Tentative Rulings for January 22, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(24)

Tentative Ruling

Re: ***Zabalza v. General Motors LLC***
Superior Court Case No. 22CECG00482

Hearing Date: January 22, 2025(Dept. 503)

Motion: Plaintiff's motion for Attorney Fees, Costs and Expenses

Tentative Ruling:

To continue to Thursday, February 6, 2025, at 3:30 p.m. in Department 503, in order to allow plaintiff to file his memorandum of points and authorities in support of his motion. If moving party wishes the motion to be considered on its merits, the brief must be filed on or before January 29, 2025.

Explanation:

Plaintiff's Notice of Motion and proof of service reflect that the moving papers included the memorandum of points and authorities, which is indeed an indispensable component of a motion, unless exempted by California Rules of Court, rule 3.1114. (Cal. Rules of Court, rules 3.1112 and 3.1113.) However, the court cannot locate the memorandum in the file, so it apparently was not filed along with the other moving papers. The court may construe the failure to file a memorandum as an admission that the motion is not meritorious and that it is cause for its denial. (Cal. Rules of Court, rule 3.1113(a).) However, since the proof of service reflects service of the memorandum on defendant, and the opposition brief does not note the absence of the memorandum as an issue, the court assumes this error of plaintiff's did not prejudice defendant, so the court will allow plaintiff an opportunity to file the brief before it considers the merits of the motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 1/21/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Duron v. Xiong***
Superior Court Case No. 23CECG00310

Hearing Date: January 22, 2025 (Dept. 503)

Motion: by Defendant Mai Xiong to Compel Plaintiff to Appear for Deposition

Tentative Ruling:

To grant. Plaintiff Emilia Juarez shall appear for deposition on a date, within two weeks from service of the order by the clerk, to be agreed upon by the parties. (Code Civ. Proc., § 2025.450, subd. (c)(1).) To impose $660.00 in monetary sanctions against Plaintiff Emilia Juarez and in favor of Defendant Mai Xiong, to be paid within 30 days to counsel for defendant.

Explanation:

Proper service of a notice of deposition compels any deponent who is a party to the action to attend, to testify, and to produce documents if requested. (Code Civ. Proc., § 2025.280, subd. (a).) Where a party deponent fails to appear at a properly noticed deposition, and no valid objection under section 2025.410 has been served, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc., § 2025.450, subd. (a).)

Defendant Mai Xiong served plaintiff Emilia Juarez with a notice of deposition on July 17, 2024 setting forth a deposition date of October 22, 2024. (Hickey Decl., ¶ 4, Ex. A.) On October 16, 2024, counsel for the deponent requested her client appear remotely for her deposition due to plaintiff's being the only caretaker for her child with special needs. (Hickey Decl., ¶ 5, Ex. B.) Defense counsel offered for plaintiff to bring her son to the deposition where he could accompany her in the conference room or sit in the lobby, however he was advised plaintiff had five children and did not feel comfortable bringing them to the deposition. (Hickey Decl., ¶¶ 6-7, Ex. C, D.) After several days of emails back and forth, plaintiff's counsel remained unwilling to produce her client in-person for the deposition to proceed as noticed.

Plaintiff did not serve a formal objection to the Notice of Deposition nor did she proceed with a motion for protective order as was suggested in the email conversation. The motion to compel the deposition of Emilia Juarez is granted. The court intends to impose sanctions in the amount of $660.00 for the time spent to prepare the motion at bench, subject to increase in the event oral argument is requested.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 1/21/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Mercado v. Washington Unified School District***
Superior Court Case No. 21CECG01671

Hearing Date: January 22, 2025 (Dept. 503)

Motion: By Defendant Washington Unified School District for Summary Judgment or, in the alternative, Summary Adjudication

Tentative Ruling:

To grant summary judgment. Defendant Washington Unified School District is directed to submit a proposed judgment consistent with this order within five days of service of the minute order by the clerk.

Explanation:

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

Affidavits of the moving party must be strictly construed and those of the opponent liberally construed. (*Petersen*, *supra*, 259 Cal.App.2d at p. 775.) The opposing affidavit must be accepted as true, and need not be composed wholly of strictly evidentiary facts. (*Ibid.*) Any doubts are to be resolved against the moving party. The facts in the affidavits shall be set forth with particularity. (*Ibid.*) The movant's affidavit must state all of the requisite evidentiary facts and not merely the ultimate facts or conclusions of law or conclusions of fact. (*Ibid.*) All doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

Plaintiff Felipe Mercado ("Plaintiff") brings five causes of action in his Second Amended Complaint ("SAC") against defendant Washington Unified School District

("Defendant") for disparate treatment based on race, color, national origin and ancestry; hostile work environment harassment; retaliation; failure to prevent harassment; and declaratory relief. Plaintiff alleges that Defendant discriminated against him by giving preferential treatment to Caucasian employees that were his subordinates, resulting in no disciplinary action against the Caucasian employee, and disciplinary action against Plaintiff. Plaintiff alleges that as a consequence of these actions, and because he spoke out about preferential treatment for non-Hispanic staff, he was unjustly disciplined by demotion.

Defendant moves for summary judgment or, in the alternative, summary adjudication of each cause of action.

Disparate Treatment

The first and third causes of action similarly relate to the allegations of disparate treatment and retaliation thereon, based on race, color, national origin, and/or ancestry within the meaning of Government Code section 12940, subdivision (a). Government Code section 12940 states, in pertinent part:

> It is an unlawful employment practice, unless based upon a bona fide occupational qualification… [¶] (a) For an employer, because of the race… color, national origin, ancestry… of any person… to bar or to discharge the person from employment…, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

To succeed, a plaintiff must show a set of circumstance that, if unexplained, permit an inference that it is more likely than not the employer intentionally treated the employee less favorably than others on prohibited grounds. (*Jones v. Dept. of Corrections* (2007) 152 Cal.App.4th 1367, 1379.) The specific elements of a prima facie case may vary depending on the particular facts. (*Guz v. Bechtel Nat'l Inc.* (2000) 24 Cal.4th 317, 355.) Generally, the plaintiff must provide evidence that he was (1) a member of a protected class; (2) was performing competently in the position she held; (3) suffered an adverse employment action; and (4) some other circumstance suggests discriminatory motive. (*Ibid.*)

Similarly, to succeed on a retaliation claim, a plaintiff must show (1) he 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.) A protected activity includes a person opposing any practices forbidden by the Fair Employment and Housing Act. (Gov. Code § 12940, subd. (h).)

Generally, a defendant employer's motion for summary judgment bears the burden to present evidence of nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the termination. (*Wilkin v. Comm. Hospital of the Monterey Peninsula* (2021) 71 Cal.App.5th 806, 821-822.) To defeat the motion, the employee then must adduce or point to evidence raising a triable issue that

would permit a trier of fact to find by a preponderance that intentional discrimination occurred. (*Id.* at p. 822.)

Defendant submits that Plaintiff cannot show that he suffered an adverse employment action. Defendant submits that Plaintiff, over the course of the period relevant to the SAC continued to receive pay increases, and generally received no discipline. (*See generally* Statement of Undisputed Material Facts ["UMF"] Nos. 1-24, 28.)

Plaintiff opposes. Specifically, Plaintiff characterizes his 2020/2021 assignment, as a "Principal on Special Assignment" as a demotion because the position, moved him from Principal to Vice Principal, and stripped Plaintiff of authority and responsibility, independent of salary. (Plaintiff's Response to UMF, Nos. 23, 24.) This is sufficient to raise a triable issue of material fact. An adverse employment must, in proper context, materially affect the terms, conditions, or privileges of employment to be actionable. (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1052.) The phrase "'terms, conditions, or privileges' must be interpreted liberally and with reasonable appreciation of the realities of the workplace in order to afford employees the appropriate and generous protection against employment discrimination that the [Fair Employment and Housing Act] was intended to provide." (*Id.* at p. 1054.) Defendant did not file a reply brief, and does not otherwise demonstrate that, as a matter of law, an increase in pay, but decrease in responsibilities and authority cannot be deemed an adverse employment action. Accordingly, the court finds there are triable issues of material fact as to whether the employment actions described, constitute a demotion.

Defendant further submits that even if there is an adverse employment action, Plaintiff cannot establish pretext of discriminatory motive. Here, the SAC alleges that the substantial motivating factor was Plaintiff's protected status as a Hispanic. Defendant submits that the transfer of Plaintiff to Principal on Special Assignment was not motivated by Plaintiff being Hispanic. (*See* UMF Nos. 23, 24, 27-29, 33-36.)

Plaintiff again opposes. Specifically, Plaintiff disputes that the adverse action was a culmination of inaction towards comments he made regarding certain insubordinate and harassing behavior. However, none of the disputes to the material facts submitted demonstrate a discriminatory motive. Though Plaintiff argues that he was subjected to disparate treatment compared to his non-Hispanic colleagues, no evidence was identified to support the argument. At best, Plaintiff submits a conclusory statement that he suffered retaliation as a consequence of raising complaints of a hostile work environment. (Response to UMF Nos. 23, 24, 27, 28, 36; *see also* Plaintiff's Statement of Evidence, Ex. F, Mercado Decl., ¶ 18, 35, 36.)[1] None of the evidence cited by Plaintiff suggests a triable issue of material fact that any of the alleged adverse employment actions were the consequence of racial animus. (*See* Plaintiff's Statement of Evidence, Ex. A, Mercado Depo., pp. 47:5-49:25.) Accordingly, Plaintiff fails his burden to demonstrate a triable issue of material fact as to the issue of discriminatory motive.

[1] Defendant's Objections to the Declaration of Felipe Mercado, No. 6, 7, 13, 27, 30 are sustained as hearsay. Objection No. 31 is sustained as improper opinion testimony. Objections No. 8 to 12, 14 to 26, 28, 29, and 32 to 38 are overruled. All other objections were not material to the disposition of the motion. (Code Civ. Proc. § 437c, subd. (q).)

Further, it is generally uncontested that, at some point, Plaintiff conveyed belief that a subordinate was acting inappropriately. (Defendant's Statement of Evidence, Ex. C, Mercado Depo., pp. 65:5-84:11.) However, nothing submitted demonstrates any causal link between the report and the alleged adverse employment action demotion. (*See generally* Mercado Depo., at Defendant's Statement of Evidence, Ex. C, Plaintiff's Statement of Evidence, Ex. A.) No other evidence was identified to otherwise support a finding of a triable issue as to this causal link, or pretext. Accordingly, Plaintiff fails his burden to demonstrate a triable issue of material fact on retaliation as pretext to a protected activity.

Hostile Work Environment Harassment

The second and fourth causes of action is for a hostile work environment and failure to prevent harassment. To establish a hostile work environment, the plaintiff must show that (1) he is a member of a protected class; (2) he was subjected to unwelcome harassment; (3) the harassment was based on his protected class; (4) the harassment unreasonable interfered with his work performance by creating an intimidating, hostile, or offensive work environment; and (5) the defendant is liable for the harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.) Failure to prevent harassment additionally requires that the defendant failed to take all reasonable steps to prevent the harassment. (Gov. Code § 12940, subd. (k).)

Similar to the issues on disparate treatment, Defendant submits that the events identified in the SAC were not based on Plaintiff's protected class. Plaintiff again opposes, arguing that though race and national origin were not expressly stated, being called a liar and having to work with a third party to resolve certain disputes were part of an ongoing pattern of undermining behavior. (Response to UMF Nos. 7, 11, 14-21, 30-32.) Plaintiff identifies no other evidence other than his inference that these actions were racially motivated against him as a Hispanic. (*Compare*, *e.g.*, *id.*, UMF No. 7 [identifying Liberta as a Caucasian teacher] and Defendant's Statement of Evidence, Ex. C., Mercado Depo., pp. 28:8-29:17; *see also* Defendant's Statement of Evidence, Ex. C, Mercado Depo., pp. 48:20-50:22.) Neither does Plaintiff's declaration in opposition suggest that any of the actions identified were due to Plaintiff's protected class as a Hispanic. (*See* Plaintiff's Statement of Evidence, Ex. F, Mercado Decl., ¶¶ 1-3, 6-14, 16-31.) Accordingly, Plaintiff fails his burden to demonstrate a triable issue of material fact that any harassment was based on his protected class, and therefore also fails to demonstrate that Defendant failed to prevent harassment.

Declaratory Relief

The SAC identifies actual controversies as to whether Defendant violated the Fair Employment and Housing Act based on the allegations of the first, second, third, and fourth causes of action. In effect, the SAC seeks declaratory relief that the other causes of action have merit.

Conclusion

For the above reasons, the court finds that there are no triable issues of material fact based on Defendant's negation of necessary elements to each cause of action of

the SAC. The motion for summary judgment is granted in favor of defendant Washington Unified School District, and against plaintiff Felipe Mercado.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 1/21/25.
(Judge's initials) (Date)