

THE HONORABLE RICHARD A. JONES

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 CASE NO. 2:17-cv-00094-RAJ

12 ABDIQAFAR WAGAFE, *et al.*,
13 Plaintiffs,

ORDER

14 v.

15 DONALD TRUMP, *et al.*,
16 Defendants.
17

18
19 This matter comes before the Court on Defendants’ motion for reconsideration.
20 Dkt. # 99. Plaintiffs oppose the motion. Dkt. # 100. For the following reasons, the
21 Court **DENIES** the motion.

22 “Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will
23 ordinarily deny such motions in the absence of a showing of manifest error in the prior
24 ruling or a showing of new facts or legal authority which could not have been brought to
25 its attention earlier with reasonable diligence.” *Id.*

26 Defendants move the Court to reconsider Part III.A. of its prior discovery order,
27 entered at docket number 98, wherein the Court granted in part and denied in part
28 Plaintiffs’ motion to compel. Defendants argue that the Court reached its decision in

1 error by (1) rejecting Mr. McCament’s declaration; (2) failing to find that Plaintiffs did
2 not meet their burden to show “necessity”; (3) failing to articulate why the balance of the
3 parties’ needs weighed in favor of disclosure; and (4) suggesting that the parties could
4 cure their issues with a detailed and thorough protective order. *See generally* Dkt. # 99.
5

6 First, the Court considered Mr. McCament’s declaration and found that it was
7 insufficient under the standard advanced by the Government. That the Government
8 disagrees with this assessment is not proper grounds for granting a motion for
9 reconsideration.

10 Second, Defendants’ Ninth Circuit authority cited for the proposition that
11 Plaintiffs failed to show “necessity” is based on the informants privilege, not the law
12 enforcement privilege.¹ The premise behind the informants privilege differs from that of
13 the law enforcement privilege. For example, Defendants rely on *In re Perez* for “an
14 analogous request to disclose specific identities.” Dkt. # 99 at 5. However, *In re Perez*
15 aimed to protect “employees seeking to vindicate rights claimed to have been denied.” *In*
16 *re Perez*, 749 F.3d 849, 856 (9th Cir. 2014) (quotations and citations omitted). Here, the
17 identities that the Government seeks to withhold are those individuals who wish to
18 vindicate their own rights. The Government is not withholding those identities to protect
19 those individuals.
20

21 Third, the Court exercised its discretion in balancing the needs of Plaintiffs versus
22 those of Defendants and found that the balance weighed in favor of disclosure. The
23 Government argued that grave national security threats could materialize were the
24 Government forced to reveal the individuals subject to CARRP and “the types of records
25 consulted” because this could lead those individuals to “alter [their] behavior, conceal
26 evidence of wrongdoing, or attempt to influence witnesses or adjust [their] means of
27
28

¹ Moreover, the persuasive authority that the Government cited dealt with asserting privilege over evidence collected through surveillance and recording; such situations are not analogous to the one at hand.

1 communication or financial dealings to avoid detection of the very behavior that the law
2 enforcement and intelligence community have determined may be indicative of a national
3 security threat[.]” Dkt. 94-5 at ¶ 18. But Plaintiffs did not request more than the
4 identities of the class members; Plaintiffs did not request “the types of records consulted”
5 for each potential class member. The Government may not merely say those magic
6 words—“national security threat”—and automatically have its requests granted in this
7 forum. Plaintiffs articulated enough to tip the balance in their favor; they requested
8 limited information—only the names of potential class members—and explained that
9 those potential class members may already be aware of the Government’s additional
10 scrutiny considering the passage of time. Under any rational balancing act, such a limited
11 scope of request will not be outbalanced by the speculative scope of what the
12 Government offered in opposition.
13

14 Finally, the Government disagreed with the Court’s conclusion that a robust
15 protective order was sufficient to protect against improper disclosure of privileged
16 information. The Government cited cases that were not analogous to this matter and
17 therefore did not persuade the Court. Disagreement with the Court’s conclusions is not a
18 sufficient basis upon which to grant a motion for reconsideration.
19

20 For the foregoing reasons, the Court **DENIES** Defendants’ motion for
21 reconsideration. Dkt. # 99.

22 Dated this 28th day of November, 2017.
23
24

25 
26

27 The Honorable Richard A. Jones
28 United States District Judge