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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FANNIE JONES-HUNDLEY, Plaintiff, v. LYNWOOD UNIFIED SCHOOL DISTRICT, RACHEL CHAVEZ, MARTINA RODRIGUEZ, MARIA LOPEZ, JOSE LUIS SOLACHE, ALFONSO MORALES, GUADALUPE RODRIGUEZ, DHYAN LAL, ROBERTO CASAS, DIANE LUCAS; ANIM MENER, MALCOLM BUTLER, Defendants.	Case No. CV 07-05025 DDP (CTx) **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** [Motion filed on May 28, 2009]

I. BACKGROUND

Plaintiff Fannie Jones-Hundley, who is African American, has been employed with Defendant Lynwood Unified School District ("the District") since 1976. (Hundley Decl. ¶ 3.) From 1976 to 2005, she was employed as a middle school teacher. (Id.) In 2005, Plaintiff was working at Lynwood Middle School ("LMS"), when principal Anim Mener began her first year. (Statement of Uncontroverted Facts ("SUF") ¶ 5.)

On September 27, 2005, Plaintiff went to a District Board meeting and described numerous problems with facilities at LMS, including that she believed "a racist act has occurred at [LMS]," and that she "was given a letter stating she was late for class and someone else was not written up who arrived at the same time." (Urias Decl. Ex. 3.) Plaintiff further stated that there was "too much going on" at LMS and that she did not want to continue working there. (Id.) The next day, on September 28, 2005, Plaintiff was delivering papers to the front office, when she states Mener approached her, used a racial epithet against her (the word "nigger"), and then told Plaintiff that Mener would get rid of her if Plaintiff continued to embarrass her (as at the Board meeting). (SUF ¶ 8; Hundley Decl. ¶ 8.) Mener denies making the racial epithet and believes Plaintiff was attempting to defame her. (Urias Decl. Ex. 14.) Plaintiff also states that Mener, in general, harassed her by not acknowledging her or speaking to her when they passed on campus, although Plaintiff concedes she was never subjected to another derogatory comment. (Hundley Decl. ¶ 8; SUF ¶ 38.)

Some time around October 4, 2005, Mener recommended that Plaintiff be transferred from LMS to Lynwood High School. (Hundley Decl. ¶ 3; Urias Decl. Ex. 22.) The reason Mener recommended Plaintiff's transfer was based on the events of September 28, 2005 and because she believed Plaintiff had defamed her. (Garcia Decl. Ex. 8.) Plaintiff filed a first charge for race discrimination and retaliation with the Equal Employment Opportunity Commission ("EEOC") on December 1, 2005. (Garcia Decl. Ex. 10.) On October 11 and 25, 2005, Plaintiff returned to the District Board's public

meetings and informed the Board that she had been transferred and discriminated against. (Urias Decl. Ex. 20.) An investigation was then conducted by the District, based on Plaintiff's comments to the Board. (See Urias Decl. Ex. 7.) In this investigation, Mener was found to have produced four witnesses who substantiated her position, while Plaintiff provided none. (Id.) The Board recommended dealing with any remaining problem according to the union's grievance procedures.

Regarding her transfer to Lynwood High, Plaintiff states that her transfer resulted in a loss of income, because she was no longer able to work on an hourly basis on the weekend or in after-school intervention programs. (Hundley Decl. ¶ 3.) Plaintiff also had more students at Lynwood High and was forced to do more preparation work, because of the different nature of the grades she taught. (Id. ¶ 5.) The students at Lynwood High also had more behavior problems. (Id. ¶ 6.) Plaintiff filed a second charge with the EEOC on July 11, 2006. (Garcia Decl. Ex. 11.)

One year after being transferred, Plaintiff went on paid administrative leave from October 2006 through May 2007 in connection with an unspecified administrative action that resulted in a confidential settlement agreement.[1] (SUF ¶ 23.) When she returned to work, Plaintiff was placed at Vista High School ("Vista"), which is a "continuation school." (SUF ¶ 24.) Students at Vista are placed there due to truancy, behavior, gang, family, and psychological problems. (Hundley Decl. ¶ 7.) Accordingly,

[1] Plaintiff requests that the Court review this settlement agreement in camera. The Court declines this request.

student conduct is much more of a problem than at Lynwood High or LMS. (Id.) Plaintiff then filed the present suit.

Plaintiff's Second Amended Complaint ("SAC) brings the following claims. Except for the fourth claim, all claims are against the District:

> 1) wrongful demotion based on race discrimination in violation of the Fair Employment and Housing Act ("FEHA"), Cal. Gov. Code § 12940(a);
> 2) retaliation in violation of FEHA § 12940(a);
> 3) discrimination based on age in violation of FEHA § 12940(h);
> 4) failure to prevent harassment in violation of FEHA § 12940(k), against both Mener and the District;
> 5) racial discrimination in violation of Title VII, 42 U.S.C. § 2000e, et seq.; and
> 6) retaliation in violation of Title VII.

(SAC 5-10.) Defendants now move for summary judgment on all of Plaintiff's claims.

II. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." Anderson, 477 U.S. at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to

find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. DISCUSSION

A. Age Discrimination under FEHA[2]

The plaintiff's prima facie burden is not "onerous," but the plaintiff must at least show "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on [age]." Guz v. Bechtel Nat. Inc., 24 Cal.4th 317, 355 (Cal. 2000).

Here, Plaintiff presents literally no evidence of discriminatory intent based on age. Therefore, there is no genuine issue and Plaintiff's age discrimination claims fail as a matter of law.

B. Racial Discrimination under FEHA and Title VII

FEHA and Title VII use the McDonnell Douglas "three-stage burden-shifting test." Guz v. Bechtel National, Inc., 24 Cal. 4th 317, 354 (Cal. 2000). Plaintiff must first establish a prima facie case of discrimination, which the employer may then rebut with evidence of a legitimate, nondiscriminatory rationale. Id. at 355-56. If the employer satisfies this burden, the plaintiff must prove that the employer's reasons are pretextual. Id. Accordingly, the plaintiff must provide evidence showing that the employer's intent or motive was discriminatory; and the ultimate

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[2] Defendants argue that Plaintiff has not exhausted administrative remedies as to age because she did not check this box on her EEOC charge. (Garcia Decl. Ex. 11.) While this is true, Plaintiff does make an allegation of age discrimination within the text of her charge. (Id.) Accordingly, the Court finds that Plaintiff has exhausted administrative remedies as to discrimination based on age.

burden of persuasion remains with the Plaintiff. Id. at 356, 383. However, where a defendant moves for summary judgment, as here, the framework is altered slightly. Defendants have the initial burden of proving either that Plaintiff has not established an element of her claim, or that Defendants have a legitimate, nondiscriminatory rationale for any adverse employment action. Avila v. Continental Airlines, Inc., 165 Cal. App. 4th 1237, 1247 (Cal. Ct. App. 2008)(citing Kelly v. Stamps.com Inc., 135 Cal. App. 4th 1088, 1098 (Cal. Ct. App. 2005)).

1. Prima Facie Case

In order to present a prima facie case under FEHA, Plaintiff must show that she is: 1) a member of a protected class; 2) performing competently in the position she held; 3) suffered an adverse employment action; and 4) that "some other circumstance suggests discriminatory motive." Kelly, 135 Cal. App. 4th at 1098 (citing Guz, 24 Cal. 4th 317).

Defendant argues that Plaintiff does not present a prima facie case because she did not suffer an adverse employment action. An adverse employment action must materially affect Plaintiff's "terms, conditions, or privileges of employment." Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1054-55 (Cal. 2005). Plaintiff does not dispute that her base salary, benefits, and teaching classification did not change when she transferred to Lynwood High School. (SUF ¶ 22.) However, Plaintiff states that she did suffer a loss of income, because the transfer precluded her from working on an hourly basis on the weekend or in the after school intervention programs at Lynwood Middle School. (Hundley Decl. ¶ 3.) Plaintiff also had more students at Lynwood High

School and was forced to do more preparation work, because of the different nature of the grades she taught. (Id. ¶ 5.) This is sufficient to raise a genuine issue for the prima facie case. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1062 (9th Cir. 2002)(plaintiff's burden of production to establish a prima facie case is "minimal and does not even need to rise to the level of a preponderance of the evidence").

2. Legitimate Business Rationale and Pretext

A legitimate business rationale must be "facially unrelated to [the] prohibited bias." Guz, 24 Cal.4th at 358. Defendants argue that Plaintiff was transferred because of an "irreconcilable difference" between Mener and her. In support of this assertion, Defendants provide a letter from Mener to Superintendent Dhyan Lal dated November 21, 2005, where Plaintiff states her belief that Plaintiff had defamed her. (Urias Decl. Ex. 14.) An allegation of defamation is facially unrelated to racial discrimination and, as such, Defendant has satisfied its burden to "articulate" a legitimate, non-discriminatory reason. See Villiarimo, 281 F.3d at 1062.

The burden thus shifts back to Plaintiff to raise a genuine dispute as to pretext regarding Defendants' stated motivation of defamation. Plaintiff's argument is based entirely on two occasions where Mener purportedly used racial epithets, a book written by District Superintendent Dhyan Lal where he describes mistreatment by the African-American community (against him personally), and statistics of hiring patterns in the District that show a decrease in African-American administrators and teachers,

and a racist remark by a District Board member (before she joined the Board).

To begin, Plaintiff fails to demonstrate how Lal's book or his deposition testimony in any way specifically relates to Mener's allegation of defamation by Plaintiff. Similarly, Plaintiff cannot raise a genuine issue regarding a Board-wide policy which resulted in Plaintiff's reassignment (based on hiring practices of the Board). While Plaintiff presents evidence that Board Members rarely, if ever, do more than approve the superintendent's personnel recommendations, Plaintiff has failed to demonstrate with more than vague speculation that Lal or any Board Member implemented any policy evidencing animus, particularly with reference to Plaintiff. As such, no reasonable trier of fact could believe these demonstrate pretext in Plaintiff's case.

Next, Plaintiff's statistical evidence demonstrates that in the District there has been a 28 percent decrease in African-American staff, teachers, and administrators from 2001 to 2008. (Mot. 8.) However, these statistics are unsupported by any corroborative evidence of discrimination; and no rational trier of fact could believe that they indicate either a policy of discrimination or, specifically, that Plaintiff's transfer was motivated by race. See American Federation of State, County, and Mun. Employees, AFL-CIO (AFSCME) v. State of Wash., 770 F.2d 1401, 1407 (9th Cir. 1985)("The weight to be accorded such statistics is determined by the existence of independent corroborative evidence of discrimination.").

Finally, Plaintiff also provides evidence of two racist comments made by Mener. One is the comment directed to Plaintiff

(that Mener believed defamed her); the was purportedly overheard by an administrator named Cornelia Davis, who states that she overheard Mener refer to the students as “niggers” and “wetbacks.” (Rees Decl. Ex. J “Davis Depo” 100:9-13.) The comment by Davis is unconnected by time or relation to Plaintiff’s employment decision, and is insufficient to create a genuine issue on a motion for summary judgment. Liu v. Amway Corp., 347 F.3d 1125, 1142 (9th Cir. 2003). The remark overheard by Plaintiff is also ultimately insufficient to raise a genuine issue, because this remark stands alone and is totally uncorroborated by any other evidence. Where the only evidence presented is "uncorroborated and self-serving" testimony by Plaintiff, this cannot raise a genuine issue of material fact. Villiarimo, 281 F.3d at 1061.

As there is no genuine issue of material fact, the Court finds that Plaintiff’s claims based on racial discrimination fail.

C. Failure to Prevent Harassment under FEHA - Defendants District and Mener

The elements of a claim of hostile environment harassment under FEHA are: 1) plaintiff belongs to a protected group; 2) plaintiff was subject to unwelcome racial, national origin, or sex harassment; 3) the harassment was sufficiently pervasive to alter the conditions of employment and create an abusive working environment; 4) the harassment was based on race, national origin, or sex; and 5) respondeat superior. Fisher v. San Pedro Peninsula Hosp., 214 Cal. App. 3d 590, 608 (Cal. Ct. App. 1989).

Again, as with her age discrimination claim, Plaintiff provides no evidence which raises a genuine dispute as to harassment based on race. Instead, Plaintiff references one racial

epithet and says generally that Mener was unpleasant to work for. In order to raise a genuine issue as to harassment, a plaintiff must present evidence that his or her workplace was "permeated with discriminatory intimidation," Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993), such that it is "subjectively and objectively" abusive. Fuller v. City of Oakland, 47 F.3d 1522, 1527 (9th Cir. 1995). Plaintiff's vague statements of unpleasant interactions with Mener are insufficient to permit a rational trier of fact to infer harassment based on race.

The Court finds that Plaintiff has not presented a claim for harassment. As Plaintiff's claim for harassment fails, Plaintiff's claim for failure to prevent harassment also fails.

D. Retaliation in Violation of Title VII and FEHA

A plaintiff establishes a prima facie case of retaliation by demonstrating: 1) she engaged in protected activity; 2) that afterwards her employer subjected her to an adverse employment action; and 3) a causal link between the two. Morgan v. Regents of University of California, 88 Cal. App. 4th 52, 69 (Cal. Ct. App. 2001). Assuming the prima facie case has been met, Defendant may rebut the prima facie case by presenting a legitimate business rationale, which the plaintiff may then overcome by a showing that the employer's rationale is pretext for retaliation. Stegall v. Citadel Broadcasting Co., 350 F.3d 1061, 1066 (9th Cir. 2003).

As described above, Plaintiff has raised a genuine issue of material fact as to whether she suffered an adverse employment action. Defendants have also articulated a legitimate business rationale - defamation by Plaintiff. However, while Plaintiff attempts to rebut Defendants' argument as it applies to

discrimination, Plaintiff does not present evidence to rebut Defendants' legitimate business rationale as it applies to retaliation. In other words, Plaintiff fails to point the Court to any evidence or argument which demonstrates that Defendants' rationale was a pretext for retaliation. Mere assertions in a party's memorandum opposing summary judgment, without designation of specific facts supported by the evidence, do not create a genuine issue of material fact. See Nissho-Iwai American Corp. v. San Francisco Unified Sch. Dist., 845 F.2d 1300, 1307 (9th Cir. 2001); S.A. Empresa De Viacao Aerea Rio Grandense v. Walter Kidde & Co., 690 F.2d 1235, 1238 (9th Cir. 1980). Further, the Court "is not required to comb the record to find some reason to deny a motion for summary judgment." Forsberg v. Pac. Northwest Bell Tel. Co., 840 F.2d 1409, 1418 (9th Cir. 1988).

Therefore, as there is no issue of material fact, the Court grants Defendants' motion as to Plaintiff's claim for retaliation.

IV. CONCLUSION

For the above reasons, Defendants' motion is GRANTED.

IT IS SO ORDERED.

Dated: August 6, 2009

DEAN D. PREGERSON
United States District Judge