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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Ann Garcia,

10 Plaintiff,

11 v.

12 Salvation Army,

13 Defendant.

No. CV-14-02225-PHX-DGC

ORDER

14
15 This case consists of two consolidated actions. Case CV14-2225 was filed by
16 Plaintiff Ann Garcia on October 7, 2014, and alleged discrimination and other wrongs in
17 the termination of Plaintiff's employment. Plaintiff filed an amended complaint on
18 January 6, 2015. Doc. 19. The Court entered a case management schedule on
19 March 20, 2015, which afforded 60 days to amend pleadings. Doc. 29. Plaintiff filed a
20 second amended complaint on May 18, 2015. Doc. 31. Plaintiff filed a motion to amend
21 her complaint on August 18, 2015 – well after the Court's deadline – which the Court
22 denied. Docs. 46, 61, 62. The Court found that Plaintiff had not shown "good cause" to
23 extend the deadline as required by Rule 16(b)(4).

24 The second cause of action, case CV15-0144, was filed before Judge Logan on
25 July 28, 2015. It too concerned Plaintiff's termination, but asserted different legal
26 claims. Plaintiff filed an amended complaint in that case on August 13, 2015. On
27 September 25, 2015, the Court transferred case CV15-01444 to this Court and
28 consolidated it with case CV14-2225.

1 Following consolidation, the Court held another case management conference to
2 address the schedule in both cases. The Court noted during the conference that Plaintiff
3 had multiple opportunities to amend her claims (three complaints in case CV14-2225 and
4 two complaints in case CV15-1444) and that the Court would not permit further
5 amendments. Plaintiff explained that she wished to add her husband as a plaintiff. The
6 Court stated during the case management conference that it would allow an amendment
7 to add Plaintiff's husband, but that the time for other amendments had passed. The Court
8 reflected this conclusion in Case Management Order #2. Doc. 72, ¶ 2.

9 On December 2, 2015, Plaintiff's husband filed a pleading seeking leave to
10 amend. Doc. 73. The next day, a similar pleading was filed, but apparently signed by
11 Plaintiff. Doc. 76. Defendant moved to strike the motions to amend. Doc. 81. Plaintiff
12 did not respond. Defendant filed a reply on January 26, 2016. Doc. 89. For several
13 reasons, the Court will deny the motions to amend.

14 1. The motion filed by Plaintiff's husband (Doc. 73) is denied because Mr.
15 Garcia is not a party to this litigation and cannot file such a motion.

16 2. Both motions are denied because they seek to do more than add Mr. Garcia
17 as a plaintiff. As Defendant notes, they include additional allegations, including an
18 apparent attempt to re-assert a failure to accommodate claim that was dropped from
19 Plaintiff's pleadings in case CV15-1444. The Court granted leave to add Plaintiff's
20 husband to this case, not to add new claims or allegations. The time for doing so has
21 passed. Plaintiff has had ample opportunity to amend her claims in the five previous
22 pleadings filed in these two consolidated cases.

23 3. The motions to do not comply with Local Rule of Civil Procedure 15.1(a).
24 This omission is critical, because it is very difficult to determine precisely what is being
25 added by the proposed amendment.

26 4. Mr. Garcia states that he does not seek any relief other than an apology. An
27 apology, however, is not a form of relief the Court may grant. Thus, it appears that Mr.
28 Garcia is not seeking relief within the jurisdiction of this Court.

1 5. Mr. Garcia seeks to join a claim for intentional infliction of emotional
2 distress. To recover on such a claim in Arizona, a plaintiff must prove that (1) the
3 defendant's conduct was extreme and outrageous, (2) the defendant either intended to
4 cause emotional distress or recklessly disregarded the near certainty that distress would
5 result from the conduct, (3) the conduct caused the plaintiff to suffer emotional distress,
6 and (4) the emotional distress was severe. *See Lucchesi v. Stimmell*, 716 P.2d 1013,
7 1015-16 (Ariz. 1986); *Ford v. Revlon, Inc.*, 734 P.2d 580, 585 (Ariz. 1987). A plaintiff
8 “may recover for intentional infliction of emotional distress only where the defendant's
9 acts are ‘so outrageous in character and so extreme in degree, as to go beyond all possible
10 bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
11 community.’” *Patton v. First Fed. Sav. & Loan Ass'n of Phx.*, 578 P.2d 152, 155 (Ariz.
12 1978) (quoting *Cluff v. Farmers Ins. Exch.*, 460 P.2d 666, 668 (Ariz. 1969)).

13 Mr. Garcia alleges that he attempted to communicate with Defendant regarding the
14 stress his wife was experiencing at work. He alleges that Defendant promised him
15 repeatedly that the matter would be resolved. When matters were not resolved and his
16 wife ultimately was terminated, he suffered extreme emotional distress. These
17 allegations do not set forth the kind of extreme and outrageous conduct required under
18 Arizona law for intentional infliction of emotional distress. Mr. Garcia does not allege
19 conduct by Defendant that goes beyond all possible bounds of decency so as to be
20 regarded as atrocious and utterly intolerable in a civilized community. Thus, the Court
21 concludes that Mr. Garcia's proposed amendment would be futile.

22 6. Plaintiff has not responded to Defendant's motion to strike or opposition to
23 the proposed amendment. Under Local Rule 7.2(i), the Court may view this as consent to
24 the positions taken by Defendant.

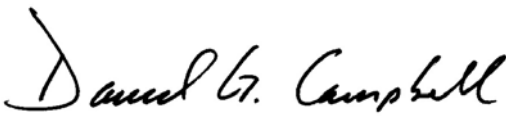
25 **IT IS ORDERED:**

26 1. The motions to amend (Doc. 73, 76) are **denied**. Further amendments will
27 not be permitted. This case shall proceed on the basis of existing pleadings and the
28 schedule set forth in Case Management Order #2 (Doc. 72).

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2. Defendant's motion to strike (Doc. 81) is **denied** as unnecessary and therefore moot.

Dated this 2nd day of February, 2016.



David G. Campbell
United States District Judge