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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHAWN L. RANDOLPH,  
  
                                Plaintiff,  
  
                                v.  
  
FEDEX-FEDERAL EXPRESS  
CORPORATION,  
  
                                Defendant.

No. 2:11-CV-0028-GEB-DAD

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

FedEx seeks summary judgment on the sole claim in Plaintiff's Second Amended Complaint ("SAC"), in which Plaintiff alleges she was terminated because of a disability, in violation of public policy. (ECF No. 72.)

**I. LEGAL STANDARD**

A party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "A fact is 'material' when . . . it could affect the outcome of the case." Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2003) (quoting

1 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). An  
2 issue of material fact is "genuine" when "the evidence is such  
3 that a reasonable jury could return a verdict for the nonmoving  
4 party." Anderson, 477 U.S. at 248.

5 If the movant satisfies its "initial burden," "the  
6 nonmoving party must set forth, by affidavit or as otherwise  
7 provided in Fed. Rule Civ. Proc. ("Rule") 56, 'specific facts  
8 showing that there is a genuine issue for trial.'" T.W. Elec.  
9 Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630  
10 (9th Cir. 1987) (quoting former Rule 56(e)). Summary judgment  
11 "evidence must be viewed in the light most favorable to the  
12 nonmoving party, and all reasonable inferences must be drawn in  
13 favor of that party." Sec. & Exch. Comm'n v. Todd, 642 F.3d 1207,  
14 1215 (9th Cir. 2011) (citing Johnson v. Paradise Valley Unified  
15 Sch. Dist., 251 F.3d 1222, 1227 (9th Cir. 2001)).

16 Further, Local Rule 260(b) prescribes:

17 Any party opposing a motion for summary  
18 judgment . . . [must] reproduce the itemized  
19 facts in the [moving party's] Statement of  
20 Undisputed Facts and admit those facts that  
21 are undisputed and deny those that are  
22 disputed, including with each denial a  
citation to the particular portions of any  
pleading, affidavit, deposition,  
interrogatory answer, admission, or other  
document relied upon in support of that  
denial.

23 If the nonmovant does not "specifically . . .  
24 [controvert duly supported] facts identified in the [movant's]  
25 statement of undisputed facts," the nonmovant "is deemed to have  
26 admitted the validity of the facts contained in the [movant's]  
27 statement." Beard v. Banks, 548 U.S. 521, 527 (2006).

28 Because a district court has no independent duty "to

1 scour the record in search of a genuine issue of triable fact,"  
2 and may "rely on the nonmoving party to identify with reasonable  
3 particularity the evidence that precludes summary judgment,"...  
4 the district court . . . [is] under no obligation to undertake a  
5 cumbersome review of the record on the [nonmoving party's]  
6 behalf. Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th  
7 Cir. 2010) (quoting Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir.  
8 1996)).

## 9 **II. UNCONTROVERTED FACTS**

10 FedEx "is an express transportation and delivery  
11 company based in Memphis, Tennessee." (Pl.'s Resp. Def.'s SUF  
12 ("SUF") ¶ 1, ECF No. 82.) "Plaintiff's employment with FedEx  
13 began on July 27, 1997" and her last position was Operations  
14 Manager at the FedEx station in Stockton, California. (Id. ¶¶ 9,  
15 15-16.) "As an Operations Manager, Plaintiff's duties included  
16 supervising couriers, handlers, and customer service  
17 representatives and the sorting of packages that arrive from the  
18 airport . . . to be placed on courier trucks for delivery to  
19 customers." (Id. ¶ 14.)

20 While working as an Operations Manager, "Plaintiff was  
21 diagnosed with agoraphobia, claustrophobia, panic attacks,  
22 anxiety, depression, night terrors, paranoia, and PTSD" and  
23 requested medical leave. (SUF ¶¶ 17, 22.) FedEx's medical leave  
24 policy "provides that the maximum allowable leave of absence is  
25 30 months . . . unless the employee is determined to be totally  
26 disabled from all occupations by the long term disability plan  
27 administrator." (Id. ¶ 27.) Plaintiff received a combination of  
28 medical absence pay, short term disability benefits and long term

1 disability benefits from FedEx for the thirty months, from August  
2 2010 through February 2013. (Id. ¶¶ 18-19, 21.) "During this  
3 medical leave of absence, Plaintiff was unable to perform the  
4 essential duties of her Operations manager job . . . . with or  
5 without an accommodation." (SUF ¶¶ 23, 25.) As a result, she "was  
6 not able to return to work." (SUF ¶ 44.) However, "FedEx's Long  
7 Term Disability Plan Administrator determined effective December  
8 1, 2012 that Plaintiff was not totally disabled from all  
9 occupations." (Id. ¶ 39.) FedEx sent Plaintiff a letter dated  
10 February 11, 2013 "notifying her of the termination of her  
11 employment." (Id. ¶ 42.) "Plaintiff is currently still suffering"  
12 from her disability and "is currently unable to perform any job  
13 at FedEx." (Id. ¶¶ 54-55.)

### 14 **III. DISCUSSION**

15 FedEx argues "Plaintiff admits that, during her medical  
16 leave of absence from August 2010 to February 11, 2013, she was  
17 unable to perform the essential duties of her Operations Manager  
18 job with or without an accommodation" and therefore public policy  
19 did "not prohibit[] [FedEx] from" terminating her employment.  
20 (Mem. P&A ISO Def.'s Mot. Summ. J. ("Mot.") 11:17-22, ECF No. 78-  
21 2.)

22 Plaintiff does not dispute that she lacks the ability  
23 to perform the essential duties of an Operations Manager and  
24 instead argues there is an issue of "material fact [regarding]...  
25 whether Plaintiff qualified for total disability in February  
26 2013." (Pl.'s Mem. P&A Opp'n Def.'s Mot. Summ. J. 4:23-24, ECF  
27 No. 81.) However, she cites to no specific facts showing she  
28 qualified for total disability in February 2013.

1 Under California common law. . . there can be  
2 no right to terminate [an employee] for an  
3 unlawful reason or a purpose that contravenes  
4 "fundamental public policy." Nevertheless,  
5 "[t]his public policy exception to the at-  
will employment rule must be based on  
6 policies carefully tethered to fundamental  
7 policies that are delineated in  
8 constitutional or statutory provisions."

9 Dep't of Fair Emp't and Hous. v. Lucent Technologies, Inc., 642  
10 F.3d 728, 748-49 (9th Cir. 2011) (citing Silo v. CHW Med. Found.,  
11 27 Cal. 4th 1097 (2002)). Plaintiff alleges in her SAC that  
12 California "has a 'fundamental' policy against disability  
13 discrimination in employment," which is delineated in the  
14 California Fair Employment and Housing Act ("FEHA"), Cal. Gov.  
15 Code § 12940. (SAC ¶¶ 27, 29, ECF No. 71.)

16 [B]y its terms, section 12940 makes it clear  
17 that drawing distinctions on the basis of  
18 physical or mental disability is not  
19 forbidden discrimination in itself. Rather,  
20 drawing these distinctions is prohibited only  
21 if the adverse employment action occurs  
22 because of a disability and the disability  
23 would not prevent the employee from  
24 performing the essential duties of the job,  
25 at least not with reasonable accommodation.  
26 Therefore, in order to establish that a  
27 defendant employer has discriminated on the  
28 basis of disability in violation of FEHA, the  
plaintiff employee bears the burden of  
proving he or she was able to do the job,  
with or without reasonable accommodation.

Green v. State, 42 Cal. 4th 254, 262 (2007).

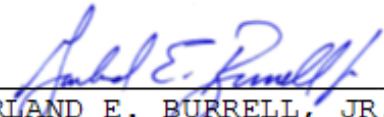
29 It is uncontroverted that during her medical leave of  
30 absence, "Plaintiff was unable to perform the essential duties of  
31 her Operations Manager job" and there "was no accommodation that  
32 would have enabled Plaintiff to perform the essential duties of  
33 her Operations Manager job." (SUF ¶¶ 23-24.) Further, it is  
34 uncontroverted that "Plaintiff is currently still suffering" from

1 her disability, "is currently unable to perform any job at  
2 FedEx," and that "FedEx. . . determined . . . Plaintiff was not  
3 totally disabled from all occupations." (SUF ¶¶ 54-55, 39.) Since  
4 the undisputed facts evince that Plaintiff was not totally  
5 disabled from all occupations, FedEx's summary judgment motion is  
6 granted.

7 **IV. CONCLUSION**

8 For the above stated reasons, FedEx's motion for  
9 summary judgment is GRANTED, judgment shall be entered in favor  
10 of Defendant and this action shall be closed.

11 Dated: January 27, 2015

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15 GARIAND E. BURRELL, JR.  
16 Senior United States District Judge  
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