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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OUSSAMA SAHIBI,

 Plaintiff,

 v.

BORJAS GONZALES, et al.,

 Defendants.

CASE No. 1:15-cv-01581-LJO-MJS (PC)

**ORDER DENYING, WITHOUT
PREJUDICE, MOTION TO COMPEL AS
TO DEFENDANT CROUNSE**

(ECF NO. 83)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Eighth Amendment excessive force claim against Defendants Cope, Gonzales, Lozano, Smith, and Stane, and on a Fourteenth Amendment due process claim against Defendant Crouse. Before the Court is Plaintiff's January 31, 2017, motion to compel. (ECF No. 83.) Defendants filed oppositions. (ECF Nos. 85-89.) Plaintiff filed no reply.

This order addresses only those portions of Plaintiff's motion to compel directed toward Defendant Crouse. The motion to compel discovery from other Defendants remains under submission pending Defendants' submission of materials for in camera review. (ECF No. 94.)

The posture of Plaintiff's motion as to Defendant Crouse is somewhat confused. On November 22, 2016 and November 28, 2016, Plaintiff filed motions seeking an

1 extension of time to file a motion to compel, indicating that Defendants had objected to
2 many of his discovery requests on grounds of confidentiality and/or privilege. He had
3 attempted to resolve this matter informally but received no response from defense
4 counsel prior to the November 3, 2016 expiration of the discovery cut-off.

5 The Court then set this and other discovery matters for a telephonic conference
6 on January 13, 2017. Therein, the Court granted Plaintiff's motions for extensions of
7 time, affording him until January 30, 2017 to file his motion to compel. (ECF No. 81.)
8 Plaintiff was advised that his motion to compel must be supported by specific arguments
9 regarding the alleged deficiencies of Defendants' responses. Furthermore, the parties
10 were advised that the Court was disinclined to consider discovery requests relating to
11 Defendant Crouse's history of excessive force issues because such information was
12 not likely to lead to the discovery of relevant admissible evidence. Lastly, the Court noted
13 that Defendant Crouse's privilege log appeared facially deficient; he was advised that
14 the failure to support objections with a proper privilege log and supporting declaration
15 could result in a finding that the privilege had been waived. (See ECF No. 81.)

16 Defendant Crouse came away from the conference with the mistaken impression
17 that the Court granted a motion to compel "against the five 'KVSP Defendants' and not
18 as to Lt. Crouse." (ECF No. 87-1 at 2.) No such motion had been granted as none had
19 been filed or argued. Nonetheless, Crouse apparently took to heart the admonition that
20 his assertion of privilege was defective and endeavored, apparently for the first time, to
21 identify privileged documents responsive to Plaintiff's requests. (See id. at 5-42.) He then
22 supplemented his discovery responses on January 31, 2017. (Id. at 3.) Therein, he
23 stated, "A privilege log is unnecessary since no such privileged/confidential documents
24 responsive to the Amended Responses exist." (Id. at 6.)

25 Plaintiff's motion to compel was filed the same day. (ECF No. 83.) Based on
26 Defendant's simultaneous amendment of his responses, the motion to compel appears
27 to be moot. The Court will not endeavor to review Plaintiff's multitudinous requests,
28 Defendant's initial and amended responses, and the parties' respective arguments to

1 determine whether live issues remain. Instead, the Court will permit Plaintiff twenty-one
2 (21) days from the date of this order to file an amended motion to compel, in the event
3 he believes the amended responses remain deficient. Once again, Plaintiff is reminded
4 that any motion to compel must identify why each contested response is deficient, why
5 the evidence sought is relevant, and why the objections to production are not
6 meritorious.

7 Based on the foregoing, Plaintiff's motion to compel further discovery from
8 Defendant Crouse is HEREBY DENIED without prejudice to Plaintiff's filing an
9 amended motion within twenty-one days.

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11 IT IS SO ORDERED.

12 Dated: March 6, 2017

/s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE
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