

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF WASHINGTON

4 ESTATE OF DANNY CECIL JONES, et al.,

5 Plaintiffs,

6
7 vs.

8 CITY OF SPOKANE, FRANK STRAUB,
9 et al.,

10 Defendants.

NO. 2:16-CV-00325-JLQ

ORDER GRANTING IN PART
MOTION TO COMPEL AND
DENYING MOTION FOR
PROTECTIVE ORDER

11
12 BEFORE THE COURT is Plaintiffs' Motion to Compel Discovery (ECF No. 21)
13 and Defendant City of Spokane's Motion for Protective Order (ECF No. 26). Both sides
14 to the litigation requested expedited hearing because the discovery issues related to the
15 resolution of a pending Motion for Judgment on the Pleadings. The court granted the
16 request for expedited consideration. The court has considered the briefing and the
17 Motions were submitted without oral argument on January 31, 2017. The court has
18 denied the Motion for Judgment on the Pleadings via separate Order.

19 **I. Introduction and Background**

20 This action was filed in state court on August 19, 2016, and removed to this court
21 on September 16, 2016. The Complaint alleges Danny Jones was shot and killed by City
22 of Spokane police officers on August 22, 2013. The Complaint is brought by his wife,
23 surviving children, and his parents. Plaintiffs allege Danny Jones was in his vehicle,
24 stopped in a parking lot, and surrounded by several police vehicles when officers "opened
25 fire." (Complaint ¶ 27). Plaintiffs allege Danny Jones was unarmed and did not pose a
26 threat to officers. Plaintiffs assert several claims, including: 1) excessive force in
27 violation of Constitutional rights under 42 U.S.C. 1983; 2) *Monell* liability against the
28 City and Chief Straub under 42 U.S.C. 1983; 3) denial of Due Process; 4) wrongful
death; and 5) negligence.

ORDER - 1

1 On September 21, 2016, this court issued an Order, which stated in part: "The
2 parties shall confer, as required by Fed.R.Civ.P. 26(f), within twenty-one (21) days of the
3 date of this Order, and discovery shall commence promptly thereafter." (ECF No. 3). The
4 court held a Scheduling Conference on November 10, 2016, and on that date issued an
5 Order which stated in part: "Counsel are reminded the court views Rule 26 liberally and
6 the parties have an obligation to disclose the good and the bad and observe an 'open file'
7 policy with the exception of privileged materials. Violations of Rule 26 and the spirit of
8 open discovery will result in the imposition of appropriate sanctions." (ECF No. 12).

9 The City answered the Complaint on September 28, 2016, and on December 8,
10 2016, filed a Motion for Judgment on the Pleadings (ECF No. 15). On November 16,
11 2016, just after the Scheduling Conference and before Defendant filed the Motion for
12 Judgment on the Pleadings, Plaintiffs served written discovery. (ECF No. 21, p. 2). The
13 City's response, or lack thereof, to the written discovery is the basis for the instant
14 dispute.

15 **II. Discussion**

16 The Motion to Compel seeks to have the court overrule Defendant's objections to
17 several Interrogatories and Requests for Production and order Defendant City to provide
18 full and complete responses. The Motion attaches the discovery at issue (See ECF No.
19 21-1). Plaintiffs' counsel has filed a Statement pursuant to Local Rule 37.1, which states
20 the parties have conferred and have been unable to resolve the City's objections to
21 Interrogatories 3 thru 10, and Requests for Production 2, 3, 4, 6, 8, and 9. (ECF No. 22).

22 The City's Motion for Protective Order (ECF No. 26) does not seek to protect any
23 specific information from discovery, but rather asks to stay discovery until after
24 resolution of the Motion for Judgment on the Pleadings. (ECF No. 26, p. 2). The City
25 states Plaintiffs allegations are "baseless" and therefore Plaintiffs are "not entitled to
26 discovery." (*Id.*). The City contends it would take "dozens" of hours to respond to the
27 written discovery. The City's Motion cites to an attached Declaration, but the Declaration
28 offers no support for the contention as to the amount of time required to respond.

1 The City was served with discovery on November 16, 2016. By that date, this
2 court had issued two Orders concerning discovery and directed discovery "shall"
3 commence. The City had not moved to dismiss for failure to state a claim, or for more
4 definite statement, but had answered the Complaint. The discovery was served on
5 November 16, 2016, and both Fed.R.Civ.P. 33 and 34 provide for a 30-day period of time
6 to respond unless otherwise stipulated or ordered by the court. Thus responses were due
7 on or about December 16, 2016. On December 16, 2016, the City filed its Responses,
8 and Objections in which the City objected to every interrogatory and request for
9 production. (See ECF No. 27). While the discovery was pending, the City filed a
10 Motion for Judgment on the Pleadings on December 8, 2016. As the City's own Motion
11 acknowledges, the filing of such motion does not stay discovery. The parties state they
12 met and conferred on January 12, 2017. At that time, discovery responses were nearly
13 one month overdue, and the City had not filed a motion to stay discovery.

14 **A. The Specific Objections**

15 Interrogatory No. 1 - Defendant City interposed a frivolous objection and refused
16 to answer the basic question of who was answering the interrogatories, and stated "to be
17 supplemented." (See ECF No. 27, Ex. A). Failing to identify a person resulted in the
18 answers being unverified and failure to comply with Fed.R.Civ.P. 33(b). The parties
19 have apparently now resolved this objection.

20 Interrogatory No. 3 - This question was answered, with the City stating it has not
21 identified any experts at this time.

22 Interrogatory No. 4 - This question asks for information "in the last 10 years"
23 involving other lawsuits in which the City was a party and wherein the claims concerned
24 an officer involved shooting. The court finds this overbroad as to temporal scope. The
25 incident here occurred in August 2013. The City shall respond to the Interrogatory for
26 the time period of August 2010 to August 2016.

27 Interrogatory No. 5 - This interrogatory asks for information about "each and every
28 incident in the past ten years", where an on-duty officer discharged a firearm (excluding

1 training exercises). This request is overbroad in its temporal scope. Additionally,
2 incidents occurring after the date Mr. Jones was shot do not appear relevant. The parties
3 shall meet and confer in an effort to narrow this request.

4 Interrogatory No. 6 - This question asks whether the City had any policies or
5 procedures, prior to August 22, 2013, "specifically relating to the use of force against
6 persons who exhibit signs of mental illness and/or psychological or emotional distress."
7 The City objected the question was "not proportional to the needs of the case", and
8 overbroad and burdensome. These objections are not well-founded. The Interrogatory
9 calls for simple yes, or no, response. The City shall provide a response.

10 Interrogatory No. 7 - Asks whether the four officers who are Defendants had
11 training "specifically relating to the use of force against persons who exhibit signs of
12 mental illness and/or psychological or emotional distress." The City's objections are
13 overruled. The City shall respond.

14 Interrogatory No. 8 - Asks whether the City "maintains any record of instances in
15 which an officer of the Department displays, but does not discharge, a firearm." The City
16 objects the question is overbroad and burdensome. The Interrogatory asks only if the
17 City does maintain records, not for the City to identify all such records. The objection is
18 overruled. The City shall answer.

19 Interrogatory No. 9 - The objection is overruled. The City shall answer.

20 Interrogatory No. 10 - This interrogatory asks for detailed information over the last
21 10 years on incidents when an officer displayed but did not discharge a firearm. This
22 request is overbroad and not proportional. The objection is sustained.

23 **B. Requests For Production**

24 Request No. 2 - This request concerns 8 categories of documents concerning the
25 four Defendant officers, including training and discipline, other litigation, etc. This
26 request concerns generally relevant areas of inquiry, and the City appears to have
27 responded by producing only training records. The City has also made several assertions
28 of privilege. The briefing does not specifically address the categories of documents

1 requested or the privilege asserted. The parties are directed to meet and confer further
2 concerning this request.

3 Request No. 3 - This Request asks for documents identified in response to
4 Interrogatory No. 4. The court has limited the scope of Interrogatory No. 4. The request
5 for "all documents" relating to prior lawsuits is overbroad and would implicate privileged
6 documents. The parties shall meet and confer concerning this request.

7 Request No. 4 - This Request pertains to documents identified in Interrogatory No.
8 5. The court has directed the parties to meet and confer further regarding the scope of
9 Interrogatory No. 5, and they shall also discuss this Request.

10 Request No. 6 - Asks for documents evidencing an official policy or procedure
11 identified in response to Interrogatory No. 7. The City shall respond to this Request.

12 Request No. 8 - This request seeks photographs, reports, video, witness statements
13 pertaining to the "subject incident". City's response states the investigative file of some
14 1,200 pages is being produced, and video and photographs will be produced. The nature
15 of the parties' dispute concerning this Request is unclear. The parties are directed to meet
16 and confer further in an attempt to resolve their differences.

17 Request No. 9 - This Request seeks documents concerning "the training of City of
18 Spokane police officers regarding the use of force in effect as of August 22, 2013" and as
19 subsequently modified. This request is clearly relevant. The City shall respond.

20 **III. Conclusion**

21 The City's discovery objections are generally not well-taken. Without finding or
22 ruling, the City's response to discovery could be construed as an attempt to delay the
23 matter, which this court does not tolerate. By the time Plaintiffs served written discovery
24 on November 16, 2016, this court had issued two Orders directing the commencement of
25 discovery and informing the parties that violations of Rule 26 and the spirit of open
26 discovery would result in the imposition of appropriate sanctions. Despite these Orders,
27 the City determined it would not answer discovery because it had filed, three weeks after
28 being served with discovery, a Motion for Judgment on the Pleadings. No timely motion

1 to stay discovery or for protective order was filed. Instead the City served an unverified
2 discovery response objecting to every question posed.

3 Without finding or ruling, the court also observes the foregoing conduct could have
4 merited an award of fees under Fed.R.Civ.P. 37. However, Plaintiffs have not
5 specifically sought fees in the Motion to Compel. Additionally, the court has found some
6 of the Plaintiffs' discovery requests to be overbroad, and thus a portion of the objections
7 were "substantially justified". Fed.R.Civ.P. 37(a)(5).

8 **IT IS HEREBY ORDERED:**

9 1. Plaintiffs' Motion to Compel (ECF No. 21) is **GRANTED IN PART** and
10 **DENIED IN PART** as set forth herein.

11 2. The City shall answer Interrogatories 4, 6, 7, 8, and 9 and produce documents
12 pursuant to Requests for Production 6 and 9 **within 14 days** of the date of this Order.

13 3. The parties shall meet and confer further regarding Interrogatory No. 5 and
14 Requests for Production 2, 3, 4, and 8 **within 14 days** of the date of this Order. If the
15 parties cannot resolve their differences they shall contact the court's Judicial Assistant,
16 Lee Ann Mauk, at (509) 458-5280 to schedule a telephonic conference with the court.

17 4. Defendant City's Motion for Protective Order (ECF No. 26) is **DENIED**.

18 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and
19 furnish copies to counsel.

20 **DATED** this 2nd day of February, 2017.

21 s/ Justin L. Ouackenbush
22 JUSTIN L. QUACKENBUSH
23 SENIOR UNITED STATES DISTRICT JUDGE
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