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HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CRYSTAL HOWERY,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND
AEROSPACE WORKERS,

Defendants.

CASE NO. C14-1814 RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on the motions of defendant International Association of Machinists and Aerospace Workers (“the Union”) for failure to prosecute (Dkt. # 53) and for summary judgment (Dkt. # 60). For the reasons stated below, the motions are GRANTED.

II. BACKGROUND

A. Procedural History

Ms. Howery initiated this action in the Northern District of California by filing a complaint which appears to allege wrongful termination of some kind. (Compl.) Dkt. # 1. Ms. Howery was formerly employed by the Boeing Company and represented by the Union. (Jackson Decl.) Dkt. # 17. The Union moved to dismiss the complaint for lack of personal jurisdiction and improper venue. (Mot.) Dkt. # 16. The Honorable William Alsup, United States District Court Judge, was not persuaded by the jurisdictional argument, but granted the motion based upon improper venue. (Order) Dkt. # 41. Because Ms. Howery worked at the Boeing plant in Washington, engaged in dealings with the Union in Washington and was terminated in Washington, Judge Alsup ordered the case transferred to this court. *Id.*, p. 4.

Based upon counsel's declaration, it appears that the Union has attempted to schedule Ms. Howery's deposition, but has been unable to reach her despite sending six separate emails and calling Ms. Howery on six separate occasions. (Detwiler Decl.) Dkt. # 54, ¶¶ 2, 3. Ms. Howery has also failed to provide initial disclosures, despite multiple requests from opposing counsel. *Id.*, ¶ 5. She has also failed to adequately respond to discovery and failed to propound any discovery of her own or schedule any depositions. *See, e.g.*, (Reply to RFAs) Dkt. # 55. On July 9, 2015, the Union filed a motion to dismiss for failure to prosecute (Dkt. # 53) and on August 20, 2015 filed a motion for summary judgment (Dkt. # 60).

B. Factual Allegations

Ms. Howery's complaint includes allegations regarding the termination of her employment from Boeing and the Union's representation of her during that process. (Compl.) Dkt. # 1. She states that the "action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination." *Id.*, ¶ 3. She then goes on to state: "I was not paid for my hourly work. I was also denied a bonus. Requests for reasonable

1 accommodation were denied. I was harassed. I was placed on leave without pay. I was
2 terminated. Throughout all of this, I requested grievances and arbitration but was
3 repeatedly denied.” *Id.*, ¶¶ 6, 7. The acts she complains of include the following:
4 “Refusal to grieve, arbitrate, intervene or fairly represent union member when Boeing:
5 Harassed and Retaliated against union member for opposing and reporting discriminatory
6 practices as well as for participating in investigations regarding discrimination, including
7 violations of: the Lilly Ledbetter Fair Pay Act; the Americans with Disabilities Act; the
8 Age Nondiscrimination Act; the Equal Pay Act; and other violations of the law.” *Id.*, ¶ 4.

9 III. ANALYSIS

10 A. Motion for Summary Judgment and Motion to Dismiss for Failure to Prosecute

11 Summary judgment is appropriate if there is no genuine dispute as to any material
12 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
13 56(a). The moving party bears the initial burden of demonstrating the absence of a
14 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On
15 an issue where the nonmoving party will bear the burden of proof at trial, the moving
16 party can prevail merely by pointing out to the district court that there is an absence of
17 evidence to support the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325. If the
18 moving party meets the initial burden, the opposing party must set forth specific facts
19 showing that there is a genuine issue of fact for trial in order to defeat the motion.
20 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

21 Here, it is difficult to decipher what claims Ms. Howery is pursuing against the
22 Union. She refers generally to a Title VII discrimination claim, but the complaint also
23 refers to the Lilly Ledbetter Fair Pay Act, the Americans with Disabilities Act, the Age
24 Discrimination in Employment Act, the Civil Rights Act, the Genetic Information
25 Nondiscrimination Act, the Equal Pay Act and other violations of the law. (Compl.) Dkt.
26 # 1, ¶ 4. She also states that the “defendant’s conduct is discriminatory with respect to
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1 the following:” race or color, religion, sex, national origin, disability, genetic
2 information, age, and retaliation for opposing discriminatory practices. *Id.*, ¶ 5.

3 The only facts stated in support of these claims appear to address conduct by
4 Boeing, not by the Union. For example, Ms. Howery states that she was not paid for her
5 hourly work, was denied a reasonable accommodation, was harassed, was placed on
6 leave without pay and finally was terminated. *Id.*, ¶ 6. The Union, however, did not act
7 as Ms. Howery’s employer and accordingly cannot be liable for the aforementioned acts.

8 With respect to a possible claim against the Union for breach of the duty of fair
9 representation, Ms. Howery simply states that she “requested grievances and arbitration
10 but was repeatedly denied.” *Id.* A union breaches its duty only if its actions are
11 “arbitrary, discriminatory or in bad faith.” *Dutrisac v. Caterpillar Tractor Co.*, 749 F.2d
12 1270, 1272 (9th Cir. 1983) (quoting *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). Ms.
13 Howery alleges no facts which would meet this standard and presents absolutely no
14 evidence in support of such a claim. Additionally, there is a six month statute of
15 limitations for a duty of fair representation claim. *Galindo v. Stoodly Co.*, 793 F.2d 1502,
16 1509 (9th Cir. 1986). Ms. Howery, however, has failed to allege any facts or present any
17 evidence which would show that her claim is timely.

18 As set forth in the Union’s motion for summary judgment and supporting
19 declarations, there is an absence of evidence to support any possible claims stated in
20 plaintiff’s complaint. (Mot.) Dkt. # 60. Plaintiff has failed to file an opposition to the
21 motion and, indeed, it appears that she has abandoned her case against the Union. *See*
22 Local Civ. R. 7(b)(2) (“[I]f a party fails to file papers in opposition to a motion, such
23 failure may be considered by the court as an admission that the motion has merit.”). Ms.
24 Howery has failed to respond to emails and phone calls regarding the scheduling of her
25 deposition, has failed to provide initial disclosures, has failed to propound discovery, and
26 has failed to provide adequate discovery responses. (Detwiler Decl.) Dkt. # 54, ¶¶ 2, 3, 5.
27 Although, Ms. Howery denies these allegations, her denial consists of a single conclusory

1 sentence.¹ (Opp.) Dkt. # 57, p. 2. She does not bother to explain what discovery she has
2 produced and what attempts she has made to schedule her deposition. Nor does she
3 bother to respond to the merits of the Union's motions.

4 Because plaintiff has failed to engage in this litigation in any meaningful manner,
5 the court GRANTS the Union's motion to dismiss for failure to prosecute (Dkt. # 53) and
6 the Union's motion for summary judgment (Dkt. # 60).

7 **IV. CONCLUSION**

8 For all the forgoing reasons, the Union's motions to dismiss for failure to
9 prosecute (Dkt. # 53) and for summary judgment (Dkt. # 60) are GRANTED. Plaintiff's
10 complaint is DISMISSED WITH PREJUDICE. The clerk is directed to close this case
11 and to enter judgment in favor of defendant and against plaintiff.

12 Dated this 15th day of September, 2015.

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16 The Honorable Richard A. Jones
17 United States District Judge

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25 ¹ Although Ms. Howery advised the court that she planned to file a motion for default
26 judgment against the Union, she never did so. (Opp.) Dkt. # 57. In any case, the court would
27 have denied such a motion. Ms. Howery could only obtain a default judgment if the Union had
"failed to plead or otherwise defend" the action. Fed. R. Civ. P. 55(a). Here, the Union
appeared and actively defended the action by filing a motion to dismiss and motion for summary
judgment.