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Superior Court of California
County of Los Angeles

SEP 29 2017

Sherri R. Carter, Executive Officer/Clerk
By: R. Inostroza, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CECILIA IXCOY,
Plaintiff,
vs.
MASSIVE PRINTS, INC., A
CALIFORNIA CORPORATION, AND
DOES 1 THROUGH 100, INCLUSIVE
Defendants.

Case No. BC618322

~~(PROPOSED)~~ JUDGMENT

Plaintiff Cecilia Ixcoy filed a Complaint alleging causes of action for Age Discrimination, in Violation of Government Code Section 12940 et. seq., and 12941 et. seq.; Failure to Investigate and Prevent Harassment, Discrimination and Retaliation in Violation of California Government Code Section 12940(k), and Violation of Article I, Section 8 of the California Constitution; Retaliation in Violation of California Government Code Section 12940 et. seq., Violation of Article 1, Section 8 of the California Constitution; Violation of Labor code Section 1102.5; and Wrongful Termination in Violation of Public Policy.

Massive Prints employed approximately 700 to 800 employees in 2011. That number had been reduced to 211 employees as of 2017. (Exhibit 101) On September 15, 2014, Defendant Massive Prints conducted a layoff of forty-eight (48) employees. The September 15, 2014 layoff was the most current layoff for defendant Massive Prints. There had been a series of layoffs dating back to 2010.

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1 The reason for the layoffs, including the September 15, 2014 layoff, was a drop in
2 revenue from \$79 million in 2011 to \$61 million in 2014. (Exhibits 104-106) Plaintiff Ixcoy
3 failed to present any evidence to dispute the reduction in revenue (\$18 million) or the
4 reduction in total number of employees. (500-600 employees)

5 Plaintiff was part of the September 15, 2014 layoff, along with forty-eight (48) other
6 employees. Plaintiff Ixcoy contended she was replaced by a younger worker, Alan Garcia
7 a.k.a. Alan Ramirez. However, Alan Garcia a.k.a. Alan Ramirez was the son of Danny Garcia,
8 a supervisor in the receiving department where Ixcoy worked for a period of time. When
9 plaintiff worked in the receiving department, she was given 12 hour shifts reduced to 10 hour
10 shifts prior to the layoff on September 15, 2014. Plaintiff was not replaced by Alan Garcia
11 a.k.a. Alan Ramirez. He was already working in the receiving department in 2012. Further, he
12 worked two to three hours a day, two to three days a week. He continued that same schedule
13 after the September 15, 2014 layoff.

14 **I. FIRST CAUSE OF ACTION FOR AGE DISCRIMINATION**

15 Under the McDonnell Douglas vs. Green (1973) 411 U.S. 792 the employee must first
16 present a prima facie case of discrimination. The burden then shifts to the employer to
17 produce evidence of a nondiscriminatory reason for the adverse action. Then, the burden shifts
18 back to the employee to show that the employers stated reason was, in fact, a pretext for
19 discriminatory acts.

20 A discharge is not based on the grounds of age unless age is a substantial motivating
21 factor in the decision. An employer would be entitled to judgment as a matter of law if the
22 record conclusively revealed some other, non-discriminatory reason for the employer's
23 decision. An employee claiming discrimination must offer substantial evidence that the
24 employers stated non-discriminatory reason for the adverse action was untrue or pretextual,
25 where the evidence shows the employer acted with a discriminatory animus, or a combination
26 of the two such that a reasonable trier-of-fact could conclude the employer engaged in
27 intentional discrimination. (West vs. Bechtel Corp. (2002) 96 Cal App 4th 996, 978)

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1 Plaintiff Ixcoy failed to meet her burden of proof and establish a prima facie case of
2 discrimination because she was part of a layoff in September of 2014 that involved forty-eight
3 (48) employees. Nineteen (19) of those employees were under the age of 40. Twenty-five
4 (25) of the laid-off employees were 40 or older. There were also four employees with
5 unknown ages. (Exhibit 102)

6 As of 2017, there were 211 employees at Massive Prints which was a reduction of
7 almost 600 employees from 2011. Ninety-eight (98) of the current employees are 40 years of
8 age or older and have lengths of service ranging from 14 to 26 years at Massive Prints.
9 (Exhibit 101)

10 Plaintiff Ixcoy failed to present a prima facie case of age discrimination. And even if it
11 could be argued that she did by testifying she was replaced by a younger worker, Alan Garcia
12 a.k.a. Alan Ramirez, defendant Massive Prints produced substantial evidence of
13 nondiscriminatory reasons for the layoff in September 15, 2014. Massive Prints' Sales by
14 Customer Summaries (Exhibits 103-106) show that in 2010, total sales amounts to
15 approximately \$79 million. In 2011, sales totaled approximately \$74 million. In 2012, sales
16 totaled approximately \$63 million and in 2014, sales totaled approximately \$61 million.

17 Defendant Massive Prints saw a reduction in sales of approximately \$18 million from
18 2010 to 2014. This drop in revenue resulted in the reduction of the workforce from
19 approximately 700 employees to 200 employees in 2017.

20 The owner of Massive Prints, Courtney Dubar testified labor is their biggest expense.
21 Due to the change in the business climate from "brick-and-mortar stores" to online sales, many
22 clients are either going out of business or reducing orders on silkscreened T-shirts. Randy
23 Freeman, one of the floor supervisors at Massive Prints testified, at one time there were 17,000
24 piece orders but there has been a reduction to 3,000 to 4,000 piece orders and then down to
25 250 piece orders. All of the witnesses for defendant Massive Prints, Courtney Dubar, Cole
26 Warren, Randy Freeman, and Danny Garcia, testified consistently and believably about the
27 reduction in the workforce since 2011.

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1 The court finds Defendant Massive Prints presented non-discriminatory undisputed
2 reasons for the reduction in the force on September 15, 2014. The court finds for Defendant
3 and against Plaintiff on the First Cause of Action.

4 **II. SECOND CAUSE OF ACTION FOR FAILURE TO INVESTIGATE AND**
5 **PREVENT HARASSMENT, DISCRIMINATION AND RETALIATION.**

6 Plaintiff withdrew her claim for harassment during the trial. Regarding the retaliation
7 claim, Plaintiff testified she complained to Danny Garcia and Randy Freeman about not
8 receiving overtime and that these complaints about not getting overtime led to her alleged
9 wrongful termination. The evidence did not support this conclusion. Randy Freeman, one of
10 the supervisors in the receiving department, testified that no one was receiving overtime.
11 When questioned if Plaintiff Ixcoy was the only employee not receiving overtime, Mr.
12 Freeman stated "no humans were receiving overtime." Mr. Freeman testified that he initially
13 ignored his bookkeeper's request to cut plaintiff's overtime, but eventually had no choice and
14 thereafter plaintiff's hours were reduced along with everyone else in the receiving department.

15 Plaintiff presented no evidence of retaliation based upon her age given the financial
16 condition of Massive Prints. The court finds for Defendant and against Plaintiff on the Second
17 Cause of Action.

18 **III. THIRD CAUSE OF ACTION**

19 This cause of action is a repeat of the Second Cause of Action. For the same reasons,
20 the court finds for Defendant and against Plaintiff on the Third Cause of Action.

21 **IV. FOURTH CAUSE OF ACTION FOR VIOLATION OF LABOR CODE**
22 **SECTION 1102.5.**

23 Labor Code Section 1102.5 provides that an employer, or any person acting on behalf
24 of the employer, shall not make, adopt or enforce any rule, regulation, or policy preventing an
25 employee from disclosing information to a government or law enforcement agency. Further,
26 an employer shall not retaliate against an employee for disclosing information, or because the
27 employer believes that the employee disclosed or may disclose information to the government
28 or law enforcement agency.

1 Plaintiff presented no credible evidence Defendant Massive Prints prevented her from
2 disclosing information to a government or law enforcement agency. Although plaintiff
3 disputed the evidence of compliance bulletins at Massive Prints, defendant presented
4 testimony from Courtney Dubar and Cole Warren that compliance posters were placed in a
5 central high traffic area at the warehouse in the Rancho Dominguez facility in Southern
6 California.

7 Cole Warren, operations manager at the time of the layoff on September 15, 2014,
8 testified there was a "We Tip" poster on the bulletin board that would allow any and all
9 employees to make anonymous complaints about the employment conditions at Massive
10 Prints. The Bulletin Boards were in place for approximately ten (10) years.

11 Plaintiff presented no evidence she made complaints to a government or law
12 enforcement agency or was prevented from doing so. Defendant also presented evidence they
13 are subject to audits from their clients, specifically Nike, which require that Massive Prints
14 comply with all wage and hour, discrimination, safety codes and other employment
15 regulations. Defendant Massive Prints testified they have received passing grades on all of the
16 Nike audits. (Exhibit 109) The court find for Defendant and against Plaintiff on the Fourth
17 Cause of Action.

18 **V. FIFTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN**
19 **VIOLATION OF PUBLIC POLICY**

20 The fifth cause of action is a repeat of the first cause of action for age discrimination.
21 Plaintiff contended younger employees were hired following the September 15, 2014 layoff.
22 However, those hires before and after September 15, 2014 were for receptionist, client account
23 manager, administrative assistant, silkscreen printer, shipping clerk, file clerk in the finance
24 department, and a VP of Operations. These were skilled positions and plaintiff presented no
25 evidence that she was qualified for any of those positions. There were some quality control
26 positions available, however, Plaintiff Ixcoy indicated to Randy Freeman she was not
27 interested in that position and clearly state to Cole Warren "I don't want to do that."

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1 Further, both Cole Warren and Courtney Dubar testified the current quality control
2 positions required a more sophisticated employee and plaintiff Ixcoy never demonstrated any
3 ability to perform the more sophisticated procedures involved in the new quality control
4 position.

5 Plaintiff elicited testimony from Cole Warren and Courtney Dubar regarding a
6 November 2008 complaint made by former employee Blanca Davila along with seven other
7 coworkers filed with the Labor Commissioner's office regarding failure to provide rest periods
8 and second meal periods. (Exhibit 115) That prior bad acts should be used to prove
9 discrimination in the present case. Plaintiff cites Pantoja v. Anton (2011) 198 Cal App 4th 87.

10 For the reasons stated above, Plaintiff has failed to prove her case whether or not this
11 evidence was admitted as to a Complaint filed with the Labor Commissioner in November
12 2008, nine (9) years ago. Although the court can take judicial notice that a prior Complaint
13 was filed with the Labor Commissioner, the contents of the report constitute hearsay and are
14 therefore inadmissible in the present action.

15 Plaintiff also cites the People vs. Bryant, Smith and Wheeler (2014) 60 Cal 4th 355 for
16 the proposition that evidence of a prior unrelated claim is relevant and not prejudicial.
17 However, the People vs. Bryant, Smith and Wheeler case is a capital murder case, in part,
18 dealing with Penal Code Section 190.3: evidence of violent unadjudicated offenses as
19 aggravating factors. This criminal case has no application to the present civil case for age
20 discrimination and does not support the admission of the prior Blanca Davila Labor
21 Commissioner Complaint. The court finds for the Defendant and against Plaintiff on the Fifth
22 Cause of Action.

23 Plaintiff Cecilia Ixcoy has not presented a prima facie case of age discrimination. Even
24 assuming arguendo she had, Defendant Massive Prints presented substantial evidence of non-
25 discriminatory reasons for the subject layoff.

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1 Accordingly, JUDGMENT is entered in favor of defendant Massive Prints and against
2 Plaintiff Cecilia Ixcoy as to all causes of action. Defendant is entitled to costs as the
3 prevailing party.

4 Dated:

09/29/17

By: GREGORY W. ALARCON
JUDGE GREGORY W. ALARCON

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