

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

EMMA MAJO,

Plaintiff,

v.

SONY INTERACTIVE
ENTERTAINMENT LLC,

Defendant.

Case No. 21-cv-09054-LB

**ORDER GRANTING MOTION TO
DISMISS**

Re: ECF No. 24

INTRODUCTION

This is a putative class and collective action against Sony Interactive Entertainment alleging pervasive gender discrimination at Sony. The named plaintiff — a female former employee — brought individual, class, and collective claims, alleging that (1) she was harassed, denied promotion, demoted, and terminated, all because of gender bias, and (2) Sony employees who are female or identify as female do not receive the same compensation as similarly situated male employees and are denied promotions.¹

The plaintiff's first amended complaint (FAC) has thirteen claims: one collective claim on behalf of herself and a nationwide class under the Fair Labor Standards Act (FLSA) as amended by

¹ First Am. Compl. (FAC) – ECF No. 22. Citations refer to material in the Electronic Case File (ECF);

the Equal Pay Act; six state-law class claims on behalf of herself and a California class; one claim on behalf of herself and both classes under the Declaratory Judgment Act, 28 U.S.C. § 2201; and five individual claims under state law.² Sony moved to dismiss the FAC under Federal Rule of Civil Procedure 12(b)(6), mainly on the ground that the plaintiff alleges only unactionable run-of-the-mill personnel activity and thus does not plausibly plead claims. It also moved to strike the claims under Rule 12(f) on the ground that the allegations are “highly individual” and do not establish that a class or collective action is procedurally proper.³

The court grants the motion to dismiss (with leave to amend) for most claims because the allegations are mostly conclusory, but the following individual claims survive: statutory and common-law wrongful termination, whistleblower retaliation under Cal. Lab. Code § 1102.5(b), and retaliation under the California Fair Employment and Housing Act (FEHA). Because the court dismisses the federal claim, though, it does not have jurisdiction over the state claims and so dismisses all claims. The court denies the motion to strike without prejudice because it is premature to decide it based on an inadequately pled complaint.

STATEMENT

1. Allegations Regarding Individual Claims

The plaintiff alleged that she was harassed, denied promotion, demoted, and terminated “because of gender bias, because she is a female, and because she spoke up about gender bias.”⁴ The specific allegations in the FAC are as follows.

The plaintiff worked at Sony from 2015 until 2021. (She does not describe her job title or responsibilities.)⁵ During that time, she was never promoted and could not find out how to get promoted, despite asking multiple managers and her mentor.⁶ When she asked, her managers would

² *Id.* (¶¶ 79–199).

³ Mot. – ECF No. 24.

⁴ FAC – ECF No. 22 (¶ 78).

⁵ *Id.* at 13 (¶ 64), 16 (¶ 77).

⁶ *Id.* at 14, 15 (¶¶ 68, 71, 72, 74).

“say something to the effect of, ‘yeah we should talk about that.’”⁷ Even though she had a direct subordinate for several years, she was never a manager.⁸ At one point, her “requests for a path to management resulted in the creation of a plan for more levels within [her] department instead of any communication that tasks, behavior modification, or knowledge was needed on [her] part.”⁹

She alleges she was effectively demoted. She at first reported to a vice president, but “after asking about how to get promoted, she was then told to report to a manager below the VP.” The change was ostensibly because the VP “did not have time to handle subordinates,” but the plaintiff “noticed that other male co-workers continued reporting to the VP.”¹⁰

In 2021, Sony terminated the plaintiff “[s]oon after” she “submitted a signed statement to Sony detailing the gender bias she [had] experienced.” The termination was ostensibly because her department was being eliminated, but she was not “a member of the department being dissolved.”¹¹

There are other allegations about gender bias. “Sony has managers (e.g., Yu Sugita) who will not be alone in a room with a female with the door closed” and who will speak only to male colleagues even if a female is present.¹² (The plaintiff does not specify that Sugita was her manager.) When the plaintiff wanted something done, she needed to send the request through a male because if she communicated with Sugita directly, he would ignore her. A “request would garner a response when it came from a male intern,” but a “a virtually identical request would be ignored if it came from a higher-level female employee.”¹³ At one point, the plaintiff left the “Security Governance, Risk, and Compliance” department because she thought promotion was unavailable (although the FAC also alleges she left the department because she was asked to and felt she had no choice because of office

⁷ *Id.* at 14 (¶ 69).

⁸ *Id.* at 14–15 (¶ 71).

⁹ *Id.* at 14 (¶ 68).

¹⁰ *Id.* (¶ 70).

¹¹ *Id.* at 16 (¶ 77).

¹² *Id.* at 14 (¶ 66).

¹³ *Id.* (¶ 67).

politics). After being told that she could return to her former department any time that there was an opening, she applied but never heard back about her application.¹⁴

Sony's human-resources department "creates resistance when women try to get promoted" by "losing track of females seeking promotion" and denying females promotion because of their current job titles, "without a real examination of [their] skills."¹⁵ By contrast, Sony promotes a "notable" number of men "out of cycle" (meaning, not during "in cycle" promotions at the time of annual performance reviews). The plaintiff knows of no female out-of-cycle promotions.¹⁶

When she joined Sony, the plaintiff's department was about forty percent female, but over time there was a "shift towards more and more males." "As of 2021, Sony is dominated by males."¹⁷

The plaintiff has also "heard [Sony] managers make gender-biased comments about female workers" (such as saying, "[w]e can understand she is not performing well because she has a lot going on at home"), but she never heard like comments about men.¹⁸

2. Class and Collective Allegations

Sony employees "who are female or identify as female . . . were not compensated equally to male employees who performed substantially similar work" and "were denied promotions."¹⁹ "Even though nearly half of [Sony] PlayStation owners are females," a third-party gender-balance survey "revealed that Sony's Executive Committee was 100% male" and gave Sony "the worst possible rating . . . because [it] did not have any females in either Staff or Line leadership roles."²⁰

The class and collective definitions are as follows.

¹⁴ *Id.* at 14–15 (¶¶ 68, 73).

¹⁵ *Id.* at 16 (¶ 76).

¹⁶ *Id.* at 15–16 (¶ 75).

¹⁷ *Id.* at 13 (¶ 65).

¹⁸ *Id.* at 15 (¶ 72).

¹⁹ *Id.* at 4 (¶ 13).

²⁰ *Id.* at 14 (¶ 68).

For the collective action under the Equal Pay Act claim, the proposed “Nationwide Class” is “[a]ll individuals employed by Sony Interactive Entertainment, LLC in the United States at any time during the time period beginning three years prior to the filing of this Complaint through the date of trial in this action who are either (a) female or (b) identify as female.”²¹

For the state-law class claims, the proposed California Class is “[a]ll individuals employed by Sony Interactive Entertainment, LLC in California at any time during the time period beginning four years prior to the filing of this Complaint through the date of trial in this action who are either (a) female or (b) identify as female.”²² The proposed “Former Employee Subclass” is “members of the California Class who are no longer employed by Sony.”²³

The FAC contains basic allegations for the class claims about numerosity, common questions of law and fact, typicality, adequacy of representation, and the requirements for Rule 26(b)(2) and (b)(3) classes. It also recites basic allegations about collective claims under the Equal Pay Act pursuant to the FLSA, 29 U.S.C. § 216(b).²⁴

The plaintiff attached declarations from female Sony employees, among other documents, to her opposition.²⁵ The court does not consider them in evaluating Sony’s motion. *See, e.g., Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989) (district court generally must disregard material outside the pleadings in considering a motion to dismiss); *Graves v. Sw. & Pac. Specialty Fin., Inc.*, No. C 13-1159 SBA, 2013 WL 5945851, at *4 (N.D. Cal. Nov. 4, 2013) (“The grounds for a motion to strike must be readily apparent from the face of the pleadings or from materials that may be judicially noticed.”).

²¹ FAC – ECF No. 22 at 12 (¶ 55).

²² *Id.* at 6 (¶ 23).

²³ *Id.* (¶ 24).

²⁴ *Id.* at 6–12 (¶¶ 29–54), 13 (¶¶ 59–63).

²⁵ U.S.D.C. ECF No. 27, ECF No. 13, U.S.D.C. ECF No. 27, ECF No. 13.

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