

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  
Northern District of California

COMERLIS DELANEY,

Plaintiff,

v.

SIMPLEXGRINNELL L.P.,

Defendant(s).

No. CV10-5103 MEJ

**QUESTIONS FOR DECEMBER 1,  
2011 HEARING**

To assist the Court in its consideration of Defendant's pending Motion for Summary Judgment (Dkt. #22), the Court issues the following questions for the parties to address at the December 1, 2011 hearing:

1. Both parties assume that the legal standard that the Court should apply in evaluating Plaintiff's Motion is the three-stage burden shifting analysis from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Neither of the parties, however, address the Ninth Circuit's rulings in *Bachelder v. America West Airlines, Inc.*, 259 F.3d 1112 (9th Cir. 2001), and *Xin Liu v. Amway Corp.*, 347 F.3d 1125 (9th Cir. 2003), and their application to Plaintiff's second cause of action under the FMLA and the CFRA. How do these cases affect the legal standard that the Court should apply?

2. Can Plaintiff's first cause of action (FEHA) be evaluated under the same legal standard as Plaintiff's second cause of action (FMLA/CFRA)?

**IT IS SO ORDERED.**

Dated: November 29, 2011

  
\_\_\_\_\_  
Maria-Elena James  
Chief United States Magistrate Judge