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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHEILA BROADNAX,  
Plaintiff,  
v.  
ADAMS & ASSOCIATES, INC.,  
Defendant.

No. 2:16-cv-00289 -TLN-KJN

**ORDER GRANTING DEFENDANT’S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

This matter is before the Court pursuant to Defendant Adams & Associates, Inc.’s (“Defendant”) Motion for Judgment on the Pleadings. (ECF No. 18.) Plaintiff Sheila Broadnax (“Plaintiff”) opposes the motion. (ECF No. 21.) Defendant has filed a reply. (ECF No. 22.) For the reasons detailed below, the Court hereby GRANTS Defendant’s motion for judgment on the pleadings (ECF No. 18).

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff was employed as a Residential Advisor for Sacramento Job Corps Center (“SJCC”), a career development facility for at-risk young adults. (ECF No. 18-1 ¶¶ 9–10.) Plaintiff is an African-American female over 40 years of age. (ECF No. 18-1 ¶¶ 27, 35, & 44.) Plaintiff alleges during her 12-year tenure at SJCC she had no disciplinary history and worked “with support and praise from her supervisors.” (ECF No. 18-1 ¶ 11.) Plaintiff alleges she was an active member of California Federation of Teachers Union (“CFTU”). (ECF No. 18-1 ¶ 12.)

1 In February 2014, Defendant became the new managing corporation of SJCC. (ECF No.  
2 18-1 ¶ 13.) Defendant evaluated all SJCC employees and rehired some, including Plaintiff who  
3 was rehired as a Residential Advisor in March 2014. (ECF No. 18-1 ¶¶ 14–15.) Defendant fired  
4 Plaintiff in April 2014 for “sleeping on the job, failing to follow directives, and poorly performing  
5 tasks at work.” (ECF No 18-1 ¶¶ 16–17.) Plaintiff alleges Defendant “used a single incident  
6 where she closed her eyes while entering time on her timecard as grounds to falsely accuse her of  
7 sleeping at work.” (ECF No. 18-1 ¶¶ 18–19.) Plaintiff alleges she was not provided with any  
8 progressive discipline or process. (ECF No. 18-1 ¶ 19.)

9 On November 18, 2015, Plaintiff filed a complaint in the Superior Court of Sacramento  
10 County. (ECF No. 18-1 at 4.) Defendant answered in the Superior Court denying each claim and  
11 asserting affirmative defenses. (ECF No. 1-1 at 21–27.) On February 12, 2016, Defendant  
12 removed this action to this Court on the basis of diversity jurisdiction. (ECF No. 1.) Defendant  
13 then moved for judgment on the pleadings contending that Plaintiff fails to state any claim on  
14 which relief can be granted. (ECF No. 18 at 7.)

15 Plaintiff alleges claims for violations of the California Fair Employment and Housing Act  
16 (“FEHA”) and common law, including: (i) age, sex, and race discrimination in violation of  
17 California Government Code § 12940(a); (ii) wrongful termination in violation of public policy;  
18 (iii) retaliation in violation of California Government Code § 12940(h); (iv) failure to prevent  
19 discrimination in violation of California Government Code § 12940(k); and (v) intentional  
20 infliction of emotional distress. (ECF No. 18-1 at 4, 6–14.)

## 21 II. STANDARD OF LAW

22 Federal Rule of Civil Procedure 12(c) provides “[a]fter the pleadings are closed — but  
23 early enough not to delay trial — a party may move for judgment on the pleadings.” Fed. R. Civ.  
24 P. 12(c). The issue presented by a Rule 12(c) motion is substantially the same as that posed in a  
25 12(b) motion — whether the factual allegations of the complaint, together with all reasonable  
26 inferences, state a plausible claim for relief. *See Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d  
27 1047, 1054–1055 (9th Cir. 2011). “A claim has facial plausibility when the plaintiff pleads  
28 factual content that allows the court to draw the reasonable inference that the defendant is liable

1 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v.*  
2 *Twombly*, 550 U.S. 544, 556 (2007)).

3 In analyzing a 12(c) motion, the district court “must accept all factual allegations in the  
4 complaint as true and construe them in the light most favorable to the non-moving party.”  
5 *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Nevertheless, a court “need not assume  
6 the truth of legal conclusions cast in the form of factual allegations.” *United States ex rel. Chunie*  
7 *v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). “A judgment on the pleadings is properly  
8 granted when, taking all the allegations in the non-moving party’s pleadings as true, the moving  
9 party is entitled to judgment as a matter of law.” *Ventress v. Japan Airlines*, 603 F.3d 676, 681  
10 (9th Cir. 2010) (citations omitted).

11 A judgment on the pleadings is not appropriate if the Court “goes beyond the pleadings to  
12 resolve an issue; such a proceeding must properly be treated as a motion for summary judgment.”  
13 *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); Fed. R.  
14 Civ. P. 12(d). A district court may, however, “consider certain materials — documents attached  
15 to the complaint, documents incorporated by reference in the complaint, or matters of judicial  
16 notice — without converting the motion to dismiss [or motion for judgment on the pleadings] into  
17 a motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

18 “While Rule 12(c) of the Federal Rules of Civil Procedure does not expressly provide for  
19 partial judgment on the pleadings, neither does it bar such a procedure; it is common to apply  
20 Rule 12(c) to individual causes of action.” *Strigliabotti v. Franklin Res., Inc.*, 398 F. Supp. 2d  
21 1094, 1097 (N.D. Cal. 2005) (citing *Moran v. Peralta Cmty. Coll. Dist.*, 825 F. Supp. 891, 893  
22 (N.D. Cal. 1993)). Courts have the discretion in appropriate cases to grant a Rule 12(c) motion  
23 with leave to amend, or to simply grant dismissal of the action instead of entry of judgment. *See*  
24 *Lonberg v. City of Riverside*, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004); *Carmen v. S.F. Unified*  
25 *Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997).

### 26 III. ANALYSIS

27 Defendant argues Plaintiff failed to plead sufficient facts to support any of her claims.  
28 (ECF No. 18 at 7.) The Court will discuss each claim in turn.

1           A.     Discrimination in Violation of California Government Code § 12940(a)

2           Plaintiff alleges she was qualified and capable of performing her job duties, and  
3 Defendants knew Plaintiff was an African-American woman, and over age of 40. (ECF No. 18-1  
4 ¶¶ 27, 37, & 45.) Defendant moves to dismiss Plaintiff’s FEHA claims for discrimination on the  
5 basis of age, sex, and race, arguing Plaintiff’s pleadings are conclusory and “boilerplate.” (ECF  
6 No. 18 at 10.) Plaintiff responds her claims are sufficiently stated. (ECF No. 21 at 4–5.)

7           FEHA prohibits an employer from discriminating against an employee because of the  
8 employee’s age, sex, or race. CAL. GOV’T CODE § 12940(a). To state a claim for discrimination  
9 under FEHA, a plaintiff must allege: (i) she was a member of a protected class; (ii) she was  
10 performing competently in the position she held; (iii) she suffered an adverse employment action;  
11 and (iv) the employer acted with a discriminatory motive. *Ayala v. Frito Lay, Inc.*, No. 116-CV-  
12 01705-DAD-SKO, 2017 WL 2833401, at \*7 (E.D. Cal. June 30, 2017) (citing *Lawler v.*  
13 *Montblanc N. Am., LLC*, 704 F.3d 1235, 1242 (9th Cir. 2013); *Guz v. Bechtel Nat’l, Inc.*, 24 Cal.  
14 4th 317, 355 (2000)). A plaintiff can demonstrate discriminatory motive by showing “other  
15 similarly situated employees outside of the protected class were treated more favorably, or other  
16 circumstances surrounding the adverse employment action give rise to an inference of  
17 discrimination.” *Achal v. Gate Gourmet, Inc.*, 114 F. Supp. 3d 781, 800 (N.D. Cal. 2015).

18           The only allegations Plaintiff makes in support of her claim are that before Defendant  
19 took over SJCC she had no disciplinary history and received praise, and Defendant fired her for  
20 reasons she disputes and was aware she was an African-American, female, and over the age of 40.  
21 (ECF No. 18-1 ¶¶ 17–19, 27, 37, & 45.) Plaintiff’s allegation Defendant terminated her due to  
22 her membership in various protected classes is a recitation of an element. *See Iqbal*, 556 U.S. at  
23 678. Furthermore, Plaintiff’s allegation Defendant terminated her employment for reasons she  
24 disputes is insufficient to plausibly suggest Defendant acted *because* of her age, sex, or race. *See*  
25 *Ravel v. Hewlett-Packard Enter., Inc.*, 228 F. Supp. 3d 1086, 1099 (E.D. Cal. 2017) (finding the  
26 plaintiff did not allege facts rising to a plausible inference of age discrimination, such as being  
27 replaced by a younger employee, overhearing negative comments about age, or her age being  
28 point of discussion).

1 Plaintiff's allegations do not give rise to a plausible inference that Defendant's proffered  
2 reason for terminating Plaintiff was pretextual. *Achal*, 114 F. Supp. 3d at 802. Because Plaintiff  
3 has not alleged facts sufficient to support the fourth element in relation to any of her  
4 discrimination claims, the Court need not analyze the other three elements. Accordingly, the  
5 Court GRANTS Defendant's motion for judgment on the pleadings as to Plaintiff's  
6 discrimination claims.

7 B. Wrongful Termination in Violation of Public Policy

8 Plaintiff alleges Defendant wrongfully terminated her employment in violation of public  
9 policy based on Plaintiff's union affiliation, age, sex, and race. (ECF No. 18-1 ¶ 55.) Defendant  
10 argues Plaintiff's claim is preempted by the National Labor Relations Act ("NLRA"), fails to  
11 allege sufficient facts, or alternatively, fails because Plaintiff's wrongful termination claim is  
12 based on deficient discrimination claims. (ECF No. 18 at 11-12.)

13 i. *National Labor Relations Act ("NLRA") Preemption*

14 In cases which involve either an actual or an arguable violation of either Section 7 or 8 of  
15 the NLRA, both the states and the federal courts must defer to the "exclusive competence" of the  
16 National Labor Relations Board ("NLRB"). *Commc 'ns Workers of Am. v. Beck*, 487 U.S. 735,  
17 742 (1988) (citing *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959)).  
18 NLRA Section 7 protects employees' rights to join labor unions, collectively bargain, and engage  
19 in other activities for purposes of mutual aid. 29 U.S.C. § 157. NLRA Section 8 prevents  
20 employers from engaging in unfair labor practices or interfering with employees' rights to join  
21 labor unions and bargain collectively. 29 U.S.C. § 158(a)(1)-(3).

22 Plaintiff's claim for wrongful termination based on Plaintiff's active union membership, if  
23 proven, would constitute a violation of the NLRA and is subject to *Garmon* preemption. *Clayton*  
24 *v. Pepsi Cola Bottling Grp.*, Civ. A. No. CV85-5957-WMB, 1987 WL 46230, at \*7 n.1 (C.D. Cal.  
25 Mar. 3, 1987). The parties agree on this point. (ECF No. 18 at 12; ECF No. 21 at 8.) Plaintiff  
26 argues Defendant had multiple illegal reasons for firing her, and *Garmon* preemption should not  
27 apply to her *entire* wrongful termination claim, which includes allegations of public policy  
28 violations outside NLRB's jurisdiction. (ECF No. 21 at 8-9) (citing *Balog v. LRJV, Inc.*, 204

1 Cal. App. 3d 1295, 1308–09 (Ct. App. 1988), *reh'g denied and opinion modified* (Sept. 20, 1988)  
2 (holding a court retains jurisdiction over wrongful termination claims based on many illegal  
3 reasons, if some reason or reasons were not even arguably related to unfair labor practices).

4 Plaintiff's claims for wrongful termination based on age, sex, and race, are not arguably  
5 related to violations of either Section 7 or 8 of NLRA, which protect union activities. The  
6 scheme of civil protection set out in FEHA is the type of interest "deeply rooted in local feeling  
7 and responsibility" NLRA does not deprive the states of the power to act on. *See Sears, Roebuck*  
8 *& Co. v. San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 180, 196 (1978); *Carter v. Smith*  
9 *Food King*, 765 F.2d 916, 921 n.6 (9th Cir. 1985).

10 Accordingly, Plaintiff's claim for wrongful termination based on union membership is  
11 preempted by NLRA, but Plaintiff's claim for wrongful termination in violation of public policy  
12 regarding Plaintiff's age, sex, and race, is not preempted.

13 *ii. Pleading Adequacy of Plaintiff's Wrongful Termination Claim*

14 Defendant argues, to the extent Plaintiff's wrongful termination claim is not preempted, it  
15 fails because it is premised on deficient discrimination claims. (ECF No. 18 at 12.) "The  
16 elements of a claim for wrongful discharge in violation of public policy are (1) an employer-  
17 employee relationship, (2) the employer terminated the plaintiff's employment, (3) the  
18 termination was substantially motivated by a violation of public policy, and (4) the discharge  
19 caused the plaintiff harm." *Yau v. Allen*, 229 Cal. App. 4th 144, 154 (2014).

20 As discussed, Plaintiff does not state sufficient allegations to support claims for age, sex,  
21 and race discrimination, so Plaintiff's derivative claim for wrongful termination in violation of  
22 public policy based on age, sex, and race fails. *See Tumblin v. USA Waste of California, Inc.*, No.  
23 CV 16-2902 DSF-PLAX, 2016 WL 3922044, at \*8 (C.D. Cal. 2016). Accordingly, the Court  
24 GRANTS Defendant's motion for judgment on the pleadings as to the wrongful termination claim.

25 C. Retaliation in Violation of California Government Code § 12940(h)

26 Plaintiff alleges she engaged in the protected activities of "being an African-American  
27 woman over the age of 40," and "an active member of the CFT union." (ECF No. 18-1 ¶¶ 64–  
28 65.) Plaintiff alleges Defendant "refused to hire her" because of those alleged protected

1 activities. (ECF No. 18-1 ¶¶ 64–65.) Defendant argues Plaintiff failed to allege “a valid adverse  
2 employment action,” or causation between that action and a protected activity, and claims  
3 regarding union activity are preempted by the NLRA. (ECF No. 18 at 13.)

4 To establish a claim for retaliation in violation of Section 12940(h), a plaintiff must show  
5 “(1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an  
6 adverse employment action, and (3) a causal link existed between the protected activity and the  
7 employer’s action.” *Yanowitz v. L’Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042 (2005); *Ayala*, 2017  
8 WL 2833401, at \*12. “Protected activity” under Section 12940(h) means an employee “opposed  
9 any practices forbidden under [FEHA] or . . . filed a complaint, testified, or assisted in any  
10 proceeding under [FEHA].” CAL. GOV’T CODE § 12940(h); *Yanowitz*, at 1042.

11 Plaintiff alleges Defendant refused to hire her and that constitutes an adverse employment  
12 action, however, Plaintiff also alleges Defendant did hire her and then terminated her  
13 employment. (ECF No. 18-1 ¶¶ 15, 17, 64–65; ECF No. 21 at 3.) If the Court construes Plaintiff  
14 to allege termination of employment as the adverse action, Plaintiff’s claim still fails because she  
15 has not alleged Defendant fired her because she engaged in any protected activity under Section  
16 12940(h). Plaintiff does not allege Defendant retaliated against her because she opposed  
17 practices forbidden under FEHA, filed a complaint, testified, or assisted in any proceeding under  
18 FEHA. Plaintiff’s claim for retaliation is a duplicate of her discrimination claims. Further, any  
19 claim for retaliation based on union activities would be subject to the exclusive jurisdiction of the  
20 NLRB. Because Plaintiff has not alleged facts sufficient to support the first element of her  
21 retaliation claim, the Court need not analyze the other elements. Accordingly, the Court  
22 GRANTS Defendant’s motion for judgment on the pleadings as to Plaintiff’s retaliation claim.

23 D. Failure to Prevent Discrimination in Violation of California Government Code §  
24 12940(k)

25 Plaintiff alleges “Defendant failed to take ‘all reasonable steps necessary’ to prevent its  
26 employees from engaging in discrimination.” (ECF No. 18-1 ¶ 74.) Defendant argues FEHA’s  
27 Section 12940(k) does not give private litigants a private cause of action for a stand-alone claim  
28 for failure to prevent discrimination as an independent statutory violation. (ECF No. 18 at 13–

1 15.) Defendant cites the Fair Employment and Housing Commission’s (“FEHC”) decision in *In*  
2 *the Matter of the Accusation of the Dep’t Fair Empl. & Hous. v. Lyddan Law Group (Williams)*,  
3 FEHC Dec. No. 10-04-P, at \*12 (Oct. 19, 2010) (holding “there cannot be a claim [by a private  
4 litigant] for failure to prevent discrimination without a valid claim for discrimination”). (ECF  
5 No. 18 at 14.) As discussed above, Plaintiff has not alleged facts sufficient to state a claim for  
6 discrimination based on age, sex, or race, so Plaintiff’s derivative claim for failure to prevent  
7 discrimination fails. Accordingly, the Court GRANTS Defendant’s motion for judgment on the  
8 pleadings as to Plaintiff’s failure to prevent discrimination claim.

9 E. Intentional Infliction of Emotional Distress

10 Plaintiff alleges Defendant acted “with the intent to cause emotional distress or with  
11 reckless disregard of the probability” of doing so. (ECF No. 18-1 ¶ 81.) Defendant argues  
12 Plaintiff’s claim fails as a matter of law because Plaintiff’s allegations with respect to intentional  
13 infliction of emotional distress relate to personnel management activities, which do not rise to the  
14 level of “extreme and outrageous conduct.” (ECF No. 18 at 15–16.)

15 To state a claim for intentional infliction of emotional distress, a plaintiff must show,  
16 among other things, “extreme and outrageous conduct by the defendant with the intention of  
17 causing, or reckless disregard of the probability of causing, emotional distress.” *Hughes v. Pair*,  
18 46 Cal. 4th 1035, 1050 (2009). Extreme and outrageous conduct must “exceed all bounds of that  
19 usually tolerated in a civilized community.” *Id.* at 1050–51. “Whether a defendant’s conduct can  
20 reasonably be found to be [extreme and] outrageous is a question of law that must initially be  
21 determined by the court.” *Berkley v. Dowds*, 152 Cal. App. 4th 518, 534 (2007).

22 “A simple pleading of personnel management activity is insufficient to support a claim of  
23 intentional infliction of emotional distress, even if improper motivation is alleged.” *Janken v.*  
24 *GM Hughes Electrs.*, 46 Cal. App. 4th 55, 80 (1996). “Managing personnel is not outrageous  
25 conduct beyond the bounds of human decency, but rather conduct essential to the welfare and  
26 prosperity of society.” *Id.* Personnel management activity includes, “hiring and firing, job or  
27 project assignments, office or work station assignment, promotion or demotion, performance  
28 evaluations, the provision of support, the assignment or non-assignment of supervisory functions,

1 deciding who will and who will not attend meetings, deciding who will be laid off.” *Id.* at 64–65.

2 Plaintiff alleges Defendant terminated her employment and disputes the reasons for her  
3 termination. (ECF No. 18-1 ¶¶ 17–19.) Plaintiff has not alleged any facts that are outside  
4 Defendant’s employment and supervisory duties. The action Plaintiff does allege — being fired  
5 — is an activity California courts have expressly found constitutes personnel management  
6 activity and is insufficient to support a claim of intentional infliction of emotional distress.  
7 *Janken*, 46 Cal. App. 4th at 64–65. Accordingly, the Court GRANTS Defendant’s motion for  
8 judgment on the pleadings as to Plaintiff’s intentional infliction of emotional distress claim.

9 **IV. LEAVE TO AMEND**

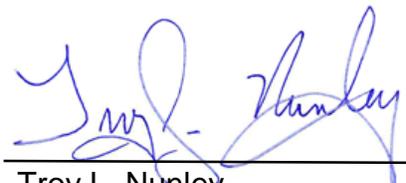
10 Courts have the discretion in appropriate cases to grant a Rule 12(c) motion with leave to  
11 amend, or to simply grant dismissal of the action instead of entry of judgment. *See Lonberg*, 300  
12 F. Supp. 2d at 945; *Carmen*, 982 F. Supp. at 1401. The Court cannot say that the pleading could  
13 not possibly be cured by the allegation of other facts. Accordingly, the Court GRANTS Plaintiff  
14 leave to amend the complaint within 30 days of the date of this Order.

15 **V. CONCLUSION**

16 For the foregoing reasons, Defendant’s Motion for Judgment on the Pleadings (ECF No.  
17 18) is hereby GRANTED as to all claims with leave to amend within 30 days of the date of this  
18 Order.

19 IT IS SO ORDERED.

20  
21 Dated: September 5, 2017



22  
23  
24 Troy L. Nunley  
United States District Judge