

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MARTINA FRANCIS,  
Plaintiff,  
v.  
COUNTY OF SAN MATEO, a municipal  
corporation; DEPARTMENT OF HEALTH  
ADMINISTRATION, a department of  
County of San Mateo; and FAMILY  
HEALTH SERVICES, a department of  
County of San Mateo,  
Defendants.

No. C 10-04343 CW  
ORDER DEFERRING  
DECISION ON  
DEFENDANT'S  
MOTION TO DISMISS  
(Docket No. 18)  
AND ALLOWING  
PLAINTIFF TO FILE  
FURTHER BRIEFING

United States District Court  
For the Northern District of California

Plaintiff Martina Francis, who is proceeding pro se, charges Defendants County of San Mateo, et al., with violations of Title VII and California's Fair Employment and Housing Act (FEHA), invasion of privacy, civil conspiracy and wrongful termination. Defendant San Mateo County moves to dismiss Plaintiff's Title VII, invasion of privacy, civil conspiracy and wrongful termination claims. The County's motion encompasses claims against itself and the other named Defendants, which are its subordinate departments. Plaintiff opposes the motion, asserting that it failed to give her adequate notice of which Rule 12(b) defense the County raised. She also argues that the County filed the motion in bad faith. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court DEFERS its decision on the County's motion and allows Plaintiff the opportunity to respond to the County's argument that her Title VII is time-barred.

BACKGROUND

1  
2 Plaintiff, who is African American, was allegedly employed by  
3 the County from January, 2008 through August 5, 2010.<sup>1</sup> She avers  
4 that she worked as an Administrative Secretary III for the County's  
5 Department of Health Administration and its Family Health Services  
6 division. The conduct of which she complains occurred between  
7 June, 2008 and May, 2009.

8 Plaintiff alleges that she filed a charge of discrimination  
9 with the California Department of Fair Employment and Housing  
10 (DFEH). In her complaint, she refers to a DFEH complaint she filed  
11 on June 11, 2009. She attaches to her current pleading right-to-  
12 sue letters from the DFEH, dated November 12, 2009, which refer to  
13 case numbers E200809A0373-01-re and E200809A0373-00-re/37AA904048.  
14 She does not allege that she filed a complaint with or obtained  
15 right-to-sue letters from the Equal Employment Opportunity  
16 Commission (EEOC).

17 The County, in a request for judicial notice, proffers  
18 documents related to case number E200809A0373-00-re/37AA904048,  
19 which pertain to a complaint of discrimination filed by Plaintiff  
20 on November 12, 2008. The County also proffers documents related  
21 to a complaint of discrimination apparently filed by Plaintiff on  
22 June 11, 2009, which bears the case number  
23 E200809A0753-00-me/37AA904283. The November, 2008 and June, 2009  
24 complaints were filed both with the DFEH and the EEOC.

25 The County tenders an EEOC notice, mailed December 8, 2009,  
26

---

27 <sup>1</sup> The County suggests that Plaintiff was discharged in August,  
28 2009, not August, 2010. County's Mot. at 5 n.3.

1 stating that the agency closed its case on Plaintiff's November,  
2 2008 complaint. Def.'s Request for Judicial Notice (RJN), Ex. B.  
3 The notice stated that Plaintiff was required to file suit against  
4 the County within ninety days.

5 The County tenders another EEOC notice, mailed April 7, 2010,  
6 stating that the agency closed its case on Plaintiff's June 11,  
7 2009 complaint. RJN, Ex. E. The notice informed Plaintiff that  
8 she was required to file suit against the County within ninety  
9 days.

10 Plaintiff filed her action on September 24, 2010.

11 LEGAL STANDARD

12 A complaint must contain a "short and plain statement of the  
13 claim showing that the pleader is entitled to relief." Fed. R.  
14 Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a  
15 claim is appropriate only when the complaint does not give the  
16 defendant fair notice of a legally cognizable claim and the grounds  
17 on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555  
18 (2007). In considering whether the complaint is sufficient to  
19 state a claim, the court will take all material allegations as true  
20 and construe them in the light most favorable to the plaintiff. NL  
21 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

22 However, this principle is inapplicable to legal conclusions;  
23 "threadbare recitals of the elements of a cause of action,  
24 supported by mere conclusory statements," are not taken as true.  
25 Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1949-50 (2009)  
26 (citing Twombly, 550 U.S. at 555).

27 When granting a motion to dismiss, the court is generally  
28

1 required to grant the plaintiff leave to amend, even if no request  
2 to amend the pleading was made, unless amendment would be futile.  
3 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911  
4 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment  
5 would be futile, the court examines whether the complaint could be  
6 amended to cure the defect requiring dismissal "without  
7 contradicting any of the allegations of [the] original complaint."  
8 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).  
9 Leave to amend should be liberally granted, but an amended  
10 complaint cannot allege facts inconsistent with the challenged  
11 pleading. Id. at 296-97.

12 DISCUSSION

13 Plaintiff did not respond substantively to the County's motion  
14 to dismiss. Instead, she argues that the County's motion violated  
15 her "due process right" because it failed to give her notice of  
16 which Rule 12(b) defense the County intended to assert. However,  
17 the County makes sufficiently clear that it seeks to dismiss  
18 Plaintiff's claims on grounds that her Title VII is time-barred,  
19 her invasion of privacy and civil conspiracy claims are not  
20 sufficiently plead and her wrongful termination claim is barred as  
21 a matter of state law. See County's Mot. at 6-9. This contrasts  
22 with Bartholomew v. Port, in which the defendants' motion to  
23 dismiss did "not state with particularity the grounds therefor."  
24 309 F. Supp. 1340, 1344 (E.D. Wis. 1970). The County's motion put  
25 Plaintiff on notice as to the defenses it raised.

26 Plaintiff also contends that the County filed the motion in  
27 bad faith because it relied on documents outside of the pleadings.

1 Although courts generally cannot consider documentary evidence on a  
2 motion to dismiss, doing so is appropriate when the pleadings refer  
3 to the documents, their authenticity is not in question and there  
4 are no disputes over their relevance. Coto Settlement v.  
5 Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010); Branch v. Tunnell,  
6 14 F.3d 449, 454 (9th Cir. 1994) (holding that courts may properly  
7 consider documents "whose contents are alleged in a complaint and  
8 whose authenticity no party questions, but which are not physically  
9 attached to the [plaintiff's] pleadings"). In her 1AC, Plaintiff  
10 referred to a DFEH complaint filed on June 11, 2009 and attached  
11 right-to-sue notices related to a complaint bearing case numbers  
12 E200809A0373-01-re and E200809A0373-00-re/37AA904048. The County's  
13 proffer relates to these complaints, and Plaintiff does not contest  
14 the authenticity or relevance of the tendered documents.  
15 Accordingly, the Court may consider them on a motion to dismiss.

16 Based on these documents, Plaintiff's claims under Title VII  
17 are time-barred. "After receiving an EEOC right-to-sue letter or  
18 becoming eligible for one by the Commission's inaction, a plaintiff  
19 generally has 90 days to file suit." Stiefel v. Bechtel Corp., \_\_\_  
20 F.3d \_\_\_, 2010 WL 4273357, at \*5 (9th Cir.) (citing 42 U.S.C.  
21 § 2000e-5(f)(1)). Here, Plaintiff received the EEOC right-to-sue  
22 letters in December, 2009 and April, 2010, well over ninety days  
23 before she filed suit on September 24, 2010. As noted above,  
24 Plaintiff did not respond to this argument, and nothing in her  
25 motion or her complaint would support equitable tolling of the  
26 statute of limitations. See id. (stating that the "filing period  
27 is a statute of limitations subject to equitable tolling in  
28

1 appropriate circumstances") (citation omitted).

2 Because Plaintiff is proceeding pro se, the Court affords her  
3 the opportunity to respond specifically to the County's argument  
4 concerning her Title VII claim. In any response, she may contest  
5 the authenticity of the documents proffered by Defendant, if she  
6 can truthfully do so, or provide grounds for applying the doctrine  
7 of equitable tolling, excusing her from the ninety-day filing  
8 requirement.<sup>2</sup> Plaintiff shall not offer argument related to any of  
9 her other claims or re-assert those arguments she included in her  
10 current opposition.

11 Notably, Plaintiff's Title VII claim enabled the Court to  
12 exercise federal question jurisdiction of her action. See 28  
13 U.S.C. § 1331; 1AC ¶ 1. If it is dismissed, no federal claim would  
14 remain in her suit and, as a result, the exercise of supplemental  
15 jurisdiction over her remaining state law claims is not necessary.<sup>3</sup>  
16 28 U.S.C. § 1367(c)(3). These claims would be dismissed without  
17 prejudice to refile in state court.

---

19  
20 <sup>2</sup> To invoke the doctrine of equitable tolling, Plaintiff must  
21 show her "excusable ignorance of the limitations period" and the  
22 lack of prejudice to the County. Santa Maria v. Pac. Bell, 202  
23 F.3d 1170, 1176 (9th Cir. 2000). This may include circumstances in  
24 which, despite her diligence, Plaintiff was "unable to obtain vital  
25 information bearing on the existence" of her Title VII claim. Id.  
26 at 1178. However, Plaintiff may not invoke equitable tolling if,  
27 within the ninety-day filing period, she had "sufficient  
28 information to know of the possible existence of a claim." Id. at  
1179; see also Scholar v. Pac. Bell, 963 F.2d 264, 268 (9th Cir.  
1992) (stating that courts "have been generally unforgiving" in  
excusing a plaintiff's failure "to exercise due diligence in  
preserving his legal rights") (citation omitted).

<sup>3</sup> Plaintiff does not assert that the Court has diversity  
jurisdiction. See 28 U.S.C. § 1332.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONCLUSION

For the foregoing reasons, the Court DEFERS its decision on the County's motion to dismiss pending Plaintiff's response to the argument that her Title VII claim is time-barred. Plaintiff may file an opposition in a brief not to exceed five pages within seven days of the date of this Order. The County may reply three days thereafter in a brief not to exceed three pages. If Plaintiff fails to file a response, her Title VII claim will be dismissed with prejudice as time-barred, and her state law claims will be dismissed without prejudice to refile in state court.

The hearing set for December 16, 2010 is VACATED.

IT IS SO ORDERED.

Dated: 12/8/2010

  
CLAUDIA WILKEN  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 FRANCIS et al,

5 Plaintiff,

6 v.

7 COUNTY OF SAN MATEO et al,

8 Defendant.

---

Case Number: CV10-04343 CW

**CERTIFICATE OF SERVICE**

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

11 That on December 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Martina Francis  
16 1918 Lakeshore Avenue, #47  
Oakland, CA 94606

17 Dated: December 8, 2010

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk