

1 fact that plaintiff had consented to magistrate judge jurisdiction and no other parties had yet appeared.
2 (Id.)

3 On August 5, 2016, Defendants Knoll, Mahdavi, Masterson, Smith and Thissell filed a motion
4 to dismiss or, in the alternative, motion for summary judgment.

5 Plaintiff filed an opposition on November 17, 2016, and Defendants filed a timely reply on
6 November 29, 2016.

7 On February 2, 2017, the undersigned issued Findings and Recommendation recommending
8 that Defendants' motion for summary judgment be granted as to Defendant Masterson only and denied
9 as to all other Defendants. The Findings and Recommendations were adopted in full on March 29,
10 2017, and judgment was entered in favor of Defendant Masterson only.

11 Defendants filed a notice of appeal to the Ninth Circuit Court of Appeals, but it was voluntarily
12 dismissed on August 28, 2017.

13 On August 31, 2017, the Court directed Defendants Knoll, Mahdavi, Smith and Thissell to file
14 a further response to Plaintiff's second amended complaint within ten days.

15 On September 8, 2017, Defendants filed an answer to the second amended complaint.

16 On September 13, 2017, the Court issued the discovery and scheduling order.

17 As previously stated, on December 7, 2017, Defendants filed a motion to compel Plaintiff to
18 respond to discovery or dismiss the case for failure to prosecute. Plaintiff has not filed an opposition
19 and the time to do so has expired. Accordingly, Defendants' motion to compel is deemed submitted
20 for review without oral argument. Local Rule 110.

21 II.

22 DISCUSSION

23 Plaintiff is proceeding pro se and he is a federal prisoner challenging his conditions of
24 confinement. As a result, the parties were relieved of some of the requirements which would
25 otherwise apply, including initial disclosure and the need to meet and confer in good faith prior to
26 involving the Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(c); Fed. R. Civ.
27 P. 37(a)(1); Local Rules 240, 251; ECF No. 59, Discovery and Scheduling Order, ¶4. Further, where
28 otherwise discoverable information would pose a threat to the safety and security of the prison or

1 infringe upon a protected privacy interest, a need may arise for the Court to balance interests in
2 determining whether disclosure should occur. See Fed. R. Civ. P. 26(c); Seattle Times Co. v.
3 Rhinehart, 467 U.S. 20, 35 n.21 (1984) (privacy rights or interests implicit in broad purpose and
4 language of Rule 26(c)); Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court for the Dist. of
5 Montana, 408 F.3d 1142, 1149 (9th Cir. 2005) (discussing assertion of privilege); Soto v. City of
6 Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (recognizing a constitutionally-based right of privacy
7 that can be raised in discovery); see also Garcia v. Clark, No. 1:10-CV-00447-LJO-DLB PC, 2012
8 WL 1232315, at *6 n.5 (E.D. Cal. Apr. 12, 2012) (noting inmate’s entitlement to inspect discoverable
9 information may be accommodated in ways which mitigate institutional safety concerns); Robinson v.
10 Adams, No. 1:08-cv-01380-AWI-BAM PC, 2012 WL 912746, at *2-3 (E.D. Cal. Mar. 16, 2012)
11 (issuing protective order regarding documents containing information which implicated the safety and
12 security of the prison); Orr v. Hernandez, No. CV-08-0472-JLQ, 2012 WL 761355, at *1-2 (E.D. Cal.
13 Mar. 7, 2012) (addressing requests for protective order and for redaction of information asserted to
14 risk jeopardizing safety and security of inmates or the institution if released); Womack v. Virga, No.
15 CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at *5-6 (E.D. Cal. Dec. 21, 2011) (requiring
16 defendants to submit withheld documents for in camera review or move for a protective order).

17 However, this is a civil action to which the Federal Rules of Civil Procedure apply. The
18 discovery process is subject to the overriding limitation of good faith, and callous disregard of
19 discovery responsibilities cannot be condoned. Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d
20 1242, 1246 (9th Cir. 1981) (quotation marks and citation omitted). “Parties may obtain discovery
21 regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to
22 the needs of the case, considering the importance of the issues at stake in the action, the amount in
23 controversy, the parties’ relative access to relevant information, the parties’ resources, the importance
24 of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery
25 outweighs its likely benefit.” Fed R. Civ. P. 26(b)(1).

26 Defendants submit that on October 5, 2017, they served Plaintiff at his address of record with
27 a first set of interrogatories and first set of requests for production of documents. (Lodge Decl. ¶ 2.)
28 Defendants collectively requested production of 19 categories of documents, and each Defendant

1 propounded at least 18 interrogatories to discover information about Plaintiff's claims. (Id.) Pursuant
2 to the Court's September 13, 2017 discovery and scheduling order, Plaintiff's responses were due
3 within 45 days of service, i.e. no later than November 20, 2017. (ECF No. 59.)

4 On November 25, 2017, defense counsel sent Plaintiff a "meet and confer" letter at his address
5 of record regarding his failure to respond to the above referenced written discovery.¹ (Lodge Decl. ¶
6 3, Ex. 2.) Counsel advised Plaintiff that if responses were not received on or before Wednesday,
7 December 6, 2017, Defendants would file a motion to compel responses. (Id.) Counsel also requested
8 that Plaintiff provide information and a date for Defendants to take his deposition. (Id.) Plaintiff did
9 not request additional time to respond to Defendants' discovery requests, and Defendants have not
10 received any response to the outstanding discovery. (Id.)

11 Given Plaintiff's complete lack of response to Defendants' timely served discovery requests
12 and timely filed motion to compel, Defendants' motion to compel shall be granted and Plaintiff will be
13 directed to file responses within thirty days or suffer dismissal of the action for failure to prosecute.
14 Local Rule 110; see Ferdik v. Bonzelet, 963 F.2d 1258, 1262-1263 (9th Cir. 1992) (district court did
15 not abuse discretion in dismissing pro se plaintiff's complaint for failing to obey an order to re-file an
16 amended complaint to comply with Federal Rules of Civil Procedure); see also Carey v. King, 856
17 F.2d 1439, 1441 (9th Cir. 1988) (dismissal for pro se plaintiff's failure to comply with local rule
18 regarding notice of change of address affirmed).

19 Accordingly, it is HEREBY ORDERED that:

- 20 1. Defendants' motion to compel is GRANTED;
- 21 2. Plaintiff shall respond to all of Defendants' requests served on October 5, 2017 within
22 thirty days from the date of service of this order; and

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28 ¹ It is noted that defense counsel sent a meet and confer letter as a courtesy notwithstanding the fact that such was not
required because Plaintiff is a prisoner and the discovery order excused such requirement. (ECF No. 59.)

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3. Plaintiff's failure to comply with this order will result in a recommendation that the action be dismissed, with prejudice. Local Rule 110.

IT IS SO ORDERED.

Dated: January 8, 2018


UNITED STATES MAGISTRATE JUDGE