United States Court of Appeals
For the Eighth Circuit

No. 17-3371

Joel Marvin Munt

Plaintiff - Appellant

v.

Nanette Larson; Kathy Reid; Shelly Monio; Kim Ebeling; Doctors #1-6; Health Services Workers #1-6; Opticians #1-4; RN #1

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: October 11, 2018
Filed: October 16, 2018
[Unpublished]

Before WOLLMAN, GRUENDER, and STRAS, Circuit Judges.

PER CURIAM.

Minnesota inmate Joel Marvin Munt appeals following the district court's[1] adverse grant of summary judgment in his 42 U.S.C. § 1983 action. Viewing the record in a light most favorable to Munt, and giving him the benefit of all reasonable inferences, we agree with the district court that defendants were entitled to summary judgment on Munt's claims under the First, Eighth, and Fourteenth Amendments, and the Americans with Disabilities Act. See Murchison v. Rogers, 779 F.3d 882, 886-87 (8th Cir. 2015) (de novo review). We also find no error in the other district court rulings Munt challenges in this court. The judgment is affirmed. See 8th Cir. R. 47B.

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[1]The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Steven E. Rau, United States Magistrate Judge for the District of Minnesota.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joel Marvin Munt,

Plaintiff,

v.

Nanette Larson, Kathy Reid, Shelly Monio, Kim Ebeling, Doctors #1-6, Health Services Workers #1-6, Opticians #1-4, and RN#1,

Defendants.

Civil No. 15-582 (SRN/SER)

MEMORANDUM OPINION AND ORDER

[Filed Under Seal]

Joel Marvin Munt, *pro se*, 236179, MCF–Stillwater, 970 Pickett St. N., Bayport, MN 55003

Lindsay LaVoie, Minnesota Attorney General's Office, 445 Minnesota St., Suite 900, St. Paul, MN 55101, for Defendants Larson, Reid, Monio, and Ebeling

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SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on the June 5, 2017 Report and Recommendation ("June 2017 R&R"[1]) of Magistrate Judge Steven E. Rau [Doc. No. 189]. In the June 2017 R&R, Magistrate Judge Rau denied Plaintiff Joel Marvin Munt's Second Motion to

[1] The Court refers to the underlying ruling as the "June 2017 R&R" to distinguish it from the June 2015 R&R [Doc. No. 74] and the July 2016 Order & R&R [Doc. No. 122].

Amend Complaint ("Second Motion to Amend") [Doc. No.129]. In addition, he recommended that Defendants' Motion for Summary Judgment [Doc. No. 140] be granted in part and denied in part as follows: (1) dismissing without prejudice claims against unnamed Defendant Doctors 1-6, Health Services Workers 1-6, Opticians Nos. 1-4, and RN No 1; (2) dismissing without prejudice claims for injunctive relief against Defendants Kathryn Reid and Shelli Monio; (3) dismissing without prejudice claims for damages against Defendants Nanette Larson, Kathryn Reid, Shelli Monio, and Kim Ebeling in their official capacities; (4) dismissing with prejudice claims against Defendants Nanette Larson, Kathryn Reid, Shelli Monio, and Kim Ebeling arising under the ADA, First, Eight, and Fourteenth Amendments; and (5) dismissing this action. Plaintiff filed timely objections to the R&R ("Plaintiff's Objections") [Doc. No. 190], to which Defendants responded [Doc. No. 191]. On July 7, 2017, Plaintiff also filed a reply to Defendants' responses to his objections.[2] (See Pl.'s Reply [Doc. No. 195].) For the reasons set forth below, this Court overrules Plaintiff's Objections and adopts the magistrate judge's June 2017 R&R.

Also before the Court are Plaintiff's Objections ("Plaintiff's Objections to Order")

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[2] The Local Rules do not provide for an objecting party to file a reply, see Minn. Dist. Ct. L.R. 72.2(b), as the Court has previously informed Munt, after he filed a reply under the same circumstances. (Sept. 23, 2015 Order at 11, n.9 [Doc. No. 87].) Pro se litigants are not excused from compliance with procedural law. Brown v. Frey, 806 F.2d 801, 804 (8th Cir. 1986). However, in the interest of fairness, the Court has reviewed Plaintiff's Reply and finds that no new grounds of objection are asserted in the Reply that are not set forth in his Objections.

[Doc. No. 193] to the March 20, 2017 Order ("March 2017 Order") [Doc. No. 182] in which Magistrate Judge Rau denied without prejudice Munt's Third Request for Appointment of Counsel [Doc. No. 146]. The Court overrules Plaintiff's Objections to the March 2017 Order and affirms the magistrate judge's ruling, as discussed below.

Because this ruling contains references and quotations from Plaintiff's medical records, it is filed under seal.

I. BACKGROUND

The extensive factual and procedural background of this case is well-documented in the R&R, which the Court incorporates herein by reference. (See June 2017 R&R at 2-13.) Plaintiff is an inmate currently incarcerated at the Minnesota Correctional Facility ("MCF")-Stillwater. (Id. at 2.) However, for most of the time relevant to this matter, he was incarcerated at MCF-Oak Park Heights, where he arrived in April 2012, after he was initially imprisoned at MCF-St. Cloud in October 2011. (Id.) Defendants Nanette Larson ("Larson"), Kathy Reid ("Reid"), Shelly Monio ("Monio"), and Kim Ebeling ("Ebeling") (collectively, "Defendants") are all personnel with the Minnesota Department of Corrections ("DOC"). (See Aug. 2016 Order at 2 [Doc. No. 127].) Larson is the Director of Health Services for the DOC. (Id.) Reid is the Health Services Administrator at MCF-Oak Park Heights. (Id.) Ebeling is a Grievance Coordinator at the DOC's "Central Office" while Monio holds the same title at MCF-Oak Park Heights.[3] (Id.)

[3] Plaintiff also listed several unnamed doctors, DOC Health Service workers, opticians, and an "RN" as defendants. Collectively, these persons are referred to as the "Unnamed Defendants."

In his Complaint, brought pursuant to 42 U.S.C. § 1983, Plaintiff alleges that Defendants and the Unnamed Defendants violated his Eighth Amendment rights. (Compl. ¶¶ A (Preliminary Statement), E.1-23 [Doc. No. 1].) Plaintiff alleges that upon being transferred to MCF-Oak Park Heights, his spare contact lenses were confiscated pursuant to a DOC policy (the "Contact Lenses Policy"). (Id. at ¶ D.3.) The DOC's general policy on adaptive equipment such as contact lenses states: "The [DOC] provides adaptive equipment to an offender when the offender's health or functional ability would otherwise be adversely affected, as determined by a designated prescribing authority or nursing staff and approved by the facility health services administrator/designee." (Ex. 9, Paulson Aff. (Minn. DOC Policy 500.150 (2011)-(2015)) [Doc. No. 142-3].)[4] Specifically with respect to contact lenses, the policy provides:

> (1) Contact lenses are not on the DOC allowable property list and therefore a medical authorization is needed for an offender to have in his/her possession. Authorizations are limited to medical necessity as deemed by the prescribing authority.
>
> (2) If an offender enters the system with contact lenses, he/she is scheduled with an optometrist within two months to determine a need for eyeglasses.
>
> (3) The offender is responsible for the purchase of all lens care products, to be purchased through the canteen, until he/she receives his/her eyeglasses.

[4] Defendants have submitted the relevant iterations of the policy in effect during Munt's incarceration, with effective dates of July 5, 2011, May 1, 2012, November 19, 2013, and April 19, 2015. (Paulson Aff., Ex. 9.) To the extent that there is any difference in wording between the iterations, such differences are minor and immaterial to the analysis here.

(4) Contact lenses are not replaced during this timeframe.

(5) Once eyeglasses are obtained, all contact lenses and solution must be sent out through property.

(Id. § C.4.(h).) Munt contends that eyeglasses cause him to suffer from severe headaches, whereas he has not experienced this problem when, in the past, he has worn contact lenses. (Compl. ¶ D.1-2.) While Plaintiff questions the Contact Lenses Policy, he emphasizes that his lawsuit is about Defendants' failure "to address a medical need rather than a particular solution to it." (Id. at p. 16.) Plaintiff also alleges that Defendants improperly interfered with his attempts to utilize the grievance process concerning these medical issues, (id.), which he alleges violates his First Amendment, due process, and equal protection rights. (Id. at ¶¶ E.2, E.16, E.20, E.21.) Munt attached 31 exhibits to his Complaint, consisting of his internal prison complaints, or "kites," along with responses to the kites, and letters reflecting his efforts to obtain legal counsel.[5] (See, generally, id., Exs. 1-21 [Doc. Nos. 1-2 to 1-4].)

Approximately eight months after filing this lawsuit, Munt moved to amend his Complaint to add a claim under the Americans with Disabilities Act ("ADA"). Although the magistrate judge found that Munt's ADA allegations presented a "close call," he recommended granting Munt's motion in part. (See July 2016 Order & R&R at 7.) The magistrate judge observed that in a grievance form attached to the original Complaint,

[5] Greater detail regarding the kites and the DOC's responses is set forth in the June 2017 R&R. (See June 2017 R&R at 2-10.)

Munt stated that his vision/headaches affected his legal research. (Id.) Citing this language, the magistrate judge incorporated an ADA claim into the original Complaint against Defendants in their official capacities, based on the alleged denial of meaningful access to law library services, (id.), and this Court adopted the magistrate judge's recommendation. (Aug. 2016 Order at 14.)

On February 22, 2016, the magistrate judge issued the Pretrial Scheduling Order [Doc. No. 113], establishing a July 1, 2016 deadline for amending pleadings, a non-dispositive motion deadline of October 1, 2016, and a dispositive motion deadline of November 1, 2016. (Pretrial Sched. Order at 1-2.) Within a week of the issuance of the Pretrial Scheduling Order, Munt objected to the deadlines [Doc. No. 115]. This Court denied his objections without prejudice, stating:

> A blanket "objection" to a pretrial scheduling order, filed only a week after the order's issuance, rife with bald speculation about the inability to meet the deadlines, containing no alternative dates or deadlines, is of little assistance to Munt. To the extent that Munt has been unable to comply with a deadline or an impending deadline, he is free to seek an extension of time, explaining his need for the extension, with specific facts.

(Aug. 2016 Order at 26) (emphasis added).

A. Plaintiff's Second Motion to Amend

On October 6, 2016, over three months past the expiration of the deadline for amending the pleadings, and one month before the November 1, 2016 deadline for filing dispositive motions, Munt filed his Second Motion to Amend, one of two motions at issue here. He submitted his Proposed Second Amended Complaint [Doc. No. 129-1] with his

motion.[6] Munt seeks to add an ADA claim based on law library access and access to the Courts generally, and even more generally, based on access to "programs or services[.]" (Pl.'s Proposed Second Am. Compl. ¶¶ E.24-25 [Doc. No. 129-1].) He also moves to add an as-applied constitutional challenge to the DOC's Contact Lenses Policy. (Id.¶ E.25.) Defendants oppose this motion, arguing that it was untimely filed and that Munt failed to meet and confer prior to filing the motion. (See Defs.' Opp'n Mem. at 2-3 [Doc. No. 134].)

In the June 2017 R&R, Magistrate Judge Rau recommended the denial of Munt's Second Motion to Amend, observing that untimeliness alone could serve as the basis for denial under Federal Rule of Civil Procedure 16(b). (June 2017 R&R at 16.) But even analyzing the motion under the more deferential standard pursuant to Rule 15(a), Magistrate Judge Rau found that Munt's proposed claims were either moot or futile. (Id. at 16-25.) He therefore recommended the denial of Munt's Second Motion to Amend. (Id. at 27.)

B. Defendants' Motion for Summary Judgment

On November 1, 2016, Defendants moved for summary judgment. Munt later filed two motions for extensions of time in which to respond to Defendants' motion [Doc. Nos. 152 & 156]. On January 13, 2017, although Munt had already filed his response,

[6] Although the Proposed Second Amended Complaint does not contain attached exhibits, Munt indicates that his exhibits remain unchanged from his originally-filed Complaint. (See Pl.'s Second Mot. to Amend at 1; Oct. 6, 2016 Letter to Clerk of Court [Doc. No. 132].) The Court therefore considers the previously-filed exhibits, (Exs. 1-31), to be incorporated in the Proposed Second Amended Complaint.

and Defendants had replied, the magistrate judge granted Munt's requests, giving him an opportunity to file an amended opposition memorandum, and giving Defendants an opportunity to file an amended reply memorandum. (Jan. 13, 2017 Order at 2 [Doc. No. 178].) In response to yet another request from Munt [Doc. No. 179] for additional time in which to respond to Defendants' summary judgment motions, the Court granted an extension to April 6, 2017. (Feb. 16, 2017 Order [Doc. No. 180].) Plaintiff filed his opposition memorandum on March 31, 2017, Defendants filed their reply on April 14, 2017, and the magistrate judge issued the R&R on June 5, 2017.

In the June 2017 R&R, after addressing Munt's Second Motion to Amend, Magistrate Judge Rau turned to Defendants' summary judgment motion. On summary judgment, he first found that because the Unnamed Defendants had not been served, the Court lacked jurisdiction over them. (June 2017 R&R at 32-33.) Observing that jurisdictional issues collateral to the merits are inappropriate for summary judgment, id. at 32 (citing Walker v. Foster, 10-CV-3096 (SRN/FLN), 2011 WL 3837122, at *1 (D. Minn. Aug. 30, 2011)), the magistrate judge recommended that Munt's claims against the Unnamed Defendants be dismissed without prejudice. (Id. at 33.) Because Defendants had requested the dismissal of the Unnamed Defendants with prejudice, (see Defs.' Mot. for Summ. J.) (emphasis added), the magistrate judge recommended denying their motion, in part, on this jurisdictional basis. (June 2017 R&R at 33.)

Regarding Munt's claims for injunctive relief against Defendants Reid and Monio, the magistrate judge found that because these Defendants do not work at MCF-Stillwater,

where Munt is presently incarcerated, any injunctive relief requested from them was moot. (Id. at 34) (citing Randolph v. Rodgers, 253 F.3d 342, 345-46 (8th Cir. 2001); Clark v. Roy, No. 15-cv-2778 (SRN/HB), 2016 WL 447458, at *2 (D. Minn. Feb. 4, 2016)). However, the magistrate judge also found that deciding claims on mootness grounds does not constitute a judgment on the merits, (id.) (citing Ranwick v. Texas Gila, LLC, 37 F. Supp. 3d 1053, 1056 (D. Minn. 2014), and thus implicates the Court's subject matter jurisdiction. (Id.) He therefore recommended the denial of Defendants' motion, in part, and the dismissal of the injunctive relief claims against Reid and Monio without prejudice. (Id..)

Similarly, regarding the Named Defendants' request for dismissal with prejudice of any damages claims against them in their official capacities, Magistrate Judge Rau observed that Eleventh Amendment immunity presents a jurisdictional question collateral to the merits. (Id. at 35.) Finding the jurisdictional matter inappropriate for summary judgment, he therefore recommended the dismissal of Munt's damages claims against the Named Defendants in their official capacities without prejudice, and the denial of Defendants' motion, in part, in this respect. (Id.)

Turning to Munt's Eighth Amendment claims, Magistrate Judge Rau found that Munt failed to establish an objectively serious medical need on the basis of his alleged facts, and that even if he established such a need, his allegations failed to establish that Defendants deliberately disregarded that medical need. (Id. at 35-36) (citing Dulany v. Carnahan, 132 F.3d 1234, 1239 (8th Cir. 1997)) (stating elements for an Eighth

Amendment medical claim).

As to Munt's ADA claim in which he alleges denial of the benefit of law library access, the magistrate judge assumed for purposes of analysis that Munt suffered from a qualifying disability and was otherwise qualified to receive the benefit. (Id. at 41.) Even so, however, Magistrate Judge Rau found no disputed issue of material fact regarding whether Munt was excluded from access to the law library services because of his disability. (Id.) Pointing to evidence to the contrary, including from David Cowan, a librarian at MCF-Stillwater, and the numerous filings in this litigation, as well as discovery that Plaintiff served on Defendants, the magistrate judge found no issue of material disputed fact regarding Munt's library access. (Id. at 41-42.) Moreover, to the extent that Munt argues that he lacks "ample" access, the magistrate judge noted that only "meaningful" access is required. (Id. at 42.) Based on the record, he determined that no reasonable jury could find that Munt has been denied meaningful access to law library services. (Id.)

With respect to claims under the First and Fourteenth Amendments, Magistrate Judge Rau observed that despite Munt's protestations to the contrary, his Amended Complaint clearly alleges claims for relief on these bases. (Id. at 43.) (citing Compl. ¶¶ E.2, E.16, E.20-E.23.) The magistrate judge found that Munt failed to allege sufficient facts to support a claim under the Equal Protection Clause of the Fourteenth Amendment. (Id.) Moreover, he found no evidence to otherwise suggest that Munt was treated differently than any other similarly situated person. (Id.) Nor did Munt establish by

factual allegation or direct proof that Defendants violated his rights in their handling of his grievances. (Id. at 44.) Further, he found there was no evidence of any improper motive or any bar to Munt filing grievances. (Id.)

Accordingly, the magistrate judge found no disputed issues of material fact and recommended judgment for Defendants as a matter of law. He thus granted Defendants' motion in part, and, for the jurisdictional reasons noted earlier, denied the motion in part. Munt objects to the June 2017 R&R on multiple bases, addressed in the Discussion section of this ruling.

C. Plaintiff's Third Request for Appointment of Counsel

After the submission of the movants' briefing on Plaintiff's Second Motion to Amend and Defendants' Motion for Summary Judgment, Munt filed his Third Request for Appointment of Counsel. In a ruling separate from the June 2017 R&R, Magistrate Judge Rau denied the motion without prejudice. (Mar. 2017 Order at 8.) Plaintiff filed separate Objections to the Order, which are also addressed below.

II. DISCUSSION

A. Plaintiff's Second Motion to Amend

Ordinarily, a district court reviews a magistrate judge's order on a nondispositive matter under an "extremely deferential" clearly erroneous or contrary to law standard. Reko v. Creative Promotions, Inc., 70 F. Supp.2d 1005, 1007 (D. Minn. 1999); see also 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D. Minn. LR 72.2(a). However, when a motion to amend is denied as futile, as was Munt's motion, in part, it is reviewed de novo.

See United States ex rel. Gaudineer & Comito, L.L.P. v. Iowa, 269 F.3d 932, 936 (8th Cir. 2001) (noting that the district court's denial of leave to amend based on futility was reviewed de novo on appeal). Further, courts are to construe pro se pleadings liberally, so that if "'the essence of an allegation is discernible,'" courts should consider the claim "in a way that permits the layperson's claim to be considered within the proper legal framework.'" Solomon v. Petray, 795 F.3d 777, 787 (8th Cir. 2015) (citing Stone v. Harry, 364 F.3d 912, 914 (8th Cir. 2004)). However, even under this liberal standard, a pro se complaint must contain specific facts in support of the claims it advances. See Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985). Courts do not "assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint." Stone, 364 F.3d at 915.

1. Rule 16

Plaintiff objects to Magistrate Judge Rau's finding that his Second Motion to Amend was untimely filed. (Pl.'s Obj. ¶¶ 13, 14, 17.) Munt did not directly acknowledge the lapsed deadline in his Memorandum in Support of the Second Motion to Amend, but instead stated in his introductory paragraph, "Note that I am filing pro se, that the DOC provides no legal assistance and that I am permitted very little time to draft this pleading (simply no time at all to research given the few hours per week I am allowed)." (Pl.'s Mem. Supp. Second Mot. to Amend at 1 [Doc. No. 130].) He argued that pursuant to Rule 15(a), leave to amend his pleading should be liberally allowed where it will result in no prejudice and when justice so requires. (Id.) (citations omitted). In response to the

untimeliness argument that Defendants raised in opposition to his motion, Munt asserted in his Reply that the Court's August 19, 2016 Order ("August 2016 Order") on his First Motion to Amend "failed to adjust the deadline for filing an amended complaint to provide me an opportunity to cure the perceived defects." (Pl.'s Reply at 2 [Doc. No. 148].) He raises these same arguments in his Objections to the June 2017 R&R, arguing that they constitute "good cause" for the late filing. (Pl.'s Obj. ¶¶ 13, 14, 17.)

Munt's motion must be denied. Rule 16(b), applicable to the Court's issuance and modification of pretrial scheduling orders, applies here. Because Plaintiff's October 6, 2016 Second Motion to Amend came well after the July 1, 2016 deadline set in the Pretrial Scheduling Order, he must meet Rule 16's more demanding good cause standard for amendment, rather than the less onerous standard under Rule 15(a). See Fed. R. Civ. P. 16(b)(4); Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 716 (8th Cir. 2008) ("When a party seeks to amend a pleading after the scheduling deadline for doing so, the application of Rule 16(b)'s good-cause standard is not optional. To permit district courts to consider motions to amend pleadings under Rule 15(a) without regard to Rule 16(b) would render scheduling orders meaningless and effectively . . . read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure." (quotations omitted)).

> The primary measure of good cause is the movant's diligence in attempting to meet the [scheduling] order's requirements. While the prejudice to the nonmovant resulting from modification of the scheduling order may also be a relevant factor, generally, we will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines.

Sherman, 532 F.3d at 716–17 (quotations and citations omitted).

The Court recognizes that the deadline for amending the pleadings, July 1, 2016, passed during the time when Munt's First Motion to Amend and his Objections to the Pretrial Scheduling Order were under advisement. However, Munt was aware of the deadline, having filed his blanket Objections to all of the deadlines within a week of the February 22, 2016 Pretrial Scheduling Order. Munt faults the Court for not *sua sponte* altering the deadlines in the August 2016 Order, (Pl.'s Obj. ¶¶ 12, 17), requiring the Court to anticipate that he would again seek leave to amend his pleadings. He asserts that complying with the Pretrial Scheduling Order was an impossibility, "as even a trained attorney could not have done so," and that the "rigidity" of the Pretrial Scheduling Order "violated the right of access to the Court.") (Id. ¶ 17.)

In addition to the fact that the Court is under no duty to predict a litigant's filing proclivities, the August 2016 Order clearly permitted Munt to seek future requests for extensions. (Aug. 2016 Order at 26.) It spelled out the process: "To the extent that Munt has been unable to comply with a deadline or an impending deadline, he is free to seek an extension of time, explaining his need for the extension, with specific facts." (Id.) If Munt planned to amend his pleadings again, he was obliged to seek an extension. The directive in the August 2016 Order, quoted above, included all deadlines, past or future. (Id.) (referring to Munt's inability to comply with a deadline or an impending, i.e., future deadline). Rather than denying him access to the courts, the Court invited Munt to seek an extension, accompanied by an explanation and specific facts.

Instead, eighteen months into this litigation, over six weeks past the issuance of the August Order, and one month before the expiration of the November 1, 2016 dispositive motion deadline, Plaintiff filed the Second Motion to Amend on October 6, 2016. The close proximity between the filing of Munt's Second Motion to Amend and the summary judgment deadline also weighs against his motion. See, e.g., N. States Power Co. v. Fed. Transit Admin., 358 F.3d 1050, 1057 (8th Cir. 2004) ("The assertion of this claim on the eve of summary judgment also weighs against [the plaintiff]." (citing Overseas Inns S.A. P.A. v. United States, 911 F.2d 1146, 1150–51 (5th Cir. 1990) (upholding district court's refusal to grant leave to amend complaint when party sought to add a claim in an effort to avoid summary judgment)); Mason v. McQuilliams, 11 Fed App'x 652, 653 (8th Cir. 2001) (upholding denial of leave to amend requested two years into litigation, and which would likely be futile)). In sum, Munt's good cause argument based on the Court's alleged failure to anticipate an extension to the pleadings deadline fails to excuse his late filing. Munt knew that he had the ability to request an extension. He has made such requests in this litigation and received extensions. (See, e.g., Feb. 16, 2017 Order [Doc. No. 180]; Jan. 13, 2017 Order; May 29, 2015 Text Order [Doc. No. 57].)

Nor does Plaintiff's status as a prisoner constitute good cause. In the August 2016 Order, the Court took into account Plaintiff's prisoner status when denying without prejudice his objections to the Pretrial Scheduling Order and directing him to seek an

extension, sufficiently supported by an explanation and facts, as needed.[7] See Rahn v. Hawkins, 464 F.3d 813, 822 (8th Cir. 2006) (finding prisoner failed to demonstrate good cause when the court's pretrial scheduling order took into account any limitations presented by prison life), overruled on other grounds by Avichail ex rel. T.A. v. St. John's Mercy Health Sys., 686 F.3d 548 (8th Cir. 2012). Finally, Plaintiff's general assertion of time constraints and that the "DOC provides no legal assistance," do not amount to good cause. All litigants face time constraints. Further, the provision of an adequate law library satisfies the constitutional right of access to the courts. See Bounds v. Smith, 430 U.S. 817, 828 (1977). The librarian at MCF-Stillwater, David Coward, attests that MCF-Stillwater has a law library and ten computers on which inmates may perform legal research or use a word processing program. (Coward Aff. ¶¶1-2 [Doc. No. 143].) Between July 6, 2015 and October 21, 2016, Coward gave approval for Munt to attend 125 sessions in the law library, of approximately 2.5 hours in length, for a total of approximately 312.5 hours. (Id. ¶ 5.) While the Court appreciates that Munt must divide his time between several lawsuits, the Court rejects Munt's claim of limited time and "no legal assistance" as good cause under Rule 16(b).

The Court therefore agrees with the magistrate judge's conclusion that Munt's

[7] Additionally, as the magistrate judge noted, (June 2017 R&R at 15), while Munt cites authority from the Ninth Circuit Court of Appeals for the proposition that "strict time limits [for pro se prisoners] ought not to be insisted upon" where restraints caused by incarceration prevent them from timely complying with court deadlines, (Pl.'s Mem. Supp. Second Mot. to Amend at 1) (citing Eldridge v. Black, 832 F.2d 1132, 1133 (9th Cir. 1987)), this is not controlling authority in this Circuit.

proposed amendments are untimely and he has not provided a persuasive showing of good cause. (June 2017 R&R at 15.) The Court also agrees with Magistrate Judge Rau that Munt's proposed amendments fail to meet the more deferential standard under Rule 15(a), discussed below.

2. Rule 15

Under Rule 15(a), leave to amend a pleading shall be "freely give[n] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave is generally not given where there is a showing 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[.]" Foman v. Davis, 371 U.S. 178, 182 (1962). The magistrate judge found that Munt's proposed amendments were either moot or futile and recommended that his Second Motion to Amend be denied. (June 2017 R&R at 27.)

"[W]hen the court denies leave on the basis of futility, it means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure[.]" Cornelia I. Crowell GST Trust v. Possis Med., Inc., 519 F.3d 778, 781–82 (8th Cir. 2008) (citing In re Senior Cottages of Am., 482 F.3d 997, 1001 (8th Cir. 2007)). Under Rule 12(b)(6), courts must assume the facts in the complaint to be true and construe all reasonable inferences from those facts in the light most favorable to the plaintiff. Morton v. Becker, 793 F.2d 185, 187 (8th Cir. 1986). Even so, however, courts need not accept

as true wholly conclusory allegations, see Hanten v. Sch. Dist. of Riverview Gardens, 183 F.3d 799, 805 (8th Cir. 1999), or legal conclusions the plaintiff draws from the facts pled, Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990). Rather, to survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 (2007). Although a complaint need not contain "detailed factual allegations," it must contain facts with enough specificity "to raise a right to relief above the speculative level." Id. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not sufficient. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). Finally, in considering a motion under Rule 12(c) "the Court must ... generally ignore materials outside the pleadings." Mickelson v. Cnty. of Ramsey, No. 13-cv-2911 (SRN/FLN), 2014 WL 4232284, at *3 (citing Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999)). A court may, however, consider exhibits attached to the complaint, documents that are necessarily embraced by the pleadings, and public records. Little Gem Life Scis., LLC v. Orphan Med., Inc., 537 F.3d 913, 916 (8th Cir. 2008). Here, because Munt intended for his previously-filed exhibits to the initial Complaint to be considered part of his Proposed Second Amended Complaint, (see Pl.'s Second Mot. to Amend at 1; Oct. 6, 2016 Letter to Clerk of Court), the Court considers them in the analysis of his claims.

As noted, the magistrate judge determined that Munt's Proposed Second Amended Complaint seeks to add a number of new factual assertions and additional claims for

relief. (June 2017 R&R at 17-18.) The proposed amendments include an ADA claim based on law library access and access to the Courts generally, and even more generally, an ADA claim based on access to prison "programs or services[.]" (Pl.'s Proposed Second Am. Compl. ¶ E.24.) He also moves to add an as-applied constitutional challenge to the DOC's Contact Lenses Policy. (Id.¶ E.25.)

a. ADA claim

The magistrate judge found that any proposed "addition" of claims previously allowed and incorporated into the Amended Complaint, i.e., claims dealing with access to the prison's law library, should be denied as moot. (June 2017 R&R at 18.) Further, on the basis of futility of amendment, the magistrate judge recommended the denial of any amendments beyond the scope of the previously-permitted ADA claim. (Id. at 19.) In his Objections, Munt argues that the magistrate judge failed to consider his attempt to cure defects in his prior ADA pleading. (Pl.'s Obj. ¶ 12.)

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 41 U.S.C. § 12132. This provision applies to state prison inmates. Penn. Dep't of Corr. v. Yeskey, 524 U.S. 206, 210 (1998). To assert a valid ADA claim, Plaintiff needs to demonstrate that: "(1) he is a person with a disability as defined by statute; (2) he is otherwise qualified for the benefit in question; and (3) he was excluded from the benefit due to discrimination based on disability." Randolph v. Rodgers, 170

F.3d 850, 858 (8th Cir. 1999) (citations omitted).

Regarding the first element, in Munt's proposed amendments, he alleges that he has "very poor vision," (Pl.'s Proposed Second Am. Compl. ¶ D.44), suffers from debilitating headaches, (id. ¶ D.45), and that these alleged disabilities substantially limit and impact his ability to see, perform manual tasks, and learn, among other things. (Id. ¶¶ E.24(a) & (b).) Even if the Court assumes that these allegations are true under the Rule 12(b)(6) framework, and that Munt meets the first element as a person with a disability as defined by statute, he provides little specificity regarding Title II's second element beyond the allegations that he is otherwise qualified to access a prison orientation video, the law library, and the courts. (Id. ¶ E.24(b).) But even assuming without deciding that Munt meets the first and second elements of a Title II ADA claim, he fails to plausibly allege the third element–that Defendants discriminated against him, denying him access to programs and services, because of his disabled status. Randolph, 170 F.3d at 858; see also Bahl v. County of Ramsey, 695 F.3d 778, 784 (8th Cir. 2012) ("The question before the district court, and now us, is whether Bahl was . . . discriminated against because of his hearing disability."). A plaintiff seeking compensatory damages under the ADA, as Munt does here, (see Compl. ¶ F.30; Proposed Second Am. Compl. ¶ F.30), must allege facts showing intentional discrimination, which can be established through a showing of deliberate indifference. Meagley v. City of Little Rock, 639 F.3d 384, 389 (8th Cir. 2011)). Under a deliberate indifference standard, intentional discrimination "does not require a showing of personal ill will or animosity towards the disabled person," but,

rather, can be "inferred from a defendant's deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights." Id.

While Plaintiff invokes the phrase "deliberate indifference" in his Proposed Second Amended Complaint, (see, e.g., Pl.'s Proposed Second Am. Compl. ¶¶ E.1-E.3; E.16; E.20; E.21), the gravamen of his proposed pleading continues to challenge his diagnosis and treatment. (See, e.g., id. ¶ E.1 ("Ignoring the existence of a serious medical issue is definitive proof of deliberate indifference to that problem."); id. ¶ E.3-E.15; E.17-E.19; E.22 (alleging that the Unnamed Defendants failed to address his headaches). This does not support a claim under the ADA, as "medical treatment decisions . . . cannot form the basis of a claim under the . . . ADA." Dinkins v. Corr. Med. Servs., 743 F.3d 633, 634 (8th Cir. 2014). Medical treatment decisions include improper diagnosis or treatment. Id.

Moreover, Munt's allegations of deliberate indifference are belied by his exhibits to the Complaint–which he included as exhibits to the Proposed Second Amended Complaint. In letters dated October 25, 2014 and December 6, 2014 from Defendant Larson, Director of Health Services for the DOC's Central Office, she acknowledged Munt's internal complaints regarding eyeglasses and headaches. (Compl., Exs. 16, 20.) Quoting DOC policy 500.150 on adaptive equipment, Larson explained that because Munt's practitioners had not determined that contact lenses were medically necessary and had therefore not authorized Munt's use of them, contacts were not provided. (Id.) In

addition to the letters from Defendant Larson, other practitioners informed Munt that contacts were only available when medically authorized. (Id., Exs. 9, 10 .) And contrary to his allegations of lack of diagnosis and treatment, Munt's exhibits show that he had been "placed on the eye Dr. list," (id., Exs. 1, 3), scheduled for an eye exam or repeat eye exam, (id., Exs. 7, 11), and that his concerns were forwarded to an eye doctor. (Id., Ex. 13). Munt's conclusory allegations of deliberate indifference, contradicted by exhibits showing treatment and diagnosis to the contrary, demonstrate that his proposed claims under the ADA would be futile. Accordingly, his proposed amendments fail and his Second Motion to Amend is denied in this regard.

b. As-Applied Challenge to Contact Lenses Policy

Regarding Munt's proposed as-applied challenge to the Contact Lenses Policy, Magistrate Judge Rau determined that this claim was likely grounded in the Eighth Amendment and the Equal Protection Clause of the Fourteenth Amendment. (June 2017 R&R at 19.) Ultimately, he found that the Contact Lenses Policy did not impinge upon either constitutional right, nor was it even a complete prohibition against contact lenses or other medical care. (Id. at 25.)

The Eighth Amendment, as applied to the states through the Fourteenth Amendment, prohibits the infliction of cruel and unusual punishment on those convicted of crimes. Wilson v. Seiter, 501 U.S. 294, 296-97 (1991). This proscription also obliges prison officials to provide inmates with medical care. Dulany, 132 F.3d at 1237 (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). A prisoner asserting a claim of

constitutionally inadequate medical care must show that the prison officials' conduct was deliberately indifferent to the prisoner's serious medical needs. Id. at 1237-38 (citing Estelle, 429 U.S. at 104.) This standard encompasses both an objective and a subjective component. Saylor v. Nebraska, 812 F.3d 637, 644 (8th Cir. 2016) (citations omitted). Under the objective component, the prisoner must show that he suffered from an objectively serious medical need, either diagnosed by a physician or obvious to a layperson. Id. Under the subjective prong, the prisoner must establish that the defendants acted with deliberate indifference. Id. Again, this is "an extremely high standard that requires a mental state of "'more . . . than gross negligence.'" Id. (quoting Fourte v. Faulkner Cnty., Ark., 746 F.3d 384, 387 (8th Cir. 2014)). As the magistrate judge noted, mere negligence in diagnosing or treating a medical condition does not rise to the level of deliberate indifference, (June 2017 R&R at 38-39), which instead requires a mental state similar to "criminal recklessness." Saylor, 812 F.3d at 644 (citing Jackson v. Buckman, 756 F.3d 1060, 1065 (8th Cir. 2014)). For nonmedical personnel, such as the Named Defendants here, this requires a showing of a "sufficiently culpable mind," id. (citing Farmer v. Brennan, 511 U.S. 825, 834 (1994)), and personal participation or direct responsibility for the alleged violations. Id. (citing McDowell v. Jones, 990 F.2d 433, 435 (8th Cir. 1993)).

Although Munt objects to Magistrate Judge Rau's findings as to whether his headaches constituted an objectively serious medical need, (see Pl.'s Obj. ¶¶ 20-23), the objections are rendered moot because the magistrate judge nevertheless assumed, for

purposes of analysis, that Munt's vision problems and headaches were both objectively serious medical needs. (June 2017 R&R at 22.) Even so, he found that Munt failed to assert sufficient facts to allow the Court to draw a reasonable inference that Defendants deliberately disregarded his medical needs. (Id.) (citing Dulany, 132 F.3d at 1239; Iqbal, 556 U.S. at 678).

Munt objects to the magistrate judge's finding that Defendants were not deliberately indifferent to his medical needs. He argues that the magistrate judge improperly focused on contact lenses, as opposed to his untreated condition and lack of a diagnosis. (Pl.'s Obj. ¶¶ 22-23.) He asserts that he is not seeking one particular solution, but rather, treatment for his condition, and that "Defendants chose not to seek an alternative solution." (Id. ¶¶ 25-26.) Munt further accuses the magistrate judge of ignoring the fact that Defendants denied him contacts simply due to DOC policy, as opposed to medical judgment. (Id. ¶¶ 24; 29.) Finally, he argues that the fact that he was only provided standard eye exams is evidence from which a jury could infer deliberate indifference. (Id. ¶ 29.)

The Court disagrees with Munt's arguments. Although he subjectively complained that his headaches were caused by wearing eyeglasses, Munt's own allegations establish that he was evaluated by medical practitioners numerous times and that Defendants sought to oversee proper medical treatment for all of his medical complaints. For instance, as Munt himself alleges, Defendant Larson advised him to work with Health Services to objectively address his headache pain, (Proposed Second

Am. Compl. ¶ D.8); staff referred him to medical doctors and opticians, (id. ¶¶ D.10; D.13-15; D.32; D.34); and Defendant Reid informed him that contacts were only allowed due to medical necessity and his case had not been determined medically necessary. (Id. ¶ D.25). And again, the exhibits to Munt's Complaint further support the fact that Munt received responsive treatment to his complaints, as the magistrate judge found:

> When Munt continued to report that new glasses did not resolve his headaches and requested alternative solutions, Larson, copying Reid, informed Munt that contact lenses were prohibited unless they are deemed a medical necessity by a prescribing authority and that his 'practitioners have not made such a determination, despite several examinations.' (Ex. 20 to Compl). Larson further informed Munt that should he continue to experience headaches, he should 'address that issue with Health Services.' (Id.). Similarly, in response to Munt's complaints and questions about the scope of DOC policy regarding contacts, Reid scheduled Munt for a repeat eye exam, explained that contacts had not been determined to be 'medically necessary' in his case and that no alternatives had been requested by Munt. (Exs. 9-11 to Compl.)

(June 2017 R&R at 24) (citing July 2015 R&R at 24-25.)

In short, Munt fails to credibly allege that Defendants denied him medically necessary treatment or that any failure to provide alternative treatment, in the form of contact lenses, surgery, or something else, resulted from deliberate indifference. There is no allegation that medical practitioners informed Defendants that contacts were medically necessary and they refused to comply with the Contact Lenses Policy or that Munt was refused medical treatment. Munt appears to argue that Defendants were constitutionally required to remedy his problems, regardless of medical judgment. But deliberate indifference requires prison officials to know of a serious medical need and deliberately

ignore it. Munt's "mere disagreement with treatment decisions," including standard eye examinations, here, "does not rise to the level of a constitutional violation." Popoalii v. Corr. Med. Servs., 512 F.3d 488, 499 (8th Cir. 2008).

The Court likewise finds that Munt fails to credibly state an Eighth Amendment violation based on his allegations that Defendants were motivated by the Contact Lenses Policy instead of medical opinions. (Pl.'s Proposed Second Am. Compl. ¶ E.25.) Again, his own allegations again demonstrate otherwise, as he treated with numerous medical practitioners to address his medical needs and Defendants repeatedly referenced the lack of medical authorization for contacts. (See Compl, Ex. 9-11; 20.) Munt also alleges that Defendants misinformed him about the policy, stating that no contacts were allowed, (id. ¶ D.9), or stated that it was a prison-specific policy, as opposed to a DOC policy. (Pl.'s Obj. ¶ 2.) Even assuming so, misinformation about the policy does not constitute deliberate indifference, particularly as Munt's allegations and exhibits to the Complaint demonstrate that that he was medically evaluated for contact lenses, and whether the policy originated from the prison or DOC is irrelevant to the legal analysis.

Although Munt did not identify the constitutional amendment implicated in his proposed claim asserting an as-applied constitutional violation of the Contact Lenses Policy, (see Proposed Second Am. Compl. ¶ 25), the magistrate judge liberally construed Munt's pleading to determine whether the proposed claim implicated the Equal Protection Clause of the Fourteenth Amendment. (June 2017 R&R at 27.) The magistrate judge found that any amendment to the pleadings on this basis would be futile, as Munt's

exhibits indicated that he was treated like any other inmate. (Id.) (citing Klinger v. Dep't of Corr., 31 F.3d 727, 731 (8th Cir. 1994)) (stating that a plaintiff in an equal protection case must demonstrate that he was treated differently than others who were similarly situated). In his Objections, Plaintiff argues that the magistrate judge misstated facts regarding the responses to kites. (Pl.'s Obj. ¶¶ 4-5.) This objection does not concern the legal basis on which Magistrate Judge Rau ruled under the Fourteenth Amendment, i.e., differences in treatment among Munt and other inmates, and, therefore, does not affect the legal analysis. Accordingly, this ground of objection is overruled.

Munt also repeatedly argues that "word count limits and time limits prevent me from arguing [an objection]" to a given aspect of the magistrate judge's ruling. (See, e.g., Pl.'s Obj. ¶¶ 9; 28; 34-35.) This basis of objection is overruled. All litigants face these limits and the Court is not obliged to fashion specific objections on their behalf. For similar reasons, the Court is unpersuaded by Munt's arguments that because he is maintaining multiple lawsuits, he has insufficient time and resources to devote to this particular lawsuit, (see id. at 1), or that printing limits have negatively affected his ability to object. (Id. ¶ 31.)

Because the magistrate judge found that Munt's proposed amendments were untimely and futile, he did not address Defendants' additional summary judgment argument that Munt failed to abide by Local Rule 7.1 (a), (June 2017 R&R at 18, n.11) , which requires litigants to meet and confer prior to the filing of motions. In his Objections, Munt asserts that the magistrate judge ignored the impossibility of Munt

meeting and conferring with Defendants. (Pl.'s Obj. ¶ 18.) Because any failure to meet and confer did not form the basis of Magistrate Rau's ruling, Munt's objections in this regard are overruled as moot. Likewise, while the magistrate observed that Munt also failed to provide a version of the Proposed Amended Complaint that comported with the Local Rules, i.e., a version that shows how the proposed pleading differs from the operative pleading, (June 2017 R&R at 17) (citing D. Minn. L.R. 15.1(b)), this did not serve as a ground for denying Munt's motion. Accordingly, the Court overrules as moot Munt's objection that the magistrate ignored the impossibility of him providing a marked-up version of the Proposed Second Amended Complaint. (Pl.'s Obj. ¶18.)

For all of these reasons, the Court adopts the June 2017 R&R and denies Plaintiff's Second Motion to Amend the Complaint.

B. Defendants' Motion for Summary Judgment

The Court also conducts a de novo review of the portion of the magistrate judge's ruling on summary judgment to which specific objections are made. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). Based on that de novo review, and for the reasons set forth below, the Court overrules Plaintiff's objections and adopts the magistrate judge's recommendation.

1. Summary Judgment Legal Standard

A recurring argument in Munt's Objections is that the magistrate judge applied the incorrect standard of proof. (See Pl.'s Obj. at ¶ 1 ("Magistrate was required to take the facts as alleged by Plaintiff as true); ¶ 9 ("Overall, Magistrate resolves factual disputes

overwhelmingly in Defendants' favor despite requirement that facts of Plaintiff must be taken as true."); page 22 ("I hope these objections will let the Court see the Magistrate has blatantly failed to take the facts alleged by Plaintiff as true and to draw all reasonable inferences in his favor.") Munt, however, incorrectly conflates the standard of review on a motion to dismiss with the standard of review on a motion for summary judgment. Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When considering summary judgment motions, courts must view the evidence and the inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. Enter. Bank v. Magna Bank, 92 F.3d 743, 747 (8th Cir. 1996). At summary judgment, the nonmoving party must offer evidence–not just plausible allegations–that reasonably support its position that disputed issues of material fact exist. Here, the magistrate judge properly considered whether any issues of material fact remained in dispute, drawing any reasonable inferences from those facts in Plaintiff's favor. He was not required to accept Plaintiff's facts as true, which is the standard of review applicable to a motion to dismiss. The Court therefore finds no error in the magistrate judge's application of the standard of review.

2. Claims Against Unnamed Defendants

Munt objects to the magistrate judge's dismissal without prejudice of his claims against the Unnamed Defendants. (Pl.'s Obj. ¶¶ 32-33.) He argues that it was impossible to name them until he received information through discovery, which, in turn, was nearly

impossible. (Id.) Munt notes that he has a limit of "50 pages a week," while engaging in "5 other court cases." (Id. ¶ 32.) The Court overrules Munt's objection to this portion of the June 2017 R&R. Plaintiff served discovery on Defendants, (see Christensen Aff. [Doc. No. 172 ¶¶ 2–4] (stating Munt served Defendants with two sets of interrogatories and a request for production of documents); id., Exs. 1–2 [Doc. No. 172-1] (Munt's requests and Defendants' proffered answers)), and was capable of serving discovery to obtain the names in question. The number of lawsuits maintained by Plaintiff does not relieve him of the responsibility to obtain the information necessary, in a timely fashion, to support the claims in this action. The Court therefore adopts this portion of the June 2017 R&R.

3. Claims for Injunctive Relief Against Reid and Monio; Damages Claims Against Defendants in their Official Capacities

Munt provides non-specific objections to the portion of the magistrate judge's recommendation concerning claims for injunctive relief against Defendants Reid and Monio, and damages against Defendants in their official capacities, stating that word count limits and time limit prevented him from submitting argument. (Pl.'s Obj. ¶¶ 34-35.) Because he submits no specific objections, the Court rejects the generalized arguments presented and adopts those portions of the June 2017 R&R concerning injunctive relief claims against Reid and Monio and claims for damages against Defendants in their official capacities.

4. Eighth Amendment § 1983 Claims

As to his medical claims under the Eighth Amendment, Munt reiterates his objections previously made with respect to his Second Motion to Amend. (Id. ¶ 36.) He argues that simply because standard eye exams did not reveal a nonstandard issue does not mean that the issue does not exist. (Id.) Munt asserts that because no optical expert has ever examined him, the "only evidence regarding [his] condition is [his] own testimony." (Id.) He contends that the magistrate judge improperly found that no diagnosis supported Munt's claims, when Defendants' alleged failure to provide a diagnosis is at the heart of his claim. (Id. ¶ 37.) Further, he argues that the magistrate judge "ignore[d] facts as alleged by Plaintiff" that Defendants repeatedly told him that contact lenses were not allowed, (id. ¶ 39; see also id. ¶¶ 40-41), and instead "[took] evidence as alleged by Defendants to support his finding of no deliberate indifference." (Id. ¶ 43.)

The reasons identified earlier in denying Plaintiff's Second Motion to Amend the Complaint apply with equal force to Plaintiff's § 1983 Eighth Amendment claims. Additionally, the record evidence on summary judgment further supports Defendants' position that there are no genuine issues of material fact in dispute and they are entitled to judgment as a matter of law.

Plaintiff's medical records, attached to the Third Affidavit of David Paulson, M.D., M.B.A. ("Paulson Affidavit"), demonstrate that Plaintiff obtained adequate, medically necessary treatment for his eye and headache complaints. (See, generally, Paulson Aff.; id., Exs. 5-7.) Dr. Paulson is the Medical Director for the DOC. (Id. ¶ 1.)

His primary duties include "evaluating complaints regarding medical care provided at DOC correctional facilities and monitoring the DOC's contract with its primary car provider, Centurion, as it relates to offender complaints about medical care." (Id.) The information provided in his affidavit is based on his personal knowledge and review of Munt's medical records. (Id.) Much of the information in the Paulson Affidavit–and, in turn, cited in the R&R–merely summarizes Munt's medical records, attached as exhibits to the affidavit, and is consistent with them. (See id. ¶¶ 2-22.)

Munt appears to object to the magistrate judge's consideration of the Paulson Affidavit. He argues that Dr. Paulson is not an optometrist and is not qualified to render an opinion in this matter. (Pl.'s Obj. ¶ 8.) Munt asserted this argument before Magistrate Judge Rau, who properly rejected it as irrelevant. (June 2017 R&R at 36.) As the magistrate judge found, "a determination as to whether Munt has been diagnosed with a condition that provides an exemption under the Contact Lenses Policy does not require expert testimony. Not a single treatment note in Munt's medical file states that a physician prescribed contacts as medically necessary." (June 2017 R&R at 36-37) (citing Paulson Aff., Ex. 6 at 1) (assessment of headaches "potentially related to . . . correctional eyewear" and treating the condition with a referral for "reevaluation and potential rewriting of patient's eyeglasses prescription"); (id. at 2) (discussing prior diagnoses of headaches caused by ethmoid sinusitis); (id. at 4) (prescribing "Dilacor XR 120" and "Tylenol on an as-needed basis" to address Munt's persistent headaches); (Paulson Aff., Ex. 7 at 5, 7) (diagnosing Munt with "[m]yopia/[a]stigmatism" after a "[n]ormal eye

exam"); see also (Paulson Aff. ¶ 13) ("There is no indication [in] Munt's medical records that he was diagnosed with keratoconus, aniseikonia, or severe astigmatism."). The Court's analysis does not therefore depend "on scientific, technical, or other specialized knowledge." (June 2017 R&R at 36) (citing Lauzon v. Senco Prods., Inc., 270 F.3d 681, 686 (8th Cir. 2001)). Munt's objection to the R&R on this basis is overruled.

Based on Dr. Paulson's review of Munt's medical records, he attests that Munt has been diagnosed with myopia and astigmatism. (Paulson Aff. ¶ 9, id., Ex. 7.) Dr. Paulson states that while keratoconus, aniseikonia, or severe astigmatism are the types of conditions that may warrant the prescription of contacts as a medical necessity, (id. ¶¶ 10-12), there is no indication in Munt's records of such diagnoses. (Id. ¶ 13.) Accordingly, because Munt does not suffer from these conditions, and because there is no objective medical evidence that Munt's eyeglasses are causing his headaches, Dr. Paulson states, "It appears, therefore, that DOC Health Services Staff and Centurion practitioners have taken appropriate steps to address Munt's concerns." (Id. ¶ 26.)

Dr. Paulson further addresses Munt's treatment for headaches, (id. ¶¶ 14-17; 20-21), and states, "I am not aware of any medical condition that would cause headaches solely because a person is wearing eyeglasses instead of contact lenses. A patient's report of a headache is a subjective complaint and in most circumstances there is no way to verify whether the person is actually having a headache." (Id. ¶ 24.) Dr. Paulson notes that over a three-year period, Munt presented to Health Services complaining of headaches on a handful of occasions. (Id. ¶ 25.) He observes that at times, Munt

indicated that his headaches were caused by his eyeglasses, while other times, the medical records do not document Munt's subjective beliefs as to the causes. (Id.) Each time that Munt was seen, Dr. Paulson notes, the practitioners offered different treatments for his headaches, and each time Munt treated with an optometrist, he was provided with new glasses in an effort to alleviate his subjective complaints of headaches. (Id.) Dr. Paulson concludes that Munt received proper treatment for his headaches. (Id.) Moreover, because no prescribing authority determined that contacts were medically necessary, Dr. Paulson states that Defendants Larson, Reid, Monio, and Ebeling had no authority to provide them. (Id. ¶ 27.)

Again, even if one assumes that Plaintiff meets the first element of an Eighth Amendment medical claim, requiring that he suffer from objectively serious medical needs, there is no genuine issue of material fact in dispute as to whether Defendants actually knew of, but deliberately disregarded those needs. See Dulany, 132 F.2d at 1239. Even viewing the evidence in the light most favorable to Plaintiff, he fails to meet that extremely high standard of proof for deliberate indifference, which requires a mental state akin to criminal recklessness. Saylor, 812 F.3d at 644 (citing Jackson, 756 F.3d at 1065.)

5. First and Fourteenth Amendment Claims

As to the magistrate judge's ruling on claims arising under the Fourteenth Amendment and First Amendment, he found that Munt failed to allege sufficient facts to support a § 1983 claim. (June 2017 R&R at 43-44.) Specifically, regarding Plaintiff's

Equal Protection claim, he found that Munt alleged no facts, nor was there any evidence, sufficient to show that Munt was treated differently than any other similarly-situated inmate. Cf. Klinger, 31 F.3d at 731. Similarly, he found insufficient allegations, let alone any evidence, that Defendants violated Munt's rights in the manner in which they handled his grievances, so as to constitute a violation of the First Amendment. (June 2017 R&R at 43-44). And, to the extent that Munt's claims stemmed from Defendants allegedly failing to follow policy or delinquently responding to his complaints, Magistrate Judge Rau found that Munt's conclusory allegations failed to state a claim or present any evidence supporting such a claim. (Id. at 44.)

Munt objects to the magistrate judge's ruling on these claims, arguing that he never intended to raise them.[8] (Pl.'s Obj. ¶¶ 49-54.) He contends that, as a pro se prisoner, his repeated allegations of "violations of the Plaintiff's first amendment right to

[8] While the Court previously construed Munt's Complaint to allege a § 1983 claim asserting First and Fourteenth Amendment violations, (see, e.g., July 2015 R&R at 10), he argues that the Court, in ruling on his preliminary injunction motions, acknowledged that he raised no such claims. (Pl.'s Obj. ¶ 49.) Munt misconstrues the Court's earlier ruling. In the context of his motion for injunctive relief, Munt asked that Defendants be ordered to provide him with contact lenses–relief, while ultimately found unavailable, that the Court considered related to his Complaint. (See July 2015 R&R at 31-32.) But he also requested that Defendants be prohibited from transferring and retaliating against him, and that he be provided with copies and deliveries of Court filings free of charge. (See id.) The Court found this requested relief unrelated to Munt's Complaint, and therefore unavailable as injunctive relief. (Id. at 32) (citing Frye v. Minn. Dep't of Corr., No. 05-cv-1327 (JNE/JJG), 2006 WL 2502236, at *1 (D. Minn. Aug. 29, 2006)). The Court correctly stated that Munt's Complaint allegations concerning Defendants' interference with the grievance process were unrelated to the injuries claimed in his motions for preliminary relief. (Id. at 34.) The Court did not, however, state that Plaintiff alleged no claims under the First and Fourteenth Amendments.

redress" and "violat[ions of] his right to Due Process and Equal Protection," (see Compl. ¶¶ E.2; E.16; E.20; E.21; E.23), were "merely comments of wrongs committed by [D]efendants to impede the bringing of this case." (Pl.'s Obj. ¶ 56.) While the magistrate judge found that Munt could have moved to amend to remove these claims, Munt asserts that doing so would have been impossible, as it would have been untimely and he would have been impeded by time and paper limitations. (Id. ¶¶ 51; 56.) He argues that a fundamental injustice will occur if the Court dismisses his claims arising under the Fourteenth Amendment, as he has an entirely separate lawsuit pending based on an alleged denial of access to the Courts. (Id. ¶¶ 51-54.)

It is clear from Munt's pleadings that he did, in fact, assert claims arising under the Fourteenth and First Amendments. However, his allegations in this lawsuit refer to the DOC's administrative processes and his ability to seek redress there. For example, in his claim against Defendant Monio, he alleges delays in kite processing, concluding, "Defendant Monio's actions also constitute violations of the Plaintiff's first amendment right to redress in so much as she impeded the administrative process Plaintiff is forced to utilize in seeking redress, his right to Due Process and his right to Equal Protection." (Compl. ¶ E.20; see also id. ¶¶ E.2; E.16; E.21; E.23.) The magistrate judge likewise construed Munt's claims, considering whether any genuine issues of material disputed fact existed under the First and Fourteenth Amendments as to Defendants' handling of his prison complaints. (June 2017 R&R at 43-44.) He found insufficient allegations and evidence to support such claims. (Id.) This Court agrees. Accordingly, to the extent

Munt objects on the basis of his belief that the dismissal of his Fourteenth Amendment and First Amendment claims constitutes a dismissal of claims concerning access to the courts, such objections are overruled as moot, as the R&R did not recommend the dismissal of such claims.

6. ADA Claims

Regarding his ADA claims based on law library access, Plaintiff objects to the magistrate judge's finding that he has meaningful access to the law library, arguing that Magistrate Judge Rau ignores the fact that his disability impacts his ability to utilize the law library. (Pl.'s Obj. ¶ 47.)

The Court again references and incorporates here its earlier reasons for denying Plaintiff's Second Motion to Amend the Complaint as to his ADA claim. And, as with Plaintiff's § 1983 Eighth Amendment claim, on summary judgment, the record evidence provides additional support for this ruling. As discussed earlier in the Court's discussion of whether Plaintiff's claim of limited law library access constituted good cause under Rule 16, MCF-Stillwater Librarian David Coward attests that between July 6, 2015 and October 21, 2016, Coward gave approval for Munt to attend 125 sessions in the law library, of approximately 2.5 hours in length, for a total of approximately 312.5 hours. (Coward Aff. ¶ 5.) Coward further states that while other inmates utilize the law library as often as Munt, there are no inmates who utilize it significantly more than he does. (Id. ¶ 6.) In addition, Coward attests that he has never observed Munt to wear eyeglasses in the law library, never known him to request any visual aids while typing or performing

research, and is otherwise unaware of any difficulty that Munt has with his eyesight, affecting his ability to utilize law library resources. (Id. ¶ 7.) The magistrate judge also observed, "Further proof Munt has not been hindered in pursuing his legal claim is evidenced by both the number and comprehensive nature of Munt's filings prepared in this litigation." (June 2017 R&R at 42) (citations omitted). The Court agrees and finds that Munt's claims under the ADA must be dismissed.

Finally, Munt lodges objections that are either redundant, and therefore already addressed, or irrelevant, as they relate to factual disagreements that have no effect on the applicable legal standard. For example, he objects to the magistrate judge's factual reference to "Dilacor XR," asserting that he was never prescribed this medication to treat either the effects of his glasses or headaches. (Pl.'s Obj. ¶ 1.) He states that he instead had to purchase medication from the canteen to treat his sinus headaches. (Id.) This "conflicting testimony," he argues, presents a fact question for the jury. (Id.) This argument is without merit. Whether or not Munt was prescribed "Dilacor XR" is not a disputed issue of material fact. The record amply demonstrates that Munt was seen for his problems with his eyes and headaches and was directed to medication for relief. (See Paulson Aff., Ex. 6 at 4 (Medical Records).) Munt himself acknowledges as much by stating that he bought his medication from the canteen. (Pl.'s Obj. ¶ 1.) Therefore, even if he was not prescribed "Dilacor XR," this does not raise a question of fact for the jury.

For all of the reasons noted above, the Court adopts the magistrate judge's recommendation, granting in part, and denying in part, Defendants' Motion for Summary

Judgment.

C. Plaintiff's Third Motion to Appoint Counsel

While Munt's Objections to the magistrate judge's ruling on his Third Motion to appoint counsel are effectively rendered moot by the Court's ruling, above, on Defendants' summary judgment motion, the Court nevertheless reviews the objections on the merits. The standard of review applicable to a nondispositive motion such as Munt's Third Motion to Appoint Counsel is highly deferential; this Court will only reverse the ruling of the magistrate judge if it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D. Minn. L.R. 72.2(a).

In ruling on Munt's Third Motion to Appoint Counsel, the magistrate judge correctly observed that civil litigants do not have a constitutional or statutory right to appointed counsel. (March 20, 2017 Order at 3-4) (citing Ward v. Smith, 721 F.3d 940, 942 (8th Cir. 2013)). Rather, appointment of counsel for indigent litigants is discretionary under 28 U.S.C. § 1915(e). As Magistrate Judge Rau noted, courts are to consider the following criteria in determining whether to appoint counsel: the factual and legal complexity of the underlying issues, the existence of conflicting testimony, and the ability of the indigent plaintiff to investigate the facts and present his claims. (Id. at 4) (citing Phillips v. Jasper Cnty. Jail, 437 F.3d 791, 794 (8th Cir. 2006)).

Munt argues that the magistrate judge's ruling should have taken the form of a Report and Recommendation, as opposed to an Order. (Pl.'s Obj. to Order ¶ 1 [Doc. No. 183].) He is incorrect because a motion for appointment of counsel–a nondispositive

pretrial motion–may be determined by a magistrate judge in an order. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D. Minn. L.R. 72.2(a). Munt also notes that he has "never consented to a Magistrate on this case." (Pl.'s Obj. to Order ¶ 1.) His consent is only required to have the magistrate judge rule on a case-dispositive motion. See Fed. R. Civ. P. 72(b). Here, the magistrate judge has not ruled on a case-dispositive motion. While the rules permit magistrate judges to exercise final authority at the district court level over civil matters, with the consent of the parties, see D. Minn. L.R. 72.1(c), that has not occurred here because such authority is vested in, and retained by, the undersigned district judge.

Munt also argues that the magistrate judge incorrectly determined that Munt is able to conduct discovery. He argues that he has no way of deposing witnesses, obtaining records, and viewing video footage. (Pl.'s Obj. to Order ¶ 2.) Munt further asserts that discovery ended long ago and he is "prohibited from filing any more motions" to pursue discovery. (Id.)

The Court assigns no error in Magistrate Judge Rau's determination. The magistrate judge acknowledged Munt's ability to advocate for himself, as reflected in his ample motion practice in this case. (March 20, 2017 Order at 6-7.) That Munt's substantive motions have largely been unsuccessful is not a reflection of his advocacy abilities, but more likely on the merits of his arguments. However, Munt has successfully obtained relief on procedural motions, such as motions seeking filing extensions. (See, e.g., Feb. 16, 2017 Order; Jan. 13, 2017 Order; May 29, 2015 Text Order.) And while

Munt argues that he could not have deposed witnesses, obtained records, or viewed video recordings unless he had the assistance of counsel, the Court disagrees. Shortly after he filed this lawsuit in February 2015, Munt could certainly have served discovery seeking his requested information. And, to the extent that Defendants objected, Munt could have moved to compel the requested information.

Munt's claim of a motions-filing prohibition appears to originate in the magistrate judge's January 2017 Order. The January 2017 Order granted Munt's second request for an extension to file his memorandum in opposition to Defendants' summary judgment motion. (Jan. 2017 Order at 1-2.) The magistrate judge also observed that the Court had received other motions filed by Munt, specifically, his Second Motion to Amend the Complaint, his Third Request for Appointment of Counsel, and his Motion to Recuse/Disqualify the Judge. (Id. at 2-3.) In light of the several pending motions, Magistrate Judge Rau stated, "Neither party shall file any further motions in this matter without first seeking permission to do so from the Honorable Susan Richard Nelson. The Court will not entertain any additional motions from either party pending the issuance of its [R&R] on the pending motions and the Order addressing the [R&R]." (Id.) To the extent that Munt contends that the January 2017 Order indefinitely barred him from filing any further motions, he is incorrect. If either party wanted to file additional motions, they were directed to seek permission from the undersigned judge. Absent such requests, the temporary pause on motion practice–applicable to both sides–merely stayed the filing of motions until the Court could issue its rulings on the pending motions, one of which was

a dispositive motion. Taking this very temporary measure, almost two years into this litigation, was not inappropriate, given that the Court's ruling on the dispositive motion could possibly obviate the need for additional motion practice. If either party wished to file a motion prior to the Court's ruling on the pending motions, they were told to seek the Court's leave. The Court rejects this argument as a basis for relief from the March 20, 2017 Order that denied appointment of counsel.

Munt argues that his Third Motion for Appointment of Counsel, filed on November 3, 2016, should have instead been considered first, and the other pending motions stayed. (Pl.'s Obj. to Order ¶ 3.) However, Munt ignores the fact that his Second Motion to Amend, filed on October 6, 2016, and Defendants' Motion for Summary Judgment, filed on November 1, 2016, were already pending at the time he made his third request for appointed counsel. Moreover, to the extent that Munt took issue with the temporary motion practice pause, he could have nonetheless objected to the January 2017 Order on this basis, or sought permission to file a motion. The Court therefore rejects Munt's claim that this temporary stay of motion practice demonstrates the magistrate judge's clear error in denying his Third Motion for Appointment of Counsel.

Munt also objects to Magistrate Judge Rau's finding that Munt's request for appointment of trial counsel was premature. (Id. ¶¶ 4-5.) Again, with a pending dispositive motion, which could result in the dismissal of Munt's case, the magistrate judge did not commit clear error in finding Munt's request for trial counsel premature.

Finally, Munt lodges a general objection to the Court's "attitude," stating that "this

Court's mind has been made up when it decided my case lacked merit because I had no expert, ignored that I was dependent on the Defendants, and denied me the ability to get the very information it said I needed for my case to have merit." (Id. ¶ 6.) The Court rejects any notion that "the Court's mind has been made up." To the contrary, the Court has applied to Plaintiff the same rules applicable to all pro se civil litigants who seek appointment of counsel and any of the other forms of relief that Plaintiff has requested. Throughout these proceedings, the Court has liberally construed Munt's pleadings and arguments. This ground of objection is therefore overruled.

Finding no error in the magistrate judge's denial of appointment of counsel, Munt's Objections to the March 20, 2017 Order are overruled and the ruling is affirmed.

THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Objections [Doc. No. 183] to the magistrate judge's March 2017 Order are **OVERRULED**, and the March 2017 Order [Doc. No. 182] is **AFFIRMED**;
2. Plaintiff's Objections [Doc. No. 190] to the magistrate judge's June 2017 R&R are **OVERRULED in part** and **OVERRULED AS MOOT in part**, and the June 2017 R&R [Doc. No. 189] is **ADOPTED**;
3. Plaintiff Joel Marvin Munt's Second Motion to Amend Complaint [Doc. No. 129] is **DENIED**;
4. The Motion for Summary Judgment filed by Defendants Nanette Larson, Kathryn Reid, Shelli Monio, Kim Ebeling, Doctors Nos. 1-6, Health

Services Workers Nos. 1-6, Opticians Nos. 1-4, and RN No. 1 [Doc. No. 140] is **GRANTED in part** and **DENIED in part**;

5. Claims against unnamed Defendants, Doctors Nos. 1-6, Health Services Workers Nos. 1-6, Opticians Nos. 1-4, and RN No. 1, are **DISMISSED without prejudice**;

6. Claims for injunctive relief against Defendants Kathryn Reid and Shelli Monio are **DISMISSED without prejudice**;

7. Claims for damages against Defendants Nanette Larson, Kathryn Reid, Shelli Monio, and Kim Ebeling in their official capacities are **DISMISSED without prejudice**;

8. The remaining claims against Defendants Nanette Larson, Kathryn Reid, Shelli Monio, Kim Ebeling arising under the ADA, and First, Eighth, and Fourteenth Amendments are **DISMISSED with prejudice**; and

9. This case is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 25, 2017

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge