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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PJ DAYACAMOS,
Plaintiff,
v.
CITY AND COUNTY OF SAN
FRANCISCO,
Defendant.

Case No. [17-cv-02644-JSC](#)

ORDER OF SERVICE

Re: Dkt. Nos. 1, 2

Plaintiff PJ Dayacamos, proceeding pro se and in forma pauperis, alleges she was terminated by Defendant, the City and County of San Francisco (“CCSF”), in retaliation for complaining that Defendant failed to provide reasonable accommodation for her disability. (Dkt. No. 1.) The Court previously granted Plaintiff’s Application to Proceed In Forma Pauperis. (Dkt. No. 4.) Pending before the Court is review of the Complaint pursuant to 28 U.S.C. § 1915. (Dkt. No. 1.) After careful review, the Court finds that the Complaint adequately states an Americans with Disability Act (“ADA”) retaliation claim and orders service of the Complaint by the Marshal.

LEGAL STANDARD

Under 28 U.S.C. § 1915, the Court has a continuing duty to dismiss any case in which a party is proceeding in forma pauperis if the Court determines that the action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. A complaint is frivolous for Section 1915 purposes where there is no subject matter jurisdiction. *See Castillo v. Marshall*, 207 F.3d 15, 15 (9th Cir. 1997) (citation omitted); *see also Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 1987) (recognizing the general proposition that a complaint should be dismissed as frivolous on Section

1 1915 review where subject matter jurisdiction is lacking). Regarding dismissals for failure to state
2 a claim, Section 1915(e)(2) parallels the language of Federal Rules of Civil Procedure 12(b)(6).
3 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). The complaint therefore must allege
4 facts that plausibly establish the defendant’s liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
5 544, 555-57 (2007). When the complaint has been filed by a pro se plaintiff, as is the case here,
6 courts must “construe the pleadings liberally ... to afford the petitioner the benefit of any doubt.”
7 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). Upon dismissal, pro se
8 plaintiffs proceeding in forma pauperis must be given leave to “amend their complaint unless it is
9 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
10 *Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984) (internal citations and quotation
11 marks omitted).

12 **COMPLAINT ALLEGATIONS**

13 Plaintiff began working for the CCSF in 1989 as a 9183 Transit Operator (Bus Driver).
14 (Complaint ¶ 1.) In 1999, Plaintiff was involved in an accident and sustained head, neck,
15 shoulder, back/spine, hip, and knee injuries. (*Id.*) Plaintiff underwent physical therapy for two
16 years but never regained full function of her back, legs, hips, or shoulders. (*Id.*) In 2004, Plaintiff
17 began working as a 1424 Clerk Typist and receptionist with the Department of Environment
18 (“DOE”) as a result of the CCSF’s ADA transfer policy. (Complaint ¶ 2.) On her first day of
19 work Plaintiff requested an ergonomically appropriate work station to meet her documented ADA
20 needs. (*Id.*) Plaintiff’s employer denied the equipment for about a year, forcing Plaintiff to
21 experience physical pain and take time off work despite the adjustments she tried to make herself
22 in the absence of any accommodation. (Complaint ¶ 3.)

23 In 2008, Plaintiff was told that her work station would undergo reconstruction and that as a
24 result, she would receive an ergonomically appropriate work space to accommodate her ADA
25 needs, specifically a work station with a desk, chair, and two-way access/egress. (Complaint ¶ 4.)
26 Shawn Rosenmoss, a CCSF employee and the DOE Fundraising Coordinator, was in charge of the
27 construction and did not reconstruct Plaintiff’s desk to fit her ADA needs. (Complaint ¶¶ 4, 5.)
28

1 Instead, Shawn cut up Plaintiff's old desk and rearranged the parts to make a smaller work area.
2 (Complaint ¶ 5.) When Plaintiff complained that her new desk was not ADA compliant, Shawn
3 told her that "an ADA compliant workstation 'wasn't in keeping' with her 'vision.'" (*Id.*) Instead
4 of raising Plaintiff's desk according to ADA specifications, Shawn used step tools from her home
5 to fashion makeshift stairs. (Complaint ¶ 6.) Shawn told Plaintiff that "the project 'ran out of
6 money'" and that her desk "was not a 'priority.'" (*Id.*)

7 In 2009, Plaintiff fell while trying to exit her work station via the makeshift stairs, injured
8 her neck, back, and knees, and had to take time off of work. (Complaint ¶ 7.) In 2010, Joe Salem,
9 the DOE Senior Budget Officer, told Plaintiff he would install ADA compliant stairs for her work
10 station. (Complaint ¶ 8.) The final stairs were built in August 2010 but were not ADA compliant.
11 (*Id.*) Plaintiff fell again in August 2010, tore the ligaments in her arm/shoulder, and re-injured her
12 knee and back. (Complaint ¶ 9.) She was out of work for three months. (*Id.*)

13 Following the accident in August 2010, DOE informed Plaintiff that she could no longer
14 use her work station because it did not comply with the ADA. (Complaint ¶ 10.) DOE moved
15 Plaintiff to another area that was also not ADA compliant. (*Id.*)

16 On August 10, 2012, Plaintiff received a letter from DOE informing her that she would be
17 laid off on October 5, 2012 because her position had been eliminated due to lack of funding.
18 (Complaint ¶ 11.) DOE hired a new receptionist to replace Plaintiff shortly thereafter. (*Id.*)
19 Plaintiff was "bumped into a succession of other CCSF positions" that continued to fail to
20 accommodate her disability. (Complaint ¶ 12.)

21 In August 2015, CCSF gave Plaintiff an "ultimatum." (Complaint ¶ 12.) She could either
22 be medically separated at 59 (before reaching retirement age of 60) or quit and "vest" in her
23 retirement. (*Id.*) Plaintiff quit. (*Id.*) Plaintiff alleges that her "termination was clearly retaliation
24 for years of legitimate complaints against DOE for failing to accommodate [her] disability."
25 (Complaint ¶ 11.)

26 Plaintiff is permanently disabled and cannot work. (Complaint ¶ 13.) Plaintiff has been
27 denied medical disability retirement and lives off of \$1,000 per month. (*Id.*) Plaintiff has
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1 exhausted all of her administrative remedies and filed this civil suit pursuant to a right to sue letter
2 she received from the Equal Employment Opportunity Commission dated February 7, 2017.

3 **PLAINTIFF’S RETALIATION CLAIM**

4 “[A] *prima facie* case of retaliation requires a plaintiff to show: (1) involvement in a
5 protected activity, (2) an adverse employment action, and (3) a causal link between the two.”
6 *Alvarado v. Cajun Operating Co.*, 588 F.3d 1261, 1269 (9th Cir. 2009) (internal quotation marks
7 and citations omitted).

8 First, Plaintiff engaged in protected ADA activity by consistently requesting reasonable
9 accommodation for her disability and complaining when she did not receive it, including filing
10 complaints with the Department of Fair Employment and Housing (attached to her Complaint).
11 Second, Plaintiff experienced an adverse employment action when she was constructively
12 discharged in August 2015. Finally, Plaintiff alleges she was terminated due to her continuous
13 failed requests for reasonable accommodation. Plaintiff has adequately alleged the three required
14 elements of an ADA retaliation case, at least for the purposes of surviving Section 1915 review.

15 **CONCLUSION**

16 For the reasons explained above, Plaintiff’s Complaint appears to state a claim upon which
17 relief can be granted as to her retaliation claim, and therefore passes Section 1915 review. The
18 Clerk of Court shall issue the summons. Further, the U.S. Marshal for the Northern District of
19 California shall serve upon the Defendant, without prepayment of fees, a copy of the Complaint,
20 any amendments or attachments, this Order, and Plaintiff’s affidavit.

21 This Order disposes of Docket No. 2.

22 **IT IS SO ORDERED.**

23 Dated: July 25, 2017

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26 JACQUELINE SCOTT CORLEY
27 United States Magistrate Judge
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