

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

MILOUS BROWN,

Plaintiff,

:

Case No. 2:22-cv-2469

- vs -

District Judge Michael H. Watson
Magistrate Judge Michael R. Merz

ANNETTE CHAMBERS-SMITH, et al.,

Defendants.

:

**DECISION AND ORDER DENYING MOTION TO EXPAND THE
RECORD**

This case under 42 U.S.C. § 1983 is before the Court on Plaintiff's Motion to Expand the Record to include "Plaintiff's Brief in Opposition of Defendants' Memorandum to Plaintiff's Motion For Leave to Amend" ("Brief in Opposition," ECF No. 63).

The Motion is denied because Plaintiff's Brief in Opposition was already filed by the Clerk on July 5, 2023 (ECF No. 57) and was before the Court when the Decision and Order Denying Plaintiff's Motion to File Second Amended Complaint was filed on August 9, 2023 (ECF No. 58). The notation in the Decision and Order that no reply memorandum had been filed is a clerical error as the docket clearly shows Plaintiff's "Brief in Opposition" was docketed as a reply on July 5, 2023.

This case is also before the Court on Plaintiff's Objections (ECF No. 62) to the Decision and Order Denying Leave to Amend (ECF No. 58). That D&O was filed August 9, 2023, and served on Plaintiff by regular mail on the same date. In a motion for extension of time to respond to Defendant's Motion to Dismiss, Plaintiff said his ability to respond was "impeded" by lack of service of a copy. The Court then ordered the Clerk to serve an additional copy of ECF No. 58 on Plaintiff and she did so the same day as the docket attests. Plaintiff never requested nor received an extension of time to object to the D&O; the additional copy was furnished as a courtesy to allow Plaintiff to respond to the Motion to Dismiss.

The D&O was filed August 9, 2023, and served on that date on Plaintiff by regular mail. By operation of Fed.R.Civ.P. 72 and 6, Plaintiff was entitled to seventeen days in which to object or until August 26, 2023. Plaintiff's Objections (ECF No. 62) were not filed until October 4, 2023. They were not mailed until October 2, 2023 (See Postmark at PageID 674). They do not include any declaration under penalty of perjury of the date of deposit in the prison mail system, so Plaintiff is not entitled to rely on the mailbox rule. Accordingly, the Objections are untimely by over a month and are hereby STRICKEN.

October 4, 2023.

s/ Michael R. Merz
United States Magistrate Judge