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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE G. AMEZQUITA,  
Plaintiff,  
v.  
CORRECTIONAL OFFICER  
D. HOUGH, et al.,  
Defendants.

Case No.: 19cv1461-AJB(KSC)

**ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL  
DISCOVERY [Doc. No. 29.]**

Plaintiff is proceeding *pro se* and *in forma pauperis* (IFP) in this civil rights action filed pursuant to Title 42, United State Code, Section 1983, alleging defendants violated his constitutional rights under the Eighth Amendment when they deliberately failed to protect him from a substantial risk of serious harm while he was housed at the R. J. Donovan Correction Facility (RJD) in 2018. [Doc. No. 1.] The Court's record indicates plaintiff is currently housed at Salinas State Prison.

Before the Court is plaintiff's Motion to Compel Discovery [Doc. No. 29] and defendant's Opposition thereto [Doc. No. 38]. In the Motion to Compel, plaintiff seeks an order requiring defendants to provide him with further responses to his First and Second Sets of Requests for Production of Documents. For the reasons outlined more fully below, the Court finds that plaintiff's Motion to Compel must be DENIED.

1 However, the Court directs defendants to provide plaintiff with a supplemental response  
2 to Document Request No. 2 (Set One), unless they have already done so.

3 **Background**

4 On October 18, 2018, while he was incarcerated at RJD, assigned to an  
5 administrative segregation unit, and suffering from suicidal ideations, paranoid delusions,  
6 and severe claustrophobia, plaintiff claims he appeared before an Institutional  
7 Classification Committee (“ICC”), which included Associate Warden Doe 2. [Doc.  
8 No. 1, at p. 3 ¶¶ 1-3.] During the ICC hearing, plaintiff alleges he refused a transfer to  
9 RJD C-Yard Level 4 housing and repeatedly informed Associate Warden Doe 2 that he  
10 was “putting [plaintiff’s] life in danger by placing [him] in C-Yard.” [Id. at p. 8 ¶ 4.]  
11 But Doe 2 replied: “I don’t care,” and “do what you gotta do.” [Id. at pp. 3, 8 ¶ 3.]

12 After the ICC hearing, plaintiff claims he was escorted back to his cell by C/Os  
13 Hough and Downs. [Doc. No. 1, at p. 8 ¶ 4.] Plaintiff “felt like he would rather die right  
14 then than get stabbed on C Yard,” and told Hough and Downs that he was feeling  
15 suicidal. [Id.] He claims Hough and Downs laughed and encouraged him repeatedly to  
16 “go ahead and kill himself.” [Id. ¶ 5.] Left in his cell in an “agitated state,” plaintiff  
17 “began tearing at the mattress in order to fashion a noose,” but instead “discovered a  
18 large blade secreted in the mattress,” which he used to slit his right wrist. [Id. ¶ 6.] He  
19 started bleeding profusely, began to feel “woozy,” and was eventually discovered by  
20 unidentified correctional officers who transported him via ambulance to the medical  
21 clinic where his arm was surgically taped to prevent further bleeding, and where he was  
22 placed in a mental health crisis bed. [Id. ¶¶ 6-7, 9.] Plaintiff contends neither C/O Hough  
23 nor C/O Downs “checked back on [him]” after he expressed his suicidal intentions, and  
24 “never notified the mental health staff about his state of emotional distress.” [Id. ¶ 7.] He  
25 further claims Warden Doe 1 and Sergeant Doe 3 both failed to adequately train and  
26 supervise custody staff, failed to investigate the incident, and failed to discipline their  
27 subordinates. [Id. at 4-5, 11-12 ¶¶ 19-35.]

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1 Plaintiff's claims against Warden Doe 1 and Sergeant Doe 3 were dismissed *sua*  
2 *sponte* at the time of initial screening, because the Complaint failed to state viable claims  
3 against them under the Eighth Amendment. At this time, the only remaining causes of  
4 action in the Complaint are alleged violations of the Eighth Amendment by:

5 (1) Associate Warden Doe 2, for failure to protect plaintiff from an allegedly dangerous  
6 placement in C-Yard during an ICC hearing on October 18, 2018; and (2) C/O Hough  
7 and C/O Downs for failure to protect plaintiff's health and safety when they returned  
8 plaintiff to his cell after the ICC hearing on October 18, 2018. [Doc. No. 3, at pp. 7-9.]  
9 Warden Doe 2 has not been identified and is not a party to the action.

### 10 Discussion

11 On December 20, 2019, the Court issued a Scheduling Order in this case setting  
12 April 17, 2020 as the deadline for completing all fact discovery. [Doc. No. 9, at p. 1.]  
13 This Scheduling Order also states as follows:

14 'Completed' means that all discovery under Rules 30-36 of the Federal  
15 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be  
16 initiated a sufficient period of time in advance of the cut-off date, so that it  
17 may be completed by the cut-off date, taking into account the times for  
18 service, notice and response as set forth in the Federal Rules of Civil  
19 Procedure. Counsel must promptly and in good faith meet and confer  
20 regarding all discovery disputes in compliance with Local Rule 26.1.a. All  
21 discovery motions must be filed within 30 days of the service of an  
22 objection, answer or response which becomes the subject of dispute or the  
23 passage of a discovery due date without response or production, and only  
24 after counsel have met and conferred and have reached impasse regarding  
25 the issue. **A failure to comply in this regard will result in a waiver of a  
26 party's discovery issue. Absent an order of the court, no stipulation  
27 continuing or altering this requirement will be recognized by the court.**

28 [Doc. No. 9, at p. 1-2.]

On January 27, 2020, plaintiff served defendants with Requests for Production of  
Documents (Set One). Defendants served plaintiff with responses on March 2, 2020.  
However, on March 16, 2020, defense counsel states in a Declaration that he received a

1 letter from plaintiff stating he had not received defendants’ responses. Defense counsel  
2 then instructed his secretary to re-mail the responses to plaintiff on March 16, 2020.  
3 According to defense counsel, plaintiff did not otherwise seek to meet and confer when  
4 he received defendants’ discovery responses. [Doc. No. 38, at p. 19.]

5 Plaintiff submitted an opposing Declaration stating he did request a meet and confer  
6 but did not receive a reply from defendants. [Doc. No. 29, at p. 21.] In support of this  
7 statement, plaintiff submitted a copy of a letter to defense counsel dated March 5, 2020  
8 advising he had not yet received defendants’ responses to his document requests. This  
9 letter does say “it seems the time is ripe for a meet and confer,” but this is not enough to  
10 satisfy the meet and confer requirement, because it was clearly made before plaintiff  
11 received defendants’ discovery responses. [Doc. No. 29, at p. 18.]

12 Plaintiff’s Declaration also states as follows: “I have attempted to get discovery  
13 materials from the defendants and they are stonewalling me.” [Doc. No. 29, at p. 21.]  
14 However, based on a review of defendants’ responses [Doc. No. 38, at pp. 8-18], it is  
15 apparent to the Court that defense counsel had legitimate reasons for objecting to  
16 plaintiff’s document requests, because they are overly broad and seek production of  
17 documents that are not relevant to the remaining claims in the Complaint. At least some  
18 of these objections might have been resolved if plaintiff met and conferred with defense  
19 counsel *after* receiving defendants’ responses. Therefore, the Court finds that plaintiff’s  
20 Motion to Compel should be denied for failure to satisfy the meet and confer requirement  
21 set forth in the Scheduling Order.

22 After receiving defendants’ responses in mid to late March 2020, plaintiff did not  
23 send his Motion to Compel to the Court until sometime in early June 2020, which is  
24 clearly beyond the 30-day deadline outlined in the Scheduling Order.<sup>1</sup> [Doc. No. 9, at  
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28 <sup>1</sup> Plaintiff’s Motion was received by the Court on June 22, 2020 and filed in the  
Court’s record on June 23, 2020.

1 pp. 1-2.] Therefore, the Court also finds that plaintiff’s Motion to Compel must be denied  
2 because it was not filed in a timely manner as required by the Scheduling Order.

3        Additionally, plaintiff would not be entitled to an order by the Court compelling  
4 defendants to provide further responses to his Requests for Production of Documents (Set  
5 One) even if he satisfied all the deadlines in the Scheduling Order. Defendants provided  
6 plaintiff with adequate responses to these document requests. All but one of plaintiff’s  
7 document requests are overly broad and seek production of official documents that bear  
8 no relevance to the claims remaining in the Complaint. In the Declaration plaintiff filed  
9 in support of his Motion to Compel, plaintiff explains he is attempting to obtain discovery  
10 materials to show “a pattern of illegal conduct” by correctional officers at RJD, including  
11 corruption, intimidation, and mistreatment of inmates. However, the only viable claims  
12 remaining in plaintiff’s Complaint do not involve a pattern of illegal conduct by  
13 correctional officers.<sup>2</sup> Rather, the only remaining viable claims in plaintiff’s Complaint  
14 are that two correctional officers violated plaintiff’s constitutional rights, because they  
15 were deliberately indifferent to his health and safety during a single incident on  
16 October 18, 2018. In short, plaintiff’s allegations do not justify production of a sweeping  
17 assortment of official documents that have nothing to do with the remaining claims in his  
18 Complaint.

19        On the other hand, the Court notes that plaintiff’s Document Request No. 2 (Set  
20 One) does legitimately seek production of “[a]ll written statements and reports, original  
21 or copies, identifiable as reports about the incidents of 10/18/2018 made by CDCR  
22 employees and/or witnesses.” [Doc. No. 38, at p. 9; Doc. No. 29, at p. 1.] Defendants  
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25 <sup>2</sup> As noted above, there is another claim in the Complaint against Associate Warden  
26 Doe 2 for failure to protect plaintiff from an allegedly dangerous placement in C-Yard.  
27 [Doc. No. 1, at pp. 3, 8.] However, Associate Warden Doe 2 has not been identified and  
28 is not a party to the action. Even considering this additional claim, the allegations in the  
Complaint are not indicative of a pattern of illegal conduct that would justify production  
of the broad range of documents plaintiff has requested.

1 provided plaintiff with the following response to this request: “See attached. Discovery  
2 is continuing, and defendants continue to search the records of [RJD] and will produce  
3 additional responsive documents if and when they are discovered.” [Doc. No. 38, at p. 9.]  
4 Since discovery in this case is now closed, the Court notes defendants’ response is  
5 incomplete, and plaintiff is entitled to a supplemental response to Document Request  
6 No. 2 indicating whether all responsive documents have been produced and whether any  
7 responsive documents are being withheld as privileged or confidential. *See* Fed.R.Civ.P  
8 26(e). Accordingly, to the extent they have not already done so, the Court finds that  
9 defendants must provide plaintiff with a supplemental response to Document Request  
10 No. 2. In all other respects, the Court finds that plaintiff’s request for an order by the  
11 Court compelling defendants to provide further responses to his Requests for Production  
12 of Documents (Set One) must also be denied, because these requests seek production of  
13 documents that fall outside the definition of relevance in Federal Rule of Civil Procedure  
14 26(b)(1).<sup>3</sup>

15 Along with his Motion to Compel, plaintiff also submitted a copy of his Requests  
16 for Production of Documents (Set Two). [Doc. No. 29, at pp. 13-17.] As to Set Two,  
17 plaintiff’s Declaration states he “requested a meet and confer with the defendants but  
18 have received no reply.” [Doc. No. 29, at p. 21.] Although the copy of Set Two submitted  
19 by plaintiff indicates he signed this document on March 23, 2020, defendants submitted  
20 contrary evidence. Exhibit C to defendants’ Opposition is a copy of plaintiff’s Request  
21 for Production of Documents (Set Two), which was signed by plaintiff on April 21, 2020,  
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24 <sup>3</sup> As to relevance, Rule 26(b)(1) provides as follows: “Parties may obtain discovery  
25 regarding any nonprivileged matter that is relevant to any party's claim or defense and  
26 proportional to the needs of the case, considering the importance of the issues at stake in  
27 the action, the amount in controversy, the parties' relative access to relevant information,  
28 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.” Fed. R. Civ. P. 26(b)(1).

1 after the discovery deadline of April 17, 2020. [Doc. No. 38-1, at p. 144.] An attached  
2 proof of service and mailing envelope also show that plaintiff served defendants with his  
3 Requests for Production of Documents (Set Two) on April 21, 2020, after the April 17,  
4 2020 discovery cutoff. [Doc. No. 38-1, at pp. 145-148.] Although they were not  
5 obligated to do so, defendants responded to plaintiff’s Second Set of requests with  
6 objections advising plaintiff they were not served in a timely manner as discovery closed  
7 on April 17, 2020. [Doc. No. 38, at p. 7; Doc. No. 38-1, at pp. 150-160.]

8 As noted above, the Scheduling Order states that discovery “must be initiated a  
9 sufficient period of time in advance of the cut-off date, so that it may be completed by  
10 the cut-off date, taking into account the times for service, notice and response as set forth  
11 in the Federal Rules of Civil Procedure.” [Doc. No. 9, at pp. 1-2.] Accordingly, as to  
12 plaintiff’s second set of Requests for Production of Documents, the Court finds that  
13 plaintiff’s Motion to Compel must be denied, because plaintiff failed to timely serve  
14 defendants with these requests.

15 Finally, the Declaration submitted with plaintiff’s Motion to Compel requests  
16 additional time to complete discovery, stating that the outbreak of the corona virus  
17 “dramatically affected [his] ability to litigate this matter.” [Doc. No. 29, at p. 21.] Since  
18 the deadline for completing discovery was April 17, 2019, and the request was not made  
19 until the Motion to Compel was filed on June 23, 2020, plaintiff is really seeking to re-  
20 open discovery.

21 A party seeking to modify a scheduling order must show “good cause.” Fed. R.  
22 Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence  
23 of the party seeking the amendment [of a scheduling order]. The district court may  
24 modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the  
25 party seeking the extension.’ Fed.R.Civ.P. 16 advisory committee's notes (1983  
26 amendment).” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).  
27 To justify re-opening discovery, the moving party must show it “diligently pursued its  
28 previous discovery opportunities. . . .” *Panatronic USA v. AT&T Corp.*, 287 F.3d 840,

1 846 (9th Cir. 2002). A request to re-open discovery may be denied if the parties already  
2 “had ample opportunity to conduct discovery.” *Id.*

3 The only reason plaintiff offers for his request to re-open discovery is that the  
4 outbreak of the corona virus “has dramatically affected [his] ability to litigate this matter.”  
5 [Doc. No. 29, at p. 21.] However, the Court notes that discovery in this case began in  
6 late December 2019 and was supposed to be completed by April 17, 2020. [Doc. No. 9,  
7 at 1.] Thus, discovery was nearly over in this case when the public health emergency  
8 began to interfere with prison operations. Without more, plaintiff has not shown he was  
9 diligent in completing discovery by the April 17, 2020 deadline. Therefore, the Court  
10 finds that plaintiff’s request to re-open discovery must be denied.

11 **Conclusion**

12 Based on the foregoing, plaintiff’s Motion to Compel is DENIED. Plaintiff’s  
13 request to re-open discovery is also DENIED. To the extent they have not already done  
14 so, defendants are directed to provide plaintiff with a supplemental response to  
15 Document Request No. 2 indicating whether all responsive documents have been  
16 produced and whether any responsive documents are being withheld as privileged or  
17 confidential.

18 IT IS SO ORDERED.

19 Dated: August 26, 2020

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21 Hon. Karen S. Crawford  
22 United States Magistrate Judge