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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Devin Andrich,
10 Plaintiff,

11 v.

12 Kevin Dusek, et al.,
13 Defendants.
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No. CV-17-00173-TUC-RM

ORDER

15 Pending before the Court is Defendants' Motion for Reconsideration. (Doc. 131.)
16 Defendants move for reconsideration or clarification of the Court's previous Order
17 resolving a dispute as to whether Plaintiff could compel Charles Ryan, the director of the
18 Arizona Department of Corrections, to sit for a deposition. (*Id.*) Defendants seek
19 reconsideration or clarification of the Court's statement that Defendant Ryan possesses
20 "knowledge of facts directly related to" Plaintiff's allegations. (Doc. 131.) Defendants "do
21 not seek reconsideration of any other aspects of the Court's Order, nor its ultimate
22 conclusion." (*Id.*) The Court denies Defendants' Motion for Reconsideration, but grants
23 Defendants' request for clarification to the extent that the discussion herein clarifies the
24 Court's previous Order. (Doc. 122.)

25 The Court previously granted Defendants' Motion to Dismiss as to Plaintiff's
26 official capacity claims against Director Ryan but denied Defendants' Motion to Dismiss
27 as to claims construed as against Director Ryan in his personal capacity. (*Id.*) (discussing
28 Doc. 73 at 6-8.)

1 While there is no *respondeat superior* liability under § 1983, supervisors may be
2 held liable “when culpable action, or inaction, is directly attributed to them.” *Starr v. Baca*,
3 652 F.3d 1202, 1205 (9th Cir. 2011). There must be a “sufficient causal connection
4 between the supervisor’s wrongful conduct and the constitutional violation.” *Id.* at 12017
5 (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989.)) “[T]he supervisor’s
6 participation could include his own culpable action or inaction in the training, supervision,
7 or control of his subordinates, his acquiescence in the constitutional deprivations of which
8 the complaint is made, or conduct that showed a reckless or callous indifference to the
9 rights of others.” *Id.* at 1207-08.

10 The Court declined to dismiss Plaintiff’s claims against Director Ryan, construed as
11 claims against him in his personal capacity, finding that he “adequately alleged that Ryan
12 ‘set[] in motion a series of acts by others . . . which [he] knew or reasonably should have
13 known would cause others to inflict a constitutional injury.’” (Doc. 73) (quoting *Starr*, 652
14 F.3d at 1207-08). Alternatively, the Court found that Plaintiff “adequately alleged that
15 Ryan is culpable for action relating to ‘the training, supervision, or control of his
16 subordinates’ or for ‘conduct that showed a reckless or callous indifference to the rights of
17 others.’” (*Id.*) Plaintiff subsequently restated these allegations in his Second Amended
18 Complaint (SAC). (Doc. 74.)

19 In discussing the legal standard governing the dispute regarding the deposition of
20 Director Ryan, the Court noted that depositions of top government officials may be allowed
21 where the official “has first-hand knowledge related to the claim being litigated.” (*Id.*)
22 (quoting *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007). The Court explained
23 that, since the remaining claims against Director Ryan are solely in his personal capacity,
24 “Director Ryan clearly has knowledge of facts directly related to these allegations” since
25 the allegations “concern his own personal involvement in plaintiff’s alleged mistreatment.”
26 (Doc. 122.)

27 Defendants argue that this observation was “clear error” and constitutes a finding
28 that was “manifestly unjust.” (Doc. 131.) The Court clarifies that its previous statement,

1 made in the context of a discovery dispute, was not a finding of fact that would preclude
2 Defendants from later “presenting evidence, consistent with his filings throughout this
3 case, that he knew nothing about the conditions” of Plaintiff’s confinement. (Doc. 131.)
4 Rather, the Court’s observation that Director Ryan necessarily “has knowledge of facts”
5 related to allegations against him made solely in his personal capacity merely follows
6 logically from the nature of the personal capacity allegations made. Plaintiff’s SAC
7 alleged, *inter alia*, that Director Ryan issued instructions through the Department’s chain
8 of command that caused Plaintiff to be subjected to unconstitutional conditions of
9 confinement. (Doc. 74 ¶¶ 165, 174.) And the Court previously found that Plaintiff’s
10 previously amended Complaint (Doc. 40), which contained less supporting factual material
11 than his SAC, “adequately alleged that Ryan ‘set[] in motion a series of acts by others . . .
12 which [he] knew or reasonably should have known would cause others to inflict a
13 constitutional injury.’” (Doc. 73.)

14 It follows that Director Ryan possesses relevant knowledge, but not that such
15 knowledge necessarily bolsters Plaintiff’s claims. Rather, the knowledge could well be in
16 the negative; Director Ryan may possess knowledge of facts tending to show that he did
17 not issue the instructions and set in motion the series of acts as alleged. Either way, the
18 Director would have first-hand knowledge and this consideration is relevant to whether
19 Plaintiff may compel his deposition. This differs from instances in which a subpoenaed
20 agency head is named merely in his official capacity and may not have personal knowledge
21 of the claims at issue. *See Green v. Baca*, 226 F.R.D. 624, 649 (C.D. Cal. 2005), *order*
22 *clarified*, No. CV-02-204744MMMMANX, 2005 WL 283361 (C.D. Cal. Jan 31, 2005)
23 (noting in claim brought for unconstitutional implementation of department policies *in toto*
24 that “unlike other official capacity suits, it cannot be said that [Sheriff] has no personal
25 knowledge of the facts at issue.”)

26 Defendants also urge that the Court improperly “relied on an Exhibit from Andrich’s
27 Motion to Strike.” (Doc. 131.) The Exhibit mentioned was an “Arizona Department of
28 Corrections Inmate Grievance Appeal Response.” (Doc. 122.) Defendants argue that it was

1 improper for the Court to consider the grievance form because it relates to Plaintiff's
2 placement in segregation, rather than directly to the conditions of his confinement in
3 segregation. (Doc. 131.) Defendants also argue that the form should not be considered
4 because it was "signed for" Director Ryan and not by him personally. (Doc. 131.) The
5 Court reiterates that its previous discussion of the grievance form was merely "[i]n further
6 support of" its independent conclusion that Defendant Ryan would have personal
7 knowledge as to his own personal involvement in Plaintiff's allegations, as discussed
8 above. (Doc. 122.)


9 In summation, the Court's observation that Director Ryan has "knowledge of facts"
10 related to the personal capacity allegations against him is not a factual finding as to the
11 merits of those allegations and of course in no way precludes the later introduction of
12 evidence "to show that [Director Ryan] was unaware of Andrich's objections to his
13 conditions of confinement at a time when he could have intervened." (Doc. 131.)
14 Defendants remain free to file a Motion for Summary Judgment and to introduce evidence
15 in support of that Motion.

16 Accordingly,

17 **IT IS ORDERED** that Defendants' Motion for Reconsideration (Doc. 131) is
18 **denied**, but the request for clarification is granted to the extent this Order clarifies the
19 Court's previous Order. (Doc. 122.)

20 Dated this 13th day of August, 2019.

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Honorable Rosemary Márquez
United States District Judge