

1 failed to file any opposition to that Motion.⁴ For the reasons set forth below, Defendant
2 CDCR's Motion is GRANTED.⁵

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4 **BACKGROUND⁶**

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6 Plaintiff is an African-American woman. For more than ten years, she served as a
7 "Foster Grandparent" in the CDCR'S Program at the N.A. Chaderjian Youth Correctional
8 Facility. Plaintiff's duties in that capacity were to provide mentorship and to act as a role
9 model for juvenile offenders. Plaintiff alleges she was compensated as a Foster
10 Grandparent through an hourly stipend, reimbursements for transportation and meals, as
11 well as time off for various purposes including sick leave, holidays and vacation. Plaintiff
12 further alleges that she was covered under federal and state compensation for work-
13 related accidents.

14 According to Plaintiff, she performed her duties satisfactorily and without
15 complaint prior to being terminated on March 20, 2014. Beginning in March 2013,
16 however, she claims that Donnie Alexander, the Program Director, subjected her to
17 verbal and psychological abuse. Defendant Alexander allegedly accused Plaintiff of
18 disrespecting, slandering, and undermining the credibility of the Program staff. Plaintiff
19 contends that those accusations were unverified, unsubstantiated, and dishonest.
20 Furthermore, Defendants allegedly defamed Plaintiff by communicating that she

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⁴ On December 20, 2016, the Court received a notice from CDCR's counsel that Daniel L. Mitchell,
23 Plaintiff's counsel, had died at some unspecified point previously. It remains unclear whether Plaintiff's
24 failure to provide any opposition to this motion is due to Mr. Mitchell's death. While it is the Court's
25 understanding that the State Bar of California assumed jurisdiction over Mr. Mitchell's practice in early
26 February of 2017, the Court has received absolutely no notification from any party purporting to represent
27 Mr. Mitchell's practice since that time. Since the present motion has now been under submission since
28 December 12, 2016, a period of more than six months, and given the lack of any communication and the
clear lack of merit to Plaintiff's remaining claim as set forth below, the Court believes it should be decided
without further delay.

⁵ Having determined that oral argument would not be of material assistance, the Court ordered this
matter submitted on the briefing in accordance with Local Rule 230(g).

⁶ This statement of facts is based on the allegations contained in Plaintiff's FAC (ECF No. 18).

1 participated in theft of funds collected for a social event, was a poor performer as a
2 Foster Grandparent, had a problem with authority, had a negative attitude, and was unfit
3 for the position. Plaintiff contends that those statements were also false.

4 Plaintiff further claims that Defendant Alexander denied her the opportunity to
5 exercise grievance procedures mandated by the Program Orientation Handbook
6 (“Handbook”) before terminating her participation in the Program. Specifically, the
7 Handbook allows “any person” to file a sexual harassment claim. Plaintiff contends that
8 her termination was based on pretextual grounds and that she was terminated because
9 of her “sex, race/color, national origin/ancestry, and job status.” FAC, ¶ 26. She also
10 claims, without further factual explication, that Alexander “had a reputation” for
11 “harassing minority women.” *Id.* at ¶ 35.

12 Plaintiff’s original Complaint was filed on February 27, 2015, in San Joaquin
13 Superior Court before being removed to this Court based on federal claims that
14 Defendants violated both Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et
15 seq, (“Title VII”) and 42 U.S.C. § 1981 (“Section 1981”). On June 10, 2015, Defendants
16 filed a motion for judgment on the pleadings pursuant to Rule 12(c). That motion was
17 granted by Memorandum and Order filed February 10, 2016, on grounds that Plaintiff, as
18 a Foster Grandparent volunteer, had not shown she was entitled to protection under
19 either Title VII or California’s corresponding protections against discrimination as codified
20 in the Fair Employment and Housing Act, California Government Code § 12900, et seq.
21 (“FEHA”). The Court further found that Plaintiff’s defamation claims, as well as the
22 claims levied against Defendant Alexander, were not viable. She was nonetheless given
23 leave to amend and, on February 28, 2016, she filed the currently operative First
24 Amended Complaint.

25 In response to the FAC, Defendants filed a motion to dismiss seeking dismissal
26 pursuant to Rule 12(b)(6) of (1) the FEHA and Title VII claims in causes of action two,
27 three, and thirteen, (2) the defamation claim in cause of action five, and (3) the breach of
28 contract claim against Defendant Alexander in cause of action one. That motion was

1 granted by Memorandum and Order filed November 14, 2016, which left as Plaintiff's
2 only surviving claim her cause of action against breach of contract against Defendant
3 CDCR. See ECF No. 27, 14:3-4.

4 In the motion now before the Court, Defendant CDCR requests judgment on the
5 pleadings with respect to that remaining breach of contract claim.

7 STANDARD

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9 Under Federal Rule of Civil Procedure 12(c), "a party may move for judgment on
10 the pleadings" after the pleadings are closed "but early enough not to delay trial." A
11 motion for judgment on the pleadings pursuant to Rule 12(c) challenges the legal
12 sufficiency of the opposing party's pleadings. See, e.g., Westlands Water Dist. v.
13 Bureau of Reclamation, 805 F. Supp. 1503, 1506 (E.D. Cal. 1992). Any party may move
14 for judgment on the pleadings under Rule 12(c) after the pleadings are closed but within
15 such time as to not delay trial.

16 A motion for judgment on the pleadings should only be granted if "the moving
17 party clearly establishes on the face of the pleadings that no material issue of fact
18 remains to be resolved and that it is entitled to judgment as a matter of law." Hal Roach
19 Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1989).
20 Judgment on the pleadings is also proper when there is either a "lack of cognizable legal
21 theory" or the "absence of sufficient facts alleged under a cognizable legal theory."
22 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). In reviewing a
23 Rule 12(c) motion, "all factual allegations in the complaint [must be accepted] as true
24 and construe[d] . . . in the light most favorable to the non-moving party." Fleming v.
25 Pickard, 581 F.3d 922, 925 (9th Cir. 2009). Judgment on the pleadings under Rule 12(c)
26 is warranted "only if it is clear that no relief could be granted under any set of facts that
27 could be proved consistent with the allegations." Deveraturda v. Globe Aviation Sec.
28 Servs., 454 F.3d 1043, 1046 (9th Cir. 2006) (internal citations omitted).

1 to show the creation of a contract, a party must do so by “identifying a contract within the
2 language of a regulatory statute and [by] defining the contours of a contractual
3 obligation. Id. at 466. Here, Plaintiff’s complaint fails to identify any language within the
4 Foster Grandparent Program statutory scheme which gives rise to any contractual
5 relationship or obligation. See FAC, ¶¶ 15-19. Moreover, looking beyond the purview of
6 the complaint, review of the federal regulations applicable to the Foster Grandparent
7 Program shows no language or other indicia that any contract for the volunteer positions
8 is either contemplated or created. See 45 C.F.R. § 2522, et seq. Indeed, as the Court
9 has already noted in its Memorandum and Order dated November 4, 2016, “to the extent
10 Plaintiff was a Foster Grandparent volunteer, her position in that regard [was] defined by
11 statute rather than contract.” ECF No. 27, 12:8-9. It also bears notice, given Plaintiff’s
12 status a volunteer for a state agency, that even under California law, the terms and
13 conditions of government service are regulated by statute and not by contract. Hyland v.
14 Wonder, 972 F.2d 1129, 1141 (9th Cir. 1992).

15 The Court consequently concludes that Plaintiff’s relationship with CDCR, and
16 specifically her participation in the Foster Grandparent program, was statutorily as
17 opposed to contractually based. As such, Plaintiff’s claim for breach of contract fails as
18 a matter of law and must be dismissed.

20 CONCLUSION

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22 For all the foregoing reasons, Defendant CDCR’s Motion for Judgment on the
23 Pleadings (ECF No. 28) is GRANTED. Because the Court does not believe the
24 deficiencies of Plaintiff’s breach of contract claim can be rectified through amendment,

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1 no further leave to amend will be permitted. Additionally, since Plaintiff's breach of
2 contract claim is Plaintiff's sole remaining claim, this concludes her case in its entirety
3 and the Clerk of Court is directed to close the file.

4 IT IS SO ORDERED.

5 Dated: June 19, 2017

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7 MORRISON C. ENGLAND, JR.
8 UNITED STATES DISTRICT JUDGE
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