



1 **II. Motion to Subpoena Non-Parties for Documents and Further Discovery**

2 Plaintiff previously filed a motion seeking issuance of blank subpoena forms in this  
3 action, on December 4, 2019. (ECF No. 92.) On March 23, 2020, the Court denied that motion,  
4 finding that Plaintiff had not provided sufficient information—including the number of  
5 subpoenas, whether he was seeking documents, testimony, or both, and whether the subpoenas  
6 were for the purpose of further discovery or trial—for the Court to grant the request. (ECF No.  
7 101.) The Court further explained that to the extent Plaintiff sought additional discovery, the  
8 extended discovery deadline had expired on June 22, 2018,<sup>1</sup> and to the extent Plaintiff sought  
9 subpoenas for the purpose of calling witnesses to appear at trial, the request was premature. (Id.)

10 On April 30, 2020, Plaintiff filed the instant motion, again seeking issuance of blank  
11 subpoenas. (ECF No. 102.) Defendants filed an opposition on May 8, 2020, and Plaintiff filed a  
12 reply on May 28, 2020. (ECF Nos. 105, 106.)

13 In his motion, Plaintiff argues that, pursuant to Federal Rule of Civil Procedure 45(a)(3),  
14 Plaintiff is only required to provide the Clerk of the Court with the case number to show that his  
15 case is pending to obtain subpoena forms from the Clerk’s Office. (ECF No. 102.) Plaintiff  
16 states that his original motion sought “subpoena forms,” meaning two or more, which is left to the  
17 Clerk’s discretion. Plaintiff clarifies that he is requesting subpoenas for the purpose of  
18 conducting further discovery from non-parties in this action. Plaintiff argues that when he  
19 responded to Defendant Neighbors’ first set of interrogatories, number 6, Plaintiff responded that  
20 the names and addresses of witnesses responsive to that interrogatory could be found in  
21 Defendant Neighbors’ personnel files, which Plaintiff would like access to in order to answer the  
22 interrogatory. (Id. at 3.) Plaintiff argues that Defendant Neighbors obtained the information  
23 Plaintiff mentioned, but turned it over in bad faith, in that Defendant Neighbors blacked out all  
24 the other names in the document, which Plaintiff argues removed his ability to obtain any  
25 information or statements from the other correctional officers who could have been witnesses.

26  
27 <sup>1</sup> The Court notes that the original deadline for completion of discovery was November 16, 2017.  
28 (ECF No. 21.) The deadline was extended to June 22, 2018 “for the purpose of allowing  
Defendants to depose Plaintiff and to file a motion to compel, if necessary.” (ECF No. 45.)

1 (Id. at 3–4.) Plaintiff argues that this redaction demonstrates that Defendant Neighbors was  
2 aware of Plaintiff’s request for the information, and that the information would have been  
3 favorable to Plaintiff’s case. (Id. at 4.) Plaintiff states that he gave notice to the Court and  
4 Defendant Neighbors that the information was not turned over, in his February 28, 2019  
5 opposition to Defendant’s motion for summary judgment. Plaintiff states that he made another  
6 request to Defendant Neighbors’ attorney for the requested information during the November 8,  
7 2019 settlement conference, and the request was denied. Plaintiff is now requesting blank  
8 subpoena forms in order to obtain the information from non-parties that are in direct possession of  
9 such information. Plaintiff requests a thirty-day extension of discovery to serve the subpoenas on  
10 the non-parties, and has listed specific documents he would like to request, though not the  
11 individuals on which the subpoenas would be served. (Id. at 7–8.)

12 In opposition, Defendants argue that Plaintiff did not serve a single discovery request  
13 during the course of the discovery period, and has presented no excuse for his lengthy delay in  
14 requesting subpoenas now, years after the close of discovery. (ECF No. 105.) Defendants further  
15 note that Plaintiff has been uncooperative throughout the discovery process, and that the Court  
16 imposed sanctions due to Plaintiff’s failure to provide less than complete and forthright discovery  
17 responses. (ECF No. 66.) Defendants argue that Plaintiff could have served discovery to obtain  
18 the names of material witnesses during discovery, or in response to Defendants’ motion for  
19 summary judgment, requested that the Court give Plaintiff additional time to conduct discovery to  
20 oppose his opposition. Instead, Plaintiff did not act in good faith, and waited over a year after the  
21 filing of Defendants’ motion for summary judgment to raise this issue. (ECF No. 105.)

22 In reply, Plaintiff again argues that his response to Defendant Neighbor’s first set of  
23 interrogatories, number six, constituted a request for the additional information. Further, Plaintiff  
24 argues that pursuant to Federal Rule of Civil Procedure 26(e)(1)–(2), Defendant Neighbors had a  
25 duty to supplement discovery responses, including an unredacted version of the document  
26 originally provided. Plaintiff argues that Defendant has not provided a justification for his failure  
27 to provide an unredacted version, and therefore Plaintiff should be permitted to seek the  
28 documents from non-parties by way of subpoenas. (ECF No. 106.)

1           **A. Discussion**

2           As discussed in the Court’s prior order denying Plaintiff’s request for blank subpoenas,  
3 the discovery deadline in this action expired on November 16, 2017, and was extended to June  
4 22, 2018 solely for the purpose of allowing Defendants to depose Plaintiff and to file any  
5 necessary motion to compel. (ECF Nos. 21, 45.) Though Plaintiff now requests an extension of  
6 that deadline, he does not provide sufficient justification for the Court to reopen discovery more  
7 than two years later, after the resolution of several rounds of dispositive motions, when this action  
8 is ready to proceed to trial.

9           Plaintiff’s request for Defendants to provide additional documentation, embedded in  
10 Plaintiff’s own response to one of Defendant Neighbors’ interrogatories, does not constitute a  
11 discovery request that obligates a response on the part of Defendant Neighbors. As stated in the  
12 Court’s March 16, 2017 Discovery and Scheduling Order, discovery would proceed pursuant to  
13 Federal Rules of Civil Procedure 1, 16, and 26–36. (ECF No. 21.) As such, Plaintiff could have  
14 served, for example: written interrogatories (pursuant to Rule 33), requests for production of  
15 documents (pursuant to Rule 34), or written requests for admission (pursuant to Rule 36), at any  
16 time during the discovery period. It is undisputed that Plaintiff did not serve any such requests on  
17 Defendants.

18           Even if, as Plaintiff argues, the Court construes Plaintiff’s request liberally due to his  
19 status as a pro se litigant and finds that Plaintiff’s response to Defendant Neighbors’ interrogatory  
20 number six should be treated as a request for production, the Court remains unpersuaded. If  
21 Plaintiff believed he had properly served a discovery request for that document, and Defendant  
22 Neighbors failed to adequately respond, Plaintiff should have filed a motion to compel pursuant  
23 to Federal Rule of Civil Procedure 37. Plaintiff did not do so.

24           Finally, Plaintiff’s argument that Defendant Neighbors was obligated to correct or provide  
25 missing documents pursuant to Rule 26(e)(1)–(2) also fails. The rule requires that a party  
26 supplement its disclosure or response “if the party learns that in some material respect the  
27 disclosure or response is incomplete or incorrect, and if the additional or corrective information  
28 has not otherwise been made known to the other parties during the discovery process or in

1 writing.” Fed. R. Civ. P. 26(e)(1)(A). However, Plaintiff has only argued that the document is  
2 incomplete due to the redaction, which does not make the document inherently incomplete or  
3 incorrect. Further, as discussed above, if Plaintiff believed that the document constituted an  
4 incomplete response to his discovery “request,” Plaintiff again should have filed a motion to  
5 compel pursuant to Federal Rule of Civil Procedure 37. Plaintiff did not do so.

6 **III. Motions for Attendance of Unincarcerated and Incarcerated Witnesses**

7 As noted above, on June 30, 2020, the Court vacated the trial date in this action and set a  
8 telephonic status conference for October 7, 2020, at 9:30 a.m. to discuss resetting the relevant  
9 deadlines and trial date. (ECF No. 110.) Pursuant to that order, the deadlines for submission of  
10 pretrial statements and motions for attendance of incarcerated and unincarcerated witnesses were  
11 vacated. (Id. at 2.)

12 Accordingly, Plaintiff’s motions for attendance of unincarcerated and incarcerated  
13 witnesses are premature. As such, the Court will not address the substance of the requests raised  
14 in those motions at this time. The deadlines for the re-filing of these motions will be reset upon  
15 confirmation of the continued trial date, which will be discussed at the telephonic status  
16 conference set for October 7, 2020, as discussed in the Court’s June 30, 2020 order. (ECF No.  
17 110.)

18 **IV. Order**

19 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 20 1. Plaintiff’s motion to subpoena non-parties for documents and further discovery, (ECF No.  
21 102), is DENIED; and  
22 2. Plaintiff’s motions for attendance of unincarcerated and incarcerated witnesses, (ECF  
23 Nos. 108, 111, 112, 115, 116), are DENIED, without prejudice, as premature.

24  
25 IT IS SO ORDERED.

26 Dated: July 22, 2020

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE