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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE H. ROBINSON,

CASE NO. 1:08-cv-01380-AWI-BAM PC

Plaintiff,

ORDER ADDRESSING PLAINTIFF’S MOTION
FOR CLARIFICATION AND DENYING
MOTION FOR MODIFICATION OF ORDER RE
IN CAMERA REVIEW

v.

D. ADAMS, et al.,

(ECF No. 124)

Defendants.

ORDER GRANTING DEFENDANTS’ MOTION
FOR A PROTECTIVE ORDER

(ECF No. 125, 127)

THIRTY-DAY DEADLINE

I. Background

Plaintiff George H. Robinson (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the [Complaint](#) filed May 13, 2008, against Defendants David, Miranda, Melo, Garcia, Mendoza, Martinez, and Masiel for use of excessive force, and Defendants Adams and Ruiz for failing to protect Plaintiff in violation of the Eighth Amendment; and against Defendants Martinez, David, Miranda, and Garcia for assault and battery; and against Defendants David, Miranda, Melo, Garcia, Mendoza, Martinez, and Masiel for intentional infliction of emotional distress and negligence in violation of state law. On May 18, 2011, the Honorable Anthony W. Ishii issued an [Order Vacating the Order](#) Partially Granting Plaintiff’s Motion to Compel and referred the Motion to Compel back to the Magistrate Judge for consideration. (ECF No. 108). On May 27, 2011, an [Order](#) Granting in Part and Denying in Part

1 Plaintiff's Motion to Compel issued. (ECF No. 109.) On July 1, 2011, Plaintiff filed a [Motion for](#)
2 [Reconsideration](#). (ECF No. 113.) On July 15, 2011, Plaintiff filed a [Supplemental Motion for](#)
3 [Reconsideration](#), and on July 25, 2011, Plaintiff filed a [Second Supplemental Motion for](#)
4 [Reconsideration](#) of the Magistrate Judge's order.¹ (ECF Nos. 113, 115, 116.) On September 1,
5 2011, the Magistrate Judge conducted an *in camera* review as discussed in the May 27, 2011 order.
6 The Magistrate Judge determined that certain documents were entitled to a protective order, and an
7 [order](#) issued directing Defendants to file a motion for a protective order. (ECF No. 121.) On
8 September 15, 2011, Plaintiff filed a [Motion for Clarification](#) and Modification of the September 1,
9 2011 order. (ECF No. 124.) Defendants filed a [Motion for a Protective Order](#) on October 3, 2011.
10 (ECF No. 125.) Plaintiff filed an [Opposition](#) to the Motion for a Protective Order on October 20,
11 2011. (ECF No. 127.)

12 **II. Discussion**

13 The Magistrate Judge conducted an *in camera* review of the documents which Defendants
14 claimed are entitled to protection due to the confidentiality of the information or due to the threat to
15 the security and safety of the institution. Pursuant to this review, the Court issued an order informing
16 the parties of the intended rulings and granted Defendants thirty days in which to file a motion for
17 a protective order and proposed protective order.

18 **A. Plaintiff's Motion for Clarification and Modification of Order**

19 Plaintiff moves for clarification and modification of the order re *in camera* review of
20 documents issued September 1, 2011. Plaintiff states that he was not provided with a list of
21 documents that were reviewed and it is unclear whether any documents were produced regarding
22 request for production nos. 26 and 28. Plaintiff requests that all documents that were reviewed by
23 the Court be produced. Plaintiff moves that he be allowed to contact the inmates involved in prior
24 incidents and provides a letter and form declaration to be sent to each inmate.

25 In the Court's *in camera* review, the Court reviewed the documents produced by defendants
26 and determined which documents are relevant to this action. Plaintiff's request for all documents
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28 ¹The motions for reconsideration are currently pending decision by the District Judge.

1 to be produced is denied, only relevant documents shall be ordered to be produced.. Fed. R. Civ. P.
2 26(b)(1). Upon production of the documents in compliance with this order, Defendants shall identify
3 the document requests for which the documents are responsive. Fed. R. Civ. P. 34(b)(2)(E)(i).

4 Plaintiff's request to have his letter and form declaration sent to all inmates identified in the
5 documents must be denied because he has not provided evidence that he completed the process to
6 obtain written authorization from the appropriate prison officials. Cal. Code Regs., tit. 15 § 3139
7 (2010). Further, because the Court does not have jurisdiction in this action over anyone other than
8 Plaintiff and Defendants, the Court can only make a request to prison officials and cannot order them
9 to allow Plaintiff to correspond with his witnesses. E.g., City of Los Angeles, 461 U.S. at 102;
10 Valley Forge Christian Coll., 454 U.S. at 471. Such a request shall not be made by the Court without
11 assurances that Plaintiff has followed procedures and used the available resources at the prison to
12 obtain written authorization after consideration by prison officials of safety, security, and procedural
13 priorities. The Court recognizes that prison administrators "should be accorded wide-ranging
14 deference in the adoption and execution of policies and practices that in their judgment are needed
15 to preserve internal order and discipline and to maintain institutional security." Whitley v. Albers,
16 475 U.S. 312, 321-322 (1986) (*quoting* Bell v. Wolfish, 441 U.S. 520, 547 (1970)).

17 **B. Motion for Protective Order**

18 Defendants move for a Protective Order for employee personnel records, appeals records for
19 inmates, and internal use of force policies that were in effect at times material to the issues raised
20 in Plaintiff's complaint. (Defendants' Motion for Protective Order 2, ECF No. 125.) Plaintiff
21 opposes the Protective Order on the grounds that Defendants did not meet and confer as required in
22 Federal Rule of Civil Procedure 26(c)(1),² the Order is vague and ambiguous, and there is no need
23 for a protective order. (Plaintiff's Opp. 1, ECF No. 127.) Plaintiff proposes that he be granted single
24 cell status while the documents are in his possession to ensure that no other inmate have access to
25 the documents.

26 "The court may, for good cause, issue an order to protect a party or person from annoyance,
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28 ²In the discovery and scheduling order issued August 20, 2009, the parties were informed that the requirements of Rule 26, that the parties meet and confer, shall not apply in this action. (ECF No. 35.)

1 embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). The court has
2 broad discretion to decide when it is appropriate to issue a protective order and the degree of
3 protection required. Phillips ex rel. Estates of Byrd v. General Motors Corp., 307 F.3d 1206, 1211
4 (9th Cir. 2002). Upon review of the documents provided by Defendants, the Court finds two
5 categories of information that need to be addressed: the training records and personnel records
6 containing confidential personal information, and those documents containing information that
7 implicates the safety and security of the institution.

8 Certain information will be redacted from the training and personnel records. The personal
9 identifying information, such as Social Security Numbers, date of birth, address, etc. of individuals,
10 is not relevant to Plaintiff’s claims in this action, and this information can be redacted without
11 affecting the substance of the information included in the documents. Therefore, given the privacy
12 and security concerns of this information and the lack of probative value, Social Security Numbers
13 and other confidential personal information of CDCR employees shall be redacted prior to
14 documents being provided to Plaintiff. The redacted training and personnel records are not subject
15 to the limitations in the Protective Order and shall be produced directly to Plaintiff.

16 The second category of documents will be subject to a protective order. Defendants argue
17 that the Use of Force Policy is confidential due to the safety and security concerns of the institution,
18 and a Protective Order is necessary to protect the staff and inmates who work and live in the SHU.
19 The defendants provided the “Use of Force Instructor’s Guide” for *in camera* review in response to
20 Plaintiff’s Request for Production. Rather than setting forth the Use of Force Policy, the document
21 is a training manual and discusses how to respond to different situations that could confront a
22 correctional officer within the Use of Force Policy. The Court has reviewed the document and finds
23 that the probative value of the Instructor’s Guide is greatly outweighed by the security risk to the
24 institution if this information were disclosed to the inmate population. Therefore, the Court finds
25 that good cause exists to issue a Protective Order for the Use of Force Instructor’s Guide. Since the
26 allegations in this action do not involve the use of deadly force or mechanical restraints, those
27 portions of the document that deal with use of deadly force and mechanical restraints are not relevant
28 and will not be ordered produced. Finally, in weighing the limited probative value of the Use of

1 Force Training Video against the safety and security concerns of the prison, the Court finds that the
2 potentially relevant information is encompassed in the Use of Force Instructor’s Guide, and the
3 Training Video shall not be ordered produced. Based upon these findings, Defendants shall be
4 ordered to produce the Use of Force Instructor’s Guide, up to and including Objective 6 on page 27,
5 and the Use of Force Policy Test Question Nos. 1 through 6, subject to the Protective Order.

6 Plaintiff argues that the Protective Order is unnecessary and proposes that he be granted
7 single cell status to avoid a cellmate having access to the documents. Plaintiff argues he will agree
8 not to copy or show the documents to non-witness inmates. While Plaintiff states he will agree not
9 to copy the documents or allow any other inmate to see them unless they are a witness in this action,
10 these conditions do not show that the Protective Order is unnecessary, but indicate Plaintiff’s
11 willingness to stipulate to a protective order.

12 To the extent that Plaintiff seeks injunctive relief directing him to be single cell status in
13 order to have the documents in his possession, the Prison Litigation Reform Act places limitations
14 on injunctive relief. Section 3626(a)(1)(A) provides in relevant part, “[p]rospective relief in any civil
15 action with respect to prison conditions shall extend no further than necessary to correct the violation
16 of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any
17 prospective relief unless the court finds that such relief is narrowly drawn, extends no further than
18 necessary to correct the violation of the Federal right, and is the least intrusive means necessary to
19 correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(A). The relief requested by
20 Plaintiff is not related to the underlying claims that Defendants used excessive force and failed to
21 protect him. Since the relief sought would not remedy the violation of the Federal right at issue here,
22 the Court cannot grant the requested relief.

23 Finally, Plaintiff argues that the Protective Order is vague and ambiguous as to a reasonable
24 amount of time for him to review the documents. To address Plaintiff’s concern regarding “a
25 reasonable amount of time,” the Court shall order that Plaintiff be allowed one hour to review the
26 portion of the Use of Force Policy Instructor’s Guide that has been ordered to be produced and take
27 notes. Accordingly, Defendants’ motion is granted and the protective order shall issue as follows.

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1 **C. Protective Order**

2 Defendants shall produce the confidential material, subject to this Protective Order on the
3 following conditions:

4 1. The Social Security Numbers and any other confidential personal information of the
5 CDCR employees shall be redacted.

6 2. Prior notice as required by Civil Code section 1798.24 (k) shall be given to individuals
7 whose names or other identifying information are disclosed in the material.

8 3. The Use of Force Instructor’s Guide may be submitted to the possession of the following
9 persons:

10 (a) The Litigation Coordinator at the institution where Plaintiff is now housed;

11 (b) Counsel for Plaintiff in this action, should Plaintiff acquire counsel;

12 (c) Paralegal, stenographic, clerical and secretarial personnel regularly employed by
13 counsel for Plaintiff;

14 (d) Court personnel and stenographic reporters engaged in such proceedings as are
15 incidental to the preparation for the trial in this action;

16 (e) Any outside expert or consultant retained by Plaintiffs’ counsel for purposes of
17 this action;

18 (f) Witnesses to whom the Use of Force Instructor’s Guide may be disclosed during
19 the preparation for trial and trial, provided that no witness may have copies of the Use of Force
20 Instructor’s Guide or Plaintiff’s notes regarding the Use of Force Instructor’s Guide, and each
21 witness shall be informed and agree to be bound by the terms of this order.

22 4. Plaintiff will be allowed to review the Use of Force Instructor’s Guide, but he may not
23 retain the document in his possession. Plaintiff shall be allowed one hour to review the Use of Force
24 Instructor’s Guide in the Litigation Coordinator’s presence and take notes. In addition, Plaintiff may
25 not disclose to or discuss this material with any other inmate, nor may any other inmate review or
26 have possession of, any material produced pursuant to the Court’s Order or Plaintiff’s notes
27 regarding the Use of Force Instructor’s Guide. Counsel for the Defendants acknowledges that such
28 access would constitute a violation of Title 15, California Code of Regulations, § 3370(b) and would

1 compromise the safety and security of the institution.

2 5. Plaintiff may take notes, but shall not make copies of the Use of Force Instructor's Guide.

3 6. All confidential material in possession of the Litigation Coordinator shall be destroyed
4 or returned to the Defendants' counsel no later than twenty days after trial of this matter, or sooner
5 if the Litigation Coordinator concludes the material is no longer needed for Plaintiff's review.

6 7. Upon final judgment or resolution of any appeal, Plaintiff or his counsel shall return or
7 destroy the Use of Force Instructor's Guide or notes on the Use of Force Instructor's Guide, and shall
8 provide Defendants' counsel with a declaration stating all confidential material has been returned
9 or destroyed.

10 8. No confidential material obtained by Plaintiff or his counsel shall be disclosed except as
11 is necessary in connection with this or related litigation, including appeals, and not for any other
12 purpose, including any other litigation.

13 9. Any confidential material filed with the Court by either party shall be filed and maintained
14 under seal.

15 10. Any violation of this Protective Order may be punishable as Contempt of Court.

16 11. Nothing in this Protective Order is intended to prevent officials or employees of the State
17 of California, or other authorized government officials, from having access to confidential material
18 to which they would have access in the normal course of their official duties.

19 12. The provisions of this Protective Order are without prejudice to the right of any party:

20 (a) To apply to the Court for a further protective order relating to any confidential
21 material or relating to discovery in this litigation;

22 (b) To apply to the Court for an order removing the confidential material designation
23 from any documents;

24 (c) To object to a discovery request.

25 12. The provisions of this order shall remain in full force and effect until further order of
26 this Court.

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1 **III. Order**

2 Accordingly it is HEREBY ORDERED that:

- 3 1. Plaintiff's Motion for Modification of the Order Re *In Camera* Review, filed
4 September 15, 2011, is DENIED;
- 5 2. Defendants' Motion for a Protective Order, filed October 3, 2011, is GRANTED;
- 6 3. The proposed orders set forth in the Order Re *In Camera* Review of the documents
7 filed under seal for *in camera* review, issued September 1, 2011, are adopted as
8 follows:
- 9 a. The employee use of force training records, Attachment 1, are to be produced
10 with any indicia of personal information, other than the employee name,
11 redacted;
- 12 b. With the exception of the WOTS Rainbow Report, the personnel records,
13 Attachment 2, are to be produced with any indicia of personal information,
14 other than the employee name, redacted;
- 15 c. Defendants shall not produce a copy of the appeal inquiries, Attachment 3.
16 A summary of the appeal inquiries is attached herein as Exhibit A;
- 17 d. The Incident Report Package Tracking Log, Attachment 4, shall not be
18 produced as it is too remote to the alleged incidents to be relevant in this
19 action;
- 20 e. The Use of Force Instructor's Guide, up to and including Objective 6 on page
21 27, and the Use of Force Policy Test Question Nos. 1 through 6 shall be
22 produced, subject to the Protective Order, and kept in the care of custody of
23 the institution's Litigation Coordinator. The Litigation Coordinator shall
24 make arrangements for Plaintiff to have one hour to review the Use of Force
25 Policy and Test Questions, in the presence of the Litigation Coordinator.
26 Plaintiff may take notes of relevant portions of the Use of Force Instructor's
27 Guide and Test Questions, but no copy of the Use of Force Instructor's Guide
28 or Test Questions shall be provided to Plaintiff;

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f. California Code of Regulations, Title 15, is equally accessible to Plaintiff and need not be produced; and

4. Defendants shall identify the document requests for which the documents are responsive.

5. Within thirty days from the date of service of this order, Defendants shall produce documents responsive to this order.

IT IS SO ORDERED.

Dated: March 15, 2012

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A**Inmate Appeals from January 22, 2005 through January 22, 2009**

Defendant Named	Date of Appeal/Incident	Inmate, CDCR #	Complaint	Conclusion
David and M. Melo	05/15/2005	Bachman	Assault/threats	Not Sustained
R. Miranda	04/04/2005	Blakes	Rough body search	Not Sustained
David	04/23/2005	Vergara, P-18218	Unnecessary force	Not Sustained
Ruiz	06/06/2005	Perry, K-99205	Assault	Not Sustained
David and Miranda	12/14/2005	Garcia, T-88303	Unnecessary force	Not Sustained
David, Masiel, and Mendoza	05/23/2006	Lamon, E-08345	Assault	Not Sustained
M. Melo and Mendoza	08/08/2006	Fisher, H-54073	Threats/retaliation	Not Sustained
Ruiz	01/27/2007	Estrada, T-42165	Assault	Not Sustained
David, M. Melo, and Mendoza	03/19/2007	Malbrue, P-89050	Aggressive use of handcuffs; released inmate causing him to fall; pepper spray	Not Sustained
M. Melo	06/29/2007	Rogers, P-75155	Aggressive use of handcuffs	Not Sustained
David and Miranda	10/05/2007	Mitchell, T-74082	Assault	Not Sustained
M. Melo	04/22/2008	Thompson, T-14323	Removed wheelchair causing fall	Not Sustained
David	07/21/2008	Taylor, C-05467	Pepper spray	Not Sustained
M. Melo	01/05/2009	Gherardi, K-78141	Assault	Not Sustained
M. Melo	01/14/2009	Beltran, E-54239	Assault; pepper spray	Not Sustained