

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Gammon v. Granholm

Gammon · No. 24-cv-05001-JSW · Decided March 4, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied motions to dismiss claims brought by Stuart Gammon against federal defendants and Lawrence Livermore National Security, LLC. The court dismissed claims involving disability discrimination, sex discrimination, race discrimination, hostile work environment, and whistleblower retaliation, while denying without prejudice LLNS’s exhaustion challenge to the race-discrimination claim. The court granted leave to amend and set deadlines for an amended complaint and case management conference.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jeffrey S. White
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 4, 2025
DOCKET	24-cv-05001-JSW
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought federal employment-discrimination, retaliation, whistleblower, and related state-law claims. The Federal Defendants and Lawrence Livermore National Security, LLC moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).
STANDARD OF REVIEW	For a facial Rule 12(b)(1) challenge, the court accepts the complaint's factual allegations as true and construes them in the plaintiff's favor; for a factual jurisdictional attack, the court may consider affidavits and other evidence. On a Rule 12(b)(6) motion, the court accepts well-pleaded allegations as true, construes them in the plaintiff's favor, and asks whether the complaint states a facially plausible claim under Rules 8(a)(2) and 12(b)(6).
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Stuart Gammon v. Chris Wright, Secretary, U.S. Department of Energy, National Nuclear Security Administration, Lawrence

TOPICS

[motions to dismiss](#) [subject matter jurisdiction](#) [employment discrimination](#) [ada / disability](#) [whistleblower](#)

PRACTICE AREAS

[employment law](#) [civil rights](#) [federal employment law](#) [civil procedure](#) [disability discrimination](#)
[whistleblower](#)

QUESTIONS PRESENTED

1. Whether the Federal Defendants were subject to suit where Gammon alleged only that LLNS was a federal contractor and that DOE and NNSA exercised certain control over LLNS's work.
2. Whether Gammon plausibly alleged that the Federal Defendants were his employer or joint employers for purposes of Title VII, the Rehabilitation Act, the ADEA, and the Whistleblower Protection Act.
3. Whether Gammon plausibly alleged disability discrimination by asserting that LLNS required a fitness-for-duty examination.
4. Whether Gammon plausibly alleged sex discrimination under California law.
5. Whether Gammon exhausted his administrative remedies for his FEHA race-discrimination claim.
6. Whether Gammon plausibly alleged race discrimination under FEHA.
7. Whether Gammon plausibly alleged a hostile work environment.
8. Whether Gammon plausibly alleged retaliation under California Labor Code section 1102.5(b).
9. Whether leave to amend should be granted.

HOLDINGS

1. The court dismissed Gammon's claims against the Federal Defendants because he failed to allege facts showing that he was a federal employee or that the Federal Defendants were his joint employers, and therefore failed to establish a waiver of sovereign immunity.
2. Gammon failed to state a disability-discrimination claim against LLNS because he did not allege facts showing that the fitness-for-duty examination materially affected the terms, conditions, or privileges of his employment.
3. Gammon failed to state a sex-discrimination claim against LLNS because he did not adequately allege a materially adverse employment action caused by sex or facts showing that similarly situated female employees received more favorable treatment.
4. The court denied LLNS's motion to dismiss the FEHA race-discrimination claim on exhaustion grounds without prejudice to renewal in a later motion or at summary judgment.
5. Gammon failed to plausibly allege race discrimination because his allegations concerning comparators and tuition reimbursement did not adequately connect differential treatment or an adverse employment

action to race.

6. Gammon failed to state a hostile-work-environment claim because he did not allege facts connecting the challenged conduct to one of his protected characteristics or showing harassment sufficiently severe or pervasive to alter the conditions of employment.
7. Gammon failed to state a retaliation claim under California Labor Code section 1102.5(b) because he did not identify a federal or state law, rule, or regulation that he reasonably believed LLNS's conduct violated.
8. The court granted leave to amend because it could not conclude that amendment would be futile.

KEY QUOTATIONS

“a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” (at 2)

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (at 2)

“It is now well-settled that an individual can have more than one employer for Title VII purposes.” (at 3)

“Although discrimination and harassment are separate wrongs, they are sometimes closely interrelated, and even overlapping, particularly with regard to proof.” (at 7)

“Gammon has not alleged which – if any – federal or state laws he reasonably believed this conduct violated.” (at 8)

FACTUAL BACKGROUND

Stuart Gammon, a mixed-race male over forty with Attention Deficit Disorder, had worked as an SES chemist for LLNS since 1998. He alleged that LLNS received directions from the Department of Energy and the National Nuclear Security Administration, that DOE approved his security clearance, and that NNSA directed projects and provided funding related to LLNS audits. Gammon alleged discrimination, harassment, retaliation, and whistleblower activity arising from workplace treatment, a fitness-for-duty examination, alleged differential treatment, and reports concerning lithium hydroxide disposal and safety protocols. He filed a complaint with the California Civil Rights Department and received a right-to-sue letter.

PROCEDURAL HISTORY

Gammon filed a complaint alleging discrimination, hostile work environment, and retaliation claims against the Federal Defendants and LLNS. The court granted the Federal Defendants' motion based on failure to allege facts establishing federal employment or a joint-employment relationship, and granted most of LLNS's motion for failure to plead plausible claims. The court denied LLNS's exhaustion argument as to the race-discrimination claim without prejudice, dismissed that claim on the merits, granted leave to amend, and set a case management conference.

DISPOSITION

CASES CITED

- Federation of African American Contractors v. City of Oakland, 96 F.3d 1204, 1207 (9th Cir. 1996)
- Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)
- Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008)
- Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994)
- Lopez v. Johnson, 333 F.3d 959, 961 (9th Cir. 2003)
- Daniels v. Browner, 63 F.3d 906, 908 (9th Cir. 1995)
- Kerr v. Jewell, 836 F.3d 1048, 1053 (9th Cir. 2016)
- EEOC v. Global Horizons, Inc., 915 F.3d 631, 637-38 (9th Cir. 2019)
- Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318, 323-24 (1992)
- Zamora v. Security Industry Specialists, Inc., 71 Cal. App. 5th 1, 31 (2021)
- Glynn v. Superior Court, 42 Cal. App. 5th 47, 53 n.1 (2019)
- Santos v. County of Humboldt, No. 22-cv-7485-RMI, 2023 WL 6882748, at *5-*6 (N.D. Cal. Oct. 18, 2023)
- Brooks v. City of San Mateo, 229 F.3d 917, 928 n.2 (9th Cir. 2000)
- Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1051 (2005)
- Guz v. Bechtel National, Inc., 24 Cal. 4th 317, 355 (2000)
- Miller v. United Airlines, 174 Cal. App. 3d 878, 890 (1985)
- Guzman v. NBA Automotive, Inc., 68 Cal. App. 5th 1109, 1118 (2021)
- Achal v. Gate Gourmet, Inc., 114 F. Supp. 3d 781, 794 (N.D. Cal. 2015)
- B.K.B. v. Maui Police Department, 276 F.3d 1091, 1100 (9th Cir. 2002)
- Fort Bend County, Texas v. Davis, 587 U.S. 541 (2019)
- Roby v. McKesson Corp., 47 Cal. 4th 686, 707 (2009)
- Bailey v. San Francisco District Attorney's Office, 16 Cal. 5th 611, 627 (2024)
- Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993)
- Mueller v. County of Los Angeles, 176 Cal. App. 4th 809, 822 (2009)
- Reddy v. Litton Industries, Inc., 912 F.2d 291, 296 (9th Cir. 1990)
- Cook, Perkiss & Liehe, Inc. v. Northern California Collection Service, Inc., 911 F.2d 242, 246-47 (9th Cir. 1990)