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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JESS R. SMITH,

10 Plaintiff,

11 v.

12 BARBARA GRONSETH, Y STUBBS,
13 S FRAKES, M OBENLAND, ROY
14 GONZALEZ, M HOLTHE,
WASHINGTON DEPARTMENT OF
CORRECTIONS,

15 Defendants.

CASE NO. 3:16-CV-05775-BHS-DWC

ORDER

16 The District Court has referred this 42 U.S.C. § 1983 action filed by Plaintiff Jess R.
17 Smith to United States Magistrate Judge David W. Christel. Presently before the Court is
18 Plaintiff Jess. R. Smith's "Motion to Reopen Discovery" ("Motion"). Dkt. 65.¹

19 The Court concludes Plaintiff has not shown good cause or excusable neglect for the
20 untimely discovery requests. Accordingly, Plaintiff's Motion is denied. Further, in light of
21 "Defendants' Answer to Plaintiff's Amended Civil Rights Complaint" (Dkt. 66), the Court
22 amends the Pretrial Scheduling Order (Dkt. 27).

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24 ¹ In the Motion, Plaintiff also requests injunctive relief related to a separate issue. Dkt. 65, pp. 4-5. The Court will address the request for injunctive relief in a separate Report and Recommendation.

1 **I. Motion to Reopen Discovery**

2 In the Motion, Plaintiff requests additional time to conduct discovery. Dkt. 65. Pursuant
3 to Federal Rules of Civil Procedure 6(b) and 16(b), the Court may extend a deadline for good
4 cause. However, if a motion for an extension is made *after* a deadline, the Court may not extend
5 time absent a showing of excusable neglect. Fed. R. Civ. P. 6(b)(1)(B).

6 Discovery began in this case on November 23, 2016. Dkt. 27. On April 11, 2017, the
7 Court stayed this case pending resolution of Plaintiff’s interlocutory appeal to the Ninth Circuit.
8 Dkt. 47. On January 12, 2018, because Plaintiff’s appeal had resolved, the Court issued an Order
9 lifting the stay and amending the briefing schedule to allow the parties to file supplemental briefs
10 to Defendants’ then-pending Motion for Summary Judgment. *See* Dkt. 53, 55. The Order
11 allowed Plaintiff to file a supplemental response on or before April 16, 2018, and allowed
12 Defendants to file an optional supplemental reply on or before April 20, 2018. Dkt. 55, p. 2.
13 Therefore, Defendants’ Motion for Summary Judgment was due to come ready for the Court’s
14 consideration on April 20, 2018. *Id.*; *see also* Dkt. 53.

15 Meanwhile, on January 19, 2018, because the stay had been lifted, Defendants’ attorney
16 responded to discovery requests Plaintiff had sent him prior to the stay being issued. Dkt. 67,
17 Pavela Dec., ¶ 11. Defendants’ attorney received additional discovery requests from Plaintiff on
18 April 11, 2018. *Id.* at ¶ 12. Defendants’ attorney returned the discovery requests to Plaintiff
19 unanswered, contending the requests were untimely. *Id.* at ¶ 13; *see also* Dkt. 65, p. 6.

20 The Federal Rules of Civil Procedure require parties to respond to interrogatories and
21 requests for production within thirty days after being served with them. Fed. R. Civ. P. 33(b),
22 34(b). Thus, given the time limits set forth in the Federal Rules of Civil Procedure, and that
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1 Defendants' Motion for Summary Judgment was due to come ready on April 20, 2018, Plaintiff
2 had between January 12, 2018 and March 21, 2018, to serve Defendants with discovery requests.

3 On April 30, 2018, Plaintiff signed, effectively filing, the present Motion. Dkt. 65.
4 Accordingly, Plaintiff's Motion is untimely and the Court may not grant the Motion unless
5 Plaintiff shows excusable neglect. Fed. R. Civ. P. 6(b)(1)(B).

6 Plaintiff asserts he should be granted additional time to conduct discovery because the
7 discovery he was given after the stay was lifted provided "newly discovered facts" and resulted
8 in his further discovery requests. Dkt. 65, pp. 5-6. However, the record reflects Defendants most
9 recently sent Plaintiff discovery on January 19, 2018 – nearly three months before Plaintiff's
10 next discovery requests in April 2018. *See id.* at 2-3, 5-6, 9; Dkt. 67, Pavela Dec., ¶¶ 11-12.
11 Further, although Plaintiff asserts Defendants sent him discovery "out of order" and in small
12 font, the record demonstrates the discovery was not so indecipherable as to warrant a nearly
13 three-month delay between Plaintiff's receipt of this discovery and his next discovery requests.
14 Dkt. 65, p. 3; *see also* Dkt. 60-2, pp. 4-17. The Court also notes Plaintiff had more than four
15 months prior to the stay being issued to conduct discovery. *See* Dkt. 27, 47. Therefore, Plaintiff
16 has failed to show either good cause or excusable neglect.

17 For the above stated reasons, the Court finds Plaintiff has not shown good cause or
18 excusable neglect sufficient to reopen the time to conduct discovery. Accordingly, the Motion
19 (Dkt. 65) is denied.

20 **II. Pretrial Scheduling Order Amendment**

21 On April 24, 2018, the Court issued an Order granting Plaintiff's Motion to Amend. Dkt.
22 62. In light of "Defendants' Answer to Plaintiff's Amended Civil Rights Complaint" (Dkt. 66),
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1 the Court amends the Pretrial Scheduling Order (Dkt. 27) as follows:

- 2 • Dispositive motions are due on or before July 9, 2018.

3 This amendment to the scheduling order does not reopen discovery.

4 Dated this 7th day of June, 2018.

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7 David W. Christel
8 United States Magistrate Judge
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