

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROSEMARY DILLON,

Plaintiff,

No. C 04-01192 JSW

v.

SAN FRANCISCO VETERANS  
ADMINISTRATION FORT MILEY  
HOSPITAL, named as "EEO" at Fort Miley,  
Hospital, 4150 Clement Street, San Francisco,  
CA 94121,

Defendant.  

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**ORDER RE CORRESPONDENCE**

On December 8, 2004, this Court granted Defendant's motion to dismiss on the basis that any employment discrimination claims were barred. However, in that Order the Court gave Plaintiff leave to amend her complaint. Specifically, the Court ruled as follows:

Although styled as a complaint for discrimination, Ms. Dillon has also alleged facts suggesting that there was a breach of [an] alleged agreement to clean up her record in exchange for her resignation. The complaint, however, does not clearly state by what procedure the agreement was reached (*e.g.*, a union grievance procedure or a Title VII statutory procedure), whether the "EEO" was a party to the agreement, or whether the "EEO" was merely involved in the negotiations between Ms. Dillon and the SFVA, resulting in a private agreement between those two parties. Apart from the general terms described herein, Ms. Dillon has not alleged any of the other terms of the agreement, has not stated whether the alleged agreement was written or oral, and, if written, has not included a copy of the agreement.

Despite these deficiencies, leave to amend is to be liberally granted where, from underlying facts or circumstances, a plaintiff may be able to state a claim. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). *See also McKenzie v. Milpitas*, 738 F. Supp. 1293, 1398 n.5 (N.D. Cal. 1990) (stating that leave to amend is freely given in order to facilitate a proper decision on the merits, and is applied with "extreme liberality"). Accordingly, because Ms. Dillon pleads facts that suggest she

1           may have a claim for breach of the agreement discussed in her complaint,  
2           the Court GRANTS Ms. Dillon leave to amend to plead such a claim. In  
3           doing so, however, the court notes that Ms. Dillon faces sever hurdles on  
4           questions of jurisdiction and statutes of limitation.

5           (Docket No. 14 (Order Granting Motion to Dismiss at 8:2-19 (footnote omitted). The Court  
6           granted Ms. Dillon leave to amend “solely to plead a claim for breach of the agreement  
7           discussed in her complaint,” and ordered her to file an amended complaint by no later than  
8           January 10, 2005. (*Id.* at 9:1-3.) The Court further advised Ms. Dillon that failure to file an  
9           amended complaint within that time frame “shall result in a dismissal for failure to prosecute.”  
10          (*Id.* at 9:5.)

11          In apparent response to that Order, the Court received a letter dated December 21, 2004,  
12          from Plaintiff, which it construed as a request to reconsider its decision on the motion to  
13          dismiss. On January 12, 2005, the Court issued an Order denying the request to reconsider the  
14          Order denying the motion to dismiss. In that same Order, because Plaintiff had not filed an  
15          amended complaint, the Court ordered Plaintiff to show cause as to why her case should not be  
16          dismissed for failure to prosecute. Plaintiff was ordered to file a written response by February  
17          11, 2005. (*See* Docket Nos. 15, 16.)

18          In apparent response to that Order, Plaintiff sent a letter dated January 26, 2005, which  
19          states only that Plaintiff has not done anything wrong and reiterating her belief that she has been  
20          wronged by Defendant. Plaintiff did not, however, provide the Court with an explanation as to  
21          why she had not complied with the Court’s order to file an amended complaint, nor did she file  
22          any document with the Court that could be construed as an amended complaint.


23          On February 17, 2005, having considered the Plaintiff’s correspondence and considering  
24          that, after having ample opportunity to do so, Plaintiff had not complied with the Court’s order  
25          to file an amended complaint, the Court issued an Order dismissing the case for failure to  
26          prosecute and directed the Clerk to close the file. (Docket No. 17.)

27          Since that date the Court has received numerous letters from the Plaintiff, the most  
28          recent of which consistently state that Ms. Dillon prosecuted a case against the “EEO, at the  
29          Fort Miley Hospital,” and “did not prosecute a case against the San Francisco Veterans

1 Administration, Fort Miley Hospital.” (*See, e.g.*, Docket Nos. 24-25, 27-33.) The Court  
2 recognized in its Order granting the motion to dismiss, that Ms. Dillon might have a claim for  
3 breach of contract against either the SFVA or the “EEO” or both, and it granted Ms. Dillon  
4 leave to file an amended complaint to assert such claim. Ms. Dillon did not do so, and the  
5 Court dismissed for failure to prosecute. The Court has considered Ms. Dillon’s  
6 correspondence but finds no basis to revisit its Order dismissing this case for failure to  
7 prosecute. The matter is closed.

8 **IT IS SO ORDERED.**

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10 Dated: May 20, 2009

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13 JEFFREY S. WHITE  
14 UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DILLON,

Case Number: CV04-01192 JSW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

SAN FRANCISCO VETERANS  
ADMINISTRATION FORT MILEY H et  
al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
District Court, Northern District of California.

That on May 20, 2009, I SERVED a true and correct copy(ies) of the attached, by placing  
said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
delivery receptacle located in the Clerk's office.

Rosemary Dillon  
3099 Milpond Drive, East #2B  
Holland, MI 49424

Dated: May 20, 2009

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk