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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NADIA JALAL THOMPSON,	}	
v.	}	
TRIDENT SEAFOODS CORP., <i>et al.</i> ,	}	
Defendants.	}	

No. C11-0120RSL  
ORDER GRANTING DEFENDANTS’  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on “Defendants’ Motion for Summary Judgment.” Dkt. # 47. Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact that would preclude the entry of judgment as a matter of law. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). The party seeking summary dismissal of the case “bears the initial responsibility of informing the district court of the basis for its motion” (Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)) and identifying those portions of the materials in the record that show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)(1)). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate “specific facts showing that there is a genuine issue for trial.” Celotex Corp., 477 U.S. at 324. “The mere existence of a scintilla of evidence in support of the non-moving party’s position is not sufficient:” the opposing party must present probative evidence in support

ORDER GRANTING DEFENDANTS’ MOTION  
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1 of its claim or defense. Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir.  
2 2001); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). In  
3 other words, “summary judgment should be granted where the nonmoving party fails to offer  
4 evidence from which a reasonable jury could return a verdict in its favor.” Triton Energy Corp.  
5 v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995).

6 Having reviewed the memoranda, declarations, and exhibits submitted by the  
7 parties,<sup>1</sup> and taking the evidence in the light most favorable to plaintiff, the Court finds as  
8 follows:

9 **A. Sex Discrimination Claim Under Title VII**

10 Employees who wish to file suit against their employer under Title VII of the Civil  
11 Rights Act of 1964 are ordinarily required to exhaust their administrative remedies by, inter alia,  
12 filing a charge with the Equal Employment Opportunity Commission (“EEOC”). See Lyons v.  
13 England, 307 F.3d 1092, 1104 (9th Cir. 2002) (“To establish federal subject matter jurisdiction,  
14 a plaintiff is required to exhaust his or her administrative remedies before seeking adjudication  
15 of a Title VII claim.” (citation omitted)); Sosa v. Hiraoka, 920 F.2d 1451, 1456 (9th Cir. 1990).  
16 “Incidents of discrimination not included in an EEOC charge may not be considered by a federal  
17 court unless the new claims are ‘like or reasonably related to the allegations contained in the  
18 EEOC charge.’” Green v. Los Angeles Cty. Superintendent of Schools, 883 F.2d 1472, 1475-76  
19 (9th Cir. 1989) (quoting Brown v. Puget Sound Elec. Apprent. & Training Trust, 732 F.2d 726,  
20 729 (9th Cir. 1984)).

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21 <sup>1</sup> This matter can be decided on the papers submitted. Defendants’ request for oral argument is  
22 DENIED.

23 The Court has not considered statements in the memoranda and declarations that are not based  
24 on the declarant’s personal knowledge or that constitute inadmissible hearsay. Nor has the Court  
25 considered statements in the memoranda that are not supported by admissible evidence. The Court has,  
26 however, considered the exhibits attached to plaintiff’s response memorandum despite the lack of  
authenticating declaration, with the exception of Exhibit G (which is inadmissible pursuant to RCW  
50.32.097).

1 Plaintiff failed to exhaust her administrative remedies regarding her underlying  
2 claim of sexual discrimination. Her June 19, 2009, EEOC charge alleges that she and another  
3 woman complained of sexual harassment in 2008, that the ship's captain was removed as a result  
4 of that complaint, and that she was subsequently removed from the M/V Independence "in  
5 retaliation for the sexual harassment complaint." Decl. of Greg Hendershott (Dkt. # 49), Ex. G.  
6 As plaintiff herself recognizes, "[a] simple reading of the EEOC complaint shows that my charge  
7 was directly related to the retaliation for reporting sexual harassment to the employer."  
8 Response (Dkt. # 53) at 17. The facts involving the 2008 sexual harassment claim were  
9 presented only as background for the retaliation charge: there is no indication that plaintiff ever  
10 contended before the EEOC that defendants' response to the discrimination complaint was  
11 inappropriate or ineffective. Decl. of Greg Hendershott (Dkt. # 49), Exs. G and H. Having  
12 failed to include the sexual harassment claim in her EEOC charge, plaintiff may not pursue that  
13 claim in federal court.

#### 14 **B. Retaliation Under Title VII and the Washington Law Against Discrimination**

15 To establish a *prima facie* case of retaliation, plaintiff must show that (1) she  
16 engaged in protected activity, (2) she suffered an adverse employment action, and (3) there is a  
17 causal link between the two. Wallis v. J.R. Simplot Co., 26 F.3d 885, 891 (9th Cir. 1994).  
18 "Thereafter, the burden of production shifts to the employer to present legitimate reasons for the  
19 adverse employment action. Once the employer carries this burden, plaintiff must demonstrate a  
20 genuine issue of material fact as to whether the reason advanced by the employer was a pretext.  
21 Only then does the case proceed beyond the summary judgment stage." Brooks v. City of San  
22 Mateo, 229 F.3d 917, 928 (9th Cir. 2000) (citations omitted). "Because Washington courts look  
23 to interpretations of federal law when analyzing retaliation claims, we . . . consider [plaintiff's]  
24 federal and state claims together." Little v. Windermere Relocation, Inc., 301 F.3d 958, 969 (9th  
25 Cir. 2002) (citing Graves v. Dept. of Game, 76 Wn. App. 705 (1994)).  
26

### 1                   **1. *Prima Facie* Case of Retaliation**

2                   Defendants do not dispute that plaintiff engaged in protected activity when she  
3 lodged her sexual harassment complaint on February 29, 2008. With regards to the adverse  
4 employment element, “an action is cognizable as an adverse employment action [in the context  
5 of a retaliation claim] if it is reasonably likely to deter employees from engaging in protected  
6 activity.” Ray v. Henderson, 217 F.3d 1234, 1243 (9th Cir. 2000). This definition of an adverse  
7 employment action is considerably broader than the one used when evaluating an intentional  
8 discrimination claim. Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 965 (9th Cir. 2004).  
9 For purposes of this motion, the Court assumes that a transfer to the purser position on the  
10 Alaska Packer would constitute an adverse employment action.

11                   The existence of a causal connection is less clear. Plaintiff alleges that Victor  
12 Scheibert, a vessel manager for defendant Trident Seafoods, terminated her employment in  
13 September 2008 because she had complained of sexual harassment seven months before. This  
14 allegation is based on (a) Scheibert’s awareness that plaintiff had mentioned him in her sexual  
15 harassment complaint and (b) the temporal relationship between the events. Although plaintiff  
16 surmises that Scheibert must have known that she accused him of not taking sufficient steps to  
17 remedy the sexual harassment she and other women were experiencing, she provides no  
18 supporting evidence. The vice president of human resources to whom plaintiff complained  
19 states that he did not share the written complaint with Scheibert or tell him that he had been  
20 mentioned in it. Decl. of Joe Misenti (Dkt. # 48) at ¶ 10. Similarly, Scheibert states that he did  
21 not know of his supposed role in the harassment until plaintiff filed this lawsuit. Decl. of Victor  
22 Scheibert (Dkt. # 50) at ¶ 7. Absent some evidence that Scheibert was aware that he had been  
23 implicated in plaintiff’s accusations, there is no basis on which to infer the necessary causal link.

24                   Contrary to defendants’ argument, however, an inference of causation can arise  
25 based on the timing of the protected activity and the subsequent adverse employment action.  
26 See Passantino v. Johnson & Johnson Consumer Prods., Inc., 212 F.3d 493, 507 (9th Cir. 2000).

1 Taking the evidence in the light most favorable to plaintiff, it appears that plaintiff worked for  
2 defendants for a number of years without incident and without complaint. When plaintiff lodged  
3 her sexual harassment complaint on February 28, 2008, it was with some concern regarding the  
4 possibility of reprisals. Decl. of Joe Misenti (Dkt. # 48), Ex. B. Within months, she had been  
5 told that her employment with Trident Seafoods was terminated. Although the inference of  
6 causation raised by this temporal relationship is rather weak, it is enough to establish a *prima*  
7 *facie* case of retaliation.

## 8 **2. Legitimate Reasons for the Adverse Employment Action**

9 Defendants argue that it terminated<sup>2</sup> plaintiff's employment because she was being  
10 supervised by her husband, Dan Thompson, and the situation was causing problems on the  
11 vessel. At least two employees (the vessel's captain and medical officer) reported that having  
12 both plaintiff and Dan on board was causing conflict, affecting morale, and negatively impacting  
13 the working environment on board. Decl. of Victor Scheibert (Dkt. # 50) at ¶ 12; Decl. of Joe  
14 Misenti (Dkt. # 48), Ex. E. See also Decl. of Greg Hendershott (Dkt. # 49), Ex. E (Captain  
15 Bishop's statement to EEOC that "he thought Dan and [plaintiff] were controlling the whole  
16 boat . . . . [S]he would tell people what to do. She wasn't in that position – she wasn't a mgr.  
17 But she had a lot of control. She'd tell Dan what to do as it related to the boat and other  
18 [employees]. This caused problems on the boat."). Scheibert eventually concluded that plaintiff  
19 and her husband were "tag-teaming" employees and that plaintiff was exercising authority she  
20 did not possess, apparently because she felt protected based on her relationship with the  
21 production superintendent. Scheibert decided to terminate her employment at the end of the  
22 2008 B season. When plaintiff asked to work one more season on the M/V Independence,  
23 Scheibert agreed and ultimately offered her another purser position on the Alaska Packer.

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24 <sup>2</sup> Although defendants maintains that Scheibert intended to transfer, not terminate, plaintiff,  
25 there is a dispute regarding what Scheibert told plaintiff when he first informed her that she could not  
26 continue working on board the M/V Independence. The Court assumes, for purposes of this motion, that  
plaintiff was originally informed that her employment would be terminated.

1 Plaintiff declined the Alaska Packer position.

2 Defendants have identified legitimate, non-retaliatory reasons for the termination/  
3 transfer.

### 4 **3. Evidence of Pretext**

5 Plaintiff's only response to defendants' explanation for the adverse employment  
6 action is to assert that the complaints regarding her performance on the job were manufactured  
7 as part of a coordinated effort to drive her from defendants' employ in retaliation for her sexual  
8 harassment complaint. As evidence, plaintiff argues that Scheibert was unhappy about being  
9 mentioned in her February 2008 complaint and cites the deposition testimony of Deane Schultz,  
10 the medical officer on board the M/V Independence.


11 As discussed above, there is no evidence that Scheibert knew that plaintiff had  
12 implicated him in her February 2008 complaint until this litigation was filed. Plaintiff's reliance  
13 on the Schultz deposition for the proposition that the vice president of human resources, Joe  
14 Misenti, "asked Schultz to report back to him problems with me and/or my behavior" is also  
15 unavailing. Response (Dkt. # 53) at 22. The deposition transcript shows only that plaintiff tried  
16 to get Schultz to acknowledge some grand scheme to spy on plaintiff. Schultz made no such  
17 admission. Rather, the witness simply says that when he became concerned about how  
18 plaintiff's behavior was impacting the crew, he contacted Misenti because Misenti had  
19 interviewed Schultz regarding plaintiff's sex discrimination claims during the spring.

20 Plaintiff's speculation regarding a conspiracy in which all of the individuals who  
21 complained about her were lying in order to curry favor with their employer while all of the co-  
22 workers who would otherwise support her interpretation of events were afraid to come forward  
23 cannot take the place of the probative evidence necessary to raise a genuine issue of fact  
24 regarding retaliatory intent. Because plaintiff has not provided evidence from which a  
25 reasonable factfinder could conclude that the reason for the adverse employment action  
26 advanced by the employer was a pretext, her retaliation claims cannot proceed beyond the

1 summary judgment stage.

2  
3 For all of the foregoing reasons, defendants' motion for summary judgment  
4 regarding plaintiff's discrimination and retaliation claims (Dkt. # 47) is GRANTED. Plaintiff  
5 recently amended her complaint to add a new claim related to defendants' alleged failure to  
6 cooperate with the EEOC investigation. Dkt. # 64. The viability of that claim will be  
7 considered in connection with defendants' pending motion to dismiss. Dkt. # 67.

8 Dated this 16th day of April, 2012.

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10 Robert S. Lasnik  
11 United States District Judge  
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