

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT MITCHELL,  
Plaintiff,  
v.  
T. FELKER, et al.,  
Defendants.

CASE NO. CV 08-1196RAJ  
ORDER ON MOTIONS

**I. INTRODUCTION**

This matter comes before the court on Plaintiff Robert Mitchell’s motion (Dkt. # 26), to compel discovery responses, his motion (Dkt. # 28) for sanctions because Defendants failed to respond timely to the motion to compel, and his unopposed motion (Dkt. # 43) for service of his amended complaint<sup>1</sup> on two newly added Defendants. For the reasons stated below, the court GRANTS the motion to compel, DENIES the motion for sanctions, GRANTS the motion for service, and makes additional orders to begin bringing this action to a resolution.

**II. DISCUSSION**

Mr. Mitchell is incarcerated at the California State Penitentiary in Sacramento (“CSP-Sacramento”), and has been since December 2007. Prior to that, he was incarcerated at High Desert State Prison (“HDSP”). He is African-American. He

<sup>1</sup> The court granted Mr. Mitchell leave to amend his complaint in an August 9, 2010 order. Dkt. # 42.

1 contends that while at HDSP, he and all other African-American inmates were placed on  
2 lockdown status for fourteen months, which included the loss of daily exercise time. Mr.  
3 Mitchell contends that he requires daily exercise to recuperate from arthroscopic surgery,  
4 and that he was unable to do so during the lockdown.

5 Mr. Mitchell filed at least one administrative complaint regarding the lockdown.  
6 He also apparently filed a state-court petition for a writ of habeas corpus. In response to  
7 these actions as well as several prior lawsuits Mr. Mitchell has filed against prison  
8 officials, he contends that prison officials retaliated against him. Among other things,  
9 they allegedly increased his security housing level, and transferred him to CSP-  
10 Sacramento, which is a maximum security prison. He contends that officials transferred  
11 him to moot his habeas corpus petition and to chill the exercise of his right to file  
12 grievances and lawsuits.

13 He filed this suit in May 2008. The suit was assigned to the undersigned judge in  
14 January 2009. The court granted Mr. Mitchell in forma pauperis status in May 2009, and  
15 ordered service of his complaint on approximately 20 prison official Defendants in  
16 August 2009. On November 10, 2009, the court entered an order setting a pretrial  
17 schedule and a March 31, 2010 discovery deadline. Mr. Mitchell served four sets of  
18 discovery requests before the end of that month, comprised of a set of interrogatories and  
19 a set of requests for production of documents (“RFPs”) to Defendant Felker, and a set of  
20 interrogatories and RFPs to Defendant Tilton. The RFPs sought documents that are  
21 facially relevant to this action, including copies of policies relating to lockdowns and  
22 exercise and reports and correspondence regarding the lockdown(s) involving Mr.  
23 Mitchell. The interrogatories sought information on the same subjects.

24 In early January 2010, Defendants responded to Mr. Mitchell’s discovery. They  
25 produced no documents, and they offered no substantive response to any interrogatory.  
26 Their responses consisted entirely of objections. The objections, in turn, were wholly  
27 non-substantive, almost entirely boilerplate, and sometimes nonsensical. Mr. Mitchell’s

1 discovery requests were brief and clear; yet every objection insisted that they were vague  
2 or unintelligible. Defendants often objected that a particular request “assumes facts,”  
3 whatever that might mean. Defendants contended that Mr. Mitchell sought documents or  
4 information subject to the attorney client privilege, but did not produce a privilege log or  
5 otherwise explain that objection. In short, Defendants’ responses served only to obstruct  
6 discovery; no good faith basis for the objections is apparent.

7 Mr. Mitchell filed a motion to compel on February 17, 2010. The memorandum  
8 accompanying the motion was 70 pages long. Mr. Mitchell separately addressed every  
9 one of his discovery requests and every one of Defendants’ objections. He explained  
10 how each request sought relevant information, and how Defendants’ objections were  
11 unfounded.

12 Defendants’ response to the motion to compel was due 21 days later, on March 10.  
13 E.D. Cal. L.R. 230(l). They did not timely respond. On March 12, Mr. Mitchell filed a  
14 motion to treat Defendants’ failure to respond as a waiver to opposition of the motion.

15 On March 15, Defendants filed a two-page opposition to the motion to compel.  
16 The court reproduces the entirety of the substance of their opposition below:

17 Defendants served substantive good-faith objections to the subject  
18 discovery. Many, if not most, of the requests were ambiguous in their  
19 language, compound, and overbroad. However, the objections stated in  
20 Defendants’ responses are clearly set forth and are self-explanatory. None  
21 of the objections were taken or stated in bad faith or to avoid discovery.  
22 The request and interrogatories were stated in unclear language and were  
23 largely compound. . . .

24 Further, Plaintiff never sent any letter addressing his concerns about  
25 Defendants’ responses, in an effort to meet and confer.

26 Dkt. # 29 at 2. Defendants’ counsel’s attached declaration provides no additional  
27 information, except an admission that Mr. Mitchell left a voice message for counsel in an  
28 effort to discuss Defendants’ discovery responses. Mr. Mitchell declares that he “left a

1 message on Defense Counsel’s answering service in an effort to resolve our discovery  
2 dispute.” Dkt. # 31 at 4.

3 Before considering Mr. Mitchell’s motion to compel, the court addresses his  
4 request that the court treat the motion as unopposed. The court is empowered to do so.  
5 E.D. Cal. L.R. 230(l) (“Failure of the responding party to file an opposition or to file a  
6 statement of no opposition may be deemed a waiver of any opposition to the granting of  
7 the motion and may result in the imposition of sanctions.”). This is not the first time that  
8 Mr. Mitchell has raised concerns about the timeliness of Defendants’ responses to  
9 motions and discovery. The court was initially willing to give Defendants the benefit of  
10 the doubt. It is not willing to do so any longer. As to this motion, the court declines to  
11 deem Defendants’ untimely opposition to be a waiver. It does so only because, as  
12 discussed below, consideration of Defendants’ late opposition only benefits Mr. Mitchell.  
13 If Defendants continue to fail to comply with deadlines that the Local Rules and this  
14 court impose, the court will not hesitate to impose monetary sanctions. On the record  
15 before the court, there is no excuse for Defendants’ untimeliness.

16 The court has broad discretion to control discovery. *Childress v. Darby Lumber,*  
17 *Inc.*, 357 F.3d 1000, 1009 (9th Cir. 2004). That discretion is guided by several principles.  
18 Most importantly, the scope of discovery is broad. A party must respond to any  
19 discovery request that is “reasonably calculated to lead to the discovery of admissible  
20 evidence.” Fed. R. Civ. P. 26(b)(1). The court, however, must limit discovery where its  
21 “burden or expense . . . outweighs its likely benefit, considering the needs of the case, the  
22 amount in controversy, the parties’ resources, the importance of the issues at stake in the  
23 action, and the importance of the discovery in resolving these issues.” Fed. R. Civ. P.  
24 26(b)(2)(C)(iii).

25 In exercising that discretion, however, the court bears in mind that it is the party  
26 opposing discovery who carries a “heavy burden” to explain why it need not produce  
27 requested discovery. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); *see*

1 *also DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002) (“The party who  
2 resists discovery has the burden to show that discovery should not be allowed, and has  
3 the burden of clarifying, explaining, and supporting its objections.”). In this case,  
4 Defendants have completely abrogated this burden. They make no effort to explain their  
5 objections to Mr. Mitchell’s discovery requests. They insist that their objections are  
6 “self-explanatory,” but they are mistaken. Their objections are rote, and they make no  
7 effort to address the substance of Mr. Mitchell’s requests. It is possible, of course, that  
8 Mr. Mitchell’s requests are in some instances overbroad, or in some instances seek  
9 information whose production would unduly burden Defendants. Without any  
10 explanation from Defendants, however, the court has no way of making that  
11 determination.

12 Defendants’ objection that Mr. Mitchell failed to meet and confer does not  
13 persuade the court. The Eastern District of California imposes strict requirements for  
14 meeting and conferring in advance of filing a discovery motion. E.D. Cal. L.R. 251.  
15 This court’s November 10, 2009 scheduling order exempts the parties from compliance  
16 with that rule. Dkt. # 18 at 5. That order does, however, require compliance with Federal  
17 Rule of Civil Procedure 37. *Id.* Rule 37 includes its own meet-and-confer requirement.  
18 Fed. R. Civ. P. 37(a) (“The motion must include a certification that the movant has in  
19 good faith conferred or attempted to confer with the person or party failing to make  
20 disclosure or discovery in an effort to obtain it with court action.”). Defendants do not  
21 deny that Mr. Mitchell telephoned their counsel and left a message in an effort to meet  
22 and confer. They state merely that Mr. Mitchell failed to send a letter in an effort to meet  
23 and confer. He is not required to send a letter; his telephone call suffices. On this record,  
24 the court finds that Mr. Mitchell attempted to meet and confer, and Defendants made no  
25 effort to reciprocate.

26 For these reasons, the court grants Mr. Mitchell’s motion to compel. This order  
27 will conclude with specific orders to Defendants to satisfy their discovery obligations.

1 Before concluding, however, the court notes that on June 30, 2010, the deadline  
2 for pretrial motions passed in this matter. Neither party brought a dispositive motion. In  
3 the court's scheduling order, it stated that it would set a trial date and related dates  
4 "following adjudication of any dispositive motion, or the expiration of time for filing  
5 such a motion if no such dispositive motions are filed." Dkt. # 18 at 6. Given  
6 Defendants' failure to produce discovery, this matter is not ready for trial. This order  
7 will conclude with specific orders designed to ready this case for trial.

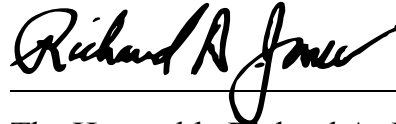
### 8 III. CONCLUSION

9 The court orders as follows:

- 10 1) Defendants shall provide complete responses to Mr. Mitchell's four sets of  
11 discovery requests, and shall do so no later than October 29. Defendants have  
12 waived any objections to those requests by failing to properly respond to Mr.  
13 Mitchell's motion to compel.
- 14 2) Defendants shall be responsible for arranging a telephone call with Mr.  
15 Mitchell during the week of November 8-12 to determine if he is satisfied with  
16 their discovery responses and whether further responses are necessary. The  
17 parties shall attempt to resolve any disputes.
- 18 3) If Mr. Mitchell chooses, he may file an additional motion to compel no later  
19 than November 30 if he finds Defendants' responses unsatisfactory. The court  
20 emphasizes that it does not encourage Mr. Mitchell to file such a motion, and  
21 that this order in no way excuses Mr. Mitchell from his obligation to  
22 reasonably limit the scope of his discovery requests.
- 23 4) After November 30, either in conjunction with an order addressing Mr.  
24 Mitchell's motion to compel or in a separate order if he does not file such a  
25 motion, the court will require the parties to meet and confer regarding a trial  
26 date and dates for pretrial submissions as described in paragraph 8 of the  
27 court's November 10, 2009 scheduling order.

- 1 5) The court grants Mr. Mitchell’s unopposed motion for service of his amended  
2 complaint on Defendants M. Wright and F. Foulk. No later than October 11,  
3 Defendants’ counsel shall file a notice with the court stating whether he will  
4 accept service of the amended complaint on behalf of those Defendants. If  
5 counsel declines to do so, the court will issue an order directing the United  
6 States Marshal to complete service.
- 7 6) All future motions and oppositions to motions in this action shall be limited to  
8 25 pages. Mr. Mitchell’s 70-page motion to compel was repetitive and  
9 unnecessarily long, and both he and the court will benefit from forcing him to  
10 be more concise. All future reply briefs shall be 12 pages or fewer.

11 DATED this 28th day of September, 2010.

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14 The Honorable Richard A. Jones  
15 United States District Judge  
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