

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JAMES DARYL WEST,

Plaintiff,

v.

Case No: 2:16-cv-694-FtM-38UAM

RONALD HEMPHILL, CARMELLO
BERRIOS, KAREN BLANKENSHIP,
H. WETTERER, BONNIE LAROSA,
ROBERT GILBREATH, SABRINA
SCHULTZ, DIANN SPRATT, JULIE
JONES, WEXFORD HEALTH
SOURCES, KATHY CONNER,
KARA WILLIAMS and JAMES
LICATA,

Defendants.

ORDER¹

Before the Court is Plaintiff's Motion for Leave to Amend Complaint filed March 6, 2019 ([Doc. 157](#)). Plaintiff attaches a proposed Second Amended Complaint to his Motion ([Doc. 157 at 6-29](#)). Defendants Hemphill, Blakenship, Wetterer, LaRoasa and Wexford Health Sources, Inc. (collectively the "Wexford Defendants") filed a Response in Opposition to the Motion on March 11, 2019 ([Doc. 161](#)). As of the date of this Order Defendants Licata, Williams, Conner, and Jones have not filed a response to the Motion

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and the time for doing so has expired. M.D. Fla. R. 3.01(b). For the following reasons, the Court GRANTS the Motion.

Plaintiff initiated this action by filing a *pro se* civil rights complaint ([Doc. 1](#)). Prior to the Court ordering service, Plaintiff filed an amended complaint as directed by the Court ([Doc. 21](#)) and submitted numerous exhibits in support ([Doc. 22](#)). In response, Defendants Julie Jones, James Licata, Kara Williams and Diann Spratt filed a joint Motion to Dismiss on July 20, 2018 ([Doc. 98](#)), Defendant Hemphill filed a Motion to Dismiss on February 4, 2019 ([Doc. 147](#)), Defendant Wexford filed a Motion to Dismiss on February 21, 2019 ([Doc. 150](#)), and Defendant Wetter filed a Motion to Dismiss ([Doc. 151](#)) on February 21, 2019. Defendants Blakenship and Larosa filed an Answer and Affirmative Defenses on November 19, 2018 ([Doc. 114](#)). Defendant Conner's response is due to be filed on or before March 28, 2019. See [Doc. 152](#). Service has not yet been effectuated upon Defendants Berrios, Gilbreath, and Schultz. See Docs. 83, 85 and 86. On February 21, 2019, counsel entered an appearance on behalf of Plaintiff ([Doc. 149](#)).

Because Plaintiff is not entitled to amend as a matter of right under [Fed. R. Civ. P. 15\(a\)\(1\)](#), he may amend his "pleading only with the opposing party's written consent or the court's leave." [Fed. R. Civ. P. 15\(a\)\(2\)](#). Leave to amend is given freely "when justice so requires." *Id.* Rule 15(a)(2) "contemplates that leave shall be granted unless there is a substantial reason to deny it." [Halliburton & Assocs., Inc. v. Henderson, Few & Co., 774 F.2d 441, 443 \(11th Cir. 1985\)](#). Absent a finding of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the

amendment, [or] futility of amendment” the Court should grant leave “freely.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Here, the Wexford Defendants object to the proposed Second Amended Complaint drafted by counsel on the basis that the pleading is “confusing, vague, ambiguous and will certainly prompt Motions for More Definite Statements followed by Motions to Dismiss.” [Doc. 161 at 2](#). The Wexford Defendants then proceed to point out alleged deficiencies in the proposed Second Amended Complaint as they relate to Wexford. *Id.* at 3-4. As noted *supra*, only the Wexford Defendants object to Plaintiff being permitted to file a Second Amended Complaint. The Court finds no bad faith or other inappropriate conduct, nor will there be undue delay by granting Plaintiff’s Motion since discovery has not yet begun. The Court notes that counsel only recently *sua sponte* entered an appearance on behalf of the Plaintiff. To the extent that the Wexford Defendants contend that the Second Amended Complaint after it is filed is deficient, they may renew their motions to dismiss at that time. However, to permit Plaintiff an opportunity to correct the alleged deficiencies in the proposed Second Amended Complaint, the Court will afford Plaintiff an additional thirty (30) days within which to file the operative Second Amended Complaint.


Accordingly, it is now

ORDERED:

1. Plaintiff’s Motion to Amend Complaint ([Doc. 157](#)) is **GRANTED** and Plaintiff shall file a Second Amended Complaint within **thirty (30) days** of the date of this Order and serve a copy upon the Defendants.

2. The following motions are **DENIED as moot**: (a) Defendants Julie Jones, James Licata, Kara Williams and Diann Spratt's Motion to Dismiss ([Doc. 98](#)); (b) Defendant Hemphill's Motion to Dismiss ([Doc. 147](#)); (c) Defendant Wexford's Motion to Dismiss ([Doc. 150](#)); (d) Defendant Wetter's Motion to Dismiss ([Doc. 151](#)); and (e) Plaintiff's Motion to Strike Defendants' Affirmative Defenses ([Doc. 127](#)).

DONE and **ORDERED** in Fort Myers, Florida this 21st day of March 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA; FTMP-1
Copies: All Parties of Record