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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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10 CURTIS RENEE JACKSON,

11 Plaintiff,

12 v.

13 D. MENDENHALL,

14 Defendant.
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Case No. 1:13-cv-01679-SAB-PC

ORDER DENYING PLAINTIFF'S
MOTION FOR SANCTIONS

(ECF No. 27)

16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C.
17 § 1983. The parties have consented to magistrate judge jurisdiction pursuant to 28 U.S.C. §
18 636(c). Pending before the Court is Plaintiff's motion for sanctions.

19 This action proceeds on Plaintiff's complaint against Defendant Correctional Officer
20 Mendenhall for use of excessive force. Plaintiff seeks monetary damages. On October 15, 2015,
21 Plaintiff filed a motion titled as "motion for contempt of court and sanctions" pursuant to Federal
22 Rule of Civil Procedure 11 and Local Rule 11-110.

23 Plaintiff seeks to an order imposing sanctions on counsel for Defendant because of his, in
24 Plaintiff's view, unauthorized access to his prison medical file. Plaintiff contends that
25 Defendant's use of his prison medical record violates his Fourth Amendment expectation of
26 privacy and the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, et. seq.
27 (HIPAA). Plaintiff specifically contends that defense counsel violated Rule 11(b) by improperly
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1 accessing his prison medical record during the discovery process.

2 Because Plaintiff is seeking monetary damages for Defendant’s alleged use of excessive
3 force, the Court finds that discovery of Plaintiff’s prison medical records is not in violation for
4 Rule 11(b)(1)-(4). By filing a complaint for monetary damages, Plaintiff has put his medical
5 condition at issue. Further, any opposition to discovery should have been addressed during
6 discovery in this action, which is closed.¹

7 Regarding Plaintiff’s HIPAA argument, Plaintiff is advised that federal courts have found
8 that HIPAA created no private right of action. U.S. v. Streich, 560 F.3d 926 (9th Cir.
9 2009)(“HIPAA does not provide any private right of action.”); Webb v. Smart Document
10 Solutions, LLC, 499 F.3d 1078, 1081 (9th Cir. 2007)(“HIPAA itself provides no right of
11 action.”); University of Colorado Hosp. v. Denver Publ’g Co., 350 F.Supp.2d 1142, 1145 (D.
12 Colo. 2004)(holding that HIPAA statutory text and structure display no intent to create a private
13 right of action, and noting that Act expressly provides a method for enforcing prohibitions, i.e.,
14 punitive fines and/or imprisonment, which indicates Congress did not intend to allow an
15 additional private remedy). Put another way, only the government can bring a claim against a
16 medical provider for violation of HIPAA.

17 Regarding Plaintiff’s Fourth Amendment claim, the Ninth Circuit has held that prisoners
18 do not have a constitutionally protected expectation of privacy in prison treatment records when
19 the state has a legitimate penological interest in access to them. Seaton v. Mayberg, 610 F.3d
20 530, 534-35 (9th Cir. 2010). Because Defendant has been sued for money damages for use of
21 excessive force on Plaintiff, the penological interest in access to Plaintiff’s prison medical
22 records is substantial. Plaintiff does not, therefore, have an expectation of privacy in his prison
23 medical records.

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28 ¹ On September 3, 2015, Defendant has filed a motion for summary judgment (ECF No. 24). On October 2, 2015,
Plaintiff filed opposition to the motion. (ECF No. 26).

