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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

10 NILS N. THIBEAUX, an individual,

CASE NO. 13-CV-291-BEN (MDD)

11 Plaintiff,

**ORDER GRANTING IN PART  
MOTION FOR SUMMARY  
JUDGMENT**

12 vs.

13 THE GEO GROUP, INC., a Florida  
14 Corporation doing business in  
15 California as GEO CALIFORNIA,  
INC.; and DOES 1 through 10,  
inclusive,

[Docket No. 32]

16 Defendant.

17 Before this Court is an Amended Motion for Summary Judgment filed by  
18 Defendant The GEO Group, Inc. (Docket No. 32). On August 28, 2014, this Court  
19 denied the Motion as to causes of action one through four, and ordered the Parties to  
20 submit additional briefing on cause of action five. (Docket No. 47). Having  
21 considered the supplemental briefs and for the reasons stated below, the Motion is  
22 **GRANTED** as to cause of action five.

23 On September 10, 2014, the Parties filed supplemental briefs addressing whether  
24 or not the exclusive remedy provisions of state worker's compensation laws bar an  
25 intentional infliction of emotional distress ("IIED") claim when that claim is based  
26 upon allegations of discrimination. (Docket Nos. 48, 49).

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1 **DISCUSSION**

2 Plaintiff alleges that the actions of Defendant in terminating his employment in  
3 contravention of public policy and in violation of Government Code § 12940 *et seq.*  
4 were “intentional, extreme, outrageous” and “done with the intent to cause emotional  
5 distress or with reckless disregard of the probability of causing Plaintiff emotional  
6 distress.” (Compl. ¶ 88). He asserts that he has been “subjected to severe emotional  
7 distress and will continue to suffer severe and permanent humiliation, mental pain and  
8 anguish, and will continue to live in a constant state of emotional tension and distress.”  
9 (*Id.* ¶ 89). He further states that Defendant’s conduct in terminating his employment  
10 without “good, just or legitimate cause” subjected him to “cruel and unjust hardship in  
11 conscious disregard of Plaintiff’s rights” as it was anticipated that he could not find  
12 comparable employment in the foreseeable future. (*Id.* ¶ 92).

13 The elements of a cause of action for IIED in California are: (1) extreme and  
14 outrageous conduct by the defendant with the intention of causing, or reckless  
15 disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering  
16 severe or extreme emotional distress; and (3) actual and proximate causation of the  
17 emotional distress by the defendant’s outrageous conduct. *Hughes v. Pair*, 46 Cal. 4th  
18 1035, 1050-51 (2009) (citations omitted).

19 Defendant asserts that summary judgment on the fifth cause of action is  
20 appropriate because the exclusive remedy available for Plaintiff’s IIED claim is  
21 worker’s compensation. (Def. Supplemental Br. 1). Plaintiff contends that the  
22 exclusivity provision does not apply because the claim is based on allegations of  
23 discrimination. (Pl. Supplemental Br. 2).

24 Injuries sustained and arising out of the course of employment are generally  
25 subject to the exclusive remedy of worker’s compensation.<sup>1</sup> Cal. Lab. Code § 3600;

26 \_\_\_\_\_  
27 <sup>1</sup> Defendant relies upon the following portions of California Labor Code § 3600:  
28 (a) Liability for the compensation provided by this division, in lieu of any

1 *Mueller v. Cnty. of Los Angeles*, 176 Cal. App. 4th 809, 823 (2d Dist. 2009).  
2 Defendant argues that the exclusive remedy applies where the damages result from  
3 intentional conduct by the employer that is a normal part of the employment  
4 relationship, even if it is egregious, harassment, manifestly unfair, or intended to cause  
5 emotional distress. (Mot. at 19 (citing *Mueller*, 176 Cal. App. 4th at 823)). Defendant  
6 contends that Plaintiff complains of emotional distress due to the termination of his  
7 employment, and that termination is “inherently a normal part of the employment  
8 relationship.” (*Id.*)

9 In response, Plaintiff contends that the exclusive remedy provision does not bar  
10 a suit for emotional distress damages resulting from sexual harassment, unlawful  
11 discrimination, or other misconduct that “exceed[s] the normal risks of the employment  
12 relationship.” (Opp’n at 24 (citing *Livitsanos v. Super. Ct.*, 2 Cal. 4th 744, 756  
13 (1992))).

14 In *Cole v. Fair Oaks Fire Protection District*, 43 Cal. 3d 148, 151 (1987), the  
15 Supreme Court of California held that when an employee’s claim is based on conduct  
16 normally occurring in the workplace, it is within the exclusive jurisdiction of the  
17 Worker’s Compensation Appeals Board. The *Cole* court considered whether an  
18 employer’s intentional misconduct provided an exception to the exclusive remedy  
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20 other liability whatsoever to any person except as otherwise specifically  
21 provided in Sections 3602, 3706, and 4558, shall, without regard to  
22 negligence, exist against an employer for any injury sustained by his or  
23 her employees arising out of and in the course of the employment and for  
the death of any employee if the injury proximately causes death, in those  
cases where the following conditions of compensation concur:

24 (1) Where, at the time of the injury, both the employer and the employee  
25 are subject to the compensation provisions of this division.

26 (2) Where, at the time of the injury, the employee is performing service  
27 growing out of and incidental to his or her employment and is acting  
within the course of his or her employment.

28 (3) Where the injury is proximately caused by the employment, either with  
or without negligence.

1 provisions. *Id.* at 157. After discussing prior case law, the *Cole* court concluded that:

2 when the misconduct attributed to the employer is actions which are a  
3 normal part of the employment relationship, such as demotions,  
4 promotions, criticism of work practices, and frictions in negotiations as  
5 to grievances, an employee suffering emotional distress causing disability  
6 may not avoid the exclusive remedy provisions of the Labor Code by  
7 characterizing the employer's decisions as manifestly unfair, outrageous,  
8 harassment, or intended to cause emotional disturbance resulting in  
9 disability.

10 *Id.* at 160. In so concluding, the court noted that if characterizing conduct normally  
11 occurring in the workplace as unfair or outrageous were sufficient to avoid the  
12 exclusive remedy, an employee could allege a cause of action in every case with a  
13 mental disability merely by alleging an ulterior purpose of causing injury, and that this  
14 would be "contrary to the compensation bargain and unfair to the employer." *Id.*

15 In *Shoemaker v. Myers*, 52 Cal. 3d 1, 7 (1990), the Supreme Court of California  
16 concluded that:

17 disabling injuries, whether physical or mental, arising from termination  
18 of employment are generally within the coverage of workers'  
19 compensation and subject to the exclusive remedy provisions, unless the  
20 discharge comes within an express or implied statutory exception or the  
21 discharge results from risks reasonably deemed not to be within the  
22 compensation bargain.

23 The *Shoemaker* court noted that "[n]onconsensual termination of an employment  
24 relationship is indistinguishable from the kinds of actions enumerated in *Cole* and must  
25 therefore also be considered a normal and inherent part of employment." *Id.* at 18.  
26 However, the court noted that this does not resolve the issue of whether the exclusive  
27 remedy provisions bar all causes of action arising from a discharge, stating that "the  
28 provisions are intended to effectuate and implement the fundamental 'compensation  
bargain' said to underlie the workers' compensation scheme." *Id.* at 20. Accordingly,  
"here the injury is a result of conduct, whether in the form of discharge or  
otherwise, not seen as reasonably coming within the compensation bargain, a separate  
civil action may lie." *Id.* The court noted that:

the exclusive remedy provisions are not applicable under certain  
circumstances, sometimes variously identified as "conduct where the

1 employer or insurer stepped out of their proper roles,” or “conduct of an  
2 employer having a ‘questionable’ relationship to the employment,” but  
3 which may be essentially defined as not stemming from a risk reasonably  
4 encompassed within the compensation bargain.

5 *Id.* at 16-17 (internal citations omitted).

6 Plaintiff cites to *Livitsanos v. Superior Court*, 2 Cal. 4th 744 (1992), for the  
7 proposition the exclusive remedy provision does not bar suit for emotional distress  
8 damages from sexual harassment, unlawful discrimination or other misconduct that  
9 exceeds the “normal risks of the employment relationship.” (Opp’n at 24 (citing  
10 *Livitsanos*, 2 Cal. 4th at 756)). The *Livitsanos* Court reviewed prior precedent and  
11 stated that:

12 So long as the basic conditions of compensation are otherwise satisfied  
13 (Lab. Code, § 3600), and the employer’s conduct neither contravenes  
14 fundamental public policy (*Tameny v. Atlantic Richfield Co.*, . . . 27  
15 Cal.3d 167 (1980)) nor exceeds the risks inherent in the employment  
16 relationship (*Cole*, . . . 43 Cal.3d 148), an employee’s emotional distress  
17 injuries are subsumed under the exclusive remedy provisions of workers’  
18 compensation.

19 2 Cal. 4th at 754.<sup>2</sup>

20 However, as pointed out by Defendant, the California Supreme Court has ruled  
21 that the exception for conduct that “contravenes public policy” is aimed at permitting  
22 a “*Tameny* action” for wrongful discharge to proceed. *Miklosy v. Regents of the Univ.*  
23 *of Cal.*, 44 Cal. 4th 876, 902-03 (2008). An IIED claim based upon the same  
24 allegations may nonetheless be barred. *See id.*

25 Upon analysis of relevant California law, Plaintiff’s IIED claim is barred by the  
26 exclusivity provisions of worker’s compensation. Plaintiff’s claims involve his  
27 termination, which is a normal and inherent part of employment. *See Shoemaker*, 52  
28 Cal. 3d at 18. Plaintiff fails to demonstrate that his termination exceeded the risks

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26 <sup>2</sup>The *Livitsanos* Court determined that it was unclear whether the intermediate  
27 appellate court was concerned with an issue involving the compensability of emotional  
28 injuries or the nature of the defendant’s alleged misconduct. 2 Cal. 4th at 756. As the  
Court of Appeal had not rendered a decision on the merits, the matter was remanded  
to the Court of Appeal. *Id.*

1 inherent in the employment relationship. The termination does not appear to involve  
2 the employer stepping out of the proper role, or conduct with a questionable  
3 relationship to employment. Plaintiff simply asserts that his claim is not barred  
4 because it “arises from Defendant’s discriminatory practices.” (Opp’n at 24-25). As  
5 discussed above, Plaintiff cannot remove his claim from the exclusive remedy of  
6 worker’s compensation merely by alleging that the conduct was manifestly unfair,  
7 outrageous, harassment, or intended to cause emotional disturbance. *Cole*, 43 Cal. 3d  
8 at 160. The exception for “contraven[ing] public policy” does not apply to preserve  
9 his IIED claims, even though Plaintiff has alleged unlawful discrimination and other  
10 misconduct. *See Miklosy*, 44 Cal. 4th. at 902-03. Accordingly, Defendant has met its  
11 burden to demonstrate that, as a matter of law, Plaintiff cannot pursue his IIED claim.  
12 The motion for summary judgment is therefore **GRANTED** as to claim five.

13 **CONCLUSION**

14 Based on the foregoing, Defendant’s Motion for Summary Judgment is  
15 **GRANTED IN PART**. Per this Court’s August 28 Order, summary judgment as to  
16 causes of action one through four was denied. The Court **GRANTS** summary  
17 judgment with respect to the remaining cause of action five.

18 **IT IS SO ORDERED.**

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20 Date: November 24, 2014

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23 HON. ROGER T. BENITEZ  
24 United States District Judge  
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