





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

- 8 4. The parties are required to act in good faith during the course of discovery and the  
9 failure to do so may result in the payment of expenses pursuant to Federal Rule of  
10 Civil Procedure 37(a)(5) or other appropriate sanctions authorized by the Federal  
11 Rules of Civil Procedure or the Local Rules.
- 12 5. Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant(s) may depose  
13 Plaintiff and any other witness confined in a prison on the condition that, at least  
14 fourteen (14) days before such a deposition, Defendant(s) serve all parties with the  
15 notice required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff's failure to  
16 participate in a properly noticed deposition could result in sanctions against Plaintiff,  
17 including monetary sanctions and/or dismissal of this case. Pursuant to Federal Rule  
18 of Civil Procedure 30(b)(4), the parties may take any deposition under this section by  
19 video conference without a further motion or order of the Court. Due to security  
20 concerns and institutional considerations not applicable to Defendant(s), Plaintiff must  
21 seek leave from the Court to depose incarcerated witnesses pursuant to Federal Rule of  
22 Civil Procedure 30(a)(2). Nothing herein forecloses a party from bringing a motion  
23 for protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.
- 24 6. With the Court's permission, Plaintiff may serve third party subpoenas, including on  
25 the California Department of Corrections and Rehabilitation and/or the Office of the  
26 Inspector General if Plaintiff seeks documents from them and the entities are not  
27 presently defendants in this case. To issue a subpoena on these entities, or any other  
28 third parties, Plaintiff must file a request for the issuance of a subpoena *duces tecum*

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

12 7. A discovery conference has been set for **September 13, 2017, at 1:30 p.m.** Parties  
13 have leave to appear by phone. To join the conference, each party is directed to call  
14 the toll-free number **(888) 251-2909** and use **Access Code 1024453**. Up until four  
15 weeks before the discovery conference, the parties may file a motion to compel further  
16 discovery responses. No later than two weeks before the discovery conference, the  
17 responding party may file a response to the motion to compel. The motion should  
18 include a copy of the request(s) and any response to the request(s) at issue. Unless  
19 there is a need for discovery prior to the discovery conference, motions to compel will  
20 not be considered until the discovery conference. Motions to compel will not be  
21 permitted after the discovery conference absent good cause. The parties should be  
22 prepared to address all discovery disputes at the discovery conference.

## 23 **II. PAGE LIMITS**

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

---

28 <sup>2</sup> Parties may seek by filing a short motion.

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

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

5 **IV. EXPERT DISCLOSURES**

6 The deadline for all parties to serve their expert disclosures is **December 1, 2017**. Parties  
7 have until **January 19, 2018**, to serve their rebuttal expert disclosures. The deadline for the  
8 completion of all expert discovery is **February 9, 2018**.

9 **V. DISPOSITIVE MOTIONS DEADLINE**

10 The deadline for filing all dispositive motions pursuant to Fed. R. Civ. P. 56 (including  
11 dispositive motions based on failure to exhaust administrative remedies) is **March 9, 2018**.  
12 Failure to raise the exhaustion issue by the deadline will result in waiver of the defense. *See*  
13 *Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir.) (providing that the exhaustion question should be  
14 decided as early as feasible), *cert. denied sub nom. Scott v. Albino*, 135 S. Ct. 403, 190 L. Ed. 2d  
15 307 (2014).

16 **VI. SETTLEMENT CONFERENCE**

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

18 **VII. MAGISTRATE JUDGE JURISDICTION**

19 The parties have consented to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C.  
20 § 636(c). (ECF No. 39).

21 **VIII. TELEPHONIC TRIAL CONFIRMATION HEARING**

22 The Telephonic Trial Confirmation Hearing is set for **September 24, 2018, at 3:00 p.m.**,  
23 in Courtroom 10, before Magistrate Judge Grosjean. Parties have leave to appear by phone. To  
24 attend the Telephonic Trial Confirmation Hearing by phone, each party participating by phone is  
25 directed to call the toll-free number **(888) 251-2909** and use **Access Code 1024453**.

26 In addition to the matters already required to be addressed in the pretrial statement in  
27 accordance with Local Rule 281, Plaintiff will be required to make a particularized showing in  
28 order to obtain the attendance of witnesses. The procedures and requirements for making such a

1 showing are outlined in detail below. Plaintiff is advised that failure to comply with the  
2 procedures set forth below may result in the preclusion of any or all witnesses named in his  
3 pretrial statement.

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

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

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

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

1 without being subpoenaed.

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

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

16 Motions for the attendance of incarcerated witnesses, if any, must be filed on or before  
17 **July 23, 2018**. Oppositions, if any, must be filed on or before **August 23, 2018**.

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

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

28 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to

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

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

16 If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to  
17 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **August 23,**  
18 **2018**. In order to ensure timely submission of the money orders, Plaintiff must notify the Court  
19 of the names and locations of his witnesses, in compliance with step 4 above, no later than **July**  
20 **23, 2018**.

21 Plaintiff shall file and serve a pretrial statement as described in this order on or before  
22 **July 23, 2018**. Defendant(s) shall file and serve a pretrial statement as described in this order on  
23 or before **August 23, 2018**.

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

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

28 **IX. TRIAL DATE**



1 A 1-3 day jury trial is set for **January 29, 2019, at 8:30 a.m.**, in Courtroom 10, before  
2 Magistrate Judge Grosjean.

3 **X. EFFECT OF THIS ORDER**

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

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

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

11 IT IS SO ORDERED.

12  
13 Dated: May 10, 2017

14 /s/ Eric P. Grosjean  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28