

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OUSSAMA SAHIBI,

Plaintiff,

v.

BORJAS GONZALES, et al.,

Defendants.

CASE No. 1:15-cv-01581-LJO-MJS (PC)

**ORDER DENYING PLAINTIFF'S MOTION
FOR SANCTIONS**

(ECF NO. 107)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Eighth Amendment excessive force claim against Defendants Cope, Gonzales, Lozano, Smith, and Stane, and on a Fourteenth Amendment due process claim against Defendant Crouse.

Before the Court is Plaintiff's May 3, 2017 motion for sanctions. (ECF No. 107.) Defendant filed an opposition. (ECF No. 112, 114.) Plaintiff filed no reply. The matter is submitted. Local Rule 230(f).

I. Procedural and Factual History

On April 5, 2017, the Court granted in part and denied in part Plaintiff's motion to compel. (ECF No. 102.) Therein, the Court ordered Defendants to provide a further, limited response to Plaintiff's Request for Production of Documents No. 19 by providing

1 Plaintiff with Office of Investigative Affairs (“OIA”) files pertaining to the incident at issue
2 in this case.

3 On April 13, 2017, Defendants served their further response. (ECF No. 105.)
4 Their response indicated that no such records exist. (See ECF No. 107.)

5 On May 3, 2017, Plaintiff filed the instant motion for sanctions. He claims that
6 Defendants’ supplemental response is deficient. He points to a letter he received from an
7 Investigative Services Unit (“ISU”) and Internal Affairs Lieutenant, discussing a letter
8 sent by Plaintiff’s father to the Office of Internal Affairs. That letter states, “The
9 allegations were forwarded to Investigative Services Unit (ISU) and Internal Affairs (IA)
10 Lieutenant P. Chanelo for an inquiry. The inquiry has been completed and the outcome
11 has been forwarded to Martin Biter, Warden, for review and recommendation.” (ECF No.
12 107 at 4.) Plaintiff also points to a letter received by his father, stating that the “Office of
13 Internal Affairs (OIA) is in receipt of your Citizens’ Complaint,” and that the complaint
14 was forwarded to the Warden.

15 In their opposition, Defendants acknowledge that records pertaining to the
16 complaint made by Plaintiff’s father were not produced to Plaintiff. They state that
17 additional research was conducted in relation to the instant motion, three responsive
18 letters were identified, and they were produced to Plaintiff as a supplemental response.
19 Because they documents were not part of an OIA investigation, and instead were
20 maintained by ISU, they were provided to Plaintiff as a supplemental response to his
21 Request for Production No. 41.

22 **II. Legal Standard**

23 Plaintiff moves for sanctions under Federal Rule of Civil Procedure 26(g)(3). Rule
24 26(g) requires the Court to impose sanctions on a party or attorney that improperly
25 certifies, without justification, that a discovery response is complete and correct and that
26 a reasonable inquiry was made with respect to the legal and factual basis for the
27 response. The reasonableness of the inquiry is measured by an objective standard;
28 there is no required showing of bad faith. See Zimmerman v. Bishop Estate, 25 F.3d

1 784, 790 (9th Cir. 1994); Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543,
2 555 (N.D. Cal. 1987). “The sanction may include an order to pay the reasonable
3 expenses, including attorney's fees, caused by the violation.”

4 **III. Discussion**

5 This Court has engaged in lengthy and tedious review of discovery requests and
6 responses, privilege logs and confidential documents in this case. (See ECF No. 102.) At
7 the heart of Plaintiff's discovery requests were two matters: (1) documents pertaining to
8 Defendants' disciplinary history, and (2) documents pertaining to the investigation of the
9 incident at issue in this case. In regard to the latter, Plaintiff's Request for Production No.
10 41 sought “Any and all information, written statements pertaining to or relevant to the
11 Incident on July 13, 2013.”

12 When Plaintiff did not receive internal investigative documents through
13 Defendants' discovery responses, he filed a motion to compel. (ECF No. 83.) That
14 motion specifically identified the letter sent by his father to the Office of Internal Affairs,
15 and at issue on the instant motion, as the source of his belief that additional documents
16 existed that had not been disclosed by Defendants or listed on their privilege log. (ECF
17 No. 83 at 6-7, 149-50.) The Court granted the motion to compel in part, and ordered
18 Defendants to provide Plaintiff with the OIA files or to provide the files to the Court for in
19 camera review. (ECF No. 102.)

20 In light of this history, Plaintiff's father's complaint letter was known to be at issue
21 in this case at least by the time Plaintiff filed his motion to compel, if not before.
22 Nonetheless, Defendants apparently did not attempt to locate documents relating to the
23 complaint when they opposed the motion to compel or when they provided supplemental
24 responses based on the Court's order on that motion. It is of grave concern to the Court
25 that but for Plaintiff's knowledge of the letter and his persistence in seeking it and related
26 documents, the ISU material may never have come to light. The Defense is cautioned
27 against providing discovery responses that champion form over substance in a way that
28 interferes with the parties', and the Court's, ability to get to the core issue in this case.

