

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES A. ROGERS,) 1:12cv01827 AWI DLB PC
)
Plaintiff,) ORDER GRANTING IN PART AND
) DENYING IN PART PLAINTIFF’S
vs.) MOTION TO COMPEL
)
N. EMERSON,) (Document 32)
)
Defendants.)

Plaintiff Charles A. Rogers (“Plaintiff”) is a prisoner proceeding pro se in this civil rights action. Defendants paid the filing fee and removed the action to this Court on November 7, 2012.

Pursuant to the Court’s June 20, 2013, order, this action is proceeding on the following cognizable claims: (1) retaliation in violation of the First Amendment against Defendant Emerson; and (2) negligence against Defendant Goss. The discovery cut-off date is December 1, 2013.

On October 3, 2013, Plaintiff filed a motion to compel further responses to (1) Requests for Interrogatories, Set Three, Numbers 5, 6 and 7 from Defendant Emerson; and (2) Requests for Production of Documents, Set Three, Number 8, from Defendants Emerson and Goss.

1 Defendants opposed the motion on November 5, 2013, and Plaintiff filed a reply on
2 November 20, 2013. The motion is deemed submitted pursuant to Local Rule 230(l).

3 **A. LEGAL STANDARD**

4 “Parties may obtain discovery regarding any matter, not privileged, that is relevant to the
5 claim or defense of any party Relevant information need not be admissible at the trial if the
6 discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.
7 R. Civ. P. 26(b)(1). Defendants are required to “furnish such information as is available” to him
8 in responding to Plaintiff’s interrogatories, and documents which are in his “possession, custody
9 or control” in responding to Plaintiff’s request for the production of documents. Fed. R. Civ. P.
10 33(a), 34(a).
11

12 If Defendants object to one of Plaintiff’s discovery requests, it is Plaintiff’s burden to
13 demonstrate why the objection is not justified. Plaintiff must inform the court which discovery
14 requests are the subject of his motion to compel, and, for each disputed response, inform the
15 Court why the information sought is relevant and why Defendants’ objections are not justified.

16 **B. INTERROGATORIES 5, 6 AND 7**

17 The responding party is obligated to respond to the interrogatories to the fullest extent
18 possible, Fed. R. Civ. P. 33(b)(3), and any objections must be stated with specificity, Fed. R.
19 Civ. P. 33(b)(4).
20

21 Interrogatory Numbers 5, 6 and 7 are similar and Defendant set forth almost identical
22 responses. Accordingly, the Court will summarize the requests and discuss them together.

23 Number 5

24 Have you ever been accused of harassment and/or retaliation by any inmate other than
25 plaintiff since the beginning of your employment by the CDCR?

26 Number 6

27 Has anyone ever initiated a staff complaint against you since the beginning of your
28 employment by the CDCR?

1 Number 7

2 Has any inmate ever initiated a staff complaint against you since the beginning of your
3 employment by the CDCR?

4 Defendant's Response

5 Defendant Emerson sets forth the following objections: (1) overly broad as to time and
6 subject matter; (2) compound; (3) seeks irrelevant information; (4) seeks inadmissible character
7 evidence; (5) calls for documents protected by the official information privilege insofar as it calls
8 for documents contained in Emerson's personnel file; and (6) may contain confidential
9 information relating to inmates, including medical conditions and custody classification, the
10 disclosure of which would create a safety issues for the institution and violate inmates' rights to
11 privacy and confidentiality. Also, as to Number 7, Defendant Emerson objected on the grounds
12 that it was duplicative of Number 6.

13
14 In moving for a further response, Plaintiff argues that the interrogatories required a
15 simple "yes" or "no" answer and did not require production, or identification, of any documents.
16 Instead, Plaintiff contends that Defendant "went into a narrative that had nothing to do with the
17 question asked." Mot. 5. Plaintiff argues that the information requested is relevant and that the
18 state privileges are not applicable in federal question cases.

19 Plaintiff is correct that the interrogatories, as written, simply require a "yes" or "no"
20 answer. They do not request specific information about any incidents, nor do they request
21 production of any related documents. Indeed, Plaintiff confirms that he only wants a "yes" or
22 "no" answer. Therefore, the Court GRANTS Plaintiff's motion to compel a further response
23 from Defendant Emerson to Interrogatory Numbers 5, 6 and 7.

24 **C. REQUEST FOR PRODUCTION NUMBER 8**

25 A party may serve on any other party a request within the scope of Rule 26(b) to produce
26 and permit the requesting party or its representative to inspect, copy, test, or sample the
27

1 following items in the responding party's possession, custody or control: any designated
2 documents or tangible things. Fed. R. Civ. P. 34(a)(1) (quotation marks omitted).

3 Request for Production Number 8 requests "any and all documents demonstrating the
4 nature of the relationship between you and any of the other defendants in the above-captioned
5 case, i.e., employees, supervisors, etc."

6 Defendants set forth numerous objections, including their contention that the request is
7 compound, overly broad, vague, seeks to invade Defendants' privacy and requests confidential
8 information that, if released, would create a hazard to the safety and security of the institution.
9 Without waiving these objections, and assuming that the request was asking for the employment
10 positions of Defendants during the time frame at issue (October 2011 through December 2011),
11 Defendants set forth their positions and supervisors. Assuming the request was asking for all
12 policies, procedures or practices specific to methods of investigation, disciplinary practices, and
13 employee penalties, the only non-privileged, responsive documents in Defendants' possession,
14 custody or control are contained in Title 15 of the California Code of Regulations and the
15 Department Operations Manual, both of which are available to Plaintiff for inspection and
16 copying under the institution's procedures.
17

18 In the attached privilege log, Defendants identify "Post Orders" as privileged.
19 Defendants contend that the documents contain confidential information, the disclosure of which
20 would create a hazard to the safety and security of the institution because the documents contain
21 information on policies, procedures and practices specific to the institution.
22

23 In his motion, Plaintiff first disputes Defendants' contention that the Post Orders are
24 confidential, and argues that Defendants do not elaborate on their claim of safety and security.
25 He also contends that insofar as Defendants cite Title 15 and the Department of Operations
26 Manual, they failed to provide specific code sections, paragraphs or pages where the documents
27 can be located.
28

1 Defendants believe that they have clearly identified Title 15 and the Department of
2 Operations Manual as containing all non-privileged and responsive documents. Defendants also
3 submit the Declaration of J. Perez, Custody Captain at the California Substance Abuse Treatment
4 Facility. Captain Perez explains why Post Orders are confidential, and why disclosure could
5 pose a threat to the institution. Perez Decl. ¶¶ 1-7.

6 As to the Post Orders, the dispute appears to be only whether such documents are
7 privileged. Defendants have met their burden of providing a privilege log and a declaration
8 setting out the safety concerns related to disclosure of the Post Orders. In his reply, Plaintiff
9 simply disagrees with Captain Perez's statements and sets forth his belief as to how the prison
10 operates. He also objects to the declaration because Captain Perez states that Post Orders contain
11 information that "is not in post orders as outlined by the D.O.M. information..." Reply 3.

12 Plaintiff has not met his burden of demonstrating that Defendants' objections are not
13 justified. Captain Perez, not Plaintiff, is in the best position to explain what Post Orders actually
14 contain, whether or not such information is specified in the Department of Operations Manual.
15 Moreover, Plaintiff has not explained to the Court why the Post Orders are necessary in light of
16 Defendants' claim of privilege.

17 Insofar as Plaintiff contends that Defendants' response is insufficient because they failed
18 to point him to a specific section, page or paragraph where the requested document could be
19 found, his argument fails. Plaintiff's request is relatively vague, and the lack of specific detail in
20 the information sought prevents Defendants from knowing exactly which sections are
21 responsive. Plaintiff has not provided additional information in his motion to compel.

22 Moreover, as Defendants explained, the documents are equally available to Plaintiff in
23 the prison law library.

24 Accordingly, Plaintiff's motion to compel a further response to Request for Production
25 Number 8 is DENIED.

1 **D. ORDER**

2 Plaintiff's motion to compel is GRANTED IN PART and DENIED IN PART.

3 Defendant Emerson SHALL submit supplemental responses to Interrogatories 5, 6 and 7, Set
4 Three, within 21 days of the date of service of this order.

5
6 IT IS SO ORDERED.

7
8 Dated: December 4, 2013

/s/ Dennis L. Beck
9 UNITED STATES MAGISTRATE JUDGE