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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

THOMAS CLINTON,
Plaintiff,

No. CIV S-05-1600-LKK-CMK-P

vs.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,
Defendants.

_____ /

Plaintiff, a former state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

Pending before the court are several of Plaintiff’s motions/requests for discovery sanctions in the form of a default judgment. Plaintiff claims “spoliation of evidence” based on the argument that Defendants and defense counsel are destroying, concealing, and refusing to produce evidence. He claims there have been twenty-eight instances where the defendants have destroyed documents or manipulated discovery so as not to produce requested documents. Plaintiff is basically arguing that the defense is not acting in good faith.

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1 **I. Plaintiff's Summary of Motions**

2 Plaintiff summarizes his requests for default judgment based on spoliation of
3 evidence as follows¹:

4 1. APPEAL TO COURT DECISION. OBJECTION OF
5 COURTS FINDINGS AND RECOMMENDATIONS;
6 PLAINTIFF QUALIFIES FOR AN EXCEPTION TO THE PLRA. Judge Karlton agreed that prison staff obstructed Plaintiff's proper
7 exhaustion of his administrative remedies, and which would prevent him from filing suit against them. (Docket #81) (Docket #91, p.4, lines 1-3).

8 2. MOTION FOR MISTRIAL 100% IN PLAINTIFF'S
9 FAVOR ON THE BASIS OF SPOLIATION AND ADVERSE
10 INFERENCE. Within this document Plaintiff proved with
11 undeniable evidence that his prison records are falsified, and that
12 other California prison officials informed the federal government
13 that his rape was substantiated in 2004. [¶] This raises the serious
14 question as to what else is falsified within Plaintiff's prison
15 records, and if the Magistrate can trust any of Plaintiff's prison
16 documents. (Docket #324).

17 3. REQUEST FOR SANCTION; REQUEST FOR
18 MISTRIAL IN FAVOR OF PLAINTIFF; RESPONSE TO
19 DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO
20 COMPEL FURTHER PRODUCTION OF DOCUMENTS, SET
21 14. Within this document Plaintiff proves that Defendant
22 destroyed the electronic evidence of Sergeant Casner's CDC 1030,
23 property file, and to prevent Plaintiff from proving that that
24 document was rewritten to discredit Plaintiff's prisoner rape.
25 Plaintiff needed that evidence to prove that these discrediting
26 documents were re written, after staff gave Plaintiff's prison rape
documents to other inmates to read. (Docket #323) [actually 322].

1 4. THE COURT IS BOUND TO DISMISS THIS CASE
2 WITH PREJUDICE AGAINST THE DEFENDANT AS A
3 MATTER OF LAW. THE DISCOVERY FOR THIS SUIT MAY
4 BE UNNECESSARY. In this response to Defendants refusal to
5 produce the property files on the computer generated documents.
6 Plaintiff produced an excerpt from his diary that he kept, and
7 where he was informed by John Doe staff that prison officials were
8 re-writing his prison documents to exonerate themselves of their
9 misconducts in publicizing Plaintiff's prisoner rape to inmates.
10 Plaintiff's presented evidence creates a reasonable doubt that
11 prison staff did re-write some of his prison documents to discredit
12 and conceal his rape. In this document Plaintiff challenged the

1 ¹ See Doc. 348.

1 Court to explain how he “knew” that Defendants were re-writing
2 his prison documents years before, and provided an excerpt from
3 his diary were [sic] John Doe staff warned Plaintiff what prison
4 officials were doing. (Docket #189).

5 5. MOTION TO COMPEL PRODUCTION OF
6 DOCUMENTS, SET NUMBER: 15, REQUEST FOR
7 SANCTIONS, p. 4-5. [¶] In Production No. 1 and its Motion to
8 Compel, Defendant lied and stated that the Confidential
9 Memorandum on Plaintiff’s rape, that was released into prison
10 population, and to cause injury to Plaintiff. Could not be found,
11 but Plaintiff proved that that document was referenced during
12 classification. [¶] This proved that either Defendant has the
13 document in their custody and control or refuses to relinquish it for
14 trial or, that state officials are destroying Plaintiff’s inmate records
15 to prevent Plaintiff’s suit from prevailing. [¶] Either way the law
16 says that if Plaintiff proves deceitful practices by Defendant this
17 suit must be dismissed and granted 100% in Plaintiff’s favor.
18 Obviously the Classification Hearing document references
19 Confidential Memorandums to refer to, and which were the
20 documents that were released publicizing Plaintiff’s prisoner rape.
21 Destruction of evidence (especially when California states it must
22 be kept for 30 years) is undeniable spoliation, and this suit must be
23 dismissed in favor of Plaintiff to prevent a miscarriage of justice.
24 (Docket #328, Exh. A)(Docket #329) [actually Doc. #210].

25 6. REQUEST FOR A PROTECTIVE ORDER AGAINST
26 DOCUMENTS THAT ARE UNTRUSTWORTHY AND/OR A
JUDICIAL NOTICE THAT DOCUMENTS ARE TO BE
CONSIDERED UNTRUSTWORTHY. Within this document
Plaintiff provided undeniable evidence that Correctional Sergeant
Sherer and Sergeant Casner documents were re-written and
because the dates and timelines do not match with the Prison
Classification Hearing documents. [¶] Plaintiff provided
undeniable evidence that Defendant’s destroyed Plaintiff’s prison
documents so he could not identify John Does and provide
evidence of constructive knowledge. This is proven by the fact
that the CDC 1030 actually references another document in which
Defendant states does not exist. Even though the state is required
to keep Plaintiff’s prison records for 30 years. Proving prison
staffs are destroying Plaintiff’s documents to injure his suit and
prevent the truth from being known. (Docket #213).

7. MOTION FOR MISTRIAL 100% IN PLAINTIFF’S
FAVOR ON THE BASIS OF SPOLIATION AND ADVERSE
INFERENCE. [Requesting] Judicial Notice that Plaintiff’s prison
rape documents were falsified. (Docket #214)

8. DESTRUCTION OF EVIDENCE, REQUEST FOR
SANCTIONS, AND SUBJECT TO DEFAULT AS A MATTER
OF LAW. Within this document Plaintiff proved that the Prisons

1 CDC 1030 Confidential Disclosure Forms referenced other
2 documents, and Defendant has admitted that the referenced
3 documents have been destroyed. Plaintiff has proven that the state
4 is required to retain those documents in Plaintiff's prison record for
5 no less than 30 years. This proves that it is a willful destruction of
6 Plaintiff's evidence to protect Defendants Desantis, Riley, Cooper,
7 and the John Does that publicized Plaintiff's prisoner rape.
8 (Docket #216).

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9. REQUEST FOR A SANCTION DUE TO DISCOVERY VIOLATION AND TO ACCEPT EVIDENCE TO SUPPORT DEFENDANT DESANTIS HISTORY OF MISCONDUCTS.

Within this document Plaintiff proved that Defendant lied about producing photographs of staff to identify his John Does, and that staff do not have to take a photograph. Those photographs already exist in staff personnel files. This is a clear violation of discovery, and not to mention Defendant "lied" to Plaintiff and the Court again. [¶] Plaintiff provided character evidence against Defendant P. Desantis, and evidence on how others are adversely treated when a party files a grievance/suit against P. Desantis. The staff turn on that person, to protect P. Desantis, and because he is the President of the prisons California Correctional Peace Officer's Association chapter at California Correctional Center, Susanville, California. (Docket #215).

10. SPOILIATION; DISCOVERY VIOLATION; SURVEILLANCE CAMERAS. Within this document Plaintiff proved that CDCR does have surveillance cameras to produce evidence of Plaintiff's abuse and to identify his John Does, and that Defendant deliberately produced the wrong evidence of the records retention schedule to permit Plaintiff to know how long those tapes are to be retained as records. [¶] Defendant refuses to produce the electronic evidence in the form of the video tapes, and refuses to produce how long those tapes are retained. The only logical reason for such acts is because: (1) Deliberately destroyed Plaintiff's evidence to prevent him from proving he was abused after he was raped; *or* (2) Deliberately not producing the evidence in their custody to permit Plaintiff to prove he was abused after he was raped. (Docket #321).

11. (TO RUN CONCURRENT WITH: SPOILIATION; DISCOVERY VIOLATION; SURVEILLANCE CAMERAS.) In this document Plaintiff proved that CDCR surveillance cameras actually "do" record, and that Defendant would have evidence to produce as Plaintiff requested. Yet, Defendant continues to lie and state that they do not. (Docket #223).

12. (TO RUN CONCURRENT WITH: REQUEST FOR PROTECTIVE ORDER AGAINST DOCUMENTS THAT ARE UNTRUSTWORTHY AND/OR A JUDICIAL NOTICE THAT DOCUMENTS ARE TO BE CONSIDERED

1 UNTRUSTWORTHY.) In this document Plaintiff proved that
2 Defendant lied about not having the requested electronic evidence,
3 which that evidence must be retained for 30 years, and Defendant
4 is either: (1) Defendant is refusing to relinquish it because it would
5 prove that the documents were re-written; or (2) Unlawfully
6 destroyed to prevent Plaintiff from proving his claim. (Docket
7 #224).

8 13. REQUEST FOR A SANCTION DUE TO DISCOVERY
9 VIOLATION IN DEFENDANTS OPPOSITION TO
10 PRODUCTION OF DOCUMENTS SET NUMBER FOUR. In
11 this document Plaintiff proved that Defendant does not have to
12 take photographs of Plaintiff's requested evidence, and that CDCR
13 could just print the documents from their surveillance cameras.
14 Plaintiff specifically produced the inmate cages that Defendant
15 states that they have no photographs of, and to prove that it is
16 impossible for a prison rape victim to request medical attention
17 without disclosing he was raped to other inmates. Thereby proving
18 that raising the burden onto Desantis, Cooper, and Riley to inform
19 medical that Plaintiff was raped and needs medical treatment.
20 (Docket #227).

21 14. ANOTHER VIOLATION OF DISCOVERY; REQUEST
22 FOR SANCTION; REQUEST FOR JUDICIAL NOTICE
23 (RESPONSE TO PRODUCTION OF DOCUMENTS SET
24 NUMBER 5, REQUEST 29.). Here Plaintiff produced evidence
25 that the CDCR medical admits the date that Plaintiff's Los Angeles
26 Men's Central Jail files were received by CDCR and Defendants
became aware that Plaintiff has a history of vulnerability. (Docket
#248).

15 15. DISCOVERY VIOLATION, REQUEST FOR
16 SANCTIONS, ADVERSE INFERENCE, AND A JUDICIAL
17 NOTICE (PRODUCTION OF DOCUMENTS SET NO. 1,
18 REQUEST 17). In this document Plaintiff proved that Defendant
19 lied and stated that there is no such thing as a Simmons Decision
20 Review, but Plaintiff has provided another inmate records to prove
21 that there is. This is the process in which Defendant was supposed
22 to use to identify the John Doe staff that released Plaintiff's prison
23 rape documents to other inmates, and proves that Defendants are
24 "concealing" the identity of Plaintiff's John Does. (Docket #247).

25 16. REQUEST FOR INFERENCE; REQUEST FOR
26 SANCTION; TO ACCEPT AS GENUINE; JUDICIAL NOTICE;
AND DISCOVERY VIOLATION IN RESPONSE TO
PRODUCTION OF DOCUMENTS SET NUMBER 11,
REQUEST NUMBER 8. In this motion Plaintiff proved that
Defendant lied about the CDC 114-A document and that there is
actually a CDC 114-A log and then there is a CDC 114-A "file"
where Plaintiff's administrative documents are kept for Defendants
to read. Plaintiff has linked Defendants Riley and Cooper to

1 knowing that Plaintiff was raped but did not summon medical care
2 but, without the file Plaintiff is prevented from linking Defendant
3 Desantis and John Doe(s) to knowing about Plaintiff's prisoner
4 rape and did not summon medical care. (Docket #252).

5 17. CD DOCUMENT AS EXHIBIT 2 SPOILIATION AND
6 VIOLATION OF DISCOVERY, DISCOVERY VIOLATION IN
7 RESPONSE TO PRODUCTION OF DOCUMENTS SET
8 NUMBER 14, NUMBER 4. In this violation of discovery Plaintiff
9 proved that Defendant deliberately produced the wrong evidence to
10 prevent Plaintiff from acquiring the evidence that they have the
11 documents in their possession but are refusing to relinquish them
12 [sic]. (Docket #282).

13 18. DISCOVERY VIOLATION: DEFENDANTS RESPONSE
14 TO REQUEST FOR PRODUCTION OF DOCUMENTS SET 3.
15 REQUEST SANCTION, JUDICIAL NOTICE, AND ADVERSE
16 INFERENCE. In this document Plaintiff proved that either prison
17 officials are destroying Plaintiff's prison records that they are
18 legally required to retain for a minimum of 30 years *or* Mr. Steel is
19 refusing to produce evidence that Plaintiff is requesting to cause
20 irreparable injury to Plaintiff's suit. Plaintiff also proved that Mr.
21 Steel presented false information and evidence and produced the
22 wrong documents for the requested PRODUCTION of documents
23 in an attempt to prevent alerting Plaintiff that his documents were
24 being unlawfully destroyed. (Docket #225) [actually Doc. #255].

25 19. REQUEST FOR A SANCTION DUE TO SPOILIATION;
26 PRODUCTION OF DOCUMENTS SET NO. TWO, NOS. 7, 8 &
27 9. Here, Plaintiff proved by using the legal correspondence logs,
28 that either Defendant is destroying his state records or refusing to
29 relinquish them, most certainly Defendant is doing this [with] all of
30 Plaintiff's requested evidence, and to prevent Plaintiff from
31 prevailing with his suit. (Docket #270).

32 20. DISCOVERY VIOLATION; SPOILIATION;
33 PRODUCTION OF DOCUMENTS SET NO. 2, REQUEST NO.:
34 13. Here, Plaintiff proved that there was administrative
35 correspondence alerting Former Director J. S. Woodsford about
36 what was criminally going on at Trinity River Conservation Camp
37 and California Correctional Center, by [sic] the administrative
38 supervisors did nothing about it. Plaintiff proved that either : (1)
39 CDCR officials are destroying Plaintiff's evidence that California
40 law requires them to retain; or (2) Are refusing to produce it to
41 keep Plaintiff from proving his claims. (Docket #269).

42 21. REQUEST SANCTION OF ADVERSE INFERENCE
43 THAT DEFENDANT HAS EVIDENCE IN THEIR CUSTODY
44 AND CONTROL BUT IS REFUSING TO PRODUCE IT.
45 Defendant continues to state that there are no confidential
46 documents to be produced for Plaintiff's discovery but, Plaintiff

1 produced a portion of the log were prison officials are signing in to
2 read these documents that Defendant states do not exist in
3 Response to Production of Documents Set No. One and Plaintiff
4 has proven that such documents are clearly referenced in CDCR
5 classification hearing documents. Plaintiff also proved that such
6 documents must be retained for a minimum of 30 years. (Docket
7 #285) [actually Doc. #265].

8 22. REQUEST FOR A SANCTION DUE TO DISCOVERY
9 VIOLATION; REQUEST FOR JUDICIAL NOTICE; ADVERSE
10 INFERENCE. (PRODUCTION OF DOCUMENTS SET
11 NUMBER 7, REQUEST NO.: 7 & 8). In this document Plaintiff
12 proved that Deputy Attorney General Jeff Steel is manipulating
13 Magistrate Kellison, Mr. Steele is not responding with an initial
14 opposition, and still manipulating Magistrate Kellison to dismiss
15 the requested document. Violating Plaintiff's right to due process.
16 Plaintiff undeniably proved that Mr. Steel violated discovery rules
17 and due process, but Magistrate Kellison is ignoring these
18 continued violations. Plaintiff also proved that Defendants do have
19 the evidence requested but are refusing to relinquish any evidence
20 on how much violence occurs at California Correctional Center
21 and Men's Colony. (Docket #274).

22 23. REQUEST FOR SANCTIONS; ADVERSE INFERENCE;
23 AND JUDICIAL NOTICE THAT CDCR HAS THREATENED
24 INMATES TO KEEP PLAINTIFF FROM EVIDENCE TO
25 PROVE HIS CLAIMS. DISCOVERY VIOLATION IN
26 RESPONSE TO PRODUCTION OF DOCUMENTS SET NO.: 8,
REQUEST NO.: 11. Providing evidence that not only are prison
officials refusing to relinquish evidence for Plaintiff to prove his
claims, but also threatening inmates to keep them from finding the
evidence within the prison for Plaintiff to prove that CDCR is
withholding evidence. (Docket #283).

27 24. REQUEST FOR SANCTION FOR ANOTHER
28 VIOLATION OF DISCOVERY; RESPONSE TO PRODUCTION
29 OF DOCUMENTS EIGHT, NO.: 9. Plaintiff undeniably proved
30 that Defendant Marshall and Mr. Steel are withholding evidence to
31 keep Plaintiff from proving his claims and prevailing in court.
(Docket #298).

32 25. WILLFUL VIOLATION OF DISCOVERY;
33 SPOILIATION; REQUEST FOR SANCTIONS. Here, Plaintiff
34 used inmate Jason Rays evidence that prison staff state that
35 requested evidence is in the Prison Law Library but, Defendant
36 states that it either doesn't exist or is privileged information.
37 Plaintiff proved that Defendant has lied and destroyed evidence,
38 again, and to prevent Plaintiff from proving his claims. (Docket
39 #302).

1 26. REQUEST DISMISSAL SANCTION FOR
2 DEFENDANTS CONTINUED WILLFUL AND DECEITFUL
3 VIOLATIONS OF DISCOVERY. Here, not only did Plaintiff
4 prove that Defendant and Mr. Steel are just “playing dumb” but
5 another inmate produced the institutional flyer that proves that the
6 Anger Management course is very “active” and the prisons are
7 “very aware” of what Plaintiff requested. (Docket #310).

8 27. REQUEST THAT THE SUIT BE DISMISSED WITH
9 PREJUDICE AGAINST THE DEFENDANTS TO PREVENT
10 MAGISTRATE KELLISON FROM PARTICIPATING IN THE
11 STATES CORRUPTION AND WILLFUL INTENT TO CAUSE
12 MISCARRIAGE OF JUSTICE. (AFFIDAVITS FOR INSCOE
13 AND TOTH HEREIN). In here Plaintiff further discredited prison
14 staff’s prisoner rape investigation (for Plaintiff) by two other prison
15 rape victims’ affidavits. “Apparently” by the two affidavits, in
16 which the Magistrate is being “invited” to peruse their C-File, an
17 “adequate” prisoner rape investigation takes “months” to complete,
18 and which proves that Plaintiff’s “one day” investigation was
19 obviously a bogus investigation to discredit Plaintiff all to protect
20 staff from liability. (Docket #315).

21 28. EVIDENCE THAT PRISON STAFF RE-WROTE
22 PLAINTIFF’S PRISON RECORDS TO REMOVE LIABILITY
23 AND CAUSE SPOILIATION. Here, Plaintiff provided evidence
24 that Plaintiff’s prison rape documents from 2005 as seen in the
25 above motions Exhibit 1 were re-written in or around the year
26 2006-2007 as seen in this motions Exhibit 2, Sub. Exhibit N.
Plaintiff’s testified against CDCR at the Prison Rape Elimination
Act Department of Justice Hearing on November 14, 2006, and
where Department of Justice inquiries began. Supporting that
Superior Staff began re-writing plaintiff’s prison rape records only
after the Department of Justice became involved. (Docket #337).
Supporting that Superior Staff began re-writing plaintiff’s prison
rape records only after the Department of Justice became involved.
The only two significant things that occurred after 2005 are this
suit and the testimony before the department of justice to inquire
into Plaintiff’s prisoner rape.

21 The court will address each of these arguments.² The underlying theme to
22 Plaintiff’s claims is that the defense is not acting in good faith.

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24 ² Plaintiff’s filings are not in sequential order, apparently due to mailing issues.
25 The court will examine the filings in the order Plaintiff presents them, identifying the docket
26 number. However, those filings which are related will be addressed sequentially regardless of
filing date or number.

1 **A. Standards**

2 Plaintiff is asking the court to find Defendants have acted in bad faith during
3 discovery and, as a sanction for their actions, enter a default judgment against them, pursuant to
4 Rule 37. Plaintiff cites Leon v. IDX Systems Corp, 464 F.3d 951 (9th Cir. 951), as support for
5 his argument. The Ninth Circuit in Leon acknowledged dismissal as “an available sanction when
6 ‘a party has engaged deliberately in deceptive practices that undermine the integrity of judicial
7 proceedings’” Id. at 958 (quoting Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69
8 F.3d 337, 348 (9th Cir. 1995).

9 The court must weigh five factors before imposing the harsh sanction of
10 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
11 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
12 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
13 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
14 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
15 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
16 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
17 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
18 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
19 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
20 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
21 1260-61 (9th Cir. 1992).

22 At a minimum, a finding of wilfulness, fault or bad faith is required prior to
23 dismissing an action. See Leon, 464 F.3d at 958. “A party’s destruction of evidence qualifies as
24 willful spoliation if the party has ‘some notice that the documents were potentially relevant to the
25 litigation before they were destroyed.’” Id. at 959 (quoting United States v. Kitsap Physicians
26 Serv., 314 F.3d 995, 1001 (9th Cir. 2002).

1 Here, Plaintiff argues the Defendants have engaged in the wilful destruction of
2 evidence in order avoid producing sufficient evidence through discovery for Plaintiff to prove his
3 claims. However, as discussed below, Plaintiff is unable to show the actual destruction, or
4 modification, of the documents he requested. Plaintiff argues the Defendants' admit the
5 documents he requested "do not exist." Plaintiff has not supported this argument. Many of
6 Plaintiff's discovery requests were vague or ambiguous, asked for documents unrelated to the
7 claims remaining in this case, or asked for documents which were not within the individual
8 defendants' "possession, custody or control." Plaintiff appears to have misunderstood the
9 Defendants' response that the documents requested were not in their "possession, custody or
10 control." Plaintiff seems to have interpreted this statement to mean the documents do not exist,
11 and reasoned that the Defendants must have destroyed the document. The court does not
12 interpret Defendants' statements the same. When the Defendants claim they are not in
13 possession, custody or control of documents, that is not to say the documents do not exist. Some
14 documents which may exists within the CDCR may not be accessible to the Defendants, in which
15 case the claim that they are not in possession, custody or control is not deceitful.

16 While the court finds some issues need further development, most of the issues
17 raised in Plaintiff's filings are actually objections to the court's prior decision regarding
18 Plaintiff's motions to compel, which were generally denied. To the extent Plaintiff is attempting
19 to re-litigate the issues resolved through his motions to compel, the court declines to do so.

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1 **B. Plaintiff’s Claims**

2 Doc. 324 (MOTION FOR MISTRIAL 100% IN PLAINTIFF’S FAVOR ON THE
3 BASIS OF SPOILIATION AND ADVERSE INFERENCE. Plaintiff’s #2.)³

4 In this motion, Plaintiff claims that prison officials falsified some of the
5 documents relating to Plaintiff’s rape claim, so the court cannot trust any position or statement
6 that the Defendants and/or defense counsel offer. Specifically, Plaintiff submits a statistical
7 report related to the Prison Rape Elimination Act of 2003. This report, Plaintiff argues, supports
8 his claim that the prison documents addressing his rape allegation have been fabricated and
9 rewritten. Plaintiff alleges he was raped in November 2004. Prison officials found his allegation
10 to be unsubstantiated. However, he argues, the California Department of Corrections and
11 Rehabilitation (CDCR) informed the Department of Justice, as part of this statistical study, that
12 in 2004 all reported prison rapes were substantiated. As CDCR stated, all prison rape reports
13 were substantiated in 2004, yet Plaintiff’s alleged rape was later found to be unsubstantiated. To
14 have arrived at this conclusion, Plaintiff maintains that his rape allegation report must have been
15 altered. He takes this argument one step further and argues that all documents in his prisoner
16 central file, must have been altered or rewritten, therefore resulting in the conclusion that none of
17 CDCR’s documents are trustworthy. He also claims that the investigation into the truth of his
18 rape is a fabricated lie.

19 However, the investigation into his rape claim is not at issue here. Instead, what
20 is at issue in the present case is Plaintiff’s claim that he was denied medical care, and was
21 retaliated against for reporting his rape. Assuming that the statistical report is admissible
22 evidence, the report Plaintiff relies on does not support his claim. The report found that in
23 California, of the 23 allegations of inmate-on-inmate nonconsensual sexual acts, 23 were

24 ³ Plaintiff’s first “spoliation” argument he refers to are his objections to the
25 undersigned’s findings and recommendations issued regarding Defendants’ motion to dismiss.
26 These objections have been addressed by the District Judge and will not be separately addressed
here. They have only been included as part of Plaintiff’s summary.

1 sustained. However, the report specifically states in a footnote that the statistics from California
2 only includes those rapes reported from January 1 to June 30, 2004.⁴ Plaintiff alleges his rape
3 occurred in November 2004. Plaintiff's report of rape would therefore not be included in this
4 report. Therefore, the finding that his rape allegation was unsubstantiated is not inconsistent with
5 the report submitted. On the information submitted, the court cannot find sufficient evidence
6 that Plaintiff's records have been falsified or destroyed. Thus, there is no basis for the court to
7 issue the sanctions requested.

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9 Doc. 214 (REQUEST THAT COURT ACCEPT THESE FACTS
10 AS TRUE AND GRANT A JUDICIAL NOTICE [TO RUN
11 CONCURRENT WITH: MOTION FOR MISTRIAL 100% IN
PLAINTIFF'S FAVOR ON THE BASIS OF SPOILIATION AND
ADVERSE INFERENCE]. Plaintiff's #7.)

12 This filing does not appear to be a separate motion or separate notice of
13 spoliation. Instead, it appears to be Plaintiff's attempt to have the court take judicial notice of the
14 documents attached to his "motion," which was filed at Doc. 324. He asks the court to find the
15 evidence and facts undeniably show that prison officials lied and said Plaintiff's prisoner rape
16 was unsubstantiated in 2004, but informed the government that it was substantiated, therefor
17 showing that documents have been falsified. As discussed above, the documents attached to
18 Plaintiff's prior motion do not support Plaintiff's claim. Plaintiff alleges his rape occurred in
19 November 2004, and the report indicates California's statistics are only for the first half of 2004.
20 The court cannot take judicial notice, based these documents, that Plaintiff's prison rape
21 documents were falsified.

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25 ⁴ See Doc. 324. Plaintiff includes this study as exhibit 2. The statistic he cites is
26 located in appendix table 1a. Doc. 324, at 31.

1 Doc. 322 (REQUEST FOR SANCTION; REQUEST FOR MISTRIAL IN
2 FAVOR OF PLAINTIFF; RESPONSE TO DEFENDANT’S OPPOSITION TO
3 PLAINTIFF’S MOTION TO COMPEL FURTHER PRODUCTION OF
4 DOCUMENTS, SET 14. Plaintiff’s #3.)

5 This filing relates to Plaintiff’s previous motion to compel set number fourteen of
6 his request for production of documents. Here, he claims the Defendants have destroyed the
7 electronic “properties file” relating to Sergeant Casner’s CDC 1030 report. Apparently what
8 Plaintiff is attempting to obtain is the summary from the word processing program on which
9 Sergeant Casner’s report was generated in order to determine when the report was originally
10 created and whether it was subsequently modified. Plaintiff did not clearly argue this issue in his
11 previous motion to compel. However, even if he had, his request would have been denied. His
12 request for the production of that type of file was certainly vague. In addition, he has not shown
13 such an electronic “properties file” is available for the documents he is requesting. Defendants’
14 failure to produce this type of document does not support Plaintiff’s theory that the document
15 was modified after the fact.

16 Doc. 189 (THE COURT IS BOUND TO DISMISS THIS CASE
17 WITH PREJUDICE AGAINST THE DEFENDANT AS A
18 MATTER OF LAW. THE DISCOVERY FOR THIS SUIT MAY
19 BE UNNECESSARY. Plaintiff’s #4.)

20 Here, Plaintiff reiterates his argument that the Defendants failed to produce the
21 “properties file” for documents. The court previously dealt with this motion. The court
22 construed it as a request for reconsideration, which was denied by the District Judge. (See Doc.
23 201).

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1 Doc. 224 (TO RUN CONCURRENT WITH: REQUEST FOR
2 PROTECTIVE ORDER AGAINST DOCUMENTS THAT ARE
3 UNTRUSTWORTHY AND/OR A JUDICIAL NOTICE THAT
4 DOCUMENTS ARE TO BE CONSIDERED
5 UNTRUSTWORTHY. Plaintiff's #12.)

6 Plaintiff continues to argue that Defendants' failure to produce the electronic
7 "properties file" supports his argument that documents have been re-written. He reiterates his
8 arguments that Sgt. Casner's CDC 1030 form was computer generated and therefore should have
9 an electronic "properties file" which Defendants should have produced. This issue has been
10 addressed, and Plaintiff fails to make the proper showing that a default judgment is an
11 appropriate sanction.

12 Doc. 210 (MOTION TO COMPEL PRODUCTION OF
13 DOCUMENTS, SET NUMBER: 15, REQUEST FOR
14 SANCTIONS, p. 4-5. Plaintiff's #5.) (Duplicate motions filed at
15 Doc. 323, 328, 329.)

16 Here, Plaintiff propounded additional discovery requests on Defendants after the
17 close of discovery. The court previously denied this motion as untimely. (See Doc. 332).
18 Discovery closed on June 27, 2008. These additional requests for production of documents were
19 propounded on or about October 21, 2008.

20 However, one of Plaintiff's requests relates to a prior request. Plaintiff had
21 requested a copy of Lieutenant Desantis' confidential memorandum regarding Plaintiff's
22 complaint of prison rape. This is the confidential memorandum Plaintiff alleges was released to
23 the prison general population. This document was originally requested as part of his request for
24 production of documents, set one, number ten. Defendants responded thereto that they were
25 unable to locate the document, but will supplement their response and produce this document if it
26 is located. The court will inquire as to the status of discovering this specific document.
27 Defendants will be required to inform Plaintiff and the court what steps have been take to recover
28 a copy of this document and produce it to Plaintiff. In all other aspects, this motion has already

1 been denied.

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3 Doc. 213 (REQUEST FOR A PROTECTIVE ORDER AGAINST
4 DOCUMENTS THAT AR UNTRUSTWORTHY AND/OR A
5 JUDICIAL NOTICE THAT DOCUMENTS ARE TO BE
6 CONSIDERED UNTRUSTWORTHY. Plaintiff's #6.)

7 Here, Plaintiff argues additional documents are untrustworthy due to a
8 discrepancy in the dates they were signed, and the information therein. Specifically, Plaintiff
9 argues that Sgt. Casner's December 1, 2004 "Confidential Information Disclosure Form," which
10 discusses the existence of Sgt. Sherer's confidential report dated November 25, 2004, is evidence
11 that the investigation into Plaintiff's rape claim was completed on November 25, 2004. He
12 argues that this is inconsistent with the classification hearing chrono which states the
13 investigation was still pending as of December 16, 2004. He claims that Sgt. Casner states the
14 investigation was "completed" on November 25, 2004.

15 Plaintiff's argument is unpersuasive. The reports Plaintiff attaches as exhibits do
16 not support his argument. The court does not find Sgt. Casner's December 1, 2004, report to
17 indicate the investigation was completed on November 25, 2004. Instead, Sgt. Casner's report
18 states "Confidential report dated November 25, 2004 authored by Correctional Sergeant R.
19 Sherer. Located in the confidential material folder in the Central File of Inmate Clinton." (Doc.
20 213, at 24 "ex. 31"). This form does not appear to the court to be an indication as to the status
21 of the investigation. Rather, it appears to be documentation regarding the existence of a
22 confidential report. This does not support Plaintiff's argument that Sgt. Casner's report is in
23 conflict with another report that indicated the investigation was still pending.

24 Plaintiff also argues that the fact that he was not issued a CDC-115 for sexual
25 misconduct supports his argument that documents were re-written after the fifteen day period the
26 prison had to issue the 115 had passed. The court does not find this argument persuasive either.
The absence of a disciplinary proceeding does not support Plaintiff's argument that documents

1 relating to his rape allegations were re-written.

2 Finally, Plaintiff raises an issue regarding the production of Sgt. Sherer's
3 confidential memorandum, which was referenced in Sgt. Casner's report. Defendants have not
4 specifically responded to this filing. It appears that Plaintiff previously requested this document
5 and the Defendants indicated they do not have possession, custody or control over it. (Addressed
6 in the former motions to compel, Doc. 103, regarding set one.) It would seem that this document
7 should be located in Plaintiff's prison records. Defendants produced other documents contained
8 in Plaintiff's prison records. The court will require a response from Defendants with some
9 explanation as to why they do not have Sgt. Sherer's confidential memorandum.

10
11 Doc. 216 (DESTRUCTION OF EVIDENCE, REQUEST FOR
12 SANCTIONS, AND SUBJECT TO DEFAULT AS A MATTER
OF LAW. Plaintiff's #8.)

13 Here, Plaintiff argues that Defendants lied about the existence of some documents
14 he requested. Specifically, he states he requested a copy of Sgt. Sherer's confidential memo
15 investigating the rape (requested in set one, number two). This memo was identified in Sgt.
16 Sherer's CDC 1030 form (which was produced). Plaintiff argues it does not make sense that
17 Defendants had Sgt. Sherer's CDC 1030 form but not the investigation report identified therein.
18 He also states he requested Defendant DeSantis' report (requested in set one, number ten), which
19 was not located and has not been produced. Next, he states he requested DeSantis' CDC 1030
20 Disclosure Form regarding that confidential report (requested in set one, number twelve).
21 Defendants had responded they do not have possession, custody or control of this document.
22 Finally, Plaintiff states he had requested Sgt. Dixon's confidential memorandum regarding the
23 publicizing of Plaintiff's prison rape incident (requested in set one, number thirteen). Defendants
24 respondent they were unable to locate this document, but will supplement their response if it is
25 located.

26 ///

1 Sgt. Sherer's and DeSantis' memos were addressed above (Doc. 210, 213). As
2 with the other documents, Defendants will be required to respond to the request for DeSantis'
3 CDC 1030 disclosure form (regarding his investigation into Plaintiff's rape claim) and Sgt.
4 Dixon's memorandum which not located. Specifically, Defendants will be required to explain
5 why DeSantis' CDC 1030 disclosure form is not in their possession, custody or control, and what
6 steps have been taken to locate Sgt. Dixon's memorandum.

7
8 Doc. 265 (REQUEST SANCTION OF ADVERSE INFERENCE
9 THAT DEFENDANT HAS EVIDENCE IN THEIR CUSTODY
10 AND CONTROL BUT IS REFUSING TO PRODUCE IT.
11 Plaintiff's #21.)

12 In this filing, Plaintiff reiterates his previous arguments regarding the confidential
13 memorandums he requested. To support his argument, he raises the issue of officers signing in
14 to read his documents on a confidential review log. These confidential documents were
15 requested in Plaintiff's request for production of documents, set one, numbers two, ten, and
16 thirteen. These documents are discussed above. Nothing in this filing requires the court to alter
17 that discussion.

18 Doc. 215 (REQUEST FOR A SANCTION DUE TO
19 DISCOVERY VIOLATION AND TO ACCEPT EVIDENCE TO
20 SUPPORT DEFENDANT DESANTIS HISTORY OF
21 MISCONDUCTS. Plaintiff's #9.)

22 Here, Plaintiff addresses his request for photographs of correctional officers. In
23 his discovery requests, Plaintiff asked for 8x10 photographs of correctional staff in order to try to
24 identify his John Doe defendants. Defendants responded with objections (not reasonably
25 calculated to lead to discovery of admissible evidence, overly burdensome, invades privacy rights
26 of third persons, vague and ambiguous). Without waiving those objections, Defendants
responded they have no documents in their possession, custody or control responsive to

1 Plaintiff's requests, and they are not required to take photographs for his benefit. In response to
2 the motion to compel, the court held Plaintiff failed to meet his burden of establishing
3 Defendants are in possession, custody or control of what he was requesting. Plaintiff now argues
4 that the Defendants' response was a lie in that photographs do exist in staff personnel files and
5 identification cards.

6 Even if photographs do exist in all staff personnel files, Plaintiff has not shown
7 the individual defendants in this action are in possession, custody or control of those
8 photographs. In addition, Plaintiff specifically requested 8x10 photographs. If there are
9 photographs from staff identification cards, these photographs are not likely to be 8x10 as
10 requested. In addition, even assuming there are digitally stored photographs of all correctional
11 staff located in personnel files, Plaintiff has not made any showing that the individual defendants
12 would have access to those files or that an 8x10 copy could be printed. The court cannot make a
13 leap from the possibility of the existence of personnel photographs to a finding that Defendants
14 are lying and therefore default judgment is an appropriate sanction.

15 Plaintiff also requests the court accept evidence of Defendant DeSantis' character
16 based on a case brought against him by a co-worker for harassment. While the court may be able
17 to take judicial notice of other court proceedings, the court is unwilling to accept character
18 evidence at this time. Plaintiff does not specify what he would have the court do with this
19 "character evidence," and there is nothing pending before the court for which this information
20 could be used.

21
22 Doc. 321 (SPOILIATION; DISCOVERY VIOLATION;
23 SURVEILLANCE CAMERAS. Plaintiff's #10.)

24 Plaintiff claims he requested copies of video surveillance tapes (requested in set
25 two, number four). Defendants objected that this request was overly burdensome and not
26 reasonably calculated to lead to discovery of admissible evidence. Defendants also responded

1 they have no such video surveillance tape in their possession, custody or control. The court
2 denied Plaintiff's motion to compel on the basis that Plaintiff did not meet his burden of showing
3 otherwise. He now argues that if Defendants do not have these records, which had to be retained
4 for "Records Management," that must mean either Defendants have deliberately destroyed the
5 evidence or deliberately not produced the evidence in their custody. This argument is not
6 persuasive. Defendants stated the video surveillance tapes are not in their possession, custody or
7 control. This is not the same as stating the video surveillance tapes do not exist or have been
8 destroyed. Even if CDCR or the facility has the video surveillance tapes (from the California
9 Correctional Center (CCC)) Plaintiff requested, Plaintiff has offered no showing that the
10 individual defendants in this case have those tapes in their possession, custody or control.⁵ The
11 court cannot find Defendant's failure to produce documents which they claim is not in their
12 possession, custody or control is a sufficient basis for entering a default judgment against them as
13 a sanction.

14
15 Doc. 223 (TO RUN CONCURRENT WITH: SPOILIATION;
16 DISCOVERY VIOLATION; SURVEILLANCE CAMERAS.
17 Plaintiff's #11.)

18 In support of the documents addressed above, Plaintiff attempts to compel the
19 court to accept another inmate's 602 inmate appeal to prove video surveillance is available to be
20 produced. However, as discussed above, Defendants have not claimed the video does not exist,
21 but rather that they do not have possession, custody or control of any such video. Even if the
22 court were to accept this filing as evidence, it does not show that the individual defendants have
23 possession, custody or control of video surveillance tapes from CCC.

24 ⁵ The court notes that the individual defendants in this matter are correctional
25 officers and the warden of California Men's Colony (CMC). There is no indication from
26 Plaintiff that the individual correctional officers, who presumably are correctional officers at
CCC, would have access to the information Plaintiff is requesting, and Warden Marshall is not
located at CCC but rather at CMC.

1 Doc. 227 (REQUEST FOR A SANCTION DUE TO
2 DISCOVERY VIOLATION IN DEFENDANTS OPPOSITION
3 TO PRODUCTION OF DOCUMENTS SET NUMBER FOUR.
4 Plaintiff's #13.)

5 Similarly, Plaintiff argues here that his request for photographs of different parts
6 of the facility at CCC should have been complied with because the photographs could have been
7 printed from the surveillance video tapes. In response to Plaintiff's request for production of
8 documents, in addition to the objections made, Defendants stated that they were not in
9 possession, custody or control of the requested photographs. Plaintiff now claims that because
10 he found videos of different facilities on line, video of CCC must be available to be produced.
11 However, as addressed above, Plaintiff makes no showing that the video he is requesting is in the
12 individuals' possession, custody or control. The court does not find that a default judgment
13 sanction is appropriate on these facts.

14 Doc. 282 (CD DOCUMENT AS EXHIBIT 2 SPOILIATION AND
15 VIOLATION OF DISCOVERY, DISCOVERY VIOLATION IN
16 RESPONSE TO PRODUCTION OF DOCUMENTS SET
17 NUMBER 14, NUMBER 4. Plaintiff's #17.)

18 Here, Plaintiff argues that the Defendants deliberately produced the wrong
19 document. In his request for production of documents set fourteen, number four, Plaintiff
20 requested Defendants "Produce the section in which governs Defendants records management
21 requirements and retention, of its electronic files, security camera surveillance recording, and e-
22 mail, and to be kept if they are involved in a serious controversy like Plaintiff's."⁶ Defendants
23 objected to that request on the basis that it was vague and ambiguous, and compound. However,
24 Defendants also pointed Plaintiff to the Department Operations Manual (DOM) available on line.
25 In response to Plaintiff's motion to compel, Defendants reiterated they complied with the request,

26 ⁶ See Doc. 156, at 13.

1 and that they had no other documents in their possession, custody or control responsive to his
2 request. Plaintiff argues now that he was able to find additional records retention schedules for
3 electronic documents and video surveillance images, which he claims prove the Defendants are
4 deliberately producing the wrong evidence to prevent him from acquiring the evidence he needs.

5 Given the vague and confusing request, the court cannot find Defendants'
6 objection inappropriate. In addition, although his request was not clear, Defendants did produce
7 what they believed was responsive to Plaintiff's request. That they did not point to the exact
8 section of the DOM which Plaintiff was looking for, does not prove they deliberately failed to
9 produce responsive documents. The court does not find sanctions appropriate. Plaintiff was
10 apparently able to find what he was looking for on-line in any event. Therefore, he was not
11 prevented from discovering the information he sought.

12
13 Doc. 247 (DISCOVERY VIOLATION, REQUEST FOR
14 SANCTIONS, ADVERSE INFERENCE, AND A JUDICIAL
15 NOTICE [PRODUCTION OF DOCUMENTS SET NO. 1,
16 REQUEST 17.] Plaintiff's #15.)

17 Another attempt to show Defendants are in possession of documents responsive to
18 his requests for production of documents which have been denied. Here, Plaintiff argues he
19 requested a copy of the policies whereby correctional officers provide photographs to victims of
20 an offense if the victim does not know who his assailant is, which Plaintiff calls a Simmons
21 Decision Review. Defendants objected to the request as argumentative and compound, but
22 responded that they do not have possession, custody or control of any responsive document.
23 Again, Plaintiff has made no showing that, even if there is such a written policy, the individual
24 defendants are in possession thereof.

25 ///

26 ///

///

1 Doc. 248 (ANOTHER VIOLATION OF DISCOVERY;
2 REQUEST FOR SANCTION; REQUEST FOR JUDICIAL
3 NOTICE [RESPONSE TO PRODUCTION OF DOCUMENTS
4 SET NUMBER 5, REQUEST 29.] Plaintiff's #14.)

5 In this filing, Plaintiff attempts to again re-litigate the denial of his motion to
6 compel. Plaintiff had requested a document identifying the date that CCC received Plaintiff's
7 medical files from the Los Angeles County Jail, as well as a copy of those medical records.
8 Defendants objected to the request stating that it was not reasonably calculated to lead to the
9 discovery of admissible evidence. Without waiving that objection, Defendants responded that no
10 responsive document is in their possession, custody or control. Plaintiff fails to make a proper
11 showing that Defendants are in possession of any responsive documents.

12 Doc. 252 (REQUEST FOR INFERENCE; REQUEST FOR
13 SANCTION; TO ACCEPT AS GENUINE; JUDICIAL NOTICE;
14 AND DISCOVERY VIOLATION IN RESPONSE TO
15 PRODUCTION OF DOCUMENTS SET NUMBER 11,
16 REQUEST NUMBER 8. Plaintiff's #16.)

17 Plaintiff argues that he requested information regarding when Administrative
18 Segregation staff became aware that Plaintiff was a prison rape survivor. In response,
19 Defendants stated the only documents responsive to his request in their possession was in
20 Plaintiff's central file which had been produced. Plaintiff now claims that what Defendants had
21 was a CDC 114-A log, but that there is also a CDC 114-A internal administrative segregation file
22 on Plaintiff. He argues these are two different things and that Defendants only produced the log,
23 not the administrative file. As Plaintiff is now arguing that the document produced was the
24 incorrect document, the court will require a response from the Defendant as to whether there is
25 also an administrative file in their possession, custody or control which can be produced.
26 Plaintiff claims this separate file is where administrative segregation documents are kept, and is
27 separate from his central file.

28 ///

1 Doc. 255 (DISCOVERY VIOLATION: DEFENDANTS
2 RESPONSE TO REQUEST FOR PRODUCTION OF
3 DOCUMENTS SET 3. REQUEST SANCTION, JUDICIAL
4 NOTICE, AND ADVERSE INFERENCE. Plaintiff's #18.)

5 In this filing, Plaintiff argues that Defendants produced incorrect documents in
6 response to his request for production of documents set three. The document at issue is his
7 prison job description. Plaintiff had asked for the job description for his position as inmate clerk
8 at CCC. What he claims was produced was from his job at CMC. Defendants have not
9 specifically responded to this filing. Defendants will be required to respond to Plaintiff's claims
10 that he had requested a different job description than what was produced.

11 Doc. 270 (REQUEST FOR A SANCTION DUE TO
12 SPOILIATION; PRODUCTION OF DOCUMENTS SET NO.
13 TWO, NOS. 7, 8 & 9. Plaintiff's #19.)

14 Plaintiff again reiterates issues which were resolved in his motions to compel. In
15 his request for production of documents, Plaintiff requested legal mail logs from three separate
16 institutions. Defendants responded to these requests with objections, stating the requests were
17 overly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.
18 Without waiting those objections, Defendants responded that they are not in possession, custody
19 or control of responsive documents other than those contained in Plaintiff's central file which
20 was produced. Plaintiff now argues that the Defendants claimed the mail logs do not exist. A
21 response that documents are not in the Defendants' possession is not the same as stating the
22 documents do not exist. Plaintiff overembellishes Defendants' statements, and the court cannot
23 find that they are "lying" as Plaintiff argues, or that default judgment sanctions are appropriate.
24 Plaintiff fails to show the logs are in the individual Defendants' possession.⁷

25 ⁷ Again, having the documents exist within CDCR is not the same as the individual
26 defendants having possession, custody or control over them.

1 Doc. 269 (DISCOVERY VIOLATION; SPOILIATION;
2 PRODUCTION OF DOCUMENTS SET NO. 2, REQUEST NO.:
3 13. Plaintiff's #20.)

4 Plaintiff raises another issue previously resolved in his motion to compel. Now he
5 claims that in regards to his request for production of documents, set two, number thirteen, he
6 asked for any response to a letter he sent to J. S. Woodford in March 2005. Defendants
7 responded they are not in possession, custody or control of any responsive document other than
8 what is in Plaintiff's central file, which was produced. Plaintiff now argues he has proven there
9 was an administrative correspondence and either CDCR officials are destroying Plaintiff's
10 evidence or they are refusing to produce it. As discussed previously, whether CDCR has the
11 documents plaintiff is seeking is not the issue, but rather whether the individual defendants have
12 possession, custody or control of the documents requested. Nothing in Plaintiff's filing shows
13 that the individuals have possession or control over a letter or response by the prior Director of
14 CDCR, who is not a defendant. Just because there is a log entry proving he sent such a letter
15 does not show the Defendants have the letter or a response to produce.

16 Doc. 274 (REQUEST FOR A SANCTION DUE TO
17 DISCOVERY VIOLATION; REQUEST FOR JUDICIAL
18 NOTICE; ADVERSE INFERENCE. [PRODUCTION OF
19 DOCUMENTS SET NUMBER 7, REQUEST NO.: 7&8].
20 Plaintiff's #22.)

21 Here, Plaintiff argues his motion to compel regarding his request for production of
22 documents, set seven, should have been granted because Defendants failed to oppose the motion.
23 However, the court denied the motion to compel, not on its merits, but because Plaintiff failed to
24 provide the court with Defendants' responses to his requests. The court found it was impossible
25 to determine whether Defendants' responses were adequate without knowing what those
26 responses were. This is essentially a request for reconsideration of the order denying his motion
27 to compel. However, Plaintiff has already filed motions for reconsideration, which have been
28 denied by the District Judge. The court will not entertain belated motions for reconsideration.

1 Doc. 283 (REQUEST FOR SANCTIONS; ADVERSE
2 INFERENCE; AND JUDICIAL NOTICE THAT CDCR HAS
3 THREATENED INMATES TO KEEP PLAINTIFF FROM
4 EVIDENCE TO PROVE HIS CLAIMS. DISCOVERY
5 VIOLATION IN RESPONSE TO PRODUCTION OF
6 DOCUMENTS SET NO.: 8, REQUEST NO.: 11. Plaintiff's #23.)

7 Here, Plaintiff argues the Defendants are trying to prevent him from proving his
8 claims. He claims CDCR officials are threatening other inmates, destroyed Plaintiff's box of
9 evidence. Nothing in this filing relates specifically to any of the individual defendants. The
10 behavior of individuals not a party to this action is beyond the court's power to control. Plaintiff
11 also argues that he requested the lock up order issued to another inmate, Ruben Roberts, in his
12 request for production of documents set eight, number eleven. Defendants objected to this
13 request on the grounds that it was not reasonably calculated to lead to the discovery of
14 admissible evidence and invades the privacy rights of third persons. Without waiving those
15 objections, Defendants also responded that they had no responsive documents within their
16 possession, custody or control. The court denied Plaintiff's motion to compel relating to this
17 request, on the basis that Plaintiff failed to show the individuals had possession, custody or
18 control over responsive documents. Plaintiff continues to argue that the documents he is
19 requesting do exist "but CDCR is just refusing to relinquish" them, and the Defendants continue
20 to lie to the court. Again, CDCR is not a party to this action. Regardless of Defendants'
21 objections, Plaintiff has not demonstrated the individuals who are parties have possession or
22 control over these documents.

23 Doc. 298 (REQUEST FOR SANCTION FOR ANOTHER
24 VIOLATION OF DISCOVERY; RESPONSE TO PRODUCTION
25 OF DOCUMENTS EIGHT, NO.: 9. Plaintiff's #24.)

26 Here again, Plaintiff is attempting to have the court reconsider its denial of
27 Plaintiff's motion to compel. This request has been denied. In regards to the specific arguments
28 raised in this filing, Plaintiff continues to argue the Defendants are withholding information,

1 information the Defendants denied having but that he found on line. Specifically, he had
2 requested a copy of an anger management program. Defendants objected to the request on the
3 grounds that it was not reasonably calculated to lead to the discovery of admissible evidence, was
4 overly burdensome and it was vague and ambiguous. Defendants also stated it was unclear what
5 exactly Plaintiff was requesting. Nothing in any of Plaintiff's filings have cleared up this
6 ambiguity. Asking the Defendants to produce a full and complete copy of a program is not
7 requesting a specific document. It is unclear whether Plaintiff is asking for a syllabus of the
8 program, class material the instructor provides the participants, or some other document.
9 Regardless of Defendants' objections on other grounds (such as the relevance of this
10 information) the court cannot order the Defendants to produce documents in response to such a
11 vague request.

12
13 Doc. 310 (REQUEST DISMISSAL SANCTION FOR
14 DEFENDANTS CONTINUED WILLFUL AND DECEITFUL
VIOLATIONS OF DISCOVERY. Plaintiff's #26.)

15 Plaintiff continues his argument that the Defendants failed to produce the
16 information he requested relating to the anger management program. He supports this argument
17 by providing the court with a flyer for the program, and arguing that the Defendants should have
18 been aware of the program, and deliberately refused to produce what was requested. As
19 discussed above, Plaintiff was unclear as to what he was requesting in regards to this program.
20 Defendants did not claim no such program existed. They stated they did not understand what
21 documents Plaintiff was requesting. Plaintiff does not make his request any more clear in his
22 current filing, and as stated above, the court will not order the Defendants to produced documents
23 when the request is unclear.

24 ///

25 ///

26 ///

1 Doc. 302 (WILLFUL VIOLATION OF DISCOVERY;
2 SPOILIATION; REQUEST FOR SANCTIONS. Plaintiff's #25.)

3 Plaintiff's arguments in this filing are unclear. It appears Plaintiff is reiterating
4 his arguments raised in other filings, including those regarding his request for documents
5 pertaining to a Simmons Decision Review, the CDC-114 file/log, and information regarding
6 what knowledge administrative segregation staff has. Plaintiff argues that inmates have access to
7 this information in the prison law library, but because he is no longer in custody he does not have
8 access to the prison law library. However, exactly what information he is requesting from the
9 prison law library, which would not be available from, for instance, a county law library, is
10 unclear. To the extent this filing is a reiteration of his other filings, those have already been dealt
11 with, and the court will not address those arguments again.

12 Doc. 315 (REQUEST THAT THE SUIT BE DISMISSED WITH
13 PREJUDICE AGAINST THE DEFENDANTS TO PREVENT
14 MAGISTRATE KELLISON FROM PARTICIPATING IN THE
15 STATES CORRUPTION AND WILLFUL INTENT TO CAUSE
16 MISCARRIAGE OF JUSTICE. [AFFIDAVITS FOR INSCOE
17 AND TOTH HEREIN]. Plaintiff's #27.)

18 In this filing, Plaintiff appears to be reiterating his argument that the investigation
19 into his rape allegation was feigned as it was completed in one day, prison records have clearly
20 been falsified, and is requesting a default judgment be entered against the Defendants as a
21 sanction for Defendants' bad faith. This document is a reiteration of his previous arguments.
22 Other than the "affidavits" from other inmates, Plaintiff has not added anything new. Plaintiff's
23 arguments have been address above, and will not be repeated here.

24 Doc. 337 (EVIDENCE THAT PRISON STAFF RE-WROTE
25 PLAINTIFF'S PRISON RECORDS TO REMOVE LIABILITY
26 AND CAUSE SPOILIATION. Plaintiff's #28.)

 Here, Plaintiff again reiterates many of the claims addressed above. In addition,
Plaintiff argues that there is an inconsistency in two of his classification chronos, both dated

1 February 2, 2005. He has attached these two chronos to his filing. The court agrees that there
2 are some inconsistencies in these two chronos, which apparently derived from the same
3 Classification Committee hearing. It is unclear why there are two chronos from the same hearing
4 and which one was drafted first. However, one document references an inadvertent release from
5 ad/seg and “that custody staff had given sensitive confidential information to another inmate.”
6 (See Doc. 337, at 47). It is unclear exactly what “sensitive confidential information” was given
7 to another inmate, but based on the claims in this case, it would appear that this information was
8 the release of Plaintiff’s rape allegations. Plaintiff argues in this filing that the information
9 contained in these documents is not important, other than to prove CDCR staff is re-writing
10 documents. Plaintiff focuses on the changes of the dates of the confidential memorandum.

11 Defendants have not filed a response to this document, and will be required to do
12 so. While it is not clear that the individual Defendants were involved in writing either of the
13 chronos, they will be required to respond. The court is unwilling to sanction the Defendants, as
14 requested by Plaintiff, on the incomplete record before the court.

15

16 **II. Other Pending Motions/Filings**

17 In addition to those motions/filings summarized by Plaintiff regarding the many
18 instances of spoliation, several other motions/filings remain pending. Those appropriate for
19 disposition at this time are discussed below. If this matter does not settle at the settlement
20 conference/mediation set before Judge Carter, the court will address any remaining motions at
21 the appropriate time.

22

23 A. Doc. 225 (Defendant Has Failed to Produce the Evidence Magistrate Has
24 Ordered Defendant to Produce)

25 Plaintiff claims that he has not received a proper copy of his central file or
26 medical records. Defendants addressed this filing in their status report, and indicated they would

1 resend the discovery responses to Plaintiff. This appears to be an adequate response. If Plaintiff
2 has not received a copy of his central and/or medical file he may contact counsel directly. If he is
3 unable to obtain a satisfactory response, and continues to claim the lack of receipt of these files,
4 he may file a new motion/request within 30 days of the date of this order. In addition, it appears
5 Plaintiff is claiming that the documents Defendant was ordered to produce in response to the
6 motion to compel, Defendant has not produced. If there still remains any outstanding documents
7 to be produced, Defendant is required to so with 10 days of the date of this order. If Plaintiff has
8 not received the documents, or an appropriate response from the Defendants, he may file a new
9 motion/request within 30 days of the date of this order if necessary.⁸

10
11 B. Doc. 239 (Rule 60; Motion to Identify John Does)

12 This filing is essentially duplicative of Doc. 215, and was addressed above.

13
14 C. Doc. 289 (Motion for Sanction or Other Appropriate Relief)

15 This motion is a reiteration of the spoliation arguments raised and discussed
16 above. To the extent Plaintiff is requesting discovery sanctions in the form of a default
17 judgment, as discussed above that request will be denied. However, there are certain documents
18 and issues discussed above which Defendants are required to address. Upon receipt of
19 Defendants' response, those specific issues will be addressed further. To the extent this motion
20 is a request for reconsideration of the order denying in part Plaintiff's numerous motions to
21 compel, that order has already been reconsidered by the District Judge and affirmed.

22
23
24 ⁸ This is not an invitation to revisit issues previously addressed. The court is only
25 allowing Plaintiff an opportunity to address those documents the court ordered Defendant to
26 produce which have not been. Plaintiff appears to have attempted to address this issue in his
recent filings, Doc. 368 and 369. The court will therefore request a response from the
Defendants.

1 D. Doc. 330 (Dispositive Motion)

2 This is Plaintiff's motion, wherein he reiterates his spoliation arguments, which
3 were addressed above, and again requests the court enter a default judgment dismissing this
4 action as a discovery sanction. This document appears to have been filed in response to the
5 court's prior dispositive motion deadline. However, the court construes this filing as another
6 motion for discovery sanctions. As addressed above, the court finds a default judgment as a
7 sanction for discovery violations inappropriate at this time. Defendants will be required to
8 address certain documents and issues Plaintiff has raised, but the court properly denied Plaintiff's
9 previous motion to compel and that issue will not be re-litigated. To the extent Plaintiff's
10 "dispositive motion" is his attempt to file a motion for summary judgment, Plaintiff's motion
11 fails to meet the filing requirements set forth in Local Rule 260.

12 The dispositive motion (i.e. summary judgment) deadline has been reset due to the
13 parties' agreement to participate in mediation. The current deadline, assuming this matter does
14 not settle at mediation, is February 22, 2009. Plaintiff is advised that if he wishes to file a motion
15 for summary judgment, his motion must meet the filing requirements set forth in Local Rules
16 142, 156 and Federal Rule of Civil Procedure 56.

17
18 E. Doc. 349 (Request for a Protective Order for Past Dockets)

19 Plaintiff argues herein that due to Defendant's failure to respond to numerous
20 filings, the court should grant his requests and issue a protective order. Exactly what the
21 protective order should be directed to protect is unclear to the court. Defendant drops a footnote
22 that two of his filings (Doc. 215 and 227) were objected to, but because the court did not decide
23 them he should be entitled to relief.

24 Plaintiff's arguments are unpersuasive. The court's failure to address Plaintiff's
25 numerous filing within the time frame he desires is not a reason for the court to accept his filings
26 carte blanc, and the court refuses to do so. Similarly, Defendant's failure to respond to all of

1 Plaintiff's filings (some of which the court has liberally construed as motions, even though they
2 did not appear to be proper motions) will not result in the automatic granting of Plaintiff's
3 requests therein. Plaintiff's request for a protective order will be denied.
4

5 F. Requests for Judicial Notice

6 Plaintiff has filed numerous requests for this court to accept documents and/or
7 affidavits as evidence and to take judicial notice thereof. This request is denied without
8 prejudice, and the Plaintiff may take such issues up with the District Court at time of trial.

9 Generally, the court will not make evidentiary rulings in the abstract and will not take judicial
10 notice of information, unless it is in connection with a pending motion (i.e. motion for summary
11 judgment). Plaintiff is hereby informed that the court will not take judicial notice at this time of
12 documents and/or affidavits, nor will it accept Plaintiff's filing of documents as "evidence." This
13 decision will not preclude Plaintiff from introducing these documents, etc., at trial and/or in
14 response or support of a motion for summary judgment; nor does it guarantee they will be
15 admissible. There is simply no reason to address these requests at this time. Plaintiff is
16 cautioned that the court is not a depository for his evidence. If plaintiff attempts to file additional
17 documents unrelated to a pending motion, the court will strike the filing from the docket.

18 This specifically relates to Plaintiff's latest filing (Doc. 365) wherein Plaintiff
19 requests the court acknowledge a document as genuine and admissible evidence. The court will
20 deny this request, without prejudice to Plaintiff's ability to attempt to have the document
21 admitted into evidence at the proper time. However, the court expresses no opinion as to
22 whether this document will be admissible as evidence.
23

24 G. Orders on Pending Motions

25 The parties are reminded that this case was filed while Plaintiff was incarcerated,
26 and has continued to be treated as a prisoner case following Plaintiff's release. The parties were

1 informed at the beginning of this action that motions filed herein would be governed by Local
2 Rule 230(1),⁹ but that

3 [i]f plaintiff is released from prison at any time during the
4 pendency of this case, any party may request application of other
5 provisions of Local Rule [230] in lieu of Local Rule [230(1)]. In
6 the absence of a court order granting such a request, the provisions
7 of Local Rule [230(1)] will govern all motions . . . regardless of
8 plaintiff's custodial status. See Local Rule [102(d)].

9 See Doc. 51 at 3.

10 Therefore, until such time as request is made to alter the handling of motions filed
11 in this case, the court will continue to treat all motions filed herein as it does in other prisoner
12 cases. Plaintiff has requested the court await his opposition to any motions for extensions of
13 time (Doc. 366). The court will therefore require that the parties attempt to stipulate to any
14 future requests for continuances. If either party requires a continuance of any deadline, they shall
15 make an attempt to obtain a stipulation therefor prior to filing a request with the court. In the
16 event no stipulation is obtained, the moving party will be required to inform the court what effort
17 was made to communicate with the other party.

18 H. Subpoenas

19 The only remaining filings the court notes which need to be addressed are
20 plaintiff's requests for subpoenas. The court will address these filings if this matter does not
21 settle at mediation.

22 **III. Conclusion**

23 The imposition of discovery sanctions, including the entry of a default judgment,
24 is discretionary. See Von Brimer v. Whirlpool Corp., 536 F.2d 838, 844 (9th Cir. 1976). Here,
25 Plaintiff fails to show the Defendants have destroyed, modified, or refused to produce documents

26 ⁹ Eastern District of California Local Rules were updated on December 1, 2009. The references herein are to the updated rule numbers. The substance of the rules addressed herein were not altered.

1 in their possession. Plaintiff has misunderstood the Defendants' responses, misinterpreted a
2 statistical study, and failed to show the Defendants have acted in bad faith, sufficient to support
3 such sanctions. However, the court will require a response from the Defendants regarding
4 documents which should have been produced.

5 Accordingly, IT IS HEREBY ORDERED¹⁰ that:

6 1. Plaintiff's requests and/or motions for discovery sanctions of default
7 judgment (Docs. 189, 214, 215, 223, 224, 227, 239, 247, 248, 265, 269, 270, 274, 282, 283, **289**,
8 **298**, 302, 310, 315, 321, 322, **324**, **330**) are denied;

9 2. Defendants are required to file a response informing the court and Plaintiff
10 the status of the production of documents responsive to his request for production of documents,
11 set one, number ten (requesting Lt. DeSantis' confidential memorandum regarding Plaintiff's
12 complaint of prison rape), including what steps have been taken to recover a copy of this
13 document and produce it to Plaintiff (Doc. 210);

14 3. Defendants are required to file a response to Plaintiff's request for a copy
15 of Sgt. Sherer's confidential memorandum (Doc. 213);

16 4. Defendants are required to respond to Plaintiff's request for Lt. DeSantis'
17 CDC 1030 disclosure form and Sgt. Dixon's investigation report (Doc. 216);

18 5. Defendants are required to respond to Plaintiff's claim that he requested an
19 administrative segregation file, not the administrative log that was produced (Doc. 252);

20 6. Defendants are required to respond to Plaintiff's claim that the job
21 description produced was different from the job description he requested (Doc. 255);

22 7. Defendants are required to respond to Plaintiff's claims regarding the re-
23 writing of his February 2, 2005, classification chronos (Doc. 337);

24 8. Defendants' required responses, as set forth above, are to be filed and

25 ¹⁰ For the Clerk of the Court's benefit, the undersigned has emphasized in bold
26 which documents are actually pending motions.

1 served on Plaintiff within 30 days of the date of this order;

2 9. Defendants are to produce any document the court previously ordered to
3 be produced (pursuant to court order 185), within 10 days of the date of this order;

4 10. If Plaintiff contends there are still outstanding documents to be produce,
5 which Defendant has not provided an appropriate response for, he may file a new motion/request
6 within 30 days of the date of this order, if necessary;

7 11. Defendants are required to file a response to Plaintiff's recent filings (at
8 Doc. 368 and 369) regarding failure to produce as required;

9 12. Plaintiff's request for protective order (Doc. 349) is denied;

10 13. Plaintiff's request for the court to acknowledge a document as genuine and
11 admissible evidence (Doc. 365) is denied without prejudice to Plaintiff's ability to attempt to
12 have the document admitted into evidence at the proper time; and

13 14. Plaintiff's request for time to respond to requests for continuances (Doc.
14 366) is granted. If either party requires a continuance of any deadline, they shall make an attempt
15 to obtain a stipulation therefor; in the event no stipulation is obtained, the moving party is
16 required to inform the court what communication was attempted with the opposing party.

17
18
19 DATED: January 15, 2010

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21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
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