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

11 IRVIN VAN BUREN,) Case No.: 1:13-cv-01273-LJO-DLB (PC)
12)
13 Plaintiff,) ORDER DENYING DEFENDANT’S
14 v.) MOTION FOR RECONSIDERATION
15 EMERSON,) (Document 29)
16 Defendant.)
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21 Plaintiff Irvin Ban Buren (“Plaintiff”) is a prisoner in the custody of the California Department
22 of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in
23 this civil rights action pursuant to 42 U.S.C. § 1983.

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PROCEDURAL BACKGROUND

21 Plaintiff filed this action on August 14, 2013. The action is proceeding on an Eighth
22 Amendment claim against Defendant Emerson.

23 On September 4, 2014, after Defendant filed an answer, the Court issued a Discovery and
24 Scheduling Order. Part I of the Order requires the parties to provide initial disclosures, including
25 names of witnesses and production of documents.

1 On October 16, 2014, Defendant filed a Request for Reconsideration of Part I of the Discovery
2 and Scheduling Order. Plaintiff did not file an opposition. The matter is deemed submitted pursuant
3 to Local Rule 230(l).

4 **LEGAL STANDARD**

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

10 **DISCUSSION**

11 Defendant correctly argues that Part I of the Discovery and Scheduling Order requires the
12 parties to engage in disclosures similar to those required under Federal Rule of Civil Procedure
13 26(a)(1). Defendant is also correct in that Plaintiff is a pro se prisoner, and that such actions are
14 generally exempt from initial disclosure requirements.

15 Defendant is incorrect, however, insofar as he argues that the Discovery and Scheduling Order
16 is an improper "standing order" meant to modify the initial disclosure requirements. As the Court has
17 previously explained in *numerous* prisoner actions where the Discovery and Scheduling Order has
18 been issued, the order is a case-specific order that issued in this action "[t]o expedite the fair
19 disposition of this action and to discourage wasteful pretrial activities." Therefore, the order is proper
20 since "even in a case excluded . . . , the court can order exchange of similar information in managing
21 the action under rule 16." Fed. R. Civ. P. 26(a)(1) Advisory Committee Note of 2000. The fact that a
22 similar order has issued in other prisoner cases does not transform the order into a formal, or informal,
23 standing order. Indeed, if there is an instance where initial disclosures are not warranted, the Court
24 will not issue an order requiring their exchange.

25 Moreover, Defendant's tactic of listing each and every prisoner action where the Discovery
26 and Scheduling Order issued does not sway the Court. The Discovery and Scheduling Orders may
27 read the same, but this does not mean that each action is not analyzed prior to the issuance of the
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1 order. As Defendant is undoubtedly aware, this Court's prisoner case load is staggering, and while the
2 Court may not tailor each and every discovery order, it reviews the actions prior to imposing initial
3 disclosures. The fact is that most, if not all, prisoner actions begin without issues that would preclude
4 initial disclosures. If other arrangements should be made subsequent to the order, the Court will act
5 accordingly.

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

12 Defendant further believes that such requirements are an undue burden on the State in prisoner
13 cases. However, again, the intent behind the order is to streamline the discovery process and
14 ultimately reduce the overall burden on the State, the Court and the parties. In fact, since the
15 requirement to exchange initial disclosures has been in place, there has been a significant decrease in
16 discovery disputes in actions where the order has issued. This decrease has benefited both the
17 parties *and* the Court.

18 Defendant also attempts to raise an issue based on his belief that the Discovery and Scheduling
19 Order improperly expands the initial disclosure requirement of Rule 26(a)(1)(A) by requiring a party
20 to identify witnesses and evidence it *may* use to support its claims or defenses. However, the order
21 requires no more than would be required under Rule 26(a), or in the ordinary course of investigating a
22 complaint. The purpose of initial disclosures under FRCP 26(a) is "to accelerate the exchange of basic
23 information . . . and to eliminate the paper work involved in requesting such information." Fed. R.
24 Civ. P. 26(a)(1) Advisory Committee Note of 1993 (emphasis added). Orders such as this fall well
25 within the vested control of a trial court to control its docket and to ensure efficient use of limited
26 judicial resources.

1 Moreover, while the order may not specifically state that disclosures are limited to
2 “discoverable information,” the context of the order, as well as common sense, dictate that only
3 discoverable information need be exchanged.

4 Finally, insofar as Defendant objects to the requirement that he produce materials in the
5 possession, custody or control of Defendant *and* CDCR, his objection fails. Defendant specifically
6 objects to the definition used in Allen v. Woodford, 2007 WL 309945 (E. D. Cal. 2007), cited in the
7 order, and contends that he is “neither the Secretary of the Department nor a member of its executive
8 staff.” Mot., 6. Defendant therefore believes that it is improper to place upon him an obligation to
9 produce documents in the care, custody or control of CDCR.

10 This standard, however, requires no more than production of information for which Defendant
11 has “the legal right to obtain” on demand. If a document does not fall within the definition of Allen, it
12 need not be produced. Certainly, Defendant will not have “possession, custody or control” of *all* of
13 CDCR’s documents. The order does not require Defendant to produce documents that he cannot
14 otherwise obtain in the course of his employment.

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

17 Defendant’s motion is DENIED. The parties SHALL exchange initial disclosures within thirty
18 (30) days of the date of service of this order.

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20 **SO ORDERED**

21 **Dated: December 2, 2014**

22 /s/ Lawrence J. O’Neill
23 **United States District Judge**
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