

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 18, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EDWARD MIER,
Plaintiff,
v.
MUTUAL OF ENUMCLAW
INSURANCE COMPANY,
Defendant.

NO. 2:21-CV-00144-SAB

**ORDER DENYING SECOND
MOTION TO DISMISS**

Before the Court is Defendant Mutual of Enumclaw Insurance Company’s Second Motion to Dismiss State Law Causes of Action for Failure to State a Claim, ECF No. 17. The motion was considered without oral argument. Defendant is represented by Steven Caplow and Arthur Simpson. Plaintiff is represented by Matthew Z. Crotty.

Facts

The following facts are taken from Plaintiff’s Complaint:

Plaintiff Edward Mier worked for Defendant Mutual of Enumclaw Insurance Company (“MoE”) from 2014 until he was fired on April 8, 2019. Plaintiff was employed as a Claims Property Casualty Risk Manager. He reported to Mike Adams, the individual who terminated his employment. Plaintiff alleges that conflicts over two employees led to his termination and are the basis for the state law claims.

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1 The first conflict centers on the performance and management of MoE
2 employee David Cannon. On or about October 25, 2018, Mr. Adams allegedly told
3 Plaintiff to fire Mr. Cannon because he was disruptive during a training class and
4 because he used FMLA for the purposes of maternity and paternity leave and told a
5 co-worker about how nice it was to be able to take that leave. Mr. Cannon was also
6 a member of the Church of Jesus Christ of Latter-Day Saints.

7 Plaintiff objected to Mr. Adams' instruction because he believed religious
8 discrimination was happening. He also disagreed that Mr. Cannon's workplace
9 performance did not stack up against his peers. He told Mr. Adams that he spoke to
10 others in the class who said that Mr. Cannon did not disrupt the training class.
11 Because Plaintiff believed that discrimination was occurring, he asked that Human
12 Resources ("HR") investigate the allegations against Mr. Cannon, and Mr. Adams
13 said, "there will be no HR investigation" and hung up the phone.

14 Mr. Adams then called Mr. Cannon, while Plaintiff participated on the call.
15 Mr. Adams allegedly yelled at Mr. Cannon and told him he had no future at the
16 company because he was rude and disruptive at the training class in question. Mr.
17 Adams also chastised Mr. Cannon about a comment Mr. Cannon made regarding
18 Cannon's use of eight weeks of FMLA relating to the birth of his fifth child.

19 Later that day, Mr. Cannon called a former employee who called Plaintiff to
20 ask him whether Mr. Cannon should file a HR complaint against Mr. Adams.
21 Plaintiff said Mr. Cannon should file the Complaint. Mr. Cannon filed the
22 complaint in November 2018. Plaintiff alleges that Mr. Adams knew or had reason
23 to know that he had assisted Mr. Cannon in making the HR Complaint.

24 A few weeks later, Mr. Adams traveled to Spokane and had a face-to-face
25 meeting with Plaintiff and implied that his performance evaluations would suffer
26 because he refused to fire Mr. Cannon. In late 2018, Plaintiff told Mr. Adams and
27 Michelle Wyatt, a manager, that Mr. Cannon was speaking with an attorney about
28 a religious discrimination claim against Defendant. Mr. Cannon and Plaintiff had

1 spoken previously about their belief that Ms. Wyatt treated Christian employees
2 poorly. In January 2019, Plaintiff told Mr. Adams and Ms. Wyatt that he believed
3 Mr. Cannon was being discriminated against and that Mr. Cannon would be
4 making a discrimination claim.

5 The second conflict centers on Ryan Johnson, a MoE employee supervised
6 by MoE employee Mr. Payne. Plaintiff and Mr. Payne were instructed by Mr.
7 Adams during a phone call to downgrade Mr. Johnson's performance evaluation.
8 Mr. Johnson had used FMLA to care for his terminally ill father. Plaintiff told Mr.
9 Adams that he could not downgrade the employee for FMLA-related issues and
10 refused to change the performance rating. Plaintiff maintains that Mr. Adams was
11 "livid," threatened Plaintiff's future raises, and did not take Plaintiff's suggestion
12 to raise the FMLA issue with HR.

13 At an annual performance review on February 6, 2019, Mr. Adams allegedly
14 expressed anger toward Plaintiff for his refusal to follow Adams' management
15 decisions regarding Mr. Cannon and Mr. Johnson. Mr. Adams told Plaintiff, "It
16 makes my blood boil when people go to HR." The resulting performance review
17 was the worst Plaintiff ever received as a MoE employee.

18 About one month later, on April 7, 2019, Plaintiff reported to HR that he
19 believed the low performance review was retaliation by Mr. Adams. One day later,
20 Plaintiff was fired. Defendant fired him for an alleged conflict of interest between
21 himself and a cousin of his who worked for one of MoE's preferred vendors.
22 Plaintiff alleges that he disclosed the relationship to Mr. Adams before January
23 2019 (the performance review) and Mr. Adams previously indicated it was not a
24 problem.

25 Months after his firing, Plaintiff applied for and was offered a job at
26 PEMCO, only to have that offer rejected after someone from MofE tell PEMCO
27 that Plaintiff was fired for a conflict of interests.

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Procedural History

On March 31, 2021, Plaintiff filed his Complaint in Spokane County Superior Court. He alleged three claims: (1) violation of the Family Medical Leave Act; (2) Wrongful Discharge in Violation of Public Policy; and (3) Wrongful Discharged–Breach of Promise. Defendant removed to federal court based on federal question jurisdiction.

On August 23, 2021, the Court granted Defendant’s Motion to Dismiss, but granted Plaintiff leave to file an Amended Complaint. ECF No. 15. On August 30, 2021, Plaintiff filed his Amended Complaint, asserting the same three claims. Defendant now moves to dismiss the state law claims (Ct. 2 and 3).

Motion Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As the Ninth Circuit explained:

To be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. The factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). When evaluating a Rule 12(b)(6) motion, the court must draw all reasonable inferences in favor of the non-moving party. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). However, the court is not required to accept conclusory allegations as true or to accept any

1 unreasonable inferences in a complaint. *In re Gilead Scis. Sec. Litig.*, 536 F.3d
2 1049, 1054 (9th Cir. 2008).

3 **Plaintiff's Complaint**

4 In Count II, Plaintiff alleges that he was wrongfully discharged in violation
5 of public policy for refusing to commit two illegal acts: (1) firing Mr. Cannon for
6 having discussions about FMLA leave and because of his religious faith; and (2)
7 downgrading Mr. Johnson for taking FMLA leave.

8 In Count III, Plaintiff alleges that the employee handbook requires
9 employees to report harassment they witnessed or feel they experienced. Plaintiff
10 alleges that in exchange for the requirement that supervisors be notified of
11 harassment an employee feels they witnessed, the handbook promises that it
12 forbids retaliation against anyone who has reported harassment.

13 Plaintiff alleges that he justifiably relied on these promises in the handbook
14 when he opposed Mr. Adams' harassment of Mr. Cannon and Mr. Johnson. He
15 asserts that he understood them to mean that if he wanted to stay employed at
16 MofE, he had to report the harassment and in exchange for making the required
17 report to management, he would not be retaliated against.

18 **Analysis**

19 Here, Plaintiff's Amended Complaint has provided sufficient facts to put
20 Defendant on notice regarding his assertions that Defendant terminated him in
21 violation of public policy for refusing to fire Mr. Cannon and opposing the
22 downgrading of Mr. Johnson's evaluation. Additionally, the Amended Complaint
23 has provided sufficient facts to put Defendant on notice regarding his assertions
24 that he justifiably relied on Defendant's employee handbook when he opposed the
25 alleged discrimination. The legal effect of Defendant's disclaimer contained in the
26 handbook is a question for the jury.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Dismiss, ECF No. 17, is **DENIED**.

3 2. Defendant shall file its Answer to Plaintiff's Amended Complaint
4 within 14 (fourteen) days from the date of this Order.

5 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
6 file this Order, provide copies to counsel, and set a case management deadline
7 accordingly.

8 **DATED** this 18th day of November 2021.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

14 Stanley A. Bastian
15 Chief United States District Judge
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