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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 John Sherman Jolicoeur,
10 Plaintiff,

11 v.

12 L. Minor, et al.,
13 Defendants.
14

No. CV-17-00930-PHX-SPL (JZB)

AMENDED ORDER

15
16 Pending before the Court are several motions from Plaintiff John Sherman
17 Jolicoeur, including: (1) “Motion Joinder of Claims and Remedies” (doc. 41); (2) Motion
18 to Join Parties under Rule 19(a) (doc. 42); (3) Motion to Appoint Counsel (doc. 68);
19 (4) Motion for Court Order (doc. 72); (5) Motion to Compel Production of Documents
20 (doc. 74); and (6) Motion for Waiver of Copy Fees (doc. 80). The Court will address each
21 motion below.

22 **I. Background.**

23 On March 29, 2017, Plaintiff filed a pro se Civil Rights Complaint. (Doc. 1.) In
24 the Court’s June 22, 2017 Screening Order (doc. 7), the Court provided the following
25 summary of Plaintiff’s claims, relevant to his pending motions:

26 Plaintiff alleges that he suffers from intervertebral disc disorders and that
27 from September 7, 2016, to January 18, 2017, he experienced multiples
28 lapses and irregularities in the provision of his prescribed pain medications,
gabapentin and Roboxin. (Doc. 1 at 6.) Plaintiff also alleges that the lapses
in medication that occurred in September 2016 resulted in the

1 discontinuation of his gabapentin prescription. (*Id.*) . . .

2 Plaintiff alleges that his medical treatment violated the terms of the
3 settlement agreement in *Parsons v. Ryan* [CV 12-00601-PHX-DJH
4 (DKD)], and that Defendants Ryan and Pratt, as signatories to that
5 agreement, are therefore liable for his constitutional injuries. (*Id.* at 13-14.)
6 Plaintiff further alleges that Defendant Ryan has adopted a policy
7 prohibiting inmates from appealing denials of their medical grievances to
8 Ryan. (*Id.*) Now, Plaintiff claims, prisoners are forced to seek remedies for
9 conduct that violates the *Parsons* agreement “from the very medical
10 administration and staffing of medical who are the causes of those
11 violations.” (*Id.* at 14.)

8 (Doc. 7 at 3-4 (footnotes omitted).) The Court screened the Complaint and found that

9 Plaintiff’s claim against Defendant Pratt is too vague and conclusory to
10 state a claim. Plaintiff alleges that Pratt was required to ensure that
11 Plaintiff’s medications were either transferred to the Buckley Unit when
12 Plaintiff was “or otherwise provided at the receiving prison without
13 interruption.” However, Plaintiff does not allege any facts to show that
14 Pratt knew that Plaintiff was going to be transferred or knew about any
15 resulting lapses in Plaintiff’s medications. Accordingly, Plaintiff has failed
16 to state a claim for relief against Defendant Pratt, and this Defendant will
17 be dismissed without prejudice.

14 (*Id.* at 9.)

15 **II. Motion Joinder of Claims and Remedies.**

16 On December 11, 2017, Plaintiff filed his “Motion Joinder of Claims and
17 Remedies of [*Parsons v. Ryan*] CV12-00601-PHX-DJH (DKD) and [*Jolicoeur v. L.*
18 *Minor*] CV 17-00930-PHX-PGR (JZB) Rule 18(a)(b).” (Doc. 41.) Plaintiff asserts that he
19 is “a member of *Parsons v. Ryan* class action civil case[,]” and therefore the settlement
20 agreement reached there applies to this action. (*Id.* at 2.) In his Motion, Plaintiff asserts
21 no new claims. “A party asserting a claim, counterclaim, crossclaim, or third-party claim
22 may join, as independent or alternative claims, as many claims as it has against an
23 opposing party.” Fed. R. Civ. P. 18(a).

24 Plaintiff’s Motion is not the model of clarity, but Plaintiff appears to seek
25 consolidation of this action with *Parsons v. Ryan*, CV12-00601-PHX-DJH (DKD).
26 Plaintiff’s intention is apparent for several reasons: (1) Plaintiff has asserted no new
27 claims; (2) Plaintiff’s Motion includes the case numbers of this action and of *Parsons*,
28 (3) Plaintiff alleges he is a member of the *Parsons* class, and notes that Defendant Ryan

1 and Mr. Pratt are defendants in *Parsons*; (4) Plaintiff alleges that both actions involve the
2 same questions of fact; and (5) Plaintiff alleges that “Defendant Ryan delayed three years
3 after signing *Parsons v. Ryan* settlement agreement and one year after this Plaintiff’s
4 transfer on 9/7/2016, for Defendant Ryan to affect a policy revision to ensure inmates are
5 transferred with [their] chronic pain medications.” (*Id.* at 10.)

6 Each of the above listed facts indicates that Plaintiff does not intend to join
7 independent or alternative claims to this action under Rule 18, but rather to consolidate
8 this action with *Parsons*. Accordingly, the Court will treat Plaintiff’s Motion Joinder of
9 Claims and Remedies as a Motion to Consolidate. *Woods v. Carey*, 525 F.3d 886, 890
10 (9th Cir. 2008) (directing the district court to treat as a motion to amend a second habeas
11 corpus petition filed while the first petition was pending) (citing *United States v. Seesing*,
12 234 F.3d 456, 462 (9th Cir. 2001) (“Pro se complaints and motions from prisoners are to
13 be liberally construed.”)).

14 **A. Legal Standard.**

15 Federal Rule of Civil Procedure 42(a) provides that “[i]f actions before the court
16 involve a common question of law or fact, the court may . . . (2) consolidate the
17 actions. . . .” Fed. R. Civ. P. 42(a). “[C]onsolidation is permitted as a matter of
18 convenience and economy in administration[,]” and “district courts enjoy substantial
19 discretion in deciding whether and to what extent to consolidate cases.” *Hall v. Hall*, 138
20 S. Ct. 1118, 1127 & 1131 (2018). But the existence of a common question alone does not
21 guarantee consolidation. See *Robert Kubicek Architects & Assocs., Inc. v. Bosley*, No.
22 CV-11-02112-PHX-DGC, 2012 WL 6554396, at *8 (D. Ariz. Dec. 14, 2012) (finding
23 consolidation was not proper because the two actions were at different stages of
24 litigation, and consolidation “would create substantial inconvenience and delay.”).

25 In determining whether consolidation is appropriate, a court “must balance the
26 interest of judicial convenience against the potential for delay, confusion and prejudice
27 that may result from such consolidation.” *Bank of Montreal v. Eagle Assoc.*, 117 F.R.D.
28 530, 532 (S.D.N.Y. 1987) (citing *Katz v. Realty Equities Corp.*, 521 F.2d 1354, 1362 (2d

1 Cir. 1975)); *see also*, *Kubicek Architects & Assocs.*, 2012 WL 6554396 at *8. Factors
2 such as differing trial dates or stages of discovery usually weigh against consolidation.
3 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2383 (1995).

4 The moving party bears the burden of proof on a motion for consolidation.
5 *See, e.g., In Re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993); *In re*
6 *Consol. Parlodel Litig.*, 182 F.R.D. at 444.

7 **B. Discussion.**

8 Plaintiff argues that consolidation is appropriate in this instance because there is a
9 commonality of circumstances between the class action plaintiffs in *Parsons* and himself.
10 Specifically, he states:

11 [W]hat all Plaintiffs of *Parsons v. Ryan* and Plaintiff Jolicoeur have in
12 common is the stipulations and settle[ment] agreement afforded prisoners
13 in *Parsons v. Ryan*. . . Moreover, Plaintiffs have in common is their alleged
14 exposure, as a result of specified statewide ADC Grievance Policy and
15 Practices that govern the overall conditions of healthcare services of
16 inmates in confinement with medical personnel who are the cause of harm
17 to inmates with a substantial continual risk of serious future harm to which
18 the Defendants are allegedly deliberately indifferent. . . Defendant Ryan
19 agreed to affect medical healthcare changes in *Parsons v. Ryan* settlement
20 agreement measures, yet, made a grievance policy that every inmate must
21 address their administrative remedies with the people who are the very
22 cause of those healthcare violations. In Plaintiff Jolicoeur's case all
23 administrative remedies of protection from suffering needlessly failed
24 Plaintiff.

19 (Doc. 51 at 8.)

20 But, as noted by Defendants, *Parsons* and this action are entirely distinct and do
21 not involve a common question of law or fact. (*See* Doc. 47 at 4.) *Parsons* is a class
22 action dating back nearly six years ago, involving more than 33,000 inmates, having
23 reached a settlement, and having been in the monitoring phase for nearly three years. This
24 action is not a class action, is in the early litigation stage, is “narrowly tailored to
25 Plaintiff's specific clinical presentation, symptomology, medical history, comorbidities,
26 diagnoses, etc.” (*Id.* at 4-5.)

27 Consolidation of these actions is not convenient and will not result in economy in
28 the judicial administration. The stages and nature of the actions are so widely disparate

1 that consolidation is almost certain to cause prejudice to the parties in both actions, as
2 well as substantial delays, confusion, and inconvenience. Additionally, because the stages
3 and the nature of the actions are so disparate, there is no obvious benefit to the parties of
4 either action.

5 What is more, there is little concern that the actions may have inconsistent results.
6 First, in *Parsons*, no verdict was issued because the action was settled. Second, Plaintiff's
7 claims against Defendant Ryan and Mr. Pratt are based on facts that took place after the
8 settlement agreement in *Parsons* was signed. *Parsons* as a class action allows for
9 differences in the ultimate determination of class members' claims owing to their own
10 unique sets of facts.

11 In sum, any judicial resources potentially saved by consolidating the cases at this
12 stage do not outweigh the almost certain prejudice and confusion that consolidation
13 would cause. Accordingly, the Court will deny Plaintiff's Motion to Consolidate.

14 **III. Motion to Join Parties.**

15 On December 11, 2017, Plaintiff submitted his "Motion to Join Parties Rule
16 19(a)." (Doc. 42.)

17 **A. Under Rule 19.**

18 Under Rule 19, a "required" party must be joined if feasible. A person or entity is
19 a "required" party if he is subject to service of process, his joinder will not deprive the
20 court of subject-matter jurisdiction, and at least one of the following conditions is met:

21 (A) in that person's absence, the court cannot accord complete relief among
22 existing parties; or

23 (B) that person claims an interest relating to the subject of the action and is
so situated that disposing of the action in the person's absence may:

24 (i) as a practical matter impair or impede the person's ability
25 to protect the interest; or

26 (ii) leave an existing party subject to a substantial risk of
27 incurring double, multiple, or otherwise inconsistent
obligations because of the interest.

28 Fed. R. Civ. P. 19(a); *see also Webb v. City of Tempe*, No. CV-16-03136-PHX-DGC,

1 2017 WL 1233827, at *2 (D. Ariz. Apr. 4, 2017).

2 Plaintiff's Motion seeks to join Richard Pratt as a Defendant under Federal Rule of
3 Civil Procedure 19(a). (*Id.* at 1.) But Plaintiff makes no argument that Mr. Pratt is a
4 required party. (*See* Docs. 42, 50). Instead, Plaintiff states that Mr. Pratt "was completely
5 aware that inmates were transferred . . . without Medications as of 10/9/2014[,] and that
6 Mr. Pratt knew that such transfers were a "risk of harm to inmate health" because he was
7 a signatory to the *Parsons* settlement. (Doc. 50 at 2.)

8 Plaintiff fails to show that Mr. Pratt is a required party. Accordingly, Plaintiff's
9 Motion under Rule 19 will be denied.

10 **B. Under Rule 15 and Rule 20.**

11 After close review of Plaintiff's briefing, the Court finds that Plaintiff's Motion
12 (doc. 42) more closely resembles a request to amend his Complaint to add Mr. Pratt as a
13 Defendant. Indeed, Defendants, in their response, treat Plaintiff's Motion as such.
14 (Doc. 46 at 3 n.2).

15 When a party seeks to amend a pleading, Rule 15 of the Federal Rules of Civil
16 Procedure is generally applicable, even where a party seeks to amend to add new parties.
17 Because Rule 20 also regulates whether parties may be joined, however, the court must
18 consider whether the proposed amended pleading to add parties meets the requirements
19 of both Rules 15 and 20. *See Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371,
20 1374 (9th Cir. 1980); *Hinson v. Norwest Fin. S. Carolina, Inc.*, 239 F.3d 611, 618 (4th
21 Cir. 2001) (stating that a "court determining whether to grant a motion to amend to join
22 additional plaintiffs must consider both the general principles of amendment provided by
23 Rule 15(a) and also the more specific joinder provisions of Rule 20(a).") (citing *Desert*
24 *Empire Bank*, 623 F.2d at 1374).

25 "In exercising the discretion provided by Rules 15 and 20, courts have shown a
26 strong liberality in allowing parties to amend their pleadings when such amendments
27 have satisfied the explicit requirements of the rules." *Desert Empire Bank*, 623 F.2d at
28 1375-76. But the Court should consider the following factors in determining whether a

1 motion to amend should be granted: (1) whether the pleading at issue has been previously
2 amended, (2) futility of the amendment, (3) bad faith, (4) undue delay, and (5) prejudice
3 to the opposing party. *Forman v. Davis*, 371 U.S. 178, 182 (1962); *see also Texaco, Inc.*
4 *v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir. 1991); *W. Shoshone Nat'l Council v. Molini*, 951
5 F.2d 200, 204 (9th Cir. 1991). “Generally, this determination should be performed with
6 all inferences in favor of granting the motion.” *Griggs v. Pace Am. Group, Inc.*, 170 F.3d
7 877, 880 (9th Cir. 1999) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th
8 Cir. 1987)).

9 Rule 8(a) of the Federal Rules of Civil Procedure provides that to state a claim for
10 relief, a complaint must contain (1) “a short and plain statement of the grounds for the
11 court’s jurisdiction,” (2) “a short and plain statement of the claim showing that the
12 pleader is entitled to relief,” and (3) “a demand for the relief sought.” The complaint also
13 must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
14 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
15 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when “the
16 plaintiff pleads factual content that allows the court to draw the reasonable inference that
17 the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).
18 “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability,
19 it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.*
20 (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). “Threadbare
21 recitals of the elements of a cause of action, supported by mere conclusory statements, do
22 not suffice.” *Id.* In reviewing a complaint for failure to state a claim, the Court must
23 “accept as true all well-pleaded allegations of material fact, and construe them in the light
24 most favorable to the non-moving party.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d
25 992, 998 (9th Cir. 2010). But the Court does not have to accept as true “allegations that
26 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Id.*

27 “Under Section 1983, supervisory officials are not liable for actions of
28 subordinates on any theory of vicarious liability.” *Hansen v. Black*, 885 F.2d 642, 645-46

1 (9th Cir.1989). In order for a supervisor to be liable for the actions of his employees,
2 there must be “either (1) his or her personal involvement in the constitutional deprivation,
3 or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the
4 constitutional violation.” *Id.* at 646. Thus, “a plaintiff must plead that each government-
5 official defendant, through the official’s own individual actions, has violated the
6 constitution.” *Iqbal*, 556 U.S. at 675.

7 Here, Defendants oppose Plaintiff’s Motion to add Richard Pratt as futile because
8 the amendments would be subject to dismissal for failure to state a claim. (Doc. 46 at 7.)
9 The Court agrees.

10 Plaintiff’s claim against Mr. Pratt does not allege facts sufficient to make the claim
11 plausible. In his original Complaint, Plaintiff included Mr. Pratt as a named defendant.
12 (Doc. 1 at 14.) But the Court dismissed Mr. Pratt, without prejudice, because Plaintiff’s
13 claim against Mr. Pratt was “too vague and conclusory to state a claim.” (Doc. 7 at 9.)
14 Specifically, the Court found that “Plaintiff [did] not allege any facts to show that Pratt
15 knew that Plaintiff was going to be transferred or knew about any resulting lapses in
16 Plaintiff’s medications.” (*Id.*)

17 Plaintiff’s new claim against Mr. Pratt suffers from the same fatal flaw.
18 Specifically, Plaintiff fails to provide sufficient facts to support his claim against
19 Mr. Pratt. Plaintiff does not explain how Mr. Pratt is personally involved in provision of
20 Plaintiff’s medical care and treatment, nor how or why Mr. Pratt was “fully aware” that
21 “measure #35” was violated in September 2016 during Plaintiff’s specific unit transfer.
22 Plaintiff does not allege that Mr. Pratt was aware Plaintiff was going to be transferred in
23 September 2016.

24 Indeed, Plaintiff’s entire claim against Mr. Pratt appears to be based in a theory of
25 respondeat superior liability, which is not available for § 1983 actions. *See Monell v.*
26 *Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691-92 (1978) (stating that §
27 1983 “cannot be easily read to impose liability vicariously on governing bodies solely on
28 the basis of the existence of an employer-employee relationship with a tortfeasor[,]” and

1 “the fact that Congress did specifically provide that A’s tort became B’s liability if B
2 ‘caused’ A to subject another to a tort suggests that Congress did not intend § 1983
3 liability to attach where such causation was absent.”)

4 Plaintiff summarily states that he “is not alleging that Mr. Pratt was merely a
5 supervisor who had no idea of what was going on within the A.D.C. prison system[.]”
6 (doc. 50 at 5), but Plaintiff provides no facts evidencing that Mr. Pratt was anything
7 more.

8 Plaintiff argues that “Mr. Pratt need not have personal knowledge that Plaintiff
9 was being transferred on 9/6/2016 from one unit to another within the Arizona
10 Department of Corrections” because, as a defendant in *Parsons*, Mr. Pratt “already knew
11 of the risk to inmate health as inmates were being transferred without medications.”
12 (Doc. 50 at 5.) Plaintiff further argues that on December 28, 2016 emails were sent to Mr.
13 Pratt containing a description of what occurred to Plaintiff. (*Id.* at 4, *see* doc. 50-1 at 42-
14 49.)

15 Plaintiff’s arguments are not persuasive. His allegations show only that Mr. Pratt
16 had generalized knowledge that inmates had been transferred without their medications
17 and do not reasonably support an inference that Mr. Pratt had particularized knowledge
18 that Plaintiff was being transferred without his medication. In its screening Order, the
19 Court dismissed the claim against Mr. Pratt because “Plaintiff [did] not allege any facts to
20 show that Pratt knew that Plaintiff was going to be transferred or knew about any
21 resulting lapses in Plaintiff’s medications.” (Doc. 7 at 9.) The fact that Mr. Pratt is a
22 defendant in *Parsons*, and that he signed the settlement agreement reached in that case,
23 only supports the inference that Mr. Pratt had generalized knowledge that it was possible
24 that inmates would be transferred without their medications. But Plaintiff’s allegations
25 are insufficient to support an inference that Mr. Pratt had specific knowledge that
26 (1) Plaintiff was going to be transferred, and (2) his medications would lapse.

27 What is more, Plaintiff does not allege facts to show Mr. Pratt engaged in
28 “deliberate indifference[.]” As the Court warned in its screening Order,

1 To act with deliberate indifference, a prison official must both know of and
2 disregard an excessive risk to inmate health; the official must both be aware
3 of facts from which the inference could be drawn that a substantial risk of
4 serious harm exists, and he must also draw the inference.

5 (Doc. 7 at 8) (citations omitted.)

6 Because Plaintiff has not adequately alleged facts to support the inference that
7 Mr. Pratt knew Plaintiff was going to be transferred without his medication, it is not
8 plausible that Mr. Pratt was personally deliberately indifferent. *Iqbal*, 556 U.S. at 675.

9 Because Plaintiff fails to state a claim against Mr. Pratt, to the extent Plaintiff is
10 requesting to file an amended complaint adding Mr. Pratt as a defendant, the Court will
11 deny the request as futile.

12 **IV. Motion to Appoint Counsel.**

13 On March 5, 2018, Plaintiff filed his second Motion to Appoint Counsel.
14 (Doc. 68.) The Court will deny the Motion.

15 There is no constitutional right to appointment of counsel in a civil case. *Johnson*
16 *v. U.S. Dep't. of Treasury*, 939 F.2d 820, 824 (9th Cir. 1991). Appointment of counsel in
17 a civil rights case is required only when “exceptional circumstances” are present. *Terrell*
18 *v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *see also Cano v. Taylor*, 739 F.3d 1214,
19 1218 (9th Cir. 2014). To determine whether there are exceptional circumstances, the
20 Court must consider “the likelihood of success on the merits as well as the ability of the
21 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
22 involved.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (quoting *Weygandt v.*
23 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). “Neither of these factors is dispositive and both
24 must be viewed together before reaching a decision.” *Wilborn v. Escalderon*, 789 F.2d
25 1328, 1331 (9th Cir. 1986); *see also Cano*, 739 F.3d at 1218; *Palmer*, 560 F.3d at 970.

26 Here, Plaintiff asserts that appointment of counsel is appropriate in this case
27 because: (1) he cannot afford counsel; (2) his imprisonment greatly limits his ability to
28 litigate; (3) he has limited knowledge of the law; (4) he does “not know how to file a
temporary restraining order with a preliminary injunction”; (5) he does “not want to

1 argue or lose [his] case on legal technicalities or legal strategies”; and (6) he “should not
2 have to endure constant and worsening daily pain because of [his] inability to properly
3 file motions in this Court.” (Doc. 68 at 10.)

4 The Court finds that Plaintiff has failed to demonstrate the required exceptional
5 circumstances to warrant appointment of counsel in this case. Plaintiff has not
6 demonstrated a likelihood of success on the merits, nor has he shown that he is
7 experiencing difficulty in litigating this case because of the complexity of the issues
8 involved. *See Wilborn*, 789 F.2d at 1331 (“If all that was required to establish
9 successfully the complexity of the relevant issues was a demonstration of the need for
10 development of further facts, practically all cases would involve complex legal issues.”).
11 Accordingly, the Court will deny Plaintiff’s Motion to Appoint Counsel (doc. 68).

12 **V. Motion to Compel.**

13 **A. Background.**

14 On September 13, 2017, the Court issued a Scheduling Order. (Doc. 20.) In its
15 Order, the Court emphasized the requirement of good faith consultations in discovery
16 disputes by explaining that:

17 [t]he parties shall not file motions concerning a discovery dispute without
18 first seeking to resolve the matter through personal or telephonic
19 consultation and sincere effort as required by Rule 37(a) of the Federal
20 Rules of Civil Procedure and Rule 7.2(j) of the Local Rules of Civil
21 Procedure. The moving party’s motion must include a statement certifying
22 that, after in-person or telephonic consultation, and sincere efforts to do so,
23 the parties have been unable to resolve the discovery dispute.

24 (*Id.* at 2.) On November 13, 2017, Plaintiff filed a Request for Production of Documents.
25 (Doc. 37.) On December 11, 2017, Defendants responded to Plaintiff’s request.
26 (Doc. 40.) On February 5, 2018, Plaintiff served Defendants with additional
27 Interrogatories and Requests for Production of Documents. (Doc. 54.) On February 10,
28 2018, Defendants received a letter from Plaintiff, which in its entirety states the
following:

The USM-285 form for Katrina Johnson is Docket 49 Service Executed on
01/02/18 at 4:59 pm. Filed in the U.S. District Court of Arizona on
January 4th 2018.

1 Should your office or Defendants want to talk concerning Discovery please
2 schedule a call.

3 (Doc. 79-1 at 9.) On February 12, 2018, discovery closed. (Doc. 20 at 2.) On March 7,
4 2018, Defendants responded to Plaintiff’s February 5, 2018 requests. (Doc. 70.) On
5 March 14, 2018, Plaintiff filed a “Motion to Compel Production of Documents for
6 Inspection and Copy.” (Doc. 74.)

7 **B. Discussion.**

8 District courts have broad discretion to permit or deny discovery. *Hallett v.*
9 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). A motion to compel discovery “must include
10 a certification that the movant has in good faith conferred or attempted to confer with the
11 person or party failing to make disclosure or discovery in an effort to obtain it without
12 court action.” Fed. R. Civ. P. 37(a)(1); LRCiv 7.2(j); *see also Lathan v. Ducart*, No. 16-
13 15633, 2017 WL 4457198, at *1 (9th Cir. Oct. 4, 2017) (“The district court did not abuse
14 its discretion by denying [plaintiff’s] motion to compel discovery because [plaintiff]
15 failed to meet and confer with defendants.”) (citation omitted). Furthermore, Rule 37.1 of
16 the Local Rules of Civil Procedure provides that a motion to compel discovery:

17 shall set forth, separately from a memorandum of law, the following in
18 separate, distinct, numbered paragraphs:

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

23 LRCiv 37.1(a).

24 In this instance, Plaintiff’s Motion to Compel fails for three reasons. First,
25 Plaintiff’s Motion fails to comply with Fed. R. Civ. P. 37(a)(1) and LRCiv 7.2(j) because
26 it contains no certification that Plaintiff has conferred, or attempted to confer, with
27 Defendants to resolve the dispute regarding the requested documents. (*See* Doc. 74.)
28 Second, Plaintiff fails to comply with LRCiv 37.1 because Plaintiff has not attached a

1 document setting forth in numbered paragraphs: (1) Plaintiff’s questions propounded,
2 (2) Defendant’s respective responses, and (3) Plaintiff’s reasoning as to why each
3 response is deficient. Finally, since Plaintiff fails to explain why the Defendants’ answers
4 were deficient, neither Defendants nor the Court can understand the grounds for
5 Plaintiff’s discovery dispute. Therefore, the Court will deny Plaintiff’s Motion for failure
6 to comply with the Federal and Local Rules of Civil Procedure and the Scheduling Order.

7 **VI. Motion for Waiver of Copy Fees.**

8 On March 23, 2018, Plaintiff filed a “Motion for Waiver of U.S. Clerk, District
9 Court Copy Fees, For Plaintiff, For Cause.” (Doc. 80.) Therein, Plaintiff alleges that,
10 while incarcerated at ASPC-Safford, Tonto Unit, he did not have access to the District
11 Court’s Local Rules. Specifically, Plaintiff states:

12 Plaintiff requested the local rule information from the Arizona Department
13 of Corrections, Inmate Paralegal Assistance, and the response Plaintiff
14 received was “unable to assist – beyond initial filing.” . . . The Local Rules
15 of Civil Procedures are not available to this Plaintiff at the Prison library or
from the Prison Paralegal and Plaintiff has no family or friend support to
aid this Plaintiff.

16 (*Id.* at 2.) In support of his Motion, Plaintiff attaches a request dated March 15, 2018, in
17 which he asks for the “LRCiv 7.2 Book for my [] Civil Rights case.” (*Id.* at 8.) On March
18 16, 2018, Prison staff responded to Plaintiff’s request, stating that “[t]he Book ‘Local
19 Rules of Civil Procedure’ is not one of the books available per D.O.C. Policy 902.” (*Id.* at
20 9.) But listed as an available text in D.O.C. Policy 902 is the “Arizona Rules of the Court
21 – Federal[,]” which contains a copy of the District Court’s Local Rules.

22 Plaintiff has provided documentation showing that the Prison library has copies of
23 the Local Rules. Plaintiff does not allege that he is being denied access to the Prison
24 library. Accordingly, the Court finds that Plaintiff has access to the Local Rules and will
25 deny Plaintiff’s Motion.¹

26 _____
27 ¹ Additionally, the docket shows that on April 5, 2018, Plaintiff was moved from
28 ASPC-Safford to ASPC-Lewis, Barchey Unit. (Doc. 81.) To the extent Plaintiff alleges
issues with access to legal materials at the ASPC-Safford Prison Library specifically,
those issues are moot.

1 **VII. Motion for Court Orders.**

2 On March 12, 2018, Plaintiff filed a “Motion for Court Orders” requesting that the
3 Court order the “nonparties Interrogatories of: Ms. Corene Kendrick, Esq, CO Kayga,
4 Badge #2044, CO A. Delo Santos, Badge # 12231, CO E. Gonzales, Badge # 11756.
5 (Doc. 72 at 1-3.)

6 Rule 33 of the Federal Rules of Civil Procedure provides that “a party may serve
7 on *any other party* no more than 25 written interrogatories, including all discrete
8 subparts.” Fed. R. Civ. P. 33(a)(1). In his Motion, Plaintiff seeks to serve non-parties
9 with interrogatories. Plaintiff’s requests are improper and misdirected. The Court will
10 deny Plaintiff’s request.

11 **IT IS ORDERED:**

- 12 1. Plaintiff’s “Motion Joinder of Claims and Remedies” (doc. 41) is **denied**.
- 13 2. Plaintiff’s “Motion to Join Parties under Rule 19(a)” (doc. 42) is **denied**.
- 14 3. Plaintiff’s Motion to Appoint Counsel (doc. 68) is **denied**.
- 15 4. Plaintiff’s Motion to Compel Production of Documents (doc. 74) is **denied**.
- 16 5. Plaintiff’s “Motion for Waiver of Copy Fees” (doc. 80) is **denied**.
- 17 6. Plaintiff’s Motion for Court Order (doc. 72) is **denied**.

18 Dated this 16th day of April, 2018.

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21 _____
22 Honorable John Z. Boyle
23 United States Magistrate Judge
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