

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF GUAM

Ye-Kyoung Kim v. University of Guam, et al.

Kim v. University of Guam · No. 1:23-cv-00026 · Decided March 31, 2026

OPINION

1 2 3 4 5 6 7 THE DISTRICT COURT OF GUAM 8 YE-KYOUNG KIM, CIVIL CASE NO. 23-00026 9 Plaintiff, 10 vs. DECISION AND ORDER 11 DENYING PLAINTIFF’S MOTION TO UNIVERSITY OF GUAM, et al., ALTER OR AMEND JUDGMENT 12 PURUSANT TO FED. R. CIV. P. 59(e) Defendants. 13 14 Before the court is Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Fed. R. 15 Civ. P. 59(e).

ECF No. 75. The court has reviewed the record and the relevant case law, and it 16 deems this matter suitable for submission without oral argument. For the reasons stated below, 17 the court hereby DENIES Plaintiff’s Motion. 18 I. BACKGROUND1 19 On November 21, 2023, Plaintiff Ye-Kyoung Kim filed a complaint against Defendants 20 University of Guam, Anita Borja Enriquez, Anthony R. Camacho, Carlos R. Taitano, Sharleen 21 Q. Santos-Bamba, Cathleen Moore-Linn, and Joseph Gumataotao alleging that they violated 22 Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Age Discrimination in 23 24 1 Citations to the record refer to CM/ECF-generated page numbers.

1 Employment Act of 1967 (“ADEA”) when they rejected her application for the position of 2 Assistant Director of Global Learning and Engagement at the University of Guam. ECF No. 1. 3 The Defendants filed a motion to dismiss the original complaint, and the court granted the 4 motion in part,2 dismissing Plaintiff’s complaint with leave to amend. ECF No. 50.3 In the 5 court’s order granting the dismissal, the court provided Plaintiff with enumerated directions on 6 how to amend her pleadings to sufficiently state her claims.

See id. at 50. 7 Plaintiff then filed her Amended Complaint on December 2, 2024. ECF No. 52. On 8 December 16, 2024, Defendants filed the second Motion to Dismiss and, in particular, it was 9 focused on Plaintiff’s Amended Complaint. ECF No. 55.

In the motion, Defendants argued that 10 Plaintiff insufficiently amended her complaint, omitted necessary factual allegations, and failed 11 to correct deficiencies from the original complaint. See ECF No. 55-1. More specifically, they 12 contended that (1) Plaintiff failed to allege sufficient facts to support her discrimination claims 13 under Title VII and the ADEA, (2) Plaintiff failed to sufficiently allege that she exhausted her 14 administrative remedies, (3) Plaintiff improperly included time barred claims in her Amended 15 Complaint, and (4) Plaintiff improperly asserted new claims in the Amended Complaint.

Id. at 5. 16 On September 5, 2025, the court granted Defendants' Motion to Dismiss Plaintiff's 17 Amended Complaint. ECF No. 71. In its decision, the court dismissed all of the following claims 18 for the reasons noted below: 19 1. Plaintiff's newly pleaded claims for breach of contract, violation of fair employment 20 practices, and hostile work environment because Plaintiff did not receive leave of the 21 2 The court granted Defendants' Motion to Dismiss the original complaint in part with leave to amend "as to Plaintiff's claims for discrimination and retaliation under Title VII, subject to the factual limitations described and to 22 Plaintiff's inclusion of Mr. Camacho in the case." ECF No. 50, at 32.

The court then denied the Motion to Dismiss the original complaint in part "as to Plaintiff's inclusion of the remaining Individual Defendants in their official 23 capacities, except Mr. Camacho as alleged." Id. 24 3 A more comprehensive recitation of the procedural history of the present matter before the Amended Complaint can be found in the court's prior Decision and Order from September 30, 2024.

ECF No. 50. 1 court or permission from the Defendants to add any new claims as previously 2 instructed by the court, id. at 9; 3 2. Plaintiff's "allegations predating her application and rejection for Assistant Director 4 of Global Learning and Engagement" because they were "time barred for failure to 5 allege administrative exhaustion," id. at 9; 6 3. Plaintiff's disparate treatment and retaliations claims because she "failed to allege 7 administrative exhaustion," id. at 10; 8 4.

Plaintiff's Title VII and ADEA claims against Defendant Camacho because she failed 9 to state how he "participated or otherwise had a role" in the claims, id. at 11; 10 5. Plaintiff's Title VII disparate treatment claim because she failed to "sufficiently 11 allege how she was treated less fairly in the hiring process ... because of her race or 12 national origin, or how the other candidates were treated more favorably" and 13 because she did "not sufficiently allege how each of the Individual Defendants 14 participated in the alleged discrimination," id. at 14-15; 15 6.

Plaintiff's ADEA disparate treatment claim because she did not allege facts of 16 ongoing age discrimination or of how age discrimination contributed to her not being 17 hired to the position that she wanted, id. at 16; and 18 7. Plaintiff's Title VII and ADEA retaliation claim because she did "not allege facts that 19 plausibly support a causal link between her prior protected activities and her failure to 20 be hired" for her desired position, id. at 17-18.

21 Considering that the Plaintiff "did not heed the court's instructions" in her Amended 22 Complaint and finding that "an additional opportunity to amend would [not] save Plaintiff's 23 claims," the court dismissed her Amended Complaint with prejudice. Id. at 19. 24 On October 3, 2025, Plaintiff filed a Motion to Alter or Amend Judgment Pursuant to 1 Fed. R. Civ.

P. 59(e). ECF No. 75. Specifically, Plaintiff requests that the court amend its 2 judgment, reinstate her complaint, or grant her leave to amend the complaint further. Id. at 3-4. 3 Defendants filed an

Opposition to the motion for reconsideration and Plaintiff filed a Reply. ECF 4 Nos. 76, 77. 5 II. LEGAL STANDARD 6 Federal Rule of Civil Procedure 59(e) allows a party to file a “motion to alter or amend a 7 judgment.” “[A] Rule 59(e) motion is an ‘extraordinary remedy, to be used sparingly in the 8 interests of finality and conservation of judicial resources.’” *Wood v. Ryan*, 759 F.3d 1117, 1121 9 (9th Cir.

2014) (per curiam) (quoting *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th 10 Cir. 2000)). District courts apply the same test to Rule 59(e) motions that they apply to motions 11 for reconsideration.⁴ *Kona Enters., Inc.*, 229 F.3d at 890-91. A district court should not grant a 12 motion for reconsideration under rule 59(e), unless (1) the moving party presents newly 13 discovered evidence, (2) the original ruling was clearly erroneous, or (3) there is an intervening 14 change in the controlling law.

See *Kaufmann v. Kijakazi*, 32 F.4th 843, 850 (9th Cir. 2022) 15 (quoting *Wood*, 759 F.3d at 1121). “District courts have ‘considerable discretion’ in deciding 16 Rule 59(e) motions.” *Id.* (quoting *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 17 1063 (9th Cir. 2003)).

Under this court’s Civil Local Rules of Practice, “[n]o motion for 18 reconsideration shall in any manner repeat any oral or written argument made in support of or in 19 opposition to the original motion except to the extent necessary to demonstrate manifest error.” 20 CVLR 7(p)(1). 21 III. DISCUSSION 22 Plaintiff has neither presented newly discovered evidence nor argued an intervening 23 24 4 A motion to alter or amend judgment is a motion for reconsideration when the motion asks the court to reconsider the merits of a decision.

See *United States ex rel. Hoggett v. Univ. of Phoenix*, 863 F.3d 1105, 1108 (9th Cir. 2017). 1 change in the controlling law. Therefore, the only remaining issue is whether the court’s original 2 ruling was clearly erroneous so as to justify granting a motion for reconsideration. See 3 *Kaufmann*, 32 F.4th at 850. 4 Plaintiff asks the court to reconsider its decision to dismiss her Amended Complaint with 5 prejudice.

ECF No. 75. She contends that the court has abused its discretion by treating 6 “similarly situated plaintiffs” differently and by holding her retaliation and continuing violation 7 claims to be time barred. *Id.* at 2-3.

Moreover, she alleges that her proposed amendments were 8 not futile as her “allegations plausibly stated claims under Title VII and the ADEA.” *Id.* at 3. She 9 then raised in her Reply that the court misapprehended crucial facts from the record. ECF No. 10 77, at 2-3. 11 A. The court did not abuse its discretion by treating Plaintiff differently. 12 Plaintiff alleges that this court has treated her differently than another plaintiff before the 13 court because it dismissed her Amended Complaint with prejudice while it allowed the other 14 plaintiff suing the “same

defendants” in another case “to file an Amended Complaint nunc pro tunc.” ECF No. 75, at 2-3.

She relies on *Analista v. University of Guam*, Civil Case No. 24- 16 00027, and argues that the “inconsistent treatment of similarly situated plaintiffs suing the same 17 defendants demonstrates an abuse of discretion and undermines uniform application of Rule 18 15(a)(2).” *Id.* at 3. Defendants contend that the court did not commit clear error because 19 “Plaintiff’s original complaint was factually insufficient to survive dismissal under FRCP 20 12(b)(6), the Court had provided Plaintiff with an opportunity to amend her original complaint to 21 address these deficiencies, including directions to allege facts in support of her claims under 22 Title VII and the ADEA with greater specificity and to plead the necessary elements under the 23 applicable law, and upon repleading, the Plaintiff did not heed the Court’s instructions and 24 instead, replaced many of her prior factual allegations with conclusory statements or omitted 1 necessary facts, and in both the original and the Amended Complaint, Plaintiff references 2 exhibits that she did not actually attach or plead.” ECF No. 76, at 6.

3 Plaintiff has not shown that the court clearly erred as a result of any unequal treatment. 4 See *Kaufmann*, 32 F.4th at 850. Generally, leave to amend a complaint should be freely given 5 “when justice so requires.” FED. R. CIV. P. 15(a).

Here, the court allowed Plaintiff leave to amend 6 the original complaint because she failed to make sufficient factual allegations in that complaint. 7 See ECF No. 50, at 32. Plaintiff subsequently filed her Amended Complaint. ECF No. 52.

In this 8 Amended Complaint, she failed to allege sufficient facts to support her claims. ECF No. 71, at 9 19. She ignored “the court’s instructions and, instead, replaced many of her prior factual 10 allegations with conclusory statements or omitted necessary facts altogether.” ECF No. 71, at 19. 11 In addition, in both the original complaint the Amended Complaint, Plaintiff failed to attach or 12 plead the correspondences and job postings which she referenced.

See *id.* As such, the court was 13 well within its discretionary authority to dismiss Plaintiff’s Amended Complaint with prejudice 14 because she failed to cure the deficiencies from her original complaint and because her claims 15 were deemed futile. See *Carvalho v. Equifax Information Servs., LLC*, 629 F.3d 876, 892 (9th 16 Cir. 2010). 17 Plaintiff was not similarly situated to the plaintiff in *Analista v. University of Guam*, Civil 18 Case No. 24-00027.

The procedural background and the facts of the two cases are different. In 19 *Analista*, the plaintiff requested from the court that he be allowed to amend his complaint to 20 include additional defendants necessary to effectuate any prospective injunctive relief.

In this 21 case, Plaintiff simply failed to allege sufficient facts for which relief can be granted. 22 Accordingly, this court ordered Plaintiff to amend her complaint to remedy the deficiencies in 23

her original complaint. See ECF No. 50, at 32. Despite having been given this opportunity, Plaintiff failed to comply with the court's directions to allege sufficient facts to support her 1 claims.

See ECF No. 71, at 19. Furthermore, the defendants in the two cases are not identical as Plaintiff argues. Only two of the defendants from the cases are the same: the University of Guam³ and Ms. Anita Enriquez. Plaintiff has failed to demonstrate how the two cases are so similarly⁴ situated as to merit completely identical treatment.

The two cases have entirely different sets of⁵ facts, procedural circumstances, and legal issues. Thus, Plaintiff has failed to show that this court⁶ abused its discretion when it dismissed her Amended Complaint with prejudice. ⁷ B. Plaintiff misstates the court's rulings: the retaliation claim was not time barred and the prior acts were properly considered.

⁸ Plaintiff argues the court erred in finding her retaliation claim time barred because it did⁹ not properly consider "the continuing violation doctrine recognized in *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002)." ECF No. 75, at 3. She elaborated in her Reply that her¹¹ "prior acts may be considered as 'background evidence' for timely claims" and she alleges that¹² her 2009 EEOC charge, her 2010 mediated settlement, and her April 2022 EEOC charge were all¹³ evidence of context and motive under the *Morgan* continuing violation doctrine which supported¹⁴ the causation element for her claim of retaliation.

ECF No. 77, at 4. Defendants counter that the¹⁵ court "should not consider these arguments because the Plaintiff is repeating the same arguments¹⁶ she made in Opposition to the Defendants' motion to dismiss the Amended Complaint ... and the¹⁷ Court has already ruled on them." ECF No. 76, at 9. ¹⁸ Again, Plaintiff failed to show that the court's ruling was clearly erroneous.

See ¹⁹ *Kaufmann*, 32 F.4th at 850. She argues that the court erred in finding that her claim under her²⁰ "retaliation theory [was] 'time-barred.'" ECF No. 77, at 4. Again, another misstatement of the²¹ record is made by Plaintiff.

The court did not find that her retaliation theory was time barred. ²² Rather, it held that Plaintiff failed to allege sufficient facts to support her retaliation claim. See ²³ ECF No. 71, at 17-18; see also *id.* at 10-11 (holding separately that Plaintiff "failed to allege²⁴ 1 administrative exhaustion for her ... retaliation claims").

Accordingly, Plaintiff's argument is ² without merit. ³ Second, she argues that the court should have considered prior acts as background⁴ evidence for timely claims. ECF No. 77, at 4. Again, Plaintiff misunderstood the court's ruling. ⁵ The court expressly acknowledged that it would consider the prior acts in its Decision and Order. ⁶ ECF No. 71, at 9-10.

The court stated that even though her “allegations predating her application 7 and rejection for Assistant Director of Global Learning and Engagement are time barred for 8 failure to allege administrative exhaustion,” the court would “continue[] to consider them as 9 background to Plaintiff’s current claims.” *Id.* Even after considering the prior acts in the 10 Decision and Order from September 5, 2025, the court found that Plaintiff failed to allege 11 sufficient facts to show a causal connection between her prior protected activities and the fact 12 that she was not offered the desired job – Assistant Director of Global Learning and 13 Engagement.

Id. at 17-18. As a result, Plaintiff’s misstatements of the record does not rise to the 14 level of a finding that this court committed clear error. 15 C. Plaintiff’s Title VII and ADEA claims were considered and deemed futile. 16 Plaintiff next argues the court incorrectly found her claims to be futile and she reiterates 17 her previous arguments from her opposition to the motion to dismiss the Amended Complaint.

18 ECF No. 75, at 3. She repeats that she “adequately alleged her superior qualifications” and that 19 she was not required to attach the job posting at this stage of the pleading. ECF No. 77, at 3. 20 Moreover, she realleges the court overlooked her accusations of dishonesty from the Defendants, 21 specifically Ms. Enriquez, who Plaintiff alleges misrepresented her alma mater on her curriculum 22 vitae.

Id. at 3-4. 23 The court already considered these allegations and found that Plaintiff’s claims were 24 futile. See ECF No. 71, at 12-16; see also *Anderson v. American Airlines, Inc.*, 2011 WL 1706514 *2 (N.D. Cal. May 5, 2011) (“A Rule 59(e) motion may not simply restate arguments 2 that already were raised in opposition to summary judgment.”); CVLR 7(p)(1) (“No motion for 3 reconsideration shall in any manner repeat any oral or written argument made in support of or in 4 opposition to the original motion except to the extent necessary to demonstrate manifest error.”).

5 As noted in the court’s Decision and Order from September 5, 2025, while Plaintiff alleges that 6 she is superior to the applicant who received the role, she still has not alleged how she is 7 particularly qualified for the role of Assistant Director of Global Learning and Engagement 8 which requires more than a doctorate degree in order to perform. See ECF No. 71, at 12-18.

In 9 addition, while the second allegation suggests alleged flaws in Ms. Enriquez’s character, it fails 10 to create a causal connection between the protected activity and the university’s decision not to 11 hire Plaintiff specifically.

Accordingly, Plaintiff’s allegations have already been considered and 12 are indeed deemed futile. 13 D. The court did not misapprehend key record facts. 14 Plaintiff argues the court committed clear error by misunderstanding key facts from the 15 record. ECF No. 77, at 2-3.

First, she contends the court incorrectly noted “President Enriquez 16 appointed the search committee for the Associate Director of Global Learning & Engagement 17 position” which was

“factually incorrect.” Id. at 3. According to Plaintiff, this error “undermined 18 [her] theory of procedural irregularity and favoritism.” Id. Second, she contends “General 19 Counsel Camacho’s EEOC position statement[] contains demonstrably false assertions about 20 Plaintiff’s employment history” which is enough to show plausibility.

Id. Plaintiff raised these 21 new arguments in her Reply. 22 As a procedural matter, “[r]epley briefs are for replying, not for raising new arguments or 23 arguments that could have been advanced in the opening brief.” *Autotech Techs. Ltd. P’ship v. 24 Automationdirect.com, Inc.*, 249 F.R.D. 530, 536 (N.D. Ill. 2008) (citing *United States v. Page* 10 of 10 1 || *Alhalabi*, 443 F.3d 605, 611 (7th Cir.2006)).

The Ninth Circuit has held that a “district court 2 ||need not consider arguments raised for the first time in a reply brief.” *Zamani v. Carnes*, 491 3 || F.3d 990, 997 (9th Cir. 2007) (citing *Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 4 || 2003)).

Therefore, the court will not consider these new arguments raised by Plaintiff in her 5 || Reply brief. 6 CONCLUSION 7 For the foregoing reasons, the court hereby DENIES Plaintiff’s Motion to Alter or 8 || Amend Judgment under Rule 59(e). Plaintiff’s case, in its entirety, is Dismissed with Prejudice. 9 SO ORDERED. is /s/ Frances M. Tydingco-Gatewood 11 2 Chief Judge Ue ’ & Dated: Mar 31, 2026 13 14 15 16 17 18 19 20 21 22 23 24