

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

JOHN WESLEY WILLIAMS,

Plaintiff,

No. CIV S-07-2385 WBS GGH P

vs.

J. WALKER, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983.<sup>1</sup> Pending before the court are: 1) plaintiff’s motion to compel, filed on 3/13/09 (# 35), to which defendants filed their opposition, on 3/30/09 (Docket #37), after which plaintiff filed a reply on 4/17/09 (# 44); 2) plaintiff’s motion to compel, filed on 3/20/09 (# 36), which defendants opposed on 3/30/09 (#38); 3) plaintiff’s motion for leave to file a second amended complaint and proposed second amended complaint, filed on 4/03/09 (# 40), to which defendants filed their opposition, on 4/24/09 (# 46), after which plaintiff filed a reply, on 5/11/09 (# 48); 4) plaintiff’s motion for leave to propound additional discovery requests, filed on 4/09/09 (# 41), to

\_\_\_\_\_ <sup>1</sup> This case (formerly FCD CMK P), along with Campbell v. CDCR, Case No. CIV-S-07-1419 WBS GGH P (formerly MCE KJM P), has been related to, but not consolidated with, Jackson v. Walker, Case No. S-06-2023 WBS GGH P. See Order, filed on 6/06/08 (Docket # 17).

1 which defendants filed their opposition, on 4/24/09 (# 45), to which plaintiff filed a reply, on  
2 5/08/09 (# 47).

3 Complaint

4 Plaintiff alleges, in his complaint, filed on November 6, 2007, that while housed  
5 at California State Prison - Sacramento (CSPS), his Eighth Amendment rights were violated by  
6 the following eleven defendants: Wardens J. Walker and J. Malfi;<sup>2</sup> Correctional Captain D.  
7 Leiber; Health Care Manager Karen Kelly; Business Services Manager Haythorne; Assistant  
8 Food Manager Hague; three Supervising Cooks II: Rodriguez, Ruller (originally misspelled by  
9 plaintiff as Rueller) and Arndt (misspelled by plaintiff as Arnt); two Correctional Cooks I  
10 Bernardino (mis-identified by plaintiff as Raymond) and Alice Smith. Complaint, pp. 2-5, 21.  
11 All defendants are expressly sued in their individual and official capacities. *Id.*, at 2-5.  
12 Plaintiff claims that all eleven defendants have implemented a policy/procedure of feeding  
13 inmates in their assigned cells as a safety/security measure. *Id.*, at 5-6.

14 Although plaintiff notes that he did not arrive at CSPS until December 7, 2004, he  
15 claims that defendants Haythorne, Hague, Rodriguez, Ruller and Arndt have been made  
16 personally aware, through “dozens of inmate complaints,” of unsanitary food conditions and  
17 handling by prison staff since January 9, 2003, such as the rat/rodent nesting and mating in the

---

18  
19 <sup>2</sup> Confusingly, plaintiff identifies both Walker and Malfi as current wardens of CSPS.  
20 Defendant Malfi is unserved. The initial summons/service of process form was mailed to him on  
21 3/31/08, re-mailed on 4/10/08, and returned and filed, on 2/20/09, as unexecuted with the  
22 notation “retired - no info in CDC locator.” Docket # 31. On 3/20/09, the court directed plaintiff  
23 to provide additional information about the defendant in order for him to be served and, upon the  
24 return of the requisite documents, again directed service upon defendant Malfi, by Order, filed on  
25 4/13/09; in that order, plaintiff was informed that he could seek judicial intervention if the  
26 information he sought about the defendant’s whereabouts was denied or unreasonably delayed,  
but plaintiff did not seek the court’s assistance. Docket # 33, # 34, # 42. On June 23, 2009, a  
waiver was returned unexecuted once more with the notation “per office of legal affairs,  
Defendant out of country and unavail. to reach.” Docket # 49. At this time, plaintiff must show  
good cause, within 21 days, why this defendant should not be dismissed. *See*, Fed. R. Civ. P.  
4(m). Although Fed. R. Civ. P. 4(f) is applicable to service of an individual in a foreign country,  
as no information has been provided as to the possible location of defendant Malfi; for example,  
there is no verification that he is, in fact, in a foreign country and for how long, and the  
applicable rules of service within such country.

1 main kitchen, but have only addressed this issue by the use of “stick[y] traps.” *Id.*, at 5-7. These  
2 defendants have issued repeated memoranda addressing prison staff throwing bread racks used  
3 for transporting food trays on the floor and then stacking them more than three high to expedite  
4 food service to inmates. *Id.*, at 7. In addition the carts used for food service are also used for  
5 sheet exchange, transporting bed mattresses, personal property and housing unit supplies, and  
6 defendants do not enforce any health and safety standards to make sure the carts are properly  
7 cleaned before use in food transport. *Id.*

8           Plaintiff avers that various inmates have filed inmate appeals on the subject of  
9 food service practices; he states that an appeal by an inmate named Jackson, CDC # J-43666,  
10 revealed that correctional officials had allowed/authorized inmates to handle food who were not  
11 medically cleared to do so – a later appeal by this inmate, Jackson, concerning deficient food  
12 health and safety standards were denied. *Complaint*, pp. 7-8. Plaintiff alleges that inmates  
13 Henry, CDC #P-64498,<sup>3</sup> and Douglas, CDC # H-533369, assigned to jobs in the main kitchen in  
14 December of 2005, from 4:00 a.m. to 11:30 a.m. discovered both dead and living rats in the main  
15 kitchen, with the dead ones caught in sticky traps. *Id.*, at 8. In January of 2006, inmate Douglas  
16 told plaintiff about the rat/rodent infestation in the main kitchen and their access to food stored in  
17 the dry goods room and prepared food left out to cool overnight, advised him not to eat certain  
18 foods and stated that he was being treated medically for what a doctor had told him was a result  
19 of food poisoning from food he ate while working in the main kitchen. *Id.*, at 9.

20           In February of 2006, an inmate named Wright, CDC # J-67360, according to  
21 plaintiff, was treated for a severe case of food poisoning after consuming an evening meal, and  
22 thereafter discovered numerous instances of other CSPA inmates who had been, or were being,  
23 treated for “exposure to food poisoning.” *Complaint*, p. 9. Wright initiated a “class action group  
24 inmate appeal,” seeking the extermination of all rodents from the main kitchen, which appeal

---

25  
26           <sup>3</sup> Plaintiff is apparently referencing a document not included within his motion but  
attached to his complaint as Exh. H at p. 66.

1 was “obstructed, ignored and denied” as a result of defendant Walker’s failure to protect the  
2 health and safety of CSPA inmates. Id.

3 Plaintiff alleges that, on Feb. 17, 2006, he was diagnosed and treated for food  
4 poisoning as a result of an evening meal. Complaint, p. 9. Plaintiff alleges that two weeks  
5 earlier a registered nurse, named J. Cunningham (not a defendant), had examined plaintiff’s  
6 symptoms at that time and had recommended treatment “contrary to the prison[’]s doctor.” Id.,  
7 at 9-10. Plaintiff also claims (although it is unclear whether plaintiff is referring to Feb. 17,  
8 2006, or two weeks earlier) that the prison doctor, Dr. Duc (not a defendant), had warned  
9 plaintiff about the CSPA food service food and told plaintiff that he had treated a high number of  
10 food poisoning cases at CSPA and that the food service program needed to be “upgraded.” Id., at  
11 10.

12 Plaintiff claims that he filed an inmate appeal on March 2, 2006, related to the  
13 issues raised herein and during his April 14, 2006, interview with defendant Rodriguez was  
14 asked by this defendant to withdraw the appeal because he had the main kitchen rodent problem  
15 under control. Complaint, p. 10. He also said that in his 15 years in the food service department  
16 at CSPA, there had always been rats/rodents in the main kitchen, which are controlled by sticky  
17 traps. Id. Plaintiff asked how defendant Rodriguez could purport to have the problem under  
18 control when, on March 24, 2006, rodent feces and bitemarks had been discovered in up to a  
19 dozen sheets of iced cake left out to cool the evening before, which incident defendant Rodriguez  
20 denied, despite the declaration by a correctional cook I, Cronjager (not a defendant), who had  
21 personally reported the incident to her supervisor, defendant Rodriguez. Id. & Exhibit G.

22 Plaintiff claims that inmate Henry, referenced above, reported to his supervisors  
23 on March 4, 2006, that a rat/rodent came into direct contact with his boot. Complaint, p. 11.  
24 Among the exhibits plaintiff has appended to his complaint is a group appeal, Log No. SAC 06-  
25 00957, filed on April 3, 2006, complaining of “ongoing unsanitary food service at CSP-  
26 Sacramento,” specifying a dinner tray having been served with hair in it, but also complaining of

1 various deficiencies in food handling, partially granted at the second level and denied at the  
2 director's level. Complaint, Exhibit O, pp. 83-91. (However, this appeal does not appear to  
3 have plaintiff's name on it anywhere). Plaintiff goes on to set forth his unsuccessful efforts to  
4 obtain relief by way of contacting the American Civil Liberties Union, filing of a grand jury  
5 complaint in Sacramento County, writing Senator Dianne Feinstein, writing the state Department  
6 of Health Services, writing Kerry McClelland of the Office of the Inspector General, writing  
7 "defendant" Woodford,<sup>4</sup> and writing defendant Walker. Id., at 11-13. Plaintiff also complains  
8 that defendants Walker, Malfi, Leiber and Kelly have been deliberately indifferent to a  
9 substantial risk of harm to plaintiff, have subjected him to unconstitutional conditions of  
10 confinement by their cell feeding practices and procedures, resulting in the food poisoning of  
11 plaintiff and others, and have been obstructive, ignored and denied the issues raised. Id., at 13-  
12 14.

13 Plaintiff contends that defendant Leiber has been put on notice of the defective  
14 food service and has denied each inmate appeal addressing the issue. Complaint, pp. 15-16.  
15 Plaintiff contends that a July 13, 2006, meeting between the C-facility Men's Advisory Council  
16 and defendants Leiber, Haythorne, and Hague, defendants offered "a sophisticated justification  
17 for the high number of inmate food poisoning cases at CSPS," but defendant Hague admitted that  
18 she had seen subordinates stack bread racks during food service and so informed defendant  
19 Leiber; she also advised Leiber that CSPS staff would only adhere to health and safety standards  
20 in food service when supervised. Id., at 16-17.

21 Plaintiff contends that rodent infestation continues throughout the C-facility main  
22 kitchen and is not a sudden or temporary invasion and defendant Leiber has done nothing to  
23

---

24 <sup>4</sup> Plaintiff sporadically denominates Woodford as a defendant, but he failed to identify  
25 this individual as a defendant when enumerating the parties to this complaint. Judge Kellison,  
26 the magistrate judge from whom this case was reassigned, did not direct service of this complaint  
upon that individual and the court does not recognize this person as a properly named [or served]  
defendant in this action. See, Orders, filed on 1/08/09 (# 7), and on 3/27/09 (# 10).

1 correct the matters complained of. Complaint, pp. 17-18. Defendant Malfi assigned plaintiff's  
2 mother's citizen's complaint about the food conditions to a Lieutenant Flint (not a defendant),  
3 who did contact his mother, Flora Lee, by phone, but the investigation has been obstructed and  
4 defendant Leiber has not provided her with a written response because of the instant lawsuit. *Id.*,  
5 at 18. Plaintiff, assigned as of June 14, 2006, through August 11, 2006, as a "butcher's helper"  
6 in the CSPS main kitchen, had a conversation with his direct supervisor, non-defendant D.S.  
7 Abellon, along with inmate Jackson (referenced earlier), and Abellon admitted there was a rodent  
8 infestation there and that it would take a complete fumigation to eliminate the rats/rodents.<sup>5</sup> *Id.*,  
9 at 18-19. Plaintiff mailed defendant Malfi a "confidential notice" about the conditions  
10 complained of on around August 6, 2006, which was ignored. *Id.*, at 19. Defendants Smith and  
11 Raymond (actually, Bernardino) were amply apprised of the issues raised herein and refused to  
12 enforce health and safety standards in violation of plaintiff's Eighth Amendment rights. *Id.*  
13 Plaintiff also alleges that these defendants are obligated to uphold state health and safety  
14 standards, listing code sections. *Id.* In addition to his claims of a violation of his Eighth  
15 Amendment rights against all defendants, plaintiff alleges a claim of retaliation by defendant  
16 Hague for the filing of this action in the form of a "bogus and false rules violation  
17 report...charging plaintiff with over-familiarity." *Id.*, at 21, 24. Plaintiff seeks declaratory and  
18 injunctive relief,<sup>6</sup> as well as money, including punitive, damages. *Id.*, at 22-23.

---

19  
20 <sup>5</sup> Plaintiff is apparently referencing a document that appears to be a copy of a declaration  
21 by D.S. Abellon, not included with the motion, but appended to plaintiff's complaint as Exh. S at  
p. 106.

22 <sup>6</sup> It appears that plaintiff's claims for injunctive relief could arguably found to be mooted,  
23 as the allegations of this complaint are regarding claimed conditions at California State Prison-  
24 Sacramento (CSPS), and at the time of filing this complaint, on Nov. 6, 2007, plaintiff was  
25 housed at California State Prison-Los Angeles, and as of August 28, 2009, plaintiff has evidently  
26 been incarcerated at Kern Valley State Prison. See Sample v. Borg, 870 F.2d 563 (9th Cir.  
1989); Darring v. Kincheloe, 783 F.2d 874, 876 (9th Cir. 1986)(claims by a prisoner for  
injunctive relief concerning an institution at which he is no longer incarcerated and for which  
there is no "reasonable expectation nor demonstrated probability" of his return become moot.  
See also Reimers v. Oregon, 863 F.2d 630, 632 (9th Cir. 1988)). However, defendants have not  
moved for dismissal of the injunctive relief claims, that is, for dismissal of plaintiff's claims

1 Motion for Leave to Amend

2 Plaintiff seeks leave to file a second amended complaint; however, in doing so, he  
3 has failed to submit an appropriate separate motion to accompany his proposed second amended  
4 complaint. By failing to file a motion in accordance with Fed. R. Civ. P. 7(b)(1)(B), he “fails to  
5 state with particularity the grounds for seeking the order.” Thus, the court must review the  
6 proposed second amended complaint in order to discern the basis for any amendment. In the  
7 proposed second amended complaint, which the court will construe in part as a motion to amend,  
8 plaintiff seeks to name three additional defendants: the California Department of Corrections and  
9 Rehabilitation (CDCR); Director of CDCR Adult Institutions Susan Hubbard; Chief of Inmate  
10 Appeals Nola Grannis (whom plaintiff describes as “Chief Correctional Administrator for the  
11 CDCR”). Motion to Amend (MTA), pp. 1-3.

12 The Federal Rules of Civil Procedure provide that a party may amend his or her  
13 pleading “once as a matter of course at any time before a responsive pleading is served.” Fed. R.  
14 Civ. P. 15(a). However, as in the instant case, once an answer has been filed, a party may amend  
15 a pleading only by leave of court or by written consent of the adverse party. See Rule 15(a)(2).  
16 Although “[t]he court should freely give leave when justice so requires,” under Rule 15(a)(2),  
17 and there is presumption in favor of granting leave to amend, such leave need not be granted  
18 where such amendment (1) would prejudice the opposing party; (2) is sought in bad faith; (3)  
19 produces an undue delay in litigation; or (4) is futile. Eminence Capital LLC v. Aspeon, Inc.,  
20 316 F.3d 1048, 1052 (9<sup>th</sup> Cir. 2003), citing Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227 (1962);  
21 Amerisource Bergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9<sup>th</sup> Cir. 2006). This circuit  
22 accords the greatest weight to “the consideration of prejudice to the opposing party,” the  
23 prejudice-showing burden resting on the opposing party. Eminence Capital, 316 F.3d at 1052.  
24 “Absent prejudice, or a strong showing of any of the remaining Foman factors, there exists a  
25 \_\_\_\_\_  
26 against the defendants in their official capacity; thus, for purposes of these pending motions, the  
injunctive relief claims remain.

1 *presumption* under Rule 15(a) in favor of granting leave to amend.” *Id.* [Emphasis in original].

2           However, in the first place in this instance, plaintiff is barred from proceeding  
3 upon his claims against the entity, CDCR, by the Eleventh Amendment. The Eleventh  
4 Amendment serves as a jurisdictional bar to suits brought by private parties against a state or  
5 state agency unless the state or the agency consents to such suit. *See Quern v. Jordan*, 440 U.S.  
6 332 (1979); *Alabama v. Pugh*, 438 U.S. 781 (1978)( *per curiam*); *Jackson v. Hayakawa*, 682 F.2d  
7 1344, 1349-50 (9th Cir. 1982). As the State of California has by no means consented to suit,  
8 plaintiff’s claims against CDCR are frivolous, thus, leave to amend to name this defendant  
9 should not be granted.

10           As to defendants Hubbard and Grannis, plaintiff seeks to sue these individuals in  
11 both their individual and official capacities. As to his claims against these individuals in their  
12 official capacities, it is likely that plaintiff’s injunctive relief claims regarding food safety  
13 standards at CSPA will ultimately be dismissed as moot (see fn. 6), thus, his official capacity  
14 claims against these defendants do not appear viable. Moreover, plaintiff fails to explain why he  
15 failed to allege the involvement of the newly named defendants when he filed the original  
16 complaint, since, as defendants note, their alleged involvement occurred before the plaintiff filed  
17 this lawsuit. *Opposition (Opp., p. 2)*. Plaintiff’s effort to explain the default on the basis that he  
18 had originally been proceeding in a separate action is not persuasive. *Reply, p. 4*.

19           To the extent he seeks to sue defendant Hubbard in an individual capacity,  
20 plaintiff does not frame a claim against her by simply alleging that she, among the litany of other  
21 defendants he lists, had personal awareness of various inmate complaints about CSPA’s allegedly  
22 deficient health and safety standards. *MTA, p. 7*. Nor does plaintiff allege sufficient claims by  
23 simply pointing out that this defendant has certain responsibilities regarding the formulation and  
24 implementation of departmental policies and regulations. *MTA, p. 19, Exhibit (Exh.) L, p. 114*.  
25 To the extent, in his reply, he seeks to implicate both CDCR and Hubbard for implementation of  
26 a cell-feeding policy at CSPA, his allegations that this practice constituted cruel and unusual



1 punishment or deliberate indifference because the procedure permitted health and safety  
2 violations is too sweeping and unsupported to state a claim. Reply, p. 7.

3 The Civil Rights Act under which this action was filed provides as follows:

4 Every person who, under color of [state law] . . . subjects, or causes  
5 to be subjected, any citizen of the United States . . . to the  
6 deprivation of any rights, privileges, or immunities secured by the  
Constitution . . . shall be liable to the party injured in an action at  
law, suit in equity, or other proper proceeding for redress.

7 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
8 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
9 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
10 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
11 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
12 omits to perform an act which he is legally required to do that causes the deprivation of which  
13 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 Moreover, supervisory personnel are generally not liable under § 1983 for the  
15 actions of their employees under a theory of respondeat superior and, therefore, when a named  
16 defendant holds a supervisory position, the causal link between him and the claimed  
17 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
18 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
19 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
20 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
21 Cir. 1982). Plaintiff alleges no colorable claims against defendant Hubbard.

22 With regard to defendant Grannis, whom he seeks to also sue in an individual  
23 capacity and for whom he includes an exhibit of her duty statement in her capacity as chief of  
24 inmate appeals, plaintiff seeks to implicate her for having frustrated his appeal efforts which  
25 helped ensure “defendant Hague’s code of silence retaliation” and fostered “the infamous code of  
26 silence by permitting defendant[s’] Walker and Malfi to deny and deprive” plaintiff of

1 documents that supported his appeals to the director’s level regarding the food health and safety  
2 conditions at CSPA. MTA, p. 19, Exh. M, p. 115. Plaintiff also alleges that defendant Grannis  
3 allowed subordinates to review his appeals (and exhibits) “in a manner contrary to the CDCR’s  
4 DOM” in order to conceal the alleged Eighth Amendment violations of CSPA’s food service. *Id.*,  
5 at 19.

6 Plaintiff is informed that prisoners do not have a “separate constitutional  
7 entitlement to a specific prison grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860  
8 (9th Cir. 2003), citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Even the non-  
9 existence of, or the failure of prison officials to properly implement, an administrative appeals  
10 process within the prison system does not raise constitutional concerns. Mann v. Adams, 855  
11 F.2d at 640. See also, Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); Flick v. Alba, 932  
12 F.2d 728 (8th Cir. 1991). Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D.Ill. 1982) (“[A prison]  
13 grievance procedure is a procedural right only, it does not confer any substantive right upon the  
14 inmates. Hence, it does not give rise to a protected liberty interest requiring the procedural  
15 protections envisioned by the fourteenth amendment”). Specifically, a failure to process a  
16 grievance does not state a constitutional violation. Buckley, supra. State regulations give rise to  
17 a liberty interest protected by the Due Process Clause of the federal constitution only if those  
18 regulations pertain to “freedom from restraint” that “imposes atypical and significant hardship on  
19 the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472,  
20 484, 115 S. Ct. 2293, 2300 (1995).<sup>7</sup> Plaintiff’s claims against defendant Grannis are not  
21

---

22 <sup>7</sup> “[W]e recognize that States may under certain circumstances create liberty interests  
23 which are protected by the Due Process Clause. See also Board of Pardons v. Allen, 482 U.S.  
24 369, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987). But these interests will be generally limited to  
25 freedom from restraint which, while not exceeding the sentence in such an unexpected manner as  
26 to give rise to protection by the Due Process Clause of its own force, see, e.g., Vitek v. Jones,  
445 U.S. 480, 493, 100 S.Ct.1254, 1263-1264 (transfer to mental hospital), and Washington, 494  
U.S. 210, 221- 222, 110 S.Ct. 1028, 1036-1037 (involuntary administration of psychotropic  
drugs), nonetheless imposes atypical and significant hardship on the inmate in relation to the  
ordinary incidents of prison life.” Sandin v. Conner, supra.

1 sufficiently cognizable and plaintiff should not be permitted to amend to frame allegations  
2 against her.

3 Defendants point out that plaintiff in seeking to amend the complaint to name  
4 Hubbard and Grannis as new defendants for having “omitted to perform duties legally required  
5 by condoning, thereby acting in concert” with the other defendants is not sufficient. *Opp.*, p. 5,  
6 citing *MTA*, ¶ 53. There is an absence of specific facts alleged to support the allegations.  
7 Defendants sued in their individual capacity must be alleged to have: personally participated in  
8 the alleged deprivation of constitutional rights; known of the violations and failed to act to  
9 prevent them; or implemented a policy that repudiates constitutional rights and was the moving  
10 force behind the alleged violations. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9<sup>th</sup> Cir.  
11 1991); *Hansen v. Black*, 885 F.2d 642 (9<sup>th</sup> Cir. 1989); *Taylor v. List*, 880 F.2d 1040 (9<sup>th</sup> Cir.  
12 1989). “Although a § 1983 claim has been described as ‘a species of tort liability,’ *Imbler v.*  
13 *Pachtman*, 424 U.S. 409, 417, 96 S. Ct. 984, 988, 47 L.Ed.2d 128, it is perfectly clear that not  
14 every injury in which a state official has played some part is actionable under that statute.”  
15 *Martinez v. State of California*, 444 U.S. 277, 285, 100 S. Ct. 553, 559 (1980). “Without  
16 proximate cause, there is no § 1983 liability.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837  
17 (9<sup>th</sup> Cir. 1996).

18 The court agrees with defendants that to the extent plaintiff wishes to add new  
19 facts in support of his claims of retaliation and deliberate indifference against the existing  
20 defendants, he is not limited to the pleadings in order to do so. *Opp.*, p. 2. The court finds that  
21 leave to further amend in this instance should not be granted because the factors to be evaluated  
22 weigh against it. There is no question that further amendment would prejudice not only the  
23 opposing party, but also unduly burden this already significantly burdened court, and would  
24 certainly produce an undue delay in this litigation which has entered its third year, and, while  
25 leave to further amend may not be sought in bad faith, it appears that the proposed amendments  
26 are futile. *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9<sup>th</sup> Cir. 2003). The

1 motion for leave to amend to proceed upon a second amended complaint will be denied.

2 First Motion to Compel

3           Plaintiff moves for an order compelling defendants Walker, Haythorne, Leiber,  
4 Hague and Ruller to respond to his various requests for production. First Motion to Compel  
5 (MTC), pp. 1-2. Plaintiff contends that each of these defendants have been evasive and  
6 incomplete in their responses. *Id.*, at 2. Plaintiff argues that the defendants have invoked the  
7 official information privilege without a sufficient basis, have asserted privacy rights under state  
8 law that are governed by federal law that are outweighed by plaintiff's need for information and  
9 that he is entitled to all relevant information. *Id.*, at 5-6.

10           Defendants argue that federal common law recognizes that a qualified official  
11 information privilege and government personnel files are considered official information, citing  
12 Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9<sup>th</sup> Cir. 1990). Opposition (Opp.), p. 3.  
13 Defendants further argue that of the 125 production requests plaintiff propounded upon  
14 defendants, only sixteen were not responded to on the basis of the objections asserted. *Id.*, at 4.  
15 Nevertheless, defendants contend, plaintiff seeks further responses to ninety-nine requests,  
16 despite the fact that as to eighty-three of these responses, defendant have produced documents or  
17 asserted an inability to comply as they had no responsive documents within their possession,  
18 custody or control. *Id.*

19           Plaintiff responds that with regard to the requests at issue, at least with respect to  
20 defendant Walker, that this defendant has failed to provide a privilege log or abide by the  
21 requisite procedures for asserting the official information privilege. Reply, pp. 4-5. As to the  
22 RFPs at issue directed to defendants Haythorne, Leiber, Hague and Ruller, plaintiff asks that they  
23 be required to provide "a verified statement" from an employee in a position to know that "after a  
24 diligent search," no responsive documents could be found. *Id.*, at 5-8.

25           "The governmental privilege must be formally asserted and delineated in order to  
26 be raised properly." Kerr v. U.S. Dist. Court for the No. Dist. of California, 511 F.2d 192, 198

1 (9<sup>th</sup> Cir. 1975).

2 “There must be a formal claim of privilege, lodged by the head of  
3 the department which has control over the matter, after actual  
4 personal consideration by that officer...”

5 Kerr, supra, at 198 (quoting United States v. Reynolds, 345 U.S. 1, 7-8, 73 S. Ct. 528, 532  
6 (1953)). The procedural prerequisites apply to all forms of “executive” privilege. See, e.g., Yang  
7 v. Reno, 157 F.R.D. 625, 632 (M.D.Pa. 1994) (state secrets and deliberative process privileges);  
8 Martin v. Albany Business Journal, Inc., 780 F. Supp. 927, 932 (N.D.N.Y. 1992) (finding  
9 “informant’s privilege” to be a governmental privilege). The claim should be made by a person  
10 in an executive policy position. See Reynolds, 345 U.S. at 8 n. 20, 73 S. Ct. at 532 n. 20 (“The  
11 essential matter is that the decision to object should be taken by the minister who is the political  
12 head of the department, and that he [or she] should have seen and considered the contents of the  
13 documents and himself have formed the view that on grounds of public interest they ought not to  
14 be produced . . .”); (see also, Kerr, supra, at 198) (denying mandamus petition brought by  
15 California Adult Authority executive personnel for district court to vacate discovery order); (see  
16 also, Scott Paper Co. v. United States, 943 F. Supp. 501-03 (E.D. Pa. 1996) (requiring IRS  
17 Commissioner to invoke deliberative process privilege); Yang, 157 F.R.D. at 632-34 & n.4  
18 (1994) (considering official status necessary to invoke privilege, collecting cases, and finding  
19 executive secretary of National Security Council could not invoke governmental privileges);  
20 Mobil Oil Corp. v. Department of Energy, 102 F.R.D. 1, 6 (D.C.N.Y. 1983) (official invoking  
21 the privilege may be an agency head or a subordinate with high authority). Some jurisdictions do  
22 not allow the agency head to delegate the authority to claim the privilege. Scott, 943 F. Supp. at  
23 502. Other jurisdictions which allow the authority to be delegated require the delegation to be  
24 accompanied by detailed guidelines regarding the use of the privilege. Id. at 503. For purposes  
25 of prisoner litigation, the warden, assistant warden or appropriately delegated prison officials  
26 should be sufficient.

26 \\\

1           Regardless of who invokes the privilege, “the information for which the privilege  
2 is claimed must be specified, *with an explanation why it properly falls within the scope of the*  
3 *privilege.*” In re Sealed Case, 856 F.2d 268, 271 (D.C. Cir. 1988) (law enforcement privilege)  
4 (emphasis added). An official cannot invoke a privilege without personally considering the  
5 material for which the privilege is sought. Yang, 157 F.R.D. at 634.

6           “To determine whether the information sought is privileged, courts must weigh  
7 the potential benefits of the disclosure against the potential disadvantages. If the latter is greater,  
8 the privilege bars discovery.” Sanchez v. City of Santa Ana, *supra*, 936 F.2d at 1033-34. “The  
9 balancing approach of the Ninth Circuit is mirrored in this and other courts’ previous  
10 determinations that a balancing test is appropriate when the disclosure of law enforcement files  
11 in a civil action is at issue.” Doubleday v. Ruh, 149 F.R.D. 601, 609 (E.D.Cal. 1993).

12           **At the outset, with respect to defendants’ responses to plaintiff’s discovery**  
13 **requests *relative to the requests at issue within both motions herein* wherein defendants have**  
14 **invoked the official information privilege, including any assertion that 15 CCR §§ 321, 370**  
15 **preclude disclosure, plaintiff is correct that they have failed to comply with the appropriate**  
16 **procedural requisites. Therefore, they have waived their objections based on any such**  
17 **qualified privilege, and defendants must supplement all responses to include any**  
18 **information withheld on that basis within 14 days.**

19           *Defendant Walker*

20           Plaintiff seeks a response, or further production, in response to requests numbered  
21 1, 3-6, 8-10 of his first set of his requests for production of documents (RFP) served upon  
22 defendant Walker and requests numbered 1, 3-15 of his second set. MTC I, p. 1, Exhs. A & B.

23           RFP Set One

24           1. All documents which would mention, discuss, or verify third  
25 level director’s review and fact finder/confidential inquiry into  
26 group appeal log # SAC-C-06-00957 at exhibit “A” in First Set of  
Admissions to Defendant Leiber served concurrently herewith.

1                    Response to RFP 1

2                    Responding party objects to this is [sic] request on the grounds it is  
3                    overbroad, references a document that is not attached to these  
4                    requests, calls for speculation, violates the privacy rights of third  
5                    persons who are not parties to this action, and seeks the disclosure  
6                    of documents protected under section 3321 and 3370. Based on  
7                    these objections, responding party will not answer this request.

8                    It is true that plaintiff has not attached the group appeal at issue to the request with  
9                    this motion to compel, and apparently did not attach it to the above RFP served on defendant  
10                   Walker; it appears in serving the RFP upon this defendant, plaintiff may have intended for him to  
11                   cross-reference it as it is identified as attached instead to request for admissions served upon  
12                   another defendant. On the other hand, plaintiff appears to have included copies of this group  
13                   appeal as Exh. O to his complaint. See Complaint, pp. 83-91. However, plaintiff was not only  
14                   not the lead inmate on the group appeal, it is not clear that he was among the inmates who signed  
15                   this grievance. This court is not persuaded by the defendant's assertion of the privacy rights of  
16                   third parties in this context, nor is the fact that the inmate appeal was not attached to the request  
17                   dispositive, if only for the fact that other requests were responded to even though this same  
18                   objection was raised as to that point. See, e.g. RFP 2 directed to defendant Walker. The fact that  
19                   plaintiff may not have even been a part of this group inmate appeal in the first place could deem  
20                   it irrelevant for purposes of this complaint; on the other hand, it does concern food sanitation  
21                   grievance during a period in which plaintiff was apparently housed there. Although plaintiff's  
22                   request is not particularly focused, the motion will be granted to the extent that documents exist  
23                   relating to any "fact finder/confidential inquiry" into this group appeal. In addition to asserting  
24                   violations of the privacy of third-party inmates, defendants contend that plaintiff could obtain the  
25                   grievance from the inmate. As noted, plaintiff has already attached a copy of the group grievance  
26                   at issue in this request, including the third level decision as Exh. O to his complaint. It appears  
                         that what plaintiff is seeking is any other documentation regarding any inquiry into the substance  
                         of this grievance. Defendant asks that if the court grants plaintiff's request, that he be permitted

1 to redact the names of all inmates and any medical records submitted with the appeal. The court  
2 does not construe the request as primarily implicating inmates' medical records. Instead,  
3 plaintiff appears to be seeking documentation of the inquiry that was conducted in response to  
4 this grievance. To the extent the inmates' medical records are implicated, defendant may redact  
5 that information, but if the defendant has documentation about any fact finding or inquiry  
6 conducted in response to the grievance, the motion as to this request, as modified, is granted.

7           As to RFP 3, seeking documents relating to the director's level  
8 appeal response to appeal Log No. SAC-B-07-00150, while defendant posits objections in the  
9 response, he also asserts without waiving objections that he does not have any documents  
10 responsive to that request in his possession, custody or control beyond those plaintiff has  
11 produced with the requests. MTC, p. 12. The court cannot direct a party to produce documents  
12 that he does not have within his possession, custody or control and the motion as to this request  
13 will be denied.

14           In RFP nos. 4 and 5, plaintiff seeks documents verifying the  
15 current prison address of two inmates, each of whom he characterizes as a "material witness,"  
16 Terral Henry, CDC # P-64498, and Michael Wallace, CDC # E-19190, respectively. MTC, p.  
17 13. To each of these requests, defendant posits the same objections, that the request "is  
18 overbroad, vague as to the meaning of 'material witness,' violates the privacy rights of third  
19 persons who are not parties to this action, and seeks disclosure of documents protected under  
20 section 3321 and 3370." Based on the objections, defendant refuses to respond to the request.

21           While these requests might have been better posed as interrogatories, defendants'  
22 opposition to these requests on the basis that they encompass "just about every document in these  
23 inmates' central and medical files," and implicate their privacy rights with regard to disclosure of  
24 their medical records and other personal information, is not well-taken. It appears most likely  
25 that plaintiff is seeking only the most current address for these two inmates for purposes either of  
26 communicating with them to obtain declarations in support of any opposition to a pretrial



1 dispositive motion (or for moving for summary judgment himself) or for purposes of having  
2 them appear as trial witnesses, should this case proceed to trial. While it is true that, should  
3 plaintiff make the requisite showing of the materiality of any testimony they might have to offer,  
4 it is the court which will decide whether or not to issue any writ of habeas corpus ad  
5 testificandum for the appearance of either or both at trial (Opp., p. 8), there does not appear to be  
6 an overriding objection to plaintiff having access to the current location of these individuals for  
7 plaintiff to seek to correspond with them by mail in accordance with the relevant prison  
8 regulations. Defendant Walker is directed to construe these requests for production as  
9 interrogatories seeking only the current address of these inmates and to provide this information  
10 to plaintiff within 14 days. Thus, as modified, plaintiff's motion as to RFP nos. 4 and 5 directed  
11 to defendant Walker will be granted.

12           As to RFP 6, wherein plaintiff asks for trial size photos that would verify the  
13 discovery of Supervisor Cook I Cronjager of rodent contamination of sheet cakes on March 24,  
14 2006, although defendant Walker interposes form objections to any such photos, i.e., objecting  
15 on grounds of overbreadth, vagueness, failure to identify the documents sought with "reasonable  
16 particularity," and lack of foundation, he also asserts, without waiving the objections, that he is  
17 not in possession, custody or control of any documents responsive to the request which defendant  
18 assumes is in reference to a declaration by Cronjager<sup>8</sup> regarding the condition of particular sheet  
19 cakes. The court cannot compel the production of documents which defendant maintains he does  
20 not have in his possession, custody or control. However, because defendant Walker is the  
21 warden of CSPS and he is sued in both his individual and official capacities, the court finds that  
22 as the warden, in his official capacity, prison-related documentation or photographs within the  
23 facility are within this defendant's possession, custody or control. Therefore, within 14 days,  
24 defendant Walker must supplement his response to inform plaintiff whether or not to his

---

25  
26 <sup>8</sup> Plaintiff does not provide the declaration within this motion, but it is apparently the one  
copied as Exh. G, p. 65, to plaintiff's complaint.

1 knowledge any such photographs exist, and if they do, the defendant must produce them (within  
2 the same time frame). Therefore, as modified, plaintiff's motion with respect to RFP no. 6 is  
3 granted.

4           The court will also require defendant Walker to supplement his responses to RFP  
5 nos. 8, 9 and 10, in the same fashion within 14 days, each of which seek production of  
6 photographs, RFP no. 8, asking for a photo of rodent(s) caught by pest control in the CSPA main  
7 kitchen; RFP no. 9, seeking photos of the area in the CSPA main kitchen where an inmate named  
8 Michael Wallace, CDC # E-19190, witnessed a "rodent nest," and RFP no. 10, seeking a photo  
9 of a dead rodent witnessed by the same inmate in a pan of refried beans in the CSPA main  
10 kitchen. Therefore, solely as modified, plaintiff's motion with regard to RFP nos. 8-10 is  
11 granted.

#### 12           RFP Set Two

13           As to RFP 1 of the second set of RFP directed to defendant Walker, wherein  
14 plaintiff seeks documents referencing CSPA "retention policy for inspection reports" at CSPA  
15 during the times relevant for this lawsuit, defendant Walker objects on the grounds of  
16 overbreadth and vagueness, but nevertheless, without waiving these objections, indicates that he  
17 is producing specifically identified documents within his possession, custody and control.  
18 Plaintiff's motion as to this request will be denied.

19           In RFP 3, plaintiff asks for "[a]ll documents which would mention, discuss, or  
20 verify hazardous analysis associated with duties of defendant Ruller at CSPA." MTC, p. 19.  
21 After positing various form objections, including, inter alia, that the request is not reasonably  
22 calculated to lead to the discovery of admissible evidence, that is unduly burdensome and  
23 oppressive because the Hazard Analysis Critical Control Point (HACCP) program is a multi-  
24 volume series and plaintiff has failed to specify any particular section, defendant refuses to  
25 produce the HACCP program "unless plaintiff specifies which section he seeks." MTC, p. 20.  
26 Nevertheless, defendant has produced several exhibits which appear to be relevant to the

1 responsibilities of defendant Ruller, described as a supervising cook II in the complaint,  
2 including but not limited to a section of the Department Operations Manual and a job description  
3 for a supervising correctional cook. The court finds that defendant appears to have provided  
4 plaintiff with relevant information regarding defendant Ruller's position and that he has also  
5 agreed to provide information from the HACCP program if plaintiff would follow up with a  
6 request for specific sections. Moreover, in a supplemental response served upon plaintiff  
7 regarding an inquiry of another defendant, Rodriguez, plaintiff was informed of the following:

8 HACCP stands for Hazard Analysis and Critical Control Points,  
9 which is a food safety and self-inspection system that highlights  
10 potentially hazardous foods and how they are handled in the food  
11 service environment. HACCP does not include training on how to  
12 respond to the presence of rodents in areas where food is prepared  
or stored. Responding party does not have specific training in  
responding to the presence of rodents; however, responding party  
immediately contacts vector control if he learns or is informed of  
the presence of rodents in an where [sic] food is prepared or stored.

13 Opp., Esquivel Dec., Exh. 7, p. 52. The motion as to this request will be denied.

14 For the same reasons set forth as to the immediately preceding RFP, plaintiff's  
15 motion with regard to RFP 4, a request regarding the "critical control[] point training and  
16 implementation" associated with defendant Ruller's duties, is also denied.

17 As to RFP 5, defendant points out in the opposition that defendant has  
18 supplemented the response, which the court's review indicates does, indeed, moot the request  
19 regarding documentation of defendant Kelly's putative removal as CSPA Health Care Manager.  
20 Opp., p. 8, Esquivel Dec., Exh. 6. Not waiving objections made, in the supplemental response  
21 defendant's counsel asserts that a reasonable and diligent search was conducted after which it  
22 was determined that "no such documents exist." Id. Plaintiff's general insistence (see reply) that  
23 responses must be further verified is not well-taken. The motion as to RFP 5 is denied.

24 As to RFP 6, citing Fed. R. Evid. 501, plaintiff seeks "confidential records and  
25 reports...generated in response to appeal log # SAC-C-06-01460," filed in a case related to this  
26 one by an inmate Campbell, CDC # H-07298, at CSPA. MTC, p. 21. Court records do

1 demonstrate that both the instant case and Jackson v. Walker, et al. CIV-S-06-2023 WBS GGH P  
2 are related to Campbell v. CDCR, et al., CIV-S-07-1419 WBS GGH P.

3           Among the objections posited to this request, which defendant has refused to  
4 answer are that:

5                     it is vague in its entirety, lacks foundation, fails to state with  
6                     particularity the documents sought, violates the privacy right of  
7                     third persons who are not parties to this lawsuit, and seeks  
8                     production of document [sic] protected under 3321 and 3370 of  
9                     Title 15 of the California Code of Regulations.

10 MTC, p. 21.

11           The court does not find this appeal attached to plaintiff's complaint but, as noted,  
12 plaintiff Campbell is proceeding in this court on a related case, seeking to implicate the same  
13 defendants for unsanitary food conditions, and medical conditions allegedly related thereto, at  
14 CSPPS. Attached to plaintiff Campbell's July 18, 2007, complaint in CIV-S-07-1419, are the  
15 various levels of his appeal and the responses in log # SAC-C-06-01460 at Exhs. O and P,  
16 concerning an alleged medical condition arising from food poisoning at CSPPS. In opposition to  
17 the request, defendant asks that if the request is granted, that defendant be permitted to redact  
18 personal identifying information and medical records submitted with the grievance to protect  
19 inmate Campbell's privacy and his rights under HIPAA. Opp., p. 8. Because the request seeks  
20 information generated in response to Campbell's grievance, it does not appear to implicate the  
21 third party privacy rights or HIPAA concerns. Plaintiff appears to be seeking documentation of  
22 the type of inquiry that was pursued in response to the grievance and to that extent only, if  
23 defendant has within his custody, possession and control documents responsive to this request,  
24 excluding Campbell's medical record or other identifying information, they must produce it.  
25 Thus, as modified, plaintiff's motion as to this RFP 6 is granted.

26           In RFP 7, plaintiff asks for all documents regarding CSPPS Medical Technician  
Assistant M. Spinks' "assertion of epidemic at CSPPS in May 2006." In response to this request,  
defendant makes form and privilege objections but concludes that without waiving these

1 objections, he has no documents responsive to the request beyond the first level reviewer's  
2 response to Appeal Log. No. SAC-C-06-01460 (the appeal referenced in RFP 6, evidently) which  
3 plaintiff had (apparently) attached to his discovery. As stated, the court cannot compel a party to  
4 produce documentation not within his custody, possession or control. However, the court will  
5 require defendant Walker, within 14 days, to supplement his response to inform plaintiff whether  
6 or not to his knowledge any such documentation exists, and if it does, to produce it within the  
7 same period of time. Therefore, as modified, the motion as to this request is granted.

8           In RFP 8, plaintiff seeks "all documents which would mention, discuss, or verify  
9 symptoms which required medical treatment to inmates at CSPA in May 2006 as asserted by  
10 MTA Spinks." MTC, p. 22. In RFP 9, plaintiff asks for all documents mentioning, discussing  
11 or verifying the medications provided to CSPA inmates during the epidemic referenced by MTA  
12 Spinks. In RFP 10, plaintiff asks for all documents mentioning, etc., the names of health  
13 officials who diagnosed the epidemic outbreak in 2006 referenced by MTA Spinks. (This  
14 request might have been better posed as an interrogatory simply asking for the names). In RFP  
15 11, plaintiff seeks all documentation that "would mention, discuss, or verify how health officials  
16 at CSPA determined" that the epidemic identified by MTA Spinks was bacterial and not viral.  
17 To all of these requests, defendant posits the same series of objections, i.e, that the each request  
18 is overbroad, vague, lacking in particularity, violates third-party privacy rights, and seeks  
19 production of documents protected under CAL. CODE REGS. tit.XV, §§ 3321 and 3450. MTC, pp. 22-  
20 23. Notwithstanding the objections, defendant maintains that he does not have any responsive  
21 documentation in his possession, custody or control (and as to RFP 8-10, defendant notes that  
22 this is with the exception of the first level appeal response in appeal log no. SAC-C-06-01460  
23 plaintiff provided with his discovery). Again the court will require defendant Walker, within 14  
24 days, to supplement his response to inform plaintiff whether or not to his knowledge any such  
25 documentation exists responsive to these requests, and if it does, to produce it within that time  
26 frame. Therefore, as modified, the motion as to RFP 8, 9, 10 and 11 is granted.

1 In RFP 12, plaintiff seeks documentation which would “mention, discuss, or  
2 verify difference between bacterial and viral epidemic during times relevant in this action.”  
3 MTC, p. 12. In RFP 13, plaintiff asks for all documents that “mention, discuss, or verify how  
4 bacterial epidemic occurred at CSPS during times mentioned by MTA S. [sic] Spinks.”  
5 Defendant raises form (including as to RFP 13 that this request “misstates the contents of a  
6 document”) and privacy objections as to these requests; however, without waiving objections,  
7 maintains he has documents responsive to the requests. Defendant is directed to supplement  
8 these responses within 14 days to inform plaintiff whether or not to his knowledge any such  
9 documentation exists responsive to these requests, and if so, to produce it within that time period.  
10 To that extent only, plaintiff’s motion as to RFP 12 and 13 is granted.

11 RFP 14 will be denied as therein plaintiff asks this defendant to provide  
12 documentation regarding another defendant’s awareness of a putative bacterial epidemic at  
13 CSPS; however, as to RFP 15, which requests any documents noting defendant Walker’s  
14 awareness of same, this defendant will be required to supplement his response to ascertain  
15 whether or not he has any knowledge of the existence of any such documentation and, if so, to  
16 produce it.

17 Defendant Haythorne

18 Within his complaint, plaintiff alleges that this defendant is the CSPS Business  
19 Services Manager at CSPS “responsible for ensuring the health and safety standards of food  
20 preparation and service.” Complaint, p. 4. Defendant’s counsel indicates that as of January  
21 2009, defendant Haythorne has no longer been employed at CSPS. Opp., Esquivel Dec., ¶ 7.  
22 Plaintiff seeks a response to request numbers 3, 4, 6, 7, 9-13, 15-19, 21-23, 25 of his set one of  
23 the requests for production he propounded upon defendant Haythorne. MTC I, p. 1, Exh. C. As  
24 to RFP 3, 4, 6, 7, 9-13, 15-19, these requests cross-reference defendant Haythorne’s responses to  
25 interrogatories plaintiff evidently served upon this defendant. Defendant has not provided the  
26 interrogatories or the responses within this motion; in any case, defendant Haythorne posited no

1 objections to any of these requests and indicates that various documents are being provided in  
2 response or that he has no responsive documents within his possession, custody or control.  
3 Assuming the interrogatories to Haythorne that are referenced are those attached to a wholly  
4 different motion to compel, filed on a later date (see second motion to compel below), plaintiff's  
5 failure to provide with more specificity within this motion what it is that he finds deficient with  
6 respect to each request for production herein places an untenable burden on the court.  
7 Notwithstanding, the court's review of the interrogatories at issue in the second motion,  
8 assuming they contain the interrogatories cross-referenced herein, does not make sufficiently  
9 clear the basis for plaintiff's dissatisfaction herein. Moreover, as noted, no objection was raised  
10 to these RFPs, and, in addition, defendant Haythorne has provided, as of March 17, 2009,  
11 amended responses to the requests, which assert with respect to each RFP for which no  
12 documents have been provided that "after a reasonable and diligent search, responding party has  
13 no responsive documents in his possession, custody, or control." See Opp., Esquivel Dec., ¶ 4,  
14 Exh. 3, pp. 15-22. Plaintiff points to no portion of Fed. R. Civ. P. 34 that would support his  
15 contention that this defendant should be directed to provide "a verified statement" from a third-  
16 party employee "in a position to know," asserting that after a diligent search "it" has been unable  
17 to locate responsive documents. Reply, p. 5. The motion as to these requests is denied.

18           As to RFP nos. 21-23, 25, plaintiff again cross-references within the requests  
19 interrogatory responses that are not provided within this motion, seeking documents related to  
20 these unsupplied responses. Moreover, in this case, each request seeks defendant Haythorne's  
21 production of documents with respect to the interrogatory responses of another party, defendant  
22 Rodriguez. Defendant Haythorne's objections to these requests, including that they called for  
23 speculation and were not directed to defendant Haythorne, are well-taken, and the motion as to  
24 these requests is inadequate and is denied.

25 \\\

26 \\\

1 Defendant Leiber

2 Plaintiff moves for an order compelling responses to his RFP set one propounded  
3 upon defendant Leiber as to requests numbered 3-8, 15, 16, 18-25. MTC I, pp. 1-2, Exh. D. As  
4 to plaintiff's motion to compel further production/response to RFP nos. 3, 4, 5, 6, 7, 8, 15, the  
5 motion suffers from the same deficiency noted above with regard to cross-referencing  
6 interrogatory responses (that were directed to this defendant), for which neither the interrogatory  
7 nor the response is provided within this motion and the basis for the motion with regard to the  
8 responses to these requests are too ill-defined within this motion. In addition, this defendant  
9 raises no objections to any of these requests, the subject of which plaintiff has failed to provide  
10 herein, but simply asserts that she has no documents responsive to the requests or that any  
11 responsive documentation has been produced. Moreover, the defendant has amended responses  
12 to each of these requests for production propounded upon defendant Leiber to aver that "after a  
13 reasonable and diligent search," she "has no other responsive documents in her possession,  
14 custody, or control." Esquivel Dec., Ex. 4, pp. 26-30. The motion as to these requests (RFP nos.  
15 3, 4, 5, 6, 7, 8, 15) is inadequate and will be denied.

16 In RFP 16, plaintiff asks for "[a]ll documents which would mention or prove that  
17 plaintiff is not entitled to relief in this action."<sup>9</sup> In response, while defendant Lieber raises form  
18 objections, without waiving the objections, this defendant notes documents provided in response  
19 to other requests and avers that she was no other responsive documents in her possession,  
20 custody or control. The court will not compel a further response, and the motion as to RFP 16 is  
21 denied.

22 \\\

23 \\\

---

24  
25 <sup>9</sup> Moreover, a discovery request which seeks in general terms for a defendant to produce  
26 documents which will prove that he will lose the case is without question improper. Such a  
request usurps the purpose of Fed. R. Civ. P. 16, and requests a legal conclusion on the part of  
the responding party.



1           RFP 18:

2           All documents which would mention, discuss, or verify that  
3           protection of the integrity of an investigation was the reason for  
            your rehousing of plaintiff on August 11, 2006.

4           Response:

5           Responding party objects to this request on the grounds it is vague  
6           in its entirety and is unduly burdensome and oppressive because it  
7           is duplicative of Nos. 12 to 14, above. Without waiving these  
8           objections, in addition to the General Chrono CDC 128-B, attached  
9           as Exhibit A to plaintiff's interrogatories to responding party,  
10          responding party produces under separate cover the following  
            documents in her possession, custody, or control: Exhibit 24  
            (sections 3270, 3375, and 3379 of Title 15 of the California Code  
            of Regulations), Exhibit 25 (sections 52020.5.3 to 52020.5.5 and  
            52020.7 and 52020.8 of Department of Operations Manual,  
            Chapter 5, Article 16), and Exhibit 22 (Plaintiff's Inmate/Parolee  
            Appeal Form (CDC 602), Log No. SAC-C-06-02265).

11          MTC, pp. 43-44.

12          Plaintiff's motion does not adequately explain to what investigation he is alluding in this request,  
13          nor how the response/production is deficient, and the motion as to RFP 18 is denied.

14                 In RFP 19, plaintiff seeks documents that "would mention, discuss, or verify" that  
15          CSPS vector control "quickly eliminated all rodents/rats from CSPS main kitchen during the  
16          times the deprivations are claimed in this lawsuit." MTC, p. 44. Without waiving some form  
17          objections, the defendant answers that she has no responsive documents other than second level  
18          appeal responses plaintiff attached to his discovery. Although in an amended response, this  
19          defendant avers that she has conducted a reasonable and diligent search but uncovered no other  
20          responsive documents (see Esquivel Dec., Exh. 4, p. 41), as a correctional captain in charge of  
21          CSPS C-facility operations, sued in both her official and individual capacities, defendant Leiber  
22          will be required to supplement her response to this request within 14 days to inform plaintiff  
23          whether or not any documents responsive to this request exist; if they do, in her official capacity  
24          as correctional captain, this defendant will be required to produce any such documentation within  
25          the same period of time. As modified, plaintiff's motion as to RFP 19 is granted.

26          \\\\\\

1           In RFP 20, plaintiff asks for all documents which would “mention, discuss, or  
2 verify,” that this defendant conducted health and safety inspections of the CSPS main kitchen  
3 during the times relevant for this action. MTC, p. 44. After posing form objections and  
4 without waiving them, defendant Leiber indicates she has produced her job description, along  
5 with two exhibits including CAL. CODE REGS. tit.XV, § 3052 and a section of the Department of  
6 Operations Manual. MTC, p. 44. It appears that this documentation is partially responsive to the  
7 request, insofar as plaintiff appears to be also asking for documents showing not just what this  
8 defendant’s job description or responsibilities are, but, what, if any, health and safety inspections  
9 she conducted. Therefore, defendant must supplement her response to this request within 14  
10 days to inform plaintiff whether or not any documents directly responsive to this request exist; if  
11 they do, in her official capacity as correctional captain, this defendant will be required to produce  
12 any such documentation within the same period of time. As modified, plaintiff’s motion as to  
13 RFP 20 is granted.

14           In each of the requests for production, numbered 21, 22 and 23, plaintiff asks for  
15 “trial size photographs.” MTC, p. 45. In RFP 21, he asks for photos “of the area in which it  
16 is alleged that rodents/rats accessed CSPS main kitchen during heavy rain season.” In RFP 22,  
17 he seeks photos “of the sticky traps used by CSPS vector control[] to catch rodents/rats in the  
18 main kitchen.” In RFP 23, plaintiff asks for photos of the CSPS main kitchen dry goods room.  
19 As to RFP 21 and 22, defendant indicates that she does not have any responsive documents, and  
20 in amended responses (Esquivel Dec., Exh. 4), indicates she has conducted a reasonable and  
21 diligent search. As to RFP 23, defendant indicates that she is producing five photographs. With  
22 regard to RFP 21 and 22, this defendant must supplement her response to indicate whether she  
23 has knowledge, in her official capacity, of the existence of any such photographs, whether “trial-  
24 size” or not, and, if so, to produce them, within 14 days. As to RFP 23, no further response will  
25 be required. Plaintiff’s motion as to RFP 21 and 22, is granted, as modified. Plaintiff’s motion  
26 as to RFP 23 is denied.

1 In RFP 24 and 25, plaintiff asks for “non-confidential documents which would  
2 allow plaintiff to call” as material witnesses to testify Cook I Cronjager and Cook I D.S. Abellon,  
3 respectively, regarding their “verified statements” (or declarations), (apparently attached as an  
4 exhibit to interrogatories to another defendant Hague, but not produced here). MTC, p. 46. In  
5 other words, plaintiff appears to be seeking the addresses of these individuals so that he could  
6 notify them or subpoena them for their testimony in future, which information might have been  
7 more appropriately sought in the form of interrogatories. To both of these requests, in  
8 objections, defendant refuses to respond, citing, inter alia, the right to privacy of these third  
9 parties and CAL. CODE REGS. tit.XV, §§ 3321 and 3450. MTC, pp. 46-47. Moreover, defendant  
10 maintains that disclosing the addresses of these individuals to a prisoner compromises their  
11 safety and less intrusive means to secure their presence at trial could be in the form of court  
12 subpoenas. Opp., p. 6. Defendant indicates that Abellon still works at CSPA and that although  
13 Cronjager has since retired, she has authorized the CSPA Litigation Coordinator to accept service  
14 of subpoenas related to employment on her behalf. Id. The court agrees that a further response  
15 to these requests, RFP nos. 24 and 25, should be denied insofar as the home addresses of these  
16 individuals should not be produced, but the court will require that the CSPA Litigation  
17 Coordinator must accept service of any subpoena of Abellon and Cronjager at the CSPA address,  
18 and, should the time arrive wherein plaintiff will seek to serve subpoenas upon them, defendants  
19 will be responsible for assuring that these subpoenas have been properly served in accordance  
20 with the above.<sup>10</sup>

21 Defendant Hague

22 Plaintiff identifies numbers 3, 6-9, 11-13, 16-25 of his RFP, set one, directed to  
23 defendant Hague as warranting an order compelling further responses. MTC I, p. 2, Exh. E.  
24 Plaintiff describes this defendant as the assistant food manager at CSPA, responsible for the  
25

---

26 <sup>10</sup> Plaintiff is responsible for paying costs associated with subpoena compliance.

1 health and safety standards of food preparation and service at CSPS. Complaint, p. 4. Plaintiff  
2 also indicates that she was employed as a supervising cook II in his discovery requests. MTC, p.  
3 53.

4 In RFP 3, plaintiff asks for documents related to the duties/obligations of the  
5 CSPS' Business Service Manager. MTC, p. 51. The court agrees with the defendant's response  
6 that the request is irrelevant and not reasonably calculated to lead to the discovery of admissible  
7 evidence. It is unclear why plaintiff would ask this of the assistant food manager, particularly  
8 since he has named another defendant who he states is the business service manager; in any  
9 event, it is understandable why this defendant, as she so indicates, would not have responsive  
10 documents. *Id.* The motion to compel as to RFP 3 is denied.

11 Plaintiff asks for "all documents which would mention, discuss, or verify the  
12 guidelines and regulations which govern health and safety kitchen inspections at the CSPS" in  
13 RFP 6. MTC, p. 52. The defendant in her response set forth a series of exhibits indicating  
14 production of CAL. CODE REGS. tit.XV, § 3052, as well as a section of the Department Operations  
15 Manual and a procedure form the Panty [sic] Operations Manual. *Id.*, at 53. Plaintiff does not  
16 provide an adequate basis in his motion for finding this response/production inadequate. The  
17 motion to compel as to RFP 6 will be denied.

18 In RFP 7 and 8, respectively, plaintiff asks for documents mentioning, discussing  
19 or verifying health and safety inspections conducted by this defendant while employed as a CSPS  
20 supervising cook II, and while employed as CSPS assistant food manager. MTC, p. 53. In  
21 response to each of these requests, the defendant provides a list of exhibits which include a job  
22 description, as well as apparently application regulations and procedures. *Id.*, at 53-54. What is  
23 missing, however, is evidence of any exhibit that would demonstrate that this individual ever  
24 conducted health and safety inspections. As this defendant, like all the others, is sued in an  
25 official, as well as individual, capacity, she must supplement her response to produce any  
26 evidence of the actual health and safety inspections she conducted and to which she should have

1 access, if such exists. This defendant has 14 days to supplement her response to RFP nos. 7 and  
2 8.

3 In RFP 9, plaintiff asks for documents regarding “any action or response by the  
4 CSPS Hazard Analysis and Critical Control Point (HACCP) Program related to the issues raised  
5 by this lawsuit,” to which the defendant responds by producing a section of the Department  
6 Operations Manual. MTC, p. 54. If defendant, not just in her individual capacity, but her official  
7 capacity as well, can locate any material directly responsive to this request, it must be produced  
8 within 14 days. The motion as to RFP 9 is granted.

9 In RFP 11, plaintiff asks for documents that “mention, discuss, or verify the  
10 requests made to the CSPS vector control[] to address rodent/rat issues in the main kitchen at  
11 CSPS.” MTC, p. 55. In RFP 12, plaintiff seeks documents referencing the response by CSPS  
12 vector control in addressing rodent/rat concerns in the main kitchen. Id. In the substantive  
13 portions of the responses, the defendant lists a number of memoranda and, as to RFP 11, also a  
14 note that she indicates is provided under separate cover. Id. at 55-56. Plaintiff in no way  
15 clarifies how these responses/productions are inadequate; in his reply, plaintiff states that the  
16 documents produced do not comply with his specific request (reply, pp. 6-7); however, plaintiff  
17 fails to adequately demonstrate how this is so. The motion as to RFP 11 and RFP 12 is denied.

18 In response to RFP 13, this defendant maintains that she has no responsive  
19 documents in her possession, custody or control, after conducting a reasonable, diligent search to  
20 plaintiff’s request for “inspection of kitchen reports” which related to health and safety  
21 issues/inspections at CSPS that she turned in to facility sergeants. MTC, p. 56. However, she  
22 limits her response to the period she deems relevant to this lawsuit. The court will order this  
23 defendant to supplement her response, within 14 days, to include any such reports that she may  
24 have within her custody, possession or control. The motion as to RFP 13 is granted.

25 Plaintiff fails to clarify how the response to RFP 16, concerning documentation of  
26 (non-party) Head of Plant Operations Albee’s response to “issues and complaint of verminous

1 conditions in the CSPS main kitchen” is inadequate and motion as to this request will be denied.  
2 At RFP 17, plaintiff asks for documents which would show “the cost and expense of” addressing  
3 “verminous conditions” at CSPS at the time relevant for this lawsuit. MTC, p. 58. Despite  
4 objecting, this defendant goes on to indicate she is producing a specific “contract/delegation  
5 purchase order” and an intraoffice requisition. Plaintiff includes the contract/purchase order (and  
6 apparently the requisition order) as an exhibit to his reply and argues that it shows “an  
7 unreasonable cost and expense” in light of the level of main kitchen rodent infestation. Reply, p.  
8 7 & Exh. A. Plaintiff may be able to show that very little was spent to address the alleged rodent  
9 problem, which could undermine the defense position. It is not entirely clear whether all related  
10 documents responsive to this request have been produced. If there are further documents  
11 responsive to this request within this defendant’s custody, possession or control, within her  
12 official and individual capacities, they must be produced within 14 days. The motion as to RFP  
13 17 is granted.

14           The court will not detail RFP nos. 18-20, for which plaintiff fails to provide an  
15 adequate basis for this motion and for which the court’s separate review can determine no  
16 sufficient basis. MTC, pp. 58-59. In each case, while the defendant posited objections to which  
17 plaintiff generally objects in his motion (p. 6), the defendant proceeded, without waiving the  
18 objections, to assert that a reasonable and diligent search had been conducted and the only  
19 responsive documents that she had to those requests were specified exhibits attached to  
20 plaintiff’s complaint. Plaintiff’s contention that this defendant should be directed to provide a  
21 verified statement from an employee/employees in a position to know, stating that after  
22 apparently a separate diligent search has been conducted, responsive documents could not be  
23 found (reply, p. 6) is not adequately supported. The motion will be denied as to RFP nos. 18, 19  
24 and 20.

25           By his motion, plaintiff makes no showing of the inadequacy of the responses to  
26 RFP 21 and 23, other than his assertion that the defendant warrants that she has no responsive

1 documents, and he once again asks that the defendant be required to submit a declaration that a  
2 third party or parties conduct a separate search. Reply, p. 6. In the first place, as to RFP 21,  
3 wherein plaintiff seeks documents regarding the duties and obligations of “CSPS HACCP  
4 program unit relevant to the issues raised by this lawsuit,” the response does indicate that an  
5 exhibit is being provided under separate cover and plaintiff has not shown how the response is  
6 deficient. The motion as to RFP 21 will be denied.

7 As to RFP 22, the defendant indicates a reasonable and diligent search to locate  
8 responsive documentation to his request for documents which would “mention or discuss reasons  
9 why the California Department of Health Services are [sic] not permitted to conduct food facility  
10 inspections of CDCR prisons and institutions, including CSPS main kitchen,” identifies an  
11 exhibit which plaintiff himself has provided and avers there has no further such documentation.  
12 This request appears to stray afield from issues relevant to this case and the motion as to this  
13 request will be denied.

14 As to RFP 23, plaintiff seeks any documentation of “the first evidence or  
15 discovery of rodent/rat activity at the CSPS main kitchen.” MTC, p. 60. In this instance, the  
16 defendant does indicate that, following a reasonable and diligent search, she has no responsive  
17 documents. Id. The court will not compel a further response, and the motion as to RFP 23 is  
18 denied.

19 As to RFP 24, plaintiff therein seeks “[a]ll documents which would mention,  
20 discuss, or verify qualifications and reasons for promoting defendant Hague from supervising  
21 cook II to assistant food manager at CSPS.” MTC, p. 60. The defendant responds that the  
22 request is objectionable because:

23 it is overbroad, is irrelevant and not reasonably calculated to lead  
24 to the discovery of admissible evidence, violates responding  
25 party’s privacy, and seeks production of documents protected  
26 under sections 3321 and 3450 of Title 15 of the California Code of  
Regulations. Based on these objections, responding party will not  
respond to this request.

MTC, pp. 60-61.

1 Plaintiff contends that this defendant has asserted the official information  
2 privilege without providing a sufficient basis or without a declaration from an appropriate  
3 official. MTC, p. 4. Plaintiff argues the privacy interests invoked are not an absolute bar to  
4 discovery, and argues correctly that state privilege doctrine does not bind federal courts in this  
5 context. Id., at 5.

6 Defendant argues, inter alia, that while plaintiff's allegation is that this defendant  
7 knew of and ignored unsanitary food service conditions at CSPA from which he got food  
8 poisoning, and that she retaliated against him by transferring him to another housing unit at  
9 CSPA, he does not allege that she was incompetent, nor does he make a claim against her  
10 supervisors, defendants Haythorne or Walker, for negligent hiring or supervision. Opp., p. 5.  
11 The court agrees that the reasons for her promotion are largely irrelevant to this action. The  
12 undersigned further agrees that to the extent there could be any relevance to such information as  
13 her qualifications, the request is far too broad and would encompass all of this defendant's  
14 personnel and employment records. See Opp., p. 6. It is particularly true that plaintiff could  
15 have obtained any relevant information through less intrusive means by asking her within an  
16 interrogatory to set forth her training, education and work experience. In addition, to the extent  
17 that this defendant's personnel records are sought, the court finds that in balancing her right to  
18 privacy against plaintiff's need for the information, the balance favors the defendant. Doubleday  
19 v. Ruh, 149 F.R.D. at 609. The motion as to RFP 24 is denied.

20 In RFP 25, plaintiff asks for "[a]ll documents which would mention, discuss, or  
21 verify any change in policy, procedure, and practices in the CSPA main kitchen following the  
22 filing of this lawsuit." MTC, p. 61. Defendant posits several objections, objecting to the request  
23 as overbroad, irrelevant and not reasonably calculated to lead to the discovery of admissible  
24 evidence, and lacking foundation, as well as claiming that it violates Fed. R. Evid. 407. Id.  
25 Nevertheless, without waiving the objections, this defendant states that following "a reasonable  
26 and diligent search," she "has no responsive documents in her possession, custody or control."



1 Id. To the extent that plaintiff asks the court to require that defendant Hague be ordered to  
2 provide a verified statement from an employee or employees in a position to know stating that  
3 after a diligent search, no responsive documents have been located (reply, p. 6), plaintiff does not  
4 provide a basis upon which the court could or should order this defendant to impose on a non-  
5 party to do so, nor does he demonstrate that any such verification must be submitted pursuant to  
6 Fed. R. Civ. P. 34. To the extent that defendant claims that the request violates Fed. R. Evid.  
7 407, the court would not find that to be a sustainable objection insofar as, while Rule 407  
8 precludes evidence of subsequent measures taken after an injury or harm to prove culpability, it  
9 would not exclude evidence of such measures for the purpose of, for example, showing “control,  
10 or feasibility of precautionary measures, if controverted, or impeachment.” However, the  
11 defendant does not rest on the objection, but avers that she has no such responsive  
12 documentation. Moreover, the request is, indeed, overbroad. The motion to compel as to this  
13 request is denied.

14 *Defendant Ruller*

15 Plaintiff asks that defendant Ruller be required to respond further to all of his  
16 requests, 1-25 of plaintiff’s RFP, set one, directed to Ruller. MTC I, p. 2, Exh. F. He complains  
17 that this defendant, in simply responding that “responding party has no responsive documents,”  
18 has not made a “diligent effort to conduct a reasonable search for documents” or provided a  
19 declaration to support the responses. MTC, p. 8.

20 In Exh. 5 to the Esquivel Dec., defendant indicates that amended responses have  
21 been served to these requests for production. Opp., Esquivel Dec., ¶ 4, Exh. 5. With respect to  
22 each response to RFP 1-21, defendant Ruller stated, in addition to those cases where production  
23 had already been provided or where none had been provided that “a reasonable and diligent  
24 search” had been conducted revealing “no responsive documents in his possession, custody, or  
25 control.” Opp., Esquivel Dec., Exh. 5, pp. 37-44. In reply, plaintiff asks the court to require  
26 defendant Ruller to provide a verified statement from an employee or employees in a position to

1 know stating that after a diligent search, no responsive documents have been located. Reply, pp.  
2 7-8. Again, plaintiff does not clarify how the court could order this defendant to impose on a  
3 non-party to do so.

4 A number of these requests cross-reference interrogatories without providing,  
5 within this motion, the substance of what documents plaintiff seeks. Assuming that the  
6 interrogatories referenced are plaintiff's provides as the subject of the second motion to compel  
7 that follows (but most of which are not at issue with respect to defendant Ruller in the second  
8 motion), plaintiff does not meet his burden to show how the amended responses to the requests  
9 herein stating that a reasonable and diligent search has been conducted uncovering no responsive  
10 documents within this defendant's possession, custody or control is insufficient. In any event,  
11 plaintiff has made it too burdensome to the court to parse the many cross-referenced requests and  
12 the motion will be denied as to RFP 1-25.

### 13 Second Motion to Compel

14 In the second motion to compel, plaintiff seeks further responses to some 53 of his  
15 interrogatories directed to the defendants. Motion to Compel 2 (MTC2). Plaintiff identifies the  
16 following responses as deficient: as to defendant Walker, the responses to the first set of  
17 interrogatories, nos. 3, 8, 9, 15, 16, 22 and 25. MTC2, p. 1 and Exh. A. As to defendant  
18 Haythorne, plaintiff seeks a "complete and full response" to his first set of interrogatories  
19 numbered 7, 8, 9, 15, 17, 20, 22, 23 and 24. MTC2, p. 1 and Exh. B. As to defendant Leiber,  
20 plaintiff identifies the following responses to his first set of interrogatories directed to this  
21 defendant numbered 4, 7, 8, 9, 10, 16, 21, 22, 23 and 24. MTC2, p. 1 and Exh. C. With regard to  
22 defendant Hague, plaintiff seeks further responses to his nos. 5, 9, 12, 13, 14, 23 and 25 of his  
23 first set of interrogatories to this defendant. MTC2, pp. 1-2 and Exh. D. Plaintiff also moves for  
24 further responses to his first set of interrogatories, nos. 8, 9, 11, 12, 13, 15, 16, 17, 18, 21, 22, and  
25 23, directed to defendant Kelly. MTC2, p. 2 and Exh. E. Plaintiff also seeks further responses to  
26 nos. 2, 3, 4, 7 and 19 from defendant Rodriguez to the first set of interrogatories propounded

1 upon him. MTC2, p. 2 and Exh. F. Finally, as to defendant Ruller, plaintiff asks for further  
2 responses to nos. 12, 13 and 25 of the first set of interrogatories directed to this defendant.  
3 MTC2, p. 2 and Exh. G. Plaintiff contends generally that the responses at issue are evasive and  
4 incomplete and he moves for sanctions pursuant to Fed. R. 37(a)(4). MTC2, p. 2. Plaintiff  
5 asserts that he did not oppose defendants' two motions for extensions of time to respond to his  
6 discovery requests,<sup>11</sup> but that in light of the responses he received, he believes these defendants  
7 have not acted in good faith. MTC2, p. 3. Plaintiff argues that despite his efforts to resolve this  
8 matter without court intervention, they have not rectified what he contends are evasive,  
9 incomplete responses that also do not indicate that diligence was exercised with regard to  
10 locating responsive information. MTC2, pp. 3-5. Plaintiff asks for monetary sanctions against  
11 defendants' counsel for what he generally characterizes as "bad faith and/or harassing conduct."  
12 MTC2, p. 7.

13           In opposition, defendants contend that plaintiff served ten sets of interrogatories  
14 and production requests upon defendants on October 20, 2008, after which plaintiff also served  
15 requests for admissions, bringing the total to nineteen sets of discovery, amounting to more than  
16 400 discovery requests. Opposition 2 (Opp2), p. 1. Specifically, as to interrogatories, according  
17 to defendants, there were 190 propounded upon them. *Id.* Defendants state that all defendants,  
18 except Smith, served their responses on February 19, 2009, while defendant Smith's  
19 interrogatory responses were served on March 2, [2009].<sup>12</sup> *Id.* Defendants assert that they  
20 responded to all but one of the 190 interrogatories and maintain that while they received a letter,  
21 dated Feb. 24, 2009, from plaintiff "stating his discontent with defendants' responses" both to the  
22 his interrogatories and production requests, he failed to specify reasons for his dissatisfaction.

---

23  
24 <sup>11</sup> These requests were granted by an Order, filed on Dec. 16, 2008, and an Order, filed  
on Jan. 14, 2009.

25 <sup>12</sup> In addition to the two extensions of time defendants were granted to serve their  
26 discovery responses, defendant Smith received a further extension of ten days to serve her  
responses to interrogatories. See Order, filed on Feb. 25, 2009.

1 Opp2, p. 2, Esquivel Dec., Exh. 1. Subsequently, defendants' counsel avers she sought to  
2 address plaintiff's concerns, in a letter dated March 11, 2009, as well as she could given the  
3 limited information he provided; counsel served a supplemental response to the second  
4 interrogatory directed to defendant Rodriguez on March 24, 2009. Opp2, p. 2, Esquivel Dec.,  
5 Exhs. 2, 7. Defendants argue that plaintiff's motion should be denied because plaintiff has failed  
6 to show how the responses are inadequate and evasive, and as to Interrogatory no. 22 directed to  
7 defendant Walker, to which that defendant interposed objections and otherwise did not respond,  
8 the motion should be denied because the objections were well-founded and had merit. Opp2, pp.  
9 2-3.

10 Defendant Walker

11 As noted, plaintiff moves for a further response to the following of defendant  
12 Walker's interrogatory (int.) responses: nos. 3, 8, 9, 15, 16, 22 and 25. MTC2, p. 1 and Exh. A.

13 As to Int. # 3, plaintiff asks for defendant Walker to state all the facts "within your  
14 knowledge" to support his response to the preceding Int.# 2. MTC2, p. 10.<sup>13</sup> In response, after  
15 raising objections on the basis of overbreadth, vagueness and lack of foundation, defendant  
16 Walker repeats his response to the second interrogatory, in which plaintiff asks Walker to  
17 "explain and provide" all knowledge that he has "as to whether the CSPA main kitchen was  
18 infested by verminous conditions during the time you were warden over CSPA." In response to  
19 Int. #3, after interposing and not waiving objections, defendant Walker states that he "has no  
20 knowledge of the Main Kitchen being 'infested by verminous conditions' since he was appointed  
21 Warden in November of 2007." (His response to Int. 2 was identical, except that therein he does  
22 not note the date when he became the warden). The court will require no further response, and  
23 the motion is denied as to Int.# 3.

24 \\\

---

25  
26 <sup>13</sup> The court's electronic pagination is referenced.

1           As to Int. #8, plaintiff references Int. # 7, which in turn references a group inmate  
2 appeal, log no. SAC-06-00566, wherein this defendants' second level appeal response included  
3 the statement that his inquiry regarding the grievance revealed "that rodents have been a problem  
4 recently due to heavy rains in the area." Plaintiff does not attach the exhibit referenced in Int. #7  
5 to the motion; instead, the court has found the document at issue attached as Exh. E to his  
6 complaint. Plaintiff's repeated failure to include all relevant documentation within his motions  
7 imposes an unwarranted burden on this court in his voluminous requests. In Int. # 8, plaintiff  
8 asks, as noted referencing the prior interrogatory, if it is this defendant's "statement under oath  
9 that rodents became a problem in the CSPA main kitchen only after heavy raining." After  
10 interposing various objections and not waiving them, defendant Walker went on to assert,  
11 correctly, that in the preceding interrogatory the request had gone to the basis of this assertion in  
12 the inmate appeal response and the response was limited to that interrogatory. Although  
13 grievance responses are not made under oath, all of the defendants' substantive discovery  
14 responses are. Plaintiff would have been better served simply to ask defendant Walker directly  
15 whether the presence of rats/rodents in the CSPA main kitchen was caused solely by heavy rains.  
16 On the other hand, defendant Walker should not be permitted to escape the import of the  
17 interrogatory and to limit his response simply because plaintiff could have posed the question(s)  
18 more artfully. Within 14 days, this defendant must supplement his response to answer the  
19 question of whether or not the presence of rats/rodents in the main kitchen was solely attributable  
20 to heavy rains. The motion as to Int. # 8 is therefore granted.

21           In Int. # 9, plaintiff's asks this defendant to "explain and provide all knowledge as  
22 to how you contend rodents were eliminated," still referencing the same appeal response. MTC2,  
23 pp. 12-13. The substantive portion of defendant's response is conclusory in that he simply states  
24 that "the investigation into the inmate appeal revealed that Vector Control aggressively  
25 responded to the presence of rodents in the Main Kitchen to eliminate the problem." Id., at 13.  
26 Defendant must supplement his response to show the basis for his conclusion that the rodent

1 problem was “aggressively” addressed and must do so within 14 days. The motion as to Int. # 9  
2 is granted.

3           Plaintiff provides no basis for the court to rule on his motion with respect to Int. #  
4 15 which asks the defendant “why the regular B-Facility Lieutenant at CSPA did not act as SHO  
5 to perform regular SHO duties in RVR’s.” MTC2, p. 15. Defendants are correct that this  
6 interrogatory is, inter alia, vague, unintelligible, lacking in foundation, and “an incomplete and  
7 improper hypothetical.” Id. Even referencing the prior interrogatory (at MTC2, p. 14) provides  
8 no clarification because even though an apparently related inmate appeal is identified and stated  
9 to be attached as Exh. C, it is not provided with the motion, nor can the court locate it among  
10 plaintiff’s immense collection of exhibits attached to his complaint. Plaintiff makes no showing  
11 that defendant’s response to Int. # 15 is inadequate, which states that “it is common for a  
12 lieutenant from another yard to act as the SHO at a rules violation hearing, especially when  
13 necessitated by time constraints or other needs.” Id., at 15. Although plaintiff makes a claim of  
14 retaliation against defendant Hague within his complaint in the form of a false rules violation  
15 report, plaintiff does not even show in his motion at this point, the relevance of this interrogatory.  
16 The motion as to Int. # 15 is denied.

17           In Int. # 16, plaintiff asks defendant Walker what knowledge or evidence he has  
18 to refute (evidently plaintiff’s) claim that defendant Hague was upset about the expiration of  
19 “time restraints” for the RVR, using his [or her] “personal influence to compel a Lieutenant  
20 Heintschel to leave CSPA Central Office specifically to act as SHO to find plaintiff guilty.”  
21 MTC2, p. 15. Plaintiff has not included within this motion the RVR at issue, as he claims to  
22 have attached as an exhibit. After interposing various well-founded objections to the question,  
23 including that it “lacks foundation” and “calls for speculation,” defendant Walker nevertheless  
24 responds that he lacks “sufficient knowledge, information, or belief to answer this interrogatory.”  
25 Id. Plaintiff provides no basis within his motion for the court to determine that this response is  
26 deficient. The motion as to Int. # 16 is denied.

1 In Int. # 22, plaintiff asks:

2 Please explain and provide all knowledge you have as to whether  
3 material witness D.S. Abellon has been subjected to discipline or  
4 adverse personnel action for providing verified statement at exhibit  
5 D herein.

6 Response:

7 Responding party objects to this interrogatory on the grounds it is  
8 overbroad, is vague as to the meaning of “material witness,”  
9 “subjected to discipline or adverse personnel action,” and “verified  
10 statement,” lacks foundation, is irrelevant and not reasonably  
11 calculated to lead to the discovery of admissible evidence, violates  
12 Abellon’s right to privacy, and seeks disclosure of information  
13 protected under sections 3321 and 3450 of Title 15 of the  
14 California Code of Regulations.

15 MTC2, pp. 17-18.

16 Once again, plaintiff fails to include the putative attached exhibit with his motion.  
17 However, a copy of an apparent declaration under penalty of perjury by a correctional  
18 supervising cook I, named D.S. Abellon, at CSP-Sacramento and dated July 6, 2006, is included  
19 as Exh. S to the complaint, at p. 107. Among the statements in the declaration is that plaintiff is  
20 an above average worker, well aware of the operations of the main kitchen. See, id., at ¶ 2. He  
21 goes on to state that he has read the allegations of a complaint filed by this plaintiff, Williams v.  
22 CDCR, et al., CIV-S-06-1373 [MCE EFB P], of which this court takes judicial notice.<sup>14</sup> Id., at ¶  
23 3. (The undersigned digresses to note that that case was dismissed for failure to exhaust  
24 administrative remedies on September 26, 2007. The instant case was filed shortly thereafter and  
25 essentially mirrors the allegations of the earlier filed case, implicating the same defendants).

26 This declarant continues, stating that the issues raised by plaintiff, regarding rat/rodent infestation  
in the CSPS main kitchen are true and that he has witnessed it. Id., at ¶ 4. Finally, he attests to  
his training and experience in dealing with rats/rodents and maintains that the elimination of

---

<sup>14</sup> Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff’d, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126 (1981).

1 them would require complete fumigation of the main kitchen. Id., at ¶ 5.

2 As previously noted, any invocation of an official information privilege has been  
3 waived by defendants. To the extent that defendants assert a third-party privacy objection, the  
4 court finds, in balancing this individual's privacy interests against the interest served by  
5 disclosure of any possible negative impact for this person in his/her employment as a result of  
6 providing the declaration, has determined that the balance weighs in favor of disclosure. The  
7 motion as to Int. # 22 will be granted.

8 In Int. # 25, plaintiff focuses on a putative assertion by CSPA Vector Control that  
9 "[t]wo rodents left alone for six months breeds two to four hundred rodents....," asking defendant  
10 Walker how, based on such a representation, he could "imply that rodents were quickly  
11 eliminated..." MTC2, p. 18. The defendant's response to this question after posing objections,  
12 in addition, inter alia, to noting that he had no knowledge to determine the accuracy of such an  
13 assertion as to the rodent breeding cycle, states flatly that he "did not imply that rodents were  
14 quickly eliminated..." but only that "the investigation into the inmate grievances complaining of  
15 unsanitary conditions at SAC revealed that Vector Control took aggressive corrective measures  
16 to quickly eliminate the presence of rodents in the main kitchen." MTC2, p. 19. Defendant's  
17 response is not quite accurate, the statement included in the relevant portion of the pertinent  
18 second level partial grant appeal response over this defendant's apparent signature is:

19 My inquiry of your complaint reveals that rodents have been a  
20 problem recently due to the heavy rains in the area. However,  
21 SAC's Vector Control has aggressively responded to this problem  
and quickly eliminated the rodents.

22 Complaint, Exh. E, p. 48. Thus, in fact, it would appear that plaintiff's reference to this  
23 defendant's mere implication of the quick elimination of rodents is mild. The appeal response  
24 appears to definitively assert the quick elimination of the rodents due to a claimed aggressive  
25 response on the part of Vector Control. Plaintiff may in future contrast the language of the  
26 appeal response to the language of the defendant in response to this interrogatory in a fashion that



1 may undermine the defendant's credibility in his response herein. However, plaintiff's  
2 interrogatory is not particularly well-framed, and the court sees no point in requiring any further  
3 response to this question. The court will deny the motion to Int. # 25.

4 Defendant Haythorne

5 Plaintiff, as noted, seeks a "complete and full response" to his first set of  
6 interrogatories numbered 7, 8, 9, 15, 17, 20, 22, 23 and 24. MTC2, p. 1 and Exh. B. With regard  
7 to plaintiff's Int. # 7, to defendant Haythorne whether, if a pest control expert offered testimony  
8 at trial that two rats left undisturbed could breed two to four hundred rats in a six-month period,  
9 this defendant would "contend such is farfetched," after interposing objections that the question,  
10 among other things, lacks foundation, calls for speculation, calls for a scientific opinion  
11 defendant is not qualified to give and is an incomplete, improper hypothetical, this defendant  
12 goes on to state that he lacks sufficient information, knowledge or belief to answer the  
13 interrogatory. MTC2, pp. 25-26. As this is the defendant's verified response, should this  
14 defendant challenge any such hypothetical testimony, plaintiff may use the response that he lacks  
15 adequate knowledge, etc., to seek to impeach him. However, the court cannot compel a further  
16 response. The motion as to this Int. # 7 is denied.

17 Int. #8:

18 Please explain why you refuse to accept responsibility for the  
19 issues raised by this lawsuit by agreement to settle dispute [sic].

20 Response

21 Responding party objects to this interrogatory on the grounds it is  
22 unintelligible in its entirety, lacks foundation, and calls for  
23 speculation, overbroad, vague as to the meaning of  
"communications, meetings, or reports" and "rodent/rat activity,"  
and lacks foundation. Without waiving these objections, based on  
responding party's investigation and knowledge, plaintiff's  
allegations are false or unsubstantiated.

24 MTC2, p. 26. In this interrogatory, the defendant appears to be referencing another question as  
25 the quoted portions of the response do not correspond with the inquiry. However, because the  
26 interrogatory is decidedly improper as a party does not have to answer why he will not settle a

1 lawsuit, the motion as to Int. # 8 will be denied.

2 Int. # 9:

3 Please explain and provide all knowledge you have as to how  
4 rodents/rats came to exist in the main kitchen at CSPA.

5 Response

6 Responding party objects to this interrogatory on the grounds it is  
7 overbroad, is vague as to the meaning of “how rodents/rats came to  
8 exist in the main kitchen,” and lacks foundation. Without waiving  
9 these objections, and limiting his response to 2005 and 2006 as  
alleged in the complaint, responding party believes that the  
appearance of rodents occurred as a result of heavy rains during the  
winter of 2005 to 2006.

10 MTC2, p. 26. While it is true that the allegations necessarily center on 2005 and 2006, which  
11 was primarily the time during which plaintiff was at CSPA, the defendant’s response should be  
12 more forthcoming. Within his complaint (see above), plaintiff concedes that he did not arrive at  
13 CSPA until December 7, 2004, but he claims that defendants Haythorne, Hague, Rodriguez,  
14 Ruller and Arndt had been made personally aware, through “dozens of inmate complaints,” of  
15 unsanitary food conditions and handling by prison staff since January 9, 2003, about the  
16 rat/rodent nesting and mating in the main kitchen. If rodents were in evidence prior to 2005,  
17 such information could be relevant for purposes of this litigation. Defendant Haythorne must  
18 supplement his response, within 14 days, to attest to whether or not he/she has any knowledge,  
19 information or belief as to whether or not there were rats/rodents in the main kitchen prior to the  
20 winter of 2005-2006, and if so, to what degree and in what amount they were present and where  
21 they came from. The motion to compel as to Int. # 9 is granted.

22 In Int. # 15, plaintiff asks whether using dead rodents to attract/catch live rodents  
23 in sticky traps in the food service area would violate Health and Safety standards. MTC2, p. 6.  
24 By his motion, plaintiff does not make clear how this question has any foundation and  
25 responding party denies knowledge of any such “purported practice.” Id. The motion will be  
26 denied as to Int. # 15.

1 In Int. # 17, plaintiff asks whether there currently are rodents in the CSPS main  
2 kitchen, and responding party asserts that the question is overbroad, irrelevant and not reasonably  
3 calculated to lead to the discovery of admissible evidence and, in addition, lacks foundation, and  
4 calls for speculation. MTC2, p. 29. The court disagrees that evidence of the on-going presence  
5 of rodents in the CSPS main kitchen is irrelevant and finds that the substantive portion of this  
6 response provided after asserting that the objections are not waived, that this defendant lacks  
7 sufficient information, knowledge or belief to respond is not sufficient. Defendant must  
8 supplement the response, within 14 days, to, at a minimum, explain why he/she has no  
9 information as to this question. The motion as to Int. # 17 is granted.

10 In Int. # 20, when plaintiff asks this defendant whether he/she is aware of food  
11 “tainted with rodent activity” from the CSPS main kitchen had been served to inmates,  
12 defendant, after interposing objections, provided the substantive response that food “which had  
13 evidence of being contaminated or suspected of being contaminated, whether by rodents or  
14 spoilage, was immediately discarded and never fed to the inmate population. MTC2, p. 30.  
15 Plaintiff may disagree with this response, but this is the defendant’s response under penalty of  
16 perjury. Plaintiff might seek to impeach this defendant with the response at trial, but he provides  
17 no basis for the court to compel a further response. The motion as to Int. # 20 is denied.

18 As to Int. nos. 22, 23 and 24, this defendant states that he/she “lacks sufficient  
19 knowledge, information or belief to answer” each of these interrogatories, that ask, respectively,  
20 to the defendant’s knowledge, how a CSPS inmate could prove he suffered food poisoning as a  
21 result of eating food prepared in the CSPS main kitchen, how much it would cost to fumigate the  
22 CSPS main kitchen and whether or not CSPS pest control keeps count of rodents caught or  
23 trapped in the main kitchen. The only interrogatory that merits a further response is # 24; it  
24 would appear to be a relatively simple task for this defendant to confirm whether or not CSPS  
25 pest control keeps, or has kept, a count of rodents caught in the CSPS main kitchen, and the  
26 defendant should supplement the response to this inquiry. The motion as to Int. nos. 22 and 23 is

1 denied; as to Int. # 24, the motion to compel is granted, and a supplemented response due within  
2 14 days.

3 Defendant Leiber

4 As to defendant Leiber, plaintiff identifies the following responses to his first set  
5 of interrogatories directed to this defendant numbered 4, 7, 8, 9, 10, 16, 21, 22, 23 and 24.  
6 MTC2, p. 1 and Exh. C. With respect to Int. # 4, wherein plaintiff asks this defendant for “all  
7 knowledge” of what actions, if any, she took to address the issue of “tray stacking” (an issue that  
8 was evidently addressed, by cross-reference to another interrogatory) at a July 13, 2006 C-  
9 Facility Men’s Advisory Council meeting at CSPS, the defendant states in the substantive portion  
10 of her response that she inquired of defendant Hague about the specifics of any such tray-  
11 stacking but Hague could not provide specifics. Defendant Leiber ends by saying that she  
12 “reminded pantry staff not to stack food.” MTC2, p. 38. If defendant Leiber has more specific  
13 information as to when and what form her reminder to pantry staff took, i.e., whether it was in  
14 the form of a memorandum and/or telling pantry staff directly to avoid tray-stacking, she should  
15 provide that information to the plaintiff within 14 days. As modified, the motion to compel as to  
16 Int. # 4 is granted.

17 In Int. # 7, plaintiff references group appeal log no. SAC-06-00566, and again not  
18 including it within his motion, asking whether it was in fact true that CSPS vector control  
19 “quickly eliminated” rodents from the C-Facility main kitchen, a reference to defendant Walker’s  
20 second level appeal response. Defendant Leiber, an official and individual capacity defendant,  
21 according to the complaint, is a correctional captain in charge of C-Facility operations  
22 (Complaint, p. 3). In his motion, plaintiff objects to this defendant’s objections based on  
23 confidentiality or privilege under state law without providing an affidavit (MTC2, p. 5-6) , while  
24 the defendant argues that no such affidavit was necessary as no information was withheld on the  
25 basis of the official information privilege. Opp2, p. 3. Defendant is incorrect on this point  
26 because to invoke the privilege, as previously observed, procedural requirements must be met

1 and having failed to meet those requirements, the objection on that basis has been waived.  
2 Defendant nevertheless does provide a substantive response and warrants that no information  
3 was withheld on the basis of the privilege. However, the substantive response, that she “lacks  
4 sufficient knowledge, information, or belief to answer” the interrogatory, in light of her position  
5 and the official capacity in which she is also sued, appears deficient. It would appear that this  
6 party could determine the accuracy of a representation that rats had been “quickly eliminated” in  
7 response to the appeal in the facility over which she has, or had, charge. The motion as to Int. #  
8 7 is granted, and defendant Leiber has 14 days to provide a further response.

9           As to Int. # 8, this defendant disclaims sufficient knowledge, information or belief  
10 to respond as to whether or not rodents “have been a problem recently due to heavy rains in the  
11 area,” in accordance with defendant Walker’s second level appeal responses. MTC2, p. 39.  
12 Plaintiff made both responding to the question, as well as ruling on the motion more difficult,  
13 because he once again failed to provide the appeal responses referenced with the motion (and  
14 evidently failed to do so with the interrogatories). On the other hand, this defendant’s assertion  
15 of a lack of information to respond to this interrogatory does not appear adequate and the  
16 invocation of privilege is not well-taken for the same reasons as the response to the prior  
17 interrogatory were not. In Int. # 9, Leiber states she has no knowledge as to whether or not  
18 rodents currently live in or access the CSPS main kitchen. If this defendant is still the C-facility  
19 captain, this does not appear to be a sufficient response; if she is not in a position to know at this  
20 time, she should so clarify. The motion as to Int. nos. 8, and 9 is granted and the defendant has  
21 14 days to supplement the responses.

22           In Int. # 10, plaintiff asks this defendant to explain all/any of her efforts to address  
23 “verminous conditions in the CSPS main kitchen while captain over C-Facility.” MTC2, p. 40.  
24 The defendant seeks unnecessarily to limit the response in time and also avers that she had no  
25 knowledge of the presence of rodents in the main kitchen until she received notice of the instant  
26 lawsuit and that of a related case. *Id.* The defendant must supplement her response within 14

1 days to inform the plaintiff whether or not she in any manner addressed the rodent issue in the  
2 CSPS main kitchen in her capacity as C-Facility captain, and, if so, what form any such efforts  
3 took. The motion as to Int. # 10 is granted.

4           As to Int. # 16, plaintiff does not adequately demonstrate how defendant's answer  
5 about the differences between CSCP's C and B facilities is inadequate, and the motion to compel  
6 as to this substantive response is denied. The same applies to Int. # 21, wherein plaintiff asks  
7 about the decision to re-house him (relating it to an appeal he does not attach) on August 11,  
8 2006 "to protect the integrity of the investigation." Plaintiff may not agree with the response, in  
9 which defendant Leiber references a prior lawsuit of plaintiff's (CIV-S-06-1373, subsequently  
10 dismissed for failure to exhaust administrative remedies, previously referenced) and plaintiff's  
11 apparent grievances against C-yard staff, which were being investigated as the basis for his being  
12 transferred from C to B yards, and that the transfer was done to protect the integrity of the  
13 ensuing investigation(s) and plaintiff's constitutional rights, but that is this defendant's  
14 substantive response, and the court will not require any further response. The motion as to Int. #  
15 21 is denied.

16           In Int. # 22, this defendant provided a substantive affirmative response to  
17 plaintiff's question, concerning whether the defendant states under oath that her claim regarding  
18 "protecting the integrity of the investigation" apparently in response to a grievance and the  
19 reasons referenced in a separate chrono were the same, again referencing documents not attached  
20 to this motion, nor evidently to the interrogatory when served, and which the court cannot locate.  
21 MTC2, p. 45. The court will require nothing further as to this question. The motion as to Int. #  
22 22 is denied.

23           The court agrees with the defendant that Int. # 23 essentially repeats # 21, and in  
24 any event, the defendant has what appears to be an adequate substantive response (MTC2, p. 46),  
25 and the motion will be denied as to Int. # 23. With respect to Int. # 24, concerning the level of  
26 knowledge this defendant might have had regarding the "any adverse effect on imposed on

1 plaintiff's mental stability immediately following" this defendant's August 11, 2006, decision to  
2 re-house plaintiff in B-Facility at CSPS, this defendant states that she "lacks sufficient  
3 knowledge, information, or belief to answer this interrogatory." MTC2, p. 46. Plaintiff provides  
4 no specific basis in his motion to refute such an assertion or to demonstrate how it is defective.  
5 The motion as to Int. # 24 is denied.

6 Defendant Hague

7 Plaintiff seeks further responses to his nos. 5, 9, 12, 13, 14, 23 and 25 of his first  
8 set of interrogatories to this defendant. MTC2, pp. 1-2 and Exh. D. According to plaintiff, as  
9 noted above, defendant Hague is the CSPS assistant food manager responsible for food  
10 preparation and service standards at that facility. Complaint, p. 4. He has also described her as  
11 at some point being a supervising cook II. See above.

12 Plaintiff does not make clear how his Int. # 5 to this defendant merits any further  
13 response. It is not clear to the court what plaintiff is asking when he refers to "restaurant  
14 management serv-safe," and what the expectations are in that context regarding "rodent existence  
15 in the culinary place." MTC2, p. 53. Nevertheless, this defendant responds, after posing  
16 objections based on vagueness, overbreadth and lack of foundation, "contact vector control so  
17 immediate corrective action is taken, and ensure contaminated food is not served." Id.  
18 Since plaintiff does not indicate how the substantive portion of the response is deficient, the  
19 motion as to this interrogatory (# 5) will be denied.

20 In Int. # 9, plaintiff asks this defendant to share her knowledge as to the first time  
21 he/she contacted vector control about a rodent problem or evidence of rodents at CSPS. MTC2,  
22 p. 54. This defendant indicates that she "does not recall." Id. Among the RFPs, plaintiff  
23 propounded upon this defendant (see first motion to compel), was a request for (RFP 11)  
24 "documents which would mention, discuss or verify the requests made to the CSPS vector  
25 control[] to address rodent/rat issues in the main kitchen at CSPS." MTC, p. 55. Defendant  
26 provided documentation responsive to that request. No further response to this interrogatory will

1 be required. The motion as to Int. # 9 is denied.

2 In response to Int. # 12, which asks whether a paragraph constituted an admission  
3 by this defendant, referencing an exhibit not included within this motion which evidently  
4 memorialized a July 13, 2006, meeting, wherein tray-stacking was addressed. The memo  
5 referenced is apparently the one the court has located as Exh. Q to the complaint. In that memo,  
6 apparently drafted as minutes by the C-Facility Men’s Advisory Council of a meeting with  
7 various staff, including this defendant, the defendant is noted as having “readily admitted to  
8 having seen trays ‘stacked herself....’” Complaint, Exh. Q, p. 99. In response to the  
9 interrogatory, however, defendant Hague states that she “has no recollection of the meeting....”  
10 MTC2, p. 55. Defendant Hague has verified her responses. Plaintiff may attempt to impeach or  
11 undermine this defendant with the memo if it is deemed admissible for that purpose, but the court  
12 cannot compel a further response. The motion as to Int. # 12 is denied.

13 As to Int. # 13, which has as its subject the same meeting, plaintiff asks defendant  
14 Hague what she knew about the tray-stacking which the minutes indicate that she witnessed.  
15 MTC2, p. 56. In once again responding that she does not recall the meeting, defendant does  
16 evade the essence of the question, which is to describe the instances of tray-stacking witnessed  
17 and how she reacted. Whether or not she recalls the meeting, this defendant may have witnessed  
18 tray-stacking and may recall having done so. In a supplemental response, within 14 days,  
19 defendant Hague must respond more directly to the question. The motion is granted as to Int. #  
20 13.

21 Similarly, in Int. #14, referencing once again the July 13, 2006, meeting, plaintiff  
22 asks the defendant who the staff member was, as recorded in the minutes, who told her tray-  
23 stacking would occur again as soon as she left. Defendant again claims not to recall the meeting,  
24 but again that is irrelevant to answering the question whether or not she can recall anyone ever  
25 telling her what is set forth therein about the tray-stacking. The motion as to Int. # 14 is granted  
26 and plaintiff must supply a supplemental or amended response within 14 days.



1 As to Int. # 23, plaintiff's question regarding this defendant's hypothetical  
2 dismissal in exchange for her being a material witness inappropriately seeks a legal conclusion  
3 from this defendant. The motion as to Int. # 23 is denied.

4 In Int. # 25, regarding when this defendant became aware of this lawsuit in  
5 relation to the filing of an RVR not attached to this motion, but evidently served with the  
6 interrogatories in this instance, the defendant has provided a complete substantive response and  
7 no further response will be compelled. The motion as to Int. # 25 will be denied.

8 Defendant Kelly

9 Plaintiff moves for further responses to his first set of interrogatories, nos. 8, 9,  
10 11, 12, 13, 15, 16, 17, 18, 21, 22, and 23, directed to defendant Kelly. MTC2, p. 2 and Exh. E.  
11 Plaintiff describes defendant Kelly as the CSPA Health Care Manager. Complaint, p. 3.

12 In Int. # 8, plaintiff asks for a response by defendant Kelly to his question  
13 regarding her knowledge of the basis/reason for the medical treatment plaintiff was provided on  
14 Feb. 17, 2006, by Dr. Duc. MTC2, p. 68. Plaintiff does not attach the exhibit he references to  
15 the motion. Id. Plaintiff might be referencing Exh. F, p. 62, attached to his complaint, but the  
16 copy of the progress notes is virtually illegible. The defendant objects, inter alia, that the  
17 question calls for a medical opinion she is not qualified to give, that the document speaks for  
18 itself, and that it is an incomplete/improper hypothetical, and without waiving objections, she  
19 goes on to state that she lacks sufficient knowledge, information and belief to respond.  
20 Defendant Kelly signs her verification with the designation that she has a Ph.D. As this  
21 defendant is evidently not a physician,<sup>15</sup> the court sees no merit to plaintiff's motion as to this  
22 interrogatory. The motion will be denied as to Int. # 8.

23 In Int. # 9, plaintiff asks a hypothetical question as to how many inmate food  
24 poisoning cases it would take before this defendant "would admit or declare an outbreak of food

---

25 <sup>15</sup> In her response to Int. # 24, an interrogatory not at issue, this defendant explicitly states  
26 that she is not a medical doctor.

1 borne illnesses” as “HCM” (or health care manager) at CSPA. MTC2, p. 68. After appropriately  
2 posing similar objections as those set forth immediately above, and without waiving them, this  
3 defendant claims that in her capacity as “HCM-A,” this defendant states that she “lacks expertise  
4 in the medical field and would have deferred to medical staff to declare an outbreak of food-  
5 borne illnesses.” Id. Plaintiff does not demonstrate how this response is inadequate. The motion  
6 as to Int. # 9 will be denied.

7 In Int. # 11, in response to plaintiff’s question as to whether it was her testimony  
8 that her “subordinate,” Dr. Duc, had not diagnosed and treated several inmates, as well as  
9 plaintiff, for food poisoning at CSPA in 2006, this defendant states, in the substantive portion of  
10 her response, that she “was never informed by Dr. Duc or any other doctor at SAC that an inmate  
11 had been diagnosed with food poisoning in 2006.” MTC2, p. 69. This response does not make  
12 clear whether or not this defendant ever conducted any sort of inquiry of Dr. Duc or any other  
13 doctor whether or not inmates at CSPA in 2006 were diagnosed and treated for food poisoning.  
14 The defendant must supplement her response to this inquiry within 14 days to inform plaintiff  
15 whether or not Dr. Duc or any other doctor found food poisoning cases among CSPA in 2006,  
16 within 14 days. The motion to compel as to # 11, as modified, is granted.

17 In Int. # 12, plaintiff asks the same question regarding Dr. Bakewell and this  
18 defendant provides the same response as that to Int. # 11. MTC2, p. 69. In Int. # 13, plaintiff  
19 asks how she could be unaware of her “subordinates providing medical treatment to inmates at  
20 CSPA in 2006...for food poisoning,” to which the defendant provides the same response as to the  
21 two preceding inquiries. Because a supplemental response to # 11 is being compelled, the  
22 motion as to Int. # 12 and Int. # 13 should be unnecessary and is denied.

23 In Int. # 15, plaintiff names six inmates, including himself, who he says, along  
24 with unnamed others, were being treated for food poisoning at CSPA in 2006 and asks for the  
25 defendant to explain how her unawareness of this alleged fact does not indicate ineffectiveness  
26 and neglect on the part of the health care manager, i.e., the defendant. MTC2, p. 71. In addition,

1 to objecting, inter alia, that the inquiry lacks foundation, calls for speculation and a medical  
2 opinion she is not qualified to give, this defendant again replies that she was never informed by  
3 medical staff about any inmate being diagnosed with food poisoning in 2006. Id. This  
4 argumentative inquiry for which the foundation is not clearly set forth does not merit a further  
5 response, and the motion as to Int. # 15 will be denied.

6           On the other hand, in a contention interrogatory, # 16, plaintiff follows up with a  
7 question about whether or not the defendant contends the inmates named in # 15 were not  
8 diagnosed with food poisoning. MTC2, p. 71. The court finds the defendant's response that she  
9 was never informed by medical staff that those inmates had been diagnosed with food poisoning  
10 in 2006 is not adequate. The motion as to Int. # 16 is granted, and the court will require a  
11 supplemented response within 14 days.

12           Int. # 17, another contention interrogatory, plaintiff references yet another exhibit  
13 which he does not attach to the motion, asks the defendant if she contends that the  
14 medications/treatment he received from Dr. Duc were not ordered for reasons specified "in the  
15 Medline Plus Drug Information from the Food and Drug Administration..." MTC2, p. 71. This  
16 is an awkwardly phrased question which the court is unable to assess without reference to the  
17 medications at issue or the drug information exhibit. The defendant maintains that she lacks  
18 sufficient knowledge, information or belief to answer the question, which does not appear to be  
19 an inappropriate response. The motion as to Int. #17 will be denied.

20           In Int. # 18, plaintiff asks the same question with regard to the medications and  
21 treatment in 2006 provided by Dr. Bakewell, which engendered a similar response. MTC2, p.  
22 72. The motion as to Int. # 18 will be denied.

23           In Int. # 21, plaintiff asks the defendant to:

24           Please explain and provide all knowledge you have as to whether a  
25           doctor unawareness [sic] to [sic] a food poisoning outbreak by  
26           persons under such doctors [sic] care would constitute adverse  
                  and/or disciplinary action by the medical board which license [sic]  
                  doctors.

1 MTC2, p. 73.

2 After interposing appropriate objections to this awkward hypothetical, the  
3 defendant indicates that she lacks sufficient knowledge to answer it. The motion as to Int. # 21  
4 will be denied. The court will also deny the motion as to the similarly framed Int. # 22.

5 In Int. # 23, plaintiff asks whether he and the other inmates were under this  
6 defendant's care during the times relevant to this case. MTC2, p. 73. In the substantive portion  
7 of the response, the defendant describes her duties as HCM-A, which included overseeing the  
8 medical department at CSPS, supervising lower ranked medical staff and formulating  
9 departmental policies. Id. She explicitly states she did not provide medical treatment to inmates.  
10 There is no basis to compel a further response. The motion as to Int. # 23 is denied.

11 Defendant Rodriguez

12 Plaintiff seeks further responses to nos. 2, 3, 4, 7 and 19 from defendant  
13 Rodriguez to the first set of interrogatories propounded upon him. MTC2, p. 2 and Exh. F. As  
14 to Int. # 2, wherein plaintiff inquired as to this defendant's training under HACCP with regard to  
15 responding to "rodents in the culinary area," defendant Rodriguez has supplemented and  
16 expanded his original response to indicate that, inter alia, "HACCP does not include training on  
17 how to respond to rodents in areas where food is restored or prepared." Esquivel Dec., Exh. 7.  
18 This defendant further asserts that he has no specific training with respect to responding to  
19 rodents' presence and that he contacts vector control when he learns of rodents being where food  
20 is stored or prepared. Id. The court finds this supplemented response to be complete and will  
21 deny the motion as to Int. # 2.

22 The court agrees with the defendant's objections to Int. # 3, wherein he contends,  
23 inter alia, that it is vague, lacking in foundation, calls for speculation, and is an incomplete  
24 hypothetical, when plaintiff asks Rodriguez to "explain and provide all knowledge you have as to  
25 how many inmates at [] CSPS need contact food poisoning before a food-borne outbreak is  
26 declared." MTC2, Exh. F, p. 80. Without waiving objections, the defendant's response to this

1 poorly framed interrogatory that he “lacks knowledge information...” to respond, is reasonable.

2 The court will deny the motion as to Int. # 3.

3 Int. # 4 is similarly poorly framed where plaintiff asks for “all knowledge”  
4 defendant has “as to what would constitute a rodent infestation in the CSPS main kitchen.”  
5 MTC2, Exh. F, p. 80. After posing and not waiving objections, the defendant once again  
6 understandably informs plaintiff he does not have sufficient knowledge or information to answer.  
7 Id., at 81. The motion as to Int. # 4 is denied.

8 Int. # 7 references a partial grant of an inmate appeal log, which he does not attach  
9 to his motion and evidently, pursuant to the objections, did not attach to the interrogatories  
10 served on this defendant. MTC2, Exh. F, pp. 81-82. Plaintiff asks the defendant to explain what  
11 relief he (plaintiff) was afforded in that partial grant. After interposing well-founded form  
12 objections, defendant, while not waiving them, responds that “he does not recall what relief  
13 plaintiff was given, if any.” Id., at 82. While plaintiff may not be satisfied with this response,  
14 the court can compel no further response. The motion as to Int. # 7 will be denied.

15 Int. # 19, plaintiff asks this defendant for his knowledge “as to all specific areas  
16 rats/rodents accessed in the main kitchen at CSPS.” MTC2, Exh. F, p. 85. The substantive  
17 portion of defendant’s response states that he knows only of rats/rodents in the bakery area of the  
18 main kitchen and cross-references the response to an earlier interrogatory, # 17, wherein  
19 defendant states that he recalled seeing evidence of rodent activity in the main kitchen bakery in  
20 2006. Id. It is obvious that plaintiff is not satisfied with this response, but it is not enough for  
21 plaintiff simply to conclude that all the substantive and verified responses by defendants that he  
22 seeks to put at issue are evasive and incomplete, he must set forth a sufficient basis for the court  
23 to compel as to a specific response and this he has failed to do. His contention that various  
24 defendants’ responses are deficient because there has been no express indication that they  
25 exercised diligence to locate responsive information, not going beyond their recollection (MTC2,  
26 p. 5) is sufficiently countered by defendants’ argument that plaintiff does not cite facts to

1 demonstrate that defendants failed to conduct a reasonable and diligent inquiry in responding,  
2 thus failing to meet his burden to show the responses are incomplete and evasive. Opp2, p. 3.  
3 The motion as to Int. # 19 will be denied.

4 Defendant Ruller

5 Plaintiff asks for further responses to defendant Ruller's responses to nos. 12, 13  
6 and 25 of the first set of interrogatories directed to this defendant. MTC2, p. 2 and Exh. G. The  
7 motion as to all of these interrogatories will be denied. In Int. # 12, plaintiff asks, somewhat  
8 inarticulately, whether this defendant contends "that plaintiff has fabricated to the court in this  
9 lawsuit regarding verminous conditions in the CSPS main kitchen." MTC2, p. 96. In the  
10 substantive portion of the verified response, defendant Ruller states that he/she has no knowledge  
11 regarding whether or not plaintiff is lying about the conditions. Id., 97. This is the defendant's  
12 response made under oath. In any event, the court cannot compel a further response to this  
13 argumentative question or to the subsequent response to Int. # 13, wherein plaintiff asks for facts  
14 in support of the response to # 12, and defendants states that "no such facts exist." Id.

15 Int. # 25, asks awkwardly whether "[i]t is realistic to believe that two rats/rodents  
16 left alone in the CSPS main kitchen for six [] months can breed two to four hundred off-spring."  
17 MTC2, p. 100. After posing well-taken objections, such as that it calls for speculation and is an  
18 incomplete hypothetical, defendant goes on to indicate that he/she has no information as to  
19 rodent breeding habits. Id., at 101. Whether or not, "it is realistic" for this defendant to believe a  
20 pair of rodents can quickly breed in the numbers suggested above would not appear to be either  
21 relevant or reasonably calculated to lead to the discovery of admissible evidence in this case.  
22 The motion to compel as to all three interrogatories at issue, nos. 12, 13 and 25 will be denied.

23 Motion for Leave to Propound Additional Discovery

24 Plaintiff asks for leave to propound additional discovery because he has already  
25 propounded the maximum number of interrogatories that he is permitted, pursuant to Fed. R.  
26 Civ. P. 33(a). He bases this motion upon his contention that defendants continue to deny a food

1 poisoning outbreak which he contends was acknowledged by two MTA's in appeal log no.  
2 SAC-C-06-01460, and he seeks to discover further facts related thereto. Motion, pp. 1-2. He  
3 appends a copy of the relevant portion of the first level response. Id., Exh. A.

4 As defendants note in their opposition, plaintiff has already propounded an  
5 exhaustive amount of interrogatories, which they number as 214. Opp., p. 1. Further, defendants  
6 argue that plaintiff has not shown how the additional information sought could not be obtained  
7 through other forms of discovery requests "such as the 100 requests for admissions or the 142  
8 production requests plaintiff has already propounded upon defendants." Id. Defendants also  
9 make the point that plaintiff has failed to submit for the court's review the proposed additional  
10 discovery that he seeks to propound. Id., at 2. Moreover, defendants show proof that plaintiff  
11 already knew of the document at issue when he propounded his first set of written discovery on  
12 the defendants. Id., at 3. Defendants attach to their opposition, as Exhibit 1, plaintiff's set one of  
13 requests for admissions directed to defendant Kelly, to which, attached as Exh. A, is a copy of  
14 the first level appeal response at issue, log no. SAC-C-06-01460. These requests were served,  
15 according to the proof of service, on January 17, 2009. In a reply, plaintiff asserts that he had  
16 exhausted the number of interrogatories he could propound absent leave to proceed with  
17 additional interrogatories as of October, 2008, but that he did not know about the appeal  
18 grievance at issue until afterward. Reply, p. 2. In addition, plaintiff points to responses at issue  
19 in certain interrogatories in his second motion to compel as proof that defendants therein were  
20 falsely denying any outbreak of food-borne bacterial infection before plaintiff obtained the  
21 grievance response. Id., at 2-3.

22 Nonetheless, plaintiff makes a wholly insufficient showing of why he would need  
23 to propound additional interrogatories at this point related to the inmate grievance he has  
24 identified. Even if plaintiff did not have knowledge of the grievance before he fashioned his  
25 interrogatories, he does appear to have had knowledge of the appeal response for some period of  
26 time; thus, defendants are correct that plaintiff has or had the means to acquire further

1 information related to this grievance response by other discovery devices. Moreover, the court  
2 has already addressed herein the issue of this particular appeal, which the court located in a  
3 related case (see above), and based upon which, the undersigned has ordered supplemental  
4 responses with respect to plaintiff's first motion to compel. This motion will be denied. No  
5 sanctions will be imposed as to either motion to compel.

6 Accordingly, IT IS ORDERED that:

7 1. Plaintiff must show good cause, within 21 days, why the unserved defendant  
8 Malfi should not be dismissed from this action;

9 2. Plaintiff's first motion to compel further responses/production to requests for  
10 production (RFP), filed on 3/13/09 (# 35), is granted in part and denied in part, as follows:

11 a) for defendant Walker, set one: granted, as modified, as to RFP nos. 1, 4, 5, 6, 8,  
12 9, 10; denied as to RFP 3;

13 b) for defendant Walker, set two: granted, as modified, as to RFP nos. 6, 7, 8, 9,  
14 10, 11, 12, 13, 15; denied as to RFP nos. 1, 3, 4, 5, 14;

15 c) for defendant Haythorne, set one: denied as to all requests, i.e., RFP nos. 3, 4,  
16 6, 7, 9-13, 15-19, 21-23, 25;

17 d) for defendant Leiber, set one: granted, as modified, as to RFP nos. 19-22;  
18 denied as to RFP nos. 3-8, 15, 16, 18, 23-25;

19 e) for defendant Hague, set one: granted, as modified, as to RFP nos. 7, 8, 9, 13,  
20 17; denied as to RFP nos. 3, 6, 11, 12, 16, 18-20, 21-22, 23-25;

21 f) for defendant Ruller, set one: denied as to all requests, RFP nos. 1-25.

22 3. Plaintiff's second motion to compel further responses to the first set of his  
23 interrogatories, filed on 3/20/09 (# 36), is granted in part and denied in part as to each defendant,  
24 as follows:

25 a) for defendant Walker, granted as to Int. # 8, # 9, # 22; denied as to Int. # 3, #  
26 15, # 16, # 25;



1 b) for defendant Haythorne, granted as to Int. # 9, # 17, # 24; denied as to Int. # 7,  
2 # 8, # 15, # 20, # 22, # 23;

3 c) for defendant Leiber, granted as to Int. # 4 (as modified), # 7, # 8, # 9, # 10;  
4 denied as to Int. # 16, # 21, # 22, # 23, # 24;

5 d) for defendant Hague, granted as to Int. # 13, # 14 ; denied as to Int. # 5, # 9,  
6 # 12, # 23, # 25;

7 e) for defendant Kelly, granted as to Int. # 11 (as modified), # 16; denied as to Int.  
8 # 8, # 9, # 12, # 13, # 15 , # 17, # 18, # 21, # 22, # 23;

9 f) for defendant Rodriguez, denied as to all interrogatories at issue, that is, denied  
10 as to Int. # 2, # 3, # 4, # 7, # 19;

11 g) for defendant Ruller, denied as to all interrogatories at issue, that is, denied as  
12 to Int. # 12, # 13, # 25.

13 **4. In addition, to the extent that defendants have withheld any information**  
14 **based on the qualified official information privilege with regard to the discovery requests**  
15 **at issue, which privilege was invoked without compliance with the procedural requisites,**  
16 **and in which any objection invoked on that basis is therefore waived, defendants must**  
17 **supplement all responses to include any information withheld on that basis within 14 days**

18 5. All supplemental/amended discovery responses must be served upon plaintiff,  
19 within 14 days of the date of this order, and proof of service thereof must be filed in this court  
20 within the same deadline.

21 6. Plaintiff's motion for leave to file a second amended complaint, filed on  
22 4/03/09 (# 40), is denied; and

23 7. Plaintiff's motion for leave to propound additional discovery requests, filed on  
24 4/09/09 (# 41) is denied.

25 DATED: 12/21/09

/s/ Gregory G. Hollows

26 GGH:009/will2385.mta+

UNITED STATES MAGISTRATE JUDGE