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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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11 GREGORY A. FRANKLIN,)	Civil No. 09cv1067 MMA(RBB)
)	
12 Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART PLAINTIFF'S
13 v.)	MOTIONS TO COMPEL DEFENDANTS
)	TO ANSWER PLAINTIFF'S
14 LARRY SMALLS, R. DAVIS, R.)	INTERROGATORIES AND REQUESTS
MADDEN, J. VARGAS, E. HALEY, E.)	FOR ADMISSION [ECF NOS. 102,
15 HOPPER, S.F. ARIAS,)	130]
)	
16 Defendants.)	
_____)	

17

18 Plaintiff Gregory Franklin, a California prisoner proceeding
 19 pro se and in forma pauperis, filed an action under 42 U.S.C. §
 20 1983 [ECF Nos. 1, 3], which now proceeds against Defendants Arias,
 21 Davis, Haley, Hopper, Maciel, Madden, Small, Trujillo, and Vargas
 22 for violations of the First, Eighth, and Fourteenth Amendments.¹
 23 (See Fourth Am. Compl. 1-2 ECF No. 79.) In his Fourth Amended
 24 Complaint, Franklin alleges that Defendants retaliated against him

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26

27 ¹ These Defendants have successfully moved to dismiss several
 28 causes of action over the course of the litigation [ECF Nos. 74,
 89].

1 after he sued them in 2007. (Id. at 4-5.)² He also complains that
2 his right to be free from cruel and unusual punishment was violated
3 when he was subjected to constant illumination from a "big cell
4 light" located right above his bunk. (Id. at 16.) After
5 Defendants Vargas, Arias, Hopper, Trujillo, Madden, Davis, and
6 Small filed an Answer [ECF No. 90], the Court conducted a case
7 management conference [ECF No. 92], and the parties commenced
8 discovery.

9 Franklin contends that he served his first set of
10 interrogatories and requests for admission in January 2012. ([Am.]
11 Mot. Compel 2, ECF No. 130.) Defendants responded with objections
12 to each discovery request on March 14, 2012. (Id.) On April 19,
13 2012, Plaintiff sent two meet-and-confer letters to defense counsel
14 where he requested additional responses to his interrogatories and
15 requests for admission. (Id.; see id. Attach. #1 Ex. C, at 7,
16 26.) Defendants then served substantive interrogatory responses.
17 (Id. (citing Id. Attach. #1 Ex. D).)

18 Plaintiff's "Motion to Compel Defendants to Answer
19 Plaintiff['s] Interrogatories and Request[s] for Admissions" was
20 filed nunc pro tunc to May 18, 2012 [ECF No. 102]. There, Franklin
21 urges that the answers provided by Defendants were nonresponsive
22 and evasive. (Mot. Compel 2, ECF No. 102 (citing id. Ex. D).)

23 Defendants filed their "Opposition to Plaintiff's Motion to
24 Compel Defendants to Answer Plaintiff's Interrogatories and
25 Requests for Admission" on June 18, 2012, along with a Separate

26
27 ² Because the Plaintiff's Fourth Amended Complaint, Motion to
28 Compel, and [Amended] Motion to Compel are not consecutively
paginated, the Court will cite to each using the page numbers
assigned by the Court's electronic case filing system.

1 Statement and Declaration of Robert Borg [ECF No. 116].³ In
2 addition to raising objections, Defendants Madden, Davis, Hopper,
3 Arias, Vargas, Trujillo, and Small argue that the Motion should be
4 denied because Plaintiff failed to quote each interrogatory in full
5 in his Motion, violating Local Rule 33.1(b)). (Opp'n 7, ECF No.
6 116.)

7 Franklin later submitted another motion to compel which was
8 filed nunc pro tunc to August 13, 2012 [ECF No. 130]. This second
9 Motion to Compel is identical to Plaintiff's first Motion, with the
10 exception of an added two-page memorandum of points and
11 authorities. (Compare Mot. Compel 1-9, ECF No. 102, with [Am.]
12 Mot. Compel 1-11, ECF No. 130). The Amended Motion to Compel
13 supersedes the original. Cf. Hal Roach Studios, Inc. v. Richard
14 Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990) (stating that
15 whether party was named in original complaint was irrelevant
16 because amended complaint superseded the original complaint).

17 On September 4, 2012, Defendants filed a "Response/Opposition
18 to Plaintiff's Additional Papers Presented in Connection with his
19 Motion to Compel Defendants to Answer Interrogatories and Requests
20 for Admission" (hereinafter Defendants' "Response") along with a
21 memorandum of points and authorities [ECF No. 133]. They also
22 filed a "Motion for Summary Judgment or Alternatively Partial
23 Summary Judgment" on June 11, 2012, which is pending before United
24 States District Court Judge Michael M. Anello [ECF No. 105].

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26 ³ Because the exhibits attached to Defendants' Opposition to
27 Plaintiff's Motion to Compel and Response/Opposition to Plaintiff's
28 Additional Papers [ECF Nos. 116, 133] are not consecutively
paginated, the Court will cite to each using the page numbers
assigned by the Court's electronic case filing system.

1 To date, Plaintiff has not filed a reply to Defendants'
2 Opposition or Response. The Court finds both of Plaintiff's
3 Motions to Compel suitable for resolution on the papers, pursuant
4 to Civil Local Rule 7.1. See S.D. Cal. Civ. R. 7.1(d)(1). The
5 Court has reviewed Franklin's Motions, Defendants' Opposition, and
6 Defendants' Response. For the reasons stated below, the Court
7 **GRANTS** in part and **DENIES** in part Plaintiff's "[Amended] Motion to
8 Compel Defendants to Answer Plaintiff['s] Interrogatories and
9 Request[s] for Admissions" [ECF No. 130].

10 I. FACTUAL BACKGROUND

11 The allegations in the Fourth Amended Complaint surround
12 events that occurred while Franklin was housed at Calipatria State
13 Prison ("Calipatria"). (Fourth Am. Compl. 1, ECF No. 79.) The
14 Plaintiff contends that after filing a lawsuit against Defendants
15 in 2007, they retaliated against him on several occasions. (See
16 generally id. at 4-15.) Specifically, Franklin claims that the
17 acts of retaliation include (1) being punished for covering a light
18 in his cell; (2) Defendant Vargas forging Plaintiff's signature and
19 stealing mailing envelopes that Franklin was entitled to as an
20 indigent inmate; (3) charging him with committing a "serious rule
21 violation" rather than an administrative violation for calling
22 Defendant Arias a "stupid motherfucker"; 4) Defendant Reyes
23 preventing Franklin and other inmates from returning to their cells
24 from the yard, and then punishing only Franklin for failing to
25 return to his cell in a timely manner; (5) denying him recreation
26 time on August 12, 2007; (6) Defendant Maciel stealing a personal
27 package from Plaintiff; and (7) placing him on "C-status" after
28 allegedly committing two serious rule violations, which Franklin

1 believes were unfounded. (Id. at 6-14.) Finally, Plaintiff
2 maintains that his right to be free from cruel and unusual
3 punishment was violated when he was subjected to constant
4 illumination from a fluorescent lightbulb located above the bunk in
5 his cell. (Id. at 16.)

6 **II. LEGAL STANDARDS**

7 It is well established that a party may obtain discovery
8 regarding any nonprivileged matter that is relevant to any claim or
9 defense. Fed. R. Civ. P. 26(b)(1). Relevant information need not
10 be ultimately admissible at trial so long as the discovery appears
11 to be reasonably calculated to lead to the discovery of admissible
12 evidence. Id. Relevance is construed broadly to include any
13 matter that bears on, or reasonably could lead to other matter that
14 could bear on, any issue that may be in the case. See Oppenheimer
15 Fund, Inc. v. Sanders, 437 U.S. 340, 350-51 (1978) (footnote
16 omitted) (citing Hickman v. Taylor, 329 U.S. 495, 501 (1947)
17 (discussing relevance to a claim or defense, although decided under
18 1978 version of Rule 26 that authorized discovery relevant to the
19 subject matter of the action). Rule 37 of the Federal Rules of
20 Civil Procedure enables the propounding party to bring a motion to
21 compel responses to discovery. Fed. R. Civ. P. 37(a)(3)(B). The
22 party opposing discovery bears the burden of resisting disclosure.
23 Miller v. Pancucci, 141 F.R.D. 292, 299 (C.D. Cal. 1992).

24 "In general, pro se representation does not excuse a party
25 from complying with a court's orders and with the Federal Rules of
26 Civil Procedure." Ackra Direct Mktg. Corp. v. Fingerhut Corp., 86
27 F.3d 852, 856-57 (8th Cir. 1996) (citing Jones v. Phipps, 39 F.3d
28 158, 163 (7th Cir. 1994); Anderson v. Home Ins. Co., 724 F.2d 82,

1 84 (8th Cir. 1983)). Above all, plaintiffs who choose to represent
2 themselves are expected to follow the rules of the court in which
3 they litigate. Carter v. Comm'r, 784 F.2d 1006, 1008-09 (9th Cir.
4 1986); see also Bias v. Moynihan, 508 F.3d 1212, 1223 (9th Cir.
5 2007) (discussing the pro se litigant's untimely filing in
6 violation of local rules). "[W]hile pro se litigants may be
7 entitled to some latitude when dealing with sophisticated legal
8 issues, acknowledging their lack of formal training, there is no
9 cause for extending this margin to straightforward procedural
10 requirements that a layperson can comprehend as easily as a
11 lawyer." Jourdan v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991).

12 III. DISCUSSION

13 A. Timeliness

14 On February 27, 2012, this Court extended the parties'
15 discovery cutoff date from April 16, 2012, to May 14, 2012. (Order
16 Granting Ex Parte Appl. 2, ECF No. 95.) Plaintiff's initial Motion
17 to Compel was filed nunc pro tunc to May 18, 2012 -- four days
18 after the new deadline. (Mot. Compel 1, ECF No. 102.) The proof
19 of service attached to Franklin's Motion, however, is dated May 14,
20 2012. (See id. at 10.) Under the mailbox rule, a legal document
21 is deemed filed on the date a prisoner delivers it to the prison
22 authorities for mailing to the court. Houston v. Lack, 487 U.S.
23 266, 270-72 (1988). Plaintiff mailed his first motion to compel
24 before the discovery cutoff, so the motion is timely. See Anaya v.
25 Campbell, No. CIV S-07-0029 GEB BBH P, 2009 WL 2390599, at *1 (E.D.
26 Cal. Aug. 3, 2009) (applying mailbox rule when prisoner mailed
27 motion to compel on discovery cutoff date).

28

1 Franklin's second Motion to Compel was filed nunc pro tunc to
2 August 13, 2012. ([Am] Mot. Compel 1, ECF No. 130.) This filing
3 was after the May 14, 2012 deadline. (See Order Granting Ex Parte
4 Appl. 2, ECF No. 95.) In light of Plaintiff's pro se status, and
5 because his second motion to compel is virtually identical to the
6 first, the Court will consider the merits of the amended motion.
7 See McCowan v. Educ. Servs. of Am., No. 1:08-CV-55, 2009 WL
8 3055313, at *2 (N.D. Ind. Sept. 21, 2009) (addressing merits of pro
9 se litigant's motion to compel despite its untimeliness); See
10 United States v. Select Aviation Corp., No. CV 05-1815(JS)(ARL),
11 2006 WL 2711545, at *1 (E.D. N.Y. Sept. 20, 2006) (same).
12 Moreover, in their Response to Franklin's second motion, Defendants
13 do not argue that the motion should be denied as untimely. (See
14 generally Resp. 2-5, ECF No. 133.)

15 **B. Meet-and-Confer Requirement**

16 As previously noted, after receiving Defendants' initial
17 objections, Plaintiff sent two meet-and-confer letters to
18 Defendants on April 19, 2012. (See [Am.] Mot. Compel Attach. #1
19 Ex. C, at 6-35, ECF No. 130.) Defendants subsequently served their
20 interrogatory answers on April 23, 2012. (Opp'n 5, ECF No. 116.)
21 Defense counsel responded to Franklin's meet-and-confer letter with
22 a letter of his own. (Id. at 5-6.) Defense counsel made no
23 attempt to meet with Plaintiff in person. (Id.) Franklin filed
24 his motion to compel less than a month later. (Mot. Compel 10, ECF
25 No. 102.)

26 According to the local rules, "The court will entertain no
27 motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless
28

1 counsel shall have previously met and conferred concerning all
2 disputed issues." S.D. Cal. Civ. R. 26.1(a). "If counsel
3 have offices in the same county, they are to meet in person. If
4 counsel have offices in different counties, they are to
5 confer by telephone." (Id.) The local rules further provide that
6 "[u]nder no circumstances may the parties satisfy the meet-and-
7 confer requirement by exchanging written correspondence." (Id.)

8 Rules requiring meet-and-confer efforts apply to pro se
9 litigants. Madsen v. Risenhoover, No. C 09-5457 SBA (PR), 2012
10 U.S. Dist. LEXIS 90810, at *8-9 (N.D. Cal. June 28, 2012) (finding
11 that the meet-and-confer requirement applies to incarcerated
12 individuals, but noting that the incarcerated plaintiff may send a
13 letter to defendants); Walker v. Ryan, No. CV-10-1408-PHX-JWS
14 (LOA), 2012 U.S. Dist. LEXIS 63606, at *5-6 (D. Ariz. May 7, 2012)
15 (denying motion to compel where unrepresented party did not include
16 a certification of attempts to meet and confer); see Jourdan v.
17 Jabe, 951 F.2d 108, 109 (6th Cir. 1991) (discussing that although
18 courts should liberally construe pro se plaintiffs' pleadings and
19 legal arguments, this liberality does not apply to compliance with
20 straightforward procedural requirements).

21 A court can deny a motion to compel solely because of a
22 party's failure to meet and confer prior to filing the motion.
23 Scheinuck v. Sepulveda, No. C 09-0727 WHA (PR), 2010 U.S. Dist.
24 LEXIS 136529, at *3-4 (N.D. Cal. Dec. 15, 2010); see Shaw v. Cnty.
25 of San Diego, No. 06-CV-2680-IEG (POR), 2008 U.S. Dist. LEXIS
26 80508, at *3-4 (S.D. Cal. Oct. 9, 2008) (denying plaintiff's motion
27 to compel for failing to attempt to meet and confer). Nonetheless,
28 courts can still decide a motion on the merits despite a failure to

1 meet and confer. See Marine Group, LLC v. Marine Trvelift, Inc.,
2 No. 10cv846-BTM (KSC), 2012 U.S. Dist. LEXIS 49064, at *6-7 (S.D.
3 Cal. Apr. 6, 2012) (explaining failure to meet and confer is
4 grounds for denying a motion, but still addressing the merits).

5 Franklin is currently incarcerated in the California State
6 Prison, located in Lancaster, which is in Los Angeles County. (See
7 [Am.] Mot. Compel 1, ECF No. 130.) Defense counsel's office is
8 also located in Los Angeles County. (See Opp'n 1, ECF No. 116.)
9 Accordingly, the parties failed to properly meet and confer in
10 person. Franklin's incarcerated status limits his ability to meet
11 and confer in person, but not defense counsel's. Furthermore,
12 defense counsel did not ask to be excused from this obligation.
13 See Kunkel v. Dill, No. 1:09-cv-00686-LJO-SKO PC, 2010 U.S. Dist.
14 LEXIS 121754, at *8 (E.D. Cal. Nov. 2, 2010) (stating that counsel
15 must make themselves reasonably available to the incarcerated party
16 in person, via telephone, or via video conference for a meet and
17 confer); See Beckner v. El Cajon Police Dept., 07cv509-W (BLM),
18 2008 WL 2033708, at *3 n.2 (S.D. Cal. May 9, 2008) ("In light of
19 the circumstances, particularly Plaintiff's incarceration . . . the
20 Court does not find that justice, efficiency, or economy would have
21 been furthered by requiring the parties to meet in person or speak
22 on the phone.") Franklin attempted to confer with counsel by
23 sending the two meet-and-confer letters. Defense counsel's failure
24 to follow local rules will not preclude Plaintiff's Amended Motion
25 to Compel. See Marine Group LLC, 2012 U.S. Dist. LEXIS 49064, at
26 *7. Moreover, Defendants do not allege that Franklin's Motion
27 should be denied on this basis. (See Opp'n 2, ECF No. 116.) Both
28 parties are now on notice, however, that additional discovery

1 motions will not be entertained absent certification by the moving
2 party of compliance with the meet-and-confer requirement or an
3 order excusing compliance with this local rule. See S.D. Cal. Civ.
4 R. 26.1(a).

5 **C. Interrogatories**

6 Plaintiff asks the Court to grant his Motion to Compel because
7 the "overwhelming majority of [Defendants'] respon[se]s were non-
8 responsive and evasive." ([Am.] Mot. Compel 2-3, ECF No. 130
9 (citing id. Ex. D).) Franklin states that he will "show the Court
10 what answers are satisfactory and non-satisfactory[.]" (Id. at 2.)
11 Plaintiff then classifies almost all of Defendants' interrogatory
12 responses into one of four categories: (1) "Ask and answer"; (2)
13 "Unsatisfactory respond [sic], did not refer to records"; (3) "Ask,
14 unsatisfactory answer"; or (4) "Unsatisfactory respond [sic], did
15 not refer to record for accurate respond [sic]." (Id. at 3-9.)

16 Franklin acknowledges that some of Defendants' responses were
17 "satisfactory." (Id. at 2.) Three of Plaintiff's four
18 classifications include the word "unsatisfactory." (See id. at 3-
19 9.) Although not completely clear, the Court will construe
20 Franklin's reference to "ask and answer" to mean that Plaintiff has
21 deemed the answer sufficient.⁴ The Court will not consider these
22 interrogatories in its ruling on the Amended Motion to Compel.

23 Defendants generally contend that Franklin's motion to compel
24 should be denied because Defendants' responses were sufficient
25 because they complied with Rule 37 and were answered in full.

27 ⁴ This is also consistent with Defendants' interpretation of
28 Plaintiff's moving papers. (See Opp'n Attach. #3 Separate
Statement 2, ECF No. 116.)

1 (Opp'n 7-8, ECF No. 116.) They also allege that no records exist
2 to supplement their responses. (Id. at 8.) To the extent records
3 do exist, Defendants argue that providing further responses would
4 be burdensome and needlessly increase the cost of litigation
5 because the California Department of Corrections and Rehabilitation
6 ("CDCR") "does not keep records in a manner that allows for such
7 information to be readily accessible." (Id. at 9.) Next,
8 Defendants maintain that their responses are sufficient because
9 some of Plaintiff's interrogatories assume facts that are in
10 dispute. (Id. at 10.) Finally, they urge that providing further
11 responses would not assist Franklin in proving his claims. (Id. at
12 11.) In their reply memorandum, titled a Response, Defendants
13 reiterate that they have provided "full and complete" responses to
14 Plaintiff's interrogatories, and they argue that Franklin has not
15 shown that further responses are warranted. (Resp. 2, ECF No.
16 133.)

17 **1. Compliance with Local Rule 33.1(b)**

18 Although defense counsel failed to meet and confer in person
19 with Plaintiff concerning this discovery dispute, in Defendants'
20 Opposition, they maintain that Franklin's Motion to Compel should
21 be denied because Franklin failed to comply with the local rules.
22 (Opp'n 7, ECF No. 116.) Specifically, Plaintiff failed to quote
23 each interrogatory in full in his moving papers. (Id.)

24 Pursuant to Local Rule 33.1(b), "[O]bjections to answers to
25 interrogatories . . . must identify and quote each interrogatory in
26 full immediately preceding the statement of any answer or objection
27 thereto." S.D. Cal. Civ. R. 33.1(b). In the body of his Motion,
28 Franklin does not quote each interrogatory. (See generally [Am.]

1 Mot. Compel 1-9, ECF No. 130.) Yet, he attaches a copy of the
2 interrogatories, Defendants' objections, and Defendants' responses
3 as exhibits to his Motion. (See id. Exs. A, D.) In light of
4 Franklin's pro se status, the Court will consider his Motion to
5 Compel despite the failure to comply with local rules. See Delange
6 v. Dutra Const. Co., 183 F.3d 916, 919 n.2. (9th Cir. 1999) (per
7 curiam) ("District courts 'have broad discretion in interpreting
8 and applying their local rules.'") (quoting Miranda v. S. Pac.
9 Transp., 710 F.2d 516, 521 (9th Cir. 1983)). Plaintiff is again
10 advised, however, that even as a pro se litigant he still must
11 adhere to the local rules. See S.D. Cal. Civ. R. 83.11(a). His
12 continued failure to comply with these rules may be grounds for
13 dismissal or judgment by default. See id.

14 **2. Objections that Defendants do not pursue**

15 **a. Hopper interrogatory 5 and Trujillo interrogatories**
16 **8-10**

17 In interrogatory 5, Franklin asks Hopper, "On August 12, 2007,
18 did Officer Haley or Officer Trujillo call you stating Plaintiff is
19 requesting to speak with you in regard to being disallowed the
20 recreation yard and confined to his cell?" ([Am.] Mot. Compel
21 Attach. #1 Ex. D, at 56, ECF No. 130.) Hopper objected that the
22 question was vague and irrelevant. (Id. at 57.)

23 In Trujillo interrogatory 8, Franklin asks, "On August 12,
24 2007, did Sgt. Hopper tell you not to allow Plaintiff to the
25 recreation yard and confine him to his cell?" (Id. at 66.)
26 Plaintiff asks Trujillo in interrogatory 9, "On August 12, 2007,
27 did Plaintiff request to speak to Sgt. Hopper about being
28 disallowed to the recreation yard and being confined to his cell?"

1 (Id.) Interrogatory 10, addressed to Trujillo, asks, "On August
2 12, 2007, did you confine Plaintiff to his cell at Sgt. Hopper's
3 request?" (Id. at 67.) Trujillo objected that the questions were
4 vague, overbroad, and irrelevant. (Id. at 66-67.)

5 Both Defendants provided similar responses and answered
6 either, "I don't recall" or "I don't know." (Id. at 57, 66-67.)
7 Franklin now moves to compel further responses to these
8 interrogatories on the basis that Defendants did not refer to
9 appropriate prison records in their responses. ([Am.] Mot. Compel
10 5-6, ECF No. 130.)

11 Although Defendants raised multiple objections when initially
12 responding to the interrogatories, the Court will only address the
13 ones they elected to pursue when opposing this Motion. See Bryant
14 v. Armstrong, 08cv02318 W(RBB), 2012 WL 2190774, at *6 (S.D. Cal.
15 June 14, 2012) (acknowledging only those objections pursued in
16 opposing the motion). In their Opposition, Defendants do not argue
17 in support of these objections. (See Opp'n Attach. #3 Separate
18 Statement 23-25, 30, ECF No. 116.) Rather, they contend that their
19 responses are sufficient because they do not recall whether the
20 events referred to in the interrogatories took place. (Id.)
21 Further, they urge that a review of Franklin's central file and
22 pertinent records reveals no evidence of the alleged conversations.
23 (Id.)

24 "A party answering interrogatories has an affirmative duty to
25 furnish any and all information available to the party." 7 James
26 Wm. Moore et al., Moore's Federal Practice § 33.102[1], at 33-72
27 (3rd ed. 2012) (footnote omitted). Interrogatories must be
28 answered "separately and fully in writing under oath." Fed. R.

1 Civ. P. 33(b)(3). If a responding party is unable to provide the
2 requested information, he may not simply refuse to answer. Haworth
3 v. Suryakant, No. 1:06-cv-1373-LJO-NEW(TAG), 2007 U.S. Dist. LEXIS
4 48380, at *5 (E.D. Cal. June 25, 2007) (citing Hansel v. Shell Oil
5 Corp., 169 F.R.D. 303, 305 (E.D. Pa. 1996)). The responding party
6 must state under oath that he is unable to answer the interrogatory
7 and must describe the efforts made to obtain the answer. Id.
8 (citing Hansel, 169 F.R.D. at 305); see also 7 James Wm. Moore et
9 al., Moore's Federal Practice § 33.102[3], at 33-75 (footnote
10 omitted).

11 Here, although Defendants have verified their responses to
12 Franklin's interrogatories under oath, they did not explain under
13 oath why they are unable to provide the information requested, nor
14 do they describe the efforts made to obtain the information. Their
15 subsequent explanations were unverified and made by defense counsel
16 in opposition to this Motion to Compel. This is not in compliance
17 with Rule 33 of the Federal Rules of Civil Procedure.

18 **i. Declaration of Robert Borg**

19 Defendant Hopper asserts that his response to interrogatory 5
20 is sufficient in light of Robert Borg's Declaration, which was
21 filed as an attachment to the Opposition. (Opp'n Attach. #3
22 Separate Statement 30, ECF No. 116 (citing id. Attach. #2 Decl.
23 Borg).) Defendant represents that his response is sufficient
24 because Borg reviewed Franklin's file and submitted a declaration
25 attesting to his findings. (Id.)

26 Borg describes himself as an expert hired to provide testimony
27 concerning this lawsuit. (Id. Attach. #2 Decl. Borg 1.) He
28 indicates that his "experience and education gives [him] an

1 understanding and an expertise to render informed opinions in this
2 case" (Id. at 2.) He does not, however, explain his
3 experience or educational background, so there is no reason to
4 conclude that he qualifies as an expert to opine in this case.

5 In the declaration, Borg discusses the difficulty of obtaining
6 the information Franklin seeks in the prison records system. (Id.
7 at 3-5.) He also attests that he has conducted a review of
8 Plaintiff's file and has uncovered no evidence lending support to
9 Franklin's claims against the Defendants. (Id. at 2-5.)

10 Interrogatories must, to the extent they are not objected to,
11 be answered under oath by the party to whom they are directed.
12 Fed. R. Civ. Pro. 33(b)(1), (3). Further, if a responding party
13 wishes to supplement his responses, he must do so under oath. See
14 Knights Armament Co. v. Optical Sys. Tech., Inc., 254 F.R.D 463,
15 466-67 (M.D. Fla. 2008), aff'd, 254 F.R.D. 470 (M.D. Fla. 2008)
16 (affirming sanction). Accordingly, to the extent Borg's
17 Declaration is offered to relieve Defendants of the obligation to
18 provide complete answers under oath, it will not suffice. If
19 Defendants wish to supplement their responses, each must do so
20 under oath. Plaintiff's Motion to Compel further responses to
21 Hopper interrogatory 5 and Trujillo interrogatories 8-10 [ECF No.
22 130] is therefore **GRANTED**.

23 **b. Hopper interrogatories 3 and 4**

24 Franklin asks Hopper in interrogatory 3, "Did you tell Officer
25 Trujillo and Officer Haley, in A-2 building on August 12, 2007, to
26 not allow Plaintiff to go to the outside recreation yard on A-yard
27 at Calipatria State Prison?" ([Am.] Mot. Compel Attach. #1 Ex. D,
28 at 55, ECF No. 130.) Plaintiff inquires in Hopper interrogatory 4,

1 "On August 12, 2007, did you tell Officer Trujillo and Officer
2 Haley to confine Plaintiff to his cell on A-facility at Calipatria
3 State Prison?" (Id. at 56.) Defendant objected that both
4 questions were vague and irrelevant. (Id. at 55-56.)

5 Hopper responded to both interrogatories by stating, "I don't
6 recall. If plaintiff wasn't allowed to go to the outside
7 recreation yard there may have been numerous reasons why he
8 couldn't go and I don't know what the specific reason was, if this
9 event even happened." (Id. at 56.) Franklin now moves to compel
10 and argues that Hopper did not refer to appropriate prison records
11 in his responses. ([Am.] Mot. Compel 6, ECF No. 130.)

12 In his Opposition to both interrogatories, Hopper contends
13 that his response is sufficient because he does not remember the
14 alleged conversations occurring, and a review of Plaintiff's
15 central file yielded no evidence that Defendant confined Franklin
16 to his cell or did anything to cause him pain and suffering.
17 (Opp'n Attach. #3 Separate Statement 28-29, ECF No. 116 (citing to
18 id. Decl. Borg Attach. #2).) Hopper maintains that Franklin's
19 "insistence on a further response borders on harassment." (Id.)

20 As discussed above, in addition to stating that he does not
21 recall the events in question, Hopper must describe under oath why
22 he is unable to provide the information requested and describe the
23 efforts made to obtain the information. Borg's Declaration does
24 not relieve Hopper of the obligation to provide his answers under
25 oath. Plaintiff is entitled to supplemental, verified responses,
26 and the Motion to Compel further responses to interrogatories 3 and
27 4 [ECF No. 130] is **GRANTED**.

28

1 **c. Trujillo interrogatory 1**

2 In Trujillo interrogatory 1, Plaintiff asks, "How long did you
3 work at Calipatria State Prison? (Please give dates.)" ([Am.] Mot.
4 Compel Attach. #1 Ex. D, at 62, ECF No. 130.) Defendant objected
5 on privacy and privilege grounds. (Id.) He also argued that the
6 question was unrelated to any claim or defense of any party. (Id.)

7 Still, Trujillo responded by stating, "About 9 years. I don't
8 remember exactly." (Id. at 63.) Franklin moves to compel on the
9 basis that Trujillo did not refer to appropriate prison records in
10 his response. ([Am.] Mot. Compel 4, ECF No. 130.)

11 Defendant states that he did not remember exactly when he
12 began working at Calipatria, yet his answer is sufficient because
13 the nine-year period covers the incidents in question and
14 corresponds to the Plaintiff's stay at Calipatria. (Opp'n Attach.
15 #3 Separate Statement 17, ECF No. 116.) In the Opposition,
16 Trujillo further submits that upon further investigation he began
17 working at Calipatria in January or February of 2002. (Id.)

18 Here, Franklin asks Trujillo to provide the dates that he was
19 employed at Calipatria State Prison. Defendant did not provide
20 this supplemental information under oath. For this reason,
21 Defendant's response is insufficient, and the Motion to Compel a
22 further response to Trujillo's interrogatory 1 [ECF No. 130] is
23 **GRANTED.**

24 **d. Madden interrogatory 10**

25 Franklin inquires in Madden interrogatory 10, "Why was
26 Plaintiff found guilty of a serious rule violation for calling an
27 officer a stupid motherfucker?" ([Am.] Mot. Compel Attach. #1 Ex.
28 D, at 79, ECF No. 130.) Defendant objected that the question was

1 vague, overbroad, unduly burdensome, calls for a legal conclusion,
2 and is unrelated to any claim or defense. (Id. at 79-80.)

3 Captain Madden then answered by stating, "I wasn't the senior
4 hearing officer. He probably was found guilty because
5 disrespecting an officer is a serious rule violation." (Id. at
6 80.) In his Motion to Compel, Plaintiff states "R. Madden,
7 interrogatory no. 10 unsatisfactory answer, chairperson of the
8 committee that used the rule violation for C-status, did not refer
9 to records [sic]." ([Am.] Mot. Compel. 8, ECF No. 130.) It is
10 unclear why Franklin feels a further response is required.

11 Defendant urges that his response is sufficient because
12 Plaintiff's interrogatory calls for a qualitative answer --
13 Madden's opinion. (Opp'n Attach. #3 Separate Statement 50, ECF No.
14 116.) He contends that the question "affords Captain Madden much
15 discretion in answering." (Id.)

16 In his answer, Madden does not clarify why he is unable to
17 report the basis given for finding Franklin guilty of a serious
18 rule violation, even if he was not the "senior hearing officer."
19 Further, he does not articulate under oath any efforts made to
20 obtain the information needed to answer the interrogatory.
21 Accordingly, the Motion to Compel a further response to Madden
22 interrogatory 10 [ECF No. 130] is **GRANTED**.

23 **e. Vargas interrogatory 16**

24 Franklin asks in Vargas interrogatory 16, "Have you passed out
25 or distributed inmates' indigent envelopes in the past or present
26 in A-2 Building at Calipatria State Prison?" ([Am.] Mot. Compel
27 Attach. #1 Ex. D, at 116, ECF No. 130.) Defendant objected that
28 the question was vague, overbroad, and irrelevant. (Id.) He then

1 responded by stating, "Yes. Almost once a month." (Id. at 117.)
2 Franklin moves to compel on the basis that Vargas did not refer to
3 appropriate prison records in his response. ([Am.] Mot. Compel 3,
4 ECF No. 130.)

5 In Opposition, Plaintiff alleges that he answered Plaintiff's
6 question by admitting that he distributed inmates' indigent
7 envelopes in the past. (Opp'n Attach. #3 Separate Statement 14,
8 ECF No. 116.) Defendant has sufficiently responded to Franklin's
9 interrogatory. Accordingly, the Motion to Compel a further
10 response to Vargas interrogatory 16 [ECF No. 130] is **DENIED.**

11 **3. Interrogatories where objections were waived**

12 **a. Vargas interrogatory 15**

13 Plaintiff inquires in Vargas interrogatory 15, "What officers
14 were working with you on third watch in A-2 Building at Calipatria
15 State Prison, on July 18, 2007 and July 25, 2007?" ([Am.] Mot.
16 Compel Attach. #1 Ex. D, at 116, ECF No. 130.) Vargas objected
17 that the question was vague, overbroad, and irrelevant. (Id.)

18 Defendant answered by stating, "I don't know." (Id.)
19 Franklin moves to compel because Vargas did not refer to
20 appropriate prison records in his response. ([Am.] Mot. Compel 4,
21 ECF No. 130.)

22 **i. Waived objections**

23 In his Opposition, Vargas contends that acquiring prison
24 records would needlessly add to the cost of litigation. (Opp'n
25 Attach. #3 Separate Statement 14, ECF No. 116.) The Federal Rules
26 of Civil Procedure provide that any ground for objection to an
27 interrogatory that is not stated in a timely manner is waived
28 unless the party's failure to object is excused by the court for

1 good cause shown. Fed. R. Civ. P. 33(b)(4); see Mancia v.
2 Mayflower Textile Svcs. Co., 253 F.R.D. 354, 359 (D. Md. 2008).
3 Objections generally must be served within 30 days of the service
4 of the interrogatories. Fed. R. Civ. P. 33(b)(2). Vargas did not
5 initially object on the ground that procuring the records needed to
6 answer this interrogatory would needlessly increase the cost of
7 litigation. (Compare [Am.] Mot. Compel Attach. #1 Ex. D, at 116,
8 ECF No. 130, with Opp'n Attach. #3 Separate Statement 14, ECF No.
9 116.) Furthermore, this objection was made without determining
10 whether any responsive records exist or what efforts would be
11 required to locate them. (See Opp'n Attach. #3 Separate Statement
12 13-14, ECF No. 116.) Vargas waived this belated and conclusory
13 objection.

14 **ii. Sufficiency of Vargas's response**

15 Next, Vargas argues that his response is sufficient because
16 (1) he does not know who was working with him on July 18 and 25,
17 2007; (2) he has no documents in his possession that contain the
18 information; and (3) assuming he could find relevant work schedules
19 reflecting who he was working with on those days, prison staffing
20 changes daily, so there is no guarantee that the work schedules
21 would be accurate. (Opp'n Attach. #3 Separate Statement 13-14, ECF
22 No. 116 (citing id. Decl. Borg Attach. #2).) Again, these
23 statements were not made under oath. Defendant has failed to
24 provide the information requested by Franklin, and he has failed to
25 state under oath why he is unable to provide it. Borg's statements
26 do not relieve Vargas of the obligation to do so. The Motion to
27 Compel a further response to Vargas interrogatory 15 [ECF No. 130]
28 is **GRANTED**.

1 **b. Davis interrogatory 1**

2 In Davis interrogatory 1, Plaintiff asks, "How long, from the
3 beginning until the end or departure, were you lieutenant on A-
4 facility at Calipatria State Prison?" ([Am.] Mot. Compel Attach.
5 #1 Ex. D, at 92, ECF No. 130.) Davis objected on privacy and
6 privilege grounds. (Id.) He also objected that the information
7 sought by Franklin was unrelated to any claim or defense. (Id.)
8 Defendant answered by stating, "I don't know. I was there for
9 about nine and a half years as a lieutenant and twenty years in
10 total." (Id. at 93.) Franklin moves to compel on the basis that
11 Davis did not refer to appropriate prison records in his response.
12 ([Am.] Mot. Compel 6, ECF No. 130.)

13 **i. Waived objections**

14 Davis now objects that the interrogatory is vague as to time
15 and that his reference to "'from the beginning until the end or
16 departure' provides no additional clarification." (Opp'n Attach.
17 #3 Separate Statement 32-33, ECF No. 116.) Davis did not initially
18 object on this ground, so the objection was waived.

19 **ii. Sufficiency of Davis's response**

20 Defendant maintains that his answer to interrogatory 1 is
21 sufficient because he has stated how long he has worked as a
22 lieutenant on A-Facility, and his answer covers the time period in
23 question. (Id.) He asserts that in light of his response,
24 conducting further research would be a waste of time and resources.
25 (Id. at 33.) Davis has answered the question asked and stated how
26 long he was a lieutenant in Calipatria's A-Facility. Accordingly,
27 and the Motion to Compel a further response to Davis interrogatory
28 1 [ECF No. 130] is **DENIED**.

1 **c. Trujillo interrogatory 12**

2 In Trujillo interrogatory 12, Plaintiff inquires, "As an
3 employee of California Department of Corrections and
4 Rehabilitation, how many times has a civil complaint been brought
5 against you?" ([Am.] Mot. Compel Attach. #1 Ex. D at 68, ECF No.
6 130.) Defendant objected on privacy, privilege, and relevance
7 grounds. (Id. at 68-69.) He also objected that the interrogatory
8 seeks information unrelated to any claim or defense of any party.
9 (Id. at 69.) Trujillo responded by stating, "This is the only one
10 I know of." (Id.) Franklin moves to compel because Defendant did
11 not refer to appropriate prison records in his response. ([Am.]
12 Mot. Compel 5, ECF No. 130.)

13 **i. Waived objections**

14 In his Opposition, Trujillo objects that the information
15 sought by Plaintiff is a public record. (Opp'n Attach. #3 Separate
16 Statement 27, ECF No. 116.) Defendant, however, did not initially
17 object on this ground. So, as discussed, the objection was waived.

18 **ii. Sufficiency of Trujillo's response**

19 Trujillo then states that it is not uncommon for correctional
20 officers to be sued by inmates for claims relating to their work,
21 and Defendant does not recall if he was previously sued. (Id.)
22 Accordingly, he claims that no further response is warranted.
23 (Id.) In his response, Defendant does not state under oath the
24 steps he took to investigate how many civil complaints have been
25 brought against him. Trujillo's interrogatory answer differs from
26 the statement in his Opposition. In light of the discrepancy, the
27 interrogatory answer is not sufficient. The Motion to Compel a
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1 further response to Trujillo interrogatory 12 [ECF No. 130] is
2 therefore **GRANTED**.

3 **4. Interrogatories objected to on relevance grounds**

4 **a. Trujillo interrogatory 4**

5 In Trujillo interrogatory 4, Franklin asks Defendant, "Did
6 Plaintiff bring two separate civil complaints against you?" ([Am.]
7 Mot. Compel Attach. #1 Ex. D, at 64, ECF No. 130.) Defendant
8 objected that the question was vague, overbroad, and irrelevant.
9 (Id.) Defendant answered the interrogatory by stating, "I don't
10 know." (Id.) Plaintiff moves to compel on the basis that Trujillo
11 did not refer to appropriate prison records in his response.
12 ([Am.] Mot. Compel 5, ECF No. 130.)

13 **i. Relevance**

14 In his Opposition, Defendant contends that the interrogatory
15 seeks irrelevant information. (Opp'n Attach. #3 Separate Statement
16 20, ECF No. 116.) This interrogatory seeks information that is
17 relevant to Franklin's accusation that Trujillo retaliated against
18 Plaintiff after he brought a lawsuit against Defendant in 2007.
19 The existence of a prior lawsuit against Trujillo is the basis for
20 Plaintiff's current retaliation claim. The objection is overruled.

21 **ii. Sufficiency of Trujillo's response**

22 Officer Trujillo submits that Franklin is the best person to
23 determine if he brought two separate suits against Defendant.
24 (Id.) Trujillo also argues that no further response is required
25 because Defendant answered "as best as he could[.]" (Id.) In the
26 context of the claims against him, Trujillo's response is
27 insufficient because he did not state under oath that he is unable
28 to provide the information Plaintiff requests. Nor does he

1 describe under oath the efforts made to obtain the information.
2 The Motion to Compel a further response to Trujillo interrogatory 4
3 [ECF No. 130] is **GRANTED**.

4 **b. Trujillo interrogatory 7**

5 Franklin asks, "Did your supervisor, Sgt. Portellio, tell you
6 that Plaintiff has to be allowed to perform his work assignment and
7 you still refused to allow him to perform his work assignment?"
8 ([Am.] Mot. Compel Attach. #1 Ex. D, at 65, ECF No. 130.)
9 Defendant objected that the question was vague, overbroad, and
10 irrelevant. (Id. at 65-66.) Trujillo answered by stating, "I
11 don't recall." (Id. at 66.) Plaintiff moves to compel because
12 Trujillo did not refer to appropriate prison records in his
13 response. ([Am.] Mot. Compel 5, ECF No. 130.)

14 **i. Relevance**

15 In his Opposition, Trujillo urges that he is not accused of
16 preventing Plaintiff from performing his work assignment. (Opp'n
17 Attach. #3 Separate Statement 22, ECF No. 116.) Rather, he asserts
18 that the only allegation against him is that he prevented Plaintiff
19 from going to the recreation yard on a single day. (Id.) The
20 Court construes this as a relevance objection.

21 In his Complaint, Franklin maintains that Trujillo confined
22 Franklin to his cell on August 12, 2007. (Fourth Am. Compl. 10,
23 ECF No. 79.) Plaintiff does not allege that Trujillo prevented him
24 from working. Nevertheless, refusing to permit Franklin to go to
25 the recreation yard or his work assignment is relevant to
26 Plaintiff's retaliation claim. Defendant also objects that the
27 interrogatory is vague. (Opp'n Attach. #3 Separate Statement 22,
28 ECF No. 116.) This objection is overruled, and the Motion to

1 Compel a further response to Trujillo interrogatory 7 [ECF No. 130]
2 is **GRANTED**.

3 **c. Warden Small interrogatories 4 and 5**

4 In interrogatory 4 to Warden Small, Franklin inquires, "How
5 many general population maximum security level facilities in the
6 California Department of Corrections and Rehabilitation [have] you
7 worked or [were] employed [at that] had a large cell light or
8 ceiling cell light that did no[t] ever cut-off and produce[d]
9 constant illumination?" ([Am.] Mot. Compel Attach. #1 Ex. D, at
10 40, ECF No. 130.) In interrogatory 5, Franklin asks Defendant to
11 provide him with the names of the facilities. (Id. at 41.)

12 Defendant objected to both interrogatories on privacy,
13 privilege, and relevance grounds. (Id. at 40-42.) He also
14 objected that the questions were vague, overbroad, unduly
15 burdensome, and unrelated to any claim or defense. (Id. at 41-42.)
16 Small answered interrogatory 4 by stating, "I do not recall." (Id.
17 at 41.) He answered interrogatory 5 by stating, "I don't know."
18 (Id. at 42.) Franklin moves to compel because Small did not refer
19 to appropriate prison records in his response to interrogatory 4.
20 ([Am.] Mot. Compel 9, ECF No. 130.) He moves to compel a further
21 response to interrogatory 5 on the basis that Small did not refer
22 to the appropriate "record or staff." (Id.)

23 **i. Relevance**

24 Small objects to both on relevance grounds because none of
25 Plaintiff's claims concern constant illumination in other prisons.
26 (Opp'n Attach. #3 Separate Statement 56, 58, ECF No. 116.) In his
27 Complaint, Franklin contends that Defendant issued a memorandum
28 stating that Calipatria inmates may not cover the lights in their

1 cells. (Fourth Am. Compl. 16, ECF No. 79.) Plaintiff alleges that
2 this violated his Eighth Amendment right to be free from cruel and
3 unusual punishment. (Id.) To show cruel and unusual punishment
4 under the Eighth Amendment, the prisoner must allege facts that
5 demonstrate that he was confined under conditions posing a risk of
6 "objectively, sufficiently serious" harm and that prison officials
7 had a "sufficiently culpable state of mind in allowing the
8 deprivation to take place." Wallis v. Baldwin, 70 F.3d 1074, 1076
9 (9th Cir. 1995) (citation omitted) (internal quotation marks
10 omitted). Evidence of conditions in other prisons is not
11 reasonably calculated to lead to admissible evidence that Franklin
12 personally suffered a violation of his Eighth Amendment rights.
13 The objection is sustained, and the Motion to Compel further
14 responses to interrogatories 4 and 5 to Defendant Small [ECF No.
15 130] is **DENIED**.

16 **d. Warden Small interrogatory 13**

17 Plaintiff asks Defendant Small, "During your tenure at
18 Calipatria State Prison as acting warden, which inmate remained the
19 longest in A-2-B privileged group in a general population facility
20 without going to Administrative Segregated Housing Unit?" ([Am.]
21 Mot. Compel Attach. #1 Ex. D, at 47, ECF No. 130.) Defendant
22 objected that interrogatory 13 was vague, overbroad, unduly
23 burdensome, and irrelevant. (Id. at 47-48.) He also objected on
24 privacy grounds. (Id. at 48.)

25 Small answered by stating, "I don't know." (Id.) Franklin
26 moves to compel on the basis that Small did not refer to
27 appropriate prison records in this response. ([Am.] Mot. Compel 9,
28 ECF No. 130.)

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i. Relevance

Defendant continues to object that the information Plaintiff seeks is irrelevant and asserts that it will not assist him in proving his claims. (Opp'n Attach. #3 Separate Statement 62, ECF No. 116.) "If Plaintiff insinuates that he is the individual who would be the answer to the question, comparing his designation in A2B privilege group to other inmates serves no purpose whatsoever." (Id.)

As discussed, Franklin argues in his Fourth Amended Complaint that Small issued a memorandum that prohibited covering the lights located in the individual cells of the prison. (Fourth Am. Compl. 16, ECF No. 79.) Plaintiff contends that this violated his right to be free from cruel and usual punishment. (Id.) It is unclear how identifying which inmate remained in the A-2-B privilege group without going to the administrative segregated housing unit is relevant to his claim. Plaintiff makes no mention of the "A-2-B privileged group" or the "Administrative Segregated Housing Unit" in his claims against this Defendant. The objection is sustained. Moreover, Defendant objects that the interrogatory is also vague, overbroad, and overly burdensome. (Opp'n Attach. #3 Separate Statement, ECF No. 116.) The objections are sustained, and the Motion to Compel a further response to interrogatory 13 [ECF No. 130] is **DENIED**.

e. Madden interrogatory 5

Franklin asks in Madden interrogatory 5, "How many inmates on A-facility have you put on C-status from January 1, 2007 until October 7, 2007?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 76, ECF No. 130.) Defendant objected that the question was vague,

1 overbroad, and unduly burdensome. (Id.) He also objected on
2 privacy and relevance grounds. (Id.)

3 Captain Madden responded to the interrogatory by stating, "I
4 do not know. Being placed on C-Status is a decision made by
5 committee and it depends on the counselors who bring the inmate to
6 committee and the behavior of the inmate." (Id.) Plaintiff moves
7 to compel because Defendant did not refer to appropriate prison
8 records in his response. ([Am.] Mot. Compel 7, ECF No. 130.)

9 **i. Relevance**

10 In his Opposition, Madden asserts that requiring him to answer
11 would be a waste of time and resources because the question seeks
12 information that has no bearing on Plaintiff's claims against
13 Madden. (Opp'n Attach. #3 Separate Statement 46, ECF No. 116.)
14 The Court construes this as a relevance objection.

15 In his Complaint, Franklin alleges that Defendant was the
16 "chairperson of the hearing" committee that placed Plaintiff on "C-
17 Status" for committing two serious rule violations. (Fourth Am.
18 Compl. 13, ECF No. 16.) This interrogatory seeks information that
19 is relevant to Franklin's claim that Defendant retaliated against
20 Plaintiff for filing the 2007 lawsuit against Madden. A reasonable
21 interpretation of this interrogatory requires the Defendant to
22 respond to how many inmates were placed on C-status by the
23 committee chaired by the Defendant during this period. The
24 objection is overruled.

25 **ii. Sufficiency of Madden's response**

26 Next, Defendant argues that his response is sufficient because
27 he does not know the answer to the question, and he has answered to
28 the best of his ability. (Opp'n Attach. #3 Separate Statement 46,

1 ECF No. 116.) Further, he insists that the phrasing of the
2 question implies that it is within Captain Madden's discretion to
3 place an inmate on C-status, when in fact, it is the Unit
4 Classification Committee's responsibility to do so. (Id.)

5 Defendant's assertion that the decision to place an inmate on
6 C-status is made by committee does not justify his failure to
7 investigate or the deficiency of his response. Accordingly, the
8 Motion to Compel a further response to Madden interrogatory 5 [ECF
9 No. 130] is **GRANTED**.

10 **f. Vargas interrogatory 12**

11 In Vargas interrogatory 12, Franklin asks, "When did you
12 receive your first notification or summons you were being sued by
13 Plaintiff for taking his personal property, on April 6, 2006, in
14 A-2 Building at Calipatria State Prison?" ([Am.] Mot. Compel
15 Attach. #1 Ex. D, at 114, ECF No. 130.) Vargas objected that the
16 question assumes facts and lacks foundation. (Id.) He also
17 objected that it was vague, overbroad, and irrelevant. (Id. at
18 114-15.)

19 Defendant answered the interrogatory by stating, "I can't
20 remember." (Id. at 115.) Plaintiff moves to compel on the basis
21 that Vargas did not refer to appropriate prison records in his
22 response. ([Am.] Mot. Compel 4, ECF No. 130.)

23 **i. Relevance**

24 Defendant argues that "[P]laintiff again refers to Officer
25 Vargas' alleged theft of plaintiff's property, but this time uses a
26 different date. There are no property theft allegations in
27 plaintiff's operative complaint." (Opp'n Attach. #3 Separate
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1 Statement 11, ECF No. 116.) The Court construes this as a
2 relevance objection.

3 In Franklin's Fourth Amended Complaint, there are no
4 allegations that Vargas stole any of Plaintiff's personal property
5 on April 6, 2006. (See generally Fourth Am. Compl. 4-16, ECF No.
6 49.) Yet, Franklin does allege that he brought an initial lawsuit
7 against Defendant in 2007. (Id. at 5, 17.) In that case, he filed
8 a second amended complaint on June 27, 2008, alleging that
9 Defendant Vargas took Plaintiff's "legal books, legal papers and
10 universal adapter" on April 7, 2006. See Pl.['s] [Second] Am.
11 Compl. at 14, Franklin v. Scribner, No. 07-cv-438 WVG (RBB) (S.D.
12 Cal. 2007), ECF No. 82. Although the dates are off by one day,
13 this appears to be the same search that Franklin refers to in his
14 interrogatory to Vargas. In light of the liberal standards
15 governing discovery, Franklin's interrogatory seeks information
16 relevant to Vargas's knowledge of the underlying lawsuit, which is
17 the basis for Franklin's current retaliation claim. Accordingly,
18 the relevance objection is overruled.

19 **ii. Sufficiency of Vargas's response**

20 Next, Vargas alleges that his response is sufficient because
21 he does not recall receiving notice of the lawsuit, and there are
22 no documents in Plaintiff's central file indicating that Defendant
23 took any of Franklin's belongings and was subsequently sued for
24 doing so. (Opp'n Attach. #3 Separate Statement 11, ECF No. 116.)
25 Defendant's response of "I can't remember" is insufficient.
26 Accordingly, Plaintiff's Motion to Compel a further response to
27 Vargas interrogatory 12 [ECF No. 130] is **GRANTED**.

28

1 **5. Interrogatories objected to on vagueness grounds**

2 **a. Vargas interrogatory 13**

3 In interrogatory 13, Plaintiff inquires, "Who passed out
4 inmates' indigent envelopes, on July 18, 2007 and July 25, 2007, in
5 A-2 Building at Calipatria State Prison?" ([Am.] Mot. Compel
6 Attach. #1 Ex. D, at 115, ECF No. 130.) Defendant objected that
7 the question is vague, overbroad, and irrelevant. (Id.) He
8 answered by stating, "Officers normally do it. I don't remember."
9 (Id.) Franklin moves to compel on the basis that Defendant did not
10 refer to appropriate prison records in his response. ([Am.] Mot.
11 Compel 4, ECF No. 130.)

12 **i. Vagueness**

13 Vargas argues in his Opposition that Plaintiff's question is
14 "vague as to what further information he desires." (Opp'n Attach.
15 #3 Separate Statement 12, ECF No. 116.) Franklin's question is
16 clear and precise, asking which Calipatria employee distributed
17 inmates' indigent envelopes on two particular days, in a particular
18 building at Calipatria. The interrogatory is not vague, and the
19 objection is overruled.

20 **ii. Sufficiency of Vargas's response**

21 Next, Defendant contends that his response is sufficient
22 because he does not recall who distributed the envelopes. (Id.)
23 Vargas's failure to recall is an incomplete response; his answer
24 does not describe what efforts he made to obtain the requested
25 information. The Motion to Compel a further response to Vargas
26 interrogatory 13 [ECF No. 130] is **GRANTED**.

1 **b. Trujillo interrogatories 3 and 5**

2 Franklin asks in Trujillo interrogatory 3, "When did you first
3 receive notification that Plaintiff brought a civil complaint
4 against you?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 63, ECF No.
5 130.) Plaintiff asks Defendant in interrogatory 5, "Why didn't you
6 allow Plaintiff to perform his work assignment during his work
7 hours?" (Id. at 64.) Defendant objected that both questions were
8 vague, overbroad, and irrelevant. (Id. at 63-65.)

9 Trujillo responded to interrogatory 3 by stating, "I don't
10 know." (Id. at 64.) He answered interrogatory 5 by stating, "I
11 don't recall the incident." (Id. at 65.) Franklin moves to compel
12 because Trujillo did not refer to appropriate prison records in his
13 response. ([Am.] Mot. Compel 4-5, ECF No. 130.)

14 **i. Vagueness**

15 In his Opposition, Defendant objects that interrogatories 3
16 and 5 are vague. (Opp'n Attach. #3 Separate Statement 19-21, ECF
17 No. 116.) Defendant asserts that interrogatory 3 is vague because
18 Plaintiff does not indicate which lawsuit he is referring to, nor
19 does he reference the subject matter of the lawsuit. (Id. at 19.)
20 In his Complaint, Franklin submits that he sued Defendant Trujillo
21 once before, in 2007. (Fourth Am. Compl. 10, ECF No. 79.) The
22 interrogatory is not so vague that it cannot be answered. This
23 objection is overruled.

24 According to Defendant, interrogatory 5 is vague because
25 Plaintiff fails to specify a time and place when Trujillo allegedly
26 did not allow Plaintiff to perform his work assignment. (Opp'n
27 Attach. #3 Separate Statement 20-21, ECF No. 116.) Interrogatory 5
28 is vague because Franklin does not reference a specific time

1 period. Moreover, in his Fourth Amended Complaint, Plaintiff does
2 not allege that Trujillo prevented Franklin from performing his
3 work assignment. (See Fourth Am. Compl. 10, ECF No. 79.) Nor does
4 Plaintiff show the relevance of this information. Thus, the
5 interrogatory is irrelevant in addition to being vague.
6 Accordingly, the Motion to Compel further responses to Vargas
7 interrogatory 3 is **GRANTED** but as to interrogatory 5, the Motion
8 [ECF No. 130] is **DENIED**.

9 **c. Vargas interrogatory 4**

10 Plaintiff asks Vargas in interrogatory 4, "On January 31,
11 2007, in A-2 Building at Calipatria State Prison, did you deny
12 Plaintiff his work privilege phone call?" ([Am.] Mot. Compel
13 Attach. #1 Ex. D, at 109, ECF No. 130.) Defendant objected that
14 the question assumes facts and lacks foundation. (Id.) He also
15 objected that the question was vague, overbroad, and irrelevant.
16 (Id.) Vargas answered, "I don't recall." (Id.)

17 Franklin moves to compel because Small provided an
18 "unsatisfactory answer." ([Am.] Mot. Compel 3, ECF No. 130.) Yet,
19 Plaintiff does not articulate why Defendant's response is
20 deficient. See Washington v. Thurgood Marshall Acad., 232 F.R.D.
21 6, 9 (D.D.C. 2005) ("Because plaintiff has completely failed to
22 explain how defendant's answers were evasive, incomplete, or non-
23 responsive, it is impossible for the court to determine what
24 information plaintiff wants compelled."); see also Daiflon, Inc. v.
25 Allied Chem. Corp., 534 F.2d 221, 227 (10th Cir. 1976) (noting that
26 the movant has the burden of proving that the answer in question
27 was incomplete). Moreover, there are no allegations in Plaintiff's
28 Fourth Amended Complaint regarding an alleged deprivation of phone

1 privileges. (See generally Fourth Am. Compl. 4-16, ECF No. 49.)
2 The interrogatory therefore also seeks irrelevant information.
3 Accordingly, the Motion to Compel Vargas to further respond to
4 interrogatory 4 [ECF No. 130] is **DENIED**.

5 **6. Interrogatories objected to on equal access grounds**

6 **a. Vargas interrogatory 17**

7 In interrogatory 17, Plaintiff asks Defendant Vargas, "Have
8 you ever been sued or had a complaint brought against you as an
9 employee for the California Department of Corrections and
10 Rehabilitation in a court of law?" ([Am.] Mot. Compel Attach. #1
11 Ex. D, at 117, ECF No. 130.) Defendant objected to the question on
12 privacy, privilege, and relevance grounds. (Id.) Further,
13 Defendant alleged that the information sought by Plaintiff was
14 obtainable from public sources. (Id. at 118.) Finally, Vargas
15 objected that the question was vague, overbroad, unduly burdensome,
16 and seeks information unrelated to any claim or defense of any
17 party. (Id. at 117-18.)

18 Vargas responded, "I believe I have but I can't recall a
19 specific incident." (Id. at 118.) Franklin moves to compel on the
20 basis that Vargas did not refer to appropriate prison records in
21 his response. ([Am.] Mot. Compel 4, ECF No. 130.)

22 **i. Equal access**

23 In his Opposition, Vargas alleges that the information sought
24 is in the public records. (Opp'n Attach. #3 Separate Statement 16,
25 ECF No. 116.) Accordingly, he submits, no further response is
26 required. (Id.) "A court may refuse to order production of
27 documents of public record that are equally accessible to all
28 parties." 7 James Wm. Moore et al., Moore's Federal Practice §

1 34.12[5][b], at 34-53 (3d ed. 2011) (footnote omitted). "However,
2 production from the adverse party may be ordered when it would be
3 excessively burdensome . . . for the requesting party to obtain the
4 documents from the public source rather than from the opposing
5 party." Id. (footnote omitted).

6 Franklin does not present any argument supporting why he
7 should be provided an additional answer. Vargas provided a
8 complete answer; supplemental information about lawsuits is not
9 called for by interrogatory 17. Franklin's Motion to Compel a
10 further response to Vargas interrogatory 17 [ECF No. 130] is
11 **DENIED.**

12 **b. Davis interrogatory 2 and Madden interrogatory 4**

13 In Davis interrogatory 2 and Madden interrogatory 4, Franklin
14 asks the same question, "How many disciplinary actions did
15 Plaintiff receive for violating rules and regulations from 2003
16 until July 1, 2007?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 75,
17 93, ECF No. 130.) Davis and Madden objected that the question was
18 vague, overbroad, and unduly burdensome. (Id.) Davis and Madden
19 also claimed that the information sought is obtainable from another
20 source that is more convenient, less burdensome, and less
21 expensive. (Id.) Finally, Defendant Davis objected on privacy and
22 relevance grounds. (Id. at 93.)

23 Both Defendants responded by stating, "I do not know. Based
24 on information and belief, Plaintiff received two actions: one on
25 9/6/05 and another on 1/9/06. Both incidents involved the
26 Plaintiff placing coverings that inhibit vision into the cell."
27 (Id. at 76, 93.) In his Motion to Compel, Plaintiff argues that
28 Davis and Madden's responses are deficient because Franklin

1 inquired about rule violations, not "action[s] or counseling"
2 ([Am.] Mot. Compel 6, 7, ECF No. 130.)

3 **i. Equal access**

4 In their Opposition, both Defendants maintain that Franklin
5 could have answered this question himself by referring to his
6 central file, which is accessible to him. (Opp'n Attach. #3
7 Separate Statement 34, 45, ECF No. 116.) Franklin does not present
8 any argument supporting why he is unable to obtain these records on
9 his own, nor has he offered a persuasive argument to shift the cost
10 and burden of obtaining the court records to the Defendants. The
11 objection is sustained, and the Motion to Compel further responses
12 to Davis interrogatory 2 and Madden interrogatory 4 [ECF No. 130]
13 is **DENIED**.

14 **7. Interrogatories where multiple objections are pursued**

15 **a. Trujillo interrogatory 2**

16 Plaintiff asks in Trujillo interrogatory 2, "When did you work
17 at Calipatria State Prison, A-2 Building? (Please give dates.)"
18 ([Am.] Mot. Compel Attach. #1 Ex. D, at 63, ECF No. 130.)
19 Defendant objected on privilege and privacy grounds. (Id.) He
20 also argued that the information sought is unrelated to any claim
21 or defense. (Id.)

22 Trujillo answered by stating, "I don't remember the year. I
23 worked there about 6 months, but I don't remember when." (Id.)
24 Franklin moves to compel because Defendant did not refer to
25 appropriate prison records in his response. ([Am.] Mot. Compel 4,
26 ECF No. 130.)

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i. Relevance

Trujillo objects that the interrogatory "seeks information that will not assist plaintiff in proving his claims." (Opp'n Attach. #3 Separate Statement 18, ECF No. 116.) As it did earlier, the Court construes this as a relevance objection. Whether Trujillo was working in Calipatria's A-2 building is relevant to the events giving rise to this lawsuit. The objection is overruled.

ii. Waived objections

Defendant also objects that the interrogatory is vague and that requiring Defendant to further respond would "needlessly add to the cost of litigation" because there is no guarantee that if work schedules or similar documents were even located that they would be accurate. (Id. at 18-19.) Yet, Trujillo did not object on these grounds initially. Accordingly, these objections were waived.

iii. Sufficiency of Trujillo's response

Here, Franklin requests that Defendant provide him with the beginning and end dates that he worked in Calipatria's A-2 building. Trujillo does not provide dates, nor does he state why he is unable to provide them or what efforts he made to obtain them. (See id.) Defendant's answer is therefore insufficient, and the Motion to Compel a further response to Trujillo interrogatory 2 [ECF No. 130] is **GRANTED**.

b. Trujillo interrogatory 6

In Trujillo interrogatory 6, Plaintiff inquires, "Why was Plaintiff confined to his cell when he was not allowed to perform his work assignment?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 65,

1 ECF No. 130.) Defendant objected that the question was vague,
2 overbroad, and irrelevant. (Id.) Trujillo responded by stating,
3 "If he was told to go back to his cell, he might have refused to go
4 to work or didn't want to do assigned duties. During work hours
5 you can't go to yard." (Id.) Franklin moves to compel because
6 Trujillo did not refer to appropriate prison records in his
7 response. ([Am.] Mot. Compel 5, ECF No. 130.)

8 **i. Relevance**

9 Defendant objects to the interrogatory because Franklin does
10 not allege that Trujillo prevented Plaintiff from performing his
11 work assignment. (Opp'n Attach. #3 Separate Statement 21, ECF No.
12 116.) The Court construes this as a relevance objection. In his
13 Complaint, Franklin maintains that Trujillo did not allow Plaintiff
14 to go to the recreation yard and confined him to his cell on August
15 27, 2007. (Fourth Am. Compl. 10, ECF No. 79.) Although
16 interrogatory 6 seeks information about the reasons Trujillo
17 confined Plaintiff to his cell, there are no allegations in
18 Plaintiff's Fourth Amended Complaint that Trujillo prevented
19 Franklin from performing his work assignment. Accordingly, the
20 relevance objection is sustained.

21 **ii. Vagueness**

22 Next, Trujillo argues that the interrogatory is vague because
23 Franklin does not specify a time and place when Defendant allegedly
24 confined Plaintiff to his cell and prevented him from performing
25 his work assignment. (Opp'n Attach. #3 Separate Statement 21, ECF
26 No. 116.) The interrogatory is vague as to time, and the objection
27 is sustained. The Motion to Compel a further response to Trujillo
28 interrogatory 6 [ECF No. 130] is **DENIED**.

1 **c. Vargas interrogatories 10 and 11 and Trujillo**
2 **interrogatory 11**

3 In Vargas interrogatory 10, Franklin asks how many inmates
4 filed grievances against Vargas for "theft, loss, destruction, or
5 negligence of inmates' property?" ([Am.] Mot. Compel Attach. #1
6 Ex. D, at 112, ECF No. 130.) Interrogatories 11 to Vargas and
7 Trujillo are the same, and each asks how many inmate grievances had
8 been brought against the Defendant for "misconduct." (Id. at 67,
9 113.) Vargas and Trujillo objected to the interrogatories on
10 privacy, privilege, and relevance grounds. (Id. at 67-68, 112-14.)
11 They also objected that the information sought by Plaintiff was
12 unrelated to any claim or defense of any party. (Id. at 67-68,
13 113-14.)

14 Vargas answered interrogatories 10 and 11 stating,
15 respectively, "I've had a grievance filed before, but I don't
16 remember the details. To my understanding, it was not
17 sustained[,] and "I do not know." (Id. at 113-14.) Trujillo
18 answered by stating, "I don't know. Maybe one, if that. I don't
19 recall getting any grievances, and if I did, none have been
20 sustained or upheld of which I am aware." (Id. at 68.) Franklin
21 moves to compel on the basis that Vargas and Trujillo did not refer
22 to appropriate prison records in their responses. ([Am.] Mot.
23 Compel 3-5, ECF No. 130.)

24 **i. Relevance**

25 In the Opposition, Defendants contend that the information
26 sought by Plaintiff is irrelevant because it will not assist him in
27 proving his claims of retaliation and complaint about constant
28 illumination. (Opp'n Attach. #3 Separate Statement 9-10, 26, ECF

1 No. 116.) Vargas interrogatories 10 and 11 seek information that
2 is relevant to the accusation that Vargas stole Franklin's
3 envelopes and forged his signature. (See Fourth Am. Compl. 6-7,
4 ECF No. 79.) Plaintiff's interrogatories appear to be reasonably
5 calculated to lead to the discovery of admissible evidence. Other
6 incidents may suggest that Vargas has taken personal property from
7 other inmates, and this may lead to the discovery of admissible
8 evidence. This could bear on Franklin's retaliation claim.
9 Vargas's relevance objection is overruled.

10 Trujillo interrogatory 11 is relevant for the same reasons,
11 and the objection is overruled. Nonetheless, to the extent
12 Franklin seeks information pertaining to misconduct that is not
13 alleged in the Complaint, the questions are overbroad. Therefore,
14 the Vargas should supplement his response to Vargas interrogatory
15 11 to include information concerning the number of grievances filed
16 by other inmates pertaining to theft, forgery, or retaliation.
17 Trujillo should supplement his response to Trujillo interrogatory
18 11 to include information concerning the number of grievances filed
19 by other inmates pertaining to confining inmates to their cells,
20 prohibiting them from using the recreation yard, and retaliation.

21 **ii. Privacy**

22 Next, Defendants object that these interrogatories violate
23 their privacy, as well as the privacy other inmates who may have
24 filed grievances. (Opp'n Attach. #3 Separate Statement 9-10, 26
25 ECF No. 116.)

26 Some courts consider the right to privacy as a qualified
27 privilege and analyze it in a similar way as the federal official
28 information privilege. See Taylor v. L.A. Police Dep't, No.

1 EDCV99-0383-RT (RCX), 1999 WL 33101661, at *6 (C.D. Cal. Nov. 10,
2 1999); Martinez v. City of Stockton, 132 F.R.D. 677, 681 (E.D. Cal.
3 1990). The movant may obtain private information when his need for
4 the information outweighs the nonmovant's privacy rights. Taylor,
5 1999 WL 33101661, at *6 . "[D]istrict courts in the Ninth Circuit
6 have found that the privacy interests police officers have in their
7 personnel files do not outweigh the civil rights plaintiff's need
8 for the documents." Soto v. City of Concord, 162 F.R.D. 603, 617
9 (N.D. Cal. 1995). There is an important public interest in
10 uncovering civil rights violations. Id.

11 Franklin seeks relevant information regarding the number of
12 other similar grievances against Defendants, and the information is
13 unlikely to be available from a source other than Defendants'
14 personnel files. See id. Any invasion of the Defendants' privacy
15 interests will be minimized by a protective order. Soto, 162
16 F.R.D. at 617; see also Taylor, 1999 WL 33101661, at *7 . Further,
17 Franklin has not requested the names of any inmates who filed
18 grievances against Vargas, so their privacy rights would not be
19 implicated. See Lamon v. Adams, No. 1:09-cv-00205-LJO-SKOPC, 2010
20 WL 4513405, at *3-4 (E.D. Cal. Nov. 2, 2010) (ordering redaction of
21 the names of the inmates who filed grievances against correctional
22 officer before documents were provided to plaintiff). Consequently,
23 the privacy objection is overruled.

24 **iii. Waived objections**

25 Vargas states that it would be an undue burden to further
26 respond to interrogatory 11. (Opp'n Attach. #3 Separate Statement
27 10, ECF No. 116.) Additionally, Vargas argues that Plaintiff's
28 interrogatory 11 is vague and overbroad as to the term

1 "misconduct." (Id.) Yet, Defendant did not initially object on
2 these grounds. Accordingly, these objections were waived.

3 Trujillo also asserts that requiring him to provide further
4 responses would be an undue burden and would needlessly increase
5 the costs of litigation. (Id. at 26.) Again, Defendant did not
6 initially object on these grounds, thus the objections were waived.

7 **iv. Sufficiency of Defendants' responses**

8 As discussed above, the responses provided by these Defendants
9 are not sufficient because they do not provide the information
10 requested by Franklin, nor do they state under oath why they are
11 unable to provide it.

12 Accordingly, Franklin's Motion to Compel further responses to
13 Vargas interrogatories 10 and 11 and Trujillo interrogatory 11 [ECF
14 No. 130] is **GRANTED**.

15 **d. Davis interrogatory 5**

16 Plaintiff inquires in Davis interrogatory 5, "How many
17 inmates, from January 2007 until July 2007, on A-facility in the
18 general population have received a rule violation report for having
19 something or a state shirt or property covering their light?"
20 ([Am.] Mot. Compel Attach. #1 Ex. D, at 94, ECF No. 130.) Davis
21 objected that the question was vague, and on privacy and relevance
22 grounds. (Id. at 95.) He answered, "I don't know." (Id.)
23 Franklin moves to compel on the basis that Davis did not refer to
24 appropriate prison records in his response. ([Am.] Mot. Compel 6,
25 ECF No. 130.)

26 **i. Relevance**

27 Davis argues that Plaintiff's question is outside the scope of
28 discovery because it will not help Franklin prove his claims of

1 retaliation and constant illumination. (Opp'n Attach. #3 Separate
2 Statement 35, ECF No. 116.) The Court construes this as a
3 relevance objection. In his Complaint, Plaintiff submits that
4 Davis violated Franklin's Due Process rights when Davis found
5 Plaintiff guilty of a serious rule violation for covering a light
6 in his cell with a shirt. (Fourth Am. Compl. 6, ECF No. 79.)
7 Interrogatory 5 seeks information that is relevant to his claim
8 that Defendant retaliated against Franklin for filing the 2007
9 lawsuit against Davis.

10 **ii. Vagueness**

11 Defendant also contends that the phrase "something or a state
12 shirt or property covering their light" is vague. (Opp'n Attach.
13 #3 Separate Statement 35, ECF No. 116.) Franklin's interrogatory
14 is clear. He asks how many inmates received a rule violation for
15 covering the lights in their cells, during a specific period of
16 time, in a specific building -- be it with a shirt, or any other
17 item of personal property. Further, Davis does not articulate why
18 the quoted phrase is vague. Accordingly, the objection is
19 overruled.

20 **iii. Privacy**

21 Next, Davis complains that Plaintiff's question violates the
22 privacy of any inmates who may have received a rule violation.
23 (Id.) Franklin has not requested the names of any inmates who
24 filed grievances against Davis, so their privacy rights would not
25 be implicated. The privacy objection is overruled.

26 **iv. Waived objections**

27 Finally, Davis contends that the question is "overly
28 burdensome" and overbroad. (Id. (citing id. Decl. Borg Attach.

1 #2).) He did not initially object on these grounds, so these
2 objections were waived.

3 **v. Sufficiency of Davis's response**

4 Davis's response of "I don't know" is insufficient.
5 Accordingly, the Motion to Compel a further response to Davis
6 interrogatory 5 [ECF No. 130] is **GRANTED**.

7 **e. Davis interrogatories 8 and 9**

8 Franklin asks in interrogatory 8, "How many times were you the
9 hearing officer from 2004 until July 14, 2007, when an inmate
10 received a rule violation for covering the cell ceiling light?"
11 ([Am.] Mot. Compel Attach. #1 Ex. D, at 96, ECF No. 130.) In
12 interrogatory 9, Plaintiff asks, "How many people did you find
13 guilty of a serious rule violation at Calipatria State Prison for
14 covering a cell ceiling light from 2004 until July 14, 2007?"
15 (Id.) Davis objected to both on privacy and relevance grounds.
16 (Id. at 96-97.) Defendant additionally objected that the
17 interrogatories were vague, overbroad, and unduly burdensome.
18 (Id.)

19 Davis answered interrogatory 8 by stating, "I don't know."
20 (Id. at 97.) He answered interrogatory 9 by stating, "Probably a
21 lot, but I don't recall a specific number." (Id.) Franklin moves
22 to compel because Davis did not refer to appropriate prison records
23 in his responses. ([Am.] Mot. Compel 7, ECF No. 130.)

24 **i. Relevance**

25 Defendant alleges that procuring the information sought in
26 both interrogatories would not assist Plaintiff in proving his
27 claims. (Opp'n Attach. #3 Separate Statement 36-37, ECF No. 116.)
28 The Court construes this as a relevance objection. The information

1 sought by Plaintiff may be relevant to support his claim that he
2 was specifically targeted by Davis when he found Franklin guilty of
3 a serious rule violation for covering a light in his cell. (See
4 Fourth Am. Compl. 6, ECF No. 79.) The objection is overruled.

5 **ii. Burdensomeness**

6 According to Davis, procuring the documents needed to provide
7 an answer to this interrogatory would be "overly burdensome"
8 because records are not maintained in a fashion that allows him to
9 readily obtain the information needed to answer this interrogatory.
10 (Opp'n Attach. #3 Separate Statement 36, ECF No. 116.) Defendant
11 then explains the "onerous" process involved in procuring this
12 information, which includes reviewing hearing logs, analyzing the
13 present prison location or parole status of over 4,000 inmates,
14 reviewing each inmate's central file, and filtering those results
15 by hearing officer. (Id.)

16 "Under Rule 26(b)(2), courts must weigh the burden or expense
17 of proposed discovery against its likely benefit, taking into
18 account 'the needs of the case, the amount in controversy, the
19 parties' resources, the importance of the issues at stake in the
20 litigation, and the importance of the proposed discovery in
21 resolving the issues.'" Green v. Baca, 219 F.R.D. 485, 493 (C.D.
22 Cal. 2003) (quoting Fed. R. Civ. Proc. 26(b)(2)) (citing Graham v.
23 Casey's Gen. Stores, 206 F.R.D. 251, 253 (S.D. Ind. 2002); Smith v.
24 Pfizer, Inc., No. CIV.A. 98-4156-CM, 2000 WL 1679483, at *2 (D.
25 Kan. Oct. 26, 2000); Playboy Enters., Inc. v. Welles, 60 F. Supp.
26 2d 1050, 1053-54 (S.D. Cal. 1999)).

27 Here, the information sought by Plaintiff is central to his
28 claim that he was punished for covering the lightbulb located in

1 his cell, while other inmates were not. Furthermore, Franklin's
2 interrogatory is drafted with sufficient precision to obtain
3 material relevant to this case. Defendant has alleged that he will
4 be "overly burdened" by procuring the information for Plaintiff,
5 but he does not establish that the benefit Franklin derives from
6 obtaining at least some of the information is outweighed by the
7 burden imposed on Defendant. See id.; see also Pham v. Wal-Mart
8 Stores, Inc., No. 2:11-cv-01148-KJD-GWF, 2011 U.S. Dist. LEXIS
9 130038, at *14-15 (D. Nev. Nov. 9, 2011) (finding that a document
10 request requiring "just over 56 hours" to review and locate
11 responsive information was not an undue burden). Accordingly, this
12 objection is overruled in part.

13 **iii. Sufficiency of Davis's response**

14 Davis maintains that his response to interrogatory 8 is
15 sufficient because he has provided an unequivocal, verified
16 response stating that he does not know the answer to Plaintiff's
17 question. (Opp'n Attach. #3 Separate Statement 36, ECF No. 116.)
18 Defendant also represents that no further response is needed as to
19 interrogatory 9 because he answered it to the best of his ability.
20 (Id. at 37.) The responses provided by Defendant are insufficient
21 under the Federal Rules of Civil Procedure. See Haworth, 2007 U.S.
22 Dist. LEXIS 48380, at *5. Accordingly, the Motion to Compel
23 further responses to Davis interrogatories 8 and 9 [ECF No. 130] is
24 **GRANTED** in part. A response should be given to each interrogatory
25 for the time period from July 14, 2005, through July 14, 2007.

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1 **f. Davis interrogatories 11-13 and Madden**
2 **interrogatories 16-17**

3 Franklin inquires in Davis interrogatory 11, "Have you ever
4 been sued as a staff for misconduct while performing your duty for
5 California Department of Corrections and Rehabilitation?" ([Am.]
6 Mot. Compel Attach. #1 Ex. D, at 98, ECF No. 130.) Interrogatory
7 12 to Davis asks, "If you were sued for misconduct, by whom, for
8 what, location, and dates it occurred?" (Id. at 100.) Franklin
9 asks in Davis interrogatory 13, "If you were sued for misconduct,
10 what was the final disposition?" (Id. at 101.)

11 In Madden interrogatory 16, Plaintiff asks, "If you have ever
12 been sued for misconduct, by whom, for what, where it occurred, and
13 the dates it occurred." (Id. at 85.) Franklin then asks Madden in
14 interrogatory 17 what the final dispositions in those cases were.
15 (Id. at 86.)

16 Defendants objected to all the interrogatories on privacy,
17 privilege, and relevance grounds. (Id. 85-87, 98-102.) They also
18 argued that the information sought by Plaintiff was all obtainable
19 from public sources that are more convenient, less burdensome, and
20 less expensive to the Defendants. (Id. at 86-87, 99-102.)
21 Finally, they objected that the questions were vague, overbroad,
22 unduly burdensome, and unrelated to any claim or defense of any
23 party. (Id. at 85-87, 99-103.)

24 Davis answered interrogatory 11 by stating, "At least one
25 other time, maybe a couple times. I'm not sure. I've never had my
26 deposition taken or testified in trial regarding a lawsuit brought
27 by an inmate." (Id. at 100.) He answered interrogatory 12 by
28 stating, "I don't recall specific information." (Id. at 101.) As

1 to interrogatory 13, he responded by stating, "I never heard of any
2 disposition relating to this lawsuit." (Id. at 103.)

3 Defendant Madden responded to interrogatory 16 by stating, "I
4 don't recall why I was sued and I don't remember the dates." (Id.
5 at 86.) He responded to interrogatory 17 by stating, "I don't
6 know, but I didn't go to court and there were no settlements to my
7 understanding." (Id. at 88.) Franklin moves to compel on the
8 basis that Davis and Madden did not refer to appropriate prison
9 records in their responses. ([Am.] Mot. Compel 7-8, ECF No. 130.)

10 **i. Relevance**

11 Defendants object that these questions are irrelevant and will
12 not assist Franklin in proving his claims. (Opp'n Attach. #3
13 Separate Statement 39, 41, 43, 53, 55, ECF No. 116.) All of these
14 interrogatories relate to prior lawsuits brought against Defendants
15 for alleged misconduct they committed as a correctional officer.
16 If Defendants have been sued for similar retaliatory conduct, it
17 may lead to admissible evidence regarding whether these Defendants
18 retaliated against Franklin. Accordingly, this objection is
19 overruled.

20 **ii. Equal access**

21 Next, Defendants complain that the information sought by
22 Plaintiff is a matter of public record. (Id.) Franklin does not
23 present any argument supporting why he is unable to obtain these
24 records. In addition, the Plaintiff has not offered a persuasive
25 argument to shift the cost and burden of obtaining the court
26 records to the Defendants. At the same time, Defendants made no
27 effort to answer these interrogatories.

28

1 In Robinson v. Adams, No. 1:08-cv-01380-AWI-SMS PC, 2011 WL
2 2118753, at *17 (E.D. Cal. May 27, 2011), the Defendants answered a
3 similar interrogatory by providing Plaintiff with a "supplemental
4 response listing cases." Robinson asked that Defendants identify
5 excessive force cases, but the court concluded that the information
6 could be obtained from public records that were equally available
7 to Plaintiff, and it would not compel a further response. Id.
8 Davis and Madden should similarly provide a list of cases.
9 Accordingly, the objection is overruled, and Franklin's Motion to
10 Compel further responses to Davis interrogatories 12-13 and Madden
11 interrogatories 16-17 [ECF No. 130] is **GRANTED** in part; the Motion
12 to Compel a further response to interrogatory 11 to Davis is
13 **DENIED**.

14 **g. Davis interrogatory 14**

15 Interrogatory 14 asks Davis to "List the dates, months, years
16 you were lieutenant on A-facility at Calipatria State Prison."
17 (Id. at 103.) Defendant objected on privacy and privilege grounds.
18 (Id.) He also argued that the question was unrelated to any claim
19 or defense. (Id.)

20 Davis answered, "I don't know. I was there for about nine and
21 a half years as a lieutenant and twenty years in total." (Id. at
22 104.) Franklin moves to compel on the basis that Davis did not
23 refer to appropriate prison records in his response. ([Am.] Mot.
24 Compel 7, ECF No. 130.)

25 **i. Relevance**

26 Defendant asserts that providing any further information would
27 be a waste of time and resources and would not assist Plaintiff in
28 proving his claims. (Opp'n Attach. #3, Separate Statement 44, ECF

1 No. 44.) The Court construes this as a relevance objection.
2 Whether Davis was working in A-Facility during the events giving
3 rise to this lawsuit is relevant. The objection is overruled.

4 **ii. Waived objection**

5 Davis also submits that interrogatory 14 is the same as Davis
6 interrogatory number 1. (Id.) He insists that this repetition
7 borders on harassment. (Id.) Yet, Defendant did not initially
8 object that this interrogatory was repetitive, thereby waiving the
9 objection.

10 **iii. Sufficiency of Davis's response**

11 Plaintiff requests Defendant to provide the dates that he was
12 employed at Calipatria State Prison. Defendant fails to provide
13 this information and fails to state under oath why he is unable to
14 provide it. Accordingly, Defendant's response is insufficient, and
15 the Motion to Compel a further response to Davis interrogatory 14
16 [ECF No. 130] is **GRANTED**.

17 **h. Madden interrogatories 6, 8, and 13**

18 Franklin asks in Madden interrogatory 6, "How many inmates,
19 from January 1, 2007 until October 7, 2007, on A-facility general
20 population have received two serious rule violation reports or one
21 serious and two administrative rule violation reports within 180
22 days?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 77, ECF No. 130.)
23 In Madden interrogatory 8, Plaintiff inquires, "How many inmates,
24 from January 2007 until July 2007, on A-facility in the general
25 population, have received a rule violation report for having
26 something or state property covering their lights?" (Id. at 78.)
27 Interrogatory 13 asks Madden, "How [m]any people did you find
28 guilty of a serious rule violation at Calipatria State Prison for

1 covering a cell ceiling light [from] 2004 until July 2007?" (Id.
2 at 82.) Defendant objected that the interrogatories were vague,
3 overbroad, and unduly burdensome. (Id. at 77-78, 82.) He also
4 objected on privacy and relevance grounds. (Id.)

5 Madden answered all these interrogatories by stating, "I don't
6 know." (Id. at 77, 79, 82.) Plaintiff moves to compel because
7 Davis did not refer to appropriate prison records in his responses.
8 ([Am.] Mot. Compel 8, ECF No. 130.)

9 **i. Relevance**

10 Defendant asserts that these questions seek irrelevant
11 information that will not help Plaintiff prove his claim of
12 retaliation and complaint about constant illumination. (Opp'n
13 Attach. #3 Separate Statement 47-49, 51, ECF No. 116.) In his
14 Complaint, Franklin insists that Madden upheld Defendant Arias's
15 charge that Plaintiff committed a serious rule violation by
16 covering up a light in his cell. (Fourth Am. Compl. 6, ECF No.
17 79.) As discussed above, the information sought by Franklin may be
18 relevant to prove that Defendant Madden did not apply prison
19 regulations to all inmates in a uniform manner. The response may
20 be relevant to Plaintiff's claims that Defendant retaliated against
21 Franklin for suing Madden in 2007. The objection is sustained as
22 to interrogatory 6 but overruled as to interrogatories 8 and 13.

23 **ii. Privacy**

24 Next, Madden urges that Franklin's requests violate the
25 privacy of other inmates who may have received rule violation
26 reports. (Opp'n Attach. #3 Separate Statement 47, 49, 51, ECF No.
27 116.) Plaintiff has not requested the names of any inmates who
28 received violation reports or were found guilty of a violation, so

1 their privacy rights would not be implicated. Further, the parties
2 may seek a protective order. The privacy objection is overruled.

3 **iii. Burdensomeness**

4 Defendant contends that procuring responsive documents to
5 these interrogatories would be unduly or "overly" burdensome
6 because records are not maintained in a fashion that allows
7 Defendant to readily obtain the information needed to answer this
8 interrogatory. (Id. at 48-49, 51.) In response to interrogatories
9 6 and 13 Madden complains about the process involved in acquiring
10 this information. (Id. at 48, 51.) He also cites the Declaration
11 of Robert Borg in support of the objections. (Id. at 51.)

12 Defendant has alleged that he will be burdened by acquiring
13 the information, but he does not show that the benefit Franklin
14 derives from obtaining at least some of the information is
15 outweighed by that burden. This objection is overruled in part.

16 **iv. Vagueness**

17 Madden also objects that interrogatories 8 and 13 are vague.
18 (Id. at 49, 51.) Yet, Defendant does not explain why these
19 questions are vague. The objection is overruled.

20 **v. Overbreadth**

21 Next, Madden complains that interrogatories 8 and 13 are
22 overbroad. (Id.) "Merely stating that an interrogatory is
23 'overbroad' does not suffice to state a proper objection." Lynn v.
24 Monarch Recovery Mgmt., Inc., Civil No. WDQ-11-2824, 2012 WL
25 2445046, at *6 (D. Md. June 27, 2012) (quoting Cappetta v. GC
26 Servs. Ltd. P'ship, No. 3:08cv288, 2008 WL 5377934, at *3 (E.D. Va.
27 Dec. 24, 2008)). "Instead, the 'objecting party must specify which
28 part of a request is overbroad, and why.'" Id. Here, Defendant

1 fails to state why the interrogatories are overbroad; accordingly,
2 the objection is overruled.

3 **vi. Waived objections**

4 Finally, Defendant objects to both interrogatory 8 and 13 on
5 the basis that they are duplicative of interrogatories to Defendant
6 Davis. (Opp'n Attach. #3 Separate Statement 49, 51 ECF No. 116.)
7 Yet, as discussed above, Defendant did not initially object on this
8 ground, so the objection was waived.

9 **vii. Sufficiency of Madden's responses**

10 Madden answered all interrogatories by stating, "I don't
11 know." ([Am.] Mot. Compel Attach. #1 Ex. D, at 77, 79, 82, ECF No.
12 130.) Accordingly, the Motion to Compel further responses to
13 Madden interrogatories 8 and 13 [ECF No. 130] is **GRANTED**, but
14 interrogatory 13 is limited to the period from July 14, 2005,
15 through July 14, 2007; Plaintiff's Motion is **DENIED** as to
16 interrogatory 6.

17 **i. Warden Small interrogatory 7**

18 Franklin asks Small, "If there was a policy at Calipatria
19 State Prison general population about the cell ceiling light that
20 never cut-off and produce[d] constant illumination, what was the
21 policy?" (Id. at 43.) Defendant objected that the question was
22 vague, overbroad, unduly burdensome, and irrelevant. (Id. at 43-
23 44.)

24 Small responded by stating, "I do not recall a specific policy
25 regarding the lights. However, Operational Procedure 4006, Inmate
26 Cell Standards, and Department Operations Manual (DOM) Sections
27 54030.17 through 54030.21.7.2, Inmate Property Authorized Personal
28 Property Schedule (APPS) incorporated into California Code of

1 Regulations (CCR), Title 15 Sections 3190 and 3191, detail the
2 property authorized and cell standards expected for CDCR." (Id. at
3 44.) Franklin moves to compel on the basis that Small did not
4 refer to appropriate prison records in his response. ([Am.] Mot.
5 Compel 9, ECF No. 130.)

6 **i. Waived objection**

7 In his Opposition, Defendant asserts that this interrogatory
8 is "virtually identical to interrogatory 6[.]" (Opp'n Attach. #3
9 Separate Statement 59, ECF No. 116.) Yet, Small did not initially
10 object that the interrogatory was repetitive, so this objection was
11 waived. (Compare id., with [Am.] Mot. Compel Attach. #1 Ex. D, at
12 43-44, ECF No. 130.)

13 **ii. Other objections**

14 Defendant also notes that requiring further responses would
15 "needlessly add to the cost of litigation and would not assist
16 plaintiff in proving his claims." (Opp'n Attach. #3 Separate
17 Statement 59, ECF No. 116.) To the extent these statements
18 supplement his initial objections, the blanket objections are
19 unavailing. See Marti v. Baires, No. 1:08-cv-00653-AWI-SKO PC,
20 2012 U.S. Dist. LEXIS 77962, at *50 (E.D. Cal. June 5, 2012)
21 (stating that boilerplate objections are insufficient). These
22 objections are overruled.

23 **iii. Sufficiency of Small's response**

24 If Small is unable to recall a specific policy governing the
25 cell lights, he must state under oath the efforts he made to
26 respond to Franklin's interrogatory. Further, Defendant should
27 explain how the regulations cited in his answer to interrogatory 7
28 are responsive and correlate with his answer to interrogatory 6.

1 The Motion to Compel a further response to interrogatory 7 [ECF No.
2 130] is **GRANTED**.

3 **j. Vargas interrogatories 3 and 5-9**

4 In interrogatory 3, Franklin asks, "On April 6, 2007, in A-2
5 Building at Calipatria State Prison, did you search Plaintiff's
6 cell and take Plaintiff's legal books, legal papers, and universal
7 adapter?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 108, ECF No.
8 130.) In Vargas interrogatory 5, Plaintiff inquires, "When you
9 took Plaintiff's property, on April 6, 2006, was each piece of
10 property fully described?" (Id. at 109.) In interrogatory 6,
11 Franklin asks who reviewed the property that Vargas confiscated
12 from the April 6, 2006 search. (Id. at 110.) Interrogatory 7
13 inquires about what happened to the legal books, legal papers, and
14 adapter that Vargas took during that search. (Id.) In
15 interrogatory 8, Franklin asks why Vargas took these items during
16 the search. (Id. at 111.) In interrogatory 9, Franklin asks when
17 Vargas received notice that Plaintiff filed a grievance against
18 Defendant for taking the property on April 6, 2006. (Id. at 112.)

19 Vargas initially objected that interrogatory 3 was vague,
20 overbroad, and irrelevant. (Id. at 108-09.) He also objected that
21 interrogatories 5 through 9 assume facts; lack foundation; and were
22 vague, overbroad, and irrelevant. (Id. at 109-12.)

23 Defendant answered interrogatory 3 by stating, "I don't
24 remember." (Id. at 109.) For interrogatory 5, Defendant answered,
25 "I cannot remember." (Id. at 110.) In Vargas interrogatory 6,
26 Vargas answered, "Usually an inmate signs and dates property that
27 has been confiscated." (Id.) In response to interrogatories 7 and
28 8, Defendant answered, "I do not know." (Id. at 111.) Defendant

1 answered interrogatory 9 by stating, "I don't remember getting
2 notice." (Id. at 112.) Plaintiff moves to compel because Vargas
3 did not refer to appropriate prison records in his responses.
4 ([Am.] Mot. Compel 3, ECF No. 130.)

5 **i. Assumes facts not in evidence**

6 In his Opposition, Defendant argues that in interrogatories 5-
7 8, Franklin assumes facts that are not true because Vargas does not
8 remember the April 6, 2006 search taking place, and a diligent
9 search of the records by Robert Borg indicates that no confiscation
10 of Franklin's property took place as alleged. (Opp'n Attach. #3
11 Separate Statement 5-7, ECF No. 116.) "Assuming facts not in
12 evidence may be the basis for an objection during trial or some
13 other evidentiary hearing. This however, is discovery." Garcia v.
14 Clark, No. 1:10-cv-00447-LJO-DLB PC, 2012 WL 1232315, at *2 (E.D.
15 Cal. Apr. 12, 2012) (citing Roesberg v. Johns-Manville Corp., 85
16 F.R.D. 290, 298 (D.C. Pa. 1980) ("That an interrogatory may contain
17 an element of conclusion is not objectionable on this ground
18 alone.")). The objection is misplaced and, therefore, overruled.

19 **ii. Relevance**

20 In his Complaint, Franklin makes no reference to an alleged
21 search of his cell that occurred on either April 6, 2006 or 2007.
22 (See generally Fourth Am. Compl. 4-16, ECF No. 79.) Defendant did
23 not pursue a relevance objection in his Opposition to any of these
24 interrogatories. (See generally Opp'n Attach. #3 Separate
25 Statement 2-16, ECF No. 116.) Despite Defendant's failure to
26 pursue this objection, the Court will not order discovery of
27 irrelevant information. See Fed. R. Civ. P. 26(b)(1).
28

1 Accordingly, Plaintiff's Motion to Compel further responses to
2 Vargas interrogatories 3 and 5-9 [ECF No. 130] is **DENIED**.

3 **k. Vargas interrogatory 14**

4 In interrogatory 14, Franklin inquires, "Is that your
5 signature on inmates' envelopes issuing log sheet, on July 18, 2007
6 and July 25, 2007?" ([Am.] Mot. Compel Attach. #1 Ex. D, at 115,
7 ECF No. 130.) Vargas objected that the question was vague,
8 overbroad, and irrelevant. (Id.) Defendant then responded by
9 stating, "I don't know. I don't have the document to which
10 plaintiff is referring." (Id. at 116.) Franklin moves to compel
11 because Defendant did not refer to appropriate prison records in
12 his response. ([Am.] Mot. Compel 4, ECF No. 130.)

13 **i. Relevance**

14 Vargas contends that in his grievance, Plaintiff did not
15 reference a delivery problem on July 25, and therefore Vargas
16 objects based on relevance and Franklin's failure to exhaust his
17 administrative remedies. (Opp'n Attach. #3 Separate Statement 13,
18 ECF No. 116.) Interrogatory 14 seeks information that is relevant
19 to Franklin's accusation that Vargas stole Plaintiff's envelopes
20 and may lead to the discovery of admissible evidence. The
21 relevance objection is overruled.

22 **ii. Vagueness**

23 In his Opposition, Defendant notes that Franklin "was
24 initially too vague in referencing the document." (Opp'n Attach.
25 #3 Separate Statement 13, ECF No. 116.) As discussed above, Vargas
26 has the burden of proving that Franklin's request is vague.
27 Defendant does not articulate how the straightforward request is
28 vague. The objection is overruled.

1 **iii. Sufficiency of Vargas's response**

2 Next, Vargas maintains that he obtained an "envelopes-issuing
3 log sheet for July 18," and he unequivocally denies that his
4 signature is on the page. (Id.) He states that a supplemental
5 verified response will be given. (Id.) To date, the Court has not
6 received any supplemental verified response. To the extent Vargas
7 seeks to deny that his signature is on the envelope-issuing log
8 sheet, he must deny it under oath. As is, his current response is
9 deficient. Accordingly, the Motion to Compel a further response to
10 Vargas interrogatory 14 [ECF No. 130] is **GRANTED**.

11 **1. Warden Small interrogatory 10**

12 Franklin asks Defendant Small, "How many complaints or
13 grievances (verbal, written, staff, Men's Advisory Committee) did
14 you receive ab[ou]t the cell ceiling light that never cut-off and
15 produce[d] constant illumination?" ([Am.] Mot. Compel Attach. #1
16 Ex. D, at 45, ECF No. 130.) Small objected that the question was
17 vague, overbroad, unduly burdensome, and irrelevant. (Id. at 45-
18 46.) He also objected on privacy grounds. (Id. at 46.)

19 Defendant answered by stating, "I do not know." (Id.)
20 Plaintiff moves to compel on the basis that Small did not refer to
21 appropriate prison records in this response. ([Am.] Mot. Compel 9,
22 ECF No. 130.)

23 **i. Relevance**

24 Defendant represents that the information sought by Franklin
25 is irrelevant and will not help prove his claims. (Opp'n Attach.
26 #3 Separate Statement 60, ECF No. 116.) In his Complaint, Franklin
27 argues that in May 2008, Small issued a memorandum that prohibited
28 covering the lights located in the individual cells of the prison.

1 (Fourth Am. Compl. 16, ECF No. 79.) Plaintiff also complains that
2 he was written up in July of 2007 for covering an "unconstitutional
3 cell light." (Id. at 5.) To prevail on his Eighth Amendment claim
4 against Small, Franklin must allege facts that demonstrate that he
5 was confined under conditions posing a risk of "objectively,
6 sufficiently serious" harm and that prison officials had a
7 "sufficiently culpable state of mind in allowing the deprivation to
8 take place." Wallis, 70 F.3d at 1076. Evidence of grievances or
9 complaints from other Calipatria inmates may be relevant to prove
10 that Small was aware that the harm Franklin was suffering was
11 objectively serious and may bear on Plaintiff's retaliation claim.
12 The relevance objection is overruled.

13 **ii. Overbreadth**

14 Small also argues that the interrogatory is "overbroad in that
15 it is not limited as to time." (Opp'n 60, ECF No. 116.) In this
16 interrogatory, Plaintiff does not refer to a specific time period.
17 Accordingly, to the extent Defendant is ordered to respond, his
18 answer should reflect those complaints and grievances after July
19 14, 2007. (See Fourth Am. Compl. 5, ECF No. 79). Otherwise, the
20 objection is sustained.

21 **iii. Burdensomeness**

22 Finally, Defendant alleges that acquiring the information
23 requested by Plaintiff would be "prohibitively burdensome" because
24 CDCR does not maintain its records in a manner that allows for
25 ready access to the information sought. (Opp'n 60-61, ECF No.
26 116.) Small describes the process involved. (Id.) Defendant has
27 not adequately shown that this process is so unduly burdensome, in
28

1 light of Plaintiff's need for the information. The objection is
2 overruled.

3 **iv. Sufficiency of Small's response**

4 Defendant's response of "I do not know" is insufficient.
5 Accordingly, the Motion to Compel a further response to Small
6 interrogatory 10 [ECF No. 130] is **GRANTED**.

7 **m. Hopper interrogatories 6 and 7**

8 Franklin inquires in Hopper interrogatory 6, "Were you the
9 senior hearing officer in any of Plaintiff's disciplinary
10 hearings?" (Mot. Compel Attach. #1 Ex. D, at 57, ECF No. 130.)
11 Interrogatory 7 asks, "On August 18, 2007, did you sit in on
12 Plaintiff's disciplinary hearing, making comments to influence
13 Plaintiff was guilty [sic] of the rule violation he received, on
14 August 11, 2007, for refusing a lawful order?" (Id. at 58.)

15 Defendant objected that both questions were vague, irrelevant,
16 overbroad, and unduly burdensome. (Id. at 57-58.) He also
17 objected that the information sought by Franklin is obtainable from
18 another source that is more convenient, less burdensome, and less
19 expensive. (Id.)

20 Hopper responded to interrogatory 6 by stating, "If I was a
21 sergeant I couldn't have been because the senior hearing officers
22 has [sic] to be lieutenant or above." (Id. at 57.) Defendant
23 answered interrogatory 7 by stating, "I may have been called as a
24 witness, but I don't recall." (Id. at 58.) Franklin moves to
25 compel on the basis that Hopper did not refer to appropriate prison
26 records in these responses. ([Am.] Mot. Compel 6, ECF No. 130.)

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i. Vagueness

In his Opposition to Hopper interrogatory 6, Defendant maintains that Plaintiff's interrogatory is vague and unlimited as to time. (Opp'n Attach. #3 Separate Statement 31, ECF No. 116.) As is, interrogatory 6 is vague as to time. To the extent Defendant is ordered to respond, he should restrict his response to those disciplinary hearings occurring after Plaintiff filed his first lawsuit against Hopper in March 2007.

As to Hopper interrogatory 7, Defendant contends that Franklin's interrogatory is "too vague." (Id.) Yet, Hopper does not articulate why the interrogatory is vague. The objection is overruled.

ii. Waived objections

Defendant objects to interrogatory 7 on the basis that Plaintiff's interrogatory is argumentative, compound, and assumes facts. (Id. at 31-32.) Hopper, however, did not initially object on these grounds. These objections were waived.

iii. Sufficiency of Hopper's responses

Hopper argues that his response to interrogatory 6 is sufficient because he comprehensively answered Plaintiff's question by stating that Hopper could never be the senior hearing officer for one of Franklin's hearings. (Id. at 31.) "[A]n evasive statement to avoid answer is no answer." Bollard v. Volkswagen of Am., Inc., 56 F.R.D 569, 574 (W.D. Mo. 1971); see Ruiz v. Hamburg-Am. Line, 478 F.2d 29, 33 (9th Cir. 1973) ("Misleading and evasive answers to interrogatories justify the court's viewing with suspicion the contentions of the party so answering."). Defendant's response in interrogatory 6 is evasive because he does

1 not state whether he was the senior hearing officer at any of
2 Plaintiff's disciplinary hearings.

3 Defendant also asserts that his response to interrogatory 7 is
4 adequate because the interrogatory "asks Sergeant Hopper to concede
5 facts that no record could substantiate." (Opp'n Attach. #3
6 Separate Statement 32, ECF No. 116.) Yet, Defendant has not stated
7 under oath any steps he took to attempt to answer even a portion of
8 Franklin's question. The response is therefore insufficient.
9 Accordingly, the Motion to Compel further responses to Hopper
10 interrogatories 6 and 7 [ECF No. 130] is **GRANTED**.

11 **D. Requests for Admission**

12 Franklin also moves to compel further responses to his
13 requests for admission. ([Am.] Mot. Compel 1, ECF No. 130.)
14 There, Plaintiff argues:

15 [A]n answering party may not give lack of information or
16 knowledge as a reason for failure to admit or deny [a
17 request for admission] unless the party states that the
18 party has made reasonable inquiry and that the
19 information known or readily obtainable by the party is
20 insufficient to enable the party to admit or deny.

21 (Id. at 11 (citing Fed. R. Civ. P. 36(a)).) Franklin attached a
22 copy of his requests for admission as an exhibit to his Motion to
23 Compel. (See id. Ex. B.)

24 In their Opposition, Defendants contend that this portion of
25 Plaintiff's motion should be denied because Defendants were unable
26 to respond with a simple "admit or deny." (Opp'n 12, ECF No. 116.)
27 They assert that the requests contain Franklin's summaries and
28 interpretations of law, which are of questionable accuracy. (Id.)
Further, they allege that Plaintiff's requests were nonsensical,
compound, and vague. (Id.)

1 In the Motion to Compel, Franklin does not specify which
2 requests for admissions he seeks to compel. (See generally [Am.]
3 Mot. Compel 1-9, ECF No. 130.) Plaintiff merely attached a copy of
4 his requests for admission to his motion. (See id. Ex. B.) This
5 will not suffice.

6 [A]t a minimum, as the moving party plaintiff has the
7 burden of informing the court which discovery requests
8 are the subject of his motion to compel, which of
9 defendants' responses are disputed, why he believes
10 defendants' responses are deficient, why defendants'
11 objections are not justified, and why the information he
12 seeks through discovery is relevant to the prosecution of
13 this action.

14 Masterson v. Campbell, No. CIV S-05-0192 JAM DAD P, 2009 WL
15 2824754, at *2 (E.D. Cal. Sept. 1, 2009) (citing Brooks v.
16 Alameida, No. CIV S-03-2343 JAM EFB P, 2009 WL 331358, at *2
17 (E.D.Cal. Feb. 10, 2009) ("Without knowing which responses
18 plaintiff seeks to compel or on what grounds, the court cannot
19 grant plaintiff's motion."); Ellis v. Cambra, No. CIV F-02-5646 AWI
20 SMS PC, 2008 WL 860523, at *4 (E.D.Cal. Mar. 27, 2008) ("Plaintiff
21 must inform the court which discovery requests are the subject of
22 his motion to compel, and, for each disputed response, inform the
23 court why the information sought is relevant and why Defendant's
24 objections are not justified.")).

25 Franklin did not specify what responses he seeks to compel and
26 why. See Masterson, 2009 WL 2824754, at *2. "The [C]ourt will not
27 review each of plaintiff's discovery requests and each of
28 defendants' responses thereto in order to determine whether any of
29 the defendants' responses are somehow deficient." Id. (citing
30 Williams v. Flint, No. CIV S 06-1238 FCD GGH P, 2007 WL 2274520, at
31 *1 (E.D. Cal. Aug. 6, 2007) ("It is plaintiff's burden to describe

1 why a particular response is inadequate. It is not enough to
2 generally argue that all responses are incomplete.")); see also Bd.
3 of Trs. of the Sheet Metal Workers Health Care Plan v. Vigil, No.
4 C08-181-JLR, 2011 U.S. Dist. LEXIS 28171, at *2 (N.D. Cal. Mar. 18,
5 2011) (citing Orr v. Bank of America, NT & SA, 285 F.3d 764, 775
6 (9th Cir. 2002)) ("[T]his Court has discretion to refuse to
7 consider evidence that the offering party fails to cite with
8 sufficient specificity."). Franklin's Motion to Compel a further
9 response to his requests for admission [ECF No. 130] is **DENIED**.

10 **E. Sanctions**

11 In his Motion, Plaintiff briefly notes that when a party fails
12 to respond to a discovery request, sanctions may be imposed.
13 ([Am.] Mot. Compel 10, ECF No. 130 (citing Fed. R. Civ. P. 37).)

14 In response, Defendants argue that Franklin's reference to
15 sanctions is inappropriate for several reasons:

16 (a) [T]here is no proper request or notice for any
17 particular sanctions; (b) no showing for an award of
18 sanctions has been made; (c) responding parties have
19 provided good faith responses to all of the subject
discovery; (d) the responses provided are substantially
justified; and (e) plaintiff has not incurred any
recoverable costs or fees in connection with this motion.

20 (Resp. 2, 4, ECF No. 133.)

21 Federal Rule of Civil Procedure 37(a) provides that if the
22 Court grants a motion to compel discovery, it shall order the
23 nonmoving party to pay the moving party's reasonable expenses
24 incurred in preparing the motion unless the Court finds that the
25 nonmoving party's failure to provide the requested discovery
26 without the Court's involvement was substantially justified. Fed.
27 R. Civ. P. 37(a)(5)(A). "A request for discovery is 'substantially
28 justified' under Rule 37 if reasonable people could differ on the

1 matter in dispute." United States EEOC v. Caesars Entm't, Inc.,
2 237 F.R.D. 428, 435 (D. Nev. 2006) (citing Reygo Pacific Corp. v.
3 Johnston Pump Co., 680 F.2d 647, 649 (9th Cir. 1982)).

4 When a motion to compel is granted in part and denied in part,
5 the Court may "apportion the reasonable expenses for the motion."
6 Fed. R. Civ. P. 37(a)(5)(C). Generally, a pro per party who acts
7 for himself is not entitled to attorney's fees. See Bone v.
8 Hibernia Bank, 354 F. Supp. 310, 311 (D.C. Cal. 1973).

9 Here, Franklin does not specifically request sanctions; he
10 merely references that sanctions may be awarded in some situations.
11 Additionally, he does not ask for a sanction amount, a nonmonetary
12 sanction, or articulate what expenses he incurred in bringing the
13 Motion. Moreover, Plaintiff is a pro se litigant, thus he incurred
14 no attorney's fees. Accordingly, to the extent Franklin requests
15 sanctions, this request is denied.

16 IV. CONCLUSION

17 For the reasons described above, Plaintiff's Amended Motion to
18 Compel is **GRANTED** in part and **DENIED** in part.

19 IT IS HEREBY ORDERED:

- 20 1. Franklin's Motion to Compel further responses to Vargas
21 interrogatories 10-15 is **GRANTED**.
- 22 2. Franklin's Motion to Compel further responses to Vargas
23 interrogatories 3-9 and 16-17 is **DENIED**.
- 24 3. Franklin's Motion to Compel further responses to Hopper
25 interrogatories 3-7 is **GRANTED**.
- 26 4. Franklin's Motion to Compel further responses to Trujillo
27 interrogatories 1-4 and 7-12 is **GRANTED**.

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- 1 5. Franklin's Motion to Compel further responses to Trujillo
2 interrogatories 5 and 6 is **DENIED**.
- 3 6. Franklin's Motion to Compel further responses to Davis
4 interrogatories 5 and 14 is **GRANTED**; and as to
5 interrogatories 8-9 and 12-13, the Motion is **GRANTED** in
6 part.
- 7 7. Franklin's Motion to Compel further responses to Davis
8 interrogatories 1, 2, and 11 is **DENIED**.
- 9 8. Franklin's Motion to Compel further responses to Madden
10 interrogatories 5, 8, and 10 is **GRANTED**; and as to
11 interrogatories 13, 16, and 17, the Motion is **GRANTED** in
12 part.
- 13 9. Franklin's Motion to Compel further responses to Madden
14 interrogatories 4 and 6 is **DENIED**.
- 15 10. Franklin's Motion to Compel further responses to Small
16 interrogatories 7 and 10 is **GRANTED**.
- 17 11. Franklin's Motion to Compel further responses to Small
18 interrogatories 4, 5, and 13 is **DENIED**.
- 19 12. Franklin's Motion to Compel responses to Requests for
20 Admission is **DENIED**.
- 21 13. To the extent Franklin requests sanctions, that request
22 is **DENIED**.

23 Supplemental responses are to be provided by Defendants on or
24 before November 9, 2012.

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1 The Clerk of the Court is directed to terminate Plaintiff's
2 Motion to Compel [ECF No. 102] because it has been superseded by
3 Plaintiff's Amended Motion [ECF No. 130].

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DATED: October 18, 2012


Ruben B. Brooks, Magistrate Judge
United States District Court

cc:
Judge Anello
All Parties of Record