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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALD L. HUNTER,
Plaintiff,
v.
RADIOSHACK CORPORATION,
Defendant.

) 1:10-cv-2297 OWW OWW SMS
)
) SCHEDULING CONFERENCE ORDER
)
) Discovery Cut-Off: 12/15/11
)
) Non-Dispositive Motion
) Filing Deadline: 1/6/12
)
) Non-Dispositive Motion
) Hearing Date: 2/10/12 9:00
) Ctrm. 7

) Dispositive Motion Filing
) Deadline: 2/6/12

) Dispositive Motion Hearing
) Date: 3/12/12 10:00 Ctrm. 3

) Settlement Conference Date:
) 1/10/12 10:30 Ctrm. 7

) Pre-Trial Conference Date:
) 4/16/12 11:00 Ctrm. 3

) Trial Date: 5/30/12 9:00
) Ctrm. 3 (JT-5 days)

I. Date of Scheduling Conference.
June 8, 2011.

II. Appearances Of Counsel.

Richard L. Moser, Esq., appeared on behalf of Plaintiff.
Law Offices of Walter W. Whelan by Brian D. Whelan, Esq.,

1 appeared on behalf of Defendant.

2 III. Summary of Pleadings.

3 A. Plaintiff's Factual Contentions.

4 1. From on or about November 3, 2006 through June 9,
5 2010, Plaintiff was employed as a sales clerk by RadioShack at
6 the Oakhurst store.

7 2. Plaintiff was employed pursuant to an oral
8 agreement.

9 3. Plaintiff performed satisfactorily all of the
10 duties and conditions under the oral agreement.

11 4. Plaintiff was terminated on June 9, 2010, because
12 of his age.

13 5. As a result of Defendant's conduct, Plaintiff
14 sustained severe and serious injury to his person.

15 6. As a result of Defendant's conduct, Plaintiff
16 suffered humiliation, embarrassment and mental anguish.

17 7. Because of Defendant's conduct, Plaintiff will be
18 required to employ the services of physicians, nurses and other
19 health care professionals in the future.

20 8. Plaintiff has been unable to engage in his
21 employment since his termination.

22 9. Plaintiff will be unable to perform his usual and
23 customary employment for an indefinite period.

24 10. The conduct of Defendant RadioShack was without
25 good, just or legitimate cause.

26 11. Plaintiff's termination was done with the intent
27 to cause injury to Plaintiff.

28 12. In terminating Plaintiff, Defendant acted

1 maliciously, oppressively and despicably.

2 13. The employment agreement between Plaintiff and
3 RadioShack contained an implied covenant of good faith and fair
4 dealing obligating Defendant RadioShack to act in good faith and
5 fairly towards Plaintiff.

6 14. Defendant RadioShack breached the implied covenant
7 of good faith and fair dealing by causing Plaintiff's termination
8 in bad faith and for reasons extraneous to the contract.

9 15. Plaintiff was terminated without good, just or
10 legitimate cause.

11 16. Plaintiff was terminated because of his age.

12 17. Plaintiff was assured by Defendant through
13 Defendant's actions, statements and conduct that Plaintiff would
14 not be terminated arbitrarily.

15 18. Because of Defendant's conduct and statements,
16 Plaintiff was led to conclude that Defendant entered into an
17 implied contract with Plaintiff not to discharge Plaintiff unless
18 there was good cause to do so.

19 19. Plaintiff received regular raises and promotions
20 as a result of his job performance.

21 20. During the time Plaintiff was employed by
22 Defendant, Plaintiff received no disciplinary action, including,
23 but not limited to, warnings against him.

24 21. Plaintiff has an implied contract with Defendant
25 that he would be employed by Defendant as long as his performance
26 was satisfactory and that Defendant would not cause him to be
27 discharged without good and just cause.

28 22. Plaintiff performed all of the duties and

1 conditions of his employment agreement. Defendant knew that
2 Plaintiff had fulfilled all of the duties and conditions of the
3 employment agreement with RadioShack.

4 23. Without misconduct on the part of Plaintiff, and
5 without good cause, Defendant breached the employment agreement
6 by engaging in conduct separate and apart from the performance of
7 obligations of the agreement and without good cause.

8 24. As a result of the Plaintiff not being able to
9 obtain comparable employment, following his termination, he has
10 sustained substantial lost wages and benefits.

11 25. Defendant's conduct in terminating Plaintiff
12 without good cause was intentional, extreme, outrageous and done
13 with the intent to cause emotional distress to Plaintiff.

14 26. Plaintiff has suffered severe emotional distress
15 as a result of Defendant's conduct.

16 27. Plaintiff has suffered damages in a sum within the
17 jurisdiction of this Court, i.e., in excess of \$75,000.

18 28. Plaintiff continues to suffer substantial losses
19 in income, earnings and benefits.

20 29. Plaintiff was denied the terms and conditions of
21 his employment because of his age in violation of Govt. Code
22 § 12940.

23 30. On or about June 9, 2010, Plaintiff's employment
24 was terminated because of his age.

25 31. Plaintiff is a member of the class of persons
26 protected from age discrimination in that he is over the age of
27 40.

28 32. Defendant RadioShack regularly employs five or

1 more persons.

2 33. Within one year from the date of the most recent
3 act of discrimination, Plaintiff filed a charge of age
4 discrimination with the California Department of Fair Employment
5 and Housing and the Equal Employment Opportunity Commission.

6 34. On or about August 3, 2010, Plaintiff received a
7 Right-To-Sue Notice from the Equal Employment Opportunity
8 Commission.

9 35. As a direct and proximate result of Defendant's
10 age discrimination, Plaintiff has suffered severe and serious
11 injury to his person, all to his damage in a sum within the
12 jurisdiction of this Court.

13 36. In addition, as a result of Defendant's age
14 discrimination, Plaintiff has suffered and continues to suffer
15 substantial losses in income, earnings and benefits.

16 37. In engaging in unlawful age discrimination,
17 Defendant RadioShack acted maliciously, despicably and
18 intentionally.

19 B. Plaintiff's Legal Contentions.

20 1. That Plaintiff was wrongfully terminated in
21 violation of the public policy against age discrimination set
22 forth in Govt. Code § 12940.

23 2. That, in terminating Plaintiff, Defendant breached
24 the implied covenant of good faith and fair dealing.

25 3. That, in terminating Plaintiff, Defendant breach
26 the implied covenant not to terminate Plaintiff except for good
27 cause.

28 4. That, in its treatment of Plaintiff, Defendant

1 engaged in intentional infliction of emotional distress.

2 5. That, in denying Plaintiff the terms and
3 conditions of his employment because of his age, Defendant
4 engaged in unlawful age discrimination in violation of Govt. Code
5 § 12940.

6 6. That Defendant's conduct toward Plaintiff was
7 despicable, oppressive, malicious and intentional, warranting
8 punitive damages.

9 C. Defendant's Factual Contentions.

10 1. Plaintiff was terminated because of unsatisfactory
11 job performance.

12 2. Plaintiff was not terminated because of his age.

13 3. Plaintiff was not subjected to unlawful age
14 discrimination at any time during his employment at RadioShack.

15 4. RadioShack did not breach the covenant of good
16 faith and fair dealing or any other contractual covenant in
17 terminating Plaintiff.

18 5. Defendant RadioShack did not engage in intentional
19 infliction of emotional distress in the way it treated Plaintiff
20 or in the way it terminated Plaintiff.

21 D. Defendant's Legal Contentions.

22 1. That Defendant RadioShack did not engage in
23 unlawful age discrimination.

24 2. That Defendant RadioShack did not wrongfully
25 terminate Plaintiff's employment.

26 3. That RadioShack did not breach any implied or
27 express contractual covenants owed to Plaintiff.

28 4. That RadioShack did not engage in intentional

1 infliction of emotional distress towards Plaintiff.

2 5. That to the extent Plaintiff's claims are based on
3 Defendant's conduct about which Plaintiff never complained and
4 for which Plaintiff sat on his rights, the doctrine of laches
5 bars Plaintiff's recovery.

6 6. That, to the extent any of the conduct on the part
7 of RadioShack on which Plaintiff complains is based on conduct
8 occurring beyond the applicable statute of limitations,
9 Plaintiff's claims based on such conduct are barred.

10 7. In failing and refusing to perform adequately his
11 job duties, Plaintiff engaged in unclean hands and is, to that
12 extent, barred from any recovery.

13 8. That Plaintiff is and was at all times an at-will
14 employee of RadioShack and that, therefore, his termination did
15 not violate any of Plaintiff's contractual rights.

16 IV. Orders Re Amendments To Pleadings.

17 1. The parties do not anticipate amending the pleadings at
18 this time.

19 V. Factual Summary.

20 A. Admitted Facts Which Are Deemed Proven Without Further
21 Proceedings.

22 1. RadioShack Corporation is a corporation
23 incorporated under the laws of the State of Delaware.

24 2. From on or about November 3, 2006 through June 9,
25 2010, Plaintiff was employed as a sales clerk by RadioShack at
26 the Oakhurst store.

27 3. Plaintiff is a member of the class of persons
28 protected from age discrimination in that he is over the age of

1 40.

2 4. Defendant RadioShack regularly employs five or
3 more persons.

4 B. Contested Facts.

5 1. Plaintiff was employed pursuant to an oral
6 agreement.

7 2. Plaintiff performed satisfactorily all of the
8 duties and conditions under the oral agreement.

9 3. Plaintiff was terminated on June 9, 2010, because
10 of his age.

11 4. As a result of Defendant's conduct, Plaintiff
12 sustained severe and serious injury to his person.

13 5. As a result of Defendant's conduct, Plaintiff
14 suffered humiliation, embarrassment and mental anguish.

15 6. Because of defendant's conduct, Plaintiff will be
16 required to employ the services of physicians, nurses and other
17 health care professionals in the future.

18 7. Plaintiff has been unable to engage in his
19 employment since his termination.

20 8. Plaintiff will be unable to perform his usual and
21 customary employment for an indefinite period.

22 9. The conduct of Defendant RadioShack was without
23 good, just or legitimate cause.

24 10. Plaintiff's termination was done with the intent
25 to cause injury to Plaintiff.

26 11. In terminating Plaintiff, Defendant acted
27 maliciously, oppressively and despicably.

28 12. The employment agreement between Plaintiff and

1 RadioShack contained an implied covenant of good faith and fair
2 dealing obligating Defendant RadioShack to act in good faith and
3 fairly towards Plaintiff.

4 13. Defendant RadioShack breached the implied covenant
5 of good faith and fair dealing by causing Plaintiff's termination
6 in bad faith and for reasons extraneous to the contract.

7 14. Plaintiff was terminated without good, just or
8 legitimate cause.

9 15. Plaintiff was terminated because of his age.

10 16. Plaintiff was assured by Defendant through
11 defendant's actions, statements and conduct that Plaintiff would
12 not be terminated arbitrarily.

13 17. Because of Defendant's conduct and statements,
14 Plaintiff was led to conclude that Defendant entered into an
15 implied contract with Plaintiff not to discharge Plaintiff unless
16 there was good cause to do so.

17 18. Plaintiff received regular raises and promotions
18 as a result of his job performance.

19 19. During the time Plaintiff was employed by
20 Defendant, Plaintiff received no disciplinary action, including,
21 but not limited to, warnings against him.

22 20. Plaintiff has an implied contract with Defendant
23 that he would be employed by Defendant as long as his performance
24 was satisfactory and that Defendant would not cause him to be
25 discharged without good and just cause.

26 21. Plaintiff performed all of the duties and
27 conditions of his employment agreement. Defendant knew that
28 Plaintiff had fulfilled all of the duties and conditions of the

1 employment agreement with RadioShack.

2 22. Without misconduct on the part of Plaintiff, and
3 without good cause, Defendant breached the employment agreement
4 by engaging in conduct separate and apart from the performance of
5 obligations of the agreement and without good cause.

6 23. As a result of the Plaintiff not being able to
7 obtain comparable employment, following his termination, he has
8 sustained substantial lost wages and benefits.

9 24. Defendant's conduct in terminating Plaintiff
10 without good cause was intentional, extreme, outrageous and done
11 with the intent to cause emotional distress to Plaintiff.

12 25. Plaintiff has suffered severe emotional distress
13 as a result of Defendant's conduct.

14 26. Plaintiff has suffered damages in a sum within the
15 jurisdiction of this Court, i.e., in excess of \$75,000.

16 27. Plaintiff continues to suffer substantial losses
17 in income, earnings and benefits.

18 28. Plaintiff was denied the terms and conditions of
19 his employment because of his age in violation of Govt. Code
20 § 12940.

21 29. On or about June 9, 2010, Plaintiff's employment
22 was terminated because of his age.

23 30. Within one year from the date of the most recent
24 act of discrimination, Plaintiff filed a charge of age
25 discrimination with the California Department of Fair Employment
26 and Housing and the Equal Employment Opportunity Commission.

27 31. On or about August 3, 2010, Plaintiff received a
28 Right-To-Sue Notice from the Equal Employment Opportunity

1 Commission.

2 32. As a direct and proximate result of Defendant's
3 age discrimination, Plaintiff has suffered severe and serious
4 injury to his person, all to his damage in a sum within the
5 jurisdiction of this Court.

6 33. In addition, as a result of Defendant's age
7 discrimination, Plaintiff has suffered and continues to suffer
8 substantial losses in income, earnings and benefits.

9 34. In engaging in unlawful age discrimination,
10 Defendant RadioShack acted maliciously, despicably and
11 intentionally.

12 35. Plaintiff was terminated because of unsatisfactory
13 job performance.

14 36. Plaintiff was not terminated because of his age.

15 37. Plaintiff was not subjected to unlawful age
16 discrimination at any time during his employment at RadioShack.

17 38. RadioShack did not breach the covenant of good
18 faith and fair dealing or any other contractual covenant in
19 terminating Plaintiff.

20 39. Defendant RadioShack did not engage in intentional
21 infliction of emotional distress in the way it treated Plaintiff
22 or in the way it terminated Plaintiff.

23 VI. Legal Issues.

24 A. Uncontested.

25 1. Jurisdiction exists under 28 U.S.C. § 1332.

26 2. Venue is proper under 28 U.S.C. § 1392.

27 3. The parties agree that the substantive law of the
28 State of California provides the rule of decision in this case.

1 B. Contested.

2 1. Whether Plaintiff's claims are barred because of
3 an at-will agreement between the parties.

4 2. Whether or not the Fair Employment and Housing
5 Act, Govt. Code § 12940, et seq., was violated by Defendant's
6 conduct.

7 3. Whether Defendant engaged in actionable and
8 intentional infliction of emotional distress.

9 4. Whether the affirmative defenses of laches,
10 unclean hands or failure of consideration apply.

11 VII. Consent to Magistrate Judge Jurisdiction.

12 1. The parties have not consented to transfer the
13 case to the Magistrate Judge for all purposes, including trial.

14 VIII. Corporate Identification Statement.

15 1. Any nongovernmental corporate party to any action in
16 this court shall file a statement identifying all its parent
17 corporations and listing any entity that owns 10% or more of the
18 party's equity securities. A party shall file the statement with
19 its initial pleading filed in this court and shall supplement the
20 statement within a reasonable time of any change in the
21 information.

22 IX. Discovery Plan and Cut-Off Date.

23 1. Plaintiff plans to take the depositions of the managers
24 and co-employees of Plaintiff at the RadioShack store in
25 Oakhurst, as well as any other percipient witnesses identified by
26 Defendant in response to discovery requests.

27 2. Defendant intends to take the depositions of Plaintiff
28 and of other percipient witnesses identified by Plaintiff in

1 response to written discovery. Defendant plans to propound
2 comprehensive written discovery including interrogatories,
3 document requests and requests for admissions. Depending on
4 Plaintiff's responses, Defendant RadioShack may seek an
5 independent psychological examination of the Plaintiff.

6 3. The parties are ordered to complete all non-expert
7 discovery on or before November 30, 2011.

8 4. The parties are directed to disclose all expert
9 witnesses, in writing, on or before October 14, 2011. Any
10 rebuttal or supplemental expert disclosures will be made on or
11 before November 15, 2011. The parties will comply with the
12 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
13 their expert designations. Local Rule 16-240(a) notwithstanding,
14 the written designation of experts shall be made pursuant to F.
15 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
16 information required thereunder. Failure to designate experts in
17 compliance with this order may result in the Court excluding the
18 testimony or other evidence offered through such experts that are
19 not disclosed pursuant to this order.

20 5. The parties are ordered to complete all expert
21 discovery on or before December 15, 2011.

22 6. The provisions of F. R. Civ. P. 26(b)(4) shall
23 apply to all discovery relating to experts and their opinions.
24 Experts shall be fully prepared to be examined on all subjects
25 and opinions included in the designation and their reports, which
26 shall include every opinion to be rendered and all reasons for
27 each opinion. Failure to comply will result in the imposition of
28 sanctions.

1 X. Pre-Trial Motion Schedule.

2 1. All Non-Dispositive Pre-Trial Motions, including any
3 discovery motions, shall be filed on or before January 6, 2012,
4 and heard on February 10, 2012, at 9:00 a.m. before Magistrate
5 Judge Sandra M. Snyder in Courtroom 7.

6 2. In scheduling such motions, the Magistrate
7 Judge may grant applications for an order shortening time
8 pursuant to Local Rule 142(d). However, if counsel does not
9 obtain an order shortening time, the notice of motion must comply
10 with Local Rule 251 and this schedule.

11 3. All Dispositive Pre-Trial Motions are to be
12 filed no later than February 6, 2012, and will be heard on March
13 12, 2012, at 10:00 a.m. before the Honorable Oliver W. Wanger, in
14 Courtroom 3, 7th Floor. In scheduling such motions, counsel
15 shall comply with Local Rule 230.

16 XI. Pre-Trial Conference Date.

17 1. April 16, 2012, at 11:00 a.m. in Courtroom 3, 7th
18 Floor, before the Honorable Oliver W. Wanger.

19 2. The parties are ordered to file a Joint Pre-
20 Trial Statement pursuant to Local Rule 281(a)(2).

21 3. Counsel's attention is directed to Rules 281
22 and 282 of the Local Rules of Practice for the Eastern District
23 of California, as to the obligations of counsel in preparing for
24 the pre-trial conference. The Court insists upon strict
25 compliance with those rules.

26 XII. Motions - Hard Copy.

27 1. The parties shall submit one (1) courtesy paper copy to
28 the Court of any motions filed. Exhibits shall be marked with

1 protruding numbered or lettered tabs so that the Court can easily
2 identify such exhibits.

3 XIII. Trial Date.

4 1. May 30, 2012, at the hour of 9:00 a.m. in Courtroom 3,
5 7th Floor, before the Honorable Oliver W. Wanger, United States
6 District Judge.

7 2. This is a jury trial.

8 3. Counsels' Estimate Of Trial Time:

9 a. Four to five days.

10 4. Counsels' attention is directed to Local Rules
11 of Practice for the Eastern District of California, Rule 285.

12 XIV. Settlement Conference.

13 1. A Settlement Conference is scheduled for January 10,
14 2012, at 10:30 a.m. in Courtroom 7 before the Honorable Sandra M.
15 Snyder, United States Magistrate Judge.

16 2. Unless otherwise permitted in advance by the
17 Court, the attorneys who will try the case shall appear at the
18 Settlement Conference with the parties and the person or persons
19 having full authority to negotiate and settle the case on any
20 terms at the conference.

21 3. Permission for a party [not attorney] to attend
22 by telephone may be granted upon request, by letter, with a copy
23 to the other parties, if the party [not attorney] lives and works
24 outside the Eastern District of California, and attendance in
25 person would constitute a hardship. If telephone attendance is
26 allowed, the party must be immediately available throughout the
27 conference until excused regardless of time zone differences.
28 Any other special arrangements desired in cases where settlement

1 authority rests with a governing body, shall also be proposed in
2 advance by letter copied to all other parties.

3 4. Confidential Settlement Conference Statement.

4 At least five (5) days prior to the Settlement Conference the
5 parties shall submit, directly to the Magistrate Judge's
6 chambers, a confidential settlement conference statement. The
7 statement should not be filed with the Clerk of the Court nor
8 served on any other party. Each statement shall be clearly
9 marked "confidential" with the date and time of the Settlement
10 Conference indicated prominently thereon. Counsel are urged to
11 request the return of their statements if settlement is not
12 achieved and if such a request is not made the Court will dispose
13 of the statement.

14 5. The Confidential Settlement Conference
15 Statement shall include the following:

16 a. A brief statement of the facts of the
17 case.

18 b. A brief statement of the claims and
19 defenses, i.e., statutory or other grounds upon which the claims
20 are founded; a forthright evaluation of the parties' likelihood
21 of prevailing on the claims and defenses; and a description of
22 the major issues in dispute.

23 c. A summary of the proceedings to date.

24 d. An estimate of the cost and time to be
25 expended for further discovery, pre-trial and trial.

26 e. The relief sought.

27 f. The parties' position on settlement,
28 including present demands and offers and a history of past

1 settlement discussions, offers and demands.

2 XV. Request For Bifurcation, Appointment Of Special Master,
3 Or Other Techniques To Shorten Trial.

4 1. Neither party requests bifurcation. No punitive
5 damages are sought.

6 XVI. Related Matters Pending.

7 1. There are no related matters.

8 XVII. Compliance With Federal Procedure.

9 1. The Court requires compliance with the Federal
10 Rules of Civil Procedure and the Local Rules of Practice for the
11 Eastern District of California. To aid the court in the
12 efficient administration of this case, all counsel are directed
13 to familiarize themselves with the Federal Rules of Civil
14 Procedure and the Local Rules of Practice of the Eastern District
15 of California, and keep abreast of any amendments thereto.

16 XVIII. Effect Of This Order.

17 1. The foregoing order represents the best
18 estimate of the court and counsel as to the agenda most suitable
19 to bring this case to resolution. The trial date reserved is
20 specifically reserved for this case. If the parties determine at
21 any time that the schedule outlined in this order cannot be met,
22 counsel are ordered to notify the court immediately of that fact
23 so that adjustments may be made, either by stipulation or by
24 subsequent scheduling conference.

25 2. Stipulations extending the deadlines contained
26 herein will not be considered unless they are accompanied by
27 affidavits or declarations, and where appropriate attached
28 exhibits, which establish good cause for granting the relief

1 requested.

2 3. Failure to comply with this order may result in
3 the imposition of sanctions.

4

5 IT IS SO ORDERED.

6 Dated: June 10, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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