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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID A. ESTRADA,
Plaintiff,

v.

OLGA BEREGOVSKAYA, et al.,
Defendants.

CASE NO. 1:15-cv-01335-LJO-EPG (PC)

SCHEDULING ORDER, AND ORDER
DIRECTING CLERK TO SEND PLAINTIFF
A COPY OF LOCAL RULE 281(b) AND TO
SERVE A COPY OF THIS ORDER ON THE
LITIGATION COORDINATOR AT PELICAN
BAY STATE PRISON

Telephonic Discovery
Status Conference: January 29, 2018
Time: 2:30 p.m.
Courtroom 10 (EPG)

Non-expert
Discovery Cut-off: February 23, 2018

Expert Disclosure
Deadline: March 23, 2018

Rebuttal Expert
Disclosure Deadline: April 20, 2018

Expert Discovery
Cut-off: May 11, 2018

Dispositive Motion
Filing Deadline: June 15, 2018

Telephonic Trial
Confirmation Hearing: April 18, 2019
Time: 8:15 a.m.
Courtroom 4 (LJO)

Jury Trial: June 18, 2019
Time: 8:30 a.m.
Courtroom 4 (LJO)

This Court conducted a scheduling conference on August 22, 2017. Plaintiff David Estrada telephonically appeared on his own behalf. Counsel David Carrasco telephonically appeared on behalf of Defendants. Pursuant to Federal Rule of Civil Procedure 16(b), this Court now sets a schedule for this action.

1 **I. DISCOVERY PROCEDURES**

2 The parties are now granted leave to serve discovery in addition to that provided as part of
3 initial disclosures. Pursuant to Federal Rules of Civil Procedure 1, 16, and 26-36, discovery shall
4 proceed as follows:

- 5 1. Discovery requests shall be served by the parties pursuant to Federal Rule of Civil
6 Procedure 5 and Local Rule 135. Discovery requests and responses shall not be filed
7 with the Court unless required by Local Rules 250.2, 250.3, or 250.4 (providing that
8 discovery requests shall not be filed unless or until there is a proceeding in which the
9 document or proof of service is at issue). A party may serve on any other party no
10 more than 15 interrogatories, 15 requests for production of documents, and 10 requests
11 for admission. On motion, these limits may be increased for good cause.
- 12 2. Responses to written discovery requests shall be due **forty-five (45) days** after the
13 request is first served. Boilerplate objections are disfavored and may be summarily
14 overruled by the Court. Responses to document requests shall include all documents
15 within a party's possession, custody or control. Fed. R. Civ. P. 34(a)(1). Documents
16 are deemed within a party's possession, custody, or control if the party has actual
17 possession, custody, or control thereof, or the legal right to obtain the property on
18 demand.¹
- 19 3. If any party or third party withholds a document on the basis of privilege, that party or
20 third party shall provide a privilege log to the requesting party identifying the date,
21 author, recipients, general subject matter, and basis of the privilege within **thirty (30)**
22 **days** after the date that responses are due. Failure to provide a privilege log within
23 this time shall result in a waiver of the privilege. To the extent the requesting party
24 disputes whether a document is privileged, it can raise that issue to the Court's
25 attention via a motion to compel (see below). If a party or third party withholds a

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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 on the basis of the official information privilege, the requesting party may
2 request that the Court conduct an *in camera* review of such document so that the Court
3 can balance the moving party's need for the documents in the litigation against the
4 reasons that are asserted in defending their confidentiality. In any such request for *in*
5 *camera* review, the party requesting review shall identify, with specificity, the
6 document(s) for which review is sought.

- 7 4. Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant(s) may depose
8 Plaintiff and any other witness confined in a prison on the condition that, at least
9 fourteen (14) days before such a deposition, Defendant(s) serve all parties with the
10 notice required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff's failure to
11 participate in a properly noticed deposition could result in sanctions against Plaintiff,
12 including monetary sanctions and/or dismissal of this case. Pursuant to Federal Rule
13 of Civil Procedure 30(b)(4), the parties may take any deposition under this section by
14 video conference without a further motion or order of the Court. Due to security
15 concerns and institutional considerations not applicable to Defendant(s), Plaintiff must
16 seek leave from the Court to depose incarcerated witnesses pursuant to Federal Rule of
17 Civil Procedure 30(a)(2). Nothing herein forecloses a party from bringing a motion
18 for protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.
- 19 5. With the Court's permission, Plaintiff may serve third party subpoenas, including on
20 the California Department of Corrections and Rehabilitation and/or the Office of the
21 Inspector General, if Plaintiff seeks documents from entities that are not presently
22 defendants in this case. To issue a subpoena on these entities, or any other third
23 parties, Plaintiff must file a request for the issuance of a subpoena *duces tecum* with
24 the Court. If the Court approves the request, it may issue Plaintiff a subpoena *duces*
25 *tecum*, commanding the production of documents from a non-party, and may
26 command service of the subpoena by the United States Marshal Service. Fed. R. Civ.
27 P. 45; 28 U.S.C. 1915(d). However, the Court will consider granting such a request
28 *only if* the documents sought from the non-party are not equally available to Plaintiff

1 and are not obtainable from Defendant(s) through a request for production of
2 documents. Fed. R. Civ. P. 34. In any request for a subpoena, Plaintiff must: (1)
3 identify with specificity the documents sought and from whom; and (2) make a
4 showing in the request that the records are only obtainable through that third party.
5 The documents requested must also fall within the scope of discovery allowed in this
6 action. See Fed. R. Civ. P. 26(b)(1).

7 6. The parties are required to act in good faith during the course of discovery and the
8 failure to do so may result in the payment of expenses pursuant to Federal Rule of
9 Civil Procedure 37(a)(5) or other appropriate sanctions authorized by the Federal
10 Rules of Civil Procedure or the Local Rules.

11 7. A discovery conference has been set for **January 29, 2018, at 2:30 p.m.** Parties have
12 leave to appear by phone. To join the conference, each party is directed to call the
13 toll-free number **(888) 251-2909** and use **Access Code 1024453**. Up until four weeks
14 before the discovery conference, the parties may file motions to compel further
15 discovery responses. No later than two weeks before the discovery conference, the
16 responding party may file response(s) to motion(s) to compel. The motion should
17 include a copy of the request(s) and any response to the request(s) at issue. Unless
18 there is a need for discovery prior to the discovery conference, motions to compel will
19 not be considered until the discovery conference. Motions to compel will not be
20 permitted after the discovery conference absent good cause. The parties should be
21 prepared to address all discovery disputes at the discovery conference.

22 8. Plaintiff shall make arrangements with staff at his or her institution of confinement for
23 his or her attendance at the discovery conference. Plaintiff's institution of
24 confinement shall make Plaintiff available for the conference at the date and time
25 indicated above. To the extent possible, prior to the conference defense counsel shall
26 confirm with Plaintiff's institution of confinement that arrangements have been made
27 for Plaintiff's attendance. The Clerk of Court shall send a copy of this order to the
28 litigation coordinator at Pelican Bay State Prison.

1 **II. PAGE LIMITS AND COURTESY COPIES**

2 The parties are advised that unless prior leave of the Court is obtained before the filing
3 deadline,² *all* moving and opposition briefs or legal memoranda filed in civil cases before
4 Magistrate Judge Erica P. Grosjean shall not exceed twenty-five (25) pages. Reply briefs by the
5 moving party shall not exceed ten (10) pages. These page limits do not include exhibits.

6 Defendant(s) shall mail or deliver courtesy hard-copies of all motions over 10 pages in
7 length to the court at 2500 Tulare St., Room 1501, Fresno, CA 93721. Courtesy hard-copies
8 shall reflect the CM/ECF document numbers and pagination.

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

10 The deadline for the completion of all non-expert discovery is **February 23, 2018**. All
11 non-expert discovery must be provided by this date, including discovery compelled following the
12 discovery conference.

13 **IV. EXPERT DISCOVERY DEADLINES**

14 The deadline for all parties to serve their expert disclosures is **March 23, 2018**. Parties
15 have until **April 20, 2018**, to serve their rebuttal expert disclosures. The deadline for the
16 completion of all expert discovery is **May 11, 2018**.

17 **V. DISPOSITIVE MOTIONS DEADLINE**

18 The deadline for filing all dispositive motions pursuant to Fed. R. Civ. P. 56 is **June 15,**
19 **2018**. Failure to raise the exhaustion of administrative remedies issue by this deadline will result
20 in waiver of the defense. *See Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014) (providing that
21 the exhaustion question should be decided as early as feasible).

22 **VI. 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. 25).

25 **VII. TELEPHONIC TRIAL CONFIRMATION HEARING**

26 A Telephonic Trial Confirmation Hearing is set for **April 18, 2019, at 8:15 a.m.**, in
27 Courtroom 4, before District Judge Lawrence J. O’Neill. Counsel for Defendant(s) is required to

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² Parties may seek leave by filing a short motion.

1 arrange for the participation of Plaintiff in the Telephonic Trial Confirmation Hearing and to
2 initiate the telephonic hearing by arranging a one line conference call and telephoning the Court
3 at (559) 499-5680.

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

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

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

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

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

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

19 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
20 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who
21 refuse to testify voluntarily, the party should serve and file a written motion for a court order
22 requiring that such witnesses be brought to court at the time of trial. Such motion should be in
23 the form described above. In addition, the party must indicate in the motion that the incarcerated
24 witnesses are not willing to testify voluntarily.

25 The Court will review and rule on the motion(s) for attendance of incarcerated witnesses,
26 specifying which prospective witnesses must be brought to court. Subsequently, the Court will
27 issue the order necessary to cause the witness's custodian to bring the witness to court.

28 Motion(s) for the attendance of incarcerated witnesses, if any, must be filed on or before

1 **February 18, 2019.** Oppositions, if any, must be filed on or before **March 18, 2019.**

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

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

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

22 If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to
23 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **March 18,**
24 **2019.** In order to ensure timely submission of the money orders, Plaintiff must notify the Court
25 of the names and locations of his witnesses, in compliance with step 4 above, no later than
26 **February 18, 2019.**

27 Plaintiff shall file and serve a pretrial statement as described in this order on or before
28 **February 18, 2019.** Defendant(s) shall file and serve a pretrial statement as described in this

1 order on or before **March 18, 2019**.

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

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

6 **VIII. TRIAL DATE**

7 A trial is set for **June 18, 2019, at 8:30 a.m.**, in Courtroom 4, before
8 District Judge Lawrence J. O'Neill.

9 **IX. EFFECT OF THIS ORDER**

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

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

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

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18 IT IS SO ORDERED.

19 Dated: August 29, 2017

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

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