

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

IRA ALSTON,

Plaintiff,

v.

JAMES DELPESCHIO, PAUL BALATKA,
GREGIO ROBLES, HAFNER, ALICEA, LISA
MOSIER, BLACK STOCK, JOHN DOE #1,
Second Shift Commander, JOHN DOE #2, *Third
Shift Commander*, JOHN DOE #3, *First Shift
Commander*, and JANE DOE #1, *Nurse*,

Defendants.

3:15-CV-01672 (CSH)

June 24, 2016

ORDER

HAIGHT, Senior District Judge:

Plaintiff recently filed two motions, a *Motion for Extension of Time until 30 days after close of discovery to identify John and Jane Does* and a *Motion for Partial Reconsideration re Initial Review Order*. This order resolves both.

I . Motion for Extension of Time

In the *Initial Review Order*, the Court gave the Plaintiff thirty days from the filing of the order to identify the John and Jane Does listed in the complaint, or else the unnamed individuals would be dismissed from the case. Plaintiff has requested that the Court enlarge the time for him to identify the John and Jane Does until thirty days after the close of discovery. This motion is denied. However, the Court would entertain, pursuant to Federal Rule of Civil Procedure 20(a)(2), a motion joining those individuals as defendants, should their identities be revealed through subsequent

discovery.

II. Motion for Partial Reconsideration

In the Court's *Initial Review Order*, the Court dismissed Plaintiff's allegations of deliberate indifference to an excessive risk of harm because Plaintiff had not alleged a harm that was sufficiently serious so as to plausibly state a claim for relief. Plaintiff moved for reconsideration of this portion of the order, asserting that the Court had overlooked relevant legal precedent.

The standard for granting a motion for reconsideration is "strict" and will be denied unless "the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). Reconsideration of a ruling by a Court generally requires "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error to prevent manifest injustice." *Virgin Atlantic Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) (quoting 18 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE & PROCEDURE § 4478 at 790 (1981)).

Plaintiff argues that the Court overlooked *Hope v. Pelzer*, 536 U.S. 730 (2002). *Hope* concerned a prisoner in Alabama who was subjected to cruel and unusual treatment by correctional officers when he was chained to a hitching post. *Hope v. Pelzer*, 536 U.S. 730 (2002). Hope was chained such that he was standing, and his arms were above shoulder height because he was only slightly taller than the hitching post. *Id.* at 734. Hope was chained twice for extended periods of time. Once, he was chained in the sun without a shirt on, which caused sunburns. *Id.* Hope, during the second time on the hitching post, was only given water once or twice and was given no bathroom breaks. *Id.*

Plaintiff's situation is distinguishable from that of the prisoner's in *Hope*. Plaintiff was not forced to stand for long periods of time with his hands above his head. Plaintiff was not left in the sun and deprived of bathroom breaks and water. Plaintiff was placed on in-cell restraint status, which, while the Plaintiff alleges was painful and uncomfortable, did not cause him any lasting damage, and is a recognized method for preventing an inmate from harming himself or others. *See Alston v. Butkiewicz*, 2012 WL 6093887, *12 (D. Conn. Dec. 7, 2012) ("Accordingly, use of restraints that are reasonably related to maintaining prison security, without more, does not violate the Eighth Amendment."). Plaintiff's *Motion for Partial Reconsideration* is denied.

III. Conclusion

In accordance with the foregoing, the Court makes the following Ruling and Order.

- A. Plaintiff's *Motion for Extension of Time* (Doc. No. 12) is denied without prejudice to refile as a motion under Federal Rule of Civil Procedure 20(a)(2) as a motion for joinder of parties.
- B. Plaintiff's *Motion for Partial Reconsideration* is denied.

It is SO ORDERED.

Dated: New Haven, Connecticut
June 24, 2016

/s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge