

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

KEITH WAYNE SEKERKE,  
  
Plaintiff,  
  
v.  
  
SHERIFF DEPUTY GONZALEZ,  
  
Defendant.

Case No.: 15-CV-573-JLS(WVG)

**ORDER ON MOTION FOR  
DETERMINATION OF DISCOVERY  
DISPUTE [ECF NO. 68]**

Currently pending before the Court is Keith Wayne Sekerke’s (“Plaintiff”) objection to Sheriff Deputy Gonzalez’s (“Defendant”) document subpoena. (ECF No. 68.) Having considered the briefing submitted by the parties and reviewed all of the supporting exhibits, the Court **OVERRULES** Plaintiff’s objections for the reasons set forth below.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On March 12, 2015, Plaintiff, proceeding *pro se* and *in forma pauperis*, filed his Complaint alleging Defendant “maliciously and sadistically strangle[d]” Plaintiff and “crashed his knee into [Plaintiff’s] jaw” following a court hearing in the San Diego Superior Court. (Compl. at 3, ECF No. 42.) Plaintiff alleges violations of his constitutional rights under § 1983 and seeks to hold Defendant responsible for causing him bruising and pain.

1 The Court's Scheduling Order, issued on May 19, 2016, set discovery to be  
2 completed by October 12, 2016. (ECF No. 39.) Plaintiff requested discovery be extended  
3 on December 5, 2016. (ECF No. 61.) On January 13, 2017, this Court granted Plaintiff's  
4 request, setting discovery to close by April 13, 2017. (ECF No. 62.)

5 On February 7, 2017, Defendant served discovery demands upon Plaintiff. Plaintiff  
6 responded by submitting responses to the Court, which were rejected on March 9, 2017.  
7 (ECF No. 65.) The Clerk of Court mailed Plaintiff's responses to Defendant on the same  
8 day. Plaintiff objected to several demands, refused to disclose his prior criminal record,  
9 and denied prior assaultive conduct toward prison guards. (ECF. No. 65-1.) On February  
10 14, 2017, Defendant served a subpoena on Kern Valley State Prison for Plaintiff's records,  
11 requesting "All non-medical documents regarding Keith Wayne Sekerke, including, but  
12 not limited to, all documents in Sekerke's 'C-file,' disciplinary records, incident reports,  
13 booking records, prison files, and classification records." (ECF No. 70, Ex. A.) Defendant  
14 sent a Notice of Privacy Rights to Plaintiff on the same day. (ECF No. 70, Ex. B.) Kern  
15 Valley State Prison produced its records to Defendant on March 10, 2017. (ECF No. 70,  
16 Ex. C.) Filed *nunc pro tunc* on March 13, 2017, Plaintiff objected to the subpoena for his  
17 prison records arguing that "there's nothing in any prison records that are relevant to my  
18 complaint against defendants." (ECF No. 68 at 1.) Defendant replied to Plaintiff's  
19 objection on March 21, 2017. (ECF No. 70.)

## 20 II. LEGAL STANDARD

21 Pursuant to Federal Rule of Civil Procedure ("FRCP") 26(b)(1), "[p]arties may  
22 obtain discovery regarding any nonprivileged matter that is relevant to any party's claim  
23 or defense." After the 2015 Amendments to Rule 26, discovery no longer need be  
24 admissible, but it still must be relevant to a party's claim or defense. *See In re Bard IVC*  
25 *Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563-64 (D. Ariz. Sept. 16, 2016). Moreover,  
26 "[d]espite the recent amendments to Rule 26, discovery relevance remains a broad concept"  
27 that is to be construed liberally. *Federal Nat'l Mortg. Assoc. v. SFR Investments Pool 1,*  
28 *LLC*, 2016 U.S. Dist. LEXIS 23925, 2016 WL 778368, at \*2 n.16 (D. Nev. Feb. 25, 2016)

1 (overruling objections to magistrate judge order); *see also Haghayeghi v. Guess?, Inc.*, 168  
2 F. Supp. 3d 1277, 1280 (S.D. Cal. 2016). “[D]iscovery is not limited to issues raised by  
3 the pleadings, for discovery itself is designed to help define and clarify the issues.”  
4 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

5 A party may request the production of any document within the scope of FRCP  
6 26(b). Fed. R. Civ. P. 34(a). However, the court must limit the extent of discovery if it  
7 determines that the proposed discovery is outside the scope permitted by FRCP 26(b)(1).  
8 Fed. R. Civ. P. 26(b)(2)(C). Moreover, “[a] court can limit discovery if it determines,  
9 among other things, that the discovery is: (1) unreasonably cumulative or duplicative; (2)  
10 obtainable from another source that is more convenient, less burdensome, or less  
11 expensive; or (3) the burden or expense of the proposed discovery outweighs its likely  
12 benefit.” *Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566, 571 (C.D. Cal. 2012).

### 13 III. DISCUSSION

14 Defendant argues that Plaintiff failed to meet and confer following his discovery  
15 concern, in violation of the Local Rules and this Court’s Chambers Rules. (ECF No. 70 at  
16 3.) The Court understands the need for the parties to meet and confer, but in this case  
17 Plaintiff faces significant obstacles as a prisoner with little means to contact and  
18 communicate with opposing counsel. Accordingly, the Court, exercising its discretion,  
19 waives the meet and confer requirement in this instance.

20 Defendant next claims that Plaintiff’s prison file is relevant for its criminal history  
21 contents, which Plaintiff has refused to disclose in discovery interrogatories. (ECF No. 40  
22 at 4.) Defendant states that Plaintiff’s file would also support Defendant’s actions in  
23 securing Plaintiff to a chair for his hearing, and would support the reasonableness of the  
24 use of force when Plaintiff failed to comply with demands to behave. *Id.* In his objection,  
25 Plaintiff argues that “[he] should be protected by privacy laws” and that “[l]ots of the  
26 material in [his] prison C-files are confidential.” (ECF No. 68 at 2.)

27 The Court with Defendant agrees that Plaintiff’s prison records are properly subject  
28 to discovery. The Court does not find the subpoena documents to be unreasonable or

1 burdensome. Plaintiff's C-file contains his criminal history, disciplinary records, and  
2 history of staff assaults. This information may be relevant to the claims or defenses in this  
3 case, and Defendant is unable to obtain any of this information from Plaintiff. Defendant  
4 served Plaintiff with Interrogatories and Admissions on February 7, 2017. (ECF No. 70 at  
5 6.) In those interrogatories, Defendants requested Plaintiff "[l]ist all criminal convictions  
6 YOU have received in YOUR lifetime, including the offense, date of sentence, and  
7 punishment awarded." (ECF No. 70 at 7, ECF No. 65-1.) In response to the interrogatory,  
8 Plaintiff stated: "Not relevant to claim. Unable to provide it." *Id.* However, under Federal  
9 Rule of Evidence 609, criminal convictions may, under the proper circumstances, be used  
10 to impeach a witness. Thus, Plaintiff's criminal history may be relevant in the event he  
11 provides testimony. Moreover, a history of prior staff assault may be relevant to Plaintiff's  
12 credibility as a witness and may be used to impeach him given, as Defendant represents,  
13 Plaintiff claims he has never struck a law enforcement officer.

14 Because Defendant explains how the requested information is relevant, the subject  
15 documents do not exceed the limits of what a party may seek via discovery. *See Lofton v.*  
16 *Verizon Wireless (VAW) LLC*, 308 F.R.D. 276, 280 (N.D. Cal. 2015) ("The question of  
17 relevancy should be construed liberally and with common sense and discovery should be  
18 allowed unless the information sought has no conceivable bearing on the case."). With  
19 respect to Plaintiff's privacy concerns, the Court finds the proper method to address his  
20 concerns is issuance of a Protective Order, not a prohibition of discovery.

### 21 **Protective Order**

22 Given the nature of the documents in Plaintiff's C-file and Plaintiff's resulting  
23 privacy concerns, the Court hereby enters a Protective Order over all documents produced  
24 in response to the subject subpoena. Accordingly, Defendant's handling of all such  
25 documents shall be governed by the following restrictions:

26 1. All documents shall be deemed "attorney's eyes only" and may be handled  
27 only by the attorneys of record in this case (currently Morris G. Hill and Ronald Lenert)  
28

1 and their staff who personally file documents which include the subject documents as  
2 exhibits (but only during the process of making such a filing on the case docket);

3 2. Mssrs. Hill and Lenert may disclose the subject documents to third parties,  
4 such as expert witnesses, but only upon seeking leave of Court and after an Order of this  
5 Court;

6 3. Any subject document that is filed as an exhibit to a court filing shall be filed  
7 under seal;

8 3. Within 10 calendar days of the termination of this case, the attorneys of record  
9 shall jointly file a declaration on the record stating that all subject documents have been  
10 destroyed;

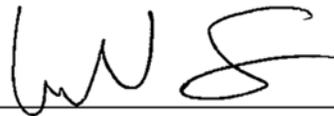
11 4. Sanctions may issue for noncompliance with the above terms.

12 **IV. CONCLUSION**

13 Based on the foregoing reasons, the Court OVERRULES Plaintiff's objections to  
14 Defendant's subpoena and enters a Protective Order.

15 IT IS SO ORDERED.

16 DATED: April 7, 2017

17 

18 \_\_\_\_\_  
19 Hon. William V. Gallo  
20 United States Magistrate Judge