

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 01, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NAOMI SUE WHITE EAGLE,

Plaintiffs,

v.

RN MELISSA HOLDWAY, RN
BRIANNE BAUGHN, DR. CLAY
and GRIEVANCE COORDINATOR
PATRICK STRAND,

Defendants.

NO: 2:22-CV-00155-RMP

ORDER DISMISSING ACTION
WITH PREJUDICE

1915(g)

Before the Court is Plaintiff Naomi Sue White Eagle's Second Amended Complaint, ECF No. 14. Plaintiff, a prisoner at the Airway Heights Corrections Center ("AHCC"), is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

SECOND AMENDED COMPLAINT

As a general rule, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012). Therefore, "[a]ll causes of action alleged in an original complaint

1 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
2 F.2d 565, 567 (9th Cir. 1987) *overruled in part by Lacey*, 693 F.3d at 928 (any
3 claims voluntarily dismissed are considered to be waived if not re-pled).
4 Furthermore, defendants not named in an amended complaint are no longer
5 defendants in the action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
6 1992). Accordingly, Defendant Kathy James has been **TERMINATED** from this
7 action, and Defendant Dr. Clay, whose first name is listed as “unknown” by
8 Plaintiff on the complaint form, was added.

9 ATTACHED DOCUMENTS

10 Among the documents attached to Plaintiff’s Second Amended Complaint
11 are a Psychological Report prepared by Diedre L. Clay, PsyD, CDP, for the time
12 frame June 22, 2020, to September 25, 2020, indicating “[a]reas of concern
13 relating to Ms. White Eagle’s historical diagnosis which may preclude surgical
14 intervention,” ECF No. 14 at 14–25; a Mental Health Evaluation for Gender
15 Dysphoria Treatment dated August 27, 2021 by Meg Manthos, PhD, *id.* at 26–37,
16 recommending a referral for a “surgical consultation for feminizing genital
17 surgery, including the option for orchiectomy while awaiting vaginoplasty,” having
18 judged such surgery “to be a psychologically appropriate and medically necessary
19 treatment for Ms. White Eagle’s genital dysphoria,” *id.* at 35; and a Care Review
20 Committee Report dated November 30, 2021, recommending approval for a
21 “consult to ‘review external consultant assessment for surgery,’” *id.* at 39.

1 According to a “Resolution Request” form dated April 11, 2022, a resolution
2 specialist commented on April 18, 2022, that “Medical is aware of your sexual
3 reassignment approvals. Unfortunately, this process can take a long time as Dr.
4 Stiller is currently the department’s only surgical provider for sexual reassignment.
5 Please continue to be patient.” *Id.* at 42.

6 Liberally construing the assertions of the Second Amended Complaint in the
7 light most favorable to Plaintiff, and having reviewed the attached documents, the
8 Court finds that the Second Amended Complaint does not cure the deficiencies of
9 the prior complaints as set forth in the Orders to Amend or Voluntarily Dismiss,
10 ECF Nos. 11 and 13.

11 Although granted repeated opportunities to do so, Plaintiff has failed to
12 clearly and concisely set forth factual allegations from which the Court could infer
13 that named Defendants have violated her constitutionally protected rights.

14 Assuming the newly added Defendant, Dr. Clay, is the Psychiatrist who assessed
15 Plaintiff in 2020, Plaintiff presents no facts from which the Court could infer that
16 Dr. Clay has prevented Plaintiff from receiving medically necessary surgery.

17 Plaintiff names two registered nurses as Defendants but presents no facts from
18 which the Court could infer that they had authority to deny Plaintiff surgery.

19 Plaintiff also fails to allege facts from which the Court could infer that Plaintiff’s
20 fourth Defendant, Patrick Strand, whose job title Plaintiff lists as “grievance,” had
21 authority to deny Plaintiff medically necessary surgery. Plaintiff’s Second

1 Amended Complaint against these Defendants fails to state a claim upon which
2 relief may be granted.

3 PLAINTIFF'S ALLEGATIONS

4 *Count I:*

5 In Count I, Plaintiff alleges “8th Amendment, Deliberate Indifference &
6 Proper treatment as to SRS” against Defendant(s) Holdway, Clay and Baughn. *Id.*
7 at 4. Plaintiff asserts that she has “been reported with Gender Dysphoria¹ since
8 1983,” secured a “legal name change” in 2006 and has been receiving hormone
9 therapy in the Washington State Department of Corrections (“DOC”) since 2013.
10 *Id.* at 5. She claims that a mental health provider, Defendant Dr. Clay,
11 “determined & documented” Plaintiff’s “evaluations & readiness” on or about June
12 22, 2020. *Id.*

13 Plaintiff contends that she “states & shows occurrences & diagnosed Gender
14 Dysphoria by Dr. Clay that surgery is deemed necessary and Defendant(s) hinder
15 & continue to reschedule Plaintiff for SRS and prohibition of surgery would be
16 detrimental & Is deliberate Indifference which is violative of 8th Amendment.” *Id.*
17 (as written in original). These contentions are unclear. Nevertheless, Plaintiff
18

19 ¹ Gender Dysphoria was first codified in the Diagnostic and Statistical Manual of
20 Mental Disorders, 5th Edition (DSM-5), copyrighted 2013.
21

1 seeks sexual reassignment surgery (“SRS”) to remove her “male parts.” *Id.*

2 Plaintiff asserts that she meets “required needs for SRS” and that
3 “Defendant(s) Baughn & Clay, followed by Holdway hinder, delay & show
4 Indifference to Plaintiff’s Need & treatment having been documented for SRS
5 readiness.” *Id.* at 5. Apart from these conclusory assertions, Plaintiff does not state
6 under what circumstances any of these named Defendants have interfered with an
7 approved surgery. She asserts only that “without surgery Plaintiff will succumb to
8 feelings of despair & hopelessness & will be at greater risk of emotional
9 destabilization & suicide.” *Id.* at 7. Plaintiff has presented no facts from which the
10 Court could infer that named Defendants have denied her needed mental health
11 treatment for expressed suicidal ideations.

12 Plaintiff asserts that “Defendant(s) ignore requests & needs of SRS showing
13 deliberate Indifference holding 8th Amendment violations because Defendant(s)
14 hinder & limit Plaintiff’s SRS knowing of Need based on a blanket policy rather
15 than medical Need.” *Id.* at 7. Again, Plaintiff does not support these conclusory
16 assertions with facts. It is unclear what Plaintiff means by “freeze-frame” or how
17 this violates the Eighth Amendment. *Id.* Plaintiff admits that she has been
18 receiving hormone therapy within the DOC since 2013. *Id.* at 5.

19 *Count II:*

20 In “Count II” Plaintiff asserts “8th Amendment, 14th Amendment violation of
21 Indifference & Equal fairness” against Defendants Strand, Baughn, Clay and

1 Holdway. *Id.* at 9. Plaintiff asserts that “Defendant(s) Do show Indifference by
2 failing to properly respond to grievances, medical kites, complaints. As
3 Defendant(s) know of need & treatment failing to properly provide treatment, unto
4 professional standards having SRS readiness documented being hindered &
5 limited.” *Id.* at 10 (as written in original).

6 The Court cannot infer from these assertions that the named Defendants
7 have violated Plaintiff’s constitutionally protected rights under either the Eighth or
8 Fourteenth Amendment. Prisoners lack a constitutional right to a specific
9 grievance procedure. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003);
10 *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, mere
11 dissatisfaction with the remedy process or its results cannot, without more, support
12 a claim for relief for violation of a constitutional right.

13 The failure of prison officials to entertain an inmate’s administrative
14 grievance does not violate his or her constitutional rights because the right to
15 petition the government is the right of access to the courts, not the administrative
16 process. *See Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991); *see also Baltoski v.*
17 *Pretorius*, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003) (“The right to petition the
18 government for redress of grievances, however, does not guarantee a favorable
19 response, or indeed any response, from state officials.”). Plaintiff’s assertions
20 regarding how defendants responded to her grievances, medical kites and
21 complaints do not state a claim upon which relief may be granted.

1 *Count III:*

2 In Count III, Plaintiff asserts, “8th & 14th Amendment, Indifference to Due
3 process, double Jeopardy clause.” ECF No. 14 at 10. Plaintiff asserts that on
4 October 17, 2022, unspecified “officials” showed “Deliberate Indifference
5 subjecting Plaintiff to harassment & violative acts in violation of double Jeopardy
6 clause; when Defendant(s) violated policy & caused a procedural error in a
7 disciplinary hearing.” *Id.* at 10–11. Plaintiff provides no factual allegations to
8 support her assertions.

9 To the extent that Plaintiff is challenging a housing decision that occurred
10 after she filed this action and just weeks prior to the submission of her Second
11 Amended complaint, it appears implausible that she could have properly exhausted
12 such a claim. *See* 42 U.S.C. § 1997e(a) (a prisoner may not sue over conditions of
13 confinement unless all available administrative remedies have been exhausted);
14 *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9th Cir. 2006); *Brown v. Valoff*, 422
15 F.3d 926, 934–35 (9th Cir. 2005). Regardless, Plaintiff does not state how any of
16 the named Defendants personally participated in this housing decision, or, in doing
17 so, violated her constitutionally protected rights.

18 Rather, she asserts in a conclusory fashion that she was “forced into a 4 man
19 Putting Plaintiff’s safety & wellbeing at risk which caused further Emotional &
20 mental Distress. Defendant(s) knowing of Plaintiff’s mental & medical status
21 ignoring housing policy & Disciplinary policy & protocols . . . Plaintiff’s double

1 jeopardy clause & due process was violated when Defendant sanctioned Plaintiff
2 for pushing call button feeling unsafe & further unto Disciplinary appeal being
3 given a sanction after serving same infraction sanction In which Infraction being
4 conducted inappropriately & violative of policy should have been Dismissed.
5 Plaintiff did not state anything about incident protecting self and confidentiality.
6 Defendant(s) clearly violate showing targeting & Did violate Double Jeopardy.”
7 *Id.* at 11 (as written in original). Again, the Court cannot infer from Plaintiff’s
8 conclusory assertions what any Defendant did that violated her constitutionally
9 protected rights. In any event, the Double Jeopardy Clause of the Fifth
10 Amendment does not apply to prison disciplinary proceedings. *See Breed v. Jones*,
11 421 U.S. 519, 528 (1975) (application of double jeopardy clause limited to
12 proceedings that are “essentially criminal”) (internal quotations and citation
13 omitted).

14 Having granted Plaintiff numerous opportunities to amend and having found
15 that Plaintiff failed to clearly and concisely present facts from which the Court
16 could infer that named Defendants have acted with deliberate indifference to her
17 serious medical needs, the Court finds that Plaintiff has failed to state a claim upon
18 which relief may be granted. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

19 Accordingly, **IT IS ORDERED** that this action is **DISMISSED WITH**
20 **PREJUDICE** for failure to state a claim upon which relief may be granted under
21 28 U.S.C. § 1915(e)(2).

1 Pursuant to 28 U.S.C. § 1915(g) a prisoner who brings three or more civil
2 actions or appeals which are dismissed as frivolous or for failure to state a claim
3 will be precluded from bringing any other civil action or appeal in forma pauperis
4 “unless the prisoner is under imminent danger of serious physical injury.” 28
5 U.S.C. § 1915(g). Plaintiff is advised to read the statutory provisions of 28 U.S.C.
6 § 1915. This dismissal of Plaintiff's complaint may count as one of the three
7 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect her ability to
8 file future claims *in forma pauperis*.

9 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
10 Order, enter judgment of dismissal with prejudice, provide copies to Plaintiff at her
11 last known address, and close the file. The District Court Clerk is further directed
12 to provide a copy of this Order to the Office of the Attorney General of
13 Washington, Corrections Division. The Court certifies that any appeal of this
14 dismissal would not be taken in good faith.

15 **DATED** December 1, 2022.

16
17 s/ Rosanna Malouf Peterson
18 ROSANNA MALOUF PETERSON
19 Senior United States District Judge
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21