

**Judge Benson – Law & Motion – Wednesday, February 8, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-4. 22CV00916 Khan, Rukhasana v. Porcayo, Joshua et al.

EVENT: (1) Joshua Porcayo’s Demurrer to the First Amended Complaint

(2) Joshua Porcayo’s Motion to Strike Portions of the First Amended Complaint

(3) Children’s Hope Foster Family Agency and Benjamin Payne’s Demurrer to the First Amended Complaint

(4) Children’s Hope Foster Family Agency and Benjamin Payne’s Motion to Strike Portions of the First Amended Complaint

Joshua Porcayo’s Demurrer to First Amended Complaint (FAC) is SUSTAINED in its entirety with leave to amend. Plaintiff, if she so chooses, shall amend within 20 days.

Regarding the seventh cause of action under the FEHA, the FAC fails to allege conduct that is severe or pervasive.

As to the fifteenth cause of action for Intentional Infliction of Emotional Distress, the FAC fails to allege outrageous conduct.

In light of the Court’s ruling on demurrer, Joshua Porcayo’s Motion to Strike Portions of Plaintiff’s First Amended Complaint (i.e. punitive damages) is GRANTED with leave to amend. Plaintiff, if she so chooses, shall amend within 20 days.

Children’s Hope Foster Family Agency and Benjamin Payne’s Demurrer to the First Amended Complaint is SUSTAINED in PART and OVERRULED in PART as set forth herein. To the extent the Demurrer is SUSTAINED, Plaintiff shall amend within 20 days if she so chooses.

Children’s Hope Foster Family Agency and Benjamin Payne’s Motion to Strike Portions of the First Amended Complaint is DENIED in PART and GRANTED in PART as set forth herein.

DEMURRER

Disability Discrimination

Although the FAC includes new allegations concerning Plaintiff’s health issues, the FAC still fails to address the Court’s previous ruling that the Complaint was vague as to what specifically caused Plaintiff to resign. As noted in the previous ruling, the FAC alleges that Plaintiff was diagnosed with cancer in 2018, but she resigned in 2021. Did Plaintiff still have

cancer in 2021 at the time she resigned? This is a basic fact that is clearly within Plaintiff's personal knowledge. The Demurrer is SUSTAINED.

Race Discrimination

As with the disability discrimination cause of action, it is unclear what specific acts of racial discrimination (not just an implied disparate work policy) caused Plaintiff to resign. The Demurrer is SUSTAINED.

Gender Discrimination

Unlike the racial discrimination allegations, the FAC contains no factual allegations that Plaintiff received disparate treatment based on her gender. According to the FAC, all of the individuals who were allegedly allowed to work remotely were women. Nor are there any factual allegations demonstrating animus based on gender. There are no facts suggesting that the conflicts between Plaintiff and Mr. Porcayo were motivated by gender. The fact that Plaintiff is a woman, does not by itself, sufficiently allege gender discrimination. As a result, we are left with conclusory allegations that Plaintiff was discriminated against based on gender.

Additionally, it is unclear what specific acts of gender discrimination caused Plaintiff to resign. The Demurrer is SUSTAINED.

Religious Discrimination

As with the disability discrimination cause of action, it is unclear what specific acts of religious discrimination caused Plaintiff to resign. The Demurrer is SUSTAINED.

Retaliation Pursuant to Labor Code § 1102.5

As discussed, the FAC continues to be vague as to what specifically caused Plaintiff to resign. As a result, the FAC still fails to sufficiently allege constructive termination in retaliation. Consequently, the demurrer is SUSTAINED.

Retaliation Under the FEHA

As with Retaliation under Labor Code § 1102.5, Retaliation under the FEHA requires an adverse employment action, i.e., constructive termination. Consistent with the Court's previous discussion, the demurrer is SUSTAINED.

Harassment

The FAC has alleged that Defendant Children's Hope had a disparate work policy regarding remote work, and that Plaintiff was discriminated against in this regard based on her race and

religion. Assuming the truth of these allegations, as the Court is required to do on demurrer, the Court finds Plaintiff has adequately alleged severe or pervasive conduct based on a protected status. Unlike the discrimination causes of action, harassment does not require constructive termination to be viable. Consequently, the demurrer is **OVERRULED** as to the seventh cause of action for harassment as it pertains to Defendant Children's Hope.

Regarding Defendant Benjamin Payne, the demurrer is **SUSTAINED** as there are no facts alleged as to Mr. Payne's individual liability.

Constructive Termination

As discussed, it is unclear what specific acts of disability, race, gender, or religious discrimination caused Plaintiff to resign. The demurrer is **SUSTAINED**.

Failure to Prevent Discrimination

In light of the Court's ruling overruling the demurrer as to the seventh cause of action for harassment, the ninth cause of action for Failure to Prevent Discrimination is necessarily **OVERRULED**.

Failure to Engage in the Interactive Process

Defendants in their moving papers acknowledge Plaintiff has sufficiently plead a disability. Unlike the disability discrimination cause of action, constructive termination is not required here, per CACI 2546. Thus, the demurrer to the tenth cause of action for Failure to Engage in the Interactive Process is **OVERRULED**.

Negligent Supervision, Hiring and Training

In reviewing the FAC, the only person this cause of action could be referring to is Mr. Porcayo. As discussed in the Porcayo demurrer, the allegations against him do not rise to the level of severe or pervasive. Consequently, the demurrer is **SUSTAINED**.

Intentional Infliction of Emotional Distress

As discussed, the Court finds Plaintiff has adequately plead harassment based on the allegations Children's Hope allowed some employees, other than Plaintiff, to work remotely on the basis of race and religion. Assuming Defendant had such a policy, the Court finds such conduct could be construed as extreme and outrageous. Consequently, the demurrer is **OVERRULED** as to Defendant Children's Hope.

However, as to Defendant Benjamin Payne, the demurrer is **SUSTAINED**. As noted in the harassment cause of action, there are no facts supporting individual liability as to Mr. Payne.

MOTION TO STRIKE

The Court re-incorporates its discussion regarding harassment and the alleged discriminatory policy concerning remote work. Again, assuming for purposes of this motion those allegations are true, the Court finds such allegations could support a finding of oppression pursuant to Civil Code § 3294. Therefore, the Motion to Strike is DENIED as to Defendant Children's Hope. However, in light of the Court's ruling as to Defendant Benjamin Payne individually, the Motion to Strike is GRANTED as to Benjamin Payne.

Defendants shall prepare and submit a form of order consistent with this ruling within 10 days.

5. **22CV02781 Mountain Circle Family Services v. Rossington, Shauna**

EVENT: Reconsideration of Shauna Rossington's Motion to Dismiss For Untimeliness

The Court will hear from counsel and the parties. The Court is in receipt of a Proof of Service concerning the moving papers dated January 7, 2023 indicating the papers were mailed to Appellant. However, Appellant is represented by counsel and there is no indication counsel was served with the moving papers.

6. **22CV02845 In re: Poliquin, Darcelle**

EVENT: Change of Name Minor

There is no proof of publication on file, nor is there a proof of service on file as to the nonconsenting parent. CCP § 1277(a)(4) requires the non-consenting parent be served with this petition a minimum of 30 days before the hearing. The Court will hear from Petitioner.

7. **20CV01884 Tyler Edwards, Inc. v. McCain, Kevin, et al.**

EVENT: Motion for Order Awarding Attorney Fees to Defendants and Cross Complainants

On the Court's motion, the Motion for Order Awarding Attorney Fees to Defendants and Cross Complainants is continued to March 1, 2023 at 9:00am to trail the Motion for a New Trial.

8. **22CV03060 DN v. Doe 1 et al.**

EVENT: Motion to File Conditional Certificates of Merit Under Seal

Motion to File Conditional Certificates of Merit Under Seal is GRANTED. The Court will sign the proposed order.