

1 that defendants did not act in bad faith,¹ but rather acted in good faith by offering to produce
2 records for the calendar year 2008, which were discovered during the search for the 2009 cell
3 search records.² (Id. at 5:1-3.)

4 Defendants seeks relief from the Magistrate Judge's order denying his motion for
5 sanctions on the grounds that, prior to issuing its order, the court did not consider Plaintiff's reply
6 to Defendant's opposition to Plaintiff's motion, which Plaintiff filed the same day the court issued
7 its order. Plaintiff states that, in his reply, he argued that defendant grossly misstated that "he
8 made an offer to produce the 2008 cell search records." (ECF 113 at 9:26-9:1.)

9 Local Rule 303(c) provides that a party may seek reconsideration of a magistrate judge's
10 order by a district judge. Federal Rule of Civil Procedure 72(a) provides that a party may serve
11 objections to a magistrate judge's order and "[t]he district court in the case must consider timely
12 objections and modify or set aside any part of the order that is clearly erroneous or contrary to
13 law." Local Rule 230(j) further requires that a party seeking reconsideration of a court order
14 demonstrate "new or different facts or circumstances claimed to exist which did not exist or were
15 not shown upon such prior motion, or what other grounds exist for the motion."

16 Here, because Plaintiff has not shown any new facts or different circumstances that did
17 not exist at the time Plaintiff filed his motion, Plaintiff's request for reconsideration is denied.
18 First, the court finds unavailing Plaintiff's contention that the Magistrate Judge erred by not
19 considering Plaintiff's reply before issuing the order denying sanctions. Local Rule 230(l)
20 requires that, in prisoner actions, the moving party file a reply within seven days after service of
21 the opposition. In this case, the opposition was served on June 25, 2013, and Plaintiff filed his
22 reply on June 10, 2013, eight days past the July 2, 2013 deadline. Moreover, and more
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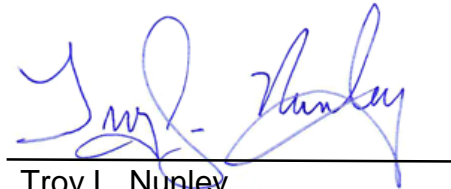
24 ¹ As the Magistrate Judge noted, sanctions are appropriate only in "extreme circumstances"
25 and where the violation is "due to willfulness, bad faith, or fault of the party." Fair Housing of
Marin v. Combs, 285 F.3d 899, 905 (9th Cir. 2002.)

26 ² The court also declined to sua sponte require defendant and counsel defendant to produce
27 plaintiff 2008 cell records because: (1) Plaintiff failed to file a reply to defendant's opposition to
28 summary judgment; (2) defendant provided plaintiff with standard cell search records; and (3)
this action had been pending for three years and the court had been extremely liberal with
discovery deadlines.

1 importantly, after a scrupulous review of both the motion for sanctions and the reply, this Court
2 finds that Plaintiff presented no new facts or evidence in his reply that were absent from his
3 motion. As such, Plaintiff's entire premise that failure to consider his reply was error is
4 inherently flawed.

5 Based on the foregoing, the court finds that: (1) the Magistrate Judge's discretionary
6 decision to deny Plaintiff's request for sanctions was neither clearly erroneous nor contrary to
7 law, and (2) Plaintiff has not adduced any new facts or evidence that were unavailable at the time
8 he filed his motion. As such, Plaintiff's request for consideration of the Magistrate Judge's order
9 denying Plaintiff's motion for sanctions is DENIED.

10 Dated: March 14, 2014

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Troy L. Nunley
United States District Judge

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