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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DYLAN JAMES DOWNEY,

9 Plaintiff,

10 v.

11 TY TRENARY, *et al.*,

12 Defendants.

Case No. C17-1024-JCC-MAT

ORDER RE: PLAINTIFF'S MOTIONS
TO COMPEL

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14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the
15 Court at the present time on twelve of plaintiff's pending motions to compel discovery. The Court,
16 having considered plaintiff's motions, defendants' response to those motions, and the balance of
17 the record, hereby finds and ORDERS as follows:

18 (1) Plaintiff's motions to compel production of documents (Dkts. 64, 68-73, 79-82) are
19 DENIED. Plaintiff, by way of this series of motions, seeks an order compelling eleven individual
20 defendants to produce documents requested by plaintiff in discovery. While plaintiff identifies in
21 his motions the documents he is seeking, he does not attach to his motions defendants' answers
22 and responses to his discovery requests. Thus, plaintiff's own motions fail to make clear the
23 precise nature of the dispute. Defendants, in their response to plaintiff's motions, help to clarify

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1 the issue, noting that the individual defendants responded to plaintiff's requests to produce
2 documents by advising that they had no responsive documents in their possession and control.
3 (Dkt. 89 at 6.)

4 Defendants first argue in their response to plaintiff's motions to compel that the motions
5 fail because plaintiff did not meet and confer, nor did he act in good faith to resolve the discovery
6 disputes, prior to filing his motions to compel as is required by the Federal Rules of Civil Procedure
7 and the Local Rules of this Court. (*Id.*) Defendants further argue that even if plaintiff did act in
8 good faith to satisfy the requirements of the rules, his motions fail on the merits.

9 Rule 37(a)(1) of the Federal Rules of Civil Procedure requires that a party seeking to
10 compel discovery include in the motion a certification that the moving party "has in good faith
11 conferred or attempted to confer" with the party failing to make disclosures. *See* Fed. R. Civ. P.
12 37(a)(1). LCR 37(a)(1)(A) provides that "a good faith effort to confer with a party or person not
13 making a disclosure or discovery requires a face-to-face meeting or a telephone conference."

14 Plaintiff attached to his motions to compel a document entitled, "Certificate of Good Faith
15 Effort to Obtain Discovery." (*See* Dkts. 64, 68-73, 79-82.) Plaintiff states in each of those
16 documents that he has "been making Good Faith attempts" to obtain the discovery he now seeks
17 to compel, though he does not detail in those documents what his efforts consist of. (*See id.*)
18 Defendants assert that plaintiff's actions during discovery do not demonstrate good faith because
19 he attempted to have a meet and confer conference prior to the time any response to his discovery
20 requests was due, he threatened to file motions to compel while defendants were still producing
21 documents, and he failed to help specifically identify discovery issues despite numerous attempts
22 by defendants to clarify plaintiff's requests and issues. (*See* Dkt. 89 at 5.) Defendants also
23 maintain that despite giving plaintiff notice on at least two occasions that he may renew his

1 requests for a meet and confer conference, plaintiff did not attempt to schedule a conference call
2 or meeting. (*Id.*)

3 Defendants submitted in conjunction with their response a series of letters exchanged by
4 the parties regarding discovery issues. (*See* Dkt. 90, Exs. A-L.) The letters exchanged by the
5 parties largely confirm defendants' representations regarding plaintiff's conduct during discovery.
6 The letters also reflect plaintiff's frustration and agitation in navigating a process with which he
7 was unfamiliar, and his sense that his efforts to schedule a telephone conference had been thwarted.
8 (*See id.*) While plaintiff clearly failed to comply with the specific requirements of LCR 37
9 requiring a telephone or in-person meeting, and did little to assist defendants in clarifying the
10 precise nature of the disputes, the extensive written communications between the parties suggest
11 that a telephone conference would not ultimately have resulted in any resolution of the issues
12 without Court intervention. Thus, though the Court is reluctant to excuse plaintiff's failure to fully
13 comply with the Rule 37 requirements, it will, in this instance, address the merits of plaintiff's
14 motions.

15 The crux of the dispute is that plaintiff requested official Snohomish County documents
16 from individual defendants who don't actually possess those documents. As defendants explained
17 to plaintiff in a letter dated January 12, 2018, official documents are the property of Snohomish
18 County and not the individual defendants, and the proper defendant to request official documents
19 from is therefore Snohomish County. (Dkt. 90, Ex. I.) According to defendants, plaintiff never
20 served additional requests for production on Snohomish County, despite having been provided an
21 explanation of the proper way to obtain the materials he was seeking, and opted instead to file the
22 instant motions to compel. (*See* Dkt. 90 at 2, ¶ 3.) Plaintiff would have been better served by
23 redirecting his discovery requests to Snohomish County, rather than taking the time to file a

1 plethora of motions to compel documents from defendants whom, the record makes clear, do not
2 possess those documents. Plaintiff's motions to compel the production of documents are without
3 merit and must therefore be denied.

4 (2) Plaintiff's motion to compel the production of photographs (Dkt. 65) is GRANTED
5 in part. Plaintiff seeks to compel defendants Ty Trenary, Snohomish County, and Tony Aston to
6 produce photographs of certain areas of the Snohomish County Jail relevant to the issues raised in
7 plaintiff's amended complaint. Defendants objected to plaintiff's requests to produce the
8 photographs on various grounds, though the primary objections appeared to be that the requested
9 photographs did not exist, that there is no requirement under the federal rules that a party create
10 documents to respond to a discovery request, and that there is no requirement for a party to finance
11 the litigation of another party. (*See* Dkt. 90, Ex. M at 3-4.) Plaintiff indicates in his motion to
12 compel that he believes the requested photos already exist in some form and defendants simply
13 don't want to produce them. (*See* Dkt. 65 at 3.)

14 Plaintiff provides no evidence to support his suspicion that the requested photographs exist
15 and that defendants are merely withholding them. And, defendants are generally correct that there
16 is no requirement that a party create documents that do not already exist to respond to a discovery
17 request. However, this is a unique circumstance wherein defendants have exclusive access to the
18 areas plaintiff wishes to have photographed. Plaintiff cannot take the photographs himself, and it
19 seems unlikely that even an individual acting on plaintiff's behalf, such as an attorney or an
20 investigator, were either to be appointed, would be permitted to take photographs inside secure
21 areas of the jail facility. For this reason the Court will require defendants to provide at least some
22 of the requested photographs.

23 With respect to plaintiff's first request for production in which plaintiff asks for

1 photographs of the showers in the secured housing unit (SHU), defendants shall provide plaintiff
2 with photos of each shower area within the SHU to the extent such photos have not already been
3 produced. Such photos should include the entrance, walls, floors and fixtures of each shower area.
4 To the extent plaintiff's first request for production calls for speculation as to how the showers
5 were used, or seeks some sort of reenactment of the events alleged in plaintiff's pleading,
6 plaintiff's motion to compel is denied.

7 With respect to plaintiff's second request for production in which he asks for photographs
8 of the interior and entrances of any cell in the old jail that "might be deemed" to be "ADA
9 compliant" "ADA accessible," or "Disability accommodated," and plaintiff's third request for
10 production in which he asks for photographs of at least one cell from each of the SHU housing
11 units (4N/4S), defendants shall provide plaintiff with photos of any cell in the SHU in which
12 plaintiff was housed between March 7, 2017 and the present. Such photos should include the
13 entrance, walls, floors and fixtures of each such cell. The Court sees no purpose in requiring
14 defendants to produce photographs of cells in which plaintiff was never confined, and plaintiff's
15 motion to compel is therefore denied to the extent his requests encompass such areas.

16 Finally, with respect to plaintiff's fourth request for production in which he asks for
17 photographs of the visitation area of the SHU, defendants shall provide photos of any SHU
18 visitation area which plaintiff would have had access to, based on his cell assignment(s) in the
19 SHU between March 7, 2017 and the present. Once again, such photos should include the entrance,
20 walls, floors and fixtures of each such area. To the extent plaintiff seeks to compel the production
21 of photographs not specifically described herein, his motion to compel is denied.

22 (3) The dispositive motion filing deadline is EXTENDED to *April 13, 2018*. The
23 current dispositive motion filing deadline is March 13, 2018. However, there are discovery issues

1 which still need to be addressed, including a motion to extend the discovery deadline that is not
2 yet ripe for consideration, and the parties should not be required to file any anticipated dispositive
3 motions while these issues remain outstanding. This extension does NOT constitute an extension
4 of the discovery deadline, nor does it preclude any party from filing a dispositive motion prior to
5 the newly established deadline.

6 (4) The Clerk is directed to send a copy of this Order to plaintiff, to counsel for
7 defendants and to the Honorable John C. Coughenour.

8 DATED this 27th day of February, 2018.

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Mary Alice Theiler
United States Magistrate Judge