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

10 JOHN THOMAS ENTLER,

11 Plaintiff,

12 v.

13 ROY GONZALEZ, et al.,

14 Defendants.

CASE NO. 3:17-cv-05407-RBL-JRC

ORDER DENYING MOTION TO
COMPEL AND DENYING
MOTION TO STRIKE

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16 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
17 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §
18 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR 3 and MJR 4.

19 Plaintiff John Thomas Entler has filed a motion to compel discovery, attaching a
20 certification stating that he has met and conferred with defendants. However, plaintiff only met
21 and conferred with defendants about two discovery materials and has not yet met or conferred
22 about the remaining eight discovery materials he identified in his motion. Therefore, the motion
23 is denied because it is premature.
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1 **BACKGROUND**

2 Plaintiff originally filed his complaint in May of 2017. Dkt. 1. He alleges that defendants
3 were deliberately indifferent to plaintiff’s safety when they installed Lexis Nexis on the prison
4 computers, thereby allowing other prisoners to learn of plaintiff’s underlying conviction and
5 allegedly leading to other prisoners harassing and threatening plaintiff. Dkt. 8. He alleges that
6 defendants have further refused to remove Lexis Nexis from the computers or censor his name in
7 the system. *Id.* After the Court ordered service of the complaint and entered a pretrial scheduling
8 order (Dkts. 9, 14), plaintiff filed a motion to compel (Dkt. 21).

9 In his motion, plaintiff argues that defendants have failed to provide the mandatory initial
10 disclosures required by the Court’s mandatory pretrial scheduling order. *Id.* He requests that the
11 Court compel defendants to provide a group of ten allegedly discoverable materials. *Id.* at 3-5.
12 He has also included a certificate stating he met and conferred with defendants to resolve the
13 dispute without success. *Id.* at 11-12.

14 Defendants responded, stating that plaintiff had not, in fact, met or conferred with
15 defendants. Dkt. 30. They argue that, though plaintiff discussed two discovery issues with
16 defendants’ counsel, the discussion did not include the discovery items identified in the motion
17 and therefore the motion is premature. *Id.* Plaintiff filed a reply, alleging that he “illustrated to
18 [defendants’ counsel] documents/records [defendants] could have produced, but didn’t,” and
19 further states that defendants were on notice they were not in compliance with the pretrial
20 scheduling order. Dkt. 32 at 2. Defendants filed a surreply, requesting plaintiff’s statement be
21 stricken because it is, “at a minimum, quite misleading.” Dkt. 34 at 1. Plaintiff then filed a
22 response to that surreply. Dkt. 36. Because it was filed in violation of local rules (*see* LCR 7), the
23 Court does not consider plaintiff’s response to the surreply.

1 **DISCUSSION**

2 **I. Motion to Strike**

3 Defendants have filed a surreply moving to strike from plaintiff’s reply the “assertion that
4 he ‘illustrated to [opposing counsel] documents/records [which] could have [been] produced, but
5 [weren’t]’.” Dkt. 34 at 1 (citing Dkt. 32 at 2, ¶ 2.3). The Court may strike from a pleading any
6 “redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. Proc. 12(f). When a
7 party moves to strike material contained in a reply brief, a surreply is the appropriate vehicle.
8 LCR 7(g). Here, defendants have not specified whether they think plaintiff’s statement is
9 redundant, immaterial, impertinent, or scandalous, but have requested the Court strike plaintiff’s
10 statement because the statement is, “at a minimum, quite misleading.” Dkt. 34 at 1. The Court
11 declines to strike the material, although it is minimally useful.

12 The Court agrees with defendants that a general statement that “[defendants] continue to
13 violate the Courts [sic] mandatory discovery order” (Dkt. 35-1 at 2) is not enough to place
14 defendants on notice of specific documents plaintiff believes defendants have failed to produce.

15 **II. Motion to Compel**

16 While a party may apply to the court for an order compelling discovery, the movant must
17 first meet and confer with the party failing to make disclosure or discovery in an effort to resolve
18 the dispute without court action. Fed. R. Civ. P. 37 (a)(1); LCR 37(a)(1). In addition, when filing
19 a motion to compel, the movant must include a certification, in the motion or in a declaration or
20 affidavit, that the movant has in good faith conferred or attempted to confer with the party
21 allegedly failing to make disclosure or discovery in an effort to resolve the dispute without court
22 action. LCR 37(a)(1). The certification must list the date, manner, and participants to the
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1 conference. *Id.* If the movant fails to include such a certification, the Court may deny the motion
2 without addressing the merits of the dispute. *See id.*

3 Plaintiff has filed a certification stating that he and defendants' counsel spoke about their
4 discovery dispute on February 5, 2018. Dkt. 21 at 11-12. However, both parties have also
5 provided evidence that, though the parties met and conferred on February 5, 2018, they only met
6 and conferred about two specific articles of discovery -- not the ten discovery requests contained
7 in plaintiff's motion to compel. *See* Dkts. 21 at 13; 36 at 7; Dkts. 29, 35. Though plaintiff need
8 not meet and confer with defendants' counsel in person, he must meet and confer about the
9 specific discovery requests he believes defendants are not complying with before he files the
10 motion to compel. *See, e.g., Moore v. Magat*, No. 140cv003608-HSG (PR), 2015 WL 5611438
11 at *1 (N.D. Cal. 2015); *Madsen v. Risenhoover*, No. C 09-5457 SBA (PR), 2012 WL 2873836 at
12 *3 (N.D. Cal. 2012) (both noting that defendants must be notified of the specific discovery they
13 are allegedly withholding before plaintiff may file a motion to compel). Moreover, defendants
14 claim that they have now provided the discovery requested in the February 5, 2018 conversation.
15 Dkts. 21 at 3-4; 35 at 2 (providing a contract between the Department of Corrections and Lexis
16 Nexis, and a declaration from defendant Roy Gonzalez regarding a different matter). Though
17 plaintiff has met and conferred about two discovery disputes, the evidence before the Court
18 indicates that he has not met and conferred about the remainder of the discovery identified in his
19 motion to compel. Therefore, the Court denies plaintiff's motion to compel.

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1 **CONCLUSIONS**

2 For the reasons stated above, defendants’ motion to strike (Dkt. 34) is denied and
3 plaintiff’s motion to compel (Dkt. 21) is also denied. The parties still have until May 1, 2018, to
4 file dispositive motions. Dkt. 14.

5 Dated this 9th day of April, 2018.

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8 J. Richard Creatura
9 United States Magistrate Judge
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