

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  
EASTERN DISTRICT OF CALIFORNIA

EDITH F. CARTWRIGHT,  
Plaintiff,

No. 2:05-cv-02439-MCE-KJM

v.

**MEMORANDUM AND ORDER**

REGENTS OF THE UNIVERSITY OF CALIFORNIA, an entity of the State of California; UNIVERSITY OF CALIFORNIA, an entity of the State of California; SAL GENITO III, an individual, in his representative and individual capacities; and DOES 2-300,

Defendants.

-----oo0oo-----

Defendants Regents of the University of California and Sal Genito III (collectively referred to as "Defendants" unless otherwise noted) move for summary judgment, or alternatively for summary adjudication of issues, on grounds that the instant lawsuit, brought by Plaintiff Edith Cartwright ("Plaintiff" or "Cartwright"), a former employee of the University of California, Davis, fails as a matter of law.

1 Defendants claim that 1) Plaintiff's termination resulted from  
2 her own allegedly threatening, intimidating and disruptive conduct  
3 towards her subordinates; 2) no evidence of pretext exists with  
4 which to rebut Defendants' purportedly legitimate reasons for  
5 terminating Plaintiff's employment; and 3) Plaintiff's causes of  
6 action against Defendant Genito in his individual capacity fail  
7 as a matter of law for lack of any supporting evidence. As set  
8 forth below, Defendants' Motion will be denied.<sup>1</sup>

9  
10 **BACKGROUND**

11  
12 Plaintiff, a Latina, Mexican-American, Native-American  
13 homosexual female, began working for the University of  
14 California, Davis in August 1987, as an employee in the Physical  
15 Plant-Facilities-Operational Department. Despite her repeated  
16 complaints to various authorities, Plaintiff claims she was  
17 subjected to a litany of discriminatory and retaliatory acts  
18 based on her race, gender, and sexual preference during her  
19 sixteen-year tenure of employment with the University.

20 Shortly after being hired, Plaintiff alleges that two of her  
21 male superiors began subjecting her to discrimination and  
22 harassment. The discrimination and harassment was ongoing and  
23 ultimately prompted Plaintiff, in 1991, to file complaints with  
24 the University, the Department of Fair Employment and Housing,  
25 and the Yolo County Superior Court.

26  
27 

---

<sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 230(g)

1 The University entered into a written settlement agreement with  
2 Plaintiff under which Plaintiff agreed to release her claims in  
3 return for \$30,000.00 and a promise by the University not to  
4 retaliate.

5 After several alleged instances in which Plaintiff alleges  
6 that she continued to be subject to harassment, discrimination,  
7 and/or retaliation, Plaintiff began to report to Defendant Genito  
8 in approximately October of 2001. Plaintiff claims that ongoing  
9 mistreatment (which need not be recited here given the Court's  
10 prior determination that only events occurring after January 14,  
11 2003 are currently actionable) prompted her to file a complaint  
12 in Yolo County Superior Court on January 14, 2003.

13 According to Plaintiff, Defendant Genito told her, around  
14 the end of January of 2003, that the University's Vice Chancellor  
15 of Human Resources, Dennis Shimek, was "very upset" about the  
16 Yolo County litigation, given Defendants' prior 1991 agreement,  
17 as delineated above, not to retaliate against Plaintiff. Genito  
18 admitted in his deposition that he told Plaintiff during this  
19 period of Mr. Shimek's displeasure about the complaint she had  
20 filed. (Genito Dep., 96:12-15).

21 In February 2003, Mr. Genito instructed Plaintiff to  
22 authorize and accept delivery of a new recycling dump truck.  
23 After research, Plaintiff discovered the dump truck had serious  
24 safety hazards and was less efficient and more expensive than the  
25 current truck. Plaintiff raised her concerns with Mr. Genito,  
26 who in response cancelled a pre-arranged meeting and failed  
27 either to follow-up or reschedule.

28 ///

1 One month after first contacting Mr. Genito, on April 24, 2003,  
2 Plaintiff sent a comprehensive written report regarding her  
3 concerns of the new dump truck to Mr. Genito and several other  
4 Managing Agents. That same day, according to Plaintiff, Genito  
5 made derogatory remarks about Plaintiff in a meeting attended by  
6 senior university personnel. The following day, April 25, 2003,  
7 Plaintiff claims she was placed on investigatory leave.

8 Before placing Plaintiff on investigatory leave, in March  
9 2003, Mr. Genito allegedly informed Plaintiff that she was being  
10 investigated due to "rumors" of the following behavior:

11 1) "hosting wild, lesbian sex parties at [her] house with  
12 [Managing Agent Genito]", 2) "perform[ing] yard work in the  
13 nude," and 3) "fetch[ing] [her] newspaper topless" (TAC 10:19-  
14 24). The investigation into these alleged "rumors" was  
15 initially conducted by Managing Agent Lead Supervisor Robert  
16 Bohn. Plaintiff alleges that because Genito was dissatisfied  
17 with the results of Bohn's investigation, he ordered Plaintiff  
18 herself to complete the investigation, despite her status as the  
19 subject of the rumors.

20 Plaintiff also alleges that on April 25, 2003, the day she  
21 was placed on investigatory leave, Mr. Genito forced three  
22 subordinate employees to file workplace grievances against  
23 Plaintiff, which were then backdated to April 16, 2003.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Although Defendants appear to concede that at least one of the  
2 complaints, the one by Nelson Randolph, was reduced to writing  
3 only after Plaintiff was placed on leave, Defendants nonetheless  
4 insisted that complaints from the three involved individuals were  
5 independently received, without solicitation, on an informal  
6 basis between April 15, 2003 and April 22, 2003.

7 The three grievances triggered an investigation, starting in  
8 July 2003, by Managing Agent June Taylor. During the course of  
9 that investigation, none of Plaintiff's witnesses were  
10 interviewed and the three complainants were interviewed in the  
11 presence of Mr. Genito. The investigation led to Plaintiff  
12 receiving a "Notice of Intent to Dismiss," which accused  
13 Plaintiff of being disrespectful, disruptive, threatening, and  
14 unprofessional while interacting with several different  
15 subordinates and co-workers.

16 On November 10, 2003 Plaintiff was fired. No progressive  
17 discipline was employed despite Plaintiff's sixteen-year job  
18 tenure with the University, the fact that her job performance had  
19 merited good reviews, and the fact that no formal disciplinary  
20 proceedings had been previously instituted against her.

21 According to Defendants, termination was justified without any  
22 progressive discipline because her actions "jeopardized the  
23 safety of employees" and consequently were grounds for immediate  
24 termination. See Defs.' Proposed Undisputed Material Fact  
25 No. 18. No evidence, however, was ever submitted suggesting that  
26 Plaintiff did anything other than verbally confronting employees  
27 under her supervision.

28 ///

1 According to Plaintiff, this conduct was commonplace among  
2 Defendants' supervisors and managers, and no other such  
3 individuals were subject to discipline for yelling. See Pl.'s  
4 Opp'n, 5:1-5. Moreover, Plaintiff has produced evidence of at  
5 least one other employee, Jane Lepisto, who actually physically  
6 struck an employee under her supervision. Despite the fact that  
7 other witnesses allegedly observed the incident and the victim  
8 had to be taken to the hospital, Ms. Lepisto was not terminated.

9       While Plaintiff was on investigatory leave, Mr. Genito  
10 allegedly entered her office without her consent, and took or  
11 destroyed several of her personal items, including framed  
12 pictures, an antique stereo, a crystal pitcher and a crystal  
13 glass. Although most of those items were apparently returned to  
14 Plaintiff about five years later, there is sharp dispute  
15 concerning why Plaintiff did not obtain her personal items  
16 sooner. Defendants contend that Plaintiff did not avail herself  
17 of numerous opportunities to retrieve the items, while Plaintiff  
18 maintains that she was not initially permitted to enter  
19 University premises to do so, and that later Defendants  
20 improperly conditioned her retrieval of the items on a dismissal  
21 of her conversion claim.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1           If the moving party meets its initial responsibility, the  
2 burden then shifts to the opposing party to establish that a  
3 genuine issue as to any material fact actually does exist.  
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
5 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.  
6 253, 288-89 (1968).

7           In attempting to establish the existence of this factual  
8 dispute, the opposing party must tender evidence of specific  
9 facts in the form of affidavits, and/or admissible discovery  
10 material, in support of its contention that the dispute exists.  
11 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that  
12 the fact in contention is material, i.e., a fact that might  
13 affect the outcome of the suit under the governing law, and that  
14 the dispute is genuine, i.e., the evidence is such that a  
15 reasonable jury could return a verdict for the nonmoving party.  
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52  
17 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper  
18 Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,  
19 "before the evidence is left to the jury, there is a preliminary  
20 question for the judge, not whether there is literally no  
21 evidence, but whether there is any upon which a jury could  
22 properly proceed to find a verdict for the party producing it,  
23 upon whom the onus of proof is imposed." Anderson, 477 U.S. at  
24 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20 L.  
25 Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the  
26 moving party has carried its burden under Rule 56(c), its  
27 opponent must do more than simply show that there is some  
28 metaphysical doubt as to the material facts ....



1 Where the record taken as a whole could not lead a rational  
2 trier of fact to find for the nonmoving party, there is no  
3 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

4 In resolving a summary judgment motion, the evidence of the  
5 opposing party is to be believed, and all reasonable inferences  
6 that may be drawn from the facts placed before the court must be  
7 drawn in favor of the opposing party. Anderson, 477 U.S. at  
8 255. Nevertheless, inferences are not drawn out of the air, and  
9 it is the opposing party's obligation to produce a factual  
10 predicate from which the inference may be drawn. Richards v.  
11 Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal.  
12 1985), aff'd, 810 F.2d 898 (9th Cir. 1987).

#### 14 ANALYSIS

15  
16 This case, quite simply, is replete with triable issues of  
17 fact that preclude summary judgment. Moreover, despite two  
18 rounds of pleadings challenges in which Defendants scrutinized  
19 the validity of virtually every cause of action asserted by  
20 Plaintiff, Defendants once again attempt to eliminate  
21 Plaintiff's remaining claims as a matter of law. Those efforts  
22 fail.

23 Under these circumstances, and given the exhaustive Orders  
24 previously issued in this matter, the Court declines to again  
25 parse the various claims in exhaustive detail. Instead, since  
26 this is a case which clearly must be adjudicated through trial,  
27 some general observations alone will suffice.

28 ///

1 First, the bulk of Defendants' Motion is predicated on the  
2 argument that Plaintiff was terminated for legitimate, non-  
3 discriminatory, reasons. The reasons for Plaintiff's  
4 termination, however, remain in stark dispute. Temporally,  
5 Plaintiff was placed on administrative leave within about three  
6 months after University management discovered her lawsuit.  
7 During the same period of time, she was asked to investigate  
8 rumors pertaining to issues surrounding her own sexual identity.  
9 The fact that no progressive discipline was employed is suspect,  
10 since it is questionable whether any alleged verbal misconduct  
11 on Plaintiff's part "jeopardized the safety of employees", as  
12 Defendants allege. Finally, the fact that another manager who  
13 actually struck one of her subordinates and was not terminated  
14 is also problematic. All these factors call into question the  
15 legitimacy of Plaintiff's termination, and further raises issues  
16 of pretext even if one assumes that Defendants have produced, at  
17 least facially, a legitimate justification for termination.  
18 Temporal proximity can itself constitute circumstantial evidence  
19 of pretext, even in the absence of all the other issues raised  
20 by this case as enumerated above. See Stegall v. Citadel  
21 Broadcasting, Co., 350 F.3d 1061, 1069 (9th Cir. 2003).

22 Defendants' request for summary adjudication on Plaintiff's  
23 claims for violations of Title VII, 42 U.S.C. § 1981 are  
24 specifically predicated on the alleged legitimacy of Plaintiff's  
25 termination.

26 ///

27 ///

28 ///

1 With regard to Plaintiff's claims under Title IX for  
2 discrimination and retaliation, the same holds true- Defendants  
3 cite to the "undisputed facts" as to Plaintiff's allegedly  
4 disruptive and threatening behavior, along with the University's  
5 subsequent investigation and review of the initial decision to  
6 terminate Plaintiff. Again, a plethora of disputed facts with  
7 regard to Plaintiff's alleged behavior, the propriety of the  
8 discipline she received in light of that behavior, and the  
9 efficacy of the University's review (the reviewer, Ms. Allred,  
10 did not even interview Plaintiff's character witnesses in spite  
11 of the fact that there were no witnesses to the alleged behavior  
12 of the three individuals who purportedly lodged oral complaints  
13 against her).

14 Plaintiff's claims against Defendant Genito as an  
15 individual are similarly not amenable to disposition on summary  
16 judgment. Whether or not Genito intentionally discriminated  
17 against Plaintiff is a question of fact. Forcing Plaintiff to  
18 investigate salacious rumors as to her own sexuality may well  
19 have been intentional in that regard. In addition, whether  
20 Genito had any role in encouraging the oral complaints allegedly  
21 made against Plaintiff in April of 2003 also raises a triable  
22 issue of fact since much of the complained of conduct occurred  
23 in late 2002, and February of 2003 at the latest. The fact that  
24 the Nelson Randolph written complaint was apparently backdated  
25 to a time before Plaintiff was put on administrative leave  
26 further underscores uncertainty about just exactly what  
27 transpired.

28 ///

1 All of this precludes summary judgment in Genito's favor as to  
2 Plaintiff's claims under California Civil Code § 52.1 and 42  
3 U.S.C §§ 1981, 1983 and 1985.

4 Similarly, given the vast disparity in accounts of what  
5 actually occurred, as outlined above, Plaintiff's remaining  
6 claims against Genito also survive, including her claims for  
7 intentional infliction of emotional distress, defamation,  
8 interference with business, conversion, negligent hiring and  
9 supervision, and invasion of privacy. As already delineated to  
10 a significant extent in this Court's prior orders, Plaintiff has  
11 stated cognizable claims for those causes of action, and the  
12 presence of pervasive disputed factual issues again precludes  
13 summary judgment. Those disputed issues include, but are not  
14 limited to, Defendant Genito's alleged conversion of Plaintiff's  
15 personal items for some five years, his alleged insistence that  
16 Plaintiff herself investigate embarrassing rumors about her  
17 sexual orientation and behavior with other employees, and his  
18 alleged role in coercing and/or backdating complaints voiced  
19 against Plaintiff by other employees.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **CONCLUSION**

2

3 For all the foregoing reasons, Defendants' Motion for  
4 Summary Judgment, or in the alternative for Summary Adjudication  
5 (Docket No. 126) is DENIED.

6 IT IS SO ORDERED.

7 Dated: December 23, 2009

8 

9  
10 

---

MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28