

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WAYNE L. PICKERING,

Plaintiff,

v.

ENENMOH,

Defendant.

Case No. 1:11-cv-00937-LJO-DLB PC

**DISCOVERY AND
SCHEDULING ORDER**

Initial Disclosures: June 8, 2015
Motions based on Exhaustion: July 21, 2015
Deadline to Amend Pleadings: August 20, 2015
Discovery Cut-Off: September 21, 2015
Dispositive Motion Deadline:
November 18, 2015

To expedite the fair disposition of this action and to discourage wasteful pretrial activities, the Court directs that the attorneys or parties, if appearing pro se, comply with the following procedures:

I. INITIAL DISCLOSURES

Notwithstanding Federal Rule of Civil Procedure 26(a)(1)(B), the parties are **HEREBY ORDERED** to provide Initial Disclosures as follows:

No later than **June 8, 2015**.

A. Plaintiff's Disclosures:

Plaintiff shall provide Defendant with the name and, if known, the location or other identifying information (such as inmate number, job classification or assignment) of each individual likely to have information about the events described in his complaint or his claims of injury or

1 damage. In addition, Plaintiff shall describe, generally, the information each individual so identified
2 is believed to possess.

3 Plaintiff shall also provide copies of, or a list describing (by category and location), all
4 documents or other tangible things in his possession, custody or control¹ which he may use to
5 support the allegation(s) in his complaint, or his claims or injury of damage.

6 B. Defendant(s) Initial Disclosures:

7 Defendant(s) shall provide Plaintiff with the name and, if known, the location or other
8 identifying information (such as inmate number, job classification or institutional assignment) of
9 each individual likely to have information about Defendant(s)' claims or defenses, or who will be
10 used to support Defendant(s)' version of the events described in the complaint. In addition,
11 Defendant(s) shall describe, generally, the information each individual so identified is believed to
12 possess.

13 Defendant(s) shall provide to Plaintiff copies of all documents and other materials in the
14 care, custody, or control of any Defendant(s) or the California Department of Corrections and
15 Rehabilitation ("CDCR") related to the claims and defenses in the case.

16 Such documents and materials shall include, but are not limited to, (a) documents and
17 materials upon which Defendant(s) rely in support of their defense of the action, (b) grievances and
18 appeals thereof, determinations of grievances and appeals, and (c) reports of completed
19 investigations by CDCR or others. If Defendants intend on filing a motion relating to Plaintiff's
20 failure to exhaust, initial disclosures must include related grievances and appeals, and all responses.
21 Simultaneous with disclosure to Plaintiff, Defense counsel shall file with the Court either a copy of
22 any cover letter (without attachments) or a statement that the disclosures required herein have been
23 completed.

24 Defendant(s) do not need to provide copies of documents that are available to Plaintiff upon
25 request, such as documents in Plaintiff's Central File or Medical File. For such documents,
26 Defendant(s) need only describe them in the disclosure with particularity, and note that Plaintiff may
27

28 _____
¹ Property is deemed within a party's possession, custody or control if the party has actual possession, custody or control thereof, or the legal right to obtain the property on demand. Allen v. Woodford, 2007 WL 309945, *2 (E.D. Cal. 2007).

1 obtain the document upon request from the prisoner/CDCR. In lieu of a description, Defendant(s)
2 may provide copies.

3 Pursuant to Federal Rule of Civil Procedure 26(e), the parties must supplement or correct the
4 disclosures in a timely manner, and failure to do so may result in the inability to present such
5 evidence in support of a motion, or at trial. Fed. R. Civ. P. 37(c).

6 II. DEPOSITIONS

7 Defendant(s) are granted leave to take the deposition of Plaintiff, or any other incarcerated
8 witness, pursuant to Federal Rule of Civil Procedure 30(a)(2)(B). Defense counsel shall provide
9 Plaintiff with notice of the date of the deposition by mailing such notice to Plaintiff at least fifteen
10 (15) days prior to the scheduled deposition date. The deposition may not commence until at least ten
11 (10) days after Defense counsel has filed their proof of compliance as required in subparagraph (B)
12 above. PLAINTIFF SHALL TAKE NOTICE that disagreement with any directive of security staff
13 at the correctional facility at which the deposition is scheduled is not a ground on which Plaintiff
14 may refuse to answer appropriate questions, and the failure of Plaintiff to attend, be sworn, and
15 answer appropriate questions may result in sanctions. Such sanctions may include dismissal of the
16 action pursuant to Federal Rule of Civil Procedure 37. Objections made in good faith in accordance
17 with governing rules are permissible.

18 III. SCHEDULE AND DEADLINES

19 A. The issue of exhaustion must be raised by either (1) a procedurally proper motion for
20 summary judgment; or (2) a motion to dismiss pursuant to Rule 12(b)(6) if the failure to exhaust is
21 clear on the face of the complaint. If the parties believe that discovery related to exhaustion is
22 necessary, they may request such discovery pursuant to Rule 56(d). Requests for limited discovery
23 must be made within thirty (30) days of the date of service of any motion for summary judgment
24 related to exhaustion. Motions relating to exhaustion must be filed on or before **July 21, 2015**.

25 B. The deadline for amending pleadings is **August 20, 2015**.

26 C. All discovery shall be completed on or before **September 21, 2015**. Motions to
27 compel must also be filed by this date.

28 D. Dispositive motions must be filed on or before **November 18, 2015**.

1 IV. DISCOVERY ISSUES

2 A. Written discovery must be served at least thirty (30) days prior to the close of
3 discovery. Responses must be served thirty (30) days after service of the discovery request. Fed. R.
4 Civ. P. 33(b)(2), 34(b)(2)(A). In objecting to discovery requests, Defendant(s) should state their
5 objections in plain language that a pro se party will likely understand.

6 B. As stated above, motions to compel must be filed on or before **September 21, 2015**.
7 The meet and confer requirement set forth in Federal Rule of Civil Procedure 37(a)(1) and Local
8 Rule 251(b) is waived. Voluntary compliance is encouraged, however.

9 V. EXTENSIONS OF TIME

10 Requests for extensions of the deadlines set forth in this Discovery and Scheduling Order
11 **must be filed on or before the expiration of the date in question. These deadlines are firm and**
12 **will not be extended by the Court except upon a showing of good cause.** Fed. R. Civ. P.
13 16(b)(4).

14
15
16 IT IS SO ORDERED.

17
18 Dated: April 22, 2015

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE