

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

THADDEUS JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 17-3089-EFM-KGG
	)	
JEFF EASTER, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM & ORDER ON MOTION TO COMPEL**

Now before the Court is Plaintiff’s “Motion to Compel Discovery and Sanctions,” filed *pro se*. (Doc. 44.) Having reviewed the submissions of the parties, Plaintiff’s motion is **GRANTED**.

**FACTUAL BACKGROUND**

Plaintiff Thaddeus Jones brings civil rights claims, *pro se*, seeking monetary damages and punitive damages against the named Defendants as a result of injuries he alleges he sustained while being held as a pretrial detainee at the Sedgwick County Detention Facility in Wichita, Kansas (“SCDF”). (*See* Doc. 1.) Plaintiff alleges that when he returned to his cell after breakfast on March 6, 2017, his

cell door was closed and secured. Five minutes later, another inmate walked up to Plaintiff’s cell door and Defendant Officer Melendez, after just letting Plaintiff into the cell, let the other prisoner into Plaintiff’s cell. Plaintiff alleges that Officer Melendez had just witnessed

Plaintiff violently shoving the other prisoner because he had stepped in front of Plaintiff in the breakfast line. After entering Plaintiff's cell, the prisoner assaulted Plaintiff and Plaintiff received injuries, including a laceration requiring sutures, which were photographed and treated. Plaintiff alleges the incident was foreseeable and no reasonable person would let a second prisoner into a single-person cell. Plaintiff alleges that his cell is located in an 'aggravated pod' which calls for heightened awareness and security. Plaintiff alleges that the SCDC and Officer Melendez had a duty of care to protect Plaintiff from foreseeable harm by another inmate.

(Doc. 5, at 1-2.) Defendants generally deny Plaintiff's allegations.

The discovery requests at issue in the present motion were mailed by Plaintiff to counsel for Defendant Jeff Easter ("Defendant" or "Defendant Easter") on September 26, 2018, making responses due on or before October 29, 2018.

(Doc. 44, at 1.) Defendant's responses were hand-delivered on November 9, 2018, some 12 days late. (*Id.*, at 2.) Defendant does not dispute this. (Doc. 45, at 4.)

Rather, Defendant attempts to excuse its untimeliness by directing the Court to an email sent by Laura Oblinger, Defendant's in-house counsel.

In her notes, Ms. Oblinger indicates the nine days Sheriff Easter was unavailable to assist in responding to Plaintiff's discovery requests following service of same, as well as the five days she was also out of town during the response period.

...

While Defendant and his counsel did not confer with Plaintiff regarding any extension of a response time in light of the limited availability of Sheriff Easter, this gesture would likely have proven futile in light of Plaintiff's prior conduct. In seeking an extension of time

to respond to Plaintiff's discovery requests for individuals who are not yet properly parties to this action pending a ruling on Defendant's Motion to Dismiss, Plaintiff filed an untimely brief in opposition to the extension. In virtually all pleadings, including the instant motion, and oral communications with this Court involving discovery issues, Plaintiff has accused Defendant and his counsel of illegal conduct, up to and including spoliation of evidence, and has further taken the step of filing a bogus ethical complaint against counsel with the Kansas Disciplinary Administrator. Rather than seeking additional delay, counsel attempted to expedite responses as quickly as feasible, and provide them to Plaintiff.

(*Id.*, at 4-5.) Defendant did not file a motion requesting an extension of time from the Court to respond to Plaintiff's discovery requests.

### **ANALYSIS**

Plaintiff initially argues that Defendant Easter "failed to timely respond within thirty (30) days as required by Fed.R.Civ.P. Rule (33) Interrogatories." (Doc. 44, at 1.) Plaintiff states that responses were due on or before October 29, 2018, but did not receive Defendant's responses until November 9, 2018, "some 12 days late." (*Id.*, at 1-2.) As such, Plaintiff contends that Defendant's objections are untimely and "waived as a matter of law." (*Id.*, at 2.)

Defendant admits that Plaintiff "did not receive responses to the discovery within 30 days." (Doc. 45, at 4.) As discussed above, defense counsel indicates that both she and Defendant Easter were unavailable for a certain number of days following the service of the discovery requests. (*Id.*, at 4, 8.) Defense counsel

attended a “religious issues conference” for five days in October while Defendant Easter took a few sick days and attended the Kansas Sheriff’s Association conference. (*Id.*, at 8.) The Court notes that Defendant’s attendance at the conference occurred *after* the deadline to respond to the discovery requests had already passed. Further, defense counsel returned from her conference several days before the deadline to serve the discovery responses – or to file a timely motion for an extension to respond. The Court also surmises that counsel’s and Defendant’s absences caused by attending the conferences were both anticipated well in advance.

As also discussed above, Defendant contends that attempting to confer with Plaintiff regarding an extension to respond to the discovery requests would have been a waste of time. Defendant points to other instances of Plaintiff being uncooperative in support of his allegation that “this gesture would likely have proven futile in light of Plaintiff’s prior conduct.” (*Id.*, at 4.)

The Court finds that Defendant’s stated reasoning for failing to provide timely answers does not *excuse* the failure to comply by the clear language of the Federal and Local Rules. According to Fed.R.Civ.P. 33(b), a “responding party *must serve its answers and any objections within 30 days* after being served with the interrogatories.” (Emphasis added.) The rule continues that “[a]ny ground not

stated in a timely objection is waived unless the court, for good cause, excuses the failure.” *Id.*, at (b)(4). To establish “good cause,” a party must show

‘at least as much as would be required to show excusable neglect.’ The party failing to assert timely objections must show it could not have reasonably met the deadline to respond despite due diligence. Mistake of counsel, ignorance of the rules, or lack of prejudice to the opposing party generally does not constitute ‘good cause.’

*Everlast World’s Boxing Hdqtrs. Corp. v. Ringside, Inc.*, No. 13-2150-CM-KGG, 2104 WL 281-15515, at \*1-2 (quoting *Linnebur v. United Telephone Ass’n*, 10–1379–RDR, 2012 WL 1183073, at \*6 (D. Kan. April 9, 2012)).

It is undisputed that the responses were due within 30 days. If Defendant was unable to meet that deadline, he should have attempted to confer with Plaintiff as to an extension of time to respond and then file the appropriate motion, regardless of whether Defendant assumed Plaintiff would or would not agree to the requested extension. Also, while prior consultation with an opposing party is preferred, Defendant could have simply filed a motion for extension of time without consulting Plaintiff.

The Court acknowledges the absences of defense counsel and Defendant Sheriff Easter. That stated, even assuming “these issues may have made it difficult for ... counsel to timely respond to the discovery requests, they do not excuse [responding party’s] failure to request a timely extension to do so.” *Everlast*, 2104

WL 281-15515, at \*2. Based on the timeline provided by Defendant (Doc. 45, at 8), the absences – most of which were planned – would not have inhibited Defendant from requesting an extension from the Court. Thus, even if the Court assumes the absences provide Defendant with good cause for failing to respond to the discovery requests in a timely manner, Defendant has failed to provide any cause for choosing not to file a motion to extend the deadline to do so. Even assuming *arguendo* that Plaintiff would have objected to the requested extension, this does not necessarily mean the Court would have denied the request. Simply stated, an opposing party’s anticipated refusal to agree to an extension does not excuse a party from requesting the extension.

Defendant was not free to merely ignore the deadline, ignore the Federal and Local Rules, and file his discovery responses when it was convenient for him. Although the Court acknowledges the lack of cooperation the parties have encountered in the past, this does not excuse a party’s duties under the Federal and Local Rules. “Whatever the merits of ... counsel’s assertions, two wrongs do not make a right.” *Frederick v. Panda No. 1, LLC*, No. 17-0420-WJM-KMT, 2018 WL 4627105, at \*2 (D. Colo. Sept. 26, 2018) (refusing to excuse belated discovery responses merely because opposing counsel “took similar liberties with responding to discovery requests”).

The Court finds that Defendant's responses were served in an untimely manner, Defendant made no attempt to ask the Court for an extension of time to respond, and, by Defendant's own statements, this was done intentionally or in complete disregard of the relevant Federal and Local Rules. Based on the arguments contained in Defendant's response, Defendant, in this case, treated the Court's deadlines with complete indifference. Defendant's objections are **waived** and the Court **GRANTS** Plaintiff's motion to compel (Doc. 44).<sup>1</sup>

Defendant is instructed to provide complete and supplemental discovery responses to Plaintiff **within thirty (30) days** of the date of this Order. Responses are to be made **without objection**. Further, Defendant is specifically instructed to refrain from providing Plaintiff with evasive responses. Responses that include language such as "I did not prepare this document ... but it appears to be" and "[w]hile I did not prepare or review this report prior to responding to this question, it appears to be consistent" are improper. Defendant is instructed to provide direct answers that reflect information not only known to him, but to which he has access.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Compel (Doc. 44) is **GRANTED**.

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<sup>1</sup> The Court declines Plaintiff's request for monetary sanctions against Defendant. The waiver of Defendant's objections is a sufficient sanction under these circumstances.

IT IS SO ORDERED.

Dated this 31<sup>st</sup> day of January, 2019, at Wichita, Kansas.

s/ KENNETH G. GALE  
HON. KENNETH G. GALE  
U.S. MAGISTRATE JUDGE