

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

TAUREAN PROCH, individually and
on behalf of a class of similarly
situated persons,

Plaintiff,

v.

SHERIFF MAT KING,
LIEUTENANT RICHARD OLEJNIK,
LIEUTENANT KYLE ADAMS,
ST. CLAIR COUNTY, MICHIGAN,
SECURUS TECHNOLOGIES, LLC,

Defendants.

Case No. 2:22-cv-12141

Judge: Laurie J. Michelson
Mag. Judge Patricia T. Morris

**PLAINTIFF’S MOTION FOR LEAVE TO FILE FIRST AMENDED
COMPLAINT AND MEMORANDUM IN SUPPORT**

Plaintiff, on behalf of himself and the proposed class, respectfully moves the Court for leave to amend the Complaint for the limited purposes of clarifying the individual counts in the complaint and the scope of each claim; adding St. Clair County, Michigan, as a defendant; and alleging additional facts about the purpose and detrimental effects of the St. Clair County Jail’s mail policy. The proposed First Amended Complaint is attached as Exhibit A.¹

¹ Pursuant to Local Rule 7.1(a)(1), counsel for Plaintiff conferred with counsel for both Defendants, provided a draft of the amended complaint, and explained the nature of the instant motion and its legal basis, but was unable to obtain Defendants’ concurrence to the motion.

BACKGROUND

Plaintiff commenced this lawsuit *pro se* while incarcerated at the St. Clair County Jail (the “Jail”). His class action complaint alleged that, in August 2022, the Jail enacted a new mail policy (the “Mail Policy”) that limited the use of the U.S. Postal Service to only plain postcards. *See* Compl., ECF No. 1, ¶ 12. The postcard-only policy left people at the Jail and their loved ones with no option but to receive longer messages or photos using the expensive messaging software on digital tablets provided by Defendant Securus Technologies, LLC (“Securus”). *See id.* Further, the Jail’s policy was to return to sender or destroy any mail that did not comply with the postcard-only policy without providing notice to the recipient or an opportunity to contest the decision. *See id.* ¶ 13. The complaint alleged that the purpose of the Mail Policy was to make money for Securus and the Jail, not to serve any legitimate penological purpose, and that, in enacting the Mail Policy, Defendants conspired to violate the First Amendment and Due Process rights of Plaintiff and the other people at the Jail to extract as much profit as possible out of incarcerated people and their families. *See id.* ¶¶ 14–18. Plaintiff also alleged that Jail officials retaliated against him for exercising his First Amendment right to file grievances while incarcerated. *See id.* ¶¶ 23–37.

Plaintiff filed the *pro se* Complaint on September 9, 2022. ECF No. 1. Securus moved to dismiss the complaint and compel arbitration. ECF No. 31. While the

motion was pending, Plaintiff and the County Defendants engaged in some limited discovery. On August 2, 2023, the Court denied Securus's motion without prejudice and ordered limited discovery on the validity of Securus's arbitration agreement. ECF No. 64. After the motion was denied, Plaintiff retained counsel. Securus and Plaintiff, now represented by counsel, began discovery on the limited arbitration issue. Shortly before the close of discovery on the arbitration issue, Securus filed a notice with the Court withdrawing its motion to compel arbitration and representing that it would not seek to compel arbitration. ECF No. 71. As a result, the parties withdrew any outstanding discovery requests on the arbitration issue.

In January and February 2024, the parties conferred pursuant to Federal Rule of Civil Procedure 26(f). Plaintiff notified Defendants that, now that he was represented by counsel, he intended to amend his complaint, and the parties agreed on a proposed schedule that included a deadline for Plaintiff to do so. *See* ECF No. 72. The parties stipulated that Securus could wait to file an Answer until after Plaintiff filed an amended complaint. *Id.* On March 13, 2024, the Court issued a Case Management and Scheduling Order (the "Scheduling Order") setting a deadline of April 12, 2024, for amendment of pleadings and for responses to any such amended pleadings. ECF No. 74. Pursuant to that Scheduling Order, Plaintiff now moves for leave to file the attached First Amended Complaint.

ARGUMENT

The Federal Rules of Civil Procedure permit a party to amend its pleading “with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Under the Rule, leave to amend shall be freely given “when justice so requires.” *Id.* Whether to grant leave to amend is within the Court’s discretion. As the Sixth Circuit has observed, “[l]eave to file an amended complaint . . . should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 519 (6th Cir. 2001); *see also Thompson v. Poindexter*, No. 85–5264, 1986 WL 17207, at *2 (6th Cir. June 10, 1986) (vacating district court order denying motion for leave to amend complaint). Accordingly, Supreme Court precedent and “case law in this Circuit manifests ‘liberality in allowing amendments to a complaint.’” *Parchman v. SLM Corp.*, 896 F.3d 728, 736 (6th Cir. 2018) (citation omitted); *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

Justice requires granting Plaintiff leave to file his First Amended Complaint. Notably, Plaintiff filed his first Complaint *pro se* while he was incarcerated. Now that he has been released from the Jail and is represented by counsel, Plaintiff seeks to clarify the individual Counts in the Complaint and the scope of each claim, including claims under the Michigan Constitution. Plaintiff also seeks to add St. Clair County, Michigan, as a Defendant. Finally, Plaintiff seeks to allege additional

facts about the purpose of the Mail Policy, as well as the Mail Policy's detrimental effects on incarcerated people and their families, including additional facts that he has learned since he originally filed his complaint.

Plaintiff does not seek to file the proposed First Amended Complaint for any improper purpose or in bad faith, nor did he unduly delay in seeking leave to amend. Indeed, Plaintiff promptly notified Defendants of his intention to amend his complaint at the Rule 26(f) conference in January, soon after Securus withdrew its motion to compel arbitration. It would not have made sense to move to amend the complaint before that because Plaintiff did not know whether his claims against Securus would be permitted to proceed in court. Moreover, the parties agreed on a proposed schedule that included a deadline for Plaintiff to amend his complaint. And the Court's Scheduling Order adopted that aspect of the parties' proposed schedule by including a deadline for amendment of the pleadings. As such, the filing of the proposed First Amended Complaint will not result in any undue delay or prejudice to any party. Because there is no evidence of undue delay, bad faith, undue prejudice to Defendants, or futility, *see Ziegler*, 249 F.3d at 519, the Court should grant Plaintiff's Motion in the interest of justice.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant his Motion for Leave to File the First Amended Complaint attached as Exhibit A.

Date: April 12, 2024,

Respectfully submitted,

/s/ Shelby Leighton

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Counsel for Plaintiff

CERTIFICATE OF CONCURRENCE

Pursuant to Local Rule 7.1, I hereby certify there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought.

Dated: April 12, 2024

/s/ Shelby Leighton
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

Dated: April 12, 2024

/s/ Shelby Leighton
Counsel for Plaintiff

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[PROPOSED] ORDER

Upon consideration of Plaintiff's Motion for Leave to File First Amended Complaint, and pursuant to Federal Rule of Civil Procedure 15(a)(2), it is hereby **ORDERED** that the motion is **GRANTED**, and Plaintiff's First Amended Class Action Complaint and Demand for Jury Trial, attached to the motion as Exhibit A, shall be deemed filed.

Date:

Patricia T. Morris
United States Magistrate Judge