

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DAMIEN GREEN,

Plaintiff,

v.

DARCI BURRESON, JENNIFER NICKELS, KIM  
CAMPBELL, STEVE HELGERSON, LORI ALSUM,  
DALIA SULIENE, PAUL PERSSON, PAUL  
KETARKUS, NANCY HAHNISCH, NATALIE  
NEWMAN, SHAWNA ELDER-HALL, JEFF VANA  
and KIMM JOHNSON,

Defendants.

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ORDER

10-cv-485-slc

In an order entered on January 21, 2011, this court granted plaintiff's request to proceed on his Eighth Amendment claims that the defendants were deliberately indifferent to his severe pain and that defendant Dr. Suliene denied him prescription medication. Defendants answered the complaint on March 1, 2011. Now before the court is Green's motion to amend his complaint.

Once answered, Fed. R. Civ. P. 15(a)(2) provides that a party may amend its pleading only with the opposing party's written consent or the court's leave, but leave should be freely given when justice so requires. Because Green is proceeding *in forma pauperis*, the court must also determine whether Green's proposed amended complaint is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

There are several problems with plaintiff's motion to amend his complaint. First, it appears he is not alleging any new facts. Second, the only difference appears to be his assertion of two fraud claims: (1) a deliberate indifference claim under the Eighth and Fourteenth

Amendments, and (2) an equal protection claim under the Fourteenth Amendment. Green has already been allowed to proceed on his deliberate indifference claim under the Eighth and Fourteenth Amendments, making the first claim for relief redundant at best. The second claim under the equal protection clause was never considered or approved by this court in his screening order, is without support in the facts as pled, and appears to be the subject of a separate suit. For all these reasons, Green's motion to amend his complaint will be denied.

ORDER

IT IS ORDERED that plaintiff's second motion to amend his complaint, dkt. 32, is DENIED.

Entered this 17<sup>th</sup> day of June, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge