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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

TODD ASHKER, *et al.*,

Plaintiffs,

v.

MATHEW CATE, *et al.*,

Defendants.

Case No. 09-cv-05796-CW (RMI)

**ORDER RE: THE PARTIES' JOINTLY
FILED DISCOVERY DISPUTE
LETTER BRIEFS**

Re: Dkt. Nos. 1388-3, 1390-3, 1392

Now pending before the court are two jointly filed letter briefs setting forth a number of discovery disputes relating to the scope of discovery that will be afforded to support Plaintiffs' forthcoming retaliation motion relating to an individual Plaintiff's placement in the Restrictive Custody General Population ("RCGP") unit. For good cause shown, the court issues the following rulings.

The first letter brief (dkt. 1388-3 *SEALED*) sets forth a dispute about certain documentation (in the form of seven autobiographies) that Plaintiffs seek as a substitute for some audio recordings which the court had previously ordered to be produced but which are unavailable due to having been destroyed. *Id.* at 2-3. Because Defendants have destroyed the audio recordings in question, Plaintiffs propose to select seven autobiographies as a substitute for the evidence that the recordings would have likely contained, and contend that the evidence in these autobiographies would be potentially relevant to the question of whether or not Defendants had any legitimate safety concerns that underpinned their decision to house that Plaintiff in the RCGP unit. *See id.* at 3. Having considered the arguments in support of and in opposition to the relief sought, the court finds that for good cause shown, Plaintiffs' request to compel the production of seven

1 autobiographies of their choice is **GRANTED**.

2 The second letter brief (dkt. 1390-3 *SEALED*) presents a dispute wherein Plaintiffs seek
3 an order compelling Defendants to identify two potential witnesses, making those witnesses (and
4 two others that are already known to Plaintiffs) available for depositions, and to provide certain
5 related documents. *Id.* at 1. Here, Plaintiffs seek additional discovery in order to address certain
6 facts that have emerged as a result of the original discovery that this court had previously ordered.
7 *Id.* at 2. The additional discovery which Plaintiffs seek can be sub-divided into four categories.

8 First, Plaintiffs seek an order compelling Defendants to identify a particular lieutenant that
9 the parties believe spoke with the previous secretary of the CDCR (Mr. Ralph Diaz) about this
10 Plaintiff's placement and retention in the RCGP. *Id.* at 2. Specifically, Plaintiffs would like this
11 person to be identified and made available for a deposition. *Id.* Defendants contend that despite a
12 diligent search, they have been unable to identify any such person; and further, that Plaintiffs have
13 already deposed Mr. Diaz, who was likewise unable to identify the lieutenant in question. *Id.* at 6-
14 7. Plaintiffs refuse to accept this answer and contend that it is "implausible" that Defendants
15 cannot identify this person and that "the only plausible inference is that no such person existed."
16 *Id.* at 3. Thus, Plaintiffs appear to suggest that the court should force Defendants to admit that
17 there was in fact no such person, or in the alternative, for the court to simply proclaim "that it be
18 taken as established for purposes of this action that there was no such person . . ." *Id.* To the extent
19 that Plaintiffs ask the court to force Defendants to admit, here and now, that there was in fact no
20 such person, that request is **DENIED**. To the extent that Plaintiffs ask the undersigned to decide
21 *now* whether something has been established for the purposes of a *forthcoming* retaliation motion,
22 that request is **DENIED** as premature.

23 Next, Plaintiffs learned during a deposition previously ordered by the court that a member
24 of CDCR's Classification Services Unit ("CSU") may have intervened in that witness's
25 investigation, but whose name the witness could not recall. *Id.* at 4. Consequently, Plaintiffs seek
26 an order directing Defendants to identify that person and to make them available for a deposition,
27 as well as producing "any emails or notes the person sent, received, or took in regard to or
28 referencing" the Plaintiff in question. *Id.* While Defendants respond that this request is

1 “cumulative, unduly burdensome, harassing, and irrelevant,” their arguments are unpersuasive.
2 Accordingly, Plaintiffs’ requests in regard to the identification and deposition of this CSU staff
3 member, along with the associated request for document production, are **GRANTED**.

4 Third, Plaintiffs seek to compel the deposition of the CSU correctional counselor who
5 drafted the decision of the Departmental Review Board (“DRB”) relating to the RCGP placement
6 of the Plaintiff in question, along with the production of any emails sent or received by that
7 person, or any notes taken by that person, relating to or referencing the Plaintiff in question. *Id.* at
8 5. Given that one of the issues to be determined in the adjudication of the forthcoming retaliation
9 motion is whether or not Defendants had any legitimate safety concerns regarding that Plaintiff’s
10 placement or retention in the RCGP unit, Defendants themselves show the relevance of this
11 particular discovery request when they submit that this particular witness’s role in the DRB
12 decision “was limited to assisting with evaluating potential safety information and inputting the
13 information into the draft document . . .” *Id.* at 9. Accordingly, Defendants’ objections that this
14 request is “overly broad in scope, unduly burdensome, and harassing,” are unpersuasive, and
15 Plaintiffs’ requests to compel this deposition and for the production of the attendant documents are
16 **GRANTED**.

17 Finally, Plaintiffs also seek to depose a certain CDCR facility’s warden, along with
18 requesting the production of any emails sent or received by that person, as well as any notes taken
19 or kept by that person that relate to or reference the Plaintiff in question. *Id.* at 2, 3. Plaintiffs
20 submit that this deposition and document production is necessary to reconcile the conflicting
21 information that is at the heart of the mysterious and unidentified lieutenant about whom Mr. Diaz
22 reportedly testified but who the CDCR is unable to identify or locate; Plaintiffs submit that this
23 warden “is the only identifiable witness to Diaz’s alleged crucial conversation with the non-
24 existent Lieutenant . . .” *Id.* Defendants respond that deposing this person “would not provide any
25 further information [that would be] relevant or necessary for Plaintiffs to draft their [] motion.” *Id.*
26 at 8. The court finds Defendants objections to be unpersuasive. Accordingly, Plaintiffs’ requests to
27 depose this witness and to compel the production of the attendant documents are **GRANTED**.

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IT IS SO ORDERED.

Dated: November 12, 2020



ROBERT M. ILLMAN
United States Magistrate Judge