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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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9 JARED M. VILLERY,

10 Plaintiff,

11 v.

12 J. JONES, *et al.*

13 Defendants.
14

Case No. 1:15-cv-01360-DAD-JDP

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL

ECF No. 57

THIRTY DAY DEADLINE

15 Plaintiff Jared M. Villery is a state prisoner proceeding without counsel in this civil rights
16 action pursuant to 42 U.S.C. § 1983. On May 29, 2019, plaintiff filed a motion to compel
17 additional responses to interrogatories and the production of more documents. *See* ECF No.
18 57. After a series of informal hearings, exchanges, and additional productions, the outstanding
19 issues were narrowed to six. *See* ECF No. 71. Plaintiff has recently indicated that further
20 efforts to informally resolve these issues have been fruitless. *See* ECF No. 80.

21 We are guided by Federal Rule of Civil Procedure 26(b)(1), which states that “[p]arties
22 may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim
23 or defense and proportional to the needs of the case,” so long as such discovery is balanced
24 according to a variety of factors. District courts have “broad discretion to manage discovery.”
25 *Avila v. Willits Env’tl. Remediation Tr.*, 633 F.3d 828, 833 (9th Cir. 2011).

26 The court grants Villery’s motion with respect to one issue: defendant Yerton’s response
27 to request for production number 18. The court denies Villery’s motion with respect to the
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1 remaining outstanding issues. We discuss the six issues in turn.

2 **1. Defendant Yerton’s response to request for production number 18.** Request for
3 production number 18 asked defendant Yerton to “[p]lease identify and produce any and all e-
4 mails that have been sent or received by Ms. Karin Richter, from the CDCR’s Office of the
5 Ombudsman, from January 1, 2014 through December 31, 2015 . . . which make reference to,
6 and/or are in any way related to, the following words, terms, or subjects: (a) inmate Jared
7 Villery; (b) California Correctional Institution; (c) retaliation at the California Correctional
8 Institution; (d) Defendant Jay Jones; (e) Defendant Richard Schmidt; (f) Defendant David
9 Nelson; (g) Defendant Rafael Escarcega; and (h) Defendant Christopher Yerton.” ECF No. 71
10 at 12. Defendant Yerton’s response was: “Without waiving previously-asserted objections,
11 after a reasonable search and diligent inquiry, 427 emails were located related to the terms
12 ‘California Correctional Institution’ that were sent or received by Ms. Richter during the time
13 in question. *Of those emails*, none contained any of the other requested search terms, and none
14 were relevant to any claims or defenses asserted in this action. On that basis, Defendant will
15 not produce any documents in response to this request.” *Id.* (emphasis added).

16 Defendant Yerton’s response misconstrues plaintiff’s request. Yerton (through Ms.
17 Richter) appears to have searched for emails that contained the terms “California Correctional
18 Institution” *and* any of the other search terms. But plaintiff did not request such a joint
19 search—a joint search that could quite naturally be expected to reduce greatly the number of
20 responsive documents.

21 The court orders Defendant Yerton to search for and produce all nonprivileged emails
22 that were sent or received by Ms. Richter during the time in question that contain the *individual*
23 terms plaintiff identities. At a minimum, such a response should include a search for all emails
24 that contain (for example) “Villery.” The court finds that such a search will be reasonably
25 calculated to produce relevant evidence and is proportional to the needs of this case. *See, e.g.,*
26 *Goolsby v. Gentry*, No. 1:11-CV-01773-LJO, 2015 WL 1849837, at *5 (E.D. Cal. Apr. 22,
27 2015) (“[E]mails suggesting a dislike for Plaintiff, or expressing a desire to retaliate against
28 him, may be used to prove motive.”).

1 **2. Defendant Schmidt’s response to interrogatory number 1.** Interrogatory number 1
2 asks defendants to “describe in detail why you believe that your actions, as set forth in
3 plaintiffs First Amended Complaint (“FAC”), did not violate any of plaintiff’s rights.” ECF
4 No. 71 at 5. Defendant Schmidt’s supplemental response contains several paragraphs that
5 recall his interactions with Villery—interactions that took place six years ago. The court finds
6 that this response is adequate and denies Villery’s request for more.

7 **3. Defendant Jones’s response to request for production number 6.** Request for
8 production number 6 asked defendant to “identify and produce any and all staff complaints that
9 have ever been filed against you during your entire career with the CDCR, by inmates other
10 than plaintiff.” ECF No. 71 at 17. Defendant produced a printout listing nine complaints with
11 some redactions. *See id.* at 24. The court finds that this response is adequate and denies
12 Villery’s request for more.

13 **4. Defendants Escarcega, Jones, Schmidt, and Yerton’s responses to request for**
14 **production number 2.** This request asks defendants to “identify and produce any and all
15 documents that comprise or are part of your CDCR personnel file, or any other file or database
16 maintained by any law enforcement agency, which describe any and all adverse personnel
17 actions, or any other form of disciplinary action taken against you, by the CDCR or other law
18 enforcement agency, during your employment with the CDCR, as well as any and all
19 documents which evidence the basis for why such disciplinary action was taken against you.”
20 ECF No. 71 at 16. The defendants stipulate that no responsive documents exist in their
21 personnel files. *Id.* at 2. The court finds that defendants’ stipulation is adequate and denies
22 plaintiff’s request for more.

23 **5. Request for production number 18 (directed at defendant Escarcega) and request**
24 **for production number 24 (directed at defendant Jones).** Request for production 24
25 (defendant Jones) asked for “any and all witness statements, statements from plaintiff,
26 evidence gathered, investigation reports, and/or any other documents or recordings created in
27 connection with the investigation conducted by CDCR Internal Affairs Investigator Magallan,
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1 into plaintiff's allegations that his inmate appeals were being destroyed by CCI staff." ECF
2 No. 71 at 18. Request for production 18 (defendant Escarcega) asked for the same materials.
3 See ECF No. 57 at 30. Defendants Escarcega and Jones "represent that they have produced all
4 responsive documents in their possession, custody, and control related to these requests," while
5 plaintiff "believes that Defendants may have the ability to demand additional responsive
6 documents from the Office of Internal Affairs." ECF No. 76 at 1.

7 Rule 34(a)(1) of the Federal Rules of Civil Procedure allows parties to serve discovery
8 request for certain relevant items "in the responding party's possession, custody, or control."
9 "[F]ederal courts have consistently held that documents are deemed to be within the
10 'possession, custody or control' for purposes of Rule 34 if the party has actual possession,
11 custody or control, or has the legal right to obtain the documents on demand." *In re Bankers*
12 *Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995); see also *United States v. International Union of*
13 *Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir.1989) ("Control is defined as the
14 legal right to obtain documents upon demand."). Here, plaintiff has failed to show that
15 defendants have the legal right to obtain more documents. The court finds that defendants'
16 responses are adequate and denies plaintiff's request for more.

17 **6. Defendant Nelson's response to request for production number 2.** Because
18 Defendant Nelson has separate representation, this response came at a later date and was
19 separately contested. See ECF No. 76 at 3. As stated above, this request asked defendant to
20 "identify and produce any and all documents that comprise or are part of your CDCR personnel
21 file, or any other file or database maintained by any law enforcement agency, which describe
22 any and all adverse personnel actions, or any other form of disciplinary action taken against
23 you, by the CDCR or other law enforcement agency, during your employment with the CDCR,
24 as well as any and all documents which evidence the basis for why such disciplinary action was
25 taken against you." ECF No. 80 at 5. Defendant Nelson responded in February that "there are
26 no pending adverse personnel actions or disciplinary actions within his records." *Id.* Nelson's
27 response described the only contents of the personnel file as a 2015 letter, which defendant
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1 Nelson argues is both expired and confidential. *Id.* Plaintiff does not dispute this
2 characterization of the letter, but instead argues that defendant Nelson may have access to other
3 files. *See id.* at 2. As with the other responses to this request, the court finds defendant
4 Nelson's response adequate and denies plaintiff's request for more.

5 **Order**

- 6 1. Plaintiff's motion to compel, ECF No. 57, is granted with respect to request for
7 production number 18 (defendant Yerton) and denied with respect to all other
8 outstanding issues.
- 9 2. Within thirty (30) days of the filing of this order, defendant Yerton must produce a
10 supplemental response to request for production number 18.
- 11 3. The court sets a new dispositive motions deadline of May 22, 2020.

12 IT IS SO ORDERED.

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14 Dated: March 18, 2020

15 
16 UNITED STATES MAGISTRATE JUDGE

17 No. 205.