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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUSAN PORTER,

Plaintiff,

v.

WILLIAM D. GORE, Sheriff of San
Diego County, in his official capacity;
WARREN STANLEY, Commissioner of
California Highway Patrol, in his official
capacity,

Defendants.

Case No.: 18cv1221-GPC-LL

**ORDER RE: PLAINTIFF’S MOTION
TO COMPEL DEFENDANT GORE**

[ECF No. 55]

Currently before the Court is Plaintiff’s Motion to Compel Defendant Gore (“MTC”) [ECF No. 55] and Defendant Gore’s Opposition (“Oppo.”) [ECF No. 57]. For the reasons set forth below, Plaintiff’s Motion to Compel is **GRANTED IN PART AND DENIED IN PART.**

RELEVANT PROCEDURAL AND DISCOVERY BACKGROUND

Plaintiff served on Defendant Gore multiple discovery requests that are at issue in the instant motion. Specifically, Plaintiff moves to compel further responses to Defendant Gore’s amended responses to Plaintiff’s Requests for Production (“RFP”) Nos. 18-27 and 30, which were served on Plaintiff on February 19, 2020. ECF No. 55-2 at Exhibit A.

1 Second, Plaintiff moves to compel a further response to Defendant Gore's amended
2 response to Plaintiff's Request for Admission ("RFA") No. 22, which was served on
3 Plaintiff on February 12, 2020. ECF 55-2 at Exhibit B. Third, Plaintiff moves to compel a
4 further response to Defendant Gore's amended response to Plaintiff's First Set of
5 Interrogatories No. 2, which was served on Plaintiff on February 19, 2020. ECF No. 55-
6 2 at Exhibit C. Fourth, Plaintiff moves to compel further responses to Defendant Gore's
7 Supplemental Responses to Plaintiff's RFP Nos. 1-10 (Set One), which were served on
8 Plaintiff on February 12, 2020. ECF No. 52-2 at Exhibit D. Fifth, Plaintiff moves to
9 compel further responses to Defendant Gore's amended response to Plaintiff's RFP Nos.
10 11-17 (Set Two), which were served on Plaintiff on February 12, 2020. ECF No. 55-2 at
11 Exhibit E.

12 Counsel for Plaintiff and counsel for Defendant Gore met and conferred on February
13 5, 2020 and February 14, 2020 to address the parties' disputes with respect to Plaintiff's
14 RFPs, RFAs and Interrogatories. ECF No. 55-2 at ¶ 11. On February 19, 2020, counsel for
15 Plaintiff filed the instant Motion to Compel and on February 27, 2020, Defendant Gore
16 filed his opposition. ECF Nos. 55, 57.

17 **LEGAL STANDARD**

18 The scope of discovery under the Federal Rules of Civil Procedure is defined as
19 follows:
20

21 Parties may obtain discovery regarding any nonprivileged matter that is
22 relevant to any party's claim or defense and proportional to the needs of the
23 case, considering the importance of the issues at stake in the action, the
24 amount in controversy, the parties' relative access to relevant information, the
25 parties' resources, the importance of the discovery in resolving the issues, and
26 whether the burden or expense of the proposed discovery outweighs its likely
27 benefit. Information within this scope of discovery need not be admissible in
28 evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1).

1 District courts have broad discretion to determine relevancy for discovery purposes.
2 See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad
3 discretion to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing
4 that courts must limit discovery where the party seeking the discovery “has had ample
5 opportunity to obtain the information by discovery in the action” or where the proposed
6 discovery is “unreasonably cumulative or duplicative,” “obtain[able] from some other
7 source that is more convenient, less burdensome, or less expensive,” or where it “is outside
8 the scope permitted by Rule 26(b)(1)”).

9 A party may request the production of any document within the scope of Rule 26(b).
10 Fed. R. Civ. P. 34(a). “For each item or category, the response must either state that
11 inspection and related activities will be permitted as requested or state with specificity the
12 grounds for objecting to the request, including the reasons.” Id. at 34(b)(2)(B). The
13 responding party is responsible for all items in “the responding party’s possession, custody,
14 or control.” Id. at 34(a)(1). Actual possession, custody or control is not required. Rather,
15 “[a] party may be ordered to produce a document in the possession of a non-party entity if
16 that party has a legal right to obtain the document or has control over the entity who is in
17 possession of the document.” Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal.
18 1995). Pursuant to Federal Rule of Civil Procedure 37, “a party may move for an order
19 compelling disclosure of discovery.” Fed. R. Civ. P. 37(a)(1). The party seeking to compel
20 discovery has the burden of establishing that its request satisfies the relevance requirement
21 of Rule 26. Soto, 162 F.R.D. at 610. Thereafter, the party opposing discovery has the
22 burden of showing that the discovery should be prohibited, and the burden of “clarifying,
23 explaining and supporting its objections.” DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458
24 (C.D. Cal. 2002) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).

25 An interrogatory may relate to any matter that may be inquired under Rule 26(b).
26 Fed. R. Civ. P. 33(a)(2). “The grounds for objecting to an interrogatory must be stated with
27 specificity, [and] [a]ny ground not stated in a timely objection is waived unless the court,
28 for good cause, excuses the failure.” Fed. R. Civ. P. 33(b)(4). “Each interrogatory must, to

1 the extent it is not objected to, be answered separately and fully in writing under oath.”
2 Fed. R. Civ. P. 33(b)(3). Responses to interrogatories must be verified. Fed. R. Civ. P.
3 33(b)(5) (“The person who makes the answers must sign them, and the attorney who
4 objects must sign any objections.”).

5 “A party may serve on any other party a written request to admit, for purposes of the
6 pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:
7 (A) facts, the application of law to fact, or opinions about either; and (B) the genuineness
8 of any described documents.” Fed. R. Civ. P. 36(a)(1). “Each matter must be separately
9 stated.” Fed. R. Civ. P. 36(a)(2). A responding party may object to a request if they state
10 the ground for the objection. Fed. R. Civ. P. 36(a)(5). The requesting party may then seek
11 a decision from the court determining the sufficiency of an answer or objection.
12 Fed. R. Civ. P. 36(a)(6). The court must order that an answer be served unless it finds an
13 objection justified. Id.

14 DISCUSSION

15 **A. Documents Related to the Legislative Intent and History Behind the** 16 **Enactment of § 27001 and its Statutory Predecessors.**

17 **a. Parties’ Positions**

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20 Plaintiff seeks an order from the Court compelling Defendant Gore to produce or
21 identify documents which Plaintiff contends are related to the legislative history of
22 California Vehicle Code § 27001 (hereinafter “§ 27001” – the statute Plaintiff was cited
23 for violating). MTC at 2-3. Specifically, Plaintiff seeks documents in response to RFP
24 Nos. 18-27 and 30. Id. at 3. Plaintiff argues that “because Defendants have the burden of
25 proving the intent behind the enactment of § 27001. . . [Plaintiff] crafted several discovery
26 requests aimed at covering any such documents.” Id.; see also ECF No. 55-2 at 9-29.
27 Plaintiff acknowledges that she had originally inferred “that there was no such legislative
28 history,” but after the San Diego Sheriff’s Department (“SDSD”) served its amended

1 responses, Plaintiff was “tipped off to the fact that SDS D possessed documents relevant to
2 the legislative history of § 27001.” MTC at 3; see also MTC Ex. B at 6:26-9:6; and Ex. C
3 at 7:13-14. Plaintiff argues that “despite SDS D’s contentions, the public nature of the
4 documents does not rid SDS D of its discovery obligations in this case.” MTC at 4. In sum,
5 Plaintiff requests that the Court “issue an order compelling SDS D to produce all documents
6 pertaining to the legislative history of § 27001 and its statutory predecessors, or in the
7 alternative to specifically identify all such documents and where they can be found.” MTC
8 at 5.

9 Defendant Gore opposes Plaintiff’s motion with respect to the legislative history
10 documents arguing that it fails on the merits for multiple reasons. *Oppo.* at 2. First, with
11 respect to RFP Nos. 18-27, Defendant Gore argues that “the phrase ‘legislative history’ is
12 nowhere to be found in those RFPs; [and] they have nothing to do with the legislative
13 history of § 27001.” *Id.* Second, with respect to RFP No. 30, Defendant Gore argues that
14 he does not have to produce legislative history simply because “Sheriff Gore’s response to
15 interrogatory no. 2 mentioned ‘legislative history.’” *Id.* at 3. Specifically, Defendant Gore
16 states that he does not have “possession, custody, or control” of such legislative history.
17 *Id.* Defendant Gore further represents that his counsel has “informed Plaintiff’s counsel
18 that the legislative history of § 27001 is in the public record at the downtown San Diego
19 public law library and has been reviewed [by defendant’s counsel] (but not copied).” *Id.*
20 (citing Decl. of Timothy M. White at ¶ 3). Thus, Defendant Gore represents that “there is
21 nothing to produce.” *Oppo.* at 3. Third, Defendant Gore argues that “even if Sheriff Gore
22 did have possession of § 27001’s legislative history (which he does not)” such public
23 records are “equally available to Plaintiff.” *Id.* (citing Bleecker v. Standard Fire Ins. Co.,
24 130 F. Supp. 2d Supp. 2d 726, 738-739 (E.D.N.C. 2000)).¹ Fourth, Defendant Gore argues
25 that with respect to RFP No. 22 and RFP No. 30, Plaintiff seeks to compel discovery that
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27 ¹ Defendant states that in Bleecker, “the court rejected the plaintiff’s efforts to compel defendant to
28 produce public records (records that, unlike Sheriff Gore, the defendant actually possessed)” because they
were “readily accessible to plaintiff.” *Oppo.* at 4 (internal citations omitted).

1 is protected as attorney work product because any research done by Sheriff Gore's
2 attorneys is protected as it is legal research done by Defendant's attorneys. Oppo. at 4
3 (citing FRCP 26(b)(3) and caselaw).

4 **b. Analysis**

5 Upon the Court's review of RFP Nos. 18-27 and 30, the court acknowledges that
6 none of the RFP Nos. explicitly request the legislative intent and history behind the
7 enactment of § 27001 and its statutory predecessors. See ECF No. 55-2 at 9-29. However,
8 Interrogatory No. 1 requested that SDSD "[d]escribe in detail all substantial government
9 interests that [SDSD] contend[s] are served by § 27001." Id. at 3. Interrogatory No. 2
10 requested that SDSD "[i]dentify all documents relied upon in responding to, or otherwise
11 supporting [SDSD's] response to Interrogatory No. 1." Ex. C at 6. Defendant's amended
12 response to Interrogatory No. 2 identifies "the legislative history and prior versions of Veh.
13 Code § 27001 and its predecessor statute(s)." Id. at 7. Defendant also admits in the
14 Opposition that his counsel has reviewed the legislative history of § 27001 at the San Diego
15 public law library. Oppo. at 3; White Decl. at ¶ 3. Accordingly, the Court finds that the
16 legislative history of § 27001 has been requested, and that there is a de minimis burden for
17 Defendant to produce it.

18 Also, Defendant's argument that because the requested material is in the public
19 record and "at least equally available to [Plaintiff's] lawyers," is not persuasive. See
20 Thomas v. Hickman, 2007 WL 4302974, at *19 (E.D. Cal. Dec. 6, 2007) (stating that the
21 fact that some of the documents might be possessed by Plaintiff or be available to Plaintiff
22 or to the public is not a basis for refusing to produce documents that are otherwise
23 discoverable") (citing 6 James Wm. Moore et al., Moore's Federal Practice, § 26.41[13]
24 3d. 2006 and Weiner v. Bache Halsey Stuart, Inc., 76 F.R.D. 624, 625 (S.D. Fla. 1977);
25 see also Bretana v. International Collection Corp., 2008 U.S. WL 4334710, * 5-6 (N.D.
26 Cal. Sept. 22, 2008) (stating defendant cannot validly object to producing discovery
27 because the information is contained in public records available to all parties). Although
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1 Defendant relies on case law in her motion to argue that she does not have to produce the
2 requested legislative history because it is in the public record, here Plaintiff represents that
3 she has been unable to find the legislative history requested. See MTC at 3 (“[I]n
4 researching the legislative history associated with the bill from which § 27001 was enacted,
5 Ms. Porter was unable to find any inference as to what the legislator’s motives were at the
6 time of § 27001 being into statute.”). MTC at 3. Defendant’s argument that he did not
7 photocopy the legislative history is unfounded because actual possession is not required.
8 See, e.g., Soto v. City of Concord, 162 F.R.D. 603 at 619. Accordingly, the Court finds
9 Defendant’s argument that the legislative history of § 27001 is not in Sherriff Gore’s
10 “possession, custody, or control” to be without merit. *Oppo.* at 3.

11 Finally, Defendant’s objection to producing the requested legislative history on the
12 basis of attorney work product is without merit as Plaintiff is not seeking Defendant’s
13 counsel’s legal research notes or strategy, but simply the legislative history of § 27001 and
14 any predecessor statutes (if any). In light of the de minimis burden to Defendant to produce
15 the requested legislative history, the Court finds it appropriate to **GRANT** Plaintiff’s
16 Motion to Compel Defendant to produce the legislative history for § 27001 and the
17 predecessor statutes (if any). Defendant Gore shall produce the legislative history for §
18 27001 and the predecessor statutes (if any) on or before **March 20, 2020**.

19 **B. Training Bulletins Received by SDSD from Third-Parties Such as the**
20 **ACLU.**

21 **a. Parties’ Positions**

22 Plaintiff seeks an order from the Court compelling Defendant to produce “training
23 bulletins” in its possession. MTC at 5. Specifically, Plaintiff argues that she has “served at
24 least nine different RFPs which such training bulletins would be responsive to.” *Id.* (citing
25 Ex. A at 3:8-17:16; Ex. D at 9:18-10:6; Ex. E at 3:6-5:13). Plaintiff argues that Defendant’s
26 sole objection on the basis that such documents are not responsive is without merit. MTC
27 at 5. Plaintiff further argues that the “SDSD’s position here is even more baffling when
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1 considering the deposition testimony surrounding these training bulletins.” Id. (internal
2 citations to specific deposition testimony omitted).

3 Defendant opposes Plaintiff’s request for training bulletins for multiple reasons.
4 First, Defendant argues that “Plaintiff’s motion does not [even] identify which particular
5 RFPs she is seeking further responses to.” Oppo. at 5. Second, Defendant notes that “[i]n
6 Sheriff Gore’s amended, verified response to RFP No. 12², he stated an inability to comply
7 with the document request because the Sheriff’s Department ‘has no responsive documents
8 in its possession, custody, or control (i.e., documents ‘related to any training received by
9 SDSD law enforcement personnel, since January 1, 2014, in which § 27001 was mentioned,
10 referred to, or covered in the training.’).” Oppo. at 6; see also ECF No. 55-2 at 115.
11 Defendant argues that the response given “is a straightforward, complete response to RFP
12 No. 12 – i.e., an unequivocal denial of possessing the requested documents, and thus an
13 inability to produce what Sheriff Gore does not have.” Oppo. at 6. Additionally, Defendant
14 argues the SDSD’s deposition testimony “supports Sheriff Gore’s denial.” Oppo. at 6
15 (internal citations to deposition testimony omitted).

16 **b. Analysis**

17 The Court agrees with Defendant that as an initial matter, Plaintiff has failed to
18 identify which RFP she is seeking further responses to. See MTC at 5. Notably, Plaintiff’s
19 Motion to Compel fails to identify which RFP it contends seek “training bulletins,” and
20 instead Plaintiff merely cites to three different exhibits (A, D, and E) attached to its motion.
21 Id. Accordingly, the Court cannot adequately evaluate Plaintiff’s arguments made in
22 connection with the training bulletins. See Valenzuela v. City of Calexico, 2015 WL
23 926149 at *1 (S.D. Cal. Mar. 4, 2015) (The moving party “carries the burden of informing
24 the court: (1) which discovery requests are the subject of [its] motion to compel; (2) which
25 of the defendants’ responses are disputed; (3) why the responses are deficient; (4) the
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27 ² RFP No. 12 sought “All documents, communications, and things related to any training received by
28 SDSD law enforcement personnel, since January 1, 2014, in which § 27001 was mentioned, referred to,
or covered in the training.” ECF No 55-2 at 115.

1 reasons defendants’ objections are without merit; and (5) the relevance of the requested
2 information to the prosecution of his action.”); Ellis v. Cambra, 2008 WL 860523 at *4
3 (E.D. Ca. Mar. 27, 2008) (“Plaintiff must inform the court which discovery requests are
4 the subject of his motion to compel, and, for each disputed response, inform the court why
5 the information is relevant and why Defendant’s objections are not justified.”) .

6 Notwithstanding this, the Court finds that Defendant has adequately responded to
7 Plaintiff’s RFP No. 12, which is the only RFP that appears to request “training bulletins.”
8 ECF No. 55-2 at 115. Defendant’s amended and verified response to RFP No. 12, which
9 states that Defendant does not have the requested documents, is straightforward and
10 sufficient. A court cannot order a party to produce documents that do not exist. See, e.g.,
11 Unilin Beheer B.V. v. NSL Trading Corp., 2015 WL 12698382, *5 (C.D. Cal. Feb. 26,
12 2017) (“a court cannot order a party to produce documents that do not exist”). “A
13 plaintiff’s mere suspicion that additional documents must exist is an insufficient basis to
14 grant a motion to compel.” Id. (citing Bethea v. Comcast, 218 F.R.D. 328, 329 (D. D.C.
15 2003)). Accordingly, Plaintiff’s Motion to Compel “training bulletins” is **DENIED**.

16 **C. Citation Information Contained Within Two Different SDDS Citation**
17 **Tracking/Management Systems.**

18 **a. Parties’ Positions**

19 Plaintiff seeks an order from the Court compelling Defendant to produce “raw
20 citation information and other files that SDDS has in its possession and which it could
21 easily produce.” MTC at 6. Plaintiff argues that such information is responsive to RFP
22 Nos. 2 and 15. Id. Plaintiff states that the “actual citations themselves” produced by the
23 SDDS “are so heavily redacted that there is little factual information to be gleamed from
24 the documents.” Id.

1 Defendant opposes Plaintiff’s request on multiple grounds. First, Defendant argues
2 that Plaintiff’s motion to compel further responses to RFP No. 2 is untimely.³ Second,
3 Defendant states that he has “produced unredacted versions of every citation the Sheriff’s
4 Department has issued for violations of § 27001 since January 1, 2013.” Oppo. at 8. Finally,
5 Defendant argues that “Plaintiff’s belated attempts to seek even more information and
6 materials – so-called ‘raw data’ from the County’s ‘NetRMS system’ - is nothing more than
7 additional RFPs (under the guise of a meet and confer letter). . . .” Id.

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9 **b. Analysis**

10 The Court agrees with Defendant that as an initial matter, Plaintiff has failed to
11 explain the timeliness of the motion to compel in connection with RFP No. 2. Defendant’s
12 supplemental response was served in October 2019, and is well beyond the deadline set
13 forth in Judge Lopez’s Chambers Rules to raise a discovery dispute with the Court. See
14 Judge Lopez’s Chambers Rules at V(C). Additionally, the Court finds that Plaintiff has
15 failed to meet her burden to inform the Court why Defendant’s responses and
16 corresponding production to RFP Nos. 2 and 15 are insufficient. As set forth in Timothy
17 White’s Declaration accompanying Defendant’s Opposition, “while certain personal
18 information has been redacted from the [§ 27001 citation] that is attached hereto (since it
19 is being filed in the public record), all of the citations produced to Plaintiff in discovery in
20 this case have been fully unredacted.” White Decl. at ¶ 57-1. Finally, upon the Court’s
21 review of RFP Nos. 2 and 15, there is no request for “raw data” or any of the “Citation
22 Information” defined in footnote four of Plaintiff’s Motion to Compel. See MTC at 6; see
23 also ECF No. 55-2 at Exhibits D and E. Accordingly, Plaintiff’s Motion to Compel
24 “Citation Information” is **DENIED**.

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27 ³ Defendant states that “Sheriff Gore’s responses to RFP 2 was served on April 29, 2019 (and even Sheriff
28 Gore’s supplemental response to RFP 2 was served in October 2019), much more than 30 days before
Plaintiff filed her motion.” Oppo. at 7.

1 **D. An Admission or Denial in Response to RFA 22 Regarding Whether SDS**
2 **D Possesses Legislative History Regarding § 27001.**

3 **a. Parties' Positions**

4 Plaintiff seeks an order compelling Defendant to “substantively respond to RFA No.
5 22.” MTC at 7. Specifically, Plaintiff states that it seeks “an admission – or a denial –
6 regarding a central factual issue in this case: whether SDS possesses legislative history
7 explaining why § 27001 was enacted.” Id. Plaintiff argues that “[t]he objections here are
8 completely off base because asking about the fact of possession does not implicate the
9 attorney-work product doctrine, and the RFA gets to a central evidentiary issue in this
10 case.” Id. Plaintiff further argues “that the documents are public does not provide a
11 legitimate basis to refuse to answer.” Id.

12 Defendant opposes on the grounds that Plaintiff’s Motion as to RFA 22 “is
13 procedurally improper.” Oppo. at 2. In support, Defendant states that “Plaintiff brings her
14 motion to compel under FRCP 37(a)(3)(B),” “[b]ut Rule 37(a)(3) by its own terms does
15 not apply to RFAs. A challenge to an RFA answer or objection must be brought under
16 FRCP 36(a)(6).” Id. Defendant argues that “Plaintiff has not moved under Rule 36, and
17 thus her motion with respect to RFA 22 [] should be denied.” Id.

18 **a. Analysis**

19 The Court agrees with Defendant that Plaintiff’s Motion, brought pursuant to Fed.
20 R. Civ. P. 37(a)(3)(B), is procedurally improper as to RFA No. 22. See Fed. R. Civ. P.
21 37(a)(3). Federal Rule of Civil Procedure 37 does not apply to RFAs. Federal Rule of Civil
22 Procedure 36(a)(6) provides for a “motion regarding the sufficiency of an answer or
23 objection” in response to a Request for Admission. See Fed. R. Civ. P. 36(a)(6).
24 Accordingly, Plaintiff’s Motion to Compel SDS to substantively respond to RFA No. 22
25 is **DENIED**.

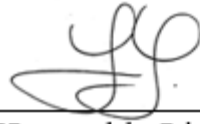
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1 **CONCLUSION**

2 Plaintiff's Motion is **GRANTED IN PART AND DENIED IN PART** as set forth
3 herein.

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5 Dated: March 10, 2020

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8 Honorable Linda Lopez
9 United States Magistrate Judge

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