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

WILLIAM CORDOBA,

Plaintiff,

No. CIV S-10-2944 DAD P

vs.

KATHLEEN L. DICKINSON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. In his complaint, plaintiff alleges that fellow inmate J. Neri assaulted him while they were waiting for prison officials to open the Unit II West Gate at California Medical Facility. Plaintiff claims that defendants Viera and Rivers failed to protect him from the serious harm posed to him from his attacker in violation of the Eighth Amendment. Pending before the court is plaintiff's motion to compel.

PLAINTIFF'S MOTION TO COMPEL

In his motion to compel, plaintiff argues that the court should compel defendants Viera and Rivers to provide him, or the court for in camera inspection, with further responses to his request for production of documents. Specifically, plaintiff believes that the defendants should have to produce documents from inmate J. Neri's central file, including all documents

1 related to the rules violation report inmate Neri received after attacking plaintiff and all
2 documents related to inmate Neri's placement in administrative segregation. Plaintiff also
3 believes that the defendants should be required to produce more documents related to "Operation
4 Plan #4" for inmate count and movement on July 12, 2008. In plaintiff's view, the document
5 defendants produced in response to his initial discovery request is irrelevant because it does not
6 address yard recall or the monitoring of inmate traffic at the Unit II West Gate. (Pl.'s Mot. to
7 Compel at 1-2.)

8 In opposition to plaintiff's motion to compel, counsel for defendants Viera and
9 Rivers argues that the documents plaintiff is requesting from inmate Neri's central file are
10 confidential. Counsel also argues that prison officials have designated plaintiff and inmate Neri
11 as enemies, so that producing inmate Neri's confidential file documents to plaintiff could
12 jeopardize the safety of inmate Neri, plaintiff, and prison staff and other inmates. In addition, as
13 to the documents related to "Operation Plan #4", counsel for defendants argues that plaintiff
14 initially requested any and all documents describing CMF's policy regarding the monitoring of
15 inmate traffic during yard unlocks and yard recall on July 12, 2008. Defendants responded by
16 providing plaintiff with "Operation Plan #4," dated July 2010, because the plan in force on July
17 12, 2008 had been purged and was no longer available. After further investigation, however,
18 defendants located "Operation Plan #4", dated April 2008, which was in effect on the day in
19 question, July 12, 2008, and provided a copy of it to plaintiff. Defense counsel notes that the
20 defendants production of documents in this regard has been responsive to plaintiff's request
21 because "Operation Plan #4" contains information about staff responsibilities during inmate
22 movement. Finally, counsel contends that the defendants are unaware of the existence of any
23 document containing information pertaining specifically to monitoring of inmate traffic at the
24 Unit II West Gate. (Debs.' Opp'n to Pl.'s Mot. to Compel at 1-5.)

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1 **DISCUSSION**

2 Under Rule 26 of the Federal Rules of Civil Procedure, “[p]arties may obtain
3 discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.”
4 Fed. R. Civ. P. 26(b). Under Rule 37 of the Federal Rules of Civil Procedure, the court may
5 order a party to provide further responses to “an evasive or incomplete disclosure, answer, or
6 response.” See Fed. R. Civ. P. 37(a)(3).

7 As to plaintiff’s request for documents from inmate Neri’s central file, the court
8 finds defendants’ objections to be well taken. Typically, an inmate does not have access to
9 another inmate’s central file. See Cal. Code. Regs. tit. 15 § 3370(b) (“Except by means of a valid
10 authorization, subpoena, or court order, no inmate or parolee shall have access to another’s case
11 records file, unit health records, or component thereof.”). Here, plaintiff and inmate Neri are
12 designated enemies and therefore a strong penological justification exists to deny plaintiff access
13 to inmate Neri’s files. Nor does this court find that in camera review by the court of inmate
14 Neri’s central file would be appropriate. As an initial matter, while plaintiff speculates that there
15 may be relevant information in inmate Neri’s central file, he has made no specific assertions or
16 showing as to what information he seeks or expects to find there. Plaintiff is proceeding against
17 defendants Viera and Rivers in this action. Insofar as there may be any relevant information
18 about the conduct of defendants Viera and Rivers mentioned in inmate Neri’s files, plaintiff
19 could and should have sought to discover that information directly from the defendants through
20 interrogatories, requests for admissions or other available discovery devices.

21 As to plaintiff’s request for documents related to “Operation Plan #4,” it appears
22 that the defendants have produced all relevant documents on the subject. Plaintiff has not made
23 any showing that further documents are available for production. Nor can this court compel the
24 defendants to produce documents that do not exist or are not in their possession or control. See
25 Fed. R. Civ. P. 34(a)(1). See also United States v. Int’l Union of Petroleum & Indus. Workers,

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1 870 F.2d 1450, 1452 (9th Cir. 1989) (a party seeking production of documents bears the burden
2 of showing the opposing party has control over them).

3 **CONCLUSION**

4 Accordingly, for all of the foregoing reasons, IT IS HEREBY ORDERED that
5 plaintiff's motion to compel (Doc. No. 31) is denied.

6 DATED: March 12, 2012.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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