

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DIJON KINNEY,  
  
  Plaintiff,  
  
  v.  
  
S. FLORES,  
  
  Defendant.

CASE NO. 1:14-cv-00503-AWI-MJS (PC)  
  
**ORDER REGARDING DISCOVERY**  
  
**TWENTY (20) DAY DEADLINE FOR  
DEFENDANT’S PRODUCTION OF  
DOCUMENTS**

Plaintiff is a state prisoner proceeding in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendant Flores on Plaintiff’s Eighth Amendment claims.

**I. Procedural History**

On June 23, 2014, Plaintiff filed a first amended complaint. (ECF No. 9.) He alleged that, on August 14, 2012 a riot broke out in his recreation yard. Plaintiff was not involved. However, Plaintiff was one of several African-American inmates on a nearby basketball court who refused to prone out on the asphalt due to the heat. As a result, Plaintiff was forced by Defendant Flores to lie down/kneel down on the ground. The temperature was over 100 degrees and the ground was burning hot. Plaintiff was

1 required to kneel on the ground for over ninety minutes. He thereafter requested medical  
2 attention and Flores refused.

3 On July 1, 2014, the Court screened the complaint and found that it stated  
4 cognizable Eighth Amendment claims. (ECF No. 10.) Flores was served and answered  
5 on November 5, 2014. (ECF No. 18.) The Court issued a discovery and scheduling  
6 order, setting July 7, 2015 as the discovery cut-off and September 17, 2015 as the  
7 dispositive motion deadline. (ECF No. 20.) The discovery deadline later was extended to  
8 July 21, 2015 for the sole purpose of taking Plaintiff's deposition in Arizona. (ECF No.  
9 30.)

10 On July 10, 2015, Plaintiff filed a "Pitchess" motion seeking materials from  
11 Defendant's personnel file. (ECF No. 31.) The motion was denied on the ground that  
12 Pitchess is inapplicable in this civil proceeding and, in any event, the discovery cut-off  
13 had expired. (ECF No. 32.)

14 On August 3, 2015, Plaintiff filed a motion for a ninety day extension of the  
15 discovery deadline. (ECF No. 33.) He claimed that he did not know how to file motions or  
16 discovery requests, he was without legal assistance from an attorney or "jail house  
17 lawyer" during the discovery period, and he is pro se and thus unfamiliar with the laws  
18 and rules of the federal courts. The motion was denied for failure to show good cause or  
19 that he had pursued discovery with the requisite diligence during the discovery period.  
20 (ECF No. 35.)

21 On September 16, 2016, Defendant moved to modify the dispositive motion  
22 deadline. (ECF No. 36.) The motion was granted and the deadline was extended to  
23 October 2, 2015.

24 On October 2, 2015, Defendant filed a motion for summary judgment. (ECF No.  
25 37.) On January 15, 2016, after Plaintiff already had opposed the motion for summary  
26 judgment and filed his unauthorized surreply, Plaintiff moved "for a transcript of prior  
27 proceedings and all discovery of evidence." (ECF No. 46.) He sought a transcript of his  
28

1 deposition, "material evidence," video footage, and photographs. He did not seek to stay  
2 proceedings on the motion for summary judgment pursuant to Federal Rule of Civil  
3 Procedure 56(d). The Court denied the motion on the ground that good cause was not  
4 presented. (ECF No. 49.)

5 On February 29, 2016, Plaintiff filed another discovery motion. (ECF No. 51.) This  
6 time, Plaintiff did seek additional time under Rule 56(d). He sought the following  
7 discovery: his own deposition transcript, the final dispositions of investigations performed  
8 by the California Department of Corrections and Rehabilitation and the Office of the  
9 Inspector General, video footage of the incident, and photographs taken by medical  
10 staff. Defendant filed no opposition. On May 27, 2016, the Court denied the motion, once  
11 again because Plaintiff failed to show he diligently pursued discovery. (ECF No. 56.)

12 Nevertheless, to facilitate the efficient resolution of discovery issues and allow  
13 summary judgment and/or trial to proceed upon the consideration of all relevant  
14 evidence, the Court ordered as follows:

- 15 1. A telephonic discovery dispute conference was set for June 21, 2016.
- 16 2. The parties were ordered to meet and confer prior to the conference to attempt  
17 to resolve disputes regarding Plaintiff's deposition transcript, photo evidence,  
18 and video evidence.
- 19 3. Defendant was ordered to provide the following documents to the Court for in  
20 camera review: any and all documents in Defendant's possession, custody, or  
21 subject to his control relating to the investigation of the August 14, 2012  
22 incident by the California Department of Corrections and Rehabilitation and/or  
23 the Office of the Inspector General.
- 24 4. Defendant also was invited to submit a statement of objections to the release  
25 of such documents to Plaintiff and a draft protective order, if deemed  
26 necessary.

1 On June 23, 2016 Defendant filed objections to the order. (ECF No. 62.) On  
2 September 23, 2016, Defendant's motion for summary judgment was denied. (ECF No.  
3 68.) On October 19, 2016, the District Judge ruled on Defendant's objections to the  
4 discovery order. (ECF No. 71.) The District Judge found good cause for reopening  
5 discovery for the limited purposes described above. He overruled Defendant's objections  
6 on procedural grounds.<sup>1</sup>

7 On November 29, 2016, the undersigned set the matter for a telephonic discovery  
8 dispute conference, ordered the parties to meet and confer regarding Plaintiff's access  
9 to photographs of his injuries, and ordered Defendant to submit the above-described  
10 documents for in camera review.

11 Defendant submitted the documents, videos, and audio recordings between  
12 January 3, 2017 and January 5, 2017. He also submitted objections to the release of  
13 said document to Plaintiff, a privilege log, and a proposed protective order (ECF Nos.92-  
14 93).

15 On January 11, 2017, counsel was appointed to represent Plaintiff. (ECF No. 96.)

16 The Court conducted it's in camera review of the documents and discussed the  
17 conclusions it drew therefrom with all parties on the record on January 13, 2017.

## 18 **II. Legal Standard**

19 The Supreme Court has long noted that privileges are disfavored. Jaffee v.  
20 Redmond, 518 U.S. 1, 9 (1996). "The party asserting an evidentiary privilege has the  
21 burden to demonstrate that the privilege applies to the information in question." Tornay  
22 v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988). Privileges are to be "strictly  
23 construed" because they "impede full and free discovery of the truth." Eureka Fin. Corp.  
24 v. Hartford Acc. and Indem. Co., 136 F.R.D. 179, 183 (E.D. Cal. 1991). "If the privilege is  
25

---

26  
27 <sup>1</sup> Defendant objected that the disputed evidence was not relevant to the motion for summary judgment; the  
28 District Judge concluded it may be relevant for trial. Defendant objected that the evidence was confidential  
and privileged; the District Judge noted that Defendant had been ordered to present these arguments to  
the undersigned and did not do so. Accordingly, the District Judge declined to address them.

1 worth protecting, a litigant must be prepared to expend some time to justify the assertion  
2 of the privilege.” Id.

3 In civil rights cases brought under section 1983, questions of privilege are  
4 resolved by federal law. Kerr v. U.S. District Court for the Northern District of California,  
5 511 F.2d 192, 197 (9th Cir. 1975). “State privilege doctrine, whether derived from  
6 statutes or court decisions, is not binding on federal courts in these kinds of cases.” Kelly  
7 v. City of San Jose, 114 F.R.D. 653, 655-56 (N.D. Cal. 1987).

8 Nevertheless, “[f]ederal common law recognizes a qualified privilege for official  
9 information.” Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990) (citing  
10 Kerr, 511 F.2d at 198). The official information privilege ensures disclosure of  
11 discoverable information without compromising the state’s interest in protecting the  
12 privacy of law enforcement officials and in ensuring the efficacy of its law enforcement  
13 system. Kelly, 114 F.R.D. at 662-63.

14 “To determine whether the information sought is privileged, courts must weigh the  
15 potential benefits of disclosure against the potential disadvantages. If the latter is  
16 greater, the privilege bars discovery.” Sanchez, 936 F.2d at 1033-34. “In the context of  
17 civil rights suits against [corrections officials], this balancing approach should be  
18 ‘moderately pre-weighted in favor of disclosure.’” Soto, 162 F.R.D. at 613 (quoting Kelly,  
19 114 F.R.D. at 661).

20 The party invoking the privilege must at the outset make a “substantial threshold  
21 showing” by way of a declaration or affidavit from a responsible official with personal  
22 knowledge of the matters attested. Soto, 162 F.R.D. at 613. “The claiming official must  
23 ‘have seen and considered the contents of the documents and himself have formed the  
24 view that on grounds of public interest they ought not to be produced’ and state with  
25 specificity the rationale of the claimed privilege.” Kerr, 511 F.2d at 198 (citation omitted).  
26 The affidavit must include: (1) an affirmation that the agency generated or collected the  
27 material in issue and has maintained its confidentiality; (2) a statement that the official  
28

1 has personally reviewed the material in question; (3) a specific identification of the  
2 governmental or privacy interests that would be threatened by disclosure of the material  
3 to plaintiff and/or his lawyer; (4) a description of how disclosure subject to a carefully  
4 crafted protective order would create a substantial risk of harm to significant  
5 governmental or privacy interests, and (5) a projection of how much harm would be done  
6 to the threatened interests if disclosure were made. Soto, 162 F.R.D. at 613. In addition,  
7 “[t]he asserting party, as in any case where a privilege is claimed, must sufficiently  
8 identify the documents so as to afford the requesting party an opportunity to challenge  
9 the assertion of privilege.” Miller v. Panucci, 141 F.R.D.292, 300 (C.D. Cal. 1992).

### 10 **III. Discussion**

11 Defendants’ privilege log contains eight Office of Internal Affairs Investigation  
12 Reports and Exhibits thereto. The Exhibits include video footage and audio recordings.  
13 The Court has conducted an in camera review of these materials and has considered  
14 the materials under the legal standard set forth above. The Court has weighed the  
15 potential benefits of disclosure against the potential disadvantages, Sanchez, 936 F.2d  
16 at 1033–34, and concludes that, in the specific instances described below, the balance  
17 tips rather clearly in favor of disclosure. The Court is sensitive to Defendant’s need to  
18 maintain institutional safety and security. Similarly, the Court appreciates the benefit to  
19 society and institutions within it of promoting thorough and accurate investigations.  
20 However, these records contain highly relevant information bearing directly on the  
21 incident at issue and potential liability therefore. Justice requires that the contents be  
22 made available to Plaintiff for use in identifying witnesses, and in questioning, and  
23 possibly impeaching, lay and expert witnesses at the trial of this case.

24 Given the foregoing, judicial preference for admitting competent, relevant  
25 evidence, and recognition that the balance is “moderately pre-weighted in favor of  
26 disclosure” in these cases, Soto, 162 F.R.D. at 613 (quoting Kelly, 114 F.R.D. at 661),  
27 the Court cannot justify withholding these records from Plaintiff on any basis proffered  
28

1 by Defendants. Accordingly, Defendants will be ordered to produce to Plaintiff's  
2 counsel the documents and materials as identified below subject to the restrictions and  
3 protections described herein.

4 **A. Office of Internal Affairs Investigation Reports**

5 Defendants have submitted eight Office of Internal Affairs ("OIA") Investigation  
6 Reports concerning the incident at issue. Each report is 125 pages long and has as its  
7 subject a different officer involved in the incident. Aside from brief identifying  
8 information at the beginning of each report and a one sentence description of the  
9 nature of the inquiry as it relates to each officer, the reports appear to be nearly  
10 identical.

11 The Court concludes that the report pertaining to Defendant is clearly relevant to  
12 Plaintiff's claims and must be disclosed pursuant to a protective order. The seven  
13 remaining reports are cumulative and need not be disclosed.

14 The Court understands Defendant's argument that portions of Defendant's  
15 report pertaining to other officers or inmates should be redacted. Nonetheless, the  
16 Court concludes that these portions of the report identify potential witnesses and  
17 contain relevant information regarding the incident. Accordingly, only the following  
18 redactions are permitted:

- 19 • Redaction of introductory paragraph containing Defendant's personal  
20 information (full name, title, then-current location, date of birth, and hire date).
- 21 • Redaction of all first names, other than first initial.
- 22 • Redaction of review of inmate Butler's medical records (pages 13-14).
- 23 • Redaction of review of interview of Dr. Chokatos concerning inmate  
24 Butler (pages 73-76).
- 25 • Redaction of a paragraph of the interview of L. Quezada (page 83, final  
26 paragraph) regarding confidential informants.
- 27 • Redaction of review of inmate Fields' medical records (page 101).

- Redaction of review of inmate Venable's medical records (page 102).

**B. Exhibits**

**1. Exhibit 1: Inmate Orientation Handbook**

This Exhibit does not contain confidential material. To the extent Plaintiff's counsel wishes to obtain it, it must be disclosed. Because it does not contain confidential material, it is not subject to any protective order.

**2. Exhibit 2: Title 15 Regulations**

This Exhibit does not contain confidential material. To the extent Plaintiff's counsel wishes to obtain it, it must be disclosed. Because it does not contain confidential material, it is not subject to any protective order.

**3. Exhibit 3: Crime/Incident Report**

This Exhibit constitutes confidential, privileged material containing sensitive safety and security information. Additionally, it has no apparent relevance to the instant litigation. Defendant need not disclose this Exhibit to Plaintiff or his counsel.

**4. Exhibit 4: Medical Reports of Injury**

This Exhibit contains medical reports relating to Plaintiff and other inmates who were allegedly injured in the incident. Information relating to participants in the riot is not relevant to Plaintiff's case and need not be disclosed. Information relating to inmates allegedly burned on the pavement is relevant and must be disclosed to Plaintiff's counsel. With the exception of Plaintiff's own records, the records will be subject to the protective order.

**5. Exhibit 5: Health Care Services Request Forms**

This Exhibit contains health care services request forms written by Plaintiff and other inmates. Information relating to inmates allegedly burned on the pavement is relevant and must be disclosed to Plaintiff's counsel. With the exception of Plaintiff's own records, the records will be subject to the protective order.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**6. Exhibits 6-11: Internal Memoranda**

These Exhibits are comprised of internal memoranda written by officers (other than Defendant) who participated in the incident. They contain the officers' first-hand observations and therefore are relevant to Plaintiff's claims. They must be disclosed to Plaintiff's counsel pursuant to the protective order. Defendant may redact first names (except first initials) and other personal identifying information.

**7. Exhibit 12: Internal Memorandum from Warden**

This Exhibit contains an internal memorandum from the Warden describing the incident, action and training taken as a result, and interactions with the Office of the Inspector General. It is relevant to Plaintiff's claims and must be disclosed pursuant to the protective order. Defendant may redact first names (with the exception of first initials) and other personal identifying information.

**8. Exhibit 13: Emails between OIG and CDCR**

These email communications between representatives of OIG and representatives of CDCR pertain to the incident and the response thereto. They are relevant to Plaintiff's claims and, while potentially prejudicial to Defendant, simply do not threaten privacy or security interests to a degree that would warrant their withholding. They must be released to Plaintiff's counsel pursuant to the protective order. First names (with the exception of first initials), email addresses, and other personal identifying information may be redacted.

**9. Exhibit 14: Inmate Correspondence**

This Exhibit contains correspondence between inmate Butler and the Prison Law Office. It has little to no relevance to Plaintiff's claims and need not be disclosed.

**10. Exhibit 15: Photographs**

This Exhibit contains photographs that relate primarily to the riot. They need not be disclosed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**11. Exhibit 16: Inmate Appeals and Staff Complaints**

This Exhibit contains inmate appeals and staff complaints filed by the involved inmates, as well as the internal investigation of their complaints. These materials are relevant and must be released to Plaintiff's counsel pursuant to the protective order. First names (with the exception of first initials) and other personal identifying information may be redacted.

**12. Exhibit 17: Surveillance Video Footage**

Defendant submitted two discs with surveillance video footage to the Court for in camera review. The first is approximately fifteen seconds long and shows the riot itself. It was taken prior to the prone out order at issue in this case and does not contain relevant material. It need not be disclosed.

The second video is approximately two minutes long. It pans the yard prior to, during, and immediately after the riot. It appears to briefly pan the basketball court area as the inmates began to prone out. It is relevant and must be released to Plaintiff's counsel subject to the protective order.

**13. Exhibit 18: Temperature Logs**

This Exhibit contains records of the temperature in various prison locations on the day of the incident. It is relevant and must be released. It does not appear to contain confidential material and therefore is not subject to the protective order.

**14. Exhibits 19, 54-56, and 68-69: Inmate Butler's Medical Records**

These Exhibits contain inmate Butler's confidential health information. The privacy interests outweigh their relevancy, and they need not be released.

**15. Exhibit 20: Photographs of Inmate Injuries**

If Defendant has not already done so, he must release to Plaintiff photographs of Plaintiff's own injuries. These photographs are not subject to the protective order. Photographs of other inmates contained in this Exhibit must be released to Plaintiff's

1 counsel, subject to the protective order. Defendant may redact first names, with the  
2 exception of first initials.

3 **16. Exhibits 21, 23, 25, 27, 29, 31, 85: Inmate Interviews**

4 These Exhibits are audio recorded interviews with the involved inmates. Plaintiff's  
5 own interview (Exhibit 31) must be released to his counsel and is not subject to the  
6 protective order. The remaining interviews are summarized in Defendant's OIA  
7 Investigation Report. To the extent Plaintiff's counsel wishes to seek release of audio  
8 recorded interviews of other inmates, he must set forth a specific basis why disclosure is  
9 warranted.

10 **17. Exhibits 22, 24, 26, 28, 30, 32, 86: Inmate Schematics**

11 These Exhibits are comprised of yard schematics that were presented to inmates  
12 during the investigation, and on which inmates were asked to mark their location at the  
13 time of the incident. The schematic marked by Plaintiff (Exhibit 32) must be released to  
14 Plaintiff's counsel pursuant to the protective order. To the extent counsel wishes to seek  
15 release of schematics marked by other inmates, he must set forth a specific basis why  
16 disclosure is warranted.

17 **18. Exhibits 33, 35, 36, 37, 41, 43, 45, 47, 51, 53, 57, 61, 63, 67, 70,**  
18 **74, 76, 78, 81, 83, 87, 89, 95, 98: Interviews of Correctional Personnel**

19 These Exhibits are audio recorded interviews with various correctional personnel  
20 involved in the incident or the response thereto. Defendant's interview (Exhibit 63) must  
21 be released to Plaintiff's counsel pursuant to the protective order. The remaining  
22 interviews are summarized in Defendant's OIA Investigation Report. To the extent  
23 Plaintiff wishes to seek release of audio recorded interviews of other personnel, he must  
24 set forth a specific basis why disclosure is warranted.

1                   **19. Exhibits 34, 40, 42, 46, 50, 52, 60, 62, 66, 73, 75, 77, 82, 84, 88,**  
2 **90: Correctional Personnel's Schematics**

3           These Exhibits are comprised of yard schematics that were presented to  
4 personnel during the investigation, and on which personnel were asked to mark their  
5 location at the time of the incident. The schematic marked by Defendant (Exhibit 66)  
6 must be released to Plaintiff's counsel pursuant to the protective order. To the extent  
7 Plaintiff wishes to seek release of schematics marked by other personnel, he must set  
8 forth a specific basis why disclosure is warranted.

9                   **20. Exhibits 38, 39, 48, 49, 58, 59, 64, 65, 71, 72, 79, 80, 96, 97, 99,**  
10 **100: Administrative Documents**

11           These exhibits contain administrative documents not relevant to this action. They  
12 need not be disclosed.

13                   **21. Exhibit 91: Fields Medical Records**

14           This Exhibit contains inmate Fields' confidential health information. The privacy  
15 interests inherent in the records outweigh their relevancy. They need not be released.

16                   **22. Exhibit 92: In Service Training Alarm Response Lesson Plan**

17           This Exhibit contains two non-consecutive pages of training materials that appear  
18 to largely relate to chain-of-command concerns during an emergency. It does not  
19 address the issue of requiring inmates to prone out during an emergency. It is not  
20 relevant to this action and need not be released.

21                   **23. Exhibit 93: Venable Medical Records**

22           This Exhibit contains inmate Venable's confidential health information. The  
23 privacy interests inherent in the records outweigh their relevancy. They need not be  
24 released.

25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**24. Exhibit 94: Post Orders**

This Exhibit contains Post Orders for the Facility C Lieutenant, the Facility C Yard/Dining Sergeant, and the Facility C Program Sergeant. As Defendant was not a lieutenant or sergeant, they are not relevant to this action and need not be released.

**C. Other: Report of Interview with Chief Warden Raythel Fischer**

This report is not listed as an Exhibit to the Investigation Report and it is unclear whether it was considered during the investigation. In any event, it concerns discussions between Raythel and Warden Brazelton regarding when the Warden became aware of the affected inmates' alleged injuries. It has little relevance to Plaintiff's claims and need not be disclosed.

**IV. Protective Order**

Defendants have requested a protective order prohibiting the dissemination of confidential materials to Plaintiff and others. A protective order is indeed warranted given the institutional concerns articulated by Defendants. Accordingly, the following protective order applies to the privileged materials described above. Defendants shall produce said materials and Plaintiff's counsel may review them and use them in litigating this matter subject to and in strictly in accordance with following terms and conditions:

1. The confidential documents may be submitted to the possession of the following persons:
  - a. Counsel for Plaintiff in this action;
  - b. Paralegal, stenographic, clerical, and secretarial personnel regularly employed by counsel for Plaintiff;
  - c. Court personnel and stenographic reporters engaged in such proceedings as are incidental to the preparation for trial or trial of this action;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

d. Any outside expert or consultant retained by Plaintiff's counsel for purposes of this action; and

e. Non-inmate witnesses to whom the materials need be disclosed as necessary for preparation for trial and trial of this case, provided that each witness shall be informed of and agree in writing to be bound by the terms of this order, and shall not, in any event, be permitted to take or retain copies of the material .

2. Plaintiff's counsel may share the confidential materials and their contents with Plaintiff. However, Plaintiff may not copy them or retain them or retain copies of them in his possession. Plaintiff may not discuss the content of the materials with any other inmate, nor may any other inmate review or have possession of the materials.

3. Upon final judgment or resolution of any appeal, Plaintiff's counsel shall return or destroy all such materials still in or subject to their possession or control, and shall provide Defendant's counsel with sworn declarations stating they have done so.

4. No confidential material obtained by Plaintiff or his counsel shall be disclosed except as is necessary to the litigation of this case, including if applicable its appeal, and for no other purpose,

5. Any violation of this Protective Order may be punishable as Contempt of Court and also may subject the violating party to litigation sanctions, including dispositive sanctions, in the Court's discretion;

6. Nothing in this Protective Order is intended to prevent officials or employees of the State of California, or other authorized government officials, from having access to confidential material to which they would have access in the normal course of their official duties.

1 7. The provisions of this Protective Order are without prejudice to the right of  
2 any party:

- 3 a. To apply to the Court for a further protective order relating to this or  
4 any confidential material or relating to discovery in this litigation;  
5 b. To apply to the Court for an order removing the confidential material  
6 designation from any documents;  
7 c. To apply to the Court for an order modifying this Protective Order for  
8 good cause shown; or  
9 d. To object to a discovery request.

10 8. The provisions of this order shall remain in full force and effect until further  
11 order of this Court.

12 **V. Further Discovery Disputes**

13 No further discovery motion may be filed without prior approval obtained in  
14 accordance with the following Telephonic Discovery Dispute Conference procedures.

15 **A. Requesting a Conference**

16 A party with a discovery dispute shall confer with the opposing party in a good  
17 faith effort to resolve the dispute without court action. If such effort fails, the moving  
18 party shall, prior to filing a notice of motion, contact Courtroom Deputy, Megan Lafata  
19 at mlafata@caed.uscourts.gov to request a pre-motion telephone conference with  
20 Magistrate Judge Seng. The request shall be deemed to include a professional  
21 representation by the requesting lawyer that a good faith effort to resolve the dispute  
22 took place but failed, and it shall advise the Court of dates and times in the next ten  
23 day period when all concerned parties can be available to confer regarding the dispute.

24 **B. Scheduling.**

25 The Court will issue a Minute Order advising counsel of the time and date of the  
26 telephone conference. The Court will provide the parties with the conference call  
27 number and access code for joining the scheduled telephonic conference.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**C. Briefing**

Not later than four business hours before the scheduled conference, each party may submit a two page brief objectively and factually outlining the dispute, the party's position on it, and the reasons therefore to mjsorders@caed.uscourts.gov. The two pages shall be in at least twelve point type and include the name of the party and the date of submission. It shall contain nothing more. There shall be no attachments. There shall be no editorializing. Inclusion therein of adjectives or adverbs or any characterization of an opponent's motives, methods, character, past practices, or the like shall subject the author to sanctions.

**D. The Conference**

At the conference, the Court will discuss the issue raised and announce its anticipated ruling on the dispute. If a party is dissatisfied with that ruling, it may seek permission to file a formal motion.

**E. Further Proceedings**

If it is determined that motion papers and supporting memoranda are needed to satisfactorily resolve the dispute, the undersigned shall approve the filing of a written motion.

**VI. Order**

Based on the foregoing, it is HEREBY ORDERED that:

1. Within twenty days of this order, the following items must be produced to Plaintiff's counsel and are not subject to the protective order: Exhibits 1, 2, 4 (in relevant part as described above), 5 (in relevant part, as described above), 18, and 20 (in relevant part as described above). These items may be shared directly with Plaintiff without limitation.
2. Within twenty days of this order, the following items must be produced to Plaintiff's counsel, subject to the protective order: Defendant's OIA Investigation Report, and Exhibits 4 and 5 (in relevant part, as described



1 above), 6-13, 16 (in relevant part, as described above), 17 (in relevant part,  
2 as described above), 20 (in relevant part as discussed above) 31, 32, 63,  
3 and 66. These items may be shared with Plaintiff subject to the protective  
4 order.

5 3. Defendant may redact the following information from his Investigation  
6 Report:

7 • Redaction of introductory paragraph containing Defendant's  
8 personal information (full name, title, then-current location, date of birth, and  
9 hire date).

10 • Redaction of all first names, other than first initial.

11 • Redaction of review of inmate Butler's medical records (pages 13-  
12 14).

13 • Redaction of review of interview of Dr. Chokatos concerning  
14 inmate Butler (pages 73-76).

15 • Redaction of a paragraph of the interview of L. Quezada (page 83,  
16 final paragraph) regarding confidential informants.

17 • Redaction of review of inmate Fields' medical records (page 101).

18 • Redaction of review of inmate Venable's medical records (page  
19 102).

20 4. Defendant may redact the following information from other materials  
21 subject to the protective order:

22 • Redaction of all first names, other than first initial.

23 • Redaction of all email addresses.

24 • Redaction of other personal identifying information.

25 5. If Defendant believes additional redactions are necessary to ensure  
26 privacy and security, he may request same within ten days of the date of  
27 this order.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6. The remaining documents submitted for in camera review need not be disclosed to Plaintiff or his counsel.

IT IS SO ORDERED.

Dated: January 16, 2017

*1st Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE