



1 As previously stated, on May 10, 2017, Defendants filed a motion to compel responses to  
2 discovery and request to modify the scheduling order. Plaintiff filed an opposition on May 22, 2017,  
3 and Defendants filed a reply on May 26, 2017.

## 4 II.

### 5 DISCUSSION

6 Plaintiff is proceeding pro se and he is a state prisoner challenging his conditions of  
7 confinement. As a result, the parties were relieved of some of the requirements which would  
8 otherwise apply, including initial disclosure and the need to meet and confer in good faith prior to  
9 involving the Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(c); Fed. R. Civ.  
10 P. 37(a)(1); Local Rules 240, 251; ECF No. 37, Discovery and Scheduling Order, ¶4. Further, where  
11 otherwise discoverable information would pose a threat to the safety and security of the prison or  
12 infringe upon a protected privacy interest, a need may arise for the Court to balance interests in  
13 determining whether disclosure should occur. See Fed. R. Civ. P. 26(c); Seattle Times Co. v.  
14 Rhinehart, 467 U.S. 20, 35 n.21 (1984) (privacy rights or interests implicit in broad purpose and  
15 language of Rule 26(c)); Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court for the Dist. of  
16 Montana, 408 F.3d 1142, 1149 (9th Cir. 2005) (discussing assertion of privilege); Soto v. City of  
17 Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (recognizing a constitutionally-based right of privacy  
18 that can be raised in discovery); see also Garcia v. Clark, No. 1:10-CV-00447-LJO-DLB PC, 2012  
19 WL 1232315, at \*6 n.5 (E.D. Cal. Apr. 12, 2012) (noting inmate's entitlement to inspect discoverable  
20 information may be accommodated in ways which mitigate institutional safety concerns); Robinson v.  
21 Adams, No. 1:08-cv-01380-AWI-BAM PC, 2012 WL 912746, at \*2-3 (E.D. Cal. Mar. 16, 2012)  
22 (issuing protective order regarding documents containing information which implicated the safety and  
23 security of the prison); Orr v. Hernandez, No. CV-08-0472-JLQ, 2012 WL 761355, at \*1-2 (E.D. Cal.  
24 Mar. 7, 2012) (addressing requests for protective order and for redaction of information asserted to  
25 risk jeopardizing safety and security of inmates or the institution if released); Womack v. Virga, No.  
26 CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at \*5-6 (E.D. Cal. Dec. 21, 2011) (requiring  
27 defendants to submit withheld documents for in camera review or move for a protective order).  
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1           However, this is a civil action to which the Federal Rules of Civil Procedure apply. The  
2 discovery process is subject to the overriding limitation of good faith, and callous disregard of  
3 discovery responsibilities cannot be condoned. Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d  
4 1242, 1246 (9th Cir. 1981) (quotation marks and citation omitted). “Parties may obtain discovery  
5 regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to  
6 the needs of the case, considering the importance of the issues at stake in the action, the amount in  
7 controversy, the parties’ relative access to relevant information, the parties’ resources, the importance  
8 of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
9 outweighs its likely benefit.” Fed R. Civ. P. 26(b)(1).

10           Generally, if the responding party objects to a discovery request, the party moving to compel  
11 bears the burden of demonstrating why the objections are not justified. Grabek v. Dickinson, No. CIV  
12 S-10-2892 GGH P, 2012 WL 113799, at \*1 (E.D. Cal. Jan. 13, 2012); Womack, 2011 WL 6703958, at  
13 \*3; Mitchell v. Felker, No. CV 08-119RAJ, 2010 WL 3835765, at \*2 (E.D. Cal. Sep. 29, 2010); Ellis  
14 v. Cambra, No. 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008).  
15 This requires the moving party to inform the Court which discovery requests are the subject of the  
16 motion to compel, and, for each disputed response, why the information sought is relevant and why  
17 the responding party’s objections are not meritorious. Grabek, 2012 WL 113799, at \*1; Womack,  
18 2011 WL 6703958, at \*3; Mitchell, 2010 WL 3835765, at \*2; Ellis, 2008 WL 860523, at \*4.  
19 However, the Court is vested with broad discretion to manage discovery and notwithstanding these  
20 procedures, Plaintiff is entitled to leniency as a pro se litigation; therefore, to the extent possible, the  
21 Court endeavors to resolve his motion to compel on its merits. Hunt v. County of Orange, 672 F.3d  
22 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir.  
23 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

24           Defendants move this Court for an order compelling Plaintiff to provide full and complete  
25 responses to each of Defendants’ interrogatories number 1, and requests for production numbers 1, 2,  
26 3, 4, 5, and 7. Defendants also request the Court extend the deadline to file an exhaustion related  
27 motion for summary judgment until sixty days after Plaintiff provides complete responses.  
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1 In opposition, Plaintiff argues that all documentation is in Defendants' possession, control or  
2 equally available to them.

3 In reply, Defendants argue that nothing in Plaintiff's opposition justifies his refusal to respond  
4 to Defendants' written discovery; nor any reason why he believes Defendants have not acted diligently  
5 with respect to the defense of exhaustion of administrative remedies.

6 As previously stated, the Court issued the discovery and scheduling order on March 8, 2017,  
7 and set June 8, 2017, as the deadline for motions for summary judgment for failure to exhaust the  
8 administrative remedies. (ECF No. 37.) Defendants submit that on March 10, 2017, they each  
9 propounded a first set of interrogatories, consisting of three to four questions, dealing primarily with  
10 Plaintiff's exhaustion of administrative remedies. (Mark Decl. ¶ 2, Ex. A; ECF No. 38-2.)  
11 Defendants also propounded their first request for production of documents, consisting of six requests.  
12 (Id., Ex. B.) Defendants received Plaintiff's responses to the discovery on March 29, 2017. (Mark  
13 Decl. ¶ 2, Exs. A & C.) On April 6, 2017, Defendants propounded a second request for production  
14 and a second set of interrogatories. (Mark Decl. ¶ 5, Exs. F-G.)

15 On April 5, 2017, Defendants' counsel sent Plaintiff a letter addressing deficiencies in  
16 Plaintiff's initial responses and requested supplemental responses. (Mark Decl. ¶ 3, Ex. D.)  
17 Plaintiff's supplemental responses were unverified and Defendants argue did not cure many of the  
18 deficiencies in his initial responses. (Mark Decl. ¶ 4, Ex. E.) Defendants further argue that Plaintiff's  
19 responses to their second request for production and second set of interrogatories repeated the same  
20 type of deficient responses about which Defendants had already advised Plaintiff. (Mark Decl., Exs.  
21 D & E.)

#### 22 **A. Interrogatory Responses**

23 "Each interrogatory must, to the extent it is not objected to, be answered separately and fully in  
24 writing under oath." Fed. R. Civ. P. 33(b)(3). "The grounds for objecting to an interrogatory must be  
25 stated with specificity. Any ground not stated in a timely objection is waived unless the court, for  
26 good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4). Finally, responses to interrogatories must  
27 be verified. Fed. R. Civ. P. 33(b)(5) ("The person who makes the answers must sign them, and the  
28 attorney, who objects must sign any objections.")

1 a. Verification of Responses

2 Plaintiff did not verify his supplemental responses to Defendants' first set of interrogatories,  
3 nor his responses to Defendants Biter's second set of interrogatories. Defendants' request for Plaintiff  
4 to provide verified supplemental responses to all of their interrogatories must be granted. Fed. R. Civ.  
5 P. 33(b)(5). Accordingly, the Court will direct Plaintiff to provide verified supplemental responses.  
6 Plaintiff's responses to Defendants' interrogatories must be dated and signed by Plaintiff, attesting  
7 under penalty of perjury to facts known by Plaintiff, in substantially the following form: "I declare  
8 under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

9 b. Further Responses to Defendants' First Sets of Interrogatories No. 1

10 As previously stated, Defendants move for Plaintiff to provide further responses to their first  
11 set of interrogatories number one.

12 Interrogatory No. 1: Each set of interrogatories served by each Defendant asked, with respect  
13 to that propounding Defendant: "Identify by log number each and every inmate appeal submitted by  
14 you that you claim exhausted your administrative remedies for your claims against Defendant [] in this  
15 action." (Mark Decl., Ex A.)

16 Plaintiff's Initial Response: "Please refer to all inmate appeals currently in evidence. See  
17 Exhibit A, pgs. 2, 3d." (Id.)

18 Plaintiff's Supplemental Response: "Each and every 602 inmate appeal submitted by me as to  
19 all defendants that's currently into evidence i[llegible] say exhausted administrative remedies." (Mark  
20 Decl., Ex. E.)

21 Defendants are correct that Plaintiff's initial and supplemental responses are evasive and  
22 deficient because he did not identify by log number each and every inmate appeal he claims exhausted  
23 his administrative remedies as requested. Plaintiff's vague reference to documents "currently in  
24 evidence" is evasive because there are no documents "in evidence" at this time, and a general  
25 reference to documents is non-responsive. See Rainbow Pioneer No. 44-18-04-A v. Hawaii-Nevada,  
26 Inv. Corp., 711 F.2d 902, 906 (9th Cir. 1983). An evasive or incomplete answer must be treated as a  
27 failure to respond. Fed. R. Civ. P. 37(b)(4). Although Defendants bear the burden to raise and prove  
28 the absence of exhaustion, Defendants are nonetheless entitled to discovery from Plaintiff regarding

1 his exhaustion efforts. Accordingly, Defendants’ motion to compel shall be granted, and Plaintiff will  
2 be directed to provide a complete, verified response to each of the Defendants’ interrogatories number  
3 one.

4 **B. Requests for Production of Documents**

5 Defendants submit that Plaintiff has not provided sufficient responses to six of the seven  
6 requests for production Defendants have propounded to date.

7 1. Requests for Production Nos. 1, 2, and 7

8 **a. Request for Production No. 1:**

9 “A copy of all documents related to your efforts to exhaust administrative remedies with  
10 respect to your claims against the Defendants in this lawsuit, including but not limited to any inmate  
11 appeals you identified in your responses to Defendant Tarnoff’s, Lawless’s, Biter’s, Acebedo’s and  
12 Castro’s interrogatories and any related responses or rejection or screen-out letters at any level of  
13 review.”

14 Plaintiff’s Initial Response: “See Attachment A, one order Kern County Superior Court, one  
15 letter dated 8-8-16.” (Mark Decl., Ex. C (Pl.’s RFP responses including documents produced).)

16 Plaintiff’s Supplemental Response: “The document you request is currently in evidence based  
17 the ‘Order Finding Service of First Amended Complaint Appropriate as to Defendants Tarnoff,  
18 Acebedo, Castro, Lawless, and Biter dated February 16, 2016. On page two it clearly states ‘All  
19 CDCR form 602 documentation submitted in relation to this case,’ therefore all defendants have  
20 copies of all 602 appeals in this case. See attachment #1 order dated 2-16-16.” (Mark Decl., Ex. E.)

21 **b. Request for Production No. 2:**

22 “A copy of all documents related to your allegations that you notified any or all of the  
23 Defendants that you were being threatened by Blood gang members.”

24 Plaintiff’s Initial Response: “The evidence requested is currently in evidence. 602 appeals.”  
25 (Mark Decl., Ex. C.)

26 Plaintiff’s Supplemental Response: “All documents that is requested are in the possession of  
27 defendants based on the attached order dated 2-16-16. See attachment #1” (Mark Dec., Ex. E.)  
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**c. Request for Production No. 7 (Defs' Second RFP):**

“All documents relating to any attempts by you to initiate CDCR’s process for disassociating from the Blood Security Threat Group.” (Mark Decl., Ex. G.)

Plaintiff’s Response: “The document you request is currently in evidence based the ‘Order Finding Service of First Amended Complaint Appropriate as to Defendants Tarnoff, Acebedo, Castro, Lawless, and Biter dated February 16, 2016. On page two it clearly states ‘All CDCR form 602 documentation submitted in relation to this case,’ therefore all defendants have copies of all 602 appeals in this case. See attachment order dated 2-16-16.” (Mark Decl, Ex. E.)

**Ruling:** Defendants’ motion to compel shall be granted. The documents Plaintiff’s initially produced, a Kern County Superior Court order and a letter dated August 8, 2016, are non-responsive to the requests. (Mark Decl., Ex. C.) Furthermore, Plaintiff’s supplemental responses that the documents requested are in the possession of the Defendants based on a service order dated February 16, 2016, is non-responsive. Although the Court did direct Plaintiff to submit “[a]ll CDCR Form 602 documentation submitted in relation to this case[,]” the request was made to facilitate the United States Marshal with service of process on each of the named Defendants. (ECF No. 17, Order at 2:20-21.) Defendants were not served with such documentation as they were not yet parties to the action. In addition, any of the form 602 documentation submitted by Plaintiff was forwarded to the Marshal’s office and not retained by this Court or placed on the docket. In any event, Plaintiff is still obligated to identify and provide such documentation to Defendants in response to their requests for production, whether previously submitted to the Court or retained in his prison file. Fed. R. Civ. P. 34; Bryant v. Armstrong, 285 F.R.D. 596, 603 (S.D. Cal. 2012).

**2. Requests for Production Nos. 3, 4, and 5**

Defendants submit that Plaintiff has produced no documents responsive to these requests and his contention regarding an error in his First Amended Complaint does not excuse him from responding.

A party may serve on any other party a request within the scope of Rule 26(b) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in

1 the responding party's possession, custody or control: any designated documents or tangible things.  
2 Fed. R. Civ. P. 34(a)(1) (quotation marks omitted). "Property is deemed within a party's 'possession,  
3 custody, or control' if the party has actual possession, custody, or control thereof or the legal right to  
4 obtain the property on demand." Allen v. Woodford, No. CV-F-05-1104 OWW LJO, 2007 WL  
5 309945, \*2 (E.D. Cal. Jan. 30, 2007) (citing In re Bankers Trust Co., 61 F.3d 465, 469 (6th Cir.  
6 1995)); accord Bovarie v. Schwarzenegger, No. 08cv1661 LAB (NLS), 2011 WL 719206, at \*4 (S.D.  
7 Cal. Feb. 22, 2011); Evans v. Tilton, No. 1:07CV01814 DLB PC, 2010 WL 1136216, at \*1 (E.D. Cal.  
8 Mar. 19, 2010).

9 In responding to discovery requests, a reasonable inquiry must be made, and if no responsive  
10 documents or tangible things exist, Fed. R. Civ. P. 26(g)(1), the responding party should so state with  
11 sufficient specificity to allow the Court to determine whether the party made a reasonable inquiry and  
12 exercised due diligence, Uribe v. McKesson, No. 08cv1285 DMS (NLS), 2010 WL 892093, at \*2-3  
13 (E.D. Cal. Mar. 9, 2010). If responsive documents do exist but the responsive party claims lack of  
14 possession, control, or custody, the party must so state with sufficient specificity to allow the Court (1)  
15 to conclude that the responses were made after a case-specific evaluation and (2) to evaluate the merit  
16 of that response. Ochotorena v. Adams, No. 1:05-cv-01525-LJO-DLB (PC), 2010 WL 1035774, at  
17 \*3-4 (E.D. Cal. Mar. 19, 2010). As with previously discussed forms of discovery, boilerplate  
18 objections do not suffice. Fed. R. Civ. P. 34(b)(2)(B), (C); Burlington N. & Santa Fe Ry. Co., 408  
19 F.3d at 1149.

20 **a. Request for Production No. 3**

21 "A copy of any medical records evidencing any injuries you claim you sustained from the  
22 attack by an inmate on August 10, 2011 that you allege in your First Amended Complaint."

23 **b. Request for Production No. 4**

24 "A copy of any documents relating to the disciplinary hearing pertaining to the attack on  
25 August 10, 2011 that you allege in your First Amended Complaint."

26 Plaintiff's Initial Response: "A copy of the RVR for Chad Elie." (Mark Decl., Ex. C.)

27 Plaintiff's Supplemental Response: "Plaintiff has misstated on the complaint as to the date of  
28 8-10-11. The date of the incident was 10-18-11." (Mark Decl., Ex. E.)

1           **c. Request for Production No. 5**

2           “A copy of any documents supporting your claims for damages resulting from the attack on  
3 August 10, 2011 that you allege in your First Amended Complaint.”

4           Plaintiff’s Initial Response: “The evidence requested is currently in the possession of the  
5 Defendants.” (Mark Decl., Ex. C.)

6           Plaintiff’s Supplemental Response: “Plaintiff has misstated in his complaint on the date of 8-  
7 10-11. The date of the incident was 10-18-11.” (Mark Decl., Ex. E.)

8           **Ruling**: Defendants’ motion to compel shall be granted. Defendants’ requests for production  
9 numbers 3, 4, and 5 seek responsive documents that are relevant to Plaintiff’s claims and injuries, or  
10 would otherwise aid in their defense of this case. Plaintiff only identified and produced one document  
11 in response to request number 4, “a copy of the RVR for Chad Elie” and failed to produce any  
12 documents in response to requests numbers 3 and 5. (Mark Decl., Ex. C.) Accordingly, Plaintiff’s  
13 responses were insufficient. Indeed, Defendants notified Plaintiff that the RVR produced was for an  
14 incident on October 18, 2011, and Plaintiff responded that the date of the incident alleged in the  
15 complaint is erroneous as the true date was October 18, 2011, not August 10, 2011. (Mark Decl., Ex.  
16 E.) Plaintiff’s clarification of the date of the 2011 incident does not excuse his compliance with  
17 Defendants’ requests. Plaintiff is required to produce documents fairly covered by Defendants’  
18 requests, and based on Plaintiff’s clarification of the exact date of the alleged incident, Plaintiff was  
19 required to produce documents responsive to these requests based on the attack as alleged in the first  
20 amended complaint. Furthermore, the document produced in response to request 4, is a copy another  
21 inmate’s disciplinary, which is not responsive to Defendants’ requests pertaining to Plaintiff’s  
22 disciplinary hearing for the 2011 attack. Accordingly, Plaintiff will be required to provide  
23 supplemental responses to requests 3, 4, and 5.

24           **C. Modification of the Scheduling Order**

25           The Court has discretion to modify a deadline in a scheduling order for good cause. Fed. R.  
26 Civ. P. 16(b)(4). The touchstone for good cause is whether the party seeking the modification has  
27 been diligent. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).  
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1 Pursuant to the Court's March 8, 2017, discovery and scheduling order, the deadline to file an  
2 exhaustion-related motion for summary judgment expires on June 8, 2017. (ECF No. 37.) Based on  
3 Defendants' discovery requests, they have acted diligently in seeking to comply with the June 8, 2017,  
4 deadline to file an exhaustion-related motion for summary judgment. Defendants served their first set  
5 of discovery requests relating to Plaintiff's exhaustion efforts within two days of discovery opening.  
6 (Mark Decl. ¶ 2.) After Plaintiff responded to the initial requests, Defendants promptly conferred with  
7 Plaintiff in an attempt to avoid the filing of a motion to compel. (Mark Decl. ¶ 3, Ex. D.) Thereafter,  
8 Plaintiff served supplemental responses, which Defendants received on or about April 25, 2017.  
9 Because Defendants believed Plaintiff's supplemental responses were deficient, the instant motion to  
10 compel was filed on May 10, 2017. Defendants submit that proper responses to their discovery  
11 requests are necessary in order to evaluate whether a motion for summary judgment for failure to  
12 exhaust the administrative remedies is proper. (Mark Decl. ¶ 6.)

13 Based on the showing of good cause, the Court will extend the deadline for filing an  
14 exhaustion-related motion for summary judgment.

### 15 III.

### 16 CONCLUSION AND ORDER

17 Based on the foregoing, Defendants' motion to compel and request for modification of the  
18 scheduling order are GRANTED, and it is HEREBY ORDERED that:

19 1. Within **thirty (30)** days from the date of service of this order, Plaintiff shall file  
20 verified, supplemental responses to *all* of Defendants' interrogatories; a further verified response to  
21 Defendants' interrogatories number 1; and further responses to Defendants' requests for production  
22 numbers 1, 2, 3, 4, 5, and 7, as explained herein;

23 2. The deadline for the filing of a motion for summary judgment for failure to exhaust the  
24 administrative remedies is extended **September 8, 2017**;

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3. All other provisions of the Court's March 8, 2017, scheduling order remain in full force and effect.

IT IS SO ORDERED.

Dated: June 1, 2017

  
UNITED STATES MAGISTRATE JUDGE