



1 were untimely. ECF No. 34 at 1-3. Defendants oppose the motion on the grounds that their  
2 responses were timely and that they provided sufficient responses and made appropriate  
3 objections. ECF No. 35 at 3-6.

4 A. Standards Governing Discovery

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

18 Where a party fails to answer an interrogatory submitted under Federal Rule of Civil  
19 Procedure 33 or fails to produce documents requested under Federal Rule of Civil Procedure 34,  
20 the party seeking discovery may move for compelled disclosure. Fed. R. Civ. P. 37(a). “The  
21 party seeking to compel discovery has the burden of establishing that its request satisfies the  
22 relevancy requirements of Rule 26(b)(1). Thereafter, the party opposing discovery has the burden  
23 of showing that the discovery should be prohibited, and the burden of clarifying, explaining or  
24 supporting its objections.” Bryant v. Ochoa, 2009 WL 1390794 at \* 1 (S.D. Cal. May 14, 2009)  
25 (citations omitted); see also Nugget v. Hydroelectric, L.P. v. Pac. Gas & Elec. Co., 981 F.2d 429,  
26 438-39 (9th Cir. 1992) (upholding denial of motion to compel because moving party did not show  
27 the request fell within the scope of Rule 26(b)(1)). The opposing party is “required to carry a

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1 heavy burden of showing why discovery was denied.” Blankenship v. Hearst Corp., 519 F.2d  
2 418, 429 (9th Cir. 1975).

3 B. Timeliness of Defendants’ Responses

4 Plaintiff argues that defendants’ responses to his discovery requests were untimely  
5 because the requests were served on December 27, 2018, making a response due by February 13,  
6 2019, but he did not receive the responses until February 19, 2019. ECF No. 34 at 2. Defendants  
7 assert that their responses were timely because they were served on February 11, 2019. ECF No.  
8 35 at 3.

9 Responses to discovery requests were due forty-five days after the date of service, ECF  
10 No. 27 at 4, ¶ 2, and defendants were entitled to an additional three days after the forty-five-day  
11 deadline expired because plaintiff’s requests were served by mail, Fed. R. Civ. P. 6(d).  
12 Accordingly, defendants had until February 14, 2019,<sup>1</sup> to serve their discovery responses on  
13 plaintiff. Contrary to plaintiff’s belief, the timeliness of the responses is based on the date they  
14 were served, not the date they were received by plaintiff. Since the responses were served on  
15 February 11, 2019, they were timely, even if they were not received by plaintiff until after the  
16 response deadline had passed.

17 C. Plaintiff’s Requests

18 Plaintiff challenges the sufficiency of responses to two of his requests for discovery.  
19 Though he did not identify whether the requests were intended as interrogatories or requests for  
20 production, the request for defendant Payne’s records appears to be a request for production,  
21 while the request to identify plaintiff’s enemy appears to be an interrogatory. ECF No. 35-2 at 2.

22 **Request No. 1:** I need CDCR record of C/O Albert Payne including  
23 all times he used force, while employed by CDCR.

24 **Response to Request No. 1:** Objection. This discovery request is  
25 overbroad, unduly burdensome and not proportional to the needs of  
the case, as responding to this request would require a hand search

26 <sup>1</sup> Rule 6(d) extends a deadline three days from “after the period would otherwise expire under  
27 Rule 6(a).” When a deadline expires on a Saturday, Sunday, legal holiday, or day when the  
28 Clerk’s Office is inaccessible, it is extended until the first accessible day that is not a Saturday,  
Sunday, or legal holiday. Fed. R. Civ. P. 6(a)(1)(C), (a)(3)(A). In this case, the forty-fifth day  
fell on a Sunday.

1 of each and every incident report in that timeframe. Further  
2 objection is made that this discovery requests seeks irrelevant  
3 information, and may seek information that is prohibited from  
4 discovery based on the right of privacy as guaranteed by the U.S.  
5 Constitution.

6 Defendants further object to this request on the round that it seeks  
7 Defendants' confidential and private information protected by  
8 federal common law and applicable California statutes, including  
9 Evidence Code section 1040, et. seq., including section 1043; Penal  
10 Code sections 832.7, 832.8; Government Code section 6254; and  
11 Civil Code sections 1798.24 and 1798.40, and California Code of  
12 Regulations Title 15, section 3400. Defendants object to this request  
13 on the ground that it seeks information, the disclosure or production  
14 of which could endanger the safety of staff of the CDCR or  
15 jeopardize the security of the institution, and is therefore deemed  
16 confidential under California Code of Regulations Title 15, section  
17 3321. Defendants further object to this request on the ground that it  
18 seeks information or an item Plaintiff cannot possess under Title 15,  
19 section 3450(d) of the California Code of Regulations.

20 Defendants also object to the extent this request seeks case records,  
21 files and unit health records of other inmates, which Plaintiff is  
22 expressly prohibited from viewing. *See* Cal. Code Regs. tit. 15, §  
23 3370(b). Any such documentation cannot be released to any agency  
24 or person outside the department, unless expressly provided for by  
25 applicable federal and state law. *Id.* at § 3370(e).

26 Subject to these objections, and without waiver, responding party  
27 answers as follows: Besides the claims of excessive use-of-force in  
28 the instant matter, Defendant Payne has no previous staff complaints  
for unnecessary or excessive use-of-force. Specific to other incidents  
involving Defendant Payne where force was applied in any manner,  
responding party has requested records and will supplement this  
response upon receipt of responsive records. As it pertains to this  
case, responding party produces use-of-force documents, identified  
as follows (Please note that the first names of CDCR staff have been  
redacted for security and safety purposes):

1. RVR dated May 5, 2015 (OLIC001-002) [Exhibit "A"]
2. Incident Reports dated May 5, 2015 (OLIC003-039) [Exhibit  
"B"]
3. Appeals documents for Log # HDSP-15-01478 (OLIC040-057)  
[Exhibit "C"]
4. Appeals documents for Log # MCSP-15-01554 (OLIC058-092)  
[Exhibit "D"]
5. Further Appeals documents for Log # MCSP-O-15-01554  
(OLIC093-138) [Exhibit "E"]
6. CDCR 602 Appeals documents regarding HDSP-O-15-01478  
(OLIC139-153) [Exhibit "F"]

1 7. Administrative Segregation Unit Placement Notice (OLIC154-  
2 157) [Exhibit “G”]

3 8. Notice of Pending CDC-115 (OLIC158) [Exhibit “H”]

4 9. Confidential Documents (OLIC159-167) [Exhibit “I”; *See*  
5 Attached Privilege Log]

6 10. Confidential Documents (OLIC168-187) [Exhibit “J”; *See*  
7 Attached Privilege Log]

8 **AMENDED DOCUMENTS BELOW INCLUDED WITH**  
9 **AMENDED RESPONSE**

10 11. Confidential Documents (OLIC188-203) [Exhibit “K”; *See*  
11 Attached Privilege Log]

12 12. Incident Reports for Log # HDSP-CSO-12-10-0444 (OLIC204-  
13 217) [Exhibit “L”]

14 13. Confidential Documents (OLIC218-238) [Exhibit “M”; *See*  
15 Attached Privilege Log]

16 14. Incident Reports for Log #COR-0CS-16-04-0240A1 (OLIC239-  
17 271) [Exhibit “N”]

18 ECF No. 35-4 at 2-4.

19 Plaintiff argues that defendants should be required to provide him with defendant Payne’s  
20 history of use of force regardless of whether a complaint was filed. ECF No. 34 at 2. He appears  
21 to believe that documentation exists, but was not provided to him, regarding additional incidents  
22 in which Payne used force. *Id.* at 2-3. Plaintiff does not appear to challenge the withholding of  
23 confidential documents beyond an apparent belief that they contain information on additional  
24 incidents. *Id.*

25 In response to this request, defendants stated that other than plaintiff’s staff complaint,  
26 there were no other staff complaints against Payne for using excessive force, and they have  
27 provided the documentation for the use of force incidents in which Payne was involved that were  
28 able to be identified, minus some confidential portions of the reports. They assert that beyond  
those records, determining whether any additional responsive records exist would require a hand-  
search of all incident reports during the requested time period.<sup>2</sup> To the extent plaintiff’s request

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<sup>2</sup> Plaintiff claims that as of 2015, Payne had been employed by the California Department of Corrections and Rehabilitation for approximately seventeen years. ECF No. 34 at 2.

1 would require a hand-search of over fifteen years of incident reports to attempt to find additional  
2 uses of force, defendants are correct that the request is both overbroad and unduly burdensome,  
3 particularly when it is unclear whether such an endeavor would reveal any further responsive  
4 documents. To the extent plaintiff seems to believe that the documents withheld as confidential  
5 relate to additional incidents involving Payne, it is clear from the privilege log that they are  
6 simply confidential portions of the reports already provided to plaintiff.<sup>3</sup> ECF No. 35-4 at 6-7.  
7 The motion will therefore be denied as to this request.

8 **Request No. 3:** Disclose identity of an inmate who claimed that I am  
9 his enemy and put him as a witness for trial.

10 **Response to Request No. 3:** Objection. This discovery request is  
11 vague and ambiguous as to “an inmate who claimed that I am his  
12 enemy.” Further objection is made that this responding party is not  
13 personally aware of Plaintiff’s enemies, and Plaintiff has not  
14 disclosed this information to responding party. Objection is also  
15 made that disclosing this information may cause safety and security  
16 concerns. Defendants also object to the extent this request seeks case  
17 records, files and unit health records of other inmates, which Plaintiff  
is expressly prohibited from viewing. *See* Cal. Code Regs., tit. 15, §  
3370(b). Any such documentation or information cannot be released  
to any agency or person outside the department, unless expressly  
provided for by applicable federal and state law. *Id.* at § 3370(e).  
Subject to these objections and without waiver, responding party  
answers as follows: Responding party is unaware of the “identity of  
an inmate who claimed that [Plaintiff is] his enemy.”

18 ECF No. 35-3 at 4-5.

19 Plaintiff argues that he requires the name of his known enemy because defendants claim  
20 his transfer to HDSP was based on enemy concerns. ECF No. 34 at 3. In light of his claim that  
21 his transfer was retaliatory, evidence regarding potential alternate reasons for the transfer are  
22 relevant. In response, defendants claim that they are unaware of the identity of an inmate  
23 claiming to be plaintiff’s enemy. However, attached to plaintiff’s complaint is a classification

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25 <sup>3</sup> Defendants’ privilege log and accompanying declarations sufficiently establish that the  
26 documents were appropriately withheld, ECF Nos. 35-4 at 6-16, and since plaintiff appears to  
27 challenge the withholding of these documents only to the extent he believes they contain  
28 additional reports of force, the court will not order their disclosure. The court further notes that  
with respect to one of the incidents disclosed, while Payne was involved, his involvement did not  
include the use of force. Rather, Payne was struck by an inmate and two other officers used force  
on the inmate in response. ECF No. 35-4 at 34-66.

1 committee chrono from plaintiff's March 26, 2015 committee meeting which was chaired by  
2 defendant Lizarraga. ECF No. 1 at 41-42. The chrono states that plaintiff "was previously  
3 endorsed to MCSP-IV(270/SNY), per Auditor Action dated 12-22-14, however he has an enemy  
4 on this facility and therefore requires transfer to an alternate institution." Id. at 42. It also states  
5 that plaintiff had previously raised safety concerns, but they were not able to be substantiated  
6 because plaintiff "was not able to identify the names of his enemy/safety concerns." Id. at 41.

7 Accordingly, defendants will be required to clarify, based upon either their personal  
8 knowledge or review of pertinent records, whether plaintiff's prison records included any known  
9 enemies at Mule Creek State Prison (MCSP) at the time of his transfer to HDSP or whether the  
10 reference to an enemy at the prison was based on plaintiff's representations that he had enemy  
11 concerns. If plaintiff's records included a known enemy at MCSP, defendants must also state, if  
12 known, whether that inmate was listed as an enemy because of that inmate's own statements or  
13 actions toward plaintiff.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion to compel, ECF No. 34, is granted in part.
- 16 2. Within twenty-one days, defendants shall serve a supplemental response to Request  
17 No. 3 as outlined above and simultaneously file a notice of service of the response.
- 18 3. The motion is denied in all other respects.
- 19 4. Plaintiff may file a motion for sanctions within twenty-one days of the service of  
20 defendants' supplemental response if defendants fail to respond to the discovery request as  
21 ordered.

22 DATED: April 2, 2020

23   
24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
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