

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gary Lee Beavers v. Officer Hosey

No. 1:21-cv-00650-HBK (PC) (E.D. Cal. Oct. 30, 2025) · No. 1:21-cv-00650-HBK (PC) · Decided October 30, 2025

SUMMARY

The United States District Court for the Eastern District of California grants in part and denies in part Gary Lee Beavers’s motion to compel discovery in his Eighth Amendment failure-to-protect action against Officer Hosey. The court orders production of certain documents concerning prior failure-to-protect investigations and records related to the underlying assault, subject to redactions, while denying or limiting other discovery requests and resetting the dispositive-motion deadline to December 15, 2025.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 30, 2025
DOCKET	1:21-cv-00650-HBK (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to compel discovery in an action proceeding on an Eighth Amendment failure-to-protect claim under 42 U.S.C. § 1983.
STANDARD OF REVIEW	Discovery rulings are committed to the court's broad discretion. The moving party bears the burden of demonstrating actual and substantial prejudice from denial of discovery.
PRECEDENTIAL VALUE	unpublished
PARTIES	Gary Lee Beavers v. Officer Hosey

TOPICS

- discovery dispute
- privilege
- civil rights
- prisoners rights
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff established a basis under the Federal Rules of Civil Procedure to compel further responses to eleven document requests.
2. Whether Defendant established the official-information privilege or other privilege sufficient to withhold documents concerning investigations or discipline related to alleged failure-to-protect conduct.
3. Whether Defendant could be compelled to create documents or lists that did not already exist.
4. Whether responsive confidential documents should be produced subject to redactions or other protective measures.

HOLDINGS

1. A motion to compel must identify not only the relevance of the requested discovery but also why the opposing party's response or objections are deficient; the moving party bears the burden of showing actual and substantial prejudice from the denial of discovery.
2. A party cannot be compelled under Federal Rule of Civil Procedure 34 to create a new document or compile information into a document that does not already exist.
3. A party invoking the qualified official-information privilege must make a substantial threshold showing, supported by a sufficiently specific declaration, that disclosure would threaten concrete governmental or privacy interests; conclusory and speculative assertions are insufficient.
4. Confidentiality alone does not exempt relevant, proportional, nonprivileged discovery from production; appropriate redactions may adequately protect privacy and security interests.

KEY QUOTATIONS

“parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” (at 3)

“A court cannot order a party to produce documents that do not exist.” (at 7)

“At the outset, confidentiality is not a basis for withholding discovery.” (at 9)

FACTUAL BACKGROUND

The action concerns Plaintiff's claim that Officer Hosey failed to protect him from an assault by inmate Price on April 7, 2019, despite allegedly knowing of Price's violent history and intentions toward Plaintiff. Plaintiff sought eleven categories of documents, including records concerning the incident, Hosey's personnel history, prison staffing, porter assignments, and institutional procedures. Defendant produced more than 500 pages but withheld certain documents based primarily on confidentiality and official-information privilege objections.

PROCEDURAL HISTORY

Plaintiff filed a motion to compel on May 12, 2025. The court deferred ruling and ordered the parties to meet and confer; after the dispute remained unresolved, the parties submitted separate statements and supporting discovery materials. The court granted the motion as to Document Requests 2 and 4, denied it as to Requests 1, 3, 5, 6, 7, 8, 9, and 11, denied Request 10 as moot, ordered production of specified documents with redactions, and reset the dispositive-motion deadline.

DISPOSITION

other

CASES CITED

- Compass Bank v. Morris Cerullo World Evangelism, 104 F. Supp. 3d 1040, 1051 (S.D. Cal. 2015)
- Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)
- Hasan v. Johnson, 2012 WL 569370, at *2 (E.D. Cal. Feb. 21, 2012)
- Kerr v. U.S. Dist. Ct. for the N. Dist. of Cal., 511 F.2d 192, 197-98 (9th Cir. 1975), aff'd, 426 U.S. 394 (1976)
- Edwards v. Cnty. of Los Angeles, 2009 WL 4707996, at *3 (C.D. Cal. Dec. 9, 2009)
- Kelly v. City of San Jose, 114 F.R.D. 653, 661, 669-70 (N.D. Cal. 1987)
- Soto v. City of Concord, 162 F.R.D. 603, 613-16 (N.D. Cal. 1995)
- Tornay v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988)
- In re Roman Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 424 (9th Cir. 2011)
- Christ v. Blackwell, 2011 WL 3847165, at *2 (E.D. Cal. Aug. 30, 2011)
- Ellis v. Cambra, 2008 WL 860523 (E.D. Cal. Mar. 27, 2008)
- Roettgen v. Foston, 2016 WL 11911155, at *2 (S.D. Cal. May 4, 2016)
- Bethea v. Comcast, 218 F.R.D. 328, 330 (D.D.C. 2003)
- Carter v. Dawson, 2010 WL 4483814, at *5 (E.D. Cal. Nov. 1, 2010)
- Ayala v. Tapia, 1991 WL 241873, at *2 (D.D.C. Nov. 1, 1991)
- Alexander v. F.B.I., 194 F.R.D. 305, 310 (D.D.C. 2000)
- Goolsby v. Carrasco, 2011 WL 2636099, at *20-21 (E.D. Cal. July 5, 2011)
- Robinson v. Adams, 2011 WL 2118753, at *53 (E.D. Cal. May 27, 2011)
- Brook v. Carey, 352 F. App'x 184, 185-86 (9th Cir. 2009)
- Nugget Hydroelectric, L.P. v. Pacific Gas & Elec. Co., 981 F.2d 429, 438-39 (9th Cir. 1992)
- Taylor v. O'Hanneson, 2014 WL 2696585, at *5 (E.D. Cal. June 13, 2014)
- Ramirez v. County of Los Angeles, 231 F.R.D. 407, 412 (C.D. Cal. 2005)
- Medina v. Cnty. of San Diego, 2014 WL 4793026, at *7 (S.D. Cal. Sept. 25, 2014)
- Parrish v. Solis, 2014 WL 2466101, at *4 (N.D. Cal. May 31, 2014)
- Womack v. Virga, 2011 WL 6703958, at *11 (E.D. Cal. Dec. 21, 2011)
- Walker v. Karelak, 2009 WL 3075575, at *1 (E.D. Cal. Sept. 21, 2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 GARY LEE BEAVERS, Case No. 1:21-cv-00650-HBK (PC) 12 Plaintiff,
ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION 13 v. TO
COMPEL 14 OFFICER HOSEY, (Doc. No. 55) 15 Defendant. 16 17 Pending before the Court is
Plaintiff Gary Lee Beavers’ Motion to Compel Discovery 18 filed May 12, 2025.

(Doc. No. 55, “motion”). For the reasons set forth herein, the Court grants 19 the motion in part,
denies the motion in part, and resets the pre-trial dispositive motion deadline 20 to December 15,
2025. 21 PROCEDURAL BACKGROUND 22 On May 23, 2025, prior to Defendant’s response
due date, the Court entered an order 23 deferring a ruling on the motion and ordering the parties to
meet telephonically and confer in 24 good faith to resolve the outstanding discovery dispute.¹
(Doc.

No. 56 at 4). If the parties were 25 unable to resolve the discovery dispute, they were directed to
file a joint statement, not to exceed 26 27 1 As pointed out by the Court, Plaintiff’s did not include
a certification that he had met and conferred with 28 defendant prior to filing the motion. (Doc.
No. 56 at 3:17-18). 1 six pages, outlining which items remained in dispute.

(Id. at 4, ¶ 5).² In contravention to the 2 Court’s order to file a joint statement, Plaintiff filed a
separate statement on September 11, 2025. 3 (Doc. No. 67). In his statement, Plaintiff avers
Defendant has not complied with any of the 4 previous requested discovery. (Id. at 1). Instead of
identifying the specific document requests 5 that remain in dispute, Plaintiff listed “three areas” of
discovery that Defendant “refused to 6 disclose.” (Id. at 2).

7 Defendant Hosey filed a statement opposing Plaintiff’s motion on September 15, 2025. 8 (Doc.
No. 68). Defendant attached the declaration of counsel attesting to the various meet and 9 confer
efforts with Plaintiff regarding the discovery dispute. (Doc. No. 68-1). Counsel for 10 Defendant
attests that over 400 pages of documents were produced to Plaintiff in its initial 11 production, and
another 100 pages of documents were produced in its supplemental production.

12 (Doc. No. 68-1, ¶¶ 5, 14). In addressing Plaintiff’s motion, Defendant points out that Plaintiff’s
13 “motion improperly expands the scope of several” of Plaintiff’s requests. (Doc. No. 68 at 2). 14
Defendant then turns and addresses each of the 11 areas of discovery requested by Plaintiff in his
15 motion. (Id. at 2-12). Thereafter, as directed by the Court, Defendant filed Plaintiff’s original
16 Requests for Production (“RFP”), Defendant’s initial responses to Plaintiff’s RFP, and 17
Defendant’s Supplemental responses to Plaintiff’s RFP.

(Doc. No. 72, Exhibit A, Exhibit C, and 18 Exhibit C, respectively). Defendant also submitted for
inspection the Declaration of N. Ibarra in 19 Support of Privilege Log in Response to Plaintiff’s
First Set of Request for Production (Doc. No. 20 72 at 29-34) and accompanied Privilege Log

(Doc. No. 72 at 35), as well as the Declaration of N. 21 Ibarra in Support of Supplemental Privilege Log in Response to Plaintiff's First Set of Request 22 for Production (Doc.

No. 72 at 61-71) and accompanied Supplemental Privilege Log (Doc. No. 23 72 at 69). 24 //// 25
//// 26 //// 27 2 In the interim, the parties met for a settlement conference on August 4, 2025 that
resulted in an impasse. 28 (See Doc. No. 65). 1 APPLICABLE LAW AND ANALYSIS 2 A. Legal
Standard 3 Federal Rule of Civil Procedure 26 provides: 4 parties may obtain discovery regarding
any non-privileged matter that is relevant to 5 any party's claim or defense and proportional to the
needs of the case, considering 6 the importance of the issues at stake in the action, the amount in
controversy, the parties' relative access to relevant information, the parties' resources, the 7
importance of the discovery in resolving the issues and whether the burden or expense of the
proposed discovery outweighs its likely benefit.

8 9 Fed. R. Civ. P. 26(b)(1). Although broad, "the scope of discovery is not without limits." 10
Compass Bank v. Morris Cerullo World Evangelism, 104 F. Supp. 3d 1040, 1051 (S.D. Cal. 11
2015). The Court "must limit" irrelevant, overly broad, unduly burdensome, cumulative or 12
disproportional discovery. Fed. R. Civ. P. 26(b)(2)(C). Whether to permit or deny discovery is 13
left to the Court's "broad" discretion.

See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). 14 Pursuant to Rule 34, a party may
request documents "in the responding party's possession, 15 custody, or control." Fed. R. Civ. P.
34(a)(1). The responding party must respond in writing and 16 is obliged to produce all specified
relevant and non-privileged documents, tangible things, or 17 electronically stored information in
its "possession, custody, or control" on the date specified.

Id. 18 A requesting party that is dissatisfied with discovery responses made under the federal rules
may 19 move to compel further responses pursuant to Rule 37(a). Fed. R. Civ. P. 37(a). An
"incomplete 20 disclosure, answer, or response must be treated as a failure to disclose, answer or
respond." Fed. 21 R. Civ. P. 37(a)(4). "The moving party bears the burden of demonstrating 'actual
and substantial 22 prejudice' from the denial of discovery." Hasan v. Johnson, 2012 WL 569370 *2
(E.D.

Cal. Feb. 23 21, 2012) (citing Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)). 24 Certain
documents may be withheld based upon privilege. The Ninth Circuit recognizes a 25 qualified
privilege for official information. Kerr v. U.S. Dist. Ct. for the N. Dist. of Cal., 511 26 F.2d 192,
198 (9th Cir.1975), aff'd, 426 U.S. 394 (1976).

However, the qualified privilege is 27 "contingent upon the competing interests of the requesting
litigant and subject to disclosure 28 especially where protective measures are taken...." Id. Under
this privilege, a "court must 1 balance the government's interest in protecting official information

from disclosure against the 2 plaintiff's need for the information.” *Edwards v. Cnty. of Los Angeles*, No. CV 08-07428 3 GAF(SSx), 2009 WL 4707996, at *3 (C.D.

Cal. Dec. 9, 2009). In civil rights cases such as this, 4 the balancing test is “moderately pre-weighted in favor of disclosure.” *Kelly v. City of San Jose*, 5 114 F.R.D. 653, 661 (N.D. Cal. 1987). However, before a court may engage in this balancing, the 6 party invoking the privilege must make a “substantial threshold showing” that the privilege 7 applies.

Soto v. City of Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995) (quoting *Kelly*, 114 8 F.R.D. at 669). The party asserting the privilege must submit a declaration or affidavit from a 9 responsible official with personal knowledge of the matters to be attested to in the affidavit. *Id.* 10 “The claiming official must ‘have seen and considered the contents of the documents and himself 11 have formed the view that on grounds of public interest they ought not to be produced’ and state 12 with specificity the rationale of the claimed privilege.” *Kerr*, 511 F.2d at 198.

The affidavit must 13 include: 14 (1) an affirmation that the agency generated or collected the material in issue and 15 has maintained its confidentiality; (2) a statement that the official has personally 16 reviewed the material in question; (3) a specific identification of the governmental or privacy interests that would be threatened by disclosure of the material to 17 plaintiff and/or his lawyer; (4) a description of how disclosure subject to a carefully crafted protective order would create a substantial risk of harm to 18 significant governmental or privacy interests, and (5) a projection of how much harm would be done to the threatened interests if disclosure were made.

19 20 *Soto*, 162 F.R.D. at 613 (quoting *Kelly*, 114 F.R.D. at 670). 21 The party resisting discovery must specifically describe how disclosure of the requested 22 information in that case would be harmful. *Soto*, 162 F.R.D. at 613-14. If the opposing party 23 fails to meet the threshold burden requirement of establishing cause to apply the privilege, the 24 privilege will be overruled.

Chism v. County of San Bernardino, 159 F.R.D. 531, 533 (C.D. Cal. 25 1994). Ordinarily, a “party asserting an evidentiary privilege has the burden to demonstrate that 26 the privilege applies to the information in question.” *Tornay v. United States*, 840 F.2d 1424, 27 1426 (9th Cir. 1988) (citing *United States v. Hirsch*, 803 F.2d 493, 496 (9th Cir. 1986)); *In re* 28 1 *Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir.

2011) 2 (explaining that “the party opposing disclosure has the burden of establishing that there is good 3 cause to continue the protection of the discovery material”). 4 ANALYSIS 5 Critical to whether the requested discovery falls within the ambit of Rule 26 is nature of 6 the claims at issue in this case.

Here, this action proceeds on Plaintiff’s single Eighth 7 Amendment failure to protect claim against the remaining one Defendant—Defendant Hosey. 8 Specifically, Plaintiff alleges

Defendant Hosey allowed inmate Price, who was a porter, to enter Plaintiff's cell and assault him despite knowing of inmate Price's violent history and violent intentions towards Plaintiff.

Plaintiff's motion identifies document requests and why the requested documents are relevant to Plaintiff's claim. (See generally, Doc. No. 55). However, the motion does not address why Defendant's responses are deficient and/or why Defendant's objections are not justified. A motion, in addition to identifying why the requested discovery is relevant, must identify why the response or the basis of the objections lodged by another party are not valid.

See *Christ v. Blackwell*, 2011 WL 3847165, at *2 (E.D. Cal. Aug. 30, 2011); *Ellis v. Cambra*, 2008 WL 17 860523 (E.D. Cal. Mar. 27, 2008). Accordingly, the motion is arguably facially deficient and the Court may deny it on that basis alone. Nonetheless, given Plaintiff's pro se status, the Court will turn to the merits of the motion. In doing so, the Court has reviewed Plaintiff's motion (Doc.

No. 55), his statement in support of his discovery requests (Doc. No. 67), Defendant's statement re: discovery disagreement (Doc. 22 No. 68), Plaintiff's initial Request for Production ("RFP") (Doc. No. 72, Exh. A), Defendant's responses thereto (Doc. No. 72, Exh. B), as well as Defendant's supplemental responses (Doc. 24 No. 72, Exh. C), with accompanying Declarations and Privilege Logs.

To the extent the discovery sought in Plaintiff's motion differs from the discovery sought in his document requests, the discovery sought in Plaintiff's RFP control. Plaintiff's motion identifies the following document requests. (see Doc. 55) Plaintiff's Document Request 1: "Please provide the full names, cell number and CDCR number for all inmates housed in my building, building #3, on the day of the day of inmate Price's assault on me, 4/7/2019.

Please note the names of all porters. (Doc. No. 55 at 2). Plaintiff claims that "[t]he information I have requested is available in the database CDCR keeps on all prisons." (Doc. No. 67 at 2). Defendant's Response: Contrary to Plaintiff's Motion, Plaintiff's first RPD sought information pertaining to the inmates housed in his building at the time of the incident, not the names of porters.

Defendant timely responded to the request by advising Plaintiff that no responsive documents were located. During several meet and confer conversations, defense counsel repeated this response and advised Plaintiff that Wasco State Prison databases did not retain information regarding what inmates were housed in a certain building during a certain time frame.

Defendant is not required to prepare a document that does not already exist. *Roettgen v. Foston*, No. 13CV1101-GPC-13 BGS, 2016 WL 11911155, at *2 (S.D. Cal. May 4, 2016). As part of meet

and confer efforts, Defendant mailed Plaintiff the names of his 14 two prior cellmates even though not specifically requested in any discovery request. (Doc. No. 68 at 2).

15 16 Initially, the Court notes that Plaintiff's original RFP did not ask for the names of the 17 porters. Thus, to the extent that the porters are not housed in building #3, this additional request 18 is beyond the information Plaintiff's originally requested. 19 In response to the request, Defendant stated that no such document exists. A court cannot 20 order a party to produce documents that do not exist.

A party's mere suspicion that additional 21 documents must exist is an insufficient basis to file a motion to compel. See *Bethea v. Comcast*, 22 218 F.R.D. 328, 330 (D. D.C. 2003). Rather, the moving party must have a colorable basis for its 23 belief that relevant, responsive documents exist and are being improperly withheld. See *Carter v. 24 Dawson*, 2010 WL 4483814, at *5 (E.D.

Cal. Nov. 1, 2010) (representation by defendants that 25 they are unable to locate responsive documents precludes the grant of a motion to compel "unless 26 Plaintiff can identify a specific document that Defendants have withheld"); *Ayala v. Tapia*, 1991 27 WL 241873, at *2 (D. D.C. Nov. 1, 1991) (denying motion to compel where moving party could 28 not identify withheld documents).

Plaintiff's belief that CDCR has this information stored in a 1 database is not enough to overcome Defendant's statement that no responsive document was 2 found. 3 Plaintiff contends "[t]his information is in a database" and suggests that such a document 4 can be obtained by a "tech employee." (Doc. No. 55 at 2). Rule 34 permits a party to request 5 documents in the responding party's possession, custody, or control.

Fed. R. Civ. P. 34(a)(1). 6 The Rule has been interpreted to mean that a party must produce only documents that are already 7 in existence. *Alexander v. F.B.I.*, 194 F.R.D. 305, 310 (D.D.C. 2000). A party is not required to 8 create new documents solely for their own production. *Id.*; see also *Goolsby v. Carrasco*, 2011 9 WL 2636099 *20-21 (E.D. Cal. July 5, 2011) (finding a document request asking for the names 10 of employees who supervised the prison cage yard is not a proper request under Rule 34); 11 *Robinson v. Adams*, 2011 WL 2118753 *53 (E.D.

Cal. May 27, 2011) (denying plaintiff's motion 12 to compel responses to a document request seeking the names of prison employees working in 13 building two during a certain time period because the request did not seek an identifiable 14 document).

Accordingly, Defendants are not required to create a list of all inmates by name, cell 15 number, CDCR number and their current location within CDCR and the Court will deny 16 Plaintiff's motion regarding Document Request No. 1. 17 Plaintiff's Document Request No. 2: 18 Please provide the information in Officer Hosey's personnel file, to include all complaints, 602's, reports and recommendations, 19 interviews, and all disciplinary actions or warnings as these items

pertain to: 20 1) allegations of use of illegal, unnecessary or excessive force against 21 a prisoner; 2) perjury; 3) falsifying evidence; 4) false statements; 5) criminal convictions; 6) admonishments; 7) suspensions; 8) drug use; 22 9) falsifying documents; 10) tampering with evidence; 11) destroying evidence; 12) failure to protect; 13) aiding or abetting any 23 of the above activities.

(Doc. No. 55 at 3). 24 Defendant's Response: 25 Contrary to Plaintiff's Motion, Plaintiff's second RPD sought the personnel file of Defendant Hosey and the two dismissed 26 Defendants. Defendant responded to this request with appropriate objections including the official information privilege and provided 27 a declaration noting safety and security concerns for the production of certain records.

Defendant narrowed the scope of the overbroad 28 request to seek documents pertaining to any investigation or 1 discipline Defendant received related to failure to protect for the five years prior to the incident and identified those records on a privilege 2 log. (See Ex. B.) Defendant also noted that, besides the documents identified in the privilege log, no other responsive documents were 3 located.

The Motion seeks new documents regarding allegations of excessive force, perjury, criminal convictions, admonishments, and 4 drug abuse which exceed the scope of permissible discovery because any such documents are not relevant to any claim or defense in this 5 case. Fed. R. Civ. P. 26(b)(1); Fed. R. Evid. 404(b). Further, this request seeks information that is privileged and confidential.

(Doc. 6 No. 68 at 2-3). 7 The Court grants in part and denies in part Plaintiff's motion regarding Document Request 8 No. 2. The Court denies the motion to the extent Plaintiff seeks additional documents for the first 9 time in his motion regarding allegations of excessive force, perjury, criminal convictions, 10 admonishments, and drug abuse by Defendant Hosey that were not included in Plaintiff's initial 11 RFP No. 2.

Further, the Court finds that Plaintiff's document requests for "all" complaints and 12 grievances made against Hosey" is overboard and overly burdensome. See *Brook v. Carey*, 352 13 Fed. App'x 184, 185-86 (9th Cir. 2009) (affirming the district court's denial of the plaintiff's 14 "motion to compel discovery of 'any and all grievances, complaints, or other documents 15... concerning mistreatment of inmates'") (modifications adopted); see also *Nugget 16 Hydroelectric, L.P. v. Pacific Gas and Elec.*

Co., 981 F.2d 429, 438-39 (9th Cir. 1992) (finding 17 the court is not required to compel discovery that is "unnecessarily burdensome and overly 18 broad," with minimal chance of relevance). 19 Defendant does not contest the relevance and proportionality of the narrowed request for 20 documents pertaining to any investigation or discipline Defendant received related to failure to 21 protect for the five years prior to the incident.

Indeed, courts have recognized in § 1983 actions that evidence of other misconduct against a defendant may be used for purposes other than character evidence, such as showing a pattern or practice of behavior. *Taylor v. O'Hanneson*, No. 24 11-CV-00538-LJO, 2014 WL 2696585, at *5 (E.D. Cal. June 13, 2014); *Ramirez v. County of Los Angeles*, 231 F.R.D.

407, 412 (C.D. Cal. 2005). Instead, Defendant objects to the producing the responsive documents (identified by bates numbers AGOPRIV0001-AGOPRIV0031) based on confidentiality, official information privilege, and the deliberative process privilege, citing California Code of Regulations, title 15, 1 sections 3321 and various state evidentiary code sections.

(Doc. No. 72 at 13, Exh. B; Doc. No. 2 72 at 35).³ While claiming “privilege,” the Declaration in support of the privileges being asserted makes clear that the thrust of Defendant’s argument against production is confidentiality. (See 4 generally, Doc. No. 72 at 30-34).⁵ At the outset, confidentiality is not a basis for withholding discovery. Rule 26(1) exempts only privileged documents, not confidential documents from discovery.

Regarding the state evidentiary objections, discovery in federal court is governed by federal law, not a state’s regulatory scheme. See *Kerr v. U.S. Dist. Ct. for N.D. Cal.*, 511 F.2d 192, 197-98 (9th Cir. 1975). Defendant does not provide any detail about the withheld documents. Defendant provides no facts as to how the responsive documents could affect the “safety and security of the institution, staff and inmates.” (Doc.

No. 72 at 33). And general assertions that governmental interests would be harmed by disclosure are insufficient to satisfy the Kelly burden. *Soto*, 162 F.R.D. at 13 614. Further, the Declaration contains only conclusory, vague and speculative concerns (the confidential documents “could be subject to search and seizure,” “could endanger the safety of others as well as the safety of Plaintiff himself,” “release of this information could also jeopardize the security of any institution where inmates are being held.”).

(Doc. No. 72 at 32-34). Such claims of vague and speculative risks do not satisfy the Kelly prongs. Thus, Defendant has not met his burden of showing the potential for harm outweighs the strong public policy in favor of uncovering civil rights violations. Plaintiff is unable to acquire such information by any other means, and this information has a high degree of potential significance to Plaintiff’s case.

As a result, the Court finds that Plaintiff’s narrowed request for any complaint, grievances, 602’s, reports and recommendations, investigation or disciplinary actions Defendant Hosey has received related to any failure to protect claims for the five years prior to the incident is relevant, proportional to the needs of the case, and not unreasonably vague, ambiguous, broad, or burdensome.

Moreover, the Court finds that proper redactions and/or a protective order would be sufficient to protect any confidential information produced in discovery. *Soto*, 162 F.R.D. at 616. The same bates numbers are identified on the Supplemental Privilege Log. 1 ("carefully drafted" protective orders can "minimize the impact of... disclosure"); *Medina v. Cnty. of San Diego*, No. 08cv1252 BAS (RBB), 2014 WL 4793026, at *7 (S.D.

Cal. Sept. 25, 3 2014) ("A protective order and the redaction of any highly personal information for which 4 Plaintiff has not shown a need will amply protect privacy interests.").^{4 5} Accordingly, Defendant's objections based on official-information privilege and 6 confidentiality are overruled and Defendant is ordered to produce the documents they have 7 identified in their Privilege Log as responsive to Plaintiff's Document Request No. 2.

As noted, 8 Defendant may redact from the responsive documents: (a) any personal information that is 9 necessary to protect the privacy of inmates, officers, and other third-parties; (b) inmate 10 information that might compromise jail security, such as, but without limitation, gang affiliation, 11 conviction offenses, or medical issues; (c) inmate information that is unrelated to this case; and 12 (d) any discussion that implicates security techniques and procedures.

13 Plaintiff's Document Request No. 3: 14 Provide the names and badge number for all officers and staff involved in the medical treatment following the assault on me by 15 Price, including the sergeant(s) in the exam room, the nurse tending to the damage to my left eye (include her employer if other than 16 CDCR), the supervising sergeant and supervising lieutenant.

(Doc. No. 55 at 3). 17 Defendant's Response: 18 Plaintiff's third RPD sought the names of the sergeant and nurse who 19 he met in the medical area after the assault, the personnel file for the sergeant, and the nurse's employer and mailing address.

In response 20 to this request, Defendant asserted applicable objections and produced all documents that included the names of responding staff 21 who met with Plaintiff on April 7, 2019, after Price's assault. Defendant could not locate any records indicating a sergeant who 22 met with Plaintiff in the medical area. Plaintiff's Motion improperly expands the request to seek the names of all officers that worked on 23 April 7, 2019.

(Doc. No. 68 at 4). 24 25 4 No protective order has been requested nor entered in this case. Thus, at this procedural stage, redactions are the only appropriate safeguard. In the future, to avoid any security concerns relating to dissemination 26 of confidential and sensitive documents, counsel for CDCR might consider trying to reach an agreement with an inmate whereby these type of documents are provided to the litigation coordinator and provided to 27 the inmate for review and detailed notetaking, but retained by litigation coordinator and made available to the inmate as needed during the course of the litigation until concluded.

28 1 Again, to the extent Plaintiff requests additional documents in his motion that were not 2 included in Plaintiff's initial RFP No. 3, his motion is denied. Further, as explained above, 3 Plaintiff is required to accept Defendant's response that he has provided all responsive 4 documents. (Id.).

Thus, the Court denies Plaintiff motion regarding Document Request No. 3. 5 Plaintiff's Document Request No. 4: 6 Please provide all Incident Reports, Supervisorial Reports, and any other and investigations regarding the assault on me by Price on 7 4/7/2019. Include all interviews, especially with Price, regarding this matter, all criminal charges, 115 RVR's, and all punishments 8 incurred by Price.

(Doc. No. 55 at 4). 9 Defendant's Response: 10 Plaintiff's fourth RPD sought investigative reports regarding his assault. Defendant produced a grievance response and supplemented 11 this response with a privilege log and supporting declaration identifying a rules violation report incarcerated person Price 12 received. Defendant objected on the grounds that confidential investigations may not be disclosed to inmates.

(See Exhibit B.) 13 Plaintiff has not explained how these objections are improper. (Doc. No 68 at 3). 14 15 A review of Defendant response (Exhibit B) reveals that Defendant produced Plaintiff's 16 Second Level Decision (AGO 0374-0375), which includes the names of persons interviewed in 17 connection with the April 7, 2019 incident, and Notice of Unusual Occurrence (AGO 0376).

18 (Doc. No. 72 at 16). Defendant, however, withheld documents deemed responsive (bates 19 numbers AGOPRIV0032-0040) citing to the official information privilege, inter alia. For the 20 same reasons, supra at Document Request No 2, the Court finds Defendant's objections to 21 producing other responsive documents unavailing.

The Court notes that Cal. Code of Regs., tit. 22 15§ 3370(b) permits an inmate to have access to a case records file with a court order. See Cal. 23 Code Regs., tit. 15, § 3370 ("[e]xcept by means of a valid authorization, subpoena, or court order, 24 no inmate or parolee shall have access to another's case records file, unit health records, or 25 component thereof").

Defendant's reliance on state regulations to prohibit Plaintiff from 26 possessing any of the responsive documents is overruled. Moreover, the Court finds that proper 27 redactions and/or a protective order would be sufficient to protect any confidential information 28 produced in discovery. Soto, 162 F.R.D. at 616 ("carefully drafted" protective orders can 1 "minimize the impact of... disclosure"); Medina v. Cnty. of San Diego, 2014 WL 4793026, at *7 2 (S.D.

Cal. Sept. 25, 2014) ("A protective order and the redaction of any highly personal 3 information for which Plaintiff has not shown a need will amply protect privacy interests."). 4 The privileges and privacy rights asserted by Defendant are outweighed by the legitimate 5 discovery interests of

Plaintiff, the policy of our national civil rights laws, and the need for an efficient, fair, and transparent judicial process.

Parrish v. Solis, 2014 WL 2466101 at *4 (N.D. Cal. May 31, 2014). Accordingly, Defendant's objections based on confidential investigation information are overruled and Defendant is ordered to produce the documents responsive to Plaintiff's Document Request No. 4 as identified in the Supplemental Privilege Log (Doc. No. 72 at 10 and 69).

As noted, Defendant may redact from the responsive documents: (a) any personal information that is necessary to protect the privacy of inmates, officers, and other third-parties; (b) inmate information that might compromise jail security, such as, but without limitation, gang affiliation, conviction offenses, or medical issues; (c) inmate information that is unrelated to this case; and (d) any discussion that implicates security techniques and procedures.

Plaintiff's Document Request No. 5: Please provide the name of all porters for building #3 in the period of February 1, 2019 through May 1, 2019. Include all reports and recommendations for adding or removing any porter during this period of time. Provide the name of the porter who replaced Price after he engaged in a fight. Who was responsible for Price being reinstated?

Was the porter who had replaced Price later charged with a crime or RVR soon after Price was reinstated? (Doc. No. 55 at 4) Defendant's Response: Plaintiff's fifth RPD sought the identities of any incarcerated person who became a porter after inmate Price was removed as a porter before the incident with Plaintiff. Defendant provided appropriate objections and advised Plaintiff that no responsive records were located.

Plaintiff's Motion expands this request to seek documents that include "who was responsible for Price being reinstated? Was the porter who had replaced Price later charged with a crime or RVR." Defendant will not respond to belated discovery requests. These are not proper document requests. Wasco State Prison did not retain these types of documents on volunteer porters.

(Doc. No. 68 at 3-4). As explained above, Plaintiff is required to accept Defendant's statement that no responsive documents were located.⁵ (Id.). Further, Plaintiff cannot expand the scope of his original RFP No. 5 in his motion.

Therefore, Plaintiff's motion regarding Document Request No. 3 is denied. Plaintiff's Document Request No. 6: Please provide a listing of all fighting or assaults in buildings #C-2 and #C-3 between October, 2018 through July 1, 2019. Provide a brief description of the incident and the date of the incident, building number, and use of rubber bullets or gas canisters and note any injuries.

Include a note of any charges that resulted from any of the fights. (Doc. No. 55 at 4). 8 Defendant's Response: 9 Plaintiff's sixth RPD sought a list that required Defendant to prepare 10 new documents, including a list of fighting and assault incidents, which is improper under Federal Rule of Civil Procedure 34. See 11 *Roettgen v. Foston*, No. 13CV1101-GPC-BGS, 2016 WL 11911155, at *2 (S.D.

Cal. May 4, 2016). Defendant made several objections, 12 including confidentiality and the official information privilege. Without waiving his objections, Defendant informed Plaintiff that no 13 document exists that includes that information. Plaintiff's motion does not challenge the adequacy of this response. No responsive 14 documents exist. (Doc. No. 68 at 4) 15 Again, as explained above, Plaintiff is required to accept Defendant's statement that no 16 responsive documents were located.

(Id.). Further, Defendant is not required to compile 17 documents that do not exist. Therefore, Plaintiff's motion regarding Document Request No. 6 is 18 denied. 19 Plaintiff's Document Request 77 20 Please provide all training materials, CDCR Regulations, directives, and instructions to staff relating to the operation of electronic doors 21 of the inmate's cells.

(Doc. No. 55 at 5). 22 Defendant's Response: 23 Defendant made several objections. Defendant also produced several responsive documents to this request, including responsive 24 regulations, Plaintiff's facility's post orders, and the inmate orientation manual. Plaintiff fails to identify how this response is 25 deficient." (Doc. No. 68 at 4). 26 5 The information Plaintiff sought through his RFP is more akin to having been sought through 27 interrogatories.

6 Identified in Plaintiff's RFP as RFP No. 7. (Exh. A, Doc. No. 72 at 5-6). 28 7 Identified in Plaintiff's RFP as RFP No. 8. (Exh. A at, Doc. No. 72 at 6). 1 Plaintiff fails to explain how Defendant's supplemental response, which included the 2019 2 version of the California Code of Regulations, Title 15, section 3283 and 3274, and the 2019 3 Facility B Post Orders was not responsive or otherwise insufficient.

See *Womack v. Virga*, 2011 4 WL 6703958, at *11 (E.D. Cal. Dec. 21, 2011) (explaining that the party seeking to compel 5 discovery "has the burden of informing the court why... the defendants' responses are 6 deficient"); *Walker v. Karelis*, 2009 WL 3075575, at *1 (E.D. Cal. Sep. 21, 2009) ("at a 7 minimum, the moving party plaintiff has the burden of informing the court... why he believes 8 the defendant's responses are deficient").

Therefore, Plaintiff's motion regarding Document 9 Request No. 7 is denied. 10 Plaintiff's Document Request No. 88 11 Please provide all training materials, CDCR Regulations, directives, and instructions to staff on procedures to follow when an assault 12 results in the necessity of medical treatment for one of the inmates. Please note all required interviews of the combatants,

requirement to 13 video any interviews, requirement for an investigation and the name of all required reports to be filed.

Also provide the guideline used to 14 determine whether to refer charges for an assault. (Doc. No. 55 at 5). 15 Defendant's Response: 16 Defendant objected on various grounds including overly broad and 17 vague, but still produced over 200 pages of documents. Defendant has complied with Plaintiff's request. Plaintiff fails to identify how 18 this response is deficient." (Doc.

No. 68 at 4). 19 Initially, the Court agrees that the request for "all" training materials, regulations in 20 connection with assaults and the need for medical care is vague and overly broad. Nonetheless, 21 Plaintiff fails to explain how Defendant's supplemental response, which included the 2019 22 version of the California Code of Regulations, Title 15, Article 2: Security, the Department 23 Operations Manual, Chapter 5, and the 2025 Operational Procedure 036 Emergency Medical 24 Response Program, was not responsive or otherwise insufficient.

See Womack, 2011 WL 25 6703958, at *11; Walke, 2009 WL 3075575, at *1. Therefore, Plaintiff's motion regarding 26 Document Request No. 8 is denied. 27 28 8 Identified in Plaintiff's RFP as RFP No. 9. (Exh. A, Doc. No. 72 at 6). 1 Plaintiff's Document Request No. 9:9 2 Please provide all training materials, CDCR regulations, directives, and instructions to staff on procedures to appoint a porter.

Please 3 pay particular attention to the procedures to follow when a porter is involved in a fight or otherwise receives disciplinary action. Please 4 include all items that would disqualify an inmate from serving as a porter, such as criminal charges, write-ups, assaults, fighting, theft, 5 etc. 6 Defendants Response: 7 Plaintiff's ninth RPD related to procedures to appoint an inmate porter fails to explain what documents Defendant has not already 8 produced.

While Defendant made timely objections, Defendant also produced several documents, including regulations on inmate work 9 and education as well as the 2019 inmate orientation manual. This response is not deficient. (Doc. No. 68 at 4). 10 11 Plaintiff once again fails to explain how Defendant's supplemental response, which 12 included the 2019 version of the California Code of Regulations, Title 15, Article 3: Work and 13 Education (§ 3040 to § 3041.3) (AGO 270-274), was not responsive or otherwise insufficient.

14 See Womack, 2011 WL 6703958, at *11; Walke, 2009 WL 3075575, at *1. Therefore, Plaintiff's 15 motion regarding Document Request No. 9 is denied. 16 Plaintiff's Request No. 10 17 Please provide the name and badge number for all building C-3 tower officers for the second shift (6am to 2pm) for the month of April, 18 2019. Also provide the name and badge number of the building C-3 tower officer on duty at 11am on January 11, 2019.

(Doc. No. 55 at 19 6). 20 Defendant's Response: 21 Plaintiff indicated to counsel that this request is no longer at issue. (Doc. No. 68 at 4). 22 23 Plaintiff does not include this request in his

statement of remaining discovery. (See Doc 24 No. 67). Consequently, the Court denies as moot Plaintiff's motion regarding Document Request 25 No. 10. 26 Plaintiff's Document Request No. 11: 27 9 Identified in Plaintiff's RFP as RFP No. 10.

(Exh. A, Doc. No. 72 at 6). 28 1 Please provide all training materials, CDCR regulations, directives, and instructions to staff on procedures to distribute the commissary 2 to the inmates. Who is responsible for passing out the commissary and is a prison official responsible for reviewing and confirming the 3 inmate has received his correct commissary? (Doc.

No. 55 at 6). 4 Defendant's Response: 5 This request was not in Plaintiff's initial RFP. (Doc. No. 68 at 4). 6 A review of Plaintiff's initial RFP no such document request. Thus, Plaintiff may not 7 compel it production by way of a motion. Furthermore, the Court finds the request not relevant to 8 Plaintiff's Eighth Amendment failure to protect claim against Defendant Hosey.

Thus, the Court 9 denies Plaintiff's motion regarding Document Request No. 11. 10 The Court previously stayed the remaining deadlines in the Amended Case Management 11 Order, including the July 30, 2025 dispositive motion deadline. (Doc. No. 63).

The Court will 12 reset the dispositive motion deadline to December 15, 2025. 13 //// 14 //// 15 Accordingly, it is ORDERED: 16 1. Plaintiff's Motion to Compel Discovery (Doc. No. 55) is GRANTED in part and 17 DENIED in part. 18 a. Plaintiff's Motion is GRANTED to Document Requests Nos. 2 and 4; 19 b. Plaintiff's Motion is DENIED as to Document Requests Nos. 1, 3, 5, 6, 7, 8, 9, 20 and 11; and 21 c. Plaintiff's Motion is DENIED as moot as to Document Request No.10.

22 2. Within fourteen (14) days of this Order, Defendant shall provide to Plaintiff the 23 following documents Defendant deemed responsive but withheld (bates numbers 24 AGOPRIV0001-31 and AGOPRIV0032-0040) with the following redactions: (a) any 25 personal information that is necessary to protect the privacy of inmates, officers, and 26 other third-parties; (b) inmate information that might compromise jail security, such 27 as, but without limitation, gang affiliation, conviction offenses, or medical issues; (c) 28 inmate information that is unrelated to this case; and (d) any discussion that implicates 1 security techniques and procedures.

2 3. The Court resets the pre-trial dispositive motion deadline to December 15, 2025. 3 " | Dated: _ October 30, 2025 Wile. Lh fareh Hack 5 HELENA M. BARCH-KUCHTA ' UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 17