UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PAUL HUPP, Plaintiff, v. SAN DIEGO COUNTY, SAN DIEGO POLICE DEPARTMENT, et al., Defendants.	Civil No. 12cv0492 GPC(RBB) **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL DISCOVERY FROM CITY OF SAN DIEGO AND RAYMOND WETZEL [ECF NO. 152]**

On September 9, 2013, Plaintiff Paul Hupp filed a "Motion to Compel Discovery [from] the City of San Diego and Raymond Wetzel [ECF No. 152]." Defendants opposed this motion on October 15, 2013 [ECF No. 173], and Hupp filed his reply on October 21, 2013 [ECF No. 180]. The Court determined that the matter was suitable for resolution without oral argument, submitted the motion on the parties' papers pursuant to the Local Civil Rule 7.1(d), and vacated the motion hearing [ECF No. 181]. For the following reasons, Plaintiff's Motion to Compel is GRANTED in part and DENIED in part.

I. FACTUAL BACKGROUND

Plaintiff Paul Hupp, proceeding pro se, commenced this action on February 28, 2012, under the provisions of 42 U.S.C. § 1983. (Compl. 1, ECF No. 1.) Plaintiff's Third Amended Complaint contains twelve causes of action and was filed on August 28, 2012 [ECF No. 64], naming as Defendants San Diego County,[1] the City of San Diego, the City of Beaumont,[2] James Patrick Romo,[3] Raymond Wetzel, William Kiernan,[4] Peter Myers, and Joseph Cargel. (Third Am. Compl. 1, ECF No. 64.) Hupp's lawsuit arises from contempt of court charges brought against him and his ensuing conviction in San Diego Superior Court in 2011. (Id. at 4-5, 7-8.)

Plaintiff alleges that in November 2010, Jeffrey Freedman[5] obtained a three-year restraining order against him in San Diego Superior Court. (Id. at 4.) In July 2011, Freedman brought contempt charges against Hupp for sending letters to Freedman in violation of the restraining order. (Id. at 5.) Defendant William Kiernan, an attorney from the San Diego County Office of the Assigned Counsel, was appointed to represent Plaintiff. (Id.) Hupp alleges that Kiernan's failure to investigate, request

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[1] Allegations against San Diego County include causes of action against the San Diego County District Attorney's office, San Diego County Office of Assigned Counsel, and the San Diego County Sheriff's Department. (Third Am. Compl. 2, ECF No. 64.)

[2] Defendant City of Beaumont was dismissed from the case on December 10, 2012 [ECF No. 105].

[3] Defendants Romo and San Diego County District Attorney's Office's Motion for Summary Judgment was granted on January 9, 2014 [ECF No. 221].

[4] Defendant Kiernan's Motion to Dismiss was granted on December 16, 2013 [ECF No. 210].

[5] All claims against Defendant Freedman were dismissed on June 4, 2012 [ECF No. 35].

discovery, or communicate with Hupp amounted to ineffective assistance of counsel. (Id. at 6-7.) Plaintiff also claims that Defendants performed DNA and fingerprint tests on the letters and envelopes allegedly sent by him, and wrongfully withheld exculpatory forensic evidence until February 2012, when they produced the evidence in another court case. (Id. at 11-12.)

Hupp was convicted and sentenced to twenty-five days in custody and fined $5,000; he asserts that this conviction was based on insufficient evidence. (Id. at 7.) Plaintiff also alleges that his trial judge improperly denied him custody credits under California Penal Code section 4019.[6] (Id. at 8.)

On January 3, 2012, Hupp reported to the San Diego County Sheriff's Department to serve his twenty-five day sentence. (Id. at 9.) Plaintiff claims that he told the Sheriff's Department personnel to apply section 4019 custody credits to his sentence, but they refused to do so. (Id.) Hupp also alleges he was denied access to the law library and was prevented from filing legal papers. (Id. at 10-11.)

Plaintiff contends that Defendants never informed him that the San Diego County District Attorney's office, San Diego Police Department, Deputy District Attorney Romo, and Detective Wetzel were investigating and assisting Deputy Attorney General Drcar in prosecuting the November 2011 civil contempt proceedings against Hupp. (Id. at 7, 11.) He also asserts that Defendants failed to disclose exculpatory DNA and fingerprint evidence obtained from the letters Freedman received, in violation of Hupp's due process

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[6] Defendant County of San Diego's Motion for Judgment on the Pleadings as to Hupp's cause of action regarding the failure to apply custody credits was granted on March 4, 2014 [ECF No. 239].

rights under Brady v. Maryland, 373 U.S. 83 (1963). (Id. at 11-12.)

These allegations are the basis of Plaintiff's claims for violation of his civil rights; conspiracy to withhold Brady evidence; interference with legal mail and free speech; unlawful detention; intentional infliction of emotional distress; as well as gross negligence in the hiring, training, supervision, and retention of prosecutors and peace officers. (Id. at 12-29.) Hupp also alleges that Defendants' actions caused him emotional and psychological injuries, embarrassment, humiliation, shame, fright, fear, and grief. (Id. at 14, 20-21.) For his injuries, Plaintiff seeks compensatory and punitive damages exceeding $75,000, as well as declaratory and injunctive relief. (Id. at 27-30, 35-37.)

II. LEGAL STANDARDS

A. Motion to Compel

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Rule 37 of the Federal Rules of Civil Procedure enables the propounding party to bring a motion to compel responses to discovery. Fed. R. Civ. P. 37(a)(3)(B). The party resisting discovery bears the burden of opposing disclosure. Miller v. Pancucci, 141 F.R.D. 292, 299 (C.D. Cal. 1992).

As the moving party, Hupp carries the burden of informing the court of (1) which discovery requests are the subject of his motion to compel, (2) which of the defendants' responses are disputed, (3)

why the responses are deficient, (4) the reasons defendants' objections are without merit, and (5) the relevance of the requested information to the prosecution of his action. See, e.g., Brooks v. Alameida, No. CIV S-03-2343-JAM-EFB P, 2009 WL 331358, at *2 (E.D. Cal. Feb. 10, 2009) ("Without knowing which responses plaintiff seeks to compel or on what grounds, the court cannot grant plaintiff's motion."); Ellis v. Cambra, No. CIV 02-05646-AWI-SMS PC, 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008) ("Plaintiff must inform the court which discovery requests are the subject of his motion to compel, and, for each disputed response, inform the court why the information sought is relevant and why Defendant's objections are not justified.").

B. Pro Se Litigants

"In general, pro se representation does not excuse a party from complying with a court's orders and with the Federal Rules of Civil Procedure." Ackra Direct Mktg. Corp. v. Fingerhut Corp., 86 F.3d 852, 856-57 (8th Cir. 1996) (citing Jones v. Phipps, 39 F.3d 158, 163 (7th Cir. 1994); Anderson v. Home Ins. Co., 724 F.2d 82, 84 (8th Cir. 1983)). Accordingly, plaintiffs who choose to represent themselves are expected to follow the rules of the court in which they litigate. Carter v. Comm'r, 784 F.2d 1006, 1008-09 (9th Cir. 1986); see also Bias v. Moynihan, 508 F.3d 1212, 1223-24 (9th Cir. 2007) (finding that district court did not abuse its discretion by failing to consider the pro se litigant's untimely filings). "[W]hile pro se litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no cause for extending this margin to straightforward procedural requirements

that a layperson can comprehend as easily as a lawyer." Jourdan v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991).

III. DISCUSSION

Plaintiff's brief and exhibits in support of his motion to obtain discovery from Defendants City of San Diego and Raymond Wetzel total more than seventy pages [ECF No. 152]. Despite this voluminous submission, Hupp fails to articulate how Defendants' objections to his requests are not justified.

A. Motion to Compel Defendant City of San Diego

Plaintiff served six requests for production on Defendant City of San Diego. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 23-26, ECF No. 152.) The City made general and some specific objections to the requests, but it produced documents in response to requests 1 and 4. (Id. at 44-45.) The Court analyzes each request in turn.

1. Request for production no. 1

Hupp's first request asks the City for "[a]ny and all documents which are in your possession concerning the investigation of Plaintiff, and more fully set forth in the Complaint, including Plaintiff's civil contempt case; Superior Court Case Number 37-2010-00102264-CU-HR-CTL, and Plaintiff's criminal case; Superior Court Case Number SCD238651." (Id. at 23-24.) Plaintiff defined the request as follows:

> This shall include at a minimum, but is not limited to:
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> a. Any and all reports or forms describing any and all aspects of the investigation;
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> b. Any and all investigation reports, including fingerprint and DNA evidence;
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> c. Any and all audio, video and digital recordings;
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> d. Any and all statements of WETZEL concerning or mentioning Plaintiff, including any and all email

> without regard to whether said email account/s are work or personal;
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> e. Any and all inter-office memos, intra-office memos, reports, letters, correspondence, computerized records or writings that mention, concern, discuss or pertain to Plaintiff;
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> f. Statements and/or interviews of any witnesses, informants, the Plaintiff, Deputy District Attorneys, lawyers, police agents and any Peace Officers including but not limited to WETZEL, or other persons who had any role or contact with WETZEL concerning the investigation of Plaintiff, including any supervisor/s.

(Id. at 24.)

The City objects to this request and argues that "[it] is compound and may call for information that is protected under the attorney client and attorney work product privileges." (Id. at 44.) Nevertheless, the Defendant City of San Diego produced seven nonprivileged items from the San Diego Police Department relating to criminal case number 11051250: (1) a "CAD Report" taken on December 29, 2011, for incident P11120050611; (2) 911 communications tapes for the incident; (3) a "Crime Report" also taken on December 29, 2011; (4) an investigator's follow-up report; (5) an "Arrest Report" taken on January 11, 2012; (6) a chain of custody report; and (7) lab files. (Id. at 44-45.) Despite its objections, "the City still produced the entire SDPD case file pertaining to the subject incident . . . ." (Def. City San Diego & Raymond Wetzel's Opp'n 3, ECF No. 173.)

Hupp contends that the City's privilege objection constitutes "pretext claims," positing that "[t]he proper response [by the City to Hupp's first request] would have been to file for a protective

order."[7] (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5, ECF No. 152.)

Plaintiff has not demonstrated that the City's responses to his requests are inadequate. Hupp asks for "[a]ny and all reports or forms describing any and all aspects of the investigation." (Id. at 24.) The City responded by producing the entire case file for the incident. (Def. City San Diego & Raymond Wetzel's Opp'n 3, ECF No. 173.) The production included five reports, 911 and communications tapes, and lab files. (Id. at 4.) Hupp has not articulated why these items are insufficient.

Plaintiff's demand for "[a]ny and all statements of WETZEL concerning or mentioning Plaintiff, including any and all email without regard to whether said email account/s are work or personal," (id. at 3), is troubling. First, Hupp has not demonstrated how the requested statements meet the relevance standard under Federal Rule of Civil Procedure 26(b)(1), given Defendant Wetzel's limited involvement in this case. Next, Plaintiff has not met his burden of showing that all of the requested statements, particularly those contained in Wetzel's personal e-mail accounts, are within the custody and control of the City. See United States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO, 870 F.2d 1450, 1452 (9th Cir. 1989) ("The party

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[7] Under Federal Rule of Civil Procedure 26(c)(1), "A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending . . . ." Fed. R. Civ. P. 26(c)(1) (emphasis added). There is no requirement that a party must file a protective order when withholding potentially discoverable information. See IPALCO Enterps., Inc. v. PSI Res., Inc., 148 F.R.D. 604, 606 n.3 (S.D. Ind. 1993) ("The Court agrees with defendants that they are not required to move for a protective order under Rule 26(c) every time they object to discovery based on Rule 26(c) grounds.") Accordingly, Plaintiff's argument is without merit.

seeking production of the documents . . . bears the burden of proving that the opposing party has such control.") (citing Norman v. Young, 422 F.2d 470, 472-73 (10th Cir. 1970)).

Plaintiff's request also seeks "[a]ny and all inter-office memos, intra-office memos, reports, letters, correspondence, computerized records or writings that mention, concern, discuss or pertain to Plaintiff." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 24, ECF No. 152.) In addition, it includes "[s]tatements and/or interviews of any witnesses, informants, the Plaintiff, Deputy District Attorneys, lawyers, police agents and any Peace Officers including but not limited to WETZEL, or other persons who had any role or contact with WETZEL concerning the investigation of Plaintiff, including any supervisors." (Id.) These requests are overbroad, and they call for production of items that may be protected by the attorney-client privilege and attorney work-product doctrine. See Hickman v. Taylor, 329 U.S. 495, 510 (1947) ("Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney."); see also Upjohn Co. v. United States, 449 U.S. 383, 390 (1981) ("[Attorney-client] privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice.") (citing Trammel v. United States, 445 U.S. 40, 51 (1980); Fisher v. United States, 425 U.S. 391, 403 (1976)).

It is unclear whether the City is claiming that it possesses responsive documents that are protected from production by the attorney-client privilege and the attorney work-product doctrine.

Initially, Defendant's discovery response was that Plaintiff's request was compound and "may call for information that is protected under the attorney client and attorney work product privileges." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 44, ECF No. 152 (emphasis added).) In opposing the Motion to Compel, the City is less equivocal. The Defendant argues that Hupp "sought information that is protected under the attorney client and attorney work product privileges." (Def. City San Diego & Raymond Wetzel's Opp'n 3, ECF No. 173.)

A party resisting discovery must do more. If this Defendant is "asserting a claim of attorney-client privilege or attorney work product protection[,] [it] must make a prima facie showing that those doctrines apply, typically by submitting a Privilege Log." In re Grand Jury Investigation, 974 F.2d 1068, 1070 (9th Cir. 1992).

In Safety Dynamics, Inc. v. Gen. Star Indem. Co., No. CV-09-00695-TUC-CKF (DTF), 2014 U.S. Dist. LEXIS 9045, at *9-10 (D. Ariz. Jan. 24, 2014), the court described what is required to refuse discovery based on a claim of privilege.

> In order to assert a privilege, boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient. Rule 26(b)(5) requires that a party expressly claim a privilege and describe the nature of the documents, communications or things not produced so as to enable the other parties to assess the applicability of the privilege or protection. A party objecting based on a claim of privilege must make the objection and explain it as to each record sought to allow the court to rule with specificity.

Id. (citations omitted) (internal quotation marks omitted). Here, the City did not prepare a privilege log for items it contends are

covered by the attorney-client privilege or the attorney work-product doctrine.

Privilege logs can take many forms. "[N]ot every case requires strict adherence to the list of items that should be part of a privilege log as identified in In re Grand Jury Investigation, 974 F.2d at 1071, and Dole v. Milonas, [889 F.2d 885, 888 n.3, 890 (9th Cir. 1989)]." Phillips v. C.R. Baird, 290 F.R.D. 615, 637 (D. Nev. 2013).

> Generally, a privilege log is adequate if it identifies with particularity the documents withheld, including their date of creation; author, title or caption; addressee and each recipient; and the general nature or purpose for creation. In addition, the particular privilege relied on must be specified. A privilege log may be supplemented by an affidavit, deposition testimony, or other evidence, if necessary, to establish that each element of the asserted privilege has been met.

6 James Wm. Moore et al., Moore's Federal Practice § 26.47[1][b], at 26-318 to 26-329 (3d ed. 2013) (footnotes omitted). The Defendant City of San Diego did not provide a privilege log, so Plaintiff Hupp was not able to determine whether the claims of privilege were legitimate or should be the subject of his Motion to Compel.

If the City continues to maintain that documents are protected from production by the attorney-client privilege and attorney work-product doctrine, it must produce a sufficiently detailed privilege log and any necessary supplemental materials to Plaintiff by April 23, 2014. See Dominguez v. Schwarzenegger, No. C 09-2306 CW (JL), 2010 U.S. Dist. LEXIS 94549, at *8, 23 (N.D. Cal. Aug. 25, 2010) (ordering privilege log). Neither the Plaintiff nor the Court currently has a basis for determining the legitimacy of these

claims of privilege or whether the failure to timely produce a privilege log resulted in a waiver. A delayed submission of a privilege log is not fatal. See Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont., 408 F.3d 1142, 1149 (9th Cir. 2005) (calling for a "holistic" assessment of the circumstances in deciding whether the failure to timely produce a privilege log resulted in a waiver of the privilege).

At the same time, Hupp has not demonstrated that the objections to his first request should be overruled. See Ellis, 2008 WL 860523, at *4 (noting that "[i]f Defendant objects to one of Plaintiff's discovery requests, it is Plaintiff's burden on his motion to compel to demonstrate why the objection is not justified[]"). Accordingly, Plaintiff's motion as to request for production number one to the City is DENIED, except as to documents described on a forthcoming privilege log and withheld on the basis of the attorney-client privilege or the attorney work-product doctrine. For those items, the motion is DENIED without prejudice.

2. Request for production no. 2

The second request asks Defendant City to produce "[a]ny and all documents that comprise of, or are part of, WETZEL'S file, including the disciplinary record and any other documents concerning WETZEL'S hiring, training, duties, performance, assignments and mental and physical condition." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 24, ECF No. 152.) The City of San Diego objects on several grounds.

> [T]his request is overbroad as to time and scope and is unduly burdensome. Further, it seeks documents protected by the Executive and Official Information Privileges.

> This request also seeks to ascertain protected information from police files in violation of state law, Penal Code sections 832.5 and 832.7 and Vehicle Code section 1808.2. Please see the attached Declaration of the Police Officer reviewing Internal Affairs Files and Personnel files, David Ramirez, and the Privilege Log. This request also seeks to invade the right to privacy of individuals under the Federal Right to privacy (5 U.S.C. section 552) and the California Constitution, Art. I, section 1. It also seeks disclosure of confidential communications made in anticipation of litigation. Subject to, and without waiving said objections, Responding Party responds as follows: Responsive documents will not be produced at this time.

(Id. at 45.)

Although the City raises many boilerplate objections to Hupp's requests for documents, it does not support or explain them in its opposition to Plaintiff's Motion to Compel. The Court will address the objections the Defendant elected to pursue when opposing Plaintiff's motion. See Bryant v. Armstrong, No. 08cv02318 W(RBB), 2012 WL 2190774, at *6 (S.D. Cal. June 14, 2012).

"[I]n federal question cases . . . in which state law claims are also raised . . . , any asserted privileges relating to evidence relevant to both state and federal claims are governed by federal common law." 6 James Wm. Moore et al., Moore's Federal Practice § 26.47[4], at 26-334.1; see also Fitzgerald v. Cassil, 216 F.R.D. 632, 635 (N.D. Cal. 2003) (applying federal privilege laws to alleged violations of the Fair Housing Act, 42 U.S.C. § 3604, and various state law claims). Similarly, in Stallworth v. Brollini, the court applied federal common law to resolve claims of privilege in an action alleging § 1983 and state law claims. 288 F.R.D. 439, 442 (N.D. Cal. 2012). Here, because Plaintiff's complaint alleges both federal and state law claims, (Third Am.

Compl. 12-34, ECF No. 64), federal common law will apply to the claims of privilege.

Federal common law recognizes a qualified privilege for official information, such as information contained in government personnel files. To determine whether the information is subject to the official information privilege, federal courts weigh the potential benefits of disclosure against the potential disadvantages. Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990).

Before engaging in this balancing test, however, the party asserting the privilege must make a "substantial threshold showing." Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995) (citing Kelly v. City of San Jose, 114 F.R.D. 653, 669 (N.D. Cal. 1987)). It must serve an objection to each discovery request that explicitly "invokes the official information privilege by name." Kelly, 114 F.R.D. at 669. The withholding party must also provide the requesting party with a privilege log or equivalent document that specifically identifies the information purportedly protected from disclosure. Hampton v. City of San Diego, 147 F.R.D. 227, 230 (S.D. Cal. 1993). To support each objection, the party asserting the privilege must submit an affidavit from a responsible official making detailed statements concerning the confidentiality of the withheld information. Kelly, 114 F.R.D. at 669-70. If the nondisclosing party does not meet this initial burden, the court orders disclosure of the documents; if the party meets this initial burden, the court generally conducts an in camera review of the material and balances each party's interests. Soto, 162 F.R.D. at 613; Kelly, 114 F.R.D. at 671.

In Kelly, the court explained:

> Unless the government, through competent declarations, shows the court what interests would be harmed, how disclosure under a protective order would cause the harm, and how much harm there would be, the court cannot conduct a meaningful balancing analysis. And because the burden of justification must be placed on the party invoking the privilege, a court that cannot conduct a meaningful balancing analysis because the government has not provided the necessary information would have no choice but to order disclosure.

Kelly, 114 F.R.D. at 669; see also Chism v. Cnty. of San Bernadino, 159 F.R.D. 531, 534-35 (C.D. Cal. 1994).

Hupp argues that his second request to the City seeks relevant documents, and he "reincorporates the response he gave to WETZEL." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5, ECF No. 152.) Yet, the City does not make a relevance objection to request number two, except as a part of its general objections. (See id. at 42, 45.) Also, the Defendant does not argue relevance in its opposition to Hupp's motion. (See Def. City San Diego & Raymond Wetzel's Opp'n 4, ECF No. 173.) The Court will not address a boilerplate, unsupported, and unexplained objection.

In its opposition to Hupp's Motion to Compel, Defendant City attached a detailed privilege log for Detective Wetzel that describes 117 documents in his personnel file withheld under claims of executive and official information privileges. (Id. Attach. #3 Decl. David Ramirez 10-14 (privilege log).) The City also attached the Declaration of David Ramirez, Executive Assistant Chief of Police of the San Diego Police Department, in support of these claims of privilege for the withheld documents. (Id. Attach. #3 Ramirez Decl. 3-9.) Ramirez indicates that he "reviewed the investigatory files held by the Internal Affairs Unit" for any

citizen complaints against Wetzel. (Id. at 4.) He then asserts "the privileges and protections afforded by state and federal law against disclosure of these records and any information contained therein . . . ." (Id.) The assistant chief of policy contends:

> [D]isclosure of these records, if any exist, will undermine the ability of this Department to conduct fair and thorough investigations into complaints of police misconduct, will erode the confidence of the police officers and citizens involved in the investigatory process and thereby discourage them from fully and freely cooperating in it, undermine and negatively affect the morale of all of the police officers of this Department, and seriously disrupt the operations of the San Diego Police Department.

(Id.)

Ramirez explains that officers' personnel files "contain confidential, personal information about the officer, including personal and family data, medical and employment history and salary information, as well as performance evaluations." (Id. at 6.) He maintains that "release of personal information about individual officers can jeopardize the safety of the officer and his or her family." (Id.) Ramirez further opines that the objectives of performance evaluations are undermined when "used for purposes outside their intended purpose and scope. Correspondingly, some superior officers may become reluctant to critically and candidly evaluate subordinates out of concern for the possible disclosure or misuse of their performance evaluations." (Id. at 7.) Even pursuant to a protective order, Ramirez concludes that "disclosure of the requested items will create a substantial risk of harm to significant governmental and privacy interests." (Id.) "If confidential information is disclosed in this matter, the privacy

rights of other individuals not a party to this lawsuit may be violated." (Id. at 8.)

In his Motion to Compel, Plaintiff acknowledges that in request number two, he "seeks mainly discipline records of WETZEL." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 4-5, ECF No. 152.) Hupp's claims against Wetzel focus on the failure of the Defendants to disclose exculpatory evidence to Hupp and the initiation of "illegitimate civil contempt" charges against him. (See Third Am. Compl. 12-16, ECF No. 64.)

The City has made its threshold showing that the requested documents are subject to the official information privilege. It invoked the official information privilege by name. Kelly, 114 F.R.D. at 669. Defendant City also submitted a privilege log, detailing the withheld information. Hampton, 147 F.R.D. at 230. Lastly, it included a declaration discussing how disclosure of the requested information "would harm significant law enforcement or privacy interests." Kelly, 114 F.R.D. at 669.

Having made its threshold showing, the question now becomes whether the benefits of disclosure outweigh the disadvantages. Sanchez, 936 F.2d at 1033-34. After reviewing Hupp's request, the privilege log submitted by Defendant City, and the Declaration of Ramirez, the Court finds that for most documents, the balance weighs against disclosure.

Hupp does not argue that documents other than those dealing with discipline or the specific claims alleged against Wetzel should be produced in response to request number two. Accordingly, the following items described on the privilege log and pertaining to Detective Wetzel need not be produced: tab numbers 2-9, 14-15,

19-20, 22-23, 28-32, 35, 37-44, 46-55, 57-58, 60-61, 69, 80-115. (See Def. City San Diego & Raymond Wetzel's Opp'n Attach. #3 Decl. David Ramirez 10-14 (privilege log), ECF No. 173.) For the remaining documents, they are to be produced to the Plaintiff if (1) they relate to the production of exculpatory evidence; (2) the items concern probable cause or the standards for bringing criminal or civil contempt charges; or (3) the documents refer or relate to the credibility, truthfulness, or veracity of Wetzel. These items are to be produced pursuant to a protective order limiting use and dissemination of the items to this case and providing for their destruction at the conclusion of the matter. Documents may be redacted to protect other information privileged from disclosure. See Kelly, 114 F.R.D. at 671.

The described documents should be produced to Plaintiff as outlined above. Otherwise, the City may "submit additional declarations and briefs directed toward attempting to satisfy the Court that the interests and policies favoring disclosure are clearly outweighed . . . by a specific, demonstrable, and substantial threat to an important governmental interest." Id. at 672. The declarations must "establish [a] nexus between the documents in question and the purported reasons for nondisclosure." Chism, 159 F.R.D. at 534.

Blanket disclosure of the requested documents would undermine the investigative capacity of the San Diego Police Department and negatively affect the morale of all its officers. Disclosing unrelated performance reviews of Defendant Wetzel may inhibit supervising officers at the San Diego Police Department when completing future performance reviews of their subordinates. These

disadvantages outweigh benefits to Hupp, particularly in light of the documents which have already been disclosed to Plaintiff by the City. See Sanchez, 936 F.2d at 1034 (noting that if the disadvantages of disclosing requested information outweigh the potential benefits, "the privilege bars discovery") (citing Jepsen v. Florida Bd. of Regents, 610 F.2d 1379, 1384-85 (5th Cir. 1980); Zaustinsky v. Univ. of California, 96 F.R.D. 622, 625 (N.D. Cal. 1983), aff'd, 782 F.2d 1055 (9th Cir. 1985)).

Except as outlined above, Defendant City has met the requirements under federal common law for properly invoking the official information privilege for this request for documents. Accordingly, Plaintiff's Motion to Compel the production of documents sought in request for production number two to the City is DENIED in part and GRANTED in part.[8]

3. Request for production no. 3

Request three seeks the following:

> Any and all documents concerning, or at all relevant, to any formal or informal complaint made against or about any CITY Peace Officer in the last 36 months that concerns perjury, dishonesty or untruthfulness in any manner whatsoever, from any source whatsoever, and concerning any subject matter whatsoever, without regard to the outcome.
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> This shall include at a minimum, but is not limited to:
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> a. Documents concerning all complaints and other disciplinary or police review of you by Internal Affairs, or the Office of the District Attorney or other law enforcement agency;

[8] The Defendants' proposed protective order appears to be an acceptable basis for a stipulated order. (Def. City San Diego & Raymond Wetzel's Opp'n Attach. #4 Def. City San Diego & Raymond Wetzel's Proposed Protective Order 2-7, ECF No. 173.)

> b. The full and complete documents concerning each action listed on CITY Peace Officer disciplinary records;
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> c. The full and complete documents concerning all complaints and other disciplinary or police review of CITY Peace Officers activities maintained by CITY, including but not limited of WETZEL; and
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> d. All information contained in the computers maintained by Internal Affairs, any other law enforcement agency, the District Attorney, including but not limited to, information retrievable by computer codes, concerning WETZEL.

(Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 24-25, ECF No. 152.) Defendant City objected to this request, invoking the official information privilege. (Id. at 46.) In his motion, Hupp explains the basis for seeking the described items.

> Plaintiff seeks information of misconduct of CITY Peace Officers which could establish a "pattern and practice" of misconduct, as such the request is valid and legitimate. CITY states "Please see the attached Declaration of the Police Officer reviewing Internal Affairs Files [sic] and Personnel files, David Ramirez, and the Privilege Log." There was no "attached" declaration, nor "Privilege Log". Lastly, CITY expressly states in the last sentence that "Responsive documents will not be produced at this time."

(Id. at 5) (alterations in original). In its opposition to Plaintiff's motion, the City argues that this request is overbroad, unduly burdensome, and seeks information that is privileged and irrelevant. (Def. City San Diego & Raymond Wetzel's Opp'n 5, ECF No. 173.)

Request number three is objectionable for several reasons. Plaintiff asks for all records of any disciplinary action taken against any police officer, including but not limited to Wetzel, by any law enforcement agency within the last thirty-six months,

concerning dishonesty. As Defendant City indicates, there are over 1,800 police officers in San Diego. (Id.) The request is exceptionally overbroad. See Santos ex rel. Santos v. City of Culver City, 228 F. App'x 655, 657 (9th Cir. Mar. 29, 2007) (unpublished memorandum disposition) (holding that a district court did not abuse its discretion in denying a request "for all complaints and arrest reports reflecting an improper use of force by any Culver City police officer and for all complaints and arrest reports referring to any use of force by the individual defendants" as overbroad).

Moreover, the requested documents are not relevant to Hupp's lawsuit. Plaintiff asserts that he wants to "establish a 'pattern and practice' of misconduct." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5, ECF No. 152.) While patterns and practices of official misconduct are relevant in § 1983 claims where municipal liability has been alleged, see Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694-95 (1978), they are not relevant here because Hupp has not pleaded "a policy, practice, or custom of the [city] [that] can be shown to be a moving force behind a violation of constitutional rights." Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011); (Third Am. Compl. 1-37, ECF No. 64); cf. Afshar v. City of Sacramento, No. CIV S041088LKKJFM, 2006 WL 1652672, at *2 (E.D. Cal. June 14, 2006) (allowing for depositions of certain witnesses as they "may lead to relevant evidence regarding plaintiff's Monell claim, specifically, whether there is a pattern and practice of jail officials using excessive force against inmates.").

Plaintiff's request for "[a]ll information contained in the computers maintained by Internal Affairs, any other law enforcement

agency, the District Attorney, including but not limited to, information retrievable by computer codes, concerning WETZEL," (see Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 25, ECF No. 152), will be limited to information "concern[ing] perjury, dishonesty or untruthfulness." (Id.) Request number three overlaps Hupp's second request of the City and the same limitations apply.

As drafted, Hupp's requests (a), (b), (c), and (d) are overbroad and irrelevant to Plaintiff's causes of action. Subparts (c) and (d), however, are limited to documents that refer to Defendant Wetzel and relate to perjury, dishonesty, or untruthfulness, and these items must be produced pursuant to a protective order as described above. In all other respects, Hupp's motion as to request number three to the City is DENIED.

4. Request for production no. 4

Plaintiff's request number four asks Defendant City to produce the following:

> All CITY materials which are in your possession and relevant to this incident, including, but not limited to, guidelines, directives, policy statements, procedures, training materials of any kind, in any form or medium, concerning CITY policy, custom or practice regarding:
>
> a. Discipline of Peace Officers generally;
>
> b. Specific discipline for the violation of constitutional rights, including, but not limited to withholding exculpatory evidence, fingerprint evidence, DNA evidence, police reports, investigative reports; and violations of due process;
>
> c. The procedure relating to or regarding acts which violate due process and denies [sic] access to exculpatory evidence, fingerprint evidence, DNA evidence, police reports, investigative reports; by Peace Officers; and violations of due process rights during and resulting from the withholding of exculpatory, fingerprint, DNA evidence, police reports, investigative reports.

(Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 25, ECF No. 152.) The City objected to this request but "produced responsive documents including the Discipline Manual for Sworn Personnel." (Def. City San Diego & Raymond Wetzel's Opp'n 6, ECF No. 173.) Despite receiving documents from the City, Hupp moves to compel a further production and argues:

> Plaintiff seeks mainly information CITY has that is relevant to this litigation, including but not limited to discipline records of Peace Officers. CITY has not responded based on "Executive" and "Official Information" privileges, privacy and CA Penal and vehicle code sections. The background of CITY'S Peace Officers, including but not limited to any discipline, misconduct, illegal acts and violations of constitutionally protected rights are relevant and are 100% discoverable. CITY does not get to pick and chose [sic] what CITY will or will not produce, if CITY wants to claim any of the privileges CITY has claimed the proper protocol would have been to ask the Court for a protective order, and let the Court make the decision on privilege, or any other claim. CITY claims non-privileged documents were produced as Exhibit 2. There was no Exhibit 2 attached to the response.

(Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5-6, ECF No. 152.) Defendant City maintains that this request is overbroad and seeks documents protected by the official information and attorney-client privileges. (Def. City San Diego & Raymond Wetzel's Opp'n 6, ECF No. 173.)

Despite Plaintiff's assertion that the City's response is deficient, Plaintiff does not discuss why the documents produced by Defendant City are inadequate, especially since he asserts that he never received them. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5-6, ECF No. 152.) Without further specificity, the Court cannot conduct a meaningful analysis of Hupp's argument. See Bazley v. Gates, No. CIV S-10-1343 LKK, 2012 WL 761660, at *2 (E.D. Cal. Mar. 7, 2012) (denying motion to compel) ("Plaintiff has not provided

specific arguments as to why any response or objection is deficient. Merely stating generally that defendants' responses are inadequate is not sufficient."). Moreover, the overbreadth of Plaintiff's fourth request precludes this Court from compelling further discovery from the City. See Erickson v. Microaire Surgical Instruments, LLC, No. C08-5745 BHS, 2010 WL 2196453, at *2 (W.D. Wash. May 27, 2010) ("Overbroad discovery requests are uniformly denied. Where the requests involve information which bears no relationship to the subject matter of the complaint, courts appropriately deny enforcement.") (citing American LegalNet, Inc. v. Davis, 673 F. Supp. 2d 1063, 1069 (C.D. Cal. 2009); Bartholomew v. Unum Life Ins. Co., 579 F. Supp. 2d 1339, 1342 (W.D. Wash. 2008)).

Hupp's Motion to Compel the production of documents described in request number four, directed to Defendant City, is DENIED. If it has not already done so, the City must provide Plaintiff with copies of the documents it agreed to produce, but Hupp claims he never received. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 6, ECF No. 152.)

5. Request for production no. 5

Plaintiff's fifth request seeks documents that refer to third parties.

> Your responses shall include any and all writings and documents, either directly or indirectly, between Freedom Communications Inc. or their representatives, Michael Bishop or his representatives, Richard and Judith Beyl or their representatives, any federal court or their representatives, any federal law enforcement agency or their representatives, any state law enforcement agency or their representatives and any local law enforcement agency or their representatives.

(Id. at 26.) Defendant City objected to this request as "overbroad as to time and scope, unduly burdensome and unintelligible[;]" it continued: "Responsive, non-privileged documents will not be produced." (Id. at 48.) In its opposition to Hupp's Motion to Compel, the City argues that "[t]his Request has nothing to do with this case. [It] doesn't really ask for documents, and he does not identify 'Michael Bishop or his representatives,' or 'Richard and Judith Beyl or their representatives.'" (Def. City San Diego & Raymond Wetzel's Opp'n 7, ECF No. 173.) Plaintiff moves to compel, arguing that the City's "objections are baseless and the reply is non responsive." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 6, ECF No. 152.)

Hupp's conclusory argument does not demonstrate that Defendant City's objection to this request is misplaced. The Court agrees that Plaintiff's fifth request is unrelated to this lawsuit. Neither Freedom Communications, Michael Bishop, Richard Beyl, nor Judith Beyl are defendants or witnesses in this case.[9] (Third Am. Compl. 2-4, ECF No. 64.) As a result, Hupp's Motion to Compel is DENIED.

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[9] It appears that Freedom Communication and these individuals were defendants in two of Plaintiff's other lawsuits. See Hupp v. Freedom Commc'ns, Inc., 221 Cal. App. 4th 398, 163 Cal. Rptr. 3d 919 (2013); Hupp v. Cnty. of San Diego, No. CIV 13-2655-GPC-RBB, 2014 WL 68580 (S.D. Cal. Jan. 8, 2014). To the extent that Hupp's request for discovery is made in connection with his other litigation, the Court cautions Plaintiff that the use of discovery requests for improper purposes can be grounds for sanctions. See Fed. R. Civ. P. 26(g)(1)(B)(ii) (explaining that "[b]y signing [a discovery request], an attorney or party certifies that to the best of the person's knowledge, information, and belief," the request is "not interposed for any improper purpose").

6. Request for production no. 6

Request six is for "[a]ny and all other documents that relate to this action, no matter how slight, that are not covered in any of the above requests." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 26, ECF No. 152.) Defendant City objected to this request as "overbroad as to time and scope, unduly burdensome and unintelligible." (Id. at 48.) The City maintains that it produced "all documents that pertain to the alleged incident in its possession, custody or control." (Def. City San Diego & Raymond Wetzel's Opp'n 7, ECF No. 173.)

In response, Hupp once again makes a conclusory assertion that these objections are "baseless and the reply is non responsive." (Id. at 6.) Plaintiff has not demonstrated that the objections to this request are unwarranted. See Ellis, 2008 WL 860523, at *4. Further, this request is overbroad. See Audibert v. Lowe's Home Centers, Inc., 152 F. App'x 399, 401-02 (5th Cir. Nov. 1, 2005) (unpublished per curiam opinion) (finding that a district court did not abuse its discretion in denying a plaintiff's "extremely broad discovery requests" which asked for "'all things, all documents, all statements, all knowledge of facts, sworn or unsworn, relating to this case'") (quoting the plaintiff's discovery request). Nevertheless, the City indicates that it has produced all documents within its control that pertain to the litigation. (Def. City San Diego & Raymond Wetzel's Opp'n 7, ECF No. 173.)

Consequently, Plaintiff's Motion to Compel the City to produce documents in response to request number six is DENIED.

B. Motion to Compel Defendant Wetzel

Hupp served five requests for production and twenty-six requests for admission on Defendant Wetzel. (See Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 10-13, 17-19, ECF No. 152.) Plaintiff attached Wetzel's responses to the requests for admission to his motion. (Id. at 28-35.) Hupp did not, however, provide the Court with a copy of Defendant Wetzel's responses to his requests for production.[10]

1. Requests for production

Of Plaintiff's five requests for production directed to Defendant Wetzel, requests one, two, four, and five are materially the same as requests one, two, four, and six served on the City. (Compare id. at 17-19, with id. at 23-26.) Hupp's request number three to Wetzel mirrors his third request to the City, except the latter is limited to Defendant Wetzel. (Compare id. at 18, with id. at 24-25.) In his Motion to Compel, Plaintiff only discusses Wetzel's responses to requests one, two, three, and five. (Id. at 4.) For that reason, the Court will only address the same four requests.

Hupp's motion is deficient for several reasons. First, Plaintiff has not attached a copy of Defendant Wetzel's responses to his motion. Although Hupp apparently intended to include a copy of Wetzel's responses as an exhibit to his motion, he did not. (Compare id. at 2 n.2, with id. at 37-49.) Instead, Plaintiff provided two copies of the City's responses to the requests for production directed to it. (See id. at 37-62.) Plaintiff gives a

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[10] Instead, Plaintiff attached a duplicate copy of the City's responses to his requests for production to his motion. (Id. at 51-62.)

marginal explanation as to why Wetzel's responses to requests one, two, three, and five are deficient, but does not discuss why Wetzel's objections are not justified. (Id. at 4.) Hupp has not met his burden of informing the Court of the dispute. See Ellis, 2008 WL 860523, at *4. Second, Plaintiff's requests for production of documents from Defendant Wetzel are duplicative of his requests of the City.

Hupp's Motion to Compel the production of documents in response to requests one, two, three, and five will be disposed of consistent with his Motion to Compel production from the City. See sections III.A.1.-3., 6. As to request number one, the motion is DENIED, except as to documents withheld on the basis of a claim of attorney-client privilege or the attorney work-product doctrine. For request number two, Plaintiff's motion is DENIED in part and GRANTED in part consistent with the Court's ruling on request number two directed to the City. See section III.A.2. Wetzel's objections to request number three are sustained in part; the request is limited to documents relating to the production of exculpatory evidence, Brady material, perjury, dishonesty, or untruthfulness. Hupp's request number five to Wetzel mirrors request number six to the City. The Motion to Compel as to request number five is DENIED for the reasons outlined in connection with request number six to the City. See section III.A.6.

2. Requests for admission

"A party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about either; and (B) the genuineness of any described

documents." Fed. R. Civ. P. 36(a)(1). Instead of admitting or denying a request for admission, the responding party may object to the request. See id. 36(a)(5). Plaintiff argues that Wetzel's answers to requests for admission numbers thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen are nonresponsive. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 5, ECF No. 152.) The Court addresses each request for admission in turn.

a. requests for admission nos. 13 and 14

Hupp's thirteenth request for admission states: "Do YOU admit Plaintiff's fingerprints were not on any of the letters sent to Jeffrey Howard Freedman, specifically the letters that were the basis for the civil contempt case against Plaintiff; San Diego County Superior Court Case Number 37-2010-00102264-CU-HR-CTL." (Id. at 11.) Request fourteen similarly asks: "Do YOU admit Plaintiff's DNA was not on any of the letters sent to Jeffrey Howard Freedman, specifically the letters that were the basis for the civil contempt case against Plaintiff; San Diego County Superior Court Case Number 37-2010-00102264-CU-HR-CTL." (Id. at 12.) Defendant Wetzel objects to each as "vague, ambiguous and overbroad and [sic] to time. Responding Party is therefore unable to admit or deny, and answers as follows: Deny." (Id. at 32.)

Plaintiff moves to compel and asserts that Wetzel provided nonresponsive answers to these two requests for admission. (Id. at 5.) Wetzel's responses were denials and are inadequate. "A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest." Fed. R. Civ. P. 36(a)(4). Boilerplate objections

are insufficient. See FTC v. Johnson, No. 2:10-cv-02203-MMD-GWF, 2013 U.S. Dist. LEXIS 139592, at *23 (D. Nev. Sept. 25, 2013) (finding that the repeated response, "'After reasonable inquiry, I am unable to obtain the information to admit or deny this statement[]'" was inadequate).

The Motion to Compel responses to requests thirteen and fourteen is GRANTED. Amended answers shall be served on or before April 23, 2014.

b. requests for admission nos. 15 through 18

Request for admission fifteen provides: "Do YOU admit that perjury is a felony crime." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 12, ECF No. 152.) Wetzel's response states: "Objection: calls for a legal conclusion. Responding Party is therefore unable to admit or deny, and answers as follows: Deny." (Id. at 15.) In request sixteen, Plaintiff asks: "Do YOU admit that Peace Officers should not commit perjury." (Id. at 12.) Request for admission seventeen reads: "Do YOU admit that committing perjury as a Peace Officer can lead to criminal charges against said Peace Officer." (Id.) Lastly, in request eighteen, Hupp asks: "Do YOU admit that YOU owed a duty to disclose to Plaintiff all exculpatory evidence in any criminal case." (Id.) Defendant Wetzel responded to requests sixteen, seventeen, and eighteen as follows: "Objection: calls for a legal conclusion and is vague, ambiguous and unintelligible. Responding Party is therefore unable to admit or deny, and answers as follows: Deny." (Id. at 33.) Plaintiff moves to compel, asserting that the answers are nonresponsive. (Id. at 5.)

Requests for admission fifteen through eighteen exceed the scope of discovery outlined by Federal Rule of Civil Procedure 36. Rule 36(a)(1)(A) provides that a request for admission must relate to "facts, the application of law to fact, or opinions about either." Fed. R. Civ. P. 30(a)(1)(A). Here, Hupp's requests do not reference any specific facts of his case. Instead, Plaintiff asks Wetzel to admit various legal propositions and reach conclusions about certain legal standards. "[P]ure requests for opinions of law . . . are not contemplated by the rule." 7 James Wm. Moore et al., Moore's Federal Practice § 36.10[8], at 36-25; see also Holston v. DeBanca, No. CIV S-09-2954-KJM-DAD P, 2012 WL 843917, at *11-13 (E.D. Cal. Mar. 12, 2012) (denying a plaintiff's requests for admission that sought legal conclusions from the defendant). For these reasons, Hupp's Motion to Compel responses to requests for admission fifteen through eighteen is DENIED.

C. Meet-and-Confer Requirement

Defendants argue that Plaintiff did not satisfy the "meet-and-confer" requirement of either the local or federal rules. (Def. City San Diego & Raymond Wetzel's Opp'n 9-10, ECF No. 173.) Under local rules, "[t]he court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel shall have previously met and conferred concerning all disputed issues." S.D. Cal. Civ. R. 26.1(a). "If counsel have offices in the same county, they are to meet in person. If counsel have offices in different counties, they are to confer by telephone." Id. The local rules further provide that "[u]nder no circumstances may the parties satisfy the meet-and-confer requirement by exchanging written correspondence." Id. The federal rules similarly instruct a party

bringing a motion to compel to "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery." Fed. R. Civ. P. 37(a)(1).

Rules requiring meet-and-confer efforts apply to pro se litigants. Walker v. Ryan, No. CV-10-1408-PHX-JWS (LOA), 2012 U.S. Dist. LEXIS 63606, at *5-6 (D. Ariz. May 7, 2012) (denying a motion to compel where an unrepresented party did not include a certification of attempts to meet and confer); see also Jourdan, 951 F.2d at 109 (discussing that liberally construing pro se plaintiffs' pleadings and legal arguments does not excuse compliance with straightforward procedural requirements). Moreover, a court may deny a motion to compel solely because of a party's failure to meet and confer prior to filing a discovery motion. Scheinuck v. Sepulveda, No. C 09-0727-WHA (PR), 2010 U.S. Dist. LEXIS 136529, at *3-4 (N.D. Cal. Dec. 15, 2010); see also Shaw v. Cnty. of San Diego, No. 06-CV-2680-IEG (POR), 2008 U.S. Dist. LEXIS 80508, at *3-4 (S.D. Cal. Oct. 9, 2008) (denying a plaintiff's motion to compel for failing to attempt to meet and confer).

Hupp states that "DEFENDANTS Counsel never replied to Plaintiff's 'meet and confer' emails, hard copy mailing or the telephone calls." (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 3, ECF No. 152.) Under the local rules, however, parties located in different counties must confer by telephone, and may not satisfy the meet-and-confer requirement through written correspondence. S.D. Cal. Civ. R. 26.1(a). For that reason, the relevant

communications between Hupp and Defendants are their telephone calls.

The exhibits attached to Plaintiff's motion show that Plaintiff sent Christina Milligan, attorney for both the City and Defendant Wetzel, an e-mail on August 29, 2013 regarding Defendant City's responses to Hupp's discovery requests. (Pl.'s Mot. Compel Attach. #1 Mem. P. & A. 64, ECF No. 152.) This e-mail, sent at 10:00 a.m., indicated that Plaintiff "will be following this letter up with a call to your office today at 10:05am." (Id. at 64.) Hupp e-mailed Milligan again at 10:30 a.m. the same day regarding Defendant Wetzel's responses to the discovery requests, stating that Plaintiff "will be following this letter up with a call to your office today at 10:30am." (Id. at 68.)

Aside from two phone calls and e-mails to defense counsel, Hupp made no other efforts to satisfy the meet-and-confer requirement prior to bringing his motion. Similarly, defense counsel made no efforts to return Plaintiff's phone calls. (See Def. City San Diego & Raymond Wetzel's Opp'n Attach. #1 Decl. Christina Milligan 1-2, ECF No. 173.) Although it is Plaintiff's burden to show a good faith effort to meet and confer, defense counsel cannot frustrate that effort by not returning phone calls. Generally, one phone call is not sufficient. See Daw Indus., Inc. v. Hanger Orthopedic Grp., Inc., No. CIV 06-1222-JAH-NLS, 2009 WL 55989, at *1 (S.D. Cal. Jan. 8, 2009) (noting that "a single phone call followed by a letter the same day concluding that the meet and confer effort had failed does not constitute a good faith attempt to resolve the dispute without need of court intervention[]"). In this case, Hupp placed two telephone calls and sent two e-mails to

counsel for Wetzel and the City. His phone calls and e-mails went unanswered by Christina Milligan or any of the attorneys representing the Defendants. Under these circumstances, Hupp's efforts to comply with the meet-and-confer requirement, although minimal, will not preclude the Court from resolving these disputes on their merits.

IV. CONCLUSION

For the reasons stated, Plaintiff's Motion to Compel discovery from Defendants City of San Diego and Raymond Wetzel is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

Dated: April 9, 2014

Ruben B. Brooks
United States Magistrate Judge

cc: Judge Curiel
All Parties of Record