

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

| | | |
|----------------------------|---|--------------------|
| LAMON TANEAL HEMINGWAY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 1:17-CV-52 JMB |
| |) | |
| BRANDEN MCSPADDEN, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

Before the Court is defendants' motion to dismiss this action, brought pursuant to Fed.R.Civ.P.12(b)(6). Defendants seek to dismiss plaintiff's complaint for failure to exhaust his administrative remedies.¹ Plaintiff has responded to defendants' motion to dismiss and requests an extension of time to file a second amended complaint. Defendants state that they acquiesce to plaintiff's request to file his second amended complaint; however, defendants wish to preserve their right to file a motion to dismiss the second amended complaint if necessary.²

In light of the aforementioned, the Court will deny the motion to dismiss and grant plaintiff time to file an amended pleading. The Court will also deny plaintiff's motion for order to show cause in which he asks for stamps and other legal materials. In his motion, plaintiff states that he was released from prison on December 2, 2017. As that time has already passed, his motion will be denied as moot.³

Accordingly,

¹Defendants further assert that plaintiff should be barred from filing suit for failing to accurately list his pending civil actions on the complaint form. This argument is specious and will be disregarded.

²Motions that refer to matters outside the pleading are more properly brought pursuant to Federal Rule of Civil Procedure 56.

³If plaintiff's circumstances have changed, he should notify the Court.

IT IS HEREBY ORDERED that defendants' motion to dismiss plaintiff's amended complaint [Doc. #14] is **DENIED without prejudice**.

IT IS FURTHER ORDERED that plaintiff shall file a second amended complaint in this action no later than **January 8, 2018**.


IT IS FURTHER ORDERED that defendants' motion for an extension of time to file their reply brief [Doc. #19] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion for order to show cause [Doc. #17] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that plaintiff's request for additional time to pay the initial partial filing fee [Doc. #16] is **DENIED AS MOOT** as the initial partial filing fee was paid on October 23, 2017.

IT IS FURTHER ORDERED that if plaintiff fails to file his second amended complaint by January 8, 2018, then this case will be dismissed without prejudice.

Dated this 7th day of December, 2017.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE