

**FILED**

JUL 23 2018

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *JLh* DEPUTYUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIAJAMES LINLOR,  
Plaintiff,

v.

CHASE BANKCARD SERVICES, INC.;  
CHASE BANK USA, NA,  
Defendants.

Case No.: 17cv5-WQH(KSC)

**ORDER RE DEFENDANTS' EX  
PARTE APPLICATION FOR  
ORDER PRIORITIZING  
DISCOVERY****[Doc. No. 55]**

Before the Court is defendants' Ex Parte Application for Order Prioritizing Discovery [Doc. No. 55] and plaintiff's Objection thereto [Doc. No. 57]. In their Ex Parte Application, defendants request that the Court issue an order staying all further discovery in the case as to plaintiff only until and unless plaintiff supplements his responses to certain discovery requests as required by Federal Rule of Civil Procedure 26(e)(1). [Doc. No. 55, at p. 3.] Although plaintiff filed a document entitled "Plaintiff's Objection to Defendants' Ex Parte Motion," he does not specifically address defendants' request to stay discovery against him until he provides supplemental responses to certain discovery requests. [Doc. No. 57, at pp. 1-18.] Instead, plaintiff complains that defendants' Ex Parte Application is "defective and improper." [Doc. No. 57, at p. 4.] He also argues that defendants are

1 withholding discovery they should have produced in response to his discovery requests;  
2 have refused to cooperate in discovery or appear for a deposition; and should be sanctioned.  
3 [Doc. No. 57, at pp. 1-2, 4-8.]

4 For the reasons outlined more fully below, the Court finds that defendants' Ex Parte  
5 Application must be DENIED for failure to: (1) establish good cause; (2) follow established  
6 rules and procedures; and (3) satisfy the meet and confer requirements. However, the Court  
7 will forewarn plaintiff about his duty to supplement his discovery responses in a timely  
8 manner as required by Federal Rule of Civil Procedure 26(e)(1).

### 9 Background

10 Plaintiff is proceeding in this action *pro se*.<sup>1</sup> In the First Amended Complaint,  
11 plaintiff generally alleges that he was the victim of credit card fraud and reported the  
12 fraud to defendants, but defendants failed to remove the fraudulent charges or conduct a  
13 reasonable investigation and then reported false and misleading information to credit  
14 reporting agencies in violation of the Fair Credit Reporting Act. [Doc. No. 22, at pp. 2-3,  
15 9 *et seq.*]

### 16 Discussion

#### 17 I. Meet and Confer Requirements.

18 "On notice to other parties and all affected persons, a party may move for an order  
19 compelling disclosure or discovery. The motion must include a certification that the  
20 movant has in good faith conferred or attempted to confer with the person or party failing  
21 to make disclosure or discovery in an effort to obtain it without court action."  
22 Fed.R.Civ.P. 37(a)(1). Local Rules also require parties to meet and confer "concerning  
23 all disputed issues" before filing a discovery motion with the Court. CivLR 26.1(a).  
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26 <sup>1</sup> District Courts are obligated to afford a certain amount of leeway to *pro se* litigants  
27 and to construe their pleadings liberally. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.  
28 2010).

1 Local Rule 26.1(a) states as follows: “If counsel have offices in the same county, they  
2 are to meet in person. If counsel have offices in different counties, they are to confer by  
3 telephone. *Under no circumstances may the parties satisfy the meet and confer*  
4 *requirements by exchanging written correspondence.”* CivLR 26.1(a) (emphasis  
5 added). Chambers’ Rules for this Court also require the parties to meet and confer “on  
6 all issues” before seeking assistance in resolving a discovery dispute. Chambers’ Rule  
7 V(B).

8 Here, it is apparent that defendants have not satisfied the meet and confer  
9 requirements with respect to the specific dispute raised in their moving papers. [Doc. No.  
10 55, at p. 5; Doc. No. 55-1, at pp. 1-4.] Defendants represent in their moving papers that  
11 they met and conferred about other issues, but they did not make any such representation  
12 as to the instant dispute about plaintiff’s duty to supplement his discovery responses.  
13 [Doc. No. 55, at p. 5.] Rather, defendants only represent that they sent a letter to plaintiff  
14 via facsimile to let him know they would be filing an Ex Parte Application the next day.  
15 [Doc. No. 55, at p. 5.] Accordingly, the Court finds that defendants’ Ex Parte  
16 Application for Order Prioritizing Discovery must be DENIED for failure to satisfy the  
17 meet and confer requirements.

18 **II. Defendants’ Request for “Prioritizing Discovery.”**

19 Defendants argue that the Court should prioritize discovery by: (1) ordering  
20 plaintiff to supplement his responses to certain discovery requests within 15 days; and  
21 (2) ordering a stay of any other discovery in the case until plaintiff supplements these  
22 discovery responses. [Doc. No. 55, at p. 3.] Essentially, the disputed discovery requests  
23 ask plaintiff to identify any charges on his credit card statements that he contends are  
24 fraudulent and to disclose any supporting documents. [Doc. No. 55, at p. 2.] Defendants  
25 contend the relief they seek is appropriate, because there is “temporal urgency such that  
26 immediate and irreparable harm will occur if there is any delay in obtaining relief.”  
27 [Doc. No. 55, at pp. 5-6.] Defendants do not state what irreparable harm will occur if the  
28 Court does not grant their request for relief. [Doc. No. 55, at pp. 6.] Rather, defendants

1 argue there is “temporal urgency,” because plaintiff cannot prevail in the case unless and  
2 until he identifies any fraudulent charges on his credit card account. [Doc. No. 55, at  
3 p. 6.]

4 “Parties may obtain discovery regarding any non-privileged matter that is relevant  
5 to any party’s claim or defense and proportional to the needs of the case, considering the  
6 importance of the issues at stake in the action, the amount in controversy, the parties’  
7 relative access to relevant information, the parties’ resources, the importance of the  
8 discovery in resolving the issues, and whether the burden or expense of the proposed  
9 discovery outweighs its likely benefit.” Fed.R. Civ.P. 26(b). “The court may, for good  
10 cause, issue an order to protect a party or person from annoyance, embarrassment,  
11 oppression, or undue burden or expense, including . . . specifying terms, including time  
12 and place . . . for the disclosure or discovery. . . .” Fed.R.Civ.P. 26(c)(1)(A).

13 On September 28, 2017, defendants served plaintiff with written discovery  
14 requests, and plaintiff responded on October 30, 2017. [Doc. No. 55, at p. 4.] In these  
15 discovery requests, defendants sought documents and information from plaintiff  
16 identifying any charges on his credit card account that he contends are fraudulent. [Doc.  
17 No. 55-1, at pp. 1-3.] However, plaintiff’s responses to defendants’ discovery requests  
18 were somewhat evasive and indicated he did not have enough information to identify any  
19 purported fraudulent charges. [Doc. No. 55-1, at pp. 1-3.] Thereafter, on March 9, 2018,  
20 defendants produced copies of statements detailing all the charges applied to defendant’s  
21 credit card account. [Doc. No. 55-1, at p. 3.]

22 On May 15, 2018, defendants filed a Motion for Summary Judgment, arguing that  
23 they are entitled to judgment in their favor, because plaintiff has not identified any  
24 fraudulent charges on his credit card account, and, as a result, he cannot satisfy his  
25 burden of establishing that defendants reported inaccurate, derogatory information to  
26 credit reporting agencies. [Doc. No. 70-1, at pp. 5-6.] On May 30, 2018, plaintiff filed  
27 an Opposition to defendants’ Motion for Summary Judgment, arguing, in part, that the  
28 District Court should deny defendants’ Motion, because plaintiff has not been given an

1 opportunity to complete discovery. [Doc. No. 78, at p. 4.] On June 13, 2018, plaintiff  
2 filed a second Opposition to defendants' Motion for Summary Judgment. [Doc. No. 83.]

3 In his May 30, 2018 Opposition to defendants' Motion for Summary Judgment,  
4 plaintiff argues that the District Court should deny defendants' Motion, because "plaintiff  
5 has not been given an opportunity to complete discovery due to defendants' stonewalling  
6 and refusals to cooperate. . . ." [Doc. No. 78, at p. 4.] Plaintiff also complains that  
7 defendants are required by law to complete an investigation into any "disputed  
8 information," but have not produced the results of an investigation even though e-mails  
9 from defendants' representative indicate that an investigation was completed. [Doc. No.  
10 78, at pp. 12-13, citing attached e-mails at Doc. No. 78, at pp. 14-15.] In his June 13,  
11 2018 Opposition to defendants' pending Motion for Summary Judgment, plaintiff  
12 continues to complain that discovery is not yet complete, that defendants have refused to  
13 cooperate in discovery, and that certain discovery produced by defendants on CDs is  
14 "locked" and "unreadable." [Doc. No. 83, at pp. 2-3, 8-9 *et seq.*]

15 Based on the foregoing, it is this Court's view that defendants cannot establish good  
16 cause to stay discovery against plaintiff until he supplements his discovery responses. If  
17 the Court stays discovery as to plaintiff only, it appears that the District Court could be  
18 unreasonably delayed in reaching a resolution on the pending Motion for Summary  
19 Judgment. In other words, plaintiff has indicated in opposing defendants' Motion for  
20 Summary Judgment that he believes defendants are withholding relevant information that  
21 will support his allegation that fraudulent charges were posted to his credit card account.  
22 Plaintiff's belief may, of course, be incorrect. However, he is entitled to pursue his theory  
23 of the case and present his evidence to the District Court in order to oppose defendants'  
24 Motion for Summary Judgment but would be unable to do so if discovery is stayed against  
25 him. *See* Fed.R.Civ.P 56(d). Accordingly, the Court finds that defendants' Ex Parte  
26 Application for Order Prioritizing Discovery must be DENIED for failure to establish good  
27 cause.

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1 **III. Plaintiff's Duty to Supplement His Discovery Responses.**

2 Defendants' request for an order compelling plaintiff to provide supplemental  
3 responses to certain discovery requests is a discovery dispute that should have been raised  
4 pursuant to the procedure set forth in Chambers' Rule V. Chambers Rule VI also states  
5 that "the Court prefers that all discovery disputes and requests for protective orders or  
6 continuances be submitted as joint motions" rather than as *ex parte* applications or motions.

7 Chambers' Rule V(A) requires the parties to submit discovery disputes in the form  
8 of a joint motion. If, as in this case, the dispute involves written discovery requests,  
9 Chambers' Rule V(D) also requires the parties to use a specific format to present their  
10 respective arguments about a discovery dispute in a single document. Chambers' Rule  
11 V(D) further states as follows:

12 A party seeking to bring a discovery dispute before the Court must provide  
13 the opposing party a reasonable opportunity to contribute to the joint motion.  
14 **An ex parte motion or application to compel is only appropriate under**  
15 **circumstances where the opposing party refuses to participate in**  
16 **contributing to a joint motion after a reasonable opportunity has been**  
17 **provided, or if the motion to compel is directed to a non-party.** This Court  
18 considers a minimum of 5 business days prior to the anticipated filing date of  
19 the joint motion to be a reasonable time period for a party to participate  
20 meaningfully in the preparation of a joint motion. This means that the party  
21 initiating a joint motion to resolve a discovery dispute must provide opposing  
22 counsel with a complete draft of the joint motion and any exhibits or  
23 supporting declarations at least 5 business days prior to the anticipated filing  
24 date. Ex parte motions or applications to compel discovery that do not contain  
25 a declaration stating the opposing party has been given a meaningful  
26 opportunity to participate in a Joint Motion will be rejected by the Court.

27 Chambers' Rule V(D) (emphasis in original).

28 Defendants did not submit their dispute in the form of a joint motion. Nor did  
defendants submit their dispute in the specific format set forth in Chambers' Rule V(D). It  
is also apparent based on the papers submitted that defendants submitted their dispute as  
an ex parte application without making any attempt to obtain plaintiff's cooperation in the  
preparation and submission of a joint motion. Accordingly, the Court finds that

1 defendants' Ex Parte Application seeking an order requiring plaintiff to supplement his  
2 discovery responses must be DENIED for failure to comply with Chambers' Rule V.

3 Defendants' Ex Parte Application and a supporting Declaration do include argument  
4 and information indicating that plaintiff does have a duty to supplement his responses to  
5 the following written discovery requests:

6 **Defendants' Interrogatory No. 1** requests "all facts that support  
7 [plaintiff's] claims against [defendants] in the [First Amended Complaint]." Plaintiff responded that he "has stated all facts supporting [his] claims in the  
8 Court-filed Second Amended Complaint." [Doc. No. 55-1, at pp. 2-3.]

9 **Defendants' Document Request No. 1** seeks "all documents that  
10 relate to any fraudulent charges [plaintiff] contend[s] were made on [his]  
11 accounts." Plaintiff responded that he "has already provided all documents  
12 known to be responsive to defendants at this time."

13 **Defendants' Interrogatory No. 5** requested that plaintiff "identify all  
14 fraudulent charges [that he] contend[s] were made on [his] accounts." Plaintiff responded that he "does not have records of 'all fraudulent charges'  
15 as these were not relayed by defendants to plaintiff in a list for plaintiff to  
16 review. Defendants solely know all fraudulent charges that they have  
17 verbally confirmed as the basis for blocking of plaintiff's credit card."

18 [Doc. No. 55-1, at p. 2-3.]<sup>2</sup>

19 As noted above, defendants provided plaintiff with copies of statements detailing all  
20 of the charges posted to his credit card account, and, as a result, it is apparent that plaintiff  
21 is able to review these charges and provide defendants with supplemental responses to  
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24 <sup>2</sup> The Ex Parte Application indicates defendants would also like supplemental  
25 responses to Interrogatory Nos. 4, 6, 7, 8, and 13; Document Request Nos. 2, 3, and 4;  
26 and Requests for Admission Nos. 1, 2, and 3. [Doc. No. 55, at p. 3.] However,  
27 defendants did not provide the Court with the information required by Chambers' Rule V  
28 (*i.e.*, the exact wording of these requests, plaintiff's responses thereto, and any reasons  
why defendants believe plaintiff's responses to these requests are inadequate and need to  
be supplemented). As a result, it is unclear whether defendants would be entitled to any  
supplemental responses as to these requests.

1 these requests. In the interests of judicial efficiency (*i.e.*, the disputed discovery requests  
2 are relevant to defendants' pending Motion for Summary Judgment), the Court will  
3 forewarn plaintiff about his duty to supplement his discovery responses. Plaintiff is  
4 specifically forewarned that Federal Rule of Civil Procedure 26(e)(1) states as follows:

5 A party who . . . has responded to an interrogatory, request for production, or  
6 request for admission—must supplement or correct its disclosure or response:  
7 (A) ***in a timely manner*** if the party learns that in some material respect the  
8 disclosure or response is incomplete or incorrect . . .; or (B) as ordered by the  
9 court.

9 Fed.R.Civ.P. 26(e)(1) (emphasis added).

10 Here, it is apparent that plaintiff's original responses to Interrogatory Nos. 1 and 5  
11 and Document Request No. 1 are now incomplete and incorrect and must be supplemented  
12 as required by Rule 26(e)(1). Because defendants provided plaintiff with copies of  
13 statements that set forth all of the charges to his credit card account, plaintiff is obligated  
14 to review the charges and identify any specific charges that he believes are fraudulent. In  
15 his various filings, plaintiff seems to take the position that he is not required to identify  
16 specific charges that he believes are fraudulent, because defendants already have that  
17 information on their own. Plaintiff also alleges in Exhibit B to the First Amended  
18 Complaint that the balance on his credit card account "went from zero to \$2,200 almost  
19 overnight, ***with no charges having been made or authorized by the plaintiff.***" [Doc. No.  
20 22, at p. 19 (emphasis added).] However, in response to defendants' discovery requests,  
21 plaintiff must identify the specific charges that ***he*** believes are fraudulent ***regardless of***  
22 ***whether he believes defendants already have this information.*** With respect to any  
23 charges he believes are fraudulent, plaintiff must also disclose any supporting facts or  
24 documents. For example, to the extent plaintiff has boarding passes, plane tickets, hotel  
25 bills, or other documents indicating where he was on a particular date that could be used to  
26 show that particular account entries are fraudulent, he must produce them.

27 Plaintiff is also forewarned that sanctions may be imposed against him if he fails to  
28 supplement his responses to defendants' discovery requests as required under Rule



1 26(e)(1). Fed.R.Civ.P. 37(c)(1)(A)-(C). In this regard, Federal Rule of Civil Procedure  
2 37(c)(1) states in part as follows:

3 If a party fails to provide information or identify a witness as required  
4 by Rule 26(a) or (e), the party is not allowed to use that information or witness  
5 to supply evidence on a motion, at a hearing, or at trial unless the failure was  
6 substantially justified or is harmless. In addition to or instead of this  
sanctions, the court, on motion and after giving an opportunity to be heard:

7 (A) may order payment of the reasonable expenses, including attorney fees,  
8 caused by the failure;

9 (B) may inform the jury of the party's failure; and

10 (C) may impose other appropriate sanctions, including [the evidentiary or  
11 terminating sanctions] listed in Rule 37(b)(2)(A)(i)-(vi).

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13 Fed.R.Civ.P. 37(c)(1).

14 *In sum, plaintiff is specifically forewarned that the above-referenced discovery*  
15 *requests and Rule 26(e)(1) require him to review all of the account statements itemizing*  
16 *all of the charges on his credit card account that were produced to him by defendants*  
17 *and to specifically identify each account entry by date and amount that he believes is*  
18 *fraudulent. As to each entry that plaintiff believes is fraudulent, he must also state any*  
19 *supporting facts and produce any supporting documents. If plaintiff fails to do so, he is*  
20 *further forewarned that monetary or other sanctions may imposed against.*

21 Since Rule 26(e)(1) requires parties to supplement their discovery responses "in a  
22 timely manner," the Court finds that any supplemental responses provided by plaintiff on  
23 or before August 3, 2018 will be considered timely. Fed.R.Civ.P. 26(e)(1) (emphasis  
24 added). If plaintiff fails to provide adequate supplemental responses by August 3, 2018,  
25 defendants may file a motion for sanctions no later than August 13, 2018.

26 **Conclusion**

27 Based on the foregoing, IT IS HEREBY ORDERED that defendants' Ex Parte  
28 Application For Order Prioritizing Discovery is DENIED for failure to establish good

1 cause; failure to satisfy the meet and confer requirements; and failure to follow Chambers'  
2 Rule V. However, as outlined above, plaintiff is forewarned that he must supplement his  
3 responses to Interrogatory Nos. 1 and 5 and Document Request No. 1 "in a timely manner"  
4 (*i.e., no later than August 3, 2018*). Fed.R.Civ.P. 26(e)(1).

5 IT IS SO ORDERED.

6 Dated: July 20, 2018



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8 Hon. Karen S. Crawford  
9 United States Magistrate Judge  
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