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

8 DOMINGO MONTAR-MORALES,

9 Plaintiff,

10 v.

11 JON P. PICKERING, *et al.*,

12 Defendants.

Case No. C20-776-TSZ-MLP

ORDER

13  
14 **I. INTRODUCTION**

15 This is a 42 U.S.C. § 1983 prisoner civil rights action. Plaintiff Domingo Montar-Morales  
16 (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, is a state prisoner who is currently  
17 confined at the Monroe Correctional Complex (“MCC”). This matter is before the Court on  
18 Plaintiff’s: (1) second motion for extension of time to complete discovery (dkt. # 25); and (2)  
19 motion to compel discovery (dkt. # 26). On July 22, 2021, Defendant Corrections Officer Bisson  
20 (“Defendant”), the sole remaining Defendant in this matter, filed responses to Plaintiff’s  
21 Motions. (Dkt. ## 27, 29.) On July 29, 2021, Plaintiff filed replies. (Dkt. ## 30-31.) Having  
22 considered the parties’ submissions, the governing law, and the balance of the record, Plaintiff’s  
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1 second motion for extension of time to complete discovery (dkt. # 25) is GRANTED; and  
2 Plaintiff's motion to compel discovery (dkt. # 26) is DENIED.

## 3 II. DISCUSSION

### 4 A. Motion for Extension of Time

5 On January 26, 2021, this Court issued a pretrial scheduling order directing the parties to  
6 complete discovery by May 26, 2021, and to file dispositive motions by June 25, 2021. (Dkt.  
7 # 18.) On May 26, 2021, Plaintiff filed his first motion for extension of time to complete  
8 discovery, which this Court granted on June 3, 2021, to allow Plaintiff to obtain discovery from  
9 the Washington Office of Public Disclosure and to receive responses from allegedly unanswered  
10 discovery requests by Defendant due to his limited law library and e-filing access at the MCC  
11 because of COVID-19 restrictions. (Dkt. ## 23, 24.) As a result, the Court extended the  
12 discovery deadline in this matter to July 12, 2021, and the dispositive motions deadline to  
13 August 9, 2021. (Dkt. # 24.)

14 Plaintiff's second motion for extension of time to complete discovery requests an  
15 additional 90 days to conduct discovery because Plaintiff recently discovered, through  
16 Defendant's response to his first set of interrogatories, that "someone, other than the Defendant,  
17 has possession, custody, or control" of his sought discovery.<sup>1</sup> (Dkt. # 25 at 1.) Plaintiff states that  
18 he sent Defendant a second set of interrogatories and requests for production that remains  
19 unanswered because Defendant objected to it as untimely and that he would like additional time  
20 so that Defendant may answer those requests. (*Id.* at 2.) Finally, Plaintiff states he continues to  
21 have limited law library and e-filing access at MCC due to COVID-19 restrictions. (*Id.*)

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23 <sup>1</sup> Plaintiff's second motion for extension of time originally requested a 45-day extension of time on the  
discovery deadline. (Dkt. # 25 at 1.) However, on reply, Plaintiff now requests a 90-day extension of time  
in order to receive his sought discovery from the Washington State Department of Corrections Public  
Records Unit. (Dkt. # 30 at 2-3, Ex. 1 at 7-9.)

1 Defendant responds that Plaintiff propounded his second set of discovery requests with  
2 insufficient time for Defendant to respond before the discovery deadline. (Dkt. # 27 at 3.)  
3 Defendant notes this is the second time Plaintiff has requested an extension of the discovery  
4 deadline, but argues Plaintiff’s basis for an extension at this juncture—that he has additional  
5 questions and that the Court should give Defendant more time to answer—fails to demonstrate  
6 good cause. (*Id.*) In addition, Defendant argues Plaintiff is actually trying to obtain information  
7 from the Washington State Department of Corrections (“DOC”) and that extending the discovery  
8 deadline will not address that issue. (*Id.*)

9 Pursuant to Rule 6(b)(1), the Court may extend a deadline for “good cause” if the request  
10 for an extension is made before the original time or its extension expires. *See* Fed. R. Civ. P.  
11 6(b)(1)(A). In determining whether “good cause” exists to amend a scheduling order, the Court  
12 examines whether the party seeking the extension exercised due diligence but otherwise cannot  
13 meet a court-imposed deadline. *See Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 609  
14 (9th Cir. 1992).

15 Here, the Court finds that a second extension of the discovery deadline is warranted.  
16 Based on the record before the Court, Plaintiff has exercised diligence in seeking discovery  
17 through the DOC’s Public Records Unit but is currently awaiting a response to his latest  
18 requests. (Dkt. # 30 at 1-3; Ex. 1 at 7-9.) Furthermore, the Court recognizes Plaintiff has limited  
19 law library and e-filing access as a result of COVID-19 restrictions at MCC. As such, the Court  
20 finds Plaintiff has demonstrated good cause for a 90-day extension of time to complete discovery  
21 in this matter.

1           **B.       Motion to Compel**

2           Next, Plaintiff moves the Court for an order compelling Defendant to produce for  
3 inspection documents Plaintiff requested in his first set of interrogatories and requests for  
4 production from May 23, 2021. (Dkt. # 26 at 1.) In his first requests for production, Plaintiff  
5 requested:

- 6           1. Any and all grievances, complaints, or other documents received by the Monroe  
7 Correctional Complex-Intensive Management Unit (MCC-IMU) Grievance  
8 Coordinator concerning fights and/or violence among Inmates, and any  
9 memoranda, investigative files, or other documents created in response to such  
10 complaints with a time frame January 1, 2016 to December 31, 2017.
- 11           2. Any and all policies, directives or instructions to staff for letting Inmates out of  
12 their cells at the MCC-IMU in A-pod by MCC staff.
- 13           3. Any and all documents created by staff for letting Inmates out of their cells at  
14 the MCC-IMU in A-pod with a time frame June 1, 2017 to June 30, 2017.
- 15           4. Any and all documents, including classification documents, relating to  
16 Plaintiff's Security Threat Group (STG) affiliation.
- 17           5. Any and all documents, including classification documents, relating to Inmate  
18 Velasquez's (DOC#370617) Security Threat Group affiliation.
- 19           6. Any and all policies, directives, or instructions to Staff on how to handle  
20 Inmates who have housing issues or STG affiliations at the MCC-IMU in A-pod  
21 by MCC Staff.
- 22           7. Any and all documents created by any Washington Corrections Center Staff  
23 member or any other [DOC] employee or official concerning plaintiff's request  
for protective custody, and any memoranda, investigative files, or other  
documents created in response to such request from May 5, 2015 to date.

(Barbara Decl., Ex. A at 6-7.) On June 21, 2021, Defendant objected that each of Plaintiff's  
requests for production were "overly broad," that Plaintiff's requests were directed at  
information within the custody and control of DOC, and that Defendant is not a custodian of  
records nor authorized to release such information. (*Id.*, Ex. C at 18-21.) Plaintiff notes that on

1 July 6-7, 2021, he tried to call Defendant’s counsel in a good faith effort to resolve the dispute  
2 but did not get an answer. (Dkt. # 26 at 2.)

3 Federal Rule of Civil Procedure 37(a) allows a party to move for disclosure or discovery  
4 to be compelled. “The motion must include a certification that the movant has in good faith  
5 conferred or attempted to confer with the person or party failing to make disclosure or discovery  
6 in an effort to obtain it without court action.” Fed. R. Civ. P. 37(a)(1); *see also* Local Civil Rule  
7 37(a)(1). A party served with a discovery request under Rule 34 is required to produce, or allow  
8 inspection of, responsive items “in the responding party’s possession, custody, or control.” Fed.  
9 R. Civ. P. 34(a)(1). In the Ninth Circuit, “[a] party may be ordered to produce a document in the  
10 possession of a non-party entity if that party has a legal right to obtain the document or  
11 has control over the entity who is in possession of the document.” *Campos-Eibeck v. C R Bard*  
12 *Inc.*, 2020 WL 835305, at \*2 (S.D. Cal. Feb 20, 2020) (internal quotations and citation omitted).

13 It appears Plaintiff attempted to contact Defendant’s counsel to confer on the basis of his  
14 motion to compel on July 6-7, 2021 but notes he did not have his call answered or returned. (Dkt.  
15 # 26 at 2.) Defendant’s counsel submits that he was working at his desk all day on July 6-7,  
16 2021, but that he did not receive any phone calls from Plaintiff, nor discovered any missed calls  
17 from the MCC that were logged by his office. (*See* Barbara Decl. at ¶ 10.)

18 Based on the record before the Court, the Court finds Plaintiff made a good faith effort to  
19 confer with Defendant to proceed with his motion to compel. Nevertheless, Plaintiff’s sought  
20 discovery is not in the possession, custody, or control of Defendant. Based on the nature and  
21 subject matter of Plaintiff’s requests, Plaintiff’s sought discovery is properly directed at DOC  
22 (*see id.*, Ex. C at 18-21), and Plaintiff submits he is in the process of receiving his sought records  
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1 from the DOC's Public Records Unit. (Dkt. # 30 at 1-3; Ex. 1 at 7-9; *see* Barbara Decl., Ex. A at  
2 6-7.) Accordingly, Plaintiff's motion to compel discovery is denied.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Court hereby orders:

5 (1) Plaintiff's second motion for extension of time to complete discovery (dkt. # 25)  
6 is GRANTED, and Plaintiff's motion to compel discovery (dkt. # 26) is DENIED.

7 (2) The parties shall complete discovery by **October 11, 2021**, and file dispositive  
8 motions by **November 8, 2021**.

9 (2) The Clerk is directed to send copies of this Order to the parties and to the  
10 Honorable Thomas S. Zilly.

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12 Dated this 3rd day of August, 2021.

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MICHELLE L. PETERSON  
15 United States Magistrate Judge  
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