

## UNITED STATES DISTRICT COURT

## DISTRICT OF OREGON

PRINCE MIGUEL ISMAEL,

Plaintiff, 2:16-cv-00683-MC

v. ORDER

JASON BELL, et al.,

Defendants.

McShane, District Judge.

Plaintiff's allegations against defendants Bell and Jones fail to state a claim for the reasons set forth in defendants Motion to Dismiss (#16). It is well settled that respondeat superior is not a proper basis for liability under § 1983. Plaintiff's Amended complaint does not allege any facts that would subject to either defendant Bell or Jones to liability for the alleged actions of John W. Kile - who has yet to be served or waive service and is not properly before the court

at this stage of the proceedings.<sup>1</sup>

However, plaintiff's Response (#24) to defendants' motion requests that he be allowed to file a third amended complaint. Plaintiff's request is allowed. Plaintiff is allowed 30 days from the date of this order to file a third amended complaint. No further amendments will be allowed.

Defendants' Partial Motion to Dismiss (#16) is denied without prejudice to request reconsideration after plaintiff has filed an amended pleading.

IT IS SO ORDERED.

DATED this 29 day of December, 2016.

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Michael J. McShane  
United States District Judge

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The court will not request waiver of service on Mr. Kile unless and until plaintiff files an amended complaint that sufficiently alleges a basis for liability against him request waiver of service until