

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

LYNN R. NELSON,

Plaintiff,

vs.

**BLUE CROSS AND BLUE SHIELD
OF NEBRASKA,**

Defendant.

8:14CV228

ORDER

This matter is before the court on the plaintiff's Motion for Leave to Amend the Complaint (Filing No. 16). The plaintiff attached a copy of the proposed Amended Complaint (Filing No. 16-1) to the motion. By amending the complaint, the plaintiff seeks to cure deficiencies alleged by the defendant in its Motion to Dismiss (Filing No. 9). The plaintiff notes the defendant opposes the motion.

Leave of court is not required for the plaintiff to file an amended complaint in this instance. Federal Rule of Civil Procedure 15(a) provides "[a] party may amend its pleading once as a matter of course within: . . . (B) if the pleading is one to which a responsive pleading is required, . . . 21 days after service of a motion under Rule 12(b)" Fed. R. Civ. P. 15(a)(1). The plaintiff filed the original complaint on July 7, 2014, in the District Court of Douglas County, Nebraska. **See** Filing No. 1-1. The defendant removed the case on August 5, 2014, to this court. **See** Filing No. 1. On September 11, 2014, the defendant filed a motion to dismiss pursuant to Rule 12(b)(6) and 12(b)(7). **See** Filing No. 9. The record contains no evidence the complaint was amended prior to the current motion. The plaintiff filed the current motion to amend twenty days after service of the motion to dismiss. Accordingly,

IT IS ORDERED:

The plaintiff's Motion for Leave to Amend the Complaint (Filing No. 16) is granted as a matter of course. The plaintiff shall have to **on or before October 9, 2014**, to file the Amended Complaint.

Dated this 2nd day of October, 2014.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge