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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,
Plaintiffs,
v.
MATTHEW WAYNE, et al.,
Defendants.

Case No. 16-cv-06994-PJH

**ORDER RE DISCOVERY LETTER
BRIEF**

Re: Dkt. No. 140

United States District Court
Northern District of California

The plaintiff-relator in the above-captioned case has filed a discovery letter brief seeking resolution of a discovery matter. See Dkt. 140.¹ The letter explains that the court previously dismissed claims against defendant Hayward Unified School District (“HUSD”), but allowed claims against three individual employees of the district to proceed. See Dkt. 123.

Plaintiff now seeks discovery from HUSD, and because HUSD is no longer a party to the case, such discovery must proceed as third-party discovery. However, the person to which third-party discovery would typically be directed is HUSD Superintendent Matthew Wayne, who remains a defendant in this case. Plaintiff explains that he is “ethically prohibited from contacting Mr. Wayne or serving discovery on him in his capacity as Superintendent of HUSD.” Dkt. 140 at 1.

Plaintiff states that he has asked Mr. Wayne’s counsel, who also served as

¹ Plaintiff’s counsel filed a second letter explaining that he did not file a joint letter brief because this is not a dispute between the parties, but rather an attempt to obtain discovery from a third party. See Dkt. 141. The court agrees that a joint letter brief was not required in this instance.

1 HUSD’s counsel prior to dismissal, to identify a contact person upon whom to serve
2 discovery, but they have “declined to do so with no explanation.” Dkt. 140 at 1.

3 The court agrees with plaintiff that any discovery sought from HUSD must proceed
4 as third-party discovery, and that a dilemma is created when the person on whom such
5 third-party discovery must be served is also a defendant in the case. Accordingly, the
6 court DIRECTS defendant Matthew Wayne to file a statement indicating whether he is
7 willing to accept service of third-party discovery in his official capacity as HUSD
8 Superintendent (i.e., not in his individual capacity), or whether he wishes to designate
9 another person to accept service on behalf of HUSD or whether there is already a
10 designated agent for service of process for the district. If Mr. Wayne wishes to designate
11 another person or if there is already a designated agent, the statement shall provide the
12 name and contact information of that person. Such statement shall be filed no later than
13 **February 14, 2022.**

14 **IT IS SO ORDERED.**

15 Dated: February 9, 2022

16 /s/ Phyllis J. Hamilton
17 PHYLLIS J. HAMILTON
18 United States District Judge
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