

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KENDELL CHARLES ALEXANDER, SR.,

Plaintiff,

v.

ROBERT ORTIZ,

Defendant.

Civil Action
No. 15-6981 (JBS-AMD)

MEMORANDUM OPINION

SIMANDLE, Chief District Judge

1. On September 21, 2015, Plaintiff Kendell Charles Alexander, Sr., submitted a civil complaint alleging violations of the Equal Protection Clause in connection with his employment at FCI Fort Dix. Complaint, Docket Entry 1.

2. The Court reviewed the complaint pursuant to 28 U.S.C. §§ 1915, 1915A, and determined that Plaintiff failed to sufficiently allege an Equal Protection claim. The Court did permit a claim alleging that Defendant Robert Ortiz retaliated against Plaintiff for filing grievances to proceed, however. The Court informed Plaintiff that he could move to amend his complaint if he could allege facts to support his Equal Protection claim. Opinion and Order, Docket Entries 3 and 4. The other defendants named in the complaint were dismissed as immune from suit and for failure to state a claim.

3. Defendant Ortiz filed an answer to the complaint on April 25, 2016. Answer, Docket Entry 18.

4. On June 1, 2016, Plaintiff filed the instant motion to amend his complaint. Docket Entry 24.

5. Defendant Ortiz responded on July 18, 2016 indicating that he had no objection to the motion. Response, Docket Entry 25. He requested permission to file an answer to the amended complaint within 10 days of the amended complaint's filing, as well as an additional two weeks to file a motion for summary judgment. *Id.* He further indicated he reserved the right to file a venue transfer motion and asked that discovery be stayed pending resolution of the summary judgment motion. *Id.*

6. Plaintiff wrote to the Court indicating he objected to any further extensions of time, the request to stay discovery, and any motion to transfer venue. Plaintiff's Reply, Docket Entry 27.

7. Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend a pleading once as a matter of course twenty-one (21) days after serving the pleading or twenty-one (21) days "after a responsive pleading or service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. Pro. 15(a)(1)(A)-(B). Plaintiff filed this motion more than 21 days after the filing of the answer on April 25, 2016;

therefore, Defendant's written consent or leave of Court is required. Fed. R. Civ. Pro. 15(a)(2).

8. Plaintiff seeks to amend his complaint to address the deficiencies in his Equal Protection claim as previously noted by the Court. Defendant does not object to the amendment. Additionally, the Court has reviewed the proposed amended complaint and concludes Plaintiff has sufficiently pled facts to state equal protection and retaliation claims. Therefore, the motion to amend shall be granted, and Defendant shall file an answer to the amended complaint within 10 days of entry of this Order.

9. Defendant may file a motion for summary judgment at any time permitted by the Federal Rules of Civil Procedure and local rules. Defendant must file a formal motion to stay discovery before the magistrate judge.

10. An appropriate order follows.

August 9, 2016
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge