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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ERIC TALLAKSEN,  
Plaintiff,  
v.  
ALEXANDER SMITH; ESTEBAN  
HERNANDEZ,  
Defendants.

Case No.: 25-cv-1073-W-DDL  
**ORDER GRANTING MOTIONS TO  
COMPEL**  
**[Dkt. No. 41]**

**I.**  
**INTRODUCTION**

Before the Court are Plaintiff’s motions to compel and motion for sanctions. Dkt. No. 41. Plaintiff seeks to compel the production of memoranda of direction (“MOD”) and to compel Defendant Smith to answer questions for which the attorney-client privilege was invoked during his initial deposition. Additionally, Plaintiff seeks sanctions against both Defendant Smith and defense counsel under Federal Rule of Civil Procedure 37.

On April 28, 2026, the Court held a motion hearing. For reasons stated at the April 28 hearing and explained below, the Court **GRANTS** the motions to compel.

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1 II.

2 DISCUSSION

3 A. Motion to Compel Production of MODs

4 Plaintiff moves to compel production of Defendant Smith’s MODs as disciplinary  
5 records responsive to Plaintiff’s Request for Production No. 18, seeking “[a]ll YOUR  
6 disciplinary records.” Dkt. No. 41 at 13. Defendant Smith argues that MODs are not  
7 disciplinary records because they are “remedial or counseling in nature” and are not  
8 appealable to the California State Personnel Board. Dkt. No. 42 at 2-3. However, the two  
9 MODs provided for *in camera* review dated August 29, 2023 and July 26, 2024 are clearly  
10 disciplinary in nature, as that term is commonly understood, particularly since they require  
11 remedial action by Defendant Smith. Moreover, during Defendant Smith’s deposition,  
12 when asked whether he had been disciplined before, he answered affirmatively and  
13 described five MODs which he had received throughout his employment with the  
14 California Highway Patrol. Dkt. No. 41-3 at 23-40. As such, the Court finds the two  
15 MODs are disciplinary records within the scope of Plaintiff’s Request for Production No.  
16 18.

17 At the April 28 hearing, defense counsel argued that the two existing MODs need  
18 not be produced because Defendant Smith testified to their contents at his deposition. This  
19 argument is unpersuasive as the Court is aware of no authority supporting the proposition  
20 that a document responsive to a request for production need not be produced if a deponent  
21 is willing to testify to its contents.

22 Plaintiff’s motion to compel production of the MODs is granted. Defendant Smith  
23 shall produce all existing MODs **by not later than May 4, 2026**. The record indicates that  
24 three additional MODs pertaining to Defendant Smith have been destroyed pursuant to the  
25 California Highway Patrol’s three-year retention policy; however, it is unclear whether any  
26 of those MODs were destroyed while this litigation was pending. Accordingly, **by not**  
27 **later than May 7, 2026**, defense counsel shall file a supplemental pleading describing the  
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1 existence of any additional MODs pertaining to Defendant Smith, including the date that  
2 any such MODs were destroyed.

3 **B. Motion to Compel Answers to Deposition Questions**

4 Defense counsel instructed Defendant Smith not to answer multiple deposition  
5 questions on the basis of attorney-client privilege. Plaintiff contends the questions – which  
6 sought information about Defendant Smith’s responses to Requests for Admission and  
7 Requests for Production – do not require Defendant Smith to divulge confidential attorney-  
8 client communications. For example, when Plaintiff asked Defendant Smith whether he  
9 had reviewed the files produced in response to RFP No. 5, defense counsel objected, stating  
10 “I’m invoking the attorney-client privilege for this entire line of questioning.” Dkt. 41-3  
11 at 73-75. Defendant Smith followed counsel’s instruction not to answer. *Id.* Similarly,  
12 defense counsel objected and instructed Defendant Smith not to answer questions regarding  
13 his responses to RFA Nos. 4-6, RFA No. 16, RFA No. 19, and RFP No. 17.

14 “The attorney-client privilege protects confidential communications between  
15 attorneys and clients, which are made for the purpose of giving legal advice.” *United States*  
16 *v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011). “The party asserting the attorney-client  
17 privilege has the burden of establishing the relationship and privileged nature of the  
18 communication.” *Id.* For the reasons discussed at the April 28 hearing, the Court finds  
19 that, on the record before it, Defendant Smith has failed to meet this burden, as he has not  
20 demonstrated how answering Plaintiff’s questions would require him to disclose any  
21 confidential communications protected by the privilege.

22 The Court **GRANTS** Plaintiff’s motion to compel. Defendant Smith shall appear  
23 for a further deposition that is limited to the questions for which the privilege was asserted  
24 and reasonable follow-up questions. The total time for all sessions of Defendant Smith’s  
25 deposition shall not exceed seven hours. The deposition shall be held in person **on May 6,**  
26 **2026, at 9:00 a.m.** at Plaintiff’s counsel’s office. Defendant Smith shall bear the costs for  
27 the further deposition.

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1 **C. Motion for Sanctions**

2 Plaintiff requests that the Court impose sanctions on both Defendant Smith and  
3 defense counsel pursuant to Federal Rule of Civil Procedure 37(a)(5). Rule 37(a)(5)(A)  
4 provides that if a motion to compel discovery is granted, “the court must...require the party  
5 or deponent whose conduct necessitated the motion, the party or attorney advising that  
6 conduct, or both to pay the movant’s reasonable expenses incurred in making the motion,  
7 including attorney’s fees,” unless the movant made a good faith attempt to obtain the  
8 discovery without court action, the opposing party’s nondisclosure was substantially  
9 justified, or an award of expenses would be unjust. Fed. R. Civ. P. 37(a)(5)(A).  
10 Additionally, Rule 30(d)(2) provides that “[t]he court may impose an appropriate sanction  
11 – including the reasonable expenses and attorney’s fees incurred by any party – on a person  
12 who impedes, delays, or frustrates the fair examination of the deponent.” Fed. R. Civ. P.  
13 30(d)(2).

14 At the April 28 motion hearing, defense counsel agreed that Defendants would bear  
15 the costs of the further deposition. The Court finds this to be an appropriate remedy and  
16 will address the issue of whether fee-shifting is required under Rule 37(a)(5)(A) in a later  
17 order.

18 **III.**  
19 **CONCLUSION**

20 For the reasons stated on the record at the April 28 hearing and explained above,  
21 the Court **GRANTS** the motions to compel disciplinary records and a further deposition  
22 of Defendant Smith.

23 **IT IS SO ORDERED.**

24 Dated: April 30, 2026

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27 Hon. David D. Leshner  
28 United States Magistrate Judge