdensome
22 objection should be overruled because defendants did not establish the nature of any alleged
23 burden posed by responding to his discovery requests; (2) defendants improperly invoked the
24 official information privilege; (3) defendants' overbroad objection to his discovery requests
25 should be overruled because defendants did not articulate a legitimate basis as to why any
26 particular discovery request was overbroad; (4) defendants improperly invoked the attorney-client
27 privilege; (5) defendants improperly invoked plaintiff's third-party privacy rights; (6) defendants
28 improperly objected on grounds that certain documents were equally available to plaintiff; (7)

1 defendants improperly invoked the compound objection because his requests were not compound
2 and in any event defendants could have answered them; (8) defendants' objection based on
3 assumption of facts not in evidence is not proper during discovery; (9) defendants improperly
4 invoked the confidential objection; (10) defendants improperly invoked vagueness as an
5 objection; (11) defendants' relevancy objection should be overruled because defendants did not
6 explain why the requested information was not reasonably calculated to lead to the discovery of
7 admissible evidence; (12) defendants failed to produce documents or identify the person in
8 custody or control of documents to allow plaintiff to obtain said documents; (13) defendants
9 improperly objected based on plaintiff seeking discovery for dates outside the scope relevant to
10 the lawsuit because they did not identify the dates they believe are within the boundaries of the
11 lawsuit; (14) defendants improperly objected that plaintiff was making a statement as opposed to
12 a discovery request in the form of an interrogatory; (15) defendants improperly objected that
13 plaintiff's discovery requests were premised on untrue facts; and (16) defendants responses to
14 certain discovery requests were evasive. (Pl.'s Mot. to Compel at 4-28.)

15 ANALYSIS

16 I. Applicable Legal Standards

17 Under Rule 26 of the Federal Rules of Civil Procedure, “[p]arties may obtain discovery
18 regarding any non-privileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ.
19 P. 26(b). “Relevant information need not be admissible at trial if the discovery appears
20 reasonably calculated to lead to the discovery of admissible evidence.” Id.

21 With respect to interrogatories, a party may propound interrogatories related to any matter
22 that may be inquired into under Federal Rule of Civil Procedure 26(b). Fed. R. Civ. P. 33(a)(2).
23 A party objecting to an interrogatory must state the grounds for the objection with specificity.
24 Fed. Civ. P. 33(b)(4). With respect to requests for production, a party may propound requests for
25 production of documents that are within the scope of Federal Rule of Civil Procedure 26(b). Fed.
26 R. Civ. P. 34(a). A party objecting to a request for production must state the reasons for the
27 objection. Fed. R. Civ. P. 33(b)(2)(B).

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1 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may
2 move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P.
3 37(a)(3)(B). The court may order a party to provide further responses to an “evasive or
4 incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4). “District courts have
5 ‘broad discretion to manage discovery and to control the course of litigation under Federal Rule
6 of Civil Procedure 16.’” Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
7 Avila v. Willits Env'tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

8 II. Discussion

9 As noted above, under the Federal Rules of Civil Procedure, boilerplate objections to
10 discovery responses do not suffice. See Fed. R. Civ. P. 33(b)(4); Fed. R. Civ. P. 33(b)(2)(B). In
11 this regard, plaintiff’s argument with respect to boilerplate objections is, generally speaking, well-
12 taken. As defense counsel argues in opposition to plaintiff’s motion to compel, however, in
13 addition to defendants’ attempt to preserve certain objections to plaintiff’s first and second set of
14 interrogatories and requests for production of documents, defendants did provide answers and
15 responsive documents to plaintiff’s various discovery requests. Plaintiff has not addressed in his
16 motion to compel why defendants’ substantive answers to his interrogatories are evasive or
17 incomplete. In addition, plaintiff has not explained why the documents defendants produced in
18 response to his discovery requests are deficient or lacking. Nor has plaintiff provided this court
19 with a copy of the produced documents (e.g., “Gower Responses – Attachment A, Bates A1-
20 A79”) that would allow the court to assess their sufficiency.

21 By way of example, plaintiff takes issue with defendants’ overbroad objection to his
22 Request for Production No. 1 propounded on defendant Davey and moves the court to compel a
23 further response from the defendant. Plaintiff’s request and defendant Davey’s response is as
24 follows:

25 **REQUEST FOR PRODUCTION NO. 1**

26 Please produce a copy of all DOCUMENTS CONCERNING a
27 “review” (as defined in 15 CCR § 3337(a)-(d)) of PLAINTIFF’S
28 segregation by a designated staff with a rank not less than the level
of correctional Captain at any time between October 6, 2009 and
May 26, 2010 at HDSP.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1**

2 Defendant objects to this request on the grounds it is vague, overly
3 broad and assumes facts not in evidence. Due to the overbreadth,
4 documents deemed confidential may be responsive, the disclosure
5 of which would create a hazard to the safety and security of the
6 institution, prison officials and inmates and violate privacy rights
7 afforded to prison officials and inmates. Without waiving these
8 objections, Defendant responds that Plaintiff was not placed in
9 segregation but was placed in a modified lockdown program
10 between October 6, 2009 through May 26, 2010. Non-confidential
11 documents regarding the modified program have been produced in
12 Defendant Gower’s responses to document production, entitled as
13 “Gower Responses – Attachment A, Bates A1-A79.”

14 (Pl.’s Mot. to Compel Ex. B.) Plaintiff contends that defendant Davey failed to establish why this
15 discovery request is overly broad, and therefore plaintiff believes the court should overrule the
16 objection. However, even if the court accepts plaintiff’s argument, he has not indicated why the
17 defendant’s substantive response and the documents defendant actually produced in response to
18 this discovery request are inadequate so as to require a further response from defendant Davey.

19 Although the court does not hold litigants proceeding pro se to the same standard that it
20 holds attorneys, at a minimum, plaintiff, as the moving party, has the burden of informing the
21 court (1) which discovery requests are the subject of his motion to compel, (2) which of the
22 defendants’ responses are disputed, (3) why he believes that defendants’ responses are deficient,
23 (4) why defendants’ objections are not justified, and (5) why the information he seeks is relevant
24 to the prosecution of this action. This court will not examine each of plaintiff’s discovery
25 requests and each of defendants’ responses thereto in order to determine whether any of
26 defendants’ substantive responses are somehow deficient. See, e.g., Gamez v. Gonzalez, No.
27 1:08-cv-01113 LJO GSA PC, 2015 WL 236684 at *10 (E.D. Cal. Jan. 16, 2015) (“Plaintiff may
28 not simply assert . . . that he is dissatisfied for general reasons with Defendants’ objections, and
29 that he wants an order compelling production of documents.”); Calloway v. Kelley, No. 1:11-cv-
30 01090 LJO SAB (PC), 2014 WL 7140576 at *2 (“Plaintiff bears the burden of identifying which
31 responses are in dispute and providing sufficient information so that the Court can discern why he
32 is challenging the response. It is insufficient for Plaintiff to merely attach all discovery requests
33 and responses thereto and claim he is not satisfied and request a further response.”).

1 The court notes that it has conducted a cursory review of defendants' responses to
2 plaintiff's discovery requests, and it appears that defendants have complied with the good-faith
3 requirement during the discovery process. See Asea v. Southern Pacific Transportation Co., 669
4 F.2d 1242, 1247 (9th Cir. 1981) (“[t]he discovery process is subject to the overriding limitation of
5 good faith obligation.”). As noted above, notwithstanding their objections to plaintiff's discovery
6 requests, defendants provided answers to plaintiff's interrogatories and have turned over
7 numerous non-confidential documents to plaintiff in response to his requests for production.
8 Where defendants refused to turn over documents, defense counsel made clear that they were not
9 in possession of the documents or that plaintiff had equal access to the documents in his central
10 file. Plaintiff is advised that this court cannot order a defendant to produce documents that do not
11 exist or are not in the defendant's possession or control. See Fed. R. Civ. P. 34(a)(1); see also
12 United States v. Int'l Union of Petroleum & Indus. Workers, 870 F.2d 1450, 1452 (9th Cir.1989)
13 (a party seeking production of documents bears the burden of showing the opposing party has
14 control over them). Nor will the court order defendants to produce documents that are equally
15 accessible to plaintiff in his central file. See, e.g., Quezada v. Lindsey, No. 1:10-cv-01402 AWI
16 SAB (PC), 2014 WL 5500800 at *3 (E.D. Cal. Oct. 30, 2014) (“Since any ordinances and laws
17 governing health and safety are public documents, which are equally available to Plaintiff,
18 Defendants cannot be compelled to produce them.”); Ford v. Wildey, No. 1:10-cv-01024 LJO
19 SAB (PC), 2014 WL 4354600 at *4 (E.D. Cal. Sept. 2, 2014) (“Defendant indicates that any such
20 documents are located in his central file for which Plaintiff has equal access. This response
21 complies with Rule 34 of the Federal Rules of Civil Procedure ...”); Valenzuela v. Smith, No. S
22 04-cv-0900 FCD DAD P, 2006 WL 403842 at *2 (E.D. Cal. Feb. 16, 2006) (defendants will not
23 be compelled to produce documents that are “equally available to plaintiff in his prison medical
24 file or in the prison law library.”).

25 Finally, although the court will not require defendants to provide further substantive
26 responses to plaintiff's discovery requests, the court agrees with plaintiff that defendants'
27 responses to plaintiff's document requests are deficient where they are not properly verified.
28 Specifically, defendants Gower, Davey, Van Leer, Sanders, and Domodon's responses to

1 plaintiff's requests for production of documents are unverified. (Pl.'s Mot. to Compel Exs. A-G.)
2 Although there is no express requirement under Rule 34 that requires responses to requests for
3 production of documents be signed under oath, courts have required as much where the response
4 does not involve production of the requested documents. See, e.g., Medina v. County of San
5 Diego, Civil No. 09cv1252 BAS (RBB), 2014 WL 4793026 at *19 (S.D. Cal. Sept. 25, 2014) (if
6 response to production of document is not a production the party must answer under oath);
7 Rogers v. Guirbino, No. 11-cv-560 IEG (RBB), 288 F.R.D. 469, 485 (S.D. Cal. Dec. 19, 2012)
8 ("if defendant Kuzil-Ruan's maintains there is no relevant material in her control, she must state
9 so under oath.") (citing Vazquez-Fernandez v. Cambridge College, 269 F.R.D. 150, 155 (D.P.R.
10 2010)); Bryant v. Armstrong, No. Civil No. 09cv02318 W(RRB), 285 F.R.D. 596, 609 (S.D. Cal.
11 June 14, 2012) (same). Accordingly, the court will order defense counsel to re-serve defendants'
12 original responses to plaintiff's document requests with the properly verified signatures.¹

13 OTHER MATTERS

14 Defendants have filed a motion for summary judgment on the merits of plaintiff's claims.
15 The court previously relieved plaintiff of having to file an opposition to defendants' motion until
16 the court ruled on his motion to compel. In light of the discussion above, the court will now order
17 plaintiff to file an opposition to defendants' motion for summary judgment.

18 CONCLUSION

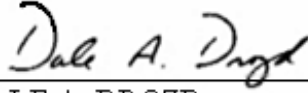
19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's motion to compel (Doc. No. 59) is granted in part and denied in part;
- 21 2. Within fourteen days of the date of service of this order, defense counsel shall re-serve
22 on plaintiff defendants' original responses to plaintiff's request for production of documents with
23 proper verified signatures;
- 24 3. Within thirty days of the date of this order, plaintiff shall file an opposition to
25 defendants' motion for summary judgment. Failure to file an opposition will be deemed as a

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27 ¹ Plaintiff also contends that defendant Van Leer's answers to plaintiff's interrogatories are
28 unverified. However, according to plaintiff's own Exhibit J, defendant Van Leer did in fact
provide the proper verification with his responses to plaintiff's interrogatories. Accordingly, the
court will not order a further response to interrogatories from defendant Van Leer.

1 statement of non-opposition and shall result in a recommendation that this action be dismissed
2 pursuant Federal Rule of Civil Procedure 41(b).

3 Dated: January 28, 2015

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6 DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

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