

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSE MONTALBAN,

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Plaintiff

CIVIL NO. 1:CV-17-0212

vs.

(Judge Caldwell)

MR. POWELL, *et al.*,

Defendants

MEMORANDUM

I. Introduction

The pro se plaintiff, Jose Montalban, a federal inmate formerly housed at USP-Canaan in Waymart, Pennsylvania, filed this civil-rights action. He alleges that USP-Canaan employees used excessive force to subdue him after he assaulted a staff member and that he was then denied medical care and food.¹ He also alleges his legal materials were lost or stolen when he was transported to federal court to appear on criminal assault charges. (ECF No. 1, Compl.) Named as defendants are twelve individuals who work at USP Canaan: Lt. Powell; Verbyla Williams; Jason Glossenger; Patricia Burgerholff, RN; Corrections Officer (CO) Modroff; Walter Dobushak, MD; Emergency Medical Technician (EMT) M. Kabonick; Jarrett Tuttle; Lt. Anthony Pedone; Food Service Supervisor Mark Brennan; and Cory Vrabel. (*Id.*)

Montalban has filed several motions: (1) a motion to proceed *in forma pauperis* (ECF No. 6); (2) a motion to accept documents as exhibits in the case (ECF No.

¹ Montalban is presently housed at FCI-Coleman in Coleman, Florida.

12); and (3) a motion to file an amended Complaint (ECF No. 14). For the reasons that follow, Plaintiff's motion to file an amended complaint will be granted. His motion to proceed *in forma pauperis* will also be granted. His motion to accept documents as exhibits in the case will be dismissed as moot.

II. *Discussion*

Plaintiff's Complaint was docketed on February 3, 2017. His motion to file an amended complaint seeks to add new defendants and "change some legal claim[s] in order to avoid the Complaint dismissed." (ECF No. 14). The court has not yet screened the Complaint to determine if it should be served. At this early stage of the litigation, we will therefore grant the motion to file an amended complaint. See Fed. R. Civ. P. 15(a)(1). Since we will allow an amended complaint, we will dismiss as moot the motion to accept documents as exhibits as Plaintiff will have the opportunity to attach documents as exhibits to his amended complaint.

Montalban is advised that his amended complaint must contain the same docket number as the instant action and should be labeled "Amended Complaint." In addition, the "amended complaint must be complete in all respects. It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed." *Young v. Keohane*, 809 F. Supp. 1185, 1198 (M.D. Pa. 1992). Montalban is cautioned that any amended complaint he may file supersedes the original complaint and must be "retyped or reprinted so that it will be complete in itself including

exhibits.” M.D. Pa. LR 15.1. Consequently, all causes of action alleged in the original complaint which are not alleged in the amended complaint are waived.

Montalban is also warned that his amended complaint must be concise and direct. See Fed. R. Civ. P. 8(d). Each allegation must be set forth in an individually numbered paragraphs in short, concise and simple statements. *Id.* The allegations should be specific enough as to time and place, and should identify the specific person or persons responsible for the deprivation of his constitutional rights and what each individual did that led to deprivation of his rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S.Ct. 1937, 1948, 173 L.Ed.2d 868 (2009). He must also specify the relief he seeks with regard to each claim. Montalban’s failure to file an appropriate amended complaint by the deadline set by the court will result in the court’s proceeding on the original complaint, and against only those defendants definitively identifiable and associated with claims in that complaint. Montalban is also cautioned that illegible submissions will be returned to him without consideration and that he should double-space his text to facilitate the ability to read it.

An appropriate order follows.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

Date: April 7, 2017