

**Judge Benson – Law & Motion – Wednesday, March 1, 2023 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 20CV01711 Dawson, Susan v. Butte-Glenn Community College District**

*EVENT: Defendant’s Motion for Summary Judgment or, in the Alternative, Summary Adjudication*

Defendant’s Motion for Summary Judgment is GRANTED.

The Court rules on evidentiary objections it deems material as follows:

Defendant’s Objection No. 5 – Sustained. Mr. Grottkau’s testimony clearly indicates it was POST’s recommendation to replace, not retrain Plaintiff.

*First Cause of Action for Gender Discrimination*

Ordinarily, a plaintiff employee who claims discrimination must first make a prima facie case, consisting of evidence that she was within the class protected from discrimination and was performing her job competently, but was terminated—plus some other circumstance suggesting discriminatory motive. (*Kelly v. Stamps.com* (2005) 135 Cal.App.4th 1088, 1097) This showing raises a presumption of discrimination, shifting to the defendant employer the burden of producing evidence to establish a genuine issue that the termination was made for a legitimate, nondiscriminatory reason. If the employer does so, the presumption disappears, but the employee, who retains the overall burden of persuasion, may then yet seek to show discriminatory motive, by evidence that the employer's proffered reason was false and a pretext, and any other evidence of discriminatory motive. A defendant employer's motion for summary judgment slightly modifies the order of these showings. If, the motion for summary judgment relies in whole or in part on a showing of nondiscriminatory reasons for the discharge, the employer satisfies its burden as moving party if it presents evidence of such nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the termination. 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 pp. 1097-1098) [Emphasis Added]

As to Defendant’s contention that the failure to destroy testing materials was a legitimate, non-discriminatory reason for discharge, Defendant presented admissible evidence that failure to destroy test scripts within ten days of the test was a security violation. (UMF 18) Plaintiff’s declaration states she was permitted to retain the documents for one year because the College operated three academies. (See Plaintiff’s declaration, ¶ 15) However, as Defendant correctly notes in its reply, admissions or concessions made during the course of discovery govern and control over contrary declarations lodged at a hearing on a motion for summary judgment. (*Visueta v. General Motors Corp.*, (1991) 234 Cal. App. 3d 1609, 1613). Here, Plaintiff’s deposition testimony is contradictory to her

declaration, as her deposition testimony provides that the test scripts are to be shredded immediately. (Evidence in Support of Defendant's Motion for Summary Judgment, Exhibit A-2, 52:7-10)

Additionally, Defendant has provided evidence that Plaintiff had administered tests in an unsatisfactory manner. (UMF 18). Although Plaintiff submits evidence that she was unfairly blamed for the students' poor performance, Plaintiff failed to submit evidence contradicting Defendant's evidence that the tests were administered in an unsatisfactory manner. Thus, no triable issue of fact exists in that Defendant has demonstrated legitimate, non-discriminatory reasons for termination. In light of the legitimate, non-discriminatory reasons provided by Defendant, Plaintiff has failed to present admissible evidence indicating that intentional discrimination on the basis of gender occurred.

### *Second Cause of Action for Retaliation*

The legal analysis concerning retaliation is similar to discrimination. Past California cases hold that 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, 1043) Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation "drops out of the picture," and the burden shifts back to the employee to prove intentional retaliation. (*Id.*) [Emphasis Added]

Here, Plaintiff has presented evidence that through the course of her employment she made (2) formal Title IX complaints with her employer. The first Title IX Complaint was made and investigated several years before termination. The investigator sustained her complaint in part. The evidence appears to show that the second Title IX complaint was pending at the time of termination. (Plaintiff's deposition testimony indicates she did not appeal the findings pertaining to the second Title IX report because she had already been terminated, see Plaintiff's Deposition, 170: 16-26; 171: 1-4. The Court infers from this evidence that the second Title IX complaint was pending at the time of termination)

The evidence of the two Title IX complaints is sufficient to meet Plaintiff's initial burden of demonstrating a prima facie case as it shows that she was engaging in protected activity. However, as outlined in the first cause of action, Defendant has presented admissible evidence showing it had legitimate, non-retaliatory reasons for terminating Plaintiff. Similar to the first cause of action, Plaintiff has failed to present evidence in response that could support a finding of intentional retaliation.

Plaintiff has attempted to present evidence that she was denied job opportunities after she filed her first Title IX complaint, see Plaintiff's Deposition, 162: 4-10, 24-25; 163: 9-10, 14-21. Plaintiff's testimony appears to indicate that she wasn't assigned certain tasks, as opposed to being denied a promotion.

*Thomas v. Department of Corrections* (2000) 77 Cal.App.4th 507, 510-511:

The inquiry as to whether an employment action is adverse requires a case-by-case determination based upon objective evidence. (*Blackie v. State of Me.* (1st Cir. 1996) 75 F.3d 716, 725.) As the First Circuit observed in *Blackie*, "[w]ork places are rarely idyllic retreats, and the mere fact that an employee is displeased by an employer's act or omission does not elevate that act or omission to the level of a materially adverse employment action." (*Ibid.*) If every minor change in working conditions or trivial action were a materially adverse action then any "action that an irritable, chip-on-the-shoulder employee did not like would form the basis of a discrimination suit." (*Williams v. Bristol-Myers Squibb Co.* (7th Cir. 1996) 85 F.3d 270, 274.)

Even though theoretically an adverse action can encompass non-monetary punishments, the Court finds Plaintiff's allegations amount to at most an alteration of her job responsibilities. The evidence does not demonstrate a material change in Plaintiff's working conditions. As a result, the Court finds Plaintiff has failed to demonstrate a triable issue of fact on the issue of whether Plaintiff suffered an adverse employment action after her first Title IX complaint.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**2-4. 20CV01514 Haven, Thomas et al v. California Vocations, Inc.**

*EVENT: (1) Motion for Final Approval of Class Action*

*(2) Motion for Class Counsel Award and Class Representative Service Awards*

*(3) Status Conference*

The hearing is continued to March 8, 2023 at 9:00am to comply with CCP § 1005. According to the proof of service, notice is deficient by at least (1) court day.

5. **135894 Credigy Receivables Inc v. Sutherland, Douglas S.**

*EVENT: Opposition to Claim of Exemption*

There is no claim of exemption on file. The case is continued to March 15, 2023 at 9:00am for the filing of the claim of exemption.

6. **22CV02854 In re: Hakimzada, Abdul Qadir**

*EVENT: Change of name (adult and children)*

There is no proof of publication on file. Upon the filing of the proof of publication the Court will sign the decree provided.

7-8. **22CV00822 Grimes, Emma v. Kennemer, Franklin R et al.**

*EVENT: (1) Plaintiff's Motion to Compel Further Responses by Franklin R. Kennemer to Plaintiff's Form Interrogatories, Set One, Request for Admissions, Set One, and Request for Production of Documents, Set One, and Request for Monetary Sanctions in the amount of \$3,250.00*

*(2) Plaintiff's Motion to Compel Further Responses by Stellar Restaurants, LLC to Plaintiff's Form Interrogatories – Employment Law, Set One, Request for Production of Documents, Set One, and Special Interrogatories, Set One, and Request for Monetary Sanctions in the amount of \$3,250.00*

Both of Plaintiffs motions to compel responses by Franklin R. Kennemer and Stellar Restaurants, LLC to Form Interrogatories, Special Interrogatories, and Production of Documents are Granted. Defendants shall provide responses within 10 days of service of the order. Plaintiffs are awarded \$1,500 in total sanctions against Defendants Franklin R. Kennemer and Stellar Restaurants, LLC.

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

9. **23CV00070 In re: Martin, Darrell Warren**

*EVENT: Change of Name (Adult)*

There is no proof of publication on file. Upon the filing of the proof of publication the Court will sign the decree provided.