

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Walter L. Hall,

Plaintiff,

v.

Officer Chapman, FCI-Milan,
UNICOR-Point A; N. Jukuri, Sheet
Metal Worker Foreman; Finch,
General Manager of UNICOR

Defendants.

Case No. 15-13771
Hon. Terrence G. Berg
Hon. Anthony P. Patti

**ORDER MODIFYING REPORT AND RECOMENDATION (Dkt. 30) AND DENYING
THE DEFENDANTS' MOTION TO DISMISS (Dkt. 13) AS MOOT**

This is a prisoner civil rights action brought by a Michigan state prisoner, Plaintiff Walter Lee Hall, pursuant to 42 U.S.C. § 1983. The procedural history relevant to the instant Order is as follows:

- On October 23, 2015 Plaintiff filed his original Complaint. (Dkt. 1).
- On March 7, 2016 Defendants filed a Motion to Dismiss Plaintiff's original Complaint. (Dkt. 13).
- On May 10, 2016 Plaintiff filed a motion to amend his original Complaint. (Dkt. 20).
- On December 12, 2016 Magistrate Judge Anthony Patti filed a Report and Recommendation granting in part and denying in part Defendants' Motion to Dismiss. (Dkt. 30).

- On December 21, 2016 Judge Patti filed an Opinion and Order granting in part and denying in part Plaintiff's motion to amend his original Complaint. (Dkt. 33).
- On December 27, 2016 Defendants filed Objections to the Report and Recommendation. (Dkt. 34).
- On January 9, 2017 Plaintiff filed a "response to courts report and recommendations" expressing his intention to file an amended complaint in accordance with what Plaintiff understood to be the Court's instructions. (Dkt. 37).
- On January 17, 2017 Plaintiff filed an Amended Complaint. (Dkt. 38).
- On January 18, 2017 Defendants filed a "response to Plaintiff's filing at Dkt. 37," indicating, among other things, that they did not object to Plaintiff's filing an amended complaint. (Dkt. 39).

Under normal circumstances, this case should be at the stage where this Court is in a position to review the Report and Recommendation of the Magistrate Judge in light of any objections filed by the parties. Here, the Magistrate Judge recommended that part of the Complaint be dismissed, as requested by Defendants, but that some of the claims be allowed to continue—thus recommending that Defendants' Motion to Dismiss the Complaint be granted in part and denied in part. (Dkt. 30). The Defendants objected to this recommendation, asking this Court to dismiss the original Complaint in its entirety. (Dkt. 34). All good so far, but the matter has been somewhat confused by the fact that Plaintiff filed an Amended Complaint (Dkt. 38)—which dropped the claims that the Magistrate Judge recommended for dismissal—before this Court had the chance to rule on Defendants' Objections to the Report and Recommendation.

Looking at the pleadings and orders, Plaintiff had good reason to think that he was expected to file his Amended Complaint when he did because the Magistrate Judge had issued an Order granting in part Plaintiff's motion to amend his Complaint. (Dkt 33). In that Order, Magistrate Judge Patti stated, "No later than 21 days following this Court's disposition of Defendants' March 7, 2016 motion to dismiss, Plaintiff **SHALL**" file a first amended complaint "which conforms to this order and any other order filed in this case." (Dkt. 33 at Pg ID 430). Although the reference to "this Court's disposition" was intended to direct Plaintiff to file his Amended Complaint after *this* Court—that is, the District Judge—had reviewed the Report and Recommendation and disposed of Defendants' Motion to Dismiss, by either accepting or rejecting the Report and Recommendation, Plaintiff apparently did not understand the Order that way because he mailed to the Court on January 10, 2017 an Amended Complaint "in direct response to [Magistrate Judge Patti's] opinion and order dated December 21, 2016." (Dkt. 38 at Pg ID 359). As Defendants acknowledge in their Motion for Extension of Time to file an answer to Plaintiff's Amended Complaint, the language of Magistrate Judge Patti's Order "did not preclude the possibility of plaintiff filing an amended complaint at any time up to 21 days following an order, which is what plaintiff did." (Dkt. 40 at Pg ID 402).

In the Sixth Circuit, "[a]n amended pleading that is complete in itself and does not refer to or adopt a former pleading as part of it supersedes or supplants the former pleading." *Shreve v. Franklin Count, Ohio*, 743 F.3d 126, 131 (6th Cir. 2014) (quoting 61B Am. Jur. 2d Pleading § 789). Here, Plaintiff's amended pleading is complete in itself and does not refer to or adopt his former pleading. Plaintiff's Amended Complaint therefore supersedes his original Complaint. Plaintiff's Amended Complaint, filed January 17, 2017 (Dkt. 38), appears to have tried to address the problems with the original Complaint raised

by Magistrate Judge Patti. Any claim within the Amended Complaint may be subjected to dispositive motion practice in accordance with the Federal Rules of Civil Procedure.

Under these circumstances, it would not be appropriate to accept in full the December 12, 2016 Report and Recommendation granting in part and denying in part Defendants' Motion to Dismiss because the Complaint to which that motion was directed has been superseded by the Amended Complaint. The Court will therefore modify the Order recommended by the Report and Recommendation and will deny Defendants' Motion to Dismiss as moot. (Dkt. 13). Defendants' Objections are overruled because they were also directed to the Magistrate Judge's recommendation concerning the original Complaint, which has been superseded.

Defendants may either answer the Amended Complaint or file any other responsive pleading within 21 days of the date of this Order.

CONCLUSION

For the reasons set forth above,

It is hereby **ORDERED** that Magistrate Judge Patti's Report and Recommendation of December 12, 2016 (Dkt. 30) is **MODIFIED** as follows:

It is **ORDERED** that Defendants' Motion to Dismiss Plaintiff's original Complaint (Dkt. 13) is hereby **DENIED AS MOOT**.

Defendants are hereby ordered to file a responsive pleading to Plaintiff's Amended Complaint within 21 days of this order.

SO ORDERED.

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Dated: February 17, 2017

Certificate of Service

I hereby certify that this Order was electronically submitted on February 17, 2017, using the CM/ECF system, which will send notification to each party.

By: s/A. Chubb _____
Case Manager