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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREN M. TAYLOR,

Plaintiff,

No. CIV S-08-0869 JAM DAD PS

vs.

DEPARTMENT OF THE
AIR FORCE, et al.,

ORDER

Defendants.

_____ /

This matter came before the court on January 23, 2009 for hearing of defendants' motion to dismiss plaintiff's claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The court also heard defendants' motion to strike documents that were submitted by plaintiff in opposition to the motion to dismiss. Plaintiff, proceeding pro se, appeared on her own behalf. Todd A. Pickles, Esq., appeared for defendants Department of the Air Force and Michael B. Donley, Secretary of the Air Force.

Upon consideration of the parties' briefing, their arguments at the hearing, and the entire file, the court granted defendants' motions for the reasons stated in open court. Liberally construing plaintiff's references to information and facts as an indication that plaintiff may be able to amend her pleading to state claims of employment discrimination and retaliation, the court dismissed plaintiff's amended complaint with leave to file a second amended complaint.

1 As the court previously advised plaintiff by order filed September 19, 2008, in an
2 employment discrimination case brought by a federal employee pursuant to Title VII, “the head
3 of the department, agency, or unit, as appropriate, shall be the defendant.” 42 U.S.C. § 2000e-
4 16(c). See Vinieratos v. U.S. Dep’t of Air Force, 939 F.2d 762, 772 (9th Cir. 1991) (“Title VII
5 requires that in a civil action alleging employment discrimination by the government, ‘the head
6 of the department, agency, or unit, as appropriate, shall be the defendant.’”). Accordingly,
7 plaintiff’s second amended complaint should not name the Department of the Air Force as a
8 defendant.

9 As explained in court, plaintiff’s second amended complaint should not include
10 any allegations of unfair labor practices that are within the exclusive jurisdiction of the Federal
11 Labor Relations Authority. With regard to plaintiff’s remaining claims against defendant
12 Donley, plaintiff must identify all causes of action, i.e., identify what provisions of which statutes
13 were violated, and then allege facts in support of each cause of action and state what relief is
14 sought. The factual allegations supporting plaintiff’s claims must be succinct yet sufficient to
15 demonstrate that the actions complained of resulted in the violation of one or more federal rights.
16 Documents should not be attached to the second amended complaint as a substitute for factual
17 allegations or as mere evidence, and the second amended complaint should not contain legal
18 argument or citations to cases. Vague and conclusory allegations will not state a claim for relief
19 or constitute the short and plain statement required by Federal Rule of Civil Procedure 8(a)(2).
20 Although the Federal Rules adopt a flexible pleading policy, every complaint must give the
21 defendant fair notice of the plaintiff’s claims.

22 Plaintiff is informed that her second amended complaint will supersede the
23 amended complaint that has been dismissed. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
24 Pursuant to Local Rule 15-220, the second amended complaint must be complete in itself without
25 reference to the prior pleading. The court cannot refer to prior pleadings to make the second
26 amended complaint complete.

1 IT IS ORDERED that:

2 1. Defendants' November 26, 2008 motion to dismiss (Doc. No. 15) is granted
3 with leave to amend;

4 2. Defendants' December 18, 2008 motion to strike (Doc. No. 24) is granted and
5 the documents attached to plaintiff's opposition brief (Doc. No. 21) are deemed stricken;

6 3. Plaintiff's second amended complaint shall be served on defendants' counsel
7 and filed with the court on or before March 6, 2009; the pleading shall be titled "Second
8 Amended Complaint" and shall not name the Department of the Air Force as a defendant; and

9 4. Defendants' response to plaintiff's second amended complaint shall be filed
10 and served within twenty days after service of the second amended complaint.

11 DATED: January 26, 2009.

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14 _____
15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

15 DAD:kw
16 DDad1/orders.pro se/taylor0869.ord.grmtd.lta