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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA

7 James Eagle,

8 Plaintiff,

9 v.

10 Bill Alexander Automotive Center, Inc.,

11 Defendant.

No. CV11-1148-PHX-JAT

ORDER

12
13 Defendant Bill Alexander Automotive Center, Inc. filed a Motion for Partial
14 Summary Judgment on October 12, 2011. (Doc. 21). Defendant seeks judgment on
15 Plaintiff James Eagle's claim for a hostile work environment under the Age
16 Discrimination in Employment Act ("ADEA"). Defendant argues the Court lacks
17 jurisdiction over the hostile work environment claim because Plaintiff's EEOC charge
18 does not mention harassment/hostile work environment.

19 The Court does not need to decide whether Plaintiff exhausted a claim for
20 harassment/hostile work environment under the ADEA in his administrative charge
21 because Plaintiff concedes in his Response to the Motion for Partial Summary Judgment
22 that he is not attempting to state a separate, stand-alone ADEA claim for hostile work
23 environment. (Doc. 31, p. 2 "Mr. Eagle is not asserting a separate claim for a hostile
24 work environment based upon his age, sixty-seven."). The Court therefore grants partial
25 summary judgment to Defendant on Plaintiff's claim for harassment/hostile work
26 environment under the ADEA, to the extent Plaintiff even attempted to allege such a
27 separate claim. Plaintiff's claim for discrimination in violation of the AEDA remains.

28 In its Reply, Defendant asks the Court to strike paragraphs 16, 17, 18, 21, 22, F

1 and G of the Complaint. The Court will deny this request because Defendant has not
2 articulated a legal basis for striking those sections of the Complaint, and it appears the
3 time for filing a motion to strike pursuant to Federal Rule of Civil Procedure 12(f) has
4 passed because Defendant already has answered the Complaint. F.R.Civ.P.
5 12(f)(2)(Party must file a motion to strike “either before responding to the pleading or, if
6 a response is not allowed, within 21 days after being served with the pleading.”).
7 Moreover, the Court agrees with Plaintiff that any age-related comments or behavior by
8 Defendant could be relevant to Plaintiff’s age-discrimination claim.

9 Also in the Reply, Defendant asks the Court to award it attorneys’ fees for having
10 to brief the Motion for Partial Summary Judgment. The Court will deny this request as
11 well because Defendant again does not articulate a legal basis for its request. This denial
12 is without prejudice to Defendant filing a properly supported motion for fees.

13 Accordingly,

14 **IT IS ORDERED** GRANTING Defendant’s Motion for Partial Summary
15 Judgment (Doc. 21). The Court enters judgment for Defendant on Plaintiff’s ADEA
16 claim for hostile work environment to the extent Plaintiff attempted to allege a separate
17 claim for harassment/hostile work environment under the ADEA.

18 **IT IS FURTHER ORDERED** Denying Defendant’s request to strike certain
19 paragraphs from the Complaint.

20 **IT IS FURTHER ORDERED** Denying without prejudice Defendant’s request
21 for attorneys’ fees.

22 Dated this 5th day of June, 2012.

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James A. Teilborg
United States District Judge