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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Aaron Harvey Beitch,
10 Plaintiff,

No. CV-18-0067-TUC-BGM

11 v.

ORDER

12 Chris Magnus, *et al.*,
13 Defendants.

14

15 Currently pending before the Court are Plaintiff’s Motion to Defendants [sic]
16 Answers to Production, Admission, and Interrogatories Request and Joint Settlement
17 Conference (“Motion to Compel”) (Doc. 46) and Motion for Court Ordered Production of
18 Documents (Doc. 54). Defendants have responded to both motions. (Docs. 49 & 57).

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20 **I. MOTION RE: DEFENDANTS’ DISCOVERY RESPONSES**

21 Plaintiff alleges that Defendants have “refused to numerous [sic] production
22 requests on documents written by Tucson Police Sergeant David Hill and Officer Paulina
23 Reed.” Pl.’s Mot. to Compel (Doc. 46) at 2.¹ Plaintiff further asserts that Defendants have
24 refused to produce the identity of an unidentified “suspect” standing on the porch and
25 “being confronted by Tucson Police Department.” *Id.* Plaintiff seeks a court order for
26 production of this information. *Id.* Defendants assert that they “provided all reports related

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28 ¹ Page numbers refer to the Case Management/Electronic Case Filing (CM/ECF) pagination.

1 to Tucson Police Department’s (“TPD”) interaction with Plaintiff and the call to which
2 officers were responding when they encountered Plaintiff.” Def.’s Response re Mot. to
3 Compel (Doc. 49) at 1 & City Defendants’ Responses to Mandatory Initial Discovery (Exh.
4 “1”) (Doc. 49-1) at 8. Defendants state that Sergeant Hill did not author a supplemental
5 report, and the supplemental report authored by Officer Reed was produced. Def.’s
6 Response re Mot. to Compel (Doc. 49) at 2. Furthermore, Defendants do not know the
7 identity of the non-party referenced on the body camera, noting that “TPD officers did not
8 make any notes or reports regarding the non-party’s identity.” *Id.*

9 A party is only required to produce those documents which are in “the responding
10 party’s possession, custody, or control[.]” Fed. R. Civ. P. 34(a). “The party seeking
11 production of the documents . . . bears the burden of proving that the opposing party has
12 such [possession, custody, or] control.” *United States v. Int’l Union of Petroleum and*
13 *Indus. Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989). A court cannot order a
14 party to produce documents or information that do not exist. *See Unilin Beheer B.V. v.*
15 *NSL Trading Corp.*, 2015 WL 12698284, at *6 (C.D. Cal. Sept. 17, 2015) (recognizing the
16 impossibility of compelling the production of non-existent documents, and finding
17 sanctions based solely on speculation improper). Defendants have declared that Sergeant
18 Hill did not write a supplemental report and that the City Defendants do not know the
19 identity of the non-party seen on the body camera. As such, there is no information for the
20 Court to compel.

21 22 **II. MOTION FOR PRODUCTION**

23 Plaintiff’s Motion for Court Ordered Production of Documents (“Motion for
24 Production”) (Doc. 54) is essentially a duplicate of his motion to compel (Doc. 46). “Once
25 a motion is filed, filing a duplicate motion will not speed up the court’s review of a
26 movant’s request since motions are generally addressed in the order which they were filed.”
27 *Tagle v. Nevada*, 2016 WL 6440423 at *2 (D. Nev. October 27, 2016). In fact, “filing
28 duplicate motions increases the court’s workload and generally delays decision while a

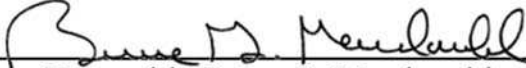
1 new round of responses and reply deadlines run.” *Id.* Plaintiff is warned that filing
2 duplicative motions may result in sanctions, including dismissal of his case. Plaintiff’s
3 Motion for Production will be denied for the reasons stated in Section I, *supra*.

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5 **III. CONCLUSION**

6 Based on the foregoing, the Plaintiff has not met his burden to show that Defendants
7 have possession of the information that he seeks. Accordingly, IT IS HEREBY
8 ORDERED that:

- 9 1) Plaintiff’s Motion to Defendants [sic] Answers to Production, Admission, and
10 Interrogatories Request and Joint Settlement Conference (Doc. 46) is DENIED;
11 and
12 2) Plaintiff’s Motion for Court Ordered Production of Documents (Doc. 54) is
13 DENIED.

14 Dated this 3rd day of April, 2019.

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17 Honorable Bruce G. Macdonald
18 United States Magistrate Judge
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