

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CHAMBERS OF  
MICHAEL A. SHIPP  
UNITED STATES DISTRICT JUDGE

CLARKSON S. FISHER FEDERAL  
BUILDING & U.S. COURTHOUSE  
402 EAST STATE STREET  
TRENTON, N.J. 08608  
609-989-2009

**NOT FOR PUBLICATION**

November 9, 2018

**LETTER OPINION & ORDER**

**VIA CM/ECF**

All counsel of record

Re: *Alex Fraenkel v. William Garcia, et al.*  
Civil Action No. 18-9281 (MAS) (TJB)

Dear Counsel and Mr. Fraenkel:

This matter comes before the Court upon the parties' Correspondence to the Court. (*See* ECF Nos. 24-2, 26, 27.)

On September 24, 2018, the Court granted Plaintiff's Motion to Amend. (ECF No. 18.) On October 9, 2018, Plaintiff filed a Third Amended Complaint. (ECF No. 19.) On October 30, 2018, Defendants Christopher Bateman, Brian Glicos, and Janice Matthewson ("Individual Defendants") filed a Motion to Dismiss. (ECF No. 23.) On October 31, 2018, Plaintiff filed a Fourth Amended Complaint. (ECF No. 24.) On the same day, Plaintiff filed a Request for Summons to be issued for certain defendants. (ECF No. 25.) Plaintiff's Fourth Amended Complaint was filed without written consent from the defendants. The State of New Jersey, the Attorney General of New Jersey, the New Jersey State Police, Colonel Joseph Fuentes, Trooper William Garcia, Trooper Matthew Erny, Detective Sergeant Robert Pavelchak, Investigator Mark Murranko, Captain Robert Price, Captain William Harkness, Detective Sergeant First Class David Bode, and Captain Christopher Nunziato ("State Defendants") have not responded to Plaintiff's Third Amended Complaint or Fourth Amended Complaint.

Upon the Court's review, the Third Amended Complaint and Fourth Amended Complaint contain substantially the same allegations and the same causes of action. (*Compare* ECF No. 19 *with* ECF No. 24.) The two complaints, however, contain different exhibits. (*Id.*) The Fourth Amended Complaint includes correspondence indicating that Plaintiff mistakenly excluded certain documents from the Third Amended Complaint. (*See* Correspondence, ECF No. 24-2.) The Court interprets the correspondence as a request for leave to file an amended complaint, and the Court grants Plaintiff's request. The Fourth Amended Complaint (ECF No. 24), accordingly, shall serve as the operative complaint. Further, the Court terminates Individual Defendants' Motion to Dismiss.

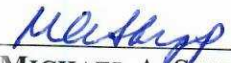
By November 16, 2018, Individual Defendants and State Defendants shall file a joint proposed schedule to answer or respond to Plaintiff's Fourth Amended Complaint. Individual Defendants may request that the Court consider their previously filed Motion to Dismiss (ECF No. 23) as their

operative motion, in which case the Court will reinstate the motion and Plaintiff's opposition will be due by November 30, 2018.

Based on the foregoing, and for other good cause shown,

**IT IS** on this 9<sup>th</sup> day of November, 2018 **ORDERED** that:

1. Plaintiff's Fourth Amended Complaint shall serve as the operative Complaint in this matter.
2. Individual Defendants' Motion to Dismiss is terminated.
3. By **November 16, 2018**, Individual Defendants and State Defendants shall file a joint proposed schedule to answer or respond to Plaintiff's Fourth Amended Complaint.
4. Should Individual Defendants request that the Court consider their previously filed Motion to Dismiss (ECF No. 23) as the operative motion, Plaintiff shall have until **November 30, 2018**, to oppose the motion.
5. The Clerk of the Court shall issue the Summons requested by Plaintiff. (ECF No. 25.)

  
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**MICHAEL A. SHIPP**  
**UNITED STATES DISTRICT JUDGE**