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

JESSE J. MONTIEL,) Case No.: 1:11cv02145 LJO DLB (PC)
)
 Plaintiff,)
 v.) ORDER DENYING DEFENDANTS'
) MOTION FOR RECONSIDERATION
 JAMES YATES, et al.,)
) (Document 22)
 Defendants.)
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)

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

PROCEDURAL BACKGROUND

Plaintiff filed this action on December 28, 2011. On February 15, 2013, the Court ordered that the action proceed on Plaintiff’s claim for deliberate indifference to a serious medical need violation of the Eighth Amendment against Defendants Green, Taher-Pour, Wilson, Das and Wynn. The Court dismissed the remaining claims and Defendants.

Defendants Taher-Pour and Wilson filed their answer on June 24, 2013. The remaining three Defendants have not yet been served.

1 On June 25, 2013, the Court issued a Discovery and Scheduling Order. Part I of the Order
2 requires the parties to provide initial disclosures, including names of witnesses and production of
3 documents.

4 On July 3, 2013, Defendants filed a Request for Reconsideration of Part I of the Discovery and
5 Scheduling Order. Plaintiff did not file an opposition.

6 On July 11, 2013, Plaintiff filed a notice with the Court indicating that he had provided initial
7 disclosures in compliance with the June 25, 2013, Discovery and Scheduling Order.

8 **LEGAL STANDARD**

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

14 **DISCUSSION**

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

19 Defendants are incorrect, however, insofar as they argue that the Discovery and Scheduling
20 Order is an improper "standing order" meant to modify the initial disclosure requirements. As the
21 Court has previously explained in at least one other prisoner action where the Discovery and
22 Scheduling Order has been issued, the order is a case-specific order that issued in this action "[t]o
23 expedite the fair disposition of this action and to discourage wasteful pretrial activities." Therefore,
24 the order is proper since "even in a case excluded . . . , the court can order exchange of similar
25 information in managing the action under rule 16." Fed. R. Civ. P. 26(a)(1) Advisory Committee Note
26 of 2000. The fact that a similar order has issued in other prisoner cases does not transform the order
27 into a formal, or informal, standing order.
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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.” June 25, 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
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1 CDCR or its documents. Mot. 10. This standard, however, requires no more than production of
2 information for which Defendants have “the legal right to obtain” on demand. If a document does not
3 fall within the definition of Allen, it need not be produced. Certainly, Defendants will not have
4 “possession, custody or control” of *all* of CDCR’s documents. The order does not require Defendants
5 to produce documents that they cannot otherwise obtain in the course of their employment.

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

8 Accordingly, Defendants’ motion is DENIED.

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11 IT IS SO ORDERED.

12 Dated: August 6, 2013

/s/ Lawrence J. O’Neill
13 UNITED STATES DISTRICT JUDGE