

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

KEVIN CHRISTOPHER MICHAEL TRIPP, Plaintiff, vs. ARTHUR ALLCOCK, Associate Warden; JENNIFER DRESKE, Deputy Warden; EUGENE REGIER, Doctor; ROBERT VESTLIE, Senior Correctional Officer; TAMMY TOP, Certified Nurse Practitioner, Defendants.	4:17-CV-04076-KES ORDER GRANTING MOTION TO AMEND AND DIRECTING SERVICE
---	--

Plaintiff, Kevin Christopher Micheal Tripp, is an inmate at the South Dakota State Penitentiary in Sioux Falls. On June 1, 2017, Tripp filed a pro se complaint under 42 U.S.C. § 1983 raising three claims. Docket 1. The court screened Tripp's complaint and found that he stated a claim against Robert Vestlie for deliberate indifference to Tripp's serious medical needs in violation of the Eighth Amendment and that Tripp stated a claim against Arthur Allcock and Jennifer Dreske under the Equal Protection Clause of the Fourteenth Amendment. Docket 7. The court dismissed Tripp's second Eighth Amendment claim because he did not allege that a specific defendant denied his bottom tier order request. *Id.* at 4. The court found that Tripp failed to state a claim

against Dr. Regier but granted Tripp leave to amend his complaint if he wished. *Id.* at 7.

On June 28, 2017, Tripp filed an amended complaint. Docket 9. Because the court granted Tripp leave to amend his complaint, the court construes his amended complaint to include a motion to amend his original complaint. This motion is granted. The court will now screen the alterations in Tripp's amended complaint under 28 U.S.C. § 1915A.¹

The only significant changes in Tripp's amended complaint are to Count I, the claim the court dismissed because Tripp failed to allege any action on the part of the named defendants. He alleges the same facts in his amended complaint as he did in his original complaint: using steps causes him extreme pain, and he sought an order so that he would be housed on the bottom tier of the prison. Docket 9 at 5. In his amended complaint, Tripp alleges that Dr. Eugene Regier, Tammy Top, Allcock, and Dreske all refused to issue a bottom tier order. *Id.* The court finds that Tripp states a claim in his amended complaint against Regier, Top, Allcock and Dreske.

Thus, it is ORDERED

1. Tripp's motion to amend (Docket 9) is granted.
2. The clerks office shall refile Docket 9 as Tripp's amended complaint.
3. The Clerk shall send blank summons forms to Tripp so he may cause the summons and amended complaint to be served upon the defendants.

¹ The court has already found that Counts II and III, which Tripp does not significantly amend, survive screening. *See* Docket 7.

4. The United States Marshal shall serve a copy of the amended complaint (Docket 9), summons, and this order upon defendants as directed by Tripp. All costs of service shall be advanced by the United States.
5. Defendants will serve and file an answer or responsive pleading to the remaining claims in the amended complaint on or before 21 days following the date of service.
6. Tripp will serve upon defendants, or, if appearance has been entered by counsel, upon their counsel, a copy of every further pleading or other document submitted for consideration by the court. He will include with the original paper to be filed with the clerk of court a certificate stating the date and that a true and correct copy of any document was mailed to defendants or their counsel.
7. Tripp will keep the court informed of his current address at all times. All parties are bound by the Federal Rules of Civil Procedure and by the court's Local Rules while this case is pending.

Dated July 13, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE