

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Marcell Jones v. B. Brownen, et al.

Brownen · No. 2:22-cv-01707 DC SCR P · Decided January 14, 2026

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MARCELL JONES, No. 2:22-cv-01707 DC SCR P 12 Plaintiff, 13 v.
ORDER 14 B. BROWNEN, et al., 15 Defendants. 16 17 Plaintiff is incarcerated in state prison
and proceeding pro se and in forma pauperis with a 18 civil rights action under 42 U.S.C. § 1983.

The parties are in a discovery dispute regarding 19 plaintiff’s access to ten staff complaints that
are responsive to his requests for production 20 (“RFPs”) Nos. 1, 3, and 4. The RFPs sought
grievances against defendants by other incarcerated 21 persons involving incidents akin to the
retaliation and due process claims in plaintiff’s complaint. 22 The undersigned detailed the
circuitous history of the parties’ dispute at length in the 23 order dated November 4, 2025, see
ECF No. 58 at 2-5, and will not repeat it here.

In that order, 24 the undersigned determined that defendants’ materials, which included the
declaration of 25 California Medical Facility (“CMF”) Litigation Coordinator B. Ebert (“Ebert
Decl.”), were 26 sufficient to invoke the official information privilege (“OIP”) and directed
defendants to 27 electronically submit the documents for in camera review. ECF No. 58 at 8.

Defendants 28 electronically submitted the documents on November 18, 2025. ECF No. 59. 1
DISCUSSION 2 Defendants’ electronic submission consisted of investigative files pertaining to
the 3 following ten staff complaints that were responsive to plaintiff’s RFPs Nos. 1, 3, and 4: 4
Log Number Bates Range1 1 82439 AGOPRIV00001-00014 5 2 109764 AGOPRIV000015-
00026 6 3 30385 AGOPRIV000027-00070 4 149087 AGOPRIV000071-00091 7 5 132323
AGOPRIV000092-000131 6 342632 AGOPRIV0000132-000153 8 7 344610 AGOPRIV0000154-
000174 9 8 531340 AGOPRIV0000175-000204 9 219287 AGOPRIV0000205-000248 10 10
163610 AGOPRIV0000249-000261 11 See Notice of Submission of Documents, ECF 59.

Defendants claim the “third-party inmate 12 privilege” and the OIP for each of the ten staff
complaints. See Ebert Decl., ECF No. 54; 13 Privilege Log, ECF No. 56-1 at 12-14. The
undersigned will address privilege each in turn. 14 I. Third-Party Privacy 15 The Ninth Circuit
recognizes a constitutionally protected privacy interest in avoiding 16 disclosure of private
personal matters, including medical records.

See *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998). “The right of privacy is not an absolute bar to discovery and courts must balance the need for the information against the claimed privacy right.” *Harris v. Kyle*, No. 1:19-cv-0462 DAD EPG PC, 2021 WL 195477, at *20 (E.D. Cal. Jan. 20, 2021) (citing *Allen v. Woodford*, No. CV-F-05-1104 OW LJO, 2007 WL 21 309485, at *5 (E.D.

Cal. Jan. 30, 2007)); see also *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (“Resolution of the privacy objection requires a balancing of the need for the information sought against the privacy right asserted.”). Third-party privacy interests outweigh disclosure of the documents pertaining to Log No. 531340.

The documents consist primarily of clinician notes and other sensitive information regarding the complainant’s mental health diagnoses and treatment. As such, it is not possible to 1 The parties are advised that the ranges do not align with those in the privilege log.

The privilege log misidentified the correct ranges for Log Nos. 344610, 531340, 219287. 1 redact without rendering the documents meaningless. Comparatively, the documents are of little 2 relevance to plaintiff’s claims.

Although the underlying grievance named defendant Rangel, 3 the allegations are fantastical and unlike the type of due process challenge plaintiff brought 4 against Rangel in his complaint. 5 Third-party privacy interests also require the redaction of the “mental health assessment” 6 portion of the RVR contained in Log No. 30385 at AGOPRIV000047-00049. Redaction of this 7 three-page segment is a sufficient protective measure because the mental health assessment is 8 easily severable from the rest of the file.

Unlike the documents in Log No. 531340 discussed 9 above, the complainant’s mental health information is not central to the staff-misconduct 10 investigation. 11 Defendants may also withhold the entirety of Log No. 149087 on relevance grounds.

The complainant’s allegations that defendant Brownen was unprofessional and used profanity fall 13 outside of the scope of plaintiff’s retaliation claim premised on Brownen’s issuance of an 14 allegedly false RVR. Courts generally will not order the production of complaints that involve 15 allegations of dissimilar incidents. See *Miller v. Pancucci*, 141 F.R.D.

292, 296 (C.D. Cal. 1992) 16 (sustaining objection to requests for complaints that fell outside the scope of plaintiff’s excessive 17 force claims); *Bartolome v. City & Cnty. of Honolulu*, No. CIV. 06-0176 SOM LEK, 2008 WL 18 2736016, at *13 (D. Haw. July 14, 2008) (finding complaints of rudeness not relevant to 19 plaintiff’s allegations of excessive force).

20 II. Official Information Privilege 21 The undersigned will next consider defendants’ assertion of the OIP. “Federal common 22 law recognizes a qualified privilege for official information.”

Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990) (citations omitted). Government personnel files and internal investigatory documents are considered official information.

See Sanchez, 936 F.2d at 1033-34; 25 Miller, 141 F.R.D. at 301. The official information privilege is subject to the competing interests of the requesting party and is “subject to disclosure especially where protective measures are taken.” Noble v. City of Fresno, No. 1:16-cv-1690 DAD BAM, 2017 WL 5665850, at *4 (E.D. Cal. Nov. 27, 2017) (quoting Kerr v. United States District Court, Northern District of California, 151 F.2d 192, 198 (9th Cir.

1975)). In the context of a civil rights action, “this balancing approach is moderately ‘pre-weight[ed] in favor of disclosure.’” Bryant v. Armstrong, 285 F.R.D. 596, 604 (S.D. Cal. 2012) (quoting Kelly v. City of San Jose, 114 F.R.D. 653, 669 (N.D. Cal. 1987) (alteration in original). As noted above, the undersigned previously determined that the Ebert Declaration provided the necessary foundation to trigger this OIP analysis.

Ebert maintained that the requested staff complaints and related investigative documents are highly sensitive, confidential, and protected from disclosure under several provisions of the Title 15 regulations. Ebert Decl. ¶¶5-8, ECF No. 54 at 2-3. Ebert added that staff and inmate witnesses may suffer retaliation if their statements are not kept confidential, and that disclosure will prevent witnesses from coming forward for fear of being identified.

Id. at ¶¶ 8-9. Ebert also expressed that disclosure of staff personnel files would create security and safety concerns, and the release of documents to plaintiff’s person specifically would have “potentially catastrophic results.” Id. ¶ 11, 13-14. While these general concerns are well taken, Ebert did not explain why these specific complaint files pose safety and security concerns. Nevertheless, the undersigned has attempted to carefully balance the interests involved in determining the scope of disclosure.

Ultimately, the undersigned did not encounter the type of sensitive information that would overcome the policy favoring disclosure in civil rights actions. The portions of the files marked “confidential” contain investigation summaries that merely recount interviews with complainants, witnesses, and accused staff. None of these summaries contain the type of tactical information that other judges have ordered withheld pursuant to the OIP.

See, e.g., Ibanez v. Miller, No. CIV S-06-22 Defendants’ objections to plaintiff’s RFPs similarly lack specifics as to the alleged danger and present circular justifications that are unhelpful to the OIP analysis.

For example, defendants’ response to RFPs Nos. 1, 3, and 4 state that the personnel files are subject to the OIP because they are confidential per Cal. Code Regs., tit. 15, § 3321(a)(1)-(2). See ECF No. 56-1 at 5, 8-9. But § 3321(a)(1)-(2) states only that confidential information

includes: “(1) Information which, if 25 known to the incarcerated person, would endanger the safety of any person; and (2) Information 26 which would jeopardize the security of the institution.” 3 The three staff complaints investigated by the Office of Internal Affairs and Management 27 Services (“AIMS”) (Logs Nos. 13223, 342632, and 344610) contain confidential “Inquiry Report Summaries,” whereas the remaining complaints investigated at the facility-level contain similar 28 confidential summaries called “Fact Gathering Reports.” 1 2668 JAM EFB P, 2009 WL 3481679 (E.D.

Cal. Oct. 22, 2009) (sustaining OIP objection to 2 disclosure of a prison operational procedure regarding tactical responses to disturbances and other 3 prison alarms). Overall, none of the ten complaints resulted in discipline against either defendant. 4 Therefore, the undersigned will order that the remaining eight complaint files be disclosed 5 to plaintiff.

In addition to the partial redaction of Log No. 30385 discussed above, the redaction 6 of the names of complainants, witnesses, and other involved incarcerated persons is an adequate 7 protective measure for defendants’ concerns regarding third-party inmate privacy. Other judges 8 of this district have found redactions appropriate against similar invocations of the OIP.

See, e.g., 9 Wells v. Gonzales, No. 1:17-cv-1240 DAD EPG PC, 2019 WL 4054022, at *8 (E.D. Cal. Aug. 10 28, 2019) (holding defendants may redact names of complaining inmates and any other persons 11 besides defendant from grievances to protect third-party privacy interests); Harris v. German, No. 12 1:15-cv-1462 DAD GSA PC, 2019 WL 4640503, at *8 (E.D. Cal. Sept.

24, 2019) (permitting 13 defendants to redact identifying information of grievance witnesses). 14 The undersigned has also thoroughly considered Ebert’s request that plaintiff not be given 15 possession of the documents and that the court instead permit plaintiff to review “a secure copy of 16 redacted portions of the confidential documents... under the supervision of CDCR staff.” See 17 Ebert Decl. ¶¶ 14-16, ECF No. 54 at 5-6.

The undersigned is persuaded by Ebert’s concerns 18 regarding frequent inmate movement and the possibility that third-party identities may be gleaned 19 from statements or descriptions of events, and as a result will grant defendants’ request that 20 plaintiff not be given possession of the complaint files.

However, given the overall volume of 21 responsive documents, plaintiff must be permitted multiple opportunities to review the documents 22 as set forth below. 23 Finally, with this order, all disputes stemming from plaintiff’s original motion to compel 24 (ECF No. 41) have been resolved.

Therefore, the undersigned will lift the stay of the dispositive 25 motion deadline, see ECF No. 44, and set a new deadline below. Discovery remains closed and 26 the parties are not to file any

further motions to compel. Plaintiff may move to enforce this order 27 should he be denied access to the records in a manner inconsistent with directions and timeline 28 below.

See *United States v. W.R. Grace*, 526 F.3d 499, 516 (9th Cir. 2008) (district courts have 1 | inherent to enforce valid pretrial discovery orders). 2 CONCLUSION 3 Accordingly, following in camera review of the ten staff complaints responsive to 4 | plaintiff's RFPs Nos. 1, 3, and 4, IT IS HEREBY ORDERED that: 5 1. Defendants may withhold: 6 a. All documents pertaining to staff complaint Log No. 531340 on third-party 7 privacy grounds; and 8 b. All documents pertaining to staff complaint Log No. 149087 due to their 9 irrelevance.

10 2. Defendants must redact the "mental health assessment" portion of the RVR 11 | contained in Log No. 30385 at AGOPRIV000047-00049. 12 3. Defendants must otherwise make the following eight (8) staff complaints available 13 | for plaintiff's review: (1) 82439; (2) 109764; (3) 30385; (4) 132323; (5) 342632; (6) 344610; (7) 14 | 219287; and (8) 163610.

In addition to the partial redaction of Log No. 30385 described above, 15 | the files may be redacted to protect the names of complainants, witnesses, and other involved 16 || incarcerated persons. 17 a. Defendants shall coordinate with the facility where plaintiff incarcerated and 18 schedule a time slot of at least three (3) hours within 21 days of the date of this 19 order for plaintiff to review the documents.

20 b. CDCR staff shall retain a copy of the documents described above and provide 21 plaintiff further opportunities to review the documents upon reasonable notice and 22 request by plaintiff during the course of this litigation. 23 4.

The stay of the dispositive motion deadline is lifted. Dispositive motions shall be 24 || filed on or before May 13, 2026. All other provisions of the discovery and scheduling order 25 || (ECF No. 33) shall remain in effect. 26 | DATED: January 13, 2026 27 Z SEAN C. RIORDAN 28 UNITED STATES MAGISTRATE JUDGE