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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN McCLINTOCK,
Plaintiff,
v.
T. COOPER, et al.,
Defendants.

No. 2: 18-cv-0560 JAM KJN P

ORDER

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion to compel filed March 6, 2020. (ECF No. 38.) Plaintiff argues that defendants should be required to provide additional documents in response to his first request for production of documents.

For the reasons stated herein, plaintiff’s motion to compel is denied except for request number 32.

II. Plaintiff’s Claims

To put the motion to compel in context, the undersigned herein sets forth the claims on which this action proceeds.

This action proceeds on the second amended complaint as to the following claims of retaliation against defendants Allen, Armenta, J. Cantu, L. Cantu, Cooper, Walker, Wheeler and

1 Winkler.

2 *Alleged Retaliation by Defendants Cooper, Armenta, Winkler, Wheeler, J. Cantu, L.*
3 *Cantu—Claim Two in Second Amended Complaint*

4 Plaintiff alleges that on April 17, 2017, he filed a grievance against defendants Cooper,
5 Armenta, Winkler, Wheeler, J. Cantu and L. Cantu. Plaintiff alleges that these defendants
6 immediately retaliated against plaintiff for filing the grievance by conducting excessive cell
7 searches of plaintiff's cell. Plaintiff alleges that defendant Cooper directed his "cabal" to search
8 plaintiff's cell two weeks after it had been searched "uneventfully." Plaintiff alleges that during
9 the search, the "cabal" broke cables by pulling them out of plaintiff's television and scattered his
10 legal property.

11 *Alleged Retaliation by Defendants Walker and Cooper—Claim Three in Second Amended*
12 *Complaint*

13 Plaintiff alleges that he filed a grievance against defendant Walker. Plaintiff alleges that
14 he put the grievance in the secured grievance box. Plaintiff alleges that defendant Allen collected
15 the grievance but failed to respond to it. Plaintiff alleges that his family sent a copy of the
16 grievance to the Sacramento Office. The Sacramento Office referred the grievance to defendant
17 Allen, who denied receiving it. Defendant Allen referred the grievance to defendant Cooper.

18 Defendant Cooper interviewed defendant Walker. Plaintiff alleges that immediately
19 following that interview, defendant Walker was given the "green light" to do as he pleased to
20 with plaintiff's personal property. Plaintiff alleges that the words "green light" were defendant
21 Walker's words, and not plaintiff's words. Plaintiff alleges that defendant Walker stomped on
22 plaintiff's hot pot and scattered plaintiff's legal documents everywhere throughout his cell.
23 Plaintiff alleges that defendant Walker intimidated plaintiff every day by either destroying
24 plaintiff's mail or keeping it in the guard's office drawer.

25 *Alleged Retaliation by Defendants Walker, Cooper and Allen—Claim Four in Second*
26 *Amended Complaint*

27 Plaintiff alleges further retaliation by defendants against plaintiff for filing the grievance
28 against defendant Walker discussed in claim three.

1 Plaintiff alleges that Correctional Officer Colosimo sent an EOP inmate, not yet cleared
2 by mental health, to plaintiff's housing unit. Plaintiff alleges that defendant Walker and
3 Correctional Officer Liem placed this unstable inmate in plaintiff's cell. Plaintiff alleges that he
4 repeatedly informed defendant Walker and Correctional Officer Liem about the inmate's unstable
5 behaviors, which included the inmate banging his head repeatedly on the cement wall, drinking
6 his own urine, etc. Plaintiff alleges that Correctional Officer Liem documented plaintiff's
7 concerns and notified defendant Cooper. However, nothing was done to help the mentally ill
8 inmate or address plaintiff's safety concerns. Plaintiff alleges that defendant Walker told him,
9 "next time be careful who you file a complaint against."

10 Plaintiff alleges that when he went back to defendant Walker's supervisors, i.e.,
11 defendants Cooper and Allen, they "shot it back" to defendant Walker, who did nothing. Plaintiff
12 went to the mental health department and spoke with the EOP psychiatrist, who told plaintiff that
13 they were unaware that the mentally ill inmate had been removed. They told plaintiff that the
14 mentally ill inmate had not been cleared from the EOP program. After plaintiff spoke to the EOP
15 psychiatrist, the mentally ill inmate was removed from plaintiff's cell. However, "the same above
16 defendants" moved another problem EOP inmate into plaintiff's cell. This mentally ill inmate
17 had also not been removed from the EOP program.

18 *Alleged Retaliation by Defendants Armenta and Cooper—Claim Five in Second Amended*
19 *Complaint*

20 Plaintiff alleges that on February 8, 2018, plaintiff followed the directives of Correctional
21 Officer Christiansen and Correctional Counselor Dixon to report "right away" to the correctional
22 counselor's office. When plaintiff arrived at the office, defendant Armenta proceeded to
23 "castigate plaintiff with profanity and unprofessionalisms." Plaintiff attempted to address
24 defendant Armenta's behavior with his supervisor, defendant Cooper. However, defendant
25 Cooper refused to address plaintiff's concerns.

26 Four hours later, defendants Armenta and Cooper falsely charged plaintiff with being "out
27 of bounds." Plaintiff alleges that defendants filed the false disciplinary charges because plaintiff
28 submitted a Form 22 regarding defendant Armenta's "caustic behavior toward plaintiff."

1 III. Motion to Compel

2 A. Legal Standard

3 The scope of discovery under Federal Rule of Civil Procedure 26(b)(1) is broad.
4 Discovery may be obtained as to “any nonprivileged matter that is relevant to any party’s claim or
5 defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “Information within
6 this scope of discovery need not be admissible in evidence to be discoverable.” *Id.* The court,
7 however, may limit discovery if it is “unreasonably cumulative or duplicative, or can be obtained
8 from some other source that is more convenient, less burdensome, or less expensive;” or if the
9 party who seeks discovery “has had ample opportunity to obtain the information by discovery;”
10 or if “the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P.
11 26(b)(2)(C).

12 “The party seeking to compel discovery has the burden of establishing that its request
13 satisfies the relevancy requirements of Rule 26(b)(1).” *Bryant v. Ochoa*, 2009 WL 1390794 at *1
14 (S.D. Cal. May 14, 2009) (citations omitted). “Thereafter, the party opposing discovery has the
15 burden of showing that the discovery should be prohibited, and the burden of clarifying,
16 explaining or supporting its objections.” *Id.* The opposing party “has the burden to show that
17 discovery should not be allowed...” *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal.
18 2002).

19 In responding to discovery requests, defendants must produce documents or other tangible
20 things which are in their “possession, custody or control.” Fed. R. Civ. P. 34(a). Responses must
21 either state that inspection and related activities will be permitted as requested, or state an
22 objection, including the reasons. Fed. R. Civ. P. 34(b)(2)(B).

23 B. Discussion

24 *Request No. 1*

25 Request no. 1 sought,

26 All documents that refer to allegations of misconduct or other
27 improper conduct by prison staff involving the defendants: T.
28 Cooper, Armenta, J. Cantu, L. Cantu, B. Walker, Wheeler, Winkler,
 and/or Allen. Whether such allegations were made by an inmate or
 by a member of the prison staff. Per Dom. 54100.25-5, 54100.25-6,

1 24100.25-7, pursuant to P.C. 832.5(a) Evidence Codes 1043, 1045,
2 1046. Subject to limitations of this request for production of
3 documents. Plaintiff requests that they may be reasonably narrowed
4 to include only those grievances, complaints, etc. filed against any of
the defendants that involve claims similar to those raised by plaintiff
in the instant action—reprisal for initiating or attempting to initiate
his/her First Amendment rights of free speech.

5 (ECF No. 50-1 at 20-21.)

6 Defendants objected to request no. 1:

7 Objection. This request is vague and overbroad as to the timeframe
8 of the documents requested. This request is unduly burdensome,
9 oppressive, and harassing because it encompasses every document
10 ever prepared that refers to any staff complaint filed against one of
11 the defendants. The vast majority of these documents are not
12 relevant to any claims or defenses in this case. This request calls for
13 the production of documents which are protected from disclosure by
14 California Code of Regulations, Title 15, §§ 3321 and 3370, and the
15 official-information privilege. This request is unduly burdensome,
oppressive, and harassing because staff complaints against a single
officer are not kept in a centralized location, but rather in the central
files of each inmate who files that complaint, and locating all such
documents would necessitate searching the central file of every
current and former inmate who has ever been housed in an institution
where one of the defendants is available. Defendants therefore
decline to produce any documents in response to this request.

16 (Id. at 21.)

17 In the motion to compel, plaintiff alleges that in request no. 1 he seeks only documents
18 from January 2010 to December 2019 that reference claims that defendants engaged in retaliation
19 in response to the exercise of First Amendment rights. (ECF No. 38 at 13.) Plaintiff also claims
20 that there is no need to look in all inmate files because that would be overburdensome. (Id.)

21 In the opposition defendants argue, in part, that producing every staff complaint that ever
22 alleged defendants committed retaliation would require searching the central files of every current
23 and former inmate who was ever housed in an institution where defendants were employed. In
24 support of this claim, defendants cite the declaration of MCSP Correctional Counselor Santos
25 submitted to plaintiff in response to the request for production of documents in support of the
26 privilege log. In relevant part, Correctional Counselor Santos states that staff complaints filed by
27 inmates against correctional staff members are not kept in a centralized location but are located in
28 the central files of each inmate who files the complaint. (ECF No. 50-1 at 83.) Correctional

1 Counselor Santos states that locating all staff complaints filed against defendants would
2 necessitate searching the central file of every current and former inmate who has ever been
3 housed in an institution where defendants were employed. (Id.)

4 Based on the declaration of Correctional Counselor Santos, the undersigned finds that
5 request no. 1 is overly burdensome to the extent it seeks staff complaints against defendants
6 alleging retaliation for exercising First Amendment rights from January 2010 to December 2019.
7 To the extent request no. 1 seeks other documents alleging retaliation by defendants, the
8 undersigned finds that request no. 1 is vague and overbroad.

9 Because the undersigned finds that request no. 1 is overly burdensome, vague and
10 overbroad, he does not consider whether the documents sought are protected by the official
11 information privilege.

12 For the reasons discussed above, plaintiff's motion to compel as to request no. 1 is denied.

13 *Request No. 2*

14 Request no. 2 sought,

15 All documents that refer or relate to CDCR policies and procedures
16 on calculated cell searches, use of power/authority/force plans,
17 authored by CDCR pursuant to E.V. 1530, 1532 including, but not
18 limited to, policy training handbook pursuant to DOM § 54060.

18 (Id. at 21.)

19 Defendants objected to request no. 2:

20 Objection. This request is vague and overbroad as to the timeframe
21 of the documents requested. This request is vague and ambiguous as
22 to the term "use of power/authority/force plans." This request is
23 unduly burdensome, oppressive, and harassing because it
24 encompasses every document that has ever cited to a CDCR policy
25 or procedure related to correctional staff's authority to conduct cell
26 searches. The vast majority of these documents fall outside the
27 timeframe of the events at issue in this case and are not relevant to
28 any claims or defenses in this case. This request calls for the
production of documents which are protected from disclosure by
California Code of Regulations, Title 15, § 3321 and 3370, and the
official-information privilege. Without waiving objections, and after
a reasonable search and diligent inquiry, defendants produce all
responsive documents in defendants' possession, custody or control.
(Bates nos. DEF001 to DEF007, DEF009 to DEF039.)

28 (Id. at 22.)

1 In the motion to compel, plaintiff states that he is satisfied with the sections of Title 15
2 and Department Operations Manual (“DOM”) provided by defendants in response to request no.
3 2. (ECF No. 38 at 14.) Plaintiff argues that defendants failed to produce DOM § 54060, which
4 he requested in request no. 2. (Id.) Plaintiff describes DOM § 54060 as a policy training
5 handbook. (Id.)

6 In the opposition, defendants correctly observe that DOM § 54060 governs the
7 distribution and use of inmate clothing and does not appear to be relevant to any claims or
8 defenses in this case. Accordingly, the undersigned finds that no further response to request no. 2
9 is required. Accordingly, the motion to compel as to request no. 2 is denied.

10 *Request Nos. 3-27*

11 Request nos. 3-27 sought the production of various disciplinary records for each defendant
12 and investigative records related to any disciplinary action taken against each defendant:

13 Request no. 3: All adverse action records, which is punitive in nature
14 and is intended to correct staff misconduct or poor performance, or
15 which terminates employment, of each defendant named herein.
Pursuant to EV. § 1043, 1044, 1046.

16 Request no. 4: All Bureau of Independent Review (BIR) records of
17 any or all investigative and/or disciplinary action taken against each
defendant named herein. Pursuant to E.V. § 104.6.

18 Request no. 5: All “Skelly Packages.” This material may include,
19 but is not limited to, the following: investigative reports, applicable
20 policies, procedures and government code sections, records of
21 training the employee/defendant has attended, job description and
22 duty statements and/or post orders for each defendant named herein.
23 Pursuant to EV § 1043, § 1045, § 1046. Plaintiff recognizes that
“Skelly Packages” are informal processes to test whether
employees’/defendants’ intended actions are adequately supported.
They are to serve only as an initial check against mistaken
decisions—in order to determine whether there are reasonable
grounds to support inquiry. [Skelly v. State Personnel Board, 539
P.2d 744 (1975)].

24 Request no. 6: All “Corrective Action(s)” records for each defendant
25 named herein; this material may include, but is not limited to, the
26 following: verbal counseling, inservice training, “on the job”
27 training, written counseling or Letter of Instruction (LOI) taken by a
supervisor to assist an employee in improving his/her work
28 performance behavior or conduct pursuant to E.V. § 1043, § 1045, §
1046.

Request no. 7: “Designated Case(s)” records assigned to vertical

1 advocate (VA) for each defendant named herein; this material may
2 include, but is not limited to the following matters involving staff
3 integrity and/or dishonest, abuse of authority, sexual misconduct, use
4 of force in which an inmate suffers death or injury, use of deadly
5 force, serious allegations made against supervisors and high profile
6 or dismissal cases assigned to the VA by the AGC. Pursuant to EV
7 § 1043, 1045, 1046.

8 Request no. 8: All “employee counseling records” for each
9 defendant named herein; this material may include, but is not limited
10 to: written record(s) of counseling, documented on a CDCR form
11 1123, between a supervisor and subordinate which provides formal
12 instructions about laws, rules, policies, and employer expectations.
13 Pursuant to EV § 1043, 1045, 1046.

14 Request no. 9: All “Executive Review” records regarding the
15 investigation findings, proposed disciplinary penalty of settlement
16 agreement, for each defendant named herein. Pursuant to EV § 1043,
17 1045, 1046.

18 Request no. 10: All “notice(s) of adverse action” for each defendant
19 named herein; the material may include, but not limited to the
20 following; a notification to the affected employee of the charges
21 against him/her, the adverse action penalty, and the effective date.
22 Pursuant to EV § 1043, 1045, 1046.

23 Request No. 11: All “office of internal affairs” (OIA) files for each
24 defendant named herein; including but not limited to, investigative
25 reports on allegations of employee misconduct. Pursuant to EV §
26 1043, 1045, 1046.

27 Request no. 12: All “preliminary notices of adverse action” for each
28 defendant named herein; this material may include, but is not limited
to: notification required of some hiring authorities in accordance
with the settlement agreement(s), to an affected employee regarding
charges against him/her and the intent to impose adverse action. This
notification summarizes the specific subsections of the Government
Code that have been violated as well as the actions that constituted
the violation. Pursuant to EV § 1043, 1045, 1046.

Request no. 13: All “Skelly Hearing” result(s) records for each
defendant named herein; this material may include, but is not limited
to: the hiring authorities final decision(s) regarding the imposition
of a disciplinary penalty. Pursuant to EV § 1043, 1045, 1046.

Request no. 14: All “Skelly Letters” for each defendant named
herein; this material may include, but is not limited to: the hiring
authorities final decision regarding the imposition of a disciplinary
penalty. Pursuant to EV § 1043, 1045, 1046.

Request no. 15: All “employee relations officer” (ERO)—
disciplinary officers’ summary(s) (ERO) adverse action(s) records
for each defendant named herein; this material may include, but is
not limited to: a summary compiled by ERO/disciplinary officer of
allegations of misconduct, from evidence contained in an

1 investigative report or other documents. Pursuant to EV § 1043,
2 1045, 1046.

3 Request No. 16: All “hiring authority’s investigative and
4 disciplinary” records for each defendant named herein; this material
5 may include, but is not limited to: CDCR Forms 989 to OIA
6 including those cases in which direct adverse action is taken without
7 an investigation, CDCR Form(s) 402 completed, CDCR Form(s) 403
8 employee disciplinary matrix, pursuant to § 1043, 1045, 1046.

9 Request no. 17: All “employee’s supervisory files” for each
10 defendant named herein. This may include, but is not limited to:
11 filing documents related to corrective action, performance, behavior,
12 and conduct of subordinate staff, imposition of corrective action,
13 corrective action for similar misconduct occurring within one year
14 prior to imposition of corrective or adverse action alleged
15 misconduct, request for investigations or adverse action to the hiring
16 authority. Pursuant to EV § 1043, 1045, 1046.

17 Request no. 18: All “vertical advocate” (VA) investigative
18 interviews, notice of adverse action drafts, accurate records of
19 assignments and documenting in the legal database all
20 communications with the hiring authority and senior inspector
21 general (SAIG) regarding disciplinary penalties: the “Skelly
22 Hearings,” the “Skelly Officers’s” recommendations, the outcome of
23 executive review, settlement agreements, SPB hearings, and any
24 appellate proceedings, documentations in the legal page of CMS all
25 communications re: investigative reports and investigative findings,
26 for each defendant named herein. Pursuant to EV § 1043, 1045,
27 1046.

28 Request no. 19: All “Office of Personnel Services, Human
Resources” documents, reports that refer or relate to allegations of
misconduct or any other improper conduct, for each defendant
named herein; this material may include, but is not limited to:
processing of adverse actions, filing and retaining final notices of
adverse action in employee office personal files for five years.
Pursuant to EV § 1043, 1045, 1046.

Request no. 20: All “Office of Personnel Services, Employee
Discipline Unit” documentation/reports that refer to or relate to
allegations of misconduct or any other improper misconduct for each
defendant named herein; this material may contain, but is not limited
to: collecting and maintaining the official department copies of all
adverse action documents separate and apart from those held in the
official personnel files, statistical information and generating reports
on adverse actions using Case Management System (CMS).
Pursuant to EV § 1043, 1045, 1046.

Request no. 21: All memorandums, forms “Orders for Form an IST”
and/or documentations of OJT for each defendant named herein.
Pursuant to EV § 1043, 1045, 1046.

Request no. 22: All “central intake” documents/investigative reports
that refer or relate to allegations of misconduct or any other improper

1 conduct for each defendant named herein. This may include, but is
2 not limited to: case assignments and case assignment numbers in the
3 case management system (CMS) and the Prolaw Database (legal data
4 base), updates of CMS legal page, cross-references (and their
5 numbers), the ERO/disciplinary officers record(s) of the findings in
6 the CMS data base, copies of CDCR form 402, vertical advocate
7 (VA) of all related communications in the legal page of the CMS—
8 including recommendations regarding the investigative findings. In
9 pursuant to EV § 1043, 1045, 1046.

10 Request no. 23: All “adverse action penalties” documents that refer
11 or relate to allegations of misconduct or other improper conduct for
12 each defendant named herein. Pursuant to EV § 1043, 1045, 1046.

13 Request no. 24: All “summary of adverse action” for non-designated
14 cases by the E.R.O./disciplinary officer for each defendant named
15 herein; this material may include but is not limited to the following:
16 work history, location and dates of assignments, prior adverse actions
17 with causes and dates listed, chronological summary of
18 investigations, dates, times and names of supervisors conducting the
19 corrective interviews, copies of corrective memorandums, incident
20 reports, summary statements of witnesses, transcripts, vouchers,
21 receipts, performance reports, photographs, and CDCR 602 form
22 (inmate parole appeal form). Pursuant to EV § 1043, 1045 1046.

23 Request no. 25: All “A.T.O. Notices” that refer or relate to
24 allegations of misconduct or any other improper conduct, for each
25 defendant named herein. Pursuant to EV § 1043, 1045, 1046.

26 Request No. 26: All “EAPT Reports” (Employment Advocacy and
27 Prosecution Team) for Mule Creek State Prison/Mule Creek Infill
28 Complex; this material may include, but is not limited to, the
following: number of adverse actions by types of discipline, number
of direct adverse actions without any investigation, number of
adverse actions with an investigation by type, number of adverse
actions where the discipline was sustained by the Skelly Officer,
number of actions where the Skelly Officer recommended
modification of the discipline, the number that the hiring authority
accepted the recommendations, number that...

Request no. 27: All “disciplinary audits” prepared by the “Office of
Legal Affairs, in conjunction with the OIA,” for Mule Creek State
Prison/Mule Creek Infill Complex, this material may include, but is
not limited to, the following: the assessments, adequacy, and
monitoring of the statute of limitations, the assessments of training
needs, evaluations of the effectiveness of each vertical advocate, the
appropriateness and thoroughness of the investigation, report,
penalty, notice of adverse action and settlement, and the policy issues
involved and/or at stake. Pursuant to EV § 1043, 1043, 1046.

(ECF No. 50-1 at 22-35.)

Defendants objected to request no. 21 as overly broad, vague and ambiguous as to the
terms “IST” and “OJT,” vague as to the timeframe of the documents requested and failing to

1 identify the documents sought with particularity. (Id. at 32.) Based on these objections,
2 defendants stated that they could not reasonably respond to this request. (Id.) Plaintiff's motion
3 to compel does not clarify the terms "IST" and "OJT." (ECF No. 38 at 26.)

4 The undersigned finds that defendants' objections to request no. 21 have merit.
5 Accordingly, the motion to compel as to request no. 21 is denied.

6 Defendants objected that the documents sought in request no. 4, 11, 16 and 27 were not
7 within the defendants' possession, custody or control, but were in the possession, custody and
8 control of a third-party government agency. (ECF No. 50-1 at 22-23, 26, 29, 35.) The
9 undersigned cannot order defendants to produce documents that are not within their possession,
10 custody or control. For this reason, the motion to compel as to request nos. 4, 11, 16 and 27 is
11 denied.

12 Defendants objected to request nos. 3-20 and 22-27 as vague and overbroad to the
13 timeframe of the documents requested. (Id. at 22-35.) Without waiving objections, defendants
14 responded that after a reasonable search and diligent inquiry, none of the defendants have been
15 investigated or disciplined for any of the allegations or claims in this lawsuit, or for matters
16 similar to the allegations in this lawsuit. (Id.; see also id. at 83 (Santos declaration).) Defendants
17 also objected that the documents requested were protected from disclosure by the official
18 information privilege. (Id. at 22-35.)

19 In the motion to compel, plaintiff alleges that in request nos. 3-27, he is seeking
20 documents containing information regarding actions taken by defendants in retaliation for inmates
21 exercising their First Amendment rights from January 2010 to December 2019. (ECF No. 38 at
22 15-30.) However, even if limited to this time frame and subject matter, defendants represent that
23 no defendant has been investigated or disciplined for any of the allegations or claims in this
24 lawsuit, or for matters similar to the allegations in this lawsuit. Accordingly, the undersigned
25 finds that the documents plaintiff seeks in these requests do not exist. To the extent plaintiff
26 seeks defendants' disciplinary records regarding matters unrelated to this action, the undersigned
27 finds that these disciplinary records are not relevant. Accordingly, no further responses to request
28 nos. 3-20 and 22-27 are required. The motion to compel as to these requests is denied on these

1 grounds.

2 The undersigned need not determine whether request nos. 3-27 are protected by the
3 official information privilege because defendants' other objections to these requests have merit.

4 *Request no. 28*

5 Request no. 28 sought,

6 All documents, electronic data, from the "Management Information
7 System" for each defendant named herein. Pursuant to EV § 1043,
1045, 1046.

8 (ECF No. 50-1 at 35.)

9 Defendants objected to request no. 28:

10 Objection. This request is overly broad, vague and ambiguous as to
11 the term "Management Information System," vague as to the
12 timeframe of the documents requested, fails to identify the
13 documents sought with particularity, and is unintelligible. Based on
these objections, and without further clarification on what documents
are being sought, defendants cannot reasonably respond to this
request.

14 (Id. at 35-36.)

15 In the motion to compel, plaintiff alleges that he is seeking documents from the
16 Management Information System from January 2010 to December 2019. (ECF No. 38 at 30.)
17 Plaintiff also alleges that he seeks documents relating to allegations of "misconduct" by
18 defendants, apparently related to their alleged retaliation against inmates for exercising their First
19 Amendment rights. (Id.)

20 As observed by defendants in the opposition, plaintiff does not explain what
21 "Management Information System" he references in this request. Plaintiff also fails to clarify the
22 documents he seeks in this request. Defendants also state that had request no. 28 clearly
23 demanded production of disciplinary records, as plaintiff's motion suggests, defendants would
24 have provided plaintiff with the same response they gave to requests nos. 3-27, i.e., no such
25 documents exist because defendants have not been investigated or disciplined for any of the
26 allegations or claims in this lawsuit, or for any matters similar to the allegations or claims in this
27 lawsuit.

28 ///

1 Defendants' objections that request no. 28 is overly broad, vague and ambiguous have
2 merit. Moreover, the documents plaintiff seeks in request no. 28, as clarified in the motion to
3 compel, do not exist. Accordingly, plaintiff's motion to compel as to request no. 28 is denied.

4 *Request no. 29*

5 Request no. 29 sought,

6 All documents for each defendant, named herein, post orders and
7 other responsibilities for each job title and position she/he has held
8 while employed by the California Department of Corrections and
9 Rehabilitation—including, but not limited to, Mule Creek State
10 Prison/Mule Creek Infill Complex. Pursuant to EV § 1043, 1045,
11 1046.

12 (ECF No. 50-1 at 36.)

13 Defendants objected to request no. 29:

14 Objection. This request is overly broad, vague as to the timeframe
15 of the documents requested, fails to identify the documents sought
16 with particularity, and is unintelligible. Based on these objections,
17 and without further clarification on what documents are being
18 sought, defendants cannot reasonably respond to this request.

19 (Id.)

20 In the motion to compel, plaintiff alleges that in request no. 29 he seeks documents from
21 January 2010 to December 2019. (ECF No. 38 at 31.)

22 The information plaintiff seeks in request no. 29 is not entirely clear. In this request,
23 plaintiff seeks all documents regarding defendants' post orders and job titles held during their
24 employment by the CDCR. Plaintiff does not describe these documents. Clearly, not every
25 document discussing defendants' post orders during their employment during CDCR is relevant
26 to this action. Accordingly, the motion to compel as to request no. 29 is denied on the grounds
27 that this request is vague and overbroad.

28 *Request No. 30*

Request no. 30 sought,

All documents entailing all policy statements concerning
"management cells status" and "cell searches." Pursuant to EV §
1043, 1045, 1046.

(ECF No. 50-1 at 36.)

1 Defendants responded to request no. 30 as follows:

2 Objection. This request is vague and overbroad as to the timeframe
3 of the documents requested. This request is vague and ambiguous as
4 to the term “policy statements.” This request is unduly burdensome,
5 oppressive, and harassing because it encompasses every document
6 that has ever cited a CDCR policy or procedure related to cell
7 searches. The vast majority of these documents fall outside the
8 timeframe of the events at issue in this case and are not relevant to
9 any claim or defenses in this case. This request calls for the
10 production of documents which are protected from disclosure by
11 California Code of Regulations, Title 15, §§ 3321 and 3370, and the
12 official-information privilege. Without waiving these objections,
13 and after a reasonable search and diligent inquiry, defendants
14 produce all responsive documents in defendants’ possession, custody
15 or control. (Bates Nos. DEF001 to DEF007, DEF009 to DEF027.)

16 (Id.)

17 In the motion to compel, plaintiff alleges that in request no. 30, he seeks records in
18 logbooks of cell searches on himself from January 2010 to December 2019. (ECF No. 38 at 31.)

19 Defendants’ objections to request no. 30, as phrased, have merit. Request no. 30 cannot
20 be reasonably interpreted to be seeking records in logbooks of cell searches on plaintiff from
21 January 2010 to December 2019. Accordingly, the motion to compel as to request no. 30 is
22 denied.

23 *Request no. 31*

24 Request no. 31 sought,

25 All documents entailing all policy statements, data, and/or guidelines
26 concerning the length of maximum time a correctional peace officer
27 can be assigned to walk the same unit, position and/or post
28 consecutively. This material may include, but is not limited to the
following: CDCR statement policy, MCSP/MCIC Statement Policy.
Pursuant to EV § 1043, 1045, 1046.

(ECF No. 50-1 at 36-37.)

In the motion to compel, plaintiff alleges that the documents sought in request no. 31 are
relevant because they concern the amount of influence defendants had in his housing unit. (ECF
No. 38 at 32.)

The undersigned observes that defendants’ response to request no. 31 is identical to the
response to request no. 30. (ECF No. 50-1 at 37.) In other words, defendants also responded

1 that, the request was unduly burdensome, oppressive, and harassing because it encompasses every
2 document that has ever cited a CDCR policy or procedure related to cell searches. (Id.) Request
3 no. 31 does not seek documents related to cell searches.

4 Nevertheless, the undersigned finds that request no. 31 is vague and overbroad as to time
5 frame. Not every “CDCR” document ever created that mentions the amount of time a
6 correctional officer can be assigned to walk the same unit or post consecutively is relevant to this
7 action. For these reasons, the motion to compel as to request no. 31 is denied.

8 *Request no. 32*

9 Request no. 32 sought,

10 All documents entailing all “job descriptions” for IDP chairperson
11 board members, facility captain, facility lieutenant, facility sergeant,
12 “peace officer,” warden, associate wardens, “watch commander.”
13 Each defendant in this case in bar surely has access to, and are
14 producible, the job description applicable to their individual
15 positions since working in the CDCR.

14 (Id. at 37.)

15 Defendants objected to request no. 32 as follows:

16 Objection. This request is vague and overbroad as to the timeframe
17 of the documents requested. This request is vague and ambiguous as
18 to the term “job descriptions.” This request is unduly burdensome,
19 oppressive, and harassing because it encompasses every document
20 that has ever described the job positions for the correctional staff
21 positions listed in this request. The vast majority of these documents
22 fall outside the timeframe of the events at issue in this case and are
23 not relevant to any claims or defenses in this case. Based on these
24 objections, and without further clarification on what documents are
25 being sought, defendants cannot reasonably respond to this request.

22 (Id. at 37.)

23 Without further explanation, the undersigned does not find the term “job description” to
24 be vague and ambiguous. Plaintiff appears to seek the job descriptions for IDP chairperson board
25 members, facility captain, facility lieutenant, facility sergeant, “peace officer,” warden, associate
26 wardens, “watch commander.”

27 No defendant is described as an IDP chairperson board member, facility captain, warden,
28 associate warden or watch commander. Plaintiff does not explain how the job descriptions for

1 these positions are relevant to this action. Accordingly, the motion to compel as to request no. 32
2 is denied to the extent plaintiff seeks job descriptions for these positions.

3 In the second amended complaint, plaintiff identifies defendants as Lieutenants (Allen),
4 Correctional Officers (Armenta, J. Cantu, L. Cantu, Walker, Wheeler and Winkler) and Sergeants
5 (Cooper). (ECF No. 13 at 1-2.) Job descriptions or statement of job duties of the positions held
6 by defendants at the time of the alleged deprivations is relevant or may lead to relevant evidence.
7 Accordingly, defendants are directed to provide plaintiff with a supplemental response to request
8 no. 32. Defendants shall provide plaintiff with their job descriptions or statement of job duties for
9 the positions they held, i.e., Lieutenant, Correctional Officer and Sergeant, at the time of the
10 alleged deprivations. If defendants are unable to provide these documents to plaintiff, they shall
11 provide an explanation for their inability to provide these documents.

12 *Request Nos. 33-36*

13 Request No. 33 sought,

14 All documents entailing electronic data which refers to or relates to
15 statistical information on how grievances (eg Form—22, 602s) are
16 screened out as “untimely” by MCSP/MCIC appeals coordinator’s
office.

17 (ECF No. 50-1 at 38.)

18 Defendants objected to request no. 33:

19 Objection. This request is overly broad, vague to the timeframe of
20 the documents requested, fails to identify the documents sought with
21 particularity, and is unintelligible. This request also appears to ask
22 defendants to calculate and produce statistical information to
23 plaintiff which is beyond the scope of Federal Rule of Civil
Procedure 34. Based on these objections, and without further
clarification on what documents are being sought, defendants cannot
reasonably respond to this request.

24 (Id.)

25 In request no. 33, plaintiff appears to seek statistical data regarding how many grievances
26 are screened out as untimely at MSCP/MCIC. In the opposition, plaintiff alleges that the
27 timeframe of the information sought in request no. 33 is from January 2010 to December 2019.

28 (ECF No. 38 at 33-34.)

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1 In the opposition, defendants appear to represent that the statistical data sought in request
2 no. 33 is not maintained. If this data does not exist, the undersigned cannot order defendants to
3 create the statistics plaintiff seeks.

4 Moreover, even if such data did exist, request no. 33 is overbroad, even if limited to
5 statistical data from January 2010 to December 2019. Statistical data regarding the number of
6 grievances screened out as untimely during this time period, regardless of topic and involvement
7 of defendants, is not relevant to this action. Accordingly, for these reasons, the motion to compel
8 as to request no. 33 is denied.

9 Request no. 34 sought,

10 All documents entailing electronic data which refers or relates to
11 statistical information on how grievances (Form—22, 602's) and the
12 number of that are screened out as "Untimely" by MCSP/MCIC
13 appeals coordinator's office when the complaint(s)/concern(s)
14 involve complaint(s) against state actor(s) for First Amendment
15 violations—retaliatory in behavior. This may include, but is not
16 limited to excessive cell searches, excessive use of
17 authority/power/force on persons or property, adverse
18 events/outcomes of applicant's program, classification status,
19 vocation/education access/removal, transferred...

20 (ECF No. 50-1 at 38.)

21 Defendants objected to request no. 34:

22 Objection. This request is overly broad, vague to the timeframe of
23 the documents requested, fails to identify the documents sought with
24 particularity, and is unintelligible. Based on these objections, and
25 without further clarification on what documents are being sought,
26 defendants cannot reasonably respond to this request.

27 (Id.)

28 In request no. 34, plaintiff appears to seek statistical data regarding how many grievances
alleging retaliation by inmates for exercising their First Amendment rights were screened out as
untimely. In the opposition, plaintiff alleges that the timeframe of the information sought in
request no. 33 is from January 2010 to December 2019. (ECF No. 38 at 33-34.)

Defendants did object that the statistical data requested in this request was not maintained.

Request no. 34 is overbroad, even if limited to statistical data from January 2010 to
December 2019. Statistical data regarding the number of grievances at MCSP/MCIC alleging

1 retaliation for exercising First Amendment rights screened out as untimely during this time frame
2 is not relevant to this action. Accordingly, for these reasons, the motion to compel as to request
3 no. 34 is denied.

4 Request no. 35 sought,

5 All documents entailing electronic data which refers or relates to
6 statistical information on how grievance (Form-22, 602's) are
7 screened out as "untimely" by MCSP/MCIC appeals coordinator's
8 office and their number of when the complaint does not entail a First
9 Amendment Retaliatory Behavior by state actor(s). This may
include, but is not limited to: housing conditions, food, general
programming, education/vocation issues, law library issues...

9 (ECF No. 50-1 at 38-39.)

10 Defendants objected to request no. 35:

11 Objection. This request is overly broad, vague as to timeframe of the
12 documents requested, fails to identify the documents sought with
13 particularity, and is unintelligible. This request also appears to ask
14 defendants to calculate and produce statistical information to
15 plaintiff, which is beyond the scope of Federal Rule of Civil
Procedure 34. Based on these objections, and without further
clarification on what documents are being sought, defendants cannot
reasonably respond to this request.

16 (Id. at 39.)

17 In request no. 35, plaintiff appears to seek statistical data regarding how many grievances
18 that did not allege retaliation by inmates for exercising their First Amendment rights were
19 screened out as untimely. In the opposition, plaintiff alleges that the timeframe of the information
20 sought in request no. 35 is from January 2010 to December 2019. (ECF No. 38 at 33-34.)

21 In the opposition, defendants appear to represent that the statistical data sought in request
22 no. 35 is not maintained. If this data does not exist, the undersigned cannot order defendants to
23 create the statistics plaintiff seeks.

24 However, even if such data did exist, request no. 35 is overbroad, even if limited to
25 statistical data from January 2010 to December 2019. It is unclear how data regarding all
26 grievances at MCSP/MCIC screened out as untimely during this time period, not involving claims
27 by inmates alleging retaliation for exercising their First Amendment rights, is relevant to this
28 action. Accordingly, for these reasons, the motion to compel as to request no. 35 is denied.

1 Request no. 36 sought, “For items [33] to [35], the statistical data can be narrowed to a
2 period from Jan. 1, 2012 to Dec. 31, 2019.” (ECF No. 50-1 at 39.)

3 Defendants objected to request no. 36:

4 Objection. This request is overly broad, fails to identify the
5 documents sought with particularity, and is unintelligible. This
6 request also appears to ask defendants to calculate and produce
7 statistical information to plaintiff, which is beyond the scope of the
Federal Rules of Civil Procedure 34. Based on these objections, and
without further clarification on what documents are being sought,
defendants cannot reasonably respond to this request.

8 (Id.)

9 For the same reasons requests nos. 33-35 are denied as overbroad, request no. 36 is
10 denied.

11 *Request No. 37*

12 Request no. 37 sought, “For the above production items [1]-[36] to be authenticated in
13 assurance and preservation from spoilage, altered state/condition—by an official
14 qualified/competent to authenticate their originality.” (Id. at 39.)


15 Defendants objected that request no. 37 was not a proper request for production of
16 documents under Federal Rule of Civil Procedure 34. (Id.) Based on this objection, defendants
17 declined to produce any documents in response to this request. (Id.)

18 Because the undersigned denies plaintiff’s motion to compel in its entirety, but for request
19 no. 32, request no. 37 seeking authentication of documents is denied.

20 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel (ECF No. 38)
21 is denied but for request no. 32; within twenty-one days of the date of this order, defendants shall
22 provide plaintiff with a further response to request no. 32; if appropriate, plaintiff may file a
23 further motion to compel based on defendants’ supplemental response to request no. 32 within
24 twenty-one days thereafter.

25 Dated: June 15, 2020

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27 Mcclin560.com

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE