UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAY QUIGLEY, plaintiff,	:	
v.	:	case no. 3:19cv482(AVC)
CAPTAIN RIVERA, ET AL., defendants.	:	

RULING ON PENDING MOTIONS

The plaintiff, Jay Quigley, is currently incarcerated at Northern Correctional Institution ("Northern"). Quigley has filed motions for reconsideration, for clarification, for extension of time and to compel. For the reasons set forth below, the motion for extension of time to extend the deadline to complete discovery is granted and the remaining motions are denied.

Quigley commenced this action by filing a complaint, pursuant to 42 U.S.C. § 1983, against the defendants, captain Rivera, lieutenants Roy and Davis and correctional officers Behm, Velazquez, La Mountain, Cordona, Sholz, Watson, John Doe #1, John Doe #2, John Doe #3 and John Doe #4. He claimed that at approximately 5:20 a.m., on April 26, 2018, at MacDougal Correctional Institution ("MacDougall"), the defendants used excessive physical force against him, sprayed him with a chemical agent, dragged him to a cell in the restrictive housing

unit, strip-searched him, placed in him in a filthy gown and applied in-cell restraints to his ankles, wrists and waist. Quigley remained in the cell for three days. During the afternoon of April 28, 2018, correctional officers escorted Quigley to a new cell and provided him with clean clothes and bedding and removed the restraints. The following day, Captain Rivera authorized Quigley to take a shower. See Compl., ECF No. 1, at 5-6, 17-36.

Quigley asserted retaliation, excessive force, unsafe or unhealthy conditions of confinement, deliberate indifference to medical and mental health needs and spoliation of evidence claims under the Fifth, Eighth and Fourteenth Amendments. On July 24, 2019, the court dismissed the spoliation of evidence and Fourteenth Amendment claims and concluded that the Fifth Amendment retaliation claim, the Eighth Amendment excessive force claims, the Eighth Amendment deliberate indifference to medical and mental health claims and the Eighth Amendment conditions of confinement claims would proceed against the defendants, in their individual capacities.

Because Quigley paid the filing fee, the court directed Quigley to serve the complaint on the defendants, in their individual capacities. The court also informed Quigley that he must identify the names of the four John Doe defendants and

effect service of the complaint on those defendants within ninety days of the court's order, pursuant to Federal Rule of Civil Procedure 4(m). On October 28, 2019, Quigley filed a notice indicating that he had identified correctional officer John Doe #1 as correctional officer Peart.

I. Motion for Reconsideration [ECF No. 26]

On November 7, 2019, the court denied Quigley's motion for appointment of counsel because he had made insufficient attempts to secure legal representation and assistance on his own. The court informed Quigley that he could renew his motion after he made additional attempts to secure legal assistance. Quigley has filed a motion for reconsideration of the court's ruling denying his motion for appointment of counsel.

The second circuit has recognized that the standard for granting a motion to reconsider "is strict and that reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (citation omitted). Thus, a motion for reconsideration is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise

taking a second bite at the apple." Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36, 52 (2d Cir. 2012) (internal quotation marks and citation omitted).

Quigley points to no information that the court overlooked in denying the motion for appointment of counsel. Rather, he suggests that the court should consider appointing pro bono counsel to represent him in this action based on new information that was not included in the motion for appointment of counsel. Given that the court did not fail to consider any information included in the motion for appointment of counsel, there is no basis on which to reconsider the ruling denying that motion. The motion for reconsideration is denied.

Quigley's motion includes allegations that he has been in touch with attorneys at the Inmates' Legal Aid Program ("ILAP") for many months and that the attorneys at ILAP have answered legal questions about litigating the case. He contends that it is important that he contact inmates who may have been witnesses to incidents that occurred on August 26, 27, and 28, 2018 and to depose Department of Correction staff members regarding the incidents. He states that the attorneys at ILAP are unable to assist him in obtaining affidavits/declarations from inmates who are confined at facilities other than Northern and are also

unable to assist him in deposing Department of Correction staff members.

Quigley attaches no copies of letters that he may have sent to ILAP seeking assistance with discovery in this action or responses from attorneys at ILAP indicating why they cannot assist him in making arrangement to depose Department of Correction employees or in securing affidavits or declarations from other inmates. Nor does Quigley indicate whether he wrote to or spoke with the warden, deputy warden or any other supervisory official at Northern to seek an exception to the general policy that inmates may not correspond with inmates from other facilities. In addition, Federal Rule of Civil Procedure 31 permits a party to conduct depositions using written questions. Quigley does not indicate that he spoke to the AAG or ILAP about the possibility of deposing correctional staff members using this method.

Thus, Quigley has not demonstrated that he requires the appointment of pro bono counsel or that legal assistance is unavailable. To the extent that this motion could be construed as a renewed motion for appointment of counsel, it is denied.

II. Motion/Notice for Clarification [ECF No. 28]

In Quigley's "NOTICE," he inquires as to whether a conference has been scheduled to plan for discovery. The docket

reflects that a conference has not been scheduled to discuss discovery issues or set deadlines for the completion of discovery. Nor do the federal or local rules of civil procedure or the court's Standing Order RE: Initial Discovery Disclosures require such a conference. To the extent that the notice has been docketed as a motion, it is denied because it seeks no relief.

III. Motion for Extension of Time [ECF No. 29]

Quigley seeks a thirty-day extension of time to file a reply to the affirmative defenses asserted by the defendants in their answer to the complaint. The Federal Rules of Civil Procedure do not require a party to file a reply to an answer. See Fed. R. Civ. P. 7(a)(7) (a reply to an answer is a pleading only if the "court orders one"). Accordingly, the motion for extension of time is denied as moot.

IV. Motion to Compel [ECF No. 40]

Quigley mentions a request for production of documents dated November 22, 2019 and claims that he has asked the defendants to produce the documents included in this request on multiple occasions. The document attached to the motion to compel includes eight interrogatories, some of which have subparts, and was signed by Quigley on January 30, 2020. It has no caption and is undated. Thus, it does not appear that this

document is a copy of the November 22, 2019 request for production of documents referenced in the motion to compel.

The defendants have filed an objection to the motion to compel on the ground that it does not comply with the Federal Rule of Civil Procedure 37(a) and Local Rule of Civil Procedure 37(a).

A motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). Quigley's statement that he requested the documents on multiple occasions and that the defendants denied him "access to these documents," is insufficient to meet the requirement that he confer in good faith with the party or attorney representing the party in an attempt to secure the documents and resolve the discovery dispute without the assistance of the court.

Furthermore, Quigley did not file a memorandum in support of the motion to compel that includes "a concise statement of the nature of the case and a specific verbatim listing of each of the items of discovery sought or opposed, and immediately following each specification . . . the reason why the item should be allowed or disallowed" as required by D. Conn. L. Civ.

R. 37(b)1. In addition, the memorandum must be accompanied by the "copies of the discovery requests in dispute." Id. The document attached to the motion to compel is undated and contains interrogatories. Thus, it does not appear to be a copy of the November 22, 2019 document production request referenced in the motion to compel.

Because the motion to compel is not accompanied by a memorandum or a copy of the November 22, 2019 production request and does not include a certificate indicating that Quigley has conferred with the defendants or AAG Fiske in a good faith effort to resolve the discovery dispute, it does not comply with the requirements of Fed. R. Civ. P. 37(a)(1) and Local Rule 37(b)1. The motion is denied.

V. Required Discovery Disclosures [ECF No. 9]

In his objection to the motion to compel, AAG Fiske states that Quigley has not provided him with the disclosures identified in the court's July 26, 2019 Standing Order RE: Initial Discovery Disclosures. See ECF No. 9. Quigley's disclosures were to have been made within forty-five days of the filing of an appearance by any defendant. AAG Fiske filed his appearance for the defendants on October 8, 2019. Thus, Quigley's disclosures were due by November 22, 2019. In a notice to the court, ECF No. 36, Quigley stated that on January

13, 2020, he mailed "the remainder of documents and things that [he] needed to produce" to AAG Fiske. It is not clear whether these documents were mailed in response to the court's Standing Order RE: Initial Discovery Disclosures.

To the extent that Quigley has not already made the necessary disclosures in compliance with the Standing Order RE: Initial Discovery Disclosures, he must do so within twenty days of the date of this order. Quigley shall also file a notice with the court indicating the date on which he mailed the required disclosures to AAG Fiske.

VI. Motion for Order [ECF No. 42]

On February 24, 2020, Quigley filed a motion seeking a "Response For An Order Compelling Discovery." In that motion, Quigley contends that AAG Fiske has "failed to provide [him] with the rest of his discovery material by Judges order to be mailed to [him] by 2/20/20." The court did not issue an order directing AAG Fiske to provide Quigley with discovery material by February 20, 2020. To the extent that this motion is a renewed motion seeking to compel the defendants to respond the discovery request referenced in the motion to compel filed on January 30, 2020, ECF No. 40, the motion is denied for the reasons stated above.

VII. Motion for Extension of Time [ECF No. 33]

Quigley seeks a forty-five-day extension of the initial review order's deadline to complete discovery. The court hereby extends the discovery deadline for sixty days. However, Quigley may not serve any new discovery requests on the defendants until he informs the court, by written notice, that he has complied with the Standing Order RE: Initial Discovery Disclosures by sending AAG Fiske the necessary disclosures.

In addition, it is apparent from the notices that Quigley filed and the defendants' responses and objections to Quigley's notices and motion to compel that Quigley is under the impression that he may serve interrogatories or requests for production of documents on all or more than one defendant at the same time. Both federal rule 33 and 34 require that separate interrogatories and requests for production of documents be served on each party. See Fed. R. Civ. P. 33(a)(1) (stating that absent leave of court or stipulation, "a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts."); Rule 34(a)(1) (providing in pertinent part that "[i]n general[,] [a] party may serve on any other party a request within the scope of Rule 26(b): (1) to produce . . . (A) any designated documents or electronically stored information . . . or (B) any designated tangible things.

. . .”). Thus, any request for production of documents or set of interrogatories must be addressed to each defendant separately.

VIII. John Doe Defendants

As indicated above, the court informed Quigley on July 24, 2019, that he must identify and serve the complaint on the John Doe defendants within ninety days pursuant to federal rule 4(m). Quigley has identified John Doe #1 as correctional officer Peart and AAG Fiske has appeared for this officer. Quigley has not informed the court that he has identified John Doe #2, John Doe #3 or John Doe #4 and has not filed any returns of service indicating that these Doe defendants have been served with a copy of the complaint. As such, the allegations asserted in the complaint against these three Doe defendants are subject to dismissal under rule 4(m). Because the court has extended the deadline to complete discovery for an additional sixty days, the court will permit Quigley an additional ninety days to serve the complaint on John Doe #2, John Doe #3 or John Doe #4 in their individual capacities. If he fails to do so within that timeframe, any claims against those Doe defendants are subject to dismissal.

CONCLUSION

Quigley's motion/notice for clarification [**ECF No. 28**], motion to compel [**ECF No. 40**] and motion for response for an order compelling discovery [**ECF No. 42**] are **DENIED**. Quigley's motion [**ECF No. 26**] is **DENIED** to the extent that it seeks reconsideration of the ruling denying his motion for appointment of counsel and is also **DENIED** to the extent that it could be construed as a renewed motion for appointment of counsel. Quigley's motion for extension of time [**ECF No. 29**] to file a reply to the defendants' answer to the complaint is **DENIED** as moot. Quigley's motion [**ECF No. 33**] seeking to extend the deadline in the initial review order for completion of discovery is **GRANTED**.

(2) To the extent that Quigley has not already made the necessary disclosures in compliance with the Standing Order RE: Initial Discovery Disclosures, he must do so within **twenty (20) days** of the date of this order. Quigley shall also file a notice with the court indicating the date on which he mailed the required disclosures to AAG Fiske.

(3) **The parties shall complete discovery within sixty (60) days of the date of this order. Discovery requests shall not be filed with the court. Summary judgment motions, if any, shall be filed with 120 days of the date of this order.**

Quigley may not serve any new discovery requests on the defendants until he informs the court, by written notice, that he has complied with the Standing Order RE: Initial Discovery Disclosures, by sending AAG Fiske the necessary disclosures.

(3) The docket reflects that Quigley has not identified or served a copy of the complaint on, the defendant, John Doe #2, the defendant, John Doe #3, or the defendant, John Doe #4, within the time period provided in Federal Rule of Civil Procedure 4(m). Because the court has extended the deadline to complete discovery for an additional sixty (60) days, the court will permit Quigley an additional ninety (90) days to serve the complaint on John Doe #2, John Doe #3 and John Doe #4, in their individual capacities. Quigley must file with the court, the Waiver of Service of Summons form signed by each defendant, demonstrating the date on which each defendant was served with a copy of the complaint. Pursuant to rule 4(m), the court will dismiss the claims asserted against any John Doe defendant who is not served within ninety days of the date of this order.

SO ORDERED at Hartford, Connecticut this 30th day of September, 2020.

_____/s/_____
Alfred V. Covello
United States District Judge