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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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James E. Skinner,

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No. CV-12-1729-PHX-SMM (LOA)

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Plaintiff,

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**ORDER**

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vs.

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Charles L. Ryan, et al.,

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Defendants.

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This matter is before the Court on Plaintiff’s Motion to Compel Discovery in which Plaintiff requests that the Court compel Defendant Ryan to produce documents responsive to his requests for production. (Doc.48) Defendant Ryan has filed a Response and Plaintiff has filed a Reply. (Docs. 58, 63) On December 29, 2013, Plaintiff filed a Supplemental Pleading in Support of His Motion to Compel Discovery. (Doc. 92)

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**I. Background**

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Plaintiff, a frequent filer<sup>1</sup> and proceeding *pro se*, commenced this prisoner civil rights action pursuant to 42 U.S.C. § 1983 on August 14, 2012, by lodging a Complaint. (Docs. 1-2) Plaintiff also requested leave to proceed *in forma pauperis*, which was granted. (Docs. 3, 6) On September 21, 2012, the assigned District Judge denied Plaintiff’s request to exceed the page

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<sup>1</sup> Plaintiff has filed six lawsuits in this division of the District Court of Arizona in the last seven years. The others are CV-06-1879-PHX-SMM (on appeal); CV-07-1070-PHX-SMM (ECV) (on appeal); CV-09-1363-PHX-SMM (LOA) (on appeal); CV-09-2152-PHX-SMM (LOA) (open case at trial level); CV-10-1197-PHX-SMM (LOA) (case final, no appeal). Each judgment entered in these cases was adverse to Plaintiff.

1 limit and file the Complaint, but granted Plaintiff leave to file an amended complaint within  
2 thirty days thereafter. (Doc. 6)

3 Plaintiff filed a First Amended Complaint on October 2, 2012. (Doc. 8) Plaintiff  
4 raised two grounds for relief against seventeen separate defendants. In Count I, Plaintiff alleged  
5 he is being deprived of basic necessities in violation of the Eighth Amendment, including  
6 inadequate plumbing in his cell, unsanitary conditions in his cell and other areas, and the failure  
7 to provide cleaning supplies to address the unsanitary conditions. In Count II, Plaintiff alleged  
8 prison officials retaliated against him in violation of the First Amendment for filing a previous  
9 federal civil rights lawsuit. The District Judge screened the First Amended Complaint in  
10 accordance with 28 U.S.C. § 1915A(a) on February 19, 2013. (Doc. 9) The District Judge  
11 dismissed Count II for failure to state a claim, along with three defendants, but ordered fourteen  
12 defendants to answer the allegations in Count I. (Doc. 9 at 15)

## 13 **II. Motion to Compel**

14 In the Motion to Compel, Plaintiff asks the Court to order Defendant Ryan to produce  
15 documents responsive to his eight requests for production. Defendant Ryan's Responses to  
16 Plaintiff's First Request for Production, a copy of which is attached to the Motion to Compel,  
17 reflect that, while Defendant objected to all of the requests for various reasons, Defendant  
18 produced 19 documents that he claims are responsive to two of Plaintiff's requests. (Doc. 48  
19 at 9-32)

20 Defendant contends, *inter alia*, the Motion to Compel should be denied because  
21 Plaintiff failed to comply with Rule 37(a)(1) of the Federal Rules of Civil Procedure  
22 ("Fed.R.Civ.P.") and Rule 7.2(j) of the Local Rules of Civil Procedure ("LRCiv"). Rule  
23 37(a)(1), Fed.R.Civ.P., provides that a motion to compel "must include a certification that the  
24 movant has in good faith conferred or attempted to confer with the person or party failing to  
25 make disclosure or discovery in an effort to obtain it without court action." The Local Rules  
26 reiterate this certification requirement and further provide that "[a]ny discovery motion brought  
27 before the Court without prior personal consultation with the other party and a sincere effort to  
28 resolve the matter, may result in sanctions." LRCiv 7.2(j).

1           Regarding his obligation to confer in good faith, Plaintiff attaches to his Motion to  
2 Compel a letter to Defendant’s counsel, dated September 19, 2013, in which he expresses his  
3 dissatisfaction with Defendant’s responses to the requests for production. (Doc. 48-1 at 20)  
4 Plaintiff also requests a teleconference with Defendant’s counsel to “confer in good faith and  
5 attempt to resolve the dispute.” (*Id.*)

6           Plaintiff’s Motion to Compel also includes a certification pursuant to LRCiv 7.2(j),  
7 explaining his attempt to confer with Defendant’s counsel. (Doc. 48-1 at 18) Plaintiff asserts  
8 Defendant’s counsel failed to respond to his request to confer. (*Id.*) Defendant’s counsel  
9 apparently failed to review these attachments because he argues in the Response that Plaintiff  
10 failed to comply with the certification and conferral requirements. (Doc. 58 at 6) Moreover,  
11 Defendant’s counsel presents nothing to show he did respond to Plaintiff’s attempt to confer  
12 about the dispute. For these reasons, Defendant’s argument that Plaintiff failed to comply with  
13 Fed.R.Civ.P. 37(a)(1) is without merit.

14           Nevertheless, Plaintiff, an experienced *pro se* litigant, has not demonstrated  
15 compliance with a different requirement pertaining to motions to compel. LRCiv 37.1 provides  
16 that a motion to compel discovery shall “set forth, separately from a memorandum of law, the  
17 following in separate, distinct, numbered paragraphs:

- 18           (1) the question propounded, the interrogatory submitted, the designation  
19           requested or the inspection requested;
- 20           (2) the answer, designation or response received; and
- 21           (3) the reason(s) why said answer, designation, or response is deficient.”

22 LRCiv 37.1(a). Civil Local Rule 37.1(a) applies to all *pro se* litigants, including prisoners. *See*  
23 *Aros v. Robinson*, 2011 WL 643386, at \*2 (D. Ariz. Feb. 11, 2011) (“Plaintiff’s failure to  
24 comply with [LRCiv 37.1(a)] provides an independent sufficient basis to deny his Motion to  
25 Compel. ”). The requirements of this Local Rule do not apply only “where there has been a  
26 complete and total failure to respond to a discovery request.” LRCiv 37.1(b).

27           A district court’s local rules are not petty requirements, but have “the force of law.”  
28 *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010) (citation omitted). They “are binding upon

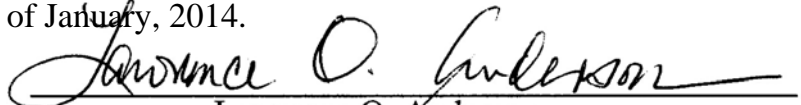
1 the parties and upon the court, and a departure from local rules that affects substantial rights  
2 requires reversal.” *Professional Programs Group v. Department of Commerce*, 29 F.3d 1349,  
3 1353 (9th Cir. 1994) (internal quotation marks omitted). “A departure is justified only if the  
4 effect is so slight and unimportant that the sensible treatment is to overlook it.” *Id.* (citations and  
5 internal quotation marks omitted). “Anyone appearing before the court is bound by these Local  
6 Rules[,] including “[p]arties not represented by an attorney unless the context requires  
7 otherwise.” LRCiv 83.3(c)(1).

8 Plaintiff’s Motion to Compel fails to comply with LRCiv 37.1(a). Plaintiff’s motion  
9 does not set forth, separately from a memorandum of law, in separate, distinct, numbered  
10 paragraphs, the documents requested, the response received and the reasons why the response  
11 is deficient. Although Plaintiff attached to his motion a copy of Defendant Ryan’s responses to  
12 Plaintiff’s requests for production, which included the original requests, Plaintiff did not do  
13 what the rule requires by explaining, with respect to each response, why it is deficient. This  
14 requirement enables the Court to address the merits of each request and response individually.  
15 Much of what Plaintiff argues in the Motion to Compel pertains generally to the admissibility  
16 of the documents requested and how he was able to obtain similar documents in prior cases.  
17 LRCiv 37.1(a) requires more. For these reasons, the Court finds Plaintiff’s Motion to Compel  
18 fails to comply with LRCiv 37.1(a), and it will be denied on that basis.<sup>2</sup>

19 Accordingly,

20 **IT IS ORDERED** that Plaintiff’s Motion to Compel Discovery, doc. 48, is **DENIED**  
21 without prejudice. Defense counsel shall promptly respond to Plaintiff’s letter in a good faith  
22 attempt to avoid judicial involvement in this discovery dispute or narrow the issues upon which  
23 the parties disagree.

24 DATED this 8<sup>th</sup> day of January, 2014.

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26 Lawrence O. Anderson  
United States Magistrate Judge

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28 <sup>2</sup> Plaintiff’s recently Supplemental Pleading in Support of His Motion to Compel  
Discovery, doc. 92, also fails to comply with LRCiv 37.1(a).