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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES RICHARD STIEFEL,
Plaintiff,
vs.
BECHTEL CORPORATION and
DOES 1-100, inclusive,
Defendants.

CASE NO. 06-CV-01414-H
(WMC)

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

On July 13, 2006, defendant Bechtel Corporation ("Defendant") removed San Diego County Superior Court case Stiefel v. Bechtel, case number GIN053461, to this Court. (Doc. No. 1.) On December 27, 2006, plaintiff James Richard Stiefel ("Plaintiff") filed a first amended complaint ("FAC"). (Doc. No. 21.) On January 11, 2007, Defendant filed a motion to dismiss Plaintiff's FAC. (Doc. No. 22.) On February 12, 2007, Plaintiff filed an opposition. (Doc. No. 25.) On February 16, 2007, Defendant filed a reply. (Doc. No. 26.)

The Court held a hearing on Defendant's motion to dismiss on February 26, 2007. Attorney Marcus Jackson represented Plaintiff and attorney Thomas McInerney represented Defendant at the hearing. On February 27, 2007, the Court filed a scheduling order regarding supplemental briefing. (Doc. No. 28.) On March 9, 2007, Defendant filed a supplemental brief in support of its motion to dismiss. (Doc. No. 32.)

1 On March 19, 2007, Plaintiff filed a supplemental opposition to Defendant’s motion to
2 dismiss. (Doc. No. 34.) On March 21, 2007, Defendant filed a motion requesting the
3 Court take judicial notice of certain facts. (Doc. No. 35.) On March 28, 2007, Plaintiff
4 filed an opposition brief. (Doc. No. 37.)

5 For the following reasons, the Court **DISMISSES WITHOUT PREJUDICE**
6 Plaintiff’s disability discrimination and retaliation claims to the extent that they are
7 based on the ADA (claims two and three). The Court **GRANTS WITH PREJUDICE**
8 Defendant’s motion to dismiss Plaintiff’s claims for wrongful termination in violation
9 of public policy (claim one), disability discrimination and retaliation to the extent that
10 they are based on the California Fair Employment Housing Act (claims two and three),
11 violations of sections 98.6, 1102.5, 132a, 6402, 6403, and 6404 of California’s Labor
12 Code (claim four), negligent supervision (claim five), and intentional infliction of
13 emotional distress (claim six). The Court **GRANTS WITHOUT PREJUDICE**
14 Defendant’s motion to dismiss Plaintiff’s disability discrimination claim under the
15 Rehabilitation Act (claim two), and Plaintiff’s claims for violations of sections 6310
16 and 6311 of California’s Labor Code.

17 **Background**

18 Plaintiff began working for Defendant at the San Onofre Nuclear Generating
19 Station (“SONGS”) as an ironworker in May 2004.¹ (FAC ¶ 7.) Defendant performs
20 services at SONGS pursuant to a contract it has with Southern California Edison
21 (“SCE”). (*Id.* ¶ 4.) In November 2005, Plaintiff reported to personnel employed by
22 Defendant the names of people involved with an emergency boom lift malfunction. (*Id.*
23 ¶¶ 9-14.) In December 2005, Plaintiff brought to the attention of his supervisor a
24 cracked weld in a system designed to remove radioactive material from the containment
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26 ¹ Defendant alleges that Plaintiff was employed by Bechtel Construction
27 Company, a subsidiary of Defendant, and states that it is not waving its right to later
28 contest the fact that Plaintiff sued the wrong entity. (Def. Bechtel Corporation’s Mem.
P. & A. Supp. Mot. Dismiss, at 1 & n.1.) Since the Court must accept all well-pleaded
factual allegations as true for purposes of a motion to dismiss, the Court accepts that
Plaintiff was employed by Defendant for purposes of this order.

1 building which housed the nuclear reactor. (Id. ¶ 15.) Plaintiff injured his left thumb
2 while working for Defendant on January 31, 2006. (Id. ¶¶ 16, 17.) Plaintiff was laid
3 off by Defendant in March 2006. (Id. ¶ 28.)

4 Subsequently, Plaintiff filed a charge of discrimination with the California
5 Department of Fair Employment and Housing. (Id. ¶ 31.) In June 2006, Plaintiff filed
6 a complaint in San Diego County Superior Court for wrongful termination in violation
7 of public policy, failure to accommodate a disability, retaliation, violations of
8 California’s Labor Code, negligent supervision, and intentional infliction of emotional
9 distress. (Compl. ¶¶ 1-74.) Defendant removed the suit to federal court. (Notice
10 Removal, at 1-4.)

11 On December 13, 2006, the Court granted Plaintiff leave to amend his complaint.
12 (Doc. No. 19.) On December 27, 2006, Plaintiff filed a FAC alleging wrongful
13 termination in violation of public policy (claim one), disability discrimination under the
14 California Fair Employment Housing Act, section 12940 et seq. of the California Labor
15 Code (“FEHA”), the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.
16 (“ADA”), and the Rehabilitation Act, 29 U.S.C. § 701 et seq. (claim two), retaliation
17 under FEHA and the ADA (claim three), violations of California’s Labor Code (claim
18 four), negligent supervision (claim five), and intentional infliction of emotional distress
19 (claim six). On January 11, 2007, Defendant filed a motion to dismiss Plaintiff’s entire
20 suit. (Def. Bechtel Corporation’s Notice Mot. and Mot. Dismiss, at 1.)

21 On February 26, 2007, the Court held a hearing on Defendant’s motion to
22 dismiss. At the hearing, Plaintiff’s attorney Marcus Jackson stated that he did not have
23 a right-to-sue letter from the Equal Employment Opportunity Commission (“EEOC”)
24 regarding his ADA claims.

25 Discussion

26 **A. Judicial Notice**

27 Defendant requests the Court take judicial notice of the fact that SONGS is
28 located on a federal enclave. Plaintiff states that he does not oppose Defendant’s

1 request because the evidence Defendant submitted demonstrates that the Court may
2 properly take judicial notice that SONGS is a federal enclave.

3 A matter that is properly the subject of judicial notice may be considered along
4 with the complaint when deciding a motion to dismiss for failure to state a claim. See
5 MGIC Indem. Corp. v. Weisman, 803 F2d 500, 504 (9th Cir. 1986). Judicial notice
6 may be taken of facts not subject to reasonable dispute in that they are “generally
7 known” in the community or “capable of accurate and ready determination by reference
8 to sources whose accuracy cannot be reasonably questioned.” See Fed. R. Evid.
9 201(b).

10 In 1939, California consented to allow the United States to acquire by purchase
11 or condemnation any track of land within the state for the purpose of erecting forts or
12 other needful buildings. See Cal. Stats. 1939, ch. 710, § 1, p. 2231 (Decl. Thomas M.
13 McInerney Supp. Def.’s Mot. Req. Judicial Notice, Ex. D). In 1942, the United States
14 acquired Camp Pendleton through condemnation. See Law Enforcement at San Onofre
15 Nuclear Generation Plant, 1 Op. Off. Legal Counsel 204, 204-05 (1977); see also Letter
16 from James Forrestal, Under Secretary of the Navy, to Earl Warren, California
17 Governor (Sept. 8, 1943) (on file in Official Recorder’s Office of San Diego County,
18 California) (Decl. Thomas M. McInerney Supp. Def.’s Mot. Req. Judicial Notice, Ex.
19 E) (“The United States of America became vested with valid title to certain lands in San
20 Diego County, California on December 31, 1942 [F]or the establishment of Camp
21 Joseph H. Pendleton . . .”).

22 In 1963, Congress authorized the Secretary of the Navy to grant an easement
23 allowing Southern California Edison Company and San Diego Gas and Electric
24 Company to construct, operate, and maintain a nuclear electric generating station in
25 Camp Pendleton Naval Reservation. See Act of July 30, 1963, Pub. L. No. 88-82, 77
26 Stat. 115. The U.S. Department of Justice has confirmed that SONGS is the nuclear
27 generating plant authorized by Congress. See Law Enforcement at San Onofre Nuclear
28 Generation Plant, supra, 1 Op. Off. Legal Counsel at 204-05 (“Camp Pendleton was

1 acquired by the United States in 1942 through condemnation. Jurisdiction over the land
2 was ceded by the State of California and accepted by the Secretary of the Navy on
3 behalf of the United States. Thus, Camp Pendleton is within the exclusive territorial
4 jurisdiction of the United States The San Onofre power plant is located within the
5 reservation on a 60-year easement granted by the Navy Department in 1964 pursuant
6 to Pub. L. 88-82, 77 Stat. 115.”) (internal citations omitted); see also Cooper v.
7 Southern California Edison Co., 170 Fed. Appx. 496, 497 (9th Cir. 2006)² (“SONGS
8 is located within a federal enclave, acquired by the United States in 1941 when it
9 established Camp Pendleton.”) (citing United States v. Fallbrook Pub. Util. Dist., 110
10 F. Supp. 767, 771 (S.D. Cal. 1953)); Snow v. Bechtel Const. Inc., 647 F. Supp. 1514,
11 1515-16 (C.D. Cal. 1986) (taking judicial notice of the fact that SONGS is located
12 within a federal enclave).

13 Furthermore, it is generally known in the community that Camp Pendleton is a
14 United States Marine Corp Base under the jurisdiction of the federal government.
15 Accordingly, the Court takes judicial notice of the fact that SONGS is located within
16 the federal enclave of Camp Pendleton, which was acquired by the United States no
17 later than December 31, 1942.

18 **B. Legal Standards For A Motion To Dismiss**

19 Defendant has moved to dismiss Plaintiff’s entire suit against it under Rule
20 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which
21 relief can be granted. A motion to dismiss for failure to state a claim pursuant to section
22 12(b)(6) tests the legal sufficiency of the claims in the complaint. See Conley v. Gibson,
23 355 U.S. 41, 45-46 (1957). Rule 12(b)(6) permits dismissal of a claim either where that
24 claim lacks a cognizable legal theory, or where insufficient facts are alleged to support
25 plaintiff’s theory. See Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir.
26 1990). In considering the sufficiency of a complaint under Rule 12(b)(6), courts cannot

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28 ² Unpublished decisions of the ninth circuit issued before January 1, 2007 may
be cited by courts in the ninth circuit for factual purposes. See Ninth Circuit Rule
36-3(c)(ii).

1 grant a motion to dismiss “unless it appears beyond doubt that the plaintiff can prove
2 no set of facts in support of his claim which would entitle him to relief.” Id. (citing
3 Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In resolving a Rule 12(b)(6) motion, the
4 court must: (1) construe the complaint in the light most favorable to the plaintiff; (2)
5 accept all well-pleaded factual allegations as true; and (3) determine whether plaintiff
6 can prove any set of facts to support a claim that would merit relief. See Cahill v.
7 Liberty Mut. Ins. Co., 80 F.3d 336, 337–338 (9th Cir. 1996).

8 Dismissal is proper, however, if a complaint is vague, conclusory, and fails to set
9 forth any material facts in support of the allegation. See North Star Intern. v. Arizona
10 Corp. Com'n, 720 F.2d 578, 583 (9th Cir. 1983). Furthermore, a court may not “supply
11 essential elements of the claim that were not initially pled.” Ivey v. Bd. of Regents of
12 the Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). If a complaint is found to fail
13 to state a claim, the court should grant leave to amend unless it determines that the
14 pleading could not possibly be cured by the allegation of other facts. See Doe v. United
15 States, 58 F.3d 494, 497 (9th Cir. 1995).

16 As a general matter, a court may only consider the pleadings and judicially
17 noticed facts in deciding a 12(b)(6) motion. See Hal Roach Studios, Inc. v. Richard
18 Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1990). Material that is properly attached
19 to the complaint may properly be considered for purposes of a motion to dismiss
20 without converting the motion into one for summary judgment. See id. at 1555 n.19.
21 Also, a court may consider documents whose contents are alleged in a complaint and
22 whose authenticity no party questions, but which are not physically attached to the
23 plaintiff’s pleading. See Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005). This
24 doctrine extends to situations in which the plaintiff’s claim depends on the contents of
25 a document and the defendant attaches the document to its motion to dismiss, even
26 though the plaintiff does not explicitly allege the contents of that document in the
27 complaint. See id.

28 ///

1 **C. ADA Claims**

2 Plaintiff stated at oral argument, and again in his supplemental briefing, that he
3 does not have a right-to-sue letter from the EEOC regarding his ADA claims. “An
4 individual plaintiff must first file a timely EEOC complaint against the allegedly
5 discriminatory party before bringing an ADA suit in federal court.” Josephs v. Pacific
6 Bell, 443 F.3d 1050, 1061 (9th Cir. 2006). The ADA incorporates the “powers,
7 remedies, and procedures” of Title VII of the Civil Rights Act of 1964, including the
8 requirement that a “right-to-sue” letter be obtained before a plaintiff brings an ADA
9 suit. See 42 U.S.C. §§ 12117(a), 2000e-5(f)(1); see also Karim-Panahi v. Los Angeles
10 Police Dept., 839 F.2d 621, 626 (affirming dismissal of Title VII suit based on failure
11 to obtain right-to-sue letter). Accordingly, the Court dismisses without prejudice
12 Plaintiff’s disability discrimination and retaliation claims to the extent that they are
13 based on the ADA.

14 **D. Rehabilitation Act Claims**

15 Plaintiff’s second cause of action alleges disability discrimination under the
16 Rehabilitation Act, 29 U.S.C. § 701 et seq. (FAC ¶¶ 41-48.) Defendant argues that
17 section 503 of the Rehabilitation Act, 29 U.S.C. § 793, entails no private right of action.
18 Plaintiff concedes that there is no private right of action under section 503.

19 Defendant also argues that section 504 of the Rehabilitation Act, 29 U.S.C.
20 § 794, only permits a right of action against an entity receiving federal financial
21 assistance, that Plaintiff has failed to allege that Defendant is an entity receiving federal
22 financial assistance, and that, in fact, Defendant does not receive federal financial
23 assistance for its work at SONGS. Section 504 prohibits any program or activity
24 receiving federal financial assistance from excluding an individual from participating
25 in the program or activity, denying an individual the benefits of the program or activity,
26 or subjecting an individual to discrimination, solely by reason of the individual’s
27 disability. See 29 U.S.C. § 794(a). Individuals aggrieved under § 794 by an act of a
28 recipient of federal assistance are provided a private right of action. See id.

1 § 794a(a)(2).

2 Plaintiff alleges in his FAC that he suffered discrimination by Defendant based
3 on his disability. (FAC ¶ 44.) Plaintiff also alleges that Defendant was a subcontractor
4 of SCE working on various projects at SONGS where it may have been a recipient of
5 federal funding. (Id. ¶ 4 (emphasis added).) In evaluating Plaintiff’s allegations for
6 purposes of a motion to dismiss, the Court must construe the complaint in the light most
7 favorable to the plaintiff and accept all well-pleaded factual allegations as true. See
8 Cahill, 80 F.3d at 337–338. Even under these standards, the Court concludes that
9 Plaintiff has not adequately plead that Defendant is the recipient of federal assistance,
10 which is required to state a claim under section 504. Accordingly, the Court grants
11 without prejudice Defendant’s motion to dismiss Plaintiff’s disability discrimination
12 claim under the Rehabilitation Act.

13 **E. Federal Enclave Doctrine**

14 Defendant alleges that Plaintiff’s claims for wrongful termination in violation of
15 public policy (claim one), disability discrimination under FEHA (claim two), retaliation
16 under FEHA (claim three), violations of California’s Labor Code (claim four), and
17 intentional infliction of emotional distress (claim six) are barred by the federal enclave
18 doctrine.

19 Article I, Section 8, Clause 17 of the United States Constitution provides that
20 Congress shall have the power to exercise exclusive legislation over all places
21 purchased by the consent of the legislature of the state in which the same shall be. This
22 constitutional provision permits the continuance of those state laws existing at time of
23 surrender of sovereignty, except insofar as they are inconsistent with the laws of the
24 United States or with the governmental use for which the property was acquired, unless
25 they are abrogated by Congress, so that no area may be left without a developed legal
26 system for private rights. See Pacific Coast Dairy v. Department of Agriculture of Cal.,
27 318 U.S. 285, 294 (1943); James Stewart & Co. v. Sadrakula, 309 U.S. 94, 99-100
28 (1940). Because the federal government has exclusive jurisdiction, such laws become

1 federal laws, although having their origin in the laws of the state. See James Stewart
2 & Co., 309 U.S. at 100; Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1250 (9th
3 Cir. 2006 (“Federal courts have federal question jurisdiction over tort claims that arise
4 on ‘federal enclaves.’”); Mater v. Holley, 200 F.2d 123, 124 (5th Cir. 1952); see also
5 91 C.J.S. United States § 15 (2006).

6 Only state laws in effect at the time of cession or transfer of jurisdiction,
7 however, can continue in operation. See James Stewart & Co., 309 U.S. at 100. Laws
8 subsequently enacted by the state are inapplicable in the federal enclave unless they
9 come within a reservation of jurisdiction or are adopted by Congress. See id.; Paul v.
10 United States, 371 U.S. 245, 268 (1963); see also 91 C.J.S. United States § 15.

11 The Court has taken judicial notice of the fact that SONGS is located within the
12 federal enclave of Camp Pendleton, which was acquired by the federal government no
13 later than December 31, 1942. Defendant argues that all or part of Plaintiff’s first,
14 second, third, fourth, and sixth claims are based on California laws enacted after the
15 transfer of jurisdiction of the area encompassing SONGS to the federal government, and
16 therefore those claims must be dismissed. Plaintiff counters, relying on Taylor v.
17 Lockheed Martin Corp., 78 Cal. App. 4th 472, 480 (2000), and Snow v. Bechtel Const.
18 Inc. 647 F. Supp. 1514, 1521 (C.D. Cal. 1986),³ that since he was at home when he
19 learned about Defendant’s refusal to re-employ him, the federal enclave doctrine does
20 not apply.

21 Plaintiff alleges that Defendant was at all relevant times a subcontractor of SCE
22 working on various projects at SONGS. (FAC ¶ 4.) He alleges that he began working
23 at Defendant on or about May 1, 2004 in the facilities department of SONGS, and was
24 moved to the Unit 1 decommissioning project at SONGS on or about November 2005.
25 (Id. ¶¶ 7-9.) Plaintiff alleges that in November 2005, he was involved in an incident
26 where he was stuck on a boom lift at SONGS, which he reported to personnel employed
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28 ³ Plaintiff also cites an out of circuit, district court case to support his argument.
The Court declines to address this non-binding case.

1 at Defendant (id. ¶¶ 9-14), and that in December 2005 he reported a problem with a
2 system used to remove radioactive material as SONGS. (Id. ¶ 15.) Plaintiff alleges that
3 in January 2006 he injured his thumb while working. (Id. ¶ 16.) He alleges that in
4 February 2006, he met with SCE employees at his work area regarding SCE’s safety
5 department reviewing the circumstances of his injury. (Id. ¶ 21.) He alleges that at
6 some point Defendant’s site manager met with another employee of Defendant at the
7 site manager’s office, and that the site manager told the employee that Plaintiff was a
8 trouble maker. (Id. ¶ 23.) He alleges that beginning on February 16, 2006, and for the
9 next three weeks, Defendant assigned him work requiring the use of both hands despite
10 the fact that he provided his foreman and a safety department representative a note from
11 his orthopedist stating he was not to use his left hand. (Id. ¶¶ 25-27.) Plaintiff alleges
12 that on March 6, 2006, Defendant laid him off, and that in late October 2006, he learned
13 that defendant refused to put him back to work, claiming that no light duty work was
14 available. (Id. ¶¶ 28-30.)

15 In Taylor, the court rejected the argument that the plaintiff’s wrongful
16 termination claim should not be barred by the federal enclave doctrine because Plaintiff
17 was terminated while he was on paid suspension and therefore not working on the
18 enclave. See Taylor, 78 Cal. App. 4th at 481. The Court noted that “[a]s the employee
19 of a contractor operating on the enclave, [plaintiff’s] claims are governed by the
20 enclave’s law, rather than by state law.” See id. (citing Hancock v. Train, 426 U.S. 167,
21 178-180 (1976)). The Snow court concluded that the federal enclave doctrine precluded
22 the plaintiff’s wrongful termination claim because “all pertinent events occurred on a
23 federal enclave.” See Snow, 647 F. Supp. at 1521. The Court concludes that all the
24 pertinent allegations in Plaintiff’s FAC regarding Plaintiff’s claims for wrongful
25 termination in violation of public policy, disability discrimination under FEHA,
26 retaliation under FEHA, violations of California’s Labor Code, and intentional
27 infliction of emotional distress allegedly occurred at SONGS, and therefore these claims
28 are subject to the federal enclave doctrine.

1 Since these claims are subject to the federal enclave doctrine, any of the claims
2 based on state law enacted after December 31, 1942, the date the Court took judicial
3 notice that the federal government obtained jurisdiction over Camp Pendleton, are
4 inapplicable in the federal enclave unless they come within a reservation of jurisdiction
5 by California or are adopted by Congress. See Paul, 371 U.S. at 268; Goodyear Atomic
6 Corp. v. Miller, 486 U.S. 174, 181 n.1 (“Direct state regulation of federal facilities is
7 allowed only to the extent that Congress has clearly authorized such regulation.”).

8 Plaintiff’s first claim is a state law claim for wrongful termination in violation of
9 public policy. The common law claim for wrongful termination in violation of public
10 policy was first recognized in California, at the earliest, in 1959. See Taylor, 78 Cal.
11 App. 4th at 486 (barring wrongful termination in violation of public policy claim based
12 on California law in suit based on events occurring in federal enclave). Plaintiff does
13 not argue that a claim for wrongful termination in violation of public policy comes
14 within a reservation of jurisdiction or that it was adopted by Congress. Therefore this
15 claim is barred by the federal enclave doctrine. Accordingly, the Court grants with
16 prejudice Defendant’s motion to dismiss this claim.

17 Plaintiff’s second and third claims, for failure to accommodate and retaliation,
18 are based, in part, on FEHA, section 12940 et seq. of California’s Government Code.
19 FEHA was not enacted until 1980. See Taylor, 78 Cal. App. 4th at 483 (citing Cal.
20 Stats. 1980, ch. 992, § 4, pp. 3148-3149). “The predecessor statutes of FEHA were
21 contained in the Fair Employment Practices Act, which was not enacted until 1959.”
22 Id. (citing former Cal. Labor Code, § 1410 et seq., added by Cal. Stats. 1959, ch. 121,
23 § 1, pp. 1999-2005). Plaintiff does not argue that these claims come within a
24 reservation of jurisdiction by California or that FEHA was adopted by Congress.
25 Therefore Plaintiff’s second and third claims, to the extent that they are based on
26 FEHA, are barred by the federal enclave doctrine. Accordingly, the Court grants with
27 prejudice Defendant’s motion to dismiss these claims.

28 Plaintiff’s sixth claim, for intentional infliction of emotional distress, was first

1 recognized by California courts after the Restatement of Torts was amended in 1947 to
2 recommend allowing a claim based on the violation of a plaintiff's interest in peace of
3 mind without the necessity of showing the elements of any traditional torts such as
4 assault, battery, false imprisonment, trespass, defamation, or invasion of privacy. See
5 5 B.E. Witkin, Summary Of California Law: Torts, §§ 449-50 (10th ed.2005) (citing
6 State Rubbish Collectors Assn. v. Siliznoff, 38 Cal. 2d 330, 336 (1952); Bowden v.
7 Spiegel, 96 Cal. App. 2d 793, 795 (1950); Richardson v. Pridmore, 97 Cal. App. 2d
8 124, 129 (1950)). Plaintiff does not argue that a claims for intentional infliction of
9 emotional distress comes within a reservation of jurisdiction by California or that the
10 tort was adopted by Congress. Therefore Plaintiff's claim for intentional infliction of
11 emotional distress is barred by the federal enclave doctrine. Accordingly, the Court
12 grants with prejudice Defendant's motion to dismiss this claim.

13 Plaintiff's fourth cause of action alleges violations of sections 98.6, 1102.5, 132a,
14 6310, 6311, 6402, 6403, and 6404 of California's Labor Code. Section 98.6 of the
15 Labor Code was adopted in 1978. See Cal. Stats. 1978, ch. 1250, § 1, p. 4064. Section
16 98.6 of California's Labor Code was derived from former section 1196 of California's
17 Labor Code, which was adopted by the California Legislature in 1937. See Cal. Stats.
18 1937, ch. 90, § 1196, p. 217. Prior to the 1978 statute, however, former section 1196
19 of California's Labor Code simply made it a misdemeanor for anyone to discriminate
20 against an employee for testifying in an investigation of California's Labor
21 Commissioner. See id. Plaintiff does not allege in the FAC that he was discriminated
22 against for offering testimony to the Labor Commissioner. Rather, his claim pursuant
23 to section 98.6 of the Labor Code is allegedly based on unsafe working conditions and
24 retaliation for reporting those conditions. Section 98.6 prohibits discrimination in the
25 workplace based on various reasons, including termination because of "the exercise by
26 the employee . . . on behalf of himself, herself, or others of any rights afforded him or
27 her." See Grinzi v. San Diego Hospice Corp., 120 Cal. App. 4th 72, 86 (2004). "Any
28 rights," for purposes of a suit brought under section 98.6, has been interpreted as those

1 rights otherwise protected by the Labor Code. See id. This much more expansive
2 language of section 98.6 relied upon by Plaintiff was not added by the California
3 Legislature until 1978. Furthermore, Plaintiff does not argue that a claim under section
4 98.6 comes within a reservation of jurisdiction by California or that this section was
5 adopted by Congress. Therefore Plaintiff's claim pursuant to section 98.6 of
6 California's Labor Code is barred by the federal enclave doctrine. Accordingly, the
7 Court grants with prejudice Defendant's motion to dismiss this claim.

8 Section 1102.5 of California's Labor Code was adopted in 1984. See Cal. Stats.
9 1984, ch. 1083, § 1. Plaintiff does not argue that a claim under section 1102.5 comes
10 within a reservation of jurisdiction by California or that this section was adopted by
11 Congress. Therefore Plaintiff's claim pursuant to section 1102.5 of California's Labor
12 Code is barred by the federal enclave doctrine. Accordingly, the Court grants with
13 prejudice Defendant's motion to dismiss this claim.

14 Section 132a of California's Labor Code, which in its current form prohibits
15 discrimination against workers injured in the course of their employment, was adopted
16 in 1972. See Cal. Stats. 1972, ch. 874, § 1, p. 1545. Although a previous version of §
17 132a of California's Labor code was adopted in 1941, that version did not address
18 discrimination by an employer based on an employee's injury, but rather prohibited an
19 employer from discriminating against an employee for filing an application or
20 complaint with, or testifying in an investigation held by, the Labor Commissioner. See
21 Cal. Stats. 1941, ch. 401, § 1, p. 1686. Furthermore, Plaintiff does not argue that a
22 claim under section 132a comes within a reservation of jurisdiction by California or that
23 this section was adopted by Congress. Therefore Plaintiff's claim pursuant to section
24 132a of California's Labor Code is barred by the federal enclave doctrine. Accordingly,
25 the Court grants with prejudice Defendant's motion to dismiss this claim.

26 Sections 6310 and 6311 of California's Labor Code were adopted in 1973. See
27 Cal. Stats. 1973, ch. 993, §§ 59, 61, p. 1930. Section 6311 was derived from former
28 section 6604 of the Labor Code, adopted by the California Legislature in 1949. See

1 Cal. Stats. 1949, ch. 1060, § 1, p. 1968. Therefore, both of these California statutes are
2 inapplicable in SONGS unless they come within a reservation of jurisdiction or were
3 adopted by Congress.

4 Plaintiff argues, relying on Taylor, that sections 6310 and 6311 of California’s
5 Labor Code have been approved by Congress for enforcement within a federal enclave.
6 Sections 6310 and 6311 are part of the California Occupational Safety and Health Act,
7 Cal. Labor Code §§ 6300 et seq., which was enacted in 1973, and approved by the
8 federal Occupational Safety and Health Administration in 1975. See Taylor, 78 Cal.
9 App. 4th at 484. In Taylor, the court held that a plaintiff was able to bring a claim for
10 alleged violations of the whistleblower provisions of subsections (a) and (b) of section
11 6310⁴ occurring on a federal enclave because the Secretary of Labor, as authorized by
12 Congress, approved a California Occupational Safety and Health Administration
13 (“Cal/OSHA”) plan to allow state safety regulation of federal enclaves when the
14 responsible federal agency does not claim exclusive jurisdiction. See id. at 483-85
15 (citing Cal. Labor Code § 6303 (defining “place of employment” within California as
16 “any place, and the premises appurtenant thereto, where employment is carried on,
17 except a place the health and safety jurisdiction over which is vested by law in, and
18 actively exercised by, any state or federal agency”); 29 C.F.R. § 1952.172(b)(4)
19 (providing “The U.S. Department of Labor will continue to exercise authority, among

20
21 ⁴ Section 6310 provides in part that:

22 (a) No person shall discharge or in any manner discriminate against any employee
23 because the employee has done any of the following: [¶] (1) Made any oral or written
24 complaint to the [Division of Occupational Safety and Health], other governmental
25 agencies having statutory responsibility for or assisting the division with reference to
26 employee safety or health, his or her employer, or his or her representative,

27 (b) Any employee who is discharged, threatened with discharge, demoted, suspended,
28 or in any other manner discriminated against in the terms and conditions of employment
by his or her employer because such employee has made a bona fide oral or written
complaint to the [Division of Occupational Safety and Health], other governmental
agencies having statutory responsibility for or assisting the division with reference to
employee safety or health, his or her employer, or his or her representative, of unsafe
working conditions, or work practices, in his or her employment or place of
employment . . . shall be entitled to reinstatement and reimbursement for lost wages and
work benefits caused by the acts of the employer.

1 other things, with regard to: [¶] (4) Private contractors on Federal installations
2 where the Federal agency claims exclusive Federal jurisdiction, challenges State
3 jurisdiction and/or refuses entry to the State”). Since the responsible federal
4 agency, the United States Air Force, allowed inspectors from Cal/OSHA to investigate
5 the plaintiff’s complaints regarding his termination from a civilian contractor operating
6 on the federal enclave, the Taylor court concluded that the federal agency did not claim
7 exclusive jurisdiction, and therefore California’s occupational safety laws applied since
8 the federal agency was not actively exercising its jurisdiction. See id.

9 Plaintiff’s FAC does not allege that the federal agency responsible for the federal
10 enclave in which SONGS resides took any action indicating that it was not claiming
11 exclusive jurisdiction or that it was not actively exercising its jurisdiction. Therefore,
12 the Court concludes that Plaintiff has failed to allege sufficient facts to support a claim
13 under section 6310 or 6311 of California’s Labor Code. Accordingly, the Court grants
14 without prejudice Defendant’s motion to dismiss Plaintiff’s claims pursuant to sections
15 6310 and 6311 of California’s Labor Code.

16 Sections 6402, 6403, and 6404 of California’s Labor Code were adopted by the
17 California Legislature in 1973. See Cal. Stats. 1973, ch. 993, § 96, p. 1939. The
18 statutes derive from very similar statutes codified in the same sections of California’s
19 Labor Code, however, that were adopted in 1937. See Cal. Stats. 1937, ch. 90, §§ 6402-
20 04, p. 309. Since these laws were in effect at the time Camp Pendleton became a
21 federal enclave in 1942, they were federalized and are not barred by the federal enclave
22 doctrine. See James Stewart & Co., 309 U.S. at 99-100. Accordingly, the Court denies
23 Defendant’s motion to dismiss Plaintiff’s claims pursuant to sections 6402, 6403, and
24 6404 of California’s Labor based on the federal enclave doctrine.

25 **F. Defendant’s Other Arguments Regarding Plaintiff’s Labor Code Claims**

26 **1. Sections 6402, 6403, and 6404 of California’s Labor Code**

27 Defendant argues that Plaintiff’s claims under sections 6402, 6403, and 6404 of
28 California’s Labor Code should be dismissed because these statutes do not provide

1 private rights of action. Section 6402 states that “[n]o employer shall require, or permit
2 any employee to go or be in any employment or place of employment which is not safe
3 and healthful.” Section 6403 provides that an employer shall not fail or neglect to
4 provide and use safety devices and safeguards reasonably adequate to render the
5 employment and place of employment safe, to adopt and use methods and processes
6 reasonably adequate to render the employment and place of employment safe, and to
7 do every other thing reasonably necessary to protect the life, safety, and health of
8 employees. See Cal. Lab. Code § 6403. Section 6404 states that “[n]o employer shall
9 occupy or maintain any place of employment that is not safe and healthful.” These and
10 similar requirements are sometimes referred to as the “general duties clauses.” See
11 California Correctional Supervisors Organization, Inc. v. Dept. of Corrections, 96 Cal.
12 App. 4th 824, 830-31 (2002); see also Ming W. Chin et al., California Practice Guide:
13 Employment Litigation ¶ 13:41 (The Rutter Group 2006). The general rule is that
14 actions by an employee against an employer for workplace injuries are subject to
15 workers’ compensation exclusivity. See Chin, et al., supra, ¶ 13.42. Therefore, the
16 Court concludes that there is no private right of action under sections 6402, 6403, or
17 6404 of California’s Labor Code. Accordingly, the Court grants with prejudice
18 Defendant’s motion to dismiss Plaintiff’s claims under these sections.

19 2. Sections 98.6, 1102.5, 132a of California’s Labor Code

20 Since the Court has previously granted Defendant’s motion to dismiss Plaintiff’s
21 claims pursuant to sections 98.6, 1102.5, and 132a of California’s Labor Code pursuant
22 to the federal enclave doctrine, the Court declines to address Defendant’s other
23 arguments regarding these claims.

24 G. Negligent Supervision Claim

25 Defendant argues that Plaintiff’s negligent supervision claim should be dismissed
26 because it is barred by workers’ compensation exclusivity provisions of California labor
27 law. Plaintiff alleges that Defendant breached an owed duty by its failure to “advise”
28 Plaintiff of unsafe working conditions, and to “obtain proper treatment and

1 accommodation following [Plaintiff's] injuries.” (FAC ¶ 62-69.)

2 Subject to limited exceptions, workers' compensation is the only remedy
3 available to injured employees against an employer responsible for injuries “arising out
4 of and in the course of employment.” See Cal. Lab. Code §§ 3600–3602, 5300; see also
5 Chin et al., supra, ¶ 15:520. “The exclusivity provisions encompass all injuries
6 ‘collateral to or derivative of’ an injury compensable by the exclusive remedies of the
7 Workers Compensation Act.” Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund,
8 24 Cal. 4th 800, 813 (2001). An injury is compensable for exclusivity purposes if two
9 conditions exist, the plaintiff is seeking to recover for an “industrial personal injury or
10 death” sustained in and “arising out of and in the course and scope of employment,” and
11 the acts or motives giving rise to the injury constitute “a risk reasonably encompassed
12 within the compensation bargain.” See id. at 813-814, 819-20.

13 Although disability discrimination claims are not preempted by workers'
14 compensation law because disability discrimination falls outside the compensation
15 bargain, see City of Moorpark v. Superior Ct., 18 Cal. 4th 1143, 1154–1155 (1998),
16 Plaintiff's claim is for negligent supervision, not disability discrimination. The Court
17 concludes that Plaintiff's negligent supervision claim seeks to recover for an industrial
18 personal injury sustained in and arising out of and in the course and scope of
19 employment, and the acts and motives allegedly giving rise to the injury constitute a
20 risk reasonably encompassed within the compensation bargain, and therefore is subject
21 to workers' compensation exclusivity provisions. Cf. Coit Drapery Cleaners, Inc. v.
22 Sequoia Ins. Co., 14 Cal. App. 4th 1595, 1605-06 (1993) (claim against employer for
23 negligent supervision in connection with alleged sexual harassment and wrongful
24 termination of employee is barred by workers' compensation exclusivity principle);
25 Hine v. Dittrich, 228 Cal. App. 3d 59, 63 n.4 (1991) (stating that the exclusivity of the
26 workers' compensation remedy might preclude a civil suit for negligent supervision of
27 third party employees in some or all cases). Accordingly, the Court grants with
28 prejudice Defendant's motion to dismiss Plaintiff's negligent supervision claim.

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Conclusion

For the reasons discussed, the Court **DISMISSES WITHOUT PREJUDICE** Plaintiff's disability discrimination and retaliation claims to the extent that they are based on the ADA (claims two and three). The Court **GRANTS WITH PREJUDICE** Defendant's motion to dismiss Plaintiff's claims for wrongful termination in violation of public policy (claim one), disability discrimination and retaliation to the extent that they are based on FEHA (claims two and three), violations of sections 98.6, 1102.5, 132a, 6402, 6403, and 6404 of California's Labor Code (claim four), negligent supervision (claim five), and intentional infliction of emotional distress (claim six). The Court **GRANTS WITHOUT PREJUDICE** Defendant's motion to dismiss Plaintiff's disability discrimination claim under the Rehabilitation Act (claim two), and Plaintiff's claims for violations of sections 6310 and 6311 of California's Labor Code. Plaintiff is granted thirty days from the date this order is filed to file an amended complaint correcting the deficiencies of the claims dismissed without prejudice.

IT IS SO ORDERED.

DATED: April 10, 2007


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

COPIES TO:
All parties of record.