

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
HARRISON FRANKLIN,

Plaintiff,

v.

ORDER

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,  
PAULINE BELGADO, SARGENT SIEDOSCHLAG,  
PETER HUIBREGTSE, LINDA HODDY-TRIPP,  
JIM WEGNER, SARGENT LIND, CAPTAIN JOHN P  
GRAHL, SARGENTDAN MEEHAN, CO II MIKE  
GLAMAN, and NURSE HOLLY MEIER,

Defendants.  
-----

On June 13, 2003, I dismissed plaintiff's claims against several John Doe defendants for his failure to identify them in an amended complaint that was to have been filed no later than June 6, 2003. On June 17, 2003, plaintiff filed a document titled "Plaintiff's Proposed Amended Complaint," and a motion to compel discovery. The majority of the issues raised in the motion to compel discovery has been mooted by Magistrate Judge Crocker's order of June 19, 2003, granting defendants' request for an extension of time to respond to plaintiff's discovery requests until 30 days after plaintiff provides defendants with a signed

medical release form. The remainder of the motion to compel does not relate to discovery of evidence. Instead, plaintiff seeks an order “compelling” defendants to give him his legal property and stop holding his legal mail. I construe this portion of plaintiff’s motion as a motion for an emergency order enjoining defendants from interfering with his ability to prosecute this action.

In support of his motion, plaintiff states that on May 25, 2003, defendants took all of his legal property and that they refuse to give it back. On May 28, 2003, prison officials took a letter plaintiff received from Assistant Attorney General Whelen, which identified the several John Doe defendants plaintiff named in his original complaint. Plaintiff contends that he has not seen the letter or the “crucial John Doe information since,” and thus will be unable to amend his complaint within the time allowed by the court.

It appears that plaintiff’s complaint about his inability to obtain his legal property or receive his legal mail is not sufficiently serious to warrant court intervention. The court’s record shows that plaintiff signed his motion to compel on June 12, 2003. On June 13, 2003, plaintiff signed the document titled “Plaintiff’s Proposed Amended Complaint.” In the proposed amended complaint, plaintiff identifies each of the Doe defendants referred to in defense counsel’s May 28 letter, and refers to various numbered paragraphs in the original complaint. From this, it appears that when plaintiff drafted his proposed amendment, he had before him defense counsel’s May 28 letter and his original complaint. Curiously,

however, plaintiff states at the close of his proposed amendment that he is making the amendment without “the aid of [his] property or legal research.”

It is perplexing why plaintiff would advise the court in his motion to compel that he was unable to meet the court’s deadline for filing a proposed amended complaint supposedly for defendants’ failure to give him his legal property, but then prepare a proposed amended complaint one day later, while allegedly still missing the “crucial” legal property. Because plaintiff’s own submissions reveal that defendants’ alleged interference with his legal property is not preventing plaintiff from prosecuting this action, I will deny his motion for an order enjoining defendants from interfering with his ability to litigate this action.

The question remains whether this court should vacate its June 13, 2003 order dismissing plaintiff’s claims against the Doe defendants for plaintiff’s failure to meet the deadline for amending his complaint to identify them. I conclude that the order should be vacated.

Although plaintiff missed the deadline for filing his proposed amended complaint, I accept plaintiff’s explanation that his temporary separation from his legal property was responsible for the delay, at least in part. More problematic is the fact that plaintiff’s proposed amendment is not in proper form. It does not include all the factual allegations from the original complaint that relate to the claims on which plaintiff has been allowed to proceed and thus cannot stand on its own in place of the original complaint. Instead,

plaintiff has listed by number the paragraphs of his original complaint in which he wishes various defendants to be identified in place of previously unnamed or “unknown” defendants against whom plaintiff was allowed to proceed. Specifically, plaintiff states that Pam Bartels should be named as the defendant in paragraph #30 of his original complaint, as the person responsible for his alleged lack of treatment for his diabetes; that Todd Bast should be named as the defendant in paragraph #31 of the complaint as the person who allowed plaintiff’s legal mail to be opened and read outside plaintiff’s presence and copied and kept after reading; that Steven Schoeler should be identified as the defendant in paragraph #38 who failed to provide plaintiff with adequate exercise; that Steven Schoeler and current defendant Dr. Paulino Belgado should be named in paragraph #41 of the complaint as the defendants who allegedly refused to provide plaintiff with special shoes; and that Paulino Belgado should be named in paragraphs #40 and 42 of the complaint as the previously unnamed defendant who refused to provide plaintiff with a special diet for his diabetes and a medically ordered mattress. In this instance, rather than delay the action further by requiring plaintiff to rewrite his complaint to insert the names of the proposed new defendants in the appropriate paragraphs in the body of the original complaint, I will allow plaintiff to amend his complaint by appending the amendment to the original complaint. Copies of the modified complaint will be sent to counsel for the existing defendants with this order for informal acceptance of service of process on defendants Todd Bast and Steven

Schoeler. In addition, I will forward a copy of the modified complaint to the United States Marshal for service on defendant Pam Bartels, who is not a state employee and thus will not be represented by the attorney representing the other defendants.

## ORDER

IT IS ORDERED that

1. Plaintiff's motion to compel discovery is DENIED as moot.
2. Plaintiff's motion for an emergency order enjoining defendants from interfering with his ability to litigate this action is DENIED for plaintiff's failure to show that immediate injunctive relief is necessary.
3. The order entered in this case on June 13, 2003, dismissing plaintiff's claims against the John Doe defendants is VACATED.
4. Plaintiff's motion to amend his complaint is GRANTED to substitute Pam Bartels, Todd Bast, Steven Schoeler and Dr. Paulino Belgado in place of the previously unknown defendants against whom plaintiff was allowed to proceed.
5. Plaintiff's "proposed amended complaint" shall be attached to plaintiff's original complaint as an addendum. This modified complaint shall be served on the newly added defendants and constitutes the operative pleading in the case.
6. All of the defendants except defendant Bartels may have until July 14, 2003, in

which to file an answer to the amended complaint. Defendant Bartels may have twenty days from the date she is served with plaintiff's amended complaint in which to file an answer.

Entered this 24th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge