

1 **I.**

2 **RELEVANT BACKGROUND**

3 On August 21, 2013, the Court issued a discovery and scheduling order, setting the discovery
4 cut-off date as April 21, 2014. (ECF No. 31.)

5 On July 7, 2014, Plaintiff filed a motion for summary judgment. (ECF No. 55.)

6 On July 24, 2014, Defendant Anderson filed a motion for summary judgment. (ECF No. 56.)

7 Thereafter, Plaintiff filed several motions relating to Defendant's motion for summary
8 judgment, conducting further discovery, and to withdraw Defendant's right to file a motion for
9 summary judgment. (ECF Nos. 61, 65, 68, 69, 71, 72.)

10 On August 22, 2014, Plaintiff requested the court to appoint counsel, or in the alternative,
11 assistance from the Court regarding false sworn declarations. (ECF No. 72.) Plaintiff also requested
12 that he be allowed to conduct discovery to obtain Defendant's time cards to show that Defendant
13 worked second watch. (Id.) The Court denied Plaintiff's motion in its entirety. (ECF No. 73.)

14 On September 11, 2014, Plaintiff filed a motion entitled "Plaintiff's Further Need for
15 Counselor Discovery New Evidence About Defendants Actual Job Hours." (ECF No. 75.) Plaintiff's
16 request was denied. (ECF No. 76.)

17 Plaintiff filed an opposition to Defendant's motion for summary judgment on October 24,
18 2014.

19 On October 30, 2014, Plaintiff moved to compel Defendant to turn over documents, including
20 a grievance Plaintiff filed regarding modesty panels in the shower. (ECF No. 83.) Plaintiff further
21 contends that defense counsel falsified documents and removed documents from Plaintiff's central
22 file. (Id.) Plaintiff also seeks log books and time cards relating to the time Defendant Anderson
23 worked. (Id.)

24 **II.**

25 **DISCUSSION**

26 It appears that Plaintiff seeks relief under Rule 56(d) of the Federal Rules of Civil Procedure
27 by seeking a delay in ruling on Defendant's pending motion for summary judgment to conduct further
28

1 discovery of the time cards and book logs as to Defendant Anderson’s work schedule during the
2 relevant time period.

3 Rule 56(d) provides that “[i]f a nonmovant shows by affidavit or declaration that, for specified
4 reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering
5 the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3)
6 issue any other appropriate order.” Fed. R. Civ. P. 6(d). In seeking relief under Rule 56(d), Plaintiff
7 bears the burden of specifically identifying relevant information, where there is some basis for
8 believing that the information actually exists, and demonstrating that the evidence sought actually
9 exists and that it would prevent summary judgment. Blough v. Holland Realty, Inc., 574 F.3d 1084,
10 1091 n.5 (9th Cir. 2009) (quotation marks and citation omitted); Getz v. Boeing Co., 654 F.3d 852,
11 867-868 (9th Cir. 2011).

12 **A. Defense Counsel’s Failure to Respond**

13 In his motion to compel, Plaintiff references a period of fourteen months in which defense
14 counsel failed to respond to Plaintiff’s discovery requests.

15 In response, defense counsel submits that Plaintiff served Defendant Anderson with requests
16 for interrogatories, requests for admissions, and request for documents in September 2013. (ECF No.
17 90, Opp’n, Ex. A.) Despite counsel’s claim that the requests were irrelevant to the matters at issue,
18 Defendant Anderson responded. (Id.)

19 Plaintiff provides no basis to support his motion to compel any further responses than those
20 provided previously by counsel.

21 **B. Modesty Screens**

22 Plaintiff seeks an order compelling defense counsel to provide a copy of Plaintiff’s grievance
23 concerning modesty panels and a petition for writ of habeas corpus. (ECF No. 83, ¶ 2.) Plaintiff
24 further alleges that Defendant Anderson “liked on my 602 and said their [sic] were modesty panels on
25 the shower doors when he knew their [sic] had not been none [sic] in over 20 years.” (ECF No. 83, ¶
26 3.)

27 Defendant opposes Plaintiff’s request on the ground that such evidence is irrelevant to the
28 issues present in the instant matter.

1 The Court agrees with Defendant. This action is proceeding against Defendant Anderson on
2 Plaintiff's claim of cruel and unusual punishment arising out of the conditions of his confinement at
3 Corcoran State Prison between February 25, 2009 to July 13, 2010. Plaintiff alleges that Defendant
4 Anderson often moved him to different cells that were next to "screaming beating psychiatric patients
5 who scream and beat at all hours of the day and night" which deprived Plaintiff of sleep and peace of
6 mind at all times. Plaintiff contends Defendant Anderson refused to monitor the noise level in the
7 security housing unit. As a result of the noise, Plaintiff alleges he had a severe nervous breakdown
8 and had to be placed on suicide watch for stress. Plaintiff also suffered three ear injuries and received
9 medical attention for his injuries. (ECF No. 20, at 3.)

10 There is no relevance to documents referring or relating to the presence or lack of modesty
11 screen and there is no basis to reopen discovery for such purpose. Accordingly, because any
12 documents relating to modesty screens is immaterial to the issues present in the instant case, Plaintiff's
13 motion to compel such documents must be denied.

14 **C. Time Cards and Log Books**

15 Plaintiff is requesting an order allowing him to subpoena the log books and Defendant's time
16 cards for the period of August 25, 2009 through April 8, 2010. Plaintiff contends these documents
17 will show that Defendant Anderson lied in his declaration (submitted in support of his motion for
18 summary judgment) about the time that he worked in March 2010, and will prove that Defendant
19 Anderson lied about touring the unit during the second watch. (ECF No. 84.)

20 Defendant responds that the documents requested will not defeat Defendant's motion for
21 summary judgment because the undisputed evidence shows that: (1) Defendant Anderson answered
22 Plaintiff's requests for interview; (2) the noisy inmate was moved within days of Plaintiff's complaint;
23 and (3) Captain Variz was responsible for moving the noisy inmate.

24 The Court finds that Plaintiff has failed to meet his burden in justifying relief under Rule 56(d).
25 Plaintiff has failed to provide sufficient factual detail to support the finding such information is
26 essential to prevent summary judgment. To the contrary, even assuming that Defendant Anderson
27 worked third watch during the three to four days in question, it is not essential to defeat summary
28 judgment by showing Anderson worked between March 6 and March 10, 2010. Defendant Anderson

1 declared that he toured the SHU on a daily basis, and never heard or saw anything out of the ordinary.
2 Furthermore, Defendant Anderson declares that at no time (regardless of the shift worked) did he
3 believe the conditions in the SHU were unconstitutional, or that Plaintiff's health or safety were
4 threatened by conditions in the SHU. Plaintiff points to no specific facts within the time cards and/or
5 log books that are essential to his opposition to Defendant's motion for summary judgment. Rather,
6 Plaintiff's motion suggests the reason for such documentation is to further his claim of perjury by
7 Defendant. The time cards and/or log books are not essential to Plaintiff's ability to challenge the
8 Defendant's credibility by way of opposition to the pending motion for summary judgment.

9 In light of the fact that Plaintiff has failed to prove that the time cards and/or log books are
10 essential to opposing Defendant's motion for summary judgment, his motion to compel and motion for
11 issuance of subpoenas are denied.

12 **D. Allegations Relating to Destroyed and/or Stolen Records from Plaintiff's Central**
13 **File**

14 Plaintiff makes repeated reference to a claim that defense counsel mishandled documents in his
15 central file. Plaintiff specifically claims that counsel "examined my prison records then she snatched
16 and took out the documents that prove he client [sic] can't be trusted, and was found to have falsified
17 my grievances." (ECF No. 83, ¶ 1.) Plaintiff essentially contends that certain documents submitted
18 by counsel are "fake," certain documents are missing from exhibits, and documents are missing from
19 his central file. (ECF No. 83, introductory paragraph & p. 3; ECF No. 84, at p.6.)

20 Defense counsel submits that Plaintiff's allegations are false. Counsel for Defendant Anderson
21 declares that she did not have access to Plaintiff's physical central file, but rather, requested a copy of
22 Plaintiff's central file on disc. (Opp'n, Ex. C, declaration of K. Hammond, ¶ 6.)

23 Defense counsel declares that she "did not include every document in Plaintiff's central file as
24 an exhibit in support of Defendant's motion for summary judgment. Only those documents that were
25 necessary to support Defendant's motion were included as exhibits. The fact that not all documents
26 included within Plaintiff's central file were used as exhibits does not signify that there are documents
27 missing from Plaintiff's central file." (Id. at ¶¶ 7-8.)

1 Plaintiff fails to demonstrate that counsel for Defendant forged, stole, damaged, destroyed, or
2 in any way altered documents, or that counsel's statements are perjured. Because the Court has found
3 not merit to Plaintiff's claim, the Court need not strike such allegations from the record as requested
4 by Defendant.

5 **III.**
6 **ORDER**

7 Based on the foregoing,

8 IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion for an extension of time to file a reply is DENIED;
- 10 2. Plaintiff's motion to compel, filed October 30, 2014, is DENIED;
- 11 3. Plaintiff's motion to subpoena Defendant's log books and time cards is DENIED; and
- 12 4. As Plaintiff has filed an opposition to Defendant's motion for summary judgment and
13 his present motions have been denied, Defendant's motion for summary judgment is
14 DEEMED submitted to the Court (Local Rule 230(1)), and the Court will issue a ruling
15 in due course.

16
17 IT IS SO ORDERED.

18 Dated: January 5, 2015

19 
20 _____
21 UNITED STATES MAGISTRATE JUDGE