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

6 GAIL VINCENT,

7 Plaintiff,

8 v.

9 BELINDA STEWART, et al,

10 Defendants.

Case No. 3:16-cv-05023-RBL-TLF

ORDER DENYING PLAINTIFF'S
MOITON TO COMPEL AND
EXTEND DISCOVERY DEADLINE

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13 This matter comes before the Court on Mr. Vincent's motion to compel and extend the
14 discovery deadline (Dkt. 77). Having considered that motion and the balance of the record, the
15 Court hereby finds and ORDERS as follows:

16 Mr. Vincent filed his motion on April 12, 2017, requesting that the Court compel the
17 defendants to produce an un-redacted copy of a document that they previously provided by
18 redacted copy. *Id.* at p. 1; *see also* Dkt. 79, pp. 1-2; Dkt. 80, Declaration of Marko L. Pavela, p.
19 1,6. The defendants assert that the redactions "protect parts of an e-mail discussion between
20 DOC employees where they discuss legal conclusions, opinions, and theories provided by their
21 attorneys and related to potential litigation." Dkt. 79, p. 2; *see also* Dkt. 80, p. 2. Mr. Vincent
22 asserts that because the e-mail communication is between two non-attorneys, it "cannot be
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1 considered privileged and must be produced as relevant to this case and discoverable.” Dkt. 77,
2 p. 2.

3 “Ordinarily a party may not discover documents and tangible things that are prepared in
4 anticipation of litigation or for trial by or for another party or its representative (including the
5 other party’s attorney, consultant, surety, indemnitor, insurer, or agent).” Federal Rule of Civil
6 Procedure (FRCP) 26(b)(3)(A). Such materials “may be discoverable if:

- 7 (i) they are otherwise discoverable under [FRCP] 26(b)(1); and
8 (ii) the [moving] party shows that it has substantial need for the materials
9 to prepare its case and cannot without undue hardship, obtain their substantial
10 equivalent by other means.

11 *Id.* FRCP 26(b)(1) in turn provides:

12 . . . Unless otherwise limited by court order, the scope of discovery is as
13 follows: Parties may obtain discovery regarding any nonprivileged matter that
14 is relevant to any party’s claim or defense and proportional to the needs of the
15 case, considering the importance of the issues at stake in the action, the
16 amount in controversy, the parties’ relative access to relevant information, the
17 parties’ resources, the importance of the discovery in resolving the issues, and
18 whether the burden or expense of the proposed discovery outweighs its likely
19 benefit. . . .

20 The plain language of FRCP 26(b)(3)(A) shows the rule is not limited to discussions
21 between attorneys, but rather relates to “documents and tangible things that are prepared in
22 anticipation of litigation or for trial *by or for another party or its representative.*” *Id.* (emphasis
23 added). Mr. Vincent fails to establish that the defendants applied redactions to anything but
24 work-product-protected communication. The defendants assert, and the record supports the
25 assertion, that the redacted portion of the requested email contains discussions between DOC
employees about legal conclusions, opinions, and theories provided by their attorneys and related
to potential litigation. This falls within the work product protection.

Even if the redactions were discoverable, Mr. Vincent does not establish any showing of

1 a substantial need for them, other than his general assertion that the email communication is “in
2 direct relation to the specific issues involving [Defendant] Joseph Williamson.” Dkt. 77, p. 2.
3 The Court further reminds Mr. Vincent that before filing a motion to compel, it is necessary to
4 comply with the requirements of FRCP 37. A motion to compel “must include a certification that
5 the movant has in good faith conferred or attempted to confer with the person or party failing to
6 make disclosure or discovery in an effort to obtain it without court action.” FRCP 37(a)(1).

7 Mr. Vincent’s motion to compel does not include the required certification. *See* Dkt. 77.

8 In addition, the defendants allege that Mr. Vincent has not exhibited the spirit of civility in the
9 discovery process. Defense counsel states that Mr. Vincent and the defendants “have previously
10 resolved discovery related matters by phone.” Dkt. 79, p. 1; *see also* Dkt. 80, p. 2. On this
11 matter:

12 . . . [R]ather than requesting a phone call with Defendants’ counsel, [Mr.
13 Vincent] began by demanding an unredacted copy of a document already
14 produced, and threatening both a motion to compel, as well as a complaint to
15 “the bar” if Defendants did not comply. [Dkt.] 80, at ¶ 3. Defendants counsel
16 responded by letter, explaining that the redactions were made to protect
17 information covered by Attorney-Work Product Privilege. [Dkt.] 80, at ¶ 4.
18 Plaintiff chose not to reply, instead filing [his] motion to compel. [Dkt.] 80, at
19 ¶ 6. . . .

20 *Id.* at pp. 1-2. The plaintiff does not deny that this interaction happened, and he apologizes if he
21 was giving the impression of being abrupt. Dkt. 90. The Court would remind the plaintiff that the
22 rules of procedure in this Court contain an expectation of calm problem solving and professional
23 communication between counsel and unrepresented parties during the discovery phase and all
24 phases of a case in order to “secure the just, speedy, and inexpensive determination of every
25 action and proceeding.” FRCP 1, LCR 1(c)(6), and United States District Court for the Western
District of Washington, Introduction to the Civil Rules.

Accordingly, for all the above reasons, the plaintiff’s motion to compel and extend the

1 discovery deadline (Dkt.77) is DENIED.

2 Dated this 18th day of May, 2017.

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6 Theresa L. Fricke
7 United States Magistrate Judge
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