

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-01654-MSK-NRN

SAUNDERS-VELEZ,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS (CDOC),
TRAVIS TRANI, in his official capacity as Director of Prisons,
MIKE ROMERO, in his official capacity as Colorado Territorial Correctional Facility Warden,
RICK RAEMISCH, in his official capacity as Executive Director of Colorado Department of Corrections,
RYAN LONG, in his official capacity as Denver Reception and Diagnostic Center Warden,
KELLIE WASKO, in her official capacity as Deputy Executive Director of Colorado Department of Corrections,
DENVER RECEPTION AND DIAGNOSTIC CENTER (DRDC), and
THE COLORADO TERRITORIAL CORRECTIONAL FACILITY (CTCF),

Defendants.

MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Plaintiff Lindsay Saunders-Velez, by and through her attorneys, Paula Greisen and Meredith A. Munro of KING & GREISEN, LLP, and Shawn Thomas Meerkamper and Lynly Egyes, of THE TRANSGENDER LAW CENTER, respectfully submit this Motion for Leave to File Third Amended Complaint in this matter pursuant to Fed. R. Civ. P. 15(a)(2). Copies of the proposed Third Amended Complaint and a redlined version showing the portions to be deleted and added, pursuant to D.C.COLO.LCiv.R 15.1(b), are submitted herewith.

D.C.COLO.LCiv.R 7.1

Pursuant to D.C.COLO.LCiv.R 7.1, counsel for the Defendants has informed undersigned counsel that Defendants have not yet taken a position on this motion.

1. On April 20, 2018, Plaintiff filed a motion in this Court asking that Defendants be prohibited from moving her into a housing unit in Colorado Territorial Correctional Facility (“CTCF”) where she believed she would be subjected to sexual assault by other inmates. [Doc. 40] The Court denied that request and a few hours after being moved into that unit, Plaintiff was raped.

2. Afterwards, there was wide-spread media coverage about this case and the events leading up to her rape. Defendants and their counsel were aware of the nationwide press coverage regarding these matters.

3. After this story went public, the Warden at CTCF, Mike Romero (“Romero”), held a meeting with five other transgendered women in custody and housed at CTCF. After that meeting, the Warden arranged to have a prominent Denver media reporter come to CTCF, interview these women and take their pictures, all to be published in the Denver Post.

4. During the interview with the reporter, these five women labeled Ms. Saunders-Velez a “snitch” for reporting her rape, and alternatively accused her of lying about the rape or “asking for it.” None of these five women were present when the rape occurred. *Exhibit 1, Denver Post article on May 16, 2018, “Trans inmates split.”*

5. Romero knew when he arranged the interview that these women would tell the reporter that Plaintiff is a “snitch” and a “liar.” Romero was also aware that some of these women have a history of violence towards other inmates. Upon information and belief, all five

women were given more favorable treatment by CDOC and Romero after they participated in the interview with the reporter.

6. Romero then conspired with other CDOC employees and agents to house Plaintiff in the same cellhouse as that occupied by most of the five women. Despite knowing that these women were subjecting Plaintiff to daily ridicule and harassment, Romero repeatedly ignored Plaintiff's complaints about the harassment, her fear of getting assaulted, and her requests to move her to a different location.

7. When these efforts were not successful in achieving the goal of Ms. Saunders-Velez withdrawing her federal lawsuit, Defendant Romero continued to conspire with other CDOC employees and agents to increase the pressure on Plaintiff to dismiss her lawsuit. These actions include but are not limited to:

- Targeting the person known to be Ms. Saunders-Velez's confidante and supporter, Mario Castillon, and subjecting him to discipline when he was seen talking to Ms. Saunders-Velez. Defendants then transferred Mr. Castillon to a different facility.
- Undersigned counsel had arranged for an in-person visit to Ms. Saunders-Velez on July 25, 2018, with two Colorado House of Representative members. This visit was arranged and approved by CDOC approximately three weeks prior to the visit. The day prior to this visit, undersigned counsel's office called CDOC again to confirm the visit and was told CDOC could "not accommodate" the visit. Undersigned counsel's repeated calls to the facility were not returned. Finally, counsel for Defendants stated that Plaintiff had a "medical issue." Although

undersigned counsel attempted to visit Plaintiff wherever she was located, Defendants would not provide undersigned counsel with Plaintiff's location.

- Denying Ms. Saunders-Velez request on August 2, 2018 that she be placed in protective custody. Her request was based on the fact that she had been raped twice, continued to receive threats of sexual assault, the media attention about her case, and threats she received from another incarcerated person, Juan Candelaria. Her request for protective custody status was denied. Shortly thereafter, CDOC moved Mr. Candelaria into Cell House 3.
- Moving Ms. Saunders-Velez back to the "punishment pod" Cell House 3 on Tuesday, August 7, 2018 because of an alleged failure to obey a lawful order. Cell House 3 is the location where Plaintiff had previously been raped. Despite the fact that CDOC has a policy that allows persons in custody to serve any restriction of privileges in her current cell, CDOC refused to allow Plaintiff that privilege and moved her to Cell House 3, where she was again placed in extreme fear for her safety.
- Refusing undersigned counsel's request for an emergency phone call with Plaintiff prior to her removal to Cell House 3, because Defendants stated that there was no emergency, despite the knowledge that Plaintiff was suffering extreme PTSD from her prior rape.

8. Upon information and belief, and as described above, Romero conspired with certain incarcerated transgender women to label Plaintiff a snitch and subject her to ongoing

danger within the correctional community in an effort to intimidate her into withdrawing her federal lawsuit in this matter and/or intimidate her from testifying as a witness therein.

9. Upon information and belief, and as described above, Defendant Romero conspired with other unnamed employees and agents of the CDOC, all in an effort to intimidate her into withdrawing her federal lawsuit in this matter and/or intimidate her from testifying as a witness therein.

10. In relevant part, 42 U.S.C. Section 1985(2) provides a cause of action if two or more people “conspire to deter, by force, intimidation, or threat,” any party or witness in any federal court proceeding.

11. Accordingly, Plaintiff moves to amend her Second Amended Complaint to add a cause of action against Defendant Romero in his individual and official capacity.

Justice Requires Leave to Amend Pursuant to Rule 15(a).

12. Federal Rule of Civil Procedure 15(a) provides that, after a responsive pleading has been served, a party may amend its pleading “only by leave of court or by written consent of the adverse party.” The Rule specifies that “leave shall be freely given when justice so requires.”

13. Leave to amend pursuant to Rule 15(a) is to provide litigants “the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties.” *Minter v. Prime Equipment Co.*, 451 F.3d 1196, 1208 (10th Cir. 2006) (quoting *Hardin v. Manitowoc-Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982)). “Refusing leave to amend is generally only 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.” *Bylin v. Billings*, 568 F.3d 1224 (10th Cir. 2009) (quoting *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993)). “The . . . Tenth Circuit has emphasized that ‘[t]he purpose

of [Rule 15(a)] is to provide litigants the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties.”” *B.T. ex rel. G.T. v. Santa Fe Pub. Schs.*, 2007 U.S. Dist. LEXIS 33912, 2007 WL 1306814, at *2 (D.N.M. 2007) (Browning, J.) (quoting *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006)).

14. Plaintiff has not unduly delayed in seeking this amendment. The circumstances giving rise to this new claim and additional party arose in April and May 2018. As with all claims against a prison, Plaintiff is required to exhaust administrative grievances under the Prison Litigation Reform Act (“PLRA”). Plaintiff timely filed a grievance on the circumstances surrounding these new facts. Plaintiff’s Step I grievance was denied. Plaintiff filed her Step II grievance in August and is awaiting a response to that grievance. CDOC has 25 days to respond to a grievance and thus the Step II response is due in September 2018. When that response is received, Plaintiff will file her Step II grievance within the five days required. Thus, the exhaustion requirement shall be met by the end of October or early November 2018.

15. Given that this motion seeks to add a claim that is related to the current lawsuit, it would be a waste of judicial resources to deny this motion and require Plaintiff to bring a separate action on these matters in November.

16. Accordingly, Plaintiff requests that this Court grant this motion on the condition that Plaintiff exhaust her administrative remedies in a timely manner, and allow discovery on these issues so as not to further delay the merits of her claims.

17. Plaintiff filed the original complaint in this case in July 2017. Plaintiff is currently serving a one to three-year sentence in the CDOC. Further delays in discovery on this case and on the proposed amended claims would not serve the interest of justice.

18. The current Scheduling Order provides that the deadline for amendment of pleadings has not passed. Since no substantive discovery has yet occurred in the case, Defendants will not be prejudiced by this amendment.

WHEREFORE, the Plaintiff respectfully request that her motion for leave to amend the complaint in this action be granted, and the proposed Third Amended Complaint be entered.

DATED this 24th day of September 2018.

Respectfully submitted,

s/ Paula Greisen
Paula Greisen
Meredith A. Munro
KING & GREISEN, LLP
1670 York Street
Denver, Colorado 80206
(303) 298-9878 telephone
greisen@kinggreisen.com
munro@kinggreisen.com

Shawn Thomas Meerkamper
Transgender Law Center
P.O. Box 70976
Oakland, CA 94612
(510) 587-9696
shawn@transgenderlawcenter.org

Lynly S. Egyes
Transgender Law Center
594 Dean Street, Suite 47
Brooklyn, NY 11238
(973) 454-6325 telephone
lynly@transgenderlawcenter.org

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September 2018, I electronically filed the foregoing **MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Chris W. Alber
Colorado Department of Law
Civil Litigation and Employment Law Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
Chris.Alber@state.co.us

Counsel for Defendants

s/ Laurie A. Mool