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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAVOUGUE A. MASON,
Plaintiff,
v.
M.L. MARTINEZ, et al.,
Defendants.

No. 2:14-cv-1041 MCE AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff’s motion to compel. ECF No. 29.

I. Procedural History

The deadline for filing discovery motions was April 10, 2015. ECF No. 19. Plaintiff did not file his motion to compel discovery until April 22, 2015.¹ ECF No. 29. However, the court deemed the motion timely and required defendants to respond. ECF No. 30. On March 9, 2016, the court denied the motion as to defendant V. Martinez and ordered the remaining defendants to provide copies of their supplemental responses to plaintiff’s requests for admissions as specified in the order. ECF No. 42 at 12. Defendants have provided their supplemental responses (ECF

¹ Since plaintiff is proceeding pro se, he is afforded the benefit of the prison mailbox rule. See Houston v. Lack, 487 U.S. 266, 276 (1988).

1 Nos. 43, 45) and the motion is ready for disposition.

2 II. Plaintiff's Allegations

3 Plaintiff alleges that on September 22, 2013, defendant M. Martinez used excessive force
4 against him when she kicked him in the right ankle during a search. ECF No. 1 at 3-4. Plaintiff
5 further alleges that defendant Major placed him in administrative segregation and that defendants
6 Major, Lozano, Matteson, and Kyte continued to retain him in administrative segregation in
7 retaliation for filing an inmate appeal. Id. at 4-5.

8 III. Motion to Compel

9 A. Standards Governing Discovery

10 The scope of discovery under Federal Rule of Civil Procedure 26(b)(1) is broad.
11 Discovery may be obtained as to “any nonprivileged matter that is relevant to any party’s claim or
12 defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “Information within
13 this scope of discovery need not be admissible in evidence to be discoverable.” Id. The court,
14 however, may limit discovery if it is “unreasonably cumulative or duplicative,” or can be
15 obtained from another source “that is more convenient, less burdensome, or less expensive;” or if
16 the party who seeks discovery “has had ample opportunity to obtain the information by
17 discovery;” or if “the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed.
18 R. Civ. P. 26(b)(2)(C). The purpose of discovery is to make trial “less a game of blind man’s
19 bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable
20 extent,” United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958), and to narrow and
21 clarify the issues in dispute, Hickman v. Taylor, 329 U.S. 495, 501 (1947).

22 Where a party fails to answer an interrogatory submitted under Rule 33, or fails to
23 produce documents requested under Rule 34, the party seeking discovery may move for
24 compelled disclosure. Fed. R. Civ. P. 37. The party seeking to compel discovery has the burden
25 of showing that the discovery sought is relevant. Aros v. Fansler, 548 F. App’x 500, 201 (9th Cir.
26 2013). The opposing party is “required to carry a heavy burden of showing” why discovery
27 should be denied. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975).

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1 B. First Motion to Compel

2 In his first motion to compel, plaintiff seeks to compel answers to interrogatories served
3 on April 5, 2015; further responses to requests for admissions served on February 2, 2015; further
4 responses to a first request for production served on an unspecified date; and responses to a
5 second request for production served on April 14, 2015. ECF No. 29; ECF No. 32 at 3-5.

6 Defendants argue that the motion to compel should be denied because it was filed after the
7 close of discovery. ECF No. 32 at 2-3. They further argue that the motion should be denied as to
8 the April 5, 2015 interrogatories and April 14, 2015 request for production because those requests
9 were untimely and as to the requests for admissions and the first request for production because
10 they have already provided appropriate and sufficient objections or responses. Id. at 3-11.

11 1. Timeliness of the Motion

12 Defendants argue that plaintiff's motion to compel should be denied as untimely. ECF
13 No. 32 at 2-3. This argument is rejected. In ordering defendants to respond to the motion, the
14 court specifically considered that the motion had been filed after the April 10, 2015 close of
15 discovery and, in its discretion, deemed the motion timely filed. ECF No. 30.

16 2. April 5, 2015 Interrogatories and April 14, 2015 Requests for Production

17 On December 19, 2014, this court filed a discovery and scheduling order which set the
18 deadline for discovery and any motions necessary to compel discovery for April 10, 2015. ECF
19 No. 19 at 5. The scheduling order further specified that requests for discovery pursuant to
20 Federal Rules of Civil Procedure 31 (deposition by written question), 33 (interrogatories), 34
21 (production), and 36 (admissions) had to be served at least sixty days prior to April 10, 2015. Id.
22 This means that the deadline for serving timely discovery requests was February 9, 2015.

23 Plaintiff seeks to compel responses to interrogatories that were not served until April 5,
24 2015 (ECF No. 29 at 1-2, 9-13), and a second request for production which was not served until
25 April 14, 2015 (id. at 3; ECF No. 32 at 5; ECF No. 33 at 5). Defendants argue that the April 5,
26 2015 interrogatories and April 14, 2015 requests for production were untimely, that they notified

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1 plaintiff that they were untimely,² and they should therefore not be required to respond. ECF No.
2 32 at 3, 5. In reply, plaintiff argues that defendants should be required to respond to the requests
3 because (1) the court deemed them timely; (2) the scheduling order provided that the parties had
4 until July 15, 2015, to file all pretrial motions except motions to compel; (3) prisoners are entitled
5 to leniency especially in light of the “code of silence;” and (4) the second request for production
6 was late because defendants did not send all of their in-service training records or duty
7 statements. ECF No. 33 at 3-5.

8 Contrary to plaintiff’s argument, while the court deemed plaintiff’s motion to compel
9 timely, that determination did not extend to the underlying requests for discovery. Defendants are
10 therefore correct that the April 5, 2015 interrogatories and April 14, 2015 requests for production
11 were untimely. Plaintiff’s general assertion that he is entitled to special consideration because he
12 is an inmate proceeding pro se is also unpersuasive given his failure to explain why he did not
13 submit his discovery requests within the time provided or request additional time to seek
14 discovery. Although plaintiff does state that his second request for production was delayed
15 because defendants did not provide certain documents, since neither party has produced a copy of
16 the second set of requests, the court is unable to determine whether it was dependent upon the
17 responses to the first set as plaintiff appears to argue.³ There is some evidence that the second set
18 of requests was for defendants’ duty statements. ECF No. 29 at 4. If that is the case, to the extent
19 those documents would not already be encompassed by the documents requested in the first set of
20 requests, it is not clear why plaintiff was unable to request these documents until he received a

21
22 ² Defendants’ response indicates that copies of the letters objecting to the requests have been
23 attached as Exhibits 1 and 3 (ECF No. 32 at 3, 5), but the only exhibit filed with the response was
24 the declaration of counsel (ECF No. 32-1), which is identified as Exhibit 2 (ECF No. 32 at 4).
25 While a copy of the first letter appears to have been attached to plaintiff’s motion to compel (ECF
26 No. 29 at 7), the court has been unable to identify a copy of the second letter among any of the
27 attachments to the various filings related to the motion to compel. However, a copy of the letter
28 is not required for the court to rule on the motion.

³ There is some indication that the second set of requests may have been seeking documents
requested in the first set of requests that were not produced. ECF No. 29 at 4; ECF No. 33 at 5.
To the extent that is the case, a motion to compel, rather than a second, duplicative request, would
be the proper method for obtaining the documents.

1 response to his first set of requests. However, even if the second set of requests was dependent
2 upon the responses to the first, plaintiff does not explain why he waited so long to submit his first
3 set of requests if he knew he would need to see the responses before submitting the second set.
4 He also fails to explain why he did not seek an extension of time to seek discovery.

5 The April 5, 2015 interrogatories and April 14, 2015 requests for production were
6 untimely and plaintiff has not established sufficient grounds to excuse their untimeliness and re-
7 open discovery. The motion to compel as to these requests will therefore be denied.

8 3. February 2, 2015 Requests for Admissions

9 In his motion to compel, plaintiff seeks to compel further responses to requests for
10 admissions that he served on February 2, 2015. ECF No. 29 at 2-3. The court has already found
11 defendants' initial objections to be inappropriate and ordered defendants to provide copies of their
12 supplemental responses, which were served on plaintiff after he filed his motion to compel. ECF
13 No. 42 at 9-11. Because plaintiff's reply, which was filed after he received defendants'
14 supplemental responses, indicates that the supplemental responses were satisfactory except as to a
15 few requests, the court will consider only the remaining disputes and deny the motion to compel
16 as moot as to the rest.

17 **Request for Admission No. 3:** Admit that the kicking of an
18 inmates legs or ankles to spread them wider is not the policy nor the
19 procedure of CDCR Correctional Officers, nor are they trained to
do so, and that it is assault and battery to kick any person in this
manner.

20 **Defendant M. Martinez' Response:** Defendant objects as the
21 request is compound, vague as to what is meant by "kicking" and
22 calls for a legal opinion. Without waiving these objections
Defendants [sic] admits that a correctional officer may not
wantonly apply force.

23 ECF No. 45 at 3.

24 Although plaintiff's motion to compel (ECF No. 29 at 2), reply (ECF No. 33 at 5), and
25 letter to defendants' counsel (ECF No. 31 at 4) all indicate that Request for Admission No. 3 was
26 directed at all defendants, only defendant M. Martinez' supplemental responses contain a
27 response to this request. ECF No. 45 at 3. It appears that upon providing clarification, plaintiff
28 only requested a response from M. Martinez or there was a misunderstanding between counsel

1 and plaintiff. However, given the nature of the request and defendant M. Martinez' response, the
2 court assumes that any response by defendants Kyte, Lozano, Matteson, and Major would be
3 identical.

4 Defendant's objections to the request are well taken. The request is compound, as it seeks
5 admission of three distinct matters, which is inappropriate under the rule. Fed. R. Civ. P.
6 36(a)(2). Furthermore, while the word "kicking" may not appear vague on first impression, in the
7 context of the request, the court can see that there may be some ambiguity. While the basic
8 motion described by the word "kicking" is not sufficiently specific, it is easy to see how the
9 response to the request could differ depending upon the amount of force used. For example, a
10 light kick that could also be classified as a tap or nudge could be perfectly acceptable and within
11 policy, while it is hard to imagine a scenario where a kick made with enough force to cause injury
12 would be acceptable. Finally, the portion regarding "assault and battery" seeks a legal opinion
13 and objection on that ground is appropriate, especially given the lack of facts that would be
14 necessary to form an opinion. Defendant's response that she "admits that a correctional officer
15 may not wantonly apply force" is sufficient and no further response will be required.

16 **Request for Admission No. 6:** Admit that Lieutenant E. Major
17 placed me in Ad-seg under false charges in Plaintiff's initial 114-D
(Lock-Up Order).

18 **Defendant Major's response:** Defendant objects to the request as
19 it assumes as true facts that are in dispute, specifically that Plaintiff
20 was placed in administrative segregation based on false charges,
21 and that Defendant was aware that the placement was based on
false charges. Without waiving these objections, Defendant admits
that Plaintiff was placed in Administrative Segregation but denies
the remaining assertions.

22 ECF No. 43 at 8.

23 Plaintiff seeks a further response from defendant Major on the ground that his response is
24 "evasive and less than truthful." ECF No. 33 at 4. However, while defendant Major did object to
25 the request, he also provided a response. The request seeks an admission that defendant Major
26 placed plaintiff in administrative segregation on false charges. This is a major disputed factual
27 issue in this case and it is unsurprising that defendant Major would deny that the charges were
28 false. Without more, plaintiff's dissatisfaction with the response and belief that defendant Major

1 is lying are not grounds for requiring defendant Major to admit the statement or provide a further
2 response. To the extent plaintiff's letter to defendants' counsel indicates that the request was also
3 for defendant Major's opinion (ECF No. 31 at 4), that is an improper request for an admission and
4 defendant Major will not be required to respond further.

5 **Request for Admission No. 8:** Admit that Plaintiff was held in Ad-
6 Seg on 10/02/2013, under the false charges of "jeopardize the
7 Integrity of an Investigation", and that Officer M.L. Martinez was
8 still performing her duties as she did while Plaintiff was on the
9 same yard, before his Ad-seg placement, and that Plaintiff and
10 Officer M.L. Martinez from conducting her job duties the 3-days
11 before Plaintiff's Ad-Seg placement. [sic]

12 **Defendant Kyte's response:** Defendant objects as the request is
13 compound, assumes as true facts that are in dispute, specifically
14 that Plaintiff was placed in administrative segregation based on
15 false charges, and is vague as to time. Defendant further objects
16 that the end of the request is incomprehensible. Without waiving
17 these objections Defendant admits that Plaintiff was held in
18 Administrative Segregation on October 2, 2013, but denies the
19 remaining assertions.

20 ECF No. 43 at 13.

21 It does not appear that defendant M. Martinez submitted a separate response to Request
22 for Admission No. 8. ECF No. 45. However, in a letter dated May 27, 2015, defense counsel
23 included a supplemental response from defendants M. Martinez and Kyte in response to
24 plaintiff's clarification of the request. ECF No. 43 at 23.

25 **Supplemental Request for Admission No. 8:** [A]dmit that officer
26 M.L. Martinez was still performing her duties on Facility A, CSP-
27 Solano on 9-22-13 to 9-25-13, without any attempts of plaintiff to
28 manipulate or stop her in the performance of her duties, as is stated
in the 128-B authorized by M.L. Martinez.

Defendants Kyte and M.L. Martinez' response: Defendants
maintain their objections to this request and further object that the
request as clarified calls for speculation as Defendants are not
aware of what Plaintiff was attempting. Without waiving these
objections, Defendant M. Martinez admits that she worked on
Facility A at CSP-Solano at least one day from September 22, 2013
to September 25, 2013 but does not recall whether she worked each
of those days. Defendants, however, cannot admit or deny the
remaining allegations because they are unaware whether Plaintiff
attempted to manipulate Defendant Martinez or stop her from
performing her job duties.

ECF No. 43 at 23.

1 Defendants' objections to the original request are appropriate. The request is compound
2 as it seeks admission of three or more distinct matters depending upon how it is broken down.
3 The request also fails to specify the time period for which it seeks an admission that defendant M.
4 Martinez was conducting her duties and the last portion of the request appears to be incomplete.

5 Defendants have admitted portions of the request while denying others, and as with
6 Request for Admission No. 6, plaintiff's dissatisfaction with defendants' denial of certain matters
7 does not warrant granting his motion to compel. As for the portion of the clarified request that
8 defendants stated they were unable to admit or deny, this response is also sufficient. The 128-B
9 authored by defendant M. Martinez stated that she believed that plaintiff would attempt to
10 manipulate her, not that she had experienced attempts by him to manipulate her or stop her from
11 performing her duties. ECF No. 1 at 18. The response that defendants cannot answer because
12 they are unaware of what plaintiff may have been trying to do without their knowledge is not
13 inconsistent with defendant M. Martinez' statement of what she believed plaintiff would do if
14 given the chance. Defendants' responses to Request for Admission No. 8 are sufficient and no
15 further response will be required.

16 **Request for Admission No. 11:** Admit that Plaintiff had asked CCI
17 McVey to do a bi-annual review at the 11-13-13 classification
18 committee and she'd said "she would", but was not allowed to by
19 CCII (A) E. Major, and CDW (A) J. Lozano.

20 **Defendant Major's response:** Defendant objects to the admission
21 as it calls for speculation, hearsay and is compound. Without
22 waiving these objections Defendant denies the request as he has no
23 personal recollection of CCI McVey or anyone else asking to do a
24 bi-annual review at the November 13, 2013 classification
25 committee. CCI McVey was assigned as Plaintiff's staff assistant
26 and met with him before the committee hearing began to explain
27 the recommendations and make sure he understood the proceeding.
28 Staff assistants do not make requests of the committee.

ECF No. 43 at 9-10.

25 Defendant Major's objections and response are proper. The request is compound,
26 defendant Major would be required to speculate regarding any conversations between plaintiff
27 and CCI McVey that he was not present for, and he has responded that he does not recall any
28 such request being made in his presence. The response identified by plaintiff in his letter to

1 counsel does not establish that defendant Major is being untruthful in his response (ECF No. 21 at
2 29) and no further response will be required.

3 4. First Request for Production (Date of Service Unspecified)

4 Plaintiff seeks to compel responses to Requests for Production Nos. 1-9 from his first set
5 of requests. ECF No. 29 at 3-4. Defendants oppose the motion on the ground that responsive
6 documents do not exist or have already been produced.

7 **Request for Production No. 1:** Any and all documents that refer or
8 relate to policies, procedures, and practices in effect in September
9 2013 for CSP-Solano custody staff regarding the filing,
10 investigation, and administrative segregation placement of any
11 inmates filing staff complaint against Officer M.L. Martinez. This
12 request includes but is not limited to all policies, procedures, or
13 practices generated by the CDCR as well as policies, procedures or
14 practices specific to CSP-Solano.

15 **Response:** Defendants have not been able to locate any documents
16 responsive to the request.

17 ECF No. 29 at 24-25.

18 In his motion to compel, plaintiff asserted that defendants had yet to provide any
19 documents in response to this request. *Id.* at 3. Defendants responded that plaintiff's motion
20 clarified that the request included policies and procedures applying to any CDCR employee, and
21 they produced various portions of the Department Operations Manual and Title 15 of the
22 California Code of Regulations on April 30, 2015, after the motion was filed. ECF No. 32 at 6.
23 Plaintiff replies that the policies produced would not cause an inmate to be placed in
24 administrative segregation for filing a staff complaint and that the procedures outlined in the
25 policies were not followed. ECF No. 33 at 6-7.

26 It is troubling that defendants did not produce any documents to plaintiff until he filed his
27 motion to compel and "clarified" that the request included policies and procedures applying to
28 any CDCR employee. Clearly, a policy or procedure that applied to all CDCR employees would
have applied to defendant M. Martinez and been responsive. Defendants' apparent reading of the
request to apply only to policies and procedures written specifically about defendant M. Martinez
is simply unreasonable. However, given that defendants appear to have produced the responsive
documents and plaintiff has received them, no further response will be required. Plaintiff's claim

1 that the policies produced do not address what actually happened, and that defendants did not
2 follow the policies provided, does not mean that further policies exist. Given the nature of
3 plaintiff's complaint, that he was placed in administrative segregation on false charges and in
4 retaliation for filing a staff complaint, or essentially outside of policy, it is unsurprising that there
5 is not a policy or procedure setting forth the steps that plaintiff alleges were taken. To the extent
6 plaintiff may be attempting to allege that there is an unwritten policy of placing inmates in
7 administrative segregation in retaliation for filing staff complaints, defendants cannot produce a
8 document that does not exist. No further response will be required.

9 **Request for Production No. 2** sought production of any equipment logs used for
10 checking out video equipment, that were signed by defendants M. Martinez and Major and non-
11 defendant Muhammed on September 24, 2013. ECF No. 29 at 25. Defendants assert that Facility
12 B does not use equipment or use logs for video cameras and so there are no logs to produce. ECF
13 No. 32 at 6. In light of the representation that the requested documents do not exist, the court
14 cannot compel a further response from defendants.

15 **Request for Production No. 3** sought production of the incident/use of force packet
16 generated as a result of the alleged use of force by defendant M. Martinez against plaintiff. ECF
17 No. 29 at 25. Defendants state that "there was no incident package regarding the incident at
18 issue" or other documents responsive to the request. Id. The response seems to indicate that an
19 incident package was not created, rather than that an incident package was created and no longer
20 exists, which is to be expected given that defendant Martinez appears to deny that there was a use
21 of force (ECF No. 18 at 2, ¶ 4). In either event, the court cannot compel production of something
22 that does not exist. However, defendants will be required to supplement their response to clarify
23 whether an incident package was ever created.

24 **Request for Production No. 4** is for any video taken between September 22 and 25, 2013
25 regarding plaintiff's alleged assault, and specifically for an interview videotaped on September
26 24, 2013. ECF No. 29 at 25. Defendants responded that they were in the process of determining
27 whether there was a recording of plaintiff's interview and that it would be produced if identified.
28 Id. at 26. In a subsequent letter to plaintiff and in their response to the motion to compel,

1 defendants state that after a reasonable inquiry, no responsive video exists. ECF No. 32 at 7; ECF
2 No. 43 at 24. However, in light of plaintiff's statements that his interview was recorded, which
3 he would have personal knowledge of, and defendants' silence on the matter, the court assumes
4 that a recording of plaintiff's interview did at one time exist. Defendants will therefore be
5 required to supplement their response to this request to detail the efforts to locate the requested
6 video and, if available, to provide an explanation as to why the video no longer exists (i.e. it has
7 been destroyed pursuant to an applicable retention schedule) and when it ceased to exist.

8 **Requests for Production Nos. 5-8** sought production of various training records from
9 each of the defendants. ECF No. 29 at 26-27. Defendants objected to the requests on various
10 grounds, but nonetheless stated that they would provide training documents with their personal
11 information redacted. Id. This response was served on February 12, 2015. Id. at 30.

12 In their response to the motion to compel, defendants argue that further production should
13 not be ordered because they served plaintiff with copies of training records for defendants
14 Matteson, M. Martinez, Kyte, and non-defendant Lee on April 30, 2015, and records for
15 defendants V. Martinez and Major on May 21, 2015. ECF No. 32 at 9. They stated that records
16 for defendant Lozano would be sent as soon as they were obtained. Id. at 10. Plaintiff's reply
17 confirms that he received the records for Matteson, M. Martinez, Kyte, Lee, V. Martinez, and
18 Major (ECF No. 33 at 11), and his reply in support of his supplemental motion to compel
19 includes a letter that indicates defendant Lozano's training records were mailed to him on June
20 23, 2015 (ECF No. 41 at 14). He argues that defendants have yet to send him copies of their
21 signed duty statements. ECF No. 33 at 11.

22 Since it appears that defendants have provided plaintiff with the requested documents,
23 they will not be required to produce anything further in response to these requests. Although
24 plaintiff alleges that he has not received defendants' signed duty statements, he requested training
25 records, which are not the same. Defendants will not be required to produce their duty
26 statements. However, while the court will not require further production, it is concerning that
27 defendants did not begin sending plaintiff the requested records until approximately two and a
28 half months after they submitted their original response to the request with the final response

1 being sent over four months after the initial response. Defendants have offered no explanation for
2 this delay. Responding that documents will be provided at a later date does not give a party leave
3 to produce the documents whenever they want or to unnecessarily delay their production.

4 **Request for Production No. 9:** Any and all documents relating to
5 allegations of excessive use of force by an [sic] CSP-Solano staff in
6 clothed body searches, cell searches, or any interactions by
7 defendant M.L. Martinez with any inmate at CSP-Solano.

8 **Defendants response:** Defendants object to this request on the
9 ground that it is compound and incomprehensible as it is unclear
10 whether the request is as to any CSP-Solano staff or is limited to
11 Defendant M.L. Martinez. The request is also overly broad as to
12 scope and time as it could refer to any interaction between
13 Defendant M.L. Martinez and any inmate throughout her
14 employment at CSP-Solano. Defendants also object to the request
15 as not reasonable [sic] calculated to lead to the discovery of
16 admissible evidence. Further, identifying responsive documents
17 would be unduly burdensome as inmate appeals and staff
18 complaints are filed by the inmate name, not the staff member who
19 is the subject of the action, thus every appeal and staff complaint
20 filed while Defendant M.L. Martinez has worked at CSP-Solano
21 would have to be reviewed to determine whether the documents is
22 [sic] responsive. Finally, if there are responsive documents, they
23 would contain confidential information regarding third party
24 inmates which can not [sic] be provided to Plaintiff, as revealing
25 such information to Plaintiff could jeopardize the safety and
26 security of the institution. Accordingly, Defendants object to this
27 request to the extent it seeks documents protected from discovery
28 by privacy protections, the official information privilege, or any
other applicable privilege or immunity.

18 In his motion to compel, plaintiff argued that every staff complaint goes into an officer's
19 employee file and that he would limit the time period to five years from September 22, 2013.
20 ECF No. 29 at 4. Defendants responded that documents in defendant M. Martinez' personnel file
21 are privileged under the official information privilege and that there are no responsive documents
22 in her file. ECF No. 32 at 11.

23 Defendants' objection as to overbreadth is appropriate to the extent plaintiff's request
24 could be interpreted to seek allegations of use of force against any officer at CSP-Solano against
25 any inmate. It is also overbroad to the extent it covers any interaction between defendant M.
26 Martinez and any inmate. It should be limited to allegations of excessive use of force against
27 defendant M. Martinez. The request is also overly burdensome in requiring the review of
28 individual inmate appeals to locate complaints about defendant M. Martinez. However, if

1 plaintiff is correct that staff complaints are kept in officer's personnel files, then the objection on
2 the grounds of undue burden, as the request applies to staff complaints for excessive use of force
3 against defendant M. Martinez, is without merit. Defendants have not addressed whether
4 plaintiff's allegation that these complaints are kept in officer personnel files is true. Instead, they
5 assert that documents in defendant M. Martinez' personnel file are privileged under the official
6 information privilege⁴ and assert that there are no responsive documents therein. While it is not
7 clear that defendant's objections are well-founded as to this portion of the request, because
8 defendants have stated that there are no responsive documents in defendant M. Martinez'
9 personnel file, there are no documents to compel and no further response will be required.

10 C. Supplemental Motion to Compel

11 On October 5, 2015, plaintiff filed a supplemental motion to compel, which he states he
12 originally submitted to the court on July 20, 2015. ECF Nos. 39, 41 at 2. Upon review, the
13 supplemental motion appears to actually constitute a request for additional discovery. ECF No.
14 39. Even assuming plaintiff served these requests on July 20, 2015, they are untimely because
15 discovery closed on April 10, 2015, and discovery requests were to be served no later than
16 February 9, 2015. ECF No. 19 at 5. Moreover, the request for production appears to seek
17 documents defendants are already obligated to produce in response to Requests for Production
18 Nos. 2-4 of plaintiff's first request for production. ECF No. 39 at 2.

19 Plaintiff argues that the requests are not untimely because they relate back to his motion to
20 compel (ECF No. 29), which was deemed timely by the court (ECF No. 30). ECF No. 41 at 2.
21 Plaintiff, however, misunderstands the purpose of a motion to compel. The purpose of a motion
22 to compel is to compel a party to produce responses to discovery that has already been served. It
23 is not an opportunity to submit additional requests. The court's determination that plaintiff's
24 motion to compel was timely did not make his underlying discovery requests timely or re-open

25 ⁴ The court will not address the official information privilege objection other than to note that the
26 privilege does not attach to official information as a right; it is determined using a balancing test
27 after the party asserting privilege submits a privilege log and affidavit from an official of the
28 agency addressing certain concerns. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th
Cir. 1990); Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995).

1 the period for discovery.

2 The court will construe the supplemental motion to compel as a request to re-open
3 discovery, and deny it because plaintiff has not shown good cause for re-opening discovery.

4 D. Conclusion

5 Defendants' supplemental responses to the requests for admissions are sufficient and no
6 further responses will be required, with the exception of the supplemental information to be
7 provided in response to Requests for Production 3 and 4. Although the court finds that sufficient
8 responses have now been provided, defendants' conduct in responding to plaintiff's discovery
9 requests borders on obstructionist and defendants and their counsel are cautioned to avoid
10 similar such conduct in the future. Plaintiff's supplemental motion to compel, which the court
11 construes as a motion to re-open discovery, is denied.

12 IV. Request to Stay Discovery

13 In their response to the motion to compel, defendants requested that if the court deemed
14 plaintiff's April 5, 2015 Interrogatories and April 14, 2015 Requests for Production timely, that
15 their time to respond be stayed pending resolution of their motion for partial summary judgment.
16 ECF No. 32 at 11-12. Since plaintiff's additional discovery requests were found to be untimely,
17 defendants' request is denied as moot.

18 V. Summary

19 Plaintiff's motion to compel responses to his April 5, 2015 Interrogatories and April 14,
20 2015 Requests for Production is denied because those requests were served too late. Plaintiff's
21 motion to compel additional responses to his February 2, 2015 Requests for Admissions is denied
22 because defendants made good objections and have responded to the requests. Plaintiff's request
23 to compel further responses to his first Request for Production is granted only as to Requests Nos.
24 3 and 4. Defendants will be required to provide supplemental information to clarify whether an
25 incident package was created and to explain what steps they took to locate the video and what
26 happened to the video. The motion is denied as to all other requests for production.

27 Defendants' will not be required to respond to plaintiff's additional discovery requests
28 because they are late and plaintiff has not explained why the court should re-open discovery.

1 Because defendants are not required to respond to the additional request, their request to stay
2 discovery is denied as moot.

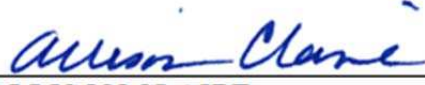
3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion to compel (ECF No. 29) is granted to the extent defendants must
5 provide supplemental responses to Requests for Production Nos. 3 and 4 as set forth in Section
6 III.B.4. above. The motion is denied in all other respects.

7 2. Plaintiff's supplemental motion to compel (ECF No. 39), which the court construes as
8 a motion to re-open discovery, is denied.

9 3. Defendants' request to stay discovery (ECF No. 32) is denied as moot.

10 DATED: March 25, 2016

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12 ALLISON CLAIRE
13 UNITED STATES MAGISTRATE JUDGE
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