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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHA'LENA ELLIZABETHANN ELLIS,
Plaintiff,
vs.
KAISER PERMANENTE, et al.,
Defendants.

CASE NO. 16cv195-LAB (KSC)

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT**

Pro se litigant Sha'lana Ellis sued Southern California Permanente Medical Group and her three supervisors ("Kaiser") for, among other things, discrimination, retaliation, and wrongful termination when Kaiser fired her after ten years of employment. Kaiser says it fired Ellis because of her "chronic tardiness and a spate of errors in administering patient vaccines and submitting laboratory samples." Ellis says Kaiser retaliated against her because she's black, disabled, and was pregnant. Ellis moved for summary judgment on her 14 claims under 42 U.S.C. §§ 1981 and 1983, Title VII, and the ADA.

I. Summary Judgment

Summary judgment is appropriate where the moving party demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Ellis hasn't offered any argument, authority, or evidence that shows her claims are undisputed. The motion for summary judgment is denied.

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II. Dismissal

Last year, the Court granted Ellis’s motion for leave to proceed *in forma pauperis*. 28 U.S.C. § 1915. The statute requires the Court to “dismiss the case at any time” if the action “fails to state a claim on which relief may be granted.” And the Court “may dismiss a claim sua sponte” when the party “cannot possibly win relief.” *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). Some of Ellis’s claims fall into this category.

A. The § 1983 Claims

The Court dismisses all of Ellis’s § 1983 claims because Kaiser is a private employer—none of the defendants were acting “under color of state law” or engaged in state action. *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982); *Tate v. Kaiser Found. Hosps.*, 2014 WL 176625, at *4 (C.D. Cal. Jan. 15, 2014) (granting summary judgment on § 1983 claims because Kaiser not a state actor). The Court dismisses claims 1–3 and 11–14 with prejudice.

B. The Title VII and ADA claims

Ellis has no claims against her supervisors in their individual capacity under Title VII or the ADA. *Walsh v. Nevada Dep’t of Human Res.*, 471 F.3d 1033, 1038 (9th Cir. 2006). But Ellis can sue her supervisors in their official capacity as agents of Kaiser. *Miller v. Maxwell’s Int’l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993); *Gary v. Long*, 59 F.3d 1391, 1399 (D.C. Cir. 1995) (“a supervisory employee may be joined as a party defendant in a Title VII action” but is “viewed as being sued in his capacity as the agent of the employer, who is alone liable”). Since Ellis is a pro se litigant, and Kaiser hasn’t moved to dismiss, the Court charitably interprets her complaint as suing her supervisors in their official capacity as representatives of Kaiser and refrains from dismissing those claims at this time.

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In sum, the only causes of action remaining are claims 4–10 under § 1981, Title VII, and the ADA.

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