

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

BRIAN KIRK,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 5:24-cv-06023-SJ-GAF
CITY OF ST. JOSEPH, MISSOURI,)	
<i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS BLEVINS AND GREIERT’S OPPOSING SUGGESTION TO
PLAINTIFF’S SECOND MOTION FOR LEAVE TO FILE SECOND AMENDED
COMPLAINT**

COME NOW Defendants Blevins and Greiert who respectfully ask this Court for the reasons stated herein and more fully in Defendants’ Opposing Suggestions to Plaintiff’s Motion to File a First Amended Complaint, **Doc. 23**, to deny Plaintiff’s Motion to File a Second Amended Complaint, **Doc. 28**. The only changes Plaintiff makes between the Proposed First Amended Complaint, **Doc. 22-1**, and the Proposed Second Amended Complaint, **Doc. 28-1**, are:

- Plaintiff adds a new factual allegation in a new sub-paragraph to paragraph 37 regarding alleged activity on June 30, 2023, **Doc. 28-1, at 11 ¶ 37(a)**;
- Plaintiff amends the Complaint to sue all Defendants in their individual capacities, **Doc. 28-1, at 2-3 ¶¶ 4-15**.

These new amendments, along with the amendments of the Proposed First Amended Complaint, would be futile because the Proposed Second Amended Complaint does not cure deficiencies to avoid dismissal; the Complaint, much less the specific defamation claims, cannot survive a Rule 12(b)(6) dismissal or anti-SLAPP dismissal; and the Court does not have jurisdiction over those state law defamation claims. **Doc. 23, at 6-12**.

Plaintiff has also engaged in unnecessary undue delay by filing a Second Motion to Amend almost five months after the Complaint was filed. Those concerns about undue delay are even more pressing now than when Plaintiff moved to file the First Amended Complaint on April 16, 2024. No new facts have emerged; the “only reason for the untimeliness of the motion was [Plaintiff’s] lack of due diligence.” *Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998); **Doc. 23, at 12-13.**

Finally, an amendment at this time would prejudice Defendants, and Plaintiff has shown bad faith and dilatory motive. **Doc. 23, at 13-15, Doc. 27, at 1-4.**

CONCLUSION

For the foregoing reasons, and the reasons explained more fully in Defendants’ Opposing Suggestions to Plaintiff’s Motion to File a First Amended Complaint, **Doc. 23**, Defendants Blevins and Greiert respectfully request the Court deny Plaintiff’s Second Motion for Leave to File a Second Amended Complaint, **Doc. 28**, and grant Defendants’ Motion to Dismiss and Strike, **Doc. 12**, which is ripe for this Court to decide, **Doc. 23, at 16.**

Dated: July 1, 2024

Respectfully submitted,

GRAVES GARRETT GREIM LLC

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2024, I caused the above and foregoing to be filed with the Court's electronic CM/ECF filing system, which automatically served counsel for all parties with a notice of filing the same.

/s/ Katherine E. Graves
*Attorney for Defendants Josh Blevins and
Steven Greiert*