UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES EUSSE, JR., Plaintiff,

v.

M. VITELA, et al., Defendants.

Case No.: 3:13-cv-00916-BEN-NLS

ORDER DENYING MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES

(Dkt. No. 63)

Plaintiff James Eusse, Jr., a California prisoner proceeding pro se and in forma pauperis, commenced this civil rights action pursuant to 42 U.S.C. § 1983 on April 16, 2013. (Dkt. No. 1.) Before the Court is Plaintiff's motion to compel further responses to certain interrogatories. (Dkt. No. 63.) Defendants oppose Plaintiff's motion. (Dkt. No. 66.) For the reasons stated below, the Court **DENIES** Plaintiff's motion.

I. Relevant Background

a. Summary of Factual Allegations[1]

Plaintiff's surviving claims allege that Defendants Vitela and Whitman retaliated

[1] This summary is taken from the Court's earlier discovery dispute order. (See Dkt. No. 61.)

against him for exercising his First Amendment rights while he was incarcerated at Centinela State Prison. (Dkt. No. 41 at 9.) According to allegations in Plaintiff's Second Amended Complaint, on April 6, 2011, Defendant Vitela escorted Plaintiff to a holding cage. After strip searching Plaintiff and removing Plaintiff from the cage, Defendant Vitela allegedly planted an inmate manufactured weapon in the cage. (Dkt. No. 25 at 5, ¶ 20.) Plaintiff alleges that Vitela then made a false "114-D" lock-up order and a "115" report, and perjured himself at Plaintiff's trial. (Id. at 6, ¶ 22.) The alleged retaliation caused Plaintiff to fear further retaliation and kept him from pursuing his claims. (Id. at 5, ¶ 18.)

The Second Amended Complaint also details an incident with Defendant Whitman, in which Plaintiff disputed the time he would receive in the segregated housing unit for the contraband weapon charge. (See id. at 6, ¶ 29.) Plaintiff believed the time spent should have been only seven months, but his 128G form indicated it would be ten months. (Id. at 6, ¶ 30.) Plaintiff alleges Defendant Whitman was part of the Institutional Classification Committee ("ICC"). (Id. at 6, ¶ 29.) Defendant Whitman allegedly told Plaintiff he "would do the full ten months and then some and that Plaintiff should learn to keep his mouth shut." (Id. at 7, ¶ 32.) When Plaintiff asked for the 128G forms back, he alleges Defendant Whitman said "No, I'm going to keep them [because] you just caught your 3 friends an extra 2 months 15 days and I'm going to tell them that it's [because] of you that they're getting the extra time." (Id. at 7, ¶ 33.)

b. Procedural Background To The Parties' Discovery Dispute

On September 3, 2015, Plaintiff served Defendants with Interrogatory Numbers 1 and 2. (Dkt. No. 63 at 2, citing Exh. A.) Interrogatory Number 1 seeks the following information: "How many inmates at Calipatria State Prison were given a Rule Violation Report (RVR) / CDCR 115 from Dec. 20, 2010—Dec. 20, 2012 for the specific act of Possession of an Inmate Manufactured Weapon." (Dkt. No. 63 at 9.) Interrogatory Number 2 asks: "What was each of those Inmates - who you list for the response of

Plaintiffs 'Interrogatory No. 1' - S.H.U. assessment to include their Possible Mitigated Asserted S.H.U." (Id.) These requests essentially seek information about the number of inmates that were given rules violation reports for possessing an inmate manufactured weapon during a two year period, and the Security Housing Unit ("SHU") terms imposed on those inmates. (See id.)

On October 6, 2015, Plaintiff received Defendants' responses. Defendants objected to Interrogatory Numbers 1 and 2 on the grounds that they are over broad, unduly burdensome and seek irrelevant information not reasonably calculated to lead to the discovery of admissible evidence. (Dkt. No. 63 at 10-19 (Exhs. B & C); see also Dkt. No. 66 at 4-5.)

Plaintiff wrote a meet and confer letter to Defendants' counsel on October 19, 2015, and had not heard back as of the date he constructively filed the present motion. (Id. at 2.) Plaintiff constructively filed his motion on November 24, 2015, which was received and filed nunc pro tunc to December 3, 2015. (See id.) He seeks to compel further responses to Interrogatory Numbers 1 and 2 on grounds the information sought is relevant and that Defendants' objections lack the requisite specificity and thus are waived.

Defendants filed their opposition on January 4, 2016. (Dkt. No. 66.) Defendants' opposition states the parties met and conferred via telephone on December 15, 2015, but were unable to resolve the dispute. (Dkt. No. 66-1 at ¶ 2.)

II. Legal Standard

Federal Rule of Civil Procedure 26(b)(1) sets forth the scope of discovery as follows:

> Parties may obtain discovery regarding any nonprivileged information that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and

> whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

The party seeking to compel discovery has the burden of establishing that his request satisfies the relevancy requirements of Rule 26. Bryant v. Ochoa, 2009 U.S. Dist. LEXIS 42339, 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009). Once the party seeking discovery has established that his request meets this relevancy requirement, "the party opposing discovery has the burden of showing that the discovery should be prohibited, and the burden of clarifying, explaining or supporting its objections." Id.

III. Discussion

The Court first addresses Plaintiff's contention that Defendants' objections lack the requisite specificity. Plaintiff relies on Caldwell v. Ctr. For Corr. Health, 228 F.R.D. 40 (D.D.C. 2005) to support his argument. In Caldwell, the district court explained that objections asserting an interrogatory is overly broad, burdensome or oppressive must be supported by affidavits or evidence that reveals the nature of the burden, and the failure to do so waives the objection. See id at 44. The Caldwell court also stated, however, that even if such an objection is waived, a plaintiff is not entitled to discovery that is not relevant. Id.

Even assuming arguendo that Caldwell is applicable persuasive authority, Defendants did not rely on their over breadth and burdensome objections in their opposition. (Dkt. No. 66 at 4-7.) Instead, Defendants relied on their objections based on relevance. (Id.) Accordingly, Plaintiff's contention that Defendants' objections lack specificity is unsupported. The Court next turns to whether the discovery Plaintiff seeks is relevant.

Plaintiff avers the discovery sought is relevant because he needs to support his claim that Defendant Whitman's assessment of a possible 10-month SHU term for Plaintiff was an act of retaliation. (Dkt. No. 63 at 5.) He contends that other inmates charged with possessing an inmate manufactured weapon were only assessed a term of 7 months and 15

days. (Id.) He also asserts he previously possessed three 128-G forms that showed other inmates with the same charges were only given a possible 7 months and 15 days. He contends Defendant Whitman took the forms from him and refused to give them back. (Dkt. No. 63 at 6, citing Second Amended Compl., Dkt. No. 25, ¶¶ 29-33.)

Defendants contend the discovery sought has no bearing on whether Defendants retaliated against Plaintiff in response to Plaintiff filing administrative appeals against them. (Dkt. No. 66 at 45.) They contend the SHU terms imposed on other inmates will not establish whether Defendant Vitela planted a weapon in Plaintiff's cell for filing an inmate appeal against him or that Defendant Whitman imposed an improper term on Plaintiff for filing an inmate appeal. (Id. at 5.)

The Ninth Circuit has stated the five basic elements of a "viable claim" of First Amendment retaliation in the prison context as follows: "(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009) (citing Rhodes v. Robinson, 408 F.3d 559, 566 (9th Cir. 2005)).

Here, Plaintiff does not argue the discovery sought is relevant to his claim that Vitela planted a weapon. (See Dkt. No. 63, passim.) Rather, Plaintiff only takes the position that the discovery is relevant to his claims against Defendant Whitman. (Dkt. No. 63 at 5 (discovery is "needed to demonstrate that Defendant Whitman's assessment of a possible 10-month S.H.U. term for Plaintiff was an act of retaliation.") The Court likewise does not see how information about the duration of other inmates' SHU terms would be relevant to Plaintiff's claim that Defendant Vitela planted a weapon in his cell. Accordingly, the Court denies Plaintiff's motion to the extent Plaintiff moves to compel further responses from Defendant Vitela as to Interrogatory Numbers 1 and 2.

The Court next turns to whether the discovery sought is relevant or may lead to

admissible evidence regarding Plaintiff's claim that Defendant Whitman retaliated against him. Plaintiff apparently asserts that if other inmates charged with possessing a manufactured weapon were given the standard 7 and a half month SHU term, whereas Plaintiff was given a ten month term, then it would tend to show Whitman retaliated against him. (See Dkt. No. 63 at 5.) Defendants respond that information about other inmates' SHU terms are not relevant because mitigating and aggravating factors can be considered in assessing an SHU term, and so each rules violation hearing for each inmate would be distinct and irrelevant to one another. (Dkt. No. 66 at 5.)

The Court agrees with Defendants that information about other inmates' SHU terms are not relevant to Plaintiff's retaliation claim against Defendant Whitman. A SHU term for an inmate is calculated based on the "expected" term under the regulations, but other factors may exist to warrant imposing a lesser or greater period of confinement. (Dkt. No. 66 at 5, citing 15 Cal. Code Regs. § 3341.5(c)(9)(D)(2); see also Dkt. No. 63 at 6).[2] When calculating a SHU term, the ICC addresses "aggravating and mitigating factors," which are taken into consideration when assessing a SHU term. Id. The discovery sought therefore would not necessarily shed light on whether Defendant Whitman retaliated by imposing a ten month sentence because the SHU terms assessed may vary based on each inmates' aggravating or mitigating factors. Accordingly, Defendants need not provide further responses to these interrogatories because the interrogatories seek irrelevant information.

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[2] Both parties cite to 15 Cal. Code Regs. § 3341.5(c)(9)(D)(2) in their briefs. (Dkt. No. 63 at 6; Dkt. No. 66 at 5.) These provisions and their subsections, however, now appear to be found under 15 Cal. Code Regs. § 3341.9(a).

IV. Conclusion

For the forgoing reasons, the Court **DENIES** Plaintiff's motion to compel further responses to interrogatories.

IT IS SO ORDERED.

Dated: February 4, 2016

Hon. Nita L. Stormes
United States Magistrate Judge