

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03316-GPG

JACQUES FREEMAN,

Plaintiff,

v.

WALGREENS,  
MARIEL RODRIQUEZ, Walgreens Employee,  
TY CHURCH, Walgreens Employee, and  
DEE GILLET, District 5 Police Department,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff Jacques Freeman currently resides in Denver, Colorado. Plaintiff, acting *pro se*, initiated this action by filing a Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed in District Court Without Prepaying Fees or Costs. The filings were deficient. Magistrate Judge Gordon P. Gallagher directed Plaintiff to cure the deficiencies, which he did and was granted leave to proceed pursuant to 28 U.S.C. § 1915.

Magistrate Judge Gallagher then, on February 4, 2015, reviewed the merits of the Complaint and found that the Complaint failed to comply with Fed. R. Civ. P. 8. Plaintiff was directed to amend the complaint and assert personal participation by each named defendant. Plaintiff also was told that Defendants Walgreens, Mariel Rodriguez, and Ty Church are not proper parties in a § 1983 action if they fail to act under color of state law in depriving his federal rights. Plaintiff further was directed to state what each defendant did to him, when the action was done, how the action harmed him, and what

specific legal right each defendant violated. Magistrate Judge Gallagher warned Plaintiff that if he failed to comply with the Order to Amend within the time allowed the Court would dismiss the action without further notice.

On February 10, 2015, counsel for Defendant Detective Michael Gillit filed a Notice of Settlement between Defendant Gillit and Plaintiff. Subsequently, on February 23, 2015, counsel filed a Stipulated Motion to Dismiss Defendant Detective Gillit With Prejudice, ECF No. 12, that is signed by both parties. The Motion will be granted.

Plaintiff, however, now has failed to comply with the Order to Amend, regarding the remaining Defendants, within the time allowed.

The Court finds Magistrate Judge Gallagher correctly determined that Plaintiff failed to comply with Rule 8 and required him to amend the Complaint. Since Plaintiff has failed to amend and address whether Defendants Walgreens, Rodriguez, and Church acted under color of state law, the Court finds these Defendants are improper parties in a 42 U.S.C. § 1983 action, and will dismiss the claims against these Defendants as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma paupers* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma pampers* in the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Stipulated Motion to Dismiss Defendant Detective Gillit with Prejudice, ECF No. 12, is granted. The claims asserted against Defendant Gillit are dismissed with prejudice. It is

FURTHER ORDERED that the remaining claims against Defendants Walgreens, Mariel Rodriguez, and Ty Church are dismissed with prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 17<sup>th</sup> day of March, 2015.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court