

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN BONAZZA,
Plaintiff,
v.
MUFG BANK, LTD.,
Defendant.

Case No. 23-cv-01161-JCS

**ORDER RE SUMMARY JUDGMENT
MOTIONS**

Re: Dkt. Nos. 121, 122

I. INTRODUCTION

The parties in this employment discrimination case have filed cross-motions for summary judgment. For the reasons stated below, Plaintiff’s summary judgment motion is DENIED. Defendant’s motion for summary judgment is GRANTED.¹ This case is dismissed, in its entirety, with prejudice.

II. BACKGROUND

Plaintiff Michael Bonazza initiated this employment discrimination case against Defendant MUFG Bank, Ltd. (“MUFG”) in the District of Hawaii on February 23, 2023. That court transferred the case to this District and the undersigned screened Plaintiff’s complaint under 28 U.S.C. § 1915. The Court found that Bonazza asserted viable claims for employment discrimination based on race and sex under Title VII of the Civil Rights Act of 1964 and ordered the complaint served. *Id.*

In his Amended Complaint, Plaintiff, who is a white male, alleges that MUFG discriminated against him by offering him only a temporary position at MUFG based on his race

¹ The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c).

1 and sex whereas many of MUFG’s permanent employees were women and non-white. Dkt. no.
2 37. Plaintiff’s theory of the case has been a moving target throughout this case; it has often been
3 unclear whether he is asserting his discrimination claims based on a theory of disparate treatment
4 or disparate impact, and sometimes he seems to be asserting claims based on an alleged breach of
5 contract. *See, e.g.*, Declaration of Nathaniel H. Jenkins in Support of Defendant MUFG Bank,
6 Ltd.’s Motion for Summary Judgment (“Jenkins Decl.”), Ex. A (Bonazza Dep.) at 46 (“I was
7 trying to prove it as hard as I could, disparate impact[.]”); *id.* at 48 (testifying that disparate
8 treatment claim was based on “giving [Bonazza] a termed contract . . . it was restrictive when
9 comparing [himself] to peers.”); *id.* at 71 (“what I’m asking is that the bank reevaluate my
10 contract” because “I don’t believe that contract was priced correctly” in light of “the incremental
11 skills that I brought to the job.”).² Further, Bonazza’s deposition testimony suggests he filed this
12 case simply to extract a settlement from MUFG without a good faith belief that his allegations of
13 race and sex discrimination were valid. *Id.* at 44 (“I initially filed the lawsuit because I felt there
14 was value in the work, and if I couldn't get it through a job, I -- I wanted to somehow get it
15 through the court system. You know, like that was literally my thought.”).

16 The basic facts relating to Bonazza’s employment history with Defendant appear to be
17 undisputed.³ Between 2013 and 2017, Bonazza was employed as a Technical Accountant by
18 MUFG Union Bank, N.A. (“Union Bank”), the predecessor of Defendant MUFG Bank, Ltd. *Id.*
19 at 101-105. Although he initially accepted a temporary position, his position with Union Bank
20 became permanent in August 2013, carrying an annual salary of \$72,000 a year. *Id.* Bonazza

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22 ² Bonazza conceded at his deposition, however, that “there was nothing wrong with the contract.”
23 *Id.* at 47. As Bonazza did not assert a breach of contract claim in the operative complaint, the
24 Court finds that there is no pending breach of contract claim in this case. In any event, Bonazza
25 has not pointed to any evidence of a breach of contract or articulated any legal theory that might
26 support such a claim. Nor has the Court found any authority to suggest that it could (or should)
27 retroactively modify the terms of Bonazza’s contract to increase his compensation for the work he
28 performed at Union Bank in 2022.

³ Much of the evidence establishing these facts was offered by MUFG in support of its summary
judgment motion, dkt. no. 122 (“MUFG Motion”). Although Bonazza did not oppose the MUFG
Motion, he submitted some evidence to support his own summary judgment motion, dkt. no. 121
 (“Bonazza Motion”). The Court treats facts as undisputed only where the evidence Bonazza
submitted does not conflict with MUFG’s evidence. Where any of the evidence offered by MUFG
is controverted by Bonazza’s evidence the Court notes as much.

1 received positive performance reviews but voluntarily resigned from his position with Union Bank
2 in October 2017 due to the work there. *Id.* at 120-129. Bonazza testified that he did not leave his
3 position with Union Bank because he was treated unfairly. *Id.* at 125.

4 Between October 2017 and May 2022, Bonazza worked sporadically. *Id.* at 87-88, 129-
5 159. He took a position as an accounts payable clerk at a company in British Columbia, Canada in
6 January 2021 and resigned from that position in July 2021. *Id.* at 148-152. That job paid an
7 annual salary of between \$40,000 and \$45,000. *Id.* at 148-149. He then moved to Hawaii and got
8 a job as an accounting manager with Helber, Haster & Fee (“HHF”) & Dep. Ex. 4 (resume). *Id.* at
9 153. His salary in this position was between \$60,000 and \$65,000. *Id.* at 155.

10 In the meantime, in September 2021, Bonazza got in touch with Chris Escher, of Union
11 Bank, to inquire about opportunities to return to Union Bank. *Id.* at 169 & Dep. Ex. 14. Initially
12 Escher told Bonazza that he could not offer him anything because the acquisition of Union Bank
13 by U.S. Bank was underway, but he told Bonazza to check back. *Id.* at 170. Bonazza emailed
14 Escher again on March 7, 2022, while still employed by HHF, to send him his updated resume.
15 *Id.* at 172. Escher told Bonazza about a temporary position at Union Bank and Bonazza
16 subsequently received an email from a Union Bank recruiter inviting him to apply for a “term
17 employment” opening at Union Bank as a Financial Reporting Project Specialist. *Id.* at 173-175
18 & Dep. Exs. 15-16. The recruiter sent the job description for the position, which explained that
19 “[t]erm employment is an employment status in which the Bank hires an individual for a
20 designated period of time, not exceeding 2 years.” *Id.*

21 Bonazza applied for the temporary position and received an offer. *Id.* at 174-175 & Dep.
22 Ex. 17. The offer letter, dated May 6, 2022, stated that the term of the position was from June 13,
23 2022 to October 13, 2023. *Id.* at 179-180 & Dep. Ex. 17. It further stated that “[u]pon mutual
24 agreement, your Term Employment period may be extended for an additional term (not to exceed
25 a combined total of two years) under the same terms and conditions set forth in this offer letter.”
26 *Id.* The salary for the temporary position was \$106,00 a year, which Bonazza described as a
27 “fantastic salary.” *Id.* at 181-182. He testified that although he understood the position was
28 temporary, he “was expecting a very fast transition” to a permanent position. *Id.*

1 Bonazza accepted the position, even though it was temporary, because he “had no
2 leverage.” *Id.* at 183. He did not apply for any permanent position with Union Bank at that time
3 or subsequently, however; nor was he aware of any such position. *Id.* at 201-204. He also is not
4 aware of any white males who have applied for a permanent position with Union Bank and not
5 been hired. *Id.* at 204.

6 Bonazza relocated from Hawaii to Oakland to take the temporary position, working out of
7 the same office he had worked from between 2013 and 2017. *Id.* at 180-181, 184. He testified
8 that there was no one else at Union Bank performing similar work and that this position was
9 “unique.” *Id.* at 190. In September 2022, just three months into the 16-month term, Bonazza
10 resigned in order to move back to Hawaii with his girlfriend. *Id.* at 196-198. His email notifying
11 Union Bank of his resignation states as follows:

12 Hi Erin, Happy Weekend.

13 I just want to take the time in this note to thank you and Chris so much
14 for bringing me back to the bank after so many years.

15 My memories at the bank, though short-lived, are good ones both then
16 and now.

17 As you might imagine, I have been thinking about where I want my
18 life to be over the next 5 years. The answer for me is definitely with
19 my girlfriend in Hawaii. It is with that in mind that I would like my
20 last day to be Monday (tomorrow).

21 In regard to the work, I’ve given Sam what I have for the piece of 66.2
22 that I worked on. They should be able to have a successful call on
23 Tuesday with Vidia because they put in all the work.

24 Thank you again so much for allowing me the opportunity to be part
25 of the team and prove myself.

26 Talk to you tomorrow.

27 Mike

28 *Id.* at 196-197 & Dep. Ex. 19.

 On January 24, 2023, Bonazza submitted an informal Inquiry form to the Equal
Employment Opportunity Commission (“EEOC”) and received a Right to Sue on or about
February 22, 2023, after filing an administrative Charge of Discrimination. *Id.* at 74-79 & Dep.
Ex. 1.

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III. THE MOTIONS

A. MUFG Motion

In its summary judgment motion, MUFG argues that Bonazza’s Title VII claims fail as a matter of law based on the undisputed facts. MUFG addresses both Bonazza’s disparate treatment theory and his disparate impact theory under Title VII. MUFG argues as to both theories that Bonazza’s discrimination claims fail because he cannot make a prima facie case of discrimination.⁴ MUFG further asserts that there is no legal theory that supports a breach of contract claim to recover what Bonazza now claims was the value of his work in excess of the salary he was paid, arguing that the undisputed evidence establishes that MUFG paid Bonazza the salary promised under the contract, to which Bonazza agreed.

Bonazza did not file an opposition to the MUFG Motion.

B. Bonazza Motion

Bonazza argues in his summary judgment motion that he is entitled to judgment as a matter of law on his discrimination claim based on disparate treatment, alleging that his “class was 10 to 1 non-white European male to white European male.” Bonazza Motion at 1. Bonazza attached various documents to his motion, including:

- screen shots of the LinkedIn pages of eight individuals who appear to be women and/or non-white and list MUFG as their current place of employment;
- emails Bonazza exchanged with Chris Escher and Erin Dickey;
- the May 6, 2022 offer letter for the temporary position;
- employment records from Bonazza’s previous tenure at Union Bank, between 2013 and 2017;
- Bonazza’s September 25, 2022 email resigning from the temporary position;
- An article entitled, “The 5 Year Statute of Limitations for Government Enforcement Actions for Civil Penalties: Recently Settled and Still Unsettled

⁴ MUFG also argued in the motion that the Title VII claims fail because Bonazza’s EEOC charge was untimely. In its Reply brief, however, MUFG withdrew those arguments. Dkt. no. 125 (MUFG Reply) at 2 n. 1.

1 Issues Regarding 28 U.S.C. Section 2462;”⁵

- 2 • Articles about gender inequality, including one entitled, “The Crisis of Men and
3 Boys;”
- 4 • A list “showing employee demographics at MUFG” listing ten individuals who are
5 purportedly MUFG employees, along with their gender and ethnicity,
6 accompanied by a group photograph of those individuals wearing MUFG T-shirts.

7 MUFG filed an opposition objecting to all of Bonazza’s evidence on the basis that it is not
8 properly authenticated.⁶ It further asserted that Bonazza’s motion is frivolous and is supported by
9 neither admissible evidence nor legal authority. Bonazza did not file a reply brief.

10 **IV. ANALYSIS**

11 **A. Legal Standards**

12 **1. Rule 56**

13 Summary judgment on a claim or defense is appropriate “if the movant shows that there is
14 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
15 law.” Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show
16 the absence of a genuine issue of material fact with respect to an essential element of the non-
17 moving party’s claim, or to a defense on which the non-moving party will bear the burden of
18 persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

19 Once the movant has made this showing, the burden then shifts to the party opposing
20 summary judgment to designate “specific facts showing there is a genuine issue for trial.” *Id.*
21 (citation omitted); *see also* Fed. R. Civ. P. 56(c)(1) (“A party asserting that a fact . . . is genuinely
22 disputed must support the assertion by . . . citing to particular parts of materials in the record
23 . . .”). “[T]he inquiry involved in a ruling on a motion for summary judgment . . . implicates the
24 substantive evidentiary standard of proof that would apply at the trial on the merits.” *Anderson v.*

25 _____
26 ⁵ Bonazza does not explain the relevance of this statute to his claims and the Court finds that it has
27 no bearing on this case. Section 2462 sets a five year limitations period on “proceeding for the
28 enforcement of any civil fine, penalty, or forfeiture[.]” 28 U.S.C. § 2462. However, Title VII
does not provide for civil fines, penalties or forfeitures.

⁶ The Court assumes that Bonazza’s evidence is admissible but need not decide that question as all
of his claims fail on other grounds.

1 *Liberty Lobby Inc.*, 477 U.S. 242, 252 (1986). The non-moving party has the burden of
2 identifying, with reasonable particularity, the evidence that precludes summary judgment. *Keenan*
3 *v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). Thus, it is not the task of the court to scour the
4 record in search of a genuine issue of triable fact. *Id.*; *see Carmen v. S.F. Unified Sch. Dist.*, 237
5 F.3d 1026, 1031 (9th Cir. 2001); Fed. R. Civ. P. 56(c)(3).

6 On summary judgment, the court draws all reasonable factual inferences in favor of the
7 non-movant, *Scott v. Harris*, 550 U.S. 372, 378 (2007), but where a rational trier of fact could not
8 find for the non-moving party based on the record as a whole, there is no “genuine issue for trial”
9 and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574,
10 587 (1986).

11 **2. Employment Discrimination Under Title VII**

12 Title VII makes it an unlawful employment practice “to fail or refuse to hire or to
13 discharge any individual, or otherwise to discriminate against any individual with respect to his
14 compensation, terms, conditions, or privileges of employment, because of such individual’s race
15 [or] sex,” among other protected categories. 42 U.S.C. § 2000e-2. At summary judgment, Title VII
16 discrimination claims are analyzed under the three-step burden-shifting framework in *McDonnell*
17 *Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th
18 Cir. 2008). At the first step, the employee must establish a prima facie case of discrimination. *Id.*
19 If the employee meets that burden, the analysis proceeds to the second step, at which the employer
20 must articulate a legitimate, nondiscriminatory reason for the challenged action. *Id.* At the third
21 step, the employee “must show that the ‘reason is pretextual “either directly by persuading the
22 court that a discriminatory reason more likely motivated the employer or indirectly by showing
23 that the employer's proffered explanation is unworthy of credence.” ’ ” *Id.* (quoting *Chuang v.*
24 *Univ. of Cal. Davis*, 225 F.3d 1115, 1123–24 (9th Cir. 2000) (quoting *Tex. Dep’t of Cmty. Affairs*
25 *v. Burdine*, 450 U.S. 248, 256 (1981))).

26 Generally, to make a prima facie case of disparate treatment discrimination under Title
27 VII, a plaintiff must establish that (1) they are a member of a protected class under Title VII
28 because of their “race, color, religion, sex, or national origin;” (2) they suffered an adverse

1 employment action; (3) at the time of the adverse action, they were performing their job in a
2 satisfactory manner; and (4) the adverse action occurred under circumstances suggesting a
3 discriminatory motive. *McDonnell Douglas Corp. v. Green*, 411 U.S. at 802-05; 42 USC § 2000e-
4 2(a)(1)-(2). Where a disparate treatment discrimination claim is based on failure to hire, a plaintiff
5 must establish the following specific elements: (1) they are a member of a protected class; (2) they
6 applied for and were qualified for a job for which the employer was seeking applicants; (3) they
7 were rejected despite being qualified for the job; and (4) after the plaintiff's rejection, the position
8 remained open and the employer continued to seek applicants from persons of comparable
9 qualifications. *Lowe v. City of Monrovia*, 775 F.2d 998, 1005 (9th Cir. 1985)). Alternatively, a
10 prima facie case of discrimination can be made if a plaintiff demonstrates that (1) they are a
11 member of a protected class; (2) they applied for a position for which they were qualified; and (3)
12 a person who was not within a protected class with similar qualifications received the position.
13 *Cotton v. City of Alameda*, 812 F.2d 1245, 1248 (9th Cir. 1987).

14 To make a prima facie case of disparate impact discrimination under Title VII, a plaintiff
15 must “identify a specific, seemingly neutral practice or policy that has a significantly adverse
16 impact on persons of a protected class.” *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1486 (9th Cir.
17 1993). “[T]he requirements of a prima facie disparate impact case . . . are in some respects more
18 exacting than those of a disparate treatment case.” *Id.* (quoting *Spaulding v. University of*
19 *Washington*, 740 F.2d 686, 705 (9th Cir.) (citation omitted), *cert. denied*, 469 U.S. 1036 (1984)).
20 The court in *Garcia* explained that “[i]n the disparate treatment context, a plaintiff can make out a
21 prima facie case merely by presenting evidence sufficient to give rise to an inference of
22 discrimination.” *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–06 (1973)). In
23 contrast, in a disparate impact case, “plaintiffs must do more than merely raise an inference of
24 discrimination before the burden shifts; they ‘must actually prove the discriminatory impact at
25 issue.’” *Id.* (quoting *Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1421 (9th Cir. 1990)). “In the
26 typical disparate impact case, in which the plaintiff argues that a selection criterion excludes
27 protected applicants from jobs or promotions, the plaintiff proves discriminatory impact by
28 showing statistical disparities between the number of protected class members in the qualified

1 applicant group and those in the relevant segment of the workforce.” *Id.* (citing *Wards Cove*
2 *Packing Co. v. Atonio*, 490 U.S. 642, 650 (1989)).

3 **B. Discussion**

4 Although Bonazza insists that he is asserting a disparate treatment claim, that claim fails
5 because he has identified no legally cognizable adverse employment action. “[A]n adverse
6 employment action is one that ‘materially affect[s] the compensation, terms, conditions, or
7 privileges of . . . employment.’ ” *Davis v. Team Elec. Co.*, 520 F.3d at 1089 (quoting *Chuang v.*
8 *Univ. of California Davis, Bd. of Trustees*, 225 F.3d 1115, 1126 (9th Cir. 2000)). “Adverse
9 employment actions are not limited to termination and may include actions such as hires, transfers,
10 promotions, [and] demotions.” *Szalay v. Bd. of Supervisors, Cnty. of Pima*, No. CV02-479-
11 TUCJMR, 2008 WL 880551, at *5 (D. Ariz. Mar. 28, 2008). Bonazza has cited no authority,
12 however, that supports his position that hiring an individual for a temporary position constitutes an
13 adverse employment action under Title VII. Nor has the Court found any such authority.
14 Furthermore, to the extent that Bonazza relies on the theory that the adverse employment action
15 was MUFG’s failure to hire him for a permanent position, he has not established a prima facie
16 case on that theory because he does not allege – much less present any evidence – that Union Bank
17 was hiring for a permanent position or that he applied for any such position. Indeed, he conceded
18 at his deposition that he knew of no such position and did not apply for a permanent position with
19 Union Bank.

20 Bonazza’s disparate impact claim is similarly deficient. Construing his claim liberally,
21 Bonazza’s claim might fit within the disparate impact framework to the extent he is alleging that
22 MUFG has a policy or practice of hiring white males for temporary positions while preserving the
23 permanent positions for women and non-white individuals, leading to the outcome Bonazza
24 contends can be seen at Union Bank, namely, a permanent work force that favors women and non-
25 white individuals over white men. The problem with this claim is that he has presented no
26 evidence that such a practice exists. Bonazza concedes that he is not aware of any white man who
27 applied for a permanent position and was turned down and Bonazza himself did not apply for a
28 permanent position, as discussed above. Nor is there any statistical evidence in the record about

1 the race and/or gender breakdown of individuals who have applied for temporary vs. permanent
2 positions with MUFG or the outcomes of those applications. Finally, the LinkedIn pages of a
3 small number of MUFG employees (even assuming they are admissible) offer no support for his
4 disparate impact claim because Bonazza has provided no reliable statistical information to provide
5 context for this evidence. Consequently, no inference of disparate impact discrimination can be
6 drawn from that evidence.

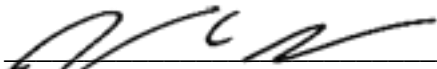
7 Because Bonazza has not made a prima facie case of discrimination based on disparate
8 treatment or disparate impact, he cannot prevail on his Title VII claims and no issues remain to be
9 tried.

10 **V. CONCLUSION**

11 For the reasons stated above, Defendant’s summary judgment motion is GRANTED.
12 Bonazza’s summary judgment motion is DENIED. This case is dismissed with prejudice. The
13 Clerk is instructed to enter judgment in favor of MUFG and close the case.

14 **IT IS SO ORDERED.**

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16 Dated: January 6, 2025

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19 JOSEPH C. SPERO
20 United States Magistrate Judge
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