UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CAROL THOMAS,

Plaintiff,

v.

CITY COLLEGE OF SAN FRANCISCO, et al.,

Defendants.

Case No. 15-cv-05504-HSG

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Re: Dkt. No. 62

Pending before the Court is Defendant San Francisco Community College District's[1] ("Defendant" or the "District") motion to dismiss Plaintiff Carol Thomas's ("Plaintiff") third amended complaint ("TAC"). *See* Dkt. No. 61. Having read the parties' papers and carefully considered their arguments, the Court finds the matter appropriate for decision without oral argument, *see* Civil L.R. 7-1(b), and **GRANTS** the motion for the reasons stated below.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a party to move to dismiss a complaint for failure to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts must "accept factual allegations in the complaint as true and construe the pleadings

[1] Plaintiff originally filed suit against "City College of San Francisco" and "City Colleges of California." However, Defendant contends that these names are erroneous, and that it should instead be referred to as the "San Francisco Community College District."

in the light most favorable to the nonmoving party," *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008), it is insufficient for pleading purposes to merely state a series of "conclusory allegations" or "unwarranted inferences," *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

II. DISCUSSION

A. Title VI of the Civil Rights Act of 1964

To state a claim against the District under Title VI of the Civil Rights Act, Plaintiff must plead facts sufficient to show that "(1) [the District] is engaging in racial discrimination; and (2) [the District] is receiving federal financial assistance." *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994). To show that Defendant is engaging in racial discrimination, Plaintiff must show that "(1) there is a racially hostile environment; (2) the district had notice of the problem; and (3) it 'failed to respond adequately to redress the racially hostile environment.'" *Monteiro v. Temple Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998). A racially hostile environment is "one in which racial harassment is severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by the recipient." *Id.* (internal quotations omitted). Plaintiff may demonstrate that Defendant had either actual or constructive notice of the hostile environment. *Id.* at 1034. A "district is liable for its failure to act if the need for intervention was so obvious, or if inaction was so likely to result in discrimination, that it can be said to have been deliberately indifferent to the need." *Id.* (internal quotations omitted).

Plaintiff's TAC fails to plead facts sufficient to meet these standards. The core of the TAC concerns Plaintiff's interaction with her City College of San Francisco counselor, Kate Ryan.[2] Plaintiff alleges that she met with Ryan on August 25, 2015 to ask Ryan to make a phone call on her behalf to verify her attendance at the school, which was necessary to enable Plaintiff to receive unemployment benefits from the Employment Development Department ("EDD") of California. TAC at 5. However, Ryan failed to call the EDD despite several requests by Plaintiff. *Id.* At a

[2] Ryan is not a party to this action.

subsequent meeting in Ryan's office on September 1, 2015, Plaintiff alleges that Ryan "refused to return the call to the EDD, [and] spoke to [Plaintiff] in a negative tone [before] discharg[ing] her from her office area," and telling Plaintiff to "go find [] another counselor." *Id.* at 6-7. Plaintiff alleges that Ryan then "assault[ed] her" by "dumping her purse outside of her office while [staring] into [Plaintiff's] eyes the entire time she maliciously handled her purse," inflicting on Plaintiff "an invisible wound." *Id.* at 7. Based solely on these interactions—and the fact that Ryan is white while she is black—Plaintiff alleges that Ryan exhibited "a discriminatory attitude and harassing conduct" rising to the level of "racist behavior and oppression with the intent to keep racial segregation among the students in school programs." Dkt. No. 63 ("Opp.") at 9. These conclusory allegations of discrimination are insufficient to support such a finding, however, as they would require the Court to draw unsupported and unreasonable inferences. *See Adams*, 355 F.3d at 1183.

Furthermore, even if Plaintiff had successfully pleaded a claim against Ryan, the Court advised Plaintiff in its last order dismissing Plaintiff's second amended complaint that because Ryan is not a named Defendant, Plaintiff needed to clearly specify how *Defendant*—San Francisco Community College District—discriminated against her on the basis of race. *See* Dkt. No. 59 at 3. "Such facts might [have] include[d] allegations of overtly racially-motivated misconduct, such as the use of racial slurs, . . . alleg[ations] that other members of the protected class suffered similar mistreatment, . . . [or] alleg[ations] showing that [Plaintiff] was treated less favorably than similarly situated students who were not members of the protected class." *Jianjun Xie v. Oakland Unified Sch. Dist.*, No. C 12–02950 CRB, 2013 WL 812425, at *4 (N.D. Cal. March 5, 2013). Plaintiff could not, however, allege that Defendant is vicariously liable for Ryan's actions. *See Santos v. Peralta Cmty. Coll. Dist.*, No. C–07–5227 EMC, 2009 WL 3809797, at *7 (N.D. Cal. Nov. 13, 2009) (holding that "a theory of vicarious liability is not viable under Title VI, just as such a theory is not viable under Title IX."); *Earl v. Fresno Unified Sch. Dist. Bd. of Educ.*, No. 1:11–CV–01568–LJO–GSA, 2012 WL 1608606, at *4 (E.D. Cal. May 8, 2012).

Plaintiff's allegations in this regard are similarly conclusory and insufficient. Plaintiff contends that following the incident between her and Ryan, Plaintiff submitted a complaint to

Dean Jorge Bell, who met with Plaintiff to discuss the matter. TAC at 8. Plaintiff emailed Dean Bell after the meeting, thanking him for apologizing for Ryan's alleged actions and requesting a meeting between himself, Plaintiff, and Ryan. *See* TAC, Ex. A. In response, Dean Bell declined to arrange any additional meetings, but assured Plaintiff that he would "deal with the situation directly with Ms. Ryan." *Id.* Nevertheless, despite their meeting and subsequent email exchange, Plaintiff contends that Dean Bell's failure to set up a second meeting demonstrated "the City College [District's] collu[sion] with the act of discrimination and injustice," as well as Dean Bell's "participat[ion] in the underlying cultural bias of group oppression at the school." TAC at 9, 10. Such unsupported allegations arising from a single unsatisfactory interaction between Plaintiff and Ryan cannot support a finding that there was a racially hostile environment at the school, to which the District failed to adequately respond.[3] *See Monteiro*, 158 F.3d at 1033. The Court therefore **GRANTS** Defendant's motion to dismiss this claim.

B. 42 U.S.C. § 1981

Plaintiff also asserts a cause of action under 42 U.S.C. § 1981.[4] *See* Compl. at 2. However, "the Eleventh Amendment prohibits actions for damages against state agencies when Congress has failed to express a contrary intent," *Belanger v. Madera Unified School Dist.*, 963 F.2d 248, 250 (9th Cir. 1992), and "[u]nder California law, school districts are agents of the state that perform central governmental functions." *Id.* at 253; *see also Mitchell v. Los Angeles Cmty. Coll. Dist.*, 861 F.2d 198, 201-02 (9th Cir. 1988). The District here is thus immune from suit with regard to this claim.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's motion to dismiss Plaintiff's TAC in its entirety. While "a *pro se* complaint, however inartfully pleaded, must be held to less

[3] Plaintiff's additional assertions that Ryan treated another black student in her class poorly while treating "similarly situated" students of other races in her class more favorably are also deficient: they are conclusory, address only Ryan's conduct rather than any failure on the part of Defendant, and could not support a finding that Plaintiff was exposed to a racially hostile environment of which Defendant had notice, and to which Defendant failed to respond.

[4] While Plaintiff asserted causes of action under 20 U.S.C. § 1681 and 29 U.S.C. § 794 in her complaint, she voluntarily dismissed those claims in her opposition. *See* Opp. at 15.

stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks omitted), a court need not grant leave to amend where "it determines that the pleading could not possibly be cured by the allegation of other facts," *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal quotation marks omitted). Plaintiff here has had three opportunities to amend her complaint, and the Court is now convinced that she cannot allege facts to cure the defects identified in the Court's orders. The Court therefore dismisses the case with prejudice. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) ("[W]here the Plaintiff has previously been granted leave to amend and has subsequently failed to add the requisite particularity to its claims, [t]he district court's discretion to deny leave to amend is particularly broad." (internal quotation marks omitted)). The Clerk is directed to close the case and enter judgment in favor of Defendant.

IT IS SO ORDERED.

Dated: 4/7/2017

HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California