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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ROSIE BOPARAI, M.D.,	)	1:09cv01164 AWI DLB
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF’S
	)	MOTION TO INCLUDE DR. DEAN NORMAN
v.	)	AS A DEFENDANT
	)	(Document 18)
	)	
ERIC K. SHINSEKI, Secretary of Veterans	)	
Affairs, United States Department	)	
of Veterans Affairs,	)	
	)	
Defendant.	)	
_____	)	

On April 19, 2010, Plaintiff Rosie Boparai, M.D., filed the instant motion to include Dr. Dean Norman as a Defendant. The matter was heard on April 30, 2010, before the Honorable Dennis L. Beck, United States Magistrate Judge. Plaintiff Rosie Boparai, M.D., telephonically appeared in pro per. Jeffrey Lodge, Assistant United States Attorney, appeared on behalf of Defendant Eric K. Shinseki, Secretary of Veterans Affairs, United States Department of Veterans Affairs (“Defendant”).

**BACKGROUND**

On July 6, 2009, Plaintiff, proceeding pro se, filed the instant complaint. Plaintiff seeks relief pursuant to Title VII, claiming retaliation for “prior EEOC” activity. Complaint, p. 1.

On January 13, 2010, Defendant filed an answer to the complaint.

On February 9, 2010, the parties filed a joint scheduling report. In the report, Plaintiff indicated that she wished to add Dr. Dean Norman as defendant to the action in his official

1 capacity as the Chief of Staff of Greater Los Angeles Healthcare. Plaintiff also reserved her right  
2 to include any individuals who conspired in any way. The United States contended that the  
3 Secretary of Veterans Affairs, in his official capacity, is the only proper defendant under  
4 Title VII.

5 On February 17, 2010, the Court issued a Scheduling Order, setting the non-expert  
6 discovery deadline as September 16, 2010, and the expert discovery deadline as December 16,  
7 2010.

8 On April 19, 2010, Plaintiff filed the instant motion to include Dr. Dean Norman, Chief  
9 of Staff at Veterans Affairs Medical Center of Greater Los Angeles Healthcare System in Los  
10 Angeles, CA, as a defendant in his official capacity.

11 On April 28, 2010, Defendant filed an opposition to the motion.

## 12 DISCUSSION

### 13 A. Legal Standard

14 Plaintiff essentially seeks to amend the complaint to name Dr. Norman as a defendant in  
15 his official capacity. Federal Rule of Civil Procedure 15(a) provides that the Court “should  
16 freely give leave [to amend] when justice so requires.” The United States Supreme Court has  
17 stated:

18 [i]n the absence of any apparent or declared reason – such as undue delay, bad faith or  
19 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
20 amendments previously allowed, undue prejudice to the opposing party by virtue of  
allowance of the amendment, futility of amendment, etc. – the leave sought should, as the  
rules require, be “freely given.”

21 [Foman v. Davis, 371 U.S. 178, 182 \(1962\)](#). The Ninth Circuit has summarized the factors to be  
22 considered to include the following: (1) undue delay; (2) bad faith; (3) prejudice to the opponent;  
23 and (4) futility of amendment. [Loehr v. Ventura County Cmty. Coll. Dist., 743 F.2d 1310, 1319](#)  
24 [\(9th Cir. 1984\)](#). Granting or denial of leave to amend rests in the sound discretion of the trial  
25 court. [Swanson v. United States Forest Serv., 87 F.3d 339, 343 \(9th Cir. 1996\)](#). Despite the  
26 policy favoring amendment under Rule 15, leave to amend may be denied if the proposed  
27 amendment is futile or would be subject to dismissal. [Saul v. United States, 928 F.2d 829, 843](#)  
28 [\(9th Cir. 1991\)](#).

1 B. Analysis

2 Defendant argues that the only proper defendant is the Secretary of Veterans Affairs in his  
3 official capacity, who already has been named and served. Section 717(c) of Title VII allows a  
4 civil action by an aggrieved federal employee “in which civil action the head of the department,  
5 agency, or unit, as appropriate, shall be the defendant.” 42 U.S.C. § 2000e-16(c); see also Cooper  
6 v. USPS, 740 F.2d 714, 715 (9th Cir. 1984) (affirming dismissal of Title VII complaint where  
7 plaintiff did not sue head of the agency); Easterly v. Department of Army, 2008 WL 2054798, \*6  
8 (E.D.Cal. May 9, 2008) (only proper defendant for federal employee’s action pursuant to Title  
9 VII was Secretary of the Army as head of department); DiJorio v. Sec’y of Veterans Affairs,  
10 1993 WL 313158, \*1 (N.D.Cal. 1993) (under Title VII, the only proper defendant was head of  
11 appropriate agency, Secretary of Veterans Affairs). Here, the defendant properly named and  
12 served is the Secretary of Veterans Affairs in his official capacity. Plaintiff does not explain who  
13 Dr. Norman is, his connection to this case, or why he was not named in the original complaint.  
14 The complaint contains no allegations specifically identifying him. In the absence of any new  
15 facts or contrary authority, there is no basis to add Dr. Dean Norman as a defendant to this action  
16 and the proposed amendment is unnecessary and futile.

17 **ORDER**

18 For the reasons discussed above, Plaintiff’s motion to include Dr. Dean Norman as a  
19 defendant is DENIED.

20  
21 IT IS SO ORDERED.

22 **Dated: May 2, 2010**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE