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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEVIE J. STEVENSON,  
Plaintiff,  
v.  
JEFFREY BEARD, Ph.D., et al.,  
Defendants.

Case No.: 3:16-cv-03079-TWR-RBM

**ORDER:**

**(1) DENYING MOTION TO  
COMPEL DISCOVERY (DOC. 169);  
AND**

**(2) DENYING AS MOOT MOTION  
TO COMPEL DEFENDANT COUCH  
TO ANSWER REQUESTS FOR  
GENUINENESS OF DOCUMENTS  
(DOC. 178.)**

**I. INTRODUCTION**

Plaintiff Stevie J. Stevenson (“Plaintiff”), a prisoner proceeding pro se and *in forma pauperis*, filed a first amended complaint (“FAC”) pursuant to 42 U.S.C. § 1983. (Docs. 6, 8.) There are currently six Defendants: J. Beard, Ph.D., N. Telles, R. Madden, C. Bell, C. Walker, and P. Couch (collectively, “Defendants”).<sup>1</sup> (Docs. 8, 61, 109–10, 113.)

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<sup>1</sup> The Court’s Order of July 11, 2018 dismissed S. Kernan, the former Secretary of CDCR, as a Defendant. (Doc. 61.)

1 On June 7, 2021, Plaintiff filed a motion to compel discovery (“MTC Requests for  
2 Production”), which was accepted *nunc pro tunc* to June 3, 2021. (Doc. 169.) On June 9,  
3 2021, Plaintiff filed a subsequent motion to compel Defendant Couch to answer requests  
4 for genuineness of documents (“MTC Requests for Admission”), which was accepted *nunc*  
5 *pro tunc* to June 8, 2021. (Doc. 178.) On June 17, 2021, Defendants filed a combined  
6 opposition to Plaintiff’s discovery motions (“Opposition”). (Doc. 184.)

7 For the reasons outlined below, Plaintiff’s MTC Requests for Production (Doc. 169)  
8 is **DENIED** and Plaintiff’s MTC Requests for Admission (Doc. 178) is **DENIED AS**  
9 **MOOT.**

## 10 II. **FACTUAL & PROCEDURAL BACKGROUND**

### 11 A. **Surviving Causes of Action in First Amended Complaint**

12 On June 8, 2017, Plaintiff filed the operative FAC asserting the following causes of  
13 action: (1) Plaintiff and other inmates housed in California state prisons have been deprived  
14 of their due process rights as a result of the California Department of Corrections &  
15 Rehabilitation’s (“CDCR”) amendment to statutes governing law libraries in prisons; (2)  
16 Plaintiff’s rights were violated when Centinela State Prison (“Centinela”) staff opened his  
17 legal mail outside of his presence; (3) Plaintiff was subjected to retaliation by Centinela  
18 staff in that he was not allowed to mail outgoing documents to courts, attorneys, or the  
19 California Innocence Project; (4) Plaintiff’s rights were violated because Centinela’s  
20 litigation coordinator withheld from Plaintiff an audio CD recording of an alleged  
21 exculpatory witness statement; and (5) altogether, the cumulative effect of these  
22 deprivations effectively denied Plaintiff the right to access the courts to present a “non-  
23 frivolous claim.” (Docs. 8, 47.) Claim one has been dismissed, however, the access to  
24 court cause of action is preserved in claim five. (Docs. 32, 61.)

### 25 B. **Instant Motions**

26 In Plaintiff’s MTC Requests for Production, Plaintiff seeks to compel Defendants J.  
27 Beard and R. Madden’s responses to Plaintiff’s first set of requests for inspection and

28 ///

1 production.<sup>2</sup> (Doc. 169 at 1.) Requests for Production (“RFP”) Nos. 1–3 seek the  
2 following: (1) photographs of Centinela and Solano State Prison’s (“Solano”) law libraries;  
3 (2) production of one computer with the “Premise” system published by Westlaw and one  
4 computer with the “Mathew Bender” collection published by Lexis Nexis for jury testing;  
5 and (3) one CD-ROM with the “Premise” system used from January 2011 through 2014  
6 and one CD-ROM with the “Mathew Bender” collection used from January 1, 2014 to the  
7 response date. (Doc. 169, Pl.’s Ex. 2 at 10–12.) Plaintiff’s motion is based on Defendants’  
8 alleged failure to provide Plaintiff with photographs of Solano’s law library in RFP No. 1  
9 and the other items requested in RFP Nos. 2–3. (*Id.* at 1, 3.)

10 In Plaintiff’s MTC Requests for Admission, Plaintiff seeks to compel Defendant P.  
11 Couch’s responses to Plaintiff’s first set of requests for admission. (Doc. 178, Pl.’s Ex. 1  
12 at 10.) Specifically, Plaintiff requests Defendant P. Couch admit the genuineness of  
13 documents in Requests for Admission (“RFA”) Nos. 19–23 and provide unqualified  
14 admissions or denials in RFA Nos. 24–31. (*Id.* at 1.) Plaintiff’s motion is based on  
15 Defendant P. Couch’s objections to each RFA based upon them exceeding the allowable  
16 limit. (*Id.* at 2–3.) Plaintiff requested the Court to “stay” a ruling on this motion during  
17 the pendency of District Judge Todd W. Robinson’s ruling on Plaintiff’s objections to the  
18 undersigned’s March 12, 2021 order on Plaintiff’s motion to compel.<sup>3</sup> (*See* Docs. 148,  
19 152.) Given that Judge Robinson issued an order overruling Plaintiff’s objections on  
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21  
22 <sup>2</sup> On March 12, 2021, the undersigned issued an order denying in part and granting in part  
23 Plaintiff’s February 9, 2021 motion to compel (Doc. 148), in which Plaintiff was ordered  
24 to re-serve the first set of requests for inspection and production upon Defendants because  
25 Defendants alleged they had no record of receiving the request. (Doc. 148 at 21–22.)  
26 Defendants mailed their responses to Plaintiff on April 23, 2021. (Doc. 169, Pl.’s Ex. 3 at

27 <sup>3</sup> One of the issues presented in Plaintiff’s February 9, 2021 motion to compel sought the  
28 RFAs propounded upon Defendant P. Couch to be deemed admitted based upon Couch’s  
failure to timely serve responses. The undersigned’s March 12, 2021 order denied this  
request and Plaintiff filed an objection to this ruling. (*See* Doc. 148 at 12–13; *see also* Doc.  
152 at 11–12.)

1 August 13, 2021, Plaintiff's request for a stay is moot. (Doc. 205 at 10.)

### 2 **III. LEGAL STANDARD**

3 A party is entitled to seek discovery of any non-privileged matter that is relevant to  
4 his claims and proportional to the needs of the case. FED. R. CIV. P. 26(b)(1). "The party  
5 seeking to compel discovery has the burden of establishing that his request satisfies the  
6 relevancy requirements of Rule 26(b)(1)." *Bryant v. Ochoa*, 07cv200 JM (PCL), 2009 WL  
7 1390794, at \*1 (S.D. Cal. May 14, 2009) (citing *Soto v. City of Concord*, 162 F.R.D. 603,  
8 610 (N.D. Cal. 1995)). District courts have broad discretion to determine relevancy for  
9 discovery purposes. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). "Thereafter,  
10 the party opposing discovery has the burden of showing that the discovery should be  
11 prohibited, and the burden of clarifying, explaining[,] or supporting its objections." *Bryant*,  
12 2009 WL 1390794, at \*1 (citing *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal.  
13 2002)).

### 14 **IV. DISCUSSION**

#### 15 **A. Meet & Confer Efforts**

16 Pursuant to Civil Local Rule 26.1(a), the Court will not entertain a motion to compel  
17 made under Federal Rules of Civil Procedure 26–37 unless the parties have previously met  
18 and conferred concerning all discovery disputes. CivLR 26.1(a). Upon providing notice  
19 to all affected persons, a motion to compel disclosure or discovery "must include a  
20 certification that the movant has in good faith conferred or attempted to confer with the  
21 person or party failing to make disclosure or discovery." FED. R. CIV. P. 37(a)(1). Meet  
22 and confer efforts also apply to pro se litigants. *See Madsen v. Risenhoover*, No. C 09–  
23 5457 SBA (PR), 2012 WL 2873836, at \*3 (N.D. Cal. July 12, 2012) (finding that the meet  
24 and confer requirement applies to incarcerated individuals but noting plaintiff may send a  
25 letter to defendants).

26 The parties' briefing is silent on any meet and confer efforts; however, on June 17,  
27 2021, Defendants served Plaintiff with amended responses to RFA Nos. 19–31. (Doc.  
28 184–2, Defs.' Ex. 1 at 2–11; Doc. 184–3 at 1.) Additionally, the parties have previously

1 met and conferred regarding various discovery disputes. (Doc. 148 at 3–4; Doc. 164 at 5–  
2 6.) Although Plaintiff failed to include a certification with his discovery motions indicating  
3 that he made a good-faith effort to meet and confer on these discovery disputes, the  
4 undersigned finds substantial compliance with the rules. *See, e.g., Madsen*, 2012 WL  
5 2873836, at \*3 (finding that pro se inmate’s failure to meet and confer before filing motion  
6 to compel did not warrant outright denial of motion); *see also Moore v. Lankford*,  
7 19CV2406–DMS (BLM), 2020 WL 6262379, at \*2 (S.D. Cal. Oct. 22, 2020) (waiving  
8 meet and confer requirements for pro se plaintiff). Therefore, Plaintiff’s motions will be  
9 considered on the merits. CivLR 26.1(a).

10 B. Defendants J. Beard and R. Madden’s Responses to RFP Nos. 1–3

11 Plaintiff seeks to compel further responses to RFP Nos. 1–3. Defendants’ responses  
12 are copied below:

13 **RFP NO. 1:** (1) Photographs

- 14 (a) All rooms in the Facility ‘A’ Law Library at CSP-Centinel.
- 15 (b) All rooms in the Facility ‘C’ Law Library at CSP-Centinel.
- 16 (c) All rooms and book shelves in the Facility ‘A’ & ‘B’ Law Library at CSP-Solano.
- 17 (d) All rooms and book shelves in the Facility ‘C’ & ‘D’ Law Library at CSP-Solano.
- 18 (e) The General area of the Facility ‘A’ and ‘C’ Law Library that depicts the counter  
19 area and LLEDS system to show the set up, at CSP-Centinel.
- 20 (f) The General area of Facilities ‘A’ ‘B’ ‘C’ & ‘D’ Law Library that depicts the  
21 counter area and LLEDS system to show the set up, at CSP-Solano.

22 If the jury is not allowed to visit CSP-Centinel and CSP-Solano’s Law Library it is  
23 Plaintiff’s intention to show them what the law library looks like and what the  
24 capacity could look like. It is Plaintiff’s intention to show the jurors how the shelves  
25 look with books on them and what shelves look like empty without any books.

26 **DEFENDANTS’ RESPONSE:** Objection. Overbroad. Compound. It is not  
27 relevant to this litigation nor is it proportional to the needs of the case, considering  
28 the importance of the issues at stake in the action, the amount in controversy, the  
parties’ relative access to relevant information, the parties’ resources, the importance  
of the discovery in resolving the issues, and whether the burden or expense of the  
proposed discovery outweighs its likely benefit. Defendants are under no obligation  
to create documents such as photographs, but to produce relevant and unprivileged  
documents that already exist. Without waiving these objections, Defendant responds

1 as follows: Photographs of the Centinela State Prison facility law libraries are  
2 attached hereto as AGO 835 to AGO 900. Photographs of the Solano State Prison  
3 were not taken because they are irrelevant to this litigation.

4 **RFP NO. 2:** (2) Testing or Sampling

5 (a) A Law Library Electronic Delivery System loaded with the “Premise” system  
6 published by Westlaw.

7 (b) A Law Library Electronic Delivery System loaded with the “Mathew Bender”  
8 collection published by Lexis Nexis.

9 It is Plaintiff’s intention to provide the Jury with two LLEDS computers one with  
10 the “Gilmore Collection” published by Westlaw and the other one with the “Mathew  
11 Bender Collection” published by Lexis Nexis and allow them to test or sample both  
12 computers in order to allow them to see for themselves if the Lexis Nexis system is  
13 functionally EQUIVALENT to the Westlaw system.

14 **DEFENDANTS’ RESPONSE:** Objection. Overbroad. Compound. Burdensome  
15 and harassing because it is a violation of copyright law for Defendants to distribute  
16 these products. It is not relevant to this litigation nor is it proportional to the needs  
17 of the case, considering the importance of the issues at stake in the action, the amount  
18 in controversy, the parties’ relative access to relevant information, the parties’  
19 resources, the importance of the discovery in resolving the issues, and whether the  
20 burden or expense of the proposed discovery outweighs its likely benefit. The  
21 current Lexis system is available to Plaintiff in the law library, and any other product  
22 Plaintiff wishes to acquire can be purchased from the publisher. The request is  
23 premature as no expert has been designated by Plaintiff, and there currently is no  
24 jury.

25 **RFP NO. 3:** (3) Electronically Stored Information Or Documents

26 (a) A CD-ROM that has the Premise legal resource system published by Westlaw,  
27 or the documents that depicts the legal resource materials that were on the LLEDS  
28 system from January 2011 through January 2014.

(b) A CD-ROM that has the Mathew Bender Collection legal resource system  
published by Lexis-Nexis, or the documents that depicts the legal resource materials  
that were on the LLEDS system from January 1, 2014, up to the date of your  
response.

This request for inspection of things and places to defendants Beard and Madden  
shall be deemed continuing so as to require supplemental answers as new and  
different information materializes.

1        **DEFENDANTS' RESPONSE:** Objection. Overbroad. Compound. Burdensome  
2 and harassing because it is a violation of copyright law for Defendants to distribute  
3 these products. It is not relevant to this litigation nor is it proportional to the needs  
4 of the case, considering the importance of the issues at stake in the action, the amount  
5 in controversy, the parties' relative access to relevant information, the parties'  
6 resources, the importance of the discovery in resolving the issues, and whether the  
7 burden or expense of the proposed discovery outweighs its likely benefit. The Lexis  
8 system is available to Plaintiff in the prison law library, and any other products  
9 Plaintiff wishes to acquire can be purchased from the publishers.

10 (Doc. 169, Pl.'s Ex. 2 at 10–12.)

11        A party serving a request within the scope of Rule 26(b) may seek production or  
12 permission “to inspect, copy, test, or sample . . . any designated documents or electronically  
13 stored information including . . . photographs, sound recordings . . . and other data . . . .”  
14 FED. R. CIV. P. 34(a). Parties responding to requests for production have a “duty under  
15 Rule 34 to conduct a diligent search and reasonable inquiry in [their] effort to obtain  
16 responsive documents.” *Kaur v. Alameida*, CV F 05 276 OWW DLB, 2007 WL 1449723,  
17 at \*2 (E.D. Cal. May 15, 2007).

18        As to RFP No. 1, Defendants' overbreadth and relevance objections are sustained.  
19 At the time Plaintiff filed the FAC, Plaintiff was housed at Centinela. (Doc. 8 at 1.) Claim  
20 five—the only surviving cause of action pertaining to the prison's law library—is based on  
21 the collective conduct of Centinela staff members and alleged violations of Plaintiff's  
22 constitutional rights that occurred while Plaintiff was housed at Centinela. (*Id.* at 32–39.)  
23 Defendants provided Plaintiff with photographs of Centinela's law library facilities and  
24 Plaintiff does not contest the sufficiency of discovery with respect to the Centinela  
25 photographs. The Court previously found that the FAC's claim five is based on the  
26 collective conduct of Centinela staff members while Plaintiff was housed at Centinela.  
27 (Doc. 106 at 8–9 (citing Doc. 8 at 32–39).) Given that Solano's law library facilities are  
28 not the subject of litigation, Plaintiff's request for photos of Solano's facilities is irrelevant.  
See *Bryant*, 2009 WL 1390794, at \*1; see also FED. R. CIV. P. 26(b)(1). Therefore,  
Plaintiff's motion as to RFP No. 1 is **DENIED**.

1 With respect to RFP Nos. 2–3, Plaintiff contends the requests are relevant to show  
2 that the research tools provided by Lexis Nexis are not functionally equivalent to the  
3 resources mandated by regulation. (Doc. 169 at 4–6.) Notably, the right of access to the  
4 courts does not guarantee “any particular methodology,” but rather, only the capability to  
5 challenge sentences or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343, 356–  
6 57 (1996). A prisoner claiming denial of his right of access to the courts must establish he  
7 suffered an actual injury, which is “actual prejudice with respect to contemplated or  
8 existing litigation, such as the inability to meet a filing deadline or present a claim.” *Id.* at  
9 348 (quotation omitted). As Judge Robinson found, merely showing a preference for  
10 certain legal research resources is not sufficient to make this showing of actual injury. (*See*  
11 *Doc. 205 at 7.*) Even so, the scope of discovery is broad and the information requested in  
12 discovery need not be admissible in evidence to be discoverable. *Republic of Ecuador v.*  
13 *Mackay*, 742 F.3d 860, 866 (9th Cir. 2014) (citation omitted); *see also* FED. R. CIV. P.  
14 26(b)(1). Here, Plaintiff has sufficiently demonstrated the information requested is  
15 arguably relevant. *Bryant*, 2009 WL 1390794, at \*1.

16 As to RFP No. 2, Defendants’ overbreadth objection is overruled as Plaintiff  
17 describes the materials to be produced with reasonable particularity. FED. R. CIV. P. 34(b).  
18 Aside from the overbreadth objection, Defendants object to RFP No. 2 as burdensome  
19 based upon “the parties’ relative access to relevant information and the parties’ resources.”  
20 (Doc. 184 at 3–4.) In their Opposition, Defendants contend they no longer license the  
21 Westlaw system and thus do not have access to the system for discovery purposes. (*Id.* at  
22 4–6.)

23 A threshold issue in any Rule 34 request for inspection is whether the item requested  
24 is within the other party’s possession, custody, or control. FED. R. CIV. P. 34(a)(1).  
25 “Property is deemed within a party’s ‘possession, custody, or control’ if the party has  
26 *actual* possession, custody, or control thereof or the legal right to obtain the property on  
27 demand.” *Marti v. M.A. Baires*, No. 08-cv-653-AWI-SKO PC, 2012 WL 2029720, at \*19  
28 (E.D. Cal. June 5, 2012) (emphasis added) (internal citation omitted). In the context of



1 electronically stored information (“ESI”) discovery, determining whether a request is  
2 burdensome depends on whether the information is accessible. *See U.S. ex rel. Carter v.*  
3 *Bridgepoint Ed., Inc.*, 305 F.R.D. 225, 239 (S.D. Cal. 2015). In *Bridgepoint*, Defendants  
4 objected to production of ESI on the grounds that their databases were stored in backup  
5 tapes and therefore, not reasonably accessible due to the undue burden and costs of  
6 retrieving the information. *Id.* at 233. The court sustained the objection reasoning that  
7 “inaccessible simply means that expenditure of resources required to access the contents is  
8 itself unreasonable.” *Id.* at 238. Here, not only have Defendants sufficiently demonstrated  
9 a lack of *actual* possession of the Westlaw system, but that it is inaccessible because it  
10 would require an expenditure of resources to license the system. (Doc. 184 at 4–6.)  
11 Accordingly, Defendants’ burdensome objection as it relates to a testing or sampling of  
12 Westlaw is sustained.

13 As to RFP No. 2’s request for a testing or sampling of Lexis Nexis, Defendants  
14 contend Plaintiff currently has access to the system in the Solano prison law library. (Doc.  
15 184 at 4–6) Generally, this type of objection is not well-taken and insufficient to resist a  
16 discovery request. *Pangborn v. L.A. Cnty. Deputy Sheriffs Lieutenant Baudino*, No. CV  
17 15–6812 AB(JC), 2018 WL 6265055, at \*2 (C.D. Cal. Sept. 27, 2018) (overruling  
18 objection that information was equally available to plaintiff in Section 1983 civil rights  
19 case). However, Rule 26(b) requires a court to limit the extent and frequency of discovery  
20 if the discovery sought “can be obtained from some other source that is more convenient,  
21 less burdensome, or less expensive.” FED. R. CIV. P. 26(b)(2)(C)(i). Here, it appears to be  
22 more convenient and less burdensome for Plaintiff to access the Lexis Nexis system from  
23 Solano’s law library for testing and sampling. Therefore, Plaintiff’s motion as to RFP No.  
24 2 is **DENIED**.

25 As to RFP No. 3, Plaintiff requests the same information as RFP No. 2—access to  
26 the Lexis Nexis and Westlaw systems—but in CD-ROM format. (Doc. 169, Pl.’s Ex. 2 at  
27 11–12.) Defendants’ objections to RFP No. 3 are essentially verbatim to those stated in  
28 RFP No. 2. (Doc. 184 at 3–6.) Accordingly, the Court’s analysis as to RFP No. 2 applies

1 equally here such that Plaintiff's motion as to RFP No. 3 is **DENIED**. *Supra* pp. 8–9.

2 C. Defendant P. Couch's Responses to RFA Nos. 19–31

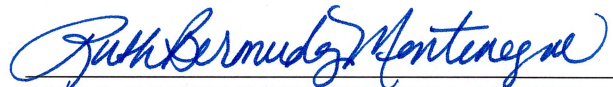
3 In Plaintiff's MTC Requests for Admission (Doc. 178), he seeks to compel  
4 Defendant P. Couch's responses to RFA Nos. 19–31. Initially, Defendant Couch objected  
5 to RFP Nos. 19–31 because Plaintiff's requests exceeded the number of allowable requests  
6 pursuant to CivLR 36.1. (Doc. 178, Pl.'s Ex. 2 at 26–30.) However, Defendant Couch has  
7 since served Plaintiff with amended responses to RFA Nos. 19–31 on June 17, 2021. (Doc.  
8 184 at 6; Doc. 184–2, Defs.' Ex. 1 at 3–11; Doc. 184–3.) In reviewing the amended  
9 answers, responses comply with Federal Rule of Civil Procedure 36(a)(4). Therefore,  
10 Plaintiff's motion as to RFA Nos. 19–31 is **DENIED AS MOOT**.

11 V. CONCLUSION

12 For the foregoing reasons and as outlined in detail above, Plaintiff's MTC Requests  
13 for Production (Doc. 169) is **DENIED** and Plaintiff's MTC Requests for Admission (Doc.  
14 178) is **DENIED AS MOOT**.

15 **IT IS SO ORDERED.**

16 DATE: September 28, 2021

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18 HON. RUTH BERMUDEZ MONTENEGRO  
19 UNITED STATES MAGISTRATE JUDGE  
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