

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-CMA

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS (In their (sic) Individual Capacity only),

Defendants.

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**DEFENDANT JASON SHUTTERS' RESPONSE IN OPPOSITION TO PLAINTIFF'S  
MOTION TO AMEND COMPLAINT (ECF No. 50)**

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Defendant Jason Shutters, through his Attorneys Hall & Evans, LLC, submits the following as his Response in Opposition to Plaintiff's Motion to Amend Complaint (ECF No. 5):

**I. INTRODUCTION**

Plaintiff, who is currently incarcerated, seeks leave to amend his Complaint for the second time, purportedly to address certain deficiencies created by multiple jail facility transfers (ECF No. 50 at 1, ¶ 1), "undue duress" (ECF No. 50 at 2, ¶ 3) and "extraordinary circumstances" (ECF No. 50 at 2, ¶ 6). Plaintiff's request should be denied for two reasons. First, Plaintiff does not identify in anything other than a conclusory fashion, any notion of how "undue duress" or "extraordinary circumstances" should form the basis for the filing of a third complaint. Secondly, the proposed amended complaint offers no new allegations which might correct any deficiencies identified in Defendant's pending Motion to Dismiss (ECF No. 43). Rather, the proposed second amended complaint contains

nothing but a lengthy and irrelevant recitation respecting Plaintiff's criminal past, and a rehash of the same conclusory allegations as set forth in the operative First Amended Complaint (cf. ECF No. 9 and ECF No. 50-1).

## II. ARGUMENT

Courts generally refuse leave to amend pleadings only on a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment. ***Duncan v. Manager, Dep't of Safety, City & County of Denver***, 397 F.3d 1300, 1315 (10th Cir.2005) citing ***Frank v. U.S. West, Inc.***, 3 F.3d 1357, 1365 (10th Cir.1993).

### A. The "amendments" to Plaintiff's proposed amended complaint are futile and should be precluded.

A proposed amendment is futile if the complaint, as amended, would be subject to dismissal. ***Bradley v. Val-Mejias***, 379 F.3d 892, 901 (10th Cir.2004). Plaintiff provides no viable argument respecting the necessity of amending the allegations in the operative complaint, or how any "new" allegations correct the deficiencies identified in Defendant's Motion to Dismiss. Further, no explanation is provided respecting a proper basis for leave to amend, based on Plaintiff's claims of "duress" or "extraordinary circumstances".

A review of the proposed amended complaint also fails to reveal any new or substantive allegations that might overcome the pending Motion to Dismiss (ECF No. 43), which argues for dismissal on several grounds, including the failure to comply with federal pleading standards pursuant to ***Bell Atl. Corp. v. Twombly***, 550 U.S. 544, 545 (2007), and qualified immunity<sup>1</sup>. None of the allegations in Plaintiff's proposed amended

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<sup>1</sup> Qualified immunity is sought as a valid Court Order, premised on a probable cause determination, was issued to conduct a search of Plaintiff (ECF No. 43 at 5)

complaint do anything to overcome the notion that the complaint should be dismissed for failing to set forth anything other than conclusory allegations, or that qualified immunity for Detective Shuttles should somehow be precluded. Rather, the proposed amended complaint still provides a largely irrelevant, fourteen-page recitation of Mr. Anderson's criminal and social history, and a restatement of the exact same claims attempted in previous iterations of the complaint. (see eg: Claim One, "formerly claim 2(b)", ECF No. 50-1 at 21; Claim Two, "formerly claim 2(a)", ECF No. 50-1 at 23).

**B. Plaintiff's attempts to amend the Complaint for a third time, are dilatory**

The purported claims in Plaintiff's proposed amended complaint also attempt to set forth the claims previously dismissed by the Court (see ECF No. 17 at 11). For example, in the proposed amended complaint Plaintiff attempts to set forth a claim for violation of the "Uniform Youthful Offender Act" related to the disclosure of a juvenile criminal matter (ECF No. 50-1 at 25) and slander/defamation (ECF No. 50-1 at 28). These claims have already been dismissed by the Court. (ECF No. 17 at 3 and 11, referring to claims 3(b) and (c)).

There is no legitimate reason provided by Plaintiff for his attempts at restating these claims, especially given a failure to seek proper review of the dismissal. Any such attempts should be precluded as futile and. see *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1206 (10th Cir.2006) citing *Viernow v. Euripides Dev.Corp.* 157 F.3d 785, 800 (10th Cir. 1998); *Hayes v. Whitman*, 264 F.3d 1017, 1027 (10th Cir.2001); *Pallottino v. City of Rio Rancho*, 31 F.3d 1023, 1027 (10th Cir.1994); *Walters v. Monarch Life Ins. Co.*, 57 F.3d 899, 903 (10th Cir.1995).

**III. CONCLUSION**

WHEREFORE, Detective Shutters, for the foregoing reasons, respectfully request the Court deny Plaintiff's request to file an amended complaint, and for entry of any other relief deemed just and appropriate by this Court.

Dated this 20th day of November 2017.

s/ Mark S. Ratner  
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**ATTORNEYS FOR DEFENDANT  
JASON SHUTTERS**

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on this 20th day of November 2017, I served via email the foregoing **DEFENDANT JASON SHUTTER'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT** (ECF No. 50) to the following:

**Plaintiff:**

Chayce Aaron Anderson, #175290  
Arkansas Valley Correctional Facility  
12750 Hwy. 96 at Lane 13  
Ordway, CO. 81034