UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA JOYCE LITTLE, Plaintiff, v. THE STATE OF WASHINGTON, et al., Defendants.	CASE NO. C11-1387JLR ORDER GRANTING MOTIONS TO DISMISS

I. INTRODUCTION

This matter comes before the court on Defendants Washington State Bar Association's ("the WSBA"), Seattle School District No. 1's ("the Seattle School District"), Clover Park School District's ("Clover Park") and Kenneth Muscatel's motions to dismiss *pro se* Plaintiff Brenda Little's first amended complaint (Dkt. ## 66, 67, 68, 72). Ms. Little filed a single response to the four motions to dismiss (Dkt. # 73). Having considered the submissions of the parties, the balance of the record, and the

governing law, and no party having requested oral argument, the court GRANTS the motions to dismiss (Dkt. ## 66, 67, 68, 72) and DISMISSES this action WITH PREJUDICE.

II. BACKGROUND

In 2011, Ms. Little filed a lawsuit in the United States District Court for the Western District of Washington against the State of Washington, the WSBA, the Seattle School District, Clover Park, and other defendants, alleging that the defendants violated her rights under the Thirteenth Amendment. (*See* Cause No. 11-0091GMK Compl. (Dkt. # 6).) The court dismissed the complaint for failure to state a claim upon which relief could be granted, and gave Ms. Little leave to file an amended complaint. (Cause No. 11-0091GMK Opinion and Order (Dkt. # 18).) Rather than amending her complaint, Ms. Little voluntarily dismissed that lawsuit. (Cause No. 11-0091GMK Order of Dismissal (Dkt. # 21).)

Ms. Little then filed a second lawsuit in this court against the State of Washington, the WSBA, the Seattle School District, and Clover Park alleging 18 different causes of action. (*See generally* Compl. (Dkt. # 16).) On Ms. Little's motion, the court dismissed the State with prejudice. (*See* Dkt. ## 32, 42.) The remaining defendants then moved to dismiss Ms. Little's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Dkt. ## 20, 22, 24, 27.) The court granted the motions to dismiss because (1) many counts were supported only by conclusory allegations that did not satisfy the pleading requirements set forth in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); and (2) other counts were supported by allegations that were so confusing that they did not satisfy Federal

Rule of Civil Procedure 8(a)(2)'s requirement that a complaint contain a "*short and plain* statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2) (emphasis added). (Order (Dkt. # 48) at 5.) The court, nevertheless, granted Ms. Little leave to file an amended complaint. (*Id.*)

Ms. Little timely filed her amended complaint, which adds Dr. Muscatel as a defendant and alleges the following causes of action: (1) civil conspiracy against all Defendants; (2) tortious interference and interference with a business relationship against all Defendants; (3) intentional infliction of emotional distress against all Defendants; (4) violation of 42 U.S.C. § 1981 against all Defendants; (5) "defamation stigma plus" against all Defendants; and (6) three claims under 42 U.S.C. § 1983 against the WSBA for violations of equal protection, disability discrimination, due process, First Amendment freedom of speech, and Seventh Amendment due process. (*See generally* Am. Compl. (Dkt. # 51).)

III. ANALYSIS

A. Motions to Dismiss

Defendants move to dismiss all of Ms. Little's claims under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (*See* Dkt. ## 66, 67, 68, 72.) When considering a motion to dismiss under Rule 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all well-pleaded allegations of material fact as true and draw all reasonable inferences in favor of the plaintiff. *See Wyler Summit P'ship v. Turner Broad.*

Sys., 135 F.3d 658, 661 (9th Cir. 1998). The court, however, need not accept as true a legal conclusion presented as a factual allegation. *Iqbal*, 129 S. Ct. at 1949-50.

Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 129 S. Ct. at 1949 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' . . . Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

As with Ms. Little's original complaint, the court has carefully reviewed Ms. Little's amended complaint to determine whether it cures the previous deficiencies. The court concludes that it does not. First, the amended complaint fails to contain the required "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Most counts of the amended complaint incorporate by reference the preceeding 90 paragraphs of allegations and then baldly recite the elements of the cause of action. Ms. Little fails to indicate which of the numerous facts previously

alleged give rise to the particular cause of action listed in each count. (*See, e.g.*, Am. Compl. ¶¶ 93-94.) The court does not consider this style of pleading to comply with Rule 8(a)'s requirement of a "short and plain statement." Nevertheless, the court has endeavored to match the allegations in the amended complaint with the alleged causes of action. Even assuming that the amended complaint complies with Rule 8(a), however, the court finds that the amended complaint fails to allege sufficient facts to establish that Defendants are liable for the alleged violations. A brief discussion of the shortcomings of each count of the amended complaint follows.

Count One – Civil Conspiracy: Like the original complaint, the amended complaint does not contain specific factual allegations from which the court could conclude that Defendants entered into a civil conspiracy. *See Iqbal*, 129 S. Ct. at 1949.

Counts Two and Three – Tortious Interference and Interference with a Business Relationship: The amended complaint fails to allege specific acts by Defendants that interfered with Ms. Little's business relationships. For example, the conclusory allegation that "Clover Park School District and the Washington State Bar Association began ex parte discussions to interfere with Brenda's contractual relationship with Mack Litton" (Am. Compl. ¶ 50), without further factual enhancement, does not comply with the pleading standard set forth in *Iqbal*, 129 S. Ct. at 1949. *See also Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*, 242 P.3d 1, 13 (Wash. Ct. App. 2010) ("Exercising one's legal interests in good faith is not improper interference," as required to establish tortuous interference.). The amended complaint, moreover, does not

allege that any intentional or negligent interference caused a breach or termination of Ms. Little's relationship with Mr. Litton.

Count Three[1] – Intentional Infliction of Emotional Distress: The amended complaint does not contain allegations of conduct that was "*so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community*." *Robel v. Roundup Corp.*, 59 P.3d 611, 619 (Wash. 2002) (internal citation omitted and emphasis in original). Here, the court finds that Ms. Little's amended complaint fails to allege any fact that even if true are so outrageous as to amount to intentional infliction of emotional distress.

Count Four – Violation of 42 U.S.C. § 1981: The amended complaint fails to allege facts giving rise to any Defendant's liability under this provision. *See Iqbal*, 129 S. Ct. at 1949.

Count Five – Defamation Stigma Plus: The amended complaint does not state a claim for "defamation stigma plus" (*id.* ¶¶ 102-03) because it does not allege that Defendants disclosed a stigmatizing statement or that any such disclosure denied Ms. Little some more tangible interest, such as employment. *See Wenger v. Monroe*, 282 F.3d 1068, 1074 (9th Cir. 2002) (setting forth the elements of a "stigma plus" due process claim).

[1] Two counts in the amended complaint are labeled "Count Three."

Counts Six, Six,[2] and Seven – 42 U.S.C. § 1983 Claims: The amended complaint alleges three counts against the WSBA under 42 U.S.C. § 1983 for violations of equal protection, disability discrimination, due process, First Amendment freedom of speech, and Seventh Amendment due process. (Am. Compl. ¶¶ 104-12.) In support of the first "Count Six," the amended complaint alleges: "Washington Bar Association intentionally hired primarily white males [sic] triers of fact, tried Little in abstentia, refused to allow her to hire a lawyer, did not appoint a lawyer for disability petition." (*Id.* ¶ 107.) Neither these specific allegations nor any other allegation in the amended complaint is sufficient to state a claim under 42 U.S.C. § 1983. First, as noted in the court's order granting Defendants' motions to dismiss Ms. Little's original complaint, the allegation that the WSBA has only white triers of fact is not sufficient to state a claim for the denial of equal protection. Second, the allegation that the WSBA "tried Little in abstentia" does not state a claim because the Washington State Court Rules for Enforcement of Lawyer Conduct ("ELC") do not prohibit the WSBA from holding a disciplinary hearing when a respondent fails to appear after being properly notified. *See* ELC 10.13 (requiring respondents to attend disciplinary hearings and setting forth inferences that hearing officers may draw from a respondent's absence). Moreover, the allegations that the WSBA refused to allow Ms. Little to hire a lawyer and that it would not appoint a lawyer for Ms. Little's disability petition are inconsistent with more specific

[2] Two counts in the amended complaint are labeled "Count Six."

allegations in the complaint that Ms. Little had a pro bono attorney and that the WSBA also appointed an attorney for her disability petition. (*See* Am. Compl. ¶¶ 76-84.)

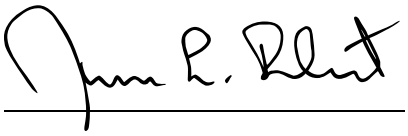
B. Leave to Amend

Defendants argue that the court should deny any request for leave to amend and dismiss Ms. Little's amended complaint with prejudice. Under Federal Rule of Civil Procedure 15(a)(2), courts are instructed to "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The court, however, may exercise its discretion to deny leave to amend "due to 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.'" *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2008) (quoting *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008)). "[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.'" *Id.* (quoting *Read-Rite Corp. Sec. Litig.*, 335 F.3d 843, 845 (9th Cir. 2003)). Here, Ms. Little has been granted numerous attempts to amend her complaint, and yet the most recent version does not correct the previously noted deficiencies. Accordingly, the court finds it appropriate to deny Ms. Little leave to amend and dismiss this action with prejudice. *See Zucco Partners*, 552 F.3d at 1007.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Defendants' motions to dismiss (Dkt. ## 66, 67, 68, 72), and DISMISSES this action WITH PREJUDICE.

Dated this 3rd day of April, 2012.



JAMES L. ROBART
United States District Judge