

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Raft L. Thompson ,	)	1:06-cv-00763-RCC
Plaintiff,	)	<b>ORDER</b>
vs.	)	
James A Yates; Timothy Lockwood,	)	
Defendants.	)	

Plaintiff Raft Thompson, who is confined in the Pleasant Valley State Prison (PVSP) in Coalinga, California, has filed a *pro se* civil rights First Amended Complaint pursuant to 42 U.S.C. § 1983. (Doc. 18). Plaintiff’s remaining claim is that Defendants violated his rights to equal protection because they intentionally treated him differently from other inmates convicted of similar crimes when they denied him visits with his minor son. (Doc. 18). Pending before the Court now are Plaintiff’s Motion to Appoint Counsel (Doc. 43), Motion to Bring Action for Declaratory and Injunctive Relief (Doc. 44), Motion to Compel Production of Documents (Doc. 45), and Objection to Answers and Motion to Compel (Doc. 47), as well as Defendants’ Request for Notice to Plaintiff of Requirements for Opposing Motion for Summary Judgment (Doc. 50).

1 **I. Plaintiff’s Motion to Appoint Counsel**

2 Appointment of counsel in a civil rights case is required only when exceptional  
3 circumstances are present. Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991) (citing  
4 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)). In determining whether to  
5 appoint counsel, the court should consider the likelihood of success on the merits, and the  
6 ability of plaintiff to articulate his claims in view of their complexity. Wood v. Housewright,  
7 900 F.2d 1332, 1335 (9th Cir. 1990). After reviewing the file, the Court determines that this  
8 case does not present exceptional circumstances requiring the appointment of counsel.  
9 Therefore, Plaintiff’s motion will be denied.

10 **II. Plaintiff’s Motion to Bring Action for Declaratory and Injunctive Relief**

11 Plaintiff seeks a preliminary injunction and asks the Court “to grant injunctive and  
12 declaratory relief, compelling the Secretary of Corrections to bar [Regulation 3173.1(b)] until  
13 the Court renders a final decision.” (Doc. 44 at 3). To obtain a preliminary injunction, the  
14 moving party must show “that he is likely to succeed on the merits, that he is likely to suffer  
15 irreparable harm in the absence of preliminary relief, that the balance of the equities tips in  
16 his favor, and that an injunction is in the public interest.” Winter v. Natural Resources  
17 Defense Counsel, Inc., 129 S.Ct. 365, 374 (2008). The moving party has the burden of proof  
18 on each element of the test. Environmental Council of Sacramento v. Slater, 184 F.Supp.2d  
19 1016, 1027 (E.D.Cal. 2000). Plaintiff here has not met his burden. Therefore, Plaintiff’s  
20 motion will be denied.

21 **III. Plaintiff’s Motions to Compel**

22 **A. Production of Documents**

23 The production of documents may be requested under FED.R.CIV.P. 34. A party must  
24 produce all discoverable documents responsive to a request that are within the party’s  
25 possession, custody, or control. Kissinger v. Reporters Committee for Freedom of the Press,  
26 445 U.S. 136, 166 (1980). Documents are deemed to be within the possession, custody, or  
27 control of a party if the party has the legal right to obtain documents on demand. United  
28 States v. Int’l Union of Petroleum & Indus. Workers, 870 F.2d 1540, 1452 (9th Cir. 1989).

1 Plaintiff seeks to compel production of Inmate Vaughn Jacobs’ “visiting records of visits  
2 with his minor children” and his own visiting record. (Doc. 45). Defendants respond that  
3 they do not have control of the requested documents because (1) they are not the custodian  
4 of records for the state prison, and (2) they would have to seek Inmate Jacobs’ permission  
5 as well as the custodian of records permission to obtain the documents. (Doc. 49). In  
6 addition, Defendants argue they “engaged in a reasonable and diligent search for any  
7 responsive information, and were unable to locate any.” (Id.).

8 Defendants are in control of Plaintiff’s visitation records because (1) the existence of a  
9 custodian of records does not deprive them of control and (2) by making this request for  
10 production, Plaintiff has authorized release of his records. Defendants are also in control of  
11 Inmate Jacobs’ visitation records because the existence of a custodian of records does not  
12 deprive them of control and (2) the Court can require disclosure of those records without the  
13 his authorization. See CAL. COD. REGS. tit. 15, § 3370 (2011) (an inmate may not have  
14 access to another inmate’s records “[e]xcept by means of a valid authorization, subpoena, or  
15 court order...”). The Court notes that while Defendants avow they have made a reasonable  
16 and diligent search for documents responsive to Plaintiff’s requests for visitation records, it  
17 appears this search did not include submitting requests to the custodian of records.  
18 Therefore, the Court will require Defendants to search again, produce any documents  
19 pertaining to Plaintiff’s records to him, and produce any documents pertaining to the other  
20 inmate to the Court for *in camera* review.

21 Plaintiff also seeks to compel production of any documents related to the “[n]umber of  
22 innocent juveniles killed by gang members.” (Doc. 45). Defendants argue they do not have  
23 any responsive documents in their possession. (Doc. 49). The Court has no reason to believe  
24 otherwise.

25 Accordingly, the Court will grant Plaintiff’s motion to compel as to his requests for  
26 production for inmate visitation records and deny the motion as to his request for the number  
27 of juveniles killed by gang members.

28 **B. Requests of Admission**

1 A party may serve a written request to admit facts, the application of law to fact, or  
2 opinions about either, and the genuineness of any described document. FED.R.CIV.P.  
3 36(a)(1). The responding party may either admit, specifically deny, or state in detail why the  
4 responding party cannot admit or deny. FED.R.CIV.P. 36(a)(4). If the responding party  
5 asserts lack of knowledge or information as the reason it cannot admit or deny, it must avow  
6 that a reasonable inquiry has been made and that the information it knows or can readily  
7 obtain is insufficient to allow it to admit or deny. Id. If the Court determines that an answer  
8 is insufficient, it can either deem the matter admitted or order an amended answer.  
9 FED.R.CIV.P. 36(a)(6).

10 Plaintiff here objects to Defendants' answers to his Requests for Admission 1-70. (Doc.  
11 47). As to each request, Defendants either admitted, denied, or stated they possessed  
12 insufficient information to admit or deny the matter. (Id.). As to those matters specifically  
13 admitted or denied, the Court finds Defendants' answers are sufficient. As to those matters  
14 specifically objected to, the Court finds Defendants' answers are also sufficient. The Court  
15 declines to consider objections raised in boilerplate language. As to those matters neither  
16 admitted nor denied because Defendants claim to have insufficient knowledge, the Court  
17 finds the answers are insufficient because Defendants did not state that they had undertaken  
18 a reasonable inquiry into each matter in their response. Rather than sanction Defendants by  
19 deeming the matters admitted, the Court will require Defendants to respond further. The  
20 Court reminds Defendants that in conducting a reasonable inquiry into these Requests for  
21 Admission, Defendants are required to make inquiries of the custodian of records for PVSP.  
22 See Frontier-Kemper Constructors, Inc. v. Elk Run Coal Co., Inc., 246 F.R.D. 522, 531  
23 (S.D.W.Va. 2007); A. Farber & Partners, Inc. v. Garber, 237 F.R.D. 250, 253-55 (C.D.Cal.  
24 2006).

25 **IV. Defendants' Request for Notice to Plaintiff of Requirements for Opposing Motion**  
26 **for Summary Judgment**

27 Defendants request the Court give the notice required by Rand v. Rowland, 154 F.3d  
28 952, 959-60 (9th Cir. 1998), which sets out what a party must do to oppose a motion for

1 summary judgment. (Doc. 50). The Court declines to give the notice at this time because  
2 Rand requires that the notice be given only after a motion for summary judgment is filed.  
3 154 F.3d at 955.

4 Accordingly,

5 **IT IS ORDERED** denying Plaintiff's Motion to Appoint Counsel (Doc. 43) and Motion  
6 to Bring Action for Declaratory and Injunctive Relief (Doc. 44).

7 **IT IS FURTHER ORDERED** granting in part and denying in part Plaintiff's Motion  
8 to Compel Production of Documents (Doc. 45). The motion is granted to the extent that  
9 Defendants shall further respond to Plaintiff's Requests for Production 1 and 2 as outlined  
10 above. The motion is denied to the extent that the Court finds Defendants' response to  
11 Plaintiff's Request for Production 10 sufficient.

12 **IT IS FURTHER ORDERED** granting in part and denying in part Plaintiff's Objection  
13 to Answers and Motion to Compel (Doc. 47). The motion is granted to the extent that  
14 Defendants shall further respond to Plaintiff's Requests for Admission 1-12, 14-15, 18, 23,  
15 26, 31, 34, 36, 38, 39, 41-42, 51, 53(H), 55, 57, 58, 60-61, and 67.<sup>1</sup> The motion is denied in  
16 all other respects.

17 **IT IS FURTHER ORDERED** denying Defendants' Request for Notice to Plaintiff of  
18 Requirements for Opposing Motion for Summary Judgment (Doc. 50). Defendants may file  
19 any motion for summary judgment within the time set out below. The Court will thereafter  
20 issue the requisite Rand notice.

21  
22 **IT IS FURTHER ORDERED** Defendants shall serve their supplemental responses to  
23 Plaintiff's Requests for Admission no later than **January 13, 2012**. The deadline for  
24 completion of all discovery shall be extended to **January 13, 2012**. The deadline for filing  
25 dispositive motions shall be extended to **February 13, 2012**.

26 DATED this 29th day of November, 2011.

27 \_\_\_\_\_  
28 <sup>1</sup>The Court uses the numbers assigned by Defendants in their responses.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

Raner C. Collins  
United States District Judge