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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FRANKIE GREER,  
Plaintiff,  
v.  
COUNTY OF SAN DIEGO, et al.,  
Defendants.

Case No.: 19-cv-378-JO-DEB

**ORDER DENYING:**

**(1) PLAINTIFF’S MOTION TO  
COMPEL THE COUNTY’S  
RESPONSES TO REQUESTS FOR  
PRODUCTION (SET FOUR) NOS.  
42 THROUGH 51; AND**

**(2) PLAINTIFF’S SEALING MOTION**

**[DKT. NOS. 220, 221]**

Before the Court are: (1) Plaintiff’s Motion to Compel Defendant County of San Diego’s Responses to Requests for Production (Set Four) Nos. 42 Through 51 (Dkt. No. 220, “Motion to Compel”), and (2) Motion for Determination as to Whether Exhibit 2 Should be Filed Under Seal (Dkt. No. 221, “Sealing Motion”). Defendant, the County of San Diego (“County”), opposes the Motion to Compel and has responded to the Sealing Motion. Dkt. Nos. 224, 225.

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1 Plaintiff's Motion to Compel comes one year after Plaintiff propounded the  
2 discovery in question, seven months after the County served its supplemental (and final)  
3 response and objections to the discovery, and three months after the fact discovery cut-off.  
4 The Court, therefore, **DENIES** the Motion to Compel as untimely, **DENIES** Plaintiff's  
5 alternative request to reopen discovery, and **DENIES** the Sealing Motion.

6 **I. PROCEDURAL BACKGROUND**

7 This Motion to Compel arises out of Plaintiff's Requests for Production (Set Four)  
8 ("RFP Set Four"), which Plaintiff propounded on August 9, 2021. Dkt. No. 220-2, ¶ 2.  
9 Plaintiff's discovery sought documents relating to previous alleged failures of medical care  
10 at the County's jails. Dkt. No. 113 at 2–13.<sup>1</sup> The County initially responded on  
11 September 22, 2021, and asserted relevance, proportionality, and third-party privacy  
12 objections to the requested documents. Dkt. Nos. 113 at 2–13, 220-2, ¶ 3.

13 Plaintiff challenged the County's objections and brought a timely Motion to Compel  
14 (Dkt. No. 113), which the Court granted on December 17, 2021 (Dkt. No. 117, "Discovery  
15 Order"). The Court's Discovery Order required the County to produce all non-privileged  
16 responsive documents and a privilege log for all privilege asserted documents. Dkt.  
17 No. 117. The County timely served supplemental responses (Dkt. No. 220-3), its privilege  
18 log (Dkt. No. 148-3 at 28–47), and supporting declarations (Dkt. Nos. 148-3 at 48–51, 220-  
19 5, 220-6). The County's privilege log asserted privilege and protection claims, including  
20 attorney-client, official information, deliberative process, self-critical analysis, law  
21 enforcement investigatory privileges, and work-product protection. Dkt. No. 148-3 at 28–  
22 47.

23 Following the Court's Discovery Order, Plaintiff timely filed a Motion to Compel  
24 challenging the County's privilege assertions for documents responsive to RFP Set Four  
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28 <sup>1</sup> When referencing page numbers for documents filed with the Court, the Court's citation  
refers to the page numbers assigned by the Court's CM-ECF system.

1 Nos. 52–54, but not Nos. 42–51. Dkt. No. 148. The Court granted Plaintiff’s motion. Dkt.  
2 No. 226.

3 On May 27, 2022, fact discovery closed. Dkt. No. 144. In August 2022, however,  
4 more than five months after the County served the supplemental responses and privilege  
5 log at issue, four months after Plaintiff filed his Motion to Compel further responses to  
6 RFP Set Four Nos. 52–54, and more than two months after fact discovery closed, Plaintiff  
7 informed the Court he wished to initiate a dispute over the County’s withholding of  
8 documents responsive to RFP Set Four Nos. 42–51. Dkt. No. 188. On September 28, 2022,  
9 after meeting and conferring with counsel and participating in two informal Discovery  
10 Conferences with the Court (Dkt. Nos. 204, 219), Plaintiff filed this Motion to Compel  
11 (Dkt. No. 220). Although styled as a Motion to Compel the County “to provide records  
12 responsive to [RFP Set Four’s] Nos. 42 through 51,” Plaintiff also seeks leave to file the  
13 untimely motion. Dkt. Nos. 220 at 2, 220-1 at 2.

## 14 II. LEGAL STANDARDS

15 Parties seeking to compel discovery must do so in a timely manner. *See KST Data,*  
16 *Inc. v. DXC Tech. Co.*, 344 F. Supp. 3d 1132, 1135–36 (C.D. Cal. 2018) (denying motion  
17 to compel filed four weeks before discovery cut-off because it was untimely); *Washington*  
18 *v. Gustafson*, No. 14-cv-0628-TLN-DB, 2017 WL 616438, at \*1 (E.D. Cal. Feb. 15, 2017)  
19 (denying motion to compel filed three weeks after scheduling order deadline because it was  
20 untimely); *Cornerstone Staffing Sols., Inc. v. James*, No. 12-cv-1527-RS-JCS, 2015 WL  
21 13037133, at \*1 (N.D. Cal. June 8, 2015) (denying motion to compel as untimely, where  
22 motion was filed after deadlines established by local rule and court order), *objections*  
23 *overruled*, 2015 WL 13037132 (N.D. Cal. June 24, 2015).

24 This Court’s Chambers Rules specifically require counsel to raise any discovery  
25 disputes with the court “within thirty (30) days of the date of the event giving rise to the  
26 dispute.” Mag. J. Daniel E. Butcher Civ. Chambers R. VI. E. (S.D. Cal., Aug. 19, 2022);  
27 *see also* Dkt. No. 36 at 2 (“If the parties reach an impasse on any discovery issue, counsel  
28 shall file an appropriate motion within the time limit and procedures outlined in the

1 undersigned magistrate judge’s chambers rules. **A failure to comply in this regard will**  
2 **result in a waiver of a party’s discovery issue.**”) (emphasis in original).

3 A request to modify the scheduling order requires a showing of good cause. Fed. R.  
4 Civ. P. 16(b)(4); *see also* Dkt. No. 36 at 6 (stating the dates set forth in the Scheduling  
5 Order Regulating Discovery and Other Pretrial Proceedings “will not be modified except  
6 for good cause shown”). The “‘good cause’ inquiry focuses primarily on the diligence of  
7 the requesting party.” *Sheridan v. Reinke*, 611 F. App’x. 381, 384 (9th Cir. 2015); *see also*  
8 *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1027 (9th Cir. 2006) (“We decline  
9 to limit the district court’s ability to control its docket by enforcing a discovery termination  
10 date, even in the face of requested supplemental discovery that might have revealed highly  
11 probative evidence, when the plaintiff’s prior discovery efforts were not diligent.”).

12 A party seeking relief from a deadline that has already passed must demonstrate both  
13 excusable neglect and good cause. Fed. R. Civ. P. 6(b)(1)(B) (stating “the court may, for  
14 good cause, extend the time on motion made after the time has expired if the party failed  
15 to act because of excusable neglect”); *see also Clay v. Cytosport, Inc.*, 15-cv-0165-L-DHB,  
16 2016 WL 11523615 at \*5 (S.D. Cal. Oct. 19, 2016) (considering motion to re-open  
17 discovery under Rule 6(b)(1)(B)).

### 18 III. DISCUSSION

19 Plaintiff’s present Motion to Compel is untimely under the Court’s Chambers Rules  
20 and the operative Scheduling Order. The Court’s Chambers Rules require counsel to raise  
21 any discovery disputes with the court “within thirty (30) days of the date of the event giving  
22 rise to the dispute.” Civ. Chambers R. VI. E. The Court’s Scheduling Order also informed  
23 the parties about this deadline and expressly warned that a “**failure to comply in this**  
24 **regard will result in a waiver of a party’s discovery issue.**”) Dkt. No. 36 at 2 (emphasis  
25 in original). The Court also ordered the parties to complete their fact discovery on or before  
26 May 27, 2022. Dkt. No. 144.

27 The event that gave rise to the present dispute occurred on February 14, 2022, when  
28 the County produced the privilege log asserting the privileges and protections Plaintiff now

1 seeks to defeat. Plaintiff, however, did not raise these challenges with the Court within  
2 thirty days as he was required to do. Instead, Plaintiff first raised his challenges in August  
3 2022, more than five months after the County asserted the privileges and more than two  
4 months after the Court's fact discovery cut-off. Plaintiff's Motion to Compel, therefore, is  
5 untimely. *Cornwell*, 439 F.3d at 1027; *see also Stoba v. Saveology.com, LLC*, No. 13-cv-  
6 02925-BAS-NLS, 2015 WL 5040024, at \*6 (S.D. Cal. Aug. 26, 2015) (affirming  
7 Magistrate Judge's denial of motion to compel as untimely under deadline established in  
8 the Magistrate Judge's Chambers Rules and recognizing "there is 'sound circuit-wide  
9 policy' supporting the enforcement of Rule 16 deadlines") (citation omitted).

10 Plaintiff implicitly concedes his Motion to Compel is untimely and requests the  
11 Court retroactively extend the time to file it, explaining he "did not immediately [upon  
12 receipt of the County's privilege log] move to compel" documents responsive to RFP Set  
13 Four's Nos. 42–51 due to counsel's "confusion and mistake" arising from the "procedural  
14 uncertainty" of the County's then pending Motion to Bifurcate and Stay and objections to  
15 the December 17, 2021 Discovery Order. Dkt. No. 220-1 at 2. Plaintiff's explanation,  
16 however, fails to establish either good cause to reopen discovery or excusable neglect for  
17 his failure to timely challenge the County's objections to RFP Set Four's Nos. 42–51.

18 The County's Motion to Bifurcate and Stay and objections to the December 17, 2022  
19 Discovery Order did not create any uncertainty over whether *Monell* discovery could  
20 proceed. To the contrary, on January 11, 2022, the Court denied the County's ex parte  
21 application "request[ing] that the Court stay *Monell* discovery, including the [December  
22 17, 2021 Discovery Order] pending a decision on Defendants' motion to bifurcate and to  
23 stay plaintiff's *Monell* claims and related discovery." Dkt. No. 120 at 3; Dkt. No. 127.

24 Consistent with the Court's denial of Plaintiff's ex parte application to stay *Monell*  
25 discovery, Plaintiff continued to pursue *Monell* discovery while the County's Motion to  
26 Bifurcate and Stay and objections were pending. Plaintiff timely filed a motion to compel  
27 the *Monell* directed discovery sought in RFP Set Four Nos. 52–54 (Dkt. No. 148), and also  
28 timely filed a motion for leave to conduct Sheriff Gore's deposition (Dkt. No. 147). And

1 on February 7, 2022, Plaintiff served a fifth request for production of documents seeking  
2 additional *Monell* discovery. Dkt. No. 224-1, ¶ 3.

3 The Court, therefore, finds Plaintiff did not diligently pursue his challenge to the  
4 County's claims for withholding documents responsive to RFP Set Four's Nos. 42–51 and  
5 has not established either excusable neglect or good cause to obtain relief from the Court's  
6 filing deadline. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992)  
7 (“Although the existence or degree of prejudice to the party opposing the modification  
8 might supply additional reasons to deny a motion, the focus of the inquiry is upon the  
9 moving party's reasons for seeking modification. If that party was not diligent, the inquiry  
10 should end.”) (citation omitted). Nor has Plaintiff shown excusable neglect for his lack of  
11 diligence. *Davis v. California Dep't of Corr. & Rehab.*, No. 08-cv-4481-SBA, 2013 WL  
12 1208965, at \*3 (N.D. Cal. Mar. 25, 2013) (“Plaintiffs’ counsel’s deliberate failure to take  
13 depositions within the discovery period . . . does not constitute excusable neglect for  
14 purposes of failure to meet a deadline.”); *Latshaw v. Trainer Wortham & Co., Inc.*, 452  
15 F.3d 1097, 1101 (9th Cir. 2006) (“[P]arties should be bound by and accountable for the  
16 deliberate actions of themselves and their chosen counsel. This includes . . . an innocent,  
17 albeit careless or negligent, attorney mistake . . .”).

### 18 III. SEALING MOTION

19 Plaintiff includes the County's RFP Set Four privilege log as Exhibit 2 in support of  
20 his Motion to Compel. Dkt. Nos. 220-4, 222. Although Plaintiff contends the privilege log  
21 should be publicly filed, because the County designated the document as confidential, he  
22 concurrently filed the Sealing Motion to allow the County the opportunity to provide its  
23 position. Dkt. No. 221. On October 7, 2022, the County filed its response. Dkt. No. 225.

24 The County neither requests its privilege log be sealed nor provides any facts to  
25 support a finding it should be sealed. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d  
26 1172, 1180 (9th Cir. 2006) (“[T]he party must ‘articulate compelling reasons supported by  
27 specific factual findings’ . . . that outweigh the general history of access and the public  
28 policies favoring disclosure . . .”) (alteration in original) (citations omitted). Moreover, as

1 the County acknowledges, its privilege log has been viewable through the public docket  
2 since March 25, 2022, and the County has not filed any motion requesting that filing be  
3 sealed. Dkt. Nos. 148-3 at 28–47, 225. The Court, therefore, does not find good cause to  
4 seal the County’s privilege log in connection with this Motion to Compel.

5 **IV. CONCLUSION**

6 Based on the foregoing, Plaintiff’s Motion to Compel and Sealing Motion are  
7 DENIED.

8 **IT IS SO ORDERED.**

9 Dated: November 15, 2022

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11 \_\_\_\_\_  
12 Honorable Daniel E. Butcher  
13 United States Magistrate Judge  
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