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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH JOHNSON,  
Plaintiff,  
v.  
E. SANDY, et al.,  
Defendants.

No. 2:12-cv-2922 JAM AC P

ORDER

On September 29, 2014, defendants filed a motion for reconsideration in part of the magistrate judge’s order filed September 15, 2014. (ECF No. 67.) Plaintiff filed an opposition on October 10, 2014 (ECF No. 77), and defendants filed a reply on October 16, 2014.<sup>1</sup> By this request, defendants sought reconsideration of two parts of the magistrate judge’s order, specifically, that part of the order requiring defendants to produce documents responsive to the following two requests from plaintiff’s first set of requests for production of documents:

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<sup>1</sup> On November 3, 2014, plaintiff filed a response to defendants’ reply brief. (ECF No. 82.) On November 12, 2014, defendants moved to strike, inter alia, this response as an unauthorized surreply. (ECF No. 85.) Defendants’ motion was submitted with the filing of their reply. See Local Rule 230(g). Plaintiff’s response is unauthorized and has not been considered by the court. Defendants’ motion to strike will be granted as to this response. Defendants also move to strike plaintiff’s response to defendants’ privilege log (ECF No. 81). That matter is pending before the magistrate judge and that part of defendants’ motion to strike is not resolved by this order.

1 Set One, RFP No. 12: Any and all formal and informal written  
2 complaints (including but not limited to CDCR 602 forms) against  
3 any defendants, alleging excessive use of force that occurred prior  
4 to (June 22, 2012) to the present (including all written responses,  
5 appeals, reports, investigations, and/or correspondence regarding  
6 the complaints).

7 Set One, RFP No. 36: Any and all grievances, complaints, or other  
8 documents received by defendants, their agents or supervisors at  
9 CSP-Solano concerning mistreatment of inmates by defendants: E.  
10 Sandy, J. Cruzen, K. Lavagnino, D. Lavergne, E. Cobain, and any  
11 memoranda, investigative files, or other documents created in  
12 response to such documents since June 22, 2012 to the present.

13 and that part of the order requiring defendants Cruzen, Lavagnino, Lavergne and Cobian to  
14 answer the following interrogatory:

15 Set One, INT No. 5: During your employment as a (CDC) officer  
16 have you ever had any 602 complaints filed against you. If so  
17 explain (A) have you ever been accused of excessive force[?]"

18 Order filed September 15, 2014 (ECF No. 61) (quoting ECF No. 56-4 at 8-9, 19-20).

19 By order filed November 21, 2014, defendants Cruzen, Lavagnino, Lavergne and Cobian  
20 were directed to, within fifteen days, answer interrogatory number 5 of plaintiff's first set of  
21 interrogatories in the manner required by the magistrate judge and file their answers with the  
22 court. Order filed November 21, 2014 (ECF No. 86) at 2. The order further required any  
23 defendant whose answer was in the affirmative to inform the court in writing how many excessive  
24 force 602 complaints had been filed against said defendant date from five years prior to June  
25 2012 through the present. *Id.* Defendants have complied with that order. (ECF Nos. 90, 91, 92,  
26 93.)

27 Defendants Lavagnino, Lavergne and Cobian have all responded that there were no  
28 allegations of excessive force against them by any inmate other than plaintiff for the relevant time  
29 period. See ECF No. 90-1 (Cobian); ECF No. 91-1 (Lavagnino); ECF No. 92-1 (Lavergne).<sup>2</sup> It  
30 follows from the amended interrogatory responses of these defendants demonstrate that there are

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31 <sup>2</sup> None of these defendants identified their response as responsive to interrogatory number 5 of  
32 plaintiff's first set of interrogatories. See ECF No. 90-1 (Cobian) (Amended Response to  
33 Interrogatory, Set One, No. 13); ECF No. 91-1 (Lavagnino) (Amended Response to Interrogatory,  
34 Set One, No. 1); ECF No. 92-1 (Lavergne) (Amended Response to Interrogatory, Set One, No.  
35 12). All of the responses provide the substantive information required by the magistrate judge  
36 and this court.

1 no documents responsive to requests 12 or 36 of plaintiff's first request for production of  
2 documents for these defendants to produce. As to these three defendants, then, the motion for  
3 reconsideration is moot.

4 Defendant Cruzen has responded that a "diligent and reasonable search" of records from  
5 June 2005 to the present revealed one 602 grievance against defendant Cruzen for excessive force  
6 against an inmate other than plaintiff. ECF No. 93 at 2.<sup>3</sup> Good cause appearing, defendant  
7 Cruzen will be directed to submit to the chambers of the undersigned for in camera review that  
8 grievance and all documents associated therewith that are responsive to request nos. 12 and 36 of  
9 plaintiff's first request for production of documents. Resolution of the remainder of defendant  
10 Cruzen's request for reconsideration is deferred pending the court's in camera review of  
11 documents pursuant to this order.

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

13 1. Defendants' motion to strike (ECF No. 85) is granted with respect to plaintiffs'  
14 unauthorized surreply (ECF No. 82) and remains pending before the magistrate judge with  
15 respect to plaintiff's response to defendants' privilege log (ECF No. 81); and

16 2. Within five days from the date of this order defendant Cruzen shall submit to the  
17 chambers of the undersigned for in camera review the grievance referred to in his amended  
18 interrogatory response and all documents associated therewith responsive to request nos. 12 and  
19 36 of plaintiff's first request for production of documents.

20 DATED: December 9, 2014

21 /s/ John A. Mendez

22 UNITED STATES DISTRICT COURT JUDGE

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28 <sup>3</sup> Defendant Cruzen amended his response to Interrogatory No. 1 of Plaintiff's First Set of  
Interrogatories. ECF No. 93.