

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSEPH BURGESSON :
 :
 v. : CASE NO: 3:06cv1663 (WWE) (HBF)
 :
 DOWNING, et al. :

RULING ON MOTION TO AMEND

Plaintiff seeks leave to amend his complaint to add four new defendants and clarify his claims. Defendants Faughnan and Vegliante ("State Trooper defendants") and defendants Falcigno, Sigmon, Onofrio and Onofrio, Jr. ("Hamden Police defendants") each have objected to plaintiff's motion. For the reasons that follow, plaintiff's motion to amend will be granted in part.

Plaintiff seeks to add two new Hamden Police Officers, Steve Degrand and Rob Derry, as defendants. The Hamden Police defendants object to the amendment and argue that plaintiff failed to include any specific allegations against either officer. Plaintiff alleges that these officers were present when he was arrested and, along with other defendants, did not prevent defendants Falcigno and Sigmon from using excessive force against him. The Court concludes that this allegation is sufficient to proceed on a claim against Officers Degrand and Derry for failure to protect plaintiff from harm.

Plaintiff also seeks to amend to identify the two John Doe EMTs who failed to provide proper medical care. This request will be granted.

The State Trooper defendants object to any claims against them in their official capacities and to the request for declaratory relief. On April 25, 2008, the Court dismissed all claims for damages against the State Trooper defendants in their official capacities (Doc. #44). Plaintiff cannot revive those claims merely by filing an amended complaint reasserting those claims. Any claim for damages against the State Trooper defendants in their official capacities will remain dismissed.

Plaintiff also seeks declaratory relief in the form of statements that the defendants violated his rights. The State Trooper defendants argue that the claims for declaratory relief merely duplicate the claims for damages. Declaratory relief is not intended to provide plaintiff "a second cause of action for the determination of identical issues." In re MTBE Prods. Liab. Litig., 457 F. Supp. 2d 455, 466-67 (S.D.N.Y. 2006). If plaintiff were to prevail on his claims for damages, the Court necessarily would have determined that plaintiff's rights were violated. A declaration to that effect adds nothing to the case. Accordingly, all claims for declaratory relief will be denied.

In conclusion, plaintiff's motion to amend (Doc. #61) is **GRANTED** in part. Plaintiff may add Officers Degrand and Derry and EMTs Moreland and Blyth as defendants. The Court previously dismissed all claims against the State Trooper defendants in their official capacities, and those claims are not revived by

filing the amended complaint. In addition, all requests for declaratory relief are **DENIED**. The case will proceed on the claims for damages only. Plaintiff is instructed to file an amended complaint consistent with this ruling within 10 days of the filing of this ruling.

Plaintiff shall complete one set of the enclosed service forms for each defendant, Degrand, Derry, Moreland and Blyth, using each defendant's current work address and one set for each defendant using the address of the Hamden City Clerk. Plaintiff shall return the completed forms within 20 days from the date of the filing of this order. Failure to comply with this order will result in the dismissal of all claims against any defendant for whom completed forms are not returned. Upon receipt of the forms, the Clerk is directed to effect service by mail on each defendant, Degrand, Derry, Moreland and Blyth, in his individual capacity and personal service on the Hamden City Clerk for each defendant in his official capacity.

SO ORDERED at Bridgeport, Connecticut, this 22d day of January 2009.

/w/
Warren W. Eginton
Senior United States District Judge