

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CEDRIC YOUNG

v.

CASE NO. 3:10CV606 (CSH)

WAYNE CHOINSKI, ET AL.

**RULING ON DEFENDANTS' MOTION TO DISMISS IN PART,
AND ON PLAINTIFF'S MOTION TO AMEND THE AMENDED COMPLAINT**

Defendants move pursuant to Federal Rule of Civil Procedure 12(b)(1) to dismiss in part Plaintiff's Amended Complaint [Doc. 10] for want of subject matter jurisdiction, because Plaintiff seeks money damages against Defendants in their official capacities, in violation of the Eleventh Amendment. [Doc. 21]

Plaintiff, *pro se* and incarcerated, has filed an opposition to the motion to dismiss, arguing that Defendants have "misconstrue[d]" his Amended Complaint [Doc. 25 at ¶ 5], and clarifying that he "is seeking [] injunctive relief [against Defendants] in their official capacities and monetary damages [against Defendants] in their individual capacities." [Doc. 25 at ¶ 6]

The Amended Complaint states that Defendants are sued in both their official and individual capacities and requests declaratory and injunctive relief as well as money damages. Both parties' readings of the Amended Complaint are plausible. That is, it is not entirely clear whether Plaintiff impermissibly intended to sue Defendants for money damages in both their official and individual capacities, or whether, in accordance with law, he sought money damages from Defendants in their individual capacities only, and sought declaratory and injunctive relief against Defendants in their official capacities.

In any case, Plaintiff has filed a Motion to Amend the Amended Complaint [Doc. 26], to which he has attached his proposed Second Amended Complaint, which contains language that makes clear that Plaintiff does not seek money damages from Defendants in their official capacities. Defendants have not filed an opposition to Plaintiff's Motion to Amend, and the time for doing so has expired. Plaintiff's Motion to Amend the Amended Complaint [Doc. 26] is GRANTED. Defendants' Motion to Dismiss in Part [Doc. 21] is FOUND TO BE MOOT in light of the clarification provided in Plaintiff's Second Amended Complaint regarding the relief sought. Defendants are ordered to file their answer to the Second Amended Complaint, once served, within the time provided in the Federal Rules of Civil Procedure.

SO ORDERED this 10th day of February, 2011, at New Haven, Connecticut.

/s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge