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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 REYNALDO GOLEZ,

No. C 07-05984 SI

9 Plaintiff,

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

10 v.

11 KERRY, INC. and DOES 1-100, inclusive,

12 Defendants.
13 _____/

14 Defendant Kerry, Inc. moved for summary judgment on plaintiff Reynaldo Golez's claims
15 arising from plaintiff's termination from his job as a maintenance mechanic at one of defendant's
16 factories. In its December 29, 2008 Order [Docket No. 76], this Court granted defendant's motion on
17 some claims and denied it on others. The Court also gave plaintiff leave to file a supplemental
18 opposition to defendant's motion with regard to plaintiff's claims for intentional infliction of emotional
19 distress and punitive damages. Now before the Court is defendant's motion for summary judgment on
20 these claims. Pursuant to Civil Local Rule 7-1(b), the Court finds that this matter is appropriate for
21 resolution without oral argument. Having considered the arguments of the parties and the papers
22 submitted, and for good cause shown, the Court rules as follows.

23
24 **BACKGROUND**

25 The facts of this case were set out in this Court's December 29 Order. In that order, the Court
26 denied defendant's motion for summary judgment on the issues of unlawful discrimination, failure to
27 prevent discrimination, wrongful termination, failure to engage in an interactive process, and back and
28 front pay; and granted defendant's motion on plaintiff's unlawful retaliation, CFRA, and COBRA

1 claims. The Court allowed further briefing on plaintiff’s claims for intentional infliction of emotional
2 distress and for punitive damages following defendant’s corporate deposition on January 8, 2009.

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4 **LEGAL STANDARD**

5 Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and
6 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
7 material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P.
8 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of
9 material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party, however, has
10 no burden to negate or disprove matters on which the non-moving party will have the burden of proof
11 at trial. The moving party need only demonstrate to the Court that there is an absence of evidence to
12 support the non-moving party’s case. *See id.* at 325.

13 The burden then shifts to the non-moving party to “designate ‘specific facts showing that there
14 is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)). To carry this burden, the
15 non-moving party must “do more than simply show that there is some metaphysical doubt as to the
16 material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).
17 “The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which
18 the jury could reasonably find for the [non-moving party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
19 242, 252 (1986).

20 In deciding a summary judgment motion, the evidence is viewed in the light most favorable to
21 the non-moving party, and all justifiable inferences are to be drawn in its favor. *Id.* at 255. “Credibility
22 determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts
23 are jury functions, not those of a judge [when she] is ruling on a motion for summary judgment.” *Id.*
24 The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory,
25 speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and
26 defeat summary judgment. *Thornhill Publ’g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

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1 any evidence indicating that they made decisions that determined corporate policy.¹

2 Second, plaintiff claimed in the first round of briefing that summary judgment on punitive
3 damages was premature because the corporate deposition would reveal that the safety concerns cited
4 by defendant were pretextual. In his supplemental briefing, plaintiff does not mention the issue of
5 pretext. Instead, plaintiff argues that punitive damages are warranted because defendant had a
6 discriminatory policy and with advance knowledge authorized and ratified actions that constituted a
7 failure to accommodate, discrimination, wrongful termination, and failure to engage in the interactive
8 process. In support of his “policy” theory, plaintiff cites deposition testimony that defendant had a
9 policy that employees could not come back to work unless they obtained a physician’s release without
10 restrictions. *See* Decl. of Randall M. Widmann in Supp. of Pl. Opp. to Def. Mot. for Summ. J.
11 (“Widmann Decl.”), at ex. A (Rogers Depo.), Tr. 24:11-16.

12 Assuming that defendant had a policy that machine mechanics could not return to work unless
13 a doctor determined that no work restrictions were necessary, the mere existence of this policy does not
14 amount to “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard
15 of that person’s rights” or “conduct which is intended by the defendant to cause injury to the plaintiff
16 or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the
17 rights or safety of others.” *See* Cal. Civ. Code § 3294(c).² Indeed, plaintiff cites no evidence
18 challenging defendant’s deposition testimony that plaintiff’s supervisors acted solely out of concern for
19 the safety of plaintiff and his co-workers. *See, e.g.*, Decl. of Robert H. Brown in Supp. of Def. Reply
20 in Supp. of Mot. for Summ. J., at ex. B (Horras Depo.), Tr. 42:1-11; *id.*, ex. A (Bisson Depo.), Tr. 60:4-

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22 ¹ Plaintiff contends that Horras reported to Chester Brock, defendant’s director of human
23 resources. Assuming for the sake of argument that Brock is an officer, director or managing agent
24 within the meaning of § 3294(b), plaintiff does not cite any evidence suggesting that Brock had advance
25 knowledge of Horras’ acts and ratified or authorized them. Moreover, the deposition testimony plaintiff
26 cites in support of his contention that Horras reported to Brock does not even mention Brock.
27 *See* Widmann Decl., at ex. C, Tr. 17:20-19:13.

28 ² None of the authorities cited by plaintiff hold otherwise. Indeed, they demonstrate that the
29 facts presented by this case cannot reach the extreme indifference threshold required for punitive
30 damages. *Cf. Wysinger v. Auto. Club of S. Cal.*, 157 Cal. App. 4th 413, 428 (Cal. Ct. App. 2007)
31 (extreme indifference found where supervisor said, “It doesn’t matter what you did for this company
32 in the last 30 . . . years. None of that matters. And you can die at your desk. We’ll replace you
33 tomorrow. Nobody cares.”).

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2 Accordingly, defendant’s motion for summary judgment on plaintiff’s claim for punitive
3 damages is GRANTED.

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5 **2. Intentional Infliction of Emotional Distress**

6 The elements of intentional infliction of emotional distress are: (1) extreme and outrageous
7 conduct by the defendant with the intention of causing, or reckless disregard of the probability of
8 causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3)
9 actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.
10 *Cervantez v. J. C. Penney Co.*, 24 Cal. 3d 579, 593 (Cal. 1979) (citations omitted). “For [c]onduct to
11 be outrageous [it] must be so extreme as to exceed all bounds of that usually tolerated in a civilized
12 community.” *Id.* (citations omitted).

13 Again, plaintiff claimed in the earlier round of briefing that summary judgment on this issue was
14 premature because the corporate deposition would reveal that safety concerns cited by defendant were
15 pretextual. Plaintiff cites no evidence suggesting defendant’s acts were outrageous or contradicting
16 defendant’s deposition testimony that plaintiff’s supervisors were concerned about his safety and that
17 of other employees. He instead relies on cases that are inapposite because they involve far more
18 extreme acts than those at issue here. *See, e.g., Huber v. Standard Ins. Co.*, 841 F.2d 980, 981 (9th Cir.
19 1988) (evidence tended to show that the way in which the plaintiff was wrongfully terminated would
20 humiliate and degrade him, and that the employer abused its power to humiliate the plaintiff); *Robinson*
21 *v. Hewlett-Packard Corp.*, 183 Cal. App.3d 1108, 1130 (Cal. Ct. App. 1986) (plaintiff cited evidence
22 that supervisor had intentionally insulted plaintiff “and his race.”).

23 Accordingly, defendant’s motion for summary judgment on this issue is GRANTED.

24
25 **3. Reconsideration of this Court’s Prior Order Concerning Front and Back Pay**

26 Defendant requests that the Court reconsider its prior order denying defendant’s motion for
27 summary judgment on the issues of front and back pay. The Court denied defendant’s claim because
28 defendant cited no authority establishing that the Title VII rule concerning back pay applies in the


1 FEHA context. *See* Dec. 29 Order, at *10. At oral argument, the Court gave defense counsel an
2 opportunity to cite authorities in support of his motion, but counsel responded that he had not found
3 any. Now defendant asks the Court to consider several cases, all of which could have been identified
4 by defendant in the earlier round of briefing. The Court will not do so as defendant has not made the
5 showing necessary for a motion for reconsideration. *See* Local Rule 7-9(b). In any event, none of the
6 authorities cited by defendant establishes that the rule on the tolling of backpay liability from *Ford*
7 *Motor Co. v. E.E.O.C.*, 458 U.S. 219, 228-29 (1982) applies to the FEHA. Accordingly, defendant's
8 motion for reconsideration of this issue is DENIED.

9
10 **CONCLUSION**

11 Defendant's motion for summary judgment on plaintiff's claims for punitive damages and
12 intentional infliction of emotional distress is GRANTED.

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14 **IT IS SO ORDERED.**

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16 Dated: 1/27/09

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19 SUSAN ILLSTON
20 United States District Judge
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