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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 LANCE WILLIAMS,

11 Plaintiff,

12 v.

13 O. ORTEGA, et al.,

14 Defendants.

Case No.: 18cv547-LAB-MDD

**ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL  
DISCOVERY, APPOINT  
COUNSEL, AND EXTEND  
DISCOVERY DEADLINE**

[ECF No. 78]

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17 On September 22, 2020, Plaintiff Lance Williams (“Plaintiff”), a state  
18 prisoner proceeding *pro se* and *in forma pauperis*, filed a motion to compel  
19 Defendants O. Ortega, R. Valencia, S. Bustos, F. Lewis, A. Bowman, and M.  
20 Kimani (collectively, “Defendants”) to respond to Plaintiff’s request for  
21 production of documents, set three, numbers 1 and 2. (ECF No. 78). Plaintiff  
22 also asks the Court to appoint counsel and to extend the discovery deadline.  
23 (*Id.* at 2). Defendants filed a response in opposition, arguing that they  
24 produced the documents in their possession and that their objections are  
25 valid. (ECF No. 80). For the reasons stated herein, the Court **DENIES**  
26 Plaintiff’s motion.  
27

## I. MOTION TO COMPEL

1  
2 Plaintiff moves to compel Defendants to respond to requests for  
3 production of documents numbers 1 and 2 of his third set. (ECF No. 78). He  
4 also requests the Court impose sanctions for Defendants' failure to fully  
5 respond to his requests. (*Id.* at 2). Defendants oppose, contending they  
6 either properly objected to the request or produced all responsive documents  
7 in their custody, possession, or control. (ECF No. 80). Defendants also argue  
8 that Plaintiff failed to meet and confer on the matter and did not attach the  
9 discovery requests to his motion. (*Id.* at 1-2).

10 The Federal Rules of Civil Procedure authorize parties to obtain  
11 discovery of "any nonprivileged matter that is relevant to any party's claim or  
12 defense and proportional to the needs of the case . . . ." Fed. R. Civ. P.  
13 26(b)(1). "Information within the scope of discovery need not be admissible to  
14 be discoverable." *Id.* District courts have broad discretion to limit discovery  
15 where the discovery sought is "unreasonably cumulative or duplicative, or  
16 can be obtained from some other source that is more convenient, less  
17 burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C).

18 A party may request the production of any document within the scope of  
19 Rule 26(b). Fed. R. Civ. P. 34(a). "For each item or category, the response  
20 must either state that inspection and related activities will be permitted as  
21 requested or state an objection to the request, including the reasons." Fed. R.  
22 Civ. P. 34(b)(2)(B). The responding party is responsible for all items in "the  
23 responding party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1).  
24 Actual possession, custody or control is not required. Rather, "[a] party may  
25 be ordered to produce a document in the possession of a non-party entity if  
26 that party has a legal right to obtain the document or has control over the  
27 entity who is in possession of the document." *Soto v. City of Concord*, 162

1 F.R.D. 603, 620 (N.D. cal. 1995). A party propounding discovery may seek an  
2 order compelling disclosure when the opposing party fails to respond, or  
3 contains unfounded objections, to discovery requests. Fed. R. Civ. P.  
4 37(a)(3)(B).

5 As an initial matter, Plaintiff contends sanctions should be imposed  
6 because the Court ordered Defendants to respond to Plaintiff's request for  
7 production of documents, set three. (ECF No. 78 at 1). However, the Court  
8 denied Plaintiff's request to compel Defendants to respond to set three  
9 because Defendants had already agreed to produce responsive documents on  
10 or before September 7, 2020. (ECF No. 66 at 2-3). For this reason, the Court  
11 declines to impose sanctions. (See ECF No. 78 at 1).

12 In request number 1, Plaintiff asks the Court to require Defendants to  
13 provide the current location and, if paroled, the parole office, parole officer,  
14 and parole county of inmate witnesses Larry Cleveland and Darrell Donalds.  
15 (ECF No. 55 at 14). Defendants provided Plaintiff with the "Warden's  
16 Checkout Orders" for Mr. Cleveland and Mr. Donalds, which contain their  
17 parole counties. (ECF No. 80 at 4). Defendants further responded that they  
18 "do not possess any other responsive documents." (*Id.*). Plaintiff argues that  
19 Defendants must provide him with the rest of the information he requested.  
20 (ECF No. 78 at 2). However, the Court cannot compel Defendants to produce  
21 documents that do not exist or are not in their possession, custody, or control.  
22 Accordingly, the Court **DENIES** Plaintiff's motion with respect to request  
23 number 1.

24 In request number 2, Plaintiff asks the Court to require Defendants to  
25 provide citizen complaints in the personnel files of all named defendants for  
26 actions that are claimed against them in this action. (ECF No. 55 at 14).  
27 Defendants object on the ground that the term "citizen complaints" is "vague

1 and ambiguous,” and that if Plaintiff is asking for civil lawsuits they are  
2 publicly available. (ECF No. 80 at 3). With respect to Defendants Ortega  
3 and Bowman, Defendants contend there “are no responsive documents.”  
4 (*Id.*). Plaintiff argues that, as a state prisoner, he is unable to obtain these  
5 citizen complaints and that Defendants should be ordered to produce them.  
6 (ECF No. 78 at 1). Plaintiff also states that he does not “believe [D]efendants’  
7 claim that [D]efendants Ortega and Bowman had nothing in their files. . . .”  
8 (*Id.* at 3). The term “citizen complaints” is vague and ambiguous,  
9 particularly as it relates to correctional officers who may have worked outside  
10 of correctional facilities in the past. As a result, the Court **SUSTAINS**  
11 Defendants’ objection. Moreover, Defendants have responded that there are  
12 no responsive documents regarding Defendants Ortega and Bowman. The  
13 Court cannot compel the production of documents that do not exist. As such,  
14 the Court **DENIES** Plaintiff’s motion with respect to request number 2.

## 15 **II. MOTION TO APPOINT COUNSEL**

16 Plaintiff next moves the Court to appoint counsel due to the “complexity  
17 of the case and large amount of witnesses to be located.” (ECF No. 78 at 2).  
18 District courts lack authority to require counsel to represent indigent  
19 prisoners in 42 U.S.C. § 1983 cases. *Mallard v. United States Dist. Court*, 490  
20 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an  
21 attorney to voluntarily represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1);  
22 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Courts consider a  
23 plaintiff’s likelihood of success on the merits as well as the plaintiff’s ability  
24 to articulate his claims *pro se* in light of the complexity of the legal issues  
25 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). However, a  
26 *pro se* litigant’s difficulty conducting discovery is insufficient to satisfy the  
27 exceptional circumstances standard. *See Wilborn v. Escalderon*, 789 F.2d

1 1328, 1331 (9th Cir. 1986) (“If all that was required to establish successfully  
2 the complexity of relevant issues was a demonstration of the need for  
3 development of further facts, practically all cases would involve complex legal  
4 issues.”). Similarly, circumstances common to most prisoners, such as lack of  
5 legal education, limited library access, or deficient general education, do not  
6 amount to exceptional circumstances. *See Wood v. Housewright*, 900 F.2d  
7 1332, 1335-36 (9th Cir. 1990). Moreover, it appears that Plaintiff has a  
8 sufficient grasp of his case, the relevant evidence, the legal issues involved,  
9 and is able to adequately articulate the basis of his claims as demonstrated  
10 by Plaintiff’s filings on the docket. The Court notes that Plaintiff’s claims are  
11 not particularly complex, and although sufficient to survive screening,  
12 Plaintiff has not demonstrated a likelihood of success on the merits.  
13 Accordingly, the Court **DENIES** Plaintiff’s motion to appoint counsel.

### 14 **III. EXTEND DISCOVERY DEADLINE**

15 Plaintiff also requests the Court extend the discovery deadline to permit  
16 Plaintiff to subpoena Mr. Donalds’ and Mr. Cleveland’s parole office to locate  
17 them, to authenticate various documents, and to “investigate” why  
18 Defendants Ortega and Bowman did not have responsive documents to  
19 request number 2. (ECF No. 78 at 2-3). The Court ordered that all discovery  
20 be completed on or before September 7, 2020. (ECF No. 44 at 2).

21 A scheduling order “may be modified only for good cause and with the  
22 judge’s consent.” Fed. R. Civ. P. 16(b)(4); *Johnson v. Mammoth Recreations,*  
23 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “[T]he focus of the inquiry is upon the  
24 moving party’s reasons for seeking modification . . . . If that party was not  
25 diligent, the inquiry should end.” *Id.* (citation omitted). In addition to being  
26 required to establish good cause, a party moving to extend time after a  
27 scheduling order deadline has passed must demonstrate excusable neglect.

1 *LaNier v. United States*, No. 15cv0360-BAS-BLM, 2017 WL 951040, at \*2  
2 (S.D. Cal. Mar. 10, 2017).

3 Plaintiff has not demonstrated diligence, good cause, or excusable  
4 neglect. First, Plaintiff's belief that Defendants have responsive documents  
5 when they have stated otherwise is not good cause. Second, Plaintiff does not  
6 explain why he needs additional time to authenticate various documents.<sup>1</sup>  
7 Finally, as indicated in a prior court order, the *in forma pauperis* statute does  
8 not authorize nor entitle the expenditure or waiver of public funds for service  
9 of subpoenas. *Davis v. Paramo*, 2017 U.S. Dist. LEXIS 21255, at \*8 (S.D.  
10 Cal. 2017). As such, the Court **DENIES** Plaintiff's request to extend the  
11 discovery deadline. In light of this ruling, the Court **DENIES AS MOOT**  
12 Plaintiff's request that the Court issue subpoenas on his behalf.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Court **DENIES** Plaintiff's motion.

15 **IT IS SO ORDERED.**

16 Dated: October 2, 2020



17  
18 Hon. Mitchell D. Dembin  
United States Magistrate Judge

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26 <sup>1</sup> Plaintiff asks the Court whether he has to authenticate any documents he plans to use at  
27 trial. (ECF No. 78 at 2). The Court advises Plaintiff that the Federal Rules of Evidence  
govern whether authentication of evidence is required.