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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THORNELL BROWN,
Plaintiff,
v.
R.J. WILLIAMS, et al.,
Defendants.

CASE NO. 1:09-cv-00792-LJO-GBC (PC)
ORDER DENYING PLAINTIFF’S MOTIONS
TO COMPEL AND DENYING PLAINTIFF’S
MOTION FOR COURT TO PROVIDE
DEFENDANTS WITH A COPY OF MOTION
TO COMPEL AS MOOT

/ Docs. 50, 52, 53

I. Procedural History

On May 4, 2009, Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. Doc. 1. On December 16, 2009, the Court found a cognizable Eighth Amendment claim for conditions of confinement following use of pepper spray. Doc. 8. On April 8, 2011, the Court adopted findings and recommendations to dismiss Plaintiff’s claim of excessive force based upon qualified immunity. Doc. 39. On November 21, 2011, Plaintiff filed a motion to compel further responses to production of documents. Doc. 50. On January 5, 2012, Plaintiff filed a motion to compel answers to deposition questions and a motion for the Court to provide Defendants with a copy of his motion. Docs. 52, 53. On January 18, 2012, Defendants filed an opposition to Plaintiff’s motion to compel. Doc. 54. On February 9, 2012, Plaintiff filed a reply to Defendants’ opposition. Doc. 55. This matter is deem submitted pursuant to Local Rule 230(1).

II. Analysis

A. Defendants' Personnel Records and Inmate Complaints are Privileged and Irrelevant

Plaintiff moves to compel further documents and responses to his discovery requests. Docs. 50, 52. Plaintiff requests all inmate complaints filed against Defendant Williams as well as his personnel record. Mot. Compel at 8-10, 13-14, Doc. 50. Under Rule 26 of the Federal Rules of Civil Procedure, “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b). Defendant Williams’ personnel record is privileged and also not relevant to Plaintiff’s claim of unconstitutional conditions of confinement. Moreover, complaints by other inmates are also irrelevant. A prison official violates the Eighth Amendment when these two components are met: (1) the deprivation alleged must be objectively sufficiently serious; and (2) the prison official possesses a sufficiently culpable state of mind. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S. 294, 297-98 (1991)). Notwithstanding the privileged nature of Defendant’s personnel file, past complaints by other inmates are not relevant to whether Plaintiff’s alleged deprivation was objectively sufficiently serious and whether Defendant Williams possessed a sufficiently culpable state of mind at the time of Plaintiff’s alleged deprivation. See *Valenzuela v. Smith*, 2006 WL 403842 (E.D. Cal. Feb. 16, 2006) (rejecting argument that all complaints against defendants while employed by CDC were relevant to show a pattern of deliberate indifference to medical needs of prisoners); *Holestine v. Terhune*, 2003 WL 23281594, * 10 (N.D. Cal. Nov. 21, 2003) (denying production of appeals of other inmates.); *Garrett v. Walker*, 2007 WL 3342522 (E.D. Cal. Nov. 9, 2007) (finding burden outweighed relevance for all appeals of deliberate indifference to inmate health and safety); *Blue v. Grannis*, 2007 WL 2758025 (E.D. Cal. Sept. 21, 2007) (denying motion to compel all grievances against defendant because “evidence of prior accusations against defendant do not bear on any material issue in this matter.”)

B. Unrelated Inmate Complaints are Inadmissible 404(b) Character Evidence

Plaintiff requests the personnel file and other inmate complaints to show Defendants’ “propensity for violence against inmates.” Mot. Compel at 5, Doc. 50. However, a “propensity for violence against inmates” is not one of the elements of Plaintiff’s claim for conditions of

1 confinement. Furthermore, evidence of other crimes, wrongs, or acts is not admissible to prove the
2 character of a person in order to show action in conformity therewith. Fed. R. Evid. 404(b).

3 **C. Defendants' Personnel Records and Inmate Complaints are Sensitive Information**

4 Defendants note that information in other inmate complaints and Defendant's personnel file
5 are sensitive and raise an issue of institutional security. "The interest of the party asserting a privilege
6 tends to be strongest when the information in question falls squarely within the definition of
7 privilege, and its disclosure would undermine the public interest in free, candid and uninhibited
8 exchange of information or jeopardize the physical security of an individual or governmental
9 institution." *Assoc. for Reduction of Violence v. Frank*, 734 F.2d 63, 66 (1st Cir. 1984). In the
10 specific context of prison files, the Supreme Court has noted the 'potential seriousness' of the
11 government's interest, based on the notion that turning over the requested documents would result
12 in substantial injury to the State's prison parole system by unnecessarily chilling the free and
13 uninhibited exchange of ideas between staff members within the system, by causing the unwarranted
14 disclosure and consequent drying up of confidential sources, and in general by unjustifiably
15 compromising the confidentiality of the system's records and personnel files. *Id.* (citing *Kerr v.*
16 *United States District Court*, 426 U.S. 394, 405 (1977); see also *Williams v. Missouri Bd. of*
17 *Probation & Parole*, 661 F.2d 697, 700 (8th Cir. 1981) ("we recognize the state's strong and
18 legitimate interest in preserving the confidentiality of sources of information necessary for parole
19 release decisions and in maintaining security and discipline within its institutions"); *Sanchez v. City*
20 *of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1990) (denying request for police department
21 personnel files after weighing potential benefits of disclosure against potential disadvantages and
22 finding that privilege bars discovery).

23 **D. Defendants Responded to Plaintiff's Requests**

24 Plaintiff requests all training, policies, protocols, and standards. Mot. Compel at 11-12, Doc.
25 50. However, Defendants provided this information. Pl. Mot. Compel, Ex. 4 at 66-73, Doc. 50; Defs.
26 Opp'n at 9, Doc. 54.

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E. Procedure to Correspond with Inmate Witnesses

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2 Plaintiff requests to correspond with inmate Jeffrey Edwards. Mot. Compel at 12-13, Doc.
3 50. Inmates may only correspond with one another if they obtain written authorization from the
4 appropriate prison officials. Cal. Code Regs., tit. 15 § 3139. Further, the Court does not have
5 jurisdiction in this action over anyone other than Plaintiff and Defendants, and cannot order that
6 Plaintiff be allowed to correspond with his witnesses. *E.g.*, *City of Los Angeles v. Lyons*, 461 U.S.
7 95, 102 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State,*
8 *Inc.*, 454 U.S. 464, 471 (1982); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1126 (9th Cir. 2006).

9 Plaintiff is required to make a showing with respect to each inmate witness that the witnesses
10 possess relevant knowledge. Relevant evidence means evidence having any tendency to make the
11 existence of any fact that is of consequence to the determination of the action more probable or less
12 probable than it would be without the evidence.” Fed. R. Evid. 401. Personal knowledge means
13 knowledge of a fact perceived by the senses, by one who has had an opportunity to observe, and must
14 have actually observed the fact. Fed. R. Evid. 602. Personal knowledge is not an absolute but may
15 consist of what the witness thinks he knows from personal perception. *Id.*

16 Plaintiff’s motion for court assistance must be denied because he has not provided evidence
17 that he completed the process to obtain written authorization from the appropriate prison officials.
18 Cal. Code Regs., tit. 15 § 3139. The Court does not have jurisdiction in this action over anyone other
19 than Plaintiff and Defendants, and the Court can only make a *request* to prison officials and cannot
20 order them to allow Plaintiff to correspond with his witnesses. *E.g.*, *City of Los Angeles*, 461 U.S.
21 at 102; *Valley Forge Christian Coll.*, 454 U.S. at 471; *Jones*, 444 F.3d at 1126. Such a request shall
22 not be made by the Court without assurances that Plaintiff has followed procedures and used the
23 available resources at the prison to obtain written authorization after consideration by prison officials
24 of safety, security, and procedural priorities. The Court recognizes that prison administrators “should
25 be accorded wide-ranging deference in the adoption and execution of policies and practices that in
26 their judgment are needed to preserve internal order and discipline and to maintain institutional
27 security.” *Whitley v. Albers*, 475 U.S. 312, 321-322 (1986) (quoting *Bell v. Wolfish*, 441 U.S. 520,
28 547 (1970)). Therefore, Plaintiff must first provide evidence that he completed the process to obtain

1 written authorization from the appropriate prison officials. Cal. Code Regs., tit. 15 § 3139.

2 **F. Procedure to Conduct Deposition by Written Questions**

3 Plaintiff contends that Defendant Williams did not respond to his deposition questions. Mot.
4 Compel at 2, Doc. 52. Under Rule 31, a party may depose any person by written questions. However,
5 where the deponent is incarcerated, the party must obtain the Court's permission to conduct the
6 deposition. Fed. R. Civ. P. 31(a)(2)(B). Further, unless the parties stipulate otherwise, the party
7 noticing the deposition is required to provide the questions to an "officer," as that term is defined
8 in Rule 28(a), who will take the deponent's responses to the questions, certify them, and send them
9 to the noticing party. *Id.* Rules 31(b), 30(b)(5). In Plaintiff's motion, he did establish that he followed
10 this procedure. Therefore, his motion to compel responses to written deposition questions must be
11 denied.

12 **III. Conclusion**

13 The Court finds that unrelated inmate complaints and Defendant Williams' personnel record
14 is privileged; not relevant to Plaintiff's claim of unconstitutional conditions of confinement;
15 inadmissible 404(b) character evidence; and sensitive and raises issues of institutional security.
16 Defendants properly responded to Plaintiff's requests for all training, policies, protocols, and
17 standards. Plaintiff did not demonstrate that he followed the proper procedure to correspond with
18 an inmate witness or to request a deposition by written questions.

19 Accordingly, based on the foregoing analysis, Plaintiff's motions to compel are DENIED,
20 and Plaintiff's motion to provide Defendants with a copy of his motion to compel is DENIED, as
21 moot.

22 IT IS SO ORDERED.

23 Dated: April 13, 2012

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25 UNITED STATES MAGISTRATE JUDGE
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