

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

JAMES BRODIGAN,)

Plaintiff,)

v.)

No. 4:18-CV-273 JAR

DR. JONATHAN ROBERTS, et al.,)

Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for leave to file an amended complaint. The Court reviewed plaintiff's complaint on August 3, 2018, for frivolousness, maliciousness and for failure to state a claim, pursuant to 28 U.S.C. § 1915. At that time, the Court issued process on several defendants and on several claims in plaintiff's complaint. The Court dismissed plaintiff's claims against two doctors named in the complaint, however, because they were not identified as doctors employed by Corizon, Inc., but instead identified as doctors employed by outside medical providers.

In his request to amend his complaint, plaintiff requests leave to amend his pleading to "recite language that these two medical contractors were acting under the color of law." Plaintiff, however, has not submitted a proposed amended complaint along with his request for leave to amend. *Clayton v. White Hall School Dist.*, 778 F.2d 457, 460 (8th Cir. 1985) ("[I]n order to preserve the right to amend the complaint, a party must submit the proposed amendment along with its motion.").

Moreover, in his complaint, neither Dr. Jonathon Roberts nor Dr. Theodore Willmore were identified as state actors subject to liability under 42 U.S.C. § 1983. Dr. Theodore Willmore


was identified as an ER doctor at a private hospital, and Dr. Jonathon Roberts was identified as a private surgeon at St. Mary's Hospital in Jefferson City, Missouri. It is for this reason that these defendants were dismissed from plaintiff's complaint. *See West v. Atkins*, 487 U.S. 42, 48 (1988) (to state a claim under 42 U.S.C. § 1983, a plaintiff must establish: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged deprivation of that right was committed by a person acting under color of state law).

If plaintiff wishes to file an amended complaint, he must file a proposed amended complaint contemporaneously with a motion to file an amended complaint, and he must identify the reasons why his motion to file his amended complaint should be granted. At this time, his motion will be denied without prejudice.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to file an amended complaint [Doc. #12] is **DENIED** without prejudice.

Dated this 5th day of September 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE