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

RALPH COLEMAN, et al.,

Plaintiffs,

No. 2:90-cv-0520 LKK JFM P

vs.

EDMUND G. BROWN, JR., et al.,

Defendants.

ORDER

_____ /

On July 26, 2013, the parties filed a Joint Statement Re Discovery Dispute on Production of Use of Force Videos (“Joint Statement”) (ECF No. 4719). The Joint Statement reflects that plaintiffs seek to compel production of use of force videos in connection with an evidentiary hearing now set before the assigned District Judge on plaintiffs’ May 29, 2013 motion for concerning use of force and disciplinary measures.¹ Plaintiffs contend, *inter alia*, that they “and their experts must have a copy of the videos to review, edit, and select portions for presentation at trial.” Joint Statement (ECF No. 4719) at 1. Defendants oppose plaintiffs’ motion to compel on the ground that plaintiffs have not served a discovery request; that

_____ ¹ That evidentiary hearing is set to commence on September 26, 2013 at 9:15 a.m. and to continue, as necessary, for nine additional days. See Order filed Aug. 1, 2013 (ECF No. 4726) at 3-4.

1 plaintiffs' motion is a "second improper request for reconsideration" of this court's prior orders
2 concerning production of use of force videos for review by plaintiffs' expert; and that plaintiffs'
3 argument concerning use of videos at the evidentiary hearing "does not pertain to discovery and
4 is not the proper subject of a motion to compel." Id. at 1-2. Defendants do not object to
5 producing use of force videotapes at the evidentiary hearing if that hearing proceeds.¹

6 After review of the Joint Statement, the parties will be directed to meet and confer
7 in order to identify a representative selection of use of force videos to be offered into evidence at
8 the evidentiary hearing.² The videos to be offered into evidence should be selected from those
9 reviewed by both of the parties' experts.³ The videos selected by the parties shall be of a
10 reasonable total length, but in no event shall exceed eight hours in length.⁴ Plaintiffs' request for
11 production of those videos for their separate review and editing will be denied. The court will,
12 however, require that plaintiffs be given adequate access to the use of force videos consistent
13 with the need for proper preparation for the evidentiary hearing. The question of whether the
14 representative videos selected by the parties will be presented in open court or inspected in
15 camera is reserved for the assigned District Judge.

16
17 ¹ Defendants are of the view that plaintiffs' use of force motion can be decided without
18 an evidentiary hearing. The assigned District Judge has set a deadline of September 6, 2013 for
19 the parties to file a stipulation so stating together with a joint statement of undisputed facts if
20 plaintiffs and defendants both agree that the motion can be submitted for decision without an
21 evidentiary hearing. See Order filed Aug. 1, 2013 (ECF No. 4726) at 4.

22 ² If the parties cannot agree on the representative videos to be presented at the
23 evidentiary hearing, each, as appropriate, may separately identify specific videos to offer into
24 evidence at the hearing which shall be of a reasonable total length, but in no event shall exceed
25 four hours per side in length.

26 ³ The district court has denied defendants' request to reinstate a report prepared by
27 defendants' expert and has suggested that the parties "may wish to explore the feasibility of one
28 or more joint prison tours" by the parties' experts "followed by submission of new reports that
29 rest on the same factual foundation." Order filed Aug. 1, 2013 (ECF No. 4726) at 3 & n.3.

⁴ The undersigned is leery of any proposal which includes submission of edited videos
because of concern over extensive and unproductive disputes over the editing and whether such
edited videos are portraying events out of context.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Except as expressly provided by this order, plaintiffs' motion to compel
3 production of use of force videos is denied;

4 2. The parties shall meet and confer and work together to identify a representative
5 selection of use of force videos reviewed by both plaintiffs' and defendants' experts to be offered
6 into evidence at the evidentiary hearing; those videos shall be of a reasonable total length, but in
7 no event shall exceed eight hours in length; if the parties cannot agree on the videos to be
8 presented each, as appropriate, may separately identify specific videos to offer into evidence at
9 the hearing which shall be of a reasonable total length, but in no event shall exceed four hours
10 per side in length; and

11 3. The question of whether the videos will be presented in open court or inspected
12 in camera is reserved for the assigned District Judge.

13 DATED: August 6, 2013.

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15 _____
16 DALE A. DROZD
17 UNITED STATES MAGISTRATE JUDGE

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