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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER J. FETZER,

Plaintiff,

vs.

DR. W. ZHANG,

Defendant.

) Case No.:1:14-cv-00357 LJO DLB
)
) **DISCOVERY AND**
) **SCHEDULING ORDER**
)
) Initial Disclosures: February 23, 2015
) Motions based on Exhaustion: April 7, 2015
) Deadline to Amend Pleadings: May 7, 2015
) Discovery Cut-Off: June 8, 2015
) Dispositive Motion Deadline: August 5, 2015

To expedite the fair disposition of this action and to discourage wasteful pretrial activities, the Court directs that the attorneys or parties, if appearing pro se, comply with the following procedures:

I. INITIAL DISCLOSURES

Notwithstanding Federal Rule of Civil Procedure 26(a)(1)(B), the parties are **HEREBY ORDERED** to provide Initial Disclosures as follows:

No later than **February 23, 2015**:

A. Plaintiff's Disclosures:

Plaintiff shall provide Defendant with the name and, if known, the location or other identifying information (such as inmate number, job classification or assignment) of each individual likely to have information about the events described in his complaint or his claims of

1 injury or damage. In addition, Plaintiff shall describe, generally, the information each individual
2 so identified is believed to possess.

3 Plaintiff shall also provide copies of, or a list describing (by category and location), all
4 documents or other tangible things in his possession, custody or control¹ which he may use to
5 support the allegation(s) in his complaint, or his claims or injury of damage.

6 B. Defendant(s) Initial Disclosures:

7 Defendant(s) shall provide Plaintiff with the name and, if known, the location or other
8 identifying information (such as inmate number, job classification or institutional assignment) of
9 each individual likely to have information about Defendant(s)' claims or defenses, or who will
10 be used to support Defendant(s)' version of the events described in the complaint. In addition,
11 Defendant(s) shall describe, generally, the information each individual so identified is believed
12 to possess.

13 Defendant(s) shall provide to Plaintiff copies of all documents and other materials in the
14 care, custody, or control of any Defendant(s) or the California Department of Corrections and
15 Rehabilitation ("CDCR") related to the claims and defenses in the case.

16 Such documents and materials shall include, but are not limited to, (a) documents and
17 materials upon which Defendant(s) rely in support of their defense of the action, (b) grievances
18 and appeals thereof, determinations of grievances and appeals, and (c) reports of completed
19 investigations by CDCR or others. If Defendants intend on filing a motion relating to Plaintiff's
20 failure to exhaust, initial disclosures must include related grievances and appeals, and all
21 responses. Simultaneous with disclosure to Plaintiff, Defense counsel shall file with the Court
22 either a copy of any cover letter (without attachments) or a statement that the disclosures
23 required herein have been completed.

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¹ Property is deemed within a party's possession, custody or control if the party has actual possession, custody or
28 control thereof, or the legal right to obtain the property on demand. *Allen v. Woodford*, 2007 WL 309945, *2 (E.D.
Cal. 2007).

1 Defendants do not need to provide copies of documents that are available to Plaintiff
2 upon request, such as documents in Plaintiff's Central File or Medical File. For such documents,
3 Defendants need only describe them in the disclosure with particularity, and note that Plaintiff
4 may obtain the document upon request from the prisoner/CDCR. In lieu of a description,
5 Defendants may provide copies.

6 Pursuant to Federal Rule of Civil Procedure 26(e), the parties must supplement or correct
7 the disclosures in a timely manner, and failure to do so may result in the inability to present such
8 evidence in support of a motion, or at trial. Fed. R. Civ. P. 37(c).

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10 II. DEPOSITIONS

11 Defendant(s) are granted leave to take the deposition of Plaintiff, or any other
12 incarcerated witness, pursuant to Federal Rule of Civil Procedure 30(a)(2)(B). Defense counsel
13 shall provide Plaintiff with notice of the date of the deposition by mailing such notice to Plaintiff
14 at least fifteen (15) days prior to the scheduled deposition date. The deposition may not
15 commence until at least ten (10) days after Defense counsel has filed their proof of compliance
16 as required in subparagraph (B) above. PLAINTIFF SHALL TAKE NOTICE that disagreement
17 with any directive of security staff at the correctional facility at which the deposition is
18 scheduled is not a ground on which Plaintiff may refuse to answer appropriate questions, and the
19 failure of Plaintiff to attend, be sworn, and answer appropriate questions may result in sanctions.
20 Such sanctions may include dismissal of the action pursuant to Federal Rule of Civil Procedure
21 37. Objections made in good faith in accordance with governing rules are permissible.

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23 III. SCHEDULE AND DEADLINES

24 A. The issue of exhaustion must be raised by either (1) a procedurally proper motion
25 for summary judgment; or (2) a motion to dismiss pursuant to Rule 12(b)(6) if the failure to
26 exhaust is clear on the face of the complaint. If the parties believe that discovery related to
27 exhaustion is necessary, they may request such discovery pursuant to Rule 56(d). Requests for
28 limited discovery must be made within thirty (30) days of the date of service of any motion for

1 summary judgment related to exhaustion. Motions relating to exhaustion must be filed on or
2 before **April 7, 2015**.

3 B. The deadline for amending pleadings is **May 7, 2015**.

4 C. All discovery shall be completed on or before **June 8, 2015**. Motions to compel
5 must also be filed by this date.

6 D. Dispositive motions must be filed on or before **August 5, 2015**.

7 **IV. DISCOVERY ISSUES**

8 A. Written discovery must be served at least thirty (30) days prior to the close of
9 discovery. Responses must be served thirty (30) days after service of the discovery request.
10 Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A). In objecting to discovery requests, Defendant(s) should
11 state their objections in plain language that a pro se party will likely understand.
12

13 B. As stated above, motions to compel must be filed on or before **June 8, 2015**. The
14 meet and confer requirement set forth in Federal Rule of Civil Procedure 37(a)(1) and Local
15 Rule 251(b) is waived. Voluntary compliance is encouraged, however.

16 **V. EXTENSIONS OF TIME**

17 Requests for extensions of the deadlines set forth in this Discovery and Scheduling Order
18 **must be filed on or before the expiration of the date in question. These deadlines are firm**
19 **and will not be extended by the Court except upon a showing of good cause.** Fed. R. Civ. P.
20 16(b)(4).
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22 IT IS SO ORDERED.

23 Dated: **January 7, 2015**

24 */s/ Dennis L. Beck*
25 UNITED STATES MAGISTRATE JUDGE
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