

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

Sep 18, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW C. DERYAN,

Plaintiff,

v.

JAMES GLOVER; TIMOTHY
TRAGESER; and DAVID WATTS,

Defendants.

No. 2:23-cv-000063-MKD

ORDER DENYING MISSY
KILGORE’S MOTION TO DISMISS
AS MOOT; DISMISSING FIRST
AMENDED COMPLAINT; AND
DENYING PLAINTIFF’S MOTION
FOR CONTINUANCE AS MOOT

ECF Nos. 10, 25, 31

Before the Court is Defendant Kilgore’s Motion to Dismiss, ECF No. 10, Plaintiff’s First Amended Complaint, ECF No. 25, and Plaintiff’s Motion for Continuance, ECF No. 31. The Court has reviewed the pleadings and is fully informed. For the reasons discussed herein, the Court denies Defendant Kilgore’s Motion to Dismiss, ECF No. 10, as moot; dismisses Plaintiff’s First Amended Complaint, ECF No. 25; and denies Plaintiff’s Motion for Continuance, ECF No. 31, as moot.

1 **BACKGROUND**

2 Plaintiff filed this a *pro se* Complaint on March 8, 2023. ECF No. 1. Ms.
3 Kilgore filed a Motion to Dismiss on April 14, 2023, ECF No. 10, which the Court
4 stayed, ECF No. 20. Plaintiff was directed to amend or voluntarily dismiss his
5 complaint. *Id.* On July 12, 2023, Plaintiff filed a First Amended Complaint. ECF
6 No. 25. Plaintiff alleges violation of his civil rights generally, as well as violations
7 of “Federal RICO statues,” his Fourth, Fifth, Sixth, Eighth, and Fourteenth
8 Amendment rights, the Americans with Disabilities Act (ADA), “Common Law,”
9 “Washington state Law,” “Obstruction of Justice,” and “Dereliction of (Police
10 Officer) Duties.” *Id.* at 11. Plaintiff alleges Defendants have engaged in fraud,
11 collusion, and unlawfully targeted Plaintiff, resulting in Plaintiff being arrested
12 multiple times and unlawfully jailed. ECF No. 25 at 12, 17. The allegations, in
13 part, concern events related to a harassment case in which Plaintiff is the
14 Defendant and Ms. Kilgore is the Plaintiff. *Id.* at 11 (citing *Missy Kilgore v.*
15 *Matthew Conon Deryan*, 21-2-00332). Plaintiff’s Amended Complaint adds David
16 Watts as a defendant and removes Ryan Pankey and Missy Kilgore as defendants.
17 ECF No. 25. Mr. Pankey and Ms. Kilgore were terminated as Defendants effective
18 the date of the Amended Complaint, July 12, 2023.

19 Plaintiff also submitted a “Supplement to First Amended Complaint,” ECF
20 No. 26. Plaintiff then submitted a Motion for Continuance, ECF No. 31, Notice of

1 Intention to Move for Entry of Default, ECF No. 34, Reply
2 Memorandum/Response Document with attachments, ECF No. 37,
3 Letter/Supplement to Declaration, ECF No. 38, and Notice of Intent: Entry of
4 Appearance for Motion of Default as to David Watts, ECF No. 39. Plaintiff has
5 also filed multiple proofs of service, including proof of service for James Caruso
6 and Julie James, who are not parties to this case. ECF Nos. 28, 30. By separate
7 Order, the Court has granted Plaintiff leave to proceed *in forma pauperis*. ECF
8 No. 4.

9 ANALYSIS

10 A. Motion to Dismiss

11 Ms. Kilgore filed a Motion to Dismiss on April 14, 2023, ECF No. 10, and
12 Plaintiff filed a response to the motion on May 10, 2023, ECF No. 19. Plaintiff's
13 First Amended Complaint, ECF No. 25, removed Ms. Kilgore as a defendant, *id.* at
14 1, 4-5, and included a "Memorandum of Support: dismissal of Missy Kilgore in
15 lawsuit," ECF No. 25-10. Ms. Kilgore was terminated as a Defendant on July 12,
16 2023. As such, Ms. Kilgore's Motion to Dismiss, ECF No. 10, is denied as moot.

17 B. 28 U.S.C. § 1915 Review

18 When an individual seeks to proceed in forma pauperis, the Court is required
19 to review the complaint and dismiss such complaint, or portions of the complaint,
20 if it "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be

1 granted; or (iii) seeks monetary relief against a defendant who is immune from
2 such relief.” 28 U.S.C. § 1915(e)(2)(B); *Wong v. Bell*, 642 F.2d 359, 361-62 (9th
3 Cir. 1981). A plaintiff’s claim is frivolous “when the facts alleged rise to the level
4 of the irrational or the wholly incredible, whether or not there are judicially
5 noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25,
6 32-33 (1992).

7 A claim is legally frivolous when it lacks an arguable basis either in law or
8 in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *superseded by statute on*
9 *other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
10 (en banc); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

11 Therefore, the Court may dismiss a claim as frivolous where it is “based on an
12 indisputably meritless legal theory” or where the “factual contentions are clearly
13 baseless.” *Neitzke*, 490 U.S. at 327. The critical inquiry is whether a constitutional
14 claim has an arguable basis in law and fact. *See Jackson v. Arizona*, 885 F.2d 639,
15 640 (9th Cir. 1989), *superseded by statute on other grounds, Lopez*, 203 F.3d at
16 1130-31; *Franklin*, 745 F.2d at 1227.

17 The facts alleged in a complaint are to be taken as true and must “plausibly
18 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
19 Mere legal conclusions “are not entitled to the assumption of truth.” *Id.* The
20 complaint must contain more than “a formulaic recitation of the elements of a

1 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The
2 complaint must plead “enough facts to state a claim to relief that is plausible on its
3 face.” *Id.* at 570. Liberally construing the first amended complaint in the light
4 most favorable to Plaintiff, the Court finds that Plaintiff has failed to state a claim
5 upon which relief may be granted.

6 Even construing the facts liberally in favor of Plaintiff, Plaintiff has not
7 sufficiently alleged that Defendants have violated any of his federal constitutional
8 or statutory rights.

9 First, to the extent Plaintiff asserts violations of criminal laws, no private
10 right of action exists to enforce criminal statutes. Federal criminal claims may not
11 be brought by anyone other than the United States. *See, e.g., United States v.*
12 *Nixon*, 418 U.S. 683, 693 (1974) (noting that the executive branch has exclusive
13 authority to decide whether to prosecute a case). As a civil claim for damages is
14 not the proper mechanism to allege criminal conduct, Plaintiff was previously
15 cautioned not to include such claims in any amended complaint. ECF No. 20 at
16 11. Plaintiff has again asserted violations of federal criminal statutes, which fails
17 to state a claim.

18 Second, Plaintiff again alleges the Court has federal question jurisdiction.
19 ECF No. 25 at 5. In response to the question that asks the complainant to “state
20 which of your federal constitutional or federal statutory rights have been violated,”

1 Plaintiff wrote “see enclosed complaint.” *Id.* The attached complaint has a
2 jurisdiction and venue section, in which Plaintiff asserts the Court has subject
3 matter jurisdiction under the Washington State Constitution. *Id.* at 30. Plaintiff
4 also discusses “racketeering,” “fraud,” “fabrication of evidence” and “all types of
5 illegal activities.” *Id.* at 30-31. Neither the state constitution claims, nor
6 allegations of criminal activity, give this Court jurisdiction over the case. Plaintiff
7 has not met his burden in demonstrating the Court has subject matter jurisdiction.
8 *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

9 Plaintiff also alleges violation of the Americans with Disabilities Act
10 (ADA), and violations of his Fourth, Fifth, Sixth, Eighth, and Fourteenth
11 Amendment rights. ECF No. 25 at 1-2, 11, 18-30. Plaintiff spends extensive time
12 discussing further criminal allegations, *see, e.g., id.* at 17, however Plaintiff does
13 not have a private cause of action regarding criminal statutes, and thus the Court
14 does not have jurisdiction over the alleged crimes, as discussed *supra*. Plaintiff
15 also appears to be asking this Court to overturn his “wrongful conviction.” *Id.* at
16 20. However, Plaintiff has failed to demonstrate this Court has jurisdiction over
17 his claim and has failed to state a claim for the reasons discussed herein.

18 Plaintiff has not set forth facts that demonstrate any violation of his
19 constitutional rights. Plaintiff’s outline of facts to support his claims again largely
20 contains information that is not relevant to any of his claims. Additionally,

1 Plaintiff's claims are mere legal conclusions, as discussed further *infra*. The
2 Court's analysis focuses on the portions of Plaintiff's First Amended Complaint
3 that specifically address each of his claims; Plaintiff has also submitted numerous
4 attachments and a supplement, totaling to over 250 pages. ECF Nos. 25, 26.
5 Plaintiff's Complaint violates Federal Rule of Civil Procedure 8, which requires
6 the pleader to set forth their claims in a simple, concise, and direct manner. Fed.
7 R. Civ. P. 8. Plaintiff was directed to file an amended complaint that consists of a
8 short and plain statement showing he is entitled to relief. ECF No. 20 at 19. Like
9 the plaintiff in *McHenry*, Plaintiff here has largely presented lengthy explanations
10 of his allegations of conspiracy and misconduct without properly notifying the
11 defendants of the legal claims, and the amended complaint does not cure the prior
12 complaint's deficiencies. *See McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.
13 1996). The court in *McHenry* noted that a case may be dismissed for violating a
14 court order that directed the plaintiff to comply with Rule 8, and a pleading may be
15 struck if the complaint is so vague or ambiguous that a party cannot reasonably be
16 required to frame a responsive pleading. *Id.* at 1177-80 (citing Fed. R. Civ. P.
17 12(e)). Federal rules apply to *pro se* litigants. *See McNeil v. United States*, 508
18 U.S. 106, 113 (1993). Thus, Plaintiff's amended complaint is subject to dismissal
19 for failure to comply with the Federal Rules.

1 1. ADA

2 Plaintiff alleges Defendants Trageser, Watts, and Glover violated his ADA
3 rights. ECF No. 25 at 29. To state a claim of disability discrimination under Title
4 II, a plaintiff must allege four elements: (1) he “is an individual with a disability;”
5 (2) he “is otherwise qualified to participate in or receive the benefit of some public
6 entity’s services, programs, or activities;” (3) he “was either excluded from
7 participation in or denied the benefits of the public entity’s services, programs, or
8 activities, or was otherwise discriminated against by the public entity;” and (4)
9 “such exclusion, denial of benefits, or discrimination was by reason of [his]
10 disability.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (per curiam),
11 *cert. denied*, 538 U.S. 921, 123 S. Ct. 1570, 155 L. Ed. 2d 311 (2003).

12 Plaintiff alleges he is an individual with a disability but does not set forth
13 facts to satisfy the other three elements of a Title II ADA claim. Plaintiff states his
14 accommodation requests were denied, ECF No. 25 at 19, 27, but it is unclear what
15 his requests were, why they were denied, and how they impacted him. It appears
16 Plaintiff may have requested a change related to his cell during incarceration, but
17 the facts surrounding the request are unclear. *Id.* at 27. As such, Plaintiff does not
18 plead sufficient facts to state a claim to relief that is plausible on its face. *See* ECF
19 No. 25; *see Iqbal*, 556 U.S. at 664; *see also Twombly*, 550 U.S. at 555.

1 2. *Section 1983*

2 Plaintiff alleges violations of his Fourth, Fifth, Sixth, Eighth, and Fourteenth
3 Amendment rights. ECF No. 25 at 23-28. Section 1983 requires a claimant to prove
4 that (1) a person acting under color of state law (2) committed an act that deprived
5 the claimant of some right, privilege, or immunity protected by the Constitution or
6 laws of the United States. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988).
7 “A person deprives another of a constitutional right, within the meaning of section
8 1983, if he does an affirmative act, participates in another’s affirmative acts, or
9 omits to perform an act which he is legally required to do that *causes* the deprivation
10 of which [the plaintiff complains].” *Redman v. Cty. of San Diego*, 942 F.2d 1435,
11 1439 (9th Cir. 1991) (emphasis and brackets in the original) (internal quotation
12 omitted), *abrogated in part on other grounds by Farmer v. Brennan*, 511 U.S. 825
13 (1994).

14 A complaint must set forth the specific facts upon which the plaintiff relies in
15 claiming the liability of each defendant. *Ivey v. Bd. of Regents of Univ. of Alaska*,
16 673 F.2d 266, 268 (9th Cir. 1982). Although the standard to evaluate a motion to
17 dismiss is liberal, particularly when the action has been filed *pro se*, a liberal
18 interpretation of a civil rights complaint may not supply essential elements of a
19 claim that the plaintiff initially failed to plead. *Id.* Thus, to withstand dismissal on a
20 Section 1983 claim, Plaintiff must set forth facts demonstrating how each Defendant

1 caused or personally participated in causing a deprivation of Plaintiff's protected
2 rights. *Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981);
3 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

4 Plaintiff again does not set forth sufficient facts to state a Section 1983
5 claim. Plaintiff alleges Defendants Watts and Glover were police officers at the
6 time of the incidents at issue, and Defendant Trageser was a "Court
7 Commissioner," and states acts were committed "under the Color of Law." ECF
8 No. 25 at 2. However, if a defendant's conduct does not violate a clearly
9 established constitutional right of which a reasonable person would have known,
10 the defendant is entitled to qualified immunity from suit. *See Harlow v.*
11 *Fitzgerald*, 457 U.S. 800, 818 (1982). Plaintiff has failed to demonstrate
12 Defendants' conduct violated a clearly established constitutional right as discussed
13 further *infra*. Thus, Defendants appear to be entitled to qualified immunity.

14 a. Fourth Amendment

15 Plaintiff contends Defendants violated his Fourth Amendment rights. ECF
16 No. 25 at 22-24. A claim of false arrest implicates a plaintiff's Fourth Amendment
17 rights and can be the basis of a Section 1983 claim. *See Pierson v. Ray*, 386 U.S.
18 547, 555-57 (1967); *Wallace v. Kato*, 549 U.S. 384, 387 n. 1, 397 (2007). To
19 prevail on a Section 1983 claim for false arrest and imprisonment, a plaintiff must
20 "demonstrate that there was no probable cause to arrest him." *Cabrera v. City of*

1 *Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998) (per curium). Therefore, a
2 plaintiff's claims for false arrest and false imprisonment are not cognizable under
3 Section 1983 until after his criminal charges have been dismissed or a resulting
4 conviction has been invalidated. *See id.* (citing *Heck v. Humphrey*, 512 U.S. 477,
5 486-87 (1994)). The Fourth Amendment also provides a right to privacy,
6 including a right to be free from unreasonable governmental searches. U.S. Const.
7 amend. IV. However, officers searching a person or conducting an inventory
8 search, incident to arrest, is not an unreasonable search and thus does not violate
9 the Fourth Amendment. *United States v. Caseres*, 533 F.3d 1064, 1070 (9th Cir.
10 2008); *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983).

11 While Plaintiff alleges he was falsely arrested, Plaintiff concedes his charges
12 have not been dismissed or invalidated. ECF No. 25 at 21. He alleges he was
13 prevented from filing his petition to vacate the conviction. *Id.* He also alleges the
14 arrest was based on false police reports. *Id.* at 22-24. Such allegations do not
15 demonstrate there was no probable cause to arrest him. Plaintiff also alleges his
16 right to privacy was violated when his property was taken at the time he was
17 arrested. *Id.* However, the searches occurred subject to a valid arrest, as Plaintiff
18 again has not set forth facts that demonstrate the arrest was unlawful. Plaintiff
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1 does not allege any other facts that clearly implicate the Fourth Amendment.

2 Plaintiff has failed to state a Fourth Amendment claim.

3 b. Fifth Amendment

4 Plaintiff contends Defendants violated his Fifth Amendment rights. ECF
5 No. 25 at 22, 24-26. Plaintiff alleges his Fifth Amendment rights were violated
6 when Defendant Trageser questioned Plaintiff about a prior crime he was acquitted
7 of, because the questioning amounted to double jeopardy. *Id.* at 24-25. To the
8 extent he challenges his Fifth Amendment due process rights, he fails to state a
9 plausible claim for relief. “The Fifth Amendment prohibits the federal government
10 from depriving persons of due process, while the Fourteenth Amendment explicitly
11 prohibits deprivations without due process by the several States.” *Castillo v.*
12 *McFadden*, 370 F.3d 882, 889 n.5 (9th Cir. 2004). As Plaintiff is not challenging
13 the actions of the federal government, the Fifth Amendment does not apply. *See,*
14 *e.g., Radford v. City of Portland*, No. Civ. 04-1754-MO, 2005 WL 189715, at *2
15 (D. Or. Jan. 20, 2005) (dismissing pro se prisoner’s Fifth Amendment due process
16 claims against state actors for failure to state a claim).

17 To the extent Plaintiff alleges a double jeopardy claim, “[t]he Double
18 Jeopardy Clause protects against three distinct abuses: [1] a second prosecution for
19 the same offense after acquittal; [2] a second prosecution for the same offense after
20 conviction; and [3] multiple punishments for the same offense.” *United States v.*

1 *Chick*, 61 F.3d 682, 686 (9th Cir. 1995) (quoting *United States v. Harper*, 490 U.S.
2 435, 440 (1989)). Plaintiff alleges only that he was questioned again but does not
3 allege he was subject to prosecution for a second time. ECF No. 25 at 24-25.

4 Plaintiff has failed to state a plausible Fifth Amendment claim.

5 c. Sixth Amendment

6 Plaintiff contends Defendants violated his Sixth Amendment rights. ECF
7 No. 25 at 22, 26-27. A criminal defendant has a constitutional Sixth Amendment
8 right to a speedy trial. Wash. Const. art. 1, § 22; U.S. Const. amend. VI. While
9 Plaintiff alleges his right to a speedy trial was violated, his conviction has not been
10 set aside, as discussed *supra*. Therefore, his speedy trial claim is barred. *See*
11 *Peterson v. Cnty. of Okanogan*, No. CV-07-0394-EFS, 2008 WL 11425391, at *2
12 (E.D. Wash. Mar. 28, 2008) (citing *Heck*, 512 U.S. at 487). There is also no cause
13 of action for damages based on a violation of Washington state constitutional
14 speedy trial rights. *Peterson*, 2008 WL 11425391, at *2 (citing *Blinka v. Wash.*
15 *State Bar Ass'n*, 36 P.3d 1094, 1102 (Wash. Ct. App. 2001)). Plaintiff has failed to
16 state a plausible Sixth Amendment claim.

17 d. Eighth Amendment

18 Plaintiff contends Defendants violated his Eighth Amendment rights. ECF
19 No. 25. at 22, 27. Plaintiff first alleges he was given a bail amount that was
20 “exceptionally high,” not justifiable, and “excessive.” *Id.* A public official is

1 liable under Section 1983 only if he causes the plaintiff to be deprived of his
2 constitutional rights; as such, an excessive bail claim must establish that 1) the bail
3 was excessive in violation of the Eighth Amendment; and 2) the defendant(s)
4 actually and proximately caused the bail to be excessive. *See Baker v. McCollan*,
5 443 U.S. 137, 142 (1979) (internal quotation marks omitted); *see also Leer v.*
6 *Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). Plaintiff alleges his bail was set at
7 \$20,000. ECF No. 25 at 22. It is not clear if Plaintiff is alleging that Defendants
8 caused his bail to be excessive and he does not explain how the bail was excessive.

9 Next, Plaintiff contends Defendant Trageser was deliberately indifferent to
10 the accommodations Plaintiff needed when incarcerated. ECF No. 25 at 27. The
11 test for deliberate indifference to medical needs is two-pronged: (1) “the plaintiff
12 must show a serious medical need by demonstrating that failure to treat a
13 prisoner’s condition could result in further significant injury or the unnecessary
14 and wanton infliction of pain”; and (2) “the plaintiff must show the defendant’s
15 response to the need was deliberately indifferent.” *Jett v. Penner*, 439 F.3d 1091,
16 1096 (9th Cir. 2006) (internal quotation marks omitted). Plaintiff contends
17 Defendant Trageser was responsible for his arrest and resulting incarceration, and
18 he ignored Plaintiff’s accommodation requests. ECF No. 25 at 22, 27. He alleges
19 he experienced pain due to assaults while in jail and due to a thin mattress, and he
20 later needed additional treatment for his conditions. *Id.* Plaintiff does not set forth

1 an explanation that indicates Defendants failed to treat Plaintiff's impairments, that
2 the failure to provide the accommodations was likely to result in further significant
3 injury or unnecessary and wanton infliction of pain, nor that the lack of
4 accommodations was deliberately indifferent. The facts surrounding Plaintiff's
5 allegations are also unclear. Plaintiff has failed to state a plausible Eighth
6 Amendment claim.

7 e. Fourteenth Amendment

8 Plaintiff contends Defendants violated his Fourteenth Amendment due
9 process and equal protection rights. ECF No. 25 at 25-26. "The requirements of
10 procedural due process apply only to the deprivation of interests encompassed by
11 the Fourteenth Amendment's protection of liberty and property." *Neal v.*
12 *Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997) (quoting *Board of Regents v. Roth*,
13 408 U.S. 564 (1972)). To the extent the Fourteenth Amendment claim relies on
14 false arrest or false imprisonment, this was addressed *supra*. To the extent Plaintiff
15 alleges Defendants engaged in illegal acts when depriving him of his rights, ECF
16 No. 25 at 26, Plaintiff has no private right of action to enforce criminal statutes, as

1 discussed *supra*. It is unclear how Plaintiff alleges Defendants violated his equal
2 protection rights. Plaintiff has failed to state a Fourteenth Amendment claim.

3 **CONCLUSION**

4 Plaintiff has not met his burden in demonstrating the Court has jurisdiction
5 over the claims and has failed to comply with the Federal Rules. Further, he has
6 failed to state a claim, and it appears Plaintiff cannot overcome Defendants'
7 qualified immunity. For the reasons set forth herein, and in the Court's Order to
8 Amend or Voluntarily Dismiss Complaint, ECF No. 20, Plaintiff's First Amended
9 Complaint, ECF No. 25, is dismissed. Plaintiff has been given an opportunity to
10 amend his complaint, and his Amended Complaint did not remedy any of the
11 issues identified in this Court's order to amend. The Court notes that Plaintiff
12 brought an action in State court against East Valley School District, which
13 contained many similar allegations as the instant case, including allegations of
14 violations of Plaintiff's due process rights and the ADA, a need for continuances
15 due to Plaintiff's housing issues, as well as allegations of widespread fraud and
16 illegal acts committed by others, and targeting of Plaintiff. *See DeRyan v. E.*
17 *Valley Sch. Dist.*, 192 Wash. 2d 1021 (2019) (Petitioner's Reply to Answer).

18 The Court finds it would be futile to allow further amendment for the
19 reasons discussed *supra*. The case is dismissed with prejudice.

1 Accordingly, **IT IS HEREBY ORDERED.**

2 1. Ms. Kilgore's Motion to Dismiss, **ECF No. 10**, is **DENIED** as moot.

3 2. Plaintiff's First Amended Complaint, **ECF No. 25** is **DISMISSED** with
4 prejudice.

5 3. Plaintiff's Motion for Continuance, **ECF No. 31**, is **DENIED** as moot.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
7 enter judgment accordingly, close the file, and provide copies to counsel, *pro se*
8 Plaintiff, and *pro se* terminated Defendant Kilgore.

9 DATED September 18, 2023.

10 *s/Mary K. Dimke*
11 MARY K. DIMKE
12 UNITED STATES DISTRICT JUDGE
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