

1 Procedure 5 and Local Rule 135. Discovery requests and responses shall not be filed
2 with the Court unless required by Local Rules 250.2, 250.3, or 250.4 (providing that
3 discovery requests shall not be filed unless or until there is a proceeding in which the
4 document or proof of service is at issue). A party may serve on any other party no
5 more than 15 interrogatories, 15 requests for production of documents, and 10 requests
6 for admission. On motion, these limits may be increased for good cause.

7 **2. Plaintiff has already served discovery on Defendants, including interrogatories.**
8 **Plaintiff served more than 15 interrogatories on each defendant. As discussed at**
9 **the scheduling conference, Plaintiff has seven days from May 2, 2017, to notify**
10 **Defendants which of the fifteen interrogatories each defendant is to answer. If**
11 **Plaintiff does not specify which interrogatories he wants each defendant to**
12 **answer, each defendant only needs to answer the first fifteen interrogatories that**
13 **were served on that defendant.**

14 3. Responses to written discovery requests shall be due **forty-five (45) days** after the
15 request is first served. Boilerplate objections are disfavored and may be summarily
16 overruled by the Court. Responses to document requests shall include all documents
17 within a party's possession, custody or control. Fed. R. Civ. P. 34(a)(1). Documents
18 are deemed within a party's possession, custody, or control if the party has actual
19 possession, custody, or control thereof, or the legal right to obtain the property on
20 demand.¹

21 4. If any party or third party withholds a document on the basis of privilege, they shall
22 provide a privilege log to the requesting party identifying the date, author, recipients,
23 general subject matter, and basis of the privilege within **thirty (30) days** after the date
24 that responses are due. Failure to provide a privilege log within this time shall result
25 in a waiver of the privilege. To the extent the requesting party disputes whether a
26

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 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 5. 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 6. 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 on the 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 7. 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

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

13 8. A discovery conference has been set for **September 11, 2017, at 1:30 p.m.** Parties
14 have leave to appear by phone. To join the conference, each party is directed to call
15 the toll-free number **(888) 251-2909** and use **Access Code 1024453**. Up until three
16 weeks before the discovery conference, the parties may file a motion to compel further
17 discovery responses. One week before the discovery conference, the responding party
18 may file a response to the motion to compel. The motion should include a copy of the
19 request(s) and any response to the request(s) at issue. Unless there is a need for
20 discovery prior to the discovery conference, motions to compel will not be considered
21 until the discovery conference. Motions to compel will not be permitted after the
22 discovery conference absent good cause. The parties should be prepared to address all
23 discovery disputes at the discovery conference.

24 **II. PAGE LIMITS**

25 The parties are advised that unless prior leave of the Court is obtained before the filing
26 deadline,² *all* moving and opposition briefs or legal memoranda filed in civil cases before
27 Magistrate Judge Grosjean shall not exceed twenty-five (25) pages. Reply briefs by the moving

28 ² Parties may seek by filing a short motion.

1 party shall not exceed ten (10) pages. These page limits do not include exhibits.

2 **III. NON-EXPERT DISCOVERY DEADLINE**

3 The deadline for the completion of all non-expert discovery is **November 17, 2017**. All
4 non-expert discovery must be provided by this date, including discovery compelled following the
5 discovery conference.

6 **IV. EXPERT DISCLOSURES**

7 At the scheduling conference, all parties stated that they did not intend to use expert
8 witnesses in this case. Therefore, absent a showing of good cause, the parties will not be allowed
9 to use expert witnesses in this case.

10 **V. EXHAUSTION MOTIONS**

11 The deadline for Defendant(s) to present any challenge for failure to exhaust
12 administrative remedies is **August 25, 2017**. The exhaustion issue may be raised only by filing a
13 motion for summary judgment under Fed. R. Civ. P. 56. Failure to raise the exhaustion issue by
14 the deadline will result in waiver of the defense. *See Albino v. Baca*, 747 F.3d 1162, 1170 (9th
15 Cir.) (providing that the exhaustion question should be decided as early as feasible), *cert. denied*
16 *sub nom. Scott v. Albino*, 135 S. Ct. 403, 190 L. Ed. 2d 307 (2014).

17 **VI. DISPOSITIVE MOTIONS DEADLINE**

18 The deadline for filing all dispositive motions pursuant to Fed. R. Civ. P. 56 (except for
19 dispositive motions based on failure to exhaust administrative remedies) is **December 20, 2017**.

20 **VII. SETTLEMENT CONFERENCE**

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

22 **VIII. MAGISTRATE JUDGE JURISDICTION**

23 The parties have declined the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. §
24 636(c). (ECF No. 29).

25 **IX. TELEPHONIC TRIAL CONFIRMATION HEARING**

26 The Telephonic Trial Confirmation Hearing is set for **October 11, 2018, at 8:15 a.m.**, in
27 Courtroom 4, before District Judge Lawrence J. O'Neill. Counsel for Defendant(s) is required to
28 arrange for the participation of Plaintiff in the Telephonic Trial Confirmation Hearing and to

1 initiate the telephonic hearing by arranging a one line conference call and telephoning the Court
2 at (559) 499-5680.

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

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

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

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

28 The willingness of the prospective witness can be shown in one of two ways: (1) the party

1 himself can swear by declaration under penalty of perjury that the prospective witness has
2 informed the party that he or she is willing to testify voluntarily without being subpoenaed, in
3 which declaration the party must state when and where the prospective witness informed the party
4 of this willingness; or (2) the party can serve and file a declaration, signed under penalty of
5 perjury by the prospective witness, in which the witness states that he or she is willing to testify
6 without being subpoenaed.

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

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

21 Motions for the attendance of incarcerated witnesses, if any, must be filed on or before
22 **August 10, 2018**. Oppositions, if any, must be filed on or before **September 10, 2018**.

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

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

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

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

21 If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to
22 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **September**
23 **10, 2018**. In order to ensure timely submission of the money orders, Plaintiff must notify the
24 Court of the names and locations of his witnesses, in compliance with step 4 above, no later than
25 **August 10, 2018**.

26 Plaintiff shall file and serve a pretrial statement as described in this order on or before
27 **August 10, 2018**. Defendant(s) shall file and serve a pretrial statement as described in this order
28 on or before **September 10, 2018**.

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

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

5 **X. TRIAL DATE**

6 A 1-3 day jury trial is set for **December 11, 2018 at 8:30 a.m.**, in Courtroom 4, before
7 District Judge Lawrence J. O'Neill.

8 **XI. EFFECT OF THIS ORDER**

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

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

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

16
17 IT IS SO ORDERED.

18 Dated: May 2, 2017

19 /s/ Eric P. Gray
20 UNITED STATES MAGISTRATE JUDGE