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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILLIP K. SAUD,

Plaintiff,

v.

STATE OF CALIFORNIA,
DEPARTMENT OF HEALTH CARE
SERVICES,

Defendant.

No. 2:14-cv-02536-GEB-AC

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

Defendant moves under Federal Rule of Civil Procedure ("Rule") 12(b)(6) for dismissal of counts 1, 2, 3, 4, 5, 8, 9, 12, and 13 in Plaintiff's Complaint, and also under Rule 12(e) for a more definite statement of all counts.¹ Defendant argues the challenged portions of Plaintiff's Complaint consist of conclusory allegations that Plaintiff was discriminated against in his employment as an attorney with Defendant by being denied promotions because of his national origin, gender, and religion, in violation of Title VII of the federal Civil Rights Act of 1964 ("Title VII") and the California Fair Employment and Housing Act ("the FEHA").

¹ Defendant initially moved to dismiss counts 6, 7, and 16, but Plaintiff voluntarily dismissed count 16, (Opp'n to Mot. to Dismiss 2:1-4, ECF No. 7), therefore, the motion challenging count 16 is denied as moot. Further, Defendant withdrew its dismissal motion in its reply brief that challenged counts 6 and 7. (Def.'s Reply Br. 2:22-24, ECF No. 8.)

1 I. FACTUAL BACKGROUND

2 The following allegations in Plaintiff's Complaint
3 concern the motion. Plaintiff alleges he is "a male [and] a
4 naturalized citizen, having emigrated from . . . Jordan," and "he
5 is not Jewish." (Compl. ¶ 4.) Plaintiff also alleges he "has been
6 subjected to a pattern and practice of discrimination . . . based
7 on his gender, national origin, and religious creed." (Id.)

8 In June of 2013, Plaintiff was a "limited term Attorney
9 III" on Defendant's Mental Health and Substance Use Disorder
10 ("MHSUD") team. (Id. ¶ 7.) At that time, Plaintiff applied for
11 Assistant Chief Counsel, and was not selected. (Id.) Rather, "a
12 Jewish woman with just one year of experience in [the Department
13 of Healthcare Services ("DHCS")]" was selected. (Id.) "On
14 November 5, 2013, [P]laintiff applied for an Attorney III
15 position on the Healthcare Delivery System ("HCDS") team." (Id. ¶
16 23.) Plaintiff was interviewed twice, with his second interview
17 occurring on January 3, 2014. (Id.) However, on or around January
18 6, 2014, the hiring attorney "decided not to select anyone for
19 the position, and to re-post the position instead." (Id.)

20 "On November 22, 2013, [P]laintiff's supervisor . . .
21 told him she would not transition [Plaintiff's limited term
22 appointment on the MHSUD team] . . . to a permanent position."
23 (Id. ¶ 11.) Instead, Plaintiff was "demoted to an Attorney I on
24 another team." (Id.) As a result, the position was left vacant.
25 (Id. ¶ 17.) On December 5, 2013, Plaintiff applied for the
26 vacancy on the MHSUD team, and "[o]n February 12, 2014, [he] was
27 notified that he was not selected." (Id.) Plaintiff alleges that
28 "all three selectees were women, whose religion [P]laintiff does

1 not know." (Id.)

2 In May of 2014, Plaintiff again applied for the
3 Attorney III position on the HCDS team after it was re-posted.
4 (Id. ¶ 29.) "Plaintiff was interviewed but not selected." (Id.)
5 Instead, a "woman . . . who was an attorney with the Department
6 of Corporations" was selected. (Id.) Also in May of 2014,
7 "[P]laintiff applied for a position as [Assistant Chief Counsel]
8 on the HCDS team." (Id. ¶ 40.) "Plaintiff was interviewed but not
9 selected," and instead, a "woman . . . who had no [relevant]
10 experience" was selected, but "she was never actually placed in
11 the position." (Id.) The position was eventually filled "with an
12 Acting [Assistant Chief Counsel]." (Id.)

13 II. LEGAL STANDARDS

14 "To survive a motion to dismiss, a [pleading] must
15 contain sufficient factual matter, accepted as true, to 'state a
16 claim to relief that is plausible on its face.'" Ashcroft v.
17 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v.
18 Twombly, 550 U.S. 544, 570 (2007)). "A claim is facially
19 plausible 'when the plaintiff pleads factual content that allows
20 the court to draw the reasonable inference that the defendant is
21 liable for the misconduct alleged.'" Somers v. Apple, Inc., 729
22 F.3d 953, 959 (9th Cir. 2013) (citation omitted). "Plausibility
23 requires pleading facts, as opposed to conclusory allegations."
24 Id. "Factual allegations must . . . raise a right to relief
25 above the speculative level." Twombly, 550 U.S. at 555. that,

26 Further, Rule 12(e) prescribes, *inter alia*: "A party
27 may move for a more definite statement of a pleading to which a
28 responsive pleading is permitted but which is so vague or

1 ambiguous that a party cannot reasonably be required to frame a
2 responsive pleading [T]he motion . . . must point out the
3 defects complained of and the details desired.”

4 **III. DISCUSSION**

5 Title VII makes it unlawful for an employer “to
6 discriminate against any individual with respect to his
7 compensation, terms, conditions, or privileges of employment,
8 because of such individual’s . . . religion, sex, or national
9 origin.” 42 U.S.C. § 2000e-2(a)(1). The FEHA also prohibits an
10 employer from discriminating against an employee “because of [the
11 employee’s] . . . race, religious creed, [or] national origin.”
12 Cal. Gov. Code § 12940(a). “California courts apply the Title VII
13 framework to claims brought under FEHA.” Metoyer v. Chassman, 504
14 F.3d 919, 941 (9th Cir. 2007).

15 “For discriminatory promotion, the plaintiff must show:
16 1. he is a member of a class protected by Title VII; 2. he was
17 qualified for the position sought; 3. he was denied the
18 promotion; and 4. individuals outside of the protected class were
19 promoted.” Pejic v. Hughes Helicopters, Inc., 840 F.2d 667, 672
20 (9th Cir. 1988).

21 **(a) Count 1**

22 Defendant seeks dismissal of Plaintiff’s count 1, in
23 which Plaintiff alleges he was discriminated against in violation
24 of the FEHA based on his national origin, gender, and religion,
25 when Defendant failed to promote him to a position for which he
26 applied. Plaintiff’s specific allegations in count 1 are the
27 following:

28 In June of 2013, [P]laintiff occupied a

1 limited term Attorney III position on the
2 [MHSUD] team[; h]e applied for an Assistant
3 Chief Counsel . . . position on that team
4 when that position was advertised in June of
5 2013[; and h]e was not selected for that
6 position[, even though he] was clearly better
7 qualified than the selectee, a Jewish woman
8 with just one year of experience in [another
9 state agency.] Plaintiff . . . had occupied
10 an Attorney III position on the MHSUD team
11 for well over a year at that point, had
12 repeatedly been praised for his work, and had
13 been with DHCS for almost eight years.

14 (Compl. ¶ 7) (emphasis added). Plaintiff has not alleged that
15 the selected "Jewish woman's" national origin is different from
16 Plaintiff's national origin. Therefore, the portion of
17 Defendant's motion challenging national origin discrimination in
18 count 1 is granted.

19 **(b) Counts 2 and 3**

20 Defendant seeks dismissal of counts 2 and 3, in which
21 Plaintiff alleges he was discriminated against based on his
22 national origin, gender, and religion under Title VII and the
23 FEHA, respectively, as follows:

24 On November 22, 2013, [P]laintiff's
25 supervisor Lisa Velazquez told him she would
26 not transition the Limited Term appointment
27 he had occupied for approximately two years
28 to a permanent appointment, even though the
position had been made a permanent position,
as had been standard practice. This was the
[MHSUD] . . . Attorney III position.
Velazquez told plaintiff he would be demoted
to an Attorney I on another team.

29 Velazquez originally justified her decision
30 on the assertion that [P]laintiff had, in
31 filling out certain forms on-line, failed to
32 indicate that he wanted a permanent
33 appointment to an Attorney III position. That
34 assertion was false. Later, after [P]laintiff
35 complained about Velazquez's discriminatory
36 treatment in failing to transition
37 [P]laintiff's appointment into a permanent
38 appointment, Velazquez changed her story,

1 asserting that personnel rules prohibited her
2 from transitioning [P]laintiff into a
3 permanent Attorney III position without
4 further competition, which was not only a
5 fundamentally different explanation than that
6 originally articulated, but also false.
7 Plaintiff is informed and believed and
8 therefore alleges that, after [P]laintiff
9 complained about this discriminatory conduct
10 on the part of Velazquez, the State of
11 California disciplined Velazquez for her
12 discriminatory conduct towards plaintiff.

13 (Compl. ¶ 11.)

14 Defendant argues these are conclusory allegations that
15 "fail[] to allege that anyone similarly situated but not in
16 [Plaintiff's] protected class[es of gender, national origin, and
17 religion] was . . . transfer[ed]" to a permanent position; and
18 that [P]laintiff has failed to allege any facts to indicate that
19 any decisions not to transfer him were because of his gender,
20 national origin or religious creed." (Mot. 4:16-19.) Plaintiff
21 does not allege facts supporting his conclusion that he was
22 discriminated against based on his gender, national origin, or
23 religion. Therefore, the portion of Defendant's motion
24 challenging counts 2 and 3 is granted.

25 **(c) Counts 4 and 5**

26 Defendant seeks dismissal of counts 4 and 5, in which
27 Plaintiff alleges that when Defendant failed to select him for an
28 Attorney III position on the MHSUD team, it discriminated against
29 him based on his national origin, gender, and religion; and
30 therefore, violated Title VII and the FEHA. Plaintiff alleges in
31 these counts that "all three selectees [for the Attorney III
32 position] were women." (Compl. ¶ 17) (emphasis added). However,
33 Plaintiff also states he "does not know" the religion of the

1 female selectees, (Id. ¶ 17), and he says nothing about each
2 selectee's national origin. Therefore, the portion of Defendant's
3 motion challenging Plaintiff's allegations of discrimination
4 based on religion and national origin in counts 4 and 5 is
5 granted.

6 **(d) Counts 8 and 9**

7 Defendant seeks dismissal of counts 8 and 9, in which
8 Plaintiff alleges Defendant's failure to select him for a
9 position on the HCDS team constitutes discrimination based on his
10 national origin, gender, and religion proscribed by Title VII and
11 the FEHA, since he "was clearly better qualified than the woman
12 who was selected." (Compl. ¶ 29.) (emphasis added). However,
13 Plaintiff has not alleged facts supporting his allegations of
14 discrimination based on religion and national origin. Therefore,
15 the portion of Defendant's motion challenging Plaintiff's
16 allegations of discrimination based on religion and national
17 origin in counts 8 and 9 is granted.

18 **(e) Counts 12 and 13**

19 Defendant seeks dismissal of counts 12 and 13, in which
20 Plaintiff alleges gender, national origin, and religious
21 discrimination under Title VII and the FEHA based on Defendant's
22 failure to select him as Assistant Chief Counsel for the HCDS
23 team, and its selection of "a woman with no [relevant]
24 experience" for that position who "was never actually placed in
25 the position" since Defendant ultimately filled the "position
26 with an Acting [Assistant Chief Counsel]." (Compl. ¶¶ 39-40.)
27 Plaintiff has not alleged facts concerning the alleged national
28 origin and religious discrimination in these counts. Therefore,

1 the portion of Defendant's motion challenging Plaintiff's
2 allegations of national origin and religious discrimination in
3 counts 12 and 13 is granted.

4 **(f) Defendant's Motion for a More Definite Statement**

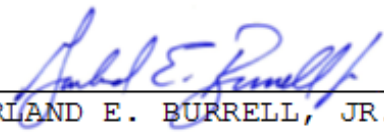
5 Defendant also argues it is entitled to a more definite
6 statement under Rule 12(e) as to any unchallenged claim in the
7 dismissal motion and any claim that is not dismissed. This motion
8 is denied because Defendant has not sufficiently "point[ed] out
9 the defects complained of and the details desired" as required by
10 Rule 12(e).

11 **IV. CONCLUSION**

12 For the stated reasons, the portion of count 1 alleging
13 national origin discrimination is dismissed; the portion of
14 counts 2 and 3 alleging national origin, religion and gender
15 discrimination are dismissed; and the portion of counts 4 and 5,
16 8 and 9, and 12 and 13, alleging national origin and religious
17 discrimination are dismissed. Further, Defendant's request for a
18 more definite statement under Rule 12(e) is denied.

19 However, Plaintiff is granted ten days leave from the
20 date on which this Order is filed to file an amended complaint
21 that addresses the stated deficiencies in any dismissed claim.

22 Dated: July 14, 2015

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25 _____
26 GARIAND E. BURRELL, JR.
27 Senior United States District Judge
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