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

8 WASTE ACTION PROJECT,

9 Plaintiff,

10 v.

11 PORT OF OLYMPIA,

12 Defendant.

CASE NO. C17-5445 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
COMPEL

13 This matter comes before the Court on Defendant Port of Olympia's ("Port")  
14 amended motion to compel testimony of non-party witness Paul Stasch ("Stasch"). Dkt.  
15 95.

16 On July 12, 2019, the parties deposed Stasch. Dkt. 96, ¶ 3. The Port's counsel  
17 asked Stasch whether he had a valid driver's license while he worked for the Washington  
18 Department of Ecology ("Ecology") in 2011, Dkt. 96-2 at 4, questions regarding Stasch's  
19 resignation, *id.* at 5, and details about a lecture he may have given at a local community  
20 college, *id.* at 5-6. Stasch refused to answer these questions.

21 On August 21, 2019, the Court granted the Port's motion for leave to file a  
22 discovery motion past the discovery deadline. Dkt. 69. On August 22, 2019, the Port

1 filed a motion to compel another deposition of Stasch to ask questions “regarding his  
2 criminal history and disciplinary history while employed at Ecology.” Dkt. 70. On  
3 September 9, 2019, Plaintiff Waste Action Project (“WAP”) responded and argued that  
4 the Court should deny the motion because the Port failed to serve the motion on Stasch or  
5 his personal counsel. Dkt. 78 at 3. WAP’s argument appeared valid because neither  
6 Stasch nor his counsel were included in the Port’s certificate of service. Dkt. 72. On  
7 September 16, 2019, the Port withdrew its motion and filed this amended motion. Dkts.  
8 93, 95. On September 30, 2019, WAP responded. Dkt. 107. On October 1, 2019, Stasch  
9 responded. Dkt. 113. On October 4, 2019, the Port replied. Dkt. 115. On October 8,  
10 2019, WAP filed a surreply requesting that the Court strike new facts and argument the  
11 Port submitted for the first time in reply. Dkt. 122.<sup>1</sup>

12 In this case, WAP and Stasch argue that the Court should deny the Port’s motion  
13 for both procedural and substantive reasons. First, WAP argues that the Port’s decision  
14 to withdraw its original motion after WAP’s response and file an amended motion  
15 correcting the deficiencies identified by WAP violates the letter and intent of the local  
16 rules of procedure. Dkt. 107 at 4–6. The Court disagrees because WAP responded to the  
17 substantive merits of both motions. This is not a situation where a party repeatedly files  
18 motions only to withdraw them after forcing the other party to respond. Attorney  
19 oversight in serving the relevant parties does not warrant denial of the motion or  
20 sanctions.

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22 <sup>1</sup> The Court denies this motion as moot because those facts and argument are irrelevant to  
the Court’s analysis.

1           Second, WAP argues that the motion violates the Court’s deadlines. *Id.* at 6–7.  
2 This argument is without merit because the Court granted the Port leave to file the  
3 motion.

4           Third, Stasch argues that the Port failed to meet and confer before filing the  
5 motion. Dkt. 113 at 5–7. The Port contends that it did meet and confer with Stasch’s  
6 counsel regarding a new deposition. Dkt. 115. In fact, the Port submits an email  
7 exchange between the parties after the Port filed this motion with an offer from Stasch to  
8 resume his deposition if the Port withdrew its motion and request for sanctions. Dkt.  
9 116-4 at 4. Inexplicably, the Port refused this offer suggesting that it might be more  
10 interested in sanctions than the subject of Stasch’s testimony. Moreover, the Port has  
11 repeatedly asserted that this case is nothing more than an attempt, even unethical in some  
12 respects, by WAP and its counsel to exact penalties and attorney’s fees for baseless  
13 allegations. *See, e.g.*, Dkt. 80 at 9 (“WAP’s citizen suit is an attempt to piggyback on  
14 Ecology’s enforcement actions by seeking its own set of penalties and damages—and of  
15 course attorney fees and litigation costs”). It would be clearly improper if the Port is  
16 seeking its own fees in retaliation. Regardless of the actual motive, the Court will not  
17 condone the denial of efforts to resolve a discovery dispute before requesting the Court’s  
18 intervention. The Court finds that this is reason alone to deny the motion, but it will  
19 briefly address the merits.

20           Regarding the subject matter of the deposition, WAP and Stasch argue that any  
21 further questions regarding his driver’s license or resignation would be irrelevant and  
22 duplicative. The Court agrees. To the extent such additional testimony might be

1 marginally relevant, the Port should have sufficient information from the previous  
2 deposition and other sources to competently attack his credibility on the issues set forth in  
3 the complaint. Therefore, the Court **DENIES** the Port's amended motion to compel.

4 **IT IS SO ORDERED.**

5 Dated this 19th day of November, 2019.

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BENJAMIN H. SETTLE  
United States District Judge