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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

COUNTRY STEVENS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BRIAN WARD, *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

3:17-cv-00093-MMD-WGC

**ORDER**

Re: ECF No. 22, 23

Before the court is Plaintiff’s “Motion for Violation of the Fed. R. Civ. P. 37.1(1)(2), Duty to Preserve Evidence, Sanctions for Spoilation, and FRCP Rule 34” (ECF No. 22). Defendant opposed the motion (ECF No. 25) and Plaintiff has replied (ECF No. 27). Also before the court is Plaintiff’s “Motion for Sanctions for Violation of Fed. R. Civ. P. Rule 34, Disclosures and Discovery” (ECF No. 23). Defendant opposed the motion (ECF No. 26) and Plaintiff has replied (ECF No. 28).

**BACKGROUND**

In the court’s Screening Order, Plaintiff’s complaint was allowed to proceed on a portion of Count II alleging First and Eighth Amendment claims against Dr. Mar. (ECF No. 7 at 14.) Plaintiff’s complaint alleges he was sexually assaulted by Dr. Mar during a medical examination witnessed by a correctional officer and a nurse.

**Motion for Violation (ECF No. 22)**

Plaintiff contends in the instant motion that Dr. Mar violated Fed. R. Civ. P. 34 by not preserving the alleged photo or video evidence regarding the matters at issue in this case. Specifically, Plaintiff claims Dr. Mar should have preserved camera footage allegedly taken by Dr. Marsha Johns “for use to

1 challenge Dr. Marsha Johns findings” during a follow-up examination by Dr. Johns that occurred three  
2 days after the exam Plaintiff complains about in his Complaint. (ECF No. 22 at 2.)

3 In response to Plaintiff’s motion, Defendant Mar states that Plaintiff “does not explain how or  
4 why Dr. Mar should be held responsible for failing to preserve medical information allegedly obtained  
5 by another doctor (Dr. Johns) who is not a party to this action. Without such a connection, it would be  
6 improper to hold Dr. Mar responsible for the actions of another licensed physician.” (ECF No. 25 at 2.)

7 Plaintiff’s reply memorandum (ECF No. 27) restates his earlier arguments. Plaintiff contends  
8 that he “has in fact shown the connection binding both Mar and Johns in their duty to preserve medical  
9 information.” (*Id.* at 4.)

10 The court finds that Plaintiff has not established that Dr. Mar (the only defendant in this action)  
11 failed to preserve electronic information in violation of Fed. R. Civ. P. 37(e). Dr. Johns is not a party  
12 to this case and the alleged fact that Dr. Johns used a camera during a rectal examination does not  
13 establish that the camera recorded any information that was later destroyed. Additionally, the court  
14 questions the relevance of the alleged photo or video evidence of the examination of Dr. Johns.

15 Plaintiff’s “Motion for Violation of the Fed. R. Civ. P. 37.1(1)(2), Duty to Preserve Evidence,  
16 Sanctions for Spoliation, and FRCP Rule 34” (ECF No. 22) is **DENIED**.

17 **Motion for Sanctions (ECF No. 23)**

18 Plaintiff’s motion does not describe any specific misconduct or discovery violations. Plaintiff’s  
19 motion does not provide the court the disputed discovery which is the vague subject of his motion as is  
20 required by LR 26-7(b). It appears that via this current motion (ECF No. 23) Plaintiff may be seeking  
21 sanctions with respect to his “Motion for Violation” (ECF No. 22) which the court has denied above.

22 Additionally, Plaintiff’s motion does not include the required certification of a good faith attempt  
23 to meet and confer. A motion seeking to compel responses to discovery must “include a certification  
24 that the 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.” Fed. R. Civ. P. 37(a); *see*  
26 *also* LR 26-7(c).

27 ///

1 Plaintiff's "Motion for Sanctions for Violation of Fed. R. Civ. P. Rule 34, Disclosures and  
2 Discovery" (ECF No. 23) is **DENIED** without prejudice. If Plaintiff elects to renew his motion, it must  
3 comply with Rule 37.

4 **IT IS SO ORDERED.**

5 DATED: November 20, 2018.

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*William G. Cobb*

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WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE

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