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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS JOHN HEILMAN,  
  
Plaintiff,  
  
v.  
  
J. COOK, et al.,  
  
Defendants.

Case No.: 14cv1412-JLS-MDD

**ORDER RE PLAINTIFF’S  
MOTIONS TO COMPEL  
SUPPLEMENTAL DISCOVERY  
RESPONSES FROM  
DEFENDANTS DONOGHUE  
AND DAVIS**

[ECF No. 89, 92, 114, 121]

On August 9, 2016, Plaintiff filed a motion to compel further discovery responses from Defendant Donoghue and a motion to compel further discovery responses from Defendant Davis. (ECF Nos. 89, 92). In these motions, Plaintiff seeks to compel responses to certain enumerated interrogatories and document demands. On August 31, 2016, Defendants filed their opposition. (ECF No. 99). On September 20, 2016, Plaintiff filed his reply. (ECF No. 108).

1 On October 3, 2016, Plaintiff filed a second motion to compel  
2 Defendants Davis and Donoghue to provide supplemental and initial  
3 discovery responses. (ECF No. 114). In this motion, Plaintiff does not  
4 specify the requests at issue, provide analysis, nor attach requests or  
5 responses. On October 12, 2016, Defendants filed their opposition to  
6 this motion, which declared in part that they were concurrently  
7 producing Defendant Davis' document demand responses. (ECF No.  
8 117).

9 On October 19, 2016, Plaintiff filed a third motion to compel  
10 Defendants Davis and Donoghue to supplement their responses to  
11 interrogatories. (ECF No. 121). In this motion, Plaintiff explains that  
12 his previous motions for Defendants to provide supplemental responses  
13 to Interrogatory Set 1 have become moot because Defendants provided  
14 Plaintiff with their responses, but Plaintiff is now seeking to compel  
15 supplemental responses to Interrogatory Set 2. (*Id.* at 2).

16 On October 28, 2016, Plaintiff filed a reply in support of his  
17 motions. (ECF No. 124). In a footnote in the reply, Plaintiff concedes  
18 that his motion to compel Defendant Davis' responses to document  
19 demands is also now moot, because he received those responses after  
20 filing his third motion to compel. (*Id.* at 3, fn.1).

21 Based on Plaintiff's concessions of mootness, the Court **DENIES**  
22 **as moot** the motion to compel Defendant Davis' responses to  
23 Interrogatory Set 1, entered on the docket as ECF No. 89, and **DENIES**  
24 **in part as moot** the motions entered on the docket as ECF Nos. 92 and  
25

1 114 to the extent they seek to compel production of responses to  
2 Interrogatory Set 1 by Defendants Davis and Donoghue and to the  
3 extent they seek to compel Defendant Davis' responses to document  
4 demands.

5 Plaintiff does not concede that the motions seeking Defendant  
6 Donoghue's responses to document demands are mooted. Accordingly,  
7 the Court will address those motions as to Defendant Donoghue's  
8 responses to document demands below. The Court also rules upon  
9 Plaintiff's motion to compel further responses to Interrogatory Set 2  
10 (ECF No. 121) below.

11 I. Motions to Compel Defendant Donoghue's Further Responses  
12 to RFPD

13 Plaintiff moves to compel further responses to Document Requests  
14 Nos. 1 and 2 from Defendant Donoghue.

15 a. RFPD 1

16 RFPD 1 seeks "documents showing [Donoghue's] medical training  
17 and past employment history."

18 Defendant Donoghue objects on grounds of proportionality to the  
19 case, relevancy and privacy.

20 Plaintiff contends that "the knowledge, education, employment  
21 and training of medical staff defendants" like Defendant Donoghue are  
22 relevant and proportional because Plaintiff is claiming the medical staff  
23 defendants were deliberately indifferent to his serious medical needs,  
24 and cites to *Kilgore v. Mandeville*, No. 2:07cv2485-GEB-KJN P, 2010  
25

1 WL 2557702 (E.D. Cal., June 21, 2010), to support this proposition.  
2 Plaintiff further argues that any privacy objections can be handled by  
3 redacting current personal information (e.g., phone number and address  
4 on a CV can be redacted).

5 Defendants counter that the medical staff defendants are not  
6 designated as expert witnesses, and the education and employment  
7 history of medical witnesses are only relevant when the witness is  
8 designated as a medical expert. Defendants distinguish *Kilgore* on the  
9 bases that it is not binding authority and because it “appears to address  
10 a situation wherein the medical specialty of the medical professionals  
11 involved in the litigation was an issue, which is not so for the case at  
12 hand.” (ECF No. 99 at 3). Defendants argue that Defendant  
13 Donoghue’s medical training and experience are not relevant because  
14 Plaintiff is not claiming Defendant Donoghue was unqualified to be a  
15 nurse, but is instead claiming that he “chose to ignore Plaintiff’s serious  
16 medical needs by refusing to provide medical treatment and saying such  
17 things as Plaintiff ‘got what he deserved.’” (*Id.* at 3-4).

18 The Court finds *Kilgore* analogous and persuasive, and finds the  
19 distinctions drawn by Defendants to be unavailing. In *Kilgore*, as here,  
20 a prisoner was proceeding pro se on a § 1983 deliberate indifference  
21 claim against medical staff who allegedly failed to respond promptly to  
22 an objectively serious medical condition. *Kilgore*, No. 2:07cv2485 GEB-  
23 KJN P, 2010 WL 2557702, at \*7 (E.D. Cal. June 21, 2010). The district  
24 court granted the prisoner’s motion to compel the medical staff

1 defendants to produce their curriculum vitae, with personal information  
2 redacted, after finding that medical staff defendants in a deliberate  
3 indifference case are similarly situated to expert medical witnesses for  
4 purposes of presuming relevance of their training and experience. *Id.*  
5 Defendants have not provided any countervailing authority.

6 The Court **GRANTS** Plaintiff's motion to compel as to RFPD 1 re  
7 Defendant Donoghue, and **ORDERS** Defendant Donoghue to provide a  
8 resume or CV, if one exists, showing his medical training and  
9 experience, redacted for current personal information.

10 b. RFPD 2

11 RFPD 2 seeks "ALL documents you contend show that you  
12 provided immediate medical care to Plaintiff Heilman for his serious  
13 medical injury of a pneumothorax while you treated Heilman in the  
14 CTC at RJD (May 9-11, 2013)."

15 Defendant objects that the request assumes facts in dispute and  
16 not in evidence, and substantively responds:

17 After a diligent search of all information within his  
18 custody and control, Responding party is not aware of any  
19 documents responsive to this Request because Plaintiff was  
20 uncooperative, aggressive, and hostile to Responding Party's  
21 attempts to medical [*sic*] evaluate and treat Plaintiff.  
22 Plaintiff also repeatedly refused to be medically evaluated by  
23 Responding party after requests by Responding Part to  
24 conduct an examination in order to provide Plaintiff the  
25 proper care and treatment. Responding Party never  
observed nor heard that Plaintiff had labored breathing.  
Plaintiff also never complained to Responding Party of  
trouble breathing or labored breathing. Accordingly,

1 Responding Party did not treat Plaintiff for a pneumothorax  
2 on May 9-11, 2013.

3 (ECF No. 99 at 5).

4 In his motion, Plaintiff disputes Defendant Donoghue's portrayal  
5 of Plaintiff in the objections. Plaintiff contends this response that  
6 Defendant Donoghue was unaware of Plaintiff's labored breathing  
7 conflicts with other documents, specifically interrogatory responses and  
8 a Form 7202 Admission Assessment to the C.T.C. at the prison that was  
9 "completed by Defendant Donoghue, a competent and experienced  
10 Registered Nurse on May 9, 2013, and noted as 'ABNORMAL BREATH  
11 SOUNDS.'" (ECF No. 92 at 5; *see also* ECF No. 108). Plaintiff attaches  
12 the Form 7202 as Exhibit C and demands a supplemental response as  
13 "required to confirm the Def.'s providing Heilman medical care of any  
14 kind." (*Id.* at 5 and 36 (Exhibit C showing Admission Assessment for  
15 Plaintiff signed by "Dr. Davis" with checkmark in box next to  
16 "Abnormal breath sounds.")).

17 In their opposition, Defendant argues that he cannot produce  
18 documents that do not exist, that the remainder of Plaintiff's arguments  
19 are irrelevant to a motion to compel, and that Plaintiff is permitted to  
20 attempt to impeach Defendant with contradicting evidence at trial.

21 The Court finds that Defendant Donoghue's response that he is  
22 not aware of responsive documents after a diligent search is sufficient.  
23 Defendant's explanation for the lack of responsive documents and  
24 Plaintiff's disagreement with the accuracy of that portrayal are  
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1 irrelevant to whether responsive documents exist. Plaintiff's reliance  
2 on Exhibit C is misplaced. First, Exhibit C is signed by Dr. Davis—not  
3 Defendant Donoghue, and therefore does not support Plaintiff's  
4 contention that Exhibit C conflicts with Defendant Donoghue's response  
5 that he was unaware of Plaintiff's breathing complaint or that he was  
6 unaware of documents responsive to this request. Second, even if  
7 Exhibit C did conflict with Defendant Donoghue's response, Plaintiff  
8 already has Exhibit C, such that compelling Defendant Donoghue to  
9 produce Exhibit C is unnecessary. And, as Defendants note, Plaintiff is  
10 free to use admissible contradictory statements by Defendant for  
11 impeachment at trial. Consequently, Plaintiff's motion to compel  
12 Defendant Donoghue to produce further responses to Request for  
13 Production No. 2 is **DENIED**.

14 II. Motion to Compel Defendants Donoghue and Davis' Further  
15 Responses to Interrogatory Set 2

16 Plaintiff moves to compel further responses to the following  
17 discovery requests from Defendant Davis: Interrogatory Set 2, Nos. 2, 3  
18 and 7. (ECF No. 121 at 2 (specifying interrogatories remaining at  
19 issue)). Plaintiff moves to compel further responses to the following  
20 discovery requests from Defendant Donoghue: Interrogatory Set 2, Nos.  
21 2, 3, 4 and 6. (*Id.* at 3).

22 Plaintiff first moved to compel supplementation of Interrogatory  
23 Set 2 by Defendants in his last (October 19, 2016) motion. Plaintiff did  
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1 not move to supplement, nor attach, Defendants' responses to  
2 Interrogatory Set 2 in his initial, mooted motions.

3 In this motion, Plaintiff does not attach the interrogatories nor the  
4 Defendants' responses. Although Plaintiff attaches his meet and confer  
5 letter to Defendants, the letter only includes the requests and Plaintiff's  
6 argument in support of supplementation; Plaintiff's letter does not  
7 include the text of Defendants' response. (ECF No. 121 at 13-21).  
8 Plaintiff also attaches Defendants' responsive meet and confer letter,  
9 but Defendants' letter merely responds to Plaintiff's letter without  
10 setting forth the text of the requests or responses.

11 As a result of Plaintiff's failure to provide the Court with a copy of  
12 the responses in dispute, the Court lacks sufficient information to  
13 compel further responses. Plaintiff's motion to compel Defendants to  
14 produce further responses to Interrogatory Set 2 is **DENIED**.

15  
16 **IT IS SO ORDERED.**

17 Dated: November 14, 2016

18   
19 Hon. Mitchell D. Dembin  
20 United States Magistrate Judge