

1 Scott Philip Jang (State Bar No. 260191)
2 Hardev S. Chhokar (State Bar No. 311802)
3 JACKSON LEWIS P.C.
4 50 California Street, 9th Floor
5 San Francisco, California 94111-4615
6 Telephone: (415) 394-9400
7 Facsimile: (415) 394-9401
8 E-mail: Scott.Jang@jacksonlewis.com
9 E-mail: Hardev.Chhokar@jacksonlewis.com

10 Attorneys for Defendant
11 INTEL CORPORATION

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 SONIA RANDHAWA,
15 Plaintiff(s),

16 v.

17 INTEL CORPORATION,
18 Defendant(s).

Case No. 2:21-cv-00054-KJM-DB

**DEFENDANT INTEL
CORPORATION'S REPLY TO
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS**

Date: May 7, 2021
Time: 10:00 a.m.
Ctmm: 3, 15th Floor
Judge: Hon. Kimberly J. Mueller

FAC Filed: March 11, 2021
Trial Date: None

19
20 **I. INTRODUCTION**

21 Plaintiff's Opposition to Defendant's Motion to Dismiss fails to show that she exhausted
22 her administrative remedies as to her Third and Fourth Causes of Action for retaliation under Title
23 VII and California's Fair Employment and Housing Act ("FEHA"). Plaintiff relies heavily on a
24 standalone reference in her EEOC Charge that she complained about a coworker's "stalking and
25 sexual harassment" to Human Resources to argue that her retaliation claims are apparent on the
26 face of the Charge or reasonably related to her discrimination allegations in the Charge. Plaintiff
27 is wrong on both counts.

28 ///

1 First, any contention that Plaintiff's retaliation claims are somehow apparent on the face of
2 the Charge is refuted by Plaintiff's concession that, even after reviewing and approving the Charge,
3 she left the box for "retaliation" unchecked and did not otherwise reference "retaliation" in the
4 Charge. Plaintiff's own conduct "creates a presumption" at the outset that she did not intend to
5 assert a retaliation claim. *Jones v. UPS, Inc.*, 502 F.3d 1176, 1186 (10th Cir. 2007).

6 Further, Plaintiff cannot overcome this presumption by clinging to a brief reference in the
7 Charge that her complaints about harassment in 2015 and 2016 allegedly went ignored by Human
8 Resources. The Charge provides no causal link between these alleged complaints and Plaintiff's
9 layoff – the only adverse employment action mentioned in the Charge. Temporal proximity does
10 not exist, as Plaintiff's layoff occurred in 2018 – which was *more than two years* after Plaintiff's
11 first alleged complaints in 2015 and still *more than a year* after Plaintiff's last alleged complaints
12 in 2016. Nor is any other causal connection discernable where, according to the Charge, the actors
13 allegedly involved in the harassment complaints (*i.e.*, a co-worker and Human Resources) were
14 different than the actor purportedly involved in Plaintiff's discriminatory termination (*i.e.*, Brian
15 Staab). Plaintiff's reference to harassment in the Charge might support a harassment claim (or
16 arguably Plaintiff's sex discrimination claim), but the standalone, causally-disconnected reference
17 simply does not come close to overcoming the "presumption" that Plaintiff did not assert a separate
18 retaliation claim. *Id.*

19 Second, contrary to Plaintiff's contention, her retaliation claims are not reasonably related
20 to the discrimination claims in her Charge such that an EEOC agent would have been expected to
21 investigate the retaliation claims. Perhaps most tellingly is the conduct of *the actual EEOC agent*
22 *in this case*. According to Plaintiff, an EEOC agent assisted her with intake and completing the
23 charge. Yet, the EEOC agent evidently did not construe Plaintiff's allegations as giving rise to a
24 retaliation claim, as the EEOC agent did not check the "retaliation" box or otherwise reference
25 "retaliation" in the Charge.

26 Moreover, a side-by-side comparison between the EEOC Charge and the First Amended
27 Complaint ("FAC") only further demonstrates the stark differences between the discrimination
28 claims in the Charge and the retaliation claims later asserted in the FAC. The claims are different

1 and mismatched with respect to the alleged (1) acts, (2) dates, and (3) perpetrators – all of which
2 preclude any conclusion that the claims are “reasonably related” such that the EEOC would been
3 expected to investigate retaliation.

4 In sum, Plaintiff failed to exhaust her administrative remedies with respect to her retaliation
5 claims. The claims should be dismissed.

6 **II. ARGUMENT**

7 **A. A Retaliation Claim is Not “Apparent on the Face” of the EEOC Charge.**

8 A retaliation claim is nowhere identified on the face of Plaintiff’s EEOC Charge. Plaintiff
9 concedes that she did not check the “retaliation” box in the Charge. (ECF No. 14 (“Opp’n”) at 3.)
10 Nor did Plaintiff reference “retaliation,” “retaliate,” or “retaliatory,” – or any similar words – in
11 the narrative of the Charge. (ECF No. 10-1 (“EEOC Charge”), Ex. A at 1.) This is all despite
12 Plaintiff admitting that she reviewed a draft prepared by an EEOC agent before she signed and
13 submitted the Charge. (Opp’n at 3.) Plaintiff’s own conduct “creates a presumption” that she did
14 not intend to assert a retaliation claim. *Jones*, 502 F.3d at 1186.

15 Plaintiff nevertheless contends that her retaliation claim is somehow apparent “on the face
16 of the EEOC Charge” because the Charge states that Plaintiff complained to Human Resources
17 about a coworker’s “stalking and sexual harassment” in 2015 and 2016. (Opp’n at 3.) Plaintiff’s
18 heavy reliance on this allegation is sorely misplaced.

19 To start, Plaintiff ignores the Charge’s grammatical structure. The reference in the Charge
20 to Human Resources allegedly ignoring Plaintiff’s complaints in 2015 and 2016 forms a separate,
21 standalone paragraph that is disconnected from the preceding paragraph’s allegation regarding
22 Plaintiff’s termination. (EEOC Charge, Ex. A at 1.) Therefore, from a grammatical standpoint,
23 Plaintiff’s allegation regarding Human Resources ignoring her harassment complaints appears to
24 constitute a separate, standalone issue/claim.

25 More critically, the Charge offers no causal connection between these alleged complaints
26 and Plaintiff’s layoff – the only adverse employment action mentioned in the Charge. Temporal
27 proximity does not exist, as Plaintiff’s layoff occurred in 2018 – which was *more than two years*
28 after Plaintiff’s first alleged complaints in 2015 and still *more than a year* after Plaintiff’s last

1 alleged complaints in 2016. Nor is any other causal nexus discernable where, according to the
 2 Charge, the actors allegedly involved in the harassment complaints (*i.e.*, a co-worker and Human
 3 Resources) were different than the actor involved in Plaintiff's discriminatory termination (*i.e.*,
 4 Brian Staab). Again, Plaintiff's reference to harassment in the Charge might support a harassment
 5 claim, but the reference does not come anywhere close to overcoming the "presumption" that she
 6 did not assert a separate retaliation claim – let alone that such a claim is "apparent on face of the
 7 Charge," as Plaintiff contends.¹ (Opp'n at 3.)

8 **B. Plaintiff's Retaliation Claims in the FAC Are Not "Reasonably Related" to**
 9 **the Allegations in Her EEOC Charge.**

10 Plaintiff's retaliation claims in her FAC could not be "reasonably be expected to grow" out
 11 of an investigation of the discrimination allegations in her Charge, and Plaintiff's Opposition fails
 12 to show otherwise. *Sosa v. Hiraoka*, 920 F.2d 1451, 1456 (9th Cir. 1990). In determining whether
 13 a retaliation claim is reasonably related to the discrimination claims in an EEOC Charge, this Court
 14 has considered factors such as "the alleged basis of discrimination, dates of discriminatory acts
 15 specified within the charge, perpetrators of discrimination named in the charge, and any locations
 16 at which discrimination is alleged to have occurred." *Bradley v. Cnty. of Sacramento Dep't of*
 17 *Human Assistance of N.Cal. Welfare Div.*, 2015 U.S. Dist. LEXIS 95747, at *8-9 (E.D. Cal. July
 18 22, 2015) (citing cases).

19 In her Opposition, Plaintiff fails to address the factual dissimilarities Defendant highlights
 20 in its Motion to Dismiss between the EEOC Charge and Plaintiff's retaliation claims. Nor does
 21 she explain *how* an investigation into the Charge's discrimination allegations could have been
 22 expected to uncover the retaliation claims as asserted in the FAC. Instead, she summarily argues:

23 A reasonable EEOC investigation would uncover additional details spanning the years
 24 [between 2015 to 2018]. Thus, any investigation of the sexual harassment and stalking

25 ¹ The reader might ask: "Why did Plaintiff reference sexual harassment complaints allegedly being
 26 ignored by Human Resources?" Plaintiff answers that question in the Charge itself: Plaintiff
 27 sought to assert a sexual *discrimination* claim. Had Plaintiff omitted the allegations regarding her
 28 sexual harassment complaints, there would have been no factual underpinning for her expressly
 asserted sexual *discrimination* claim. *See Gerald v. Locksley*, 785 F.Supp.2d 1074, 1114 (D.N.M.,
 Aug. 1, 2011) (dismissing retaliation because reasonable reader would understand that plaintiff's
 reference to management inaction of his harassment complaints, which was referenced in EEOC
 Charge, was "merely an explanation leading up to the gist of his complaint of discrimination").

1 claims would have reached the retaliatory Improvement Required Notice entered against
2 Plaintiff and, it follows, the wrongful denial of a promotion [in 2017] . . . , all other
3 subsequent events described in the Plaintiff's FAC culminating in termination of Plaintiff's
employment.

4 (Opp'n at 5:5-11.) Plaintiff's conclusory argument fails.

5 As an initial matter, it is telling that the EEOC agent who actually handled Plaintiff's intake
6 and drafting of the Charge did *not* think her allegations sounded in retaliation. The EEOC agent
7 did not check the "retaliation" box or otherwise reference "retaliation" in the Charge. Nor, again,
8 did Plaintiff make any effort to change this – to the extent that she had any intention of asserting a
9 retaliation claim.

10 Moreover, a side-by-side comparison between the EEOC Charge and the First Amended
11 Complaint ("FAC") only further demonstrates the stark differences between the discrimination
12 claims in the Charge and the retaliation claims later asserted in the FAC. **First**, the FAC includes
13 completely new alleged adverse employment actions. There is no mention in the Charge of the
14 retaliatory acts (or corresponding dates) that Plaintiff specifies as the basis for her retaliation claims
15 in the FAC. Specifically, the alleged wrongful Improvement Required Notice in 2015 and denied
16 promotion in 2017 are nowhere referenced in the Charge. The EEOC could not have been expected
17 to investigate these matters.

18 **Second**, the FAC identifies completely different alleged perpetrators. The only perpetrator
19 named in the Charge, Brian Staab, has no relationship with the individuals implicated in Plaintiff's
20 Third and Fourth Causes of Action. Mr. Staab – the individual who Plaintiff claims discriminated
21 against her because he did not extend her employment past her pre-established layoff date – was
22 (a) not the subject of Plaintiff's alleged sexual harassment complaints (Sam Phillips) (*see* ECF No.
23 9 ("FAC") ¶ 19); (b) not the manager who allegedly placed Plaintiff on an Improvement Required
24 Notice in 2015 (Charles Rostocil) (*see* ECF No. 1 ("Verified Complaint") ¶ 24), and (c) not the
25 manager who allegedly denied Plaintiff a promotion in 2017 (Subramanian) (*see* FAC ¶ 30).
26 Plaintiff's failure to name these perpetrators necessarily limited the scope of her EEOC Charge
27 and would not have led to an investigation into Plaintiff's retaliation claims.

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