

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

LENIN GARCIA,	)	Civil No. 12-CV-718 AJB (NLS)
Plaintiff,	)	<b>ORDER GRANTING IN PART</b>
v.	)	<b>AND DENYING IN PART</b>
CLUCK, et al.,	)	<b>PLAINTIFF’S MOTION TO</b>
Defendants.	)	<b>COMPEL</b>
_____	)	(Dkt. No. 32.)

Plaintiff Lenin Garcia, a prisoner proceeding *pro se*, commenced this action on March 22, 2012, seeking redress for civil rights violations. (Dkt. No. 1.) The operative pleading in this action is the second amended complaint, which alleges Defendants retaliated against Plaintiff by making threats, fabricating forms and write-ups, and adversely changing his housing. (Dkt. No. 25.)

Currently pending before this Court is Plaintiff’s motion to compel further responses to four of his Requests for Production. (Dkt. No. 32.) Defendants oppose. (Dkt. No. 34.) The responses in question were served on July 26, 2013. (Dkt. No. 34-1 ¶ 4.) According to Chambers Rules, motions regarding written discovery are to be filed jointly, and are due within forty-five days of the service of the initial response. Under the Rules, a joint motion regarding these responses was due on September 9, 2013. Therefore, the pending motion was untimely filed. The motion was also not filed jointly, as required. The Court chooses to exercise its discretion and address the merits of the

1 motion, however, the parties are warned that any future untimely or improper filings may  
2 be summarily rejected.

### 3 **I. DISCOVERY PRINCIPLES**

4 The purpose of discovery is to “remove surprise from trial preparation so the  
5 parties can obtain evidence necessary to evaluate and resolve their dispute.” *U.S. ex rel.*  
6 *O’Connell v. Chapman University*, 245 F.R.D. 646, 648 (C.D. Cal. 2007) (quotation and  
7 citation omitted). Federal Rule of Civil Procedure 26(b)(1) offers guidance as to the  
8 scope of discovery permitted in an action:

9 Unless otherwise limited by court order, the scope of discovery is as  
10 follows: Parties may obtain discovery regarding any nonprivileged  
11 matter that is relevant to any party’s claim or defense...Relevant  
12 information need not be admissible at the trial if the discovery  
13 appears reasonably calculated to lead to the discovery of admissible  
14 evidence.

15 “Relevance for purposes of discovery is defined very broadly.” *Garneau v. City of*  
16 *Seattle*, 147 F.3d 802, 812 (9th Cir. 1998). “The party seeking to compel discovery has  
17 the burden of establishing that its request satisfies the relevancy requirements of Rule  
18 26(b)(1). Thereafter, the party opposing discovery has the burden of showing that the  
19 discovery should be prohibited, and the burden of clarifying, explaining or supporting its  
20 objections.” *Bryant v. Ochoa*, No. 07cv200 JM (PCL), 2009 WL 1390794 at \*1 (S.D.  
21 Cal. May 14, 2009) (internal citation omitted).

22 District courts have broad discretion when determining relevancy for discovery  
23 purposes. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). However, this  
24 discretion should be balanced with the obligation to interpret the Rules in order to secure  
25 a “just, speedy, and inexpensive determination” of the action. Fed. R. Civ. P. 1.  
26 Additionally, this Court has the power to restrict discovery when it is necessary to  
27 prevent “annoyance, embarrassment, oppression, or undue burden or expense[.]” Fed. R.  
28 Civ. P. 26(c)(1). The Court should also impose limits when “the burden or expense of  
the proposed discovery outweighs its likely benefit[.]” Fed. R. Civ. P. 26(b)(2)(C).

### II. PLAINTIFF’S MOTION TO COMPEL

Plaintiff’s motion to compel concerns four of his Requests for Production, which

1 are outlined below. He argues that the information sought is relevant, relates directly to  
2 the credibility of Defendants, and may be evidence of a “habit, character, and custom to  
3 engage in misconduct.” (Dkt. No. 32 at 2.<sup>1</sup>) Plaintiff also asserts that the documents  
4 requested should not be protected by privilege or deemed confidential. *Id.* at 3-4.

5 **A. Request for Production No. 3**

6 Produce any and all documents, grievances/602s submitted by other inmates  
7 where allegations of retaliation, cover up, [fabrication] of RVR-115, 114-D,  
8 transferring inmates to ASU as retaliatory punishment, or retaliatory bed moves  
9 were made against any of the Defendants during their employment in CDCR.

10 Defendants asserted objections to this demand, arguing that the request is  
11 irrelevant, compound, vague and ambiguous, overly broad, burdensome, oppressive, and  
12 that it violates the privacy rights of individuals who are not a party to this action. (Dkt.  
13 No. 34 at 2-3.) Defendants also objected to the demand as “impermissibly seek[ing]  
14 confidential peace officer information” under California law, and on the basis of “official  
15 information privilege established by the analogous federal case law.” *Id.* at 3. In  
16 response to Plaintiff’s motion, Defendants argue that Plaintiff’s desire to use this  
17 information to demonstrate “custom to engage in misconduct” is impermissible under  
18 Fed. R. Evid. 404(a). *Id.* According to Defendants, the documents listed in the privilege  
19 log concern events that occurred after the events alleged in the complaint, and therefore  
20 they are not relevant to factors such as motive, opportunity, or intent, or other factors  
21 listed in Fed. R. Evid. 404(b). *Id.*

22 As an initial matter, Defendants’ objections related to Fed. R. Evid. 404 are  
23 misguided. Rule 404 concerns the admissibility of certain types of evidence, and Rule 26  
24 permits discovery of relevant information that “need not be admissible at trial.” The  
25 Court also does not agree with Defendants’ assertion that the documents listed on the  
26 privilege log are irrelevant because they relate to incidents that occurred after the events  
27 alleged in the complaint. Other complaints about conduct similar to that alleged in the  
28 complaint may lead to the discovery of admissible evidence that could bear on Plaintiff’s

---

<sup>1</sup>References to page numbers in the parties’ submissions refer to those assigned by the ECF system.

1 claims, regardless of when the complaints were made. The privilege log indicates that the  
2 other inmate appeals were all initiated within approximately one year of the events  
3 alleged in the complaint, so they are not far removed from the time period in question.  
4 The demand is reasonably tailored to parallel Plaintiff's specific allegations, and is  
5 therefore not overbroad.

6 With respect to the objections based on privilege for documents responsive to this  
7 demand, Defendants only state that they are "well-founded," and make no argument or  
8 explanation as to why the objections are well-founded. (Dkt. No. 34 at 3.) This Court  
9 declines to speculate on Defendants' behalf. As noted above, the party opposing  
10 discovery bears the burden of showing why discovery should be denied. *Blankenship v.*  
11 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). Defendants have not proffered  
12 anything towards meeting that burden. This Court finds the remainder of Defendants'  
13 boilerplate objections unavailing.

14 Accordingly, Plaintiff's motion to compel further response to Request for  
15 Production No. 3 is **GRANTED**. The Court is mindful of the potential privacy concerns  
16 of those who filed the appeals in question, and therefore orders that the names and  
17 identifying information of the inmates be redacted. *See Lamon v. Adams*, No. 1:09-cv-  
18 205-LJO-SKO PC, 2010 WL 4513405 at \*3-4 (E.D. Cal. Nov. 2, 2010) (ordering  
19 redaction of inmate names on grievances before production).

#### 20 **B. Request for Production No. 4**

21 Produce any and all lawsuits, petitions, [and] writs where any of the Defendants  
22 were named as a party during their employment at CDCR.

23 In their objections, Defendants state that this request is irrelevant, compound,  
24 vague and ambiguous, asks for documents equally available to Plaintiff, and is overly  
25 broad. (Dkt. No. 34 at 4.) This Court agrees that this request is overbroad, and that  
26 Plaintiff has failed to demonstrate the relevance of all the documents that may fall within  
27 this request. Accordingly, Defendants' objections on these grounds are sustained and  
28 Plaintiff's motion to compel further response is **DENIED**.

1           **C. Request for Production No. 5**

2           Produce any and all documents regarding any of the Defendants [who have]  
3           been counseled, reprimanded, [and/or] disciplined by their [supervisor's]  
4           designee for misconduct during their [time] in CDCR.

5           In their objections, Defendants state that the request is irrelevant, compound, vague  
6           and ambiguous, overly broad, burdensome, and oppressive. (Dkt. No. 34 at 5.) They  
7           also object on the basis of various privileges. *Id.* In their response to the motion, they  
8           argue that Plaintiff has not shown that these documents are relevant to his claims. *Id.*  
9           They point out that Plaintiff narrowed his request in another demand (discussed below) to  
10          documents related to factually similar incidents, and there were no responsive documents  
11          to that request. *Id.*

12          This Court agrees that this demand is overbroad, and that Plaintiff has not shown  
13          that all documents contained within this request are relevant to this action. Accordingly,  
14          Defendants' objections on these grounds are sustained and Plaintiff's motion to compel  
15          further response is **DENIED**.

16           **D. Request for Production No. 6**

17           Produce any and all information from Defendants['] personal files regarding  
18           disciplinary reports, formal or informal complaints and any information  
19           regarding prior factually similar incidents including retaliation, retaliatory  
20           transfers to "ASU," retaliatory cell move transfers, cover up, conspiracy,  
21           fabrication of 115-RVR, fabrication of 114-D, moral turpitude conduct, [and]  
22           past transgressions.

23           In their objections, Defendants state that the request is irrelevant, compound, vague  
24           and ambiguous, overly broad, burdensome, and oppressive. (Dkt. No. 34 at 6.) They  
25           also object on the basis of various privileges. *Id.* Notwithstanding those objections, there  
26           were no documents responsive to this request. *Id.* Plaintiff has not offered evidence to  
27           the contrary, therefore this Court finds Defendants' response sufficient. Plaintiff's  
28           motion to compel further response is **DENIED**.

29           **III. CONCLUSION**

30           Accordingly, it is hereby **ORDERED**:


- 31           1. Plaintiff's motion to compel further response to Request for Production No.  
32           3 is **GRANTED**. Defendants shall produce redacted copies of the

1 responsive documents within thirty days of the date of this Order.

2 2. Plaintiff's motion to compel further response to Request for Production Nos.  
3 4, 5, and 6 is **DENIED**.

4 **IT IS SO ORDERED.**

5  
6 DATED: December 6, 2013

7   
8 Hon. Nita L. Stormes  
9 U.S. Magistrate Judge  
10 United States District Court

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28