

FILED

SEP 17 2015

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *wp* DEPUTY

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9

10 RUBEN GARCIA,

Plaintiff,

Case No.: 3:13-cv-0807 BEN (KSC)

**ORDER: (1) DENYING  
PLAINTIFF'S MOTION TO  
COMPEL DISCOVERY**

11  
12  
13 v.

**(2) GRANTING DEFENDANTS'  
MOTION TO QUASH SUBPOENA**

14  
15  
16 D. STRAYHORN, et al.,

Defendant.

**(3) GRANTING DEFENDANTS'  
APPLICATION FOR RELIEF FROM  
THE REQUIREMENT FOR JOINT  
MOTIONS IN DISCOVERY  
DISPUTES**

[Doc. Nos. 42, 29, 40]

17  
18  
19  
20  
21 Before the Court are three interrelated motions concerning discovery of documents  
22 associated with grievances filed by prisoners incarcerated at the Richard J. Donovan  
23 Correctional Facility in San Diego, California. [Doc. No. 29, Def. Motion to Quash  
24 Subpoena; Doc. No. 40, Def. Application for Relief from the Requirement for Joint  
25 Motions in Discovery Disputes; Doc. No. 42, Pl. Motion to Compel Discovery.]  
26 Defendants have opposed the Motion to Compel Discovery. [Doc. No. 44]. The Plaintiff  
27 did not file oppositions to defendants' Motion to Quash or Application for Relief [Doc.  
28 Nos. 29, 40]; the Court construes the Plaintiff's subsequent submission of the Motion to

1 Compel Discovery as a consolidated response to these two previously filed related  
2 Motions. [Doc. Nos. 29, 40.]

3 For the reasons outlined below, the Court finds that plaintiff's Motion to Compel  
4 Discovery must be DENIED. [Doc. No. 42.] Defendants Application for Relief from the  
5 Requirement for Joint Motions in Discovery Disputes is GRANTED. [Doc. No. 40.]  
6 Defendants' Motion to Quash Subpoena is consequently GRANTED. [Doc. No. 29.]

### 7 Background

8 Plaintiff, an inmate proceeding *pro se* in this action pursuant to 42 U.S.C. § 1983,  
9 filed the original Complaint on April 3, 2013. [Doc. No. 1.] The operative Second  
10 Amended Complaint ("Complaint") was filed on July 16, 2013. [Doc. No. 6.] Therein,  
11 plaintiff alleges that the defendants violated his Constitutional rights under the First  
12 Amendment by taking actions of retaliation for engaging in free speech activities or filing  
13 lawful grievances. [Doc. No. 6, at p. 5.]

14 Plaintiff's Motion To Compel Discovery makes a general application for relief  
15 requesting the Court to compel cooperation in the discovery process and references  
16 interrogatories, request for admissions, and document requests. [Doc. No. 42, at p. 1-2.]  
17 Plaintiff attached to the Motion copies of the defendants' responses to his interrogatories  
18 and document requests, which contained a typed version of the original request before  
19 stating the defendants' objection and the substantive reasoning behind each response. [Doc.  
20 No. 42, at p. 24-47.] Neither party attached the plaintiff's original interrogatories, request  
21 for admissions, or discovery requests.<sup>1</sup> [Doc. No. 42; Doc No. 29.] No request for  
22 admissions were presented to the Court by either party. *Id.*

23 Plaintiff's Memorandum of Points and Authorities focuses solely on his request for  
24 the production of certain documents, without addressing the interrogatories or request for  
25 admissions. The plaintiff did not articulate any reasoning or basis why the interrogatories  
26

---

27  
28 <sup>1</sup> The Court construes plaintiff's attachments as an acknowledgement that the defendants properly represented and transcribed his interrogatories and document requests.

1 and admissions provided by defendant did not comply with discovery obligations. The  
2 Court liberally construes the pleadings and papers of a *pro se* litigant. *Karim–Panahi v.*  
3 *L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988). However, it is not the Court’s role to  
4 serve as an advocate for either party, and the Court will not comb through the papers  
5 submitted by the plaintiff to generate arguments on his behalf. *Jacobsen v. Filler*, 790 F.2d  
6 1362, 1364–66 (9th Cir. 1986) (holding that the court must remain a “referee” in the  
7 adversarial process, and cannot serve as legal counsel for a party, even if that party is a *pro*  
8 *se* litigant). Accordingly, the Court construes the totality of the Motion to Compel as a  
9 request for an order compelling the defendants to produce only the referenced documents  
10 in the Motion.

### 11 **I. PLAINTIFF’S MOTION TO COMPEL DISCOVERY**

12 Plaintiff’s Motion seeks the production of “any and all grievances complaints, or  
13 other documents received by the defendants or their agents at Richard J. Donovan  
14 Correctional Facility (“RJDCF”) concerning mistreatment of inmates by defendants and  
15 any memoranda, investigative files, or other documents created in response to such  
16 documents.” [Doc. No. 42, at p. 3.]

17 "Parties may obtain discovery regarding any matter, not privileged, which is relevant  
18 to the claim or defense of any party involved in the pending action. Relevant information  
19 need not be admissible at trial if the discovery appears reasonably calculated to lead to the  
20 discovery of admissible evidence." Fed.R.Civ.P. 26(b). However, a court may limit  
21 discovery of relevant material if it determines that the discovery sought is unreasonably  
22 cumulative or duplicative, or obtainable from some other source that is more convenient,  
23 less burdensome, or less expensive, or the burden or expense of the proposed discovery  
24 outweighs the likely benefit. Fed.R.Civ.P. 26(c). The party resisting discovery generally  
25 bears the burden to show that the discovery requested is irrelevant to the issues in the case  
26 or is overly broad, unduly burdensome, unreasonable, or oppressive. If the resisting party  
27 meets its burden, the burden shifts to the moving party to show the information is relevant  
28 and necessary. *Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 686 (S.D. Fla 2010).

1 Plaintiff argues that defendants should be ordered to produce the above-described  
2 documents because they are relevant and important to his case. He represents that the  
3 requested documents relate directly to the credibility of the defendants and could be used  
4 as evidence at trial to show that they have a habit, character, or custom of engaging in  
5 retaliation. [Doc. No. 42, at p. 8.] On due process grounds, he also argues that the Court  
6 should not allow defendants to withhold the requested documents based on privilege or  
7 confidentiality grounds. [Doc. No. 42, at p. 3.]

8 Defendants argue that they should not be compelled to provide plaintiff with any of  
9 these documents. First, prison grievances or "602 appeals" are logged and maintained  
10 according to the names of the inmates who filed them, not by the names of staff members  
11 who are named in the grievances.<sup>2</sup> Defendants therefore argue that plaintiff's request is  
12 overly broad and unreasonably burdensome, as it would require a search of every grievance  
13 or "602 appeal" ever filed by any inmate at any time to determine whether it included  
14 allegations against the defendants. [Doc No. 44, at p. 8.] Construing the request as  
15 pertaining to 69 third party individual prisoners plaintiff has identified, defendants argue  
16 that plaintiff has failed to provide any nexus connecting the named individuals to the  
17 plaintiff's claim. [Doc. No. 44, at p. 5-6.]

18 Second, defendants argue that disclosure of grievances or "602 appeals" that were  
19 not filed by plaintiff would violate the privacy rights of other inmates who have filed  
20 grievances. [Doc. No. 44 at p. 5.] Defendants note that the California Code of Regulations  
21 prohibits prison officials from disclosing the individually filed grievances to third-party  
22 inmates. [Doc. No. 44, at p. 9.] The third-party prisoners therefore lodge complaints with  
23 an expectation of confidentiality. *Id.* Even redacting the names and identification numbers  
24 of the third-party inmates would not adequately protect them as the reports contain  
25

---

26  
27 <sup>2</sup> In support of this argument, defendants incorporated by reference the Declarations of  
28 B. Baenziger, a correctional counselor and M. LeStage, the Use of Force Coordinator, both of whom are  
employed at R. J. Donovan Correctional Facility, and are familiar with the files and documents maintained  
at the facility. [Doc. No. 44, at p. 5-6; 7-10]

1 sufficient identifiable information that could place inmates in jeopardy if others became  
2 aware of their confidential complaints. [Doc. No. 44, at p. 9-10.]

3 Third, defendants contend that plaintiff has not shown that the requested documents  
4 seek information that is relevant or reasonably calculated to lead to the discovery of  
5 admissible evidence. They further contend that plaintiff's only reason for seeking  
6 disclosure of the documents is to use them to reflect negatively on defendants' character  
7 propensity, in violation of Federal Rule of Evidence 404. [Doc. No. 44, at p. 5-7.]

8 Fourth, defendants argue that disciplinary records are protected from disclosure by  
9 the official information privilege and the defendants' privacy interests.<sup>3</sup> [Doc. No. 44, at p.  
10 5-6.] As a result, defendants claim these documents are protected unless the potential  
11 benefits of disclosure outweigh the potential disadvantages. They assert that the potential  
12 disadvantages of disclosing information from their personnel files and disciplinary records  
13 outweighs the likely benefits, and that the potential benefits to plaintiff of disclosure are  
14 low. Specifically, defendants assert that the risk of harm from disclosure of sensitive  
15 information in their disciplinary records, including confidential responses to administrative  
16 appeals not provided to the original complainant, is very high.

17 This Court found persuasive the defendants' argument that plaintiff's request for  
18 production of grievances or "602 appeals" by other inmates and associated documents in  
19 his request, even if relevant, is overly broad and unduly burdensome to defendants.  
20 Producing grievances or "602 appeals" would be too time-consuming and expensive as it  
21 would require defendants to review each and every grievance or "602 appeal" ever filed to  
22

---

23  
24 <sup>3</sup> In support of this argument, defendants cite the Declaration of M. LeStage, the Use of Force  
25 Coordinator, and the Declaration of B. Baenziger, an Appeals Coordinator at R. J. Donovan Correctional  
26 Facility, who are familiar with the files and records maintained there. These Declarations explain that  
27 personnel files contain personal, private, and confidential information, so it is the policy of the  
28 Department of Corrections and R. J. Donovan Correctional Facility not to reveal the contents of these  
files to third parties. [Doc. No. 42, at p. 12-14; 19-21] The Declarations also outline the governmental  
interests in maintaining the privacy and confidentiality of these documents, as well as the risks of harm  
to the defendants and other inmates if the third-party grievances are disclosed. [Doc. No. 42, at p. 11-  
15; 18-22.]

1 determine whether any of the defendants is named therein. [Doc. No. 42. at p. 11-15; 18-  
2 22.]

3 It is apparent that the plaintiff is seeking production of the documents described in  
4 his request in an attempt to show at trial that defendants have a propensity for misconduct.  
5 However, “[c]haracter evidence is normally not admissible in a civil rights case.” *Gates*  
6 *v. Rivera*, 993 F.2d 697, 700 (9<sup>th</sup> Cir. 1993). Federal Rule of Evidence 404(b) specifically  
7 provides that: “Evidence of a crime, wrong, or other act is not admissible to prove a person’s  
8 character in order to show that on a particular occasion the person acted in accordance with  
9 the character.” Fed.R.Evid. 404(b). Therefore, even if prior grievances or complaints have  
10 been made against defendants, this evidence would likely not be admissible for plaintiff’s  
11 purpose.

12 The Court concludes that plaintiff’s request is overly broad as to time and subject  
13 matter. Further, plaintiff has not provided any evidence differentiating the 69 named  
14 individuals from any other inmate in the facility. As to subject matter, plaintiff has failed  
15 to articulate how the filing of a grievance or lawsuit by another inmate has any relevance  
16 to his pending claim.

17 Production of the requested documents would also improperly implicate the privacy  
18 rights of other inmates. *See, e.g., Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 n. 21  
19 (1984) (referring to the authority of Federal Courts to issue protective orders for good cause  
20 under Rule 26(c) and stating that privacy interests are a valid reason for restricting  
21 discovery). For the foregoing reasons, plaintiff’s Motion to Compel Discovery is  
22 DENIED.<sup>4</sup>

23 ///

24 ///

---

26 <sup>4</sup> It is unnecessary for the Court to determine at this time whether the requested documents are  
27 protected by the official information privilege or by defendants’ privacy interests, because plaintiff  
28 request is overly broad and unduly burdensome. The Court therefore takes no position at this time as to  
whether the requested documents are protected by the official information privilege.



1 documents most closely resemble the category of personnel files described in *Crispin*, the  
2 Court finds that defendant Strayhorn has standing to file a motion to quash the subpoena  
3 served by plaintiff.

4 Defendants cite three distinct reasons to quash the subpoena in their motion: (1) it is  
5 void because it was not personally served; (2) it is overly broad and unreasonably  
6 burdensome; and (3) the requested material is confidential and violates the privacy rights  
7 of both Officer Strayhorn and the third-party prisoners. [Doc. No. 29, p. 1-2.]

8 The documents requested by the plaintiff in the subpoena are *exactly* the same  
9 subject and type of documents sought in plaintiff's Motion to Compel. *Compare* [Doc. No.  
10 29-2, p. 4] *with* [Doc. No. 42, p. 25-26.] For the same reasons addressed above, the Court  
11 finds that the plaintiff's request is overly broad and unreasonably burdensome. *See supra*  
12 p. 3-7. Therefore, defendants' Motion to Quash Subpoena must be GRANTED.<sup>6</sup>

13 **Conclusion**

14 Based on the foregoing, plaintiff's Motion to Compel is be DENIED. [Doc No. 42.]  
15 Consequently, the defendants Motion to Quash and the Application for Relief are hereby  
16 GRANTED. [Doc. No. 29; Doc. No. 40.]

17 IT IS SO ORDERED.

18 Date: Sept. 17, 2015

19  
20  
21   
22 KAREN S. CRAWFORD  
23 United States Magistrate Judge  
24  
25  
26

27 <sup>6</sup> The Court takes no position at this time as to whether the subpoena is technically invalid or  
28 protected by the official information privilege, as the documents and information sought by the plaintiff  
are overly broad and unreasonably burdensome.