

1 When plaintiff filed his discovery motion on May 14, 2015,¹ he had received no responses
2 from defendants to his discovery requests, specifically: Plaintiff’s Interrogatories to Defendant
3 Kuppinger, Set One, Nos. 1-7 (Pl. Ex. A); Plaintiff’s Interrogatories to Defendant Moore, Set
4 One, Nos. 1-8 (Pl. Ex. B); Plaintiff’s First Request for Production of Documents to Defendant
5 Kuppinger (Pl. Ex. C); Plaintiff’s First Request for Production of Documents to Defendant Moore
6 (Pl. Ex. D).

7 Responses to written discovery requests in this action are due within 45 days after service
8 of the requests. See ECF No. 49 at 4. Plaintiff avers that he served each of the above requests on
9 the same date, March 27, 2105. ECF No. 50 at 1. Review of the requests indicates that on March
10 27, 2015, plaintiff dated and signed each request and/or the respective certificate of service.²
11 Normally, this date would control the “service date” of plaintiff’s requests. See n.1, supra. So
12 construed, responses were due within 45 days, plus three additional days for responding to
13 matters served by mail,³ or by May 14, 2015. Defendants served their responses by mail one day
14 later, on May 15, 2105.

15 However, defendants assert that their responses were not yet due when plaintiff filed his
16 motion on May 14, 2015. Defendants rely on the “service dates” written and initialed by prison
17 officials on the backs of the envelopes containing plaintiff’s discovery requests. Title 15, section
18 3142, California Code of Regulations, sets forth the procedures for processing an inmate’s
19 outgoing confidential mail. An inmate must present to designated staff the contents of his mail in
20 an unsealed envelope for inspection. “If no prohibited material is discovered, the contents shall
21 be returned to the envelope and sealed. Staff shall place their signature, badge number and date
22 across the sealed area on the back of the envelope. Staff shall then deposit the confidential mail
23

24 ¹ The filing dates referenced herein are based on the prison mailbox rule, pursuant to which a
25 document is deemed served or filed on the date a prisoner signs the document and gives it to
26 prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (establishing prison
27 mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox
28 rule to both state and federal filings by incarcerated inmates).

² See ECF No. 50 at 7-8 (Pl. Ex. A); ECF No. 50 at 12, 15 (Pl. Ex. B); ECF No. 50 at 18-9 (Pl.
Ex. C); ECF No. 50 at 22 (Pl. Ex. D).

³ See Fed. R. Civ. P. 6(d) (adding three days to respond to matters served, inter alia, by mail).

1 in the appropriate depository.” 15 C.C.R. § 3142(d).

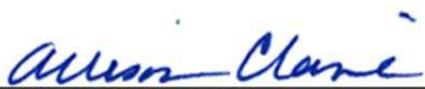
2 In the instant case, the envelope containing the discovery requests directed to defendant
3 Moore was signed and dated by a correctional official on March 31, 2015, while the envelope
4 containing the discovery requests directed to defendant Kuppinger was signed and dated by a
5 correctional official on April 1, 2015. See ECF No. 51 at 14, 19-20. Relying on these dates,
6 defendant Moore’s responses were due by May 18, 2015, while defendant Kuppinger’s responses
7 were due by May 19, 2015. So construed, defendants’ responses served May 15, 2015 were
8 timely.

9 There is some authority for defendants’ reliance on the dates provided by prison officials
10 on the envelopes containing plaintiff’s discovery requests. See e.g., Ford v. Soto, 2013 WL
11 4039803, *1 n.2 (C.D. Cal. 2013) (relying on “the date written and initialed by a prison official
12 on the back of the envelope containing the Petition” as the constructive filing date for purposes of
13 the mailbox rule); Gleghorn v. Chappell, 2012 WL 5058736,*5 n.7 (C.D. Cal. 2012) (same); see
14 also Mitchell v. Janda, 2014 WL 502629, *4 n.3 (C.D. Cal. 2014) (concluding that the petition
15 would be untimely filed even if the court applied this construction of the mailbox rule).

16 Nevertheless, regardless whether this court construes defendants’ responses as timely
17 served, or served one-day late, plaintiff’s concerns are now moot because defendants have served
18 their responses. Moreover, it appears that plaintiff failed to meet and confer with defendants
19 regarding his discovery concerns before filing the instant motion. See Fed. R. Civ. P. 37(a)(1)
20 (“[A] party may move for an order compelling disclosure or discovery [and such] motion must
21 include a certification that the movant has in good faith conferred or attempted to confer with the
22 person or party failing to make disclosure or discovery in an effort to obtain it without court
23 action.”); see also ECF No. 49 at 5, ¶ 5 (Discovery and Scheduling Order).

24 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel discovery and
25 for sanctions, ECF No. 50, is denied.

26 DATED: June 10, 2015

27 
28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE