

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

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4        TODD ASHKER, et al.,  
5                                    Plaintiffs,  
6                                    v.  
7        GOVERNOR OF THE STATE OF  
8        CALIFORNIA, et al.,  
9                                    Defendants.

No. 09-cv-05796-CW

ORDER ON PLAINTIFFS' MOTION  
FOR DE NOVO REVIEW OF  
MAGISTRATE JUDGE'S DECISION  
ON RETENTION OF CLASS MEMBERS  
IN THE SHU

(Dkt No. 795)

10                                    Before the Court is Plaintiffs' motion to review and reverse  
11                                    the magistrate judge's decision on a dispositive matter referred  
12                                    to him regarding the California Department of Corrections and  
13                                    Rehabilitation (CDCR) retention of class members in the Security  
14                                    Housing Unit (SHU). Defendants filed an opposition to the motion  
15                                    and Plaintiffs filed a reply. Having considered the papers, the  
16                                    Court reviews the magistrate judge's decision de novo and affirms  
17                                    it.

18                                    FACTUAL BACKGROUND

19                                    In December 2016, the CDCR found Inmates A and B guilty of  
20                                    charges of conspiracy to murder Inmate C. The CDCR intends to  
21                                    hold Inmates A and B in the SHU for their offense until 2020.  
22                                    Declaration of Carmen E. Bremer (Bremer Decl.), Ex. A. The  
23                                    CDCR's finding was based on four prisoner notes and a letter from  
24                                    an alleged co-conspirator, Inmate D. See id. The CDCR provided  
25                                    Inmates A and B with Confidential Information Disclosure Forms  
26                                    (1030 forms), which are used to convey information that the CDCR  
27                                    deems to be confidential. Bremer Decl., Ex. B. The 1030 forms  
28

1 contain the text of the four prisoner notes and the CDCR's  
2 interpretation of those notes. See id. The names of the alleged  
3 conspirators and co-conspirators were replaced with asterisks for  
4 safety reasons. See id. The 1030 forms additionally referred to  
5 a letter from Inmate D to Inmate A about a plan to murder Inmate  
6 C. Bremer Decl., Ex. C; see also Bremer Decl., Ex. E. The 1030  
7 forms stated that Inmate D's letter constituted additional  
8 information concerning Inmate A and B's participation in the plot  
9 to murder Inmate C and that the information confirmed that the  
10 plan to murder Inmate C existed. See Bremer Decl., Ex. C.

11 Plaintiffs brought a motion before Magistrate Judge Vadas to  
12 enjoin the CDCR from retaining class members Inmates A and B in  
13 the SHU on two bases: that the CDCR did not make the requisite  
14 evidentiary showing to place Inmates A and B in the SHU and that  
15 the CDCR violated paragraph thirty-four of the Settlement  
16 Agreement by issuing inadequate 1030 forms. Docket No. 706.  
17 Judge Vadas denied the motion, holding that the Settlement  
18 Agreement terms "do not include granting the court broad, general  
19 authority to review disciplinary decisions by the CDCR using any  
20 standard . . ." Docket No. 786. Plaintiffs then brought the  
21 instant motion to challenge Judge Vadas' order. See Settlement  
22 Agreement ¶ 53.

23 LEGAL STANDARD

24 This Court reviews de novo Judge Vadas' decision. Docket  
25 No. 486-3, Settlement Agreement ¶ 53 ("An order issued by  
26 Magistrate Judge Vadas under this Paragraph is subject to review  
27 under 28 U.S.C. § 636(b)(1)(B)."). The referenced section  
28 provides, "A judge of the court may accept, reject, or modify, in

1 whole or in part, the findings or recommendations made by the  
2 magistrate judge." 28 U.S.C. § 636(b)(1).

3 DISCUSSION

4 Plaintiffs argue that the CDCR has not substantially  
5 complied with paragraph thirty-four of the Settlement Agreement.  
6 In California, "a party is deemed to have substantially complied  
7 with an obligation only where any deviation is unintentional and  
8 so minor or trivial as not substantially to defeat the object  
9 which the parties intend to accomplish." Rouser v. White, 825  
10 F.3d 1076, 1082 (9th Cir. 2016) (internal quotation marks  
11 omitted).

12 Paragraph thirty-four of the Settlement Agreement requires  
13 that the CDCR "adhere to the standards for the consideration of  
14 and reliance on confidential information set forth in Title 15 of  
15 the California Code of Regulations, section 3321." Section 3321,  
16 which defines the types of confidential information and their  
17 use, provides in relevant part:

- 18 (a) The following types of information shall be  
19 classified as confidential:  
20 (1) Information which, if known to the inmate,  
21 would endanger the safety of any person.  
22 (2) Information which would jeopardize the  
23 security of the institution.  
24 (3) Specific medical or psychological information  
25 which, if known to the inmate, would be medically  
26 or psychologically detrimental to the inmate.  
27 (4) Information provided and classified  
28 confidential by another governmental agency.  
29 (5) A Security Threat Group debrief report,  
30 reviewed and approved by the debriefing subject,  
31 for placement in the confidential section of the  
32 central file.
- 33 (b) Uses of specific confidential material.  
34 [ . . . ]  
35 (3) The documentation given to the inmate shall  
36 include:  
37 (A) The fact that the information came from a  
38 confidential source.

1 (B) As much of the information as can be  
2 disclosed without identifying its source  
3 including an evaluation of the source's  
4 reliability; a brief statement of the reason  
5 for the conclusion reached; and, a statement  
6 of reason why the information or source is  
7 not disclosed.

8 Plaintiffs argue that the CDCR failed to comply with section  
9 3321 in two ways. First, Plaintiffs contend that the CDCR  
10 violated subsection 3321(a) by redacting the names of the  
11 conspirators and co-conspirators. Specifically, Plaintiffs argue  
12 that the CDCR should have substituted the names of the  
13 conspirators and co-conspirators with identifiers that would  
14 allow Plaintiffs to distinguish them from one another. But  
15 Plaintiffs cannot point to anything in section 3321 or any other  
16 regulation that requires the CDCR to do so. The cases cited by  
17 Plaintiffs are inapposite because they do not involve section  
18 3321. Both cases concern the redaction of documents provided in  
19 litigation pursuant to the Federal Rules of Civil Procedure. See  
20 Hayes v. Corr. Corp. of Am., 2011 U.S. Dist. LEXIS 101312, \*8,  
21 2011 WL 3962153 (D. Idaho 2011); Osborn v. Bartos, 2010 U.S.  
22 Dist. LEXIS 114119, \*43 (D. Ariz. 2010). This is different from  
23 the CDCR's disclosure of confidential information in disciplinary  
24 proceedings pursuant to section 3321.

25 Second, Plaintiffs contend that the CDCR violated section  
26 3321(b) (3) (B) with respect to the 1030 form for Inmate D's  
27 letter, which Plaintiffs argue did not include "as much of the  
28 [confidential] information as can be disclosed without  
identifying its source." The CDCR's choice to provide only a  
brief summary of Inmate D's letter in the 1030 forms is notable  
considering that the CDCR provided the redacted text of the other

1 four prisoner notes. The CDCR's summary, however, accurately  
2 stated the facts relevant to the charged act of the plot to  
3 murder Inmate C. The 1030 form stated that Inmate D's letter  
4 contained additional information concerning Inmate A and B's  
5 participation in the plot to murder Inmate C, which confirmed  
6 that the plan to murder Inmate C existed. See Bremer Decl., Ex.  
7 C. This does not appear to be an attempt to obfuscate the  
8 evidence, as Plaintiffs suggest. Plaintiffs have not shown  
9 substantial noncompliance with paragraph thirty-four of the  
10 Settlement Agreement.

11 CONCLUSION

12 The Court reviews de novo the magistrate judge's decision on  
13 a dispositive matter referred to him regarding the CDCR's  
14 retention of class members in the SHU and affirms the magistrate  
15 judge's decision.

16 IT IS SO ORDERED.

17 Dated: February 28, 2018



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18 CLAUDIA WILKEN  
19 United States District Judge  
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