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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Pedro Ramos,  
10 Plaintiff,  
11 v.  
12 Paul Penzone, et al.,  
13 Defendants.  
14

No. CV-17-00205-PHX-DLR (ESW)

**ORDER**

15  
16 The Court has considered Plaintiff's Motion Requesting Discovery Conference  
17 (Doc. 44), Plaintiff's Motion to Compel Discovery Response (Doc. 52), "Defendants'  
18 Response to Order (Doc. 51) Requesting Status of Discovery Disputes and Response to  
19 Motion to Compel (Doc. 52)" (Doc. 53), Notice of Service of Defendants' Rule 26.1  
20 Fifth Supplemental Disclosure Statement (Doc. 54), and Plaintiff's Rule 15.1 Request to  
21 Amend Discovery Rule 26 (Doc. 55).

22 Plaintiff sought a discovery conference to obtain documents requested in  
23 Plaintiff's Request for Production which were not produced. In his Motion to Compel  
24 Discovery Response (Doc. 52), Plaintiff indicates with specificity which documents  
25 Defendants failed to produce. Defendants assert that they now have produced all  
26 documents which are in Defendants' possession as requested (Doc.53 at 3). Plaintiff  
27 indicates that he is "now fully complete with his discovery process." (Doc. 55 at 2).

28 The Court finds that a discovery conference is not necessary at this time. Plaintiff has

1 received all discovery sought, and his Motion to Compel is now moot.

2 Plaintiff additionally requests permission of the Court to file a Rule 26 (a)(1)  
3 supplemental disclosure statement inclusive of the information received in Defendants'  
4 Fifth Supplemental Disclosure Statement. Rather than filing a Notice of Service of his  
5 supplemental disclosures, Plaintiff has lodged the supplemental disclosure statement  
6 itself. Discovery deadlines were extended by Order of the Court filed December 28,  
7 2017 (Doc. 48), and Plaintiff's supplemental disclosure is well within the modified  
8 deadlines. However, Fed. R. Civ. P. 5(d) states that "disclosures under Rule 26(a)(1)...  
9 must not be filed until they are used in the proceeding or the court orders filing...."  
10 LRCiv 5.2 provides that "[a] 'Notice of Service' of the disclosures and discovery requests  
11 and responses listed in Rule 5(d) of the Federal Rules of Civil Procedure must be filed  
12 within a reasonable time after service of such papers." Plaintiff has not "used" the lodged  
13 supplemental disclosure in the proceeding (e.g. by relying upon it in support of a motion,  
14 supporting a motion to compel, etc.). Therefore, Plaintiff's filing of the actual  
15 supplemental disclosure instead of a "Notice of Service" is in violation of LRCiv 5.2 and  
16 Rule 5(d) of the Federal Rules of Civil Procedure. Accordingly, the Court will grant  
17 Plaintiff leave to supplement his Rule 26(a)(1) disclosure and to file a Notice of Service  
18 of his supplemental disclosure deemed served on the date of lodging, February 8, 2018  
19 (Doc. 55). However, the Court will strike the lodged document (Doc. 56) as a violation  
20 of LRCiv 5.2 and Fed. R. Civ. P. 5(d). *See* LRCiv 7.2(m) (allowing the Court to strike  
21 any part of a filing that is not authorized by rule).

22 Based on the above,

23 **IT IS ORDERED** denying as moot Plaintiff's Motion Requesting Discovery  
24 Conference (Doc. 44).

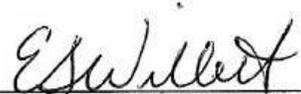
25 **IT IS FURTHER ORDERED** denying as moot Plaintiff's Motion to Compel  
26 Discovery Response (Doc. 52).

27 **IT IS FURTHER ORDERED** granting in part "Plaintiff's Rule 15.1 Request to  
28 Amend Discovery Rule 26" (Doc. 55) as set forth herein.

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**IT IS FUTHER ORDERED** striking the documents lodged at Doc. 56 and Doc. 47. Plaintiff shall file a Notice of Service of Plaintiff's Rule 26.1 Supplemental Disclosure Statement within twenty (20) days of the filing of this Order. His Rule 26.1 Supplemental Disclosure Statement lodged at Doc. 56 is deemed served on Defendants on February 8, 2018. Plaintiff's Rule 26.1 Disclosure Statement (Doc. 47) filed December 26, 2017 is deemed served on the date of filing.

Dated this 13th day of February, 2018.

  
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Eileen S. Willett  
United States Magistrate Judge