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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN EDWARDS,

Plaintiff,

v.

D. CABRAL, et al.,

Defendants.

Case No. 1:13-cv-00345-AWI-MJS (PC)

ORDER DENYING PLAINTIFF'S
REQUEST FOR DISCOVERY
SUBPOENAS

(ECF NO. 36.)

ORDER DENYING, IN PART, AND
GRANTING, IN PART, PLAINTIFF'S
MOTIONS TO COMPEL

(ECF NOS. 37, 40, 43, 46.)

ORDER DENYING AS MOOT PLAINTIFF'S
MOTION FOR DISPOSITION

(ECF NO. 53.)

ORDER GRANTING PLAINTIFF'S
MOTION FOR EXTENSION OF TIME

(ECF NO. 59.)

I. PROCEDURAL HISTORY

Plaintiff Steven Edwards is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This matter proceeds on an Eighth Amendment claim against Defendants Bratton, Cabral, Escorto, and Pascual.

1 Before the Court are Plaintiff's August 20, 2014 motion for discovery subpoenas
2 (ECF No. 36.), Plaintiff's September 8, 2014 motions to compel discovery (ECF Nos. 37,
3 40, 43, 46.), Plaintiff's November 25, 2014 motion for disposition of the motions to compel
4 (ECF No. 53.), and Plaintiff's motion for extension of time to respond to Defendants' motion
5 for summary judgment (ECF No. 59.). Defendants opposed the motion for discovery
6 subpoenas and the motions to compel (ECF Nos. 50 & 51.), and Plaintiff replied to
7 Defendants' opposition to the motions to compel (ECF No. 52.). The motions are deemed
8 submitted. Local Rule 230(l).

9 **II. DISCOVERY SUBPOENAS**

10 Subject to certain requirements, Plaintiff is entitled to the issuance of a subpoena
11 commanding the production of documents or electronically stored information relevant to
12 his claim from a nonparty. Fed. R. Civ. P. 34(c), 45. However, the Court will consider
13 granting such a request only if the documents or electronically stored information sought
14 from the nonparty are not equally available to Plaintiff and are not obtainable from
15 Defendant through a request for the production. See Fed. R. Civ. P. 34, 45. If Defendant
16 objects to Plaintiff's discovery request, a motion to compel is the next required step. Fed.
17 R. Civ. P. 37(a). If the Court rules that the documents or electronically stored information
18 are discoverable but Defendant does not have care, custody, and control of them, Plaintiff
19 may then seek a subpoena of a nonparty. See Fed. R. Civ. P. 34, 45. Alternatively, if the
20 Court rules that the documents and electronically stored information are not discoverable,
21 the inquiry ends. The Court will not issue a subpoena for a nonparty individual without
22 Plaintiff first following the procedure outlined above.

23 Here, the subpoenas are directed to Defendants, parties in the instant action, and
24 appear to request documents that Plaintiff sought from Defendants through the discovery
25 process. Plaintiff now wishes to compel their production as he is unsatisfied with
26 Defendants' responses to his requests. As noted above, the next step is for Plaintiff to file
27 a motion to compel, which he has done. That motion will be addressed below. Plaintiff's
28 motion for discovery subpoenas is therefore DENIED.

1 **III. MOTIONS TO COMPEL**

2 **A. Legal Standard**

3 “The discovery process is subject to the overriding limitation of good faith.” *Asea v.*
4 *S. Pac. Transp. Co.*, 669 F.2d 1242, 1246 (9th Cir. 1981). “Parties may obtain discovery
5 regarding any non-privileged matter that is relevant to any party's claim or defense.” Fed.
6 R. Civ. P. 26(b)(1). The Court also may order discovery of any relevant matter with a
7 showing of good cause. *Id.* Information is relevant if it “appears reasonably calculated to
8 lead to the discovery of admissible evidence.” *Id.* “In each instance, the determination
9 whether . . . information is discoverable because it is relevant to the claims or defenses
10 depends on the circumstances of the pending action.” Fed. R. Civ. P. 26 advisory
11 committee's note (2000 Amendment) (Subdivision (b)(1)).

12 Generally, if the responding party objects to a discovery request, the party moving to
13 compel bears the burden of demonstrating why the objections are not justified. *Grabek v.*
14 *Dickinson*, 2012 WL 113799, at *1 (E.D. Cal. Jan. 13, 2012); *Ellis v. Cambra*, 2008 WL
15 860523, at *4 (E.D. Cal. Mar. 27, 2008). The moving party “at a minimum . . . has the
16 burden of informing the court which discovery requests are the subject of his motion to
17 compel, which of the . . . responses are disputed, why . . . [the] responses are deficient,
18 why the . . . objections are not justified, and why the information he seeks through
19 discovery is relevant . . .” *Walker v. Karelas*, 2009 WL 3075575, at *1 (E.D. Cal. Sep. 21,
20 2009).

21 The Court must limit discovery if the burden of the proposed discovery “outweighs its
22 likely benefit.” Fed. R. Civ. P. 26(b)(2)(C)(iii).

23 **B. Requests for Production**

24 The requests and responses at issue and the Court’s ruling on each are as follows:

25 **Request for Production No. 1:** Total work history of each and every defendant.

26 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
27 terms “total work history.” The request is overbroad as to time. To the extent that this
28 request includes personnel files of the Defendants, personnel-related files are
subject to the qualified privilege of official information and a federal common law

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privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy rights of staff, including federal common law and applicable California statutes including Penal Code sections 832.7, 832.8, Government Code section 6254 and Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title 15, section 3400. Personnel files also are protected under California Evidence Code section 1040, *et. seq.*, including section 1043. The request also seeks information that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

Request for Production No. 1 (Amended): Total work history as to Any & All work related incidence Reports, or Complaints specifically about D. Cabral, R. Bratton, J. Escorto, and M. Pascual, causing Deliberate Indifference, Injuries, or Denial or delay of Medical Attention to Inmates or Staff, Any & All Complaints specifically about Training or Methods of Medical Care of Inmates, or Staff from January, 2010 Until December, 2013.

Response: Objection. The request is vague, ambiguous and overbroad as to the terms "total work history." The request is overbroad as to tim~. The request is unduly burdensome and is not calculated to lead to the discovery of admissible evidence. To the extent that this request includes personnel files of the Defendants, personnel-related files are subject to the qualified privilege of official information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy rights of staff, including federal common law and applicable California statutes including Penal Code sections 832.7, 832.8, Government Code section 6254 and Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title, 15 section 3400. Personnel files also are protected under California Evidence Code section 1040, *et. seq.*, including section 1043. The request also seeks information that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

Analysis and Ruling:

Plaintiff argues that the documents are admissible as 404(b) evidence to prove Defendants' motive, knowledge, opportunity, and intent and are needed to put forth a proper defense. He contends that his request is limited to the 602 health care staff complaints that are searchable by employee name and that the timeframe is limited to the period that records are kept by the Health Care Appeals Office.

1 Defendants argue the request is: 1) vague, ambiguous, and overbroad as to "total
2 work history," 2) will not lead to admissible evidence, 3) personnel records are privileged, 4)
3 is overbroad to the extent that it requests documents after the alleged incident, and 5) is
4 overly burdensome because 602-HC forms are only tracked by inmate name, not staff
5 name.

6 The motion to compel a response to this request is denied. Plaintiff has not shown
7 that the requested documents are likely to lead to the discovery of admissible evidence.
8 *See Valenzuela v. Smith*, 2006 U.S. Dist. LEXIS 6078, *5-6 (E.D. Cal. Feb. 15, 2006)
9 (request for all complaints and investigations against defendants to prove a pattern of
10 medical indifference denied as overbroad and burdensome and for failure to show
11 likelihood of leading to discoverable evidence). Generally, evidence of a person's
12 character is not admissible to prove they acted in conformity with that character on a
13 particular occasion. Fed. R. Evid. 404(a). Plaintiff has not identified any exception that
14 might apply. Federal Rule of Evidence 404(b)(2), permitting an exception to the
15 admissibility of evidence of other crimes or wrongful acts, is only applicable in criminal
16 cases, and therefore does not apply to the instant action. Fed. R. Evid. 404(b)(2).

17
18 **Request for Production No. 2:** All disciplinary reports, complaints (602, 622, etc.),
19 any and all write-ups submitted by inmates, staff, co-workers, and superiors on each
and every defendant.

20 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
21 terms "any and all write-ups." The request is overbroad as to time. The request
22 further poses an undue burden, in that CDCR form 602 Inmate Parolee Appeal
23 forms and CDCR form 622 Request for Interview forms are not indexed by the name
24 of the Correctional Officer referred to on the form, requiring a search through every
25 Central File for every inmate housed at the institution while Defendant was
26 employed there. To the extent that this request includes personnel files of the
27 Defendants, personnel-related files are subject to the qualified privilege of official
28 information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936
F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy
rights of staff, including federal common law and applicable California statutes
including Penal Code sections 832.7, 832.8, Government Code section 6254 and
Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title,
15 section 3400. Personnel files also are protected under California Evidence Code
section 1040, *et. seq.*, including section 1043. The request also seeks information
that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of

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which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d). The request further violates Federal Rule of Evidence 404 and is not calculated to lead to the discovery of admissible evidence.

Request for Production No. 2 (Amended): Any & All Disciplinary Report, Complaints specifically 602(s), G22(s), etc., Any & All Write-ups (Specifically about the treatment, and medical Conduct to Inmates) Submitted by inmates, Staff, Co-Workers, Superiors, on defendants D. Cabral, R. Bratton, J. Escorto, and M. Pascual from January, 2010 Until December, 2013 (the Complaints written by Inmates are important and significant to the showing of Plaintiff case as to defendants).

Response: Objection. The request is overbroad as to time. The request is unduly burdensome and is not calculated to lead to the discovery of admissible evidence. To the extent that this request includes personnel files of the Defendants, personnel-related files are subject to the qualified privilege of official information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy rights of staff, including federal common law and applicable California statutes including Penal Code sections 832.7, 832.8, Government Code section 6254 and Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title, 15 section 3400. Personnel files also are protected under California Evidence Code section 1040, *et seq.*, including section 1043. The request also seeks information that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

Analysis and Ruling:

The parties assert the same arguments in support of their respective positions as they did with Plaintiff's Request for Production No. 1. The Court adopts the same reasoning set forth above to sustain Defendants' objection as to discoverability.

Request for Production No. 3: All days worked from May 1, 2012 through September 30, 2012.

Response: Objection. The request is vague, ambiguous and overbroad as to the terms "all days worked." The request is overbroad as to time. To the extent that this request includes personnel files of the Defendants, personnel-related files are subject to the qualified privilege of official information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy rights of staff, including federal common law and applicable California statutes including Penal Code sections 832.7,

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832.8, Government Code section 6254 and Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title, 15 section 3400. Personnel files also are protected under California Evidence Code section 1040, *et. seq.* including section 1043. The request also seeks information that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

Request for Production No. 3 (Amended): All days worked from May 1, 2012 Through September 30, 2012, (Days that show on time Cards and sign-in and sign-out log sheets).

Response: Objection. The request is vague, ambiguous and overbroad as to the terms "any and all" and "specifically memorialize." This request violates the qualified privilege of official information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). The request also seeks information that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the institution. Additionally, the production of confidential information is improper on the grounds that an inmate shall not have access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d). To the extent that this request includes personnel files of the Defendants, personnel-related files are subject to the qualified privilege of official information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy rights of staff, including federal common law and applicable California statutes including Penal Code sections 832.7, 832.8, Government Code section 6254 and Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title, 15 section 3400. Personnel files also are protected under California Evidence Code section 1040, *et. seq.*, including section 1043.

Analysis and Ruling:

Plaintiff argues that the sign in and out sheets are needed to prove that Defendants were working at Pleasant Valley State Prison during the dates that he alleged they committed medical indifference. He has received such documents from the Attorney General's office in other cases (attaching an example to his reply as Exhibit C).

Additionally, he contends that CDCR Form 998, which Defendants' state contains the requested information, "will not have any effect at proving anything." (ECF No. 52 at 9.)

Defendants argue the request is vague, ambiguous, and overbroad as to "all days worked" and "sign in's and out sheets," and Defendants' personnel records are privileged.

1 However, they agree to produce CDCR Form 998 for each Defendant, which contains the
2 days and hours worked from July 17-21, 2012 (the dates relevant to Plaintiff's claim).

3 Plaintiff's contention that the CDCR form does not contain the requested information
4 is unsupported. He should have attached the form and indicated how it is deficient. See
5 *Walker*, 2009 WL 3075575, at *1.

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7 **Request for Production No. 4:** All written Statements, originals or copies, video
8 Tape(s) (sub-evidence locker #40 bruises, marks, O.C. sprayed eyes, interview at
9 Pleasant Valley State Prison), Identifiable as reported about the Incident on July 17,
10 2012, through September 30, 2012, made by prison Doctor, RN' s, LVN' s, LPT' s,
any and All medical staff, Optometrist, ophthomologist, Civilian employees, or the
Department of Corrections (CDCR) and prisoner Witnesses, as to Defendants D.
Cabral, R. Bratton, J. Escorto, and M. Pascual.

11 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
12 terms "sub-evidence locker #40 bruises, marks, O.C. sprayed eyes, interview at
13 Pleasant Valley State Prison," and "on each and every defendant." The request is
14 overbroad as to time. To the extent that this request includes personnel files of the
15 Defendants, personnel-related files are subject to the qualified privilege of official
16 information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936
17 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy
18 rights of staff, including federal common law and applicable California statutes
19 including Penal Code sections 832.7, 832.8, Government Code section 6254 and
20 Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title,
21 15 section 3400. Personnel files also are protected under California Evidence Code
22 section 1040, *et. seq.* including section 1043. The request also seeks information
that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of
which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2)
jeopardize the security of the institution. Additionally, the production of confidential
information is improper on the grounds that an inmate shall not have access to
information designated confidential. Cal. Code Regs. tit. 15, § 3370(d). Without
waiving these objections, the responding party has access to a CDCR 837 Incident
Report concerning the incident of July 17, 2012, at Pleasant Valley State Prison
which is the subject of this action which will be produced.

23 **Analysis and Ruling:**

24 Plaintiff argues that the documents are needed to prove he had medical needs that
25 Defendants knew of and failed to meet. He agrees that he received his medical records
26 from July 17 – 21, 2012. However, he asserts those records are deficient because he
27 received medical treatment through September 30, 2012, the records do not contain the
28

1 information from the doctor and ophthalmologist that treated him, and he has not received
2 the video.

3 Defendants argue Plaintiff previously agreed at his deposition that he has the
4 medical records and that the video was played for him at this deposition.

5 Defendants' objection is overruled, in part. Plaintiff is entitled to receive medical
6 records pertaining to his injuries through September 30, 2012. He is also entitled to the
7 records from the doctor and ophthalmologist who treated him. However, Plaintiff is not
8 entitled to a copy of the video. As Plaintiff concedes, prisoners are not allowed to possess
9 diskettes. (ECF No. 52 at 15-16.) Should Plaintiff need to review the video again,
10 Defendants should make it reasonably available to him.

11
12 **Request for Production No. 5:** Any All Rules, regulations, and policies of
13 California Department of Corrections and rehabilitation, health Care Service
about the Treatment of a prisoner with O.C. Spray in eyes with Glaucoma.

14 **Response:** Objection. The request is vague, ambiguous and overbroad as to
15 the terms "treatment of prisoner with O.C. (Oleoresin Capsicum) spray in eyes
16 with glaucoma." The request is overbroad as to time. Without waiving these
objections, the responding party has access to documents responsive to this
request, which will be produced.

17 **Analysis and Ruling:**

18 Plaintiff argues that the documents are needed to prove Defendants violated rules,
19 regulations, and policies in treating him.

20 Defendants contend the request is overbroad as to time, ambiguous, and irrelevant
21 because violation of CDCR policy does not give rise to a constitutional claim. However,
22 they provided Plaintiff with the regulations in effect as of July 17, 2012, relating to the
23 decontamination of inmates exposed to oleoresin capsicum pepper spray.

24 Given Defendants produced the documents, Plaintiff's motion is denied as moot.

25
26 **Request for Production No. 6:** All sign in's and out sheets for Pleasant Valley
27 State Prison D-Yard Building D-4 Administrative Segregation Unit (A.S.U.) from
July 1, 2012 through August 30, 2012 on each and every defendant.

28 **Response:** Objection. The request is vague, ambiguous and overbroad as to
the terms "sign in's and out sheets" on each and every defendant." The request is

1 overbroad as to time. This request violates the qualified privilege of official
2 information and a federal common law privilege. *Sanchez v. City of Santa Ana*,
3 936 F.2d 1027, 1033-34 (9th Cir. 1991). The request also seeks information that is
4 deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which
5 could: (1) endanger the safety of other inmates and staff of the CDCR, or (2)
6 jeopardize the security of the institution. Additionally, the production of
7 confidential information is improper on the grounds that an inmate shall not have
8 access to information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

9 **Request for Production No. 6 (Amended):** All sign in's or out sheets Specifically
10 for pleasant Valley State Prison, D-Yard, D-4 (Building D-4), Administrative
11 Segregation unit (A.S.U.), and A-Yard Medical Clinic, Time Cards of each
12 Defendant Specifically for July 17, 18, 19, 20, 21, of 2012, Specifically from
13 Pleasant Valley State prison dated and signed by, D. Cabral, R. Bratton, J.
14 Escorto, M. Pascual.¹

15 **Response:** Objection. The request is vague, ambiguous and overbroad as to
16 the terms "sign in's and out sheets" and "on defendant. To the extent that this
17 request includes personnel files of the Defendants, personnel-related files are
18 subject to the qualified privilege of official information and a federal common law
19 privilege. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th Cir. 1991).
20 Personnel files are also protected by the privacy rights of staff, including federal
21 common law and applicable California statutes including Penal Code sections
22 832.7, 832.8, Government Code section 6254 and Civil Code sections 1798.24 and
23 1798.40 and California Code of Regulations Title, 15 section 3400. Personnel files
24 also are protected under California Evidence Code section 1040, *et. seq.*, including
25 section 1043. The request also seeks information that is deemed confidential under
26 Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger the
27 safety of other inmates and staff of the CDCR, or (2) jeopardize the security of the
28 institution. Additionally, the production of confidential information is improper on
the grounds that an inmate shall not have access to information designated
confidential. Cal. Code Regs. tit. 15, § 3370(d).

20 **Analysis and Ruling:**

21 Plaintiff argues that the documents are needed to prove Defendants worked in the
22 D-4 building at Pleasant Valley State Prison on the given dates. In response to
23 Defendants' objection based on security concerns, Plaintiff contends he is not looking to
24 harm any of the staff or gain insight into the layout of the prison.

25 Defendants contend that the information is confidential and jeopardizes the security
26 of the prison as it could be utilized to plan an incident in the Administrative Segregation
27

28 ¹ In Plaintiff's motion to compel, he provides his original request and does not include this amended
version. (ECF Nos. 37, 40, 43, 46.). The amended language does not change the Court's ruling.

1 Unit. Additionally, they contend CDCR Form 998 sufficiently provides Plaintiff with the
2 hours each Defendant worked on the given dates.

3 As with Request for Production No. 3, Plaintiff's contention that the CDCR Form
4 does not contain the requested information is unsupported. Plaintiff should have attached
5 the form to his motion and indicated how it is deficient. *See Walker*, 2009 WL 3075575, at
6 *1.

7 **Request for Production No. 7:** The daily assignment sheet on each and every
8 defendant as to day to day responsibilities.

9 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
10 terms "daily assignment sheet" and "day to day responsibilities." The request is
11 overbroad as to time. The request violates the qualified privilege of official
12 information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936
13 F.2d 1027, 1033-34 (9th Cir. 1991). The request also seeks information that is
14 deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which
could: (1) endanger the safety of other inmates and staff of the CDCR, or (2)
jeopardize the security of the institution. Additionally, the production of confidential
information is improper on the grounds that an inmate shall not have access to
information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

15 **Request for Production No. 7 (Amended):** The Daily Assignment Sheets
16 Specifically for D-yard D-4, (A.S.U.), at Pleasant Valley State Prison for July 17, 18,
17 19, 20, 21, of 2012, on D. Cabral, R. Bratton, J. Escorto, M. Pascual, as to day to
day responsibilities, Signed and dated by Defendants.²

18 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
19 terms "daily assignment sheet" and "day to day responsibilities." The request is
20 overbroad as to time. The request violates the qualified privilege of official
21 information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936
22 F.2d 1027, 1033-34 (9th Cir. 1991). The request also seeks information that is
23 deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which
could: (1) endanger the safety of other inmates and staff of the CDCR, or (2)
jeopardize the security of the institution. Additionally, the production of confidential
information is improper on the grounds that an inmate shall not have access to
information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

24 **Analysis and Ruling:**

25 Plaintiff argues that the documents are needed to prove Defendants' access to him
26 and knowledge of his injuries.

27 _____
28 ² In Plaintiff's motion to compel, he provides his original request and does not include this amended
version. (ECF Nos. 37, 40, 43, 46.). The amended language does not change the Court's ruling.

1 Defendants argue 1) the terms “daily assignment sheet” and “day to day
2 responsibilities” are vague; 2) to the extent that the request includes Post Orders, it is
3 prohibited by confidentiality concerns; 3) and CDCR does not maintain “daily assignment
4 sheets” for its employees. Defendant Pascual has produced her “RN Closeout” sheet,
5 documenting which patients were examined by her office, and Defendants agree to
6 produce their Duty Statements.

7 Defendants’ objection is sustained. Defendants do not possess or keep “daily
8 assignment sheets.” (ECF No. 51 at 17.) Defendants cannot produce what they do not
9 have. They agree to provide non-confidential documents that contain the requested
10 information.

11 **Request for Production No. 8:** Rules and obligations as to each and every
12 defendant's training.

13 **Response:** Objection. The request is vague, ambiguous and overbroad as to the
14 terms "rules and obligations" and "every defendant's training." The request is
15 overbroad as to time. To the extent that this request includes personnel files of the
16 Defendants, personnel-related files are subject to the qualified privilege of official
17 information and a federal common law privilege. *Sanchez v. City of Santa Ana*, 936
18 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also protected by the privacy
19 rights of staff, including federal common law and applicable California statutes
20 including Penal Code sections 832.7, 832.8, Government Code section 6254 and
21 Civil Code sections 1798.24 and 1798.40 and California Code of Regulations Title,
22 15 section 3400. Personnel files also are protected under California Evidence Code
section 1040, *et. seq.*, including section 1043. The request also seeks information
that is deemed confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of
which could: (1) endanger the safety of other inmates and staff of the CDCR, or (2)
jeopardize the security of the institution. Additionally, the production of confidential
information is improper on the grounds that an inmate shall not have access to
information designated confidential. Cal. Code Regs. tit. 15, § 3370(d).

23 **Request for Production No. 8 (Amended):** Specific Rules, Obligations, and
24 Training received by D. Cabral, R. Bratton, J. Escorto, M. Pascual, as, RN's, L VN's,
25 LPT's (How they treat inmates for medical issues with O.C. spray in eye(s),
26 Counseling, Passing out Medication, How to Decontaminate an inmate whom been
hit with O.C. Spray etc.)³

27
28 ³ In Plaintiff’s motions to compel, his request is stated as follows: “Rules and Regulations as to the
Defendants D. Cabral, R. Bratton, J. Escorto, M. Pascual, Training as to working for CDCR as a,
RN, LPT, LVN.” (ECF Nos. 37, 40, 43, 46.). This language does not change the Court’s ruling.

1 **Response:** Objection. The request is vague and ambiguous as to the terms
2 "specific rules, obligations, and training," "how they treat inmates for medical issues,"
3 and "counseling." Without waiving these objections, the responding party has access
4 to documents responsive to this request, copies of which are attached as Exhibit B.

4 **Analysis and Ruling:**

5 Plaintiff argues that 1) the documents are needed to prove Defendants did/did not
6 have proper training to deal with inmates, 2) Plaintiff's use of the documents to plan an
7 incident is an unsupported assumption, 3) Defendants do not have standing to refuse
8 release of the documents, and 4) Defendants "should not have a problem releasing the
9 document[s]" if they do not give rise to a constitutional claim. (ECF No. 52 at 15.)

10 Defendants argue that the training materials are 1) confidential because they could
11 lead to an inmate planning an incident to occur during decontamination, which would
12 jeopardize the security of the prison; 2) irrelevant because failure to follow their training
13 protocols does not give rise to a constitutional claim; and 3) the request is vague,
14 ambiguous, and overbroad as to the terms "how they treat inmates for medical issues" and
15 "counseling." Defendants also maintain that they complied with the request by providing
16 the rules and regulations in effect as of July 17, 2012, relating to the decontamination of
17 inmates exposed to oleoresin capsicum pepper spray.

18 Defendants' objection is sustained. The training manuals are irrelevant. Plaintiff
19 states a medical indifference claim against Defendants. It does not require proof of proper
20 or inadequate training. Plaintiff has received documents indicating the proper protocol in
21 using oleoresin capsicum pepper spray and decontaminating inmates exposed to it.

22 **Request for Production No. 9:** That Plaintiff be afforded the photograph copies
23 (color not black and white) of video tape of bruises, swollen red eyes, etc. that was
24 taken in A-yard Program Office on July 17, 2012 by Sgt. Motta, and D. Deniz (C/O)
25 that relates to this matter.

26 **Response:** Objection. The request also seeks information that is deemed
27 confidential under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1)
28 endanger the safety of other inmates and staff of the CDCR, or (2) jeopardize the
security of the institution. Additionally, the production of confidential information is
improper on the grounds that an inmate shall not have access to information
designated confidential. Cal. Code Regs. tit. 15, § 3370(d). Without waiving this

1 objection, Defendant has access to a use of force video taken prepared on July 17,
2 2012 and will provide Plaintiff with an opportunity to view this video tape.

3 **Request for Production No. 9 (Amended):** Plaintiff be afforded Specifically
4 Photographic copies of plaintiff's documented bruises, shoulder, swollen red eyes
5 etc., Specifically in color that was taken on A-Yard Program Office, with digital
6 camera on July 17, 2012, as related to this matter.⁴

7 **Response:** Objection. The request seeks information that is deemed confidential
8 under Cal. Code Regs. tit. 15, § 3321, the disclosure of which could: (1) endanger
9 the safety of other inmates and staff of the CDCR, or (2) jeopardize the security of
10 the institution. Additionally, the production of confidential information is improper on
11 the grounds that an inmate shall not have access to information designated
12 confidential. Cal. Code Regs. tit. 15, § 3370(d). Without waiving these objections,
13 the responding parties have access to a video interview of Plaintiff, dated July 17,
14 2012, which is confidential, but which was shown to Plaintiff on March 21, 2014.

15 **Analysis and Ruling:**

16 Plaintiff argues these documents are needed to prove his injuries were not
17 documented by Defendants. Plaintiff concedes that he is not allowed to possess a diskette,
18 which is the only available form of producing the video, but requests color photographs of
19 his injuries instead.

20 Defendants contend they complied with the request by playing a copy of the video
21 for Plaintiff at his deposition.

22 It is unclear from the parties' submissions whether photographs of Plaintiff's injuries
23 exist. Defendants' objection is limited to the production of a video, which was previously
24 addressed under Request for Production No. 4, and does not appear to be what Plaintiff is
25 requesting here. To the extent that photographs of Plaintiff's injuries exist, Defendants
26 should produce them or object accordingly.

27 **IV. MOTION FOR DISPOSITION**

28 As this order addresses the disposition of Plaintiff's motions to compel, Plaintiff's
separate motion for same is denied as moot. (ECF No. 53.)

⁴ In Plaintiff's motion to compel, his request is stated as follows: "Photograph copies (color not
black & white) of bruises, swollen red eyes, etc., taken on digital camera in A-Yard Program Office
by Sgt. Motta, and C.O. D. Deniz the 17 of July, 2012." (ECF Nos. 37, 40, 43, 46.). This language
does not change the Court's ruling.

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V. MOTION FOR EXTENSION OF TIME

On January 8, 2015, Plaintiff filed a motion seeking 30 to 45 days to respond to Defendants' motion for summary judgment. (ECF No. 59.) Subsequently, Plaintiff filed an opposition to the motion for summary judgment (ECF No. 60.) and an amended opposition (ECF No. 61.). To the extent that Plaintiff wishes to file one more amended opposition after receiving the documents in response to his Requests for Production Nos. 4 and 9, he will be granted leave to do so.

VI. ORDER

Accordingly, for the reasons stated, it is HEREBY ORDERED that:

1. Plaintiff's motion for discovery subpoenas is DENIED.
2. Plaintiff's motions to compel are GRANTED, in part, and DENIED, in part. Defendants shall produce responses to requests 4 and 9 or provide a further response supporting objections, within twenty (20) days of service of this Order.
3. Plaintiff's motion for disposition is DENIED as moot.
4. Plaintiff's motion of extension of time is GRANTED. Plaintiff has until **March 27, 2015** to file a supplemental opposition, if any, to Defendants' motion for summary judgment. Defendants to file a reply by **April 3, 2015**.

IT IS SO ORDERED.

Dated: January 27, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE