

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

KEVIN N. BASS,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.

Defendants.

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CIVIL ACTION NO. 5:25-cv-00244-H-BV

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR
LEAVE TO FILE A SECOND AMENDED COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Texas Tech University Health Sciences Center ("TTUHSC") and the Individual Defendants file this Response in Opposition to Plaintiff's Motion for Leave to File a Second Amended Complaint (Doc. 43) and respectfully show the Court as follows:

I. INTRODUCTION

Plaintiff again seeks leave to amend his pleadings after this Court has already denied a prior request for failure to comply with Rule 8 and after Defendants have identified dispositive legal defects in a pending Motion to Dismiss (Doc. 27). The present motion reframes the request as an effort to streamline the pleading, but the governing standard under Rule 15 requires more than stylistic revision. It requires a proposed amendment that meaningfully cures the deficiencies that render the existing claims subject to dismissal.

The proposed Second Amended Complaint does not meet that standard (Doc. 43-1). Plaintiff concedes that he is not asserting new legal theories and instead reorganizes the same claims already at issue. That concession is decisive. Where the underlying legal defects remain

unchanged, amendment serves no purpose other than prolonging the litigation and delaying resolution of threshold immunity defenses.

The procedural posture reinforces that conclusion. Plaintiff has already amended once as a matter of course, sought leave to amend again, and received a detailed ruling from this Court explaining why his prior proposed amendment failed to comply with Rule 8. The present motion follows immediately on the heels of that ruling and Defendants' Motion to Dismiss. This sequence reflects an attempt to revise the pleadings in response to identified defects rather than to cure them in a manner recognized by Rule 15.

Leave to amend is not warranted. The proposed amendment remains futile as a matter of law, does not overcome the jurisdictional and immunity barriers already raised, and would only delay resolution of issues that must be addressed at the outset. The motion should be denied.

II. LEGAL STANDARD

Rule 15(a)(2) provides that leave to amend should be freely given when justice so requires, but that directive does not create an entitlement to repeated amendment. The Supreme Court has long recognized that leave may be denied where there is undue delay, repeated failure to cure deficiencies, undue prejudice, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Fifth Circuit has emphasized that futility alone is sufficient to deny leave, particularly where the proposed amendment would not survive a motion to dismiss.

An amendment is futile when it fails to state a claim upon which relief can be granted or when it does not overcome threshold jurisdictional or immunity barriers. Courts also deny leave when a plaintiff seeks to revise a complaint in response to a motion to dismiss without addressing the underlying legal defects identified in that motion. That principle carries particular force where,

as here, the plaintiff has already had an opportunity to amend and has been advised by the Court of deficiencies in the pleadings.

III. ARGUMENT AND AUTHORITIES

A. Plaintiff's Motion Reflects Repeated Attempts to Reframe the Same Claims

The procedural history demonstrates a pattern of iterative pleading. Plaintiff filed an original complaint, amended once as a matter of course, and then sought leave to amend again. The Court denied that request after finding that the proposed amendment failed to comply with Rule 8's requirement of a short and plain statement. Plaintiff now returns with another proposed amendment, this time asserting that the revised pleading is shorter and more organized.

That framing does not alter the governing analysis. Rule 15 does not permit a litigant to test the sufficiency of his claims through successive revisions each time deficiencies are identified. Courts in this Circuit routinely deny leave under similar circumstances, particularly when the proposed amendment follows a motion to dismiss and does not address the substantive issues raised in that motion.

The present motion falls squarely within that line of authority. Plaintiff's effort to reorganize his allegations does not transform this into a new case. It remains an attempt to relitigate the same claims through a revised format, and Rule 15 does not require the Court to allow that process to continue. Allowing amendment under these circumstances would effectively permit Plaintiff to test the sufficiency of his claims through serial revisions in response to dispositive motions, a practice the Fifth Circuit has repeatedly rejected.

B. The Proposed Amendment is Futile

The central defect in Plaintiff's motion is that the proposed amendment makes no meaningful change to the legal foundation of his claims. Plaintiff expressly confirms that the

proposed amendment “does not add new legal theories” and that “[t]he claims asserted are the same statutory and constitutional theories already at issue,” instead characterizing the amendment as a reorganization and streamlining of existing claims. (Docs. 43 & 43-1). That admission confirms the amendment does not cure the deficiencies already identified by Defendants. Courts routinely deny leave under these circumstances, where a plaintiff acknowledges that no new legal theories are asserted and instead attempts to repackage the same claims in a revised format. *See Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003). That concession is dispositive. Courts do not grant leave where a proposed amendment merely reconfigures existing allegations without curing the underlying legal defects.

The pending Motion to Dismiss (Doc. 27) raises threshold issues that are not dependent on the length or organization of the complaint. TTUHSC’s status as an arm of the State of Texas implicates sovereign immunity, which bars claims for damages against the institution and against officials in their official capacities. That jurisdictional bar does not turn on factual detail and cannot be circumvented through repleading.

The individual-capacity claims face a similar obstacle. Qualified immunity protects state officials unless the plaintiff plausibly alleges the violation of a clearly established constitutional right. The proposed amendment continues to rely on the same underlying conduct involving academic and disciplinary decisions within a public medical school. Reframing those allegations does not plausibly establish that any Defendant violated clearly established law, and the proposed pleading still fails to satisfy the standard required to overcome qualified immunity.

The same reasoning applies to Plaintiff’s statutory and constitutional theories more broadly. Expanding or reorganizing the factual narrative does not supply the missing elements necessary to state a plausible claim. Courts in this Circuit routinely deny leave to amend under

these circumstances, particularly where the proposed amendment does not cure the deficiencies previously identified and would remain subject to dismissal. *See Rosenzweig v. Azurix Corp.*, 332 F.3d at 864 (affirming denial of leave to amend where proposed amendment failed to remedy defects); *Avatar Expl., Inc. v. Chevron, U.S.A., Inc.*, 933 F.2d 314, 321 (5th Cir. 1991) (same).

An amendment is futile when it would not survive a Rule 12(b)(6) motion, and courts are well within their discretion to deny leave on that basis. *See Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 566 (5th Cir. 2002). Here, Plaintiff's proposed Second Amended Complaint does not alter the governing legal analysis. It repackages the same claims, based on the same underlying conduct, and remains subject to the same dispositive defenses. Amendment is futile and does not justify leave under Rule 15.

The absence of substantive change is dispositive. An amendment that does not alter the governing legal analysis cannot justify leave under Rule 15.

C. Plaintiff's Reliance on Rule 8 Does Not Justify Amendment

Plaintiff attempts to anchor his motion in the Court's prior Rule 8 ruling, asserting that the only identified defect was excessive length and that the revised complaint cures that issue. This argument misapprehends the scope of the Court's discretion under Rule 15.

Rule 8 compliance is necessary, but it is not sufficient. A complaint that is concise yet legally deficient remains subject to dismissal. The Court's prior order addressed Rule 8 concerns, but it did not eliminate the independent legal barriers raised in Defendants' Motion to Dismiss (Doc. 27). Those barriers remain in place, and the proposed amendment does not overcome them.

A shorter complaint does not equate to a viable claim. The relevant question is whether the amendment changes the legal landscape of the case. It does not. The same claims, based on the same theories, remain subject to the same dispositive defenses.

D. Plaintiff's Attempt to Add a New Defendant is Independently Futile

Plaintiff's motion also seeks to add a new individual defendant, David Trotter, Ph.D. That request independently warrants denial of leave.

Plaintiff admits that Trotter was identified by name and role in an earlier pleading but was “inadvertently omitted” from the defendant list. (Doc. 43-1 ¶ 10). That is not the type of “mistake” that permits relation back under Rule 15(c)(1)(C). Where a plaintiff makes a deliberate choice not to sue a known party—rather than a mistake concerning that party's identity—relation back is not permitted. *See Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 548–49 (2010); *Jacobsen v. Osborne*, 133 F.3d 315, 320–21 (5th Cir. 1998). Plaintiff's conclusory allegation of “coordinated defense representation” does not satisfy Rule 15(c). Even where notice may be inferred through shared counsel, relation back still requires a qualifying “mistake” concerning identity, which Plaintiff has not alleged. *See id.*

The timing confirms the defect. The events giving rise to Plaintiff's claims occurred in late 2023, and the addition of Trotter falls outside the applicable limitations period unless relation back applies. Plaintiff's own allegations foreclose that possibility. He does not allege a misidentification or confusion about Trotter's identity; he alleges only an omission. That is insufficient as a matter of law.

The proposed claims against Trotter are also futile for the same reasons addressed above. Plaintiff does not allege any new facts specific to Trotter that would overcome qualified immunity or state a plausible constitutional violation. Instead, the proposed amendment simply incorporates Trotter into the same narrative already challenged in Defendants' Motion to Dismiss (Doc. 27). Adding a new defendant to legally deficient claims does not cure those deficiencies.

For these reasons, Plaintiff's attempt to add Trotter provides an independent and sufficient basis to deny leave.

E. Allowing Amendment Would Undermine Early Resolution of Immunity Defenses

The timing of Plaintiff's motion further supports denial. Defendants have raised sovereign immunity and qualified immunity, both of which are intended to shield defendants from the burdens of litigation at the earliest possible stage. Permitting another round of amendment would delay resolution of those defenses and expand the litigation without any corresponding benefit.

The Supreme Court has repeatedly emphasized that immunity defenses are not merely defenses to liability, but entitlements to avoid the burdens of litigation altogether and must be resolved "at the earliest possible stage of litigation." *Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009); *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009). Sovereign immunity operates with the same force, depriving courts of jurisdiction and requiring early resolution. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144–46 (1993). Allowing amendment in the face of pending immunity defenses would invert that framework and undermine the very protections those doctrines are designed to secure. The Fifth Circuit has consistently rejected efforts to expand or prolong litigation where immunity is raised, recognizing that the doctrine is designed to spare defendants from precisely that burden. *See Carswell v. Camp*, 54 F.4th 307, 311–12 (5th Cir. 2022). The Court may deny leave where amendment would interfere with resolution of threshold issues.

The Fifth Circuit has further made clear that leave to amend may be denied where a plaintiff has already had an opportunity to amend and still fails to cure deficiencies, or where amendment would serve no purpose other than prolonging the litigation. *See Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 139 (5th Cir. 1993); *Rosenzweig*, 332 F.3d at 864.

The proposed amendment would do just that. It would prolong the case, require additional briefing, and postpone a ruling on dispositive defenses that are already fully presented. Rule 15 does not require that result.

In sum, Plaintiff's motion seeks another round of pleading in a case where the dispositive issues are legal, not factual. The proposed amendment does not change the nature of Plaintiff's claims, does not cure the jurisdictional and immunity barriers identified in Defendants' Motion to Dismiss, and does not introduce any theory that would alter the Court's Rule 12(b)(6) analysis. Amendment would not advance the case. It would only delay resolution of threshold issues that must be decided as a matter of law. Rule 15 does not require that result, and controlling Fifth Circuit precedent confirms that leave should be denied where amendment would be futile and would not survive dismissal.

IV. CONCLUSION AND PRAYER

Plaintiff's motion reflects a continued effort to reframe the same claims after those claims have been challenged on dispositive legal grounds and found wanting as a matter of law, including Plaintiff's improper attempt to add a new defendant outside the limitations period. The proposed Second Amended Complaint (Doc. 43-1) does not introduce new legal theories, does not cure the deficiencies identified in Defendants' Motion to Dismiss (Doc. 27), and does not overcome the jurisdictional and immunity barriers that govern this case. Amendment under these circumstances would be futile and would serve only to delay resolution of issues that must be decided at the threshold.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court deny Plaintiff's Motion for Leave to File a Second Amended Complaint and grant Defendants all other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on April 21, 2026, via the Court's ECF system to:

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