

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

FRANCIS A.L. ENGLEBRIGHT, and
ROSELLA ENGLEBRIGHT, individually
and as co-special administrators of the
estate of FRANCIS A.L.
ENGLEBRIGHT, JR.,

Plaintiffs,

v.

Case No. 24-CV-552-CVE-CDL

SHANNON BUHL,
KODY FISHER,
ERIN FAULKENBERRY,
BRYAN SMITH, special administrator of
the estate of BRIAN CATCHER, deceased,
and
UNITED STATES OF AMERICA,

Defendants.

**RESPONSE OF DEFENDANT UNITED STATES OF AMERICA TO
PLAINTIFFS' APPLICATION TO AMEND**

The Defendant, United States of America ("USA"), by and through Clinton J. Johnson, United States Attorney for the Northern District of Oklahoma, and Rachel D. Parrilli, Assistant United States Attorney, submits the following as its Response to Plaintiffs' Application to Amend (Dkt. 41).

Refusing leave to amend is justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment. *Castleglen, Inc. v. Resolution Trust Corp.*, 984 F.2d 1571, 1585 (10th Cir. 1993) (citing *Foman v.*

Davis, 371 U.S. 178, 182 (1962)). Defendant United States has submitted a Motion to Dismiss showing the futility of Plaintiffs' claims (Dkt. 36). The Court would rightfully deny the Plaintiffs' Application to Amend as futile.

Additionally, Plaintiffs tacitly admit the insufficiency of their Complaint and request authority to amend, but Plaintiffs do not allege that they require additional time to acquire facts, just that they wish to change their allegations if the current ones are deemed insufficient by the Court. Furthermore, "[w]here the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial." *Las Vegas Ice & Cold Storage Co. v. Far West Bank*, 893 F.2d 1182, 1185 (10th Cir. 1990). In this case, Plaintiffs are relying on the Court to correct its pleading, but do not need additional time or factual information to revise their Complaint.

Plaintiffs' Motion to Amend also says, "5. Counsel for Defendants has been contacted but have not responded regarding objection hereto." (Dkt. 41). Undersigned counsel was never contacted regarding any proposed amendment.

While courts liberally grant motions to amend complaints, "when it would be futile to allow a complaint to be amended because the new assertions would fail to withstand a motion to dismiss, leave to amend should be denied." *Moore v. Eli Lilly & Co.*, 626 F. Supp. 365, 366 (D. Mass. 1986)(*quoting Foman v. Davis*, 371 U.S. 178, 182 (1962)). In this case, Plaintiffs' Amended Complaint, based on the known facts, would not withstand a Motion to Dismiss. All relevant facts were known to Plaintiffs

when they filed their Complaint and the Court should deny the Application to Amend.

Respectfully submitted,

UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2025, the foregoing document was electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to counsel of record.

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