

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Daniel Larsen, et al.,

Civil No. 21-568 (DWF/DJF)

Plaintiffs,

v.

ORDER

State of Minnesota, et al.,

Defendants.

This lawsuit was commenced by nearly four dozen clients of the Minnesota Sex Offender Program (“MSOP”) who, on behalf of themselves and putatively on behalf of a group of similarly situated MSOP clients, seek relief from the conditions of their ongoing civil detention. Very shortly after filing, this action was stayed pending the adjudication of *Karsjens v. Minnesota Department of Human Services*, No. 11-CV-3659 (DWF/TNL). *See* Doc. No. 7. Judgment has since been entered in *Karsjens*, and the stay previously imposed in this matter has now been lifted.

Prior to the lifting of the stay, each of the plaintiffs were directed to provide notice of whether they intended to continue prosecuting this lawsuit. Eleven plaintiffs did not provide the required notice, and those plaintiffs subsequently were dismissed without prejudice from this action. *See* Doc. No. 84. Since that time, another eight plaintiffs—Christopher Sime, Raymond Semler, Allen Pyron, Kevin Nelson, Jeremy Bilder, Anthony Green, Robert Smith, and Jeremy Asher—have requested to be voluntarily dismissed from this action. *See* Doc. Nos. 85-89, 91, 94-95. Each of those motions for

voluntary dismissal will be granted, and the eight plaintiffs who filed those motions will be dismissed without prejudice from this lawsuit. Following those dismissals, twenty-eight plaintiffs remain active in this proceeding.¹

Apart from the motions for voluntary dismissal, this matter is before the Court on a bevy of motions brought by the Plaintiffs, including (1) a motion to file an amended complaint, *see* Doc. No. 6; (2) five separate motions for injunctive relief, *see* Doc. Nos. 9, 13, 49, 54, & 63; (3) a motion to reconsider the earlier denial of *in forma pauperis* (“IFP”) status to the Plaintiffs, *see* Doc. No. 96; (4) motion to certify a class of similarly situated MSOP clients, *see* Doc. No. 4; (5) a related motion to appoint class representatives, *see* Doc. No. 52; (6) a motion for appointment of counsel, *see* Doc. No. 51; and (7) a motion for appointment of psychological experts, *see* Doc. No. 55. As explained below, each of those motions will be denied as procedurally improper, on the merits, or for both reasons.

I. Motion to File Amended Complaint

Very shortly before the stay was imposed in this matter, Plaintiff Daniel Larsen filed a motion to amend the pleading in this matter. *See* Doc. No. 6. Service of process had not yet been effected (and, as far as the record reflects, still has not yet been effected)

¹ Those plaintiffs are the following: Daniel Larsen, Joseph Goodwin, Guy Greene, Terry Branson, Mark Wallace, Austin Black Elk, Michael Perseke, Chester Grauberger, Dezeray Roblero-Barrios, Ernesto Longoria, Joseph Delle, Danny Stone, Robert Suddeth, Anthony Garnett, Donald Hill, Paul Knutson, Julian Caprice, David McGuire, David Hamilton, Jacquard Larkin, Shawn Jamison, Richard Fageroos, Dan Wilson, Michael Rogers, Jose Gutierrez, Thomas Bolter, Brent Nielsen, and Kevin Karsjens.

on the defendants, and therefore the Plaintiffs are entitled to amend their pleading once as a matter of course, with no leave of the Court required. *See* Fed. R. Civ. P. 15(a)(1).

Nevertheless, the motion to amend will be denied as procedurally improper, because only Larsen signed that document. “Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented.” Fed. R. Civ. P. 11(a). Where a motion is brought on behalf of more than one unrepresented litigant, each of those litigants must sign the motion and thereby demonstrate both that they support the request and that, to the best of their knowledge, the motion does not misrepresent the facts or the law and was not brought for frivolous or malicious purposes. *See, e.g., Sitts v. Weaver*, No. 9:20-CV-1474 (GTS/DJS), 2021 WL 51411, at *3 (N.D.N.Y. Jan. 6, 2021). One *pro se* litigant cannot litigate on behalf of the entire group, because “[a] nonlawyer can’t handle a case on behalf of anyone except himself.” *Georgakis v. Illinois State Univ.*, 722 F.3d 1075, 1077 (7th Cir. 2013) (citing 28 U.S.C. § 1654). This theme will come up again and again in this order: One unrepresented Plaintiff, or a small group of unrepresented Plaintiffs, cannot take the role as “lead counsel” for everyone else.

That said, although the motion to amend the complaint will be denied as procedurally improper, the proposed amended complaint filed in conjunction with the motion appears to have been signed by each of the plaintiffs who remains a party to this action. As explained above, the Plaintiffs did not need leave of the Court to file that amended complaint. *See* Fed. R. Civ. P. 15(a)(1). The motion to amend, along with being procedurally improper, was therefore also unnecessary. The Clerk of Court will be

directed to redocket the document currently docketed as the “Proposed Amended Complaint” (Doc. No.[6-1]) as the amended complaint, and that document will now act as the operative pleading in this matter.

II. Motions for Injunctive Relief

Five motions for preliminary or permanent injunctive relief have been filed in this matter. *See* Doc. Nos. 9, 13, 49, 54, & 63. Like the motion to amend, each of the motions for injunctive relief—and each of the documents filed in support of those motions—was signed by only one of the plaintiffs, yet those motions seek relief on behalf of the Plaintiffs as a collective group. The motions are therefore procedurally improper and will be denied without prejudice.

III. Motion for Reconsideration of Denial of IFP Status

Plaintiffs were denied IFP status in this proceeding on the grounds that the group as a collective whole (and several of the Plaintiffs individually) appeared to be capable of paying the filing fee for this matter without undue hardship. *See* Doc. No. 83. The filing fee thereafter was promptly paid for this matter, evincing that Plaintiffs were, in fact, capable of paying that filing fee without undue hardship, but Plaintiff Daniel Larsen nevertheless requests that the Court reconsider the denial of IFP status. *See* Doc. No. 96. Again, the motion is procedurally improper, as it is brought by only a single litigant on behalf of the group of Plaintiffs a whole. Even leaving this problem aside, however, no evidence has been submitted to the Court showing that the Plaintiffs were unable to pay the filing fee for this matter at the time they filed this action or that the remaining Plaintiffs had become unable to pay the filing fee by the time that the stay was lifted and

the IFP application was denied. The motion for reconsideration of the earlier denial of IFP status thus will itself be denied.

IV. Motions to Certify Class and Class Representatives

This lawsuit is putatively brought on behalf of *all* MSOP clients, not only those clients named as plaintiffs to this action. Plaintiff Daniel Larsen has filed a motion for the Court to certify this broader class pursuant to Rule 23 of the Federal Rules of Civil Procedure, and many of the plaintiffs have joined in a motion requesting that sixteen plaintiffs be appointed as class representatives. But just as one *pro se* litigant cannot litigate on behalf of other plaintiffs, neither can a *pro se* litigant—or a group of *pro se* litigants—adequately represent the interests of a broader class of persons. *See Stone v. Jesson*, No. 11-CV-0951 (WMW/HB), 2019 WL 3769707, at *2 (D. Minn. May 30, 2019) (collecting cases). These motions will therefore also be denied.

V. Motion for Appointment of Counsel

No doubt sensing the practical difficulties of prosecuting this matter as a group, Plaintiff Daniel Larsen has filed a motion for appointment of counsel to represent the Plaintiffs and the putative class of similarly situated MSOP clients. *Pro se* litigants do not have a statutory or constitutional right to appointment of counsel in a civil case. *See Stevens v. Redwing*, 146 F.3d 538, 548 (8th Cir. 1998). “When determining whether to appoint counsel for an indigent civil litigant, the district court considers relevant factors such as the complexity of the case, the ability of the indigent litigant to investigate the facts, the existence of conflicting testimony, and the ability of the indigent to present his claim.” *Id.*

To begin, Plaintiffs have not provided sufficient evidence to support the argument that they *are* indigent (at least as a collective group), and it is therefore uncertain to what extent Plaintiffs may request at all that counsel be appointed on their behalf. *See* 28 U.S.C. § 1915(e)(1). Ignoring this problem, however, the Court is not inclined to appoint counsel at this stage of the proceedings. This lawsuit does appear to be complex, but much of that complexity arises mostly from the decision of Plaintiffs to prosecute this case together rather than separately. Moreover, the claims brought in this litigation appear to have substantial overlap with the claims raised in the *Karsjens* litigation, and those claims were already fully and fairly litigated on behalf of the MSOP clients by skilled counsel. To the extent that this lawsuit differs from *Karsjens* at all, it appears to have been brought in order to present the claims that counsel for plaintiffs in *Karsjens* considered and rejected. *See* Doc. No. 96 at 3-8. But the role of counsel is not to parrot to the Court the positions of his or her clients, and appointed counsel in this matter would prove no more satisfactory to the plaintiffs in this regard than the counsel in *Karsjens* appears to have proved. Finally, it is not clear at this stage of the proceedings to what extent any of Plaintiffs' claims would benefit from development by an attorney, as the defendants have not yet had the opportunity to respond to the pleading in this matter. For all of these reasons, the motion for appointment of counsel will be denied.

VI. Motion for Appointment of Psychological Experts

Finally, Plaintiff Daniel Larsen requests that the Court appoint psychological experts to provide evidence in support of their claims for relief. *See* Doc. No. 55. It is not clear at this time that Plaintiffs have stated a claim on which relief may be granted

(defendants have not yet had the opportunity to respond to the complaint or amended complaint), and any steps taken by the Court regarding the development of evidence supporting those claims would therefore be premature. This motion is also denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The motions to voluntarily dismiss (Doc. Nos. [85], [86], [87], [88], [89], [91], [94], & [95]) are **GRANTED**.
2. Plaintiffs Christopher Sime, Raymond Semler, Allen Pyron, Kevin Nelson, Jeremy Bilder, Anthony Green, Robert Smith, and Jeremy Asher are **DISMISSED WITHOUT PREJUDICE** from this action.
3. The motion to file an amended complaint (Doc. No. [6]) is **DENIED**.
4. The Clerk of Court is directed to redocket the proposed amended complaint (Doc. No. [6-1]) as the amended complaint. That document is now the operative pleading in this matter, notwithstanding the denial of the motion to amend.
5. The motions for injunctive relief (Doc. Nos.[9], [13], [49], [54], and [63]) are **DENIED WITHOUT PREJUDICE**.
6. The motion to reconsider denial of *in forma pauperis* status (Doc. No.[96]) is **DENIED**.
7. The motion to certify class (Doc. No.[4]) is **DENIED**.
8. The motion to appoint class representatives (Doc. No.[52]) is **DENIED**.
9. The motion for appointment of counsel (Doc. No.[51]) is **DENIED**.

10. The motion for appointment of psychological experts (Doc. No.[55]) is

DENIED.

Dated: November 17, 2022

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge