IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SPENCER McCLAIN,

OPINION and ORDER

Plaintiff,

v. 13-cv-755-jdp

CATHY A. JESS, EDWARD F. WALL, LARRY L. JENKINS, MARK HEISE, MICHAEL BAENEN, P. ERICKSON, BUD WALDRON, MICHAEL MOHR, DEIRDRE MORGAN, CAPTAIN BRANDT, and GARY H. HAMBLIN,

Defendants.

In this civil action, plaintiff Spencer McClain, who is a prisoner under a state of Wisconsin judgment but is currently incarcerated at the Arkansas Valley Correctional Facility, located in Ordway, Colorado, is proceeding on claims that various defendant prison officials failed to protect him from other inmates at the Green Bay Correctional Institution after he cooperated with authorities in criminal cases against gang members. Plaintiff seeks to amend his complaint and has filed a series of motions seeking to sanction defendants for various perceived acts of misconduct, several motions to compel discovery, and several motions renewing his request for court-recruited counsel. Defendants have filed a motion for summary judgment that has not yet been fully briefed.

After considering the parties' submissions, I will allow plaintiff to amend his complaint to include additional allegations about defendants at the Green Bay Correctional Institution but deny his request to expand the scope of the case to other conditions of confinement or claims regarding Colorado prisons. I will deny his various motions for sanctions, to compel discovery, and for recruitment of counsel. Finally, I will set a new briefing schedule for defendants' motion for summary judgment and set new deadlines for the remainder of the case.

A. Objection to reassignment of case

This case was transferred from District Judge Barbara B. Crabb to me pursuant to a May 19, 2014 administrative order. Dkt. 57. Plaintiff has filed a motion objecting to the reassignment of the case, Dkt. 76, asking that the court now transfer the case back to Judge Crabb "due to familiarity and judicial economy." *Id*. This motion will be denied, as the reassignment of this case was part of the usual practice when a new judge is appointed to the bench.

B. Sanctions

1. Location of defendants

Plaintiff has filed a motion for reconsideration of two parts of the court's April 22, 2014 order: (1) the denial of plaintiff's motions for assistance in recruiting counsel; and (2) the denial of his motions to sanction or disqualify defendants' counsel for misrepresenting the location of some defendants in relation to determining the proper venue for this case. Dkt. 56. Plaintiff has also filed a stand-alone motion for sanctions regarding the venue issue. Dkt. 58. The recruitment of counsel for plaintiff will be discussed in more detail below. As for the issue of sanctioning or disqualifying defendants' counsel, Judge Crabb stated the following in her April 22, 2014 order:

> With regard to requests [for injunctive relief] (2) though (4), it difficult to envision a plausible scenario under which the court would even have the authority to grant requests such as . . . "disqualifying" opposing counsel for their actions in litigating the case or otherwise contributing to the alleged harm plaintiff has faced. Moreover, those requests must be denied because they relate to issues outside the scope of this lawsuit, which at this point is about defendants' failure to protect him at the Green Bay Correctional Institution.
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> [In moving for change of venue,] [c]ounsel for defendants has submitted an affidavit stating that all of the defendants and likely witnesses "live and work in the Eastern District of Wisconsin, Green Bay area." Plaintiff responds that this is inaccurate, as several of the defendants (such as Department of Corrections Secretary Edward Wall and Deputy Secretary Deirdre Morgan) work in Madison

> as high-level officials in the Wisconsin Department of Corrections. Presumably, this means that they do not reside in the Green Bay area and defendants chose not to file a reply brief suggesting that plaintiff is incorrect. Because I am not convinced that defendants' assertions about the residence of the parties are correct, I will deny their motion to dismiss the case based on improper venue.

Dkt. 53 at 2-4. Plaintiff now reiterates his argument that counsel should be sanctioned for incorrectly stating that all of the defendants and witnesses lived in the Eastern District when this was obviously not true. Rather than renew his request for disqualification of counsel, plaintiff asks for judgment in his favor, contempt of court charges, a $1.1 million fine, and an inquiry by the Office of Lawyer Regulation. Dkt. 66 at 5-6. For their part, defendants now clarify that "[t]he affidavit should have stated with greater specificity that the defendants *with personal involvement* in the lawsuit, along with all conceivable witnesses, live and work in the Green Bay area." Dkt. 59 at 3 (emphasis in original).

To say that plaintiff is making a mountain out of a molehill would be an understatement. The court expects defendants to be more precise with their language going forward, but there is no reason to think that they intentionally misled the court (the court knows full well that high-level DOC officials are generally stationed in Madison), and in any case, plaintiff was not prejudiced by the mistake. Judge Crabb acknowledged that defendants were incorrect and denied their venue motion. I see no need to reconsider her decision not to sanction defendants for this relatively minor mistake.[1]

[1] Plaintiff's unreasonableness in pursuing sanctions is underscored by a secondary argument raised in his reply brief. He points out that the notary statement on counsel's affidavit contained a crossed-out date (originally stating November 2013 but amended to February 2014, *see* Dkt. 28 at 3). Plaintiff calls this "a criminal offense punishable by jail time" but does not explain how he was prejudiced by this, nor can I fathom any scenario in which defendants stood to gain by falsifying the date. Given the timing of this case (defendants were served in January 2014), the only reasonable explanation is that the November 2013 date was a typographical error.

2. Sealing of docket entries

In the April 22, 2014 order, Judge Crabb granted plaintiff's motion to seal case documents from public view because of a perceived risk of harm to plaintiff. Dkt. 53 at 6-7. The order stated in part "the clerk of court [is directed] to seal the docket in this case. Going forward, the parties should mark their filings as sealed." Dkt. 53 at 7. Plaintiff has filed two motions stating that defendants have refused to comply with this order, and he seeks tens of thousands of dollars in sanctions. Dkt. 75 and 97. Plaintiff has also filed a motion for default judgment, Dkt. 99, as a sanction for these errors, alleged perjury with regard to the motion to change venue, and two mailing mistakes, one in which court mail sent to one of plaintiff's previous Wisconsin prisons was returned by the prison with the notation "address unknown" even though plaintiff had changed prisons and thus his new address should have been knowable, *see* Dkt. 47 and 48, and one in which defendants sent plaintiff an empty envelope but rectified that mistake by immediately re-sending plaintiff the filing they had erroneously failed to mail to him, *see* Dkt. 64, 65.

With regard to errors in filing documents under seal, defendants admit that they inadvertently failed to file the first two submissions at issue, Dkt. 71 and 72, "without the under seal designation," but that "office staff . . . confirmed that the documents are now under seal." Dkt. 77. Plaintiff replies by stating that there are numerous other documents defendants did not "label" as sealed, which shows that defendants are again attempting to defraud the court. With regard to the second set of documents plaintiff says were not properly sealed, Dkt. 90 and 91, defendants deny that they were unsealed when submitted.

As with plaintiff's previous motion for sanctions, he sees malicious behavior on the part of defendants when the only reasonable view is to chalk the oversights up to garden-variety inattentiveness. Part of the disconnect may be due to ambiguity in the April 22 order along with

plaintiff's unfamiliarity with the mechanics of sealing documents in this court. Because defendants are filing their documents on the court's electronic filing system, they have been "marking" their documents as sealed by selecting a "docket as sealed" option within the electronic system as they file a document. Even where, as apparently was the case with Dkt. 71 and 72, defendants failed to select that option, the court, through its clerk's office staff, double-checks each document filed in the case to ensure that it is indeed sealed. It is possible that those docket entries were unsealed for a matter of hours until caught by clerk's office staff (for instance, the entry for Dkt. 72 shows that it was modified by clerk's office staff the same day the document was submitted by defendants; I assume the modification was sealing the originally unsealed document). Even if defendants are incorrect about sealing the second set of documents plaintiff claims were unsealed, a similar docket modification by the clerk's office shows that at the very latest, the documents were sealed the same day they were filed. Plaintiff can rest assured that every single document in this case is currently sealed.

Plaintiff seems to be arguing that defendants violated the court's order by failing to place the word "sealed" in the caption of each document itself. The April 22 order is somewhat ambiguous on this requirement, so there is no reason to consider sanctioning defendants, particularly where the best way to ensure sealing is to accomplish it through the electronic filing system. In any event, more recent documents filed by defendants show that they are now including that notation in the caption of the documents themselves. Because plaintiff is not using the electronic filing system, he should take care to continue to mark his submissions as "sealed" in the captions of those documents.

To the extent that defendants indeed failed to comply with the court's order regarding any of these documents, the prejudice to plaintiff is so miniscule that I will deny his motion for sanctions. However, even though plaintiff's individual objections to defendants' mistakes are

overblown, they do tend to show a certain amount of sloppiness by the state. Plaintiff and the court have the right to expect defendants to follow court orders, and I expect that every submission made by defendants going forward will be made under seal. On the other hand, it is difficult to envision a scenario under which I would ever sanction a party in the way plaintiff wishes (directing judgment and awarding tens of thousands of dollars in fines) for the types of mistakes made by counsel in this action. Nothing in this order should be taken as encouragement to plaintiff to file more motions for sanctions. But, if he chooses to do so, he will need to *explain in precise detail* how he has been harmed by defendants' actions, not just show that defendants made isolated, technical mistakes. Plaintiff's efforts would be better focused on litigating the substantive aspects of the case.

C. Amended Complaint

Plaintiff has filed a motion for leave to amend his complaint, Dkt. 100, along with a proposed amended complaint, Dkt. 101, and one-page supplement to the amended complaint, Dkt. 102. In his proposed amended complaint and supplement, plaintiff attempts to greatly expand the scope of his claims. He now alleges the following in addition to his original claims regarding the failure to protect him from inmate violence in Wisconsin prisons:

- Plaintiff wrote a letter to Wisconsin Attorney General J.B. Van Hollen alerting him to the danger he faced. Assistant Attorney General Melissa Rhone forwarded the letter to DOC Chief Legal Counsel Kathryn Anderson, who suggested plaintiff utilize the prison administrative remedies or file a lawsuit;

- At some point in 2013, plaintiff was housed in the same segregation unit as a member of the Gangster Disciples who told the entire wing that plaintiff was an informant and to "smash [plaintiff] on sight." Plaintiff alerted defendants Baenen and Erickson, but they did nothing;

- While in segregation, plaintiff was deprived of recreation and sunlight, suffered depression, and was constantly exposed to pepper spray, loud banging and screaming from the other inmates, and the smell of feces;

- Plaintiff was denied parole or movement to less restrictive prisons based on false conduct reports based on his refusal to leave segregation status because of the threats he faced;

- Plaintiff was transferred to the custody of the Colorado Department of Corrections against his will, far away from his family and friends, as retaliation for this lawsuit;

- Plaintiff was not allowed to bring his property on the trip to Colorado. While being transported to Colorado, plaintiff was exposed to second-hand smoke and tuberculosis;

- While spending a month at the Denver Reception and Diagnostic Center, the officers would turn on bright lights every time they made rounds, did not provide a clock to inmates, locked inmates in their cells 23 hours a day, and did not provide meals totaling 2700 calories a day. Plaintiff was housed with an inmate who was also housed with him at the Green Bay Correctional Institution. This inmate started rumors that plaintiff is an informant;

- After plaintiff was transferred to the Buena Vista Correctional Facility, he became seriously ill from a virus that had placed the facility on quarantine. Plaintiff suffered chest pains and other symptoms related to his tuberculosis medication and poor ventilation of his cell. The cells also lacked fire suppression equipment and contained asbestos and lead paint. Inmates were subjected to constant illumination and rodent infestation. The prisoners were much more violent at this facility. The kitchen was infested with rodents and insects and plaintiff was not provided meals totaling 2700 calories a day;

- Plaintiff was denied placement in minimum security status for no reason;

- Plaintiff received false conduct reports in retaliation for complaining about the substandard conditions of confinement;

- While in segregation in the Colorado prison, plaintiff has received numerous threats from "the Soreno gang members"; and

- Plaintiff is deprived of the Wisconsin legal loan process, legal materials regarding Wisconsin law, and reading glasses necessary to study legal materials.

Because plaintiff is attempting to amend his complaint after defendants filed their answer, and defendants have not provided written consent, he may not amend without leave of the court. Fed. R. Civ. P. 15(a)(2). Although I "should freely give leave [to amend] when justice so

requires" under this rule, I conclude that it would be unduly prejudicial to defendants to permit plaintiff to greatly expand the scope of his lawsuit this far into the litigation. His proposed amended complaint would introduce additional claims against Wisconsin DOC personnel for the conditions of his confinement, claims against the staff who transported him to Colorado, and claims against Colorado governmental personnel for both the additional threats he faced and for the conditions of his confinement in an entirely different prison system. Thus I will deny in large part plaintiff's motion for leave to amend.

However, because the thrust of this case is the adequacy of prison officials' response to the alleged danger faced by plaintiff as an informer, I conclude that any claims directly related to that issue might properly be included in this case, so I will screen those portions of the complaint below, construing the amended complaint liberally. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). I understand plaintiff to be attempting to bring two additional sets of claims about danger at Wisconsin prisons, and one additional set of claims concerning the Buena Vista Correctional Facility in Colorado.

1. Letter to attorney general

Plaintiff now names Wisconsin Attorney General J.B. Van Hollen, Assistant Attorney General Melissa Rhone, and DOC Chief Legal Counsel Kathryn Anderson as defendants. Plaintiff alleges that he wrote a letter to Wisconsin Attorney General J.B. Van Hollen alerting him to the danger he faced. Assistant Attorney General Melissa Rhone forwarded the letter to DOC Chief Legal Counsel Kathryn Anderson, who suggested plaintiff utilize the prison administrative remedies or file a lawsuit, but did not take any action to look into the threats themselves.

To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a "substantial risk of serious harm" and (2) the prison officials identified acted with

"deliberate indifference" to that risk. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Brown v. Budz*, 398 F.3d 904, 909 (7th Cir. 2005). However, "[p]ublic officials do not have a free-floating obligation to put things to rights . . . . Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job."). *Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009).

I will not let plaintiff proceed on a failure to protect claim against any of these defendants. There is no indication that Van Hollen was ever aware of plaintiff's letter, and in any case, under *Burks* there is no reason to think that he should be personally responsible for the administration of the prison system. Although Rhone and Anderson were aware of plaintiff's letter, Anderson's ultimate response that plaintiff should pursue his rights in the inmate grievance system was acceptable under *Burks*.

2. Additional allegations against defendants Baenen and Erickson

At some point in 2013, plaintiff was housed in the same segregation unit as a member of the Gangster Disciples who told the entire wing that plaintiff was an informant and to "smash [plaintiff] on sight." Plaintiff alerted already-named defendants Baenen and Erickson, but they did nothing. I will allow plaintiff to proceed on these additional claims because they form part of plaintiff's overarching claim that various officials at Wisconsin prisons failed to protect plaintiff from being repeatedly placed in danger from gang member inmates.

3. Failure to protect from threats in Colorado prison

I understand plaintiff to be alleging that he faced similar threats of harm from gang members at the Buena Vista Correctional Facility. He names several Colorado prison officials and the governor as defendants and suggests that both the Wisconsin and Colorado defendants are responsible for the threats he now faces.

If plaintiff brought allegations suggesting that any of the current Wisconsin defendants acted with deliberate indifference by transferring him to Colorado, I would let him proceed with

those claims in this case, but he fails to include any such allegations. He suggests that he was transferred to Colorado out of retaliation for filing this lawsuit, but, as stated above, I will not allow him to amend the complaint to include non-failure-to-protect claims at this point.

With regard to the Colorado defendants, his allegations raise the question whether any failure to protect claims concerning the Colorado prisons even belong in this lawsuit. Under Federal Rule of Civil Procedure 20(a)(2), separate defendants may be joined together in one action if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and . . . any question of law or fact common to all defendants will arise in the action." Given plaintiff's fairly vague allegations regarding the threats he faces in the Colorado prison, I cannot say that the threats he faces in Colorado arise out of the same series of transactions or occurrences and the threats he faced in Wisconsin.[2] Plaintiff seems to attempt to make a connection between the Wisconsin threats and Colorado threats by alleging that while he was housed at the Denver Reception and Diagnostic Center, he was housed with an inmate who knew him from the Green Bay Correctional Institution, Brian Scottsylvia, who started rumors that plaintiff is an informant. However, it is difficult to make the connection between Scottsylvia and the actual threats he now faces in Colorado because plaintiff does not seem to be saying that Scottsylvia followed plaintiff to the Buena Vista Correctional Facility. Therefore, I will not allow plaintiff to proceed with his claims against any of the Colorado defendants.

4. Supplement to answer

Although Dkt. 101 is now the operative complaint, I will not require defendants to file

[2] Plaintiff's allegations against the Colorado defendants also raise the issue whether they would be subject to personal jurisdiction in this court for how they treat a Wisconsin DOC prisoner, or whether this court would be the proper venue for such claims. Because objections to personal jurisdiction and venue can be waived, I need not address these issues in screening the allegations.

an amended answer addressing the entire new pleading.[3] Defendants have already answered the original complaint, and the vast majority of plaintiff's allegations in the amended complaint. Defendants will be given a short time to submit a supplement to their answer addressing only plaintiff's new allegations against defendants Baenen and Erickson. They will also be given a chance to file a supplement to their pending motion for summary judgment to address any of these allegations if they so choose.

D. Motions to compel discovery

1. Dkt. 70

Plaintiff objects to defendants' responses to two separate requests for production of documents. (Confusingly, they both seem to be named plaintiff's "First Request for Production of Documents"). To start, plaintiff argues that defendants should be sanctioned because they failed to respond to either of his requests within the 30-day deadline set by Federal Rule of Civil Procedure 34. Plaintiff dated his first request April 11, 2014, and defendants responded May 16, 2014. Plaintiff dated his second request May 28, 2014, and defendants responded July 2, 2014. Defendants state that they actually received plaintiff's first request on April 18, 2014 and received his second request on June 6, 2014, so they complied with the 30-day deadlines. I will not sanction defendants because it stands to reason that defendants would not have received the documents the same day plaintiff placed them in the prison mail. Moreover, even if defendants were actually late by a few days, sanctions would be inappropriate for such a marginally late response.

The real question is whether defendants have complied with the substance of plaintiff's

[3] Because plaintiff's one-page supplement to the amended complaint, Dkt. 102, does not contain any allegations regarding the claims on which plaintiff has been allowed to proceed, the supplement will not be considered part of the operative pleading, and defendants need not submit an answer to the supplement.

requests. First, plaintiff seeks his copies of all of his inmate grievances, his "special placement need" requests, and all communications between DOC officials and law enforcement concerning plaintiff's placement requests. Defendants state that they *have* responded in full to these requests, so it appears that the only question is whether these documents actually reached plaintiff. I will deny this portion of his motion, but plaintiff should correspond with defendants (and, if necessary, follow up with a new motion to compel) if these documents did not actually reach him.

Plaintiff next asks for copies of the "Wisconsin Administrative Codes and Internal Management Procedure." Defendants respond by stating that it is unreasonable and overly burdensome to provide the entire administrative code and internal procedures, but that they have given plaintiff an index of these materials so that plaintiff may select relevant portions for defendants to provide. This is an appropriate response, so I will deny this portion of the motion.

Finally, plaintiff asks for a complete copy of the "segregation log," which he believes would show every time he left the cell for recreation, library time, or other reasons. Plaintiff states that he needs this information to show that during the 15 months he was in segregation, he never attended recreation out of fear from the threats he received. Defendants object to scouring the log books for each individual entry concerning plaintiff, and note that in any event, the log does not necessarily document the movement of individual prisoner rather than large groups (such as that the "200 wing" was taken out for recreation). Further, they have submitted "law library list" entries and "External Movement" entries for time plaintiff left the prison for court appearances or hospital visits, and explain the ways plaintiff can seek Health Services Unit, Psychological Services Unit, and Program Review Committee records to document his movements for those respective purposes. They also concede that plaintiff did not attend recreation while in segregation, which appears to settle the issue behind plaintiff's request.

Therefore I will deny this portion of the motion. If plaintiff still seeks individual log records, he will have to file a new motion explaining in detail the purpose for his request.

2. Dkt. 86

This motion concerns plaintiff's Fourth Request for Production of Documents. Defendants state that plaintiff did not attempt to confer with them before filing motions Dkt. 86-88, as required under Federal Rule of Civil Procedure 37(a)(1), which alone would be reason enough to deny the motions. Moreover, plaintiff does not explain precisely what documents he seeks in this particular motion. He does include defendants' response, which states that they would not be responding to the request because they relate to an incident taking place in September 2014 at a Colorado prison. Because plaintiff is not proceeding on claims concerning the Colorado prison, none of those documents have any relevance to this case.

3. Dkt. 87

This motion concerns plaintiff's Second Request for Production of Documents. Many of the requested documents concern communications between the Wisconsin and Colorado prisons, but as stated above, there is no reason for defendants to turn over material regarding Colorado prisons. Additionally, plaintiff makes other requests concerning his communications with prison officials, but that information appears to have been provided to him, as discussed with regard to Dkt. 70. Finally, plaintiff makes blanket requests for items such as "All Inmate Complaints concerning the Departments failure to provide security for an inmate from April 2010-present" and "All incident reports concerning security failure to provide security for inmates from April 2010-present." Dkt. 87, at 5-6. Defendants raise reasonable objections about the extremely broad scope of these requests and privacy concerns implicated in letting plaintiff see other inmates' complaints, and plaintiff makes no real response to the objections in his reply (he merely restates the same conclusory reply for each request: "The defendants' objection to

request [is] without merit and frivolous," Dkt. 94). I conclude that plaintiff fails to show that the likely benefit of these documents outweighs the burden of production and legitimate privacy concerns. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii).

4. Dkt. 88

This motion concerns plaintiff's interrogatories, in which he asks defendants to recount their efforts to assist him after he complained about threats to his safety. They provide responses or objections to a few of plaintiff's questions, but otherwise respond by referring plaintiffs to DOC records pertaining to the special placement needs forms and plaintiff's complaints about his safety that they have already turned over to plaintiff. These are acceptable responses under Federal Rule of Civil Procedure 33(d) ("the responding party may answer by: (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could."). Plaintiff objects to many of these responses, but only in conclusory fashion, and as stated earlier, he has not conferred with defendants. I will deny this motion because plaintiff does not explain in detail why he thinks defendants have improperly responded.

E. Recruitment of counsel and access to the court

In the April 22, 2014 order, the court denied plaintiff's motion for the court's assistance in recruiting him counsel "because it remains too early to tell whether plaintiff will require the help of outside counsel in this case" and stated that "[g]oing forward, plaintiff remains free to refile his motion, but he will need to explain in detail why he cannot litigate the case himself." Dkt. 53 at 8. Plaintiff now asks for reconsideration of the April 22 order and has filed additional motions for help in recruiting counsel. Dkt. 55, 56, 61, 68, 113. Plaintiff argues that his imprisonment in Colorado makes it especially difficult to litigate his claims. In particular, he states that he is not afforded law library time and does not receive the same legal loan that

Wisconsin prisoners receive. He asks the court for an injunction requiring the Colorado Department of Corrections to provide him with a legal loan.

If a prison official was actively and physically blocking plaintiff's ability to come to trial or defend against a motion filed by the defendants, then the court might delve into the questions plaintiff raises about his access to the court, but it seems clear from the record that plaintiff has had no difficulty filing a large number of submissions to the court. Plaintiff's assertions about law library access and other impediments is intertwined with his requests for recruitment of counsel, but plaintiff has still failed to show that the complexity of the case outstrips his ability to litigate it. This is not a complex case from a legal standpoint; the questions are whether the defendants knew about the threats facing plaintiff and how they responded to them. Much of the key evidence in this case will be plaintiff's firsthand reports of the threats he faced, and he has already been provided with significant discovery materials, as well as the materials defendants have provided as part of their summary judgment motion. Plaintiff should be able to respond to the summary judgment motion using the discovery he has received and own firsthand accounts. Accordingly, I will deny plaintiff's motions for recruitment of counsel without prejudice. I will also deny his motion for an injunction regarding the legal loan.

As the court has previously told plaintiff, *see* Dkt. 53, he remains free to file a separate lawsuit regarding denial of his access to the courts, but he will have to show how he has been injured by prison officials' actions. *See, e.g.*, *Lewis v. Casey*, 518 U.S. 343, 350-54 (1996).

F. Motion to amend schedule

Defendants have filed a motion for summary judgment. Plaintiff responded by filing a motion for an extension of time to file a response, as well as a motion to "dismiss" the motion for perceived misconduct by defendants. I have already addressed plaintiff's complaints about

misconduct and concluded there is no reason to sanction defendants, so I will deny his motion to strike the summary judgment motion. I will grant his request for more time to respond to the motion. As stated in this court's procedures to be followed on briefing summary judgment motions, plaintiff should submit a brief, numbered responses to each of defendants' proposed findings of fact, a separate document containing his own numbered proposed findings of fact, and copies of all of the evidence he refers to in his proposed findings. Plaintiff may provide his testimony about events he has firsthand knowledge of by detailing those events and declaring under penalty of perjury that his recounting of the events is true.

Granting plaintiff's motion for more time to file a summary judgment response will also push the remaining timeline for this case back about a month. The schedule will be amended as follows:

- Defendants' summary judgment supplement regarding plaintiff's new allegations against defendants Baenen and Erickson: April 13, 2015
- Plaintiff's summary judgment response: May 11, 2015
- Defendants' summary judgment reply: May 25, 2015
- Rule 26(a)(3) Disclosures and all motions in limine: July 20, 2015
- Objections: August 3, 2015
- Final Pretrial Conference: August 24, 2015 at 8:30 a.m
- Trial: August 24, 2015 at 9:00 a.m.

ORDER

IT IS ORDERED that:

1. Plaintiff Spencer McClain's motion seeking reassignment of the case, Dkt. 76, is DENIED.

2. Plaintiff's motion for reconsideration of the court's April 22, 2014 order denying

his motion for sanctions against defendants, Dkt. 56, and his new motion for sanctions regarding the proper venue for this case, Dkt. 58, are DENIED.

3. Plaintiff's motions for sanctions regarding defendants' failure to mark documents as sealed, Dkt. 75, 97, and his related motion for default judgment, Dkt. 99, are DENIED.

4. Plaintiff's motion for leave to amend his complaint, Dkt. 100, is GRANTED. Plaintiff's amended complaint, Dkt. 101, is the operative pleading.

5. Plaintiff is GRANTED leave to proceed on an additional claim regarding defendants Baenen's and Erickson's failure to respond to threats made by a member of the Gangster Disciples. Defendants may have until April 13, 2015, to submit a supplement to their answer regarding this claim.

6. Plaintiff's motions to compel discovery, Dkt. 70, 86, 87, 88, are DENIED.

7. Plaintiff's motions for the court's assistance in recruiting him counsel, Dkt. 55, 56, 61, 68, 113, are DENIED without prejudice.

8. Plaintiff's motion for an injunction requiring the Colorado Department of Corrections to provide him with a legal loan, Dkt. 55, is DENIED.

9. Plaintiff's motion to dismiss defendants' motion for summary judgment, Dkt. 116, is DENIED. Plaintiff's motions for an extension of time to file a summary judgment response, Dkt. 114, 116, are GRANTED. The schedule is amended as discussed above.

Entered March 30, 2015.

BY THE COURT:

/s/
JAMES D. PETERSON
District Judge