

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

BALIN BRAKE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:20-cv-00345-HAB-SLC
	)	
CITY OF FORT WAYNE, <i>et al.</i>,	)	
	)	
Defendants.	)	

ORDER

On April 23, 2021, Plaintiff filed an “Agreed Motion to File Plaintiff Balin Brake’s Second Amended Complaint” (ECF 36), seeking leave to file a second amended complaint (ECF 37) fully naming previously unidentified Defendant John Doe. Also before the Court is a motion filed by Defendants on April 19, 2021, seeking an extension of time to answer Plaintiff’s first amended complaint—on the understanding that Plaintiff would soon file a second amended complaint negating the need to respond to the first amended complaint (ECF 31)—and requesting fourteen days after service of Plaintiff’s second amended complaint to file an answer or otherwise respond. (ECF 34). For the following reasons, both motions (ECF 34, 36) will be GRANTED.

Beginning with the motion for an extension, Defendants had until April 19, 2021, to file an answer or otherwise respond to Plaintiff’s first amended complaint. (ECF 33). In anticipation of the second amended complaint, Defendants filed its motion to avoid filing multiple answers. (*See* ECF 34 ¶ 5). Because Defendants’ motion for an extension is unopposed (ECF 34 ¶ 5), it is GRANTED.

As to the motion to amend, the deadline for Plaintiff to seek leave to amend his complaint was March 2, 2021 (ECF 28), and thus, the motion is untimely. Accordingly, Plaintiff must show “good cause” for the amendment under Federal Rule of Civil Procedure 16(b)(4). *Alioto v.*

Town of Lisbon, 651 F.3d 715, 719-20 (7th Cir. 2011) (collecting cases). That being said, the parties in their Report of Parties’ Planning Meeting specifically considered Plaintiff’s need to belatedly amend his complaint “in the event Defendant John Doe [was] not identified prior to March 2, [2021]” (ECF 25 at 4). Further, Plaintiff did not learn Defendant John Doe’s identity until April 19, 2021 (ECF 36 ¶ 6), and diligently sought to amend his complaint a mere four days later. Accordingly, Rule 16(b)’s “good cause” standard is satisfied. *See Trustmark Ins. Co. v. Gen. & Cologne Life Re of Am.*, 424 F.3d 542, 553 (7th Cir. 2005) (“Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking amendment.” (citation omitted)).

Consequently, because the motion is agreed to by Defendants, Plaintiff’s motion to amend (ECF 36) is GRANTED. *See* Fed. R. Civ. P. 15(a)(2) (stating that the court should “freely give leave [to amend] when justice so requires”). The Clerk is DIRECTED to show Plaintiff’s second amended complaint (ECF 37) as accepted and filed as of April 26, 2021. Defendants have to and including May 10, 2021, to answer or otherwise respond to Plaintiff’s second amended complaint (ECF 37).¹ Finally, in light of this Order, the Court *sua sponte* VACATES the status conference regarding Defendants’ motion for an extension scheduled for April 27, 2021. (ECF 35).

SO ORDERED. Entered this 26th day of April 2021.

/s/ Susan Collins
Susan Collins
United States Magistrate Judge

¹ The need to answer or otherwise respond to the first amended complaint is now MOOT. *See Flannery v. Recording Indus. Ass’n of Am.*, 354 F.3d 632, 638 (7th Cir. 2004) (“It is axiomatic that an amended complaint supersedes an original complaint and renders the original complaint void.”).