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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. HICKS,
Plaintiff,
v.
AFSHIN ARYA, et al.,
Defendants.

No. 2: 16-cv-2465 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are motions to compel filed by plaintiff and defendant Arya. (ECF Nos. 24, 27.) Also pending is plaintiff’s motion for a sixty days extension of time to conduct discovery. (ECF No. 35.)

Defendant’s Motion to Compel (ECF No. 24)

Plaintiff’s Alleged Failure to Respond

Defendant alleges that on March 27, 2017, defendant served plaintiff with special interrogatories and a request for production of documents. Defendant correctly states that pursuant to the March 23, 2017 scheduling order, responses to discovery requests are due within forty-five days. Defendant states that plaintiff failed to respond to the discovery requests. Defendant requests that the court compel plaintiff to respond to the discovery requests within ten days.

1 In his opposition to the motion to compel, plaintiff alleges that he did not receive the
2 discovery requests from defendant when they were originally served. (ECF No. 28.) On May 28,
3 2017, after receiving the discovery requests attached to the motion to compel, plaintiff served
4 defendant with responses to the discovery requests. (Id.)

5 In the reply to plaintiff's opposition, defendant argues that plaintiff's claim that he did not
6 receive the discovery requests when they were first served is undermined by his change of
7 address filing. (ECF No. 29 at 2.) A pleading filed by plaintiff on March 27, 2017, states that
8 plaintiff was then housed at California State Prison-Sacramento ("CSP-Sac"). (ECF No. 22.)
9 Court records indicate that on or around April 21, 2017, plaintiff was transferred to California
10 State Prison-Corcoran. The proofs of service for the special interrogatories and request for
11 production of documents indicate that they were served on plaintiff at CSP-Sac on March 27,
12 2017. (ECF No. 24 at 10, 14.)

13 Because it is clear that plaintiff received the discovery requests, defendant argues that
14 plaintiff's objections to the discovery requests are untimely. Defendant also argues that
15 plaintiff's objections are without merit.

16 Based on the current record, the undersigned cannot make a definitive finding regarding
17 whether plaintiff received defendant's discovery requests when they were originally served.
18 Accordingly, the undersigned herein addresses the merits of the motion to compel.

19 *Interrogatories*

20 At issue are eleven interrogatories. As discussed herein, all but one are contention
21 interrogatories. "'Contention interrogatories, directed to a pro se party, are rarely appropriate[.]'"
22 Morgan v. Haviland, 2011 WL 2433648 at *2 (E.D. Cal. 2011) (quoting Nielsen v. Society of
23 New York Hosp., 1988 WL 100197 at *2 (S.D. N.Y. 1988).) In addition, "plaintiff is not
24 required to present his entire case in discovery responses. 'Each and every fact' interrogatories
25 pose problems for a responding party and a reviewing court. Parties are not tasked with laying
26 out every jot and tittle of their evidentiary case in response to interrogatories." Tubbs v.
27 Sacramento County Jail, 2008 WL 863974 at *1 (E.D. Cal. 2008), citing Lucero v. Valdez, 240
28 F.R.D. 591, 594 (D.N.M. 2007) ("[c]ontention interrogatories should not require a party to

1 provide the equivalent of a narrative account of its case, including every evidentiary fact”).

2 Interrogatories nos. 2, 3, 4, 5, 6, 8, 9, 10, 11 and 13 are contention interrogatories.¹

3 Accordingly, the undersigned does not find good cause to require plaintiff to provide further
4 responses to these interrogatories.

5 Interrogatory no. 7 asked, “Please identify the serious medical need(s) which you claim is
6 the subject of this lawsuit.” (ECF No. 24 at 8.) Plaintiff objected that this interrogatory was
7 vague. (ECF No. 29 at 6.) Plaintiff further responded, “however, plaintiff suffers from cervical
8 spondylosis, hep c and hypertension.” (Id.) Interrogatory no. 7 is not vague. Plaintiff shall
9 provide a further response clarifying that the medical needs identified in the response to
10 interrogatory no. 7 are those which he claims are the subject of this lawsuit.

11 *Request for Production of Documents*

12 Defendant argues that in response to the request for production of documents, plaintiff
13 served a stack of documents. Defendant states that there is no indication to what request the
14 documents are responsive.

15 Request no. 1 asked for, “[a]ll documents that support your contention that Defendant Dr.
16 Arya was deliberately indifferent to your serious medical needs.” (ECF No. 24 at 12.) Request

17
18 ¹ Interrogatory number 2 asked, “Please state all facts which support your contention that
19 Defendant Dr. Arya was deliberately indifferent to your serious medical needs.” (ECF No. 24 at
20 8.) Interrogatory no. 3 asked, “Please identify all persons who have knowledge of your
21 contention that Defendant Arya was deliberately indifferent to your serious medical needs.” (Id.
22 at 8.) Interrogatory no. 4 asked, “Please identify each document which supports your contention
23 that Defendant Dr. Arya was deliberately indifferent to your serious medical needs.” (Id. at 8.)
24 Interrogatory no. 5 asked, “Please state all facts that support your contention that you sustained
25 injury or damages as a result of Defendant Arya’s act or omissions.” (Id. at 8.)
26 Interrogatory no. 6 asked, “Please identify all documents that support your contention that you
27 exhausted administrative remedies with regards to your claims against Defendant Dr. Arya.”
28 (Id. at 8.) Interrogatory no. 8 asked, “Please identify all persons who have knowledge of the
serious medical need(s) which you claim is the subject of this lawsuit.” (Id. at 8.) Interrogatory
no. 9 asked, “Please identify all documents which refer to the serious medical need(s) which you
claim is the subject of this lawsuit.” (Id. at 8.) Interrogatory no. 10 asked, “Please state all facts
that support your contention that Dr. Arya was the cause of your injuries and damages.” (Id. at
8.) Interrogatory no. 11 asked, “Please identify all witnesses who have knowledge Dr. Arya was
the cause of your injuries and damages.” (Id. at 8.) Interrogatory no. 13 asked, “Please identify
documents that show Dr. Arya was the cause of your injuries and damages.” (Id. at 9.) It appears
that interrogatory no. 13 is mislabeled, as there is no interrogatory no. 12.

1 no. 2 asked for, “[a]ll documents that support your contention that you exhausted administrative
2 remedies with regards to your claims against Defendant Dr. Aryan.” (Id. at 13.) Request no. 3
3 asked for, “[a]ll documents that refer to the serious medical need which you claim is the subject
4 of this lawsuit.” (Id.) Request no. 4 asked for, “[a]ll documents that identify the dates on which
5 you claim Defendant Dr. Arya was deliberately indifferent to your medical needs.” Request no. 5
6 asked for, “[a]ll documents that identify the harm you suffered as a result of Defendant Dr.
7 Arya’s actions or inactions.” (Id.) Request no. 6 asked for, “[a]ll documents that show that
8 Defendant Dr. Arya was the cause of your harm.” (Id.)

9 Rule 34 requires a party requesting the production of documents to “describe with
10 reasonable particularity each item or category of items” to be produced. Fed. R. Civ. P.
11 34(b)(1)(A). Broad requests are disfavored and may be disallowed. See Crawford-El v. Britton,
12 523 U.S. 574, 598 (1998) (“Rule 26 vests the trial judge with broad discretion to tailor discovery
13 narrowly...”); Regan-Touhy v. Walgreen Co., 526 F.3d 641, 649 (10th Cir. 2008) (noting that the
14 Manual for Complex Litigation § 11.443, at 75, encourages courts to “forbid sweeping requests”
15 and to “direct counsel to frame requests for production of the fewest documents possible”).

16 Defendant’s requests for production of documents violate Rule 34 because they fail to
17 describe the documents requested with reasonable particularity. The requests are overly broad
18 and include documents that are not relevant to this action. Accordingly, plaintiff is not required
19 to provide a further response to these requests.

20 Plaintiff’s Motion to Compel (ECF No. 27)

21 Plaintiff seeks further responses to four requests for production of documents. Request
22 no. 1 seeks his California Department of Corrections and Rehabilitation (“CDCR”) unit health
23 records from July 1, 2010, to the date of the request. (ECF No. 27 at 4.) Defendant objected to
24 this request on grounds that plaintiff had access to his health care records by asking for review of
25 the records. (Id.) Defendant also stated that if defendant subpoena’s plaintiff’s medical records,
26 plaintiff may request a copy from the subpoena service. (Id.)

27 In the motion to compel, plaintiff argues that accessing his medical records through
28 “normal institutional channels is a long and cumbersome process, raises evidentiary hurdles, and

1 will delay the completion of discovery.” (Id. at 2.)

2 The court will not order defendant to produce documents that are equally accessible to
3 plaintiff in his medical file. See, e.g., Valenzuela v. Smith, 2006 WL 403842 at *2 (E.D. Cal.
4 Feb. 16, 2006) (defendants will not be compelled to produce documents that are “equally
5 available to plaintiff in his prison medical file or in the prison law library.”); Ford v. Wildey,
6 2014 WL 4354600 at * 4 (E.D. Cal. Sept. 2, 2014) (“Defendant indicates that any such documents
7 are located in his central file for which Plaintiff has equal access. This response complies with
8 Rule 34 of the Federal Rules of Civil Procedure....”). Accordingly, plaintiff’s motion to compel a
9 further response to request no. 1 is denied.

10 Request no. 2 sought, “All volumes of the ‘Inmate Medical Services Policies and
11 Procedures.’” (ECF No. 27 at 5.) Defendant objected that the request was not relevant and
12 unduly burdensome. (Id.) Defendant further responded that there are 13 volumes contained in
13 the Inmate Medical Services Policies and Procedures and each volume contains multiple chapters.
14 (Id.) Defendant stated that this document was equally available to plaintiff because it was
15 available to the public on the internet, and then gave the web site. (Id.) Without waiving
16 objection, defendant stated that he would produce the table of contents for each volume. (Id.)

17 The undersigned agrees with defendant that request no. 2 is unduly burdensome and seeks
18 information not relevant to this action. The request is overbroad. Accordingly, plaintiff’s motion
19 to compel a further response to request no. 2 is denied.

20 Request no. 3 sought the “Correctional Health Care Services Care Guide.” (Id. at 5.)
21 Defendant responded that the request was not relevant and unduly burdensome. (Id.) Defendant
22 stated that there were 23 medical care guideline topics: anticoagulation, asthma, chest pain,
23 clozapine, Coccidioidomycosis (Valley Fever), cognitive impairment/dementia, COPD, diabetes,
24 Dyslipidemia, ELSD, gender dysphoria, hepatitis C, HIV, hunger strike, hypertension, major
25 depressive disorder, pain management, palliative care, schizophrenia, seizure disorders, skin soft
26 tissue, tuberculosis, wound and skin ulcer management. (Id.) Defendant stated that most, if not
27 all, of these topics did not apply to any allegation in plaintiff’s complaint. (Id.) Defendant also
28 argued that this document was equally available to plaintiff, and cited the web site. (Id.)

1 The undersigned agrees with defendant that request no. 3 is unduly burdensome and seeks
2 information not relevant to this action. This request is overbroad. Accordingly, plaintiff's motion
3 to compel a further response to request no. 3 is denied.

4 Request no. 4 sought the CDCR Operations Manual. (Id.) Defendant objected that this
5 request was unduly burdensome. (Id.) Defendant also argued that plaintiff had access to this
6 document in the library. (Id.) The undersigned agrees with defendant that this request is unduly
7 burdensome, as well as overbroad. Accordingly, plaintiff's motion to compel a further response
8 to this request is denied.

9 Plaintiff's Motion for Extension of Time to Conduct Discovery (ECF No. 35)

10 Pursuant to the March 23, 2017 scheduling order, all motions to compel were to be filed
11 by July 7, 2017. (ECF No. 21.) All requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34
12 or 36 were to be served not later than sixty days prior to that date. (Id.)

13 In the pending motion, filed June 29, 2017, plaintiff requests that the discovery cut-off be
14 extended 60 days. (ECF No. 35.) In support of this request plaintiff alleges,

15 Because the parties have been unable to resolve their discovery
16 disputes and both parties have filed motions to compel discovery
17 with the court that are pending resolution, plaintiff requests this
court to extend discovery for 60 days.

18 (Id. at 1.)

19 When a request is made to modify a discovery plan and scheduling order before the
20 expiration of the deadlines and before the final pretrial order is entered, a district court may
21 extend the discovery deadlines upon a showing of "good cause." Coleman v. Quaker Oats Co.,
22 232 F.3d 1271, 1294 (9th Cir. 2000). The good cause standard "primarily considers the diligence
23 of the party seeking the amendment." Id. Discovery extensions may be allowed if the deadlines
24 "cannot reasonably be met despite the diligence of the party seeking the extension." Id.

25 In the pending motion, plaintiff does not describe the additional discovery he intends to
26 conduct or why he was unable to serve these requests prior to the close of discovery. Without this
27 information, the undersigned cannot determine whether plaintiff acted diligently. Accordingly,

28 ////

1 plaintiff's motion to extend the discovery deadline is denied.²

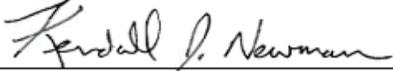
2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Defendant's motion to compel (ECF No. 24) is denied but for interrogatory no. 7;
4 plaintiff shall serve defendant with a further response to interrogatory no. 7 within fourteen days
5 of the date of this order;

6 2. Plaintiff's motion to compel (ECF No. 27) is denied;

7 3. Plaintiff's motion for an extension of time to conduct discovery (ECF No. 35) is
8 denied.

9 Dated: August 23, 2017

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11 _____
12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE

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27 ² The undersigned has separately recommended that plaintiff's motion to file an amended
28 complaint naming two new defendants be granted. If this motion is granted, discovery will be
reopened as to these two new defendants.