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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TIMOTHY HOWARD,	)	Case No.: 1:10cv01783 AWI DLB (PC)
	)	
Plaintiff,	)	
v.	)	ORDER DENYING DEFENDANTS’
	)	MOTION FOR RECONSIDERATION
J. WANG, et al.,	)	
	)	(Document 46)
Defendants.	)	
	)	
	)	

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Plaintiff Timothy Howard (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

**PROCEDURAL BACKGROUND**

Plaintiff filed this action on September 28, 2010. On January 22, 2013, the Court ordered that the action proceed on Plaintiff’s Eighth Amendment claim against Defendants Dr. Wang and Dr. Clark.

Defendants filed their answer on July 3, 2013.



1           The Court notes that the discovery order at issue, which has been used and upheld in other  
2 actions in this Court, was implemented in light of the numerous discovery issues that were arising with  
3 increasing frequency in other pro se prisoner actions. Defendants’ discovery practices were bordering  
4 on unnecessarily obstructive, and these tactics caused numerous discovery disputes that required  
5 extensive Court resources to resolve. The intent of the order, as explained above, is to discourage  
6 similar wasteful activities.

7           Defendants further believe that such requirements are an undue burden on the State in prisoner  
8 cases. However, again, the intent behind the order is to streamline the discovery process and  
9 ultimately reduce the overall burden on the State, the Court and the parties. Similarly, although  
10 Defendants suggest that the order deprives counsel of the exercise of professional judgment in  
11 determining how much time and effort to devote to investigation, the order requires no more than  
12 would be required under Rule 26(a), or in the ordinary course of investigating a complaint. The  
13 purpose of initial disclosures under FRCP 26(a) is “to accelerate the *exchange of basic information* . . .  
14 and to eliminate the paper work involved in requesting such information.” Fed. R. Civ. P. 26(a)(1)  
15 Advisory Committee Note of 1993 (emphasis added). Orders such as this fall well within the vested  
16 control of a 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.” July 9, 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 medical doctors who do not control CDCR or its  
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documents. Mot. 9. This standard, however, requires no more than production of information for which Defendants have “the legal right to obtain” on demand. If a document does not fall within the definition of Allen, it need not be produced. Certainly, Defendants will not have “possession, custody or control” of *all* of CDCR’s documents. The order does not require Defendants to produce documents that they cannot otherwise obtain in the course of their employment.

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

Accordingly, Defendants’ motion is DENIED.

IT IS SO ORDERED.

Dated: November 19, 2013

  
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SENIOR DISTRICT JUDGE