

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:14-cv-651-FDW

CHRISTOPHER OXENDINE-BEY,)
)
Plaintiff,)
)
vs.)
)
JOHN MITCHELL, et al.,)
)
Defendants.)
_____)

ORDER

THIS MATTER comes before the Court on a motion to dismiss or strike Plaintiff’s Second and Third Amended Complaints, filed by Defendants Mitchell, Lemon, Brooks, Mims, Rorie, Beaver, Kiker, and Abernathy. (Doc. No. 28).

Plaintiff filed the original complaint in this action on November 21, 2014, naming as Defendants: Kristopher Kiker, Michael Brooks, Kenneth Beaver, David Mitchell, Maranda Mims, Angela Rorie, Milessia Abernathy, Terry Lemon, and John Aaron. (Doc. No. 1). In his initial complaint, Plaintiff claims that Defendants failed to protect him from an alleged assault involving another inmate at Lanesboro Correctional Institution which, according to Plaintiff, occurred in October 2014. Before the Court’s frivolity review, Plaintiff filed an Amended Complaint on May 4, 2015, adding factual allegations--including allegations pertaining to an alleged assault involving another inmate at Lanesboro which, according to Plaintiff, occurred in August 2014. (Doc. No. 7).

On May 7, 2015, the Court completed its frivolity review and allowed the claims asserted in Plaintiff’s Complaint and Amended Complaint to proceed. (Doc. No. 8). On May 18, 2015,

summons were issued to the Defendants named in the Complaint and Amended Complaint.

(Doc. No. 10). On the same day, without first filing a motion to amend, Plaintiff filed a Second Amended Complaint, naming additional persons as Defendants and including allegations regarding alleged wrongful conduct and an alleged assault involving another inmate at Lanesboro, which Plaintiff asserts occurred in May 2015--after Plaintiff initiated this action.

(Doc. No. 9). In June 2015, the Complaint, as amended on May 4, 2015, was served on all of the Defendants named in the Amended Complaint except for Defendant John Aaron. (Doc. No. 14-20).


On June 19, 2015, the Defendants who were served with the original Complaint filed a motion for an extension of time to respond to Plaintiff's Complaint as amended on May 4, 2015. (Doc. No. 22). On June 22, 2015, the Court allowed Defendants' motion and extended Defendants' time to file an Answer or other response to August 2, 2015. Before Defendants filed an Answer, Plaintiff filed a Third Amended Complaint on June 26, 2015. (Doc. No. 25). In his Third Amended Complaint, Plaintiff again attempts to include claims against individuals not named as Defendants in Plaintiff's Initial and First Amended Complaint, as well as allegations regarding conduct that allegedly occurred after the filing of Plaintiff's Initial and First Amended Complaint. (Doc. No. 25). On August 3, 2015, Defendants filed an Answer to Plaintiff's initial and First Amended Complaint. (Doc. No. 27). Defendants have now moved to strike Plaintiff's Second and Third Amended Complaints.

The Court agrees with Defendants that Plaintiff's Second and Third Amended Complaints are improper and should be stricken. Under Rule 15 of the Federal Rules of Civil Procedure, Plaintiff was required to first obtain permission from the Court before filing the Second and Third Amended Complaint. See FED. R. CIV. P. 15(a) (stating that a party may

amend its pleading once as a matter of course within a specified time period, and “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave”). Plaintiff’s Second and Third Amended Complaints, (Doc. No. 9; 25), are hereby stricken from the record.

IT IS THEREFORE ORDERED THAT:

(1) Defendants’ Motion to Dismiss or Strike Plaintiff’s Second and Third Amended Complaints is **GRANTED**. (Doc. No. 28).


Frank D. Whitney
Chief United States District Judge

