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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Sonja Schroeder, *et al.*,

No. CV-17-01301-PHX-JJT

10 Plaintiffs,

ORDER

11 v.

12 Megan J Brennan,

13 Defendant.

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15 At issue is Defendant's Motion for Partial Dismissal (Doc. 9), to which Plaintiffs
16 have filed a Response in opposition (Doc. 14), and in support of which Defendant has
17 filed a Reply. (Doc. 17.) The Court concludes that oral argument, although requested by
18 one of the parties, would not assist in its resolution of this Motion. LRCiv. 7.2(f).

19 The Complaint in this matter comprises two counts: 1) a hostile work environment
20 employment discrimination claim under 42 U.S.C. § 2000e, *et seq.*, brought by Plaintiff
21 Schroeder alone; and 2) a retaliation claim pursuant to the same statutory scheme,
22 brought by both Plaintiffs Schroeder and Walker. (Compl., Doc. 1 at 5-6.) The Motion
23 here seeks only dismissal of Plaintiff Schroeder's hostile work environment claim. The
24 Court thus will restrict its discussion of facts, allegations, procedural history and posture
25 to those that are relevant to Count One.

I. Factual Background and Procedural History

26 Plaintiff Schroeder has worked for the United States Postal Service (“USPS”)
27 since at least February 2013. From that time through 2016, she was supervised at the
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1 Peoria Main Post Office facility by Mr. Lynn McLuty, with whom Plaintiff alleges many
2 difficulties. On December 17, 2015, Plaintiff made an informal complaint to USPS
3 management of a hostile work environment. She alleges that no timely investigation of
4 her complaint occurred and no remedial measures were taken by USPS or then-manager
5 of the Peoria facility, Albert Zavala. As time passed, Plaintiff continued to experience
6 issues with McLuty. Having heard nothing on her internal complaint, Plaintiff filed a
7 formal complaint with USPS's Equal Employment Opportunity office on July 8, 2016.¹

8 In her formal EEO complaint, where the USPS EEO office asks complainants to
9 "[e]xplain the specific actions(s) or situations(s) that resulted in [their] alleging that
10 [they] were discriminated against [because of their] sex," Plaintiff listed three such
11 actions or situations, including the one at issue here:

12 On 12/17/15 was physically injured by supervisor McLarty at
13 work; then reported/initiated Hostile Work Environment
14 complaint which was never acted upon or investigated by
USPS, including [sic] Zuavala.

15 (Doc. 9 Ex. 1-A at 1.) USPS's EEO office sent Plaintiff a letter of Partial
16 Acceptance/Partial Dismissal of Formal EEO Complaint on August 3, 2016. Among the
17 issues USPS EEO notified Plaintiff it had accepted from her complaint was that

18 [a]s of March 25, 2016, [Plaintiff] had not been advised of the
19 results of management's inquiry into [her] hostile work
environment complaint from December 17, 2015.

20 (Doc. 9 Ex. 1-B at 2.) In the letter, USPS EEO advised Plaintiff that if she "did not agree
21 with the defined accepted issues," she must provide a written response "specifying the
22 nature of [her] disagreement" within seven days of receipt of the letter. (Doc. 9 Ex. 1-B
23 at 2.) Plaintiff did not provide a response.

24
25 ¹ The Court notes that this matter, and therefore this Order, encompasses three
26 distinct uses of the word "complaint": the informal internal complaint Plaintiff alleges
27 she made to her USPS management structure at the Peoria facility in December 2015; the
28 formal complaint of discrimination and retaliation she made to the USPS EEO office in
July 2016, which is the prerequisite for bringing a later action in under Title VII in the
District Court; and the Complaint filed in this Court to institute the instant matter. The
Court has tried to consistently distinguish between the three documents at issue by
referring to them, respectively, as the "informal complaint," the "formal EEO complaint,"
and the "Complaint."

1 On February 2, 2017, USPS EEO issued its Final Agency Decision on Plaintiff's
2 formal EEO complaint, finding no discrimination as to the accepted claims. (Doc. 9 Ex.
3 1-C.) The agency's analysis on the claim at issue did not address the hostile work
4 environment claim; rather it focused exclusively on management's failure to advise
5 Plaintiff of the results of its inquiry into her prior informal claim. (Doc. 9 Ex. 1-C at 8-9.)
6 The Decision advised Plaintiff of her right to appeal to the Equal Employment
7 Opportunity Commission or to bring an action to this Court. (Doc. 9 Ex. 1-C at 17.)

8 Plaintiff timely brought this action on May 2. In support of her hostile work
9 environment claim in Count One, Plaintiff Schroeder alleges in the Complaint that during
10 a three-year period from 2013 to 2016,

11 she was repeatedly subjected to gender offense terms and
12 comments during working hours and on Postal Service
13 premises. Offensive words used by [Plaintiff's supervisor]
14 McLuty included but were not limited to: "pussy", "fucking
15 ridiculous", "you don't have any balls", "submissive" to
16 communicate his belief that women are subordinate to males,
17 "talking bitches", "bitch", commented on her clothing and the
size of his penis. Comments of this type occurred during 2013
and continued until [Plaintiff's supervisor] was removed from
the Peoria Main Post Office.

18 (Compl. at 2-3.) Plaintiff relies on the above allegations to demonstrate a series of
19 separate acts over time that would collectively constitute the unlawful employment
20 practice of maintaining a hostile work environment.

21 Defendant seeks to dismiss the hostile work environment claim in Count One on
22 the grounds that Plaintiff Schroeder failed to exhaust her administrative remedies as
23 required under Title VII with regard to this claim by failing to raise it – or any of the facts
24 listed above in support of it – in her EEO complaint to the USPS.

25 **II. Analysis**

26 Before a federal employee pursues an employment discrimination claim under
27 Title VII in federal court, she first must exhaust all administrative remedies according to
28 applicable statutory provisions. *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 833 (1976).

1 Here, that exhaustion requires filing a timely complaint of discrimination with the USPS
2 EEO. *Leorna v. United States Dep't of State*, 105 F.3d 548, 550 (9th Cir. 1997). And the
3 formal complaint made to EEO must substantially encompass the matter claimed in the
4 judicial Complaint. *See Leong v. Potter*, 347 F.3d 1117, 1122 (9th Cir. 2003). As
5 Defendant notes in her Motion to Dismiss, the jurisdictional scope of the action a plaintiff
6 may bring in this Court “depends on the scope of the EEOC charge and investigation.
7 The specific claims made in district court must be presented to the EEOC.” *Id.* (internal
8 citations omitted). As a result, discrimination allegations that are not brought in the EEO
9 complaint will not stand in this Court. *Id.* This makes sense: the purposes of the
10 exhaustion requirement are 1) to allow EEO to serve its role of both counselling and
11 investigating specific claims; 2) putting parties on notice of specific claims; and 3)
12 narrowing issues for prompt adjudication. *See Sommatino v. United States*, 255 F.3d 704,
13 710 (9th Cir. 2001).

14 The question for the Court is whether Plaintiff Schroeder's mention of the term
15 “hostile work environment” in her formal EEO complaint constitutes exhaustion of her
16 hostile work environment claim before the USPS EEO office. Plaintiff argues that simply
17 using the term is enough to encompass the claim, and thus to substantially comply with
18 the exhaustion requirement. Defendant counters that mere mention is insufficient,
19 especially where the point of Plaintiff’s claim before the EEO is not a hostile work
20 environment. A review of the actual claim language Plaintiff used in her formal EEO
21 complaint leads the Court to agree with Defendant. Plaintiff states in the relevant claim
22 that she wishes USPS EEO office to investigate, for possible discrimination, the
23 following incident: that she “reported/initiated Hostile Work Environment complaint
24 which was never acted upon or investigated by USPS, including [Zavala].”

25 This is not a description of a hostile work environment claim. It states no pattern
26 or series of acts that could constitute a hostile work environment under applicable law.
27 And it includes none of the specifics that appear in Plaintiff’s Complaint to this Court to
28 outline a recurring course of acts over time—no mention of Plaintiff being subjected to

1 gender-offensive terms, and no recounting of comments made to her about her clothing or
2 statements about the size of her supervisor’s penis. Rather, it complains only of a failure
3 to investigate a prior complaint of a hostile work environment. In other words, the
4 gravamen of the formal EEO claim was the Postal Service's lack of responsiveness to her
5 prior complaint. That is the claim that is exhausted.

6 Plaintiff correctly notes that the Court has jurisdiction over each discrimination
7 charge that is “like or reasonably related to” the claims in the formal EEO complaint or
8 “that fall within the EEOC investigation which can reasonably be expected to grow out
9 of” the EEO charge. *Sosa v. Hiroaka*, 920 F.2d 1451, 1456 (9th Cir. 1990). But the Court
10 rejects the argument that her hostile work environment claim in the Complaint is either
11 like or reasonably related to her claim in the EEO complaint as to USPS’s non-
12 responsiveness to her prior informal complaint. Similarly, the Court does not find that,
13 where an employee makes an expressly delineated EEO claim that management failed to
14 investigate or address a prior complaint, an EEO investigation of that original complaint
15 reasonably can be expected to grow out of a failure-to-address claim. This is particularly
16 true where, as here, Plaintiff did not provide the EEO investigators, through her formal
17 EEO complaint, any of the specifics of the acts claimed to constitute the hostile work
18 environment.

19 Even assuming *arguendo* that Plaintiff intended her claim to be one of a hostile
20 work environment, it would have been clear to her that USPS EEO did not so interpret
21 her claim when she and her counsel received the letter of Partial Acceptance/Partial
22 Dismissal of Formal EEO Complaint—a misinterpretation she was obligated to correct.
23 Plaintiff argues in her response that she had no duty to clarify what her claim was in the
24 event USPS EEO misconstrued it: “That the final agency decision did not include any
25 hostile work environment analysis is of no consequence. Ms. Schroeder is not responsible
26 for drafting the final agency analysis or its contents.” (Doc. 14 at 2.) This is simply
27 incorrect. While it may be true that Plaintiff is not responsible for drafting the agency
28 decision, she is responsible for making sure the agency is aware of her specific claim.

