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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAKEITH LEROY MCCOY,  
Plaintiff,  
v.  
J. RAMIREZ, et al.,  
Defendants.

CASE NO. 1:13-cv-01808-MJS (PC)  
**ORDER DENYING WITHOUT PREJUDICE  
PLAINTIFF'S MOTION FOR CIVIL  
SUBPOENA**  
**(ECF No. 63)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter proceeds against Defendant Ramirez on an Eighth Amendment excessive force claim.

Pending now is Plaintiff April 27, 2016, motion for a civil subpoena. (ECF No. 63.) Defendant opposes the motion. For the reasons set forth below, the Court construes Plaintiff's motion as a motion to compel and will deny it without prejudice to its renewal.

On March 24, 2016, Plaintiff served on Defendant his First Request for Production of Documents ("RPD"), which included 18 total requests. Pl.'s Decl. ¶ 2, Ex. A (ECF No. 63). On April 6, 2016, Defendant objected to the requests on multiple grounds, including relevance, overbreadth, privacy, and privilege. See Pl.'s Decl. Ex. B. Relevant here,

1 Defendant responded as follows to Request Nos. 14-17: “After diligent search and  
2 reasonable inquiry, Responding Party is not in possession of any documents responsive  
3 to this request.” Id. (ECF No. 63 at 21-23).

4 It appears that Plaintiff has interpreted this response that Defendant is not in  
5 *possession* of responsive documents as an assertion that Defendant does not have  
6 *access* to them. Based on that interpretation, Plaintiff now moves to serve a civil  
7 subpoena on the Litigation Coordinator at California Correctional Institution in  
8 Tehachapi, California, who Plaintiff presumes to have access not only to documents  
9 responsive to Request Nos. 14-17, but to all 18 Requests.

10 Defendant opposes Plaintiff’s motions on two grounds. First, he argues that  
11 Plaintiff failed to meet and confer and failed to submit a joint discovery statement in  
12 violation of Federal Rule of Civil Procedure 37(a)(1) and the Court’s Local Rule 251.  
13 However, the Court’s March 17, 2016, Discovery and Scheduling Order specifically  
14 relieved the parties of the duties imposed by these Rules. See ECF No. 58 ¶ 4 (“[U]nless  
15 otherwise ordered, Local Rule 251 shall not apply, and the requirement set forth in  
16 Federal Rules of Civil Procedure 26 and 37 of a good faith conference or attempt to  
17 confer with the other party to resolve the dispute shall not apply.”). Accordingly,  
18 Defendant’s objection on this ground is overruled.

19 Defendant next argues that Plaintiff failed to satisfy his burden as the moving  
20 party. Pursuant to Federal Rule of Civil Procedure 26(b), parties may obtain discovery  
21 regarding any nonprivileged matter that is relevant to any party's claim or defense and  
22 proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1) (Dec. 2015). As the  
23 moving party, Plaintiff bears the burden of informing the Court of (1) which discovery  
24 requests are the subject of his motion to compel, (2) which of Defendant’s responses are  
25 disputed, (3) why he believes Defendant’s responses are deficient, (4) why Defendant’s  
26 objections are not justified, and (5) why the information he seeks through discovery is  
27 relevant to the prosecution of this action. See, e.g., Ellis v. Cambra, 2008 WL 860523, at  
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1 \*4 (E.D. Cal. Mar. 27, 2008) (“Plaintiff must inform the court which discovery requests  
2 are the subject of his motion to compel, and, for each disputed response, inform the  
3 court why the information sought is relevant and why Defendant's objections are not  
4 justified.”).

5 The Court agrees with Defendant that Plaintiff has not met his burden here. In this  
6 motion, Plaintiff seeks documents responsive to all 18 Requests without addressing any  
7 of the objections asserted by Defendant. By way of example, the Court reproduces  
8 Plaintiff’s Request for Production No. 3 and Defendant’s response:

9  
10 **Request for Production No. 3:** The names, addresses, and  
11 telephone numbers of all persons interviewed by the agency  
12 during the investigation of said complaints.

13 **Response to Request No. 3:** Responding Party objects to  
14 this request on the grounds that the request is vague and  
15 ambiguous. Responding Party does not know what Plaintiff  
16 means by “complaints” or “the agency.” Responding Party  
17 further objects on the grounds that the request seeks  
18 confidential and restricted security information, and it seeks  
19 information protected by the Constitutional right to privacy of  
20 Responding Party and third parties. Responding Party  
21 further objects to this request on the grounds that the  
22 requested documents are confidential and not disclosed to  
23 inmates, other CDCR employees, or the general public.  
24 Responding party further objects on the grounds and to the  
25 extent that this request is not relevant nor reasonably  
26 calculated to lead to the discovery of admissible evidence.

27 ECF No. 63 at 16.

28 Though Defendant objects to Request No. 3 on grounds of ambiguity,  
confidentiality, privacy, and relevance, Plaintiff does not discuss any of these objections  
in his motion. Instead, he focuses in on Defendant’s response to Request Nos. 14-17  
that he is not in possession of responsive documents. Apparently widening the target of  
this response to all 18 Requests instead of the 4 against which it was actually asserted  
and also substituting the word “access” for “possession,” Plaintiff expresses confusion,

1 stating that he was under the impression that Defendant's current counsel had access to  
2 responsive documents since they were allegedly available to previous counsel.<sup>1</sup> He  
3 declares:

4 [¶ 4] That prior to [current] counsel coming onto the case to  
5 represent Defendant, Defendant was represented by the  
6 California Attorney General's Officer [sic] who does have  
7 access to these documents Plaintiff requests.

8 [¶ 5] That Plaintiff misconstrued then counsel and current  
9 [counsel] as having equal access to the documents  
10 requested.

11 Pl.'s Decl. ¶¶ 4-5. Review of Defendant's responses, however, reveals that access to  
12 responsive documents is not an issue, let alone the only issue.

13 In sum, Plaintiff has misunderstood Defendant's response to Request Nos. 14-17,  
14 expanded the scope of the response to all 18 Requests, and failed to address any of the  
15 other objections raised by Defendant. Plaintiff's motion must therefore be denied.<sup>2</sup>

16 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's April 27, 2016,  
17 motion for civil subpoena (ECF No. 63) is DENIED without prejudice to its renewal.

18 IT IS SO ORDERED.

19 Dated: June 8, 2016

20 /s/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE

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25 <sup>1</sup> Defendant's current counsel substituted in on February 10, 2016 (ECF No. 56).

26 <sup>2</sup> Since the discovery deadline in this case is November 17, 2016 (ECF No. 58), Plaintiff will have time to  
27 renew this motion after appropriately addressing the objections asserted by Defendant. Assuming Plaintiff  
28 pursues this discovery, Defendant is advised that the Court would find it inordinately unhelpful, and  
perhaps sanctionable, if Defendant's assertions of privilege went accompanied by a privilege log. Miller v. Pancucci, 141 F.R.D. 292, 300 (9th Cir. 1992); Fed. R. Civ. P. 26(b)(5)(A).