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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES WALTERS, on behalf of himself and those similarly situated,  Plaintiff,  v.  TARGET CORP.,  Defendant.
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Case No.: 16-cv-1678-L-MDD

**ORDER ON JOINT MOTION FOR  
DETERMINATION OF  
DISCOVERY DISPUTE  
REGARDING REQUESTS FOR  
ADMISSION**

**[ECF NO. 114]**

Before the Court is the joint motion of the parties for determination of a discovery dispute filed on October 12, 2018. (ECF No. 114). The dispute concerns whether Defendant need respond to requests for admission allegedly served untimely under the operative Scheduling Order.

The Scheduling Order, in relevant part, provides:

All fact discovery shall be completed by all parties no later than **September 18, 2018**. “Completed” means that all discovery under Rules 30-36, and discovery subpoenas under Rule 45,1 must be initiated a sufficient period of time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking into account the times for service, notice and response.

1 (ECF No. 66, ¶ 5). It appears undisputed that Plaintiff served Defendant  
2 with requests for admission, under Rule 36, Fed. R. Civ. P., on August 21,  
3 2018, which carried a due date of September 20, 2018. (ECF No. 114 at 2).<sup>1</sup>  
4 Rule 36(a)(3) requires a response be served to a request for production within  
5 30 days after being served with the request.

6 Plaintiff seeks to compel Defendant to respond arguing that its service  
7 was only 2 days late, Defendant is not prejudiced and, in the alternative, to  
8 extend the scheduling order deadline to allow Defendant to respond. (ECF  
9 No. 114 at 2-3). Defendant asserts that court-ordered deadlines should be  
10 enforced and that Plaintiff has not shown the requisite good cause to modify  
11 the scheduling order.

12 The Court agrees with Defendant that deadlines provided either in the  
13 Federal Rules, scheduling orders or chambers rules should be enforced. Close  
14 enough is not good enough. *See Jones v. Ryan*, No. 07-cv-1019-JMA, 2010 WL  
15 3275686 at \*1 (S.D. Cal. Aug. 13, 2010). The Court also agrees that  
16 modification of the scheduling order, under Rule 16(b)(4), Fed. R. Civ. P.,  
17 requires good cause. The standard for good cause under this Rule primarily  
18 considers the diligence of the party seeking the modification. *See Johnson v.*  
19 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

20 The Court will enforce its deadlines unless convinced by Plaintiff that  
21 good cause exists to modify the scheduling order. In that regard, Plaintiff  
22 offers that requests for admission serve the cause of advancing the litigation  
23 by narrowing issues for trial and avoiding the necessity of proving certain  
24 facts. Plaintiff also offers that he has been diligent in pursuing discovery and  
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27 <sup>1</sup> The Court will refer to page numbers provided by CM/ECF rather than original  
pagination throughout.

1 there is no prejudice. Plaintiff offers the case of *Estate of Cruz-Sanchez v.*  
2 *United States*, No. 17-cv-0569-BEN-NLS, 2018 WL 2193415 (S.D. Cal. May  
3 14, 2018), in support of its position that good cause exists here to extend the  
4 scheduling order. In *Estate of Cruz-Sanchez*, however, the tardiness in  
5 serving requests for production of documents was a consequence of the late  
6 discovery of a witness with relevant documents. 2018 WL 2193415 at \*2.  
7 That is not the case here.

8 On August 22, 2018, the Court denied Plaintiff's motion to amend the  
9 scheduling order finding, among other things, that "Plaintiff has failed to  
10 demonstrate diligent and timely pursuit of discovery." (ECF No. 82). At that  
11 point, Plaintiff was on notice that the Court had issues with Plaintiff's  
12 diligence. Plaintiff's assertion that it was delayed in writing the requests for  
13 admission because Plaintiff had to wait for responses from certain third party  
14 discovery is insufficient as Plaintiff has not provided any specifics regarding  
15 when the responses were received and why they were essential to the  
16 requests for admission. (ECF No. 114-1 at 4).

17 The Court recognizes and agrees with the utility of requests for  
18 admission in potentially narrowing issues and the need for certain proof. The  
19 parties again will have this opportunity in advance of their pretrial  
20 conference. During the pretrial conference, the district judge will be looking  
21 to the parties to simplify the issues and admit and stipulate to facts and  
22 documents to avoid unnecessary proof. *See* Rule 16(c)(2)(A) and (C), Fed. R.  
23 Civ. P. The late-served requests for admissions can serve as a template to  
24 guide those discussions.

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1 CONCLUSION

2 As presented in this Joint Motion, Plaintiff's motion to compel  
3 responses to requests for admission is **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated: November 9, 2018



6 Hon. Mitchell D. Dembin  
7 United States Magistrate Judge

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