

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH ADAIR DAVIS,

Plaintiff,

V.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS et
al.,

Defendants.

CASE NO. 3:16-CV-05129-BHS-DWC

**ORDER DENYING MOTION TO
CONSOLIDATE**

The District Court has referred this action, filed pursuant to 42 U.S.C. §1983, to United States Magistrate Judge David W. Christel. Plaintiff, proceeding *pro se* and *in forma pauperis*, filed this civil rights Complaint pursuant to 42 U.S.C. § 1983.

Plaintiff has filed a Motion titled “Motion to Merge Linked Complaints.” Dkt. 79. The Court construes this as a Motion to Consolidate (“Motion”) pursuant to Federal Rule of Civil Procedure 42. *Id.* Defendants filed a Response. Dkt. 80.

The Court denies Plaintiff's Motion as the two cases involve different facts and defendants.

DISCUSSION

3 “If actions before the court involve a common question of law or fact, the court may: (1)
4 join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or
5 (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). Under Rule
6 42, the Court has “broad discretion” to consolidate cases pending in the same district either upon
7 motion by a party or *sua sponte*. *In re Adams Apple., Inc.* 829 F.2d 1484, 1487 (9th Cir. 1987).
8 In exercising this discretion, the Court “weighs the saving of time and effort consolidation would
9 produce against any inconvenience, delay, or expense that it would cause.” *Huene v. United*
10 *States*, 743 F.2d 703, 704 (9th Cir. 1984).

11 Plaintiff is proceeding *pro se* and *in forma pauperis* in two separate civil actions, both
12 filed pursuant to 42 U.S.C. § 1983 and alleging violations of his civil rights. *Davis v. Washington*
13 *Department of Corrections*, Case No. 3:16-cv-05129-BHS-DWC (“*Davis I*”); *Davis v. Hayes, et*
14 *al.*, Western District of Washington Case 2:16-cv-01709-RSM, (“*Davis II*”). The instant action,
15 *Davis I*, was filed on February 19, 2016. *Davis I* at Dkt. 1. Plaintiff is challenging his conditions
16 of confinement while housed at Washington Corrections Center. *Id.* at Dkt. 11. Plaintiff alleges
17 Defendants, all Department of Corrections employees, violated his rights under the First
18 Amendment, Eighth Amendment, Fourteenth Amendment and Americans with Disabilities Act
19 (“ADA”). *Id.* On September 1, 2016, the Court issued a Pretrial Scheduling Order, ordering
20 discovery be completed by March 1, 2017 and dispositive motions due by March 31, 2017. *Id.* at
21 Dkt. 44. On November 30, 2016, Defendants filed their Motion for Summary Judgment, *id.* at
22 Dkt. 59, which was re-noted for March 3, 2017 after granting Plaintiff’s Motion for Extension,
23 *id.* at Dkt. 74; Dkt. 77.

1 Plaintiff filed his second action, *Davis II*, on November 3, 2016. *Davis II* at Dkt. 1. The
2 Court has not ordered service of Plaintiff's complaint in *Davis II*. *Id.* at Dkt. 7 (Order Declining
3 Service and Granting Leave to Amend); Dkt. 10. In *Davis II*, Plaintiff is challenging his
4 conditions of confinement while housed at King County Jail. *Id.* at Dkt. 6; Dkt. 7. Plaintiff
5 purports to sue 47 employees of the King County Jail, Department of Adult and Juvenile
6 Detention, alleging the defendants violated his rights under the First Amendment, Eighth
7 Amendment, Fourteenth Amendment and ADA. *Id.*

8 Based on the Court's examination of these two actions, Plaintiff's Motion is denied.
9 While the two cases require application of similar laws, they do not involve the same set of facts
10 or the same parties. Moreover, *Davis II* is at a different procedural posture and the Court is
11 awaiting the filing of an amended complaint. Consolidation of the cases would cause prejudice
12 since a scheduling order regulating discovery and further proceedings has already issued in
13 *Davis I* and Defendants' Motion for Summary Judgment is pending.¹

14 Dated this 24th day of January, 2017.

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16 _____
17 David W. Christel
18 United States Magistrate Judge
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24 ¹ Defendants' Motion for Summary Judgment is ready for the Court's review on March 3,
25 2017. *Davis I* at Dkt. 59; Dkt. 77.