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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLENN O’CONNOR,
Plaintiff,
v.
W. PEREZ, et al.,
Defendants.

No. 2:18-cv-1057 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff claims defendants violated his Eighth Amendment rights. Presently before the court is plaintiff’s motion for leave to exceed the interrogatory limit. (ECF No. 59.) For the reasons set forth below the court will deny the motion.

I. Allegations in the Operative Complaint

Plaintiff has a prescribed CPAP (continuous positive airway pressure) machine to treat sleep apnea. (ECF No. 22 at 3.) When the mask for his CPAP machine broke, he submitted the proper health care form requesting a replacement, but he did not receive a response. He submitted two additional forms but still did not receive a response. Thereafter, he filed an inmate appeal, or 602 form, regarding his request for a replacement part. (Id. at 4.) The nurse who reviewed the form immediately made a phone call to get plaintiff a replacement mask. Plaintiff

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1 has named as defendants the health care staff members who reviewed his medical request forms
2 and failed to take action to obtain a replacement part for plaintiff's CPAP machine.

3 **II. Motion to Propound Additional Interrogatories**

4 Plaintiff states that he is proceeding pro se and will not be allowed to conduct depositions
5 or be allowed to call witnesses. (ECF No. 59 at 1.) He also states that he is severely handicapped
6 by these restrictions and requests "leave to pursue up to 75 interrogatory questions of
7 defendants." (Id. at 2.) He states that his number of 75 is reflective of the medical terms that will
8 be used, there are entire concepts unknown to the average inmate, and there is no other way
9 plaintiff will be able to obtain this information.

10 In their opposition defendants argue that plaintiff has "failed to make any particularized
11 showing as to why additional interrogatories are necessary in this case." (ECF No. 61 at 2.) They
12 further allege that the facts of this case are "far simpler than most medical cases." (Id. at 3.)

13 **III. Legal Standards**

14 Pursuant to Rule 33(a) of the Federal Rules of Civil Procedures, "[u]nless otherwise
15 stipulated or ordered by the court, a party may serve on any party no more than 25 written
16 interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be
17 granted to the extent consistent with Rule 26(b)(1) and (2)." Fed. R. Civ. P. 33(a).

18 Typically, a party requesting additional interrogatories must make a "particularized
19 showing" as to why additional discovery is necessary. Archer Daniels Midland Co. v. Aon Risk
20 Services, Inc. of Minn., 187 F.R.D. 578, 586 (D. Minn. 1999). However, a party proceeding pro
21 se is held to a somewhat lesser standard. A pro se party must show good cause for additional
22 discovery. See McClellan v. Kern County Sheriff's Office, No. 1:10-cv-0386 LJO MJS (PC),
23 2015 WL 5732242, at *1 (E.D. Cal. Sept. 29, 2015) (citing Fed. R. Civ. P. 26(b)(1); Cantu v.
24 Garcia, No. 1:09cv00177 AWI DLB PC, 2013 WL101667, at *3 (E.D. Cal. Jan. 8, 2013); Eichler
25 v. Tilton, No. CIV S-06-2894 JAM CMK P, 2010 WL 457334, at *1 (E.D. Cal. Feb. 3, 2010)).

26 Pursuant to Rule 33(a), once the moving party has made the appropriate showing, the
27 court shall grant leave if it is consistent with FRCP 26(b)(2). Rule 26(b)(2)(C) states that the

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1 court must limit the “frequency or scope of discovery otherwise allowed by these rules” if it finds
2 that:

3 (i) the discovery sought is unreasonably cumulative or duplicative,
4 or can be obtained from some other source that is more convenient,
less burdensome, or less expensive;

5 (ii) the party seeking discovery has had ample opportunity to obtain
6 the information by discovery in the action; or

7 (iii) the proposed discovery is outside the scope permitted by Rule
26(b)(1).

8 Rule 26(b)(1) describes the scope of discovery as follows:

9 Parties may obtain discovery regarding any nonprivileged matter that
10 is relevant to any party's claim or defense and proportional to the
11 needs of the case, considering the importance of the issues at stake
12 in the action, the amount in controversy, the parties' relative access
13 to relevant information, the parties' resources, the importance of the
discovery in resolving the issues, and whether the burden or expense
of the proposed discovery outweighs its likely benefit. Information
within this scope of discovery need not be admissible in evidence to
be discoverable.

14 **IV. Analysis**

15 It is not clear from plaintiff's motion whether he seeks to propound 75 total interrogatories
16 or 75 interrogatories per defendant for a total of 300 interrogatories. To the extent plaintiff is
17 requesting to submit 75 total interrogatories, that request is moot. As defendants state in their
18 opposition, plaintiff may submit 25 interrogatories per defendant for a total of 100 interrogatories
19 because there are four defendants. Based on the parties' submissions, it appears that plaintiff has
20 not yet submitted any interrogatories to defendants. Thus, 100 interrogatories may be sufficient
21 to provide plaintiff with all the information that he needs in this action.

22 Plaintiff argues that he needs to propound additional interrogatories because there are
23 “entire concepts unknown to the average prisoner” so he will need to explore topics generally
24 before asking specifics and that the case will involve “many medical terms.” (ECF No. 59 at 2.)
25 While the court recognizes that plaintiff is proceeding pro se, and is therefore entitled to some
26 leniency in making a showing of his need for discovery, plaintiff must provide some basis for the
27 court to permit him to propound additional discovery. See McNeil v. Hayes, No. 1:10-cv-1746
28 AWI SKO (PC), 2014 WL 1125014, at *2 (E.D. Cal. 2014) (“[T]he ‘particularized showing’ to

1 obtain leave to serve additional interrogatories cannot be divorced from Plaintiff's pro se status.”);
2 Smith v. Davis, No. 1:07-cv-1632 AWI GSA PC, 2009 WL 2905794, at *1 (E.D. Cal. Sept. 4.
3 2009) (plaintiff bears the burden of demonstrating a need for additional interrogatories).
4 Additionally, a court may deny a pro se plaintiff's request for additional interrogatories where the
5 plaintiff has not sufficiently specified the reason additional interrogatories are necessary. Doster
6 v. Beard, No. 1:15-cv-1415 DAD GSA PC, 2017 WL 1393509 at *4 (E.D. Cal. Apr. 13, 2017)
7 (denying request to serve additional interrogatories where plaintiff did not explain the nature or
8 subject matter of additional interrogatories); McClellan v. Kern County Sheriff's Office, No.
9 1:10-cv-0386 LJO MJS (PC), 2015 WL 5732242 at *2 (E.D. Cal. Sept. 29, 2015) (denying
10 motion for additional interrogatories because plaintiff did not specify what factual matters he
11 sought clarification on or why he could not seek the information through other discovery tools).

12 Plaintiff has not submitted proposed interrogatories with the motion for review or
13 specified the nature or subject matter of the additional interrogatories. Therefore, the court
14 cannot adequately address plaintiff's request. Further, as defendants have argued, the issues
15 relating to plaintiff's claim in this action appear to be fairly straightforward as the issue in this
16 case simply involves defendants' alleged failure to respond to plaintiff's request for a replacement
17 part for his medical device.

18 The court finds that plaintiff has not shown that he will need to propound 300
19 interrogatories in this case. However, should plaintiff find that he requires additional
20 information, and that such information must be sought via additional interrogatories, he may file a
21 renewed motion. Any future motion should include proposed interrogatories and state
22 specifically why additional interrogatories are necessary. For these reasons, the court will deny
23 plaintiff's motion for additional interrogatories without prejudice.

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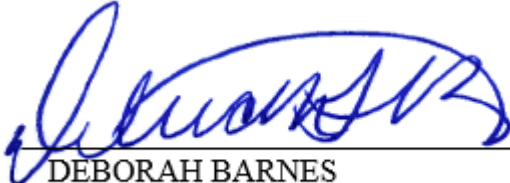
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V. Conclusion

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to propound additional interrogatories (ECF No. 59) is denied without prejudice.

Dated: March 2, 2020



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:12
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