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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 MALINDA SLATON,

9 Plaintiff,

10 v.

11 L.L.O. INC., et al.,

12 Defendants.
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Case No. 2:17-cv-01561-RFB-CWH

ORDER

14 Presently before the court is plaintiff Malinda Slaton's motion to supplement and amend
15 complaint (ECF No. 20), filed on June 9, 2018. Defendant International Brotherhood of
16 Electrical Workers, Local Union 357 ("Local 357") filed a response (ECF No. 22) on June 21,
17 2018. Defendant L.L.O. Inc. d/b/a Acme Electric ("Acme") filed a response (ECF No. 23) on
18 June 25, 2018. Slaton filed replies (ECF Nos. 24, 25) on June 28, 2018, and July 2, 2018.

19 Also before the court is Slaton's motion for referral to Early Neutral Evaluation program
20 (ECF No. 26), filed on July 10, 2018. Acme filed a response (ECF No. 29) on July 11, 2018.
21 Local 357 did not file a response. Slaton filed a reply (ECF No. 31) on July 18, 2018.

22 Also before the court is the parties' proposed discovery plan and scheduling order (ECF
23 No. 32), filed on August 13, 2018.

24 **I. BACKGROUND**

25 Slaton is a female journeyman electrician who was assigned by her union, Local 357, to
26 work on "Project Neon" for subcontractor Acme. (Compl. (ECF No. 1) at 4.) Slaton was
27 terminated on October 28, 2016, for failing to report damage to one of Acme's vehicles that
28 occurred during an accident at the construction yard. (*Id.*) According to Slaton, she was not the

1 driver of the vehicle, did not cause the accident, reported the accident to her foreman within
2 minutes of it occurring, but nevertheless was given verbal and written warnings and terminated,
3 while the male driver of the vehicle and another male coworker who was involved in the accident
4 were not disciplined. (*Id.* at 4-5.) Slaton alleges Acme violated a collective bargaining
5 agreement by firing her and Local 357 failed to adequately represent her during grievance
6 procedures. (*Id.* at 5-9.)

7 Slaton brought suit against defendants, alleging claims for breach of contract (claim one)
8 against Acme and for breach of the duty of fair representation (claim two) against Local 357. (*Id.*
9 at 7-9.) Acme subsequently filed a motion to dismiss and a motion to stay discovery. (Mot. to
10 Dismiss (ECF No. 6); Mot. to Stay (ECF No. 12).) The court denied the motion to dismiss
11 without prejudice and temporarily stayed the case to allow Slaton to determine whether she would
12 seek to amend the complaint to add a discrimination claim. (Mins. of Proceedings (ECF No. 18).)
13 Slaton now moves to amend, seeking to allege a sex-discrimination claim (count three) against
14 Acme and Local 357 in addition to her other claims. (Proposed Am. Compl. (ECF No. 20-1).)

15 **II. ANALYSIS**

16 Generally, a plaintiff may amend his complaint once “as a matter of course” within
17 twenty-one days of serving it, or within twenty-one days after service of a responsive pleading or
18 motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1). Otherwise, “a party may amend its
19 pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P.
20 15(a)(2). “The court should freely give leave when justice so requires.” *Id.*; *Foman v. Davis*, 371
21 U.S. 178, 182 (1962). “The court considers five factors in assessing the propriety of leave to
22 amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and
23 whether the plaintiff has previously amended the complaint.” *United States v. Corinthian Colls.*,
24 655 F.3d 984, 995 (9th Cir. 2011). A proposed amendment is futile if it could not withstand a
25 Rule 12(b)(6) motion for failure to state a claim. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214
26 (9th Cir. 1988). It is within the court’s discretion to determine whether to grant leave to amend,
27 and “[a] district court does not err in denying leave to amend where the amendment would be
28 futile.” *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009).

1 Here, there is no indicia of bad faith or undue delay, and Slaton has not previously
2 amended her complaint. The defendants do not argue they would be prejudiced by amendment.
3 Thus, the relevant question is whether amendment to add a sex-discrimination claim would be
4 futile.

5 Local 357 argues amendment to allege a sex-discrimination claim against it is futile
6 because Slaton did not exhaust her administrative remedies. Specifically, Local 357 argues that
7 although Slaton brought a charge against Acme, she did not file an EEOC or NERC charge
8 against Local 357. Local 357 further argues the deadline for bringing a charge against it has
9 expired. Slaton replies that she does not intend to bring a sex-discrimination claim against Local
10 357. The court therefore will deny Slaton's motion to amend as to Local 357 and will require
11 Slaton to file a proposed amended complaint clarifying that claim three is asserted only against
12 Acme.

13 Acme argues amendment to allege a sex-discrimination claim against it is futile because
14 Slaton does not allege facts indicating that similarly-situated individuals outside her protected
15 class were treated more favorably than Slaton. Acme therefore argues Slaton fails to state a prima
16 facie claim for sex discrimination. Acme does not dispute, however, that Slaton alleges the other
17 elements of a sex-discrimination claim.

18 Title VII makes it "an unlawful employment practice for an employer . . . to discriminate
19 against any individual with respect to his compensation, terms, conditions, or privileges of
20 employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). To state a prima
21 facie claim for sex discrimination, a plaintiff must show that that (1) he belongs to a protected
22 class, (2) he performed his job satisfactorily, (3) he suffered an adverse employment action and,
23 (4) the employer treated him differently than a similarly situated employee who does not belong
24 to the same protected class. *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th
25 Cir. 2006) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

26 Here, Slaton states a prima facie claim for sex discrimination against Acme. Slaton
27 alleges that she is female, that she was qualified for her position as an electrician, and that she
28 suffered adverse employment actions of being reprimanded and terminated. She further alleges

1 she was treated differently than similarly-situated individuals outside of her protected class.
2 Specifically, she alleges that although she was not the driver of the vehicle, did not cause the
3 accident at issue in this case, and reported the accident to her foreman within minutes of it
4 occurring, she nevertheless was given verbal and written warnings and terminated, while the male
5 driver of the vehicle and another male coworker who was involved in the accident were not
6 disciplined. Given that Slaton states a claim for sex discrimination, amendment would not be
7 futile. The court, in its discretion, therefore will grant Slaton's motion to amend to bring a sex-
8 discrimination claim against Acme.

9 Finally, because Slaton states an employment-discrimination claim that falls under Local
10 Rule 16-6, the court will grant Slaton's motion for referral to the court's Early Neutral Evaluation
11 program. The court also will approve the parties' stipulated discovery plan, which seeks a 180-
12 day discovery plan, with discovery deadlines to be measured from the date of the Early Neutral
13 Evaluation conference.

14 **III. CONCLUSION**

15 IT IS THEREFORE ORDERED that plaintiff Malinda Slaton's motion to supplement and
16 amend complaint (ECF No. 20) is GRANTED in part and DENIED in part as stated in this order.
17 By September 19, 2018, Slaton must file a second amended complaint clarifying that her claim
18 for sex discrimination is only against defendant Acme.

19 IT IS FURTHER ORDERED that Slaton's motion for referral to Early Neutral Evaluation
20 program (ECF No. 26) is GRANTED. The clerk of court must assign this case to the Early
21 Neutral Evaluation program. The court will enter a separate order scheduling the Early Neutral
22 Evaluation conference.

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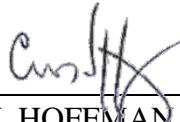
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1 IT IS FURTHER ORDERED that the parties' proposed discovery plan and scheduling
2 order (ECF No. 32) is GRANTED. Within seven days of the Early Neutral Evaluation
3 conference, the parties must meet and confer and file a proposed discovery plan and scheduling
4 order that contains dates certain that are measured from the date of the conference.

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6 DATED: September 12, 2018

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11 C.W. HOFFMAN, JR.
12 UNITED STATES MAGISTRATE JUDGE
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