

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Sidney WYLIE,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:02cv313(PCD)
	:
CITY OF NEW HAVEN, <i>et al.</i> ,	:
Defendants.	:

RULINGS ON DEFENDANTS' MOTIONS TO DISMISS AND
PLAINTIFF'S MOTION TO AMEND COMPLAINT

The collective defendants from the Town of Hamden (“Hamden defendants”) and the City of New Haven (“New Haven defendants”) move separately to dismiss the complaint. Plaintiff, appearing *pro se*, moves to amend the complaint. For the reasons set forth herein, defendants’ motions to dismiss are granted and plaintiff’s motion to amend is granted.

I. BACKGROUND

The following is discerned from the allegations in plaintiff’s complaint. On May 23, 2001, plaintiff was arrested in New Haven by Officer Lalli. He was subjected to a pat down search and then handcuffed to a rail in the rain. He asked Officer Lalli to put him in the police car but was refused for his having “diseases.” Also present at the time were New Haven police officers Manwore, Palmer, Novella and Hamden police officer Dave Falcigno. At some time, defendants told Kim Baez, in whom plaintiff had a social interest, that plaintiff had AIDS, tuberculosis, and hepatitis although defendants had no evidence to support such statement.

II. DISCUSSION

The above represents all factual allegations in the present complaint. Based on the

foregoing, plaintiff claims that defendants violated his First, Fourth, Eighth and Fourteenth Amendment rights, violated CONN. GEN. STAT. §§ 19a-581 and 19a-590 by disclosing privileged medical information¹ and violated the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*

A. Motion to Dismiss Standard

A motion to dismiss is properly granted when “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 69 (2d Cir. 2001) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984)). A motion to dismiss must be decided on the facts as alleged in the complaint. *Merritt v. Shuttle, Inc.*, 245 F.3d 182, 186 (2d Cir. 2001). All allegations in the complaint are assumed to be true and are considered in the light most favorable to the non-movant. *Manning v. Utilities Mut. Ins. Co., Inc.*, 254 F.3d 387, 390 n.1 (2d Cir. 2001).

B. Pleading Standard

Federal pleading standards require “a short and plain statement of the grounds upon which the court’s jurisdiction depends” and “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a). The allegations must “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz v. Sorema*

¹ Plaintiff may not allege both an improper disclosure of privileged medical information in violation of Connecticut law and a false disclosure as to a disease. Although alternative legal theories may be plead, contradictory factual allegations may not. Plaintiff is presumably aware of his own medical conditions. If there is no medical evidence that he suffers from a disease, plaintiff may not invoke the Connecticut statutes protecting private medical information as the absence of medical documentation precludes the claim. If defendants disclosed information from the medical records, then the existence of medical documentation as to the condition precludes a claim that the information was falsely disclosed.

N. A., 534 U.S. 506, 512, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002) (internal quotation marks omitted). As such, allegations in a complaint need only be brief, concise and clear. *See* FED. R. CIV. P. 8(a).

Plaintiff's argument that his pleadings are entitled to deference and thus are sufficient is without merit. Although plaintiff is correct in pointing to the liberal construction afforded *pro se* complaints, *see Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), it cannot be said that a *pro se* plaintiff need not identify the involvement of particular defendants and may simply name thirteen defendants without indicating, even briefly, the nature of their involvement in events giving rise to the claim. Such would not sufficiently notify defendants of the claims against them.

Plaintiff also argues that he filed his complaint in Connecticut state court according to the state pleading standards, thus defendants, having elected to remove the case to federal court, may not now argue defects as to the pleadings therein. Plaintiff's argument is without merit. Connecticut employs a fact pleading standard rather than a notice pleading standard, and as such requires more detail in pleadings than the federal standard requires. *See Brownlee v. Conine*, 957 F.2d 353, 354 (7th Cir. 1992). As plaintiff does not meet the federal standard, his complaint would similarly be defective under the Connecticut state pleading standard.

In an attempt to define the parameters of his complaint, plaintiff adds details through his memoranda in opposition. This Court is, however, limited to the allegations in the complaint. *See Kopec v. Coughlin*, 922 F.2d 152, 154 (2d Cir. 1991). Memoranda filed in opposition to motions to dismiss are not opportunities to supplement the allegations in the complaint. Allegations may be supplemented only by the filing of an amended complaint.

C. Merits of Complaint

Plaintiff's complaint suffers from a number of deficiencies in the claims that can be discerned from the allegations. As an initial matter, as argued by the Hamden defendants, an off duty police officer employed by a different municipality who merely witnesses an unlawful arrest cannot be said to have acted under the color of state law as required for a claim under 42 U.S.C. § 1983. See *Latuszkin v. City of Chicago*, 250 F.3d 502, 505-06 (7th Cir. 2001) (off-duty police officer did not act under color of state law where disputed action occurred while officer was driving his own car outside of his police jurisdiction and where there was no allegation that officer engaged in police activity, displayed any police power or possessed any indicia of his office). "[U]nder 'color' of law means 'pretense' of law and that acts of officers in the ambit of their personal pursuits are plainly excluded." *Monsky v. Moraghan*, 127 F.3d 243, 245 (2d Cir. 1997) (internal quotation marks omitted). As there is no allegation that Officer Falcigno was present at the scene as more than a private citizen, the § 1983 claim against him, and against the remaining Hamden defendants for failure to train or supervise him, fails.

In his claims against the New Haven defendants, plaintiff alleges that his First and Eight Amendment rights were violated by his arrest. There is nothing in the allegations implicating an activity protected by the First Amendment. Nor is there a viable Eighth Amendment claim. Such claims do not arise until after a formal adjudication of guilt as a State lacks the authority to administer punishment prior to such adjudication. See *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 199 n.6, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).

As to plaintiff's alleged Fourth Amendment violations of unlawful search and seizure, plaintiff's first allegation is that he "was stopped and arrested." He does not allege, nor can his

allegations be construed as alleging, that the arrest or the search incident to such arrest was unreasonable. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 360-61, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001) (providing that a warrantless, custodial arrest must be reasonable under the circumstances); *Michigan v. Long*, 463 U.S. 1032, 1059, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983) (“It is the fact of the lawful arrest which establishes the authority to search, and . . . in the case of a lawful custodial arrest a full search of the person . . . is . . . a ‘reasonable’ search under that Amendment.” (internal quotation marks omitted)).

Defendants remaining claims as to the disclosure of privileged medical information, the circumstances of his arrest and alleged disabilities are sufficiently vague or unintelligible to preclude further discussion. The complaint is dismissed. As plaintiff has moved to amend his complaint, his motion is granted with leave to file an amended complaint consistent with the foregoing decision within thirty days of the date of this ruling.

III. CONCLUSION

Defendants’ motions to dismiss (Doc. Nos. 14 and 24) are **granted**. Plaintiff’s motion to amend his complaint (Doc. No. 36) is **granted**.

SO ORDERED.

Dated at New Haven, Connecticut, February ____, 2003.

Peter C. Dorsey
United States District Judge