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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Schaun Owens,

Plaintiff,

vs.

Maricopa County Community College
District and Lisa Hemming,

Defendants.

) No. CV-15-01769-PHX-SPL

ORDER

Before the Court is Defendants’ Motion for Summary Judgment (Doc. 50). The motion is fully briefed, and oral argument has not been requested. As follows, the motion will be granted.

On August 5, 2013, Plaintiff Schaun Owens was hired as a full-time Cosmetology Associate Instructor for the Maricopa Skill Center, a division of a community college operated by the Maricopa County Community College District (“District”). Owens alleges that shortly after school began that fall, her supervisor, Lisa Hemming, directed her to tell students that they could not speak Spanish in the student lounge, to which Owens responded in opposition. On February 12, 2014, Owens was terminated.

On September 4, 2015, Owens, appearing *pro se*, filed a complaint initiating the instant action against Hemming and the District, claiming racial discrimination and retaliation in violation of 42 U.S.C. § 1981 (Count One), racial discrimination and retaliation in violation of the equal protection clause of the Fourteenth Amendment under 42 U.S.C. § 1983 (Count Two), and retaliation in violation of her First Amendment right

1 to free speech under 42 U.S.C. § 1983 (Count Three). (Doc. 1.) Defendants have moved
2 for summary judgment on all three claims, arguing that there is no genuine dispute of
3 material fact of discrimination or retaliation by Hemming, or municipal liability for her
4 alleged conduct.

5 Summary judgment is appropriate if “the movant shows that there is no genuine
6 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
7 Fed. R. Civ. P. 56(a). Summary judgment may also be entered “against a party who fails
8 to make a showing sufficient to establish the existence of an element essential to that
9 party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp.*
10 *v. Catrett*, 477 U.S. 317, 323 (1986).

11 A party seeking summary judgment “bears the initial responsibility of informing
12 the district court of the basis for its motion, and identifying those portions of [the record]
13 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*,
14 477 U.S. at 323. If the movant carries its initial burden of production, in response, the
15 non-movant “must do more than simply show that there is some metaphysical doubt as to
16 the material facts,” and instead must “come forward with ‘specific facts showing that
17 there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
18 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e)). The court views the evidence
19 and draws reasonable inferences “in the light most favorable to the party opposing the
20 motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). However, only
21 disputes over facts that could affect the outcome of the suit will preclude the entry of
22 summary judgment, and the disputed evidence must be “such that a reasonable jury could
23 return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
24 248 (1986). *See also Scott v. Harris*, 550 U.S. 372, 380 (2007).

25 Here, Defendants first argue that they are entitled to summary judgment on
26 Owens’s racial discrimination and equal protection claims. (Doc. 50.) In her response,
27 Owens does not address these claims or replies to Defendants’ arguments. Owens having
28 failed to establish, must less identify, any triable dispute of material fact as to these

1 claims, “Rule 56(c) mandates the entry of summary judgment” on Counts One and Two
2 of the complaint. *Celotex*, 477 U.S. at 322. *See also Jenkins v. Cty. of Riverside*, 398 F.3d
3 1093, 1095 n.4 (9th Cir. 2005) (claims not raised in opposition to summary judgment
4 motion are abandoned).

5 Second, Defendants argue that Owens has failed to show that there is a genuine
6 issue of material fact as to her claim of retaliation by Hemming and municipal liability
7 under *Monell*. In their memorandum, Defendants discuss each element of Owens’s claim
8 and address the lack of evidence in the record which demonstrates that there is no triable
9 issue of unconstitutional retaliation. They have filed a detailed statement of facts and
10 attached supporting evidence. (Doc. 51.) Owens responds by arguing that the following
11 creates a genuine issue for trial: she engaged in protected speech by “expressing her
12 opinions on the illegality of Hemming’s directive to ban the Spanish language in the
13 student lounge,” (Doc. 53 at 2); the decision to terminate her was motivated by her
14 speech because it was only “four or five months after Ms. Owens brought to light
15 Hemming[’]s unfair treatment of Spanish speaking students,” (Doc. 53 at 5); and the
16 District is liable because it “made a deliberate choice to approve of and ratify Hemming’s
17 numerous acts of retaliatory harassment by making the decision to remove Ms. Owens
18 [from] her position, and [] allow[ed] Hemming’s harassment of Ms. Owens to continue
19 for months while she was still an employee” (Doc. 53 at 6).

20 Owens’s response fails to carry her burden to identify, with sufficient particularity,
21 facts that create a genuine dispute necessitating trial. *See Matsushita Elec. Indus. Co.*,
22 475 U.S. at 587. Owens’s cursory reference to vague facts in her brief, without any
23 specific citation to or discussion of them, is insufficient to demonstrate that there is a
24 triable dispute of fact. *See Celotex*, 477 U.S. at 324 (“Rule 56(e) [] requires the
25 nonmoving party to go beyond the pleadings and by her own affidavits, or by the
26 depositions, answers to interrogatories, and admissions on file, designate specific facts
27 showing that there is a genuine issue for trial.”) (internal quotation marks omitted);
28 *F.T.C. v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997)

1 (conclusory, self-serving statements in briefs lacking detailed facts and any supporting
2 evidence are insufficient to create a genuine issue of material fact). Owens does not
3 address or cite to any *specific* fact regarding the alleged “directive to ban the Spanish
4 language in the student lounge,” the “opinions” or statements she made in response to
5 Hemming’s conduct, when and where the protected speech occurred, the alleged
6 harassing conduct, or the circumstances leading up to or surrounding her termination.
7 Absent such facts, Owens fails to make a sufficient showing regarding the essential
8 elements of her case which she would have to prove at trial. *See Eng v. Cooley*, 552 F.3d
9 1062, 1070 (9th Cir. 2009).

10 Indeed, Owens has not pointed to or submitted *any* evidence to demonstrate that
11 there is a triable dispute. Owens has not filed a responsive separate statement of facts, as
12 was directed in the Court’s Order and is required by the local rules. (Doc. 52.) Owens has
13 not attached any documentary evidence or submitted a written declaration stating the
14 factual basis that supports her claims. The unsworn allegations in the complaint are
15 insufficient to create an issue of fact on summary judgment. *See Lujan v. National*
16 *Wildlife Federation*, 497 U.S. 871, 888-89 (1990) (“the purpose of Rule 56 is to enable a
17 party who believes there is no genuine dispute as to a specific fact essential to the other
18 side’s case to demand at least one sworn averment of that fact before the lengthy process
19 of litigation continues.”). And, even if Owens could defeat summary judgment by merely
20 citing to the allegations in her complaint, it would not yield a different outcome in this
21 case because here, she did not do so.

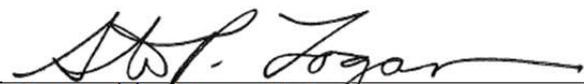
22 Owens was provided with an ample opportunity to develop the record through
23 discovery, and received sufficient notice of the requirements needed to defeat
24 Defendants’ motion. *See Albino v. Baca*, 747 F.3d 1162, 1177 (9th Cir. 2014). Absent
25 any evidence on summary judgment from Owens setting forth, with sufficient specificity,
26 her version of the events that support her claims, the Court is unable to conclude that
27 there is a triable dispute of fact. The Court is not required to construct arguments and
28 identify the material facts in search of a genuine dispute for trial when Owens has chosen

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not to do so herself. *See Bias v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007) (“A district court does not have a duty to search for evidence that would create a factual dispute” and “lacks the power to act as a party’s lawyer, even for *pro se* litigants”); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001) (“The district court need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set forth in the opposing papers with adequate references so that it could conveniently be found”); *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (the district court has no responsibility on summary judgment to “scour the record in search of a genuine issue of triable fact”); *Forsberg v. Pac. N.W. Bell Tel. Co.*, 840 F.2d 1409, 1417-18 (9th Cir. 1988). Defendants are therefore also entitled to summary judgment on Plaintiff’s First Amendment retaliation claim in Count Three. Accordingly,

IT IS ORDERED that Defendants’ Motion for Summary Judgment (Doc. 50) is **granted**. The Clerk of Court shall enter judgment accordingly and **terminate** this action.

Dated this 29th day of September, 2017.


Honorable Steven P. Logan
United States District Judge