

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DERRICK R. OMARO,

Plaintiff,

v.

D. O'CONNELL, Attica Correctional Facility
Sergeant, et al.,

Defendants.

DECISION & ORDER

16-CV-6052W

Pending before this Court is defendants' motion to reopen discovery to continue plaintiff's deposition and to compel him to answer questions in a non-evasive manner. (Docket # 48).

I have reviewed the challenged portions of plaintiff's testimony and agree that his answers were evasive. (*See* Docket # 56 at 53.3-57.7, 60.12-77.2). Defendants are entitled to obtain answers to their questions about the bases of plaintiff's claims against them. They are entitled to ascertain whether plaintiff can describe the claims against them without reference to or reading from the complaint. If he can, defendants are entitled to elicit such a description from plaintiff and to ask follow-up questions. If he claims he cannot, defendants are entitled to elicit a clear statement to that effect and to explore the factual bases for the allegations made in the complaint. Not only must plaintiff answer those questions, but he must also clarify, if asked, whether his allegations of wrongdoing by defendants are limited to those set forth in the complaint.

With respect to the questions concerning the fourth package violation (Docket # 56 at 102.2-106.3), I read plaintiff's testimony to state that he does not remember ordering the package or paying for it. (*See id.* at 105.25-106.3). To avoid confusion, defendants may question plaintiff to confirm his sworn testimony that he has no recollection of ordering or paying for the fourth package.

For the reasons set forth herein, counsel may continue plaintiff's deposition on these issues. The deposition shall occur by no later than **January 31, 2018**, and shall be limited to no more than ninety (90) minutes. Although plaintiff may object to questions, he is reminded that he must nonetheless answer the questions directly and non-evasively. *See* Fed. R. Civ. P. 30(c)(2).

IT IS SO ORDERED.

s/Marian W. Payson
MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
January 2, 2018