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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADDIE SMITH,

Plaintiff,

v.

LEGACY PARTNERS, INC. ET AL.,

Defendants.

CASE NO. 2:21-cv-00629-JHC

ORDER RE: MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)
AND/OR MOTION FOR JUDGMENT ON
THE PLEADINGS UNDER FED. R. CIV. P.
12(c) OF DEFENDANTS
SYRES PROPERTIES, LLC,
SYUFY ENTERPRISES, LP,
SYWEST DEVELOPMENT, LLC,
SYHADLEY, LLC,
GLEN CERIDONO,
AND JOSEPH SYUFY

I.

INTRODUCTION

This matter comes before the Court on a motion to dismiss by Defendants Glen Ceridono, SyRES Properties, LLC, Joseph Syufy, Syufy Enterprises, LP, SyWest Development, LLC, and SyHadley, LLC (collectively, the “Syufy Defendants”). Dkt. # 28. The Court has considered the materials filed in support of, and in opposition to, the motion, and the file herein. Being fully advised, the Court GRANTS the motion in part and DENIES it in part.

ORDER RE: MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(b)(6) AND/OR MOTION FOR
JUDGMENT ON THE PLEADINGS UNDER FED. R.
CIV. P. 12(c) - 1

II.**BACKGROUND**

1
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3 Plaintiff Addie Smith alleges that the Syufy Defendants at all material times herein
4 owned the Hadley Apartments, sometimes referred to as SyHadley, LLC, in Mercer Island,
5 Washington. Dkt. # 1 at ¶ 1.3. The Syufy Defendants contracted with third-party management
6 company Legacy Partners, Inc. (“Defendant Legacy”) to manage the Hadley Apartments. *Id.* at
7 ¶ 1.8. On or around May 6, 2019, Defendant Legacy hired Plaintiff to work for them as a
8 “Business Manager.” *Id.* at ¶ 1.6. Plaintiff’s employment with Defendant Legacy lasted until
9 August 7, 2019, when her employment was terminated. *Id.* at ¶ 6.6.

10 Plaintiff identifies as Black. *Id.* at ¶ 1.2. Plaintiff alleges that, beginning in June 2019,
11 residents of the Hadley Apartments repeatedly harassed, stalked, and physically attacked her
12 because of her race. Dkt. # 1 at ¶¶ 4.3–4.9; 6.7–6.8. She further alleges that she reported these
13 incidents on multiple occasions to Christina Jones (“Defendant Jones”) and Michael Holt
14 (“Defendant Holt”), employees of Defendant Legacy, and that nothing was done to correct the
15 situation. *Id.* at ¶¶ 4.10–4.14; 6.3; 6.5; 6.9.

16 Plaintiff alleges that Defendant Jones and Defendant Holt required her to wear heeled
17 shoes at work, even though White business managers were permitted to wear flat shoes. *Id.* at ¶¶
18 5.2; 7.6. She further alleges that Defendant Jones told her she could not wear her hair in braids
19 and that she would not have been hired if she had worn braids. *Id.* at ¶ 5.3. She alleges that
20 throughout her employment, she repeatedly complained about these practices. *Id.* at ¶ 6.2.

21 Plaintiff alleges that over the course of her employment with Defendant Legacy, residents
22 of the Hadley Apartments repeatedly asked her to violate state and federal housing laws. Dkt.

1 # 1 at ¶¶ 7.4–7.5. She alleges that her employment was terminated, at least in part, because of
2 her refusal to comply with these requests. *Id.* at ¶ 7.2.

3 Lastly, Plaintiff alleges that corporate defendants initiated an “anti-harassment action”
4 against her, claiming that she had written them “harassing emails.” Dkt. # 1 at ¶ 7.7. She alleges
5 that defendants did so in “retaliation” although she does not explain further. *Id.* at ¶ 7.8.

6 Plaintiff filed the instant lawsuit against Defendant Legacy, Defendant Jones, Defendant
7 Holt, and the Syufy Defendants on May 11, 2021, alleging claims of race discrimination under
8 42 U.S.C. § 1981, Title VII of the Civil Rights Act, and RCW 49.60; sex discrimination under
9 Title VII of the Civil Rights Act and RCW 49.60; hostile working environment under 42 U.S.C.
10 § 1981, Title VII of the Civil Rights Act, and RCW 49.60; retaliation under Title VII of the Civil
11 Rights Act and RCW 49.60; wrongful termination; and premises liability/negligence. Dkt. # 1.
12 The Syufy Defendants move to dismiss under Fed. R. Civ. P. 12(b)(6) and/or for judgment on the
13 pleadings under Fed. R. Civ. P. 12(c), arguing that they are improper defendants. Dkt. # 28; 31.
14 Plaintiff opposes the motion. Dkt. # 32.

15 III.

16 ANALYSIS

17 A. Form of Defendants’ Motion to Dismiss

18 As an initial matter, the Court construes the Syufy Defendants’ motion not as a motion
19 under Rule 12(b)(6), but as a motion for judgment on the pleadings under Rule 12(c). Motions
20 under Rule 12(b) must “be made before pleading if a further pleading is permitted.” *Aldabe v.*
21 *Aldabe*, 616 F.2d 1089, 1093 (1980) (quoting Fed. R. Civ. P. 12(b)). However, if a motion to
22 dismiss for failure to state a claim “is made after the answer is filed, the court can treat the
23 motion as one for judgment on the pleadings pursuant to [Rule] 12(c).” *Id.*; see also Fed. R. Civ.

1 P. 12(h)(2) (authorizing a motion under Rule 12(c) to raise the defense of failure to state a claim,
2 even after an answer has been filed). The case for construing a post-answer motion to dismiss
3 for failure to state a claim as a Rule 12(c) motion “is further strengthened, where, as here, [the
4 answer] include[s] the defense of failure to state a claim.” *Aldabe*, 616 F.2d at 1093.

5 Here, Defendants filed their answer on June 30, 2021, Dkt. # 13, and the Syufy
6 Defendants filed the present motion to dismiss on November 24, 2021. Dkt. # 28. The answer
7 includes as a defense that Plaintiff’s complaint “fails, in whole or in part, to state a cause of
8 action upon which relief can be granted.” Dkt. # 13 at 9. Accordingly, the Court construes the
9 Syufy Defendants’ motion as a Rule 12(c) motion for judgment on the pleadings.

10 B. Rule 12(c) Standard

11 Under Rule 12(c), “[a]fter pleadings are closed—but early enough not to delay trial—a
12 party may move for judgment on the pleadings.” Fed. R. Civ. P. 12 (c). The court evaluates a
13 Rule 12(c) motion under the same standard as a Rule 12(b)(6) motion. *Chavez v. United States*,
14 683 F.3d 1102, 1008 (9th Cir. 2012); *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192
15 (9th Cir. 1989). Dismissal under Rule 12(b)(6) may be based on a lack of a cognizable legal
16 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
17 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

18 When evaluating a motion to dismiss, the court construes the complaint in the light most
19 favorable to the non-moving party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d
20 940, 946 (9th Cir. 2005). However, the complaint “must contain sufficient factual matter,
21 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court
23 accepts all well-pleaded factual allegations as true and draws all reasonable inferences in favor of

1 the plaintiff. *See Baker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009).

2 The Court also liberally construes *pro se* pleadings. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42
3 (9th Cir. 2010).

4 C. Title VII Claims

5 Title VII of the Civil Rights Act instructs a complainant, before commencing a Title VII
6 action in court, to file a charge with the Equal Employment Opportunity Commission (“EEOC”).
7 42 U.S.C. § 2000e-5(e)(1); (f)(1). On receipt of the charge, the EEOC is to notify the employer
8 and investigate the allegations. *Id.* § 2000e-5(b). If the EEOC chooses not to pursue litigation or
9 otherwise act on the charge, the complainant is issued a “right-to-sue” notice 180 days after the
10 charge is filed. *Id.*; 29 C.F.R. § 1601.28. On receipt of this notice, the complainant may
11 commence a civil action against the employer. 42 U.S.C. § 2000e-5(f)(1).

12 Plaintiff alleges in her complaint that she filed a Charge of Discrimination, 551-2020-
13 02006, with the EEOC and that she received her Notice of Right to Sue on February 10, 2021.
14 Dkt. # 1 at ¶ 3.4. In adjudicating a motion under Fed. R. Civ. P. 12(b)(6) or 12(c), the Court is
15 permitted to consider the contents of documents incorporated by reference in the complaint. *See*
16 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (“A court may consider evidence on which
17 the complaint ‘necessarily relies’ if (1) the complaint refers to the document; (2) the document is
18 central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to
19 the 12(b)(6) motion.”). It is clear from the referenced documents that Plaintiff named only
20 “Legacy Partners” in her Charge of Discrimination, and that the EEOC issued a Notice of Right
21 to Sue only as to Defendant Legacy. Dkt. # 29-1 at 2; 4.

22 The Supreme Court held in *Fort Bend County, Texas v. Davis*, that Title VII’s charge-
23 filing requirement is a mandatory claim-processing rule. 139 S.Ct. 1843, 1852 (2019).

1 Therefore, a court must enforce the rule if timely raised. *Id.* (citing *Eberhart v. United States*,
2 546 U.S. 12, 19 (2005)). Unlike the defendants in *Fort Bend County*, who waited years to assert
3 the rule and thus were determined to have waived the argument, the Syufy Defendants have
4 raised this issue in a timely motion to dismiss. Dkt. # 28.¹ Therefore, the Court must apply the
5 mandatory claim-processing rule and dismiss all of Plaintiff’s Title VII claims with prejudice.

6 D. 42 U.S.C. § 1981 Claims

7 42 U.S.C. § 1981 protects the equal right of “[a]ll persons within the jurisdiction of the
8 United States” to “make and enforce contracts” without respect to race. 42 U.S.C. § 1981(a).
9 The statute currently defines “make and enforce contracts” to include “the making, performance,
10 modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms,
11 and conditions of the contractual relationship.” *Id.* § 1981(b). To prevail on a 1981 claim, a
12 plaintiff must initially plead that, but for her race, she would not have suffered the loss of a
13 legally protected right. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009,
14 1013 (2020).

15 Plaintiff has not alleged a contractual or employment relationship with the Syufy
16 Defendants that would give rise to a claim under 42 U.S.C. § 1981. Her complaint states that she
17 was “an employee of Defendant Legacy Partners Inc.” at all relevant times herein. Dkt. # 1 at ¶
18 1.1. She does mention that she met on a weekly basis with Glen Ceridono (Senior Vice
19 President of SyRES Property), that he sent her two emails with positive feedback on her work,
20 and that he provided her with money outside the regular budget. *Id.* at ¶ 1.9. However, these
21 allegations do not suggest that she was employed by the Syufy Defendants, or that she had or
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23 ¹ Defendants also raised this argument in their timely Answer. Dkt. # 13.

1 would have had rights under an existing or proposed contract with the Syufy Defendants.

2 Further, Plaintiff does not allege any wrongful conduct by the Syufy Defendants.

3 In Plaintiff's response to the motion, she alleges substantially more facts regarding her
4 relationship with the Syufy Defendants. Dkt. # 32 at 7. She also references and attaches several
5 documents, including filings by SyHadley, LLC in an unlawful detainer action and an appeal
6 thereof before the King County Superior Court and the Washington Court of Appeals. *Id.* at 3–
7 46. She urges this Court to take judicial notice of these documents, in which SyHadley states
8 that it employed Plaintiff, and apply principles of judicial estoppel. Dkt. # 10; 12–14. In reply,
9 the Syufy Defendants object to the consideration of these documents on the grounds that they
10 were not attached to, or incorporated by reference in, Plaintiff's complaint. Dkt. # 41 at 4–5. In
11 the alternative, they argue that if this Court takes judicial notice of the documents, it should also
12 take notice of the opinion of the Washington Court of Appeals in which it found that "Smith was
13 employed by Legacy Partners, not SyHadley." Dkt. # 42–1 at 8.

14 Generally, district courts may not consider material outside the pleadings when assessing
15 the sufficiency of a complaint. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th
16 Cir. 2018). There are two exceptions to this rule: the incorporation-by-reference doctrine, and
17 judicial notice under Federal Rule of Evidence 201. *Id.* These exceptions do not apply to this
18 case. Neither the new facts alleged by Plaintiff regarding her relationship with the Syufy
19 Defendants, nor the records of state court proceedings attached to her Response, were referenced
20 in her initial complaint. Further, judicial notice under Rule 201 permits a court to notice an
21 adjudicative fact if it is "not subject to reasonable dispute." Fed. R. Evid. 201(b). A fact is "not
22 subject to reasonable dispute" if it is "generally known," or can be accurately and readily
23 determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid.

1 201(b)(1)-(2). The presence of an employment relationship between Plaintiff and the Syufy
2 Defendants is clearly disputed. Therefore, the Court declines to take judicial notice of the
3 statements by the Syufy Defendants, and will consider only the contents of Plaintiff’s complaint
4 and the documents referenced therein.

5 Because Plaintiff has not sufficiently pleaded a contractual or employment relationship
6 with the Syufy Defendants that would give rise to a claim under 42 U.S.C. § 1981, the Court
7 dismisses these claims without prejudice.

8 E. Claims under RCW 49.60 (Washington Law Against Discrimination)

9 The Washington Legislature enacted the Washington Law Against Discrimination
10 (“WLAD”) to eliminate and prevent discrimination in employment based on, among other
11 protected categories, an individual’s race or sex. RCW 49.60.010; *see also Woods v. Seattle’s*
12 *Union Gospel Mission*, 197 Wash.2d 231, 238–39, 481 P.3d 1060 (2021). The statute
13 accordingly recognizes a “right to obtain and hold employment without discrimination[.]” RCW
14 49.60.030(1)(a). Any individual “deeming [herself]...injured by an act in violation of” the
15 WLAD may bring a private action for injunctive relief and damages. RCW 49.60.030(2).

16 An employee alleging employment discrimination must show that the misconduct
17 affected the “terms or conditions of [their] employment.” RCW 49.60.180(3); *see also Glasgow*
18 *v. Georgia-Pac. Corp.*, 103 Wash. 2d 401, 405, 693 P.2d 708 (1985). The employment
19 discrimination statute is limited to unfair practices by, or imputable to, an “employer” by
20 operation of the language, “it is an unfair practice for an employer[] [t]o...” RCW 49.60.180; *see*
21 *also Floeting v. Grp. Health Coop.*, 192 Wash. 2d 848, 854-55, 434 P.3d 39 (2019). Similarly,
22 to prevail in a hostile working environment claim under the WLAD, an individual must show
23 that the claimed harassment or adverse employment action was “imputable to the employer.”

1 *Loeffelholz v. Univ. of Washington*, 175 Wash. 2d 264, 275, 285 P.3d 854 (2012). To establish a
2 claim for retaliation under the WLAD, a plaintiff must show that (1) she engaged in a protected
3 activity, (2) she suffered an adverse employment action, and (3) there was a causal link between
4 the protected activity and the adverse employment action.” *Cornwell v. Microsoft Corp.*, 192
5 Wash. 2d 403, 411, 430 P.3d 229 (2018); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054,
6 1064 (9th Cir. 2002); *Little v. Windemere Relocation, Inc.*, 301 F3d 958, 969 (9th Cir. 2002)
7 (“Washington courts look to interpretations of federal law when analyzing retaliation claims.”).

8 For the reasons stated above, Plaintiff has not pleaded an employment relationship with
9 the Syufy Defendants that would give rise to a claim under the WLAD. Plaintiff does not allege
10 any misconduct on the part of, or imputable to, the Syufy Defendants that would violate any of
11 the provisions of RCW 49.60, since she does not allege that she was employed by the Syufy
12 Defendants. The Court therefore dismisses the WLAD claims without prejudice.

13 F. Wrongful Termination Claim

14 Although Plaintiff does not explicitly say so in her complaint, it appears from her
15 arguments that she is bringing a claim for wrongful discharge in violation of public policy. The
16 Washington common law tort of wrongful discharge in violation of public policy serves as a
17 “narrow exception to the at-will doctrine.” *Martin v. Gonzaga Univ.*, 191 Wash. 2d 712, 722–
18 23, 425 P.3d 837 (2018). A plaintiff can establish a claim of wrongful discharge in violation of
19 public policy if they fall into one of four categories:

20 “(1) where employees are fired for refusing to commit an illegal act; (2) where
21 employees are fired for performing a public duty or obligation, such as serving jury
22 duty; (3) where employees are fired for exercising a legal right or privilege, such
23 as filing workers’ compensation claims; and (4) where employees are fired in
24 retaliation for reporting employer misconduct, i.e., whistle-blowing.”

1 *Id.* at 723 (quoting *Gardner v. Loomis Armored, Inc.*, 128 Wash. 2d 931, 936, 913 P.2d 377
 2 (1996)). A plaintiff who does not fall into one of those categories can still establish a wrongful
 3 discharge in violation of public policy claim through the “Perritt test”²:

4 “(1) The plaintiffs must prove the existence of a clear public policy (the clarity
 5 element). (2) The plaintiffs must prove that discouraging the conduct in which they
 6 engaged would jeopardize the public policy (the jeopardy element). (3) The
 7 plaintiffs must prove that the public-policy-linked conduct caused the dismissal (the
 8 causation element). (4) The defendant must not be able to offer an overriding
 9 justification for the dismissal (the absence of justification element).”

10 *Id.* (quoting *Gardner*, 128 Wash. 2d at 941).

11 Plaintiff alleges that her employment was terminated at least in part due to her refusal to
 12 violate federal housing laws. Dkt. # 1 at ¶¶ 7.2; 7.4–5. She also states that she was reprimanded
 13 by Defendant Holt, and employee of Defendant Legacy, for wearing flat shoes. *Id.* at ¶ 7.6.

14 However, as explained above, nowhere in her complaint does she allege that the Syufy
 15 Defendants employed her or terminated her employment. A necessary element of a wrongful
 16 discharge action is that the Plaintiff actually be discharged by the defendant. *See Martin v.*
 17 *Gonzaga Univ.*, 191 Wash. 2d 712, 723, 425 P.3d 837 (2018) (explaining burden-shifting
 18 between plaintiff–employee and defendant–employer); *see generally Mackey v. Home Depot*, 12
 19 Wash. App. 2d 557, 459 P.3d 371 (2020). Because Plaintiff has insufficiently pleaded an
 20 employment relationship with the Syufy Defendants and does not allege that she was wrongfully
 21 discharged by the Syufy Defendants, the Court dismisses the claim without prejudice.

22 G. Premises Liability/Negligence Claim

23 To state a claim for negligence, a Plaintiff must show (1) the existence of a duty, (2)
 24 breach of that duty, (3) resulting injury, and (4) proximate cause. *Tincani v. Inland Empire*

² *Martin*, 191 Wash. 2d at 723 (citing Henry H. Perritt Jr., *Workplace Torts: Rights and Liabilities* (1991)).

1 *Zoological Soc’y*, 124 Wash.2d 121, 127–28, 875 P.2d 621 (1994). Under Washington common
2 law, a landowner's duty of care to persons on the land is governed by the entrant’s common law
3 status as an invitee, licensee, or trespasser. *Id.* at 128. Generally, a landowner
4 owes trespassers and licensees only the duty to refrain from willfully or wantonly injuring them,
5 whereas to invitees the landowner owes an affirmative duty to use ordinary care to keep the
6 premises in a reasonably safe condition. *Van Dinter v. City of Kennewick*, 121 Wash.2d 38, 41–
7 42, 846 P.2d 522 (1993).

8 Plaintiff’s complaint, which simply recites the elements of negligence, does not allege
9 sufficient information to state a claim. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)
10 (“Allegations in a complaint...may not simply recite the elements of a cause of action, but must
11 contain sufficient allegations of underlying facts to give fair notice and to enable the opposing
12 party to defend itself effectively.”); *Iqbal*, 556 U.S. at 678 (“To survive a motion to dismiss, a
13 complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is
14 plausible on its face.” (citing *Twombly*, 550 U.S. at 570)). Plaintiff does not allege whether her
15 status was that of an invitee, licensee, or trespasser. She does not explain the duty owed to her
16 by the Syufy Defendants, the way in which that duty was breached, her alleged injury, or the
17 causal link between the Syufy Defendants’ actions and her injury. She has therefore alleged
18 insufficient facts to state a claim. Accordingly, the Court dismisses Plaintiff’s premises
19 liability/negligence claim without prejudice.

20 H. Amendments to Complaint

21 In her Response to the Syufy Defendants’ Motion to Dismiss, Plaintiff requests that she
22 be permitted to amend her complaint. Dkt. # 32 at 2. Courts have discretion to grant leave to
23 amend in conjunction with 12(c) motions and may dismiss causes of action rather than grant

1 judgment. *See Harris v. Cnty. Of Orange*, 682 F.3d 1126, 1134 (9th Cir. 2012); *Carmen v. San*
2 *Francisco United Sc. Dist.*, 982 F. Supp. 1396, 1401 (N. D. Cal. 1997), *aff'd*, 237 F.3d 1026 (9th
3 Cir. 2001). Per the scheduling order issued on July 8, 2021, the deadline to submit amended
4 pleadings was March 2, 2022. Dkt. # 15. However, the Court notes that Plaintiff's Response
5 was filed before that deadline, on December 1, 2021. Dkt. # 32. Because the delay in the
6 Court's ruling was outside of Plaintiff's control, the Court will grant an exception to the
7 scheduling order. Plaintiff shall have until June 9, 2022 to seek leave to amend her complaint
8 under Fed. R. Civ. P. 15(a)(2) as to the claims that are dismissed without prejudice.

9 **IV.**

10 **CONCLUSION**

11 For the foregoing reasons, this Court GRANTS the Syufy Defendants' motion and
12 dismisses Plaintiff's Title VII claims against them with prejudice. The Court dismisses all other
13 claims against the Syufy Defendants without prejudice. Plaintiff is granted until June 9, 2022 to
14 seek leave to amend her complaint under Fed. R. Civ. P. 15(a)(2).

15 Dated this 20th day of May, 2022,

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17 

18 John H. Chun
19 United States District Judge