

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

10 EDWARD B. SPENCER,

11 Plaintiff,

12 vs.

13 RICHARD MILAN,

14 Defendant.
15
16
17
18
19

1:20-cv-00682-JLT-GSA-PC

**ORDER DENYING PLAINTIFF'S MOTION TO
COMPEL AS PROCEDURALLY DEFECTIVE**

**ORDER DENYING MOTION FOR SANCTIONS
AND REQUEST FOR EXTENSION OF
DISCOVERY DEADLINE**

(ECF No. 44.)

20 **I. BACKGROUND**

21 Edward B. Spencer ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
22 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds
23 against sole defendant Milan¹ ("Defendant") for subjecting Plaintiff to adverse conditions of
24 confinement in violation of the Eighth Amendment.

25 On October 25, 2022, Plaintiff filed a motion to compel and for sanctions, and requested
26 an extension of the discovery deadline. (ECF No. 44.) On November 14, 2022, Defendant filed
27

28

¹ Sued as Milan.

1 an opposition to the motions. (ECF No. 48.) The motion is now before the court. Local Rule
2 230(l).

3 **II. APPLICABLE LEGAL STANDARDS**

4 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may
5 move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ.
6 P. 37(a)(3) (B). The court may order a party to provide further responses to an “evasive or
7 incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4). “District courts have
8 ‘broad discretion to manage discovery and to control the course of litigation under Federal Rule
9 of Civil Procedure 16.’” Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
10 Avila v. Willits Env'tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)). Generally, if the
11 responding party objects to a discovery request, the party moving to compel bears the burden of
12 demonstrating why the objections are not justified. E.g., Grabek v. Dickinson, No. CIV S–10–
13 2892 GGH P., 2012 WL 113799, at *1 (E.D.Cal. Jan. 13, 2012); Ellis v. Cambra, No. 1:02–cv–
14 05646–AWI–SMS (PC), 2008 WL 860523, at *4 (E.D.Cal. Mar. 27, 2008). This requires the
15 moving party to inform the Court which discovery requests are the subject of the motion to
16 compel, and, for *each* disputed response, why the information sought is relevant and why the
17 responding party’s objections are not meritorious. Grabek, 2012 WL 113799, at *1; Womack v.
18 Virga, No. CIV S–11–1030 MCE EFB P., 2011 WL 6703958, at *3 (E.D.Cal. Dec. 21, 2011)
19 (emphasis added).

20 **III. PLAINTIFF’S MOTION TO COMPEL AND FOR SANCTIONS**

21 Plaintiff requests the court to compel Defendant to serve further responses to Plaintiff’s
22 Interrogatories and Request for Production of Documents, Set One, which Plaintiff served on
23 August 22, 2022.

24 Plaintiff has submitted copies of his discovery requests and Defendant’s responses. (ECF
25 No. 44, Exhs. A & B.) Plaintiff states that his requests seek only relevant information, and that
26 Defendant responded with boilerplate and non-particular objections. Plaintiff alleges that on
27 October 14, 2022, he attempted to call the Supervising Deputy Attorney General by telephone to
28 meet and confer, to no avail.

1 Defendant has objected to each of Plaintiff's discovery requests as vague and ambiguous,
2 and as seeking information that is not relevant to the claims and defenses of the parties in this
3 case.

4 Here, Plaintiff has not met his burden of informing the court why *each* disputed response
5 to his Interrogatories and Request for Production of Documents is deficient. Plaintiff addresses
6 all fourteen disputed responses together, merely stating that Defendants made incomplete
7 responses. This is not sufficient to meet Plaintiff's burden.

8 The court has reviewed Defendant's Responses and finds that Defendant made boilerplate
9 objections, but also addressed each of Plaintiff's Requests individually. Plaintiff has not
10 adequately addressed Defendant's objections or Defendant's argument that Plaintiff has not
11 requested relevant information. Therefore, Plaintiff's motion to compel shall be denied as
12 procedurally defective.

13 In light of the Court's denial of Plaintiff's motion to compel, the Court shall also deny
14 Plaintiff's motion for sanctions.

15 **VI. REQUEST FOR MODIFICATION OF SCHEDULING ORDER**

16 The current discovery deadline for this case expired on November 9, 2022. (ECF No.
17 46.) Plaintiff requests an extension of the discovery deadline to bring any further motions to
18 compel or for sanctions.

19 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
20 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
21 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
22 modification of a scheduling order must generally show that even with the exercise of due
23 diligence, they cannot meet the requirement of the order. Id. The court may also consider the
24 prejudice to the party opposing the modification. Id. If the party seeking to amend the scheduling
25 order fails to show due diligence the inquiry should end and the court should not grant the motion
26 to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

27 Plaintiff has not shown good cause for the Court to extend the discovery deadline in the
28 Court's scheduling order. Discovery was open for nearly ten months, from January 10, 2022

1 until November 9, 2022, and Plaintiff has not explained why he could not meet the requirements
2 of the order. Plaintiff merely requests an extension of the deadline in case he needs to bring
3 further motions to compel or motions for sanctions. Therefore, Plaintiff's request to modify the
4 scheduling order shall be denied.

5 **VII. CONCLUSION**

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

- 7 1. Plaintiff's motion to compel and for sanctions, filed on October 25, 2022, is
8 denied as procedurally defective; and
- 9 2. Plaintiff's motion to modify the Court's scheduling order is denied for failure to
10 show good cause.

11 IT IS SO ORDERED.

12 Dated: November 17, 2022

13 /s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE