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

BRUCE DWIGHT SUTTON,	)	Case No.: 1:13-cv-1344 - AWI- JLT
Plaintiff,	)	
v.	)	ORDER DENYING PLAINTIFF’S MOTION TO
	)	COMPEL FURTHER RESPONSES TO
	)	DISCOVERY REQUESTS
MANAGEMENT & TRAINING	)	
CORPORATION,	)	(Doc. 53)
Defendant.	)	
	)	

Plaintiff Bruce Dwight Sutton asserts Defendant Management & Training Corporation (“MTC”) operates the correctional facility in which Plaintiff is incarcerated. Plaintiff alleges MTC is responsible for his exposure to, and contraction of, Coccidioidomycosis, commonly known as “Valley Fever.” In the matter pending before the Court, Plaintiff seeks to compel further discovery responses to 34 requests for production of documents related to his claims. (Doc. 53.) MTC objects to the request for additional discovery, reporting that it “has produced all responsive documents . . . which included over 2700 pages of policies, minutes from meetings, administrative appeals, construction documents, and emails.” (Doc. 54 at 10.)

The parties filed their “Joint Statement Re: Discovery Disagreement” in compliance with Local Rule 251 on January 21, 2015. (Doc. 54.) The Court heard the oral arguments of the parties on January 28, 2015. For the following reasons, Plaintiff’s motion to compel is **DENIED**.

///

1 **I. Background and Procedural History**

2 Plaintiff initiated this action by filing a complaint against MTC on August 22, 2013. (Doc. 1.)  
3 Plaintiff alleges MTC held a contract with the United States of America to operate Taft Correctional  
4 Institution, and MTC’s “officers, agents and/or employees negligently and recklessly exposed” Plaintiff  
5 to Valley Fever at the correctional facility. (Doc. 1 at 2, ¶ 2.) According to Plaintiff, MTC was “on  
6 notice of the risk of harm from cocci and failed to take actions to protect Plaintiff from that harm.” (*Id.*  
7 at 6, ¶ 16.) Specifically, Plaintiff alleges:

8 [He] was not provided any special protective breathing masks or other devices, and to  
9 his knowledge there was no special air conditioning equipment employed by the facility  
10 to filter out the dust occurring in the local environment. Nor was there any prohibition  
11 of outdoor activities during dusty conditions. Nor was anything done to keep the dust  
that forms that basis of the facility covered with grass or shrubs. Nor was that dust ever  
watered down or oiled down. Nor were inmates kept inside during windy conditions.  
As a result of these errors, Plaintiff contracted Cocci.

12 (*Id.* at 11-12, ¶ 41.) Plaintiff reports he was diagnosed with Valley Fever shortly after arriving at Taft  
13 C.I. in November 2011, and alleges that “[a]s a result of [the] valley fever infection, Plaintiff will  
14 require lifetime medical supervision, treatment, and in all likelihood, medication.” (*Id.* at 12, ¶¶42, 47.)  
15 Defendant MTC filed its answer to Plaintiff’s complaint on September 19, 2013. (Doc. 14.)

16 The Court entered its Scheduling Order in this action on January 8, 2014. (Doc. 25.) Pursuant  
17 to that Order, non-expert discovery was to be concluded no later than December 1, 2014. (*Id.* at 1.)  
18 However, on November 25, 2014, the parties requested the deadlines ordered by the Court be extended,  
19 because there were several outstanding discovery requests and Defendant had produced over 1,000  
20 documents that Plaintiff had not been able to review. (Doc. 46.) The Court amended the Scheduling  
21 Order to allow an extension of time for the filing of non-dispositive motions, but did not extend the  
22 deadline for non-expert discovery. (Doc. 51.)

23 **II. Preliminary Observations**

24 Despite the Court’s explicit order that no discovery motions may be filed without authorization  
25 of the Court, Plaintiff completely ignored his obligation and filed the motion without any explanation  
26 attempting to justify his actions. The scheduling order was explicit that,

27 No written discovery motions shall be filed without the prior approval of the assigned  
28 Magistrate Judge. A party with a discovery dispute must first confer with the opposing  
party in a good faith effort to resolve by agreement the issues in dispute. If that good  
faith effort is unsuccessful, the moving party promptly shall seek a telephonic hearing

1 with all involved parties and the Magistrate Judge. It shall be the obligation of the  
2 moving party to arrange and originate the conference call to the court.

3 (Doc. 25 at 4.)

4 Likewise, throughout the joint statement, when setting forth the grounds for disagreement,  
5 Plaintiff omits the fact that Defendant provided supplemental responses to a number of the requests  
6 and, seemingly, appears to believe that he can proceed based upon his disagreement with the initial  
7 response without regard for the supplemental responses. Finally, the Court is stunned by what appears  
8 to be a multitude of frivolous arguments, i.e., “If MTC undertook no efforts to combat the spread of  
9 cocci at TCI, MTC should so state.” (Doc. 52 at 41.) Clearly, the fact that a defendant does not possess  
10 responsive documents does not equate to an admission that it took no action. Even if a defendant does  
11 not have responsive documents *because* it took no action, this does not mean that the request for  
12 production of documents is converted to an interrogatory wherein the defendant is obligated to make a  
13 written explanation of its failure to act. If an admission is sought, a plaintiff is must propound requests  
14 for admissions under Fed. R. Civ. P. 36. Likewise, if a defendant attests it has no responsive  
15 documents, insisting to the contrary without providing supporting evidence, is insufficient.

16 Though the conduct of this motion causes the Court grave concern, it will, nonetheless, allow it  
17 to proceed. However, counsel is strongly admonished in future to comply with all orders of the Court  
18 and should not expect any further leniency.

19 **III. Legal Standards Governing Discovery**

20 The scope and limitations of discovery are set forth by the Federal Rules of Civil Procedure. In  
21 relevant part, Rule 26(b) states:

22 Unless otherwise limited by court order, parties may obtain discovery regarding any  
23 nonprivileged matter that is relevant to any party’s claim or defense – including the  
24 existence, description, nature, custody, condition, and location of any documents or  
25 other tangible things . . . For good cause, the court may order discovery of any matter  
26 relevant to the subject matter involved in the accident. Relevant information need not be  
27 admissible at the trial if the discovery appears reasonably calculated to lead to the  
28 discovery of admissible evidence.

27 Fed. R. Civ. P. 26(b). Relevant evidence is defined as “evidence having any tendency to make the  
28 existence of any fact that is of consequence to the determination of the action more probable or less

1 probable than it would be without the evidence.” Fed. R. Evid. 401.

2 **IV. Discussion and Analysis**

3 A party may request documents “in the responding party’s possession, custody, or control.”  
4 Fed. R. Civ. P. 34(a)(1). Similarly, a party may serve a request “to permit entry onto designated land or  
5 other property possessed or controlled by the responding party, so that the requesting party may  
6 inspect, measure, survey, photograph, test, or sample the property . . .” Fed. R. Civ. P. 34(a)(2). A  
7 request is adequate if it describes items with “reasonable particularity;” specifies a reasonable time,  
8 place, and manner for the inspection; and specifies the form or forms in which electronic information  
9 can be produced. Fed. R. Civ. P. 34(b). Thus, a request is sufficiently clear if it “places the party upon  
10 ‘reasonable notice of what is called for and what is not.’” *Kidwiler v. Progressive Paloverde Ins. Co.*,  
11 192 F.R.D. 193, 202 (N.D. W. Va. 2000) (quoting *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408,  
12 412 (M.D.N.C. 1992)); *see also* Schwarzer, Tashima & Wagstaffe, *California Practice Guide: Federal*  
13 *Civil Procedure Before Trial* (Rev. #1 2011) Discovery, para. 11:1886 (“the apparent test is whether a  
14 respondent of average intelligence would know what items to produce”).

15 The responding party must respond in writing and is obliged to produce all specified relevant  
16 and non-privileged documents, tangible things, or electronically stored information in its “possession,  
17 custody, or control” on the date specified. Fed. R. Civ. P. 34(a). Actual possession, custody or control  
18 is not required. “A party may be ordered to produce a document in the possession of a non-party entity  
19 if that party has a legal right to obtain the document or has control over the entity who is in possession  
20 of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620 (N.D. Cal. 1995). Such documents  
21 include documents under the control of the party’s attorney. *Meeks v. Parson*, 2009 U.S. Dist. LEXIS  
22 90283, 2009 WL 3303718 (E.D. Cal. September 18, 2009) (involving a subpoena to the CDCR); *Axler*  
23 *v. Scientific Ecology Group, Inc.*, 196 F.R.D. 210, 212 (D. Mass. 2000) (A “party must produce  
24 otherwise discoverable documents that are in his attorneys’ possession, custody or control.”).

25 In the alternative, a party may state an objection to a request, including the reasons. Fed. R.  
26 Civ. P. 34(b)(2)(A)-(B). When a party resists discovery, he “has the burden to show that discovery  
27 should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”  
28 *Oakes v. Halvorsen Marine Ltd.*, 189 F.R.D 281, 283 (C.D. Cal. 1998) (citing *Nestle Food Corp. v.*

1 *Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 104 (D.N.J. 1990)). Boilerplate objections to a request for a  
2 production are not sufficient. *Burlington Northern & Santa Fe Ry. v. United States Dist. Court*, 408  
3 F.3d 1142, 1149 (9th Cir. 2005).

4 If a party “fails to respond that inspection will be permitted - or fails to permit inspection - as  
5 requested under Rule 34,” the propounding party may make a motion to compel production of  
6 documents. Fed. R. Civ. P. 37(a)(3)(B)(iv). Further, “an evasive or incomplete disclosure, answer, or  
7 response must be treated as a failure to disclose, answer or respond.” Fed. R. Civ. P. 37(a)(4). “The  
8 moving party bears the burden of demonstrating ‘actual and substantial prejudice’ from the denial of  
9 discovery.” *Branch v. Umphenour*, 2014 U.S. Dist. LEXIS 109288 at \*10 (E.D. Cal. Aug. 7, 2014)  
10 (citing *Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

11 **A. Request for Production Set One, No. 3:** Any and all documents which refer to Taft CI  
12 Policy re: Personal Protective Equipment dated March 17, 2009.

13 Defendant objected to this request, asserting it “is vague, ambiguous, and overly broad as to the  
14 term ‘refer to,’” and “is overly broad as to time period.” (Doc. 54 at 10.) Further, Defendant contends  
15 Plaintiff’s request for all documents relating to the policy “is overly broad because personal protective  
16 equipment (PPE) includes equipment that has nothing to do with Valley Fever.” (*Id.*) Defendant notes  
17 that “latex gloves [for] inmates who are employed as painters, or slip resistant footwear for inmates  
18 who are janitors” are PPE, but “have nothing to do with this lawsuit.” (*Id.* at 11; Doc 52-1 at 3.)

19 On the other hand, Plaintiff asserts that Defendant’s response to the discovery request was  
20 insufficient because there is a factual dispute regarding whether masks were available to inmates.  
21 (Doc. 54 at 11.) According to Plaintiff, “Defendant maintains that masks were ‘readily available,’”  
22 while he “adamantly state[s] that masks were not available.” (*Id.*) Plaintiff contends that “Defendant  
23 refuses to provide any emails or correspondence related to whether masks were requested by or offered  
24 to inmates or whether, as it relates to cocci, this policy was ever implemented.” (*Id.*)

25 Significantly, as Defendant argues, the request for production of any and all documents related  
26 to the PPE policy appears overbroad, as the policy covered PPE for activities and equipment not related  
27 to this lawsuit. Defendant produced documents related to “the following inmate work related activities:  
28 Horticulture, Janitor-Housing Unit, Painters, Welders, and Wheels Powder Coating; the N95 Mask

1 Clearance Packet and Procedures; Collateral Duty Safety Officer (COSO) Guidelines; and TCI Policy  
2 5A: Inmate Work and Performance Pay.” (Doc. 54 at 11.) Plaintiff has not demonstrated how this  
3 response is insufficient. To the extent Plaintiff sought specific information regarding masks, the  
4 request for production was not narrowly tailored but sought documents as to *all* PPE. Defendant’s  
5 objection that the request is overbroad is **SUSTAINED**. Therefore, Plaintiff’s request to compel further  
6 discovery responses to Request for Production Set One, No. 3 is **DENIED**.

7 **B. Request for Production Set One, No. 6:** Any and all DOCUMENTS which refer to the  
8 MTC Standard Operating Procedure re Treatment of Inmates with Cocci/Valley Fever (SOP-  
4002) dated 24 October 2007, and subsequent revisions.

9 Defendant produced the “Procedure re Treatment of Inmates with Cocci/Valley Fever (SOP-  
10 4002) dated October 2007” as part of its initial disclosures. (Doc. 54 at 12.) According to Plaintiff,  
11 “The policy states that “Inmate(s) who have a medical condition that puts them at risk for developing  
12 Coccidiomycosis . . . will be re-designated to a federal facility wherein this fungal infection/disease  
13 is not endemic. The Policy then sets out a criteria used to determine if the inmate should be  
14 transferred.” (*Id.* at 13.) Further, Plaintiff asserts: “the Policy mandates that “All positive Cocci tests  
15 will be reported to the Kern County Department of Pub. Health using the Confidential Morbidity  
16 Report form PM 110 (rev. 10/30/08).” (*Id.*)

17 Through this request for production, Plaintiff seeks information regarding “who developed this  
18 policy or determined its criteria . . . and what information was relied on when the policy was drafted.”  
19 (Doc. 54 at 13.) Specifically, Plaintiff seeks to learn why race was not included in the list of criteria,  
20 because Plaintiff believes race “is the greatest indicator of a likelihood to acquire the illness.” (*Id.*) In  
21 addition, Plaintiff reports MTC did not provide any completed Confidential Morbidity Report forms.  
22 (*Id.*) Plaintiff argues he is “entitled to review any completed forms that were prepared by and  
23 submitted by MTC to Kern County,” because he was given “charts prepared by MTC that summarize  
24 the amount of cocci-infections at TCI, but were not provided the materials (such as these forms) used to  
25 compile those charts.” (*Id.*) In taking this position, however, Plaintiff fails to explain how the  
26 information he seeks is fairly encompassed by the request.

27 Defendant maintains that it has “produced all responsive documents in its custody, possession,  
28 and control.” (Doc. 54 at 14.) Although Plaintiff requested emails that reference SOP-4002, Defendant

1 reports that the policy “was established in 2007, and per the email retention policy, MTC does not  
2 retain emails from that time period.” (*Id.*) Defendant notes that Plaintiff deposed Warden Benov,  
3 Health Care Administrator L. Watts, and Dr. B. Rucker, and “addressed the issue of SOP 4002,  
4 including its creation, revision, et cetera.” (*Id.*) Further, MTC asserts “cocci serology/ morbidity  
5 reports for each inmate are maintained in inmate medical files and not in a central database,” as a result  
6 “it would be unduly burdensome to go through every inmate medical file and pull the serology reports  
7 and other cocci medical records.” (*Id.* at 15.) In addition, Defendant argues that pulling the requested  
8 reports is unduly burdensome because MTC does not have a list identifying “all the Valley Fever  
9 positive inmates whose medical files that would have to be obtained and combed through in order to  
10 pull these reports.” (*Id.*)

11 Plaintiff has not explained why Defendant’s objections to the request as overbroad and unduly  
12 burdensome are without merit. *See Grabek v. Dickinson*, 2012 WL 113799 at \*1 (E.D. Cal. Jan. 13,  
13 2012); *Waterbury v. Scribner*, 2008 WL 2018432 at \*1 (E.D. Cal. May 8, 2008) (“the moving party  
14 bears the burden of informing the court . . . for each disputed response, why defendant’s objection is  
15 not justified”). The mere fact that “Plaintiffs have no idea who developed this policy or determined its  
16 criteria” is hardly a basis for compelling an additional response. If this is Plaintiff’s true knowledge  
17 deficit, the Court has difficult understanding why he did not simply ask for this information in an  
18 interrogatory and, instead, sought it through a document request which was not designed to elicit this  
19 information.

20 On the other hand, there is no indication that the Confidential Morbidity Report forms “refer to”  
21 the policy—although they may have been completed and provided to the county as a *result of* MTC’s  
22 implementation of the policy.<sup>1</sup> Importantly, Defendant has asserted that it has produced all responsive  
23 documents and denies that it has any additional documents whether in paper or electronic form.<sup>2</sup>  
24 Plaintiff has not presented any evidence that any additional documents exist. Thus, Plaintiff’s request  
25 to compel the production of further documents responsive to the Request for Production Set One, No. 6  
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27 <sup>1</sup> Moreover, it appears that the Kern County Health Department, rather than MTC, may have prepared these reports.  
(Doc. 54 at 18)

28 <sup>2</sup> Defendant reports that “[c]ommunications with Kern County Public Health Department to report Valley Fever  
cases are typically telephonic.” (Doc. 54 at 25.)

1 is DENIED.

2 **C. Request for Production Set Two, No. 12:** Any and all DOCUMENTS that pertain to  
3 any effort by the Federal Bureau of Prisons (“BOP”) to determine the incidence of the disease  
4 Coccidioidomycosis (or “Valley Fever”) among the inmates or staff in its prison system at any  
5 time before December 2011.

6 Defendant objects to this request because it “assumes facts not in evidence.” (Doc. 54 at 15.)

7 Further, Defendant objects on the following grounds:

8 [The request] This request assumes facts not in evidence, is overly broad as to time period,  
9 and is unduly burdensome. This request is also vague and ambiguous as to the term  
10 “incidence,” as this term is not defined. Further this request is irrelevant to the extent that it  
11 seeks documents before MTC took over management of the premises in August 2007.  
12 Further, this request is overly broad if it requests medical records for any/all inmates who  
13 report to medical staff with potential symptoms of Coccidioidomycosis, as those records  
14 are maintained in patient medical records. Additionally, inmate medical records are  
15 protected by privacy rights and HIPAA protections. Finally, it also appears that this  
16 request was intended to be directed to the USA/BOP, and calls for speculation.

17 (*Id.*)

18 As an initial matter, the objection that an interrogatory “assumes facts not in evidence” is not  
19 proper in the course of discovery. *See Garcia v. Clark*, 2012 WL 1232315, at \*2 (E.D. Cal. Apr. 12,  
20 2012) (explaining “[a]ssuming facts not in evidence may be the basis for an objection during trial or  
21 some other evidentiary hearing,” but not during the course of discovery”); *see also Roesberg v. Johns-*  
22 *Manville Corp.*, 85 F.R.D. 292, 298 (D.C. Pa. 1980) (that a discovery request “may contain an element  
23 of conclusion is not objectionable on this ground alone”). Thus, Defendant’s objection is overruled.  
24 Nevertheless, MTC conducted “a diligent search regarding email communications and produced all  
25 responsive emails . . . and letters that it had with the BOP including correspondence to Dr. Pelton about  
26 Valley Fever and requests to BOP to consider race-exclusion policies.” (Doc. 54 at 18.) Further,  
27 Defendant reports that “most” of its communications occurred during monthly meetings with the BOP,  
28 and MTC “produced the minutes from all meetings from when MTC took over control of Taft in  
September 27, 2007 until present.” (*Id.*) As a result, Defendant maintains it produced “all documents  
that it has in its custody, possession, and control that were responsive to this request.” (*Id.* at 17.)

Although Plaintiff asserts he is entitled to any correspondence “[i]f the BOP corresponded with  
MTC about cocci at TCI (or vice-versa)” (Doc. 54 at 16), he has not presented any evidence that  
additional responsive documents exist. In *Evans v. Tilton*, the Court ruled the defendants had



1 adequately responded to a request for production where the plaintiff failed to present “a sufficient  
2 showing . . . which creates a reasonable belief that more information exists. *Id.*, 2010 U.S. Dist. LEXIS  
3 36953, at \*8 (E.D. Cal. March 18, 2010). Here, Plaintiff does no more than speculate that MTC has not  
4 produced all documents that relate to the efforts made by the BOP “to determine the incidence of the  
5 disease . . . among the inmates or staff in its prison system.” Accordingly, Plaintiff’s request to compel  
6 further responses from MTC to the Request for Production Set Two, No. 12 is **DENIED**.

7 **D. Request for Production Set Two, No. 13:** Any and all DOCUMENTS that pertain to  
8 collecting, analyzing, and/or reporting information concerning the incidence of the disease  
9 Coccidioidomycosis (or “Valley Fever”) among the inmates and/or the staff at Taft Correctional  
10 Institution (hereinafter “Taft CI”), from the time it first accepted federal inmates through 2011.

11 Defendant objects to this request on the grounds that it assumed facts not in evidence; overly  
12 broad in scope as related to the time period, and to the extent Plaintiff seeks “medical records for any/  
13 all inmates who report to medical staff with potential symptoms of Coccidioidomycosis;” unduly  
14 burdensome; and “vague and ambiguous as to the term ‘incidence.’” (Doc. 54 at 19.) For the reasons  
15 set forth above, this objection is overruled. *See Garcia*, 2012 WL 1232315 at \*2; *Roesberg*, 85 F.R.D.  
16 at 298. In addition, Defendant fails to explain how the request is unduly burdensome, and as a result  
17 this objection is overruled. *See Burlington Northern & Santa Fe Ry.*, 408 F.3d at 1149; *Oakes*, 179  
18 F.R.D. at 283.

19 Regardless, “Defendant maintains that it did a diligent search and produced all policies, emails,  
20 and minutes that are responsive to this request.” (Doc. 54 at 20.) Plaintiff presents no evidence to  
21 suggest that additional documents exist. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. Therefore,  
22 the request to compel further responses to Request for Production Set Two, No. 13 is **DENIED**.

23 **E. Request for Production Set Two, No. 14:** Any and all DOCUMENTS that pertain to  
24 the number of inmates actually receiving medical treatment for Coccidioidomycosis at Taft CI,  
25 from the time it first accepted federal inmates to the present, including but not limited to the costs  
26 for such medical treatment.

27 MTC objects to this request as “assum[ing] facts not in evidence, . . . overly broad, and unduly  
28 burdensome.” (Doc. 54 at 20.) For the reasons set forth above, these objections are overruled. *See*  
*Garcia*, 2012 WL 1232315 at \*2; *Roesberg*, 85 F.R.D. at 298; *Burlington Northern & Santa Fe Ry.*,  
408 F.3d at 1149. Defendant objects also that the “request is irrelevant to the extent that it seeks

1 documents before MTC took over management of the premises in August 2007;” “is compound and  
2 violates the privacy and HIPAA rights of third parties if medical records for individual inmates are  
3 sought.” (Doc. 54 at 20.) Further, Defendant reported that MTC “investigated and there are no  
4 responsive documents regarding the costs for medical treatment for these inmates, as the medical  
5 treatment is primarily provided at Taft by salaried medical staff.” (*Id.*) In a supplemental response,  
6 Defendant produced “the costs of diflucan (the primary treatment for Valley Fever) from August 20,  
7 2007 until September 29, 2014.” (*Id.* at 22; *see also* Doc. 54-1 at 17.)

8 Plaintiff argues the response is insufficient and asserts that he seeks information related to the  
9 costs of medical treatment. (*See* Doc. 54 at 21.) Moreover, it does not appear to seek medical records  
10 of inmates. Plaintiff asserts MTC’s response fails to “answer the question of how much MTC spent  
11 responding to cocci infections at TCI.” (*Id.*) Plaintiff explains:

12 GEO, the previous contractor, apparently had to purchase additional insurance as a result  
13 of the costs of responding to inmates with cocci infections. An Oct. 1, 2005 Report  
14 prepared by Abt Associates, Inc., titled “Contracting for Imprisonment in the Federal  
15 Prison System: Cost and Performance of the Privately Operated Taft Correctional  
16 Institution” . . . states, on page 56, that “GEO’s spending for insurance and self-  
17 insurance nearly tripled between FY 1998 and 2002, largely due to the unanticipated  
18 costs of treating patients and staff infected with Valley Fever, or Coccidioidomycosis, a  
sometimes deadly disease caused by an infectious fungus that is endemic in the San  
Joaquin Valley, where Taft is located. GEO’s contract assumes all costs for healthcare  
and it has experienced high costs of hospitalization and care. Because of the facility’s  
location, GEO has been unable to obtain third-party insurance that costs less than the  
cost of self- insurance, and GEO has consequently chosen to bear these costs on its  
own.”

19 (*Id.*) Plaintiff asserts it is reasonable to presume that “MTC made similar investigation and analysis as  
20 its predecessor, GEO,” and argues that he is “entitled to know what cost-estimates were made by MTC  
21 relating to Valley Fever.” (*Id.*)

22 However, it is not clear that the request would encompass documents related to a failed attempt  
23 to obtain health care insurance coverage even assuming MTC undertook the same efforts to obtain  
24 coverage as GEO. Notably, the request seeks information about “the number of inmates *actually*  
25 *receiving medical treatment.*” Exactly how this request, then, fairly seeks information about a failed  
26 attempt to buy insurance, is unclear.

27 Additionally, although the insurance coverage held by MTC’s predecessor, apparently, was  
28 impacted by the number of inmates contracting Valley Fever, there is no indication that MTC had the

1 same insurance carrier or suffered a similar cost increase for its insurance or that MTC even had  
2 insurance or ever wanted to have it. MTC asserts that it has not submitted written applications for  
3 insurance. (*See* Doc. 54-1 at 66, Gruenberg Decl. ¶ 11.) As such there is no evidence to support  
4 Plaintiff's speculation that there must be documents related to the number of inmates infected with  
5 Valley Fever and/or MTC's insurance costs. Moreover, Defendant maintains that it "does not have  
6 custody or control of any documents related to the cost of their outside care, as MTC pays for outside  
7 medical services in the aggregate and does not differentiate between Valley Fever medical expenses  
8 versus other types of medical expenses." (Doc. 54 at 22.) Thus, Plaintiff's motion to compel further  
9 production of documents in response to Request for Production Set Two, No. 14 is **DENIED**.

10 **F. Request for Production Set Two, No. 15:** Any and all DOCUMENTS that pertain to  
11 the number of federal inmates who were hospitalized (either at Taft CI's medical facilities or  
12 elsewhere) after contracting Coccidioidomycosis at Taft CI, from the time it first accepted  
13 federal inmates for incarceration to the present, including but not limited to the costs for such  
14 hospitalizations.

15 Defendant objected to this request for production as overly burdensome, speculative, and  
16 irrelevant because that the costs for other inmates are irrelevant to the plaintiff's claims. (Doc. 54 at  
17 23-24.) However, MTC "investigated and determined that only 3 inmates from Taft have been  
18 hospitalized after contracting Coccidioidomycosis." (*Id.* at 23.) In its supplemental response to the  
19 request, "Defendant produced the Medical/Surgical and Psychiatric Referral Requests for inmates who  
20 have been referred for outside care. Defendant also produced the monthly Performance Minutes from  
21 2007 until present, which identifies the number of inmates who have been transported for medical care  
22 each month." (*Id.* at 24.) Defendant notes that outside medical services are billed in the aggregate so  
23 the costs for the cost of the hospitalization of these three inmates re not ascertainable. However, at the  
24 hearing, Defendant agreed to confirm there was no separate line item related to the cost of  
25 hospitalization for these inmates. Defendant SHALL provide this confirmation no later than **February**  
26 **6, 2015**.

27 On the other hand, Plaintiff fails to explain how the supplemental response was nonresponsive  
28 or insufficient. Further, to the extent that the responses were insufficient, Plaintiff has not carried his  
burden to explain any "actual and substantial prejudice." *See Branch*, 2014 U.S. Dist. LEXIS 109288  
at \*10 (citing *Hallet*, 296 F.3d at 751 (9th Cir. 2002)). Thus, Plaintiff's request to compel further

1 responses to Request for Production Set Two, No. 15 is **DENIED**.

2 **G. Request for Production Set Two, No. 20:** Any and all DOCUMENTS that pertain to  
3 communications of any kind between any agency of the Department of Justice (including but  
4 not limited to the BOP) and the U. S. Centers for Disease Control and Prevention (CDC), and/or  
5 any of its divisions, such as the Division of Foodborne, Bacterial and Mycotic Diseases  
6 (DFBMD), that pertain or relate to the prevention, control, or management of the disease  
7 Coccidioidomycosis (or “Valley Fever”).

8 Defendant argues that this request is compound, unduly burdensome, and vague and ambiguous.  
9 (Doc. 54 at 25.) Also, Defendant argues this is overly broad and irrelevant “to the extent that it seeks  
10 documents before MTC took over management of the premises in August 2007.” (*Id.*) Finally, MTC  
11 asserts the request should have been directed to the BOP. (*Id.*)

12 In response, Plaintiff conceded that “MTC can limit its response to its period of operation.”  
13 (Doc. 54 at 26.) However, Plaintiff argues that Defendant failed to produce all the responsive  
14 documents because “MTC produce[d] a letter to the BOP dated January 13 2014 . . . regarding MTC’s  
15 request to change the at-risk of Valley Fever designation to include African Americans and Filipinos,”  
16 and letter indicated it was “a follow up to MTC’s October 14, 2013 letter.” (*Id.*) Plaintiff asserts the  
17 letter from MTC to the BOP dated October 14, 2013, was not produced. (*Id.*) Also, Plaintiff seeks  
18 further information related to communications with “with the Kern County Department of Health for  
19 each cocci-infection at TCI,” arguing he is entitled to see any such “emails, letters, and completed  
20 forms” reporting Valley Fever cases. (*Id.*)

21 Defendant reports that MTC “did a diligent search regarding email communications and  
22 produced all responsive emails.” (Doc. 54 at 27.) MTC supplemented its responses to this request  
23 “with emails and letters that it had with BOP, including but not limited to correspondence to Dr. Pelton  
24 about Valley Fever and requests to BOP to consider race-exclusion policies.” (*Id.*, citing Patrick Decl.  
25 ¶ 5.) Defendant maintains that its response was sufficient because MTC “produced all responsive  
26 documents in its custody, possession, and control.” (*Id.* at 26.)

27 As an initial matter, it is unclear whether Defendant’s supplemental response included the letter  
28 dated October 14, 2013. On the other hand, MTC is not an administrative agency. *See Edison v.*  
*United States*, 2013 U.S. Dist. LEXIS 15631 at \*3 (E.D. Cal. Feb. 4, 2013). Similarly, the Kern  
County Department of Health is not an agency of the Department of Justice or the U. S. Centers for

1 Disease Control and Prevention (CDC). Although Plaintiff wants communications between MTC and  
2 the BOP, and MTC and the County Department of Health, such documents are not encompassed in the  
3 request for communications “between any agency of the Department of Justice ... and the U. S. Centers  
4 for Disease Control and Prevention (CDC), and/or any of its divisions.” Moreover, Plaintiff has not  
5 presented any evidence that further documents between an agency of the Department of Justice and any  
6 division of the CDC are in the care, custody, or control of MTC. Accordingly, Plaintiff’s request to  
7 compel further responses to the Request for Production Set Two, No. 20 is **DENIED**.

8 **H. Request for Production Set Two, No. 23:** Any and all DOCUMENTS that pertain to  
9 the number of administrative tort claims presented by or filed by federal inmates that allege they  
10 contracted the disease Coccidioidomycosis (or “Valley Fever”) as a result of their incarceration  
11 at Taft CI.

12 Defendant asserts that this request also should have been directed to the Federal Bureau of  
13 Prisons. (Doc. 54 at 28.) On the other hand, Plaintiff asserts:

14 Early in this litigation, counsel for MTC argued that MTC should be dismissed because of  
15 purported non-compliance with the PLRA. The Court ordered MTC to provide its  
16 grievance procedures for Tort claims, and MTC did so. Each of the three plaintiffs initially  
17 filed the informal grievance with their counselor at TCI, per MTC’s grievance policy.  
18 Presumably, others did so as well. If MTC is asserting that no inmate ever filed a  
19 grievance with MTC relating to cocci, MTC should so state. If not, MTC should produce  
20 the copies of the grievances. Moreover, MTC produced a document of performance  
21 meetings in 2008 that states that “A total of 50 Administrative Remedies were filed for the  
22 reporting period. Twenty one for UDC matters and 28 for medical. One was closed -  
23 granted; one was closed - denied, and two were rejected.” (MTC 2200). Plaintiff is entitled  
24 to know if these, or other administrative claims, were related to the spread of cocci at TCI.

25 (*Id.* at 28.) In response, Defendant asserts that “Plaintiff is confusing government tort claims with  
26 administrative appeals.” (*Id.* at 29.) Indeed, government tort claims must be “presented in writing to  
27 the appropriate Federal agency . . .” 28 U.S.C. § 2401(b). As such, any government tort claims would  
28 have been filed with the Bureau of Prisons, not MTC.

29 Furthermore, Defendant asserts that “[n]o government tort claims were filed with MTC, nor  
30 does MTC receive copies of any tort claims that Plaintiff may have filed with Bureau of Prisons in  
31 connection with the Federal Tort Claims Act.” (Doc. 54 at 29.) As a result, MTC reports “[t]here are  
32 no documents responsive to plaintiff’s request in defendant’s possession, custody, or control.” (*Id.* at  
33 28.) This response is sufficient, and Plaintiff has not identified any evidence suggesting the contrary.  
34 *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. Therefore, Plaintiff’s request to compel responses to

1 Request for Production Set Two, No. 23 is **DENIED**.

2 **I. Request for Production Set Two, No. 24:** Any and all DOCUMENTS that pertain to  
3 the number of tort suits and/or civil rights suits filed by federal inmates that allege they  
4 contracted the disease Coccidioidomycosis (or “Valley Fever”) as a result of their incarceration  
5 at Taft CI.

6 Defendant objects that Plaintiff “assumes facts not in evidence” with this request. (Doc. 54 at  
7 29.) As explained above, this is not a proper objection in the course of discovery, and this objection is  
8 overruled. *See Garcia*, 2012 WL 1232315, at \*2; *Roesberg*, 85 F.R.D. at 298. MTC objects also to the  
9 request as overly broad and unduly burdensome because Plaintiff “seeks ‘any and all documents’  
10 pertaining to any lawsuit for an indefinite time period.” (*Id.*) Nevertheless, Defendant conducted an  
11 investigation and identified cases brought by Fekrat, Edison, Hammond, Aluya, Sutton, Nuwintore,  
12 Healy, and Mercado. (Doc. 54 at 29-30.) According to MTC, “Litigation Coordinator D. Patrick is  
13 apprised of lawsuits involving inmates who are or were at Taft, and he is not aware of any other  
14 lawsuits involving Valley Fever other than the lawsuits identified in Defendant’s response.” (*Id.* at 30,  
15 citing Patrick Decl. ¶ 9.) Specifically, Mr. Patrick reports:

16 I am made aware of all lawsuits that are filed relating [to] incidents that occurred while  
17 inmate are or were inmates at Taft. I am aware that the following lawsuits have been filed  
18 against MTC regarding Valley Fever at Taft: *Edison v.[.] United States of America, et al.*,  
19 *Fekrat v. United States of America, et al.* (closed), *Hammond v. MTC*, *Aluya v. MTC*,  
*Sutton v. MTC*, *Mercardo v. United States of America*, and *Healy v. Taft Federal*  
*Correctional Institution, et al.* *Healy* was recently dismissed. I have been informed about  
the lawsuit *Walker v. GEO*. However, it is my understanding that this involved an  
incident relating to Valley Fever which occurred before MTC took control operation of  
Taft. I am not aware of any other lawsuits.

20 (Doc. 54-1 at 69-70, Patrick Decl. ¶ 9.) Again, Plaintiff presents no evidence that Defendant has not  
21 been candid and that further information exists. Therefore, Plaintiff’s request to compel further  
22 responses to Request for Production Set Two, No. 24 is **DENIED**.

23 **J. Request for Production Set Two, No. 28:** Any and all DOCUMENTS that pertain to  
24 any measures implemented, or considered for implementation, to prevent inmates from being  
infected with Valley Fever at Taft CI from 2004 to the present.

25 In its initial response to this request, MTC referred Plaintiff to documents already in his  
26 possession, including the “Standard Operating Procedure: Intake Screening (SOP-14 4005) (MTC  
27 0724-0730); Procedure re Treatment of Inmates with Cocci/Valley Fever (SOP-4002) dated October  
28 2007 (MTC 0022-0026); [and] American Lung Association, Facts about Cocci. (MTC 0001-0003).”

1 (Doc. 54 at 31.) In addition, Defendant provided copies of minutes from performance meetings where  
2 Valley Fever was discussed. (*Id.* at 32.)

3 Plaintiff reports that Defendant “‘padded’ its responses” by providing “13 identical copies of  
4 the minutes of one meeting” and failing to “provide the minutes from the following performance  
5 meetings: April, June, July and November, 2009; March, May, October, November, December, 2010;  
6 ALL months in 2011 except November and December; and May, 2013.” (Doc. 54 at 32.) MTC reports  
7 this was an unintentional error, and admits its error in omitting the minutes. (*Id.*) At the hearing,  
8 Plaintiff’s request noted that the minutes had been produced but MTC admitted also that the April 2009  
9 minutes were not. MTC committed to producing them. Thus, the April 2009 minutes **SHALL** be  
10 produced via e-mail **no later than February 2, 2015**. Thus, the motion to compel further responses is  
11 **DENIED**.

12 **K. Request for Production Set Two, No. 31:** Any and all DOCUMENTS related to the  
13 annual cost - per inmate - of ...treating an inmate infected with disseminated  
14 Coccidioidomycosis (or “Valley Fever”), while that inmate is incarcerated by the BOP.

15 Defendant asserts that this request “assumes facts not in evidence, is overly broad as to time  
16 period and facility, and unduly burdensome.” (Doc. 54 at 33.) In addition, MTC argues this request  
17 violates the HIPAA and privacy rights of third parties to the extent any “medical records for individual  
18 inmates are sought.” (*Id.*)

19 For the reasons set forth above, Defendant’s objection that the request “assumes facts not in  
20 evidence” is overruled. *See Garcia*, 2012 WL 1232315, at \*2; *Roesberg*, 85 F.R.D. at 298. Further,  
21 Defendant fails to explain how the request is unduly burdensome. Because the Court cannot speculate  
22 as to the grounds upon which this objection is based, the objection is overruled. *See Burlington*  
23 *Northern & Santa Fe Ry.*, 408 F.3d at 1149; *Oakes*, 179 F.R.D. at 283.

24 On the other hand, Plaintiff does not address Defendant’s argument that the request is overly  
25 broad because it includes prison facilities that are not operated by MTC, and in regions where Valley  
26 Fever is not endemic. The Court finds the objection is well-taken and it is sustained. Moreover,  
27 Defendant identified “the number of individuals who were diagnosed with Valley Fever at Taft through  
28 the infectious disease reports,” as well as “the costs of diflucan . . . from August 20, 2007 until  
September 29, 2014.” (Doc. 54 at 33.) Defendant asserts that it does not have “custody or control of

1 any documents related to the cost of . . . outside care, as MTC pays for outside medical services in the  
2 aggregate and does not differentiate between Valley Fever medical expenses versus other types of  
3 medical expenses.” (*Id.* at 33-34.) Plaintiff presents no evidence that additional documents exist. *See*  
4 *Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. At the hearing, Defendant clarified that it had no further  
5 responsive documents except for minutes related to an April 2009 meeting which they **SHALL** provide  
6 via e-mail **no later than February 2, 2015**. Consequently, Plaintiff’s request to compel further  
7 responses to Request for Production Set Two, No. 31 is **DENIED**.

8 **L. Request for Production Set Two, No. 34:** Any and all DOCUMENTS evidencing any  
9 claims by inmates related to Coccidioidomycosis (or “Valley Fever”) at Taft CI.

10 Defendant objects that this request is “vague and ambiguous, and overly broad as to the term  
11 ‘all documents evidencing any claims,’ and is therefore unduly burdensome.” (Doc. 54 at 34.) The  
12 Court agrees. For example, Plaintiff could be seeking information made on claims made by inmates to  
13 medical personnel regarding their symptoms, or claims made to prison staff regarding the need for  
14 medical treatment, government tort claims filed with the BOP, administrative grievances filed with  
15 MTC, or claims filed in either the state or federal courts. Thus, the request is not sufficiently clear to  
16 place MTC upon “reasonable notice” of the type of “claims” Plaintiff seeks information regarding. *See*  
17 *Kidwiler v. Progressive Paloverde Ins. Co.*, 192. F.R.D. at 202; *see also* Fed. R. Civ. P. 34(b)  
18 (requiring that a document request describe items with “reasonable particularity”). Plaintiff’s request to  
19 compel further discovery in response to Request for Production Set Two, No. 34 is **DENIED**.

20 **M. Request for Production Set Two, No. 36:** Any and all DOCUMENTS related to any  
21 ground disturbing activities that took place at Taft CI between 2010 and the period of Plaintiffs  
22 [sic] incarceration, including, but not limited to, plumbing or other maintenance and gardening  
practices.

23 Initially, Defendant objected the request, in part, as “vague and ambiguous at to the term[]  
24 ‘ground disturbing activities,’” because the term was not defined. (Doc. 54 at 35.) In response,  
25 Plaintiff clarified that “[g]round breaking activities” included “plumbing, gardening and ‘discing’  
26 (looking for contraband under soil).” (*Id.*) Also, Plaintiff reported “several witnesses have discussed  
27 work on a plumbing drain on or around 2012 which required the disruption of soil.” (*Id.*) Plaintiff  
28 argues he is “entitled to know what ground-disturbing activities took place on site (to determine if they



1 were done in a fashion that did, or did not, prevent inmates from infection.” (*Id.* at 35-36.)

2 In a supplemental response, MTC “produced documents and emails in its control regarding the  
3 water pipeline project,” which MTC asserts “was the only construction project that involved the  
4 breaking of soil.” (Doc. 54 at 36.) According to Defendant, these documents establish that “MTC had  
5 a very limited role in construction projections—mainly providing gate clearance to BOP contractors.”  
6 (*Id.*) Defendant maintains that “it is not the custodian of records for the U.S. Bureau of Prisons,” and  
7 Plaintiff’s request should have been directed to the BOP. (*Id.*)

8 Plaintiff acknowledges “some responsive documents were received,” and fails to explain how  
9 the supplemental response was nonresponsive or otherwise insufficient. The Court cannot manufacture  
10 arguments on Plaintiff’s behalf related to the sufficiency of the discovery response. *See Womack v.*  
11 *Virga*, 2011 WL 6703958, at \*11 (E.D. Cal. Dec. 21, 2011) (explaining that the party seeking to  
12 compel discovery “has the burden of informing the court why . . . the defendants’ responses are  
13 deficient”); *Walker v. Karelas*, 2009 WL 3075575, at \*1 (E.D. Cal. Sep. 21, 2009) (at a minimum, the  
14 moving party plaintiff has the burden of informing the court . . . why he believes the defendant’s  
15 responses are deficient”). Further, Plaintiff identifies no evidence from which the Court may determine  
16 that additional responsive documents exist. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8.

17 At the hearing, Plaintiff’s counsel complained that Defendant’s response failed to identify the  
18 relevant Bates-numbered documents. Thus, **no later than February 6, 2015**, Defendant’s counsel  
19 **SHALL** identify to Plaintiff’s counsel the specific documents at issue by providing the Bates numbers  
20 of these documents.

21 Therefore, the request to compel further responses to Request for Production Set Two, No. 36 is  
22 **DENIED**.

23 **N. Request for Production Set Two, No. 37:** Any and all DOCUMENTS, including all  
24 contracts, permit applications, and responses thereto, related to any instance in which YOU or a  
private contractor at YOUR discretion broke the soil at the Taft CI facility.

25 As with the related prior request, Plaintiff fails to explain how the supplemental response to the  
26 request, which included the documents and emails related to the water pipeline project at Taft CI, was  
27 not responsive or otherwise insufficient. *See Womack*, 2011 WL 6703958, at \*11; *Evans*, 2010 U.S.  
28 Dist. LEXIS 36953, at \*8. For the reasons set forth as to Request No. 36, the request to compel further

1 responses to Request for Production Set Two, No. 37 is **DENIED**.

2 **O. Request for Production Set Two, No. 38:** Any and all DOCUMENTS and materials  
3 related to the watering of the grass that covered the grounds at Taft CI between 2010 and the  
4 period of Plaintiffs [sic] incarceration at Taft CI, including but not limited to, materials related  
5 to the implementation, or ceasement, of ground- watering activities at Taft CI.

6 Defendant objected, “This request assumes facts not in evidence, and is vague and ambiguous.”  
7 (Doc. 54 at 37.) For the reasons set forth above, these objections are overruled. *See Garcia*, 2012 WL  
8 1232315 at \*2; *Roesberg*, 85 F.R.D. at 298; *Burlington Northern & Santa Fe Ry.*, 408 F.3d at 1149. In  
9 addition, Defendant objected “th[e] request is overly broad in time period and seeks information not  
10 reasonably calculated to lead to the discovery of admissible evidence.” (*Id.* at 37.) Given that the  
11 evidence related to watering relates to methods that may be taken to prevent Valley Fever, Defendant’s  
12 objection on the grounds of relevancy is overruled.

13 Nevertheless, Plaintiff reports that “MTC identified some documents that relate to MTC’s  
14 decision to cease watering the grass at TCI.” (Doc. 54 at 38.) Plaintiff argues the discovery produced  
15 does not include “any internal documents relying on the materials [MTC] provided, or used in  
16 determining whether to continue providing the ground-cover (an effective method to combat the spread  
17 of cocci-infections.” (*Id.* at 38.) According to Plaintiff, “Someone at MTC made a decision, and  
18 informed others, to cease watering the grounds,” and he is “entitled to see all documents and emails  
19 relating to that decision.” (*Id.*) However, Defendant has explained that “most prison administrative  
20 matters are no communicated via email” or in writing, but were rather “discussed over the phone and  
21 during meetings with the Bureau of Prisons.” (*Id.*) MTC produced the minutes from all such meetings,  
22 and conducted “a diligent search regarding email communications.” (*Id.*, citing Patrick Decl. ¶ 5.)

23 Although Plaintiff speculates there must be more documents, he has not identified any evidence  
24 supporting this assertion. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. Therefore, Plaintiff’s  
25 request to compel further responses to Request for Production Set Two, No. 38 is **DENIED**.

26 **P. Request for Production Set Two, No. 39:** Any and all DOCUMENTS including all  
27 contracts and permit applications and responses related to any instance in which MTC (or an  
28 inmate working at MTC’s discretion) or a private contractor broke the soil at Taft CI.

As with Request Nos. 36 and 37, Plaintiff fails to explain how Defendant’s supplemental  
response, which included the documents and emails related to the water pipeline project at Taft CI, was

1 not responsive or otherwise insufficient. *See Womack*, 2011 WL 6703958, at \*11; *Walker*, 2009 WL  
2 3075575, at \*1. For the reasons set forth above, the request to compel further responses to Request for  
3 Production Set Two, No. 39 is **DENIED**.

4 **Q. Request for Production Set Two, No. 40:** Any and all DOCUMENTS and materials  
5 related to any construction on the grounds at Taft CI between 2010 and the period of Plaintiffs  
6 [sic] incarceration at Taft CI. This shall include all contract and permit applications and  
responses related to any instance in which MTC (or an inmate working at MTC's direction or a  
private contractor broke the soil at the Taft CI facility).

7 Again, Plaintiff fails to explain how Defendant's supplemental response was not sufficient. *See*  
8 *Womack*, 2011 WL 6703958, at \*11; *Walker*, 2009 WL 3075575, at \*1. Plaintiff does not present any  
9 evidence that any construction occurred at Taft CI other than the water pipeline project, or that creates a  
10 reasonable belief that more information exists. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. For  
11 the reasons set forth above, the request to compel further responses to Request for Production Set Two,  
12 No. 40 is **DENIED**.

13 **R. Request for Production Set Two, No. 42:** Any and all DOCUMENTS and materials  
14 related to efforts by MTC to reduce the spread of infection of Coccidioidomycosis ("cocci") at  
Taft CI.

15 Defendant objects to this request as vague and ambiguous, overly broad as to time period, and  
16 unduly burdensome. (Doc. 54 at 40.) Further, Defendant asserted the request was overbroad "if it  
17 requests medical records for any/all inmates who report to medical staff with potential symptoms of  
18 Coccidioidomycosis, as those records are maintained in patient medical records," and that the "inmate  
19 medical records are protected by privacy rights and HIPAA protections." (*Id.* at 40-41.) Without  
20 waiving these objections, Defendant produced the "MTC, Taft CI Handbook, dated 2014," and directed  
21 Plaintiff to documents already in his possession, including the Standard Operating Procedure (SOP-  
22 4002), Treatment of Inmates with Cocci/Valley Fever, Standard Operating Procedure (SOP-4005),  
23 Intake Screening (MTC 0724-0730), and "Taft Correctional Institution Infectious Disease Report From  
24 September 2007 until December 2011." (*Id.* at 41.)

25 Plaintiff concedes the time was overbroad, and responded that "MTC can limit its responses to  
26 the time period in which it operated TCI." (Doc. 54 at 41.) In addition, Plaintiff asserts that the  
27 documents produced "establish that those sought by the Request exist – for example: [] The Standard  
28 Operating Procedure is a final document that describes how TCI is to be run by MTC. MTC

1 presumably developed the SOP based on suggestions, drafts, and discussions.” (*Id.*) Further, he asserts  
2 “The ‘Taft Correctional Institution Infectious Disease Report From September 2007 until December  
3 2011 (MTC 0731-782)’ is a purported summary of the amount of inmates who became infected on a  
4 monthly bases . . . based on some other information (presumably the Kern County Department of  
5 Health cocci forms) . . .” (*Id.* at 42.) Plaintiff contends he is entitled to see any drafts and documents  
6 used to prepare the final documents produced by MTC. (*Id.* at 41-42.)

7 In response, Defendant asserts Plaintiff is “seeking documents related to the [Standard  
8 Operating Procedure] that no longer exist.” (Doc. 54 at 42.) MTC reports that “SOP-4002 was  
9 established in 2007, and per the email retention policy [to keep emails 180 days], MTC does not retain  
10 emails from that time period.”<sup>3</sup> (*Id.*; Doc. 54-1 at 69, Patrick Decl. ¶ 4.) Further, Defendant reports  
11 Plaintiff has “several prior versions of the SOP,” which Plaintiff does not dispute. (*Id.*)

12 Finally, it is not clear how the medical records of any inmates would be responsive to the  
13 request for “efforts by MTC” to reduce the spread of Valley Fever. Although, the medical records  
14 would describe the treatment received by the inmates, they would not identify policies or practices  
15 implemented by MTC to reduce the infection rate of others.

16 Because Defendant reports it has produced all response documents (Doc. 54 at 42), and Plaintiff  
17 has not presented evidence that creates a reasonable belief that more information exists, the request to  
18 compel further responses to Request for Production Set Two, No. 42 is **DENIED**.

19 **S. Request for Production Set Two, No. 47:** All DOCUMENTS, including  
20 correspondence and emails, between MTC and the USA and/or the Federal Bureau of Prisons  
21 which references or relates to “Valley Fever”, “Coccidiomycosis” or “cocci” between 2007  
22 and the present.

22 Defendant asserts this request “assumes facts not in evidence, is overly broad as to time period  
23 and scope of documents, and is overly burdensome.” (Doc. 54 at 44.) Despite these objections,  
24 Defendant “produced the Infectious Disease Reports from September 2007 to July 2013,” and reports it  
25 has “requested the Infectious Disease Reports from July 2013 to present, and will supplement this  
26 response upon receipt.” (*Id.*) In the supplemental response, MTC produced “emails and letters that it  
27

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28 <sup>3</sup> Notably, emails from 2007 related to the establishment of the Standard Operating Procedure would not have been  
subject to a litigation hold, as no actions had been filed against MTC at that time.

1 had with BOP, including correspondence to Dr. Pelton about Valley Fever and requests to BOP to  
2 consider race-exclusion policies.” (*Id.*) Therefore, Defendant asserts the “response was adequate  
3 because [MTC] produced all documents in its custody, possession, and control.” (*Id.*)

4 On the other hand, Plaintiff asserts Defendant’s “Response was insufficient[,] [f]or the same  
5 reasons identified in the discussion of Request for Production No. 12.” (Doc. 54 at 44.) Plaintiff  
6 acknowledges that MTC produced “emails from 2011 from MTC to the BOP related to the cocci  
7 problem at TCI,” but asserts MTC did not produce “[a] privilege log or other documents identifying  
8 other documents that were not produced.” (Doc. 54 at 16.) However, Defendant did not assert any  
9 privilege exists in response to the request for production, and Plaintiff does not explain how the  
10 documents produced as part of MTC’s supplemental response were not sufficient to respond to Request  
11 No. 47. *See Womack*, 2011 WL 6703958, at \*11; *Walker*, 2009 WL 3075575, at \*1. Moreover, there  
12 is no evidence to suggest Defendant was not telling the truth that it has produced all documents  
13 responsive to this request in its care, custody and control. Therefore, the request to compel further  
14 responses to Request for Production Set Two, No. 47 is **DENIED**.

15 **T. Request for Production Set Two, No. 48:** All DOCUMENTS, including  
16 correspondence and emails, between MTC and any other governmental agency, including, but  
17 not limited to, the Kern County Department of Health which references or relates to “Valley  
18 Fever”, “Coccidioidomycosis” or “cocci” between 2007 and the present.

18 MTC objects, in part, to this request for production as “overly broad as to . . . [the] scope of  
19 documents.” (Doc. 54 at 44.) The Court agrees. Because Plaintiff seeks any and all documents which  
20 even mention Valley Fever, Coccidioidomycosis, or cocci, the request does not give MTC “reasonable  
21 notice” of the documents requested by Plaintiff. *See Kidwiler*, 192. F.R.D. at 202; *see also* Fed. R. Civ.  
22 P. 34(b) (requiring that a document request describe items with “reasonable particularity”). Rather, the  
23 request is so broad that compliance with the request would place a significant burden upon MTC.  
24 Moreover, production would be unduly burdensome to the extent that Plaintiff seeks medical records  
25 and the cocci forms filed with or by the Kern County Department of Public Health. Defendant reports  
26 that it does not have a list “of all the Valley Fever positive inmates whose medical files that would have  
27 to be obtained and combed through in order to pull these reports.” (Doc. 54 at 15.) Defendant asserts  
28 the “cocci serology/morbidity reports for each inmate are maintained in inmate medical files and not in

1 a central database.” (*Id.*) As a result, MTC would be required “to go through every inmate medical file  
2 and pull the serology reports and other cocci medical records.” (*Id.*) Given the number of inmates  
3 housed at Taft CI, and such a task is unduly burdensome.

4 Accordingly, Defendant’s objections that the request for production is overly broad and unduly  
5 burdensome are **SUSTAINED**, and Plaintiff’s request to compel further responses to Request for  
6 Production Set Two, No. 48 is **DENIED**.

7 **U. Request for Production Set Two, No. 49:** All DOCUMENTS, including  
8 correspondence and emails, between MTC and any private entity which references or relates to  
9 “Valley Fever”, “Coccidiomycosis” or “cocci” between 2007 and the present.

10 Defendant objected to this request, arguing: “This request assumes facts not in evidence<sup>4</sup>, is  
11 overly broad as to time period and scope of documents, and is overly burdensome. This request is  
12 vague and ambiguous as to the term ‘private entity.’ Further this request is irrelevant to the extent that  
13 it seeks documents before 2007.” (Doc. 54 at 46.) Defendant explains that it is unclear “what private  
14 entities plaintiff is referring to.” (*Id.*) On the other hand, Plaintiff contends: “If MTC spoke with no  
15 one, ever, about valley fever at TCI, MTC should so state.<sup>5</sup> If it is stating that the correspondence was  
16 via email, and those emails have been destroyed, MTC should so state.” (Doc. 54 at 46.)

17 Significantly, this request suffers the same infirmity as Request No. 48. Because Plaintiff seeks  
18 any and all documents which even mention Valley Fever, Coccidiomycosis, or cocci, between MTC  
19 and any private entity— without clarifying if this is limited to organization— the request does  
20 sufficiently identify documents requested by Plaintiff. *See Kidwiler*, 192. F.R.D. at 202; *see also* Fed.  
21 R. Civ. P. 34(b). Defendant’s objections that the request for production is overly broad and unduly  
22 burdensome are **SUSTAINED**, and Plaintiff’s request to compel further responses to Request for  
23 Production Set Two, No. 49 is **DENIED**.

24 **V. Request for Production Set Two, No. 51:** All complaints, including BOP forms,  
25 submitted, filed, or provided to YOU or any governmental entity by inmates at TAFT CI which  
26 references or relates to “Valley Fever”, “Coccidiomycosis” or “cocci.”

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27 <sup>4</sup> As explained above, this is not a proper objection in the course of discovery, and this portion of the objection is  
28 overruled. *See Garcia*, 2012 WL 1232315, at \*2; *Roesberg*, 85 F.R.D. at 298.

<sup>5</sup> As noted above, if Plaintiff wished explanation or an admission, he should have propounded an interrogatory or a  
request for admission.

1 MTC argues, “This request vague and ambiguous, and overly broad as to the term ‘all  
2 complaints,’ and is therefore unduly burdensome.” (Doc. 54 at 47.) Similar to Plaintiff’s request No.  
3 34, this request does not give MTC “reasonable notice” of the type of “complaints” sought by Plaintiff.  
4 *See Kidwiler v. Progressive Paloverde Ins. Co.*, 192. F.R.D. at 202; *see also* Fed. R. Civ. P. 34(b)  
5 (requiring that a document request describe items with “reasonable particularity”). For example,  
6 Plaintiff could be seeking information on complaints made by inmates *to* medical personnel regarding  
7 their symptoms, complaints made *about* medical personnel for inadequate medical assistance, any  
8 administrative complaints filed with MTC, or complaints filed in the state and/or federal courts.  
9 Indeed, in response to the request, Defendant identified complaints filed in this Court and produced  
10 inmate grievances raising Valley Fever. (*See* Doc. 54 at 47.)

11 Given the lack of clarity, Defendant’s objections that the request is vague and ambiguous, and  
12 overbroad are **SUSTAINED**, and Plaintiff’s request to compel further discovery in response to Request  
13 for Production Set Two, No. 51 is **DENIED**.

14 **W. Request for Production Set Two, No. 53:** All DOCUMENTS which references or  
15 relates to the issuance of diflucan (or flucanazole) at TAFT CI, including the company or entity  
16 from which it was obtained, and at what expense.

17 Initially, Defendant objected to this request for production. (Doc. 54 at 48.) Plaintiff responded  
18 that “MTC spends a great deal of money on Fluconazole, which is prescribed to inmates afflicted with  
19 disseminated Valley Fever,” and argued he is “entitled to know how much is spent on this medication.”  
20 (*Id.*) Accordingly, Defendant supplemented its response and “produced the document regarding the  
21 ordering of diflucan from August 20, 2007 until September 29, 2014.” (*Id.*)

22 Plaintiff does not assert the supplemental response was nonresponsive. (*See* Doc. 54 at 48.)  
23 The Court will not speculate as to the sufficiency of the response. *See Womack*, 2011 WL 6703958, at  
24 \*11; *Walker v. Karelas*, 2009 WL 3075575, at \*1. Furthermore, Plaintiff presents no evidence that  
25 additional responsive documents exist. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8. Therefore,  
26 Plaintiff’s request to compel further document production in response to Request for Production Set  
27 Two, No. 53 is **DENIED**.

28 **X. Request for Production Set Two, No. 54:** All DOCUMENTS, including  
correspondence and emails, between MTC and its predecessor, the GEO Group which  
references or regards “Valley Fever”, “Coccidiomycosis” or “cocci” at TAFT CI.

1 MTC objects, “This request assumes facts not in evidence, is overly broad as to time period and  
2 scope of documents, and is overly burdensome.” (Doc. 54 at 49.) Objections notwithstanding,  
3 Defendant reports that it “investigated and there are no responsive documents that were retained from  
4 when MTC took control from GEO in 2007.” (*Id.*)

5 Because Defendant maintains that there are no responsive documents, Plaintiff’s motion to  
6 compel responses to Request for Production Set Two, No. 54 is **DENIED**.

7 **Y. Request for Production Set Two, No. 56:** All minutes or agendas from any meetings  
8 attended by YOU in which the topic of “Valley Fever”, “Coccidiomycosis” or “cocci” at  
TAFT CI was discussed.

9 In its supplemental discovery response, Defendant produced a “full set of minutes from 2007 to  
10 present to Plaintiff.” (Doc. 54 at 50.) However, MTC indicated at the hearing, it failed to produce the  
11 minutes from the April 2009 meeting and committed to doing so **no later than February 2, 2015**.

12 Because MTC complied with the discovery request and it does not appear there are any outstanding  
13 responsive documents, Plaintiff’s request to compel further responses to Request for Production Set  
14 Two, No. 56 is **DENIED**.

15 **Z. Request for Production Set Two, No. 60:** All applications for insurance presented to  
16 any insurer by YOU which mention “Valley Fever”, “Coccidiomycosis” or “cocci”.

17 Defendant sought clarification from Plaintiff regarding “which insurance documents Plaintiff  
18 was seeking . . . , as Defendant was unclear what precise documents Plaintiff was looking for or how  
19 they were relevant to the case.” (Doc. 54 at 52.) However, MTC reports that Plaintiff did not provide  
20 any clarification. (*Id.*) Nevertheless, Defendant’s counsel “investigated the matter and was informed  
21 that MTC does not submit a written application for insurance.” (*Id.*, citing Doc. 54-1 at 66, Gruenberg  
22 Decl. ¶ 11.) Because MTC has not submitted written applications for insurance, there are no  
23 documents to be produced, and Plaintiff’s request to compel responses to Request for Production Set  
24 Two, No. 60 is **DENIED**.

25 **AA. Request for Production Set Two, No. 61:** All policies of insurance which may provide  
26 YOU with coverage for any claims arising out of an incidence of “Valley Fever”,  
“Coccidiomycosis” or “cocci” at TAFT CI.

27 Defendant objected to this request, and noted that it sought clarification as to what was being  
28 sought. However, rather than providing clarification, the current motion was filed. At the hearing,



1 counsel clarified that the request was directed “primarily” at health care insurance coverage but agreed  
2 that this request could have applied to liability coverage as well. However, because MTC interpreted  
3 this, fairly, as a request for the information related to health care coverage and Plaintiff failed to  
4 provide clarification that he also sought liability coverage, and MTC has documented that it has no  
5 such health care coverage for the costs associated with the treatment of Valley Fever, the request is  
6 **DENIED.**

7 **BB. Request for Production Set Four, No. 62:** All DOCUMENTS that reference or regard  
8 any steps taken by, or considered by, MTC to address the incidence of “Valley Fever”,  
9 “Coccidiomycosis” or “cocci” at TAFT CI.

10 Defendant argues this request is duplicative of No. 42, which sought documents “related to  
11 efforts by MTC to reduce the spread of infection” of Valley Fever at Taft CI. (Doc. 54 at 55; *see also*  
12 *id.* at 40.) MTC notes that it “produced policies, minutes, emails, administrative grievances, and other  
13 documents showing how MTC responded to address Valley Fever.” (*Id.*) According to Defendant,  
14 “Plaintiff has not demonstrated how Defendant’s responses are insufficient.” (*Id.*) The Court agrees.

15 The requests are substantively similar, and require the same documents to be produced, such as  
16 the MTC Taft Handbook, Standard Operating Procedures, and guidelines for “Treatment of Inmates  
17 with Cocci/Valley Fever.” Given the duplicative nature of the request, Plaintiff’s motion to compel  
18 further responses to Request for Production Set Four, No. 62 is **DENIED.** *See, e.g., Reese v. Basi,*  
19 2014 U.S. Dist. LEXIS 78307, at \*19 (E.D. Cal. June 6, 2014) (denying a request to compel the  
20 production of documents “as duplicative”).

21 **CC. Request for Production Set Four, No. 63:** All DOCUMENTS that reference or regard  
22 dust control measures taken by, or considered by, MTC to address the incidence of “Valley  
23 Fever”, “Coccidiomycosis” or “cocci” at TAFT CI.

24 Defendant objects to this request on several grounds, but directed Plaintiff “to the Taft  
25 Correctional Institution Admission and Orientation Program Lecture- Medical, which was produced in  
26 response to Plaintiffs [sic] Third Set of Request for Production of Documents.” (Doc. 54 at 55-56.)  
27 MTC noted these documents “includ[e] several policies that relate to dust.” (*Id.* at 56.)

28 Plaintiff does not explain how this response was nonresponsive or deficient. *See Womack, 2011*  
WL 6703958, at \*11 (the party seeking to compel discovery “has the burden of informing the court  
why . . . the defendants’ responses are deficient”). To the extent that the responses were insufficient,

1 Plaintiff met his burden of explaining any “actual and substantial prejudice” from the denial of further  
2 discovery. *See Branch*, 2014 U.S. Dist. LEXIS 109288 at \*10 (citing *Hallet*, 296 F.3d at 751 (9th Cir.  
3 2002)). Finally, this request is substantively the same as the prior requests made by Plaintiff regarding  
4 efforts undertaken by MTC to address and prevent the spread of Valley Fever at Taft CI.<sup>6</sup> Accordingly,  
5 Plaintiff’s motion to compel further responses to Request for Production Set Four, No. 63 is **DENIED**

6 **DD. Request for Production Set Four, No. 64:** All DOCUMENTS that reference or regard  
7 the availability of masks for inmates at TAFT CI.

8 Previously, MTC produced the “N95 Mask Clearance Packet and Procedures.” (Doc. 54 at 11.)  
9 Responding to this request, Defendant asserts Plaintiff seeks documents that are overbroad in scope and  
10 “irrelevant to the extent that it seeks documents [related to time] before MTC took over management of  
11 the premises in August 2007.” (*Id.* at 56.) Plaintiff has not carried his burden to explain why  
12 Defendant’s objections to the request as overbroad and irrelevant are without merit. *See Waterbury*,  
13 2008 WL 2018432 at \*1 (“the moving party bears the burden of informing the court . . . for each  
14 disputed response, why defendant’s objection is not justified”). These objections are sustained.

15 In addition, Defendant directed Plaintiff to other documents previously produced, including  
16 “The Taft Correctional Institution Admission and Orientation Program Lecture- Medical.” (Doc. 54 at  
17 57.) Plaintiff acknowledges that Defendant produced “TCI forms and instructions . . . as to how  
18 inmates could request various types of masks.” (*Id.*) There is nothing in the record that “creates a  
19 reasonable belief that more information exists. *See Evans*, 2010 U.S. Dist. LEXIS 36953, at \*8.

20 At the hearing, Plaintiff’s counsel asserted that this request should have generated production of  
21 receipts related to purchasing masks for inmates. However, in the meet and confer efforts, counsel  
22 never made this clarification and the request, as phrased, fails to alert MTC that cost information was  
23 being sought. Accordingly, Plaintiff’s motion to compel further responses to this request is **DENIED**.

24 **EE. Request for Production Set Four, No. 70:** All DOCUMENTS that reference or regard  
25 any grass cover, or decision to let grass die, on the grounds at TAFT CI.

26 At the hearing, Plaintiff’s counsel indicated that this dispute had been resolved and, therefore,  
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28 <sup>6</sup> Indeed, Plaintiff acknowledges the duplicative nature of the request by referring the Court to his arguments made  
in support of the Request No. 42, through which he sought all documents and materials “related to efforts by MTC to reduce  
the spread of infection of coccidioidomycosis.” (*See Doc. 54 at 40; id. at 56.*)

1 the motion as to this request is deemed **WITHDRAWN**.

2 **FF. Request for Production Set Four, No. 71:** All DOCUMENTS that reference or regard  
3 any detail, policy or program concerning inmates and activities which involve working with the  
4 soil or ground disruption including but not limited to groundskeeping and gardening.

5 Without waiving its objections in response to this request, MTC referred Plaintiff to “the Taft  
6 Correctional Institution Admission and Orientation Program Lecture-Medical,” which was produced  
7 previously. (Doc. 54 at 59.) Plaintiff argues the “reference to three pages of an orientation brochure is  
8 insufficient.” (*Id.* at 60.) Plaintiff asserts that through this request, he sought information regarding  
9 “what were given inmates that involved the disturbing of soil (such as gardening, plumbing, assistance,  
10 or discing, etc.)” (*Id.*) Further, Plaintiff sought documents identifying “what precautions were taken so  
11 that inmates involved in such activities would not get infected, or that the activities were done in a  
12 fashion to minimize the risk to others.” (*Id.*) According to Plaintiff, “Simply put – inmates cleaned the  
13 ground and were involved in maintaining the premises. MTC knows what inmates were instructed to  
14 do,” and he is “entitled to see what MTC did or did not do in relation to this hazardous activity.” (*Id.*)

15 Importantly, the request does not clearly include the information Plaintiff seeks. Further, this  
16 request is substantively duplicative to other requests Plaintiff made regarding “ground disruption” and  
17 “breaking the soil,” such as Request No. 36 for any documents “related to ground disturbing activities .  
18 . . including, but not limited to, plumbing or other maintenance and gardening practices.” (*See* Doc. 54  
19 at 35.) Finally, MTC asserts that it “has produced all responsive documents” (*id.* at 60), and there is no  
20 evidence in the record to suggest that further information exists. Therefore, Plaintiff’s motion to  
21 compel further responses to Request for Production Set Four, No. 71 is **DENIED**.

22 **GG. Request for Production Set Four, No. 73:** All DOCUMENTS that reference or regard  
23 the time an inmate would spend outside per day, on average, at TAFT CI.

24 Defendant objected to this request as “vague and ambiguous, . . . overly broad, and unduly  
25 burdensome.” (Doc. 54 at 61.) Also, Defendant objected that the information sought “is irrelevant to  
26 the extent that it seeks documents before MTC took over management of the premises in August 2007.”  
27 (*Id.*) Despite these objections, MTC reported that it found “no documents responsive to plaintiffs [sic]  
28 request.” (*Id.*)

29 Plaintiff asserts Defendant’s response was not sufficient, because there have been “[s]everal

1 studies . . . to determine the spread of cocci at prisons in the San Joaquin [sic] Valley [that] evaluated the  
2 amount of time an inmate spends each day outside.” (Doc. 54 at 61.) Plaintiff argues, “Either this  
3 information is available, or MTC never inquired.” (*Id.*)

4 Defendant supplemented its response “to refer to the inmate handbooks that says that the  
5 recreation department is open seven days a week, 0600-2030 hours, unless there is inclement weather.”  
6 (Doc. 54 at 62.) Defendant explained that Taft CI “is a low level facility,” and “there is not a strict  
7 schedule.” (*Id.* at 62.) The time spent outside by each inmate depends on job assignments, educational  
8 classes, and the time chosen to participate in outdoor recreation—and there is no “documentation of  
9 how much time an average inmate spends outside.” (*Id.* at 61-62.) Finally, MTC reports it “is not  
10 aware that any studies were conducted at its facility.” (*Id.* at 63.)

11 Plaintiff does not assert the supplemental response was nonresponsive, and does not identify  
12 any study undertaken at Taft CI that evaluated the time spent outside by inmates. (*See* Doc. 54 at 61-  
13 62.) Because it does not appear that additional responsive documents exist, Plaintiff’s request to  
14 compel further responses to Request for Production Set Four, No. 73 is **DENIED**.

15 **HH. Request for Production Set Four, No. 79:** All communications with any third parties,  
16 including the Kern County Department of Health related to “Valley Fever”,  
“Coccidiomycosis” or “cocci”.

17 MTC asserts this request is overly broad and “duplicative of prior requests for production of  
18 documents regarding this topic.” (Doc. 54 at 62.) As part of his second set of requests, Plaintiff  
19 previously sought correspondence and emails between MTC and any private entity and “any other  
20 governmental agency, including, but not limited to, the Kern County Department of Health which  
21 references or relates to “Valley Fever”, “Coccidiomycosis” or “cocci” between 2007 and the  
22 present.” (*See* Doc. 54 at 44-46.) Because the request is duplicative, and for the reasons set forth above  
23 related to Request Nos. 48 and 49, Plaintiff’s motion to compel further responses to Request for  
24 Production Set Four, No. 79 is **DENIED**.

25 **V. Conclusion and Order**

26 Based on the foregoing, the Court **ORDERS**:

- 27 1. Plaintiff’s Motion to Compel Defendants’ Response to Discovery (Doc. 53) is  
28 **DENIED**:

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2. Defendant **SHALL** provide written confirmation that was no separate line item related to the cost of hospitalization for the three inmates treated for Valley Fever **no later than February 6, 2015**;
3. **No later than February 2, 2015**, Defendant **SHALL** provide the minutes form the April 2009 meeting via e-mail to Plaintiff’s counsel;
4. **No later than February 6, 2015**, Defendant’s counsel **SHALL** identify to Plaintiff’s counsel the specific documents relevant to the water pipeline project at TCI by providing the Bates numbers of these documents;
5. The parties are reminded that **no future motion to compel in this case will be heard unless the parties fully comply with the scheduling order. (Doc. 25 at 4)**

IT IS SO ORDERED.

Dated: January 29, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE