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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 RICKY ANTHONY YOUNG,

11 Plaintiff,

12 v.

13 SCOTT RUSSELL et al.

14 Defendants.

CASE NO. C13-5079 BHS-JRC

ORDER

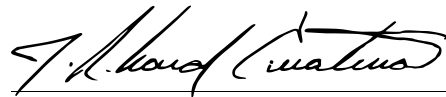
15 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
16 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §
17 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

18 Plaintiff has filed a motion to compel discovery, but he has not documented whether or
19 not he has met and conferred with opposing counsel as required by Local Rule 37. Further,
20 plaintiff's motion is not in the format required by Local Rule 37.

21 Because plaintiff is an inmate, the Court orders defendants' counsel to contact plaintiff
22 and arrange a conference. The Court orders the parties to confer on or before August 29, 2013.
23 The conference may take place face to face or telephonically. If plaintiff chooses to file a motion
24

1 to compel after the conference, then plaintiff must re-file his motion in the format required by
2 Local Rule 37. The Court has attached the complete text of Local Rule 37 and Local Rule 37,
3 Appendix B to this order. Because plaintiff is an inmate, plaintiff is excused from complying
4 with the portions of the Local Rule that requires plaintiff to “make the submission available in
5 computer-readable format.”

6 Dated this 6th day of August, 2013.

7 

8 J. Richard Creatura
9 United States Magistrate Judge

10
11 **Local Rule 37.**

12 **FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY;
13 SANCTIONS**

14 **(a) Motion for Order Compelling Disclosure or Discovery**

15 (1) *Meet and Confer Requirement.* Any motion for an order compelling disclosure or
16 discovery must include a certification, in the motion or in a declaration or affidavit,
17 that the movant has in good faith conferred or attempted to confer with the person or
18 party failing to make disclosure or discovery in an effort to resolve the dispute without
19 court action. The certification must list the date, manner, and participants to the
20 conference. If the movant fails to include such a certification, the court may deny the
21 motion without addressing the merits of the dispute. A good faith effort to confer with
22 a party or person not making a disclosure or discovery requires a face-to-face meeting
23 or a telephone conference. If the court finds that counsel for any party, or a party
24 proceeding pro se, willfully refused to confer, failed to confer in good faith, or failed
to respond on a timely basis to a request to confer, the court may take action as stated
in CR 11 of these rules.

(2) *Expedited Joint Motion Procedure.* A motion for an order compelling disclosure or
discovery may be filed and noted in the manner prescribed in LCR 7(d)(3).
Alternatively, the parties may, by agreement, utilize the expedited procedure set forth
in this subsection. If the parties utilize this procedure, the motion may be noted for
consideration for the day the motion is filed. After the parties have conferred, a party
may submit any unresolved discovery dispute to the court through the following

1 procedure:

2 (A) The moving party shall be responsible for preparing and filing a joint LCR
3 37 submission to the court. An example of an LCR 37 submission is attached as
4 Appendix B.

5 (B) The moving party may draft an introductory statement, setting forth the
6 context in which the dispute arose and the relief requested. Each disputed
7 discovery request and the opposing party's objection/response thereto shall be
8 set forth in the submission. Immediately below that, the moving party shall
9 describe its position and the legal authority which supports the requested relief.

10 The moving party shall provide the opposing party with a draft of the LCR 37
11 submission and shall also make the submission available in computer-readable
12 format.

13 (C) Within seven days of receipt of the LCR 37 submission from the moving
14 party, the opposing party shall serve a rebuttal to the moving party's position for
15 each of the disputed discovery requests identified in the motion. The opposing
16 party may also include its own introductory statement. The opposing party's
17 rebuttal for each disputed discovery request shall be made in the same document
18 and immediately following the moving party's statement in support of the relief
19 requested. If the opposing party no longer objects to the relief requested, it shall
20 so state and respond as requested within seven days from the date the party
21 received the draft LCR 37 submission. If the opposing party fails to respond, the
22 moving party may file the LCR 37 submission with the court and state that no
23 response was received.

24 (D) The moving party's reply, if any, in support of a disputed discovery request
shall follow the opposing party's rebuttal for such request in the joint
submission and shall not exceed one half page for each reply.

(E) The total text that each side may contribute to a joint LCR 37 submission
shall not exceed twelve pages. This limit shall include all introductory or
position statements, and statements in support of, or in opposition to, a
particular request, but shall not include the discovery request itself.

(F) Each party may submit declarations for the purpose of attaching documents
to be considered in connection with the submission and to provide sufficient
information to permit the court to assess expenses and sanctions, if appropriate.
If a party fails to include information sufficient to justify an award of fees, it
shall be presumed that any request for fees has been waived. A declaration shall
not contain any argument.

(G) The moving party shall prepare a proposed order that identifies each of the
discovery requests at issue, with space following each of the requests for the
court's decision. This proposed order shall be attached as a Word or Word
Perfect compatible file to an e-mail sent to the e-mail orders address of the

1 assigned judge pursuant to the court's Electronic Filing Procedures.

2 (H) The moving party shall be responsible for filing the motion containing both
3 parties' positions on the discovery disputes, any declarations submitted by the
4 parties, and the proposed form of order. The moving party shall certify in the
5 motion that it has complied with these requirements. The submission shall be
6 noted for consideration on the date of filing and shall be described as a "LCR 37
7 Joint Submission."

8 (I) If all parties agree to do so, they may use the expedited joint motion
9 procedure for other types of motions, including but not limited to motions to
10 seal, motions for relief from a deadline, and motions in limine. The timing and
11 procedure shall be the same as set forth above except that (1) instead of setting
12 forth the disputed discovery request and the opposing party's objection/response
13 thereto, the moving party should set forth the relief requested and the legal
14 authority that supports the requested relief, and (2) the moving party must
15 submit a proposed order that sets forth the relief requested.

16 Sample form Appendix B.

17 **CIVIL RULES**

18 **APPENDIX B. SUBMISSION REGARDING REQUEST FOR PRODUCTION**

19 **See LCR 37**

20 The Honorable Robert S. Lasnik

21 UNITED STATES DISTRICT COURT
22 WESTERN DISTRICT OF WASHINGTON
23 AT SEATTLE

24 JONES ACTOR,)	
)	No. C01-9999RSL
)	
Plaintiff,)	
)	LCR 37 SUBMISSION REGARDING
v.)	REQUEST FOR PRODUCTION
)	NO. 17
BIG ROSE FLOWER)	NOTE ON MOTION CALENDAR:
COMPANY,)	[insert date]
)	
Defendant.)	

25 **I. MOVING PARTY'S INTRODUCTORY STATEMENT**

1 Defendant Big Rose Flower Company is the moving party for this submission. Plaintiff
2 Jones Actor is seeking more than \$2.5 million in damages, claiming that at the time he
3 purchased Big Rose stock, Big Rose allegedly failed to disclose that the property owned by
4 Big Rose for growing flowers would be unable to produce a suitable crop in 2000. It is
5 claimed that these alleged misstatements violated Section 10(b) of the 1934 Securities
6 Exchange Act and the Washington Securities Act.

7 These allegations are untrue. Further, Actor is a director of a company that is also in the
8 flower business, Fleurs 'R' Nous Company, and he was undoubtedly aware of the problems
9 caused by the 1999 drought, which affected all flower producing companies in the Northwest.

10 **II. RESPONDING PARTY'S STATEMENT**

11 Jones Actor purchased nearly \$3 million of stock in Big Rose--stock that is worth less
12 than \$500,000 today. He purchased this substantial amount of stock because of glowing
13 reports from Big Rose regarding its prospects for future profits.

14 However, things were not as rosy as they seemed. All of Big Rose's land holdings
15 used to produce flowers were not only severely parched by the 1999 drought, but also
16 contaminated with chemicals because of a mistake in choosing fertilizers. Big Rose knew
17 that it was unlikely that these chemicals could be removed from the soil in time to produce
18 a profitable crop for 2000. When this information was finally disclosed to the public, Big
19 Rose stock plummeted in value.

20 **III. DISPUTED DISCOVERY REQUESTS**

21 **REQUEST FOR PRODUCTION 17:** Please produce all income tax returns for 1995
22 through 2000 for the Fleurs 'R' Nous Company.

23 **RESPONSE:** Actor objects to this request on the grounds that it calls for information
24 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
Further, the information sought is confidential.

25 **Moving Party's Argument**

26 Actor claims that he was deceived by the alleged omissions of information from Big
27 Rose's public statements. To defend against this claim, Big Rose will show that Actor is a
28 sophisticated individual, who was aware of the risks in the flower business and who also
29 had information obtained by Fleurs 'R' Nous regarding the problems that Big Rose was
30 having with its land at the time he was buying Big Rose stock. Defendants in security
31 cases are properly allowed to obtain tax returns, because they help show the plaintiff's
32 degree of sophistication and understanding of the risks of investment. *Davis v. Big Co.*,
33 123 F.3d 777, 788 (9th Cir. 1999). Further, the tax return may identify individuals with
34 knowledge of Actor's understanding of the industry.

35 **Responding Party's Response**

1 While it is true that tax returns may be produced to show the degree of sophistication
2 of a securities plaintiff, the tax returns sought here are not Actor's personal tax returns, but
3 rather the tax returns for a company in which he is a director and part owner. That
4 company is not a party to these proceedings. Non-parties should not be forced to produce
5 their tax returns absent very compelling reasons. *Westminster v. Abbey*, 867 F.3d 309, 312
(9th Cir. 1999). No compelling reasons have been presented. Fleurs 'R' Nous is not a
6 publicly traded company, and its financial and other information is maintained as
7 confidential. It is a competitor of Big Rose, and disclosure of this information through
8 discovery could be harmful.

9
10 **Moving Party's Reply**

11 Actor's supposed concern about Fleurs 'R' Nous' confidential information can be
12 addressed through a protective order. Big Rose will agree not to disclose this information
13 to persons other than counsel and experts absent agreement of the parties or further order
14 of the court. While Fleurs 'R' Nous is not a party, its tax returns may contain information
15 about money spent addressing the drought problem that was common to several floral
16 companies. Thus, the information could lead to the discovery of admissible evidence.

17 **CERTIFICATION**

18 I certify that the full response by the responding party has been included in this
19 submission, and that prior to making this submission the parties conferred to attempt to
20 resolve this discovery dispute in accordance with LCR 37(a).

21 DATED:

22
23 _____
24 Ira Just (WSBA #1234) Attorneys for Big Rose Company Moving Party

LCR 37 SUBMISSION
(C01-9999RSL)

Law Firm of Lawyers
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Seattle, Washington 98104