

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**

ERIC WHEELER,)	Case No.: 1:12cv00861 LJO DLB (PC)
)	
Plaintiff,)	
v.)	ORDER DENYING DEFENDANTS’
)	MOTION FOR RECONSIDERATION
ALLISON, et al.,)	
)	(Document 48)
Defendants.)	
)	
)	

Plaintiff Eric Wheeler (“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 May 25, 2012. On March 11, 2013, the Court determined that the action should proceed on Plaintiff’s Eighth Amendment claims against Defendants Allison, Duck, Murrieta, Lowder, Loftis, Ross, Mui, Neubarth and Ancheta.

Defendants Allison, Duck, Murrieta, Lowder, Loftis and Neubarth filed an answer on January 14, 2014. On January 17, 2014, the Court issued a Discovery and Scheduling Order. Part I of the

1 Order requires the parties to provide initial disclosures, including names of witnesses and production
2 of documents.

3 Defendants Allison, Duck, Murrieta, Lowder, Loftis and Neubarth filed a Request for
4 Reconsideration of Part I of the Discovery and Scheduling Order. Plaintiff filed his opposition on
5 February 10, 2014. The matter is deemed submitted pursuant to Local Rule 230(1).

6 Due to differing dates of service, Defendant Ancheta filed an answer on February 12, 2014,
7 and Defendant Ross filed an answer on February 18, 2014. The Court has not yet ordered the
8 Discovery and Scheduling Order applicable to Defendants Ancheta or Ross because of this motion.

9 A waiver of service filed on January 14, 2014, indicates that Defendant Mui has been served,
10 though an answer has not yet been filed.

11 **LEGAL STANDARD**

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

17 **DISCUSSION**

18 Defendants correctly argue that Part I of the Discovery and Scheduling Order requires the
19 parties to engage in disclosures similar to those required under Federal Rule of Civil Procedure
20 26(a)(1). Defendants are also correct in that Plaintiff is a pro se prisoner, and that such actions are
21 generally exempt from initial disclosure requirements.

22 Defendants are incorrect, however, insofar as they argue that the Discovery and Scheduling
23 Order is an improper "standing order" meant to modify the initial disclosure requirements. As the
24 Court has previously explained in *numerous* prisoner actions where the Discovery and Scheduling
25 Order has been issued, the order is a case-specific order that issued in this action "[t]o expedite the fair
26 disposition of this action and to discourage wasteful pretrial activities." Therefore, the order is proper
27 since "even in a case excluded . . . , the court can order exchange of similar information in managing
28

1 the action under rule 16.” Fed. R. Civ. P. 26(a)(1) Advisory Committee Note of 2000. The fact that a
2 similar order has issued in other prisoner cases does not transform the order into a formal, or informal,
3 standing order. Indeed, if there is an instance where initial disclosures are not warranted, the Court
4 will not issue an order requiring their exchange.

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

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

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

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

6 Defendants also attempt to raise an issue based on the Discovery and Scheduling Order's
7 failure to limit the disclosures to "discoverable information." While the order may not specifically
8 state that disclosures are limited to "discoverable information," the context of the order, as well as
9 common sense, dictate that only discoverable information need be exchanged. Indeed, the order limits
10 Defendants' disclosures to information regarding individuals "likely to have information about
11 Defendant(s)' claims or defenses, or who will be used to support Defendant(s)' version of the events
12 described in the complaint." January 17, 2014, Order at 2.

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

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

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: February 24, 2014

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