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

JASON LATRELL THOMAS,

No. 2:12-CV-0471-MCE-CMK-P

Plaintiff,

vs.

ORDER

TERRY, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s motions (Docs. 70, 87, and 98) related to discovery.

In his first motion (Doc. 70), filed on April 6, 2015, plaintiff seeks issuance of a subpoena duces tecum to a third party, the Internal Investigation Office of the California Medical Facility. The California Department of Corrections and Rehabilitation (“CDCR”) specially appeared to oppose the motion. In its opposition, CDCR asserts that the documents plaintiff seeks are protected under the official information privilege recognized in Sanchez v. City of Santa Ana, 936 F.2d 1027 (9th Cir. 1991). CDCR also asserts that the documents are confidential under California law and may not be disclosed to an inmate.

1 At the outset, the court notes that CDCR’s arguments would be more properly
2 raised in the context of a motion to quash. In any event, given that the original scheduling order
3 opening discovery in this action has been vacated pending the filing of and response to a fourth
4 amended complaint, plaintiff’s motion will be denied without prejudice to renewal following
5 issuance of a new scheduling order re-opening discovery in this action.

6 In his second motion (Doc. 87), filed on June 8, 2015, plaintiff seeks an order
7 compelling further responses to interrogatory No. 3 propounded to defendant Lawrence and
8 interrogatory Nos. 2, 3, 4, and 6 propounded to defendant Terry. According to plaintiff,
9 defendants “did not properly invoke the official information privilege when answering their
10 interrogatories.” Specifically, plaintiff cites United States v. Reynolds, 345 U.S. 1 (1953), for
11 the proposition that, in order to properly assert the privilege, defendants were required to submit
12 a declaration from the official having actual control over the requested documents.

13 Upon review of the disputed discovery, the court observes that defendants
14 affirmatively asserted the official information privilege recognized in Sanchez. Reynolds is
15 inapplicable to this case because it dealt with the United States’ privilege against revealing
16 military secrets. Plaintiff has cited no case supporting his position that defendants improperly
17 invoked the official information privilege in this case, and has made no argument that the
18 privilege does not apply to the discovery at issue. Plaintiff’s motion to compel will be denied.

19 In his third motion (Doc. 98), filed on September 21, 2015, plaintiff seeks an
20 order extending the dispositive motion filing deadline. Plaintiff’s motion will be denied as
21 unnecessary because the schedule for this case, including the dispositive motion filing deadline,
22 was vacated on March 23, 2015, pending the filing of and response to a fourth amended
23 complaint.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion (Doc. 70) is denied without prejudice;
2. Plaintiff's motion (Doc. 87) is denied; and
3. Plaintiff's motion (Doc. 98) is denied as unnecessary.

DATED: September 23, 2015



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE