

1 Discovery in this action closed on August 10, 2014. (ECF No. 15.) The matter
2 initially was set for trial on April 26, 2016 (ECF No. 35), but was continued by agreement
3 of the parties to July 6, 2016 due to the unavailability of defense counsel (ECF No. 70),
4 and trial eventually was vacated due to defense counsel's sudden and unexpected death
5 (ECF No. 79). No new trial date has been set.

6 Following the close of discovery, Plaintiff sought to reopen discovery through a
7 series of motions. (ECF Nos. 48, 58, 62, 63.) The first of these was denied on the ground
8 that Plaintiff failed to show he had pursued discovery with the requisite diligence. (ECF
9 No. 55.) On March 22, 2016, the Court issued a further minute order regarding the
10 specific discovery requests contained in Plaintiff's motions. (ECF No. 66.) Therein, the
11 parties were ordered to meet and confer and attempt to resolve, without Court
12 intervention, issues regarding Plaintiff's access to his own medical records. Defense
13 counsel was ordered to provide to the Court, for in camera review, law enforcement
14 records relating to the incident at issue and certain medical records concerning detainee
15 Jackson. The parties were ordered to appear telephonically at a discovery dispute
16 conference on March 31, 2016.

17 On March 24, 2016, defense counsel responded to the minute order stating that,
18 despite a diligent effort to comply, no responsive documents were identified. (ECF No.
19 68.) However, defense counsel later notified the Court that responsive law enforcement
20 documents had been identified and were being sent to the Court for in camera review.
21 The documents did not arrive prior to the March 31, 2016 conference.

22 At the conference, the Court denied Plaintiff's general discovery requests, in part
23 due to Plaintiff's lack of diligence as previously stated, and in part because some of the
24 requests, such as his request pursuant to the Freedom of Information Act, were legally
25 unfounded. Nevertheless, in order to ensure that potentially relevant evidence was
26 available for presentation at trial, the Court addressed Plaintiff's more specific requests
27 regarding his own medical records, Jackson's medical records, and law enforcement
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1 records regarding the incident at issue. These requests are discussed in more detail
2 below.

3 Following the conference, Plaintiff filed a motion requesting the Court provide him
4 with documents denied him by Defendants. (ECF No. 74.) Defendants filed objections
5 (ECF No. 76), and Plaintiff filed a response (ECF No. 77).

6 **II. PLAINTIFF'S ACCESS TO HIS OWN MEDICAL RECORDS**

7 At the telephonic discovery dispute conference, the Court addressed Plaintiff's
8 claimed lack of access to his complete medical record. Despite Plaintiff having received
9 voluminous medical records from defense counsel, there seemed to be some confusion
10 amongst the parties as to what, precisely, constituted Plaintiff's medical record and what
11 that record should contain. Defense counsel was ordered to confer with the Department
12 of State Hospitals and Coalinga State Hospital to determine whether Plaintiff had
13 received all of his medical records. To the extent he had not, defense counsel was
14 ordered to provide such records to Plaintiff. Plaintiff was afforded until April 13, 2016 to
15 notify the Court of his dissatisfaction, if any, with defense counsel's response.

16 Defense counsel later advised the Court that Plaintiff believed his medical records
17 to be complete, aside from photographs of his injuries that Plaintiff thought should be
18 contained therein. However, according to defense counsel and Coalinga State Hospital,
19 Plaintiff's medical records contain no photographs. Plaintiff has not indicated to the Court
20 any dissatisfaction regarding these records, aside from his request for photographs. The
21 Court notes that photographs of Plaintiff's injuries are contained in law enforcement
22 records and are discussed below. Accordingly, the Court views this issue as having been
23 resolved.

24 **III. LAW ENFORCEMENT RECORDS AND PHOTOGRAPHS**

25 Defendants submitted for in camera review law enforcement records regarding
26 the incident at issue and accompanying photographs of Plaintiff and inmate Jackson
27 following the assault.

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1 The Court has reviewed the photographs and determined that they are relevant to
2 Plaintiff's case. The Court sees no reason why the photographs should not be produced
3 to Plaintiff. Defendants will be ordered to do so.

4 The Court also has reviewed the law enforcement records pertaining to the
5 assault on Plaintiff by detainee Jackson. These consist of incident reports and
6 supplemental incident reports from the Department of State Hospitals' Coalinga Police
7 Services. The reports are investigatory in nature. The records are minimally relevant to
8 this action in that they primarily contain various eyewitness accounts of the incident
9 between Plaintiff and Jackson. However, it is undisputed that Jackson assaulted Plaintiff
10 at Coalinga State Hospital on April 27, 2013. The details of the assault are not
11 particularly relevant to Plaintiff's claims.

12 The primary disputed issue in this action is whether Defendants knew or had
13 reason to know, prior to the assault, that Jackson presented a danger to other detainees
14 at Coalinga State Hospital. There is nothing in the law enforcement records to indicate
15 Defendants – or for that matter, other staff – had such knowledge. Indeed, several
16 witness statements tend to contradict Plaintiff's contentions that Jackson was a known
17 risk. There is some discussion in the records concerning an Interdisciplinary Note
18 regarding general statements of frustration made by Jackson on April 4, 2013 as
19 overheard by detainee Sam Consiglio. However, the records indicate that Consiglio did
20 not report these statements to staff. Additionally, Plaintiff has identified Consiglio as a
21 voluntary witness in this action and the Court has granted Plaintiff's motion to make
22 Consiglio available to testify at trial. Accordingly, Plaintiff may establish these facts
23 through Consiglio's own testimony.

24 Finally, the Court notes that the law enforcement records contain a wealth of
25 information that is confidential in nature (full names, birth dates, social security numbers,
26 and other personal identifying information regarding hospital staff and detainees) or
27 information that could jeopardize institutional safety and security and the investigatory
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1 process (confidential, and somewhat sensitive statements made by detainees to law
2 enforcement).

3 In light of the foregoing, the Court will not order Defendants to produce these
4 investigatory records to Plaintiff. The records have minimal relevance and are unlikely to
5 be of much, if any, benefit to Plaintiff. On the other hand, disclosure has the
6 disadvantage of exposing sensitive statements made in confidence to law enforcement
7 to Plaintiff and, potentially, other detainees at Coalinga State Hospital. In these
8 circumstances, the balance weighs against disclosure. See Sanchez v. City of Santa
9 Ana, 936 F.2d 1027, 1033–34 (9th Cir. 1990) (“To determine whether the information
10 sought is privileged, courts must weigh the potential benefits of the disclosure against
11 the potential disadvantages. If the latter is greater, the privilege bars discovery.”)

12 **IV. DETAINEE JACKSON’S MEDICAL RECORDS**

13 Plaintiff contends that Jackson’s medical records will reflect (1) that Jackson had
14 a history of threatening other detainees at Coalinga; (2) that Jackson had a history of
15 attacking “whites,” and (3) that Jackson had a history of violence, generally. Defendants
16 contend that Jackson’s medical records do not support these contentions.

17 The Court has conducted an in camera review of the records and agrees with
18 Defendants. There is no record in the medical file, including the Interdisciplinary Notes
19 referenced by Plaintiff, of Jackson having threatened other detainees. Although there is
20 a single Interdisciplinary Note from March 10, 2013 indicating that Jackson and his peers
21 were engaged in a loud verbal dispute, there is no indication that the dispute involved
22 threats and, in any event, the note reflects that Jackson exited the room and no further
23 incident was noted.

24 The only other indications of violence contained in the medical file are the passing
25 references to Jackson’s underlying offenses and his disciplinary actions while
26 incarcerated. This information, although potentially relevant,¹ already was made
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28 ¹ The Court notes that this information is presently the subject of a motion in limine. (ECF No. 69.)

1 available to Plaintiff through Defendant's motion for summary judgment. (ECF No. 23-7.)

2 No greater detail regarding these incidents is contained in the medical records.

3 Accordingly, the Court finds no basis for disclosure of Jackson's medical records.

4 **IV. PLAINTIFF'S MOTION FOR DOCUMENTS**

5 Following the telephonic discovery dispute conference, Plaintiff filed a motion
6 requesting that the Court provide him with documents denied him by Defendants.
7 Plaintiff states that the motion is filed in compliance with the April 13, 2016 deadline for
8 alerting the Court to deficiencies in Defendants' production of documents following the
9 conference. He provides a lengthy list of discovery items he wishes to receive, including
10 photographs, specified portions of Jackson's medical records, internal administrative
11 directives and investigatory reports, emails, and other notes and exchanges by and
12 between various personnel.

13 As Plaintiff acknowledges in his response to Defendants' objections (ECF No. 77),
14 his motion misapprehends the Court's ruling. The Court required only that defense
15 counsel ensure that Plaintiff had a complete copy of his own medical records. (ECF No.
16 70.) Plaintiff raises no objections in this regard.

17 To the extent Plaintiff seeks additional discovery not already addressed herein,
18 his request will be denied. The Court notes that much of the information sought by
19 Plaintiff, particularly that pertaining to events after the assault at issue here, has no
20 apparent relevance. In any event, the Court already has twice denied Plaintiff's
21 wholesale requests to reopen discovery. Plaintiff provides no basis for revisiting those
22 decisions.

23 **V. CONCLUSION AND ORDER**

24 Based on the foregoing, it is HEREBY ORDERED that:

- 25 1. Defendants shall, within twenty-one (21) days of the date of this order,
26 produce to Plaintiff all photographs associated with the Department of
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State Hospitals' Coalinga Police Services investigation into the April 27, 2013 incident at issue in this case; and

2. Plaintiff's motion requesting the Court provide documents denied him by Defendants is DENIED.

IT IS SO ORDERED.

Dated: May 4, 2016

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE