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

Karen M. Baker,

Plaintiff,

v.

Walgreens Arizona Drug Company,

Defendant.

No. CV-15-00342-PHX-JAT

**ORDER**

Pending before the Court are cross-motions for summary judgment filed by Plaintiff Karen M. Baker, (Doc. 44), and Defendant Walgreens Arizona Drug Company. (Doc. 45). The parties' motions come in response to the Court's May 6, 2016, Order finding that the Court would exercise supplemental jurisdiction over Plaintiff's state law "wrongful termination" claim pursuant to Title 28 U.S.C. § 1367 (2012). (Doc. 43). Having considered the parties' filings, the Court now rules on the pending motions.<sup>1</sup>

**I.**

In its April 18, 2016, Order the Court set forth in detail the factual allegations underlying Plaintiff's lawsuit. (Doc. 40 at 1-5). The Court need not do so again. For

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<sup>1</sup> Neither party requested oral argument on the pending dispositive motions. Both parties have submitted memoranda discussing the law and facts in support of their positions and oral argument will not aide the Court's decisional process. *See e.g., Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *Lake at Las Vegas Investors Group, Inc. v. Pacific. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991). As noted *infra*, neither party filed a timely response opposing summary judgment under LRCiv 7.2(c).

1 purposes of adjudicating the pending cross-motions for summary judgment, it is  
2 sufficient to note the following procedural developments.

3 On April 18, 2016, the Court granted Defendant summary judgment on Plaintiff's  
4 federal law claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et*  
5 *seq.*, ("Title VII"), and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §  
6 621 *et seq.*, ("ADEA"). (Doc. 40 at 7-22). The Court also found, reading *pro se* Plaintiff's  
7 pleading liberally, that the Complaint contained a state law claim of "wrongful  
8 termination," (*id.* at 22-23), but that further factual development was necessary to  
9 determine whether the Court had original jurisdiction under 28 U.S.C. § 1332, or whether  
10 the Court had discretion to exercise supplemental jurisdiction under 28 U.S.C. § 1367.  
11 (*Id.* at 23).

12 On May 6, 2016, after considering the parties' briefing on subject matter  
13 jurisdiction, the Court found that original jurisdiction did not exist, but that in its  
14 discretion the Court would exercise supplemental jurisdiction over the state law claim, as  
15 it was "part of the same controversy as [Plaintiff's] federal law discrimination claims, and  
16 that judicial efficiency w[ould] be promoted by hearing the claim." (Doc. 43 at 2).  
17 Because Plaintiff's Complaint and her subsequent filings failed to provide any substance  
18 as to what sort of state law "wrongful termination" claim was alleged, the Court further  
19 found that Plaintiff's claim was best characterized as a violation the Arizona Employment  
20 Protections Act ("APEA"), pursuant to A.R.S. § 23-1501(3)(b) (2014), for violations of  
21 the Arizona Civil Rights Act ("ACRA"). (*Id.*) Finally, in light of the Court's decision to  
22 exercise supplemental jurisdiction over the state law claim, coupled with "the ambiguities  
23 about the nature of the claim in the original Complaint,"<sup>2</sup> the Court amended its Fed. R.

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25 <sup>2</sup> Plaintiff's entire wrongful termination claim was the succinct allegation that  
26 Defendant "[t]erminated her employment against state law" because it "willfully and  
27 knowingly fabricated a lie and accused Plaintiff of theft." (Doc. 1 at 10). Defendant did  
28 not seek summary judgment on any state law claims in the Complaint. Defendant's  
Answer, however, did acknowledge the possibility that the Complaint alleged a state law  
claim and noted that "[d]ue to the vague allegations in Plaintiff's Complaint, and  
specifically, in Count II, the nature of Count II and whether this Count arises out of the  
same conduct alleged in Count I is unclear." (Doc. 9 at 2 n.2). Defendant thereafter  
"reserve[d] the right to seek dismissal of Count II because such allegations, even if true,

1 Civ. P. 16(b) Scheduling Order and permitted each party file dispositive motions by  
2 Friday, May 20, 2016. (*Id.* at 3).

3 Both parties filed a motion for summary judgment on Plaintiff's remaining claim  
4 on May 20, 2016. (Doc. 44; Doc. 45). Neither party filed a timely response opposing  
5 summary judgment,<sup>3</sup> nor did either party request oral argument. Having set forth the  
6 pertinent procedural background, the Court turns to the pending motions.

## 7 8 **II.**

9 The Court's April 18, 2016, Order set forth in full the applicable legal standard for  
10 a Fed. R. Civ. P. 56(a) motion for summary judgment where one party is a pro se litigant.  
11 (Doc. 40 at 5-7). The Court need not recite the full standard again. Summary judgment is  
12 only appropriate where there is no genuine issue of material fact, *Celotex Corp. v.*  
13 *Catrett*, 477 U.S. 317, 323 (1986), and as a pro se litigant, the Court must liberally  
14 construe Plaintiff's pleadings, *Franklin v. Murphy*, 745 F.2d 1221, 1235 (9th Cir. 1984)  
15 (citation omitted), and her burden to overcome summary judgment in this employment  
16 discrimination action is minimal. *Diaz v. Eagle Produce, Ltd.*, 521 F.3d 1201, 1207 (9th  
17 Cir. 2008) (quoting *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1124 (9th  
18 Cir. 2000)).

## 19 20 **III.**

### 21 **A. Plaintiff's Motion for Summary Judgment**

22 The Court begins by addressing Plaintiff's motion. (Doc. 44). Having reviewed the  
23 motion liberally, the Court finds it to be insufficient to entitle Plaintiff to judgment as a  
24 matter of law. Plaintiff's motion is primarily a re-telling of facts contained in Plaintiff's

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26 are not sufficient to state a claim for relief under either Arizona statutory or common  
law." (*Id.*).

27 <sup>3</sup> LRCiv 7.2(c) requires that a party opposing summary judgment file a responsive  
28 memorandum within fourteen days after service of the motion. Each motion for summary  
judgment was filed on May 20, 2016. As of June 8, 2016, no responsive memoranda had  
been filed with the Court. (Doc. 44, 45).

1 opposition to Defendant’s earlier motion for summary judgment, (Doc. 26), and rests on  
2 three factual allegations. The Court will address each in turn.

3 First, Plaintiff recounts in detail the incident involving the customer who tendered  
4 five dollars as partial payment for the transaction that ultimately led to Plaintiff’s  
5 termination. (Doc. 44 at 2-4). Plaintiff denies that she stole the customer’s money, and  
6 alleges that Luis Palomo, the manager at the store where Plaintiff worked, “fabricated  
7 this lie of theft, and then terminated Plaintiff’s employment.” (*Id.* at 6, 7). The Court,  
8 however, previously noted that it was unable “to identify a viable cause of action under  
9 the [Arizona Employment Protection Act (“AEPA”)] for making false accusations about  
10 an employee.” (Doc. 43 at 2). Plaintiff has yet to point to anywhere in the statute that  
11 authorizes such a claim, and to the extent that the allegation supports a claim of  
12 discrimination on the basis of race and age, the Court finds it to be a “conclusory  
13 statement without factual support” in the record. Plaintiff has proffered no evidence to  
14 support the allegation, and absent some corroboration in the record, the Court need not  
15 consider it. *Surrell v. Cal. Water Serv.*, 518 F.3d 1097, 1103 (9th Cir. 2008) (citation  
16 omitted). Even accepting Plaintiff’s conclusory claim, she has still proffered nothing to  
17 show that other similarly situated employees were treated differently than she was. *See*  
18 *Baker v. Walgreens Ariz. Drug. Co.*, No. CV-15-00342-PHX-JAT, 2016 U.S. Dist.  
19 LEXIS 51503, at \*13 (D. Ariz. April 18, 2016) (finding that the record did not contain  
20 “even a modicum of evidence to support [Plaintiff’s] claim”).

21 Next, Plaintiff asserts that the Arizona Department of Economic Security  
22 (“ADES”) investigated Plaintiff’s unemployment claim, and found that Plaintiff was  
23 entitled to unemployment insurance due to the fact she was “discharged because [her]  
24 employer was not satisfied with [her] work” and not due to negligence or carelessness.  
25 (Doc. 44 at 10). Plaintiff also cites to a brief discussion with an ADES Unemployment  
26 Insurance Consultant where she informed the consultant that there was a delay between  
27 the incident that led to Plaintiff’s termination and the actual date of termination. (*Id.* at 6).  
28 These facts, however, pertain to what appears to be an investigation as to whether

1 Plaintiff was eligible to collect unemployment. ADES is the state agency that handles  
2 applications for and dissemination of unemployment benefits. *Prebula v. Arizona Dep't*  
3 *of Economic Sec.*, 672 P.2d 978, 980 (D. Ariz. 1983). The ADES investigation  
4 determined that Plaintiff was not “negligent” or “careless” and did not “fail[] to provide  
5 the ordinary care expected” in her job, a statement closely resembling the definition for  
6 negligence. The succinct, one paragraph letter does nothing to suggest that Defendant  
7 terminated, or discriminated against Plaintiff if any way, on the basis of race or age.

8 Finally, Plaintiff’s motion alleges that “all non-African Americans, working for  
9 [Defendant] have never been treated with this kind of d[i]sparate treatment.” (Doc. 44 at  
10 7). The assertion is supported by nothing of record, although Plaintiff’s motion does  
11 assert that she “seeks to provide th[e] Court with substance that further support[]s [her]  
12 state law claim per A.R.S. [§] 23-1501(3)(b)(i).” (*Id.*). Absent any semblance of support  
13 for this allegation, the Court finds that it is a “conclusory statement without factual  
14 support,” and the Court will not consider it. *Surrell*, 518 F.3d at 1103.

15 In sum, Plaintiff’s motion for summary judgment, (Doc. 44), fails to establish that  
16 Defendant discharged or discriminated against Plaintiff on the basis of race or age. More  
17 specifically, as will be discussed *infra*, Plaintiff’s motion does nothing to show, or even  
18 suggest, that “other employees with qualifications similar to her own were treated more  
19 favorably” by Defendant. *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1220 (9th Cir.  
20 1998). Plaintiff is not entitled to judgment as a matter of law, and the motion will be  
21 denied.

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23 **B. Defendant’s Motion for Summary Judgment**

24 To the extent that Plaintiff’s remaining state law claim can be characterized as an  
25 alleged AEPA claim premised on ACRA violations, substantial case law suggests that  
26 Plaintiff’s claim is not actionable. *See Cronin v. Sheldon*, 991 P.2d 231, 241 (Ariz. 1999)  
27 (finding that the “exclusive remedies provision” of the AEPA precluded the petitioners’  
28 ACRA-based claims); *Taylor v. Graham County Chamber of Commerce*, 33 P.3d 518,

1 522 (Ariz. Ct. App. 2001) (noting that the ACRA “provides a remedy to an employee for  
2 the violation” and that it cannot serve as the basis for an AEPA claim); *Miles v. Vasquez*,  
3 No. CV-07-1398-PHX-FJM, 2007 U.S. Dist. LEXIS 100142, at \*3-5 (D. Ariz. Nov. 5,  
4 2007) (noting that the ACRA is a specifically delineated statute that “provides a remedy  
5 to an employee” and that “a wrongful discharge claim cannot be premised on [a]  
6 violation of the ACRA”); *Fallar v. Compuware Corp.*, 202 F. Supp. 2d 1067, 1076 (D.  
7 Ariz. 2002) (finding that Plaintiff’s “only remedies” for civil rights violations were  
8 pursuant to the ADA and the ACRA and that the claim could not be brought under the  
9 AEPA). In light of the aforementioned authorities, the Court finds that to the extent that  
10 Plaintiff’s state law claim can be properly characterized as an AEPA claim premised on  
11 violations of the ACRA, it is not actionable. *See Baron v. Arizona*, 270 Fed. Appx. 706,  
12 710 (9th Cir. 2008) (holding that because the “ACRA provides a remedy for sex  
13 discrimination, [the plaintiff] cannot bring this claim under the AEPA”).

14 The Court’s analysis, however, continues. In the April 17, 2016, Order, the Court  
15 noted that Plaintiff had offered nothing throughout this litigation to illuminate even the  
16 general nature of her state law claim. *Baker v. Walgreens Ariz. Drug. Co.*, No. CV-15-  
17 00342-PHX-JAT, 2016 U.S. Dist. LEXIS 60449, at \*2 (D. Ariz. May 6, 2016). The Court  
18 found that given the nature of the Complaint, Plaintiff’s state law claim was one for  
19 discrimination that led to her firing. To the extent that Plaintiff’s claim can be  
20 characterized as an independent claim that Defendant violated the ACRA, A.R.S. § 41-  
21 1463(B)(1) (2014),<sup>4</sup> the Court finds that Defendant is entitled to summary judgment.

22 “Title VII and the Arizona Civil Rights Act . . . are ‘generally identical,’ and . . .  
23 federal Title VII law has been ‘persuasive in the interpretation of the ACRA.’” *Lopez v.*  
24 *Produce Exch.*, 171 Fed. Appx. 11, 12 (9th Cir. 2006) (quoting *Bodett v. CoxCom, Inc.*,  
25 366 F.3d 736, 742 (9th Cir. 2004)); *see also Higdon v. Evergreen Int’l Airlines*, 673 P.2d  
26 907, 909 n.3 (Ariz. 1983) (noting that “[t]he Arizona Civil Rights Act is modeled after

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28 <sup>4</sup> A.R.S. § 41-1463(B)(1) makes it an unlawful employment practice for an employer to “discharge any individual or otherwise to discriminate against any individual . . . because of the individual’s race” or “age.”

1 and generally identical to the federal statute in the area” Title VII). This applies to the  
2 ADEA as well. *See Cardwell v. Intel Corp.*, No. CIV 99-0532-PHX-MHM, 2002 U.S.  
3 Dist. LEXIS 19273, at \*10 (D. Ariz. Sept. 19, 2002) (citing *Timmons v. City of Tucson*,  
4 830 P.2d 871, 875 (Ariz. Ct. App. 1991)) (finding federal ADEA case law “persuasive in  
5 interpreting [the] ACRA”). Thus, when analyzing a claim under the ACRA, courts  
6 subject it to the same framework of analysis as federal law discrimination claims.  
7 *Shaninga v. St. Luke’s Med. Ctr. LP*, No. CV-14-02475-PHX-GMS, 2016 U.S. Dist.  
8 LEXIS 49131, at \*17-19 (D. Ariz. April 11, 2016); *Kunz v. Smith’s Food & Drug Ctrs.*,  
9 *Inc.*, No. CV-09-1645-PHX-GMS, 2011 U.S. Dist. LEXIS 29591, at \*18 (D. Ariz. March  
10 21, 2011); *Knowles v. United States Foodservice, Inc.*, No. CV-08-01283-PHX-ROS,  
11 2010 U.S. Dist. LEXIS 95267, at \*9 (D. Ariz. Sept. 9, 2010); *De La Torre v. Merck*  
12 *Enters.*, 540 F. Supp. 2d 1066, 1079 n.10 (D. Ariz. 2008); *Barkclay v. Wal-Mart Stores,*  
13 *Inc.*, No. CV 07-981-PHX-MHM, 2007 U.S. Dist. LEXIS 95260, at \*9-12 (D. Ariz. Dec.  
14 13, 2007).

15 Here, Plaintiff’s Complaint alleged discrimination on the basis of race and age, but  
16 the Complaint failed to “establish a prima facie case of discrimination” through “direct or  
17 circumstantial evidence of discriminatory intent.” *Baker*, 2016 U.S. Dist. LEXIS 51503,  
18 at \*13 (quoting *Vasquez v. County of Los Angeles*, 394 F.3d 634, 640 (9th Cir. 2003)).  
19 Plaintiff therefore had to proffer “evidence that ‘gives rise to an inference of unlawful  
20 discrimination’ . . . through the [burden shifting] framework set forth in *McDonnell*  
21 *Douglas Corp. v. Green*[, 411 U.S. 792 (1973)].” *Vasquez*, 394 F.3d at 640 (citing  
22 *Cordova v. State Farm Ins. Cos.*, 124 F.3d 1145, 1148 (9th Cir. 1997)). Defendant was  
23 entitled to summary judgment on Plaintiff’s federal discrimination claims, *Baker*, 2016  
24 U.S. Dist. LEXIS 51503, at \*40, because despite Plaintiff’s minimal burden to establish a  
25 prima facie case of discrimination, the record “simply failed to produce even a modicum  
26 of evidence to support [Plaintiff’s] claim that other similarly situated employees were  
27 treated more favorably than she was . . . .” *Id.* at \*36, \*37. Thus, under the burden-  
28 shifting framework set forth in *McDonnell Douglas*, Plaintiff failed to carry her initial

1 burden of establishing a prima facie case of discrimination.

2 Plaintiff's pending motion for summary judgment,<sup>5</sup> (Doc. 44), fails to add  
3 anything substantive to the record. It follows that to the extent Plaintiff's state law claim  
4 is an independent allegation under the ACRA, Plaintiff has failed to carry her initial  
5 burden to establish a "prima facie case of discrimination" on the basis of age or race  
6 under the *McDonnell Douglas* test. The record still does not contain "even a modicum of  
7 evidence" to support Plaintiff's claim that other "similarly situated employees were  
8 treated more favorably than she was." *Baker*, 2016 U.S. Dist. LEXIS 51503, at \*37  
9 (citation omitted). Accordingly, Plaintiff's state law claim has failed to "present any  
10 evidence creating a genuine dispute of material fact" necessitating trial to resolve. *Dang*  
11 *v. Solar Turbines, Inc.*, 452 Fed. Appx. 804, 805 (9th Cir. 2011). Defendant is entitled to  
12 summary judgment on the remaining state law claim.

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14 **IV.**

15 To conclude, the Court finds that Plaintiff's motion for summary judgment must  
16 be denied. The Court further finds that to the extent Plaintiff's state law claim is a claim  
17 under the AEPA, it is not actionable. To the extent that Plaintiff's state law claim is an  
18 independent ACRA claim, Defendant is entitled to summary judgment, as Plaintiff has  
19 failed to make out a prima facie case of discrimination on the basis of age or race.

20 Between this Order and the Court's prior Order granting Defendant summary  
21 judgment on Plaintiff's federal law claims, (Doc. 40), Defendant is entitled to judgment  
22 as a matter of law on all counts contained in the Complaint. Accordingly, the Clerk of the  
23 Court shall enter judgment in favor of Defendant, and dismiss the case with prejudice.

24 For the aforementioned reasons,

25 **IT IS ORDERED** that Plaintiff's motion for summary judgment, (Doc. 44), is  
26 **DENIED.**

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28 <sup>5</sup> Plaintiff failed to timely oppose Defendant's motion for summary judgment.  
LRCiv. 7.2(c).

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**IT IS FURTHER ORDERED** that Defendant's motion for summary judgment, (Doc. 45), with respect to Plaintiff's state law claim is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment in favor of Defendant and dismiss this case with prejudice.

Dated this 8th day of June, 2016.

