

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

JERRY HENRY,

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Plaintiff,

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vs.

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No. 2:12-cv-00127-SWW

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RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION,
DANNY BURL, DEXTER PAYNE, and
JEREMY ANDREWS, Individually and as
Agency Representatives,

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Defendants.

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ORDER

Jerry Henry, a former employee of the Arkansas Department of Correction (ADC), brings this action against Ray Hobbs, Director of the ADC, and ADC employees Danny Burl, Dexter Payne, and Jeremy Andrews, alleging that he was terminated pursuant to a scheme and conspiracy to terminate black employees by the ADC and that the scheme and conspiracy was carried out by Burl, Payne and Andrews, and authorized by Hobbs.

The matter is before the Court on motion of separate defendants Burl and Payne (but not Hobbs or Andrews) to dismiss [doc.#3]. Henry has filed a “Memorandum in Opposition to Motion to Dismiss” [doc.#6] in which he addresses one of the grounds for dismissal and states that the other issues are addressed in a proposed First Amended Complaint attached to his response, which he states he submits for filing.

It is not clear if counsel for the ADC defendants intended to omit Hobbs and Andrews from her motion to dismiss, and counsel for Henry has not properly filed a motion for leave to file an amended complaint. In light of the questions surrounding the current pleadings, the Court

will deny without prejudice separate defendants' motion to dismiss [doc.#3] and will construe Henry's "Memorandum in Opposition to Motion to Dismiss" [doc.#6] as a motion for leave to file the First Amended Complaint attached to that pleading. Defendants are hereby give fourteen (14) days from the date of entry of this Order in which to respond to Henry's now-construed motion for leave to file the First Amended Complaint. Should the Court deny Henry's motion for leave to file the First Amended Complaint, defendants may refile their motion to dismiss in the same or revised manner. Should the Court grant Henry's motion for leave to file the First Amended Complaint, defendants may file an appropriate responsive pleading to the First Amended Complaint (*e.g.*, a motion to dismiss or an Answer) once Henry timely files it.

IT IS SO ORDERED this 14th day of September 2012.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE