

**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 RENEWED 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 Renewed Motion for Leave to File a Second Amended Complaint (Doc. 57) and respectfully show the Court as follows:

I. INTRODUCTION

Plaintiff’s Renewed Motion for Leave does not present a materially different proposed pleading, newly discovered facts, or an intervening change in the law. Instead, Plaintiff asks the Court to revisit issues already addressed by the United States Magistrate Judge after extensive briefing on Defendants’ Motion to Dismiss, Plaintiff’s prior Motion for Leave, Defendants’ Response, and Plaintiff’s proposed Second Amended Complaint.

After considering Defendants’ Motion to Dismiss, Plaintiff’s proposed Second Amended Complaint, and the parties’ briefing, the Magistrate Judge recommended dismissal of Plaintiff’s claims and further recommended denying leave to amend because amendment would be futile. (Doc. 54 at 1–2, 56–57). Plaintiff’s renewed motion simply repackages the same request by

asserting that additional factual allegations now cure the deficiencies identified in the Findings, Conclusions, and Recommendation. They do not.

Plaintiff's motion rests on the mistaken premise that the Magistrate Judge recommended denial because the proposed pleading lacked factual detail—the so-called “closed loop” in which, on Plaintiff's telling, a detailed pleading was rejected for its detail while a concise pleading is now faulted for lacking it. The Findings concluded otherwise. The proposed amendment was found futile because, even accepting every one of Plaintiff's factual allegations as true, the proposed complaint still failed to overcome the jurisdictional, immunity, standing, and clearly-established-law deficiencies governing Plaintiff's claims. (Doc. 54 at 56–57). Those are legal defects, not gaps in a factual narrative, and no quantum of additional or restored detail can cure them. Reorganizing allegations or adding factual detail does not alter those legal conclusions. Tellingly, even the single claim as to which no immunity defense applies—Plaintiff's Rehabilitation Act claim against TTUHSC (see Doc. 54 at 11 n.3)—fails on the independent, merits-based grounds the Findings identified. Plaintiff's reliance on that lone surviving avenue therefore leads nowhere.

Nor does Plaintiff identify any legitimate basis for granting leave at this stage. Plaintiff has repeatedly amended or sought leave to amend his pleadings, Defendants have fully briefed both the merits of Plaintiff's claims and the futility of amendment, and the Magistrate Judge has now concluded that Plaintiff has “pleaded his best case” and nevertheless failed to state viable claims. (Doc. 54 at 56). Rule 15 does not require endless opportunities to repackaging the same claims in successive pleadings.

Accordingly, because Plaintiff's renewed motion presents no basis to disturb the Magistrate Judge's recommendation that amendment would be futile, the motion should be denied.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Defendants do not dispute that this standard reflects “a bias in favor of granting leave to amend,” and that leave should not be denied absent a “substantial reason.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872 (5th Cir. 2000). But that “generous standard is tempered by the necessary power of a district court to manage a case,” *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 566 (5th Cir. 2003), and “[l]eave to amend is in no way automatic,” *Marucci Sports, L.L.C. v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014). The decision whether to grant leave remains within the Court’s sound discretion, *Foman v. Davis*, 371 U.S. 178, 182 (1962), and the Court may deny leave based on “undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, . . . and futility of the amendment.” *Schiller*, 342 F.3d at 566; *accord Marucci*, 751 F.3d at 378; *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003).

Futility is the ground on which the Magistrate Judge relied here, and it is dispositive. “An amendment is futile if it would fail to survive a Rule 12(b)(6) motion.” *Marucci*, 751 F.3d at 378. A court therefore evaluates a proposed amended complaint under “the same standard of legal sufficiency as applies under Rule 12(b)(6).” *Stripling*, 234 F.3d at 873. Where a proposed amended complaint does not cure the legal deficiencies identified by the Court or remains subject to dismissal as a matter of law, denial of leave is not an abuse of discretion. *Marucci*, 751 F.3d at 378; *see also Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 566 (5th Cir. 2002). Equally important, the liberal amendment policy has limits. “[A]t some point a court must decide that a plaintiff has had fair opportunity to make his case; if, after that time, a cause of action has

not been established, the court should finally dismiss the suit.” *Jacquez v. Procunier*, 801 F.2d 789, 792 (5th Cir. 1986). A plaintiff may not “continue to amend or supplement [his] pleadings until [he] stumble[s] upon a formula that carries [him] over the threshold.” *Id.* That principle applies with full force to a *pro se* litigant: leave “is not required . . . if the plaintiff has already pleaded his ‘best case,’” particularly where he “does not state what facts he would include in an amended complaint.” *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009).

Here, the Magistrate Judge has already evaluated Plaintiff’s proposed Second Amended Complaint in conjunction with Defendants’ Motion to Dismiss and expressly concluded amendment would be futile. (Doc. 54 at 1–2, 56–57). Plaintiff’s renewed motion provides no basis to depart from that conclusion.

III. ARGUMENT AND AUTHORITIES

A. Plaintiff’s Renewed Motion Merely Reasserts Arguments Already Considered and Rejected in the Findings, Conclusions, and Recommendation.

Plaintiff’s Renewed Motion presents no materially new basis for granting leave to amend. Instead, it largely repeats the same arguments advanced in Plaintiff’s prior Motion for Leave (Doc. 43), Defendants’ Response (Doc. 48), his briefing in opposition to Defendants’ Motion to Dismiss, and now his Objections to the Magistrate Judge’s Findings, Conclusions, and Recommendation (Doc. 56). The renewed motion simply repackages those arguments in an effort to obtain a different result.

The central premise of Plaintiff’s motion is that the proposed Second Amended Complaint now cures the deficiencies identified by the Magistrate Judge because it restores factual allegations omitted from Plaintiff’s earlier proposed pleading. But the Magistrate Judge did not recommend denial of leave merely because Plaintiff omitted additional factual detail. Rather, after considering Plaintiff’s proposed Second Amended Complaint in conjunction with Defendants’ Motion to

Dismiss and Defendants’ Response in Opposition to Plaintiff’s Motion for Leave (Docs. 27, 48)—as the Court expressly recognized in its July 14, 2026, Order (Doc. 55)—the Magistrate Judge concluded that amendment would be futile because the proposed pleading still failed to overcome the legal deficiencies governing Plaintiff’s claims.

Plaintiff’s renewed motion attempts to recharacterize the Findings as identifying only “missing facts” that can be supplied through further amendment. That characterization misstates the Recommendation. The Findings addressed numerous threshold legal barriers—including sovereign immunity, qualified immunity, standing, the requirements of *Ex parte Young*, and the pleading standards applicable to Plaintiff’s constitutional and statutory claims—and concluded that Plaintiff had not alleged facts sufficient to state viable claims notwithstanding his proposed amendments. Doc. 54. Simply adding additional factual allegations or reorganizing existing ones does not alter those legal conclusions.

Nor does Plaintiff’s chart purporting to map additional allegations to portions of the Findings change the analysis. At most, the chart identifies where Plaintiff has supplemented or expanded factual allegations. It does not demonstrate that those additional allegations cure the legal deficiencies identified by the Magistrate Judge or otherwise transform claims that remain subject to dismissal into plausible claims for relief. The issue before the Court is not whether Plaintiff has added more factual detail; it is whether the proposed amendment remedies the defects rendering amendment futile. The Magistrate Judge correctly concluded that it does not.

Accordingly, Plaintiff’s renewed motion provides no persuasive reason for the Court to revisit the Magistrate Judge’s futility determination or permit yet another amended pleading.

B. Plaintiff's Additional Allegations Do Not Alter the Futility Analysis.

Plaintiff's renewed motion is premised on the notion that the proposed Second Amended Complaint cures the deficiencies identified in the Findings by restoring factual allegations that appeared in earlier proposed pleadings. That premise misunderstands the basis for the Magistrate Judge's recommendation.

The Findings do not conclude that Plaintiff's claims fail because they lack factual detail. Rather, accepting Plaintiff's factual allegations as true, the Magistrate Judge analyzed each category of claims under the governing legal standards and concluded that the proposed Second Amended Complaint nevertheless failed to state viable claims for relief. Thus, the deficiency identified in the Findings was not the absence of factual detail, but Plaintiff's inability to allege facts sufficient to satisfy the governing legal standards. The Recommendation addresses, among other things, sovereign immunity, qualified immunity, standing, the requirements for prospective relief under *Ex parte Young*, the pleading standards applicable to Plaintiff's First Amendment, procedural due process, Rehabilitation Act, ADA, and retaliation claims, and the insufficiency of Plaintiff's allegations as to each. Simply expanding the factual narrative does not alter those legal conclusions.

Indeed, much of Plaintiff's renewed motion simply identifies additional allegations that were available to him long before the Findings issued. Plaintiff's accompanying chart cites paragraphs from prior proposed pleadings and attempts to demonstrate that specific facts have now been restored to the proposed Second Amended Complaint. But the relevant question is not whether Plaintiff can identify additional facts or further elaborate upon his allegations. The question is whether those allegations cure the legal deficiencies rendering amendment futile. The Magistrate Judge concluded that they do not.

Nor does Plaintiff's renewed pleading materially alter the legal theories asserted in this case. Plaintiff acknowledges that the proposed complaint continues to assert the same statutory and constitutional claims arising from the same underlying events. Although Plaintiff has revised, expanded, and reorganized portions of the factual allegations, those revisions do not overcome the jurisdictional barriers, immunity doctrines, or pleading deficiencies identified in the Findings. Rule 15 does not require leave to amend where additional factual allegations leave the governing legal analysis unchanged.

Ultimately, Plaintiff's motion invites the Court to revisit the merits of the Magistrate Judge's analysis by presenting a revised version of the same claims. That is not the purpose of Rule 15. As the Magistrate Judge concluded, Plaintiff "has pleaded his best case," yet still "has not shown that he can plead sufficient facts to overcome the deficiencies" identified in the Recommendation. Doc. 54 at 56. Plaintiff's renewed motion does not change that conclusion. Accordingly, Plaintiff's additional allegations do not remedy the legal defects identified in the Findings, and further amendment would serve only to prolong the litigation without changing the outcome.

C. Plaintiff Has Already Been Afforded Ample Opportunity to Present His Claims, and Further Amendment Would Be Futile.

Plaintiff argues that he has never been afforded a meaningful opportunity to plead his "best case" because his First Amended Complaint was filed as a matter of course and his subsequent proposed amendments were never accepted for filing. Relatedly, Plaintiff contends the prior rulings created a "closed loop" or impossible pleading standard—his detailed pleading rejected under Rule 8 for its detail, and his concise pleading now found futile for lacking detail. Both arguments overlook the procedural posture of this case and misread the Findings.

The relevant inquiry is not whether a particular proposed pleading became the operative complaint. Rather, the question is whether Plaintiff has been afforded a fair opportunity to present his proposed amendments for the Court's consideration in determining whether further leave should be granted. He has. Indeed, the Court expressly recognized that Plaintiff's later-filed Motion for Leave was evaluated in connection with Defendants' Motion to Dismiss when it denied Plaintiff's earlier Motion for Leave as moot. Doc. 55.

Plaintiff's "closed loop" theory fails on its own terms. The order denying leave to file the detailed pleading did so without prejudice and instructed Plaintiff to replead in conforming form—it was an invitation to cure, not a bar. Plaintiff accepted that invitation and filed a shortened pleading, which the Magistrate Judge then evaluated on the merits. That is the ordinary sequence Rule 15 contemplates, not a trap. More fundamentally, the premise that the concise pleading was found futile "for lacking detail" misreads the Findings. As shown in Part III.B above, the Magistrate Judge did not fault the pleading for brevity; the Magistrate Judge held that the claims fail as a matter of law—for want of sole causation, an interactive-process obligation, standing, a false statement, clearly established law, and but-for causation. A pleading can be both concise and legally sufficient; Plaintiff's cannot be sufficient at any length, because the defects are legal rather than a matter of degree of detail. There is thus no "closed loop"—only claims that no volume of allegations can save.

Nor was Plaintiff deprived of notice or an opportunity to cure. From the moment Defendants moved to dismiss, Plaintiff was on notice of every deficiency now at issue, and the Fifth Circuit has squarely held that such notice supplies the opportunity to cure: pleading deficiencies "certainly [a]re brought to counsel's attention by the defendant's motion to dismiss," and a plaintiff who responds by standing on and repleading his allegations must be assumed to

have “pleaded his best case.” *Jacquez v. Procunier*, 801 F.2d 789, 792–93 (5th Cir. 1986). Plaintiff did exactly that—he responded to the motion, then amended twice in an effort “to cross the required threshold.” *Id.* at 792. Having done so, he cannot now claim he was denied a fair chance to make his case. *See Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 566–67 (5th Cir. 2003) (affirming denial where plaintiff had a “fair opportunity to present its case, but failed to do so”).

Over the course of this litigation, Plaintiff has filed multiple proposed amended complaints, Defendants have fully responded to Plaintiff’s proposed amendments and explained why amendment would be futile, and the Magistrate Judge thoroughly evaluated Plaintiff’s proposed Second Amended Complaint in conjunction with Defendants’ Motion to Dismiss. After carefully analyzing Plaintiff’s proposed pleading under the applicable legal standards, the Magistrate Judge concluded that Plaintiff had “pleaded his best case” and that further amendment would be futile. Doc. 54 at 56. Plaintiff’s Renewed Motion identifies no intervening change in the law, no newly discovered facts that were previously unavailable, and no materially different allegations that would alter the Magistrate Judge’s analysis. Nor has Plaintiff identified any factual allegations unavailable when he filed either his prior Motion for Leave or his proposed Second Amended Complaint.

Instead, Plaintiff seeks yet another opportunity to revise allegations that have been available throughout this litigation. By his own account, every fact he now says cures the Findings was pleaded in his earlier proposed pleading months before the Findings issued—confirming there are no “newly discovered facts” and that further amendment would merely repackage what Plaintiff has always had. Rule 15’s liberal amendment policy does not require successive opportunities to refine or supplement factual allegations after the Court has determined that the proposed amended complaint remains legally insufficient. A plaintiff may not “continue to amend

or supplement [his] pleadings until [he] stumble[s] upon a formula that carries [him] over the threshold.” *Jacquez*, 801 F.2d at 792. And a proposed pleading that “simply provides more specific details” or is a “re-write” of a prior one—without curing the governing legal defect—is “an exercise in futility.” *Schiller*, 342 F.3d at 569; *Marucci Sports, L.L.C. v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378–79 (5th Cir. 2014). That principle governs here even though Plaintiff proceeds *pro se*: leave “is not required . . . if the plaintiff has already pleaded his ‘best case,’” and the Magistrate Judge expressly found that Plaintiff has. *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009).

The procedural history of this case demonstrates that Plaintiff has had multiple opportunities to present his claims, and the Magistrate Judge has already concluded that the proposed Second Amended Complaint fails to cure the deficiencies identified in Defendants’ Motion to Dismiss. Plaintiff’s Renewed Motion offers no persuasive basis for departing from that conclusion. Accordingly, the Court should deny Plaintiff’s Renewed Motion for Leave to File a Second Amended Complaint.

D. Plaintiff’s Renewed Attempt to Add Dr. Trotter Remains Futile.

Plaintiff again seeks leave to add David Trotter, Ph.D., as a defendant, asserting that the proposed claims relate back under Federal Rule of Civil Procedure 15(c)(1)(C). Plaintiff’s renewed motion offers no materially new factual allegations or legal authority warranting a different result. Nor does it identify any error in the Court’s prior consideration of Plaintiff’s proposed Second Amended Complaint.

Plaintiff invokes *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010), for the proposition that relation back turns on what Dr. Trotter knew or should have known during the Rule 4(m) period, not on Plaintiff’s own diligence. *Krupski* does not aid him. The Supreme Court held that a

“deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the proper party’s identity.” *Id.* at 549. Where “the original complaint and the plaintiff’s conduct compel the conclusion that the failure to name the prospective defendant . . . was the result of a fully informed decision as opposed to a mistake,” Rule 15(c)(1)(C)(ii) “[is] not met.” *Id.* By his own allegations, Plaintiff was aware of Dr. Trotter’s identity and his role in the underlying events when this action was filed, yet deliberately chose not to name him as a defendant. Nothing in the Renewed Motion suggests that Plaintiff misunderstood Dr. Trotter’s role or mistakenly sued another party in his place. Rather, Plaintiff’s allegations demonstrate a deliberate litigation choice—not a “mistake concerning the proper party’s identity” within the meaning of Rule 15(c)(1)(C).

The Fifth Circuit has continued to enforce that mistake requirement after *Krupski*. Rule 15(c) “does not allow an amended complaint adding new defendants to relate back if the newly-added defendants were not named originally because the plaintiff did not know their identities,” and “failing to identify individual defendants cannot be characterized as a mistake.” *Winzer v. Kaufman Cnty.*, 916 F.3d 464, 470 (5th Cir. 2019 (quoting *Jacobsen v. Osborne*, 133 F.3d 315, 321 (5th Cir. 1998)). A fortiori, a plaintiff who knew a defendant’s identity and role and consciously declined to sue him has made “a conscious choice to sue one party and not another,” which “does not constitute a mistake and is not a basis for relation back.” *Sanders-Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir. 2010). This defect is independent of Plaintiff’s diligence, so *Krupski*’s rejection of a diligence requirement is beside the point.

The point is not academic. Section 1983 claims in Texas borrow the State’s two-year personal-injury limitations period. *Winzer*, 916 F.3d at 469. The conduct Plaintiff attributes to Dr.

Trotter occurred in late 2023 and early 2024. Accordingly, any claim first asserted against him now is untimely unless it relates back under Rule 15(c)—and it does not. An untimely amendment adding a defendant “is futile unless, under Rule 15(c), it relates back to the date of the original filing.” *Jacobsen*, 133 F.3d at 320. A court in this District recently applied exactly this reasoning to deny a *pro se* Section 1983 plaintiff leave to add a new individual defendant where the plaintiff “only recently learned of [the defendant’s] identity, [and did] not [allege] that he was mistaken as to her identity”; because relation back did not apply, amendment “would be futile.” *Mornes v. Valdez*, 414 F. Supp. 3d 888, 892 (N.D. Tex. 2019).

Moreover, and independent of relation back, adding Dr. Trotter does not cure the legal deficiencies identified in the Findings. The proposed claims against Dr. Trotter arise from the same underlying allegations—the conduct of the disciplinary process—that the Magistrate Judge concluded fail to state viable federal claims and are barred by qualified immunity. (Doc. 54 at 52–53). Adding another defendant to allegations that already fail as a matter of law would not alter the futility analysis. *See Winzer*, 916 F.3d at 471 (denial of leave to add defendants proper where the claims would be futile).

For these reasons, and for the reasons previously set forth in Defendants’ Response in Opposition to Plaintiff’s prior Motion for Leave, Plaintiff’s renewed request to add Dr. Trotter should likewise be denied.

IV. CONCLUSION AND PRAYER

Plaintiff’s Renewed Motion identifies no intervening change in the law, no newly discovered facts, and no materially different proposed pleading that would justify revisiting the Magistrate Judge’s determination that amendment would be futile. Instead, Plaintiff largely

repackages arguments and allegations previously presented to the Court and considered in the Findings, Conclusions, and Recommendation.

The Magistrate Judge thoroughly evaluated Plaintiff's proposed Second Amended Complaint together with Defendants' Motion to Dismiss and expressly recommended denying leave because amendment would be futile. (Doc. 54 at 56–57). Plaintiff's renewed effort to supplement or reorganize his allegations does not alter that analysis. Having already considered Plaintiff's proposed Second Amended Complaint and concluded that amendment would be futile, the Court should decline to revisit that determination through Plaintiff's renewed motion raising substantially the same issues. Rule 15 does not require the Court to permit successive amendments where the proposed pleading remains legally insufficient. The Court has likewise already denied Plaintiff's earlier Motion for Leave as moot after concluding that the later-filed motion had been fully considered in connection with the Motion to Dismiss. *See* Doc. 55.

WHEREFORE, PREMISES CONSIDERED, Defendants Texas Tech University Health Sciences Center and the Individual Defendants respectfully request that the Court deny Plaintiff's Renewed Motion for Leave to File Second Amended Complaint in its entirety and grant Defendants such other and further relief, at law or in equity, to which they may be justly 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 August 5, 2026, via the Court's ECF system to:

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