

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

HERMAN C. SMITH, JR.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-CV-45-SNLJ
)	
BRANDI JUDEN, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on review of plaintiff's motion for leave to proceed in forma pauperis [Doc. 5]. In light of plaintiff's financial information, the motion will be granted, and plaintiff will be assessed an initial partial filing fee of \$1.70, which is twenty percent of his average deposits.

Having carefully reviewed the amended complaint [Doc.6], the Court finds that plaintiff may have viable constitutional claims for medical indifference; however, he has failed to assert facts and claims against all named defendants, and he has failed to state the capacity in which he is suing defendants. As such, the Court will instruct plaintiff to file a second amended complaint on a Court-provided form, in accordance with the specific instructions set forth below.

All claims in an action must be included in one, centralized complaint form, as neither the Court nor defendants wish to search through supplemental and prior pleadings in order to piece together plaintiff's claims. **As such, plaintiff is warned that the filing of a second amended complaint replaces the original complaint and all previously-filed pleadings and attachments or exhibits, and therefore, he must include each and every one of the claims he wishes to pursue in the second amended complaint.** See, e.g., *In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). **Any claims from the original complaint, amended complaint, supplements, and/or pleadings and attachments or exhibits that are not included in the second amended complaint will be deemed abandoned and will not be considered.** *Id.* **Plaintiff is advised that the second amended complaint will replace all prior complaints and will be the only pleading this Court reviews.** See *id.* **If plaintiff wishes to sue defendants in their individual capacities, plaintiff must specifically say so in the second amended complaint.**

Plaintiff should not attach any exhibits to the second amended complaint; all claims should be clearly set forth in the "Statement of Claim." In addition, in the "Caption" of the second amended complaint, plaintiff shall set forth the name of each defendant he wishes to sue; and in the "Statement of Claim," plaintiff shall

start by typing the first defendant's name, and under that name, he shall set forth in separate numbered paragraphs the allegations supporting his claim(s) as to that particular defendant, as well as the right(s) that he claims that particular defendant violated and the capacity in which the defendant is being sued. Plaintiff shall proceed in this manner with each of the named defendants, separately setting forth each individual name and under that name, in numbered paragraphs, the allegations specific to that particular defendant and the right(s) that he claims that particular defendant violated. The second amended complaint must contain short and plain statements showing that plaintiff is entitled to relief, the allegations must be simple, concise, and direct, and the numbered paragraphs must each be limited to a single set of circumstances. If plaintiff needs more space, he may attach additional sheets of paper to the second amended complaint and identify them as part of the "Caption" or "Statement of Claim"; however, as previously stated, plaintiff shall not attach any exhibits to the pleading. Plaintiff shall sign the second amended complaint.

Plaintiff is reminded that he is required to submit his second amended complaint on a Court-provided form, and it must comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff's failure to make specific and actionable allegations against any of defendant(s) will result in that individual's

dismissal from this case.¹ Last, if plaintiff fails to file a second amended complaint on a Court form in accordance with the Court's instructions, this action will be dismissed without prejudice and without further notice.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. 5] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall pay an initial partial filing fee of \$1.70 within thirty (30) days from the date of this order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

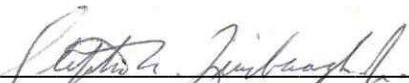
IT IS FURTHER ORDERED that plaintiff shall file a second amended complaint within thirty (30) days from the date of this Order, in accordance with the specific instructions set forth above.

IT IS FURTHER ORDERED that plaintiff's failure to comply with this Order will result in the dismissal of this action, without prejudice and without further notice to him.

¹The Court will review plaintiff's second amended complaint pursuant to 28 U.S.C. § 1915. A claim and/or defendant must survive § 1915 review in order for plaintiff to proceed in this lawsuit.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue on defendants at this time.

Dated this 21st day of June, 2016.



UNITED STATES DISTRICT JUDGE