UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs.

ROBERT L. REEVES AND ASSOCIATES, A PROFESSIONAL CORPORATION,

Defendants.

CASE NO. CV 00-10515 DT (RZx)

ORDER **GRANTING** DEFENDANT ROBERT L. REEVES AND ASSOCIATES, A PROFESSIONAL CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CLAIMANTS QUILATON, SILVA, SAEZ, WANG, ARAI AND EUM

I. Background

A. Factual Summary

This action is brought by Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") against Defendant Robert L. Reeves and Associates, a Professional Corporation ("Defendant") under Title VII of the Civil Rights Act of 1964, as amended, the Pregnancy Discrimination Act of 1978 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment

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practices on the basis of sex, and to provide appropriate relief to certain females who were adversely affected by such practices ("Claimants").

The following facts are undisputed and relevant to the issues currently before this Court:

This matter began on August 11, 1997, when Judith Quilaton filed a charge of Discrimination with the EEOC on the grounds that she was terminated because she was pregnant. On June 20, 2000, the EEOC issued a Letter of Determination finding that:

> pregnant females as a class, were terminated in violation of Title VII of the Civil Rights Act of 1964, as amended and that females as a class, were subjected to frequent harassment that was intimidating, hostile and offensive and unreasonably interfered with work performance in violation of Title VII of the Civil Rights Act of 1964, as amended.

After "conciliation" failed, the EEOC filed this lawsuit against Defendant. In an interrogatory dated February 2, 2001, Defendant asked, "State the name of all persons you allege comprise the 'Class of Female' employees indicated in paragraph 8(b) of your complaint." The EEOC answered: "Investigation continues. At present, Plaintiff alleges that all current former employees of Defendant who are female are potential members of this class, and that the following persons have been identified to date: Clarissa (Fang) Liao, Nikki Mehrpoo Jacobson, Lisa Wilkerson, Joyce Wang, Jeanette Catuira, Miwa Arai, Elizabeth Babida, Margaret Eum, Nadia Preciado, Judith Quilaton, Rowena Silva, and Deanna Saez. EEOC will timely supplement all discovery responses."[1]

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[1] The EEOC will not be pursuing the claims of Arai, Wang and Eum.

The facts with respect to the Claimants at issue in this motion, Judith Quilaton, Rowena Silva, Deanna Saez, are discussed within the analysis portion of this order.

B. Procedural Summary

On September 29, 2000, the EEOC filed the Complaint for Civil Rights Employment Discrimination in the United States District Court for the Central District of California, which was assigned to District Judge Dickran Tevrizian as Case No. CV 00-10515 DT (RZx).

On December 5, 2000, Defendant filed an Answer to the Unverified Complaint.

On June 11, 2001, Defendant filed a Motion for Leave to Amend Answer, which this Court granted on July 9, 2001.

On June 26, 2001, the EEOC filed a Motion for Review and Reconsideration of Magistrate Judge's Order on Plaintiff's Motion to Compel, which this Court denied on July 27, 2001 and further ordered a clarification of the Magistrate Judge's protective order.

On August 31, 2001, Defendant filed a Motion for Partial Summary Judgment as to Claimants Catuira and Preciado.

On September 25, 2001, this Court entered an Order Granting Defendant Robert L. Reeves and Associates' Motion for Partial Summary Judgment as to Claimants Catuira and Preciado.

On October 18, 2001, Defendant filed the Statement of Fact and Conclusions of Law as to Claimants Catuira and Preciado.

On October 19, 2001, this Court entered a Partial Summary Judgment Following September 24, 2001 Ruling.

On November 1, 2001, Defendant filed a Motion for Attorneys' Fees, which this Court denied on November 26, 2001.

On November 27, 2001, Defendant filed a Motion for Partial Summary Judgment as to Claimants Quilaton, Silva, Saez, Wang, Arai and Eum, which is presently before this Court.

II. Discussion

A. Standard

Under the Federal Rules of Civil Procedure, summary judgment is proper only where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514 (1986). If the moving party satisfies the burden, the party opposing the motion must set forth specific facts showing that there remains a genuine issue for trial. See id.; Fed. R. Civ. P. 56(e).

A non-moving party who bears the burden of proof at trial to an element essential to its case must make a showing sufficient to establish a genuine dispute of fact with respect to the existence of that element of the case or be subject to summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Such an issue of fact is a genuine issue if it reasonably can be resolved in favor of either party. See Anderson, 477 U.S. at 250-51, 106 S. Ct. at 2511. The non-movant's burden to demonstrate a genuine issue of material fact increases when the factual context renders her claim implausible. See Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475

U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986). Thus, mere disagreement or the bald assertion that a genuine issue of material fact exists no longer precludes the use of summary judgment. See Harper v. Wallingford, 877 F.2d 728 (9th Cir. 1989); California Architectural Building Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

If the moving party seeks summary judgment on a claim or defense on which it bears the burden of proof at trial, it must satisfy its burden by showing affirmative, admissible evidence.

Unauthenticated documents cannot be considered on a motion for summary judgment. See Hal Roach Studios v. Richard Feiner and Co., 896 F.2d 1542, 1550 (9th Cir. 1990).

On a motion for summary judgment, admissible declarations or affidavits must be based on personal knowledge, must set forth facts that would be admissible evidence at trial, and must show that the declarant or affiant is competent to testify as to the facts at issue. See Fed. R. Civ. P. 56(e). Declarations on "information and belief" are inappropriate to demonstrate a genuine issue of fact. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

B. Analysis

Defendant brings this motion with respect to six of the sexual harassment Claimants: Joyce Wang, Miwa Arai, Margaret Eum, Judith Quilaton, Rowena Silva and Deanna Saez. At the outset, based upon the EEOC's representations it will not be proceeding on the behalf of Joyce Wang, Miwa Arai, Margaret Eum, this Court grants Defendant's Motion for Summary Judgment with regard to those Claimants.

As to the remaining Claimants, Quilaton, Silva and Saez, EEOC alleges they were discriminated against by Defendant when they were terminated

because of pregnancy. Defendant argues none of those Claimants was subject to adverse job action or because they were pregnant.

In order to survive a summary judgment motion, EEOC is first required to make out a prima facie pregnancy discrimination case by showing each Claimant: (1) was pregnant; (2) had been performing her job satisfactorily; (3) suffered an adverse employment action; and (4) that the discharge occurred "under circumstances giving rise to an inference of discrimination." Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1025 (9th Cir.2000); See also, Chuang v Univ. of Cali. Davis, Bd. of Trs., 225 F.3d 1115, 1124 (9th Cir.2000) (specifying the fourth element as whether similarly situated non-pregnant individuals were treated more favorably). If the EEOC is able to make this prima facie showing, the burden of production then shifts to Defendant to articulate a legitimate, nondiscriminatory reason for the challenged action. See Chuang at 1124.

1. The EEOC cannot establish a establish a prima facie case of sexual harassment with respect to Claimant Rowena Silva

The following incidents form the basis of the EEOC's claim with respect to Silva. Silva was employed by Defendant as a receptionist in Defendant's law firm from July of 1996 through April of 1997. At the time she was hired, Silva did not know she was pregnant. She discovered she was pregnant two weeks after she began working for Defendant. Prior to her pregnancy becoming known, Robert Reeves ("Reeves") would compliment her. Soon after Silva announced she was pregnant, Reeves began treating her differently than he had previously. He became hypercritical of trivial matters. For example, he questioned her about how she arranged items on her desk, he complained about ink on a telephone, the way furniture was polished, how his bagel was toasted, and about children being present in the lobby instead of the children's room, which occurred only after

Defendant moved to an office which had a children's room. When Silva's pregnancy began to show, Saez was routinely positioned to sit in the direct line of view of clients and Silva was seated somewhat off to the side where her pregnancy would not be noticed.

Silva began maternity leave on January 10, 1997 and gave birth in February 22, 1997. When Silva was on maternity leave, Defendant hired another receptionist to replace Silva. Silva's supervisor, Jennifer Latman, called Silva and told her she was being replaced and that, unless she returned to work, she would be fired. Silva responded by providing Defendant with a physician's note stating she could not return to work until April 7, 1997. Upon her return to work on or about April 7, 1997, Reeves told Silva he was going to fire her. For the first time he told her he had not been happy with her work performance prior to her taking maternity leave. By her own account and those of her supervisors, Silva's work performance had been good. Silva threatened to sue Defendant if she was fired, and Reeves promptly recanted.

After this conversation, Silva became afraid for her job. Reeves criticized her daily about her performance and Silva believed Reeves was looking for a reason to fire her and sought new employment. Silva found another job and quit Defendant law firm. She then requested Defendant allow her to continue working as a part-time on-call receptionist on Saturdays to avoid contact with Reeves. Silva testified that she continued to work for several months for Defendant in that capacity. She ultimately left because she found another job at the Westin Bonaventure which paid more than Defendant.

This Court concludes as a matter of law that Reeves's conduct toward Silva, while sharp and cross, was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment. The required

showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct. "Conduct must be extreme to amount to a change in the terms and conditions of employment." Montero v. AGCO Corp., 192 F.3d 856, 860 (9th Cir. 1999) (quoting Faragher v. City of Boca Raton, 524 U.S. 775 (1998)). A sexually objectionable environment must be viewed both subjectively and objectively. In other words, the environment must be one that the victim perceived to be hostile or abusive and that a reasonable person would find hostile or abusive.

With respect to the criticism Reeves directed towards Silva, evidence presented throughout this case shows Reeves was extraordinarily strict and picky about how he wanted everything to be done in his office. While no doubt unpleasant, his conduct appears uniformly reprehensible and not particularly discriminatory with respect to pregnancy. With respect to Silva's replacement while on maternity leave, there is nothing discriminatory about this, since the work needed to be completed by someone, and Christine Alcudia, who was to perform Silva's duties while Silva was on maternity leave, was transferred to another position when Silva returned. Defendant alleges she voluntarily resigned two months after returning from her maternity leave, then requested part-time employment, which was accommodated, and ultimately quite in order to take advantage of a higher paying weekend job.

Plaintiff's factual allegations do not materially differ those of Defendant. Furthermore, any factual disputes have been resolved in Plaintiff's favor and still raise no triable issues of fact as to Defendant's liability. The EEOC has failed to carry its burden of showing a triable issue of fact exists as to whether Reeve's conduct created an abusive environment or that an adverse job action was taken with respect to her employment. The evidence does not support EEOC's

allegation that an adverse job action taken as a result of Silva's pregnancy or that Reeves' conduct was motivated by discriminatory intent, or was, for that matter, inappropriate or unreasonable. This Court concludes no reasonable juror could find that the conduct alleged toward Silva was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment as a matter of law, or that any adverse job action was taken.

2. The EEOC cannot establish a prima facie case of sexual harassment with respect to Claimant Deanna Saez

This Court concludes as a matter of law that Saez was not terminated as a result of her pregnancy. The following incidents form the basis of the EEOC's claim with respect to Saez. Saez was hired by Reeves as a receptionist in his law firm in November 1996. She had been a client of the law firm and had planned to move to New York to find a job to help pay off her fees, but when she informed Reeves of her intent to move to seek employment in order to pay her fees, he offered her a job at the law firm. Saez believed she was being hired on a full-time permanent basis, and her personnel file does not reflect an agreement to limit her employment term. Sometime after she began working for Defendant, she realized she was pregnant. While she was a receptionist for Defendant, she adequately performed her job. No one complained to her about her performance. She was not reprimanded or counseled, orally or in writing, for poor performance by any of her supervisors. The office manager, Maria Marcelo, said her only criticism was that Saez was "a little slow." Saez was concerned about making photocopies because she was pregnant, but she never refused to do so. Reeves told Saez in February of 1997 that she was being laid off. Marcelo later stated Saez was laid off. Saez believes she was fired because she was pregnant, although she did not feel she was treated any different after she informed her co-workers

and Reeves she was pregnant. She was, however, pregnant when she was fired. Reeves told her she was being laid off because she couldn't make photocopies. On her last day of work Saez was taken to lunch by Latman, Jurado and one other employee. One of them, though she cannot recall which, told her the only reason she was being fired was because she was pregnant.

The evidence with respect to Saez fails to support two elements of a prima facie case of discrimination: that Saez was satisfactorily performing her duties and that she was discharged under circumstances giving rise to an inference of discrimination. The evidence does not support that she was terminated because she was pregnant. Additionally, Saez specifically recalled that she was not treated any differently by Reeves after she informed him and her other co-workers she was pregnant. She does not allege she was thereafter removed from the line of sight of clients, as Silva alleged. Additionally, Saez testimony indicates she simply could not recall whether or not her performance had been criticized. She recalled Reeves was strict and very specific about how he wanted things done. Additionally, that there might have been an absence of criticism of her performance does not, as the EEOC would have this Court presume, mean that Saez' performance was adequate. That there was an absence of criticism is insufficient to satisfy the second element of a prima facie case of discrimination. Indeed, in order to make a prima facie showing of decimation, a claimant has the *affirmative* burden to show her performance was adequate; the mere absence of a plethora of evidence to the contrary does not a showing make. In any case, even if Saez satisfied this burden, Defendant offer substantial evidence of Saez inadequate performance and insubordination to overcome his burden of proving there was a lawful basis for terminating her employment. For example, Saez' former supervisor testified that Saez refused to make photocopies, send facsimiles, or

deliver certain packages and that she covered for her until she was forced to ask for overtime in order to finish her own work. Moreover, Saez asked Reyes not to tell Reeves that she refused to perform these duties.

Second, Saez fails to offer evidence of the fourth element of a prima facie showing of discrimination. As noted above, the evidence Saez offers of the circumstances of her termination, whether it was a firing or lay off, do not show she was discharged under circumstances giving rise to an inference of discrimination. She was hired as a result of her need to pay off her legal fees and was terminated soon after those fees were paid. Additionally, even after she announced her pregnancy, she continued to be position in the direct line of view of clients. Finally, Saez herself did not feel she was treated any differently after she made her pregnancy known to Reeves.

This Court concludes, assuming all the facts alleged by the EEOC are true, Saez has failed to make a prima facie showing of sex discrimination based on her pregnancy. Saez cannot show she was satisfactorily performing her duties while employed by Defendant or that she was discharged by under circumstances giving rise to an inference of discrimination.

3. The EEOC cannot establish a prima facie case of sexual discrimination with respect to Judith Ignacio Quilaton

The following incidents form the basis of the EEOC's claim with respect to Quilaton. Quilaton was employed by Defendant as a receptionist in his law firm from March 25, 1997 until July 19, 1997. Although she was about two months pregnant at the time she began working for Defendant, she did not learn she was pregnant until April 19, 1997. When she told her supervisor, Jennifer Latman, she was pregnant, Latman told her to keep it quiet. Quilaton's pregnancy began to show in June or July of 1997, and she began wearing maternity clothes at

that time. Quilaton passed her 90-day probation period on or about June 23, 1997, and was fired on July 19, 1997.

Prior to her termination, Quilaton had been adequately performing her job duties. She received no complaints about her performance from the desk supervisor, Latman, or the office manager Martinez. Quilaton could not recall being reprimanded for improperly handling notices or tardiness. Quilaton acknowledged that she was late to work on several occasions. Martinez and Latman also came to work late and were not reprimanded. Defendant did not follow its written policy regarding employee work hours. Employee time sheets indicate Defendant's employees came to work as early as 7:30 a.m. and as late as 12:30 p.m., although the Office Policy and Procedural Manual states office hours are from 9:00 a.m. to 6:00 p.m.

Quilaton never falsified time sheets, contrary to Defendant's assertions. Martinez could only recall one incident when Quilaton wrote the incorrect time on her time sheet, but Quilaton told Martinez her watch was running slow, and Quilaton then corrected the time sheet entry.

Quilaton acknowledged she refused to make photocopies. She admitted being warned about attendance, even though she didn't have a problem with attendance, and that sometimes she failed to show up for work as reported by a supervisor. When she was terminated she was told by Reeves he was firing her after he took a survey of the adequacy of her performance. She passed her probation period on or about June 23, 1997, when she was by her estimation about five months pregnant. Her pregnancy began to show in June or July. She was fired on July 18, 1997.

This Court notes there are some facts in dispute, but they are not material. For example, Defendant offers substantial evidence Quilaton mishandled

telephone calls and received constant complaints from callers and other employees. Rather than disputing Defendant's charge, Quilaton states she does not recall others complaining about her or mishandling calls. Defendant also introduces substantial evidence that Quilaton was frequently late for work and given warnings about her lateness. While she acknowledges she was late on at least eight separation occasions, rather than deny she was late more than that, she simply says she does not recall, or does not have the numbers. Defendant also offers proof Quilaton was caught falsely signing in the wrong time and giving herself credit for working more hours than she had in fact. Plaintiff acknowledges one instance of writing an incorrect time on her time sheet and responds that she was not aware of the sign-in policy because she was not told when she was first hired. After acknowledging making photocopies was one of her duties, she was asked if she had "flatly refused" to make photocopies." She denied "flatly refusing," but that she "explained the situation," that the toner was a problem for her, and that was the reason she refused to make the photocopies. Additionally, although Plaintiff's moving papers allege Quilaton did not recall ever being reprimanded, in her deposition she in fact recalled being warned about attendance, although she denied having a problem with attendance, although she did acknowledge that she did not show up for work sometimes.

Assuming all the facts alleged by the EEOC are true, Plaintiff nonetheless has failed to meet its burden of making a prima facie showing of discrimination with respect to Quilaton. Plaintiff's evidence fails to support two elements of a prima facie case of discrimination: that Quilaton was satisfactorily performing her duties and that she was discharged under circumstances giving rise to an inference of discrimination. By her own admission, Quilaton was late to work on at least eight separate occasions in the five months she was employed at

Reeves' law firm and recalled being warned at least once; she "didn't show up for work sometimes;" she wrote the incorrect time on her time sheet when she arrived late one day, giving herself credit for more time than she had worked; and she would not make photocopies when asked to do so in at least five separate instances, even though that was one of her duties. Finally, Quilaton states she was approximately two months pregnant when she was first hired by Defendant on March 25, 1997. Plaintiff has failed to support that Quilaton was satisfactorily performing her duties or that she was discharged under circumstances giving rise to an inference of discrimination.

III. Conclusion

In sum, this Court concludes that no triable issue exists about whether adverse employment actions were taken with respect to claimants Silva, Saez or Quilaton because they were pregnant. As such, the EEOC has failed to establish a prima facie case of discrimination with respect to those specific claimants. Defendant is thereby entitled to summary judgment with respect to those claimants.

Accordingly, this Court **grants** Defendant Robert L. Reeves & Associates, a Professional Law Corporation's, Motion for Partial Summary Judgment as to Claimants Silva, Saez, Quilaton, Wang, Arai and Eum.

IT IS SO ORDERED.

DATED: JAN 22 2002

DICKRAN TEVRIZIAN

Dickran Tevrizian, Judge
United States District Court