

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

NATHAN HOGGARD

PLAINTIFF

vs.

No. 3:15-cv-323 JM

ROGER PAGE, ET AL.

DEFENDANTS

ORDER

Pending are Plaintiff's second Motion for Leave to File Amended Complaint (Docket No. 7) and Defendants' Supplemental Motion to Dismiss (Docket No. 15)<sup>1</sup>. Both motions have been responded to, and replies have been filed. For the reasons stated below, the Court will give Plaintiff leave to amend a second, and final, time and will deny Defendants' motion to dismiss without prejudice.

Regarding Plaintiff's motion for leave to file a second amended complaint, the Court is guided by the language of Rule 15(a)(2) that requires a court to "freely give leave [to amend] when justice so requires." In circumstances showing "undue delay, bad faith on the part of the moving party, futility of the amendment or unfair prejudice to the opposing party," denial of leave to amend may be justified. *Crest Const. II, Inc. v. Doe*, 660 F.3d 346, 358-59 (8th Cir. 2011) (internal citations omitted). The Court finds that none of those factors are present in this case. A final scheduling order was only entered on January 8, 2016, and the Court believes Defendants' arguments regarding futility of amendment would be better and more fully addressed in a motion to dismiss the second amended complaint or in a motion for summary judgment. Therefore, Plaintiff is given leave to amend his complaint a final time. However, the amended complaint must comply with Local Rule 5.5(e), which provides that "[a]ny amendment

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<sup>1</sup> This is the first motion to dismiss that Defendants have filed other than first asserting these defenses in their answers.

to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.” Plaintiff has until February 22, 2016 to file his amended and substituted complaint.

In light of the leave being given to Plaintiff to amend, Defendants’ motion to dismiss is denied at this time without prejudice. The Court notes that Defendants attached exhibits to their motion to dismiss; if Defendants intend to rely on matters outside the pleadings in any future motion, it will be treated as a motion for summary judgment. Fed. R. Civ P. 12(d).

For these reasons, Plaintiff’s Motion for Leave to File Amended Complaint (Docket No. 7) is GRANTED, and Defendants’ Supplemental Motion to Dismiss (Docket No. 15) is DENIED without prejudice.

IT IS SO ORDERED this 16th day of February, 2016.

  
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James M. Moody Jr.  
United States District Judge