

1 further discovery will be granted in part and denied in part, and plaintiff's motion for sanctions
2 will be denied.²

3 Defense counsel has filed an opposition to each motion, see ECF Nos. 34, 35, and
4 provided a copy of defendant's responses to plaintiff's production requests, ECF No. 34, Ex. A.
5 The undersigned's review of the latter demonstrates that counsel reasonably construes the motion
6 to compel as an effort to obtain documents and a videotape responsive to plaintiff's Request for
7 Production Nos. One and Four. ECF No. 34, Ex. A.³ (In response to plaintiff's Request for
8 Production Nos. Two and Three, defendant produced documents as well as a privilege log
9 identifying responsive but confidential documents.) Defense counsel continues to maintain that
10 there exist no responsive documents. ECF No. 34-1 at 2 (Shryock Decl. ¶ 6). Counsel also
11 emphasizes that plaintiff made no attempt to inform counsel that defendant's responses were
12 deficient before filing either motion, i.e., plaintiff declined defense counsel's invitation to discuss
13 "any other issues" following his deposition on July 10, 2018, and failed to satisfy the "safe

14 ² Plaintiff has also filed a motion for summary judgment. See ECF No. 28. Defendant has filed
15 an opposition, ECF No. 36, and a statement that he does not intend to file his own motion for
16 summary judgment, ECF No. 37. The merits of the pending motion for summary judgment will
be addressed by the court in due course.

17 ³ Plaintiff's Request for Production No. One seeks:

18 Any and all grievances, complaints, or other documents received by
19 prison staff defendant D. Murphy at High Desert concerning the
20 mistreatment of inmates by defendant and any memoranda,
investigative files, or other documents created in response to such
complaints since January 1, 2016 to August 18, 2016.

21 Defendant responded, after asserting numerous objections to the request, that "After a diligent
search and reasonable inquiry, no responsive documents were located."

22 Plaintiff's Request for Production No. Four seeks:

23 I'm requesting on August 18, 2016 the Footage camera interview that
24 I had with Lieutenant M. Williams to the use of force package and
the use of force package and the footage of the morning [sic] in BLD
5 on August 18 2016 from the security cameras.

25 Defendant responded: "Defendant is concurrently sending a copy of the videotaped interview of
26 Plaintiff that was conducted on August 18, 2016 by Lt. M. Williams to the Litigation Coordinator
at Richard J. Donovan (RJD) Correctional Facility. . . . After a diligent search and reasonable
27 inquiry, no other responsive video footage was located. Defense counsel further avers in
opposition that "[i]n drafting responses to Plaintiff's requests, my office confirmed that there
28 were no operable surveillance cameras in the building where the incident occurred on the date in
question." ECF No. 34-1 at 2 (Shryock Decl. ¶ 5).

1 harbor” provision required under Rule 11, Federal Rules of Civil Procedure, by first notifying
2 defendant of his intent to seek sanctions. Finally, in response to plaintiff’s motion for sanctions,
3 counsel accurately notes that the motion is inadequate because it “lacks any facts that might
4 inform defense counsel what they are accused of doing or why it would warrant sanctions. . . .
5 [Plaintiff does not] explain what documents were falsified, what facts were misrepresented, what
6 sworn statements were perjurious, or what public statements were slanderous.” ECF No. 35 at 1-
7 2.

8 Significantly, plaintiff did not file a reply to defendant’s opposing briefs, and the time for
9 doing so has passed.

10 A party’s statement that, after a reasonable and diligent search, there exist no responsive
11 documents to a production request is an acceptable reply. Here, however, the challenged
12 responses were provided by defense counsel alone, “according to Defendant’s best knowledge at
13 this time.” ECF No. 34-2 at 2. So that both parties can rely on the subject responses, the court
14 will direct defense counsel to serve plaintiff with a verification – signed under oath by both
15 defendant and defense counsel – that a reasonable and diligent search has been conducted to
16 locate all requested documents, videotapes and other materials responsive to Plaintiff’s Request
17 for Production Nos. One and Four, and that there exist no responsive materials.⁴ In all other
18 respects, plaintiff’s motion to compel will be denied for failure to demonstrate any inadequacy in
19 the subject discovery responses.

20 Plaintiff’s motion for sanctions will be denied for failure to demonstrate any inadequacy
21 in the conduct of defendant or his counsel.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s motion to compel discovery, ECF No. 33, is granted in part.

24 2. Within fourteen (14) days after the filing date of this order, defendant and his counsel
25 shall serve plaintiff with a verification signed under penalty of perjury by both defendant and his
26 counsel, that a reasonable and diligent search has been conducted to locate all documents,

27 ⁴ It should go without saying that if defendant locates any responsive materials, they must be
28 identified and produced, and also verified under penalty of perjury.

1 videotapes and other materials responsive to Plaintiff's Request for Production Nos. One and
2 Four, but there exist no responsive materials.

3 3. Plaintiff's motion for sanctions, ECF No. 32, is denied.

4 IT IS SO ORDERED.

5 DATED: August 21, 2018

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7 ALLISON CLAIRE
8 UNITED STATES MAGISTRATE JUDGE
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