

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BENNIE OLIVER

Plaintiff

v.

**WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY, et al.,**

Defendants.

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Civil Case No. 10-1380-RWT

MEMORANDUM OPINION

On February 3, 2011, Plaintiff Bennie Oliver (“Oliver”) moved for leave to file a Second Amended Complaint in this automobile collision case. ECF No. 29. Oliver seeks to amend his First Amended Complaint primarily to add a claim for gross negligence. *Id.* Defendant Metropolitan Transit Police Officer Christopher Fulda (“Fulda”), the sole remaining defendant, opposes Oliver’s motion. ECF No. 32.

Rule 15(a) of the Federal Rules of Civil Procedure provides that, more than 21 days after a responsive pleading or a motion to dismiss is served, “[a] party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Leave to amend a complaint under F. R. Civ. P. 15(a) “should be freely given . . . unless 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 be futile.” *Steinburg v. Chesterfield County Planning Comm’n*, 527 F.3d 377, 390 (4th Cir. 2008). Futile amendments are those that cannot survive a motion to dismiss. *See Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995); *Frank M. McDermott, Ltd. v. Moretz*, 898 F.2d 418, 420-21 (4th Cir. 1990); *Classen Immunotherapies, Inc. v. King Pharms., Inc.*, 403 F. Supp. 2d 451, 459 (D. Md. 2005).

