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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Julie Deese,
Plaintiff,
vs.
Wells Fargo Bank; Reede Reynolds and
Heather Reynolds, husband and wife,
Defendants.

No. CV-08-00539-ROS

ORDER

Before the Court are the parties' cross-Motions for Partial Summary Judgment. For the reasons discussed, Defendants' Motion will be granted and Plaintiff's Motion will be denied.

BACKGROUND

Plaintiff filed an Amended Complaint for disparate treatment and a hostile work environment on the basis of her sex (Count I) and intentional infliction of emotional distress and interference with employment relationship (Count II). Plaintiff is employed as a senior investigator at Wells Fargo Bank. In 2004, Defendant Reede Reynolds became Plaintiff's new manager. Plaintiff alleges Reynolds began giving her unwarranted verbal and written reprimands, demeaned the quality of her work, and generally treated her in a negative fashion because of her sex. Plaintiff alleges males that held similar positions were treated much better, and that Reynolds made negative comments about women that evidenced his

1 discriminatory bias against women. Plaintiff alleges she was mistreated in a pervasive,
2 continuing, and extreme manner, which constituted a hostile work environment.

3 **STANDARD**

4 When parties submit cross-motions for summary judgment, each motion must be
5 considered on its own merits and analyzed under Federal Rule for Civil Procedure 56. *Fair*
6 *Housing Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir.
7 2001). Summary judgment is appropriate where “there is no genuine issue as to any material
8 fact” and “the movant is entitled to judgment as a matter of law.” Fed R. Civ. P. 56(c). To
9 enter summary judgment, the Court must examine all evidence and find no dispute
10 concerning genuine issues of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
11 242, 255-256 (1986). The evidence of the non-moving party is to be believed, and all
12 reasonable inferences drawn in its favor. *See id.* “[A] party seeking summary judgment
13 always bears the initial responsibility of informing the district court of the basis for its
14 motion, and identifying those portions of the pleadings, depositions, answers to
15 interrogatories, and admissions on file, together with the affidavits, if any, which it believes
16 demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477
17 U.S. 317, 323 (1986) (internal citations omitted). However, if the non-moving party bears
18 the burden of proof at trial, the moving party’s summary judgment motion need only
19 highlight the absence of evidence supporting the non-moving party’s claims. *See Devereaux*
20 *v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (citing *Celotex Corp.*, 477 U.S. at 323-25).
21 The burden then shifts to the non-moving party who must produce evidence sustaining a
22 genuine issue of disputed material fact. *See id.*

23 **DISCUSSION**

24 Defendants move for summary judgment on the sex discrimination/hostile work
25 environment claim on the ground that it is barred by the applicable statute of limitations and
26 fails as a matter of law because the conduct alleged was not severe or pervasive. Defendants
27 move for summary judgment on the intentional interference with a business relationship
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1 claim on the ground that Plaintiff has not alleged the essential elements of the claim.
2 Defendants move for summary judgment on the intentional infliction of emotional distress
3 claim on the ground that Plaintiff has insufficient evidence to support it.¹ Plaintiff moves for
4 summary judgment on the ground that the evidence shows there are no genuine issues of fact
5 and she is entitled to judgment as a matter of law.²

6 **I. Statute of Limitations**

7 Defendants argue Plaintiff's sex discrimination/hostile work environment claim is
8 barred by Title VII's 300-day statute of limitations because Plaintiff failed to file a charge
9 of discrimination within 300 days of any discreet adverse employment action.

10 Title VII requires plaintiffs to file a charge of discrimination with the EEOC within
11 300 days of the discriminatory conduct prior to bringing a claim. 42 U.S.C. § 2000e-5(e).
12 Discreet discriminatory acts are not actionable if time-barred. *National R.R. Passenger Corp.*
13 *v. Morgan*, 536 U.S. 101, 115 (2002). Plaintiff filed her charge of discrimination on
14 February 21, 2008. To the extent Plaintiff's discrimination claim is based on discreet adverse
15 employment actions that occurred prior to April 27, 2007, the claim is time-barred. Hostile
16 work environment claims, however, are different than claims based on discreet acts because
17 their very nature involves repeated conduct. *Id.* As long as at least one "act contributing to
18 the claim occurs within the filing period, the entire time period of the hostile work
19 environment may be considered by a court for the purposes of determining liability." *Id.* at
20 117. Because Plaintiff appears to allege both discrimination based on discreet acts and
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22 ¹Defendants also move for summary judgment on Plaintiff's claim for religious
23 discrimination. In response, Plaintiff indicates she did not intend to assert a religious
24 discrimination claim. Although she alleges anti-Jewish offensive comments were made, she
25 cited these comments to support her claim that she experienced a hostile work environment
26 on the basis of her sex. To the extent the Amended Complaint asserts a religious
discrimination claim, Defendant will be granted summary judgment on it.

27 ²In addition to the claims in her Amended Complaint, Plaintiff moves for summary
28 judgment on a retaliation claim. Plaintiff did not plead a retaliation claim in her Amended
Complaint, and the Court will not consider it.

1 discrimination based on a hostile work environment, these claims will be analyzed
2 separately.

3 **A. Discrimination Based on Discreet Adverse Employment Actions**

4 Defendants argue no discreet adverse employment actions occurred after April 27,
5 2007. Plaintiff does not point to any discreet adverse employment acts that occurred after
6 that date. The only allegation she makes concerning acts that took place after that date is
7 that, “throughout 2007,” she was required to come to work on time every day while her male
8 counterpart was allowed to come in late and leave when he wanted. This was an ongoing
9 employment action that occurred throughout 2007 and does not constitute a discreet act that
10 occurred after April 27, 2007. *See Wheeler v. Arizona Dept. of Corrections*, 2008 WL
11 724982, *3 (D. Ariz. 2008). To the extent Plaintiff alleges discrimination based on discreet
12 acts, the claim is barred and Defendants will be granted summary judgment on it.

13 **B. Hostile Work Environment**

14 As discussed above, the timeliness of a hostile work environment claim is evaluated
15 differently because it is based on ongoing circumstances that occur over a period of time.
16 The Supreme Court has held that if at least one “act contributing to the claim occurs within
17 the filing period, the entire time period of the hostile work environment may be considered
18 by a court for the purposes of determining liability.” *Morgan*, 536 U.S. at 115. Defendant
19 argues that no acts occurred within the relevant time period that can form the basis for a sex
20 discrimination-based hostile work environment claim.

21 As noted, the only action Plaintiff claims occurred during the relevant period was that
22 she was required to come to work on time everyday. She also implies (though does not
23 expressly state) that the following additional forms of hostile treatment occurred during the
24 relevant time period: (1) she was required to do more work and more training than her male
25 counterparts, (2) she was given “crap cases” which would not help her reputation as an
26 investigator, and (3) she was required to have her files looked over by a co-worker. In
27 support, Plaintiff cites to various paragraphs in her statement of facts in support of these
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1 allegations. The statements of fact Plaintiff cites do not provide evidence these acts occurred
2 within the relevant time period. None of the statements of fact cited by Plaintiff alleges these
3 acts occurred beyond April 27, 2007.

4 As Defendant has moved for summary judgment on the ground that Plaintiff's hostile
5 work environment claim is time-barred, Plaintiff has the burden of citing evidence that she
6 experienced a hostile work environment within the relevant time period. *See Devereaux v.*
7 *Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001). Plaintiff is not entitled to "rely merely on
8 allegations or denials in [her] own pleading; rather, [her] response must—by affidavits or as
9 otherwise provided in this rule—set out specific facts showing a genuine issue for trial." Fed.
10 R. Civ. P. 56(e). Plaintiff has cited to no evidence that the acts alleged occurred within the
11 relevant time period. The Court is not required to perform an independent search through
12 all the depositions, interrogatories, and other papers in the record to find evidence to support
13 Plaintiff's claims. *See Schneider v. TRW, Inc.*, 938 F.2d 986, 990 n. 2 (9th Cir. 1991) ("[A]
14 district court is under no obligation to mine the full record for issues of triable fact.").
15 Because Plaintiff has cited no evidence to show she experienced a hostile work environment
16 within the relevant time period, her claim is time-barred. Defendants will be granted
17 summary judgment on Plaintiff's claim for sex discrimination/hostile work environment.

18 **II. Intentional Interference with Business Relationship**

19 Defendants move to dismiss the intentional interference with business relationship
20 claim because Plaintiff failed to allege the existence of a contract with a third party. To state
21 a claim for intentional interference with a business relationship, Plaintiff must allege the
22 existence of a contract between Plaintiff and a third-party. *Payne v. Pennzoil Corp.*, 672
23 1322, 1327 (Ariz. Ct. App. 1983) ("[S]ince the three employees were acting *for* the company,
24 they cannot be interfering with a contract *of* the company."). Plaintiff concedes there is no
25 third-party. Defendants will be granted summary judgment of the intentional interference
26 claim.

1 **III. Intentional Infliction of Emotional Distress**

2 Defendants move to dismiss the intentional infliction of emotional distress claim on
3 the ground that none of Defendants’ alleged conduct rises to the level of “extreme and
4 outrageous” conduct. To prevail on an intentional infliction of emotional distress claim, a
5 plaintiff must show:

- 6 (1) that defendants’ conduct could be characterized as extreme and outrageous;
7 (2) that defendants either intended to cause or recklessly disregarded the near
8 certainty that emotional distress would result from their conduct;
9 (3) that defendants’ conduct actually caused severe emotional distress.

9 *Nelson v. Phoenix Resort Corp.*, 888 P.2d 1375, 1386 (Ariz. Ct. Appl. 1994) (internal citation
10 and quotation marks omitted). To be “extreme and outrageous,” the conduct must be “so
11 outrageous in character and so extreme in degree, as to go beyond all possible bounds of
12 decency, and to be regarded as atrocious and utterly intolerable in a civilized community.”
13 *Mintz v. Bell Atlantic Systems Leasing Intern., Inc.*, 905 P.2d 559, 563 (Ariz. Ct. App. 1995)
14 (internal citation omitted). The trial court determines whether the acts complained of are
15 sufficiently extreme and outrageous to state a claim for relief. *Id.* (“Only when reasonable
16 minds could differ in determining whether conduct is sufficiently extreme or outrageous does
17 the issue go to the jury.”). Liability does not extend to “mere insults, threats, annoyances,
18 petty oppressions, or other trivialities.” *Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1059
19 (9th Cir. 2007) (citing Restatement 2d of Torts, § 46). “There is no occasion for the law to
20 intervene where someone’s feelings are hurt.” *Id.*

21 Plaintiff fails to allege “extreme and outrageous conduct” sufficient to state a claim
22 for intentional infliction of emotional distress. Plaintiff alleges Defendant Reynolds insulted
23 her and shouted at her, swore at her, told her she had to come to work on time, gave her more
24 work than other employees, gave her the “crap” cases to work on, publicly accused her of not
25 performing up to her duties, and regularly demeaned her work performance. These
26 allegations are not so extreme and outrageous as to be regarded as atrocious and utterly
27 intolerable in a civilized community. *See Mintz*, 905 P.2d at 564 (callousness and
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1 insensitivity by employer, including hand-delivering a termination letter while plaintiff was
2 in the hospital receiving treatment for severe emotional problems, did not state claim for
3 intentional infliction of emotional distress); *see also Nelson*, 888 P.2d at 1386 (plaintiff who
4 was required to come to work at 3:00 a.m., had armed security guards force him out of the
5 building, and was fired in front of news media who were invited to watch his termination,
6 failed to allege sufficiently extreme and outrageous conduct to state a claim for intentional
7 infliction of emotional distress). Plaintiff argues Reynolds' conduct was made particularly
8 extreme because he knew she was particularly susceptible to emotional distress. But Plaintiff
9 cites no evidence to show Reynolds knew she was particularly susceptible to emotional
10 distress.


11 Plaintiff argues Defendant Wells Fargo is liable for intentional infliction of emotional
12 distress because it knew of Reynolds' conduct and failed to remedy it. Because Reynolds'
13 alleged conduct does not constitute extreme and outrageous conduct, Wells Fargo's failure
14 to remedy also does not constitute extreme and outrageous conduct. In any case, Defendant
15 has submitted evidence that Wells Fargo did not fail to investigate and respond to Plaintiff's
16 complaints about Reynolds. Defendants will be granted summary judgment on Plaintiff's
17 intentional infliction of emotional distress claim.

18 Accordingly,

19 **IT IS ORDERED** Defendants' Motion for Summary Judgment (Doc. 115) **IS**
20 **GRANTED.**

21 **FURTHER ORDERED** Plaintiff's Motion for Summary Judgment (Doc. 118) **IS**
22 **DENIED.** The clerk shall terminate this case.

23 DATED this 13th day of September, 2010.

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Roslyn O. Silver
United States District Judge