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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH JOHNSON,
Plaintiff,
v.
E. SANDY, et al.,
Defendant.

No. 2:12-cv-2922 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff’s request for production of documents and motion to compel. ECF No. 168.

I. Request for Production and Motion to Compel

Discovery in this matter closed on June 6, 2014. ECF No. 53 at 5. On September 15, 2014, discovery was re-opened for the limited purpose of resolving pending discovery disputes and given a new deadline of October 23, 2014. ECF No. 61 at 21, 23. The court has already denied two previous requests from plaintiff to re-open discovery so that he may submit additional requests. ECF Nos. 72, 155. The current request to submit discovery requests and motion to compel will also be denied.

In his request for production and motion to compel, plaintiff submits four requests for documents. He argues the information sought was requested within the discovery time limits.

1 ECF No. 168. The court finds, however, that plaintiff's first request is an expansion of Requests
2 for Production, Set One, Number 28 and Set Two, Number 7. ECF No. 56-4 at 16, 26. The
3 original requests demonstrate that plaintiff believed that defendants' medical records may be
4 necessary for his pursuit of this case and he has not offered any explanation as to why he could
5 not have sought more comprehensive medical records at that time.

6 The second and third requests are duplicative of Request for Production, Set Two,
7 Number 15 (ECF No. 56-4 at 30), which has already been addressed by this court (ECF No. 155
8 at 3-4). As has already been stated, defendants have averred that the only audio or video recorded
9 witness interview regarding the use of force against plaintiff was plaintiff's own interview from
10 August 22, 2012, and while defendants are under an ongoing obligation to supplement their
11 responses, the court cannot order them to produce something that does not exist. ECF No. 61 at
12 11-12; ECF No. 155 at 3-4. This means that while defendants have an obligation to produce any
13 recordings of inmate Faris's interview that they may subsequently discover, the court cannot
14 compel production in light of the sworn representation that such recordings do not exist. The
15 court will not address this issue again.

16 Finally, plaintiff's fourth request is for the report the Office of Internal Affairs made in
17 response to Warden Swarthout's request for investigation. While this request seeks
18 supplementation of documents plaintiff was only recently given an opportunity to review, Bates
19 numbered page 40 of those documents clearly states that after reviewing the request, the Office of
20 Internal Affairs denied the request for an investigation, meaning that there is no investigative
21 report.

22 For these reasons, plaintiff's request for production of documents and motion to compel
23 will be denied.

24 II. Sealed Documents

25 On March 14, 2016, the court granted defendants' motion to file under seal. ECF
26 No. 163. It appears that defendants have not yet submitted the documents to the Clerk of the
27 Court for filing. If they have not already done so, defendants shall submit discovery documents
28 Bates numbered pages 28-34, 36-42, and 46-51 to the Clerk of the Court for filing under seal no

1 later than March 25, 2016. The documents shall be submitted to the Clerk of the Court in
2 accordance with the procedures outlined in Local Rule 141(e)(2)(i).

3 III. Summary

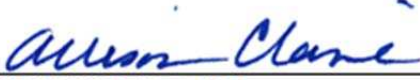
4 Plaintiff's request for production and motion to compel is denied because plaintiff has not
5 shown that he could not ask for defendants' medical records during the original discovery period;
6 his requests related to inmate Faris's interview are the same as his previous requests and have
7 already been addressed by the court; and the documents plaintiff was allowed to review show that
8 the warden's request for an investigation was denied.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff's request for production and motion to compel (ECF No. 168) is denied.

11 2. If they have not already done so, defendants shall submit discovery documents Bates
12 numbered pages 28-34, 36-42, and 46-51 to the Clerk of the Court for filing under seal no later
13 than March 25, 2016. The documents shall be submitted to the Clerk of the Court in accordance
14 with the procedures outlined in Local Rule 141(e)(2)(i).

15 DATED: March 22, 2016.

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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