

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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NATALIE NELSON, *et al.*,

Plaintiffs,

VS.

MICHAEL WILLDEN, *et al.*,

Defendants.

Case No. 2:13-cv-50-GMN-VCF

ORDER

This matter involves Natalie Nelson's civil rights action against Michael Willden. (See Amend. Compl. #48).¹ Before the court is Plaintiff Natalie Nelson's Motion to Compel (#63). Non-party Las Vegas Metropolitan Police Department filed an opposition (#67) and Nelson replied (#70). Also before the court is Las Vegas Metropolitan Police Department's Counter Motion for a Protective Order (#68). Nelson opposed (#71) and the Department replied (#74). For the reasons stated below, Nelson and the Department's motions are granted in part and denied in part.

DISCUSSION

The parties' filings present two issues: (1) whether the meet and confer requirement applies to nonparties and (2) whether the Las Vegas Metropolitan Police Department ("Department") should be compelled to produce the requested documents. Each issue is addressed below.

First, Nelson argues that Local Rule 26-7(b)'s meet and confer requirement "is inapplicable to the instant motion because [the Department] is a non-party to the lawsuit." (See Pl.'s Mot. to Compel (#63) at 2 n. 1). This is mistaken. Although Local Rule 26-7(b) states that "the parties" must meet and confer, where—as here—a local rule and federal rule conflict, the federal rule controls. *See FED. R. CIV.*

¹ Parenthetical citations refer to the court's docket.

1 P. 83(a)(1); *Marshall v. Gates*, 44 F.3d 722, 725 (9th Cir. 1995). Federal Rule of Civil Procedure
2 37(a)(1) states:

3 On notice to other parties and **all affected persons**, a party may move for an order
4 compelling disclosure or discovery. The motion must include a certification that the
5 movant has in good faith conferred or attempted to confer with the **person** or party
6 failing to make disclosure or discovery in an effort to obtain it without court action.

7 FED. R. CIV. P. 37(a)(1) (emphasis added). During the court’s August 22, 2014, hearing Nelson argued
8 that Rule 37(a)(1)’s meet and confer requirement does not apply to the Department because it is not a
9 “person.” This is also mistaken. Public entities, which are corporations, are persons. *Trustees of*
10 *Dartmouth College v. Woodward*, 17 U.S. 518 (1819) (recognizing corporate personhood); *Citizens*
11 *United v. Fed. Election Comm’n*, 558 U.S. 310 (2010). Rule 37(a)(1)’s meet and confer requirement is
not limited to natural persons.

12 As discussed by Magistrate Judge Johnston in *Shuffle Master, Inc. v. Progressive Games, Inc.*,
13 170 F.R.D. 166, 170 (D. Nev. 1996), a “facially valid motion to compel” has two components: “First is
14 the actual **certification** document. The certification must accurately and specifically convey to the court
15 who, where, how, and when the respective parties attempted to personally resolve the discovery dispute.
16 Second is the **performance**, which also has two elements. The moving party performs, according to the
17 federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer.”
18 *Shuffle Master*, 170 F.R.D. at 170 (emphasis original). As discussed during the court’s August 22, 2014
19 hearing, the meet and confer requirement is mandated by law because it conserves the court’s and the
20 litigant’s time and resources.

21 Having determined that the meet and confer requirement applies to parties and nonparties alike,
22 the court now turns to the second issue: whether the Department should be compelled to produce the
23 requested documents. Federal Rule of Civil Procedure 26(b)(2)(C) states that “the court must limit”
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1 discovery if it determines that “the burden or expense of the proposed discovery outweighs its likely
2 benefit.” During the August 22, 2014 hearing, the court heard arguments on Nelson’s alleged need for
3 the requested information and the burden that producing the information would place on the
4 Department. Taking Rule 26(b)(2)(C)’s balancing policies into consideration, the court struck a middle
5 path between full disclosure and no disclosure.

6 First, the court ordered the parties to file a Stipulated Confidentiality and Protective Order
7 limiting the disclosure of information related to Kasondra Martinsen and Osbaldo Sanchez’s criminal
8 histories. The litigants complied and, on September 5, 2014, the court signed the Stipulation. (See Doc.
9 #83).

10 Second, the court addressed the remaining subpoenaed documents. According to the Department,
11 these documents fall into four categories: documents that will (1) subject the criminal defendants to an
12 unfair trial; (2) provide information to criminal defendants, which they are not entitled to in the pending
13 criminal actions; (3) chill cooperation of third-party witnesses in future investigations; and (4) make
14 public confidential evaluations by officers regarding what law was violated and who violated the law.
15 (See Dep’t’s Reply (#74) at 2:19–22). The Department asserts that these documents are subject to the
16 law enforcement investigatory privilege. *See, e.g., United States v. Winner*, 641 F.2d 825 (10th Cir.
17 1981).

18 In order to protect the Department’s interest in the documents and permit discovery to proceed,
19 as contemplated by the Federal Rules of Civil Procedure, the court ordered the following: the
20 Department will (1) Bates stamp each responsive document, (2) review the responsive documents and
21 compile a privilege log that identifies which category the document falls into, (3) permit Plaintiffs’
22 counsel to review the privileged documents and verify the accuracy of the privilege log, (4) produce
23 non-privileged responsive documents, and (5) comply with this order within thirty days. (See Mins.
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1 Proceedings #75). When reviewing the privileged documents, Plaintiffs' counsel may not copy any of
2 the privileged documents, but may take notes. Plaintiffs' counsel **must not disclose** the content of the
3 privileged documents to anyone, including the Plaintiffs, until after the criminal prosecutions have
4 concluded. After Plaintiffs' counsel has reviewed the documents, it may propose a discovery extension
5 if the privileged documents are important to Plaintiffs' case.

6 ACCORDINGLY, and for good cause shown,

7 IT IS ORDERED that Natalie Nelson's Motion to Compel (#63) is GRANTED in part and
8 DENIED in part, in accordance with the terms stated above.

9 IT IS FURTHER ORDERED that Non-party Las Vegas Metropolitan Police Department's
10 Counter Motion for a Protective Order (#68) is GRANTED in part and DENIED in part, in accordance
11 with the terms stated above.

12 IT IS SO ORDERED.

13 DATED this 10th day of September, 2014.



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15 CAM FERENBACH
16 UNITED STATES MAGISTRATE JUDGE
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