

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

LUIS NIEVES,

Plaintiff,

v.

JON LITSCHER,
MICHAEL CATALANO,
PRISON HEALTH SERVICES, INC.,
PAM BARTELS,
JOHN DOES 1, 34, 35, 36, 37, 39, 82, 84, A, D and E;
and GERALD A. BERGE,

Defendant.

ORDER

04-C-163-C

Plaintiff Luis Nieves is a former co-plaintiff in a group complaint filed in the District Court for the Eastern District of Wisconsin. After the case was transferred to this district on March 1, 2004, I severed the claims of the several plaintiffs and instructed each one of them to submit, no later than April 9, 2004, individual proposed pleadings setting forth only those claims on which they had been allowed to proceed and identifying all defendants who allegedly committed the acts about which they complained. I advised the plaintiffs that when I received their amended pleadings, I would review them to insure they were limited

to the claims on which each had been allowed to proceed. In addition, I advised the plaintiffs that if they were still unable to identify the defendants that they had described as Doe defendants in the original complaint, I would dismiss the claims for which no defendant had been identified.

Because the court learned on April 5, 2004 that plaintiff Nieves had been transferred and probably had not received the March 15 order, another copy of the order was sent to him at his new address and his deadline for submitting a proposed pleading and naming the Doe defendants was extended to April 30, 2004. Subsequently, Nieves wrote a letter dated April 25, 2004, seeking more time in which to comply with the March 15 order and asking for copies of all the papers filed in the case. His request for a second extension of time was granted in an order dated May 4, 2004. Plaintiff Nieves was given until May 24, 2004, in which to submit his proposed amended complaint. In addition, I sent plaintiff a copy of Judge Adelman's March 7, 2003 order, which described the claims on which he was allowing the plaintiffs to proceed, so that plaintiff could prepare his amended pleading.

Now plaintiff has submitted a two page letter in which he describes John Doe #37 as Chaplain Overbo, Jane Doe #39 as CO II Grondin, Jane Doe A as R.N. Shirley Olson. He states that he does not know the names of John Does D and E. He does not allege any factual allegations. Instead, he describes his inability to send copies of his papers to his former co-plaintiffs and seeks a court order instructing the warden to allow him to send mail

to them. Plaintiff appears not to understand that because the claims of the individual plaintiffs have been severed, it is not necessary for him to send copies of his submissions to his former co-plaintiffs.

In any event, plaintiff's letter is inadequate to allow him to continue to prosecute this action. The letter cannot be construed as a proposed amended pleading setting out his claims against the defendants he now identifies or any other of the other named defendants, because it contains no factual allegations of constitutional wrongdoing. All three orders previously sent to plaintiff Nieves in this case made it clear to him that he would need to submit an amended pleading setting out his claims against the defendants if he wishes to continue with this lawsuit. This requirement was imposed to insure that he understood and consented to the claims that were raised on his behalf in the group complaint. Plaintiff's failure to submit such a pleading suggests that he has not been involved in any meaningful way with litigating the group complaint and that he is not prepared to prosecute his own claims in a severed lawsuit.

ORDER

IT IS ORDERED that this case is DISMISSED without prejudice to plaintiff Luis Nieves's filing a new complaint at some future time.

Entered this 23rd day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge