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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN WILLIAMS,

Plaintiff,

No. CIV S-06-2381 FCD CKD P

vs.

DIAL, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's May 4, 2011 motion to compel defendant Scovel to answer interrogatories, to which Scovel filed an opposition on May 26, 2011, after which plaintiff filed a reply on June 6, 2011. Also pending is plaintiff's July 22, 2011 motion for production of documents, to which defendants have not responded. Pursuant to the analysis below, the court will partially grant, and partially deny, both of these motions.

In this action, which proceeds against defendants Scovel and Dial on the Second Amended Complaint (SAC) filed on March 17, 2008, plaintiff alleges that Dial, a physician, and Scovel, a nurse, at High Desert State Prison, were deliberately indifferent to plaintiff's serious medical needs and denied him adequate medical treatment for prostate cancer. Service was ordered on defendant Dial on August 9, 2011 (Dkt. No. 117), and he has not yet responded to the

1 SAC (see Dkt. No.139), so the instant discovery dispute concerns only defendant Scovel.

2 I. Interrogatories

3 Plaintiff by his motion avers that defendant Scovel's responses to his First
4 Request for Interrogatories (Dkt. No. 109, Attachment 1 ("Responses")) are deficient and seeks
5 to compel supplemental responses to some or all of them. Plaintiff propounded 25
6 interrogatories in this request, and because it is not clear from his motion whether plaintiff is
7 satisfied with Scovel's responses to any of them, the court will address all of them here.

8 Under the Federal Rules of Civil Procedure, a responding party is obligated to
9 respond to interrogatories to the fullest extent possible, Fed. R. Civ. P. 33(b)(3), and any
10 objections must be stated with specificity, Fed. R. Civ. P. 33(b)(4). The responding party shall
11 use common sense and reason. E.g., Collins v. Wal-Mart Stores, Inc., No. 06-2466-CM-DJW,
12 2008 WL 1924935, *8 (D. Kan. Apr.30, 2008). A responding party is not generally required to
13 conduct extensive research in order to answer an interrogatory, but a reasonable effort to respond
14 must be made. L.H. v. Schwarzenegger, No. S-06-2042 LKK GGH, 2007 WL 2781132, *2
15 (E.D.Cal. Sep. 21, 2007). Further, the responding party has a duty to supplement any responses
16 if the information sought is later obtained or the response provided needs correction. Fed. R.
17 Civ. P. 26(e)(1)(A).

18 In his opposition, defendant Scovel argues that, as to Interrogatory Nos. 1-3, 5-13,
19 and 17-23, plaintiff's motion should be denied "because he failed to give notice to Defendants, or
20 the Court, as to how Defendants' responses are deficient." (Dkt. No. 110 ("Opp.") at 2.)

21 Defendant has a point. See Cal. Rules of Court, Rule 3.1345(c) (party moving to
22 compel discovery responses must include reasons why further answers should be ordered: legal
23 or factual arguments why the answers given were incomplete or nonresponsive, or the objections
24 invalid). As to Interrogatory Nos. 3, 7, 8, 9, and 10, plaintiff complains that defendant's
25 responses are "laced with ambiguity" (Dkt. No. 109 ("Mtn.") at 2). He also asserts that "all his
26 questions are posed to show that plaintiff was in great need of pain relief." (Id.) Plaintiff offers

1 no further argument as to why these responses, or any others specified by defendant above, are
2 inadequate under the Federal Rules of Civil Procedure. Having carefully reviewed defendant's
3 responses to these interrogatories, the court concludes that defendant made reasonable attempts
4 to respond to the questions posed. For example, in Interrogatory No. 20, plaintiff asks: "Does a
5 prescription from outside the institution count." While objecting that this request is nonsensical,
6 vague and ambiguous as to time and scope and as to "count," defendant Scovel responds that
7 "prescriptions from non-CDCR doctors are considered recommendations and physicians at CTC
8 must re-write prescriptions from outside doctors." (Responses at 7.) Other responses to these
9 interrogatories make similar objections but also provide brief but informative answers. Thus, the
10 court will deny plaintiff's motion as to these interrogatories.

11 Plaintiff also argues, in more detail, that defendant's responses to the following
12 interrogatories are deficient:

13 Interrogatory No. 4:

14 "In your professional perspective was C.T.C. efficient in it's care
15 of Patient Plaintiff at his admittance."

16 Response to Interrogatory No. 4:

17 "Defendant objects to this request on the grounds that it is
18 nonsensical, vague and ambiguous as to time and scope and as to
19 "professional perspective," "efficient," "care," and "admittance,"
and inappropriately seeks an expert opinion. For these reasons,
Defendant cannot answer this interrogatory."

20 (Responses at 2.) Plaintiff argues that defendant "must answer [this request] with specificity,
21 which goes to understanding the plaintiff's condition at the time specific. . . . As to (4), defendant
22 [must?] answer, or be declared not an expert, or professional in his respective position." (Mtn. at
23 3.) Defendant Scovel responds that "he is neither an expert witness nor a doctor, so he cannot
24 give an expert opinion. Further, Plaintiff does not explain what he means regarding C.T.C.'s
25 care being efficient. Because of this ambiguity, Defendant Scovel can only speculate as to what
26 Plaintiff means, which he is not required to do [] under the rules of discovery." (Opp. at 3.) The

1 court will sustain defendant's objection as to vagueness and ambiguity, and will deny plaintiff's
2 motion as to Interrogatory No. 4.¹

3 Interrogatory No. 14:

4 "In your Professional/Perspective absent any arrogance, is it smart
5 to refuse pain medication the day after two major surgery's.

6 A) If yes, explain . . .

7 B) If no, explain . . .

8 Response to Interrogatory No. 14:

9 "Defendant objects to this request on the grounds that it is
10 compound, nonsensical, argumentative, vague and ambiguous as to
11 time and scope and as to "Professional/Perspective," "absent any
12 arrogance," "smart," "refuse," and "major surgery's." [C]alls for
13 speculation, and presents an incomplete hypothetical. Without
14 waiving these objections, this interrogatory is so vague that
15 Defendant is unable to answer it.

16 (Responses at 5.) Here, plaintiff is essentially asking for a medical opinion based on a bare-
17 bones hypothetical, absent the patient-specific facts that would form the basis of an actual
18 medical opinion. Moreover, as noted above, defendant Scovel is not a physician and does not
19 claim to be a medical expert. The court will sustain defendant's objection as to vagueness and
20 deny plaintiff's motion as to Interrogatory No. 4.

21 Plaintiff also objects to defendant's refusal to answer Interrogatory No. 15
22 ("Explain the advantages of tylenol and codeine and it's disadvantages."). (Responses at 5-6.)
23 For the same reasons as above, the court will sustain defendant's objection that "this
24 interrogatory is so vague that Defendant is unable to answer it." (Id.)

25 Similarly, plaintiff objects to defendant's refusal to answer Interrogatory No. 16
26 ("Explain the advantages of naproxen, and it's disadvantages.") For the same reasons as above,
the court will sustain defendant's objection that "this interrogatory is so vague that Defendant is

¹ In his reply, plaintiff offers "rephrased" Interrogatory Nos. 4, 14, 15, 16, and 18. (Dkt. No. 111 at 3-4.) As it would be unfair to allow plaintiff to effectively serve new interrogatories on defendant Scovel long after the discovery deadline has passed, the court will only consider those interrogatories originally propounded by plaintiff.

1 unable to answer it.” (Id.)

2 Interrogatory No. 24:

3 “What proof do you have to support your affirmative defense No.
4 5?”

5 Response to Interrogatory No. 24:

6 “Defendant objects to this interrogatory on the grounds that it is in
7 excess of the twenty-five interrogatories, including subparts,
8 permitted by Rule 33, of the Federal Rules of Civil Procedure, and
9 Plaintiff has failed to obtain permission of the Court to propound
10 additional interrogatories.”

11 (Responses at 8.) The numerical limit on interrogatories is designed to provide judicial scrutiny
12 before parties make potentially excessive use of this discovery method. Adv. Comm. Notes on
13 1993 Amendments to Federal Rule of Civil Procedure (“Rule”) 33(a)(1). Here, given that
14 plaintiff is proceeding pro se, the court will permit plaintiff to propound Interrogatory No. 24
15 even if it brings the total number of interrogatories to more than twenty-five discrete subparts.
16 This does not constitute an excessive use of interrogatories, in the court’s view. Therefore, the
17 court will grant plaintiff’s motion to compel as to Interrogatory No. 25. See Rule 33(a)(1)
18 (“Leave to serve additional interrogatories may be granted to the extent consistent with Rule
19 26(b)(2).”); Rule 26(e)(1)(B) “A party who has made a disclosure under Rule 26(a) – or who has
20 responded to an interrogatory, request for production, or request for admission – must
21 supplement or correct its disclosure or request . . . as ordered by the court.”)

22 Interrogatory No. 25:

23 “What is the policy on outside services once determined the need is
24 critical.”

25 Response to Interrogatory No. 25:

26 “Defendant objects to this interrogatory on the grounds that it is in
excess of the twenty-five interrogatories, including subparts,
permitted by Rule 33, of the Federal Rules of Civil Procedure, and
Plaintiff has failed to obtain permission of the Court to propound
additional interrogatories.”

(Responses at 8-9.)

1 This request is inartfully drafted and somewhat vague. However, for the reasons discussed as to
2 Interrogatory No. 24, the court will grant plaintiff's motion as to Interrogatory No. 25 to the
3 following extent: Defendant is to set forth all CDCR and/or HDSP policies concerning how
4 prison medical staff determine whether an inmate requires outside medical services.

5 III. Documents

6 On July 22, 2011, plaintiff filed a short motion "for production of endorsed set of
7 first interrogatories. Amended portions thereof." (Dkt. No. 115.) He requests that "the
8 transcripts of the interrogatory taken against plaintiff on June 10, 2011" be forwarded to plaintiff
9 at his current address. The court assumes that plaintiff is referring to the transcript of a June 10,
10 2011 deposition that was apparently taken of plaintiff by defendants. (See Dkt. No. 123-3 at 15.)
11 To assist plaintiff in proceeding while incarcerated and pro se, the court will order defendants to
12 send plaintiff a complete transcript of this deposition at his current address if defendants have not
13 already done so.

14 Finding no other colorable request in this three-page motion, the court will
15 otherwise deny the motion.

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiff's motion to compel defendant to answer interrogatories (Dkt. No.
18 109), filed May 4, 2011, is granted in part and denied in part, as follows:

19 (a) denied as to Interrogatories 1 through 23;

20 (b) granted as to Interrogatory No. 24;

21 (c) granted as to Interrogatory No. 25 to the following extent: Defendant is to set
22 forth all CDCR and/or HDSP policies concerning how prison medical staff determine whether an
23 inmate requires outside medical services.

24 2. As to those requests for which plaintiff's motion has been granted, defendant
25 will have twenty-one (21) days to serve his supplemental responses and to file proof of service
26 thereof in this court.

1 3. Plaintiff's motion for production of documents (Dkt. No. 115), filed July 22,
2 2011, is granted to the following extent: Within twenty-one (21) days, defendants shall mail
3 plaintiff a complete transcript of defendants' June 10, 2011 deposition of plaintiff, unless
4 defendants have already done so, in which case they shall so notify the court. This motion is in
5 all other respects denied.

6 Dated: November 29, 2011

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CAROLYN K. DELANEY
9 UNITED STATES MAGISTRATE JUDGE

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