

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FRANK J. FERNANDEZ,
Plaintiff,
v.
E. DUARTE,
Defendant.

Case No.: 3:22-cv-00446-BAS-VET

**ORDER TO FILE PRIVILEGE LOG
AND LODGE DOCUMENTS FOR *IN*
CAMERA REVIEW**

Before the Court is Plaintiff Frank Fernandez’s (“Plaintiff”) Motion to Compel Discovery. Doc. No. 81 (“Motion”). Defendant E. Duarte (“Defendant”) timely opposed the Motion. Doc. No. 83 (“Opposition”). Defendant invokes the official information privilege in the Opposition, having withheld materials that are otherwise responsive to many of Plaintiff’s requests for production. *Id.* at 14–16. Centinela State Prison Litigation Coordinator N. Telles (“Declarant Telles”) filed a supporting declaration, representing that he or she has reviewed or is familiar with material responsive to Plaintiff’s relevant requests for production. *Id.* at 67. Declarant Telles further represents that producing certain responsive documents, such as Defendant’s personnel file, would present significant safety and security risks that cannot be mitigated through a protective order. *Id.* at 68–74. Defendant’s counsel also affirms in a separate declaration that she has diligently reviewed

1 responsive documents and produced all non-privileged documents to Plaintiff. Doc. No.
2 83-1 at 2.

3 However, neither the Motion nor the Opposition attach a privilege log describing the
4 responsive materials being withheld. Defendant’s counsel briefly references a
5 “supplemental privilege log,” *see id.* at 2, but no privilege log is currently before the Court.
6 Nor does the Court have an adequate understanding of the documents being withheld.
7 Whenever a party withholds discoverable information due to a claim of privilege, they must
8 “describe the nature of the documents, communications, or tangible things not produced or
9 disclosed—and do so in a manner that, without revealing information itself privileged or
10 protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A)(ii).
11 Further, when the official information privilege is asserted, the Court “must balance the
12 government’s interest in protecting official information from disclosure against the
13 plaintiff’s need for the information.” *Edwards v. Cnty. of L.A.*, No. CV 08-07428
14 GAF(SSx), 2009 U.S. LEXIS 114577, at *2–3 (C.D. Cal. Dec. 9, 2009) (citing *Kelly v.*
15 *City of San Jose*, 114 F.R.D. 653, 661 (N.D. Cal. 1987)).

16 To adequately assess Defendant’s official information privilege claims and conduct
17 the necessary balancing, the Court requires both a privilege log and unredacted copies of
18 the documents withheld for *in camera* review. *See Solomon v. Tapia*, No. 1:22-cv-1604-
19 KES-HBK (PC), 2024 U.S. Dist. LEXIS 236148, at *6–7 (E.D. Cal. Dec. 4, 2024)
20 (requiring submission of unredacted report for *in camera* review and a privilege log in case
21 involving *pro se* prisoner asserting a First Amendment claim). Therefore, the Court
22 **ORDERS** the following:

23 1. On or before **February 3, 2025**, Defendant must file on the docket all
24 privilege logs provided to Plaintiff in compliance with Fed. R. Civ. P. 26(b)(5)(A)(ii).

25 2. On or before **February 7, 2025**, Defendant must lodge with the Court for *in*
26 *camera* review all responsive materials being withheld on the basis of the official
27 information privilege. Defendant must lodge unredacted versions of the materials, either
28 electronically or in paper form. If lodging electronically, Defendant may either e-mail the

1 materials to efile_torres@casd.uscourts.gov as PDF attachments or mail a USB-drive with
2 the saved materials.

3 3. If mailing, Defendant shall address any materials to: Chambers of Magistrate
4 Judge Valerie E. Torres, 333 West Broadway, Suite 420, San Diego, CA 92101. Defendant
5 shall note the case name and number and shall clearly mark as “Confidential Lodgment for
6 In Camera Review/Not for Filing” on the outside of the envelope.

7 **IT IS SO ORDERED.**

8
9 Dated: January 27, 2025



10
11 Honorable Valerie E. Torres
12 United States Magistrate Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28