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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 ROBERT MOORE,

12 Plaintiff,

13 v.

14 JOE LANKFORD, MERCEDES ARELLANO, R.
15 BUCKEL, AND DAVID STROMSKI,

16 Defendants.
17
18

Case No.: 19CV2406-DMS (BLM)

**ORDER DENYING IN PART
PLAINTIFF'S MOTION FOR ORDER
COMPELLING DISCOVERY**

[ECF No. 27]

19 Currently before the Court is Plaintiff's September 4, 2020 Motion for Order Compelling
20 Discovery [ECF No. 27 ("MTC")], Defendants' September 22, 2020 Opposition to the motion
21 [ECF No. 30 ("Oppo.")], and Plaintiff's September 29, 2020 reply [ECF No. 31 ("Reply")]. For
22 the reasons set forth below, Plaintiff's motion is **DENIED IN PART**.

23 **DISCOVERY BACKGROUND**

24 On July 10, 2020, Plaintiff served written discovery on Defendants that included Requests
25 for Production of Documents ("RFPs") and Interrogatories. MTC at 18-48 and 49-51 ("Plaintiff's
26 Decl.") at ¶ 2; see also Oppo. at 6; ECF No. 30-1, Declaration of Christopher H. Findley In
27 Support of Defendants' Opposition to Plaintiff's Motion to Compel ("Findley Decl.") at ¶ 2.
28 Defendants responded to the requests on August 10, 2020 and produced more than 3,500

1 documents on a compact disc. Plaintiff's Decl. at ¶ 3; see also Oppo. at 6; Findley Decl. at ¶ 2,
2 Exhs. 1-4.

3 On August 16, 2020, Plaintiff submitted a motion to compel that was received on August
4 21, 2020 and accepted on discrepancy on September 4, 2020. ECF Nos. 25 and 27. On
5 September 8, 2020, the Court issued a briefing schedule requiring Defendants to file their
6 opposition on or before September 22, 2020 and Plaintiff to file any reply on or before October
7 13, 2020. ECF No. 28. The parties timely filed their pleadings in accordance with the Court's
8 order. See Oppo. and Reply.

9 On September 18, 2020, after the instant motion was filed, Defendants printed the
10 documents previously submitted to Plaintiff on a compact disc and delivered paper copies to
11 Plaintiff. Findley Decl. at ¶ 2.

12 LEGAL STANDARD

13 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

14 Parties may obtain discovery regarding any nonprivileged matter that is relevant
15 to any party's claim or defense and proportional to the needs of the case,
16 considering the importance of the issues at stake in the action, the amount
17 in controversy, the parties' relative access to relevant information, the parties'
18 resources, the importance of the discovery in resolving the issues, and whether
19 the burden or expense of the proposed discovery outweighs its likely
20 benefit. Information within this scope of discovery need not be admissible in
evidence to be discoverable.

21 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 26(b)(1).

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

1 A party may request the production of any document within the scope of Rule
2 26(b). Fed. R. Civ. P.34(a). “For each item or category, the response must either state that
3 inspection and related activities will be permitted as requested or state with specificity
4 the grounds for objecting to the request, including the reasons.” Id. at 34(b)(2)(B). The
5 responding party is responsible for all items in “the responding party’s possession, custody, or
6 control.” Id. at 34(a)(1). Actual possession, custody or control is not required. Rather, “[a]
7 party may be ordered to produce a document in the possession of a non-party entity if that
8 party has a legal right to obtain the document or has control over the entity who is in
9 possession of the document.” Soto v. City of Concord, 162 F.R.D. 603, 619 (N.D. Cal. 1995).

10 A party may serve interrogatories that relate to any matter within the scope of Fed. R.
11 Civ. P. 26(b). Fed. R. Civ. P. 33(a). “The grounds for objecting to an interrogatory must be
12 stated with specificity,” and any interrogatory not objected to must be answered fully in writing
13 under oath. Fed. R. Civ. P. 33(b). An interrogatory not objected to within 30 days after the
14 responding party has been served is waived, unless the court, for good cause, excuses the
15 waiver. Fed. R. Civ. P. 33(b)(4). The waiver is effective “even in situations where a party had
16 a proper objection to a discovery request.” Reliance Ins. Co. v. Core Carriers, Inc., 2008 WL
17 2414041 *3 (M.D. Fla. June 11, 2008).

18 **DISCUSSION**

19 Defendants argue that the Court should deny Plaintiff’s motion because he failed to meet
20 and confer prior to filing the motion and did not include a certificate demonstrating a good faith
21 attempt to meet and confer with his motion. Oppo. at 6, 8-9.

22 While Defendants are correct, and the Court may deny a motion to compel solely due to
23 Plaintiff’s failure to meet and confer prior to filing, “courts can still decide a motion on the merits
24 despite a failure to meet and confer.” Rogers v. Giurbino, 288 F.R.D. 469, 477 (S.D. Cal. 2012)
25 (citing Marine Group, LLC v. Marine Trvelift, Inc., 2012 WL 1155971, at *2–3, (S.D. Cal. Apr. 6,
26 2012) (explaining failure to meet and confer is grounds for denying a motion, but still addressing
27 the merits)). Here, Plaintiff did not comply with the meet and confer requirements prior to filing
28 the instant motion but the Court declines to deny Plaintiff’s motion on this ground. Id. (finding

1 that *pro se* inmate's failure to meet and confer prior to filing a motion to compel did "not warrant
2 an outright denial of his Motion to Compel" and waiving the meet and confer requirement) (citing
3 S.D. Cal. CivLR. 1.1(d) ("[i]n any case for the convenience of the parties in interest, or in the
4 interest of justice, a judge may waive the applicability of these rules.")).

5 A. Compact Disc Production

6 Plaintiff seeks an order from the Court requiring Defendants to "transcribe and produce
7 for inspection every document listed in the Plaintiff's request for production of documents" and
8 to provide Plaintiff with paper copies of the documents instead of a compact disc. MTC at 1-2.
9 Because Plaintiff did not meet and confer with defense counsel, Defendants were unable to
10 resolve this issue without litigation. In their opposition, Defendants explain that they produced
11 their documents on a compact disc due to the volume of the documents (over 3,500 documents)
12 and on the assumption that Plaintiff would be able to view the documents via the prison's
13 litigation coordinator. Oppo. at 6-7. After receiving Plaintiff's motion, Defendants "produced
14 the documents to Plaintiff in paper format." *Id.* at 7; see also Findley Decl. at ¶ 2 ("[a]fter
15 receiving this Motion, I caused the documents to be printed, placed in a box, and delivered to
16 Plaintiff on September 18, 2020"). Plaintiff confirmed that he received the paper documents.
17 Reply at 2. Accordingly, the Court **DENIES AS MOOT** Plaintiff's request for an order requiring
18 Defendants to produce paper copies.

19 B. Interrogatories No. 6 to Defendant Lankford, No. 13 to Defendant Strumsky, No.
20 15 to Defendant Buckel, and No. 6 to Defendant Arellano

21 Plaintiff seeks an order from the Court compelling further response to Interrogatory No.
22 6 to Defendant Lankford, Interrogatory No. 13 to Defendant Strumsky, Interrogatory No. 15 to
23 Defendant Buckel, and Interrogatory No. 6 to Defendant Arellano. MTC; see also Reply.¹ The

24
25 ¹ Plaintiff seeks further responses to Interrogatory No. 6 to Defendant Arellano and Interrogatory
26 No. 15 to Defendant Buckel on page five of his Reply. It is unclear if Plaintiff intended to also
27 seek further responses to Interrogatory No. 6 to Defendant Lankford and Interrogatory No. 13
28 to Defendant Strumsky since Plaintiff does not specifically request further response to those
interrogatories. The Court will give Plaintiff the benefit of the doubt and include them in its
analysis since the interrogatories concern the exact same type of information being sought in

1 interrogatories ask “[h]ave you ever been disciplined if so for what [?]” and “[h]ave you ever
2 received any write-ups or discipline from any superior supervisors ever, if so what were they
3 for[?]” MTC at 30 (Interrogatory No. 6 to Defendant Lankford), 35 (Interrogatory No. 6 to
4 Defendant Arellano), 46 (Interrogatory No. 13 to Defendant Strumsky) and 41 (Interrogatory
5 No. 15 to Defendant Buckle).

6 Defendants responded to the interrogatories and stated:

7 Defendant objects on the ground that the interrogatory is compound.² Defendant
8 further objects on the grounds that it is not relevant to a claim or defense
9 considering the importance of the issues at stake in the action, the amount in
10 controversy, the parties’ relative access to relevant information, the parties’
11 resources, the importance of the discovery in resolving the issues, and that the
12 burden or expense of the discovery outweighs its benefits. Fed. R. Civ. P. 26(b)(1).
13 The request would also violate the privacy rights of the third-party inmates. The
14 request would also violate the privacy rights of the Defendant. Finally, the request
would violate the official information privilege. Subject to these objections,
Defendant responds as follows: No.

15 Findley Decl. at Exhs. 1-4 (citations omitted). Defendants also sent Plaintiff a declaration signed
16 under penalty of perjury from J. Giurbino, a Correctional Counselor currently assigned as the
17 Acting Litigation Coordinator at Richard J. Donovan Correctional Facility (“RJDCF”). Giurbino
18 Decl. at ¶ 1. Giurbino declares that there are no documents responsive to the four
19 interrogatories at issue. Id. at ¶ 3 (no responsive documents to Interrogatory No. 6 to Defendant
20 Lankford, No. 13 to Defendant Strumsky, No. 15 to Defendant Buckel, or No. 6 to Defendant
21 Arellano).

22 All four defendants responded “No” to the interrogatory and Giurbino’s declaration
23 confirms that there are no responsive documents. Accordingly, Plaintiff’s request to compel
24

25
26 Interrogatory No. 6 to Defendant Arellano and Interrogatory No. 15 to Defendant Buckel.

27 ² This first sentence is not included in Defendants’ response to Interrogatory No. 6 to Defendant
28 Lankford, but is included in the responses to the other three interrogatories. Findley Decl. at
Exh. 3.

1 further response Interrogatory No. 6 to Defendant Lankford, Interrogatory No. 13 to Defendant
2 Strumsky, Interrogatory No. 15 to Defendant Buckel, and Interrogatory No. 6 to Defendant
3 Arellano is **DENIED**.

4 C. Interrogatories No. 16 to Defendant Lankford, No. 15 to Defendant Arellano, No.
5 16 to Defendant Buckle, and No. 14 to Defendant Strumsky

6 Plaintiff seeks an order from the Court compelling further response to Interrogatory No.
7 16 to Defendant Lankford³, Interrogatory No. 15 to Defendant Arellano, Interrogatory No. 16 to
8 Defendant Buckle, and Interrogatory No. 14 to Defendant Strumsky. MTC at 2; see also Reply
9 at 5. Those interrogatories ask

10 Have you ever been written up or grievances filed against you by any inmate while
11 you worked in the canteen, if so how many and for what.

12 Have you ever had a grievance filed against you by any inmate besides the plaintiff,
13 if so for what.

14 Have you ever had a 602 grievance filed against you by any other inmate other
15 than the plaintiff, for what.

16 Have you ever been written up by inmates if so for what.

17 Id. at 31 (Interrogatory No. 16 to Defendant Lankford), 36 (Interrogatory No. 15 to
18 Defendant Arellano), 41 (Interrogatory No. 16 to Defendant Buckle), and 46
19 (Interrogatory No. 14 to Defendant Strumsky).

20 Defendants responded to the interrogatories and stated:

21 Defendant objects on the ground that the interrogatory is compound. Defendant
22 further objects on the grounds that it is not relevant to a claim or defense

23 ³ Plaintiff's MTC states that he is seeking further response to Interrogatory No. 16 to Defendant
24 Lankford. MTC at 2. Plaintiff's Reply states that he is seeking further response to Interrogatory
25 No. 14 to Defendant Lankford. Reply at 5. The Court assumes that this is a typographical
26 error and Plaintiff intended to write Interrogatory No. 16 which, similar to the other
27 interrogatories at issue, concerns potential grievances filed against Defendant Lankford by
28 inmates. Id. Interrogatory No. 14 asks Defendant Lankford "On 1-12-19 when you had a
disagreement and the Plaintiff reported to work the next day didn't you tell the Plaintiff that he
couldn't work in the front of the canteen, but that he had to work in the back of the canteen"
and does not appear to be at issue in this motion. Findley Decl. at Exh. 3.

1 considering the importance of the issues at stake in the action, the amount in
2 controversy, the parties' relative access to relevant information, the parties'
3 resources, the importance of the discovery in resolving the issues, and that the
4 burden or expense of the discovery outweighs its benefits. Fed. R. Civ. P. 26(b)(1).
5 The request would also violate the privacy rights of the third-party inmates. The
6 request would also violate the privacy rights of the Defendant and third-party
7 inmates. Finally, the request would violate the official information privilege.

7 Findley Decl. at Exhs. 1-4 (internal citations omitted).

8 Plaintiff seeks an order from the Court requiring Defendants to answer the interrogatories
9 and produce responsive documents. MTC at 2. Plaintiff argues that the interrogatories do not
10 seek privileged information and specifically notes that he is not asking for information "such as
11 addresses, medical data, leaves or vacations etc." Id. Plaintiff argues that the information is
12 relevant to his case because it demonstrates a pattern and history of racist, discriminatory, and
13 retaliatory behavior. Id.

14 Defendants contend that the inmate grievances Plaintiff seeks (1) are not relevant or
15 within the scope of discovery, (2) violate the privacy rights of Defendants and third-party
16 inmates, and (3) are protected by the official information privilege. Oppo. at 9-15.

17 1. Relevance

18 Defendants argue that the grievances are not relevant or within the scope of discovery
19 because they could not lead to discoverable evidence since they only show that "Defendants
20 acted consistently with the allegations Plaintiff is making in this case" and prior bad acts are
21 inadmissible. Id. at 10. Defendants note that grievances are merely allegations and do not
22 mean that the person named in the grievance has committed whatever act they are accused of
23 committing making the grievances undiscoverable. Id.

24 The Court overrules Defendants' objection to the extent that they argue that grievances
25 are never relevant and never within the scope of discoverable information. See Tate v. Andres,
26 2020 WL 1984151, at *3 (E.D. Cal., Apr. 27, 2020) (granting plaintiff's motion to compel further
27 response to RFPs, finding that "complaints or appeals against defendant based upon the same
28 type of conduct at issue in this action are, in fact, relevant[,]" and noting that "sufficient

1 similarities in complaints could potentially demonstrate a pattern of conduct by defendant that
2 would speak to his intent, which is a necessary component to each of the claims against him”);
3 Houston v. Eldridge, 2018 WL 1014459, at * 5 (E.D. Cal., Feb. 22, 2018) (“Plaintiff is entitled to
4 discovery of grievances filed by other inmates alleging that defendants [] used physical violence
5 on an inmate.”); Eusse v. Vitela, 2015 WL 9008634, at * 4 (S.D. Cal. Dec. 14, 2015) (“other
6 disciplinary records and substantiated complaints about conduct similar to that alleged in the
7 complaint are relevant and may lead to the discovery of admissible evidence that could bear on
8 Plaintiff's claims”) citing Garcia v. Cluck, 2013 WL 6441474, * 3 (S.D. Cal. Dec. 6, 2013) (finding
9 that complaints by inmates about conduct similar to the plaintiff's allegations of retaliation are
10 relevant, and directing production of same). Plaintiff's requests seek relevant information but
11 because they are not limited to an appropriate time period and to the specific claims at issue in
12 this case, they also seek irrelevant information. See Houston v. Eldridge, 2018 WL 1014459, at
13 * 5 (“Plaintiff is not entitled to grievances filed against defendant Eldridge alleging physical
14 violence because plaintiff does not allege that defendant Eldridge used excessive force”); Taylor
15 v. O'Hanneson, 2014 WL 2696585 at * 5 (E.D. Cal. 2014) (denying without prejudice plaintiff's
16 overbroad request for grievances against defendants concerning the mistreatment of prisoners
17 but suggesting that a “properly phrased request. . . specifically tailored to documents pertaining
18 to Plaintiff's claim of excessive force” would be permitted and noting that “admissibility of
19 character evidence is a proper objection to be raised at trial, but not necessarily in the discovery
20 phase.”).

21 Plaintiff's complaint alleges cruel and unusual punishment, deliberate indifference to
22 safety, ADA discrimination, equal protection violations, and retaliation. ECF No. 1 (“Compl.”).
23 The alleged wrongful conduct occurred during 2019 and Plaintiff filed his complaint in this court
24 on December 16, 2019. Id. Accordingly, the Court finds the relevant time frame to be January
25 1, 2015 to December 31, 2019. The Court further finds that with regard to the identified
26 interrogatories and the requested grievances, the scope of relevant response for each Defendant
27 is all grievances filed between January 1, 2015 and December 31, 2019 that allege claims similar
28 to the claims alleged against each Defendant in the complaint.

1 2. Privacy Rights

2 Defendants contend that Plaintiff's requests violate the privacy rights of Defendants and
3 third-party inmates because "Defendants have a privacy interest in not disclosing allegations,
4 investigations, or grievances claiming they acted inappropriately" and grievances may contain
5 confidential information such as the names and addresses of staff members and other identifying
6 information. Id. at 12. In addition, grievances may contain statements from witnesses who
7 have been promised confidentiality and producing that information may lead to lower witness
8 participation in future investigations. Id. Defendants request that they be able to redact inmate
9 names if the Court orders the production of the inmate grievances. Id. at 13.

10 Defendants' privacy objection is overruled. If documents are ordered to be produced,
11 Defendants' privacy concerns can be addressed with a protective order and/or the redaction of
12 identifying information. See Lamon v. Adams, 2010 WL 4513405, at * 3–4 (E.D. Cal. Nov.2,
13 2010) (ordering redaction of the names of the inmates who filed grievances against correctional
14 officer before documents were provided to plaintiff); see also Smith v. Kiesz, 2013 WL 1338927,
15 at * 2 (E.D. Cal., Apr. 3, 2013) (ordering defendant to produce documents from defendant's
16 personnel file and noting that any documents disclosed were subject to a protective order that
17 required defense counsel "to redact any and all identifying personal information which might
18 pose a security risk if released, including, but not limited to, the defendant's home addresses,
19 social security numbers, telephone numbers, etc."); Eusse, 2015 WL 9008634 at * 4 (noting
20 defendants' privacy concerns and ordering that "the names and identifying information of the
21 individuals who made the complaints, as well as other officers who were not involved in the
22 incident, may be redacted."); and Thompson v. Morales, 2008 WL 413757, at * 1 (E.D. Cal., Feb.
23 13, 2008) ("Privacy concerns, if any, may be addressed by redaction of names, CDC numbers,
24 and other identifying information, should the defendants be required to produce documents
25 responsive to this request.").

26 3. Official Information Privilege

27 Finally, Defendants contend that the requested grievances are protected by the official
28 information privilege "which weighs the potential benefits of disclosure against the

1 disadvantages of chilling a government agency's ability to do its job.” Id. Defendants state that
2 when they responded to Plaintiff’s interrogatories, they provided Plaintiff with a declaration from
3 J. Giurbino in support of the contention that the official information privilege applies to the
4 instant dispute. Id. at 14; see also MTC at 13-16 (“Giurbino Decl.”). Defendants argue that a
5 protective order would be insufficient to protect the information being sought because Plaintiff
6 is a *pro se* prisoner housed at the same facility where Defendants work. Id. at 15.

7 a. Legal Standard

8 “Federal common law recognizes a qualified privilege for official information.” Sanchez
9 v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990) (citing Kerr v. United States Dist. Ct.
10 for N.D. Cal., 511 F.2d 192, 198 (9th Cir.1975), aff'd, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d
11 725 (1976)). The party asserting the privilege has the initial burden of proving the applicability
12 of the privilege. See Kelly v. City of San Jose, 114 F.R.D. 653, 669–71 (N.D.Cal.1987); see also
13 Hampton v. City of San Diego, 147 F.R.D. 227, 230 (S.D.Cal.1993) (“Through this opinion, this
14 court is hereby joining the Northern District's and Central District's procedures outlined in Kelly
15 v. City of San Jose, 114 F.R.D. 653 (N.D.Cal.1987) and Miller v. Pancucci, 141 F.R.D. 292
16 (C.D.Cal.1992) for invoking the official information privilege”); Stewart v. City of San Diego,
17 2010 WL 4909630, at * 1 (S.D. Cal. 2010) (applying Kelly). A party seeking to invoke the official
18 information privilege in response to a discovery request must serve a timely discovery response
19 specifically identifying the official information privilege as a basis for its objection. Kelly, 114
20 F.R.D. at 669. The objection must be accompanied by a declaration or affidavit “from a
21 responsible official within the agency who has personal knowledge of the principal matters to
22 be attested to in the affidavit or declaration.” Id. The affidavit or declaration must include:

- 23 (1) an affirmation that the agency generated or collected the material in issue and
24 has in fact maintained its confidentiality (if the agency has shared some or all of
25 the material with other governmental agencies it must disclose their identity and
26 describe the circumstances surrounding the disclosure, including steps taken to
27 assure preservation of the confidentiality of the material), (2) a statement that the
28 official has personally reviewed the material in question, (3) a specific identification
of the governmental or privacy interests that would be threatened by disclosure of

1 the material to plaintiff and/or his lawyer, (4) a description of how disclosure
2 subject to a carefully crafted protective order would create a substantial risk of
3 harm to significant governmental or privacy interests, (5) and a projection of how
4 much harm would be done to the threatened interests if the disclosure were made.

4 Id. at 670. “If the nondisclosing party does not meet this initial burden of establishing cause to
5 apply the privilege, the court must order disclosure of the documents; if the party meets this
6 initial burden, the court generally conducts an *in camera* review of the material and balance[s]
7 each party's interests.” Bryant v. Armstrong, 285 F.R.D. 596, 605 (S.D. Cal. 2012).

8 The balance test requires that “courts must weigh the potential benefits of disclosure
9 against the potential disadvantages.” Sanchez, 936 F.2d at 1033-34. The Kelly court provided
10 a non-exhaustive list of factors (taken from Frankenhauser v. Rizzo, 59 F.R.D. 339 (E.D. Pa.
11 1973)) that may be considered when engaging in this weighing process: (1) the extent to which
12 disclosure will thwart governmental processes by discouraging citizens from giving the
13 government information; (2) the impact upon persons who have given information of having
14 their identities disclosed; (3) the degree to which government self-evaluation and consequent
15 program improvement will be chilled by disclosure; (4) whether the information sought is factual
16 data or evaluative summary; (5) whether the party seeking the discovery is an actual or potential
17 defendant in any criminal proceeding either pending or reasonably likely to follow from the
18 incident in question; (6) whether the police investigation has been completed; (7) whether any
19 intradepartmental disciplinary proceedings have arisen or may arise from the investigation; (8)
20 whether the plaintiff's suit is non-frivolous and brought in good faith; (9) whether the
21 information sought is available through other discovery or from other sources; and (10) the
22 importance of the information sought to the plaintiff's case. Kelly, 114 F.R.D. at 663. In making
23 this determination, courts must conduct “a situation specific analysis of the factors made
24 relevant by the request in issue and the objection to it.” Id. In civil rights cases against police
25 departments, the balancing test should be “moderately pre-weighted in favor of disclosure.”
26 Soto, 162 F.R.D. at 613 (quoting Kelly, 114 F.R.D. at 661).

27 b. Analysis

28 Defendants have satisfied their initial burden of proving the applicability of the privilege.

1 J. Giurbino's declaration states that he personally reviewed the documents responsive to
2 Interrogatory No. 16 to Defendant Lankford, No. 14 to Defendant Strumsky, No. 15 to Defendant
3 Arellano, and No. 16 to Defendant Buckel and that the documents contain confidential
4 information including "medical information, information about the inmate's property, the
5 inmate's job, and the people with whom the inmate associates." Id. at ¶ 4. Giurbino explains
6 that the confidential information about other inmates can be used "to extract favors or otherwise
7 weaponize the information" and that releasing the information "would endanger the safety of
8 persons within the prison and jeopardize the security of the institution if disclosed." Id. Giurbino
9 further explains that the documents contain confidential information about staff members such
10 as "their full names, addresses, and other identifying information" which, if given to an inmate,
11 could be distributed through the inmate population and create a substantial danger for prison
12 staff, their families, and their property. Id. at ¶ 5. Giurbino notes that RJDCF has an interest
13 in keeping the information confidential because it encourages inmates to make truthful
14 statements during investigations and encourages investigators to accurately report their
15 findings. Id. at ¶ 6. An inmate is willing to provide truthful statements if they do not have to
16 fear being identified as a snitch or one who cooperates with authorities which could jeopardize
17 their physical safety. Id. at ¶ 7. Finally, Giurbino declares that even if Plaintiff was represented
18 by counsel, a protective order would be insufficient for protecting the confidential information
19 as Plaintiff could still "learn of the information inadvertently through [his] lawyer, [his] lawyer's
20 staff, or [his] lawyer's representatives." Id. at ¶ 8.

21 Because the Court finds that Defendants have satisfied the threshold requirement for
22 application of the Official Information Privilege with respect to these interrogatories, the Court
23 will perform an *in camera* review of the relevant grievances and conduct a balancing analysis to
24 determine whether the Official Information Privilege applies.

25 Defendants must lodge a copy of the grievances responsive to Interrogatory No. 16 to
26 Defendant Lankford, Interrogatory No. 15 to Defendant Arellano, Interrogatory No. 16 to
27 Defendant Buckle, and Interrogatory No. 14 to Defendant Strumsky with the Court for *in camera*
28 review to efile_major@casd.uscourts.gov on or before **November 6, 2020**. Defendants

1 are only **required to provide grievances that fit within the Court's definition of**
2 **relevance as set forth in Section C.1.** The Court will review the documents and issue an
3 order regarding Plaintiff's motion to compel further response to Interrogatory No. 16 to
4 Defendant Lankford, Interrogatory No. 15 to Defendant Arellano, Interrogatory No. 16 to
5 Defendant Buckle, and Interrogatory No. 14 to Defendant Strumsky.

6 D. Sanctions

7 Plaintiff requests that the Court sanction Defendants in the amount of \$100 "as
8 reasonable expenses in obtaining this order" since Defendants were not substantially justified in
9 hindering Plaintiff's access to the requested documents. MTC at 3-4. Defendants contend that
10 the Court should not award sanctions against Defendants because (1) "Plaintiff violated the local
11 and federal rules, and is prohibited from moving for sanctions[.]" (2) "Defendants acted with
12 substantial justification[.]" and (3) "a pro per party who acts for himself is not entitled to
13 attorney's fees." Oppo. at 15-16.

14 Pursuant to Federal Rule of Civil Procedure 37, if a motion to compel discovery is denied,
15 the Court

16 must, after giving an opportunity to be heard, require the movant, the attorney
17 filing the motion, or both to pay the party or deponent who opposed the motion
18 its reasonable expenses incurred in opposing the motion, including attorney's fees.
19 But the court must not order this payment if the motion was substantially justified
or other circumstances make an award of expenses unjust.

20 FRCP 37(a)(5)(B). "Discovery conduct is substantially justified if it is a response to a genuine
21 dispute or if reasonable people could differ as to the appropriateness of the contested action."
22 Izzo v. Wal-Mart Stores, Inc., 2016 WL 409694, at *7 (D. Nev. Feb. 2, 2016) (citing Pierce v.
23 Underwood, 487 U.S. 552, 565 (1988)).

24 Here, Plaintiff's motion to compel response to Interrogatory No. 6 to Defendant Lankford,
25 Interrogatory No. 13 to Defendant Strumsky, Interrogatory No. 15 to Defendant Buckel, and
26 Interrogatory No. 6 to Defendant Arellano has been denied and there is a good faith dispute as
27 to Interrogatory No. 16 to Defendant Lankford, Interrogatory No. 15 to Defendant Arellano,
28 Interrogatory No. 16 to Defendant Buckle, and Interrogatory No. 14 to Defendant Strumsky.

1 Because Plaintiff did not comply with the Court's meet and confer requirements and because his
2 motion to compel was denied in part and disputed in good faith in another part, the Court
3 **DENIES** Plaintiff's request for sanctions.

4 **CONCLUSION**

5 Plaintiff's request for an order requiring Defendants to produce paper copies is **DENIED**
6 **AS MOOT.**

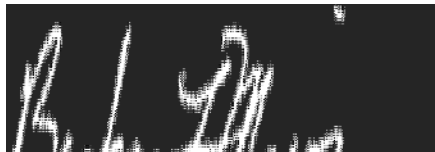
7 Plaintiff's request to compel further response Interrogatory No. 6 to Defendant Lankford,
8 Interrogatory No. 13 to Defendant Strumsky, Interrogatory No. 15 to Defendant Buckel, and
9 Interrogatory No. 6 to Defendant Arellano is **DENIED.**

10 Defendants must lodge the grievances responsive to Interrogatory No. 16 to Defendant
11 Lankford, Interrogatory No. 15 to Defendant Arellano, Interrogatory No. 16 to Defendant Buckle,
12 and Interrogatory No. 14 to Defendant Strumsky as defined by the Court with Judge Major's
13 Chambers at efile_major@casd.uscourts.gov on or before **November 6, 2020**. An order
14 regarding Plaintiff's motion to compel responses to those interrogatories will follow.

15 Plaintiff's request for sanctions is **DENIED.**

16 **IT IS SO ORDERED.**

17 Dated: 10/22/2020

A rectangular box containing a handwritten signature in black ink, likely belonging to Judge Major as mentioned in the text.