

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

RICHARD R. CADMUS, JR.,)	
Plaintiff,)	Civil Action No. 5:15-cv-00045
)	
v.)	<u>REPORT & RECOMMENDATION</u>
)	
ROBERT T. WILLIAMSON, <i>et al.</i> ,)	By: Joel C. Hoppe
Defendants.)	United States Magistrate Judge

Plaintiff Richard R. Cadmus, Jr., proceeding *pro se*, has brought this action against government officials in Frederick County, Virginia, alleging a variety of constitutional, statutory, and common law torts arising from those officials' law enforcement activities. Pending before the Court now is Cadmus's Second Motion for Leave to File an Amended Complaint, ECF No. 72. This motion is before me by referral for report and recommendation under 28 U.S.C. § 636(b)(1)(B). ECF No. 5. The parties have fully briefed the issues, ECF Nos. 73–75, and the motion is ripe for decision.¹ After considering the pleadings, the parties' briefs, and the applicable law, I find that several of Cadmus's claims are futile and that he may not bring claims on behalf of the other proposed plaintiffs. I also find, however, that Cadmus should be allowed to move forward on those claims that the Defendants did not oppose in their brief. Therefore, I recommend that the presiding District Judge grant in part and deny in part Cadmus's motion to amend.

I. Procedural History

On June 9, 2015, Cadmus filed his original complaint against Defendants Robert T. Williamson, the Sheriff of Frederick County; Williamson's department, the Frederick County

¹ Although Cadmus has requested oral argument, ECF No. 78, I find that the motion can be decided on the filings alone, and therefore decline Cadmus's request for a hearing.

Sheriff's Office² ("FCSO"); Doug Nicholson, a deputy in the FCSO; John and Jane Does 1 through 25, also deputies in the FCSO; and Aimee Cook, a Virginia Magistrate sitting in Frederick County. Compl., ECF No. 2. He asserted his claims against these Defendants in both their individual and official capacities. *Id.* Williamson, Cook, and Nicholson each moved to dismiss Cadmus's complaint, ECF Nos. 14, 22, 25, and Cadmus thereafter filed a motion for leave to amend his complaint, ECF No. 29, to which he attached his proposed first amended complaint, ECF No. 29-1 ("First Am. Compl."). The proposed first amended complaint provided more detailed allegations of fact, asserted new causes of action, and named as additional Defendants John Heflin, Barry Kittoe, and Rick Singhas, all deputies in the FCSO. *Id.*

The undersigned Magistrate Judge issued a Report and Recommendation recommending that the Court dismiss the original complaint and deny leave for Cadmus to file the proposed first amended complaint as written on grounds of bad faith and futility. ECF No. 56. Cadmus filed several sets of objections to the Report and Recommendation, ECF Nos. 58–61, and also moved for limited discovery and a stay of the Court's review of the Report and Recommendation until he could complete this discovery, ECF Nos. 64–65. On March 10, 2016, the presiding District Judge issued a Memorandum Opinion, ECF No. 66, and Order, ECF No. 67, adopting the Report and Recommendation in part, rejecting it in part, and denying Cadmus's motion for a stay and limited discovery. The Court dismissed with prejudice Cadmus's claims against Cook and his official capacity claims for damages against Williamson and the deputies on the grounds of judicial immunity and sovereign immunity, respectively. Mem. Op. 7–17, 22–25. The presiding District Judge also dismissed Cadmus's remaining claims without prejudice, finding that his original complaint failed to state a claim upon which relief could be granted, *id.* at 12–13, and that the proposed first amended complaint failed to correct the deficiencies of the original

² Cadmus later conceded that the FCSO is not an entity that is subject to suit. ECF No. 45, at 7.

complaint and was therefore futile, *id.* at 25–27.³ Cadmus was given an opportunity to file another amended complaint reasserting any claim that had not been dismissed with prejudice. ECF No. 67.

II. Proposed Second Amended Complaint

On March 29, 2016, Cadmus again moved for leave to file an amended complaint, ECF No. 72, and attached to his motion a proposed second amended complaint, ECF No. 72-1 (“Second Am. Compl.”). The proposed second amended complaint includes new Plaintiffs and Defendants, and it asserts new claims in addition to those already included in the original complaint and proposed first amended complaint. Nicholson, Williamson, and the FCSO filed a brief in opposition to Cadmus’s motion on the grounds that some of his proposed amendments would be futile, ECF No. 73 (“Def. Br.”), and Cadmus thereafter filed reply briefs and exhibits, ECF Nos. 74–75.

A. *Allegations of Fact*

In assessing whether a proposed amendment is futile because it fails to state a claim,⁴ I must view all well-pled facts in the proposed amended complaint in the light most favorable to the plaintiff. *See Philips v. Pitt Cty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). In recognition of Cadmus’s *pro se* status and my obligation to hold his pleadings to “less stringent standards than formal pleadings drafted by lawyers,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), I will also consider facts presented in his reply brief. *See Shomo v. Apple, Inc.*, No. 7:14cv40, 2015 WL 777620, at *2 (W.D. Va. Feb. 24, 2015) (considering “both the complaint

³ The District Judge did not adopt the Report and Recommendation’s finding that Cadmus had amended his complaint in bad faith. *Id.* at 19–21.

⁴ “We adjudge amendment futile when the proposed amended complaint fails to state a claim.” *Van Leer v. Deutsche Bank Sec., Inc.*, 479 F. App’x 475, 479 (4th Cir. 2012) (citing *United States ex rel. Wilson v. Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376 (4th Cir. 2008)).

and the factual allegations in Shomo's response to the motion to dismiss in determining whether his claims can survive dismissal"); *Christmas v. Arc of the Piedmont, Inc.*, No. 3:12cv8, 2012 WL 2905584, at *1 (W.D. Va. July 16, 2012) (accepting as true facts from a *pro se* plaintiff's complaint and brief in opposition to decide a motion to dismiss).

On the whole, the facts Cadmus alleges in his proposed second amended complaint largely resemble those he asserted in his original complaint and proposed first amended complaint. Because the parties and the Court are already familiar with Cadmus's factual allegations, a brief summary of the pertinent facts is sufficient for the purpose of this motion.⁵ Cadmus, a resident of Frederick County, Second Am. Compl. ¶ 2, complains of a variety of adverse actions by the Defendants that he alleges were carried out against him as retaliation for his history of activism concerning, among other issues, local law enforcement accountability, *see id.* ¶¶ 17–29. *See generally* ECF No. 75-3, at 118–44.

The central event in Cadmus's complaint is a domestic incident and subsequent law enforcement intervention that took place on June 9, 2013, at which time Cadmus lived with his terminally ill mother, Laura Fabrizio, and acted as her caretaker. Second Am. Compl. ¶¶ 30–39. The domestic incident arose from an argument Cadmus had with his sister, Laura Carver, and her boyfriend, Matthew Sirbaugh, that escalated into a physical confrontation between Cadmus and Sirbaugh. *Id.* ¶¶ 40–53. Both Cadmus and Sirbaugh called 911, accusing each other of assault, and Frederick County sheriff's deputies, including Nicholson, arrived shortly thereafter. *Id.* ¶¶ 54–56. Although Cadmus, Carver, and Sirbaugh were all standing in front of the house when the deputies arrived, the deputies entered into the house over Cadmus's objection. *Id.* ¶¶ 58–63. The deputies then questioned Carver, Sirbaugh, and Fabrizio in one room while Cadmus was

⁵ A more thorough summary of the facts alleged in Cadmus's original complaint and proposed first amended complaint may be found in the undersigned Magistrate Judge's first Report and Recommendation, ECF No. 56, at 2–7, 32–34.

kept in a separate room. *Id.* ¶ 64. Cadmus claims that the deputies’ interactions with him were immediately hostile, although they were consistently friendly with the other three individuals. *Id.* ¶¶ 65–76. After the questioning had gone on for some time, the deputies arrested Cadmus and placed him in Nicholson’s patrol vehicle. *Id.* ¶¶ 77–83.

Nicholson then drove Cadmus to the local detention center. *Id.* ¶ 84. On the way, Nicholson made a number of remarks regarding Cadmus’s history and activism, which Cadmus perceived as threatening. *Id.* ¶¶ 85–91. After they arrived at the detention center, Nicholson spoke to Magistrate Cook for several minutes before swearing out an arrest warrant alleging that Cadmus assaulted Carver and Fabrizio. Cadmus alleges that the facts in Nicholson’s affidavit supporting the warrant were fabricated and that nobody at the residence had even accused him of assaulting Carver or Fabrizio. *Id.* ¶¶ 99–124. Cook then issued the warrants, *id.* ¶¶ 125–28, and entered protective orders restricting Cadmus from contact with Fabrizio and Carver, *id.* ¶ 134.

Following this incident, Cadmus attempted to file complaints against Nicholson and submitted “FOIA” requests for the recordings of the 911 calls, but he met resistance from supervisory officials at the FCSO. *Id.* ¶¶ 135–45. Meanwhile, although Cadmus had notified Nicholson and others that he was responsible for Fabrizio’s care, the protective order entered against him prevented him from assisting her.⁶ *Id.* ¶¶ 134 & n.23, 153. At one point, Cadmus was alerted by Fabrizio’s neighbors that she was not in good condition. Cadmus called the FCSO to ask for a welfare check, and deputies arrived with EMS to investigate Fabrizio’s condition, but did not take any further action or discuss their findings with Cadmus. *Id.* ¶¶ 154–62. On August 19, 2013, Fabrizio was found in her home in critical condition and taken to the hospital, where she died three days later. *Id.* ¶¶ 163–66. Following these events, Cadmus claims that Frederick County deputies continued to make warrantless entries into his home without his consent. *Id.* ¶¶

⁶ It appears that at this time Fabrizio was living with Carver, who struggled with drug addiction. *Id.* ¶ 183.

185–204, 224–37. In addition, Cadmus complains that Williamson and other supervisory officials resisted complying with a “FOIA” request Cadmus submitted regarding possible thefts from Fabrizio’s estate; Cadmus ultimately prevailed in a mandamus action and was eventually able to compel a response to his request. *Id.* ¶¶ 205–23.

B. New Parties and Claims

The proposed second amended complaint includes new parties on both sides of the dispute. On the Defendants’ side, Cadmus no longer brings any claims against Magistrate Cook, but now asserts a claim against Lieutenant Donald Lang, a supervisor within the FCSO who Cadmus alleges to have been involved in rejecting his “FOIA” requests. *Id.* ¶¶ 205–23, 408–11. On the Plaintiffs’ side, Cadmus now asserts claims in his capacity as Administrator of Fabrizio’s estate (“the Estate”). *Id.* ¶ 2. In addition, the proposed second amended complaint includes Carver as a plaintiff. *Id.* ¶ 3.

Along with the claims he has brought in his prior complaints, Cadmus also asserts new substantive claims in the proposed second amended complaint. He now brings causes of action under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 701, *et seq.*⁷ The first cause of action, asserted on behalf of Cadmus, Carver, and the Estate against the FCSO, Williamson, Nicholson, and two John Does, alleges a violation of the ADA’s nondiscrimination provision, 42 U.S.C. § 12132, resulting from the entry of the protective order against Cadmus and the Defendants’ failure to arrange for alternative care for Fabrizio once Cadmus could no longer contact her. Second Am. Compl. ¶¶ 268–91. The second cause of action, asserted under the enforcement provision of the ADA, 42 U.S.C. § 12133, alleges a violation of the nondiscrimination requirements of the Rehabilitation

⁷ “The ADA and Rehabilitation Act generally are construed to impose the same requirements due to the similarity of the language of the two acts.” *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468 (4th Cir. 1999).

Act, 29 U.S.C. § 794. The Defendants and factual basis for this claim are the same as for the first cause of action, but the second claim is asserted only on behalf of Cadmus in his capacity as Administrator of the Estate. Second Am. Compl. ¶¶ 292–307. The proposed second amended complaint also asserts a survival action and a wrongful death claim on behalf of the Estate, *id.* ¶¶ 439–45, brings a claim for common-law trespass on behalf of Cadmus and Carver, *id.* ¶¶ 431–38, and adds Carver to Cadmus’s ongoing claim for intentional infliction of emotional distress, *id.* ¶¶ 426–30.

III. Analysis

Under the Federal Rules of Civil Procedure, a party may seek leave from the court to amend its pleading, and the court should grant leave to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Despite this general rule liberally allowing amendments,” courts may deny leave to amend “if the amendment ‘would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.’” *United States ex rel. Nathan v. Takeda Pharm. N. Am., Inc.*, 707 F.3d 451, 461 (4th Cir. 2013) (quoting *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc)).

Here, the Defendants do not oppose Cadmus’s motion as to most of the claims. Considering that leave to amend should be “freely give[n],” Fed. R. Civ. P. 15(a)(2), I recommend that the presiding District Judge grant Cadmus’s motion as to the unopposed claims. The Defendants argue that certain claims in the proposed second amended complaint are futile. The Court may deny Cadmus’s motion as futile if the proposed second amended complaint fails to state a claim, *Van Leer*, 479 F. App’x at 479, or otherwise fails to correct the deficiencies identified in the earlier complaints, *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 442 F. App’x 2, 7 (4th Cir. 2011). In making this determination, the Court asks whether these claims would

survive a motion to dismiss under Rule 12(b)(6). *Elrod v. Busch Entm't Corp.*, 479 F. App'x 550, 551 (4th Cir. 2012) (per curiam) (citing *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011)). In order to survive a motion to dismiss, a complaint must “state[] a plausible claim for relief” that “permit[s] the court to infer more than the mere possibility of misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In making this determination, the Court accepts as true all well-pled facts and construes those facts in the light most favorable to the plaintiff. *Philips*, 572 F.3d at 180. The Court need not accept legal conclusions, formulaic recitation of the elements of a cause of action, or “bare assertions devoid of further factual enhancements,” however, as those are not well-pled facts for Rule 12(b)(6)’s purposes. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

Plaintiffs must plead enough facts to “nudge[] their claims across the line from conceivable to plausible,” and a court should dismiss a complaint that is not “plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. Federal courts have an obligation to construe *pro se* pleadings liberally, so that any potentially valid claim can be fairly decided on its merits rather than the *pro se* litigant’s legal acumen. *Rankin v. Appalachian Power Co.*, No. 6:14cv47, 2015 WL 412850, at *1 (W.D. Va. Jan. 30, 2015) (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)). Still, “a *pro se* plaintiff must . . . allege facts that state a cause of action, and district courts are not required ‘to conjure up questions never squarely presented to them.’” *Considerder v. Medicare*, No. 3:09cv49, 2009 WL 9052195, at *1 (W.D. Va.

Aug. 3, 2009) (quoting *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)), *aff'd*, 373 F. App'x 341 (4th Cir. 2010).

A. *New Plaintiffs*

Defendants object to the inclusion of Carver and the Estate as plaintiffs in the proposed second amended complaint on the grounds that Cadmus does not have authority to bring these parties' claims before the Court. With regard to the claims asserted on behalf of Carver, I note that she has not yet entered an appearance before the Court or signed any filings purported to be made on her behalf, as required by Rule 11(a) of the Federal Rules of Civil Procedure. Furthermore, Cadmus—a *pro se* litigant—may not represent Carver's interests in this Court. *See Myers v. Loudoun Cty. Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005) (“The right to litigate for *oneself*, however, does not create a coordinate right to litigate for *others*.”). Nor may he litigate *pro se* on behalf of the Estate, even though he is the Administrator, because he is not the sole beneficiary, ECF No. 74, ¶ 23 (stating that Cadmus and Carver are beneficiaries of the Estate). *See Kimble v. Withers*, No. 5:12cv110, 2013 WL 6147678, at *4 (W.D. Va. Nov. 22, 2013) (citing *Kone v. Wilson*, 630 S.E.2d 744, 746 (Va. 2006)) (observing that the administrator of an estate may not bring a Virginia wrongful death claim *pro se*); *see also Witherspoon v. Jeffords Agency, Inc.*, 88 F. App'x 659, 659 (4th Cir. 2004) (unpublished per curiam) (remanding case “to ascertain whether there are any other interested parties to the Estate,” and thus whether representative could litigate *pro se* on its behalf); *McAdoo v. United States*, No. 1:12cv328, 2014 WL 359043, at *1–3 (W.D.N.C. Feb. 3, 2014) (citing, *inter alia*, *Witherspoon*, 88 F. App'x at 659) (finding that the executor of an estate could not represent the estate *pro se* if the estate had other beneficiaries or creditors). The complaint therefore may not be amended to include claims asserted by Carver or the Estate until appropriate representatives for those parties enter an

appearance before the Court. Accordingly, I recommend that the motion be denied without prejudice as to the claims of Carver and the Estate. Cadmus should be allowed twenty-one days to retain counsel for the Estate, who may then move for leave to amend to assert claims on behalf of the Estate.

B. Standing

Defendants also argue that Cadmus, in his personal capacity,⁸ does not have standing to assert claims under the ADA and Rehabilitation Act for alleged injuries sustained by Fabrizio. In order to meet the constitutional minimum for standing in federal court, “a plaintiff must prove that: 1) he or she suffered an ‘injury in fact’ that is concrete and particularized, and is actual or imminent; 2) the injury is fairly traceable to the challenged action of the defendant; and 3) the injury likely will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 396 (4th Cir. 2011) (citations omitted). Furthermore, in some circumstances the plaintiff may need to satisfy additional statutory or prudential standing requirements. *See id.* at 396–97; *Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205, 214–15 (4th Cir. 2002).

Here, Cadmus does not explain how he himself was injured by any of the Defendants’ alleged violations of the ADA and Rehabilitation Act, as is necessary to meet the constitutional requirements for standing, but instead focuses only on the prudential considerations related to third-party standing. Pl. Reply Br. 8–10, ECF No. 75. It is unclear whether Cadmus intends to argue that it is unnecessary for him to meet the constitutional standing requirements if he can instead show that he has satisfied the requirements for prudential standing. To the extent he does

⁸ Defendants do not appear to challenge Cadmus’s standing to assert claims in his capacity as Administrator of the Estate, but instead only his standing to bring these claims on his own behalf. To the extent Defendants challenge Cadmus’s standing to bring claims in his representative capacity, I will defer resolution of this issue on its merits until the Estate is properly represented before the Court. For this same reason, I will not now address the Defendants’ arguments as to Carver’s standing.

make such an argument, it is incorrect. “Although [third-]party standing allows a party to assert the claims of other parties, the plaintiff must still independently have standing to sue.” *Blake v. Southcoast Health Sys., Inc.*, 145 F. Supp. 2d 126, 137 n.16 (D. Mass. 2001) (citing *Craig v. Boren*, 429 U.S. 190, 194 (1976), and *Eisenstadt v. Baird*, 405 U.S. 438, 443–44 (1972)). Because any alleged violations of the ADA and Rehabilitation Act would have implicated Fabrizio’s rights, rather than Cadmus’s rights, it is therefore doubtful that Cadmus meets the injury requirement to establish constitutional standing for these claims. *See Shaw v. Lynchburg Dep’t of Soc. Servs.*, No. 6:08cv22, 2009 WL 222663, at *4 (W.D. Va. Jan. 29, 2009).

Furthermore, even if Cadmus’s claims met the constitutional threshold for standing, they do not satisfy the prudential requirements for third-party standing. “To overcome the prudential limitation on third-party standing, a plaintiff must demonstrate: (1) an injury-in-fact; (2) a close relationship between [himself] and the person whose right [he] seeks to assert; and (3) a hindrance to the third party’s ability to protect his or her own interests.” *Freilich*, 313 F.3d at 215 (citing *Powers v. Ohio*, 499 U.S. 400, 410–11 (1991)). Here, although Cadmus argues that Fabrizio’s death presents a hindrance to her ability to pursue her own claims, Pl. Br. 9, these claims might still be asserted by the Estate, rather than by Cadmus in his individual capacity. *See Martin v. Cal. Dep’t of Veterans Affairs*, 560 F.3d 1042, 1050 (9th Cir. 2009) (holding that decedent’s daughter did not have standing to bring claim on behalf of decedent where decedent’s estate was also a party to the same action and had brought the claim directly on behalf of the decedent). Cadmus therefore does not have standing to bring the ADA and Rehabilitation Act claims in his own name. Instead, these claims may only be brought by the Estate after it has secured appropriate representation. Accordingly, I recommend that the motion be denied with prejudice as to Cadmus’s personal-capacity claims under the ADA and Rehabilitation Act.

C. *Official-Capacity Claims*

Finally, the Defendants argue that Cadmus cannot continue to assert official-capacity claims against the individual Defendants or any claims at all against the FCSO. As discussed *supra*, the Court has previously dismissed with prejudice Cadmus's claims for damages against Williamson, Nicholson, and other FCSO deputies in their official capacities because, as Virginia constitutional officers, these officials are protected by Eleventh Amendment sovereign immunity. Mem. Op. 7–12, 22–23, 27–28, 30. In addition, Cadmus has previously conceded that the FCSO is not a proper Defendant, ECF No. 45, at 7, and the Court has noted its agreement with this assessment, Mem. Op. 1 n.1. Nonetheless, in his proposed second amended complaint, Cadmus continues to assert claims against the FCSO and against Williamson and Nicholson in their official capacities. Second Am. Compl. 2–4. As to his claims against the FCSO, Cadmus does not offer any reason for disregarding his earlier concession. In any case, the law is clear that the FCSO is not an entity that is subject to suit and distinct from the Sheriff himself. *See Revene v. Charles Cty. Comm'rs*, 882 F.2d 870, 874 (4th Cir. 1989) (noting that a sheriff's office “is not a cognizable legal entity separate from the Sheriff in his official capacity”). Cadmus therefore should not be permitted to amend his complaint to include claims against the FCSO.

With respect to the issue of sovereign immunity, there is some confusion as to which claims are asserted against Williamson and Nicholson in their official capacities. Cadmus states at various points that only his ADA claims are brought against the Defendants in their official capacities, Second Am. Compl. 3 nn. 2–3; Pl. Reply Br. 6–8, but the proposed second amended complaint also lists official-capacity Defendants in Cadmus's claim for retaliation under the First Amendment, Second Am. Compl. 60, and in the survival action brought on behalf of the Estate, *id.* at 65. The Court has already made clear that Cadmus's constitutional and common-law tort

claims against the Defendants in their official capacities are barred by Eleventh Amendment sovereign immunity, and to the extent he still seeks to bring these official-capacity claims, he may not be permitted to do so.

On the other hand, it is not so clear whether Eleventh Amendment immunity would provide a defense to official-capacity claims brought under the ADA and Rehabilitation Act. *See United States v. Georgia*, 546 U.S. 151, 158–59 (2006) (finding that, in creating a private cause of action for damages against the states for discrimination that violates both the ADA and the Fourteenth Amendment, Congress validly abrogated state sovereign immunity); *Chase v. Baskerville*, 508 F. Supp. 2d 492, 507 (E.D. Va. 2007) (noting that a state may waive its sovereign immunity against Rehabilitation Act claims by accepting federal funds). This question is moot as to any claims asserted by Cadmus individually because, as explained *supra*, he does not have standing to bring these claims on his own behalf. As to claims asserted by Carver and the Estate, I will withhold opinion until those parties have appeared before the Court.

IV. Conclusion

Although Cadmus seeks to add Carver and the Estate as plaintiffs by amendment, he may not bring claims on behalf of these parties as a *pro se* litigant. I therefore recommend that the presiding District Judge **DENY WITHOUT PREJUDICE** Cadmus's second motion to amend, ECF No. 72, as to those parties and allow Cadmus twenty-one (21) days to retain counsel for the Estate. Counsel may move for leave to amend to assert claims on behalf of the Estate. Furthermore, I recommend that the presiding District Judge **DENY WITH PREJUDICE** Cadmus's motion as futile insofar as he asserts on his own behalf (1) any claims under the ADA and Rehabilitation Act and (2) any claims against the FCSO and any claims for monetary damages against all other Defendants in their official capacities. These claims and the claims on

behalf of Carver and the Estate shall be stricken from the proposed second amended complaint. Because the Defendants do not otherwise oppose Cadmus's motion, however, I recommend that the presiding District Judge **GRANT** the motion for leave to amend as to all other claims asserted in the proposed second amended complaint, and order it filed.

Notice to Parties

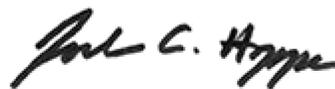
Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14 day period, the Clerk is directed to transmit the record in this matter to the Honorable Michael F. Urbanski, United States District Judge.

The Clerk shall send certified copies of this Report and Recommendation to all counsel of record and unrepresented parties.

ENTER: August 23, 2016



Joel C. Hoppe
United States Magistrate Judge