

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Dean v. Zhang

Dean · No. 24-cv-00413-RSH-JLB · Decided August 13, 2025

OPINION

Dean v. Zhang

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JERMAINE MICHAEL DEAN, Case No.: 24-cv-00413-RSH-JLB 12 Plaintiff,

ORDER DENYING PLAINTIFF’S

13 v. MOTION TO COMPEL

DISCOVERY

14 DR. R.Y. ZHANG, et al., 15 Defendants. [ECF No. 34] 16 17 Before the Court is a Motion to
Compel filed by Plaintiff Jermaine Michael Dean 18 (“Plaintiff”). (ECF No. 34.) Defendant Dr.
R.Y. Zhang (“Defendant”) filed an opposition. 19 (ECF No. 36.) For the reasons set forth below,
the Court DENIES Plaintiff’s Motion to 20 Compel.

21 I. BACKGROUND

22 On February 28, 2024, Plaintiff, a state prisoner incarcerated at the R.J. Donovan 23
Correctional Facility (“RJD”) in San Diego, California, proceeding pro se, filed a civil 24 rights
complaint pursuant to 42 U.S.C. § 1983 accompanied by a Motion to Proceed In 25 Forma
Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF Nos. 1–2.) On
26 March 1, 2024, he filed a First Amended Complaint (“FAC”) accompanied by a second
27 motion to proceed IFP. (ECF Nos. 4–5.) Plaintiff claimed the named defendants, his 28
personal care physician (“PCP”) at RJD Dr. Zhang, RJD Chief Medical Officer 1 Dr. Roberts, and
John and Jane Does 1–100 members of the RJD committee who approve 2 surgeries, violated his
Eighth Amendment right to adequate medical care by causing a 3 delay in surgery for a torn bicep.
(ECF No. 4 at 2–10.) 4 On March 19, 2024, the Court granted Plaintiff leave to proceed IFP and
screened 5 the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). (ECF No. 7.) The
Court 6 found Plaintiff had failed to plausibly allege an Eighth Amendment claim against any 7
defendant because he failed to set forth sufficient factual allegations that any defendant 8 was
deliberately indifferent to his serious medical need for surgery, as opposed to alleging 9 at most
negligence or medical malpractice. (Id. at 5–8.) Plaintiff was notified of the 10 deficiencies of his
pleading, granted leave to amend, and informed that any defendant not 11 re-named and any

claims not re-alleged in his amended complaint would be waived. (Id. 12 at 8–9.) 13 On April 26, 2024, Plaintiff filed a Second Amended Complaint (“SAC”), the 14 operative complaint, naming Dr. Zhang as the sole defendant. (ECF No. 8.) In the SAC, 15 Plaintiff alleges that on January 11, 2021, while housed at RJD, he requested medical 16 attention for a painful injury to his left bicep. (Id. at 3.) On January 26, 2021, he was seen 17 by a nurse, who recommended he see his PCP, defendant Dr. Zhang. (Id.) On 18 February 2, 2021, Defendant examined Plaintiff and diagnosed him with a ruptured tendon 19 in his left bicep. (Id.) Plaintiff contends Defendant could have sent him to an outside 20 hospital for emergency surgery, as he had in the past with other inmates, but instead 21 referred Plaintiff for a surgical consultation with Dr. Roberts, the Chief Medical Officer at 22 RJD, who “put [his file] on the stack of medical requests.” (Id. at 3–4.) As a result, 23 Plaintiff’s surgery was delayed until about six months after the initial injury. (Id.) Plaintiff 24 alleges Tri-State Hospital cleared him for surgery on February 28, 2021, but it took until 25 June 18, 2021, for the RJD committee to approve his surgery. (Id. at 7.) During this delay, 26 his tendon healed improperly and shrank, preventing it from being reattached in a way that 27 did not leave his bicep looking disfigured and causing possible future ulnar nerve damage 28 at the elbow. (Id. at 4.) 1 Plaintiff claims Defendant referred him to the RJD committee rather than ordering 2 him out for emergency surgery, as he had done for two white inmates “and others,” because 3 of racial bias against Plaintiff, who is Black, and because Defendant benefitted financially 4 from doing so. (Id. at 3–5.) In support of that allegation, Plaintiff attaches to the SAC a 5 declaration from Dale Calvin Whitmer who states that in 2022 he witnessed a white inmate 6 named Derrick rupture “his tendon in much the same way I could ascertain [Plaintiff] 7 ruptured his,” and who was immediately taken to an outside hospital for emergency surgery 8 and who now has no apparent deformity or any difference in his bicep from before it was 9 injured. (ECF No. 8-1 at 67–68.) Mr. Whitmer states that he himself was injured on 10 November 18, 2018, “at which time I was taken out on an emergency evacuation to the 11 hospital, in much the same way [as] Derrick, receiving medical care.” (Id. at 68.) He states 12 that during his treatment, RJD PCP Dr. Goldseth informed him that RJD PCPs receive a 13 financial benefit from referring inmates to the surgical committee. (Id.) He also states that 14 it appears to him that white inmates receive better medical care than Black inmates. (Id.) 15 Plaintiff’s allegations in the SAC were found to be sufficient to survive the “low 16 threshold” of the screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b) with respect 17 to an Eighth Amendment claim against Defendant. (ECF No. 9 at 6.) Accordingly, the 18 U.S. Marshals were ordered to effect service on Defendant. (Id.) On July 16, 2024, 19 Defendant filed an answer. (ECF No. 14.) An Early Neutral Evaluation Conference was 20 held on August 26, 2024. (ECF No. 19.) The case did not settle. (Id.) The Scheduling 21 Order was issued the following day, setting a fact discovery deadline of January 27, 2025, 22 and an expert discovery deadline of May 19, 2025. (ECF No. 20.)

23 II. LEGAL STANDARD

24 The Federal Rules of Civil Procedure authorize parties to obtain discovery regarding 25 any nonprivileged matter that is relevant to any claim or defense and proportional to the 26 needs of the case, “considering the importance of the issues at stake in the action, the 27 amount in controversy, the parties’ relative access to relevant information, the parties’ 28 resources, the importance of the discovery in resolving the issues, and whether the burden 1 or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 2 26(b)(1). “Information within this scope of discovery need not be admissible in evidence 3 to be discoverable.” Id.

4 Rule 26(b) requires a district court to “limit the frequency or extent of discovery” if 5 it determines that “the discovery sought is unreasonably cumulative or duplicative, or can 6 be obtained from some other source that is more convenient, less burdensome, or less 7 expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i). Courts “must consider both relevance and 8 proportionality in determining whether the scope of discovery that a party seeks is 9 appropriate.” *BlackBerry Ltd. v. Facebook, Inc.*, No. CV 18-1844-GW (KSX), 2019 WL 10 4544425, at *6 (C.D. Cal. Aug. 19, 2019). “District courts have broad discretion in 11 determining relevancy for discovery purposes.” *Survivor Media, Inc. v. Survivor Prods.*, 12 406 F.3d 625, 635 (9th Cir. 2005) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 13 2002)). 14 On a motion to compel, the moving party bears the burden of demonstrating 15 relevance, proportionality and other Rule 26 requirements. *Shared P’ship v. Meta 16 Platforms, Inc.*, Case No. 22-cv-02366-RS (RMI), 2023 WL 2526645, at *3 (N.D. Cal.

17 Mar. 14, 2023) (citation omitted). The party resisting discovery “has the burden to show 18 that discovery should not be allowed, and has the burden of clarifying, explaining, and 19 supporting its objections.” *Weinstein v. Catapult Grp., Inc.*, No. 21-CV-05175-PJH, 2022 20 WL 4548798, at *1 (N.D. Cal. Sept. 29, 2022) (quoting *Oakes v. Halvorsen Marine Ltd.*, 21 179 F.R.D. 281, 283 (C.D. Cal. 1998)).

22 III. DISCUSSION

23 A. Timeliness 24 Defendant argues that Plaintiff’s motion to compel is untimely. (ECF No. 36 at 5.) 25 Pursuant to the Scheduling Order issued in this case, all interrogatories, requests for 26 admission, and document production requests were required to be served by 27 November 25, 2024. (ECF No. 20 ¶ 4.) On December 8, 2024, thirteen days after the 28 deadline, Plaintiff served Defendant with his first set of RFPs. (ECF No. 36-2 at 3–5.) In 1 RFP No. 1, Plaintiff requested a “copy of Defendant’s record of investigations and 2 complaints filed against the Defendant regarding medical issues that have occurred during 3 his employment with the California Department of Corrections and Rehabilitation.” (Id. 4 at 3.) 5 On January 10, 2025, Defendant served objections to Plaintiff’s first set of RFPs. 6 (Id. at 8–10.) Defendant objected to RFP No. 1 on the grounds of timeliness. (Id. at 9.) 7 Defendant further objected on the basis that it was vague and ambiguous, unduly 8 burdensome, overbroad in time and scope, and sought irrelevant information. (Id.) To the 9 extent the RFP called for confidential documents, Defendant

asserted the official 10 information privilege and privacy concerns. (Id. at 9–10.) Defendant stated that he would 11 not produce any documents in response to the request. (Id. at 10.) 12 On January 28, 2025, Plaintiff attempted to obtain copies of complaints against 13 Defendant through a California Public Records Act request. (ECF No. 34-1 at 2–3.) On 14 February 17, 2025, Plaintiff made an additional California Public Records Act request for 15 the complaint and disciplinary history of Bennett Feinberg, M.D., Defendant’s designated 16 expert in this case. (Id. at 5.) On February 25, 2025, California Correctional Health Care 17 Services (“CCHCS”) denied Plaintiff’s request for records relating to Defendant and 18 Dr. Feinberg, stating, “[T]he information you are requesting is exempt from release via the 19 California Public Records Act.” (Id. at 6–8.) CCHCS directed Plaintiff to the California 20 Department of Consumer Affairs, Medical Board of California, for information regarding 21 complaints against the medical licenses of Defendant and Dr. Feinberg. (Id.) On 22 March 9, 2025, Plaintiff appealed CCHCS’s denial. (Id. at 9–10.) 23 On May 6, 2025, Plaintiff filed a request to meet and confer with Defendant 24 regarding his intent to request the “reopening of [] discovery” and to seek “an order 25 compelling discovery in order to obtain facts for cross examination of Defendant’s Expert 26 Witness, and at the same time, if possible, gain the requested documents on the Defendant 27 Zhang.” (ECF No. 25.) Defendant filed a response to Plaintiff’s request, stating that 28 Defendant had arranged a telephonic meet and confer to occur on May 9, 2025. (ECF No. 1 26.) Defendant later left a voicemail with Judge Burkhardt’s Chambers indicating that the 2 meet and confer was unsuccessful in resolving the dispute. (ECF No. 33.) Accordingly, 3 this Court set a briefing schedule on the present motion to compel. (Id.) 4 Plaintiff served his second set of RFPs on May 11, 2025. (ECF No. 36-2 at 18.) In 5 his second set of RFPs, Plaintiff again sought discovery related to grievances and 6 complaints lodged against Defendant concerning any mistreatment of inmates. (Id. at 14– 7 15.) At the same time, Plaintiff served on Defendant a “Request for Discovery/Production 8 of Documents” pursuant to Rule 34 of the Federal Rules of Civil Procedure seeking 9 discovery related to Dr. Feinberg. (Id. at 16–17.) Per the Scheduling Order in this case, 10 expert discovery closed on May 19, 2025. (ECF No. 20 ¶ 7.) On June 9, 2025, Defendant 11 mailed Plaintiff a letter stating he would not respond to the second set of discovery requests 12 because they were untimely and because Dr. Feinberg is not a party to this action. (ECF

13 No. 36-1, Declaration of S. Gray Gilmor (“Gilmor Decl.”) ¶ 7.)

14 Given the foregoing, the Court finds the present dispute untimely as to Defendant, 15 as Plaintiff did not serve his discovery requests in a timely manner in accordance with the 16 deadlines set forth in the Scheduling Order. (See ECF No. 20.) In addition, Plaintiff did 17 not bring his dispute concerning Defendant’s response to the Court in a timely manner. 18 Plaintiff served his first set of RFPs on Defendant in December 2024, Defendant objected 19 in January 2025, and Plaintiff did not raise a dispute concerning Defendant’s response 20 before the

undersigned magistrate judge until May 2025. (See *id.* at 3 (“All discovery 21 disputes must be raised within 30 calendar days of the service of an objection, answer, 22 or response that becomes the subject of dispute, or the passage of a discovery due date 23 without response or production, and only after counsel (and any unrepresented parties) 24 have met and conferred to resolve the dispute.”); J. Burkhardt’s Civ Chambers R. § V.) 25 However, as Plaintiff is proceeding *pro se* and in *forma pauperis*, the Court will address 26 the substance of Plaintiff’s motion to compel responses from both Defendant and 27 Dr. Feinberg. 28

/// 1 B. Analysis 2

1. Complaints in Defendant’s File 3 In his second set of RFPs, Plaintiff requested the following: 4 Any and all grievances, complaints, or other documents received and or 5 included within the Employee’s R.Y. Zhang’s Central File/Employee File, 6 received by prison staff or his agents at Richard J. Donovan Correctional Facility concerning the mistreatment of inmates by Defendant R.Y. Zhang, 7 and any memoranda, investigative files, or other documents created in 8 response to such complaints, since 01/01/2021 through 01/01/2025. 9 (ECF No. 36-2 at 14.) 10 Defendant did not respond to Plaintiff’s second set of RFPs because they were 11 untimely. (ECF No. 36 at 3; Gilmor Decl. ¶ 7.) In opposition to Plaintiff’s motion to 12 compel, Defendant argues that even if Plaintiff’s requests were timely, “any grievances— 13 if they exist—are irrelevant to the claims and defenses in this case and protected from 14 disclosure.” (ECF No. 36 at 8.) Defendant asserts that any grievances and corresponding 15 investigative documents are privileged under the official information and privacy 16 privileges. (*Id.* at 9.) Defendant further notes that healthcare grievances filed by third- 17 party inmates would contain sensitive medical information. (*Id.*) Defendant argues that 18 not only are third-party inmates entitled to privacy but disclosing them could chill inmates 19 from using the grievance process. (*Id.*) 20 Plaintiff argues that the requested documents are relevant to his claim that Defendant 21 “violated his constitutional right for adequate medical care with deliberate indifference by 22 untimely providing surgery resulting in a chronic condition . . . , all resulting from 23 Defendant[’s] choice of routing Plaintiff’s surgical approval through an illegal Utilization 24 Review System, whose sole purpose is to limit medical services, especially in . . . [s]urgical 25 [s]cheduling.” (ECF No. 34 at 5.) Plaintiff claims he does not seek personnel records, but 26 copies of “complaints and allegations.” (*Id.* at 8–9.) He also asserts that the requested 27 documents will include evidence of Defendant’s “racial based bias[] towards Black 28 inmates.” (*Id.* at 9.) 1 In his SAC, Plaintiff alleges that Defendant’s decision to route Plaintiff for surgical 2 approval through RJD-MURS rather than send him immediately out for emergency surgery 3 was motivated either by financial concerns or racial bias. (SAC at 3–9.) In support of his 4 allegations, Plaintiff attaches a declaration from another inmate, Dale Calvin Whitmer, 5 who states that he personally witnessed a white inmate who ruptured his tendon in much 6 the same way as he could ascertain Plaintiff ruptured his tendon be taken immediately to 7 an outside hospital for emergency surgery. (SAC, Ex. A, at 67–69.) Mr. Whitmer also 8 stated that an RJD PCP informed him that doctors receive a financial benefit for referring 9 their patients through RJD-MURS for their evaluation and decisions pertaining to medical 10 treatments,

especially surgeries. (Id. at 68.) 11 To establish deliberate indifference to serious medical needs, Plaintiff must show 12 that Defendant's "response to the need was deliberately indifferent." *Jett v. Penner*, 439 13 F.3d 1091, 1096 (9th Cir. 2006). Deliberate indifference is shown by "a purposeful act or 14 failure to respond to a prisoner's pain or possible medical need and . . . harm caused by the 15 indifference." Id. (citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1991), 16 overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) 17 (en banc)). Deliberate indifference may be manifested "when prison officials deny, delay 18 or intentionally interfere with medical treatment, or it may be shown by the way in which 19 prison physicians provide medical care." Id. (quoting *McGuckin*, 974 F.2d at 1059). 20 a. Relevance 21 The Court finds that Plaintiff has not established the relevance of "any and all" 22 complaints and grievances filed against Defendant concerning any alleged "mistreatment 23 of inmates." Not only is the request vastly overbroad as it seeks complaints and grievances 24 beyond the scope of the instant matter, but Plaintiff has not established how Defendant's 25 response to another inmate's serious medical needs is relevant to Defendant's decision to 26 refer Plaintiff to RJD-MURS in this case based on his evaluation of Plaintiff's needs. The 27 declaration attached to Plaintiff's SAC from Mr. Whitmer, who claims that "Derrick," a 28 white inmate, received different medical care for a ruptured tendon than Plaintiff received, 1 does not establish relevance. First of all, Mr. Whitmer does not claim that it was Defendant 2 who treated Derrick. Furthermore, neither Plaintiff nor Mr. Whitmer could possibly know 3 the specific nature of Derrick's injury or what Derrick's immediate medical needs may 4 have been. 5 Plaintiff therefore has not established that the discovery he requests is relevant and 6 proportional to the needs of the case, rather than a mere fishing expedition. See, e.g., *Brook 7 v. Carey*, 352 F. App'x 184, 185–86 (9th Cir. 2009) (finding the district court properly 8 denied the prisoner plaintiff's motion to compel discovery of "[a]ny and all grievances, 9 complaints, or other documents received by the defendants . . . concerning mistreatment of 10 inmates" in a deliberate indifference to medical needs case as the "request was overbroad, 11 immaterial to [the plaintiff's] particular circumstances, and overly burdensome to 12 defendants"); *Valenzuela v. Smith*, No. S 04-0900 FCD DAD P, 2006 WL 403842, at *2, 13 n.1 (E.D. Cal. Feb. 16, 2006), adopted by 2006 WL 736765 (E.D. Cal. Mar. 22, 2006), 14 aff'd, 249 F. App'x 528 (9th Cir. 2007) (denying request for all complaints and 15 investigations against defendants to prove a pattern of medical indifference as overbroad 16 and burdensome and for failure to show likelihood of leading to discoverable evidence); 17 *Bovarie v. Schwarzenegger*, No. 08CV1661 LAB NLS, 2011 WL 719206, at *3 (S.D. Cal.

18 Feb. 22, 2011) (noting that "[t]he facts and circumstances of each inmate's medical 19 condition is different" in denying discovery for third-party medical records in deliberate 20 indifference case). 21 Plaintiff further argues that the requested documents are relevant under Rule 404 of 22 the Federal Rules of Evidence. (ECF No. 34 at 9–10.) Under Rule 404(b)(1), "evidence 23 of a crime, wrong, or other act is not admissible to prove a person's character in order to 24 show that on a particular occasion the person acted in accordance with the character." Fed. 25 R.

Evid. 404(b)(1). However, “[t]his evidence may be admissible for another purpose, 26 such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, 27 absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2). The request is denied 28 to the extent it seeks impermissible character evidence. 1 To the extent the request seeks permissible evidence of motive, the Court finds that 2 any potential relevance is outweighed by the third-party inmates’ right to privacy, as 3 discussed below. 4 b. Third-Party Privacy 5 Even if complaints and grievances lodged against Defendant by third parties have 6 the potential to be minimally relevant to establish motive, the Court finds that determining 7 whether Defendant acted with deliberate indifference in other cases would necessarily 8 invade the privacy of third-party inmates. Plaintiff accuses Defendant of making medical 9 decisions deliberately indifferent to Plaintiff’s medical needs, motivated by racial bias 10 and/or financial incentive. He hopes that through these discovery requests he can find 11 evidence of Defendant making wrongful medical decisions through deliberate indifference 12 to the medical needs of other inmates. Determining whether Defendant so acted in these 13 other matters would first entail evaluating the appropriateness of his medical decisions 14 under the specific medical circumstances of each patient. 15 The Ninth Circuit recognizes a constitutionally protected privacy interest in avoiding 16 disclosure of private personal matters, including medical records. See *Norman-Bloodsaw* 17 v. *Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998); see also *Nelson v. Nat’l* 18 *Aeronautics & Space Admin.*, 530 F.3d 865, 877 (9th Cir. 2008) rev’d as to other matters, 19 562 U.S. 134 (2011) (“We have repeatedly acknowledged that the Constitution protects an 20 individual interest in avoiding disclosure of personal matters. This interest covers a wide 21 range of personal matters, including . . . medical information” (internal citations 22 omitted)); *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004), abrogated 23 on other grounds by *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) 24 25 26 1 See *George v. Sonoma Cnty. Sheriff’s Dep’t*, 732 F. Supp. 2d 922, 937 (N.D. Cal. 27 2010) (“Evidence of an improper or ulterior motive can support a conclusion that a defendant failed to exercise sound medical judgment but instead acted with a culpable state 28 1 (“Individuals have a constitutionally protected interest in avoiding ‘disclosure of personal 2 matters,’ including medical information.”). Although that right is heavily circumscribed 3 in prison,² it is also clearly established that “a prison inmate retains those [constitutional] 4 rights that are not inconsistent with his status as a prisoner or with the legitimate 5 penological objectives of the corrections system.” *Turner v. Safley*, 482 U.S. 78, 95 (1987) 6 (citation and internal quotation marks omitted); see also *Doe v. Beard*, 63 F. Supp. 3d 1159, 7 1166–67 (C.D. Cal. 2014). 8 The right of privacy is not, however, “an absolute bar to discovery and courts must 9 balance the need for the information against the claimed privacy right.” *Harris v. Kyle*,

10 No. 1:19-cv-0462-DAD-EPG-PC, 2021 WL 195477, at *2 (E.D. Cal. Jan. 20, 2021) (citing 11 *Allen v. Woodford*, No. CV-F-05-1104-OWW-LJO, 2007 WL 309485, at *5 (E.D. Cal. Jan. 12 30, 2007)); see also *Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995) 13

(“Resolution of the privacy objection requires a balancing of the need for the information 14 sought against the privacy right asserted.”). Here, given the minimal potential relevance 15 of the requested documents, the Court finds that the need for the requested information 16 does not outweigh the right of third-party inmates to medical privacy.³ 17 /// 18 19 2 See, e.g., *Seaton v. Mayberg*, 610 F.3d 530, 534 (9th Cir. 2010) (“To the extent that 20 [the plaintiff’s] constitutional claim attacks disclosure while he was in prison serving his 21 sentence and for a penological purpose relating to his imprisonment, [his] claim falls within the body of law regarding privacy for prisoners, the general principle being that 22 whatever privacy right he has may be overridden for legitimate penological reasons.” 23 (emphasis added)). 3 This Court is not the proper forum, as Plaintiff urges, to appeal the State of 24 California’s denial of Plaintiff’s Public Records Act requests. See *Lambert v. Weller*, No. 25 C20-1558-JLR-MAT, 2021 WL 1393066, at *3 (W.D. Wash. Mar. 16, 2021), adopted by 2021 WL 1387661 (W.D. Wash. Apr. 12, 2021) (collecting cases). However, the Court 26 notes that the requests were denied with citation to Cal. Gov’t Code § 7927.700, which 27 similarly prohibits the “disclosure of personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” (See ECF No. 34- 28 1 c. Official Information Privilege 2 “Federal common law recognizes a qualified privilege for official information.” 3 *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (9th Cir. 1990), as amended on denial 4 of reh’g (Feb. 27, 1991), as amended on denial of reh’g (May 24, 1991). “Government 5 personnel files are considered official information.” *Id.* “To determine whether the 6 information sought is privileged, courts must weigh the potential benefits of disclosure 7 against the potential disadvantages. If the latter is greater, the privilege bars discovery.”

8 *Id.* at 1033–34.

9 A party claiming that information is privileged must “describe the nature of the 10 documents, communications, or tangible things not produced or disclosed—and do so in a 11 manner that, without revealing information itself privileged or protected, will enable other 12 parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A)(ii). In addition to a privilege log, 13 a party seeking to invoke the official information privilege and prevent disclosure must 14 submit an affidavit from a responsible official of the agency in control of the materials 15 sought who has personal knowledge that includes the following: 16

(1) an affirmation that the agency generated or collected the material in issue 17 and has maintained its confidentiality; (2) a statement that the official has 18 personally reviewed the material in question; (3) a specific identification of the governmental or privacy interests that would be threatened by disclosure 19 of the material to plaintiff and/or his lawyer; (4) a description of how 20 disclosure subject to a carefully crafted protective order would create a substantial risk of harm to significant governmental or privacy interests, and 21 (5) a projection of how much harm would be done to the threatened interests 22 if disclosure were made. 23 *Soto*, 162 F.R.D. at 613 (citations omitted). 24 In this case, there is no indication that Defendant served a privilege log when 25 responding to Plaintiff’s first set of RFPs or included the requisite

declaration. As a result, 26 the Court is unable to assess Defendant's assertion of the official information privilege. 27 The Court's order therefore does not rest on the application of this privilege. 28 1 Based on the foregoing, the Court denies Plaintiff's motion to compel his second set 2 of RFPs directed to Defendant for lack of relevance and third-party privacy. 3 2. Complaints in Dr. Feinberg's File 4 In a separate discovery request, Plaintiff requested: 5 Any and all grievances, complaints, or other documents received and or 6 included within the Employee's Dr. Bennett Feinberg MD, CCHP's Central File/Employee File, received by prison staff or his agents at the California 7 Department of Corrections and Rehabilitation and the CCHP concerning the 8 mistreatment of inmates by Defendant's Expert Witness, Dr. Bennett Feinberg MD, CCHP and any memoranda, investigative files, or other documents 9 created in response to such complaints, since the beginning of his 10 employment, through 01/01/2025. 11 (ECF No. 36-2 at 16-17.) 12 Defendant did not respond to this discovery request because Dr. Feinberg is not a 13 party to this action. (ECF No. 36 at 3; Gilmore Decl. ¶ 7.) In opposition to Plaintiff's 14 motion to compel, Defendant argues that even if Plaintiff's requests were timely, this 15 request is improper because Dr. Feinberg is not party to this action and Rule 34 is limited 16 to party discovery. (ECF No. 36 at 9.) Defendant asserts that expert discovery is conducted 17 through deposition and Plaintiff must pay fees related to a deposition. (Id. at 9-10.) 18 Defendant further states that it has no authority to respond or produce personnel documents 19 on behalf of Dr. Feinberg. (Id. at 10.) 20 As stated by Defendant, Rule 34 applies only to party discovery. See Fed. R. Civ. 21 P. 34(a) ("A party may serve on any other party a request within the scope of Rule 22 26(b)[.]"). When an expert has been retained as a testifying witness, as is the case with 23 Dr. Feinberg, the party's discovery must be conducted through deposition. Fed. R. Civ. P. 24 26(b)(4)(A); see also *Ransom v. Gray*, No. 07-CV-02340-IEG (WMC), 2009 WL 5184131, 25 at *4 (S.D. Cal. Dec. 21, 2009), *aff'd*, 473 F. App'x 741 (9th Cir. 2012). For these reasons, 26 Plaintiff's motion to compel a response to his RFP directed to Dr. Feinberg is DENIED. 27 /// 28 ///

1 }IV. CONCLUSION

2 Based on the foregoing, Plaintiff's motion to compel is DENIED. 3 IT IS SO ORDERED. 4
||Dated: August 13, 2025 - n. Jill L. Burkhardt 6 ited States Magistrate Judge 7 8 9 10 11 12 13 14
15 16 17 18 19 20 21 22 23 24 25 26 27 28