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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 HECTOR ALEMAN,
7 Plaintiff,
8 v.
9 C/O K. ACOSTA., *et al.*,
10 Defendants.

Case No. 1:15-cv-01293-LJO-EPG (PC)
ORDER DENYING DEFENDANTS'
OBJECTIONS TO DISCOVERY ORDER
(ECF Nos. 42, 49)

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12 Plaintiff Hector Aleman (“Plaintiff”) is a prisoner in the custody of the California
13 Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding *pro se* and *in*
14 *forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants
15 Rentieria, Ledesma, Nuno, Fierros, Montalvo, Acosta, and Garcia (“Defendants”) on Plaintiff’s
16 failure to protect claim. (ECF No. 15, p. 2.)

17 Defendants have filed an objection with this Court contesting portions of the Magistrate
18 Judge’s order following the initial scheduling conference that ordered production of certain
19 categories of documents. For the reasons described below, Defendants’ objection is overruled.

20 **I. PROCEDURAL BACKGROUND**

21 On February 1, 2017, the Magistrate Judge issued an order requiring initial disclosures
22 and setting a mandatory scheduling conference. (ECF No. 23.) The order directed the parties to
23 exchange certain categories of information consistent with Rule 26 of Federal Rules of the
24 Civil Procedure prior to the Rule 16 scheduling conference. (*Id.* at 2.) The order further
25 directed the parties to “be prepared to informally discuss the following issues” and included
26 “The location of potentially relevant documents; . . . Discovery each party intends to take, if
27 any, in addition to the discovery ordered above.” (*Id.* at 3.) Finally, the order directed the
28 parties to file a scheduling conference statement addressing the issues listed above as well as

1 any other issues that the parties believe would assist in the scheduling of the case. (*Id.*)

2 On April 21, 2017, Defendants Garcia, Renteria, Nuno, Montalvo, Fierros, and
3 Ledesma filed their scheduling conference statement. (ECF No. 33.) These Defendants
4 indicated that they had complied with the Magistrate Judge’s February 1, 2017 order by
5 “providing Plaintiff with the names and available contact information for thirty individuals
6 likely to have discoverable information that Defendants may use to support their claims or
7 defenses.” (*Id.* at 2.) Additionally, the Defendants provided Plaintiff with eleven categories of
8 documents that they were intending to use support their claims or defenses. (*Id.*) Plaintiff also
9 filed a scheduling conference statement, which included a list of documents that may be used to
10 support his claims. (ECF No. 35)

11 The Magistrate Judge held the mandatory Rule 16 scheduling conference on June 15,
12 2017. Plaintiff appeared *pro se* and Defendants appeared through counsel. (ECF No. 41.)
13 During the conference, the Magistrate Judge discussed the categories of documents based on
14 the parties’ initial scheduling reports and asked whether the parties had such documents and
15 whether they had been exchanged. (*See, e.g.*, ECF No. 46, pp. 10:18-11:7 (“THE COURT: Mr.
16 Lodholz, do you also have all of the documents and photographs and evidence that relate to the
17 RVR and disciplinary proceedings? MR. LODHOLZ: I believe so, Your Honor.”)). The Court
18 then discussed documents that may be obtained in the future within these categories and a
19 provided a procedure for production or raising objections to such production. (*Id.* at 12:23-
20 13:18 (“THE COURT: Okay. Well, I’ll, I’ll modify that to say that if you obtain other
21 documents related to the criminal case, I am going to order you either to produce them to Mr.
22 Aleman or inform him of any objections that you have so he could litigate. . . . MR.
23 TERHORST: . . . I think if there's something that does come up that's confidential for reasons
24 that we cannot disclose, I'll be happy to put it in a privilege log so that way, at least there's a
25 record of what we have. THE COURT: Yes. Okay. Objection or put in a privilege log. You just
26 need to make it clear that if you've obtained a document and for some reason believe it's not
27 subject to discovery, obviously you need to tell Mr. Aleman that.”).

28 Based on input from the parties, the Magistrate Judge identified certain categories of

1 documents that the Magistrate Judge found to be “so clearly relevant to the issues here that I
2 want to make sure that they, that they are part of our discovery.” (*Id.* at 14.) Each of these
3 categories was discussed on the record and the parties were given an opportunity to object to
4 such categories. Notably, Defendants did not object to any of the categories of documents.
5 Indeed, Defense counsel represented that Defendants had already provided all documents
6 within these categories to the best of their knowledge. The Court also specified that a party
7 could maintain objections based on privilege or confidentiality as to documents falling within
8 those categories so long as those objections were disclosed to the other party. The Court
9 concluded this discussion by explaining:

10 So I am going to issue an order that, that confirms, though, that to the extent
11 they have not been exchanged -- but to be clear, it sounds like they have -- that
12 all parties are to produce or confirm that the other side has documents -- and the
13 wording can be in my, more exact in my order -- but it will be trying to get the
14 RVR, the 602 exhaustion, the criminal case, and any internal institutional
15 investigations. But again, it sounds -- and I'm, and I'm happy to hear that -- that
16 the parties already have that. As always, for those documents and for all
17 documents -- I'll reiterate -- if for some reason any party thinks that they don't
18 need to produce it for any reason, they need to notify or if it's for a privilege,
19 they need to give a privilege log.

20 (*Id.* at 22:6-18).

21 After the scheduling conference, the Court issued a “Rule 16 discovery order following
22 initial scheduling conference.” (ECF No. 42.) As part of that order, the Magistrate Judge listed
23 the same five categories of documents that the parties were to produce (if they had not already
24 produced them) “[i]n an effort to secure the just, speedy, and inexpensive disposition of this
25 action, and after consideration of factors in Rule 26(b)(1) of the Federal Rules of Civil
26 Procedure.” (*Id.*) The Magistrate Judge further provided the parties a mechanism to preserve
27 objections to producing confidential information. (*Id.*)

28 On June 29, 2017, Defendants Fierros, Garcia, Ledesma, Montalvo, Nuno, and Renteria
filed the instant Rule 72(a) objections to the Magistrate Judge’s June 16, 2017 order. (ECF No.
49.) Specifically, these Defendants object to the Magistrate Judge’s authority under Rule 16 to
issue the order. (*Id.*)

1 **II. LEGAL STANDARD**

2 Pursuant to Federal Rule of Civil Procedure 72(a), when reviewing a magistrate judge's
3 order, “[t]he district judge in the case must consider timely objections and modify or set aside
4 any part of the order that is clearly erroneous or is contrary to law.” *See also* 28 U.S.C. §
5 636(b)(1)(A); Local Rule 303. Under the clearly erroneous standard of review, a district court
6 may overturn a magistrate judge's ruling “ ‘only if the district court is left with the definite and
7 firm conviction that a mistake has been made.’ ” *Computer Economics, Inc. v. Gartner Group,*
8 *Inc. .*, 50 F.Supp.2d 980, 983 (S.D.Cal.1999) (quoting *Weeks v. Samsung Heavy Indus. Co.,*
9 *Ltd.*, 126 F.3d 926, 943 (7th Cir.1997)). Under the contrary to law standard, a district court
10 may conduct independent review of purely legal determinations by a magistrate judge. *Id.*

11 **III. DISCUSSION**

12 At the outset it is worth noting that Defendants have no objection to any of the
13 categories of documents covered by the Magistrate Judge’s order. On the contrary, it appears
14 that they provided such documents to Plaintiff even prior to the initial scheduling conference.
15 Rather, Defendants object only to the Magistrate Judge’s authority to issue a discovery order
16 under these circumstances. Specifically, Defendants argue that the “Magistrate Judge’s order is
17 effectively a Request for Production of Documents propounded on the parties by the Court.”
18 (ECF No. 49, p. 2.) On this premise, the Defendants proceed to contend that the text of Rule 16
19 does not permit the Magistrate Judge to participate in discovery by “propound[ing] discovery
20 requests on the parties.” (*Id.* at 3.)

21 The characterization of the Magistrate Judge’s June 16, 2017 order as a “request for
22 production” and a desire to “propound discovery” demonstrates a misunderstanding of these
23 proceedings. Rather, the Magistrate Judge asked for the parties to identify categories of
24 discoverable information through scheduling conference reports and initial disclosures and to
25 discuss such documents at the scheduling conference. The parties identified such documents
26 and further discussed discoverable information at the scheduling conference. All categories of
27 documents identified in the Court’s order had been discussed on the record based on input from
28 the parties and with an opportunity to be heard. Not only did Defendants not object to any of

1 the categories of discovery covered by the Court's order, they represented they had already
2 produced all such documents in their initial disclosures to the best of their knowledge. (*Id.* at
3 21-22, “So the Court’s clear, that from our perspective everything’s been produced, but we
4 certainly will be vigilant if there’s anything else comes up.”) Moreover, the Court stated on the
5 record and in its order that parties could raise objections to specific documents going forward.

6 Nothing prevents the Magistrate Judge from issuing a discovery order based on input
7 from the parties regarding categories of discoverable information and with notice and an
8 opportunity to be heard by all counsel. Indeed, courts are increasingly using informal
9 discovery procedures such as telephonic conferences to address discovery issues. *See, e.g.,*
10 *Engert v. Stanislaus Cty.*, No. 1:13-cv-0126-LJO-BAM, 2014 WL 5217301 (E.D. Cal. Oct. 14,
11 2014) (resolving discovery disputes during hearing without formal motion); *Thomas-Young v.*
12 *Sutter Cent. Valley Hosps.*, No. 1:12-cv-01410-AWI-SKO, 2013 WL 30574167, at *1 (E.D.
13 Cal. June 17, 2013) (same); *Honeywell Int’l, Inc. v. Western Support Grp.*, No. CV 12-00645-
14 PHX-JAT, 2013 WL 2369919, at *1 n.2 (D. Ariz. May 29, 2013) (same).

15 It is well established that “[t]he district court has wide discretion in controlling
16 discovery.” *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (collecting cases). *See*
17 *also United States v. W.R. Grace*, 526 F.3d 499, 508–09 (9th Cir. 2008) (“We begin with the
18 principle that the district court is charged with effectuating the speedy and orderly
19 administration of justice. There is universal acceptance in the federal courts that, in carrying out
20 this mandate, a district court has the authority to enter pretrial case management and discovery
21 orders designed to ensure that the relevant issues to be tried are identified, that the parties have
22 an opportunity to engage in appropriate discovery and that the parties are adequately and timely
23 prepared so that the trial can proceed efficiently and intelligibly.”). Moreover, Federal Rule of
24 Civil Procedure 16 provides that “At any pretrial conference, the court may consider and take
25 appropriate action on the following matters: “(F) controlling and scheduling discovery,
26 including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;”
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28

1 Fed. R. Civ. P. 16(c)(2).¹ “The express purposes of Rule 16 include ‘expediting disposition of
2 the action’ and ‘discouraging wasteful pretrial activities.’” *Hamilton v. Hart*, No.
3 110CV00272DADEPG, 2017 WL 272090, at *3 (E.D. Cal. Jan. 19, 2017) (quoting Fed. R.
4 Civ. P. 16(a)). “Federal Rule of Civil Procedure 16 vests the Court with early control over cases
5 ‘toward a process of judicial management that embraces the entire pretrial phase, especially
6 motions and discovery.’ ” *Id.* (quoting *Chire v. New Castle Corp.*, No. 2:14-cv-00383-RFB-
7 NJK, 2014 WL 4803109, at *1 (D. Nev. Sept. 26, 2014)) (quoting Fed. R. Civ. P. 16 advisory
8 committee's note to 1983 amendment)). Indeed, the Advisory Committee Notes to Rule 26
9 provides that the Court has the authority to order the exchange of information in managing the
10 action pursuant to its Rule 16 authority. *See* Fed R. Civ. P. 26, Advisory Committee Note,
11 2000 Amendments (providing that even parties are exempt from initial disclosures, “the court
12 can order exchange of similar information in managing the action under Rule 16”).²

13 In conclusion, the Magistrate Judge’s authority to enter a pretrial discovery order
14 directing the exchange of certain information between the parties is supported by the Federal
15 Rules of Civil Procedure, Advisory Committee Notes, and caselaw interpreting those rules.
16 The Magistrate Judge’s order was based on input from the parties regarding categories of
17 relevant documents, and the parties were given notice and an opportunity to be heard.

18 Accordingly, Defendants’ objection is overruled.³

19 ¹ It is noted that this list is non-exhaustive. *See* Fed. R. Civ. P. 16(c)(2)(P).

20 ² Although not binding on this Court, it is worth noting that District Judge Dale A. Drozd recently
21 overruled similar objections also brought by the Attorney General’s office on the basis that the parties were given
22 sufficient notice, courts are permitted to “employ informal procedures in resolving discovery disputes, the
23 magistrate judge had legal authority to order a pretrial discovery order “to ensure that the relevant issues to be tried
24 are identified,” the Court addressed the parties’ objections. *See Hamilton v. Hart*, No. 110CV00272DADEPG,
25 2017 WL 272090, at *1 (E.D. Cal. Jan. 19, 2017) (rejecting argument the order following discovery conference
26 directing production of information did not follow a formal, noticed motion to compel and finding textual support
27 within Rule 37 for entry of the order).

28 ³ To the extent that Defendants’ objection attacks the authority of a federal magistrate judge to enter such
an order, the objection is overruled. The scope of magistrate judge authority is derived from Title 28, United
States Code, Section 636. Under that statute, a district judge “may designate a magistrate judge to hear and
determine any pretrial matter pending before the court, except [certain enumerated motions].” 28 U.S.C. §
636(b)(1)(A). The Local Rules of this District designate that: 1) all discovery motions and pretrial scheduling
conferences shall be conducted by magistrate judges, Local Rule 302(c)(1), (13), and 2) magistrate judges resolve
discovery disagreements, Local Rule 251. Thus, a magistrate judge’s authority to enter pretrial discovery orders
in this District is coextensive with the overall authority of the district court to enter such an order.

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IV. CONCLUSION

For these reasons, the June 16, 2017 order is not clearly erroneous or contrary to law and the Defendants' objections (ECF No. 49) are DENIED.

IT IS SO ORDERED.

Dated: July 6, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE