

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LUCIA PHARR HINTON,

Plaintiff,

v.

CHEROKEE NATION, *et al.*,

Defendants.

Civil Action No. 23-1422 (RDM)

**DEFENDANT DIRECTOR DARRYL LACOUNTE’S
REPLY IN SUPPORT OF HIS MOTION TO DISMISS**

Defendant Darryl LaCounte, Director of the Bureau of Indian Affairs, hereby submits this reply in support of his motion to dismiss the Amended Complaint as to claims asserted against him in his individual capacity. *See* ECF No. 20 (“Motion”). By failing to dispute the arguments in Defendant’s Motion, the Opposition (ECF No. 26) of Plaintiff Lucia Pharr Hinton effectively concedes that her Amended Complaint should be dismissed.

ARGUMENT

I. Plaintiff Effectively Concedes She Cannot State a Claim Under Section 1983

In her Second Claim for Relief, Plaintiff asserts a claim against Defendant pursuant to 42 U.S.C. § 1983. Am. Compl. ¶¶ 28-39. In his Motion, Defendant demonstrated that this claim fails because Section 1983 does not provide a cause of action against federal officials acting under federal law. *See* Mot. at 3-4. Plaintiff does not address this argument at all in her Opposition, thereby effectively conceding the argument. *See, e.g., Brett v. Brennan*, 404 F. Supp. 3d 52, 59 (D.D.C. 2019) (“[I]t is well-understood that ‘if a party files an opposition to a motion and therein addresses only some of the movant’s arguments, the court may treat the unaddressed arguments as conceded.’”) (quoting *Wannall v. Honeywell, Inc.*, 775 F.3d 425, 428 (D.C. Cir. 2014)).

Accordingly, Defendant reiterates his request to dismiss this claim for the reasons stated in his Motion.

II. Plaintiff Effectively Concedes She Cannot State a *Bivens* Claim

Plaintiff does briefly argue that she has stated a *Bivens* claim against Defendant. Yet that argument is nothing more than a “formulaic recitation of the elements” of a *Bivens* cause of action and a repetition of the insufficient “unadorned, the-defendant-unlawfully-harmed-me accusation” in her Amended Complaint. *See* Opp. at 4-5; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Tellingly, Plaintiff does not disagree that the Supreme Court has recognized a *Bivens* claim in only three circumstances, and that the circumstances underlying her Second Claim for Relief is not one of those circumstances. *See generally* Opp. Plaintiff also does not dispute or even address Defendant’s legal analysis, *see* Mot at 5-13, establishing that implying a *Bivens* remedy in this new context is foreclosed. *See generally* Opp. Once again, the Court may treat Defendant’s arguments as effectively conceded.

Likewise, Plaintiff does not dispute Defendant’s arguments, *see* Mot. at 13-19, demonstrating that Plaintiff has failed to allege facts showing that Defendant would not be entitled to qualified immunity. *See generally* Opp. “In order to defeat qualified immunity at the motion to dismiss stage, plaintiff must allege facts that plausibly establish” that the defendant personally violated clearly established law. *Boatwright v. Jacks*, 239 F. Supp. 3d 229, 233 (D.D.C. 2017). As demonstrated in Defendant’s Motion and unrebutted in the Opposition, Plaintiff has failed to allege any actual action taken by Director LaCounte, much less one that violated a clearly federal statutory or constitutional right. Therefore, Defendant “is entitled to dismissal.” *Bernier v. Allen*, Civ. A. No. 16-0828 (APM), 2019 WL 11320973, at *2 (D.D.C. Aug. 22, 2019) (cleaned up).

In sum, the crux of Plaintiff’s response to Defendant’s Motion is that Defendant “has a sharp eye for technicalities” but that it is “inappropriate for determination at this stage of the

litigation” to conclude that the Amended Complaint fails to state a plausible claim for relief. Opp. at 4-5. Not surprisingly, Plaintiff does not supply any authority that the Court is permitted to ignore the pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Iqbal*.

For the reasons stated in Defendant’s Motion and largely unrebutted by Plaintiff, Defendant respectfully requests that the Court dismiss Plaintiff’s claim against Defendant LaCounte.

Dated: December 18, 2023
Washington, DC

Respectfully submitted,

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