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2 Claim 2: Eighth Amendment deliberate indifference to serious medical needs
claim, based on allegations that Plaintiff was denied access to mental health care.

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4 Claim 3: Fourteenth Amendment due process claim, based on allegations he was
improperly put in, and kept in, solitary confinement for false or pre-textual
5 reasons.

6 In its September 16, 2016 screening order, the Court went on to discuss the defendants
7 that were to be included in this case and served with process. (ECF No. 23, pp. 10-11.)

8 As of the date of this order, three defendants have been served with process: Office of
9 Correctional Safety, Sergeant M. West, and G. Garrett. Service of process was attempted upon
10 another defendant, Institutional Gang Investigator, but the summons was returned unexecuted
11 because the individual could not be identified with the information provided. (ECF No. 30.)

12 At the June 12, 2017 hearing, the Court and the parties discussed identifying the
13 appropriate defendants for Plaintiff's claims in this case. Counsel for defendants indicated that it
14 has initially disclosed documents to Plaintiff that would assist him with identifying the
15 appropriate defendants for this case, including the identity of the John Doe and Institutional Gang
16 Investigator defendants involved with Plaintiff's allegations in claims 1 and 3. Plaintiff indicated
17 that his present confinement restrictions likely have prevented him from viewing these initial
18 disclosures.

19 To facilitate the identification of the appropriate defendants for claims 1 and 3, defense
20 counsel offered to send Plaintiff a letter that describes all of the individuals involved with
21 Plaintiff's alleged gang validation, re-validation and other CDCR assessments concerning
22 Plaintiff's placement in solitary confinement from 2008-2015. The Court directed defense
23 counsel to send the letter to Plaintiff, as offered, and also to file a copy of the letter with the
24 Court.

25 With respect to claim 2, the medical claim, defense counsel indicated that information
26 required to name the appropriate defendants would likely be contained in Plaintiff's medical file,
27 but her clients could not access the Plaintiff's medical file. Plaintiff indicated that he would seek
28 access to his medical file in order to name the appropriate defendants for claim 2.

1 The Court directed Plaintiff, after he has had an opportunity to review the letter from
2 defense counsel and his medical file, to file a motion naming the appropriate defendants for this
3 case. Additionally, the Court opened discovery and explained the various types of discovery
4 available to Plaintiff, which are more specifically described below in this order. The Court, then,
5 set a discovery conference for September 25, 2017 to follow-up on the status of the naming of the
6 appropriate defendants in this case and setting the remainder of the discovery schedule.

7 To facilitate the filing of Plaintiff's motion, the Clerk is directed to re-send Plaintiff a
8 copy of its September 16, 2016 screening order (ECF No. 23).

9 **II. STATUS CONFERENCE**

10 A status conference has been set for **September 25, 2017, at 1:30 p.m.** Parties have leave
11 to appear by phone. To join the conference, each party is directed to call the toll-free number
12 **(888) 251-2909** and use **Access Code 1024453**.

13 **III. SETTLEMENT CONFERENCE**

14 The parties expressed interest in an early settlement conference. An order setting a
15 settlement conference before another magistrate judge will issue at a later date.

16 **IV. MOTION FOR EXTENSION OF TIME**

17 On January 4, 2017, the Court issued an order directing the parties to make initial
18 disclosures. (ECF No. 35.) Plaintiff filed a motion for extension of time on March 9, 2017
19 requesting relief from this order. (ECF No. 48.) Plaintiff articulated the restrictions preventing
20 him from fully complying with the Court's order both in the motion and at the June 13, 2017
21 hearing.

22 At the June 13 hearing, the Court discussed the additional information required by
23 Plaintiff and Plaintiff supplemented this information as well as he could orally. Plaintiff agreed
24 to send information regarding any 602 grievance regarding his gang validation when those
25 documents become available to him.

26 Accordingly, the March 9 motion for extension of time (ECF No. 48) is DENIED as
27 MOOT.

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1 **V. 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 in its statement of a discovery dispute to be discussed at the discovery

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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 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*

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

IT IS SO ORDERED.

Dated: June 13, 2017

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE