

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANIEL AGER, individually and as a Successor)	Case No.: 11-cv-6642-EJD (PSG)
in Interest to the ESTATE OF ALAN AGER,)	
KATHRYN AGER, and ELIZABETH AGER)	ORDER RE MOTION TO COMPEL
	AND OUTSTANDING DISCOVERY
Plaintiffss,)	DISPUTES
v.)	
	(Re: Docket No. 57, 64, 70, 71)
ANTHONY HEDGEPATH, et al,)	
Defendants.)	

On December 18, 2012, Plaintiffs Daniel Ager, et al (“Plaintiffs”) and Defendants Anthony Hedgepath, et al (“Defendants”) appeared at a hearing before the court regarding disputes over depositions and production of documents.¹ At the hearing, the court ordered Defendants to produce the witnesses Plaintiffs sought to depose and ordered the parties to meet and confer and provide to the court a letter brief detailing the substance of the dispute.²

On December 28, 2012, the parties submitted a letter consisting of nine requests for production of documents that were in dispute.³ The court set a hearing on February 5, 2013 for

¹ See Docket No. 63.

² See id.

³ See Docket No. 64.

1 those nine disputes.⁴ The court continued the hearing at the parties' request to February 12, 2013.⁵
2 On February 8, 2013, Plaintiffs submitted a status report certifying the discovery disputes to be
3 heard at the February 12 hearing,⁶ and on February 11, 2013, Defendants submitted their response
4 to the status report.⁷ On February 12, 2013, the parties appeared for a hearing on the various
5 discovery disputes.

6 Based on the parties' latest submissions to the court, five discovery disputes remain.⁸ The
7 parties are familiar with the underlying case and the dispute here, and so the court provides only its
8 decision and a summary of its reasoning.
9

10 **A. Documents Relating to Interrogatory I and Lt. Warfield's Deposition Testimony**

11 Plaintiffs seek supplemental responses from Defendant Belinda Hedrick's ("Hedrick")
12 response to Interrogatory I, which asked, "Who approved double celling inmate Beaver [] with
13 inmate Ager?" Hedrick responded that Lt. Warfield ("Warfield"), who was the on-duty supervisor
14 at that time, signed the form transferring inmate Beaver to the same cell where inmate Alan Ager
15 ("Ager") was housed, and was subsequently killed by Beaver.⁹ In his deposition, Warfield
16 indicated that he would not have approved the double celling arrangement and in fact did not
17 approve the arrangement. Plaintiffs seek to have Hedrick supplement her response and to depose
18 further Hedrick and Warfield. Defendants assert that Hedrick's response was correct and oppose
19 the request for further deposition as untimely.¹⁰
20
21

22 ⁴ See Docket No. 65.

23 ⁵ See Docket No. 67.

24 ⁶ See Docket No. 70.

25 ⁷ See Docket No. 71.

26 ⁸ See Docket Nos. 70, 71.

27 ⁹ See Docket No. 70.
28

1 The court agrees with Plaintiffs. Although signed the form, he disavowed making the
2 actual decision to double cell Beaver and Ager. Plaintiffs are entitled to an answer as to who made
3 the decision, not just who signed the form approving the transfer. Defendants shall make all
4 reasonable investigation as to who made the decision, including interviewing all individuals who
5 might have made the decision or might know the identities of those who did.

6 **B. Incident Package and Internal Affairs Investigation Report Relating to the April 28,**
7 **2009 Assault/Use of Force by Officer Mejia on Ager**

8 Plaintiffs next seek discovery of an incident package regarding an “assault/use of force”
9 incident between Ager and Officer Mejia. Defendants have agreed to produce the incident package
10 and have represented to the court that they have already mailed the incident package to Plaintiffs.

11 Plaintiffs also seek discovery of the Internal Affairs investigation of the incident (“IA
12 Report”) subject to a protective order. Although Defendants assert that Plaintiffs’ failure to allege
13 a conspiracy prevents discovery of this information,¹¹ Plaintiffs’ theory of the case involves
14 Defendants’ deliberate indifference, and a confrontation between Ager and a correctional officer
15 would be relevant to that claim. As Plaintiffs have argued, information contained in the IA Report
16 is relevant to whether Defendants were on notice that Ager was at risk. Defendants shall produce
17 the IA Report subject to the stipulated protective order.¹²

18 **C. Beaver’s Profile in the Incident Package and C-Files for Inmates Aragon, Gadson, and**
19 **Beaver**

20 Plaintiffs seek Beaver’s “profile,” which Plaintiffs contend should have been included in
21 the incident package from the homicide of Ager by Beaver.¹³ Defendants assert that they have
22
23
24

25 ¹⁰ See Docket No. 71.

26 ¹¹ See Docket No. 64.

27 ¹² See Docket No. 31.

28 ¹³ See Docket No. 70.

1 produced the entire incident package and that the Beaver profile does not exist.¹⁴ Defendants shall
2 produce the profile if they have it.

3 Plaintiffs also seek categories of information from the central files (“C-Files”) for inmates
4 Aragon, Gadson, and Beaver.¹⁵ Defendants argue on behalf of the third parties on whom the
5 subpoenas have been served that these requests are vague, overbroad, unduly burdensome, and that
6 the information is subject to the privacy protection of the California and U.S. Constitutions and by
7 the official information privilege.¹⁶

8
9 The court agrees that the C-files of Aragon, Gadson, and Beaver are relevant to the issue of
10 deliberate indifference. Plaintiffs’ theory is that the inmates’ history of violence and rule violations
11 showed that Defendants knew the inmates were dangerous. Defendants are therefore ordered to
12 produce the C-files of the inmates.

13 **D. Phone Records of Dan Ager**

14 Defendants seek the records of telephone conversations between Daniel Ager and Salinas
15 Valley State Prison staff and officials regarding his father, Alan Ager, during the time his father
16 was housed there. Plaintiffs have agreed to produce these documents, subject to the limitation that
17 they are able to make redactions of any private information unrelated to the case. Plaintiffs shall
18 produce these documents and make the necessary redactions, tracking any redactions in an
19 accompanying log.
20

21 **E. Conclusion**

22 No later than February 26, 2013, Defendants shall produce the following, consistent with
23 this order: supplementary responses to Interrogatory I; the IA Report regarding the incident
24

25 _____
26 ¹⁴ See Docket No. 71.

27 ¹⁵ See Docket No. 70.

28 ¹⁶ See Docket No. 71.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

between Officer Mejia and Ager on April 28, 2009, subject to the stipulated protective order; the Beaver profile in the incident package, if it exists; and the C-files for inmates Aragon, Gadson, and Beaver. By this same date, Plaintiffs shall produce redacted telephone records between Daniel Ager and Salinas Valley State Prison staff and officials during the time Alan Ager was housed there.

IT IS SO ORDERED.

Dated: February 13, 2013



PAUL S. GREWAL
United States Magistrate Judge