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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK LEE DEARWESTER,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT,

Defendant.

No. 2:13-cv-2064 MCE KJN P (TEMP)

ORDER

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is defendant's motion to compel and plaintiff's motion to compel. Below, the court will address each motion in turn.

BACKGROUND

Plaintiff is proceeding on his original complaint against defendant County of Sacramento. Therein plaintiff alleges that, pursuant to a Sacramento County Sheriff's Department policy, all incoming inmate mail, with the exception of legal mail and other approved correspondence, is limited to postcards no larger than six inches by four and one-half inches. Plaintiff claims that the policy, a copy of which is attached to plaintiff's complaint, violates his rights under the First Amendment. (Compl. at 3 & Attachs.)

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1 **APPLICABLE LEGAL STANDARDS**

2 Under Rule 26 of the Federal Rules of Civil Procedure:

3 Parties may obtain discovery regarding any non-privileged matter
4 that is relevant to any party’s claim or defense and proportional to
5 the needs of the case, considering the importance of the issues at
6 stake in the action, the amount in controversy, the parties’ relative
7 access to relevant information, the parties’ resources, the
8 importance of the discovery in resolving the issues, and whether the
9 burden or expense of the proposed discovery outweighs its likely
10 benefit. Information within this scope of discovery need not be
11 admissible in evidence to be discoverable.

12 Fed. R. Civ. P. 26(b).

13 With respect to interrogatories, a party may propound interrogatories that “relate to any
14 matter that may be inquired into under Federal Rule of Civil Procedure 26(b).” Fed. R. Civ. P.
15 33(a)(2). With respect to requests for production, a party may propound requests for production
16 of documents that are “within the scope of Federal Rule of Civil Procedure 26(b).” Fed. R. Civ.
17 P. 34(a).

18 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may
19 move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P.
20 37(a)(3)(B). The court may order a party to provide further responses to “an evasive or
21 incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4). “District courts have
22 ‘broad discretion to manage discovery and to control the course of litigation under Federal Rule
23 of Civil Procedure 16.’” Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
24 Avila v. Willits Envtl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

25 **DEFENDANT’S MOTION TO COMPEL**

26 Defendant County of Sacramento has moved to compel plaintiff’s responses to
27 defendant’s Interrogatories, Set One, and defendant’s Requests for Production of Documents, Set
28 One. According to defense counsel, the defendant served plaintiff with these discovery requests
on September 30, 2015, making plaintiff’s responses due by November 13, 2015. Plaintiff has
not responded to any of the discovery requests. Defense counsel notes that on December 2, 2015,
defense counsel made a good-faith effort to confer with plaintiff in writing and obtain his
responses to no avail. (Def.’s Mot. to Compel at 1-3, Debow Decl. Exs. A & B.)

1 In opposition to the pending motion to compel, plaintiff contends that he had not received
2 defendant's interrogatories or requests for production of documents until the defendant filed the
3 pending motion to compel on December 17, 2015. Plaintiff requests an additional forty-five (45)
4 to sixty (60) days to respond to defendant's discovery requests. (Pl.'s Opp'n to Def.'s Mot. to
5 Compel at 1.)

6 Under the circumstances of this case, the court grants defendant's motion to compel. In
7 addition, if plaintiff has not already responded to defendant's discovery requests, the court will
8 grant him a reasonable extension of time to respond to defendant's interrogatories and requests
9 for production of documents. Plaintiff is advised that with respect to defendant's interrogatories,
10 plaintiff must answer each interrogatory "separately and fully in writing under oath." Fed. R.
11 Civ. P. 33(b)(3). With respect to defendant's request for production of documents, if plaintiff has
12 any relevant documents or materials in his possession or control, he must produce them in
13 response to defendant's discovery requests. If plaintiff is not in possession or control of relevant
14 materials, he must state under oath that the requested documents do not exist or are not in his
15 possession or control. See Fed. R. Civ. P. 34(a)(1). Plaintiff is cautioned that "[t]he discovery
16 process is subject to the overriding limitation of good faith obligation." Asea v. Southern Pacific
17 Transportation Co., 669 F.2d 1242, 1247 (9th Cir. 1981).

18 **PLAINTIFF'S MOTION TO COMPEL**

19 The court now turns to plaintiff's motion to compel. Plaintiff has moved to compel
20 defendant County of Sacramento to provide a further response to his Interrogatory No. 4.
21 According to plaintiff, he served the defendant with interrogatories on September 30, 2015,
22 making the defendant's responses due by November 13, 2015. The parties do not dispute that the
23 defendant timely served plaintiff with responses to the interrogatories. Plaintiff, however, was
24 dissatisfied with defendant's response to Interrogatory Number 4 and made a good-faith effort to
25 confer with the defendant in writing. Although the defendant served plaintiff with a supplemental
26 response to Interrogatory Number 4, plaintiff believes defendant's response is still not adequate
27 and moves to compel a further response. (Pl.'s Mot. to Compel at 2-3.)

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1 In opposition to the pending motion to compel, defense counsel contends that the court
2 should deny plaintiff's motion to compel because it is untimely. Moreover, counsel contends that
3 the court should not compel the defendant to provide a further response to plaintiff's
4 Interrogatory No. 4 because it is made up of at least four discrete interrogatories, and it is not
5 clear which subpart plaintiff refers to his motion to compel. In addition, plaintiff's request for
6 names, addresses, booking photographs for anyone held in defendant's custody in any capacity in
7 the Sacramento County Main Jail or any of defendant's other facilities where inmates are held in
8 any capacity is overbroad and would be so burdensome as to constitute harassment. (Def.'s
9 Opp'n to Pl.'s Mot. to Compel at 2-6.)

10 As an initial matter, plaintiff's Interrogatory No. 4 states:

11 State the name, ADDRESS at the time of booking into
12 DEFENDANT'S custody, any available forwarding
13 ADDRESS(es), IDENTIFICATION NUMBER, booking
14 photograph(s) of all PERSONS in DEFENDANT'S custody in any
15 capacity at its Sacramento County Main Jail Facility or any other of
16 DEFENDANT'S facilities where inmates are held in any capacity
17 during INCIDENT.

18 State the name, ADDRESS(es), and relationship to any inmate
19 above, any PERSON who witnessed the INCIDENT or the events
20 occurring immediately before or after the INCIDENT; any
21 PERSON who made any statement at the scene of the INCIDENT;
22 any PERSON who heard any statements made about the
23 INCIDENT by any individual at the scene; and who YOU or
24 ANYONE ACTING ON YOUR BEHALF claim has knowledge of
25 the INCIDENT (except for expert witnesses covered by Code of
26 Civil Procedure section 2034).

27 Have YOU or ANYONE ACTING ON YOUR BEHALF
28 interviewed any individual concerning the INCIDENT? If so, for
each individual state:

(a) The name, ADDRESS, and telephone number of the individual interviewed;

(b) The date of the interview; and

(c) The name, ADDRESS, and telephone number of the PERSON who conducted the interview.

Have YOU or ANYONE ACTING ON YOUR BEHALF obtained a written or recorded statement from any individual concerning the INCIDENT? If so, for each statement state:

(a) The name, ADDRESS, and telephone number of the individual

1 from whom the statement was obtained;

2 (b) The name, ADDRESS, and telephone number of the individual
3 who obtained the statement;

4 (c) The date the statement was obtained; and

5 (d) The name, ADDRESS, and telephone number of each PERSON
6 who has the statement or a copy.

7 (Def's. Opp'n to Pl.'s Mot. to Compel, Debow Decl. Ex. A.)

8 Defendant County of Sacramento objected to Interrogatory No. 4 on the grounds that it is
9 overbroad, violates third parties' right to privacy, and is not reasonably calculated to lead to the
10 discovery of admissible evidence because plaintiff is not permitted to make claims on behalf of
11 other inmates or persons who had been detained at the jail. Without waiving these objections and
12 others, in response to plaintiff's inquiry about identification of witnesses, the defendant provided
13 plaintiff with the names and badge numbers of two lieutenants and three deputies who could be
14 contacted via defense counsel. In response to plaintiff's inquiry about individuals interviewed
15 and whether any statements were taken from witnesses, defendant informed plaintiff that no
16 individuals had been interviewed. (Def's. Opp'n to Pl.'s Mot. to Compel, Debow Decl. Ex. A.)

17 Under the circumstances of this case, the court denies plaintiff's motion to compel. First,
18 as defense counsel argues, plaintiff's motion is untimely. According to this court's discovery and
19 scheduling order, the parties needed to file any motion to compel on or before December 11,
20 2015. (ECF No. 33) Plaintiff signed his motion to compel on January 4, 2016, and the court did
21 not receive his motion for filing until January 8, 2016. Moreover, even if the court excused
22 plaintiff's failure to file his motion to compel on time, plaintiff's Interrogatory Number 4 is
23 grossly overbroad, and the "burden or expense of the proposed discovery outweighs its likely
24 benefit." Fed. R. Civ. P. 26(b). Plaintiff has not satisfactorily explained how or why the
25 information he seeks is relevant to his sole claim for municipal liability based on the defendant's
26 alleged change to the incoming inmate mail policy. As this court previously advised plaintiff, he
27 may not assert legal rights on behalf of third parties, including other inmates. (ECF No. 32 at 3.)
28 Accordingly, for all of the foregoing reasons, the court will not require the defendant to provide
any further response to plaintiff's Interrogatory No. 4.

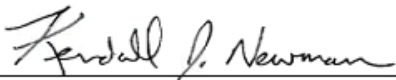
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CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Defendant’s motion to compel (ECF No. 39) is granted;
2. Within thirty days of the date of this order, plaintiff shall respond to defendant’s Interrogatories, Set One, and defendant’s Request for Production of Documents, Set One if he has not done so already; and
3. Plaintiff’s motion to compel (ECF No. 42) is denied.

Dated: April 6, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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