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United States District Court,
W.D. Wisconsin.

Berrell FREEMAN, Plaintiff,
v.
Gerald Berge and Jon E. LITSCHER, Defendants.

No. 03–C–0021–C. | July 30, 2003.

Attorneys and Law Firms

David J. Harth, for Plaintiff.

Corey F. Finkelmeyer, Assistant Attorney General, Madison, WI, for Defendants.

Opinion

ORDER

CROCKER, Magistrate J.

***1** Before the court are plaintiff Berrell Freeman's motions to compel the defendants to provide more complete responses to his First Request for Production of Documents and Request for Admissions (dkts.29–31). Defendants have objected to all but two of plaintiff's document requests on the ground that they seek information related to claims that this court has dismissed from this lawsuit. Defendants made the same objection to plaintiff's requests for admissions; at the same time, however, they answered each request with a categorical denial. Defendants maintain that most of the information plaintiff seeks is not relevant to this lawsuit; plaintiff maintains that it is.

Only two of plaintiff's claims are still alive: 1) his claim that defendants violated his Eighth Amendment rights by subjecting him to extreme cell temperatures; and 2) his claim that defendants violated his Eighth Amendment rights when they denied him adequate food. In his submissions in support of his motion to compel, plaintiff maintains that he should be allowed to argue that the "excessive temperatures, denial of food, etc. *together* caused the plaintiff's injuries," pointing out that the Supreme Court has recognized a "totality of conditions" theory as a basis for an Eighth Amendment claim. Plaintiff is wrong. There is no "etc." in this case. The court has allowed plaintiff to proceed only on his claims relating to cell temperatures and the denial of food, not the totality of the conditions existing at the Wisconsin Secure Program Facility.

As explained in this court's decision on defendants' motion to dismiss, although the Supreme Court has recognized that some conditions of confinement may "in combination" establish an Eighth Amendment violation when each would not do so alone, this theory is only viable when the particular conditions "have a mutually enforcing effect that produces the deprivation of a single, identifiable human need." *Wilson v. Seiter,* 501 U.S. 294, 304, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991) (citing low nighttime cell temperature plus a failure to issue blankets as example). Although the court recognized in previous orders that plaintiff's allegations in his complaint might state a claim that certain conditions at SMCI/WSPF operated together to deprive him of a basic human need for social interaction and sensory stimulation, it dismissed this claim on the ground that defendants were entitled to qualified immunity on this issue. With respect to his complaints of excessive cell temperatures and the use of food as punishment, the court held that each of these claims alone stated independent Eighth Amendment claims. Plaintiff does not need to proceed on a "combination" theory with respect to these claims because each is adequate alone to state a violation of the

Eighth Amendment. Furthermore, plaintiff has not identified a single basic human need that is disturbed by the combined effect of the alleged food deprivation and excessive cell temperatures. Every condition that is egregious enough to violate the Eight Amendment is likely to cause emotional pain and mental distress. These psychological injuries are common human responses to unconstitutional behavior. The "need" to be free from such injuries inflicted by others is not the kind of basic human need that was envisioned by the Supreme Court as warranting special treatment under the Eighth Amendment.

***2** Having clarified the scope of this lawsuit, I now turn to plaintiff's specific discovery requests.

Requests for Admissions

Plaintiff concedes that his Requests for Admission 1–7 seek medical opinions that defendants are not qualified to give. In Requests for Admission 8–14, plaintiff asks defendants to admit that plaintiff has suffered from a variety of ailments while at SMCI/WSPF, including secretion of excessive gastric acid; constant/frequent headaches; physical complaints that are without any diagnosable basis; despair and sleep disorders; complications in breathing; distortions or illusions; and forgetfulness and confusion. Request for Admission 15 asks defendants to admit that plaintiff has been placed on a medical diet while a prisoner at SMCI/WSPF. Defendants objected to every request as "irrelevant and outside the scope of this litigation given that the court has dismissed any and all claims related to the subject matter found in this admission request." Notwithstanding that objection, the defendants categorically denied each of plaintiff's requests.

Because defendants have answered each of plaintiff's requests, it is unnecessary to rule on the sufficiency of their relevance objection. Under Fed.R.Civ.P. 36(a), a party who denies a request to admit

> shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

Fed.R.Civ.P. 36(a). Plaintiff argues that defendants have violated this rule by denying his requests for admissions categorically. However, plaintiff has not submitted any evidence or argument to support his contention that defendants lacked a good faith basis for their denials. Absent evidence to the contrary, this court presumes that the defendants are familiar with Rule 36 and that they complied with it when they drafted their answers to plaintiff's requests for admissions.

That said, I note that in their response to plaintiff's motion to compel, defendants have asserted that plaintiff's admissions seek "several mental and physical health determinations from defendants who are not qualified to provide such determinations." If that is the reason defendants denied all of plaintiff's requests for admissions regarding his health while at SMCI/WSPF, then their responses are inadequate under Rule 36. According to the rule, an answer to a request for admission "shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the mater." In other words, "I don't know" is different from a denial: when a party answers "I don't know," then he must explain why not.

In addition, the rule states that

> [a]n answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

***3** I don't know the basis for defendants' denials, so I cannot conclude that defendants' responses are inadequate. To prevent misunderstandings, however, I am directing that defendants review their answers to ensure full compliance with Rule 36, and to amend their answers forthwith if there are any deficiencies.

Document Requests
I am denying plaintiff's motion for an order compelling defendants to produce documents. Requests nos. 1–6, 8, 15 and 16 seek information relating to the effects of solitary confinement or the "behavioral modification process" on a prisoner, including studies and evaluations of the SMCI/WSPF or other Supermax facilities by outside groups or individuals; policies regarding the placement and retention of inmates at the institution; and the incidence of depression, sleep disturbances and attempted suicide at SMCI/WSPF compared to other Wisconsin prisons. This information all relates to plaintiff's claim that the totality of the conditions at SMCI/WSPF deprived him of the basic human need for social interaction and sensory stimulation. As such, it is irrelevant to this lawsuit.

Request No. 7 seeks copies of correspondence exchanged between defendants and Dr. Gary Maier addressing the inadequacy of the mental health service at SMCI/WSPF. Request No. 12 seeks any documents that relate to "SMCI directing Dr. Maier to curtail the prescribing of sleep medications or other medications." It is unclear how this information relates to plaintiff's claims that he was denied food as punishment and that he was subject to extreme cell temperatures. Plaintiff has not alleged in this case that prison officials were deliberately indifferent to his serious medical needs. Absent such an allegation, I presume that these document requests are related to plaintiff's "totality of conditions" claim, which has now been dismissed. Accordingly, defendants will not be ordered to respond to these discovery requests.

Request Nos. 10, 11 and 18 seek copies of various medical reports pertaining to the plaintiff. Even assuming some of these reports might be relevant to plaintiff's claims regarding excessive cell temperatures and food deprivation, defendants do not have to produce them. In fact, because the records plaintiff seeks are confidential, defendants cannot have access to them unless plaintiff provides a signed medical release to defendants. Plaintiff may obtain his own copies of his medical reports from the institution.

Request No. 14 seeks information related to cell and strip searches. Because this court has dismissed plaintiff's complaint regarding monthly cell and strip searches, defendants do not have to produce this information.

Request No. 17 seeks copies of defendants' "answers to interrogatories, admissions, depositions and declarations" previously given in the *Jones 'El v. Litscher* case, 00–C–421–C. Although some of these materials might contain relevant information insofar as excessive cell temperature was an issue in the *Jones 'El* case, I am not ordering defendants to produce them. Plaintiff's request is much too broad and it imposes an undue burden on defendants. Plaintiff may discover the information he needs by drafting his own interrogatories tailored to the specific issues in his case.

***4** Finally, in a separate motion, plaintiff contends that defendants' response to Request No. 9, which asked for documents related to the adequacy of WSPF/SMCI's heating and ventilation system, is inadequate because it does not include the temperature records for June 29, 2001 to July 25, 2001. Defendants have not opposed plaintiff's request for those records. Accordingly, this motion will be granted.

ORDER

IT IS ORDERED:

1. Plaintiff's motion to compel defendants to produce more complete responses to his requests for admissions (dkt.30) is DENIED.

2. Plaintiff's motion for an order compelling discovery (dkt.29) is DENIED.

3. Plaintiff's motion for an order to produce documents (dkt.31) is GRANTED. Defendants are ordered to produce records showing the temperatures at SMCI between June 29, 2001 to July 25,

2001, if such documents exist. Plaintiff's motion to compel the production of documents is denied in all other respects.