

1 declarations, and exhibits. For the following reasons, the Court will deny Plaintiff’s request for an
2 extension to file discovery motions. The Court also recommends that Plaintiff’s request for an
3 order directing the release of Plaintiff’s legal property be denied.

4 **I. BACKGROUND**

5 Plaintiff’s motion seeks additional time to compel discovery from Defendants and to
6 submit interrogatory requests. (ECF No. 125, p. 2-3). Plaintiff argues that an extension is
7 necessary because Defendants have “coordinated with Prison Wardens to seize [Plaintiff’s] legal
8 work since 1/18/23 to 3/19/2023.” (*Id.* at 1). Plaintiff states that he is unable to recall which
9 requested documents were described in his request for production of documents, and thus, is
10 unable to file an “interrogatory request motion.” (*Id.*) Further, Plaintiff alleges that Defendants
11 have coordinated with prison wardens to harass Plaintiff by transferring him several times
12 between Kern Valley State Prison (“KVSP”), California State Prison, Corcoran (“COR”), and
13 California State Prison, Sacramento (“CSP-SAC”). (*Id.* at 2). Plaintiff’s motion indicates that
14 Plaintiff has been “sequestered” in administrative segregation where his legal work and personal
15 property has been seized to prevent Plaintiff from prosecuting this case. (*Id.*)

16 Defendants’ response states that “any actions allegedly taken by the parties and non-
17 parties were taken for appropriate reasons, and not as part of a vaguely alleged conspiracy to
18 improperly seize or withhold property.” (ECF No. 135, p. 2). As Defendants’ response provides:

19 Plaintiff was initially placed in ASU on January 18, 2023 at KVSP due to self-
20 expressed enemy concerns. (Decl. of R. Largent, at ¶ 7; Exh. 1.) Reports of inmate
21 safety concerns, including allegations of enemy concerns, are addressed promptly
22 and investigated thoroughly, often requiring an inmate’s placement in ASU for
23 their own safety and that of others in the institution while the circumstances are
24 investigated. (*Id.*, at ¶¶ 3-4, 7.) see Cal. Code Regs. tit. 15, § 3335(a) (an inmate
25 may be placed in administrative segregation for “for the safety of any person”
26 including placement in non-disciplinary segregation for “investigation of safety
27 concerns not resulting from misconduct”). Plaintiff remained in ASU at KVSP
28 while his concerns were investigated, and was specifically informed at several
classification proceedings that his placement in ASU resulted from his report of
enemy concerns. (*Id.*, at ¶¶ 7; Exhs. 1-4.) Cal. Code Regs. tit. 15, § 3337
(providing for review of placement at classification hearing).

Once it was determined that Plaintiff could not safely program at KVSP’s Facility
C, he was endorsed for transfer to COR. (Decl. of R. Largent, at ¶¶ 8-9; Exh. 2.)
Plaintiff was transferred to COR on February 18, 2023, and placed in ASU. (Decl.
of K. Coyle, at ¶ 9.) On March 2, 2023, Plaintiff appeared for a classification
hearing. (*Id.*, at ¶¶ 9-10; Exh. 3.) Notably, as a participant in the Mental Health

1 Delivery System at the Enhanced Outpatient (“EOP”) level of care, and because
2 Plaintiff is classified at Level IV, the only institutions capable of housing Plaintiff
3 are CSP-SAC, KVSP, and Salinas Valley State Prison (“SVSP”). (Id.) Plaintiff has
4 documented enemies at KVSP and SVSP, thus the classification committee
5 endorsed Plaintiff to CSP-SAC. (Id.)

6 On March 8, 2023, Plaintiff transferred from COR to CSP-SAC, and was placed in
7 ASU pending placement in Facility B’s general population EOP housing upon
8 availability of a bed. (Decl. R. Largent, at ¶ 11.) On March 16, 2023, the
9 Classification Committee at CSP-SAC met to discuss Plaintiff’s placement, as
10 Plaintiff’s move to Facility B was still pending availability of a cell and bed. (Id.,
11 at ¶ 12; Exh. 4.) Plaintiff was again advised by a staff assistant of the reasons of
12 his placement, and the reasons he would remain in ASU pending the move to
13 Facility B. (Id.) On April 3, 2023, Plaintiff was moved from ASU to Facility B’s
14 general population EOP housing unit. (Id., at ¶ 13.) There are no pending actions
15 to transfer Plaintiff at this time. (Id.)

16 (ECF No. 135, pp. 2-3) (internal footnote omitted).

17 As for Plaintiff’s access to his legal property between January and April 2023, Defendants
18 provide the following information:

19 Plaintiff’s placement in ASU at KVSP was premised solely on safety concerns,
20 and the need to investigate his self-expressed safety concerns. (Decl. B. Hancock,
21 at ¶ 9; Exh. 1.) Thus, his placement in ASU was for non-disciplinary reasons. (Id.)
22 Although placed in KVSP’s ASU, Plaintiff’s legal property remained at the
23 institution and was available upon request. (Id., at ¶¶ 10-14; Exhs. B-E.) In a
24 separate filing, Plaintiff states his legal property was provided to him at KVSP’s
25 ASU, thus allowing him to “start to make [a] memorandum.” (ECF No. 131, at p.
26 5, ¶ 6.)

27 Plaintiff arrived at COR along with 4 boxes of personal property (which includes
28 legal property), and 1 box containing a television, on February 18, 2023. (Decl. of
K. Coyle, at ¶ 9; Exh. A.) This property was logged by the Receiving and Releases
supervising sergeant. (Id.) Plaintiff’s property was then transferred to his ASU
housing unit on February 21, 2023. (Id., at ¶ 10; Exh. B.) Plaintiff’s property
traveled with him on March 8, 2023, when he was transferred from COR to CSP-
SAC. (Decl. of K. Coyle., at ¶ 12; Exh. C; Decl. of K. Porter, at ¶ 7; Exh. A.)

At CSP-SAC, Plaintiff remained in ASU until he was assigned to Facility B’s
general population housing unit to cell B5-106 on April 3, 2023. (Decl. of K.
Porter, at ¶ 9; Exh. B.) Plaintiff was able to request access to any of his personal
property, including legal property, at any time. (Id.) As of April 5, 2023, Plaintiff
had 6 boxes of personal property in B Facility. (Id.)

(Id. at pp. 4-5).

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1 **II. REQUEST FOR EXTENSION OF TIME**

2 Pursuant to Federal Rule of Civil Procedure 16(b), a scheduling order “may be modified
3 only for good cause and with the judge's consent.” Fed. R. Civ. P. 16(b)(4). Good cause requires a
4 showing of due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir.
5 1992). For example, good cause may be found where the moving party shows that it was diligent
6 in assisting the Court in creating a workable scheduling order, that it is unable to comply with the
7 scheduling order's deadlines due to matters not reasonably foreseeable at the time the scheduling
8 order issued, and that it was diligent in seeking a modification once it became apparent it could
9 not comply with the scheduling order. *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal.
10 1999). The party seeking to modify a scheduling order bears the burden of demonstrating good
11 cause. *Johnson*, 975 F.2d at 609.

12 The Court does not find good cause to modify the scheduling order. Discovery opened in
13 this case on October 22, 2022. (ECF No. 78). It will remain open until August 24, 2023.
14 Moreover, Plaintiff has actively litigated this case since that time, including filing two motions to
15 compel. (*See* ECF Nos. 106, 126, 134). Although Plaintiff generally complains that he did not
16 have access to his legal property for some of this time period, he does not explain any specific
17 motions he plans to file or discovery he cannot take in the remaining months allowed for
18 discovery.

19 Additionally, according to the declarations filed by Defendants, aside from days where
20 Plaintiff was transported between facilities, Plaintiff has had physical possession of his legal
21 property or retained the ability to request access to his legal property since the time Plaintiff was
22 first placed in administrative segregation at KVSP to his eventual transfer to CSP-SAC. Further,
23 according to the declaration of the acting lieutenant supervisor of the receiving and release
24 department at CSP-SAC, Plaintiff's six boxes of personal property have been located in
25 Plaintiff's housing facility at CSP-SAC since April 5, 2023. (ECF No. 135-2, p. 3).

26 Thus, Plaintiff has not shown good cause to modify the Court's scheduling order.

27 **III. PLAINTIFF'S REQUEST FOR ORDER TO RELEASE LEGAL WORK**

28 Under the All Writs Act, federal courts “may issue all writs necessary or appropriate in
aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C.

1 § 1651(a). “The power conferred by the Act extends, under appropriate circumstances, to persons
2 who, though not parties to the original action or engaged in wrongdoing, are in a position to
3 frustrate the implementation of a court order or the proper administration of justice, and
4 encompasses even those who have not taken any affirmative action to hinder justice.” *United*
5 *States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) (footnote
6 and citations omitted).

7 “Thus, use of the All Writs Act is appropriate in prisoner civil rights cases where non-
8 party correctional officials are impeding the prisoner-plaintiff’s ability to litigate his pending
9 action.” *Hammler v. Haas*, 2019 U.S. Dist. LEXIS 48377, *3-4 (E.D. Cal., Mar. 22, 2019); *see*
10 *also Mitchell v. Haviland*, 2015 U.S. Dist. LEXIS 109106, *5 (E.D. Cal., Aug. 18, 2015) (“Use of
11 the All Writs Act is appropriate in cases where prison officials, not named as defendants,
12 allegedly have taken action that impedes a prisoner’s ability to litigate his case”); *Lopez v. Cook*,
13 2014 U.S. Dist. LEXIS 52198, 2014 WL 1488518 (E.D. Cal., Apr. 15, 2014) (issuing an order
14 under the All Writs Act requiring prison officials to provide Plaintiff, who was in the Segregated
15 Housing Unit for non-disciplinary reasons, with two contact visits with his counsel). However,
16 “injunctive relief under the All Writs Act is to be used sparingly and only in the most critical and
17 exigent circumstances,” and only “if the legal rights at issue are indisputably clear.” *Brown v.*
18 *Gilmore*, 533 U.S. 1301, 1303, 122 S.Ct. 1, 150 L.Ed.2d 782 (2001) (citations and internal
19 quotation marks omitted).

20 Plaintiff requests a court order directing Defendants to release Plaintiff’s legal work. The
21 Court construes this request as an order under the All Writs Act.

22 The Court finds that Plaintiff has failed to show that staff at KVSP, COR, or CSP-SAC
23 are impeding his ability to litigate this action. And although Plaintiff alleges that Defendants in
24 this case have “coordinated” with correctional staff, Plaintiff fails to provide any details or
25 documentation supporting this allegation. Indeed, while Plaintiff alleges that he was placed in
26 administrative segregation so that he would be prevented from prosecuting this case, Defendants
27 have provided declarations that indicate Plaintiff was placed in administrative segregation due to
28 his own safety concerns. Further, when an investigation validated those security concerns,
Plaintiff was transferred to a facility where he could be safely housed.

1 As Plaintiff has failed to show critical and exigent circumstances, and as injunctive relief
2 under the All Writs Act is to be used sparingly, the Court will recommend that Plaintiff's request
3 be denied.

4 **IV. RECOMMENDATION AND ORDER**

5 Based on the foregoing, IT IS RECOMMENDED that Plaintiff's request for an order
6 under the All Writs Act (ECF No. 125) be DENIED.

7 These findings and recommendations are submitted to the United States district judge
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
9 (14) days after being served with these findings and recommendations, any party may file written
10 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's
11 Findings and Recommendations." Any response to the objections shall be served and filed within
12 fourteen (14) days after service of the objections. The parties are advised that failure to file
13 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*
14 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394
(9th Cir. 1991)).

15 Additionally, IT IS ORDERED that Plaintiff's request for a sixty-day extension to file
16 discovery related motions (ECF No. 125) is DENIED.

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18 IT IS SO ORDERED.

19 Dated: April 25, 2023

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE
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