

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAWN EVANS,

Plaintiff,

-v-

13-CV-0805A

ORDER

SUPERINTENDENT THOMAS GRIFFIN, et al.,,

Defendants.



Upon review of the plaintiff's *pro se* prisoner civil rights complaint, the Court, pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, granted plaintiff permission to proceed *in forma pauperis*, dismissed a certain number of plaintiff's claims with leave to amend and directed that if plaintiff did not file an amended complaint as directed by a certain date, those claims dismissed without prejudice would be dismissed with prejudice and the Clerk of the Court was to cause the Marshals Service to serve the summons and complaint upon the remaining defendants--Fuller, Balmer, Tillinghast and Paluch--with respect to the remaining assault/use of excessive force claims only. (Docket No. 4, Decision and Order). The claims that were dismissed without prejudice with leave to amend were the claims against defendants Griffin, Clement, Pedalty, Ellis, Thatcher, Maldano and Rozell, and alleged claims of retaliation, denial of adequate medical treatment and denial of recreation. (Id.)

Plaintiff later filed a First Amended Complaint and a Second Amended Complaint against both the defendants against whom the complaint was dismissed without prejudice and against whom the complaint was not dismissed. (Docket Nos. 5 and 6). Plaintiff has now filed a Notice to Voluntarily Dismiss the First and Second Amended Complaints against the defendants previously dismissed without prejudice from the complaint--Griffin, Clement, Rozell, Maldano, Pedalty, Ellis and Thatcher. (Docket No. 7). He also requests that the Court cause the summons and complaint to be served against the defendants not dismissed from the complaint--Fuller, Balmer, Tillinghast and Paluch.

Because no answer or motion for summary judgment has been filed by any adverse party, see Fed.R.Civ.P. 41(a)(1)(A)(i), the First and Second Amended Complaints are hereby dismissed without prejudice, and the assault/use of excessive force claims against Fuller, Balmer, Tillinghast and Paluch set forth in the complaint (see Docket No. 4, Decision and Order, at 10-11) will proceed to service.

IT IS HEREBY ORDERED that, pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i), the First and Second Amended Complaints are hereby dismissed without prejudice, and

FURTHER, that the Clerk of the Court is directed to cause the United States Marshals Service to the summons and complaint, this Order and the Order filed December 6, 2013 (Docket No. 4), upon

defendants Fuller, Balmer, Tillinghast and Paluch, without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor;

FURTHER, the Clerk of the Court is also directed to forward a copy of this Order by email to Michael Russo, Assistant Attorney General in Charge, Buffalo Regional Office <Michael.Russo@ag.ny.gov>; and

FURTHER, that, pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer the complaint.

SO ORDERED.

s/Michael A. Telesca
MICHAEL A. TELESKA
United States District Judge

Dated: April 2, 2014
Rochester, New York