UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CATHY JONES-RILEY,

Plaintiff,

v.

HEWLETT PACKARD COMPANY and MARGO WATSON,

Defendants.

No. 2:13-CV-00125-TLN-EFB

ORDER

This matter is before the Court pursuant to Defendants Hewlett Packard Co. ("HP") and Margo Watson's ("Watson") (collectively, "Defendants") Motion for Summary Judgment and/or Partial Summary Judgment. (Mot. for Summ. J., ECF No. 22.) Plaintiff Cathy Jones-Riley ("Plaintiff") has filed an opposition to Defendant's motion. (Pl.'s Opp'n to Defs.' Mot. for Summ. J., ECF No. 25.) The Court has carefully considered the arguments raised in Defendants' motion and reply as well as Plaintiff's opposition. For the reasons set forth below, the Court DISMISSES with prejudice Plaintiff's claims under the doctrine of judicial estoppel.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff brought suit against Defendants on September 4, 2012, in California Superior Court, Placer County. (Compl., ECF No. 2-1.) Defendants removed the action to this Court on January 22, 2013. (Notice of Removal, ECF No. 2.) In her complaint, Plaintiff alleges seven causes of action: 1) race discrimination in violation of 42 USC § 1981; 2) race discrimination in violation of California Constitution, Article I, § 8; 3) retaliation in violation of 42 USC § 1981; 4)

retaliation in violation of Cal. Labor Code § 1102.5; 5) wrongful termination in violation of public policy; 6) intentional infliction of emotional distress; and 7) negligent infliction of emotional distress. (ECF No. 2-1.) On February 13, 2014, Defendants moved for summary judgment or, in the alternative, partial summary judgment against Plaintiff. (ECF No. 22.) Defendants argue that all of Plaintiff's claims are barred by judicial estoppel as a result of Plaintiff's failure to disclose the claims in her bankruptcy filing. (Defs.' Mem. in Supp. of Mot. for Summ. J., ECF No. 22-1.) Defendants further argue that Plaintiff's claims must be dismissed because each asserted cause of action provides no genuine dispute of material fact.[1] (ECF No. 22-1.)

Plaintiff's complaint alleges that she suffered discrimination on the basis of her race beginning in September 29, 2009, while she was employed at HP. (ECF No. 2-1, ¶ 11–12.) Plaintiff alleges that she complained to a Human Resources representative at HP about her concerns of race discrimination on January 20, 2010. On that same day, Plaintiff states that she was given a performance warning and placed on probation by Defendant Watson, her supervisor. (ECF No. 2-1, ¶ 18.) On January 26, 2010, Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging race discrimination and retaliation for complaints of race discrimination. (ECF No. 2-1, ¶ 18.) On July 6, 2010, HP notified Plaintiff that she would be terminated effective September 10, 2010. (ECF No. 2-1, ¶ 19.) On July 7, 2010, Plaintiff filed a second EEOC charge against HP, alleging her termination was a result of race discrimination and retaliation against her for reporting such conduct. (Defs.' Undisputed Material Facts ("UMF"), ECF No. 22-2, ¶ 48.)

Defendants assert, and Plaintiff does not dispute, that Plaintiff filed for a Chapter 13 bankruptcy in the Federal District Court of the Northern District of Georgia on September 23, 2011. (UMF, ECF No. 22-2, ¶ 53.) Plaintiff did not disclose the two EEOC charges, or any other reference to the instant claims, as part of her bankruptcy petition. (UMF, ECF No. 22-1, ¶ 55–56.) Plaintiff converted her Chapter 13 bankruptcy to Chapter 7 on December 1, 2011, and

[1] Because this Court finds that each of Plaintiff's claims is barred by judicial estoppel, the Court will not address Defendants' arguments as to the merits of each individual cause of action.

received Chapter 7 discharge on March 14, 2012. (UMF, ECF No. 22-2, ¶ 57.) Plaintiff then filed the instant claims in state court on September 4, 2012. (Compl., ECF No. 2-1.) There is no indication that Plaintiff made any effort to amend her bankruptcy petition to disclose these claims at any time.

II. STANDARD OF LAW

The doctrine of judicial estoppel is applied to "protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 743 (2001). In the bankruptcy context, the Ninth Circuit has held that "a party is judicially estopped from asserting a cause of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements." *Hamilton v. State Farm Fire & Cas. Co*., 270 F.3d 778, 783 (9th Cir. 2001) (citing *Hay v. First Interstate Bank of Kalispell, N.A*., 978 F.2d 555, 557 (9th Cir. 1992)). Judicial estoppel is "an equitable doctrine invoked by a court at its discretion." *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). *See also*, *Dzakula v. McHugh*, 746 F.3d 399, 402 (9th Cir. 2014); *Benetatos v. Hellenic Republic*, 371 F. App'x 770, 771 (9th Cir. 2010); *Latin v. Perot Sys. Corp*., 336 F. App'x 708, 709 (9th Cir. 2009).

The Supreme Court has outlined three factors that courts may consider in deciding whether to apply judicial estoppel: 1) whether a party's later position is clearly inconsistent with its earlier position; 2) whether the party has succeeded in persuading a court to accept the earlier position; and 3) whether the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Hamilton*, 270 F.3d at 782–83 (citing *New Hampshire*, 532 U.S. at 750–51). The Ninth Circuit does "not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts." *Id*. at 783. However, many district courts within the Ninth Circuit have applied judicial estoppel in a bankruptcy context using these three factors. *See, e.g., Ceja-Corona v. CVS Pharmacy, Inc*., No. 1:12-CV-01703-AWI, 2014 WL 1679410 (E.D. Cal. Apr. 28, 2014); *Banuelos v. Waste Connections, Inc.*, No. 1:12-CV-1012 AWI SAB, 2013 WL 398859 (E.D. Cal. Jan. 31, 2013);

Yoshimoto v. O'Reilly Auto., Inc., No. C 10-05438 LB, 2011 WL 2197697 (N.D. Cal. June 6, 2011); *Caviness v. England*, No. CIVS042388 GEB DADPS, 2007 WL 1302522 (E.D. Cal. May 3, 2007).

III. ANALYSIS

Defendants ask this Court to dismiss Plaintiff's complaint in its entirety on the basis of judicial estoppel, arguing that Plaintiff failed to disclose these claims in her Chapter 13 bankruptcy filing. (ECF No. 22-1.) The Court will apply the Supreme Court's three factor test in determining whether Plaintiff's omission is grounds for dismissing her claims.

A. Plaintiff's Claims are Clearly Inconsistent with Her Bankruptcy Filing

Defendants argue that Plaintiff's claims in this case are clearly inconsistent with her bankruptcy filing. (ECF No. 22 at 12.) Plaintiff responds that "she never considered" disclosing the information because "she assigned no value to the claim and hoped the disagreement would resolve." (ECF No. 25 at 12.) She further argues that she did not make the decision to sue Defendants until August 2012, five months after her debt was discharged. (ECF No. 25 at 12.) Plaintiff's arguments are insufficient under the law to support a defense.

It is clear that, in her bankruptcy filing, Plaintiff was under "an express, affirmative duty to disclose all assets, *including contingent and unliquidated claims*." *Hamilton*, 270 F.3d at 785 (emphasis in original). The Ninth Circuit has held that such claims exist when "the debtor has knowledge of enough facts to know that a potential cause of action exists." *Hamilton*, 270 F.3d at 784. This district has further held that a claim, and the duty to report that claim, "accrues when the cause of action is complete with all its elements." *Ceja-Corona*, 2014 WL 1679410, at *9 (internal citations omitted).

There is no doubt that Plaintiff's legal claims existed at the time of her bankruptcy filing. Plaintiff states that she notified Defendants of her concerns of race discrimination on January 20, 2010. (ECF No. 2-1, ¶ 18.) Plaintiff relied on those relevant facts to file an EEOC charge on January 26, 2010. (ECF No. 2-1, ¶ 18.) Plaintiff was notified that she would be terminated on July 6, 2010. (ECF No. 2-1, ¶ 19.) On July 7, 2010, Plaintiff filed a second EEOC charge against HP, alleging her termination was a result of race discrimination and retaliation against her for

reporting such conduct. (Defs.' Undisputed Material Facts ("UMF"), ECF No. 22-2, ¶ 48.) Clearly, Plaintiff had sufficient facts to determine that a cause of action against Defendants may have existed. In addition, all of these actions took place prior to Plaintiff's filing for bankruptcy on September 23, 2011. (UMF, ECF No. 22-2, ¶ 53.)

Moreover, Plaintiff's assertion that she "assigned no value to the claim" is disingenuous. Plaintiff's attorney submitted a letter to Defendants on February 16, 2012, a month before Plaintiff's bankruptcy claim was resolved, alleging a cause of action and outlining "demands." (UMF, ECF No. 22-2, ¶ 62.) A subsequent letter from Plaintiff's attorney on June 25, 2012 indicates that Plaintiff and her counsel estimated the value of her claim to be $890,000. (UMF, ECF No. 22-2, ¶ 63.) Clearly, Plaintiff felt that her claims held some value. *Yoshimoto v. O'Reilly Auto., Inc.*, 2011 WL 2197697, at *6 (N.D. Cal. June 6, 2011) (applying judicial estoppel due to plaintiff's failure to disclose claims in bankruptcy filing and finding that retaining a lawyer who sought $2.6 million was evidence that plaintiff knew of the claims' value).

Finally, the fact that Plaintiff did not formally file claims against Defendants until after her debt was discharged is irrelevant to this analysis. Courts have been clear that the date the claims have accrued for the purpose of judicial estoppel is irrelevant to the date the claims are filed in court. *See, e.g.*, *Hamilton*, 270 F.3d at 784 (finding judicial estoppel applied where plaintiff had sent letters to defendant notifying of potential claims, but did not file against defendant until one year after filing for bankruptcy); *Ceja-Corona*, 2014 WL 1679410, at *9 (applying judicial estoppel against plaintiff's disability discrimination claims where plaintiff did not file EEOC complaints until more than one year after her bankruptcy filing); *Banuelos v. Waste Connections, Inc.*, 2013 WL 398859, at *3–4 (finding that plaintiff's claim was estopped where the claim accrued just one month before the bankruptcy proceeding was terminated and the action was not filed in court until after the proceeding terminated).

Plaintiff had an obligation to disclose these claims in her bankruptcy filing. Her failure to do so makes her attempt to bring these claims in the instant action inconsistent with her bankruptcy action.

B. The Court was "Misled" in Bankruptcy Proceedings

A court is misled where it relies on Plaintiff's inconsistent representations in making its decision. *Hamilton*, 270 F.3d at 778. The bankruptcy court reached a final decision in this case, discharging Plaintiff's debt under Chapter 7 on March 14, 2012. (UMF, ECF No. 22-2, ¶ 57.) Therefore, Plaintiff's bankruptcy filing, which did not disclose the instant claims, was successful. The Ninth Circuit has held that "a discharge of debt by a bankruptcy court … is sufficient acceptance to provide a basis for judicial estoppel." *Hamilton*, 270 F.3d at 784.

C. Allowing Plaintiff's Claim Provides an Unfair Advantage

It is clear that permitting Plaintiff to proceed with her claims provides her with an unfair advantage. Plaintiff argues that applying judicial estoppel would simply reward the "bad actors," the Defendants, by relieving them of the responsibility to justify their alleged discrimination. (ECF No. 25 at ¶ 12–13.) While Plaintiff's point is well taken, it is simply not supported by the law. Plaintiff's failure to list her claims against Defendants in her bankruptcy filing deceived the bankruptcy court and Plaintiff's creditors, who relied on her statements of debt. *Hamilton*, 270 F.3d at 785. "The interests of creditors and the Bankruptcy Court are impaired when an incomplete disclosure is made. If this case were to proceed, it would reward the failure to fully disclose assets. Such a result would be improper and unfair." *Banuelos*, 2013 WL 398859, at *3–4.

D. Plaintiff's Failure to Disclose was Not Mistaken

Plaintiff's primary opposition to judicial estoppel is that Plaintiff's failure to disclose these claims in her bankruptcy filing was inadvertent and mistaken. (ECF No. 25 at 11–13.) Plaintiff argues that it is inappropriate for a court to apply judicial estoppel where the party's position is based on inadvertence or mistake. (ECF No. 25 at 11 (citing *New Hampshire*, 532 U.S. at 753).) Plaintiff's argument is misplaced for two reasons.

First, the Ninth Circuit has not recognized inadvertence or mistake as an exception to judicial estoppel in this context. *Yoshimoto*, 2011 WL 2197697, at *6 (citing *Hamilton*, 279 F.3d at 783). Even if inadvertence or mistake could provide an exception in this context, this district has indicated that "'debtor's failure to satisfy its statutory disclosure duty is 'inadvertent' only

when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment.'" *Id*. at *6 (quoting *In re Coastal Plains*, 179 F.3d 197, 210 (5th Cir. 1999)). Plaintiff had intimate knowledge of the claims, as evidenced by the EEOC charges she filed, and had a motive to conceal them so that creditors would not reach whatever benefit she collected from those claims.

Plaintiff further argues that evidence of mistake should prevent judicial estoppel. Plaintiff cites to *Ah Quin v. County of Kauai Department of Transportation*, 733 F.3d 267 (9th Cir. 2013), where a Ninth Circuit court reversed a district court's application of judicial estoppel on the grounds that the district court failed to properly consider mistake as an exception. (ECF No. 25 at 11–12.) Plaintiff's argument overlooks that the Ninth Circuit court in *Ah Quin* clearly limited their analysis to the facts of that case. In *Ah Quin*, the district court refused to accept plaintiff's assertion that his omissions in his bankruptcy filing were inadvertent despite the fact that plaintiff reopened the bankruptcy proceedings and corrected the filing error. *Ah Quin*, 733 F.3d at 267–77. The court held that a "key factor is that Plaintiff reopened her bankruptcy proceedings and filed amended bankruptcy schedules that properly listed this claim as an asset." *Id*. at 272. Plaintiff can make no such claim here. Therefore, this Court finds insufficient evidence of inadvertence or mistake.

Second, even if this Court found that Plaintiff's initial incorrect filing was inadvertent, her failure to amend or reopen her filing to correct the errors prevents her from claiming mistake or inadvertence. "The debtor's duty to disclose potential claims as assets does not end when the debtor files schedules, but instead continues for the duration of the bankruptcy proceeding." *Hamilton*, 270 F.3d at 785. Certainly, at the point where Plaintiff retained counsel to communicate with Defendants regarding these claims, Plaintiff should have recognized the need to disclose the claims in her bankruptcy filing. Her failure to do so indicates that her omission was not mistaken or inadvertent.

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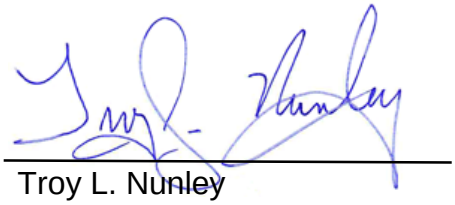
IV. CONCLUSION

For the foregoing reasons, the Court DISMISSES Plaintiff's claims with prejudice.

IT IS SO ORDERED.

Dated: January 21, 2015



Troy L. Nunley
United States District Judge