

1 I. Plaintiff Allegations

2 Plaintiff alleges that on November 8, 2012, plaintiff experienced excruciating abdominal
3 pain and was rushed from Mule Creek State Prison to an outside hospital where a “c-scan x-ray”
4 was taken. ECF No. 1 at 7. After the x-ray was taken, defendant correctional officers Singh and
5 Rodriguez took plaintiff to a holding cell near defendant Rogero’s office. From the holding cell,
6 plaintiff overheard defendant Dr. Rogero tell Singh and Rodriguez that plaintiff had a lacerated
7 spleen, a bleeding right kidney, and genital warts and should be scheduled for surgery
8 immediately. Id. at 8. Rodriguez told Dr. Rogero that plaintiff was a snitch who had a civil
9 lawsuit pending against several correctional officers, and asked Dr. Rogero to schedule plaintiff’s
10 surgery in April so that plaintiff would not be able to go to trial. Id. at 9. Dr. Rogero later
11 proposed another surgery date and Rodriguez again called plaintiff a snitch and made reference to
12 plaintiff’s pending lawsuit. Plaintiff remained in the hospital for three days and was returned to
13 prison without obtaining adequate medical care or a scheduled surgery date.³

14 II. Legal Standards Common to All Discovery

15 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
16 party’s claim or defense and, for good cause, the court may order discovery of any matter relevant
17 to the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1). Relevant information need
18 not itself be admissible at trial provided the discovery appears reasonably calculated to lead to the
19 discovery of admissible evidence. Id.

20 Generally, if the responding party objects to a discovery request, the party moving to
21 compel bears the burden of demonstrating why the objections are not justified. See e.g., Grabek
22 v. Dickinson, 2012 WL 113799, *1, 2012 U.S. Dist. LEXIS 4449 (E.D. Cal. 2012); Womack v.
23 Virga, 2011 WL 6703958, *3, 2011 U.S. Dist. LEXIS 1 (E.D. Cal. 2011). This requires the
24 moving party to inform the Court which discovery requests are the subject of the motion to
25 compel, and, for each disputed response, why the information sought is relevant and why the
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27 ³ A more detailed summary of plaintiff’s allegations is set forth in this court’s order filed
28 December 23, 2014. See ECF No. 36 at 2-4.

1 responding party's objections are not meritorious. Grabek, 2012 WL 113799 at *1; Womack,
2 2011 WL 6703958 at *3.

3 The court is vested with broad discretion to manage discovery, Hunt v. County of Orange,
4 672 F.3d 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625,
5 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) and, where the
6 discovery request seeks information which, based on the record, is clearly within the scope of
7 discovery and the objection lacks merit, the court may elect to exercise its discretion to reach the
8 merits of the dispute. See e.g., Marti v. Baires, 2012 WL 2029720, *3, 2012 U.S. Dist. LEXIS
9 77962 (E.D. Cal. 2012); Williams v. Adams, 2009 WL 1220311, *1, 2009 U.S. Dist. LEXIS
10 37515 (E.D. Cal. 2009). The court must limit discovery if the burden of producing it outweighs
11 its likely benefit. Fed. R. Civ. P. 26(b)(2)(C)(iii). "In each instance, the determination whether ...
12 information is discoverable because it is relevant to the claims or defenses depends on the
13 circumstances of the pending action." Fed. R. Civ. P. 26 Advisory Committee's Note (2000
14 Amendment), Gap Report re. Subdivision (b)(1).

15 III. Plaintiff's Discovery Requests Served on Defendant Rogero

16 With respect to defendant Rogero, the following three motions are presently before the
17 court: (1) plaintiff's motion to compel Rogero to provide further responses to plaintiff's Request
18 for Production of Documents, Set One, ECF No. 43; (2) plaintiff's motion to compel Rogero to
19 respond to Request for Production of Documents, Set Two, ECF No. 35; and (3) plaintiff's
20 motion to compel Rogero to provide further responses to Interrogatories, Set One, ECF No. 37.

21 A. Request for Production, Set One (ECF No. 43)

22 On October 23, 2014, plaintiff served Request for Production of Documents, Set One on
23 defendant Rogero, seeking production of eight photographs of the interior of San Joaquin General
24 Hospital, where the alleged violation of plaintiff's rights took place. On December 4, 2014,
25 Rogero served timely legal objections to Set One and stated in response to each production
26 request that he "has no responsive documents." See ECF No. 39-3, Exh. C.

27 On December 10, 2014 (applying the mailbox rule), plaintiff filed a motion to compel
28 Rogero to provide further responses to plaintiff's Request for Production of Documents, Set One.

1 ECF No. 34. On January 13, 2015, Rogero opposed the motion on the grounds that, as a contract
2 radiologist who is not an employee of San Joaquin General Hospital, he does not have possession,
3 custody, or control of any of the photographs requested by plaintiff. ECF No. 39. Rogero also
4 implied that he had no means to obtain such photographs. Id.

5 By order dated January 26, 2015, the court denied plaintiff's motion to compel further
6 responses to Request for Production of Documents, Set One. ECF No. 42. The court's review of
7 plaintiff's requests indicated that, rather than asking for existing photographs to be produced,
8 plaintiff appeared to be asking for photographs to be taken and then provided to him. The court
9 denied plaintiff's motion, finding Rogero's responses to be reasonable and legally sufficient.
10 ECF No. 42 at 4.

11 On January 14, 2015, plaintiff filed the instant motion to compel, ECF No. 43, again
12 seeking further responses from defendant Rogero to Request for Production of Documents, Set
13 One.⁴ Here, plaintiff takes issue with Rogero's statement that Rogero does not have possession,
14 custody, or control of the requested photos.⁵ Specifically, plaintiff appears to argue that Rogero
15 subpoenaed the requested photos (along with other documents) from San Joaquin General
16 Hospital, but has failed to turn them over to plaintiff. ECF No. 43 at 2-3.

17 In opposition to plaintiff's motion, defendant Rogero argues that the court already denied
18 plaintiff's motion to compel further responses to Request for Production of Documents, Set One.
19 Rogero contends that plaintiff's current motion presents no new facts or arguments, and fails to
20 refute the court's conclusion that Rogero's responses to Set One were reasonable and legally
21 sufficient. ECF No. 52.

22 Defendant Rogero's argument is well taken. Plaintiff's request for an order compelling
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24 ⁴ Plaintiff's motion appears to be a response to ECF No. 39, Rogero's opposition to plaintiff's
25 initial motion to compel further responses to Request for Production of Documents, Set One, ECF
26 No. 34. In the instant motion, plaintiff does not set forth the individual production requests, but
27 instead states that he is objecting to defendant Rogero's responses "for the second time." See
28 ECF No. 43 at 2.

⁵ Plaintiff also argues that his production requests were not vague or ambiguous. ECF No. 43 at
2.

1 further responses to Request for Production of Documents, Set One has already been denied.
2 ECF No. 42. Plaintiff's only new argument is that Rogero now has possession of the requested
3 photos because he obtained them by subpoena. See ECF No. 43. If defendant Rogero has
4 obtained possession, custody, or control of the requested photos, he is required to supplement his
5 responses to plaintiff's discovery requests. See Fed. R. Civ. P. 26(e). However, at present there
6 is no reason to believe the photos exist, much less that defendant Rogero has obtained possession
7 of them. Plaintiff's motion to compel further responses to Production of Documents, Set One is
8 denied.

9 In his motion to compel, plaintiff also requests a court order compelling defendant Rogero
10 to produce the records Rogero obtained by subpoena from San Joaquin General Hospital, Mule
11 Creek State Prison, and Kern Valley State Prison. ECF No. 43 at 3. However, this request was
12 not included in the Request for Production of Documents, Set One served on defendant Rogero,⁶
13 see ECF No. 39-3 at 1-4, and it is unclear whether plaintiff served a RFP on defendant Rogero
14 requesting production of all the documents defendant received by subpoena.⁷ Because plaintiff
15 has not established that he served a discovery request for these documents on defendant Rogero
16 prior to filing the instant motion to compel, the undersigned must deny plaintiff's motion to
17 compel with respect to his general request for all the documents defendant Rogero received by
18 subpoena from San Joaquin General Hospital, Kern Valley State Prison, and Mule Creek State
19 Prison.⁸

20 B. Request for Production, Set Two (ECF No. 35)

21 On November 2, 2014, plaintiff served Request for Production of Documents, Set Two on
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23 ⁶ In the Request for Production of Documents, Set One, plaintiff requested only photographs
from defendant Rogero. See ECF No. 39-3 at 1-4.

24 ⁷ Defendant Rogero does not address this request in his opposition to plaintiff's motion to
25 compel. See ECF No. 52.

26 ⁸ The court notes that some of the documents defendant Rogero received by subpoena from San
27 Joaquin General Hospital and Kern Valley State Prison are attached as Exhibits C and D to
28 Rogero's motion for summary judgment. See ECF No. 69-7 at 12-25. However, the court will
not deny plaintiff's motion on mootness grounds as it is unclear whether these exhibits contain all
the documents defendant Rogero received.

1 defendant Rogero, seeking production of a list of medications given to plaintiff at San Joaquin
2 General Hospital on November 8, 2014, a copy of plaintiff's "x-ray c-scan," a voice recording of
3 the doctor's diagnosis of plaintiff's injuries, security footage of plaintiff shackled to his hospital
4 bed, and a copy of hospital procedures regarding inmate wards. On December 4, 2014, Rogero
5 served legal objections and stated that he had no responsive documents.

6 On December 14, 2014 (applying the mailbox rule), plaintiff filed the present motion to
7 compel further responses to Request for Production, Set Two. ECF No. 35. On December 23,
8 2014, the court vacated ECF No. 35 as duplicative of plaintiff's December 10, 2014 motion to
9 compel, ECF No. 34. However, upon further review, the court later determined that Rogero's
10 response to ECF No. 35 was required, and ordered Rogero to respond within fourteen days of the
11 court's January 26, 2015 order. ECF No. 42.

12 On February 5, 2015, Rogero filed an opposition plaintiff's motion to compel further
13 responses to Request for Production, Set Two. ECF No. 45. Defendant argues that plaintiff's
14 motion should be denied because Rogero does not have possession, custody, or control of the
15 requested documents and because plaintiff did not attempt to confer in good faith before filing his
16 motion compel.⁹ ECF No. 45 at 1-2.

17 i. Failure to Meet and Confer

18 Defendant argues that plaintiff's motion to compel should be denied because plaintiff did
19 not file a certification that he attempted to confer in good faith with defendant Rogero before
20 filing his motion to compel, in violation of Federal Rule of Civil Procedure 37(d)(1)(B). ECF No.
21 45 at 2, 4-5. Rule 37(d)(1)(B) provides that "[a] motion for sanctions for failing to answer or
22 respond must include a certification that the movant has in good faith conferred or attempted to
23 confer with the party failing to act in an effort to obtain the response without court action." Fed.
24 R. Civ. P. 37(d)(1)(B). Because the court finds that plaintiff's motion does not include a request

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26 ⁹ Defendant's also includes a number of boilerplate objections to each production request, none
27 of which are supported by argument or explanation. See ECF No. 45. However, defendant
28 provides responses to plaintiff's requests notwithstanding his objections. In each response,
defendant asserts that he has no responsive documents. See id.

1 for sanctions against defendant Rogero,¹⁰ Rule 37(d)(1)(B) is not applicable to the instant motion.
2 To the extent defendant means to assert that plaintiff's failure to file a certification violates Rule
3 37(a), the court declines to enforce the rule against plaintiff here because of his pro se status.
4 Plaintiff's failure to file the certification will not provide grounds for denying the motion.

5 ii. Lack of Possession, Custody, or Control

6 Pursuant to Rule 34(a), documents sought in discovery motions must be within the
7 "possession, custody, or control" of the party upon whom the request is served. Fed. R. Civ. P.
8 (34)(a). "A party need not have actual possession of the documents to be deemed in control of
9 them . . . A party that has a legal right to obtain certain documents is deemed to have control over
10 the documents." Branch v. Umphenour, No. 1:08-CV-01655-AWI, 2014 WL 3891813, at *8
11 (E.D. Cal. Aug. 7, 2014) (internal citations and quotations omitted).

12 **RFP No. 1, Set Two:** Complete copy of med log's of medication
13 given to Plaintiff while he was admitted to San Joaquin General
Hospital.

14 **Response:** Objection. This request for production is objected to as
15 vague and ambiguous, and is not reasonably calculated to lead to
16 the discovery of admissible evidence. Without waiving these
objections, responding party has no responsive documents.

17 Plaintiff seeks to compel production of a list or log of the medications he received during
18 his stay at San Joaquin General Hospital. ECF No. 35 at 2. In light of plaintiff's allegation that
19 on November 8, 2012, defendant Rogero initially determined that plaintiff required surgery but
20 changed his mind for non-medical reasons, plaintiff's medication list is relevant and reasonably
21 calculated to lead to the discovery of admissible evidence related to plaintiff's physical condition
22 on that date.

23 In his opposition, defendant emphasizes that he is not an employee of San Joaquin
24 General Hospital and that he does not have possession, custody, or control of the requested
25 documents. ECF No. 45 at 3. However, the court's review of the record indicates that defendant
26 subpoenaed plaintiff's medical records from San Joaquin General Hospital on December 2, 2012.

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28 ¹⁰ Plaintiff brought his motion to compel pursuant to Rule 37(a). See ECF No. 35 at 1.

1 See ECF No. 69-7 (Defendant Rogero’s Motion for Summary Judgment) at 15-19. It is unclear
2 whether defendant received the requested documents from San Joaquin General Hospital prior to
3 filing his opposition to plaintiff’s motion, or if defendant later provided the requested documents
4 to plaintiff. Accordingly, defendant shall be required to file a statement with the court indicating
5 whether the documents he obtained by subpoena from San Joaquin General Hospital, Mule Creek
6 State Prison, or Kern Valley State Prison included any records related to medications plaintiff
7 received while plaintiff was a patient at San Joaquin General Hospital in November 2012. If
8 defendant received any records related to plaintiff’s medications, he shall produce them to
9 plaintiff.

10 **RFP No. 2, Set Two:** Plaintiff is request actual xray c-scan by
11 Linda Hodges on November 8, 2012 to be logged in the courts as
evidence of Plaintiff.

12 **Response:** Objection. This request for production is objected to as
13 an improper request for production of documents, vague and
14 ambiguous, overbroad, violates doctor-patient confidentiality, and
15 is not reasonably calculated to lead to the discovery of admissible
evidence. Without waiving these objections, responding party has
no responsive documents.

16 While defendant objects to plaintiff’s request as vague and ambiguous, the court finds
17 plaintiff’s request to be reasonably interpreted as asking for a copy of the x-rays from plaintiff’s
18 November 8, 2012 CT scan, as opposed to the report interpreting the scan. The x-rays are
19 relevant to plaintiff’s physical condition as of November 8, 2012, and their relevance is made
20 more clear by defendant’s argument on summary judgment that plaintiff did not require surgery
21 and did not have a serious medical need. See ECF No. 69 at 1. However, to the extent plaintiff
22 seeks to require defendant to file a copy of the x-rays with the court on plaintiff’s behalf, the
23 request is improper and will be denied.

24 Because of plaintiff’s pro se status, the court will also consider whether defendant should
25 be required to produce the x-rays to plaintiff himself. See *Ferdik v. Bonzelet*, 963 F.2d 1258,
26 1261 (9th Cir.1992) (the inartful pleadings of pro se litigants are to be liberally construed);
27 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir.1988) (pro se litigants should not
28 lose their right to a hearing on the merits of their claim “due to ignorance of technical procedural

1 requirements”). Defendant asserts that he has no documents responsive to plaintiff’s request.
2 However, because it is unclear whether defendant later received the x-rays by way of subpoena,¹¹
3 defendant will be required to file a declaration with the court indicating whether plaintiff’s
4 November 8, 2012 x-rays were included in the documents defendant received from San Joaquin
5 General Hospital, Mule Creek State Prison, or Kern Valley State Prison. If defendant received
6 the x-rays, he shall be required to produce them to plaintiff.

7 **RFP No. 3, Set Two:** One copy of recorded voice: #
8 537974090/Job # 913115 of doctor of Plaintiff diagnosis on 11-8-
9 12 time 16:36:00 and 11-9-12 time 7:40:00 to be sent directly to
10 Plaintiff.

11 **Response:** Objection. This request for production is objected to as
12 vague and ambiguous, and is not reasonably calculated to lead to
13 the discovery of admissible evidence. Without waiving these
14 objections, responding party has no responsive documents.

15 The court finds that plaintiff’s request for “recorded voice: # 537974090/Job # 913115” is
16 neither vague nor ambiguous, given that defendant was able to determine that plaintiff’s seeks the
17 dictation recording corresponding to Dr. Tarig A. Samarkandy’s preliminary report, attached to
18 plaintiff’s complaint as Exhibit A, ECF No. 1 at 27-28.¹² Plaintiff contends the dictation
19 recording is relevant to establishing his diagnosis before and after his November 8, 2012 CT scan
20 at San Joaquin General Hospital. ECF No. 35 at 3. Presumably, plaintiff believes that the
21 dictation is a more reliable indicator of his diagnosis because unlike a written report, the dictation

22 ¹¹ In defendant Rogero’s motion for summary judgment, ECF No. 69, defendant attaches an
23 exhibit including “the relevant records” defendant obtained by subpoena from San Joaquin
24 General Hospital. See ECF No 69-6 at 1, 69-7 Ex. C at 12-19. The x-rays are not included in the
25 attachment. However, the court’s review of the record indicates that in opposition to plaintiff’s
26 motion for summary judgment, defendant filed another exhibit including “the relevant records”
27 defendant obtained from San Joaquin General Hospital. See ECF No. 66-2 at 1, 66-4 Ex. B.
28 Because each exhibit includes some documents not included in the other exhibit, see id., the court
cannot assume that either exhibit includes all the records defendant obtained by subpoena from
San Joaquin General Hospital.

¹² The last page of Dr. Tarig A. Samarkandy’s preliminary report bears the following identifiers:

Voice #537974090/Job #913115
D: 11/8/08/12 16:36:00
T: 11/09/2012 07:40:00
TAS: medq

ECF No. 1 at 28.

1 recording cannot be altered. The recording is therefore relevant to plaintiff's claim that defendant
2 Rogero declined to schedule plaintiff for surgery despite Rogero's initial finding that surgery
3 would be required.

4 Defendant contends he has no responsive documents and is unable to obtain the recording,
5 if it exists, because he is not an employee of San Joaquin General Hospital. ECF No. 45 at 4.
6 While plaintiff argues the dictation recording is relevant, he does not argue that defendant has
7 possession, custody, or control of the recording. In light of plaintiff's pro se status, the court will
8 require defendant to file a statement with the court indicating whether he received the dictation
9 recording by subpoena from San Joaquin General Hospital. If defendant received the recording,
10 he shall produce it to plaintiff. If defendant did not receive the recording, no further production
11 will be required.

12 **RFP No. 4, Set Two:** One complete copy of security video foot-use
13 of Plaintiff shackled to hospital for two plus days at hospital.

14 **Response:** Objection. This request for production is objected to as
15 vague and ambiguous, assumes facts not in evidence, narrative, and
16 is not reasonably calculated to lead to the discovery of admissible
evidence. Without waiving these objections, responding party has
no responsive documents.

17 Plaintiff claims that every inmate admitted to San Joaquin General Hospital for an
18 overnight stay is "monitored over security video." ECF No. 35 at 4. Video footage of plaintiff's
19 hospital stay could provide evidence of plaintiff's contact with defendants while at San Joaquin
20 General Hospital, which is relevant in light of Rogero's assertion that he never conversed with
21 plaintiff and defendant Singh's assertion that he was not at San Joaquin General Hospital on the
22 day of plaintiff's CT scan. To the extent this footage exists, it is discoverable.

23 Defendant contends he does not have the security footage and argues that he is not an
24 employee of San Joaquin General Hospital. ECF No. 45 at 4. Plaintiff asserts that defendant is
25 acting in bad faith by concealing the video footage, but does not otherwise argue that defendant
26 has possession, custody, or control of the video. See ECF No. 35 at 4. Here, the court notes that
27 defendant's subpoena to San Joaquin General Hospital included a request for any "video tapes" or
28 recordings of plaintiff. See ECF No. 69-7 Ex. C at 18. Accordingly, defendant shall file a

1 statement with the court indicating whether he received the video footage from San Joaquin
2 General Hospital. If defendant received the footage, he shall produce it to plaintiff. If he did not
3 receive the footage, no further production shall be required as plaintiff makes no argument that
4 defendant has possession, custody, or control of the video.

5 **RFP No. 5, Set Two:** Copy's of any memorandums documents
6 governing rules of security of hospital in regards to the inmate ward
part of hospital where inmates are admitted.

7 **Response:** Objection. This request for production is objected to as
8 vague and ambiguous, and is not reasonably calculated to lead to
the discovery of admissible evidence. Without waiving these
9 objections, responding party has no responsive documents.

10 The court finds plaintiff's request is not vague or ambiguous, and the request is reasonably
11 interpreted as asking for documents relating to San Joaquin General Hospital's security policies
12 regarding the area of the hospital where inmate patients are located.

13 Defendant again argues that he does not have the requested documents and implies that he
14 is unable to obtain the documents because he is not an employee of San Joaquin General Hospital.
15 See ECF No. 45 at 4. Here, defendant's point is well taken, as it is not clear that Rogero would
16 be able to obtain San Joaquin General Hospital's security policies by requesting them from San
17 Joaquin General Hospital or Mule Creek State Prison. Unlike defendants Rodriguez and Singh,
18 who are represented by the Attorney General's Office and could likely obtain the documents from
19 CDCR¹³ by requesting them,¹⁴ defendant Rogero is neither a CDCR employee nor an employee
20 of San Joaquin General Hospital. As defendant Rogero explains in his opposition, Rogero is
21 contracted by San Joaquin General Hospital to provide radiological services only. ECF No. 45 at
22 2. In light of defendant Rogero's apparent inability to obtain copies of the security polices and
23 plaintiff's complete failure to argue that defendant has possession, custody, or control of the
24 documents, the court will deny plaintiff's motion as to RFP No. 5.

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26 ¹³ California Department of Corrections and Rehabilitation.

27 ¹⁴ See Branch v. Umphenour, No. 1:08-CV-01655-AWI, 2014 WL 3891813, at *8 (E.D. Cal.
28 Aug. 7, 2014) (individual defendants who are employed by CDCR can generally obtain documents from CDCR by requesting them).

1 C. Interrogatories, Set One (ECF No. 37)

2 On October 22, 2014, plaintiff served defendant Rogero with Interrogatories, Set One.
3 Rogero timely served an initial response on plaintiff on November 24, 2014, comprised of only
4 legal objections. ECF No. 38-2, Exh. B. On the same date, and prior to receiving defendant's
5 objections, plaintiff filed a motion to compel, ECF No. 30, asserting that he had not yet received
6 defendant's answers. This motion was later denied as premature. See ECF No. 42 (January 26,
7 2015 Order).

8 On December 23, 2014, defendant served amended answers to plaintiff's Interrogatories,
9 Set One, which included substantive statements notwithstanding defendant's objections. See ECF
10 No. 38-1, Exh. A. On December 29, 2014, plaintiff filed the instant motion to compel, ECF No.
11 37, challenging the content of Rogero's amended responses. Defendant Rogero opposed the
12 motion. ECF No. 41.

13 In his motion, plaintiff seeks to compel defendant Rogero to provide further responses to
14 interrogatories 1, 2, 3, 4, 6, 8, 9, 13, 14, 16, 17, 20, 21, and 23. ECF No. 37 at 1. Defendant
15 opposes the motion on the grounds that plaintiff's request is moot with respect to interrogatories
16 1-4, 6, 8, 9, 13, 16, 17, and 23 because Rogero already provided plaintiff with substantive
17 responses to these requests. ECF No. 41 at 2. With respect to interrogatories 14, 20, and 21,
18 defendant maintains his objections and asserts that plaintiff's requests exceed the scope of
19 discovery.¹⁵ Id.

20 **Interrogatory No. 1 to Rogero, Set One:** How long have you
21 work at San Joaquin General Hospital as a Doctor.

22 **Response:** Objection. This interrogatory is objected to as vague
23 and ambiguous, and calling for a legal conclusion. Without
24 waiving these objections, I have had privileges to work at San
25 Joaquin General Hospital since the late 1990. I have never
26 contracted with the California Department of Corrections.

25 ¹⁵ Defendant also asserts that plaintiff's motion to compel should be denied because plaintiff did
26 not attempt to confer in good faith before filing his motion and did not file any accompanying
27 certification as required by Federal Rule of Civil Procedure 37(d)(1)(B). ECF No. 41 at 2. For
28 the reasons discussed above, the court will not use plaintiff's failure to meet and confer as
grounds for denying the motion.

1 Plaintiff alleges that he is entitled to the requested information because it is non-privileged
2 and relevant to the discovery of admissible evidence, but does not explain why defendant's
3 response is deficient. The court finds that defendant Rogero has sufficiently responded to this
4 interrogatory. Plaintiff inquired as to how long Rogero has worked at San Joaquin General
5 Hospital, and Rogero explained that he has had privileges to work there since 1990. Plaintiff's
6 motion to compel is denied as to Interrogatory No. 1.

7 **Interrogatory No. 2 to Rogero, Set One:** While working at San
8 Joaquin General Hospital and contracting out for the state have you
ever had a civil lawsuit filed or pending against you.

9 **Response:** Objection. This interrogatory is objected to as vague
10 and ambiguous, calling for a legal conclusion, and is not reasonably
11 calculated to lead to the discovery of admissible evidence. Without
waiving these objections, I have not been involved in any other
lawsuit involving the California Department of Corrections.

12 Plaintiff argues that whether Rogero had prior lawsuits filed against him is relevant to
13 Rogero's character and to establishing prior bad acts by defendant, but again fails to explain how
14 defendant's response is deficient. ECF No. 37 at 2. Plaintiff's reference to "contracting out for
15 the state" suggests that he is asking whether Rogero has ever had a civil lawsuit filed against him
16 involving the CDCR, and Rogero stated that he has not. Defendant Rogero has answered
17 plaintiff's interrogatory and will not be required to provide a supplemental response.

18 **Interrogatory No. 3 to Rogero, Set One:** Whate is your secretary
19 full complete name.

20 **Response:** Objection. This interrogatory is objected to as vague
21 and ambiguous, and is not reasonably calculated to lead to the
discovery of admissible evidence. Without waiving these
objections, I do not have a secretary.

22 With respect to the secretary, plaintiff states that "this person is very important in the facts
23 in case she was present during incident." ECF No. 37 at 2. Rogero stated that he does not have a
24 secretary. Rogero has answered plaintiff's interrogatory and will not be required to provide
25 further responses to this question.

26 **Interrogatory No. 4 to Rogero, Set One:** How long has your
27 secretary worked for you inside your office.

28 **Response:** Objection. This interrogatory is objected to as vague
and ambiguous, and is not reasonably calculated to lead to the

1 discovery of admissible evidence. Without waiving these
2 objections, I do not have a secretary.

3 Here, plaintiff specifically inquired about Rogero's secretary and Rogero again responded
4 by stating that he does not have a secretary. Rogero has answered plaintiff's interrogatory and
5 will not be required to provide further responses to this question.

6 **Interrogatory No. 6 to Rogero, Set One:** As a doctor did it appear
7 that plaintiff was in excruciating.

8 **Response:** Objection. This interrogatory is objected to as
9 incomplete, vague and ambiguous, and is not reasonably calculated
10 to lead to the discovery of admissible evidence. Without waiving
11 these objections, I did not meet, converse with, or examine the
12 plaintiff. I was not involved with the plaintiff's care beyond
13 receiving and interpreting the CT scans.

14 In his motion, plaintiff asserts that Interrogatory No. 6 stated: "As a doctor did it appear
15 that plaintiff was in excruciating *pain*." ECF No. 37 at 3 (emphasis added). Plaintiff argues that
16 defendant Rogero's opinion of plaintiff's condition when plaintiff was first admitted to the
17 hospital is relevant to the discovery of evidence regarding what medications were given to
18 plaintiff. See ECF No. 37 at 3. Presumably, the medications given to plaintiff are relevant to
19 establishing plaintiff's physical condition and whether plaintiff had a serious medical need on
20 November 8, 2012.

21 However, defendant's opposition indicates that "pain" was omitted from the actual
22 interrogatory submitted to defendant. See ECF No. 38-1 at 3.¹⁶ This omission is presumably the
23 basis for defendant's objection that the interrogatory is incomplete as well as vague and
24 ambiguous. Given that the complaint repeatedly alleges that plaintiff was in "excruciating pain,"
25 see ECF No. 1 at 7, 10, the court questions whether defendant was truly unable to discern the
26 meaning of plaintiff's interrogatory. However, defendant has attempted to respond to the
27 interrogatory despite his objections. Defendant's response that he never met or examined
28 plaintiff suggests that defendant did not have sufficient contact with plaintiff to form an opinion

¹⁶ A copy of defendant Rogero's responses to plaintiff's interrogatories is attached as an exhibit to ECF No. 38, defendant's initial opposition to plaintiff's motions to compel, ECF Nos. 30 and 37. Defendant later filed another opposition, ECF No. 41, responsive to ECF No. 37 only.

1 as to whether plaintiff was in excruciating pain. Accordingly, requiring a further response to this
2 interrogatory would be futile. Defendant Rogero will not be required to provide a further
3 response to Interrogatory No. 6.

4 **Interrogatory No. 8 to Rogero, Set One:** While plaintiff was at
5 San Joaquin General Hospital what type of pain meds did you give
6 him for his pain.

7 **Response:** Objection. This interrogatory is objected to as vague
8 and ambiguous, assumes facts not in evidence, and is not
9 reasonably calculated to lead to the discovery of admissible
10 evidence. Without waiving these objections, I did not order any
11 pain medication for the plaintiff.

12 Plaintiff appears to argue that the type of pain medication he received at San Joaquin
13 General Hospital is reasonably calculated to lead to the discovery of admissible evidence relating
14 to plaintiff's diagnosis after the CT scan was taken, see ECF No. 37 at 3, which is relevant to
15 whether plaintiff had a serious medical need. Here, defendant Rogero responded that he did not
16 give plaintiff any pain medication. Because plaintiff and defendant dispute whether defendant
17 gave plaintiff any pain medication at all, requiring a further response to this interrogatory would
18 be futile. Accordingly, defendant Rogero will not be required to provide a further response to
19 Interrogatory No. 8.

20 **Interrogatory No. 9 to Rogero, Set One:** Do every patient get
21 introduced to the surgeon after receiving a c-scan for stomach.

22 **Response:** Objection. This interrogatory is objected to as vague
23 and ambiguous, overbroad in scope, lacking in foundation, and is
24 not reasonably calculated to lead to the discovery of admissible
25 evidence. Without waiving these objections, no. It is not routine to
26 introduce a patient to a surgeon after receiving an abdominal CT
27 scan.

28 Here, plaintiff's interrogatory can reasonably be read to ask whether it is routine for
patients to be introduced to the surgeon after they have a CT scan,¹⁷ to which defendant answered
in the negative. Defendant Rogero has sufficiently responded to plaintiff's interrogatory and will
not be required to provide a further response.

¹⁷ Although it is not entirely clear, plaintiff appears to assert that the identity of the surgeon is relevant to the security video footage plaintiff requested from defendant Rogero, which would depict plaintiff shackled to the bed while being introduced to the surgeon. See ECF No. 37 at 4.

1 **Interrogatory No. 13 to Rogero, Set One:** When plaintiff stated to
2 you he was hungry and asked you could he have something to eat
3 didn't you in fact state to him he could-not because he may need
4 surgery.

5 **Response:** Objection. This interrogatory is objected to as vague
6 and ambiguous, lacking in foundation, calling for a narrative,
7 assumes facts not in evidence, and is not reasonably calculated to
8 lead to the discovery of admissible evidence. Without waiving
9 these objections, I did not meet or converse with the plaintiff. I was
10 not told the plaintiff was hungry and I did not make that response.

11 This interrogatory essentially asks whether defendant Rogero told plaintiff he might need
12 surgery. Defendant maintains that he never spoke with plaintiff. In light of the disagreement as
13 to whether this conversation took place, the issue of whether defendant made this statement is a
14 factual dispute to be resolved at trial. Defendant Rogero will not be required to provide a further
15 response to Interrogatory No. 13.

16 **Interrogatory No. 14 to Rogero, Set One:** Why did you change
17 your mind about giving Plaintiff.

18 **Response:** Objection. This interrogatory is objected to as
19 incomplete, vague and ambiguous, assumes facts not in evidence,
20 lacking in foundation, and is not reasonably calculated to lead to the
21 discovery of admissible evidence.

22 In his motion to compel, plaintiff's represents that Interrogatory No. 14 read: "Why did
23 you change your mind about giving plaintiff *surgery*." ECF No. 37 at 4 (emphasis added). In his
24 opposition, defendant explains that the word "surgery" was not included in the version of
25 Interrogatory No. 14 posed to defendant and that defendant objected to the interrogatory as
26 incomplete because he was unable to interpret plaintiff's request. ECF No. 41 at 4. Defendant
27 contends that he should not be required to answer this interrogatory since plaintiff's modification
28 of the interrogatory through a motion to compel is improper. Id.

 Here, the court agrees that plaintiff's interrogatory is vague and that defendant may not
have been able to interpret plaintiff's request. While the court might under other circumstance
require defendant to supplement his response in light of plaintiff's pro se status, the court will not
require it here. Plaintiff's Eighth Amendment claim against defendant Rogero revolves around
his allegation that Rogero initially determined that plaintiff required surgery, but did not schedule
plaintiff for surgery because of defendant Rodriguez's interference. Defendant Rogero has filed a

1 motion for summary judgment on the grounds that plaintiff did not have a serious medical need
2 on November 8, 2012 and did not require surgery. See ECF No. 69-2 at 1. Whether defendant
3 Rogero initially determined plaintiff required surgery is a question of fact that will be
4 determinative of plaintiff's Eighth Amendment claim against defendant Rogero. Requiring a
5 further and predictable response to this request would be futile, and plaintiff's motion to compel
6 will be denied as to Interrogatory No. 14.

7 **Interrogatory No. 16 to Rogero, Set One:** Whate is the surgeon
8 full name who you who you entroduce Plaintiff to.

9 **Response:** Objection. This interrogatory is objected to as vague
10 and ambiguous, assumes facts not in evidence, and is not
11 reasonably calculated to lead to the discovery of admissible
12 evidence. Without waiving these objections, I did not introduce the
13 plaintiff to any surgeon.

12 Plaintiff asserts that defendant Rogero introduced plaintiff to a surgeon and that the
13 identity of the surgeon is relevant because the surgeon could provide information regarding the
14 inadequate medical care plaintiff received at San Joaquin General Hospital.¹⁸ See ECF No. 37 at
15 5. In light of defendant Rogero's response that he did not introduce plaintiff to any surgeon,
16 requiring a further response here would be futile. Plaintiff's motion to compel will be denied as
17 to Interrogatory No. 16.

18 **Interrogatory No. 17 to Rogero, Set One:** When plaintiff stated
19 he previous had stomach problems of bleach being put in his food
20 whate type of treatment did you give him for that problem.

21 **Response:** Objection. This interrogatory is objected to as vague
22 and ambiguous, lacking in foundation, assumes facts not in
23 evidence, and is not reasonably calculated to lead to the discovery
24 of admissible evidence. Without waiving these objections, I did not
25 meet or converse with the plaintiff. I did not provide plaintiff with
26 any treatment.

24 In his complaint, plaintiff alleges that he spoke with defendant Rogero, that he told
25 defendant about his stomach problems resulting from bleach being put in his food, and that

26 ¹⁸ Plaintiff appears to assert that the surgeon could be "a reliable witness" who could testify as to
27 the inadequate medical care plaintiff received at the hands of defendant Rogero. See ECF No. 37
28 at 5.

1 Rogero examined plaintiff and advised him that a nurse would be in to ask plaintiff questions and
2 take blood and urine samples. See ECF No. 1 at 13. Defendant Rogero maintains that he did not
3 meet with plaintiff or provide him with treatment. Defendant has answered plaintiff's
4 interrogatory and will not be required to provide a further response.

5 **Interrogatory No. 20 to Rogero, Set One:** What type of medical
6 problems does a person have in your opinion as a doctor if they
7 have a lacerated spleen.

8 **Response:** Objection. This interrogatory is objected to as vague
9 and ambiguous, overbroad in scope, calling for speculation, calling
10 for expert testimony, is an incomplete hypothetical, and is not
11 reasonably calculated to lead to the discovery of admissible
12 evidence.

13 Plaintiff's complaint alleges that on November 8, 2012, defendant Rogero determined that
14 plaintiff had a lacerated spleen, a bleeding right kidney, and a genital wart. In his motion to
15 compel, plaintiff asserts that the medical problems associated with a lacerated spleen are
16 "relevant to his diagnosis." See ECF No. 37 at 5. The information appears relevant to
17 establishing that plaintiff had a lacerated spleen on November 8, 2012, which supports his
18 deliberate indifference claim against defendant Rogero.

19 Defendant argues that the interrogatory is vague and ambiguous because "there is no
20 limitation on what might be considered a 'medical problem,'" and is overbroad because "it covers
21 situations in which a patient is suffering from other problems beyond the symptoms of a lacerated
22 spleen." ECF No. 41 at 5. Defendant further asserts that the interrogatory calls for speculation
23 because "there are numerous potential problems that could arise because of, concurrent to, or
24 prior to a lacerated spleen" and because "the interrogatory lacks specificity or particularity in
25 regards to 'person.'" Id. According to defendant, the requested opinion is not sufficiently
26 particularized to plaintiff's case to provide any relevant information. Id.

27 An interrogatory may relate to any matter that may be inquired into under Rule 26(b), and
28 an interrogatory is not objectionable merely because it asks for an opinion or contention that
relates to fact or the application of law to fact. Fed. R. Civ. P. 33(a)(2). However, an
interrogatory calling for an opinion must be phrased with particularity. Baker v. Perez, No. 2:09-
CV-2757 MCE KJN, 2011 WL 4842427, at *3, 2011 U.S. Dist. LEXIS 117758 (E.D. Cal. Oct.

1 12, 2011) (citations omitted). Here, the court agrees that plaintiff's request for an opinion is not
2 sufficiently particularized. The interrogatory is phrased as a request for general medical
3 information and is not tailored to plaintiff's symptoms or plaintiff's treatment. Cf. Atcherley v.
4 Clark, No. 1:12 CV 00225 LJO DLB, 2014 WL 5880152, at *2-3 (E.D. Cal. Nov. 12, 2014)
5 (requiring defendant to provide further responses to plaintiff's inquiries as they related to plaintiff
6 and plaintiff's treatment, where the court found that plaintiff's question was aimed at the
7 treatment plaintiff received and defendant had the requisite knowledge to answer the question).
8 Defendant will not be required to answer this interrogatory.

9 **Interrogatory No. 21 to Rogero, Set One:** When a person has a
10 lasirated spleen does his white blood cells drop.

11 **Response:** Objection. This interrogatory is objected to as vague
12 and ambiguous, calling for speculation, calling for expert
13 testimony, is an incomplete hypothetical, and is not reasonably
14 calculated to lead to the discovery of admissible evidence.

15 Plaintiff appears to assert that the relationship between a drop in white blood cells and a
16 lacerated spleen is relevant to determining his diagnosis before and after his November 8, 2012
17 CT scan. See ECF No. 37 at 6. Defendant argues that the interrogatory calls for speculation
18 since "there are many causes for a change in white blood cell count." Defendant asserts that
19 plaintiff is seeking expert testimony and that plaintiff's "attempt to self-diagnose" is not relevant
20 to plaintiff's case. ECF No. 41 at 6.

21 As in Interrogatory No. 20, the court finds that Interrogatory No. 21 is not sufficiently
22 particularized. Plaintiff again seeks general medical information in the form of expert testimony
23 and his request is not tailored to the specific facts of his own case. Defendant will not be required
24 to respond to this interrogatory.

25 **Interrogatory No. 23 to Rogero, Set One:** If Plaintiff liver,
26 spleen and abdominal area looks remarkable according to your final
27 report of plaintiff c-scan, why did you also state if anemia sets any
28 worst surgery is needed were you doughting your own prognosis of
Plaintiff.

Response: Objection. This interrogatory is objected to as vague
and ambiguous, lacking in foundation, misstates the evidence,
compound, calling for a narrative, assumes facts not in evidence,
calling for speculation, calling for expert testimony, is an
incomplete hypothetical, and is not reasonably calculated to lead to

1 the discovery of admissible evidence. Without waiving these
2 objections, I did not find that the liver, spleen, or abdominal area
3 looked remarkable; conversely, my report states that I found “liver,
spleen, adrenals and kidneys are unremarkable.” I made no
4 mention of anemia or surgery in my report.

5 In his motion to compel, plaintiff appears to assert that Interrogatory No. 23 is relevant to
6 his diagnosis and that the conflicting reports issued by Rogero bear on Rogero’s credibility.
7 Specifically, plaintiff asserts that Rogero issued one report finding plaintiff’s abdominal area,
8 liver, and spleen appeared “remarkable,” and issued a separate report stating that surgery would
9 be entertained if the patient gets worse. See ECF No. 37 at 6. Plaintiff directs the court’s
10 attention to the reports attached as exhibits to the complaint.

11 The court has reviewed Dr. Rogero’s report discussing plaintiff’s CT scan, ECF No. 1 at
12 29, as well as the preliminary report, id. at 27-28. Rogero’s report states that the “[l]iver, spleen,
13 adrenals and kidneys are *unremarkable*,” and the report makes no mention of anemia or surgery.
14 ECF No. 1 at 29 (emphasis added). The preliminary report, on the other hand, states as follows:
15 “if the patient getting [*sic*] any worse will entertain surgical options.” However, it appears that
16 the preliminary report was issued by Dr. Tarig A. Samarkandy, not by defendant Rogero. See
ECF No. 1 at 27-28.

17 Plaintiff’s interrogatory inquires as to why Rogero stated that plaintiff may need surgery if
18 his anemia gets worse. Defendant responded that his report makes no mention of anemia or
19 surgery. In light of defendant’s response, the court finds that defendant has sufficiently
20 responded to plaintiff’s interrogatory, and no further response will be required as to Interrogatory
21 No. 23.

22 For the above reasons, plaintiff’s motion to compel is denied as to the Interrogatories
23 propounded on defendant Rogero.

24 IV. Discovery Requests Served on Defendant Rodriguez

25 With respect to defendant Rodriguez, the following three motions are presently before the
26 court: (1) plaintiff’s motion to compel Rodriguez to respond to Request for Production of
27 Documents, Set One, ECF No. 47; (2) plaintiff’s motion to compel Rodriguez to provide further
28 responses to Request for Production of Documents, Set One, ECF No. 59; and (3) plaintiff’s

1 motion to compel Rodriguez to provide further responses to Interrogatories, Set One, ECF No.
2 60.

3 A. Request for Production of Documents, Set One (ECF Nos. 47 and 59)

4 i. January 27, 2015 Motion to Compel (ECF No. 47)

5 Plaintiff served defendant Rodriguez with Request for Production of Documents, Set One
6 on October 21, 2014. By order filed December 23, 2014, the court extended the time for
7 defendant Rodriguez to serve plaintiff with his discovery responses until thirty days after the
8 district judge's adoption of this court's companion findings and recommendations.¹⁹ ECF No. 36.
9 The findings and recommendations were adopted by the district judge on March 6, 2015. ECF
10 No. 54. Accordingly, defendant Rodriguez's discovery responses were due on April 6, 2015.

11 On January 27, 2015, plaintiff filed a motion to compel Rodriguez to respond to Request
12 for Production of Documents, Set One. ECF No. 47. Plaintiff's motion appears to be based on
13 his belief that Rodriguez's responses were due within thirty days of the date the findings and
14 recommendations were filed, rather than the date the findings and recommendations were adopted
15 by the district judge. Because Rodriguez's responses were not yet due at the time plaintiff filed
16 his January 27, 2015 motion to compel, the motion is denied as premature.

17 ii. March 25, 2015 Motion to Compel (ECF No. 59)

18 Defendant Rodriguez served his responses to Request for Production of Documents, Set
19 One on plaintiff on March 11, 2015. On March 25, 2015, plaintiff filed a motion to compel
20 Rodriguez to provide further responses to plaintiff's production requests. ECF No. 59.
21 Defendant Rodriguez opposed the motion. ECF No. 61.

22 **RFP No. 2:** One complete copy of MSCP CtC treatment center Log
23 Book of officers defendants R. Rodriguez and H. Singh for Log in's
and Log out's for the day of November 8, 2012.

24 **Response:** Defendant produces as Attachment B the Daily
25 Urgent/Emergent Tracking System log for November 8, 2012.

26 In his motion to compel, plaintiff acknowledges that defendant provided him with a copy

27 ¹⁹ Defendant Singh was also granted the same extension of time for serving his discovery
28 responses on plaintiff. ECF No. 36.

1 of a log sheet, but states that it is not the log sheet that plaintiff requested. ECF No. 59 at 2.
2 Plaintiff clarifies that he seeks a copy of the log tracking the officers' in and out times at their
3 work stations at the CTC treatment center, rather than the log tracking the location of inmates. Id.
4 In response, defendant Rodriguez explains that he misunderstood plaintiff's initial request, and
5 has since provided plaintiff with a copy of defendant Rodriguez and defendant Singh's sign-in
6 sheets for November 8, 2012. ECF No. 61 at 2.²⁰ Because plaintiff has received the requested
7 information, plaintiff's motion to compel a further response to Request No. 2 is denied as moot.

8 **RFP No. 3:** Two complete copies of M.C.S.P. sally port
9 transportation Log Book. Log out's for the morning of November
10 8, 2012 of defendants R. Rodriguez and H. Singh of Inmate Smith
T-80524.

11 **Response:** Defendant produces as Attachment C a complete copy
of the M.C.S.P. Sallyport Register.

12 In his motion to compel, plaintiff states that he seeks a copy of the Sallyport log tracking
13 the movements of the officers, not the log tracking plaintiff's movements. Defendant Rodriguez
14 explains in his opposition that Mule Creek State Prison maintains one Sallyport log for state and
15 private vendor vehicles, and that this log includes vehicles used to transport inmates outside of
16 prison. ECF No. 61 at 3. Rodriguez states that a copy of this log was provided to plaintiff on
17 March 11, 2015 in response to plaintiff's production request. Id. As the court understands
18 defendant's response, there is one Sallyport log and it has already been provided to plaintiff.
19 Accordingly, plaintiff's motion to compel a further response to Request No. 3 is denied since he
20 has been provided with the document requested.

21 **RFP No. 4:** Once complete copy of a diagram map of M.C.S.P.
22 CtC triag treatment center.

23 **Response:** Objection, this request seeks information that is not
24 reasonably calculated to lead to the discovery of admissible
25 evidence. Allowing inmates access to maps detailing the specifics
26 of prison layout threatens the safety of inmates and staff and
security of the institution. Defendant does not have in his
possession, custody, or control any documents responsive to this

27 ²⁰ Defendant notes that defendant Singh's November 8, 2012 sign-in sheet indicates that Singh
28 was not present in the treatment center on November 8, 2012. ECF No. 61 at 2.

1 request, and is under no legal obligation to compile or create
2 documentary evidence.

3 With respect to defendant Rodriguez, plaintiff's complaint alleges that Rodriguez
4 retaliated against plaintiff and was deliberately indifferent to plaintiff's serious medical needs
5 when he interfered with plaintiff's medical care during an emergency trip to San Joaquin General
6 Hospital. See ECF No. 1. In his motion to compel, plaintiff asserts that a map or diagram of the
7 treatment center at Mule Creek State Prison is relevant to establishing the location of defendant
8 Rodriguez's workstation in relation to Dr. Rudas' office, where plaintiff attempted to obtain
9 medical care before and after November 8, 2012. See ECF No. 59 at 3. However, it is not clear
10 how the location of defendant Rodriguez's workstation at Mule Creek State Prison is relevant to
11 the claims in plaintiff's complaint, which primarily focus on events that occurred at San Joaquin
12 General Hospital.²¹

13 Defendant contends that allowing inmates access to maps of detailing specific prison
14 layouts implicates safety concerns within the prison. ECF No. 61 at 3. Plaintiff responds that
15 safety is not an issue because plaintiff is no longer at Mule Creek State Prison, the treatment
16 center is "away from the main yard," and a number of inmates travel throughout the treatment
17 center on a daily basis. ECF No. 61 at 3. Defendant's concern regarding prison safety is well
18 taken, as the court recognizes the potential dangers associated with inmates possessing maps of a
19 particular prison. In the present case, the court finds that defendant's interest in prison safety
20 outweighs plaintiff's marginal, if any, need for a map of the Mule Creek treatment center. If
21 plaintiff requires evidence that defendant Rodriguez's workstation is near Dr. Rudas' office,
22 plaintiff may draw his own diagrams or testify as to the location of Rodriguez's workstation, as
23 plaintiff appears to have personal knowledge of the layout of the treatment center and the location

24 ²¹ Plaintiff's complaint does appear to allege that defendant Rodriguez continued to interfere
25 with plaintiff's medical care after plaintiff returned to Mule Creek State Prison from San Joaquin
26 General Hospital. However, plaintiff's vague allegations of continued interference appear to be
27 based solely on plaintiff's assertion that Rodriguez continued to work in the Mule Creek
28 Treatment Center and plaintiff continued to be denied the medical care he desired. In other
words, plaintiff appears to assert that because he was not receiving adequate medical care, it must
have been because Rodriguez was interfering.

1 of Rodriguez's desk.²² Plaintiff's motion to compel is denied as to RFP No. 4.

2 **RFP No. 5:** One photo while standing inside triage treatment exam
3 room exiting door towards T. Seng's office.

4 **Response:** Objection, this request seeks information that is not
5 reasonably calculated to lead to the discovery of admissible
6 evidence. Allowing inmates access to photographs detailing
7 specifics of prison design threatens the safety of inmates and staff
8 and security of the institution. Defendant is not aware of, and does
9 not have in his possession, custody, or control any documents
10 responsive to this request, and is under no legal obligation to
11 compile or create documentary evidence.

12 The court's review of Request No. 5 indicates that plaintiff may be asking for a specific
13 photograph to be taken and then provided to plaintiff, not that an existing photograph be
14 produced. Defendant is not obligated to create such a photograph in response to plaintiff's
15 production request. See Goolsby v. Carrasco, 2011 WL 2636099 at *8-9 (E.D. Cal. July 5, 2011)
16 (denying plaintiff's motion to compel production of documents where plaintiff's request required
17 defendant to "create documents, as opposed to produce already existing documents").
18 Accordingly, plaintiff's motion to compel a further response to Request No. 5 is denied.

19 **RFP No. 6:** One complete photo in main hallway of MCSP CtC
20 triage treatment center wright outside main exam room in hallway
21 between Dr. Tseng.

22 **Response:** Objection, this request seeks information that is not
23 reasonably calculated to lead to the discovery of admissible
24 evidence. Allowing inmates access to photographs detailing
25 specifics of prison design threatens the safety of inmates and staff
26 and security of the institution. Defendant is not aware of, and does
27 not have in his possession, custody, or control any documents
28 responsive to this request, and is under no legal obligation to
compile or create documentary evidence.

29 Plaintiff again appears to request that defendant take a specific photograph and provide it
30 to plaintiff. Plaintiff's motion to compel a further response to Request No. 6 is denied.

31 For the above reasons, plaintiff's motion to compel Rodriguez to provide further
32 responses to Request for Production of Documents, Set One is denied.

33 ²² Should plaintiff want to include this information in his motion for summary judgment, plaintiff
34 may file a supplemental declaration describing the location of the defendant Rodriguez's
35 workstation at Mule Creek State Prison.

1 B. Interrogatories, First Set (ECF No. 60)

2 Plaintiff served Interrogatories, First Set on defendant Rodriguez and Rodriguez served
3 timely responses on March 11, 2015. On March 30, 2015, plaintiff filed a motion to compel
4 Rodriguez to provide further responses to Interrogatory Nos. 2, 3, 6, 7, 8, and 9. ECF No. 60.
5 Defendant opposed the motion. ECF No. 62.

6 **Interrogatory No. 2, Set One:** Have you ever had a civil law suit
7 against you if yes how many and whate for?

8 **Response:** Objection, this interrogatory is compound and seeks
9 information that is not reasonably calculated to lead to the
10 discovery of admissible evidence. Without waiving these
11 objections, Rodriguez responds as follows:

12 As far as I am aware, while employed by CDCR, I have only been
13 named as a Defendant in this lawsuit.

14 Plaintiff's request for a further response to Interrogatory No. 2 appears to be based on his
15 belief that defendant's response to Interrogatory No. 2 is contradicted by his response to
16 Interrogatory No. 3, in which defendant states that he has had two inmate appeals filed against
17 him while employed with CDCR. However, plaintiff appears to conflate the prison grievance
18 process with the filing of a civil lawsuit. Because not every inmate appeal will necessarily lead to
19 the filing of a civil lawsuit, there is nothing contradictory about Rodriguez's statement that he has
20 had two inmate appeals filed against him, but has only been named as a defendant in the present
21 civil lawsuit. The court finds that defendant has provided a sufficient response to Interrogatory
22 No. 2. No further response will be required.

23 **Interrogatory No. 3, Set One:** While working for (CDCR) have
24 any inmate's filed, any 602 compliants on you claiming retaliation
25 if yes how many.

26 **Response:** Objection, this interrogatory is compound, and is
27 overbroad and vague as to time and place. Without waiving these
28 objections, Rodriguez responds as follows:

In my 28 years of employment with CDCR, as far as I am aware,
only two appeals were filed against me.

Plaintiff argues that defendant's response is incomplete because he did not indicate
whether the two appeals filed against him included claims of retaliation. ECF No. 60 at 2. At the

1 same time, plaintiff also contends that his interrogatory required a “yes” or “no” answer. See id.

2 In opposition, defendant argues that plaintiff has now expanded his request to include the
3 subject matter of the appeals filed, and asserts that plaintiff has not explained how the information
4 is relevant. ECF No. 62 at 4. Defendant also provides the following clarification: “Yes,
5 Defendant Rodriguez is aware of two appeals filed against him during his 28 years of
6 employment, and due to the length of time, no, he does not recall whether the claim in either or
7 both of those two appeals was retaliation.” Id. Defendant further argues that he cannot be
8 compelled to provide an answer he does not recall, and that he must make only a reasonable effort
9 to respond to plaintiff’s inquiry. Id.

10 Here, plaintiff’s original interrogatory can be reasonably interpreted as asking how many
11 602 complaints claiming retaliation have been filed against defendant Rodriguez during the time
12 Rodriguez was employed by the CDCR. Rodriguez’s answer is incomplete in that it does not
13 specify whether the two appeals filed against him were for retaliation – the only type of appeal
14 plaintiff inquired about. While defendant is only required to make a reasonable effort to respond
15 to plaintiff’s interrogatory, see Atcherley v. Clark, No. 1:12CV00225 LJODLBPC, 2014 WL
16 5902497, at *2 (E.D. Cal. Nov. 12, 2014), defendant has not provided the court with sufficient
17 information to determine whether his efforts to respond were reasonable. For example, it is
18 unclear whether defendant made any effort to locate the appeals in a database, or if he relied
19 solely on his memory in answering plaintiff’s inquiry.

20 Plaintiff’s motion to compel is therefore granted to the extent that defendant shall be
21 required to file a declaration with the court explaining his efforts to locate the information. In the
22 alternative, defendant may choose to inform plaintiff whether the two appeals filed against him
23 were for retaliation, if he is able to locate the information.

24 **Interrogatory No. 6, Set One:** On November 8, 2012 who did you
25 obtain information from about Plaintiff previous civil lawsuit
against some (CDCR) officers.

26 **Response:** Objection, this interrogatory is not reasonably calculated
27 to lead to the discovery of admissible evidence, is vague as to time
and place, and calls for hearsay. Without waiving these objections,
28 and assuming, based on the allegations in the Complaint that
Plaintiff is referring to when he was transported to San Joaquin

1 General Hospital on November 8, 2012, Rodriguez responds as
2 follows:

3 I do not recall discussing lawsuits filed by Smith with anybody on
4 November 8, 2012. As far as I recall, I spoke on the telephone
5 while at still [sic] Mule Creek with a staff person from the
6 Investigative Services Unit (ISU) about a pending administrative
7 appeal that needed to be resolved that week and was instructed to
8 ask the doctor at the hospital whether Plaintiff could return to the
9 prison for that appeal.

10 In his motion to compel, plaintiff argues that defendant sidestepped the question posed in
11 the interrogatory and instead introduced “new evidence” that defendant Rodriguez had a phone
12 conversation with an ISU staff member regarding a pending administrative appeal. Plaintiff
13 asserts that no appeal was pending and that he is entitled to know the name of the ISU staff
14 member, who could provide information regarding what was said during the conversation with
15 defendant Rodriguez. See ECF No. 60 at 3.

16 In opposition, defendant argues that plaintiff has attempted to expand the scope of his
17 interrogatory to include the name of the ISU staff member and the details of the conversation
18 defendant had with the ISU staff member. Defendant also provides the following clarification:

19 No, Defendant Rodriguez did not discuss previous lawsuits filed by
20 Smith with anyone on November 8, 2012. Yes, on November 8,
21 2012, Defendant Rodriguez recalls a phone conversation with an
22 ISU staff person instructing him to ask the hospital doctor whether
23 Smith could be returned to the prison for a pending administrative
24 appeal. Defendant Rodriguez does not recall the ISU staff person’s
25 name.

26 ECF No. 62 at 5.

27 Here, the court finds that defendant Rodriguez has sufficiently responded to plaintiff’s
28 interrogatory. Plaintiff’s interrogatory asked from whom defendant received information on
November 8, 2012 regarding plaintiff’s prior *civil lawsuit* against other CDCR officers.
Defendant responded that he does not recall discussing plaintiff’s civil lawsuits with anyone on
November 8, 2012. To the extent plaintiff requests information as to the identity of the staff
person defendant spoke with regarding a pending administrative appeal, the information falls
outside the scope of the original interrogatory. See *Scott v. Palmer*, No. 1:09-CV-01329-LJO,
2014 WL 6685810, at *3-4 (E.D. Cal. Nov. 26, 2014) (plaintiff is not entitled to expand the scope

1 of discovery beyond that sought in the initial discovery request). Plaintiff's motion to compel
2 will be denied as to Interrogatory No. 6.

3 **Interrogatory No. 7, Set One:** Once you took Plaintiff c-scan in to
4 be read by defendant doctor Grant Rogero, did you walk wright
back out to the waiting.

5 **Response:** Objection, this interrogatory assumes as true facts that
6 are in dispute, is vague as to time and place, calls for speculation,
7 and is unintelligible. Without waiving these objections, and
8 assuming, based on the allegations in the Complaint that Plaintiff is
referring to when he was transported to San Joaquin General
Hospital on November 8, 2012, Rodriguez responds as follows:

9 I would not have handled Plaintiff's c-scan. When officers are at an
10 outside facility, we do not handle documents because everything is
computerized and test results are transmitted electronically to the
doctor who will read the results.

11 Plaintiff argues that defendant did not answer the interrogatory posed to him and that he
12 should be required to state whether he went "back out to the waiting room area with defendant
13 Singh." See ECF No. 60 at 4. Defendant argues that he answered the interrogatory by explaining
14 why "the physical act of [defendant] carrying a c-scan in to be read by Dr. Rogero was an
15 impossibility," and thus he was unable to answer the remainder of plaintiff's interrogatory. ECF
16 No. 62 at 6-7. Defendant's point is well taken. In light of defendant's response that he did not
17 take plaintiff's c-scan in to be read by Dr. Rogero, defendant cannot provide an answer as to what
18 he did next. Plaintiff's motion will be denied as to this interrogatory.

19 **Interrogatory No. 8, Set One:** The third time defendant doctor
20 Grant Rogero came out his office whate did he say to you and
defendant H. Singh about Plaintiff.

21 **Response:** Objection, this interrogatory assumes as true facts that
22 are in dispute, is vague as to time and place, and calls for
speculation and hearsay. Without waiving these objections, and
23 assuming, based on the allegations in the Complaint that Plaintiff is
referring to when he was transported to San Joaquin General
24 Hospital on November 8, 2012, Rodriguez responds as follows:

25 I do not recall specifically the doctor going in and out of his office
26 numerous times on November 8, 2012. As far as I can recall,
before Plaintiff was transported to the hospital on November 8,
27 2012, I was instructed by ISU to ask the doctor that if possible
could Plaintiff return to prison because he had an administrative
28 appeal to be resolved that week.

1 Plaintiff contends that defendant should be compelled to answer this interrogatory
2 “correctly” and to address the events that occurred at San Joaquin General Hospital, rather than
3 focusing on the phone call that took place at Mule Creek State Prison. See ECF No. 60 at 4-5.

4 In his opposition, defendant clarified his response as follows: “Defendant Rodriguez does
5 not recall the doctor going in and out of an office numerous times, nor does he recall what the
6 doctor said the third time, if in fact he entered and exited an office three times.” ECF No. 62 at 8.
7 Defendant cannot be compelled to provide an answer that he does not recall. Plaintiff’s motion to
8 compel will be denied as to Interrogatory No. 8.

9 **Interrogatory No. 9, Set One:** What did you hear Plaintiff express
10 to you and defendant Singh through the holding cell door.

11 **Response:** Objection, this interrogatory is vague as to time and
12 place, ambiguous, and confusing with respect to “what did you hear
13 Plaintiff express,” and the information sought is not reasonably
14 calculated to lead to the discovery of admissible evidence. Without
15 waiving these objections, and assuming, based on the allegations in
16 the Complaint that Plaintiff is referring to when he was transported
17 to San Joaquin General Hospital on November 8, 2012, Rodriguez
18 responds as follows:

19 San Joaquin Hospital does not have holding cells in the emergency
20 room. I do not have any recollection of Plaintiff being in a holding
21 cell at Mule Creek.

22 In his motion to compel, plaintiff explains that after his CT scan, he was taken to a
23 “holding cell” next to defendant Rogero’s office. See ECF No. 60 at 5. Plaintiff asserts that
24 defendant Rodriguez has not fully answered the interrogatory posed to him, which asks what
25 Rodriguez heard plaintiff express through the holding cell door. See id.

26 In his opposition, defendant provides the following clarification: “Defendant Rodriguez
27 does not recall Smith being in a holding cell at San Joaquin General Hospital, nor does he recall
28 Smith expressing anything while being in a holding cell.” ECF No. 62 at 9.

The court finds that although plaintiff’s interrogatory is somewhat vague, it does not
preclude a more direct response. Plaintiff must have been “held” somewhere in San Joaquin
General Hospital after his CT scan on November 8, 2012. While this location may not have been
in a “holding cell” per se, plaintiff is clearly asking what Rodriguez heard plaintiff say from the
room or location plaintiff was kept in after his CT scan. Rodriguez attempted to clarify his

1 response in his opposition, but his clarification is ambiguous. The court cannot tell whether
2 Rodriguez is representing that he does not recall plaintiff expressing anything while he was in
3 whatever location he was held in after the CT scan, or whether Rodriguez's statement that he does
4 not recall plaintiff expressing anything *while in a holding cell* follows from the assertion that San
5 Joaquin General Hospital does not have holding cells. Accordingly, defendant shall be required
6 to supplement his response and answer the following inquiry: What did you hear plaintiff express
7 to you and defendant Singh from the location where plaintiff was held after his CT scan? If
8 defendant does not recall plaintiff expressing anything at all to him after plaintiff's CT scan,
9 defendant should clarify this in his response. Accordingly, plaintiff's motion to compel a further
10 response is granted as to Interrogatory No. 9.

11 **Interrogatory No. 15, Set One:** Why did you tell defendant doctor
12 Grant Rogero that plaintiff was a snitch.

13 **Response:** Objection, this interrogatory assumes as true facts that
14 are in dispute, and is vague as to time and place. Without waiving
15 these objections, and assuming, based on the allegations in the
16 Complaint that Plaintiff is referring to when he was transported to
17 San Joaquin General Hospital on November 8, 2012, Rodriguez
18 responds as follows:

19 I did not tell the doctor that Plaintiff was a snitch. The paperwork
20 transport officers receive before taking an inmate to an outside
21 facility provides very basic information, such as the inmates
22 commitment offense, enemies, and escape history, but officers
23 would not have access to information regarding inmate prison
24 history. Further, I had no independent knowledge of Plaintiff
25 before the transport.

26 Plaintiff contends that defendant Rodriguez's response to Interrogatory No. 15 is
27 misleading.²³ ECF No. 60 at 6. Specifically, plaintiff asserts that defendant's statement that he
28 had no knowledge of the plaintiff's prison history is contradicted by his response to Interrogatory
No. 6, in which defendant stated that on November 8, 2012, an ISU staff member told defendant
that plaintiff had an administrative appeal pending. Id.

Defendant asserts that the motion to compel should be denied because he fully answered

²³ It is unclear whether plaintiff seeks to compel defendant Rodriguez to supplement his response to Interrogatory No. 15, or if plaintiff merely intended to point out alleged discrepancies in defendant's responses.

1 Interrogatory No. 15, which asks only why defendant Rodriguez told defendant Rogero that
2 plaintiff was a snitch. ECF No. 62 at 10. Defendant's point is well taken. Interrogatory No. 15 is
3 limited to whether Rodriguez told Rogero that plaintiff was a snitch, and Rodriguez responded
4 that he did not make this statement. Rodriguez's answer to plaintiff's interrogatory is sufficient
5 and requiring a further response here would be futile, as the issue of whether Rodriguez told
6 Rogero that plaintiff was a snitch is a factual dispute to be resolved at trial. Plaintiff's motion to
7 compel is denied as to Interrogatory No. 15.

8 In accordance with the above, IT IS HEREBY ORDERED that:

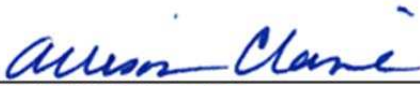
- 9 1. Plaintiff's motion to compel production of documents from defendant Rogero (ECF
10 No. 43) is denied;
- 11 2. Plaintiff's motion to compel production of documents from defendant Rogero (ECF
12 No. 35) is granted in part and denied in part. It is granted as to the RFP Nos. 1, 2, 3,
13 and 4 to the extent that defendant Rogero is required to file a statement with court
14 within ten (10) days of the date of this order indicating whether he received the
15 requested documents by subpoena. If he received the documents, he shall produce
16 them to plaintiff. As to RFP No. 5, the motion is denied;
- 17 3. Plaintiff's motion to compel defendant Rogero to provide supplemental responses to
18 Interrogatories, Set One, (ECF No. 37) is denied;
- 19 4. Plaintiff's motion to compel production of documents from defendant Rodriguez (ECF
20 No. 47) is denied;
- 21 5. Plaintiff's motion to compel production of documents from defendant Rodriguez (ECF
22 No. 59) is denied;
- 23 6. Plaintiff's motion to compel defendant Rodriguez to provide supplemental responses
24 to Interrogatories, First Set (ECF No. 60) is granted in part and denied part. As to
25 Interrogatory No. 3, plaintiff's motion is granted to the extent that defendant
26 Rodriguez is required to file a declaration with the court within ten (10) days from the
27 date of this order, explaining his efforts to determine if the two appeals filed against
28 him included retaliation claims. In the alternative, defendant may choose to inform

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plaintiff whether the two appeals filed against him were for retaliation. As to Interrogatory No. 9, plaintiff's motion is granted and defendant is directed to file a supplemental response within ten (10) days indicating what he heard plaintiff express to defendant Rodriguez and defendant Singh from the location plaintiff was kept in following plaintiff's CT scan on November 8, 2012. As to Interrogatories 2, 6, 7, 8, and 15, plaintiff's motion to compel is denied; and

7. Plaintiff shall have sixty days from the date of service of this order to respond to defendant Rodriguez's pending motion for summary judgment.

DATED: September 29, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE