

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

**'O'**

Case No. 2:13-CV-02272-CAS(VBKx) Date October 6, 2014

Title BEVERLY GOOCH V. AMERICAN EAGLE AIRLINES, INC.

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (In Chambers) DEFENDANT'S MOTION TO STRIKE THE FOURTH AMENDED COMPLAINT (Dkt. #66, filed September 8, 2014)

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of October 20, 2014, is vacated, and the matter is hereby taken under submission.

## I. INTRODUCTION AND BACKGROUND

Plaintiff Beverly Gooch, proceeding pro se, filed this action against American Eagle Airlines, Inc. and Does 1 through 10 on or about August 21, 2012, in Los Angeles County Superior Court. Defendant filed a notice of removal in this Court on March 29, 2013, on the basis of diversity jurisdiction. Dkt. #1. On May 28, 2014, plaintiff filed the operative third amended complaint ("TAC"). Dkt. #51. The TAC asserts the following claims: violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621, et seq.; two separate hostile work environment claims, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, et seq.; retaliation in violation of the ADEA; retaliation in violation of public policy under California law; intentional infliction of emotional distress; negligent infliction of emotional distress; concealment; damages; and attorney's fees. Id.<sup>1</sup>

<sup>1</sup>On October 6, 2014, the Court held a hearing on defendant's motion to dismiss the TAC's second, third, fifth, sixth, seventh, and eighth claims for relief, pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. #53. The Court dismissed the TAC's

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On August 21, 2014, plaintiff filed without leave of Court a Fourth Amended Complaint (“FAC”). Dkt. #64. The FAC asserts claims for age discrimination in violation of the ADEA; retaliation in violation of the ADEA; intentional infliction of emotional distress; and negligent infliction of emotional distress. *Id.* On September 8, 2014, defendant filed a motion to strike the FAC on the ground that it was filed without leave of court. Dkt. #66. Plaintiff did not file an opposition. That motion was noticed for hearing on October 20, 2014. However, at the October 6, 2014 hearing on defendant’s motions to dismiss and strike portions of the TAC, the Court informed the parties that it was taking the motion to strike the FAC under submission and vacating the October 20, 2014 hearing.

## II. DISCUSSION

Fed. R. Civ. P. 15(a)(1) provides that a party may amend its pleading once as a matter of course, within timing limitations. “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” *Id.* 15(a)(2). “An amendment to a pleading not made in conformity with Rule 14(a) may be stricken as lacking legal effect.” Cellular Accessories For Less, Inc. v. Trinitas LLC, No. CV 12-06736 DDP (SHx), 2014 WL 1311053 (C.D. Cal. April 11, 2014). Plaintiff did not obtain the Court’s leave or defendant’s consent before filing the FAC.<sup>2</sup>

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second, third, fifth, sixth, and eighth claims without leave to amend. The Court denied defendant’s motion as to plaintiff’s seventh cause of action for negligent infliction of emotional distress. Thus, the substantive claims for relief left standing in the TAC are (1) violation of the ADEA, (2) retaliation in violation of the ADEA, and (3) negligent infliction of emotional distress.

<sup>2</sup>In email correspondence between the parties submitted by defendant, plaintiff indicated that she believed had the right to file the FAC based on a tentative order distributed at the July 21, 2014 hearing. See Mot. to Strike FAC, Mo Decl. Ex. C. As defendant explained in a reply email, the Court never adopted this tentative order, and plaintiff accordingly did not have leave to file the FAC. See id. Ex. D.

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Moreover, even if the Court were to consider the FAC, it contains the claim for intentional infliction of emotional distress the Court dismissed from the TAC in its October 6, 2014 hearing, and otherwise contains claims substantially identical to those alleged in the TAC. As such, plaintiff will suffer no prejudice if she is required to proceed on the TAC. The Court therefore GRANTS defendant's motion to strike the FAC.

IT IS SO ORDERED.

Initials of Preparer

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CMJ