



1 housed individuals like him in a facility located in an area known to be hyper-  
2 endemic for contraction of Valley Fever, an infection caused by exposure to  
3 coccidioides (also called coccidioidomycosis) fungus, and failed to take reasonable  
4 steps to protect him from the disease.

5 Pending before the Court are the following motions: (1) Plaintiff's motion to  
6 compel discovery (ECF No. 23); (2) Plaintiff's request for an investigator (ECF No. 24);  
7 (3) Defendants Ahlin, Kramer and Mayberg's request for extension of time to file an  
8 opposition to Plaintiff's motion to compel (ECF No. 26); and (4) Defendants' two requests  
9 for a modification of the Discovery and Scheduling Order<sup>1</sup> (ECF Nos. 29, 30).

10 **I. Relevant Procedural History**

11 Plaintiff initiated this action on October 22, 2015. The complaint was screened on  
12 March 28, 2016, and dismissed with leave to amend on qualified immunity grounds.  
13 (ECF No. 8.)

14 Plaintiff subsequently filed a motion for reconsideration of the screening order.  
15 (ECF No. 9.) On August 17, 2016, the undersigned determined that Plaintiff's claims are  
16 not barred by the doctrine of qualified immunity and that the allegations are sufficient to  
17 proceed to service against Defendants Mayberg, Kramer, Ahlin and the Fresno Board of  
18 Supervisors on a safe conditions claim. (ECF No. 10.) Plaintiff was thus directed to file a  
19 notice of his willingness to proceed on the complaint as screened or file an amended  
20 pleading.

21 On September 19, 2016, plaintiff filed a response indicating his willingness to  
22 proceed on the complaint as screened. (ECF No. 11.) Accordingly, on September 22,  
23 2016, the undersigned filed consistent findings and recommendations, which were  
24 adopted in full on November 23, 2016. (ECF Nos. 12, 13.) Defendants were served  
25 shortly thereafter.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Defendant Fresno Board of Supervisors is represented by Fresno County Counsel whereas Defendants  
Kramer, Mayberg and Ahlin are represented by the Deputy Attorney General. Both sets of Defendants filed  
a request to modify the Discovery and Scheduling Order.

1 On February 24, 2017, a Discovery and Scheduling Order (“DSO”) issued setting  
2 the discovery deadline for October 24, 2017, and the dispositive motion deadline for  
3 January 5, 2018. (ECF No. 18.)

4 **II. Plaintiff’s Motion to Compel**

5 Plaintiff’s motion to compel seeks further responses to his discovery requests and  
6 \$200 in sanctions against Defendants Kramer, Mayberg, and Ahlin for their allegedly  
7 dilatory discovery tactics.

8 **A. Background**

9 Plaintiff propounded his first set of requests for production of documents (“RPD”) on  
10 Defendants Kramer, Mayberg, and Ahlin on July 21, 2017; his first set of  
11 interrogatories on August 15, 2017; and his second set of RPD on September 12, 2017.

12 Defendants Kramer, Mayberg, and Ahlin responded to the first set of RPDs on  
13 August 22, 2017. (Pl.’s Mot. to Compel [“MTC”] Ex. A). Defendants Kramer and Mayberg  
14 then responded to the first set of interrogatories on October 2, 2017 (MTC Ex. B), while  
15 Defendant Ahlin sought and was granted an extension through October 6, 2017, to  
16 respond to the interrogatories (MTC Ex. D). These Defendants allegedly misfiled the  
17 second set of RPDs and therefore did not respond to them before the response  
18 deadline. See Decl. of C. Murphy in Supp. of Defs.’ Opp’n (ECF No. 27-1) ¶ 6. In any  
19 event, Defendants contend this second set of RPDs is identical to the first set<sup>2</sup>, and the  
20 response deadline fell after the October 24, 2017, discovery deadline in this case. Id.  
21 Plaintiff does not dispute either of these contentions.

22 **B. Legal Standards**

23 The discovery process is subject to the overriding limitation of good faith, and  
24 callous disregard of discovery responsibilities cannot be condoned. Asea, Inc. v.  
25 Southern Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981) (quotation marks and  
26 citation omitted). “Parties may obtain discovery regarding any nonprivileged matter that

27 \_\_\_\_\_  
28 <sup>2</sup> The Court is unable to verify this claim. No copy of the second set of RPDs has been provided to the Court.

1 is relevant to any party's claim or defense and proportional to the needs of the case,  
2 considering the importance of the issues at stake in the action, the amount in  
3 controversy, the parties' relative access to relevant information, the parties' resources,  
4 the importance of the discovery in resolving the issues, and whether the burden or  
5 expense of the proposed discovery outweighs its likely benefit." Fed R. Civ. P. 26(b)(1).

6 Generally, if the responding party objects to a discovery request, the party moving  
7 to compel bears the burden of demonstrating why the objections are not justified.

8 Grabek v. Dickinson, No. CIV S-10-2892 GGH P, 2012 WL 113799, at \*1 (E.D. Cal. Jan.  
9 13, 2012); Womack v. Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at \*3  
10 (E.D. Cal. Dec. 21, 2011); Mitchell v. Felker, No. CV 08-119RAJ, 2010 WL 3835765, at  
11 \*2 (E.D. Cal. Sep. 29, 2010); Ellis v. Cambra, No. 1:02-cv-05646-AWI-SMS PC, 2008  
12 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008). This requires the moving party to inform the  
13 Court which discovery requests are the subject of the motion to compel, and, for each  
14 disputed response, why the information sought is relevant and why the responding  
15 party's objections are not meritorious. Grabek, 2012 WL 113799, at \*1; Womack, 2011  
16 WL 6703958, at \*3; Mitchell, 2010 WL 3835765, at \*2; Ellis, 2008 WL 860523, at \*4.

17 However, the Court is vested with broad discretion to manage discovery and  
18 notwithstanding these procedures, Plaintiff is entitled to leniency as a pro se litigant;  
19 therefore, to the extent possible, the Court endeavors to resolve his motion to compel on  
20 its merits. Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012); Survivor Media,  
21 Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296  
22 F.3d 732, 751 (9th Cir. 2002).

### 23 C. Analysis

24 Plaintiff claims that Defendants' responses to his discovery requests were late  
25 and/or inadequate. However, he fails to identify with particularity which responses he  
26 finds inadequate and why. He objects generally to Defendants' objections based on, for  
27 example, the deliberative process and the official information privilege, but presents no  
28

1 legal argument why the objections are improper in the contexts asserted. Without  
2 providing this information, Plaintiff has not met his burden on his motion to compel.

3 In addition, to the extent Plaintiff's motion can be construed as a request for an  
4 extension of the discovery deadline, the Court does not find good cause. See Fed. R.  
5 Civ. P. 16(b)(4). Plaintiff was in receipt of Defendants' responses to the first set of RPDs  
6 as early as August 22, 2017, yet he waited until the eve of the discovery deadline to  
7 challenge them. He also does not contest the Defendants' claim that the second set of  
8 RPDs is identical to the first. Since Plaintiff himself could have prevented the need for an  
9 extension, his motion to compel and any related request for an extension of the  
10 discovery deadline must be denied.

### 11 **III. Plaintiff's Request for an Investigator**

12 On November 2, 2017, Plaintiff submitted a request for an investigator pursuant to  
13 Federal Rule of Civil Procedure 26(c) "to assist plaintiff in the compelling of discovery  
14 from the defendants." Plaintiff seeks the appointment of an investigator to consider the  
15 Defendants' objections to Plaintiff's unspecified discovery requests.

16 Construing this request as a discovery-related motion, it will be denied, having  
17 been filed on November 2, 2017, several days after the October 24, 2017, discovery  
18 deadline. See DSO at 2 ¶ 7 ("[D]iscovery motions will not be considered if filed after the  
19 discovery deadline.")

20 To the extent the motion is deemed a request for appointment of counsel, it too  
21 will be denied. Plaintiff does not have a constitutional right to appointed counsel in this  
22 action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot  
23 require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v.  
24 United States District Court for the Southern District of Iowa, 490 U.S. 296, 298, 109  
25 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the Court may  
26 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113  
27 F.3d at 1525.

28

1 Without a reasonable method of securing and compensating counsel, the Court  
2 will seek volunteer counsel only in the most serious and exceptional cases. In  
3 determining whether “exceptional circumstances exist, the district court must evaluate  
4 both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate  
5 his claims *pro se* in light of the complexity of the legal issues involved.” *Id.* (internal  
6 quotation marks and citations omitted). In the present case, the Court does not find the  
7 required exceptional circumstances.

8 **IV. Modification to the Discovery and Scheduling Order**

9 On January 4, 2018, the Defendants moved to modify the DSO as it relates to the  
10 dispositive motion deadline, originally set for January 5, 2018. Good cause appearing,  
11 this deadline will be extended as set forth below.

12 **V. Conclusion**

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s motion to compel discovery (ECF No. 23) is DENIED;
- 15 2. Plaintiff’s motion for an investigator (ECF No. 24) is DENIED;
- 16 3. Defendants’ request for an extension of time (ECF No. 26) is GRANTED. The  
17 opposition filed on November 27, 2017, is deemed timely filed; and
- 18 4. Defendants’ requests for a modification of the DSO (ECF Nos. 29, 30) are  
19 GRANTED. The dispositive motion deadline is continued by 30 days from the  
20 date of this Order.

21  
22 IT IS SO ORDERED.

23 Dated: January 18, 2018

24 /s/ Michael J. Seng  
25 UNITED STATES MAGISTRATE JUDGE  
26  
27  
28