

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

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JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

06-C-205-C

THOMAS E. KARLEN; RANDALL R. HEPP;  
CYNTHIA L. O'DONNELL; RICHARD RAEMISCH;  
DANIELLE LACOST; MATTHEW FRANK;  
PERRY NICHOLS, APRIL OLIVERSON, and  
unidentified prison staff members,

Defendants.  
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In a preliminary pretrial conference order dated September 19, 2006, magistrate judge Stephen Crocker directed that no later than October 6, 2006, the existing defendants file with the court and serve on plaintiff a letter “identifying all ‘John Doe’ defendants” referred to in plaintiff’s complaint. Further, the magistrate judge gave plaintiff until October 16, 2006, in which to amend his complaint to replace all references to John Doe or unknown defendants with the names provided to him by the state. The magistrate judge advised plaintiff that if he did not file an amended complaint naming the John Doe defendants by the deadline, then this court could dismiss plaintiff’s claims against these defendants.

As directed, the state responded with a list of names and first and second shift schedules so that plaintiff could match up names with his allegations of wrongdoing. In addition, because the work shift schedules could not be located for certain dates on which plaintiff had alleged constitutional violations relating to the processing of his mail, defendants provided daily log book entries for those dates.

Now, plaintiff has filed an amended complaint. Although he has identified six previously unknown defendants in the caption and the body of his complaint, he indicates that he could not identify the John Doe defendants described in paragraphs 46, 47, 85, 86, 89 and 91 of his complaint because the “documents provided by the defendants [were insufficient] to identify staff members assigned to the mailroom or property room on those dates.”

In paragraph 46, plaintiff alleges that on August 13, 2005, he received mail from attorney Laurence J. Dupuis, which was clearly marked “Legal Correspondence,” and that the mail was opened outside plaintiff’s presence by an unknown officer.

In paragraph 47, plaintiff alleges that on July 5, 2005, he received mail from the U.S. Dept. of Homeland Security that was opened outside his presence by an unknown officer.

In paragraph 85, plaintiff alleges that on or about January 27, 2005, he received several books provided free of charge from a retail bookstore as part of a prisoner literature program and that an unknown property officer rejected all the books pursuant to a policy.

In paragraph 86, plaintiff alleges that on January 31, 2005, he received three books free of charge from a bookstore as part of a prisoner literature program and that an unknown property officer rejected all three books pursuant to prison policy.

In paragraph 89, plaintiff alleges that on February 19, 2005, he received six books provided free of charge from a retail bookstore as part of a prisoner literature program and that an unknown property officer rejected all six books pursuant to prison policy.

In paragraph 91, plaintiff alleges that on March 13, 2005, he received four books free of charge from a retail bookstore as part of a prisoner literature program and that an unknown property officer rejected all four books pursuant to prison policy.

The court cannot allow a plaintiff to pursue claims against a defendant who cannot be served with the complaint against him and defend against the charges of wrongdoing. Therefore, I must dismiss plaintiff's claims against the unknown officers who are alleged in paragraphs 46 and 47 to have opened his mail improperly and the unknown officers in paragraphs 85, 86, 89 and 91 who are alleged to have confiscated plaintiff's books improperly. The claims raised in paragraphs 46, 47, 85, 86, 89 and 91 remain alive in the case with respect to other defendants, however. Plaintiff has been allowed to proceed against defendants Karlen, O'Donnell, Hepp and Raemisch with respect to the August 13, 2005 communication at issue in paragraph 46 and against defendants Karlen and O'Donnell with respect to the July 5, 2005 communication at issue in paragraph 47. He has been allowed

to proceed against defendant Hepp with respect to the claims made in paragraphs 85, 86, 89 and 91.

#### ORDER

IT IS ORDERED that plaintiff's amended complaint is ACCEPTED as the operative pleading in this case. In all future orders and motions, the caption of the case is to reflect the addition of defendants K. Bauer, Michelle McCaughtry, Jeffrey Schefelker, Travis Berry, Judy Imberg and Officer M. Nelson. Copies of the amended complaint are being forwarded to the office of the Attorney General for service on newly added defendants K. Bauer, Michelle McCaughtry, Jeffrey Schefelker, Travis Berry, Judy Imberg and Officer M. Nelson. The existing defendants may delay filing a responsive pleading to the amended complaint until the time the newly added defendants have in which to respond.

Further, IT IS ORDERED that plaintiff's claims against the unknown officers who are alleged in paragraphs 46 and 47 to have opened his legal mail improperly and the unknown officers who are alleged in paragraphs 85, 86, 89 and 91 to have confiscated

plaintiff's books improperly are DISMISSED without prejudice.

Entered this 9th day of November, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge