

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHARLES L. MOORE III,

Plaintiff,

v.

LT. PANTOJA et al.,

Defendants.

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Case No. CIV-15-688-HE

ORDER

This matter is before the Court on the pro se Plaintiff's amended motion to compel discovery responses and his second motion for an extension of time to respond to Defendant Pantoja's amended motion for summary judgment. Pl.'s Am. Mot. to Compel (Doc. No. 52); Pl.'s Second Mot. for Extension of Time (Doc. No. 59).

Motion to Compel

In his motion to compel, Plaintiff asserts that Defendant Pantoja, who is the sole remaining defendant in this case, has failed to "directly and fully" answer ten of the fourteen interrogatories that Plaintiff attached to his motion. Pl.'s Am. Mot. to Compel at 1-2 (citing Interrogatories 1-6 and 8-11). On March 10, 2017, the Court ordered Defendant Pantoja to respond to Plaintiff's discovery motion within ten days, and stayed Plaintiff's impending deadline to respond to Defendant Pantoja's dispositive motion. Order of Mar. 10, 2017 (Doc. No. 57) at 1. Defendant Pantoja timely filed a response in which he objects that Plaintiff's motion seeks "discovery on information that has . . . already been provided via the Special Report"; "is not relevant to the [action's] subject matter"; or "will not aid"

Plaintiff in responding to Defendant's motion for summary judgment, which includes Defendant's assertion that he is entitled to qualified immunity on Plaintiff's Eighth Amendment excessive-force claim. Def.'s Resp. (Doc. No. 58) at 2-3; *see also id.* at 2 (Defendant Pantoja noting that the parties were supposed to complete discovery by December 8, 2016, and that he "sent responses to Plaintiff's discovery requests, including proper responses and objections," within 30 days after Plaintiff mailed those requests on December 5, 2016).

Plaintiff has submitted copies of the Interrogatories that he asserts Defendant failed to properly answer, *see* Pl.'s Am. Mot. to Compel Ex. 1 (Doc. No. 56-1) at 1-3, but neither Plaintiff nor Defendant has submitted a copy of Defendant's actual responses. The Court therefore reviews the Motion based on the summaries of Defendant's answers and objections as provided by the parties. The Court finds that none of the information sought in Interrogatories Nos. 1, 2, 3, 4, 5, 9, and 11 is relevant to Plaintiff's sole remaining claim, which is based on alleged excessive force by Defendant. In Interrogatory No. 6, Plaintiff requests the names of "staff [who] were present in the A3 pod" during the cell search that preceded the alleged use of excessive force. *Id.* at 1. In Interrogatory No. 8, Plaintiff requests the names of inmates and staff who were interviewed regarding the events at issue in the course of ODOC's preparation of the Special Report. *Id.* at 2. Both of these interrogatories seek identification of persons who reasonably may have witnessed acts or circumstances relevant to Plaintiff's remaining claim, which is discoverable information. And while the Special Report identifies some of these persons, it is not apparent that all such persons have been named. In Interrogatory No. 10, Plaintiff asks whether Defendant

during the cell search “touch[ed] Plaintiff’s naked right buttock with boxers.” *Id.* Such information is arguably relevant to the alleged excessive force incident following the cell search. Moreover, although Defendant has now asserted qualified immunity, allowing “limited discovery” is appropriate because Defendant’s “characterization of his actions differ from the [P]laintiff’s characterization of those actions.” *Rome v. Romero*, 225 F.R.D. 640, 643-44 (D. Colo. 2004) (citing *Crawford-El v. Britton*, 523 U.S. 574, 593 n.14 (1998)).

Therefore, Plaintiff’s Motion to Compel is GRANTED in part and DENIED in part. Defendant shall respond to Interrogatories Nos. 6, 8, and 10 consistent with the discussion above within ten days of the date of this Order. No further action is required of Defendant as to Interrogatories Nos. 1, 2, 3, 4, 5, 9, and 11.

Motion for Extension of Time

Although Plaintiff broadly alleges that “all of the discovery is germane to the instant action,” Plaintiff does not assert that he needs Defendant Pantoja’s sworn answer to any specific interrogatory in order to meaningfully respond to Defendant’s motion for summary judgment. Pl.’s Am. Mot. to Compel at 2; *see* Fed. R. Civ. P. 33(b), 56(c)-(e). Moreover, despite the stay, Plaintiff has now responded on the merits to Defendant Pantoja’s motion for summary judgment. Pl.’s Resp. to Def.’s Am. Mot. for Summ. J. (Doc. No. 60) at 1-3; *see* Def.’s Reply (Doc. No. 61) at 1-4. Plaintiff’s “response brief [does] not allude to the motion to compel” or otherwise explain his “purported need for the evidence [he] sought to compel.” *Naifeh v. Ideal Homes of Norman, L.P.*, 260 F. App’x 122, 124 (10th Cir. 2008); *see* Pl.’s Resp. to Def.’s Am. Mot. for Summ. J. at 1-3; *see also* Pl.’s Second Mot.

for Extension of Time at 1 (Plaintiff stating that he needs one additional week to respond to Defendant Pantoja's motion for summary judgment because the law library was closed for ten days). Plaintiff also has not attempted to "show[] by affidavit or declaration, that for specified reasons, [he] cannot present facts essential to justify [his] opposition" to Defendant Pantoja's motion for summary judgment without the requested discovery. Fed. R. Civ. P. 56(d); cf. *Douglass v. United Auto Workers Local Union 31*, 188 F. App'x 656, 659 (10th Cir. 2006) (finding no error where district court granted summary judgment in defendants' favor without resolving the pro se plaintiff's non-specific discovery motion).

The one asserted fact that Plaintiff says he "does not have sufficient information" to respond to concerns the amount of pepper spray that Defendant Pantoja allegedly used against Plaintiff on November 24, 2014. See Pl.'s Resp. to Def.'s Am. Mot. for Summ. J. at 1 ¶ 2; Def.'s Am. Mot. for Summ. J. (Doc. No. 49) at 9 ¶ 5 ("[T]he amount of pepper spray used on Plaintiff was determined to be ten (10) grams from one (1) 122-gram can."). But Plaintiff did not submit any interrogatories asking about pepper spray. See Pl.'s Am. Mot. to Compel at 1-2; Pl.'s Am. Mot. to Compel Ex. 1, at 1-3.

Accordingly, Plaintiff's second motion for an extension of time (Doc. No. 59) is DENIED as moot and the limited stay entered on March 10, 2017, is hereby LIFTED.

IT IS SO ORDERED this 6th day of April, 2017.



CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE