TENTATIVE RULINGS

FOR: October 5, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. George V. Spanos, Dept. C (Historic Courthouse) at 2:00 p.m.

Estate of Emily Gray **18PR000011**

FIRST AND FINAL ACCOUNT AND REPORT OF EXECUTOR AND PETITON FOR SETTLEMENT FOR ALLOWANCE OF COMPENSATION TO EXECUTOR AND ATTORNEY FOR ORDINARY SERVICES AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. George V. Spanos, Dept. C (Historic Courthouse) at 2:00 p.m.

Banks v. Oak Paper Products Co., Inc., et al. **17CV000517**

DEFENDANTS OAK PAPER PRODUCTS CO., INC. AND ACORN PAPER PRODUCTS COMPANY, LLC'S MOTION FOR SUMMARY ADJUDICATION

TENTATIVE RULING:

Defendants Oak Paper Products Co., Inc. and Acorn Paper Products Company, LLC's ("defendants") motion for summary adjudication is DENIED.

The Court sustains plaintiff's objection numbers 4-7, finding the excerpts at issue amount to speculation and are without a proper foundation. The Court overrules the balance of

plaintiff's objections. Defendants' objections are sustained, as the Court agrees Exhibits 1-4 to plaintiff's declaration lack the proper foundation and contain hearsay.

Although the motion is captioned as one for summary judgment and adjudication in the alternative, defendants' notice of motion indicates they move for summary adjudication in their favor as to the seven causes of action alleged against them by plaintiff Luuann Banks ("plaintiff").

This is an employment action, arising out of plaintiff's employment with defendant Acorn Paper Products Co., LLC, which designs and manufactures wine packaging components. Plaintiff worked for defendants from July 27, 2016 to October 21, 2016 as a customer service representative. She spent the first two weeks training at defendants' Galt, California location, under the supervision and direction of her supervisor, Lisa Cervantes. Thereafter she worked exclusively at defendants' American Canyon facility under the supervision of defendant Ron Valtierra, and alongside another customer service representative, Rodolfo ("Rudy") Cardenas.

In reviewing a motion for summary judgment or adjudication, courts use a system of shifting burdens as an aid to the presentation and resolution of employment cases because direct evidence of discrimination and harassment are seldom available. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 354–355.) At trial, the initial burden is on the employee to establish a prima facie case of discrimination or harassment. When the employer seeks summary judgment, however, the initial burden rests with the employer to show that no unlawful conduct occurred. (Code Civ. Proc., § 437c(p)(2); see *Guz v. Bechtel Nat'l, Inc.*, supra, 24 Cal.4th at 354-355; *University of So. Calif. v. Sup.Ct.* (1990) 222 Cal.App.3d 1028, 1036.)

As the moving party on summary judgment or adjudication, the employer must carry the burden of showing the employee's action has no merit. (Code Civ. Proc., § 437c(p)(2).) It may do so by evidence either (1) negating an essential element of the employee's claim (difficult to do, because prima facie case of discrimination is so flexible), or (2) showing some "legitimate, nondiscriminatory reason" for the action taken against the employee. (See *Caldwell v. Paramount Unified School Dist.* (1985) 41 Cal.App.4th 189, 202–203.)

If the employer meets this initial burden, the employee must produce "substantial responsive evidence that the employer's showing was untrue or pretextual" ... thereby raising at least an inference of discrimination to avoid summary judgment. (*Hersant v. California Dept. of Social Services* (1997) 57 Cal.App.4th 997, 1004–1005 (employee must offer substantial evidence that employer's stated reasons were pretextual or evidence that employer acted with discriminatory intent, or a combination thereof); *University of So. Calif. v. Sup.Ct.*, supra, 222 Cal.App.3d at 1036.)

In analyzing any motion for summary judgment, courts must apply a three-step analysis: (1) identify the issues framed by the pleadings to be addressed; (2) determine whether moving party showed facts justifying a judgment in movant's favor; and (3) determine whether the opposing party demonstrated the existence of a triable, material issue of fact. (*Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1182-83; *McGarry v. Sax* (2008) 158 Cal.App.4th 983, 994; *Hinesley v. Oakshade Town Center* (2005) 135 Cal. App. 4th 289, 294.)

In their motion, Defendants attempt to both negate an essential element of plaintiff's claims, *and* proffer a legitimate, nondiscriminatory reason for terminating her.

A review of defendants' motion immediately demonstrates defendants' motion addresses only a fraction of the allegations set forth in the complaint, implying there is but one allegedly harassing comment by defendant Valtierra—that plaintiff has a large backside and thus must be married to a black man—rather than numerous comments and actions, all of which plaintiff alleges made her uncomfortable, nervous of being alone with defendant, and prompted behavioral changes with respect to her attire and interpersonal interactions with defendant. Defendants' failure to acknowledge or address the remaining allegations renders their motion infirm, as the motion's singular focus on one or two comments alleged in the complaint fails to address the issues framed by the pleadings. The court concludes defendants have failed to meet their burden as the moving parties, as the motion is based on an incomplete and inaccurate summary of what has been alleged.

By way of example, in her first cause of action, plaintiff asserts sexual harassment based on hostile work environment in violation of Gov. Code § 12940. As correctly set forth by defendants, to prevail on a hostile work environment sexual harassment claim, Plaintiff must demonstrate that: "she was subjected to sexual advances, conduct, or comments that were (1) unwelcome; (2) because of sex; and (3) sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment. In addition, she must establish the offending conduct was imputable to her employer." (*Lyle v. Warner Bros. Television Prods*. (2006) 38 Cal. 4th 264, 279 (internal citations omitted); see also *Miller v. Dep't of Corrections* (2005) 36 Cal. 4th 446, 462; *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 U.S. 57, 67; *Fisher v. San Pedro Peninsula Hosp*. (1989) 214 Cal. App. 3d 590, 608 (adopting same standard as Title VII for hostile work environment sexual harassment claims under FEHA).

Focusing only on the allegation that defendant Valtierra commented on the size of plaintiff's backside, defendants first contend there is no evidence to support plaintiff's allegation that Valtierra made this comment to *her*, as opposed to her coworker Rudy Cardenas who then shared it with her. They further argue such conduct is neither severe nor pervasive, or because of her sex, and that none of the conduct was ever reported to her supervisor or human resources and thus cannot be imputed to defendants. They contend plaintiff is unable to substantiate her allegations, and her testimony is unreliable because it is self-serving.

Defendants' argument here and throughout the motion only succeeds if the Court focuses only on the single comment on which defendants focus in their motion, and ignores the many instances of inappropriate conduct and statements made to her by defendant Valtierra, as alleged in the Complaint (e.g., asking to watch plaintiff use the restroom and the implying he has the ability to watch her in the restroom, discussing his sex life and indiscretions, asking if he could purchase a sex toy for plaintiff and asking her to use it in his presence, staring at her breasts while plaintiff spoke to him, repeatedly offering nuts while asking if she wanted to put his nuts in her mouth).

Defendants' approach is not supported by case authority. "In determining whether the alleged harassment is sufficiently severe or pervasive to constitute a hostile work environment..., it is well-established that the court must consider the totality of circumstances." (*Williams v. Gen. Motors Corp.* (6th Cir. 1999) 187 F.3d 553, 562.) Defendants focus on each alleged comment or interaction individually and out of the context of the entire relationship, which amounts to "impermissible disaggregation of the incidents," as discussed in *Williams*. "[W]hen the complaints are broken into their theoretical component parts, each claim is more easily dismissed[,] [but] the issue is not whether each incident of harassment *standing alone* is sufficient to sustain the cause of action in a hostile environment case, but whether-taken together-the reported incidents make out such a case." (*Id.* at 562.)

Further, to grant the motion, the Court would have to ignore not only plaintiff's sworn testimony, but that of Rudy Cardenas, which corroborates a sizable amount of what plaintiff alleges in her Complaint, as well as plaintiff's allegation and testimony that she reported the conduct to her supervisor Lisa Cardenas as directed by defendants' "Complaint Procedure." Defendants suggest Cardenas' testimony, like plaintiff's, is unreliable because Cardenas is plaintiff's friend.

The Court may not weigh evidence or make credibility determinations in analyzing a motion for summary judgment because these are "jury functions, not those of the judge." yet that is precisely what defendants ask the court to do in their motion. (See *Anderson v. Liberty Lobby* (1986) 477 U.S. 242, 249-250.) As acknowledged by defendants in footnote 5 of their motion, there is no basis on which to disregard the sworn testimony of Cardenas and defendants' attempt to reduce Cardenas' credibility is misplaced on summary judgment. Whether plaintiff's and/or Cardenas' testimony is credible or reliable is for the trier of fact to decide at trial, and the evidence at issue establishes there are triable issues of material fact.

Defendants attempt to further undermine the credibility of plaintiff's allegations by arguing they directly contradict her EEOC claim. Specifically, they argue plaintiff admits under penalty of perjury in the claim that only *one* incident of allegedly harassing conduct occurred, which she reported at the time of her termination on October 21, 2016. As with defendants' summary of the allegations of the complaint, this ignores the portion of the claim where plaintiff asserts the conduct of which she complains was pervasive. She asserts: "Throughout my employment there l was frequently sexually harassed by my supervisor Ron Valtierra." Defendants interpretation of the claim is unreasonable.

Setting aside defendants' failure to meet their burden as the moving party, there are numerous triable issues of material fact as to each of plaintiff's claims. Contrary to defendants' arguments, there are triable issues of material fact as to each of plaintiff's seven causes of action. Plaintiff alleges a great deal of conduct and statements over a brief period of time and presents sufficient evidence to suggest it was on a daily basis. Similarly, there is sufficient evidence to support her claim that she not only reported the conduct to her supervisor, but her supervisor warned her about Valtierra's "lack of a filter," and told plaintiff it would be taken care of. Regarding defendants' contention that they fired her based on plaintiff's poor performance, lack of skills, and excessive breaks, plaintiff has presents evidence indicating her direct supervisor was totally unaware of any purported issues or decision to terminate her, and no one ever

informed plaintiff of problems. Further, the evidence indicates defendant Valtierra recommended she begin receiving bonuses, Rudy Cardenas' testimony suggests the individual sent by corporate to terminate plaintiff stated her termination was unrelated to her performance but amounted to a "he said/she said" situation. Coupled with plaintiff's allegation and testimony that defendant Valtierra told her he was "working on getting rid of her" after she rebuffed his conduct, there are disputes of fact regarding defendants' purported legitimate, nondiscriminatory reasons for terminating plaintiff. Plaintiff has adequately demonstrated with substantial evidence that defendants' stated reasons were mere pretext, raising at least an inference of harassment.

Based on the foregoing, the motion is DENIED in its entirety.

Samuel Higuera v. Pine Ridge Winery, LLC **17CV000535**

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE INCENTIVE PAYMENT, AND ATTORNEY'S FEES AND COSTS

TENTATIVE RULING: Plaintiff Samuel Higuera's motion is GRANTED. The settlement is fair, adequate, and reasonable. The Court will sign the proposed order. Under paragraph 16, the settlement administrator shall make a final report of disbursement by April 17, 2019. An OSC re: Dismissal is set for April 17, 2019, at 8:30 a.m. in Dept. I.