

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

MAIKIJAH HA'KEEM, ROY HUGHES,  
JIMMY BOOKER,<sup>1</sup> and JACQUARD  
LARKIN,

Plaintiffs,

v.

Case No. 16-CV-348 (JNE/SER)

**ORDER**

CHAD MESOJEDEC, *Rehabilitation  
Therapist Director sued in their individual  
and official capacities*, TROY  
BASARABA, *Security Manager sued in  
their individual and official capacities*,  
ELIZABETH WYATT, *Security Counselor  
sued in their individual and official  
capacities*, KEVIN SCHLERET, *Property  
Personnel sued in their individual and  
official capacities*, MANDY TORGERSON,  
*Property Supervisor sued in their individual  
and official capacities*, KEVIN MOSER,  
*MSOP-Moose Lake Facility Director sued  
in their individual and official capacities*,  
and NICK LAMMI, *Rehabilitation  
Counselor sued in their individual and  
official capacities*,

Defendants.

This matter is before the Court on a Report and Recommendation (“R&R”) issued by the Honorable Steven E. Rau, United States Magistrate Judge, on December 29, 2016. (Dkt. No. 34.) The R&R recommends denying Defendants’ Motion to Dismiss (Dkt. No. 13) without prejudice and granting Plaintiffs leave to amend the Complaint. (*See* Dkt. No. 34.) Neither party objected to the R&R. Nevertheless, the Court conducted a de novo review of the record. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); D. Minn. LR 72.2(b)(3).

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<sup>1</sup> In accordance with this Order, “Jimmy Booker” is substituted for “James Booker.”

Plaintiffs did not formally move for leave to amend the Complaint, but expressed a desire to amend in lieu of dismissal. (*See* Dkt. No. 23 at 12, 16, 18.) The R&R considered this desire an implied motion for leave to amend. (*See* Dkt. No. 34 at 5.) A court “should freely grant leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Although the Court is well within its discretion to deny informal requests for leave to amend stated in opposition to a motion to dismiss, *see U.S. ex. rel. Roop v. Hypoguard USA, Inc.*, 559 F.3d 818, 822-23 (8th Cir. 2009), the Court agrees that providing Plaintiffs leave to amend in this case will fulfill the purposes of the Federal Rules and facilitate a proper decision on the merits, *see Foman v. Davis*, 371 U.S. 178, 182 (1962). Thus, the Court accepts the R&R’s recommended disposition.

Therefore, IT IS ORDERED THAT:

1. “Jimmy Booker” is substituted for “James Booker” in this matter.
2. Defendants’ Motion to Dismiss [Dkt. No. 13] is DENIED WITHOUT PREJUDICE.
3. Plaintiffs are granted leave to file an amended complaint within 30 days of this Order.

Dated: January 25, 2017.

s/Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge