

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MUMIA ABU-JAMAL

Plaintiff,

v.

**JOHN KERESTES, Superintendent
State Correctional Institution Mahanoy**

**Christopher Oppman, DOC Director of
Bureau of Health Care Services**

Dr. John Lisiak, SCI Mahanoy

Dr. Shaista Khanum, SCI Mahanoy

**Scott Saxon, Physician’s Assistant, SCI
Mahanoy**

**Chief Health Care Administrator John
Steinhart, SCI Mahanoy**

GEISINGER MEDICAL CENTER

Defendants.

**PLAINTIFF’S MOTION FOR LEAVE TO FILE
FIRST AMENDED AND SUPPLEMENTAL COMPLAINT**

Pursuant to Rule 15 of the Federal Rule of Civil Procedure and for the reasons set forth below, Plaintiff Mumia Abu-Jamal, by and through his undersigned counsel, respectfully moves for leave to file their First Amended and Supplemental Complaint (“Amended Complaint”), attached hereto as Exhibit A and filed herewith. As grounds for its motion, Plaintiffs state the following:

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: **Case No. 15-Cv-00967**
: **(RDM)(KM)**
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: **Judge Robert D. Mariani**
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: **Magistrate Judge Karoline**
: **Mehalchick**
:
:
: **ELECTRONICALLY FILED**

1. On May 18, 2015, Plaintiff filed the original Complaint, alleging that Defendants' prohibition on all visitation and communication with his legal counsel during his hospitalization at Geisinger Medical Center, as well as the prohibition on family visits and the near-total restriction on phone calls with family violated his First, Fifth, and Fourteenth Amendment rights. That complaint alleges facts concerning Mr. Abu Jamal's health and the lack of treatment he had been receiving at SCI Mahanoy.

2. Plaintiff seeks leave to file the attached Amended Complaint because the amendments and supplements set forth therein are concomitant with the core facts and claims set forth in the original Complaint. The original and amended complaints raise legal claims under the Eighth Amendment and Pennsylvania state law arising from acts, omissions, and circumstances pertaining to Plaintiff's medical care.

3. The First, Fifth and Fourteenth Amendment claims arising from the restrictions on Mr. Abu Jamal's visitation while an in-patient at Geisinger Medical Center have been retained in the Amended Complaint.

4. Pursuant to Local Rule 7.1, counsel for Plaintiff has sought opposing counsel's concurrence in this Motion for Leave to File First Amended and Supplemental Complaint. Counsel for Geisinger Medical Center has indicated that he takes no position on this motion. Counsel for the Department of Corrections defendants has indicated that she will oppose this motion.

5. The Amended Complaint adds additional facts, Eighth Amendment and state law claims, additional defendants, and additional prayers for relief. Plaintiffs also seek leave to supplement the complaint by adding facts that occurred after the filing of the original Complaint. Pursuant to Local Rule 15.1(b), the attached Exhibit B highlights new and stricken material.

6. Federal Rule of Civil Procedure 15(a) allows a party to amend its complaint at any time with the opposing party's written consent or the court's leave. Rule 15(a) mandates that "[t]he court should freely give leave when justice so requires." Rule 15(a) requires courts to grant such leave assuming there is no undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility. *See, e.g., Foman v. Davis*, 371 U.S. 178, 182 (1962).

7. In *Lundy v. Admar of New Jersey, Inc.*, 34 F.3d 1173, 1196 (3d Cir. 1994) the United States Court of Appeals for the Third Circuit stated that "This Court has often held that absent undue substantial prejudice, an amendment should be allowed under Rule 15(a) unless denial can be grounded in bad faith or dilatory motive, truly undue to explained delay, repeated failure to cure by amendments previously allowed or futility of the amendment."

8. A motion to supplement a complaint under Rule 15(d) "is governed by essentially the same standards as a motion to amend a complaint." *Keys v. Carroll*, No. 3:10-CV-1570, 2012 U.S. Dist. LEXIS 22020, at *6 (M.D. Pa. Feb. 22, 2012).

9. Here, defendants will not be substantially or unduly prejudiced by the amendments and supplements in the Amended Complaint. This case is in its infancy. The defendants have not filed a responsive pleading. Plaintiff is acting in good faith, and is simply adding allegations relating to the core facts and claims of the original complaint, and he is doing so early in the process. It would be equitable and in the interest of judicial economy to permit plaintiff to amend.

10. Nor can the amendment be deemed “futile”. To survive that challenge, the complaint need only allege such facts to state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To state a claim under the Eighth Amendment, a plaintiff must allege facts showing that the defendants “[knew] of an intentionally disregard[ed] an excessive risk to [plaintiff’s] health.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) *see also* *Giles v. Kearney*, 571 F.3d 318, 330 (3d Cir. 2009)(“To act with deliberate indifference to serious medical needs is to recklessly disregard a substantial risk to serious harm”). The allegations in the amended complaint easily meet that standard.

11. First, the Amended Complaint alleges that the defendants ignored and failed to treat hyperglycemia leading to an episode of diabetic shock, a potentially fatal condition (Amended Complaint ¶¶ 35-41).

12. Second, Plaintiff alleges that the defendants delayed in diagnosing and now have totally failed to treat his active Hepatitis C infection. (Amended Complaint,

¶¶ 30-34, 42-48, 54-74). Left untreated, an active Hepatitis C infection can cause irreparable harm to the liver and can lead to death. (Amended Complaint ¶¶ 24-27).

13. Finally, Plaintiff alleges that they have ceased treating his skin condition, and that this condition is a likely manifestation of untreated Hepatitis C. That condition has worsened and continues causing pain and suffering (Amended Complaint, ¶¶ 28, 30-34, 42-48, 54-74).

CONCLUSION

For the foregoing reasons, this Court should issue an order allowing Plaintiff to file his First Amended and Supplemental Complaint.

Respectfully submitted,

Dated: August 3, 2015

/s/ Bret D. Grote

Bret D. Grote
PA I.D. No. 317273
Abolitionist Law Center
P.O. Box 8654
Pittsburgh, PA 15221
Telephone: (412) 654-9070
bretgrote@abolitionistlawcenter.org

/s/ Robert J. Boyle

Robert J. Boyle
277 Broadway
Suite 1501
New York, N.Y. 10007
(212) 431-0229
Rjboyle55@gmail.com
NYS ID# 1772094
Pro Hac Vice

Counsel for Plaintiff

Dated: August 3, 2015

/s/ Bret D. Grote

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PA I.D. No. 317273

Abolitionist Law Center

P.O. Box 8654

Pittsburgh, PA 15221

Telephone: (412) 654-9070

bretgrote@abolitionistlawcenter.org

/s/ Robert J. Boyle

Robert J. Boyle

277 Broadway

Suite 1501

New York, N.Y. 10007

(212) 431-0229

Rjboyle55@gmail.com

NYS ID# 1772094

Pro Hac Vice

Counsel for Plaintiff

1. Plaintiff's First Amended and Supplemental Complaint is filed as of the date of this Order;

2. Plaintiffs shall provide service upon Defendants Oppman, Lisiak, Khanum, Saxon, and Steinhart pursuant to Rule 4 of the Federal Rules of Civil Procedure; and

3. Defendants shall file Answers or otherwise respond to the First Amended and Supplemental Complaint no later than _____, 2015.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2015, I electronically filed a true and correct copy of the foregoing Motion to File First Amended and Supplemental Complaint with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to the following:

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Motion for Leave to File First Amended and Supplemental Complaint upon each defendant in the following manner:

Service Via ECF:

For Defendants Kerestes, Oppman, Lisiak, Khanum, Saxon, and Steinhart:

Laura Neal, Esquire
Pennsylvania Department of Corrections
1920 Technology Parkway
Mechanicsburg, PA 17050
lneal@pa.gov

Fore Defendant Geisinger Medical Center:

Jack Dempsey, Esquire
Myers, Brier & Kelly, LLP
425 Spruce Street, Suite 200
Scranton, Pennsylvania 18503
jdempsey@mbklaw.com

s/ Bret D. Grote

Bret D. Grote
Abolitionist Law Center
P.O. Box 8654
Pittsburgh, PA 15221

Dated: August 3, 2015