



1 he could not provide supplemental discovery responses because of multiple transfers between  
2 institutions, thus depriving him of access to his legal property. Thereafter, Plaintiff filed the  
3 instant motion as an attempt to secure the legal property needed to provide supplemental  
4 responses. The parties were directed to meet and confer regarding the issue, and ultimately the  
5 Court held telephonic status conferences with the parties on July 24, 2018 and August 21, 2018.  
6 (ECF Nos. 89, 94.)

7 As Plaintiff has now filed his additional supplemental response to Defendants' discovery  
8 request, (ECF No. 97), and Defendants indicated during the August 21, 2018 status conference  
9 that they were prepared to proceed to trial. Accordingly, the Court finds that Plaintiff's pending  
10 motion to compel is appropriately denied as moot.

## 11 **II. Plaintiff's Motion Requesting Modification of Scheduling Order**

12 Also before the Court is Plaintiff's motion requesting modification of the Court's  
13 scheduling order, filed August 22, 2018. (ECF No. 96.) In this motion, Plaintiff alleges that he  
14 served a request for documents, electronically stored information, and other tangible things on  
15 defense counsel in person on April 25, 2017, or by mail on April 26, 2017.<sup>1</sup> (ECF No. 96.)  
16 Defendants filed an opposition on August 29, 2018, (ECF No. 98), and Plaintiff filed a reply on  
17 September 10, 2018, (ECF No. 101). The motion is deemed submitted. Local Rule 230(l).

18 In his motion, Plaintiff argues that his request was served on Defendants in late April  
19 2017, well before the close of discovery on November 9, 2017, and defense counsel responded  
20 with only boilerplate objections. Plaintiff argues that his subsequent transfers between  
21 institutions, beginning on July 12, 2017, resulted in the seizure of his property. He was thereafter  
22 engaged in filing an opposition to Defendants' motion compel and responding to Defendants'  
23 own discovery requests, as outlined above. Plaintiff attaches a copy of the notice of request for  
24 documents allegedly served on Defendants in April 2017. (ECF No. 96.)

25 In opposition, Defendants argue that the motion should be denied on timeliness and  
26 procedural grounds. Specifically, Defendants contend that, construed as a motion to modify the

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27 <sup>1</sup> Plaintiff alleges that he attempted to serve the notice of his request on defense counsel in person during his April 25,  
28 2017 deposition, but service was refused at that time. Plaintiff states that he therefore served the request by mail the  
following day. However, no proof of service by mail is attached to the request. (ECF No. 96, p. 2.)

1 discovery and scheduling order, Plaintiff has exceeded the November 9, 2017 deadline for such a  
2 request by nine months, with no explanation for the untimeliness. In addition, if construed as a  
3 motion to compel discovery, Defendants contend that the motion is also untimely, procedurally  
4 defective, and requests production and creation of evidence from nonparties to this case. (ECF  
5 No. 98.)

6 In his reply, Plaintiff argues that his request is timely because the Court has discretion to  
7 modify its scheduling order. Plaintiff contends that he is not seeking additional discovery, but  
8 rather seeks responses to his outstanding discovery requests. In addition, Plaintiff argues that he  
9 was without his property in November 2017, consistently notified the Court of his ongoing issues  
10 obtaining access to his legal property, and Defendants intentionally withheld responses to  
11 Plaintiff's request while simultaneously wrapping Plaintiff up in their own motion to compel.  
12 (ECF No. 101.)

#### 13 **A. Procedural Deficiencies and Untimeliness**

14 Upon review of the motion, the Court finds that the request is procedurally deficient.  
15 Plaintiff states that the objections he received from Defendants are "boilerplate." However,  
16 Plaintiff has not attached the objections received from Defendants, nor have Defendants provided  
17 their responses to the Court. Indeed, it is unclear to the Court, based on the briefing from the  
18 parties, whether Plaintiff's requests were ever mailed to Defendants, whether those requests were  
19 received, and whether any responses or objections were ever returned.

20 Additionally, Plaintiff has not adequately explained the untimeliness of the motion.  
21 Although Plaintiff argues that he has been without his property for nine months, dating back to  
22 the November 2017 close of discovery, Plaintiff does not explain his failure to file a motion to  
23 compel prior to that time. Pursuant to the Court's discovery order, responses to discovery  
24 requests are due forty-five (45) days after service. Based on a presumed service date of April 26,  
25 2017, Defendants' discovery responses were due on June 13, 2017.<sup>2</sup> Based on that due date,  
26 Plaintiff had approximately five months prior to the close of discovery to file a motion to compel.

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28 <sup>2</sup> This calculation is based on the 45 days allowed by the Court's discovery order and the addition of 3 days due to  
service of the requests by mail. (ECF No. 32; Fed. R. Civ. P. 6(d).)

1 Furthermore, even accounting for Plaintiff's difficulties in obtaining his legal property after that  
2 time, which are well-documented in this action, Plaintiff failed to advise the Court of any issue  
3 until the August 22, 2018 motion. Plaintiff has demonstrated himself more than capable of filing  
4 motions for extension of time in relation to other deadlines, (ECF Nos. 38, 44, 46, 58, 67, 76), all  
5 of which set forth in detail the reasons for his requests. Plaintiff does not indicate in any of these  
6 motions that he had served discovery requests of his own on Defendants, that he was dissatisfied  
7 with their responses, or that he needed additional time to file a motion to compel.

8 **B. Substance of the Motion**

9 Despite the procedural deficiencies, Plaintiff is entitled to leniency as a *pro se* litigant, and  
10 therefore, to the extent possible, the Court endeavors to resolve his motion on its merits. Hunt v.  
11 Cty. of Orange, 672 F.2d 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor Productions,  
12 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). The  
13 Court's review of the motion, however, is hindered by the failure of **both** parties to sufficiently  
14 address the substance of the motion, including providing the Court with Defendants' objections, if  
15 any.

16 Thus, in order to conserve judicial resources, the Court has reviewed the motion without  
17 the benefit of any objections. Upon brief examination of the requests at issue, the majority do not  
18 appear to be meritorious. Plaintiff has requested documents from his central file that are equally  
19 available to both parties, documents not in possession of Defendants, information that would have  
20 been more appropriately addressed through interrogatories, and broad categories of documents  
21 with questionable relevance to the instant action. In addition, it appears Plaintiff requests the  
22 creation of documents or evidence that do not currently exist. Plaintiff generally argues that the  
23 documents requested are needed to prove his allegations, but he does not specifically address why  
24 the information sought is relevant and why any objections are not meritorious. In light of  
25 Plaintiff's failure to meet this burden, and the procedural defects and untimeliness of the motion,  
26 the motion is denied.

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