

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICKI STEFANINI,
Plaintiff,
v.
HEWLETT PACKARD ENTERPRISE
COMPANY,
Defendant.

Case No. 18-cv-07051-NC

**ORDER GRANTING HPE'S
MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 101

In this employment discrimination case, defendant Hewlett Packard Enterprise Company moves for summary judgment over all twelve of plaintiff Vicki Stefanini's claims. The Court FINDS that Ms. Stefanini has not provided sufficient admissible evidence to create a genuine dispute of material fact as to any of her claims. Stefanini has failed to make a prima facie case for gender discrimination, retaliation, or interference with FMLA rights. She has also failed to provide facts in support of her wrongful termination, breach of contract, failure to pay wages, and unfair competition claims. As such, the Court GRANTS HPE's motion for summary judgment as to all of Ms. Stefanini's claims and DISMISSES the case.

I. BACKGROUND

A. Undisputed Facts

Vicki Stefanini worked in sales at HPE for about one and a half years. She was initially hired by HPE (then "Hewlett-Packard Company," or "HP") in March 2015. Dkt.

1 No. 101, Decl. of Jeffrey Ho at ¶ 2. In the fall of that year, HP acquired Aruba Wireless
2 Networks and split into HPE and Hewlett Packard, Inc. Dkt. No. 101, Decl. of Stephen
3 Carlock at ¶ 3. HPE combined HP and Aruba sales teams to operate Aruba as a division of
4 HPE. *Id.* Stefanini’s HP sales team, led by Robert Ruiz, was transferred to a new
5 combined HP-Aruba sales team led by Aruba salesperson Stephen Carlock. *Id.*

6 On the new team, Stefanini was responsible for selling both HP products and Aruba
7 products. *Id.* at ¶ 6. Carlock required his team members to update him monthly on sales
8 forecasts and to maintain certain ratios of “Upside,” “Pipeline,” and “Committed” sales
9 (essentially, prospective sales at varying levels of commitment). *Id.* at ¶ 13.

10 In February 2016, Carlock emailed his manager to express concerns about
11 Stefanini’s job performance and to discuss how to start the process of terminating her. *Id.*
12 at ¶ 20; Ho Decl. at ¶ 2x, Exh. 6. The HR department recommended that Carlock first
13 provide her with a written warning and place her on a performance improvement plan. *Id.*
14 Carlock also contacted a colleague who led a regional pre-sale consulting team to see if
15 Stefanini could join that team. *Id.* Stefanini was offered a place on that team, but she
16 declined. Carlock Decl. at ¶ 22–23.

17 Carlock issued a written warning and performance improvement plan for Stefanini
18 in April 2016. *Id.* at ¶ 25, Ex. B; Stefanini Depo, Ex. 19. The warning stated that
19 Stefanini had continued to focus only on HP products rather than learning the new Aruba
20 products that she was now responsible to sell. *Id.* It stated that Carlock had requested
21 Stefanini take a class about the Aruba products but that she had not attended either of two
22 classes available since his request. *Id.* It also stated that Stefanini had “not generated the
23 expected pipeline and thus revenue expected,” that she “achieved less than 25% quota” in
24 Q1 and Q2, that her prospective sales opportunities were under the required ratio, and that
25 she had recently lost a large sales opportunity. *Id.* The performance improvement plan
26 required that Stefanini improve her prospective sale ratios, meet with executives about her
27 accounts, complete trainings in Aruba products, and meet with Carlock weekly to review
28 her progress. Carlock Decl. at ¶ 25, Ex. B. At this same meeting, Carlock informed

1 Stefanini that he was transferring one of her accounts, Comcast, to another team member.
2 Stefanini Depo. at 122:8–123:14.

3 HPE uses software called MyComp to track salespeople’s sales credits, quotas, and
4 commissions. Foley Decl. at ¶ 4. Individual salespeople maintain their own records and
5 are responsible for reporting errors in MyComp. Dkt. No. 101, Declaration of Adrian
6 Hurel at ¶ 4, Ex. 1. In May 2016, Stefanini reported MyComp issues to Carlock. Stefanini
7 Depo. Ex. 44. Carlock connected her to the Sales Compensation department for
8 assistance. Foley Decl. at ¶ 2, Ex. 1. Carlock emailed his whole team on June 1, 2016,
9 and asked them to compile any MyComp errors into a spreadsheet, writing, “DO NOT
10 SEND ME EMAILS one at a time as you find stuff.” Stefanini Depo. Ex. 43.

11 Also in May 2016, Stefanini emailed Dominic Orr, the former President and CEO
12 of Aruba, stating that she was “being treated differently by manager Stephen Carlock due
13 to being part of a protected class.” Stefanini Depo. Ex. 32. Orr forwarded her email to HR
14 and HR began an investigation. Ho Decl. at ¶ 2e, Ex. 7. The investigation included
15 meetings between HR and Stefanini, interviews with members of Carlock and his sales
16 team, and document review. *Id.* HR concluded that the complaint had no substance. *Id.*

17 Around the same time, HPE initiated a company-wide workforce reduction and
18 asked Carlock to rank his team members based on performance in order to reduce his team
19 by two positions. Carlock Depo. at ¶ 29, 30. On May 23, 2016, Carlock sent his manager
20 a ranked list of his team members, ranking Stefanini as one of the two lowest performers.
21 *Id.* at ¶ 31, 32.

22 Later in May 2016, Stefanini requested a medical leave of absence based on a
23 doctor’s recommendation. Stefanini Depo. Ex. 41. Her leave was granted, and set to run
24 from July 18 through October 9, 2016. Ho Decl. at ¶ 2f, Ex. 8. Because she was on leave
25 when the workforce reduction was implemented, HPE did not inform Stefanini that she
26 was being laid off until October 17, 2016. Carlock Decl. at ¶ 31, 23; Foley Decl. at ¶ 2,
27 Ex. 1; Stefanini Depo. Ex. 46. Her last day with HPE was October 28, 2016. *Id.* Her
28 position was never backfilled. Carlock Decl. at ¶ 37.

1 **B. Procedural History**

2 Stefanini’s complaint against HPE brings twelve claims: (1) employment
3 discrimination based on gender under the Fair Employment and Housing Act (FEHA); (2)
4 failure to prevent gender discrimination under FEHA; (3) wrongful termination; (4)
5 retaliation for exercising California Family Rights Act (CFRA) rights; (5) interference
6 with Family and Medical Leave Act (FMLA) rights; (6) retaliation; (7) breach of contract;
7 (8) breach of the covenant of good faith and fair dealing; (9) failure to pay agreed-upon
8 wages; (10) failure to pay wages due upon termination; (11) failure to reimburse business
9 expenses; and (12) unfair competition. Dkt. No. 25. The Court held a hearing on HPE’s
10 motion for summary judgment. Dkt. No. 111. At the hearing, the Court confirmed with
11 Ms. Stefanini that, as she discussed in her deposition, she intended to voluntarily dismiss
12 her claim for failure to reimburse business expenses. *Id.* The Court also indicated to Ms.
13 Stefanini that it intended to grant HPE’s motion for summary judgment as to her claims for
14 failure to prevent discrimination and breach of the covenant of good faith and fair dealing
15 because those claims were based entirely on the same law and facts as her claims for
16 employment discrimination and breach of contract. *Id.* Stefanini confirmed that those
17 claims were identical. The Court therefore dismissed those claims as duplicative. *Id.*

18 This order addresses Stefanini’s remaining claims: (1) employment discrimination
19 based on gender under FEHA; (2) wrongful termination; (3) retaliation for exercising
20 CFRA rights; (4) interference with FMLA rights; (5) retaliation; (6) breach of contract; (7)
21 failure to pay agreed-upon wages; (8) failure to pay wages due upon termination; and (9)
22 unfair competition.

23 All parties consented to the jurisdiction of a magistrate judge under 28 U.S.C. §
24 636(c). Dkt. Nos. 11, 16.

25 **II. LEGAL STANDARD**

26 Summary judgment may be granted only when, drawing all inferences and
27 resolving all doubts in favor of the nonmoving party, there is no genuine dispute as to any
28 material fact. Fed. R. Civ. P. 56(a); *Tolan v. Cotton*, 134 S. Ct. 1861, 1863 (2014);

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under
2 governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty*
3 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if “the
4 evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*
5 Bald assertions that genuine issues of material fact exist are insufficient. *Galen v. Cnty. of*
6 *L.A.*, 477 F.3d 652, 658 (9th Cir. 2007).

7 The moving party bears the burden of identifying those portions of the pleadings,
8 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact.
9 *Celotex*, 477 U.S. at 323. Once the moving party meets its initial burden, the nonmoving
10 party must go beyond the pleadings, and, by its own affidavits or discovery, set forth
11 specific facts showing that a genuine issue of fact exists for trial. Fed. R. Civ. P. 56(c);
12 *Barthelemy v. Air Lines Pilots Ass’n*, 897 F.2d 999, 1004 (9th Cir. 1990) (citing *Steckl v.*
13 *Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983)). All justifiable inferences, however,
14 must be drawn in the light most favorable to the nonmoving party. *Tolan*, 134 S. Ct. at
15 1863 (citing *Liberty Lobby*, 477 U.S. at 255).

16 **III. DISCUSSION**

17 **A. Evidentiary Issues**

18 On summary judgment, the Court is limited to relying only on competent and
19 admissible evidence. *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324,
20 1335 (9th Cir. 1980).

21 To begin, the Court notes some general concerns with the evidence provided in
22 support of the briefing on this motion. One issue is Ms. Stefanini’s citation to her own
23 questions asked during depositions of HPE witnesses. *See generally* Dkt. No. 109.
24 Proceeding pro se, Ms. Stefanini conducted depositions on her own behalf. During those
25 depositions, transcripts reveal that Ms. Stefanini sometimes asked lengthy questions
26 including facts and backgrounds about the case, some of which are highlighted in apparent
27 support for her opposition to the motion for summary judgment. *See, e.g.*, Dkt. No. 109,
28 Deposition of Stephen Carlock, at 6:20–7:2. Stefanini’s questions are not admissible

1 evidence. A similar problem exists with exhibits used at depositions. Dkt. No. 109. Some
2 of these exhibits appear to have been created by Stefanini for the purpose of this litigation.
3 They are not authenticated or otherwise admissible. For example, Exhibit 15 to Adrian
4 Hurel’s deposition is a timeline of complaints Stefanini made to Stephen Carlock about
5 MyComp issues. Exhibit 20 to Hurel’s deposition is a list made by Stefanini of the
6 commissions that she believes she was owed but not paid. These documents are not
7 admissible as evidence to show that Stefanini made those complaints at those times or that
8 she was owed those commissions.

9 One piece of evidence in particular dispute is the declaration of Robert Oliver. Dkt.
10 No. 109, Ex. C1. HPE asks the Court to disregard the declaration in its entirety because
11 HPE says it is inconsistent with other evidence. Dkt. No. 101 at 14, n.17. The Court finds
12 that this criticism of the declaration goes to its weight, not its admissibility, and considers
13 the declaration in context with the other evidence presented by both parties.

14 The Court decides this motion based only on the admissible evidence provided by
15 both parties. *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1047–49 (9th Cir. 1995).

16 **B. Gender Discrimination, Failure to Prevent Discrimination, and Wrongful**
17 **Termination**

18 A claim for gender discrimination under FEHA first requires that the plaintiff
19 establish a prima facie case of discrimination. *Day v. Sears Holdings Corp.*, 930 F. Supp.
20 2d 1146, 1176 (C.D. Cal. 2013) (citing *McDonnell Douglas Corp. v. Green*, 9411 U.S.
21 792 (1973)). This prima facie case requires a showing that: (1) the plaintiff is a member of
22 a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered
23 an adverse employment action; and (4) circumstances suggest discriminatory motive. *Id.*
24 If the plaintiff makes this prima facie showing, the defendant must provide evidence that it
25 had non-discriminatory motives for its conduct. *Id.* at 1160. Then, the plaintiff again has
26 the burden to prove that the defendant’s proffered reasons are pretext for unlawful
27 discrimination. *Id.* at 1161.

28 Here, the Court finds that Stefanini has failed to present evidence to make a prima

1 facie case of gender discrimination. She is a member of a protected class (female) and she
2 suffered an adverse employment action (termination). However, she has not shown that
3 she was qualified for the position or that the circumstances of her termination suggest
4 discriminatory motive. The only evidence Stefanini has provided regarding her
5 competence and performance is her own testimony. Dkt. No. 108 at 8–9. She testified that
6 she was meeting 300% of her quota and was out-performing her peers, but that pervasive
7 MyComp issues prevented this performance from being properly recorded. Dkt. No. 101,
8 Stefanini Depo. at 82:4–84:3. The Court is unclear on the basis for this “300%” number—
9 no documents or other records support it. To the contrary, HPE has provided documentary
10 evidence that Stefanini’s performance was subpar: the written warning and performance
11 improvement plan contain a record of multiple performance issues, and subsequent emails
12 indicate that Stefanini did not improve in accordance with the warning and plan. Carlock
13 Decl. at ¶ 27, Ho Decl. at ¶ 2d, Ex. 6. Stefanini’s opinions about her own performance are
14 not evidence. She has therefore failed to make a prima facie case of gender discrimination
15 because she has not shown that she was qualified for the position, especially in light of
16 HPE’s evidence that she was not. Because Stefanini has not made a prima facie case for
17 gender discrimination, the burden does not shift to HPE to give non-discriminatory reasons
18 for its actions.

19 The Court hereby GRANTS the motion for summary judgment as to Stefanini’s
20 gender discrimination claim. As discussed above, the Court also dismisses Stefanini’s
21 claim for failure to prevent gender discrimination, because it is based on identical facts and
22 law as the gender discrimination claim.

23 Stefanini’s claim for wrongful termination is also based on entirely the same
24 allegations and evidence as her gender discrimination claim. Dkt. No. 25 at 6–7. That is,
25 Stefanini claims her termination was wrongful because it was a result of gender
26 discrimination. The Court has found that Stefanini has not provided evidence that she was
27 discriminated against based on her gender. Therefore, the Court also GRANTS the motion
28 for summary judgment as to the wrongful termination claim.

1 **C. Retaliation for Exercising CFRA Rights**

2 A claim under the California Family Rights Act first requires the plaintiff to make a
3 prima facie case of retaliation. *Nelson v. United Techs.*, 74 Cal. App. 4th 597, 613 n.5
4 (1999). This requires showing: (1) that the plaintiff was eligible for CFRA leave; (2) that
5 the plaintiff took CFRA leave; (3) that the plaintiff suffered an adverse employment action
6 because she exercised her right to take CFRA leave; and (4) that there was a causal
7 connection between the adverse employment action and the plaintiff’s exercising of her
8 CFRA rights. *Dudley v. Dep’t of Transp.*, 90 Cal. App. 4th 255, 261 (2001).

9 Neither party disputes that Stefanini was eligible for CFRA leave, took that leave,
10 and was terminated. The questions are whether Stefanini was terminated because of her
11 leave and whether she has shown a causal connection between her termination and leave.
12 Stefanini argues that she was laid off just after returning from medical leave and draws the
13 conclusion that her layoff was retaliation for taking that leave. Dkt. No. 108 at 11–14.
14 However, the record evidence shows that HPE’s process of terminating Stefanini began
15 before she ever requested or took medical leave. Specifically, Stephen Carlock sent an
16 email to HR to inquire about how to terminate Stefanini in February 2016. Foley Decl. at
17 ¶ 2, Ex. 1; Stefanini Depo. at 79:8–16; Stefanini Depo. Ex. 19. He implemented her
18 written warning and performance plan in April 2016. *Id.* On May 23, 2016, Carlock
19 provided his manager with a ranked list of his team by performance for the upcoming
20 workforce reduction. *Id.* On May 24, 2016, Carlock was informed about Stefanini’s
21 request for medical leave. *Id.* Her leave began on July 18, 2016. *Id.*

22 Because HPE has shown that Carlock had begun inquiring about terminating
23 Stefanini three months before her request for leave, and because he submitted his ranked
24 list of team members’ performance for workforce reduction before he had knowledge of
25 her request for leave, Stefanini has failed to make a prima facie showing that there was a
26 causal connection between the termination and the medical leave. *Williams v. G&K*
27 *Servs., Inc.*, 774 F. App’x 369 (9th Cir. 2019). Therefore, the Court GRANTS the motion
28 for summary judgment as to Stefanini’s claim for retaliation for exercising CFRA rights.

1 **D. Interference with FMLA Rights**

2 To bring a claim for interference with Family and Medical Leave Act rights, the
3 plaintiff must make a prima facie showing that: (1) she was eligible for FMLA protections;
4 (2) her employer was covered by the FMLA; (3) she was entitled to leave under the
5 FMLA; (4) she provided sufficient notice of her intent to take leave; and (5) her employer
6 denied her the FMLA benefits to which she was entitled. *Alejandro v. ST Micro Elecs.,*
7 *Inc.*, 129 F. Supp. 3d 898, 914 (N.D. Cal. 2015).

8 Here, Stefanini was granted the FMLA leave that she requested. Ho Decl. at 2f, Ex.
9 8. Stefanini was on medical leave from July 18 through October 9, 2016. Ho Decl. at ¶ 2f,
10 Ex. 8. She has not suggested that she ever requested any other FMLA benefits that HPE
11 denied. If Stefanini was not denied any FMLA benefits, then she cannot make a prima
12 facie case for interference with FMLA rights. As such, the Court GRANTS the motion for
13 summary judgment as to Stefanini’s claim for interference with FMLA rights.

14 **E. Retaliation**

15 A claim for retaliation under either the CFRA or California Labor Code § 1102.5
16 requires a plaintiff to make a prima facie case of retaliation by showing: (1) that she
17 engaged in protected activity; (2) that she suffered an adverse employment action; and (3)
18 a causal connection between the protected activity and the adverse employment action.
19 *McVeigh v. Recology San Francisco*, 213 Cal. App. 4th 443, 468–69 (2013).

20 Here, Stefanini alleges that she engaged in the protected activity of complaining to
21 HR about perceived gender-based discrimination. Dkt. No. 25 at 9–10; Foley Decl. at ¶ 2,
22 Ex. 1. She sent an email to former Aruba President and CEO Dominic Orr about being
23 “treated differently by manager Stephen Carlock due to being a part of a protected class”
24 on May 5, 2016. *Id.* As discussed above, Carlock had begun emailing HR about
25 terminating Stefanini in February 2016 and had issued her a written warning and
26 performance improvement plan in April 2016. Because the process leading to her
27 termination began prior to her complaint to HR, Stefanini has not shown how the
28 complaint caused her termination. Stefanini has not put forth evidence to show a causal

1 connection between her termination and her HR complaint. The Court therefore GRANTS
2 the motion for summary judgment as to Stefanini’s retaliation claim.

3 **F. Failure to Pay Agreed-Upon Wages and Wages Due Upon Termination**

4 Under California Labor Code §§ 201–202, an employer must pay an employee all
5 wages based on her earned compensation. Stefanini claims that HPE owes her unpaid
6 wages in the form of commissions that she earned from her sales. Dkt. No. 25 at 13.

7 It is unclear precisely how much Stefanini believes she is owed: in her opposition to
8 the motion for summary judgment, Stefanini alludes to “over \$10,000,000” in unpaid
9 commissions but also states that she “believes that the total commissions she is owed is
10 \$577,500,” and references commissions owed on particular accounts totaling
11 \$4,148,888.00, \$237,400.00, and \$27,265,068.00 each. Dkt. No. 108 at 10, 16, 18.

12 Nevertheless, this argument in her opposition brief is not evidence. Attached to the
13 opposition, Stefanini includes an exhibit titled “Stefanini / HPE Damages” that lists
14 \$597,067.27 in unpaid commissions, \$330,000.00 in unpaid diverted commissions, and
15 another \$330,000.00 in unpaid channel commissions. Dkt. No. 109, Ex. 6. Because this
16 document is a damages demand prepared by Stefanini for the purpose of this litigation, the
17 Court finds that it is not admissible evidence. Stefanini attaches a similar exhibit, a
18 timeline summary of her complaints about MyComp errors, which she also created for the
19 case. *Id.*, Ex. 15. This exhibit is also inadmissible.

20 Similarly, Stefanini has not presented evidence to support her allegations about the
21 mechanism by which her commissions were denied. Stefanini says that HPE’s sales and
22 commissions tracking system, MyComp, was not operating correctly. HPE acknowledges
23 that “[d]uring the time in question, all HPE salespeople were unable to rely on MyComp
24 for current data due to certain systems issues that were causing the posting of sales
25 transaction data to be delayed.” Dkt. No. 101 at 7, n.11; Foley Decl. at ¶ 2, Ex. 1. The
26 existence of this apparent general problem with MyComp is not enough to show that
27 Stefanini was not paid commissions she was owed. Stefanini’s primary evidence for her
28 unpaid commissions, apart from her own opinions and exhibits, is the declaration from

1 Robert Oliver. Oliver described “known issues with the HP sales commission software,
2 MyComp,” including “faulty sales commission payouts with incorrect calculations” that
3 “resulted in exceedingly smaller commissions paid out to Ms. Stefanini than what she had
4 calculated.” Dkt. No. 109, Ex. C1, Declaration of Robert Oliver, at 2:17–19. Mr. Oliver
5 states that his information about the MyComp issues came from a telephone conversation
6 that he overheard between Stefanini and Stephen Carlock, where Stefanini asked Carlock
7 for assistance with the MyComp problems. *Id.* Oliver having heard Stefanini complain
8 about MyComp problems is not sufficient evidence to show that the issues resulted in
9 Stefanini’s commissions going unpaid.

10 On the other hand, HPE has provided a spreadsheet summary report of Stefanini’s
11 commissions compensation. Dkt. No. 101, Hurel Decl., Ex. 3. This report indicates that
12 Stefanini received all sales credits owed to her, but was below quota, so was not entitled to
13 any additional payments. Hurel Decl. at ¶¶ 13–24. Stefanini testified that she made
14 numerous complaints to Carlock about inaccuracies in her MyComp account, but that
15 Carlock only fixed inaccuracies in accounts for her male coworkers. Dkt. No. 101,
16 Stefanini Depo. at 83:13–18. HPE has provided emails between Carlock, the HPE IT
17 department, Carlock’s sales team, and Stefanini about the MyComp issues. Dkt. No. 101,
18 Stefanini Depo. Exs. 43–45. The emails show that Stefanini asked Carlock and IT for help
19 with MyComp, and that Carlock instructed both Stefanini and the rest of his team to create
20 spreadsheets documenting any MyComp inaccuracies. *Id.* HPE states that Stefanini never
21 submitted any spreadsheet or otherwise filed any record of any errors; Stefanini has
22 provided no evidence that she did so. In the end, the Court is left without any evidence
23 beyond Ms. Stefanini’s own opinion that she was owed any commissions due to MyComp
24 errors. The evidence only shows widespread MyComp problems and Stefanini’s personal
25 complaints. Nothing shows that Stefanini was owed unpaid commissions, or how much.

26 Because Stefanini has not produced evidence to create a genuine dispute of material
27 fact regarding the cause, existence, or amount of her unpaid commissions, the Court
28 GRANTS the motion for summary judgment as to her two unpaid wage claims.

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G. Breach of Contract

The essential elements of a breach of contract claim are: (1) the existence of a contract; (2) the plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach; and (4) resulting damages to the plaintiff. *Coles v. Glaser*, 2 Cal. App. 5th 384, 391 (2016). An at-will employee has no underlying contract, and therefore cannot bring a claim for breach of contract or breach of the implied covenant of good faith and fair dealing. *Horn v. Cushman & Wakefield Western, Inc.*, 72 Cal. App. 4th 798, 818–820 (1999); *Sabido v. Walgreens Drugs*, Case No. 03-cv-2857-MJJ, 2005 WL 522078, at *9 (N.D. Cal. Mar. 2, 2005).

Stefanini was an at-will employee. Carlock Decl. at ¶ 9, Ex. A; Hurel Decl. at ¶ 16, Ex. 4. She therefore cannot bring a breach of contract claim for her termination. *Horn*, 72 Cal. App. 4th 798, 818–20 (1999). Stefanini’s breach of contract claim is also based upon her unpaid wages. As the Court discussed in Section F above, Stefanini has not provided admissible evidence to create a genuine dispute of fact regarding her unpaid wages. Therefore, the Court GRANTS the motion for summary judgment as to Stefanini’s breach of contract claim. As discussed previously, the Court also dismisses the breach of the covenant of good faith and fair dealing claim, because it is based on identical facts and law as the breach of contract claim. Furthermore, if there is no evidence of a contract, there can be no implied covenant of good faith and fair dealing adjoining the contract.

H. Unfair Competition

A claim for unfair competition under California Business & Professions Code § 17200 is based on a defendant’s unlawful, unfair, or fraudulent business act or practice. A plaintiff bringing a UCL claim must show: (1) economic injury; and (2) that the economic injury was a result of the defendant’s unfair business practice. *Prescott v. Rady Children’s Hosp.-San Diego*, 265 F. Supp. 3d 1090, 1103 (S.D. Cal. 2017).

Stefanini’s UCL claim is based on her gender discrimination and wrongful termination claims. Dkt. No. 25 at ¶ 117. The Court has granted summary judgment as to those claims in this order. Stefanini has not established an unfair business practice by

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HPE. Therefore, the Court also GRANTS the motion for summary judgment as to the UCL claim.

IV. CONCLUSION

The Court FINDS no genuine disputes of material fact based on the admissible evidence provided by the parties in support of their briefing on this motion. Even viewing the admissible evidence in the light most favorable to Ms. Stefanini, the Court FINDS that her claims fail as a matter of law. The Court GRANTS HPE’s motion for summary judgment. This case is hereby DISMISSED.

IT IS SO ORDERED.

Dated: January 22, 2020



NATHANAEL M. COUSINS
United States Magistrate Judge