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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Ruben Dario Garcia, Jr. ,

12 Plaintiff,

13 v.

14 Blahnik et al,

15 Defendant.

Case No.: 14cv875-LAB-BGS

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

16
17 **I. BACKGROUND**

18 Plaintiff Ruben Garcia alleges that between April 2012 and August 2013, certain
19 members of the prison staff at R.J. Donovan Correctional Facility retaliated against him
20 by charging him with disciplinary violations, failing to process his inmate grievances, and
21 suspending his position on the prison's Mens' Advisory Council. (ECF No. 1. at 5-18.)

22 **a. Plaintiff's First Set of Discovery**

23 On December 15, 2015, Plaintiff served Defendants with twenty-seven Requests
24 for Admissions, in addition to Interrogatories and Requests for Production of Documents.
25 (Declaration of Christopher H. Findley in Support of Opposition to Motion to Compel
26 "Findley Decl." Ex. 1.) The Requests for Admissions asked that each Defendant admit
27 that they had received the proper training and were aware of the applicable regulations
28 governing prisoners and correctional officers. The Requests for Admissions also asked

1 Defendants to authenticate the general chronos and rules violation reports on which
2 Plaintiff bases his claims. Defendants responded to this discovery, and admitted they
3 were properly trained and familiar with the applicable regulations and admitted the
4 authenticity of the documents at issue. (Findley Decl. Ex. 2.) Defendants also responded
5 to Plaintiff's Interrogatory requests and Requests for Production of Documents. (Findley
6 Decl. Ex. 3.) This first set of discovery is not the basis of Plaintiff's Motion to Compel.

7 **b. Plaintiff's Second Set of Discovery**

8 On March 6, 2016, Plaintiff served a second set of discovery, which included
9 Requests for Admissions, Requests for Production of Documents, and Interrogatories.
10 (Findley Decl. Exs. 3, 4, 5, 6.) Defendants responded on April 8, 2016. (Findley Decl.
11 Exs. 7, 8, 9, 10.) It is this second set of discovery that is in dispute in Plaintiff's Motion
12 to Compel. All references to Interrogatories, Requests for Production of Documents, and
13 Requests for Admissions refer to this second set of discovery, unless stated otherwise.

14 **II. PROCEDURAL POSTURE**

15 Plaintiff filed a Motion to Compel on April 20, 2016. (ECF No. 46.) On April 21,
16 2016, the Court set forth a briefing schedule on Plaintiff's motion. On April 29, 2016,
17 Plaintiff filed a supplemental brief in support of his motion to compel. (ECF No. 51.)
18 Thereafter, the Court updated the briefing schedule to allow Defendants additional time
19 to respond. (ECF No. 52.) Defendants filed their opposition on May 31, 2016. (ECF
20 No. 55.) Plaintiff filed a reply on June 17, 2016, *nunc pro tunc*, June 14, 2016. (ECF
21 No. 57.)

22 **III. TIMELINESS OF RESPONSES**

23 Plaintiff argues that Defendants did not timely respond to his discovery requests.
24 (ECF No. 46 at 4.) Defendants were required to respond to Plaintiff's discovery within
25 thirty days. *See* Fed. R. Civ. P. 33(b)(2)(setting forth the deadline to respond for
26 interrogatories); Fed. R. Civ. P. 34(b)(2)(A)(setting forth the deadline to respond for
27 requests for production of documents); Fed. R. Civ. P. 36(a)(3)(setting forth the deadline
28 to respond for requests for admission). Moreover, the Federal Rules allow for a three day

1 extension when discovery is served by mail. *See* Fed. R. Civ. P. 6(d).

2 Plaintiff's discovery is dated March 6, 2016 (Findley Decl. Exs. 3-6) and was
3 served by mail. (*Id.* at ¶ 4.) Defendants were required to respond thirty-three days later,
4 by April 8, 2016. Defendants served their responses by mail on April 8, 2016. (Findley
5 Decl. ¶ 5.) Defendants' responses were, therefore, timely.

6 **IV. FAILURE TO MEET AND CONFER**

7 Defendants argue that Plaintiff's Motion to Compel should be denied because he
8 failed to meet and confer with Defendants to attempt to resolve the discovery disputes
9 informally. (ECF No. 55 at 5.) Civil Local Rule 26.1 provides, "The court shall entertain
10 no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel shall have
11 previously met and conferred concerning all disputed issues." S.D. Cal. Civ. R. 26.1(a).
12 Counsel for the moving party must serve and file a certificate of compliance with this
13 rule when filing a discovery motion. S.D. Cal. Civ. R. 26.1(b). Additionally, Federal
14 Rule of Civil Procedure 37 provides that a motion to compel discovery responses "must
15 include a certification that the movant has in good faith conferred or attempted to confer
16 with the person or party failing to make the disclosure or discovery in an effort to obtain
17 it without court action." Fed. R. Civ. P. 37(a)(1).

18 Rules requiring meet-and-confer efforts apply to *pro se* litigants. *Madsen v.*
19 *Risenhoover*, No. C 09-5457 SBA (PR), 2012 WL 2873836, at *3 (N.D. Cal. June 28,
20 2012) (finding that the meet-and-confer requirement applies to incarcerated individuals,
21 but noting that the incarcerated plaintiff may send a letter to defendants); *Walker v. Ryan*,
22 No. CV-10-1408-PHX-JWS (LOA), 2012 WL 1599984, at *2-3, at *5-6 (D. Ariz. May
23 7, 2012) (denying motion to compel where unrepresented party did not include a
24 certification of attempts to meet and confer); *see Jourdan v. Jabe*, 951 F.2d 108, 109 (6th
25 Cir. 1991) (discussing that although courts should liberally construe *pro se* plaintiffs'
26 pleadings and legal arguments, this liberality does not apply to compliance with
27 straightforward procedural requirements).

28 A court can deny a motion to compel solely because of a party's failure to meet

1 and confer prior to filing the motion. *Scheinuck v. Sepulveda*, No. C 09–0727 WHA
2 (PR), 2010 WL 5174340, at *1–2 (N.D. Cal. Dec. 15, 2010); *see Shaw v. Cnty. of San*
3 *Diego*, No. 06–CV–2680–IEG (POR), 2008 U.S. Dist. LEXIS 80508, at *3–4 (S.D. Cal.
4 Oct. 9, 2008) (denying plaintiff’s motion to compel for failing to attempt to meet and
5 confer.) Nonetheless, courts can still decide a motion on the merits despite a failure to
6 meet and confer. *See Marine Group, LLC v. Marine Trvelift, Inc.*, No. 10cv846–BTM
7 (KSC), 2012 WL 1155971, at *2–3 (S.D. Cal. Apr. 6, 2012) (explaining failure to meet
8 and confer is grounds for denying a motion, but still addressing the merits).

9 Plaintiff failed to meet and confer with Defendants’ attorney prior to filing this Ex
10 Parte Motion to Compel Discovery. Even so, Plaintiff’s incarcerated status frustrates his
11 ability to meet and confer. *See Kunkel v. Dill*, No. 1:09–cv–00686–LJO–SKO PC, 2010
12 WL 4530225, at *3 (E.D. Cal. Nov. 2, 2010) (stating that counsel must make themselves
13 reasonably available to the incarcerated party in person, via telephone, or via video
14 conference for a meet and confer.) Although Plaintiff could have attempted to confer
15 with counsel by telephone or mail, his failure to do so, without more, does not warrant an
16 outright denial of his Motion to Compel. *See Marine Group LLC*, 2012 WL 1155971, at
17 *2–3. For the purposes of this Motion, the Court will waive the meet and confer
18 requirement. *See S.D. Cal. Civ. R. 1.1(d)*. Nevertheless, additional motions will not be
19 entertained absent certification by the moving party of compliance with the meet-and-
20 confer requirement. *See S.D. Cal. Civ. R. 26.1(a)*.

21 **V. INTERROGATORIES**

22 Plaintiff’s Interrogatories requested that Defendants list their specific post duties.
23 (*See Findley Decl.*, Exs. 3, 4.) In his Motion to Compel, Plaintiff argues that Defendants’
24 responses “did not respond these specifically made Interrogatories, and the primary
25 reason for these conclusions seems to be lost to his jailhouse lawyers assistance and
26 Garcia himself.” (ECF No. 51 at 20.) Defendants contend that they described each of
27 their post assignments in detail, and fully responded to Plaintiff’s Interrogatories. (ECF
28 No. 55 at 7.) Defendants state that there is “no greater detail available” and they cannot

1 more fully respond to these Interrogatories. (*Id.*)

2 Interrogatories “must, to the extent it is not objected to, be answered separately and
3 fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). The Court cannot compel
4 Defendants to provide information they claim does not exist. Nor has Plaintiff explained
5 why he believes Defendants’ responses to the Interrogatories are insufficient. As a result,
6 the Court finds that Defendants adequately responded to Plaintiff’s Interrogatories.
7 Moreover, Defendants confirmed under oath that they provided all available information,
8 and the Court has no reason to question that claim. Therefore, Plaintiff’s Motion to
9 Compel further responses to Plaintiff’s Interrogatories is **DENIED**.

10 **VI. REQUESTS FOR PRODUCTION OF DOCUMENTS**

11 Plaintiff’s request for Production of Document Nos. 1-4 are almost identical,
12 and seek the same information from all defendants. Request for Production No. 1,
13 for example, requests the following:

14 Any and all CDCR business records setting forth in writing what were those
15 post assignment duties and responsibility defendants were to adhere to when
16 defendants E. Mendoza, S. Rutledge, C. Hernandez, acted as “reviewing
17 Supervisors” in the matters of RVR-115 cases # FC-13-061, # FC-13-378, #
18 FC-13-366. Such documents should include any pertinent/relevant CDCR
19 Operative Procedures; Codes; Departmental Operations Manual; CDCR
20 Written Correspondences, CDCR Memorandums; CDCR Notes; CDCR
21 Administrative Bulletins; CDCR Informational Bulletins; CDCR
22 Understanding of Training Acknowledgement Forms; CDCR Training
23 Module Test Forms etc.

24 (Findley Decl. Ex. 5.)

25 **a. Defendants Provided Responsive Documents Regarding their Post** 26 **Assignment Duties**

27 Plaintiff’s Motion to Compel argues that Defendants should be required to
28 produce the requested documents because they are relevant to his claims and not

1 protected by privilege. (ECF No. 51 at 18.) In response, Defendants explain that
2 they produced “all responsive documents related to Defendants’ post assignment
3 duties on the dates Plaintiff specified.” (ECF No. 55 at 7 citing Findley Decl. Ex.
4 9.) Defendants further state that they “did not withhold documents on the grounds
5 that they were privileged.” (ECF No. 55 at 7 citing Findley Decl. ¶ 7.) Because
6 Defendants state that they produced all responsive documents, the Court cannot
7 compel them to produce documents they claim do not exist. Nor has Plaintiff
8 explained why he believes the production is insufficient. Therefore, the Court
9 finds that Plaintiff’s Motion to Compel documents regarding Defendants’ post
10 assignment duties is **DENIED**.

11 **b. Plaintiff’s Request for CDCR Training Acknowledgement Forms**

12 Based on Plaintiff’s statement in his Motion to Compel that the requested
13 documents “can establish the specific training defendants possessed” at the
14 relevant time periods (ECF No. 51 at 19), Defendants surmise that Plaintiff
15 expected production of CDCR Training Acknowledgement Forms, which
16 Defendants admit they did not produce.

17 Defendants explain that they read Plaintiff’s mention of CDCR Training
18 Acknowledgement Forms as an inconsistent instruction, and did not produce them
19 on that basis. (ECF No. 55 at 8.) Defendants further state that, to the extent the
20 request is interpreted by the Court to include the training acknowledgement forms,
21 Defendants “properly objected on the grounds that such records are not reasonably
22 calculated to lead to the discovery of admissible evidence.” (*Id.* citing Findley
23 Decl. Ex. 9.) Moreover, Defendants also explain that they already admitted in
24 Plaintiff’s first set of Requests for Admission that “(1) they are required to comply
25 with all applicable laws, trained to comply with all such laws, and have received
26 the necessary training to comply with all such laws and regulations.” (*Id.* citing
27 Findley Decl., Ex. 2, RFAs 2-10.)

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1 **c. Relevant Law**

2 Federal Rule 26(b)(2)(C) requires the court, on motion or on its own, to limit the
3 frequency or extent of discovery otherwise allowed by the rules if it determines that (1)
4 “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from
5 some other source that is more convenient, less burdensome, or less expensive;” (2) the
6 party seeking discovery has had ample opportunity to obtain the information by discovery
7 in the action;” or (3) “the proposed discovery is outside the scope permitted by Rule
8 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(i)-26(b)(2)(C)(iii). The Court must also limit
9 discovery when “the burden or expense of the proposed discovery outweighs its likely
10 benefit.” Fed. R. Civ. P. 26(b)(1).

11 **d. Discussion**

12 The Court agrees that Plaintiff’s Request is confusing, but finds that
13 Plaintiff’s explicit mention of CDCR Training Acknowledgement Forms clarifies
14 any ambiguity that his request sought these specific forms. Moreover, the Court
15 agrees with Plaintiff that such training forms are relevant to his claims in this case.
16 However, the Court also finds that such documents are duplicative of other
17 discovery in this case wherein Defendants admitted that they were properly trained
18 in the relevant regulations and procedures. (ECF No. 55 at 8 citing Findley Decl.,
19 Ex. 2, RFAs 2-10.) Admissions narrow the scope of the case by removing issues
20 from the case once and for all. (See Adv. Comm. Note to 1970 Amendment to
21 Fed. R. Civ. P. 36.) Requiring Defendants to produce documents that are likely to
22 prove a fact already admitted would be duplicative. Therefore, based on this
23 Court’s inherent power to restrict discovery that “is unreasonably cumulative or
24 duplicative,” Plaintiff’s Motion to Compel further documents in response to his
25 Request for Production of Documents is **DENIED**. See Fed. R. Civ. P.
26 26(b)(2)(C)(i).

27 **VII. REQUESTS FOR ADMISSION**

28 Plaintiff argues that the Requests for Admission that he seeks are relevant to the

1 issues in his case. (ECF Nos. 46, 51.) Defendants object to the propounded Requests for
2 Admission because they exceeded the amount allowed under the Local Rules, and
3 because they improperly sought admissions on pure issues of law. (ECF No. 55 at 8.)
4 The Court agrees with Defendants that they are not required to respond to Requests for
5 Admission that exceed the amount allowed under Local Rule 36.1(a). *See* Fed. R. Civ. P.
6 26(b)(2) (“By order or local rule, the court may also limit the number of requests under
7 Rule 36.”) Defendants’ objections on this basis are **GRANTED** and Plaintiff’s Motion to
8 Compel further answers to any of his Requests for Admission is **DENIED**.

9 **VIII. CONCLUSION**

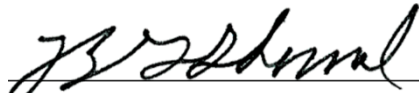
10 Plaintiff’s Motion to Compel further responses to his second set of Interrogatories
11 is **DENIED**.

12 Plaintiff’s Motion to Compel further responses to his second set of Requests for
13 Production of Documents is **DENIED**.

14 Plaintiff’s Motion to Compel further responses to his second set of Requests for
15 Admission is **DENIED**.

16 IT IS SO ORDERED.

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18 Dated: July 15, 2016

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20 Hon. Bernard G. Skomal
21 United States Magistrate Judge
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