

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,

Plaintiff,

v.

J. HERNANDEZ, Correctional
Officer, and A. MAGALLANES,
Correctional Officer,

Defendants.

Case No.: 18cv259-CAB-MDD

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

[ECF Nos. 41, 44]

I. INTRODUCTION

Plaintiff Allen Hammler (“Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, initiated this action against Defendants J. Hernandez and A. Magallanes (collectively, “Defendants”) by filing a Complaint pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 25). On August 12, 2019, Plaintiff served requests for admissions on Defendant Magallanes. (ECF No. 37, Exhibit A). On September 4, 2019, Plaintiff served requests for production of documents on Defendants. (*Id.*). Defendants objected to several of Plaintiff’s requests on the grounds that they were “vague, ambiguous, and overbroad.” (*Id.*).

On November 7, 2019, *nunc pro tunc*, Plaintiff filed a motion to compel

1 Defendants to meet and confer on Defendants’ objections to his requests for
2 admissions and requests for production of documents. (ECF No. 37). The
3 Court ordered the parties to meet and confer and file status reports following
4 the meeting to inform the Court whether the dispute has been resolved, and
5 if not, which issues remain. (ECF No. 40).

6 On December 9, 2019, the parties met and conferred telephonically.
7 (ECF No. 41 at 1). As a result of the meet and confer, the parties were able to
8 resolve all but four issues: Plaintiff’s requests for production numbers 2, 3, 6,
9 and 8. (*Id.*; ECF No. 44). For the reasons stated herein, the Court **GRANTS**
10 **IN PART AND DENIES IN PART** Plaintiff’s motion to compel as presented
11 in the parties’ status reports. (ECF Nos. 41, 44).

12 **II. LEGAL STANDARD**

13 The Federal Rules of Civil Procedure authorize parties to obtain
14 discovery of “any nonprivileged matter that is relevant to any party’s claim or
15 defense and proportional to the needs of the case” Fed. R. Civ. P.
16 26(b)(1). “Information within the scope of discovery need not be admissible in
17 evidence to be discoverable.” *Id.* District Courts have broad discretion to
18 limit discovery where the discovery sought is “unreasonably cumulative or
19 duplicative, or can be obtained from some other source that is more
20 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C).

21 A party may request the production of any document within the scope of
22 Rule 26(b). Fed. R. Civ. P. 34(a). “For each item or category, the response
23 must either state that inspection and related activities will be permitted as
24 requested or state an objection to the request, including the reasons.” Fed. R.
25 Civ. P. 34(b)(2)(B). If the responding party chooses to produce responsive
26 information, rather than allow for inspection, the production must be
27 completed no later than the time specified in the request or another

1 reasonable time specified in the response. *Id.* An objection must state
2 whether any responsive materials are being withheld on the basis of that
3 objection. Fed. R. Civ. P. 34(b)(2)(C). An objection to part of a request must
4 specify the part and permit inspection or production of the rest. *Id.* The
5 responding party is responsible for all items in “the responding party’s
6 possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). Actual possession,
7 custody or control is not required. Rather, “[a] party may be ordered to
8 produce a document in the possession of a non-party entity if that party has a
9 legal right to obtain the document or has control over the entity who is in
10 possession of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620
11 (N.D. Cal. 1995).

12 **III. DISCUSSION**

13 **1. Requests for Production Numbers 2 and 3**

14 Plaintiff requested Defendants produce “[s]till shots from each and
15 every one of the surveillance camera(s) mounted in and ar[ound] Building B-6
16 where the events in controversy took place, i.e., photo(s) from each of the
17 camera(s), one single shot” and “[m]aintenance reports relevant to teach and
18 every one of the surveillance camera(s) mounted in and around Building B-6
19 where the events in controversy took place stating which cameras were
20 functional on the date of 11,15,2016 and which were not.” (ECF No. 37 at 18-
21 19). As to both requests, Defendants responded that “[a]fter a diligent search
22 and reasonable inquiry, no responsive documents or tangible things were
23 located.” (ECF No. 39-1 at 6-8). A party’s statement that, after a reasonable
24 and diligent search, there exist no responsive documents to a production
25 request is an acceptable reply. *See Uribe v. McKesson*, No. 08cv1285 DMS
26 (NLS), 2010 WL 892093, at *2-3 (E.D. Cal. Mar. 9, 2010). Plaintiff states
27 that he told Defense counsel that the still shots are available if she requests

1 them from CDCR, but she responded that “it would be to create evidence
2 which the Defense has no obligation to do.” (ECF No. 44 at 2). If responsive
3 documents do exist, but the responsive party claims lack of possession,
4 custody or control, the party must state so. *Ochotorena v. Adams*, No. 1:05-
5 cv-01524-LJO-DLB (PC), 2010 WL 1035774, at *3-4 (E.D. Cal. Mar. 19, 2010).
6 Based on Defendants’ supplemental responses, it does not appear that any
7 documents were withheld. (See ECF No. 39-1 at 6-8). Accordingly, Plaintiff’s
8 motion to compel production of still shots and maintenance reports as
9 presented in his status report is **DENIED**.

10 **2. Request for Production Number 6**

11 In his sixth request for production of documents, Plaintiff requests “[a]
12 list of all Prisoner/Patient(s) who attended the Mental Health Group with
13 Plaintiff Hammler on date of 11,15,2016.” (ECF No. 37 at 20). Defendants
14 objected on the grounds that the request “seeks information protected by
15 third-parties’ right to privacy,” that the information is irrelevant and
16 disproportionate to the needs of the case. (*Id.*). The Court may limit the
17 scope of discovery to protect the privacy interests of litigants and third
18 parties. See Fed. R. Civ. P. 26(c); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20,
19 34-35 (1984). These inmates, as third parties, have the right to have their
20 privacy protected. That right is not absolute and may be overcome by a
21 strong showing of relevance. Plaintiff contends these inmates may have
22 heard parties to this action “leveling threats during group.”¹ (ECF No. 44 at
23 5). Plaintiff has only alleged that these inmates may have heard a threat

24
25
26
27 ¹ Plaintiff’s First Amended Complaint alleges that Defendant Hernandez pushed Plaintiff
off of a stool at Mental Health Group on November 15, 2016 and told Plaintiff “I’m gonna
escort you to yard and we’ll see if you’ll be talkin’ all that shit . . . just go to yard and don’t
bitch out.” (ECF No. 25 at 4-5).

1 during Mental Health Group. That is not enough. In any event, Plaintiff
2 does have evidence to support his claim because he has presented another
3 inmate's declaration regarding the alleged threats. (See ECF No. 25 at 5). As
4 a result, the Court **DENIES** Plaintiff's motion to compel the names of the
5 inmates who attended Mental Health Group on November 15, 2016.

6 **3. Request for Production Number 8**

7 Finally, Plaintiff seeks "[a]ll cell search rec[eipts] engendered on the
8 date of 11,15,2016 and date of 11,28,2016." (ECF No. 7 at 21). The parties
9 apparently did not discuss this request during the telephonic meet and
10 confer. (See ECF Nos. 41, 44). Plaintiff alleges in the First Amended
11 Complaint that correctional officers Hugh and Barrientos searched his cell on
12 November 28, 2016. (ECF No. 25 at 11-12). Plaintiff alleges his cell was
13 searched in retaliation for reporting Defendant Hernandez's behavior. (*Id.* at
14 11). However, Plaintiff does not allege his cell was searched on November 15,
15 2016. (*Id.* at 4-11). Defendants argue this information is irrelevant because
16 Defendants did not search Plaintiff's cell. Because Plaintiff does not allege in
17 his First Amended Complaint that his cell was searched on November 15,
18 2016, the Court agrees with Defendants that any cell search receipt on that
19 date is irrelevant. However, because Plaintiff alleges that his cell was
20 searched on November 28, 2016 in retaliation for reporting Defendant
21 Hernandez's behavior, a cell search receipt is discoverable. Accordingly,
22 Defendants must produce to Plaintiff a cell search receipt for a search of
23 Plaintiff's cell conducted on November 28, 2016 to the extent that it exists.

24 **IV. CONCLUSION**

25 Based on the foregoing, the Court **GRANTS IN PART AND DENIES**
26 **IN PART** Plaintiff's motion to compel as presented in the parties' status
27 reports. (ECF Nos. 41, 44). Specifically, Plaintiff's motion to compel requests

1 for production numbers 2, 3, and 6 are **DENIED**, and Plaintiff's motion to
2 compel request for production number 8 is **GRANTED IN PART**. To the
3 extent such documents exist, Defendants must produce to Plaintiff a cell
4 search receipt for a search of Plaintiff's cell conducted on November 28, 2016
5 on or before **January 22, 2020**.

6 Dated: January 8, 2020



7
8 Hon. Mitchell D. Dembin
United States Magistrate Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27