

1 ECF No. 38. Discovery is currently closed in this action.

2 **I. Plaintiff's Motions to Compel**

3 **A. Interrogatories**

4 In his motions to compel further responses to his interrogatories to each defendant,
5 plaintiff challenges the objections made to his requests concerning all disciplinary actions,
6 inmates appeals, and citizen complaints made against them. ECF Nos. 42-44. Plaintiff does not
7 explain how any of defendants' objections are not justified, especially considering that the
8 interrogatories include the entire time in which defendants have been employed as correctional
9 officers. Plaintiff simply complains that defendants did not respond to these interrogatories after
10 objecting to them.

11 **B. Requests for Production of Documents**

12 In separate motions to compel further responses to his requests for production of
13 documents to each defendant, plaintiff challenges defendants' failure to produce photos and
14 measurements of various items and/or locations. ECF Nos. 45-48.¹ Plaintiff also challenges
15 defendants' objections to his requests for the identifying information of individuals who filed 602
16 appeals, civil suits, personnel reprimands, and citizen complaints against defendants. For the first
17 time, plaintiff attempts to demonstrate why defendants' responses are inadequate and why the
18 documents requested are discoverable, although he does so in a general and conclusory fashion
19 rather than by addressing each of defendants' specific objections. Plaintiff contends that the
20 documents requested are "relevant to [the] past or present mistreatment of inmates" by
21 defendants. ECF No. 45 at 4. In his motion to compel defendant Shearer to respond to plaintiff's
22 second set of requests for production of documents, plaintiff asserts that video surveillance
23 footage of the sexual assault of another inmate is relevant to demonstrate defendant's "proof of
24 motive, opportunity, intent, preparation, plan, knowledge[,] identify, or absence of mistakes or
25 accidents...." ECF No. 48 at 6.

26 ¹ The court notes that plaintiff's Exhibit A attached to his motion for an order compelling
27 discovery against defendant R. Sharp is missing the even numbered pages. See ECF No. 47 at 8-
28 14. The court assumes, without deciding, that this is due to problems related to prison
photocopying services for which plaintiff is not at fault.

1 **C. Request for Admissions**

2 In a separate motion, plaintiff requests an extension of time to reserve a complete set of
3 his requests for admissions to defendant Sharp because several pages of the original set were
4 missing. ECF No. 39. Although plaintiff indicates that a full and complete set was originally
5 served on defendant Sharp, the response indicates that the “First Set of Requests for Admissions
6 to Defendant Sharp skips from Request No. 7 to Request No. 23.” ECF No. 39 at 14, n. 1. In a
7 subsequently filed motion to compel, plaintiff attached a complete set of the Requests for
8 Admissions. See ECF No. 51 at 7-12. The court notes that the missing requests seek admissions,
9 inter alia, that defendant Sharp used excessive force against plaintiff, that he heard plaintiff state
10 “I got you,” and, that he wrote a narrative report concerning the events at issue in the present
11 case. See ECF No. 51 at 9-11.

12 Defendants’ oppositions to these motions to compel emphasize that plaintiff failed to meet
13 and confer prior to seeking court intervention in the discovery disputes. See ECF Nos. 49, 53-54,
14 57. Additionally, defendants assert that plaintiff failed to specify why their objections are not
15 justified and how his requested discovery is relevant to the excessive force claims at issue in the
16 present case.

17 In lieu of filing a reply to any of defendants’ oppositions to his motions to compel,
18 plaintiff filed a request for a settlement conference. ECF No. 59. However, a review of the
19 docket in this case indicates that a settlement conference was held on January 7, 2021 and that the
20 case did not settle. ECF No. 32. Neither the procedural posture of this case nor plaintiff’s request
21 provide any indication that this case is capable of settlement at this juncture. Therefore, the court
22 will deny plaintiff’s request to schedule a second settlement conference in this matter.

23 **II. Legal Standards**

24 The Federal Rules of Civil Procedure permit discovery of “any nonprivileged matter that
25 is relevant to any party's claim or defense and proportional to the needs of the case, considering
26 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative
27 access to relevant information, the parties’ resources, the importance of the discovery in resolving
28 the issues, and whether the burden or expense of the proposed discovery outweighs its likely

1 benefit.” Fed. R. Civ. P. 26(b)(1). Such discoverable information need not be admissible at the
2 trial if the discovery appears reasonably calculated to lead to the discovery of admissible
3 evidence. Id. The court may limit discovery if it is “unreasonably cumulative or duplicative, or
4 can be obtained from some other source that is more convenient, less burdensome, or less
5 expensive;” or if the party who seeks discovery “has had ample opportunity to obtain the
6 information by discovery;” or if “the proposed discovery is outside the scope permitted by Rule
7 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C). In a motion to compel, the moving party bears the burden
8 of showing why the other party's responses are inadequate or their objections unjustified. See
9 Williams v. Cate, 2011 WL 6217378 at *1 (E.D. Cal. Dec.14, 2011), citing Ellis v. Cambra, 2008
10 WL 860523 at *4 (E.D. Cal. Mar.27, 2008).

11 **III. Analysis**

12 Here, the court will deny plaintiff’s motions to compel. First and foremost, plaintiff failed
13 to meet and confer with defendants concerning the discovery disputes before he filed his
14 numerous motions to compel. See ECF No. 33 at 5 (requiring the parties to comply with Rule 37
15 of the Federal Rules of Civil Procedure “[i]f disputes arise about the parties’ obligations to
16 respond to requests for discovery....”). Even when defense counsel reached out in an effort to
17 meet and confer, plaintiff refused to narrow or otherwise modify the scope of the discovery that
18 he was seeking. See ECF No. 54-1 at 2 (Declaration of Andrew Whisnand). Secondly, plaintiff
19 has not met his burden of demonstrating how the requested discovery is relevant to his claims
20 against defendants or how each of their objections is not justified. As noted above, in a motion to
21 compel, the moving party bears the burden of showing why the other party's responses are
22 inadequate or their objections unjustified. See Williams, 2011 WL 6217378 at *1 (“Plaintiff
23 bears the burden of informing the Court ... for each disputed response, why Defendant's objection
24 is not justified.... Plaintiff may not simply assert that he has served discovery responses, that he is
25 dissatisfied, and that he wants an order compelling further responses.”), citing Ellis v. Cambra,
26 2008 WL 860523 at *4 (E.D.Cal. Mar.27, 2008). Defendants’ past or present mistreatment of
27 other inmates is not relevant in determining whether they used excessive force against plaintiff on
28 March 18, 2019, especially considering that plaintiff’s complaint does not involve a sexual

1 assault. For these reasons, plaintiff's motions to compel will be denied.

2 With respect to plaintiff's motion for an extension of time to reserve his requests for
3 admissions to defendant Sharp, the court will deny the motion. In doing so, the court first notes
4 that the requests for admissions concerning the contents of defendant Sharp's incident report are
5 duplicative of the report itself. Fed. R. Civ. P. 26(b)(2)(C). The remaining requests for
6 admissions were covered in additional discovery requests to defendant Sharp and were also the
7 subject of plaintiff's other motions to compel. See ECF Nos. 43, 47. Because the court has
8 denied those motions to compel, the court finds that plaintiff has not demonstrated the relevance
9 of the additional missing requests for admissions. See Fed. R. Civ. P. 26(b)(2)(C)(iii). For all
10 these reasons, the court will deny plaintiff's motion for an extension of time to reserve the
11 requests for admissions on defendant Sharp.

12 While these motions to compel were pending, the dispositive motions deadline, set by
13 order of March 8, 2021, passed. In light of this ruling, the court will further amend the discovery
14 and scheduling order by extending the pretrial motions deadline governing this case.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's motion for an extension of time to reserve the Request for Admissions, Set
17 One on defendant Sharp (ECF No. 39) is denied.
- 18 2. Plaintiff's motions to compel (ECF Nos. 42-48, 51) are denied for the reasons stated
19 herein.
- 20 3. The court sua sponte amends the discovery and scheduling order in this case by
21 extending the pretrial motions deadline to February 22, 2022.
- 22 4. Pretrial conference and trial dates will be set, as appropriate, following adjudication of
23 any dispositive motion, or the expiration of time for filing such a motion.

24 Dated: November 19, 2021

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE