

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TOM NOVACK,

Plaintiff,

VS.

CITY OF WEBSTER, TEXAS, *et al.*,

Defendants.

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CIVIL ACTION NO. H-10-2594

ORDER


The plaintiff has filed a motion and a renewed motion to reinstate this case to the active docket. The case was stayed and administratively closed, with the parties' agreement, pending the resolution of criminal charges against the plaintiff. Those charges have been dismissed and the plaintiff seeks reinstatement. (Docket Entry No. 23). That motion is unopposed and is granted.

Before this case was dismissed, the plaintiff filed an amended complaint and the defendants filed an amended motion to dismiss that complaint. (Docket Entry No. 12). The case was stayed shortly thereafter. The plaintiff has filed a motion for leave to supplement the complaint. (Docket Entry No. 21). The defendants oppose the motion. (Docket Entry No. 22).

To allow for orderly and efficient consideration of the challenges to the pleadings, this court grants the motion to reinstate and for leave to file a supplemented complaint. (Docket Entry No. 21). The plaintiff must file a second amended complaint no later than **October 7, 2011**. This order makes the defendants' renewed motion to dismiss moot. Although the defendants contend that the proposed supplements to the complaint should not be permitted under Rule 15 because they would be futile, the standard to determine futility is the same standard that applies to a motion to dismiss

under Rule 12(b)(6). It is most efficient to have the amended pleading filed and all the challenges to that pleading presented in a single motion to dismiss. The defendants must file a Rule 12(b)(6) motion to dismiss the second amended complaint no later than **October 21, 2011**.

SIGNED on September 26, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge