

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Redd-Oyedele v. Santa Clara County Office of Education

Redd-Oyedele · No. 22-cv-02128-EJD · Decided March 14, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied defendants’ motion to dismiss an employment discrimination action brought under Title VII, the Fourteenth Amendment, FEHA, 42 U.S.C. § 1983, and 42 U.S.C. § 1985(3). The court dismissed the FEHA claim against the Santa Clara County Office of Education with prejudice on Eleventh Amendment immunity grounds, while allowing the other claims to proceed. The court terminated the motion to strike as moot.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward J. Davila
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 14, 2025
DOCKET	22-cv-02128-EJD
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Second Amended Complaint and separately moved to strike its third count.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts factual allegations as true and construes the pleading in the light most favorable to the nonmoving party, but need not accept legal conclusions couched as factual allegations. The complaint must contain sufficient factual matter to state a claim that is plausible on its face. Pro se pleadings receive a less stringent construction but must provide defendants with minimum notice of the alleged wrongdoing.
PRECEDENTIAL VALUE	District court order; precedential status unknown

TOPICS

- employment discrimination
- racial discrimination
- title vii
- section 1983
- motions to dismiss

PRACTICE AREAS

employment discrimination

civil rights

constitutional law

federal civil procedure

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint sufficiently alleged ongoing violations of federal law and prospective relief to invoke the Ex parte Young exception to Eleventh Amendment immunity against the individual defendants in their official capacities.
2. Whether California's Eleventh Amendment immunity barred Plaintiff's FEHA claim against the Santa Clara County Office of Education in federal court.
3. Whether the Second Amended Complaint adequately pleaded conspiracy claims under 42 U.S.C. §§ 1983 and 1985(3).
4. Whether the motion to strike the newly added FEHA count should be decided after that count was dismissed.

HOLDINGS

1. The Second Amended Complaint sufficiently alleged an ongoing violation of federal law and sought prospective injunctive relief, so the Ex parte Young exception permitted the official-capacity claims in counts two, four, and five to proceed past the pleading stage.
2. The FEHA claim against the Santa Clara County Office of Education was barred by Eleventh Amendment immunity because California had not waived its immunity to FEHA suits in federal court.
3. The Second Amended Complaint adequately pleaded conspiracy claims under 42 U.S.C. §§ 1983 and 1985(3), and counts four and five survived the motion to dismiss.

KEY QUOTATIONS

“Assuming all facts to be true and viewing these allegations in the light most favorable to Plaintiff, the Court finds that Plaintiff has now sufficiently alleged ongoing conduct.” (at 7)

“Therefore, the Court DENIES Defendants’ motion to dismiss counts four and five.” (at 13)

“Plaintiff may proceed with counts one, two, four, and five. Count three is dismissed with prejudice.” (at 13)

FACTUAL BACKGROUND

Plaintiff, an African American or Black employee of the Santa Clara County Office of Education, alleged that defendants repeatedly rejected her promotion applications and instead promoted less-qualified white or fair-skinned candidates. She alleged that two SCCOE employees, acting in their official capacities, maintained an ongoing practice of manipulating or disregarding Merit System Rules to favor white candidates. She further alleged that the employees agreed between May and August 2021 to exclude Black employees from promotions and implemented that agreement by promoting a white candidate to two positions for which Plaintiff had applied.

PROCEDURAL HISTORY

Plaintiff previously amended her complaint after the court granted two earlier motions to dismiss with leave to amend certain claims. In the Second Amended Complaint, she asserted Title VII, Fourteenth Amendment, FEHA, 42 U.S.C. § 1983 conspiracy, and 42 U.S.C. § 1985(3) conspiracy claims. The court granted the motion to dismiss in part, denied it in part, dismissed the FEHA claim with prejudice, allowed the other four counts to proceed, and terminated the motion to strike as moot.

DISPOSITION

other

CASES CITED

- Maney v. Brown, 91 F.4th 1296, 1302 (9th Cir. 2024)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Erickson v. Pardus, 551 U.S. 89 (2007)
- Estelle v. Gamble, 429 U.S. 97, 106 (1976)
- Brazil v. U.S. Dep't of Navy, 66 F.3d 193, 199 (9th Cir. 1995)
- Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)
- Ex parte Young, 209 U.S. 123, 149-56 (1908)
- Arizona Students' Ass'n v. Arizona Bd. of Regents, 824 F.3d 858, 865 (9th Cir. 2016)
- Verizon Md., Inc. v. Public Serv. Comm'n of Md., 535 U.S. 635, 645 (2002)
- Riley's Am. Heritage Farms v. Elsasser, 32 F.4th 707, 724 (9th Cir. 2022)
- Sato v. Orange Cnty. Dep't of Educ., 861 F.3d 923, 934 (9th Cir. 2017)
- Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010)
- I.H. by & through Hunter v. Oakland Sch. for Arts, 234 F. Supp. 3d 987, 994 (N.D. Cal. 2017)
- Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1141 (9th Cir. 2000)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
SAN JOSE DIVISION 7 8 ANN GERTHELIA REDD-OYEDELE, Case No. 22-cv-02128-EJD 9
Plaintiff, ORDER GRANTING IN PART AND DENYING IN PART MOTION TO 10 v.
DISMISS; TERMINATING AS MOOT MOTION TO STRIKE 11 SANTA CLARA COUNTY
OFFICE OF EDUCATION, et al., 12 Re: ECF Nos. 36, 37 Defendants. 13 Pro se Plaintiff Ann
Redd-Oyedele (“Plaintiff”) brings this employment discrimination 14 action against her employer,
Defendant Santa Clara County Office of Education (“SCCOE”), and 15 two SCCOE employees in
their official capacity, Defendants Stephanie Gomez and Marissa Perry 16 (“Individual
Defendants”) (collectively, “Defendants”).

Second Am. Compl. (“SAC”), ECF No. 17 35. Before the Court are Defendants’ motions to dismiss Plaintiff’s Second Amended Complaint 18 (“SAC”) and to strike count three from the SAC. Mot. to Dismiss, ECF No. 36; Mot. to Strike, 19 ECF No. 37. These motions are fully briefed. Opp’n to Mot. to Dismiss and Mot. to Strike, ECF 20 No. 38; Reply in Supp. of Mot to Dismiss, ECF No. 39; Reply in Supp. of Mot. to Strike, ECF No. 21 40.

Upon careful consideration of the relevant documents, the Court finds this matter suitable for 22 decision without oral argument pursuant to Local Rule 7-1(b). 23 For the following reasons, the Court GRANTS IN PART and DENIES IN PART 24 Defendants’ motion to dismiss and TERMINATES AS MOOT Defendants’ motion to strike. 25 I. BACKGROUND 26 Plaintiff, an employee in the SCCOE’s District Business and Advisory Services 27 Case No.: 22-cv-02128-EJD 1 Department who identifies as African American or Black, alleges that Defendants are 2 discriminating against her on the basis of race and color by repeatedly rejecting her applications 3 for promotions and instead promoting less-qualified white and fair-skinned candidates.

See SAC. 4 The Court summarized in greater detail Plaintiff’s essential allegations in its previous Orders and 5 need not repeat those here. See First Order Granting Mot. to Dismiss (“First Order”), ECF No. 25; 6 Second Order Granting Mot. to Dismiss (“Second Order”), ECF No. 34. 7 Plaintiff asserts five claims in the SAC: (1) violation of Title VII under 42 U.S.C. § 8 2000(e) against SCCOE; (2) violation of Equal Protection rights under the Fourteenth 9 Amendment¹ against all Defendants; (3) violation of the California Fair Employment and Housing 10 Act (“FEHA”) against SCCOE; (4) conspiracy to deprive civil rights under 42 U.S.C. § 1983 11 against Individual Defendants; and (5) conspiracy “to deprive Equal Protection of the Laws” under 12 42 U.S.C. § 1985(3) against Individual Defendants.

See SAC. 13 This is Defendants’ third motion to dismiss Plaintiff’s complaint for failure to state a 14 claim. The Court granted Defendants’ two prior motions to dismiss with leave to amend several 15 claims (“First Order” and “Second Order”) (collectively, “Prior Orders”).

The Court’s Second 16 Order made two general findings relevant to the present motion. First, the Court found that 17 Plaintiff failed to allege ongoing conduct sufficient to overcome Eleventh Amendment immunity 18 as to Individual Defendants in counts two, four, and five.² See Second Order 5–10.

Second, the 19 Court found that Plaintiff failed to plead facts sufficient to state a claim of conspiracy in counts 20 four and five. *Id.* at 10–12. Plaintiff’s claim against the SCCOE under FEHA in count three is a 21 new claim that the Court had not examined in its Prior Orders. 22 Defendants’ present motion to dismiss argues that Plaintiff failed to cure the deficiencies 23 identified in the Court’s Prior Orders.

Defendants also bring a motion to strike count three, 24 25 1 The Court will construe count two as being brought under the 42 U.S.C. § 1983 framework 26 permitting a private right of action for constitutional violations. See *Maney v. Brown*, 91 F.4th 1296, 1302 (9th Cir. 2024). 27 2 Counts four and five appeared as counts three and four respectively in the FAC.

Case No.: 22-cv-02128-EJD 1 arguing that Plaintiff improperly included this new claim in the SAC without leave from the 2 Court. 3 II. LEGAL STANDARD 4 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, 5 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 6 U.S. 662, 678 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff 7 must “plead[] factual content that allows the court to draw the reasonable inference that the 8 defendant is liable for the misconduct alleged,” which requires “more than a sheer possibility that 9 a defendant has acted unlawfully.” *Id.* The Court must “accept factual allegations in the 10 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” 11 *Manzarek v. St. Paul Fire & Marine Ins.*

Co., 519 F.3d 1025, 1031 (9th Cir. 2008). However, 12 “courts are not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 13 556 U.S. at 678. 14 Pro se pleadings are held to a less stringent standard than those drafted by lawyers. 15 *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 16 (1976)).

But still, even pro se pleadings “must meet some minimum threshold in providing a 17 defendant with notice of what it is that it allegedly did wrong” and how they are entitled to relief. 18 *Brazil v. U.S. Dep’t of Navy*, 66 F.3d 193, 199 (9th Cir. 1995). 19 If the court concludes that a Rule 12(b) (6) motion should be granted, the “court should 20 grant leave to amend even if no request to amend the pleading was made, unless it determines that 21 the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 22 F.3d 1122, 1127 (9th Cir.

2000) (en banc) (quotation omitted). 23 III. DISCUSSION 24 Defendants seek dismissal on the following grounds: (1) Individual Defendants have 25 Eleventh Amendment immunity for counts two, four, and five because the SAC still does not 26 allege ongoing conduct pursuant to *Ex parte Young*, 209 U.S. 123, 149–56 (1908); (2) the SCCOE 27 Case No.: 22-cv-02128-EJD 1 has Eleventh Amendment immunity for count three because California has not waived its 2 immunity to FEHA suits in federal court; and (3) counts four and five still fail to state a claim for 3 conspiracy against Individual Defendants.

Defendants do not challenge count one or count two as 4 pled against the SCCOE. 5 A. Eleventh Amendment Immunity as to Individual Defendants in Counts Two, Four, and Five 6 As the Court has recited in its Prior Orders, although Eleventh Amendment immunity bars 7 money damages

and other retrospective relief against a state, as well as officers of a state agency 8 sued in their official capacity, the doctrine of Ex parte Young provides a well-recognized 9 exception.

Ex parte Young, 209 U.S. at 149–56. The Ex parte Young doctrine permits certain 10 claims to proceed against state officials in their official capacity, specifically “claims seeking 11 prospective injunctive relief... to remedy a state’s ongoing violation of federal law.” Arizona 12 Students’ Ass’n (“ASA”) v. Arizona Bd. of Regents, 824 F.3d 858, 865 (9th Cir.

2016) (citing Ex 13 parte Young, 209 U.S. at 149–56. To determine whether the Ex parte Young doctrine is 14 applicable, “a court need only conduct a ‘straightforward inquiry into whether [the] complaint 15 alleges an ongoing violation of federal law and seeks relief properly characterized as 16 prospective.’” Verizon Md., Inc. v. Public Serv. Com’n of Md., 535 U.S. 635, 645 (2002). “[T]he 17 plaintiff must identify a practice, policy, or procedure that animates the constitutional violation at 18 issue.” ASA, 824 F.3d at 865; see also Riley’s Am.

Heritage Farms v. Elsasser, 32 F.4th 707, 724 19 (9th Cir. 2022) (genuine issue of material fact existed as to whether school district’s “ongoing 20 policy barring future field trips” was sufficient ongoing violation of federal law). 21 As an initial matter, Defendants begin with a general argument that Plaintiff failed to 22 allege ongoing conduct in counts two, four, and five, not that the conduct constitutes an ongoing 23 violation of federal law.

Defendants separately argue that Plaintiff failed to allege facts sufficient 24 to state a claim for conspiracy in counts four and five, which the Court will discuss below in 25 Section III.C. Accordingly, the Court will focus its analysis here on examining only whether 26 Plaintiff sufficiently alleges ongoing conduct in the SAC. 27 Case No.: 22-cv-02128-EJD 1 The Court previously found the FAC devoid of facts alleging ongoing conduct.

Second 2 Order 7–8. Plaintiff’s allegations in the FAC centered on discrete past actions, and the only 3 instance where Plaintiff alleged ongoing conduct was in a recitation of the law—“The [Individual] 4 Defendants are liable in their official capacities for this claim, due to an ongoing and continuing 5 violation of Federal Laws.” FAC ¶ 63. 6 Now, the SAC contains the following new allegations: 7 Count Two 8 • “The First, Second and Third Defendants, by ignoring and sidestepping the rigid provisions of the Merit System Rules, engaged 9 in an ongoing violation of federal laws, relating to prevention of racially motivated employment practices.” Id. ¶ 62.

10 • “However, at all times material to this lawsuit, the Defendants engaged 11 in an ongoing, deliberate and methodical practice of ignoring the msr and instead selected candidates, based on racial preferences and 12 favoritism.” Id. ¶ 67. 13 • “These practices continue to date and are ongoing within the SCCOE establishment.” Id. ¶ 69. 14 • “By engaging in an ongoing and serial manipulation of the msr, the 15 Second and Third Defendants are liable in their official capacities for this claim... ” Id. ¶ 71 (new allegation emphasized).

16 Count Four 17 • “Contrary to law, the Second and Third Defendants deliberately 18 engaged in ongoing acts which are calculated to deprive Plaintiff of civil rights guaranteed by the US Constitution.” Id. ¶ 89. 19 • “The individual Defendants, as part of their ongoing and continuous 20 covert and overt agreements to deprive Plaintiff and other similarly situated Black employees of the SCCOE, their civil rights, took the 21 following steps, in furtherance of their ongoing unlawful agreements: (a) Scheming against and excluding Plaintiff and other Black 22 American employees of the SCCOE from gaining promotions. (b) Organizing meetings or telephonic conferences, during which 23 schemes were concocted and perfected to manipulate the selection and hiring processes at the SCCOE to favor white 24 candidates. (c) Covertly and overtly instructing oral board panel members to 25 favor white candidates in their ranking scores. (d) Manipulation of the msr to favor white candidates.

26 (e) Scheming, either covertly or overtly, to deny black employees of the SCCOE equal protection of the laws. 27 Case No.: 22-cv-02128-EJD (f) Formulation of a hours long “written test” for the Director III, 1 DBAS position, in May 2021, which had never occurred prior to then, in order to give white candidates an unfair advantage. 2 (g) Agreeing, either covertly or overtly, to deprive Plaintiff (and other similarly situated African American employees of the 3 SCCOE), of constitutional rights.” Id. ¶ 101 (new allegations emphasized).

4 • “The acts and or omissions of the Second and Third Defendants, listed 5 above, which are still ongoing, were the causative factor that caused Plaintiff to suffer monetary damages.” Id. ¶ 103. 6 Count Five 7 • “As part of an ongoing, carefully orchestrated plan to promote only 8 white or fairer skin tone employees of the SCCOE, the Second and Third Defendants, while acting in concert and in a deliberate and 9 carefully orchestrated plan, effected the selection of a white candidate, Susan, instead of a black candidate, the Plaintiff: into the 10 Interim Director position and the permanent Director III, DBAS position between May 2021 and August 2021, thereby violating 11 federal laws.” Id. ¶ 113.

12 • “At all times material to this lawsuit, the Second and Third Defendants, met, agreed upon and took positive steps to put into 13 fruition their ongoing plans.... ” Id. ¶ 116. 14 • “At all material times, the aforesaid acts of the individual Defendants are ongoing and continue to date.” Id. ¶ 117. 15 • “By aforesaid acts and or omissions, the individual Defendants 16 maintains an ongoing practice of contravening the specific provisions of the msr (merit system rules).” Id. ¶ 118.

17 Assuming all facts to be true and viewing these allegations in the light most favorable to 18 Plaintiff, the Court finds that Plaintiff has now sufficiently alleged ongoing conduct. The SAC 19 alleges that Individual Defendants’ current hiring practices manipulate or contravene the Merit 20 System Rules to favor white candidates as part of an ongoing plan to exclude Plaintiff and other 21 Black employees from gaining promotions.

Further, while the Court notes that the relief sought— 22 “a perpetual injunction, restraining the First, Second and Third Defendants from further violations 23 of federal laws”—is vague and likely suffers enforcement deficiencies, the SAC nonetheless 24 continues to seek prospective relief. *Id.*, at 17, ¶¶ 101, 116.

The SAC also sufficiently alleges that 25 the ongoing hiring practice and plan to promote only white or fair-skinned employees played a 26 part in her being denied promotional opportunities in 2021 and continues to effectively “exclude 27 Case No.: 22-cv-02128-EJD 1 [Plaintiff] and other Black American employees of the SCCOE from gaining promotions at the 2 SCCOE.” *Id.* ¶¶ 101, 116.

Of course, Plaintiff will ultimately bear the burden of proof as to 3 whether the conduct alleged in the SAC is ongoing. However, at the pleading stage, the Court 4 finds that these allegations of ongoing conduct and prayer for prospective relief are sufficient to 5 survive a motion to dismiss on Eleventh Amendment immunity grounds. 6 Therefore, the Court DENIES Defendants’ motion to dismiss count two as to Individual 7 Defendants.

Defendants raise additional challenges to counts four and five that the Court will 8 discuss below in Section III.C. 9 B. Eleventh Amendment Immunity as to SCCOE in Count Three 10 Defendants next argue that Plaintiffs’ new FEHA claim against SCCOE must be dismissed 11 because California has not waived its immunity to FEHA actions in federal Court.

The Court 12 agrees. County Offices of Education in California are considered arms of the state, and the Ninth 13 Circuit has found that California has not waived its immunity to FEHA suits in federal court. See, 14 e.g., *Sato v. Orange Cnty. Dep’t of Educ.*, 861 F.3d 923, 934 (9th Cir. 2017). 15 Therefore, the Court GRANTS Defendants’ motion to dismiss count three without leave to 16 amend.

See *Lopez*, 203 F.3d at 1127. Defendants’ motion to strike count three is accordingly 17 TERMINATED AS MOOT. 18 C. Conspiracy Claim 19 As the Court stated in its Prior Orders, to establish a conspiracy claim under 41 U.S.C. § 20 1983, a plaintiff must show “(1) the existence of an express or implied agreement among the 21 defendant officers to deprive [her] of [her] constitutional rights, and (2) an actual deprivation of 22 those rights resulting from that agreement.” *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir.

2010). 23 For conspiracy claims under Section 1985(e), the elements are similar but ultimately different: 24 “(1) the existence of a conspiracy to deprive the plaintiff of the equal protection of the laws; (2) an 25 act in furtherance of the conspiracy; and (3) a resulting injury.” *I.H. by & through Hunter v. 26 Oakland Sch. for Arts*, 234 F. Supp. 3d 987, 994 (N.D.

Cal. 2017) (quoting *Addisu v. Fred Meyer*, 27 Case No.: 22-cv-02128-EJD 1 Inc., 198 F.3d 1130, 1141 (9th Cir. 2000)). 2 In the Second Order, the Court found that the FAC included statements the

Court 3 previously found absent from the original complaint, i.e., allegations that Individual Defendants 4 were “acting in concert,” “colluded,” and “gathered at a location yet to be identified,” and that 5 Individual Defendants “took acts in furtherance of the conspiracy” to deny Plaintiff the 6 promotions.

Second Order 12. However, Plaintiff still had not provided sufficient facts to support 7 these legal conclusions. Id. 8 Now, Plaintiff alleges the following additional³ facts relevant to a claim of conspiracy. 9 Individual Defendants, and potentially others, met between May 2021 and August 2021 at an 10 unknown location. SAC ¶¶ 105, 106, 113, 114. Defendant Gomez was the Director of Business 11 Operations, and Defendant Perry was the Human Resources Analyst.

Id. ¶ 88. During this 12 meeting, Individual Defendants “agreed and concocted an elaborate scheme in which Black 13 employees, including Plaintiff, would be sidelined for promotional opportunities within the 14 SCCOE, while White or fairer skinned employees would be selected for promotional positions.” 15 Id. ¶ 90.

In furtherance of this agreement, Individual Defendants promoted a white person into 16 two positions for which Plaintiff had applied in 2021: the Interim Director position and the 17 Director III position. See id. ¶¶ 90, 105, 106, 113, 114. Defendant Gomez was on the oral board 18 panel that interviewed candidates for this position, and Defendant Perry signed off on and 19 approved the chosen candidate.

Id. ¶¶ 60, 108. Perry notified Plaintiff that she was not selected 20 for the position due to a lack of leadership skills, and Gomez later similarly told Plaintiff that she 21 had no leadership skills. Id. ¶¶ 38, 110. Plaintiff had been in a leadership position for the entirety 22 of her employment spanning over three decades. Id. ¶ 38.

The white employee chosen for the 23 promotions held a less senior role than Plaintiff, received an interview score below Plaintiff, and 24 had a shorter employment history with unrelated work experience. Id. ¶¶ 93–94, 99–101. Plaintiff 25 26 3 While some of these facts were also alleged in the FAC, the Court discusses them in tandem with 27 the new facts alleged in the SAC to provide the entire context of Plaintiff’s conspiracy claim.

Case No.: 22-cv-02128-EJD 1 alleges that Individual Defendants’ agreement to promote only white or fair-skinned employees is 2 ongoing and is preventing her and other Black employees from receiving promotions. Id. ¶¶ 101, 3 116, 117. 4 Assuming all facts to be true and viewing these allegations in the light most favorable to 5 Plaintiff, the Court finds these allegations sufficient to meet Plaintiff’s pleading standard.

6 Defendants’ only argument here is that Plaintiff’s allegations remain conclusory and fail to 7 “provide facts – who, what, when, or where – to support these conclusory claims.” Mot. to 8 Dismiss 6. The Court disagrees.

The SAC now contains facts to allege the “who”—Individual 9 Defendants and potentially others; the “what”—met and agreed to promote a less-qualified white 10 candidate instead of a Black candidate as part of an ongoing plan to promote only white and light- 11 skinned employees; and the “when”—sometime between May 2021 and August 2021. Plaintiff 12 also alleges that Individual Defendants carried out their plan by using their positions in the hiring 13 process to promote a less-qualified white applicant instead of Plaintiff.

Facts to support Plaintiff’s 14 allegation that Individual Defendants worked together include allegations that they separately 15 informed her at different times that she did not receive the promotions because she lacked 16 leadership skills. 17 As the Court previously indicated, Plaintiff will ultimately need to prove each element of 18 her conspiracy claims; but for these purposes, the Court finds that Plaintiff has pled enough facts 19 to “meet some minimum threshold in providing a defendant with notice of what it is that it 20 allegedly did wrong.” Brazil, 66 F.3d at 199.

21 Therefore, the Court DENIES Defendants’ motion to dismiss counts four and five. 22 IV. CONCLUSION 23 Based on the foregoing, the Court GRANTS IN PART and DENIES IN PART 24 Defendants’ motion to dismiss. Plaintiff may proceed with counts one, two, four, and five. Count 25 three is dismissed with prejudice. Defendants’ motion to strike is TERMINATED AS MOOT.

26 27 Case No.: 22-cv-02128-EJD 1 IT IS SO ORDERED. 2 Dated: March 14, 2025 3 4 EDWARD J. DAVILA 5 United States District Judge 6 7 8 9 10 11 a 12 13 14 © 15 16 = 17 6 18 19 20 21 22 23 24 25 26 27 Case No.: 22-cv-02128-EJD 28 ORDER GRANTING IN PART AND DEN. IN PART MOT. TO DISMISS; TERMINATING MOT. TO STRIKE