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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEBBIE THEBEAU,

Plaintiff,

v.

TEHACHAPI VALLEY HEALTHCARE
DISTRICT, ALAN BURGESS, and DOES 1 – 25,

Defendants.

1:13-CV-00730-LJO-JLT

ORDER TO SHOW CAUSE RE
DISMISSAL OF 42 U.S.C. § 1983 CLAIM;
AND

TO HOLD IN ABEYANCE PENDING
MOTION FOR SUMMARY JUDGMENT

(Doc. 27)

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INTRODUCTION

Plaintiff Debbie Thebeau (“Thebeau”) brings this action for violations of Cal. Lab. Code § 1102.5, California’s Fair Employment and Housing Act (“FEHA”), and 42 U.S.C. § 1983 against Defendants Tehachapi Valley Healthcare District (“TVHD”) and Alan Burgess (“Burgess”). After TVHD and Burgess removed this action to this Court from Kern County Superior Court, Thebeau agreed to dismiss voluntarily her FEHA claims and to dismiss Burgess as a defendant in this matter. Now before the Court is remaining defendant TVHD’s motion for summary adjudication of Thebeau’s Cal. Lab. Code § 1102.5 claim.

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BACKGROUND

A. Thebeau’s Allegations

Thebeau was employed by TVHD from August 1998 until her termination on or about June 28, 2012. Thebeau’s position at TVHD from 2000 until her termination was Human Resources Director.

In June 2007, Burgess was hired as the new Chief Executive Officer of TVHD.

Thebeau alleges that, in early June 2009, she and Compliance Officer Mary Carleen Warrack (“Warrack”) reported and complained to Burgess that there was a pattern of patient abuse by the TVHD nursing staff. Thebeau and Warrack demanded that the abuse be reported to CDPH.

Thebeau and Warrack began an inquiry into a patient abuse claim against nurse Tiffany Melin-

1 Darko. During an interview in the inquiry, nurse Val Carmean refused to participate and walked out.
2 Burgess and Director of Nursing Andrew Petty accused Thebeau and Warrack of being on a
3 “witch hunt.”
4 Additional abuse reports were made, including a report that a staff member kicked a patient.
5 Thebeau and Warrack filed a formal complaint with CDPH. Formal complaints were also
6 lodged with the TVHD Board of Directors.
7 Thebeau cautioned Burgess that he was retaliating against Warrack for her outspoken
8 comments about patient abuse and this angered Burgess.
9 On or about March 1, 2010, Thebeau attended a management meeting where Warrack again
10 brought up patient abuse allegations and the criminal exposure of executive officers. Burgess
11 allegedly threw a water bottle at Warrack. Thebeau filed a written statement with the TVHD Board in
12 support of Warrack and against Burgess.
13 Thebeau alleges she also reported acts of sexual harassment by Burgess. Burgess posted
14 pictures and jokes, directed at Thebeau. Thebeau also received complaints of hostile work
15 environment based on sexual matters from other employees against Burgess that required her to
16 confront Burgess and report him to the TVHD Board.
17 On or about January 18, 2012, Burgess made the statement “two down and one to go.”
18 Thebeau believes the “two down” referred to Warrack and another employee and the “one to go”
19 referred to Thebeau. She alleges that all three were witnesses to the March 1, 2010 events.
20 On or about January 19, 2012, Thebeau filed a formal grievance and went on medical leave.
21 Thebeau did not request Family and Medical Leave Act (“FMLA”) time off because she had enough
22 accrued sick time. Thebeau, through her doctor, routinely reported her status, including in a letter
23 stating that she was disabled through August 22, 2012.
24 On or about June 15, 2012, Defendants retroactively reversed hours from Thebeau’s Paid Time
25 Off (“PTO”) account. Defendants claimed that Thebeau should not accrue PTO hours while she was
26 on leave. Thebeau alleges that this reflected a reversal of policy and that, prior to June 15, 2012, all
27 exempt employees could accrue PTO hours while on leave.
28 On or about June 28, 2012, TVHD terminated Thebeau.

1 such motion.” *Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir. 1981) (quoting *Crawford v. Bell*, 599
2 F.2d 890, 893 (9th Cir. 1979), *Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir. 1970)) (citing C.
3 Wright & A. Miller, *Federal Practice and Procedure*, § 1357 at 593 (1969)).

4 In Thebeau’s § 1983 claim, she alleges “Defendant TVHD took Plaintiff’s property from her
5 vested Paid Time Off account without due process in violation of 42 U.S.C. § 1983.” (Compl. ¶ 39).
6 “To establish a violation of procedural due process a plaintiff must demonstrate: (1) a deprivation of a
7 constitutionally protected liberty or property interest, and (2) a denial of adequate procedural
8 protections.” *Tutor-Saliba Corp. v. City of Hailey*, 452 F.3d 1055, 1061 (9th Cir. 2006) (quoting
9 *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998)). The Court
10 has serious doubts about the sufficiency of the allegations pertaining to Plaintiff’s § 1983 due process
11 claim. The only facts alleged in the complaint bearing relevance to this claim are that, on or about
12 June 15, 2012, TVHD retroactively reversed hours from Thebeau’s PTO account and that such conduct
13 reflected a reversal in TVHD policy because, prior to June 15, 2012, exempted employees could accrue
14 PTO hours while on leave. (Compl. ¶ 22). Plaintiff does not allege facts to suggest how the hours
15 reversed from her PTO account on June 15, 2012 would have translated into any constitutionally
16 protected property right in light of her June 28, 2012 dismissal. Plaintiff also does not allege any facts
17 pertaining to the procedures provided (or not provided) subsequent to the changes to her PTO account,
18 or whether she took advantage of any available procedures.

19 Accordingly, Plaintiff Thebeau is ORDERED TO SHOW CAUSE in writing on or before
20 August 22, 2014 why her fourth cause of action brought under 42 U.S.C. § 1983 should not be
21 dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim for which relief can be
22 granted.

23 CONCLUSION AND ORDER

24 For the reasons discussed above,

- 25 1. Plaintiff Debbie Thebeau is ORDERED TO SHOW CAUSE in writing on or
26 before August 22, 2014 why her fourth cause of action brought under 42 U.S.C. §
27 1983 should not be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to
28 state a claim for which relief can be granted;

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- 2. Plaintiff's response to the order to show cause shall not exceed ten (10) pages in length; and
- 3. Defendant Tehachapi Valley Healthcare District's motion for summary adjudication as to Plaintiff's first cause of action under Cal. Lab. Code § 1102.5 is HELD IN ABEYANCE pending the resolution of the above issue.

IT IS SO ORDERED.

Dated: August 14, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE