

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH LAWRENCE LENK,
Plaintiff,
v.
MONOLITHIC POWER SYSTEMS,
INC.,
Defendant.

Case No.15-cv-01148 NC

**ORDER GRANTING MOTION TO
DISMISS THE THIRD AMENDED
COMPLAINT**

Re: Dkt. No. 82

Plaintiff Kenneth Lenk sues his former employer, Monolithic Power Systems, for wrongful “constructive” termination. Lenk was employed by MPS for about one year before he left. During that year, Lenk alleges that MPS did not pay him a 25% bonus that he was owed, and forced Lenk to end his employment using a variety of unlawful tactics.

The Court previously dismissed Lenk’s federal causes of action and seven state law causes of action without leave to amend, but permitted Lenk to amend two state law causes of action. Dkt. Nos. 70, 80. Now, the Court considers MPS’ motion to dismiss Lenk’s third amended complaint, alleging the two remaining state law claims. The Court finds that Lenk has failed to state a claim for wrongful constructive termination, and that Lenk did not relocate as required for his California Labor Code § 970 claim. The Court GRANTS the motion to dismiss without leave to amend.

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1 intentionally created or knowingly permitted working conditions that were so intolerable
2 or aggravated at the time of the employee’s resignation that a reasonable employer would
3 realize that a reasonable person in the employee’s position would be compelled to resign.
4 Id. “The mere existence of illegal conduct in a workplace does not, without more, render
5 employment conditions intolerable to a reasonable employee.” Id. at 1254. The Supreme
6 Court in Turner cautioned that there should be a causal link between the employer’s
7 wrongful and illegal actions and plaintiff’s resignation. Finally, the Court noted that
8 constructive discharge requires a “continuous pattern of harassment.” Id. at 1255.

9 Here, Lenk alleges that “reporting of his expense reimbursement issue to HR lead to
10 the hostile environment and constructive discharge actions performed by his manager
11 Sciammas and/or the company.” TAC ¶ 70. However, Lenk also alleges that “Given the
12 complaint about the California Labor Code violation, MPS HR’s Wei promptly resolved
13 some of the expense reimbursement issue by issuing a check the same day as a partial
14 payment of the outstanding expenses.” TAC ¶ 35.

15 Lenk’s own allegations demonstrate that there was no pattern and practice of
16 harassment at MPS sufficient to convert Lenk’s resignation into an unlawful discharge.
17 Lenk’s other allegations that MPS created a hostile work environment by reducing his
18 work and providing insufficient support are not related to his Labor Code claim. This
19 claim is DISMISSED.

20 **B. California Labor Code § 970**

21 California Labor Code § 970 provides that “No person, or agent or officer thereof,
22 directly or indirectly, shall influence, persuade, or engage any person to change from one
23 place to another in this State or from any place outside to any place within the State, or
24 from any place within the State to any place outside, for the purpose of working in any
25 branch of labor, through or by means of knowingly false representations, whether spoken,
26 written, or advertised in printed form, concerning either:

- 27 (a) The kind, character, or existence of such work;
28 (b) The length of time such work will last, or the compensation therefor;

- 1 (c) The sanitary or housing conditions relating to or surrounding the work;
- 2 (d) The existence or nonexistence of any strike, lockout, or other labor dispute
- 3 affecting it and pending between the proposed employer and the persons then or last
- 4 engaged in the performance of the labor for which the employee is sought.”

5 This section “requires the employee to demonstrate that his or her employer made
6 ‘knowingly false representations’ concerning the nature, duration or conditions of
7 employment.” Eisenberg v. Alameda Newspapers, 74 Cal. App. 4th 1359, 1392 (1999).
8 “Moreover, under the statute an employee must establish that the employer induced him or
9 her to relocate or change addresses.” Id. Allegations of fraud or misrepresentation require
10 a heightened pleading standard. Fed. R. Civ. P. 9(b). “The complaint must specify such
11 facts as the times, dates, places, benefits received, and other details of the alleged
12 fraudulent activity.” Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993) (citations
13 omitted).

14 Here, Lenk does not allege that he relocated for the work, but rather that MPS
15 relocated farther away from his house. TAC ¶¶ 100-102. Lenk alleges that he assessed
16 whether to move, but decided not to move until his daughter finished high school. TAC ¶
17 101. Thus, Lenk cannot meet the threshold requirement to allege a claim under California
18 Labor Code § 970. This claim is DISMISSED.

19 **C. Leave to Amend**

20 Generally, a Court must grant leave to amend freely. Fed. R. Civ. P. 15(a).
21 However, in granting leave to amend, the Court considers: (1) undue delay; (2) bad faith;
22 (3) prejudice to the opponent; and/or (4) futility of the proposed amendment. Loehr v.
23 Ventura County Community College District, 743 F.2d 1310, 1319 (9th Cir. 1984) (citing
24 Foman v. Davis, 371 U.S. 178, 182 (1962)). In Lockheed Martin Corp. v. Network
25 Solutions, Inc., the Ninth Circuit determined that the district court properly denied leave to
26 amend because the plaintiff’s “legal basis for a cause of action is tenuous, [so] futility
27 supports the refusal to grant leave to amend.” 194 F.3d 980, 986 (9th Cir. 1999)(citing
28 Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)).

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In addition, a court may also consider whether the plaintiff has previously amended his complaint. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 n.3 (9th Cir. 1987). “Where a court has already provided the plaintiff one or more opportunities to amend her complaint, its discretion over further amendments is particularly broad.” *Dauth v. Convenience Retailers, LLC*, 13-cv-047 MEJ, 2013 WL 4225587, at *2 (N.D. Cal. July 31, 2013).

Here, Lenk has filed three complaints, several oppositions to motions to dismiss, and attached voluminous additional documentation with his complaints and motions. The Court finds amendment of these claims would be futile because Lenk has no further facts that could remedy the deficiencies outlined above, and Lenk has had several opportunities to amend his complaint. Thus, the Court dismisses the claims without leave to amend.

III. CONCLUSION

The Court GRANTS MPS’s motion to dismiss Lenk’s remaining claims without leave to amend.

IT IS SO ORDERED.

Dated: March 31, 2016



NATHANAEL M. COUSINS
United States Magistrate Judge