

1 appeared on behalf of Defendants. Pursuant to Federal Rule of Civil Procedure 16(b), this Court
2 now sets a schedule for this action.

3 **I. DISCOVERY PROCEDURES**

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

- 7 1. Discovery requests shall be served by the parties pursuant to Federal Rule of Civil
8 Procedure 5 and Local Rule 135. Discovery requests and responses shall not be filed
9 with the Court unless required by Local Rules 250.2, 250.3, or 250.4 (providing that
10 discovery requests shall not be filed unless or until there is a proceeding in which the
11 document or proof of service is at issue). A party may serve on any other party no
12 more than 15 interrogatories, 15 requests for production of documents, and 10 requests
13 for admission. On motion, these limits may be increased for good cause.
- 14 2. 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 3. If any party or third party withholds a document on the basis of privilege, that party or
22 third party shall provide a privilege log to the requesting party identifying the date,
23 author, recipients, general subject matter, and basis of the privilege within **thirty (30)**
24 **days** after the date that responses are due. Failure to provide a privilege log within
25 this time shall result in a waiver of the privilege. To the extent the requesting party

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

9 4. Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendant(s) may depose
10 Plaintiff and any other witness confined in a prison on the condition that, at least
11 fourteen (14) days before such a deposition, Defendant(s) serve all parties with the
12 notice required by Federal Rule of Civil Procedure 30(b)(1). Plaintiff's failure to
13 participate in a properly noticed deposition could result in sanctions against Plaintiff,
14 including monetary sanctions and/or dismissal of this case. Pursuant to Federal Rule
15 of Civil Procedure 30(b)(4), the parties may take any deposition under this section by
16 video conference without a further motion or order of the Court. Due to security
17 concerns and institutional considerations not applicable to Defendant(s), Plaintiff must
18 seek leave from the Court to depose incarcerated witnesses pursuant to Federal Rule of
19 Civil Procedure 30(a)(2). Nothing herein forecloses a party from bringing a motion
20 for protective order pursuant to Federal Rule of Civil Procedure 26(c)(1) if necessary.

21 5. With the Court's permission, Plaintiff may serve third party subpoenas, including on
22 the California Department of Corrections and Rehabilitation and/or the Office of the
23 Inspector General, if Plaintiff seeks documents from entities that are not presently
24 defendants in this case. To issue a subpoena on these entities, or any other third
25 parties, Plaintiff must file a request for the issuance of a subpoena *duces tecum* with
26 the Court. If the Court approves the request, it may issue Plaintiff a subpoena *duces*
27 *tecum*, commanding the production of documents from a non-party, and may
28 command service of the subpoena by the United States Marshal Service. Fed. R. Civ.

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

9 6. 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 7. A discovery and status conference has been set for **February 12, 2018, at 1:30 p.m.**
14 Parties have leave to appear by phone. To join the conference, each party is directed
15 to call the toll-free number **(888) 251-2909** and use **Access Code 1024453**. Up until
16 four weeks before the conference, the parties may file motions to compel further
17 discovery responses. No later than two weeks before the conference, the responding
18 party may file response(s) to motion(s) to compel. The motion should include a copy
19 of the request(s) and any response to the request(s) at issue. Unless there is a need for
20 discovery prior to the conference, motions to compel will not be considered until the
21 conference. Motions to compel will not be permitted after the conference absent good
22 cause. The parties should be prepared to address all discovery disputes at the
23 conference.

24 8. Plaintiff shall make arrangements with staff at his institution of confinement for his
25 attendance at the discovery and status conference. Plaintiff's institution of
26 confinement shall make Plaintiff available for the conference at the date and time
27 indicated above. To the extent possible, prior to the conference defense counsel shall
28 confirm with Plaintiff's institution of confinement that arrangements have been made

1 for Plaintiff's attendance.

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

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

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

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

11 The deadline for the completion of all non-expert discovery is **March 30, 2018**. All non-
12 expert discovery must be provided by this date, including discovery compelled following the
13 discovery and status conference.

14 **IV. EXPERT DISCOVERY DEADLINES**

15 The deadline for all parties to serve their expert disclosures is **April 27, 2018**. Parties
16 have until **May 25, 2018**, to serve their rebuttal expert disclosures. The deadline for the
17 completion of all expert discovery is **June 22, 2018**.

18 **V. EXHAUSTION MOTIONS**

19 The deadline for Defendant(s) to present any challenge for failure to exhaust
20 administrative remedies is **January 26, 2018**. The exhaustion issue may be raised by filing a
21 motion for summary judgment under Fed. R. Civ. P. 56 or by filing a request an evidentiary
22 hearing. Failure to raise the exhaustion issue by this deadline will result in waiver of the defense.
23 *See Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014) (providing that the exhaustion question
24 should be decided as early as feasible).

25 **VI. DISPOSITIVE MOTIONS DEADLINE**

26 The deadline for filing dispositive motions (except for dispositive motions based on
27 failure to exhaust administrative remedies) is **July 20, 2018**.

28 ² Parties may seek leave by filing a short motion.

1 **VII. MAGISTRATE JUDGE JURISDICTION**

2 The parties have declined the jurisdiction of a magistrate judge pursuant to 28 U.S.C. §
3 636(c). (ECF No. 23).

4 **VIII. TELEPHONIC TRIAL CONFIRMATION HEARING**

5 A Telephonic Trial Confirmation Hearing is set for **May 9, 2019, at 10:00 a.m.**, in
6 Courtroom 2, before District Judge Anthony W. Ishii. Counsel for Defendant(s) is required to
7 arrange for the participation of Plaintiff in the Telephonic Trial Confirmation Hearing and to
8 initiate the telephonic hearing at (559) 499-5660.

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

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

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

27 A party intending to introduce the testimony of incarcerated witnesses who have agreed to
28 voluntarily attend the trial must serve and file a written motion for a court order requiring that

1 such witnesses be brought to court at the time of trial. The motion must: (1) state the name,
2 address, and prison identification number of each such witness; and (2) be accompanied by
3 declarations showing that each witness is willing to testify and that each witness has actual
4 knowledge of relevant facts. The motion should be entitled “Motion for Attendance of
5 Incarcerated Witnesses.”

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

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

24 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
25 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who
26 refuse to testify voluntarily, the party should serve and file a written motion for a court order
27 requiring that such witnesses be brought to court at the time of trial. Such motion should be in
28 the form described above. In addition, the party must indicate in the motion that the incarcerated

1 witnesses are not willing to testify voluntarily.

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

5 Motion(s) for the attendance of incarcerated witnesses, if any, must be filed on or before
6 **March 8, 2019**. Oppositions, if any, must be filed on or before **April 8, 2019**.

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

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

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

27 If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who refuse to
28 testify voluntarily, Plaintiff must submit the money orders to the Court no later than **April 8,**

1 **2019.** In order to ensure timely submission of the money orders, Plaintiff must notify the Court
2 of the names and locations of his witnesses, in compliance with step 4 above, no later than **March**
3 **8, 2019.**

4 Plaintiff shall file and serve a pretrial statement as described in this order on or before
5 **March 8, 2019.** Defendant(s) shall file and serve a pretrial statement as described in this order on
6 or before **April 8, 2019.**

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

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

11 **IX. TRIAL DATE**

12 A trial is set for **July 9, 2019, at 8:30 a.m.,** in Courtroom 2, before
13 District Judge Anthony W. Ishii.

14 **X. EFFECT OF THIS ORDER**

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

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

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

22
23 IT IS SO ORDERED.

24 Dated: September 13, 2017

25 /s/ Eric P. Gray
26 UNITED STATES MAGISTRATE JUDGE