

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JORDAN L. MOORE,

Plaintiff,

-against-

CITY OF YONKERS, POLICE OFFICER
MORAN, POLICE OFFICER NEVILLE
BENNETT, YONKERS POLICE DETECTIVE
JOHN DOE #1, and YONKERS POLICE
DETECTIVE JOHN DOE #2,

Defendants.

19-CV-03629 (PMH)

ORDER

PHILIP M. HALPERN, United States District Judge:

Plaintiff, currently incarcerated in Collins Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his federal constitutional rights. By order dated April 26, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").¹

Plaintiff's initial Complaint, which was docketed via ECF on April 23, 2019, named as Defendants the City of Yonkers, Police Officer Moran ("Moran"), a John Doe Police Officer, and two John Doe Detectives. (Doc. 2). On May 14, 2019, the Court issued an Order of Service directing the U.S. Marshals to effectuate service on Defendants City of Yonkers and Moran. (Doc. 6). The Order also directed the City of Yonkers to identify the John Doe Defendants pursuant to *Valentin v. Dinkins* within 60 days. (*Id.*). The City of Yonkers failed to timely comply with the *Valentin* Order. The City of Yonkers and Moran filed Answers on July 25, 2019. (Doc. 11).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

The Court held a telephonic conference on July 29, 2020. Thereafter, the Court issued an Order directing the City of Yonkers to identify the John Doe Defendants within 30 days and directing Plaintiff to amend his Complaint within 30 days of learning the identities of the John Doe Defendants. (Doc. 36). On August 27, 2020, counsel for Defendants notified the Court that the John Doe police officer was identified as Police Officer Neville Bennett (“Bennett”), but that it was unable to identify the John Doe Detective Defendants. (Doc. 40).

By letter dated September 10, 2020, and filed via ECF on September 25, 2020, Plaintiff requested an amended complaint form. (Doc. 45). The form was sent to Plaintiff on October 9, 2020 (Oct. 9, 2020 Dkt. Entry). Plaintiff’s First Amended Complaint (“FAC”) was filed via ECF on November 4, 2020. (Doc. 47, Am. Compl., “FAC”). Plaintiff’s FAC names as Defendants the City of Yonkers, Moran, Bennett, and two John Doe Detectives.

Plaintiff’s FAC does not include any additional information about the identities of the John Doe Detectives beyond that which was provided in Plaintiff’s initial Complaint. Thus, because the City of Yonkers has already notified the Court and Plaintiff that it was unable to identify the John Doe Detective Defendants based on the information provided by Plaintiff, Plaintiff’s claims against the John Doe Detectives are dismissed.

Counsel for Defendant stated on the record during the July 29, 2020 conference that it would accept service of Plaintiff’s FAC on behalf of the then-yet-to-be-named John Doe Defendants. (Doc. 36 (memorializing same)). Thus, the Court considers Plaintiff’s FAC served on Defendant Bennett on November 4, 2020, the date on which the FAC was docketed via ECF. (Doc. 47). Bennett shall answer or move by January 4, 2021.

CONCLUSION

Defendant Bennett shall answer or move by January 4, 2021. By January 4, 2021, Defendants City of Yonkers and Moran shall either file an Amended Answer to Plaintiff's FAC or notify the Court via letter that they intend to rely on their Answer filed on July 25, 2019.

The Court shall hold a telephonic conference on January 6, 2021 at 11:15 a.m. At the time of the scheduled conference all parties shall call (888) 398-2342; access code: 3456831. It is the responsibility of counsel for Defendants to make prior arrangements with the appropriate facility to have the Plaintiff available via telephone.

The Court instructs the Clerk to mail a copy of this Order to Plaintiff at the address provided on the docket.

SO ORDERED.

Dated: November 16, 2020
New York, New York



PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Sergeant Stephan Pietre
Downstate Correctional Facility
121 Red Schoolhouse Road
P.O. Box 445
Fishkill, NY 12524-0445

2. Officer Kendre Lyons
Downstate Correctional Facility
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P.O. Box 445
Fishkill, NY 12524-0445