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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
5

6 **STEVEN R. MILLER,**

7 **Plaintiff,**

8 **v.**

9 **ALBERT NAJERA, et al.,**

10 **Defendants.**

**1:12-cv-01288-LJO (PC)**

**ORDER RE MOTION TO COMPEL  
AND MISCELLANEOUS REQUESTS  
(ECF NO. 61)**

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12  
13 Pro se Plaintiff Steven Miller brings this case against Defendants, alleging failure to protect and  
14 deliberate indifference claims under the Eighth and Fourteenth Amendments. *See* ECF No. 32. The  
15 Discovery and Scheduling Order, issued February 1, 2017, set May 1, 2017 as the deadline for filing  
16 “[a]ll motions asserting failure to exhaust administrative remedies.” ECF No. 41 at 3. On May 18, 2017,  
17 the Court held a Trial Scheduling Conference, ECF No. 58, during which Fresno County Counsel, Scott  
18 Hawkins, requested additional time to file any motion regarding exhaustion. Plaintiff, who appeared at  
19 the hearing telephonically, did not object, and the request was granted. Specifically, a dispositive  
20 motions deadline was set for September 5, 2017, *see* ECF No. 59, and the Court specifically indicated  
21 that motions regarding exhaustion would be permitted up to that date.

22 On July 31, 2017, Plaintiff filed a “Motion to Compel a Response for Failure to Meet Exhaustion  
23 Motion Filing Deadline . . . and Failure in Notification of Fresno Defendants Brief Statement From  
24 Telephonic Hearing.” ECF No. 61. First, Plaintiff notes, correctly, that no Defendant filed any motion  
25 asserting failure to exhaust administrative remedies by May 1, 2017, the deadline set forth in the

1 February 1, 2017 Discovery and Scheduling Order. *Id.* at 1. He then asks the Court to compel Defendant  
2 to file “some sort of motion seeking the resolution of summary judgment” or “find the Defendants in  
3 procedural default and grant a Summary Judgment to Plaintiff under Federal Rules of Civil Procedure  
4 Rule 54(b).” *Id.* at 2. This request is **DENIED**. The relevant deadline for filing any motion regarding  
5 exhaustion was extended to September 5, 2017.

6 Second, Plaintiff appears to be suggesting that the Fresno County Defendants failed to file a  
7 “brief statement” prior to the trial setting conference held on May 18, 2017. *See id.* at 1. This is  
8 incorrect. The Fresno County Defendants did include a brief statement of the case within their  
9 scheduling conference statement filed in advance of the trial setting conference. *See* ECF No. 57 at 1-2.  
10 According to the proof of service, the document containing that brief statement was served on Plaintiff  
11 via United States mail at his address of record. *Id.* at 4. The Court therefore sees no basis for Plaintiff’s  
12 request, which the Court **DENIES** as moot.

13  
14 IT IS SO ORDERED.

15 Dated: August 4, 2017

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE