SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 02/14/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Local Rule 3.43(2).) CourtCall will **NOT** be used by D18. Zoom is approved for all hearings except Issue Conferences and Trials.
Dept. 18's telephone number is: (925) 608-1118.

NOTE: In order to minimize the risk of miscommunication, Dept. 18 prefers and encourages email notification to the department of the request to argue and specification of issues to be argued.

Dept. 18's email address is: dept18@contracosta.courts.ca.gov.

Submission of Orders After Hearing in Department 18 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. The order must include appearances. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C23-00581
CASE NAME: JOEL TOSCANO VS. STEPHANIE WARREN
HEARING ON SUMMARY MOTION ADJUDICATION
FILED BY: TOSCANO, JOEL
TENTATIVE RULING:

Plaintiff Joel Toscano brings this Motion for Summary Adjudication of his first cause of action for Breach of Contract [Motion] against Defendant Worthy Ventures, Inc. [Defendant]. The Motion is opposed by Defendants Worthy Ventures, Inc. and Stephanie Warren.

For the following reasons, the Motion is denied.

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Background

Plaintiff seeks summary adjudication to enforce the promissory note executed by Defendant Stephanie Warren [Warren] on behalf of Defendant and in favor of Plaintiff. Plaintiff presents the promissory note along with his declaration, certain checks representing payment on the note, certain purported text messages, and the deposition testimony of Warren. In opposition, Defendant Warren contends that she was not given $200,000 by Plaintiff at the time the note was signed, and that Plaintiff provided her with $30,000 in cash sometime after the Note was executed. Both parties agree that Defendant Warren has since paid $34,000 to Plaintiff via three payments between September 8, 2021 and March 5, 2022.

The promissory note submitted by Plaintiff as Exhibit A to the operative complaint and as Exhibit A to Plaintiff's deposition [Note] states that on January 20, 2021, Defendant "promises to pay" Joel Toscano "the principal sum of Two Hundred Thousand Dollars ($200,000)," and that "[t]he full balance on this Note … is due an payable on the 20th day of August, 2021." (Declaration of [Dec.] J. Toscano, ¶4, Ex. A.) The Note also includes interest at twelve percent (12%), which Plaintiff advises in his Motion that he does not seek to recover in this action. Plaintiff states in his declaration that the Note reflects the amount he paid to Warren on the date the Note was executed. (Dec. J. Toscano Dec., ¶ 4.)

The deposition transcript submitted by Plaintiff includes testimony by Warren that approx. a week after executing the Note she received "a bundle of money" that she did not count upon receipt, and when she counted it, she found there was only $30,000. (Dec. C. Garrett in support of Motion, ¶ 2, Ex. A at 52:22-60:4, 76:12-77:21; see also Opposition to Motion, 2:24-25; Dec. S. Warren in support of Opposition, ¶ 4.) Warren testified that she had discussions with Joel regarding the discrepancy and modifying the Note, but did not take any other steps to change the amount in the Note. (Dec. C. Garrett, ¶ 2, Ex. A at 52:22-60:4, 76:12-77:21.) Warrent also testified that the money she received from Plaintiff was more of an investment than a loan. (*Ibid*.)

Warren agrees that she provided payment of $34,000 to Plaintiff as reflected in the checks submitted in Exhibit B to Plaintiff's Declaration. (Toscano Dec., Ex. B; Garrett Dec., Ex. A at 65:17-67:9; see also Opposition, 2:26-3:4; Dec. S. Warren, ¶ 4.) In deposition, Warren denied and did not confirm that she received or sent the text messages with Plaintiff that are submitted in Exhibit C to Plaintiff's Declaration. (Toscano Dec., ¶ 5, Ex. C; Garrett Dec., Ex. A at 77:22-84:20.) Furthermore, the subject messages do not evidence that Defendant acknowledged she owed a debt of $200,000 to Plaintiff. (Toscano Dec., Ex. C.)

Standard

"The initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc*. (2005) 128 Cal.App.4th 1510, 1519.) The

plaintiff has the initial burden of "showing there is no defense to [the cause of action] by establishing there is no triable issue of material fact as to "each element of the cause of action entitling the party to judgment on the cause of action." (Code of Civ. Proc. § 437c (p).)

"A party cannot succeed without disproving even those claims on which the opponent would have the burden of proof at trial." (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065.) Even "[w]here, as in this case, no opposition is presented, the moving party still has the burden of eliminating all triable issues of fact." (*Hufft v. Horowitz* (1992) 4 Cal.App.4th 8, 13.) Summary judgment cannot be obtained where the amount of damages is in dispute. (*Dept. of Industrial Relations, Div. Labor Standard Enforcement v UI Video Stores, Inc.* (1997) 55 Cal. App. 4th 1084, 1097.)

Analysis

Plaintiff acknowledges that "the elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiffs performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldiitan* (2011) 51 Cal.4th 811, 821. As Plaintiff contends, Civil Code § 1550 provides that the following are "essential to the existence of a contract": "1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and, 4. A sufficient cause or consideration."

The first issue, here, is whether a contract exists. Plaintiff presents evidence that he and Warren, on behalf of Defendant, executed the Note ostensibly to provide funding for Defendant's business remodeling or "flipping" houses. Both parties concede that Plaintiff provided Defendant with cash, but the date of receipt and the amount received are disputed. (See summary above.) The date of receipt of cash from Plaintiff by Warren and the amount of that cash are not independently documented and the Note was not amended or supplemented to account for the receipt of the cash.

Plaintiff argues that the Note is sufficient evidence of consideration, pursuant to Civil Code §§ 1605, 1614 and 1615, citing *Rancho Santa Fe Pharmacy, Inc. v. Seyfert* (1990) 219 Cal App3d 875 and Evidence Code § 604. *In Rancho Santa Fe Pharmacy*, the court held that "Section 1614 … relieves the party producing the written document of the need to make the initial showing on what in most cases will be a nonissue, i.e., consideration." (*Rancho Santa Fe Pharmacy, Inc. v. Seyfert* (1990) 219 Cal.App.3d 875, 883.) However, here, the written documentation does not reflect consideration as contemplated by Civil Code § 1614. Plaintiff even acknowledges that "the Note simply does not impose any specific transfer obligation on Plaintiff; the sole performance obligation is that Worthy pay Plaintiff $200,000." (Plaintiff's Memorandum of Points and Authorities [MPA] at 7:19-20.) Plaintiff points to no language in the Note that states that Defendant received any consideration in exchange for the promise to pay. As such, Plaintiff cannot rely on the Note as evidence of consideration for Defendant's promise to pay.

Plaintiff then argues, without supporting authority or analysis, that parol evidence of Defendant's testimony as to the amount received is not admissible to dispute the amount owed. (Plaintiff's MPA at 7:26-8:6.) For the reasons discussed above, Plaintiff cannot rely on the Note to prove the existence of a contract as the Note does not provide evidence of consideration. As such, Plaintiff must introduce parol evidence to show that consideration was given. Here, the evidence of consideration is disputed as summarized above. "The trial court may not weigh the evidence in the manner of a fact finder to determine whose version is more likely true..." (*Binder v. Aetna Life Insurance Co.* (1999) 75 Cal.App.4th 832, 840.) As this matter involves a question of credibility, summary adjudication is not appropriate.

Finally, Plaintiff also argues, citing *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, that Defendant waived any right to assert the supposed underpayment of the loan when she failed to obtain a change to the Note or dispute the amount owed in response to Plaintiff's text messages. However, the court in *Wind Dancer* confirms that waiver is a question for the trier of fact. (10 Cal.App.5th at 78.) As such, for this additional reason, summary adjudication is not appropriate.

For such reasons, the Motion is denied.

2. 9:00 AM CASE NUMBER: C23-01917
CASE NAME: APRIL BOLIN VS. CONTRA COSTA COUNTY EMPLOYMENT AND HUMAN SERVICES DEPARTMENT
HEARING ON DEMURRER TO: 1ST AMENDED COMPLAINT
FILED BY: CONTRA COSTA COUNTY EMPLOYMENT AND HUMAN SERVICES DEPARTMENT
TENTATIVE RULING:

The demurrer to plaintiff's First Amended Complaint ("FAC"), filed by Contra Costa County Employment and Human Services Department ("EHSD" or "County") is **sustained in part and overruled in part**. The demurrer is sustained, with leave to amend, as to counts one through five. It is overruled as to counts six and seven (failure to provide reasonable accommodation and retaliation), as discussed below.

Any amended complaint shall be filed and served on or before February 24, 2025.

Background

Plaintiff April Bolin, the oldest employee and the only African-American supervisor in her department, sues her employer, County, over "a continuous pattern of severe and pervasive harassment based on her age and race" and County's failure to accommodate her disabilities (a bilateral hearing loss, Graves' Disease and anxiety).

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Plaintiff began working for EHSD in 2004 as a Social Worker. (FAC, ¶21.) In 2014, she was promoted to Social Work Supervisor II. As a Social Work Supervisor, her duties included supervising a unit of Social Workers II/III, interns, and technical support staff who are assigned complex and specialized caseloads. Plaintiff successfully performed her duties throughout her employment. (FAC, ¶¶21-23.)

Starting in 2019, plaintiff told her Division Manager Leilah Ahranjani and other managers that she is hearing impaired and needed accommodation, but her requests were ignored or denied. Plaintiff specifically requested to meet in a room with walls which would allow her to hear better, but instead Ahranjani merely told her she would speak louder. Plaintiff provided EHSD with a request for accommodation from her doctor, and she also communicated her request for accommodations related to her anxiety and Graves' disease. EHSD has taken no action to accommodate plaintiff or even to engage in an interactive process to discuss such accommodation. In turn, this exacerbates her anxiety. (FAC, ¶¶59-63.)

With respect to the "continuous pattern of severe and pervasive harassment based on her age and race," in April 2019, one Director, Michelle Rodriguez-Ziemer, told plaintiff that Black women are seen as aggressive. Because of this, plaintiff was forced to pass this responsibility to a non-African-American employee. (FAC, ¶24.) Plaintiff also claims she was singled out for her criticism of certain workplace guidelines in September 2019, being told her tone was "angry" and "purposely defiant," and that her use of the word "dictatorial" was "violent." (FAC, ¶26.) This "appeared to [plaintiff] to be racial stereotyping and she communicated this to Ahranjani and management. (FAC, ¶27.) In a subsequent meeting with management, plaintiff was accused of physically pushing Rodriguez-Ziemer in an earlier meeting on August 7, 2019. (FAC, ¶27.)

In February of 2020, Ahranjani criticized plaintiff for leaving early despite the fact that she knew of plaintiff's brother's sudden death, which she was still grieving. In contrast, Ahranjani had been supportive of other non-African-American employees who lost loved ones. (FAC, ¶28.)

In June of 2020, plaintiff was offended by a statement co- authored by Carolyn Foudy, Interim Deputy Director. The statement included the phrase, "all lives matter," which was insensitive and hurtful in the wake of the murder of George Floyd. (FAC, ¶29.)

In August of 2020, plaintiff applied for a Division Management position, and was first on the list of applicants. However, after closing the list, Personnel reopened the list to existing Division Managers to apply, which is against protocol . Ultimately EHSD chose two existing Division Managers over plaintiff. Plaintiff was qualified for this position and believes the only reason for her non-selection was retaliatory for her complaints of racial harassment. (FAC, ¶30.)

In November 2020, plaintiff met with management, including Ahranjani and Foudy. Ahranjani denied having ever used the words "angry," "violent," and "purposely defiant" to apply to plaintiff and Foudy angrily expressed that she believed Ahranjani. Foudy further accused plaintiff of being isolated, and uncollaborative, common stereotypes used to describe African-American women. Foudy told plaintiff that when she was asked a question that was really an order, she was just supposed to say, "yes." (FAC, ¶31.)

In April of 2022, Ahranjani began a pattern of micromanaging plaintiff. Specifically, she stated that she thought plaintiff was "unable to lead [her] staff," and said she would be attending all future meetings with plaintiff's staff, a requirement not imposed on any other supervisors. Ahranjani also told plaintiff that she had reported her to the Chief Nursing Officer and the Deputy Director, for reasons unknown. (FAC, ¶32.) Ahranjani also began requiring plaintiff to include her on all communications with her staff, a requirement not imposed on any other supervisors. (FAC, ¶33.) Ahranjani falsely accused plaintiff of being in disagreement with state mandates and requirements for acceptable productivity. This was a serious claim that undermined plaintiff's professional reputation and endangered her employment. (FAC, ¶34.)

In June of 2022, plaintiff noticed her participation in leadership meetings was limited by the Program Director. During this time, Ahranjani and Foudy became increasingly critical of plaintiff's work. (FAC, ¶35.) On August 3, August 9, August 12, August 25, and August 31, 2022, Ahranjani unjustifiably issued plaintiff counseling memos regarding minor issues. (FAC, ¶36.)

On August 29, 2022, plaintiff filed her administrative FEHA complaint stating that the events at issue are those "on or before August 24, 2022." (See RJN in Support of Demurrer, Ex. A.) She received her Right to Sue Letter on September 22, 2022. (*Id*. at Ex. B.)

Some contentions in the FAC do not specify when they occurred. For example, in paragraph 43, plaintiff alleges that Ahranjani consistently treated plaintiff differently from other Supervisors by excluding her from meetings, that when plaintiff had incidents arise, managers from EHSD were included, despite the normal protocol just including a supervisor and employee, plaintiff had higher expectations placed on her, plaintiff's complaints regarding anxiety in the workplace were ignored.

To the extent that plaintiff alleges events after August 2022, the Court does not include them in this background as they are subject to the exhaustion of remedies bar discussed below.

Plaintiff's initial complaint was filed on August 2, 2023, approximately one year after her administrative complaint and right to sue letter. County responded by filing a demurrer. Plaintiff did not oppose the demurrer, which was accordingly sustained with leave to amend.

Plaintiff filed her FAC on April 12, 2024. The FAC alleges seven causes of action pursuant to various subdivisions of Government Code, § 12940: (1) Discrimination Based on Race and Age; (2) Harassment; (3) Disability Discrimination; (4) Failure to Prevent Discrimination; (5) Failure to Engage in a Good Faith Interactive Process; (6) Failure to Provide Reasonable Accommodation; and (7) FEHA Retaliation.

The County met and conferred on the amended complaint with plaintiff's counsel (see Declaration of Sean M. Rodriquez in Support of Defendant Contra Costa County's Demurrer to Plaintiff's First Amended Complaint), as required by statute, and later filed this demurrer.

The County generally demurs pursuant to Code of Civil Procedure, section 430.10, subdivision (e), arguing the causes of action fail to allege the required elements. In support of its demurrer, County has requested judicial notice of the FEHA administrative complaint and right to sue letter.

Plaintiff opposes the demurrer.

Request for Judicial Notice

In support of its demurrer, the County filed a Request for Judicial Notice ("RJN") with respect to the plaintiff's Complaint of Discrimination Under the Provisions of the California Fair Employment and Housing Act, Case No. 202204-16702513, Dated August 29, 2022, as well as the Notice of Case Closure and Right to Sue, Case No. 202204-16702513, dated September 7, 2022. The request is **granted**. (Evidence Code 452, subdivision (c) [official acts of the legislative, executive, and judicial departments of the state].)

Standard

"When any ground for objection to a complaint, cross-complaint, or answer appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading." (Code Civ. Proc., § 430.30 (a).) In reviewing the sufficiency of a complaint, all material facts properly pleaded are deemed admitted, but not contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, citations omitted.) On demurrer, the complaint is read as a whole and the parts in their context, considering matters which may be judicially noticed. (*Ibid*.; Code Civ. Proc. § 430.30(a).)

A demurrer cannot rightfully be sustained to part of a cause of action or to a particular type of damage or remedy. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047.)

Where a demurrer is sustained, the burden of proving a reasonable possibility that it can be cured through amendment is on the plaintiff. (*Blank, supra*, at 318.)

Discussion

1. Statute of Limitations

County argues "several of plaintiff's theories of recovery" fail based on the previously applicable one-year statute of limitations for a Fair Employment and Housing Act ("FEHA") administrative complaint. Plaintiff does not respond to the argument.

It is true that, at the time of the 2019 events, there was a one-year limitations period for filing a claim with California's Civil Rights Department ("CRD") (formerly the Department of Fair Employment and Housing) (under former Gov. Code § 12960(d)(1)). However, because the limitations period changed in January 2020, when the limitations period for 2019 events had not yet expired, the time to file her administrative complaint as to the 2019 events then was extended to three years (under Gov. Code § 12960(e)(5)).

Plaintiff did not file her CRD complaint until late August 2022. Accordingly, it appears that events earlier than August 2019 (including when Michelle Rodriguez-Ziemer told plaintiff that "Black women are seen as aggressive") cannot be considered as the basis for the FAC causes of action because they are barred by the statute of limitations. (FAC, ¶24.) On the other hand, County also

argues events from early August and September 2019 are barred, but these events do fall within the three-year period prior to the CRD complaint and they are not barred based on timing.

2. Exhaustion

County also raises plaintiff's failure to exhaust administrative remedies. As with the timing issues discussed above, plaintiff's opposition fails to respond.

County argues that the FEHA requires that an employee file a charge with the CRD that sets forth the particulars of any FEHA violations, prior to filing a lawsuit. Exhaustion in the CRD is mandatory and jurisdictional with respect to FEHA claims and thus an employee pursuing FEHA claims in court must have first filed an administrative complaint and obtained a right-to-sue letter from the agency. (*Foroudi v. The Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1002-1003, citations omitted.) Claims in the employee's civil complaint that fall outside the scope of the DFEH/CRD complaint are barred. (*Ibid*.)

Although plaintiff filed a charge with the CRD in late August of 2022 (see County's RJN in Support of Demurrer, Ex. A), the FAC contains numerous allegations after that date. Additionally, while the issue of disability accommodation clearly appears in the CRD complaint, other bases for the FAC are not as clear. Despite the FAC mentioning anxiety, the CRD complaint specifically denies any "mental health diagnosis." Setting aside the specific factual contents, however (this is not the grounds on which County demurs), plaintiff failed to exhaust her remedies with respect to the events after August 2022. None of those later events (including, but not limited to, the reassignment of her team) may be considered to establish whether plaintiff states a cause of action.

While the statute of limitations and exhaustion arguments are not alone a bar to any particular cause of action, and a demurrer cannot be sustained to part of a cause of action, these arguments appear to have merit. Accordingly, these arguments affect the sufficiency of the causes of action, as discussed below.

3. Race and Age-Based Discrimination (Count 1)

The elements of a claim for discrimination under FEHA include that (1) plaintiff was a member of a protected class, (2) plaintiff was qualified for the position she sought or was performing competently in the position she held, (3) plaintiff suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggesting a discriminatory motive. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355.)

County argues plaintiff fails to state the third and fourth elements here.

What constitutes an adverse employment action "is not, by its nature, susceptible to a mathematically precise test, and the significance of particular types of adverse actions must be evaluated by taking into account the legitimate interests of both the employer and the employee." (*Malais v. Los Angeles City Fire Dept.* (2007) 150 Cal.App.4th 350, 357, quoting *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054.) Minor or relatively trivial adverse actions or conduct by employers of fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms,

conditions, or privileges of employment and are not actionable. On the other hand, adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of sections 12940[, subdivision] (a) and 12940[, subdivision] (h)." (*Ibid*.)

Notably, in paragraphs 134 and 153, there are references to plaintiff being ultimately "terminated." These are the only references to such termination that the Court located in the FAC, and they appear to directly conflict with the ongoing retaliation allegations in paragraph 57. If plaintiff was terminated, this would undoubtedly constitute an adverse employment action, but plaintiff would face an exhaustion of remedies problem. In any amended complaint, plaintiff shall address the inconsistency.

Plaintiff's opposition, in arguing she has stated an adverse employment action, refers to the County's decision not to hire her for a Division Management position she had applied for in August of 2020. This contention that she was "denied promotion" is also reflected in her CRD complaint. Plaintiff contends she was qualified and "first on the list," but the County broke with protocol to re-open the list (after closing it) to allow existing Division Managers to apply, and ultimately chose two existing Division Managers over plaintiff. While this could potentially constitute an adverse employment action (this is generally a question for the factfinder), nothing about the allegations suggest a race or age based reason.

On the contrary, it appears the position was awarded to someone with higher qualifications. Further, it is unclear whether the person hired for the position was a member of plaintiff's protected classes. Plaintiff's own allegations note that she "believes the only reason for her non-selection was retaliatory *for her complaints* of racial harassment." (FAC, ¶30.) Even assuming this is true, this would suggest her seventh cause of action, retaliation, not discrimination. (Notably, aside from this reference, there is no mention of any "complaints of racial harassment" in the FAC.)

While the opposition argues plaintiff was "repeatedly mislabeled as an angry black woman," that is not an accurate characterization of the allegations, which instead state that plaintiff was accused of being angry, isolated, uncollaborative, and defiant. (FAC, ¶¶27, 31.) It is also true that the plaintiff is African-American, but no one is alleged to have labeled her "an angry black woman," let alone those who oversaw the hiring of a Division Management position. The FAC itself admits the accusations merely "appeared" to plaintiff to be "racial stereotyping" since they are "common stereotypes used to describe African-American women." These descriptors are not, on their face, specific to African-Americans and, inferring a discriminatory animus into these terms would inhibit the ability of employers to candidly provide feedback to their employees. While the opposition argues plaintiff was subject to "racially charge [sic] labels," the Court disagrees the allegations rise to the level of race discrimination.

As for age discrimination, plaintiff does not plead any facts that suggest her age was the cause of any particular treatment.

The demurrer to the first cause of action is sustained, with leave to amend.

4. Harassment (Count 2)

County demurs to the cause of action for harassment, arguing plaintiff can state neither age-based nor race-based harassment because nothing in the FAC could be described as "severe or pervasive."

FEHA prohibits employers from harassing their employees or knowingly allowing others to do so. (Gov. Code § 12940(j).) To state a successful harassment claim, a plaintiff must show that "(1) she is a member of a protected group; (2) she was subjected to harassment because she belonged to this group; and (3) the alleged harassment was so severe that it created a hostile work environment." (*Lawler v. Montblanc N. Am., LLC* (9th Cir. 2013) 704 F.3d 1235, 1244, citing *Aguilar v. Avis Rent A Car System, Inc*. (1999) 21 Cal.4th 121, 129.)

Courts look to the totality of the circumstances to determine whether harassment is severe or pervasive enough to alter the workplace environment. (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 628; Gov. Code, § 12923 (c).) "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) are not sufficient to create an actionable claim of harassment." (*Bailey, supra*, 16 Cal.5th at 628, internal quotation marks and citation omitted.) FEHA does not impose a "civility code. (*Sheffield v. Los Angeles County Dept. of Social Services* (2003) 109 Cal.App.4th 153, 161.) The offensive behavior must relate to a protected category such as disability, gender or race, and must be sufficiently "severe or pervasive" so as to interfere with the employee's working conditions or work performance, creating an "objectively" abusive work environment and one subjectively perceived by the employee as abusive. (*Id*.; *Mokler v. County of Orange* (2007) Cal.App.4th 121, 145 [to be actionable, workplace must be permeated with discriminatory intimidation, ridicule and insult sufficiently severe or pervasive to alter the conditions of the victims employment and create an abusive working environment].)

Plaintiff's opposition responds that the "racially abusive environment" existed since 2019, resulting in "a continual repeated harm to plaintiff." She cites paragraphs 31 and 43 of the FAC. Paragraph 31 describes the November 2020 meeting with management wherein Ahranjani denied having ever used the words "angry," "violent," and "purposely defiant" to apply to plaintiff, and wherein Foudy angrily expressed that she believed Ahranjani and accused plaintiff of being isolated, and uncollaborative. Paragraph 43 describes Ahranjani excluding plaintiff from meetings, management being involved in incidents that arise with plaintiff, and the higher expectations allegedly placed on plaintiff.

The cited paragraphs do not amount to race or age-related harassment. No one is alleged to have ever commented on plaintiff's age. Setting aside the "Black women are seen as aggressive" event (which is time-barred since it took place more than three year prior to plaintiff's CRD complaint), no explicit references to plaintiff's race are alleged whatsoever.

While plaintiff may have been offended by her superiors' language and their use of terms frequently targeting Black women, the feedback provided ("defiant," "angry") had nothing to do with race or age on its face. Employers and their agents are permitted to communicate feedback to

employees. The standard to which they are held is an objective one. The remarks and other actions alleged here do not rise to the level of harassment based on race or age.

The demurrer to the second cause of action is sustained, with leave to amend.

5. Disability Discrimination (Count 3)

The County demurs to the third cause of action for disability discrimination. Disability discrimination, as both parties appear to agree, requires a plaintiff to plead and establish (1) she suffered from a disability; (2) she was qualified to perform the essential duties of the position with or without reasonable accommodation; and (3) she was subjected to an adverse employment action because her disability. (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236.)

County argues plaintiff does not allege an adverse employment action or that any such action was taken in response to plaintiff's claimed disability. Plaintiff cites the County's August 2020 failure to award her a management position. (FAC, ¶30.) As discussed above with respect to the race and age-based discrimination claim, this could potentially constitute an adverse employment action, but nothing about the allegations suggest a disability-based reason. The position was awarded to someone with higher qualifications who may or may not have had a disability. Plaintiff herself "believes the only reason for her non-selection was retaliatory *for her complaints* of racial harassment." (FAC, ¶30.) She does not attribute this failure to procure the position to any disability.

Citing paragraphs 32 and 38 of her FAC, plaintiff also asserts she has sufficiently alleged the third element by raising the "increased scrutiny" to which she has been subjected. Paragraph 32 and paragraph 38 describe some of the micromanagement issues and criticisms by Ahranjani. None of the allegations attribute these issues to any disability, however. It is also unclear whether plaintiff has sufficiently exhausted with respect to the events described in these two paragraphs since they do not contain any date references and the administrative complaint does not raise these sort of concerns.

The demurrer is sustained to the disability discrimination cause of action, with leave to amend.

6. Failure to Prevent Discrimination (Count 4)

Based on the above discussion with respect to the discrimination claims, County's demurrer to the derivative fourth cause of action (failure to prevent discrimination), is sustained with leave to amend.

7. Failure to Engage in a Good Faith Interactive Process (count 5)

The County demurs to the fifth cause of action.

The elements of a cause of action for failure to engage in the interactive process are: (1) the plaintiff has a disability covered by FEHA and known to the defendant; (2) the plaintiff requested a reasonable accommodation for his or her disability so that he or she could perform the essential functions of the job; (3) the plaintiff was willing to participate in an interactive process to determine whether a reasonable accommodation could be made so that he or she could perform the essential job requirements; (4) the defendant failed to participate in a timely, good faith interactive process to

determine whether reasonable accommodation could be made; (5) resulting in harm to the plaintiff. (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.)

In paragraph 58, the FAC sets forth plaintiff's alleged disabilities ("bilateral hearing loss, hyperthyroidism/Graves' Disease, heat intolerance, and anxiety"), and in paragraph 118, she alleges one or more of these are covered by FEHA. Plaintiff alleges that she provided a note from her doctor "with a request for accommodation" (FAC, ¶59), and in paragraph 120, she alleges that the County was aware of her disability. Most of what needs to be alleged is alleged.

However, plaintiff fails to allege that she was "willing to participate in an interactive process to determine whether a reasonable accommodation could be made so that he or she could perform the essential job requirements." This element is necessary in order for the FAC to sufficiently allege this cause of action.

The demurrer to the fifth cause of action is sustained with leave to amend.

8. ***Failure to Provide Reasonable Accommodation (Count 6)***

The County demurs to the sixth cause of action.

The elements of a failure to accommodate claim are (1) the plaintiff has a disability under the FEHA, (2) the plaintiff is qualified to perform the essential functions of the position, and (3) the employer failed to reasonably accommodate the plaintiff's disability. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1009-1010.)

Plaintiff asserts the requisite facts. In paragraph 59, plaintiff's FAC states that "[s]tarting in September 2019," plaintiff made requests for accommodation for her hearing impairment, "all of which have been ignored or denied." On September 9, 2019, plaintiff alleges she made a specific request to "meet in a room with walls which would allow her to hear better," but the request was denied. Ahranjani merely told plaintiff she would speak louder. The FAC states plaintiff provided EHSD with a request for accommodation from her doctor, but all of her requests for accommodation were ignored.

The County does not challenge that plaintiff had a FEHA covered disability, that plaintiff is qualified to perform the essential functions of the position, or that it failed to provide any accommodation. Instead, County inserts an additional element, about informing the County of a "qualifying medical disability for which she specifically requested a reasonable and [sic] available accommodation." This is not the standard.

The cause of action for failure to provide reasonable accommodation is sufficient. The demurrer to the sixth cause of action is overruled.

9. FEHA Retaliation (Count 7)

The County attacks the cause of action for FEHA retaliation.

"In order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse

employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1042; *Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 930 [stating the same standard for wrongful termination in violation of public policy].) Protected activity includes when an "employee opposes conduct that ultimately is determined to be unlawfully discriminatory under the FEHA, but also when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA." (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1043; see also, Cal. Code Regs., tit. 2, § 11021(a)(1)(D).)

The County argues plaintiff has not shown that she engaged in protected activity under FEHA, such as by reporting race or age discrimination. However, plaintiff alleges, in paragraph 27, that she communicated to Ahranjani and management that she was concerned about the criticism calling her violent and dictatorial because it appeared to be racial stereotyping. She further connects her complaint to the failure to be awarded a management position in August of 2020 (FAC, ¶30.) This is sufficient for pleading purposes.

The demurrer is overruled as to the retaliation cause of action.

3. 9:00 AM CASE NUMBER: C23-02605
CASE NAME: TALWINDER KAHLON VS. RICHARD FONG, JR.
***HEARING ON MOTION IN RE: ENTRY OF JUDGMENT**
FILED BY: PINOLE STATION HOMEOWNERS ASSOCIATION
****TENTATIVE RULING:****

On August 16, 2024, the trial judge granted Pinole Station Homeowners Association's motion for judgment on the pleadings. The motion was granted but allowed Plaintiff leave to amend. Plaintiff was ordered to file any amended complaint by 4pm on August 30, 2024. Plaintiff has not filed an amended complaint. On October 11, 2024, defendant Pinole Station Homeowners Association filed a motion for entry of judgment based upon plaintiff's failure to file an amended complaint.

Plaintiff has failed to file a timely opposition despite the court's admonishment that plaintiff needed to abide by court rules and procedures. The opposition filed by plaintiff alleges he was not served with the current motion. Further, plaintiff improperly requests the court rescind its prior order without filing a noticed motion. Here, the court has proof the motion including the date of the hearing was served timely upon plaintiff via email. It is unclear to the court why Plaintiff has not just filed an amended complaint.

Pursuant to Code of Civil Procedure if a motion for judgment on the pleadings is granted on the entire complaint with leave to file an amended complaint, but an amended complaint is not filed within the allotted time, judgment shall be entered forthwith in favor of the moving party. (See Code of Civil Procedure sections 438, subd. (h)(4)(c) and subd. (i)(1)(B).

The motion is granted. The court enters judgment in favor of defendant Pinole Station Homeowners Association.

4. 9:00 AM CASE NUMBER: C23-02605
CASE NAME: TALWINDER KAHLON VS. RICHARD FONG, JR.
HEARING IN RE: JOINDER BY RICHARD FONG JR. AND FONG & FONG APC TO MOTION FOR ENTRY OF JUDGMENT
FILED BY: RICHARD FONG JR. FONG AND FONG A PROFESSIONAL CORPORATION
TENTATIVE RULING:

Defendants' motion for joiner is granted. For the reasons stated on line 3, the court grants defendants' motion for entry of judgment in favor of defendants.

5. 9:00 AM CASE NUMBER: C24-00806
CASE NAME: JANE DOE VS. JONATHAN SALDANA
***HEARING ON MOTION IN RE: BE RELIEVED AS COUNSEL FOR JANE DOE**
FILED BY: Counsel for Plaintiff
TENTATIVE RULING:

The motion to be relieved as counsel is granted. The court's order shall be effective upon filing proof that the court's order was served upon the client.

6. 9:00 AM CASE NUMBER: C24-01749
CASE NAME: GEORGE NAJJAR VS. ALEX GOLDSTEIN
HEARING IN RE: APPLICATION TO APPEAR PRO HAC VICE AS TO DAVID TYLER ADAMS FOR DEFENDANTS
FILED BY: GOLDSTEIN, ALEX
TENTATIVE RULING:

Granted.

7. 9:00 AM CASE NUMBER: C24-01749
CASE NAME: GEORGE NAJJAR VS. ALEX GOLDSTEIN
HEARING IN RE: TO PRO HAC VICE AS TO JOSHUA E. HOLLANDER FOR DEF
FILED BY: GOLDSTEIN, ALEX
TENTATIVE RULING:

Granted.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 02/14/2025

8. 9:00 AM CASE NUMBER: C24-01749
CASE NAME: GEORGE NAJJAR VS. ALEX GOLDSTEIN
HEARING IN RE: PRO HAC VICE AS TO MARC E. KASOWITZ FOR DEFS
FILED BY: GOLDSTEIN, ALEX
TENTATIVE RULING:

Granted.

9. 9:00 AM CASE NUMBER: MSC20-01760
CASE NAME: BYERS VS USAA GENERAL INDEMNITY COMPANY
HEARING IN RE: PRO HAC VICE APPLICATION AS TO GAVIN CHILDERS
FILED BY:
TENTATIVE RULING:

Granted.

10. 9:00 AM CASE NUMBER: MSC20-01760
CASE NAME: BYERS VS USAA GENERAL INDEMNITY COMPANY
HEARING IN RE: PRO HAC VICE APPLICATION AS TO MATTHEW LEONARD
FILED BY:
TENTATIVE RULING:

Granted.

11. 9:00 AM CASE NUMBER: MSC21-01659
CASE NAME: EGUILOS VS GOODSON
***HEARING ON MOTION IN RE: STRIKE DEFENDANTS SUPPLEMENTAL EXPERT EXCHANGE**
FILED BY: EGUILOS, RUFINA
TENTATIVE RULING:

Civil Code of Procedure section 2034.280 provides: "Within 20 days after the exchange described in Section 2034.260, any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party of the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject."

Here, the parties' initial expert disclosure took place on September 9, 2024. Any supplemental expert witness list must have been disclosed by September 29, 2024. The supplemental expert disclosure that occurred on September 30, 2024, was untimely. For that reason, Miranda Van Horn is excluded from testifying at trial.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 02/14/2025

12. 9:00 AM CASE NUMBER: MSC21-02487
CASE NAME: ADVANCE CONSTRUCTION VS. CLARK
***HEARING ON MOTION IN RE: ENFORCE SETTLEMENT AGREEMENT**
FILED BY: ADVANCE CONSTRUCTION TECHNOLOGY, INC.
****TENTATIVE RULING:****

The unopposed motion to enforce the settlement agreement is granted. Judgment is entered in favor of plaintiff in the amount of $20,000. Plaintiff is awarded attorney fees and costs in the amount of $4,185. The total award is $24,185.

13. 9:00 AM CASE NUMBER: N23-0611
CASE NAME: ROQUE VS. PARKER
***HEARING ON MOTION IN RE: SET ASIDE DEFAULT**
FILED BY:
****TENTATIVE RULING:****

Before the Court is Defendant Christopher Parker's Motion to Set Aside Default Judgment. ("Motion").

Procedural History

Plaintiff filed her Complaint for Partition of Real and Personal Property on March 30, 2023. The Proof of Service of Summons on file indicates that Defendant was personally served on April 21, 2023. As such, a response was due on or before May 22, 2023.

On May 15, 2023, Defendant filed a motion to extend time to respond to the Complaint. The Court granted this request, holding the Defendant "may have until August 24, 2023 to answer in this matter." The Court also made clear that "No further extensions will be given." On August 29, 2023, when no responsive pleading had been filed and served, Plaintiff filed a request for default, which was granted that same day.

Almost one month later, on September 20, Defendant filed a motion to set aside the default. On December 7, 2023, the Court issued a tentative ruling denying the motion. As no party contested the tentative ruling, it became the Order of the Court on that date. (Local Rule 3.43.) On February 23, 2024, the Court entered an Interlocutory Judgment. Thereafter, on July 22, 2024, a Judgment for Partition (Default) ("Final Judgment") was entered.

Defendant filed the instant motion to set aside default judgment on October 21, 2024.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 18
JUDICIAL OFFICER: DANIELLE K DOUGLAS
HEARING DATE: 02/14/2025

Standard

Defendant moves to set aside the default judgment pursuant to California Code of Civil Procedure ("CCP") §473(b).

Code of Civil Procedure 473(b) provides, in relevant part:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

When moving to set aside a default under CCP §473(b), the moving party has the burden of proof. (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 88.) However, section 473 is often applied liberally when a party in default moves promptly to seek relief and the party opposing the motion will not suffer prejudice if relief is granted. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

Analysis

Time to Challenge Default

When a party seeks relief from a default, "[a]pplication for this relief … shall be made within a reasonable time, in no case exceeding six months, after the … order … was taken." (CCP §473(b).) Default was entered on August 29, 2023. An interlocutory judgment was entered on February 23, 2024. The Final Judgment was entered on July 22, 2024.

Defendant makes clear that he is moving to set aside only the Final Judgment, as the six-month time limit has clearly run with respect to the default and interlocutory judgment. Defendant argues that since he is only moving to set aside the Final Judgment that his motion is timely as it is brought within six-months of its entry, citing *Grados v. Shiau* (2021) 63 Cal.App.5th 1042. While that may be the case in some situations (for example when the judgment awards damages not set forth in the complaint – see e.g. *Behm v. Clear View Technologies* (2015) 241 Cal.App.4th 1, 17), that analysis does not apply to the instant case.

The court in *Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267 provides a succinct overview of the proper analysis:

> [Defendant's] motion was filed less than six months after entry of the default judgment, but more than six months after entry of its default. The trial court therefore could not set aside the default under Code of Civil Procedure section 473. And because it could not set aside the default, it also could not set aside the default judgment under Code of Civil Procedure section 473, because that would be 'an idle

> act.' (*Howard Greer Custom Originals v. Capritti* (1950) 35 Cal.2d 886, 888[].) 'If the judgment were vacated, it would be the duty of the court immediately to render another judgment of like effect, and the defendants, still being in default, could not be heard in opposition thereto. …'" (*Id.* at 273.)

The California Supreme Court in *Howard*, quoted by *Pulte Homes,* includes an even more in-depth explanation of this legal tenet:

> The setting aside and vacating the judgment alone, which was all the relief sought in said motion, would have been an idle act, because the default . . . would have stood undisturbed. The default cut off defendants from making any further opposition or objection to the relief which plaintiff's complaint shows he is entitled to demand. A defendant against whom a default has been entered is out of court and is not entitled to take any further steps in the cause affecting plaintiff's right of action; he cannot thereafter, until such default is set aside in a proper proceeding, file pleadings or move for a new trial, or demand notice of subsequent proceedings. . . . [citing cases] . . . If the judgment were vacated it would be the duty of the court immediately to render another judgment of like effect, and the defendants, still being in default, could not be heard in opposition thereto. …" (*Howard*, supra, 35 Cal.2d at 888-89 citations omitted.)

Defendant concedes that he is not, and cannot, seek to have the default set aside. While the current request to set aside the Final Judgment may be timely, the Court is without power to set it aside as doing so would be an 'idle act.' (*Pulte Homes Corp.*, supra, 2 Cal.App.5th at 273.) Even if the Court set aside the Final Judgment, it would be required to thereafter enter a new final judgment – without input from Defendant as he is and would remain in default.

Based on the above, Defendant's Motion is **denied**.

Attorney Fee Request

Plaintiff requests that she be awarded attorney's fees in the amount of $4,500 'pursuant to Code of Civil Procedure section 1032 (b).' In the supporting declaration, counsel contends that that section allows the court to award attorney's fees to a prevailing party including those where a party defends against a motion to set aside a judgment and is successful," without citation to any case supporting this claim.

To begin with, section 1032 (b), says nothing about attorney fees. It states: "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." Section 1032 "simply allows for the award of statutory costs upon the determination by the court of a prevailing party." (*Skaff v. Rio Nido Roadhouse* (2020) 55 Cal.App.5th 522, 543.) "Nothing about this provision suggests that a 'prevailing party' determination may give rise

to an award of *attorney fees* when such award is no authorized under another statute." (*Id.* at 543-44 italics in original.) Plaintiff fails to cite any statute that allows attorney fees in the current situation.

Plaintiff's request for attorney fees is **denied**.

Law & Motion

ADD-ON

14. 9:00 AM CASE NUMBER: C24-02886
CASE NAME: TRISHA OLIVAREZ VS. ED HAWKINS, JR.
***HEARING ON MOTION IN RE: TO CONSOLIDATE OR, IN THE ALTERNATIVE, STAY UNLAWFUL DETAINER ACTION**
FILED BY: OLIVAREZ, TRISHA
TENTATIVE RULING:

The request to stay the unlawful detainer is granted. The unlawful detainer, PS24-1237, is set for case management conference on 2/24/2025, at 9 am in Department 18. The court trial in the unlawful detainer set for 2/18/25 is vacated.