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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JONATHAN W. MUNDO,
Plaintiff,
v.
HECTOR CARMONA, et al.,
Defendants.

**Case No. 1:16-cv-01687-AWI-MJS
(PC)**
**ORDER GRANTING MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**
(ECF No. 45)

Plaintiff, a prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 7, 2016. (ECF No. 1.) The case proceeds on Plaintiff's first amended complaint against Defendants Alba, Archuleta, Bonffil, and Carmona. (ECF No. 16.)

On February 9, 2018, Plaintiff filed a motion to compel production of documents by Defendant Carmona. (ECF No. 45.) Defendant Carmona opposes the motion. (ECF No. 50.) Plaintiff did not file a reply memorandum and the time to do so has expired. Pursuant to Local Rule 230, the motion is deemed submitted. For the reasons outlined below, the motion is granted.

1 **I. Background**

2 Plaintiff served his request for documents to all Defendants, including Defendant
3 Carmona. Among them were request for production number six (“RFP 6”) (seeking
4 documents concerning staff complaints against Defendant Carmona) and request for
5 production number seven (“RFP 7”) (seeking documents concerning internal affairs
6 investigations against Defendant Carmona for violating the rights of inmates). Defendant
7 Carmona objected to both requests on various grounds, but then answered that he had
8 no responsive documents in his possession, custody, or control.

9 Plaintiff moves to compel Defendant Carmona to respond more fully to RFP 6 and
10 RFP 7 claiming that, as an employee of the California Department of Corrections and
11 Rehabilitation (“CDCR”), Defendant Carmona can request the records from his employer.
12 (ECF No. 45.) Defendant Carmona stands on his objection that he does not have the
13 documents in his possession, custody, or control and has no obligation under Federal
14 Rule of Civil Procedure 34 to request them from CDCR. (ECF No. 50.)

15 **II. Legal Standard**

16 A party is deemed to have control over documents if he or she has a legal right to
17 obtain them. See Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472 (D. Nev. 1998); see
18 also 7 James Wm. Moore, et al., Moore's Federal Practice, § 34.14[2][b], at 34–73 to 34–
19 75 (footnote omitted) (“The term ‘control’ is broadly construed.”). A party responding to a
20 document request “can[] furnish [not] only that information within his immediate
21 knowledge or possession; he is under an affirmative duty to seek that information
22 reasonably available to him from his employees, agents, or others subject to his control.”
23 Meeks v. Parsons, No. 1:03–cv–6700–LJO–GSA, 2009 WL 3003718, *4, (E.D. Cal. Sept.
24 18, 2009) (citation omitted).

25 Courts have assumed that a party has control of documents in the possession of
26 another and ordered the party to produce relevant documents. See Zackery v. Stockton
27 Police Dep't, No. CIV S–05–2315 MCE DAD P, 2007 WL 1655634, *3–4, (E.D. Cal. June
28 7, 2007) (“directing” counsel for defendants to obtain and produce records in the

1 possession of their current employer, the Stockton Police Department); cf Bryant v.
2 Armstrong, 285 F.R.D. 596, 607 (S.D. Cal. 2012) (while a defendant may be directed to
3 obtain and produce documents from a current employer, the defendant may not be
4 directed to obtain and produce such documents from a former employer).

5 **III. Discussion**

6 Defendant Carmona's objection to production on the ground that he lacks
7 possession, custody or control of the documents is overruled.

8 The specific facts of this action render such an objection unfounded. By virtue of
9 his employment with non-party CDCR, Defendant Carmona is represented by the
10 Attorney General's Office. It is this Court's experience that individual defendants who are
11 employed by CDCR and/or the Attorney General can generally obtain documents, such
12 as the ones at issue here, from CDCR by requesting them. Defendant Carmona has
13 constructive control over the requested documents, and the documents must be
14 produced. See, e.g., Pulliam v. Lozano, No. 1:07-cv-964-LJO-MJS, 2011 WL 335866
15 (E.D. Cal. Jan. 31, 2011); Mitchell v. Adams, No. CIV S-06-2321 GEB GGH, 2009 WL
16 674348, *9 (E.D. Cal. Mar. 6, 2009) (even though defendant warden was sued in his
17 individual capacity, he had constructive control over requested documents because he
18 had authority to obtain the requested documents from third party CDCR); see also Gray
19 v. Faulkner, 148 F.R.D. 220, 223-24 (N.D. Ind. 1992) (requiring certification that
20 responding parties "have conducted a search for the information reasonably available to
21 them through their agents, attorneys, or others subject to their control and have
22 determined that the information requested either does not exist or that it has been
23 produced.").

24 Accordingly, Plaintiff's motion to compel will be granted. Defendant Carmona shall
25 produce the requested documents within thirty days from the date of service of this
26 Order.

27 **IV. Conclusion**

28 For the foregoing reasons, Plaintiff's motion to compel (ECF No. 45) is GRANTED

1 and Defendant Carmona shall produce the requested documents within thirty days from
2 the date of service of this Order.

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4 IT IS SO ORDERED.

5 Dated: February 27, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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