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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 TIENKHAM SINGANONH,

12 Plaintiff,

13 v.

14 RODRIGUEZ, et al.,

15 Defendants.
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Case No. 1:18-cv-00590-AWI-EPG (PC)

ORDER FOLLOWING INITIAL
SCHEDULING CONFERENCE

(ECF No. 34)

17 Tiengkham Singananh (“Plaintiff”) is a state prisoner¹ proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On October 7, 2019, the
19 Court held an Initial Scheduling Conference (“Conference”). Plaintiff telephonically appeared
20 on his own behalf. Counsel Scott Hawkins telephonically appeared on behalf of Defendants.

21 During the Conference, and with the benefit of the scheduling conference statements
22 provided by the parties, the Court and the parties discussed relevant documents in this case and
23 their possible locations. In addition to opening discovery generally, the Court ordered that
24 certain documents that are central to the dispute be promptly produced.

25 Therefore, in an effort to secure the just, speedy, and inexpensive disposition of this

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28 ¹ Plaintiff has alleged that he was a pretrial detainee at the time his constitutional rights were allegedly
violated. (ECF No. 14, p. 7).

1 action,² and after consideration of Federal Rule of Civil Procedure 26(b)(1),³ IT IS ORDERED⁴
2 that:

- 3 1. The parties have forty-five days from the date of service of this order to serve
4 the opposing party with all documents in their possession, custody, or control
5 regarding whether Plaintiff exhausted his available administrative remedies.
6 Parties do not need to produce documents they have already provided, or
7 documents provided to them by the opposing party.
- 8 2. Defendants have forty-five days from the date of service of this order to provide
9 Plaintiff with witness statements and/or evidence gathered from investigation(s)
10 into the incident(s) at issue in the complaint.⁵ If any witness statements and/or
11 evidence is withheld based on the official information privilege, the withholding

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14 ² See, e.g., *United States v. W.R. Grace*, 526 F.3d 499, 508–09 (9th Cir. 2008) (“We begin with the
15 principle that the district court is charged with effectuating the speedy and orderly administration of justice. There
16 is universal acceptance in the federal courts that, in carrying out this mandate, a district court has the authority to
17 enter pretrial case management and discovery orders designed to ensure that the relevant issues to be tried are
18 identified, that the parties have an opportunity to engage in appropriate discovery and that the parties are
19 adequately and timely prepared so that the trial can proceed efficiently and intelligibly.”).

17 ³ Federal Rule of Civil Procedure 26 provides that “[p]arties may obtain discovery regarding any
18 nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case,
19 considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative
20 access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and
21 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).
22 “Information within this scope of discovery need not be admissible in evidence to be discoverable.” *Ibid*.

20 ⁴ Pursuant to Federal Rule of Civil Procedure 16, “[a]t any pretrial conference, the court may consider
21 and take appropriate action on the following matters: . . . controlling and scheduling discovery, including orders
22 affecting disclosures and discovery under Rule 26 and Rules 29 through 37” and “facilitating in other ways the
23 just, speedy, and inexpensive disposition of the action.” Fed. R. Civ. P. 16(c)(2)(F). See also *Little v. City of
24 Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (“The district court has wide discretion in controlling discovery.”).
25 Federal Rule of Civil Procedure 16 vests the district court with early control over cases “toward a process of
26 judicial management that embraces the entire pretrial phase, especially motions and discovery.” *In re Arizona*,
27 528 F.3d 652, 655 (9th Cir. 2008) (affirming district court’s requiring that prison officials prepare a *Martinez*
28 report to give detailed factual information involving a prisoner’s suit under 42 U.S.C. § 1983 and stating “district
courts have wide latitude in controlling discovery.”). See also Advisory Committee Notes to 1993 Amendment to
Federal Rules of Civil Procedure regarding Rule 26(a) (“The enumeration in Rule 26(a) of items to be disclosed
does not prevent a court from requiring by order or local rule that the parties disclosed additional information
without a discovery request.”).

26 ⁵ See *Woodford v. Ngo*, 548 U.S. 81, 94-95 (2006) (“[P]roper exhaustion improves the quality of those
27 prisoner suits that are eventually filed because proper exhaustion often results in the creation of an administrative
28 record that is helpful to the court. When a grievance is filed shortly after the event giving rise to the grievance,
witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and
preserved.”).

1 party shall submit the withheld witness statements and/or evidence to the Court
2 for in camera review, along with an explanation of why the witness statements
3 and/or evidence is privileged.⁶ The witness statements and/or evidence shall be
4 Bates stamped, and mailed to Judge Grosjean at 2500 Tulare Street, Sixth Floor,
5 Fresno, CA 93721. The withholding party shall also file and serve a notice that
6 they have complied with this order.

- 7 3. If any party obtains medical records related to Plaintiff's injuries stemming from
8 the incident alleged in the complaint, that party shall promptly serve the
9 opposing party with a copy of those records.

10 Additionally, for the reasons stated on the record at the Conference, IT IS ORDERED
11 that Plaintiff's motion for appointment of pro bono counsel (ECF No. 34) is DENIED without
12 prejudice.

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14 IT IS SO ORDERED.

15 Dated: October 7, 2019

16 /s/ Eric P. Grosjean
17 UNITED STATES MAGISTRATE JUDGE

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23 ⁶ The "common law governmental privilege (encompassing and referred to sometimes as the official or
24 state secret privilege) . . . is only a qualified privilege, contingent upon the competing interests of the requesting
25 litigant and subject to disclosure . . ." *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, 511 F.2d 192, 198 (9th Cir. 1975)
26 (internal citations omitted). The Ninth Circuit has since followed *Kerr* in requiring *in camera* review and a
27 balancing of interests in ruling on the government's claim of the official information privilege. *See, e.g., Breed v.*
28 *U.S. Dist. Ct. for N. Dist. of Cal.*, 542 F.2d 1114, 1116 (9th Cir. 1976) ("[A]s required by *Kerr*, we recognize 'that
in camera review is a highly appropriate and useful means of dealing with claims of governmental privilege.'")
(quoting *Kerr v. U. S. Dist. Ct. for N. Dist. of Cal.*, 426 U.S. 394, 406 (1976)); *Sanchez v. City of Santa Ana*, 936
F.2d 1027, 1033-34 (9th Cir. 1990), *as amended on denial of reh'g* (Feb. 27, 1991), *as amended on denial of reh'g*
(May 24, 1991) ("Government personnel files are considered official information. To determine whether the
information sought is privileged, courts must weigh the potential benefits of disclosure against the potential
disadvantages. If the latter is greater, the privilege bars discovery.") (internal citations omitted).