



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO CHRISTOPHER VALENCIA, Plaintiff, v. No. CV 1:17-00509 RB/SCY THE BOARD OF REGENTS, University of New Mexico, ROBERT FRANK, in his individual capacity, CHAOUKI ABDALLAH, in his individual capacity, CAROL PARKER, in her individual capacity, MARK PECENY, in his individual capacity, LES FIELD, in his individual capacity, RONDA BRULOTTE, ERIN DEBENPORT, LINDSAY SMITH, FRANCIE CORDOVA, in her individual capacity, LAURA LYNN BUCHS, in her individual capacity, HEATHER COWAN, in her individual capacity, AARON JIM, in his individual capacity, ALEXANDRA TACEA, KAYLA AHMED, DANIELLE KABELLA, JOE SCEARCE, LAURA MORRIS, JULIA FULGHUM, in her individual capacity, ALBERT SENA, DENNIS OLGUIN, and SARAH LEISTER, Defendants.

MEMORANDUM OPINION AND ORDER Once again the Court clear enough for the case to proceed. The last time it n detail, the Court sent the complaint back for lack of clarity and concision. Many months and a few amended complaints later, Valencia has successfully stitched together a coherent narrative. However, it is still unclear who, exactly, is being sued for what. So yet again, the Court , this time with specific directions on how to amend. Valencia has three business days to file an amended complaint as instructed.

BACKGROUND 1 start at UNM and the beginning of trouble

Valencia was hired as a tenure-track assistant professor in the Department of Anthropology by the Board of Regents of the University of New Mexico (UNM) in 2012. (Doc. 76 ¶¶ 30 31.) For about three years, Valencia performed his duties without incident, even receiving a letter from Defendant Chaouki Abdallah, the Provost of the university, in June 2015, Id. ¶ 35.)

But just days later, Defendant Les Field told Valencia that students from the anthropology department had filed a complaint against him with the Office of Equal Opportunity (OEO). (Id. substance of the complaints. (Id. ¶¶ 37 38.) Valencia heard no more about the OEO complaint

until Field emailed him about two months later. (See id. ¶¶ 40, 42.) In his email, Field told Valencia that Defendants Mark Peceny and Julia Fulghum had requested ecusal from grading comprehensive exams for the 2015 2016 year because of the ongoing OEO investigation. (Id. ¶ 40, 42.) Field told Valencia that his recusal that is disciplinary in nature without any formalized, written, Id.



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

¶ 44.) Compliance Office, protesting that removing him Id. ¶ 47.)

ovost, Defendant Carol Parker, investigated and determined that Field, Peceny, and Fulghum had recused Valencia from grading 1 Third Amended Complaint (Doc. 76) as true and views the allegations in the light most favorable to Valencia. *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009).

complaints to the OEO. (Id. ¶ 48.) Such a recusal, Parker found, allowable under UNM policy. (Id.) Valencia remained

suspended from grading in spite of his protests that he was unable to defend himself against unknown complaints and that no UNM policy justified his temporary suspension. (Id. ¶¶ 48, 50 52.)

It was only in September 2015 that Valencia first learned about the substance of the complaints against him. (See id. ¶ 56.) First, the OEO, acting through Defendant Laura Lynn Buchs, told Valencia that Defendant Danielle Kabella, one of his students, had accused him of sexual orientation discrimination. (Id.) Then the OEO notified Valencia that Defendant Kayla Ahmed, a former UNM graduate student, had accused him of sexual harassment and gender discrimination. (Id. ¶ 61 62.) Ultimately, the OEO determined that both complaints were not supported by probable cause. (Id. ¶¶ 60, 65.)

By this time, Valencia suspected that three female professors, Defendants Ronda Brulotte, Erin Debenport, and Lindsay Smith had been engaging in a smear campaign against him. (See id. ¶ 69.) He noticed that those who had lodged complaints against him were students mentored by Brulotte, Debenport, or Smith. (Id. ¶ 68.) He repeatedly told Field that other faculty

had made false allegations against him and coached student complaints. (See id. ¶¶ 70, 73, 79.)

no evidence that the OEO did anything in response. (See id. ¶¶ 77, 82 83.) Brulotte, Debenport, See id. ¶ 86.) For example, Brulotte told students that (Id. ¶ 84.) And in the presence of

students at a local restaurant, Brulotte and Debenport high-fived each other as they proclaimed Id. ¶ 128.) As a result, students dropped Valencia as their advisor and Valencia was removed from academic committees. (See id. ¶ 86.) When later asked to not See id. ¶ 88.) Investigation into anthropology department and original disciplinary action

After repeated complaints from Valencia, the OEO finally See

id. ¶¶ 89 91.) During the investigation, the OEO threw university policies by the wayside. The OEO did not give Valencia an opportunity to respond to adverse claims, or even provide notice of what those claims were, despite policy requiring notice and an opportunity to respond. (See id. ¶¶ 94 95,



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

98.) The OEO did not allow Valencia to identify favorable witnesses, in spite of policy requiring the OEO to do so. (Id. ¶ 100.) Those students who did reach out or submit statements Id. ¶¶ 107, 114.) And despite policy that limited the OEO to investigating claims brought within 90 or 180 days of the alleged conduct absent a finding of good cause, the OEO mainly investigated 12-month-old claims without identifying good cause for investigating the stale claims. (Id. ¶¶ 96 97, 108.)

was troubling. Students complained that they were under pressure to support the accusers against - understanding the seriousness of the claims against Valencia, or accused of victim blaming. (Id. ¶¶ 115 16, 118, 123.) Brulotte, Smith, and Debenport Id. ¶ 121.) In those meetings, the three professors shared confidential

information about their interactions with the OEO, the anthropology department administration, and the pending investigations. (Id.) Brulotte also posted on Facebook in a manner viewable by some students, making clear her opposition to Valencia and claiming that anyone who did not See id. ¶ 129.) As a result, students who did not believe the allegations against Valencia hesitated to come forward for fear of social backlash or retaliation from Brulotte, Smith, or Debenport. (See id. ¶¶ 117, 122.)

After nine months, the OEO released its findings in March 2016. (Id. ¶¶ 103, 133.) The OEO found that the overwhelming majority of allegations against Valencia lacked corroboration, but found probable cause to believe that Valencia had engaged in discriminatory conduct based on sexual orientation and gender identity, and that Valencia subjected students to a sexually harassing hostile academic environment. (Id. ¶¶ 104 05.) After the O released, Peceny sent Valencia a notice of emergency suspension, from which Valencia learned

(Id. ¶ 131 32.)

Freedom & Tenure Committee (AFTC). (Id. ¶¶ 134 discretionary appeal without any substantive review, in contravention of UNM policy. (See id. ¶¶

136 37.) But the AFTC found that the anthropology department may have committed procedural error by relying on the emergency suspension provision, which was only meant for a imminent harm. (Id. ¶¶ 138, 140.) Although

Valencia protested the length of the emergency suspension to Peceny and Field, neither the workplace for two-and-a-half months. (Id. ¶¶ 142 43.)

Eventually, Field issued Valencia a letter of censure, and Valencia was allowed to return to his normal duties. (Id. ¶¶ 149 50.) Valencia appealed the letter of censure after receiving assurances from the university that appealing did not carry the risk of additional punishment. (See id. ¶ 152.) Media fury, reopening of investigation, and termination of employment



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

As the letter of censure Id. ¶ 153.) Brulotte, Smith, and Debenport

situation. (See id. ¶ 154.)

Smith, and Debenport had allowed their attorneys to disclose confidential information to the

media, that the OEO had done nothing to protect him, and that he was now the target of derogatory and threatening emails. (Id. ¶ 163.) Neither the university, the OEO, nor the anthropology department addressed . (Id. ¶ 165.)

Instead, the university reopened its investigation into Valencia and made a broad Id. ¶¶ 156, 158.) Shortly afterwards, Valencia was again placed

on emergency suspension based on new information the university received. (Id. ¶ 160.) Apparently Defendant Albert Sena, a UNM maintenance employee, had accused Valencia of being involved in a drunken assault and battery in Spring 2015. (Id. ¶ 166.) And Defendant Laura Morris, a former student of Val because of her race and engaging in inappropriate conduct. (Id. ¶¶ 169 71.)

Valencia filed yet another complaint with the OEO, again reiterating that Brulotte, Smith, and Debenport had been engaging in an unchecked media campaign against him and noting that his previous complaints to the anthropology department had been fruitless. (Id. ¶¶ 174, 176.) Brulotte had even posted a photograph of Valencia on Facebook p Id. ¶ 175.)

In August 2016, Peceny, who was handl Id.

sion. (Id. ¶ 183.) Then the OEO, in a decision signed by Defendants Aaron Jim and Francie Cordova, found no probable cause to Id. ¶ 185.) Valencia attempted to appeal his discharge to the AFTC, but the AFTC would not hear his appeal. (Id. ¶ 187.) s lawsuit and the present motion to dismiss

Valencia then filed this lawsuit. The defendants have asked the Court to dismiss (Doc. 78 at 4, 8.) The problem with the complaint, the defendants contend, is that it does not comply with Rule 8 of the Federal Rules of Civil Procedure. (Doc. 78 at 4.)

DISCUSSION Rule 8 of the Federal Rules of Civil Procedure intelligibly so as to inform the defendants of the legal claims Mann v. Boatright,

477 F.3d 1140, 1148 (10th Cir. 2007). A lengthy complaint bloated with irrelevant allegations could so obfuscate See U.S. ex rel. Garst v. Lockheed- Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003). If a complaint violates Rule 8, a court may

dismiss the complaint. See id. But complaints do not need to be perfect, and a court should Id. The



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

defendants argue that in 51 pages), amount of time required to answer the complaint, and lack of clarity about who is being charged in each count require dismissal pursuant to Rule 8. (Doc. 78 at 5 8.) The Court rejects the defendants time and length objections. to respond to the complaint is not the product of unnecessary length in the complaint, but rather

the length of time covered in the complaint, as well as the number of defendants (22) and claims (20) involved. Valencia has cut much of the unnecessary prose from his previous complaint, and considering that many of the numbered paragraphs consist of a single sentence and that Valencia is attempting to tell a years-long story involving 22 defendants the Court finds that the complaint is not so unnecessarily lengthy as to render it unclear. Indeed, the complaint was clear enough for the Court to s allegations earlier in this Opinion. Instead of being nightmarishly exhausting, as the defendants argue, the complaint tells an exhaustingly nightmarish story of a person struggling helplessly for years under a cloud of innuendo and allegations. However, the complaint is still unclear as to who is being sued for what. In paragraph 208 of the complaint, individually-named institutional Defendants . . . to wit, Defendants Frank, Abdallah, Parker,

Since Valencia later says that -named Defendants set forth in paragraph 208 refer to the same defendants, (Doc. 79 at 4), UNM must -named institutional

and Fulghum. De -named institutional

id. at 6), the Court guesses that Valencia probably made a typographical error and proceeds to decrypt the complaint with its working theory.

Count 1 alleges misconduct by UNM and the individually-named institutional defendants, but appears to seek relief only -named Defendants set forth in This apparent discrepancy where Valencia alleges improper behavior by UNM but excludes UNM when discussing relief is pervasive in the complaint. (See, e.g., id. ¶¶ 245 46.) When the defendants highlight this discrepancy as confusing, (Doc. 78 at 7), Valenci -named Defendants were separated from UNM for the obvious 5.) But the defendants may have some legal sense after all, because even a as true, the question remains: did Valencia exclude UNM entirely from the count, or did Valencia include UNM in the count, but only refrain from seeking punitive damages against it?

And -named Defendants not included in paragraph 208 14. (Id. at 6.) Taking the list of defendants on the cover page and striking the defendants identified in paragraph 208, the Court identifies the individually- as Brulotte, Debenport, Smith,

Tacea, Ahmed, Kabella, Searce, Morris, Sena, Olguin, and Leister. A reasonable conclusion, then, is that all of those defendants would be charged in counts 7 and 12 14. But count 14 only mentions Brulotte, Debenport, Tacea, and Leister, apparently contradicting Valencia



Valencia v. The Board of Regents, University of New Mexico et al

2018 | Cited 0 times | D. New Mexico | August 16, 2018

-named Defendants not included in paragraph 208 are 4.

There are other confusing aspects of how Valencia identifies the defendants for his legal claims, but the Court will not highlight them here. The Court intention is to get on with the case, not to nitpick, but it and the defendants should not have to guess who is being charged in each count. As written, the complaint gives the Court little confidence that it knows who is being sued for what.

CONCLUSION The Court will grant in part without prejudice s story, but Valencia must clarify who is being sued in each count. The Court

directs Valencia to add an underlined sentence at the end of each count that names, specifically, each defendant who is charged in that count. This underlined sentence will be deemed comprehensive as to each count and will take precedence over any contradictory or Valencia has three business days from the filing of this Memorandum Opinion and Order to file an amended complaint as instructed.

ROBERT C. BRACK SENIOR U.S. DISTRICT JUDGE

