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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KATHY STONE,

Plaintiff,

v.

SEVERN TRENT SERVICES, INC.,  
a Pennsylvania corporation,

Defendant.

No. 2:14-cv-00689-JAM-DAD

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

This matter is before the Court on Defendant Severn Trent Services, Inc.'s ("Defendant") Motion to Dismiss (Doc. #6) the seventh cause of action in Plaintiff Kathy Stone's ("Plaintiff") Complaint (Doc. #1).<sup>1</sup> Plaintiff opposed the motion ("Opposition") (Doc. #9). Defendant filed a reply (Doc. #11).

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff began her employment with Defendant in 2013. Comp. ¶¶ 3-5. She alleges that in mid-2013, Defendant "commenced

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 18, 2014.

1 a plan, scheme or design" to damage her reputation as a manager  
2 and with customers by criticizing her work. Id. ¶ 5. Plaintiff  
3 received a written code of conduct warning on July 29, 2013 that  
4 Plaintiff alleges "falsely state[d] that Plaintiff had violated  
5 the company's code of conduct." Id. Plaintiff alleges that she  
6 applied for a promotion and was denied in substantial part  
7 because of her sex. Id. ¶¶ 10-11. She alleges that during her  
8 employment, Defendant created and allowed to exist a sexually  
9 hostile environment and discriminated against and harassed her on  
10 the basis of her sex. Id. ¶ 25. Plaintiff alleges that when she  
11 attempted to report the harassment by her co-workers, Defendant  
12 retaliated against her. Id. ¶ 35.

13 Plaintiff was injured in an automobile accident during her  
14 employment with Defendant while "travelling between sites  
15 requiring her supervision." Comp. ¶ 46. Plaintiff alleges that  
16 this injury "caused her to suffer severe, disabling, physical  
17 injury," and interfered with her ability to concentrate and "work  
18 in a pain-free environment." Id. She claims that Defendant, by  
19 its actions, retaliated against her for filing a worker's  
20 compensation claim in violation of California Labor Code section  
21 132a ("§ 132a"). Id. ¶¶ 45-50.

22 Plaintiff filed the Complaint on March 14, 2014, alleging  
23 seven causes of action: (1) Sex Discrimination; (2) Refusal to  
24 Promote in Violation of Public Policy; (3) Sexual Harassment;  
25 (4) Violation of Government Code § 12940(i); (5) Retaliation for  
26 Reporting Harassment; (6) Violation of Government Code § 12950;  
27 and (7) Retaliation for Filing a Worker's Compensation Claim.

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1 II. OPINION

2 Defendant contends the Court should dismiss the seventh  
3 cause of action, based on alleged retaliation for filing a  
4 worker's compensation claim, because it fails to state a claim  
5 upon which relief can be granted. MTD at p. 2. Plaintiff brings  
6 the claim pursuant to § 132a. Comp. ¶¶ 45-50. Defendant argues  
7 that the Workers' Compensation Appeals Board ("WCAB") is the  
8 exclusive forum for bringing such claims under § 132a. MTD at  
9 pp. 2, 4-5.

10 In her Opposition to the motion, Plaintiff first asks the  
11 Court to resolve the "tension" between Dutra v. Mercy Medical  
12 Center Mt. Shasta, 209 Cal.App.4th 750 (2012) ("Dutra") and City  
13 of Moorpark v. Superior Court of Ventura County, 18 Cal. 4th 1143  
14 (1998) ("Moorpark"). Plaintiff then includes a lengthy citation  
15 to Fretland V. County of Humboldt, 69 Cal.App.4th 1478  
16 ("Fretland") and the text of an amendment to the Fair Employment  
17 and Housing Act ("FEHA"), Government Code § 12940(h). Based on  
18 this, she argues she can bring her claim for retaliation based on  
19 § 132a.

20 Section 132a proscribes retaliation by an employer against  
21 an employee who has filed or has made known their intention to  
22 file a worker's compensation claim. Section 132a provides that  
23 claims under its provisions "are to be instituted by filing an  
24 appropriate petition with the appeals board." The WCAB is  
25 "vested with full power, authority, and jurisdiction to try and  
26 determine finally all matters specified in [§ 132a] subject only  
27 to judicial review." § 132a.

28 The Supreme Court of California has held that § 132a "does

1 not provide an exclusive remedy and does not preclude an employee  
2 from pursuing FEHA and common law wrongful discharge remedies."

3 Moorpark, 18 Cal. 4th at 1158. However, § 132a includes:

4 . . . limitations on its scope and remedy that prevent  
5 it from being the basis of a common law cause of  
6 action. The statute establishes a specific procedure  
7 and forum for addressing a violation. It also limits  
8 the remedies that are available once a violation is  
9 established. Allowing plaintiff to pursue a tort  
10 cause of action based on a violation of section 132a  
11 would impermissibly give her broader remedies and  
12 procedures than that provided by the statute.

13 Dutra, 209 Cal. App. 4th at 756.

14 As Defendant has argued and Plaintiff has failed to  
15 expressly address, a claim under § 132a must be brought to the  
16 WCAB; the WCAB is the **exclusive forum** for claims under § 132a.  
17 See Dutra, 209 Cal.App.4th at 756; Steiner v. Verizon Wireless,  
18 2:13-CV-1457-JAM-KJN, 2014 WL 202741, at \*3-4 (E.D. Cal. 2014)  
19 (§ 132a claim "falls under the exclusive jurisdiction of the  
20 Workers' Compensation Appeals Board"); Capote v. CSK Auto, Inc.,  
21 12-CV-02958-JST, 2014 WL 1614340, at \*12 (N.D. Cal. 2014). It is  
22 simultaneously true that § 132a does not provide the exclusive  
23 remedy for the conduct and resulting harm alleged by Plaintiff  
24 here, and does not preclude her from "pursuing FEHA and common  
25 law [] remedies." Moorpark, 18 Cal. 4th at 1158. In other  
26 words, although a § 132a claim is not an injured party's  
27 exclusive remedy, the WCAB is the "exclusive *forum* for pursuing a  
28 section 132a claim." Id. Specifically, similar claims under  
FEHA are viable and not precluded by § 132a as stated in  
Fretland. 69 Cal.App.4th at 1485-86. Here, Plaintiff has  
brought her worker's compensation retaliation claim solely under  
§ 132a. As a result, the Court finds Plaintiff's seventh cause

1 of action is improperly brought before it. Accordingly, the  
2 Court grants Defendant's Motion to Dismiss with prejudice.

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III. ORDER

For the reasons set forth above, the Court GRANTS Defendant's Motion to Dismiss Plaintiff's seventh cause of action for worker's compensation retaliation pursuant to § 132a with prejudice.

IT IS SO ORDERED.

Dated: July 30, 2014



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE