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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABONILICO CARROLL,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No.: 19-cv-2126-BAS-KSC

**ORDER DENYING MOTION TO
COMPEL**

[Doc. No. 82]

Plaintiff Abonilico Carroll (“plaintiff”) is proceeding *pro se* and *in forma pauperis* in this action under 42 U.S.C. § 1983. Presently before the Court is plaintiff’s “Motion to Compel Discovery” (the “Motion to Compel”). Doc. No. 82. Defendants oppose. Doc. No. 84. In the Motion to Compel, plaintiff seeks an order requiring defendants to produce documents responsive to his Requests for Production of Documents served on April 18, 2021. Doc. No. 82 at 1, 5. For the reasons stated below, the Motion to Compel is **DENIED**.

I. BACKGROUND

Plaintiff initiated this action in November 2019. *See* Doc. No. 1. As set forth in the operative Second Amended Complaint (the “Complaint”), plaintiff alleges that defendants

1 violated his Eighth Amendment rights when, in “blatant disregard” for his health and
2 safety, they failed to place him in appropriate housing (i.e., on the lower floor, in a lower
3 bunk) as he recovered from surgery. *See generally* Doc. No. 30. Defendants Wright and
4 Miller answered the Complaint on March 29, 2021. Doc. No. 36.

5 By order dated May 7, 2021, the Court set the pretrial schedule (the “Scheduling
6 Order”). Doc. No. 40. Among other things, the Scheduling Order instructed the parties
7 that:

8 All fact discovery shall be completed by all parties by **September 3, 2021**.
9 ... **Counsel shall promptly and in good faith meet and confer with regard**
10 **to all discovery disputes in compliance with Local Rule 26.1(a)**. The Court
11 expects counsel to make every effort to resolve all disputes without court
12 intervention through the meet and confer process. If the parties reach an
13 impasse on any discovery issue, counsel shall file an appropriate motion
14 within the time limit and procedures outlined in the undersigned magistrate
15 judge’s chambers rules. **A failure to comply in this regard will result in a**
waiver of a party’s discovery issue. Absent an order of the court, no
stipulation continuing or altering this requirement will be recognized by
the court.

16 *Id.* at 2 (emphasis in original).

17 On April 16, 2021, plaintiff filed a Notice of Change of Address, to which he
18 attached a document titled “Discovery Motion” that consisted entirely of written discovery
19 requests to defendants. *See* Doc. No. 37 at 3-5. Specifically, the document contains 12
20 Requests for Production (“RFPs”) and seven interrogatories. *See id.*

21 The Court subsequently rejected for filing other written discovery requests from
22 plaintiff (*see* Doc. Nos. 50, 52, and 64) pursuant to this District’s Civil Local Rules
23 prohibiting the filing of interrogatories, requests for admission and requests for production
24 “unless and until they are used in the proceedings.” *See* CivLR 33.1(c), 36.1(c). In
25 disposing of other motions filed by plaintiff, the Court repeatedly instructed him that he
26 was required to abide by the Federal Rules of Civil Procedure, the District’s Local Rules,
27 and the undersigned’s Chambers’ Rules, notwithstanding his status as a *pro se* litigant.
28 *See, e.g.*, Doc. Nos. 55 at 2; 60 at 2; 67 at 3.

1 On July 1, 2021, in a one-paragraph filing, plaintiff requested a conference with the
2 Court to “solve [his] discovery issues,” reporting that defendants had not produced
3 unspecified documents that he had requested from them. Doc. No. 59. The Court denied
4 plaintiff’s request without prejudice on July 2, 2021, explaining that once plaintiff had
5 served discovery requests on defendants or third parties, he must allow the recipient time
6 to respond and then meet and confer with the responding parties regarding any
7 disagreements before seeking the Court’s assistance. Doc. No. 60 at 2. As plaintiff
8 provided no information regarding the timing of the discovery at issue or the parties’ meet-
9 and-confer efforts, the Court found that its “intervention at this time is premature.” *Id.* The
10 Court further instructed plaintiff that:

11 “any future request by plaintiff for the Court’s assistance with a discovery
12 dispute must be made by motion and must include the following: (1) a copy
13 of the discovery requests at issue; (2) the date the requests were served and
14 the date the responses (if any) were received; (3) a statement by plaintiff that
15 he has met and conferred with counsel for the defense to try to resolve the
16 dispute; (4) an explanation of why plaintiff is entitled to the documents or
17 other information sought in the discovery requests, supported by citation to
18 appropriate legal authorities; and (5) if any responses to the discovery have
19 been received, an explanation of why plaintiff believes those responses are
20 not adequate.”

19 *Id.* at 2-3. The Court further advised plaintiff that any discovery motion filed by plaintiff
20 “must also comply with the Civil Local Rules.” *Id.* at 3.

21 Plaintiff thereafter moved twice for an extension of time regarding unspecified
22 “discovery disputes,” which the Court denied without prejudice for plaintiff’s failure to
23 provide enough information for the Court to determine if good cause for the requested
24 extension existed. *See* Doc. Nos. 71, 72, 76 and 77. The instant Motion to Compel
25 followed.

26 **II. DISCUSSION**

27 In his Motion to Compel, plaintiff reports that he served defendants with a Request
28 for Production of Documents on April 18, 2021. Doc. No. 82 at 1. Despite the Court’s

1 instructions, plaintiff did not attach the discovery requests at issue to his Motion to Compel.
2 Nevertheless, by comparing plaintiff’s description of the information requested with the
3 discovery requests attached to plaintiff’s Notice of Change of Address, the Court surmises
4 that plaintiff seeks to compel responses to RFPs No. 1, 2, 3, 4, 6, 7, and 9. *Compare* Doc.
5 No. 37 at 3-4 *with* Doc. No. 82 at 3, 5.

6 **A. Defendants’ Responses and Objections Were Timely**

7 Plaintiff argues that defendants should be compelled to respond to his RFPs due to
8 their “failure to respond timely.” Doc. No. 82 at 2. He asserts that he served his RFPs on
9 April 18, 2021, and that defendants responded more than 30 days later, on May 27, 2021.
10 *Id.* at 1, 2. Because the Federal Rules of Civil Procedure require a response to discovery
11 within 30 days, plaintiff asserts, the Court should deem defendants’ objections waived and
12 compel the production of responsive documents. *Id.* at 2-3. In response, defendants state
13 they were served with these requests on April 16 (not 18), 2021, “when counsel received
14 the ECF notification” of their filing. Doc. No. 84 at 5. Defendants aver they timely served
15 responses and objections on May 14, 2021 and have attached a proof of service
16 demonstrating the same. *See id.* at 5, *see also* Doc. No. 84-1 at 38 (proof of service of
17 “Defendants’ Responses to Plaintiff’s First Set of Requests for Production of Documents”
18 dated May 14, 2021). Accordingly, the Court finds defendants timely responded to
19 plaintiff’s RFPs, and have not waived their objections thereto. Plaintiff’s Motion to
20 Compel on the basis that defendants’ responses were untimely is therefore **DENIED**.

21 **B. Plaintiff Failed to Comply with the Court’s Orders and Rules**

22 Plaintiff states in his Motion to Compel that he “wrote to defendants on May 30,
23 2021” (i.e., after receiving defendants’ responses and objections to his RFPs) “in an attempt
24 to resolve the dispute informally as required by the Local Rule.” Doc. No. 84 at 1. Plaintiff
25 has not attached his May 30, 2021 letter to defendants, but defendants have submitted a
26 letter from plaintiff bearing that date. *See* Doc. No. 84-1 at 5. As defendants correctly
27 note, plaintiff’s letter does not refer to plaintiff’s initial RFPs, to defendants’ responses
28 thereto, or to any disagreement with defendants’ objections or reason why plaintiff found

1 the responses inadequate. *See id.*; *see also* Doc. No. 84 at 4. Instead, plaintiff’s letter
2 describes nine categories of documents he was “asking for,” some of which are duplicative
3 of plaintiff’s first RFPs and some of which are entirely new requests. *See* Doc. No. 84-1
4 at 5. Plaintiff wrote, “If you can[’]t produce this simple information I have to ask the
5 Judge for a conference to get this discovery thing handled, [or] file a motion ... Please let’s
6 resolve this discovery dispute I’m not asking for much this is reasonable!” *Id.* Defendants
7 interpreted plaintiff’s May 30, 2021 letter as a second set of RFPs and served plaintiff with
8 responses and objections to them on July 2, 2021. *See* Doc. No. 84-1 at 41-209.

9 Before filing his Motion to Compel, plaintiff was required to confer with defendants
10 regarding their discovery disputes. *See* Fed. R. Civ. P. 37(a)(1); CivLR 26.1.a; Chambers’
11 Rules and Civil Pretrial Procedures for the Honorable Karen S. Crawford (hereafter
12 “Chambers’ Rules”), § VIII.A. The Court finds that plaintiff’s May 30, 2021 letter did not
13 satisfy the requirement that he meet and confer with defendants, as he simply reiterated his
14 discovery demands (and added some new requests) with an ultimatum to defendants to
15 provide responses or face a discovery motion. *See Shuffle Master, Inc. v. Progressive*
16 *Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996) (holding that a good faith meet and confer
17 effort requires the parties to “engage in a two-way communication ... to meaningfully
18 discuss each contested discovery dispute in a genuine effort to avoid judicial intervention”).

19 Furthermore, after receiving defendants’ July 2, 2021 response to his letter, plaintiff
20 appears to have let the matter drop until October 9, 2021, when he sent his Motion to
21 Compel to the Court. *See* Doc. No. 82 at 7. This is clearly beyond the 30-day deadline
22 outlined in the Court’s rules, and plaintiff was advised in the Scheduling Order he must
23 comply with that deadline or his discovery issue would be waived. *See* Chambers’ Rules,
24 § VIII.B.; Doc. No. 40 at 2. Plaintiff has not stated any reason in his Motion to Compel to
25 excuse his delay in bringing this discovery dispute to the Court’s attention.¹ Even
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28 ¹ Indeed, it appears that plaintiff prepared his motion on June 17, 2021, before he received
defendants’ response to his May 30, 2021 letter. *See* Doc. No. 82 at 6. One week later, he

1 assuming his previous two motions for an extension of time to bring unspecified “discovery
2 disputes” to the Court’s attention relate to the instant dispute, the Court denied both of
3 those requests for plaintiff’s failure to explain the need for additional time. *See* Doc. Nos.
4 72, 77.

5 Accordingly, the Motion to Compel is **DENIED** as untimely and for plaintiff’s
6 failure to meet and confer with defendants.

7 **C. The Requested Discovery Is Objectionable**

8 The Court further finds that even if plaintiff had appropriately met and conferred
9 with defendants and filed his Motion to Compel within the Court’s deadlines, he would
10 not be entitled to an order by the Court compelling defendants to provide further
11 responses to RFPs No. 1, 2, 3, 4, 6, 7, and 9.

12 Broadly speaking, the document requests at issue fall into two categories. In the
13 first category are RFPs No. 2-4, 6-7, and 9, which are requests for policies and procedures
14 applicable to inmates recovering from surgery and/or who need wheelchairs or other
15 accommodations. *See* Doc. No. 37 at 4; *see also* Doc. No. 82 at 3-5. Defendants objected
16 to these requests as vague, overbroad, and not proportional to the needs of the case. *See*
17 Doc. No. 84-1 at 14-18. While some of these objections could likely have been resolved
18 through a proper meet and confer, the Court generally agrees with defendants that
19 plaintiff’s sweeping requests for “any and all policies, directives, or instructions to staff”
20 regarding inmates recovering from “major surgery” or requiring the use of a wheelchair
21 for any reason were objectionably overbroad. The Court therefore rejects plaintiff’s
22 characterization of defendants’ objections as “frivolous.” Doc. No. 82 at 3.

23 Furthermore, notwithstanding their objections, defendants state that they “have
24 already produced documents to [p]laintiff that are responsive to his request for policies
25 concerning the housing of inmates in wheelchairs and for inmates returning from surgery”
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28 requested a discovery conference with the Court, which the Court denied as premature, as
described above. *See* Doc. Nos. 59, 60.

1 in response to plaintiff’s May 30, 2021 letter, which are “essentially ... the same” as the
2 documents plaintiff now seeks to compel. Doc. No. 84 at 6. The Court agrees. As
3 demonstrated by defendants’ filing, they have produced to plaintiff over 150 pages of
4 responsive documents, including CDCR’s “Remedial Plan” for inmates with disabilities,
5 CDCR’s guidelines concerning durable medical equipment (“DME”) and
6 accommodations for disabled inmates, and RJD’s operational plans concerning DME,
7 disability accommodations, and its disability placement program. *See* Doc. No. 84-1 at
8 49-209. Plaintiff does not state in his Motion to Compel why these responses are
9 insufficient, and the Court does not find them to be. Plaintiff’s Motion to Compel further
10 responses to RFPs No. 2-4, 6-7, and 9 is therefore **DENIED** on this alternative basis.

11 In the second category is RFP No. 1, which seeks “any and all grievances,
12 complaints or other documents received against defendants[.]” *See* Doc. No. 37 at 3.
13 Plaintiff states that documents demonstrating defendants’ “past mistreatment of inmates”
14 is relevant because such evidence would “show a pattern the defendants continuously
15 perform this type of misconduct.” Doc. No. 82 at 3, 5. However, plaintiff asserts in his
16 Complaint that defendants were deliberately indifferent to a risk to his health and safety
17 by failing to appropriately accommodate him in a lower bunk in a lower-tier cell while
18 he was recovering from surgery, and that because of this indifference he fell and was
19 injured in a single incident in August 2016. *See generally* Doc. No. 30. These claims
20 relate only to defendants’ treatment of or actions toward plaintiff, and as such their
21 treatment of other inmates is not relevant to those claims. *See* Fed. R. Civ. P. 26(b)(1)
22 (limiting the scope of discovery to “nonprivileged matter that is relevant to any party’s
23 claim or defense and proportional to the needs of the case”). In short, plaintiff’s
24 allegations do not justify production of a sweeping assortment of official documents that
25 have nothing to do with the claims asserted in his Complaint. Plaintiff’s Motion to
26 Compel further responses to RFP No. 1 is accordingly **DENIED** on this alternative basis.

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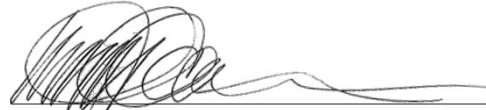
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ORDER

For the reasons stated above, plaintiff's Motion to Compel [Doc. No. 82] is **DENIED.**

IT IS SO ORDERED.

Dated: November 10, 2021



Hon. Karen S. Crawford
United States Magistrate Judge

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