

**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.**

§
§
§
§
§
§

Civil Action No. 5:25-cv-00244-H-BV

**PLAINTIFF'S BRIEF IN SUPPORT OF RENEWED MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Use of Generative Artificial Intelligence (N.D. Tex. LR 7.2(f)). Plaintiff used generative artificial intelligence as a research and drafting aid in preparing this brief. Plaintiff has reviewed the content and accepts full responsibility for it.

Pursuant to N.D. Tex. Local Rule 7.1(d), Plaintiff Kevin N. Bass submits this brief in support of his renewed motion for leave to file the proposed Second Amended Complaint attached to the motion as Exhibit 1 — the same document attached as Exhibit A to Plaintiff's contemporaneously filed Objections to the Findings, Conclusions, and Recommendation of July 14, 2026 (Dkt. No. 54) ("FCR"). This motion is filed subject to, and without waiver of, those Objections.

I. BACKGROUND: THE TWO ORDERS

1. The docket records the following sequence:

(a) Dkt. Nos. 26, 32-1 (proposed amended complaint): Plaintiff first moved for leave to amend on January 20, 2026 — one day **before** Defendants filed their motion to dismiss, Dkt. No. 27 (Jan. 21, 2026). On February 15, 2026, twenty-five days after that motion and **the same day** he

filed his response to it, Dkt. No. 33, Plaintiff amended his motion for leave to attach a pleading of 215 paragraphs addressing the deficiencies Defendants had identified — pleading, among other facts, the verbatim post text, the specific accommodations requested, the limitations communicated to TTUHSC, and the institution's months of documented internal recognition. Dkt. No. 32-1 ¶¶ 38-39, 49, 86.

(b) Dkt. No. 42 (March 27, 2026): this Court denied leave to file that pleading solely under Rule 8, faulting precisely its factual detail — "[i]t quotes extensively from documents . . . and includes minute details about incidents forming the bases of his claims" — and instructing that "Bass need not present evidence" at the pleading stage. Dkt. No. 42 at 5-6. The order did not reach Defendants' futility arguments. *Id.* at 5.

(c) Dkt. Nos. 43, 43-1 (March 31, 2026): four days later, Plaintiff moved for leave to file a shortened complaint drafted "to comply with Rule 8," stating — without contradiction from Defendants or the Court at the time — that "[t]he sole basis for this Court's prior denial was Rule 8 noncompliance — not substantive futility." Dkt. No. 43 at 2-3.

(d) Dkt. No. 54 (July 14, 2026): the FCR recommends denying leave because the shortened complaint lacks specific factual detail — and concludes Plaintiff "has pleaded his best case," FCR at 45, and "has not shown that he can plead sufficient facts to overcome the deficiencies," FCR at 55.

2. The two orders, taken together, describe a closed loop: the detailed pleading was denied for its detail, and the compliant pleading is now found futile for lacking detail. If adopted, the result would be that neither pleading Plaintiff actually tendered — detailed or concise — was permissible, and the case would end without any court having passed on a pleading that is both concise and complete.

II. LEGAL STANDARD

3. Leave to amend is to be "freely give[n] . . . when justice so requires," Fed. R. Civ. P. 15(a)(2), and denied only for "a substantial reason." Dkt. No. 42 at 3 (quoting *Clark v. Dep't of Pub. Safety & Corr.*, 141 F.4th 653, 661 (5th Cir. 2025)). An amendment is futile only "if it would fail to survive a Rule 12(b)(6) motion," under which all well-pleaded facts are accepted as true and viewed in the light most favorable to the plaintiff. *Marucci Sports, L.L.C. v. NCAA*, 751 F.3d 368, 378 (5th Cir. 2014). The Fifth Circuit's remedy for a complaint that violates Rule 8 by prolixity is an opportunity to replead in conforming form — not the end of the case. *Gordon v. Green*, 602 F.2d 743, 746-47 (5th Cir. 1979) (cited at Dkt. No. 42 at 4). And a pro se plaintiff should ordinarily be given an opportunity to amend once deficiencies have been identified by the court, unless the defects are incurable. *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009); *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 329 (5th Cir. 2002).

III. ARGUMENT

A. The "ample opportunity" premise is refuted by the docket.

4. The FCR concludes: "Bass has had ample opportunity to plead his best case. He amended his complaint once. And despite being put on notice of deficiencies in his first amended complaint via Defendants' motion to dismiss, Bass's proposed second amended complaint does not cure those deficiencies." FCR at 55. Both supporting propositions fail. As to the first: the one amendment was filed as of right under Rule 15(a)(1), before service and before any deficiency had been identified by any party or by the Court. Dkt. No. 42 at 1-2. An amendment taken as of right is not an opportunity to cure — it is the entitlement the rule confers on every plaintiff. The opportunity *Great Plains* contemplates is one afforded *after* deficiencies are identified, 313 F.3d at 329, and Plaintiff has never received one: the first amended complaint predated any identified deficiency, and the Dkt. No. 42 denial addressed the pleading's form, not the

sufficiency of any claim. As to the second: Plaintiff moved for leave to amend on January 20, 2026 — before the motion to dismiss existed. Dkt. No. 26. Once it was filed, he responded to the notice it gave: on February 15, 2026, the same day he answered the motion, he amended his motion for leave to attach the 215-paragraph pleading supplying the facts the FCR now identifies as missing. Dkt. Nos. 32, 32-1, 33. This Court denied leave on March 27, 2026 — not because the pleading failed to cure, but because it contained "minute details about incidents forming the bases of his claims." Dkt. No. 42 at 5-6. Plaintiff filed a conforming pleading four days later. Dkt. Nos. 43, 43-1. The premise is therefore inverted: notice was given, the cure was tendered within the month, and the cure was denied for being one. The only pleading that "does not cure those deficiencies" is the pleading Plaintiff drafted to comply with the order rejecting the pleading that did. The FCR itself concedes the trajectory: the conforming pleading "recites the facts in chronological order and contains detail that his operative pleading omitted, making it easier to understand." FCR at 46. A pleading history the FCR describes as improving is not one that has exhausted its best case.

B. The same recommendation closes the evidentiary record as well as the pleading.

5. The FCR declined to consider any material either party submitted, FCR at 8-10, including the General Counsel's statement that the removal was "prompted by the Social Media post," Ex. A ¶ 32, which it excluded solely because it lay outside the pleadings, FCR at 44 n.6 — and then found the causation allegations conclusory, FCR at 44-45. Exclusion was within the Court's discretion. But its consequence, combined with a recommendation of dismissal with prejudice and denial of further amendment, is that the documented facts can be neither pleaded nor proved: not pleaded, because the pleading that contained them was denied under Rule 8 and the one that omitted them is now called futile; not proved, because the record was closed and no further pleading will be permitted. Rule 15(a)(2) does not contemplate that outcome.

C. Every fact the FCR identified as missing exists in the record at Dkt. No. 32-1.

6. The FCR's conclusion that Plaintiff "has not shown that he can plead sufficient facts," FCR at 55, is refuted by the docket. The table below maps each deficiency the FCR identified to the paragraph of Dkt. No. 32-1 — filed three and a half months before the FCR — where the fact is pleaded, and to the paragraph of Exhibit 1 where it now appears in Rule 8-conforming form:

FCR deficiency (page)	Dkt. No. 32-1	Exhibit 1
Post's "specific language" not included; court "cannot evaluate it" (43, 54)	¶ 86 (verbatim text)	¶¶ 1, 31
"[D]oes not specify what accommodations he allegedly requested" (47)	¶¶ 38, 49	¶ 36
No facts on the timing bind / TTUHSC's control of the schedule (17, 49)	¶ 46 (OP 77.14 process requires up to two weeks; TTUHSC controlled the date and chose not to postpone)	¶ 37
No facts notifying TTUHSC "of his disability's limitations" (16-17)	¶ 38	¶¶ 23, 36, 69
No facts that disabilities "substantially limit . . . major life activities" (50)	¶ 38 (functional limitations; the statutory "major life activities" phrasing is supplied by Exhibit 1 ¶¶ 23, 67)	¶¶ 23, 67
No facts showing intentional discrimination (19-21, 50)	¶¶ 48-49 (redaction; mid-hearing break; selective grant)	¶ 72
Content of "other posts" and grievances unpleaded (43, 54)	¶¶ 92-93, 133	¶¶ 22, 56, 89
Causation allegations "conclusory"; retaliatory animus not the but-for cause (43-45)	¶ 133 (Institutional Speech Monitoring and Dossier Construction, 2020-2023)	¶¶ 26-29, 91
No facts connecting the accommodation request to any adverse action; "gating" allegation "vague" (27-28)	¶¶ 44, 200-201 (eight-item causation chain: the December 8 notice to the Board Chair and SDS; exclusion of disability evidence and denial of the expert witness the same morning Dr. Erwin was added	¶¶ 69, 96

	as a witness; rejection of the request as "retroactive leniency")	
Time-limit and bias allegations "conclusory" (35, 37)	¶ 51 (80 minutes vs. 30-minute limit)	¶ 44
"[D]oes not explain when or how TTUHSC became aware" of the ADHD diagnosis (47)	¶ 42 (the Board's own determination letter refers to a "pre-existing ADHD diagnosis")	¶ 25
No allegation that the coach's conduct "dissuaded him from filing complaints" (51)	¶ 39 (at 14-15) (coaching ended in writing; warning at the hearing that suit "makes it much more difficult for you for many reasons")	¶ 30
"[D]oes not specify who made that post or on what platform" (5)	¶ 123 (an external individual, on Discord, within five days of the non-public determination, in language mirroring internal TTUHSC terminology)	—
No ongoing ADA violation alleged; injunctive relief "relates to past wrongs" (24-25, 50)	¶¶ 8-9, 153-56; Prayer ¶ A (declaratory relief limited "to the extent they continue or are likely to recur")	¶¶ 6, 63, 86; Prayer (a)

7. Whatever else may be said of these facts, "Plaintiff cannot plead them" is not among the available conclusions. They were pleaded. The Court denied leave because of that detail. Dkt. No. 42 at 5-6. In addition, public records obtained since the proposed amendment was filed — the Attorney General's production of the hearing officer's outside-counsel contract records (Public Information Request Nos. R031345 and R031347, final release May 22, 2026) — supply further concrete facts bearing on the due-process and bias allegations, confirming that "Bass has pleaded his best case" is not an available conclusion either. See Brief in Support of Objections, Objection 4.

D. Exhibit 1 cures within Rule 8.

8. Exhibit 1 is a proposed Second Amended Complaint of twenty-five pages — the Dkt. No. 43-1 pleading with the specific facts identified in the FCR restored in summary form, without the document quotations and exhibit volume that Dkt. No. 42 found objectionable. It demonstrates that the two orders can be satisfied simultaneously. Exhibit 1 responds to deficiencies articulated with specificity for the first time in the FCR; Plaintiff could not have tailored a pleading to those articulations any earlier. Exhibit 1 also eliminates the retrospective declaratory request the FCR identifies, FCR at 21, 50: its prayer seeks declaratory relief only as to ongoing conduct — the continuing publication of stigmatizing exclusion characterizations and the continuing refusal of a name-clearing hearing. Ex. 1, Prayer (a). That limitation is not new; it restores the express framing of the Dkt. No. 32-1 prayer, which sought a declaration only "to the extent [the challenged practices] continue or are likely to recur," Dkt. No. 32-1, Prayer ¶ A — language lost in the compression to the conforming pleading whose absence the FCR now counts against amendment. Exhibit 1 likewise abandons the injunctive requests the FCR found retrospective or impermissibly general, FCR at 22-25 — the expungement and corrected-transcript items, the contingent new-hearing request, and the comply-with-law formulations — seeking only the name-clearing process, limits on new communications, and a corrective clarification to identified recipients. Ex. 1, Prayer (d). The reasons the amendment is not futile — including that it states at minimum a Rehabilitation Act claim against TTUHSC, as to which no immunity defense applies, see FCR at 11 n.3 — are set forth in Objections 2 through 7 of the Brief in Support of Plaintiff's Objections, which Plaintiff incorporates by reference.

E. The Trotter addition relates back, and the FCR never analyzed it.

9. The proposed amendment names David Trotter as a defendant. The FCR acknowledges the request, FCR at 46, but never analyzes it. The relation-back inquiry under Fed. R. Civ. P. 15(c)(1)(C) turns on what Trotter knew or should have known within the Rule 4(m) period, not

on Plaintiff's knowledge of his existence or diligence in naming him. *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 548-49 (2010). Defendants have already briefed the addition, Dkt. No. 48, and the relation-back facts are pleaded at Exhibit 1 ¶ 10.

F. No substantial reason supports denial.

10. No scheduling order has issued, no discovery has begun, and no trial setting exists. Defendants face no cognizable prejudice: apart from the Trotter addition and the restatement of the Gibson due-process allegations as a separate count resting on "the same conduct" already litigated, FCR at 55, the pleading narrows, rather than expands, the claims already presented in Defendants' motion to dismiss. There is no undue delay: the FCR issued July 14, 2026, and this motion follows within the objection period. There is no repeated failure to cure deficiencies by amendments previously allowed — no amendment responding to a court-identified deficiency has ever been allowed. And futility, the only ground the FCR reached, is addressed above and in the Objections briefing.

11. The district judge may act on this motion directly in resolving the Objections, may receive the attached pleading as further evidence under 28 U.S.C. § 636(b)(1), or may recommit the matter to the Magistrate Judge with instructions. *Freeman v. County of Bexar*, 142 F.3d 848, 852-53 (5th Cir. 1998).

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court grant leave to file the Second Amended Complaint attached to the motion as Exhibit 1, or in the alternative recommit the question of amendment to the Magistrate Judge with instructions to consider the attached pleading, and grant such other relief as is just.

Dated: July 28, 2026.

Respectfully submitted,

/s/ Kevin N. Bass

Kevin N. Bass

3815 130th Street, Apt. 511

Lubbock, TX 79423

Telephone: 512-333-4092

Email: kbassphiladelphia@gmail.com

CERTIFICATE OF SERVICE

I certify that on July 28, 2026, I served this brief on counsel for Defendants of record via the Court's ECF system.

/s/ Kevin N. Bass