

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARIO MADRID,

Plaintiff,

No. 17-11266

v.

District Judge Avern Cohn
Magistrate Judge R. Steven Whalen

GLENN KING, ET AL.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION TO AMEND COMPLAINT [Doc. #48]**

Before the Court is Plaintiff Mario Madrid's motion to file an amended complaint [Doc. #48]. Under the terms discussed below, the motion will be GRANTED IN PART AND DENIED IN PART.

Fed.R.Civ.P. 15(a) states that after a responsive pleading is filed, a complaint may be amended only by leave of the court, and that "leave shall be freely given when justice so requires." However, when a proposed amended complaint would not survive a motion to dismiss, the court may properly deny the amendment. *Neighborhood Development Corp. v. Advisory Council on Historic Preservation*, 632 F.2d 21, 23 (6th Cir. 1980); *Thiokol Corporation v. Department of Treasury*, 987 F.2d 376 (6th Cir. 1993).

The Plaintiff's proposed amended complaint names Mark Holey as a Defendant. However, the Court granted Holey's motion to dismiss, and Holey has been dismissed with prejudice [Doc. #29]. Therefore, including him as a Defendant would be futile, and the motion to amend will be denied to the extent that it names Holey. In addition, to the extent that the proposed amended complaint asserts an Eighth Amendment claim against

Defendant Cindy Olmstead, the Court also dismissed that claim. *Id.*

The proposed amended complaint also adds additional allegations of adverse actions by Defendant Cindy Olmstead with respect to the First Amendment retaliation claim. That claim as to Olmstead survived the motion to dismiss. The Court discerns no prejudice to Defendants in permitting the additional factual allegations in ¶¶ 16 and 17 of the proposed amended complaint to be added.

Accordingly, Plaintiff's motion to amend [Doc. #48] is GRANTED to the extent that proposed ¶¶ 16 and 17 may be added.

The motion is DENIED as to all claims against Defendant Mark Holey and as to the Eighth Amendment claim against Defendant Cindy Olmstead.

Within 14 days of the date of this Order, Plaintiff will file an amended complaint consistent with the terms of this Order.

IT IS SO ORDERED.

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: January 29, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on January 29, 2019, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen