

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-00229-WYD-MJW

ERIC QUADE,

Plaintiff,

v.

WARDEN KEVIN MILYARD, et al.,

Defendants.

**ORDER REGARDING
THE PRO SE INCARCERATED PLAINTIFF SIMON E. SUE'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS PURSUANT TO F.R.C.P. [SIC] RULE 36(A)
(DOCKET NO. 106)**

MICHAEL J. WATANABE
United States Magistrate Judge

This matter is before the court on the Pro Se Incarcerated Plaintiff Sue's Motion to Compel Production of Documents Pursuant to F.R.C.P. [sic] Rule 37(a) (docket no. 106). The court has reviewed the subject motion (docket no. 106) and response (docket no. 124). In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court finds:

1. That I have jurisdiction over the subject matter and over the parties

to this lawsuit;

2. That venue is proper in the state and District of Colorado;
3. That each party has been given a fair and adequate opportunity to be heard on the subject motion (docket no. 106);
4. That as to the Pro Se Incarcerated Plaintiff Sue's Request for Production ("RFP") No. 9, I find that such request for photographs is not relevant to the claims and defenses in this case as the strip search did not occur in these locations. Accordingly, Defendants are not required to respond any further to RFP No. 9;
5. That as to the Pro Se Incarcerated Plaintiff Sue's RFP No. 12, I find that Defendants have agreed to supplement their production to this RFP within 30 days. Accordingly, Defendants are required to supplement their response to RFP No. 12. to include disclosures of the Step 3 grievance responses on or before March 25, 2009, which is 30 days from the date of Defendants' Response (filed on February 25, 2009, docket no. 124);
6. That as to Pro Se Incarcerated Plaintiff Sue's RFP No. 13, I find that this RFP requests information that is confidential and information that may pose a security threat if produced. Accordingly, in order to balance the need for disclosure with the need for security, Defendants will be required to provide to the Pro Se Incarcerated Plaintiff Sue a redacted copy of these documents as approved previously by Magistrate Judge Kathleen M. Tafoya in

Case No. 07-cv-01976-PAB-KMT, Ybanez v. Milyard, et al., of the incident after action report(s) as attached to the Response (docket no. 124) before this case was consolidated into the current case 07-cv-00229-WYD-MJW, on or before March 25, 2009; and,

7. That as to Pro Se Incarcerated Plaintiff Sue's RFP No. 15, I find that the information sought in this RFP is not relevant, noting that the claims and defenses of this case concern the manner that the strip search of inmates that occurred in the gym at the Sterling Correctional Facility on August 1, 2006 was conducted. Accordingly, information concerning the search of property in Living Unit 1 is not relevant to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, no further response is required by Defendants to RFP No. 15.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law, this court **ORDERS**:

1. That the Pro Se Incarcerated Plaintiff Sue's Motion to Compel Production of Documents Pursuant to F.R.C.P. [sic] Rule 37(a) (docket no. 106) is **GRANTED IN PART AND DENIED IN PART** as outlined below;
2. That the Motion (docket no. 106) is **GRANTED** as stated above in

paragraphs 5 and 6 above;

3. That the Motion (docket no. 106) is **DENIED** as stated above in paragraphs 4 and 7 above; and,
4. That each party shall pay their own attorney fees and costs.

Done this 10th day of March 2009.

BY THE COURT

S/ Michael J. Watanabe
MICHAEL J. WATANABE
U.S. MAGISTRATE JUDGE