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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Elizabeth Marie Hogan,

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No. CV-09-02379-PHX-NVW

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Plaintiff,

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ORDER

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vs.

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Anasazi Foundation,

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Defendant.

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Before the Court is the Motion to Dismiss Plaintiff’s Third Amended Complaint¹ by Defendant Anasazi Foundation (“Anasazi”) (Doc. 27).

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I. Legal Standard

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On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), all allegations of material fact are assumed to be true and construed in the light most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). To avoid dismissal, a complaint must contain “only enough facts to state a claim for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

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¹Plaintiff has filed a Complaint, a First Amended Complaint, and a Third Amended Complaint, but no Second Amended Complaint. (Docs. 1, 17, 24.)

1 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
2 *Iqbal*, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009).

3 However, the principle that a court accepts as true all of the allegations in a
4 complaint does not apply to legal conclusions or conclusory factual allegations. *Id.* at
5 1949, 1951. “Threadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” *Id.* at 1949. “A plaintiff’s obligation to provide
7 the grounds of his entitlement to relief requires more than labels and conclusions, and a
8 formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S.
9 at 555.

10 **II. Analysis**

11 Hogan’s response to Anasazi’s motion to dismiss her Third Amended Complaint is
12 that she has corrected the deficiencies identified in the Court’s June 23, 2010 Order, *i.e.*,
13 her failure to allege a *prima facie* case of gender-based disparate treatment and
14 enforcement of the Anasazi policy requiring trail walkers to “refrain from sexual
15 intimacies outside of marriage.” She contends she has cured these deficiencies by adding
16 or slightly editing the following conclusory allegations:

- 17 43. On information and belief, DEFENDANT does not ask similarly
18 situated male applicants for employment about their marital status
19 prior to extending an offer of employment.
- 20 44. On information and belief, DEFENDANT does not require similarly
21 situated male applicants for employment to agree to abide by a
22 celibacy policy prior to extending an offer of employment.
- 23 45. On information and belief, DEFENDANT does not require similarly
24 situated male applicants for employment to provide information
25 about their marital status.
- 26 46. On information and belief, DEFENDANT does not enforce its
27 celibacy policy against its male employees, whether married or
28 unmarried.
- 29 47. DEFENDANT violated Title VII because the plaintiff was in the
30 protected group (FEMALE), was qualified to do the work, was doing
31 the work in a satisfactory manner, was terminated, was treated less
32 favorably than [*sic.*] situated employees who were male, and
33 DEFENDANT was motivated by illegal discrimination because of
34 sex.

1 48. DEFENDANT violated Title VII because the plaintiff was in the
2 protected group (FEMALE), was qualified to do the work, was
3 denied employment, was treated less favorably than [*sic.*] situated
applicants for employment who were male, and DEFENDANT was
motivated by illegal discrimination because of sex.

4 49. DEFENDANT violated Title VII by asking about PLAINTIFF's
5 marital status, contrary to EEOC Guidelines which specifically
6 forbid any inquiry into an applicant's sex, marital status, pregnancy,
7 medical history of pregnancy, future child bearing plans, number
and/or ages of children or dependents, provisions for child care,
abortions, birth control, ability to reproduce, and name or address of
spouse of children.

8 (Doc. 24) The Third Amended Complaint does not include any factual allegations
9 different from or additional to those in the previous complaint. It alleges only bare
10 conclusions and no factual allegations that demonstrate favorable treatment was given to
11 male employment applicants or male employees. *See Iqbal*, 129 S. Ct. at 1949
12 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
13 statements, do not suffice.”).

14 The Third Amended Complaint alleges that Hogan received the Anasazi policy
15 statement requiring trail walkers to “refrain from sexual intimacies outside of marriage”
16 in her pre-hire training packet. It further alleges that Mr. Howard told her the policy
17 “specifically meant that until a trail walker is married, they are not to engage in sexual
18 intimacies.” It does not allege that Mr. Howard told her, indicated, suggested, or implied
19 that the policy applied, or was enforced against, only female employees. It alleges that
20 Mr. Merchant told Hogan “that Anasazi had hired trail walkers before who had been open
21 about their homosexual orientation,” but it does not allege that Mr. Merchant indicated
22 that the openly homosexual trail walkers included only males. It also alleges that Hogan
23 asked Mr. Merchant whether Anasazi would change its policy to recognize same-sex
24 marriages or committed relationships—not that she asked Mr. Merchant whether Anasazi
25 would discontinue its disparate, gender-based enforcement of the policy.

26 Further, the Third Amended Complaint alleges that on the second day of training,
27 not on the first day, Mr. Howard asked Hogan about the ring on her finger, not
28 specifically about her marital status. It further alleges that Hogan volunteered the

1 information that she was married to a woman. It does not allege that Anasazi asked
2 Hogan about her marital status, asked other women at the training about their marital
3 status, or did not ask men at the training about their marital status.

4 In spite of Hogan's insistence she is alleging discrimination based on gender, not
5 sexual orientation, the Third Amended Complaint continues to allege discrimination
6 based on sexual orientation:

7 39. It is not stated anywhere in the pre-employment packet, job
8 requirements, or at the Anasazi website that sexual orientation is a
9 condition of employment. Up until the very moment PLAINTIFF
10 stated plaintiff's partner's gender to Mr. Howard, PLAINTIFF had
11 been considered a favorable candidate en route to becoming a trail
12 walker.

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14 42. PLAINTIFF was told that PLAINTIFF will not be employed because
15 PLAINTIFF did not possess a qualification that was not disclosed
16 when PLAINTIFF applied for this position.

17 (Doc. 24)

18 Moreover, the Third Amended Complaint does not allege that Hogan was actually
19 employed by Anasazi, only that she was qualified to be hired and was invited to attend
20 pre-hire training. Therefore, she was not "terminated" as summarily alleged in paragraph
21 47. Further, the Third Amended Complaint alleges she was told that she would remain
22 eligible for employment if she chose to comply with the Anasazi policy, and Hogan
23 agrees that the policy on its face does not discriminate on the basis of gender, but
24 apparently she did not choose to comply with the policy. Thus, she was not "denied
25 employment" as alleged in paragraph 48.

26 Because Plaintiff's Third Amended Complaint fails to meet pleading requirements
27 under *Twombly*, it will be dismissed for failure to state a claim upon which relief can be
28 granted.

29 **IV. Leave to Amend**

30 Leave to amend should be freely given "when justice so requires." Fed. R. Civ. P.
31 15(a)(2). But, "[l]eave need not be granted where the amendment of the complaint would

1 cause the opposing party undue prejudice . . . or creates undue delay.” *Ascon*
2 *Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989). The district court’s
3 discretion to deny leave to amend a complaint is “especially broad” where the plaintiff
4 already has had one or more opportunities to amend her complaint. *Id.* at 1161. “Leave
5 to amend need not be given if a complaint, as amended, is subject to dismissal.” *Moore*,
6 885 F.2d at 538. Hogan already has amended her complaint twice without success.
7 Further opportunity to amend would cause Anasazi undue prejudice and likely would be
8 futile. Therefore, Hogan will not be granted further leave to amend.

9 IT IS ORDERED that Defendant’s Motion to Dismiss Plaintiff’s Third Amended
10 Complaint (Doc. 27) is granted.

11 IT IS FURTHER ORDERED that Plaintiff’s Third Amended Complaint (Doc. 24)
12 is dismissed with prejudice.

13 IT IS FURTHER ORDERED directing the Clerk to enter judgment dismissing this
14 action with prejudice for failing to state a claim upon which relief can be granted. The
15 Clerk shall terminate this case.

16 DATED this 17th day of September, 2010.

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Neil V. Wake
United States District Judge