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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER, Plaintiff, v. J. HERNANDEZ, Correctional Officer, and A. MAGALLANES, Correctional Officer, Defendants.

Case No.: 18-cv-0259-CAB-MDD

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

[ECF No. 65]

I. INTRODUCTION

Plaintiff Allen Hammler (“Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, initiated this action against Defendants J. Hernandez and A. Magallanes (collectively, “Defendants”) by filing a Complaint pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 25). Presently before the Court is Plaintiff’s Motion to Compel Discovery Response, filed on April 24, 2020, *nunc pro tunc*. (ECF No. 65).

For the reasons stated herein, the Court **DENIES** Plaintiff’s motion to compel discovery responses. (ECF No. 65).

II. LEGAL STANDARD

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2 The Federal Rules of Civil Procedure authorize parties to obtain
3 discovery of “any nonprivileged matter that is relevant to any party’s claim or
4 defense and proportional to the needs of the case” Fed. R. Civ. P.
5 26(b)(1). “Information within the scope of discovery need not be admissible in
6 evidence to be discoverable.” *Id.* District Courts have broad discretion to
7 limit discovery where the discovery sought is “unreasonably cumulative or
8 duplicative, or can be obtained from some other source that is more
9 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C).

10 A party may request the production of any document within the scope of
11 Rule 26(b). Fed. R. Civ. P. 34(a). “For each item or category, the response
12 must either state that inspection and related activities will be permitted as
13 requested or state an objection to the request, including the reasons.” Fed. R.
14 Civ. P. 34(b)(2)(B). If the responding party chooses to produce responsive
15 information, rather than allow for inspection, the production must be
16 completed no later than the time specified in the request or another
17 reasonable time specified in the response. *Id.* An objection must state
18 whether any responsive materials are being withheld on the basis of that
19 objection. Fed. R. Civ. P. 34(b)(2)(C). An objection to part of a request must
20 specify the part and permit inspection or production of the rest. *Id.* The
21 responding party is responsible for all items in “the responding party’s
22 possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). Actual possession,
23 custody or control is not required. Rather, “[a] party may be ordered to
24 produce a document in the possession of a non-party entity if that party has a
25 legal right to obtain the document or has control over the entity who is in
26 possession of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620
27 (N.D. Cal. 1995). A party propounding discovery may seek an order

1 compelling disclosure when the opposing party fails to respond, or contains
2 unfounded objections, to discovery requests. Fed. R. Civ. P. 37(a)(3)(B).

3 **III. DISCUSSION**

4 Plaintiff's motion does not specify which discovery requests are at issue,
5 and instead asks for "all requested evidence" from Set Two, along with any
6 "omitted discovery" from Defendants' responses. (ECF No. 65 at 1).

7 Defendants oppose Plaintiff's motion for its untimeliness along with
8 Plaintiff's failure to meet the burden of proof under Federal Rule of Civil
9 Procedure 37. (ECF No. 69). Regardless of this, and out of an abundance of
10 caution, Defendants addressed each discovery request in Plaintiff's Request
11 for Production, Set Two. (*See Id.*).

12 **1. Timeliness**

13 As a threshold issue, Defendants assert that Plaintiff's Request for
14 Production, Set Two, was untimely because it was served less than 33 days
15 before the close of discovery. (ECF No. 69 at 2). Although the Court must
16 construe pleadings liberally, "[p]ro se litigants must follow the same rules of
17 procedure that govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th
18 Cir. 1987), overruled on other grounds by *Lacey v Maricopa Cnty.*, 693 F.3d
19 896 (9th Cir. 2012) (en banc). Courts, however, have "a duty to ensure that
20 pro se litigants do not lose their right to a hearing on the merits of their claim
21 due to ignorance of technical procedural requirements." *Balistreri v. Pacifica*
22 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990), overruled on other grounds by
23 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). "[S]trict time limits . . .
24 ought not to be insisted upon' where restraints resulting from a pro se
25 prisoner plaintiff's incarceration prevent timely compliance with court
26 deadlines." *Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987) (citing
27 *Tarantino v. Eggers*, 380 F.2d 465, 468 (9th Cir. 1967)).

1 The Court waives the timeliness requirement in this instance because
2 of Plaintiff's status as a prisoner proceeding *pro se*. Accordingly, the Court
3 overrules Defendants' objection to timeliness.

4 **2. Request for Production, Set Two**

5 Plaintiff's motion requests Defendants to produce all evidence from his
6 Request for Production ("RFP"), Set Two, along with any omitted evidence
7 from their response dated March 20, 2020. (ECF No. 65 at 1). Plaintiff
8 supports his request by merely alleging that Defendants have not been
9 forthcoming. (*Id.*). He contends that Defendants are intentionally delaying
10 the production of documents, hindering his ability to timely review and
11 prepare his case. (*See Id.* at 2).

12 On May 20, 2020, Defendants provided a detailed Response in
13 Opposition to Plaintiff's motion. (ECF No. 69). Defendants contend their
14 response was made in good faith and assert that any delay in production due
15 to the COVID-19 pandemic has not prejudiced Plaintiff due to the extension
16 of discovery deadlines. (ECF No. 69-1).

17 On March 03, 2020, Defendants received Plaintiff's RFP, Set Two.
18 (ECF No. 69-1 at 2). Plaintiff's RFP propounded 14 requests, numbered 14
19 through 28. (*See Id.* at 7-20). On March 20, 2020, Defendants responded to
20 Plaintiff's RFP, Set Two, by objecting and providing substantive responses
21 where applicable. (*Id.*). Due to direct impact of COVID-19 on prison
22 operations within the California Department of Corrections and
23 Rehabilitation, Defendants were unable to explicitly reply to the existence of
24 certain responsive documents. (*Id.* at 2) [Declaration of Deputy A.G.
25 Cassandra J. Shryock]. In light of this, through continued communication
26 with Richard J. Donovan Correctional Facility ("RJD"), Defendants were able
27 to supplement their initial reply to provide substantive responses to

1 Petitioners RFP. (*Id.* at 2-4, and 21-34). Specifically, on April 24, May 7, and
2 May 18, 2020, Defendants supplemented their responses to unequivocally
3 and substantively reply to each unanswered request as responsive documents
4 were located by RJD staff. (*Id.*).

5 Although Defendants were unable to fully and unequivocally respond to
6 the initial request, their efforts have not been discounted. Defendants have
7 taken thorough measures to ensure responsive documents have been located
8 at RJD and provided them to Plaintiff.

9 Prior to Defendants' supplemental responses, on April 21, 2020, *nunc*
10 *pro tunc*, Plaintiff filed this motion requesting "omitted" responses which
11 have subsequently been provided by Defendants in their supplemental
12 responses. Accordingly, Plaintiff's motion to compel the omitted responses is
13 **DENIED** as moot. Plaintiff also requests that Defendants provide "all the
14 requested evidence" in his RFP, set two. However, plaintiff does not point to
15 or cite any deficiencies in Defendants' responses. Let alone, Plaintiff's motion
16 is the first time Defendants were made aware of any dissatisfaction to their
17 responses. The Court cannot make assumptions on its own behalf as to
18 which requests Plaintiff believes are lacking. Defendants made significant
19 efforts to respond to each request. Therefore, the Court **DENIES** Plaintiff's
20 motion for further response.

21 **IV. CONCLUSION**

22 Based on the foregoing, the Court **DENIES** Plaintiff's motion to compel
23 discovery response. (ECF No. 65).

24 Dated: June 22, 2020

25 

26 Hon. Mitchell D. Dembin
27 United States Magistrate Judge