



1 pursuant to Rule 12(e), Motion for Definite Statement, that should the court allow plaintiff to file an  
2 amended complaint, plaintiff be required to conform his pleadings to the Federal Rules of Civil  
3 Procedure. *Id.* at 4.

4         It is not instantly clear from the Request (#53) whether plaintiff is attempting to amend his  
5 Complaint or whether he is seeking leave of court to file an amended Complaint. Either way, plaintiff  
6 has not attached a proposed amended complaint as required under Local Rule 15-1. While pursuant to  
7 Fed.R.Civ.P. 7(b)(1), a motion must state with particularity the grounds for seeking an order and the  
8 relief sought, *pro se* filings are “to be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007);  
9 *accord* Rule 8(f) (“All pleadings shall be so construed as to do substantial justice”). Based on the  
10 substance of the motion and plaintiff’s specific request “to be allowed to supplement,” the court construes  
11 plaintiff’s Request (#53) to be a Motion for Leave to File an Amended Complaint.

12         Plaintiff’s Request (#53) must be denied because it is untimely. The Request (#53) was filed  
13 nearly seven (7) weeks *after* the deadline to file motions to amend or to add parties and approximately  
14 one month before discovery cut-off. *See* Scheduling Order (#47). Once the court has filed a pretrial  
15 scheduling order pursuant to Rule 16, with a timetable for amending pleadings, a motion for leave to  
16 amend is governed first by the standards of Rule 16(b) and only secondarily by Rule 15(a) if the Rule  
17 16(b) standards are met. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992).  
18 A scheduling order “shall not be modified except upon a showing of good cause and by leave of . . . a  
19 magistrate judge.” Fed. R. Civ. P. 16(b). “Rule 16(b)’s ‘good cause’ standard primarily considers the  
20 diligence of the party seeking the amendment.” *Johnson*, 975 F.2d at 609. Plaintiff fails to proffer a  
21 reason for the late filing of his motion.

22         Accordingly, and for good cause shown,

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IT IS ORDERED that plaintiff's Request to Supplement (#53) is DENIED.

DATED this 24th day of May, 2010.



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**LAWRENCE R. LEAVITT**  
**UNITED STATES MAGISTRATE JUDGE**