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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DESHAWN CATHEY,  
Plaintiff,  
v.  
CITY OF VALLEJO, et al.,  
Defendants.

No. 2:14-cv-01749-JAM-AC

ORDER

On August 26, 2015, the court held a hearing on both parties’ motions to compel and plaintiff’s “motion requesting that . . . Frederick ‘Marc’ Cooley be included as a person listed in the protective order.” ECF Nos. 22, 23, 25. Plaintiff appeared in pro per and Furah Faruqui appeared on behalf of defendants City of Vallejo and Officer Jodi Brown. On review of the motion, the documents filed in support and opposition, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

FACTUAL BACKGROUND

Plaintiff alleges that on April 3, 2014, at approximately 4:00 p.m., he was visiting his friend Patricia Nuttall at her home in Vallejo. ECF No. 15 at 2. Later on, as plaintiff was leaving, several Vallejo Police Department vehicles arrived. Id. One of the officers on the scene was defendant Officer Jodi Brown, who ordered plaintiff to stop. Id. Plaintiff complied with Officer Brown’s order, and was subsequently placed in tight handcuffs. Id. Plaintiff asked

1 Officer Brown to loosen his handcuffs, but she ignored him. Id. Officer Brown then searched  
2 plaintiff's pockets and found \$788, which she confiscated. Id. Officer Brown forced plaintiff  
3 into a police vehicle and transported him to the Vallejo Police Department, where he was left in  
4 tight handcuffs for approximately an hour. Id. Plaintiff asked Officer Brown to loosen his  
5 handcuffs several times, but she refused. Id. As a result of Officer Brown's treatment of  
6 plaintiff, he suffered pain and numbness for approximately three weeks. Id. at 3. Plaintiff was  
7 released, perhaps after an hour but he does not specify, and given a citation for violation of  
8 California Health and Safety Code § 11532(a).<sup>1</sup> Id.

9 Plaintiff claims that Officer Brown violated his Fourth Amendment right to freedom from  
10 unreasonable searches and seizures because she did not have probable cause to either arrest or  
11 search him. Id. at 1. Plaintiff also claims that by keeping him in tight handcuffs Officer Brown  
12 used excessive force in violation of the Fourth Amendment. Id. Finally, plaintiff claims that the  
13 Vallejo Police Department violated his Fourth Amendment rights under Monell because it has a  
14 policy, practice, or custom, of allowing excessive force. Id. at 2.

#### 15 PROCEDURAL BACKGROUND

16 Plaintiff filed his original complaint on July 24, 2014. On November 13, 2014,  
17 defendants filed an answer. ECF No. 9. Both plaintiff and defendants then filed status reports  
18 ahead of the court's March 4, 2015, status conference. ECF Nos. 10, 11, 12. On March 5, 2015,  
19 the court issued its scheduling order in this matter. ECF No. 13. On April 3, 2015, plaintiff filed  
20 a motion for leave to amend and a proposed amended complaint. ECF Nos. 14, 15. The court  
21 granted plaintiff's motion on April 24, 2015.<sup>2</sup> ECF No. 17.

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22  
23 <sup>1</sup> Cal. Health & Safety Code § 11532(a) states that:

24 It is unlawful for any person to loiter in any public place in a  
25 manner and under circumstances manifesting the purpose and with  
26 the intent to commit an offense specified in Chapter 6 (commencing  
with Section 11350) and Chapter 6.5 (commencing with Section  
11400).

27 <sup>2</sup> Defendants have yet to file an answer to plaintiff's amended complaint, although presumably  
28 they mean to rely upon their original answer in light of the fact that the amended complaint and  
original complaint are substantially similar.

1 Plaintiff filed motions to compel and to include Frederick “Marc” Cooley in the protective  
2 order on June 10, 2015. ECF Nos. 19, 20. Plaintiff then filed amended motions pursuant to the  
3 court’s order on June 26, 2015. ECF Nos. 22, 23. On July 20, 2015, defendants filed a motion to  
4 compel responses to their own discovery requests. ECF Nos. 25, 26. Two days later, plaintiff  
5 filed an opposition to defendants’ motion to compel claiming he never received defendants’  
6 discovery requests. ECF No. 32. Then, on July 23, 2015, defendants filed an opposition to  
7 plaintiff’s motion to compel claiming that plaintiff’s discovery requests were overbroad,  
8 irrelevant, and unduly burdensome. ECF Nos. 27, 29. Defendants also filed an opposition to  
9 plaintiff’s protective order motion, asserting that Mr. Cooley should not be permitted to view  
10 documents subject to any protective order because he is engaged in the unauthorized practice of  
11 law.<sup>3</sup> ECF No. 28.

12 On July 29, 2015, the court struck the parties’ oppositions and instructed them to file a  
13 joint statement in accordance with Local Rule 251(c). ECF No. 34. Then, on August 6, 2015,  
14 defendants’ counsel filed affidavits attesting that plaintiff had stormed out of his office during an  
15 attempt to meet and confer. ECF Nos. 35, 36. Based on this allegation the court found that there  
16 had been a breakdown in communication and that further meet and confer efforts on this issue  
17 would likely be futile. ECF No. 37. Accordingly, the court reinstated the parties’ oppositions  
18 and instructed them to file optional replies no later than two days prior to the August 26, 2015  
19 hearing. Id. On August 12, 2015, defendants filed a reply to plaintiff’s opposition. ECF No. 38.  
20 On August 25, 2015, plaintiff filed replies to defendants’ oppositions. ECF Nos. 39, 40. On  
21 September 28, 2015, plaintiff filed a motion for reconsideration based on the erroneous

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22  
23 <sup>3</sup> In support of their opposition defendants filed a request for judicial notice of the following  
24 documents: (1) an abstract of the judgment in People v. Cooley, Case No. VCR214659 (Solano  
25 Cnty. Super. Ct.), and (2) plaintiff’s civil complaint for breach of contract in Cooley v.  
26 Capenhurst, Case No. FCS043739 (Solano Cnty. Super. Ct.). ECF No. 30. Under Rule 201 of  
27 the Federal Rules of Evidence, a court must take judicial notice of an adjudicative fact that is not  
28 subject to reasonable dispute because it is either (1) generally known or “(2) can be accurately  
and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.  
Evid. 201(b). The filings attached to defendants’ request for judicial notice can be determined  
“from sources whose accuracy cannot reasonably be questioned.” Id. Accordingly, the court  
hereby grants defendants’ request for judicial notice.

1 understanding that the court had already issued an order disposing of his motion to compel. ECF  
2 No. 45. The court will deny the motion without prejudice as premature.

3 DISCOVERY DISPUTE

4 Plaintiff served his first request for production of documents on March 30, 2015. ECF  
5 No. 23 at 2. Defendants provided objections on April 29, 2015. Id. Plaintiff requests that the  
6 court compel defendants to supply responsive documents to the following requests for  
7 production:

8 **Request No. 1:** Please provide any and all documents,  
9 electronically stored information or tangible thing reflecting or  
10 relating to any reports, memoranda, letters, notes, audio and/or  
11 video recordings or summaries of any oral statements relating to  
Citizen Complaints and/or Civil lawsuits made against any and all  
Vallejo, Police Officers concerning excessive force that has  
occurred within the last fourteen (14) years.

12 **Response to Request No. 1:** Responding party requests to this  
13 request as it is vague and overbroad in scope. Thus [sic] it seeks  
14 information not reasonably calculated to lead to admissible  
15 evidence. Specifically, this case involves the alleged use of “too-  
16 tight handcuffs.” These facts are unique and thus Plaintiff’s request  
for all complaints about excessive force of any and all City of  
Vallejo Police Officers for a period of fourteen years prior to the  
filing of this action, is thus overbroad and not specific.

17 Finally, Defendant objects to this request as it seeks to invade the  
18 right to privacy of Vallejo Police Officers without cause or  
justification. The requested information is subject to the official  
information privilege as the information sought was gathered in the  
19 course of investigations by the Vallejo Police Department. (See  
20 Kelly v. City of San Jose, 114 F.R.D. 653 (N.D. Cal. 1987) and the  
California Government Code § 6254, California Penal Code §  
21 832.7, and California Evidence Code § 1043 et seq.) (See also  
Declaration of Captain Sidney De Jesus served herewith.)

22 ECF No. 23 at 2–3.<sup>4</sup>

23 On April 24, 2015, defendants served written interrogatories and requests for production  
24 upon plaintiff. ECF No. 25 at 2. Plaintiff never responded to defendants’ discovery requests. Id.  
25 Then, on June 2, 2015, defendants sent a meet and confer letter to plaintiff requesting that he  
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27 <sup>4</sup> Plaintiff also asks the court to compel defendants to respond to his second request, which is  
28 exactly the same except it seeks documents concerning complaints of *lethal force* instead of  
*excessive force*. See ECF No. 23 at 5–6.

1 respond to their discovery requests by June 12, 2015, but again, plaintiff never responded. Id.  
2 Defendants' first set of interrogatories include the following:

3 **INTERROGATORY NO. 1:** Please state any and all facts you  
4 possess regarding the alleged misconduct of Defendant JODI  
BROWN on the night of the subject INCIDENT.

5 **INTERROGATORY NO. 2:** Please state any and all witnesses  
6 with knowledge regarding the alleged misconduct of Defendant  
JODI BROWN on the night of the subject INCIDENT.

7 **INTERROGATORY NO. 3:** Please describe any and all  
8 documents you possess regarding the alleged misconduct of  
Defendant JODI BROWN on the night of the subject INCIDENT.

9 **INTERROGATORY NO. 4:** Itemize (name of provider, date of  
10 service) each medical expense which you or anyone acting on your  
behalf is claiming as damages arising out of the subject  
11 INCIDENT.

12 **INTERROGATORY NO. 5:** Please state the amount actually  
accepted as full payment by each of your medical providers for the  
13 expenses incurred by you as a result of the subject INCIDENT.

14 **INTERROGATORY NO. 6:** Please IDENTIFY the HEALTH  
CARE PROVIDER (i.e., Medicare, Medi-Cal) that made the  
15 payments identified in response to Interrogatory Nos. 4 & 5.

16 **INTERROGATORY NO. 7:** Did you receive Medicare benefits  
for any of the injuries that you are claiming as a result of the subject  
17 INCIDENT.

18 **INTERROGATORY NO. 8:** Please state the claim number issued  
by Medicare for any Medicare benefits you received as a result of  
19 your injuries sustained in the subject INCIDENT.

20 **INTERROGATORY NO. 9:** Please state the name, address, and  
telephone number of any individual(s) at Medicare that you have  
21 dealt with regarding Medicare benefits that you received as a result  
of your injuries sustained in the subject INCIDENT.

22 **INTERROGATORY NO. 10:** If you received any Medicare  
benefits as a result of your injuries sustained in the subject  
23 INCIDENT, what is the total amount of Medicare benefits received to  
date.  
24

25 **INTERROGATORY NO. 11:** Have you placed [sic] Medicare on  
notice of this subject lawsuit?

26 **INTERROGATORY NO. 12:** Do you attribute any loss of income  
or earning capacity to the subject INCIDENT? (If your [sic] answer  
27 is "no," do not answer interrogatories 13 through 19).  
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**INTERROGATORY NO. 13:** Please state: (a) the nature of your work; (b) your job title at the time of the subject INCIDENT; and (c) the date your employment began.

**INTERROGATORY NO. 14:** Please state the last date before the subject INCIDENT that you worked for compensation.

**INTERROGATORY NO. 15:** Please state your monthly income at the time of the subject INCIDENT and how the amount was calculated.

**INTERROGATORY NO. 16:** Please state the date you returned to work at each place of employment following the subject INCIDENT.

**INTERROGATORY NO. 17:** Please state the dates you did not work and for which you lost income as a result of the subject incident.

**INTERROGATORY NO. 18:** State the total income you have lost to date as a result of the subject INCIDENT and how the amount was calculated.

**INTERROGATORY NO. 19:** Will you lose income in the future as a result of the subject INCIDENT? If so, please state: (a) the facts upon which you base this contention; (b) an estimate of the amount; (c) an estimate of how long you will be unable to work; and (d) how the claim for future income is calculated.

ECF No. 26 at 5–7. Defendants’ first set of requests for production included the following:

**REQUEST NO. 1:** Please produce any and all documents you possess regarding the alleged misconduct of Defendant JODI BROWN on the night of the subject INCIDENT.

**REQUEST NO. 2:** Please produce any and all statements of witnesses with knowledge regarding the alleged misconduct of Defendant JODI BROWN on the night of the subject INCIDENT.

**REQUEST NO. 3:** Please produce any and all documents reflecting injuries you claim to have sustained due to the subject INCIDENT.

**REQUEST NO. 4:** Please produce any and all documents reflecting medical expenses you claim to have incurred due to the subject INCIDENT.

**REQUEST NO. 5:** Please produce any and all documents reflecting lost earning you claim to have incurred due to the subject INCIDENT.

Id. at 13–14.

1 LEGAL STANDARDS

2 I. Discovery

3 Under Federal Rule of Civil Procedure 26(b), “[U]nless otherwise limited by court order,  
4 the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged  
5 matter that is relevant to any party’s claim or defense—including the existence, description,  
6 nature, custody, condition, and location of any documents or other tangible things and the identity  
7 and location of persons who know of any discoverable matter.<sup>5</sup> For good cause, the court may  
8 order discovery of any matter relevant to the subject matter involved in the action. Relevant  
9 information need not be admissible at the trial if the discovery appears reasonably calculated to  
10 lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).

11 Under Rule 34(a), “any party may serve on any other party a request to produce and  
12 permit the party making the request . . . to inspect and copy any designated documents . . . which  
13 are in the possession, custody or control of the party upon whom the request is served.” Fed. R.  
14 Civ. P. 34(a)(1). “[A] party need not have actual possession of documents to be deemed in  
15 control of them.” Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472 (D. Nev. 1998) (quoting  
16 Estate of Young v. Holmes, 134 F.R.D. 291, 294 (D. Nev. 1991). “A party that has a legal right  
17 to obtain certain documents is deemed to have control of the documents.” Clark, 81 F.R.D. at  
18 472. Under Rule 34(b), the party to whom the request is directed must respond in writing that  
19 inspection and related activities will be permitted as requested, or state an objection to the  
20 request, including the reasons. Fed. R. Civ. P. 34(b)(2). Also, “[a] party must produce  
21 documents as they are kept in the usual course of business or must organize and label them to  
22 correspond to the categories in the request.” Fed. R. Civ. P. 34(b)(E)(i).

23 Under the Federal Rules of Civil Procedure, interrogatories must be “answered separately  
24 and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). A party is obligated to respond to the  
25 fullest extent possible and state any objections with specificity. Fed. R. Civ. P. 33(b)(3), (b)(4).  
26 While extensive research is not required, a reasonable effort to respond must be made. L.H. v.

27 <sup>5</sup> “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it  
28 would be without the evidence; and (2) the fact is of consequence in determining the action.”  
Fed. R. Evid. 401.

1 Schwarzenegger, 2007 U.S. Dist. LEXIS 73752, at \*9 (E.D. Cal. Sept. 21, 2007). In a motion to  
2 compel, the moving party bears the burden of showing why the other party’s responses are  
3 inadequate or their objections unjustified. See, e.g., Ellis v. Cambra, 2008 U.S. Dist. LEXIS  
4 24418, at \*2 (E.D. Cal. Mar. 27, 2008). A district court has broad discretion in deciding whether  
5 to require answers to interrogatories. See 8A Wright, Miller & Marcus, Federal Practice &  
6 Procedure § 2176 at 311 & n. 1 (Civil 2d ed. 1994).

7 II. Motion to Compel

8 Pursuant to Rule 37(a), a party propounding discovery or taking a deposition may seek an  
9 order compelling responses when an opposing party has failed to respond or has provided evasive  
10 or incomplete responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or incomplete disclosure,  
11 answer, or response must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P.  
12 37(a)(4). “It is well established that a failure to object to discovery requests within the time  
13 required constitutes a waiver of any objection.” Richmark Corp. v. Timber Falling Consultants,  
14 959 F.2d 1468, 1473 (9th Cir. 1992) (citing Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir.  
15 1981)). “The party who resists discovery has the burden to show discovery should not be  
16 allowed, and has the burden of clarifying, explaining, and supporting its objections.”  
17 Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir.1975).

18 DISCUSSION

19 I. Production of Excessive Force Complaints

20 A. Overbroad/Irrelevant

21 Defendants argue that plaintiff’s document requests are overbroad and seek irrelevant  
22 information because they are not limited to complaints of excessive force involving injury from  
23 tight handcuffs. Plaintiff’s complaint alleges that the Vallejo Police Department has a policy,  
24 practice, or custom of allowing excessive force, and that this policy led to Officer Brown placing  
25 plaintiff in excessively tight handcuffs. Excessive force complaints against the Vallejo Police  
26 Department and related documents are clearly relevant to establishing that such a policy exists.  
27 See, e.g., Duenez v. City of Manteca, No. 2:11-CV-1820 LKK AC, 2013 U.S. Dist. LEXIS  
28 24954, at \*10-11 (E.D. Cal. Feb. 22, 2013) (“Documents that are a part of the personnel records



1 of officers defending civil rights actions, while containing sensitive information, are within the  
2 scope of discovery.”) (citing Soto v. City of Concord, 162 F.R.D. 603, 614–15 (N.D. Cal. 1995)).  
3 Relevant information is not limited to complaints regarding handcuffs. Accordingly, defendants’  
4 relevance and overbreadth arguments go too far.

5         However, as the court explained at the hearing, plaintiff’s requests are overbroad in other  
6 ways. First, the complaint does not include allegations of lethal force. The Ninth Circuit defines  
7 lethal force as force that creates a substantial risk of causing death or serious bodily injury. Smith  
8 v. City of Hemet, 394 F.3d 689, 706 (9th Cir. 2005). Plaintiff alleges that Officer Brown placed  
9 him in excessively tight handcuffs for approximately an hour. ECF No. 15 at 2. Documents  
10 related to the use of lethal are irrelevant to plaintiff’s claims. Second, plaintiff seeks all reports,  
11 memoranda, and other “tangible things” that relate to any and all excessive force complaints filed  
12 with the department in the past fourteen (14) years. A ten year relevance horizon is more  
13 appropriate. Accordingly, the court will order defendants to produce all complaints of non-lethal  
14 excessive force involving conduct alleged to have occurred while an arrestee was in police  
15 custody filed within the last ten years.

16         B.     The Official Information Privilege

17         Defendants also argue that the records at issue are subject to the official information  
18 privilege; however, they have plainly failed to meet its standard. The official information  
19 privilege is a qualified one that “must be formally asserted and delineated in order to be raised  
20 properly.” Kerr v. U.S. Dist. Ct. for N. Dist. of Cal., 511 F.2d 192, 198 (9th Cir. 1975) aff’d, 426  
21 U.S. 394 (1976). The party invoking the privilege must at the outset make a “substantial  
22 threshold showing” by way of a declaration of affidavit from a responsible official with personal  
23 knowledge of the matters to be attested to in the affidavit. Soto, 162 F.R.D. at 613.

24                 The affidavit must include: (1) an affirmation that the agency  
25 generated or collected the material in issue and has maintained its  
26 confidentiality; (2) a statement that the official has personally  
27 reviewed the material in question; (3) a specific identification of the  
28 governmental or privacy interests that would be threatened by  
disclosure of the material to plaintiff and/or his lawyer; (4) a  
description of how disclosure subject to a carefully crafted  
protective order would create a substantial risk of harm to  
significant governmental or privacy interests, and (5) a projection

1 of how much harm would be done to the threatened interests if  
2 disclosure were made.

3 Id. In addition, “[t]he asserting party, as in any case where a privilege is claimed, must  
4 sufficiently identify the documents so as to afford the requesting party an opportunity to  
5 challenge the assertion of privilege.” Miller v. Pancucci, 141 F.R.D. 292, 300 (C.D. Cal. 1992).  
6 “If the court concludes that a defendant's submissions are not sufficient to meet the threshold  
7 burden, it will order disclosure of the documents in issue.” Soto, 162 F.R.D. at 613. If the  
8 threshold burden is met, the court will order an in camera review and balance each parties’  
9 interests. Id.

10 In support of their opposition defendants have submitted the affidavit of Acting Captain  
11 Sidney DeJesus, who oversees all aspects of the internal affairs of the Vallejo Police Department,  
12 including citizen complaints, and civil complaints against officers and the department. ECF No.  
13 29 at 4–6. According to Officer DeJesus, the documents plaintiff requests include departmental  
14 and civil complaints relating to Officer Brown. Id. These complaints include internal affairs  
15 materials, personnel records, and “other confidential and privileged materials.” Id. Personnel  
16 files in particular contain performance evaluations, training history, medical information, personal  
17 identifying information, and other internal affairs documents. Id. Officer DeJesus asserts that the  
18 requested documents cannot be produced because they are protected by privacy rights granted by  
19 the California Constitution. Id. Further, Officer DeJesus states that a protective order in this  
20 matter would be insufficient because plaintiff is being assisted by Mr. Cooley. Id. Officer  
21 DeJesus believes that if the requested documents are produced it is inevitable that they would be  
22 shared with those plaintiffs Mr. Cooley is assisting in other cases. Id. In addition, Officer  
23 DeJesus argues that producing internal affairs documents would chill open discussion amongst  
24 investigators seeking to improve the department’s operations. Id. Finally, Officer DeJesus  
25 argues that some of the requested documents relate to ongoing investigations and that their  
26 disclosure would jeopardize the investigations. Id. In the alternative, defendants request that the  
27 requested documents be produced subject to a protective order. Id.

28 Officer DeJesus’ arguments are plainly insufficient to satisfy the requirements of the

1 official information privilege. First, Officer DeJesus never explicitly states, as he is required to,  
2 that he has personally reviewed the material in question. Instead, Officer DeJesus asserts in a  
3 more general sense that the documents requested by plaintiff contain sensitive information that  
4 should not be revealed to anyone outside the department. In addition, Officer DeJesus' argument  
5 as to why a protective order is insufficient fails. Officer DeJesus states that a protective order  
6 would be insufficient because plaintiff will invariably share the information with Mr. Cooley,  
7 who in turn will share the information with plaintiffs he is assisting in other matters. Defendants  
8 offer no evidence to support the contention that plaintiff cannot be trusted to abide by the terms of  
9 a protective order.<sup>6</sup> Finally, Officer DeJesus does not include a projection of how much harm  
10 would be done to the police department's interests if the requested documents were produced.  
11 Accordingly, the court finds that the documents requested by plaintiff are not subject to the  
12 official information privilege.

13 Nevertheless, some of the above information is sensitive and private, and accordingly  
14 should not be disclosed in the absence of a protective order. For example, private information in  
15 Officer Brown's personnel records, including her home address, telephone number, social  
16 security number, and personal job history should be redacted. In addition, some internal affairs  
17 materials such as use of force tactics and other private officer information could constitute  
18 documents responsive to plaintiff's requests. See, e.g., Soto, 162 F.R.D. at 614 (collecting cases  
19 endorsing the use of carefully crafted protective orders to prevent the harmful disclosure of  
20 internal affairs materials). Accordingly, the court will order defendants to produce documents  
21 responsive to plaintiff's request for production number one, as modified pursuant to this order,  
22 within thirty days of the issuing of a protective order in this matter.

## 23 II. Defendants' Discovery Requests

24 The court will grant defendants' motion to compel because plaintiff has failed to timely

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25 <sup>6</sup> Counsel for defendants did claim at the hearing that Mr. Cooley has, in the past, shared  
26 information subject to a protective order with the media. Such conduct would obviously be  
27 sanctionable. However, defendants did not raise this incident in their papers, nor provide any  
28 evidence. Even if defendants had raised this issue in their papers, it does not support their  
contention that *plaintiff* cannot be trusted to abide by a protective order that may or may not allow  
Mr. Cooley access to produced documents.

1 respond to defendants' discovery requests. Plaintiff concedes that he has failed to respond to  
2 defendants' discovery requests; however, he asks that the court not grant defendants' motion to  
3 compel because he never received defendants' interrogatories, requests for production, or meet  
4 and confer letter. It is undisputed that defendants properly served plaintiff under the Federal  
5 Rules. See Fed. R. Civ. P. 5(b); ECF No. 26 at 8–9, 15–16 (proofs of service). As the court  
6 explained to plaintiff at the hearing, he must be diligent in pursuing discovery in this matter. See  
7 Conkle v. Jeong, 73 F.3d 909, 914 (9th Cir. 1995) (noting that parties have a duty to diligently  
8 pursue discovery). His mailing address must be up to date, and he must keep track of any  
9 discovery requests he receives. Local Rule 182(f). As long as defendants properly serve plaintiff  
10 in accordance with the Federal Rules, the court is required to treat plaintiff as if he received the  
11 correspondence in question. Defendants' discovery requests seek information that is relevant to  
12 plaintiff's claims, including the contact information of witnesses to plaintiff's arrest, medical  
13 records related to his injuries, how any hospital bills were paid for, and whether he missed any  
14 work due to his injuries. See ECF No. 26 at 5–7, 13–14. Accordingly, the court will grant  
15 defendants' motion to compel responses to their interrogatories and requests for production.

16 Defendants also request that the court grant them attorney's fees in the amount of \$2,200.  
17 In accordance with Federal Rule of Civil Procedure 37(a)(5)(A), the court must direct the party  
18 necessitating the motion to compel to pay the moving party's expenses unless failure to respond  
19 was "substantially justified" or other circumstances would make an award "unjust." "The test for  
20 substantial justification is one of reasonableness." United States v. First Nat. Bank of Circle, 732  
21 F.2d 1444, 1447 (9th Cir. 1984). Plaintiff states that Mr. Cooley has been checking his mail for  
22 him, and that if he had received the discovery requests he would have responded. To the extent  
23 that plaintiff is attempting to excuse his failure to respond by stating that he trusted Mr. Cooley to  
24 check his mail, that excuse does not constitute substantial justification. Plaintiff has a duty to  
25 diligently pursue this matter, and that includes checking his own mail. Plaintiff cannot effectively  
26 ignore that duty by allocating all responsibility for monitoring his case to another individual who  
27 is not his attorney. Nevertheless, the court will deny defendants' request for attorneys' fees in  
28 light of plaintiff's pro se status, his apparent lack of bad faith, and the fact that this is plaintiff's

1 first failure to respond. If plaintiff neglects to respond to defendants' discovery requests a *second*  
2 time, the court will grant sanctions in the amount of the attorney's fees required to pursue any  
3 motion to compel.

4 III. Plaintiff's Request that Mr. Cooley Be Included in the Protective Order


5 The court will deny plaintiff's motion to include Mr. Cooley in the protective order  
6 because it is premature. As the court explained at the hearing, plaintiff's motion is premature  
7 because the court has yet to issue a protective order in this case. However a protective order will  
8 be necessary. Accordingly, the court will order defendants to submit a proposed protective order  
9 within thirty days of the service of this order. Once defendants have submitted a protective order,  
10 plaintiff will have fourteen days to file objections, pointing to specific paragraphs and proposing  
11 substitutions.

12 CONCLUSION

13 In accordance with the above, THE COURT HEREBY ORDERS that:

- 14 1. Plaintiff's motion to compel, ECF No. 23, is GRANTED IN PART. Defendants  
15 must produce all documents related to excessive force complaints involving conduct alleged to  
16 have occurred while an arrestee was in police custody filed within the last ten years;
- 17 2. Defendants' motion to compel, ECF No. 25, is GRANTED;
- 18 3. Plaintiff's motion to include Mr. Cooley in the protective order, ECF No. 22, is  
19 DENIED;
- 20 4. Defendants must submit a proposed protective order within thirty (30) days of the  
21 service of this order. Plaintiff may then file objections within fourteen (14) days of the filing of  
22 the proposed order. Those objections must point to specific provisions of the proposed order,  
23 explain why they are insufficient, and propose substitutions to the extent they are necessary; and
- 24 5. Plaintiff's motion for reconsideration, ECF No. 45, is DENIED without prejudice  
25 as premature.

26 DATED: September 28, 2015

27   
28 ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE