

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DEBRA VANESSA WHITE,

CASE NO. C19-0284-JCC

10 Plaintiff,

ORDER

11 v.

12 RELAY RESOURCES and GENERAL
13 SERVICES ADMINISTRATION,

14 Defendants.

15
16 This matter comes before the Court on Defendant Relay Resources' motion to dismiss
17 (Dkt. No. 52). Having considered the parties' briefing and the relevant record, the Court
18 STRIKES the claims against the Relay Resources' in Plaintiff's amended complaint (Dkt. No.
19 47) and DENIES Relay Resources' motion to dismiss as moot.

20 **I. BACKGROUND**

21 The Court previously set forth the underlying facts of this case and will not repeat them
22 here. (*See* Dkt. No. 40 at 1–3.) On July 9, 2019, the Court dismissed all but one of Plaintiff's
23 claims against Relay Resources. (*See id.* at 6–7.) In doing so, the Court granted Plaintiff leave to
24 amend her breach of contract claim. (*See id.* at 5–7.) Plaintiff subsequently filed an amended
25 complaint, but she did not amend her breach of contract claim. (*See generally* Dkt. No. 47.)
26 Instead, Plaintiff added several new defendants and asserted 10 new claims against Relay

1 Resources. (*See generally id.*) Relay Resources now moves to dismiss all but one of Plaintiff's
2 new claims on the grounds that (1) Plaintiff did not comply with the Court's July 9 order, (*see*
3 Dkt. No. 52 at 2–3), and (2) the amended complaint fails to state claims for which relief can be
4 granted, (*see id.* at 4–11). In the alternative, Relay Resources asks the Court to direct Plaintiff to
5 file a more definitive statement of her claims. (*See id.* at 9.)

6 **II. DISCUSSION**

7 **A. Plaintiff's Compliance with the Court's Order**

8 As the Court previously set forth in a different order, Relay Resources incorrectly
9 construes the Court's July 9 order as having barred Plaintiff from seeking to amend her
10 complaint by adding new claims. (*See* Dkt. No. 80 at 2.) Because Plaintiff may still seek leave to
11 amend her complaint but must request the Court's permission to do so in a motion, the Court will
12 construe Plaintiff's amended complaint as a motion for leave to amend. (*See id.* at 2–4) (citing
13 Fed. R. Civ. Pro. 7(b)(1), 15(a)). Accordingly, the Court must analyze Plaintiff's implied
14 "motion" under Rule 15(a) instead of Rule 12(b).

15 Rule 15(a)(2) states that "[the] court should freely give leave [to amend] when justice so
16 requires." However, leave "need not be granted where the proposed amendment is futile."
17 *Nordyke v. King*, 644 F.3d 776, 788 n.12 (9th Cir. 2011). A proposed amendment is futile if it
18 would be "subject to dismissal." *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir.
19 1998). The test for whether a proposed amendment is futile is, therefore, identical to the test for
20 whether a pleading survives a challenge under Rule 12(b)(1) or (6).¹ *See Nordyke*, 644 at 788
21 n.12 (citing *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988)). Accordingly,
22 Plaintiff must establish that the Court has subject matter jurisdiction over each of her new claims.
23 *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). Plaintiff must also
24 allege sufficient facts, accepted as true, to state a claim for relief that is plausible on its face.

25
26 ¹ Given that the tests are identical, the Court will treat Relay Resources' arguments under
12(b)(1) and (6) as arguments for why Plaintiff's proposed amendments are futile.

1 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when a plaintiff
2 pleads factual content that allows the court to draw the reasonable inference that the defendant is
3 liable for the misconduct alleged. *Id.* at 678.

4 **B. The Merits of Plaintiff’s New Claims**

5 Plaintiff proposes to add 10 claims against Relay Resources. For the reasons explained
6 below, the Court finds that except for her sixth claim, all of Plaintiff’s proposed claims are futile.
7 The Court further finds that Plaintiff’s sixth claim is redundant with claims in her original
8 complaint.

9 1. Count I

10 In Count I, Plaintiff brings a claim under 18 U.S.C. § 371 for “Defrauding the United
11 States.” (*See* Dkt. No. 47 at 8.) It is unclear, however, how Relay Resources allegedly defrauded
12 the United States; Plaintiff’s factual allegations relate only to her inability to “use the computer”
13 or access other information. (*See id.*) More importantly, 18 U.S.C. § 371 “do[es] not provide for
14 a private right of action.” *Henry v. Universal Tech. Inst.*, 559 Fed. App’x 648, 650 (9th Cir.
15 2014). Count I therefore fails to state a claim.

16 2. Count II

17 For Count II, Plaintiff brings a claim under 18 U.S.C. Chapter 47. (*See* Dkt. No. 47 at 8–
18 9.) Chapter 47, like the rest of the United States Criminal Code, “provide[s] no basis for civil
19 liability.” *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Accordingly, Count II fails
20 to state a claim.

21 3. Count III

22 Count III appears to be a due process claim. (*See* Dkt. No. 47 at 9.) To have a valid due
23 process claim, a plaintiff must have a protected property interest. *Perry v. Sindermann*, 408 U.S.
24 593, 599 (1972). “A government employee has a constitutionally protected property interest in
25 continued employment when the employee has a legitimate claim of entitlement to the job.” *See*
26 *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). Whether an employee has

1 such a claim is usually determined by state law. *See id.* “If under state law, employment is at-
2 will, then the claimant has no property interest in the job.” *Id.*

3 Here, Plaintiff has not alleged sufficient facts to show that she had a constitutionally
4 protected property interest. In the Court’s July 9 order, the Court found that it was unclear
5 whether Plaintiff’s original complaint alleged the existence of a contract between Plaintiff and
6 Relay Resources. (*See* Dkt. No. 40 at 5–6.) The Court also found that even if Plaintiff did allege
7 that a contract existed, she had not overcome the presumption that a Washington employment
8 contract is at-will. (*See id.* at 6) (citing *Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1084
9 (Wash. 1984)). The Court therefore gave Plaintiff leave to amend her complaint to show, if she
10 could, that a contract existed between Plaintiff and Relay Resources and that Relay Resources
11 intended to grant Plaintiff a long-term employment contract. (*See id.* at 5–6.) In response to the
12 Court’s July 9 order, Plaintiff did not amend her complaint to show the existence of a long-term
13 employment contract. Instead, Plaintiff alleges that Relay Resources violated her “liberty to
14 work” by “treating [her] as if she is a criminal . . . and requir[ing] [her] to provide an opportunity
15 to appeal to EEOC and GSA EEO to explain her side of the story.” (*See* Dkt. No. 47 at 9.) These
16 new allegations fail to establish that Plaintiff’s employment with Relay Resources—if it
17 existed—was anything other than at-will. Consequently, Count III fails to state a claim. *See*
18 *Portman*, 995 F.2d at 904.

19 4. Count IV

20 Count IV is a claim for “Violation of the Wagner Act Known as the National Labor
21 Relations Act of (1935).” (Dkt. No. 47 at 9–10.) The National Labor Relations Board has
22 exclusive jurisdiction over claims brought under the NLRA for unfair labor practices by
23 employers. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 108 (1989). Count
24 IV therefore fails to state a claim over which the Court has jurisdiction.

25 5. Count V

26 In Count V, Plaintiff alleges that Relay Resources violated Title VII by refusing to enter

1 into a contract with Plaintiff because of her “deaf accent.” (*See* Dkt. No. 47 at 10.) A person’s
2 accent can sometimes serve as a proxy for their race or national origin. *See Conti v. Corp. Servs.*
3 *Group, Inc.*, 2013 WL 2297140, slip op. at 7 (W.D. Wash. 2013) (citing *Fragrante v. City &*
4 *County of Honolulu*, 888 F.2d 591, 596 (9th Cir. 1989)) (“[B]ecause accent is often tied to
5 national origin in a way that language ability is not, the law is suspicious of decisions based on
6 accent.”). Accordingly, discrimination based on a person’s accent can be actionable under Title
7 VII. *See id.* at 7–8. Yet, Title VII does not prohibit discrimination based on a person’s disability.
8 *See* 42 U.S.C. § 2000e-2. And in this case, Plaintiff’s “deaf accent” serves as a proxy for (or is a
9 part of) her disability—not her race or national origin. As a result, Count V fails to state a claim.

10 6. Count VI

11 Relay Resources does not ask the Court to address Count VI. However, Count VI is a
12 restatement of Plaintiff’s disability discrimination claim from her original complaint, (*compare*
13 Dkt. No. 47 at 10–11, *with* Dkt. No. 3 at 12–16), and Federal Rule of Civil Procedure 12(f)
14 authorizes the Court to strike any “redundant . . . matter.” Accordingly, the Court STRIKES
15 Count VI as redundant with Plaintiff’s original complaint.

16 7. Count VII

17 For Count VII, Plaintiff cites 29 C.F.R. § 1606.7, appears to allege that GSA required her
18 to “Speak English” (as opposed to sign language), and concludes that this is why the agency
19 refused to enter into a contract with her. (*See* Dkt. No. 47 at 11–12.) These allegations appear to
20 be redundant with Plaintiff’s original complaint. (*Compare* Dkt. No. 47 at 11–12, *with* Dkt. No.
21 3 at 5–11.) Moreover, § 1606.7 does not provide an additional cause of action. Section 1606.7,
22 like all Equal Employment Opportunity Commission guidelines, does not have the force of law;
23 it merely reflects “a body of experience and informed judgment to which courts and litigants
24 may properly resort for guidance.” *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 141–42 (1976); *see*
25 *also Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975).

1 8. Count VIII

2 Plaintiff labels Count VIII “Negligence/Misrepresentation.” (See Dkt. No. 47 at 12.) The
3 factual allegations in Count VIII are impossible for the Court to decipher. Those allegations are
4 as follows:

5 69. Defendant knew of this circumstances or requirements of the telephone at the
6 time the contract was prepare for the Plaintiff.

7 70. Without a contract in place, Vanessa can’t use the computer at GSA.

8 71. Without a contract in place, RR and GASA will not obtain a videophone.

9 72. Reiteration in her social media account and Apple ID cause damages to her in
10 not having communication access at home.

11 73. As a promate usof defendant’s actions, Plaintiff has suffered lost wages and
12 benefits.

13 These allegations fail to state a claim for negligence, negligent misrepresentation, or any
14 other cause of action of which the Court is aware. *See Ranger Ins. Co. v. Pierce County*,
15 192 P.3d 886, 889 (Wash. 2008) (listing the elements for negligence); *Merriman v. Am.*
16 *Guarantee & Liab. Ins. Co.*, 396 P.3d 351, 360–61 (Wash. Ct. App. 2017) (listing the
17 elements for negligent misrepresentation).

18 9. Count IX

19 Count IX purports to be a claim under the Racketeer Influenced and Corrupt
20 Organization Act, 18 U.S.C. §§ 1961–1968. (See Dkt. No. 47 at 12–13.) To state a claim under
21 RICO, a plaintiff must allege “one or more defendant ‘persons’ conducted or participated in the
22 activities of an ‘enterprise’ through a pattern of racketeering activity consisting of at least two
23 predicate acts cognizable under RICO.” *Capitol West Appraisals, LLC v. Countrywide Fin.*
24 *Corp.*, 759 F. Supp. 2d 1267, 1272 (W.D. Wash. 2010). These allegations must be made “with
25 particularity” and must include “‘the who, what, when, where, and how,’ of the misconduct
26 charged.” *See id.* at 1271 (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104–05 (9th

1 Cir. 2003)). Count IX, however, does not state with particularity the wrongful acts that Relay
2 Resources engaged in. Count IX instead begins with an unclear statement about “Defendants[’]”
3 efforts to “manipulate the legal system.” (See Dkt. No. 47 at 13–14.) It then asserts that
4 “Defendants have actively sought to hamper government anti-extremists by direct propaganda.”
5 (See *id.*) Finally, Count IX ends by listing provisions of the United States Code that Defendants
6 have allegedly violated. (See *id.*) These allegations do not satisfy the pleading standard for a civil
7 RICO claim. See *Capitol West Appraisals*, 759 F. Supp. 2d at 1271–72.

8 10. Count X

9 Count X is titled “Americans with Disability Notification Act of 2011.” (See Dkt. No. 47
10 at 14.) “[T]he ADA Notification Act has been introduced multiple times . . . [but it] never
11 became law.” *Raetano v. Kally K’s, Inc.*, 2009 WL 651808, slip op. at 7 n.3 (M.D. Fla. 2009).
12 The Act cannot, therefore, provide the basis for any claim in this case.

13 **III. CONCLUSION**

14 For the foregoing reasons, the Court concludes that it would be futile and redundant for
15 Plaintiff to amend her complaint to add her proposed claims against Relay Resources. The Court
16 therefore DENIES Plaintiff leave to amend and STRIKES the claims against Relay Resources
17 that Plaintiff has raised in her amended complaint (Dkt. No. 47). The Court also DENIES Relay
18 Resources’ motion to dismiss (Dkt. No. 52) as moot.

19 DATED this 31st day of October 2019.

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23 John C. Coughenour
24 UNITED STATES DISTRICT JUDGE