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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 GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR UNREDACTED HOUSING ROSTER
(ECF NO. 109)

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 5, 2017 motion seeking disclosure of an unredacted inmate housing roster. (ECF No. 109.) Defendants filed an opposition. (ECF No. 113.) Plaintiff filed a reply. (ECF No. 118.) In addition, the Court ordered Defendants to submit the unredacted roster to the Court in camera. (ECF Nos. 115, 117.) The matter is submitted. Local Rule 230(*l*).

1 **I. Basis for Plaintiff's Motion**

2 On April 5, 2017, the Court granted in part and denied in part Plaintiff's motion to
3 compel. (ECF No. 102.) Therein, the Court ruled, in relevant part, as follows:

4 Request No. 30 seeks the inmate housing roster for Plaintiff's
5 housing unit for the date of the incident at issue in this case.
6 Defendants objected to this request on grounds of
7 confidentiality, safety and security, and third party privacy.
8 The declaration submitted by Defendants in support of their
9 privilege log addressed only the defendant officers'
10 confidential information; it articulated no basis for withholding
11 the inmate housing roster. In their opposition to the motion to
12 compel, Defendants cite only to generalized concerns
13 regarding the release of confidential inmate information to
14 other inmates.

15 This declaration is insufficient to support Defendants' claim of
16 privilege. Additionally, the only asserted basis for maintaining
17 the confidentiality of these documents is state law concerning
18 confidentiality and privacy. The Court finds these justifications
19 unpersuasive grounds for withholding discovery. Moreover,
20 the Court concludes that a roster of inmates housed on
21 Plaintiff's unit at the time the incident occurred may be
22 relevant and necessary for the identification of potential
23 inmate witnesses. There appears to be no alternative means
24 available to Plaintiff to obtain this information. Accordingly,
25 the Court concludes that the housing roster must be
26 produced to Plaintiff.

27 However, to the extent the roster contains confidential inmate
28 information beyond the inmate's first initial, last name, and
CDCR number, such information may be redacted, without
prejudice to Plaintiff seeking disclosure of the redacted
information upon a showing of good cause.

(ECF No. 102 at 5.)

29 Defendants redacted the inmates' cell numbers from the housing roster and
30 provided the roster to Plaintiff. (See ECF Nos. 109, 113.) Plaintiff now moves for
disclosure of the cell numbers on the ground that he is unable to identify the inmate
witnesses he is trying to locate. Plaintiff states that he knows only where the inmates
lived, not their names or CDCR numbers. (ECF No. 109.) Thus, a list of names and
CDCR numbers is of essentially no use.

1 Defendants contend that their redaction of the cell numbers is in compliance with
2 the Court's order which, according to Defendants, allowed them to redact "confidential
3 information." (ECF No. 113 at 1.) Defendants also contend that release of cell numbers
4 to Plaintiff will jeopardize institutional safety and security. More specifically, the cell
5 numbers will allow Plaintiff, a known member of a security threat group, to identify
6 individuals that did not assist him during the excessive force incident, and to then
7 retaliate against those individuals. Defendants submit a declaration in support of
8 withholding cell numbers based on these concerns.

9 Plaintiff claims that, without the cell information, he will be unable to identify the
10 witnesses and thus is unable to subpoena them for trial. Plaintiff also states that
11 Defendants' security concerns are without merit. First, Plaintiff contends that some of the
12 inmates he seeks are of a different race and/or were in their cells at the time of the
13 incident. Thus, they could not or would not have come to his aid. Second, Plaintiff points
14 out that two fellow inmates were in the vicinity of the incident and did not come to his aid.
15 These inmates were identified in incident reports provided to Plaintiff and they also were
16 his co-defendants in a criminal trial arising out of this incident. However, in the four years
17 since the incident occurred, these two inmates have not been subject to any reprisals for
18 failing to assist Plaintiff. (ECF No. 118.)

19
20 **II. Discussion**

21 The Court begins by noting that Defendants' redaction of inmate cell numbers is
22 not in compliance with the Court's order on the motion to compel. The Court allowed
23 Defendants to redact "confidential inmate information," not whatever information the
24 Defendants considered confidential. Indeed, the Court expressly rejected Defendants'
25 general assertions with regard to confidentiality. Although "confidential inmate
26 information" was not defined in the order, the Court finds it strains credulity to include cell
27 numbers in that definition in the circumstances presented here.

1 Moreover, the Court expressly found that disclosure of the housing roster was
2 relevant and necessary for the identification of potential witnesses. Defendants did not
3 seek reconsideration of the Court's order. Yet, Defendants now contend that Plaintiff
4 should not be permitted to identify witnesses because doing so may put those witnesses
5 in jeopardy. Defendants previously had two opportunities to raise these arguments: in
6 the privilege log and supporting declaration submitted along with their initial discovery
7 response, and in their response to Plaintiff's motion to compel. They did not do so. They
8 provide no justification as to why these arguments should be considered at this late
9 stage. Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880
10 (9th Cir. 2009) ("A motion for reconsideration should not be granted, absent highly
11 unusual circumstances, unless the district court is presented with newly discovered
12 evidence, committed clear error, or if there is an intervening change in the controlling
13 law."); Local Rule 230(j) (a party seeking reconsideration must show that "new or
14 different facts or circumstances are claimed to exist which did not exist or were not
15 shown upon such prior motion, or what other grounds exist for the motion").

16 Even if such arguments were presented, the Court finds the proffered
17 justifications for withholding the cell numbers unpersuasive. The declaration submitted
18 by Defendants states that Plaintiff is an active member of a security threat group, and
19 security threat group members generally may require other group members to come to
20 their aid upon penalty of reprisal. The declaration does not address any reprisals
21 believed to be undertaken or planned by Plaintiff, nor does it address any reprisals
22 against the two other inmates involved in this incident, whose names are known to
23 Plaintiff. Plaintiff himself has disavowed any desire to retaliate against other inmates.
24 Furthermore, Plaintiff is entitled under the discovery rules to identify witnesses whose
25 version of the events may differ from that of Defendants, and Defendants have not
26 proposed any alternative means for him to do so. The logical result of Defendants'
27 position would require Plaintiff to call approximately one hundred inmate witnesses to
28 testify at trial, a result the Court is unwilling to entertain.

1 The Court has already balanced the interests at stake in releasing the roster to
2 Plaintiff and has determined that information necessary for Plaintiff to identify witnesses
3 must be disclosed to him. See Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34
4 (9th Cir. 1990). The arguments presented on the instant motion do not persuade the
5 Court to alter that ruling.

6 Nonetheless, the Court acknowledges that Plaintiff does not require information
7 from the approximately one hundred inmates listed on the roster. Accordingly, the Court
8 will grant Plaintiff's motion in part and deny it in part as set forth below.

9
10 **III. Conclusion and Order**

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff's motion for an unredacted copy of the inmate housing roster is
13 GRANTED IN PART AND DENIED IN PART.
- 14 2. Within fourteen (14) days, the parties shall meet and confer, and
15 Plaintiff shall then identify up to ten (10) cell numbers for which he
16 desires inmate information.
- 17 3. If Plaintiff is unable to so identify the cell numbers, Defendants shall,
18 within fourteen (14) days thereafter, provide Plaintiff with a diagram of
19 the housing unit where Plaintiff may mark the ten (10) cells for which he
20 desires inmate information. Plaintiff's review of the diagram shall take
21 place under the supervision of the Litigation Coordinator at his
22 institution and shall be permitted for no more than thirty (30) minutes.
23 No copies of the cell diagram shall be made or left with Plaintiff.
- 24 4. Within fourteen (14) days of Plaintiff identifying the cell numbers,
25 Defendants shall provide Plaintiff with the first initial, last name and
26 CDCR number associated with each individual in an identified cell at
27 the time in question.

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5. All disclosures made pursuant to this order are subject to the Court's April 5, 2017 protective order (ECF No. 102), as modified on April 17, 2017 (ECF No. 104).

IT IS SO ORDERED.

Dated: June 23, 2017

Isl. Michael J. Seng
UNITED STATES MAGISTRATE JUDGE