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**United States District Court
Central District of California**

JA'NAYE GRANBERRY,
Plaintiff,
v.
DENIS R. MCDONOUGH,
Defendant.

Case No 2:22-cv-05555-ODW (PVCx)
**ORDER DENYING DEFENDANT'S
MOTION TO STRIKE AND
GRANTING DEFENDANT'S
MOTION TO DISMISS [13]**

I. INTRODUCTION

On August 3, 2022, Plaintiff Ja'Naye Granberry, proceeding pro se, filed this civil rights action against Defendant Denis R. McDonough in his official capacity as the Secretary of the Department of Veterans Affairs. (Compl., ECF No. 1.) McDonough now moves to strike certain allegations and to dismiss the Complaint. (Mot. Dismiss & Strike ("Mot." or "Motion"), ECF No. 13.) For the following reasons, the Court **DENIES** the Motion to Strike and **GRANTS** the Motion to Dismiss.¹

¹ The Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 Granberry is an employee of the Department of Surgical and Perioperative Care
3 at the Veterans Healthcare Medical Center in Los Angeles, California. (Compl. at 1.²)
4 Granberry alleges she was subjected to a hostile work environment and various acts of
5 employment discrimination and retaliation by her supervisor, Robert Lopez. (*Id.* at 1–
6 2.) Granberry makes nine factual allegations. (*Id.* at 2.) Among other things,
7 Granberry alleges that Lopez sent an email to his Equal Employment Opportunity
8 (“EEO”) department asking “for information on retali[at]ion because [Granberry]
9 [p]ut [Lopez] in an unman[age]able situation.” (*Id.*) Granberry further alleges that
10 Lopez “fabricated false reports of failure on [Granberry’s] performance rating,” “gave
11 [Granberry] an unjustified negative evaluation,” and “treated the male staff more
12 favorabl[y] than [Granberry].” (*Id.*)

13 Granberry’s claims for “[r]etaliatory [h]arassment,” “[h]ostile [w]ork
14 [e]nvironment,” and “[s]ex and [r]ace” are listed as headings in the request for
15 damages, but Granberry makes no allegations specific to any claim. (*Id.* at 5–6).
16 Granberry seeks monetary damages and an injunction requiring McDonough to restore
17 Granberry’s leave time and grant her a two-grade promotion. (*Id.* at 2, 6.)

18 Attached to the Complaint, Granberry submits a U.S. Equal Employment
19 Opportunity Commission (“EEOC”) Decision on Request for Reconsideration
20 (“Decision”), dated June 15, 2022.³ (*Id.* at 7–9). According to the Decision, on
21 July 25, 2015, Granberry filed a formal complaint with the EEOC “alleging she was
22 subjected to a hostile work environment and discriminated against based on her race
23 (African American), sex (female), and reprisal for prior protected EEO activity.” (*Id.*

24 _____
25 ² When citing the Complaint, the Court cites the pagination found in the CM/ECF header.

26 ³ When ruling on a Rule 12(b)(6) motion, “[a] court may . . . consider certain materials—documents
27 attached to the complaint, documents incorporated by reference in the complaint, or matters of
28 judicial notice—without converting [a] motion to dismiss into a motion for summary judgment.”
See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). Accordingly, in resolving
McDonough’s Motion to Dismiss, the Court considers the EEOC Decision attached to the
Complaint.

1 at 7.) On May 29, 2020, an EEOC Administrative Judge (“AJ”) issued a summary
2 judgment decision finding that Granberry did not establish any discrimination or
3 unlawful retaliation. (*Id.* at 8.) Thereafter, the Department of Veterans Affairs issued
4 a final order implementing the AJ’s decision, which Granberry appealed to the EEOC.
5 (*Id.*) On appeal, the EEOC “found that the AJ properly issued a decision without a
6 hearing finding no discrimination or unlawful retaliation.” (*Id.*) Granberry requested
7 reconsideration. (*Id.*) In considering Granberry’s request for reconsideration, the
8 EEOC found that Granberry did not meet the criteria for reconsideration because “she
9 simply reiterate[d] [the] contentions and arguments raised, or [that she] should
10 have . . . raised, in her appeal.” (*Id.*) Therefore, on June 15, 2022, the EEOC denied
11 the request for reconsideration and its decision finding no discrimination or unlawful
12 retaliation became final. (*Id.*) The Decision notified Granberry of her right to file a
13 civil action in an appropriate United States District Court within ninety days from the
14 date of receipt of the Decision. (*Id.*) The Decision directed Granberry to name as the
15 defendant in any complaint “the person who is the official Agency head or department
16 head, identifying that person by his or her full name and official title.” (*Id.*)

17 On August 3, 2022, Granberry filed the Complaint in this action, naming Denis
18 R. McDonough, Secretary of the Department of Veterans Affairs, as the defendant.
19 (*See generally* Compl.) The Court understands Granberry to assert causes of action
20 for retaliation, hostile work environment, and sex and race discrimination. (*Id.* at 5–
21 6). On March 23, 2023, McDonough moved to strike certain allegations and to
22 dismiss the Complaint pursuant to Federal Rules of Civil Procedure (“Rules” or
23 “Rule”) 12(f) and 12(b)(6), respectively. (Mot.) The Motion is fully briefed. (Opp’n,
24 ECF No. 15; Reply, ECF No. 16.)

25 III. LEGAL STANDARDS

26 A. Rule 12(f)—Motion to Strike

27 Under Rule 12(f), the Court, upon a motion or sua sponte, “may strike from a
28 pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.

1 Civ. P. 12(f). “The function of a 12(f) motion to strike is to avoid the expenditure of
2 time and money that must arise from litigating spurious issues by dispensing with
3 those issues prior to trial.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973
4 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.
5 1993), *rev’d on other grounds by sub nom. Fogerty v. Fantasy, Inc.*, 510 U.S. 517
6 (1994)). However, motions to strike are generally disfavored and should not be
7 granted “unless it is clear that the matter to be stricken could have no possible bearing
8 on the subject matter of litigation.” *Shabaz v. Polo Ralph Lauren Corp.*, 586 F. Supp.
9 2d 1205, 1209 (C.D. Cal. 2008). “Given their disfavored status, courts often require a
10 showing of prejudice by the moving party before granting the requested relief.” *Cal.*
11 *Dep’t of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033
12 (C.D. Cal. 2002) (internal quotation marks omitted).

13 **B. Rule 12(b)(6)—Motion to Dismiss**

14 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
15 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
16 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To
17 survive a dismissal motion, a complaint need only satisfy “the minimal notice
18 pleading requirements of Rule 8(a)(2)” — “a short and plain statement of the claim.”
19 *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be
20 enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*
21 *Twombly*, 550 U.S. 544, 555 (2007). Pursuant to this standard, the complaint must
22 “contain sufficient factual matter, accepted as true, to state a claim to relief that is
23 plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation
24 marks omitted).

25 The determination of whether a complaint satisfies the plausibility standard is a
26 “context-specific task that requires the reviewing court to draw on its judicial
27 experience and common sense.” *Id.* at 679. A court is generally limited to the
28 pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . as

1 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,
2 250 F.3d 668, 679 (9th Cir. 2001) (internal quotation marks omitted). However, a
3 court need not blindly accept “allegations that are merely conclusory, unwarranted
4 deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*,
5 266 F.3d 979, 988 (9th Cir. 2001). Ultimately, there must be sufficient factual
6 allegations “to give fair notice and to enable the opposing party to defend itself
7 effectively,” and the “allegations that are taken as true must plausibly suggest an
8 entitlement to relief, such that it is not unfair to require the opposing party to be
9 subjected to the expense of discovery and continued litigation.” *Starr v. Baca*,
10 652 F.3d 1202, 1216 (9th Cir. 2011).

11 Although pro se pleadings are to be construed liberally, pro se litigants are “not
12 excused from knowing the most basic pleading requirements.” *Am. Ass’n of*
13 *Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000); see *Hebbe*
14 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (construing pro se inmate’s civil rights
15 complaint liberally). A court may not “supply essential elements of the claim that
16 were not initially ple[aded].” *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). A
17 liberal reading cannot cure the absence of such facts. *Ivey v. Bd. of Regents of Univ.*
18 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 IV. DISCUSSION

20 The Court considers McDonough’s Motion to Strike and Motion to Dismiss in
21 turn.

22 A. Rule 12(f)—Motion to Strike

23 McDonough moves to strike Granberry’s “first, second, fourth through sixth,
24 and eighth factual allegations” on the basis that they are immaterial and impertinent
25 because they are time-barred. (Mot. 6–8.) McDonough argues that these factual
26 allegations concern events that took place in 2013 through 2015,⁴ and that they are

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28 ⁴ In the Complaint, Granberry fails to allege the dates on which any of her factual allegations occurred. However, McDonough submits EEOC records that identify the dates of certain allegations. (See Decl. Julianne M. Ference ISO Mot. (“Ference Decl.”) Exs. 1–5, ECF No. 13-1.)

1 time-barred because Granberry failed to timely file an EEOC complaint after
2 receiving notice of her right to file a complaint regarding those allegations.⁵ (*Id.* at 8.)

3 “‘Immaterial’ matter is that which has no essential or important relationship to
4 the claim for relief or the defenses being pleaded.” *Fantasy*, 984 F.2d at 1527
5 (quoting 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*
6 § 1382, at 706–07 (1990)). “‘Impertinent’ matter consists of statements that do not
7 pertain, and are not necessary, to the issues in question.” *Id.* (quoting 5A Charles A.
8 Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1382, at 711 (1990)).

9 The Court cannot conclude that Granberry’s factual allegations concerning prior
10 acts of alleged discrimination are immaterial or impertinent. First, such allegations
11 may be used as “background evidence” in support of timely claim of discrimination.
12 *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 102 (2002); *see also Wallace*,
13 2022 WL 14746303, at *7 (“[P]rior acts can constitute background evidence or
14 circumstances that give rise to an inference of discrimination for disparate treatment
15 claims.” (cleaned up)). Second, the prior act allegations may be relevant to
16 Granberry’s hostile work environment claim. Because “[a] hostile work environment
17 claim is composed of a series of separate acts that collectively constitute one
18 ‘unlawful employment practice’ . . . it does not matter . . . that some of the component
19 acts of the hostile work environment fall outside the statutory time period.” *Morgan*,
20 536 U.S. at 117 (citation omitted). “Provided that an act contributing to the claim
21

22 McDonough argues that judicial notice of Granberry’s administrative record before the EEOC is
23 appropriate. (Mot. 3.) Courts may take judicial notice of records and reports of administrative
24 bodies. *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012). Accordingly, the Court takes
25 judicial notice of the EEOC records that McDonough submits with the Motion. *See Wallace v.*
DeJoy, No. 2:21-cv-08885-RSWL (SKx), 2022 WL 14746303, at *3 (C.D. Cal. Oct. 24, 2022)
(taking judicial notice of EEOC records, reports, and documentation as judicially noticeable matters
of public record).

26 ⁵ Federal employees who believe they have been discriminated against “must initiate contact with a
27 Counselor within 45 days of the date of the matter alleged to be discriminatory.” 29 C.F.R.
28 § 1614.105(a)(1). In addition, if a resolution is not reached during counseling, the Counselor must
give the employee notice of the right to file a formal complaint, and the employee must file a formal
complaint within 15 days of receipt of the notice. 29 C.F.R. § 1614.105(d).

1 occurs within the filing period, the entire time period of the hostile environment may
2 be considered by a court for the purposes of determining liability.” *Id.*

3 For these reasons, and because McDonough does not demonstrate that he is
4 prejudiced by the factual allegations he seeks to strike, the Court **DENIES**
5 McDonough’s Motion to Strike.

6 **B. Rule 12(b)(6)—Motion to Dismiss**

7 McDonough moves to dismiss Granberry’s claims for retaliation, hostile work
8 environment, and sex and race discrimination on the basis that she fails to state a
9 claim upon which relief can be granted. (Mot. 8–12.)

10 1. *Retaliation*

11 To state a prima facie claim of retaliation, a plaintiff must plead that (1) they
12 engaged in protected activity; (2) they suffered a materially adverse action; and
13 (3) there was a causal relationship between the two. *Westendorf v. W. Coast*
14 *Contractors of Nev., Inc.*, 712 F.3d 417, 422 (9th Cir. 2013). “An employee engages
15 in protected activity when [they] oppose[] an employment practice that either violates
16 Title VII or that the employee reasonably believes violates that law.” *Id.*

17 Here, Granberry fails to allege that she participated in any protected activity.
18 (*See* Compl. 1–2.) Thus, as can only be the case, Granberry also fails to allege that
19 her participation in a protected activity was the cause of any materially adverse
20 employment action. (*See id.*) Accordingly, Granberry fails to state a claim for
21 retaliation. The Court **GRANTS** McDonough’s Motion to Dismiss Granberry’s
22 retaliation claim.

23 2. *Hostile Work Environment*

24 To establish a hostile work environment claim under Title VII, a plaintiff must
25 allege that (1) they were “subjected to verbal or physical conduct of a harassing
26 nature”; (2) “this conduct was unwelcome”; and (3) the “conduct was sufficiently
27 severe or pervasive to alter the conditions of the victim’s employment and create an
28 abusive working environment.” *Kortan v. Cal. Youth Auth.*, 217 F.3d 1104, 1109–10

1 (9th Cir. 2000). “A plaintiff must show that the work environment was both
2 subjectively and objectively hostile.” *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103,
3 1113 (9th Cir. 2004).

4 Here, Granberry contends that all of Lopez’s actions collectively contributed to
5 a hostile work environment. (Opp’n 4–6.) McDonough asserts that at least five of
6 Granberry’s nine factual allegations occurred between 2013 and 2015 and, thus, are
7 time-barred and should not be considered by the Court in determining whether
8 Granberry sufficiently alleges a hostile work environment. (Mot. 8, 10–11.) As
9 discussed above, “[a] charge alleging a hostile work environment claim . . . will not be
10 time barred so long as all acts which constitute the claim are part of the same unlawful
11 employment practice and at least one act falls within the time period.” *Morgan*,
12 536 U.S. at 122; *see also supra* Part IV.A. To determine whether certain events
13 constitute “one unlawful employment practice,” courts consider whether (1) the events
14 “were sufficiently severe or pervasive”; and (2) the “earlier and later events amounted
15 to the same type of employment actions, occurred relatively frequently, or were
16 perpetrated by the same managers.” *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 893
17 (9th Cir. 2005) (cleaned up) (quoting *Morgan*, 536 U.S. at 116, 120). Granberry’s
18 allegations, however, address only one aspect of the *Porter* factors: that the acts were
19 perpetrated by the same manager, Lopez. Accordingly, Granberry fails to allege that
20 Lopez’s acts constitute “one unlawful employment practice.”

21 Even assuming Granberry sufficiently alleges that all nine of Lopez’s acts
22 constitute “one unlawful employment practice,” Granberry still fails to state a hostile
23 work environment claim. Granberry’s sparse allegations do not show that Lopez’s
24 “conduct was sufficiently severe or pervasive to alter the conditions of [Granberry’s]
25 employment and create an abusive working environment.” *Kortan*, 217 F.3d at 1110.
26 In total, Granberry alleges that Lopez asked another employee about retaliation, gave
27 Granberry an unjustified negative evaluation, fabricated false reports of failure on
28 Granberry’s performance rating, had Granberry surveilled, told Lopez’s supervisors

1 that Granberry’s work was failing and overtime should be taken away, raised his voice
2 at Granberry, fabricated false reports of Granberry’s failures, changed Granberry’s
3 performance measures, asked other employee’s to do Granberry’s assignments, and
4 treated male staff more favorably. (Compl. 2.) Without additional factual context
5 regarding Granberry’s work performance and the frequency of Lopez’s alleged
6 conduct, the Court cannot conclude that these alleged acts were severe or frequent
7 enough to unreasonably interfere with Granberry’s work performance. *See Harris v.*
8 *Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) (considering “frequency of the
9 discriminatory conduct; its severity; whether it is physically threatening or
10 humiliating, or a mere offensive utterance; and whether it unreasonably interferes with
11 an employee’s work performance”); *see also Davis v. Team Elec. Co.*, 520 F.3d 1080,
12 1095 (9th Cir. 2008) (“A working environment is abusive if hostile conduct pollutes
13 the victim’s workplace, making it more difficult for her to do her job, to take pride in
14 her work, and to desire to stay on in her position.” (internal quotation marks omitted)).
15 Additionally, although Granberry requests damages for humiliation, among other
16 purported harms, she fails to allege that any of Lopez’s acts subjected her to public
17 humiliation. (See Compl. 2.) As a whole, the Court finds that Granberry fails to
18 allege sufficient facts to demonstrate a subjectively and objectively hostile work
19 environment and, thus, fails to state a claim for a hostile work environment.

20 Accordingly, the Court **GRANTS** McDonough’s Motion to Dismiss
21 Granberry’s hostile work environment claim.

22 3. *Discrimination*

23 Title VII forbids discrimination by employers based on an individual’s race,
24 color, religion, sex, or national origin. 42 U.S.C. § 2000e-2. To state a prima facie
25 claim of discrimination, a plaintiff must plead that (1) they belonged to a protected
26 class; (2) they were qualified for their position; (3) they experienced an adverse
27 employment action; and (4) similarly situated individuals outside the plaintiff’s
28 protected class were treated more favorably. *Chuang v. Univ. of Cal. Davis, Bd. of*

1 *Trs.*, 225 F.3d 1115, 1123 (9th Cir. 2000). An adverse employment action is one that
2 “materially affect[s] the compensation, terms, conditions, or privileges of . . .
3 employment.” *Davis*, 520 F.3d at 1089 (alterations in original); *see also* 42 U.S.C.
4 § 2000e-2(a). Although an employment discrimination complaint need not “contain
5 specific facts establishing a prima facie case,” it must nonetheless contain “a short and
6 plain statement of the claim showing that the pleader is entitled to relief.”
7 *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 (2002).

8 Here, Granberry fails to make sufficient factual allegations showing that she is
9 entitled to relief for discrimination on the basis of her sex or race. To begin with,
10 Granberry fails to expressly allege her sex or race. The EEOC Decision attached to
11 Granberry’s Complaint states that Granberry describes herself as an African American
12 female. (Compl. 7.) McDonough also acknowledges that Granberry is an African
13 American female. (*See* Mot. 4.)

14 Accepting that Granberry is a member of a protected class based on her sex and
15 race, Granberry nonetheless fails to allege any facts showing that she was qualified for
16 her position, that she suffered an adverse employment action, and that other similarly
17 situated individual employees outside her protected class were treated more favorably.
18 First, Granberry alleges no facts indicating that she was qualified for her position.
19 Second, although Granberry requests in her prayer for relief restoration of 152 hours
20 of leave and a two-grade promotion, Granberry never alleges that she was denied
21 leave or a promotion. (*See* Compl. 6.) Third, Granberry’s sole allegation that
22 references sex discrimination states only that “Lopez treated the male staff more
23 favorable than [Granberry].” (*Id.* at 2.) Such a bare, conclusory assertion,
24 unsupported by any factual allegations, cannot sustain Granberry’s discrimination
25 claim. *See Iqbal*, 556 U.S. at 678 (“A pleading that offers ‘labels and
26 conclusions’ . . . ‘will not do,’” “[n]or does a complaint suffice if it tenders ‘naked
27 assertion[s]’ devoid of ‘further factual enhancement.’” (citation omitted)). For
28 example, Granberry does not allege any facts indicating that the “male staff” to which

1 she refers are similarly situated individuals who held similar positions and engaged in
2 similar conduct as Granberry. *See Vasquez v. County of Los Angeles*, 349 F.3d 634,
3 641 (9th Cir. 2003), *as amended* (Jan. 2, 2004) (“[I]ndividuals are similarly situated
4 when they have similar jobs and display similar conduct.”). Further, although
5 Granberry alleges that “other employee[s] with same circumstance as [Granberry]
6 [received] a more favorable evaluation,” Granberry alleges no facts showing that the
7 “other employee[s] with same circumstance” were outside of the relevant protected
8 classes, such as males or non-African American employees. (*See* Compl. 2). As such,
9 the Court finds that Granberry’s allegations fail to provide sufficient facts to support a
10 plausible discrimination claim.

11 Accordingly, the Court **GRANTS** McDonough’s Motion to Dismiss
12 Granberry’s discrimination claim.

13 **C. Leave to Amend**

14 Where a district court grants a motion to dismiss, it should provide leave to
15 amend unless it is clear the complaint could not be saved by any amendment. *See*
16 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

17 Here, Granberry raises additional facts in the Opposition that she did not allege
18 in the Complaint. (*See generally* Opp’n.) Although the Court may not consider these
19 facts in resolving McDonough’s Motion to Dismiss, the Court may consider them in
20 determining whether to grant Granberry leave to amend the Complaint. *Broam v.*
21 *Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003). In light of Granberry’s Opposition
22 and the liberal standards for amending pleadings, the Court **GRANTS** Granberry
23 leave to amend the Complaint to allege additional facts and the dates of her
24 allegations.

25 **V. CONCLUSION**

26 For the reasons discussed above, the Court **DENIES** McDonough’s Motion to
27 Strike and **GRANTS** McDonough’s Motion to Dismiss **with leave to amend**. (ECF
28 No. 13.) If Granberry chooses to file an amended complaint, she must file it within

1 **twenty-one (21) days** of the date of this order, in which case McDonough shall
2 answer or otherwise respond no later than **fourteen (14) days** from the date the
3 amended complaint is filed.

4 Moreover, Granberry is advised that the Federal Pro Se Clinic offers free
5 information and guidance to individuals who are representing themselves in federal
6 civil actions. The Los Angeles Clinic operates by appointment only. Appointments
7 are available either by calling the Clinic or by using an internet portal. The Clinic can
8 be reached at (213) 385-2977, ext. 270 or through an internet request at the following
9 site: <http://prose.cacd.uscourts.gov/los-angeles>. Clinic staff can respond to many
10 questions with a telephonic appointment or through an email account. It may be more
11 convenient to email questions or schedule a telephonic appointment. Staff can also
12 schedule an in-person appointment at their location in the Roybal Federal Building
13 and Courthouse, 255 East Temple Street, Suite 170, Los Angeles, California 90012.
14 Granberry is encouraged to visit the Clinic or otherwise consult with an attorney prior
15 to filing an amended complaint.

16
17 **IT IS SO ORDERED.**

18
19 July 10, 2023

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**