UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

IL FORNAIO (AMERICA) LLC; AND DOES 1-10, INCLUSIVE,

Defendant.

Case No. 2:22-cv-05992-SPG-JPR

ORDER GRANTING, IN PART, DENYING, IN PART, DEFENDANT'S MOTION TO DISMISS THE COMPLAINT OR FOR A MORE DEFINITE STATEMENT [ECF NO. 14]

Before the Court is Defendant Il Fornaio (America) LLC's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, for a more definite statement under Rule 12(e) (the "Motion"). (ECF No. 14). Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC" or "Commission") opposes. (ECF No. 17). Having considered the accompanying declarations, the relevant law, and the record in this case, the Court deems the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. For the reasons set forth below, the Court GRANTS, IN PART, and DENIES, IN PART, the Motion.

I. BACKGROUND

A. Factual Background

Defendant Il Fornaio (America) LLC ("Il Fornaio" or "Defendant") owns and operates several fine dining Italian restaurants throughout California. (ECF No. 1 ("Compl.") ¶ 6). The Charging Party began working for Defendant in 2017 as a hostess. (*Id.* ¶ 15(a)). Plaintiff Commission alleges that since at least March 2018, Defendant has subjected female employees, including the Charging Party and similarly aggrieved employees (the "Aggrieved Employees"), to ongoing, unwelcome, severe, or pervasive harassment and created and maintained an offensive, abusive, intimidating hostile work environment. (*Id.* ¶ 15).

The Complaint alleges that Defendant's male supervisors subjected Charging Party and the Aggrieved Employees to "frequent, ongoing, inappropriate, unwelcome, and offensive conduct of a sexual nature." (*Id.*). Specifically, the male supervisors made graphic comments to Charging Party and the Aggrieved Employees, including, but not limited to, discussing having anal sex; making comments about female employee's lips, breasts, buttocks, and genitalia; and making inappropriate sexual jokes. *See* (Compl. ¶ 15(b)). The Complaint further alleges that male supervisors engaged in inappropriate and unwanted sexual behavior with the Charging Party and the Aggrieved Employees including, but not limited to, leering at the Aggrieved Employees, "rubbing genitals on an employee's back," "smacking" and "groping" female employees on their buttocks and genitals, showing pornography to female employees on a Supervisor's cell phone, and giving an unsolicited gift of lingerie. *See* (*id.* ¶ 15(c)). The Charging Party and the Aggrieved Employees also were subject to unwanted sexual conduct and comments from their coworkers, including the coworkers making frequent comments about the employees' bodies, asking invasive questions about employees' sex lives, and attempting to kiss and touch the employees, among other conduct. (*Id.* ¶ 15(d)).

The conduct and comments alleged in the Complaint began in at least 2015, and Plaintiff alleges that Defendant knew or should have known of the hostile work environment because all the alleged conduct was "ubiquitous, open, frequent," and "often within the earshot or plain sight of Defendant's other managers or supervisors." (*Id.* ¶ 17).

Throughout the relevant period, the Charging Party and the Aggrieved Employees allege that they complained verbally and in writing about the harassment numerous times to supervisors, management, and Human Resources, but that Defendant failed to take adequate steps to address their complaints. (*Id.* ¶¶ 16, 18). For example, though several complaints were made about a chef employed by Defendant, including complaints of physical groping, Defendant failed to terminate him and instead promoted him, raising his pay. (*Id.* ¶ 20). Defendant failed to discipline other male employees against whom numerous complaints were lodged for years. (*Id.*).

Defendant also retaliated against the Charging Party and the Aggrieved Employees for complaining about the alleged harassment by allegedly reducing hours or shifts, forcing an individual to clean the bar more frequently than others, refusing requests for time off, and "threatening" the employees. (*Id.* ¶ 22(a)). Numerous of the Aggrieved Employees had their hours and shifts reduced after they made complaints about sexual harassment. (*Id.*). As a result of this retaliation, the Charging Party and the Aggrieved Employees were forced to leave their employment. (*Id.* ¶ 23). The Charging Party resigned in May 2019.

B. Procedural History

On October 7, 2019, the Charging Party filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant. (ECF No. 14-1 ("Mot.") at 7); *see also* (Compl. ¶ 9). Defendant received copies of the charge of discrimination and participated in the Commission's investigation. (*Id.* ¶ 10). On January 11, 2022, Plaintiff Commission issued a "Letter of Determination" to Defendant (the "Letter"), finding reasonable cause to believe that Defendant had violated Title VII. (*Id.* ¶ 11). Thereafter, Plaintiff Commission and Defendant engaged in informal methods of conciliation to remedy the practices described in the Letter, but the process failed to reach a conciliation

agreement. (*Id.* ¶ 12). On April 21, 2022, Plaintiff Commission issued a "Notice of Failure of Conciliation" to Defendant (the "Notice"), advising Defendant that the Commission was unable to secure an acceptable conciliation agreement. On August 24, 2022, Plaintiff Commission commenced this action on behalf of the Charging Party and the Aggrieved Employees. On January 5, 2023, Defendant filed the Motion, seeking dismissal or, alternatively, an order requiring Plaintiff to make a more definite statement of the pleading. (Mot.). On February 1, 2023, Plaintiff opposed the Motion. (ECF No. 17 ("Opp.")).

On February 2, 2023, the Parties filed a stipulation requesting the Court stay the proceedings and continue the hearing on the Motion until at least June 7, 2023, while the Parties engaged in private mediation, facilitated by Hon. Margaret Nagle (Ret.). (ECF No. 18 at 2; ECF No. 18-1 ¶ 8). The Court granted the stipulation on February 6, 2023, stayed the case, and subsequently granted two extensions of the stay and continuations of the hearing on the Motion while the parties engaged in mediation. (ECF No. 21; ECF No. 22-1 ¶¶ 7-9; ECF Nos. 22–23; ECF No. 26; ECF No. 26-1 ¶ 14; ECF No. 29).

On December 1, 2023, the stay lifted, and the Parties filed a joint status report informing the Court that they had not been able to reach a resolution to the case. (ECF No. 31). On December 6, 2023, in support of the Motion, Defendant replied to Plaintiff's opposition brief. (ECF No. 33 ("Reply")).

II. LEGAL STANDARD

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). When resolving a motion to dismiss for failure to state a claim under Rule 12(b)(6), courts "consider[s] the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). "Dismissal under Rule 12(b)(6) is proper when the complaint either

(1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). To survive a Rule 12(b)(6) motion, the plaintiff 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 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*, 556 U.S. at 678. "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted).

When ruling on a Rule 12(b)(6) motion, the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). "[D]ismissal is affirmed only if it appears beyond doubt that [the] plaintiff can prove no set of facts in support of its claims which would entitle it to relief." *City of Almaty v. Khrapunov*, 956 F.3d 1129, 1131 (9th Cir. 2020) (internal citation and quotation marks omitted). However, the Court is "not required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Seven Arts Filmed Ent., Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (citing *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)).

III. DISCUSSION[1]

Defendant argues that the Complaint should be dismissed as to the unnamed and unidentified class members because the allegations lack sufficient specificity to meet the

[1] Title VII requires the EEOC to follow the procedural requirements of 42 U.S.C. § 2000e-5(b) before it may initiate suit on behalf of private plaintiffs. "These requirements include: (1) the private party's filing of a charge of the Title VII violation; (2) the EEOC's service of that charge on the employer; (3) the EEOC's investigation into the charge and determination of whether reasonable cause exists to believe that the charge is true (usually

federal pleading standard. (Mot. at 5–6). Specifically, Defendant argues that the Complaint lacks sufficient information regarding: the number of Aggrieved Employees; which of Defendant's 19 restaurants are involved; basic identifying information of the Aggrieved Employees, including position held, dates of employment, and specific conduct as to the individual; which of the Aggrieved Employees complained about the harassment and by what method; the identities of the coworkers or supervisors allegedly involved, including the location of the restaurants where the coworkers worked and divisions in which they worked; which and how many of the Aggrieved Employees resigned as a result of the allegations; and the timeframes either during which the Aggrieved Employees were employed or when the alleged harassment occurred. (*Id.*). Defendant contends that, because it is unable to submit a responsive pleading due to the allegations being too vague and ambiguous, the Complaint should be dismissed it its entirety or, alternatively, dismissed as to the Aggrieved Employees, or that the Court should require a more definite statement. (*Id.* at 6). The Court considers Defendant's arguments for each of Plaintiff's claims.

A. Hostile Work Environment Claim

At the pleading stage, a plaintiff bringing claims under Title VII need only satisfy Rule 8 of the Federal Rules of Civil Procedure, and "need not support his allegations with evidence, but his complaint must allege sufficient facts to state the elements of a hostile work environment claim." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008); *see also U.S. E.E.O.C. v. Pioneer Hotel, Inc.*, No. 2:11-CV-01588-LRH, 2013 WL 3716447, at *3 (D. Nev. July 15, 2013) (denying motion to dismiss a hostile work environment claim and finding "[a] complaint containing allegations and factual

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by issuing a Letter of Determination); and (4) an attempt to conciliate the violation between the employee and employer." *U.S. Equal Emp. Opportunity Comm'n v. Cardinal Health 200, LLC*, No. CV 19-00941 CBM, 2020 WL 1225085, at *2 (C.D. Cal. Feb. 5, 2020) (citing *Occidental Life Ins. Co. of Cal. v. E.E.O.C.*, 432 U.S. 355, 359–60 (1977). Defendant does not challenge the Complaint on this basis. Based on the Court's review of the Complaint, Plaintiff appears to have met such procedural requirements.

statements that clearly put the defendant on notice that the instant action is based on the defendant's alleged discrimination on a particular protected basis against the charging party and other similarly situated employees beginning at a specific point in time is sufficient to survive a motion to dismiss."). To state a sex-based hostile work environment claim, Plaintiff must plead that "(1) she was subjected to verbal or physical contact of a sexual nature, (2) the conduct was unwelcome, and (3) the abusive conduct was sufficiently severe or pervasive so as to alter the conditions of her employment thus creating an abusive working environment." *Foster v. ScentAir Techs., Inc.*, No. 13-CV-05772-TEH, 2014 WL 2603995, at *3 (N.D. Cal. June 10, 2014) (citing *Sheffield v. Los Angeles Cnty. Dep't of Soc. Servs.*, 109 Cal. App. 4th 153, 161 (2003); *Miller v. Dep't of Corr.*, 36 Cal. 4th 446, 462 (2005)); *see also Washington v. Lowe's HIW Inc.*, 75 F. Supp. 3d 1240, 1250 (N.D. Cal. 2014). Conduct is not considered pervasive if it is "occasional, isolated, sporadic, or trivial . . . ." *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 283 (2006) (citation omitted).

Here, Plaintiff has adequately alleged a hostile work environment claim on behalf of the Charging Party. As a threshold issue, the Complaint sufficiently alleges that the alleged harassing behavior was premised on the sex of the employee because the conduct was directed at female employees, and several of the specific allegations allow the Court to draw the inference that such comments were made to female employees and were gender based.[2] *See* (Compl. ¶ 15). As to the first element, the Complaint alleges that the Charging Party was subject to both verbal and physical contact of a sexual nature. For example, taking the allegations as true, the Charging Party was subjected to conduct such as "discuss[ions] [about] anal sex," "smacking on the buttocks, [and] groping on the buttocks and genitals . . . ." *See* (*id.* ¶ 15(b)–(c)). Second, the Charging Party alleges that such conduct was unsolicited and unwelcome, and that she complained about the behavior

[2] For example, the Complaint alleges that male supervisors "stat[ed] they wanted to leave their wives for employees or they wished they did not have a wife, [and] t[old] an employee she would look good in a bikini . . . ." (Compl. ¶ 15(b)).

numerous times. (*Id.* ¶¶ 15–16). Third, Plaintiff alleges that the behavior alleged was "ubiquitous, open, frequent, and consistent in nature," rather than isolated.[3] *See* (*id.* ¶ 17). Additionally, Plaintiff alleges that because Defendant allegedly did not properly handle such complaints, including by promoted alleged harassers and failing to discipline other alleged harassers, the harassment continued and "alter[ed] the terms and conditions of the Charging Party['s]" employment. (*Id.* ¶ 21). According to the Complaint, based on the pervasive harassment, the Charging Party was forced to resign in May 2019. (*Id.* ¶ 23). This is sufficient to withstand a Rule 12(b)(6) motion. *See Pioneer Hotel*, 2013 WL 3716447, at *3 (denying a motion to dismiss a "complaint containing allegations and factual statements that clearly put the defendant on notice that the instant action is based on the defendant's alleged discrimination on a particular protected basis against the charging party . . . beginning at a specific point in time"); *U.S. E.E.O.C. v. Am. Laser Centers LLC*, No. 1:09-CV-2247-AWI-DLB, 2010 WL 3220316, at *6 (E.D. Cal. Aug. 13, 2010). The Court thus denies the Motion as to the Charging Party because the Complaint has plausibly alleged that she was subjected to a hostile work environment based on the comments and behavior of her male supervisors and coworkers.

However, the Complaint fails to put Defendant on notice as to how these allegations apply to the Aggrieved Employees and the scope of this purported class of individuals. *See cf. Pioneer Hotel, Inc.*, 2013 WL 3716447, at *3 (finding class allegations sufficient at the pleading stage when the complaint alleged the protected class, the particular location, the departments involved, and specific behavior and language). For example, the Complaint does not identify which of the alleged behavior and language applies to the Charging Party

[3] The Court also notes that the nature of the comments and behavior are not alleged as isolated incidents and include behavior that support the inference that it occurred more than one time. For example, Plaintiff alleged that male coworkers "repeatedly rubb[ed] genitals on employees from behind, [and] ma[de] frequent comments about employees' bodies and buttocks . . . ." (Compl. ¶ 15(d)).

and which of the alleged conduct applies to the Aggrieved Employees.[4] While such omissions need not prove fatal on their own, the Complaint further fails to provide several categories of details, such as which of Defendant's locations is implicated by the Complaint; what type of roles the Aggrieved Employees held; the location of the divisions where the male co-workers, supervisors, and managers worked; the approximate timeframes for when the Aggrieved Employees worked for Defendant; and the approximate dates of complaints about the offending conduct and/or of resignation. Lastly, the Complaint fails to identify—even anonymously—one other claimant, other than the Charging Party. *See Farmers Ins. Co.*, 24 F. Supp. 3d at 968 (noting that allegations may be considered sufficient if they identify "at least one aggrieved individual"); *U.S. E.E.O.C. v. Pioneer Hotel, Inc.*, No. 2:11-CV-1588-LRH-RJJ, 2012 WL 1601658, at *3 (D. Nev. May 4, 2012) (finding that the complaint did not meet the federal pleading standards when

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[4] Citing *Equal Emp. Opportunity Comm'n Sanchez v. Evans Fruit Co. Marin*, No. CV-10-3033-LRS, 2012 WL 12866311, at *3 (E.D. Wash. Nov. 27, 2012), *on reconsideration in part sub nom. E.E.O.C. v. Evans Fruit Co.*, No. CV-10-3033-LRS, 2013 WL 633421 (E.D. Wash. Feb. 20, 2013), Defendant also argues that Plaintiff improperly aggregates the individual and class claims. *See, e.g.*, (Mot. at 7). The Ninth Circuit has indicated that misconduct involving non-party individuals, to the extent an individual plaintiff is aware of such misconduct, may be relevant for purposes of determining whether a plaintiff's allegations make out a colorable claim of hostile work environment based on the totality of the circumstances. *See Brooks v. City of San Mateo*, 229 F.3d 917, 923–25 (9th Cir. 2000). However, "harassment directed towards others of which an employee is unaware can, naturally, have no bearing on whether she reasonably considered her working environment abusive." *Id.* at 923; *see also Equal Emp. Opportunity Comm'n Sanchez*, 2012 WL 12866311, at *3 (stating there are limitations to aggregating claims because, "[i]mplicit in the consideration of the totality of the circumstances is that a plaintiff was aware of the harassment that was allegedly directed toward other employees." (internal quotation marks and citation omitted)). Although more properly addressed at the summary judgment stage, as was the case in the above-cited cases, the Court notes that the allegations of the Complaint also do not make clear whether the Charging Party and any particular member of the Aggrieved Employees were actually aware of sexually harassing conduct directed at other Aggrieved Employees, as opposed to relying on mere rumors, innuendos, or other unsubstantiated information about the broader conduct complained of in the Complaint.

it did not "define or explain the scope of the class, how many class members there [we]re, or who subjected the class members to the alleged discrimination").[5] While the Court is not aware of any authority that states that any one of these identifying factors is dispositive,[6] and the Court disagrees with Defendant that Plaintiff must cure each and every identified deficiency, all of the omissions taken together render the allegations regarding the Aggrieved Employees too vague to satisfy the Rule 8 pleading standards.[7] Therefore,

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[5] *See also E.E.O.C. v. JBS USA, LLC*, No. 8:10CV318, 2015 WL 4506709, at *6–7 (D. Neb. July 24, 2015) (noting that class allegations would be sufficient if they identified "the time frame in which the alleged violations occurred; the names of two presently identified victims; a general description of the class of aggrieved persons; the specific claims alleged and their elements as to the charging party and the class of aggrieved persons; the types of conduct to which the named claimants and the unidentified class were subjected; and the remedies being sought" (citing *EEOC v. United Parcel Serv., Inc.*, No. 09–CV–5291, 2013 WL 140604, at *4 (N.D. Ill. Jan. 11, 2013))).

[6] In fact, requiring all these details would likely result in a heightened pleading standard, like that required for fraud claims under Rule 9. *See, e.g.*, *United States EEOC v. Bay Club Fairbanks Ranch, LLC*, No. 18-cv-1853, 2019 U.S. Dist. LEXIS 16708, at *3–5 (S.D. Cal. Feb. 1, 2019) (stating that the requirement to plead "the who, what, when, where, and how" is "akin to the level required to plead fraud," which is not a required standard under Title VII). District courts have refused to apply a heightened standard to Title VII claims that would require allegations setting forth the "who, what, when, where, and how" of the plaintiff's claims. *See U.S. E.E.O.C. v. Justin Vineyards & Winery LLC*, CV 22-6039 PA (RAOx) (C.D. Cal. Jan. 22, 2023), Dkt. No. 36, at 4–5.

[7] For example, the Complaint leaves Defendants without answers to the following questions: whether the Aggrieved Employees are hostesses, wait staff, or are serving in other positions; whether the harassment is pervasive at each Defendant location, only a few locations, or just one location; and whether the offending male employees are located in the same division as the Charging Party or the Aggrieved Employees, generally, or in other divisional settings? The Court emphasizes that the purpose of the Rule 8 pleading standard is not to make Plaintiff's claims narrower, but to provide notice to Defendant of the scope of liability such that it can feasibly answer the Complaint.

the Court grants the Motion, insofar as it argues Plaintiff's allegations regarding the Aggrieved Employees are deficient, with leave to amend the deficiency.[8]

1. Retaliation Claim

Under section 704 of the Civil Rights Act of 1964, it is unlawful "for an employer to discriminate against any [ ] employees . . . because [the employee] has opposed any practice made an unlawful employment practice by [Title VII], or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). "To state a claim for retaliation under Title VII, a plaintiff must demonstrate that: '(1) the employee engaged in a protected activity, (2) she suffered an adverse employment action, and (3) there was a causal link between the protected activity and the adverse employment decision.'" *Pringle v. Wheeler*, 478 F. Supp. 3d 899, 915 (N.D. Cal. 2020) (quoting *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1093–94 (9th Cir. 2008)). Conduct constituting a "protected activity" includes filing a charge or complaint, testifying about an employer's alleged unlawful practices, and "engaging in other activity intended to oppose an employer's discriminatory practices." *Raad v. Fairbanks North Star Borough School Dist.*, 323 F.3d 1185, 1197 (9th Cir. 2003) (citing 42 U.S.C. § 2000e-3(a)) (internal quotations omitted). Adverse employment actions include conduct that would "dissuade[] a reasonable worker from making or supporting a charge of discrimination." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006) (internal quotations omitted); *see also Ray v. Henderson*, 217 F.3d 1234, 1241, 1243 (9th Cir. 2000) (noting a broad approach to the definition of an "adverse employment action," which includes "lateral transfers, unfavorable job references, and changes in work schedules"). While a plaintiff is "not required to plead a prima facie case of . . . retaliation in order to survive a motion to dismiss," the complaint still must "contain[] sufficient factual matter, accepted as true, to state a claim for relief

[8] The Court agrees with Plaintiff that Rule 23 does not apply to actions brought by the EEOC on behalf of a class. *See Gen. Tel. Co. of the Nw. v. Equal Emp. Opportunity Comm'n*, 446 U.S. 318, 323 (1980).

that is plausible on its face." *Cloud v. Brennan*, 436 F. Supp. 3d 1290, 1300–01 (N.D. Cal. 2020) (quoting *Achal v. Gate Gourmet, Inc.*, 114 F. Supp. 3d 781, 796–97 (N.D. Cal. 2015)).

As alleged, the Complaint has not plausibly stated a retaliation claim. The only allegation in the Complaint regarding whether the Charging Party or any of the Aggrieved Employees reported the alleged conduct states, "[a]s early as 2016, Charging Party and other similarly aggrieved employees complained verbally and in writing to supervisors, management, and Human Resources personnel about the harassment and hostile work environment they endured." (Compl. ¶ 18). However, the Charging Party allegedly began working for Defendant in 2017. (*Id.* ¶ 15(a)). The Complaint does not thus contain any allegations about when either the Charging Party and/or aggrieved employees in fact engaged in a protected activity. Additionally, though the Complaint alleges that the Charging Party resigned in 2019 due to the working conditions and retaliation, the Complaint does not allege that the Charging Party, herself, was subject to any of the alleged retaliation, such as the reduced shifts. *See* (Compl. ¶ 22(a)); *see also Ray*, 217 F.3d at 1240–43. And, because Plaintiff has not sufficiently alleged a protected activity, Plaintiff also fails to draw a causal connection between any protected activity and the Charging Party's resignation in 2019. Finally, for the same reasons set forth in the discussion of the hostile workplace claim, the Complaint does not plead a plausible claim for the alleged class of Aggrieved Employees either because of deficiencies under Rule 8.

Accordingly, the Court grants Defendant's motion to dismiss this claim. However, amendment does not yet appear futile and the dismissal will be without prejudice and with leave to amend to cure the deficiencies.

2. Constructive Discharge Claim

"A constructive discharge occurs when, looking at the totality of the circumstances, a reasonable person in [the employee's] position would have felt that he was forced to quit because of intolerable and discriminatory working conditions." *Sanchez v. City of Santa Ana*, 915 F.2d 424, 431 (9th Cir. 1990) (internal quotation marks and citations omitted).

"A claim of constructive discharge under Title VII has 'two basic elements': the plaintiff 'must prove first that he was discriminated against by his employer to the point where a reasonable person in his position would have felt compelled to resign' and 'must also show that he actually resigned.'" *Horton v. Narbaitz*, No. 22-CV-03174-WHO, 2023 WL 2563078, at *7 (N.D. Cal. Mar. 16, 2023) (quoting *Green v. Brennan*, 578 U.S. 547, 555 (2016)). Typically, "[w]hether working conditions were so intolerable to justify a reasonable employee's decision to resign is normally a factual question for the jury." *Sanchez,* 915 F.2d at 431 (citing *Thomas v. Douglas*, 877 F.2d 1428, 1434 (9th Cir. 1989)). However, a plaintiff must show more than a single isolated incident and allege some sort of "aggravating factors, such as a continuous pattern of discriminatory treatment." *Sanchez*, 915 F.2d at 431 (citing *Satterwhite v.* Smith, 744 F.2d 1380, 1382 (9th Cir. 1984) (internal quotation marks omitted).

Here, accepting the allegations as true, the Complaint contains sufficient allegations to put Defendant on notice of the Charging Party's claims against it. As discussed above, the Complaint alleges that the Charging Party resigned in May 2019 after being subject to ubiquitous, frequent, and ongoing offensive behavior, which includes inappropriate touching, commenting on her body, and calling her names based on the male coworker's opinion of her body. *See* (Compl. ¶¶ 15, 23); *see Oluvic v. Azusa Pac. Univ.*, No. 3:18-CV-983-L-KSC, 2019 WL 669633, at *3 (S.D. Cal. Feb. 15, 2019) ("For purposes of constructive termination, the conditions must be assessed in their totality . . . [and] incidents of differential treatment over a period of months or years are sufficient to establish a claim of constructive discharge." (internal quotation marks omitted) (citing *Watson v. Nationwide Ins. Co*., 823 F.2d 360, 361 (9th Cir. 1987); *Pa. State Police v. Suders*, 542 U.S. 129, 139 (2004))). Assuming each of the allegations to be true, the Complaint sets forth conduct that appears to be of a repetitive, rather than isolated, nature and could reasonably lead an employee to resign under those conditions.

However, as with both claims above, the allegations as to the similarly Aggrieved Employees continue to fail Rule 8 and therefore, as currently alleged, cannot plausibly

allege a constructive discharge claim or put Defendant on notice of the scope of the class of Aggrieved Employees. The Court thus dismisses Plaintiff's constructive discharge claim without prejudice, insofar as it is asserted based on the class of Aggrieved Employees, and with leave to amend to cure the deficiencies described herein.

IV. CONCLUSION[9]

For the foregoing reasons, Defendant's Motion is GRANTED as to the class allegations and the retaliation claim and otherwise DENIED. An amended complaint, if any, may be filed within twenty-one (21) calendar days from the date that this Order was entered and must address the deficiencies in this Order.

DATED: March 11, 2024

HON. SHERILYN PEACE GARNETT
UNITED STATES DISTRICT JUDGE

[9] Furthermore, because the Court finds the matters about which the Defendant requests the Court take judicial notice are not necessary to the decision on this motion, it denies the requests for judicial notice. *See e.g., Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 976 (9th Cir. 2006) (district court may deny judicial notice of documents it does not rely upon and which are not pertinent or necessary to its ruling on motion to dismiss).