

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TRAVIS R. MCPEEK,

Plaintiff,

vs.

KELLIE WASKO, SECRETARY OF
CORRECTIONS, INDIVIDUAL AND
OFFICIAL CAPACITY; BRENT FLUKE,
WARDEN AT THE MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; AARON HAYNES, SD DOC
MEDICAL DIRECTOR, INDIVIDUAL AND
OFFICIAL CAPACITY; JANE/JOHN DOE
MEDICAL PROVIDER(S), INDIVIDUAL
AND OFFICIAL CAPACITIES,

Defendants.

4:23-CV-04025-RAL

OPINION AND ORDER GRANTING
PLAINTIFF'S MOTION TO AMEND AND
GRANTING DEENDANTS' MOTION FOR
EXTENSION OF TIME TO ANSWER

Plaintiff Travis R. McPeek, an inmate at the Mike Durfee State Prison, filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. This Court granted McPeek leave to proceed in forma pauperis and ordered him to pay a \$35.23 initial partial filing fee. Doc. 9. McPeek timely paid his initial partial filing fee. Before this Court screened McPeek's complaint, McPeek moved for leave to amend his complaint. Doc. 10. The Court granted McPeek's motion to amend his complaint, Doc. 12 at 2, and screened the amended complaint under 28 U.S.C. § 1915A, Doc. 12 at 2–13. After screening, the Court ordered service on Defendants Kellie Wasko, Brent Fluke, Aaron Haynes, and the John/Jane Doe medical provider(s). *Id.* at 16–17. McPeek seeks leave to file a second amended complaint to correct a date, identify a DOC staff member who is not a defendant, and correct some spelling errors. Doc. 15 at 1. Defendants Kellie Wasko and Aaron Haynes move for

an extension of time to answer McPeek's amended complaint. Doc. 16. Defendant Fluke has not yet been served, id. at 2, and Defendants Wasko and Haynes, for sake of judicial economy, request that their time for responding to McPeek's amended complaint be extended until twenty-one days after McPeek's amended complaint is served on Defendant Fluke, id.

I. Motion to Amend Complaint

Federal Rule of Civil Procedure 15(a)(1)(A) provides that a party may amend a pleading once as a matter of course twenty-one days after serving it. McPeek has already amended his complaint once as a matter of course. Doc. 10; Doc. 12 at 2. Thus, Federal Rule of Civil Procedure 15(a)(2) requires that McPeek obtain leave to file a second amended complaint. Leave to amend "should be freely given in order to promote justice." Plymouth Cty. v. Merscorp, Inc., 774 F.3d 1155, 1160 (8th Cir. 2014) (citation omitted). Denial of a motion to amend "is appropriate in those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the non-moving party can be demonstrated." Hillesheim v. Myron's Cards & Gifts, Inc., 897 F.3d 953, 955 (8th Cir. 2018) (internal quotation omitted). Here, none of these circumstances exist. Defendants have not responded to McPeek's amended complaint, and the proposed changes are not substantive. Granting McPeek leave to file a second amended complaint is in the interests of justice. McPeek's motion to amend, Doc. 15 is granted, and the Clerk of Clerk shall file his proposed amended complaint, Doc. 15-1.

II. Defendants' Motion for Extension of Time to Answer

Defendants Wasko and Haynes, for sake of judicial economy, request that their time for responding to McPeek's amended complaint be extended until twenty-one days after Defendant Fluke is served. Doc. 16. For good cause, Defendants' motion to for extension of time, Doc. 16, is granted. Defendants Wasko and Haynes will serve and file an answer or responsive pleading

to the second amended complaint, Doc. 15-1, on or before twenty-one days after the service on Defendant Fluke is completed.

III. Conclusion

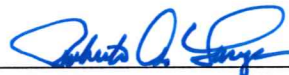
Accordingly, it is

ORDERED that McPeek's motion to amend complaint, Doc. 15, is granted. The Clerk of Court shall file McPeek's proposed second amended complaint, Doc. 15-1. In addition, the Clerk of Clerk shall provide to the United States Marshals Service a copy of this opinion and order and McPeek's second amended complaint, Doc. 15-1, so that they can be served along with the summonses the Clerk of Court has issued for Brent Fluke, and the John/Jane Doe medical provider(s). It is further

ORDERED that Defendants' motion for extension of time, Doc. 16, is granted. Defendants Wasko and Haynes will serve and file an answer or responsive pleading to the second amended complaint, Doc. 15-1, on or before twenty-one days after service on Defendant Fluke is completed.

DATED August 17th, 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE