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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DANA GRAY,

12 Plaintiff,

13 vs.

14 ROMERO, et al.,

15 Defendants.  
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1:13-cv-01473-DAD-GSA-PC

ORDER RESPONDING TO PLAINTIFF'S  
MOTION OF INQUIRY AND DENYING  
REQUEST FOR PROTECTIVE ORDER,  
WITHOUT PREJUDICE

(ECF No. 151.)

17 Dana Gray ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action  
18 pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff's Fourth Amended  
19 Complaint filed on September 21, 2015, against defendants Dr. V. Romero, Dr. A. Comelli,  
20 FNP N. Loadholt, Dr. C. Rebel, John Ziomek, DPM, and Dr. V. Mundunuri, on Plaintiff's  
21 medical claim under the Eighth Amendment. (ECF No. 45.)

22 On December 9, 2016, Plaintiff filed a motion of inquiry. (ECF No. 151.) Plaintiff also  
23 requested a protective order applicable to her entire C-File. (Id.)

24 **I. BACKGROUND**

25 This case is presently in the discovery phase.

26 On May 23, 2016, Plaintiff filed a motion to quash a subpoena by which defendant Dr.  
27 Rebel's counsel sought production of all of Plaintiff's medical records and her entire Central  
28 File (C-File) in the possession of the California Department of Corrections and Rehabilitation.

1 (ECF No. 81, 86-1, Ex. 1.) The then-assigned magistrate judge initially granted Plaintiff's  
2 motion to quash, finding her medical records to be irrelevant at that time in light of defendant  
3 Dr. Rebel's pending motion to dismiss based on the applicable statute of limitations. (ECF No.  
4 97.) However, the day prior to the issuance of that order, defendant Rebel filed a supplemental  
5 opposition to the motion to quash in which he argued that in opposing his pending motion to  
6 dismiss, Plaintiff had specifically relied on and attached some of her medical records. (ECF No.  
7 96.) Persuaded by this new argument, the magistrate judge vacated his prior order, found that  
8 Plaintiff's medical records "may be relevant" to disposition of the pending motion to dismiss,  
9 and denied Plaintiff's motion to quash the subpoena. (ECF No. 99 at 3.) The magistrate judge  
10 also concluded that Plaintiff had "waived any applicable privilege by: (1) placing her mental  
11 state at issue in her First Amendment Complaint; and (2) requesting damages for emotional  
12 injury." (*Id.*) On July 20, 2016, Plaintiff filed objections to the magistrate judge's order denying  
13 the motion to quash, as well as a motion to limit the scope of the subpoena issued for her  
14 central file and medical records. (ECF No. 102.)

15 On November 17, 2016, the Court issued an order construing Plaintiff's motion as a  
16 motion for reconsideration of the magistrate judge's order, granting the motion for  
17 reconsideration, and vacating the order denying Plaintiff's motion to quash. (ECF No. 147.)  
18 The Court ordered that "[n]o records shall be produced pursuant to the subpoena at issue absent  
19 further order of the court. (*Id.* at 8:7-8.)

## 20 **II. PLAINTIFF'S INQUIRY**

21 Plaintiff inquires as to extent of discovery that has been released to defendant Rebel.  
22 Specifically, Plaintiff requests a court order for defendant Rebel to reveal if he received  
23 Plaintiff's entire C-file or any part thereof.

24 Evidence on the Court's record shows that defendant Dr. Rebel did not receive any  
25 records from Plaintiff's C-File pursuant to Dr. Rebel's subpoena. On December 1, 2016,  
26 defendant Rebel filed a statement of compliance with the Court's November 16, 2016 order  
27 granting Plaintiff's request for reconsideration. (ECF No. 150.) In the statement, defendant  
28 Rebel asserted that "[u]pon receipt of this Court's November 16, 2016, Order, counsel for Dr.

1 Rebel contacted Second Image National concerning Dr. Rebel’s subpoena that was the subject  
2 of Plaintiff’s motion to quash and advised Second Image National to close Dr. Rebel’s record  
3 order[, and n]o additional records will be sought under this subpoena.” (Id. ¶2.) The statement  
4 of compliance also asserts that “Dr. Rebel and his counsel will not further pursue production of  
5 plaintiff’s Central file and psychiatric records for purposes of Dr. Rebel’s motion to dismiss,  
6 which has been fully briefed and submitted to this Court.” (Id. ¶3.)

7 In light of defendant Rebel’s statement filed on December 1, 2016, Plaintiff’s request  
8 for a court order for defendant Rebel to reveal if he received Plaintiff’s entire C-file or any part  
9 thereof is moot.

### 10 **III. REQUEST FOR PROTECTIVE ORDER – RULE 26(c)**

11 Rule 26(c)(1) of the Federal Rules of Civil Procedure provides, “A party or any person  
12 from whom discovery is sought may move for a protective order in the court where the action  
13 is pending . . . The court may, for good cause, issue an order to protect a party or person from  
14 annoyance, embarrassment, oppression, or undue burden or expense . . . .” Fed. R. Civ. P.  
15 26(c)(1). Options available to the court include, among others, “forbidding the disclosure or  
16 discovery; . . . [and] forbidding inquiry into certain matters, or limiting the scope of disclosure  
17 or discovery to certain matters.” Id. District courts are vested with broad discretion in  
18 determining whether a protective order is appropriate and, if so, what degree of protection is  
19 warranted. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36, 104 S.Ct. 2199 (1984); see also  
20 Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1211–12 (9th Cir. 2002).  
21 The party seeking to limit discovery has the burden of proving “good cause,” which requires a  
22 showing “that specific prejudice or harm will result” if the protective order is not granted. In re  
23 Roman Catholic Archbishop of Portland in Or., 661 F.3d 417, 424 (9th Cir. 2011) (citing Foltz  
24 v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003)).

25 Plaintiff’s request for a protective order states, in its entirety: “Plaintiff requests a  
26 protective order for her entire C-File.” (ECF No. 151.) Such a request, without more, is  
27 insufficient to establish good cause for the Court to issue a protective order. Plaintiff has the  
28 burden to show “that specific prejudice or harm will result” if the protective order is not

1 granted. Plaintiff must describe which specific documents, which types of document, and/or  
2 which types of information in her C-File would cause her harm if disclosed to Defendants or  
3 the public, and what specific prejudice or harm will result from disclosure.

4 Rule 26(b)(1) describes the scope of discovery allowed in general, as follows:

5 “Unless otherwise limited by court order, the scope of discovery is as follows:  
6 Parties may obtain discovery regarding any nonprivileged matter that is relevant  
7 to any party's claim or defense and proportional to the needs of the case,  
8 considering the importance of the issues at stake in the action, the amount in  
9 controversy, the parties' relative access to relevant information, the parties'  
10 resources, the importance of the discovery in resolving the issues, and whether  
11 the burden or expense of the proposed discovery outweighs its likely benefit.  
12 Information within this scope of discovery need not be admissible in evidence to  
13 be discoverable.” Fed. R. Civ. P. 26(b)(1).

14 Thus, Defendants are entitled to obtain relevant discovery<sup>1</sup> that is not privileged. There  
15 is no indication that Plaintiff's C-File only contains information that is not relevant or  
16 privileged. As such, Plaintiff's request for a protective order for “her entire C-File” is  
17 overbroad.

18 If Plaintiff seeks to assert a privilege as to any relevant information, she must identify or  
19 describe the privilege and specify what information falls under that privilege. For example, the  
20 Court advised Plaintiff in the November 16, 2016 order that “[a] psychotherapist-patient  
21 privilege exists under federal law, protecting ‘confidential communications between a licensed  
22 psychotherapist and her patients in the course of diagnosis or treatment’ from compelled  
23 disclosure under Rule 501 of the Federal Rules of Evidence[, and that o]ne asserting the  
24 privilege has the burden of showing that 1) the individual to whom the communication was  
25 made is a psychotherapist, 2) the communication to that psychotherapist were confidential, and  
26 3) the communications were made in the course of diagnosis or treatment.” (ECF No. 147 at  
27 4:17-5:2) (cites omitted). The Court decided that Plaintiff had not waived the psychotherapist-  
28 plaintiff privilege in this case as to “any and all communications documented in CDCR records  
... based upon the fourth amended complaint's tangential references to plaintiff's mental  
health or her seeking of emotional distress damages.” (*Id.* at 8:1-4.) However, the Court did

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<sup>1</sup> “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 40.

1 not suggest that the entire contents of Plaintiff's C-File were privileged or could be withheld  
2 from Defendants during discovery.

3 Based on these facts, Plaintiff has not shown good cause for the Court to issue a  
4 protective order. Therefore, Plaintiff's request shall be denied, without prejudice to renewal of  
5 the motion showing that specific prejudice or harm will result if the protective order is not  
6 granted as to specific, identified documents or information contained in her C-File.

7 **IV. CONCLUSION**

8 In light of the foregoing, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's motion of inquiry, filed on December 9, 2016, is resolved by this  
10 order; and  
11 2. Plaintiff's request for a protective order is denied, without prejudice.

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13 IT IS SO ORDERED.

14 Dated: December 21, 2016

/s/ Gary S. Austin  
15 UNITED STATES MAGISTRATE JUDGE  
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