

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846

CITY OF DETROIT, MICHIGAN,

Chapter 9

Debtor.

Judge Thomas J. Tucker

**ORDER GRANTING, IN PART, THE MOTION BY JEROME COLLINS
ENTITLED “MOTION FOR LEAVE TO COMPLY NUNC PRO TUNC,
WITH ORDER OF SEPTEMBER 29, 2016 DEADLINE FOR AMENDING
COMPLAINT” (DOCKET # 12971)**

This case is before the Court on the motion filed on December 21, 2018 by Jerome Collins, entitled “Motion for Leave to Comply *Nunc Pro Tunc*, with Order of September 29, 2016 Deadline for Amending Complaint” (Docket # 12971, the “Motion”). The City of Detroit filed a response objecting to the Motion on January 4, 2019 (Docket # 12976). The Court held a hearing on the Motion on January 16, 2019. Counsel for the City of Detroit appeared at the hearing, but neither Jerome Collins nor his attorney appeared at the hearing. Confirming action taken by the Court during the hearing, and for the reasons stated by the Court on the record during the hearing,

IT IS ORDERED that the Motion (Docket # 12971) is granted to the extent of the findings and conclusions made in this Order, and to the extent of the relief provided by this Order, and otherwise the Motion is denied.

THE COURT FINDS AND CONCLUDES AS FOLLOWS:

1. Except for its timing, the filing of the stipulation of dismissal (the “Stipulation”) that was filed in the United States District Court on December 20, 2017, at Docket # 27, in Case No. 2:15-cv-11756 (Eastern District of Michigan), captioned *Jerome Collins vs. City of Detroit, et al.* (the “District Court Case”), fully satisfied the requirement in paragraph 2 of this Court’s September 29, 2016 Order (Docket # 11597, the “September 29, 2016 Order”), that:

No later than October 5, 2016, Jerome Collins must dismiss, or cause to be dismissed, Case No 15-11756 filed with the United States District Court for the Eastern District of Michigan, Southern Division, and captioned Jerome Collins vs. City of Detroit, Detroit Police Department, Ralph Godbee, former Police Chief, Mattie Lewis, former Police Officer, and John Does, whose identities are presently unknown to the extent it seeks any relief against the City of Detroit or property of the City of Detroit, including to the extent



it seeks any relief against any current or former employee of the City of Detroit in his/her official capacity.

Under Fed. R. Civ. P. 41(a)(1)(A)(ii), the filing of this Stipulation had the effect of causing the District Court Case to be dismissed with prejudice, to the extent required by this Court's September 29, 2016 Order.¹ And the filing of this Stipulation in the District Court Case was specifically authorized and compelled by an order of this Court that was filed on December 11, 2017 (Docket # 12735).

2. With the possible exception described in paragraph 3 of this Order, the proposed amended complaint that is attached to the Motion (Docket # 12971, Exhibit 2) (the "proposed amended complaint") does not violate, and is not inconsistent with, the September 29, 2016 Order, because it does not "seek[] any relief against the City of Detroit or property of the City of Detroit," or "seek[] . . . any relief against any current or former employee of the City of Detroit in his/her official capacity."
3. The only possible exception to the findings and conclusions stated in paragraph 2 of this Order is to the extent that the proposed amended complaint includes any reference(s) to the City of Detroit or the Detroit Police Department as a "Defendant" in the case. (*See, e.g.*, the proposed amended complaint at 15, ¶ 85 (reference to "Defendants Detroit Police Department and DPD"). (The Court assumes that these references are inadvertent errors by counsel for Jerome Collins, which can and should be corrected.)
4. In footnote 1 in the United State District Court's Order filed on July 19, 2018 in the District Court Case (at Docket # 42), the court stated the following:

Substantively, the most recent version of plaintiff's proposed amended complaint (the "corrected amended" version attached as an exhibit to the instant motion for reconsideration) appears to comply with the Bankruptcy Court's order, at least in part, because it eliminates the City of Detroit and its police department as defendants, sues the individual defendants in their individual capacities only, and deletes requests for injunctive relief against the city and its police department. **Nonetheless**, as defendants note in their response brief, **any judgment against the individuals would in effect be a judgment against the city insofar as the city must, or decides to, indemnify defendants, all of whom appear to be current or former city employees. Therefore, it is possible that the proposed "corrected amended" complaint runs afoul of the Bankruptcy Court's order requiring plaintiff to dismiss his**

¹ During the January 16, 2019 hearing on the Motion, counsel for the City of Detroit stated that the City agrees with this proposition.

complaint “to the extent it seeks any relief against . . . property of the City of Detroit.” This is an issue for the Bankruptcy Court to determine as a “matter[] arising from the interpretation . . . of” its September 29, 2016, order.

(emphasis added). In response to this footnote in the District Court’s Order, this Court finds and concludes that the proposed amended complaint is *not* violative of or inconsistent with the September 29, 2016 Order. This is so because the mere fact that the City must, or decides to, indemnify the individual defendants in the District Court Case does *not* mean that the proposed amended complaint “seeks any relief against the City of Detroit or property of the City of Detroit,” or “seeks . . . any relief against any current or former employee of the City of Detroit in his/her official capacity,” within the meaning of the September 29, 2016 Order. Rather, it does *not* mean this.²

5. The September 29, 2016 Order does not preclude Jerome Collins from seeking or obtaining leave to amend his complaint in the District Court Case to file the proposed amended complaint (after any references to the City of Detroit or the Detroit Police Department as “Defendants” are removed).

IT IS FURTHER ORDERED that:

- A. Jerome Collins is not precluded by this Court’s September 29, 2016 Order from seeking and obtaining leave in the District Court Case to file an amended complaint, in the form of the proposed amended complaint (after any references to the City of Detroit or the Detroit Police Department as “Defendants” are removed). This is so even though Jerome Collins did not comply with the September 29, 2016 Order until December 20, 2017, long after the October 5, 2016 deadline stated in the Order.
- B. The proper procedure, if Jerome Collins wishes to seek leave to amend his complaint in the District Court Case, is to file a new motion in that case under Fed. R. Civ. P. 15(a) for leave to amend his complaint.³
- C. This Order is not intended to, cannot, and does not, limit in any way the authority and discretion of the United States District Court under Fed. R. Civ. P. 15(a)(2) to grant or deny

² During the January 16, 2019 hearing on the Motion, counsel for the City of Detroit stated that the City agrees with this proposition.

³ During the January 16, 2019 hearing on the Motion, this Court indicated that it would set a specific deadline (January 30, 2019) for Collins to file any such motion in the District Court for leave to amend his complaint. Upon further reflection after the hearing, however, the Court concludes that it would not be appropriate for this Court to set such a deadline. That is properly a matter only for the District Court.

leave to Jerome Collins to amend his complaint in the District Court Case, based on any appropriate grounds or factors other than any grounds for denial that are foreclosed by the decisions made in this Order.

- D. This Order is without prejudice to any and all rights that the City of Detroit and any Defendant or proposed Defendant may have to oppose any motion for leave to file an amended complaint that Jerome Collins may file in the District Court Case, other than any grounds for denial that are foreclosed by the decisions made in this Order.

Signed on January 16, 2019



/s/ Thomas J. Tucker

Thomas J. Tucker
United States Bankruptcy Judge