

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Robert A. Snead, :
 :
Plaintiff : Civil Action 2:12-cv-00739
 :
v. : Judge Sargus
 :
Gary C. Mohr, : Magistrate Judge Abel
 :
Defendant :

ORDER

Several motions are pending before the Court.

Plaintiff's January 23, 2014 Request for an Additional Number of Interrogatories (doc. 78). Plaintiff maintains that the additional interrogatories are needed because this is the sole means by which he may obtain necessary evidence. Rule 33(a)(1) provides that "[u]nless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts." A court has discretion to permit additional interrogatories in accordance with Rule 26(b)(2). *Id.* However, Rule 26(b)(2)(C) requires a court to limit discovery if (1) the requested discovery is unreasonably cumulative or duplicative or can be obtained from a more convenient or less expensive source; (2) the party seeking discovery has had ample opportunity to obtain the information sought; or (3) the burden or expense outweighs the likely benefit of the discovery. Leave to serve additional interrogatories

has been denied where the requesting party failed to make “a particularized showing why the additional discovery is necessary.” *King v. Butler Mfg. Co.*, No. 07-1165, 2008 U.S. Dist. LEXIS 64925, at *2 (W.D. Tenn. July 30, 2008). Here, plaintiff has not provided sufficient information for the Court to determine whether further interrogatories are necessary or whether they would impose an undue burden on defendants. Because plaintiff has failed to make a particularized showing as to why these additional interrogatories are necessary, the motion is DENIED.

Plaintiff’s January 23, 2014 Motion for an Extension of time with which to Conduct Discovery & Request for Clarification (doc. 79). In the past, plaintiff has been permitted to inspect documents and after such review, request which documents he would like copied. Defendants have not responded to plaintiff’s request for clarification or provided an explanation as to why he should not be permitted to inspect documents prior to having copies made. Plaintiff’s motion is GRANTED. Plaintiff should be permitted to inspect those documents he seeks prior to requesting which documents should be copied.

Plaintiff’s February 11, 2014 Motion to Compel Discovery (doc. 83). In his third motion to compel, plaintiff argues that defendants have waived any objections by failing to respond to his third request for discovery in a timely manner. Plaintiff argues that the discovery he seeks is relevant to the claims and defenses in this case. Plaintiff maintains that defendants made financial cuts with the intent of inflicting harm, injury and suffering on plaintiff.

Plaintiff's objections to defendants' responses are OVERRULED. Plaintiff's requests are not relevant to his claim that defendants were deliberately indifferent to his serious medical needs. Rather, the discovery requests seek information concerning plaintiff's attempts at bringing a class action on behalf of a class of prisoners. Plaintiff is not permitted to represent a class of prisoners, and his discovery requests concerning such claims are not relevant to whether defendants violated his Eighth Amendment rights. Plaintiff's motion to compel is DENIED.

Plaintiff's February 11, 2014 Motion to File a Supplemental Complaint (doc. 84).

Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend the complaint after a responsive pleading has been filed only by leave of court, but requires that such leave "be freely granted when justice so requires." Rule 15(a), Fed. R. Civ. P. That standard was construed by the Supreme Court in *Foman v. Davis*, 371 U.S. 178, 182 (1962):

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.--the leave sought should be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court

See, Duggins v. Steak 'N Shake, 195 F.3d 828, 834 (6th Cir. 1999).

Delay alone is not a ground for denying leave to amend. *Dana Corporation v. Blue Cross & Blue Shield Mutual*, 900 F.2d 882, 888 (6th Cir. 1990). The party opposing leave to amend must demonstrate significant prejudice. *Duggins*, 195 F.3d at 834; *Moore v. City of Paducah*, 790 F.2d 557, 562 (6th Cir. 1986). The Court determines prejudice by considering

whether the assertion of the new claim or defense would: require the opponent to expend significant additional resources to conduct discovery and prepare for trial; significantly delay the resolution of the dispute; or prevent the plaintiff from bringing a timely action in another jurisdiction.

Phelps v. McClellan, 30 F.3d 658, 662-63 (6th Cir. 1994). The longer the period of unexplained delay, the lesser the burden of demonstrating prejudice. *Id.* Courts have frequently found prejudice where the amendment is made after the discovery deadline has passed, *Duggins v. Steak 'N Shake*, 195 F.3d at 843 (Plaintiff aware for months of basis claim, but did not move to amend until discovery deadline had passed and motion for summary judgment was filed); *United States v. Midwest Suspension and Brake*, 49 F.3d 1197, 1202 (6th Cir. 1995)(Amendment sought one month before trial); *Priddy v. Edelman*, 883 F.2d 438, 446 (6th Cir. 1989); *Janikowski v. Bendix Corporation*, 823 F.2d 945, 952 (6th Cir. 1987), or on the eve of trial. *Ferguson v. Neighborhood Housing Services, Inc.*, 780 F.2d 549 (6th Cir. 1986). A party who moves to amend late in the lawsuit has "an increased burden to show justification for filing to move earlier." *Wade v. Knoxville Utilities Board*, 259 F.3d 452, 459 (6th Cir. 2001)(Citation omitted). Nonetheless, even amendments

made on the eve of trial are permissible when there is no demonstrable prejudice.

United States v. Wood, 877 F.2d 453, 456-57 (6th Cir. 1989)(Amendment permitted three weeks before trial).

Here, the deadline for completing discovery has passed. The deadline for filing dispositive motions is March 17, 2014. Permitting plaintiff to add three new parties will greatly impact adjudication of this case. Plaintiff's motion is DENIED.

Plaintiff's February 13, 2014 Motion for Default Judgment (doc. 86). Plaintiff seeks default judgment based on defendants' failure to comply with the Magistrate Judge' November 1, 2013 Order requiring the production of digital x-rays, MRIs and ultrasounds. Plaintiff also contends that defendants fail to comply with legitimate discovery requests. Although defendants have objected to many of plaintiff's discovery requests, they have not failed to comply with their discovery obligations. In my February 11, 2014 Order, I noted that plaintiff indicated that he had the means for viewing digital records of his x-rays and MRIs. Plaintiff was directed to communicate with counsel for defendants to ensure that he had the proper means for doing so, and, if he did, defendants were directed provide plaintiff with an opportunity to viewing these items. Plaintiff's motion is DENIED.

Under the provisions of 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P., and Eastern Division Order No. 91-3, pt. F, 5, either party may, within fourteen (14) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by the District Judge. The motion must specifically designate the

Order, or part thereof, in question and the basis for any objection thereto. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

s/Mark R. Abel
United States Magistrate Judge