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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

CHARLES AUSTIN PARKS,
CDCR #K-72151,

Plaintiff,

v.

R. TAIT, et al.,

Defendants.

Case No. 08-CV-1031-H (JMA)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO COMPEL RESPONSES TO DOCUMENT REQUESTS AND DENYING REQUEST FOR SANCTIONS [Doc. 31]

This matter comes before the Court on a Motion to Compel Responses to Demands for Production and Request for Sanctions filed by Plaintiff Charles Austin Parks [Doc. 31]. For the reasons set forth below, Plaintiff's motion is **GRANTED IN PART** and **DENIED IN PART**.

I. CASE BACKGROUND

Plaintiff, a pro se, is an inmate currently incarcerated at California State Prison, Sacramento. The named defendants include Correctional Officer R. Tait, Correctional Officer R. Huff, Correctional Officer A. Rendon, Licensed Vocational Nurse T. Davis, Licensed Vocational Nurse M. Flores, Licensed Vocational Nurse A. Berry, and Licensed Vocational Nurse S. Moreno. All defendants were employed at California

1 State Prison, Corcoran (“Corcoran”) at the time the events giving rise to Plaintiff’s claims
2 allegedly occurred. Plaintiff asserts the following claims in his First Amended Complaint
3 (“FAC”):

4 (1) Eighth Amendment excessive force claim against Defendant Tait: Plaintiff
5 alleges that on November 8, 2007, Defendants Tait and Rendon came to his cell to
6 escort him to the law library. Tait allegedly placed Plaintiff’s handcuffs on too tight and,
7 when Plaintiff complained, made them even tighter. When Plaintiff complained again,
8 Tait allegedly pulled Plaintiff to the side and threatened to make the handcuffs even
9 tighter. Plaintiff states that Tait then yanked the chain in between the handcuffs,
10 causing excruciating pain. Plaintiff subsequently brought the matter to the attention of a
11 sergeant. FAC at 4-6, ¶¶ 14-23.

12 (2) Eighth Amendment failure to protect claim against Defendant Rendon:
13 Plaintiff alleges that Rendon failed to protect him during the above incident, and instead
14 laughed and told Plaintiff to “shut the fuck up.” Id. at 7, ¶¶ 24-25.

15 (3) Retaliation in violation of the First and Eighth Amendments against
16 Defendants Tait and Huff: Plaintiff alleges that on November 8, 2007, Tait and Huff
17 conducted a search of his cell as a punitive measure to retaliate against him for
18 speaking out about the above incidents. Id. at 7-9, ¶¶ 26-30.

19 (4) Deliberate indifference to medical needs against Defendants Tait and
20 Rendon: Plaintiff alleges that the tight handcuffs caused bruises to his wrist bone. Id.
21 at 9, ¶ 31.

22 (5) Deliberate indifference to medical needs against Defendants Davis and
23 Flores: Plaintiff alleges that Davis and Flores covered up Tait’s deliberate indifference
24 to his serious medical needs. Plaintiff further asserts that Davis falsified a state
25 document by stating that she did not view any injuries to Plaintiff’s wrist. Id. at 9-10, ¶¶
26 32-33.

27 (6) Deliberate indifference to medical needs against Defendants Huff and Tait:
28 Plaintiff alleges that on November 8, 2007, Huff and Tait interfered with his medical

1 treatment by confiscating his medical supplies, including his asthma inhaler, when they
2 conducted a search of his cell. Plaintiff further alleges that Tait denied him the
3 opportunity to soak his infected toe. Id. at 10-12, ¶¶ 34-40.

4 (7) Deliberate indifference to medical needs against Defendants Berry and
5 Moreno:¹ On October 12, 2007, Dr. Wilson, a non-party, ordered Plaintiff to soak his
6 foot, due to an infected toe following minor surgery, in warm water and Epsom salt for
7 15-20 minutes per day. On October 13, 2007, Berry allegedly refused to allow Plaintiff
8 to soak his toe and did not provide him with a clean bandage. Plaintiff asserts that
9 Berry suggested that he soak his toe in an unsanitary toilet. On October 14, 2007,
10 Moreno refused to allow Plaintiff to soak his toe and instead offered him a small white
11 cup to soak his toe in as a joke. Id. at 12-14, ¶¶ 41-46.

12 Plaintiff served three sets of document requests on August 3, 5, and 12, 2009
13 containing a total of sixty-five (65) requests.² Defendants served responses on
14 September 2, 3, and 11, 2009, respectively. The parties met and conferred by
15 telephone during the Case Management Conference held on September 10, 2009.
16 Plaintiff then sent meet and confer correspondence to Defendants' counsel on or
17 around September 13, 2009, to which counsel for Defendants responded on or around
18 October 6, 2009. Plaintiff now moves to compel further responses to his document
19 requests on the basis that Defendants' responses were "evasive, vague, incomplete . . .
20 as well as repetitive." Pl.'s Affidavit in Supp. of Mot. at 4, ¶ 4. Defendants have filed an
21 opposition, to which Plaintiff has filed a reply.

22 **II. LEGAL STANDARDS**

23 Under the Federal Rules, "Parties may obtain discovery regarding any
24 nonprivileged matter that is *relevant to any party's claim or defense.*" Fed. R. Civ. P.

26 ¹Defendant Moreno has not yet been served with the FAC and has not appeared in this
27 action. Thus, the term "Defendants", as used herein, refers to all defendants except Defendant
28 Moreno.

²The first and second sets contained twenty-five (25) requests each; the third set
contained fifteen (15) requests.

1 26(b)(1) (emphasis added). The intention of Rule 26(b)(1) is to focus the parties and
2 the court on the actual claims and defenses involved in the action. Fed. R. Civ. P. 26
3 Advisory Committee Notes, 2000 Amendment. “Relevant information need not be
4 admissible at the trial if the discovery appears reasonably calculated to lead to the
5 discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). A district court has the
6 authority to define the actual scope of discovery to the reasonable needs of the action.
7 Fed. R. Civ. P. 26 Advisory Committee Notes, 2000 Amendment.

8 “The Supreme Court has instructed the federal courts to liberally construe the
9 inartful pleading of pro se litigants.” Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir.
10 1987) (citation and internal quotations omitted). The rule of liberal construction is
11 “particularly important in civil rights cases.” Ferdik v. Bonzelet, 963 F.2d 1258, 1261
12 (9th Cir. 1992). This principle also applies to discovery propounded by pro se litigants.
13 See Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986) (courts should treat pro se
14 litigants with “great leniency” when evaluating compliance with the technical rules of civil
15 procedure).

16 **III. DISCUSSION**

17 **A. Defendants’ Nunc Pro Tunc Request for Extension of Time and Request 18 that Plaintiff’s Motion Be Stricken**

19 Defendants, relying on Fed. R. Civ. P. 4(c)(2), contend that the proof of service
20 accompanying Plaintiff’s motion was defective as Plaintiff himself effected service. Rule
21 4(c)(2), however, provides only that a party may not serve a *summons and complaint*.
22 See Fed. R. Civ. P. 4(c)(2). It does not bar a party from serving his own discovery
23 motion. Accordingly, Defendants’ request that Plaintiff’s motion be stricken pursuant to
24 Rule 4(c)(2) is **DENIED**.³

25 Defendants’ nunc pro tunc request for an extension of time to oppose Plaintiff’s
26 motion is **GRANTED**. According to the Court’s calculations, Defendants had until

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28 ³Additionally, the Court notes that Rule 5, which pertains to serving and filing pleadings
and other papers, does not prohibit a party from serving his own motion papers. See Fed. R.
Civ. P. 5.

1 October 22, 2009, or twenty-one (21) days from October 1, 2009, to file an opposition.
2 See L.R. 78-230(m) (requiring oppositions to motions in prisoner cases to be filed and
3 served not more than eighteen (18) days, plus three (3) days for mailing, after the date
4 of service of the motion). Defendants' opposition was served and filed on October 23,
5 2009, just one day after the deadline. Given possible delays in mailing from the prison
6 (the Court notes, for example, that Plaintiff's motion was not filed with the Court until
7 October 9, 2009, eight (8) days after the proof of service was executed), the Court finds
8 Defendants' request for a one day extension of time to be reasonable. Along the same
9 lines, the Court has taken into account the arguments set forth in Plaintiff's reply, which
10 was apparently served on November 5, 2009 but not filed until November 13, 2009, in
11 its consideration of the instant motion, despite the fact that it is questionable whether it
12 was timely filed. See id. (requiring reply papers in prisoner cases to be filed and served
13 not more than five (5) days, plus three days (3) for mailing, after service of the
14 opposition).

15 **B. Plaintiff's Motion to Compel**

16 Neither Plaintiff nor Defendants have identified which of the 65 document
17 requests are at issue in this motion. Instead, Plaintiff seeks to compel the production of
18 various categories of documents. Defendants have made their arguments in opposition
19 to the motion by responding to the categories of documents addressed by Plaintiff.
20 Given the large number of requests propounded, and because, in the Court's view,
21 many of the requests are vague, unintelligible, cumulative, and/or duplicative, it would
22 be no easy task to determine which particular document requests are at issue.
23 Therefore, the Court will follow the approach used by the parties and will rule upon the
24 categories of documents at issue instead of particular document requests.

- 25 **1. "Evidence that will bring to light that these defendants' superiors**
26 **and Corcoran State Prison administration as well as**
27 **CDCR/Department of Corrections should have been well aware of**
28 **Defendants' nature based on similar acts of misconduct."**

The first category of documents sought by Plaintiff consists of documents relating

1 to the knowledge of Defendants' superiors, the Corcoran State Prison administration,
2 and the California Department of Corrections and Rehabilitation ("CDCR") of "similar
3 acts of misconduct" by Defendants. See Pl.'s Affidavit at 12:2-5. Although, as
4 discussed below, documents concerning "similar acts of misconduct" may be
5 discoverable (see infra Section B.5), Plaintiff has not established that documents
6 concerning the knowledge of Defendants' superiors, the Corcoran State Prison
7 administration, or the CDCR of any such similar acts of misconduct are relevant to the
8 claims he has asserted in this case. Plaintiff has not alleged any claims of supervisory
9 liability against Defendants' superiors, and he cannot assert any claims against the
10 prison or the CDCR as they are not "persons" subject to suit within the meaning of
11 section 1983. See 42 U.S.C. § 1983; see also Taylor v. List, 880 F.2d 1040, 1045 (9th
12 Cir. 1989) ("Liability under section 1983 arises only upon a showing of personal
13 participation by the defendant."). Plaintiff is entitled only to discovery relevant to the
14 claims asserted in the pleadings, not to claims which have not been, or cannot be,
15 asserted. See Fed. R. Civ. P. 26 Advisory Committee Notes, 2000 Amendment ("[T]he
16 court . . . has the authority to confine discovery to the claims and defenses asserted in
17 the pleadings" and "the parties . . . have no entitlement to discovery to develop new
18 claims . . . that are not already identified in the pleadings.") Therefore, Plaintiff's motion
19 to compel production of these documents is **DENIED**.

20 **2. "All the information that is available to the Warden Derral G. Adams,**
21 **and his subordinates, Defendants R. Tait, R. Huff, A. Rendon, T.**
22 **Davis, A. Berry, M. Flores, S. Moreno. This includes all policies,**
23 **statements, prison rules, and manuals on the use of force and**
excessive use of force, and the policies and procedures on
administering medical treatment, and Corcoran State Prison policies
on staff retaliation towards prisoners."

24 The second category of documents sought by Plaintiff consists generally of
25 prison policies, rules, and manuals on the use of force, use of excessive force,
26 administration of medical treatment, and staff retaliation on prisoners. Pl.'s Affidavit at
27 12:27-13:6; see also id. at 5:12-16 (seeking to compel production of documents
28 regarding "when and how should force be applied to prisoners housed in Corcoran

1 State Prison Security Housing Units, each of the rules and regulations outside of the
2 general rules set forth in the California Code of Regulation Title 15 manual”); id. at
3 20:26-27 (seeking “policies used in daily operation of the prison”). Defendants argue in
4 response that most prison policy is available to the public, as published in Title 15 of the
5 California Code of Regulations and the Department Operations Manual (“DOM”), and
6 thus is equally available to all parties. Defendants acknowledge that other prison
7 policies exist, but state that such information “cannot be made available to inmates
8 because of security concerns.” Defs.’ Opp’n at 5. Defendants further acknowledge the
9 existence of an Operational Procedure regarding the use of force during cell extractions,
10 but contend that it should not be produced because it is “strictly classified” and because
11 this case does not involve a cell extraction. Id.

12 As Plaintiff does not dispute Defendants’ assertion that this case does not involve
13 a cell extraction, the Court finds that the Operational Procedure regarding the use of
14 force during cell extractions is not relevant and need not be produced. The Court
15 further finds that the prison policy set forth in Title 15 of the California Code of
16 Regulations and the DOM are equally available to all parties, and thus need not be
17 produced. It is unclear to the Court what other policies, rules, and manuals may exist
18 concerning the use of force, use of excessive force, administration of medical treatment,
19 and staff retaliation on prisoners, and thus the Court cannot evaluate whether any other
20 such policies, rules, and manuals constitute sensitive information which should not be
21 made available to Plaintiff due to security concerns. Even so, because Plaintiff does not
22 make any allegations concerning the prison’s policies, procedures, or practices in the
23 FAC, such materials are not relevant to Plaintiff’s claims. Again, Plaintiff may not use
24 discovery to develop new claims that are not already identified in the pleadings. Fed. R.
25 Civ. P. 26 Advisory Committee Notes, 2000 Amendment. Therefore, Plaintiff’s motion
26 to compel production of these documents is **DENIED**.

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1 **3. “[Plaintiff’s] own files from this agency and the Defendants in the**
2 **form of Plaintiff’s 114-D log . . . from November 8, 2007 until**
3 **December 31, 2007.”**

4 Plaintiff moves to compel the production of his 114-D log. Pl.’s Affidavit at 13:9-
5 12. Defendants state that they will produce the log for the dates specified by Plaintiff,
6 i.e., from November 8, 2007 through December 31, 2007. Defs.’ Opp’n at 5. If they
7 have not already done so, Defendants shall produce the log to Plaintiff by no later than
8 January 4, 2010.

9 **4. “Security Housing Unit file, unit log entries of where Plaintiff was**
10 **housed from November 8, 2007 until December 31, 2007.”**

11 Next, Plaintiff moves to compel the production of the log maintained by the
12 Security Housing Unit from November 8, 2007 through December 31, 2007. Pl.’s
13 Affidavit at 13:11-12. Defendants have requested the log from the CDCR, and intend to
14 produce it to Plaintiff so long as the production is not objectionable. Defs.’ Opp’n at 5.
15 Defendants shall either produce the log or shall serve an amended discovery response
16 setting forth any objection to producing the document by no later than January 4, 2010.

17 **5. “Discovery to check out [Defendants’] backgrounds and work**
18 **history, including prior suits or reprimands for misbehavior.”**

19 Plaintiff contends that he is entitled to discovery concerning Defendants’
20 backgrounds, work histories, prior suits, and reprimands for misbehavior. Pl.’s Affidavit
21 at 15:11-14. In particular, he contends that because his suit “is based on excessive use
22 of force and/or misconduct by particular prison employees,” he has the “right to check
23 out [each] defendant’s background and work history.” Pl.’s Reply at 6:28-7:6.
24 Defendants object to this discovery on the basis that it is not relevant to Plaintiff’s
25 claims. Defs.’ Opp’n at 6. Defendants also observe that the release of the requested
26 information to Plaintiff would “threaten the safety of the officers and the security of the
27 institution.” Id.

28 Plaintiff’s request, as phrased, is overly broad. However, in narrowing Plaintiff’s
 request, the Court finds that documents concerning similar acts of misconduct involving

1 Defendants are relevant and/or are reasonably calculated to lead to the discovery of
2 admissible evidence, and thus should be produced. See, e.g., Fed. R. Evid. 404(b);
3 Gibson v. Beer, 2008 WL 4057543, at *2 (E.D. Cal. 2008) (requiring production of
4 factually similar complaints against defendants); Drake v. White, 2009 WL 799128, at *2
5 (E.D. Cal. 2009) (ordering production of all complaints alleging excessive force against
6 defendants). Plaintiff's request must further be narrowed to a specific period of time. In
7 Gibson, the court permitted discovery of complaints of similar acts of misconduct over
8 less than a two year period. See Gibson, 2008 WL 4057543, at *2. Here, the Court
9 finds a two year period of time to be appropriate.

10 Although Defendants argue that the release of the requested documents would
11 pose a safety threat to Defendants and to the prison, they do not cite any authority nor
12 provide any evidence to support this assertion. In any event, the Court finds that
13 permitting Defendants to redact any personal information from the documents to be
14 produced should address any potential security concerns.

15 Accordingly, Plaintiff's motion to compel production of these documents is
16 **GRANTED IN PART** as follows: Defendants shall produce all documents concerning
17 complaints or discipline against Defendants relating to similar acts of misconduct
18 between the period from November 8, 2006 to November 8, 2008 (one year prior to and
19 after the date the events giving rise to Plaintiff's claims allegedly occurred). As to
20 Defendant Tait, such "similar acts of misconduct" would include any allegations of
21 excessive force, retaliation, and deliberate indifference to medical needs. As to
22 Defendant Rendon, documents reflecting allegations of excessive force, failure to
23 protect, and deliberate indifference to medical needs shall be produced. As to
24 Defendant Huff, documents relating to allegations of retaliation and deliberate
25 indifference to medical needs shall be produced. As to Defendants Davis, Flores, and
26 Berry, only documents reflecting allegations of deliberate indifference to medical needs
27 need be produced. Defendants may redact from the documents any portions which
28 reflect their personal information. All documents ordered to be produced shall be

1 served upon Plaintiff by no later than January 4, 2010.

2 **6. “Deliberative and advisory materials in the form of internal memos**
3 **on the subject of disciplinary measures taken and results, past and**
4 **present misconduct, actions which resulted in corrective measures.”**

5 The next category of documents sought by Plaintiff consists of “internal memos”
6 regarding “disciplinary measures taken” in relation to “misconduct,” including information
7 concerning the “results” thereof. Pl.’s Affidavit at 5:9-12. Plaintiff’s reply clarifies that he
8 seeks information concerning misconduct that is “related to [the] application of force.”
9 Pl.’s Reply at 6:19-22.

10 It is unclear to the Court whether Plaintiff seeks this information as it relates to
11 Defendants only, or whether he seeks information of a more general nature. To the
12 extent Plaintiff seeks information concerning Defendants only, the request is subsumed
13 within the discussion above, and no further production is required. To the extent the
14 request seeks information of a more general nature, the request is overly broad.
15 Plaintiff’s motion to compel production of these documents is thus **DENIED**.

16 **7. Investigative Reports**

17 Finally, Plaintiff seeks the following investigative reports: (1) Investigative report
18 by Sergeant Marsh dated January 8, 2008, (2) Appeal No. CSPC-5-07-05327 by
19 Sergeant Marsh dated December 12, 2007, (3) Appeal No. CSPC-07-5773 by Sergeant
20 Marsh dated January 5, 2008, and (4) Appeal No. CSPC-07-5000 by W. Doering, SRN
21 Il dated December 12, 2007. Pl.’s Reply at 8:1-6. Defendants have agreed to produce
22 a redacted copy of the investigative report by Sergeant Marsh regarding the subject
23 incident. Defs.’ Opp’n at 7. The other reports were referenced only in Plaintiff’s reply,
24 not his moving papers, and thus Defendants did not have the opportunity to set forth
25 their position regarding the remaining three reports in their opposition.

26 It is unclear whether these reports pertain to Plaintiff and to the events in
27 question in this lawsuit. If they do, it is likely they should be produced, possibly with
28 redactions. If they do not relate to Plaintiff, they are not relevant to Plaintiff’s claims and
need not be produced. Defendants shall either make a further production relating to the

1 above or, if they contend that no further response is warranted, shall serve an amended
2 discovery response setting forth their position, by no later than January 4, 2010. If
3 Plaintiff is unsatisfied with Defendants' response, he will need to promptly file a new
4 motion to compel as to those documents.

5 **IV. CONCLUSION**

6 For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiff's motion to
7 compel responses to demands for production is **GRANTED IN PART** and **DENIED IN**
8 **PART** as follows:

9 Category 1: **DENIED**.

10 Category 2: **DENIED**.

11 Category 3: **GRANTED**. Defendants shall produce the log to Plaintiff by no later
12 than January 4, 2010.

13 Category 4: Defendants shall either produce the log or shall serve an amended
14 discovery response setting forth any objection to producing the document by no later
15 than January 4, 2010.

16 Category 5: **GRANTED IN PART**. All documents ordered to be produced shall
17 be served upon Plaintiff by no later than January 4, 2010.

18 Category 6: **DENIED**.

19 Category 7: Defendants shall either make a further production relating to the
20 above or, if they contend that no further response is warranted, shall serve an amended
21 discovery response setting forth their position, by no later than January 4, 2010.

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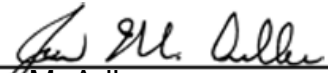
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1 Plaintiff's request for sanctions is **DENIED**. To the extent that Plaintiff's motion
2 seeks to compel responses from Defendant Moreno, the motion is **DENIED** as Moreno
3 has not appeared in this action.

4 **IT IS SO ORDERED.**

5 DATED: December 4, 2009

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7 Jan M. Adler
8 U.S. Magistrate Judge
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