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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 PAUL JORGENSON,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA, et al.,

13 Defendants.
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Case No. 1:17-cv-00817-LJO-EPG (PC)

ORDER FOLLOWING INITIAL
SCHEDULING CONFERENCE

15 Paul Jorgenson (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma*
16 *pauperis* in this action.

17 The Court held an initial scheduling conference on March 20, 2019. (ECF No. 69).
18 Plaintiff telephonically appeared on his own behalf. Counsel Edward Olsen personally
19 appeared on behalf of defendant United States of America. Counsel Carlos Ambriz
20 telephonically appeared on behalf of defendant Haak. Counsel Thomas Gray telephonically
21 appeared on behalf of defendants Randhawa and Emanuel Medical Center.

22 For the reasons stated on the record at the conference, IT IS ORDERED that:

23 1. Discovery is open only as the following issues:

- 24 a. Plaintiff’s consent at Emanuel Medical Center to the medical procedures
25 Plaintiff underwent at Emanuel Medical Center.
26 b. The Court’s jurisdiction to hear this matter.
27 c. Exhaustion of administrative remedies as to Plaintiff’s claim against the
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1 United States of America.

2 d. Identification of Doe Defendants.

- 3 2. The parties have forty-five days from the date of service of a discovery request to
4 respond to that request.
- 5 3. In the motions to dismiss filed by defendants Haak, Randhawa, and Emanuel
6 Medical Center, these defendants raised the issue of Plaintiff's consent at Emanuel
7 Medical Center to the medical procedures Plaintiff underwent at Emanuel Medical
8 Center. In each motion to dismiss, this issue is converted to a motion for summary
9 judgment. Plaintiff has until July 12, 2019, to submit a supplemental response
10 (which may include evidence) that addresses only the issue of his consent. If
11 Plaintiff files a supplement, Defendants have until August 16, 2019, to file a reply.
- 12 4. Defendant United States of America has until April 26, 2019, to file a motion for
13 summary judgment on the issue of exhaustion of administrative remedies. Plaintiff
14 has until June 21, 2019, to file his response to the motion. Defendant United States
15 of America has until June 28, 2019, to file a reply. Failure to file a motion for
16 summary judgment on the issue of exhaustion by this deadline will result in waiver
17 of the defense. See Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014) (providing
18 that the exhaustion question should be decided as early as feasible).
- 19 5. Plaintiff has until July 12, 2019, to identify Doe Defendants. To add named
20 defendants in place of Doe Defendants, Plaintiff may file a motion for leave to
21 amend the complaint or a motion to substitute. Failure to file a motion for leave to
22 amend or a motion to substitute by this deadline may result in dismissal of Doe
23 Defendants.
- 24 6. Within thirty days from the date of service of this order, Plaintiff shall serve
25 Defendants' counsel (Mr. Olsen, Mr. Ambriz, and Mr. Gray) with his initial
26 disclosures. As discussed in the Court's prior order (ECF No. 44), Plaintiff shall
27 provide Defendants' counsel with "[t]he name and, if known, the address and
28 telephone number of each individual likely to have discoverable information—along

1 with the subjects of that information—that [Plaintiff] may use to support [his] claims
2 or defenses, unless the use would be solely for impeachment.” (Id. at 2). Plaintiff
3 shall also provide Defendants with a “copy—or a description by category and
4 location—of all documents, electronically stored information, and tangible things
5 that [Plaintiff] has in [his] possession, custody, or control and may use to support
6 [his] claims or defenses, unless the use would be solely for impeachment.” (Id.)

- 7 7. A Status Conference is set for September 9, 2019, at 3:00 p.m. At the conference
8 the parties shall be prepared to discuss all outstanding motions, and, if necessary,
9 the setting of a schedule.
- 10 8. As the Court has converted a portion of the motions to dismiss into motions for
11 summary judgment, pursuant to Rand v. Rowland, 154 F.3d 952, the Court hereby
12 notifies Plaintiff of the following rights and requirements for opposing Defendants’
13 motions for summary judgment.

14 **NOTICE AND WARNING:**

15 Certain defendants have made a motion for summary judgment by which
16 they seek to have some of your claims dismissed. A motion for summary
17 judgment under Rule 56 of the Federal Rules of Civil Procedure will, if
18 granted, end your case as to those claims.

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20 Rule 56 tells you what you must do in order to oppose a motion for summary
21 judgment. Generally, summary judgment must be granted when there is no
22 genuine issue of material fact— that is, if there is no real dispute about any
23 fact that would affect the result of your case, the party who asked for
24 summary judgment is entitled to judgment as a matter of law, which will end
25 your case. When a party you are suing makes a motion for summary
26 judgment that is properly supported by declarations (or other sworn
27 testimony), you cannot simply rely on what your complaint says. Instead,
28 you must set out specific facts in declarations, depositions, answers to

1 interrogatories, or authenticated documents, as provided in Rule [56(c)],¹
2 that contradict the facts shown in the defendant's declarations and
3 documents and show that there is a genuine issue of material fact for trial. If
4 you do not submit your own evidence in opposition, summary judgment, if
5 appropriate, may be entered against you. If summary judgment is granted,
6 the claims at issue will be dismissed and there will be no trial on those
7 claims.

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9 EASTERN DISTRICT OF CALIFORNIA LOCAL RULE
10 REQUIREMENTS

11 You are responsible for filing all evidentiary documents cited in the
12 opposing papers. Local Rule 260(b). If additional discovery is needed to
13 oppose summary judgment, Local Rule 260(b) requires you to "provide a
14 specification of the particular facts on which discovery is to be had or the
15 issues on which discovery is necessary." Id. See also Fed. R. Civ. P. 56(d).

16 IT IS SO ORDERED.

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18 Dated: March 26, 2019

19 /s/ Eric P. Groj
20 UNITED STATES MAGISTRATE JUDGE

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27 ¹ The substance of Rule 56(e) from the 1998 version, when Rand was decided, has been reorganized and
28 renumbered with the current version of Rule 56(c).