

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OMAR GARCIA, JR.,

1:14-cv-00476-BAM (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

V.

(ECF No. 41)

TULARE COUNTY MAIN JAIL, et al,

Defendants.

Plaintiff Omar Garcia, Jr. (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, initiated this civil rights action pursuant to 42 U.S.C. § 1983 while he was detained at the Bob Wiley Detention Facility in Visalia, California. Plaintiff is now a state prisoner housed at California State Prison, Los Angeles County. This action proceed on Plaintiff’s first amended complaint against: (1) Defendants O’Rafferty and Kaiois (sued as Kaious) for excessive force in violation of the Fourteenth Amendment, (2) Defendant Onstott for failure to intervene in violation of the Fourteenth Amendment; (3) Defendants O’Rafferty, Kaiois, Flores, Avina, Myers (sued as Meyers) and Ellis for deliberate indifference to serious medical needs in violation of the Fourteenth Amendment; and (4) Defendants O’Rafferty, Kaiois, Flores, Avina, Myers and Ellis for negligence in violation of state law. All parties have consented to the jurisdiction of a United States Magistrate Judge. (ECF Nos. 5, 19.)

1 On January 22, 2018, Plaintiff filed with the Court a document titled “Request and Motion
2 to Compel for the Production of Discovery and Documents.” (ECF No. 41.) On February 15,
3 2018, the Court ordered Defendants to file a response to the motion. (ECF No. 43.) Defendants’
4 response was filed on March 5, 2018. (ECF No. 44.) The time for Plaintiff to file a reply has
5 expired, and the motion is deemed submitted.

6 Though Plaintiff’s filing is characterized as a motion to compel, it appears to be a
7 discovery request for production of documents pursuant to Federal Rule of Civil Procedure 34.
8 Specifically, Plaintiff requests further video footage from the time of the events at issue, as well
9 as the names and identifying information of other individuals who made contact with Plaintiff
10 during those events. The proof of service is signed and dated January 15, 2018, one day prior to
11 the close of discovery, and there is no indication that this request was served on Defendants prior
12 to that date. (ECF No. 41, p. 4.)

13 In their response, Defendants state that they previously provided Plaintiff with a compact
14 disc containing all of the videos requested, which included all available video of the alleged
15 incident in their possession.¹ Defendants further object to Plaintiff’s motion on the grounds that
16 it is untimely and seeks discovery outside the scope of Rule 34.

17 Pursuant to the Court’s discovery and scheduling order, “discovery requests . . . must be
18 served sufficiently in advance of the discovery deadline to permit time for a response and time to
19 prepare and file a motion to compel.” (ECF No. 35, p. 2.) Plaintiff’s motion, which is more
20 accurately characterized as a request for production of documents, was not served on Defendants
21 until one day prior to the January 16, 2018 discovery deadline. As noted by Defendants, this did
22 not permit Defendants sufficient time to serve a response prior to the discovery deadline.

23 Even if the Court broadly construes Plaintiff’s filing as a motion to extend the discovery
24 deadline for the purpose of obtaining responses to this request for production of documents,
25 Plaintiff has nevertheless failed to show good cause, or any cause, which explains why he did not

26 ¹ Defendants state generally that they have already produced the requested videos to Plaintiff, citing in support their
27 Supplemental Response to Plaintiff’s prior Request for Production of Documents. (ECF No. 44, p. 2.) However, the
28 Court notes that the specific dates and times of video footage requested in Plaintiff’s current motion do not
correspond with the specific dates and times of video footage requested in Plaintiff’s prior Request for Production of
Documents. Nevertheless, the discrepancy does not alter the Court’s ruling on this motion.

1 submit his discovery request within the time provided or request additional time to seek
2 discovery.

3 Plaintiff has failed to set forth good cause for his untimely discovery request, as required
4 by Federal Rule of Civil Procedure 16(b)(4). Therefore, Plaintiff's motion to compel, (ECF No.
5 41), is DENIED.

6 IT IS SO ORDERED.
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8 Dated: April 2, 2018

/s/ *Barbara A. McAuliffe*
9 UNITED STATES MAGISTRATE JUDGE

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