

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EVERETT KEITH THOMAS,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 21-CV-0441
	:	
CITY OF PHILADELPHIA, <i>et al.</i>,	:	
Defendants.	:	

ORDER

AND NOW, this 23rd day of April, 2021, upon consideration of Plaintiff Everett Keith Thomas's Amended Complaint and Exhibits (ECF Nos. 18-21), it is **ORDERED** that:

1. For the reasons stated in the accompanying Memorandum, the following claims are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii):

- a. All claims against the City of Philadelphia;
- b. All claims against the Defendants in their official capacities; and
- c. All claims against Defendant Hester.

2. Thomas may **PROCEED** at this time on his claim against C/O John Doe Housing Officer B1-Pod 2 in his individual capacity based on the events of December 16, 2020, when sewage water flooded the multipurpose room where Thomas was housed and Thomas was required to clean the sewage water.

3. The Clerk of Court shall **TERMINATE** the following Defendants from the docket: (a) Blanche Carney; (b) C/O Edwards; and (c) C/O Hester. The Clerk of Court **SHALL NOT TERMINATE** the City of Philadelphia as a Defendant at this time so that the City may assist with efforts to identify and serve the remaining John Doe Defendant, who is identified as

an employee of the City who was working the 11 p.m. to 7 a.m. shift on December 26, 2020 on Unit B1-Pod 2 at the Curran-Fromhold Correctional Facility.

4. Service shall be made upon the John Doe Defendant if and when he is identified.

5. The Clerk of Court shall issue a summons for the City of Philadelphia. Service of the summons and the Amended Complaint (ECF No. 19), along with a copy of this Order and the Court's accompanying Memorandum, shall be made upon the City of Philadelphia by the U.S. Marshals Service. Thomas will be required to complete a USM-285 form so that the Marshals can serve the City of Philadelphia. Failure to complete that form may result in dismissal of this case.

6. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting *pro se*). Service may be made by mail. Proof that service has been made is provided by a certificate of service. The certificate of service should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

"I, (name), do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same in the U.S. mail, properly addressed, this (day) of (month), (year).

(Signature)"

7. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and Local Rules are to be followed. Thomas is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal.

8. Thomas is specifically directed to comply with Local Rule 26.1(f) which provides that “[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute.” Thomas shall attempt to resolve any discovery disputes by contacting Defendants’ counsel directly by telephone or through correspondence.

9. No direct communication is to take place with the United States District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk of Court.

10. In the event a summons is returned unexecuted, it is Thomas’s responsibility to ask the Clerk of Court to issue an alias summons and to provide the Clerk with the Defendant’s correct address, so service can be made.

11. The parties should notify the Clerk’s Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties’ legal rights.

BY THE COURT:

/s/ Juan R. Sánchez
JUAN R. SÁNCHEZ, C.J.