

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Rivera v. East Bay Municipal Utilities District

Rivera · No. 24-cv-02491-JD · Decided February 25, 2025

OPINION

Rivera v. East Bay Municipal Utilities District

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 IVETTE RIVERA, Case No. 24-cv-02491-JD 8 Plaintiff,

ORDER RE DISMISSAL

v. 9

10 EAST BAY MUNICIPAL UTILITIES

DISTRICT, et al., 11 Defendants. 12 13 Pro se plaintiff Ivette Rivera has sued the East Bay Municipal Utility District (EBMUD) 14 and a host of individual EBMUD directors and employees (individual defendants). See generally 15 Dkt. No. 1. She alleges claims of retaliation and sex-based discrimination under various state and 16 federal statutes. Id. ¶¶ 64-101. EBMUD and the individual defendants waived service and moved 17 to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). See Dkt. Nos. 12-13, 18. 18 The complaint is dismissed with leave to amend.

19 BACKGROUND

20 As alleged in the complaint, Rivera is a “supervisory employee” at EMBUD and has 21 worked there as a “Gardener Foreman” since January 24, 2005. Dkt. No. 1 ¶ 5. In 2015, Rivera 22 sued EMBUD, and that action settled on April 20, 2021. Id. ¶¶ 6-7. Rivera says that before filing 23 suit, her “performance appraisal averages throughout the years contained 85%-100%, Exceptional 24 or Exceeds ratings” but that afterwards “her appraisal ratings for Exceptional or Exceeds 25 Expectations plummeted to 0% to 14% appraisal ratings.” Id. ¶ 8. She further says that after the 26 litigation her appraisal ratings “typically became 75% Meets Expectations, 25% Exceeds 27 Expectations and 0% Exceptional.” Id. 1 The complaint’s allegations at this point become quite difficult to follow. It appears that in

2 March 2021 at EBMUD public board meetings Rivera began commenting that others’ remarks 3 were not accurately reported in meeting minutes, stating that other local agencies don’t have 4 similar pesticide-application policies, criticizing EBMUD for defending against various lawsuits, 5 and reading from filings in a lawsuit against EBMUD. Id. ¶¶ 9-18. 6 Rivera lists, without saying

why, a series of events involving different people including, 7 inter alia, (1) denial of overtime in June 2021 and November 22; (2) denial of an extension of time 8 to file an administrative appeal of the denial of a “retaliation and discrimination determination 9 letter” when the deadline fell during plaintiff’s scheduled vacation; (3) a proposed revised 10 Performance Plan for which Rivera asked for a “classification study” because she did not like the 11 proposal; (4) that a union representative was permitted more time than Rivera to speak at a single 12 public board meeting; (5) attempts to require Rivera to attend mediation with supervisors with 13 whom she was having repeated disputes due to performance evaluations; and (6) the retraction of a 14 “Needs Improvement” performance appraisal given to one of Rivera’s male subordinates. Id. 15 ¶¶ 19-43. These events are said to have occurred between April 2021 and December 2023. Id. 16 In April 2024, Rivera sued EBMUD again along with sixteen individual defendants, 17 alleging discrimination and retaliation in violation of 42 U.S.C. § 1983 (Counts I and IV); 18 conspiracy to interfere with an individual’s civil rights in violation of 42 U.S.C. §§ 1985, 1986 19 (Counts II and III); sex-based discrimination and retaliation under federal and California state 20 antidiscrimination laws (Counts V and VI); and requesting declaratory relief. Dkt. No. 1 ¶¶ 64- 21 101. EBMUD and the individual defendants separately moved to dismiss the complaint on 22 various grounds under Rule 12(b)(6). Dkt. Nos. 12-13. Rivera timely filed her opposition to 23 EBMUD’s motion but did not separately respond to the individual defendants. Dkt. No. 19. The 24 Court took the motions under submission without oral argument. Dkt. No. 18.

25 LEGAL STANDARDS

26 Rivera is proceeding pro se, so her “complaint is read generously and with a forgiving 27 eye.” *Lovelady v. U.S. CBP*, No. 24-cv-00075-JD, 2025 WL 523901, at *1 (N.D. Cal. Feb. 18, 1 showing that the pleader is entitled to relief.” A plaintiff’s burden to provide the “‘grounds’ of his 2 ‘entitle[ment] to relief’ requires more than labels and conclusions Factual allegations must be 3 enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 4 544, 555 (2007) (alteration in original) (quotations omitted). In other words, “[a] complaint must 5 proffer ‘enough facts to state a claim to relief that is plausible on its face.’” *Red v. Heck*, No. 20- 6 cv-02853-JD, 2020 WL 6562305, at *1 (N.D. Cal. Nov. 9, 2020) (quoting *Twombly*, 550 U.S. at 7 570). Although all factual allegations must be accepted as true, and all reasonable inferences 8 made in the plaintiff’s favor, “the Court will not credit conclusory statements or speculation or 9 legal conclusions dressed up as fact.” *Lovelady*, 2025 WL 523901, at *1.

10 DISCUSSION

11 I. CLAIMS AGAINST EBMUD

12 A. SECTION 1983 CLAIMS

13 Counts I and IV of the complaint are dismissed.¹ In *Monell v. Department of Social 14 Services*, the Supreme Court of the United States held that municipal entities may be sued under 15 § 1983 when the complained-of injury is the product of “a government[] policy or custom.” 436 16 U.S. 658, 694 (1978). Insofar as Count I seeks to hold EBMUD, which no one disputes is a

17 municipal entity for purposes of Monell, liable for the allegedly unlawful acts of its employees,
it 18 is dismissed with prejudice. See *United States v. Town of Colorado City*, 935 F.3d 804, 808
(9th

19 Cir. 2019) (citing *Monell*, 436 U.S. at 692). With respect to Count IV, the complaint does not
set

20 forth facts plausibly alleging a “policy or custom” that resulted in the complained-of injuries to
21 sustain a § 1983 claim under Monell. Rivera lists several alleged policies or practices that she
22 believes violated her constitutional rights, Dkt. No. 1 ¶ 89, but those allegations are wholly 23
conclusory and speculative because they are untethered to any specific or concrete facts, see *Coy*
24 v. *Lilith Games (Shanghai) Co., Ltd.*, No. 19-cv-08192-JD, 2022 WL 3214320, at *2-3 (N.D.
Cal. 25 26 27 1 Count I alleges a claim under § 1983 while Count IV alleges “Monell-related
Claims.” Because

1 Aug. 9, 2022). A bare assertion that the individual incidents of which she complains were
2 “ratified” by board members is not a plausible allegation of a policy or custom. Dkt. No. 19 at 7.

3 B. SECTIONS 1985 & 1986 CLAIMS

4 To bring a claim under 42 U.S.C. §1985(3), which is the subsection of § 1985 relevant to 5 the
complaint’s allegations, Rivera must plausibly allege, among other things, the existence of a 6
conspiracy. See *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (elements of a 7
§ 1985(3) claim). Even if EBMUD could be liable for conspiring with its employees, the 8
complaint does not contain any non-speculative or non-conclusory allegations of a conspiracy. 9
Rivera alleges a series of events spanning the course of three years, only some of which are 10
discernably related to one another, then summarily asserts that EBMUD “conspired to deprive” 11
her of her rights. Dkt. No. ¶ 71. There are no allegations of an agreement, and the allegations 12
about the various incidents do not provide a non-speculative basis from which the Court may 13
reasonably infer the existence of a conspiracy. See *Rick-Milk Enterp., Inc. v. Equilon Enterp.* 14
LLC, 532 F.3d 963, 976 (9th Cir. 2008); see also *Twombly*, 550 U.S. at 555 (“Factual allegations
15 must be enough to raise a right to relief above the speculative level.”). Consequently, Count II
is 16 dismissed without prejudice. Because “a cause of action is not provided under 42 U.S.C. §
1986 17 absent a valid claim of relief under section 1985,” Count III, too, is dismissed without
prejudice. 18 *Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985).

19 C. DISCRIMINATION AND RETALIATION CLAIMS

20 The complaint also alleges unlawful sex-based discrimination (Count V) and retaliation 21
(Count VI) in violation of Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat.
22 241, and California’s Fair Employment and Housing Act (FEHA), Cal. Gov. Code §§ 12900-
96. 23 California courts analyze FEHA discrimination and retaliation claims under similar
standards that 24 federal courts use for Title VII claims. See, e.g., *Kohler v. Inter-Tel Techs.*, 244
F.3d 1167, 1172- 25 73 (9th Cir. 2001) (collecting cases); *Sada v. Robert F. Kennedy Med. Ctr.*, 56
Cal. App. 4th 138, 26 148, 155-56 (1997). 27 For Count V, Rivera must plausibly allege “(1) [she]

is a member of a protected class; (2) 1 similarly situated individuals outside [her] protected class were treated more favorably, or other 2 circumstances surrounding the adverse employment action give rise to an inference of 3 discrimination.” *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004). The 4 complaint falters at the fourth prong. 5 Rivera alleges two incidents in which she was denied overtime while “other men are 6 allowed to work overtime” and that “all males reporting directly to Ed Bettencourt received OT 7 cash payments over \$10,000.00 - \$60,000.00 more than Plaintiff in 2020, 2021, and 2022.” Dkt.

8 No. 1 ¶ 24. The complaint does not, however, allege facts showing those “other men” who 9 “report[] to Ed Bettencourt,” *id.*, are “similarly situated” to Rivera “in all material respects,” 10 *Moran v. Selig*, 447 F.3d 748, 755 (9th Cir. 2006); see *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 11 1151, 1157 (9th Cir. 2010) (“[I]ndividuals are similarly situated when they have similar jobs and 12 display similar conduct.” (quotation omitted)). There are no allegations about whether most of 13 those men had the same role or position as Rivera or whether they performed or sought overtime 14 at a similar frequency. Rivera also does not allege “other circumstances surrounding” those two 15 incidents, which occurred over a year apart, that “give rise to a [plausible] inference of 16 discrimination.” *Berry v. Dep’t of Social Servs.*, 447 F.3d 642, 656 (9th Cir. 2006) (quotation 17 omitted). These same reasons also preclude the allegations concerning Juan Valencia or “one of 18 her subordinate employees, a male of European descent,” Dkt. No. 1 ¶¶ 42-43, from forming the 19 basis of a plausible claim of sex-based discrimination. 20 A claim of retaliation requires plausible allegations “1) that [Rivera] acted to protect [her] 21 Title VII rights; 2) that an adverse employment action was thereafter taken against [her]; and 3) 22 that a causal link existed between the two events.” *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 23 1124 (9th Cir. 2004); see also *Bailey v. San Francisco Dist. Attorney’s Office*, 16 Cal. 5th 611, 24 636 (2024) (elements of retaliation claim under FEHA). 25 Rivera alleges that her performance appraisal averages declined after her filing suit against 26 EBMUD in 2015, Dkt. No. 1 ¶¶ 6-8, but the complaint does not allege facts about that lawsuit that 27 support a reasonable inference that it constituted “protected activity” under Title VII or FEHA. 1 *Inc.*, 36 Cal. 4th 1028, 1042-43 (2005). Nor do the present allegations of Rivera’s comments at 2 public board meetings plausibly show that she was engaged in protected activity. The complaint 3 alleges that Rivera repeatedly commented about filings in an ongoing lawsuit against EBMUD but 4 does not give any insight into the content of her comments or anything in particular she said. 5 Consequently, there is not a non-speculative basis for understanding the complaint to allege that 6 Rivera “engag[ed] in other activity intended to ‘oppose[]’ an employer’s discriminatory practices.” 7 *Raad v. Fairbanks North Star Borough Sch. Dist.*, 323 F.3d 1185, 1197 (9th Cir. 2003) (second 8 alteration in original) (quoting 42 U.S.C. § 2000e-3(a)).² 9 Insofar as Rivera means to base a claim of retaliation on the fact that she was not given an 10 extension of time to appeal her discrimination and retaliation determination letter, Dkt. No. 1 ¶ 23, 11 she does not plausibly allege that “a causal link existed between” her filing of the complaint and 12 the denial of the extension, *McGinest*, 360 F.3d at

1124. In a similar vein, the complaint's other 13 allegations assert in conclusory fashion that Rivera was being retaliated against but do not provide 14 factual grounds for plausibly concluding she had engaged in "protected activity" and/or there 15 existed a causal link between such alleged activity and the allegedly adverse action.

16 D. DECLARATORY RELIEF CLAIM

17 Plaintiff also seeks declaratory relief against EBMUD but only nominally so. The 18 complaint expressly states it is seeking a Court order "enjoin[ing] and restrain[ing]" EBMUD and 19 indeed alleges that "Plaintiff has no adequate remedy at law to prevent" the allegedly unlawful 20 conduct "other than through injunctive relief." Dkt. No. 1 ¶¶ 100-01. Consequently, it appears 21 that Rivera is seeking from the Court not a declaration but an injunction. An injunction is a 22 remedy, not a cause of action itself. Because Rivera has not plausibly stated a claim against 23 EBMUD, a request for injunctive relief cannot be sustained. 24 25 26 2 As discussed, Federal Rule of Civil Procedure 8 requires a "short and plain statement of the 27 claim." Including links to a YouTube video and directing the Court to blocks of speech contained

1 II. CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS

2 Rivera's claims under § 1983 (Counts I and IV) are dismissed as to all the individual 3 defendants. Because Monell is a theory of municipal-entity liability, not individual liability, 4 Count IV is dismissed with prejudice. For Count I, the complaint's allegations do not state a claim 5 upon which relief can be granted. 6 Federal Rule of Civil Procedure 8 requires no more than a "short and plain statement of the 7 claim showing that the pleader is entitled to relief" that is "simple, concise, and direct." Fed. R. 8 Civ. P. 8(a)(2), (d)(1). Five of the individual defendants are EBMUD Board Directors, and as far 9 as the Court can tell, the only specific allegations as to these individuals in the complaint are a 10 recitation of who they are. Dkt. No. 1 ¶¶ 46-50. There are generalized allegations about the 11 authority of board members as board members, that the board members generally ratified actions, 12 and the conclusion that they violated the U.S. Constitution. See, e.g., id. ¶¶ 43, 51, 66. What's 13 missing are any concrete facts about anything these individuals may have done in connection with 14 any alleged wrongdoing. 15 As for the remaining individual defendants, it is unclear which allegations Rivera is relying 16 on to state a claim as to which individual defendant. The complaint repeatedly refers to 17 "Defendants" writ large as having violated her rights and caused her harm, id. ¶¶ 64-69, but the 18 Court cannot discern which of the sprawling and conclusory allegations, if any, are connected to a 19 claim as to which defendant. Moreover, Rivera did not develop any meaningful opposition to the 20 individual defendants' motion to dismiss. 21 Counts II and III are dismissed without prejudice as to the individual defendants for the 22 same reasons those claims do not state a claim against EBMUD. The complaint does not allege 23 facts providing a non-speculative basis from which the Court can reasonably infer the existence of 24 a conspiracy among some or all of the individual defendants, and the absence of a plausible claim 25 under § 1985 dooms a claim under § 1986. Counts V and VI, which allege sex-based 26 discrimination and retaliation under Title VII

and FEHA, are dismissed with prejudice as to all 27 individual defendants. It is well-established that employees and supervisory employees cannot be 1 Maxwell's Int'l Inc., 991 F.2d 583, 587-88 (9th Cir. 1993); Jones v. Lodge at Torrey Pines 2 || Partnership, 42 Cal. 4th 1158, 1162-74 (2008). Finally, Rivera's claim for declaratory (or 3 || injunctive) relief as to the individual defendants is dismissed for the reasons earlier provided.

4 CONCLUSION

5 Because supervisory liability cannot lie against a municipal entity under § 1983, Count I is 6 || dismissed with prejudice as to EBMUD. Conversely, Count IV is dismissed with prejudice as to 7 the individual defendants. Similarly, Counts V and VI are dismissed with prejudice as to the 8 individual defendants. The remaining claims as to all defendants are dismissed with leave to 9 amend. Rivera may file an amended complaint consistent with this order by March 21, 2025. No 10 || new parties or claims may be added without the Court's prior consent. Failure to meet the filing 11 deadline or conform to this order will result in dismissal of the case pursuant to Federal Rule of 12 Civil Procedure 41(b). 13 IT IS SO ORDERED. || Dated: February 25, 2025 2 16

5 TAME DONATO

niteg# States District Judge 18 19 20 21 22 23 24 25 26 27 28