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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

John Roettgen,

Plaintiff,

v.

Foston, et al,

Defendant.

Case No.: 13cv1101-GPC-BGS

**ORDER ON PLAINTIFF’S MOTION
FOR RECONSIDERATION**

I. FACTUAL BACKGROUND

Plaintiff alleges that Defendants used excessive force against him on May 5, 2011, and then retaliated against him when he reported the excessive force. (ECF No. 1.) Plaintiff served discovery seeking a broad range of documents. Defendants produced a number of documents, but objected to Plaintiff’s document requests that sought unrelated grievances from third-party inmates, Defendants’ disciplinary records, internal affairs reports, and reprimands. (Declaration of Christopher H. Findley in Support of Defs.’ Opp’n to Mot. for Reconsideration (Findley Decl.) ¶ 2.)

Plaintiff moved to compel further production of documents, and Defendants opposed. (ECF Nos. 83, 84.) The Court subsequently issued an order requiring Defendants to produce “all disciplinary records, internal affairs reports and/or investigations, CDCR 602 complaints, grievances, and/or reprimands that involve

1 allegations of excessive force, retaliation, or untruthful conduct involving each of the
2 Defendants throughout the course of their employment at Richard J. Donovan
3 Correctional Facility.” (ECF No. 92 at 17-18.) The Court then analyzed Defendants’
4 objections based on privacy concerns and “acknowledge[d] that these documents may
5 contain private information such as social security numbers and addresses.” (*Id.* at 10.)

6 The Court continued:
7

8 Importantly, any invasion of the Defendants’ privacy interests can be
9 mitigated through a protective order (*Soto*, 162 F.R.D. at 617) and by
10 redacting sensitive information. *See Lamon v. Adams*, 2010 WL 4513405, at
11 *3–4 (E.D. Cal. Nov. 2, 2010) (ordering redaction of the names of the
12 inmates who filed grievances against correctional officer before documents
13 were provided to plaintiff). These measures will greatly reduce the invasion
14 of privacy that would occur with production of the documents at issue.

15
16 (*Id.*) The Court then granted “Defendants permission to redact any sensitive information
17 from all documents prior to disclosure.” (*Id.*)

18 **II. PROCEDURAL BACKGROUND**

19 On May 23, 2016, Plaintiff filed a Motion for Reconsideration. (ECF No. 95.)
20 The Motion requested that the grievances be produced with the names of the inmates
21 filing the grievances. (*Id.* at 2.) Plaintiff argued that the identity of the inmates was
22 necessary because he “may need to track down the authors in order to obtain details and
23 their willingness to testify.” (*Id.*) Plaintiff also sought to expand the Court’s definition
24 of “untruthful conduct” to allegations of filing false reports to cover up misconduct,
25 failure to protect, and keeping investigations internalized. (*Id.* at 2-3.)

26 The Court ordered Defendants to file a response to Plaintiff’s Motion by July 8,
27 2016, and ordered Plaintiff to file a reply by July 22, 2016. (ECF No. 101.)

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1 **III. RELEVANT LAW**

2 The law of the case doctrine is a judicial invention designed to aid in the efficient
3 operation of court affairs. *Lockert v. United States Dept. of Labor*, 867 F.2d 513, 518
4 (9th Cir. 1989). Under the doctrine, a court is generally precluded from reconsidering an
5 issue previously decided by the same court, or a higher court in the identical case.
6 *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988), amended, 860 F.2d 357
7 (9th Cir. 1988). For the doctrine to apply, the issue in question must have been “decided
8 explicitly or by necessary implication in [the] previous disposition.” *Liberty Mutual Ins.*
9 *Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982); accord *Eichman v. Fotomat Corp.*,
10 880 F.2d 149, 157 (9th Cir. 1989).

11 A court may have discretion to reopen a previously resolved question under one or
12 more of the following circumstances: (1) the first decision was clearly erroneous; (2) an
13 intervening change in the law has occurred; (3) the evidence on remand is substantially
14 different; (4) other changed circumstances exist; (5) a manifest injustice would otherwise
15 result. *Thomas v. Bible*, 983 F.2d 152, 155 (9th Cir. 1993).

16 **IV. CLARIFICATION REGARDING REDACTION OF INMATES’**
17 **NAMES**

18 Plaintiff appears to seek clarification regarding whether the Court ordered
19 Defendants to redact the names of the inmates who filed grievances produced in
20 discovery. Defendants explain that they took the Court’s language “grant[ing]
21 Defendants’ permission to redact sensitive information from all documents prior to
22 disclosure” to include the names of the inmates. (Findley Decl. ¶ 4.) However, because
23 the order did not explicitly require the Defendants to redact the names of the inmates,
24 Defendants do not object to the Court reconsidering its order in that respect. (ECF No.
25 106 at 4.)

26 For the law of the case doctrine to apply, the issue in question must have been
27 “decided explicitly or by necessary implication in [the] previous disposition.” *Liberty*
28 *Mutual Ins. Co.*, 691 F.2d at 441. To the extent this Court’s prior order was not explicit

1 on the issue of redaction, the Court now clarifies that it *did* intend for Defendants to
2 redact the names of the inmates filing grievances when it allowed for the redacting of
3 sensitive information. Without knowing what the documents said, the Court properly
4 balanced Plaintiff's need for the information with the privacy interests of the individual
5 inmates.

6 Moreover, to the extent Plaintiff wants this Court to reconsider allowing the
7 inmates' names to be redacted, that request is **DENIED**. Plaintiff's motion could be
8 interpreted as arguing that, because he has now received the documents from Defendants,
9 this constitutes a changed circumstance warranting reconsideration of this Court's order
10 allowing for inmates' names to be redacted. However, Plaintiff has not made a specific
11 showing that *any* documents support a re-balancing of factors in his favor, such that the
12 privacy interest held by any inmate would be outweighed by the relevance of that
13 information to Plaintiff's claims. Other than supplying the Court with hundreds of
14 documents produced by Defendants, Plaintiff has not identified a single incident
15 evidenced by those documents that would compel this Court to override its prior order
16 allowing for redaction of inmates' names. The Court will not sanction a carte-blanche
17 disclosure of every inmate's name in Defendants' production. That would allow for
18 precisely the type of fishing expedition the Federal Rules of Civil Procedure seek to
19 avoid.

20 Plaintiff has not made a specific showing that would warrant disclosing the identity
21 of any inmates named in Defendants' production. As a result, Defendants need not
22 supplement their production to disclose any inmates' names.

23 **V. CLARIFICATION REGARDING "UNTRUTHFUL CONDUCT"**

24 The Court ordered Defendants to produce inmate grievances, internal affairs
25 investigations, and disciplinary reports involving allegations of excessive force,
26 retaliation, or untruthful conduct. (ECF No. 92 at 17-18.) Plaintiff asks this court to
27 expand the definition of untruthful conduct to include (1) filing false reports to include
28 investigative reports and inmate disciplinary; (2) filing false reports so as to cover up

1 misconduct; (3) failure to protect; and (4) keeping investigations internalized in order to
2 prevent outside discovery. (ECF no. 95 at 3.)

3 Without agreeing that these definitions are appropriate, Defendants represented as
4 follows: “in producing inmate grievances, internal affairs investigations, and disciplinary
5 reports involving allegations of excessive force, retaliation, or untruthful conduct,
6 Defendants did not withhold, and produced all grievances, internal affairs investigations,
7 and disciplinary reports that related to (1) allegations of filing false reports, including (2)
8 reports to cover up misconduct; (3) allegations of failure to protect; and (4) allegations of
9 keeping investigations internalized in order to prevent outside discovery. (Findley Decl.
10 ¶ 5.)

11 Without endorsing Plaintiff’s expanded definition of the term “untruthful,” the
12 Court finds that Plaintiff’s request for clarification of the term is MOOT. Even under
13 Plaintiff’s definition, Defendants state that they have produced all relevant documents.
14 The Court cannot compel production of documents that have already been produced.

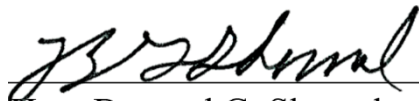
15 **VI. CONCLUSION**

16 Plaintiff’s Motion for Reconsideration **DENIED**. The Court clarifies that it did
17 intend for the inmates’ names to be redacted in its original order. The Court still finds
18 that Defendants are not required to disclose the names of the inmates who filed any
19 grievances produced to Plaintiff in discovery.

20 As for Plaintiff’s request for an expanded definition of the term “untruthful,” the
21 Court finds that Plaintiff’s request is **MOOT** because Defendants represented that they
22 have produced all documents responsive to Plaintiff’s expanded definition.

23 **IT IS SO ORDERED.**

24 Dated: September 1, 2016

25 
26 Hon. Bernard G. Skomal
27 United States Magistrate Judge
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