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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

THOMAS GOOLSBY,  
Plaintiff,

v.

GENTRY, et al.,  
Defendants.

Case No. 1:11-cv-01773-LJO-DLB PC

ORDER REGARDING PLAINTIFF'S  
MOTION TO COMPEL  
(Document 87)

ORDER REGARDING PLAINTIFF'S  
MOTION TO SUPPLEMENT REPLY  
(Document 105)

Plaintiff Thomas Goolsby ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's First Amendment retaliation claim against Defendants Gentry, Noyce, Eubanks, Tyree, Medrano, Holman, Holland and Steadman.<sup>1</sup>

The discovery cut-off is April 16, 2015. Dispositive motions must be filed by May 15, 2015.

On October 17, 2014, Plaintiff filed the instant motion to compel Defendants Holland, Noyce, Eubanks, Steadman and Tyree to provide further responses to Requests for Production of Documents, Interrogatories and Requests for Admissions. After receiving extensions of time, Defendants opposed the motion on February 25, 2015. Plaintiff filed his reply on March 12, 2015, and the motion is suitable for decision. Local Rule 230(l).

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<sup>1</sup> On November 13, 2014, the Court granted summary judgment on Plaintiff's due process claim against Defendants Gutierrez and Holland for failure to exhaust, and granted partial summary judgment on Plaintiff's due process claim against Defendants Eubanks, Tyree and Medrano. ECF No. 91, at 5. Accordingly, Plaintiff's due process claim is no longer part of this action.

1 **I. ALLEGATIONS IN FIRST AMENDED COMPLAINT**

2 Plaintiff is currently housed at Pelican Bay State Prison. The events at issue occurred while  
3 he was incarcerated at the California Correctional Institution (“CCI”) in Tehachapi, California.

4 Plaintiff alleges that Defendants Gentry, Noyce, Eubanks, Tyree and Medrano initiated a  
5 validation packet against him on the orders of Defendants Holland and Steadmon. Plaintiff alleges  
6 that this was done in retaliation for filing appeals and lawsuits against them.

7 He explains that in June 2010, he was placed in Ad-Seg pending conclusion of an  
8 investigation into his gang activities. On August 27, 2010, Defendant Noyce concluded the  
9 investigation and found insufficient evidence to validate Plaintiff as an associate of a prison gang.  
10 On September 10, 2010, he was released back into the general population.

11 In December 2010, Plaintiff met with Defendant Holman in preparation for his inmate  
12 classification hearing. Defendant Holman told Plaintiff that Defendant Holland “told me to tell you  
13 to drop your lawsuits on her or . . . else your [sic] going back to the hole permanently validated.”  
14 ECF No. 15, at 6. Plaintiff did not reply and did not drop his lawsuits.

15 On February 11, 2011, he was placed in Ad-Seg pending validation as an associate of the  
16 Nazi Low Rider (“NLR”) prison gang. Defendant Eubanks gave him his validation packet and  
17 Defendant Tyree signed his lock-up order. Plaintiff alleges that upon reviewing his packet, the  
18 documents in his validation packet were the same as those used by Defendant Noyce to find  
19 insufficient evidence six months prior.

20 On April 11, 2011, Plaintiff alleges that Defendant Eubanks admitted that the only reason  
21 that Plaintiff was validated was because of his lawsuits and appeals. He alleges that his placement in  
22 segregated housing has made it more difficult to conduct legal work, prosecute litigation and access  
23 the law library.

24 **II. RULING ON DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 In granting Defendants’ motion for partial summary judgment, the Court first explained that  
26 Plaintiff could not state a claim based on his belief that his validation packet was a “sham” because  
27 false charges, alone, do not support a claim under section 1983. The Court also rejected Plaintiff’s  
28 claim that Defendants Noyce’s August 2010 decision was “proof” that his validation was a sham.

1 In reviewing the specific evidence used to validate him, the Court found (1) the “filter list”  
2 constituted some evidence of gang validation; (2) Plaintiff’s address book could be used in  
3 validating him; and (3) Plaintiff was given a reasonable opportunity to be heard by the critical  
4 decision-maker.

5 After finding that Defendants did not err in their use of the above evidence, the Court also  
6 noted that Defendants relied on additional items to validate Plaintiff, including identification of  
7 Plaintiff by another gang member, a note authored by Plaintiff, and a note indicating that Plaintiff  
8 was involved in a prior assault.

9 Therefore, the Court granted summary judgment because there were no genuine issues of  
10 material fact as to whether “some evidence” existed for Plaintiff’s validation. The Court also found  
11 that the proper procedures were followed.

12 Based on the ruling on summary judgment, Plaintiff cannot, in his retaliation claim, question  
13 the reliability of the documents used to validate him, and discovery as to that issue will not be  
14 permitted. The issue remaining is whether there were any additional documents used in the second  
15 review, or some other explanation to support the different results.

16 **III. MOTION TO COMPEL STANDARD**

17 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any  
18 party’s claim or defense, and for good cause, the Court may order discovery of any matter relevant to  
19 the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1) (quotation marks omitted).  
20 Relevant information need not be admissible at the trial if the discovery appears reasonably  
21 calculated to lead to the discovery of admissible evidence. *Id.* (quotation marks omitted).

22 Generally, if the responding party objects to a discovery request, the party moving to compel  
23 bears the burden of demonstrating why the objections are not justified. *E.g., Grabek v. Dickinson*,  
24 No. CIV S-10-2892 GGH P, 2012 WL 113799, at \*1 (E.D. Cal. Jan. 13, 2012); *Womack*, 2011 WL  
25 6703958, at \*3; *Mitchell v. Felker*, No. CV 08-119RAJ, 2010 WL 3835765, at \*2 (E.D. Cal. Sep. 29,  
26 2010); *Ellis v. Cambra*, No. 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at \*4 (E.D. Cal. Mar.  
27 27, 2008). This requires the moving party to inform the Court which discovery requests are the  
28 subject of the motion to compel, and, for each disputed response, why the information sought is

1 relevant and why the responding party's objections are not meritorious. *Grabek*, 2012 WL 113799,  
2 at \*1; *Womack*, 2011 WL 6703958, at \*3; *Mitchell*, 2010 WL 3835765, at \*2; *Ellis*, 2008 WL  
3 860523, at \*4. However, the Court is vested with broad discretion to manage discovery and  
4 notwithstanding these procedures, Plaintiff is entitled to leniency as a pro se litigation. *Hunt v.*  
5 *County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012); *Survivor Media, Inc. v. Survivor Productions*,  
6 406 F.3d 625, 635 (9th Cir. 2005); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

### 7 **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### 8 **A. LEGAL STANDARD**

9 A party may serve on any other party a request within the scope of Rule 26(b) to produce and  
10 permit the requesting party or its representative to inspect, copy, test, or sample the following items  
11 in the responding party's possession, custody or control: any designated documents or tangible  
12 things. Fed. R. Civ. P. 34(a)(1) (quotation marks omitted). "Property is deemed within a party's  
13 'possession, custody, or control' if the party has actual possession, custody, or control thereof or the  
14 legal right to obtain the property on demand." *Allen v. Woodford*, No. CV-F-05-1104 OWW LJO,  
15 2007 WL 309945, \*2 (E.D. Cal. Jan. 30, 2007) (citing *In re Bankers Trust Co.*, 61 F.3d 465, 469  
16 (6th Cir. 1995)); *accord Bovarie v. Schwarzenegger*, No. 08cv1661 LAB (NLS), 2011 WL 719206,  
17 at \*4 (S.D. Cal. Feb. 22, 2011); *Evans v. Tilton*, No. 1:07CV01814 DLB PC, 2010 WL 1136216, at  
18 \*1 (E.D. Cal. Mar. 19, 2010).

19 In responding to discovery requests, a reasonable inquiry must be made, and if no responsive  
20 documents or tangible things exist, Fed. R. Civ. P. 26(g)(1), the responding party should so state  
21 with sufficient specificity to allow the Court to determine whether the party made a reasonable  
22 inquiry and exercised due diligence, *Uribe v. McKesson*, No. 08cv1285 DMS (NLS), 2010 WL  
23 892093, at \*2-3 (E.D. Cal. Mar. 9, 2010). If responsive documents do exist but the responsive party  
24 claims lack of possession, control, or custody, the party must so state with sufficient specificity to  
25 allow the Court (1) to conclude that the responses were made after a case-specific evaluation and (2)  
26 to evaluate the merit of that response. *Ochotorena v. Adams*, No. 1:05-cv-01525-LJO-DLB (PC),  
27 2010 WL 1035774, at \*3-4 (E.D. Cal. Mar. 19, 2010). As with previously discussed forms of  
28

1 discovery, boilerplate objections do not suffice. Fed. R. Civ. P. 34(b)(2)(B), (C); *Burlington N. &*  
2 *Santa Fe Ry. Co.*, 408 F.3d at 1149.

3 **B. DEFENDANT HOLLAND**

4 **Request Number 1:** Plaintiff Thomas Goolsby F-19778 requests a complete copy of his C-  
5 file from March 2006 up to March 2012.

6 ***Response:***<sup>2</sup> Defendant did not produce any documents, arguing that the request is overbroad  
7 as to time and scope, the non-confidential portion is equally available to Plaintiff, the request does  
8 not relate to the retaliation claim,<sup>3</sup> and seeks confidential information. Defendants provided a  
9 privilege log.

10 ***Ruling:*** Plaintiff is entitled to review his C-file pursuant to institutional policy and request  
11 copies of non-confidential documents. In his motion, Plaintiff contends that he “request[ed] these  
12 documents from his counselor,” but the request was denied. ECF No. 87, at 4. Plaintiff therefore  
13 argues that he does not have a method to obtain these documents.

14 However, as Defendants point out, Plaintiff’s request was denied because he asked for his  
15 entire C-file, which would have comprised hundreds of pages. In his request, Plaintiff states that he  
16 “just need[s] it documented that this amount of documents is not possible through” a request to his  
17 counselor. ECF No. 87, at 189. Plaintiff cannot avoid the fact that he is entitled to review his C-file  
18 by submitting an improper request. In other words, Plaintiff cannot circumvent prison policies and  
19 now demand the documents in discovery. Plaintiff also admits that he has acquired numerous C-file  
20 documents through other prior lawsuits, some of which were filed in this action. The fact that he  
21 does not have current access to the documents he already has, however, does not necessarily negate  
22 his ability to review his C-file again.

23 As to confidentiality, Defendants have submitted a privilege log and declaration to support  
24 their objection, arguing that the confidential documents contain names of informants, and that  
25 disclosure would endanger those inmates. Defendants also contend that redaction will not protect

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26 <sup>2</sup> To shorten the length of this order, the Court will summarize Defendants’ objections and responses.

27 <sup>3</sup> Plaintiff served discovery relating to the retaliation claim prior to the opening of discovery. On April 17, 2014, the  
28 Court issued an order requiring Defendants to respond to the discovery. The order did not permit Plaintiff to propound  
any additional discovery. Defendant therefore takes the position that the request is not related to the retaliation claim,  
and is therefore excluded by the April 17, 2014, order. As general discovery is now open, Defendants do not appear to  
be relying on this objection any longer.

1 the inmates because facts and details could clue Plaintiff, or another inmate, into the identity of the  
2 informant. Bartelmie Decl., ¶¶ 6-7 (ECF No. 87, at 207). Although Plaintiff states that he simply  
3 wants the conclusions and assessments of the Institutional Gang Investigators (“IGI”), Defendants  
4 argue that even disclosure of conclusions and assessments will educate inmates in gang-investigation  
5 techniques and hamper future investigations.

6 Where otherwise discoverable information would pose a threat to the safety and security of  
7 the prison or infringe upon a protected privacy interest, a need may arise for the Court to balance  
8 interests in determining whether disclosure should occur. See Fed. R. Civ. P. 26(c); *see also Garcia*  
9 *v. Clark*, 2012 WL 1232315, at \*6 n.5 (E.D. Cal. 2012) (noting inmates entitlement to inspect  
10 discoverable information may be accommodated in ways which mitigate institutional safety  
11 concerns); *Robinson v. Adams*, 2012 WL 912746, at \*2-3 (E.D. Cal. 2012) (issuing protective order  
12 regarding documents containing information which implicated the safety and security of the prison);  
13 *Orr v. Hernandez*, 2012 WL 761355, at \*1-2 (E.D. Cal. 2012) (addressing requests for protective  
14 order and for redaction of information asserted to risk jeopardizing safety and security of inmates or  
15 the institution if released); *Womack v. Virga*, 2011 WL 6703958, at \*5-6 (E.D. Cal. 2011) (requiring  
16 defendants to submit withheld documents for in camera review or move for a protective order).

17 The Court agrees that the information Plaintiff seeks is relevant to his retaliation claim, to the  
18 extent it may reveal differences between the two reviews. However, given the sensitive nature of the  
19 documents at issue, the Court will not order production at this time. Instead, the Court will order  
20 Defendants to produce the documents at issue for in camera review. Defendants must include a  
21 detailed log describing the documents and setting forth their argument as to why the documents  
22 should be withheld. Defendants must also indicate when the documents were added to Plaintiff’s C-  
23 file.

24 Plaintiff’s motion to compel is therefore GRANTED IN PART, as described above.

25 **Request Number 2:** Plaintiff Thomas Goolsby F-19778 requests all electronic mail sent to  
26 Defendant Holland, or sent from Defendant Holland which contains, describes, mentions or talks  
27 about Plaintiff from January 2009 through March 2012.

1           **Response:** Defendants objected to the request as overbroad, and seeking documents that are  
2 confidential and/or subject to the attorney/client privilege. However, despite the objections,  
3 Defendants responded, “having made a diligent search, there are no all electronic mail sent to  
4 Defendant Holland, or sent from Defendant Holland, which contains, describes, mentions or talks  
5 about Plaintiff’s gang validation, inmate appeals or lawsuits from January, 2009, through February  
6 2011. Therefore, no documents will be produced.” ECF No. 100, at 14-15.

7           **Ruling:** The Court need not rule on Defendants’ objections because they nonetheless  
8 provided a substantive response. In his motion, Plaintiff does not state why he believes that (a)  
9 responsive documents exist; and (b) why Defendants are withholding them. In his reply, Plaintiff  
10 faults Defendants for restricting their search for emails relating to Plaintiff’s gang validation, inmate  
11 appeals or lawsuits. He believes that Defendant Holland could possess an email stating that she  
12 “wanted ‘to get’” Plaintiff or “retaliate” against him. ECF No. 102, at 3.

13           Plaintiff admits that it is “exceptionally rare” for a CCI prison official to write an email about  
14 an inmate. ECF No. 87, at 7. Nonetheless, he is correct that Defendants’ restricted search may,  
15 theoretically, have left discoverable information undisclosed. As Plaintiff argues, emails suggesting  
16 a dislike for Plaintiff, or expressing a desire to retaliate against him, may be used to prove motive.  
17 *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012).

18           Defendants also end the time period at February 2011. While the Court agrees that March  
19 2012 is too long of a time period, the period should go until October 2011, when Plaintiff filed this  
20 action.

21           Accordingly, Plaintiff’s motion is GRANTED IN PART. Defendants shall conduct a search  
22 for emails, for the time period January 2009 through October 2011, suggesting a dislike for Plaintiff,  
23 or a desire to retaliate against him, and supplement their response, within thirty (30) days.

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1           **Request Number 3:** Plaintiff requests all CCI institutional memoranda created between  
2 January 2008 and July 2011 concerning prison gang policy or actions or investigation of prison  
3 gangs.

4           **Response:** Defendants did not produce documents, objecting to the request as overbroad and  
5 vague, and seeking irrelevant information, documents equally available to Plaintiff, and confidential  
6 information.

7           **Ruling:** Plaintiff argues, and the Court agrees, that his request is not “so vague, ambiguous  
8 and unintelligible,” as Plaintiff specifies the documents he seeks: CCI memos relating to prison  
9 gang policy, actions or investigations. ECF No. 100, at 15.

10           As to relevance, Plaintiff argues that the memos are relevant to show that Defendants may  
11 have deviated from their own policies. Defendants, relying in part on the Court’s ruling on summary  
12 judgment, suggest that this evidence is related to Plaintiff’s due process claim. Defendants are  
13 correct that Plaintiff can no longer challenge the evidence used to validate him, but he is entitled to  
14 discover whether there are differences between the two reviews. The requested memos may offer  
15 proof of motive, and the Court finds that the requested information is relevant.

16           As to the scope of the request, Plaintiff argues that he limited the request to January 2008,  
17 when he arrived at CCI, and July 2011, when he was validated. However, the Court will sustain  
18 Defendants’ objection in part, as memos issued *after* the February 2011 submission of his gang  
19 validation packet are not relevant.<sup>4</sup>

20           Finally, Defendants object on the basis of confidentiality, but they have not provided a  
21 privilege log. As a result, Defendants have not provided the Court with any specific information to  
22 permit a balancing of interests. The Court cannot simply accept Defendants’ belief that the relevant  
23 documents are confidential and should not be produced.

24           Accordingly, the Court cannot determine whether Defendants’ confidentiality objection  
25 should be sustained. Plaintiff’s motion is GRANTED IN PART. Defendants must supplement their  
26 responses with a privilege log that describes responsive documents with specificity and explains the

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27 <sup>4</sup> In ruling on Request Number 2, the Court ended the time period at October 2011, when Plaintiff filed this action. That  
28 request, however, sought information that could have been created after the submission of the February 2011 gang  
validation packet. For Request Number 3, the relevant policies would only be those applicable prior to Plaintiff’s  
February 2011 gang validation.



1 concerns related to disclosure. However, as noted above, Defendants must only include documents  
2 created between January 2008 and February 2011.

3 **Request Number 4:** Plaintiff requests a complete and whole copy of all confidential  
4 memorandum used to validate Plaintiff as an associate of any prison gang.

5 **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
6 to time and scope, and seeks confidential information. Defendants provided a privilege log.

7 **Ruling:** In Plaintiff's motion, he clarifies that he was validated twice (NLR and AB prison  
8 gangs), and that the validations occurred a few months apart in 2011. Given this explanation, the  
9 request is not overbroad.

10 Next, Plaintiff argues that the documents are not confidential for various reasons.<sup>5</sup> As in  
11 Request Number 1, Defendants have submitted a privilege log and declaration to support their  
12 objection, arguing that the confidential documents contain names of informants, and that disclosure  
13 would endanger those inmates. Defendants also contend that redaction will not protect the inmates  
14 because facts and details could clue Plaintiff, or another inmate, into the identity of the informant.  
15 Bartelmie Decl., ¶¶ 6-7 (ECF No. 87, at 207). Although Plaintiff states that he simply wants the  
16 conclusions and assessments of the Institutional Gang Investigators ("IGI"), Defendants argue that  
17 even disclosure conclusions and assessments will educate inmates in gang-investigation techniques  
18 and hamper future investigations.

19 The Court has already discussed this issue in the ruling on Request Number 1, and the same  
20 analysis applies here. Although Defendants argue that Plaintiff already has copies of the  
21 Confidential Disclosure Information Forms (CDCR 1030), the forms, by their nature, do not disclose  
22 the specific information that Plaintiff is seeking.

23 Plaintiff's motion is therefore GRANTED IN PART, and Defendants are ordered to produce  
24 the documents at issue for in camera review.<sup>6</sup> Defendants must include a detailed log describing the  
25 documents and setting forth their argument as to why the documents should be withheld.

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26  
27 <sup>5</sup> To the extent that Plaintiff argues a waiver of confidentiality because Defendants cited only California law, the Court  
will not find such a waiver given the nature of this action. Plaintiff is a prisoner and the Court will not subject  
institutional staff or other inmates to a risk of harm based solely on Defendants' failure to cite federal law.

28 <sup>6</sup> The Court questions whether documents related to Plaintiff's "AB" validation are relevant, but it will not make this  
determination until it reviews the documents in camera.

1           **Request Number 5:** Plaintiff requests a copy of all confidential memorandum filed in his C-  
2 File from March 2006 through March 2012.

3           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
4 to time and scope, and seeks confidential information. Defendants provided a privilege log.

5           **Ruling:** This request is similar to Request Numbers 1 and 4, and the Court will not repeat its  
6 analysis here. Plaintiff's motion is GRANTED IN PART and Defendants are ordered to submit the  
7 documents for in camera review.

8           **Request Number 6:** Plaintiff requests a complete and whole copy of all written material  
9 alleged by Defendant to be evidence of gang activity, such as confiscated letters, notes, documents,  
10 pictures etc.

11           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
12 to time and scope, and seeks confidential information. Defendants provided a privilege log.

13           **Ruling:** This request is similar to Request Numbers 1 and 4, and the Court will not repeat its  
14 analysis here. Plaintiff's motion is GRANTED IN PART and Defendants are ordered to submit the  
15 documents for in camera review.

16           **Request Number 7:** Plaintiff requests a copy of CCI's mission statement and housing  
17 directive in effect between January 2011 and March 2012.

18           **Response:** Defendants did not produce documents, arguing that the category of documents is  
19 not described with reasonable particularity, overbroad in time and scope and irrelevant. Defendants  
20 also contend that the request seeks confidential documents.

21           **Ruling:** In his motion, Plaintiff argues that he is seeking two documents- CCI's mission  
22 statement and housing directive- in effect during a fourteen month period.

23           While the request may not be overbroad, the Court finds that the documents are not relevant.  
24 Plaintiff argues that in January 2011, when he was housed on CCI's 4A General Population Yard,  
25 CCI announced a plan to convert the yard to a SHU. All inmates were to be transferred to other  
26 Level 4 prisons. Plaintiff states that he was put up for transfer to High Desert State Prison, and he  
27 believes that this is what triggered the timing of the retaliatory validation. He contends that this goes  
28 to motive, and argues that "if Defendants didn't act immediately they would lose their opportunity to

1 retaliate.” ECF No. 87, at 24.

2 The Court disagrees. Plaintiff alleges that he left CCI in March 2012, over a year after the  
3 announcement of changes to the 4A Yard. However, even if Plaintiff was put up for immediate  
4 transfer, the connection between his eventual transfer and Defendants’ alleged retaliation is tenuous,  
5 at best. In other words, even assuming Defendants retaliated against him at that time, *when* he was  
6 retaliated against does not relate to *why* he was retaliated against.

7 Accordingly, Plaintiff’s motion to compel is DENIED.

8 **Request Number 8:** Plaintiff requests all documents that list and describe Defendant  
9 Holland’s job duties and responsibilities as Warden of CCI.

10 ***Response:*** Defendants did not produce documents, arguing that the request is overbroad as  
11 to time and scope, and seeks confidential information. Defendants provided a privilege log.

12 ***Ruling:*** Setting aside whether the request is overbroad or seeks confidential information, the  
13 documents are not relevant. Plaintiff argues that the documents are extremely relevant because they  
14 will show what “duty of care” Defendant Holland owed to Plaintiff. ECF No. 87, at 26. Plaintiff  
15 also argues that when her job duties are compared to her actions, it will provide evidence of  
16 retaliation.

17 Plaintiff alleges that Defendant Holland ordered the retaliatory gang validation. Whatever  
18 “duty of care” she owed is not an issue. As to Plaintiff’s comparison argument, Plaintiff does not  
19 need her job description to demonstrate that such actions would not be included in her job duties.  
20 It’s common sense that a Warden’s job duties would not include retaliation.

21 The requested documents are not relevant to Plaintiff’s retaliation claim and his motion to  
22 compel is DENIED.

23 **Request Number 9:** Plaintiff requests a copy of all incident reports and rules violation  
24 reports that Defendant believes evidences gang activities by Plaintiff.

25 ***Response:*** Defendants did not produce documents, arguing that the request is overbroad as  
26 to time and scope, and that the documents are not described with reasonable particularity.  
27 Defendants also object because the request seeks confidential information, and because the  
28 documents are equally available to Plaintiff.

1           **Ruling:** The Court rejects Defendants’ objections that the request is overbroad and/or fails to  
2 describe the documents with reasonable particularity.

3           As to relevancy, Plaintiff argues that he needs the information to “discover what evidence  
4 Defendants are relying on” for his validation so he can attack it and show its unreliability. ECF No.  
5 87, at 28. However, as Defendants point out, Plaintiff was not validated on the basis of any incident  
6 reports or rules violation reports. Moreover, Plaintiff is precluded from attacking the reliability of  
7 the documents used to validate him- his claim is now narrowed to comparing the two reviews.

8           Accordingly, Plaintiff’s motion to compel is DENIED.

9           **Request Number 10:** Plaintiff requests a copy of all log book entries concerning him, by any  
10 log book at CCI, from January 2010 through March 2012.

11           **Response:** Defendants did not produce documents, arguing that the request is compound,  
12 overbroad as to time and scope, and vague. Defendants also contend that the request is not relevant  
13 and seeks disclosure of confidential information.

14           **Ruling:** As to relevancy, Plaintiff contends that he needs the log entries because certain  
15 Defendants deny that some conversations took place. He believes that if he can show that he was at  
16 the location at the time of the conversation, it would support his claims. The Court therefore finds  
17 the entries relevant, but not all entries for the time period requested. Given that Plaintiff needs the  
18 log entries to support his claims of specific conversations, only log entries for those specific periods  
19 are relevant.

20           Defendants also contend that Plaintiff has access to the log books, though they did not object  
21 on this basis in their response. To support their claim, they cite a CDCR 114-A1 and CDCR 114-A  
22 attached to Plaintiff’s motion to compel. Plaintiff argues, however, that he received these documents  
23 through discovery in another action, and that they do not pertain to the relevant time period. Indeed,  
24 it is the Court’s understanding that inmates do not generally have access to log books.

25           Accordingly, the Court GRANTS Plaintiff’s motion IN PART. Plaintiff SHALL provide  
26 Defendants with specific dates on which the conversations at issue occurred within ten (10) days of  
27 the date of service of this order, and Defendants SHALL provide a supplemental response to the  
28 request, as narrowed, within thirty (30) days.

1           **Request Number 11:** Plaintiff requests a copy of all 114-A's Ad-Seg Records created under  
2 his name and CDC #F19778 between January 2010 and March 2012, this includes 114-A, 114-A1,  
3 sign in logs, roster logs, all documents contained in Plaintiff's segregation file and stored.

4           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
5 to time and scope, vague and seeks documents equally available to Plaintiff. Defendants also  
6 contend that the request is not relevant and seeks disclosure of confidential information.

7           **Ruling:** Similar to the log books requested in Number 10, Plaintiff contends that he needs  
8 the requested documents to corroborate his statements and identify key witnesses. The Court's  
9 findings as to Number 10 apply equally here. The Court does not find the request vague.

10           Plaintiff's motion is therefore GRANTED IN PART. Plaintiff SHALL provide Defendants  
11 with specific dates on which the conversations at issue occurred within ten (10) days of the date of  
12 service of this order, and Defendants SHALL provide a supplemental response to the request, as  
13 narrowed, within thirty (30) days.

14           **Request Number 12:** Plaintiff requests a copy of all CDC Form 119 and all other mail room  
15 records that contain Plaintiffs name and or CDC # at CCI from January 2008 through March 2012.

16           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
17 to time and scope, and vague. Defendants also contend that the request is not relevant and seeks  
18 disclosure of confidential information.

19           **Ruling:** In their opposition, Defendants indicate that even though the request seeks  
20 irrelevant information, they will comply by providing Plaintiff's (1) incoming legal mail log from  
21 April 1, 2008, through March 27, 2012; and (2) outgoing legal mail log from February 25, 2008,  
22 through March 26, 2012.

23           This response appears to be sufficient. In his motion to supplement his reply, Plaintiff states  
24 that he has received the mail logs.

25           **Request Number 13:** Plaintiff requests a copy of all audio recordings made of Plaintiff, or  
26 mentioning Plaintiff at CCI, between January 2008 and March 2012.

27           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
28 to time and scope and vague. Defendants also contend that the request is not relevant.

1           **Ruling:** Plaintiff argues that he needs these audio recordings because he thinks that  
2 Defendants, through the use of audio recordings, learned that Plaintiff was not an associate of the  
3 NLR. He also believes that Defendant Noyce relied on this type of evidence in finding insufficient  
4 evidence to validate him in August 2010.

5           Again, as noted above, Plaintiff is precluded from challenging the sufficiency of the evidence  
6 used to validate him, and he is only entitled to discover whether there were any differences of  
7 evidence between the two reviews, or whether there was some other reason behind the different  
8 outcome. Therefore, evidence that suggests that he is *not* a gang member may be relevant to motive.  
9 However, such evidence would only include recordings of other inmates, as recordings of Plaintiff's  
10 own interviews would be self-serving hearsay. Plaintiff may file a declaration or testify about the  
11 details of his own interviews.

12           Having narrowed the request to interviews involving other inmates, the Court also finds that  
13 the request should be narrowed as to time frame because only the time between the two reviews  
14 would be relevant in this instance.

15           In their opposition, Defendants contend that disclosure of inmate informant interviews may  
16 endanger the lives of the informants and compromise gang investigations. Defendants did not  
17 provide a privilege log and therefore do not provide the Court with any specific information to  
18 permit a balancing of interests. The Court cannot simply accept Defendants' belief that the relevant  
19 documents are confidential and should not be produced.

20           Accordingly, the Court cannot determine whether Defendants' confidentiality objection  
21 should be sustained. Plaintiff's motion is GRANTED IN PART. Defendants must supplement their  
22 responses with a privilege log that describes responsive documents with specificity and explains the  
23 concerns related to disclosure. However, as noted above, Defendants must only include audio  
24 recordings of other inmates taken between August 2010 and February 2011.

25           **Request Number 14:** Plaintiff requests a copy of all video recordings made of Plaintiff, or  
26 mentioning Plaintiff at CCI between January 2008 and March 2012.

27           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
28 to time and scope and vague. Defendants also contend that the request is not relevant.

1           **Ruling:** The Court makes the same findings as in Request Number 13. Plaintiff's motion is  
2 GRANTED IN PART. Defendants must supplement their responses with a privilege log that  
3 describes responsive documents with specificity and explains the concerns related to disclosure.  
4 However, as noted above, Defendants must only include video recordings of other inmates taken  
5 between August 2010 and February 2011.

6           **Request Number 16:** Plaintiff requests a copy of all of CCI's Operational Procedures in  
7 effect between January 2008 and March 2012, including a master list of all operational procedures  
8 index.

9           **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
10 to time and scope, vague and irrelevant. Defendants also object because the documents are equally  
11 available to Plaintiff, and because the request seeks disclosure of confidential and/or privileged  
12 information.

13           **Ruling:** Plaintiff argues, and the Court agrees, that his request is not vague, as it specifically  
14 seeks CCI's Operational Procedures.

15           As to relevance, Plaintiff argues that the Operations Procedures are relevant to show that  
16 Defendants may have deviated from their own procedures in validating Plaintiff. Defendants,  
17 relying in part on the Court's ruling on summary judgment, suggest that this evidence is related to  
18 Plaintiff's due process claim. Defendants are correct that Plaintiff can no longer challenge the  
19 evidence used to validate him, but he is entitled to discover whether there are differences between  
20 the two reviews. The requested Operational Procedures may offer proof of motive, and the Court  
21 finds that the requested information is relevant.

22           As to the scope of the request, Plaintiff argues that he limited the request to the time he was  
23 incarcerated at CCI- January 2008 to March 2012. However, the Court will sustain Defendants'  
24 objection in part, as Operational Procedures in effect after the February 2011 submission of his gang  
25 validation packet are not relevant. The Court also limits the request to Operational Procedures  
26 related to gang validation.

27           To the extent that Defendants argue that Plaintiff has access to CCI's Operational  
28 Procedures, the Court notes that he is no longer housed at CCI. Defendants also state that Plaintiff

1 has access to Title 15 of the Code of California Regulations and the Department Operation Manual,  
2 but this request does not seek those documents.

3 Finally, Defendants object on the basis of confidentiality and privilege, but they have not  
4 provided a privilege log. As a result, Defendants have not provided the Court with any specific  
5 information to permit a balancing of interests. The Court cannot simply accept Defendants' belief  
6 that the relevant documents are confidential and should not be produced.

7 Accordingly, the Court cannot determine whether Defendants' confidentiality/privilege  
8 objection should be sustained. Plaintiff's motion is GRANTED IN PART. Defendants must  
9 supplement their responses with a privilege log that describes responsive documents with specificity  
10 and explains the concerns related to disclosure. However, as noted above, Defendants must only  
11 include documents relevant to gang validation and in effect between January 2008 and February  
12 2011.

13 **Request Number 17:** Plaintiff requests a copy of all policies, manuals, guides, texts,  
14 documents, electronic documents, concerning the investigating identifying and suppression of prison  
15 gangs or security threat groups by prison officials operative between January 2008 and March 2012  
16 at CCI.

17 ***Response:*** Defendants did not produce documents, arguing that the request is overbroad as  
18 to time and scope, vague and irrelevant. Defendants also object because the documents are equally  
19 available to Plaintiff, and because the request seeks disclosure of confidential and/or privileged  
20 information.

21 ***Ruling:*** Plaintiff contends that he crafted this request as specifically as he could, because he  
22 does not know the official names of the documents he seeks. Given, however, that Plaintiff  
23 propounded specific requests for CCI gang policy memorandums (Request Number 3 ) and  
24 Operational Procedures (Request Number 16), this requests appears to be aimed at documents, if any  
25 exist, that do not fall into the above categories.

26 As to the remaining issues, the Court's analysis is the same as in Request Number 16.  
27 Plaintiff's motion is GRANTED IN PART. Defendants must supplement their responses with a  
28 privilege log that describes responsive documents with specificity and explains the concerns related



1 to disclosure. However, as noted above, Defendants must only include documents in effect between  
2 January 2008 and February 2011.

3 **Request Number 18:** Plaintiff requests a copy of all classification manuals, policies, guides,  
4 regulations, texts, documents, electronic documents concerning the classification of inmates in  
5 operation between January 2008 through March 2012.

6 **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
7 to time and scope, vague and irrelevant. Defendants also object because the documents are equally  
8 available to Plaintiff, and because the request seeks disclosure of confidential and/or privileged  
9 information.

10 **Ruling:** Plaintiff contends that validation and segregation documents are both classification  
11 actions, making them relevant to his claims. Defendants argue, and the Court agrees, that  
12 classification issues are not relevant to Plaintiff's retaliation claim. Accordingly, his motion is  
13 DENIED.

14 **Request Number 20:** Plaintiff requests a copy of all policies, memos, texts, documents,  
15 electronic documents, that concern Plaintiff and Plaintiff's litigation against prison officials, between  
16 September 2009 and March 2012.

17 **Response:** Defendants did not produce documents, arguing that the request is overbroad as  
18 to time and scope, compound, vague and irrelevant. Defendants also cite the attorney/client  
19 privilege.

20 **Ruling:** The Court agrees that documents discussing Plaintiff's litigation may be relevant to  
21 his retaliation claim, but it sustains Defendants' objection based on scope. As these requests are  
22 directed to Defendant Holland, the Court will narrow the requests to documents *to and from*  
23 Defendant Holland. The Court will also narrow the time-frame to September 2009 (when he filed  
24 his first lawsuit against prison officials) through October 2011 (when he filed this action).

25 Despite the relevancy of documents, documents may fall into attorney-client  
26 communications, and would be privileged as such.

27 Plaintiff's motion is GRANTED IN PART. Defendants must supplement their responses  
28 with a privilege log that describes responsive documents with specificity and explains the concerns

1 related to disclosure. However, as noted above, Defendants must only include documents to and  
2 from Defendant Holland between September 2009 and October 2011.

3 **C. DEFENDANT NOYCE**

4 **Request Number 2:** Plaintiff requests a copy of all policies, manuals, texts, memorandum,  
5 booklets, documents and electronic documents used to aid and guide Defendant in the execution of  
6 his duties to identify and validate prison gang members and associates.

7 ***Response:*** Defendant did not produce documents, arguing that the request is overbroad as to  
8 time and scope, vague and irrelevant. Defendant also objects because the documents are equally  
9 available to Plaintiff, and because the request seeks disclosure of confidential and/or privileged  
10 information.

11 ***Ruling:*** The parties repeat the arguments made in Request Number 17 to Defendant  
12 Holland. Plaintiff contends that he crafted this request as specifically as he could, because he does  
13 not know the official names of the documents he seeks. Given, however, that Plaintiff propounded  
14 specific requests for CCI gang policy memorandums (Request Number 3 ) and Operational  
15 Procedures (Request Number 16), this requests appears to be aimed at documents, if any exist, that  
16 do not fall into the above categories.

17 As to the remaining issues, the Court's analysis is the same as in Request Number 16.  
18 Plaintiff's motion is GRANTED IN PART. Defendant must supplement his response with a  
19 privilege log that describes responsive documents with specificity and explains the concerns related  
20 to disclosure. However, as noted above, Defendant must only include documents in effect between  
21 January 2008 and February 2011.

22 **Request Number 5:** Plaintiff requests all written material in Defendant's possession that he  
23 believes evidences gang activity by Plaintiff between January 2008 through March 2012.

24 ***Response:*** Defendant did not produce documents, arguing that the request is overbroad as to  
25 time and scope, vague and irrelevant. Defendant also objects because the request seeks disclosure of  
26 confidential information. He provided a privilege log.

27 ***Ruling:*** This request is similar to Request Numbers 1 and 4 to Defendant Holland, and the  
28 Court will not repeat its analysis here. Plaintiff's motion is GRANTED IN PART and Defendant is

1 ordered to submit the documents for in camera review. The Court will limit the time frame to  
2 January 2008 to October 2011, the date Plaintiff filed this action.

3 **Request Number 6:** Plaintiff requests a copy of all audio recordings made of Plaintiff, or  
4 mentioning Plaintiff at CCI between January 2008 and March 2012.

5 ***Response:*** Defendant did not produce documents, arguing that the request is overbroad as to  
6 time and scope, vague and irrelevant.

7 ***Ruling:*** The Court has addressed this issue in ruling on Request Number 13 to Defendant  
8 Holland. The same analysis applies here. Plaintiff's motion is GRANTED IN PART. Defendant  
9 must supplement his response with a privilege log that describes responsive documents with  
10 specificity and explains the concerns related to disclosure. However, as noted above, Defendant  
11 must only include audio recordings of other inmates taken between August 2010 and February 2011

12 **Request Number 7:** Plaintiff requests a copy of all video recordings made of Plaintiff, or  
13 mentioning Plaintiff at CCI between January 2002 and March 2012.

14 ***Response:*** Defendant did not produce documents, arguing that the request is overbroad as to  
15 time and scope, vague and irrelevant.

16 ***Ruling:*** The Court has addressed this issue in ruling on Request Number 14 to Defendant  
17 Holland. The same analysis applies here Plaintiff's motion is GRANTED IN PART. Defendant  
18 must supplement his response with a privilege log that describes responsive documents with  
19 specificity and explains the concerns related to disclosure. However, as noted above, Defendant  
20 must only include video recordings of other inmates taken between August 2010 and February 2011.

21 **Request Number 8:** Plaintiff requests a copy of all electronic mail (e-mail) sent to or from  
22 Defendant that concerns Plaintiff or mentions Plaintiff between January 2008 through March 2012.

23 ***Response:*** Defendant objected to the request as overbroad, and seeking documents that are  
24 confidential and/or subject to the attorney/client privilege. However, despite the objections,  
25 Defendant responded, "(1) he does not recall any emails concerning Plaintiff from January 2008  
26 through March 2012; (2) he has made a diligent search and found no hard copies of emails  
27 concerning Plaintiff from January 2008 through March 2012; (3) due to volume, his emails are not  
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1 stored or archived for more than 90 days after they are sent; and (4) he no longer has access to the  
2 same computer that he had from January 2008 through March 2012.” ECF No. 100, at 57.

3 **Ruling:** The Court need not rule on Defendant’s objections because he nonetheless provided  
4 a substantive response. Plaintiff does not provide any reason why he believes that responsive  
5 documents *do* exist. “Mere distrust and suspicion regarding discovery responses do not form a  
6 legitimate basis to further challenge responses which are facially legally sufficient; and Plaintiff is  
7 entitled neither to continue demanding additional and/or different evidence in support of discovery  
8 responses already provided nor to expand the scope of discovery beyond that sought in the initial  
9 discovery request.” *Scott v. Palmer*, 2014 WL 6685810, \* 3 (E.D.Cal. 2014); Fed.R.Civ.P. 26(g)(1),  
10 33; *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D.Cal. 2013); *L.H. v. Schwarzenegger*, 2007 WL  
11 2781132, at \*2 (E.D.Cal. 2007).

12 Plaintiff also expresses disbelief as to Defendant’s claim that emails are not kept for more  
13 than 90 days. In his motion to supplement his opposition, he provides a Department of Operations  
14 Manual section indicating that CDCR is required to keep emails for three years. However, even if  
15 there are no exceptions to this retention policy, Defendant has nonetheless provided a substantive  
16 response. The Court cannot compel a party to produce documents that do not exist.

17 Plaintiff’s motion is therefore DENIED.

18 **Request Number 14:** Plaintiff requests a copy of any and all documents that relate to any  
19 evaluation of the reliability of each piece of confidential information used to determine the gang  
20 identification of Plaintiff between January 2008 and March 2012.

21 **Response:** Defendant did not produce documents, objecting to the request as overbroad and  
22 vague. Defendant also objected on the basis of relevancy and confidentiality.

23 **Ruling:** Plaintiff explains that this request is “strictly limited to those documents that ‘relate  
24 to any evaluation of the reliability’” of evidence used to validate him. ECF No. 87, at 58. However,  
25 Plaintiff is precluded from questioning reliability based on the Court’s findings on summary  
26 judgment. As this request seeks documents solely relating to reliability, his motion is DENIED.

1           **Request Number 15:** Plaintiff requests a copy of any and all documents that pertain to the  
2 basis of the decision to place him in segregated housing, including but not limited to any document  
3 reviewed or created by any institutional gang coordinator, unit classification committee, and/or  
4 institutional classification committee between January 2008 and March 2012.

5           ***Response:*** Defendant did not produce documents, objecting to the request as overbroad and  
6 vague. Defendant also objected on the basis of relevancy and confidentiality.

7           ***Ruling:*** Plaintiff argues that documents relating to his segregation are relevant to his  
8 retaliation claim. The Court disagrees. The fact that Plaintiff was placed in segregated housing  
9 pending his validation does not relate to any element of his retaliation claim. Moreover, as  
10 Defendant points out, the documents supporting his segregation are the same as those that supported  
11 his validation. Plaintiff's motion is DENIED.

12           **D.       DEFENDANT STEADMAN**

13           **Request Number 1:** Plaintiff requests a copy of all electronic mail sent to or from Defendant  
14 concerning Plaintiff or mentioning Plaintiff between January 2008 through March 2012.

15           ***Response:*** Defendant objected to the request as overbroad, and seeking documents that are  
16 confidential and/or subject to the attorney/client privilege. However, despite the objections,  
17 Defendant responded, "(1) he does not recall any emails concerning Plaintiff from January 2009  
18 through March 2012; (2) he has made a diligent search and found no hard copies of emails  
19 concerning Plaintiff from January 2009 through March 2012; (3) due to volume, his emails are not  
20 stored or archived for more than 90 days after they are sent; and (4) he no longer has access to the  
21 same computer that he had from January 2009 through March 2012." ECF No. 100, at 68.

22           ***Ruling:*** The Court need not rule on Defendant's objections because Defendant nonetheless  
23 provided a substantive response. Plaintiff does not provide any reason why he believes that  
24 responsive documents *do* exist. "Mere distrust and suspicion regarding discovery responses do not  
25 form a legitimate basis to further challenge responses which are facially legally sufficient; and  
26 Plaintiff is entitled neither to continue demanding additional and/or different evidence in support of  
27 discovery responses already provided nor to expand the scope of discovery beyond that sought in the  
28 initial discovery request." *Scott v. Palmer*, 2014 WL 6685810, \* 3 (E.D.Cal. 2014); Fed.R.Civ.P.

1 26(g)(1), 33; *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D.Cal. 2013); *L.H. v. Schwarzenegger*, 2007  
2 WL 2781132, at \*2 (E.D.Cal. 2007).

3 Plaintiff also expresses disbelief as to Defendant's claim that emails are not kept for more  
4 than 90 days. In his motion to supplement his opposition, he provides a Department of Operations  
5 Manual section indicating that CDCR is required to keep emails for three years. However, even if  
6 there are no exceptions to this retention policy, Defendant has nonetheless provided a substantive  
7 response. The Court cannot compel a party to produce documents that do not exist.

8 Plaintiff's motion is therefore DENIED.<sup>7</sup>

9 **E. DEFENDANT EUBANKS**

10 **Request Number 1:** Plaintiff requests a copy of all electronic mail sent to or from Defendant  
11 concerning Plaintiff or mentioning Plaintiff between January 2008 through March 2012.

12 ***Response:*** Defendant objected to the request as overbroad, and seeking documents that are  
13 confidential and/or subject to various privileges. Defendant also argued that the request was not  
14 relevant. However, despite the objections, Defendant responded, "(1) he does not recall any emails  
15 concerning Plaintiff from January 2009 through March 2012; (2) he has made a diligent search and  
16 found no hard copies of emails concerning Plaintiff from January 2009 through March 2012; (3) due  
17 to volume, his emails are not stored or archived for more than 90 days after they are sent; and (4) he  
18 no longer has access to the same computer that he had from January 2009 through March 2012."  
19 ECF No. 100, at 70.

20 ***Ruling:*** The Court's analysis is the same as the analysis for Request Number 1 to Defendant  
21 Steadman, and the Court will not repeat it here. Plaintiff's motion is therefore DENIED.<sup>8</sup>

22 **Request Number 2:** Plaintiff requests a copy of all confidential memorandum authored by  
23 Defendant that mentions Plaintiff between January 2008 through March 2012.

24 ***Response:*** Defendant did not produce documents and objected to the request as overbroad  
25 and failing to adequately describe the requested documents. Defendant also objected on the basis of  
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27  
28 <sup>7</sup> Plaintiff points out that Defendant used January 2009 rather than January 2008. If this is not a typographical error, Defendant shall provide a supplemental response within thirty (30) days of the date of service of this order.

<sup>8</sup> Plaintiff points out that Defendant used January 2009 rather than January 2008. If this is not a typographical error, Defendant shall provide a supplemental response within thirty (30) days of the date of service of this order.

1 confidentiality, and because Plaintiff had equal access to documents that were in his C-file.  
2 Defendant provided a privilege log.

3 **Ruling:** Plaintiff argues that he specified the documents he seeks- confidential memoranda  
4 authored by Defendant Eubanks between January 2008 and March 2012 that mentions him. Indeed,  
5 Defendant provided a privilege log and listed numerous Confidential Memoranda on their privilege  
6 log. Therefore, the Court finds that the request adequately describes the requested documents.

7 To the extent that Defendant argues that these documents are available in Plaintiff's C-file,  
8 the documents are confidential and would not likely be available to Plaintiff for review.

9 As to relevancy, Plaintiff argues that the documents will reveal the information Defendant  
10 Eubanks had about Plaintiff's gang affiliation prior to submitting the gang validation packet.  
11 Plaintiff believes that Defendant Eubanks received information that Plaintiff was a TCF Skinhead,  
12 rather than an NLR associate, but that he ignored this evidence and distorted other evidence to fit an  
13 NLR validation. Plaintiff believes that Defendant Eubanks did so to carry out Defendant Holland's  
14 orders to retaliate. Plaintiff is entitled to discover whether there were differences in the two  
15 evidentiary reviews, and this information may be relevant.

16 As to confidentiality, Defendants have submitted a privilege log and declaration to support  
17 their objection, arguing that the confidential documents contain names of informants, and that  
18 disclosure would endanger those inmates. Defendants also contend that redaction will not protect  
19 the inmates because facts and details could clue Plaintiff, or another inmate, into the identity of the  
20 informant. Bartelmie Decl., ¶¶ 6-7 (ECF No. 87, at 207).

21 Given the sensitive nature of the documents at issue, the Court will not order production at  
22 this time. Instead, the Court will order Defendant to produce the documents at issue for in camera  
23 review. Defendant must include a detailed log describing the documents and setting forth his  
24 argument as to why the documents should be withheld.

25 Plaintiff's motion to compel is therefore GRANTED IN PART, as described above.

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1           **Request Number 3:** Plaintiff requests a copy of all documents that Defendant has that he  
2 believes evidences gang activity by Plaintiff.

3           **Response:** Defendant did not produce documents, arguing that the request is overbroad as to  
4 time and scope, vague and irrelevant. Defendant also objects because the request seeks disclosure of  
5 confidential information. He provided a privilege log.

6           **Ruling:** This request is similar to Request Numbers 1 and 4 to Defendant Holland, and the  
7 Court will not repeat its analysis here. Plaintiff's motion is GRANTED IN PART and Defendant is  
8 ordered to submit the documents for in camera review. The Court will limit the time frame to  
9 January 2008 to October 2011, the date Plaintiff filed this action.

10           **Request Number 4:** Plaintiff requests a copy of all documents Defendant examined in the  
11 course of his investigation into Plaintiff's gang activity between January 2010 and March 2012.

12           **Response:** Defendant did not produce documents, arguing that the request is overbroad as to  
13 time and scope, vague and irrelevant. Defendant also objects because the request seeks disclosure of  
14 confidential information. He provided a privilege log.

15           **Ruling:** Plaintiff argues, and the Court agrees, that his request is not vague. Defendants  
16 were able to identify responsive documents and list them in a privilege log.

17           As to relevance, Plaintiff argues the documents will support a conclusion that Plaintiff was  
18 not an NLR gang member. Defendants are correct, however, that Plaintiff can no longer challenge  
19 the evidence used to validate him, and therefore cannot argue the evidence was insufficient. Plaintiff  
20 is entitled to discover whether there are differences between the two reviews, and the requested  
21 documents may be relevant in that context.

22           As to the scope of the request, Plaintiff argues that he limited the request to January 2010 and  
23 March 2012, the time frame of Defendant Eubanks' investigation. The Court will sustain  
24 Defendant's objection in part, as evidence reviewed after the February 2011 submission of his gang  
25 validation packet are not relevant.

26           However, given the sensitive nature of the documents at issue, the Court will not order  
27 production at this time. Instead, the Court will order Defendant to produce the documents at issue  
28 for in camera review. Defendant must include a detailed log describing the documents and setting



1 forth his argument as to why the documents should be withheld. Defendant need only include  
2 documents reviewed between January 2010 and February 2011.

3 Plaintiff's motion to compel is therefore GRANTED IN PART, as described above.

4 **Request Number 5:** Plaintiff requests a copy of all documents Defendant reviewed when  
5 investigating Plaintiff's rebuttal claims from February 2011 to August 2011.

6 **Response:** Defendant did not produce documents, arguing that the request is overbroad and  
7 unrelated to his retaliation claim. Defendant also argues that responsive documents are confidential,  
8 and that Plaintiff's written rebuttal, reviewed by Defendant, is available to Plaintiff in his C-file.

9 **Ruling:** Plaintiff argues that the requested documents are relevant because Defendant  
10 Eubanks willfully refused to review Plaintiff's rebuttal because, regardless of what it said, he was  
11 under orders from Defendant Holland to validate Plaintiff. Plaintiff therefore believes that the  
12 documents will show that Defendant Eubanks' conclusion is "illogical and deviated significantly"  
13 from CDCR guidelines.

14 As has been discussed throughout this order, Plaintiff is precluded from challenging the  
15 sufficiency of the evidence used to validate him, and he is only entitled to discover whether there  
16 were any differences of evidence between the two reviews, or whether there was some other reason  
17 behind the different outcome. In granting the motion for summary judgment, the Court found that  
18 Plaintiff was given a meaningful opportunity to be heard by the critical decision-maker, and he is  
19 precluded from challenging this now.

20 Therefore, Defendant Eubank's review of Plaintiff's rebuttal *after* the submission of his gang  
21 validation package is not relevant to determining the differences between the two reviews.  
22 Accordingly, Plaintiff's motion is DENIED.

23 **Request Number 7:** Plaintiff requests all documents reviewed by Defendant in his  
24 investigation as to the reliability of the filter list, confidential memo dated 1/26/10 authored by C.A.  
25 Eubanks.

26 **Response:** Defendant did not produce documents, arguing that the request was not related to  
27 Plaintiff's retaliation claim and sought confidential documents.

1           **Ruling:** Plaintiff argues that the documents are relevant to show that Defendant’s conclusion  
2 in the January 26, 2010, memorandum is “illogical and lacks reliability.” ECF No. 87, at 77.

3 Plaintiff contends that this is why Defendant Noyce found the memo unreliable in August 2010.

4           Again, Plaintiff cannot challenge the reliability of the evidence used to validate him. He can,  
5 however, discover any differences between the two evidentiary reviews. The requested documents  
6 may reveal what led to a different conclusion in February 2011, and are relevant for this purpose  
7 only.

8           Defendant did not provide a privilege log for responsive documents and the Court cannot rule  
9 on his confidentiality objection. Accordingly, Plaintiff’s motion is GRANTED IN PART.

10 Defendant must supplement his response with a privilege log that describes responsive documents  
11 with specificity and explains the concerns related to disclosure.

12 **IV.    RESPONSES TO INTERROGATORIES**

13         **A.    LEGAL STANDARD**

14           An interrogatory may relate to any matter that may be inquired into under Rule 26(b), and an  
15 interrogatory is not objectionable merely because it asks for an opinion or contention that relates to  
16 fact or the application of law to fact. Fed. R. Civ. P. 33(a)(2) (quotation marks omitted). Parties are  
17 obligated to respond to interrogatories to the fullest extent possible under oath, Fed. R. Civ. P.  
18 33(b)(3), and any objections must be stated with specificity, Fed. R. Civ. P. 33(b)(4); *Davis v.*  
19 *Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981). The responding party shall use common sense and  
20 reason. *E.g.*, *Collins v. Wal-Mart Stores, Inc.*, No. 06-2466-CM-DJW, 2008 WL 1924935, \*8 (D.  
21 Kan. Apr. 30, 2008). A responding party is not generally required to conduct extensive research in  
22 order to answer an interrogatory, but a reasonable effort to respond must be made. *Gorrell v.*  
23 *Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013); *L.H. v. Schwarzenegger*, No. S-06-2042 LKK GGH,  
24 2007 WL 2781132, \*2 (E.D. Cal. Sep. 21, 2007). Further, the responding party has a duty to  
25 supplement any responses if the information sought is later obtained or the response provided needs  
26 correction. Fed. R. Civ. P. 26(e)(1)(A).

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**B. DEFENDANT HOLLAND**

**Interrogatory Number 1:** Between January 2008 and March 2012 which lawsuits were you aware of that inmate Goolsby F-19778 filed. State the same for Goolsby inmate appeals.

**Response:** Defendant objected because the interrogatory contained two subparts and was overbroad as to time and scope. Defendant also objected because any knowledge of lawsuits and appeals after February 11, 2011, the date which Plaintiff alleges that his retaliatory gang validation was issued, is not relevant. Without waiving the objections, Defendant answered both subparts as follows:

*Subpart A:* Responding Party does not keep track of inmate lawsuits, and was not aware of Plaintiff’s litigation history prior to February 11, 2011. Responding Party was served with the complaint in *Goolsby v. Cates*, No. 1500 CV 270062 SPC, Superior Court of California, County of Kern, in September or October, 2010, and would have been aware of that lawsuit at that time.

*Subpart B:* Responding Party does not keep track of inmate appeals, and was not aware of Plaintiff’s inmate appeal history. Before February 11, 2011, Responding Party performed Second-Level review of the following inmate appeals submitted by Plaintiff: Log No CCI-0-09-01674, Log No. CCI-0-09-01255, Log No. CCI-0-09-01290, Log No. CCI-0-09-01722, Log No. CCI-0-09-00814, Log No. CCI-0-09-01193, Log No. CCI-0-10-00909, Log No. CCI-0-1 0-00698. Responding party would have been aware of these appeals at the time she reviewed them.

**Ruling:** Plaintiff concedes in his motion that the time frame is overbroad and agrees to limit the time period to January 2008 through February 2011.

Turning to Defendant’s substantive response, Plaintiff argues that the response is contradictory, i.e., Defendant states that she was not aware of Plaintiff’s litigation history before February 11, 2011, but then states that she was served with a complaint in September or October 2010. As to the appeals, Plaintiff argues that Defendant contradicted herself again when she says that she did not know of Plaintiff’s appeal history , but then cites appeals that were reviewed prior to February 11, 2011.

1 Defendant believes that the response is not contradictory, explaining that Wardens are named  
2 in hundreds of lawsuits and inmate appeals. “Being aware of Goolsby’s litigation or appeals would  
3 require Holland to keep track of his lawsuit and appeals,” and since she did not so do, she was not  
4 aware of his history. ECF No. 100, at 96.

5 Accordingly, Plaintiff’s motion is DENIED.

6 **Interrogatory Number 2:** Between January 2008 and March 2012 please list all persons you  
7 discussed inmate Goolsby F-1977 with and give a synopsis of these communications?

8 Response: Defendant objects to the interrogatory as compound and overbroad and contends  
9 that the time period after February 11, 2011, is not relevant to any claims or defenses. Defendant  
10 also objects on the basis of the attorney/client privilege. Defendant nonetheless provided the  
11 following substantive response: “Responding party does not specifically recall any discussions with  
12 any Defendants in this action regarding Plaintiff during the stated time period and after a diligent  
13 search, has found no documents evidencing such communications.” ECF No. 100, at 96-97.

14 ***Ruling:*** Plaintiff objects to Defendant’s narrowing of the interrogatory to conversations with  
15 the named Defendants, rather than the requested “all persons.” Given Plaintiff’s claims, the Court  
16 agrees that the request should be limited to Defendants.

17 Finally, Plaintiff argues that he is seeking attorney/client privileged information, but only  
18 from Defendant’s former counsel. However, the attorney/client privilege is not limited to current  
19 counsel, and includes Defendant’s conversations with her former attorney.

20 For these reasons, Defendant’s response is sufficient and Plaintiff’s motion is DENIED.

21 **Interrogatory Number 4:** Did you at any time, for any reason cause Plaintiff Thomas  
22 Goolsby to be moved, either within CCI or to another institution and state your reasons and evidence  
23 relied on for each move.

24 ***Response:*** Defendant did not provide a response, and instead objected to the interrogatory as  
25 compound and overbroad. Defendant also argues that the time period after February 11, 2011, and  
26 Plaintiff’s transfers to another institution, are not relevant to any claims or defenses.

27 ***Ruling:*** Plaintiff argues that the request is relevant because it seeks separate instances of  
28 retaliation that Defendant Holland took against him, both in moves within CCI and to other

1 institutions. However, the claims in this action do not assert retaliatory cell-move or retaliatory  
2 transfer.<sup>9</sup> The request is not relevant.

3 To the extent that Plaintiff believes that evidence of other retaliation is admissible as  
4 “separate bad acts,” Federal Rule of Evidence 404 prohibits the use of prior acts to show that a  
5 defendant acted in accordance therewith on a particular occasion. Plaintiff’s motion is DENIED.

6 **Interrogatory Number 5:** What was your reason and evidence relied on to approve inmate  
7 Goolsby F-19778 for transfer to PBSP?

8 **Response:** Defendant did not provide a response, and instead objected to the interrogatory as  
9 compound and overbroad. Defendant also argues that the time period after February 11, 2011, and  
10 Plaintiff’s transfers to another institution, are not relevant to any claims or defenses.

11 **Ruling:** The same ruling as that in Request Number 4 applies here. The information is not  
12 relevant and Plaintiff’s motion is DENIED.

13 **Interrogatory Number 6:** When reviewing inmate Goolsby’s Central File, during his  
14 classification hearings did you review his whole file or partial file and if partial which documents?

15 **Response:** Defendant objected to the interrogatory as compound, overbroad and not likely to  
16 lead to the discovery of relevant evidence. Defendant also argues that Plaintiff’s classification  
17 hearings are not relevant to any claims or defenses. Without waiving these objections, Defendant  
18 responded, “Responding Party cannot answer the question without knowing which classification  
19 hearing Plaintiff is referring to and in what capacity (chairman or committee member) Responding  
20 Party was attending the hearing.” ECF No. 100, at 99.

21 **Ruling:** Plaintiff has agreed to limit the request to classification hearings prior to February  
22 11, 2011.

23 As to relevancy, Plaintiff contends that he seeks to establish that Defendant Holland read his  
24 C-File on numerous occasions and was aware of the information it contained. Defendant argues that  
25 his classification hearings are not relevant, particularly those after February 11, 2011, and before  
26 October 2010, when she was served with his complaint in another action.

27 The Court agrees that the information is relevant insofar as it may demonstrate Defendant’s

28 

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<sup>9</sup> Plaintiff alleges a retaliatory transfer claim against Defendant Holland in *Goolsby v. Holland*, et al., 1:13-cv-01100  
BAM (E.D. Cal.).

1 knowledge of the contents of his C-File. The Court will sustain Defendant's objection as to scope,  
2 and limit the time frame for classification hearings between October 2010 and February 2011.

3 Plaintiff's motion is GRANTED. Defendant shall provide a response to the interrogatory, as  
4 narrowed, within thirty (30) days of the date of service of this order.

5 **Interrogatory Number 7:** How would you describe inmate Goolsby F-19778 legal activity at  
6 CCI between January 2008 and March 2012?

7 ***Response:*** Defendant objected to the interrogatory as overbroad, vague and not likely to lead  
8 to the discovery of relevant evidence. Defendant also argues that the interrogatory is argumentative  
9 and calls for speculation. Without waiving these objections, Defendant responded, "Responding  
10 Party is not familiar with Plaintiff's legal activity other than being served with the complaint in  
11 *Goolsby v. Cates*, No. 1500 CV 270062 SPC, Superior Court of California, County of Kern, in  
12 October 2010, and would have been aware of that lawsuit at that time." ECF No. 100, at 100.

13 ***Ruling:*** Plaintiff agrees to narrow the time frame to January 2008 through February 2011.  
14 He contends that Defendant Holland's perception of Plaintiff's legal activity is relevant to proving  
15 whether she viewed it in a negative light.

16 Accordingly, Plaintiff's motion is DENIED.

17 **Interrogatory Number 9:** Did you believe the claims Inmate Goolsby F-19778 raised in his  
18 lawsuits and inmate appeals meritorious? Describe the reasons you relied on for your belief?

19 ***Response:*** Defendant did not provide a response, and objected to the interrogatory as  
20 overbroad, vague and not likely to lead to the discovery of relevant evidence. Defendant also argues  
21 that the interrogatory is argumentative and calls for speculation.

22 ***Ruling:*** Plaintiff argues that the request is relevant to show Defendant Holland's state of  
23 mind and opinion of Plaintiff's lawsuits and appeals. He agrees to shorten the time period to January  
24 2008 through February 11, 2011. Defendant, however, argues that the request is not relevant  
25 because only Defendant Holland's knowledge of Plaintiff's legal activity is relevant to his retaliation  
26 claim.

27 The Court disagrees. Defendant's thoughts as to whether Plaintiff's lawsuits or appeal had  
28 merit are relevant to his retaliation claim.

1 Plaintiff's motion is GRANTED IN PART. Defendant shall provide a supplemental  
2 response within thirty (30) days of the date of service of this order. The time-frame is narrowed to  
3 January 2008 through February 2011.

4 **B. DEFENDANT NOYCE**

5 **Interrogatory Number 2:** What evidence of gang activity did you discover about inmate  
6 Goolsby f-19778 between August 2010 and February 11, 2011.

7 **Response:** Defendant objects to the interrogatory as argumentative, in that it makes an  
8 assumption that "gang activity" is required for validation. Defendant also objects because the  
9 interrogatory seeks disclosure of confidential information. Without waiving these objections,  
10 Defendant provides the following response: "Responding Party does not recall which documents he  
11 reviewed before drafting the 128-B memo of August 31, 2010. Nor can it be ascertained from the  
12 record which documents were in Plaintiff's central file when Responding Party conducted his review  
13 on August 27, 2010. The CDCR 128-B chrono dated February 8, 2011, authored by B. Medrano  
14 was not in Plaintiff's confidential file on August 27, 2010. It is also possible that the Confidential  
15 Memorandum/Debriefing Report dated May 25, 2010, authored by G. Hopkins was not in Plaintiff's  
16 confidential file on August 27, 2010, because debriefing reports can take up to six months to be filed  
17 in the confidential file of each inmate mentioned in the debriefing report, due to the number of  
18 inmates referenced in the debriefing report. The review was conducted because Plaintiff was placed  
19 in Administrative Segregation because he was observed checking the 128-G chronos of inmates  
20 assigned to the IVA General Population. In Responding Party's experience, an inmate's checking of  
21 another inmate's 128-G is not typically considered gang activity and would not be considered a  
22 source of validation." ECF No. 100, at 102.

23 **Ruling:** The Court rejects Defendant's contention that the interrogatory is argumentative.  
24 As Plaintiff points out, it says nothing about validation, and there is no legal assumption that gang  
25 activity is required for validation.

26 Insofar as Defendant contends that Plaintiff is precluded from making arguments related to  
27 the sufficiency of the evidence, his argument is rejected. Plaintiff's interrogatory is aimed directly at  
28 the remaining issue in this case- what happened between the August 2010 review and the February

1 2011 review? Plaintiff asks Defendant Noyce what documents he reviewed during this time, which  
2 is directly relevant to this issue.

3 Finally, Defendant's response is not responsive to the request. Plaintiff is not concerned with  
4 that evidence Defendant Noyce reviewed prior to August 2010, or with explanations as to why  
5 documents may not have been in his C-File.

6 Defendant also cites confidentiality, but he can likely refer to the documents without creating  
7 confidentiality issues.

8 Accordingly, Plaintiff's motion is GRANTED. Defendant shall provide a supplemental  
9 response within thirty (30) days of the date of service of this order.

10 **Interrogatory Number 4:** Do you believe there are any non-gang related reasons why Inmate  
11 Goolsby F-19778 would have another inmates name, CDC # or contact information? If so what are  
12 they?

13 **Response:** Defendant objects to the interrogatory as not relevant, vague, argumentative and  
14 calling for speculation. Without waiving these objections, Defendant provides the following  
15 substantive response: "Plaintiff had the names and addresses of validated members of the NLR  
16 prison gang Robert Pandolfi (F-66741) and David Baumgaertel (P-4629) in his address book. By  
17 maintaining these inmates' information in his personal address book, Plaintiff was evidencing his  
18 past and current association with these inmates. A confidential de-briefing memo dated April 6,  
19 2009, reveals that Plaintiff was communicating with Baumgaertel (a validated NLR member)  
20 regarding gang business: i.e., NLR member "Lil Hoss" Williams' standing with the gang. A  
21 confidential Intel Report-Investigation states that on December 15, 2011, an outgoing letter from  
22 Plaintiff to Baumgaertel attempted to relay information regarding other inmates and NLR gang  
23 business." ECF No. 100, at 107.

24 **Ruling:** Plaintiff contends that this information is relevant because the parties disagree as to  
25 the reasons that Plaintiff had other inmates' names. Plaintiff wants to know whether Defendant  
26 recognizes any non-gang related reasons for having the names.

27 However, whether there is a non-gang related reason for having inmates' names is not  
28 relevant to the only issue remaining in this case the differences, if any, between the August 2010



1 review and the February 2011 review.

2 Plaintiff's request is not relevant and his motion is DENIED.

3 **Interrogatory Number 5:** Do you believe there is any non- gang related reasons why an  
4 inmate would have a list of general population White inmates in his possession?

5 **Response:** Defendant objects to the interrogatory as not relevant, vague, argumentative and  
6 calling for speculation. Without waiving these objections, Defendant provides the following  
7 substantive response: "The rosters found in the possession of validated NLR members was not a  
8 'list of general population White inmates.'" ECF No. 100, at 108.

9  
10 **Ruling:** The ruling is the same as that for Interrogatory Number 4, above. Plaintiff's motion  
11 is DENIED.

12 **Interrogatory Number 13:** You allege confidential memo 1/25/2010 authored by C.A.  
13 Eubanks is a "Roster" of "Active White Inmates." How did you come to this determination and  
14 explain why the list is not merely a list of "General Population Inmates"? What's written on it  
15 indicates gang activity?

16 **Response:** Defendant objects to the interrogatory as compound, but provides the following  
17 response:

18 *Subpart A:* The list is not a list of general population inmates. Roster number 1  
19 contained the names, CDCR numbers, and hometowns of White inmates housed in  
20 buildings 5 through 8. Roster number 2 was a complete list of all White inmates in  
21 buildings 1 through 8. An IGI investigation verified the status and housing of each  
22 inmate listed on the rosters.

23 *Subpart B:* It is common that gangs keep lists or rosters of inmates in good standing  
24 with the gang in a particular housing unit. On December 18, 2009, Security Squad  
25 Officer R. Frye searched the personal property of two validated NLR members and  
26 discovered two rosters of White inmates housed in the Security Housing Unit (SHU)  
27 at CCI-IVB who were in good standing with the NLR. The lists contained the  
28 inmates' name, moniker, hometown and CDCR number. There is no reason that two

1 validated NLR gang members would have lists containing the names, monikers,  
2 hometowns and CDCR numbers of White inmates in the SHU for non-gang reasons.  
3 An IGI investigation verified the status and housing of each inmate listed on the  
4 rosters. Every inmate listed was found at one time to be living in the housing unit as  
5 indicated on rosters. Additionally, the manner in which the rosters were generated,  
6 made it apparent that the information was not meant to be seen or read by CDCR  
7 staff.

8 **Ruling:** Plaintiff's motion is limited to Subpart B. He contends that the response is not  
9 responsive because it does not indicate what was written on the lists to indicate gang activity.  
10 However, Defendant specifically states that the list contained "the inmates' names, monikers,  
11 hometowns and CDCR number," and then goes on to explain why this evidenced gang activity. In  
12 any event, this information would only be relevant to the extent that it explained any differences  
13 between the August 2010 review and the February 2011 review.

14 Plaintiff's motion is DENIED.

15 **C. DEFENDANT TYREE**

16 **Interrogatory Number 2:** Do you Defendant J. Tyree believe there is any legitimate non-  
17 gang related reasons why Inmate Goolsby F-19778 would have another inmates name, CDC# and  
18 contact information?

19 **Response:** Defendant objects to the interrogatory as not relevant, vague, argumentative and  
20 calling for speculation. Without waiving these objections, Defendant states, "Plaintiff had the names  
21 and addresses of validated members of the Nazi Low Riders (NLR) prison gang Robert Pandolfi (F-  
22 66741) and David Baumgaertel (P-46291) in his address book. By maintaining these inmates'  
23 information in his personal address book, Plaintiff was evidencing his past and current association  
24 with these inmates." ECF No. 100, at 111.

25 **Ruling:** The ruling is the same as that for Interrogatory Number 4 to Defendant Noyce.  
26 Plaintiff's motion is DENIED.

27 **Interrogatory Number 4:** On February 11, 2011 you Defendant J. Tyree issued a 113-D lock  
28 up segregating Inmate Goolsby F-19778, who ordered you to do this and what basis did you have for

1 taking this action?

2 **Response:**

3 *Subpart A:* Objection. The interrogatory is argumentative in that it assumes that: 1)  
4 Responding Party “issued A 113-D Lock of Segregating Inmate Goolsby F-19778”  
5 and 2) Responding Party was ordered “to do this.” Without the document referenced,  
6 Responding Party cannot fully answer. Without waiving said objection, Responding  
7 Party answers: Plaintiff was placed in the Administrative Segregation Unit on  
8 February 11, 2011, after the IGI Unit concluded an investigation into Plaintiff’s  
9 involvement and association with the NLR.

10 *Subpart B:* Objection. The interrogatory is argumentative in that it assumes that: 1)  
11 Responding Party “issued A 113-D Lock of Segregating Inmate Goolsby F-19778.”  
12 Without the document referenced, Responding Party cannot fully answer. Without  
13 waiving said objection Responding Party answers: On 02/11/2011, the Institution  
14 Gang Investigations Unit (IGI), completed an investigation of Plaintiff regarding his  
15 current gang status. Under California Code of Regulations Title 15, Section 3378,  
16 there was sufficient evidence to validate Plaintiff as an associate of the NLR prison  
17 gang. At that time, Plaintiff was placed in Administrative Segregation under Title 15,  
18 section 3335.

19 **Ruling:** Plaintiff only argues that Defendant failed to state who ordered him to write the lock  
20 up order. In his opposition, Defendant contends that he answered the best he could, as there is no  
21 evidence that he issued such an order. Defendant states that he has not been able to find the lock-up  
22 order in Plaintiff’s C-File, and Plaintiff did not attach the document to his requests. Without the  
23 document, Defendant contends that he cannot fully answer.

24 In responding to the interrogatory, Defendant was required to make a reasonable effort to  
25 respond. Based on his response, it appears that he has done so given the information he had. If  
26 Plaintiff has a copy of the lock-up order at issue, he may present the document to Defendant within  
27 ten (10) days of the date of service of this order. Defendant must then supplement his response  
28 within (30) days.

1           **D.       DEFENDANT EUBANKS**

2           **Interrogatory Number 6:** Did you read and consider in the course of your investigation the  
3 128-B IGI review chrono dated August 31, 2010, authored by E. Noyce that found “insufficient  
4 evidence” to validate Goolsby based on the same source items used by you to validate Goolsby an  
5 associate of the NLR?

6           ***Response:*** Defendant objected to the interrogatory as argumentative, and making the  
7 erroneous assumption that the August 31, 2010, chrono by Defendant Noyce was the same source  
8 item used by Defendant Eubanks in Plaintiff’s NLR validation package. Without waiving the  
9 objection, Defendant states: “Noyce’s August 31, 2010 chrono did not list what documents he  
10 reviewed. The CDCR 128-B chrono dated February 8, 2011, authored by B. Medrano was not in  
11 Plaintiff’s C-file on August 27, 2010, when Noyce did his review. It is also possible that the  
12 Confidential Memorandum/Debriefing Report dated May 25, 2010, authored by G. Hopkins was not  
13 in Plaintiff’s confidential file on August 27, 2010, because debriefing reports can take up to six  
14 months to be filed in the confidential file of each inmate mentioned in the debriefing report, due to  
15 the number of inmates referenced in the debriefing report.” ECF No. 100, at 114.

16           ***Ruling:*** Plaintiff argues only that Defendant Eubanks failed to answer the actual question-  
17 whether he reviewed the 128B chrono. In his opposition, Defendant believes that Plaintiff is trying  
18 to get Defendant Eubanks to “implicitly admit” that his validation was based on the same evidence.  
19 ECF No. 100, at 114.

20           The Court agrees that the interrogatory impermissibly assumes that the two reviews were  
21 based on the same source items. However, Defendant can provide a response to the interrogatory  
22 when this portion is omitted. Accordingly, Plaintiff’s motion is GRANTED IN PART. Defendant  
23 shall provide a response, within thirty (30) days of the date of service of this order, to the following  
24 interrogatory: “Did you read and consider in the course of your investigation the 128-B IGI review  
25 chrono dated August 31, 2010, authored by E. Noyce?”

26           **Interrogatory Number 14:** In your opinion is there any legitimate non-gang reason for  
27 Inmate Goolsby F-19778 to possess a validated inmates’ name, CDC#, and/or contact information in  
28 his property? If yes, please state all reasons.

1           **Response:** Defendant objects to the interrogatory as not relevant, vague, argumentative and  
2 calling for speculation. Without waiving these objections, Defendant states, “Plaintiff had the names  
3 and addresses of validated members of the NLR prison gang Robert Pandolfi (F-66741) and David  
4 Baumgaertel (P-46291) in his address book. By maintaining these inmates’ information in his  
5 personal address book, Plaintiff was evidencing his past and current association with these inmates.”  
6 ECF No. 100, at 115.

7           **Ruling:** The ruling is the same as that for Interrogatory Number 4 to Defendant Noyce.  
8 Plaintiff’s motion is DENIED.

9  
10           **Interrogatory Number 16:** Can you write down to the best of your memory the conversation  
11 you had with Inmate Goolsby F-19778 on April 11, 2011?

12           **Response:** Defendant responded as follows: “No. But the records indicate the following:  
13 Responding Party provided to Plaintiff the non-confidential information being used to validate him  
14 as an NLR associate. Responding Party also provided to Plaintiff Confidential Information  
15 Disclosure Forms (CDCR 1030) for the confidential information used to validate him. Responding  
16 Party advised Plaintiff that an interview regarding the information obtained during this investigation  
17 would be held in not less than 24-hours.” ECF No. 100, at 116.

18           **Ruling:** Plaintiff believes that Defendant’s response is contradictory because he first says  
19 that he cannot write down the conversation, but then goes on to describe it. Plaintiff’s argument is  
20 rejected. Defendant said he could not write down the conversation, and in his opposition, he  
21 confirms that he has no memory of the conversation. However, in an effort to provide additional  
22 information, Defendant summarized the conversation as it appeared in his records.

23           Defendant’s response is adequate and Plaintiff’s motion is DENIED.

24           **Interrogatory Number 19:** Which supervisors have you received directions from to  
25 investigate Inmate Goolsby F-19778 for gang activity?

26           **Response:** Defendant objects to the interrogatory as argumentative because it assumes that  
27 he needed supervisory direction to investigate Plaintiff. Without waiving the objection, Defendant  
28 responded, “in the course of my job responsibilities, I investigated Goolsby’s gang association based

1 on information prison staff has uncovered demonstrating gang association.” ECF No. 100, at 117.

2 **Ruling:** Plaintiff argues, and the Court agrees, that the interrogatory does not assume that  
3 Defendant needed supervisory direction to investigate Plaintiff. Plaintiff’s main issue with the  
4 answer is that it is non-responsive. The Court agrees. If Defendant did not receive directions from  
5 anyone, he should so state.

6 Plaintiff’s motion is GRANTED. Defendant shall provide a supplemental response within  
7 thirty (30) days of the date of service of this order.

8 ///

9 ///

10 **V. REQUESTS FOR ADMISSIONS**

11 **A. LEGAL STANDARD**

12 “A party may serve on any other party a written request to admit, for purposes of the pending  
13 action only, the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the  
14 application of law to fact, or opinions about either; and (B) the genuineness of any described  
15 documents.” Fed. R. Civ. P. 36(a)(1).

16 If a matter is not admitted, the answer must specifically deny it or state in detail why  
17 the answering party cannot truthfully admit or deny it. A denial must fairly respond  
18 to the substance of the matter; and when good faith requires that a party qualify an  
19 answer or deny only a part of a matter, the answer must specify the part admitted and  
20 qualify or deny the rest. The answering party may assert lack of knowledge or  
information as a reason for failing to admit or deny only if the party states that it has  
made reasonable inquiry and that the information it knows or can readily obtain is  
insufficient to enable it to admit or deny.

21 Fed. R. Civ. P. 36(a)(4).

22 “The grounds for objecting to a request must be stated,” Fed. R. Civ. P. 36(a)(5), and with  
23 other forms of discovery, it is well established that boilerplate objections do not suffice, *e.g.*,  
24 *Thompson v. Yates*, No. 1:06-cv-00763-RCC, 2011 WL 5975469, at \*2-3 (E.D. Cal. Nov. 29, 2011);  
25 *Everest Indem. Ins. Co. v. Aventine-Tramonti Homeowners Assoc.*, No. 2:09-cv-1672-RCJ-RJJ, 2011  
26 WL 3841083, at \*2 (D. Nev. Aug. 29, 2011); *Palladini v. City of Milpitas*, No. CV 06-00779 JW  
27 (HRL), 2008 WL 1774090, at \*2 (N.D. Cal. Apr. 16, 2008); *Medina v. U.P.S.*, No. C-06-791 JW  
28 PVT, 2007 WL 2123699, at \*2 (N.D. Cal. Jul. 23, 2007); *Eastridge Personnel of Las Vegas, Inc. v.*

1 *Du-Orpilla*, No. 2:06-cv-00776-KJD-PAL, 2007 WL 1232229, at \*2 (D. Nev. Apr. 26, 2007); *A.*  
2 *Farber & Partners, Inc. v. Garber*, 237 F.R.D. 250, 255 (C.D. Cal. 2006).

3 Finally, “[t]he requesting party may move to determine the sufficiency of an answer or  
4 objection,” Fed. R. Civ. P. 36(a)(6). “Unless the court finds an objection justified, it must order that  
5 an answer be served. On finding that an answer does not comply with this rule, the court may order  
6 either that the matter is admitted or that an amended answer must be served.” *Id.* Efforts to obstruct  
7 discovery through objections or evasive responses which lack any good faith basis will not be  
8 condoned. *Marchand v. Mercy Med. Cntr.*, 22 F.3d 933, 938 (9th Cir. 1994); *In re TFT-LCD (Flat*  
9  
10 *Panel) Antitrust Litigation*, No. M 07-1827 SI, 2011 WL 3566419, at \*5 (N.D. Cal. Aug. 12, 2011);  
11 *Mitchell*, 2010 WL 3835765, at \*1.

12 **B. DEFENDANT HOLLAND**

13 **Request Number 3:** Admit or deny you believed Goolsby’s inmate appeal and lawsuit  
14 lacked merit.

15 ***Response:*** Defendant objected to the request as compound, vague, argumentative and  
16 overbroad. Without waiving objections, Defendant responded, “Responding Party cannot admit or  
17 deny the request because the request does not contain sufficient facts to formulate an answer, is  
18 unintelligible and calls for speculation.” ECF No. 100, at 117.

19 ***Ruling:*** In his motion, Plaintiff agrees to limit the request to appeals and lawsuits filed  
20 before February 11, 2011. He also clarifies that the request seeks her opinion as to *all* appeals and  
21 lawsuits filed before that time.

22 Plaintiff contends that her answer is non-responsive. Given Plaintiff’s clarifications,  
23 Defendant should be able for formulate a more specific response.

24 As to relevancy, the Court discussed the issue in granting Plaintiff’s motion for a further  
25 response to Interrogatory Number 9 to Defendant Holland.

26 Plaintiff’s motion is GRANTED IN PART and Defendant shall provide a supplemental  
27 response to the request, as modified, within (30) days of the date of service of this order.

28 **Request Number 7:** Admit or deny you Defendant Holland sent e-mails to other CCI prison

1 officials about Inmate Goolsby F-19778 and his appeals and litigation, between January 2008 and  
2 March 2012.

3 **Response:** Defendant objected to the request as compound, vague, argumentative, and not  
4 relevant overbroad. Without waiving the objections, Defendant responded, “Responding Party  
5 cannot admit or deny the request because she cannot recall any emails with other CCI officials  
6 concerning Plaintiff at CCI and after a diligent search has found no documents evidencing such  
7 emails.” ECF No. 100, at 118.

8 **Ruling:** Plaintiff believes that Defendant evaded a response by saying that she “cannot  
9 recall.” He also contends that she has access to her computer’s hard drive and should therefore be  
10 able to state, “unequivocally,” whether she sent any email.

11 Plaintiff’s argument is without merit. A responding party is entitled to state that they cannot  
12 recall, and in such cases, the party must state that they made a “reasonable inquiry” to find the  
13 necessary information. *See e.g., Asea, Inc., v. Southern Pac. Transp. Co.*, 669 F.2d 1242, 1247 (9th  
14 Cir.1981) (“A response [to requests for admissions] which fails to admit or deny a proper request for  
15 admission does not comply with the requirements of Rule 36(a) if the answering party has not, in  
16 fact, made ‘reasonable inquiry’ or if information ‘readily obtainable’ is sufficient to enable him to  
17 admit or deny the matter.”). Here, Defendant indicates that she made a diligent search, and in her  
18 opposition, clarifies that she searched for emails that had been printed out. Rule 36 does not, as  
19 Plaintiff argues, require Defendant to conduct a search of her hard drive.

20 The response is sufficient. In a prior discovery request, Defendant indicated that emails were  
21 not saved for more than 90 days. While Plaintiff may not agree, Defendant’s response is adequate.  
22 Plaintiff’s motion is therefore DENIED.

23 **Request Number 12:** Admit or deny that you believed in 2010 that inmate Goolsby F-19778  
24 was a problem inmate.

25 **Response:** Defendant objected to the request as not relevant, vague and argumentative.  
26 Without waiving the objections, Defendant states that she “cannot truthfully admit or deny the  
27 request because she cannot recall if she had any belief or opinion as to Plaintiff in 2010, and the term  
28 “problem inmate” is too vague and unintelligible.” ECF No. 100, at 119.



1           **Ruling:** Plaintiff contends that “problem inmate” is not vague or unintelligible, and defines  
2 it as “an inmate that presents perplexity or difficulty.” ECF No. 87, 110. While Plaintiff may have  
3 defined the term in general, it remains vague because it does not specify the type of problem. This  
4 action is about retaliation based on Plaintiff’s litigation, and anything outside of that would be  
5 irrelevant.

6           In any event, Defendant’s simple statement that she does not recall is insufficient under Rule  
7 36(a)(4). Plaintiff’s motion is therefore GRANTED IN PART. Defendant must provide a  
8 supplemental response within thirty (30) days of the date of service of this order. The request is  
9 modified as follows: “Admit or deny that you believed in 2010 that inmate Goolsby F-19778 was a  
10 problem inmate because he filed appeals or lawsuits.”

11           **Request Number 13:** Admit or deny that you believed in 2010 and 2011 that an inmate who  
12 possessed another inmates’ contact information that was validated had only one reason for  
13 possessing that contact information and that was gang activity.

14           **Response:** Defendant objected to the request as irrelevant, vague and unintelligible. Without  
15 waiving the objections, Defendant responded, “Responding Party cannot truthfully admit or deny the  
16 request because: 1) she cannot recall if he had any belief or opinion as to stated subject matter in  
17 2010 and 2011; 2) the request is ambiguous; and 3) the request calls for speculation and as a  
18 hypothetical question, the request contains insufficient foundational facts to formulate an answer.”  
19 ECF No. 100, at 120.

20           **Ruling:** The ruling is the same as that for Interrogatory Number 4 to Defendant Noyce.  
21 Plaintiff’s motion is DENIED.

22           **C.     DEFENDANT EUBANKS**

23           **Request Number 7:** Admit or deny that if you found a list of Inmates’ names and identifying  
24 information and one of the Inmates was validated, the list evidenced gang activity by all inmates  
25 listed.

26           **Response:** Defendant objected to the request as ambiguous, argumentative, calling for  
27 speculation, requiring a hypothetical answer and irrelevant. Without waiving the objections,  
28 Defendant responded, “Responding Party cannot admit or deny the request because it is incomplete,

1 hypothetical, and insufficient facts are given to formulate an answer.” ECF No. 100, at 122.

2 ***Ruling:*** The ruling is the same as that for Interrogatory Number 4 to Defendant Noyce.  
3 Plaintiff’s motion is DENIED.

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10 **ORDER**

11 Plaintiff’s motion to compel is GRANTED IN PART and DENIED IN PART, as described  
12 throughout this order. Where applicable, Defendants SHALL file supplemental responses within  
13 thirty (30) days of the date of service of this order.

14 Plaintiff’s motion to supplement his reply (Document 105) is GRANTED insofar as the  
15 Court discussed his arguments in this decision.

16 IT IS SO ORDERED.  
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18 Dated: April 22, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE