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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT H. SMITH, *et al.*,

Plaintiffs,

v.

RYAN W. PHILLIPS, *et al.*,

Defendants.

Case No. C17-1457-RSL-MAT

ORDER DENYING PLAINTIFFS’  
MOTION TO EXCLUDE DEPOSITIONS

This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the Court at the present time on plaintiffs’ motion to exclude depositions. Defendants oppose plaintiffs’ motion. The Court, having reviewed plaintiffs’ motion, defendants’ responses thereto, and the balance of the record, hereby finds and ORDERS as follows:

(1) Plaintiffs’ motion to exclude depositions (Dkt. 66) is DENIED. Plaintiffs, by way of the instant motion, seek to exclude their depositions which were taken by defendants’ counsel on November 7, 2018 at the Federal Detention Center in SeaTac, Washington (FDC SeaTac). Plaintiffs argue in their motion that the depositions should be excluded because they were not allowed to cross-examine each other during the depositions as permitted by Fed. R. Civ. P. 30(c), and because defendants did not seek leave of court to take the depositions as required by Fed. R. Civ. P. 30(a)(2)(B). (*See* Dkt. 66.) Defendants argue that plaintiffs’ arguments are without merit.

ORDER DENYING PLAINTIFFS’  
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1 (See Dkts. 67-69.) The Court concurs.

2 The record demonstrates that defendants first attempted to depose plaintiff Smith at FDC  
3 SeaTac on November 1, 2018. (See Dkt. 66 at 1; Dkt. 68, ¶ 2.) Prior to commencement of the  
4 deposition, plaintiff Smith objected to proceeding in the absence of his co-plaintiff, James Phillips.  
5 (*Id.*) The parties agreed to continue the deposition so that defendants could request that FDC  
6 SeaTac allow the plaintiffs to attend each others' depositions. (See Dkt. 68, ¶ 2.) Defendants  
7 rescheduled the depositions for November 7, 2018, and sought permission from FDC SeaTac  
8 officials for both plaintiffs to be present for both depositions. (See *id.*, ¶¶ 2-3.) On November 5,  
9 2018, defendants were advised by FDC SeaTac officials that plaintiffs would not be allowed to be  
10 in the same room at the same time for "security reasons," and that the depositions would have to  
11 be conducted separately. (*Id.*, ¶ 3 and Ex. A at 1.)

12 On November 7, 2018, counsel for defendants again went to FDC SeaTac to depose  
13 plaintiffs. (Dkt. 68, ¶ 3.) Counsel for the Snohomish County defendants advised plaintiff Smith  
14 that the facility would not allow his co-plaintiff, Mr. Phillips, to be present. (*Id.* and Ex. B.)  
15 Counsel further advised plaintiff Smith that defendants would leave the depositions open so that  
16 plaintiffs could ask each other questions at some future time if they chose to do so. (See *id.*)  
17 Plaintiff Smith thereafter agreed to proceed with his deposition. (See *id.*) Counsel likewise  
18 advised plaintiff Phillips at the beginning of his deposition that defendants would leave the  
19 depositions open so that plaintiffs could ask each other questions at some future time if they chose  
20 to do so. (Dkt. 68, ¶ 3 and Ex. C.)

21 According to defendants, the depositions remain open at this time and plaintiffs still have  
22 the opportunity to examine each other should they choose to do so. (See Dkt. 67 at 2-3.) It appears  
23 that defendants reasonably worked within the limitations imposed by FDC SeaTac to obtain

1 plaintiffs' depositions and to preserve their right to cross-examine each other. The Court sees no  
2 defect in this process which would justify exclusion of the depositions.

3 To the extent plaintiffs argue that the depositions should be excluded because defendants  
4 failed to obtain leave of court before taking the depositions, plaintiffs' argument is frivolous. Local  
5 Civil Rule (LCR) 30(a)(2) allows a party to take the deposition of a person in custody, and provides  
6 that the party seeking to take such a deposition "shall attempt to reach agreement with officials of  
7 the institution as to date, time, place, and maximum duration of the deposition." LCR 30(a)(2)  
8 further provides that "[i]f agreement is reached, the party taking the deposition shall give notice as  
9 provided in Fed. R. Civ. P. 30(b), and no further order of the court is required." The record makes  
10 clear that defendants reached agreement with FDC SeaTac to take plaintiffs' depositions so no  
11 court order was required.

12 Plaintiffs' suggestion that defendants were required to serve notice of the depositions on  
13 the warden of FDC SeaTac and on the U.S. Attorney before proceeding with the depositions (*see*  
14 Dkt. 70) is incorrect and is based on a simple misreading of LCR 30(a)(b) which requires such  
15 notice *only* if agreement with the facility cannot be reached. Plaintiffs again fail to identify any  
16 defect which would justify exclusion of their depositions.

17 (2) The Clerk is directed to send copies of this Order to plaintiffs, to counsel for  
18 defendants, and to the Honorable Robert S. Lasnik.

19 DATED this 14th day of January, 2019.

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21   
22 Mary Alice Theiler  
23 United States Magistrate Judge