

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLLEEN DENISE WALKER,
Plaintiff,
v.
CA EMPLOYMENT DEVELOPMENT
DEPT.,
Defendant.

Case No. [17-cv-00071-JCS](#)

**ORDER DISMISSING AMENDED
COMPLAINT PURSUANT TO 28 U.S.C.
§ 1915 WITH LEAVE TO AMEND**

Re: Dkt. No. 9

I. INTRODUCTION

Plaintiff Colleen Denise Walker, pro se, brings this employment discrimination action against her former employer, the California Employment Development Department (“EDD”). The Court previously granted Walker’s application to proceed in forma pauperis (dkt. 2, 4) and now reviews the sufficiency of her amended complaint¹ pursuant to 28 U.S.C. § 1915(e)(2). For the reasons discussed below, the amended complaint is DISMISSED with leave to amend. Walker may file a second amended complaint addressing the deficiencies discussed herein **no later than May 3, 2017**.² The case management conference previously set for April 7, 2017 is hereby CONTINUED to June 30, 2017 at 2:00 PM in Courtroom G, located on the fifteenth floor of the San Francisco courthouse at 450 Golden Gate Avenue.

II. THE AMENDED COMPLAINT

Walker brings this action under Title VII of the Civil Rights Act of 1964, alleging employment discrimination in the course of her employment with EDD at a call center. Am.

¹ Walker filed an amended complaint (dkt. 9) before the Court determined whether her initial complaint should be served on EDD.

² Walker has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c). Because no other party has yet been served or appeared, Walker is currently the only party to the case and her consent is sufficient for the undersigned to evaluate her amended complaint.

1 Compl. (dkt. 9). She describes the “acts complained of” as follows:

2 Management caused a stressful work environment in lieu of my
3 medical condition and denied me a work environment free of
4 discrimination. Harassment by management regarding the
5 nationality of my fiancé (Iranian) and defamation of my character as
6 a U.S. Veteran. Denied access to my Department of Veteran Affairs
7 physician after causing Acute Stress in workplace and directed me
8 to return to harassing and stressful environment. Forced to quit on
9 January 6, 2016 due to working conditions that were affecting my
10 physical and mental health.

11 *Id.* ¶ 4 (sic throughout).

12 Walker alleges that EDD discriminated against her based on her race or color, her status as
13 a veteran, and her fiancé’s Iranian descent. *Id.* ¶ 5. She describes the facts of her claim as
14 follows:

15 Questioned and denied access to VA urgent care via email in 2012
16 by manager Raymond Tapia, resulting in emergency hospitalization,
17 voiced concern to Senator Eric Swalwell (Exhibit A) Management
18 posted my fiancé’s Nader Zand picture in front entrance and lunch
19 room (Exhibit B) Retaliation by management regarding my rights to
20 a discrimination free work environment (Exhibit’s C & D), Called
21 CHP on me at workplace (Exhibit E), Processed over 3000
22 electronic Spanish claims during overtime backlog, but denied
23 hardship transfer because I do not speak Spanish (Exhibit F),
24 Addressed concerns to U.S. Senators (Exhibit G), Great concerned
25 ignored (Exhibit H), Denied access to VA healthcare because
26 emergency card was missing (Exhibit I).

27 *Id.* ¶ 6 (sic throughout). The exhibits attached to Walker’s amended complaint are summarized
28 below in chronological order, with the exception of Exhibit B, which is a photograph of a bulletin
board that includes one posting with a picture of a man’s face. *See* Am. Compl. Ex. B. Walker
alleges that the discrimination at issue occurred on or about December 7, 2015, and that she
received a right-to-sue letter from the Equal Employment Opportunity Commission on December
7, 2016. Am. Compl. ¶¶ 7, 9.

Exhibit A is a letter to Walker from U.S. Representative Eric Swalwell, dated July 25,
2014. Am. Compl. Ex. A. This letter does not reference any correspondence from Walker to
Swalwell, but instead states Swalwell’s opposition to the Supreme Court’s holding in *Burwell v.*
Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014), and his view that “[h]ealth care decisions
should be made by a woman in consultation with her family, her faith, and her physician – not her

1 boss.” Am. Compl. Ex. A. The version of this letter attached to the amended complaint also
2 includes a photocopy of a Department of Veterans Affairs card bearing Walker’s name and
3 photograph. *Id.*

4 Exhibit C is a memorandum from A’Nette Knox-Talley to Walker dated July 24, 2015 and
5 captioned “Memorandum of Discussion – Disturbances at Workplace.” Am. Compl. Ex. B
6 (capitalization altered). The memorandum describes an incident in which Walker’s fiancé Nadder
7 Zand stood near the EDD office building staring into a window, and another incident in which he
8 stood outside the gate of building yelling: “You, I want to talk to you, what the hell is going on
9 with management? Come here, I want to talk to you, Damn you, Tammy? What the hell is going
10 on?” *Id.* at 1 (purporting to quote Zand). According to Knox-Talley, Walker stated: (1) that Zand
11 grabbed Walker’s arm and yelled at her when she went outside to talk to him; (2) that Zand had
12 refused Walker’s requests to stop coming to the office because he believed he needed to protect
13 her; (3) that over the previous few months Zand had begun yelling at Walker to come meet him
14 during her breaks from work; and (4) that Zand asked for the names of some of Walker’s
15 coworkers and supervisors and wanted to speak to them directly. *Id.* at 1–2. Knox-Talley wrote
16 that she had advised Walker that Zand’s behavior was “impacting the office” and Walker’s ability
17 to focus on work, that Walker should contact the Oakland Police Department if she thought that
18 was necessary, that it was Walker’s responsibility to resolve the issue so that it did not disrupt the
19 workplace, and that Knox-Talley expected Walker to do so immediately. *Id.* at 2. The
20 memorandum also advised Walker that resources were available through EDD’s employee
21 assistance program. *Id.* Knox-Talley signed the memorandum, but Walker refused to sign it. *Id.*

22 The same day that Knox-Talley issued her the memorandum, Walker sent an email to
23 Ernesto Magana, another EDD employee, stating that she wanted to dispute aspects of the
24 memorandum and raise concerns, and asking to whom she should direct such a response. Am.
25 Compl. Ex. C-1. Magana responded eleven minutes later to ask Walker how she wished to
26 proceed, and suggested the possibilities of submitting a rebuttal to the memorandum, a formal
27 complaint, or a union grievance. *Id.*

28 Walker sent a rebuttal to Knox-Talley on July 27, 2015. Am. Compl. Ex. C-2. She wrote

1 that the issues arose from incidents where she was docked pay or questioned when she stayed
2 home from work due to illness or back pain. *Id.* at 1. According to Walker, Zand was concerned
3 that Walker had been treated with indifference by management, but Walker asserted that aspects
4 of Knox-Talley’s characterization of Zand’s behavior were inaccurate, and that her ability to focus
5 on her job had not been affected. *Id.* According to Walker, the California Highway Patrol had
6 been called to the office, and had told her that Zand could walk with her during her breaks as long
7 as he was not on state property. *Id.* at 2.

8 On August 12, 2015, Tammy Johnson sent a memorandum to Walker denying her request
9 for a hardship transfer. Am. Compl. Ex. F. Johnson explained that the only positions available at
10 the offices to which Walker wished to transfer required Spanish language ability. *Id.* at 1. She
11 encouraged Walker to watch for other available positions and apply if a suitable position became
12 available, and also noted that she might benefit from EDD’s employee assistance program. *Id.*
13 Johnson also sent a letter to Yvonne R. Walker (no apparent relation to Plaintiff Colleen Walker),
14 the president of the relevant chapter of the Service Employees International Union, notifying the
15 union that the request for hardship transfer had been denied because the only open position
16 required an employee to speak Spanish. *Id.* at 3.

17 Exhibit E-1 to the complaint is a partially redacted copy of an “Arrest - Investigation
18 Report” completed by Officer Jose Avina of the California Highway Patrol, listing Walker as the
19 subject and “Incident” as the offense investigated. *See* Am. Compl. Ex. E-1. The report, which is
20 dated November 19, 2015, describes an incident that occurred on November 18, 2015. *See id.* In
21 the narrative supplement to the report, Avina explains that he was dispatched to investigate “a
22 remote control drone and a possibility of an employee carrying a concealed fire arm” (sic) at
23 Walker’s workplace. Am. Compl. Ex. E-2. As far as can be discerned from the unredacted
24 portions of the report, an employee told Avina that a coworker’s “husband”³ was flying a drone
25 over the building, and also that another person had told that employee that another employee
26 (apparently Walker) said that “she carried a [sic] ‘M-16’ in her new purse.” *Id.* Avina spoke to
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28 ³ References to Walker’s “husband” in Avina’s report appear to erroneously refer to her fiancé,
Zand. There is no indication outside of Avina’s report that Walker was married.

1 the person to whom Walker had made the comment about the purse—apparently Elizabeth Reed—
2 and Reed said she had complimented Walker on the purse and believed Walker was trying to make
3 a joke, but nevertheless “felt it should be addressed.” *Id.* When Avina spoke to Walker, Walker
4 told him that she was joking, she had never brought a gun to work, “neither she nor her husband
5 [sic] own a firearm,” the bag was too small to hold the types of guns she had mentioned, and her
6 coworkers were paranoid. *Id.* Walker also told Avina that her “husband” (sic) was not the person
7 flying the drone and that neither she nor him owned a drone. *Id.* Avina explained that comments
8 about weapons at work can alarm fellow employees and that issues with Walker’s “husband” (sic)
9 could result in him being banned from the workplace; Walker “related that she understood.” *Id.*
10 Avina relayed Walker’s responses to others at EDD and did not recommend further action. *Id.*

11 On December 14, 2015, Walker sent an email to Knox-Talley, her supervisor, stating that
12 she had previously objected to the decision to transfer some of the people from Knox-Talley’s unit
13 to a different unit headed by Ray Tapia. Am. Compl. Ex. H. Walker wrote: “Due to prior events
14 when I was previously in his unit and events/actions that have been occurring towards me over the
15 past year; this is starting to cause me great stress and chest pains working here at the Oakland
16 Primary Call Center.” *Id.*

17 On December 17, 2014, EDD Northern Operations Division Chief Maria Rutherford issued
18 Walker a “Corrective Action Memorandum” for “Discourteous Behavior,” which generally
19 describes the same events as Officer Avina’s report. Am. Compl. Ex. D-1 (capitalization altered).
20 Rutherford wrote that after Walker’s coworker Elizabeth Reed complimented Walker’s bag,
21 Walker responded that the bag “was to carry my Tech 9 or M16 in,” and another coworker
22 overheard the conversation. *Id.* at 1. Walker later met with a manager, James Thomas, to discuss
23 the incident and said that she wished she could take back the comment because of how others
24 perceived her. *Id.* Walker was issued a reminder of EDD’s zero tolerance policy regarding threats
25 and violence and completed an online training course. *Id.* Rutherford wrote that Walker’s
26 “behavior created a disruption” and was “completely unacceptable,” and directed Walker to “treat
27 everyone with dignity and respect.” *Id.* at 2. Both Rutherford and Walker signed this
28 memorandum. *Id.*

1 Walker sent a rebuttal to Rutherford on December 20, 2015, stating that she intended the
2 comment about keeping a gun in her handbag as a joke, Reed understood it as such and laughed,
3 and both of them thought nothing of it at the time. Am. Compl. Ex. D-3. Walker implied that it
4 would be absurd to take the comment literally because “this handbag is the size of a Starbucks
5 paper bag.” *Id.* She was embarrassed to be escorted outside to speak to law enforcement about
6 the incident, and wrote that attention from that incident and from her fiancé’s picture being posted
7 in the office caused her to seek a transfer to a different office, which was denied because she did
8 not speak Spanish. *Id.* She also wrote that she did not expect her later conversation with James
9 Thomas—whom she confided in “based on the understanding that he is also an African American
10 Veteran and would understand where I was coming from”—to be cited as further documentation
11 of her having made threats or disrupted the workplace. *Id.*

12 Exhibit I-1 to the complaint consists of an EDD “Emergency Assistance Information” form
13 dated December 21, 2015 and listing Walker’s contact information, emergency contact person,
14 and physician. *Id.* The same page includes a confirmation that Walker had checked in for
15 appointments at “OAK URGENT CARE CLINIC” and “OAK BEHAV HLTH PCMHI LOCUM”
16 on December 24, 2015. *Id.*

17 Exhibit I-2 consists of an initial intake assessment from a mental health consultation at the
18 Oakland VA clinic on December 24, 2015. Am. Compl. Ex. I-2. The author of the assessment,
19 Victoria Russell, wrote that Walker’s division chief referred her to a “WC clinic” after noticing
20 acute stress in Walker’s voice two days before. *Id.* A medical doctor at the clinic had diagnosed
21 “acute stress reaction” but sent Walker back to work. *Id.* Walker reported to Russell that she did
22 not think that response was appropriate for her symptoms and that she had been experiencing
23 harassment at work for two years, including an incident two years before where she was denied
24 sick leave but left work anyway, and ultimately needed surgery at an emergency room. *Id.*
25 Walker had been transferred away from the supervisor (presumably Tapia) who denied her sick
26 leave, but had recently been transferred back to him, and was experiencing anxiety, chest pain, and
27 difficulty sleeping. *Id.* According to Russell, Walker “describe[d] unusual patterns of harassment,
28 which a reasonable person would find discomfiting.” *Id.*

1 On August 18, 2016, Walker received a letter from the office of Senator Dianne Feinstein
2 stating that Feinstein was “sorry to hear about [Walker’s] difficulties with discrimination at work,”
3 but that the issue fell outside of Feinstein’s “jurisdiction as a United States Senator.” Am. Compl.
4 Ex. G-1. Feinstein encouraged Walker to contact the office of Jerry Brown, the Governor of
5 California. *Id.* On August 31, 2016, Walker received a letter from Eric José Vizcaíno, Director of
6 Constituent Services for Senator Barbara Boxer, stating that Walker’s issue “appears to fall under
7 the jurisdiction of the State of California” and that Vizcaíno had therefore forwarded Walker’s
8 correspondence to the director of the California Department of Fair Employment and Housing.
9 Am. Compl. Ex. G-2.

10 **III. ANALYSIS**

11 **A. Legal Standard**

12 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave
13 to proceed in forma pauperis, courts must engage in screening and dismiss any claims which:
14 (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek
15 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see*
16 *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996). Rule 8(a)(2) of the Federal Rules of Civil
17 Procedure provides that a pleading must contain a “short and plain statement of the claim showing
18 that the pleader is entitled to relief.” A complaint that lacks such statement fails to state a claim
19 and must be dismissed.

20 In determining whether a plaintiff fails to state a claim, the court assumes that all factual
21 allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th
22 Cir. 1995). However, “the tenet that a court must accept a complaint’s allegations as true is
23 inapplicable to legal conclusions [and] mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S.
24 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The pertinent
25 question is whether the factual allegations, assumed to be true, “state a claim to relief that is
26 plausible on its face.” *Id.* (citing *Twombly*, 550 U.S. at 570). Thus, to meet this requirement, the
27 complaint must be supported by factual allegations. *Id.*

28 Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must

1 “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v.*
2 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). “A district court should not dismiss a
3 pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the
4 complaint could not be cured by amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
5 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988) (per curiam)).
6 Further, when it dismisses the complaint of a pro se litigant with leave to amend, “the district court
7 must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the
8 litigant uses the opportunity to amend effectively.” *Id.* (quoting *Ferdik v. Bonzelet*, 963 F.2d
9 1258, 1261 (9th Cir. 1992)). “Without the benefit of a statement of deficiencies, the pro se litigant
10 will likely repeat previous errors.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th
11 Cir. 1988) (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)).

12 **B. Walker’s Amended Complaint Fails to State a Claim**

13 The only legal claim asserted in Walker’s amended complaint is for employment
14 discrimination under Title VII. That law prohibits employers from discriminating based on an
15 “individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a). Whether
16 based on a theory of harassment or a more specific adverse employment action, a Title VII
17 plaintiff must generally present “actions taken by the employer from which one can infer, if such
18 actions remain unexplained, that it is more likely than not that such action was based upon race or
19 another impermissible criterion.” *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 743 (9th Cir. 2004)
20 (quoting *Gay v. Waiters’ Union*, 694 F.2d 531, 538 (9th Cir. 1982)). Discrimination need not be
21 the only reason for the mistreatment. “It suffices instead to show that the motive to discriminate
22 was one of the employer’s motives, even if the employer also had other, lawful motives that were
23 causative in the employer’s decision.” *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517,
24 2523 (2013).

25 A plaintiff may rely either on direct evidence that her mistreatment was motivated by
26 discrimination, or on circumstantial evidence by showing that: (1) she is a member of a protected
27 class; (2) she was qualified for her position and performed adequately; (3) she experienced adverse
28 employment action; and (4) similarly situated individuals not in her protected class were treated

1 more favorably, or other circumstances give rise to an inference of discrimination. *See Hawn v.*
 2 *Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010). Although a plaintiff does not
 3 necessarily need to plead each of these elements specifically in her complaint, they nevertheless
 4 “help to determine whether [she] has set forth a plausible claim.” *Khalik v. United Air Lines*, 671
 5 F.3d 1188, 1192 (10th Cir. 2012); *see also Jianjun Xie v. Oakland Unified Sch. Dist.*, No.
 6 C 12-2950 CRB, 2013 WL 812425, at *4 n.3 (N.D. Cal. Mar. 5, 2013) (examining relevant
 7 authority).

8 Walker’s brief assertion that her “race or color,” “Veteran Status[,] and fiancé of Iranian
 9 [descent]” motivated her alleged mistreatment, as well as the assertion that she suffered
 10 “[h]arassment by management regarding the nationality of [her] fiancé (Iranian) and defamation of
 11 [her] character as a U.S. Veteran,” *see* Am. Compl. ¶¶ 4–5, are “legal conclusions [and] mere
 12 conclusory statements” that, without more, are not sufficient to state a claim. *See Iqbal*, 556 U.S.
 13 at 678. Instead the Court must determine whether Walker’s factual allegations plausibly support
 14 the conclusion that her race, her fiancé’s national origin, or her status as a veteran motivated any
 15 adverse action by EDD. The Court finds Walker’s present allegations insufficient.

16 Although Walker’s allegations do not address her race, some of the exhibits to the
 17 amended complaint suggest that she is African American. *See* Am. Compl. Ex. D-3 (stating that
 18 Walker expected Thomas to understand her because he was “also an African American Veteran”);
 19 *id.* Ex. E-1 (listing Walker’s race as “Black”). She does not allege, however, that any EDD
 20 employee overtly or implicitly indicated that Walker’s treatment was based on her race, that
 21 similarly situated non-African American employees were treated differently, or any other facts
 22 from which the Court could plausibly infer that race was a factor in EDD’s or its employees’
 23 alleged conduct. The documents attached to the amended complaint suggest that the disciplinary
 24 memoranda that Walker received were based on her fiancé’s conduct and on her comment about
 25 having a gun, and that the denial of her request for a transfer was based on her inability to speak
 26 Spanish; there is no basis to conclude from the amended complaint that those or other actions were
 27 based on race. Absent factual allegations plausibly supporting a conclusion that Walker’s alleged
 28 mistreatment was motivated by the fact that she is African American, the amended complaint does

1 not adequately state a claim under Title VII for employment discrimination based on race.

2 Assuming for the sake of argument that Title VII protects against discrimination based on
3 a plaintiff's fiancé's membership in a protected class,⁴ Walker does not plausibly allege here that
4 any harassment or other mistreatment was based on her fiancé's national origin or ancestry.
5 Walker does not allege that any EDD employee mentioned—or even knew of—Zand's Iranian
6 ancestry or national origin. Nor does she allege that other employees with similarly situated
7 significant others of non-Iranian background were treated differently. To the contrary, the
8 documents attached to the amended complaint appear to indicate that to the extent Zand was
9 relevant to Walker's treatment at EDD, it was because EDD employees believed Zand caused a
10 disturbance by staring in a window, yelling outside the gate, attempting to contact Walker's
11 supervisors or coworkers, and flying a drone over the building. Even if that were not so, however,
12 Walker has offered no factual allegations supporting an inference that Zand's Iranian background
13 was a factor in Walker's treatment.

14 Veteran status is not a protected class under Title VII, *see* 42 U.S.C. § 2000e-2(a) (barring
15 discrimination based on "race, color, religion, sex, or national origin"), but the Uniform Services
16 Employment and Reemployment Rights Act of 1994 ("USERRA") prohibits employment
17 discrimination based on military service. *See* 38 U.S.C. § 4311(a). A plaintiff bringing a claim
18 under USERRA must plead sufficient factual allegations to support the conclusion that veteran
19 status was "a motivating factor in the employer's action." *See id.* § 4311(c)(1); *Tukay v. United*
20 *Airlines, Inc.*, No. 14-cv-04343-JST, 2015 WL 3623814, at *4 (N.D. Cal. June 10, 2015). As with
21 Walker's race and fiancé-national-origin theories discussed above, there is no indication in the
22 factual allegations of the amended complaint or in its exhibits that any action by EDD was
23 motivated by Walker's status as a veteran. Where, as here, a plaintiff "has not pled any facts
24 suggesting that [her] veteran status was a motivating factor" in her alleged mistreatment, a claim
25 under USERRA must be dismissed. *Tukay*, 2015 WL 3623814, at *4 (granting a motion to

26
27 ⁴ *See, e.g., Cortezano v. Salin Bank & Tr. Co.*, 680 F.3d 936, 939 (7th Cir. 2012) (assuming for the
28 sake of argument that "discrimination based on the race or national origin of a person's spouse or
partner falls within the protections of Title VII," and citing decisions so holding from the Second,
Sixth, and Eleventh Circuits).

1 dismiss, with leave to amend).

2 In sum, it is not enough for Walker to merely assert that her treatment at EDD was
3 improperly motivated by her race, by her fiancé’s national origin, or by her status as a veteran—
4 she must explain what happened that supports that conclusion. Because Walker has not
5 adequately alleged that EDD’s conduct was motivated by her membership in a protected class
6 under Title VII or USERRA, her discrimination claims must be dismissed. This order does not
7 reach the remaining issues required to state a claim under those statutes, including whether the
8 conduct at issue rises to the level of actionable adverse employment actions or harassment.⁵

9 **IV. CONCLUSION**

10 For the reasons discussed above, Walker’s amended complaint is DISMISSED with leave
11 to amend. If Walker is aware of facts supporting the conclusion that her treatment at EDD was
12 motivated by her membership in a protected class, she may further amend her complaint to allege
13 such facts **no later than May 3, 2017**. Any second amended complaint must include the caption
14 and civil case number used in this order (17-cv-0071-JCS) and the words SECOND AMENDED
15 COMPLAINT on the first page. Because an amended complaint completely replaces the previous
16 complaint, any amended complaint must include all the claims and allegations Walker wishes to
17 present. *See Ferdik*, 963 F.2d at 1262. Walker is encouraged to set forth all facts that she believes
18 are relevant to her discrimination claims.

19
20 _____
21 ⁵ Although the Ninth Circuit defines adverse employment actions “broadly,” *see Little v.*
22 *Windermere Relocation, Inc.*, 301 F.3d 958, 970 (9th Cir. 2001), “[n]ot every employment
23 decision amounts to an adverse employment action,” *Brooks v. City of San Mateo*, 229 F.3d 917,
24 929 (9th Cir. 2000) (citation omitted). In order to support a discrimination claim, an employer’s
25 action must be “one that ‘materially affect[s] the compensation, terms, conditions, or privileges of
26 . . . employment.’” *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008) (citation
27 omitted).

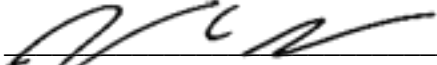
28 In addition to specific adverse employment actions, “harassment so ‘severe or pervasive’ as to
‘alter the conditions of [the victim’s] employment and create an abusive working environment’
violates Title VII.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 786 (1998) (citation omitted).
“Workplace conduct is not measured in isolation; instead, whether an environment is sufficiently
hostile or abusive must be judged by looking at all the circumstances, including the frequency of
the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a
mere offensive utterance; and whether it unreasonably interferes with an employee’s work
performance.” *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 270–71 (2001) (per curiam)
(citations and internal quotation marks omitted).

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Walker, who is not represented by counsel, is also encouraged to consult with the Federal Pro Bono Project's Legal Help Center in either of the Oakland or San Francisco federal courthouses for assistance if she continues to prosecute this action. The San Francisco Legal Help Center office is located in Room 2796 on the fifteenth floor at 450 Golden Gate Avenue, San Francisco, CA 94102. The Oakland office is located in Room 470-S on the fourth floor at 1301 Clay Street, Oakland, CA 94612. Appointments can be made by calling (415) 782-8982 or signing up in the appointment book located outside either office, and telephone appointments are available. Lawyers at the Legal Help Center can provide basic assistance to parties representing themselves but cannot provide legal representation.

IT IS SO ORDERED.

Dated: April 5, 2017



JOSEPH C. SPERO
Chief Magistrate Judge