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

TONY RICHARD LOW,

Plaintiff,

No. CIV S-05-2211 MCE DAD P

vs.

GARY R. STANTON, et al.,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with claims brought pursuant to 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and state law. Before the court are two motions to compel further discovery brought by plaintiff.

By way of background, in his complaint plaintiff alleges that while he was detained at the Solano County Jail, on three occasions defendants Garrison and/or Rodriguez used excessive force against him. First, plaintiff alleges that on June 30, 2005, while he was talking to another officer about using the telephone, defendant Garrison grabbed plaintiff's arms, slammed his face and chest into the wall and shoved plaintiff up the stairs to his cell. (Compl. at 7.) Second, plaintiff alleges that on July 4, 2005, he pressed the unit intercom button several times and requested that the phone be turned on when defendant Garrison threatened plaintiff that if he did not stop pushing the intercom button, he would come out of the unit control tower

1 and “beat my ass.” (Id. at 8.) Plaintiff claims that when he continued to make his requests to use
2 the phone, defendants Garrison and Rodriguez opened the day room unit door and Garrison
3 struck him several times with closed fists. (Id.) Plaintiff alleges that defendants Garrison and
4 Rodriguez then dragged him across the concrete floor and kicked him inside his cell. (Id.) Third,
5 plaintiff claims that on July 19, 2005, defendant Garrison and another officer searched his cell,
6 used threatening language while doing so and asked plaintiff about a missing TV outlet fixture.
7 (Id. at 9.) Because plaintiff feared he would again be assaulted by Garrison he fled, running
8 toward an area where he knew there was a video monitoring system. (Id. 9-10.) Plaintiff claims
9 he was chased by defendant Garrison, fell to the floor and that Garrison then punched him
10 repeatedly in the head and neck area. (Id. at 10.)

11 I. Motion to Compel Production of Documents (Court Docket No. 114)

12 Plaintiff served defendants with four sets of requests for the production of
13 documents containing 106 requests for documents. Plaintiff contends that defendants failed to
14 properly respond to 89 of those requests. (Reply at 2.) Plaintiff now seeks an order compelling
15 the production of incident reports, grievances, personnel records, diagrams, and inmate rosters.
16 In his reply brief, plaintiff clarifies that his motion to compel concerns eight of his requests for
17 production of documents. (Id.)

18 A. Incident Reports

19 Plaintiff served three requests for the production of documents concerning
20 incident reports and received the following responses.

21 Set One: Request for Production of Documents No. 4

22 Any and all Incident Reports involving the use of force by any of
23 the named defendants in this action form [sic] June 29, 2004 to
November 2, 2005.

24 RESPONSE:

25 Objection. Overly broad, harassing, and burdensome. Incident
26 reports in the Solano County Jail are filed by inmate name. The
Solano County Jail houses up to 1064 inmates and the population
is in daily fluctuation. To locate all incident reports involving the

1 19 defendants named in this action would require reviewing the
2 incident report files of every inmate housed in the Solano County
3 Jail during a period of time in excess of 16 months and looking at
4 each individual incident report to determine whether any particular
report involved any of the 19 defendants. In addition, this request
seeks documents which could invade other inmate's [sic] rights to
privacy.

5 (MTC, Ex. C at 3-4.)

6 Set Two: Request for Production of Documents No. 21

7 Any and all incident reports written by defendants RODRIGUEZ
8 and GARRISON involving the use of force between the period of
June 2004 and January 2006.

9 RESPONSE:

10 Objection. Compound. Overly broad, harassing, and burdensome.
11 Incident reports in the Solano County Jail are filed by inmate
12 name. The Solano County Jail houses up to 1064 inmates and the
13 population is in daily fluctuation. To locate all incident reports
14 involving defendants RODRIGUEZ and GARRISON would
15 require reviewing the incident report files of every inmate housed
in the Solano County Jail during a twenty month period of time and
looking at each individual incident report to determine whether any
particular report was written by either RODRIGUEZ or
GARRISON. In addition, this request seeks documents which
could invade other inmate's [sic] rights to privacy.

16 (Id., Ex. E at 9.)

17 Set Four: Request No. 21

18 Any and all incident reports written by defendants Rodriguez
19 and Garrison involving the use of force between the period of June
2004 and January 2006.

20 Defendants may sanitize the incident reports blacking out the
names of all inmates involved in the interests [sic] of privacy.

21 Plaintiff would suggest [sic] that the defendants query the
22 Solano County Sheriff's Office Custody Division's computer
system by defendants [sic] name and identification number in order
to obtain the requested documents.

23 In any case make an effort to obtain the requested documents or
document your reasons for not making the effort.

24 RESPONSE: Objection. Compound. Vague and ambiguous as to
25 whether the plaintiff is requesting all incident reports concerning
26 himself or all incident reports prepared by RODRIGUEZ and
GARRISON involving the use of force. If the plaintiff is
requesting the former, all incident reports concerning himself have

1 already been produced. If the plaintiff is requesting the latter,
2 responding parties further object that the request is overly-broad,
3 harassing, and burdensome. Incident reports in the Solano County
4 Jail are filed by inmate name. The Solano County Jail houses up to
5 1064 inmates and the population is in daily fluctuation. To locate
6 all incident reports written by RODRIGUEZ and GARRISON
7 involving the use of force between June 2004 and January 2006
8 would require reviewing the incident report files of every inmate
9 housed in the Solano County Jail during a twenty month period of
10 time and looking at each individual incident report to determine
11 whether any particular report was written by either RODRIGUEZ
12 or GARRISON and, further, whether it involved the use of force.
13 In addition, this request seeks documents which could invade other
14 inmates' rights to privacy.

15 (Id., Ex. I at 13-14.)

16 In his motion, plaintiff argues that discovery should not be denied because
17 defendants have an inefficient system for maintaining their records, citing Fagan v. District of
18 Columbia, 136 F.R.D. 5, 7 (D. D.C. 1991). (MTC at 4.) Plaintiff states in his declaration that he
19 needs the incident report written by defendants Garrison and Rodriguez "to establish their
20 personal frequency and propensity to use force." (Id., Pl.'s Decl, ¶ 23 at 5.)¹

21 In opposing the motion to compel, defendants have submitted the declaration of
22 Sergeant Donna Cameron, a classification sergeant at the Solano County Jail's Fairfield detention
23 facility. (Opp'n, filed May 2, 2008, Donna Cameron Decl. (Cameron Decl.)² at 1-2.) Sergeant
24 Cameron explains that incident reports are maintained only electronically rather than on paper.
25 (Cameron Decl. at 2.) She states that incident reports are retrievable by entering in the computer
26 the name of the inmate or the incident report number. (Id.) She declares that the computer
system does not allow for the retrieval of incident reports based on the name of the officer who
authored a particular report, the nature of the incident, or the staff person who was the subject of
the grievance. (Id.) Thus, Sergeant Cameron states:

¹ Court Docket No. 114 at 14.

² Court Docket No. 116, Part 6.

1 To locate all incident reports or inmate grievances involving a
2 particular staff person at the Solano County jail over a specified
3 time period would require reviewing every incident report or
4 inmate grievance of every inmate housed in the Solano County jail
during the specified period of time and looking at each individual
incident report or inmate grievance to determine whether any
particular report or grievance involved the specified staff person.

5 (Id.)

6 Defendants argue that plaintiff seeks the production of incident reports which are
7 not relevant to this action and not likely to lead to evidence that would be admissible at trial in
8 any event. (MTC at 3-4, 7-8.) In this regard, defendants argue that plaintiff has already been
9 provided incident reports that involved himself, producing incident reports unrelated to this
10 action would invade the privacy of the other jail inmates who are the subject of those reports, and
11 reports regarding other incidents involving different inmates and possibly different officers are
12 not relevant to this action since the issue of whether excessive or proper force was used against
13 plaintiff will be determined based on the facts of this case. (Id. at 4-5 and 8.)

14 In his reply, plaintiff argues that defendants have “no standing” to argue that the
15 jail filing system prevents them from producing the requested documents or to suggest how
16 plaintiff should conduct his discovery. (Reply at 4.) Plaintiff also disputes defendants’
17 contention that plaintiff’s discovery efforts are an attempt to harass defendants or that the
18 discovery requests are invalid because of compound language. (Id. at 6-7.)

19 Plaintiff’s motion seeking the production of incident reports will be denied. The
20 court agrees that plaintiff’s request for production number 4 is overly broad since plaintiff’s
21 excessive force claim concerns only defendants Garrison and Rodriguez. In addition, the court is
22 not persuaded that the production of all incident reports written by defendants Garrison or
23 Rodriguez over an 18 month period (request number 28 for sets two and four), would produce
24 any information relevant to this action. To the extent that plaintiff seeks such reports in an
25 attempt to show that defendants Garrison and Rodriguez had a propensity for using excessive
26 force, such evidence would be inadmissible to prove conduct. See Rule 404(b) of the Federal

1 Rules of Evidence (“Evidence of other crimes, wrongs, or acts is not admissible to prove the
2 character of a person in order to show action in conformity therewith.”). As one district court has
3 stated in denying a similar discovery request:

4 The plaintiffs might further contend that the documents could lead
5 to admissible evidence against the individual officers in question,
6 as these past incidents of excessive force might bear on the case at
7 issue. This sort of past conduct evidence is not admissible in
8 federal courts, with very narrow exceptions. Fed.R.Evid. 404(b). It
9 further appears that the documents are not likely to lead to
admissible evidence. The liability of the individual police officer
arises out of this particular incident. Evidence of other similar
incidents could only show a propensity for excessive use of force.
This is the sort of conduct in conformity with character evidence
which 404(b) prohibits.

10 Segura v. City of Reno, 116 F.R.D. 42, 44 (D. Nev. 1987).

11 In addition, the character traits of defendants Garrison and Rodriguez are not an
12 essential element of plaintiff’s excessive force claim. Moreover, the granting of plaintiff’s overly
13 broad request would require the production of incident reports, which although authored by
14 defendants Garrison or Rodriguez, involved the use of legitimate force by officers, including
15 officers not parties to this action. Finally, the court is persuaded that the discovery request is
16 burdensome and to some extent would invade the privacy of other inmates. See Seattle Times
17 Co. v. Rhinehart, 467 U.S. 20, 35 n.21 (1984) (noting that privacy interests may be a basis for
18 restricting discovery).

19 Accordingly, plaintiff’s motion to compel will be denied with respect to his
20 request that additional incident reports be produced by defendants.

21 B. Inmate Grievances

22 Plaintiff served a request for the production of documents concerning inmate
23 grievances and received the following response.

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1 Set One: Request No. 8

2 Any and all documentation reflecting grievances filed by Solano
3 County Jail inmates specifically against any of the named
4 defendants in this action from June 29, 2004 until November 2,
5 2005.

6 RESPONSE:

7 Objection. Overly broad and not reasonably calculated to lead to
8 the discovery of admissible evidence. In addition, the request is
9 burdensome and harassing. See response to Request to Produce
10 No. 4.

11 (MTC, Ex. C at 4-5.)

12 Defendants argue that they should not be required to produce the requested
13 documents because unsubstantiated grievances from a time prior to plaintiff's arrival at the jail
14 involving incidents unrelated to those involving plaintiff are completely irrelevant to this action
15 and are not properly the subject of discovery. (Opp'n at 6.) Defendants also explain that they
16 would have to review the inmate grievances of every inmate housed at the jail for the period of
17 time requested in order to comply with this request since grievances are maintained in the jail's
18 computer system and retrievable by entering the name of the inmate that wrote the grievance or
19 by entering the grievance number. (Id.) Defendants represent that although grievances are also
20 maintained in paper form in the Classification Sergeant's office, they are filed only by grievance
21 number and the review necessary to comply with the request would be unduly burdensome. (Id.)

22 In his reply, plaintiff again argues that defendants have no standing to rely on the
23 filing system as a reason for failing to produce the grievances. (Reply at 4-5.) Plaintiff also
24 argues that the grievances he seeks are a "valuable source" of information regarding other
25 complaints against jail personnel which would help substantiate his claims in this case. (Id. at 5.)

26 Plaintiff's arguments are unpersuasive for the same reasons set forth above with
 respect to his request incident reports. The request is therefore overly broad, burdensome, and
 requires the production of documents not relevant to this action. Accordingly, the court will
 deny plaintiff's motion to compel further production of inmate grievances.

1 C. Personnel Records

2 Plaintiff served two requests for the production of documents concerning the
3 personnel files of the defendant officers and received the following responses.

4 Set Two: Request for Production of Documents No. 28

5 The complete personnel record of defendant GARRISON,
6 including but not limited to:

7 1. Job description 2. Commendations. 3. Reprimands. 4. Letters
8 of instructions. 5. Citizen's complaints. 6. Workman's [sic]
9 Compensation claims. 7. Injury reports. 8. Complaints and/or
10 Grievances filed against him. This request shall exempt any
11 personal information such as: 1. Home address. 2. Phone
12 numbers, 3. Social Security Number, 4. W2-Forms. 5. Financial
13 information or other information not reasonably related to the
14 performance of his duties as a sheriff employee.

15 RESPONSE: Objection. Compound and not reasonably calculated
16 to lead to the discovery of admissible evidence. Vague and
17 ambiguous as to which entity's personnel records regarding
18 GARRISON are being requested. Overly broad, harassing,
19 burdensome and vague as to time. Inmate grievances are filed by
20 inmate name. The Solano County Jail houses up to 1064 inmates
21 and the population is in daily fluctuation. To locate all inmate
22 grievances involving GARRISON would require reviewing the
23 grievance files of every inmate housed in the Solano County Jail
24 during GARRISON'S employment and looking at each individual
25 grievance to determine whether any particular grievance involved
26 GARRISON. In addition, this request seeks documents which
could invade other inmate's [sic] rights to privacy.

This request also asks for documents protected from disclosure
pursuant to California Penal Code §832.7 and the official
information privilege and seeks documents not related to a claim or
defense in this litigation. See declaration of Lieutenant Charles
Johnson. In addition, this request invades GARRISON'S right to
privacy.

21 (MTC, Ex. E at 11-12.)³

22 Set Four: Request No. 28

23 The complete personnel record of defendant Garrison, including
24 but not limited to:

25 1. Job description
26 2. Commendations

³ Court Docket No. 114 at 48-49.

- 1 3. Reprimands
- 2 4. Letters of instructions [sic]
- 3 5. Citizen's complaints and/or grievances filed against him
- 4 6. Workmen's [sic] Compensation claims
- 5 7. Injury reports
- 6 8. Solano County Sheriff Department complaints or grievances
- 7 within his personnel file

This request shall exempt any personal information such as:

- 5 A. Home address
- 6 B. Phone numbers
- 7 C. Social Security Number
- 8 D. W2 forms
- 9 E. Financial information

or other information not reasonably related to the performance of his duties as a Solano County Sheriff employee. The personnel record requested is in the possession of the Solano County Sheriff's Department.

This request is made pursuant to F.R.C.P. 34 and in accordance with FRCP 26(b)

If the defendants raise claims of privilege that plaintiff ask [sic] that defendants describe the nature of the documents, things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the plaintiff or other parties to assess the applicability of the privilege or protection.

14 RESPONSE: Objection. Compound and not reasonably calculated
15 to lead to the discovery of admissible evidence. Overly broad,
16 harassing, burdensome and vague as to time. Inmate grievances
17 are filed by inmate name. The Solano County Jail houses up to
18 1064 inmates and the population is in daily fluctuation. To locate
19 all inmate grievances involving GARRISON would require
20 reviewing the grievance files of every inmate housed in the Solano
21 County Jail during GARRISON'S employment and looking at
22 each individual grievance to determine whether any particular
23 grievance involved GARRISON. In addition, this request seeks
24 documents which could invade other inmate's right to privacy.
25 This request also asks for documents protected from disclosure
26 pursuant to California Penal Code §832.7 and the official
information privilege and seeks documents not related to a claim or
defense in this litigation. See declaration of Lieutenant Charles
Johnson produced with responding parties' response to request for
production of documents, set two. In addition, this request invades
GARRISON'S right to privacy.

24 (MTC, Ex. I at 16-17.)

25 The Lieutenant Johnson referred to by defendants states in his declaration filed
26 with the court that Sheriff Department policy requires that officer personnel files be

1 confidentially maintained and that, in his opinion, the release of such information would put an
2 officer at risk, compromise the security of the Department and the officer, and thwart open
3 communication between commanding officers and their subordinates. (Id., Ex. F at 1-2.)⁴
4 Finally, Lieutenant Johnson indicates that he personally reviewed defendant Garrison’s personnel
5 file and “it is my opinion that none of the records contained in that file is relevant to the
6 allegations of plaintiff’s complaint.” (Id., Ex. F at 2.) Defendants request at the very least in
7 camera review of the requested personnel file before the court determines whether any
8 documents from that file should be produced. (Id.)

9 Plaintiff argues that defendants cannot claim a privilege which is based on state
10 law, and that defendants must identify the specific privilege they are asserting. (MTC at 5-7.)
11 Plaintiff argues that Lieutenant Johnson’s declaration establishes that the documents he seeks
12 have been released to persons outside this litigation and no privilege can be asserted because of
13 that disclosure. (MTC at 7.) Plaintiff states that he needs defendant Garrison’s personnel
14 records to establish his history of using excessive force, to locate witnesses who could testify as
15 to that history and to establish collusion between the defendants concerning the unconstitutional
16 use of force. (Pl’s Decl. at 5-6.)⁵

17 Defendants argue that defendant Garrison is entitled to protection of his personnel
18 file by the official information privilege. (Opp’n at 11.) Citing Sanchez v. City of Santa Ana,
19 936 F.2d 1027, 1033 (9th Cir. 1990), defendants argue that government personnel files are
20 considered official information which are privileged if the potential benefits of disclosure
21 outweigh the potential disadvantages. (Id.) In order to apply the privilege, defendants must file
22 a declaration or affidavit which shows (1) the material in issue has been kept confidential, (2) the
23 official has reviewed the material in question, (3) the governmental interest that would be

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25 ⁴ Plaintiff’s Exhibit F is at Court Docket No. 114, pages 54-55.

26 ⁵ Court Docket No. 114 at 14-15.

1 threatened by disclosure, (4) the disclosure even with a protective order would create a
2 substantial risk of harm to significant governmental interests, (5) a projection of the harm if
3 disclosure was made. (Id.) (citing Kelly v. San Jose, 114 F.R.D. 653, 670 (N.D. Cal. 1987)).
4 Defendants contend that through the declaration submitted by Lieutenant Johnson they have
5 fulfilled those requirements with respect to plaintiff's request. (Opp'n at 12-13.) Defendants
6 also argue that plaintiff could have acquired the information he seeks through use of
7 interrogatories, rather than by seeking the disclosure of defendant Garrison's personnel file. (Id.
8 at 13.) Lastly, defendants argue that the disadvantages to disclosure outweigh any potential
9 benefits in this case because disclosure would needlessly and dangerously expose Garrison's
10 personal information and thereby chill open communication between commanding officers and
11 their subordinates, seriously impacting the supervision and disciplinary procedures within the
12 Solano County Sheriff's Department. (Id. at 13-14.)

13 In reply plaintiff asserts that defendant Garrison's use of force against him was
14 not an aberration and that information in Garrison's personnel file could lead to the discovery of
15 admissible evidence that would substantiate plaintiff's claims against Garrison and his employer.
16 (Reply at 7.)

17 Plaintiff's request for production in this regard is overly broad. See Glass v. Diaz,
18 No. 1:04-CV-5953-AWI-DLB-P, 2007 WL 2022034 (E.D. Cal. July 9, 2007) ("Plaintiff may not
19 use discovery as a fishing expedition entitling him to review defendants' personnel files in their
20 entirety.") Plaintiff did not limit his request for personnel file records to those concerning the use
21 of excessive force nor did plaintiff limit the time period covered by his request. Plaintiff has also
22 made no showing concerning the relevancy of defendant Garrison's worker's compensation
23 claims, injury reports, letters of instructions, commendations and job description. Although
24 personnel records of police officers who have allegedly engage in the excessive use of force may
25 be subject to discovery pursuant to properly limited requests for production, plaintiff has not

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1 made such a properly limited request here. Accordingly, the court will deny plaintiff's motion to
2 compel the broad production of defendant Garrison's personnel files.

3 D. Diagrams

4 Plaintiff served a request for the production of documents concerning diagrams
5 and received the following response.

6 Set Three: Request No. 7

7 The Facility Administrators [sic] written policies and procedures
8 for an exercise [sic] and recreation plan at the County Jail,
9 including diagrams of all designated exercise [sic] areas and the
exact locations within the County Jail were [sic] exercise [sic] is
permitted and authorized: The CCR § 1065 mandates the plan.

10 RESPONSE: Objection. Requesting diagrams of the facility poses
11 a security risk and for that reason no diagrams will be produced.
12 Responding parties hereby produce Solano County Sheriff's Office
Custody Policy and Procedures No. 19.05, Recreational Inmate
Activities.

13 (MTC, Ex. H at 4-5.)⁶ Plaintiff contends that the diagram is needed "to establish exactly where
14 those locations are to prevent defendants from claiming later that an area within the facility is
15 suddenly authorized exercise [sic] areas . . . [and for] exhibits and visual aids during trial"

16 (Pl.'s Decl. ¶ 40 at 8-9.)

17 In opposing the motion to compel defendants provide the declaration of
18 Lieutenant Rod Marsh who attests to the security concerns should a diagram of the physical
19 layout of the jail be produced. He states in this regard:

20 From this information, he could determine the precise location of
21 all exit doors, security doors, fire doors, entrances, and exits into
22 and out of these areas. He could calculate exact distances between
23 points and estimate response times to different areas within the jail.
All of this information would be of immeasurable value to an
inmate in plotting an escape or an attack on staff or another inmate.

24 (Opp'n, Marsh Decl. ¶ 3 at 2.)

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26 ⁶ Court Docket No. 114 at 60-71.

1 The court is persuaded by the security concerns expressed by Lieutenant Marsh in
2 his declaration and is unconvinced that the requested information is necessary to allow plaintiff
3 to properly prepare his case. Accordingly, plaintiff's motion to compel the production of the
4 requested jail diagrams will be denied.

5 E. Roster of Inmates

6 Plaintiff served a request for the production of documents seeking a roster of jail
7 inmates on certain dates and received the following response.

8 Set Three: Request No. 16

9 County Jail Roster or list of detainees containing the names and
10 identification numbers of any and all inmates assigned to and
11 housed within the County Jail, 4th Floor, Max-A side, A-Module
12 on the following dates:

- 13 A. July 14, 2005
- 14 B. July 19, 2005

15 RESPONSE: Objection. This request seeks documents that
16 invade the right of privacy of other inmates and are protected from
17 disclosure by Cal. Penal Code § 13300 et seq.

18 (MTC, Ex. H at 8.) In his declaration, plaintiff explains that he needs a roster of jail inmates on
19 the days in question to help him locate potential witnesses to the beatings he suffered while
20 incarcerated at the jail. (Id., Pl.'s Decl. ¶ 45 at 10.)

21 Defendants argue that such disclosure not only violates other inmates' right of
22 privacy, but also seeks irrelevant information. (Opp'n at 19.) Defendants point out that in his
23 complaint plaintiff alleges that he was the victim of officers using excessive force on June 30,
24 2005, July 4, 2005, and July 19, 2005. Therefore, defendants argue, a roster of jail inmates for
25 July 14 is irrelevant. (Id.) Moreover, defendants argue that since plaintiff alleges that the beating
26 on July 19, 2005 occurred away from the housing unit, his need for the requested information is
questionable and clearly outweighed by the interest of the other jail inmates in preserving their
privacy. (Id.)

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1 In reply, plaintiff points out that he requested the roster for July 4, not July 14 and
2 that inmates in the housing unit would have a clear and unobstructed view of the areas around the
3 unit control booth and the officer desk, and the area outside the housing units, where the alleged
4 uses of excessive force occurred. (Reply at 10-11.)

5 Plaintiff has neither alleged nor presented any evidence that any other inmates at
6 the jail witnessed the alleged use of excessive force against him. Rather, plaintiff merely
7 speculates that other inmates may have observed the events in question. Moreover, there are a
8 variety of less-intrusive ways in which plaintiff could have sought information more likely to
9 identify any witnesses than by broadly requesting the entire roster of inmates housed at the
10 county jail on several days in 2005. The discovery request that is the subject of the motion to
11 compel appears to be a fishing expedition and not a legitimate and carefully honed attempt to
12 identify legitimate witnesses. Accordingly, and in light of the privacy rights of the other jail
13 inmates, the court will deny plaintiff's motion for the production of a roster of inmates and their
14 identification numbers.

15 II. Plaintiff's Second Motion to Compel (Court Docket No. 120)

16 In his second motion to compel, plaintiff seeks responses to his request for
17 admissions, set one, served on defendants on May 14, 2008. Defendants oppose the motion,
18 arguing that the request for admissions was untimely pursuant to the court's scheduling order.

19 The court's March 6, 2008 Scheduling Order set June 20, 2008 as the deadline for
20 discovery. The required that motions to compel discovery needed to be filed by that date and that
21 all requests for discovery needed to be served not later than sixty days prior to that date.

22 Therefore, under that Scheduling Order the deadline for serving discovery requests on the
23 opposing party was April 21, 2008. Since plaintiff's request for admissions was served on
24 defendant well after that date, they were untimely. Accordingly, plaintiff's motion to compel
25 responses to his untimely request for admissions will be denied.

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1 CONCLUSION

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

3 1. Plaintiff's motion to compel (Court Docket No. 114), filed on April 11, 2008,
4 is denied; and

5 2. Plaintiff's motion to compel (Court Docket No. 120), filed on June 13, 2008, is
6 denied.

7 DATED: January 6, 2009.

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10 _____
11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

11 DAD:4
12 low2211.mtc2a