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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEANGELO A. GREEN,

Plaintiff,

v.

MARGARET GILBERT, et al.,

Defendants.

CASE NO. 3:17-cv-05898-RBL-DWC

AMENDED ORDER GRANTING MOTION TO STRIKE[1]

The District Court has referred this 42 U.S.C. § 1983 action filed by Plaintiff DeAngelo Green to United States Magistrate Judge David W. Christel. Before the Court is Defendants' Motion to Strike Plaintiff's Third Amended Complaint ("Motion"). Dkt. 66.

I. Background

On March 13, 2018, Plaintiff filed a Motion to Amend the Amended Complaint (Dkt. 41) and, the next day, filed an Amended Motion to Amend the Amended Complaint ("Amended

[1] The Court has amended this Order to include the specific page numbers of the Approved Third Amended Complaint (Dkt. 43-1, pp. 1-19) this Court approved for filing. The remainder of the Order remains unchanged.

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Motion to Amend") (Dkt. 43). He attached a Proposed Third Amended Complaint with his Amended Motion to Amend. Dkt. 43-1, pp. 1-19. The Court granted Plaintiff's Amended Motion to Amend in part, and stated "Plaintiff may file his Third Amended Complaint on or before May 18, 2018, and should file only his Complaint, omitting any attachments or exhibits." Dkt. 50.

Plaintiff subsequently filed a Third Amended Complaint (Dkt. 54), but it differed from Plaintiff's Proposed Third Amended Complaint filed with his Amended Motion to Amend (*compare* Dkt. 43-1 *with* Dkt. 54). On May 31, 2018, the Court directed service of the new Third Amended Complaint on newly named Defendants Clearance Kilwein, Richard D. Boling, Richard W. Estes, and A. Rothwell. Dkt. 63. The Court also directed Defendants Gilbert and Gleason to either answer Plaintiff's Third Amended Complaint, or to show cause why they had not yet filed an Answer. Dkt. 64.

Defendants responded by filing their Motion to Strike, arguing Plaintiff had not filed the Third Amended Complaint authorized by the Court's Order. Dkt. 66. Plaintiff responded, arguing his allegations had not materially changed in the Third Amended Complaint he filed and that the Court had provided "'freely' permission to amend his Third Amend[ed] Complaint." Dkt. 67. Defendants filed a Reply. Dkt. 68.

II. Discussion

Pursuant to Local Rule 15, "[a] party who moves for leave to amend a pleading . . . must attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation." That rule also indicates the proposed amended pleading should include markings to indicate how it differs from the previous pleading. LCR 15. If the Motion for Leave to Amend is granted, the party whose pleading was amended "must file . . . the amended pleading . . . within fourteen (14) days of the filing of the order granting leave to amend . . . ." *Id.*

This rule indicates the proposed amended complaint included with a motion for leave to amend is the amended complaint that should be filed with the Court. When the Court entered its Order instructing Plaintiff to file his Third Amended Complaint (Dkt. 66), it did not grant Plaintiff leave to freely file a new, different amended complaint. Rather, it contemplated Plaintiff filing the Proposed Third Amended Complaint the Court reviewed and determined was an appropriate amendment. Because Plaintiff did not file the same pleading as the Court reviewed when it granted his Amended Motion to Amend, the current Third Amended Complaint is improper.

Therefore, the Court grants in part Defendants' Motion to Strike (Dkt. 66) and Plaintiff's current Third Amended Complaint (Dkt. 54) is hereby stricken. The Clerk is directed to file the Third Amended Complaint the Court reviewed and approved, attached to his Amended Motion to Amend (Dkt. 43-1, pp 1-19), as his Approved Third Amended Complaint.

III. Conclusion

For the reasons stated above, Defendants' Motion to Strike (Dkt. 66) is granted. The Clerk is directed to strike Plaintiff's Third Amended Complaint (Dkt. 54) from the docket.

The Clerk is directed to file the Third Amended Complaint (Dkt. 43-1, pp. 1-19) as an Approved Third Amended Complaint.

The Court modifies its Order Directing Service (Dkt. 63) and Order to File Answer (Dkt. 64) as follows: Defendants shall have until August 3, 2018 to file an Answer to Plaintiff's Approved Third Amended Complaint.

The Clerk is directed to send a copy of this Order to Plaintiff and to counsel for Defendants.

Dated this 18th day of July, 2018.

David W. Christel
United States Magistrate Judge