

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

SEAN TOLIVER,	:	
Plaintiff,	:	
	:	
v.	:	No. 3:16-cv-1899 (SRU)
	:	
SEMPLE, et al.,	:	
Defendants.	:	

RULING ON PLAINTIFF’S MOTION FOR RECONSIDERATION

Sean Toliver seeks reconsideration of the portion of the Initial Review Order dismissing the claims against Warden Falcone. For the reasons that follow, the request is denied.

Reconsideration will be granted only if the moving party can identify controlling decisions or data that I overlooked and that would reasonably be expected to alter my decision. A motion for reconsideration “is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a “second bite at the apple.” *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (quoting *Schrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) (internal quotation marks and citation omitted)). Any new evidence must be “truly newly discovered or could not have been found by due diligence.” *Space Hunters, Inc. v. United States*, 500 F. App’x 76, 81 (2d Cir. 2012).

Toliver asks me to take judicial notice of a purported class action filed on behalf of inmates at Garner Correctional Institution. The complaint in that case, *Grenier v. Semple*, No. 3:16-cv-1465 (AVC), was filed in August 2016. Toliver did not file the complaint in this case until December 2016. Thus, any information from the class action could have been included in

the complaint and is not newly discovered. Because that information is not newly discovered, it is insufficient to warrant reconsideration of the dismissal of the claim against Warden Falcone.

In addition, the *Grenier* plaintiffs allege that Warden Falcone did not assume that position until March 2014. *See Grenier v. Semple*, No. 3:16-cv-1465 (AVC), ECF No. 1 at 5. Toliver alleged no facts suggesting that Warden Falcone was aware of the problem before assuming the position of warden, or had any duty to inform Toliver of the problem before that time. Also, Toliver alleges that immediately after the test results were known, remedial measures were undertaken and completed by June 2014.

Toliver's motion for reconsideration [**ECF No. 15**] is **GRANTED**. After careful review, however, the requested relief is **DENIED**.

SO ORDERED this 27th day of February 2017, at Bridgeport, Connecticut.

/s/STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge