

Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SUZANNE Z. MUELLER,

Plaintiff,

v.

MOVE, INC.,

Defendant.

Case No. 2:20-cv-01374 RSM

DEFENDANT’S MOTION FOR A MORE
DEFINITE STATEMENT ON THIRD
CAUSE OF ACTION AND TO DISMISS
FIRST, SECOND, AND FOURTH
THROUGH SEVENTH CAUSES OF
ACTION

**NOTE ON MOTION CALENDAR:
OCTOBER 16, 2020**

Defendant Move, Inc. (“Move”), by its attorneys and pursuant to the Federal Rules of Civil Procedure (“FRCP”) 12(b)(6) and 12(e) and Civil Local Rule 7, respectfully moves this Court to order Plaintiff Suzanne Mueller (“Mueller”) to provide a more definite statement as to the Third Cause of Action in the Complaint and to dismiss the First, Second, Fourth, Fifth, Sixth, and Seventh Causes of Action in the Complaint. In support of its motion, Move states as follows:

I. INTRODUCTION

Mueller claims that Move violated the Washington Law Against Discrimination (“WLAD”), RCW 49.60 *et seq.*, in the Third Cause of Action in her Complaint. [Dkt. 1-2 at Section VI.] Mueller may be lumping together several potential causes of action under the WLAD in this Third Cause of Action. It appears that Mueller is pleading the elements for a claim of unlawful harassment based on sex under the WLAD. Mueller also makes mere

1 references to age discrimination, sex discrimination, and retaliation, but she does not plead the
2 elements of those claims. [*Compare* Dkt. 1-2 ¶ 6.2 with ¶¶ 6.3-6.4.] It is thus unclear whether
3 Mueller is alleging a sex harassment claim under WLAD or something more under WLAD.
4 Because Move cannot discern the claims being asserted against it in Mueller’s Third Cause of
5 Action, Move cannot reasonably prepare a response to it. The Court should order Mueller to
6 provide a more definite statement in an amended complaint setting forth the specific WLAD
7 causes of actions she is pleading or dropping references to claims she is not pleading.

8 Mueller’s remaining six causes of action are tort claims that are or that possibly are
9 entirely duplicative of any WLAD causes of action that she could be pleading. This Court
10 should dismiss such duplicative claims. In addition, these six causes of action fail to state
11 claims, and this Court should dismiss these causes of action for this additional reason.

12 II. PROCEDURAL HISTORY AND COMPLAINT

13 On August 18, 2020, Mueller personally served Move with a Summons and Complaint
14 brought in the Superior Court of the State of Washington for the County of King (“King County
15 Superior Court”). [Dkt. No. 1-3.] Move timely removed the action to this Court on September
16 17, 2020 before Mueller filed the Complaint in King County Superior Court and before Move
17 submitted a responsive pleading. [Dkt. No. 1.] Move must, therefore, file a responsive pleading
18 in this Court on or before September 24, 2020. *See* FRCP 81(c)(2).

19 Mueller’s Complaint sets forth 28 factual claims, *see* Dkt. No. 1-2 at ¶¶ 3.1-3.28, and
20 seven causes of action, *see* Dkt. No. 1-2 at Sections IV through XIII. The causes of action are:
21 (1) Negligent Retention (First Cause of Action); (2) Negligent Supervision (Second Cause of
22 Action); (3) Washington Laws Against Discrimination (Third Cause of Action); (4) Intentional
23 Infliction of Emotional Distress (Fourth Cause of Action); (5) Negligent Intention of Emotional
24 Distress (Fifth Cause of Action); Wrongful Discharge (Sixth Cause of Action); and Retaliation
25 (Seventh Cause of Action). [Dkt. 1-2 at Sections IV through XIII.] All seven of these causes of
26

1 action derive from the same factual situation underlying the 28 factual claims. [Dkt. 1-2 at ¶¶
2 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1.]

3 Mueller’s Third Cause of Action is generically entitled “Washington Laws Against
4 Discrimination.” [Dkt. 1-2 at Section VI.] In this cause of action, Mueller states:

- 5 6.1 Plaintiff incorporates herein by reference all the foregoing
6 paragraphs of her Complaint as if fully set forth herein at length.
- 7 6.2 The above-described harassment on the basis of sex is a violation
8 of RCW 49.60 et seq., and Washington common law.
- 9 6.3 Plaintiff was a victim of sexual harassment and age and gender
10 discrimination by the defendant, which would not have occurred
11 but for her sex and age. The harassment and discrimination was
12 sufficiently pervasive so as to affect the terms, conditions and/or
13 privileges of employment by creating an intimidating, hostile and
14 offensive working environment that any woman would have found
15 offensive. The actions made against plaintiff by defendant were
16 due to plaintiff’s gender and were not accidental, but were
17 intentional, inappropriate, and demeaning in nature.
- 18 6.4 Defendant Move, Inc. knew, or should have known, of the hostile
19 and offensive working environment created and sustained by its
20 agents and employees, all of whom held a supervisory position at
21 all times during the aforementioned harassment. Move, Inc. took
22 no action against various employees and agents, and did nothing to
23 stop the retaliatory actions taken against plaintiff after she
24 provided supporting facts in the sexual harassment investigation.
- 25 6.5 Defendant Move, Inc. is strictly liable for the actions of its agents
26 and employees, and it knew or should have known of the unlawful
conduct, as its agents and were direct or tacit participants in the
unlawful discriminatory and retaliatory acts. Defendant was
negligent in failing to remedy, deter, or otherwise correct the
unlawful discrimination and retaliation directed towards plaintiff,
which was perpetuated, conducted and condoned by its own agents
and employees. Such inaction on the part of defendant constituted
a reckless indifference to the protected rights of plaintiff.
- 6.6 The unlawful employment practices complained of above were
intentional.
- 6.7 The unlawful employment practices complained of above were
done with malice or with reckless indifference to the unprotected
rights of the plaintiff.
- 6.8 As a result of defendant’s unlawful employment practices, plaintiff
has been harmed in an amount to be proven at trial.

1 [Dkt. 1-2 at ¶¶ 6.1-6.8.] She sets forth the elements for a claim of unlawful harassment based on
 2 sex. But, she also references sex and age discrimination and retaliation. [Dkt. 1-2 at ¶¶ 6.3, 6.4,
 3 6.5.] She does not, however, set forth the elements of discrimination or retaliation under the
 4 WLAD in the Third Cause of Action. [Dkt. 1-2 at ¶¶ 6.1-6.8.]

5 III. ARGUMENT AND CITATION OF AUTHORITY

6 A. The Court Should Order Mueller to Amend Her Complaint and More 7 Definitely State What She Is Pleading Under Her Third Cause of Action

8 It is unclear what WLAD claims Mueller is asserting in her Third Cause of Action
 9 entitled “Washington Laws Against Discrimination.” *See* Dkt. 1-2 at Section VI, ¶¶ 6.1-6.8.
 10 Because of this, Move is not able to craft a response to or assert defenses for the Third Cause of
 11 Action. To avoid this very situation, if Mueller is asserting more than a sex harassment claim
 12 under WLAD, then FRCP 10(b) requires Mueller to state her claims in separate counts. If she is
 13 not asserting more than a sex harassment claim under WLAD, then she should drop the
 14 references to discrimination and retaliation in her Third Cause of Action. This Court should
 15 order Mueller to amend her complaint accordingly.

16 FRCP 12(e) provides, in relevant part, that:

17 A party may move for a more definite statement of a pleading to which a
 18 responsive pleading is allowed but which is so vague or ambiguous that the party
 cannot reasonably prepare a response.

19 “A party may move for a more definite statement if the pleading is so vague or ambiguous that
 20 the party cannot reasonably prepare a response.” *Hayton Farms, Inc. v. Pro-Fac Corp.*, No.
 21 C10-520-RSM, 2010 WL 5174349, at *4 (W.D.Wash. Dec. 14, 2020).

22 The Third Cause of Action is generically entitled “Washington Laws Against
 23 Discrimination.” *See* Dkt. 1-2 at Section VI, ¶¶ 6.1-6.8. Mueller appears to set forth the
 24 elements of only one cause of action under the WLAD -- a claim for unlawful harassment based
 25 on sex. *See id.* at ¶¶ 6.2-6.8. However, she also uses verbiage like “discrimination” and
 26 “retaliation” in paragraphs 6.3, 6.4, and 6.5 of her Complaint. These references suggest she may

1 be asserting other causes of action under the WLAD, but the references are vague, intermingled
2 with the elements of an unlawful harassment claim, and void of the elements for WLAD
3 discrimination and retaliation claims.

4 Move cannot discern the true scope of the cause(s) of action Mueller is attempting to
5 plead under the WLAD. Is she pleading only unlawful harassment because of sex under the
6 WLAD? Or is she also pleading discrimination because of age and/or sex under the WLAD, and
7 under what type of discrimination theory? Or is she additionally pleading retaliation because of
8 age and/or sex under the WLAD? Or some or all of the above? Move is left guessing as to how
9 to respond to Mueller's Third Cause of Action and what affirmative defenses to plead.

10 A motion for a more definite statement is appropriate where, as here, a plaintiff has left a
11 defendant guessing as to the nature of the claims against it by combining several potential causes
12 of action from one statute into one cause of action. *See, e.g., Nielsen v. Unum Life Ins. Co. of*
13 *Am.*, 58 F.Supp.3d 1152, 1166 (W.D.Wash. Sept. 2, 2014) (“As Count XIII combines at least
14 four separate claims under ERISA, the Court finds that [d]efendant’s request for a more definite
15 statement, pursuant to Fed.R.Civ.P. 12(e), has merit.”; requiring plaintiff to file an amended
16 complaint separating claims under ERISA “into separate counts in conformity with Fed.R.Civ.P.
17 10(b)”). Similarly, here, if Mueller is pleading more than one cause of action under WLAD, then
18 she should separate her claims under the WLAD. If she is not, then she should delete the vague
19 references to sex discrimination, age discrimination, and retaliation. Doing this will promote
20 clarity and enable Move to respond. At this point, however, Move cannot reasonably prepare a
21 response to Mueller’s broad Count under the WLAD. *See, e.g., Akmal v. Centerstance, Inc.*, No.
22 11-5378 RJB, 2013 WL 1148841, at *6 (W.D. Wash. Mar. 19, 2013) (granting defendant’s
23 motion for a more definite statement because “some of [p]laintiff’s claims, including, ‘racial
24 discrimination-interference with business contracts,’ ‘racial discrimination—harassment,’ and
25 ‘racial discrimination—retaliation’ [were] unclear as to whom they are being asserted against,
26

1 and *under which legal theory*") (emphasis added). The Court should require Mueller to amend
 2 her complaint to clearly state the cause(s) of action that she is pleading under the WLAD.

3 **B. Mueller's Six Common Law Causes of Action Should Be Dismissed Because**
 4 **They Fail to State Claims.**

5 A motion to dismiss under FRCP 12(b)(6) challenges the adequacy of a complaint on its
 6 face, testing whether a plaintiff has properly stated a claim. "To survive a motion to dismiss, a
 7 complaint must contain sufficient factual matter, accepted as true to state a claim to relief that is
 8 plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and
 9 citation omitted); *Steele v. Wells Fargo Bank N.A.*, Case No. C18-0230JLR, 2018 WL 3126546,
 10 at *2 (W.D.Wash. June 26, 2018) (quoting same). Mueller's six common law causes of action
 11 are duplicative of her sex harassment claim under WLAD and/or her additional WLAD claims
 12 (depending on how she clarifies her Third Cause of Action),¹ and therefore fail or may fail to
 13 state a claim for relief that is plausible on their face for this reason alone. She also fails to plead
 14 sufficient facts to establish the elements of these causes of action.

15 **1. Mueller's six common law causes of action may be barred because they**
 16 **are duplicative.**

17 Mueller alleges six common law claims as her First, Second, and Fourth through Seventh
 18 Causes of Action: Negligent Retention (First), Negligent Supervision (Second), Intentional
 19 Infliction of Emotional Distress (Fourth), Negligent Infliction of Emotional Distress (Fifth),
 20 Wrongful Discharge in Violation of Public Policy (Sixth), and Retaliation (Seventh). *See* Dkt. 1-
 21 2 at ¶¶ 4.1-5.8, 7.1-10.6. These causes of action all derive from the same facts underlying
 22 Mueller's WLAD claim or potential claims. *Compare* Dkt. 1-2 at ¶¶ Sections IV, V, VII, VIII,
 23 XII, and XIII with VI; *see also, supra*, n.1. Common law claims that rely on the same facts

24 _____
 25 ¹ Mueller's First, Second, Fourth, and Fifth Causes of Action are duplicative of her sex
 26 harassment claims under WLAD in her Third Cause of Action. Mueller's Sixth and Seventh
 Cause of Action may be duplicative, depending on how she clarifies her Third Cause of Action.

1 underlying a plaintiff's WLAD claim are duplicative and must be dismissed. *See, e.g., Ellis on*
2 *behalf of Corliss v. Larson Motors, Inc.*, No. BR 15-43566, 2017 WL 4758763, at *4
3 (W.D.Wash. Oct. 20, 2017) ("Because Corliss's negligent supervision claim is based on the same
4 facts alleged in the sexual harassment claim, and because Larson Motors concedes that it is
5 vicariously liable for the tortious conduct of its employees, the negligent supervision claim is
6 both redundant and improper under Washington law"); *Gamble v. Pacific Nw. Reg'l Council of*
7 *Carpenters*, No. 2:14-cv-00455RSM, 2015 WL 402782, at *6 (W.D.Wash. Jan. 29, 2015)
8 (providing support for the proposition that state law tort claims, like Mueller's wrongful
9 discharge and retaliation claims, must be dismissed when the WLAD provides sufficient relief
10 for the alleged wrongdoing); *Bakki v. Boeing Co., No. C20-0235JLR*, 2020 WL 2767308, at *5
11 (W.D. Wash. May 28, 2020) ("Washington courts have held that common law tort claims, such
12 as [intentional infliction of emotional distress] and negligent infliction of emotional distress . . .
13 that are based on the same facts underpinning a plaintiff's claim for unlawful discrimination, are
14 duplicative of the discrimination claim and therefore must be dismissed."); *Ellorin v. Applied*
15 *Finishing, Inc.*, 996 F.Supp.2d 1070, 1093-94 (W.D.Wash. Feb. 7, 2014) (citations omitted)
16 ("Washington courts have held that common law tort claims, such as negligent infliction of
17 emotional distress, negligent supervision, and intentional infliction of emotional distress (which
18 is also known as the tort of outrage), that are based on the same facts underpinning a plaintiff's
19 claim for unlawful discrimination, are duplicative of the discrimination claim and therefore must
20 be dismissed."). Thus, at the outset, Mueller's First, Second, Fourth, and Fifth Causes of Action
21 must be dismissed because they are duplicative of Plaintiff's claims under the WLAD, and her
22 Sixth and Seventh Causes of Action may need to be dismissed, depending on how she clarifies
23 her Third Cause of Action.

1 **2. Mueller does not plead facts sufficient to state a cause of action for**
2 **negligent retention.**

3 As noted above, Mueller’s negligent retention claim (First Cause of Action) is entirely
4 duplicative of Mueller’s claim or claims under WLAD. But this claim (and all of the claims
5 discussed *infra* at Sections B.3-B.6) fail for the additional reason that Mueller has not pled
6 sufficient facts to establish the elements of the claim.

7 The Washington Supreme Court has adopted the following test for negligent retention:

8 [T]o hold an employer liable for negligently . . . retaining an employee who is
9 incompetent or unfit, a plaintiff must show that the employer had knowledge of
10 the employee’s unfitness or failed to exercise reasonable care to discover
11 unfitness before . . . retaining the employee.

11 *Anderson v. Soap Lake School Dist.*, 191 Wash.2d 343, 356 (2018) (citation omitted). Mueller
12 must also show that a negligently retained employee proximately caused her injuries. *Preston v.*
13 *Boyer*, No. C16-1106-JCC-MAT, 2019 WL 8060201, at *7 (W.D. Wash. Nov. 27, 2019), *report*
14 *and recommendation adopted*, No. C16-1106-JCC, 2020 WL 416269 (W.D. Wash. Jan. 24,
15 2020).

16 Mueller does not plead facts showing that Move had knowledge of managers’ alleged
17 unfitness or that Move failed to exercise reasonable care to discover the alleged unfitness. To be
18 sure, she repeatedly alleges that managers made inappropriate comments to her, *see* Dkt. No.1-2
19 at ¶¶ 3.7-3.9, 3.11-3.14, 3.16, but she does not allege why Move should have known about their
20 alleged comments or why Move should have discovered these alleged comments. Specifically,
21 she never alleges that she told anyone about these allegedly inappropriate comments, let alone
22 complained about them to anyone at Move. Based on the face of her complaint, she has not pled
23 facts sufficient to show that Move knew or should have known about the allegedly unlawful
24 behavior. This Court should dismiss Mueller’s negligent retention claim (First Cause of Action).

1 **3. Mueller does not plead facts sufficient to state a cause of action for**
2 **negligent supervision.**

3 Mueller’s negligent supervision claim (Second Cause of Action) likewise is insufficient.

4 The elements of a negligent supervision claims are:

5 (1) [A]n employee acted outside the scope of [the employee’s] employment; (2)
6 the employee presented a risk of harm to other employees; (3) the employer knew,
7 or should have known in the exercise of reasonable care that the employee posed
8 a risk to others; and (4) that the employer’s failure to supervise was the proximate
9 cause of injuries to other employees.

10 *Briggs v. Nova Servs.*, 135 Wash.App. 955, 966-67 (2006), *aff’d*, 166 Wash.2d 794 (2009)
11 (*citing Niece v. Elmview Group Home*, 131 Wash.2d 39, 48-49 (1997)). Mueller does not plead
12 the first or second elements of a negligent supervision claim.

13 Under Washington law, the tort of negligent supervision “creates a limited duty to control
14 an employee for the protection of third parties, even where the employee is acting outside the
15 scope of employment.” *Chapman v. Progress Rail Serv. Corp.*, 2015 WL 7345761, at *11
16 (W.D.Wash. Nov. 19, 2015) (internal quotation marks omitted) (*citing Niece*, 131 Wash.2d at
17 51). The tort is not available, however, when an employee allegedly acts within the scope of
18 employment. “[W]hen an employee commits negligence within the scope of employment, a
19 different theory of liability -- vicarious liability applies. Under Washington law, therefore, a
20 claim for negligent hiring, training, [or] supervision is generally improper when the employer
21 concedes the employee’s action occurred within the scope of employment.” *Ellis*, No. BR 15-
22 43566, 2017 WL 4758763, at *3 (citation and block quotation omitted).

23 Mueller alleges that the managers who committed the alleged unlawful actions were
24 acting *within* the scope of their employment, not outside of it. *See, e.g.*, Dkt. No. 1-2 at ¶¶ 3.7-
25 3.16, 3.18-20, 6.3. For example, she alleges that “[t]he harassment and discrimination was
26 sufficiently pervasive so as to affect the terms, conditions and/or privileges of employment by
27 creating an intimidating, hostile and offensive *working* environment” *Id.* at ¶ 6.3 (emphasis
28 added). Her negligent supervision claim fails for this reason alone. *See, e.g., Huifang Zhang v.*

1 *United States*, No. C19-1211-RSM, 2020 WL 2114500, at *11 (W.D.Wash. May 4, 2020
2 (concluding that plaintiff failed to state a claim for negligent supervision where “[n]othing in the
3 [c]omplaint, liberally construed, alleg[ed] that [the] Officer[‘s] actions were performed outside
4 the scope of employment”).

5 Mueller also does not allege that Move knew or why Move should have known about
6 managers’ alleged comments to Mueller. As explained in Section B.2, *supra*, Mueller simply
7 has not pled facts sufficient to show that Move knew or should have known about the alleged
8 unlawful behavior. Therefore, her negligent supervision claim fails for this additional reason.
9 *See Vopnford v. Plans*, No. C16-1835JLR, 2017 WL 3424964, at *10 (W.D.Wash. Aug. 8, 2017)
10 (dismissing negligent supervision claim where the “amended complaint contains no allegations
11 that suggest any . . . employees acted outside the scope of their employment or that . . .
12 management knew or should have known that the employees represented a risk of harm to
13 others”); *Hawkins v. Douglas Cty.*, No. 2:15-CV-0283-TOR, 2016 WL 347684, at *8
14 (E.D.Wash. Jan. 28, 2016 (dismissing claim where “[c]omplaint fail[ed] to state any facts to
15 demonstrate that the deputies presented a risk of harm and their employers knew or should have
16 known about the risk”). This Court should dismiss her negligent supervision claim (Second
17 Cause of Action).

18 **4. Mueller does not plead facts sufficient to state a cause of action for**
19 **intentional infliction of emotional distress.**

20 Mueller’s cause of action for intentional infliction of emotional distress (Fourth Cause of
21 Action) is deficient. In Washington, the tort of intentional infliction of emotional distress
22 requires a plaintiff to prove the following elements:

23 (1) [E]xtreme and outrageous conduct; (2) intentional or reckless infliction of
24 emotional distress; and (3) actual severe emotional distress.
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1 *Bradford v. City of Seattle*, 557 F.Supp.2d 1189, 1206-07 (W.D.Wash. April 4, 2008) (citing
2 *Kloepfel v. Bokor*, 149 Wash.2d 192, 195-96 (2003)). Mueller does not allege facts sufficient to
3 plead the third element.

4 Mueller alleges only that she “experienced substantial and enduring emotional distress,”
5 *see* Dkt. 1-2 at ¶ 3.22, and that she “suffer[ed] emotional distress and mental suffering,” *id.* at ¶
6 7.3. This is not sufficient to establish actual, severe emotional distress. For example, in *Phillips*
7 *v. World Pub. Co.*, 822 F.Supp.2d 1114, 1120 (W.D. Wash. Oct. 14, 2011) (citations and
8 quotation marks omitted), this Court ruled that plaintiff’s allegations in the amended complaint
9 “that he became emotionally distressed, that the distress manifested itself in physical symptoms,
10 and that he obtained treatment for his distress and symptoms” were bare and conclusory
11 statements (and a mere formulaic recitation of elements) insufficient to plead a claim for
12 intentional infliction of emotional distress. Mueller similarly pleads that she experienced
13 emotional distress, but she does not claim that her alleged emotional distress and mental
14 suffering resulted in physical symptoms or that she obtained treatment for that distress and
15 suffering. In other words, Mueller pleads even lesser alleged facts than the plaintiff in *Phillips*.
16 His claim failed, and this Court should likewise dismiss Mueller’s intentional infliction of
17 emotional distress claim (Fourth Cause of Action).

18 **5. Mueller does not plead facts sufficient to state a cause of action for**
19 **negligent infliction of emotional distress.**

20 Similarly, Mueller does not plead facts sufficient to state a claim of negligent infliction of
21 emotional distress. She must plead facts that establish symptomology. *See, e.g., Phillips*, 822
22 F.Supp.2d at 1120 (dismissing negligent infliction of emotional distress claim and stating
23 “plaintiff has not alleged in his complaint any actual symptoms or made any specific allegations
24 regarding his medical diagnosis; he has not gone beyond the mere formulaic recitation that he
25 had unnamed symptoms”); *Strong v. Terrell*, 147 Wash. App. 376, 388 (2008) (to prove
26 negligent infliction of emotional distress, a plaintiff has to prove that her emotional distress is

1 accompanied by objective symptoms and the emotional distress must be susceptible to medical
 2 diagnosis and proved through medical evidence) (*citing Kloepfel*, 149 Wash.2d at 197)
 3 (quotation marks omitted); *Cyr v. Pierce Cty.*, No. C16-0430 RSM, 2016 WL 2855272, at *6
 4 (W.D.Wash. May 16, 2016) (“Plaintiffs’ claim fails as a matter of law because they have not
 5 provided any allegations of objective symptomatology that would allow their case to go forward,
 6 and this Court has already determined that the Deputies are immune from suit on any negligence
 7 claim.”). Aside from mere references to “emotional distress and suffering,” Mueller has not
 8 pled facts showing her alleged injuries are susceptible to medical diagnoses. This Court should,
 9 therefore, dismiss her negligent infliction of emotional distress claim (Fifth Cause of Action).

10 **6. Mueller does not plead facts sufficient to state causes of action for**
 11 **wrongful discharge or retaliation.**

12 Mueller’s tort claims that Move wrongfully discharged her and retaliated against her
 13 likewise do not plead sufficient facts to state these claims. To prevail on a claim of wrongful
 14 discharge or retaliation, a plaintiff must “show that the public-policy-linked conduct was a
 15 ‘significant factor’ in the decision to discharge the worker.” *Martin v. Gonzaga Univ.*, 191
 16 Wash. 2d 712, 725 (2018) (citations omitted). Mueller’s wrongful discharge and retaliation
 17 claims fail to plead facts sufficient to state this required element of her tort claim.

18 While Mueller makes conclusory allegations that her termination of employment was
 19 “based on” her complaint about alleged sexual harassment of her co-worker, *see* Dkt. No. 1-2 at
 20 ¶ 9.3, and retaliatory because of her “participation of and support of coworkers’ [sic] complaints
 21 [sic] of sexual harassment, *see* Dkt. No. 1-2 at ¶¶ 10.3-10.4, her Complaint is void of factual
 22 allegations that her alleged complaint was a significant factor in Move’s decision to terminate
 23 her employment. She alleges merely that she had “been chosen for layoff.” *See* Dkt. No. 1-2 at
 24 ¶ 3.17. She does not plead any alleged facts that tie that layoff to her complaint about alleged
 25 sexual harassment. Mere statements that her discharge was “based on,” “wrongful,” or
 26 “retaliatory” is not enough to state a claim of wrongful discharge or retaliation. *See, e.g.*,

1 *Sukhinia v. Kitsap Bank*, No. 3:19-cv-05963-RBL, 2020 WL 60275, at *2 (W.D.Wash. Jan. 6,
2 2020) (requiring plaintiff to allege concrete facts to support the elements of a cause of action).
3 This Court should dismiss Mueller’s wrongful discharge and retaliation claims (Sixth and
4 Seventh Causes of Action).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Defendant Move, Inc. respectfully requests that this Court
7 require Plaintiff Suzanne Mueller to amend her Complaint to provide a more definite statement
8 of her claims under the Washington Law Against Discrimination for her Third Cause of Action
9 (Section XI of her Complaint) and that this Court dismiss her six common law claims embodied
10 in the First, Second, Fourth, Fifth, Sixth, and Seventh Causes of Action (Sections IV, V, VII,
11 VIII, XII [sic], and XIII [sic] of her Complaint).

12 DATED this 24th day of September, 2020.

13 SEYFARTH SHAW LLP
14 Attorneys for Defendant Move, Inc.

15 By: /s/ Molly Gabel
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CERTIFICATE OF SERVICE

I hereby declare that on this 24th day of September, 2020, I caused a copy of *Move, Inc.'s Motion For A More Definite Statement On Third Cause Of Action And To Dismiss First, Second, And Fourth Through Seventh Causes Of Action* to be sent using the ECF Filing system which will send notification of such filing to the following:

Robin Williams Phillips
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2600 Two Union Square
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DATED this 24th day of September, 2020.

Molly Gabel
Molly Gabel

Honorable Ricardo S. Martinez

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SUZANNE Z. MUELLER,

Plaintiff,

v.

MOVE, INC.,

Defendant.

Case No. 2:20-cv-01374 RSM

[PROPOSED] ORDER GRANTING
DEFENDANT MOVE, INC.'S MOTION
FOR A MORE DEFINITE STATEMENT
ON THIRD CAUSE OF ACTION AND
TO DISMISS FIRST, SECOND, AND
FOURTH THROUGH SEVENTH
CAUSES OF ACTION

**NOTED FOR HEARING:
OCTOBER 16, 2020**

IT IS SO ORDERED. The Court GRANTS Defendant Move, Inc.'s Motion for A More
Definite Statement on Plaintiff's Third Cause of Action. The Court further GRANTS Defendant
Move, Inc.'s Motion to Dismiss Plaintiff's First, Second, and Fourth through Seventh Causes of
Action.

DATED this _____ day of _____, 2020.

Honorable Ricardo S. Martinez
UNITED STATES CHIEF DISTRICT JUDGE

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