

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HOMER TYRONE LEWIS, ) Case No.: 1:12-cv-00856-LJO-BAM (PC)  
Plaintiff, )  
v. ) ORDER DENYING PLAINTIFF'S MOTION TO  
KATHLEEN ALISON, et al., ) COMPEL PRODUCTION OF DOCUMENTS  
Defendants. ) (ECF No. 61)  
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## I. Background

Plaintiff Homer Tyrone Lewis (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following summary judgment for failure to exhaust administrative remedies, this action currently proceeds on Plaintiff’s third amended complaint against Defendant Denny for retaliation in violation of the First Amendment of the United States Constitution. (ECF No. 93.)

On August 18, 2014, Plaintiff filed a motion to compel the production of documents from Defendants Adams, Allison, Denny and Junious pursuant to Federal Rule of Civil Procedure 37. (ECF No. 61.) Defendants opposed the motion on September 9, 2014. (ECF No. 67.) Plaintiff replied on September 19, 2014. (ECF No. 73.) The motion is deemed submitted. Local Rule 230(1).

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1                   **II. Motion to Compel**

2                   **A. Request for Production of Documents**

3                   “A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce  
4 and permit the requesting party or its representative to inspect, copy, test, or sample the following  
5 items in the responding party’s possession, custody or control: (A) any designated documents or  
6 electronically stored information . . . .” Fed. R. Civ. P. 34(a)(1)(A).

7                   In responding to requests for production, a party must produce documents or other tangible  
8 things which are in his or her “possession, custody, or control.” Fed. R. Civ. P. 34(a). Responses  
9 must either state that inspection and related activities will be permitted as requested or state an  
10 objection to the request, including the reasons. Fed. R. Civ. P. 34(b)(2)(B).

11                   Actual possession, custody or control is not required. “A party may be ordered to produce a  
12 document in the possession of a non-party entity if that party has a legal right to obtain the document  
13 or has control over the entity [that] is in possession of the document.” *Soto v. City of Concord*, 162  
14 F.R.D. 603, 619 (N.D. Cal.1995); *see also Allen v. Woodford*, 2007 WL 309945, at \*2 (E.D. Cal. Jan.  
15 30, 2007) (“Property is deemed within a party’s ‘possession, custody, or control’ if the party has actual  
16 possession, custody, or control thereof or the legal right to obtain the property on demand.”) (citation  
17 omitted).

18                   **B. Discussion**

19                   Plaintiff seeks to compel responses to request for production of documents (POD) 24, which  
20 was served on Defendants Adams, Junious and Denny. To the extent Plaintiff seeks the production of  
21 documents from or concerning former defendants Adams, Allison and Junious, his motion to compel  
22 shall be denied. These defendants are no longer parties to this action. The Court therefore limits its  
23 analysis to documents relevant to the retaliation claim against Defendant Denny.

24                   **POD 24:** “Any and all, prior and present grievances, staff complaints, civil litigations state or  
25 federal by CDCR inmates, or other documents reletive [sic] to official misconduct pertaining only to  
26 particular kinds of complaints and/or allegations in the Personnel Files of Defendants Adams, Junious  
27 and Denny, including but not limited to, Investigative reports by the Federal Bureau of Investigations

1 (F.B.I.), (CDCR) or outside Law Enforcement Agencies of Office of Internal Affairs (O.I.A.),  
2 Investigative Services Unit (I.S.U.) concerning [RETALIATION] against CDCR inmates and/or  
3 CDCR employees from the time you were employed by the California Department of Corrections and  
4 Rehabilitation ('CDCR') to the present, according to Federal Rules of Civil Procedure[] Rule 26(b)(1),  
5 and Rule 404(b), Federal Rules of Evidence, produce copies of all documents."

6       **Response:** "Objection, this request is vague, ambiguous, and confusing with respect to  
7 'official misconduct pertaining only to particular kinds of complaints and/or allegations,' and appears  
8 to present a compound request for several different types of documents. To the extent this request  
9 seeks any and all complaints submitted by CDCR inmates in any forum alleging any misconduct, or  
10 specifically retaliation, by Defendants Adams, Junious, and Denny, it is overbroad, unduly  
11 burdensome with regard to time and scope, and is not reasonably calculated to lead to the discovery of  
12 admissible evidence. Responding to this request would require a search of every venue wherein an  
13 inmate might complain about a prison official, throughout Defendants' entire careers with CDCR, to  
14 screen for any mention of Defendants Adams, Junious, or Denny. The massive effort required to do so  
15 is not likely to yield any relevant evidence, because the request is not tailored to addressing Lewis's  
16 claim that Defendants retaliated against him in connection with his January 31, 2011 placement in  
17 administrative segregation. Additionally, any complaints submitted by other inmates responsive to  
18 this request would be protected by the official information privilege. Other than the present matter,  
19 Defendants are not aware of any inmate grievances or complaints against them alleging retaliation,  
20 and are not aware of any investigations into claims of retaliation against them. Defendants do not  
21 have care, custody, or control over any investigative reports prepared by the FBI. Without waiving  
22 these objections, Defendants respond as follows:

23       Defendants produce as Attachment A a copy of CDCR Form 602, Inmate/Parolee Appeal, log  
24 number SATF-Z-11-0092 authored by Lewis on April 4, 2011, concerning his administrative  
25 segregation placement and legal materials; as Attachment B a copy of the first-level response to appeal  
26 log number SATF-Z-11-0092; as Attachment C a copy of the second-level response to appeal log  
27 number SATF-Z-0092; as Attachment D a copy of the third-level response to appeal log number

1 SATF-Z-11-0092; as Attachment E a copy of CDCR Form 602, Inmate/Parolee Appeal, log number  
2 SATF-Z-11-01492 authored by Lewis on May 27, 2011, concerning his administrative segregation  
3 placement and legal materials; as Attachment F a copy of the first-level response to appeal log number  
4 SATF-Z-01492; as Attachment G SATF Inmate/Parolee Appeals Tracking System printout for Lewis;  
5 and as Attachment H a copy of Office of Appeal Inmate/Parolee Appeals Tracking System printout for  
6 Lewis.

7 **Ruling:** Plaintiff's motion to compel is denied. Plaintiff contends that Defendant Denny's  
8 objections are not justified or meritorious because the discovery appears reasonably calculated to lead  
9 to the discovery of admissible evidence and the requested documents are relevant. Fed. R. Civ. P.  
10 26(b)(1). Plaintiff's argument overlooks Defendant Denny's objections that, amongst other things, the  
11 request is vague, confusing, compound, overbroad and unduly burdensome. The Court finds that these  
12 objections are both justified and meritorious. Plaintiff's request is confusing, compound, overbroad as  
13 to time and scope and is unduly burdensome by requiring Defendant Denny to seek documents from a  
14 variety of sources, not simply the types of documents contained in his personnel file, for the entirety of  
15 his career with CDCR. Further, Plaintiff fails to demonstrate how complaints from other inmates  
16 regarding Defendant Denny are reasonably calculated to lead to the discovery of admissible evidence  
17 or are relevant to any claim or defense related to Defendant Denny's alleged retaliation against  
18 Plaintiff in 2011.

19 Plaintiff also complains that Defendant Denny is asserting "Official Information Privilege,"  
20 "Informant Identity Privilege," and "Law Enforcement Privilege" concerning the requested documents  
21 from Defendant Denny's personnel file. Plaintiff's complaint is inaccurate. Defendant Denny only  
22 asserts the official information privilege in connection with Plaintiff's apparent request for grievances  
23 filed by other prisoners. Regardless, the request for grievances and complaints made by other inmates  
24 is overbroad as to time and unduly burdensome. As noted above, Plaintiff also fails to demonstrate  
25 how complaints from other inmates regarding Defendant Denny are reasonably calculated to lead to  
26 the discovery of admissible evidence or are relevant to any claim or defense in this action. Further,

1 Defendant Denny represents that he is unaware of any inmate grievances or complaints against him  
2 alleging retaliation.

3 Plaintiff also asserts in his reply that Defendant Denny can produce documents in his “care,  
4 custody or control of outside Law Enforcement Agencies of Investigative Reports.” (ECF No. 73, p.  
5 3.) However, Defendant Denny represents that he is unaware of any investigations into claims of  
6 retaliation against him. Moreover, there is no indication that Defendant Denny has the legal right to  
7 obtain investigative documents from an outside agency and Defendant Denny cannot be compelled to  
8 produce documents in the care, custody and control of outside law enforcement agencies. Fed. R. Civ.  
9 P. 34(a)(1).

10 **III. Conclusion and Order**

11 For the reasons stated, Plaintiff’s motion to compel production of documents, filed on August  
12 18, 2014, is HEREBY DENIED.

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14 IT IS SO ORDERED.

15 Dated: January 21, 2015

16 /s/ *Barbara A. McAuliffe*  
17 UNITED STATES MAGISTRATE JUDGE

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