

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 YSABELLE BOUACHANH NACHACK,

Case No. 24-cv-00027-SVK

8 Plaintiff,

9 v.

**ORDER GRANTING
MOTION TO DISMISS
FIFTH CAUSE OF ACTION
WITHOUT LEAVE TO AMEND**

10 WALMART INC.,

11 Defendant.

Re: Dkt. No. 41

12 Self-represented Plaintiff alleges that she purchased a product from Defendant Walmart
13 Inc.'s ("Walmart") website, and that when she subsequently went to a physical Walmart store to
14 return the item, a store manager verbally and physically assaulted her and accused her of theft.
15 *See* Dkt. 39 (the "SAC").¹ She commenced this action to pursue five causes of action against
16 Walmart, including a claim of racial discrimination in violation of California's Unruh Civil Rights
17 Act. *See id.* ¶¶ 49-55. Upon Walmart's first motion to dismiss the racial-discrimination claim, the
18 Court dismissed the claim because Plaintiff had not "offer[ed] sufficient facts demonstrating, or
19 from which the Court c[ould] reasonably infer, that Walmart intentionally discriminated against
20 her on the basis of her race." *See* Dkt. 38 (the "Prior Order") at 3. Rather, as demonstrated by
21 Plaintiff's allegations, she had "simply assume[d] that the manager verbally and physically
22 assaulted her because of her race." *See id.*

23 The Court offered Plaintiff an opportunity to amend her claim and specifically instructed
24 her to do so "only if she c[ould], in good faith, offer sufficient facts demonstrating, or from which
25 the Court c[ould] reasonably infer, that Plaintiff's race motivated the manager's alleged conduct."
26

27 ¹ The Court accepts the allegations in the SAC as true. *See Boquist v. Courtney*, 32 F.4th 764, 772
28 (9th Cir. 2022).

1 *See id.* at 4. Plaintiff then filed the SAC, and Walmart now again moves to dismiss the racial-
2 discrimination claim. *See* Dkts. 41 (the “Motion”), 48, 49. The Court has determined that the
3 Motion is suitable for resolution without oral argument.² *See* Civil Local Rule 7-1(b).

4 Plaintiff’s allegations in the SAC concerning her racial-discrimination claim remain
5 substantively identical to her allegations in the prior complaint. *Compare* SAC ¶¶ 49-55, *with*
6 Dkt. 29 ¶ 49. That is, a store manager treated her rudely and disrespectfully, and she assumes the
7 store manager did so because of her race. Plaintiff alleges just one new fact in the SAC in support
8 of her claim—that she “has experienced several individuals who were prejudiced against her based
9 on her Asian race and Immigrant status since” she first immigrated to the United States as a
10 teenager (*see* SAC ¶ 50)—but the Court cannot reasonably infer from that fact that the store
11 manager here discriminated against Plaintiff because of her race. Thus, as before, the Court must
12 dismiss the racial-discrimination claim because Plaintiff does not offer facts that “bridge the gap
13 between the manager’s conduct and Plaintiff’s race motivating that conduct.” *See* Prior Order at
14 3-4. Because Plaintiff’s claim fails for the same reason as before, and because Plaintiff has failed
15 to correct a pleading deficiency previously identified even after being given leave to amend with
16 specific instructions on how she could correct that deficiency, the Court concludes that further
17 leave to amend would be futile and therefore will not give Plaintiff leave to amend the claim
18 further. *See, e.g., Snapkeys, Ltd. v. Google LLC*, No. 19-cv-02658-LHK, 2020 WL 6381354, at *7
19 (N.D. Cal. Oct. 30, 2020) (dismissing claim without leave to amend where, *inter alia*, plaintiff
20 “has already failed multiple times to adequately allege a . . . claim”); *Martin v. CSAA Ins. Exch.*,
21 No. 17-cv-04066-MEJ, 2018 WL 1242069, at *4 (N.D. Cal. Mar. 8, 2018) (denying request for
22 leave to amend where, *inter alia*, “Plaintiffs repeatedly failed to cure deficiencies in their
23

24 ² All necessary Parties—Plaintiff and Walmart—have consented to the jurisdiction of a magistrate
25 judge. *See* Dkts. 3, 6. Plaintiff also sued 10 Doe defendants. *See* SAC ¶ 3. These Doe
26 defendants are not “parties” for purposes of assessing whether there is complete consent to
27 magistrate-judge jurisdiction. *See Williams v. King*, 875 F.3d 500, 502-505 (9th Cir. 2017)
28 (magistrate-judge jurisdiction vests only after all named parties, whether served or unserved,
consent); *RingCentral, Inc. v. Nextiva, Inc.*, No. 19-cv-02626-NC, 2020 WL 978667, at *1 n.1
(N.D. Cal. Feb. 28, 2020) (*Williams* does not require consent of unnamed Doe defendants).

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

pleading”).

Accordingly, the Court **GRANTS** the Motion and **DISMISSES** the racial-discrimination claim **WITHOUT LEAVE TO AMEND**. The Parties shall appear for a remote status conference on **December 10, 2024**, and shall file a joint status report by **December 3, 2024**.

SO ORDERED.

Dated: October 23, 2024



SUSAN VAN KEULEN
United States Magistrate Judge