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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9

10 LANCE WILLIAMS,

11 Plaintiff,

12 v.

13 O. ORTEGA, et al.,

14 Defendants.

Case No.: 18cv547-LAB-MDD

**ORDER RE: PLAINTIFF'S  
MOTION FOR SANCTIONS**

[ECF No. 108]

15  
16 On December 9, 2020, Lance Williams ("Plaintiff"), a state prisoner  
17 proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to  
18 42 U.S.C. § 1983, moved the Court to impose sanctions upon Defendants for  
19 withholding documents responsive to his document requests in request for  
20 production of documents, set three, numbers 2 and 3. (ECF No. 108).  
21 Defendants filed a response in opposition, arguing that they produced all  
22 responsive documents in their possession, custody, and control, and that they  
23 otherwise validly objected to the requests. (ECF No. 110). For the reasons  
24 stated herein, the Court **DENIES** Plaintiff's request pursuant to Federal  
25 Rule of Civil Procedure 37(c)(1), but **ORDERS** Defendants to: (1) conduct a  
26 further search of responsive documents to Plaintiff's requests for production  
27 of documents, set three, numbers 2 and 3; (2) conduct a thorough review of

1 the prior production in this case; and (3) file a declaration with the Court  
2 explaining whether their production complies with Federal Rule of Civil  
3 Procedure 26(g).

#### 4 I. LEGAL STANDARD

5 The Federal Rules of Civil Procedure authorize parties to obtain  
6 discovery of "any nonprivileged matter that is relevant to any party's claim or  
7 defense and proportional to the needs of the case . . . ." Fed. R. Civ. P.  
8 26(b)(1). "Information within the scope of discovery need not be admissible in  
9 evidence to be discoverable." *Id.* District courts have broad discretion to  
10 limit discovery where the discovery sought is "unreasonably cumulative or  
11 duplicative, or can be obtained from some other source that is more  
12 convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C).

13 A party may request the production of any document within the scope  
14 of Rule 26(b). Fed. R. Civ. P. 34(a). "For each item or category, the response  
15 must either state that inspection and related activities will be permitted as  
16 requested or state an objection to the request, including the reasons." Fed. R.  
17 Civ. P. 34(b)(2)(B). If the responding party chooses to produce responsive  
18 information, rather than allow for inspection, the production must be  
19 completed no later than the time specified in the request or another  
20 reasonable time specified in the response. *Id.* An objection must state  
21 whether any responsive materials are being withheld on the basis of that  
22 objection. Fed. R. Civ. P. 34(b)(2)(C). An objection to part of a request must  
23 specify the part and permit inspection or production of the rest. *Id.* The  
24 responding party is responsible for all items in "the responding party's  
25 possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Actual possession,  
26 custody or control is not required. Rather, "[a] party may be ordered to  
27 produce a document in the possession of a non-party entity if that party has a

1 legal right to obtain the document or has control over the entity who is in  
2 possession of the document." *Soto v. City of Concord*, 162 F.R.D. 603, 620  
3 (N.D. Cal. 1995).

4 Pursuant to Federal Rule of Civil Procedure 37(c), a party that fails to  
5 provide responsive documents it has in its possession, custody, or control, "is  
6 not allowed to use that information . . . to supply evidence on a motion, at a  
7 hearing, or at a trial, unless the failure was substantially justified or is  
8 harmless." Fed. R. Civ. P. 37(c)(1). In the event a party wrongfully withholds  
9 responsive information, sanctions may be imposed under Rule 26(g)(3)  
10 against anyone who signed the response. Fed. R. Civ. P. 26(g)(1)(A)-(3).

## 11 II. RELEVANT BACKGROUND

12 Plaintiff propounded requests for production, set three, around June  
13 4, 2020. (ECF No. 65 at 2). As relevant to the instant motion, request  
14 number two asks Defendants to produce "all healthcare appeal grievances . . .  
15 in the personnel files of all named defendants for actions that are claimed  
16 against them in this complaint." (ECF No. 55 at 14). Plaintiff specifies that  
17 for Defendant Valencia, that includes "acts of deliberate indifference to  
18 medical and mental health care, failure to act, failure to report incident,  
19 failure to protect, dishonesty, falsifying discipline reports, fabrication of  
20 charges and evidence, retaliation." (*Id.* at 15). Request number three asks  
21 Defendants to produce "[a]ll 602 appeal grievances custody and medical filed  
22 on R. Valencia by Plaintiff Lance Williams." (*Id.* at 15).

23 On July 16, 2020, Plaintiff filed a motion to compel Defendants to  
24 respond to his requests for production set three. (ECF No. 55). Defendants  
25 indicated that they would provide a response to Plaintiff's third set on or  
26 before September 7, 2020. (ECF No. 65 at 2). Accordingly, the Court denied  
27 Plaintiff's motion to compel responses to his third set. (ECF No. 66 at 3).

1 On September 22, 2020, Plaintiff moved to compel Defendants to  
2 respond to his third set of requests for production of documents, numbers 1  
3 and 2. (ECF No. 78). However, in moving to compel production of documents  
4 responsive to request number 2, Plaintiff only sought “citizen complaints” in  
5 the personnel files of all named defendants. (ECF No. 78). Defendants  
6 objected on the ground that the term “citizen complaints” is “vague and  
7 ambiguous.” (ECF No. 80 at 3). The Court sustained Defendants’ objection.  
8 (ECF No. 81).

9 On September 24, 2020, Defendants supplemented their response to  
10 Plaintiff’s third set of requests for production of documents. (ECF No. 111 at  
11 14). With respect to request number 3, Defendants objected on the grounds  
12 that the requested documents “are equally available to Plaintiff as part of his  
13 own prison Central file or by request through the prison appeals office.” (*Id.*).  
14 Notwithstanding the objection, Defendants produced CDCR 602 Log No.  
15 RJD-A-18-02815 and CDCR 602 Log No. RJD-A-03783 and noted that “there  
16 are no other responsive documents.” (*Id.*).

### 17 III. DISCUSSION

18 Plaintiff argues Defendants failed to produce healthcare grievances he  
19 filed against Defendant Valencia. In support, Plaintiff attaches 602-HC  
20 grievances in his possession that Defendants did not produce. (ECF No. 108  
21 at 23-47). The grievances in Plaintiff’s possession are responsive to request  
22 numbers 2 and 3 because they are healthcare grievances filed by Plaintiff  
23 against Defendant Valencia. (*See* ECF No. 55 at 14-15). Defendants concede  
24 that they did not produce these healthcare grievances. (*See* ECF No. 111 at  
25 3). They argue they do not have possession, custody, or control over these  
26 healthcare grievances and that they validly objected to Plaintiff’s request on  
27 the grounds that they were in Plaintiff’s possession. (*Id.*). Defendants

1 further contend the Court should uphold its prior Order sustaining their  
2 objection to request number 2 on the grounds that it is vague. (*Id.* at 2).

3 First, Defendants' objection to request number 2 was raised in  
4 response to Plaintiff's use of the term "citizen complaints." (ECF No. 80 at 3).  
5 To the extent Defendants claim that the term "healthcare appeal grievances"  
6 is vague, that objection is overruled. Defendants' second objection is also  
7 meritless. There may be value in determining whether Defendants had  
8 documents in their possession, custody, or control despite Plaintiff also  
9 having access to them.

10 The fact that Defendants could not find grievances against named  
11 defendants in this action begs credulity and the Court is concerned about  
12 Defendants' record keeping and search for records. Notwithstanding these  
13 concerns, the Court recognizes that Plaintiff is in possession of these  
14 documents. Therefore, the Court **DENIES** Plaintiff's request to impose  
15 monetary sanctions pursuant to Federal Rule of Civil Procedure 37(c)(1)  
16 because the failure to produce was harmless. Instead, the Court **ORDERS**  
17 Defendants to: (1) conduct a further search of responsive documents to  
18 Plaintiff's requests for production of documents, set three, numbers 2 and 3;  
19 (2) conduct a thorough review of the prior production in this case; and (3) file  
20 a declaration with the Court explaining whether their production complies  
21 with Federal Rule of Civil Procedure 26(g) on or before **January 8, 2021**.

22 **IT IS SO ORDERED.**

23 Dated: December 29, 2020



24 Hon. Mitchell D. Dembin  
25 United States Magistrate Judge  
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