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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

XING WEI JING,)	Case No. CV 13-05207 DDP (MANx)
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS' MOTION
)	TO DISMISS
v.)	
)	[Dkt. 20]
COUNTY OF LOS ANGELES,)	
)	
Defendants.)	
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Presently before the court is a Motion to Dismiss filed by Defendant County of Los Angeles. (Dkt. 20.) Having considered the parties' submissions, the court grants the motion and adopts the following order.

I. Background

Plaintiff is a forty-seven year old Chinese-American citizen. ([First] Amended Complaint ("FAC") ¶¶ 1, 3, p. 11:1-2.) He was a doctor in China, but was employed as a registered nurse at LAC/USC Medical Center. (FAC. ¶¶ 1,8.) Plaintiff participated in the

1 intensive care unit program in the spring and summer of 2012. (FAC
2 ¶ 2.) Plaintiff was the oldest person in the program, and the only
3 Chinese employee. (FAC. ¶3.) Plaintiff was demoted to a clerk
4 position, and effectively terminated on February 22, 2012 (Am.
5 Compl. ¶¶ 4.) Plaintiff alleges that he was rated "competence" at
6 all times and that, in spite of the rating, he was replaced by
7 someone less qualified. (FAC ¶¶ 2,4)

8 At a Christmas party in 2011, Plaintiff's immediate
9 supervisor's husband asked Plaintiff about his age, religion, and
10 reasons for moving to the United States. (FAC ¶ 5.) In February
11 2012, assistant supervisor Amelia Shovlin also inquired about his
12 age and reasons for immigrating. (FAC ¶ 6.)

13 Plaintiff also complains that some instructors spread rumors
14 that "Chinese doctor should not be nurse" and "Chinese nurse will
15 get fired," while some preceptors graded him "not met" on
16 evaluations and opined to colleagues that Plaintiff was "too old to
17 work in ICU." (FAC. ¶¶ 8-9) Instructor Mike Pucket "reached his
18 face to plaintiff face 2, 3, fists far, shaving his head to
19 Plaintiff said, 'I would not let you pass this program, are you
20 emotional?'" (FAC. ¶ 25.) Plaintiff also contends that he was
21 called "Ying Yang" and "Buda" by preceptor Carmen Martinez. (FAC ¶
22 10) The same preceptor also suggested to Plaintiff that his
23 eyebrows were too long, and needed to be cut. (FAC ¶ 11.)
24 Plaintiff explained that long eyebrows were important in his
25 culture, to which Martinez replied "forget your culture." (FAC ¶
26 11.) Plaintiff contends that he overheard Martinez say to other
27 nurses that she would not give him a "met" rating on the evaluation
28 because she did not like him. (FAC ¶ 11.) Plaintiff further

1 alleges that he was required to sign "DHS Discipline Manual
2 Attestation form" on two occasions, but that no one else signed it.
3 (FAC. ¶ 7.) Plaintiff alleges that he was told he had to sign
4 twice because his form was lost, "which is not true, but 'Scaring',
5 because is kept in HR, not in manager's hands." (Id.)

6 Plaintiff filed several complaints to managers, union
7 authorities, and other throughout 2012 and 2013. (FAC ¶ 28).
8 Plaintiff was required to attended some type of counseling session,
9 during which someone gave false testimony regarding Plaintiff's
10 performance. (FAC ¶ 14.) Plaintiff was then forced to resign.¹
11 (Id.)

12 Plaintiff alleges five claims in the FAC: (1) "discrimination
13 termination"; (2) "hostile working environment, and harassment";
14 (3) "retaliation"; (4) "intentional discrimination" and (5)
15 "employment defamation." He cites 42 U.S.C. § 2000e-2 (unlawful
16 employment practices), 42 U.S.C. § 1981 (equal rights under the
17 law) and Cal. Civil Code § 46(3) (slander). Defendant now moves to
18 dismiss the FAC.

19 **II. Legal Standard**

20 A complaint will survive a motion to dismiss when it contains
21 "sufficient factual matter, accepted as true, to state a claim to
22 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
23 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
24 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
25 "accept as true all allegations of material fact and must construe

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27 ¹ The timing of the events alleged in the FAC is somewhat
28 unclear. Though Plaintiff alleges that he resigned in August 2012,
he continued working past that time, before later being terminated.

1 those facts in the light most favorable to the plaintiff." Resnick
2 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
3 need not include "detailed factual allegations," it must offer
4 "more than an unadorned, the-defendant-unlawfully-harmed-me
5 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
6 allegations that are no more than a statement of a legal conclusion
7 "are not entitled to the assumption of truth." Id. at 679. Even
8 under the liberal pleading standard of Federal Rule of Civil
9 Procedure 8(a)(2), under which a party is only required to make a
10 "short and plain statement of the claim showing that the pleader is
11 entitled to relief," a "pleading that offers 'labels and
12 conclusions' or a 'formulaic recitation of the elements of a cause
13 of action will not do.'" Id. 678 (quoting Twombly, 550 U.S. at
14 555).

15 **III. Discussion**

16 A complaint must include "a short and plain statement of the
17 claim showing that the pleader is entitled to relief." Fed. R.
18 Civ. P. 8(a)(2). The allegations must be "simple, concise and
19 direct." Fed. R. Civ. P. 8(d)(1). Confusing, ambiguous, and
20 distracting pleadings do not meet the requirements of Rule 8. See
21 Cafasso v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th
22 Cir. 2011). A complaint must be dismissed if it is "so verbose,
23 confused and redundant that its true substance, if any, is well
24 disguised." Hearns v. San Bernardino Police Dep't, 530 F.3d. 1124,
25 1131 (9th Cir. 2008)(quoting Gillibeau v. City of Richmond, 417
26 F.2d 426, 431 (9th Cir. 1969).

27 This court dismissed Plaintiff's original complaint for
28 failure to comply with Rule 8. (Dkt. 17). Recognizing Plaintiff's

1 pro se status, the court dismissed the original complaint with
2 leave to amend. Plaintiff's First Amended Complaint, however,
3 suffers from many of the same deficiencies as the original
4 complaint. For example, Plaintiff's first claim for
5 "discrimination termination" refers to his race, age, religion and
6 "gene of his image: 'short, long eyebrow,'" without specifying on
7 which protected characteristic his claim is based. Plaintiff also
8 alleges that he was rated "competence" at all times (FAC ¶ 2), but
9 also that he received "not met" evaluations. (FAC ¶9.) Plaintiff's
10 amended complaint also includes numerous allegations, such as those
11 involving conversations at a Christmas party, that are not tied to
12 any particular claim or otherwise explained.² Furthermore, the
13 sequence of events alleged remains unclear. Plaintiff's First
14 Amended Complaint does not adequately identify the basis for each
15 cause of action or give Defendant sufficient notice of what
16 Plaintiff's claims are, and must therefore be dismissed. See
17 Pickern v. Pier 1 Imports, 457 F.3d 963, 968 (9th Cir. 2006).

18 Though Defendant contends that amendment would be futile, the
19 court disagrees. While the FAC does not satisfy Rule 8, it is an
20 improvement upon Plaintiff's original complaint. Similarly, while
21 Plaintiff's opposition to the instant motion cannot cure the
22 deficiencies of the First Amended Complaint, it is significantly
23 better organized than Plaintiff's first opposition, and is

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25 ² The lack of context for many of Plaintiff's allegations is
26 potentially critical. For example, even if some comments, taken
27 out of context, appear to have a negative connotation, "simple
28 teasing, offhand comments, and isolated incidents (unless extremely
serious) will not amount to discriminatory changes in the 'terms
and conditions' of employment.'" Farragher v. City of Boca Raton,
524 U.S. 775, 788 (1998).

1 sufficient to persuade the court that Plaintiff may be able to
2 state a viable claim upon amendment.

3 It appears that Plaintiff has expended considerable effort and
4 time to research and compose his two complaints and responses to
5 the motions to dismiss, despite apparent language barriers. The
6 court once again notes that the Federal Pro Se Clinic, which,
7 though not administered by this court, is located within the
8 courthouse in Room G-19 at 312 N. Spring Street, Los Angeles,
9 California 90012, offers information to civil litigants proceeding
10 pro se.

11 **IV. Conclusion**

12 For the reasons stated above, Defendant's Motion to Dismiss is
13 GRANTED. The Amended Complaint is DISMISSED, with leave to amend.
14 Any second amended complaint shall be filed within thirty days of
15 the date of this order.

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21 IT IS SO ORDERED.

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23 Dated: October 6, 2014



DEAD D. PREGERSON

United States District Judge

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