



Gonzalez v. US Human Rights Network et al

2021 | Cited 0 times | D. Arizona | June 1, 2021

WO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Rosalee Gonzalez,

Plaintiff, v. US Human Rights Network, et al.,

Defendants.

No. CV-20-00757-PHX-DWL ORDER

US Human Rights Network,

Counterclaimant, v. Rosalee Gonzalez and John Doe Gonzalez, husband and wife,

Counterdefendants.

amend the scheduling order and for leave to file a second amended complaint . (Doc. 78.) For the following reasons, the motion is denied.

BACKGROUND The parties are familiar with the facts of this case, which are set out in earlier orders. In a nutshell, Plaintiff asserts that U.S. Human Rights Netwo her as an independent contractor and then wrongfully terminated her after she complained

various counterclaims against her. (Doc. 58.)

On March 18, 2020, Plaintiff filed a complaint in Maricopa County Superior Court. (Doc. 1-3.) On April 20, 2020, Network removed the action to this court. (Doc. 1.) 11.) On May 22, 2020, Network filed an answer and counterclaims. (Doc. 12.) On August 11, 2020, the Court entered a Rule 16 scheduling order providing that 2.) The scheduling order also set a fact discovery deadline of June 11,

2021 (id. ¶ 5) and a dispositive motions deadline of June 25, 2021 (id. ¶ 8.a). On January 11, 2021, after



Gonzalez v. US Human Rights Network et al

2021 | Cited 0 times | D. Arizona | June 1, 2021

briefing from the parties, the Court entered an order that, among other things, dismissed three individual Network representatives Marcia Johnson- Blanco - , Eric Tars , and Lisa Crooms-Robinson - for lack of personal jurisdiction,

55.) On April 2, 2021, the parties participated in a settlement conference before Magistrate Judge Bibles. (Doc. 74.) Settlement was not reached. (Id.) On April 8, 2021, after briefing from the parties, the Court denied Johnson-Blanco, Tars, and Crooms- c. 75.) On May 7, 2021, Plaintiff filed a motion to amend the scheduling order and for leave to file a SAC. (Doc. 78.) The motion is fully briefed and neither side has requested oral argument. (Docs. 84, 88.) On May 21, 2021, the parties submitted joint notices of discovery dispute regarding (1) (2)

DISCUSSION Although has been that she was wrongfully terminated due to her complaints about being misclassified as an

independent contractor, Plaintiff now seeks to add a claim that a different improper motivation racial animus in violation of 42 U.S.C. § 1981 was the true reason for her termination. (Doc. 78 at 3-4.) Plaintiff also moves to extend certain unexpired deadlines in the case management order. (Id.) Network responds that Plaintiff should not be granted leave to amend because (1) her new proposed claim is futile, (2) the request to amend is dilatory and violates the scheduling order, and (3) the amendment would be unfairly prejudicial. (Doc. 84 at 6-7.) Plaintiff replies that leave to amend the complaint should be granted under Rule 15(a)(2). (Doc. 88 at 2.) Under the scheduling order, the deadline to seek leave to file an amended pleading was August 11, 2020. (Doc. 39 ¶ 2.) After a deadline established in a Rule 16 scheduling order expires, *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). See also

Leibel v. City of Buckeye, 2019 WL 4736784, *2 (D. Ariz. 2019) Because those standards apply her her complaint. Fed. R. Civ. P. 16(b)(4). good cause standard primarily

considers the diligence of the party seeking the amendment [C]arelessness is not compatible with a finding of diligence and offers no reason for a grant of relief [T]he If that *Johnson*, 975 F.2d at 609. I. Good Cause A. Leave To Amend

earlier misclassification and retaliation claims (Doc. 78 at 30-32, 41-42, 45) and asserts a new racial discrimination claim and allegations under 42 U.S.C. § 1981 (id. at 34-38, 42- 44). Indigenous/American Indian and Latino Executive Director and that, during relevant times

in her tenure, s and stakeholders expressed discontent about her handling of issues particular to the African-American community. (Id.) Plaintiff

alleges that Network subsequently decided to replace her with Salimah Hankins -American, in an effort relationship with certain advocacy organizations. (Id.)



Gonzalez v. US Human Rights Network et al

2021 | Cited 0 times | D. Arizona | June 1, 2021

at 36 ¶ 64, 37 ¶¶ 67-69.) Plaintiff alleges that, after she was fired, Hankins took over as acting Executive Director. (Id. at 37 ¶ 71.) Plaintiff alleges that later, in January 2021, a Black and/or African American man was selected to co- and that on February 22, 2021, Vickie Casanova-Willis - , who is also

B - - Id. at 37-38 ¶¶ 72-77.) Plaintiff argues that good cause exists to grant the amendment request because it ed, through discovery in this case, -Willis . . . led certain Black and/or African-American - (Doc. 78 at 4.) Plaintiff also contends that it was only in February 2021, when Casanova-

-term successor, that the racial nature of her alleged mistreatment and termination became apparent. (Id. at 5 2021 that Dr. Gonzalez could have discovered she had been terminated because of her In her reply, Plaintiff elaborates that Casanova- After the April 2021 settlement

conference proved unsuccessful, Plaintiff sought request, which Network declined in a letter dated April 26, 2021. (Doc. 78 at 5-6.)

Id. at 6.) ter the deadline for amended pleadings Story v. Midland

Funding LLC, 2016 WL 5868077, *2 (D. Or. 2016). To determine whether a party exercised diligence, courts typically consider the amount of time between the discovery of the new information and when the party requested leave to amend. Zivkovic v. S. California Edison Co., 302 F.3d 1080, 1087-88 (9th Cir. 2002).

Story, 2016 WL 5868077 at *2-3. See also Navarro v. Eskanos & Adler, 2006 WL -week delay does not constitute a failure in

Story, 2016 WL 5868077 at *2. See e.g., Aldan v. World Corp., 267 F.R.D. 346, 358 (D. N. Mar. I. 2010) (holding that plaintiff was diligent where there was a delay of a month-and-a-half between discovery of the new information and the

Here, the Court concludes that Plaintiff failed to exercise diligence. First, was not until October 2020, or February 2021, that she first became aware of a potential

racial discrimination claim. Plaintiff alleges that she personally participated in certain race- related disagreements with Casanova-Willis and others during her employment, which ended in November 2019. (Doc. 78 at 29, 34-37.) Indeed, she alleges that she complained of this treatment to Johnson-Blanco while still employed with Network. (Id. at 37 ¶ 65.) Further, Plaintiff alleges she was replaced immediately after termination (i.e., around November 2019) by an acting Executive Director who did not hail from her protected groups (Indigenous/American Indian and Latino - (Id. at 37 ¶ 71.) It is therefore puzzling why Plaintiff fixates on the February 2021 hiring of Casanova-Willis as the supposed point in time when she first became aware - 1981 claim. (Doc. 88 at 5.) Her immediate



Gonzalez v. US Human Rights Network et al

2021 | Cited 0 times | D. Arizona | June 1, 2021

successor, Hankins, who is alleged to be a member of the same group as Casanova-Willis, replaced her months before this lawsuit was even filed. Thus, even though (as Plaintiff argues) a successful claim under § 1981 requires proof of

knew or should have known the relevant underlying facts long before this case was filed (let alone before the entry of the scheduling order). Under these circumstances, it was not diligent to wait until May 2021 deadline set forth in the scheduling order, and only a month before the close of fact discovery to seek to assert a race-discrimination claim for the first time. Cf. *Agricola Baja Best, S. De. R.L. de C.V. v. Harris Moran Seed Co.*, 2013 WL 4499118, *2 (S.D. Cal. The record here does not reflect reasonable diligence and therefore Plaintiff fails to establish good cause. Plaintiff received the alleged representations in regard to and informed Defendant of the germination issue well before the inception of this lawsuit, i.e., years before the scheduling orders deadline. Thus, Plaintiff knew, or should have known, of the facts underlying the proposed amendments well before the scheduling order deadline to amend. Second, even accepting Plaintiff had sufficient information to assert her racial discrimination claim by February 2021 at the latest. was only in late February 2021 that Dr. Gonzalez could have discovered she had been Nevertheless, Plaintiff waited until May 7, 2021, more than two months after that discovery, before filing the pending motion for leave to amend. That length of time is not consistent with reasonable diligence. See, e.g., *MiCamp C* filed the motion nearly one month after [discovering relevant facts] does not indicate

Ogier v. KC Care, LLC, 2019 WL 3210089, *3 (D. Or. 2019) (finding lack of diligence where party wait . . . waiting two months after discovery of new facts to file a motion for leave to amend

; , 2015 WL 5022326, discovering new facts to bring a motion to amend does not constitute diligence under Rule

efforts to amendment, the delay was not justified under these circumstances. Cf. *MiCamp Sols.*, 2021 WL 289661 at *3 (one-month delay not justified e

from those discussions). Indeed, the scheduling order in this case specifically cautioned and when the parties elect to pursue settlement efforts, including a settlement conference before a magistrate judge. ¶ 10.) B. Extension Of Deadline For Discovery Plaintiff also moves to amend the scheduling order to extend the fact discovery and dispositive motion deadlines by 180 days. (Doc. 78 at 7.) Plaintiff argues that good cause supports this amendment request because of (1) ongoing discovery disputes with Network,

The Court disagrees. elate to ongoing discovery disputes that the Court will hear and resolve in short order. (Doc. 85 [first discovery dispute]; Doc. 86 [second discovery dispute]; Doc. 87 [setting telephonic discovery dispute hearing for June 2, 2021].) At this time the Court does not believe that a six-month extension is warranted on the basis of those disputes, but the parties may file a renewed motion to extend the discovery and dispositive motion deadlines if, after the resolution of the



Gonzalez v. US Human Rights Network et al

2021 | Cited 0 times | D. Arizona | June 1, 2021

ongoing disputes, either party determines that additional time is needed. Finally, b SAC is denied, that rationale cannot support extending the discovery and dispositive motion deadlines.

Accordingly, IT IS ORDERED that Plai SAC (Doc. 78) is denied. IT IS FURTHER ORDERED order to extend the discovery and dispositive motion deadlines is denied without prejudice.

Dated this 1st day of June, 2021.

