UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MICHAEL HOLGUIN,

Plaintiff,

v.

COUNTY OF LOS ANGELES, et al.,

Defendants.

No. CV 10-8011-GW (PLAx)

ORDER RE: PLAINTIFF'S MOTION TO COMPEL DISCOVERY

In this civil rights action, plaintiff is seeking damages from, among others, defendants Deputy Giovani Rico ("Rico"), Deputy Fernando Luviano ("Luviano"), and Deputy David Ortega ("Ortega"), based on their alleged use of excessive force against plaintiff on October 18, 2009, while he was detained on the 3000 floor in unit 3500 of the Los Angeles County Men's Central Jail ("MCJ"). Plaintiff is also attempting to show Monell[1] liability against the entity defendants.

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[1] Under Monell v. Dept. of Social Services, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), certain of the defendants can be held liable for the officers' actions if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or if the alleged action was "pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision making channels."

1 Through this Motion, plaintiff seeks documents from defendants pertaining to use of force
2 reports, excessive force complaints, and investigations at MCJ relating to defendants Rico,
3 Luviano, and Ortega, as well as the entire 3000 floor of MCJ, where detainees in protective
4 custody and administrative segregation are held. Plaintiff also seeks documents pertaining to
5 deputies of MCJ who have tattoos identifying their assignment to the 3000 floor. (See Joint
6 Stipulation at 3).[2] Plaintiff argues that the documents are relevant to show the proclivity on the
7 part of MCJ deputies to engage in improper conduct, and go to plaintiff's Monell claim, the alleged
8 supervisory and individual liability of defendant Sheriff Lee Baca, and the alleged punitive
9 damages. (Id. at 8-12).

10 Defendants have objected to producing some of the requested documents, arguing that the
11 Requests are overbroad and burdensome as defendants would have to undertake a tremendous
12 amount of work to gather responses and analyze documents and events in order to respond.
13 (See, e.g., Declaration of Captain Shaun Mathers). Defendants have also objected to the subject
14 discovery Requests on multiple other grounds, including the attorney-client privilege, the work
15 product doctrine, privacy interests, the official information privilege, the self-critical analysis
16 privilege, relevance, and on the Requests being vague and ambiguous. Defendants seek an in
17 camera inspection prior to any ordered release of documents, and if it is determined that release
18 is proper, that it only be done with an amended protective order in place.

19 The Court has reviewed the Joint Stipulation filed in connection with plaintiff's Motion, and
20 all related filings, and has determined that oral argument will not be of material assistance in
21 determining the Motion. Accordingly, the hearing scheduled for May 31, 2011, is **ordered off**
22 **calendar** (see Local Rule 7-15), and the Court rules as follows:

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26 [2] The Requests for documents at issue here -- Requests Nos. 9-11, 21, 33 -- are somewhat
broader in scope than as stated in the Joint Stipulation. Plaintiff apparently narrowed the scope
27 of his Requests pursuant to meet and confer discussions between the parties prior to the bringing
of the instant Motion. (See Declaration of Virginia Keeny, Exhibits 2-3). It is this narrowed scope
28 that the Court addresses herein.

A. Requests Nos. 9-10: granted.

Defendants have agreed to produce "complaints, investigations into complaints or discipline resulting from complaints regarding use of force by [defendants Luviano and/or Ortega] subject to a protective order, protecting the privacy rights of third parties." (See Joint Stipulation at 17, 18).

The Court concludes that the documents agreed to be produced by defendants pursuant to Requests Nos. 9 and 10 are sufficient to respond to the documents requested by plaintiff under those Requests. All such documents must be produced. While the Court observes that the Protective Order currently in place in this action has specific provisions to cover the protection of confidential information -- including sensitive information in the parties' possession pertaining to third parties (see Protective Order issued March 17, 2011) -- to the extent defendants deem it necessary, the parties may file a proposed stipulated amended protective order for the Court's review prior to the production of documents ordered herein that would provide additional protections for confidential and sensitive information to be produced pursuant to this Order.

B. Requests Nos. 11, 21, 33: granted in part.

Pursuant to Requests Nos. 11 and 21, plaintiff requests all documents relating to any use of force reports involving defendant Rico and/or involving inmates held on the 3000 floor of MCJ, including any such reports, any investigations into such incidents, and any findings and/or discipline resulting from such investigations. (See Joint Stipulation at 19-20, 27). Specifically, for documents pertaining to defendant Rico (Request No. 11), plaintiff requests documents from the time period "commencing on [defendant Rico's] first assignment to the jails or January 1, 2006, whichever is later, to the present." (Joint Stipulation at 19-20). For documents concerning inmates held on the 3000 floor of MCJ (Request No. 21), plaintiff requests documents from January 1, 2006, to the present. (Joint Stipulation at 27).

Pursuant to Request No. 33, plaintiff requests "[a]ny and all documents, including notes, reports, investigative interviews, recordings, memos and correspondence, discussing or analyzing whether any deputies deployed to the 3000 unit of [MCJ] in 2009 bore a tattoo of the number

'3000,' or any other indicia of the unit or modules to which they were assigned within the jail." (Joint Stipulation at 31).

Under Federal Rule of Civil Procedure 26(b)(1), discovery is permitted of "any nonprivileged matter that is relevant to any party's claim or defense." As a general matter, Rule 26(b) is to be "liberally interpreted to permit wide-ranging discovery of information," even if that information is not ultimately admitted at trial. See Comcast of Los Angeles, Inc. v. Top End International, Inc., 2003 WL 22251149, at *2 (C.D. Cal. July 2, 2003); see also Fed.R.Civ.P. 26(b)(1) ("Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."). The burden is on defendants to show that discovery should not be allowed (Comcast, 2003 WL 22251149, at *2 (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975))); it is not up to defendants to decide what plaintiff needs to pursue this action. While defendants complain that plaintiff's Requests go beyond the bounds of discoverable information, the Court finds that the discovery sought by plaintiff concerns information that is properly and necessarily within the range of relevant material.[3]

As an initial matter, defendants object to the production of documents from defendant Rico's personnel file, arguing that plaintiff has failed to sufficiently establish that defendant Rico was involved in the alleged incident of excessive force. (Joint Stipulation at 20). The Court disagrees. In the First Amended Complaint ("FAC"), plaintiff identifies defendant Rico as one of the MCJ deputies whom he believes used excessive force against him on October 18, 2009. (See FAC at 4-5). Despite defendants' contention that plaintiff has not sufficiently established that

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[3] It is not the role of the Court in this Motion to determine what evidence the District Judge will actually allow in at a trial in this case, or whether the evidence responsive to Requests Nos. 11, 21, and 33 will be admitted for a permissible purpose. See, e.g., Colonial Life & Accident Insur. Co. v. Superior Court of Los Angeles County, 31 Cal.3d 785, 791, n. 8 (1982) (quoting Pacific Tel. & Tel. Co. v. Superior Court, 2 Cal.3d 161, 172-73 (1970) ("[Courts] may appropriately give the applicant [for discovery] substantial leeway, especially when the precise issues of the litigation of the governing legal standards are not clearly established [citation]; a decision of relevance for purposes of discovery is in no sense a determination of relevance for purposes of trial.") (brackets in original)). At this discovery stage of the proceedings, the Court has determined that the requested documents as limited herein are relevant to plaintiff's claims.

defendant Rico was actually involved in the incident, and defendant Luviano's apparent deposition testimony that defendant Rico was not involved (see Joint Stipulation at 20), defendants have failed to point to any specific evidence (such as a deposition statement by plaintiff) in which plaintiff acknowledged that he is not confident that defendant Rico was involved. Neither has plaintiff withdrawn his allegations in the FAC as to defendant Rico. Accordingly, the Court concludes that the requested documents pertaining to defendant Rico are discoverable, as such "discovery appears reasonably calculated to lead to the discovery of admissible evidence" in support of plaintiff's claim of excessive force against defendant Rico. See Fed.R.Civ.P. 26(b)(1).

Further, the Court agrees with plaintiff that documents concerning use of force reports pertaining to defendant Rico and/or detainees of the 3000 floor of MCJ are relevant to plaintiff's Monell claim. Specifically, such reports may show, among other things, that the defendant entity had a custom or practice of allowing personnel to commit incidents similar to the misconduct alleged herein, i.e., that the conduct that occurred was so prevalent as to constitute either a custom or policy of the entity, which plaintiff will need to show to prevail on his Monell claim. See Monell, 436 U.S. at 694 (plaintiff may hold a local government entity responsible under § 1983 for a constitutional injury only if he can show that his injury resulted from a policy, practice, or custom made by the entity's "lawmakers or by those whose edicts or acts may fairly be said to represent official policy"); see also Delia v. City of Rialto, 621 F.3d 1069, 1081-82 (9th Cir. 2010) (as amended) (plaintiff must show that the alleged "constitutional violation result[ed] from: (1) an employee acting pursuant to an expressly adopted official policy; (2) an employee acting pursuant to a longstanding practice or custom; or (3) an employee acting as a final policymaker") (quotations and citation omitted). Prior instances of, for example, use of force in dealing with inmates by defendant Rico, or by any other MCJ personnel against inmates held on the 3000 floor of MCJ, could show that defendant Rico's or other MCJ personnel's propensity for using excessive force against inmates was known to the entity, and that the entity condoned the behavior, which could trigger municipal liability.

Similarly, the Court agrees with plaintiff's contention that evidence indicating that some MCJ deputies sport tattoos identifying their assignment to the 3000 floor is relevant to show, among

1 other things, "the indifference of jail officials to guards taking on their own personal 'vigilante'
2 system to enforce order in the jails." (Joint Stipulation at 31). Such evidence would in turn support
3 plaintiff's Monell claim, as it would help establish plaintiff's contention in the FAC that the
4 defendant entity has a policy and practice of exercising "deliberate indifference, gross negligence,
5 and reckless disregard" for the safety and security of MCJ inmates by selecting, retaining, and
6 assigning officers with demonstrable propensities for misconduct and who believe "they have free
7 reign to engage in excessive force against inmates." (FAC at 2).

8 Defendants' objections to many of the subject Requests as being vague and ambiguous
9 are overruled. While the Court recognizes that in some instances a discovery request may be so
10 vague or ambiguous as to not allow a response (see, e.g., Dubin v. E.F. Hutton Group Inc., 125
11 F.R.D. 372, 376 (S.D.N.Y. 1989)), such is not the case here. Rather, the Court finds that the
12 terms used by plaintiff in his discovery Requests are not presented in a vague or ambiguous
13 manner, and can readily be responded to using the common and ordinary meanings of those
14 terms. They do not involve matters of opinion, are not dependent on subjective standards of
15 measurement, and provide a reasonably clear indication of the information being sought. Indeed,
16 many of the terms in Request No. 11 that defendants assert are vague are the exact same terms
17 that defendants use in agreeing to produce documents responsive to Requests Nos. 9 and 10.
18 (Compare Joint Stipulation at 17-18 with Joint Stipulation at 19). In order to aid the quest for
19 relevant information, the parties should not seek to evade disclosure by quibbling and objection.

20 Turning to the specific privilege objections raised by defendants, the party who withholds
21 discovery materials based on a privilege must provide sufficient information (i.e., a privilege log)
22 to enable the other party to evaluate the applicability of the privilege or other protection.
23 Fed.R.Civ.P. 26(b)(5); see Clarke v. American Commerce Nat'l Bank, 974 F.2d 127, 129 (9th Cir.
24 1992). Failure to provide sufficient information may constitute a waiver of the privilege. Asserting
25 a "blanket objection" to plaintiff's Requests will be found to be insufficient and improper. Davis v.
26 Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) (blanket privilege objection is improper); see Clarke,
27 974 F.2d at 129 (blanket assertions of privilege are "extremely disfavored"). It appears that
28 defendants have not provided plaintiff with a privilege log identifying the documents that have been

withheld pursuant to their various privilege objections. This failure alone could warrant the Court's rejection of defendants' asserted privileges. See United States v. Construction Products Research, Inc., 73 F.3d 464, 473-74 (2d Cir. 1996) (claim of privilege may be rejected where claimant provides deficient privilege log). In any event and as explained below, the Court finds that defendants have failed to demonstrate that documents responsive to Requests Nos. 11, 21, and 33 may be withheld based on the asserted privileges.

Defendants' objections based on attorney-client privilege and the work product doctrine are overruled. "Under California law, the attorney-client privilege attaches to confidential communications between a client and his attorney during the course of the attorney-client relationship. The party asserting the attorney-client privilege bears the burden of demonstrating the existence of the privilege." QST Energy, Inc. v. Mervyn's and Target Corp., 2001 WL 777489, *2 (N.D. Cal. May 14, 2001) (citations omitted). The attorney-client privilege applies when "(1) legal advice is sought (2) from a professional legal advisor in his capacity as such, and (3) the communications relating to that purpose (4) are made in confidence (5) by the client." Griffith v. Davis, 161 F.R.D. 687, 694 (C.D. Cal. 1995). Here, defendants have set forth no evidence in the Joint Stipulation establishing that counsel was contacted for the purpose of providing legal advice about the matters at hand. Thus, the purpose of the privilege -- to protect disclosures necessary to obtain informed legal advice and to encourage "full and frank disclosure by the client to his or her attorney" -- has not been implicated here. Clarke, 974 F.2d at 129. Defendants' blanket assertion in the Joint Stipulation that the attorney-client privilege is implicated as to certain unidentified documents is inadequate.

Neither can the Court conclude that the work product doctrine protects any of the requested documents. Rule 26(b)(3) of the Federal Rules of Civil Procedure may "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney . . . concerning the litigation." The work product doctrine "is intended to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation,' free from unnecessary intrusion by his adversaries." United States v. Adlman, 134 F.3d 1194, 1196 (2d Cir. 1998) (quoting Hickman v. Taylor, 329 U.S. 495, 510-11, 67 S.Ct. 385, 91 L.Ed. 451

(1947)). Furthermore, "[t]o be entitled to the protection of the work product rule, the material must have been generated in preparation for litigation. The prospect of future litigation is insufficient." Whitman v. United States, 108 F.R.D. 5, 9 (D.N.H. 1985). No showing that documents were generated in preparation of litigation has been made by defendants here; accordingly, this doctrine does not shield the requested documents.

Defendants also object to producing the requested documents based in part on California Penal Code §§ 146e, 832.5, 832.7 and 832.8, California Evidence Code §§ 1040 and 1043, and California Government Code § 3300, as well as on privacy concerns. The Court overrules these objections as well. The privileges accorded by California statutory provisions have no applicability in a federal civil rights action. See, e.g., Miller v. Pancucci, 141 F.R.D. 292, 297-99 (C.D. Cal. 1992); Kelly v. City of San Jose, 114 F.R.D. 653, 655 (N.D. Cal. 1987). Yet even the California statutes recognize a litigant's right to have access to the type of information that plaintiff is seeking as long as the information is relevant to the subject matter involved in the pending litigation and the procedures specified therein are followed. See, e.g., California Penal Code § 832.7(a); California Evidence Code §§ 1043 and 1045. The Court finds that the information sought by plaintiff in Requests Nos. 11, 21, and 33 (as limited below) is relevant to plaintiff's claims in the pending action, and further finds that plaintiff's need for the discovery outweighs any alleged privacy interest of defendants or third parties whose information may be produced. See Unger v. Cohen, 125 F.R.D. 67, 70-71 (S.D.N.Y. 1989); Tyner v. City of Jackson, 105 F.R.D. 564, 565-66 (S.D. Miss. 1985) ("A basic function of federal courts is to facilitate the ascertainment of truth in resolving disputes. . . . [I]nvestigative reports regarding other similar incidents involving any of the individual police officers are also either relevant or will lead to the discovery of admissible evidence."); Ragge v. MCA/Universal Studios, 165 F.R.D. 601, 604-05 (C.D. Cal. 1995) (the right to privacy is not absolute, but is "subject to invasion depending upon the circumstances"). Moreover, the Court finds that the Protective Order entered in this action strikes the appropriate balance between the need for the information and the privacy interests of defendants or third parties, and the Court will entertain a stipulated amended protective order to further address the privacy concerns raised by defendants. See, e.g., King v. Conde, 121 F.R.D. 180, 191-92

(E.D.N.Y. 1988) (rejecting police officers' claim of privacy interest in their professional personnel records); Knoll v. American Tel. & Tel. Co., 176 F.3d 359, 365 (6th Cir. 1999) (approving of protective orders to protect non-parties from "the harm and embarrassment potentially caused by nonconfidential disclosure of their personnel files").

Next, while federal common law recognizes that a privilege for official information exists, and that government personnel files are official information, the privilege is only qualified. Kerr v. United States District Court, 511 F.2d 192, 198 (9th Cir. 1975), aff'd., 426 U.S. 394 (1976). In order to determine if a privilege exists that would bar discovery, a court "must weigh potential benefits of disclosure against potential disadvantages; . . . [s]uch balancing should be considered on a case by case basis, determining what weight each relevant consideration deserves in the fact-specific situation that is before the Court." Miller, 141 F.R.D. at 299-300 (emphasis added). See also Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990), cert. denied, 502 U.S. 957 (1991). The court in Miller noted that the balancing test has been "moderately pre-weighted in favor of disclosure." Miller, 141 F.R.D. at 300 (citing Kelly, 114 F.R.D. at 662).

Before the balancing test is even conducted, however, certain requirements must be met. Among other things, the party asserting the official information privilege must sufficiently identify the documents so as to afford the requesting party an opportunity to challenge the assertion of the privilege. Miller, 141 F.R.D. at 300. As stated above, there is no indication that defendants provided plaintiff with a privilege log to do just that. In addition, the opposing party must also submit a declaration from the head of the department with control over the issue containing, in part, "a specific identification of the governmental or privacy interests that would be threatened by disclosure." Id. (quoting Kelly, 114 F.R.D. at 670). Once the department head's objections are received, and access to the requested information is still sought, a protective order should be entered into to preserve confidentiality. Only if a protective order cannot be reached should resort to the Court be had. Miller, 141 F.R.D. at 301. If the threshold burden of showing why production is not warranted has not been met, the "privilege assertion will be overruled in its entirety and complete disclosure will be ordered." Id.

Here, defendants through the declaration of Captain Shaun Mathers, supervisor in the Risk Management Bureau of the Los Angeles County Sheriff's Department, have asserted that production of the documents requested by plaintiff would be harmful because Sheriff Department personnel would need to be reassigned from other duties to respond to the Requests, and the task of looking for responsive documents would "consum[e] [an] inordinate amount of time, expense, and resources." (See Mathers Decl. at ¶¶ 7-10). Captain Mathers' declaration, however, is generic in nature, and does not specifically address how "disclosure of the requested information in this case would be harmful." Miller, 141 F.R.D. at 301 (emphasis in original). Neither does the declaration set forth to the Court's satisfaction how disclosure pursuant to a carefully crafted protective order would harm a "significant government interest and how much harm would be done to those interests by disclosure in this particular case." Id. (citing Kelly, 114 F.R.D. at 670) (emphasis added). Generalized concerns that producing responsive documents would be time consuming and would divert resources are inadequate to prevent disclosure of this relevant information.[4]

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[4] Furthermore, it is insufficient for an objecting party to simply invoke generalized objections of burdensomeness; rather, with respect to the discovery requests, the opposing party

> must show specifically how, despite the broad and liberal construction afforded the federal discovery rules, each [request] is not relevant or how each [request] is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.

Roesberg v. Johns-Manville Corp., 85 F.R.D. 292, 296-97 (E.D. Pa. 1980) (citations omitted); Wirtz v. Capitol Air Service, Inc., 42 F.R.D. 641, 643 (D. Kan. 1967). For a burdensomeness argument to be sufficiently specific to prevail, it must be based on affidavits or other evidence showing the exact nature of the burden. Kansas-Nebraska Natural Gas v. Marathon Oil Co., 109 F.R.D. 12, 24 (D. Neb. 1985) (party objecting to production requests must specify why the requests are objectionable); Roesberg, 85 F.R.D. at 296-97. The Mathers declaration fails in this regard.

Many of defendants' contentions of burdensomeness do not take into account the more limited scope of the Requests presented by plaintiff in the Joint Stipulation. Specifically, in opposing Request No. 11, defendants assert that it would be too burdensome to produce use of force reports pertaining to defendant Rico since 2004 (see Joint Stipulation at 24-25), even though plaintiff narrowed his Request to only those reports dated "on [defendant Rico's] first assignment to the jails or January 1, 2006, whichever is later, to the present." (Joint Stipulation at 20). Similarly, in opposing Request No. 21, defendants argue that it would be too burdensome for

(continued...)

Defendants' reliance on Sanchez v. City of Santa Ana in support of its privilege argument is misplaced. (See Joint Stipulation at 22-23). Sanchez involved a plaintiff's efforts to obtain statistical data from personnel records in an employment discrimination case. See Sanchez, 936 F.2d at 1033. That same statistical data was also available from a government agency, however, so resort to the personnel records was not required. Id. at 1034. Defendants have not established that the alternate avenues to obtain the requested information available in Sanchez are present here. See also Soto v. City of Concord, 162 F.R.D. 603, 615-16 (N.D. Cal. 1995) (rejecting defendant police officers' assertion of official information privilege under Sanchez, where defendants failed to show that the information sought by plaintiff from police documents could be obtained from another source). Further, even assuming that the Mathers declaration was sufficient to satisfy defendants' threshold burden under Miller and Kelly with respect to the "official information" privilege, the Court finds that the speculative, potential disadvantages of disclosure cited therein are outweighed by plaintiff's legitimate need for the discovery sought by these Requests. While the Court recognizes defendants' concerns that disclosure could result in harm to defendants as well as to governmental and societal interests, the Court agrees with the reasoning of the Kelly court that internal investigation files are "presumptively discoverable" where plaintiff makes a proper showing of relevance. Kelly, 114 F.R.D. at 666. Such a showing has been made here, especially when production is subject to a protective order.

Defendants' reliance on the "self-critical analysis" privilege is also misplaced. No such privilege exists under federal common law. Griffith v. Davis, 161 F.R.D. 687, 701 (C.D. Cal. 1995); see Dowling v. American Hawaii Cruises, Inc., 971 F.2d 423, 425 n.1 (9th Cir. 1992) ("The

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[4](...continued)
defendants to produce use of force reports for all of MCJ since 2006 (Joint Stipulation at 28), even though plaintiff limited the Request to only those documents dated since January 2006 relating to detainees or inmates held on the 3000 floor of MCJ. (Joint Stipulation at 27). Nevertheless, with respect to plaintiff's request for use of force reports relating to detainees or inmates held on the 3000 floor of MCJ, the Court concludes that the scope of the Request -- dating back to 2006 -- is overbroad. Further, to the extent plaintiff requests documents pertaining to MCJ deputies bearing tattoos or other indicia of units or modules to which they were assigned on floors **other than the 3000 floor**, the Court finds Request 33 overbroad. Accordingly, the Court finds it appropriate to further limit the Requests as set forth below.

Supreme Court and the circuit courts have neither definitively denied the existence of such a privilege, nor accepted it and defined its scope."); see Carman v. McDonnell Douglas Corp., 114 F.3d 790, 793 (8th Cir. 1997) (suggesting that new evidentiary privileges are "not lightly created" under federal common law).

With the above context in mind, the Court **grants** plaintiff's Requests Nos. 11, 21, and 33, **in part**, as follows[5]:

1. Request No. 11: granted.

Defendants must produce all documents in their possession, custody, or control relating to any use of force reports involving defendant Rico, including any such reports, any investigations into such incidents, and any findings and/or discipline resulting from such investigations from the time period commencing on defendant Rico's first assignment to the jails or January 1, 2006, whichever is later, to the present.

2. Request No. 21: granted in part.

Defendants must produce all documents in their possession, custody, or control pertaining to or constituting use of force reports, investigations into use of force incidents, findings of such investigations, and imposition of discipline as a result of such use of force relating to detainees or inmates held on the 3000 floor of MCJ, **limited to the time frame of October 18, 2007, to the present.**

3. Request No. 33: granted in part.

Defendants must produce all documents in their possession, custody, or control discussing or analyzing whether any deputies deployed to the 3000 floor of MCJ in 2009 bore a tattoo of the number "3000," or bore any other indicia of association with **the units or modules of floor 3000.**

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[5] The Court declines defendants' invitation to conduct an in camera review prior to ordering the production of documents. Rather, with the limits imposed herein and the use of a protective order, defendants' concerns have been addressed by the Court.

CONCLUSION

Plaintiff's Motion to Compel is **granted in part** as set forth above. **Within fifteen (15) calendar days of the date of this ruling**, defendants are **ordered** to produce all documents in their possession, custody, or control responsive to plaintiff's requests for production, as detailed above. The Court will make the production of documents subject to an appropriately drafted stipulated amended protective order, which the parties may submit to the Court for review prior to the production of these documents.[6] If the parties are unable, working in good faith, to stipulate to an amended protective order within seven (7) calendar days of the date of this ruling, each party may submit a proposed protective order for the Court's consideration **no later than June 1, 2011**. The proposed protective orders should indicate which section(s) were not agreeable to the other party. The Court will then enter an amended protective order that will control this action.

DATED: May 23, 2011

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

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[6] The Court advises that a proposed amended stipulated protective order should, among other things, indicate that documents produced herein may be used only in connection with this action.