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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS IV,

1:05-cv-01625-LJO-GSA-PC

Plaintiff,

ORDER GRANTING IN PART PLAINTIFF’S
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS
(Doc. 85.)

v.

W. J. SULLIVAN, et al.,

ORDER FOR DEFENDANTS TO PRODUCE
DOCUMENTS PURSUANT TO PLAINTIFF’S
REQUEST FOR PRODUCTION NO. 13, AS
INSTRUCTED BY THIS ORDER, WITHIN
THIRTY DAYS

Defendants.

_____ /

I. BACKGROUND

Plaintiff George E. Jacobs IV (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now proceeds with the Third Amended Complaint filed by Plaintiff on May 5, 2010, on Plaintiff’s Eighth Amendment claims, against defendants D. Watson (correctional sergeant), P. Chan (correctional officer), S. McGregor (correctional officer), D. Blankenship (correctional officer), M. Crotty¹ (correctional officer), E. Granillo (correctional officer), C. Nelson (correctional officer), M. Carrasco (correctional captain), R. Johnson (correctional lieutenant), and D. Jobb (correctional officer) for use of excessive

¹On June 23, 2011, Plaintiff’s case against defendant Crotty was stayed pursuant to 11 U.S.C. §362(a) because defendant Crotty filed bankruptcy. (Doc. 58.) To date, the stay has not been lifted.

1 force; and against defendants J. Adams aka Salazar (medical technical assistant), Ms. Alexander
2 (registered nurse), Watson, and Granillo for failure to provide adequate medical care.² (Doc. 29.)

3 On January 23, 2012, the Court issued a scheduling order in this action, extending the
4 discovery deadline to March 5, 2012, for the limited purpose of allowing Plaintiff to file a motion
5 to compel. (Doc. 83.) On February 17, 2012, Plaintiff filed a motion to compel production of
6 documents. (Doc. 85.) On March 15, 2012, Defendants filed an opposition. (Doc. 95.) On July 9,
7 2012, Plaintiff filed a reply. (Doc. 106.) Plaintiff's motion to compel is now before the Court.

8 **II. PLAINTIFF'S ALLEGATIONS³**

9 Plaintiff alleges that he was transferred to CCI-Tehachapi from Lancaster State Prison.
10 Plaintiff complains that the staff at CCI-Tehachapi immediately acted hostile toward Plaintiff
11 because the staff at Lancaster State Prison informed them that Plaintiff was a "staff assaulter" and
12 filed administrative grievances. (Third Amended Complaint ("3ACP"), Doc. 29 ¶ 22.)

13 Plaintiff claims that defendant D. Watson withheld Plaintiff's personal and legal property
14 because of Plaintiff's reputation as a staff assaulter and grievance filer. Plaintiff filed a grievance
15 about his property, but did not receive his property. Plaintiff told defendant D. Blankenship that he
16 wanted to speak with higher authorities. Blankenship told Plaintiff that "today is not a good day to
17 be doing this because the sergeant (defendant D. Watson) is not to be messed with!" (3ACP ¶ 25.)
18 Later, Watson approached Plaintiff and berated him. Plaintiff asked to speak with a higher authority
19 again, but Watson began making comments about Plaintiff "wanting to hurt himself" and began
20 spraying Plaintiff with pepper spray. (3ACP ¶ 27.) Defendant P. Chan also joined in and sprayed
21 Plaintiff. Watson asked Plaintiff if he wanted to come out of the cell, but when Plaintiff approached
22 the door, he was bombarded with more pepper spray. Defendant S. McGregor then opened the door
23 from the control tower to allow Watson to directly spray Plaintiff. Watson asked Plaintiff if he was
24 ready to exit and the cell door suddenly opened completely and a crowd of guards rushed in and

25
26 ²On October 20, 2010, the Court dismissed all other claims from this action, based on Plaintiff's failure to
state a claim. (Doc. 31.)

27 ³This summary includes Plaintiff's allegations against Defendants in the Third Amended Complaint, upon
28 which the Court based its finding that Plaintiff stated the cognizable claims upon which this case now proceeds. (See
Court's Screening Order, Doc. 31.)

1 attacked Plaintiff. Plaintiff claims that defendants Carrasco, Johnson, Jobb, Watson, and Chan were
2 standing at the entrance of Plaintiff's cell watching defendants Blankenship, Crotty, Granillo, and
3 Nelson "assault and batter Plaintiff in the form of using unnecessary use of force excessively."
4 (3ACP ¶ 33.) Plaintiff was then shackled and taken to a cell outside the building. Plaintiff's clothes
5 were cut off and he was sprayed with cold water. Plaintiff claims that the weather was particularly
6 cold because it was in the middle of winter. Plaintiff was verbally abused by Watson while he was
7 being hosed down.

8 Watson and Granillo then escorted Plaintiff to the dining hall and placed him in a holding
9 cage and strip searched him, leaving him naked. Watson took out his pepper spray and shook it up
10 while making sexually harassing remarks. Watson left and returned later to tell Plaintiff that his
11 officers were injured and weapons were found in Plaintiff's cell. Plaintiff was then sprayed with
12 pepper spray again. Watson then falsely reported that Plaintiff spat on Watson's face, to justify the
13 use of pepper spray. Plaintiff claims that Granillo was present during the entire sequence of events
14 but failed to intervene. Plaintiff alleges that Watson refused to summon medical attention unless
15 Plaintiff agreed to exit the holding cage and allow Watson to wash off all the pepper spray to
16 eliminate any evidence of misconduct. When Plaintiff pled for medical assistance, Watson went
17 outside to get the hose and sprayed Plaintiff with water again. Plaintiff claims that D. Abarquez (not
18 named as a defendant) then took photos of Plaintiff.

19 Plaintiff complains that Abarquez was responsible for collecting evidence of the incident but
20 allowed Plaintiff's cell to remain unsecured for over an hour, thereby allowing the other defendants
21 to enter and exit and plant false evidence in the cell. Plaintiff was later seen by defendant J. Adams
22 and a "psych doctor." (3ACP ¶ 46.) Plaintiff complains that neither person did anything to have
23 Plaintiff transported to the medical health care unit for treatment. Plaintiff complained about the
24 burning sensation in his eyes and on his body, and told J. Adams that he was on eye medication and
25 needed his medication to alleviate the pain. Adams ignored Plaintiff and walked away. Plaintiff also
26 complains that defendant Alexander came by, but refused to offer any medical treatment. Hours
27 later, Watson told Plaintiff that he was being moved to the infirmary to be examined by a physician.
28 However, Plaintiff alleges that he was tricked and was not seen by a physician. Plaintiff alleges that

1 he was placed on suicide watch “in direct violation of his civil liberties.” (3ACP ¶ 50.) Plaintiff
2 complains that while he was on suicide watch, he was “not provided with any of life’s bare minimum
3 necessities” because he was fed via “two plastic bags filled with loose food.” (3ACP ¶ 51.) Later,
4 D. Abarquez transferred Plaintiff to CSP-Corcoran. Plaintiff was told that he was being transferred
5 to receive medical care, but was instead placed on suicide watch at CSP-Corcoran. Plaintiff claims
6 that the entire incident was a conspiracy to place Plaintiff on suicide watch in response to Plaintiff’s
7 exercise of his right to file administrative grievances complaining about the conduct of prison
8 guards. Plaintiff claims that Defendant John Doe #1 is a senior hearing official who served as the
9 adjudicator for the rules violation report that Plaintiff received as a result of the pepper spray
10 incident. John Doe #1 found Plaintiff guilty of battery on a peace officer with a deadly weapon.
11 Plaintiff claims that he was denied the right to call the defendants and all other pertinent eye
12 witnesses. Plaintiff also claims he was denied the right to present physical and documentary
13 evidence. Plaintiff was told that he would be found guilty regardless of any evidence that Plaintiff
14 presented in his defense.

15 **III. PLAINTIFF’S CLAIMS**

16 **A. Eighth Amendment Excessive Force Claim**

17 The Court found that Plaintiff states a cognizable claim for excessive force under the Eighth
18 Amendment, against defendants Watson, Chan, McGregor, Blankenship, Crotty, Granillo, Nelson,
19 Carrasco, Johnson, and Jobb, for attacking Plaintiff and maliciously pepper-spraying Plaintiff.
20 Plaintiff claims that defendants Watson and Chan pepper sprayed Plaintiff in a malicious manner.
21 Plaintiff alleges that defendant McGregor participated in the first pepper spray incident by opening
22 the door for Watson so he could administer the pepper spray directly at Plaintiff. Plaintiff alleges
23 that defendants Blankenship, Crotty, Granillo, and Nelson attacked Plaintiff while defendants
24 Carrasco, Johnson, Jobb, Watson, and Chan stood nearby and observed without making any effort
25 to intervene. Plaintiff was later hosed down in the cold and pepper sprayed again by Watson in a
26 malicious manner. Plaintiff alleges that defendant Granillo stood by and observed without making
27 any effort to intervene.

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1 “What is necessary to show sufficient harm for purposes of the Cruel and Unusual
2 Punishments Clause [of the Eighth Amendment] depends upon the claim at issue” Hudson v.
3 McMillian, 503 U.S. 1, 8 (1992). “The objective component of an Eighth Amendment claim is . .
4 . contextual and responsive to contemporary standards of decency.” Id. (internal quotation marks
5 and citations omitted). The malicious and sadistic use of force to cause harm always violates
6 contemporary standards of decency, regardless of whether or not significant injury is evident. Id.
7 at 9; see also Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth Amendment excessive force
8 standard examines de minimis uses of force, not de minimis injuries). However, not “every
9 malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9. “The Eighth
10 Amendment’s prohibition of cruel and unusual punishments necessarily excludes from constitutional
11 recognition de minimis uses of physical force, provided that the use of force is not of a sort
12 ‘repugnant to the conscience of mankind.’” Id. at 9-10 (internal quotations marks and citations
13 omitted).

14 “[W]henever prison officials stand accused of using excessive physical force in violation of
15 the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied
16 in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”
17 Id. at 7. “In determining whether the use of force was wanton and unnecessary, it may also be proper
18 to evaluate the need for application of force, the relationship between that need and the amount of
19 force used, the threat reasonably perceived by the responsible officials, and any efforts made to
20 temper the severity of a forceful response.” Id. (internal quotation marks and citations omitted).
21 “The absence of serious injury is . . . relevant to the Eighth Amendment inquiry, but does not end
22 it.” Id.

23 **B. Eighth Amendment Medical Care Claim**

24 The Court found that Plaintiff states cognizable claims against defendants Adams aka
25 Salazar, Alexander, Watson, and Granillo for failure to provide adequate medical care in violation
26 of the Eighth Amendment, for ignoring Plaintiff’s requests for decontamination from the effects of
27 the pepper spray and Plaintiff’s requests for access to his eye medication to alleviate the pain from
28 pepper spray.

1 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
2 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
3 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part
4 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
5 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
6 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was
7 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
8 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
9 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a
10 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused
11 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference may be
12 manifested “when prison officials deny, delay or intentionally interfere with medical treatment, or
13 it may be shown by the way in which prison physicians provide medical care.” Id. (citing McGuckin
14 at 1060 (internal quotations omitted)). Where a prisoner is alleging a delay in receiving medical
15 treatment, the delay must have led to further harm in order for the prisoner to make a claim of
16 deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd.
17 of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)). The failure to decontaminate prisoners
18 or otherwise provide medical treatment for prisoners exposed to pepper spray can support a claim
19 for the violation of the Eighth Amendment. Clement v. Gomez, 298 F.3d 898, 905 (9th Cir. 2002).

20 **IV. MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

21 **A. Federal Rules of Civil Procedure 26(b), 36(a), and 37**

22 Under Rule 26(b), “[U]nless otherwise limited by court order, the scope of discovery is as
23 follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
24 party's claim or defense — including the existence, description, nature, custody, condition, and
25 location of any documents or other tangible things and the identity and location of persons who know
26 of any discoverable matter. For good cause, the court may order discovery of any matter relevant
27 to the subject matter involved in the action. Relevant information need not be admissible at the trial

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1 if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.
2 R. Civ. P. 26(b)(1).

3 Pursuant to Rule 34(a) of the Federal Rules of Civil Procedure, “any party may serve on any
4 other party a request to produce and permit the party making the request . . . to inspect and copy any
5 designated documents . . . which are in the possession, custody or control of the party upon whom
6 the request is served.” Fed. R. Civ. P. 34(a)(1). “[A] party need not have actual possession of
7 documents to be deemed in control of them.” Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472
8 (D.Nev., 1998) quoting Estate of Young v. Holmes, 134 F.R.D. 291, 294 (D.Nev. 1991). “A party
9 that has a legal right to obtain certain documents is deemed to have control of the documents.” Clark
10 181 F.R.D. at 472. Under Rule 34(b), the party to whom the request is directed must respond in
11 writing that inspection and related activities will be permitted as requested, or state an objection to
12 the request, including the reasons. Fed. R. Civ. P. 34(b)(2). Also, “[a] party must produce
13 documents as they are kept in the usual course of business or must organize and label them to
14 correspond to the categories in the request.” Fed. R. Civ. P. 34(b)(E)(I).

15 Pursuant to Rule 37(a), a party propounding discovery may seek an order compelling
16 disclosure when an opposing party has failed to respond or has provided evasive or incomplete
17 responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or incomplete disclosure, answer, or response
18 must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4). “It is well
19 established that a failure to object to discovery requests within the time required constitutes a waiver
20 of any objection.” Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th
21 Cir.1992) (citing Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir.1981)). The moving party bears
22 the burden of demonstrating “actual and substantial prejudice” from the denial of discovery. See
23 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.).

24 **B. Plaintiff’s Motion**

25 Plaintiff seeks a court order compelling Defendants to produce documents in response to
26 Requests 1, 7-11, 13-49, 53, 54, 57, 58, 60, 61, 64, and 67 of Plaintiff’s Requests for Production of
27 Documents (“RPD”) Sets One, Two, and Three. Plaintiff asserts that he served Sets One, Two, and
28 Three on Defendants in April 2011, and Defendants responded on August 22, 2011. Plaintiff argues

1 that some of Defendants' responses were evasive, incomplete, and failed to disclose information
2 required by Federal Rules of Civil Procedure 26(a), (e)(1), and 34, without good cause and/or
3 substantial justification.

4
5 > **REQUEST FOR PRODUCTION (RFP) NO. 1:**

6 All documents that refer to allegations of misconduct or other improper conduct by prison
7 staff including all named defendants, whether such allegations were made by an inmate or
8 by a member of the prison staff, during relevant time period, per Departmental Operations
9 Manual (D.O.M.) § 54100.25.5, § 54100.25.6, § 54100.25.7; pursuant to Penal Code
10 832.5(a), Evidence Code(s) §§ 1043, 1044, 1045, 1046.

11 **RESPONSE TO RFP NO. 1:**

12 Defendants have made a reasonable and diligent search for documents and have not
13 been able to locate any documents which would be responsive to this request.

14 **Discussion**

15 Plaintiff does not specifically address RFP No. 1 but generally argues that he is entitled to
16 relevant documents and Defendants would have located such documents if they had diligently
17 searched the information available to them.

18 Defendants argue that they should not be compelled to respond further to this request,
19 because this request seeks documents that arise from staff complaints allegedly filed against
20 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
21 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
22 Defendants object to Plaintiff's requests as overbroad and beyond the scope of this litigation.
23 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
24 documents responsive to this request exist.

25 The Court finds this request to be unreasonable because it is overbroad in its request for "all"
26 documents by "prison staff," vague as to the meaning of "relevant time period," and irrelevant as to
27 its request for information about misconduct by prison staff other than Defendants. Therefore,
28 Defendants are not required to provide any further response to this request.

1 > **RFP NO. 7:**

2 Please produce and relinquish the following document(s); plaintiff's CDCR daily 114A
3 inmates AD/SEG 106 (notes) file. Pursuant to E.V. Code(s) §§ 1530, 1532, 1600.

4 **RESPONSE TO RFP NO. 7:**

5 Included as responsive to this request is a copy of Plaintiff's 114A's from January 24,
6 2005, through February 3, 2005. (Attachment B)

7 **Discussion**

8 Plaintiff does not specifically address RFP No. 7 and does not give any explanation why
9 Defendants' response to RFP No. 7 is deficient. Therefore, Defendants are not required to provide
10 any further response to this request.
11

12 > **RFP NO. 8:**

13 Please produce and relinquish the following document(s); including but not limited to;
14 plaintiff's 4A-Yard S.H.U. CDCR daily 114A inmate Ad/SEG log (notes) file for the
15 relevant time period of: November 9, 2004 thru January 24, 2005.

16 **RESPONSE TO RFP NO. 8:**

17 Defendants object to this request because it is overbroad and therefore over
18 burdensome, is not relevant to the timeframe of the alleged incident, and is therefore
19 deemed harassing. Defendant further objects because the request appears to be
20 duplicative of Request No. 7.

21 **Discussion**

22 Plaintiff does not specifically address RFP No. 8, although he argues that the time period
23 from November 9, 2004 through January 24, 2005 is relevant because this is the time period between
24 Plaintiff's arrival at the prison and the date of the alleged assault. Defendants argue that Plaintiff
25 fails to explain the deficiency of their response to RFP No. 8.

26 Defendants objections are sustained. Plaintiff has not explained how the Ad Seg log notes
27 from November 9, 2004 through January 23, 2005 are relevant to any of the claims or defenses in
28 this action. This case now proceeds against Defendants only on claims for excessive force and

1 inadequate medical treatment based on events beginning on January 24, 2005. Defendants have
2 already provided the log notes for January 24, 2005 in their response to RFP No. 7. Therefore,
3 Defendants are not required to provide any further response to this request.

4
5 > **RFP NO. 9:**

6 Please produce and relinquish the following document(s); including but not limited to; IV-A-
7 H.U.E. yard (S.H.U.) sergeant log (notes) and tower control booth log notes from relevant
8 time periods. Pursuant to E.V. Codes §§ 1530, 1532.

9 **RESPONSE TO RFP NO. 9:**

10 Defendants object to this request because it is vague as to time, and the term
11 “relevant time periods” implying more than one day. Defendants have made a
12 reasonable and diligent search for documents and have not been able to locate any
13 documents which would be responsive to this request.

14 **Discussion**

15 Plaintiff argues that these log books exist and Defendants should provide them. Defendants
16 respond that logs books are only retained for five years; the incident occurred on January 24, 2005;
17 and Defendants had no knowledge of this lawsuit until six years after the incident and a year after
18 the required retention of the log books ended. Plaintiff replies that if there is such a five-year policy,
19 it is the Court’s fault the evidence is gone, because Plaintiff made three motions to preserve evidence
20 which were denied, on March 15, 2007, December 26, 2007, and April 19, 2011.

21 Defendants’ objection on the ground that this request is vague as to time is sustained.
22 Moreover, Defendants cannot be compelled to produce documents that no longer exist.⁴ Therefore,
23 Defendants are not required to make any further responses to this request.

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27 ⁴With respect to Plaintiff’s argument that the Court is responsible for loss of the log book evidence because
28 the Court denied Plaintiff’s motions, Plaintiff’s three motions to preserve evidence concerned video tape evidence,
not log books, and therefore Plaintiff’s argument is without merit. (See Docs. 17, 18, and 55.)

1 > **RFP NO. 10:**

2 Please produce and relinquish the following document(s); including but not limited to;
3 plaintiff 4B-Yard (ACH) unit CDCR daily 114A inmate S.H.U. log (notes) file for the
4 relevant time period of: January 24, 2005.

5 **RESPONSE TO RFP NO. 10:**

6 Defendants object to this request because it is duplicative of Request No. 8. The
7 request is therefore in violation of Rule 26(b)(2)(C). Defendants have made a
8 reasonable and diligent search for documents and have not been able to locate any
9 documents which would be responsive to this request.

10 **Discussion**

11 Defendants objection is sustained. RFP No. 10 is duplicative of RFP No. 8. The Court must
12 limit unreasonably cumulative or duplicative discovery. Fed. R. Civ. P. 26(b)(2)(C). Therefore,
13 Defendants are not required to make any further responses to this request.

14
15 > **RFP NO. 11:**

16 Please produce and relinquish the following document(s); including but not limited to; 4A
17 yard (S.H.U.) dinning hall #4 unit sergeant log (notes), and control tower booth log (notes)
18 for the time period of January 24, 2005. Pursuant to E.V. Codes §§ 1530, 1532, 1600.

19 **RESPONSE TO RFP NO. 11:**

20 Defendants have made a reasonable and diligent search for documents and have not
21 been able to locate any documents which would be responsive to this request.

22 **Discussion**

23 Plaintiff argues that these log books exist and Defendants should provide them. Defendants
24 respond that logs books are only retained for five years; the incident occurred on January 24, 2005;
25 and Defendants had no knowledge of this suit until six years after the incident and a year after the
26 required retention of the log books ended. Plaintiff replies that if there is such a five-year policy, it
27 is the Court's fault the evidence is gone, because Plaintiff made three motions to preserve evidence
28 which were denied, on March 15, 2007, December 26, 2007, and April 19, 2011.

1 Defendants cannot be compelled to produce documents that no longer exist. Therefore,
2 Defendants are not required to make any further responses to this request. Plaintiff's argument that
3 the Court is responsible for loss of log notes evidence is addressed above at footnote 4.
4

5 > **RFP NO. 13:**

6 Please produce and relinquish tangible items, including but not limited to: All photographs
7 of the crime incident scene 4A yard housing unit 5 cell 103, of plaintiff, and E. Granillo, D.
8 Blankenship. Any other photograph relevant thereto pursuant to E.V. Codes §§ 1550, and
9 1553.

10 **RESPONSE TO RFP 13:**

11 Included as responsive to this request are copies of photographs taken after the
12 incident of January 24, 2005. (Attachment C)

13 **Discussion**

14 Plaintiff argues that Defendants have provided him with photographs which do not depict
15 the true nature of the things photographed, because the photos are black and white photocopies of
16 color photos which are too dark to ascertain what the photos depict. Defendants argue that
17 Plaintiff's argument is frivolous because Plaintiff has already seen and inspected the color
18 photographs, and if Plaintiff wants color photographs for use at trial, Defendants will make them
19 available then. Plaintiff replies that he has never seen or been in possession of any color photographs
20 connected to this case.

21 Plaintiff is entitled to color copies of the requested photographs which accurately depict the
22 subject matter. Fed. R. Civ. P. 26(b)(1). Defendants shall be required to provide Plaintiff with
23 quality color copies of the photographs within thirty days.
24

25 > **RFP NO. 14:**

26 Please produce and relinquish the following item(s); 4A-yard housing unit 5 isolation log
27 book(s) for January 25, 2005.

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1 **RESPONSE TO RFP NO. 14:**

2 Defendants have made a reasonable and diligent search for documents and have not
3 been able to locate any documents which would be responsive to this request.

4 **Discussion**

5 Plaintiff argues that these log books exist and Defendants should provide them. Defendants
6 respond that logs books are only retained for five years; the incident occurred on January 24, 2005;
7 and Defendants had no knowledge of this suit until six years after the incident and a year after the
8 required retention of the log books ended. Plaintiff replies that if there is such a five-year policy, it
9 is the Court's fault the evidence is gone, because Plaintiff made three motions to preserve evidence
10 which were denied, on March 15, 2007, December 26, 2007, and April 19, 2011.

11 Defendants cannot be compelled to produce documents that no longer exist. Therefore,
12 Defendants are not required to make any further responses to this request. Plaintiff's argument that
13 the Court is responsible for loss of log notes evidence is addressed above at footnote 4.

14
15 > **RFP NO. 15:**

16 Please produce and relinquish the following item(s); 114-1 inmate segregation profile for
17 plaintiff Jacobs.

18 **RESPONSE TO RFP NO. 15:**

19 Included as responsive to this request is a copy of Plaintiff's Inmate Segregation
20 Profile. (Attachment D)

21 **Discussion**

22 Plaintiff does not specifically address RFP No. 15 and does not give any explanation why
23 Defendants' response to RFP No. 15 is deficient. Defendants are not required to provide any further
24 response to this request.

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1 > **RFP NO. 16:**

2 Please produce and relinquish all excessive use of force video tape interviews from relevant
3 time period of November 9, 2004 thru January 24, 2005 of all prisoners who were allegedly
4 assaulted by Defendants. Pursuant to E.V. Codes §§ 1271, 1550.1, 1553, 1562.

5 **RESPONSE TO RFP NO. 16:**

6 Defendants object to this request because it is overbroad, burdensome, and would be
7 extremely expensive to produce any and all recordings of third parties who are not
8 part of this litigation. Defendants further object because the request is not relevant
9 to this matter because Plaintiff is seeking interviews of other inmates, and not this
10 incident. Defendants further object because the production of such items is a
11 violation to the privacy rights of these third parties, and could possibly threaten the
12 security of the institution. Defendants further object because the term “allegedly
13 assaulted” is vague, argumentative, and calls for a legal opinion. It is Defendants
14 position that they have not assaulted Jacobs or any other inmate. Defendants will
15 therefore not produce any documents responsive to this request, because they do not
16 exist.

17 **Discussion**

18 Plaintiff argues that this request is not overbroad, as it only requests records of excessive
19 force by Defendants during a two-month period. Plaintiff argues that it is not burdensome to search
20 Defendants’ “elite computerized tracking system of files” containing the names of Defendants,
21 incidents involving excessive force incidents “which resulted in a serious injury to the body or head,”
22 and the names of the victims. (Motion, Doc. 85 at 11.) Plaintiff also argues that Defendants’
23 argument that the items are confidential or privileged does not apply in federal court.

24 Defendants argue that this request invades the privacy rights of third parties because inmates
25 participate in use-of-force interviews with the expectation that their statements will be kept
26 confidential. Defendants also argue that the request is overbroad and irrelevant because Plaintiff did
27 not allege that he sustained any blows to the head or face.

28 ///

1 Plaintiff replies that under Rule 26(b), he is entitled to discover video interviews of any
2 allegations made by an inmate of misconduct by prison staff involving Defendants during the
3 relevant time period, because these are the same or similar acts as Plaintiff suffered at the hands of
4 Defendants, claims clearly limited to the subject matter in Plaintiff's complaint.

5 While it is true that "[q]uestions of privilege that arise in the course of the adjudication of
6 federal rights are 'governed by the principles of the common law as they may be interpreted by the
7 courts of the United States in the light of reason and experience,' " United States v. Zolin, 491 U.S.
8 554, 562, 109 S.Ct. 2619, 2625 (1989) (quoting Federal Rule of Evidence 501), this Court may give
9 some weight to privacy rights protected by state statutes. The "ultimate responsibility for deciding
10 how much weight to ascribe to such interests, and how that weight compares with the significance
11 of competing interests, must reside with the federal courts." Kelly v. City of San Jose, 114 F.R.D.
12 653, 656 (N.D.Cal. 1987). This Court usually allows plaintiffs in prisoner cases to discover records
13 of similar claims, such as excessive force, against officers in the past. While evidence of misconduct
14 is "not admissible to prove a person's character in order to show that on a particular occasion the
15 person acted in accordance with the character," the evidence may be admissible for other purposes.
16 Fed. R. Evid. 404(b); 608(b), and the scope of discovery encompasses relevant information which
17 "appears reasonably calculated to lead to the discovery of admissible evidence," Fed. R. Civ. P.
18 26(b). However, privacy concerns must be considered, and the Court often requires that confidential
19 or private information requested in discovery be redacted or submitted for in camera review before
20 it is provided to another party. Here, Plaintiff requests video tapes of interviews given by other
21 inmates, in which the inmates allege that the Defendants in this action used excessive force against
22 them during a limited time period. Plaintiff is not entitled to discover confidential information
23 which may include names of third parties or sensitive testimony given under the expectation of
24 confidentiality by third parties not part of this litigation. Moreover, to the extent that there are
25 numerous video tapes responsive to Plaintiff's request, it is burdensome and expensive for
26 Defendants to produce copies for Plaintiff.

27 The Court finds that the burden of producing the recordings requested by Plaintiff outweighs
28 its likely benefit, considering that records of use-of-force incidents involving Defendants are

1 available from more convenient, less burdensome, and less expensive sources. Despite claims of
2 privilege, personnel files are discoverable in federal question cases. Garrett v. City and County of
3 San Francisco, 818 F.2d 1515, 1519 n. 6 (9th Cir.1987) (citations omitted). Further, discovery of
4 the information Plaintiff seeks from the video tapes is not essential in resolving the issue of whether
5 Defendants used excessive force against Plaintiff in the January 24, 2005 incident at issue in this
6 action. Therefore, Defendants shall not be required to make further responses to this request.

7
8 > **RFP NO. 17:**

9 Please produce or relinquish all recommendation records by the Assistant Warden and
10 Facility Captain of all prisoner interviews of excessive use of force arising from defendants'
11 actions including but not limited to the "Report of Findings: Request is for relevant time
12 period of November 9, 2004 thru January 24, 2005. Pursuant to E.V. codes §§ 1271, 1550.1,
13 1553, 1562.

14 **RESPONSE TO RFP NO. 17:**

15 After a reasonable and diligent search by Defendants, no documents responsive to
16 this request exist.

17 **Discussion**

18 Plaintiff does not specifically address RFP No. 17 but generally argues that he is entitled to
19 relevant documents and Defendants would have located such documents if they had diligently
20 searched the information available to them.

21 Defendants argue that they should not be compelled to respond further to this request,
22 because this request seeks documents that arise from staff complaints allegedly filed against
23 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
24 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
25 Defendants object to Plaintiff's requests are overbroad and beyond the scope of this litigation.
26 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
27 documents responsive to this request exist.

28 ///

1 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
2 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
3 documents exist. Therefore, Defendants are not required to make any further response to this
4 request.

5
6 > **RFP NO. 18:**

7 Please produce and relinquish the following document(s): All adverse action records, which
8 is punitive in nature and is intended to correct misconduct or poor performance, or which
9 terminates employment, of each defendant named herein. Pursuant to E.V. § 1043, § 1045,
10 § 1046.

11 **RESPONSE TO RFP NO. 18:**

12 After a reasonable and diligent search by Defendants, no documents responsive to
13 this request exist.

14 **Discussion**

15 Plaintiff does not specifically address RFP No. 18 but generally argues that he is entitled to
16 relevant documents and Defendants would have located such documents if they had diligently
17 searched the information available to them.

18 Defendants argue that they should not be compelled to respond further to this request,
19 because this request seeks documents that arise from staff complaints allegedly filed against
20 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
21 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
22 Defendants object to Plaintiff's requests are overbroad and beyond the scope of this litigation.
23 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
24 documents responsive to this request exist.

25 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
26 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
27 documents exist. Therefore, Defendants are not required to make any further response to this
28 request.

1 > **RFP NO. 19:**

2 Please produce and relinquish the following document(s): All Bureau of Independent Review
3 (BIR) record of any/all investigative and/or disciplinary action taken against each defendant
4 named herein. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

5 **RESPONSE TO RFP NO. 19:**

6 After a reasonable and diligent search by Defendants, no documents responsive to
7 this request exist.

8 **Discussion**

9 Plaintiff does not specifically address RFP No. 19 but generally argues that he is entitled to
10 relevant documents and Defendants would have located such documents if they had diligently
11 searched the information available to them.

12 Defendants argue that they should not be compelled to respond further to this request,
13 because this request seeks documents that arise from staff complaints allegedly filed against
14 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
15 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
16 Defendants object to Plaintiff's requests are overbroad and beyond the scope of this litigation.
17 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
18 documents responsive to this request exist.

19 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
20 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
21 documents exist. Therefore, Defendants are not required to make any further response to this
22 request.

23
24 > **RFP NO. 20:**

25 Please produce and relinquish the following document(s): All "skelly packages", this
26 material may include but is not limited to the following; investigative report, applicable
27 policies, procedures and Government Code sections; records of training the employee(s) has

28 ///

1 attended; job descriptions and duty statements and/or post orders that are related to the
2 charges for each defendant named herein. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

3 **RESPONSE TO RFP NO. 20:**

4 After a reasonable and diligent search by Defendants, no documents responsive to
5 this request exist.

6 **Discussion**

7 Plaintiff does not specifically address RFP No. 20 but generally argues that he is entitled to
8 relevant documents and Defendants would have located such documents if they had diligently
9 searched the information available to them.

10 Defendants argue that they should not be compelled to respond further to this request,
11 because this request seeks documents that arise from staff complaints allegedly filed against
12 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
13 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
14 Defendants object to Plaintiff's requests are overbroad and beyond the scope of this litigation.
15 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
16 documents responsive to this request exist.

17 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
18 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
19 documents exist. Therefore, Defendants are not required to produce any documents in response to
20 this request.

21
22 > **RFP NO. 21:**

23 Please produce and relinquish the following document(s): All "corrective action" records for
24 each defendant named herein. This material may include but is not limited to the following:
25 verbal counseling, in-service training on the job training, written counseling, or a letter of
26 instruction taken by a supervisor to assist an employee in improving his/her work
27 performance behavior or conduct. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

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1 **RESPONSE TO RFP NO. 21:**

2 After a reasonable and diligent search by Defendants, no documents responsive to
3 this request exist.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 21 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
14 documents responsive to this request exist.

15 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
16 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
17 documents exist. Therefore, Defendants are not required to make any further response to this
18 request.

19
20 > **RFP NO. 22:**

21 Please produce and relinquish the following document(s): All "Designated Cases" records,
22 assigned to the vertical advocates for each defendant named herein. This material may
23 include but is not limited to the following matters including staff integrity and/or dishonesty,
24 abuse of authority, sexual misconduct, use of force in which an inmate suffers death or
25 serious injury, use of deadly force, serious allegations made against supervisors, and high
26 profile or dismissal cases assigned to the vertical advocate by the AGC. Pursuant to E.V.
27 Codes §§ 1043, 1045, 1046.

28 ///

1 **RESPONSE TO RFP NO. 22:**

2 After a reasonable and diligent search by Defendants, no documents responsive to
3 this request exist.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 22 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that they have made a reasonable and diligent search, and no
14 documents responsive to this request exist.

15 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
16 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
17 documents exist. Therefore, Defendants are not required to make any further response to this
18 request.

19
20 > **RFP NO. 23:**

21 Please produce and relinquish the following document(s): All "employee counseling records"
22 for each defendant named herein. This material may include but is not limited to the
23 following: A written record of counseling, documented on a CDC form 1123, between a
24 supervisor and subordinate which provides formal instructions about laws, rules policies, and
25 employer expectations. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

26 **RESPONSE TO RFP NO. 23:**

27 Defendants object to this request because it is not relevant, is a violation of their
28 rights to privacy, has been propounded for the pure purpose of harassment or

1 embarrassment, and is in violation of Rule 26 (b)(2)(C). Without waiving said
2 objections, after a reasonable and diligent search by Defendants, documents
3 responsive to this request do not exist.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 23 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
14 and diligent search, and no documents responsive to this request exist.

15 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
16 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
17 documents exist. Therefore, Defendants are not required to make any further response to this
18 request.

19
20 > **RFP NO. 24:**

21 Please produce and relinquish the following document(s): All "executive review" records
22 regarding the investigative finding, proposed disciplinary penalty, or settlement agreement,
23 for each Defendant named herein. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

24 **RESPONSE TO RFP NO. 24:**

25 Defendants object to this request because it is compound, overbroad, not relevant to
26 this action, and is a violation of the Defendants' privacy rights regarding their
27 personnel files. Without waiving said objections, after a reasonable and diligent
28 search by Defendants, documents responsive to this request do not exist.

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 24 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 25:**

18 Please produce and relinquish the following document(s): All notice(s) of “adverse action”
19 for each defendant named herein. This material may include but is not limited to the
20 following: A notification to the affected employee of the charges against him/her, the adverse
21 action penalty, and the effective date. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

22 **RESPONSE TO RFP NO. 25:**

23 Defendants object to this request because it is compound, overbroad, not relevant to
24 this action, and is a violation of the Defendants’ privacy rights regarding their
25 personnel files. Without waiving said objections, after a reasonable and diligent
26 search by Defendants, documents responsive to this request do not exist.

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 25 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 26:**

18 Please produce and relinquish the following document(s): All “Office of Internal Affairs
19 (OIA)” filed, for each defendant named herein, including but is not limited to; investigative
20 reports on allegations of employee misconduct. Pursuant to E.V. Code(s) §§ 1043, 1045,
21 1046.

22 **RESPONSE TO RFP NO. 26:**

23 Defendants object to this request because it is compound, overbroad, not relevant to
24 this action, and is a violation of the Defendants’ privacy rights regarding their
25 personnel files. Without waiving said objections, after a reasonable and diligent
26 search by Defendants, documents responsive to this request do not exist.

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 26 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 27:**

18 Please produce and relinquish the following document(s): All “preliminary notice(s) of
19 adverse action” for each defendant named herein. This material may include but is not
20 limited to the following: Notification required of some hiring authorities in accordance with
21 the Bodiford Settlement Agreement, to an effected employee regarding charges against
22 him/her and the intent to impose adverse action. This notification summarizes the specific
23 subsections of the Government code that have been violated, as well as the actions that
24 constituted the violation. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

25 **RESPONSE TO RFP NO. 27:**

26 Defendants object to this request because it is compound, overbroad, not relevant to
27 this action, and is a violation of the Defendants’ privacy rights regarding their

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1 personnel files. Without waiving said objections, after a reasonable and diligent
2 search by Defendants, documents responsive to this request do not exist.

3 **Discussion**

4 Plaintiff does not specifically address RFP No. 27 but generally argues that he is entitled to
5 relevant documents and Defendants would have located such documents if they had diligently
6 searched the information available to them.

7 Defendants argue that they should not be compelled to respond further to this request,
8 because this request seeks documents that arise from staff complaints allegedly filed against
9 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
10 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
11 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
12 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
13 and diligent search, and no documents responsive to this request exist.

14 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
15 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
16 documents exist. Therefore, Defendants are not required to make any further response to this
17 request.

18
19 > **RFP NO. 28:**

20 Please produce and relinquish the following document(s): All "skelly hearing" results records
21 for each defendant named herein, this material may include but is not limited to the
22 following: the hiring authorities' final decision regarding the imposition of a disciplinary
23 penalty. Pursuant to E.V. Code(s) §§ 1043, 1045, 1046.

24 **RESPONSE TO RFP NO. 28:**

25 After a reasonable and diligent search by Defendants, no documents responsive to
26 this request exist.

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 28 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 29:**

18 Please provide and relinquish the following document(s): All “skelly letters” for each
19 defendant named herein, this material may include but is not limited to the following: The
20 hiring authority’s final decision regarding the imposition of a disciplinary penalty. Pursuant
21 to E.V. Codes §§ 1043, 1045, 1046.

22 **RESPONSE TO RFP NO. 29:**

23 After a reasonable and diligent search by Defendants, no documents responsive to
24 this request exist.

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 29 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 30:**

18 Please produce and relinquish the following document(s): All “(ERO)” Employee Relations
19 Officer-Disciplinary Officer’s summary adverse action records for each defendant named
20 herein, this material may include but it not limited to the following: A summary compiled
21 by the ERO/Disciplinary Officer of allegations of misconduct, from evidence contained in
22 an investigative report or other documents. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

23 **RESPONSE TO RFP NO. 30:**

24 After a reasonable and diligent search by Defendants, no documents responsive to
25 this request exist.

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 30 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 31:**

18 Please produce and relinquish the following document(s): All “hiring authority’s”
19 investigative and disciplinary records for each defendant named herein. This material may
20 include but it not limited to the following: CDCR Forms 989 to the OIA including those
21 cases in which direct adverse action is taken without an investigation, CDCR form(s) 402
22 completed, CDCR form(s) 403 employee disciplinary matrix. Pursuant to E.V. Code(s) §§
23 1043, 1045, 1046.

24 **RESPONSE TO RFP NO. 31:**

25 After a reasonable and diligent search by Defendants, no documents responsive to
26 this request exist.

27 ///

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1 **Discussion**

2 Plaintiff does not specifically address RFP No. 31 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 32:**

18 Please produce and relinquish the following document(s): All "employees supervisory files"
19 for each defendant named herein. This material may include but it not limited to the
20 following: Filing documentation related to Corrective action, performance, behavior, conduct
21 of subordinate staff, imposition of corrective action, corrective action for similar misconduct
22 occurring within one(1) year prior to the imposition of corrective or adverse action, alleged
23 misconducts, requests for investigations or adverse action to hiring authority. Pursuant to
24 E.V. Codes §§ 1043, 1045, 1046.

25 **RESPONSE TO RFP NO. 32:**

26 After a reasonable and diligent search by Defendants, no documents responsive to
27 this request exist.

28 ///

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 32 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
11 and diligent search, and no documents responsive to this request exist.

12 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
13 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
14 documents exist. Therefore, Defendants are not required to make any further response to this
15 request.

16
17 > **RFP NO. 33:**

18 Please produce and relinquish the following document(s): All “vertical advocate”
19 investigative interviews; notices of adverse action drafts, accurate records of assignments and
20 documenting in the legal database all communications with the hiring authority and SAIG
21 (Senior and Inspectors General) regarding disciplinary penalties: The skelly hearings, the
22 skelly officer’s recommendation; the outcome of executive review, settlement agreements,
23 SPB hearings, and any appellate proceedings, documentation in the legal page of the CMS.
24 All communications regarding investigative reports and investigative findings for each
25 defendant named herein. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

26 **RESPONSE TO RFP NO. 33:**

27 Defendants object to this request because it is compound, overbroad, not relevant to
28 this action, and is a violation of the Defendants’ privacy rights regarding their

1 personnel files. Without waiving said objections, after a reasonable and diligent
2 search by Defendants, documents responsive to this request do not exist.

3 **Discussion**

4 Plaintiff does not specifically address RFP No. 33 but generally argues that he is entitled to
5 relevant documents and Defendants would have located such documents if they had diligently
6 searched the information available to them.

7 Defendants argue that they should not be compelled to respond further to this request,
8 because this request seeks documents that arise from staff complaints allegedly filed against
9 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
10 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
11 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
12 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
13 and diligent search, and no documents responsive to this request exist.

14 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
15 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
16 documents exist. Therefore, Defendants are not required to make any further response to this
17 request.

18
19 > **RFP NO. 34:**

20 Please produce and relinquish all "Office of Personnel" services, human resources
21 document/reports that refer or relate to allegations of misconduct or any other improper
22 conduct. For each defendant named herein, this material may include but is not limited to
23 the following: Processing of adverse actions, filing and retaining final notices of adverse
24 action in employee office personnel files for three (3) years. Pursuant to E.V. Codes §§
25 1043, 1045, 1046.

26 **RESPONSE TO RFP NO. 34:**

27 Defendants object to this request because it is compound, overbroad, not relevant to
28 this action, and is a violation of the Defendants' privacy rights regarding their

1 personnel files. Without waiving said objections, after a reasonable and diligent
2 search by Defendants, documents responsive to this request do not exist.

3 **Discussion**

4 Plaintiff does not specifically address RFP No. 34 but generally argues that he is entitled to
5 relevant documents and Defendants would have located such documents if they had diligently
6 searched the information available to them.

7 Defendants argue that they should not be compelled to respond further to this request,
8 because this request seeks documents that arise from staff complaints allegedly filed against
9 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
10 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
11 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
12 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
13 and diligent search, and no documents responsive to this request exist.

14 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
15 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
16 documents exist. Therefore, Defendants are not required to make any further response to this
17 request.

18
19 > **RFP NO. 35:**

20 Please produce and relinquish all "Office of Personnel Services" employee discipline unit"
21 documents/reports that refer or relate to allegations of misconduct or any other improper
22 conduct, for each defendant named herein. This material may include but is not limited to
23 the following: Collecting and maintaining the official departmental copies of all adverse
24 action documents separate and apart from these held in the official personnel files, statistical
25 information and generating reports on adverse actions using case management system.

26 Pursuant to E.V. Codes §§ 1043, 1045, 1046.

27 ///

28 ///

1 **RESPONSE TO RFP NO. 35:**

2 Defendants object to this request because it is compound, overbroad, not relevant to
3 this action, and is a violation of the Defendants’ privacy rights regarding their
4 personnel files. Without waiving said objections, after a reasonable and diligent
5 search by Defendants, documents responsive to this request do not exist.

6 **Discussion**

7 Plaintiff does not specifically address RFP No. 35 but generally argues that he is entitled to
8 relevant documents and Defendants would have located such documents if they had diligently
9 searched the information available to them.

10 Defendants argue that they should not be compelled to respond further to this request,
11 because this request seeks documents that arise from staff complaints allegedly filed against
12 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
13 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
14 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
15 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
16 and diligent search, and no documents responsive to this request exist.

17 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
18 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
19 documents exist. Therefore, Defendants are not required to make any further response to this
20 request.

21
22 > **RFP NO. 36:**

23 Please produce and relinquish all memorandum forms “order for formal IST and/or
24 documentation of OJT”, for each defendant named herein. Pursuant to E.V. Codes §§ 1043,
25 1045, 1046.

26 **RESPONSE TO RFP NO. 36:**

27 Attached are Defendants training records. (Attachment A.)

28 ///

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 36 and does not give any explanation why
3 Defendants’ response to RFP No. 36 is deficient. Defendants are not required to provide any further
4 response to this request.

5
6 > **RFP NO. 37:**

7 Please produce and relinquish all “central intake” documents/investigative reports, that refer
8 or relate to allegations of misconduct or any other improper conduct for each defendant
9 named herein. This material may include but is not limited to the following: The Case
10 Management Systems (CMS) and the pro law database (Legal database) updates of the CMS
11 legal page, cross reference numbers, the ERO/Disciplinary Officer’s record of the findings
12 in the CMS database, copies of the CDCR form 402, vertical advocate of all related
13 communications in the legal page of the CMS including, specifically his/her
14 recommendations, regarding the investigative findings. Pursuant to E.V. Codes §§ 1043,
15 1045, 1046.

16 **RESPONSE TO RFP NO. 37:**

17 Defendants object to this request because it is compound, overbroad, not relevant to
18 this action, and is a violation of the Defendants’ privacy rights regarding their
19 personnel files. Without waiving said objections, after a reasonable and diligent
20 search by Defendants, documents responsive to this request do not exist.

21 **Discussion**

22 Plaintiff does not specifically address RFP No. 37 but generally argues that he is entitled to
23 relevant documents and Defendants would have located such documents if they had diligently
24 searched the information available to them.

25 Defendants argue that they should not be compelled to respond further to this request,
26 because this request seeks documents that arise from staff complaints allegedly filed against
27 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
28 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,

1 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
2 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
3 and diligent search, and no documents responsive to this request exist.

4 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
5 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
6 documents exist. Therefore, Defendants are not required to make any further response to this
7 request.

8
9 > **RFP NO. 38:**

10 Please produce and relinquish all "adverse action penalties" documents that refer or relate
11 to allegations of misconduct or any other improper conduct for each defendant named herein.
12 This material may include but is not limited to the following: Letters or reprimand, salary
13 reductions, suspension without pay, demotion to a lower class dismissal from state service,
14 all communications related to penalty imposition in the legal database. Pursuant to E.V.
15 Codes §§ 1043, 1045, 1046.

16 **RESPONSE TO RFP NO. 38:**

17 Defendants object to this request because it is compound, overbroad, not relevant to
18 this action, and is a violation of the Defendants' privacy rights regarding their
19 personnel files. Without waiving said objections, after a reasonable and diligent
20 search by Defendants, documents responsive to this request do not exist.

21 **Discussion**

22 Plaintiff does not specifically address RFP No. 38 but generally argues that he is entitled to
23 relevant documents and Defendants would have located such documents if they had diligently
24 searched the information available to them.

25 Defendants argue that they should not be compelled to respond further to this request,
26 because this request seeks documents that arise from staff complaints allegedly filed against
27 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
28 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,

1 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
2 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
3 and diligent search, and no documents responsive to this request exist.

4 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
5 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
6 documents exist. Therefore, Defendants are not required to make any further response to this
7 request.

8
9 > **RFP NO. 39:**

10 Please produce and relinquish all "ATO Notices" that refer or relate to allegations of
11 misconduct for each named defendant herein. For the relevant time period. Pursuant to
12 E.V. Codes §§ 1043, 1045, 1046.

13 **RESPONSE TO RFP NO. 39:**

14 Defendants object to this request because it is vague as to time, compound,
15 overbroad, not relevant to this action, and is a violation of the Defendants' privacy
16 rights regarding their personnel files. Without waiving said objections, after a
17 reasonable and diligent search by Defendants, documents responsive to this request
18 do not exist.

19 **Discussion**

20 Plaintiff does not specifically address RFP No. 39 but generally argues that he is entitled to
21 relevant documents and Defendants would have located such documents if they had diligently
22 searched the information available to them.

23 Defendants argue that they should not be compelled to respond further to this request,
24 because this request seeks documents that arise from staff complaints allegedly filed against
25 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
26 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
27 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.

28 ///

1 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
2 and diligent search, and no documents responsive to this request exist.

3 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
4 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
5 documents exist. Therefore, Defendants are not required to make any further response to this
6 request.

7
8 > **RFP NO. 40:**

9 Please produce and relinquish all “EAPT records” (Employment Advocacy and Prosecution
10 Team) for Lancaster State prison. This material may include but is not limited to the
11 following number of adverse actions by types of discipline, number of direct (without an
12 investigation) adverse action by type, number of actions where the discipline was sustained
13 by the skelly officer, number of actions where the skelly officer recommended modification
14 of the discipline, number that the hiring authority rejected the recommendation, number of
15 settlements reached prior to the SPB decision, SPB (State Personnel Board) decisions
16 number of cases where SPB upheld the original discipline. Pursuant to E.V. Codes §§ 1043,
17 1045, 1046.

18 **RESPONSE TO RFP NO. 40:**

19 After a reasonable and diligent search by Defendants, no documents responsive to
20 this request exist.

21 **Discussion**

22 Plaintiff does not specifically address RFP No. 40 but generally argues that he is entitled to
23 relevant documents and Defendants would have located such documents if they had diligently
24 searched the information available to them.

25 Defendants argue that they should not be compelled to respond further to this request,
26 because this request seeks documents that arise from staff complaints allegedly filed against
27 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
28 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,

1 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
2 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
3 and diligent search, and no documents responsive to this request exist.

4 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
5 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
6 documents exist. Therefore, Defendants are not required to make any further response to this
7 request.

8
9 > **RFP NO. 41:**

10 Please produce and relinquish all "disciplinary audits" prepared by the "Office of Legal
11 Affairs, in conjunction with the "OIA", for Lancaster State Prison. This material may
12 include but is not limited to the following: The assessments, adequacy, and monitoring of the
13 statute [*sic*] of limitations, the assessments of training needs, evaluations, of the effectiveness
14 of each vertical advocate, the appropriateness and thoroughness of the investigation, report,
15 penalty, notice of adverse action and settlement; and the policy issues involved and/or at
16 stake. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

17 **RESPONSE TO RFP NO. 41:**

18 Defendants object to this request because it is vague as to time, compound,
19 overbroad, not relevant to this action, and is a violation of the Defendants' privacy
20 rights regarding their personnel files. Without waiving said objections, after a
21 reasonable and diligent search by Defendants, documents responsive to this request
22 do not exist.

23 **Discussion**

24 Plaintiff does not specifically address RFP No. 41 but generally argues that he is entitled to
25 relevant documents and Defendants would have located such documents if they had diligently
26 searched the information available to them.

27 Defendants argue that they should not be compelled to respond further to this request,
28 because this request seeks documents that arise from staff complaints allegedly filed against

1 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
2 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
3 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
4 Defendants nonetheless respond that without waiving their objections, they have made a reasonable
5 and diligent search, and no documents responsive to this request exist.

6 Defendants cannot be compelled to produce documents that do not exist. Plaintiff has not
7 argued, or presented evidence, that any Defendant has faced disciplinary action or that such
8 documents exist. Therefore, Defendants are not required to make any further response to this
9 request.

10
11 > **RFP NO. 42:**

12 Please produce and relinquish the following document(s): On site prison hospital unit log
13 entry for December 31, 2005 and January 4, 2006. Pursuant to E.V. Codes §§ 1043, 1045,
14 1046.

15 **RESPONSE TO RFP NO. 42:**

16 See Attachment B which contains the documents responsive to the request along with
17 additional medical records in possession of the Defendants.

18 **Discussion**

19 Plaintiff does not specifically address RFP No. 42 and does not give any explanation why
20 Defendants' response to RFP No. 42 is deficient. Defendants are not required to provide any further
21 response to this request.

22
23 > **RFP NO. 43:**

24 Please produce and relinquish the following document(s): All (IHUOFC) "Institution head
25 use of force review committees" use of force incidents reports for each defendant named
26 herein, this material may include but is not limited to the following; evaluation of all relevant
27 documents, executive review forms, pursuant to E.V. Codes §§ 1043, 1045, 1046.

28 ///

1 **RESPONSE TO RFP NO. 43:**

2 After a reasonable and diligent search, Defendants are unable to locate any
3 documents that are responsive to this request.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 43 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that they have made a reasonable and diligent search and were
14 unable to locate any documents responsive to this request.

15 Defendants cannot be compelled to make more than a reasonable and diligent search for
16 documents in response to this request. Plaintiff has not argued, or presented evidence, that any
17 Defendant has faced disciplinary action or that such documents exist. Therefore, Defendants are not
18 required to make any further response to this request.

19
20 > **RFP NO. 44:**

21 Please produce and relinquish the following document(s): All use of force executive review
22 records, files, or reports from the relevant time period, for each defendant named herein.

23 This material may include but is not limited to the following: qualitative [*sic*] evaluation
24 analysis, videos involving calculated use of force for incident(s), administrators'
25 memorandums addressed to the warden of the outcome of the Department executive review
26 committee. Pursuant to E.V. Codes §§ 1043, 1045, 1046.

27 ///

28 ///

1 **RESPONSE TO RFP NO. 44:**

2 After a reasonable and diligent search, Defendants are unable to locate any
3 documents that are responsive to this request.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 44 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that they have made a reasonable and diligent search and were
14 unable to locate any documents responsive to this request.

15 Defendants cannot be compelled to make more than a reasonable and diligent search to locate
16 documents responsive to this request. Plaintiff has not argued, or presented evidence, that any
17 Defendant has faced disciplinary action or that such documents exist. Therefore, Defendants are not
18 required to make any further response to this request.

19
20 > **RFP NO. 45:**

21 Please produce and relinquish the following document(s): All "manager's review (second
22 level) review forms" for all Defendants named herein from the relevant time periods. This
23 material may include but is not limited to the following; second level analysis,
24 determinations if use of force was within the guidelines of the Department/Institution policy,
25 procedure and training, address violations of policy not identified in the review process,
26 pursuant to E.V. Codes §§ 1043, 1045, 1046.

27 ///

28 ///

1 **RESPONSE TO RFP NO. 45:**

2 After a reasonable and diligent search, Defendants are unable to locate any
3 documents that are responsive to this request.

4 **Discussion**

5 Plaintiff does not specifically address RFP No. 45 but generally argues that he is entitled to
6 relevant documents and Defendants would have located such documents if they had diligently
7 searched the information available to them.

8 Defendants argue that they should not be compelled to respond further to this request,
9 because this request seeks documents that arise from staff complaints allegedly filed against
10 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
11 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
12 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
13 Defendants nonetheless respond that they have made a reasonable and diligent search and were
14 unable to locate any documents responsive to this request.

15 Defendants cannot be compelled to make more than a reasonable and diligent search to locate
16 documents responsive to this request. Plaintiff has not argued, or presented evidence, that any
17 Defendant has faced disciplinary action or that such documents exist. Therefore, Defendants are not
18 required to make any further response to this request.

19
20 > **RFP NO. 46:**

21 Please produce and relinquish the following document(s): "Institutional head review of use
22 of force critique and qualitative evaluation analysis records", files, or reports for each
23 Defendant named herein, from the relevant time periods. Pursuant to E.V. §§ 1043, 1045,
24 1046.

25 **RESPONSE TO RFP NO. 46:**

26 After a reasonable and diligent search, Defendants are unable to locate any
27 documents that are responsive to this request.

28 ///

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 46 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them.

5 Defendants argue that they should not be compelled to respond further to this request,
6 because this request seeks documents that arise from staff complaints allegedly filed against
7 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
8 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
9 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
10 Defendants nonetheless respond that they have made a reasonable and diligent search and were
11 unable to locate any documents responsive to this request.

12 Defendants cannot be compelled to make more than a reasonable and diligent search to locate
13 documents. Plaintiff has not argued, or presented evidence, that any Defendant has faced
14 disciplinary action or that such documents exist. Therefore, Defendants are not required to make any
15 further response to this request.

16
17 > **RFP NO. 47:**

18 Please produce and relinquish al “VCFC” use of force committee electronic data, on the
19 database system established by the “UOFC” for each Defendant named herein from the
20 relevant time period. This material may be include but is not limited to the following;
21 information collected from the use of force incident reports, appeals of use of force, the use
22 of force form, and the use of force executive review, the type of force used, reasons for the
23 use of force. Pursuant to E.V. §§ 1043, 1045, 1046.

24 **RESPONSE TO RFP NO. 47:**

25 After a reasonable and diligent search, Defendants are unable to locate any
26 documents that are responsive to this request. Defendants do not have custody,
27 possession or control over any such documents requested.

28 ///

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 47 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them. Plaintiff also argues that all documentation and
5 information requested is well within Defendants’ reach, kept in the usual course of business of the
6 CDCR.

7 Defendants argue that they should not be compelled to respond further to this request,
8 because this request seeks documents that arise from staff complaints allegedly filed against
9 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
10 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
11 Defendants object to Plaintiff’s request as overbroad and beyond the scope of this litigation.
12 Defendants nonetheless respond that they have made a reasonable and diligent search and were
13 unable to locate any documents responsive to this request.

14 Defendants cannot be compelled to make more than a reasonable and diligent search to locate
15 documents that are not within their custody, possession or control. Plaintiff has not argued, or
16 presented evidence, that any Defendant has faced disciplinary action or that such documents exist.
17 Therefore, Defendants are not required to make any further response to this request.

18
19 > **RFP NO. 48:**

20 Please produce and relinquish all document(s), electronic data, from the “management
21 information system”, for each Defendant named herein. Pursuant to E.V. §§ 1043, 1045,
22 1046.

23 **RESPONSE TO RFP NO. 48:**

24 After a reasonable and diligent search, Defendants are unable to locate any
25 documents that are responsive to this request. Defendants do not have custody,
26 possession or control over any such documents requested.

27 ///

28 ///

1 **Discussion**

2 Plaintiff does not specifically address RFP No. 48 but generally argues that he is entitled to
3 relevant documents and Defendants would have located such documents if they had diligently
4 searched the information available to them. Plaintiff also argues that all documentation and
5 information requested is well within Defendants' reach, kept in the usual course of business of the
6 CDCR.

7 Defendants argue that they should not be compelled to respond further to this request,
8 because this request seeks documents that arise from staff complaints allegedly filed against
9 Defendants, and Plaintiff did not file a staff complaint arising from the January 24, 2005 incident.
10 To the extent Plaintiff seeks other staff complaints and disciplinary actions filed against Defendants,
11 Defendants object to Plaintiff's request as overbroad and beyond the scope of this litigation.
12 Defendants nonetheless respond that they have made a reasonable and diligent search and were
13 unable to locate any documents responsive to this request.

14 Defendants cannot be compelled to make more than a reasonable and diligent search to locate
15 documents that are not within their custody, possession or control. Plaintiff has not argued, or
16 presented evidence, that any Defendant has faced disciplinary action or that such documents exist.
17 Therefore, Defendants are not required to make any further response to this request.

18
19 > **RFP NO. 49:**

20 Please produce and relinquish all videotape-recorded interviews by inmates who sustained
21 blows to the head and/or facial area, serious injury, or made allegations of inappropriate use
22 of force against each Defendant named herein, from the relevant time period. This material
23 may include, but is not limited to the following, audiotapes. Pursuant to E.V. Codes §§
24 1043, 1045, 1046.

25 **RESPONSE TO RFP NO. 49:**

26 Defendants object to this request because it is overbroad, compound, and not relevant
27 to the action. Defendants further object because the request is over burdensome and
28 in violation of Rule 26(b)(2)(C). Plaintiff is essentially asking Defendants to

1 generate a list of inmates that were within the institution at the same time, but
2 Plaintiff has not specified the time period, merely stated “relevant time.” Defendants
3 would be required to look into every inmate’s central file in order to see if they were
4 ever involved in an incident where force was used to see if a video-taped interview
5 was done for a third party inmate, then decipher whether the force used involved
6 “blows to the head and/or facial area.” The task is literally impossible and would be
7 an extreme hardship for the Defendants, and for the employees of CDCR.
8 Defendants further object that the term “serious injury” is vague and subject to
9 several different types of definitions, whether by a layperson, or by a medical
10 professional, therefore the request calls for the premature disclosure of expert
11 opinion. After an inquiry by Defendants, no documents responsive to this request are
12 in Defendants’ custody, possession, or control.

13 **Discussion**

14 Plaintiff argues that this request is not overbroad, as it only requests records of excessive
15 force by Defendants from a two-month period. Plaintiff argues that it is not burdensome to search
16 Defendants’ “elite computerized tracking system of files” containing the names of Defendants,
17 incidents involving excessive force incidents “which resulted in a serious injury to the body or head,”
18 and the names of the victims. (Motion, Doc. 85 at 11.) Plaintiff also argues that Defendants’
19 argument that the items are confidential or privileged does not apply in federal court.

20 Defendants argue that this request invades the privacy rights of third parties because inmates
21 participate in use-of-force interviews with the expectation that their statements will be kept
22 confidential. Defendants also argue that the request is overbroad and irrelevant because Plaintiff did
23 not allege that he sustained any blows to the head of face.

24 Plaintiff replies that under Rule 26(b), he is entitled to discover video interviews of any
25 allegations made by an inmate of misconduct by prison staff involving Defendants during the
26 relevant time period, because these are the same or similar acts as Plaintiff suffered at the hands of
27 Defendants, claims clearly limited to the subject matter in Plaintiff’s complaint.

28 ///

1 While it is true that “[q]uestions of privilege that arise in the course of the adjudication of
2 federal rights are ‘governed by the principles of the common law as they may be interpreted by the
3 courts of the United States in the light of reason and experience,’ ” United States v. Zolin, 491 U.S.
4 554, 562, 109 S.Ct. 2619, 2625 (1989) (quoting Federal Rule of Evidence 501), this Court may give
5 some weight to privacy rights protected by state statutes. The “ultimate responsibility for deciding
6 how much weight to ascribe to such interests, and how that weight compares with the significance
7 of competing interests, must reside with the federal courts.” Kelly v. City of San Jose, 114 F.R.D.
8 653, 656 (N.D.Cal. 1987). This Court usually allows plaintiffs in prisoner cases to discover records
9 of similar claims, such as excessive force, against officers in the past. While evidence of misconduct
10 is “not admissible to prove a person’s character in order to show that on a particular occasion the
11 person acted in accordance with the character,” the evidence may be admissible for other purposes.
12 Fed. R. Evid. 404(b); 608(b), and the scope of discovery encompasses relevant information which
13 “appears reasonably calculated to lead to the discovery of admissible evidence,” Fed. R. Civ. P.
14 26(b). However, privacy concerns must be considered, and the Court often requires confidential or
15 private information requested in discovery to be redacted or submitted for in camera review before
16 it is provided to another party. Here, Plaintiff requests video tapes of interviews given by other
17 inmates, in which the inmates allege that the Defendants in this action used excessive force against
18 them during a limited time period. Plaintiff is not entitled to discover confidential information
19 which may include names of third parties or sensitive testimony given under the expectation of
20 confidentiality by third parties not part of this litigation. Moreover, to the extent that there are
21 numerous video tapes responsive to Plaintiff’s request, it could be burdensome and expensive for
22 Defendants to produce copies for Plaintiff.

23 The Court finds that the burden of producing the recordings requested by Plaintiff outweighs
24 its likely benefit, considering that records of use-of-force incidents involving Defendants are
25 available from more convenient, less burdensome, and less expensive sources, such as personnel
26 files. Garrett v. City and County of San Francisco, 818 F.2d 1515, 1519 n. 6 (9th Cir.1987)
27 (citations omitted) (despite claims of privilege, personnel files are discoverable in federal question
28 cases). Further, discovery of the information Plaintiff seeks from the video tapes is not essential in

1 resolving the issue of whether Defendants used excessive force against Plaintiff in the January 24,
2 2005 incident at issue in this action. Therefore, Defendants shall not be required to make further
3 responses to this request.

4
5 > **RFP NO. 53:**

6 Please produce and relinquish all document(s) that relate or refer to medical treatment for
7 prisoners who suffer injury, and/or serious injury. This material may include, but is not
8 limited to the following; medical treatment policies for M.T.A.'s, R.N's, psych techs and
9 LVN's, pursuant to E.V. Codes §§ 1271, 1280, 1530, 1532, 1550.1, 1600.

10 **RESPONSE TO RFP NO. 53:**

11 Defendants object to this request on the grounds that it is compound, vague and
12 ambiguous, overly broad, and is not a request to produce specific identifiable
13 documents. Defendants further object on the grounds that it requests information not
14 within Defendants' personal knowledge, possession, custody, or control. It is
15 essentially calling for the entire prison systems' medical records for every prisoner.
16 It is clearly in violation of Rule 26(b)(2)(C). Defendants do not have medical records
17 that address the injuries of inmates in their possession, custody, or control.

18 Defendants will not produce the medical records of third party inmates. As to
19 policies or job descriptions, these documents will be produced in other responses.

20 **Discussion**

21 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
22 a request, they must make a reasonable and good faith effort to obtain the information in Defendants'
23 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
24 contends that Defendants have not submitted the required affidavits to prove their lack of personal
25 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
26 privileged, and he has a right to all discovery matter leading to relevant information.

27 Defendants' objections are sustained on the grounds that Plaintiff's request for other
28 prisoners' medical records is compound, vague, ambiguous, overly broad, and not a request to

1 produce specific identifiable documents. The Court also finds that the burden or expense for
2 Defendants to produce this discovery outweighs the likely benefit of the discovery to Plaintiff in this
3 action, since Plaintiff's medical claim proceeds only against defendants Adams, Alexander, Watson,
4 and Granillo for events occurring during a limited time period. Fed. R. Civ. P. 26(b)(2)(C). With
5 respect to Plaintiff's request for medical treatment policies, the Court finds that Defendants'
6 response, that these documents will be produced in other responses, suffices. Therefore, Defendants
7 shall not be required to make further responses to this request.

8
9 > **RFP NO. 54:**

10 Please produce and relinquish all documents that relate or refer to the serious injury treatment
11 policy for inmates housed in the C.S.P.-Tehachapi main hospital, pursuant to E.V. Codes
12 §§ 1271, 1280, 1530, 1532, 1550.1, 1600.

13 **RESPONSE TO RFP NO. 54:**

14 Defendants object to this request on the grounds that it is compound, vague and
15 ambiguous, not relevant to this action, overly broad, and is not a request to produce
16 specific identifiable documents. Defendants further object on the grounds that it
17 requests information not within Defendants' personal knowledge, possession,
18 custody, or control. After a reasonable inquiry, Defendants do not have medical
19 records that address the injuries of inmates in their possession, custody, or control.

20 **Discussion**

21 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
22 a request, they must make a reasonable and good faith effort to obtain the information in Defendants'
23 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
24 contends that Defendants have not submitted the required affidavits to prove their lack of personal
25 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
26 privileged, and he has a right to all discovery matter leading to relevant information.

27 Defendants reassert their objections and argue that the term "serious injury treatment" is
28 vague and ambiguous. They assert that this request is overbroad in time and scope because Plaintiff

1 was not treated at the prison's main hospital, and it is irrelevant because no evidence shows he was
2 denied treatment at the main hospital.

3 Defendants' objections are sustained on the grounds that Plaintiff's request is vague, overly
4 broad, and is not a request to produce specific identifiable documents. Therefore, Defendants shall
5 not be required to make further responses to this request.

6
7 > **RFP NO. 57:**

8 Please produce and relinquish the following document(s): Plaintiff's "Unit Health Care
9 Records" all four volumes, this material may include but is not limited to the following:
10 hospital records, 128G chronos documenting all hunger strikes initiated by Plaintiff while
11 housed at Tehachapi Prison, CDCR 7219's from each incidents in question, CDCR 7225, all
12 reports made to the A.W. HCM, LMO, ADD, PCP, warden, division regional
13 administrator(s), deputy director, institutions division; the chief deputy director, pursuant to
14 E.V. Codes §§ 1271, 1280, 1530, 1532, 1550.1, 1600.

15 **RESPONSE TO RFP NO. 57:**

16 Defendants object to this request as overbroad, burdensome, and not relevant to this
17 action. Defendants do not have possession of the Plaintiff's central file or medical
18 records because defendants are not located at the prison Plaintiff is currently housed.

19 Medical records have been provided in Attachment B to Plaintiff's Request for
20 Production of Documents Set Two. Plaintiff has access to his medical file and is
21 merely making the request to harass and cause unnecessary work and expense to
22 CDCR, in violation of Rule 26(b)(2)(C). Plaintiff has four lawsuits where he has
23 made similar requests, and through discovery has obtained this information.

24 Defendants have produced in Attachment B, to Set Two, medical records from
25 Plaintiff's medical files.

26 **Discussion**

27 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
28 a request, they must make a reasonable and good faith effort to obtain the information in Defendants'

1 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
2 contends that Defendants have not submitted the required affidavits to prove their lack of personal
3 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
4 privileged, and he has a right to all discovery matter leading to relevant information. As for any
5 argument by Defendants that Plaintiff can find documents in his own files, Plaintiff argues that
6 Defendants cannot know what documents are in Plaintiff's central file or how those documents
7 compare to the documents he seeks.

8 Defendants argue that Plaintiff has not explained the deficiency of their responses to this
9 request.

10 Plaintiff has not addressed Defendants' assertion that Defendants have already provided
11 Plaintiff's medical records to him in response to other discovery requests in this case and other cases.
12 Moreover, Plaintiff has access to his own files and can obtain these records himself if he does not
13 already have them. Therefore, Defendants shall not be required to make further responses to this
14 request.

15
16 > **RFP NO. 58:**

17 Please produce and relinquish the following document(s): Plaintiff's entire central file
18 records, including but not limited to all confidential material, as it will not jeopardize the
19 safety and security of the institution, pursuant to E.V. Codes §§ 1271, 1280, 1530, 1532,
20 1550.1, 1600.

21 **RESPONSE TO RFP NO. 58:**

22 Defendants object to this request as overbroad, burdensome, and not relevant to this
23 action. Defendants further object because there may be items within the files that are
24 a security risk, but Plaintiff has failed to identify exactly what he is seeking, merely
25 stated he is seeking his entire central file. Without waiving said objections,
26 Defendants have attached as Exhibit B, the incident report and central file documents
27 in their possession, custody, or control.

28 ///

1 **Discussion**

2 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
3 a request, they must make a reasonable and good faith effort to obtain the information in Defendants’
4 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
5 contends that Defendants have not submitted the required affidavits to prove their lack of personal
6 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
7 privileged, and he has a right to all discovery matter leading to relevant information. As for any
8 argument by Defendants that Plaintiff can find documents in his own files, Plaintiff argues that
9 Defendants cannot know what documents are in Plaintiff’s central file or how those documents
10 compare to the documents he seeks.

11 Defendants argue that Plaintiff has not explained the deficiency of their responses to this
12 request.

13 Plaintiff has not addressed why the documents Defendants produced in response to this
14 request are deficient. Nonetheless, Plaintiff has access to his own files and can obtain these records
15 himself if he does not already have them, by submitting a request in writing pursuant to prison
16 procedures. Cal. Code Regs., tit. 15 § 3450. With respect to confidential information in Plaintiff’s
17 files, Plaintiff fails to identify what he is seeking. Ordinarily, the scope of discovery only includes
18 nonprivileged information relevant to the claims and defenses in this action. Fed. R. Civ. P. 21(b).
19 Defendants’ objection to Plaintiff’s request for “all confidential material” as overbroad is sustained.
20 Therefore, Defendants shall not be required to make further responses to this request.

21 > **RFP NO. 60:**

22 Identify and produce any and all documents of policies and procedures relating to the
23 placement of non-mental health prisoners in a psychiatric ward, suicide watch, and/or
24 psychiatric evaluation unit(s). This material may include, but is not limited to the following:
25 regulations, instructions, notes, memorandums, internal communications and directives.

26 Pursuant to E.V. Codes §§ 1560, 1561, 1562, 1271 et al (ibid).

27 ///

28 ///

1 **RESPONSE TO RFP NO. 60:**

2 Defendants object to this request because it is an incomplete hypothetical, compound,
3 and vague to the materials being sought. Defendants are unable to produce any
4 documents responsive to this request because from the request itself, they are unable
5 to identify documents responsive to this request.

6 **Discussion**

7 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
8 a request, they must make a reasonable and good faith effort to obtain the information in Defendants’
9 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
10 contends that Defendants have not submitted the required affidavits to prove their lack of personal
11 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
12 privileged, and he has a right to all discovery matter leading to relevant information.

13 Defendants argue that the Court should deny a further response to RFP 60 because it is
14 unintelligible. Defendants argue that to the extent Plaintiff is requesting suicide-watch policies
15 concerning the psychiatric ward, such policies are not relevant to this suit for excessive force and
16 deliberate indifference.

17 Defendants’ objections are sustained, and the Court finds this request to be irrelevant to the
18 claims and defenses in this action. Therefore, Defendants shall not be required to make further
19 responses to this request.

20
21 > **RFP NO. 61:**

22 Identify and produce the 4B-yard infirmary and/or psychiatric unit medical isolation log
23 book(s) for the relevant time period of January 24, 2005. Pursuant to E.V. Codes §§ 1560,
24 1561, 1562, 1271 et al (ibid).

25 **RESPONSE TO RFP NO. 61:**

26 Defendants have made a reasonable inquiry and diligent search but cannot find the
27 log books. Generally, the log books are kept for five years, but we have searched and
28 they cannot be found.

1 **Discussion**

2 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
3 a request, they must make a reasonable and good faith effort to obtain the information in Defendants’
4 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
5 contends that Defendants have not submitted the required affidavits to prove their lack of personal
6 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
7 privileged, and he has a right to all discovery matter leading to relevant information.

8 Defendants cannot be compelled to produce documents that do not exist and cannot be found.
9 Therefore, Defendants shall not be required to make further responses to this request.

10
11 > **RFP NO. 64:**

12 Identify and produce any and all documents, policies, and procedures relating to emergency
13 cell extractions in the security housing units, Tehachapi State Prison. This material may
14 include, but is not limited to the following: regulations, instructions, notes, memorandums,
15 internal communications and directives. Pursuant to E.V. Codes §§ 1560, 1561, 1562, 1271
16 et al (ibid).

17 **RESPONSE TO RFP NO. 64:**

18 Defendants object to this request because it is not relevant to the operable complaint,
19 and attempts to divulge information as to how CDCR conducts cell extractions, all
20 of which could be used by inmates to attempt to circumvent institution security. As
21 such, the Operational Procedure is restricted and will not be produced.

22 **Discussion**

23 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
24 a request, they must make a reasonable and good faith effort to obtain the information in Defendants’
25 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
26 contends that Defendants have not submitted the required affidavits to prove their lack of personal
27 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
28 privileged, and he has a right to all discovery matter leading to relevant information. As for any

1 argument by Defendants that Plaintiff can find documents in his own files, Plaintiff argues that
2 Defendants cannot know what documents are in Plaintiff's central file or how those documents
3 compare to the documents he seeks.

4 Defendants argue that they have properly asserted a privilege in response to this request, as
5 they did include a complete copy of their responses to the third set of production requests, including
6 the privilege log, in Exhibit 5.

7 While it is true that “[q]uestions of privilege that arise in the course of the adjudication of
8 federal rights are ‘governed by the principles of the common law as they may be interpreted by the
9 courts of the United States in the light of reason and experience,’ ” United States v. Zolin, 491 U.S.
10 554, 562, 109 S.Ct. 2619, 2625 (1989) (quoting Federal Rule of Evidence 501), this Court may give
11 some weight to privacy rights protected by state statutes. The “ultimate responsibility for deciding
12 how much weight to ascribe to such interests, and how that weight compares with the significance
13 of competing interests, must reside with the federal courts.” Kelly v. City of San Jose, 114 F.R.D.
14 653, 656 (N.D.Cal. 1987). The Court often requires confidential or private information requested
15 in discovery to be redacted or submitted for in camera review before it is provided to another party.
16 Here, Plaintiff requests official documents, policies, and procedures relating to emergency cell
17 extractions in the security housing units at Tehachapi State Prison, including internal
18 communications and directives to prison officials faced with an emergency extraction of an inmate
19 in which the official must quickly take control and avoid harm to inmates and prison staff.

20 Plaintiff is not entitled to discover privileged information which may be used to breach prison
21 security. The Court finds that the burden of divulging the prison's policies and procedures for
22 conducting emergency cell extractions outweighs its likely benefit to Plaintiff. Such information
23 provided to inmates would unduly expose the institution, staff, and inmates to a substantial risk of
24 harm, and the information is not essential to support Plaintiff's claim of excessive force during the
25 specific incident at issue in this action. Therefore, Defendants shall not be required to make further
26 responses to this request.

27 ///

28 ///

1 > **RFP NO. 67:**

2 Identify and produce any and all documents and records ordering and/or authorizing
3 Plaintiff's transfer to the 4B yard psychiatric evaluation unit. Pursuant to E.V. Codes §§
4 1560, 1561, 1562, 1271 et al (ibid).

5 **RESPONSE TO RFP NO. 67:**

6 Defendants object to this request on the grounds that it is compound, vague as to time
7 and ambiguous, overly broad, and not likely to lead to the discovery of admissible
8 evidence. Notwithstanding these objections, if Plaintiff is referring to a classification
9 committee action, those documents are available for Plaintiff's review of his central
10 file, but are also included within prior responses to Plaintiff's request for documents
11 from his central file.

12 **Discussion**

13 Plaintiff argues that if Defendants do not have personal knowledge sufficient to respond to
14 a request, they must make a reasonable and good faith effort to obtain the information in Defendants'
15 business records, personnel files, prison policy files, or some other place available to them. Plaintiff
16 contends that Defendants have not submitted the required affidavits to prove their lack of personal
17 knowledge. Plaintiff also argues that Defendants have not made a proper claim that the material is
18 privileged, and he has a right to all discovery matter leading to relevant information. As for any
19 argument by Defendants that Plaintiff can find documents in his own files, Plaintiff argues that
20 Defendants cannot know what documents are in Plaintiff's central file or how those documents
21 compare to the documents he seeks.

22 Defendants argue that Plaintiff has not explained the deficiency of their response to this
23 request.

24 Defendants' objections are sustained on the grounds that this request is compound, vague as
25 to time and ambiguous, overly broad, and not likely to lead to the discovery of admissible evidence.
26 Plaintiff has not addressed why the documents Defendants produced in Defendants' prior responses
27 to Plaintiff's request for documents from his central file are deficient. Moreover, Plaintiff has access
28 to his own files and can obtain these records himself if he does not already have them, by submitting

1 a request in writing pursuant to prison procedures. Cal. Code Regs., tit. 15 § 3450. Therefore,
2 Defendants shall not be required to make further responses to this request.

3 **VI. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion to compel further responses to Plaintiff's Requests for Production
6 of Documents Sets One, Two, and Three, filed on February 17, 2012, is GRANTED
7 in part and DENIED in part; and
- 8 2. Within thirty days from the date of service of this order, Defendants are required to
9 produce copies of color photographs in response to Plaintiff's RFP No. 13, as
10 instructed by this order.

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16 IT IS SO ORDERED.

17 Dated: August 27, 2012

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE