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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 THOMAS GOOLSBY,

12 Plaintiff,

13 v.  
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15 MATTHEW CATE, et al.,

16 Defendants.  
17

1:13-cv-00119-DAD-EPG-PC

ORDER FOLLOWING DISCOVERY  
AND STATUS HEARING HELD ON  
JULY 19, 2016  
(Resolves ECF No. 80.)

ORDER GRANTING PLAINTIFF'S  
MOTION TO SUPPLEMENT HIS  
OPPOSITION TO DEFENDANTS'  
MOTION  
(ECF No. 81.)

ORDER DENYING PLAINTIFF'S  
MOTION FOR PROTECTIVE  
ORDER AND/OR POSTPONEMENT  
OF DEPOSITION  
(ECF No. 83.)

ORDER FOR DEFENDANTS TO  
SERVE DISCOVERY RESPONSES  
PURSUANT TO THIS ORDER

**Settlement Conference:**

**Monday, August 1, 2016, at 10:00 a.m.  
Courtroom 10 (EPG)**

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25 **I. BACKGROUND**

26 Thomas Goolsby ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights  
27 action pursuant to 42 U.S.C. § 1983. This action was filed on January 25, 2013. (ECF No. 1.)

28 The case now proceeds with the Second Amended Complaint filed on June 6, 2014, on

1 Plaintiff's Eighth Amendment claims against defendants Warden Kimberly Holland, Warden  
2 Michael Stainer, and Captain J. Lundy, for denial of adequate outdoor exercise time; and  
3 defendants Captain J. Lundy, Sergeant S. Foster, Plumlee (Maintenance Supervisor), Warden  
4 Kimberly Holland, Correctional Officer Jordon, and Correctional Officer Uribe, for deliberate  
5 indifference to unsanitary and unsafe conditions.<sup>1</sup> (ECF No. 34.) The events at issue allegedly  
6 occurred at the California Correctional Institution (CCI) in Tehachapi, California, during a  
7 thirteen-month period while Plaintiff was incarcerated there in segregated housing.

8 This case is now in the discovery phase, pursuant to the Court's amended discovery and  
9 scheduling order filed on December 8, 2015. (ECF No. 64.) The deadline for completion of  
10 discovery, including the filing of motions to compel, is August 8, 2016, and the deadline for  
11 filing pretrial dispositive motions is October 17, 2016. (Id.) This case is scheduled for a  
12 settlement conference before the undersigned on August 1, 2016 at 10:00 a.m.

13 **II. STATUS CONFERENCE**

14 On July 19, 2016 at 10:30 a.m., a telephonic status conference was held before  
15 Magistrate Judge Erica P. Grosjean. Plaintiff appeared telephonically on his own behalf, and  
16 California Deputy Attorney General R. Lawrence Bragg appeared telephonically on behalf of  
17 Defendants. Pending before the Court were Plaintiff's request for a hearing to resolve  
18 discovery disputes, filed on June 30, 2016 (ECF No. 80); Plaintiff's motion to supplement his  
19 opposition to Defendants' motion for summary judgment and to declare Plaintiff a vexatious  
20 litigant, filed on July 5, 2016 (ECF No. 81); and Plaintiff's motion for a protective order and/or  
21 postponement of deposition, filed on July 15, 2016 (ECF No. 83).

22 **A. Discovery**

23 **1. Defendants**

24 Defendants reported that they took Plaintiff's deposition on July 18, 2016 and are ready  
25 for the settlement conference.

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28 <sup>1</sup> On March 24, 2015, the Court issued an order dismissing all other claims and defendants from  
this action, for Plaintiff's failure to state a claim under § 1983. (ECF No. 36.)

1                   **2.     Plaintiff**

2                   Plaintiff reported that he served discovery requests in May 2016, which were answered  
3 by Defendants in June 2016. Plaintiff also served additional requests, which are pending.  
4 Plaintiff raised the following discovery issues:

5                   **a.     Motion for Protective Order**

6                   On July 15, 2016, Plaintiff filed a motion for a protective order and/or postponement of  
7 his deposition scheduled for July 18, 2016. (ECF No. 83.) At the July 19, 2016 hearing,  
8 Defendants reported that they had taken Plaintiff’s deposition on July 18, 2016. Because the  
9 deposition was taken, Plaintiff’s motion is moot.

10                   **b.     Memorandum**

11                   On June 30, 2016, Plaintiff filed a notice of discovery disputes, in which he asserts that  
12 that Defendants “redacted a large portion of Operational procedure 111 and Memorandum  
13 dated January 8, 2010, authored by K. Holland, citing confidential information.” (ECF No. 80  
14 at 2.) At the hearing, Plaintiff requested an unredacted version of the Memo.

15                   Plaintiff had requested documentation of the number of exercise modules in the IEM  
16 Yard (exercise yard) at CCI. Defendants asserted that they produced the Memo, which  
17 concerns the IEM Yard, because the number of exercise modules was given in the Memo, but  
18 they redacted the remainder of the Memo because it was not responsive to Plaintiff’s request.  
19 Defendants also argued that the Memo is not relevant, because it concerns a time period  
20 different from the events at issue in this case.

21                   The Court ordered that by **July 26, 2016**, Defendants are required to produce any part  
22 of the Memo which concerns inadequate exercise time, as specified in the Court’s December  
23 16, 2015 order. (ECF No. 72 at 2-3.) Redactions may be proper, i.e., if the Memo concerns  
24 issues wholly unrelated to exercise time. However, the fact that the Memo pre-dated events is  
25 not a basis to redact information regarding exercise. **By July 26, 2016**, Defendants are required  
26 to either make a supplemental production of documents to Plaintiff, or submit a brief report that  
27 no production was made.

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1 toilet, in all the toilets at issue.” (ECF No. 80 at 3.) Plaintiff also requests to photograph the  
2 exercise yard.

3 Defendants objected to Plaintiff’s request, on the ground that any inspection by Plaintiff  
4 at this juncture would not be relevant to the time period of Plaintiff’s allegations. Defendants  
5 also argued that Plaintiff’s request should not be granted because Plaintiff expects to make the  
6 inspection himself, and because he is not currently housed at CCI and would need to be  
7 transported there. Defendants also argued that Plaintiff’s damages are minimal because: (1)  
8 the toilet did not actually overflow, Plaintiff merely needed to flush the toilet to resolve the  
9 problem, and Plaintiff did not suffer from skin infections; (2) Plaintiff did not require medical  
10 attention for the asthma he suffered from breathing mold; and (3) after Plaintiff slipped and fell  
11 on the wet floor, he only required an ice pack and pain medication, and has no resulting back  
12 problems. Defense counsel further indicated he expected an inspection would likely reveal a  
13 continuing problem with backflow of toilets because the prison has been denied funding to fix  
14 the issue.

15 The Court took the issue of inspection under advisement and invited Defendant to  
16 respond by **August 5, 2016**, to a Request for Admission that CCI continues to experience  
17 problems with backflow of toilets. Although Defendant contests the relevance of this request,  
18 especially as it concerns cells other than the Plaintiff’s, the Court ruled that the presence of a  
19 continuing issue at CCI was sufficiently relevant for discovery, especially regarding deliberate  
20 indifference, and that ordinarily a Plaintiff would be entitled to inspect the premises as part of  
21 discovery. If Defendants fail to adequately respond to this request, the Court will take that into  
22 consideration in ruling on Plaintiff’s request for an inspection.

23 **f. Request to Take Depositions**

24 In Plaintiff’s notice of discovery disputes (ECF No. 80), he asserts that Defendants  
25 objected to his notice of depositions. Plaintiff seeks to take Defendants’ depositions at Kern  
26 Valley State Prison, “using the prison’s video equipment in lieu of a stenographer due to cost.”  
27 (Id. at 2.) At the hearing, the Court directed Plaintiff to Rule 28 of the Federal Rules of Civil  
28 Procedure, which requires the presence of an officer authorized to take oaths, and Rule 30

1 which requires that a transcript be made of the deposition proceedings. Plaintiff was advised  
2 by the Court that he must show that he is able to comply with these requirements and pay the  
3 required costs before his request to take depositions will be considered.

4 **B. Motion for Summary Judgment**

5 At the hearing, the Court discussed Defendants' pending motion for summary  
6 judgment, in which Defendants argue that Plaintiff is barred from bringing state law claims  
7 because he waited too long after the state denied his claims to file his lawsuit. Plaintiff asserts  
8 that he waited so long because he was still exhausting his prison appeal.

9 The Court asked defense counsel if Defendants would have moved to dismiss Plaintiff's  
10 claims for failure to exhaust if Plaintiff had filed his complaint while his appeal of the  
11 cancellation of his grievance was pending, even if the six-month period for filing after  
12 Government Claims had given permission were set to expire. Defense counsel said such a  
13 complaint would be subject to dismissal because they were separate requirements.

14 The Court stated that findings and recommendations addressing the motion will be  
15 issued before the August 1, 2016 settlement conference.

16 **C. Motion to Supplement Opposition**

17 On July 5, 2016, Plaintiff filed a motion to supplement his opposition to Defendants'  
18 motion for summary judgment and to declare Plaintiff a vexatious litigant. (ECF No. 81.) At  
19 the hearing, the Court granted Plaintiff's motion to supplement his opposition, with evidence of  
20 the disposition of Plaintiff's other case 1:11-cv-01773-LJO-DLB, Goosby v. Gentry, which  
21 Plaintiff submitted to the Court on July 5, 2016. (ECF No. 81.) Defendants may file a reply to  
22 the supplemented opposition **on or before July 25, 2016.**

23 **D. Request for Extension of Discovery Deadline**

24 Plaintiff requested an extension of the deadline to complete discovery. The Court  
25 denied the request and will not allow extra time beyond the August 8, 2016 discovery deadline  
26 for the filing of motions to compel. That said, Defendants need to respond to outstanding  
27 requests notwithstanding the discovery deadline.

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1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion to supplement his opposition to Defendants' motion for  
4 summary judgment and to declare Plaintiff a vexatious litigant, filed on July 5,  
5 2016, is GRANTED, and Defendants may file a reply to the supplemented  
6 opposition **on or before July 25, 2016;**
- 7 2. Plaintiff's motion for a protective order and/or postponement of deposition, filed  
8 on July 15, 2016, is DENIED as moot.
- 9 3. Defendants are ordered to serve discovery responses as instructed by this order;  
10 and
- 11 4. A Settlement Conference is scheduled for August 1, 2016, at 10:00 a.m., before  
12 Magistrate Judge Erica P. Grosjean.

13  
14 IT IS SO ORDERED.

15 Dated: **July 29, 2016**

16 /s/ Erica P. Grosjean  
17 UNITED STATES MAGISTRATE JUDGE

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