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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARILYN MENDOZA,

Plaintiff,

v.

LOUIS DEJOY, POSTMASTER
GENERAL OF THE UNITED STATES
POSTAL SERVICE,

Defendants.

Case No.: 21-cv-00991-H-JLB

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS**

[Doc. No. 3.]

On August 13, 2021, Defendant Louis DeJoy, Postmaster General of the United States Postal Service, filed a partial motion to dismiss Plaintiff Marilyn Mendoza’s complaint. (Doc. No. 3.) On September 3, 2021, Plaintiff filed a response in opposition to Defendant’s motion to dismiss. (Doc. No. 4.) On September 13, 2021, Defendant filed a reply. (Doc. No. 5.) On September 29, 2021, the Court took the matter under submission. (Doc. No. 8.) For the reasons below, the Court denies Defendant’s motion to dismiss.

Background

The following factual background is taken from the allegations in Plaintiff’s complaint. Plaintiff is a female who was born in Manila, Philippines, and she classifies herself as Filipino, Pacific Islander. (Doc. No. 1, Compl. ¶ 5.) Plaintiff is an employee of the United States Postal Service. (Id. ¶ 6.)

1 On or about March 30, 2020, Plaintiff was reassigned to a new position as a Caller
2 Service Clerk (“CSC”). (Id. ¶ 8.) Foster Ladell Williams, an African American male, was
3 Plaintiff’s main supervisor. (Id. ¶ 7.) In taking this position, Plaintiff replaced Alfredo
4 Lopez, who retired as a CSC and who is a male of Hispanic descent and classifies as
5 Mexican American. (Id. ¶ 9.)

6 Plaintiff alleges that from the beginning of her employment as a CSC, she was
7 micromanaged by Williams and treated differently than her predecessor, Lopez. (Id. ¶ 10;
8 see also id. ¶¶ 11-17.) Plaintiff alleges that this different treatment constituted race,
9 national origin, and/or ancestry discrimination and sex discrimination. (Id. ¶¶ 26, 32.)

10 On or about July 23, 2020, Plaintiff sent her Union President a complaint letter
11 explaining the way Williams had been treating her and the various events that had occurred.
12 (Id. ¶ 18; Doc. No. 3-2, Ex. 1 at 5-7.) Plaintiff alleges that Defendant retaliated against her
13 after she filed this complaint letter. (Doc. No. 1, Compl. ¶¶ 18, 20.)

14 On or about September 26, 2020, Plaintiff filed a formal complaint with the U.S.
15 Equal Employment Opportunity Commission, Los Angeles District Office. (Id. ¶ 22; Doc.
16 No. 3-2, Ex. 1.) On April 7, 2021, an administrative judge for the EEOC issued a decision
17 entering summary judgment in favor of Defendant. (Doc. No. 3-2, Ex. 11.) On April 20,
18 2021, the EEOC issued a notice of final action, implementing the administrative judge’s
19 April 7, 2021 decision. (Doc. No. 1, Compl. ¶ 22; Doc. No. 3-2, Ex. 12.)

20 On May 25, 2021, Plaintiff filed a complaint in this Court against Defendant,
21 alleging claims for: (1) race, national origin, and/or ancestry discrimination in violation of
22 Title VII of the Civil Rights Act of 1964 et seq. (“Title VII”); (2) sex discrimination in
23 violation of Title VII; and (3) retaliation in violation of Title VII. (Doc. No. 1, Compl. ¶¶
24 23-40.) By the present motion, Defendant moves to dismiss Plaintiff’s claim for race,
25 national origin, and/or ancestry discrimination in violation of Title VII for failure to
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1 exhaust her administrative remedies.¹ (Doc. No. 3 at 2, 7.)

2 Discussion

3 I. Legal Standards for a Rule 12(b)(6) Motion to Dismiss²

4 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
5 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has
6 failed to state a claim upon which relief can be granted. See Conservation Force v. Salazar,
7 646 F.3d 1240, 1241 (9th Cir. 2011). Federal Rule of Civil Procedure 8(a)(2) requires that
8 a pleading stating a claim for relief contain “a short and plain statement of the claim
9 showing that the pleader is entitled to relief.” The function of this pleading requirement is
10 to “give the defendant fair notice of what the . . . claim is and the grounds upon which it
11 rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

12 A complaint will survive a Rule 12(b)(6) motion to dismiss if it contains “enough
13 facts to state a claim to relief that is plausible on its face.” Id. at 570. “A claim has facial
14 plausibility when the plaintiff pleads factual content that allows the court to draw the
15 reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.
16 Iqbal, 556 U.S. 662, 678 (2009). “A pleading that offers ‘labels and conclusions’ or ‘a
17 formulaic recitation of the elements of a cause of action will not do.’” Id. (quoting
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20 ¹ Defendant does not move to dismiss the other two claims in Plaintiff’s complaint. (See Doc. No.
21 3.)

22 ² Defendant filed his motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1),
23 contending that exhaustion under Title VII is a jurisdictional prerequisite to the Court’s subject matter
24 jurisdiction. (Doc. No. 3 at 5-6.) This is incorrect.

25 “The Supreme Court recently clarified that Title VII’s claim-processing rules, while mandatory,
26 are non-judicial.” Cloud v. Brennan, 436 F. Supp. 3d 1290, 1302 (N.D. Cal. 2020) (citing Fort Bend
27 Cty., Texas v. Davis, 139 S. Ct. 1843, 1850 (2019) (“Title VII’s charge-filing requirement is not of
28 jurisdictional cast.”)); accord dela Cruz v. Brennan, No. 19-CV-01140-DMR, 2020 WL 1233886, at *4
(N.D. Cal. Mar. 13, 2020). “However, a plaintiff ‘must allege compliance with the [mandatory processing
rule] . . . in order to state a claim on which relief may be granted.’” Cloud, 436 F. Supp. 3d at 1302
(quoting Williams v. Wolf, No. 19-CV-00652-JCS, 2019 WL 6311381, at *6 (N.D. Cal. Nov. 25, 2019)).
“Therefore, the court will consider Defendant’s administrative exhaustion arguments under a Rule
12(b)(6) standard.” dela Cruz, 2020 WL 1233886, at *4.

1 Twombly, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’
2 devoid of ‘further factual enhancement.’” Id. (quoting Twombly, 550 U.S. at 557).
3 Accordingly, dismissal for failure to state a claim is proper where the claim “lacks a
4 cognizable legal theory or sufficient facts to support a cognizable legal theory.”
5 Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

6 In reviewing a Rule 12(b)(6) motion to dismiss, a district court must accept as true
7 all facts alleged in the complaint, and draw all reasonable inferences in favor of the
8 claimant. See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d
9 938, 945 (9th Cir. 2014). But a court need not accept “legal conclusions” as true. Iqbal,
10 556 U.S. at 678. Further, it is improper for a court to assume the claimant “can prove facts
11 which it has not alleged or that the defendants have violated the . . . laws in ways that have
12 not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of
13 Carpenters, 459 U.S. 519, 526 (1983).

14 In addition, a court may consider documents incorporated into the complaint by
15 reference and items that are proper subjects of judicial notice. See Coto Settlement v.
16 Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010). If the court dismisses a complaint for
17 failure to state a claim, it must then determine whether to grant leave to amend. See Doe
18 v. United States, 58 F.3d 494, 497 (9th Cir. 1995); see Telesaurus VPC, LLC v. Power,
19 623 F.3d 998, 1003 (9th Cir. 2010).

20 **II. Analysis**

21 In his motion to dismiss, Defendant argues that Plaintiff’s claim for race, national
22 origin, and/or ancestry discrimination in violation of Title VII should be dismissed with
23 prejudice for failure to exhaust her administrative remedies. (Doc. No. 3 at 2, 6-7.)
24 Specifically, Defendant argues that Plaintiff failed to properly exhaust her administrative
25 remedies because she did not assert a claim for discrimination based on race, national
26 origin, and/or ancestry in her underlying EEO complaint, and she did not timely amend her
27 EEO complaint to include any such claim. (Id.)

28 “Title VII of the Civil Rights Act of 1964 proscribes discrimination in employment

1 on the basis of race, color, religion, sex, or national origin.” Davis, 139 S. Ct. at 1846. “In
2 order to bring a Title VII claim in district court, a plaintiff must first exhaust her
3 administrative remedies.” Sommatino v. United States, 255 F.3d 704, 707 (9th Cir. 2001)
4 (citing 42 U.S.C. § 2000e–16(c)). “Under Title VII, a plaintiff must exhaust her
5 administrative remedies by filing a timely charge with the EEOC, or the appropriate state
6 agency, thereby affording the agency an opportunity to investigate the charge.” B.K.B. v.
7 Maui Police Dep’t, 276 F.3d 1091, 1099 (9th Cir. 2002), as amended (Feb. 20, 2002) (citing
8 42 U.S.C. § 2000e–5(b)). “The administrative charge requirement serves the important
9 purposes of giving the charged party notice of the claim and narrow[ing] the issues for
10 prompt adjudication and decision.” Id. (internal quoting marks omitted).

11 “Incidents of discrimination not included in an EEOC charge may not be considered
12 by a federal court unless the new claims are like or reasonably related to the allegations
13 contained in the EEOC charge.” Lyons v. England, 307 F.3d 1092, 1104 (9th Cir. 2002).
14 Nevertheless, courts must construe “the language of EEOC charges ‘with utmost liberality
15 since they are made by those unschooled in the technicalities of formal pleading.’” B.K.B.,
16 276 F.3d at 1100; see also Green v. Los Angeles Cty. Superintendent of Sch., 883 F.2d
17 1472, 1476 (9th Cir. 1989) (“[T]he remedial purpose of Title VII and the paucity of legal
18 training among those whom it is designed to protect require charges filed before the EEOC
19 to be construed liberally.”). “[T]he crucial element of a charge of discrimination is the
20 factual statement contained therein.” B.K.B., 276 F.3d at 1100. Thus, courts will
21 “consider a plaintiff’s claims to be reasonably related to allegations in the charge ‘to the
22 extent that those claims are consistent with the plaintiff’s original theory of the case,’ as
23 reflected in the plaintiff’s factual allegations and h[er] assessment as to why the employer’s
24 conduct is unlawful.” Lyons, 307 F.3d at 1104 (quoting B.K.B., 276 F.3d at 1100).

25 Defendant argues that Plaintiff failed to properly exhaust her administrative
26 remedies because she failed to include a claim for race, national origin, and/or ancestry
27 discrimination in her EEO complaint. (Doc. No. 3 at 6-7; Doc. No. 5 at 2-5.) In response,
28 Plaintiff argues that she administratively exhausted her claim because the numerous

1 statements in her EEO complaint were sufficient to put Defendant on notice of such a claim.
2 (Doc. No. 4 at 5-8.)

3 The Court acknowledges that in her EEO complaint, Plaintiff only checked the box
4 for sex discrimination. (Doc. No. 3-2, Ex. 1 at 1.) Plaintiff did not check the boxes for
5 race, color, or national origin discrimination. (See id.) Nevertheless, in the EEO
6 complaint, Plaintiff states: “The circumstances that led to my complain[t] is detailed in my
7 July 23, 2020 email to the USPS union” (Id. at 3.) In that email, Plaintiff asserted:
8 “Foster never pestered Al, who is a black belt martial art instructor. I’m a tiny Asian
9 woman, who poses no threat, but vulnerability in my sincere desire to make an honest
10 living. Foster would never scold or put down a man like Al, but would yell at and
11 intimidate Marilyn in a heartbeat.” (Id. at 7.)

12 Liberally construing the above allegations, these allegations are sufficient to exhaust
13 Plaintiff’s claim for race, national origin, and/or ancestry discrimination in violation of
14 Title VII. The Ninth Circuit has explained that in evaluating whether a plaintiff has
15 exhausted her claims, the “crucial element” is the “factual statement” contained in the EEO
16 complaint. B.K.B., 276 F.3d at 1100. Here, Plaintiff’s factual statement contains sufficient
17 allegations to exhaust her claim for race, national origin, and/or ancestry discrimination, in
18 particular Plaintiff’s assertion that she was treated differently because she is “a tiny Asian
19 woman.” (Doc. No. 3-2, Ex. 1 at 7.) In addition, in light of these allegations, Plaintiff’s
20 claim for race, national origin, and/or ancestry discrimination is consistent with her original
21 theory of the case. See Lyons, 307 F.3d at 1104. As such, Plaintiff administratively
22 exhausted her claim for race, national origin, and/or ancestry discrimination in violation of
23 Title VII, and the Court declines to dismiss the claim.

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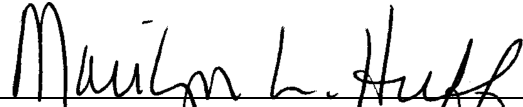
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1 Conclusion

2 For the reasons above, the Court denies Defendant DeJoy's motion to dismiss
3 Plaintiff's claim for race, national origin, and/or ancestry discrimination in violation of
4 Title VII. Defendant must file an answer to Plaintiff's complaint **within thirty (30) days**
5 from the date this order is filed.

6 **IT IS SO ORDERED.**

7 DATED: October 19, 2021

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10 MARILYN L. HUFF, District Judge
11 UNITED STATES DISTRICT COURT
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