

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 SAMUEL SALDANA,

12 Plaintiff,

13 v.

14 M.E. SPEARMAN, et al.,

15 Defendants.
16

No. 2:18-cv-0319 AC P

ORDER

17 Plaintiff, a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C.
18 § 1983, has filed a motion for an extension of time to respond to defendant's motion for summary
19 judgment, ECF No. 58, and a motion for reconsideration, ECF No. 59.

20 Plaintiff requests an additional thirty days to respond to defendant's motion for summary
21 judgment, on the stated ground that defendant did not attach a complete copy of plaintiff's
22 deposition to the motion as required by court rules. ECF No. 58. The court will grant plaintiff's
23 request for an extension. However, plaintiff is advised that the Local Rules provide that only the
24 portions of the deposition upon which defendants rely are to be filed as exhibits. L.R. 133(j).
25 Furthermore, although defendant was required to provide a courtesy copy of the entire deposition

26 ///

27 ///

28 ///

1 to the court, which he did, there was no obligation for him to provide a complete copy to
2 plaintiff.¹ Id.

3 Plaintiff has also filed a motion for reconsideration in which he requests the undersigned
4 reconsider the denial of his motion to compel. ECF No. 59. By order filed January 28, 2021, the
5 undersigned denied plaintiff's motion to compel production of video interviews of two inmate-
6 witnesses. ECF No. 55. The motion was denied on the ground that it was filed over five months
7 after the deadline for filing motions to compel, with no explanation for the untimeliness. Id. at 1.
8 The court further noted that even if the motion were timely, "it is clear from the attachments to
9 the motion that counsel advised plaintiff that there were no videos responsive to his request, ECF
10 No. 54 at 6, 83, and the court cannot order defendant to produce something that does not exist."
11 Id. Plaintiff requests reconsideration on the ground that he wants to subpoena both inmates and
12 the lieutenant who conducted the interviews to testify that the interviews were video recorded.
13 ECF No. 59 at 1. He also requests that defendant be required to provide a complete copy of
14 plaintiff's deposition and that counsel be appointed to assist him in subpoenaing the witnesses.
15 Id. at 2-3.

16 Local Rule 230(j) requires that a motion for reconsideration state "what new or different
17 facts or circumstances are claimed to exist which did not exist or were not shown upon such prior
18 motion, or what other grounds exist for the motion; and . . . why the facts or circumstances were
19 not shown at the time of the prior motion." L.R. 230(j)(3)-(4). In seeking reconsideration
20 plaintiff fails to identify any new or different facts or circumstances, and does not explain why his
21 motion to compel was late. Furthermore, even if the court assumes that plaintiff's witnesses
22 testified that the interviews were video recorded, that does not mean that those recordings still
23 exist. The motion for reconsideration will therefore be denied. With respect to plaintiff's request
24 for a copy of his deposition, as explained above, defendant was not required to provide plaintiff
25 with a copy of plaintiff's deposition, and the court will not order him to do so. The court will also
26

27 ¹ Local Rule 133(j) does require a copy of the deposition be sent to all other parties if the court's
28 courtesy copy is transmitted by email. However, defendant submitted a paper courtesy copy to
the court.

1 deny the request for counsel because there is no need to subpoena the inmates and lieutenant to
2 testify that the interviews were video recorded.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for an extension of time, ECF No. 58, is GRANTED. Plaintiff shall
5 have thirty days from the service of this order to file his opposition to defendant's motion for
6 summary judgment.

7 2. Plaintiff's motion for reconsideration, ECF No. 59, is DENIED.

8 3. Plaintiff's motion for an order directing defendant to provide a copy of his deposition,
9 ECF No. 59, is DENIED.

10 4. Plaintiff's motion for appointment of counsel, ECF No. 59, is DENIED.

11 DATED: March 29, 2021

12 
13 ALLISON CLAIRE
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28