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If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN GERONIMO

JOAN GREEN,
Plaintiff,
vs.
COUNTY OF SAN GERONIMO,
SAN GERONIMO GENERAL
HOSPITAL, DOES 1-100, inclusive,
Defendants.

Case No.
**PLAINTIFF’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION**
Date:
Time:
Place:
Judge:

Plaintiff Joan Green opposes the Motion for Summary Judgment or in the Alternative, Summary Adjudication of Issues of Defendant County of San Geronimo (“County”) on the ground that there are triable issues of material fact as to the causes of action against the moving party, County, and therefore summary judgment should be denied.

INTRODUCTION

This action for wrongful termination was brought by plaintiff against her former

1 employer, County of San Geronimo, for whom she worked at the San Geronimo General
2 Hospital (“SGGH”). She sued on the grounds that she was discriminated against in her
3 employment at SGGH and then wrongfully terminated on June 25, 2007, from her
4 position as Assistant Director of Nursing at SGGH.

5 Triable issues of material fact here give rise to the inference that the reason for her
6 termination was pretextual and that the true reason was County’s discrimination against
7 plaintiff, in part through the actions of plaintiff’s superior, Alice Malus, the Director of
8 Nursing.

9
10 **ARGUMENT**

11 **1. The standard for summary judgment**

12 Summary judgment is a drastic remedy to be used sparingly, and any doubts about
13 the propriety of summary judgment are to be resolved in favor of the opposing party.
14 *Yanowitz v. L’Oreal USA, Inc.* (2003) 106 Cal. App.4th 1036, 1050. To prevail, the
15 defendant must show that one or more of the elements of each cause of action cannot be
16 established or that it has a complete defense to a cause of action. The plaintiff must then
17 show—as she will—that there are triable issues of fact as to each cause of action. Code
18 Civ. Proc. § 437(c)(o)(2).

19 “[A]lthough the burden of proof in a [discrimination] action claiming an
20 unjustifiable [termination] ultimately rests with the plaintiff . . . , in the case of
21 a motion for summary judgment or summary issue adjudication, *the burden*
22 *rests with the moving party to negate the plaintiff’s right to prevail on a particular*
23 *issue* In other words, the burden is reversed in the case of a summary
24 issue adjudication or summary judgment motion”

25 *Sandell v. Taylor-Lustig, Inc.* (2010) 188 Cal.App.4th 297, 309 (cites omitted).
26

1 In weighing the evidence, the court must liberally construe the evidence of the
2 non-moving party. *Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138,
3 1142.

4 In reviewing a motion for summary judgment, we accept as undisputed fact
5 only those portions of the moving party's evidence that are uncontradicted by
6 the opposing party. In other words, the facts alleged in the evidence of the
7 party opposing summary judgment and the reasonable inferences that can be
8 drawn therefrom are accepted as true.

9 *Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 148

10 Plaintiff alleged four causes of action. County's motion is based on one common
11 defense—that it terminated plaintiff with good cause for dishonesty, and that this reason
12 overcomes plaintiff's claims of discrimination. There are triable issues of material fact
13 regarding each of plaintiff's four claims. Furthermore, plaintiff can show that County
14 retaliated against plaintiff and that County, through plaintiff's supervisor, Alice Malus,
15 engaged in pervasive harassment of plaintiff.

16
17 **2. The reason for plaintiff's termination presents triable issues of material**
18 **fact.**

19 County's ostensible reason for terminating plaintiff is that she had provided
20 County with a "false doctor's note" to support her request for medical leave.
21 Defendant's Separate Statement, Fact 48 (Fact 48 for each cause of action). But plaintiff
22 was terminated despite providing a note from Dr. Primo, her primary doctor, who had
23 been unavailable during the period when she got the note from Dr. Secundo. Plaintiff's
24 Separate Statement, Disputed Fact ("PDF") No. 45, Green Dec., ¶¶ 9, 10. SGGH
25 attached the notes from Dr. Primo to its motion as Exhibit N.

1 **3. The evidence against Green does not support termination.**

2 The evidence County used as the pretext to terminate Green does not support
3 County's conclusion stated in its termination letter of June 25, ____ ("the Letter"),
4 Exhibit "O" to defendant's Motion. The Letter states that plaintiff's conduct in
5 presenting a note from a retired doctor, Dr. Mario Secundo, to substantiate her medical
6 leave of absence was "dishonest, fraudulent, and not becoming of a County employee."
7 Exhibit O to Motion. But there are triable issues of fact as to plaintiff's conduct and
8 County's reason for firing plaintiff. According to the Letter, plaintiff stated to Lucy
9 Anderson that she did not intend to be dishonest by using Dr. Secundo's note for her.
10 Exhibit O to Motion. County made little effort, if any, to determine if plaintiff was being
11 honest in her response to their inquiry.

12 As Exhibit "N" to the Motion makes clear, plaintiff presented two notes from Dr.
13 Primo to cover the period of plaintiff's absence from work, including the period covered
14 by Dr. Secundo's note. It can be inferred from the fact that plaintiff secured notes from
15 Dr. Primo as soon as possible that, had she intended to deceive SGGH, she would have
16 solely relied on the note from Dr. Secundo. What is telling in the Letter is the complete
17 omission of any reference to Dr. Primo's notes.

18 In *Johnson v. United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and*
19 *Ventura Counties* (2009) 173 Cal.App.4th 740, cited by County, the court reversed a ruling
20 for the defendant on summary judgment on the grounds that, although the defendant's
21 reason for terminating Johnson was on its face sufficient to support the motion, the
22 circumstances taken as a whole raised a triable issue of fact:

23 Although we have set out several matters which *by themselves* will not
24 constitute substantial evidence that defendant's stated reason for firing
25 plaintiff was pretextual or that defendant acted with a discriminatory animus
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1 when it fired her, there remains the question whether these matters, *when*
2 *taken together*, do constitute sufficient evidence to demonstrate a triable issue
3 of fact with respect to plaintiff's contention that her pregnancy was the true
4 cause of defendant's decision to fire her.

5 *Id.* at 758 (emphasis in the original).

6 Here, the totality of the circumstances raises a triable issue of fact as to the true
7 cause for the decision to terminate plaintiff:

- 8 1. Alice Malus gave plaintiff additional responsibilities without additional
9 support to assist her in fulfilling her new responsibilities. PDF No. 10;
- 10 2. Plaintiff complained to Malus about her lack of support for plaintiff. PDF
11 No. 10;
- 12 3. Malus was critical of plaintiff and did not support her. PDF No. 11;
- 13 4. Malus criticized plaintiff on trivial matters such as the seating arrangement
14 at the Sacramento conference; plaintiff believes the criticism was based on
15 her age. PDF No. 11 (Undisputed);
- 16 5. Malus blamed plaintiff for the citation given to the colonoscopy unit. PDF
17 No. 25 and 26;
- 18 6. In December, plaintiff complained to Human Resources about Alice Malus,
19 and met with Interim Director Richard Aldred to complain about Malus.
20 PDF No. 30-35.
- 21 7. Plaintiff filed a detailed "Rule 20" complaint (Exhibit K to Motion) that
22 outlines Malus's discriminatory conduct towards plaintiff; however, the
23 conclusion of the EEO Coordinator, Tom White, was that Malus's conduct
24 was not discrimination under Rule 20.
- 25 8. County hired an investigator, Jack Black, to investigate the working
26

1 environment at SGGH. Her conclusion was in part that Malus's actions
2 were not discriminatory. This assessment ignored all of plaintiff's
3 complaints, as well as that of one interviewee, who told Black that Malus
4 had "a problem with white women."

5 Nursing Administration Work Environment Assessment, Exhibit K to
6 Motion;

- 7 8. Plaintiff's termination letter makes no reference to the doctor's notes from
8 Dr. Primo that cover the same period as the note from Dr. Secundo. Exhibit
9 N to Motion.

10 County argues that it acted in "good faith" in firing plaintiff, citing *Coltran v.*
11 *Rollins Hudig Hall International* (1998) 17 Cal.App.4th 95, 109. County argues it need only
12 show it took "reasonable steps" before deciding to fire plaintiff. Motion at 14:6-9. If so,
13 County failed to meet this burden. It failed to consider the totality of the circumstances as
14 to why plaintiff went to Dr. Secundo in the first place and why, after talking to
15 Dr. Secundo, she then got two notes from Dr. Primo that covered her absence. County's
16 actions raise a triable issue as to whether or not it was reasonable to ignore plaintiff's
17 efforts to get her medical excuse notes from Dr. Primo and rely solely on Dr. Secundo's
18 note as justification for firing plaintiff.

19 In *King v. United Parcel Service* (2007) 152 Cal.App.4th 426, cited by County, the
20 court held that the reason for plaintiff's termination, a violation of the UPS integrity
21 policy, was sufficient to overcome a claim of pretext. *King* can be distinguished from the
22 present case by the fact that, in *King*, the policy was in place to insure driver safety and
23 meet federal regulations. *Id.* at 430. And the facts in *King* were much more overwhelming
24 in supporting UPS's reason for firing King. There was little doubt that King was involved
25 in helping a driver falsify his timecard, a serious violation with safety implications. Here,
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1 there is only the word of Dr. Secundo against that of plaintiff that he had told her his note
2 could not be used as an excuse for medical leave. PDF No. 45. Plaintiff had been a County
3 employee for 20 years and had worked her way up to Assistant Director of Nursing.
4 County presented no evidence as to why plaintiff would be dishonest about the note, and
5 gave no reason why it believed Dr. Secundo instead of plaintiff.

6 The following facts support plaintiff's claim for retaliation:

- 7 1. In January and February _____, plaintiff alleged discrimination on the part
8 of Malus and filed a detailed outline of Malus's discriminatory conduct;
9 PDF No. 34;
- 10 2. The claim was rejected by County in March; PDF No. 34;
- 11 3. County investigated plaintiff starting around April for allegedly presenting a
12 fraudulent doctor's note to County to support her medical leave. PDF No.
13 44;
- 14 3. In June, County terminated plaintiff on the pretext that the note from Dr.
15 Secundo was plaintiff's attempt to deceive County to obtain medical leave.
16 PDF No. 48.

17 Plaintiff's protected activity was reporting discrimination by Malus. The adverse
18 action was plaintiff's termination and the basis for that termination can be inferred to be
19 because of her age. The investigation of plaintiff began within a few weeks of the rejection
20 of her Rule 20 claim regarding Malus and it can be inferred that this time period was
21 sufficiently close to her complaint to be related. Based on all of these circumstances, there
22 is a triable issue of material fact as to plaintiff's claim for retaliation. See *Yanowitz v.*
23 *L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.

24 Plaintiff has also established that she suffered harassment by Malus. As set forth in
25 the Separate Statement and as County's own report states, Malus was "not always able to
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1 control her temper when frustrated” and displayed her anger “inappropriately at times.”
2 Exhibit K to Motion. Although Jack Black concluded that Malus’s anger was “not
3 sufficient to cause the type of negative work environment described by Ms. Green,” that
4 should be a matter for the trier of fact to determine for themselves based on plaintiff’s
5 Rule-20 complaint, also attached as part of Exhibit K to the Motion.

6 Plaintiff’s Rule 20 complaint is five single-spaced pages that sets forth in detail
7 Malus’s discriminatory acts. This complaint alone should mandate the denial of the
8 motion as to plaintiff’s claim of harassment as it details what plaintiff describes in part as
9 “five long years” of being belittled by Malus. Exhibit K, ¶ 11 h. Paragraph 11 also details
10 Malus’s discriminatory conduct against plaintiff in comparison to Malus’s treatment of
11 Jose Feliciano, who held the same job title as plaintiff.

12 The discriminatory conduct by Malus over a long period of time as alleged by
13 plaintiff in her Rule-20 complaint meets the standard cited by County in *Aguilar v. Avis*
14 *Rent A Car System, Inc.* (1999) 21 Cal.4th 121 in that it was pervasive and of a “repeated,
15 routine” nature. *Id.* at 131. Further, plaintiff’s Rule 20 complaint at par. 12 details the
16 psychological and physical stress on plaintiff caused by Malus’s harassment. “When the
17 workplace is permeated with discriminatory intimidation, ridicule and insult that is
18 sufficiently severe or pervasive to alter the conditions of the victim’s employment and
19 create an abusive working environment, the law is violated.” *Kelly-Zurian v. Wohl Shoe*
20 *Company, Inc.* (1994) 22 Cal.App.4th 397, 409 (citations and internal quotation marks
21 omitted).

22 Here, Green’s Rule 20 complaint, submitted by County, sets forth the pervasive
23 and constant harassment of plaintiff by Malus over a long period of time. Therefore, there
24 is a triable issue of material fact as to plaintiff’s claim for harassment.

1 **CONCLUSION**

2 Defendant's reason for terminating plaintiff, and all the circumstances
3 surrounding her firing, present triable issues of fact. the Motion for Summary Judgment
4 or in the Alternative, Summary Adjudication of Issues of Defendant County of San
5 Geronimo should be denied.

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7 Dated:

Respectfully submitted,

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10 _____
11 LOUIS LAWYER
12 Attorney for Plaintiff Joan Green
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