

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSHUA G. FRANKLIN, SR.,

Plaintiff,

vs.

SCOTT FRAKES, Director, In his
Individual and Official Capacity; et al.,

Defendants.

8:16CV470

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On January 30, 2017, the court ordered Plaintiff to file an amended complaint by March 1, 2017, or face dismissal of this action. ([Filing No. 9.](#)) On February 27, 2017, Plaintiff requested a short continuance to file an amended complaint. ([Filing No. 10.](#)) On March 1, 2017, the court granted Plaintiff an extension until March 13, 2017, to file an amended complaint. (Filing No. 11 (Text Order).) On March 20, 2017, the court dismissed this matter without prejudice because Plaintiff failed to file an amended complaint. ([Filing No. 13](#); [Filing No. 14.](#)) The court, however, received a letter from Plaintiff that crossed in the mail with its March 20th Order and Judgment. ([Filing No. 15.](#)) In his letter, Plaintiff states that he did not receive the court's March 1st order (granting him an extension until March 13th to file an amended complaint) until March 9th. (*Id.*) He states that prison officials withheld the order from him because he "filed litigation for retaliation." (*Id.*) He requests a fourteen-day extension and a "temporary injunction" "to prevent further retaliation." (*Id.*)

[Federal Rule of Civil Procedure 60](#) allows the court to relieve a party from a final judgment in certain situations. Based upon Plaintiff's allegations, the court will grant him relief under Rule 60(b)(6) and reopen this matter. *See Harley v. Zoesch*, 413 F.3d 866, 871 (8th Cir. 2005) ("Relief is available under Rule 60(b)(6) only where exceptional circumstances have denied the moving party a full and fair

opportunity to litigate his claim and have prevented the moving party from receiving adequate redress.”). Plaintiff, however, has not established the factors for the court to issue injunctive relief. *See Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (2003) (setting forth factors and that the movant bears the burden of proof).

IT IS THEREFORE ORDERED that:

1. The clerk’s office shall reopen this matter. Plaintiff is ordered to file an amended complaint no later than **April 5, 2017**. Should Plaintiff fail to do so, this action will be dismissed without further notice. The clerk of court is directed to set a pro se case management deadline using the following text: **April 5, 2017: check for amended complaint.**

2. The Order and Judgment dated March 20, 2017, dismissing this matter without prejudice are vacated.

Dated this 22nd day of March, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge