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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAKEITH L. MCCOY,  
Plaintiff,  
v.  
A. HOLGUIN, et al.,  
Defendants.

**1:15-cv-00768-DAD-MJS (PC)**

**ORDER**

- (1) GRANTING PLAINTIFF'S UNOPPOSED SECOND MOTION TO AMEND DISCOVERY AND SCHEDULING ORDER;**
  - (2) DENYING PLAINTIFF'S MOTION FOR ORDER COMPELLING RESPONSES TO DISCOVERY (RENEWED);**
  - (3) GRANTING IN PART PLAINTIFF'S MOTION FOR ORDER TO COMPEL (RENEWAL);**
  - (4) DENYING PLAINTIFF'S MOTION FOR LEAVE TO PROPOUND ADDITIONAL INTERROGATORIES;**
  - (5) DENYING PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS; AND**
  - (6) DENYING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER**
- (ECF NOS. 64, 65, 66, 67, 69, 74)**

1 Plaintiff is a state prisoner proceeding pro se in this civil rights action pursuant to  
2 42 U.S.C. § 1983. This matter proceeds on Plaintiff's Second Amended Complaint  
3 ("SAC") asserting excessive force and failure to protect claims against 19 Defendants  
4 following a March 12, 2015 assault at California Correctional Institute ("CCI").

5 Pending before the Court are a number of discovery-related motions filed by  
6 Plaintiff: (1) a second motion to amend discovery and scheduling order (ECF No. 64); (2)  
7 a motion for order compelling response to discovery (renewed) (ECF No. 65); (3) a  
8 motion for order to compel further response to discovery and application for sanctions  
9 (renewal) (ECF No. 66); (4) a motion for leave to propound additional interrogatories  
10 (ECF No. 67); (5) a motion to compel further response to first request for production of  
11 documents and imposing monetary sanctions (ECF No. 69); and (6) a motion for  
12 protective order (ECF No. 74).

13 Defendants filed a statement of non-opposition to Plaintiff's second motion to  
14 amend the discovery and scheduling order. (ECF No. 68.) They have not responded to  
15 Plaintiff's motion for protective order, but they have filed an opposition to the other  
16 discovery motions. (ECF No. 70, 71.)

17 **I. Plaintiff's Allegations**

18 The allegations of Plaintiff's SAC may be summarized essentially as follows:

19 **A. Escort to Library**

20 On March 12, 2015, during an escort to the library, Plaintiff was shoved without  
21 provocation by Defendant Casillas. Defendants Holguin, Moore, and King then joined  
22 Defendant Casillas in punching and beating Plaintiff with their batons. Defendant Holguin  
23 pepper sprayed Plaintiff; Defendant Lomas attempted to break Plaintiff's leg by twisting it  
24 backwards; and Defendants Gonzales and A. Martinez dragged Plaintiff by his arms  
25 approximately 10-15 yards, causing him pain. Throughout the beating, Plaintiff remained  
26 handcuffed and was obeying orders.

27 Defendants Holland, Kilmer, Lomas, and Santa Maria watched the assault but  
28 failed to intervene.

1           **B.     Placement in Holding Cell**

2           When Plaintiff was then transferred to a holding cell, Defendant Gonzales twice  
3           shoved him and slammed his head against the back of the cell. Defendants Delgado,  
4           Barron, Montanez, Mayfield and Moreno then punched Plaintiff repeatedly, and  
5           Defendant A. Martinez kicked Plaintiff in the ribs.

6           Defendants Deluna, Bennett, Arrellano, and C. Martinez watched this assault but  
7           failed to intervene.

8           **II.     Relevant Procedural History**

9           Plaintiff initiated this action on May 20, 2015, and was granted leave to proceed in  
10          forma pauperis on July 14, 2015. On October 26, 2015, Plaintiff’s SAC was screened  
11          and found to state (a) an excessive force claim against Defendants Casillas, Holguin,  
12          Moore, King, Lomas, Gonzales, A. Martinez, Delgado, Barron, Montanez, Mayfield and  
13          Moreno and (b) a failure to intervene claim against Defendants Arellano, Deluna, C.  
14          Martinez, Bennett, Holland, Kilmer, Lomas, and Santa Maria. Service was ordered  
15          shortly thereafter, and Defendants filed an answer on April 13, 2016.

16          The Discovery and Scheduling Order (“DSO”) issued on April 19, 2016, and set  
17          the discovery deadline for December 19, 2016, and the dispositive motion deadline for  
18          February 27, 2017. (ECF No. 29.)

19          On January 9, 2017, Defendants moved to revoke Plaintiff’s in forma pauperis  
20          (“IFP”) status. (ECF No. 56.) On March 7, 2017, findings and recommendations issued to  
21          grant Defendants’ motion and to revoke Plaintiff’s IFP status. (ECF No. 56.) The district  
22          judge adopted the findings and recommendations in full on May 11, 2017, and directed  
23          Plaintiff to pay the filing fee. (ECF No. 61.) Plaintiff paid the filing fee shortly thereafter.

24          During the pendency of Defendants’ motion to revoke Plaintiff’s IFP status, the  
25          parties’ respective motions to modify the DSO were granted in part. (ECF No. 46.) The  
26          discovery deadline was continued to February 17, 2017, and the dispositive motion  
27          deadline was continued to April 19, 2017.

28          Later, though still during the pendency of Defendants’ motion to revoke, the

1 undersigned granted Defendants' motion to stay discovery pending resolution of the IFP  
2 issue, and, accordingly, denied without prejudice two motions to compel filed by Plaintiff.  
3 (ECF No. 54.)

4 Following the district judge's adoption of the March 7, 2017, findings and  
5 recommendations, the DSO was amended once again, with the discovery deadline reset  
6 for June 30, 2017, and the dispositive motion deadline reset for August 15, 2017. (ECF  
7 No. 62.)

8 Plaintiff has now renewed those two discovery motions previously denied without  
9 prejudice. (ECF Nos. 65, 66.) He also filed two additional discovery motions and an  
10 unopposed motion to modify the DSO. (ECF Nos. 64, 67, 69.) Lastly, he filed a motion  
11 for protective order. (ECF No. 74.)

### 12 **III. Legal Standards**

13 Federal Rule of Civil Procedure 26(b)(1) (as amended eff. Dec. 1, 2015) sets forth  
14 the following standard pertaining to relevance:

15 Parties may obtain discovery regarding any nonprivileged matter that is relevant  
16 to any party's claim or defense and proportional to the needs of the case, considering  
17 the importance of the issues at stake in the action, the amount in controversy, the  
18 parties' relative access to relevant information, the parties' resources, the importance of  
19 the discovery in resolving the issues, and whether the burden or expense of the  
20 proposed discovery outweighs its likely benefit. Information within this scope of discovery  
21 need not be admissible in evidence to be discoverable.

22 Limitations to discovery are set forth in Federal Rule of Civil Procedure  
23 26(b)(2)(C), which provides:

24 On motion or on its own, the court must limit the frequency or  
25 extent of discovery otherwise allowed by these rules or by  
local rule if it determines that:

26 (i) the discovery sought is unreasonably cumulative or  
27 duplicative, or can be obtained from some other source that  
is more convenient, less burdensome, or less expensive;

28 (ii) the party seeking discovery has had ample opportunity to

1 obtain the information by discovery in the action; or

2 (iii) the proposed discovery is outside the scope permitted by  
3 Rule 26(b)(1).

4 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery  
5 may move for an order compelling an answer, designation, production, or inspection.”  
6 Fed. R. Civ. P. 37(a)(3) (B). The court may order a party to provide further responses to  
7 an “evasive or incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4).  
8 “District courts have ‘broad discretion to manage discovery and to control the course of  
9 litigation under Federal Rule of Civil Procedure 16.’” Hunt v. County of Orange, 672 F.3d  
10 606, 616 (9th Cir. 2012) (quoting Avila v. Willits Envntl. Remediation Trust, 633 F.3d 828,  
11 833 (9th Cir. 2011)). Generally, if the responding party objects to a discovery request,  
12 the party moving to compel bears the burden of demonstrating why the objections are  
13 not justified. E.g., Grabek v. Dickinson, 2012 WL 113799, at \*1 (E.D. Cal. Jan. 13, 2012);  
14 Ellis v. Cambra, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008). This requires the  
15 moving party to inform the Court which discovery requests are the subject of the motion  
16 to compel, and, for each disputed response, why the information sought is relevant and  
17 why the responding party's objections are not meritorious. Grabek, 2012 WL 113799, at  
18 \*1; Womack v. Virga, 2011 WL 6703958, at \*3 (E.D. Cal. Dec. 21, 2011).

19 The Court is vested with broad discretion to manage discovery. Notwithstanding  
20 these procedures, Plaintiff is entitled to leniency as a pro se litigant; therefore, to the  
21 extent possible, the Court endeavors to resolve Plaintiff's motion to compel on its merits.  
22 Hunt, 672 F.3d at 616; Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635  
(9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

#### 23 **IV. Motion for Order Compelling Response to Discovery (Renewed)**

24 In the Motion for Order Compelling Response to Discovery (Renewed) (ECF No.  
25 65), Plaintiff simply refiled his original motion in which he contends that Defendants have  
26 failed entirely to respond to any of his October 26, 2016 and November 3, 2016  
27 discovery requests.. Plaintiff seeks an order compelling further responses since they  
28

1 were due on or before the December 2016 discovery deadline.

2 As Defendants rightly point out, there have since been two modifications to the  
3 DSO and a stay of discovery pending resolution of Defendants' motion to revoke IFP.  
4 This resulted in a new discovery deadline. Therefore, to the extent Plaintiff's motion is  
5 premised on Defendants' failure to respond by the initial discovery deadline, his motion  
6 will be denied.

7 **V. Motion for Order to Compel Further Response to Discovery and Application**  
8 **for Sanctions (Renewal)**

9 In the Motion for Order to Compel Further Response to Discovery and Application  
10 for Sanctions (Renewal) (ECF No. 66), Plaintiff is dissatisfied with Defendants' October  
11 14, 2016, objections to Plaintiff's Second Request for Production of Documents.

12 **A. Relevant Background**

13 **1. Plaintiff's Requests**

14 The Requests for Production ("RPD") at issue seek the following:

- 15 • An original (as opposed to an amended) administrative contact report  
16 dated March 12, 2015 (RPD No. 25);
- 17 • The instruction manuals from the respective companies that produce the  
18 batons and pepper sprays used by Defendants (RPD Nos. 26-27);
- 19 • The original crime/incident report dated March 12, 2015 (RPD No. 28);
- 20 • The March 12, 2015, time card for Defendant King (RPD No. 29);
- 21 • The CDC Form 804 sent to records on March 12, 2015, and April 10, 2015  
22 (RPD Nos. 30-31);
- 23 • All emails, text messages, and records for all of the Defendants from  
24 March 12, 2015, to the present (RPD No. 32);
- 25 • "Any and all data" on the use of force against inmates handcuffed behind  
26 their back from 2010 through 2016 in Facility A at CCI (RPD No. 33);
- 27 • The California Correctional Peace Officer Association Bargaining Rules  
28 (RPD No. 34);

- The five-year financial history for all Defendants (RPD No. 35);
- “Any and all memorandums” concerning the incident underlying this case (RPD No. 36); and
- Staff procedure and training manuals for administrative segregation at CCI (RPD Nos. 37-38).

## **2. Defendants’ Responses**

As to RPD Nos. 25, 28-31, and 36, Defendants asserted various objections and noted that they “are in the process of locating the requested documents, and hereby reserve the right to supplement this response when responsive documents are located.” Defendants further noted that they “will provide a privilege log and declaration in support of the privileged documents” for RPD Nos. 29-31 and 36.

As to RPD Nos. 26-27, 32-35, and 37-38, Defendants asserted various objections and declined to supplement their response.

### **B. Discussion**

Defendants contend Plaintiff’s motion is premature in light of their notice that they would supplement their responses to the RPDs. While Defendants did identify certain requests for which they would supplement their responses (RPD Nos. 25, 28-31, and 36), they explicitly declined to supplement their responses to RPD Nos. 26-27, 32-35, and 37-38. Thus, the Court agrees that Plaintiff’s motion is premature as to the former set of requests, but it is not premature as to the latter.

#### **1. RPD Nos. 26-27**

In RPD Nos. 26 and 27, Plaintiff seeks the “Instruction manual from the company that produces the expandable batons (MEB batons) [and ‘MK-9 OC pepper spray’] to consumers that Defendants possess at work.”

Defendants’ responses to these two requests are substantively identical:

Defendants object to this Request on the grounds that (1) it is vague and ambiguous as to the terms “Instruction manual,” “the company,” “the MK-9 OC pepper spray” [“expandable batons (MEB batons)”], (2) it is vague as to the applicable time period, and (3) it is overly broad as to scope of

1 requested documents. Defendants further object to this  
2 Request on the grounds that it may seek information  
3 protected from disclosure by the Official Information Privilege  
4 and impermissibly seeks confidential peace officer  
5 information within the meaning of California Penal Code  
6 section 832.7 and the California Peace Officer's Bill of Rights  
7 and violates the procedures outlined in California Evidence  
8 Code sections 1043 and 1045. **Should the court order  
9 production of the confidential documents, Defendants  
10 request an in-camera review, and that all confidential  
11 information be redacted.** The confidential documents  
12 responsive to this request are protected by the official  
13 information privilege for the safety and security of the  
14 institution, staff and inmates. Furthermore, this Request  
15 violates the privacy rights of Defendants and the information  
16 requested should not be released to a prison inmates [sic] or  
17 parolees. In light of these objections, Defendants will not  
18 provide documents responsive to this Request.

19 (Emphasis in original.)

20 In their opposition to the instant motion, Defendants submit no argument in  
21 support of the litany of objections asserted against these two (or indeed, any) RPDs.

22 Defendants' invocation of the official information privilege is overruled. To invoke  
23 this privilege, Defendants bear the burden of the initial showing that confidentiality  
24 overrides the liberal discovery procedures outlined in Rule 26, which requires an affidavit  
25 from an agency official in control of the documents. Oyarzo v. Tuolumne Fire Dist., 2013  
26 WL 1758798, at \*9-10 (E.D. Cal. 2013) (citing Soto v. City of Concord, 162 F.R.D. 603,  
27 613 (N.D. Cal. 1995) and Kelly v. City of San Jose, 114 F.R.D. 653, 660-61 (N.D. Cal.  
28 1987)); see also Randle v. Franklin, 2010 WL 3069205, at \*3 (E.D. Cal. Aug. 3, 2010)  
29 (“[T]he Defendant has the burden of showing that confidentiality and safety concerns  
30 override the liberal discovery procedures outlined in Fed.R.Civ.P. 26”). The simple  
31 assertion of the privilege, as Defendants have done here, is insufficient.

32 Also overruled are Defendants' objections based on the confidentiality of peace  
33 officer information within the meaning of California Penal Code section 832.7 and the  
34 procedural requirements of California Evidence Code sections 1043 and 1045. California  
35 Penal Code § 832.7 provides that California peace officer personnel records are  
36 confidential. San Diego Police Officers Assn. v. City of San Diego Civil Service Comm.,



1 104 Cal. App. 4th 275, 287 (2002) (“We conclude section 832.7 provides that peace  
2 officer personnel records, as defined in section 832.8, are confidential.”) California  
3 Evidence Code sections 1043 and 1045 also concern information in a peace officer’s  
4 personnel records.<sup>1</sup> Defendants cite no case, and the Court has been unable to locate  
5 one, that holds that these sections also apply to information manuals from companies  
6 that manufacture equipment used by peace officers.

7 Defendants’ objections on grounds of vagueness and ambiguity are sustained in  
8 part. Concerning the definitions of certain terms, Plaintiff’s Requests for Production are  
9 preceded by specific definitions for all but one of the terms that Defendants deem vague  
10 or ambiguous. While the term “the company” itself is not specifically defined, it is  
11 described with reasonable particularity in the request (“the company that produces” the  
12 referenced items). A request is sufficiently clear if it describes items with “reasonably  
13 particularity” and it “places the party upon ‘reasonable notice of what is called for and  
14 what is not.’” Fed. R. Civ. P. 34(b); Kidwiler v. Progressive Paloverde Ins. Co., 192.  
15 F.R.D. 193, 202 (N.D. W.Va. 2000) (quoting Parsons v. Jefferson-Pilot Corp., 141 F.R.D.  
16 408, 412 (M.D.N.C. 1992)); see also O’Connell and Stevenson, California Practice  
17 Guide: Federal Civil Procedure Before Trial (2017) Discovery, para. 11:1886 (“the  
18 apparent test is *whether a respondent of average intelligence would know what items to*  
19 *produce*”) (emphasis in original).

20 As for Defendants’ objections based on scope and time, RPD Nos. 26-27 shall be  
21 limited to the instruction manuals—i.e., “directions given to consumers by the  
22 manufacturer”—for the specific type and./or model of “MK-9 OC pepper spray” and  
23 “expandable (MEB batons)” used by the correctional officers on March 12, 2015, in the  
24 course of the incident at issue in this case.

25 Finally, the Court turns to Defendants’ “safety and security” objection. When

26 \_\_\_\_\_  
27 <sup>1</sup> Documents that are a part of the personnel records of officers defending civil rights actions, while  
28 containing sensitive information, are of course within the scope of discovery. Soto, 162 F.R.D. at 614-15;  
Hampton v. City of San Diego, 147 F.R.D. 227, 230-31 (S.D. Cal. 1993); Miller v. Pancucci, 141 F.R.D.  
292, 296 (C.D.Cal.1992).

1 discoverable information may give rise to institutional safety and security concerns,  
2 courts balance the need for the information and the extent the information compromises  
3 security to determine whether disclosure is warranted. See Marti v. Baires, 2012 WL  
4 2029720, at \*2 (E.D. Cal. June 5, 2012). A conclusory objection based on institutional  
5 security, however, is insufficient. See Goolsby v. Carrasco, 2011 WL 2636099, at \*6-7  
6 (E.D. Cal. July 5, 2011).

7 Here, Defendants merely state that the safety and security of the inmates, staff  
8 and institution would be affected, but do not explain how or why this is so. Nonetheless,  
9 the undersigned proceeds cautiously in light of any potential risks. Accordingly,  
10 Defendants shall produce to the Court all documents responsive to RPD Nos. 26 and 27  
11 within ten (10) days for *in camera* review.

## 12 **2. RPD No. 32**

13 In RPD No. 32, Plaintiff seeks “Emails, text messages, and phone records of/from  
14 all Defendants from March 12, 2015 to current.” Defendants asserted various objections,  
15 including on grounds of relevance and overbreadth. These objections will be sustained.  
16 While Plaintiff claims the text messages are relevant because they amount to  
17 “statements made during and in regard to the course and scope of their employment,”  
18 this request is nothing more than a fishing expedition. See Rivera v. Nibco, Inc., 364  
19 F.3d 1057, 1072 (9th Cir. 2004) (“District courts need not condone the use of discovery  
20 to engage in ‘fishing expeditions.’”). Plaintiff’s motion will be denied for this request.

## 21 **3. RPD No. 33**

22 In RPD No. 33, Plaintiff seeks “Any and all data on uses of force on inmates who  
23 were handcuffed behind their backs as opposed to being waist-chained from 2010 to  
24 2016 on Facility A in California Correctional Institution.” Defendants’ objections include  
25 vagueness, overbreadth, relevance, privacy, the safety and security of the institution,  
26 and the official information privilege. Plaintiff counters that this information is relevant to  
27 show that there is a “pattern and practice” of attacking inmates whose hands are cuffed  
28 behind their backs, like Plaintiff was on March 12, 2015. Plaintiff, however, is not

1 proceeding on a custom, policy or practice claim. Instead, he proceeds only on individual  
2 claims concerning a single incident. His motion will therefore be denied as to this  
3 request.

#### 4 **4. RPD No. 34**

5 In RPD No. 34, Plaintiff seeks a copy of the California Correctional Peace Officer  
6 Association Bargaining Rules. Defendants assert another relevance objection. Plaintiff  
7 counters that these Rules will establish that one of the Defendants, Moore, was aware of  
8 Plaintiff's complaints against her and was attempting to "hide and/or cover up her  
9 complicity in this action." Plaintiff has not sufficiently demonstrated that this information  
10 will assist him in the prosecution of his excessive force claim against Defendant Moore.  
11 Accordingly, his motion will be denied as to RPD No. 34.

#### 12 **5. RPD No. 35**

13 In RPD No. 35, Plaintiff seeks the five year financial record history of all of the  
14 Defendants. Defendants objected to this request on grounds of, inter alia, vagueness  
15 and overbreadth, relevance, and privacy. Plaintiff claims this information is relevant to  
16 his request for punitive damages.

17 Although Defendants object on relevancy grounds, a Defendant's financial  
18 information is relevant to a Plaintiff's claim for punitive damages and within the scope of  
19 permissible discovery. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 269  
20 (1981) ("By allowing juries and courts to assess punitive damages in appropriate  
21 circumstances against the offending official, based on his personal financial resources,  
22 [42 U.S.C. § 1983] directly advances the public's interest in preventing repeated  
23 constitutional deprivations."); Fair Hous. Council of Cent. Cal., Inc. v. Nunez, 2011 WL  
24 5320981, at \*2 (E.D. Cal. Nov. 3, 2011). The Ninth Circuit has not established "the  
25 parameters of the dissemination of financial information during discovery when punitive  
26 damages are alleged," but a majority of federal courts do not require the plaintiff to make  
27 a prima facie showing that punitive damages may be recovered "to discover information  
28 relating to the Defendant's financial condition in advance of trial." EEOC v. Cal. Psych.

1 Transitions, 258 F.R.D. 391, 394-95 (E.D. Cal. 2009). Consequently, the information  
2 Plaintiff seeks through these discovery requests to determine Defendants' net worth is  
3 relevant and within the scope of discovery.

4 Nonetheless, the undersigned agrees with Defendants that Plaintiff's request is  
5 overly broad as to time (an unspecified five-year period) and vague as to scope  
6 ("financial record history," which Plaintiff defines as "prior incomes," does not fairly  
7 identify the nature of the documents that Plaintiff seeks). These objections will therefore  
8 be sustained.

#### 9 **6. RPD Nos. 37-38**

10 In RPD Nos. 37 and 38, Plaintiff seeks "[s]taff procedure manuals" and "[s]taff  
11 training materials" for the administrative segregation units at CCI. Defendants object to  
12 these requests on multiple grounds, including relevance. Plaintiff contends that this  
13 information will show that the Defendants needed additional training despite a  
14 determination that they did not following an investigation into the incident. Plaintiff also  
15 claims that this information will demonstrate "with certainty" that Defendants acted with  
16 malice and were sadistic."

17 These requests will be denied. Plaintiff has not sufficiently demonstrated how  
18 these manuals have any bearing on his excessive force and failure to protect claims,  
19 which are premised on Defendants' conduct when escorting Plaintiff from the law library  
20 and then later during his placement in a holding cell. In addition, Plaintiff has not shown  
21 how the failure of any of the Defendants to abide by any procedures listed in either  
22 manuals lends support to a finding of maliciousness as opposed to, for example, mistake  
23 or carelessness.

24 Plaintiff's related request for sanctions will also be denied.

#### 25 **VI. Application for Leave to Propound Additional Interrogatories**

26 In Plaintiff's Application for Leave to Propound Additional Interrogatories (ECF No.  
27 67), Plaintiff seeks leave to serve interrogatories in excess of the 25-interrogatory limit  
28 on Defendants V. Moore and H. Bennett. Plaintiff has already propounded 25

1 interrogatories on each of these Defendants, but seeks to serve an additional 25 on  
2 Moore and an additional 14 on Bennett. Plaintiff claims that the questions directed to  
3 Moore are intended to identify this Defendant's whereabouts on the day of the incident.  
4 The questions directed to Bennett are intended "to clarify her involvement as a  
5 bystander in the incident at issue."

6 Rule 33 of the Federal Rules of Civil Procedure limits interrogatories to twenty-five  
7 per party, including discrete subparts, but the Court may grant leave to serve additional  
8 interrogatories to the extent consistent with Rule 26(b)(2). The limitation is not intended  
9 "to prevent needed discovery, but to provide judicial scrutiny before parties make  
10 potentially excessive use of this discovery device," and "[i]n many cases, it will be  
11 appropriate for the court to permit a larger number of interrogatories...." Advisory  
12 Committee Notes to the 1993 Amendments of Fed. R. Civ. P. 33.

13 In their objections, Defendants point out that the additional interrogatories that  
14 Plaintiff now seeks to propound are in fact duplicates of a second set of interrogatories  
15 already propounded—without leave of Court—on Defendant Bennett on October 29,  
16 2016, and on Defendant Moore on November 2, 2016. Defs.' Opp'n Exs. B, C. To the  
17 extent Plaintiff is dissatisfied with Defendants' responses to these additional  
18 interrogatories, Defendants rightly point out that Plaintiff may move to compel further  
19 responses. He may not now seek leave to serve additional interrogatories for  
20 interrogatories already served.

21 **VII. Motion for Order Compelling Further Response to First Request for**  
22 **Production of Documents and Imposing Sanctions**

23 **A. Relevant Background**

24 Plaintiff served his first request for production of documents on May 12, 2016, and  
25 Defendants served their responses on June 20, 2016. Dissatisfied with these responses,  
26 Plaintiff filed a motion to compel on July 28, 2016.

27 By order dated January 23, 2017, Plaintiff's motion was granted in part and further  
28 responses were ordered within ten days. (ECF No. 46.) Relevant here, Defendants were

1 directed to issue supplemental responses to RPD Nos. 17, 19, 22, and 23, within ten  
2 days. On January 31, 2017, Defendants filed a timely Notice of Compliance with the  
3 Court's January 23, 2017, Order.

4 In his now-pending Motion for Order Compelling Further Response to First  
5 Request for Production of Documents and Imposing Monetary Sanctions (ECF No. 69),  
6 Plaintiff takes issue with Defendants' supplemental responses to RPD Nos. 17, 19, 22,  
7 and 23.

8 **B. Discussion**

9 **1. RPD Nos. 17, 19**

10 Concerning RPD Nos. 17 and 19, Plaintiff sought information related to the  
11 incident underlying this action. In RPD No. 17, he sought "Any statements by officers to  
12 investigators in internal affairs or at the institutions all Defendant(s) have been or are  
13 currently employed at regarding the events which form the basis of the causes of action  
14 in this case." In RPD No. 19, he sought "All written statements, originals or copies,  
15 identifiable as reports about the incident on March 12, 2015, made by CDCR employees  
16 and/or witnesses."

17 While Defendants had produced documents responsive to these requests, the  
18 Court ordered a supplemental response as follows:

19 It does not appear Defendants have declared under penalty  
20 of perjury that they have produced all documents responsive  
21 to RPD Nos. 17 and 19. They shall do so within ten days  
22 from the date of this Order. To the extent they need to identify  
23 and produce additional documents to ensure that their  
24 declaration is truthful, they shall do that within the same ten-  
25 day period. Out of respect for possible legitimate security  
concerns, Defendants may redact from any such additional  
records personal identifying information beyond last names  
and titles of corrections officers and officials and redact in full  
names of confidential informants, subject to Plaintiff's  
reserved right to seek release of same for good cause  
shown.

26 Jan. 23, 2017, Order (ECF No. 46) at 8-9.

27 In a letter attached to their Notice of Compliance, Defendants noted that

28 In response to your Requests for Production Numbers 17 and

1 19, Defendants produced numerous documents. In its Order,  
2 the Court noted that fact, and ordered Defendants to either  
3 provide a sworn declaration that the documents produced  
4 were the only ones responsive to your requests, or to  
5 produce any additional documents, along with a declaration.

6 Defs.' Opp'n Ex. A (ECF No. 52 at 4-5).

7 Defendants then provided the declaration of Marlon Dailo, the Litigation  
8 Coordinator at CCI, who declared that the documents previously produced to Plaintiff  
9 "are all of the documents in [the California Department of Corrections and Rehabilitation  
10 ("CDCR")]’s possession that are responsive to Requests for Production Numbers 17 and  
11 19." Decl. of M. Dailo ¶ 5 (ECF No. 52 at 10-12).

12 In his motion, Plaintiff contends that M. Dailo "is not being truthful and is duly  
13 dishonest [sic] about the existence of the documents." Pl.’s Decl. in Supp. of Mot. to  
14 Compel ¶ 11 (ECF No. 69). He also claims that the Defendants failed to specify whether  
15 any documents ever existed, have been destroyed, have been lost, misplaced, or stolen  
16 and further failed to specify whether any responsive documents were in Defendants’  
17 possession at one point but no longer. But this information was not required by the  
18 Court’s order. Additionally, Plaintiff has presented no evidence of the existence of  
19 documents not produced to him, such as investigation-related material (Defendants  
20 claim that no investigation took place following the incident). He has also failed to submit  
21 any probative evidence of M. Dailo’s alleged dishonesty. Plaintiff’s motion to compel will  
22 therefore be denied as to RPD Nos. 17 and 19.

## 23 **2. RPD No. 22**

24 In RPD No. 22, Plaintiff sought the CCI staff roster for the entire Facility 4A. This  
25 request was modified by the January 23, 2017, Order to "the staff roster only for the date  
26 of the assault in this case, March 12, 2015, and limited to the facility where the assault  
27 occurred." Defendants were thus directed to submit this log within ten days. Defendants’  
28 Notice of Compliance included a 4-page roster of correctional officers who worked on  
Facilities A-C on Watches 1-3 on March 12, 2015. (ECF No. 52 at 6-9.)

Plaintiff seeks further response on the ground that Defendants improperly limited

1 the roster to correctional officers and omitted the names of all other employees, including  
2 medical staff. Defendants counter that medical staff assignments are listed separately  
3 and based on medical facility assignments. Since the incident in this case did not occur  
4 in a medical facility, they contend that they produced the information requested by  
5 Plaintiff and ordered by the Court. The undersigned agrees and therefore denies  
6 Plaintiff's motion as to RPD No. 22.

7 **3. RPD No. 23**

8 In RPD No. 23, Plaintiff sought a copy of a complaint he wrote to CCI Warden Kim  
9 Holland in February 2015 regarding living conditions on Facility 4A in Building 6.  
10 Defendants were ordered to provide a copy of this letter "unless they can show they do  
11 not have it or provide other good cause why they cannot so produce it." In their  
12 opposition, Defendants acknowledge that they overlooked this portion of the Court's  
13 Order and will search their records for a copy and provide it if they have it. Plaintiff's  
14 motion is thus denied as moot as to RPD No. 23.

15 Plaintiff's related request for sanctions will be denied.

16 **VIII. Motion for Protective Order**

17 In his final discovery motion, Plaintiff seeks a protective order to preclude  
18 Defendants from taking his oral deposition. (ECF No. 74.) He claims that he was recently  
19 deposed by the Department of Justice in a related state law case that is based on the  
20 same facts. He states that the deposition in this case will subject him to annoyance,  
21 embarrassment, oppression, undue burden or expense and that it constitutes an abusive  
22 practice.

23 This Court recently reviewed the substance of Plaintiff's state case in an August  
24 21, 2017, findings and recommendations to deny Defendants' motion to stay. (ECF No.  
25 77.) There, the undersigned determined that Plaintiff's state case, McCoy v. CDCR,  
26 Case No. BCV-15101024-TSC, which was filed in the Kern County Superior Court,  
27 proceeds against the CDCR and eight individuals, including four Defendants named  
28 here (King, Moore, Casillas, and Holguin). Plaintiff's claims in that case are state law



1 claims for battery, deceit, intentional infliction of emotional distress, property damage,  
2 and breach of duty. In this case, on the other hand, Plaintiff proceeds against 19  
3 Defendants on federal claims of Eighth Amendment excessive force and failure to  
4 protect claims. In light of the substantial differences both in claims and Defendants,  
5 Plaintiff's motion for protective order will be denied.

6 **IX. Motion to Modify Scheduling Order**

7 In his second motion to modify the scheduling order (ECF No. 64), Plaintiff seeks  
8 a continuation of the discovery and dispositive motion deadlines to conduct discovery.  
9 Defendants have filed a statement of non-opposition. (ECF No. 68.) Considering the  
10 procedural history of this case, including a discovery stay and the multiple discovery  
11 motions, the Court finds good cause to modify the scheduling order. Fed. R. Civ. P.  
12 16(b)(4). Accordingly, this request will be granted.

13 **X. Conclusion**

14 Based on the foregoing, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's second motion to amend the discovery and scheduling order (ECF  
16 No. 64) is GRANTED;
  - 17 a. The discovery deadline is continued to October 20, 2017,
  - 18 b. The dispositive motion deadline is continued to December 15, 2017;
- 19 2. Plaintiff's motion for order compelling response to discovery (renewal) (ECF  
20 No. 65) is DENIED;
- 21 3. Plaintiff's motion for order to compel further response to discovery and  
22 application for sanctions (renewal) (ECF No. 66) is GRANTED IN PART.  
23 Defendants shall produce to the Court all documents responsive to RPD Nos.  
24 26-27 within ten (10) days from the date of this Order for *in camera* review.  
25 The motion is DENIED as to all other requests;
- 26 4. Plaintiff's motion for leave to propound additional interrogatories (ECF No. 67)  
27 is DENIED;
- 28 5. Plaintiff's motion for order compelling further response to first request for

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production of documents and imposing monetary sanctions (ECF No. 69) is DENIED; and

6. Plaintiff's motion for protective order (ECF No. 74) is DENIED.

IT IS SO ORDERED.

Dated: September 12, 2017

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