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9	UNITED STATES DISTRICT COURT	
10	EASTERN DISTRICT OF CALIFORNIA	
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12	BINH TRAN,	1:14-cv-01320-DAD-EPG (PC)
13	Plaintiff,	ORDER DIRECTING CLERK TO RETURN PLAINTIFF'S FIRST SET OF DEPOSITION
14	v.	UPON WRITTEN QUESTIONS AND LETTER
15	E. SMITH,	
16	Defendant.	
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18		
19	Binh Tran ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with	
20	this civil rights action filed pursuant to 42 U.S.C. § 1983 and attendant state law claim for	
21	common law negligence. On May 25, 2017, Plaintiff attempted to file his first set of deposition	
22	upon written questions, as well as a letter addressed to the Court.	
23	The Court will return to Plaintiff both Plaintiff's first set of deposition upon written	
24	questions and the letter. Plaintiff should not file discovery requests with the Court. Further,	
25	discovery has not yet been opened in this case. (ECF No. 2, p. 4). Additionally, Plaintiff appears	
26	to request that the questions not be shared with defendant until a later time, which the Court	
27	cannot do.	
28	Finally, the Court notes that Plaintiff appears to confuse two separate discovery tools.	

1 Federal Rule of Civil Procedure 33, under which this discovery request is purportedly filed, 2 allows interrogatories to be served on other parties. Federal Rule of Civil Procedure 31 allows 3 depositions to be taken by written questions. However, Plaintiff must first ask for leave of the 4 Court before he can serve a deposition by written questions. Fed. R. Civ. P. 31(a)(2)(B). If 5 Plaintiff is granted leave to take a deposition by written questions, he needs to serve a copy of the 6 questions on defendant E. Smith (Fed. R. Civ. P. 31(a)(3)), as well as the officer who is to take 7 the deposition (Fed. R. Civ. P. 31(b)). Note also that Rule 30(c)(3), regarding Depositions by Oral Examination has a provision regarding "Participating Through Written Questions," which 8 9 states that "Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The 10 11 officer must ask the deponent those questions and record the answers verbatim." If Plaintiff wishes to proceed with a deposition upon written questions, he may make an 12 oral motion at the initial scheduling conference, which is currently set for August 14, 2017, at 13 2:00 p.m. The Court and parties will discuss discovery at that time and can address Plaintiff's 14 discovery plan. 15 Accordingly, based on the foregoing, the Clerk of Court is DIRECTED to return 16 Plaintiff's first set of deposition upon written questions and the attached letter to Plaintiff. 17 18 IT IS SO ORDERED. 19 Is/ Erici P. Group-UNITED STATES MAGISTRATE JUDGE 20 Dated: May 26, 2017 21 22 23 24 25 26 27 28

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