

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re JOHN DOE
a/k/a Robert Winburn,

Petitioner,

Case No. 23-mc-50143
Honorable Matthew F. Leitman

**ORDER (1) GRANTING PLAINTIFF’S MOTION TO AMEND (ECF No. 6)
AND (2) DIRECTING PLAINTIFF TO FILE AN AMENDED COMPLAINT
IN COMPLIANCE WITH FED. R. CIV. P. 8(a)**

This is a prisoner civil-rights case brought by Plaintiff John Doe, also known as Robert Winburn. United States District Judge Stephen J. Murphy, III previously enjoined Winburn from filing a civil action in this Court without prepaying costs or fees unless he shows that he faces “imminent danger of serious physical injury. 28 U.S.C. § 1915(g).” (*See* Order, ECF No. 1-2, PageID.35.) Earlier in this action, the Court concluded that Winburn’s allegations established that he was in imminent danger of serious physical injury under 28 U.S.C. § 1915(g). Accordingly, on October 25, 2022, the Court granted Plaintiff’s application to proceed *in forma pauperis*. (*See* Order, ECF No. 5.)

Winburn is a Michigan prisoner presently confined at the G. Robert Cotton Correctional Facility in Jackson, Michigan. In this action, he alleges that Michigan Department of Corrections employees R.N. Griffith, Officer Todd Redman, Admin. Assistant K. Napter, P.A. Kristin Austin, and Classification Director J. Schley

committed and/or are liable for ongoing sexual abuse and misconduct. (*See* Compl., ECF No. 1; Proposed First Am. Compl., ECF No. 7.)

Now before the Court is Winburn's motion to amend and/or supplement his Complaint. (*See* Mot., ECF No 6.) Winburn seeks to add allegations and claims based on acts and/or omissions that have occurred since he filed the Complaint. (*See id.*, PageID.111. *See also* Proposed First Am. Compl., ECF No. 7.) Federal Rule of Civil Procedure 15(d) provides that the Court may, on just terms, permit a party to serve a supplemental pleading based upon events occurring after the filing of the Complaint. Here, a responsive pleading has not yet been filed. Thus, allowing Winburn to do file a First Amended Complaint will not prejudice any of the Defendants. Accordingly, the Court will **GRANT** Winburn's motion and will allow him to file a First Amended Complaint.

Finally, the Court notes that none of Winburn's filings to date – including his proposed First Amended Complaint (*see* ECF No. 7) – comply with Federal Rule of Civil Procedure 8(a)(2). The combined Complaint and proposed First Amended Complaint are 78 pages and contain far more factual allegations than necessary or appropriate. Rule 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotation marks omitted).

It would be unduly burdensome to require the Defendants to answer the Complaint or the proposed First Amended Complaint in their current state.

Accordingly, the Court **ORDERS** Winburn to file a single First Amended Complaint in this case that complies with Rule 8(a) of the Federal Rules of Civil Procedure by not later than **August 1, 2024**. The First Amended Complaint will be the controlling Complaint in this action and will supersede all other pleadings filed by Winburn. Therefore, Winburn shall include in the First Amended Complaint all of the substantive claims that he wishes to pursue in this case. In addition, the First Amended Complaint shall set forth the facts that are essential to those claims and that fairly inform the Defendants of the claims against them. The First Amended Complaint shall not contain unnecessary detailed and/or irrelevant allegations.

If Winburn files a First Amended Complaint by August 1, 2024, as set forth above, the Court will direct the Clerk of the Court to assign this action a case number on the Court's active civil docket, and all future proceedings will take place using that case number. If Winburn does not file a First Amended Complaint by August 1, 2024, that fully complies with this order, this Court will dismiss his claims without prejudice.

IT IS SO ORDERED.

Dated: May 22, 2024

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 22, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126