

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WALTER HERNANDEZ, SR.,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 04-3344-MLB
)	
E.J. GALLEGOS AND KENDALL HUGHES,)	
)	
Defendants.)	
)	

ORDER

Before the court are the following:

1. Plaintiff's "Motion for Complaint of Harassment" (Doc. 16); and
2. Defendants' response (Doc. 18).

Plaintiff seeks damages related to his alleged exposure to second hand smoke and proceeds pro se on a complaint filed under the Federal Tort Claims Act and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendants have filed their answer (Doc. 15).

Plaintiff complains that he has been harassed by an attorney representing the defendants whose name is "Melgren."¹ He also claims that one of the defendants, Kendall Hughes, asked plaintiff to dismiss the case against him because the case "can cause him a lot of problems." Defendants have responded with declarations of Mary Benning, an attorney for the Bureau of Prisons and Kendall Hughes, a chaplain at USP Leavenworth. Ms. Benning indicates that

¹Eric Melgren is United States Attorney for Kansas. Obviously, plaintiff is confused about the person with whom he spoke.

she spoke to plaintiff because she understood that plaintiff wished to dismiss this lawsuit. Mr. Hughes indicates that plaintiff told him that he had filed a case "because other inmates were filing and now that the institution had gone smoke-free, he wanted to withdraw the lawsuit." Both Ms. Benning and Mr. Hughes deny plaintiff's claims of harassment.

Plaintiff does not have an attorney and an attorney representing the defendants is entitled to speak with him about his lawsuit. Plaintiff can refuse to speak with Mr. Hughes if he wishes. There is nothing to indicate however, that the contact plaintiff had with Ms. Benning or Mr. Hughes constituted "harassment."

Accordingly, plaintiff's motion is denied. This case is returned to the assigned U.S. magistrate for appropriate pretrial handling.

IT IS SO ORDERED.

Dated this 21st day of October 2005, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE