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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARRELL HARRIS,
Plaintiff,
v.
S. ESCAMILLA,
Defendant.

Case No. 1:13-cv-01354-DAD-MJS (PC)
**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL FURTHER
RESPONSEs TO INTERROGATORY
NO. 5**
**ORDER DENYING PLAINTIFF'S
REQUEST FOR SANCTIONS**
(ECF No. 95)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The case proceeds on Plaintiff's First Amendment free exercise of religion claim against Defendant Escamilla. (ECF No. 9.)

Before the Court is Plaintiff's June 3, 2016 motion to compel discovery. (ECF No. 95.) Defendant filed an opposition to Plaintiff's motion on June 29, 2016. (ECF No. 100.) Plaintiff did not file a reply. In hopes of the efficient resolution of this discovery issue, the Court held a telephonic discovery dispute conference ("TDDC") for July 8, 2016 at 11:00 am.

1 **I. PROCEDURAL HISTORY**

2 Plaintiff first filed a motion to compel discovery on September 14, 2015. (ECF No.
3 51.) On December 2, 2015, the Court denied Plaintiff's motion in part because Plaintiff
4 failed to state which of Defendant's responses were inadequate and why. (ECF No.
5 56.) The Court did, however, extend the discovery deadline by fourteen days to allow
6 Plaintiff an opportunity to file an amended motion to compel curing identified
7 deficiencies. Id. Plaintiff filed an amended motion to compel on December 17, 2015.
8 (ECF No. 61.)

9 On March 29, 2016, the Court granted in part and denied in part Plaintiff's
10 amended motion to compel and directed Defendant to serve further responses to
11 certain requests for admissions and interrogatories within fourteen days of the Court's
12 order. (ECF No. 79.)¹

13 On May 1, 2016, in accordance with the Court's order, Defendant served
14 supplemental responses to Plaintiff's discovery requests. (ECF No. 95 at 14-15.) On
15 June 3, 2016, Plaintiff filed another motion to compel, arguing Defendant had failed to
16 fully comply with the Court's March 29, 2016 order directing him to provide a response
17 to Interrogatory No. 5. (ECF No. 95.) Plaintiff also requested the Court impose sanctions
18 on Defendant for failing to comply with the Court's order. Defendant filed an opposition
19 to Plaintiff's motion to compel on June 29, 2016. (ECF No. 100.) Plaintiff has not filed a
20 reply.

21 On July 8, 2016, the Court held the above-referenced TDDC. Plaintiff appeared
22 pro se, and Deputy Attorney General Arthur Mark appeared on behalf of Defendant.

23 **II. LEGAL STANDARD**

24 The discovery process is subject to the overriding limitation of good faith. Asea,
25 Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir.1981). Parties may obtain
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27 ¹On May 4, 2016, Plaintiff filed a motion with the district judge to reconsider the portions of the Court's
28 order denying his motion to compel. (ECF No. 92.) None of the discovery requests referenced in the
motion for reconsideration are at issue in the instant motion to compel.

1 discovery regarding any non-privileged matter that is relevant to any party's claim or
2 defense, and for good cause, the Court may order discovery of any matter relevant to
3 the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1). Relevant information
4 need not be admissible at the trial if the discovery appears reasonably calculated to
5 lead to the discovery of admissible evidence. Id.

6 Generally, if the responding party objects to a discovery request, the party
7 moving to compel bears the burden of demonstrating why the objections are not
8 justified. E.g., Grabek v. Dickinson, No. CIV S-10-2892 GGH P., 2012 WL 113799, at
9 *1 (E.D. Cal. Jan. 13, 2012); Ellis v. Cambra, No. 1:02-cv-05646-AWI-SMS (PC), 2008
10 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008). This requires the moving party to inform
11 the Court which discovery requests are the subject of the motion to compel, and, for
12 each disputed response, why the information sought is relevant and why the responding
13 party's objections are not meritorious. Grabek, 2012 WL 113799, at *1; Womack v.
14 Virga, No. CIV S-11-1030 MCE EFB P., 2011 WL 6703958, at *3 (E.D. Cal. Dec. 21,
15 2011).

16 The court must limit discovery if the burden of the proposed discovery outweighs
17 its likely benefit. Fed. R. Civ. P. 26(b)(2)(C)(iii). "In each instance, the determination
18 whether . . . information is discoverable because it is relevant to the claims or defenses
19 depends on the circumstances of the pending action." Fed. R. Civ. P. 26 Advisory
20 Committee's Note (2000 Amendment) (Gap Report) (Subdivision (b)(1)).

21 **III. DISCUSSION**

22 Plaintiff's motion to compel stems from Defendant's alleged failure to fully
23 respond to Plaintiff's Interrogatory No. 5, Set One, which reads:

24 **"Have you ever been found guilty of misconduct of any kind?" (ECF No. 51**
25 **at 62.)**

26 **A. Background**

27 Plaintiff first propounded this request on Defendant sometime between May and
28 June, 2015. On June 22, 2015, Defendant responded as follows:

1
2 Defendant objects to this interrogatory on the grounds that it is vague and
3 ambiguous as to the terms “misconduct of any kind” and “found guilty.”
4 Defendant is also unsure what information Plaintiff is seeking with this request . .
5 . . To the extent Plaintiff is seeking information contained in Defendant’s
6 personnel records, Defendant also objects on the grounds that personnel records
7 are subject to the qualified privilege of official information and federal common
8 law privilege. Pursuant to *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34
9 (9th Cir. 1991), such broad requests are generally not allowed on federal
10 common law grounds. The confidential nature of employee personnel files
11 prohibits the opening of such files to a plaintiff for a general search which could
12 reach well beyond the legitimate inquiries necessary. *Id.* Personnel files are also
13 protected by the privacy rights of staff, including federal common-law, the
14 California Constitution, and applicable California statutes such as Penal Code
15 sections 832.7, 832.8, Government Code section 6254, and Civil Code sections
16 1798.24 and 1798.40 and California Code of Regulations Title 15 §3400.
17 Defendant also objects on the grounds of safety and security and the privacy of
18 other inmates. Plaintiff is not permitted to have access to the grievances or
19 complaints filed by other inmates. Cal. Code. Regs. Tit. 15, §3370. Subject to
20 and without waiving the foregoing objections, Defendant responds that he has
21 never been charged with or “found guilty” of any criminal “misconduct.” (ECF No.
22 51 at 62.)

23
24 In granting Plaintiff’s motion to compel a response to this interrogatory, the Court
25 rejected Defendant’s assertion that “guilty” referred to only criminal misconduct. (ECF
26 No. 79 at 15.) It read Plaintiff’s request as having clearly sought evidence of prior
27 misconduct, criminal or otherwise. The Court also found Defendant could comply with
28 Plaintiff’s request without disclosing confidential documents and personnel files.
Sanchez v. City of Santa Ana, 936 F.2d 1027 (9th Cir. 1990) (noting where Plaintiff
sought disclosure of confidential personnel records, “[m]ost of the relevant information .
. . could have been developed by interrogatories.”); *Hamilton v. Quinonez*, 1:14-cv-
1216, 2015 WL 3660138, at *3 (E.D. Cal. June 10, 2015) (“While Cal. Code Regs. Tit.
15 § 3370(b) may prevent Defendants from producing documents from another inmate’s
central file absent a court order, it does not prevent Defendants from responding to an
interrogatory on the same issues.”) (ECF No. 79 at 16-17).

1 Acknowledging that nearly 5000 inmate appeals are filed each year at CSP-
2 Corcoran and that only appeals classified as “staff complaints” are searchable by staff
3 member name, the Court ordered Defendant make a reasonable inquiry into evidence
4 of prior misconduct by at least searching staff complaints cross-referenced with
5 Defendant’s name for instances of misconduct and then setting forth what he did not
6 search and why. (ECF No. 79 at 18.) The Court ordered Defendant to provide further
7 responses with fourteen days. Id.

8 **B. Defendant’s Supplemental Response**

9 Pursuant to the Court’s order, Defendant provided the following supplemental
10 response to Interrogatory No. 5:

11
12 Defendant does not recall, and does not recall being advised of, any staff
13 complaints that were submitted regarding him that resulted in finding him “guilty”
14 of violating CDCR policy or regulations. In addition, after a diligent search of
15 available information and documents conducted on his behalf, Defendant is
informed and believes that there are no staff complaints against him that resulted
in a finding that he violated CDCR policy or regulations.

16 With respect to his work record, the two corrective counselings (sic) Defendant
17 received do not amount to a finding of “guilt” because the CDCR Operations
18 Manual classifies corrective action as non-punitive in nature, and the purpose of
19 such corrective action is to assist an employee in improving his work
performance. Finally, in his 23 year career with CDCR, Defendant has never
been the subject of any adverse action by CDCR. (ECF No. 95 at 14-15.)

20 Defendant’s supplemental response to Plaintiff also included the May 11, 2016
21 Declaration of D. Goree, CSP-Corcoran Appeals Coordinator, who affirms:

- 22
23 1) S/he conducted a search for staff complaints relating to Officer Escamilla
24 through the Inmate Appeals Tracking System, an electronic database
25 maintained by CSP-Corcoran tracking staff complaints made from 2005
26 forward;
27 2) S/he found no staff complaints finding Escamilla violated any CDCR policy or
28 regulations;
3) S/he also reviewed records available at CSP-Corcoran pertaining to staff
complaints against Escamilla dating from 2010 forward, and found that none

1 of the staff complaints lodged against Escamilla resulted in a finding that he
2 violated CDCR policy of regulations; and
3 4) S/he affirms that until May 9, 2016, staff complaints were only retained for five
4 years, per CDCR policy. (ECF No. 95 at 16.)

5 **C. Plaintiff's Instant Motion to Compel**

6 Plaintiff now argues Defendant's responses are inadequate. According to
7 Plaintiff, Defendant was required to search both staff complaints and 602s generally;
8 Defendant's supplemental response referenced only staff complaints and not general
9 602s. (ECF No. 95 at 2.) Plaintiff also points out Defendant admitted to having two
10 "corrective counselings" (sic) which, to Plaintiff, implies Defendant committed some sort
11 of misconduct. Id. Finally, Plaintiff maintains he asked for evidence of all misconduct,
12 not only that which resulted in punishment. Id.

13 Plaintiff seeks all 602s or other documents detailing Defendant's past instances
14 of misconduct, including records of Defendant's prior corrective counseling, whether or
15 not Defendant was ultimately found culpable. Plaintiff further asks for sanctions to be
16 imposed on Defendant for not providing such information. Id.

17 **D. Defendant's Objections to the Instant Motion to Compel**

18 Defendant argues he has already supplied a complete supplemental response to
19 Interrogatory No. 5. The Declaration of A. Pacillas confirms that only 602s classified as
20 staff complaints are searchable by staff members' name. (ECF No. 100 at 2.) Defendant
21 further argues that the Court required only that Defendant search staff complaints for
22 references to Defendant, and did not order Defendant to turn over "602s and
23 documents." Id.

24 **E. Telephonic Discovery Dispute Conference**

25 During the TDDC, Plaintiff contended that the Court's order obligated Defendant
26 to search all 602's involving Defendant and turn over all such documents relating to
27 Defendant.

28 Defendant responded that CSP-Corcoran processes upwards of 5000 602s
every year. Only those 602s classified as staff complaints (which have been searched

1 in this case) are searchable by staff member name. It is wholly impractical to search
2 every single 602 for references to Defendant. The search conducted would have
3 identified all staff complaints against Defendant producing a finding of culpability or
4 resulting in corrective action.

5 **F. Analysis**

6 Plaintiff's motion to compel a further response to Interrogatory No. 5 will be
7 denied.

8 The Court's March 29, 2016 order required Defendant to conduct a reasonable
9 search and identify records of culpability for misconduct on Defendant's part, and to
10 state what records had not been searched and why. (ECF No. 79.) Defendant has
11 done precisely that. Nowhere in the Court's order was Defendant directed to turn over
12 any documents to Plaintiff. Id. Plaintiff's request for the production of documents will
13 therefore be denied.

14 Furthermore, Plaintiff's interrogatory was limited to actions that resulted in a
15 finding that Defendant had somehow been found to have engaged in conduct that was
16 improper. Defendant's responses show that he has searched such sources as are
17 reasonably available and searchable and identified nothing called for by the request.
18 The interrogatory asks for nothing more. As Defendant explained during the TDDC, if a
19 602 classified as a "staff complaint" led to some action being taken against Defendant,
20 the search conducted would have identified it.

21 Reading through each and every 602 filed in the past five years to see if any
22 referred to Defendant would have required a mammoth undertaking and not been
23 productive of anything requested or anything of likely probative value. At most, it may
24 have identified other prisoner complaints against Defendant, not findings of culpability.
25 Mere complaints are not what the interrogatory or the Court's interim order called for.
26 Indeed, evidence of mere allegations of misconduct would not likely be admissible since
27 evidence relating to them would necessitate a minor trial of each such complaint to
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1 determine its relevancy. See Fed. R. Evid. 404. Plaintiff's request that Defendant
2 conduct a further search of all 602s for evidence of allegations of misconduct will be
3 denied as well.

4 Plaintiff's request for Defendant's corrective counseling record also will be
5 denied. Defendant represents that corrective counseling is non-punitive. Such
6 counseling records are not called for by Plaintiff's interrogatory.

7 **IV. REQUEST FOR SANCTIONS**

8 As the Court has denied Plaintiff's motion, it will not impose sanctions against
9 Defendant.

10 **V. CONCLUSION AND ORDER**

11 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 12 1. Plaintiff's motion to compel (ECF No. 95) is DENIED in full; and
13 2. Plaintiff's request for sanctions (ECF No. 95) is DENIED.
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15 IT IS SO ORDERED.

16 Dated: July 16, 2016

17 /s/ Michael J. Seng
18 UNITED STATES MAGISTRATE JUDGE
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