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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER NATHANIEL
WASHINGTON,

Plaintiff,

v.

YOUNG, et al.,

Defendants.

No. 2:16-cv-1341 JAM DB P

ORDER AND ORDER TO SHOW CAUSE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action pursuant to 42 U.S.C. § 1983, alleging defendants violated his Eighth Amendment rights. Presently before the court is defendants’ motion for sanctions and request to seal. (ECF No. 41.)

I. Background

Plaintiff’s complaint alleges that while he was an inmate at High Desert State Prison defendants directed another inmate to physically assault him in violation of the Eighth Amendment. (ECF No. 1.) Plaintiff attached as Exhibit B to his complaint a document purportedly written by inmate Howard Grissom stating Grissom was directed by defendant correctional officers to assault plaintiff and was rewarded for carrying out the assault. (ECF No. 1 at 10.) After defendants were served, they responded by filing a motion for terminating sanctions and a request to seal. (ECF No. 41.) They allege plaintiff forged the declaration of

1 Grissom attached to the complaint in an effort to defraud the court. Defendants attached a
2 declaration purportedly signed by Grissom stating he did not write the declaration attached to
3 plaintiff's complaint and that the signature affixed to it was not his. (ECF No. 41-2.) Defendants
4 claim the declaration could be seen by inmates who have access to publicly filed court records,
5 posing a safety risk to Grissom and jeopardizing the security of the institution where he is housed.
6 (ECF No. 41-3.) Defendants request to seal the page of the complaint containing the declaration
7 allegedly written and signed by Grissom. (ECF No. 41.)

8 Plaintiff's filings in response to defendants request do not indicate that he opposes the request
9 to seal. (ECF Nos. 47, 48.) Plaintiff claims Grissom made the same statements in a declaration
10 executed on December 18, 2015¹ and repeated those statements during a visit with a
11 representative from the Prison Law Office in February 2016. (ECF No. 47.)

12 **II. Legal Standards**

13 In evaluating requests to seal, the court starts “with a strong presumption in favor of access to
14 court records.” Ctr. For Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096 (9th Cir. 2016)
15 (quoting Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003)). “The
16 presumption of access is ‘based on the need for federal courts, although independent—indeed,
17 particularly because they are independent—to have a measure of accountability and for the public
18 to have confidence in the administration of justice.’” Id. (quoting United States v. Amodeo, 71
19 F.3d 1044, 1048 (2d Cir. 1995)). Generally, if a party seeks to seal a judicial record, the party
20 bears the burden of overcoming this presumption by articulating “compelling reasons supported
21 by specific factual findings” to justify sealing the records at issue. Kamakana v. City and County
22 of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006).

23 In general, when “‘court files might have become a vehicle for improper purposes’ such as the
24 use of records to gratify spite, promote public scandal, circulate libelous statements, or release
25 trade secrets,” there are “compelling reasons” sufficient to outweigh the public’s interest in
26

27 ¹ Plaintiff attached a declaration that states it was written by Grissom and details claims similar to
28 those made in the declaration attached to plaintiff's complaint. Defendants addressed this
declaration in their reply (ECF No. 49), but did not request that it be sealed.

1 disclosure. Id. at 1179 (internal citations and alterations omitted). However, “[t]he mere fact that
2 the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to
3 further litigation will not, without more, compel the court to seal its records.” Id. (citing Foltz,
4 331 F.3d at 1136).

5 **III. Discussion**

6 Defendants have stated Grissom may become a target for assault by other inmates if the
7 declaration remains viewable by the public. They have alleged facts showing that compelling
8 reasons exist to seal the declaration because if viewed by inmates it could pose a safety risk to
9 Grissom as well as the institution where he is presently housed. See Kamakana, 447 F.3d at
10 1184; Nursing Home Pension Fund v. Oracle Corp., 01-cv-0988 MJJ, 2007 WL 3232267 *2
11 (N.D. Cal. Nov. 1, 2007) (finding compelling reason to protect confidential witnesses from
12 retaliation and harassment.).

13 Based on the information before it at this time and out of an abundance of caution, the court
14 will grant defendant’s request to seal. Additionally, plaintiff is instructed that if he intends to file
15 similar documents in the future he should seek leave of the court or request to file them under seal
16 in accordance with Local Rule 141. In granting the request to seal the court makes no
17 determination regarding the authenticity of the declaration.

18 **IV. Show Cause Hearing**

19 Defendants moved for terminating sanctions based on Grissom’s declaration that he did not
20 write or sign the declaration attached to the complaint. (ECF Nos. 41, 41-2.) Plaintiff’s response
21 indicates that the information contained in the declaration is true and Grissom executed a separate
22 declaration containing the same information in December 2015. (ECF No. 47.) After reviewing
23 defendant’s motion for terminating sanctions (ECF No. 41) and plaintiff’s response (ECF Nos. 47,
24 48), the court has determined it is necessary to have a hearing to show cause why plaintiff has not
25 violated Rule 11. See Fed. R. Civ. P. 11(c)(3) (the court may, on its own motion order a hearing
26 to show cause why conduct by a party has not violated Rule 11).

27 Federal courts have broad powers to impose sanctions against parties or counsel for improper
28 conduct in litigation. The court derives the power to impose sanctions on parties or their counsel

1 from three primary sources of authority, “(1) Federal Rule of Civil Procedure 11, which applies to
2 signed writings filed with the court, (2) 28 U.S.C. § 1927, which is aimed at penalizing conduct
3 that unreasonably and vexatiously multiplies the proceedings, and (3) the court’s inherent power.”
4 Fink v. Gomez, 239 F.3d 989, 991 (9th Cir. 2001).

5 Rule 11(b) of the Federal Rules of Civil Procedure provides that “[b]y presenting to the court
6 a pleading, written motion or other paper – whether by signing, filing, submitting, or later
7 advocating it – an attorney or unrepresented party certifies that to the best of the person’s
8 knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
9 (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay,
10 or needlessly increase the cost of litigation; . . . and (3) the factual contentions have evidentiary
11 support, or, if so specifically identified, will likely have evidentiary support after a reasonable
12 opportunity for further investigation or discovery” Rule 11(c) provides for the imposition of
13 appropriate sanctions for a violation of Rule 11(b) on any attorney, law firm or party that has
14 violated the rule or is responsible for the violation committed. Any sanction imposed must be
15 limited to what suffices to deter repetition of the conduct or comparable conduct by others
16 similarly situated. Fed. R. Civ. P. 11(c)(4).

17 Further, “courts have inherent power to dismiss an action when a party has willfully deceived
18 the court and engaged in conduct utterly inconsistent with the orderly administration of justice.”
19 Anheuser-Busch, Inc. v. Natural Beverage Distrib., 69 F.3d 337, 348 (9th Cir. 1995) (quoting
20 Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983)). “[B]ecause dismissal is
21 so harsh a penalty, it should be imposed only in extreme circumstances.” Wyle, 709 F.2d at 589.
22 “It is well-settled that dismissal is warranted where . . . a party has engaged deliberately in
23 deceptive practices that undermine the integrity of judicial proceedings” Anheuser-Busch,
24 Inc., 69 F.3d at 348.

25 At the hearing plaintiff will be required to show cause why his conduct in preparing and filing
26 the declaration of Grissom attached to his complaint is not in violation of Rule 11 and why
27 defendants’ motion for terminating sanctions should not be granted.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Defendants notice of request to seal (ECF No. 51) is granted;

3 2. The Clerk of the Court shall seal the portion of plaintiff's complaint containing Grissom's
4 declaration (ECF No. 1 at 10);


5 3. An order to show cause hearing is set before the undersigned on August 30, 2018, at 10:00
6 a.m in Courtroom 27;

7 4. Plaintiff, Grissom, and defense counsel shall make a personal appearance for the hearing
8 on August 30, 2018;

9 5. The parties may submit supplemental briefing on the order to show cause hearing. If
10 plaintiff chooses to file a supplemental brief, it shall be due no later than twenty-eight days before
11 the show cause hearing. If defendants choose to file a supplemental brief, it shall be due no later
12 than fourteen days before the show cause hearing; and

13 6. Separate orders and writs of habeas corpus ad testificandum will issue to obtain the
14 presence of plaintiff and inmate Grissom at the hearing.

15 Dated: May 31, 2018

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18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE
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21 DLB:12
22 DLB1/Orders/Prisoner-Civil rights/wash1341.seal
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