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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
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12 LEONARD RANSOM, JR.,

13 Plaintiff,

14 v.

15 DANNY HERRERA and RICKY
16 BRANNUM,

17 Defendants.
18

Case No. 1:11-cv-01709-LJO-EPG (PC)

ORDER REGARDING S. KERNAN'S
MOTION TO QUASH SUBPOENA, OR
ALTERNATIVELY, ISSUE PROTECTIVE
ORDER

(ECF NO. 122)

19 Leonard Ransom, Jr. ("Plaintiff"), is a state prisoner proceeding *pro se* in this civil
20 rights action filed pursuant to 42 U.S.C. § 1983. This case is now proceeding "on Plaintiff's
21 Second Amended Complaint (ECF No. 72), against defendants Brannum and Herrera on
22 Plaintiff's Fourteenth Amendment procedural due process claim, Fourteenth Amendment
23 substantive due process claim under Devereaux, retaliation claim, section 1983 malicious
24 prosecution claim, and conspiracy claim." (ECF No. 77, p. 2). Plaintiff's complaint stems
25 from the allegation that Defendants falsely accused Plaintiff of assaulting an officer, which
26 resulted in a criminal case against Plaintiff and a rules violation report. Those claims were
27 eventually dismissed over two years later. However, the false claims against Plaintiff resulted
28 in substantial time in administrative segregation, a criminal case against Plaintiff, denial of

1 parole, and delay of the next opportunity for parole for ten years.

2 The present motion is non-party S. Kernan's motion to quash a subpoena by Plaintiff
3 which asks for documents regarding Plaintiff's placement in administrative segregation and
4 information regarding the psychological effects of solitary confinement. (ECF No. 122). The
5 Court heard argument regarding this motion at the discovery and status conference on April 4,
6 2018. (ECF No. 132). Plaintiff filed an opposition to the motion to quash on April 16, 2018.
7 (ECF No. 136). S. Kernan filed a reply on April 20, 2018. (ECF No. 143).

8 I. The Parties' Positions

9 Plaintiff's subpoena seeks the following documents:

- 10 • "Specific e-mails, internal memoranda, notes, transcripts [sic], and statements of Scott
11 Kernan regarding the effects of long, and short-term solitary confinement, made in
12 interview with Oprah Winfrey, which aired on 10/22/17, on 60 Minutes;"
- 13 • Emails, memoranda, notes, policies, instructional directives, procedures, text messages
14 from S. Kernan or his designee to any member of the Board of Parole Hearings
15 regarding "the psychological effects of. . . solitary confinement, on those inmates
16 appearing before the board,. . . during the tenure of Scott Kernan;"
- 17 • Emails, letters, internal memoranda, and text messages from K. Holland or E. Stelter to
18 the Classification and Staff Representative regarding segregation or transfer of Plaintiff,
19 from the period of March 29, 2011, through November 1, 2011.

20 (ECF No. 122-2, pgs. 4-5).

21 S. Kernan objects to the subpoena because (1) it was not signed by the clerk's office;
22 (2) it seeks information not relevant to Plaintiff's claims; (3) it fails to provide an adequate time
23 to respond; and (4) it requests documents that are privileged. (ECF No. 122).

24 II. Analysis of Motion to Quash

25 A. Lack of Clerk Signature

26 Kernan first objects that service was improper because the Clerk did not sign the
27 subpoena.

28 Federal Rule of Civil Procedure 45(a)(3) states that "The clerk must issue a subpoena,
signed but otherwise in blank, to a party who requests it. The party must complete it before
service. An attorney also may issue a sign a subpoena if the attorney is authorized to practice

1 in the issuing Court.” Here, the Clerk failed to sign the subpoena before sending to Plaintiff.
2 S. Kernan asks for the subpoena to be quashed on that basis.

3 The Court will not quash the subpoena on this basis. The clerk or attorney’s signature
4 is a requirement that demonstrates the authenticity of the subpoena. Here, the subpoena is
5 authentic. Indeed, the Court itself authorized issuance of the subpoena when it granted
6 Plaintiff’s motion and directed the clerk to issue the subpoena. (ECF No. 113). Defendants do
7 not challenge its authenticity. Nor could they as they are aware that it was issued pursuant to
8 this Court’s order. The lack of a signature was clearly an oversight, and the record is clear that
9 it was in fact issued by the Clerk’s Office. It is also worth noting that the lack of a clerk’s
10 signature is not one of the bases to move to quash a subpoena under Rule 45(d)(3).

11 **B. Relevance of Requested Documents**

12 S. Kernan next objects to the requests as not relevant because S. Kernan is not a
13 Defendant and the requests are not targeted to the actions of Defendants. S. Kernan contends
14 that Defendants had no role in Plaintiff’s housing at any other institution.

15 Plaintiff argues in response that Plaintiff is seeking documents regarding the
16 consequences of Defendants’ conduct in filing their allegedly false allegations against Plaintiff.
17 Specifically, Plaintiff seeks documents showing how long he was kept in administrative
18 segregation as a result of those allegations, as well as the negative effects from long term
19 confinement in administrative segregation or solitary confinement. Plaintiff claims that S.
20 Kernan had the ultimate responsibility to retain or transfer Plaintiff out of Administrative
21 Segregation.

22 After review of the arguments, the Court finds that the requested documents are
23 relevant, but also that the requests are overbroad. Plaintiff is entitled to documents showing
24 that he was put in Administrative Segregation as a result of Defendants’ allegations and
25 resulting rules violation report, and is also entitled to information from one of the heads of the
26 CDCR regarding any negative effects from long term placement in Administrative Segregation.
27 Plaintiff’s due process claim in part turns on whether he was deprived of a liberty interest
28 solely as a result of the false accusations. The duration in which he was confined in

1 administrative segregation and the conditions in that segregation are very relevant to whether
2 Defendants' false charges violated Plaintiff's constitutional rights. This issue and the relevance
3 of Plaintiff's allegations related to his confinement were discussed extensively in the Court's
4 opinions in this case at ECF No. 61, pgs. 14-17, and ECF No. 76, pgs. 10-11. However, the
5 requests must be narrowly tailored to this relevant information. Accordingly, the Court finds
6 the following subset of Plaintiff's requests are sufficiently relevant to be discoverable under
7 Federal Rule of Civil Procedure 26:

- 8 • Written reports or public statements authored in whole or in part by S. Kernan
9 regarding the effects of long and short term Administrative Segregation or
10 solitary confinement. This includes memoranda or transcripts regarding an
11 interview with Oprah Winfrey on October 22, 2017.¹
- 12 • Documents regarding segregation or transfer of Plaintiff from the period of
13 March 29, 2011, through November 1, 2011.²

14 C. Privilege Objection

15 To the extent S. Kernan locates documents he believes to be privileged, he may submit
16 the documents for *in camera* review with an explanation for the Court. Any non-privileged
17 documents or portions of the documents shall be given to Plaintiff without awaiting the results
18 of the Court's review of potentially privileged documents.

19 III. Conclusion

20 For the foregoing reasons, the Court orders as follows:

21 Within 45 days, S. Kernan shall conduct a reasonable search for documents in his
22

23 ¹ As always, the subpoena only covers documents in S. Kernan's possession, custody, or control. He is
24 under no obligation to seek documents from Ms. Winfrey. Additionally, the Court is not ordering a search for
25 every possible communication on these subjects, such as comments made in email or text messages. However, to
26 the extent S. Kernan has authored or contributed to a report providing a reasoned opinion on these topics, and that
27 report can be located with a reasonable search, it shall be provided.

28 ² Again, S. Kernan is only obligated to perform a reasonable search of documents in his possession,
custody, or control. The Court cannot determine what a reasonable search involves without knowledge of how S.
Kernan's documents are kept. However, it would appear that a search in S. Kernan's electronic files under this
date range for Plaintiff's name, inmate number, and the relevant RVR number, in addition to a search of any
segregated hard copy files associated with Plaintiff, if any, would be reasonable.

1 possession, custody, or control, and produce the following or submit them for *in camera*
2 review:

- 3 • Written reports or public statements authored in whole or in part by S. Kernan
4 regarding the effects of long and short term Administrative Segregation or
5 solitary confinement. This includes memoranda or transcripts regarding an
6 interview with Oprah Winfrey on October 22, 2017.
- 7 • Documents regarding segregation or transfer of Plaintiff from the period of
8 March 29, 2011, through November 1, 2011.

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10 IT IS SO ORDERED.

11 Dated: May 14, 2018

12 /s/ Eric P. Goss
13 UNITED STATES MAGISTRATE JUDGE
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