

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DAVID SMITH,**

**Plaintiff,**

**vs.**

**SARGENT TURNER and  
CORPORAL BELL,**

**Defendants.**

**4:13CV3041**

**ORDER**

This matter is before the court on the plaintiff's, David Smith, motion to amend (Filing No. 41) and motion to issue summons (Filing No. 42). The plaintiff seeks to amend his Amended Complaint and include Diane Sabatka-Rine (Sabatka-Rine) as a defendant in this matter. **See** Filing No. 41. The plaintiff alleges Sabatka-Rine was aware of the underlying incidents alleged in this lawsuit. **Id.** The defendants did not file any opposition to the plaintiff's motions. The court will grant the plaintiff leave to file a second amended complaint to incorporate his allegations against Sabatka-Rine. **See** Fed. R. Civ. P. 15(a)(2) ("[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."). Upon consideration,

**IT IS ORDERED:**

1. The plaintiff's motion to amend (Filing No. 41) is granted. The plaintiff shall have until **February 6, 2015**, to file a second amended complaint.

2. The plaintiff's motion to issue summons (Filing No. 42) is granted to the extent the necessary forms will be sent to the plaintiff after the plaintiff files a second amended complaint. Upon filing of the second amended complaint, the Clerk of the court shall send a summons form and a USM-285 form to the plaintiff. The plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the Court. In the absence of the forms, service of process cannot occur. Upon receipt of the completed forms, the Clerk of the Court will sign the summons form, to be forwarded with a copy of the second amended complaint to the U.S. Marshal for

service of process on Sabatka-Rine. The Marshal shall serve the summons and the second amended complaint without payment of costs or fees. Service may be by certified mail pursuant to Federal Rule of Civil Procedure 4 and Nebraska law in the discretion of the Marshal.

3. The Clerk of the Court is directed to set a pro se case management deadline in this case with the following text: "February 9, 2015: Check for filing of second amended complaint and issuance of summons form and USM-285 form to plaintiff."

### **ADMONITION**

Pursuant to NECivR 72.2 any objection to this Order shall be filed with the Clerk of the Court within fourteen (14) days after being served with a copy of this Order. Failure to timely object may constitute a waiver of any objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

Dated this 6th day of January, 2015.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge