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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 FRAYNO CRUMB,

12 Plaintiff,

13 v.

14 M. HASSELBLAD, et al.,

15 Defendants.
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Case No.: 16cv581-BTM (NLS)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL**

[ECF No. 46]

18 On November 6, 2017, Plaintiff Frayno Crumb constructively filed a motion to
19 compel Defendants M. Hasselblad and D. Strayhorn to fully respond to the first sets of
20 interrogatories he served on them. ECF No. 46. The Court ordered the parties to meet
21 and confer on the issues raised in the motion but the parties were unable to come to a
22 resolution. ECF No. 47. Defendants filed their opposition and Plaintiff filed his reply.
23 ECF Nos. 49, 50. For the reasons set forth below, the Court **GRANTS IN PART** and
24 **DENIES IN PART** Plaintiff's motion to compel.

25 **I. Background**

26 Plaintiff Crumb is incarcerated at the R. J. Donovan State Prison. He is proceeding
27 *pro se* and *in forma pauperis* and has filed a civil complaint pursuant to 42 U.S.C.
28 § 1983. Plaintiff alleges civil rights violations against Defendants Hasselblad and

1 Strayhorn for violating his Eighth Amendment right to be free from cruel and unusual
2 punishment arising from a physical altercation that took place on January 27, 2015. ECF
3 No. 31. Specifically, Plaintiff alleges that, while waiting in line to be escorted back to his
4 cell block after receiving his morning medication, Defendant Strayhorn instigated a
5 physical encounter with him after he refused to engage with Hispanic inmates after they
6 called Defendant Strayhorn a racial slur. *Id.* at 11-14. Plaintiff alleges that Defendants
7 proceeded to assault him even though he was in handcuffs until other officers pulled them
8 off of him. *Id.* at 14. Plaintiff alleges that excessive force was used against him and
9 resulted in several injuries on his body. *Id.* at 14-19.

10 **II. Legal Standard**

11 Federal Rule of Civil Procedure 33 permits interrogatories on any topic within the
12 scope of Rule 26, which sets forth the discovery scope as follows:

13 Parties may obtain discovery regarding any nonprivileged information that is
14 relevant to any party's claim or defense and proportional to the needs of the
15 case, considering the importance of the issues at stake in the action, the
16 amount in controversy, the parties' relative access to relevant information, the
17 parties' resources, the importance of the discovery in resolving the issues, and
18 whether the burden or expense of the proposed discovery outweighs its likely
19 benefit. Information within this scope of discovery need not be admissible in
20 evidence to be discoverable.

21 Fed. R. Civ. P. 26(b)(1).

22 The party seeking to compel discovery has the burden of establishing that his
23 request satisfies the relevancy requirements of Rule 26. *Bryant v. Ochoa*, No. 07-cv-200-
24 JM (PCL), 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009). Once the party seeking
25 discovery has established that his request meets this relevancy requirement, "the party
26 opposing discovery has the burden of showing that the discovery should be prohibited,
27 and the burden of clarifying, explaining or supporting its objections." *Id.* The Court is
28 vested with broad discretion to manage discovery. *Hunt v. County of Orange*, 672 F.3d
606, 616 (9th Cir. 2012); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

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1 **III. Discussion**

2 In Plaintiff’s motion, he specifically seeks supplemental responses to Defendant
3 Hasselblad’s responses to Interrogatories (Set One), Nos. 1 (A, B, and C), 2¹, 3 (A and
4 B), and 4 (A, B, and C) and Defendant Strayhorn’s Responses to Plaintiff’s
5 Interrogatories (Set One), Nos. 1-11.^{2,3,4}

6 **a. Interrogatories 1-4 as to Defendants Strayhorn and Hasselblad**

7 Plaintiff seeks to compel Defendants Strayhorn and Hasselblad to fully respond to
8 Interrogatories 1-4. These interrogatories generally seek similar information regarding
9 grievances, investigations, reprimands, and lawsuits that have been filed against
10 Defendants. Interrogatory 1 reads as follows:

11 **INTERROGATORY NO. 1:**

- 12 A. Since your employment at CDCR have you ever been 602 for any excessive
13 force or misconduct?
14 B. How many?
15 C. What was the outcome of the 602's?

16 ¹ Plaintiff requests that Defendant Hasselblad be ordered to fully respond to Plaintiff’s Interrogatory (Set
17 One), No. 2 (A, B, and C), but this interrogatory does not appear to have subparts. *See* ECF No. 46 at
18 13.

19 ² On the first page of his motion, Plaintiff states that he requests Defendant Strayhorn to fully respond to
20 interrogatories 1-11, ECF No. 46 at 1, but in his memorandum of points and authorities, he appears to
21 have crossed out the 11 and has written that he is seeking responses to interrogatories 1-5. ECF No. 46
22 at 3. To err on the side of caution, the Court will address all 11 interrogatories as to Defendant
23 Strayhorn.

24 ³ In his reply brief, Plaintiff makes references to his “request for documents”/“request for production of
25 documents” and contends that out of his Requests 1-8, Defendants have only answered 1 and not 2-8.
26 ECF No. 50 at 2, 4. However, Plaintiff’s present motion only moved on his interrogatories, not any
27 requests for production. The Court does not have any copies of these requests for production or any
28 further information about them. Thus, the issues Plaintiff raised in his moving papers regarding the
interrogatories are the only matters properly before the Court at this time.

⁴ As a threshold issue, Plaintiff brings a timeliness argument for the first time in his reply brief. ECF
No. 4-5. He argues that Defendants’ objections are untimely and are, thus, waived. *Id.* First, the court
need not consider arguments raised for the first time in a reply brief as it deprives the responding party
an opportunity to respond. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). Second, his exact
argument is unclear as he confusingly discusses his requests for production in this argument, *see* ECF
No. 50 at 2, 4, and does not clearly lay out what discovery was served when and what objections were
received when. The Court declines to find Defendants’ objections to the interrogatories waived as
untimely and will instead address them on the merits.

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2 **RESPONSE TO INTERROGATORY NO. 1:**

3 A. Objection. This interrogatory is not reasonably calculated to lead to the
4 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
5 potentially seeks personal and confidential records.

6 B. Objection. This interrogatory is not reasonably calculated to lead to the
7 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
8 potentially seeks personal and confidential records.

9 C. Objection. This interrogatory is not reasonably calculated to lead to the
10 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
11 potentially seeks personal and confidential records.

12 ECF No. 46 at 7.

13 Defendants argue that this interrogatory is too broad in that it covers 602 inmate
14 appeals for any “excessive force or misconduct.” ECF No. 49 at 3-4. Defendants argue
15 that information about their conduct in other situations is not relevant to whether they
16 used excessive force against Plaintiff in this case. *Id.* Defendants also contend that the
17 interrogatory is too broad because it is not temporally limited. *Id.* Plaintiff argues that
18 such information is relevant because he has alleged a pattern of mistreatment by
19 Defendants and even though such evidence may not be admissible as character evidence
20 under Federal Rule of Evidence 404(b), such evidence may be admissible for other
21 purposes. ECF No. 50 at 7.

22 Some courts have found similar requests to be too broad and categorically denied
23 motions to compel. *See, e.g., Brook v. Carey*, 352 Fed. Appx. 184, 185-86 (9th Cir.
24 2009) (affirming district court denial of motion to compel “[a]ny and all grievances,
25 complaints, or other documents received by the defendants . . . concerning mistreatment
26 of inmates”); *Morris v. Nangalama*, No. 12-CV-1202-MCE, 2015 WL 3447427, at *2-6
27 (E.D. Cal. May 28, 2015) (denying motion to compel on any “602 staff complaint”); *Blue*
28 *v. Grannis*, No. 05-cv-1256-GEB, 2007 WL 2758025, at *3 (E.D. Cal. Sept. 21, 2007)
(denying motion to compel on “[a]ny and all grievances, such as, but not limited to:
‘Inmate/Parolee Appeal 602’s or civil rights Complaints within the past 5 years
concerning the defendant’s violation of a prisoner’s Civil Rights’”).

1 On the other hand, other courts have permitted such discovery after imposing
2 certain limitations. Courts have recognized that such information may be used for
3 purposes other than character evidence, for example to show bias or a pattern or practice
4 of unprofessional behavior. *Taylor v. O'Hanneson*, No. 11-CV-00538-LJO, 2014 WL
5 2696585, at *5 (E.D. Cal. June 13, 2014); *Ramirez v. County of Los Angeles*, 231 F.R.D.
6 407, 412 (C.D. Cal. 2005). Such courts permit some discovery into past complaints by
7 narrowing the complaints to the same defendants, to similar claims as being asserted in
8 the lawsuit, and with a time limitation. *See Taylor*, 2014 WL 2696585, at *5
9 (“Defendants may tailor their production to include only documents regarding allegations
10 brought against them, within the five years preceding the events in question in this action,
11 by others to claims similar to the excessive force claim upon which Plaintiff proceeds in
12 this action.”); *see also Hamilton v. Quinonez*, No. 14-cv-1216-LJO, 2015 WL 3660138,
13 at *3-6 (E.D. Cal. June 10, 2015) (limiting responses to interrogatories to grievances
14 related to the specific defendant, within three years, and related to inmate assaults and
15 failures to protect).

16 The Court agrees that, as written, the interrogatory is too broad. While Plaintiff’s
17 causes of action against Defendants are for excessive force only, the interrogatory covers
18 all other “misconduct” as well. Furthermore, the interrogatory is not limited in time and
19 inmate 602 appeals that are too removed in time may be of limited relevance. However,
20 the Court finds that the latter approach of ordering more tailored discovery is the right
21 approach in this case. Though this evidence may not be used to show Defendants’
22 character, discovery is not limited to admissible evidence and such evidence may be used
23 for other permissible purposes or may lead to other admissible evidence. Construing
24 Plaintiff’s complaint liberally, as the Court must, he does allege that Defendant Strayhorn
25 has exhibited similar behavior in the past and alleges that there is a culture that permits
26 such behavior at the prison. ECF No. 31 at 14-15, 20.

27 Thus, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff’s motion to
28 compel as to Interrogatory No. 1. Defendants Strayhorn and Hasselblad must provide a

1 complete response to this interrogatory involving inmate 602 appeals made directly
2 against them, limited to similar accusations of excessive force, and time-limited to a
3 period of three years prior to the incident at issue in January 2015. If Defendants contend
4 that their response will necessarily require disclosure of confidential information of other
5 inmates, guards, or other prison personnel, they may redact information as needed to
6 protect the privacy of others.

7 Interrogatories 2 and 3 read as follows:

8 **INTERROGATORY NO. 2:**

9 Have you ever been investigated by any Lts., Captains, Warden, or Internal
10 Affairs?

11 **RESPONSE TO INTERROGATORY NO. 2:**

12 Objection. This interrogatory is not reasonably calculated to lead to the
13 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
14 potentially seeks personal and confidential records.

15 **INTERROGATORY NO. 3:**

16 A. Have you ever been reprimanded or investigated?

17 B. How many times?

18 **RESPONSE TO INTERROGATORY NO. 3:**

19 A. Objection. This interrogatory is not reasonably calculated to lead to the
20 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
21 potentially seeks personal and confidential records.

22 B. Objection. This interrogatory is not reasonably calculated to lead to the
23 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
24 potentially seeks personal and confidential records.

25 ECF No. 46 at 7-8.

26 Defendants make similar arguments that Interrogatories 2 and 3 are overbroad.
27 ECF No. 49 at 4-5. Defendants contend that these two interrogatories are even broader
28 because they do not contain any limitation as to what kind of investigations they would
cover and could include employment issues unrelated to Plaintiff's allegations against
Defendants. *Id.* The Court agrees that the scope of these requests needs to be tailored
under a similar approach as for Interrogatory 1. The Court **GRANTS IN PART** and

1 **DENIES IN PART** Plaintiff's motion to compel as to Interrogatories No. 2 and 3.
2 Defendants Strayhorn and Hasselblad must provide a complete response to these
3 interrogatories involving reprimands and investigations made against them, limited to
4 similar accusations of excessive force, and time-limited to a period of three years prior to
5 the incident at issue in January 2015. If Defendants contend that their response will
6 necessarily require disclosure of confidential information of other inmates, guards, or
7 other prison personnel, they may redact information as needed to protect the privacy of
8 others.

9 Finally, Interrogatory 4 is substantially similar to Interrogatory 1, but seeks
10 information related to lawsuits rather than inmate 602 appeals.

11 **INTERROGATORY NO. 4:**

- 12 A. Have you ever been sued for excessive force or any misconduct?
13 B. How many times?
14 C. What was the outcome of the suits?

15 **RESPONSE TO INTERROGATORY NO. 4:**

- 16 A. Objection. This interrogatory is not reasonably calculated to lead to the
17 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
18 potentially seeks personal and confidential records.
19 B. Objection. This interrogatory is not reasonably calculated to lead to the
20 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
21 potentially seeks personal and confidential records.
22 C. Objection. This interrogatory is not reasonably calculated to lead to the
23 discovery of admissible evidence, is vague and ambiguous, is overly broad, and
24 potentially seeks personal and confidential records.

25 ECF No. 46 at 8.

26 The Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's motion to
27 compel as to Interrogatory No. 4. Defendants Strayhorn and Hasselblad must provide a
28 complete response to this interrogatory involving lawsuits naming them as defendants,
involving similar accusations of excessive force, and time-limited to a period of three
years prior to the incident at issue in January 2015. If Defendants contend that their
response will necessarily require disclosure of confidential information of other inmates,

1 guards, or other prison personnel, they may redact information as needed to protect the
2 privacy of others.

3 **b. Interrogatories 5-9 as to Defendant Strayhorn**

4 Plaintiff also seeks to compel Defendant Strayhorn to fully respond to
5 Interrogatories 5-9, which are reproduced below with Defendant Strayhorn's responses.

6 **INTERROGATORY NO. 5:** On the day of the incident did Lt. Allamby have to
7 come out of the program office and pull you off me?

8 **RESPONSE TO INTERROGATORY NO. 5:** No.

9 **INTERROGATORY NO. 6:** Did you get mad at me because other races were
10 calling you niggers, and you wanted me to assault them, because I was Black too.

11 **RESPONSE TO INTERROGATORY NO. 6:** No.

12 **INTERROGATORY NO. 7:** Did you assault me because I wouldn't do what you
13 wanted me to do?

14 **RESPONSE TO INTERROGATORY NO. 7:** I did not assault you.

15 **INTERROGATORY NO. 8:** Is it policy to not get on a personal level with an
16 inmate, and that you were willing to disregard this policy?

17 **RESPONSE TO INTERROGATORY NO. 8:** Staff should treat inmates with
18 courtesy and respect, but generally avoid forming personal relationships. I did not
19 disregard this policy.

20 **INTERROGATORY NO. 9:** Did you attempt to get me to assault a Hispanic
21 inmate for calling you a House Nigger?

22 **RESPONSE TO INTERROGATORY NO. 9:** No.

23 ECF No. 46 at 8-9. The Court finds that Defendant Strayhorn has provided full answers
24 to these interrogatories. Thus, Plaintiff's motion to compel further response to
25 Interrogatories 5-9 is **DENIED**.

26 **c. Interrogatories 10-11 as to Defendant Strayhorn**

27 Plaintiff also seeks to compel Defendant Strayhorn to fully respond to
28 Interrogatories 10 and 11, which are reproduced below with Defendant Strayhorn's
responses.

INTERROGATORY NO. 10:

A: After you assaulted Plaintiff why didn't you get him any medical attention?

1 B: Is it policy when an inmate is down and hurt or bleeding from a injury you get
2 him medical attention?

3 **RESPONSE TO INTERROGATORY NO. 10:**

- 4 A. Defendant will respond.
5 B. Defendants will respond.

6 **INTERROGATORY NO. 11:**

- 7 A: Were you given IST training by your superiors for your involvement in this
8 incident?
9 B: What is IST training?

10 **RESPONSE TO INTERROGATORY NO. 10:**

- 11 A. Defendant will respond.
12 B. Defendants will respond.

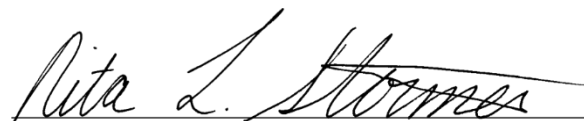
13 ECF No. 46 at 9; ECF No. 50 at 15. Defendant Strayhorn has not objected to these
14 interrogatories on any grounds, but has failed to provide a full response. *See* Fed. R. Civ.
15 P. 33(b)(3). The Court **GRANTS** Plaintiff's motion to compel further responses and
16 orders Defendant Strayhorn to provide a full, substantive response to these two
17 interrogatories.

18 **IV. Conclusion**

19 Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's
20 motion to compel. Within 30 days of this order, Defendants Strayhorn and Hasselblad
21 must provide responses to Plaintiff's interrogatories in accordance with the rulings as set
22 forth above in this order.

23 **IT IS SO ORDERED.**

24 Dated: January 22, 2018



25 Hon. Nita L. Stormes
26 United States Magistrate Judge
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