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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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|--------------------------------------|---|---------------------------------|
| JENNIFER ZAMORA, |) | 2:09-CV-01292-JAM-EFB |
| |) | |
| Plaintiff, |) | <u>ORDER DENYING MOTION FOR</u> |
| |) | <u>SUMMARY JUDGMENT</u> |
| v. |) | |
| |) | |
| JANET NAPOLITANO, SECRETARY OF |) | |
| THE DEPARTMENT OF HOMELAND |) | |
| SECURITY <i>and</i> GALE ROSSIDES, |) | |
| ASSISTANT SECRETARY; ACTING |) | |
| ADMINISTRATOR OF THE |) | |
| TRANSPORTATION SECURITY |) | |
| ADMINISTRATION; THE UNITED |) | |
| STATES OF AMERICA <i>and</i> DOES 1- |) | |
| 20, |) | |
| |) | |
| Defendants. |) | |
| _____ / |) | |

Jennifer Zamora ("Plaintiff") brought this action against Janet Napolitano, Secretary of the Department of Homeland Security ("DHS"), Gale Rossides, Assistant Secretary of the DHS, and the Acting Administrator of the Transportation Security Administration (collectively "Defendants") for violations of 42

1 U.S.C. § 2000e et seq. ("Title VII") and several state law
2 claims. Defendants filed a Motion for Summary Judgment on June
3 24, 2009 (Docket #17). Defendants argue that they are entitled
4 to relief because Plaintiff's Title VII claim is time barred or,
5 alternatively, because the claim is barred by the doctrine of
6 laches. Plaintiff opposed the Motion (Docket #18). A hearing
7 on the Motion was held in this court on July 29, 2009.
8

9 For the following reasons, Defendants' Motion is
10 DENIED.
11

12 FACTUAL AND PROCEDURAL BACKGROUND

13 In 2003, Plaintiff filed an administrative complaint
14 with the Equal Employment Opportunity Commission ("EEOC")
15 alleging sexual harassment and a hostile work environment by her
16 supervisor at the Transportation Security Administration
17 ("TSA"). Plaintiff withdrew the EEOC administrative complaint
18 in May of 2006 and filed suit in federal court asserting Title
19 VII claims in early 2007. See Zamora v. Dept. of Homeland
20 Security, Case No. 2:07-cv-00023 ("Zamora I"). Zamora I was
21 initially dismissed as untimely. However, the Court later
22 reinstated the complaint because Plaintiff never received a
23 right to sue letter from the EEOC informing her of the 90-day
24 time bar on filing Title VII claims. In March 2009 the Court
25 dismissed Zamora I without prejudice, holding that Plaintiff
26 failed to assert a claim against the proper defendants.
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1 Plaintiff filed the present action ("Zamora II") in
2 Sacramento County Superior Court in April 2009. The complaint
3 asserts the same claims as Zamora I, adds two new claims under
4 California state law, and names a proper defendant, Janet
5 Napolitano as Secretary of the DHS. Zamora II was removed to
6 this Court on May 8, 2009.
7

8 Defendants now move for summary judgment, alleging
9 that Plaintiff's Title VII claim under the Civil Rights Act of
10 1964 is time barred and, in the alternative, that the Title VII
11 claim is barred under the doctrine of laches. Plaintiff opposes
12 the motion.
13

14 OPINION

15 Summary judgment is proper "if the pleadings,
16 depositions, answers to interrogatories, and admissions on file,
17 together with affidavits, if any, show that there is no genuine
18 issue of material fact and that the moving party is entitled to
19 judgment as a matter of law." Fed. R. Civ. P. 56(c). The
20 purpose of summary judgment "is to isolate and dispose of
21 factually unsupported claims and defenses." Celotex v. Catrett,
22 477 U.S. 317, 323-324 (1986).
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25 The moving party bears the initial burden of
26 demonstrating the absence of a genuine issue of material fact
27 for trial. Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 248-
28 49 (1986). If the moving party meets its burden, the burden of

1 production then shifts so that "the non-moving party must set
2 forth, by affidavit or as otherwise provided in Rule 56,
3 'specific facts showing that there is a genuine issue for
4 trial.'" T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors
5 Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (quoting Fed. R. Civ.
6 P. 56(e) and citing Celotex, 477 U.S. at 323). The Court must
7 view the facts and draw inferences in the manner most favorable
8 to the non-moving party. United States v. Diebold, Inc., 369
9 U.S. 654, 655 (1962).

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12 A. The Statute of Limitations

13 A government employee filing a Title VII action
14 pursuant to 42 U.S.C. § 2000e-5 must file that action "[w]ithin
15 90 days of receipt of notice of final action" taken by the
16 relevant agency or the EEOC, or after 180 days "from the filing
17 of the initial charge" if the agency or the EEOC fails to take
18 any action on the matter. 42 U.S.C. § 2000e-16(c).

19
20 Defendants argue that Plaintiff received sufficient
21 notice of final action during the litigation of Zamora I, thus
22 triggering the 90 day limitations period of section 2000e-16(c),
23 and that Plaintiff failed to file a complaint in Zamora II until
24 almost one year after receiving that notice. Docket # 17, 6:3-
25 14; Docket # 23, 4:15-16. Defendants cite a footnote in the
26 Ninth Circuit's opinion in Missirilian v. Huntington Memorial
27 Hospital, 662 F.2d 546 (9th Cir. 1981), to argue that the
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1 Court's April 15, 2008 Order dismissing Zamora I constituted a
2 "clear indication" of the commencement of the 90 day period.
3 Footnote 6 of the Ninth Circuit's decision in Missirilian notes
4 that a right to sue letter is not the only possible form of
5 notice sufficient to commence the 90 day period. Missirilian,
6 662 F.2d at 550 n.6. Notice is sufficient where a Title VII
7 plaintiff receives "a *clear indication* of when the ninety-day
8 period commences." Id. at 550 (emphasis added).
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11 Not only has Plaintiff still not received a right to
12 sue letter from the EEOC, but this Court's April 15, 2008 Order
13 was not a "clear indication" of the commencement of the 90 day
14 period. Defendants do not point to any specific text within the
15 April 15, 2008 Order that would provide such "clear indication."
16 See Docket # 17, 5:2-6:18. The April 15, 2008 Order merely
17 reinstated Zamora I, after it had been dismissed as untimely,
18 because the Court discovered that the EEOC had failed to deliver
19 a notice to sue letter to Plaintiff. Nowhere did the Order
20 specifically or clearly advise Plaintiff that the 90 day period
21 would commence immediately or that the Order would serve to
22 replace a notice to sue letter. Contrary to Defendants'
23 assertion that Plaintiff "unquestionably knew" of the
24 commencement of the 90 day limitations period, Plaintiff has
25 never received any proper notice that specifies the date by
26 which she must file suit on her claims.
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1 As such, Defendants' Motion is DENIED with regards to
2 the statute of limitations for a Title VII claim.

3 B. The Doctrine of Laches

4 A district court has the discretionary authority to
5 bar an action where "a party's unexcused or unreasonable delay
6 has prejudiced his adversary." Boone v. Mechanical Specialties
7 Co., 609 F.2d 956, 958-59 (9th Cir. 1979) (citing International
8 T. & T. Corp. v. General T. & E. Corp., 518 F.2d 913, 926 (9th
9 Cir. 1975)). The doctrine of laches protects against
10 difficulties caused by "unreasonable delay in bringing an
11 action, not against problems created by the pendency of a
12 lawsuit after it is filed." Id. at 958.

13 Defendants argue that the passage of time since the
14 alleged harassment back in 2003, combined with Plaintiff's "lack
15 of diligence and gross procedural error," justify the motion for
16 summary judgment. Docket at 17, 6:25-28. In support of their
17 argument, Defendants cite delay during the administrative
18 action, delay in filing Zamora I after withdrawing the
19 administrative complaint, the failure to sue a proper defendant
20 in Zamora I, delay in filing Zamora II, and the loss of
21 availability of witnesses due to these delays. Id. at 7:2-8:27.

22 Defendants fail to show that Plaintiff's actions have
23 resulted in Defendants suffering substantial prejudice. Indeed,
24 as this Court noted in its June 5, 2008 Order denying
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1 Defendants' motion to dismiss, Defendants have contributed to
2 the delay in the resolution of the dispute. See Zamora I,
3 Docket at 28, 6:13-23 ("This Court . . . finds that Defendants
4 contributed to the five year delay of which they now complain by
5 unnecessarily delaying the resolution of Zamora's administrative
6 claim.") Moreover, Plaintiff's alleged delay in filing Zamora I
7 was recognized by this Court as partly a result of the EEOC's
8 failure to issue a right to sue letter. See Zamora I, Docket at
9 31. The delay in filing Zamora II occurred under similar
10 circumstances. While Plaintiff has caused some delay in the
11 action by failing to sue the appropriate defendants, this delay
12 does not rise to such an unreasonable level so as to move this
13 Court to grant summary judgment in Defendants favor.

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17 As such, Defendants' Motion is DENIED with regards to
18 the doctrine of laches.

19 III. ORDER

20 For the reasons set forth above, Defendants' Motion is
21 DENIED. The parties are ordered to file a Joint Status Report as
22 required by the Court's previous Order (Docket #2) on or before
23 August 25, 2009.
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26 IT IS SO ORDERED.

27 DATED: August 5, 2009

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE