

1  
2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5

6 MARLON BLACHER,

7 Plaintiff,

8 v.

9 S. JOHNSON,

10 Defendant.

1:12-cv-01159-EPG (PC)

ORDER DENYING PLAINTIFF'S MOTION  
TO COMPEL AND GIVING PLAINTIFF  
LEAVE TO PROPOUND A LIMITED  
DISCOVERY REQUEST AFTER THE  
NON-EXPERT DISCOVERY PERIOD

(ECF NO. 80)

11  
12  
13 **I. BACKGROUND**

14 Marlon Blacher ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*  
15 in this civil rights action pursuant to 42 U.S.C. § 1983. On January 3, 2017, Plaintiff filed a  
16 motion to compel. (ECF No. 80).

17 Plaintiff asks the Court to order Defendant "to produce and permit the Plaintiff to  
18 inspect/copy any non-privileged [sic] documentation which would show any possible link  
19 between any dangerous contraband confiscated/seized from any 'CSP-Corcoran SHU Kitchen'  
20 prison worker and said contraband having been employed to harm/poses any veri[f]iable threat  
21 to any person/property; as well as any documentation which details the search procedures  
22 enforced at other CDCR prisons' 'Work Exchange' locations concerning prisoners returning  
23 from work at the end of the shift." (*Id.* at p. 2).

24 On January 17, 2017, Plaintiff filed a notice regarding the motion to compel. (ECF No.  
25 82). According to the notice, Plaintiff spoke with counsel for Defendant (Mr. Lee), and Mr.  
26 Lee agreed that an attempt would be made to produce the documents sought by Plaintiff, even  
27 though Mr. Lee did not believe that the documents were relevant.

28 On January 18, 2017, Defendant filed an opposition to the motion to compel. (ECF No.

1 81). According to Defendant, Plaintiff never requested a production of documents under  
2 Federal Rule of Civil Procedure 34. Instead, Plaintiff filed a motion to compel. Additionally,  
3 Defendant argues that even if Plaintiff's motion to compel is construed as a request for  
4 production of documents, it is untimely because it was served after the cutoff of December 18,  
5 2016.

## 6 **II. APPLICABLE RULES AND LAW**

7 The Court is vested with broad discretion to manage discovery. Hunt v. County of  
8 Orange, 672 F.3d 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor Prods., 406 F.3d  
9 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). Parties may  
10 obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or  
11 defense, and for good cause, the Court may order discovery of any matter relevant to the  
12 subject matter involved in the action. Fed. R. Civ. P. 26(b)(1) (quotation marks omitted).  
13 Relevant information need not be admissible at the trial if the discovery appears reasonably  
14 calculated to lead to the discovery of admissible evidence. Id. (quotation marks omitted).

15 If the propounding party receives responses to discovery that are insufficient, he or she  
16 may move to compel further responses. Generally, if the responding party objects to a  
17 discovery request, the party moving to compel bears the burden of demonstrating why the  
18 objections are not justified. E.g., Grabek v. Dickinson, No. CIV S-10-2892 GGH P, 2012 WL  
19 113799, at \*1 (E.D. Cal. Jan. 13, 2012); Womack v. Virga, No. CIV S-11-1030 MCE, 2011  
20 WL 6703958, at \*3 (E.D. Cal. Dec. 21, 2011); Mitchell v. Felker, No. CV 08-119RAJ, 2010  
21 WL 3835765, at \*2 (E.D. Cal. Sep. 29, 2010); Ellis v. Cambra, No. 102CV-05646AWI-  
22 SMSPC, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008). This requires the moving party to  
23 inform the Court which discovery requests are the subject of the motion to compel and, for  
24 each disputed response, why the information sought is relevant and why the responding party's  
25 objections are not meritorious. Grabek, 2012 WL 113799 at \*1; Womack, 2011 WL 6703958  
26 at \*3; Mitchell, 2010 WL 3835765 at \*2; Ellis, 2008 WL 860523 at \*4.

27 Additionally, the Court issued an order in this case that parties must serve discovery  
28 requests and file a motion to compel if the responses were legally unsatisfactory: "[d]iscovery

1 propounded on a party is self-executing, and must be served directly on the party from whom  
2 discovery is sought; parties should not file copies of their discovery with the court. Local  
3 Rules 250.2, 250.3, 250.4. Discovery documents [] inappropriately submitted to the court will  
4 be returned or stricken. Where the response to discovery is unsatisfactory, the party seeking  
5 discovery may file a motion to compel discovery, including a copy of the discovery  
6 propounded and the response thereto. Fed. R. Civ. P. 3[7]. A motion to compel must be  
7 accompanied by ‘a certification that the movant has in good faith conferred or attempted to  
8 confer with the party not making the disclosure in an effort to secure the disclosure without  
9 court action.’ Fed. R. Civ. P. 37(a)([1])[]. A discovery motion that does not comply with all  
10 applicable rules will be stricken and may result in imposition of sanctions.’ (First Information  
11 Order in Prisoner Civil Rights Case, ECF No. 3, pgs. 4-5).

### 12 **III. ANALYSIS**

13 Plaintiff has not complied with the Court’s order regarding discovery because Plaintiff  
14 filed a motion to compel before propounding a discovery request on Defendant. Additionally,  
15 even if the Court were to treat the motion to compel as a discovery request, it appears that it  
16 was not timely filed. (ECF No. 71, p. 2). Accordingly, Plaintiff’s motion to compel will be  
17 denied.

18 However, given that the motion was filed approximately two weeks after the deadline,  
19 Defendant had notice of Plaintiff’s attempt to get documents from Defendant, the delay does  
20 not appear to prejudice Defendant or the rest of the schedule in this case, the Court will give  
21 Plaintiff 30 days from the date of service of this order to propound a formal discovery request  
22 formally asking defendants for only the documents discussed in the motion to compel (or a  
23 subset of those documents). Defendant will have 45 days from the date of service of the  
24 discovery request to respond. Plaintiff will have 45 days from the date of service of the  
25 response to the discovery request to file a motion to compel, if one is necessary.<sup>1</sup>

---

26  
27 <sup>1</sup> In order to guide the parties, the Court notes that the documents regarding search procedures in  
28 particular appear relevant and discoverable. Additionally, it appears that Defendant has already agreed to provide  
the requested documents. It is the Court’s hope that this issue can be resolve without a motion to compel.

1 **IV. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED THAT:

- 3 1. Plaintiff's motion to compel, (ECF No. 80) is DENIED without prejudice; and  
4 2. Plaintiff has 30 days from the date of service of this order to propound a formal  
5 discovery request. The discovery request may only include the same requests  
6 that were in the motion to compel. Defendant has 45 days from the date of  
7 service of the discovery request to respond. Plaintiff has 45 days from the date  
8 of service of the response to the discovery request to file a motion to compel, if  
9 one is necessary.  
10 3. Except as so modified to allow this limited discovery, the remainder of the  
11 Court's scheduling order, (ECF No. 71) remains in effect.

12 IT IS SO ORDERED.

13 Dated: **February 10, 2017**

14 /s/ Eric P. Gray  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28