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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jeremy Pinson,

10 Plaintiff,

11 v.

12 Federal Bureau of Prisons,

13 Defendant.  
14

No. CV-22-00298-TUC-RM

**ORDER**

15 Pending before the Court are Plaintiff's Motion for Leave to Amend/Join Parties  
16 (Doc. 117), Motion to Declare Response a Rule 12(e) Motion (Doc. 161), and Motion for  
17 Leave to File Motion to Compel (Doc. 191).<sup>1</sup>

18 **I. Proposed Third Amended Complaint**

19 Plaintiff seeks leave to file a proposed Third Amended Complaint ("TAC") that  
20 reasserts her Eighth and Fifth Amendment claims in Counts One through Three and adds  
21 in Count Four a claim for violations of 42 U.S.C. §§ 1985 and 1986. (Doc. 117; *see also*  
22 Doc. 117-1). In the proposed Count Four, Plaintiff seeks \$5,000,000.00 in damages and  
23 names as defendants Mark Gutierrez, Muhammad Zantout, Linda Geter, Ashley Noble,  
24 Alison Leukefeld, Karl Leukefeld, Timethea Pullen, Brandi Reynolds, Jeffrey Burkett,  
25 Donald Lewis, Shannon Robbins, and J. Felix. (Doc. 117-1 at 2-5, 23.)<sup>2</sup> Plaintiff alleges  
26 that on or about October 5, 2022, Gutierrez and non-party SIS Lieutenant Christensen  
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28 <sup>1</sup> Other pending motions will be resolved separately.

<sup>2</sup> All record citations refer to the page numbers generated by the Court's electronic filing system.

1 threatened Plaintiff with transfer and prolonged housing in segregation if she did not  
2 withdraw her lawsuits against prison staff. (*Id.* at 16-17.) Gutierrez and Christensen also  
3 threatened “several witnesses who testified, via Declaration, in several of [Plaintiff’s]  
4 cases before this Court.” (*Id.* at 17.) Plaintiff declined to drop any of her lawsuits. (*Id.*)  
5 Gutierrez, Zantout, and Felix then conspired to author—and submit to Geter, Noble,  
6 Alison Leukefeld, Karl Leukefeld, Pullen, Reynolds, Burkett, Lewis, and Robbins—a  
7 transfer request that resulted in Plaintiff’s placement in the Secure Administrative Unit  
8 (“SAU”) at USP-Allenwood, where she has been subjected to daily death threats and  
9 sexual harassment. (Doc. 117-1 at 9, 17-19.) The transfer request falsely stated that  
10 Plaintiff was involved with illicit activities, was conspiring to deal drugs and pimp  
11 transgender inmates, was “attempting to recruit other inmates to make false allegations  
12 against BOP staff regarding the treatment of transgender inmates,” and was “using her  
13 status as a transgender inmate to her benefit by filing false PREA allegations to remove  
14 any inmate she has issues with.” (*Id.* at 17-18.) Gutierrez submitted the false statements  
15 to Geter, despite knowing that it was a serious offense to create BOP documents  
16 containing false statements, “particularly for a malicious purpose such as retaliation.”  
17 (*Id.* at 18.)

18 In mid-2023, Noble visited Plaintiff at USP-Tucson, and Plaintiff told Noble that  
19 Gutierrez, Zantout, Felix, and non-defendant Christensen had threatened her with  
20 retaliation if she didn’t agree to drop pending civil claims. (*Id.* at 22.) Plaintiff also  
21 utilized electronic requests to staff to alert Noble, Pullen, Robbins, Reynolds, Burkett,  
22 Lewis, and both Leukefelds “to Gutierrez, Zantout, and other misconduct at USP Tucson  
23 in great detail as well as the threatened retaliation.” (*Id.*)

## 24 **II. Legal Standard**

25 With the exception of amendments made as a matter of course, a party “may  
26 amend its pleading only with the opposing party’s written consent or the court’s leave.”  
27 Fed. R. Civ. P. 15(a)(2). Leave should freely be given “when justice so requires.” *Id.* In  
28 determining whether to grant leave to amend, courts consider the following factors:

1 “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
2 cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
3 party by virtue of allowance of the amendment, [and] futility of amendment.” *Eminence*  
4 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Futility alone may  
5 justify refusing to grant leave to amend. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.  
6 1995). The test for determining futility is the same as the test for determining whether a  
7 pleading survives a motion to dismiss under Rule 12(b)(6). *White v. Relay Res.*, No.  
8 C19-0284-JCC, 2019 WL 5677541, at \*1 (W.D. Wash. Oct. 31, 2019). Under that test,  
9 “a complaint must contain sufficient factual matter, accepted as true, to state a claim to  
10 relief that is plausible on its face,” meaning the complaint’s factual allegations must  
11 “allow[] the court to draw the reasonable inference that the defendant is liable for the  
12 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation  
13 marks omitted).

14 The Court is required to screen complaints brought by prisoners seeking relief  
15 against a governmental entity or an officer or an employee of a governmental entity. 28  
16 U.S.C. § 1915A(a). The Court must dismiss a complaint or any portion thereof if a  
17 plaintiff has raised claims that are frivolous or malicious, that fail to state a claim upon  
18 which relief may be granted, or that seek monetary relief from a defendant who is  
19 immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

### 20 **III. Discussion**

21 In opposition to Plaintiff’s Motion to Amend, Defendant argues that Plaintiff’s  
22 proposed TAC does not comply with Federal Rules of Civil Procedure 18(a) and 20(a)(2)  
23 because Plaintiff’s proposed claims under 42 U.S.C. §§ 1985 and 1986 do not arise from  
24 the same nucleus of facts as Plaintiff’s existing claims. (Doc. 135 at 7-8.) Defendant  
25 also argues that Plaintiff’s proposed amendment would be futile because Plaintiff fails to  
26 state a claim on which relief can be granted under 42 U.S.C. §§ 1985 and 1986. (*Id.* at 3-  
27 7.) Defendant does not argue that any other factor, such as prejudice or undue delay,  
28 supports denying leave to amend.

1           **A. Joinder**

2           Federal Rule of Civil Procedure 20(a)(2)(B) provides that defendants may be  
3 joined in one action if “any question of law or fact common to all defendants will arise in  
4 the action.” Questions of fact regarding the Transgender Executive Council’s (“TEC”)   
5 decision to transfer Plaintiff to USP-Allenwood instead of transitioning her to a female  
6 facility are at issue with respect to the existing claims in this case and with respect to  
7 Count Four of the proposed TAC. Accordingly, the Court finds that Plaintiff’s proposed  
8 TAC complies with Rule 20(a)(2)(B).

9           **B. Section 1985(3) Conspiracy**

10           Section 1985 of Title 42 of the United States Code prohibits several types of  
11 conspiracies. In relevant part, Section 1985(2) prohibits conspiracies to intimidate parties  
12 or witnesses from attending or testifying in federal court, and Section 1985(3) prohibits  
13 conspiracies to deprive any person or class of persons “of the equal protection of the  
14 laws, or of equal privileges and immunities under the laws.” A party injured by an act  
15 taken in furtherance of a conspiracy prohibited by 42 U.S.C. § 1985 may recover  
16 damages against any one or more of the conspirators. 42 U.S.C. § 1985(3). To establish  
17 a conspiracy, a plaintiff must show “an agreement or meeting of the minds[.]”  
18 *Mendocino Env’t Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1301 (9th Cir. 1999).  
19 Conclusory allegations of a conspiracy “without factual specificity” are insufficient to  
20 state a § 1985 claim. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th  
21 Cir. 1988).

22           The factual allegations of Plaintiff’s proposed TAC are insufficient to show the  
23 existence of a § 1985(3) conspiracy. Plaintiff alleges that Gutierrez, Felix, and Zantout  
24 authored and submitted a transfer request that resulted in Plaintiff’s placement in the  
25 SAU at USP-Allenwood, and that they wrote in the transfer request that Plaintiff “was  
26 ‘using her status as a transgender inmate’ in false and malicious contexts to secure her  
27 transfer.” (Doc. 117-1 at 9.) Plaintiff further alleges that Gutierrez knew the transfer  
28 request contained false statements and nevertheless submitted the request to Geter. (*Id.* at

1 17-18.) However, Plaintiff does not allege that Felix, Zantout, Geter, or any individual  
2 other than Gutierrez knew that the transfer request contained false statements.  
3 Accordingly, Plaintiff has failed to allege sufficient facts to show the existence of a  
4 conspiracy to submit a transfer request containing false statements.

5 Furthermore, to state a § 1985(3) conspiracy, a plaintiff must not only allege a  
6 conspiracy to deprive her of the equal protection of the laws and injury as a result of an  
7 action taken in furtherance of the conspiracy; the plaintiff must also allege “invidiously  
8 discriminatory animus behind the conspirators’ action.” *Griffin v. Breckenridge*, 403  
9 U.S. 88, 102 (1971). Such discriminatory animus must be based on race, *id.*, or some  
10 other suspect or quasi-suspect class, *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536  
11 (9th Cir. 1992). “[A] group of individuals who share a desire to engage in conduct that  
12 the § 1985(3) defendant disfavors” does not constitute a protected class for purposes of  
13 the statute. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 269 (1993).

14 Assuming, without deciding, that § 1985(3) extends to discriminatory animus  
15 against transgender individuals, Plaintiff’s proposed TAC nevertheless does not  
16 sufficiently allege discriminatory animus. Plaintiff alleges that Gutierrez stated Plaintiff  
17 was attempting to recruit other inmates to make false allegations against BOP staff  
18 “regarding the treatment of transgender inmates,” and was “using her status as a  
19 transgender inmate to her benefit by filing false PREA allegations to remove any inmate  
20 she has issues with.” (Doc. 117-1 at 17-18.) But the factual allegations of the TAC make  
21 clear that Gutierrez’s purpose was not discriminatory animus against Plaintiff for being  
22 transgender, but, rather, retaliation against Plaintiff for her litigation and her allegations  
23 against prison staff. Because § 1985(3) claims cannot be grounded “on classes defined  
24 by the conduct the defendants oppose,” these factual allegations fail to state a claim under  
25 § 1985(3). *Dean v. Warren*, 12 F.4th 1248, 1263 (11th Cir. 2021) (citing *Bray*, 506 U.S.  
26 at 269).

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1           **C. Section 1985(2) Conspiracy**

2           To state a claim based on retaliation under § 1985(2), “a plaintiff must prove four  
3 elements: (1) a conspiracy by the defendants; (2) to injure a party or witness in his or her  
4 person or property; (3) because he or she attended federal court or testified in any matter  
5 pending in federal court; (4) resulting in injury or damages to the plaintiff. *Portman v.*  
6 *Cnty. of Santa Clara*, 995 F.2d 898, 909 (9th Cir. 1993). Plaintiff alleges that Gutierrez  
7 and non-party SIS Lieutenant Christensen threatened her with prolonged housing in  
8 segregation and transfer if she did not withdraw her lawsuits before this Court, and that  
9 they made similar threats to several inmates who submitted witness declarations in her  
10 cases. (Doc. 117-1 at 16-17.) Liberally construed, Plaintiff alleges that Gutierrez  
11 engaged in a § 1985(2) conspiracy.

12           Defendant argues that Plaintiff fails to allege injury for purposes of a § 1985 claim  
13 because she alleges only that she was transferred from one high-security male prison to  
14 another, and inmates do not have a liberty interest in being housed at a particular prison.  
15 However, a plaintiff need not allege an injury to a constitutionally protected interest to  
16 state a claim for damages under § 1985(2). *Haddle v. Garrison*, 525 U.S. 121, 125-26  
17 (1998). Furthermore, liberally construed, the proposed TAC alleges that Gutierrez, in  
18 furtherance of the § 1985(2) conspiracy, secured Plaintiff’s prolonged confinement in  
19 restrictive, segregated housing where she experiences death threats and pervasive sexual  
20 harassment. Such allegations may implicate a due process injury. *Sandin v. Conner*, 515  
21 U.S. 472, 483-84 (1995) (government may, under certain circumstances, create due-  
22 process protected liberty interest in freedom from restraint which “imposes atypical and  
23 significant hardship . . . in relation to the ordinary incidents of prison life”).

24           **D. Section 1986<sup>3</sup>**

25           Section 1986 provides for the liability of individuals who neglect or refuse to  
26 prevent a § 1985 conspiracy despite having knowledge of the conspiracy and the power

27 \_\_\_\_\_  
28 <sup>3</sup> In her Reply in support of her Motion to Amend, Plaintiff clarifies that her proposed  
TAC asserts only § 1986 claims against Defendants Noble, Pullen, Robbins, Reynolds,  
Burkett, Lewis, Alison Leukefeld, and Karl Keukefeld. (Doc. 155 at 6.)

1 to prevent it. 42 U.S.C. § 1986. “A claim can be stated under section 1986 only if the  
2 complaint contains a valid claim under section 1985.” *Karim-Panahi v. Los Angeles*  
3 *Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988); *see also Trerice v. Pedersen*, 769 F.2d  
4 1398, 1403 (9th Cir. 1985) (“a cause of action is not provided under 42 U.S.C. § 1986  
5 absent a valid claim for relief under section 1985”). Because Plaintiff’s proposed TAC  
6 fails to plead facts supporting the elements of a § 1985(3) conspiracy, it also necessarily  
7 fails to state a claim under § 1986 for failing to prevent a § 1985(3) conspiracy. *See*  
8 *Karim-Panahi*, 839 F.2d at 626.

9 With respect to a failure to prevent a § 1985(2) conspiracy, Plaintiff alleges that  
10 she told Defendant Noble that Gutierrez, Zantout, Felix, and non-party Christensen had  
11 “threatened her with retaliation if she didn’t agree to drop her pending civil claims” in  
12 cases that went to trial in Fall 2023. (Doc. 117-1 at 22.) Plaintiff also alleges that she  
13 utilized electronic requests to staff to notify Noble, Pullen, Robbins, Reynolds, Burkett,  
14 Lewis, and both Leukefelds “to alert them to Gutierrez, Zantout and other misconduct at  
15 USP Tucson in great detail as well as the threatened retaliation.” (*Id.*) Plaintiff  
16 sufficiently alleges that she notified Noble of a § 1985(2) conspiracy to retaliate against  
17 her because of her litigation before this Court, and that Noble failed to prevent the  
18 conspiracy despite having the power to do so. However, Plaintiff’s allegations that she  
19 notified Pullen, Robbins, Reynolds, Burkett, Lewis, and both Leukefelds of misconduct  
20 and retaliation by Gutierrez and Zantout are too general to state a claim under 42 U.S.C.  
21 § 1986. Plaintiff does not allege that she notified these defendants that Gutierrez and  
22 Zantout were retaliating against her because of her litigation, nor does she provide any  
23 specific information about what she reported to these defendants.

#### 24 **E. Conclusion**

25 Plaintiff’s proposed Third Amended Complaint sufficiently states a claim under 42  
26 U.S.C. § 1985(2) against Defendant Gutierrez and a claim under 42 U.S.C. § 1986  
27 against Defendant Noble. The Court therefore does not find that Plaintiff’s Motion to  
28 Amend should be denied on grounds of futility. However, the proposed Third Amended

1 Complaint fails to state claims under 42 U.S.C. §§ 1985 and 1986 against any of the other  
2 proposed new defendants. Accordingly, on screening under 28 U.S.C. § 1915A(a), the  
3 Court will dismiss Defendants Zantout, Geter, Alison Leukefeld, Karl Leukfeld, Pullen,  
4 Reynolds, Burkett, Lewis, Robbins, and Felix.

5 **IV. Motion to Declare Response a Rule 12(e) Motion**

6 Plaintiff asks the Court to construe Defendant's Response to her Motion to Amend  
7 as a motion for more definite statement under Federal Rule of Civil Procedure 12(e).  
8 (Doc. 161.) Plaintiff argues that, because Defendant's Response argues that Plaintiff's  
9 Motion to Amend should be denied on grounds of futility, the Response is actually a  
10 disguised motion to dismiss under Rule 12(b)(6) or motion for more definite statement  
11 under Rule 12(e). (*Id.*)

12 The Court finds nothing improper in Defendant's argument that leave to amend  
13 should be denied on the grounds that Plaintiff's proposed amendment would be futile, nor  
14 does the Court find any reason to construe Defendant's Response as a motion under Rule  
15 12(b)(6) or Rule 12(e). Accordingly, Plaintiff's Motion will be denied.

16 **V. Motion for Leave to File Motion to Compel**

17 Plaintiff seeks leave to file a motion to compel regarding Defendants' failure to  
18 produce certain discovery requested by Plaintiff. (Doc. 191.) After Plaintiff filed the  
19 Motion for Leave to File Motion to Compel, this Court appointed counsel for Plaintiff;  
20 directed counsel for Plaintiff and Defendant to meet and confer in an attempt to resolve  
21 or narrow any discovery disputes; and withdrew the provision in its Scheduling Order  
22 requiring leave of Court to file discovery dispute motions. (Doc. 202.)

23 Because the Court has withdrawn its requirement that leave of Court be obtained  
24 prior to the filing of a discovery dispute motion, and because the Court's resolution of  
25 Plaintiff's Motion for Leave to Amend/Join Parties may affect the relevance of certain  
26 discovery requests, Plaintiff's Motion for Leave to File Motion to Compel will be denied  
27 as moot. Defendant is directed to review its discovery responses to determine whether  
28 any amendments are necessary, and the parties are directed to continue to meet and



1 confer to eliminate or narrow any remaining discovery disputes. Either party may file a  
2 discovery dispute motion if any discovery disputes remain after good-faith personal  
3 consultation.

4 **IT IS ORDERED:**

- 5 1. Plaintiff's Motion for Leave to Amend/Join Parties (Doc. 117) is **granted**.  
6 The Clerk of Court is directed to re-file Document 117-1 as Plaintiff's  
7 Third Amended Complaint.
- 8 2. Defendant Gutierrez must answer the 42 U.S.C. § 1985(2) claim asserted in  
9 Count Four of Plaintiff's Third Amended Complaint. Defendant Noble  
10 must answer the 42 U.S.C. § 1986 claim asserted in Count Four. Defendant  
11 Federal Bureau of Prisons must answer the re-asserted Counts One through  
12 Three of the Third Amended Complaint. Any answer or response must  
13 state the specific defendant by name on whose behalf it is filed. The Court  
14 may strike any answer, response, or other motion or paper that does not  
15 identify the specific defendant by name on whose behalf it is filed.
- 16 3. The claim under 42 U.S.C. § 1985(3) asserted in Count Four of the Third  
17 Amended Complaint, as well as Defendants Zantout, Geter, Alison  
18 Leukefeld, Karl Leukfeld, Pullen, Reynolds, Burkett, Lewis, Robbins, and  
19 Felix, are hereby **dismissed without prejudice**.
- 20 4. Within **ten (10) days** of the date this Order is filed, Plaintiff shall file a  
21 notice indicating whether she intends to utilize the United States Marshal's  
22 Service for completion of service of process with respect to Defendants  
23 Gutierrez and Noble.
- 24 5. Plaintiff's Motion to Declare Response a Rule 12(e) Motion (Doc. 161) is  
25 **denied**.

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6. Plaintiff's Motion for Leave to File Motion to Compel (Doc. 191) is **denied as moot**, as discussed above. Either party may file a discovery dispute motion if any discovery disputes remain after good-faith personal consultation.

Dated this 27th day of August, 2024.

  
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Honorable Rosemary Márquez  
United States District Judge