

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
SOUTHERN DISTRICT OF CALIFORNIA

RAYNARD VALLERY,)	Civil No. 08cv00095 DMS(RBB)
)	
Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART PLAINTIFF'S
v.)	MOTION FOR DISCOVERY-RELATED
)	RELIEF [ECF NO. 110]
)	
J. BROWN, et al.,)	
)	
Defendants.)	
_____)	

Vallery's Motion for Discovery-Related Relief was filed nunc pro tunc to October 28, 2011 [ECF No. 110]. Plaintiff seeks an order directing the Defendants to (1) disclose missing pages from the produced documents, (2) conduct a more diligent document search, and (3) search for the correct classes of documents. Vallery also seeks an order requiring any CDCR employee to (1) file a declaration identifying policies regarding the destruction of the documents sought and (2) file a declaration establishing whether any documents were destroyed; Plaintiff requests that the person who conducted the searches document the steps taken in doing so. (Mot. Disc. Related Relief 2-3, ECF No. 110.) The Plaintiff also

1 moves the Court for an "independent judicial determination of
2 whether Defendants' document searches and reviews were diligent."
3 (Id. at 3.)

4 On November 18, 2011, Defendants' Opposition to Plaintiff's
5 Motion for Discovery-Related Relief was filed, along with the
6 Declaration of John P. Walters and eight exhibits in support [ECF
7 No. 115]. There, the Defendants argue that the Motion should be
8 denied because it is based, in part, on Vallery's misunderstanding
9 of the exhibits and Court orders, and because Defendants properly
10 complied with the Court orders and discovery requests. (Defs.'
11 Opp'n 2, ECF No. 115.)

12 The Court has considered the arguments raised in Vallery's
13 Motion and Defendants' Opposition. The Court **GRANTS** in part and
14 **DENIES** in part Plaintiff's Motion for Discovery-Related Relief [ECF
15 No. 110].

16 I. APPLICABLE LAW

17 In response to a request for production of documents under
18 Rule 34 of the Federal Rules of Civil Procedure, a party is to
19 produce all responsive documents in the party's "possession,
20 custody, or control." Fed. R. Civ. P. 34(a)(1). A party may be
21 required to produce a document that is in the possession of a
22 nonparty entity if the party has the legal right to obtain the
23 document. Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal.
24 1995). The term "control" is broadly construed, and it includes
25 the legal right of the responding party to obtain documents from
26 other sources upon demand. Id. (quotation and citations omitted);
27 7 James Wm. Moore, et al., Moore's Federal Practice, § 34.14[2][b],
28 at 34-75 (3d ed. 2011) (footnote omitted).

1 "[W]hen a response to a production of documents is not a
2 production or an objection, but an answer, the party must answer
3 under oath." 7 James Wm. Moore, et al., Moore's Federal Practice,
4 § 34.13[2][a], at 34-57 (footnote omitted); see id. § 34.14[2][a],
5 at 34-73 (footnote omitted); see also Schwartz v. Marketing Publ'g
6 Co., 153 F.R.D. 16, 21 (D. Conn. 1994) (citing cases establishing
7 that the absence of possession, custody, or control of documents
8 that have been requested must be sworn to by the responding party).

9 II. DISCUSSION

10 A. Order Directing Further Responses

11 1. Missing pages

12 Based on the documents produced by Defendants, the Court finds
13 that Vallery's arguments are without merit. The employee history
14 summary provided to Vallery is complete; Plaintiff mistakes fax
15 pagination with the number of pages in the document. Although
16 Vallery believes the inmate appeal log is incomplete, his suspicion
17 is insufficient to refute Defendants' assertion that the document
18 is complete. The Plaintiff's request for an order directing
19 Defendants to disclose missing pages from Exhibits A and D is
20 **DENIED.**

21 2. Diligence of search

22 The Plaintiff's Motion seeking an order instructing Defendants
23 to conduct a more diligent search is **GRANTED** in part.

24 With respect to document request 40, Defendant Brown asserts
25 he has produced all documents in his current employer's possession.
26 Brown is to supplement his response to include any additional
27 responsive documents in his possession, custody, or control
28 reflecting the reasons for all of Brown's transfers between

1 prisons, not just his transfer to the California Institute for Men.
2 If true, Officer Brown must also answer under oath that there are
3 no other responsive documents in his possession, custody, or
4 control. See Vazquez-Fernandez v. Cambridge Coll., Inc., 269
5 F.R.D. 150, 155 (D. P.R. 2010).

6 As to document requests 4 and 6, Defendant Brown is to
7 supplement his responses by providing documents concerning any
8 inmate grievances filed against him for conduct similar to that
9 alleged by Vallery. If there are no further responsive documents
10 for either request, Brown must indicate so under oath with
11 corresponding specificity.

12 For document request 5 seeking incident reports reflecting
13 altercations between Defendant Brown and inmates, it is unclear
14 whether the Defendant has produced all materials in his control
15 because Defendants' Third Amended Supplemental Responses are not
16 before the Court. For this reason, Brown is to supplement his
17 responses and also answer under oath.

18 Finally, with regard to document request 42, Vallery
19 challenges Defendant Brown's response relating to Calipatria's
20 investigation of Vallery's claims against him. The Defendant is to
21 provide any additional documents to Plaintiff and must state under
22 oath the absence of possession, custody, or control over further
23 responsive documents.

24 **3. Document search parameters**

25 Vallery's Motion for an order directing the Defendants to
26 search for the correct classes of documents is **DENIED**.

27 The Court ordered Defendants to respond to document requests 4
28 and 6 seeking inmate complaints against Officer Brown for conduct

1 similar to that alleged in the Second Amended Complaint. The
2 gravamen of Vallery's allegations is that Officer Brown committed
3 sexual misconduct. Aside from stating under oath that no further
4 responsive documents exist, as discussed previously, Plaintiff is
5 not entitled to the expanded scope of production that he describes.

6 Additionally, the Court did not order Defendants to produce
7 complaints from other law enforcement agencies in response to
8 document requests 7, 13, 20, 25, and 31. (See Order Granting in
9 Part & Den. in Part 17-21, ECF No. 102.) Vallery is not entitled
10 to any further response.

11 **4. Declaration concerning document destruction policy**

12 The Court **DENIES** Vallery's request that the Court order "any
13 CDCR employee" to provide a declaration confirming the existence of
14 a policy regarding the destruction of prison records. For document
15 requests 10, 17, 23, and 29, Plaintiff is not entitled to a
16 declaration from an unspecified third party. Even so, Defendants
17 Dee, Bell, Stratton, and Bourland must establish the nonexistence
18 of complaints filed before 2006 in a statement made under oath.
19 These Defendants are also to state under oath that the documents
20 produced relating to complaints filed between 2006 and January 16,
21 2008, are exhaustive.

22 **5. Declaration as to actual document destruction**

23 Likewise, for document requests 10, 17, 23, and 29, the Court
24 will not direct an unidentified third party to submit a declaration
25 that the relevant inmate complaints against Defendants Dee, Bell,
26 Stratton, and Bourland prior to 2006 were in fact purged. To that
27 extent, Plaintiff's request is **DENIED**. The four responding
28 Defendants, however, are to state under oath that they do not have

1 possession, custody, or control over additional responsive
2 documents.

3 **6. Document search declaration**

4 Vallery also seeks an order directing "the person or persons
5 who actually conducted the searches and reviews" to submit a
6 declaration describing the searches. Plaintiff's request is
7 similarly **DENIED**; however all Defendants are to state under oath
8 that all responsive documents have been provided.

9 **B. Independent Judicial Determination**

10 Based on the above, the Court **DENIES** Vallery's request for a
11 judicial determination as to the adequacy of Defendants' document
12 requests.

13 **III. CONCLUSION**

14 The Plaintiff's Motion for Discovery-Related Relief [ECF No.
15 110] is **GRANTED** in part and **DENIED** in part.

16 IT IS HEREBY ORDERED:

- 17 1. The Defendants are to serve Vallery with supplemental
18 responses to these document requests, and, where
19 appropriate, include statements under oath no later than
20 December 2, 2011. The records may be redacted only to
21 eliminate sensitive personal information, such as social
22 security numbers, home addresses, telephone numbers,
23 family and health insurance information.
- 24 2. The hearing on Defendants' Motion for Summary Judgment
25 set for January 9, 2012, at 10:00 a.m. remains as set.
26 Plaintiff may file a one comprehensive supplemental
27 opposition by December 15, 2011. The Defendants may
28

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

reply to Vallery's Opposition [ECF No. 79] and any
supplemental opposition by December 30, 2011.

DATE: November 23, 2011



RUBEN B. BROOKS
United States Magistrate Judge

cc: Judge Sabraw
All Parties of Record