UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Hamdi A. Mohamud, Plaintiff, v. Heather Weyker, in her individual capacity as a St. Paul Police Officer, Defendant.	Case No. 17-CV-2069 (JNE/TNL)

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

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Introduction

Plaintiff Hamdi Mohamud moves this Court under Rule 15 for leave to amend her complaint for the second time, following the Eighth Circuit's decisions in *Ahmed v. Weyker*[1] (remanding this case for this Court to determine whether Officer Weyker was acting under color of state law), and *Yassin v. Weyker*[2] (clarifying the relevant legal standards for assessing whether an officer acts under color of state law). Ms. Mohamud seeks to amend her complaint for two purposes: (1) to provide more detailed allegations and newly uncovered evidence to confirm Officer Weyker was acting under color of state law consistent with the legal standards the Eighth Circuit announced in *Yassin* and (2) to clarify that Officer Weyker, a St. Paul police officer leading a state-federal task force and cross-deputized as a Special Deputy U.S. Marshal, was simultaneously acting under color of both state and federal law when she violated Ms. Mohamud's clearly established Fourth Amendment rights.

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[1] 984 F.3d 564 (8th Cir. 2020), *cert. denied sub nom. Mohamud v. Weyker*, 142 S. Ct. 2833 (June 21, 2022) (mem.).

[2] 39 F.4th 1086 (8th Cir. 2022), *cert. denied*, 143 S. Ct. 779 (Feb. 21, 2023) (mem.).

The Court should grant Ms. Mohamud's motion and allow her to amend her complaint to achieve those purposes and because none of the limited circumstances for denying amendment are present. Ms. Mohamud has not engaged in undue delay. She offers her amendments in good faith. She has never failed to cure a previous deficiency. Her amendments are meritorious, not futile. And allowing Ms. Mohamud to amend would not prejudice Officer Weyker. To the contrary, justice requires providing Ms. Mohamud an opportunity to amend her complaint in light of new law and evidence and ensure Ms. Mohamud can test her claims on the merits. Fed. R. Civ. P. 15(a)(2).

Ms. Mohamud's proposed second amended complaint and a redlined version showing the proposed amendments from the operative complaint accompany her motion.

Background

I. As a St. Paul police officer, Officer Weyker initiated and led a years-long investigation that fell apart in the face of her dishonesty.

As the Eighth Circuit previously explained, Ms. Mohamud's case is "another chapter in the aftermath of an investigation" that was "plagued with problems from the start." *Ahmed*, 984 F.3d at 565. Beginning in

2008, Officer Weyker led the doomed investigation as a St. Paul police officer, targeting a group of thirty people—nearly all Minnesota residents and Somali refugees (the *"Adan* cases"). *Id.*; *see also United States v. Fahra*, 643 F. App'x 480, 481–83 (6th Cir. 2016); Prop. 2d Am. Compl. ¶¶ 37–39. "Of the thirty people who were indicted [in the *Adan* cases], *United States v. Adan*, 913 F. Supp. 2d 555, 558–59 (M.D. Tenn. 2012), only nine were ultimately tried, [*Fahra*, 643 F. App'x at 483], and each was acquitted, *id.* at 484." *Ahmed*, 984 F.3d at 565. After a "painstaking review of the record," the Sixth Circuit concluded that Officer Weyker's tale "of sex trafficking and prostitution" was "likely a fictitious story" that Officer Weyker advanced through a campaign of lies and deceit. *Fahra*, 643 F. App'x at 482, 484.

II. Officer Weyker framed Ms. Mohamud to protect a witness Officer Weyker was cultivating for her doomed investigation.

Ms. Mohamud—along with her friends Hawo Ahmed and Ifrah Yassin—were "[p]erhaps the most accidental of participants" in Officer Weyker's investigation. *Yassin*, 39 F.4th at 1088. Ms. Mohamud and her friends were caught in Officer Weyker's web of lies on July 16, 2011, when they had the misfortune of being attacked by Muna Abdulkadir, a key

witness Officer Weyker was cultivating in the *Adan* cases. *Id.*; *Ahmed*, 948 F.3d at 565–66. Following the attack, the girls called 911 for help. Meanwhile, Ms. Abdulkadir fled and "made a call of her own to Weyker. Worried about the possibility of losing a witness, Weyker sprang into action." *Ahmed*, 983 F.3d at 566.

Although Officer Weyker had been cross-deputized as a Special Deputy U.S. Marshal on August 24, 2010, she was still a full-time St. Paul police officer. Moreover, Officer Weyker was exclusively a St. Paul officer when she initiated the investigation in the *Adan* cases, led it for years, met Ms. Abdulkadir, and began cultivating her as a witness in 2009. Prop. 2d Am. Compl. ¶¶ 40–51; *contra Yassin*, 39 F.4th at 1090 (incorrectly stating that Ms. Abdulkadir "was only on [Officer Weyker's] radar because she was assigned to a federal investigation").

Using her Minnesota credentials and specialized knowledge of local policing, Officer Weyker quickly injected herself into the state-law investigation of Ms. Abdulkadir's attack. Prop. 2d Am. Compl. ¶ 21. "She first contacted Minneapolis Police Officer Anthijuan Beeks, who responded to the 911 call. Weyker told him that she had 'information and documentation' that Ahmed, Mohamud, and Yassin 'had been actively seeking out

Abdulkadir' in an effort 'to intimidate' her for agreeing to cooperate in a federal investigation." *Ahmed*, 984 F.3d at 566.

But Officer Weyker was lying. She "had no information or documentation. Rather, she just wanted to shield Abdulkadir from arrest to further incentivize her continued participation in the investigation. The plan worked." *Id.* at 566 (cleaned up). Officer Beeks arrested Ms. Mohamud and her friends for witness tampering under Minnesota law based on Officer Weyker's intentional misrepresentations. Prop. 2d Am. Compl. ¶ 29. And Officer Weyker further documented those misrepresentations in a St. Paul police report, which she emailed to a Minneapolis police officer. *Id.* at ¶¶ 28(a)–(c).

"Weyker did not stop there. The next day, she prepared a [federal] criminal complaint and a sworn affidavit," repeating the lies from her St. Paul police report. *Ahmed*, 984 F.3d at 566; Prop. 2d Am. Compl. ¶ 31. In her affidavit, Weyker confirmed that the foundation of her investigation was her work as a St. Paul police officer assigned to the Vice Unit, and that federal officials were assisting her with work she had pursued through the Vick Task Force. Prop. 2d Am. Compl. ¶ 50; *see also id.* at ¶¶ 37–40. With that, Officer Weyker's frame-up was accomplished:

"Mohamud, a minor at the time, spent just short of 25 months in federal custody" before "the government dismissed the case against" her. *Ahmed*, 984 F.3d at 566.

Procedural History

Following Ms. Mohamud's release from federal prison, the collapse of the *Adan* cases, and multiple federal courts calling out Officer Weyker's troubled relationship with the truth, Ms. Mohamud filed her complaint against Officer Weyker on June 15, 2017. Since that day, Ms. Mohamud has been "trying to hold a rogue law-enforcement officer responsible for landing [her] in jail through lies and manipulation." *Ahmed*, 984 F.3d at 565. By stipulation, Ms. Mohamud filed an amended complaint on September 20, 2017. She asserted two claims for damages based on Fourth Amendment violations: one claim under 42 U.S.C. § 1983 for Officer Weyker's actions under color of state law and one under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for Officer Weyker's actions under color of federal law.

I. Officer Weyker has never answered Ms. Mohamud's complaint, and this Court has denied Officer Weyker qualified immunity.

Officer Weyker responded to the first amended complaint with a consolidated motion to dismiss in this and a related case brought by Ms. Ahmed, *Ahmed v. Weyker*, No. 17-2020. Officer Weyker argued that probable cause existed to arrest and prosecute Ms. Mohamud and her friends, that Officer Weyker is entitled to qualified immunity, and that no cause of action exists under Section 1983 or *Bivens* to sue Officer Weyker in her personal capacity. Dkt. 17. This Court denied the motion, holding Officer Weyker is not entitled to qualified immunity without deciding whether Section 1983 or *Bivens* is the proper vehicle for Ms. Mohamud's claims. Dkt. 27 (citing *Osman v. Weyker*, No. 16-CV-908, 2017 WL 3425647, at *6–7 (D. Minn. Aug. 9, 2017); *Yassin v. Weyker*, No. 16-CV-2580, 2017 WL 3425689, at *3 n.5 (D. Minn. Aug. 9, 2017)). This Court reasoned in part that it is clearly established that "a seizure without 'a truthful factual showing sufficient to constitute probable cause' violates the Fourth Amendment," *id.* at 10 (quoting *Livers v. Schenck*, 700 F.3d 340, 357 (8th Cir. 2012)), and that nothing in Officer Beeks's investigation "except the

allegedly false information conveyed to him by Weyker, led him to believe that Ahmed or Mohamud had engaged in any criminal activity," *id.* at 11.

II. On appeal, the Eighth Circuit held Officer Weyker could not be sued under *Bivens* but remanded for this Court to consider whether Weyker can be sued under Section 1983.

Officer Weyker appealed. The Eighth Circuit did not disturb this Court's qualified immunity holding, having previously decided in an appeal of Ms. Yassin's case that Weyker is not shielded by qualified immunity because "a reasonable officer would know that deliberately misleading another officer into arresting an innocent individual to protect a sham investigation is unlawful." *Farah v. Weyker*, 926 F.3d 492, 503 (8th Cir. 2019). Instead, the Eighth Circuit held Ms. Mohamud could not sue Officer Weyker for her actions taken under color of federal law, applying the Supreme Court's two-step test for evaluating *Bivens* under *Ziglar v. Abbasi*, 582 U.S. 120, 137 (2017). *Ahmed*, 984 F.3d at 568–69. The Eighth Circuit then vacated and remanded for this Court to dismiss Ms. Mohamud's *Bivens* claim but specifically noted that Ms. Mohamud might be able to proceed under Section 1983. *Ahmed*, 984 F.3d at 571. As the Eighth Circuit put it: "Just because a *Bivens* remedy is off the table does not mean [Ms. Mohamud's case is] over. If the district court determines

on remand that Weyker was acting under color of state law," Ms. Mohamud's Section 1983 claims may proceed. *Id*.

III. When Ms. Mohamud petitioned the Supreme Court, the U.S. Solicitor General persuaded the Court not to hear the case because Ms. Mohamud might be able to proceed under Section 1983.

Before litigating the Section 1983 issue on remand, Ms. Mohamud petitioned the Supreme Court for certiorari on the *Bivens* issue. *See generally* Pet. for Cert., *Mohamud v. Weyker*, 142 S. Ct. 2833 (2022) (No. 21-187). The U.S. Solicitor General, however, persuaded the Court not to hear the case in an interlocutory posture, explaining that the Eighth Circuit "remanded the case to permit the district court to determine whether respondent was acting under color of state law, which might permit petitioner's constitutional claim to proceed under Section 1983." Gov't Br. in Opp., *Mohamud v. Weyker*, 142 S. Ct. 2833 (2022) (No. 21-187), at 20. On that basis, the Solicitor General convinced the Supreme Court to wait before deciding whether to hear Ms. Mohamud's case: "If the district court finds that petitioner's Fourth Amendment claim cannot proceed under Section 1983, and that determination is upheld in any subsequent appeal, petitioner will be able to raise her [*Bivens*] claim, together with

any other claims that may arise in those subsequent proceedings, in a single petition for certiorari." *Id.* at 21.

On the Solicitor General's and Eighth Circuit's invitations, Ms. Mohamud now returns to this Court and asks it to address whether Officer Weyker was acting under color of state law. This Court has not yet decided that issue. That's because this Court granted the parties' joint motions to stay the case while the Eighth Circuit and Supreme Court resolved the similar Section 1983 question in *Yassin*. Dkt. 40, 45. *Yassin* arose from the same incidents that underlie Ms. Mohamud's case. But *Yassin* was based on a different complaint, the plaintiff was represented by different counsel, and the case lived a separate procedural life. Still, it made sense as a matter of judicial economy to wait for the Eighth Circuit and then the Supreme Court to resolve the Section 1983 question in *Yassin* before addressing the related legal issue here. Otherwise, this Court might have issued a decision that required unnecessary relitigation of the issue. So Ms. Mohamud's case was stayed until recently, when the Supreme Court denied certiorari in *Yassin*. Dkt. 40, 45.

After the Supreme Court declined to hear *Yassin*'s case, the parties conferred to discuss the status of this case and its next steps. The parties

then appeared at a status conference before Magistrate Judge Leung and stipulated to a briefing schedule, which the Court adopted. Dkt. 64. Under that schedule, Ms. Mohamud files her motion to amend on June 5, 2023, the same deadline as Officer Weyker's motion to dismiss or in the alternative for summary judgment.

IV. The parties have engaged in no discovery, and Ms. Mohamud now moves the Court for leave to amend her complaint to better address the legal contours of Section 1983 the Eighth Circuit expressed in *Yassin*.

With all its procedural history, this case remains in its infancy despite its age. The parties have yet to engage in any discovery. They have not participated in a Rule 26(f) conference or exchanged initial disclosures. The Court has not entered a Rule 16(b) scheduling order. Officer Weyker has never even filed an answer. With this history in mind, Ms. Mohamud moves this Court for leave to amend her complaint once more, to better address the legal issues as they have been clarified by the Eighth Circuit. *See infra* at 14, 26–29 (explaining how the amended allegations address *Yassin*'s treatment of the Section 1983 issue).

Purposes of Amendment

Ms. Mohamud's proposed amendments do not overhaul this case. They do not add parties or claims. Nor do they fundamentally change the two claims she asserted. They instead serve two other purposes.

First, the amendments provide more detailed and new factual allegations confirming that Officer Weyker was acting under color of Minnesota law when she framed Ms. Mohamud. The Eighth Circuit in *Yassin* focused on the relationship between state law and the nature and circumstances of Officer Weyker's conduct. *Yassin*, 39 F.4th at 1090. In doing so, the court identified certain facts that matter for the color-of-state-law question. For example, the fact that the witness Officer Weyker was trying to protect "was only on [Officer Weyker's] radar because she was assigned to a federal investigation"; the fact that Officer Weyker "did not stray from the 'performance of [her] official [federal] duties'" when she spoke to Minneapolis police officers at the scene; and the fact that Officer Weyker "acted within the scope of her federal duties while dealing with the situation." *Id.* at 1090–91.

Many allegations in Ms. Mohamud's proposed amended complaint contradict this trio of key facts and ultimately demonstrate that state law

had everything to do with Officer Weyker's conduct. Further, Ms. Mohamud's new counsel has unearthed several memoranda of understanding that govern task forces between the St. Paul Police Department and federal government. Those memoranda, which Ms. Mohamud has attached to her proposed second amended complaint, have never been disclosed to this Court—not here, nor in Ms. Yassin's or Ms. Ahmed's cases. *See* Prop. 2d Am. Compl. ¶¶ 47–48 & Exs. 1–3. These agreements make clear that the *Adan* cases resulted from Officer Weyker's work as the lead investigator of a St.-Paul-run joint state-federal task force called the Gerald D. Vick Human Trafficking Task Force. *See* Prop. 2d Am. Compl. ¶¶ 37–49 & Ex. 1. Perhaps even more importantly, these newly uncovered documents explicitly provide the formal agreement—both before and after Officer Weyker framed Ms. Mohamud—between the St. Paul Police Department and federal government that the actions of cross-deputized officers like Officer Weyker give rise to liability under Section 1983 as those taken under color of state law. *E.g.*:

> Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. Section 1983 for state and local officers or cross-deputized federal officers.

See Prop. 2d Am. Compl. ¶¶ 47–48 & Ex. 2 at § III(G), Ex. 3 at SOP § VIII(G). As a result, Ms. Mohamud's proposed amended complaint contradicts key facts the Eighth Circuit relied on in *Yassin* and proves that Weyker was acting under color of state law when she framed Ms. Mohamud. *See infra* Part IV.

Second, Ms. Mohamud seeks to allege that Officer Weyker acted under color of both state and federal law simultaneously. The amendments thus eliminate the need to litigate whether Officer Weyker was operating under color of federal law *or* color of state law. She was, as a cross-deputized state and federal officer, operating under color of both by design. That is the purpose of such cooperative state-federal efforts.

Argument in Support of Amendment

Ms. Mohamud's motion for leave to amend the complaint should be granted. Her motion is governed by the "liberal amendment policy" of Rule 15(a).[3] *Roberson v. Hayti Police Dep't*, 241 F.3d 992, 995 (8th Cir. 2001). Under this policy, courts "should freely give leave" to amend when

[3] This liberal policy contrasts with the "good cause" standard that applies under Rule 16(b) when a party seeks to amend pleadings after the deadline set forth in a scheduling order. Fed. R. Civ. P. 16(b); *see Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008). No scheduling order has been entered here.

justice so requires, letting the plaintiff test her claims on the merits. Fed. R. Civ. P. 15(a)(2). Courts may deny leave to amend only in "limited circumstances"—as when (I) undue delay, (II) bad faith by the movant, (III) repeated failure to cure deficiencies, (IV) futility of the amendment, or (V) unfair prejudice to the non-movant are shown. *Roberson*, 241 F.3d at 995 (citing *Foman v. Davis*, 371 U.S. 178 (1962)). Officer Weyker can demonstrate none here.

I. Ms. Mohamud has acted promptly in seeking amendment.

There has been no delay in filing Ms. Mohamud's motion. This is her first opportunity to propose amendments based on the event that spurred them: Eighth Circuit precedent decided while the case was stayed (along with new factual information within the defendant's possession and recently uncovered by plaintiff's new counsel). *See* Wright & Miller, Fed. Prac. & Proc. § 1488 (3d ed. 2023 update) (observing that "a motion to amend should be made as soon as the necessity for altering the pleading becomes apparent").

Even if there were delay, it has not prejudiced Officer Weyker. It is "well-settled" in this circuit "that delay alone is not a sufficient reason for denying leave." *Buder v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 644

F.2d 690, 694 (8th Cir. 1981). The opposing party must prove that the delay resulted in "unfair prejudice." *Sanders v. Clemco Indus.*, 823 F.2d 214, 217 (8th Cir. 1987). There is "no prejudice" in allowing an amended complaint, even after a significant delay, when "the amended claims [are] substantially similar to those asserted in the original complaint." *Id.* Likewise, defendants cannot show unfair prejudice when they are just as able to "conduct any necessary additional discovery" as if the motion had been filed sooner. *Buder*, 644 F.3d at 694.

For these reasons, it was improper for the district court in *Buder* to deny the plaintiffs' motion to amend their complaint to add a new claim, even though the parties had already engaged in "[e]xtensive (and expensive) discovery" and even though the plaintiffs knew or should have known earlier that they could assert the new claim. *Buder v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 486 F. Supp. 54, 55–56 (E.D. Mo. 1980) ("*Buder District*"); *see Buder*, 644 F.2d at 695. The plaintiffs originally asserted one claim for federal securities law violations. The statute of limitations became an issue, and the parties agreed to stay the case while the Eighth Circuit determined, in a different case, which state statute of limitations applied. Once the Eighth Circuit decided that question,

the defendant in *Buder* moved for summary judgment, arguing that the statute of limitations barred the claim, and the plaintiffs moved to amend the complaint to add a common-law fraud claim. The district court granted the defendant's summary judgment motion and denied the plaintiffs' motion to amend. The Eighth Circuit reversed the order denying plaintiffs leave to amend. The circuit court reasoned that "the facts on which [the] previously unasserted claim is based are all known or available to all parties," so there was "no prejudice in allowing an amended complaint." *Id.* at 694; *see also Popp Telcom v. Am. Sharecom, Inc.*, 210 F.3d 928, 943 (8th Cir. 2000).[4]

[4] The district court faced a similar situation in *Moore v. Jefferson Capital Systems, LLC*, No. 4:15-CV-418, 2017 WL 2813536 (E.D. Mo. June 29, 2017). The case was stayed while the Eighth Circuit and Supreme Court decided potentially dispositive issues in different cases. Once the stay was lifted, the plaintiff moved to amend her complaint based on the recently decided precedent. The defendant protested that the amendments asserted a new theory of liability, that the proposed factual allegations should have been included in the original complaint, and that allowing the amendment would impose additional discovery requirements. Def.'s Mem. in Opp. to Pl.'s Mot. for Leave to Amend, *Moore v. Jefferson Cap. Sys.*, *LLC*, 4:15-CV-418, Dkt. 47 at 2 (E.D. Mo. June 16, 2017). The court granted leave to amend even under the more rigorous "good cause" standard of Rule 16(b). *Moore*, 2017 WL 2813536 at *2; *see supra* n.3.

By contrast, courts have found a delay to be unfairly prejudicial when (1) trial is near and the amendments would leave the opposing party inadequate time to prepare,[5] (2) the amendments would unfairly impose new discovery costs on the opposing party,[6] or (3) the amendments would add many parties and "substantially different claims arising from fundamentally different facts," *Fuller v. Sec'y of Def.*, 30 F.3d 86, 89 (8th Cir. 1994).

None of those prejudicial circumstances exist here. Trial is nowhere in sight, and no discovery has taken place. So the amendments could not unfairly impose *new* discovery demands on Officer Weyker. The amendments provide details about the relationship between Officer Weyker's state-law authority and her state-federal task force work. Those facts "are all known or available to all parties," *Buder*, 644 F.2d at 694; and the amendments concede that Officer Weyker was acting under color of

[5] *E.g.*, *Thompson-El v. Jones*, 876 F.2d 66, 68 (8th Cir. 1989) (trial two weeks away); *Mills v. Des Arc Convalescent Home*, 872 F.2d 823, 826 (8th Cir. 1989) (trial less than three weeks away); *Vitale v. Aetna Cas. & Sur. Co.*, 814 F.2d 1242, 1252 (8th Cir. 1987) (trial less than two months away).

[6] *E.g.*, *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497–98 (8th Cir. 2008); *Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998).

federal law. If anything, the amendments will alleviate discovery burdens on Officer Weyker, by narrowing the disputes and focusing discovery on specific facts. Finally, the amendments would not add any parties or claims arising from fundamentally different facts.

Denying leave to amend here would be even less appropriate than in *Buder*. As this case nears its sixth birthday, it is "still in the formative stages." *Jackson v. Rockford Hous. Auth.*, 213 F.3d 389, 393 (7th Cir. 2000). The motion does not come after any discovery has taken place, much less "[e]xtensive (and expensive) discovery" as in *Buder District*. 486 F. Supp. at 54. Indeed, the parties have not even exchanged their initial disclosures and Officer Weyker has yet to file an answer. She is in "no position to complain" that the motion will deny her a speedy and inexpensive trial. *Buder*, 644 F.2d at 694. At most, granting the motion may allow Officer Weyker to seek dismissal of the new complaint. But like the new discovery in *Buder*, another 12(b)(6) motion does not amount to unfair prejudice, especially when Officer Weyker resolved to file her motion to dismiss or in the alternative for summary judgment before Ms. Mohamud's motion to amend has been resolved.

As a result, Officer Weyker cannot show delay, let alone prejudicial delay.

II. Ms. Mohamud has acted in good faith.

The proposed amendments seek to refine the factual allegations, add supporting facts, and narrow the issues in response to the Eighth Circuit's instructive decision in *Yassin*. The amendments have not been submitted for a dilatory or other improper purpose. *Cf. Thompson-El*, 876 F.2d 66 (counsel apparently sought leave to amend to delay trial until a more convenient time). Quite the contrary, Ms. Mohamud hopes the amendments will facilitate a more efficient and expeditious resolution of her claims on the merits.

III. Ms. Mohamud has never failed to cure deficiencies.

This Court has never found deficiencies in Ms. Mohamud's complaint. This is her first chance to amend the complaint to address issues that the Eighth Circuit found in the *Yassin* plaintiff's Section 1983 claim.

Courts have found unexcused failures to cure deficiencies when, for example, a court previously ruled that allegations were too indefinite, the plaintiff failed to correct those deficiencies in an amended complaint, and the plaintiff sought to fix the problems in yet another amended

complaint. *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1066 (8th Cir. 2005). Or when the court granted the plaintiff two prior opportunities to amend her complaint and both times it failed to include the requests for damages she sought to add later. *St. Louis Fire Fighters Ass'n Local 73 v. City of St. Louis*, 96 F.3d 323, 330 (8th Cir. 1996).

By contrast, Ms. Mohamud has not squandered any prior opportunities to adjust her pleadings based on the developments that occurred in her own case or *Yassin*.

IV. The amendments are meritorious.

The proposed amendments adjust the complaint's allegations to better tailor Ms. Mohamud's Section 1983 claims to *Yassin*. The Eighth Circuit remanded this case so Ms. Mohamud could press her argument that Officer Weyker acted under color of state law when she violated Ms. Mohamud's clearly established Fourth Amendment rights. *Ahmed*, 984 F.3d at 571. The proposed amendments clarify Ms. Mohamud's Section 1983 claim by providing more thorough allegations addressing the relevant factual and legal issues recently announced by the Eighth Circuit in *Yassin*.

A court may deny leave to amend based on futility only by reaching the legal conclusion "that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6)."[7] A complaint withstands a motion to dismiss when it contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ahern Rentals, Inc. v. EquipmentShare.com, Inc.*, 59 F.4th 948, 953 (8th Cir. 2023) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Court must accept the well-pleaded allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff—here, Ms. Mohamud. *Id.* The Court also must consider only the complaint and "materials that are necessarily embraced by the pleadings and exhibits attached to the complaint." *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 697 n.4 (8th Cir. 2003).

[7] This standard, coupled with Local Rule 72.1, creates "conceptual difficulties for a magistrate judge deciding it." *Arcaro v. City of Anoka*, No. 13-CV-2772, 2014 WL 12605451, at *3 (July 16, 2014) (Ericksen, J.). That is because, under 28 U.S.C. § 636(b)(1)(A), a magistrate judge may not ordinarily rule on a motion to dismiss, and denying a motion for leave to amend because a proposed new claim is legally insufficient is, at least indirectly, a ruling on that claim's merits. Facing these conceptual difficulties in *Arcaro*, the magistrate judge properly granted leave to amend, allowing the merits of the new complaint's claim to be tested in a motion to dismiss before the district judge.

Ms. Mohamud maintains that her first amended complaint—if properly construed in the light most favorable to her—states a claim under Section 1983. But to whatever extent that complaint could arguably fail to adequately allege that Officer Weyker was acting under color of state law, the proposed amendments cure that defect. *Yassin* makes this clear.

For her Section 1983 claim, Ms. Mohamud needs to plead "two—and only two—allegations": (1) that she was deprived of a federal right; and (2) that the person who deprived her of the right—Officer Weyker—acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

The proposed second amended complaint satisfies the first requirement (deprivation of a federal right) for the same reasons the first amended complaint satisfied this requirement. This Court recognized that Ms. Mohamud's first amended complaint "plausibly alleged Weyker violated rights under the Fourth Amendment and that [Mohamud's] allegedly violated rights were clearly established." Dkt. 27 at 11. The Eighth Circuit did not disturb that holding. *See also Farah*, 926 F.3d at 503 ("[A] reasonable officer would know that deliberately misleading another officer into arresting an innocent individual to protect a sham

investigation is unlawful."). The proposed amendments will not disturb that decision, either.

The proposed amended complaint continues to allege that when Minneapolis police officer Anthijuan Beeks arrived on the scene of the knife attack, he regarded Ms. Mohamud and her friends as victims of a crime committed by Muna Abdulkadir. *See Farah*, 926 F.3d at 503; Prop. 2d Am. Compl. ¶ 19. The new complaint also continues to allege that nothing in that officer's investigation—other than the false information Officer Weyker conveyed to him—led him to believe that Ms. Mohamud or her friends had engaged in any criminal activity. Dkt. 27 at 11; Prop. 2d Am. Compl. ¶¶ 20–27, 29–30. The proposed complaint likewise continues to allege that Officer Weyker knowingly lied and omitted key facts to support the criminal complaint against Ms. Mohamud and her friends. Dkt. 27 at 11; Prop. 2d Am. Compl. ¶¶ 28, 31–35. These allegations prove violations of the clearly established right to be free from "seizure without 'a truthful factual showing sufficient to constitute probable cause.'" Dkt. 27 at 10 (citation omitted).

The second, color-of-state-law requirement has not yet been evaluated by this Court in Ms. Mohamud's case. The Eighth Circuit addressed

this requirement in *Yassin*. On summary judgment, the court in *Yassin* recognized that the inquiry "can turn out to be quite 'fact[ ]bound'" and determined that state law had "nothing to do with" the nature and circumstances of Officer Weyker's conduct. 39 F.4th at 1090. The Court reasoned in part that "the witness [that Officer Weyker] was trying to protect, Muna Abdulkadir, was only on her radar because she was assigned to a federal investigation." *Id.* The Court also reasoned that Officer Weyker "did not stray" from her official federal duties when speaking with the arresting Minneapolis police officers at the scene. *Id.*

Ms. Mohamud seeks to specify the exact opposite with her proposed amendments—that Officer Weyker's position as a St. Paul police officer had everything to do with the nature and circumstances of her conduct; that the witness Officer Weyker was trying to protect was on her radar only because Officer Weyker was a St. Paul police officer; and that Officer Weyker did stray from her official duties as a Special Deputy U.S. Marshal when speaking with the St. Paul officers at the scene. Prop. 2d Am. Compl. ¶¶ 36, 40, 43–45. On this last point, the amendments specify that Officer Weyker's federal authority was limited to "seek[ing] and

execut[ing] arrest and search warrants supporting a federal task force." *Id.* at ¶ 45.

Buttressing these allegations, Ms. Mohamud seeks to further allege Officer Weyker's investigation into the *Adan* cases was part of her work as a member of the Gerald D. Vick Task Force, a state-federal task force for which "[t]he St. Paul Police Department (SPPD) is the lead agency" and which maintained a distinctly Minnesotan mission to combat human trafficking "when it appears in Minnesota." Prop. 2d Am. Compl. ¶¶ 37–51. This explains why, as the Sixth Circuit observed affirming the acquittals in the *Adan* cases, "Officer Weyker (the lead agent), . . . the principal victim-witness[], and all but a few of the 30 defendants [in the *Adan* cases] reside[d] in Minnesota, and an overwhelming portion of the events at issue occurred in Minnesota." *Fahra*, 643 F. App'x at 482. The proposed amendments allege that the only reason Officer Weyker was involved in the *Adan* cases and the only reason Officer Weyker knew Ms. Abdulkadir is because Officer Weyker was a St. Paul police officer. All roads run through St. Paul and the Vick Task Force. *Id.* at ¶¶ 36–43, 45.

The proposed amendments also allege that Officer Weyker's federal deputization supplemented, but did not displace, her state authority.

Prop. 2d Am. Compl. ¶¶ 36, 43–49. Supporting this allegation, the proposed amended complaint provides that the St. Paul Police Department entered task-force agreements with the FBI—both before and after Officer Weyker's actions in June 2011—memorializing the relationship between the state and federal agencies and explicitly recognizing that cross-deputized agents like Officer Weyker continue to act with state authority while on a state-federal task force. *E.g.*:

> Bivens Actions. Liability for violations of federal constitutional law rests with the individual Federal agent or officer, or employee, pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for State and local officers or cross-deputized Federal officers.

See Prop. 2d Am. Compl. ¶¶ 47–48 & Ex. 2 at § III(G), Ex. 3 at SOP § VIII (G). Ms. Mohamud has attached these referenced memoranda of understanding to her proposed amended complaint.

Ms. Mohamud's proposed amendments ultimately create a constellation of facts that is incompatible with the scenario relied on in *Yassin*. *See Yassin*, 39 F.4th at 1090–91. Even if the Eighth Circuit were correct in *Yassin*,[8] Ms. Mohamud's proposed amendments prove an "actual or

[8] Ms. Mohamud maintains that the Eighth Circuit's decision in *Yassin* was incorrectly decided and preserves her right to challenge it on appeal. But Ms. Mohamud's proposed amended complaint states a claim even if *Yassin* was correctly decided.

purported relationship between [Weyker's] conduct and [her] duties as a [St. Paul] police officer." *Id.* at 1091 (alterations in original) (quoting *Magee v. Trs. of Hamline Univ.*, 747 F.3d 532, 535 (8th Cir. 2014)). In sum, Ms. Mohamud's proposed amended complaint includes three documents outlining the relationship between St. Paul and the federal government during Officer Weyker's work and additional facts that make abundantly clear that, at a minimum, Officer Weyker, St. Paul, and the federal government all believed Officer Weyker, as a cross-deputized officer, was acting under color of state law and subject to liability under Section 1983 when she framed Ms. Mohamud.

V. The amendments would not prejudice Officer Weyker.

Just as the timing of this motion does not unfairly prejudice Officer Weyker, *see supra* Part I, neither would granting the motion. "[E]ven where some prejudice to the adverse party would result if the motion to amend were granted, that prejudice must be balanced against the hardship to the moving party if it is denied." *Buder*, 644 F.2d at 694. The hardship to Ms. Mohamud if the motion is denied may be significant. If the Court denies this motion and grants Officer Weyker's motion to dismiss the first amended complaint, then Ms. Mohamud may be denied a

determination on the merits of her claims.[9] By contrast, granting the motion would not require Officer Weyker to develop a fundamentally different defense or engage in more discovery. Without unfair prejudice to Officer Weyker, the Court should follow the liberal policy of granting leave to amend.

Conclusion

This case does not present "those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the non-moving party can be demonstrated." *Roberson*, 241 F.3d at 995. This Court should thus "freely give leave" to Ms. Mohamud to amend her complaint, giving her claims an opportunity to be tested on the merits.

[9] Again, Ms. Mohamud maintains that her first amended complaint should survive a motion to dismiss. But to the extent there are deficiencies in that first amended complaint, the proposed second amended complaint cures them and tailors them to the new legal standards expressed by the Eighth Circuit and Supreme Court.

Respectfully submitted on June 5, 2023,

/s/ Patrick Jaicomo

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Certificate of Compliance

Under Local Rule 7.1(f)(2), the undersigned counsel for Plaintiff Hamdi Mohamud certifies that Plaintiff's Memorandum in Support of Motion for Leave to File satisfies the requirements of Local Rules 7.1(f) and 7.1(h). The memorandum is typewritten in double-spaced, 14-point, Century Schoolbook font, with the exception of footnotes and block quotes, which are typewritten in single-spaced 14-point Century School font. As calculated using the word-count function of Microsoft Word 365, the memorandum contains 5,951 words, including all text, headings, footnotes, and quotations.

/s/ Patrick Jaicomo
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