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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 NOCOMIE TOMIA MOORE,

8 Plaintiff,

9 v.

10 6 COUNTY OFFICERS, et al,

11 Defendants.

NO. 2:22-CV-0256-TOR

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AS MOOT
AND GRANTING PLAINTIFF'S
LEAVE TO AMEND

12 BEFORE THE COURT IS Defendant's Motion to Dismiss (ECF No. 29)

13 and Plaintiff's Motion for Leave to Amend (ECF No. 42). These matters were
14 submitted for consideration without oral argument. The Court has reviewed the
15 record and files herein and is fully informed. For the reasons discussed below,
16 Defendant's Motion to Dismiss (ECF No. 29) is DENIED as moot and Plaintiff's
17 Motion for Leave to Amend (ECF No. 42) is GRANTED in part.

18 **BACKGROUND**

19 This case concerns alleged battery and denial of medical treatment while
20 Plaintiff was incarcerated in the Spokane County Jail in 2019. ECF No. 13 at 8.

ORDER DENYING DEFENDANT'S MOTION TO DIMISS AS MOOT AND
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1 Plaintiff alleges that in August 2019 she was assaulted and battered by six county
2 officers in the correctional facility's shower area. ECF No. 13 at 8, 11. She
3 contends that one female and five or six male officers beat her, slammed her into
4 the wall, and hit her in the throat. *Id.* at 8. After this altercation, Plaintiff asserts
5 she was denied access to medical treatment for months while in immense pain, and
6 that she continued to be denied access to medical treatment after she fractured her
7 hip in October 2019. *Id.* at 8-10.

8 Plaintiff filed her initial complaint with the Court *pro se* and *in forma*
9 *pauperis* on October 31, 2022. ECF No. 7. The Court initially dismissed the
10 complaint with leave to amend, and Plaintiff filed her First Amended Complaint
11 ("FAC") *pro se* on January 31, 2023. ECF No. 11. In her FAC, Plaintiff named
12 Spokane County Jail, NaphCare, Inc. ("NaphCare"), two NaphCare Nurses, and 6
13 County Officers as defendants. ECF No. 11 at 1, 3. The FAC alleged that Plaintiff
14 was assaulted by correctional officers, denied medical care, and discriminated
15 against based on her race, sexual orientation, and disability while she was a pretrial
16 detainee at the Spokane County Jail, setting forth claims of negligence, Americans
17 with Disabilities Act ("ADA") and Rehabilitation Act ("RA") violations, and
18 Fourteenth Amendment violations including is treatment as a pretrial detainee,
19 inadequate medical treatment, equal protection, and due process violations. ECF
20 No. 11 at 8-9. Subsequently, the Court dismissed all defendants for failure to state

1 a claim except the 6 County Officers but noted that Plaintiff had an opportunity to
2 seek leave to amend. ECF No. 12 at 23.

3 Plaintiff then filed her Second Amended Complaint (“SAC”), in which she
4 named the Spokane County Jail, 6 County Officers, Unknown County Official,
5 John Doe 2, NaphCare, and NaphCare’s employees Jane Doe 1 and Jane Doe 2.
6 ECF No. 13 at 4-5. Plaintiff again alleged that she was assaulted by correctional
7 officers, denied medical care, and discriminated against based on her race, sexual
8 orientation, and disability while she was a pretrial detainee at the Spokane County
9 Jail. ECF No. 13 at 8-9. The Court found that Plaintiff had plausibly stated a
10 Fourteenth Amendment claim against 6 County Officers with respect to her
11 allegations of excessive use of force, due process violations, and equal protection
12 violation as well as a claim for intentional infliction of emotional distress. ECF
13 No. 14 at 5. Additionally, the Court found that Plaintiff had stated a plausible
14 claim against NaphCare and employees Jane Doe 1 and Jane Doe 2 for Fourteenth
15 Amendment claims of inadequate medical treatment and equal protection
16 violations by Jane Doe 1 and Jane Doe 2. ECF No. 14 at 5. The Court dismissed
17 defendants Spokane County Jail, Unknown County Official, John Doe 2, and
18 dismissed Plaintiff’s claim for negligence or violation of the ADA or the RA. The
19 Court subsequently ordered that NaphCare be served with process and required
20 that Plaintiff attempt to discover all other remaining defendants identities through

1 subpoena of Spokane County Detention Services and though NaphCare. ECF No.
2 14 at 11-12.

3 On June 6, 2023, Plaintiff moved for the appointment of counsel. ECF No.
4 19. Shortly thereafter, Defendant NaphCare moved to dismiss for failure to state a
5 claim on June 12, 2023. ECF No. 21. Pro bono counsel was subsequently
6 appointed on behalf of Plaintiff on July 31, 2023. ECF No. 28. Counsel was then
7 terminated, and new pro bono counsel was appointed on August 17, 2023. ECF
8 No. 33. After seeking several extensions of time to respond to Defendant’s Motion
9 to Dismiss, Plaintiff now seeks leave to amend and dismiss Plaintiff’s Motion to
10 Dismiss as moot. ECF Nos. 42 and 43.

11 In her proposed Third Amended Complaint (“TAC”), Plaintiff appears to
12 include Spokane County as a defendant through its operation of the Spokane
13 County Jail. ECF No. 42-1 at 8, ¶ 4. She also names Spokane County Jail
14 correctional officers Jane Roe 1, Jane Roe 2, John Roe 1, John Roe 2, John Roe 3,
15 and John Roe 4. ECF No. 42-1 at 6, ¶¶ 13-18. In addition, she names NaphCare
16 as a corporation as well as two employees, Jane Doe 1 and Jane Doe 2. ECF No.
17 42-1 at 4 ¶ 8, 5 at ¶¶ 11, 12. In addition to her 42 U.S.C. § 1983 claim for Eighth
18 and Fourteenth Amendment violations, Plaintiff’s TAC asserts the state law claims
19 of RCW 7.70 and negligence against NaphCare and its two employees, as well as
20 Spokane County and the individual correctional officers. Id. at 18, ¶¶ 4, 20.

1 **DISCUSSION**

2 Amendment of pleadings is governed by Federal Rule of Civil Procedure 15.
3 Under Rule 15(a)(2), a plaintiff seeking to amend its complaint after an answer has
4 been filed must obtain either the opposing party's written consent or leave of the
5 court. Fed. R. Civ. P. 15(a)(2). Under Rule 15(a), leave to amend a party's
6 pleading "should [be] freely give[n] ... when justice so requires," because the
7 purpose of the rule is "to facilitate decision on the merits, rather than on the
8 pleadings or technicalities." *Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir.
9 2015) (citation omitted). In deciding whether to grant leave, Courts consider
10 several factors, including (1) bad faith on the part of the movant; (2) undue delay;
11 (3) prejudice to the opposing party; (4) futility of amendment; (5) and whether the
12 plaintiff has previously amended the complaint. *United States v. Corinthian*
13 *Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).

14 Here there is no suggestion of Plaintiff's bad faith in seeking a third
15 amendment. Nor is there evidence that amendment would be futile. On the
16 contrary, up until this August, Plaintiff has appeared before the Court *pro se* while
17 incarcerated. Additionally, Defendant does not argue that granting leave to amend
18 would cause prejudice. ECF No. 45. Allowing Plaintiff an amendment now that
19 she is represented by counsel would be in the interest of justice to further clarify
20 the claims she is alleging. ECF No. 42 at 3.

1 Likewise, amendment would not cause undue delay. While there has been
2 delay in answering Defendant's June 12, 2023 Motion to Dismiss, parties in this
3 matter have not yet engaged in a Rule 26(f) conference. While amendment would
4 cause delay, it would not cause undue delay. Thus, this factor weighs neutrally in
5 deciding whether to grant leave to amend.

6 Plaintiff has previously amended twice as a *pro se* litigant. ECF Nos. 11 and
7 13. As such, a third amendment weighs against granting leave to amend.

8 Taken as a whole, and in the interest of justice, three factors weigh for
9 granting leave to amend, one neutrally, and one against. Therefore, Plaintiff is
10 granted leave to amend, and Defendant's Motion to Dismiss is rendered moot as it
11 is based on Plaintiff's Second Amended Complaint.¹ *See Ramirez v. Cnty. of San*

13 ¹ The Court takes notice of a footnote in Defendant's Response to the Motion
14 to Dismiss as Moot (ECF No. 46 at 1), and agrees that the specific quote, "that the
15 court should rule on a motion for leave to amend a complaint before deciding a
16 motion to dismiss that same complaint because allowing leave to amend renders
17 the motion to dismiss moot" which appears in Plaintiff's motion (ECF No. 43 at 2)
18 does not appear in *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952 (8th
19 Cir. 2002). However, the general idea that an amended complaint supersedes the
20 original complaint, and therefore renders a motion to dismiss moot, does. "[I]n

1 *Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015); *Ferdik v. Bonzelet*, 963 F.2d
2 1258, 1262 (9th Cir.1992) (amended pleading supersedes the original pleading);
3 *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir.1990)
4 (“[t]he fact that a party was named in the original complaint is irrelevant; an
5 amended pleading supersedes the original”).

6 **I. Claims asserted under Washington State’s Tort Claim Form,**
7 **RCW 4.96.020**

8 However, Defendants assert that allowing Plaintiff to rely on use of the
9 Washington State standard tort claim form under Wash. Rev. Code 4.96.020 would
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11 denying Pure Country's motion to amend the complaint, the district court did not
12 exercise any discretion based upon the interests of justice. Instead, the district
13 court ignored Pure Country's motion to amend, granted Sigma Chi's motion to
14 dismiss the original complaint, and then denied Pure Country's motion to amend
15 the complaint as moot. That approach, as a procedural matter, was plainly
16 erroneous. If anything, Pure Country's motion to amend the complaint rendered
17 moot Sigma Chi's motion to dismiss the original complaint.” *Pure Country, Inc. v.*
18 *Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002). The Court cautions
19 plaintiff to exercise care with quotation but does not find any breach of candor
20 toward the tribunal.

1 render her amendment futile. ECF No. 45 at 5-8. The Court agrees. RCW
2 4.96.020 requires that a plaintiff seeking damages from a governmental entity or its
3 employees arising from tortious conduct to file a tort claim form with the
4 appropriate governing body and then wait sixty days *before* filing a claim. RCW
5 4.96.020(4).

6 As a preliminary matter, RCW 4.96.020 is only applicable to tort claims
7 asserted against the State of Washington, its agencies, and employees in an official
8 capacity. RCW 4.96.020(2). Plaintiff's federal 18 U.S.C § 1983 claim, as well as
9 claims against NaphCare and its employees do not require use of the tort claim
10 form.

11 In her TAC, Plaintiff alleges state law causes of action against Spokane
12 County, as well as its employees. ECF No. 42-1 at 18. In bringing these claims in
13 her motion for leave to amend, Plaintiff indicates that she intends to file a tort
14 claim form, and requests the Court stay proceeding for ninety days in order to
15 engaged in the type of investigative and settlement process that RCW 4.96.020 is
16 intended to elicit. ECF No. 42-1 at 9, ¶ 23, and ECF No. 42 at 3. Defendant
17 opposes such a stay. ECF No. 45 at 4-5. Considering that Plaintiff has already
18 filed her complaint, the use of the tort claim form and sixty-day waiting period
19 would be statutorily improper, and as such a ninety-day stay is likewise
20 unnecessary.

1 However, under the Washington notice statute, claims for damages must “be
2 presented to an agent within the applicable period of limitations” and are “deemed
3 presented when the claim form is delivered” to the agent. RCW 4.96.020(2).

4 Although this statute is liberally construed, it requires claims for damages to be
5 presented on the standard tort claim form or an alternative form created by the
6 local government entity. RCW 4.96.020(3), (5). The tort claim must contain,
7 among other information, a description of the injury, a list of the names of all
8 persons involved, and a statement of the amount of damages claimed. RCW
9 4.96.020(3). When a party does not make use of the tort claims form, a court may
10 look to whether a complaint falls into “substantial compliance,” which puts the
11 government entity on notice of the forthcoming lawsuit without serving as a
12 “gotcha.” *Bell v. City of Tukwila*, No. C10-379Z, 2011 WL 1045586, at *1 (W.D.
13 Wash. Mar. 21, 2011). Substantial compliance means (1) a bona fide attempt to
14 comply with the statute and (2) notice that actually accomplishes its purpose.
15 *Renner v. City of Marysville*, 168 Wash. 2d 540, 545 (2010); *see also Est. of Shafer*
16 *v. City of Spokane*, No. 2:22-CV-0220-TOR, 2023 WL 3211834, at *2 (E.D. Wash.
17 May 2, 2023) (finding substantial compliance where a plaintiff filed a claim with
18 the City of Spokane for damages after an alleged wrongful shooting detailing
19 damages because a bona fide attempt to meet the requirements of RCW 4.96.020
20 was made).

1 The record before the Court does not indicate that Plaintiff initially filed a
2 standard form with Spokane County. However, Plaintiff did file a complaint with
3 Spokane County Sheriff’s Office on May 26, 2022, which included, to her
4 knowledge at the time, a recitation of the events, the people involved, and a general
5 discussion of what she suffered in damages. ECF No.11 at 11-13. Additionally,
6 Plaintiff indicated in her FAC that she sent a letter to Spokane County officials and
7 “jail officials” requesting to settle the claim but received no response. ECF No. 11
8 at 7, ECF No. 13 at 17-18. In light of the goal of RCW 4.96.020 in providing
9 notice to government entities, while construing that goal liberally as Plaintiff was
10 proceeding *pro se* while incarcerated, the Court finds that the complaint lodged
11 with the Spokane County Sheriff and the letter sent to County officials may serve
12 as a substitution for RCW 4.96.020 notice, thereby placing Spokane County on
13 notice of the forthcoming complaint. The Court finds that an attempt was made to
14 comply with the statute, and on this record and at this time claims made against
15 Spokane County and its employees may proceed in Plaintiff’s Third Amended
16 Complaint.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. Plaintiff's Motion for Leave to Amend (ECF No. 42) is **GRANTED** in
3 part. Plaintiff shall file a Third Amended Complaint **within thirty (30)**
4 **days** of the date of this Order, consistent with the instructions set forth
5 above.
- 6 2. Plaintiff's Motion to Dismiss as Moot Defendant's Motion to Dismiss
7 (ECF No. 43) is **GRANTED**.
- 8 3. Defendant's Motion to Dismiss (ECF No. 21) is **DENIED AS MOOT**
9 with leave to renew.

10 The District Court Executive is directed to enter this Order and furnish
11 copies to counsel.

12 DATED October 20, 2023.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge