

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**MARIO KEITH VANPELT
ADC #119581**

PLAINTIFF

VS. **NO. 1:11CV00019-KGB-BD**

**JACK OXNER
AND JAMES GUYNES**

DEFENDANTS

ORDER

Mr. Vanpelt, though his attorney, has filed a motion to amend his complaint to add a due process claim, a retaliation claim, an access to the courts claim, and several state law claims. (Docket entry #84) Defendants have responded to the motion (#87) and oppose the request to amend. They argue that they will suffer undue prejudice if the Court allows Mr. Vanpelt to amend his complaint.

Under Federal Rule of Civil Procedure 15(a), courts “should freely give leave [to amend] when justice so requires.” Defendants note that they have a summary judgment motion (#43) pending and that they have been prejudiced by exposing their theory of the case. They also argue that the proposed amendment would cause additional delay. But, “[d]elay alone is not enough to deny a motion to amend; prejudice to the nonmovant must also be shown.” *Doe v. Cassel*, 403 F.3d 986, 991 (8th Cir. 2005); *Bediako v. Stein Mart, Inc.*, 354 F.3d 835, 841 (8th Cir. 2004).

The Defendants have not shown that they will suffer unfair prejudice if Mr. Vanpelt is allowed to amend. While the Court previously denied Mr. Vanpelt’s pro se

motion to amend, his counsel has now articulated specific claims against the existing and new defendants that arose out of the events described in the original complaint.

Accordingly, the motion (#84) is GRANTED.

In light of the Court's decision to allow Mr. Vanpelt to amend, Defendants' motion for summary judgment (#43) is DENIED as moot, without prejudice.

IT IS SO ORDERED this 12th day of September, 2012.



UNITED STATES MAGISTRATE JUDGE