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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN DELANEY,)	Case No. CV 07-05049 DDP (CTx)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING MOTION FOR SUMMARY
)	JUDGMENT
LYNWOOD UNIFIED SCHOOL)	
DISTRICT, RACHEL CHAVEZ,)	
MARTINA RODRIGUEZ, MARIA)	[Motion filed on May 11, 2009]
LOPEZ, JOSE LUIS SOLACHES,)	
ALFONSO MORALES, GUADALUPE)	
RODRIGUEZ, DHYAN LAL;)	
ROBERTO CASES; DIANE LUCAS,)	
ANIM MENER, MALCOLM BUTLER,)	
)	
Defendants.)	
_____)	

I. BACKGROUND¹

Plaintiff John DeLaney, who is Caucasian and over forty, was working as a teacher at Will Rogers Elementary School ("Will Rogers") in Defendant Lynwood Unified School District (the

¹ The evidence provided by the parties in this case does not always create a linear or coherent narrative of material events or, in particular, a background for relevant events. Nevertheless, the Court will describe the facts as presented by the parties.

1 "District") during Summer 2005 and for the 2005-06 school year.²
2 (Statement of Uncontroverted Facts ("SUF") ¶¶ 1-2; Rees Decl. Ex. I
3 ("Delaney Depo") 35.) Beginning in Fall 2005, Malcolm Butler
4 became the principal at Will Rogers. (SUF ¶ 3.)

5 During the 2005 school year, Plaintiff states that Butler
6 confronted him in front of his students, angrily berated Plaintiff
7 in a physically threatening manner, and intimidated Plaintiff so
8 that Plaintiff was afraid for his personal safety. (Delaney Decl.
9 ¶ 9.) March 20, 2006 was Plaintiff's last day of work. (SUF ¶ 6.)
10 On September 1, 2006, Plaintiff officially retired from the
11 District. (SUF ¶ 12.) However, Plaintiff states that his
12 retirement was "in reality a constructive discharge, or
13 termination, caused by principal Malcolm Butler's threatening and
14 harassing conduct to such a degree that [he] could not then, and
15 still cannot, function as a teacher." (DeLaney Decl. ¶ 8.)

16 In addition, Plaintiff provides evidence that in 2005, Dhyan
17 Lal, who was the Superintendent of the District until 2008,
18 published an autobiography book in which he detailed negative
19 experiences within the African-American community in various school
20 districts in Los Angeles against Lal personally. (Statement of
21 Genuine Issues ("SGI") ¶ 2.) Plaintiff argues that this book is
22 evidence of general racial animus in the District, because the
23 District Board Members do not act to ensure there is no racial
24 discrimination or question Lal's employment recommendations. (SGI
25 ¶ 9.) Lastly, Plaintiff presents statistics from the District

26

27 ² Plaintiff also argues, without providing any evidence, that
28 he is a "long tenured teacher with the District, who had never been
laid off, terminated, demoted, or disciplined." (Opp'n 4.)

1 that show, in general, the number of African-American teachers has
2 declined, while the number of Latino teachers has increased. (SGI
3 ¶ 11.)

4 In his Second Amended Complaint ("SAC"), Plaintiff makes the
5 following claims:

- 6 1) hostile work environment harassment based on race
- 7 discrimination in violation of the Fair Employment and Housing
Act ("FEHA"), Cal. Gov. Code § 12940(a);
- 8 2) discrimination based on age in violation of FEHA §
12940(h);
- 9 3) failure to prevent harassment in violation of FEHA §
12940(h);
- 10 4) constructive wrongful termination due to hostile work
environment harassment based on age discrimination in
11 violation of FEHA § 12940(k);
- 12 5) racial discrimination under Title VII, 42 U.S.C. § 2000e,
et seq.;
- 13 6) age discrimination under the Age Discrimination in
Employment Act ("ADEA"), 29 U.S.C. §§ 621-634.

14 (SAC 5-11.) Defendant now moves for summary judgment on all of
15 Plaintiff's claims.

16 **II. LEGAL STANDARD**

17 Summary judgment is appropriate where "the pleadings, the
18 discovery and disclosure materials on file, and any affidavits show
19 that there is no genuine issue as to any material fact and that the
20 movant is entitled to a judgment as a matter of law."
21 Fed. R. Civ. P. 56(c). In determining a motion for summary
22 judgment, all reasonable inferences from the evidence must be drawn
23 in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc.,
24 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence
25 is such that a reasonable jury could return a verdict for the
26 nonmoving party," and material facts are those "that might affect
27 the outcome of the suit under the governing law." Anderson, 477
28 U.S. at 248. However, no genuine issue of fact exists "[w]here the

1 record taken as a whole could not lead a rational trier of fact to
2 find for the non-moving party." Matsushita Elec. Indus. Co. v.
3 Zenith Radio Corp., 475 U.S. 574, 587 (1986).

4 **III. DISCUSSION**

5 A. Race and Age Discrimination under ADEA, FEHA, and Title 6 VII

7 Plaintiff's race and age discrimination arguments all rest on
8 the same facts, so the Court will analyze these claims together, as
9 all suffer from the same flaw. Plaintiff has not presented
10 sufficient evidence to raise a genuine issue regarding
11 discriminatory intent, whether based on age or race. See Guz v.
12 Bechtel National, Inc., 24 Cal. 4th 317, 354 (Cal. 2000)(requiring,
13 under the burden-shifting analysis, evidence that the employer's
14 intent or motive was discriminatory); Kentucky Retirement Systems
15 v. E.E.O.C., 128 S. Ct. 2361, 2366 (2008)(requiring under ADEA that
16 the employee's age "actually motivated the employer's decision").

17 Plaintiff's only evidence of discriminatory intent based on
18 race is Lal's book and the statistics of district hiring patterns.
19 Neither of these create any reasonable inferences regarding
20 Plaintiff and his race (Caucasian), and their relationship to his
21 employment at Will Rogers. See also American Federation of State,
22 County, and Mun. Employees, AFL-CIO (AFSCME) v. State of Wash., 770
23 F.2d 1401, 1407 (9th Cir. 1985)(statistical evidence, by itself, is
24 insufficient to establish discriminatory intent without
25 corroborating evidence).

26 Similarly, regarding age discrimination, Plaintiff's only
27 evidence of age discrimination is his declaration, where he states
28 that it is his "information and belief" that he was replaced by

1 younger workers, in addition to his testimony that he talked to
2 three younger workers who reported fewer visits or discipline from
3 Butler. (DeLaney Depo. 105:-106.) This is insufficient to create a
4 genuine issue of material fact, because no reasonable juror could
5 believe that these vague allegations establish animus based on age
6 or any motivation based on age. Where the only evidence presented
7 is "uncorroborated and self-serving" testimony by Plaintiff, this
8 cannot raise a genuine issue of material fact. Villiarimo v. Aloha
9 Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

10 As there is no genuine issue of material fact, the Court finds
11 that Plaintiff's claims based on age and racial discrimination
12 fail.

13 B. Harassment and Failure to Prevent Harassment

14 The elements of a claim for hostile environment age harassment
15 are that Plaintiff was: "(1) subjected to verbal or physical
16 conduct because of his age, (2) the conduct was unwelcome, and (3)
17 the conduct was sufficiently severe or pervasive to alter the
18 conditions of plaintiff's employment and create an abusive working
19 environment." Juell v. Forest Pharmaceuticals, Inc., 456 F. Supp.
20 2d 1141, 1157 (E.D. Cal. 2006)(internal quotations and brackets
21 omitted).

22 Again, Plaintiff provides no evidence which raises a genuine
23 dispute as to harassment based on age. Instead, Plaintiff
24 speculates about the District's and Butler's motivation for its
25 discipline practices, without providing any evidence that
26 Plaintiff's harassment was tied to his age. A plaintiff must
27 further present evidence that his or her workplace was "permeated
28 with discriminatory intimidation," Harris v. Forklift Sys., Inc.,

1 510 U.S. 17, 21 (1993), such that it is "subjectively and
2 objectively" abusive. Fuller v. City of Oakland, 47 F.3d 1522,
3 1527 (9th Cir. 1995). Plaintiff states generally that he had
4 confrontations with Butler on "more than one occasion," where
5 Butler moved "into [his] personal space" to berate and angrily
6 reprimand Plaintiff in a physically threatening manner. (Delaney
7 Decl. ¶ 9.) Again, even assuming that this is subjectively
8 abusive, there is no evidence the abuse is based on age.

9 As Plaintiff has not raised a genuine issue of material fact,
10 the Court finds that he has not presented a claim for hostile work
11 environment harassment based on age. As Plaintiff's claim for
12 harassment fails, Plaintiff's claim for failure to prevent
13 harassment also fails.

14 **IV. CONCLUSION**

15 For the above reasons, the Court GRANTS Defendant's motion for
16 summary judgment.

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18 IT IS SO ORDERED.

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21 Dated: August 6, 2009


22 DEAN D. PREGERSON
23 United States District Judge
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