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

TRADELL M. DIXON,  
Plaintiff,

v.

M. ARMAS, et al.,  
Defendants.

CASE NO. 1:13-cv-00165-DAD-EPG (PC)  
SCHEDULING ORDER AND ORDER  
DIRECTING CLERK TO SEND PLAINTIFF  
A COPY OF LOCAL RULE 281(b)  
Telephonic Discovery  
Status Conference: July 24, 2017  
Time: 10:00 a.m.  
Courtroom 10 (EPG)  
Nonexpert  
Discovery Cut-off: September 8, 2017  
Expert Disclosure  
Deadline: October 6, 2017  
Rebuttal Expert  
Disclosure Deadline: November 3, 2017  
Expert Discovery  
Cut-off: December 1, 2017  
Dispositive Motion  
Filing Deadline: January 12, 2018  
Telephonic Trial  
Confirmation Hearing: November 26, 2018  
Time: 1:30 p.m.  
Courtroom 5 (DAD)  
Jury Trial: January 29, 2019  
Time: 8:30 a.m.  
Courtroom 5 (DAD)

This Court conducted a scheduling conference on March 1, 2017. Plaintiff Tradell Dixon telephonically appeared on his own behalf. Counsel David Goodwin and Jon Allin telephonically appeared on behalf of Defendants. Pursuant to Fed. R. Civ. P. 16(b), this Court now sets a schedule for this action.

**I. DISCOVERY PROCEDURES**

1 The parties are now granted leave to serve discovery in addition to that provided as part of  
2 initial disclosures.<sup>1</sup> However, discovery regarding the claim against defendant Armas is stayed  
3 pending resolution of his motion to dismiss. If the claim against defendant Armas is not  
4 dismissed, discovery will open as to defendant Armas immediately upon the district judge's order  
5 adopting the findings and recommendations that deny the motion to dismiss.

6 Pursuant to Federal Rules of Civil Procedure 1, 16, and 26-36, discovery shall proceed as  
7 follows:

- 8 1. Discovery requests shall be served by the parties pursuant to Federal Rule of Civil  
9 Procedure 5 and Local Rule 135. Discovery requests and responses shall not be filed  
10 with the Court unless required by Local Rules 250.2, 250.3, or 250.4 (providing that  
11 discovery requests shall not be filed unless or until there is a proceeding in which the  
12 document or proof of service is at issue). Each party is limited to serving 15  
13 interrogatories, 15 requests for production of documents, and 10 requests for  
14 admission. On motion, these limits may be increased for good cause.
- 15 2. Responses to written discovery requests shall be due **forty-five (45) days** after the  
16 request is first served. Boilerplate objections are disfavored and may be summarily  
17 overruled by the Court. Responses to document requests shall include all documents  
18 within a party's possession, custody or control. Fed. R. Civ. P. 34(a)(1). Documents  
19 are deemed within a party's possession, custody, or control if the party has actual  
20 possession, custody, or control thereof, or the legal right to obtain the property on  
21 demand.<sup>2</sup>
- 22 3. If any party or third party withholds a document on the basis of privilege, they shall  
23 provide a privilege log to the requesting party identifying the date, author, recipients,  
24 general subject matter, and basis of the privilege within **thirty (30) days** after the date  
25 that responses are due. Failure to provide a privilege log within this time shall result  
26 in a waiver of the privilege. To the extent the requesting party disputes whether a

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26 <sup>1</sup> Plaintiff has until **March 31, 2017**, to serve Defendants with his supplemental initial disclosures.

27 <sup>2</sup> Defendant(s)' responses should be consistent with their right to request documents pursuant to  
28 California Government Code § 3306.5 ("Each employer shall keep each public safety officers' personnel file or a true  
and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a  
request thereof by the officer.").

1 document is privileged, it can raise that issue to the Court's attention in its statement of  
2 a discovery dispute to be discussed at the discovery conference (see below). If a party  
3 or third party withholds a document on the basis of the official information privilege,  
4 the requesting party may request that the Court conduct an *in camera* review of such  
5 document so that the Court can balance the moving party's need for the documents in  
6 the litigation against the reasons that are asserted in defending their confidentiality. In  
7 any such request for *in camera* review, the party requesting review shall identify, with  
8 specificity, the document(s) for which review is sought.

9 4. The parties are required to act in good faith during the course of discovery and the  
10 failure to do so may result in the payment of expenses pursuant to Federal Rule of  
11 Civil Procedure 37(a)(5) or other appropriate sanctions authorized by the Federal  
12 Rules of Civil Procedure or the Local Rules.

13 5. Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant(s) may depose  
14 Plaintiff and any other witness confined in a prison upon condition that, at least  
15 fourteen (14) days before such a deposition, Defendant(s) serve all parties with the  
16 notice required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff's failure to  
17 participate in a properly noticed deposition could result in sanctions against Plaintiff,  
18 including monetary sanctions and/or dismissal of this case. Pursuant to Federal Rule  
19 of Civil Procedure 30(b)(4), the parties may take any deposition under this section by  
20 video conference without a further motion or order of the Court. Due to security  
21 concerns and institutional considerations not applicable to Defendant(s), Plaintiff must  
22 seek leave from the Court to depose incarcerated witnesses pursuant to Federal Rule of  
23 Civil Procedure 30(a)(2). Nothing herein forecloses a party from bringing a motion  
24 for protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.

25 6. With the Court's permission, Plaintiff may serve third party subpoenas, including on  
26 the California Department of Corrections and Rehabilitation and/or the Office of the  
27 Inspector General if Plaintiff seeks documents from them and the entities are not  
28 presently defendants in this case. To issue a subpoena on these entities, or any other  
third parties, Plaintiff must file a request for the issuance of a subpoena *duces tecum*

1 with the Court. If the Court approves the request, it may issue Plaintiff a subpoena  
2 *duces tecum*, commanding the production of documents from a non-party, and may  
3 command service of the subpoena by the United States Marshal Service. Fed. R. Civ.  
4 P. 45; 28 U.S.C. 1915(d). However, the Court will consider granting such a request  
5 *only if* the documents sought from the non-party are not equally available to Plaintiff  
6 and are not obtainable from Defendant(s) through a request for production of  
7 documents. Fed. R. Civ. P. 34. In any request for a subpoena, Plaintiff must: (1)  
8 identify with specificity the documents sought and from whom, and (2) make a  
9 showing in the request that the records are only obtainable through that third party.  
10 The documents requested must also fall within the scope of discovery allowed in this  
11 action. See Fed. R. Civ. P. 26(b)(1).

- 12 7. A discovery conference has been set for **July 24, 2017, at 10:00 a.m.** Parties have  
13 leave to appear by phone. To join the conference, each party is directed to call the  
14 toll-free number **(888) 251-2909** and use **Access Code 1024453**. Up until two weeks  
15 before the discovery conference, the parties may file a motion to compel further  
16 discovery responses. One week before the discovery conference, the responding party  
17 may file a response to the motion to compel. The motion should include a copy of the  
18 request(s) and any response to the request(s) at issue. Unless there is a need for  
19 discovery prior to the discovery conference, motions to compel will not be considered  
20 until the discovery conference. Motions to compel will not be permitted after the  
21 discovery conference absent good cause. The parties should be prepared to address all  
22 discovery disputes at the discovery conference.

## 22 **II. NON-EXPERT DISCOVERY DEADLINE**

23 The deadline for the completion of all non-expert discovery is **September 8, 2017**. All  
24 non-expert discovery must be provided by this date, including discovery compelled following the  
25 discovery conference.

## 26 **III. EXPERT DISCLOSURES**

27 The deadline for all parties to serve their expert disclosures is **October 6, 2017**. Parties  
28 have until **November 3, 2017**, to serve their rebuttal expert disclosures. The deadline for the

1 completion of all expert discovery is **December 1, 2017**.

2 **IV. EXHAUSTION MOTIONS**

3 All Defendants have informed the Court that they do not intend to present any challenge  
4 for failure to exhaust administrative remedies.

5 **V. DISPOSITIVE MOTIONS DEADLINE**

6 The deadline for filing all dispositive motions pursuant to Fed. R. Civ. P. 56 is **January**  
7 **12, 2018**.

8 **VI. SETTLEMENT CONFERENCE**

9 The Court is not setting a settlement conference at this time.

10 **VII. MAGISTRATE JUDGE JURISDICTION**

11 Defendants have declined the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. §  
12 636(c). (ECF No. 33).

13 **VIII. TELEPHONIC TRIAL CONFIRMATION HEARING**

14 The Telephonic Trial Confirmation Hearing (“TTCH”) is set for **November 26, 2018, at**  
15 **1:30 p.m.**, in Courtroom 5, before District Judge Dale A. Drozd. Plaintiff is required to appear  
16 telephonically, and Defendants’ counsel are encouraged to appear telephonically. The dial in  
17 number is 877-402-9757 (access code 6966236). Because the Court may be hearing other matters  
18 using the same conference line, the parties should wait to state their appearance until their case  
19 has been called and appearances are requested. The parties should keep all background noise to a  
20 minimum. If Defendants’ counsel choose to appear telephonically, at least 48 hours prior to the  
21 TTCH they must email Courtroom Deputy Renee Gaumnitz at Rgaumnitz@caed.uscourts.gov to  
22 advise the Court that they will be appearing telephonically.

23 In addition to the matters already required to be addressed in the pretrial statement in  
24 accordance with Local Rule 281, Plaintiff will be required to make a particularized showing in  
25 order to obtain the attendance of witnesses. The procedures and requirements for making such a  
26 showing are outlined in detail below. Plaintiff is advised that failure to comply with the  
27 procedures set forth below may result in the preclusion of any or all witnesses named in his  
28 pretrial statement.

At the trial of this case, Plaintiff must be prepared to introduce evidence to prove each of

1 the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of  
2 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is Plaintiff's responsibility to  
3 produce all of the evidence to prove his case, whether that evidence is in the form of exhibits or  
4 witness testimony. If Plaintiff wants to call witnesses to testify, he must follow certain  
5 procedures to ensure that the witnesses will be at the trial and available to testify.

6 1. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to  
7 Testify Voluntarily - An incarcerated witness who agrees voluntarily to attend trial to give  
8 testimony cannot come to court unless this Court orders the warden or other custodian to permit  
9 the witness to be transported to court. This Court will not issue such an order unless it is satisfied  
10 that: (a) the prospective witness is willing to attend; and (b) the prospective witness has actual  
11 knowledge of relevant facts.

12 A party intending to introduce the testimony of incarcerated witnesses who have agreed  
13 voluntarily to attend the trial must serve and file concurrent with the pretrial statement a written  
14 motion for a court order requiring that such witnesses be brought to court at the time of trial. The  
15 motion must: (1) state the name, address, and prison identification number of each such witness;  
16 and (2) be accompanied by declarations showing that each witness is willing to testify and that  
17 each witness has actual knowledge of relevant facts. The motion should be entitled "A Motion  
18 for Attendance of Incarcerated Witnesses."

19 The willingness of the prospective witness can be shown in one of two ways: (1) the party  
20 himself can swear by declaration under penalty of perjury that the prospective witness has  
21 informed the party that he or she is willing to testify voluntarily without being subpoenaed, in  
22 which declaration the party must state when and where the prospective witness informed the party  
23 of this willingness; or (2) the party can serve and file a declaration, signed under penalty of  
24 perjury by the prospective witness, in which the witness states that he or she is willing to testify  
25 without being subpoenaed.

26 The prospective witness's actual knowledge of relevant facts can be shown in one of two  
27 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an  
28 eyewitness or an ear-witness to the relevant facts (i.e., if an incident occurred in plaintiff's cell  
and, at the time, plaintiff saw that a cellmate was present and observed the incident, plaintiff may

1 swear to the cellmate's ability to testify), the party himself can swear by declaration under penalty  
2 of perjury that the prospective witness has actual knowledge; or (2) the party can serve and file a  
3 declaration signed under penalty of perjury by the prospective witness in which the witness  
4 describes the relevant facts to which the prospective witness was an eye- or ear witness. Whether  
5 the declaration is made by the party or by the prospective witness, it must be specific about the  
6 incident, when and where it occurred, who was present, and how the prospective witness  
7 happened to be in a position to see or to hear what occurred at the time it occurred.

8 The Court will review and rule on the motion for attendance of incarcerated witnesses,  
9 specifying which prospective witnesses must be brought to Court. Subsequently, the Court will  
10 issue the order necessary to cause the witness's custodian to bring the witness to Court.

11 Motions for the attendance of incarcerated witnesses, if any, must be filed on or before  
12 **September 26, 2018**. Oppositions, if any, must be filed on or before **October 26, 2018**.

13 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to  
14 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who  
15 refuse to testify voluntarily, the party should submit with his pretrial statement a motion for the  
16 attendance of such witnesses. Such motion should be in the form described above. In addition,  
17 the party must indicate in the motion that the incarcerated witnesses are not willing to testify  
18 voluntarily.

19 3. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to  
20 Testify Voluntarily - It is the responsibility of the party who has secured an unincarcerated  
21 witness's voluntary attendance to notify the witness of the time and date of trial. No action need  
22 be sought or obtained from the Court.

23 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to  
24 Testify Voluntarily - If a prospective witness is not incarcerated, and he or she refuses to testify  
25 voluntarily, the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the  
26 party seeking the witness's presence must tender an appropriate sum of money for the witness.  
27 Id. In the case of an unincarcerated witness, the appropriate sum of money is the daily witness  
28 fee of \$40.00 plus the witness's travel expenses. 28 U.S.C. § 1821.

If Plaintiff wishes to obtain the attendance of one or more unincarcerated witnesses who

1 refuse to testify voluntarily, Plaintiff must first notify the Court in writing of the name and  
2 location of each unincarcerated witness. The Court will calculate the travel expense for each  
3 unincarcerated witness and notify Plaintiff of the amount(s). Plaintiff must then, for each witness,  
4 submit a money order made payable to the witness for the full amount of the witness's travel  
5 expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the  
6 unincarcerated witness by the United States Marshal unless the money order is tendered to the  
7 Court. Because no statute authorizes the use of public funds for these expenses in civil cases, the  
8 tendering of witness fees and travel expenses is required even if the party was granted leave to  
9 proceed *in forma pauperis*.

10 If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to  
11 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **October 26,**  
12 **2018**. In order to ensure timely submission of the money orders, Plaintiff must notify the Court  
13 of the names and locations of his witnesses, in compliance with step 4 above, no later than  
14 **September 26, 2018**.

15 Plaintiff shall file and serve a pretrial statement as described in this order on or before  
16 **September 26, 2018**. Defendant shall file and serve a pretrial statement as described in this order  
17 on or before **October 26, 2018**.

18 The parties are advised that failure to file pretrial statements as required by this order may  
19 result in the imposition of appropriate sanctions, which may include dismissal of the action or  
20 entry of default.

21 The Clerk is DIRECTED to send Plaintiff a copy of Local Rule 281(b).

## 22 **IX. TRIAL DATE**

23 A jury trial is set for **January 29, at 8:30 a.m.**, in Courtroom 5, before  
24 District Judge Dale A. Drozd.

## 25 **X. EFFECT OF THIS ORDER**

26 This order represents the Court and the parties' best estimated schedule to complete this  
27 case. Any party unable to comply with the dates outlined in this order shall immediately file an  
28 appropriate motion or stipulation identifying the requested modification(s).

*The dates set in this Order are considered to be firm and will not be modified absent a*



1 *showing of good cause, even if a stipulation to modify is filed.* Due to the impacted nature of the  
2 civil case docket, this Court disfavors requests to modify established dates.

3 Failure to comply with this order may result in the imposition of sanctions.

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5 IT IS SO ORDERED.

6 Dated: March 3, 2017

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/s/ Eric P. Groj  
UNITED STATES MAGISTRATE JUDGE