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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KIM E. TOLBERT,
Plaintiff,
v.
CITY & COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH, et
al.,
Defendants.

Case No. [16-cv-00810-JD](#)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

Re: Dkt. Nos. 13, 14

Plaintiff Kim Tolbert filed this employment discrimination lawsuit as a pro se litigant on February 18, 2016. Dkt. No. 1. She is now represented by counsel. *See* Dkt. No. 15. Defendants City and County of San Francisco (Department of Public Health) and Barbara Garcia have moved to dismiss the complaint. Dkt. Nos. 13, 14. The Court found this matter suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b), Dkt. No. 21, and dismisses the complaint with leave to amend.

Plaintiff’s complaint contains five claims for relief, brought under (1) Title II of the Federal Civil Rights Act of 1964, (2) 42 U.S.C. Section 1981, (3) 42 U.S.C. Section 1985, (4) California’s Unruh Civil Rights Act, and (5) CCSF Civil Service Rule 103. Dkt. No. 1.

Defendant Barbara Garcia moves to dismiss on the ground that she was not properly served with a complete copy of the complaint. Dkt. No. 13 at 5. In response, plaintiff has not shown that service on Garcia was proper under Federal Rule of Civil Procedure 4. *See, e.g., Sears v. Cnty. of Monterey*, No. C 11-01876 SBA, 2012 WL 368688, at *14 (N.D. Cal. Feb. 3, 2012) (“Once service of process has been challenged by the defendant, plaintiff bears the burden of proving valid service in accordance with Rule 4,” citing *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004)). On amendment of the complaint, as ordered below, plaintiff is directed to serve

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Garcia in accordance with Rule 4 and file a proof of service.

Both defendants move to dismiss the complaint for failure to state a claim. Dkt. Nos. 13, 14. In response, plaintiff seeks leave to amend the complaint “to pursue claims under Title VII, 42 U.S.C. Section 1981, and, 42 U.S.C. Section 1983 under the Equal Protection Clause and First Amendment.” Dkt. No. 16 at 4. The Court grants leave to amend for these claims only. Plaintiff’s claims under (1) Title II of the Federal Civil Rights Act of 1964, (3) 42 U.S.C. § 1985, (4) California’s Unruh Civil Rights Act, and (5) CCSF Civil Service Rule 103 are dismissed with prejudice.

Plaintiff will file her amended complaint by Friday, May 20, 2016.

IT IS SO ORDERED.

Dated: May 6, 2016



JAMES DONATO
United States District Judge