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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 LENIER AYERS,

7 Plaintiff,

8 v.

9 HENRY RICHARDS, et al.,

10 Defendants.

No. C08-5390 BHS/KLS

ORDER DENYING PLAINTIFF'S THIRD
MOTION TO COMPEL (DKT. 164) AND
GRANTING DEFENDANT'S MOTION
FOR SANCTIONS (DKT. 167)

11 Before the court is Plaintiff's "Third Motion For Previously Requested Public
12 Disclosure" (hereinafter "Third Motion") (Dkt. 164) and Defendants' Motion for Sanctions
13 (Dkt. 167). Plaintiff has responded to Defendants' motion for sanctions. Dkt. 173. Defendant
14 has filed a reply. Dkt. 172. Having carefully considered the motions, affidavits, responses, and
15 balance of the record, the Court finds that sanctions against Plaintiff are appropriate.
16

17 **DISCUSSION**

18 **A. Plaintiff's Third Motion – Failure to Confer**

19 In his Third Motion, plaintiff seeks an order compelling Defendants to provide
20 documents previously sought in his January 2009 Request for Production. Plaintiff fails to
21 provide the court with notice that he conferred in good faith with counsel for defense before
22 seeking the Court's intervention in a discovery matter. *See* Fed. R. Civ. P. 37(d)(1)(A)
23 and (B). The court previously admonished Plaintiff that he must confer before seeking the
24 court's assistance in a discovery matter. (Dkt. 139, p. 3). Despite this previous admonishment,
25 Plaintiff has again filed a discovery motion without first conferring in good faith with defense
26

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1 counsel. Dkt. 164. Despite being advised of this failing, he provides no explanation in his
2 response for his failure to comply with Rule 37(d). For this reason, the court shall deny his Third
3 Motion (Dkt. 164).

4 **B. Defendants' Motion for Sanctions**

5 On July 20, 2009, the court found that defendants had produced SCC Policies 140
6 and 235 to plaintiff. Dkt. 139, p. 4. In his Third Motion, Plaintiff again accuses defense counsel
7 of failing to produce these documents. Dkt. 164. Plaintiff accuses the defense of "falsely
8 stating" in Docket 161 that SCC Policies 140 and 235 were provided to plaintiff as of
9 September 10, 2009. Dkt. 164 at ¶ 1 (Dkt. #164). Docket 161 is a court order that makes
10 no mention of SCC Policies 140 and 235. The following docket entry, Docket 162, is
11 Defendants' Notice of Compliance With Order Dkt. #161. In that Notice, Defendants state that
12 they served plaintiff with a copy of former SCC Policy 404 and a memorandum dated
13 April 10, 2006, regarding the discontinuation of SCC Policy 404. SCC Policies 140 and 235
14 are not mentioned at all.
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17 Plaintiff accuses defense counsel of "obstructing justice" and "suppressing evidence" in
18 its Sixth Supplemental Response to plaintiff's January 2009, Request for Production. Dkt. 164,
19 p. 1. However, this court found that Defendants had previously produced the requested
20 documents to Plaintiff. Dkt. 139, p. 4. Defendants previously provided plaintiff with a copy of
21 SCC Policy 140 on February 13, 2009, a courtesy copy of SCC Policy 235 on June 5, 2009, and
22 the documents delineated in its Notice of Compliance (Dkt. 162) on September 10, 2009. Dkt.
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1 168 ¶ 3, Attachs. B, C; Dkt. #117, ¶¶ 4, 7.2 Therefore, the documents Plaintiff seeks to compel
2 in his Third Motion have been in his possession for the past seven months.¹

3 In his Third Motion, Plaintiff also asks the court to compel Defendants to provide
4 criminal history record on certain persons, including those who are not defendants in this case
5 (Jose David Garcia, Mike Hogan, and Jeremy Dorfner.) The court previously addressed this
6 issue and found that defendants were not required to provide criminal records on non-defendants.
7 Dkt. 139, pp. 5-6. Further, the court found that Defendants had complied with the request:
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9 In response to Mr. Ayers' January 19th request for criminal records
10 "pertaining to RRC. Jose David Garcia, Mike Hogan, and Jeramy Dorfner
(RRC's)," Defendants responded as follows:

11 Objection, SCC does not retain criminal records on staff.
12 Defendants also object to this request as the persons plaintiff is
13 seeking records about are not named defendants in this case.
14 Without waiving objections, defendant will supplement this
15 response as they receive further documentation regarding this
16 request.

17 Dkt. 115, Attachment B, p. 10.

18 Thus, Plaintiff's claim that he has been refused public disclosure
19 documents is not true. It is also not true that is has been refused "background
20 criminal history on certain defendants." Defendants stated that they do not have
21 the information requested. The Court further notes that a request for production of
22 documents relates to documents already under the possession and control of the
23 party. The Defendants are under no obligation to search out documents that are
24 not in their possession or control. There is no evidence before the Court that the
25 Defendants have given an untrue answer or are concealing evidence.

26 Dkt. 139, p. 15. Despite the court's order and findings, Plaintiff persists in his repeated requests
for the same information and more troubling, accuses defense counsel of underhanded dealing in
her "refusal" to produce the information to him. In his response to Defendants' motion for

¹ In addition, SCC Policy 235 is maintained on plaintiff's living unit and available for him to view at any time. Dkt. 168 at ¶ 3.

1 sanctions, Plaintiff merely states “I indicated that the defendants, and AG have once again
2 refused to provide previously requested criminal history documents that were ordered by the
3 Court.” Dkt. 173, p. 1. Thus, Plaintiff persists in insisting that Defendants have failed to provide
4 him with discovery that has already been provided to him and which has previously been the
5 subject of motions to compel upon which this court has ruled.

6
7 The Court has the inherent power to impose sanctions in response to abusive litigation
8 practices. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44, 111 S.Ct. 2123, 115 L.Ed.2d 27
9 (1991). A movant’s signature on a pleading is an indication that a motion is brought in good
10 faith and is not designed to needlessly increase the cost of litigation. Rule 11 Fed. R. Civ. P.
11 Failure to comply with Rule 11 may result in sanctions. *Id.* The Supreme Court has recognized
12 that every paper filed with the Clerk of the Court, no matter how repetitious or frivolous, requires
13 some portion of the institution's limited resources. A part of the court’s responsibility is to see
14 that these resources are allocated in a way that promotes the interests of justice. The continual
15 processing of a litigant’s frivolous requests does not promote that end. *In re McDonald*, 489
16 U.S. 180, 184, 109 S. Ct. 993, 103 L. Ed. 2d 158 (1989). “The goal of fairly dispensing justice . .
17 . is compromised when the Court is forced to devote its limited resources to the processing of
18 repetitive and frivolous requests.” *In re Sindram*, 498 U.S. 177, 179-80, 111 S. Ct. 596, 112 L.
19 Ed. 2d 599 (1991). The same is true when defendants are forced to devote limited public
20 resources to responding to repetitious, baseless motions.

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23 Plaintiff’s Third Motion is a repetitive motion lacking any basis in law or fact. In
24 addition, he accuses defense counsel of engaging in unprofessional and illegal behavior that has
25 no basis in fact. Plaintiff has been repeatedly admonished to refrain from filing pleadings
26 without following the civil rules, including that a sanction might follow that may include

1 dismissal. *See, e.g.*, Dkts. 139, p. 3; Dkt. 159, p. 3. Despite these admonitions, Plaintiff
2 continues to make sworn statements accusing defense counsel of misconduct that this court has
3 already concluded are false. Mr. Ayers has also made statements indicating that the cost to
4 defend this lawsuit is “insignificant” to him and “not his problem.” Dkt. 168 at ¶ 4, Attach. D.

5 Plaintiff finds no fault with his own conduct or the unnecessary costs he has forced the
6 other side to incur in responding to plaintiff's numerous and meritless filings, although his
7 conduct has unnecessarily delayed and vexatiously multiplied the proceedings, increased costs,
8 and wasted the resources of defendants and this court. The court notes that the imposition of
9 sanctions is appropriate even though plaintiff is proceeding pro se. He has shown the ability to
10 follow the court's rules when it suits him, and his filings contain cogent legal arguments and
11 appropriate citations to cases and statutes.
12

13 The court agrees that a sanction should be imposed that will actually deter Plaintiff from
14 continuing to squander the resources of the court and Defendants; to do otherwise will continue
15 to penalize defendants because they will be forced to defend – at taxpayer expense – duplicative
16 and meritless motions. For these reasons, the court has determined that the amount of \$500.00 is
17 an appropriate financial sanction against Plaintiff and that this matter shall be stayed. If Plaintiff
18 fails to pay the sanction as specified, the court will recommend that the action be dismissed for
19 failure to comply with a court order and as sanction for his conduct.
20

21 Plaintiff is hereby ordered:

- 22 1) Defendants' motion for sanctions (Dkt. 167) is **GRANTED and Plaintiff**
23 **is ordered to pay into the court registry the amount of Five Hundred**
24 **Dollars (\$500.00).**
- 25 2) **This action is stayed** pending payment of the sanction and Plaintiff shall
26 pay the sanction **on or before January 8, 2010** or the court will

1 recommend the action be dismissed for failure to comply with a court
2 order and as sanction for plaintiff's conduct.

- 3 3) Plaintiff's "Third Motion" (Dkt. 164) is **DENIED**.
- 4 4) The Clerk of Court is directed to send a copy of this order to Plaintiff and
5 to counsel for Defendants and to note the date of **January 8, 2010** as the
6 due date for payment of the sanction.

7 DATED on the 10th day of November, 2009.

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10 Karen L. Strombom
11 United States Magistrate Judge