

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN JONES,

Plaintiff,

v.

NATIONAL RAILROAD
PASSENGER CORPORATION,
a corporation, and DOES 1 through
10, inclusive,

Defendants.

Case No. 2:14-cv-04461-RGK-VBK

~~PROPOSED~~ JUDGMENT

Dept: Courtroom 850
Judge: Hon. R. Gary Klausner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] JUDGMENT

WHEREFORE, Defendant National Railroad Passenger Corporation's d/b/a Amtrak ("Defendant") Motion for Summary Judgment/Adjudication was duly noted for consideration on March 20, 2015. The Court, having considered the papers submitted and arguments of the parties, and for good cause appearing, concludes that the evidence in the record fails to raise a triable issue of material fact to defeat Defendant's Motion as to Plaintiff's claim for Racial Discrimination in Employment under the California Fair Employment and Housing Act §§ 12940, *et seq.* ("FEHA"). Accordingly, Plaintiff's failure to prevent discrimination and wrongful termination claims also fail, as they are derivative of Plaintiff's racial discrimination claim. Specifically, the Court makes the following findings:

1. Plaintiff has not established a *prima facie* case of racial discrimination because the evidence is undisputed that he was not performing competently in the position he held prior to termination.

2. Plaintiff further cannot establish a *prima facie* case of racial discrimination claim because the record does not present a triable issue as to the existence of circumstances suggesting a discriminatory motive. Plaintiff failed to introduce any evidence indicating that the Defendant's employees who made the decisions regarding his termination had a history of racial discrimination or were otherwise motivated by racial animus. Plaintiff's evidence of discriminatory motive harbored by Jay Fountain, even if true, is immaterial because the decisions regarding Plaintiff's adverse employment action were not made by Mr. Fountain.

3. Even assuming that Plaintiff could raise a triable issue as to his *prima facie* case, Amtrak offered undisputed evidence of a legitimate, non-discriminatory reason for the adverse employment action taken, and Plaintiff failed to raise a triable issue as to pretext. Specifically, Defendant terminated Plaintiff's employment after conducting a hearing that found breach of protocol and theft, and

1 Plaintiff's only evidence of discriminatory motive is immaterial, as it is limited to
2 Mr. Fountain.

3 4. Plaintiff's claim for Wrongful Termination in Violation of Public
4 Policy fails because he cannot establish an underlying public policy violation.
5 Specifically, Plaintiff alleges that racial discrimination in violation of the FEHA is
6 the public policy violation underpinning this claim. However, because Plaintiff's
7 FEHA claim fails, his derivative wrongful termination claim fails as well.

8 5. Plaintiff's claim for Failure to Prevent Discrimination in Employment
9 fails because Plaintiff cannot show that he suffered actionable discrimination.

10 6. To the extent the Court relied on evidence to which the parties
11 objected, those objections are overruled.

12 Because the Court finds that there is no genuine issue for trial,

13 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS**
14 **FOLLOWS:**

15 Judgment is entered in favor of Defendant National Railroad Passenger
16 Corporation d/b/a Amtrak and against Plaintiff Kevin Jones. Plaintiff shall take
17 nothing as a result of his claims for relief, all of Plaintiff's claims for relief shall be
18 dismissed with prejudice, and Defendant shall recover its costs.

19
20 Dated: MAR 27 2015

Gary Klausner
21 HON. R. GARY KLAUSNER
22 JUDGE, U.S. DISTRICT COURT
23
24
25
26
27
28