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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM MEYER, et al. ,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants.

Case No.: 3:21-cv-0341-RSH (BLM)

**ORDER DENYING PLAINTIFF’S
MOTION TO COMPEL**

[ECF No. 264]

Currently before the Court is Plaintiff William Meyer’s January 10, 2025 Motion to Compel Defendants Valenzuela, Craft, Paugh, and Snyder (“Defendants”) to Provide Further Responses to Discovery.¹ ECF No. 264. On January 17, 2025, Defendants filed an Opposition (“Oppo.”). ECF No. 267. On January 24, 2025, Plaintiff filed his Reply (“Reply”). ECF No. 268. On January 28, 2025, Plaintiff filed a “Supplemental Declaration,” without leave of court. ECF No. 269.

¹ On January 12, 2025, Plaintiff filed a “Notice of Errata re: Exhibits” and submitted Exhibits H-Z and AA-TT that he was not able to file with the original motion due to “technical issues.” See ECF No. 265-5.

1 After reviewing Plaintiff's MTC, the Defendants' Oppo, Plaintiff's Reply and all supporting
2 documents, the Court **DENIES** Plaintiff's Motion for the reasons set forth below.

3 **RELEVANT BACKGROUND**

4 On December 27, 2021, Plaintiffs William Meyer and Dana Gascay filed their second
5 amended complaint ("SAC") in this action alleging, *inter alia*, that Defendants, social workers
6 employed by the County of San Diego, violated their civil rights by allegedly impermissibly
7 conducting video surveillance of Plaintiffs and their minor child ("M.M.") while she was receiving
8 medical treatment. ECF No. 61 at ¶¶ 94-104. Following District Judge Robert Huie's Order
9 granting in part, and denying in part, Defendants' Motion to Dismiss Plaintiffs' SAC, the only
10 remaining Defendants are Valenzuela, Craft, Paugh, and Snyder. See ECF No. 95. In addition,
11 the Monell claims against the County of San Diego were dismissed and Plaintiffs did not file a
12 noticed motion seeking leave to amend these claims as instructed by District Judge Huie if they
13 wanted to attempt to re-allege a Monell claim. Id.

14 Beginning in August of 2024, the parties brought their first motion seeking an extension
15 of time to comply with this Court's Chambers Rules regarding discovery disputes. ECF No. 249.
16 It was in this motion that the parties raised the issue of the dispute over Defendants' responses
17 to Plaintiff Meyer's Request for Production of Documents ("RFPs") (Set 3). Id. The Court granted
18 the parties request for an extension of time for the Plaintiff to bring a motion to compel if
19 necessary. ECF No. 250. The parties went on to file three more motions seeking extensions of
20 time to comply with the Court's Chambers Rules which the Court granted. ECF Nos. 255, 257,
21 and 259. The parties filed a fifth request on December 20, 2024. ECF No. 260. The Court found
22 that the parties had failed to establish good cause to grant their request for another extension
23 and issued a briefing schedule for Plaintiff's motion to compel which is currently before the
24 Court. ECF No. 261.

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1 **LEGAL STANDARD**

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

3 Parties may obtain discovery regarding any nonprivileged matter that is relevant
4 to any party's claim or defense and proportional to the needs of the case,
5 considering the importance of the issues at stake in the action, the amount in
6 controversy, the parties' relative access to relevant information, the parties'
7 resources, the importance of discovery in resolving issues, and whether the burden
8 or expense of the proposed discovery outweighs the likely benefit. Information
9 within this scope of discovery need not be admissible in evidence to be
10 discoverable.

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

12 Typically, the relevance standard is broad in scope and "encompass[es] any matter that
13 bears on, or that reasonably could lead to other matters that could bear on, any issue that is or
14 may be in a case." Doherty v. Comenity Capital Bank & Comenity Bank, 2017 WL 1885677, at
15 *2 (S.D. Cal. May 9, 2017). Relevance, however, is not without limits. Id. The 2015 amendment
16 to Rule 26(b) removed the phrase "reasonably calculated to lead to the discovery of admissible
17 evidence" because it was often misconstrued to define the scope of discovery. Fed. R. Civ. P.
18 26(b)(1) advisory committee's notes (2015 amendment). Instead, to fall within the scope of
19 discovery, the information must also be "proportional to the needs of the case," requiring lawyers
20 to "size and shape their discovery requests to the requisites of a case" while "eliminat[ing]
21 unnecessary or wasteful discovery." Fed. Civ. R. P. 26(b)(1); Cancino Castellar v. McAleenan,
22 2020 WL 1332485, at *4 (S.D. Cal Mar. 23, 2020) (quoting Roberts v. Clark Cty. Sch. Dist., 312
23 F.R.D. 594, 603 (D. Nev. 2016)).

24 District courts have broad discretion to determine relevancy for discovery purposes. D.M.
25 v. County of Merced, 2022 WL 229865, at * 2 (E.D. Cal. Jan. 26, 2022) (citing Hallett v. Morgan,
26 296 F.3d 732, 751 (9th Cir. 2002) and Survivor Media v. Survivor Prods., 406 F.3d 625, 635
27 (9th Cir. 2005)). District courts also have broad discretion to limit discovery to prevent its abuse.
28 See Fed. R. Civ. P. 26(b)(2) (instructing that courts must limit discovery where the party seeking
the discovery "has had ample opportunity to obtain the information by discovery in the action")

1 or where the proposed discovery is “unreasonably cumulative or duplicative,” “obtain[able] from
2 some other source that is more convenient, less burdensome or less expensive,” or where it “is
3 outside the scope permitted by Rule 26(b)(1)”. Further, “[w]hen analyzing the proportionality
4 of a party's discovery requests, a court should consider the importance of the issues at stake in
5 the action, the amount in controversy, the parties’ relative access to the information, the parties’
6 resources, the importance of the discovery in resolving the issues, and whether the burden or
7 expense of the proposed discovery outweighs its likely benefit.” Cancino, 2020 WL 1332485, at
8 *4 (citing Fed. R. Civ. P. 26(b)(1)).

9 Fed. Civ. R. P. 34 provides that a party may serve on another a request for production of
10 documents, electronically stored information, or tangible things within the scope of Fed. Civ. R.
11 P. 26(b). Fed. R. Civ. P. 34(a). Where a party fails to produce documents requested under Rule
12 34, the party propounding the request for production of documents may move to compel
13 discovery. See Fed. R. Civ. P. 37(a). “The party seeking to compel discovery has the burden of
14 establishing that its requests satisfy the relevancy requirements of Rule 26(b)(1). Thereafter,
15 the party opposing discovery has the burden of showing that the discovery should be prohibited,
16 and the burden of clarifying, explaining, or supporting its objections.” Williams v. County of San
17 Diego, 2019 WL 2330227, at *3 (citing Bryant v. Ochoa, 2009 WL 1390794, at *1 (S.D. Cal. May
18 14, 2009)) (internal quotations omitted).

19 **DISCOVERY NO LONGER AT ISSUE**

20 As an initial matter, Defendants have informed the Court in their Opposition that they are
21 “withdrawing their objections and will voluntarily produce” the following PowerPoint training
22 presentations: (1) “HS SS SWS Confidentiality & Legal Liabilities” November 2015; (2) “County
23 Counsel – Juvenile Dependency Training” September 2016; (3) “HH SS CWS The Law”
24 September 2016; and (4) “Forensic Interviews and Medial Evaluations” 2019. Oppo. at 7.
25 There are eight remaining PowerPoint presentations that are still in dispute Id.

26 **PLAINTIFFS’ POSITION**

27 On July 3 and July 5, 2024, Plaintiff served his RFPs, Set Three, requesting that the
28 Defendants produce all “training material DOCUMENTS, PowerPoint Presentations (in native

1 form), lecture notes, letters, flyers, handouts, and/or video and/or audio recordings – all in ESI
2 format – you received, viewed, and/or were presented during” twelve separate trainings. See
3 Pullman Decl. at ¶¶ 1, 2, ECF No. 264-1.

4 Plaintiff argues that the Defendants’ objections to the RFPs on the grounds of attorney-
5 client privilege and attorney work product are without merit. MTC at 7-14. Specifically, Plaintiff
6 argues that the primary purpose of the trainings was to teach, not to provide legal advice. Id.
7 at 7 (citing ACLU of N. Cal. v. U.S. Dep’t of Just., 880 F.3d 473, 487 (9th Cir. 2018)). Plaintiff
8 also asserts that Defendants have failed to make the proper showing that the purpose of the
9 trainings was to “avoid prospective litigation” and attorney work product only “applies to
10 materials that would not have been generated but for the pendency or imminence of litigation.”
11 Id. at 12 (citing Greer v. Cnty of San Diego, 634 F.Supp.3d 911, 918 (S.D. Cal. 2022)).²

12 Defendants also are alleged to have waived their objections by failing to timely object.
13 Id. at 15-16. Plaintiff argues that Defendants’ original responses to the RFPs, with one
14 exception, did not contain any specific attorney-client privilege or attorney work product
15 objections. Id. at 16. Defendants are also alleged to have expressly waived these privileges
16 by “voluntarily producing training materials that addressed similar and/or overlapping
17 issues/topics” in other litigation matters. Id. at 17.

18 Finally, Plaintiff argues the training materials are relevant to show that the constitutional
19 rights at issue were clearly established and therefore, these documents are “relevant to the
20 qualified immunity analysis.” Id. at 19.

21 **DEFENDANTS’ POSITION**

22 Defendants assert that the training materials at issue are protected by attorney-client
23 privilege and attorney work product doctrine. Oppo. at 9 (citing United States v. Richey, 632
24 F.3d 559 (9th Cir. 2011)). In support of this argument, Defendants have submitted the
25 declaration of Caitlin Rae, Assistant County Counsel for the Office of County Counsel. See Rae
26

27 ² On February 10, 2025, the Ninth Circuit Court of Appeals reversed the district court’s decision
28 in Greer in a published decision. See Greer, et al. v. County of San Diego, et al., --F.4th --,
2025 WL 441836 (9th Cir. Feb. 10, 2025.)

1 Decl., ECF No. 267-1. Defendants also argue that they have not waived any objections or “in
2 the alternative relief from any waiver should be granted.” *Oppo*. at 10.

3 Defendants assert that the training materials that are in question are not within the scope
4 of permissible discovery for two reasons. *Id.* at 13. First, these materials are irrelevant because
5 there is no Monell liability at issue in this matter as the County was dismissed as a defendant in
6 this case. *Id.* Second, many of the training materials the Plaintiff seeks were presented to the
7 individual Defendants after the allegations giving rise to the claims against these Defendants
8 occurred and therefore they cannot be relevant to any qualified immunity analysis. *Id.* at 15.

9 **ANALYSIS**

10 A. Relevancy

11 First, the Court will consider the relevancy of the discovery sought by Plaintiff because
12 relevancy is a primary consideration when deciding a motion to compel discovery. *See* Fed. R.
13 Civ. P. 26 (b)(1). The Court has “broad discretion in determining relevancy for discovery
14 purposes.” *Survivor Media, Inc. v. Survivor Productions*, 406 F.3d 625, 635 (9th Cir. 2005).
15 Plaintiff argues that the RFPs seek relevant information because the training materials impact
16 whether Defendants are entitled to qualified immunity. MTC at 19. Specifically, Plaintiff argues
17 that “any training Defendants received regarding a parent’s constitutional rights or the
18 constitutional constraints they must follow, is relevant to the qualified immunity analysis”
19 because these trainings would demonstrate “Defendants knew Plaintiff’s constitutional rights,
20 but acted with deliberate indifference in the face of those rights.” *Id.* (citations omitted).

21 In response, Defendants argue that the trainings are not relevant because they occurred
22 after the alleged constitutional violations and because Plaintiff has not established that the
23 specific information contained within the trainings is relevant to the specific constitutional
24 violations alleged by Plaintiff. *Oppo*. at 15-17. Defendants also assert that Plaintiff improperly
25 relies on this Court’s finding in Hipschman v. County of San Diego that similar training materials
26 were relevant to the parties’ claims and argue that this case is distinguishable from Hipschman
27 because there are no Monell claims in the SAC. *Id.* ___ F.Supp.3d ___, 2024 WL 3647061, at *3
28 (S.D. Cal. July 31, 2024) (“The Court finds that the training of County social workers, along with

1 corresponding materials, is relevant to the Plaintiff's Monell claim seeking to hold the County
2 liable under a municipal liability theory.")

3 The Court agrees with Defendant that the Court's Hipschman ruling is inapplicable to the
4 instant dispute and relevancy cannot be based on Monell. The Court therefore must consider
5 whether the requested training materials are relevant to Defendants' potential affirmative
6 defense of qualified immunity. A qualified immunity defense is only applicable to the three
7 constitutional claims brought under 42 U.S.C. § 1983 and not to the causes of action brought
8 under California state law. See Johnson v. Bay Area Rapid Transit Dist., 724 F.3d 1159, 1171
9 (9th Cir. 2013) ("[T]he doctrine of qualified immunity does not shield defendants from state law
10 claims."). Accordingly, the Court will consider whether the materials at issue are relevant to the
11 claims brought under the first three causes of action alleged in the SAC.

12 Qualified immunity protects government officials from liability for civil damages "if the
13 plaintiff's rights were not clearly established at the time of the alleged misconduct." Ballentine
14 v. Tucker, 28 F.4th 54, 64 (9th Cir. 2022) (citation omitted). As such, a plaintiff must show "(1)
15 a violation of a constitutional right," and (2) that the right was "clearly established at the time
16 of [the] defendant's alleged misconduct." Evans v. Skolnik, 997 F.3d 1060, 1064 (9th Cir. 2021)
17 (citing Pearson v. Callahan, 555 U.S. 223, 232 (2009)). To determine if a right was clearly
18 established, "[t]he relevant inquiry is whether, at the time of the officers' action, the state of
19 the law gave the officers fair warning that their conduct was unconstitutional." Hope v. Pelzer,
20 536 U.S. 730, 741 (2002). The right an official is alleged to have violated must be "clearly
21 established" in a particularized sense, such that any reasonable official would understand that
22 their conduct violates that right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). This
23 standard does not consider the subjective knowledge of a government official but rather it is an
24 objective standard to determine whether any reasonable officer in the same circumstances
25 would have understood that their conduct violated a clearly established right. Because the
26 standard evaluates knowledge at the time of the alleged violation, "cases decided after the
27 relevant conduct are 'of no use in the clearly established inquiry.'" Evans, 997 F.3d at 1066
28 (citing Brosseau, 543 U.S. at 200, n. 4.).

1 In the SAC, Plaintiff alleges a Fourth Amendment violation for “unwarranted covert
2 surveillance” of the parents while in the hospital room, First and Fourteenth Amendment
3 violations for “deception in the presentation of evidence/false reporting,” and Fourth and
4 Fourteenth Amendment violations for “unwarranted, non-consensual medical
5 procedures/examinations.” SAC at 67-84. Of the three causes of action, the training materials
6 at issue are only potentially relevant to the SAC’s second cause of action which alleges
7 “deception in the presentation of evidence/false reporting” and involves the alleged presentation
8 of “deceptive evidence against a parent in the juvenile court proceedings.” SAC at 78. The first
9 and third causes of action raise claims of surveillance in the hospital room and non-consensual
10 medical procedures. Plaintiff does not explain how or why the training materials at issue are
11 relevant to these two causes of action or how these trainings would impact a qualified immunity
12 argument since the trainings do not address the types of claims raised in the first and third
13 causes of action.

14 Plaintiff claims that the presentations are relevant because the alleged violations occurred
15 from “April 2019 until now” when “Paugh and Snyder intentionally [hid] material exculpatory
16 evidence from Bill, Dana, and their counsel.” Reply at 8 (citing SAC at 66.). While Plaintiff does
17 not clearly articulate his position, this argument can only be applicable to the second cause of
18 action which presents the claim that Defendants presented false evidence and reports in the
19 juvenile court proceedings. The other two causes of action do not involve the alleged hiding of
20 exculpatory evidence.

21 The second cause of action alleges that in March of 2019, the juvenile court judge ordered
22 the Defendants to “produce all of its evidence” to Plaintiff. SAC at 66. Sometime shortly
23 thereafter, Defendant Paugh is alleged to have personally delivered “what she claimed was the
24 ‘entire file.’” Id. at 67. In addition, Defendants Paugh and Snyder are alleged to have filed their
25 last report to the juvenile court a “few days” after March 28, 2019. Id. On April 2, 2019, the
26 juvenile court is alleged to have “accept[ed]” the report into evidence. Id. As a result, the
27 conduct giving rise to the claims asserted in the second cause of action is alleged to have
28 occurred in March and April of 2019. Seven of the eight trainings at issue in this motion occurred

1 after that time period (July 2019 or later) and are therefore not relevant to the Defendants’
2 potential qualified immunity defense. Evans, 997 F.3d at 1066 (trainings that took place after
3 the alleged constitutional violations are of no help to a “clearly established inquiry”).

4 There is one training that is currently withheld that occurred prior to 2019 and therefore,
5 may be relevant to the qualified immunity defense. See Oppo. at 17. This training is entitled
6 “HS SS SWS SE as Witness – November 2016.” Id. Training materials can be relevant,
7 “although not dispositive, to determining whether reasonable officers would have been on notice
8 that their conduct was unreasonable.” Vasquez v. County of Kern, 949 F.3d 1153, 1164-65 (9th
9 Cir. 2020) (citing Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052, 1062 (9th
10 Cir. 2003)). The Court will address this training in the following sections.

11 For the reasons set forth above, the Court finds that Plaintiff has not established that the
12 trainings that occurred after April 2019 are relevant to the qualified immunity analysis. Plaintiff
13 also has not established relevance on any other basis. Accordingly, the Court DENIES Plaintiff’s
14 motion to compel the PowerPoint presentations at issue, with the exception of the “HS SS SWS
15 SE as Witness – November 2016” presentation.

16 B. Waiver

17 Plaintiff contends the Defendants waived the attorney-client privilege and work product
18 protection on the following grounds: (1) the County of San Diego previously disclosed iterations
19 of the withheld materials to third parties; (2) the Defendants waived the privilege objections by
20 implication; (3) the privilege log was insufficient to show who received the training materials;
21 and (4) their objections were untimely. Mot. at 10-14.

22 1. Express Waiver

23 First, Plaintiff argues that the Court should find that these individual Defendants waived
24 these privileges because the “County repeatedly demonstrated a disregard for the privilege” and
25 the County produced these trainings in previous litigation. MTC at 16—17. Plaintiff provides no
26 authority for finding that the individual Defendants waived their privilege objections because the
27 County, who is not part of this action, potentially provided these materials, or similar materials,
28 in other litigation that did not involve the individual Defendants. Id. Accordingly, the Court

1 rejects this argument.

2 2. Waiver by Implication

3 Second, Plaintiff argues that the individual Defendants waived the attorney-client
4 privilege by implication. The Ninth Circuit has established that the attorney-client privilege
5 cannot be used both as a “sword and a shield.” Bittacker v. Woodford, 331 F.3d 715, 719 (9th
6 Cir. 2003). In Bittacker, the Ninth Circuit held that a party may not abuse the attorney-client
7 privilege by asserting claims that the opposing party cannot adequately dispute without access
8 to the privileged materials. Id. Plaintiff argues that “[u]nder the fairness principle, Defendant[s]
9 have waived the attorney-client privilege – if any – to the withheld training materials.” MTC at
10 18. Plaintiff does not cite to the relevant Ninth Circuit authority establishing the “fairness
11 principle.”

12 “Where a party raises a claim which in fairness requires disclosure of the protected
13 communication, the attorney-client privilege may be waived.” United States v. Amlani, 169 F.3d
14 1189, 1195 (9th Cir. 1999) (citation omitted). Under Ninth Circuit law, finding an implied waiver
15 requires that: (1) assertion of the privilege was a result of some affirmative act, such as filing
16 suit, by the asserting party; (2) through this affirmative act, the asserting party put the protected
17 information at issue by making it relevant to the case; and (3) application of the privilege would
18 have denied the opposing party access to information vital to his defense. 3D Systems, Inc. v.
19 Wynne, 2024 WL 940318, *5 (S.D. Cal. Feb. 21, 2024) (citing Hearn v. Wray, 68 F.R.D. 574,
20 581 (E.D. Wash. 1975)). Initially, the Court finds that Plaintiff has not established the first
21 element as he provides no legal authority for the proposition that the Defendants’ answer
22 asserting an affirmative defense of qualified immunity constitutes the required affirmative act.
23 The Court also finds that Plaintiff has not satisfied the third element as he has not established
24 that the training material is “vital to his defense,” that is, it is vital to defeat a claim by
25 Defendants that they are entitled to qualified immunity.

26 As set forth above, the qualified immunity defense is based on an objective standard that
27 focuses on what a reasonable officer should have known at the time of the alleged violations.
28 Plaintiff can adequately raise an argument that the Defendants are not entitled to qualified

1 immunity without the requested PowerPoint presentations because he need only show that a
2 reasonable officer would have understood that Defendants' conduct violated "clearly established
3 statutory or constitutional rights of which a reasonable person would have known." Kinsela v.
4 Hughes, 584 U.S. 100, 104 (2018) (citation omitted.) While training materials may be relevant,
5 they are "not dispositive to determine whether reasonable officers would have been on notice
6 that their conduct was unreasonable" for qualified immunity purposes. Vasquez v. County of
7 Kern, 949 F.3d 1153, 1165 (9th Cir. 2020).

8 Accordingly, the Court rejects this argument.

9 3. Privilege Log

10 Third, Plaintiff claims that the privilege log submitted by the Defendants is insufficient to
11 assert the privilege because it fails to "identify 'all individuals listed as receiving a copy of the
12 document and their relationship to the County' and 'any other individuals to whom the document
13 was disseminated and their relationship to the County.'" MTC at 18 (citing Greer v. Cnty of San
14 Diego, 634 F.Supp.3d 911, 921 (S.D. Cal. 2022). Plaintiff's argument once again impliedly
15 incorporate the involvement of the County in this discovery response. The County is not part of
16 this action and Plaintiff did not propound this discovery on the County. See ECF Nos. 103-105.
17 Here, the individual Defendants are alleged to have received this training which was prepared
18 by County Counsel, see Rae Declaration, and Plaintiff provides no basis from which this Court
19 could find that the individual Defendants would know other individuals to whom the County
20 potentially disseminated this information and their relationship to the County.

21 Accordingly, the Court finds that the privilege log submitted by Defendants is not
22 deficient.

23 4. Timeliness

24 Finally, Plaintiff argues that Defendants' objections based on attorney-client privilege and
25 attorney work product are waived because they were not timely raised. MTC at 15-16. Plaintiff
26 briefly raises the issue of timeliness of the relevancy objection but the argument contained in
27 his motion only addresses timeliness of the assertion of attorney-client privilege. Id. Defendants
28 argue that to the extent that any of their objections were untimely, the Court should find that

1 good cause exists to excuse a failure to timely object. Oppo. at 13 (citing In re Outlaw
2 Laboratories, LP Litig., 2020 WL 1674552, at *8 (S.D. Cal. Apr. 6 2020).

3 Generally, “a failure to object to discovery requests within the time required constitutes
4 a waiver of any objection.” Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473
5 (9th Cir. 1992). However, Rule 33, which is applicable to interrogatories, permits courts to
6 excuse a party's failure to timely assert objections “for good cause.” Fed. R. Civ. P. 33(b)(4).
7 Although Rule 34 does not contain an analogous express “good cause” exception, courts
8 “generally agree that there is no reason to treat waiver under Rule 34 any different than Rule
9 33.” Ocean Garden Prod. Inc. v. Blessings Inc., 2020 WL 4284383, at *1 (D. Ariz. July 27, 2020)
10 (quoting Liguori v. Hansen, 2012 WL 760747, at *12 (D. Nev. Mar. 6, 2012)). Accordingly, courts
11 “retain discretion to relieve a late or non-responding party from the potentially harsh
12 consequences associated with waiver.” Liguori, 2012 WL 760747, at *11.

13 Defendants assert that they spent several months in the meet and confer process, as
14 evidenced in the declaration of Plaintiff’s counsel, attempting to “narrow and refine the nature
15 of the dispute at issue.” Oppo. at 13. In fact, the parties were able to resolve some of their
16 differences as shown by the Defendants withdrawing their objections and agreeing to produce
17 some of the material in dispute. Id. at 7. It also appears that individuals Defendants’ initial
18 responses to this discovery indicated that they did not possess the responsive documents and
19 that it was through the meet and confer process that they were able to obtain some of these
20 documents from the County. See Exs. AA-DD. Therefore, it is reasonable that their objections
21 would change following this meet and confer process and obtaining the material that they did
22 not initially possess.

23 For these reasons, the Court finds that good cause exists to excuse Defendants’ untimely
24 objections to Plaintiff’s discovery requests and therefore, the Court finds that Defendants’
25 attorney-client and relevancy objections are not waived.

26 C. Attorney-Client Privilege

27 The Court turns to the final PowerPoint presentation that the Defendants argue is
28 protected from disclosure by attorney-client privilege and the attorney work product doctrine.

1 This presentation is titled "HS SS SWS SW As Witness – November 2016." Oppo. at 7. The
2 attorney-client privilege protects confidential communications between attorneys and clients,
3 which are made for the purpose of giving legal advice. The party asserting the attorney-client
4 privilege has the burden of establishing the relationship and privileged nature of the
5 communication. United States v. Ruehle, 583 F.3d 600, 607 (9th Cir. 2009) (citing United States
6 v. Munoz, 233 F.3d 1117, 1128 (9th Cir. 2000)). The attorney-client privilege exists where: (1)
7 legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such,
8 (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6)
9 are at his instance permanently protected (7) from disclosure by himself or by the legal adviser,
10 (8) unless the protection be waived. See United States v. Richey, 632 F.3d 559, 566 (9th Cir.
11 2011) (internal citations and quotation marks omitted).

12 Plaintiff argues that this Court should find the presentation is not privileged based on its
13 previous ruling in Hipschman v. County of San Diego, in which this Court found that the County
14 of San Diego had failed to meet their burden to show that the training materials in dispute were
15 protected by attorney-client privilege because the "declaration of counsel for the County [was]
16 insufficient to establish the applicability of the attorney-client privilege as it is a conclusory
17 statement without any specific details or references to any of the PowerPoint presentations and
18 training materials." Id., 2024 WL 3647061, at *6 (S.D. Cal. July 31, 2024) ("Hipschman I").
19 The Court's first ruling on the training materials in Hipschman is not instructive in this dispute.
20 Instead, it is the following ruling in Hipschman issued on the plaintiff's second motion to compel
21 training documents that is more applicable to this dispute. See Hipschman v. County of San
22 Diego, 2024 WL 5081631 (S.D. Cal. Dec. 11, 2024) ("Hipschman II"). In Hipschman II, in
23 response to the second motion filed by the plaintiffs, the County provided a declaration from
24 Caitlin Rae, Assistant County Counsel, which this Court found, unlike the first declaration filed
25 by County Counsel, established "that the training materials currently at issue were prepared and
26 presented by attorneys providing legal advice to social workers to avoid prospective litigation."
27 Id. at *5.

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1 As was the case in Hipschman II, the individual Defendants in this matter have also
2 supplied the Declaration of Caitlin Rae, Assistant County Counsel,³ which establishes that the
3 training materials currently at issue were prepared and presented by attorneys providing legal
4 advice to social workers to avoid prospective litigation. Decl. of Caitlin Rae in Supp. of Oppo. to
5 Mtn. to Compel, ECF No. 267-1 ("Rae Decl.").

6 In this declaration, Ms. Rae explains that in 2015 the County "created a position of
7 'embedded' attorney within the Office of County Counsel to bolster its support and training of
8 County social workers." Rae Decl. at ¶ 2. Ms. Rae personally served in the role of "embedded
9 attorney" from November of 2015 to 2019. Id. at ¶ 3. She also served as "Chief Deputy
10 overseeing the entire Juvenile Dependency division of the Office of County Counsel from 2019
11 to 2022." Id. She explained that the primary purpose of the embedded attorney was to provide
12 legal advice to social workers "with the purpose of minimizing legal exposure, decrease civil suits
13 and reduce civil liability." Id. The duties of the embedded attorney required them to "develop,
14 prepare and present trainings to County social workers to avoid prospective litigation." Id. at
15 ¶ 4. The trainings were considered to be "confidential attorney-client privileged communications
16 and attorney work product" and were maintained by the Office of County Counsel. Id. They
17 were not shared with parties outside the County Counsel's office or individuals other than the
18 social workers who attended the trainings. Id. Ms. Rae attests that the PowerPoint presentation
19 at issue, "HS SS CWS SW As Witness November 2016" was prepared by a County Counsel
20 attorney and presented by County Counsel to County social workers "with respect to testifying
21 and case presentation in juvenile dependency proceedings and trial, and if necessary, for
22 depositions in related civil litigation." Id. at ¶ 5(a).

23 / / /

24
25 ³ Plaintiff has filed objections to several paragraphs of Ms. Rae's Declaration in which she
26 declares that she is "not aware of any of the above-mentioned documents being produced or
27 disclosed in prior litigation or this pending litigation." Pl.'s Obj. to Rae Decl., ECF NO. 268-1.
28 However, the Court has already determined that the issue of the County potentially disclosing
this information in other litigation is not relevant to the motion before this Court seeking
documents from individual Defendants. Accordingly, Plaintiff's objections are overruled.

1 As a result, the individual Defendants have provided sworn testimony establishing that
2 the document currently being withheld was prepared by attorneys whose duties include
3 developing, preparing, and presenting "trainings to County social workers to avoid prospective
4 litigation" and whose "primary purpose is to "advise County social workers with the purpose of
5 minimizing legal exposure, decrease civil suits and reduce civil liability based on trends in
6 litigation and emerging case law." Id. at ¶¶ 2, 3.

7 In the moving papers, as well as the Reply, Plaintiff argues that the County's own Rule
8 30(b)(6) witness testified in the Hipschman matter that the "trainings do not discuss specific
9 cases, ongoing litigation, or matters that could lead to litigation involving the County or its
10 employees." Reply at 12 (citing Pullman Decl., Ex. F. ECF No. 264-9, 10:21 - 12:12; 24:6-14;
11 23:20-25; 26:11-21.) Exhibit "F" to Mr. Pullman's declaration consists of excerpts from a
12 deposition transcript of Tara Motley, an employee of the County of San Diego whose title is
13 "Protective Services Program Manager for the Child and Family Well-Being Department." ECF
14 No. 264-9. However, Plaintiff's argument that this deposition testimony contradicts the
15 declaration of Ms. Rae and shows that the trainings do not involve discussions or information
16 that are protected by the attorney-client privilege or work product doctrine is not supported by
17 the testimony itself. Instead, this testimony shows that Ms. Motley was specifically asked
18 questions about the "Social Worker Initial Training" or "SWIT" and the presentations titled "Legal
19 Liabilities." Id. These trainings are not the training that remains at issue here. The Defendants
20 have already agreed to produce the trainings discussed by Ms. Motley. See Oppo. at 17. There
21 is no testimony by the County identified by Plaintiff that the remaining withheld training materials
22 support their assertion that these trainings are "general and merely [] teach case workers their
23 duties." MTC at 10.

24 The Court has considered Ms. Rae's declaration and finds that it adequately sets forth
25 facts establishing the elements of the attorney-client privilege and therefore the remaining
26 PowerPoint presentation is protected by the privilege.

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1 D. Attorney Work Product

2 Plaintiff also argues that the attorney work product doctrine does not apply to the training
3 materials because “work product only applies to material that would not have been generated
4 but for the pendency or imminence of litigation.” MTC at 12 (citing Greer⁴, 634 F.Supp.3d at
5 918.)

6 The work product doctrine is not a privilege but a qualified immunity that “protects from
7 discovery in litigation ‘mental impressions, conclusions, opinions, or legal theories of a party’s
8 attorney’ that were ‘prepared in anticipation of litigation or for trial.’ ” ACLU of N. Cal. v. U.S.
9 Dep’t of Justice, 880 F.3d 473, 483 (9th Cir. 2018) (quoting Fed. R. Civ. P. 26(b)(3)). “Shielding
10 from discovery materials prepared ‘with an eye toward the anticipated litigation’ protects the
11 integrity of adversarial proceedings by allowing attorneys to prepare their thoughts and
12 impressions about a case freely and without reservation.” Id. at 484. “To qualify for work-
13 product protection, documents must: (1) be ‘prepared in anticipation of litigation or trial’ and
14 (2) be prepared ‘by or for another party or by or for that other party’s representative.’ ” Richey,
15 632 F.3d at 567 (citation omitted).

16 Here, Ms. Rae attests that the materials currently being withheld were prepared by
17 attorneys who created the materials and presented these trainings for the purpose of “avoid[ing]
18 prospective litigation.” Rae Decl. at ¶ 4. Ms. Rae also notes that Plaintiffs have asked for these
19 materials in their “native form” but if they were to provide these materials in that form, it would
20 “reveal the context of the legal advice and strategies provided to social workers by attorneys.”
21 Id. at ¶ 6. As an example, according to Ms. Rae, the “notes” section of the PowerPoint
22 documents “contain the mental impressions of the embedded attorneys who created the
23 presentations.” Id. In addition, the documents “include interpretation of the law and legal
24 strategies used to defend from current and future civil and dependency litigation.” Id.

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27 ⁴ In reversing the district court’s finding that there was no attorney-client privilege, the Ninth
28 Circuit determined that it “need not and do not consider the work product doctrine.” Greer,
No. 23-55607 at fn. 1.

1 The Court finds that Defendants have sufficiently met their burden to establish that the
2 training materials at issue, including the materials in their "native form," are protected by the
3 attorney work product privilege.

4 F. In Camera Review

5 Finally, Plaintiff argues that this Court should conduct an in camera review of the
6 documents withheld by Defendants. MTC at 20. For the reasons set forth above, the Court is
7 able to resolve the motion based on briefing and finds no need to review the documents withheld
8 by Defendants. Accordingly, the Court declines to review the documents in camera.

9 **CONCLUSION**

10 For the reasons set forth above, Plaintiff's motion to compel, ECF No. 264, is **DENIED**.

11
12 Dated: 3/11/2025


13 Hon. Barbara L. Major
14 United States Magistrate Judge