



1 Defendant Mason filed a motion for summary judgment on October 1, 2012. On October 3,  
2 2012, Plaintiff filed another request for an extension of the discovery deadline.

3 On January 9, 2013, the Court issued an order vacating the prior screening order, as well as the  
4 January 12, 2011 order dismissing Defendant Mason, and the July 26, 2011 Discovery and Scheduling  
5 Order. The Court also denied Defendant's pending motion for summary judgment and Plaintiff's  
6 request for an extension of time without prejudice.

7 Also on January 9, 2013, the Court issued a new screening order finding service appropriate  
8 for Defendant Mix *and* Defendant Mason. Defendant Mason filed an answer on May 10, 2013.

9 On May 13, 2013, the Court issued a Discovery and Scheduling Order. Part I of the Order  
10 requires the parties to provide initial disclosures, including names of witnesses and production of  
11 documents.

12 On May 31, 2013, Defendants filed a Request for Reconsideration of Part I of the Discovery  
13 and Scheduling Order. Plaintiff did not file an opposition.

#### 14 **LEGAL STANDARD**

15 Defendants move for reconsideration pursuant to Local Rule 303(c), which permits District  
16 Judge review of a Magistrate Judge's order. Local Rule 303(a) incorporates the "clearly erroneous" or  
17 "contrary to law" standard set forth in Federal Rule of Civil Procedure 72(a). Thus, the District Judge  
18 must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R.  
19 Civ. P. 72(a).

#### 20 **DISCUSSION**

##### 21 **A. Defendants' General Objections**

22 Defendants correctly argue that Part I of the Discovery and Scheduling Order requires the  
23 parties to engage in disclosures similar to those required under Federal Rule of Civil Procedure  
24 26(a)(1). Defendants are also correct in that Plaintiff is a pro se prisoner, and that such actions are  
25 generally exempt from initial disclosure requirements.

26 Defendants are incorrect, however, insofar as they argue that the Discovery and Scheduling  
27 Order is an improper "standing order" meant to modify the initial disclosure requirements. As the  
28 Court has previously explained in at least one other prisoner action where a similar Discovery and

1 Scheduling Order was issued, the order is a case-specific order that issued in this action “[t]o expedite  
2 the fair disposition of this action and to discourage wasteful pretrial activities.” Therefore, the order is  
3 proper since “even in a case excluded . . . , the court can order exchange of similar information in  
4 managing the action under rule 16.” Fed. R. Civ. P. 26(a)(1) Advisory Committee Note of 2000. The  
5 fact that a similar order has issued in other prisoner cases does not transform the order into a formal, or  
6 informal, standing order.

7 Defendants further believe that such requirements are an undue burden on the State in prisoner  
8 cases. However, the intent behind the order is to streamline the discovery process and ultimately  
9 reduce the overall burden on the State, the Court and the parties. Similarly, although Defendants  
10 suggest that the order deprives counsel of the exercise of professional judgment in determining how  
11 much time and effort to devote to investigation, the order requires no more than would be required  
12 under Rule 26(a), or in the ordinary course of investigating a complaint. The purpose of initial  
13 disclosures under FRCP 26(a) is “to accelerate the *exchange of basic information* . . . and to eliminate  
14 the paper work involved in requesting such information.” Fed. R. Civ. P. 26(a)(1) Advisory  
15 Committee Note of 1993 (emphasis added). Orders such as this fall well within the vested control of a  
16 trial court to control its docket and to ensure efficient use of limited judicial resources.

17 Defendants also attempt to raise an issue based on the Discovery and Scheduling Order’s  
18 failure to limit the disclosures to “discoverable information.” While the order may not specifically  
19 state that disclosures are limited to “discoverable information,” the context of the order, as well as  
20 common sense, dictate that only discoverable information need be exchanged. Indeed, the order limits  
21 Defendants’ disclosures to information regarding individuals “likely to have information about  
22 Defendant(s)’ claims or defenses, or who will be used to support Defendant(s)’ version of the events  
23 described in the complaint.” May 13, 2013, Order at 2.

24 Finally, insofar as Defendants object to the requirement that Defendants produce materials in  
25 the possession, custody or control of Defendants *and* CDCR, their objection fails. Defendants  
26 specifically object to the definition used in Allen v. Woodford, 2007 WL 309945 (E. D. Cal. 2007),  
27 cited in the order, and contend that they are “rank and file employees of CDCR” who do not control  
28 CDCR or its documents. Mot. 10. This standard, however, requires no more than production of

1 information for which Defendants have “the legal right to obtain” on demand. If a document does not  
2 fall within the definition of Allen, it need not be produced. Certainly, Defendants will not have  
3 “possession, custody or control” of *all* of CDCR’s documents. The order does not require Defendants  
4 to produce documents that they cannot otherwise obtain in the course of their employment.

5 The above arguments are not persuasive and do not establish that the Discovery and  
6 Scheduling Order, in general, is contrary to law or clearly erroneous.

7 **B. Defendants’ Case-Specific Objections**

8 As applied to this action, Defendants argue that the Discovery and Scheduling Order is  
9 inappropriate because it will essentially give Plaintiff, who did not serve discovery requests during the  
10 13 months that discovery was previously open, a second chance at discovery.

11 The Court agrees that Plaintiff should not benefit from another round of unlimited discovery  
12 under the circumstances. For this reason only, the Court will grant the motion for reconsideration and  
13 vacate the May 13, 2013, Discovery and Scheduling Order. The Court will direct the Magistrate  
14 Judge to issue an order allowing limited discovery by separate order.

15 **ORDER**

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Defendants’ motion for reconsideration is GRANTED as described above;  
18 2. The May 13, 2013 Discovery and Scheduling Order is VACATED; and  
19 3. The matter is referred back to the Magistrate Judge for the issuance of a new discovery and  
20 scheduling order.

21  
22  
23 IT IS SO ORDERED.

24 Dated: July 31, 2013

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26 SENIOR DISTRICT JUDGE