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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGELA RAMOS, an individual,

Plaintiff,

v.

LOS RIOS COMMUNITY COLLEGE
DISTRICT, a public entity,
THOMAS KLOSTER dba METRO-MATH
TUTORING SERVICES, a company,
THOMAS KLOSTER, an
individual, DOES 1-50,
inclusive,

Defendants.

CIV. NO. 2:17-1458 WBS KJN

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS STATE LAW CLAIMS

This court's Order of October 17, 2017, denying defendant's motion to dismiss plaintiff's federal claim for violation of 20 U.S.C. § 1681(a), did not address plaintiff's supplemental state law claims for violation of Cal. Educ. Code § 66270, violation of California Civil Code § 51.9, negligence, and intentional infliction of emotional distress. The court now does so in this Order.

"[A] school district may be liable if its own direct negligence is established, [but] it cannot be held vicariously

1 liable for its employee's torts." John R. v. Oakland Unified
2 Sch. Dist., 48 Cal. 3d 438, 441 (1989). Plaintiff argues that
3 she is not attempting to hold the district vicariously liable,
4 but argues that her state claims are premised on ratification.

5 As an alternate theory to respondeat superior, an
6 employer may be liable for an employee's act where the employer
7 either authorized the tortious act or subsequently ratified an
8 originally unauthorized tort." C.R., 169 Cal. App. 4th at 1110.
9 An employee may ratify an employee's action by the "voluntary
10 election to adopt the employee's conduct by, in essence, treating
11 the conduct as its own." Delfino v. Agilent Techs., Inc., 145
12 Cal. App. 4th 790, 810 (6th Dist. 2006). "The theory of
13 ratification is generally applied where an employer fails to
14 investigate or respond to charges that an employee committed an
15 intentional tort, such as assault or battery." C.R. v. Tenet
16 Healthcare Corp., 169 Cal. App. 4th 1094, 1110 (2d Dist. 2009).

17 The failure to discharge an employee after knowledge of
18 his or her wrongful acts may be evidence supporting ratification,
19 Delfino, 145 Cal. App. 4th at 810 (citation omitted), "but the
20 omission to dispense with the services of the offender, standing
21 by itself and unsupported by any other circumstances indicating
22 the employer's approval of his course, is never sufficient to
23 establish ratification." Edmunds v. Atchison, T. & S.F. Ry. Co.,
24 174 Cal. 246, 249 (1917).

25 Here, there are no facts alleged that show that
26 defendant voluntarily elected to treat Kloster's conduct as its
27 own. See Garcia ex rel. Marin v. Clovis Unified Sch. Dist., 627
28 F. Supp. 2d 1187, 1199 (E.D. Cal. 2009) (Ishii, J.) (stating

1 plaintiff had not pled adequate facts to establish ratification
2 where district took steps to effectuate change and punish the
3 teacher). In fact, plaintiff concedes that the District police
4 spoke to plaintiff the day after the District had actual notice
5 of the harassment, and interviewed Kloster a week later. Thus,
6 in response to learning about the harassment, the District
7 investigated and responded to plaintiff's complaints.

8 Moreover, California courts have hesitated to apply a
9 theory of ratification to hold a school district liable for the
10 sexual harassment of its teachers. See id. at 1203. ("[I]t is
11 unclear if ratification may be applied when the sexual misconduct
12 of a teacher is involved.")¹ With regard to plaintiff's
13 negligence claim, "[t]he only way a school district may be held
14 liable must be premised on its own direct negligence in hiring
15 and supervising the teacher." Steven F. v. Anaheim Union High
16 Sch. Dist., 112 Cal. App. 4th 904, 909 (4th Dist. 2003) (citing
17 John R., 48 Cal. 3d at 453).

18 Plaintiff argues that her negligence claim is based on
19 the District's own negligent conduct, including the failure to

20 ¹ Plaintiff argues that § 51.9 can be brought under a
21 ratification theory. See C.R., 169 Cal. App. 4th at 1111
22 ("Principles of ratification apply to a section 51.9 cause of
23 action.") Defendant argues that any § 51.9 claim against the
24 District "must be rooted in a theory of conspiracy or aider and
25 abettor liability." E.F. v. Delano Joint Union High Sch. Dist.,
26 Civ. No. 1:16-1166 LJO JLT, 2016 WL 5846998, at *6 (E.D. Cal.
27 Oct. 6, 2016) (O'Neill, J.); see also Cal. Civ. Code § 52(b)
28 ("Whoever denies the right provided by Section 51.7 or 51.9, or
aids, incites, or conspires in that denial, is liable for each
and every offense for the actual damages suffered by any person
denied that right.") The court need not decide which standard
applies. Under either standard, plaintiff has not sufficiently
pled enough facts to establish ratification, conspiracy, or
aiding and abetting.

1 adequately investigate the teacher's background and the failure
2 to adequately supervise the teacher. (Pl.'s Opp'n to Mot. to
3 Dismiss at 11.) However, as pled, plaintiff's negligence claim
4 appears to be based exclusively on vicarious liability.
5 Specifically, plaintiff alleges only that the district owed a
6 duty of reasonable care, breached that duty of care, and that
7 breach caused plaintiff harm. There are no facts alleged
8 regarding the District's supervision or investigation of Kloster.
9 A Complaint "requires more than labels and conclusions, and a
10 formulaic recitation of the elements of a cause of action will
11 not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.
12 Ct. 1955, 1965 (2007).

13 IT IS THEREFORE ORDERED that defendant's motion to
14 dismiss plaintiff's state law claims under the California Equity
15 in Higher Education Act, Cal. Educ. Code § 66270; California
16 Civil Code § 51.9; negligence; and intentional infliction of
17 emotional distress claims (Docket No. 4) be, and the same hereby
18 is GRANTED.

19 Plaintiff has twenty days from the date this Order is
20 signed to file a First Amended Complaint, if she can do so
21 consistent with this Order.

22 Dated: January 29, 2018



23 **WILLIAM B. SHUBB**
24 **UNITED STATES DISTRICT JUDGE**
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