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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 EARL WARNER,
10 Plaintiff,
11 v.
12 M. CATE, et al.,
13 Defendants.

Case No. 1:12-cv-01146-LJO-MJS (PC)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR AN EXTENSION OF
TIME TO FILE REPLY**

(ECF No. 137)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL DEFENDANTS
TO ANSWER INTERROGATORIES
AND PRODUCE DOCUMENTS**

(ECF NOS. 126 & 129)

FOURTEEN DAY DEADLINE

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20 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil
21 rights action brought pursuant to 42 U.S.C. § 1983. (ECF No. 1 & 7.) This action
22 proceeds on Plaintiff's first amended complaint ("FAC") against Defendants Walker,
23 Davis, Prokop, Spralding, and Fellows for failure to protect in violation of the Eighth
24 Amendment. (ECF No. 10.)

25 Before the Court is Plaintiff's September 30, 2016 motion to compel discovery.
26 (ECF No. 126.) On October 11, 2016, Plaintiff filed a supplement to his motion to
27 compel (ECF No. 129) which includes Defendants' discovery responses. Defendants
28 oppose the motion. (ECF No. 134.)

1 On November 30, 2016, Plaintiff filed a late motion seeking an extension of time
2 to file a reply. (ECF No. 137.) That motion is also pending before the Court. On
3 December 5, 2016, Plaintiff filed his reply. (ECF No. 138.) The matter is submitted
4 pursuant to Local Rule 230(/).

5 **I. Procedural History**

6 The Court set an initial discovery deadline of July 4, 2015. (ECF No. 48.) On
7 motion by Plaintiff, that deadline was extended to July 24, 2015. (ECF Nos. 61 & 64.)
8 Between June 9 and July 24, 2015 Plaintiff served on Defendants a request for the
9 production of documents as well as one set of interrogatories each to Defendants
10 Fellows, Davis, Spralding, and Prokop; two sets of interrogatories to Defendant Walker,
11 and one set of requests for admissions to Defendant Walker. (Decl. of E. Warner in
12 Supp. of Mot. to Compel (ECF No. 129 at 33) ¶¶ 2-4.)

13 After Defendants objected to all of Plaintiff's discovery requests as untimely on
14 the ground that Defendants' responses would come due November 23, 2015, after the
15 close of discovery, Plaintiff filed a motion to compel Defendants' responses. (ECF No.
16 90.) On July 7, 2016, Plaintiff's motion to compel was granted. (ECF No. 112.)
17 Defendants were directed to serve responses to Plaintiff's discovery requests within
18 twenty-one days of the Court's order. Id. Plaintiff was directed to file any additional
19 motions to compel within fourteen days of receiving Defendants' responses. Id.

20 Defendants requested and were granted one extension of time to serve Plaintiff
21 with their responses. (ECF Nos. 114 & 115.) On or about August 29, 2016, Defendants
22 served Plaintiff with their responses. (ECF No. 119 ¶ 2.) After seeking and receiving an
23 extension of time of his own (ECF Nos. 119 & 124), Plaintiff filed the instant motion to
24 compel on September 30, 2016. (ECF No. 126.) On October 11, 2016, Plaintiff filed a
25 supplement to the motion to compel; the supplement is merely a copy of the motion to
26 compel with the addition of Defendants' discovery responses, which Plaintiff omitted
27 from his original filing. As the supplement contains Plaintiff's full motion to compel, the
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1 Court will refer to that document, docketed as ECF No. 129, exclusively throughout this
2 order.

3 **II. Plaintiff's Case Allegations**

4 The following factual allegations are summarized from Plaintiff's FAC:

5 On January 6, 2011, Plaintiff was transferred from Salinas Valley State Prison
6 (SVSP) to PVSP because of security and safety concerns stemming from his negative
7 relationship with the Northern Riders prison gang. Plaintiff was initially housed on
8 orientation status and exposed to inmates throughout PVSP. He was recognized by
9 various inmates as having been confined in segregation at SVSP because of his safety
10 concerns. The leader of the Northern Riders at PVSP, an inmate named Siordia¹,
11 learned of Plaintiff's presence and threatened "to do Plaintiff great bodily harm." In
12 addition to his gang allegiance, Siordia wanted to harm Plaintiff because Siordia had
13 been attacked several years earlier at another prison by an associate of Plaintiff's.
14 Plaintiff feared Siordia was capable of directing an attack against Plaintiff at PVSP.

15 On January 19, 2011, Plaintiff appeared before Defendants for an initial
16 classification hearing. Plaintiff told Defendants he believed his safety was in jeopardy for
17 the reasons stated above. Defendants responded that Plaintiff needed "to be a man"
18 and deal with the inmates who posed a threat to him. Defendants also told Plaintiff that
19 he was "out of places to go." Defendant Walker then summoned inmate Siordia and
20 placed him in a holding cage adjacent to Plaintiff. Walker told Siordia what Plaintiff had
21 said about his fears and then told the two inmates to talk it out. Siordia denied any
22 animosity towards Plaintiff. Defendants then approved Plaintiff for the same housing unit
23 as Siordia. In the housing unit, Plaintiff was confronted by another inmate and
24 questioned about snitching. Plaintiff refused to leave his cell for meals. Prisoners
25 affiliated with Siordia loitered outside Plaintiff's cell during meal breaks. Shortly
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27 ¹ The papers filed in this case spell inmate Siordia's name as "Siordia" and "Sordia." As the Court has
28 utilized the spelling "Siordia" in the past (see, e.g., Order Den. Def.'s Mot. Summ. J. (ECF No. 116)) it will
continue to do so for the sake of consistency.

1 thereafter Plaintiff cut his own wrists and was removed from general population and
2 eventually from PVSP.

3 **III. Legal Standard**

4 Parties may obtain discovery regarding any non-privileged matter that is relevant
5 to any party's claim or defense, and for good cause, the Court may order discovery of
6 any matter relevant to the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1).
7 Relevant information need not be admissible at the trial if the discovery appears
8 reasonably calculated to lead to the discovery of admissible evidence. Id.

9 However, the court must limit discovery if the burden of the proposed discovery
10 outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2)(C). In such situations, the Court
11 must limit discovery if it determines that:

12 (i) the discovery sought is unreasonably cumulative or
13 duplicative, or can be obtained from some other source that
14 is more convenient, less burdensome, or less expensive;

15 (ii) the party seeking discovery has had ample
16 opportunity to obtain the information by discovery in the
17 action; or

18 (iii) the proposed discovery is outside the scope
19 permitted by Rule 26(b)(1).

20 (Id.) "In each instance, the determination whether . . . information is discoverable
21 because it is relevant to the claims or defenses depends on the circumstances of the
22 pending action." Fed. R. Civ. P. 26 Advisory Committee's Note (2000 Amendment)
(Gap Report) (Subdivision (b)(1)).

23 Pursuant to Rule 37(a), a party propounding discovery may seek an order
24 compelling disclosure when an opposing party objects or otherwise fails to respond or
25 provides evasive or incomplete responses. Fed. R. Civ. P. 37(a)(3)(B). "[A]n evasive or
26 incomplete disclosure, answer, or response must be treated as a failure to disclose,
27 answer, or respond." Fed. R. Civ. P. 37(a)(4).

28 Generally, the party moving to compel bears the burden of demonstrating why

1 the objections are not justified. E.g., Grabek v. Dickinson, No. CIV S-10-2892 GGH P.,
2 2012 WL 113799, at *1 (E.D. Cal. Jan. 13, 2012); Ellis v. Cambra, No. 1:02-cv-05646-
3 AWI-SMS (PC), 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008). This requires the
4 moving party to inform the Court which discovery requests are the subject of the motion
5 to compel, and, for each disputed response, why the information sought is relevant and
6 why the responding party's objections are not meritorious. Grabek, 2012 WL 113799, at
7 *1; Womack v. Virga, No. CIV S-11-1030 MCE EFB P., 2011 WL 6703958, at *3 (E.D.
8 Cal. Dec. 21, 2011).

9 The Court is vested with broad discretion to manage discovery and
10 notwithstanding these procedures, Plaintiff is entitled to leniency as a pro se litigant;
11 therefore, to the extent possible, the Court endeavors to resolve Plaintiff's motion to
12 compel on its merits. Hunt v. Cnty. Of Orange, 672 F.3d 606, 616 (9th Cir. 2012);
13 Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir. 2005); Hallett
14 v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

15 **IV. Discussion**

16 Plaintiff seeks an order compelling Defendants to respond to seven requests for
17 the production of documents ("RPDs") as well as ten Interrogatories directed to
18 Defendant Walker. Rather than address the requests in the order they were proffered,
19 the Court will group them into the following subcategories: 1) Privileged Documents; 2)
20 Plaintiff's Prison Record; 3) the Incident; 4) Prison Administration; and 5) Inmate
21 Siordia.

22 **A. Privileged Documents**

23 The Supreme Court has long noted that privileges are disfavored. Jaffee v.
24 Redmond, 518 U.S. 1, 9 (1996). "The party asserting an evidentiary privilege has the
25 burden to demonstrate that the privilege applies to the information in question." Tornay
26 v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988). Privileges are to be "strictly
27 construed" because they "impede full and free discovery of the truth." Eureka Fin. Corp.
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1 v. Hartford Acc. and Indem. Co., 136 F.R.D. 179, 183 (E.D. Cal. 1991). “If the privilege
2 is worth protecting, a litigant must be prepared to expend some time to justify the
3 assertion of the privilege.” Id.

4 In civil rights cases brought under section 1983, questions of privilege are
5 resolved by federal law. Kerr v. United States Dist. Ct. for the N. Dist. of Cal., 511 F.2d
6 192, 197 (9th Cir. 1975). “State privilege doctrine, whether derived from statutes or
7 court decisions, is not binding on federal courts in these kinds of cases.” Kelly v. City of
8 San Jose, 114 F.R.D. 653, 655–56 (N.D. Cal. 1987).

9 “Federal common law recognizes a qualified privilege for official information.”
10 Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990) (citing Kerr, 511
11 F.2d at 198. The discoverability of official documents should be determined under the
12 “balancing approach that is moderately pre-weighted in favor of disclosure.” Kelly, 114
13 F.R.D. at 661. The party asserting the privilege must properly invoke the privilege by
14 making a “substantial threshold showing.” Id. at 669. For each discovery request
15 objected to, the party must file an objection and submit a declaration or affidavit from a
16 responsible official with personal knowledge of the matters attested to by the official. Id.
17 The affidavit or declaration must include (1) an affirmation that the agency has
18 generated or collected the requested material and that it has maintained its
19 confidentiality, (2) a statement that the material has been personally reviewed by the
20 official, (3) a description of the governmental or privacy interests that would be
21 threatened by disclosure of the material to the plaintiff or plaintiff's attorney, (4) a
22 description of how disclosure under a protective order would create a substantial risk of
23 harm to those interests, and (5) a projection of the harm to the threatened interest or
24 interests if disclosure were made. Id. at 670. “The asserting party, as in any case where
25 a privilege is claimed, must sufficiently identify the documents so as to afford the
26 requesting party an opportunity to challenge the assertion of privilege.” Miller v.
27 Pancucci, 141 F.R.D. 292, 300 (9th Cir. 1992). Pursuant to Federal Rule of Civil
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1 Procedure 26(b)(5)(A),

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3 When a party withholds information otherwise discoverable by
4 claiming that the information is privileged or subject to protection as
5 trial-preparation material, the party must:

- 6 (i) expressly make the claim; and
- 7 (ii) describe the nature of the documents,
8 communications, or tangible things not
9 produced or disclosed – and do so in a manner
10 that, without revealing information itself
11 privileged or protected, will enable other parties
12 to assess the claim.

13 The advisory committee notes to Rule 26(b)(5) make clear that withholding otherwise
14 discoverable materials on the basis that they are privileged or subject to the work
15 product doctrine without notifying the other parties as provided in Rule 26(b)(5)(A) by
16 describing the nature of the information in a privilege log so as to enable them to assess
17 the claim “*may* be viewed as a waiver of the privilege or protection.” Fed. R. Civ. Pro.
18 26(b)(5) advisory committee's comment (emphasis added).

19 Nonetheless, the Ninth Circuit has “reject[ed] a per se waiver rule that deems a
20 privilege waived if a privilege log is not produced within Rule 34’s 30-day time limit.”
21 Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Ct. for the Dist. of Mont., 408 F.3d
22 1142, 1149 (9th Cir. 2005). Instead, the Ninth Circuit has instructed courts to look at the
23 following factors in determining whether a waiver has occurred: (1) “the degree to which
24 the objection or assertion of privilege enables the litigant seeking discovery and the
25 court to evaluate whether each of the withheld documents is privileged;” (2) “the
26 timeliness of the objection and accompanying information about the withheld
27 documents;” (3) “the magnitude of the document production;” and (4) “other particular
28 circumstances of the litigation that make responding to discovery unusually easy ... or
unusually hard.” Id. In evaluating these factors, the court is directed to apply them “in
the context of a holistic reasonableness analysis” and not in a “mechanistic

1 determination of whether the information is provided in a particular format.” Id.
2 (emphasis added).

3 Here, Plaintiff seeks to compel responses to RPDs Nos. 1, 7, and 8, and
4 Interrogatories Nos. 12, 13, 14, 15, and 17, all of which seek, in whole or in part, details
5 about staff misconduct, inmate enemy lists and gang associations, and inmate personal
6 information. (Pl.’s Mot. to Compel (“MTC”) (ECF No. 129) at 5-30.) Defendants objected
7 to the disclosure of any information regarding staff complaints, disciplinary proceedings,
8 inmate enemies and gang associations, and any personal information about inmates
9 other than Plaintiff. They submitted to Plaintiff the declaration of PVSP Litigation
10 Coordinator K.D. Geringer in support of their assertion of privilege. (Decl. of K.D.
11 Geringer in Supp. of Official Information Privilege (MTC at 82-85)).

12 Without referencing any particular discovery request, the declaration proffers a
13 blanket objection to disclosing any documents relating to staff complaints, disciplinary
14 proceedings, or inmate enemy lists, gang affiliations, or personal information. (Id. ¶¶ 3,
15 10.) Geringer avers that those documents are kept confidential to encourage the
16 accurate and complete investigations of claims of misconduct, protect staff personal
17 information, and protect inmate safety and institutional security. (Id. ¶¶ 3-14.) Geringer
18 cites to California laws and regulations protecting such information as privileged. (Id. ¶¶
19 4-5.) Geringer states that a protective order would be insufficient to mitigate the
20 potential harm of disclosure. (Id. ¶ 15.) Geringer’s declaration does not describe the
21 nature of the specific documents withheld, nor did Defendants submit a privilege log.

22 Most of Plaintiff’s requests for confidential information can be disposed of on
23 relevance or untimeliness grounds, as discussed in succeeding subsections. Two
24 requests, however, warrant an examination of whether Defendants properly invoked
25 privilege.
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1 **1. Defendants' Disciplinary Records**

2 Plaintiff's RPD No. 8 seeks:

3 "Copies of any/and all documents pertaining to any court actions, disciplinary
4 proceeding's (sic), reports of staff misconduct; reports generated as witnesses,
5 or [participation] in any official investigations of criminal acts, or misconduct
6 involving themselves or other C.D.C.R. employees, of each of the defendants in
7 this suit."

8 (MTC at 61.)

9 Defendants object that Plaintiff's request for any documents pertaining to other
10 CDCR employees not connected with this suit is overbroad and likely to produce
11 irrelevant information. As to evidence of Defendants' own misconduct, Defendants
12 object that such documents are privileged and confidential for reasons of institutional
13 and personal security, and cite to both the Geringer Declaration and state laws,
14 including sections of the California Government Code, Penal Code, and Evidence Code,
15 in support of this assertion.

16 The Court agrees that evidence of unrelated employees' misconduct, as well as
17 Defendants' witness statements relating to the investigation of the same, are irrelevant
18 and beyond the scope of this case. Plaintiff's request for disclosure of those documents
19 will be denied.

20 Likewise, Plaintiff's requests for all "reports" of staff misconduct, valid or
21 otherwise, is grossly overbroad. Even if not overbroad, and even if responsive records
22 suggested some misconduct on the part of a defendant unrelated to this case, it would
23 be precluded under Federal Rule of Evidence 403. To consider it the Court and the
24 parties would have to conduct a trial within a trial to determine whether the suggestion
25 or finding of other misconduct was justified and relevant. That would be unduly time
26 consuming, potentially confusing and prejudicial. Plaintiff's request for reports of
27 misconduct against Defendants will therefore be denied.

28 However, to the extent any Defendant has been investigated or been subject to
disciplinary proceedings for the misconduct alleged in this lawsuit (failure to protect

1 Plaintiff from harm at the hands of other inmates), evidence of same would be relevant
2 to this case. Further, Defendants' objections to these disclosures on state law privilege
3 grounds fail. Kelly, 114 F.R.D. at 655–56. Defendants also have failed to specify, in
4 accordance with Rule 26(b)(5)(A), the nature of the documents withheld on privilege
5 grounds, thereby denying Plaintiff a meaningful opportunity to attempt to rebut their
6 assertion of privilege. Thus, it could be said that Defendants may be deemed to have
7 waived the assertion of privilege.

8 However, the Court is cognizant of the genuine security concerns Defendants
9 raise. Therefore, Defendants will be directed to file with the Court and serve on Plaintiff,
10 within fourteen (14) days of this order the following:

- 11 1. A detailed privilege log identifying the date, title and nature of any
12 document reflecting disciplinary proceedings being initiated against
13 any Defendant herein relating to the actions and inaction alleged in
14 the Plaintiff's pleadings;
- 15 2. For each document, an individual with personal knowledge of the
16 content of each document must submit an affidavit describing with
17 specificity his or her reason for refusing to disclose the document.
18 Boilerplate objections will not be considered; and
- 19 3. Deliver every such document to the Court for *in camera* review;
- 20 4. Defendants also may file and serve a proposed protective order for
21 the Court's review and approval in the event the Court determines
22 that disclosure of these materials to Plaintiff is appropriate;

23 To the extent Defendants' objections stem from concerns regarding the dissemination of
24 confidential personal information, they must include in their submissions to the Court
25 redacted versions believed necessary to protect such information.

26 **2. "Confidential" Information Within Plaintiff's File**

27 Plaintiff's RPD No. 1 requested Plaintiff's "complete prison record." As discussed
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1 further in subsection IV.B.1.a, below, his motion to compel compliance with this request
2 will be denied on a several grounds, including that the record generally is equally
3 available to Plaintiff. However, Plaintiff's motion specifically requests as a subset of his
4 record the "confidential" information that Defendants purportedly reviewed during the
5 January 19, 2011 classification hearing regarding Plaintiff's placement. (MTC at 10.)
6 Plaintiff contends that those records are relevant to Plaintiff's claim that Defendants
7 acted with deliberate indifference when they housed Plaintiff with Siordia.

8 Defendants respond that Plaintiff is attempting to refine his request so as to
9 include production of documents not requested before the end of discovery.
10 Defendants also claim privilege.

11 As the Court looked beyond Defendant's technical waiver of privilege claims, so
12 too will it look beyond the technical deficiency created by the delayed specificity in
13 Plaintiff's request. Given the potentially very relevant nature of such documents if they
14 show what Plaintiff suspects, the interests of justice and the desire to see this case
15 proceed to trial on consideration of all relevant evidence, the Court therefore directs
16 Defendants to produce, within fourteen (14) days of the date of this Order, any withheld
17 portion of Plaintiff's prison records file, both in current and in redacted, form, for *in*
18 *camera* review and provide a privilege log, all in accordance with the procedures set out
19 in Section IV.A.1 above.

20 **B. Plaintiff's Prison Records**

21 **1. RPD No. 1**

22 Plaintiff seeks to compel a response to RPD No. 1, which requests Plaintiff's
23 "complete prison record," or central file. (MTC at 56.) In his motion to compel, Plaintiff
24 clarifies that he seeks the production of his "archive file" and "minutes made by the
25 recorder of the hearing on January 19, 2011." (Id. at 8-11.)
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2 **a. “Complete” Prison Record and Archive File**

3 Plaintiff seeks his “complete prison record,” including his archive file (Plaintiff’s
4 prison record under a different CDCR number). He argues there is a “substantially
5 reasonable likelihood” that his prison records will contain admissible evidence pertinent
6 to this action. Plaintiff argues that, based on his past experience with the CDCR, he
7 believes Defendants are best-positioned to obtain this file on Plaintiff’s behalf, because
8 they have more ready access to the electronic and paper recordkeeping systems. (MTC
9 at 11.) Plaintiff states that if Defendants are unwilling to turn over the documents to
10 Plaintiff, Plaintiff would agree to simply inspecting them so that he may identify the
11 documents that pertain to his case.

12 Defendants object to producing Plaintiff’s entire central file on several grounds.
13 First, they argue that Plaintiff’s request is vague, unspecific, and overbroad, and fails to
14 describe with reasonable particularity the items he seeks, as required by Rule
15 34(b)(1)(A). Second, Defendants argue that some of the documents within Plaintiff’s
16 central file may pose confidentiality and safety concerns. Finally, Defendants point out
17 that Plaintiff himself has access to his central file, and may request permission directly
18 from prison authorities to inspect it—thus, there is no need for Defendants to produce
19 said file to Plaintiff.

20 Defendants also object to Plaintiff’s request for his archive file as untimely, as
21 Plaintiff did not specifically request it in a RPD prior to filing his motion to compel.

22 The Court finds Plaintiff’s request is overbroad and unduly burdensome on
23 Defendants. See Mailhoit v. Home Depot U.S.A., Inc., 285 F.R.D. 566, 570 (C.D. Cal.
24 2012) (“All-encompassing demands that do not allow a reasonable person to ascertain
25 which documents are required do not meet the particularity standard of Rule
26 34(b)(1)(A)”) (internal quotations omitted). Plaintiff may not use discovery requests to
27 engage in a fishing expedition in the hopes that he may turn up some relevant or useful
28 information. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1072 (9th Cir. 2004).

1 Furthermore, Plaintiff has been advised that the Court will not compel disclosure
2 of documents that are equally available to Plaintiff, such as those contained within
3 Plaintiff's central file. (See Discovery and Scheduling Order (ECF No. 48) at 2.)
4 Plaintiff's argument that Defendants can more readily access Plaintiff's central file is
5 unavailing. Plaintiff has presented no evidence that he ever attempted to inspect his
6 central file without Court intervention. Indeed, this case has been pending since 2012;
7 Plaintiff has had more than sufficient time to make the necessary requests for his file to
8 the appropriate prison authorities.

9 As to Plaintiff's archive file, Defendants are correct that Plaintiff's request for his
10 archive file is untimely, and Plaintiff's request will be denied on that ground. Moreover,
11 Plaintiff has not demonstrated how the information contained within his archive file is
12 relevant to any of the claims in this lawsuit.

13 Plaintiff's request for Defendants to either produce or copy Plaintiff's entire prison
14 file, including his archive file, will be denied. The Court does nevertheless request
15 Defendants' assistance in facilitating Plaintiff's access to his file to the extent
16 Defendants are reasonably able to do so.

17 **c. Hearing Minutes**

18 Plaintiff asks for "minutes made by the recorder of the hearing on January 19,
19 2011." (MTC at 11.) Defendants respond that they provided Plaintiff with the CDCR
20 128G Classification Chrono documenting the January 19, 2011 hearing, and reported
21 they were unaware of any other report documenting the meeting.

22 Notwithstanding that this specific request was not contained in Plaintiff's request
23 for production of documents and is thus untimely, Defendants have responded to it.
24 Accordingly, Plaintiff's request is denied.

25 **2. Plaintiff's Enemy List**

26 Interrogatory No. 15 asks for the names and addresses of any inmates currently
27 listed as Plaintiff's enemy within Plaintiff's central file or any other prison records. (MTC
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1 at 97.)

2 To the extent Plaintiff seeks enemy information contained in other inmates' files
3 or confidential enemy information contained within Plaintiff's own file, Defendants
4 objected on the grounds of privilege and institutional security. To the extent Plaintiff
5 seeks non-confidential information contained within his own file, Defendants reiterated
6 that Plaintiff is free to seek this information on his own. Defendants also objected that
7 this interrogatory seeks information beyond the scope of this litigation.

8 The Court agrees: Plaintiff's request extends beyond the scope of this litigation.
9 According to Plaintiff, this case stems from his enemy concerns with one inmate,
10 Siordia. Any other enemies that are not related to this case not relevant. Plaintiff
11 proffered a separate request for Siordia's contact information (see Interrogatory No. 12).
12 Plaintiff's request as to Interrogatory No. 15 will be denied in its entirety.

13 **C. The Incident**

14 **1. Written Reports**

15 Plaintiff's RDP No. 2 seeks "all written statements . . . identifiable as reports
16 about the incidents on January 19th and 20th, 2011, made by CDCR employees and/ or
17 witnesses." In his motion to compel, Plaintiff explains that this request was intended to
18 include documents regarding his holding cell interview with Siordia. (MTC at 57.)
19 Plaintiff believes there are detailed written reports of the self-cutting incident, including
20 incident reports and witness statements. Likewise, he believes there are detailed logs
21 documenting his stay in the holding cell, listing such details as the circumstances
22 surrounding his placement in the cell, the names of the officers who placed him there,
23 and the names of the supervisors who approved the placement.

24 Defendants assert they provided Plaintiff with a copy of the CDCR 128G form
25 documenting the January 19, 2011 hearing and know of no other written reports of the
26 incident. Defendants are unaware of any reports documenting Plaintiff's self-laceration
27 incident other than medical records which Plaintiff can access himself. Further,
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1 Defendants deny that any holding cell interview with Siordia ever took place.

2 Defendants have responded to Plaintiff's requests. Defendants cannot be forced
3 to produce something they do not have and insist does not exist. Simply because
4 Plaintiff does not like the response he received does not change the result. Scott v.
5 Palmer, 1:09-cv-01329, 2014 WL 6685810, at *3 (E.D. Cal. Nov. 26, 2014) ("Mere
6 distrust and suspicion regarding discovery responses do *not* form a legitimate basis to
7 further challenge responses which are facially legally sufficient; and Plaintiff is entitled
8 neither to continue demanding additional and/or different evidence in support of
9 discovery responses already provided") (emphasis in original). If Plaintiff thinks a
10 response he received is false, he may attempt to so show at trial.

11 **2. Photographs**

12 Plaintiff's RPD No. 5 seeks photographs of the holding cage area of Facility A at
13 PVSP. (MTC at 59.) Defendants object on the ground that they have no such
14 photographs in their possession.

15 Defendants have responded to this request in full. Defendants have no obligation
16 under the discovery rules to create evidence to support Plaintiff's claims. Accordingly,
17 the request to compel Defendants to take photographs will be denied.

18 **3. Mental Health Staff List**

19 Plaintiff's RPD No. 6 seeks the name and address of the PVSP Facility A
20 psychologist "scheduled to conduct an initial intake interview with Plaintiff on January
21 19, 2011," as well as a list of mental health services staff members working on January
22 19 and 20, 2011. (MTC at 59.) Defendants responded that they attempted to discover
23 the name of the psychologist referenced in the request and were unsuccessful. They
24 were also unable to locate the staff list.

25 As above, Defendants cannot be compelled to produce documents which they do
26 not have and do not believe exist. Plaintiff's request will be denied.

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4. The Holding Cage Conversation

Plaintiff seeks responses to several interrogatories proffered to Defendant Walker relating to the alleged holding cage conversation between him and Siordia. Interrogatory No. 7 asks: “[E]xplain the Committee’s decision to excuse the Plaintiff from the room in order to summon inmate Sordia to the program office area, inform him of Plaintiff’s report of having received a warning from him of eminent danger if he remained at P.V.S.P.; and arrange for a confrontation between he and the Plaintiff via the holding cages within the office area?” (MTC at 93.) Interrogatory No. 8 asks: “According to your direct knowledge and information, did any of the other member(s) of the committee raise any . . . objections or express any dissenting opinions, concerning the propriety of your decision to arrange such a controlled confrontation between the Plaintiff and inmate Sordia?” (MTC at 93-94.) Finally, Interrogatory No. 9 asks: “Were you not aware that Plaintiff had previously caused inmate Sordia[] to be listed as an enemy . . . before taking the course of action you did involving he and inmate Sordia, on January 19, 2011?” (MTC at 94.)

Defendant Walker objected to the above interrogatories on the ground that the holding cage conversation with Siordia never happened, and therefore, no response exists. Subject to his objection, Defendant Walker states in response to Interrogatory No. 9 that he does not remember if he was aware that Siordia was listed as Plaintiff’s enemy at the time of the January 19, 2011 hearing.

Plaintiff has his answers. Plaintiff’s motion to compel responses to Interrogatories Nos. 7, 8, and 9 will therefore be denied.

5. Plaintiff’s January 19, 2011 Cellmate

Interrogatory No. 17 seeks the name, identification number, and current address of the inmate housed with Plaintiff in the orientation unit on January 19, 2011 prior to Plaintiffs move to Siordia’s housing unit. (MTC at 98.) Plaintiff’s motion to compel explains that this individual can testify about Plaintiff’s unwillingness to be moved and

1 the fact that Plaintiff had to be forcibly removed from his former cell in a manner which
2 Plaintiff describes as “unprecedented.” Plaintiff believes this inmate may know the
3 identities of the correctional officers who processed and orchestrated the move.
4 Defendants object to disclosing this information on relevancy and privilege grounds.

5 There is a chance this inmate could provide relevant information. Moreover,
6 Defendants’ objections on privilege grounds are unavailing, as they do not explain how
7 releasing this inmate’s name (which Plaintiff theoretically knew at the time) and current
8 institution would pose a serious threat to institutional security. Defendants are therefore
9 directed to disclose to Plaintiff the name, CDCR number, and current institution of the
10 inmate assigned as Plaintiff’s cellmate immediately prior to his cell move on January 19,
11 2011.

12 **D. Prison Administration**

13 **1. Statistics of Inmate Violence**

14 Plaintiff’s RPD No. 7 requests a “comprehensive statistical report” of incidents of
15 inmate violence in PVSP Facility A from 2009 to 2014. (MTC at 60.) Plaintiff asks for
16 instances of one-on-one violence, violence involving two or more inmates, and violence
17 between groups of inmates, as well as inmate-staff violence. He seeks the dates of
18 each incident; the names, CDCR numbers, badge numbers, and addresses of each
19 party involved; and copies of reports and photographs taken by the Investigative
20 Services Unit in relation to each occurrence.

21 Defendants objected that Plaintiff’s request is unintelligible, seeks privileged
22 information, and in any case, seeks a document that Defendants believe does not exist.

23 Plaintiff’s request is grossly overbroad, seeks information with only tangential, if
24 any, potential relation to his case, and presents obvious security risks. Plaintiff’s request
25 will be denied.
26
27
28

1 **2. Prisoner Housing Protocols**

2 RPD No. 9 seeks copies of CDCR rules, directives, and protocols regarding
3 inmate housing assignments in effect between January 19 and 20, 2011. (MTC at 62.)
4 In response, Defendants served Plaintiff with copies of the 2011 Title 15 Article 1.6
5 Section 3269 Inmate Housing Assignments, DOM 52020.5.3 Daily Record of Housing
6 and Assignment Changes, and DOM 54055.7 Housing and Discipline. Plaintiff now
7 argues in his motion to compel that there are other documents Defendants were
8 required to fill out regarding Plaintiff's housing assignment that Defendants should have
9 but failed to turn over, including a CDCR Form 154.

10 Plaintiff's request sought rules, directives, and protocols only. He did not request
11 the CDCR Form 154 or any other documents particular to Plaintiff's own housing
12 assignment, and he does not argue that the documents he received were unresponsive
13 to his actual request. Plaintiff's request will be denied.

14 **E. Inmate Siordia**

15 **1. Identifying Inmate Siordia, His Associates, and Victims**

16 Interrogatories Nos. 12, 13, and 14 all request identifying information for inmate
17 Siordia, his associates, and his victims. Specifically, Interrogatory No. 12 requests
18 Siordia's full name, identification numbers, and current address. (MTC at 95.)
19 Interrogatory No. 13 seeks the names, identification numbers, and addresses of inmate
20 Siordia's past victims and gang associates. (MTC at 96.) Interrogatory No. 14 asks for
21 the names, identification numbers, and addresses of the two inmates responsible for
22 attacking inmate Siordia years ago. (MTC at 96.)

23 Defendants provided Plaintiff with inmate Siordia's full name, Robert Siordia.
24 Defendants objected to each remaining request on the grounds that such information is
25 confidential and beyond the scope of this case.

26 The Court agrees that most of this information goes beyond the scope of this
27 case. Evidence of Siordia's prior gang associates, victims, or enemies is minimally
28

1 relevant to whether Siordia posed a substantial risk of harm to Plaintiff on January 19,
2 2011. While Plaintiff claims the attack on Siordia was a driving force behind Siordia's
3 animosity toward Plaintiff in 2011, Plaintiff does not explain what information these
4 inmates could provide that would be relevant to Plaintiff's claims today. Plaintiff's motion
5 to compel as to Interrogatory Nos. 13 and 14 is denied.

6
7 However, Plaintiff may wish to subpoena Siordia, a relevant witness, to testify at
8 trial. To do so, Plaintiff will need Siordia's CDCR number and current institution. This
9 information is free and publicly available to anyone with an internet connection²; thus,
10 Defendants' claim of privilege is unavailing. Defendants are therefore directed to
11 disclose to Plaintiff Siordia's CDCR number and current institution, as requested in
12 Interrogatory No. 12.

13 **2. Siordia's Violent History**

14 Interrogatory No. 10 asks Defendant Walker if he had "the means of assessing
15 the department's files and records pertaining to inmate Sordia's prior history of violent
16 behavior . . . before making the decision [to] act with such clear indifference to Plaintiff's
17 fears and concerns?" Interrogatory No. 11 asks Defendant Walker if he or anyone else
18 "reviewed the criminal of C.D.C.R. disciplinary record history, and/or documented
19 reports, memo[s], confidential, or otherwise, pertaining to the proclivities of inmate
20 Sordia towards inflicting serious physical injury upon other inmate(s)." (MTC at 94-95.)

21 In response to Interrogatory No. 10, Defendant Walker replied that he possessed
22 the means to review an inmate's record of violent behavior and gang affiliation. In
23 response to Interrogatory No. 11, Defendant replied that he reviewed no such records
24 with regards to Siordia, and is not aware of any other individual having done so.

25 Plaintiff's dispute with Defendant Walker's responses centers on his disbelief of
26 them. Plaintiff's motion to compel responses to Interrogatories Nos. 10 and 11 will be
27 denied.

28 ² The CDCR maintains a free public inmate locator website, <http://inmatelocator.cdcr.ca.gov/default.aspx>.

1 **V. Motion for an Extension to File Reply**

2 Plaintiff requested an extension of time to file a reply on the ground that shortly
3 after he filed the instant motion to compel he was transferred to a crisis bed, during
4 which time he was separated from his legal property. He also states he had limited
5 access to the law library.

6 Good cause appearing, the Court will grant Plaintiff's motion for an extension.

7 **VI. Conclusion**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion for an extension to file a reply (ECF No. 137) is GRANTED;
- 10 2. Plaintiff's motion to compel (ECF Nos. 126 & 129) is GRANTED in part and
11 DENIED in part, consistent with this order;
- 12 3. Within fourteen (14) days of this order, Defendants are DIRECTED to:
- 13 a. Provide Plaintiff with the CDCR number and current institution of
14 inmate Siordia and Plaintiff's January 19, 2011 cellmate (Interrogatory
15 Nos. 12 & 17);
- 16 b. File with the Court and serve on Plaintiff a privilege log or declaration
17 describing the confidential documents that have been withheld, as well
18 as an affidavit supporting the asserted privilege, as described in this
19 order;
- 20 c. Submit to the Court for *in camera* review:
- 21 i. Documents relating to disciplinary actions or findings of misconduct
22 against any Defendant for the acts alleged in this lawsuit (RPD No.
23 8); and
- 24 ii. Confidential documents contained within Plaintiff's prison record
25 that Defendants relied on during the January 19, 2011 hearing
26 (RPD No. 1);
- 27 d. If necessary, file a proposed protective order for the documents
28

1 referred to herein; and

2 4. Failure to comply with this order may result in sanctions.

3
4 IT IS SO ORDERED.

5 Dated: December 11, 2016

6 /s/ Michael J. Seng
7 UNITED STATES MAGISTRATE JUDGE