

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ROY A. DURHAM,  
Plaintiff,

vs.

WARDEN MICHAEL SHEETS, *et al.*,  
Defendants.

Case No. 1:13-cv-226

Weber, J.  
Litkovitz, M.J.

**ORDER REPORT AND  
RECOMMENDATION**

Plaintiff, an inmate at the Southern Ohio Correctional Facility (SOCF), brings this prisoner civil rights action under 42 U.S.C. § 1983 alleging violations of his constitutional rights by certain employees of the Warren Correctional Institution (WCI). This matter is before the Court on defendants Justin Johnson, Michael Sheets, Rob Jeffreys, Joseph Little, Adam Keesler, and Justin Reese's (defendants)<sup>1</sup> motion for judgment on the pleadings (Doc. 48). This matter is also before the Court on: (1) plaintiff's motion for voluntary dismissal of his claims against certain individuals (Doc. 39); (2) plaintiff's motion to amend his complaint (Doc. 50), defendants' response in opposition (Doc. 52); and plaintiff's reply memorandum (Doc. 53); and (3) plaintiff's motion to stay the proceedings (Doc. 51).

**I. Defendants' Motion for Judgment on the Pleadings (Doc. 48)**

By way of background, plaintiff initiated this action in April 2013 by filing a pro se complaint challenging his treatment at WCI when he was incarcerated there in 2011 to 2012. (Doc. 1). On June 10, 2013, the undersigned recommended that plaintiff's claim for injunctive relief and claims against certain supervisory correctional officials be dismissed, but allowed plaintiff's claims to proceed against five WCI correctional officers. (Doc. 9).

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<sup>1</sup>For purposes of this opinion, "defendants" refers to only these defendants, all of whom have been properly served and have appeared through counsel. *See* Docs. 20, 21. The Court will address the service issues related to the other named defendants *infra*.

Plaintiff then filed a motion to amend his complaint, which was granted in light of the recent Sixth Circuit decision, *LaFountain v. Harry*, 716 F.3d 944 (6th Cir. 2013). (Docs. 13, 14). Plaintiff proceeded to file an amended complaint in excess of 300 pages, naming 99 individual defendants and challenging his treatment at various Ohio penal institutions over the course of several years. (Doc. 20). The undersigned determined that plaintiff's complaint failed to comply with Fed. R. Civ. P. 8(a) and plaintiff was ordered to resubmit an amended complaint limited to 20 pages and "to causes of action that arose in a location that is covered by this Court's venue jurisdiction (*i.e.*, WCI) based on incidents occurring within two years of filing the instant action." (Doc. 22). Plaintiff complied with this Order and submitted a 20 page complaint (the second amended complaint) on September 9, 2013. (Doc. 28). On October 17, 2013, plaintiff requested leave of Court to submit approximately 230 pages of exhibits which were referenced in the second amended complaint. (Doc. 30). On November 22, 2013, the undersigned granted plaintiff's request and held that the exhibits were to be considered as exhibits attached to plaintiff's second amended complaint. (Doc. 35 at 3). It is with this procedural background in mind that the Court considers defendants' motion for judgment on the pleadings.

Rule 12(c) of the Federal Rules of Civil Procedure provides that "[a]fter the pleadings are closed - but early enough not to delay trial - a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). The review of a Rule 12(c) motion is the same as a review under Rule 12(b)(6). *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007). The Court must "construe the complaint in the light most favourable to the non-moving party, accept the well-pled factual allegations as true, and determine whether the moving party is entitled to judgment as a matter of law." *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d

327, 336 (6th Cir. 2007). However, the Court “need not accept the plaintiff’s legal conclusions or unwarranted factual inferences as true.” *Id.* “To withstand a Rule 12(c) motion for judgment on the pleadings, ‘a complaint must contain direct or inferential allegations respecting all the material elements under some viable legal theory.’” *Barany-Snyder v. Weiner*, 539 F.3d 327, 332 (6th Cir. 2008) (quoting *Commercial Money Ctr.*, 508 F.3d at 336).

Defendants assert that they are entitled to judgment on the pleadings because plaintiff’s second amended complaint contains “nothing more than bare allegations” insufficient to withstand a Federal Rule of Civil Procedure 12(c) challenge. (Doc. 48 at 4). Defendants maintain that plaintiff’s failure to provide additional factual details regarding his alleged mistreatment at WCI at the defendants’ hands is fatal to his complaint because plaintiff must plead sufficient factual matter to make his claims plausible. (*Id.* at 5) (citing *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010)). Defendants further assert they are entitled to qualified immunity because plaintiff’s second amended complaint does not set forth sufficient facts from which the Court can determine that defendants violated plaintiff’s clearly defined constitutional rights. (*Id.*). The Court disagrees.

Defendants’ motion misapprehends plaintiff’s pleading. In claiming their entitlement to judgment on the pleadings, defendants reference only the allegations in plaintiff’s second amended complaint while ignoring the 200+ pages of exhibits that the Court ordered were to be considered part of the pleading. These exhibits include extensive details regarding, among other things, defendant Justin Reese’s alleged theft of plaintiff’s property, Warden Sheets’ knowledge that plaintiff was being harassed by other inmates, defendant Justin Johnson and Joseph Little’s deliberate indifference to plaintiff’s safety, and defendant Adam Keesler’s knowledge that plaintiff was being harassed by WCI personnel and inmates. *See* Doc. 30 at 4-6, 8-11, 50, 68-70,

149. Defendants' failure to reference these extensive exhibits in their motion for judgment on the pleadings indicates that they did not consider this evidence in challenging plaintiff's second amended complaint. Given the abundance of factual details in the exhibits provided by plaintiff, which are part of his pleading pursuant to the Court's November 22, 2013 Order, defendants' assertions that the second amended complaint does not contain sufficient factual details to state claims against them is without support. Accordingly, the undersigned recommends that defendants' motion for judgment on the pleadings (Doc. 48) be **DENIED**.

## **II. Plaintiff's Motions (Docs. 39, 50, 51)**

After defendants filed their motion for judgment on the pleadings on plaintiff's second amended complaint, plaintiff filed a motion seeking leave to amend his complaint once more. (Doc. 50). Plaintiff asserts that defendants' motion gave him "a clearer understanding of what information the amended complaint must contain." (*Id.* at 4). Because the undersigned recommends that defendants' motion for judgment on the pleadings be denied, it is unnecessary for plaintiff to further amend his complaint to provide additional information. Accordingly, plaintiff's motion to amend (Doc. 50) is **DENIED**.

In connection with his motion to amend, plaintiff moves to stay these proceedings. (Doc. 51). Plaintiff asserts that a stay is appropriate because in the event his motion to amend is granted, it will allow time for the Court to review and screen the proposed amended complaint. Further, plaintiff claims that if the motion to amend is denied a stay would be necessary as he would require additional time to respond to defendants' motion for judgment on the pleadings. Given the Court's recommendation that defendants' motion for judgment on the pleadings be denied and the denial of plaintiff's motion to amend, plaintiff's motion to stay the proceedings (Doc. 51) is likewise **DENIED**.

Plaintiff also moves to voluntarily dismiss defendants Romanak, Bush, Maggard, Parvez Sarwar and Rodney McIntosh. (Doc. 39). Plaintiff filed this motion shortly after the undersigned recommended that his claims against these individuals be dismissed for failure to state a claim for relief. *See* Doc. 35. This recommendation was later adopted by the District Judge in a January 8, 2014 Order dismissing defendants Romanak, Bush, Maggard, Bush, Parvez Sarwar and Rodney McIntosh. (Doc. 40). Because the individuals plaintiff voluntarily seeks to dismiss are no longer parties to this lawsuit, plaintiff's motion to voluntarily dismiss them (Doc. 39) is **DENIED** as moot.

### **III. Service on the Remaining Defendants**

It has come to the attention of the Court that the following named defendants have not been served with a summons and complaint: Rudolph Pringles, Rodney Taylor, Stephen Blake, Roselie Battles, Lieutenant U.D. Johnson, Corrections Officer Jeromy Montgomery, Corrections Officer Juishua Muller, Corrections Officer Danie Lane, Sandra Crawford, Corrections Officer Daniel Lang, Corrections Officer Anthony Johnson, Timmothy Radeffer, Corrections Officer Keith Lawson, Corrections Officer Frank Bailey, Lieutenant Phil Walker, Doctor Kenneth Washington, Nancy Frye, Gary Mohr, Gary Croft, Eugene Hunyadi, and Don Coble. The Court is in possession of completed United States Marshals forms for each of these named defendants. However, plaintiff has not submitted a copy of the second amended complaint (Doc. 28) or summons forms for each of these defendants. Therefore, plaintiff is ordered to submit a sufficient number of copies of his second amended complaint and summons forms for service on these defendants within **thirty (30) days** of the date of this Order. Upon receipt of these documents, the Court shall order service of process by the United States Marshal.

#### **IV. Conclusion**

For the reasons stated above, **IT IS HEREBY RECOMMENDED THAT** defendants' motion for judgment on the pleadings (Doc. 49) be **DENIED**.

Further, plaintiff's motion to voluntarily dismiss defendants Romanak, Bush, Maggard, Sarwar, and McIntosh (Doc. 39) and motions to amend his complaint and stay the proceedings (Docs. 50, 51) are **DENIED**.

Date: 5/14/14

  
Karen L. Litkovitz  
United States Magistrate Judge

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**NOTICE**

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