

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Meyer v. County of San Diego

No. 3:21-cv-0341-RSH (BLM) (S.D. Cal. Mar. 11, 2025) · No. 3:21-cv-0341-RSH (BLM) · Decided March 11, 2025

SUMMARY

The United States District Court for the Southern District of California denies William Meyer's motion to compel further discovery responses concerning training materials sought from individual County of San Diego defendants. The court concludes that most of the requested materials are not relevant to qualified immunity because they postdated the alleged constitutional violations, and it rejects arguments that privilege objections were waived. The court also finds that the remaining November 2016 training presentation is protected by attorney-client privilege.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Barbara L. Major
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 11, 2025
DOCKET	3:21-cv-0341-RSH (BLM)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff William Meyer moved to compel individual defendants to provide further responses to requests for production of documents. The magistrate judge denied the motion.
STANDARD OF REVIEW	Discovery rulings, including relevance and proportionality determinations, are reviewed under the district court's broad discretion.
PRECEDENTIAL VALUE	unpublished
PARTIES	William Meyer, Dana Gascay v. County of San Diego, Valenzuela, Craft, Paugh, Snyder

TOPICS

- discovery dispute
- qualified immunity
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

discovery

qualified immunity

attorney-client privilege

QUESTIONS PRESENTED

1. Whether the requested training materials were relevant and proportional to the claims or to the individual defendants' potential qualified-immunity defense.
2. Whether defendants waived attorney-client privilege or work-product protection by producing similar materials in other litigation, asserting qualified immunity, providing an allegedly deficient privilege log, or making untimely objections.
3. Whether the remaining November 2016 training presentation was protected by attorney-client privilege.
4. Whether the remaining training materials were protected by the attorney work-product doctrine.
5. Whether an in camera review of the withheld materials was necessary.

HOLDINGS

1. Training materials created after the alleged constitutional violations were not relevant to the defendants' potential qualified-immunity defense because qualified immunity evaluates whether the law was clearly established at the time of the alleged misconduct.
2. The November 2016 training could potentially be relevant to qualified immunity, but the plaintiff did not establish that the requested materials were discoverable on that basis.
3. The defendants did not waive their privilege or work-product objections through prior disclosure by the County, implied waiver, an allegedly deficient privilege log, or untimely objections.
4. The remaining November 2016 PowerPoint presentation was protected by attorney-client privilege.
5. The withheld training materials, including their native form, were protected by the attorney work-product doctrine.

KEY QUOTATIONS

“The relevant inquiry is whether, at the time of the officers’ action, the state of the law gave the officers fair warning that their conduct was unconstitutional.” (at 7)

“The Ninth Circuit has established that the attorney-client privilege cannot be used both as a “sword and a shield.”” (at 10)

“The attorney-client privilege protects confidential communications between attorneys and clients, which are made for the purpose of giving legal advice.” (at 15)

“The work product doctrine is not a privilege but a qualified immunity that “protects from discovery in litigation ‘mental impressions, conclusions, opinions, or legal theories of a party's attorney’ that were ‘prepared in anticipation of litigation or for trial.’”” (at 15)

FACTUAL BACKGROUND

Plaintiffs alleged that County social workers conducted covert video surveillance of them and their minor child during medical treatment, presented deceptive evidence or false reports in juvenile court proceedings, and caused nonconsensual medical procedures or examinations. Meyer sought training materials received by the individual defendants in connection with those claims, arguing that the materials were relevant to qualified immunity and that privilege and work-product objections had been waived. Most disputed trainings occurred after the alleged conduct, while one presentation, titled "HS SS SWS SW As Witness – November 2016," predated the alleged violations.

PROCEDURAL HISTORY

Plaintiffs filed a second amended complaint alleging that County social workers violated their civil rights through surveillance, deception or false reporting, and nonconsensual medical procedures or examinations involving their minor child. The district court dismissed the Monell claims against the County and dismissed other claims in part, leaving Valenzuela, Craft, Paugh, and Snyder as defendants. After multiple discovery-extension requests, Meyer moved to compel production of PowerPoint training presentations. Defendants withdrew objections and agreed to produce four presentations, but continued to withhold eight others based primarily on relevance, attorney-client privilege, and work-product protection. The court denied the motion, including as to the one pre-2019 presentation that might have been relevant to qualified immunity.

DISPOSITION

other

CASES CITED

- Doherty v. Comenity Capital Bank & Comenity Bank, 2017 WL 1885677, at *2 (S.D. Cal. May 9, 2017)
- Cancino Castellar v. McAleenan, 2020 WL 1332485, at *4 (S.D. Cal. Mar. 23, 2020)
- Roberts v. Clark Cty. Sch. Dist., 312 F.R.D. 594, 603 (D. Nev. 2016)
- D.M. v. County of Merced, 2022 WL 229865, at *2 (E.D. Cal. Jan. 26, 2022)
- Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)
- Surfivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir. 2005)
- Williams v. County of San Diego, 2019 WL 2330227, at *3 (S.D. Cal. May 31, 2019)
- Bryant v. Ochoa, 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009)
- Johnson v. Bay Area Rapid Transit Dist., 724 F.3d 1159, 1171 (9th Cir. 2013)
- Ballentine v. Tucker, 28 F.4th 54, 64 (9th Cir. 2022)
- Evans v. Skolnik, 997 F.3d 1060, 1064, 1066 (9th Cir. 2021)
- Pearson v. Callahan, 555 U.S. 223, 232 (2009)
- Hope v. Pelzer, 536 U.S. 730, 741 (2002)
- Anderson v. Creighton, 483 U.S. 635, 640 (1987)
- Hipschman v. County of San Diego, 2024 WL 3647061, at *3, *6 (S.D. Cal. July 31, 2024)
- Vasquez v. County of Kern, 949 F.3d 1153, 1164-65 (9th Cir. 2020)
- Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052, 1062 (9th Cir. 2003)

- Bittacker v. Woodford, 331 F.3d 715, 719 (9th Cir. 2003)
- United States v. Amlani, 169 F.3d 1189, 1195 (9th Cir. 1999)
- 3D Systems, Inc. v. Wynne, 2024 WL 940318, at *5 (S.D. Cal. Feb. 21, 2024)
- Kinsela v. Hughes, 584 U.S. 100, 104 (2018)
- Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992)
- In re Outlaw Laboratories, LP Litig., 2020 WL 1674552, at *8 (S.D. Cal. Apr. 6, 2020)
- Ocean Garden Prod. Inc. v. Blessings Inc., 2020 WL 4284383, at *1 (D. Ariz. July 27, 2020)
- Liguori v. Hansen, 2012 WL 760747, at *11-*12 (D. Nev. Mar. 6, 2012)
- United States v. Ruehle, 583 F.3d 600, 607 (9th Cir. 2009)
- United States v. Munoz, 233 F.3d 1117, 1128 (9th Cir. 2000)
- Hipschman v. County of San Diego, 2024 WL 5081631, at *5 (S.D. Cal. Dec. 11, 2024)
- Greer v. County of San Diego, 634 F. Supp. 3d 911, 918, 921 (S.D. Cal. 2022)
- ACLU of N. Cal. v. U.S. Dep't of Justice, 880 F.3d 473, 483-84 (9th Cir. 2018)
- United States v. Richey, 632 F.3d 559, 566-67 (9th Cir. 2011)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 Case No.: 3:21-cv-0341-RSH (BLM) 11 WILLIAM MEYER, et al., 12
Plaintiffs, ORDER DENYING PLAINTIFF'S MOTION TO COMPEL 13 v. [ECF No. 264] 14
COUNTY OF SAN DIEGO, et al., 15 Defendants. 16 17 18 19 20 Currently before the Court is
Plaintiff William Meyer's January 10, 2025 Motion to Compel 21 Defendants Valenzuela, Craft,
Paugh, and Snyder ("Defendants") to Provide Further Responses 22 to Discovery.¹ ECF No. 264.

On January 17, 2025, Defendants filed an Opposition ("Oppo."). 23 ECF No. 267. On January 24,
2025, Plaintiff filed his Reply ("Reply"). ECF No. 268. On January 24 28, 2025, Plaintiff filed a
"Supplemental Declaration," without leave of court. ECF No. 269. 25 26 27 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." 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,, 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. 25 /// 26 /// 27 /// 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 controversy, the parties' relative access to relevant information, the parties' 6 resources, the importance of discovery in resolving issues, and whether the burden 7 or expense of the proposed discovery outweighs the likely benefit.

Information 8 within this scope of discovery need not be admissible in evidence to be discoverable. 9 Fed. R. Civ. P. 26(b)(1). 10 Typically, the relevance standard is broad in scope and "encompass[es] any matter that 11 bears on, or that reasonably could lead to other matters that could bear on, any issue that is or 12 may be in a case." *Doherty v. Comenity Capital Bank & Comenity Bank*, 2017 WL 1885677, at 13 *2 (S.D.

Cal. May 9, 2017). Relevance, however, is not without limits. Id. The 2015 amendment 14 to Rule 26(b) removed the phrase "reasonably calculated to lead to the discovery of admissible 15 evidence" because it was often misconstrued to define the scope of discovery. Fed. R. Civ. P. 16 26(b)(1) advisory committee's notes (2015 amendment). Instead, to fall within the scope of 17 discovery, the information must also be "proportional to the needs of the case," requiring lawyers 18 to "size and shape their discovery requests to the requisites of a case" while "eliminat[ing] 19 unnecessary or wasteful discovery." Fed.

Civ. R. P. 26(b)(1); *Cancino Castellar v. McAleenan*, 20 2020 WL 1332485, at *4 (S.D. Cal Mar. 23, 2020) (quoting *Roberts v. Clark Cty. Sch. Dist.*, 312 21 F.R.D. 594, 603 (D. Nev. 2016)). 22 District courts have broad discretion to determine relevancy for discovery purposes. *D.M. 23 v. County of Merced*, 2022 WL 229865, at * 2 (E.D. Cal. Jan. 26, 2022) (citing *Hallett v. Morgan*, 24 296 F.3d 732, 751 (9th Cir.

2002) and *Surfvivor Media v. Survivor Prods.*, 406 F.3d 625, 635 25 (9th Cir. 2005)). District courts also have broad discretion to limit discovery to prevent its abuse. 26 See Fed. R. Civ. P. 26(b)(2) (instructing that courts must limit discovery where the party seeking 27 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 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 in *Greer* in a published decision.

See *Greer, et al. v. County of San Diego, et al.*, --F.4th --, 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 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 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 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, 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 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.

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 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 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 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.

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 declares that she is “not aware of any of the above-mentioned documents being produced or 26 disclosed in prior litigation or this pending litigation.” Pl.’s Obj. to Rae Decl., ECF NO. 268-1. 27 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 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 Opp. 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.

27 / / / 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. 25 / / / 26 27 4 In reversing the
district court’s finding that there was no attorney-client privilege, the Ninth Circuit determined that
it “need not and do not consider the work product doctrine.” Greer, 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 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 x, be Mg ore 13 Hon. Barbara L. Major 4 United States Magistrate Judge 15 16 17 18
19 20 21 22 23 24 25 26 27 28 17