

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Khori Francis v. Doug Collins, et al.

Francis · No. CV-25-01009-PHX-KML · Decided February 26, 2026

OPINION

Francis

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Khori Francis, No. CV-25-01009-PHX-KML 10 Plaintiff, ORDER 11 v. 12 Doug Collins, et
al., 13 Defendants. 14 15 Plaintiff Khori Francis, a former police officer for the Phoenix Veterans
Affairs 16 Police Department (“VAPD”), brings a Title VII retaliation claim against Doug Collins
in 17 his official capacity as Secretary of Veterans Affairs. In October 2025, Francis’s claim was
18 dismissed with limited leave to amend for failure to plausibly state a claim. His fourth 19
amended complaint again fails to allege sufficient facts to state a retaliation claim and is 20
dismissed without leave to amend. 21 I. Background 22 A more complete background is provided
in the October 21, 2025, order. (Doc. 34.) 23 In brief, Francis was a police officer with the
Phoenix VAPD. (Doc. 35 at 1.) Between
24 January 2022 and February 2025, Francis submitted three separate Equal Employment
25 Opportunity (“EEO”) complaints. (Doc. 35 at 2.) Only the third EEO complaint is relevant 26
here. That complaint alleged the VAPD had retaliated against Francis by reviving a DOJ 27
criminal investigation involving improper timekeeping allegations, purportedly because of 28 his
prior EEO activity. (Doc. 36-4 at 2.) The VA’s Office of Resolution Management 1 dismissed that
third EEO complaint on February 19, 2025, reasoning the complaint was 2 effectively a collateral
attack on the DOJ’s process and outside VA jurisdiction, and noting 3 the DOJ is a federal agency
distinct and independent from the VA. (Doc. 36-5 at 4.) Francis 4 filed this civil action on March
27, 2025. (Doc. 1.) 5 In October 2025, the court dismissed Francis’s sole remaining retaliation
claim with 6 limited leave to amend. (Doc. 34.) The court explained Francis had not identified an
7 actionable adverse action nor plausibly alleged but-for causation. (Doc. 34 at 7.) If Francis 8
chose to amend, he was ordered to provide “significantly more facts” and, in particular, to 9
“identify the adverse action taken against him” and “allege sufficient facts to show a causal 10
link between his protected EEO activity . . . and the adverse action.” (Doc. 34 at 8.) Francis 11
amended his complaint but did not comply with those directions. 12 According to the fourth
amended complaint, in 2025 the DOJ “reopened a matter” 13 (i.e., the timekeeping investigation
that had been “presumed closed due to nearly two years 14 of inactivity”). (Doc. 35 at 2.) Francis

now identifies “criminal investigator” Richard 15 Kennedy as the person who revived the investigation. (Doc. 35 at 2.) Francis does not 16 clarify whether Kennedy works for the DOJ or another employer. Francis alleges “[o]n 17 information and belief, this reopening occurred after VA officials . . . transmitted 18 information and communications about [Francis] to Investigator Kennedy and DOJ 19 personnel.” (Doc. 35 at 3.) There are no specific facts regarding the alleged 20 communications. 21 The VA again moves to dismiss for failure to state a claim. (Doc. 36.) Two months 22 after the motion to dismiss was fully briefed, Francis filed a document titled “Affidavit of 23 Khori Francis,” which includes additional allegations and attempts to reframe the asserted 24 adverse action. (Doc. 39.) 25

II. Standard 26 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, 27 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 28 556 U.S. 662, 678 (2009) (simplified). This is not a “probability requirement,” but a 1 requirement that the factual allegations show “more than a sheer possibility that a defendant 2 has acted unlawfully.” *Id.* A claim is facially plausible “when the plaintiff pleads factual 3 content that allows the court to draw the reasonable inference that the defendant is liable 4 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim 5 for relief . . . [is] a context-specific task that requires the reviewing court to draw on its 6 judicial experience and common sense.” *Id.* at 679. 7

III. Analysis 8

A. Failure to State a Claim 9

After the prior order, Francis’s only surviving theory is Title VII retaliation by the 10 VA through reviving the DOJ’s investigation beginning in early 2025. (Doc. 34 at 9.) 11 To state a prima facie case of retaliation, a plaintiff must show: (1) he engaged in 12 protected activity; (2) he suffered an adverse employment action; and (3) a causal 13 connection exists between the protected activity and the adverse employment action.¹ 14 *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1093–94 (9th Cir. 2008). Title VII’s anti- 15 retaliation protections extend to former employees, *Robinson v. Shell Oil Co.*, 519 U.S. 16 337, 346 (1997), and the adverse-action element is met where the challenged conduct “well 17 might have dissuaded a reasonable [person] from making or supporting a charge of 18 discrimination.” *Emeldi v. Univ. of Or.*, 698 F.3d 715, 726 (9th Cir. 2012) (simplified). 19 The parties do not dispute Francis engaged in protected EEO activity in 2022 and 2023, so 20 only the second and third elements are at issue. (Doc. 38 at 2.) 21 Francis attempts to satisfy the adverse-action element by alleging fear of 22 prosecution, emotional and financial harm, reputational stigma, and difficulty obtaining 23 law-enforcement credentials in light of the renewed DOJ investigation. (Doc. 35 at 3–5.) 24 But the core “action” he identifies is the DOJ’s conduct, not any concrete act by the VA. 25

1 The requirement of establishing a prima facie case is an “evidentiary standard” and not a 26 “pleading requirement[.]” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002). Thus, a complaint cannot be dismissed merely because it does not contain facts establishing all 27 the requirements of a prima facie case. See *Austin v. Univ. of Or.*, 925 F.3d 1133, 1137 (9th Cir. 2019). That said, a plaintiff’s complaint must still include “sufficient, nonconclusory 28 allegations plausibly linking the [adverse] action to discrimination” or retaliation. *Id.* at 1138 (applying this standard in the Title IX context). 1 The

complaint offers only generalized assertions that the VA “maintain[ed] false and 2 stigmatized records” or “constructively den[ied]” credential eligibility, without identifying 3 what records exist, who maintained them, who denied credentials, when any denial 4 occurred, or—most importantly—how those consequences are traceable to VA action 5 rather than the existence of an independent DOJ inquiry. (Doc. 35 at 5.) Absent factual 6 allegations showing the VA actually took a materially-adverse step, the complaint does not 7 plausibly plead an adverse action. See *Iqbal*, 556 U.S. at 678 (conclusory allegations do 8 not suffice). 9 Even assuming the renewed DOJ investigation and its alleged downstream effects 10 could qualify as materially adverse, Francis still fails to plead the required causal link. A 11 retaliation claim requires but-for causation. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 12 338, 362 (2013). Francis again does not plausibly allege that the VA took, directed, or 13 substantially influenced the DOJ’s decision to renew its investigation. Instead, he offers 14 only speculative assertions that VA officials “transmitted information” to the DOJ and that 15 the departure of the VA Police Chief somehow relates to the DOJ’s renewed attention. 16 (Docs. 35 at 2–3; 37 at 9.) Francis pleads no nonconclusory facts identifying who at the 17 VA communicated with the DOJ, what was communicated, when it was communicated, or 18 why any such communication would suggest a retaliatory motive rather than routine 19 information-sharing. 20 The temporal gap further weakens causation. Francis’s protected activity occurred 21 in 2022 and 2023, but the investigation was allegedly renewed in early 2025. “A nearly 18- 22 month lapse” (let alone a longer one, like here) is “too long, by itself, to give rise to an 23 inference of causation.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 24 2002). Although Francis argues causation can be inferred from a “pattern of antagonism” 25 (Doc. 37 at 5), the complaint alleges no specific intervening retaliatory acts or ongoing 26 hostility between his protected activity and the alleged renewed investigation. Cf. *Porter 27 v. Cal. Dep’t of Corr.*, 419 F.3d 885, 895 (9th Cir. 2005). Finally, Francis’s invocation of 28 a third-party influence “cat’s paw” theory does not salvage the claim. (Doc. 37 at 5.) Even 1 assuming such a theory could apply, the complaint alleges no facts showing any VA official 2 proximately caused the DOJ’s actions. Speculation about influence over an independent 3 agency—which is all Francis offers—cannot establish causation. See *Staub v. Proctor 4 Hosp.*, 562 U.S. 411, 422 (2011). 5 Because Francis again fails to allege facts plausibly linking the VA to the DOJ’s 6 renewed investigation, he has not stated a plausible Title VII retaliation claim. Since he 7 was already granted leave to amend specifically to cure this defect and failed to do so, the 8 complaint is now dismissed without leave to amend. See *Kendall v. Visa U.S.A., Inc.*, 518 9 F.3d 1042, 1051–52 (9th Cir. 2008) (affirming denial of leave to amend as futile where 10 prior district court order put plaintiffs “on notice . . . of the same defects” that led to 11 dismissal of amended complaint). 12 B. Francis’s “Affidavit” 13 Two months after the motion was fully briefed, Francis filed a document he calls an 14 “affidavit.” (Doc. 39.) This unauthorized filing appears to abandon the fourth amended 15 complaint’s DOJ-investigation theory and instead recasts the case as arising from Deputy 16 Chief

Alan Barone's August 2025 comments and their unspecified relationship to a 17 different complainant's case. (Doc. 39 at 1–2.) Because those allegations concern a 18 different asserted adverse action than the one pleaded in the complaint—which took place 19 five months after this lawsuit was first filed—the court does not consider them in resolving 20 the pending motion. Francis's new theory does not appear to have been exhausted, but even 21 if credited, the affidavit's allegations do not cure the defects discussed above or supply 22 nonconclusory facts tying the VA to the DOJ's investigative decisions in early 2025. 23 / 24 / 25 / 26 / 27 / 28 / 1 Accordingly, 2 IT IS ORDERED the Motion to Dismiss (Doc. 36) is GRANTED. Francis's || complaint (Doc. 35) is DISMISSED WITH PREJUDICE for failure to state a claim. The Clerk of Court shall enter judgment in favor of defendant and close this case. 5 Dated this 26th day of February, 2026. 6 Honorable Krissa M. Lanham 9 United States District Judge 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -6-