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

PETER CASEY CRUZ,
Plaintiff,

v.

JONATHAN HAMRICK,
Defendant.

CASE NO. 1:13-cv-00988-LJO-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: 2:00 p.m.
Courtroom 10 (EPG)
Non-Expert
Discovery Cut-off: September 11, 2017
Expert Disclosure
Deadline: September 29, 2017
Rebuttal Expert
Disclosure Deadline: October 27, 2017
Expert Discovery
Cut-off: November 30, 2017
Dispositive Motion
Filing Deadline: December 15, 2017
Telephonic Trial
Confirmation Hearing: November 28, 2018
Time: 8:15 a.m.
Courtroom 4 (LJO)
Jury Trial: January 23, 2019
Time: 8:30 a.m.
Courtroom 4 (LJO)

This Court conducted a scheduling conference on February 13, 2017. Plaintiff Peter Cruz telephonically appeared on his own behalf. Counsel Peter Meshot personally appeared on behalf of Defendant. Pursuant to Fed. R. Civ. P. 16(b), this Court now sets a schedule for this action.

I. INITIAL DISCLOSURES

Plaintiff has until March 3, 2017, to serve his initial disclosures on Defendant. Defendant

1 has until March 3, 2017, to serve his supplemental initial disclosures on Plaintiff.

2 **II. DISCOVERY PROCEDURES**

3 The parties are now granted leave to serve discovery in addition to that provided as part of
4 initial disclosures. Pursuant to Federal Rules of Civil Procedure 1, 16, and 26-36, discovery shall
5 proceed as follows:

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

27 ¹ 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 or third party withholds a document on the basis of the official information privilege,
2 the requesting party may request that the Court conduct an *in camera* review of such
3 document so that the Court can balance the moving party's need for the documents in
4 the litigation against the reasons that are asserted in defending their confidentiality. In
5 any such request for *in camera* review, the party requesting review shall identify, with
6 specificity, the document(s) for which review is sought.

- 7
- 8 4. The parties are required to act in good faith during the course of discovery and the
9 failure to do so may result in the payment of expenses pursuant to Federal Rule of
10 Civil Procedure 37(a)(5) or other appropriate sanctions authorized by the Federal
11 Rules of Civil Procedure or the Local Rules.
- 12 5. Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant may depose
13 Plaintiff and any other witness confined in a prison upon condition that, at least
14 fourteen (14) days before such a deposition, Defendant serves all parties with the
15 notice required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff's failure to
16 participate in a properly noticed deposition could result in sanctions against Plaintiff,
17 including monetary sanctions and/or dismissal of this case. Pursuant to Federal Rule
18 of Civil Procedure 30(b)(4), the parties may take any deposition under this section by
19 video conference without a further motion or order of the Court. Due to security
20 concerns and institutional considerations not applicable to Defendant, Plaintiff must
21 seek leave from the Court to depose incarcerated witnesses pursuant to Federal Rule of
22 Civil Procedure 30(a)(2). Nothing herein forecloses a party from bringing a motion
23 for protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.
- 24 6. With the Court's permission, Plaintiff may serve third party subpoenas, including on
25 the California Department of Corrections and Rehabilitation and/or the Office of the
26 Inspector General if Plaintiff seeks documents from them and the entities are not
27 presently defendants in this case. To issue a subpoena on these entities, or any other
28 third parties, Plaintiff must file a request for the issuance of a subpoena *duces tecum*
with the Court. If the Court approves the request, it may issue Plaintiff a subpoena
duces tecum, commanding the production of documents from a non-party, and may

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

- 10 7. A discovery conference has been set for **July 24, 2017, at 2:00 p.m.** Parties have
11 leave to appear by phone. To join the conference, each party is directed to call the
12 toll-free number **(888) 251-2909** and use **Access Code 1024453**. Two weeks before
13 the discovery conference, the parties may file a motion to compel further discovery
14 responses. One week before the discovery conference, the responding party may file a
15 response to the motion to compel. The motion should include a copy of the request(s)
16 and any response to the request(s) at issue. Unless there is a need for discovery prior
17 to the discovery conference, motions to compel will not be considered until the
18 discovery conference. Motions to compel will not be permitted after the discovery
19 conference absent good cause. The parties should be prepared to address all discovery
20 disputes at the discovery conference.

21 **III. EXPERT DISCLOSURES**

22 The deadline for all parties to serve their expert disclosures is **September 29, 2017**.
23 Parties have until **October 27, 2017**, to serve their rebuttal expert disclosures. The deadline for
24 the completion of all expert discovery is **November 30, 2017**.

25 **IV. DISCOVERY DEADLINE**

26 The deadline for the completion of all non-expert discovery is **September 11, 2017**. All
27 discovery must be provided by this date, including discovery compelled following the discovery
28 conference.

V. DISPOSITIVE MOTIONS DEADLINE

1 The deadline for filing all dispositive motions pursuant to Fed. R. Civ. P. 56 is **December**
2 **15, 2017.**

3 **VI. SETTLEMENT CONFERENCE**

4 No settlement conference has been scheduled. The Court will revisit the issue of
5 scheduling a settlement conference at the discovery conference on July 24, 2017.

6 **VII. MAGISTRATE JUDGE JURISDICTION**

7 Plaintiff has declined the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. §
8 636(c). (ECF No. 5).

9 **VIII. TELEPHONIC TRIAL CONFIRMATION HEARING**

10 The Telephonic Trial Confirmation Hearing is set for **November 28, 2018, at 8:15 a.m.,**
11 in Courtroom 4, before Chief Judge Lawrence J. O'Neill. The parties may appear by telephone
12 by arranging a one line conference call and telephoning the Court at (559) 499-5680.

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

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

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

1 knowledge of relevant facts.

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

9 The willingness of the prospective witness can be shown in one of two ways: (1) the party
10 himself can swear by declaration under penalty of perjury that the prospective witness has
11 informed the party that he or she is willing to testify voluntarily without being subpoenaed, in
12 which declaration the party must state when and where the prospective witness informed the party
13 of this willingness; or (2) the party can serve and file a declaration, signed under penalty of
14 perjury by the prospective witness, in which the witness states that he or she is willing to testify
15 without being subpoenaed.

16 The prospective witness’s actual knowledge of relevant facts can be shown in one of two
17 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
18 eyewitness or an ear-witness to the relevant facts (i.e., if an incident occurred in plaintiff’s cell
19 and, at the time, plaintiff saw that a cellmate was present and observed the incident, plaintiff may
20 swear to the cellmate’s ability to testify), the party himself can swear by declaration under penalty
21 of perjury that the prospective witness has actual knowledge; or (2) the party can serve and file a
22 declaration signed under penalty of perjury by the prospective witness in which the witness
23 describes the relevant facts to which the prospective witness was an eye- or ear witness. Whether
24 the declaration is made by the party or by the prospective witness, it must be specific about the
25 incident, when and where it occurred, who was present, and how the prospective witness
26 happened to be in a position to see or to hear what occurred at the time it occurred.

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

1 Motions for the attendance of incarcerated witnesses, if any, must be filed on or before
2 **September 28, 2018**. Oppositions, if any, must be filed on or before **October 26, 2018**.

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

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

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

19 If Plaintiff wishes to obtain the attendance of one or more unincarcerated witnesses who
20 refuse to testify voluntarily, Plaintiff must first notify the Court in writing of the name and
21 location of each unincarcerated witness. The Court will calculate the travel expense for each
22 unincarcerated witness and notify Plaintiff of the amount(s). Plaintiff must then, for each witness,
23 submit a money order made payable to the witness for the full amount of the witness's travel
24 expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the
25 unincarcerated witness by the United States Marshal unless the money order is tendered to the
26 Court. Because no statute authorizes the use of public funds for these expenses in civil cases, the
27 tendering of witness fees and travel expenses is required even if the party was granted leave to
28 proceed *in forma pauperis*.

If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to

1 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **October 26,**
2 **2018.** In order to ensure timely submission of the money orders, Plaintiff must notify the Court
3 of the names and locations of his witnesses, in compliance with step 4 above, no later than
4 **September 28, 2018.**

5 Plaintiff shall file and serve a pretrial statement as described in this order on or before
6 **September 28, 2018.** Defendant shall file and serve a pretrial statement as described in this order
7 on or before **October 26, 2018.**

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

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

12 **IX. TRIAL DATE**

13 A 1-3 day jury trial is set for **January 23, 2019, at 8:30 a.m.,** in Courtroom 4, before
14 Chief Judge Lawrence J. O'Neill.

15 **X. EFFECT OF THIS ORDER**

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

19 *The dates set in this Order are considered to be firm and will not be modified absent a*
20 *showing of good cause, even if a stipulation to modify is filed.* Due to the impacted nature of the
21 civil case docket, this Court disfavors requests to modify established dates.

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

23 IT IS SO ORDERED.

24 Dated: February 14, 2017

25 /s/ Eric P. Gray
26 UNITED STATES MAGISTRATE JUDGE