

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

KENNETH L. WALLER, JR.
ADC #103829

PLAINTIFF

V. 1:11CV00095 JLH/JTR

WENDY KELLEY, Deputy Director,
Arkansas Department of Correction, et al,

DEFENDANTS

ORDER

Plaintiff, Kenneth L. Waller, Jr., is a prisoner in the Grimes Unit of the Arkansas Department of Correction. On November 4, 2011, the Court issued a Recommended Partial Disposition suggesting that: (1) Plaintiff be allowed to proceed with his § 1983 inadequate medical care claim against the Defendants; and (2) his Federal Tort Claims Act and pendent state law negligence claims be dismissed, with prejudice, for failing to state a claim upon which relief may be granted. *See* docket entry #5.

While that Partial Recommended Disposition was pending, Plaintiff filed a Motion to Amend the Complaint, a lengthy Proposed Amended Complaint, and Motion for Service. *See* docket entries #7, #8, and #9.

Federal Rule of Civil Procedure 15(a)(a) provides that a plaintiff may amend

his complaint once, without leave of the court, prior to service. Service has not yet been issued in this case. Thus, the Motion to Amend will be granted.

Additionally, the Court will vacate the November 4, 2011 Recommended Partial Disposition and issue a new Recommended Partial Disposition that: (1) discusses the allegations raised by Plaintiff in both his original and Amended Complaints; and (2) determines whether service is appropriate on each of the Defendants.

IT IS THEREFORE ORDERED THAT:

1. The November 4, 2011 Recommended Partial Disposition (docket entry #5) is VACATED.
2. Plaintiff's Motion for Leave to File an Amended Complaint (docket entry #7) is GRANTED.
3. The Clerk is directed to file a copy of Plaintiff's Proposed Amended Complaint (docket entry #8) as "Plaintiff's Amended Complaint."
4. Plaintiff's Motion for Service (docket entry #9) is DENIED, AS MOOT.

Dated this 6th day of January, 2012.


UNITED STATES MAGISTRATE JUDGE