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

TIMOTHY LECOMPTE,)	Case No.: 1:11cv02105 LJO DLB (PC)
)	
Plaintiff,)	
v.)	ORDER DENYING DEFENDANTS’
)	MOTION FOR RECONSIDERATION
DHAH, et al.,)	
)	(Document 27)
Defendants.)	
)	
)	

Plaintiff Timothy LeCompte (“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 December 21, 2011. On February 1, 2013, the Court ordered that the action proceed on Plaintiff’s Eighth Amendment claim against Defendants Dhah, Moon, Wang, Macias and Zamora.

Defendants Moon, Macias, Wang and Zamora filed their answer on December 9, 2013.

1 On December 10, 2013, the Court issued a Discovery and Scheduling Order.¹ Part I of the
2 Order requires the parties to provide initial disclosures, including names of witnesses and production
3 of documents.

4 On January 24, 2014, Defendants Moon, Macias, Wang and Zamora filed a Request for
5 Reconsideration of Part I of the Discovery and Scheduling Order. Plaintiff did not file an opposition.
6 The matter is deemed submitted pursuant to Local Rule 230(l).

7 **LEGAL STANDARD**

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

13 **DISCUSSION**

14 Defendants correctly argue that Part I of the Discovery and Scheduling Order requires the
15 parties to engage in disclosures similar to those required under Federal Rule of Civil Procedure
16 26(a)(1). Defendants are also correct in that Plaintiff is a pro se prisoner, and that such actions are
17 generally exempt from initial disclosure requirements.

18 Defendants are incorrect, however, insofar as they argue that the Discovery and Scheduling
19 Order is an improper "standing order" meant to modify the initial disclosure requirements. As the
20 Court has previously explained in *numerous* prisoner actions where the Discovery and Scheduling
21 Order has been issued, the order is a case-specific order that issued in this action "[t]o expedite the fair
22 disposition of this action and to discourage wasteful pretrial activities." Therefore, the order is proper
23 since "even in a case excluded . . ., the court can order exchange of similar information in managing
24 the action under rule 16." Fed. R. Civ. P. 26(a)(1) Advisory Committee Note of 2000. The fact that a
25 similar order has issued in other prisoner cases does not transform the order into a formal, or informal,
26

27 ¹ Defendant Dhah filed an answer on February 3, 2014, after the Court's issuance of the Discovery and Scheduling Order.
28 Given the pendency of this motion, the Court has not yet made the Discovery and Scheduling Order applicable to Defendant Dhah.

1 standing order. Indeed, if there is an instance where initial disclosures are not warranted, the Court
2 will not issue an order requiring their exchange.

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

9 Defendants further believe that such requirements are an undue burden on the State in prisoner
10 cases. However, again, the intent behind the order is to streamline the discovery process and
11 ultimately reduce the overall burden on the State, the Court and the parties. In fact, since the
12 requirement to exchange initial disclosures has been in place, there has been a significant decrease in
13 discovery disputes in actions where the order has issued. This decrease has benefited both the
14 parties *and* the Court.

15 Similarly, although Defendants suggest that the order deprives counsel of the exercise of
16 professional judgment in determining how much time and effort to devote to investigation, the order
17 requires no more than would be required under Rule 26(a), or in the ordinary course of investigating a
18 complaint. The purpose of initial disclosures under FRCP 26(a) is "to accelerate the *exchange of basic*
19 *information . . .* and to eliminate the paper work involved in requesting such information." Fed. R.
20 Civ. P. 26(a)(1) Advisory Committee Note of 1993 (emphasis added). Orders such as this fall well
21 within the vested control of a trial court to control its docket and to ensure efficient use of limited
22 judicial resources.

23 Defendants' generic burden argument is also undermined by the fact that in almost all cases
24 where this order has been upheld, Defendants have, within a reasonable amount of time, filed a notice
25 with the Court that they have provided their initial disclosures. Moreover, given that the amount of
26 discovery is not as broad as Defendants argue, it is likely that Defendants already have a majority of
27 documents in their possession based on their initial review of the action.
28

1 Defendants also attempt to raise an issue based on the Discovery and Scheduling Order's
2 failure to limit the disclosures to "discoverable information." While the order may not specifically
3 state that disclosures are limited to "discoverable information," the context of the order, as well as
4 common sense, dictate that only discoverable information need be exchanged. Indeed, the order limits
5 Defendants' disclosures to information regarding individuals "likely to have information about
6 Defendant(s)' claims or defenses, or who will be used to support Defendant(s)' version of the events
7 described in the complaint." December 10, 2013, Order at 2.

8 Finally, insofar as Defendants object to the requirement that Defendants produce materials in
9 the possession, custody or control of Defendants *and* CDCR, their objection fails. Defendants
10 specifically object to the definition used in Allen v. Woodford, 2007 WL 309945 (E. D. Cal. 2007),
11 cited in the order, and contend that they are medical and appeal staff who do not control CDCR or its
12 documents. Mot. 9. This standard, however, requires no more than production of information for
13 which Defendants have "the legal right to obtain" on demand. If a document does not fall within the
14 definition of Allen, it need not be produced. Certainly, Defendants will not have "possession, custody
15 or control" of *all* of CDCR's documents. The order does not require Defendants to produce
16 documents that they cannot otherwise obtain in the course of their employment.

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

19 Accordingly, Defendants' motion is DENIED.
20 IT IS SO ORDERED.

21 Dated: February 25, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE