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

<p>AMAPOLA MARTIN,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>HOME DEPOT U.S.A. INC.;</p> <p>ALEX TAYLOR; and</p> <p>DOES 1-10, inclusive,</p> <p style="text-align: right;">Defendants.</p>		
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Case No.: 3:17-cv-0754-BEN-BGS

**ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
[Doc. 22]**

This is an employment discrimination and retaliation lawsuit. Plaintiff Amapola Martin brings twelve claims against Defendants Home Depot U.S.A. Inc. and her former supervisor, Alex Taylor, related to the termination of her employment. Home Depot and Taylor move for summary judgment on all of Martin's claims. Doc. 22. For the following reasons, Defendants' motion for summary judgment is **GRANTED IN PART**.

I. BACKGROUND

On February 15, 2017, Martin filed suit in the Superior Court of California, County of San Diego for twelve claims arising out of her employment relationship with Home Depot. In her Complaint, Martin brings Count 11 for violation of both California state and federal law under the California Family Rights Act ("CFRA") and Family and Medical Leave Act of 1993 ("FMLA."). Martin brings her remaining eleven claims under California state law. On April 14, 2017, Defendants removed the action to this Court based on the Court's federal question jurisdiction over Martin's federal FMLA claim and

1 supplemental jurisdiction over the remaining state law claims. *See* 28 U.S.C. §§ 1441(c)
2 and 1367(a).

3 II. UNDISPUTED FACTS¹

4 Martin began working as a sales associate for Home Depot on September 25, 1986.
5 Around September 2013, Martin applied to an open hourly Associate Support Department
6 Supervisor (“ASDS”) position at Home Depot’s Fairmont location. Around February
7 2015, Home Depot hired Alex Taylor as the Fairmont location’s store manager. In early
8 September 2015, Martin submitted a formal complaint about Taylor’s conduct to the
9 Associate Advice and Counsel Group (“AACG”) and to District Human Resources
10 Manager (“DHRM”) Courtney Krukow. Over a one-week period, the AACG investigated
11 and interviewed several Home Depot employees about Martin’s complaints and concluded
12 that Martin’s allegations about Taylor’s conduct were “not substantiated.” Shortly after
13 the AACG’s findings, on September 30, 2015, Martin informed Home Depot’s Employee
14 Relations staff that she was taking a medical leave of absence. [Ex. 1, p. 202, Martin
15 000931]. On January 27, 2016, after approximately four months of leave, Martin returned
16 to her ASDS position at the Fairmont store.

17 On July 11, 2016, Assistant Store Manager Theresa Ruis reported to the AACG her
18 belief that Martin lacked manager approval for two schedule changes Martin made in early
19 July 2016. [Ex. 1, p. 389 HD 000789]. The AACG opened a formal investigation, which
20 included interviewing Martin and several employees, as well as taking Martin’s written
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22
23 ¹ The following factual background is drawn from the relevant admissible evidence
24 submitted by the parties. Defendants filed numerous objections to evidence relied upon by
25 Martin. However, because the Court need not rely upon the particular underlying evidence
26 in deciding Defendants’ motion, Defendants’ objections are **OVERRULED as moot**. *See*,
27 *e.g., Doe v. Starbucks, Inc.*, 2009 WL 5183773, at *1 (C.D. Cal. Dec. 18, 2009) (“In
28 motions for summary judgment with numerous objections, it is often unnecessary and
impractical for a court to methodically scrutinize each objection and give a full analysis of
each argument raised.”).

1 statement. On July 20, 2016, the AACG sent a message to DHRM Lisa Ference with its
2 findings,² including recommending termination of “Martin’s employment with [Home
3 Depot] for a major work rule violation of the company standards of performance for
4 integrity: creating, performing or authorizing a transaction for oneself. . . . [and] falsifying,
5 altering, destroying or misusing a Company document.” [Ex. 1, p. 389, HD000789].
6 Ference then reviewed Martin’s personnel file and the AACG’s findings, and on July 22,
7 2016, Home Depot terminated Martin’s employment.

8 III. DISCUSSION

9 “A party is entitled to summary judgment if the ‘movant shows that there is no
10 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
11 of law.’” *City of Pomona v. SQM North America Corp.*, 750 F.3d 1036, 1049 (9th Cir.
12 2014) (quoting Fed. R. Civ. P. 56(a)). “The moving party initially bears the burden of
13 proving the absence of a genuine issue of material fact.” *In re Oracle Corp. Sec. Litig.*,
14 627 F.3d 376, 387 (9th Cir. 2010) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
15 (1986)). In determining whether to grant or deny summary judgment, it is not a court’s
16 task “to scour the record in search of a genuine issue of triable fact.” *Keenan v. Allan*, 91
17 F.3d 1275, 1279 (9th Cir. 1996). Rather, a court is entitled to rely on the nonmoving party
18 to “identify with reasonable particularity the evidence that precludes summary judgment.”
19 *See id.* “Where the record taken as a whole could not lead a rational trier of fact to find
20 for the nonmoving party, there is no genuine issue for trial.” *City of Pomona*, 750 F.3d at
21 1049.

22 A. The CFRA and FMLA (Count 11)

23 Defendants move for summary judgment on Martin’s Count 11 for violation of the
24 CFRA and the FMLA. Because it is the sole basis for federal jurisdiction in this case, the
25 Court first addresses the FMLA claim. Under the FMLA, employees are entitled to two
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27
28 ² Prior to the investigation, Home Depot replaced Krukow with Ference.

1 interrelated substantive rights. First, an employee has the right to take up to twelve weeks
2 of leave for the qualifying reasons outlined in 29 U.S.C. § 2612(a), provided they have
3 worked for the covered employer for 12 months. *Bachelder v. America West Airlines, Inc.*,
4 259 F.3d 1112, 1122 (9th Cir. 2001); *see also* 29 U.S.C. § 2612(a). Second, an employee
5 who takes FMLA leave has the right to be restored to her original position or to a position
6 equivalent in benefits, pay, and conditions of employment upon return from leave. *Id.*

7 Defendants argue summary judgment is warranted on the FMLA claim because
8 Martin was not entitled to additional intermittent leave after already taking approximately
9 four months of leave in the prior 12-month period, citing to Home Depot's Leave of
10 Absence Policy. Martin does not disagree. *See* Doc. 29, p. 20. Instead, Martin responds
11 by citing Paragraph 28 of her Complaint to show how Home Depot violated the FMLA:

12 Mr. Taylor's conduct forced [her] to go on medical leave of absence in or
13 around September 30, 2015 because she was so stressed and it was affecting
14 her physical and mental health.³ While [she] was on medical leave she was
15 told by her physician to rest, yet the Home Depot DHRM continued to contact
16 [her] to discuss work.⁴ During the time when [she] was on leave, her position
17 was posted a couple of times and offered to another employee in violation of
18 CFRA and FMLA. While [Martin] was away, another employee was given
19 the login information for another ASM in order to perform [Martin's] ASDS
20 position.

21 Complaint, ¶ 28 (emphasis added). Martin, however, does not support the cited factual
22 allegations from her Complaint with citation to the record. *See, e.g., Nelson v. Pima*

23 ³ It is unclear about whether Martin intends to convey that Taylor forced her to take
24 a medical leave or simply, that due to her distress because of Taylor's alleged misconduct,
25 Martin personally felt she needed to take a medical leave. Regardless, Martin fails to
26 support her allegations with any citations to the record. *See, e.g., Nelson v. Pima*
Community Coll., 83 F.3d 1075, 1081-82 (9th Cir. 1996) (“[M]ere allegation and
27 speculation do not create a factual dispute for purposes of summary judgment.”).

28 ⁴ Again, Martin fails to identify any evidentiary support for her allegation that Home
Depot contacted her about work during her FMLA leave. Thus, the Court need not consider
this allegation.

1 *Community Coll.*, 83 F.3d 1075, 1081-82 (9th Cir. 1996) (“[M]ere allegation and
2 speculation do not create a factual dispute for purposes of summary judgment.”).

3 Martin goes on to contend only that Home Depot’s motion must fail because Home
4 Depot does not refute her allegations that it violated the FMLA by (1) trying to fill her
5 position when she was gone and (2) failing to offer the accommodations she sought to take
6 care of her husband. Doc. 29, p. 20. Again, however, Martin fails to cite any evidentiary
7 support for those allegations. *See, e.g., Keenan*, 91 F.3d at 1279 (A court is entitled to rely
8 on the nonmoving party to “identify with reasonable particularity the evidence that
9 precludes summary judgment.”).

10 Martin appears to bring her FMLA claim as an “interference claim,” *see* 29 U.S.C.
11 § 2615(a)(1), because she alleges Home Depot violated the FMLA by posting her position,
12 having another employee perform her ASDS job functions during her leave, and denying
13 the accommodations she allegedly sought to take care of her husband. *See* Doc. 29, p. 20.
14 To establish her interference claim, Martin must show “(1) [s]he was eligible for the
15 FMLA’s protections, (2) h[er] employer was covered by the FMLA, (3) [s]he was entitled
16 to leave under the FMLA, (4) [s]he provided sufficient notice of her intent to take leave,
17 and (5) h[er] employer denied h[er] FMLA benefits to which [s]he was entitled.” *Sanders*
18 *v. City of Newport*, 657 F.3d 772, 778 (9th Cir. 2011). Based on the parties’ statements of
19 fact, the Court can discern only the following supported factual allegations relevant to
20 Martin’s FMLA claim:

21 (1) Following the AACG’s finding that Martin’s complaints about Taylor
22 were “not substantiated,” Martin took a medical leave of absence, which
23 lasted from late September 2015 until January 27, 2016.

24 (2) Martin returned to her ASDS position on January 27, 2016 where she
25 worked until Home Depot terminated her employment on July 22, 2016.⁵

26 ⁵ Importantly, Martin contends Home Depot terminated her employment based on
27 her gender and age and in retaliation for her complaints about Taylor’s allegedly
28 discriminatory conduct, not in retaliation for taking a medical leave of absence. *See, e.g.,*
Doc. 29, p. 17.

1 Accordingly, Martin fails to carry her burden. First, the Court can discern no facts
2 concerning the alleged “accommodations that she sought to take care of her husband.”
3 Thus, the Court rejects this allegation as unsupported by the record. Second, the Court can
4 discern no facts concerning Home Depot’s alleged attempts to fill her position while Martin
5 was on leave. Again, Martin fails to identify any portions of the record that support her
6 allegations.

7 Still, even assuming Home Depot did post her position and/or did have someone
8 perform her job functions during her leave, Martin fails to explain how such conduct
9 violates the FMLA. *See, e.g., Sanders v. City of Newport*, 657 F.3d 772, 778 (9th Cir. 2011)
10 (“The right to reinstatement . . . is the linchpin of the entitlement theory because the FMLA
11 does not provide leave for leave’s sake, but instead provides leave with an expectation that
12 an employee will return to work after the leave ends.”). Martin raises no evidence or
13 argument that Home Depot failed to reinstate her after her leave. *See id.* (“[E]vidence that
14 an employer failed to reinstate an employee who was out on FMLA leave to her original
15 (or an equivalent) position establishes a prima facie denial of the employee’s FMLA
16 rights.”). Rather, the undisputed facts show that Home Depot returned Martin to her
17 original ASDS position immediately upon the conclusion of her medical leave on January
18 27, 2016. *Cf. Rodriguez v. Akima Infrastructure Svcs., LLC*, 2017 WL 2214612, at *8
19 (N.D. Cal. May 19, 2017) (analyzing plaintiff’s interference claim based on her allegation
20 that “defendants violated the FMLA when they failed to reinstate her to her former
21 position.”). Thus, on the present record, no reasonable jury could find that Home Depot
22 denied Martin the FMLA benefits to which she was entitled. Accordingly, the Court
23 **GRANTS** summary judgment on Martin’s Count 11 as to the FMLA violation, only, in
24 favor of Home Depot.

1 **B. Remaining State Law Claims (Counts 1-12)**

2 Martin brings her remaining twelve claims under California state law.⁶ Martin's
3 state law claims are before the Court based on supplemental jurisdiction.⁷ See 28 U.S.C. §
4 1367(a). The Court exercises its discretion to **REMAND** the case to state court. See 28
5 U.S.C. § 1367(a) ("The district courts may decline to exercise supplemental jurisdiction
6 over a claim . . . if the district court has dismissed all claims over which it has original
7 jurisdiction"); see also *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)
8 ("The discretion to remand enables district courts to deal with cases involving pendent
9 claims in the manner that best serves the principles of economy, convenience, fairness, and
10 comity which underlie the pendent jurisdiction doctrine."); *Sanford v. MemberWorks, Inc.*,
11 625 F.3d 550, 561 (9th Cir. 2010) ("In the usual case in which all federal-law claims are
12 eliminated before trial, the balance of factors . . . will point toward declining to exercise
13 jurisdiction over the remaining state law claims.").

14 **IV. CONCLUSION**

15 For the previous reasons, Defendants' motion for summary judgment, Doc. 22, is
16 **GRANTED IN PART**. Summary judgment is **GRANTED** in favor of Home Depot on
17 Count 11 as to the FMLA claim, only. In its discretion, the Court declines to exercise
18 supplemental jurisdiction over the remaining state law claims. Accordingly, the present
19 action is **REMANDED** to the Superior Court of the State of California, County of San
20 Diego for all further proceedings.

21 DATED: December //, 2018

22 
23 **HON. ROGER T. BENITEZ**
United States District Judge

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25
26 ⁶ Count 11 includes both a federal (the FMLA) and state (the CFRA) claim. Because
27 the Court granted summary judgment on only the FMLA portion of Count 11, part of Count
28 11 remains, and thus, twelve state law claims are still pending.

⁷ There is no diversity of citizenship because all parties are citizens of California.
See Doc. 1, p. 16 ¶¶ 1-3.