

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MOTION TO EXTEND TIME AND TO AMEND ORDER

Plaintiff, by counsel, respectfully requests that the Court:

- a) To allow plaintiff to confer with counsel, extend to June 4, 2021 the time in which plaintiff may file an amended complaint, and
- b) Amend the Order of April 28, 2021 to state that, if plaintiff does not file an amended complaint, this action will be dismissed without prejudice.

Grounds for this motion are as follows:

1. In its Order of April 28, 2021, the Court dismissed plaintiff's claims for injunctive and declaratory relief as moot and ruled that plaintiff "lacks standing to bring suit in the first instance." (ECF No. 103 at 5.)

2. The Court concluded its Order as follows:

For the reasons explained above, the Court has no choice but to dismiss Mohandie's second-amended complaint. Still, the dismissal is without prejudice to amend the complaint by May 21, 2021. Mohandie will be afforded another opportunity to plead a justiciable case. But he should do so with this order in mind and in accordance with his requirements under Federal Rule of Civil Procedure 11. If

Mohandie declines to amend his complaint by that date, this dismissal will be with prejudice.

(ECF No. 103 at 10.)

3. Counsel has shared with plaintiff, by mail, the Court's order and has recommended a particular course of action. Contacting plaintiff is difficult because he is incarcerated and because of delays by the United States Postal Service. Counsel has not heard from plaintiff and therefore requests an additional 14 days (to June 4, 2021) to confer with plaintiff.

4. In addition, plaintiff respectfully requests that the Court modify its Order to state that dismissal would be without prejudice, as required by *MAO-MSO Recovery II, LLC v. State Farm Mut. Auto. Ins. Co.*, 935 F.3d 573, 581 (7th Cir. 2019):

The decision that plaintiffs lacked Article III standing is one of jurisdictional significance: it means that the court had no authority to resolve the case. *See, e.g., Spokeo, Inc. v. Robins*, — U.S. —, 136 S. Ct. 1540, 1547 (2016). And that is why the court erred by dismissing the case “with prejudice.” *See, e.g., T.W. and M.W. v. Brophy*, 124 F.3d 893, 898 (7th Cir. 1997) (“[W]hen a suit is dismissed for want of subject-matter jurisdiction, that is, because the court has no power to resolve the case on the merits even if the parties are content to have it do so, it is error to make the dismissal with prejudice”).

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiff