



1 Pursuant to the court's discovery and scheduling order, discovery closed on January 27,  
2 2017. ECF No. 26. A scheduling order may be modified upon a showing of good cause. Fed. R.  
3 Civ. P. 16(b). Good cause exists when the moving party demonstrates he cannot meet the  
4 deadline despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
5 609 (9th Cir. 1992). Plaintiff's motion, filed over a month after the close of discovery, does not  
6 request modification of the scheduling order; nor does it demonstrate a basis for such  
7 modification. *See* ECF No. 32 at 6, 21 (showing that defendant had served plaintiff with his  
8 discovery responses over two months prior to the close of discovery). The motion is therefore  
9 denied as untimely.

10 Moreover, the only discovery requests specifically discussed in plaintiff's motion are  
11 those requesting a "transcribed copy" of the use of force interview. Defendant's response  
12 indicates that such a transcript does not exist. ECF No. 32 at 20. Defendant cannot be compelled  
13 to produce a document that does not exist, and is not required to create a document in response to  
14 plaintiff's request for production.

15 As noted, plaintiff's motion also seeks a court order for defendant to produce a video of  
16 the interview to the court. By separate order, the court grants defendant's request to file and  
17 lodge a compact disk containing the use of force interview. Thus, this portion of plaintiff's  
18 motion appears to be moot.

19 Accordingly, it is HEREBY ORDERED that "Plaintiff's Reply to Defendant's Stipulated  
20 Request to File and Lodge Plaintiff's Use of Force Interview" (ECF No. 32), construed as a  
21 motion to compel, is denied.

22 DATED: March 21, 2017.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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