

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Bahman-Vincent v. Creative Growth Art Center, Inc.

Bahman-Vincent · No. 24-cv-04964-KAW · Decided May 28, 2025

SUMMARY

The United States District Court for the Northern District of California struck Plaintiff Haideh Bahman-Vincent’s declaration and 46 exhibits because they contained improper legal conclusions and were not properly authenticated or presented for consideration on motions for judgment on the pleadings. The court granted Plaintiff one final opportunity to file an opposition addressing one or both motions and citing specific complaint paragraphs. The court also ordered Plaintiff’s counsel, David Michael Syme, to show cause why he should not be personally sanctioned and referred to the court’s Standing Committee on Professional Conduct for repeated filing and compliance violations.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Rue A. Westmore
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 28, 2025
DOCKET	24-cv-04964-KAW
DISPOSITION	other
PROCEDURAL POSTURE	The court addressed Plaintiff's opposition to pending motions for judgment on the pleadings, struck Plaintiff's declaration and exhibits, permitted one final opportunity to file a compliant opposition, and ordered Plaintiff's counsel to show cause why sanctions and a professional-conduct referral should not issue.
STANDARD OF REVIEW	A motion for judgment on the pleadings tests the legal sufficiency of the claims asserted in the complaint, like a Rule 12(b)(6) motion. The court may not consider evidence extrinsic to the pleadings without converting the motion into a Rule 56 summary-judgment motion under Federal Rule of Civil Procedure 12(d).
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

motion for judgment on the pleadings

sanctions

pleadings

civil procedure

PRACTICE AREAS

civil procedure

employment law

civil rights

disability discrimination

QUESTIONS PRESENTED

1. Whether Plaintiff's declaration and exhibits were properly considered in opposition to motions for judgment on the pleadings.
2. Whether Plaintiff should receive one final opportunity to file a compliant opposition to the motions for judgment on the pleadings.
3. Whether Plaintiff's counsel should be ordered to show cause why personal monetary sanctions and referral to the court's Standing Committee on Professional Conduct should not be imposed.

HOLDINGS

1. The court struck Plaintiff's declaration and exhibits because the declaration contained significant improper legal conclusions and the exhibits were not properly authenticated or presented through a request for judicial notice. In addition, evidence extrinsic to the pleadings may not be considered on a motion for judgment on the pleadings unless the motion is converted to one for summary judgment.
2. The court granted Plaintiff one final opportunity to file an opposition addressing one or both motions, focusing on the sufficiency of the pleadings and citing the specific complaint paragraphs supporting each cause of action.
3. The court ordered counsel David Michael Syme to show cause why he should not be personally sanctioned \$1,000 and reported to the court's Standing Committee on Professional Conduct based on repeated failures to meet filing deadlines and comply with court orders.

KEY QUOTATIONS

“like a 12(b)(6) motion to dismiss, a motion for judgment on the pleadings tests the legal sufficiency of the claims asserted in the complaint.” (at 2)

“The Court cannot consider evidence extrinsic to the pleadings without converting the motion to a Rule 56 summary judgment motion.” (at 2)

FACTUAL BACKGROUND

Plaintiff filed an opposition to pending motions for judgment on the pleadings that was unclear as to which motion or motions it addressed. The opposition included a declaration containing numerous legal conclusions and 46 exhibits totaling more than 270 pages, without an authenticating declaration or request for judicial notice. Plaintiff also failed to identify specific complaint paragraphs or exhibits supporting the asserted factual disputes. Plaintiff's counsel had additionally failed to comply with prior deadlines and court orders concerning oppositions, chambers copies, and discovery disputes.

PROCEDURAL HISTORY

Defendant Ginger Shulick Porcella filed a motion for judgment on the pleadings, and Defendant Creative Growth Art Center, Inc. separately filed such a motion. Plaintiff failed to timely oppose the motions, prompting an order to show cause. Plaintiff later filed an opposition accompanied by a declaration and 46 exhibits, which the court struck as procedurally improper and insufficiently connected to the pleadings. The court allowed one final opportunity to oppose the motions and ordered counsel David Michael Syme to show cause regarding possible sanctions and referral.

DISPOSITION

other

CASES CITED

- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)

OPINION

Bahman-Vincent v. Creative Growth Art Center, Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 HAIDEH BAHMAN-VINCENT, Case No. 24-cv-04964-KAW 8 Plaintiff,

ORDER STRIKING PLAINTIFF’S

9 v. DECLARATION AND EXHIBITS;

ORDER TO SHOW CAUSE RE

10 CREATIVE GROWTH ART CENTER, ATTORNEY SYME

INC., et al., 11 Re: Dkt. Nos. 39, 43, 45 Defendants. 12 13 On May 6, 2025, Defendant Ginger Shulick Porcella filed a motion for judgment on the 14 pleadings. (Dkt. No. 33.) Per Civil Local Rule 7-3(a), Plaintiff Haideh Bahman-Vincent’s 15 opposition was due on May 20, 2025. After Plaintiff failed to file an opposition, the Court issued 16 an order to show cause on May 22, 2025, requiring Plaintiff to file her opposition or statement of 17 non-opposition by May 27, 2025. (Second OSC, Dkt. No. 43.) The Court also ordered Plaintiff to 18 explain why the opposition was not timely filed. (Id.) The Court noted that this was the second 19 time Plaintiff had failed to file a timely opposition, and that Plaintiff had not fully responded to the 20 prior order to show cause, which had required that Plaintiff explain why the opposition to the 21 motion to disqualify was not timely filed. (Id.; see also First OSC, Dkt. No. 39.) 22 On May 26, 2025, Plaintiff filed an opposition. It is unclear if this opposition is to 23 Defendant Porcella’s motion for judgment on the pleadings and/or Defendant Creative Growth Art 24 Center, Inc.’s separately filed motion for judgment on the pleadings.1 (Pl.’s Opp’n, Dkt. No. 45.) 25 The opposition included a declaration

by Plaintiff, much of which consists of improper legal 26 27 1 The Court notes that if the opposition is only to Defendant Porcella's motion for judgment on the 1 conclusions. (See Bahman-Vincent Decl. ¶¶ 2-5 (alleging that Plaintiff was harassed because of 2 her disability, age, and "other reasons," that the harassment was severe and pervasive, and that the 3 work environment was hostile), 20 (alleging that Plaintiff is an "ordinary sensitive person" for 4 purposes of an intentional infliction of emotional distress claim), 82 (asserting that "there was no 5 cause in terminating my accommodation"), 87 (asserting that "the harassment, discrimination, 6 intimidation, slander, and other actions by Porcella constituted a constructive termination of my 7 employment"), 108 (asserting that "Porcella's actions were not privileged communications as part 8 of her scope of duties").) Plaintiff also includes 46 exhibits comprising over 270 pages, which are 9 not attached to a declaration authenticating the exhibits or a request for judicial notice explaining 10 why the exhibits are judicially noticeable. 11 Because the declaration includes significant improper legal conclusions and the exhibits 12 are not properly presented, the Court STRIKES Plaintiff's declaration and exhibits. In any case, it 13 is unclear how the Court could have considered the declaration or exhibits; like a 12(b)(6) motion 14 to dismiss, a motion for judgment on the pleadings tests the legal sufficiency of the claims asserted 15 in the complaint. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). The 16 Court cannot consider evidence extrinsic to the pleadings without converting the motion to a Rule 17 56 summary judgment motion. See Fed. R. Civ. P. 12(d). 18 Further, the Court notes that the opposition itself does not include specific citations to the 19 complaint, Plaintiff's declaration, or the 46 exhibits; rather, the opposition simply states that there 20 are factual disputes per the complaint and Plaintiff's declaration, without specifying what 21 paragraphs are relevant to those alleged factual disputes. (E.g., Pl.'s Opp'n at 9 ("Plaintiff's 22 Complaint and declaration allege facts in response to each of the above questions related to her 23 claim of Slander Per Se, addressing the above questions.")) With respect to the exhibits, Plaintiff 24 asserts that "[o]ne of the exhibits is Plaintiff's original employment contract," but does not 25 identify which exhibit. (Id.) It is not the Court's responsibility to review Plaintiff's 246- 26 paragraph complaint, 119- paragraph declaration, and 46 exhibits to determine what supports 27 Plaintiff's case. Rather, it is Plaintiff's responsibility to identify the relevant factual averments 1 Accordingly, the Court will permit Plaintiff one final opportunity to file an opposition to 2 the motions for judgment on the pleadings. Plaintiff shall make clear if the opposition is to one or 3 both motions for judgment on the pleadings. The opposition should focus on why the pleadings 4 are sufficient and should include citations to the specific paragraphs in the complaint that support 5 each cause of action. The opposition should also not number each paragraph; an opposition is not 6 a declaration. Plaintiff shall file the opposition no later than June 4, 2025. Should Plaintiff file 7 the opposition, Defendants shall have until June 11, 2025 to file a reply. 8 Finally, the Court notes that Plaintiff's counsel, David Michael Syme, has violated 9 multiple court orders in this past month. Attorney Syme has failed to explain why he did not file 10 a timely opposition to the motion to disqualify,

as required by the May 16, 2025 order to show 11 cause. (First OSC at 1.) Attorney Syme has also failed to explain why he did not file a timely 12 opposition to Defendant Porcella's motion for judgment on the pleadings, as required by the May 13 22, 2025 order to show cause. (Second OSC at 1.) Further, Attorney Syme has failed to provide 14 the chambers copy of his untimely opposition to the motion to disqualify, as required by a separate 15 May 22, 2025 order. (Dkt. No. 41.) The Court also notes that earlier this month, Attorney Syme 16 filed a motion to quash after being told that discovery disputes between the parties had to be 17 resolved by joint discovery letter, as required by the Court's standing order. (See Dkt. Nos. 27, 18 32.) For reasons the Court cannot fathom, Attorney Syme provided what appeared to be a single 19 page of the discovery letter as an exhibit to the motion to quash. (Dkt. No. 32-1.) In short, in less 20 than a month, Attorney Syme has filed an improper motion, failed to timely oppose two motions 21 (thus requiring the issuance of two orders to show cause), and failed to comply with three court 22 orders. 23 In light of these actions, the Court ORDERS Attorney Syme to show cause, by June 4, 24 2025, why he should not be personally sanctioned \$1,000.00 and reported to the Court's Standing 25 Committee on Professional Conduct, by: (1) explaining why he has repeatedly failed to file timely 26 oppositions, (2) explaining why he has repeatedly failed to comply with court orders, (3) 27 providing all required chambers copies (see Judge Westmore Standing Order ¶ 5 (requiring 1 the Civil Local Rules and the Court's standing order, and filing a declaration under penalty of 2 || perjury attesting to his compliance. Failure to do all of the above will result in the motions for 3 || judgment on the pleadings being granted as unopposed, the imposition of sanctions, and/or referral 4 || to the Standing Committee. 5 IT IS SO ORDERED. 6 Dated: May 28, 2025 . 7 Rue A. WESTMORE United States Magistrate Judge 8 9 10 11 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28