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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY RAY BAKER,  
Plaintiff,  
v.  
J. MACOMBER, et al.,  
Defendants.

No. 2:15-cv-0248 GEB AC P

ORDER

**I. Introduction**

Plaintiff is a state prisoner at California State Prison Sacramento (CSP-SAC), proceeding pro se and in forma pauperis with this civil rights action against sole remaining defendant Correctional Officer J. McCowan. In his original complaint, plaintiff contends that defendant McCowan’s conduct on August 10, 2012 constituted excessive force and deliberate indifference to plaintiff’s serious medical needs in violation of the Eighth Amendment. Presently pending is plaintiff’s motion to compel discovery, ECF No. 50; plaintiff’s initial request for court intervention to locate his legal materials, ECF No. 52; and plaintiff’s request for leave to file a motion for sanctions based on the repeated confiscation of his property, ECF No. 58. For the reasons that follow, the court grants in part plaintiff’s motion to compel discovery, and denies his request for leave to file a sanctions motion. The court will reset the deadline for plaintiff’s opposition to defendant’s motion for summary judgment.

1                   **II.     Plaintiff's Legal Materials, February 2017**

2                   On February 15, 2017, plaintiff requested the court's intervention in locating and  
3 returning his legal materials. See ECF No. 52. The court requested that the Office of the  
4 California Attorney General inquire into the location of plaintiff's legal materials and his access  
5 to them. See ECF No. 56. On March 29, 2017, CSP-SAC Correctional Officer R. Kendall, the  
6 Property Officer assigned to the Administrative Segregation Unit's A-6 Block where plaintiff was  
7 then housed, filed and served a declaration which provides in pertinent part:

8                   2. As a Correctional Officer in the unit, I have received training on  
9 the proper ways to package, store, seal, and catalog an inmate's  
10 property. An inmate's property is solely in the custody of CDCR  
when an inmate is on limited property access or temporarily away  
from the facility.

11                   3. I was asked by the Office of the Attorney General to account for  
12 inmate Baker's legal property following his January 27 2017  
assignment to Administrative Segregation.

13                   4. On January 27 2017, I received notice to pack Baker's cell as he  
14 was assigned to Administrative Segregation. Inmates housed in  
15 Administrative Segregation are not permitted to have the same  
16 amount of property as general population inmates. I was tasked  
17 with then packing Baker's excess property and putting it into  
18 storage to hold for him until he was not [sic] longer housed in  
Administrative Segregation. During the packing process, each of  
Baker's eight boxes were labeled and sealed with tape to protect the  
contents. Additionally, a CDCR Form 1083 was generated to log  
any instances where the inmate or any member of staff accessed the  
property.

19                   5. On January 31, 2017, Baker returned to general population.

20                   6. On February 22 2017, Baker signed a CDCR Form 143  
21 acknowledging that he had received his eight boxes of property. A  
22 true and correct copy of the CDCR Form 143 is attached as Exhibit  
A.

23                   7. On February 22 2017, Baker's eight boxes of property were  
24 returned with their originally-taped seal in place. Additionally, the  
25 CDCR Form 1083 did not note that anyone had tampered with or  
opened Baker's property boxes. There is no indication that anyone  
tampered place with Baker's property.

26 ECF No. 57 at 1-3.

27                   A copy of the CDCR Form 143 pertinent to plaintiff's property is attached to and  
28 consistent with Officer Kendall's declaration. See ECF No. 57 at 5 (Ex. A).

1 The court is satisfied that plaintiff obtained possession of his legal materials on February  
2 22, 2017, shortly after he initially requested the court's assistance.

3 **III. Plaintiff's Legal Materials, March 2017**

4 On March 27, 2017, plaintiff signed and mailed a "Request for Leave to File a Motion for  
5 Sanctions Against Defendants," based on the March 23, 2017 confiscation of his legal and  
6 personal property. See ECF No. 58. Plaintiff avers that when he was returned to "General  
7 Population Main Line C Yard" on March 23, 2017, "Officer[] Jones, Officer Moore, and Property  
8 Room Officer G. Presel" took plaintiff's property because Sergeant Porter directed that it be  
9 inventoried. Id. at 1. Plaintiff states that his property "had already been inventoried and cleared  
10 for issuance to plaintiff on 3/23/2017 by C/O R. Kendall of A Facility 6-Block EOP prior to  
11 plaintiff's return to the GP Main Line on said date." Id. Plaintiff contends that "Property Room  
12 Officer G. Presel is deliberately withholding plaintiff's legal/personal property out of race based  
13 retaliation against plaintiff for him filing grievances and suits against CSP-Sacramento co-  
14 workers and superiors." Id. Plaintiff alleges that his property is being withheld as leverage to get  
15 plaintiff to sign a "1083 Property Inventory Sheet" for whatever property may be returned to him,  
16 which "means that plaintiff's lost, stolen, damaged property will be taken as a sacrifice if plaintiff  
17 signs the 1083." Id. at 2. Plaintiff avers that he has not seen his property since March 24, 2017,  
18 when it "was all disarranged and mixed up and put in plastic bags." Id. Plaintiff requests that the  
19 court enforce or reissue its order filed March 15, 2017, again direct an inquiry into the location of  
20 plaintiff's property and impose sanction on "defendants" in the amount of \$10,000.

21 The correctional officers alleged to have recently confiscated plaintiff's property are not  
22 defendants in this action. For that reason, plaintiff cannot pursue a retaliation claim or seek  
23 sanctions against these officers in this action. Further, this court has no authority to intervene in  
24 the temporary confiscation of property associated with a change in housing. See e.g., Shaw v.  
25 Chang, 2015 WL 355497, at \*6, 2015 U.S. Dist. LEXIS 10625, at \*18-9 (N.D. Cal. 2015) and  
26 cases cited therein (due process not implicated in the temporary loss of personal property due to a  
27 prisoner's housing move or reclassification). Because plaintiff indicates that his property is being

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1 withheld because he has refused to sign a property inventory form, the court will not involve itself  
2 further.

3 Plaintiff's "Request for Leave to File a Motion for Sanctions Against Defendants" will be  
4 denied.

5 **IV. Plaintiff's Motion to Compel Discovery**

6 Plaintiff moves to compel further responses to Plaintiff's Interrogatories, Set One, and  
7 Plaintiff's Request for Production of Documents, Set One. See ECF No. 50. Defendant has  
8 opposed the motion. See ECF No. 51. The requests and disputed responses are addressed in  
9 numerical order.<sup>1</sup>

10 **A. Plaintiff's Interrogatories, Set One**

11 Plaintiff moves for further responses to all ten of the interrogatories he propounded. For  
12 the reasons set forth below, defendant will be required to serve supplemental responses to  
13 plaintiff's Interrogatory Nos. 2, 7 and 8, as construed below.

14 **1. Interrogatory No. 1**

15 INTERROGATORY NO. 1: Identify any and all documents  
16 relating to use of force and reporting the use of force policies and  
procedures.

17 RESPONSE TO INTERROGATORY NO. 1: Responding party  
18 states that the following sections of Title 15 are responsive: 3268,  
3268.1, 3268.2, 3268.3, and 3279. Responding party states that the  
19 following sections of the Department Operations Manual are  
20 responsive: 51020.1, 51020.2, 51020.3, 51020.4, 51020.5, 51020.6,  
51020.7, 51020.8, 51020.9, 51020.10, 51020.11, 51020.12,  
51020.12.1, 51020.12.2, 51020.12.3, 51020.12.4, 51020.12.5,  
51020.12.6, 51020.17, 51020.17.1, 51020.17.2, 51020.17.3,  
51020.17.4, 51020.17.5, 51020.17.6, 51020.17.7, 51020.17.8,  
51020.18, 51020.18.1, 51020.18.2, 51020.19, 51020.19.1,  
51020.19.2, 51020.19.3, 51020.19.4, 51020.19.5, 51020.21,  
51020.22, 51030.1, 51030.2, 51030.3, 51030.4, 51030.4.1,  
51030.4.2, 51030.5, 51030.5.1, 51030.5.2, and 51030.6.

24 PLAINTIFF'S CHALLENGE: "I specifically asked defendant to  
25 identify not cite or quote the sections in the (DOM) Department  
Operational Manual." ECF No. 50 at 3.<sup>2</sup>

26  
27 <sup>1</sup> In light of plaintiff's pro se and incarcerated status, the court rejects defendant's contention that  
28 plaintiff's motion should be denied due to his failure to initiate a meet and confer on the disputed  
discovery matters before bringing this motion.

<sup>2</sup> Plaintiff's quoted material includes minor edits without any substantive significance.

1            DEFENDANT’S OPPOSITION: “Plaintiff provides no explanation  
2 for how Defendant McCowan’s response was deficient. (ECF No.  
3 50 at 3.) Indeed, Plaintiff’s interrogatory specifically asks  
4 McCowan to identify all documents relating to use of force  
reporting and the above-mentioned documents are responsive to  
this request. Thus, McCowan should not be compelled to further  
respond.” ECF No. 51 at 2.

5            **Ruling**: Defendant’s response to Interrogatory No. 1 is satisfactory for the reasons stated  
6 by defendant; the court finds plaintiff’s challenge to be without merit.

7            **2. Interrogatory No. 2**

8            INTERROGATORY NO. 2: Identify any and all documents  
9 relating to prison staff training and education as pertains to IST [In-  
10 Service Training] Code B2670, title DOM [Department Operations  
Manual], Chapter 5 Art 2 [§ 51020.1 et seq.] Use of Force Rv.

11            RESPONSE TO INTERROGATORY NO. 2: Responding party  
12 states that documents from the Use of Force training are responsive  
to this request.

13            PLAINTIFF’S CHALLENGE: “I specifically asked defendant to  
14 identify any and all documents relating to prison staff training and  
education as it pertains to IST Code B2670 Title DOM Chapter 5  
15 Art. 2 Use of Force Revision. IST Code B2670 is not available for  
review in the [DOM].” ECF No. 50 at 3.

16            DEFENDANT’S OPPOSITION: “Plaintiff again provides no  
17 explanation for how Defendant McCowan’s response was deficient.  
(ECF No. 50 at 3.) The Use of Force training documents are  
18 responsive to this request, and have appropriately been identified.  
Plaintiff’s complaint that the documents are not available for review  
19 is because those documents are privileged, as shown by the  
declaration of J. Brown in support of Defendant’s Privilege Log.  
20 Thus, McCowan should not be compelled to further respond as the  
requested documents have been identified.” ECF No. 51 at 3.

21            **Ruling**: For the following reasons, the court directs defendant to serve plaintiff with a  
22 supplemental response to this interrogatory as construed herein.

23            Defendant’s initial response to Interrogatory No. 2 was vague, as underscored by  
24 defendant’s explanation in opposition to plaintiff’s motion. Defendant’s Privilege Log was  
25 provided in response to plaintiff’s Request for Production No. 1, which sought “Any and all rules,  
26 regulations and policies of the CDCR about the treatment of Disabled Prisoners regarding cuffing  
27 and waist restraints.” See ECF No. 50 at 15. Defendant identified as responsive CDCR’s “Use  
28 of Force Training Documents from the Correctional Officer Academy,” dated January 2010, and

1 withheld the materials on the ground that their disclosure could jeopardize the safety and security  
2 of California prisons, citing Cal. Code Regs. tit. 15, §§ 3321 and 3450(d), and based on the  
3 official information privilege, citing Cal. Evid. Code § 1040 and Kerr v. U.S. District Court, 511  
4 F.2d 192, 198 (9th Cir. 1975). See id. Plaintiff has not challenged defendant's response to this  
5 production request or defendant's privilege log.

6 However, plaintiff sought distinctly different information in his Request for Production  
7 No. 1 and Interrogatory No. 2. The production request sought materials describing CDCR  
8 procedures for restraining disabled prisoners with cuffs and/or waist restraints. The interrogatory  
9 sought the identification of materials concerning CDCR's revised policies concerning the use of  
10 force, as articulated in In-Service Training (IST) Code B2670. Defendant's new assertion that the  
11 subject IST provision is within CDCR's privileged January 2010 Use of Force Training  
12 Documents underscores the inadequacy of defendant's initial response.

13 Accepting defendant's representation that the subject IST provision is confidential and  
14 should remain so for security reasons, the court nevertheless construes plaintiff's Interrogatory  
15 No. 2 to request relevant information. **Defendant will be required to serve plaintiff with a  
16 supplemental response to Interrogatory No. 2 that identifies all of defendant McCowan's  
17 training and education concerning the use of force, including all pertinent dates and  
18 descriptions.**

### 19 3. Interrogatory No. 3

20 INTERROGATORY NO. 3: Identify any and all documents  
21 relating to the incident complained of in the complaint and which  
occurred on August 10, 2012.

22 RESPONSE TO INTERROGATORY NO. 3: Responding party  
23 states that the following documents are responsive to this request:  
24 an August 10, 2012 CDCR Form 7219 authored by Nurse Joe  
Maalihan, Log No. SAC-C-12-02492 authored by Timothy Baker,  
25 and an August 10, 2012 Healthcare request Form 7362 authored by  
Timothy Baker.

26 PLAINTIFF'S CHALLENGE: "RN Joe Maalihan has sworn under  
27 penalty of perjury that first he didn't treat me on August 10, 2012.  
Then after plaintiff submitted the original 7219 authored by Joe  
Maalihan he subsequently changed his position as to what actually  
28 happened on 8/10/12. It goes to credibility of Defendant J.  
McCowan." ECF No. 50 at 3.

1            DEFENDANT’S OPPOSITION: “Despite labeling it as an  
2 objection, Plaintiff does not appear to have an objection to this  
3 response. (ECF No. 50 at 3.) All documents responsive to this  
4 request have been identified and thus no further response should be  
5 compelled.” ECF No. 51 at 3.

6            **Ruling**: Defendant’s response to Interrogatory No. 3 is satisfactory for the reasons stated  
7 by defendant; the court finds plaintiff’s challenge to be without merit.

#### 8            **4. Interrogatory No. 4**

9            INTERROGATORY NO. 4: Identify any and all parties who  
10 conducted any investigatory action regarding this incident at any  
11 time between August 10, 2012, and the date of this request.

12            RESPONSE TO INTERROGATORY NO. 4: Responding party  
13 states that the following individuals have investigated this incident:  
14 Nurse J. Maalihan, Litigation Coordinator T. Kraemer, Sergeant K.  
15 Steele, Doctor B. Hamkar, and Correctional Counselor J.  
16 McCowan.

17            PLAINTIFF’S CHALLENGE: “Dr. B. Hamkar has sworn under  
18 penalty of perjury that I had refused a medical treatment  
19 appointment on 8/10/12. But offered no evidence to support his  
20 contentions.” ECF No. 50 at 3.

21            DEFENDANT’S OPPOSITION: “Again, despite labeling it as an  
22 objection, Plaintiff does not appear to have an objection to this  
23 response or request further information. (ECF No. 50 at 3.) All  
24 individuals responsive to this request have been identified. Thus, no  
25 further response should be compelled.” ECF No. 51 at 4.

26            **Ruling**: Defendant’s response to Interrogatory No. 4 is satisfactory for the reasons stated  
27 by defendant; the court finds plaintiff’s challenge to be without merit.

#### 28            **5. Interrogatory No. 5**

INTERROGATORY NO. 5: Identify any and all parties who had  
cause to create any document regarding this incident at any time  
between August 10, 2012, and present.

RESPONSE TO INTERROGATORY NO. 5: Responding party  
objects to this request on the ground that the request is vague as to  
the phrase “create any document.” Without waiving the objection,  
responding party states that Nurse J. Maalihan produced a CDCR  
Form 7219 regarding this incident.

PLAINTIFF’S CHALLENGE: “Plaintiff contends that this is not  
privileged information and that the request is [not] ‘vague’ as to  
“create any document.” Create = means 1). Bring into existence.  
2). To originate. So its not vague. Dr. Hamkar did not produce  
any documents relative to his sworn affidavit. Plaintiff’s request  
was/is clear and explicit.” ECF No. 50 at 4.

1            DEFENDANT’S OPPOSITION: “Plaintiff erroneously contends  
2 that Defendant made an assertion of privilege. (ECF No. 50 at 4.)  
3 To the extent “this incident” refers to the allegations of August 10,  
4 2012, the CDCR Form 7219 created by J. Maalihan is responsive to  
5 this request. (Id.) In sum, all documents responsive to this request  
6 have been identified. Thus, no further response should be  
7 compelled.” ECF No. 51 at 4.

8            **Ruling**: Defendant’s response to Interrogatory No. 5 is satisfactory for the reasons stated  
9 by defendant; the court finds plaintiff’s challenge to be without merit.

10            **6. Interrogatory No. 6**

11            INTERROGATORY NO. 6: Identify any documents related to any  
12 complaint, grievance, criticism, censure, reprimand, rebuke,  
13 directed at the defendant(s) as listed in the complaint prior to or  
14 subsequent to the incident giving rise to this proceeding.

15            RESPONSE TO INTERROGATORY NO. 6: After a diligent  
16 search, responding party states that there are no documents or staff  
17 complaints responsive to this request.

18            PLAINTIFF’S CHALLENGE: “Plaintiff asked defendant to  
19 identify any documents related to any complaints, grievance,  
20 criticism, censure, reprimand, rebuke directed at the defendant.  
21 However the defendant’s response is too vague as to a diligent  
22 search and failed to identify any documents he did find in relation  
23 to plaintiff’s request.” ECF No. 50 at 4.

24            DEFENDANT’S OPPOSITION: “Plaintiff’s objection appears to  
25 challenge the validity of Defendant McCowan’s response, but does  
26 not provide any evidence that Defendant’s investigation should  
27 have identified any specific documents. (ECF No. 50 at 4.)  
28 Defendant diligently searched for any documents that he could  
identify that were responsive to this request and found none. Thus,  
as all reasonable investigation has been conducted, and (sic) no  
further response should be compelled.” ECF No. 51 at 4.

**Ruling**: Defendant’s response to Interrogatory No. 6 is satisfactory for the reasons stated  
by defendant; the court finds plaintiff’s challenge to be without merit.

**7. Interrogatory No. 7**

INTERROGATORY NO. 7: Correctional-Officer J. McCowan  
Controlled Use of Force Immediate Use of Force and Non-Deadly  
Force.

RESPONSE TO INTERROGATORY NO. 7: Objection. The  
interrogatory is unintelligible as drafted, and therefore responding  
party cannot provide a response.

PLAINTIFF’S CHALLENGE: “Plaintiff contends that defendant  
has cited and quoted every DOM section allegedly relating to Use

1 of Force, Immediate Force & Non Deadly Force. Plaintiff contends  
2 that defendant has allegedly been trained in this area as OJT [On-  
3 the-Job Training] requires him to be so. Plaintiff left out the word  
4 Training. It's merely an oversight. Defendant is intelligent and can  
reasonably deduce what plaintiff's intentions were and are.  
Defendant fails to offer any response that's within his personal  
knowledge." ECF No. 50 at 4.

5 DEFENDANT'S OPPOSITION: "Plaintiff's objection indicates  
6 that it was defense counsel's burden to deduce which word (or  
7 words) was omitted from his interrogatory. (ECF No. 50 at 4.) As  
8 drafted, Plaintiff's interrogatory remains unintelligible. Because  
9 Defendant provided a reasonable objection, no further response  
10 should be compelled." ECF No. 51 at 5.

11 **Ruling:** Although defendant's objection and opposition are reasonable in light of the poor  
12 wording of this interrogatory, the court liberally construes this request, consistent with  
13 Interrogatory No. 2, to require the identification of defendant McCowan's training concerning the  
14 "Use of Force," the "Immediate Use of Force," and the "Use of Non-Deadly Force," including all  
15 pertinent dates and descriptions. **So construed, the motion is granted.**

#### 16 **8. Interrogatory No. 8**

17 INTERROGATORY NO. 8: Identify and attach copies of any and  
18 all documents relating to prison medical clinic diabetic-care and  
19 treatments.

20 RESPONSE TO INTERROGATORY NO. 8: Responding party  
21 objects to the request for production made within the interrogatory  
22 request and no documents will be produced. Without waiving the  
23 objection, responding party states section 3355 of Title 15 is  
24 responsive to this request and Volume 4, Chapter 1.4, Section 4.1.4  
25 of the Inmate Medical Services, Policies and Procedures.

26 PLAINTIFF'S CHALLENGE: "Defendant J. McCowan's counsel  
27 has stated that his client has training in escorting inmates with  
28 medical and mental health disabilities to and from the Medical  
Clinic for appointments and therefore should have reasonable  
knowledge of prison medical clinic, diabetic-care treatments or  
treatment Policies & Procedures. But defendant offering no  
documents would only confirm plaintiff's contentions of  
defendant's J. McCowan's inability to comply with policies and  
procedures of the medical clinic rules as they relate to patients. He  
can only offer up sections from the CCR Title 15. Plaintiff was  
clear and explicit in his request." ECF No. 50 at 5.

DEFENDANT'S OPPOSITION: "Plaintiff's objection to  
Defendant's response appears to be mainly conjecture and  
argument (ECF No. 50 at 5), but fails to show that Defendant's  
objections were invalid. Documents responsive to Plaintiff's

1 request were identified, but were not produced as document  
2 production is reserved for limited circumstances. See Fed. R. Civ.  
3 P. 33(d) [business records]. Thus, Defendant McCowan should not  
4 be compelled to further respond.” ECF No. 51 at 5.

5 **Ruling:** The court liberally construes this interrogatory to require defendant, in a  
6 supplemental response, to identify any education or training defendant McCowan received  
7 concerning the routine and/or urgent medical needs of diabetic prisoners, and concerning the  
8 escort of prisoners to and from the medical clinic, including prisoners with medical disabilities.

9 **So construed, the motion is granted.**

### 10 **9. Interrogatory No. 9**

11 INTERROGATORY NO. 9: Can you state the names and  
12 addresses or otherwise identify and locate any person to who you or  
13 your attorneys knowledge claims to know of facts relevant to the  
14 conduct described in these interrogatories.

15 RESPONSE TO INTERROGATORY NO. 9: Objection. For  
16 privacy reasons, responding party states that no addresses or  
17 complete names can be provided. Responding party further objects  
18 to this request on the grounds that it is overly broad and that the  
19 interrogatory is vague as to the phrase “conduct described in these  
20 interrogatories.” Without waiving the stated objections and to the  
21 extent the interrogatory seeks witnesses to the alleged events of  
22 August 10, 2012 at issue in Plaintiff’s complaint, there are no  
23 witnesses.

24 PLAINTIFF’S CHALLENGE: “Plaintiff reasserts that in discovery  
25 that these names are not a matter of privacy or privilege when he  
26 offers no other solutions such as critiquing this plaintiff’s request.  
27 As it relates to all of the people who are parties and nonmoving  
28 parties. As they may have an interest in the outcome or  
proceedings of this civil case. Thus they should be disclosed.  
Plaintiff asserts that the defendant J. McCowan’s counsel has  
personal knowledge of witnesses and potential witnesses as it was  
asked in plaintiff’s deposition on March 24, 2016 to state anyone  
present on August 10, 2012.” ECF No. 50 at 5.

29 DEFENDANT’S OPPOSITION: “Plaintiff states that his interest in  
30 this civil case supersedes any privacy concerns for persons with  
31 knowledge relevant to this case. (ECF No. 50 at 5.) Plaintiff has  
32 not set forth any reasonable justification for needing the addresses  
33 or full names of alleged witnesses. Even if Plaintiff had met this  
34 burden, Defendant McCowan stated that there were no witnesses.  
35 Thus, Defendant McCowan should not be compelled to further  
36 respond.” ECF No. 51 at 5-6.

37 **Ruling:** Defendant’s response to Interrogatory No. 9 is satisfactory for the reasons stated

1 by defendant; the court finds plaintiff's challenge to be without merit.

2 **10. Interrogatory No. 10**

3 INTERROGATORY NO. 10: Identify and attach a copy of any  
4 and all documents showing who was on duty at C Facility Medical  
at 3:00 PM on the day of August 10, 2012.

5 RESPONSE TO INTERROGATORY NO. 10: Responding party  
6 objects to the request for production demanded through an  
interrogatory and therefore no documents will be produced.  
7 Without waiving the objection, responding party states that the  
8 following staff members were on duty in C Facility Medical at the  
time in question: Y. Vasquez, J. McCowan, and J. Maalihan.

9 PLAINTIFF'S CHALLENGE: "Plaintiff asserts that Defendant J.  
10 McCowan has personal information regarding who all was on duty  
at C Facility Medical Clinic on August 10, 2012. Plaintiff is asking  
11 for all of the names of CDCR staffers that were on duty on said  
date. In the event that this matter proceeds to trial plaintiff is  
12 avoiding any unforeseeable surprises or foreseeable surprises for  
that matter. Plaintiff is asking that the requested information be  
13 provided as it is pertinent to his defense and case as are all of the  
questions plaintiff posed in his First Set of Interrogatories and  
14 Production of Documents Request. The aforementioned CDCR  
staffers are witnesses for defendant Officer J. McCowan or  
potential witnesses." ECF No. 50 at 6.

15 DEFENDANT'S OPPOSITION: "Plaintiff does not seem to take  
16 issue with the response provided. To the extent Plaintiff requests  
production of documents through interrogatories, it is improper  
17 unless the Defendant chooses to produce records in lieu of a  
response. See Fed. R. Civ. P. 33(d) [business records]. Since all  
18 known staff members have been identified, Defendant McCowan  
should not be compelled to further respond." ECF No. 51 at 6.

19 **Ruling:** Defendant's response to Interrogatory No. 10 is satisfactory for the reasons  
20 stated by defendant; the court finds plaintiff's challenge to be without merit.

21 **B. Plaintiff's Requests for Production of Documents, Set One**

22 Plaintiff seeks further production related to only one request, Request for Production No.  
23 5. That request, and defendant's response are as follows, ECF No. 50 at 20:

24 Request for Production No. 5: Any and all review of the Sallyport  
25 camera's view that's located above the C Facility visiting rooms  
wall. And a review of C Facility Medical Clinics holding cages in  
26 the sallyport.

27 Response to Request for Production No. 5: Responding party  
28 objects to this request on the grounds that the request is compound,  
ambiguous, and unintelligible as drafted. To the extent the request  
seeks camera footage from August 10, 2012, there is no video

1 responsive to this request. Without waiving the objections, no  
2 video responsive to this request will be produced.

3 Plaintiff challenges defendant's response on the ground that the subject camera was  
4 intended to capture any activities in the sally port, breeze way and medical clinic where  
5 defendant's challenged conduct allegedly occurred. Plaintiff reasonably asserts that any filming  
6 of this conduct on August 10, 2012 is highly relevant to his claims. Plaintiff notes, however, that  
7 it appears "the camera in question has been removed thus destroying evidence." ECF No. 50 at 7.

8 Defendant responds that he "has conducted reasonable investigation and is yet to discover  
9 any footage of this incident. To the best of his knowledge, there is no footage of this alleged  
10 event." ECF No. 51 at 7.

11 As frustrating as it may be for plaintiff, defendant can do no more than conduct a  
12 reasonable investigation to locate the requested material. When no responsive material is located  
13 after a reasonable investigation, there is no basis for compelling defendant's further production.  
14 However, defendant remains under a continuing obligation to produce responsive material if it is  
15 later discovered.

16 Accordingly, plaintiff's request for further production pursuant to his Request for  
17 Production No. 5 is denied without prejudice.

18 **V. Conclusion**

19 For the foregoing reasons, IT IS HEREBY ORDERED that:

20 1. Plaintiff's motion to compel discovery, ECF No. 50, is granted in part.

21 2. Within fourteen (14) days after the filing date of this order, defendant shall serve  
22 plaintiff with supplemental responses to his Interrogatory Nos. 2, 7 and 8, as set forth in this  
23 order; in all other respects, plaintiff's motion to compel discovery is denied.

24 3. Plaintiff's motion for leave to file a motion for sanctions, ECF No. 58, is denied.

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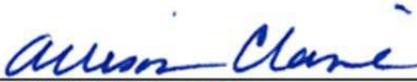
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4. Plaintiff's opposition to defendant's motion for summary judgment is due thirty days after service of the supplemental discovery responses here ordered.

SO ORDERED.

DATED: April 26, 2017

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE