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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MELISSA FAIRFIELD,

CASE NO. 1:07-cv-01412-LJO-SKO PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CERTAIN
CLAIMS

v.

DEBORAH PATRICK, et al.,

(Doc. 16)

Defendants.

Plaintiff Melissa Fairfield (“Plaintiff”) is a state prisoner proceeding pro in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California Department of Corrections and Rehabilitation (“CDCR”) and is incarcerated at the Central California Women’s Facility (“CCWF”) in Chowchilla, California. Plaintiff names Deborah Patrick (warden), Miles Bettencourt (supervisor), Dale Clayton (associate warden), Rob Chenault (chief plant manager), Mary Lattimore (chief deputy warden), Bruce Hubble (chief plant manager), T. Arreallano (inmate assignment lieutenant), and Toni Brown (inmate appeals coordinator) as defendants. For the reasons set forth below, the Court finds that Plaintiff’s second amended complaint states cognizable claims against Defendants Chenault and Clayton for retaliation in violation of Plaintiff’s First Amendment rights. The Court finds that Plaintiff’s second amended complaint fails to state any other claims and will recommend that Plaintiff’s non-cognizable claims be dismissed, without leave to amend.

I. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
4 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
5 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
6 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 In determining whether a complaint fails to state a claim, the Court uses the same pleading
8 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must
9 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.
10 R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual
11 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me
12 accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.
13 Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual matter,
14 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550
15 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s
16 liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id.
17 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual
18 allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true.
19 Id. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
20 statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

21 **II. Background**

22 **A. Procedural Background**

23 Plaintiff filed the original complaint in this action on September 27, 2007. (Doc. #1.)
24 Plaintiff’s original complaint was screened pursuant to 28 U.S.C. § 1915A(a) on July 15, 2008.
25 (Doc. #12.) The Court found that Plaintiff’s original complaint failed to state any cognizable claims.
26 Plaintiff was notified of the deficiencies in her claims and was given leave to file an amended
27 complaint. Plaintiff filed a first amended complaint on August 7, 2008. (Doc. #13.) Plaintiff’s first
28 amended complaint was screened on February 18, 2010. (Doc. #15.) The Court found that

1 Plaintiff's first amended complaint failed to state any cognizable claims and Plaintiff was given leave
2 to file a second amended complaint. Plaintiff filed her second amended complaint on March 15,
3 2010. (Doc. #16.) This action proceeds on Plaintiff's second amended complaint.

4 **B. Factual Background**

5 Plaintiff alleges that Defendants lowered her pay grade. On September 22, 2006, Plaintiff
6 was assigned to "Plant Operations" as a "Lead Plumber." (Am. Compl. 3, ECF No. 16.) Plaintiff
7 complains that she should have been given a "pay grade 1" but was instead given a "pay grade 2."
8 Plaintiff asked numerous officials about the incorrect pay grade but did not receive any explanation.

9 In January 2007, Plaintiff heard rumors from other inmates that the pay grades were going
10 to be lowered to be in-line with the pay grades at Valley State Prison for Women. Plaintiff spoke
11 with Defendant Miles Bettencourt about her pay grade. When Bettencourt told Plaintiff that she did
12 not deserve a "pay grade 1," Plaintiff insisted that she met the criteria for the higher pay grade.
13 Bettencourt also informed Plaintiff that "the men don't make what the women make, they make
14 more, and that the pay grades at CCWF would be lowered to a pay grade 5."¹ (Am. Compl. 4, ECF
15 No. 16.)

16 On February 12, 2007, Plaintiff spoke with Defendant Rob Chenault about the pay grades.
17 When Plaintiff complained about the disparity in pay between male and female inmates, Chenault
18 told Plaintiff that "females don't have it hard like the men do."

19 Plaintiff filed an inmate appeal about the issue. On March 6, 2007, Chenault told Plaintiff
20 that she would be removed from plant operations before he retired. Plaintiff filed another appeal
21 because she felt like she was being intimidated for filing an appeal.

22 Plaintiff's was interviewed by Defendant Dale Clayton on March 23, 2007. Plaintiff alleges
23 that Clayton used "verbal and physical intimidation . . . in order to coerce [Plaintiff] into dropping
24 the issue." (Am. Compl. 6, ECF No. 16.) When Plaintiff asked Clayton about the pay disparity
25 between male and female prisoners, Clayton did not listen to Plaintiff's complaints. Plaintiff's
26

27 ¹It is unclear who broached the subject of the unequal pay first. Plaintiff does not allege that she
28 complained to Bettencourt about the unequal pay, but it is unclear why Bettencourt would bring up the subject if
Plaintiff did not mention it first.

1 appeal was denied and the denial indicated that Plaintiff “did not perform lead work.” (Am. Compl.
2 6, ECF No. 16.)

3 On May 3, 2007, Clayton authored a memorandum which instructed prison officials to delete
4 all “lead” verbiage from the “Plant Operations Job Descriptions.” (Am. Compl. 7, ECF No. 16.)
5 Plaintiff alleges that the response was in direct retaliation against Plaintiff for her appeal. Plaintiff
6 alleges that her second level appeal was denied by Defendants T. Brown and Mary Lattimore.

7 Plaintiff also complains that multiple notices regarding the issue were ignored by the warden
8 and associate wardens. Plaintiff alleges that Defendant T. Brown responded to one request and
9 indicated that she was not qualified to respond to Plaintiff’s inquiries because she has no knowledge
10 about the systems in place at the prisons that house men. Plaintiff complains that she could have
11 acted as a “liason for the state of California in regards to an inmates[sic] eligibility for and
12 availability of desired work or program activity.” (Am. Compl. 8, ECF No. 16.)

13 Plaintiff complains that Defendant T. Arellano “should have been aware of the different skill
14 levels and pay grades at CCWF.” (Am. Compl. 8, ECF No. 16.) Plaintiff complains that Arrellano
15 could have looked up Plaintiff’s job history and known that the references to “lead” positions was
16 removed.

17 Plaintiff alleges that Defendant Bruce Hubble “was on board with the reduction of ‘lead’
18 positions.” (Am. Compl. 9, ECF No. 16.)

19 Plaintiff complains that Bettencourt later stated that the job positions were revised such that
20 all positions in plant operations were classified as “semi-skills” and were given the title of “helper”
21 as opposed to “lead.” (Am. Compl. 11, ECF No. 16.) Plaintiff complains that the change was unfair
22 because “it doesnt[sic] matter how well we know the trade we will always be recognized as not
23 special skilled, lead, technician.” (Am. Compl. 11, ECF No. 16.)

24 Plaintiff alleges that on October 27, 2009, Defendant Hubble had Defendant Arellano remove
25 Plaintiff from the plumbing shop “for retaliation for trying to coerce me to sign documentation that
26 he believed pertained to safety of my job, which I added an additional addendum stating ‘under
27 implied retaliation.’” (Am. Compl. 12, ECF No. 16.) Plaintiff’s allegation of retaliation is unclear.

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1 **III. Discussion**

2 Plaintiff does not identify her causes of action. Although Plaintiff filed her complaint on a
3 form complaint for Section 1983 actions, Plaintiff does not identify what specific rights Defendants
4 allegedly violated. For the purposes of analyzing Plaintiff’s complaints, the Court will liberally
5 construe Plaintiff’s complaint as raising claims under Section 1983 for the violation of her equal
6 protection rights under the Fourteenth Amendment and raising claims of retaliation in violation of
7 her First Amendment rights.

8 **A. Equal Protection Claims**

9 The Equal Protection Clause requires that persons who are similarly situated be treated alike.
10 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). A classification that
11 is drawn on the basis of gender calls for “a heightened standard of review.” City of Cleburne, Tex.
12 v. Cleburne Living Center, 473 U.S. 432, 440 (1985). To justify the classification and disparate
13 treatment of persons based upon their gender, the classification must have “exceedingly persuasive”
14 justification. U.S. v. Virginia, 518 U.S. 515, 533 (1996). The state must show that the
15 “classification serves ‘important governmental objectives and that the discriminatory means
16 employed’ are ‘substantially related to the achievement of those objectives.’” Mississippi University
17 for Women v. Hogan, 458 U.S. 718, 724 (1982) (quoting Wengler v. Druggists Mutual Ins. Co., 446
18 U.S. 142, 150 (1980)). However, “official action will not be held unconstitutional solely because
19 it results in a racially disproportionate impact. . . . Proof of . . . discriminatory intent or purpose is
20 required to show a violation of the Equal Protection Clause.” Village of Arlington Heights v.
21 Metropolitan Housing Development Corporation, 429 U.S. 252, 264-65 (1977).

22 Plaintiff’s complaint fails to allege facts that plausibly support the conclusion that Defendants
23 acted with discriminatory intent or purpose by refusing to give Plaintiff a raise to “pay grade 1” and
24 stripping Plaintiff of the “lead” status in her job position. The Court notes that every defendant is
25 employed at CCWF, an institution that presumably only houses female inmates. Accordingly, any
26 assertion that Defendants provided disparate treatment to Plaintiff on the basis of her gender is
27 contradicted by the fact that Defendants do not provide any “treatment” to male inmates. Defendants
28 do not supervise any male inmates. The inference that Defendants act with discriminatory intent or

1 purpose merely because their actions only affect members of one gender is not well supported
2 because the single-gender impact of their actions is an unavoidable product of the fact that they work
3 an institution that only houses female inmates. To infer a discriminatory intent or purpose merely
4 from the fact that their administrative decisions only impact female inmates would subject every
5 decision that Defendants make to potential liability under the Equal Protection Clause.

6 To support a plausible claim for relief for an equal protection violation, Plaintiff must
7 specifically allege facts that support the inference that Defendants acted with discriminatory intent
8 or purpose. Plaintiff has failed to do so. Plaintiff has not even alleged that Defendants were aware
9 of a disparity in pay between men and women when they made the decision to reduce the wages paid
10 at CCWF. Plaintiff has not alleged that Defendants knew what male inmates in equivalent job
11 positions were paid when they made their decision to reduce the wages at CCWF. Plaintiff alleges
12 that Defendants reduced the wages at CCWF so that the wages would be in-line with the wages
13 provided at another prison that housed women. However, that allegation alone does not support the
14 inference that Defendants were aware that the wages would be less than those paid to men with
15 equivalent skills and job positions.

16 Plaintiff does allege that Defendants Bettencourt and Chenault were aware of a difference
17 in pay between male and female inmates. However, it is unclear whether Bettencourt or Chenault
18 knew about the pay disparity before Plaintiff complained about it, or whether they were merely
19 responding to Plaintiff's complaints and assumed that Plaintiff's assertions about the existence of
20 the disparity were true. In either case, Plaintiff has not alleged that Bettencourt or Chenault knew
21 about any pay disparity when they made the decision to cut wages at CCWF. Accordingly, Plaintiff
22 has not alleged any facts that plausibly support the inference that the decision to cut wages at CCWF
23 was made with discriminatory intent or purpose.

24 The Court further notes that it is unclear whether any actual pay disparity exists. Plaintiff
25 has not identified any specific male inmates who receive higher pay than the inmates at CCWF or
26 any male prisons that offer their inmates higher pay. Plaintiff does not allege how she knows that
27 male inmates are paid more than female inmates. The only factual allegation in support of an alleged
28 disparity in pay is Plaintiff's allegation that higher pay grades exist in the "Dictionary of

1 Occupational Titles,” and Defendants do not allow any inmates at CCWF to receive those higher pay
2 grades. However, nothing in Plaintiff’s complaint supports the inference that male inmates at other
3 prisons receive those higher pay grades. Plaintiff’s conclusion appears to be entirely speculative.²
4 Further, in order to support an equal protection claim, Plaintiff must allege facts that plausibly
5 support the conclusion that similarly situated male inmates are receiving higher pay than the female
6 inmates at CCWF. Plaintiff has not identified any class of similarly situated male inmates, or male
7 inmates that possess similar skill sets and job duties compared to the female inmates at CCWF.
8 Accordingly, the Court finds that Plaintiff has failed to support her claim for relief with adequate
9 factual allegations. Plaintiff fails to state any cognizable equal protection claims against Defendants.

10 **B. Retaliation Claims**

11 Plaintiff claims that Defendants Chenault and Clayton retaliated against Plaintiff for filing
12 grievances about her pay grade. In the prison context, allegations of retaliation against a prisoner’s
13 First Amendment rights to speech or to petition the government may support a section 1983 claim.
14 Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d
15 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “[A] viable claim of First
16 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some
17 adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such
18 action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
19 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
20 Cir. 2005). An allegation of retaliation against a prisoner’s First Amendment right to file a prison
21 grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d 1283, 1288
22 (9th Cir. 2003).

23 Plaintiff alleges that Defendant Chenault threatened to fire Plaintiff from her job if she did
24 not drop her administrative grievance. Plaintiff similarly alleges that Defendant Clayton verbally
25 and physically intimidated Plaintiff during an interview by “getting in [her] face [and] telling [her

27 ²Plaintiff does allege that Defendants Bettencourt and Chenault acknowledged the pay disparity when they
28 told Plaintiff that the male inmates get paid more because “females don’t have it hard like men do.” However, as the
Court noted previously, it is unclear whether Bettencourt and Chenault knew about the pay disparity or whether they
were merely responding to Plaintiff’s complaints and assumed that her assertions about the pay disparity were true.

1 that she] ‘better drop the 602.’” (Am. Compl. 6, ECF No. 16.) Although Plaintiff was not actually
2 terminated from her job, “the mere threat of harm can be an adverse action, regardless of whether
3 it is carried out because the threat itself can have a chilling effect.” Brodheim v. Cry, 584 F.3d 1262,
4 1270 (9th Cir. 2009) (emphasis in original). Plaintiff need not allege an explicit threat of harm –
5 the threat of harm may be implied. Id. Accordingly, the Court finds that Plaintiff states cognizable
6 claims for relief against Defendants Chenault and Defendant Clayton for retaliating against
7 Plaintiff’s First Amendment right to file grievances against the government.

8 Plaintiff also alleges that Defendant Clayton authored a memorandum that directed other
9 prison officials to remove all “lead” verbiage from the “Plant Operations Job Descriptions.” (Am.
10 Compl. 7, ECF No. 16.) The change appears to be entirely semantic, as it occurred after Plaintiff
11 had learned that her pay grade would not be raised. Accordingly, the Court finds that the issuance
12 of the memorandum and the removal of the “lead” verbiage from the job descriptions does not
13 constitute “adverse action” within the meaning of a First Amendment retaliation claim. Plaintiff has
14 neither alleged that the exercise of her First Amendment rights was chilled by the removal of the
15 “lead” verbiage, nor has she alleged a harm that is “more than minimal.” Rhodes v. Robinson, 408
16 F.3d 559, 568 n.11 (9th Cir. 2005).

17 Finally, Plaintiff claims that Defendant Hubble removed Plaintiff from the plumbing shop
18 “for retaliation for trying to coerce me to sign documentation that he believed pertained to the safety
19 of my job; which I added a[sic] additional addendum stating ‘under implied retaliation.’” (Am.
20 Compl. 12, ECF No. 16.) Plaintiff’s allegations are vague and unclear. Plaintiff has not alleged
21 what the document said and does not explain why she refused to sign the document. It is unclear
22 what Plaintiff meant by “under implied retaliation.” The Court notes that if the document pertained
23 to safety, Defendant Hubble’s action would not be unconstitutional because “it is reasonably related
24 to legitimate penological interests.” Turner v. Safley, 482 U.S. 78, 89 (1987). Plaintiff fails to state
25 any cognizable claims against Defendant Hubble.

26 **C. No Leave to Amend**

27 The Court is generally required to provide Plaintiff with notice of the deficiencies in her
28 claims and an opportunity to amend her complaint in order to cure those deficiencies. See Lopez v.

1 Smith, 203 F.3d 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule that leave to amend
2 should be granted even if no request to amend was made unless the court determines that the
3 pleading could not possibly be cured by the allegation of other facts); Noll v. Carlson, 809 F.2d
4 1446, 1448 (9th Cir. 1987) (pro se litigant must be given leave to amend his or her complaint unless
5 it is absolutely clear that the deficiencies of the complaint could not be cured by amendment).
6 However, the Court's previous screening order already informed Plaintiff of the deficiencies in her
7 equal protection claims and Plaintiff's second amended complaint fails to amend her complaint in
8 a way that meaningfully addresses those deficiencies. Accordingly, the Court will recommend that
9 Plaintiff's equal protection claims be dismissed without leave to amend. See Ferdik v. Bonzelet, 963
10 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with prejudice upheld where court had instructed plaintiff
11 regarding deficiencies in prior order dismissing claim with leave to amend).

12 The Court notes that Plaintiff has not been given instructions regarding the deficiencies in
13 her retaliation claims because Plaintiff has made the factual allegations regarding retaliation for the
14 first time in her second amended complaint. Accordingly, the Court will provide Plaintiff with an
15 opportunity to amend her retaliation claims against Defendant Hubble. The Court will recommend
16 that this action proceed on Plaintiff's retaliation claims against Defendants Chenault and Clayton.
17 If Plaintiff intends to amend her claims against Defendant Hubble, she must file a motion requesting
18 leave to file an amended complaint within thirty days of the date of service of this Findings and
19 Recommendations. Otherwise, this action will proceed only on Plaintiff's claims against Defendants
20 Chenault and Clayton.

21 **IV. Conclusion and Recommendation**

22 Plaintiff's complaint states cognizable claims against Defendants Chenault and Clayton for
23 alleged retaliation against Plaintiff's exercise of her First Amendment right to file grievances against
24 the government. However, Plaintiff does not state any other cognizable claims. Plaintiff was
25 provided with the opportunity to amend and her second amended complaint failed to remedy the
26 deficiencies in her equal protection claims. The Court finds that the deficiencies in Plaintiff's equal
27 protection claims are not curable by further amendment of her complaint.

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1 Accordingly, it is HEREBY RECOMMENDED that:

- 2 1. This action proceed on Plaintiff's second amended complaint, filed on March 15,
3 2010, against Defendants Chenault and Clayton for retaliation against Plaintiff's
4 exercise of her First Amendment rights; and
- 5 2. Plaintiff's equal protection claims be dismissed for failure to state a claim.

6 These Findings and Recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
8 days after being served with these Findings and Recommendations, any party may file written
9 objections with the Court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
11 shall be served and filed within ten (10) days after service of the objections. The parties are advised
12 that failure to file objections within the specified time may waive the right to appeal the District
13 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 **Dated:** November 1, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE