

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

**1. 20CV02018 FINKBINER, DONALD V. BUTTE-GLENN COMMUNITY COLLEGE DISTRICT**

*EVENT: Defendant Butte-Glenn Community College District's Motion for Summary Judgment or, in the Alternative, Summary Adjudication*

Defendant's Request for Judicial Notice is granted. Defendant's Objections to Plaintiff's Evidence are overruled as to Objection Nos. 1-3, and sustained as to Objection Nos. 4 (lacks foundation), 5 (lacks foundation), 6 (lacks foundation, speculative), 7 (lacks foundation, speculative, and misstates testimony), and 8 (lacks foundation, speculative).

The Court finds that Plaintiff has failed to establish a prima facie case of age discrimination as he has failed to present any evidence that an adverse employment action was taken against him due to his age, nor has he presented any evidence that he was replaced in his position by a significantly younger person. See, *Hersant v. Dept. of Soc. Servs.* (1997) 57 Cal.App.4th 997, 1003. [UMF 28-31]. The Motion for Summary Adjudication is therefore granted as to the Second Cause of Action – Age Discrimination.

The Court finds that although Plaintiff has established a prima facie case of disability discrimination under FEHA, Defendant has also satisfied its initial burden to present admissible evidence showing either that one or more elements of Plaintiff's prima facie case is lacking. See, *Jensen v Wells Fargo Bank* (2000) 85 Cal.App.4th 245. [UMF Nos. 14, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 34, 35, 36, 40, 41, 42; Plaintiff's Additional UMF No. 50]. The burden then shifts back to Plaintiff and the Court finds that Plaintiff has not made a sufficient showing that the employer's asserted reason is false. "[A] reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason." *Hicks v. KNTV Television, Inc.* (2008) 160 Cal.App.4th 994, 1003. The undisputed evidence overwhelmingly supports a nonretaliatory basis for Plaintiff's termination. [UMF Nos. 14, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 34, 35, 36, 40, 41, 42; Plaintiff's Additional UMF No. 50.] Plaintiff has thus failed to satisfy his burden here and the Motion for Summary Adjudication is granted as to the First Cause of Action – Disability Discrimination.

The Court finds that there is no triable issue as to whether Plaintiff received an accommodation in relation to his medical status. [UMF Nos. 44, 45, 46, 47, 48]. The Motion for Summary Adjudication is therefore granted on the issue of whether Plaintiff requested or was denied a reasonable accommodation for any alleged disability.

Finally, the Court finds that Plaintiff's Third Cause of Action for Retaliation fails as a matter of law because the undisputed evidence demonstrates that Plaintiff cannot establish that he engaged in a protected activity under the Fair Employment and Housing Act. [See UMF Nos. 14, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 34, 35, 36, 40, 41, 42; Plaintiff's Additional UMF No. 50].

Based on the above and pursuant to *Code of Civil Procedure* §437c, there are no genuine issues as to any material fact and Defendant is entitled to summary judgment as a matter of law. The Court vacates the Mandatory Settlement Conference on April 3, 2023, the Trial Readiness Conference on May 4, 2023 and the Jury Trial on May 8, 2023 and sets this matter for a Status Conference on April 5, 2023 at 10:30 a.m. for status of dismissal. Defendant shall prepare and submit a form of order consistent with this ruling and Judgment of Dismissal within two weeks.

**2. 21CV02257 NORLUND, SANDRA ET AL V. NORLUND, RICHARD ET AL**

*EVENT: Defendant John C. Schaller's Special Motion to Strike*

On the Court's own motion, Defendant John C. Schaller's Special Motion to Strike is continued to March 29, 2023 at 9:00 a.m. Meanwhile, the Court has taken judicial notice of the Second District Court of Appeal's decision in Los Angeles County Superior Court Case# 20STCV27665. In reviewing the opinion, the Court finds overlapping factual and legal issues exist between this case and the Los Angeles County case. For example, page 2 of the Second Districts' opinion states " ... Sandra alleged Richard breached the settlement agreement by failing to execute the deed of trust that was supposed to secure the promissory note." Further, on page 15 the opinion states "She did not state she was abandoning all claims for relief based on breach of the settlement agreement or that she was not seeking to hold Richard and Sharon personally liable."

The gravamen of this case is the alleged failure of Defendants to execute a deed of trust that secured the promissory note. Consequently, common questions of law and fact exist between the two cases. Further, a substantial risk exists for conflicting rulings if the cases are not joined, not to mention potential res judicata and/or collateral estoppel implications. Presently, the Court is inclined to transfer this case to Los Angeles County. Before doing so, the Court invites briefing from the parties on the issue. All briefs shall be filed and served no later than March 17, 2023.

**3. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY**

*EVENT: Motion to be Relieved as Counsel for Plaintiff*

The Motion to be Relieved as Counsel is granted. The Case Management Conference on calendar March 1, 2023 at 10:30 a.m. is advanced and continued to May 3, 2023 at 10:30 a.m. The Court will sign the form of order previously submitted by counsel with modification to Paragraph 7.a. to indicate that the next scheduled hearing is a Case Management Conference on May 3, 2023 at 10:30 a.m. and striking the language in paragraph 7.b. relating to the Motion to file Second Amended Complaint as that motion has not been filed and is not on the Court's calendar.

**4. 22CV01322 WALLISER, ELIZABETH V FOLEY, ROBERT ET AL**

*EVENT: Motion to be Relieved as Counsel for Plaintiff*

The Motion to be Relieved as Counsel is granted. The Court will sign the form of order previously submitted by counsel with modification to Paragraph 7.a. to indicate that the next scheduled hearing is a Case Management Conference on March 15, 2023 at 10:30 a.m.

**5. 22CV01663 STEELE, LILLIANA V. HOBBS, BRADLEY**

*EVENT: Motion to be Relieved as Counsel*

The Motion to be Relieved as Counsel is granted. The Court will sign the form of order previously submitted by counsel with modification to Paragraph 7.a. to indicate that the next scheduled hearing is a Case Management Conference on April 19, 2023 at 10:30 a.m. Counsel is to provide the client with the file within five days of this ruling.