

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Marshall v. Alameda Contra Costa Transit District

No. 24-cv-00996-JST (N.D. Cal. Apr. 7, 2025) · No. 24-cv-00996-JST · Decided April 7, 2025

OPINION

Marshall v. Alameda Contra Costa Transit District

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 DANNY MARSHALL, Case No. 24-cv-00996-JST 8 Plaintiff,

ORDER GRANTING IN PART

9 v. MOTION FOR RECONSIDERATION

AND MOTION FOR LEAVE TO

10 ALAMEDA CONTRA COSTA TRANSIT FURTHER AMEND COMPLAINT

DISTRICT, et al., 11 Re: ECF Nos. 52, 61 Defendants. 12 13 Before the Court is Defendant Amalgamated Transit Union, Local 192's ("ATU Local 14 192") motion for partial reconsideration, ECF No. 52, and Plaintiff Danny Marshall's motion for 15 leave to further amend the complaint, ECF No. 61. The Court will grant both motions in part.

16 I. BACKGROUND

17 Plaintiff Danny Marshall is an employee of Defendant Alameda Contra Costa Transit 18 District ("AC Transit"), a public entity that operates a bus fleet in Alameda and Contra Costa. 19 ECF No. 1, Ex. F ¶ 5. He alleges that although he was performing his job as AC Transit's Mentor 20 Coordinator satisfactorily, he was removed from the position and replaced by a less qualified, less 21 senior, female colleague. Id. ¶¶ 18, 19. Marshall alleges his demotion violated the terms of the 22 collective bargaining agreement ("CBA") between AC Transit and his union, ATU Local 192. Id. 23 He then brought this action in Alameda Superior Court against AC Transit, ATU Local 192, and 24 ATU Local 192's President, Robert Coleman for (1) violations of Section 1983; (2) discrimination 25 in violation of California's Fair Housing and Employment Act ("FEHA"); (3) failure to prevent 26 workplace discrimination in violation of FEHA; (4) breach of the duty of fair representation; (5) 27 breach of contract; (6) violation of California's Public Utilities Code Section 2107; and (7) 1 1. Procedural History 2 Marshall first filed this action in Alameda Superior Court on April 14, 2023. ECF No. 1, 3 Ex. A. On May 26, 2023, Marshall filed a first amended complaint ("FAC"), alleging that he was 4 improperly removed from AC Transit's Mentor Coordinator position in 2021. See id., Ex. B. In 5 advance of Defendants' responsive

pleading deadline in Alameda Superior Court, Defendants met 6 and conferred with Marshall “regarding their anticipated demurrers seeking dismissal of Plaintiff’s 7 FAC in its entirety.” *Id.*, Ex. E ¶ 4. As a result of this meet and confer, the parties stipulated to 8 allow Marshall to amend his FAC, and Marshall dropped “the age discrimination theories asserted 9 in his FAC and did not plead any claims based on alleged age discrimination in his” second 10 amended complaint (“SAC”). ECF No. 64 at 4;1 compare ECF No. 1, Ex. B with ECF No. 1, Ex. 11 F. Defendants removed the action to this Court based on the federal law claims in the SAC, ECF

12 No. 1. Defendants moved to dismiss all of Marshall’s claims. ECF No. 8; ECF No. 9.

13 On October 21, 2024, the Court granted in part and denied in part ATU Local 192’s 14 motion to dismiss Marshall’s complaint, including dismissing Marshall’s breach of the duty of fair 15 representation claim without leave to amend and dismissing Marshall’s breach of contract claim 16 with leave to amend. ECF No. 51 at 7–8, 10. On November 12, ATU Local 192 moved for leave 17 to ask the Court to reconsider its granting of Marshall leave to amend his breach of contract claim 18 in light of dispositive legal arguments that ATU Local 192 presented to the Court in its briefing. 19 See ECF No. 52 at 3–6. On November 18, Marshall filed his third amended complaint as directed 20 by the Court. See ECF No. 53. On November 20, the Court granted ATU Local 192’s motion for 21 leave to file a motion for reconsideration under Civil Local Rule 7-9(b) and construed ATU Local 22 192’s filing at ECF No. 52 as that motion. ECF No. 54. 23 After briefing for the motion for reconsideration concluded, Marshall moved for leave to 24 further amend his complaint and file a fourth amended complaint. See ECF No. 61. AC Transit 25 filed a statement of non-opposition regarding the motion for leave to further amend the complaint. 26 ECF No. 63. ATU Local 192 opposed the motion on grounds discussed below. See ECF No. 64. 27

1 II. JURISDICTION

2 The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1367.

3 III. LEGAL STANDARDS

4 A. Motion for Reconsideration 5 A district court has discretion to revise any interlocutory order that is entered before the 6 entry of judgment adjudicating all claims in the action. Fed. R. Civ. P. 54(b). In this District, 7 motions for reconsideration are governed by Civil Local Rule 7-9, which requires a party to make 8 a motion for leave to file a motion for reconsideration. See Civil L.R. 7-9(a). The party moving 9 for leave to file a motion for reconsideration must show reasonable diligence in bringing the 10 motion and one of the following grounds: (1) a “material difference in fact or law from that which 11 was presented to the Court before” entry of the interlocutory order, which, in the exercise of 12 reasonable diligence, the party applying for reconsideration did not know at the time of the order; 13 (2) the “emergence of new material facts or a change in law occurring after the time of such 14 order”; or (3) a “manifest failure by the Court to consider material facts or dispositive legal 15 arguments which were presented to the Court before” the entry of the interlocutory order. See 16 Civil L.R. 7-9(b)(1)–(b)(3). 17 The determination of

whether to grant a motion for reconsideration is within the district court's discretion. See *In re Agric. Rsch. & Tech. Grp., Inc.*, 916 F.2d 528, 533 (9th Cir. 1990). 19 “[M]ere disagreement with a court’s order does not provide a basis for reconsideration.” 20 *Maynard v. United Servs. Auto. Ass’n Fed. Sav. Bank*, No. 21-CV-04519-JSW, 2022 WL 21 4126272, at *4 (N.D. Cal. Sept. 9, 2022). 22 B. Motion for Leave to Amend Complaint 23 Under Federal Rule of Civil Procedure 15(a)(2), a “court should freely give leave [to 24 amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Court considers five factors in 25 deciding a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing 26 party, (4) futility of amendment, and (5) whether the plaintiff has previously amended its 27 complaint. *In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 1 Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 2 F.3d 708, 712 (9th Cir. 2001)). Generally, a court should determine whether to grant leave “with 3 all inferences in favor of granting the motion.” *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 4 (9th Cir. 1999). “Courts may decline to grant leave to amend only if there is strong evidence of 5 ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure 6 deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . , [or] 7 futility of amendment, etc.’” *Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 8 1109, 1117 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

9 IV. DISCUSSION

10 A. Motion for Reconsideration 11 In its motion-to-dismiss briefing, ATU Local 192 cited *Taylor v. Amalgamated Transit 12 Union Local 192*, No. RG12657954, 2013 WL 12165541 (Cal. Super. Sept. 5, 2013), to argue that 13 Marshall’s breach of contract claim against it was subsumed by his breach of the duty of fair 14 representation claim. ECF No. 9 at 13–14. In *Taylor*, the court found that the plaintiff’s breach of 15 contract claim against her union was subsumed by her breach of duty of fair representation claim. 16 *Taylor*, 2013 WL 12165541, at *2. In its previous order, this Court reasoned that *Taylor* relied on 17 *Rodriguez v. Southern California District Council of Laborers*, 160 Cal.App.3d 956 (1984), and 18 that while *Rodriguez* found that federal law preempted the plaintiff’s state breach of contract 19 claim, it did not follow that state causes of action would likewise be subsumed by a state duty of 20 fair representation. ECF No. 51 at 7 (citing *Rodriguez*, 160 Cal. App. 3d at 958). The Court thus 21 declined to dismiss Marshall’s breach of contract claim against ATU Local 192 on this ground 22 absent more compelling authority. *Id.* 23 ATU Local 192 argues that “in concluding that Plaintiff’s breach of contract claim against 24 the Union was not encompassed by his [duty of fair representation] claim . . . the Court manifestly 25 failed to consider dispositive legal arguments that the Union presented to the Court in its briefing,” 26 including those based on *Giffin v. United Transp. Union*, 190 Cal. App. 3d 1359 (1987)), 27 *Hussey v. Operating Engineers Local Union No. 3*, 35 Cal. App. 4th 1213 (1995), and *Lerma v.* 1 cases cited by ATU Local 192 are inapplicable because they are not “factually identical to the 2 present situation.” ECF No. 57 at 5. The Court agrees with ATU Local

192 and finds that the 3 cited cases—and Giffin in particular, which the Taylor court also cited—suggest that Marshall’s 4 breach of contract claim here is subsumed by his duty of fair representation claim arising under 5 state law. 6 In Giffin, the plaintiff was a bus operator who faced termination for allegedly failing to 7 report an accident. 190 Cal. App. 3d at 1361. After his public transit union refused to take his 8 grievance to arbitration pursuant to the collective bargaining agreement, the plaintiff brought a 9 breach of contract claim against the union. Id. at 1362. As is true here, the public transit union 10 there was exempt from the National Labor Relations Act and the National Labor Management 11 Relations Act because it represented employees of a state political subdivision. Id. at 1363. The 12 plaintiff’s claims thus arose from state—not federal—labor law. Id. at 1363–64. In deciding the 13 applicable statute of limitations, the California Court of Appeal then held that although the 14 plaintiff’s claim was labeled as one for breach of contract, the plaintiff’s claim was in “substance 15 or gravamen” a claim for breach of the union’s duty of fair representation. Id. at 1363. The Court 16 explained that the allegations “obviously attempt[ed] to state a cause of action against the union 17 for breaching its duty to appellant to represent him in good faith during grievance proceedings 18 pursuant to a collective bargaining agreement[,] . . . a specific and well-defined liability 19 under . . . state law, not an ordinary contract liability.” Id. The Court thus affirmed dismissal of 20 the plaintiff’s claim for failure to comply with the shorter statute of limitations applicable to 21 claims for breach of the duty of fair representation. Id. at 1366–67. 22 Like in Giffin, Marshall’s breach of contract claim essentially alleges that ATU Local 192 23 breached its duty to represent him in good faith during the proceedings surrounding his demotion 24 from and bid to recover his position as Mentor Coordinator pursuant to their CBA. See ECF No. 25 1, Ex. F ¶¶ 79–80 (“Defendants deprived Plaintiff of the benefits of the collective bargaining 26 agreement by removing him without cause, good cause, or just cause from the Mentor Coordinator 27 role and awarding the same to Ms. Minette Frost, which thus prevented Plaintiff from receiving 1 act in good faith as to Plaintiff.”). That cause of action encapsulates a “specific and well-defined 2 liability” arising from a union’s duties under state law—“not an ordinary contract liability.” 3 Giffin, 190 Cal. App. 3d at 1366. Accordingly, Marshall does not state a breach of contract claim 4 independent of his claim for breach of the duty of fair representation. The Court thus grants ATU

5 Local 192’s motion for reconsideration to dismiss Marshall’s breach of contract claim on this 6 ground, but the Court dismisses with leave to amend. 7 B. Motion for Leave to Further Amend Complaint 8 Marshall seeks to add new allegations regarding “discriminatory and retaliatory conduct 9 [that] occurred after the Complaint was filed,” namely that he was “denied the Mentor Coordinator 10 position again on or about July 29, 2024, in favor of a significantly younger female co-worker 11 with much less ATU Local 192 seniority than [he] possesses.” See ECF No. 61 at 5. Similarly, 12 Marshall seeks to add as two new defendants—AC Transit General Manager Michael Hursh and 13 ATU Local 192 President Latrina Meredith—the individuals who allegedly made the final 14 decision to deny the Mentor Coordinator position to Marshall in 2024. See id. at

6. Marshall's 15 proposed amended complaint would bring new claims under 42 U.S.C. § 1983 and the Age 16 Discrimination in Employment Act ("ADEA") against ATU Local 192. See ECF No. 65-1 at 14– 17 16. 18 ATU Local 192 opposes Marshall's proposed amendments to the extent that they (1) seek 19 to assert a new claim under 42 U.S.C. §1983 against Defendant Coleman and new claims under 42 20 U.S.C. §1983 and the ADEA against ATU Local 192 based on the 2021 events and (2) seek to add 21 as a defendant current ATU Local 192 President LaTrina Meredith. ECF No. 64 at 2. ATU Local 22 192 otherwise does not oppose Marshall's request for leave to amend "based on new factual 23 allegations regarding events in 2024." See *id.* at 2 n.2. 24 The Court finds that the Rule 15 factors weigh in favor of denying Marshall's requests to 25 amend along the grounds identified by ATU Local 192. First, there has been undue delay in 26 bringing new claims based on the same 2021 events that have been at issue since the first 27 complaint was filed in April 2023 and in the two subsequent amended complaints leading up to 1 be prejudicial to ATU Local 192 because Marshall concedes that he previously abandoned his age 2 discrimination claim after meeting and conferring with the defendants in preparing its SAC. See 3 ECF No. 64 at 4. Allowing Marshall to revive those claims now—when Marshall points to no 4 new facts or developments to justify doing so—would defeat the purpose of encouraging parties to 5 narrow their claims outside of motion practice. See ECF No. 61 at 5 (acknowledging that 6 Marshall was able to amend his prior complaints "without motion practice in a voluntary meet- 7 and-confer process") (emphasis in original). Indeed, it is unclear from Marshall's reply brief 8 whether he even contests that his proposed amendments should not include new claims based on 9 the 2021 events. See ECF No. 65 at 3 ("[I]t is respectfully requested that Plaintiff be permitted to 10 further amend his Complaint to add new claims for discrimination based on age and gender, and 11 for CCRD retaliation, occurring between March 7, 2024, and July 29, 2024, when Plaintiff was 12 summarily and deliberately taken out of the recruitment process.") (emphasis added). 13 Second, the Court agrees with ATU Local 192 that adding Latrina Meredith as a defendant 14 would be futile. "It has long been recognized that union officers and employees are not 15 individually liable to third parties for acts performed as representatives of the union in the 16 collective bargaining process." *Peterson v. Kennedy*, 771 F.2d 1244, 1256 (9th Cir. 1985). 17 Marshall did not provide any response to this argument in his reply brief. The Court thus takes 18 Marshall's silence as a concession, and the Court will deny Marshall leave to amend to add 19 Latrina Meredith as a defendant. 20 As for the remainder of Marshall's requests to amend—which are unopposed—the Court 21 grants them consistent with this order. The Court finds no bad faith, undue delay, prejudice, or 22 futility associated with those proposed amendments. Accordingly, Marshall may add Michael 23 Hursh as a party, assuming Marshall can allege facts that support his claims against Hursh; he may 24 include new claims and allegations regarding his denial of the Mentor Coordinator position in 25 2024; and he may cure the deficiencies identified in the Court's previous order, ECF No. 51, and 26 in this order.

27 CONCLUSION

1 the basis above, in addition to the general failure to state a claim as explained in the Court's 2
previous order. See ECF No. 51 at 10. The Court, however, dismisses Marshall's breach of 3 ||
contract claim with leave to amend. The Court also grants Marshall leave to amend his complaint
4 || to add Michael Hursh as a defendant and to include claims surrounding the alleged post-
complaint 5 || conduct, but denies leave to amend to include new claims involving the 2021
events. Within 21 6 || days from this order, Marshall may file an amended complaint consistent
with this order. 7 The case management conference scheduled for April 8, 2025 is continued to
June 3, 2025 8 at 2:00 p.m. An updated joint case management statement is due May 27, 2025. 9
IT IS SO ORDERED. 10 Dated: April 7, 2025 11

JON S. TIGAR'

12 nited States District Judge 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28