

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 10-cv-00334-PAB-KMT

JEFFREY ALLEN PHILLIPS,

Plaintiff,

v.

SUSAN TIONA, Doctor, Kit Carson Correctional Center,
HOYT BRILL, Warden, Kit Carson Correctional Center,
JODI GRAY, Health Administrator, Kit Carson Correctional Center, and
CORRECTIONS CORPORATION OF AMERICA, owner of private prison KCCC,

Defendants.

ORDER

This matter is before the court on Plaintiff's "Motion for a More Definate [sic] Statement" (Doc. No. 85, filed November 16, 2010).

Under Fed. R. Civ. P. 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Under the Federal Rules of Civil Procedure, Plaintiff may not reply to an answer as a matter of right. *See* Fed. R. Civ. P. 7(a)(7) (plaintiff may file reply to answer only by court order). In fact, outside of a reply to counterclaims, "a reply to an answer ordinarily is unnecessary and improper in federal practice." 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1185 (3d ed. 2004).

Here, the court has not granted Plaintiff leave to reply to defendants' answer, which means that

the answer is not a pleading to which a responsive pleading is allowed under Rule 12(e). *See Ramos Oil Recyclers, Inc. v. AWIM, Inc.*, No. 2:07-cv-00448-GEB-DAD, 2007 WL 2345014, at *4 (E.D. Cal. Aug. 16, 2007) (denying motion for more definite statement of affirmative defenses because no responsive pleading permitted); *Travelers Indem. Co. of Conn. v. Presbyterian Healthcare Res.*, 313 F. Supp.2d 648, 653 (N.D. Tex.2004) (Rule 12(e) inapplicable where court does not order responsive pleading to answer and affirmative defenses). Therefore, it is

ORDERED that Plaintiff's "Motion for a More Definate [sic] Statement" (Doc. No. 85) is DENIED.

Dated this 17th day of November, 2010.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge