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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

AL GENE FISHER,)	
)	
Plaintiff,)	Case No. 2:07-cv-02271-PMP-GWF
)	
vs.)	ORDER
)	
T. FELKER, <i>et al.</i> ,)	Motion to Compel (#54)
)	
Defendants.)	

This matter is before the Court on Plaintiff’s Motion for an Order Compelling Discovery (#54), filed August 19, 2010 and Defendants’ Opposition to Motion for Order Compelling Discovery (#57), filed September 14, 2010.

BACKGROUND

Plaintiff Al Fisher alleges that on January 10, 2007 at High Desert State Prison (“HDSP”) he was using the toilet in his cell when a corrections officer initiated a search of the cell. (#13 at 5-6). According to the First Amended Complaint, the female corrections officer initiating the search accused Plaintiff of masturbating and reported this to her co-workers. (*Id.*) In response, Plaintiff states that Sergeant G. Robertson ordered that Plaintiff be handcuffed and removed from his cell. (*Id.* at 6). Plaintiff alleges that he is an American with Disabilities Act (“ADA”) inmate with a mobility impaired sign on his cell door. (#13 at 7). Once he was handcuffed, Robertson allegedly slammed Fisher into a wall face-first and then threatened him. (*Id.* at 6-7). Correctional Officer Terry Savage then pulled Fisher from the room by the handcuffs and slammed Plaintiff into a wall and pulled upwards on Plaintiff’s handcuffed hands, which allegedly injured Plaintiff’s back, shoulders, arms and hands. (*Id.* at 7). Savage allegedly ignored Plaintiff’s explanation that he suffered from a chronic back condition.

1 (*Id.*) The First Amended Complaint also states that Lieutenant R. Plainer spit in Plaintiff's face and
2 threatened his life while Correctional Officer F. Shelton watched. (*Id.* at 7-8). Plainer then put Plaintiff
3 into a small containment area where Plaintiff just had room to stand. (*Id.*) Fisher alleges that he was
4 confined in the small space for about eight (8) hours and that Plainer did not act upon Plaintiff's
5 complaints about standing due to his alleged disability and chronic back pain. (*Id.* at 8). Plaintiff states
6 that he was eventually transferred to administrative segregation. (*Id.*)

7 Four months later, on April 15, 2007, Plaintiff was handcuffed and in the process of transporting
8 his property from administrative segregation by means of a sheet tied around his neck when
9 Correctional Officer W. Hanks allegedly assaulted him. (*Id.* at 9). Plaintiff states that Hanks pulled the
10 sheet forcefully from Fisher's neck. (*Id.*) When Fisher complained that he was being choked, Hanks
11 allegedly slammed Plaintiff to the ground and attacked him while Fisher remained handcuffed. (*Id.*)
12 Based on these actions, Plaintiff claims that Defendants Shelton, Savage, Hanks, Robertson and Plainer
13 violated his Eighth Amendment rights¹ by assaulting him and showing deliberate indifference to his
14 welfare. (#13).

15 **DISCUSSION**

16 In the process of discovery, Plaintiff served Defendants with Requests for Production of
17 Documents on May 31, 2010. (#57 at 1). Defendants responded to the discovery requests and asserted
18 various objections. (*Id.*) The Court will now examine the discovery requests at issue² and Defendants'
19 responses to determine whether Defendants should be compelled to supplement their responses.
20 ...

21 _____
22 ¹ Plaintiff's First Amended Complaint contained additional claims that Defendants Wong,
23 Jackson, Grannis, Roche, Felker, Amero, Smith, Richardson and Chrones's actions violated his Fourth,
24 Eighth and Fourteenth Amendment rights. (#13). These claims were dismissed by the Court for failure
to state a claim upon which relief could be granted. (#20).

25 ² Plaintiff failed to attach the requests for production at issue to his motion to compel as required
26 by Local Rule 250.3. Where the original discovery requests at issue are not attached, the Court will
27 generally deny the motion to compel without prejudice and require the moving party to resubmit the
28 motion with the proper attachments. However, Defendants included the discovery requests at issue in
their response to the present motion. The Court will rely on this information in order to analyze the
discovery dispute before it.

1 **Request for Production No. 1:** Objection upheld as overbroad and unduly burdensome.

2 Plaintiff requests that Defendants produce records of any complaints or civil suits filed against
3 Defendants. Defendants object to the request as overbroad. Plaintiff's request is neither limited in time
4 or scope nor reasonably calculated to lead to the discovery of admissible evidence. As a result, the
5 request is overbroad and unduly burdensome. *See Freeland v. Sacramento City Police Dept.*, 2009 WL
6 545994 (E.D.Cal. March 4, 2009) (finding that requests for "any and all" documents, civil rights suits
7 and civil claims is overbroad and unduly burdensome). Therefore the Court will uphold Defendants'
8 objection on the grounds that the request is overbroad. As the Court has upheld this objection, it will
9 not address Defendants' additional objections.

10 **Request for Production No. 5:** Denied without prejudice due to Defendants' supplement.

11 Plaintiff requests "[d]ocuments pertaining to training of officers at High Desert Prison
12 concerning conducting counts (institutional counts). And/or the protocol of how to conduct counts."
13 (#57 at 3). Defendants object to the request as compound, vague and ambiguous. The Court agrees that
14 Plaintiff's phrasing is vague and unclear. As a result, the Court will limit the request for production³ to
15 the procedures at HDSP related to the conducting of institutional counts of prisoners. Such a request is
16 limited in scope and reasonably calculated to lead to the discovery of admissible evidence.

17 However, the Court will not order Defendants to further respond to rephrased request for
18 production no. 5. In responding to Plaintiff's motion to compel (#57), Defendants attached additional
19 documents in order to supplement their discovery responses without waiving their stated objections.
20 Included within these attachments is Department Operations Manual sections 52020.4.1 - 52020.8.10.
21 (#57-3 at 1-16). The disclosure of these operations manual sections would appear to fully respond to
22 request for production no. 5 as limited by the Court. As a result, the Court will deny without prejudice
23 Plaintiff's request and Defendants will not be required to further supplement their response. If after
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25
26 ³ "It is within the discretion of a court ruling on a motion to compel to narrow the requests rather
27 than sustain the responding party's objections to them in toto. In doing so, the court effectively sustains
28 an objection that the requests are vague, ambiguous or overbroad in part, and overrules it in part."
Green v. Baca, 219 F.R.D. 485 (C.D.Cal. 2003) (citing *United States Environmental Protection Agency*
v. Alyeska Pipeline Service Co., 836 F.2d 443, 448 (9th Cir.1988)).

1 reviewing this order and the defendants' supplement, Plaintiff still seeks additional relevant documents,
2 Plaintiff should request the specific documents from Defendants. As the Court has denied Plaintiff's
3 request without prejudice, it will not address Defendants' objections.

4 **Request for Production No. 7:** No further response required.

5 Plaintiff requests HDSP's administrative logs from January 10, 2007 that document when he
6 was placed in a cell and how long he was kept there. (#57 at 4-5). Defendants object to the request as
7 compound, vague and ambiguous and state that they are not in possession of any responsive documents.
8 (#57 at 4). The Court will not require further response as Defendants have stated that they do not
9 possess any responsive documents and Plaintiff has offered no evidence to the contrary.

10 **Request for Production No. 8:** Vague and ambiguous objections upheld.

11 Plaintiff requests "Documents of protocol of inmates entering Administrative Segregation."
12 (#57 at 5). Defendants object to the request as unduly burdensome, vague and ambiguous. The Court
13 agrees that Plaintiff's phrasing is vague and unclear. It is unclear whether Plaintiff is requesting HDSP
14 procedures related to administrative transfers or the HDSP procedures for placement of an inmate in
15 segregation. Defendants' objections as to the vagueness and ambiguity of the request are upheld and
16 Defendants are not required to further respond to this request. As the Court has upheld these two
17 objections, it will not address Defendants' additional objections.

18 **Request for Production No. 9:** Objections overruled.

19 Plaintiff requests that Defendants provide him with photographs of the "holding cage" in the
20 Program Office in the B-Facility at HDSP. (#57 at 5). Defendants object to the request as vague and
21 ambiguous because it does not state a specific time period for the requested photos and they argue that
22 the meaning of "holding cell" is ambiguous. (*Id.*) Defendants' vagueness objection as to time is not
23 well taken. As Plaintiff has not identified a specific time period, it is clear that he is requesting
24 photographs of the "holding cell" as it exists today. In addition, while Plaintiff's phrasing may not be
25 precise as to the term "holding cell," the Court finds that the request's language is specific enough for
26 Defendants to identify the holding area in the B-Facility of HDSP where Plaintiff was placed on
27 January 10, 2007. As a result, the Court will overrule Defendants' vague and ambiguous objections.

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1 Defendants also object to photographs of the holding cell being produced because disclosure
2 would present a threat to the security of the institution and the safety of staff and inmates. (#57 at 5).
3 The California Code of Regulations allows for information “which would jeopardize the security of the
4 institution” to be classified as confidential. 15 CA ADC § 3321(a)(2). However, state agents and
5 corrections institutions may not merely refuse to respond to discovery requests by raising the allegation
6 that a response would compromise the safety and security of the institution. *See Jacobs v. Scribner*,
7 2009 WL 3157533, *3-*4 (E.D.Cal. Sept. 25, 2009) (partially overruling the defendants’ objection to
8 producing confidential sections of the Department Operational Manual). Defendants must sufficiently
9 demonstrate how allowing Plaintiff to view photographs of a holding cell that he was allegedly placed
10 in for hours would create a specific safety or security threat for the institution. Defendants fail to do so.
11 (*See* #57). In their opposition, Defendants recite the regulatory language that disclosure of the
12 photograph “presents a threat to the security of the institution and the safety of staff and inmates.”
13 However, mere recitation of the regulatory standard without any further explanation is not enough for
14 the Court to find the photographs at issue to be confidential. As Defendants have offered no description
15 as to how disclosure could pose a safety or security threat, the Court finds that Defendants have not met
16 their burden of showing that the photographs requested are confidential. Therefore, Defendants’
17 confidentiality objection is overruled.

18 However, Defendants state that they are not in possession of any responsive photographs.
19 Plaintiff has not offered any evidence that calls Defendants’ assertion into question. Under normal
20 litigation conditions, where the defendants are not in possession of photographs responsive to the
21 plaintiff’s request, the Court would order the parties to agree upon a time when Plaintiff would be able
22 to photograph the area at issue. However, in this instance, the area in question is within a prison.
23 Additionally, as a prisoner, Plaintiff’s movements are restricted and prison rules may prohibit Plaintiff
24 from possessing a camera. Therefore, the Court finds it is reasonable to order that Defendants arrange
25 to photograph the holding cell in the Program Office in the B-Facility at HDSP and provide the
26 photograph to Plaintiff.

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1 **Request for Production No. 10:** Vague and ambiguous objections upheld.

2 Plaintiff requests photos of the inside of Building Two at HDSP, specifically “the entrance from
3 the inside of Building Two,” photos of “each (3) sections of the cells” and a photo of the “view from
4 cell 207 to the entrance where correctional officer said she entered the building on January 10, 2007.”
5 (#57 at 6). Defendants object to the request as compound, vague and ambiguous.

6 The Court agrees that Plaintiff’s phrasing is vague and ambiguous. It is unclear from the
7 request what photographs Plaintiff is requesting. In addition, Plaintiff’s motion to compel merely
8 restates the language of his request for production without further explanation. As such, it does not
9 offer any additional details to demonstrate that the descriptions of his requested photographs are not
10 vague and ambiguous. Defendants’ objections are upheld.

11 **Requests for Production No. 11-12:** Plaintiff’s requests are denied without prejudice.

12 Plaintiff requests “all findings” whether confidential or not from two specific Citizen Complaint
13 Log entries. (#57 at 7-8). Defendants asserted various objections to requests for production no. 11 and
14 12, but produced responsive documents with certain information redacted as confidential. (*Id.*)
15 Plaintiff responds that these entries are “imperative” to his case and Defendants should produce
16 unredacted versions of the log entries. (*Id.*)

17 In this instance, Defendants have disclosed responsive documents in good faith to Plaintiff,
18 redacting information that they deemed confidential. By insisting that Defendants should produce an
19 unredacted version, Plaintiff implies that the redactions are improper or excessive. However, Plaintiff
20 has offered no explanation to the Court about what evidence was redacted and Plaintiff failed to attach
21 the documents at issue for the Court to examine. As a result, the Court does not have sufficient
22 information to evaluate the merits of Plaintiff’s request for an unredacted version of the Citizen
23 Complaint Log entries. Therefore, Plaintiff’s requests will be denied without prejudice.

24 **Request for Production No. 14:** Vague and ambiguous objections upheld.

25 Plaintiff requests documents “regarding inmates being released from Administration
26 Segregation on D-Facility” at HDSP and “protocol of release”. (#57 at 8-9). Defendants object to the
27 phrase “protocol of release” as ambiguous and object to the request for documents regarding inmates
28 being released from administrative segregation as “vague” as to time. (*Id.*)

1 The Court agrees that Plaintiff's phrasing is vague and ambiguous. It is unclear from the
2 request what documents Plaintiff is requesting regarding the release of inmates from administrative
3 segregation or from what time period Plaintiff is seeking records. As it is Plaintiff's burden in a
4 discovery request to specify the information sought, the Court will uphold Defendants' vagueness
5 objection. In addition, it is not clear what specific procedures Plaintiff is requesting from Defendants.
6 The language is ambiguous and it is unclear whether Plaintiff seeks details regarding how HDSP
7 officers should physically remove a prisoner from segregation or the procedure for how HDSP
8 evaluates when prisoners should be released from administrative segregation. As a result, Defendants'
9 objections are upheld. As the Court has upheld these objections, it will not address Defendants'
10 additional objections.

11 In addition, the Court notes that Defendants attached additional documents to their response to
12 the present motion to compel as a supplement to their discovery responses without waiving their stated
13 objections. (*See* #57). Included within these attachments is HDSP Local Operational Plan No. 725.
14 (#57-3 at 19-21). If after reviewing this order and the defendants' supplement, Plaintiff still seeks
15 additional relevant documents, Plaintiff should serve additional discovery requests on Defendants and
16 identify specific procedural documents.

17 **Request for Production No. 17:** Vague and ambiguous objections upheld.

18 Plaintiff requests "medical training" documents related to "conducting medical searches and
19 clearances" and "filling out 7219 forms while inmates are checked". (#57 at 9). Defendants objected to
20 the request as vague and ambiguous, but without waiving their objections, provided Plaintiff with a
21 responsive administrative regulation.

22 The Court agrees that Plaintiff's phrasing is vague and ambiguous in regards to the term
23 "medical searches and clearances". In his motion to compel, Plaintiff does not provide further
24 explanation as to the meaning of this phrase. He merely restates his original request for production
25 language verbatim. Therefore, Defendants' vague and ambiguous objections as to the phrase "medical
26 searches and clearances" are upheld. Defendants are not required to further respond to this request. As
27 the Court has upheld these objections, it will not address Defendants' additional objections.

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1 **Request for Production No. 18:** Overbroad and not relevant objections upheld.

2 Plaintiff requests “any statistics” related to indecent exposure offenses at HDSP, specifically
3 statistics broken down by the race of the offender and how many offenders had prior convictions for
4 indecent exposure. (#57 at 9-10). Defendants object to the request as overbroad and not likely to lead
5 to the discovery of relevant evidence. (*Id.*)

6 The Court agrees that the request is overbroad as it is not limited to a specific time period. In
7 addition, Plaintiff has failed to demonstrate how statistics related to indecent exposure offenses are
8 relevant to his claim that Defendants violated his Eighth Amendment rights through alleged physical
9 abuse and a lengthy detention where he was forced to stand without concern for his disability.

10 Therefore, Defendants’ objections will be upheld. Defendants are not required to further respond to this
11 request. As the Court has upheld these objections, it will not address Defendants’ additional objections.
12 Accordingly,

13 **IT IS ORDERED** that Plaintiff’s Motion for an Order Compelling Discovery (#54) is **granted**
14 **in part** and **denied in part** as follows:

- 15 1. Defendants shall substantively respond to request for production no. 9 on or before
16 **January 31, 2011;**
- 17 2. Defendants are not required to further respond to request for production no. 7;
- 18 3. Defendants’ objections are upheld for requests for production no. 1, 8, 10, 14, 17 and 18
19 and Defendants are not required to further respond to these requests; and
- 20 4. Plaintiff’s requests for production no. 5, 11 and 12 are denied without prejudice.

21 DATED this 5th day of January, 2011.

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24 GEORGE FOLEY, JR.
25 United States Magistrate Judge
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