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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINE SHUROW,

Plaintiff,

v.

GINO MORENA ENTERPRISES, LLC,
et al.,

Defendants.

Case No.: 3:16-cv-02844-L-KSC

**ORDER GRANTING WITH
PREJUDICE DEFENDANTS’
MOTION [Doc. 5] TO DISMISS**

Pending before the Court is Defendants Gino Morena Enterprises, LLC and Alicia Spitler’s (collectively “Defendants”) motion to dismiss Plaintiff Christine Shurow’s (“Plaintiff”) Complaint [Doc. 1]. The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d)(1). For the reasons stated below, the Court **GRANTS** Defendants’ motion.

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1 **I. BACKGROUND**

2 This case arises out of an employment relationship between Plaintiff and
3 Defendants. Plaintiff began working for Defendant Geno Morena Enterprises (“GME”) in 2007 as a barber at Eielson Air Force Base. GME promoted her to the position of
4 Assistant Manager in 2008. In March of 2011, Plaintiff transferred to GME’s operation
5 on Marine Corps Base Camp Pendleton (“GME Pendleton”). Though slated to begin
6 work at Pendleton as a full time Assistant Manager, Plaintiff had to work part time for
7 several months before receiving a promotion to full time Assistant Manager in October
8 2011, a position she held until late 2014. While working at GME Pendleton, Plaintiff
9 made several complaints about working conditions and Labor Code violations. Plaintiff
10 alleges Defendants responded to these complaints with harassment and retaliation.
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12 Around July 2014, Plaintiff injured her elbow when she accidentally hit it against a
13 door jamb. Her doctor diagnosed her with an elbow strain and told her to take three days
14 off work. After a subsequent visit, Plaintiff’s doctor cleared her for return to work.
15 However, soon after her return to work, her doctor told her to take two weeks off, and
16 renewed this direction three times. Plaintiff presented her doctor’s notes to Defendant
17 Spitler (“Spitler”), a general manager at GME Pendleton, who in turn told Plaintiff that
18 her management position would be safe on medical leave for twelve weeks. Despite this
19 assurance, Defendants informed Plaintiff after eight weeks of medical leave that she
20 would no longer have a management position.

21 Plaintiff’s doctor subsequently permitted her to return to work, first under the
22 condition that she be permitted to ice her elbow fifteen minutes per hour as needed, and
23 later simply “as needed.” Defendants found these conditions either “too restrictive” or
24 “too vague” and therefore refused to allow Plaintiff to return to work and later denied her
25 request for leave under the Family and Medical Leave Act and terminated her
26 employment.

27 Plaintiff filed a complaint with the Superior Court of California, County of San
28 Diego, alleging state law claims for (1) disability discrimination; (2) disability

1 harassment; (3) failure to accommodate disability; (4) failure to engage in the interactive
2 process of accommodation of a disability; (5) failure to prevent, correct and remedy
3 discrimination and harassment; (6) violation of the whistleblowing law; (7) retaliation in
4 violation of FEHA, FMLA, and the CLRA; (8) retaliation for complaints of OSHA
5 violations; (9) retaliation for complaints of harassment and discrimination; (10) failure to
6 pay wages due; (11) failure to provide meal and rest periods; (12) failure to provide an
7 accurate itemized statement of wages and hours; (13) waiting time penalties; (14)
8 violation of California Business and Professions Code §17200; (15) wrongful
9 termination; (16) intentional infliction of emotional distress; and (17) negligent infliction
10 of emotional distress. (See Compl. [Doc. 1–2].) Defendants removed to this Court and
11 now move to dismiss. (See Rem. Not. [Doc. 1]; MTD [Doc. 5].) Plaintiff opposes (See
12 Opp’n [Doc. 6].)

13 14 **II. LEGAL STANDARD**

15 The court must dismiss a cause of action for failure to state a claim upon which
16 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
17 tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,
18 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and
19 “construe them in the light most favorable to [the nonmoving party].” *Gompper v. VISX,*
20 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*
21 *Seattle*, 83 F.2d 1575, 1580 (9th Cir. 1996).

22 As the Supreme Court explained, “[w]hile a complaint attacked by a Rule 12(b)(6)
23 motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to
24 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
25 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
26 *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007) (internal citations and
27 quotation marks omitted). Instead, the allegation in the complaint “must be enough to
28 raise a right to relief above the speculative level.” *Id.* at 1965. A complaint may be

1 dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient
2 facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,
3 534 (9th Cir. 1984).

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5 **III. DISCUSSION**

6 The dispositive question presented by Defendants' motion is whether the Federal
7 Enclave Doctrine bars Plaintiff's claims. Camp Pendleton is a federal enclave
8 established no later than December 31, 1942. *Stiefel v. Bechtel Corp.*, 497 F. Supp. 1138,
9 1145 (S.D. Cal. 2007). Under the Federal Enclave Doctrine, state law is inapplicable
10 unless it both predates the federal government's acquisition of the property and is not
11 inconsistent with federal law. *Pac. Coast Dairy v. Dep. of Agric. of Cal.*, 318 U.S. 285,
12 294 (1943); U.S. Const. art. 1 §8 cl. 17. Here, Plaintiff does not dispute the fact that all
13 of her causes of action are based on California state laws that either postdate Camp
14 Pendleton's enclave status or are inconsistent with federal law.¹ Rather, Plaintiff presents
15 several arguments as to why the Federal Enclave Doctrine is inapplicable or an exception
16 applies.

17 Plaintiff's first argument is that the Federal Enclave Doctrine does not govern a
18 number of the claims here because she could amend her complaint to show that the
19 conduct underlying her claims occurred off base. Specifically, she claims to be able to
20 allege facts showing that (1) GME's human resources department is located off base; (2)
21 the decision to terminate her employment was made by management off base; and (3)
22 Plaintiff was off base when she learned that GME had terminated her employment.

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¹ The Court notes that, to the extent Plaintiff's first and second causes of action are based on the
28 California Constitution, they fail because the California Constitution nowhere addresses discrimination
or harassment based on a physical disability.

1 The main² problem with this argument is that, even if these facts were true, they
2 would not take Plaintiff’s claims outside of the Federal Enclave Doctrine. In the context
3 of claims by employees against contractor employers operating on a federal enclave, the
4 Doctrine applies if the plaintiff’s place of employment was located on the federal
5 enclave. *Lockhart v. MVM, Inc.*, 175 Cal. App. 4th 1452, 1458–60 (2009) (holding
6 federal enclave doctrine applies on materially identical facts); *see also Powell v. Tessada*
7 *& Assocs.*, 2005 WL 578103 (C.D. Cal. 2005) (same); *Taylor v. Lockheed Martin Corp.*,
8 78 Cal. App. 4th 472, 481 (2000) (same). Because Plaintiff’s place of employment was
9 located on Camp Pendleton, the Federal Enclave Doctrine applies.

10 Next, Plaintiff contends that, inasmuch as she is seeking emotional distress
11 damages, the Federal Enclave Doctrine does not bar her claims. More specifically, she
12 argues that by enacting 16 U.S.C. § 457 Congress limited the Federal Enclave Doctrine
13 such that it does not apply to state law claims to the extent they seek damages for
14 emotional distress. Congress repealed 16 U.S.C. § 457 on December 19, 2014 and
15 replaced it with 28 U.S.C. 28 U.S.C. §5001. Though there are significant cosmetic
16 differences, the statutes appear substantively identical. The current version reads
17 **(a) Death.**--In the case of the death of an individual by the neglect or wrongful act of
18 another in a place subject to the exclusive jurisdiction of the United States within a State,
19 a right of action shall exist as though the place were under the jurisdiction of the State in
20 which the place is located.
21 **(b) Personal injury.**--In a civil action brought to recover on account of an injury
22 sustained in a place described in subsection (a), the rights of the parties shall be governed
23 by the law of the State in which the place is located.
24 28 U.S.C. § 5001.

25 Resolution of Plaintiff’s argument requires interpretation of the words “personal
26 injury” as used in the title of subsection b, and “injury” as used in the body. Because the
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28 ² Even if meritorious, Plaintiff’s argument would not provide a grounds for denying Defendants’ motion to dismiss. Rather, it is only relevant to the inquiry of whether the Court should grant leave to amend.

1 quoted language in the body of subsection b is ambiguous, it is proper to look to the
2 language in the title for guidance. *Brotherhood of R.R. Trainmen v. Baltimore & O.R.*
3 *Co.*, 331 U.S. 519, 528–29 (1947). The Court sees only two feasible interpretations of
4 the words “personal injury” as used in § 5001: (1) a physical injury sustained by one’s
5 person or (2) any injury a person might sustain.

6 The second interpretation is overbroad. It is co-extensive with the injury in fact
7 requirement of Article III Section II of the U.S. Constitution for standing to sue. If the §
8 5001 exception to the Federal Enclave Doctrine were coextensive with Article III
9 standing, then § 5001 would swallow the entire Federal Enclave Doctrine. Such a result
10 would be inconsistent with the more than eighty years of Federal Enclave Doctrine
11 jurisprudence since Congress enacted 16 U.S.C. § 457. Indeed, If Congress had
12 abolished the doctrine, there would be no needs for the courts to continue analyzing its
13 applicability to cases. Accordingly, the Court follows *Kelly v. Lockheed Martin Servs.*
14 *Grp.*, 25 F. Supp. 2d 1, 7–9 (D.P.R. 1998), and holds that § 5001 creates an exception
15 allowing recovery only for damages stemming from a physical injury to one’s person.
16 Because Plaintiff does not allege Defendants’ conduct caused her such physical injury,
17 her claims do not fit under § 5001 (b).

18 Plaintiff’s last argument in opposition is that her whistle blowing claims based on
19 Cal. Labor Code §§ 1102.5 and 6310 are not subject to the Federal Enclave Doctrine
20 because Congress authorized California to enforce these Labor Code provisions on
21 federal enclaves. In support, Plaintiff cites *Taylor*, 78 Cal. App. 4th at 483–86. The
22 court in *Taylor* held that the Secretary of Labor, under a congressional delegation of
23 power, authorized the application of state workplace safety laws on federal enclaves
24 *where the federal government does not actively exercise its jurisdiction. Id.* Because the
25 U.S. Air Force officials on the base at issue in *Taylor* allowed state OSHA inspectors to
26 come on base and respond to the plaintiff’s complaints about his employment
27 termination, the court reasoned that the Air Force did not actively exercise its jurisdiction
28 and therefore permitted the application of state workplace safety laws. *Id.*

1 This case is distinct from *Taylor* in that Plaintiff makes no allegation that the
2 federal government did not actively exercise its jurisdiction as to occupational safety
3 laws. In the absence of such allegations, state occupational safety laws are not exempt
4 from the Federal Enclave Doctrine. *Stiefel v. Bechtel corp.*, 497 F. Supp. 2d 1138, 1150–
5 51 (S.D. Cal. 2007). Accordingly, the Court finds that the Federal Enclave Doctrine
6 precludes Plaintiff’s claims under California Labor Code Sections §§ 1102.5 and 6310.

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8 **IV. CONCLUSION AND ORDER**

9 Because the Federal Enclave Doctrine bars all of Plaintiff’s state law claims, the
10 Court **GRANTS WITH PREJUDICE** Defendant’s motion to dismiss.

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12 **IT IS SO ORDERED.**

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14 Dated: May 1, 2017

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16 Hon. M. James Lorenz
17 United States District Judge
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