

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-119-FDW**

SEAN SMITH,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
ALLAN KENNEDY, et al.,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on initial review of Plaintiff’s Second Amended Complaint, (Doc. No. 20). Plaintiff is proceeding *in forma pauperis*, (3:14-cv-625, Doc. No. 8).

Pro se Plaintiff Sean Smith filed a civil rights suit pursuant to 42 U.S.C. § 1983 with regards to incidents that allegedly occurred at the Lanesboro Correctional Institution. Plaintiff filed the original Complaint along with four other inmates in case number 3:14-cv-625-FDW. The instant case was opened on March 10, 2017, after the Court granted several Defendants’ motion to sever. The original Complaint passed initial review and Plaintiff was granted leave to amend to add a common law claim of intentional infliction of emotional distress, to which counsel for Mr. Wall and the existing Defendants did not object. (Doc. No. 19). The Court concludes that the Second Amended Complaint is not frivolous and should be served on Defendants. See 28 U.S.C. § 1915(e)(2)(B).

For the reasons stated herein, the Second Amended Complaint will proceed and service will be ordered on Mr. Wall.

IT IS, THEREFORE, ORDERED that:

1. The Second Amended Complaint, (Doc. No. 20), survives initial review under 28

U.S.C. § 1915.

2. **IT IS FURTHER ORDERED THAT** the Clerk is directed to mail summons forms to Plaintiff's counsel, which counsel will fill out and return for service of process on Defendant Wall within **20 days** of this Order. Once the Court receives the summons forms, the Clerk shall then direct the U.S. Marshal to effectuate service on Defendant Wall. The Clerk is respectfully instructed to note on the docket when the form has been mailed to Plaintiff's counsel.

Signed: March 21, 2018



Frank D. Whitney
Chief United States District Judge

