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

MONTE L. HANEY,

Plaintiff,

No. 2:11-cv-2196 JAM EFB P

vs.

T. WOODS,

Defendant.

ORDER

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On December 21, 2012, and on January 4, 2013, plaintiff filed requests for injunctive relief, claiming he had been prevented from filing a motion to compel because he did not have access to a copy machine. Dckt. Nos. 22, 23. Those motions now appear to be moot, because on January 4, 2013, plaintiff filed a motion to compel. Dckt. No. 24. On January 25, 2013, defendant opposed the motion to compel and on February 4, 2013, defendant filed a reply. Dckt. Nos. 25, 26.¹

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¹ On February 11, 2013, defendant filed a motion to compel and for sanctions. Dckt. No. 24. On February 25, 2013, defendant filed a motion to stay the motion to compel and to withdraw the request for sanctions. Dckt. No. 29. Good cause appearing, defendant's February 25, 2013 request is granted.

1 This action proceeds on plaintiff’s First Amendment claims against defendant Woods for
2 Woods’ alleged retaliation and refusal to send out plaintiff’s mail. In his motion to compel,
3 plaintiff seeks responses to his requests for production number 4, and to interrogatories numbers
4 11 and 21.

5 Information is relevant for purposes of discovery if “it is reasonably calculated to lead to
6 the discovery of admissible evidence.” *Id.* Relevant information encompasses “any matter that
7 bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may
8 be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L.
9 Ed. 2d 253 (1978). Because discovery is designed to define and clarify the issues in the case, it
10 is not limited to the precise issues raised in the pleadings. *Id.* at 350-51. “The question of
11 relevancy should be construed ‘liberally and with common sense’ and discovery should be
12 allowed unless the information sought has no conceivable bearing on the case.” *Soto v. City of*
13 *Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995) (quoting *Miller v. Panuci*, 141 F.R.D. 292, 296
14 (C.D. Cal. 1992)). The court may limit discovery if it determines the discovery sought is
15 unreasonably cumulative or obtainable from a more convenient or less expensive source, the
16 party seeking discovery had ample opportunity to obtain the information sought, or the burden or
17 expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2).

18 A motion to compel is appropriate where a party fails to produce relevant, non-privileged
19 documents requested pursuant to Rule 34. Fed. R. Civ. P. 37(a)(3). If a party, in response to a
20 request for production under Rule 34, fails to produce or permit inspection, the discovering party
21 may move for an order compelling production. *Id.* An evasive or incomplete answer or
22 response to a discovery request “must be treated as a failure to disclose, answer or respond.”
23 Fed. R. Civ. P 37(a)(4). The party seeking the motion to compel discovery has the burden of
24 informing the court why the defendants’ objections are not justified or why the defendants’
25 responses are deficient.

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1 Rule 33(b) provides that the party responding to an interrogatory must answer by stating
2 the appropriate objection(s) with specificity or by “answer[ing] separately and fully in writing
3 under oath.” Fed. R. Civ. P. 33(b)(3), (4). Rule 37(a) provides that the interrogating party may
4 move to compel an answer when a party fails to answer an interrogatory, or when the answer
5 provided is evasive or incomplete. Fed. R. Civ. P. 37(a)(3)(B)(iii), (a)(4).

6 Plaintiff’s request for production number 4 states: “Provide Plaintiff with a complete
7 copy of your disciplinary and citizen’s complaint file during the complete time you have been
8 employed for [CDCR].” A reasonable interpretation of plaintiff’s request is that he seeks
9 documentation of any complaints, investigations, and/or disciplinary actions taken against
10 defendant. Plaintiff’s request is not limited in time or subject matter, and for those reasons, is
11 overly broad. In his reply, however, plaintiff narrows his request to complaints or investigations
12 involving defendant between the years of 2009 to 2013.

13 Defendant objects to the request as seeking information that is privileged and/or private.
14 However, defendant does not adequately explain how the requested information would implicate
15 privacy rights or is privileged. Documents that are a part of the personnel records of officers
16 defending civil rights actions, while containing sensitive information, are within the scope of
17 discovery. *Soto v. City of Concord*, 162 F.R.D. 603, 614-15 (N.D. Cal. 1995); *Hampton v. City*
18 *of San Diego*, 147 F.R.D. 227, 230-31 (S.D. Cal. 1993); *Miller v. Pancucci*, 141 F.R.D. 292, 296
19 (C.D. Cal. 1992). Whether personnel files are privileged depends upon the balance of “potential
20 benefits of disclosure against potential disadvantages; if the latter is greater, the official
21 information privilege may bar discovery.” *Miller*, 141 F.R.D. at 299. Because “privileges
22 operate in derogation of the truth finding process[,] the law places the burden of proving all
23 elements essential to invoking any privilege on the party seeking its benefits.” *Kelly v. City of*
24 *San Jose*, 114 F.R.D. 653, 662 (N.D. Cal. 1987); Fed. R. Civ. P. 26(b)(5). To invoke the official
25 information privilege the party opposing discovery must, in addition to a privilege log, submit an
26 affidavit from an official of the agency in control of the materials. *See Kelly*, 114 F.R.D. at 670.

1 This provides the court with the information it needs to determine whether the requested
2 disclosure is proper. Here, defendant has not met this burden.

3 In this action, documents pertaining to complaints, investigations, and/or disciplinary
4 actions taken against defendant between the years of 2009 to 2013, for alleged conduct that is
5 similar to that alleged in plaintiff's complaint, are reasonably calculated to lead to admissible
6 evidence in support of plaintiff's claims. Accordingly, plaintiff's motion to compel a response to
7 request for production number 4 is granted, as set forth below.

8 Plaintiff's interrogatory number 11 states: "Did you review me for any administrative
9 Appeal while I was housed at B-facility CSP Sacramento from July 2009 to March 2011."
10 Defendant objected to this request as vague as to the terms "review me," and as irrelevant or not
11 reasonably calculated to lead to admissible evidence. Because the meaning and relevance of
12 interrogatory number 11 is unclear, defendant's objections are sustained and plaintiff's motion to
13 compel is denied as to this request.

14 Plaintiff's interrogatory number 21 states: "How come you never reviewed any of my
15 Administrative appeals prior to this lawsuit being filed against you?" Defendant objected to this
16 request as lacking foundation, vague as to time, vague as to the term "reviewed," and not
17 reasonably calculated to lead to admissible evidence. Defendant's objections are sustained and
18 plaintiff's motion to compel is denied as to this request.

19 Accordingly, it is ORDERED that:

- 20 1. Plaintiff's requests for injunctive relief (Dckt. Nos. 22, 23) are denied as moot.
- 21 2. Plaintiff's motion to compel (Dckt. No. 24) is granted to the extent that, within 21
22 days of the date of this order, defendant shall produce relevant documents, including documents
23 from personnel files, concerning complaints, investigations and/or disciplinary actions based on
24 defendant's alleged retaliation and/or interference with inmate mail from 2009 to the present. To
25 the extent such information implicates privacy rights, defendant may redact identifying personal
26 information from responsive documents.

1 3. Defendant's motion to stay and to withdraw his request for sanctions (Dckt. No. 29) is
2 granted. The Clerk of the Court shall administratively terminate Docket Number 27. Within 21
3 days of the date of this order, defendant shall submit a status report addressing whether counsel
4 wishes to renew the motion to compel, or whether discovery has been completed.

5 Dated: March 7, 2013.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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