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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

J. PALMER, et al.,

Defendants.

Case No. 1:09-cv-01329-LJO-SKO (PC)

ORDER (1) GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION TO COMPEL RFP, SET ONE, (2) DENYING MOTION FOR *IN CAMERA* REVIEW, (3) DENYING MOTION FOR ORDER RE MAIL LOG AS MOOT, (4) DENYING MOTION TO COMPEL RFP, SET TWO, (5) REQUIRING DEFENDANTS TO SERVE INITIAL RESPONSE TO RFP, SET TWO, (6) DENYING MOTION TO COMPEL RFA AND ROG, SET TWO, (7) DENYING MOTION TO STRIKE, AND (8) DENYING SECOND MOTION TO COMPEL RFP, SET TWO, AS MOOT

(Docs. 117, 143, 147, 149, 160, 165, and 169)

Response Deadline for (1) RFP, Set One, 18 and 19 and (2) RFP, Set Two, 1-14: thirty days

Order on Plaintiff’s Motions to Compel and Related Discovery Motions

I. Procedural History

Plaintiff Floyd Scott (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 29, 2009. This action for damages is proceeding against Defendants Palmer, Rivera, and Lopez (“Defendants”) on Plaintiff’s claim that while he was at Kern Valley State Prison (“KVSP”) in Delano, California, Defendant Palmer used excessive physical force against him, and Defendants Rivera and Lopez

1 failed to intervene, in violation of his rights under the Eighth Amendment of the United States
2 Constitution.

3 Pending before the Court are the parties' motions to compel and related motions. This
4 order, which is issued concurrently with five other orders, resolves Plaintiff's motions to compel
5 concerning requests for production of documents ("RFP"), requests for admission ("RFA"), and
6 interrogatories ("ROG"), and his request for an *in camera* review of Defendants' personnel files
7 and other documents.

8 **II. Discussion**

9 **A. Motion to Compel Further Responses to RFP, Set One**

10 **1. Legal Standard**

11 Plaintiff is proceeding pro se and he is a state prisoner challenging the constitutionality of
12 the level of force used against him on April 10, 2006, at KVSP.¹ As a result of Plaintiff's
13 incarceration, the parties were relieved of some of the requirements which would otherwise apply,
14 including initial disclosure and the need to meet and confer in good faith prior to involving the
15 Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(c); Fed. R. Civ. P.
16 37(a)(1); Local Rules 240, 251; Doc. 35, Discovery and Scheduling Order, ¶15. Further, where
17 otherwise discoverable information would pose a threat to the safety and security of the prison or
18 infringe upon a protected privacy interest, a need may arise for the Court to balance interests in
19 determining whether disclosure should occur. *See* Fed. R. Civ. P. 26(c); *Seattle Times Co. v.*
20 *Rhinehart*, 467 U.S. 20, 35 n.21, 104 S.Ct. 2199 (1984) (privacy rights or interests implicit in
21 broad purpose and language of Rule 26(c)); *Burlington N. & Santa Fe Ry. Co. v. United States*
22 *Dist. Court for the Dist. of Montana*, 408 F.3d 1142, 1149 (9th Cir. 2005) (discussing assertion of
23 privilege); *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (recognizing a
24 constitutionally-based right of privacy that can be raised in discovery); *see also Garcia v. Clark*,
25 No. 1:10-CV-00447-LJO-DLB PC, 2012 WL 1232315, at *6 n.5 (E.D. Cal. Apr. 12, 2012) (noting
26 inmate's entitlement to inspect discoverable information may be accommodated in ways which
27 mitigate institutional safety concerns); *Robinson v. Adams*, No. 1:08-cv-01380-AWI-BAM PC,

28 ¹ There is no dispute that there was an incident of force.

1 2012 WL 912746, at *2-3 (E.D. Cal. Mar. 16, 2012) (issuing protective order regarding
2 documents containing information which implicated the safety and security of the prison); *Orr v.*
3 *Hernandez*, No. CV-08-0472-JLQ, 2012 WL 761355, at *1-2 (E.D. Cal. Mar. 7, 2012) (addressing
4 requests for protective order and for redaction of information asserted to risk jeopardizing safety
5 and security of inmates or the institution if released); *Womack v. Virga*, No. CIV S-11-1030 MCE
6 EFB P, 2011 WL 6703958, at *5-6 (E.D. Cal. Dec. 21, 2011) (requiring defendants to submit
7 withheld documents for *in camera* review or move for a protective order).

8 However, this is a civil action to which the Federal Rules of Civil Procedure apply. The
9 discovery process is subject to the overriding limitation of good faith and callous disregard of
10 discovery responsibilities cannot be condoned. *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d
11 1242, 1246 (9th Cir. 1981) (quotation marks and citation omitted). Parties may obtain discovery
12 regarding any nonprivileged matter that is relevant to any party’s claim or defense, and for good
13 cause, the Court may order discovery of any matter relevant to the subject matter involved in the
14 action.² Fed. R. Civ. P. 26(b)(1) (quotation marks omitted). Relevant information need not be
15 admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
16 admissible evidence. *Id.* (quotation marks omitted).

17 Generally, “[t]he party opposing discovery bears the burden of resisting disclosure,”
18 *Rogers v. Giurbino*, 288 F.R.D. 469, 479 (S.D. Cal. 2012) (citation omitted), but in cases such as
19 this, the parties were relieved of the meet and confer requirement and the requirement that they
20 file a joint statement regarding their discovery disagreement, Fed. R. Civ. P. 26(c)(1), 37(a)(1);
21 Local Rule 251. As a result, Plaintiff bears an initial procedural burden in moving to compel; the
22 Court is generally disinclined to sift through the parties’ discovery requests and responses in an
23 effort to determine what is in dispute and why it is in dispute. Fed. R. Civ. P. 7(b)(1). Plaintiff
24 must identify which discovery requests are at issue and why he is entitled to the relief he seeks
25 (e.g., why the information is relevant and why the objections lack merit). *E.g.*, *Grabek v.*
26 *Dickinson*, No. CIV S-10-2892 GGH P, 2012 WL 113799, at *1 (E.D. Cal. Jan. 13, 2012);

27 ² “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the
28 evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

1 *Womack*, 2011 WL 6703958, at *3; *Mitchell v. Felker*, No. CV 08-119RAJ, 2010 WL 3835765, at
2 *2 (E.D. Cal. Sep. 29, 2010); *Ellis v. Cambra*, No. 1:02-cv-05646-AWI-SMS PC, 2008 WL
3 860523, at *4 (E.D. Cal. Mar. 27, 2008). However, the Court is vested with broad discretion to
4 manage discovery, *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012); *Survivor Media,*
5 *Inc. v. Survivor Productions*, 406 F.3d 625, 635 (9th Cir. 2005); *Hallett v. Morgan*, 296 F.3d 732,
6 751 (9th Cir. 2002), and notwithstanding the general procedure, Plaintiff is entitled to leniency as
7 a pro se litigant and to the extent possible, the Court endeavors to resolve his motion to compel on
8 its merits, e.g., *Williams v. Adams*, No. 1:05-cv-00124-AWI-SMS PC, 2009 WL 1220311, at *1
9 (E.D. Cal. May 4, 2009).

10 **2. Background**

11 On February 21, 2013, Plaintiff filed a motion to compel further responses to RFP, set one,
12 numbers 1 through 20. (Doc. 117.) Defendants filed an opposition on March 15, 2013, and
13 Plaintiff filed a reply on April 2, 2013. (Docs. 136, 141.)

14 In their opposition, Defendants stated that in reviewing Plaintiff's motion to compel, they
15 determined there were some errors in their discovery responses and on March 13, 2013, they
16 served supplemental responses curing those deficiencies. In his reply, Plaintiff acknowledged
17 receipt and partial acceptance of the supplemental responses.³

18 **3. RFP Standard**

19 A party may serve on any other party a request within the scope of Rule 26(b) to produce
20 and permit the requesting party or its representative to inspect, copy, test, or sample the following
21 items in the responding party's possession, custody or control: any designated documents or
22 tangible things. Fed. R. Civ. P. 34(a)(1) (quotation marks omitted). "Property is deemed within a
23 party's 'possession, custody, or control' if the party has actual possession, custody, or control
24 thereof or the legal right to obtain the property on demand," *Allen v. Woodford*, No. CV-F-05-
25 1104 OWW LJO, 2007 WL 309945, *2 (E.D. Cal. Jan. 30, 2007) (citing *In re Bankers Trust Co.*,

26
27 ³ Unless otherwise specified, the Court's rulings are based on its consideration of the parties' arguments in the motion,
28 opposition, and reply briefs, and on its review of (1) Plaintiff's discovery requests and Defendants' discovery
responses set forth in Exhibit A to Plaintiff's motion to compel, and (2) Defendants' supplemental discovery
responses set forth in Exhibit 1 to Defendants' opposition (Doc. 136-3).

1 61 F.3d 465, 469 (6th Cir. 1995)); *accord Bovarie v. Schwarzenegger*, No. 08cv1661 LAB (NLS),
2 2011 WL 719206, at *4 (S.D. Cal. Feb. 22, 2011); *Evans v. Tilton*, No. 1:07CV01814 DLB PC,
3 2010 WL 1136216, at *1 (E.D. Cal. Mar. 19, 2010), and in responding to discovery requests, a
4 reasonable inquiry must be made, Fed. R. Civ. P. 26(g)(1).

5 **4. Rulings on RFP, Set One**

6 **RFP 1:** “[A]ll documentation on the instructions on or directions on the use of the pepper
7 spray that was used to spray the plaintiff on April 10, 2006 which includes but not limited to the
8 ingredients, and the [e]ffects of the pepper spray with the use in the eyes and how to use said
9 spray.” (MTC, Doc. 117, Ex. A.)

10 **Ruling:** Plaintiff’s motion to compel a further response is denied.⁴

11 Following service of the supplemental response, left at issue is Plaintiff’s request for the
12 production of instructions or directions on the use of pepper spray, its effects, and the ingredient
13 list. Defendants provided Plaintiff with copies of the applicable Title 15 regulations, which they
14 stated represent the only source of the California Department of Correction and Rehabilitation’s
15 use of force policy in effect in April 2006; and they responded that they do not have possession,
16 custody, or control over the pepper spray ingredient list or directions. Plaintiff’s argument that he
17 cannot obtain that information as an inmate and Defendants must therefore supply it to him lacks
18 merit. The applicable discovery rules only require production of documents within Defendants’
19 possession, custody, or control, and Plaintiff is required to accept their legally sufficient response
20 that they do not have instructions or directions for the pepper spray used in April 2006.

21 While Plaintiff may be disinclined to trust Defendants’ discovery responses, he is in a
22 position no different than any other civil litigant: in the absence of legal or fact-based substantive
23 deficiencies, he is required to accept the responses provided. Mere distrust and suspicion
24 regarding discovery responses do *not* form a legitimate basis to further challenge responses which
25 are facially legally sufficient; and Plaintiff is entitled neither to continue demanding additional
26 and/or different evidence in support of discovery responses already provided nor to expand the

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28 ⁴ The bases for the Court’s rulings are identified. However, the Court finds it both unnecessary and unhelpful to further burden the record with a recitation of objections and arguments not relied upon for the rulings. Therefore, Defendants’ responses are not reproduced herein.

1 scope of discovery beyond that sought in the initial discovery request. Fed. R. Civ. P. 26(g)(1),
2 33; *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013); *L.H. v. Schwarzenegger*, No. S-06-
3 2042 LKK GGH, 2007 WL 2781132, at *2 (E.D. Cal. 2007).

4 Moreover, signed discovery responses are themselves certifications to the best of the
5 person’s knowledge, information, and belief formed after a reasonable inquiry, Fed. R. Civ. P.
6 26(g)(1)(B) (quotation marks omitted), as are other signed filings presented to the Court, *see* Fed.
7 R. Civ. P. 11(b). *See also* Fed. R. Civ. P. 33(c). Further, as counsel is aware, Defendants are
8 required to supplement their discovery responses should they learn that their responses were
9 incomplete or incorrect, if the incomplete or incorrect information has not otherwise been made
10 known to Plaintiff. Fed. R. Civ. P. 26(e)(1) (quotation marks omitted).

11 **RFP 2:** “[T]he C.D.C.R. Policy on the use of pepper spray that was in place on April 10,
12 2006 incident, which shall include all training and instructions on the use of pepper spraying
13 inmates.” (MTC, Ex. A.)

14 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
15 response.

16 **RFP 3:** KVSP’s “[p]olicy on the use of pepper spray that was in place on April 10, 2006
17 incident, which shall include all training and instructions on the use of pepper spraying inmates
18 which also includes but not limited to how to assist inmates who’ve been pepper spray to be
19 decontaminated.” (MTC, Ex. A.)

20 **Ruling:** Plaintiff’s motion to compel a further response is denied.

21 Defendants’ supplemental response was acceptable in part to Plaintiff, and his remaining
22 contention that they did not comply fully with his request lacks any specific factual support.
23 Plaintiff’s motion to compel was based on an erroneous source identification, which Defendants
24 cured in their supplemental response, and a bare assertion regarding incomplete compliance is
25 insufficient to support a motion to compel a further response.

26 **RFP 4:** “[P]roof that each [defendant] attended training as provided by C.D.C.R. and
27 KVSP’s policy and how many hours each named defendant was required to attend and how often
28 the training is available to each named defendant.” (MTC, Ex. A.)

1 **Ruling:** Plaintiff’s motion to compel a further response is denied.

2 Defendants responded that (1) the IST (in service training) Reports produced to Plaintiff
3 show the training classes each defendant actually attended and (2) no other responsive documents
4 exist. This response is legally sufficient and Plaintiff is required to accept it.

5 **RFP 5:** “C.D.C.R. and KVSP’s Policy on how Correctional Officers are entitled to carry
6 pepper Spray on their person(s) ‘compare to how to Correctional Officer is entitled to have use of
7 a fire arm such as a handgun or rifle’ is there some type of test a Correctional Officer must take
8 and pass and if so did Defendant J. Palmer have authority to carry and use pepper spray.” (MTC,
9 Ex. A.)

10 **Ruling:** Plaintiff’s motion to compel a further response is denied.

11 Defendants’ response is sufficient. Defendants produced the documents responsive to
12 Plaintiff’s policy request, and Plaintiff cannot, via a document production request, ask whether
13 correctional officers must pass a test to carry pepper spray and whether Defendant Palmer was
14 authorized to carry and use pepper spray. Questions such as those form the basis for
15 interrogatories, not document requests.

16 **RFP 6:** The pepper spray manufacturer’s “[p]olicy on the use of [its] product, which
17 includes instructions on how long to spray and how much to spray, in a persons eyes, how to
18 decontaminate the pepper spray once used on a person.” (MTC, Ex. A.)

19 **Ruling:** Plaintiff’s motion to compel a further response is denied.

20 Plaintiff’s is required to accept Defendants’ response that they do not have possession,
21 custody, or control over the manufacturer’s product use policies.

22 **RFP 7:** CDCR’s “[p]olicy on the use of excessive force from a Correctional Officers use
23 with pepper spray, Plaintiff also seeks from KVSP’s Policy on a Correctional Officers use of
24 excessive force with the use of pepper spray.” (MTC, Ex. A.)

25 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
26 response.

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1 **RFP 8:** CDCR’s “[p]olicy on the use of excessive force from a Correctional Officer by use
2 of Correctional Officers hands, and feet used to assault inmates that was in place in April, 2006.”
3 (MTC, Ex. A.)

4 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
5 response.

6 **RFP 9:** KVSP’s “[p]olicy on the use of excessive force from Correctional Officer by use
7 of Correctional Officers hands, and feet used to assault inmates that was in place in April, 2006.”
8 (MTC, Ex. A.)

9 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
10 response.

11 **RFP 10:** CDCR and KVSP’s policies “for the use of excessive force upon an inmate who
12 is laying face down on the ground in handcuffs.” (MTC, Ex. A.)

13 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
14 response.

15 **RFP 11:** CDCR and KVSP’s policies “on Correctional Officers assisting and or Protecting
16 inmates from excessive force from other Correctional Officers and their need to report such
17 incidents to their Supervisors which includes but not limited to the use of pepper spray, hitting and
18 kicking handcuffed inmates.” (MTC, Ex. A.)

19 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
20 response.

21 **RFP 12:** C.D.C.R. and KVSP’s policies “on the use of pepper spray on an inmate who
22 informs Correctional Officers that they have Asthma, and Allergies to Fragrances Sensitivity.”
23 (MTC, Ex. A.)

24 **Ruling:** Denied as moot in light of Plaintiff’s acceptance of Defendants’ supplemental
25 response.

26 **RFP 13:** “Plaintiff seeks in discovery on defendant J. Palmer, J. Palmers employment
27 record minus the personal addresses or contact numbers. Plaintiff seeks: ‘(1) Any C.D.C.R. Form
28 602’s that other inmates filed on J. Palmer for excessive force against them. (2) Any C.D.C.R.

1 Form 602 filed against J. Palmer for the use of pepper spray. (3) Any complaints filed against J.
2 Palmer from any fellow Correctional Officers which includes any Supervisors as well. (4) The
3 reasons why J. Palmer was either transferred by choice or for other reasons from one prison to
4 another prison. Which includes but not limited to did he leave on his own terms or because of
5 complaints filed against him by either inmates or other C.D.C.R. Staff Members. (5) Any and all
6 documentation on J. Palmer attendance for training on the use of pepper spray prior to the April
7 10, 2006 incident. (6) Any and all documentation on J. Palmers attendance for training on the use
8 of force against inmates prior to April 10, 2006. (7) The Report on what the C.D.C.R. and KVSP
9 did to J. Palmer stemming from the April 10, 2006 excessive use of force against Plaintiff. Which
10 includes but not limited to any suspensions, wage lost, retraining, any documentation on J. Palmer
11 not being around Plaintiff i.e. Restraining Order or Keep Away Orders.” (MTC, Ex. A.)

12 **RFP 14:** “Plaintiff seeks in discovery on Defendant M.H. Lopez’s employment record
13 minus any addresses, or contact numbers. Plaintiff seeks: (1) Any and all C.D.C.R. Form 602
14 filed against Lopez for excessive force. (2) Any and all complaints on Lopez filed by any
15 C.D.C.R. Staff Employees including Supervisors. (3) Plaintiff seeks the C.D.C.R. and KVSP’s
16 Report on Lopez from the April 10, 2006 incident stemming from Lopez’s failure to Protect
17 Plaintiff from J. Palmers assault upon Plaintiff. This includes but not limited to any Suspensions,
18 wage lost; retraining, and documentation on M.H. Lopez’s not being around Plaintiff i.e.
19 Restraining Orders or keep away orders. (4) Any and all Documentation that Lopez attended
20 training on Protecting inmates from assaults from other Correctional Officers. (5) Any and all
21 training on Lopez on the use of force against inmates. (6) Any and all documentation that Lopez
22 attended training on the use of force against inmates. (7) Any and all documentation that Lopez’s
23 training as a Supervisor (8) Any and all documentation on training that was supervised by Lopez
24 on the use of force against inmates. (10) Any and all documentation on Lopez’s supervising
25 Correctional Officers on the use of pepper spray.”⁵ (MTC, Ex. A.)

26 **RFP 15:** “Plaintiff seeks in discovery on Defendant R.S. Rivera’s employment record
27 minus any addresses, or contact numbers. Plaintiff seeks: (1) Any and all documented C.D.C.R.

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⁵ Plaintiff does not include a subsection (9) in his request for RFP 14.

1 Form 602's against Rivera for force against inmates. (2) Any and all documented complaints on
2 against Rivera from any C.D.C.R. Staff members including Supervisors. (3) Plaintiff seeks the
3 C.D.C.R. and KVSP's Report on Rivera from the April 10, 2006 incident stemming from J.
4 Palmers assault upon Plaintiff, This includes but not limited to any Suspensions wage lost,
5 retraining, and restraining orders and or keep away orders of not being around Plaintiff. (4) Any
6 and all training that Rivera received on the use of force used against inmates. (5) Any and all
7 training that Rivera received regarding the protection of inmates from personal assaults from other
8 Correctional Officers. (6) Any and all training that Rivera received on the use of pepper spray.”
9 (MTC, Ex. A.)

10 **Ruling on RFP 13, 14, and 15:** Plaintiff's motion to compel a further response is denied.⁶

11 With respect to inmate appeals and other types of complaints filed against Defendants,
12 Plaintiff has not met his burden as the party moving to compel production. The documents sought
13 must be relevant, and Plaintiff fails to show how other inmates' appeals and other types of
14 complaints are relevant to his claim, which arises from a single incident of alleged excessive force
15 on April 10, 2006. Fed. R. Civ. P. 26(b)(1); Fed. R. Evid. 401. Plaintiff argues that he needs the
16 appeals and complaints to show Defendants' propensity for and pattern of using force. However,
17 Plaintiff cannot use evidence of other incidents of force to prove that he was subjected to unlawful
18 force on April 10, 2006, Fed. R. Evid. 404(a)(1), and he has not otherwise indicated how unrelated
19 third-party complaints against Defendants are relevant to his claim, Fed. R. Evid. 401.⁷

20 Turning to the issue of Defendant Palmer's transfer to another prison, Plaintiff's request
21

22 ⁶ Defendants' cursory citation to state law as a shield against disclosure of personnel files is unavailing in federal
23 court, *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1990); *Soto v. City of Concord*, 162 F.R.D. 603,
24 613 (N.D.Cal. 1995), as is Plaintiff's citation to the Freedom of Information Act (5 U.S.C. §§ 552 *et seq.*) as a source
25 of authority compelling the discovery he seeks, *Drake v. Obama*, 664 F.3d 774, 785-86 (9th Cir. 2011); *Moore v.*
United Kingdom, 384 F.3d 1079, 1089 (9th Cir. 2004). However, given the denial of Plaintiff's motion to compel on
other grounds discussed herein, the Court need not reach the relevant privilege, which is the federal "official
information" privilege. *Sanchez*, 936 F.2d at 1033-34; *Soto*, 162 F.R.D. 603 at 613.

26 ⁷ Inadmissibility at trial does not necessarily preclude discovery, Fed. R. Civ. P. 26(b)(1), and evidence which is
27 inadmissible for one purpose may still be admissible for a different purpose. However, the scope of discovery is
28 limited to evidence which is relevant to Plaintiff's excessive force claim and where the relevance is not obvious,
Plaintiff bears the burden of informing the Court of the basis for his motion to compel. Fed. R. Civ. P. 26(b)(1); Fed.
R. Evid. 401.

1 was in the form of a question rather than a document request, as Defendants noted, but regardless,
2 Defendants stated that Defendant Palmer was not transferred to another prison. (Opp., Doc. 136,
3 9:24-10:2.) Based on that response, there is nothing further to compel.

4 Regarding training, Defendants produced the IST Reports, thereby responding in full to
5 this document production request.

6 With respect to other documentation related to any adverse action taken against Defendants
7 as a result of the incident of force on April 10, 2006, Plaintiff is required to accept Defendants'
8 response that no documents exist, and Plaintiff identifies no grounds meriting the *in camera*
9 review he requests.⁸ The Court reviewed the third level response to Plaintiff's inmate appeal,
10 which was cited by Plaintiff in seeking an *in camera* review, and the response neither found nor
11 implied that Plaintiff's allegations of staff misconduct were *substantiated*. Rather, an inquiry into
12 Plaintiff's allegations was initiated and completed.

13 **RFP 16:** "[A] detailed outline of KVSP's Facility 'D's building one (1) C-sections general
14 area including the cell doors and the dayroom area, as well as the door to the rotunda and the
15 rotunda itself. By use of photo's and or drawings such as used for fire drill escapes or
16 evacuations with the dinning room door and the yard door.'" (MTC, Ex. A.)

17 **Ruling:** Plaintiff's motion to compel a further response is denied.

18 First, it is not clear how these documents and/or photographs are relevant to Plaintiff's
19 claim that on April 10, 2006, Defendant Palmer used excessive force against him, or that
20 Defendants Lopez and Rivera were present but failed to intervene. Fed. R. Civ. 26(b)(1); Fed. R.
21 Evid. 401. Second, Defendants responded that they do not have possession, custody, or control
22 over any responsive documents or photographs, and that response is legally sufficient.⁹

23 **RFP 17:** "[A] detailed copy of KVSP's Facility D building ones Rotunda's cameras film

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25 ⁸ *In camera* reviews, which are burdensome and intrusive, are not routinely conducted and they are not available to a
26 litigant merely seeking reassurance regarding the sufficiency of the response received. *See U.S. v. Zolin*, 491 U.S.
554, 569-575, 109 S.Ct. 2619 (1989); *In re Grand Jury Investigation*, 974 F.2d 1068, 1074-75 (9th Cir. 1992). Here,
Defendants certified that no responsive documents exist and Plaintiff identifies no factual basis suggesting otherwise.

27 ⁹ As Defendants acknowledged in their response to RFP 16, if they create responsive documents or photographs for
28 trial purposes, they will be required to produce them to Plaintiff at that time. Fed. R. Civ. P. 26(e). (MTC, Doc. 117,
p. 28 n.2.)

1 for the April 10, 2006 incident.” (MTC, Ex. A.)

2 **Ruling:** Plaintiff’s motion to compel a further response is denied.

3 Plaintiff may not use his motion to compel to exceed the scope of his discovery request,
4 which was limited to camera footage; he is required to accept the legally sufficient response that
5 no camera footage exists; and he lacks any legal entitlement to a declaration or other evidence
6 “proving” to him that no footage exists.

7 **RFP 18:** “[A] detailed written report conducted at least twice by KVSP’s internal affairs
8 investigation into the April 10, 2006 incident, which includes but not limited to what is commonly
9 called the ‘GOON SQUAD’ by inmates or ‘TASK FORCE’.” (MTC, Ex. A.)

10 **Ruling:** Plaintiff’s motion to compel is granted in part and denied in part.

11 While the Court agrees that Plaintiff’s use of terminology such as “goon squad” is both
12 unnecessary and lacking in any apparent relevance to his legal claim, he is nonetheless entitled to
13 the production of investigatory internal affairs reports relating to the incident of force on April 10,
14 2006, *if any*, and the Court is not persuaded that Defendants lack the legal right to obtain any such
15 reports.¹⁰ The Court notes that Defendants already produced a “Crime/Incident Report” and a
16 “Use of Force Incident” report, but notably absent from their response to RFP 18 is a statement
17 that there are no additional responsive documents. (Opp., Doc. 136-3, pp. 30-70.)

18 Accordingly, within thirty days from the date of service of this order, Defendants shall
19 either (1) produce any additional investigatory reports responsive to RFP 18 or (2) serve Plaintiff
20 with a supplemental response making clear that they conducted a reasonable inquiry and no
21 additional investigatory reports exist. If Defendants serve a supplemental response certifying that
22 there are no additional responsive documents, Plaintiff is required to accept that answer. Fed. R.
23 Civ. P. 26(g)(1), 34.

24 **RFP 19:** “Any and all Medical Reports on the Defendants from the April 10, 2006
25 incident.” (MTC, Ex. A.)

26
27 ¹⁰ Plaintiff’s mere distrust of a discovery response or mere desire for a different response does not suffice to support a
28 motion to compel. However, neither is the Court is required to suspend all reason and common sense when
independently reviewing the sufficiency of a disputed discovery response, and an adverse employment-related
determination is more than likely available to the involved employee.

1 **Ruling:** Plaintiff’s motion to compel is granted in part and denied in part.

2 Documentation of any injuries sustained by Defendant Palmer during the physical
3 altercation with Plaintiff on April 10, 2006, is relevant, and Defendants’ argument to the contrary
4 lacks merit. Therefore, Defendants shall produce any medical reports concerning Defendant
5 Palmer’s injuries or lack of injury within thirty days. Defendants may redact any unnecessary and
6 highly sensitive information such as birth date, address, Social Security number, etc., and they
7 may redact any medical information which is irrelevant and/or unrelated to injuries sustained on
8 April 10, 2006. Such information might include but is not limited to medical history or
9 preexisting conditions unrelated to any injuries sustained on April 10, 2006. *However*, in granting
10 Plaintiff’s request for a supplemental response, the Court notes that the Crime/Incident Report
11 already produced to Plaintiff documents the lack of injury to Defendant Palmer. (Opp., Doc. 136-
12 3, p. 39.) As a result, there may well be no additional records subject to production, and if that is
13 so, Plaintiff is required to accept that answer.

14 Plaintiff is not entitled to Defendants Lopez and Rivera’s medical records, as they were not
15 directly involved in the incident of force and their medical information has no apparent relevance
16 to Plaintiff’s legal claim.¹¹

17 **RFP 20:** “[A]ny and all changes that KVSP implemented into their Policy regarding the
18 use of pepper spray and the training for the use of pepper spray since the April 10, 2006 incident
19 which also includes but not limited to any changes in Policy on excessive force and any training
20 regarding such.” (MTC, Ex. A.)

21 **Ruling:** Plaintiff’s motion to compel a further response is denied.

22 Defendants supplemented their initial discovery response and produced documents from
23 Title 15, the DOM (Departmental Operations Manual), and the IMSP&P (Inmate Medical
24 Services Policies and Procedures) manual. Although Plaintiff now asserts that KVSP has its own
25 policies, his initial discovery request was already clear that he was seeking KVSP policies and his
26 motion to compel arose from Defendants’ “erroneous” Title 15 citation. Defendants served a

27 ¹¹ To the extent that the medical records are somehow relevant, Plaintiff fails to make that showing in either his
28 motion or his reply; and the Crime/Incident Report indicates they sustained no injuries.

1 supplemental response accompanied by documents; as their response appears legally sufficient on
2 its face, Plaintiff's bare assertion in his reply that there is or should be an additional prison-specific
3 policy is insufficient to support a motion to compel a further response.

4 **B. Motion for *In Camera* Review of Personnel Files**

5 On April 25, 2013, Plaintiff filed a motion seeking an *in camera* review of Defendants'
6 personnel files. (Doc. 143.) Defendants filed an opposition on May 16, 2013, and Plaintiff filed a
7 reply on April 25, 2013. (Docs. 146, 148.)

8 Plaintiff's motion for an *in camera* review is premised on Defendants' response to his
9 RFP, set one, and their responses to his RFA. Plaintiff contends that evidence of Defendants'
10 reassignment to different positions and yards suggests they were disciplined following their
11 involvement in the April 10, 2006, incident of force; and given their refusal to admit such, the
12 Court should engage in an *in camera* review of their personnel files.

13 No substantively meritorious basis for an *in camera* review has been presented. *See U.S. v.*
14 *Zolin*, 491 U.S. 554, 569-575, 109 S.Ct. 2619 (1989); *In re Grand Jury Investigation*, 974 F.2d
15 1068, 1074-75 (9th Cir. 1992). As an initial matter, Plaintiff's contention that he is entitled to an
16 *in camera* review on any discovery request involving a confidentiality objection is incorrect.
17 (Reply, Doc. 148, 2:16-18.) To the contrary, *in camera* reviews are available only in limited
18 circumstances, and even if the moving party meets its initial factual burden, courts retain
19 discretion to grant or deny the request. *See Zolin*, 491 U.S. at 570-572; *In re Grand Jury*
20 *Investigation*, 974 F.2d at 1075.

21 Plaintiff's motion to compel further responses to his RFP, set one, was fully addressed in
22 section II(A). With the limited exception of RFPs 18 and 19, Plaintiff's motion was denied and he
23 was informed that he is required to accept the response that no documents, or no additional
24 documents, exist. Furthermore, a denial in response to an RFA is a legally sufficient answer, and
25 Plaintiff is required to accept it. Fed. R. Civ. P. 36(a)(4). Finally, the fact that Defendants have
26 worked different positions at different locations falls short of supplying the requisite factual basis
27 for raising a challenge to the truthfulness of Defendants' response that they were not subject to
28 adverse employment action as a result of the incident on April 10, 2006.

1 Given the absence of a sufficient factual basis supporting Plaintiff's motion for an *in*
2 *camera* review, the motion is denied. See *Zolin*, 491 U.S. at 569-575; *In re Grand Jury*
3 *Investigation*, 974 F.2d at 1074-75.

4 **C. Motion to Compel Response to RFP, Set Two**

5 **1. Procedural Background**

6 On February 27, 2013, Plaintiff filed a motion to compel a response to RFP, set two, which
7 he represents was served on September 12, 2011.¹² (Doc. 127.) On February 28, 2013, the Court
8 denied Plaintiff's motion as premature in light of the order granting Defendants an extension to
9 time to March 28, 2013, to serve discovery responses.¹³ (Doc. 129.) On May 23, 2013, Plaintiff
10 filed another motion to compel responses to RFP, set two. (Doc. 147.) Defendants filed an
11 opposition on June 13, 2013, and Plaintiff filed a reply on July 3, 2013; a motion for a court order
12 pursuant to Federal Rule of Civil Procedure 37 on October 15, 2013; and a proof of service for
13 RFP, set two, on October 28, 2013. (Docs. 150, 155, 169, 170.)

14 **2. RFP, Set Two**

15 Plaintiff represents that he served Defendants with RFP, set two, on September 12, 2011,
16 and he subsequently submitted a mail log evidencing he sent mail to the Attorney General's Office
17 in Sacramento on September 13, 2011.¹⁴ (MTC, Doc. 147, p. 1; Mail Log, Doc. 170, p. 3.)
18 Defendants, however, submit counsel's declaration that she did not receive any discovery requests
19 in between those served on July 17, 2011, and January 16, 2013. (Chinn Dec., Doc. 150, ¶2.)

20 Cutting through the parties' various arguments, there is insufficient support for a finding
21 that Plaintiff did not serve RFP, set two, by mail on September 12, 2011, or that Defendants
22 received it but failed to answer. Without question, mail sometimes fails to reach its destination
23 and here, there is no indication that anything other than lost mail is to blame. The Court cannot

24 _____
25 ¹² Several stays during the course of this litigation impacted discovery response deadlines.

26 ¹³ At that time, Defendants and the Court thought the discovery request subject to the extension of time was RFP, set
27 two. Instead, it turned out to be a different discovery request, entitled "Motion for Additional Discovery" and lacking a
28 "set two" designation. (Reply, Doc. 155, 2:1-3.)

¹⁴ Plaintiff's motion for an order requiring Salinas Valley State Prison to send him a copy of his mail log is moot in
light of Plaintiff's subsequent receipt of the log. (Docs. 169, 170.) That motion is therefore denied as moot.

1 divine how or why the mail went astray, but a just resolution requires only that Defendants now
2 respond. Accordingly, to the end, Plaintiff's motion to compel is denied, but Defendants are
3 required to serve their initial response to RFP, set two, within thirty days.¹⁵

4 **D. Motion to Compel Further Responses to RFA and ROG, Set Two**

5 **1. Procedural Background**

6 On June 3, 2013, Plaintiff filed a motion seeking to compel further responses to his RFA
7 and ROG, set two, served on Defendant Palmer. (Doc. 149.) Defendants filed a response on June
8 24, 2013, and Plaintiff filed a reply on July 15, 2013. (Docs. 152, 156.)

9 **2. Electronic Signature and *In Camera* Review Request**

10 Plaintiff's stated challenge to Defendant Palmer's discovery responses lies mainly with
11 Defendant's electronic signature. However, Defendant Palmer may sign documents electronically
12 through his counsel, and his electronic signature complies with Local Rule 131(f).¹⁶ Plaintiff's
13 preference for a handwritten signature provides no basis for a challenge, as he lacks any legal
14 entitlement to demand a non-electronic signature. With respect to Plaintiff's argument that he is
15 required to sign his filings and other documents, Defendants are represented by counsel and are
16 required to use the electronic filing system, which includes authorization of electronic signatures.
17 Local Rule 133(a). Plaintiff, on the other hand, is pro se and is required to file documents
18 conventionally, which requires a handwritten signature. Local Rule 133(b)(2).

19 Additionally, Plaintiff seeks again seeks an *in camera* view. However, Plaintiff is not
20 entitled to an *in camera* review, and the record is devoid of any legitimate basis for one. *See*
21 *Zolin*, 491 U.S. at 569-575; *In re Grand Jury Investigation*, 974 F.2d at 1074-75.

22 **3. Review of Substantive RFA and ROG Responses**

23 The stated bases for Plaintiff's motion to compel, discussed in the previous subsection,
24 lack merit. However, in an effort to bring final closure to RFA and ROG responses, set two, the
25

26 ¹⁵ Defendants shall treat Plaintiff's motion to compel, Ex. A., pages 6 through 9, as RFP, set two, and respond
27 accordingly.

28 ¹⁶ Electronic signatures are permissible so long as counsel has the original signature on file and the electronic
signature is accompanied by a statement to that effect. Local Rule 131(f). The signature in question, which is Exhibit
B to Plaintiff's motion, is accompanied by the statement that the original signature is on file.

1 Court has considered the discovery requests and responses on their merits, and it finds no
2 additional basis warranting relief to Plaintiff.

3 Specifically, Defendant Palmer's admission (RFA 1) and denials (RFAs 3, 4, and 5) are
4 legally sufficient, and Plaintiff is not entitled to seek any further response. Fed. R. Civ. P.
5 36(a)(4). With respect to RFA 2, Defendant's objection is sustained and Plaintiff's motion to
6 compel is denied. The question "Admit the reason that you are no longer employed by C.D.C.R.
7 K.V.S.P." is not a request for admission, and Plaintiff is not entitled to a further response to his
8 improper inquiry. Fed. R. Civ. P. 36(a)(5).

9 Defendant Palmer's substantive responses to Plaintiff's ROGs, 1-5, are also legally
10 sufficient. Fed. R. Civ. P. 33(b). Although Defendant objected to ROGs 2-5, he nevertheless
11 responded to them in full, and there exist no grounds to compel a different or an additional
12 response. *Id.*

13 **E. Second Motion to Compel Response to RFP, Set Two**

14 On August 8, 2013, Plaintiff filed a second motion to compel a response to RFP, set two.
15 (Doc. 160.) In response, on August 29, 2013, Defendants filed a motion to strike the motion to
16 compel as duplicative of the motion filed on May 23, 2013. (Doc. 165.) Plaintiff filed a reply on
17 September 16, 2013. (Doc. 168.)

18 Again cutting through the parties' various arguments, Plaintiff renamed RFP, set two, as
19 RFP, set three, and re-served it on June 24, 2013. Plaintiff's decision to re-serve the RFP was due
20 to (1) Defendants' representation they never received RFP, set two, and (2) the confusion of RFP,
21 set two, with the third discovery request sent to Defendants and entitled "Motion for Additional
22 Discovery," discussed in footnote 12.¹⁷ Defendants did not serve a response to the re-served RFP
23 and instead informed Plaintiff by letter that the RFP was untimely under the operative scheduling
24 order. Plaintiff then brought his second motion to compel. In as much as Plaintiff attempted to
25 address Defendants' earlier argument that they were not served with RFP, set two, by re-serving it
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28 ¹⁷ The Court will continue to refer to this second RFP as set two and the parties are directed to do the same. Plaintiff's relabeling of the RFP as set three shall be disregarded.

1 on June 24, 2013, his second motion to compel is not duplicative of the first motion and
2 Defendants' motion to strike on that ground is denied.

3 Pursuant to the scheduling order filed on February 22, 2013, the discovery deadline was
4 July 9, 2013, and Defendants' rejection of Plaintiff's re-served RFP, set two, as untimely was
5 supported given the requirement that discovery requests be served at least forty-five days before
6 the discovery deadline. (Doc. 35, ¶3; Doc. 122.) However, as discussed in section II(C),
7 Defendants are required to serve a response to RFP, set two, within thirty days, and Plaintiff's
8 second motion to compel is denied moot.

9 **III. Order**

10 Based on the foregoing, the Court HEREBY ORDERS as follows:

11 1. Plaintiff's motion to compel further responses to RFP, set one (doc. 117), is
12 DENIED as to RFPs 1-17 and 20, and GRANTED as to RFPs 18 and 19;

13 2. Within **thirty (30) days** from the date of service of this order, Defendants shall
14 serve Plaintiff with supplemental responses to RFPs 18 and 19;

15 3. Plaintiff's motion for an *in camera* review (doc. 143) is DENIED;

16 4. Plaintiff's motion to compel a response to RFP, set two (doc. 147), is DENIED, but
17 Defendants shall serve their initial response to RFP, set two, within **thirty (30) days** from the date
18 of service of this order;

19 5. Plaintiff's motion for an order requiring Salinas Valley State Prison to send him a
20 copy of his mail log (doc. 169) is DENIED as moot;

21 6. Plaintiff's motion to compel further responses to RFAs and ROGs, set two, and for
22 an *in camera* review (doc. 149), is DENIED;

23 7. Defendants' motion to strike Plaintiff's second motion to compel a response to
24 RFP, set two (doc. 165), is DENIED; and

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8. Plaintiff's second motion to compel a response to RFP, set two (doc. 160), is DENIED as moot.

IT IS SO ORDERED.

Dated: November 25, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE