

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 DANNIE BERCHTOLD,

12 Plaintiff,

13 vs.

14 CITY OF ANGELS aka ANGELS  
15 CAMP, *et al.*,

16 Defendants.  
17

**Case No. 1:16-cv-00397-DAD-EPG**

**ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL**

(ECF No. 21)

18  
19 Plaintiff Dannie Berchtold is proceeding *pro se* in this civil rights action. His claims  
20 arise out of a traffic stop near Angels Camp, California that occurred on February 5, 2015. The  
21 case was scheduled on May 31, 2016 and the Court set a non-expert discovery cutoff date of  
22 February 1, 2017. (ECF No. 10.) On December 14, 2016, the Court extended the non-expert  
23 discovery cutoff date to February 28, 2017. (ECF No. 17.)

24 On February 28, 2017, the Court conducted a telephonic discovery conference with the  
25 parties in which Plaintiff requested permission to move to compel three specific pieces of  
26 discovery. Despite the late date of his request, the Court granted conditional permission for  
27 Plaintiff to file his motion:

28 Plaintiff is granted permission to file a motion to compel with respect to his  
document requests for his police report and notes, body camera video footage of  
his stop, and the document for the DMV related to his driver's license; ***provided,***

1 ***however, that Plaintiff meets and confers in writing with Defendants re: his***  
2 ***requests before filing his motion. Plaintiff shall attach copies of the meet and***  
3 ***confer letters to his motion when filed. Plaintiff's motion may be no longer***  
4 ***than 10 pages and must be filed no later than March 17, 2017.*** Defendants  
5 may file any opposition no later than March 24, 2017. No hearing date needs to  
6 be noticed and the Court will take the Motion under submission after the  
opposition brief is filed. Both parties are relieved of the requirement of  
preparing a joint discovery statement under Local Rule 251. Plaintiff is advised  
that ***no new discovery requests or disputes will be entertained in his Motion***  
and that ***any failure to comply with the requirements of this Order may result***  
in the denial of his Motion and/or sanctions.

7 (ECF No. 20 (emphasis added).)

8 On March 21, 2017, Plaintiff filed a Motion to Compel. (ECF No. 21.) The Motion  
9 requested that the Court compel responses to a set of requests for document production that  
10 Plaintiff served on Defendant Angels Camp on March 7, 2017. Among other items, the requests  
11 ask for:

- 12 • “Brand Name, type and specifications of flashlight utilized by Officer Kyle  
13 Henson during the exam of the Plaintiff”;
- 14 • “Reason for the use of the flashlight Officer Kyle Henson during the exam”;
- 15 • “The number of intersections the Plaintiff and Officer Kyle Henson traveled  
16 through from the point of Officer Kyle Henson’s first sight of the Plaintiff to the  
17 point outside of the city limits where he stopped the Plaintiff”; and,
- 18 • “The current location of the Plaintiff’s Driver License and date in which it was  
19 received.”

20 Plaintiff also attaches two emails to the Motion, both of which appear to be cover emails for the  
21 March 7, 2017 requests. Defendants filed a timely response to the Motion on March 24, 2017.

22 Rule 37(a) of the Federal Rules of Civil Procedure requires that any motion to compel  
23 discovery “must include a certification that the movant has in good faith conferred or attempted  
24 to confer with the person or party failing to make disclosure or discovery in an effort to obtain  
25 it without court action.” This requirement is further codified in Local Rule 251(b), which  
26 requires meet and confer communications as a precondition for the Court to hear a discovery  
27 motion. The meet and confer obligation was also a part of this Court’s March 1, 2017 order.

28 (ECF No. 20.) A motion to compel may be denied where the moving party has failed to

1 appropriately meet and confer. *Cardoza v. Bloomin' Brands, Inc.*, 141 F.Supp.3d 1137, 1145  
2 (D. Nev. 2015) (“A threshold issue in the review of any motion to compel is whether movant  
3 made adequate efforts to resolve the dispute without court intervention.”); *Maddox v. Cnty. of*  
4 *Sacramento*, Case No. CIV S-06-0072 GEB EFB, 2008 WL 4635658, at \*2 (E.D. Cal. Oct. 20,  
5 2008).

6 Plaintiff was expressly directed to meet and confer with Defendants to resolve his  
7 outstanding discovery dispute. The Court explained, in great detail, how to appropriately meet  
8 and confer with Defendants before filing a motion to compel. Plaintiff has ignored those  
9 instructions and has not made any efforts to meet and confer with Defendants. This alone  
10 constitutes an adequate ground on which to deny Plaintiff’s Motion.

11 Plaintiff’s Motion is also improper because:

- 12 • It asks the Court to compel more discovery than was permitted in the March 1,  
13 2017 minute order, despite the express warning that no new discovery requests  
14 would be entertained;
- 15 • It is untimely because it was filed after the March 17, 2017 deadline that the  
16 Court imposed in the March 1, 2017 minute order;
- 17 • It is premature because it asks the Court to compel production of new discovery  
18 requests that were apparently first served on March 7, 2017 without providing  
19 Defendants the required thirty day period to respond; and,
- 20 • It fails to demonstrate good cause for failing to bring the motion to compel  
21 before the discovery cutoff date. *See, e.g., Gucci Am., Inc. v. Guess?, Inc.*, 790  
22 F.Supp.2d 136, 139 (S.D.N.Y. 2011) (“Where a party is aware of the existence  
23 of documents or other information before the close of discovery and propounds  
24 requests after the deadline has passed, those requests should be denied.”);  
25 *Glesenkamp v. Nationwide Mut. Ins. Co.*, 71 F.R.D. 1, 3 (N.D. Cal. 1974) *aff’d*,  
26 540 F.2d 458 (9th Cir. 1976) (“plaintiff’s failure to discover any facts in support  
27 of her claim for fraud in a year and a half . . . convinces the Court that allowing  
28 additional discovery would not serve the interests of justice.”).

1 Even if the Court were to reach the substantive merits of Plaintiff's Motion, it would be  
2 denied. Plaintiff's Motion does not explain: (1) whether he asked Defendants for this discovery  
3 previously; (2) how they responded; or (3) why any response by Defendants is deficient.  
4 Absent any of this information, Plaintiff's Motion is insufficient. *Womack v. Virga*, Case No.  
5 CIV S-11-1030 MCE EFP P, 2011 WL 6703958, at \*3 (E.D. Cal. Dec. 21, 2011) ("The party  
6 seeking the motion to compel discovery has the burden of informing the court why the  
7 defendants' objections are not justified or why the defendants' responses are deficient."); *Ellis*  
8 *v. Cambra*, Case No. 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at \*4 (E.D. Cal. March  
9 27, 2008) ("If Defendant objects to one of Plaintiff's discovery requests, it is Plaintiff's burden  
10 on his motion to compel to demonstrate why the objection is not justified. Plaintiff must inform  
11 the court which discovery requests are the subject of his motion to compel, and, for each  
12 disputed response, inform the Court why the information sought is relevant and why  
13 Defendant's objections are not justified.").

14 For all the reasons set forth above, Plaintiff's Motion to Compel (ECF No. 21) is  
15 DENIED.

16  
17 IT IS SO ORDERED.

18 Dated: March 27, 2017

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