United States District Court
for the Eastern District Of Missouri

TERRY LEE HINDS, Plaintiff, v. "UNITED STATES" GOVERNMENT, Defendant.	Case No. 4:17-CV-750-JAR **Memorandum in Support of United States' Motion to Strike Filings or, in the Alternative, for an Extension of Time**

Plaintiff Terry Lee Hinds filed this action against Defendant the United States, improperly named as "'United States' Government," more than four months ago. In that time, he has filled the docket with numerous motions, briefs, "notices," and "requests," in addition to an unsuccessful motion for a writ of mandamus from the United States Court of Appeals for the Eighth Circuit. Five times, this Court, through three different judges, has ordered Plaintiff to file an amended complaint in compliance with Federal Rule of Civil Procedure 8 ("Rule 8"). (ECF Nos. 8, 18, 29, 36, 42.) Despite his hundreds (if not thousands) of pages of filings, Plaintiff has failed to comply with the Court's orders. He has not filed a complaint that complies with Rule 8.

On June 14, 2017, Plaintiff filed fourteen documents. They are not labelled as an amended complaint, nor do they state any claim for relief. But, to the extent the Court construes them collectively as an attempt to file an amended complaint, the Court should strike these filings because they do not comply with Rule 8. Plaintiff's two sets of filings (ECF Nos. 44-45) are in seven parts each, and total over 150 pages and 580 paragraphs. They incorporate more than four hundred of the more than five hundred exhibits Plaintiff

filed with his original complaint. The filings contain mostly incoherent and redundant allegations.

In the alternative, if the Court determines that Plaintiff has filed an amended complaint in compliance with Rule 8, the Court should extend the United States' time to respond by sixty days. Responding to such extensive material would take significantly more time than the fourteen days provided by Federal Rule of Civil Procedure 15(a)(3).

PROCEDURAL HISTORY

Plaintiff initiated this action by filing a 547-page, 4,451-paragraph complaint, a brief in support, and four boxes of exhibits. (ECF Nos. 1-3.[1]) Since then, Plaintiff has filed numerous lengthy, frivolous documents, despite the Court's repeated warnings against such filings.

This case was originally assigned to Magistrate Judge John M. Bodenhausen, who *sua sponte* found the complaint's length violated Fed. R. Civ. P. 8(a) and (e) and struck the complaint. (Mem. & Order, ECF No. 8.) Judge Bodenhausen ordered Plaintiff to file an amended complaint by March 20, 2017. (*Id.* at 3.)

Plaintiff then moved for an extension of time to file a response to the Court's Order (ECF No. 12). Plaintiff argued in support (ECF No. 13) not only that an extension of time was appropriate but also that the Court's ruling was incorrect. The next day, Plaintiff filed a notice (ECF No. 14) of "objections and opposition" to the Court's Order and another notice (ECF No. 15) electing to have this action reassigned to a district judge. The Clerk reassigned the case to District Judge John A. Ross. (ECF No. 16.) Judge Ross granted Plaintiff's extension of time, but he declined to reconsider Judge

[1] The exhibits were too numerous to be scanned into the electronic docket, and instead they are maintained in the Clerk's office in paper format.

Bodenhausen's previous Order. (Mem. & Order, ECF No. 18.) Judge Ross's Order cautioned Plaintiff that "failure to [file an amended complaint in conformity with the requirements of Rule 8] may result in dismissal of this action." (*Id.* at 2.)

In the next week, instead of filing an amended complaint, Plaintiff filed two "Requests for Constitutional Relief" (ECF Nos. 19-20) aimed at his quibbles with the Clerk's categorization of this case and counsel for the United States' notice of appearance. Attached to these motions, Plaintiff filed memorandums in support and several exhibits. During the next two weeks, Plaintiff filed two notices disputing the timing of his filing of additional exhibits (ECF Nos. 22, 26); two notices of filing of additional exhibits (ECF Nos. 23, 25) with exhibits attached; a notice and request for a hearing date (ECF No. 24) for Plaintiff to challenge Judges Bodenhausen's and Ross's Orders, along with a declaration, notice, and exhibit in support; and a three-page, six-exhibit "Second Notice of Appearance" (ECF No. 27) of Mr. Hinds on behalf of himself.

Next, Plaintiff filed his "First Notice of a Short and Plain Statement of the Claim Showing the Plaintiff Is Entitled to Relief Under the First Amendment" (ECF No. 28). While the title of this document appeared to indicate an attempt to comply with the Court's Order, the document itself made no effort to comply with Rule 8.[2] The next day, Judge Ross issued an Order (ECF No. 29) ruling that Plaintiff's Notice failed to comply with the Court's Orders because it attempted to incorporate the entirety of Plaintiff's original complaint. The Court once again cautioned Plaintiff that failure to file an amended complaint in conformity with the requirements of Rule 8 may result in dismissal of this action. (*Id.*)

[2] Indeed, Plaintiff argued that FRCP 8, as applied, is unconstitutional. (*Id.* ¶ 17.)

After Plaintiff filed another request for a hearing (ECF No. 30), Judge Ross disqualified himself (ECF No. 31), and the Clerk reassigned the case to District Judge Audrey G. Fleissig (ECF No. 32). Three days after the reassignment, Plaintiff filed fourteen more "notices" (ECF Nos. 33-34).[3] Simultaneously, Plaintiff filed a motion for a sixty-day extension of time (ECF No. 35) "to present the merits of his action" or, in the alternative, to comply with the Court's Orders. Two days later, the Court granted Plaintiff's motion in part (Mem. & Order 2, ECF No. 36), allowing him an extra twenty-seven days, until June 15, 2017, to file an amended complaint complying with Rule 8. However, the Court also ruled that Plaintiff's seventeen other "motions or other documents" did not "appear to have any basis in law or fact." (*Id.* at 1.) Therefore, the Court denied them as frivolous and advised Plaintiff that the Court would not entertain any similar motions filed by Plaintiff. (*Id.*)

One week later, Plaintiff filed a motion (ECF No. 38) seeking reconsideration of Judge Bodenhausen's Order and Judge Ross's two Orders. The next week, Plaintiff filed two "one-inch-thick stack[s] of documents." (Mem. & Order 1, ECF No. 42.) The first stack was returned to Plaintiff unfiled. (*Id.* at 2; *see also* ECF No. 37.) The Court interpreted the second stack (ECF Nos. 40-41) as a motion for reconsideration, and denied it. (Mem. & Order 2-3, ECF No. 42.) The Court again ordered Plaintiff to file an amended complaint in compliance with Rule 8 no later than June 15, 2017. (*Id.* at 3.) The Court also instructed the Clerk to continue to return to Plaintiff any additional exhibits or notices not presented in support of an amended complaint or non-frivolous motion. (*Id.*)

[3] These notices appear to have been an attempt to circumvent FRCP 8 by filing the contents of the original complaints in separate documents, one count per notice. But each notice, yet again, attempted to incorporate the entirety of Plaintiff's original complaint as well.

Plaintiff then filed a Petition for Mandamus with the United States Court of Appeals for the Eighth Circuit. (ECF No. 43.) The Eighth Circuit denied Plaintiff's petition. (ECF Nos. 47-48.)

One day before the deadline for Plaintiff to file a proper amended complaint, Plaintiff filed two sets of seven documents each. The documents in the first set are titled "Plaintiff's Hybrid Pleading #[1-7] Making a Conscientious Effort to Comply with the Court's Orders Manifesting an Amended Complaint" and are labelled "Revelations" 1 through 7. (ECF No. 44.) The documents in the second set are titled "Plaintiff's Conscientious Effort to Comply with Court's Orders to Manifest and Amended Complaint within a Religiosity of Facts" and are labelled "Religiosity of Facts" 1 through 7. (ECF No. 45.) Collectively, these fourteen documents are hereinafter referred to as the "June 14 Filings."

Similar to the fourteen notices (ECF Nos. 33-34) Plaintiff filed on May 8, 2017, the June 14 Filings appear to be an attempt to circumvent Rule 8 by incorporating previous filings piecemeal. *See* footnote 3, *supra*. Only this time, instead of incorporating counts of the original complaint, the June 14 Filings incorporate over four hundred of the more than five hundred exhibits Plaintiff filed with the original complaint. The four hundred incorporated exhibits amount to thousands of pages of incorporated materials. The June 14 Filings do not set forth any claim for relief or otherwise request any relief. Instead, they merely identify Plaintiff's beliefs.

The next day, Plaintiff filed another motion requesting a hearing (ECF No. 46.) A week later, Plaintiff filed a motion for a "continuance" (ECF No. 49) which appears to

request that this case proceed directly to trial prior to Plaintiff's filing an amended complaint in compliance with Rule 8.

ARGUMENT

Under Rule 12(f), the Court may strike "redundant, immaterial, impertinent, or scandalous matter" from pleadings. The June 14 Filings are redundant, immaterial, and impertinent because they do not request any relief and were filed in violation of the Court's Orders. Even if the Court were to construe them as an amended complaint, they would violate Rule 8 and the Court's Orders. In that case, the Court should strike the June 14 Filings as impertinent to the sole task assigned to Plaintiff by the Court.

I. The Court Should Strike Plaintiff's June 14 Filings.

A. Because Plaintiff's June 14 Filings Do Not Request any Relief, the Court Should Strike them for Violating the Court's Orders.

The Court should strike Plaintiff's filings to enforce the Court's Orders. The Court has five times ordered Plaintiff to file an amended complaint. (*See* ECF Nos. 8, 18, 29, 36, 42.) In the two most recent Orders, the Court stated that it will not accept any additional pleadings that are not an amended complaint or non-frivolous motions. (ECF Nos. 36, 42.) The June 14 Filings are not an amended complaint (nor are they non-frivolous motions). They do not state any claim for relief. Indeed, they do not request any relief at all. Instead, they contain lists of Plaintiff's alleged religious beliefs and incorporate over four hundred exhibits totaling thousands of pages. Therefore, to enforce its Orders, the Court should strike the June 14 Filings, pursuant to Federal Rule of Civil Procedure 12(f), as redundant, immaterial, and impertinent matters. *See Adams v. Am. Family Mut. Ins. Co.*, 813 F.3d 1151, 1154 (8th Cir. 2016) ("A theory of liability that is

not alleged or even suggested in the complaint would not put a defendant on fair notice and should be dismissed.").

While pro se filings are liberally construed, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004), the Court should not invent claims not presented by the pro se litigant. *Stringer v. St. James R-1 Sch. Dist.*, 446 F.3d 799, 802 (8th Cir. 2006) ("'[P]ro se litigants must set [a claim] forth . . . .'" (first two alternations in original; ellipsis added) (quoting *Cunningham v. Ray*, 648 F.2d 1185, 1186 (8th Cir. 1981))); *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989) (refusing to "construct a legal theory" for a pro se plaintiff); *Wallach v. City of Pagedale*, 41 F.R.D. 547, 547 (E.D. Mo. 1966) ("The plaintiff pleads pro se and the court accordingly construes the pleadings with liberality. Even so, the defendants are entitled to know the extent of the claim against them as well as its precise nature."). Because the June 14 Filings contain no requests for relief, they cannot be liberally construed into an amended complaint.

B. If the June 14 Filings Are Construed as an Amended Complaint, the Court Should Strike them for Violating Rule 8.

Even if the Court were to disagree and liberally construe the June 14 Filings into an amended complaint, the Court should still strike the June 14 Filings for violating the Court's Orders and failing to comply with Rule 8. Five times, the Court has ordered Plaintiff to file an amended complaint in compliance with Rule 8. To the extent Plaintiff intended the June 14 Filings to serve as an amended complaint, they are an attempt to circumvent the spirit of Rule 8 by filing extensive material across fourteen documents and incorporating over four hundred exhibits comprising thousands of pages.

Rule 8 "'underscore[s] the emphasis placed on clarity and brevity by the federal pleading rules.'" (Mem. & Order 1, ECF No. 8 (quoting *Ciralsky v. CIA*, 355 F.3d 661, 669 (D.C. Cir. 2004)).) For clarity and brevity, Rule 8(a)(2) requires "a short and plain statement" of each claim, and Rule 8(d) requires each allegation to be "simple, concise, and direct."

Complaints may violate Rule 8 by their length. (Mem. & Order 2, ECF No. 8 (collecting cases).) *See Michaelis v. Neb. St. Bar Ass'n*, 717 F.2d 437, 439 (8th Cir. 1983). Complaints may also violate Rule 8 by lacking in coherence and organization. *See, e.g.*, *Schmidt v. Herrmann*, 614 F.2d 1221, 1224 (9th Cir. 1980) (affirming dismissal of "confusing, distracting, ambiguous, and unintelligible pleadings"); *Cintron-Luna v. Roman-Bultron*, 668 F. Supp. 2d 315, 317-18 (D.P.R. 2009) (finding "fifty-six (56) pages of poorly numbered and disorganized paragraphs containing repetitive factual allegations and conclusory statements" failed to comply with Rule 8(a)). Plaintiff's June 14 Filings run afoul of Rule 8 both because of their length and their lack of coherence and organization.[4]

The June 14 Filings are excessively long. The following table identifies the numbers of pages, numbered[5] paragraphs, and incorporated exhibits in each of the June 14 Filings:

Filing	Pages	Numbered Paragraphs	Incorporated Exhibits
Revelation 1	16	105	32
Revelation 2	4	6	0
Revelation 3	6	19	0

[4] Pro se plaintiffs, like all others, must comply with Rule 8. *Cody v. Leon*, 468 F. App'x 644, 645 (8th Cir. 2012) (per curiam).

[5] Each of the June 14 Filings also contains several unnumbered paragraphs.

Filing	Pages	Numbered Paragraphs	Incorporated Exhibits
Revelation 4	4	13	12
Revelation 5	5	7	7
Revelation 6	22	98	96
Revelation 7	10	36	32
Religiosity of Facts 1	11	40	34
Religiosity of Facts 2	16	61	55
Religiosity of Facts 3	8	23	18
Religiosity of Facts 4	10	31	30
Religiosity of Facts 5	16	60	53
Religiosity of Facts 6	9	28	23
Religiosity of Facts 7	14	53	49
Total	**151**	**580**	**409**[6]

Even without counting the thousands of pages of incorporated exhibits, the collective 151 pages and 580 paragraphs of the June 14 Filings bring them well within the range of excessively lengthy complaints. *See, e.g.*, *Michaelis*, 717 F.2d at 439 (98-page, 144-paragraph amended complaint); *In re Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F. Supp. 2d 1059, 1073-75 (N.D. Cal. 2001) (124-page second amended complaint); *Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1244 (N.D. Cal. 1998) (65-page complaint); *Burns v. Spiller*, 4 F.R.D. 299, 300 (D.D.C. 1945) (32-page complaint). Incorporating 409 exhibits exacerbates the problem. *See, e.g.*, *Cody*, 468 F. App'x at 645 (finding "75–page fourth amended complaint contain[ing] 246 paragraphs with repeated references to various other declarations and documents filed with earlier complaints, one of which was [the plaintiff's] own declaration containing 267 paragraphs, which in turn cited 260

[6] The total incorporated exhibits is slightly less than the sum of the exhibits incorporated in each of the June 14 Filings because some exhibits are incorporated into more than one filing.

exhibits" violated Rule 8); *In re Metro. Sec. Litig.*, 532 F. Supp. 2d 1260, 1277-78 (E.D. Wash. 2007) (finding Rule 8 violated by 317-page amended complaint that "incorporate[d] as many facts as possible").

Additionally, the June 14 Filings are incoherent and disorganized. Many of Plaintiff's allegations are incoherent.[7] *See Koll v. Wayzata State Bank*, 397 F.2d 124, 125 (8th Cir. 1968) (holding that complaint consisting of "16 printed pages of disconnected, incoherent and rambling statements" violated Rule 8). Moreover, the allegations are split across 14 partially individually numbered filings and 409 incorporated exhibits. *See Cintron-Luna*, 668 F. Supp. 2d at 318 ("Plaintiff's Amended Complaint consists of poorly numbered paragraphs that combine different sets of circumstances in a disorganized fashion, even occasionally posing questions laden with speculation having no factual basis."). Many of the June 14 Filings contain repetitive allegations, including a similar, if not identical, section entitled "First Amendment Right to Petition and Protest." *See In re Metro. Sec. Litig.*, 532 F. Supp. 2d at 1278 (finding a complaint that "repeat[ed] many allegations three or four times" violated Rule 8 (quoting *Wenger*, 2 F. Supp. 2d at 1243)).

[7] *See, e.g.*, Revelation #1, ¶ 7, ECF No. 44 ("In light of forces and influences in the forums of dialogue shared or exercised in the eyes of its beholders, whether reserved or germane to said Parties' participation is an issue herein."); Revelation #6, ¶ 1, ECF No. 44-5 ("Plaintiff's [conscience] dictates as the architect of his [LLP]; he knows what is to come by the principle on which it is built. Plaintiff's [conscience] dictates free exercise principles as set forth in [OVC] and declares he has a First Amendment Quintessential Right to [CLP]." (bracketed material in original)); Religiosity of Facts #4, ¶ 1, ECF No. 45-3 ("Plaintiff avers where a given religion is strongly associated – or perceived to be associated; manifested by the said parties proselytizing, or when engaged in numerous forms of religiously oriented expressions of their activities; it cultivates intrinsic and expressive associations."); Religiosity of Facts #5, ¶ 4, ECF No. 45-4 ("Plaintiff avers Defendants' [Govspel] [Body of Rites] [Peter to Paul Mandates] as [THE WORDS] of THEIRS has '[the force and effect of the color of law]' *per se* as ('[Interfaith]')" (bracketed material in original)).

At a minimum, the Court should strike Plaintiff's noncompliant filings. *See Koll*, 397 F.2d at 126-27 ("We, therefore, conclude the complaint should have been stricken for failure to comply with Fed.R.Civ.P. 8(a) and 8(e)."). Plaintiff's refusal to comply with Rule 8 may warrant a more severe response. *See Mangan v. Weinberger*, 848 F.2d 909, 911 (8th Cir. 1988) (affirming dismissal with prejudice because of the plaintiff's "deliberate persistence in refusing to conform his pleadings to the requirements of Rule 8"); *Michaelis*, 717 F.2d at 439 ("But if the plaintiff has persisted in violating Rule 8 the district court is justified in dismissing the complaint with prejudice.").

II. In the Alternative, the Court Should Extend the Unites States' Time to Respond By Sixty Days.

In the event that the Court determines both (1) that the June 14 Filings are an amended complaint and (2) that they comply with Rule 8, the United States respectfully requests a sixty-day extension of time to respond. Federal Rule of Civil Procedure 12(a)(2) provides the United States with sixty days after service on the U.S. Attorney to answer or otherwise respond to a complaint. But Rule 15(a)(3) provides all parties, including the United States, with only fourteen additional days in which to respond to an amended complaint.

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), the Court may, for good cause shown, extend the time for the United States to respond to Plaintiffs' amended complaint. "[A]n application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party." 4B Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1165 (4th ed. 2008).

Here, good cause exists to grant the United States' motion for extension of time. If the United States is required to respond to Plaintiff's lengthy, incoherent, and disorganized June 14 Filings, including more than four hundred incorporated exhibits totaling thousands of pages, it would require significant time. At a minimum, the United States would need sixty days to invest sufficient time in such an effort.

This motion is not made for the purpose of delay. Rather, the motion is made to afford the United States time to prepare, to the extent possible, a cogent and accurate response to the June 14 Filings, if a response is required. No other deadlines have been set in this action, and this motion is the United States' first request for an extension of a deadline. A reasonable extension of sixty days will not prejudice Plaintiff. To the contrary, Plaintiff has requested several extensions of time, and his pending motion for a continuance appears to request an extension of certain aspects of this matter.

CONCLUSION

Five times, the Court has ordered Plaintiff to file an amended complaint in compliance with Rule 8. Plaintiff has not done so. His June 14 Filings are neither an amended complaint nor compliant with Rule 8. At a minimum, the Court should strike these filings. In the alternative, the United States requests a sixty-day extension of time to respond.

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Dated: June 29, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 29, 2017, I filed this memorandum with the Court through the CM/ECF system and caused a copy to be mailed to:

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