

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**DERRICK ALLEN,**

**Plaintiff,**

**vs.**

**CASE NO. 4:07CV469-RH/AK**

**JAMES MCDONOUGH, et al,**

**Defendants.**

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**ORDER**

Presently before the Court is Plaintiff's Motion to Amend (doc. 90), wherein he wishes to identify the John Doe corrections officer named in his previous complaint as Sgt. Velmon Watson. Rather than file a second amended complaint, which appears to be somewhat different from the first amended complaint that has already been served, the Court finds that the First Amended Complaint should be served upon the newly named Defendant and he shall answer to the claims asserted therein against "John Doe." Thus, the motion to amend (doc. 90) shall be **GRANTED**, insofar as the newly named defendant shall be added to this cause, but the Second Amended Complaint which was filed (doc. 91) shall be **STRICKEN**, as it is not the governing pleading in this cause.

Plaintiff moves to compel Defendant Watson to answer the second amended complaint, which is herein **DENIED**. **Watson will be served with the First Amended**

**Complaint and be directed to respond to the claims against the John Doe defendant named therein.** Insofar as Plaintiff seeks to compel discovery from him, this request is denied as well since he has not yet made an appearance in this cause and Plaintiff does not identify what discovery he is referring to. Finally, Plaintiff requests copies of Document 22 and Watson's Affidavit, attached to Defendants' Motion for Summary Judgment. (Doc. 87). The Court is not responsible for providing copies free of charge to a party, but to facilitate matters it will in this one instance **direct the Clerk to make a copy of Document 22 and Exhibit D of Doc. 87 and mail them to Plaintiff.**

Accordingly, it is

**ORDERED:**

1. Plaintiff's Motion to Amend (doc. 90) is **GRANTED**, insofar as the John Doe Defendant is herein identified as Sgt. Velmon Watson and shall be served with the first amended complaint. The proffered second amended complaint (doc. 91) shall be **STRICKEN**.

2. Plaintiff's Motion to Compel (doc. 92) is **DENIED**. **The Clerk will, however, copy and mail to him Document 22 and Exhibit D to Document 87.**

3. The Clerk shall make a copy of the amended complaint (doc. 33) and issue summons for Velmon Watson, indicating that he has sixty (60) days in which to file a response to the complaint, and refer the summons to the United States Marshals, along with the service copy of the first amended complaint and a copy of this order which shall be served with the first amended complaint upon the Defendants.

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4. Pursuant to Rule 4(c), Federal Rules of Civil Procedure, **Ricky Cloud**, is specially appointed to serve process upon the Defendants at Franklin CI.

5. Within 30 days from the date of entry of this order on the docket, the United States Marshal or a Deputy United States Marshal shall serve a copy of the civil rights complaint, a summons, and this order upon each Defendant. Service shall be accomplished **by mailing these documents by regular mail to the above named special process server who shall serve the complaint.** All costs of service shall be advanced by the United States.

6. Within 10 days after receipt of the complaint and this order, **Ricky Cloud** shall **serve the complaint upon the Sgt. Velmon Watson, complete and sign** the return of service, and **return** it to the Clerk of Court as proof of service. *Defendants shall also sign the return of service as an acknowledgment of receipt of service.*

7. *If service is returned unexecuted, or if a return is not filed within forty-five (45) days from the date of this order, the Clerk of Court shall immediately notify Chambers.*

8. Defendant shall have 60 days in which to file a response to the complaint.

9. **If Defendant Watson wishes to join in the pending motion for summary judgment, he shall so advise the Court.**

10. Counsel for Defendants shall file a notice of appearance within thirty (30) days of the date of service.

11. Plaintiff is advised that after a response to the complaint has been filed, no further amendments to the complaint shall be permitted by the Court unless, as required by Rule 15 of the Federal Rules of Civil Procedure, Plaintiff files a separate motion for

leave to so amend and provides a copy of the proposed amended complaint. N.D. Fla. Loc. R. 15.1.

12. In accordance with 28 U.S.C. § 636(c)(2), the Clerk shall forward to Plaintiff a form for consenting to trial by the magistrate judge, with the case number written on it. If Plaintiff wishes to consent, the form should be signed and forwarded to counsel for Defendants. If Defendants wish to consent, the form should be signed and returned to the Clerk.

13. After a notice of appearance has been filed, Plaintiff shall be required to mail to the attorney for each Defendant a copy of every pleading or other paper, including letters, submitted for consideration by the Court. Plaintiff shall include with each pleading, motion, or other paper to be filed with the Clerk of the Court a certificate stating the date an identical copy of the paper was mailed to each Defendant or to the attorney representing each Defendant. Any paper so submitted for filing that does not contain a "certificate of service" shall be returned by the Clerk and disregarded by the Court.

14. Plaintiff is reminded to keep the Clerk of Court advised of any change in his mailing address should he be transferred, released from prison, or otherwise be relocated. Failure to do so may result in the dismissal of Plaintiff's action for failure to prosecute should court orders not be able to reach Plaintiff.

**DONE AND ORDERED** on this the 7<sup>th</sup> day of December, 2009.

***s/ A. KORNBLUM***  
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**ALLAN KORNBLUM**  
**UNITED STATES MAGISTRATE JUDGE**

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