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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRYL L. HUBBARD,
Plaintiff,
v.
C.D. HOUGLAND,
Defendants.

No. 2:09-cv-0939 TLN AC P

ORDER

Plaintiff is a former state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are plaintiff’s motions for a gag order and to compel discovery. ECF Nos. 170, 171.

I. Motion for Gag Order

In his motion for a “gag order,” plaintiff requests that the court issue an order preventing defendants attorneys

from revealing, discussing, or relating any part of plaintiff’s Exhibit list, or from giving any indications to the defendants themselves, on how plaintiff is going to conduct his case, based on anything in plaintiff’s pretrial statement, or the fact that plaintiff has motioned the court for a gag order in the first place.

ECF No. 170 at 2. Plaintiff asserts that this request is made based on fear for his safety. Id. The court construes the motion for a “gag order” as a motion for protective order. Defendants oppose

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1 the motion on the grounds that plaintiff has not met his burden for obtaining a protective order.
2 ECF No. 174.

3 In order to obtain a protective order limiting to whom documents are disclosed, the
4 moving party must show good cause for the restriction. Fed. R. Civ. P. 26(c)(1). “The party
5 opposing disclosure has the burden of proving ‘good cause,’ which requires a showing ‘that
6 specific prejudice or harm will result’ if the protective order is not granted.” In re Roman
7 Catholic Archbishop of Portland in Oregon, 661 F.3d 417, 424 (9th Cir. 2011) (quoting Foltz v.
8 State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003). “‘Broad allegations of
9 harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c)
10 test.’” Beckman Indust., Inc. v. Int’l Ins. Co., 966 F.2d 470, 476 (9th Cir. 1992) (quoting
11 Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3rd Cir. 1986)).

12 Plaintiff’s only articulated reason for requesting the protective order is that he fears for his
13 safety from defendants and their co-workers due to past misconduct. ECF No. 170. Not only are
14 plaintiff’s allegations of misconduct broad and non-specific, but plaintiff is no longer in the
15 custody of the California Department of Corrections and Rehabilitation (CDCR), making any
16 claims of retaliation tenuous at best. Plaintiff has failed to point to any specific harm that he will
17 suffer if defendants’ counsel is permitted to communicate with his clients regarding plaintiff’s
18 trial exhibits and pretrial statement.

19 Additionally, as defendants point out, the majority of plaintiff’s exhibits, as identified in
20 his pretrial statement, are documents created by public entities, most of which are available
21 publicly online. ECF No. 172 at 7-8, Exhibits 1-10, 13. To the extent plaintiff seeks to prevent
22 defendants’ counsel from discussing public agency documents with his clients, especially those
23 made available online to the general public, the court finds no good cause for such a restriction.
24 The court also finds no good cause for preventing defendants’ counsel from discussing “old news
25 reports” with his clients. Id. at 8, Exhibit 16. Plaintiff’s other listed exhibits include his CDCR
26 medical records and healthcare appeal. Id., Exhibits 11, 12, 14, 15. To the extent plaintiff’s
27 medical records and healthcare appeal deal with injuries he allegedly suffered as a result of
28 defendants’ use of force, plaintiff has put his injuries at issue by bringing this lawsuit and he has

1 not established any good cause for preventing counsel from discussing those records and alleged
2 injuries with his clients.

3 Plaintiff's request that defense counsel also be prevented from discussing with his clients
4 how plaintiff plans to conduct his case, based on his pretrial statement and motion for a gag order,
5 is also unsupported by any good cause. Both documents are publicly filed and it is counsel's
6 responsibility to properly prepare his clients for trial. It would be unsurprising if such preparation
7 necessarily included discussing with his clients what to expect from plaintiff at trial. Plaintiff
8 provides no good cause for restricting defendants' communications with their counsel and
9 preventing them from participating fully in their defense against plaintiff's allegations.

10 For these reasons, plaintiff's motion for a protective order will be denied.

11 II. Motion to Compel

12 Plaintiff has also filed a motion to compel discovery items. ECF No. 171. Specifically,
13 he seeks to compel (1) a replacement of the use of force training video, (2) a copy of the video of
14 his interview conducted by Sgt. Thompson, and (3) the remainder of defendant Hougland's
15 misconduct history. Id. Discovery in this matter closed on September 3, 2013. ECF No. 120 at
16 5. There was a limited re-opening of discovery in order to complete discovery in accordance with
17 the March 18, 2014 order on plaintiff's motion to compel, and limited discovery closed on
18 December 1, 2014, when defendants served their supplemental responses. ECF Nos. 133, 146,
19 148.

20 Since defendants have represented that they will provide plaintiff with another copy of the
21 use of force training video (ECF No. 175 at 5), the motion as to this request will be denied as
22 moot.

23 With respect to the video of plaintiff's interview, defendants state that plaintiff's records
24 reflect that he was given an opportunity to view the recorded interview. ECF No. 175 at 4. It
25 appears that plaintiff was incarcerated at that time. Id. Plaintiff has not previously raised issues
26 with the response to this production request (ECF No. 123) and if plaintiff sought to compel
27 production of a physical copy of the interview upon his release from prison, the time for doing so
28 has long since passed as plaintiff has been out of CDCR custody since at least October 10, 2012

1 (ECF No. 108), and discovery closed on September 3, 2013 (ECF No. 120 at 5).

2 As for the request for the remainder of defendant Hougland's misconduct history, it
3 appears that plaintiff is alleging that defendants failed to fully comply with the March 18, 2014
4 discovery order. Defendants provided their supplemental responses on December 1, 2014, nearly
5 two years ago (ECF No. 148) and plaintiff offers no explanation for the delay in bringing the
6 alleged deficiency to the court (ECF No. 171). Moreover, the court's order only required
7 defendant Hougland to produce "documentation to which he has access at HDSP or any other
8 CDCR facility or located within his own personnel file" (ECF No. 133 at 12), and defendants
9 state that they have provided documentation as far back within the required timeframe as they can
10 access (ECF No. 175 at 5).

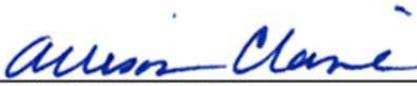
11 For the reasons addressed above, plaintiff's motion to compel will be denied.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Plaintiff's motion for a gag order (ECF No. 170) is construed as a motion for a
14 protective order and is denied.

15 2. Plaintiff's motion to compel (ECF No. 171) is denied.

16 DATED: October 18, 2016

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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