

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-151-FDW**

ALFONZO CABALLERO,)
)
 Plaintiff,)
)
 vs.)
)
 PHILLIP BONEY, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court on periodic status review.

Pro se Plaintiff's Complaint that was filed pursuant to 42 U.S.C. § 1983 passed initial review on claims of excessive force and discrimination as to several Defendants. (Doc. No. 14). The Court ordered the Clerk to commence the procedure for waiving service of process pursuant to Local Rule 4.3 and Waivers of Service were executed by Defendants McIntosh, older, Burke, and Mack. (Doc. No. 21). NC DPS filed a sealed Notice providing the last known addresses for Defendants Boney and Heh, and the U.S. Marshal was instructed to attempt service on those Defendants. (Doc. No. 22, 23). However, NC DPS was unable to identify Defendant Smith based on the allegations in the Complaint and a review of NC DPS records. (Doc. No. 22).

On September 28, 2018, the Court instructed Plaintiff to file a Notice within 10 days providing any and all information about Defendant Smith to assist NC DPS in identifying the individual against whom Plaintiff intends to proceed. (Doc. No. 23). Plaintiff was cautioned that the failure to comply may result in dismissal of the claims against Defendant Smith. (*Id.*). The time for filing a Notice with regards to Defendant Smith has expired and Plaintiff has failed to comply.

Plaintiff has failed to provide additional identifying information that would permit


Defendant Smith to be served. It appears that Plaintiff may have abandoned his claims against Defendant Smith. Plaintiff shall file, within **ten (10) days** of this Order, a Notice as required in the Court's September 28, 2018, Order, or shall file a Response to this Order explaining why he has failed to do so. Failure to comply with this Order will result in dismissal of the claims against Defendant Smith without further notice.

In addition, it appears from NC DPS records that Plaintiff has been transferred from Marion C.I. to Tabor C.I. and he has not filed a Notice of Change of Address with the Court. Plaintiff is reminded that it is his responsibility to keep the Court apprised of his current address at all times. Plaintiff's failure to do so may lead to dismissal of this action for lack of prosecution.

IT IS, THEREFORE, ORDERED that:

- (1) Plaintiff **shall have ten (10) days from the date of this Order** in which to either file a Notice providing additional information about Defendant Smith or file a Response to this Order showing cause for why he has failed to comply with the Court's Order of September 28, 2018. If Plaintiff fails to do so, Plaintiff's claims against Defendant Smith will be dismissed without further notice to Plaintiff.
- (2) The Clerk of Court is instructed to mail a copy of this Order and the September 28, 2018, Order, (Doc. No. 23), to Plaintiff at his address of record at Marion C.I. as well as at Tabor C.I.

Signed: October 11, 2018


Frank D. Whitney
Chief United States District Judge 