

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JASON C. MOULTON,)
)
 Plaintiff,)
)
 v.) CV-09-129-B-W
)
 MAINE DEPARTMENT OF)
 CORRECTIONS et al.,)
)
 Defendants.)

ORDER ON MOTION TO DISMISS OF DEFENDANT FOWLES

On April 2, 2009, Jason C. Moulton filed a *pro se* complaint alleging the violation of his civil rights against a number of state defendants, including Dwight Fowles, identified as “Dep. Warden Fowles.” *Complaint* at 3 (Docket # 1). On September 21, 2009, Attorney Andrews B. Campbell entered his appearance on behalf of Mr. Moulton. *Notice of Appearance* (Docket # 16). On December 2, 2009, Mr. Campbell filed on Mr. Moulton’s behalf an Amended Complaint.¹ The Amended Complaint retained Deputy Fowle as a defendant, and stated that he “was and is the Unit Manager of the S.M.U. at the Maine State Prison in Warren, Maine.” *Am. Compl. for Violations of Civil Rights and Pendent State Claims and Demand for Equitable Relief* (Docket # 23). On December 14, 2009, Deputy Fowles moved to dismiss the amended complaint on the ground that, other than identifying him as a defendant, the amended complaint makes no specific allegations against him and that, under *Ashcroft v. Iqbal*, ___U.S. ___, 129 S. Ct. 1937 (2009) and *Berube v. Conley*, 506 F.3d 70, 85 (1st Cir. 2007), the amended complaint

¹ Mr. Moulton moved to amend the complaint on November 20, 2009, and the motion was duly granted on November 30, 2009. *Pl.’s Mot. to Amend Initial Compl.* (Docket # 19); *Order Granting Mot. to Amend Compl.* (Docket # 23).

fails to state a cause of action. *Mot. to Dismiss of Def. Fowles* (Docket # 24). On December 23, 2009, Mr. Moulton filed a motion to amend the first amended complaint, which states in part:

Plaintiff does not name Dwight Fowles in proposed Second Amended Complaint mooting the Motion to Dismiss of the State of Maine and agrees to his dismissal without prejudice because it appears at this point in the litigation that the contentions of the Defendant are well founded.

Pl. 's Mot. to Amend First Am. Compl. and to Join and Substitute Certain Parties and Incidental Relief at ¶ 5 (Docket # 28).

The Court therefore GRANTS Defendant Dwight Fowles' Motion to Dismiss without prejudice (Docket # 24).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 7th day of January, 2010