IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALEMAYEHU GETACHEW,

Plaintiff,

v.

Case No. 2:11-CV-169
JUDGE SARGUS
MAGISTRATE JUDGE KING

CENTRAL OHIO WORKFORCE INVESTMENT CORPORATION, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's *Motion to Amend His Complaint*, Doc. No. 20. For the reasons that follow, the motion is denied.

I.

Plaintiff Alemayehu Getachew ["Plaintiff"] brings this action against Defendants Central Ohio Workforce Investment Corporation ["COWIC"] and Goodwill Industries ["Goodwill"], alleging that he was discriminated against on the basis of his race, national origin, and age in connection with his efforts to obtain employment. Specifically, Plaintiff alleges that he registered with COWIC's publically funded program intended to assist persons in finding work and that he was denied employment by Goodwill. *Complaint*, ¶¶ 12, 13. Plaintiff, who is proceeding without the assistance of counsel, seeks relief under Title VII of the Civil Rights Act of 1964 ["Title VII], 42 U.S.C. § 2000e, *et seq.*, the Fourteenth Amendment to the United States Constitution and the Age Discrimination in Employment Act ["ADEA"], 29 U.S.C. § 621, *et seq.*

Plaintiff also asserts a claim of retaliation against Defendant Goodwill pursuant to 42 U.S.C. § 1981. The Court exercises federal question jurisdiction over this action. 28 U.S.C. § 1331.

In his *Complaint*, Doc. No. 2, Plaintiff alleges that both Defendants discriminated against him on account of his race, age and national origin from March through June 2009. *Id.*, at ¶¶ 12, 27, 33, 42, 44, 49-50, 54, 58, 60-63, 89-91. Plaintiff further alleges that he was retaliated against by Defendant Goodwill because this Defendant allegedly considered Plaintiff's previous "record of asserting his civil rights . . . in denying him employment in [ ] three open positions. . . ." *Id.*, at ¶ 94.

Defendants have filed *Answers* to the *Complaint*, Doc. Nos. 6, 10, and both Defendants have filed *Motions to Dismiss* the claims asserted by Plaintiff. Doc. Nos. 4, 7.

Plaintiff has filed a motion to amend his *Complaint* to assert an additional claim of race discrimination under 42 U.S.C. § 1983 against both Defendants.[1] In particular, Plaintiff claims that Defendant COWIC "violated his rights by denying him a training opportunity allowed by 'WIA' [Workforce Investment Act]." *Motion to Amend,* at 1. Plaintiff alleges that Defendant Goodwill "work[ed] closely with the state government . . . in implementing the [WIA]" and thus, is a state actor for purposes of § 1983. *Id.*, at 4. Plaintiff also asserts, in conclusory fashion, that he "wants to add gender bias against [Defendant Goodwill]." *Id.*, at 6. Both Defendants oppose Plaintiff's *Motion to Amend*. Plaintiff has not filed a *Reply Memorandum* in support of the motion.

II.

Both Defendants argue that Plaintiff's proposed new claim could not survive a motion to

[1]In his original *Complaint*, the claim for violation of equal protection is alleged against Defendant COWIC only. *See Complaint*, Doc. No. 2, at ¶¶ 35-47.

dismiss and that the motion for leave to amend should therefore be denied. Rule 15(a) of the Federal Rules of Civil Procedure provides that a court "should freely give leave [to amend] when justice so requires." The grant or denial of a request to amend is left to the broad discretion of the district court. *General Electric Co. v. Sargeant & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990). In exercising its discretion, a district court may consider such factors as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing parties by virtue of allowance of the amendment [and] futility of the amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The United States Court of Appeals for the Sixth Circuit has held that leave to amend may be properly denied if the proposed amendment would be futile, *i.e.*, "if the amendment could not withstand a Fed. R. Civ. P. 12(b)(6) motion to dismiss." *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000). In making this determination, a court must construe the proposed claim in the light most favorable to the plaintiff and all well-pleaded facts must be accepted as true. *See Bower v. Federal Express Corp.*, 96 F.3d 200, 203 (6th Cir. 1996); *Misch v. The Cmty. Mutual Ins. Co.*, 896 F.Supp. 734, 738 (S.D. Ohio 1994).

In determining whether a claim could survive a motion to dismiss under Rule 12(b)(6), the United States Supreme Court has explained that a claim "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" *Id.* at 556. Accordingly, a claim is appropriately dismissed under Rule 12(b)(6) if it does not allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

III.

According to Defendants, Plaintiff's proposed claim could not withstand a Rule 12(b)(6) motion to dismiss because Plaintiff cannot satisfy the state action requirement of § 1983. Whether or not a private entity acts under color of state law is a question of law. *See e.g., Neuns v. City of Columbus*, 303 F.3d 667, 670 (6th Cir. 2002). "A private party's actions constitute state action under section 1983 where those actions may be 'fairly attributable to the state.'" *Chapman v. Higbee Co.*, 319 F.3d 825, 833 (6th Cir. 2003) (*en banc*), quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 947 (1982). "The [United States] Supreme Court has developed three tests for determining the existence of state action in a particular case: (1) the public function test; (2) the state compulsion test; and (3) the symbiotic relationship or nexus test." *Id.*, citing *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992).

In its motion to dismiss the § 1983 claim asserted in Plaintiff's original *Complaint*, Defendant COWIC points out that it is a private, not-for-profit corporation. *Motion to Dismiss*, Doc. No. 7, at 9, citing Exhibit B. Defendant COWIC also argues that it cannot be considered a state actor under any of the three tests developed by the United States Supreme Court. *Id.*, at 9-11. In opposing the proposed amendment to the original *Complaint*, COWIC again argues that Plaintiff's allegations fall short of establishing state action. "[N]either COWIC's actions nor its receipt of federal Workforce Investment Act monies renders its conduct 'state action' under the public function test, the state compulsion test, or the symbiotic/nexus test for purposes of the Fourteenth Amendment." *Memorandum contra*, Doc. No. 21, at 2. Similarly, Defendant Goodwill argues that Plaintiff has failed to allege facts that would establish state action on its

part.

Because the issue of state action – which is addressed in Defendant COWIC's motion to dismiss – has not yet been resolved, the Court concludes that its discretion is better exercised in favor of granting Plaintiff leave to amend the complaint in order to assert an additional claim under § 1983.

IV.

WHEREUPON, the Plaintiff's *Motion to Amend his Complaint*, **Doc. No. 20** is **GRANTED.**

Plaintiff is **ORDERED** to file the amended complaint within seven (7) days of the date of this *Order.*

Should Defendants intend to renew their motions to dismiss in response to the anticipated amended complaint, they may, if they wish, simply incorporate by reference the arguments asserted in their motions to dismiss the original *Complaint*.

August 23, 2011
DATE

s/ Norah McCann King
NORAH McCANN KING
UNITED STATES MAGISTRATE JUDGE