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United States District Court,
 C.D. California.

Mattie Belinda EVANS, Plaintiff,
 v.
 Patsy WATT, et al., Defendants.

No. CV03-04040 FMC(RNBX).

Filed June 9, 2003.
 Jan. 7, 2004.

Background: Employee brought action against her employer under Title VII and Age Discrimination in Employment Act (ADEA).

Holding: On employer's motion to dismiss, the District Court, [Cooper, J.](#), held that employer with fewer than 15 employees did not meet definition of "employer" in either Title VII or ADEA.
 Motion granted.

West Headnotes

[\[1\] Federal Courts](#)  [307](#)
[170Bk307 Most Cited Cases](#)

Whether District Court may exercise its diversity jurisdiction is measured at the time of the filing of the complaint, not after dismissal of nondiverse parties.

[\[2\] Civil Rights](#)  [1111](#)
[78k1111 Most Cited Cases](#)

Employer with fewer than 15 employees did not meet definition of "employer" in either Title VII or ADEA. Civil Rights Act of 1964, § 701(b), [42 U.S.C.A. § 2000e\(b\)](#); Age Discrimination in Employment Act of 1967, § 11(b), [29 U.S.C.A. § 630\(b\)](#).

Mattie Belinda Evans, Los Angeles, CA, plaintiff, pro se.

Mark B Brueggemann, Spierer Woodward Corbalis & Goldberg, Redondo Beach, CA, for Patsy Watt, individually & director of Vearl Sneed Family Properties Incorporated, defendant.

Mark B Brueggemann, (See above), for Marilyn

Hilzer, individually & Officer and Director of Vearl Sneed Family Properties Incorporated, defendant.

Mark B Brueggemann, (See above), for Myrle A Blomberg, individually & Officer and Director of Vearl Sneed Family Properties Incorporated, defendant.

[Howard L Hoffenberg](#), **Howard L Hoffenberg** Law Offices, Los Angeles, CA, for Vearl Sneed Family Properties Incorporated, a California corporation, defendant.

[Howard L Hoffenberg](#), **Howard L Hoffenberg** Law Offices, Los Angeles, CA, for Vearl Sneed Family Properties Incorporated, cross-claimant.

Mark B Brueggemann, Spierer Woodward Corbalis & Goldberg, Redondo Beach, CA, for Patsy Watt, cross-defendant.

Mark B Brueggemann, (See above), for Marilyn Hilzer, cross-defendant.

Mark B Brueggemann, (See above), for Myrle A Blomberg, cross-defendant.

ORDER GRANTING MOTION TO DISMISS

[COOPER, J.](#)

*1 This matter is before the Court on the Motion of Defendant Vearl Sneed Family Properties, Inc., to Dismiss (docket # 31). The Court deems this matter appropriate for decision without oral argument. See [Fed.R.Civ.P. 78](#); Local Rule 7-15. Accordingly, the hearing set for January 12, 2004, is removed from the Court's calendar. For the reasons set forth below, the Court hereby grants Defendant's Motion.

I. Background

This action arises out of an employment dispute. Plaintiff is employed by Defendant Vearl Sneed Family Properties, Inc. ("VSFPI"). The other individual Defendants, Patsy Watt, Marilyn Hilzer, and Myrle Blomberg are part owners of VSFPI.

II. Diversity Jurisdiction

[\[1\]](#) Plaintiff asserts that this action is properly before

the Court pursuant to its diversity jurisdiction. However, Plaintiff's own allegations state that she is a resident of Los Angeles County, and that VSFPI is a California corporation with a principal place of business in California. FAC ¶¶ 1, 7. Therefore, this Court's diversity jurisdiction is not invoked. [\[FN1\]](#)

[FN1.](#) Plaintiff's offer in the opposition to dismiss her claims against VSFPI does not cure this defect. Whether the Court may exercise its diversity jurisdiction is measured at the time of the filing of the Complaint, not after dismissal of nondiverse parties. [Stock West Corp. v. Taylor, 964 F.2d 912, 917 \(9th Cir.1992\)](#) (en banc).

III. Federal Question Jurisdiction

Plaintiff also asserts that this action is properly before the Court pursuant to federal question jurisdiction. Plaintiff has asserted claims under Title VII of the 1964 Civil Rights Act, [42 U.S.C. § 2000e](#), et seq., and, possibly, the Age Discrimination in Employment Act ("ADEA"), [29 U.S.C. § 621](#), et seq. Plaintiff's first, second, third, and eighth claims fall into this category. Plaintiff also, with her fourth cause of action, asserts an unfair labor practice claim, presumably under the Labor Management Relations Act, [29 U.S.C. § 158](#), et seq.

Plaintiff's remaining claims for defamation, invasion of privacy, intentional infliction of emotional distress, fraud, and contract claims are before the Court pursuant to its supplemental jurisdiction. [See 28 U.S.C. § 1367\(a\)](#).

[\[2\]](#) In the current Motion, Defendant argues that Plaintiff may not maintain a Title VII or ADEA claim against VSFPI [\[FN2\]](#) because VSFPI does not meet the statutory definition of an "employer" under either Title VII (fewer than 15 employees) or the ADEA (fewer than 20 employees). [See 42 U.S.C. § 2000e\(b\)](#) (defining "employer" for purposes of Title VII as entities employing 15 or more individuals for each working day in 20 or more weeks during the year); [29 U.S.C. 630\(b\)](#) (defining "employer" for purposes of the ADEA as entities having 20 or more employees for each working day in the current or previous calendar year). Defendant has submitted evidence that it does not meet either of these definitions. [See Bloomberg Decl.](#), ¶ 6. Plaintiff does not dispute this fact, nor has she asked for additional discovery regarding this issue. Accordingly, the Court hereby dismisses with prejudice the following causes of action, to the extent that they rely on Title

VII and the ADEA: First, second, third, and eighth.

[FN2.](#) As a technical matter, Plaintiff has not asserted any claim under Title VII or the ADEA against VSFPI; rather, she has asserted these claims against the individual Defendants. These claims may not be asserted against individuals. [Miller v. Maxwell's Intern. Inc., 991 F.2d 583, 587 \(9th Cir.1993\)](#) (no individual liability under either Title VII or the ADEA). Ordinarily, the Court would dismiss these claims without prejudice to allow Plaintiff to replead them against her employer. However, here, Plaintiff alleges that VSFPI is her employer, and VSFPI has already provided evidence that these claims may not be asserted against it because it does not meet the statutory definition of an "employer." Therefore, in the absence of Plaintiff's request for discovery regarding the number of employees employed by any Defendant, the Court dismisses these claims with prejudice.

[3] Plaintiff may not maintain her unfair labor practice claim in this forum. The National Labor Relations Board ("NLRB"), not the district courts, has primary jurisdiction to adjudicate unfair labor practice claims. [See Nelson v. International Brotherhood of Electrical Workers, 899 F.2d 1557, 1564 \(9th Cir.1990\)](#). Accordingly, Plaintiff's unfair labor practice claim is dismissed without prejudice to being refiled with the NLRB.

*2 In the absence of a federal question, the Court declines to exercise supplemental jurisdiction over the remaining state-law claims. [See 28 U.S.C. § 1367\(c\)\(3\)](#). Plaintiff's state-law claims, including claims for discrimination, harassment, retaliation, and hostile work environment pursuant to the Fair Education and Housing Act, [Cal. Gov't Code § 12900](#), et seq., are dismissed without prejudice to their being refiled in state court.

IV. Conclusion

The Court dismisses with prejudice Plaintiff's claims under Title VII and the ADEA. The Court dismisses Plaintiff's unfair labor practice without prejudice to its being refiled with the NLRB. The Court declines to exercise supplemental jurisdiction over the remaining state-law claims, and dismisses those claims without prejudice to their being refiled in state court.

Not Reported in F.Supp.2d
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