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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   Sonia Randhawa,   No. 2:21-cv-00054-KJM-DB

12   Plaintiff,   ORDER

13   v.

14   Intel Corporation,

15   Defendant.

16

17   Sonia Randhawa alleges Intel Corporation, her former employer, fired her because of her

18   race, color, sex, and age. She also alleges Intel was motivated by her longstanding complaints of

19   sexual harassment by a coworker. Intel moves to dismiss the retaliation claims. It argues

20   Randhawa did not include those claims in the charge she filed with the relevant regulatory

21   agencies, which is a prerequisite of any lawsuit. **The motion is denied.** An investigation of

22   retaliation could "reasonably be expected to grow out of" the investigation of Randhawa's other

23   allegations, so the prerequisite is satisfied. *See Josephs v. Pac. Bell*, 443 F.3d 1050, 1062 (9th

24   Cir. 2006) (emphasis omitted) (quoting *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1100 (9th

25   Cir. 2002)).

26   **I.   ALLEGATIONS**

27   At this stage, the court assumes the following allegations are true. *Ashcroft v. Iqbal*,

28   556 U.S. 662, 678 (2009).

1   Intel hired Randhawa in early 2015. First Am. Compl. ¶ 15, ECF No. 9. She consistently

2   earned awards and accolades, and the company told her a promotion was in her future. *Id.* ¶¶ 16–

3   17. But not long after she was hired, a coworker began to harass her, and she complained to the

4   company's human resources department. *Id.* ¶¶ 18–19. Soon after her complaint, the company

5   issued an "Improvement Required Notice" that falsely accused her of poor performance. *Id.*

6   ¶¶ 20–21. She filed a further complaint about the false notice, and it was removed from her file.

7   *Id.* ¶¶ 22–23.

8   Randhawa moved into a new group and position but faced new problems. *Id.* ¶ 25. Her

9   new supervisor discriminated against her in assigning work, *id.* ¶¶ 27–28, and the old coworker

10   also continued to harass her, *see id.* ¶ 29. The harassment continued unabated despite complaints.

11   *Id.* She was also denied a promised promotion. *Id.* ¶ 30. She tried unsuccessfully to raise

12   complaints with a vice president and other Intel management, but her complaints and appeals

13   went unanswered. *Id.* ¶¶ 31–33.

14   Intel then began a reorganization effort, which included layoffs. *Id.* ¶ 34. To decide

15   which employees would be laid off, managers assigned scores based on job codes. *See id.* ¶ 35.

16   Intel gave Randhawa the wrong job code, and her score was lower as a result, and in fact was the

17   lowest among her group. *See id.* ¶¶ 36–38. She alerted the company to the mistake, but no one

18   corrected it. *See id.* ¶¶ 36–37. She was terminated, effective several weeks later. *Id.* ¶ 41. The

19   only other person in the group to be fired was an unnamed Caucasian man, but Randhawa

20   suspected the company had invented him to lend an appearance of neutrality to its decision; there

21   was not any Caucasian man of his age on her team. *See id.* ¶¶ 39–40. And rather than

22   eliminating the position Randhawa was vacating, as might be expected if her job had truly

23   become redundant, the company began recruiting someone to take her place. *Id.* ¶ 42.

24   Before her termination's effective date, Randhawa began looking for a new position

25   within the company. She applied for more than fifty jobs at Intel through its internal career

26   services system. *Id.* ¶ 43. One opening was promising. *See id.* ¶ 44. But a condition of that

27   position required her to remain an Intel employee after the day of her scheduled termination. *See*

28   /////

1   *id.* Intel had a policy permitting its hiring managers to extend layoff dates in this situation, but

2   Randhawa's request for an extension was denied, and she was not rehired. *Id.* ¶ 45.

3   After she left Intel, Randhawa filed complaints with the California Department of Fair

4   Employment and Housing and with the U.S. Equal Employment Opportunity Commission. *See*

5   *id.* ¶ 47 & Ex. A. In her California complaint, she checked the boxes for discrimination on the

6   basis of race, color, sex, national origin and age, and explained what had happened:

7   I was hired as a Technical Project Manager. I had excellent performance. Without
8   notice I was told my position was being eliminated. I am 43 years old. I am aware
9   that several white and southern Indian folks stayed on.

10   I applied for various positions within Intel before I would be terminated but Brian
11   Staab [an Intel manager] would not keep me employed long enough to continue
12   competing internally, therefore I lost all chances of staying with Intel. I found this
13   discriminatory again as it would not have been a hardship to keep me on for another
14   month to ensure I would continue to work at Intel.
15   In 2015, I began to complain of stalking and sexual harassment by a coworker. The
16   complaints continued until the end of 2016, but HR never took action.

17   I believe I was terminated based on my sex (female) race (North Indian), national
18   origin (Australia), [and] color in violation of Title VII of the Civil Rights Act of
19   1964, as amended.

20   I believe I was terminated based on my age (43) in violation of the Age
21   Discrimination in Employment Act of 1967, as amended.

22   Req. J. Notice Ex. A, ECF No. 10-1.[1] The EEOC issued a right-to-sue letter in October 2020, and

23   Randhawa filed this action within the applicable 90-day period. *See* First Am. Compl. ¶ 48

24   & Ex. A; 42 U.S.C. § 2000e-5(f)(1). In her current complaint, she alleges several discrimination,

25   harassment, retaliation, and wrongful termination claims against both Intel and several Doe

26   defendants.[2] *See generally* First Am. Compl.

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        [1] The block quotation above preserves the inconsistent paragraph separations in the
charge. The court takes judicial notice of this document for the limited purpose of ascertaining its
contents. *See Hellmann-Blumberg v. Univ. of Pac.*, No. 12-286, 2013 WL 1326469, at *1 (E.D.
Cal. Mar. 29, 2013).

        [2] If defendants' identities are unknown when the complaint is filed, plaintiffs have an
opportunity through discovery to identify them. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.
1980). But the court will dismiss such unnamed defendants if discovery clearly would not
uncover their identities or if the complaint would clearly be dismissed on other grounds. *Id.* The

1   Intel moves to dismiss the retaliation claims, which Randhawa asserts under both Title VII

2   of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act. *See* Mot.,

3   ECF No. 10; First Am. Compl. ¶¶ 65–80 (citing 42 U.S.C. § 2000e-3(a) and Cal. Gov't Code

4   § 12940(h)). Intel argues Randhawa did not include retaliation claims in the charges she filed

5   with the California or federal authorities. *See id.* at 7–13. If that is correct, then the retaliation

6   claims would not have been exhausted. *See id.* Randhawa opposes the motion, which is now

7   fully briefed. *See* Opp'n, ECF No. 14; Reply, ECF No. 15. The court submitted the matter after a

8   combined hearing and scheduling conference. Luke Peters and Marta Vanegas appeared at the

9   hearing for Randhawa, and Scott Jang and Hardev Chhokar appeared for Intel.

10 **II.   LEGAL STANDARD**

11   A party may move to dismiss for "failure to state a claim upon which relief can be

12 granted." Fed. R. Civ. P. 12(b)(6). The motion may be granted only if the complaint lacks a

13 "cognizable legal theory" or if its factual allegations do not support a cognizable legal theory.

14 *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1122 (9th Cir. 2013). The court

15 assumes all factual allegations are true and construes "them in the light most favorable to the

16 nonmoving party." *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154, 1160 (9th Cir. 2019).

17 If the complaint's allegations do not "plausibly give rise to an entitlement to relief," the motion

18 must be granted. *Iqbal*, 556 U.S. at 679.

19   A complaint need contain only a "short and plain statement of the claim showing that the

20 pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), not "detailed factual allegations," *Bell Atl.*

21 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But this rule demands more than unadorned

22 accusations; "sufficient factual matter" must make the claim at least plausible. *Iqbal*, 556 U.S. at

23 678. In the same vein, conclusory or formulaic recitations elements do not alone suffice. *Id.*

24 (quoting *Twombly*, 550 U.S. at 555). This evaluation of plausibility is a context-specific task

25 drawing on "judicial experience and common sense." *Id.* at 679.

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federal rules also provide for dismissing unnamed defendants that, absent good cause, are not
served within 90 days of the complaint. Fed. R. Civ. P. 4(m).

III.   ANALYSIS

A plaintiff who alleges employment discrimination under either Title VII or the California Fair Employment and Housing Act must first file a charge with the relevant administrative agency. *See Sommatino v. United States*, 255 F.3d 704, 707 (9th Cir. 2001) (citing 42 U.S.C. § 2000e-16(c)); *Yurick v. Superior Court*, 209 Cal. App. 3d 1116, 1120–21 (1989). The relevant federal and California agencies have a work-sharing agreement under which the exhaustion of Title VII remedies also exhausts Fair Employment and Housing Act remedies. *McCarthy v. R.J. Reynolds Tobacco Co.*, 819 F. Supp. 2d 923, 935 (E.D. Cal. 2011). The California law also "mirrors" the federal law in its exhaustion requirements. *See Josephs*, 443 F.3d at 1062 n.4 (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1082 n.4 (9th Cir. 2000) (per curiam)). The court therefore considers both the state and federal claims together, as have the parties. *See* Mot. at 7–13; Opp'n at 3–7.

The purposes of Title VII's administrative exhaustion requirement are to give employers notice of the claims against them and to "narrow[] the issues for prompt adjudication and decision." *B.K.B.*, 276 F.3d at 1099 (quoting *Park v. Howard Univ.*, 71 F.3d 904, 907 (D.C. Cir. 1995)). A pre-litigation charge permits the administrative agency to investigate and to mediate. *See id.* The scope of any lawsuit that follows the charge is therefore limited to (1) the scope of the agency's "actual investigation" plus (2) whatever investigation could "reasonably be expected to grow out of the charge." *Josephs*, 443 F.3d at 1062 (emphasis omitted) (quoting *B.K.B.*, 276 F.3d at 1100). In some older cases, courts described this prerequisite as jurisdictional. *See, e.g.*, *B.K.B.*, 276 F.3d at 1099–1100. The Supreme Court has since clarified that it is not. *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1850 (2019).

The charge-filing rule has often been expressed in quite permissive terms. The Ninth Circuit has said, for example, that a plaintiff's new allegations are within the scope of the original charge if they are "like or reasonably related to" the allegations in the charge. *Green v. Los Angeles County Superintendent of Schs.*, 883 F.2d 1472, 1475–76 (9th Cir. 1989) (quoting *Brown v. Puget Sound Elec. Apprenticeship & Training Tr.*, 732 F.2d 726, 729 (9th Cir. 1984)). A new allegation can reasonably be expected to have grown out of another charge if the new allegation is

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