



I.

DISCUSSION

Plaintiff is proceeding pro se and he is a federal prisoner challenging his conditions of confinement. As a result, the parties were relieved of some of the requirements which would otherwise apply, including initial disclosure and the need to meet and confer in good faith prior to involving the Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(c); Fed. R. Civ. P. 37(a)(1); Local Rules 240, 251; ECF No. 41, Discovery and Scheduling Order, ¶4. Further, where otherwise discoverable information would pose a threat to the safety and security of the prison or infringe upon a protected privacy interest, a need may arise for the Court to balance interests in determining whether disclosure should occur. See Fed. R. Civ. P. 26(c); Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35 n.21 (1984) (privacy rights or interests implicit in broad purpose and language of Rule 26(c)); Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court for the Dist. of Montana, 408 F.3d 1142, 1149 (9th Cir. 2005) (discussing assertion of privilege); Soto v. City of Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (recognizing a constitutionally-based right of privacy that can be raised in discovery); see also Garcia v. Clark, No. 1:10-CV-00447-LJO-DLB PC, 2012 WL 1232315, at \*6 n.5 (E.D. Cal. Apr. 12, 2012) (noting inmate's entitlement to inspect discoverable information may be accommodated in ways which mitigate institutional safety concerns); Robinson v. Adams, No. 1:08-cv-01380-AWI-BAM PC, 2012 WL 912746, at \*2-3 (E.D. Cal. Mar. 16, 2012) (issuing protective order regarding documents containing information which implicated the safety and security of the prison); Orr v. Hernandez, No. CV-08-0472-JLQ, 2012 WL 761355, at \*1-2 (E.D. Cal. Mar. 7, 2012) (addressing requests for protective order and for redaction of information asserted to risk jeopardizing safety and security of inmates or the institution if released); Womack v. Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at \*5-6 (E.D. Cal. Dec. 21, 2011) (requiring 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 litigant; 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           Plaintiff seeks to compel Defendants to respond to his request for production, set one, number  
25 13 which requested as follows: “Produce all footage from 5am til 7pm recorded from all cameras in  
26 unit 2A, the counselor office hallway, the indoor tunnels in front of 2A and the inmate exit to the  
27 compound from 2A – Oct 6 2017 til Oct 28, 2017.” (Pl. Mot. at 1, ECF No. 48.) Defendants indicated  
28 that they did not possess any video footage responsive to this request. (Id.)

1 Plaintiff “requests this Court to order the video footage be turned over to the plaintiff either by  
2 subpoena or as discovery. The video footage is essential to the plaintiff’s case as it stands now both  
3 Mr. Alatary & Mr. Castanada have no recollection of being called to plaintiff’s cell door, together.  
4 Further, Mr. Alatary maintains he never spoke to the plaintiff or recalls escorting him. On Oct 16,  
5 2017 Alatary escorted plaintiff to the interviews where plaintiff complained of serious medical issue.  
6 The video footage will prove the interactions.” (Pl. Mot. at 1-2.)

7 Defendants initially argue that Plaintiff’s “motion is deficient because it is not supported by an  
8 affidavit as required by Local Rules 230(h) and 142.” (Mot. at 1:20-21.) However, Local Rule 230  
9 does not govern discovery disputes, and its provisions “shall not apply to motions dealing with  
10 discovery matters.” Local Rule 251(f). Nonetheless, Plaintiff’s motion to compel a further response  
11 must be denied. Defendants submit that they timely responded to Plaintiff’s request for production  
12 without qualification or objections. Defense counsel has declared under penalty of perjury that after a  
13 diligent inquiry there is no responsive video, and Plaintiff has not submitted evidence to the contrary.  
14 Therefore, Defendants cannot be compelled to produce a video that does not exist. Fed. R. Civ. P.  
15 34(a)(1).

16 While the Court recognizes that Plaintiff may be disinclined to accept Defendants’ discovery  
17 responses at face value, he is in a position no different than any other civil litigant: he is required to  
18 accept legally sufficient discovery responses. Mere distrust and suspicion do *not* form a legitimate  
19 basis to further challenge facially sufficient discovery responses. Moreover, signed discovery  
20 responses are themselves certifications to the best of the person’s knowledge, information, and belief  
21 formed after a reasonable inquiry, Fed. R. Civ. P. 26(g)(1)(B) (quotation marks omitted), as are other  
22 signed filings presented to the Court, Fed. R. Civ. P. 11(b). See also Fed. R. Civ. P. 33(c). Further,  
23 Defendants are required to supplement their discovery responses should they learn that their responses  
24 were incomplete or incorrect, if the incomplete or incorrect information has not otherwise been made  
25 known to Plaintiff. Fed. R. Civ. P. 26(e)(1) (quotation marks omitted).

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**II.**  
**ORDER**

Based on the foregoing, Plaintiff's motion to compel, filed March 14, 2019, is DENIED.

IT IS SO ORDERED.

Dated: April 16, 2019

  

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UNITED STATES MAGISTRATE JUDGE