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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 JOSE TRUJILLO,

12 Plaintiff,

13 v.

14 DANN'S DISCOUNT AUTO SALES, INC.,
15 et al.,

16 Defendants.

Case No. 1:17-cv-00065-LJO-SAB

ORDER DENYING PLAINTIFF'S
REQUEST TO STRIKE DEFENDANTS'
OBJECTION AND OVERRULING
DEFENDANTS' OBJECTION TO
PLAINTIFF'S DEMAND FOR INSPECTION

(ECF Nos. 10, 11)

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18 Plaintiff Jose Trujillo filed this action against Defendants Dann's Discount Auto Sales,
19 Inc. and P.W. Holdings, LLC, on January 13, 2017. (ECF No. 1.) The mandatory scheduling
20 conference is set in this matter for March 28, 2017. (ECF No. 3.) On March 16, 2017,
21 Defendants filed an objection to Plaintiff's notice of inspection on the ground that Plaintiff
22 cannot propound discovery until after the parties have participated in the mandatory FRCP 26(f)
23 conference which has not occurred. (ECF No. 10.)

24 On March 20, 2017, Plaintiff filed a request to strike the objections arguing that the Rule
25 34 notice may be served more than 21 days after the summons and complaint are served on a
26 party. The demand for inspection was served on February 28, 2017. The first Rule 26(f)
27 conference between the parties was held on March 7, 2017, and the inspection is scheduled to
28 take place on April 24, 2017. (ECF No. 11.)

1 The issue currently before the Court has been improperly raised. Defendants have not
2 filed a motion, but an objection to discovery. Plaintiff seeks to strike Defendants' objection but
3 provides no legal authority for the request. Since Defendants have objected to the demand for
4 inspection, and Plaintiff has filed what the Court construes as a reply, the Court shall address
5 Defendants' objection.

6 Pursuant to Rule 26(d) of the Federal Rules of Civil Procedure a party may not seek
7 discovery before the parties have conferred as required by the Rule 26(f). Fed. R. Civ. P.
8 26(d)(1). However, a party may deliver an early request under Rule 34 more than 21 days after
9 the party is served with the summons and complaint. Fed. R. Civ. P. 26(d)(2)(A). The request is
10 then considered served on the date of the Rule 26(f) conference. Fed. R. Civ. P. 26(d)(2)(B).

11 Pursuant to Rule 34 of the Federal Rules for Civil Procedure, a party may serve a request
12 to permit entry onto designated property "controlled by the responding party, so that the
13 requesting party may inspect, measure, survey, photograph, test, or sample the property or any
14 designated object or operation on it." Fed. R. Civ. P. 34(a)(2). The request must specify a
15 reasonable time and manner of making the inspection. Fed. R. Civ. P. 34(b)(1)(B). Where the
16 request is served prior to the Rule 26(f) conference, the responding party must respond within 30
17 days of the parties first Rule 26(f) conference. Fed. R. Civ. P. 34(b)(2)(A). Rule 26(f) provides
18 that the parties must confer at least 21 days before a scheduling conference is to be held or a
19 scheduling order is due under Rule 16(b). Fed. R. Civ. P. 26(f)(1).

20 Here, the demand for inspection is deemed served pursuant to Rule 26(d) on March 7,
21 2017, when the parties had their first Rule 26(f) conference. The inspection is to occur on April
22 24, 2017, more than six weeks after the date served. Rule 34 provides that a party must respond
23 within thirty days of the request. The Court finds that the demand for inspection provided
24 reasonable notice of the date of inspection.

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1 Accordingly, Plaintiff's request to strike Defendants' objection to the demand for
2 inspection is DENIED; and Defendants' objection to the demand for inspection is
3 OVERRULED.

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5 IT IS SO ORDERED.

6 Dated: March 20, 2017


UNITED STATES MAGISTRATE JUDGE