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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

MICHAEL HERNANDEZ GONZALEZ,

Plaintiff,

v.

THE FRESNO SHERIFF'S  
DEPARTMENT, et al.,

Defendants.

Case No. 1:15-cv-01200-BAM (PC)

**ORDER DENYING MOTION TO COMPEL  
WITHOUT PREJUDICE  
(ECF No. 38)**

**ORDER CLARIFYING DISCOVERY  
REQUEST AND ORDERING DEFENDANT  
TO RESPOND WITHIN **FOURTEEN (14)  
DAYS****

**Deadline to Identify Doe Defendants: **Forty-Five (45) Days****

Plaintiff Michael Hernandez Gonzalez (“Plaintiff”) was a pretrial detainee at the time of the incident and is currently a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff and Defendant Mims have consented to the jurisdiction of a United States Magistrate Judge. (ECF Nos. 4, 34.) This action proceeds on Plaintiff’s third amended complaint against Defendants Sheriff Mims and Deputy Sheriffs JOHN and JANE DOES 1–10 for failing to protect Plaintiff in violation of the Fourteenth Amendment, arising from Defendants’ failure to investigate Plaintiff’s subsequent placements in holding cells, after the initial beating on or about October 20, 2012, including upon his return from Atascadero. (ECF Nos. 21, 22.)

**I. Background**

On April 12, 2017, the Court issued an order finding service of the third amended complaint appropriate on Defendant Mims. The Court further ordered Plaintiff, within ninety

1 (90) days from the date of the order, to provide written notice identifying the Doe Defendants  
2 with enough information to locate the defendants for service of process. (ECF No. 22.)

3 On May 12, 2017, Plaintiff filed a motion requesting a 60-day continuance to obtain  
4 information as to the identity of the Doe Defendants. (ECF No. 25.) As Plaintiff did not include  
5 any reasons for his request and more than 60 days remained before the original deadline expired,  
6 the Court issued an order denying Plaintiff's motion. (ECF No. 26.)

7 Defendant Mims appeared and filed an answer in this action on June 23, 2017. (ECF No.  
8 28.) The Court issued a discovery and scheduling order on June 28, 2017. (ECF No. 29.)

9 Thereafter, Plaintiff filed three motions: (1) Plaintiff's motion for extension of time in  
10 which to serve unknown defendants, (ECF No. 31); (2) Plaintiff's motion to appoint counsel,  
11 (ECF No. 32); and (3) Plaintiff's motion to compel discovery, (ECF No. 33). The Court granted  
12 the motion for extension of time and denied the motion to appoint counsel and motion to compel  
13 without prejudice. (ECF No. 35.) The Court further advised Plaintiff that as discovery was now  
14 open in this action with respect to Defendant Mims, it was unnecessary for him to file a motion to  
15 compel unless he found a discovery response from Defendant Mims to be unsatisfactory. (Id.)

16 On August 23, 2017, Plaintiff filed a response to the Court's order, stating that he had  
17 asked Defendant Mims to arrange to accept service on behalf of the unserved and unknown  
18 classification officers at the Fresno County Jail. (ECF No. 36.) Plaintiff further suggested that  
19 Defendant Mims could provide the names of the Defendants directly to the U.S. Marshal Service  
20 as a compromise between Plaintiff's need to effectuate service and the privacy of the  
21 classification officers. (Id.)

22 Defendant Mims filed a response on August 24, 2017. (ECF No. 37.) Defendant Mims  
23 attached a declaration of counsel stating that she replied to Plaintiff's letter the day it was  
24 received, and attached a copy of Plaintiff's letter and her response. In her letter, defense counsel  
25 advised Plaintiff that she is not authorized to accept service of any documents on behalf of any  
26 unnamed County employees. (Id.)

27 On September 7, 2017, Plaintiff filed the instant motion to compel, relating to various  
28 discovery issues. (ECF No. 38.) Defendant Mims opposes the motion to compel on the grounds

1 that she is unable to further respond to Plaintiff's request without further clarifying and/or  
2 identifying or descriptive information, and to the extent that Plaintiff seeks an order pertaining to  
3 matters other than classification issues, such matters have not been addressed as part of any  
4 discovery between the parties. Defendant Mims attached a copy of Plaintiff's discovery request  
5 dated August 28, 2017 and defense counsel's letter in response. Plaintiff's request, though  
6 difficult to understand, appears to request the names of the Fresno County Jail classification  
7 officers, as related to injuries sustained in 2014 and his placement in cell(s) with Bulldogs gang  
8 members that led to a further attack. Plaintiff again proposes that Defendant Mims provide the  
9 names of the classification deputies directly to the U.S. Marshal as a compromise for effective  
10 service. In her letter in reply, defense counsel states merely that it is Defendant Mims'  
11 understanding that Plaintiff was never housed with other detainees or inmates in the Fresno  
12 County Jail who had been identified as belonging to any bulldog gang. (Id.)

## 13 **II. Legal Standards**

14 The discovery process is subject to the overriding limitation of good faith, and callous  
15 disregard of discovery responsibilities cannot be condoned. Asea, Inc. v. S. Pac. Transp. Co., 669  
16 F.2d 1242, 1246 (9th Cir. 1981) (quotation marks and citation omitted). "Parties may obtain  
17 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and  
18 proportional to the needs of the case, considering the importance of the issues at stake in the  
19 action, the amount in controversy, the parties' relative access to relevant information, the parties'  
20 resources, the importance of the discovery in resolving the issues, and whether the burden or  
21 expense of the proposed discovery outweighs its likely benefit." Fed R. Civ. P. 26(b)(1).

22 Generally, if the responding party objects to a discovery request, the party moving to  
23 compel bears the burden of demonstrating why the objections are not justified. E.g., Grabek v.  
24 Dickinson, No. CIV S-10-2892 GGH P, 2012 WL 113799, at \*1 (E.D. Cal. Jan.13, 2012);  
25 Womack v. Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at \*3 (E.D. Cal. Dec.  
26 21, 2011); Mitchell v. Felker, No. CV 08-119RAJ, 2010 WL 3835765, at \*2 (E.D. Cal. Sep.29,  
27 2010). This requires the moving party to inform the Court which discovery requests are the  
28 subject of the motion to compel, and, for each disputed response, why the information sought is

1 relevant and why the responding party's objections are not meritorious. Grabek, 2012 WL  
2 113799, at \*1; Womack, 2011 WL 6703958, at \*3; Mitchell, 2010 WL 3835765, at \*2.

3 However, the Court is vested with broad discretion to manage discovery and  
4 notwithstanding these procedures, Plaintiff is entitled to leniency as a pro se litigant. Hunt v. Cty.  
5 of Orange, 672 F.3d 606, 616 (9th Cir. 2012); Surfvivor Media, Inc. v. Survivor Prods., 406 F.3d  
6 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

### 7 **III. Discussion**

8 To the extent Plaintiff refers to matters not yet addressed as part of any discovery between  
9 the parties, Plaintiff's motion to compel is denied. Plaintiff should refer to the Court's June 28,  
10 2017 discovery order regarding the relevant Federal Rules of Civil Procedure applicable to  
11 discovery and any disputes that may arise.

12 However, in light of Plaintiff's pro se status, the Court finds it appropriate to clarify the  
13 remainder of Plaintiff's request in this instance. As should be apparent to Defendant from the  
14 docket and the Court's discussion of the background of this action, Plaintiff is seeking the  
15 identities of the particular Doe Defendants named in the third amended complaint, so they can be  
16 identified and located by the U.S. Marshal for service of process.

17 Plaintiff's complaint identifies the Doe Defendants as members of the Fresno County Jail  
18 classification committee who failed to investigate Plaintiff's subsequent placements in holding  
19 cells, after the initial beating on or about October 20, 2012, including upon his return from  
20 Atascadero on or about May 2013. Although Plaintiff's August 28, 2017 discovery request may  
21 be difficult to understand, he explicitly refers to his need to provide the U.S. Marshals with the  
22 names of the Fresno County Jail classification deputies. Defense counsel's letter, addressing only  
23 the matter of whether counsel believes Plaintiff was ever housed with other detainees or inmates  
24 identified as members of the Bulldogs gang, is not responsive to Plaintiff's request.

25 Nevertheless, Defendant's argument that she is unable to further respond absent additional  
26 clarifying or identifying information is well taken. Accordingly, and in light of Plaintiff's pro se  
27 status, the Court will clarify Plaintiff's request.

28 ///

1 Defendant shall provide Plaintiff with the names of the classification committee members  
2 for the Fresno County Jail who were responsible for Plaintiff's housing and/or cell placements  
3 from October 20, 2012, until Plaintiff's placement following his return from Atascadero on or  
4 about May 2013. Defendant is reminded that should she assert any privileges, "[t]he party  
5 asserting an evidentiary privilege has the burden to demonstrate that the privilege applies to the  
6 information in question." Tornay v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988).

7 **IV. Conclusion and Order**

8 Accordingly, IT IS HEREBY ORDERED as follows:

- 9 1. Plaintiff's motion to compel (ECF No. 38) is DENIED, without prejudice;
- 10 2. Defendant shall respond to Plaintiff's August 28, 2017 discovery request, as  
11 clarified by this order, within **fourteen (14) days** from the date of service of this order; and
- 12 3. Within **forty-five (45) days** from the date of service of this order, Plaintiff shall  
13 provide the Court with written notice identifying Doe Defendants with enough information to  
14 locate the defendants for service of process.

15 IT IS SO ORDERED.

16 Dated: October 5, 2017

17 /s/ Barbara A. McAuliffe  
18 UNITED STATES MAGISTRATE JUDGE