

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, et al.,)	
<i>Plaintiffs,</i>)	
)	
v.)	DOCKET NO.: 2:12-cv-00184-wks
)	
KENNETH L. MILLER, et al.,)	
<i>Defendants.</i>)	

**RESPONSE OF DOUGLAS WRIGHT TO
PLAINTIFFS’ MOTION TO AMEND COMPLAINT**

The Court should deny Plaintiffs’ Motion to Amend Complaint because the proposed Second Amended Complaint contains an incorrect caption and it fails to remove irrelevant and immaterial factual allegations about Douglas Wright (“Wright”). Doc. 127. The proposed Second Amended Complaint ignores the Court’s Opinion and Order dismissing Plaintiffs’ claim against Wright. Doc. 116.

First, the caption to the proposed Second Amended Complaint continues to list Wright as a “Defendant.” Doc. 127-1 at 1. However, the Court previously dismissed Plaintiffs’ claim against Wright. Doc. 116. The caption of the pleadings therefore needs to conform to the Court’s Opinion and Order.

‘Ministerial tidiness’ leads to accurate final judgments. Judges and parties also want to be able to open a case file and reap the convenience of learning who is left in a case by consulting the caption; at a minimum, they should not be misled by it.

Shinholster v. Langston, 606CV073, 2008 WL 4762306, *7 n.6 (S.D. Ga. Oct. 28, 2008)(directing parties who “persist in including a dismissed defendant in the caption on their pleadings” to cease this practice). *See id.* (inclusion of dismissed parties in subsequent case captions by the clerk and parties was “erroneous”). *See also Bare v. Fed. Exp. Corp.*, 886 F.Supp. 2d 600, 606 (N.D. Ohio

2012)(agreeing with defendant that a motion to amend a case caption “to remove a previously dismissed party is wholly unnecessary”).

Plaintiffs did not confer with Wright prior to filing their Motion to Amend. Local Rule 7(a)(7) requires a party filing a non-dispositive motion to certify that the party has made a good faith attempt to obtain the opposing party’s agreement to the requested relief. Since the proposed Second Amended Complaint continues to list Wright as a “Defendant” in the caption, and continues to assert factual allegations directed at Wright, Plaintiffs were required to comply with Local Rule 7(a)(7) vis-à-vis Wright – they wholly failed to do so.

After Plaintiffs filed the Motion to Amend, Wright’s counsel telephoned both Attorney Kramer and Attorney Star to discuss (1) why Wright was still listed on the caption, despite the Court’s dismissal of Wright from the action, and (2) why they had not attempted to confer with Wright’s counsel prior to filing the Motion to Amend. No explanation was given for the failure to comply with Local Rule 7(a)(7) prior to filing the Motion to Amend. With respect to Plaintiffs’ failure to delete Wright as a Defendant in the caption, Attorneys Kramer and Star insisted that they were powerless to change the caption even though they were amending the Complaint so as to delete any claim against Wright. They further took the position that, “Once the Court grants our Motion, you are free to ask the Court to delete Wright’s name from the caption.”

Once Wright was dismissed from the action, the onus was not on him to conform the captions of Plaintiffs’ future court filings with the Court’s Opinion and Order dismissing Wright from the action. Because Plaintiffs shirked their responsibility to conform future captions to comply with the Court’s Opinion and Order, Wright has been forced, needlessly, to incur yet additional attorneys’ fees, on top of the attorneys’ fees he was forced to incur as a result of Plaintiffs filing an action against him in a forum that clearly has no personal jurisdiction over him.

Second, the proposed Second Amended Complaint continues to assert allegations about Wright that are immaterial and irrelevant to Plaintiffs' claims against the remaining defendants. In paragraphs 15, 30 and 39 of the proposed Second Amended Complaint, Plaintiffs carry forward allegations against Wright that have no logical connection to the two surviving claims now being asserted against the remaining defendants, viz., Count One: Intentional Tort of Kidnapping, and Count Two: Conspiracy to Violate Civil Rights. Because the allegations against Wright are not material to Plaintiffs' claims against the remaining Defendants, they serve no legitimate purpose, and rather have the effect of creating undue and unnecessary stress and turmoil for Wright.

Furthermore, in paragraphs 16 and 20 of the proposed Second Amended Complaint, Plaintiffs take a scatter-gun approach by directing allegations generally against "Co-Defendants." By failing to remove Wright's name from the caption, at best there is ambiguity as to whether the allegations in paragraphs 16 and 20 are directed, *inter alia*, against Wright.

Plaintiffs' failure to remove irrelevant and immaterial allegations about Wright is improper. "The body of the Complaint may not include these individuals or entities as defendants, and the Complaint should not allege violations by [dismissed defendants]." *Ward v. City of Sparks*, 3:09-CV-00007-RCJ, 2010 WL 4053918, *3 (D. Nev. October 14, 2010)(denying leave to file amended complaint, "warn[ing] plaintiff that his amended complaint is not a legal brief," and requiring plaintiff to "focus on providing facts that help to establish conduct and policies by **appropriate** defendants")(emphasis added). Plaintiffs' inclusion of "immaterial ... matter" in the Second Amended Complaint is incompatible with Fed. R. Civ. P. 12(f). *See, e.g., Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 617-18 (1st Cir. 1988)(affirming the striking of "scandalous matter which impugned the character of defendants" because "they are superfluous descriptions and not substantive elements of the cause of action [and] [a]s such, they have no place in pleadings

before the court”); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) *rev’d on other grounds*, 510 U.S. 517, 114 (1994)(“‘Immaterial’ matter is that which has no essential or important relationship to the claim for relief or the defenses being pleading”).

Plaintiffs refusal to remove Wright from the caption and their failure to delete immaterial and impertinent allegations about Wright, where they are available to be reviewed by the media and the general public, is improper. If Plaintiffs’ Motion to Amend is granted without the caption being corrected and the immaterial allegations being struck, Wright will continue to be harmed in the court of public opinion. Such tactics should not be countenanced. “A complaint in a lawsuit is not a press release.” *Rapp v. Jews for Jesus, Inc.*, 944 So. 2d 460, 463 (Fla. Dist. Ct. App. 2006) *rev’d on other grounds*, 997 So. 2d 1098 (Fla. 2008)(affirming the striking of “redundant, bellicose, and unnecessary” allegations).

The Court should therefore deny Plaintiffs’ Motion for Leave to Amend and direct Plaintiffs to remove Wright from the caption and to delete all allegations concerning Wright that are not necessary to Plaintiffs’ claims against the remaining defendants. Further, as Plaintiffs failed to confer with Wright prior to filing their Motion to Amend, and they have no reasonable basis for refusing to make the corrections requested, Douglas Wright respectfully requests that the Court award him the reasonable costs and fees he incurred in preparing this Response.

DATED at Burlington, Vermont, this 27th day of December, 2013.

DOUGLAS WRIGHT

BY: PAUL FRANK + COLLINS P.C.

By: /s/ Robert G. Cain, Esq.
Robert G. Cain, Esq.
P.O. Box 1307
Burlington, VT 05402-1307

CERTIFICATE OF SERVICE

I hereby certificate that a true and correct copy of the foregoing was filed electronically with the Court on December 27, 2013. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

DATED at Burlington, Vermont, this 27th day of December, 2013.

DOUGLAS WRIGHT

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