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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

ROBERT MORRIS,)	1:08-cv-01422-AWI-MJS
)	
Plaintiff,)	ORDER RE: REQUEST FOR
)	CLARIFICATION AND
v.)	PARTIAL RECONSIDERATION
)	
OFFICER CHRISTOPHER LONG,)	(Docs. 247)
)	
Defendant.)	

I. INTRODUCTION

Plaintiff Robert Morris has filed a request for clarification and partial reconsideration of the Court’s August 8, 2012 order re: further motions in limine. The Court hereby clarifies its previous order. For reasons discussed below, the motion for partial reconsideration shall be denied.

II. FACTS AND PROCEDURAL BACKGROUND

The Court refers the parties to previous orders for a complete chronology of the proceedings. On January 11, 2012, plaintiff Robert Morris (hereinafter referred to as “Plaintiff”) filed his ninth amended complaint, asserting one cause of action against defendant Officer Christopher Long (hereinafter referred to as “Defendant”) for federal civil rights violations (in particular, excessive

1 force in violation of the Fourth Amendment right to be free of unreasonable searches and seizures)
2 pursuant to 42 U.S.C. § 1983. Within the ninth amended complaint, Plaintiff alleged as follows:

3 “4. . . . [P]laintiff was taken by Officer Long to a Fresno Police Department facility
4 located near Shaw Avenue and 6th Street for purposes of a forced blood draw.
5 During the course of said blood draw, Officer Long unnecessarily and with extreme
6 force administered a control hold on plaintiff’s left arm while blood was being drawn
7 from his right arm. Officer Long continued this extreme use of force for a prolonged
time, resulting in severe and permanent injuries to plaintiff’s left arm and shoulder.
[¶] 5. Officer Long’s use of force in connection with the forced blood draw was
totally unnecessary, as plaintiff was cooperative throughout his interaction with
Officer Long, even though he had been the victim of a battery and robbery”

8 On April 13, 2012, the parties filed their initial motions in limine. The parties filed further motions
9 in limine on July 8, 2012 and oppositions and replies on July 23, 2012 and July 30, 2012,
10 respectively. On August 8, 2012, the Court issued an order on the parties’ further motions in limine,
11 which were subsequently addressed at a hearing on August 10, 2012. On August 11, 2012, Plaintiff
12 filed this request for clarification and partial reconsideration of the Court’s August 8, 2012 order.

13 14 **III. LEGAL STANDARD**

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16 “Whenever any motion has been granted or denied in whole or in part, and a subsequent
17 motion for reconsideration is made upon the same or any alleged different set of facts, counsel shall
18 present to the Judge or Magistrate Judge to whom such subsequent motion is made an affidavit or
19 brief, as appropriate, setting forth the material facts and circumstances surrounding each motion for
20 which reconsideration is sought, including [¶] (1) when and to what Judge or Magistrate Judge the
21 prior motion was made; [¶] (2) what ruling, decision, or order was made thereon; [¶] (3) what new
22 or different facts or circumstances are claimed to exist which did not exist or were not shown upon
23 such prior motion, or what other grounds exist for the motion; and [¶] (4) why the facts or
24 circumstances were not shown at the time of the prior motion.” Local Rule 230(j). Reconsideration
25 of motions may also be granted under the standards applicable to reconsideration of a final judgment
26 under Federal Rule of Civil Procedure 59(e). Under Rule 59(e), “[r]econsideration is appropriate

1 if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the
2 initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.
3 There may also be other, highly unusual, circumstances warranting reconsideration.” *School Dist.*
4 *No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (citations
5 omitted).

6 7 IV. DISCUSSION 8

9 Plaintiff first moves for clarification of the Court’s ruling on his motion in limine #1. In its
10 August 8, 2012 order re: further motions in limine, the Court stated as follows on the issue of
11 Plaintiff’s #1:

12 **“1. Motion in limine #1: Untimely disclosed or undisclosed witnesses and evidence**
13 – In his initial motions in limine filed April 13, 2012, Plaintiff, pursuant to Federal
14 Rules of Civil Procedure 26(a) and (e), first moved to exclude ‘any evidence or
15 witnesses not timely disclosed during discovery.’ In particular, Plaintiff contended
16 the defense had listed documents (nos. 20-22, 23 (in part), 24 and 27-29) and
17 witnesses (nos. 14 and 17-58) in the pretrial order issued April 3, 2012 that had not
18 been disclosed to Plaintiff or disclosed during discovery with reasonable
19 particularity, either in Defendant’s initial disclosures or responses to written
20 discovery requests. Finding Plaintiff had failed to provide evidence (in the form of
21 his own declaration or a declaration from counsel) to show this was the case, the
22 Court reserved ruling on the motion in its April 27, 2012 order [re: the parties’ initial
23 motions in limine]. Plaintiff now renews this motion, pointing to a declaration filed
24 April 29, 2012 by Plaintiff’s counsel Kevin Little that Plaintiff contends establishes
25 Defendant did not comply with his discovery obligations. [¶] In opposition,
26 Defendant contends Rule 26 does not require the disclosure of witnesses or evidence
27 where they would be used solely for impeachment purposes.”

28 The Court further stated:

“Rule 26 provides in pertinent part, “[A] party must, without awaiting a discovery
request, provide to the other parties: [¶] (I) the name and, if known, the address and
telephone number of each individual likely to have discoverable information – along
with the subjects of that information – that the disclosing party may use to support
its claims or defenses, unless the use would be solely for impeachment; [¶] (ii) a copy
– or a description by category and location – of all documents, electronically stored
information, and tangible things that the disclosing party has in its possession,
custody, or control and may use to support its claims or defenses, unless the use
would be solely for impeachment[.]” Fed. R. Civ. P. 26(A). To the extent Defendant
intends for his argument here to be construed as a representation he intends to use the
witnesses and evidence at issue solely for impeachment purposes, the Court would

1 agree Defendant's failure to disclose them would not preclude their
2 admissibility/ability to testify. To the extent Defendant does *not* so intend, the Court,
3 having reviewed the pleadings of record and all competent and admissible evidence
4 submitted, would find as follows: [¶] • defense witness nos. 19 and 20 may be
5 permitted to testify; [¶] • defense witness nos. 18 and 21-56 are precluded from
6 testifying; [¶] • defense exhibit nos. 20-23, 27 and 29 are admissible; [¶] • defense
7 exhibit nos. 24 and 28 are inadmissible. [¶] The Court shall leave it to Defendant to
8 clarify at the hearing how he intends to proceed, and shall rule accordingly. Thus,
9 ruling on Plaintiff's motion in limine #1 remains RESERVED."

10 Plaintiff now requests an explanation why the Court did not make a ruling as to witness nos. 14, 17,
11 57 or 58 in its August 8, 2012 order. The failure to address the foregoing witnesses was oversight.
12 Having reviewed the pleadings of record and all competent and admissible evidence submitted, the
13 Court finds that to the extent Defendant does not intend to use witness nos. 14, 17, 57 and 58 for
14 impeachment purposes, they would be precluded from testifying. In any case, the Court does not see
15 why this is an issue. At the August 10, 2012 hearing, defense counsel represented to the Court that
16 they intended to use the witnesses and exhibits at issue solely for impeachment purposes. Based on
17 these representations, Defendant will not be allowed to use these witnesses for substantive purposes.

18 Plaintiff further moves for reconsideration of the Court's ruling on defense exhibit nos. 20-24
19 and 27-29, but provides no compelling reason why reconsideration should be granted. Exhibits nos.
20 21-23, 27 and 29, which the Court ruled were admissible, are records maintained by third parties *on*
21 *behalf of Plaintiff*. In light of this fact, and the fact Plaintiff (1) identified the documents either in
22 his deposition or in response to discovery requests and (2) was given notice Defendant had served
23 subpoenas on those third parties specifically seeking such information, Plaintiff cannot reasonably
24 contend he was prejudiced simply because he did not timely receive copies of the documents *from*
25 *Defendant* after Defendant obtained them for himself. Even if Plaintiff were prejudiced, he could
26 have minimized such prejudice by propounding document requests on Defendant or subpoenaing
27 the documents directly; nothing suggests Plaintiff's ability to acquire the documents was in any way
28 affected. The same could be said about the documents comprising exhibit no. 20. Admittedly,
29 Defendant has not pointed to – and the Court has been unable to locate – any evidence in the record
30 showing Defendant expressly disclosed to Plaintiff he might be using the exhibits at issue to support

1 his claims or defenses, as required under Rule 26. In the Court's view, however, Plaintiff cannot
2 reasonably contend he did not expect Defendant might do so, given the exhibits consist of records
3 going to Plaintiff's medical, employment and criminal history and would have been viewed by a
4 prudent litigant in Plaintiff's position as being especially informative to a case as this. In any event,
5 the Court fails to see why this is of concern, given defense's representation the exhibits are to be
6 used for impeachment. Accordingly, Plaintiff's motion for partial reconsideration shall be denied.

7
8 **V. DISPOSITION**
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10 Based on the foregoing, Plaintiff's motion for partial reconsideration is DENIED.

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12 IT IS SO ORDERED.

13 Dated: August 14, 2012

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16 CHIEF UNITED STATES DISTRICT JUDGE
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