

1 received, but none of the requests sought production of video footage. (Id.) Despite plaintiff's
2 failure to seek video footage in the discovery requests received by defendant, counsel for
3 defendant obtained video footage from May 19, 2022, one of the days defendant worked in B7,
4 and was making arrangements for plaintiff to view the footage at Salinas Valley State Prison
5 where plaintiff is currently housed. (Id.) No other video footage for any of the dates defendant
6 worked in B7 has been located, and "none is believed to exist." (ECF No. 47 at 3.) Defendant
7 also provided a copy of defendant's responses to plaintiff's first set of requests for production of
8 documents. (ECF No. 47 at 5-8.)

9 Plaintiff did not file a reply.

10 Motions to Compel Discovery

11 A. Standards Governing Discovery Disputes

12 Under Rule 37 of the Federal Rules of Civil Procedure, "a party seeking discovery may
13 move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P.
14 37(a)(3)(B). The court may order a party to provide further responses to an "evasive or
15 incomplete disclosure, answer, or response." Fed. R. Civ. P. 37(a)(4). "District courts have
16 'broad discretion to manage discovery and to control the course of litigation under Federal Rule
17 of Civil Procedure 16.'" Hunt v. County. of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
18 Avila v. Willits Env'tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

19 The party moving to compel bears the burden of informing the court (1) which discovery
20 requests are the subject of his motion to compel, (2) which of the responses are disputed, (3) why
21 he believes the response is deficient, (4) why defendants' objections are not justified, and (5) why
22 the information he seeks through discovery is relevant to the prosecution of this action. McCoy
23 v. Ramirez, 2016 WL 3196738, at *1 (E.D. Cal. Jun. 9, 2016); Ellis v. Cambra, 2008 WL 860523,
24 at *4 (E.D. Cal. Mar. 27, 2008). If a court grants the motion, then the court must order the party
25 "whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in
26 making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). The court must not
27 award expenses if "the movant filed the motion before attempting in good faith to obtain the
28 disclosure or discovery without court action"; "the opposing party's nondisclosure, response, or

1 objection was substantially justified”; or “other circumstances make an award of expenses
2 unjust.” Fed. R. Civ. P. 37(a)(5)(A)(i)-(iii).

3 B. Discussion

4 Plaintiff’s motion to compel was signed under penalty of perjury on March 14, 2024, one
5 day before the discovery deadline expired, and therefore the motion is timely. However, as
6 argued by defendant, plaintiff failed to provide a copy of the discovery request or the proof of
7 service attesting to service of the purported request for production of video footage on defendant.
8 In addition, plaintiff failed to reply to defendant’s opposition, and defendant’s responses to the
9 plaintiff’s first request for production of documents confirms that plaintiff did not seek video
10 footage in such request. Because it appears plaintiff failed to properly serve a request to produce
11 video footage, plaintiff’s motion to compel is denied. The Court appreciates the defendant
12 planning for plaintiff to view the May 19, 2022 video footage despite plaintiff’s failures.

13 As set forth above, the Court would normally be required to order plaintiff to pay
14 defendant’s reasonable expenses in opposing plaintiff’s motion. However, because plaintiff is
15 indigent, and proceeding in forma pauperis, the Court finds such an order would be unjust.¹

16 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel (ECF No. 45)
17 is denied.

18 Dated: May 10, 2024

19 
20 CHI SOO KIM
21 UNITED STATES MAGISTRATE JUDGE

22 /l/robi1641.mtc
23

24 _____
25 ¹ That said, plaintiff is cautioned to take care when filing motions, and when signing court filings
26 under penalty of perjury. Courts have dismissed an action with prejudice for failure to comply
27 with a court order, for failure to prosecute, and for failure to comply with local rules. See, e.g.,
28 Malone v. United States Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for
failure to comply with court order); see also Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
1986) (dismissal for failure to prosecute and for failure to comply with local rules); see also ECF
No. 26 at 8 ¶ 17.