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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

James E. Skinner,)	No. CV-12-1729-PHX-SMM (LOA)
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Charles L. Ryan, et al.,)	
)	
Defendants.)	

This matter is before the Court on Plaintiff’s Motion to Compel Discovery in which Plaintiff seeks an order compelling Defendant Ryan to produce documents responsive to his requests for production. (Doc. 102) Defendant has filed a Response and Plaintiff has filed a Reply. (Docs. 116, 117) Plaintiff also filed a Supplement to his Motion to Compel. (Doc. 121) Also pending is Plaintiff’s Motion for Rule 11 Sanctions against Defendants’ counsel. (Doc. 115) Defendants’ counsel has filed a Response and Plaintiff has filed a Reply. (Docs. 124, 130) Plaintiff also filed a Supplement to his Motion for Rule 11 Sanctions. (Doc. 118)

I. Background

Plaintiff, proceeding *pro se*, commenced this prisoner civil rights action pursuant to 42 U.S.C. § 1983 on August 14, 2012, by lodging a Complaint. (Docs. 1-2) Plaintiff also requested leave to proceed *in forma pauperis*, which was granted. (Docs. 3, 6) On September 21, 2012, the assigned District Judge denied Plaintiff’s request to exceed the page limit and file the Complaint, but granted Plaintiff leave to file an amended complaint within thirty days thereafter. (Doc. 6)

1 Plaintiff filed a First Amended Complaint on October 2, 2012. (Doc. 8) Plaintiff
2 raised two grounds for relief against seventeen separate defendants. In Count I, Plaintiff alleged
3 he is being deprived of basic necessities in violation of the Eighth Amendment, including
4 inadequate plumbing in his cell, unsanitary conditions in his cell and other areas, and the failure
5 to provide cleaning supplies to address the unsanitary conditions. Plaintiff claims that for nine
6 months he was housed in a cell in which the base of the toilet leaked every time it was used,
7 which caused flooding, and that he was not provided adequate supplies to address the problem.
8 He further claims that when he was eventually moved to a different cell in a different housing
9 unit, the walls of the cell appeared to have blood and dried feces on them. He claims that during
10 the several months he was there, he repeatedly requested supplies to clean his cell but received
11 adequate supplies on only one occasion. Plaintiff also claims that outdoor recreation cages and
12 an outer stairwell were covered with cat waste and pigeon droppings. He claims these
13 contaminants were then tracked back to his cell. Plaintiff claims he informed Defendants of
14 these issues but they failed to take any action to resolve the problems.

15 In Count II, Plaintiff alleged prison officials retaliated against him in violation of the
16 First Amendment for filing a previous federal civil rights lawsuit. The District Judge screened
17 the First Amended Complaint in accordance with 28 U.S.C. § 1915A(a) on February 19, 2013.
18 (Doc. 9) The District Judge dismissed Count II for failure to state a claim, along with three
19 defendants, but ordered fourteen defendants to answer the allegations in Count I.¹ (Doc. 9 at 15)
20 Plaintiff seeks unspecified compensatory and punitive damages, along with declaratory and
21 injunctive relief. (Doc. 8 at 20)

22 **II. Motion to Compel**

23 In the Motion to Compel, Plaintiff asks the Court to order Defendant Ryan to produce
24 documents responsive to his eight requests for production. Defendant's Response to the Motion
25 to Compel indicates that, while Defendant objected to all of Plaintiff's requests for various
26 reasons, Defendant produced 19 pages of documents, identified by Defendant as "Skinner's

27
28 ¹ Thirteen defendants have answered. The fourteenth, Rita Duarte, was dismissed without
prejudice on March 13, 2014 for failure to serve pursuant to Fed.R.Civ.P. 4(m). (Doc. 134)

1 Detention Record,” in response to two of the requests. In response to a third request, Defendant
2 produced 238 pages identified as “Toilet Repair Work Orders.” (Doc. 116 at 9-32) Otherwise,
3 Defendant contends the responses are sufficient and the objections proper. Defendant, however,
4 also lists eleven categories of documents that counsel for Defendants “has been waiting for
5 some months now for ADC [Arizona Department of Corrections] to provide.”² (Doc. 116 at 7-8)

6 **A. Legal Standards for Discovery**

7 Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery
8 regarding any nonprivileged matter that is relevant to any party’s claim or defense . . . Relevant
9 information need not be admissible at the trial if the discovery appears reasonably calculated
10 to lead to the discovery of admissible evidence. All discovery is subject to the limitations
11 imposed by Rule 26(b)(2)(C).” Fed.R.Civ.P. 26(b)(1). These limitations reflect that, in addition
12 to being relevant, discovery must also be proportional to the issues and needs of the case. *Kaiser*
13 *v. BMW of North America, LLC*, 2013 WL 1856578, at *3 (N.D. Cal. May 2, 2013) (citing
14 Fed.R.Civ.P. 26(b)(2)(C)). Rule 26(b)(2)(C) provides:

15 On motion or on its own, the court must limit the frequency or extent of
16 discovery otherwise allowed by these rules or by local rules if it determines
17 that:

18 (i) the discovery sought is unreasonably cumulative or duplicative, or can
19 be obtained from some other source that is more convenient, less
20 burdensome, or less expensive;

21 (ii) the party seeking discovery has had ample opportunity to obtain the
22 information by discovery in the action; or

23 (iii) the burden or expense of the proposed discovery outweighs its likely
24 benefit, considering the needs of the case, the amount in controversy, the
25 parties’ resources, the importance of the issues at stake in the action, and the
26 importance of the discovery in resolving the issues.

27 ² Defendants’ counsel states that the ADC legal assistant who was primarily responsible
28 for obtaining documents for the past ten years passed away on January 15, 2014. (Doc. 116 at
8) As a result, according to counsel, a substantial backlog exists, thus causing the delay in
producing the eleven categories of documents. (*Id.*) The Court notes, however, that since filing
his Response to the Motion to Compel, Defendant supplemented his responses to Plaintiff’s
requests for production on April 9, 2014, though the Court does not know what documents were
included with the supplemental response. (Doc. 148)

1 Thus, the court must “strike[] the proper balance between permitting relevant
2 discovery and limiting the scope and burdens of the discovery to what is proportional to the
3 case.” *Kaiser*, 2013 WL at *3. Moreover, “[b]road discretion is vested in the trial court to
4 permit or deny discovery, and its decision to deny discovery will not be disturbed except upon
5 the clearest showing that denial of discovery results in actual and substantial prejudice to the
6 complaining litigant.” *Hallet v. Morgan*, 296 F.3d 732,751 (9th Cir. 2002) (citing *Goehring v.*
7 *Brophy*, 94 F.3d 1294, 1305 (9th Cir. 1996)).

8 **B. Application**

9 Plaintiff’s first request states:

10 **RFP No. 1:** “Budget Records: For the relevant time frame produce any and all ADC
11 budget records for ASPC - Florence and ASPC - Eyman including detailed documentation for
12 any line items related to plumbing repair, flooding incidents, plumbing maintenance, cleaning
13 supplies and equipment, inmates cleaning crews, and prophylactic supplies for dealing with
14 potential infectious bodily fluids or either infectious contaminants for Central and Browning
15 Units.”

16 Defendant produced no documents in response to the request and objected by claiming
17 the request is “vague, burdensome, overbroad, irrelevant, argumentative, assumes facts not
18 established, requires speculation and conclusion, and not calculated to lead to the discovery of
19 admissible evidence.” (Doc. 116 at 2) Defendant also contends that disclosing these documents
20 to an inmate would create a threat to the safe and orderly operation of the maximum security
21 prison units in which Plaintiff is housed. Defendant also claims Plaintiff “has available to him
22 all ADC policies and procedures that are not restricted from inmate possession at the prison
23 library or upon request to the prison library.” (Doc. 116 at 2)

24 The Court finds Plaintiff’s first request for production is overly broad and unduly
25 burdensome. In addition, the scope of the request is disproportional to the issues in this case.
26 Plaintiff’s complaints of being housed in unsanitary cells and being denied adequate cleaning
27 supplies do not entitle him to “any and all” budget records for an unspecified time period for
28 two different prison facilities. Given the claims at issue in this case, the Court will not impose
upon Defendant the significant burden of searching for and producing the wide range of
documents responsive to this request.

1 Plaintiff's second request states:

2 **RFP No. 2:** "Sanitation Requirements: For the relevant time frame produce any and
3 all documents showing ADC policy, procedures, post orders, directives, standards and Arizona
4 law regarding ADC duties or requirements for maintaining adequate cell, recreation cage, and
outer staircase sanitation for Central and Browning Units including any and all work crew
records whether said crews were inmate crews or contractors."

5 Defendant produced 19 pages of documents in response to this request, referred to as
6 "Skinner's Detention Record," but still objected by claiming the request is "vague, burdensome,
7 overbroad, irrelevant, argumentative, assumes facts not established, requires speculation and
8 conclusion, and not calculated to lead to the discovery of admissible evidence." (Doc. 116 at

9 2) Defendant also contends that disclosing these documents to an inmate would create a threat
10 to the safe and orderly operation of the maximum security prison units in which Plaintiff is
11 housed. Defendant also claims Plaintiff "has available to him all ADC policies and procedures
12 that are not restricted from inmate possession at the prison library or upon request to the prison
13 library." (Doc. 116 at 2)

14 The Court finds Plaintiff's second request for production to be overly broad, unduly
15 burdensome, and disproportional to the issues in this case. The Court will not impose upon
16 Defendant the extraordinary burden of essentially producing every document in his possession,
17 including "work crew records" for two facilities, that has anything to do with cell, recreation
18 cage and staircase maintenance.

19 Additionally, Defendant's list of "Additional Documents Requested" includes
20 documents that may be responsive to Plaintiff's second request for production. Plaintiff may,
21 therefore, have since received additional documents responsive to this request. Regardless, the
22 Court will not require Defendant to produce anything further in response to Plaintiff's second
23 request for production.

24 Plaintiff's third request states:

25 **RFP No. 3:** "Compliance records: For the relevant time frame produce any and all
26 records which show or are in any way evidence of available cleaning supplies and equipment,
27 as well as the supplies and equipment actually distributed both to Plaintiff and other prisoners
at Central and Browning Units including any and all daily activity schedules, individual inmate
detention records, cleaning equipment inventory and check out records, and correctional service
logs generated during the normal course of ADC operations at each of Plaintiffs housing
28 locations, any and all audit reports or records."

1 Defendant produced 19 pages of documents in response to this request, referred to as
2 “Skinner’s Detention Record,” but still objected by claiming the request is “vague, burdensome,
3 overbroad, irrelevant, argumentative, assumes facts not established, requires speculation and
4 conclusion, and not calculated to lead to the discovery of admissible evidence.” (Doc. 116 at
5 3) Defendant also contends that disclosing these documents to an inmate would create a threat
6 to the safe and orderly operation of the maximum security prison units in which Plaintiff is
7 housed. Defendant also claims Plaintiff “has available to him all ADC policies and procedures
8 that are not restricted from inmate possession at the prison library or upon request to the prison
9 library.” (Doc. 116 at 3)

10 The Court finds Plaintiff’s third request for production to be overly broad, unduly
11 burdensome, and disproportional to the issues in this case. Plaintiff is seeking “any and all”
12 records having anything to do with cleaning supplies at two separate facilities for an unspecified
13 period of time. Under the circumstances of this case, the Court will not impose upon Defendant
14 the extraordinary burden of producing the enormous number of documents that may be
15 responsive to the request.

16 Additionally, Defendant’s list of “Additional Documents Requested” includes
17 documents that may be responsive to Plaintiff’s third request for production. Plaintiff may,
18 therefore, have since received additional documents responsive to this request. Regardless, the
19 Court will not require Defendant to produce anything further in response to Plaintiff’s third
20 request for production.

21 Plaintiff’s fourth request states:

22 **RFP No. 4:** “Maintenance Records: For the relevant time frame produce all Central
23 Unit maintenance records regarding either the repair or replacement of toilets or toilet plumbing
24 including any and all work orders, repair or replacement costs or estimates, names of suppliers,
25 lists of all broken toilets or otherwise in need of repair or replacement, maintenance logs, and
26 an all documentation showing requests for funding to repair or replace toilets or plumbing.”

27 Defendant produced 238 pages of documents in response to this request, referred to
28 as “Toilet Repair Work Orders,” but still objected by claiming the request is “vague,
burdensome, overbroad, irrelevant, argumentative, assumes facts not established, requires
speculation and conclusion, and not calculated to lead to the discovery of admissible evidence.”

1 (Doc. 116 at 3) Defendant also contends that disclosing these documents to an inmate would
2 create a threat to the safe and orderly operation of the maximum security prison units in which
3 Plaintiff is housed. Finally, Defendant claims the request is “beyond the bounds of this lawsuit
4” (Doc. 116 at 3)

5 The Court finds Plaintiff’s fourth request for production to be overly broad, unduly
6 burdensome, and disproportional to the issues in this case. Plaintiff’s claim that he was housed
7 in a cell with a leaky toilet for nine months does not entitle him to every record pertaining to
8 every toilet at the Central Unit for an unspecified period of time. Under the circumstances of
9 this case, the Court will not impose upon Defendant the extraordinary burden of producing the
10 enormous number of documents that may be responsive to the request.

11 Additionally, Defendant’s list of “Additional Documents Requested” includes
12 documents that may be responsive to Plaintiff’s fourth request for production. Plaintiff may,
13 therefore, have since received additional documents responsive to this request. Regardless, the
14 Court will not require Defendant to produce anything further in response to Plaintiff’s fourth
15 request for production.

16 Plaintiff’s fifth request states:

17 **RFP No. 5:** “Department Directives: For the relevant time frame produce any and all
18 Department Orders (DO), Director’s Instructions (DI), Institutional Orders (IO), Memorandums,
19 Directives or emails regarding employee conduct, performance, and professionalism including
20 ADC performance factors, ADC supervisory issues manual, DO 105 Information Reporting, DO
501 Employee Professionalism, Ethics and Conduct, DO 514 Performance Appraisal for
Correctional employees (PACE), DO 601 Administrative Investigation and Employee
Discipline, Town Hall Meeting dates and records of proceedings.”

21 Defendant produced no documents in response to the request and objected by claiming
22 the request is “vague, burdensome, overbroad, irrelevant, argumentative, assumes facts not
23 established, requires speculation and conclusion, and not calculated to lead to the discovery of
24 admissible evidence.” (Doc. 116 at 4) Defendant also contends that disclosing these documents
25 to an inmate would create a threat to the safe and orderly operation of the maximum security
26 prison units in which Plaintiff is housed. Defendant also claims Plaintiff “has available to him
27 all ADC policies and procedures that are not restricted from inmate possession at the prison
28 library or upon request to the prison library.” (Doc. 116 at 4)

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2 The Court finds Plaintiff's fifth request for production is irrelevant, overly broad,
3 unduly burdensome, and disproportional to the issues in this case. Plaintiff's one remaining
4 claim for relief does not come close to supporting a request for virtually every document ever
5 produced by ADC pertaining to employee conduct, performance, and professionalism. The
6 Court will, therefore, not impose upon Defendant the extraordinary burden of producing the
7 enormous number of documents that may be responsive to the request.

8 Plaintiff's sixth request states:

9 **RFP No. 6:** "Plaintiff's ADC Records: Produce and all documents regarding or
10 referencing Plaintiff, under the custody and control of any ADC employee at any ADC facility,
11 including incident reports, evaluations, cell block two (MAX Phase Program) screening and
12 removal records or reports, classification and disciplinary records, institutional inmate letters
13 and responses, incoming and outgoing correspondence, grievance records, interstate corrections
14 compact records, memorandums or emails, and master file."

15 Defendant produced no documents in response to the request and objected by claiming
16 the request is "vague, burdensome, overbroad, irrelevant, argumentative, assumes facts not
17 established, requires speculation and conclusion, and not calculated to lead to the discovery of
18 admissible evidence." (Doc. 116 at 4) Defendant also contends that disclosing these documents
19 to an inmate would create a threat to the safe and orderly operation of the maximum security
20 prison units in which Plaintiff is housed. Defendant also claims Plaintiff "has available to him
21 all ADC policies and procedures that are not restricted from inmate possession at the prison
22 library or upon request to the prison library." (Doc. 116 at 4) Lastly, Defendant explains that
23 Plaintiff is provided with a copy of many of the documents he is requesting at the time they are
24 created.

25 The Court finds Plaintiff's sixth request for production to be irrelevant, overly broad,
26 unduly burdensome, and disproportional to the issues in this case. Plaintiff's one remaining
27 claim for relief based on unsanitary conditions in his cell and inadequate cleaning supplies does
28 not entitle him to every document ever generated by ADC that contains a reference to him.
Plaintiff has not adequately demonstrated that such records are relevant to his claim. The Court
will, therefore, not impose upon Defendant the burden of producing the documents that may be

1 responsive to the request.

2 Additionally, Defendant’s list of “Additional Documents Requested” includes
3 documents that may be responsive to Plaintiff’s sixth request for production. Plaintiff may,
4 therefore, have since received additional documents responsive to this request. Regardless, the
5 Court will not require Defendant to produce anything further in response to Plaintiff’s sixth
6 request for production.

7 Plaintiff’s seventh request states:

8 **RFP No. 7:** “Defendant Disciplinary Records: Produce any and all documents
9 regarding the employee disciplinary and criminal histories known to exist under each
10 Defendants’ name and employee identification number (EIN) including PACE records,
reprimands, suspensions, and terminations or any other administrative or criminal action taken
against them.”

11 Defendant produced no documents in response to the request and objected by claiming
12 the request is “vague, burdensome, overbroad, irrelevant, argumentative, assumes facts not
13 established, requires speculation and conclusion, and not calculated to lead to the discovery of
14 admissible evidence.” (Doc. 116 at 4-5) Defendant also contends that disclosing these
15 documents to an inmate would create a threat to the safe and orderly operation of the maximum
16 security prison units in which Plaintiff is housed.

17 The Court finds Plaintiff’s seventh request for production is irrelevant and
18 disproportional to the issues in this case. Plaintiff’s claim that Defendants acted with deliberate
19 indifference to safety by failing to adequately respond to his complaints of unsanitary conditions
20 in his cell and inadequate cleaning supplies does not entitle him to each Defendant’s
21 disciplinary record, including their criminal histories. The Court finds such records are not
22 relevant to Defendants’ alleged conduct in this action. The Court will, therefore, not require
23 Defendant to produce documents responsive to this request.

24 Plaintiff’s eighth request states:

25 **RFP No. 8:** “Any and all documentation which supports any defense which may be
26 raised at trial including ADC count sheets with the names, ADC numbers, and housing locations
27 of each inmate whether named or referenced individually or as a group in any defense regarding
28 who was not given cell or cleaning supplies and equipment in accordance with ADC policy or
custom, any and all documents specific to each inmate evidence as to the reason(s) they were
not permitted to receive cleaning supplies and equipment.”

1 Defendant produced no documents in response to the request and objected by claiming
2 the request is “vague, burdensome, overbroad, irrelevant, argumentative, assumes facts not
3 established, requires speculation and conclusion, and not calculated to lead to the discovery of
4 admissible evidence.” (Doc. 116 at 5) Defendant also contends that disclosing these documents
5 to an inmate would create a threat to the safe and orderly operation of the maximum security
6 prison units in which Plaintiff is housed.

7 The Court finds Plaintiff’s eighth request for production is vague, overly broad,
8 unduly burdensome, and disproportional to the issues in this case. Plaintiff will be entitled to
9 copies of any documents Defendants intend to use at trial in support of any defenses they raise.
10 He is not, however, entitled to the broad scope of documents he seeks in this request. The Court
11 will not not impose upon Defendant the significant burden of producing all the documents that
12 may be responsive to Plaintiff’s request.

13 Additionally, Defendant’s list of “Additional Documents Requested” includes
14 documents that may be responsive to Plaintiff’s eighth request for production. Plaintiff may,
15 therefore, have since received additional documents responsive to this request. Regardless, the
16 Court will not require Defendant to produce anything further in response to Plaintiff’s eighth
17 request for production.

18 **C. Motion to Compel - Conclusion**

19 Based on the foregoing discussion, Plaintiff’s Motion to Compel Discovery, doc. 102,
20 will be denied.

21 **II. Motion for Sanctions**

22 Next, Plaintiff seeks sanctions against Defendants’ counsel based on counsel’s alleged
23 misrepresentation, in a previous filing, that Plaintiff had been “convicted of multiple murders
24 both inside and outside of prison.” (*See* Doc. 110 at 1-2) Based on that alleged fact, counsel said
25 “the Court should not lend any credence to [Plaintiff’s] allegations.” (*Id.*) Counsel also attached
26 a footnote to the statement referencing a website that presumably supported the assertion.

27 As Plaintiff accurately points out, the information cited by Defendants’ counsel does
28 not indicate Plaintiff has been convicted of multiple murders. It appears from the information

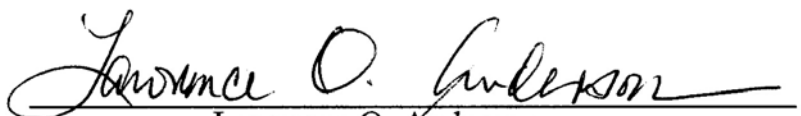
1 cited that Plaintiff is serving a life sentence for a murder conviction in Massachusetts.³ While
2 in prison, Plaintiff was again charged with murder after he was involved in a fight started by
3 another inmate which resulted in the inmate's death. Plaintiff, however, was acquitted of the
4 charge following a jury trial.

5 Although counsel's assertion was inaccurate and reckless, the Court exercises its
6 discretion and declines to impose sanctions. *See* Fed.R.Civ.P. 11(c)(1) (providing that the court
7 "may" impose an appropriate sanction for a violation of Rule 11(b)). This civil rights action
8 involves allegations by Plaintiff that, while incarcerated in the Arizona Department of
9 Corrections, Defendants acted with deliberate indifference to his health and safety in violation
10 of the Eighth Amendment. The circumstances that led to Plaintiff's incarceration have no
11 bearing on the Court's rulings in this matter. Counsel's assertion regarding Plaintiff's criminal
12 history has no relevance to the issues in this case and it was disregarded by the Court. Plaintiff's
13 motion for sanctions will, therefore, be denied.

14 Accordingly,

15 **IT IS ORDERED** that Plaintiff's Motion to Compel Discovery, doc. 102, and
16 Plaintiff's Motion for Rule 11 Sanctions, doc. 115, are **DENIED**.

17 DATED this 13th day of May, 2014.

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20 Lawrence O. Anderson
21 United States Magistrate Judge

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³ <http://law.justia.com/cases/federal/appellate-courts/F3/430/483/505500> (last accessed
28 May 12, 2014).