

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:16-cv-385-FDW

JIMMY ALLEN ROBERTS,)
)
 Plaintiff,)
)
 vs.)
)
 FRANK L. PERRY, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER comes before the Court on Plaintiff’s Motion to Amend Complaint, (Doc. No. 9), and Plaintiff’s Motion for Default Judgment, (Doc. No. 11).

First, Plaintiff’s Motion for Leave to Amend Complaint will be denied because he has not attached a proper proposed amended complaint to his motion. Rather, Plaintiff seeks to supplement the original complaint with an additional claim set forth in the motion. See (Doc. No. 9 at 1). In order to amend his complaint, Plaintiff may not simply add allegations to his already existing complaint as he attempts to do here. Rather, he must submit a proposed amended complaint that contains all claims he intends to bring in this action against all Defendants he intends to sue. That is, a plaintiff may not amend his complaint in piecemeal fashion. Once Plaintiff amends his complaint, the original complaint will be superseded, meaning that if an amended complaint omits claims raised in the original complaint, the plaintiff has waived the omitted claims. See Young v. City of Mt. Ranier, 238 F.3d 567 (4th Cir. 2001). The amended complaint must be submitted on the form that will be supplied with this Order and set forth a “short and plain” statement of the claims. See Fed. R. Civ. P. 8(a)(2).


Second, Plaintiff’s Motion for Default Judgment, (Doc. No. 11), will be denied as

premature because the Complaint has not yet been initially reviewed and no Defendant has been served.

IT IS THEREFORE ORDERED that:

- (1) Plaintiff's Motion for Leave to Amend Complaint, (Doc. No. 9), is **DENIED** at this time, with permission to refile his motion for leave to amend along with a proposed amended complaint in accordance with this Order.
- (2) Plaintiff's Motion for Default Judgment, (Doc. No. 11), is **DENIED**.
- (3) The Clerk of this Court is respectfully directed to mail Plaintiff a new Section 1983 complaint form.

Signed: July 20, 2017



Frank D. Whitney
Chief United States District Judge

