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**Superior Court of California, County of Alameda  
Fremont Hall of Justice**

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<p>O'Neill  Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>Genesis Logistics, Inc.  Defendant/Respondent(s) (Abbreviated Title)</p>	<p style="text-align: center;">No. <u>RG08397331</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Summary Judgment/Adjudication Partial Grant</p>
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The Motion for Summary Judgment/Adjudication filed for Arthur Gbotoe and Richard Tinney and Loriza Ali and Exel, Inc. and Genesis Logistics, Inc. was set for hearing on 02/25/2010 at 02:30 PM in Department 607 before the Honorable George C. Hernandez, Jr.. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The motion is granted in part and denied in part.

The Motion of Defendants Genesis Logistics, Inc., Exel Inc., Loriza Ali, Arthur Gbotoe and Richard Tinney ("Defendants") for Summary Judgment or, in the Alternative for Summary Adjudication ("Motion") came on for hearing on February 25, 2010 in Department 607 of the above-entitled court, Judge George C. Hernandez presiding. Michael Tiliakos of Rao Tiliakos LLP appeared on behalf of Defendants. Valerie Toohey O'Dell of O'Dell Law Offices appeared on behalf of Plaintiffs. The Court has considered all of the papers filed in connection with Defendant's Motion, the arguments of counsel, and, good cause appearing, HEREBY ORDERS as follows:  
Defendants' Motion is GRANTED IN PART as follows:  
(1) The Motion for Summary Adjudication of the claim for Harassment (based on sex and/or national origin) is GRANTED as to both Plaintiff Mildred Padaong and Plaintiff Tim O'Neill. The employer defendants argue that the accused harasser, Defendant Loriza Ali, was not a supervisory employee such that the employer defendants can be held liable for her conduct. See State Dept of Health Servs. V. Superior Court, 21 Cal. 4th 1026, 1040 (2003); see also Defendants' Separate Statement in Support ("UMF"), Nos. 5-17 (Issue 1). Further, the employer defendants argue that, even if Defendant Ali is a non-supervisory employee, there is no evidence that they knew or should have known of Defendant Ali's alleged conduct. See *id.*; see also UMF 31 (Issue 2).  
As to Plaintiff Padaong, there is insufficient evidence that Defendant Ali was her supervisor. UMF 5-17 (Issue 1); Plaintiffs' Response to UMF ("RUMF"), Nos. 5-17; Defendants' Objections to Evidence, Nos. 1-14, Sustained. Defendant Ali's alleged "involvement" with supervisory decisions is inadequate to establish that she was, in fact, Plaintiff Padaong's supervisor for purposes of liability under the California Fair Employment and Housing Act ("FEHA"). Further, it is undisputed that Plaintiff Padaong never complained of any alleged harassment prior to her resignation. UMF 31 (Issue 2); RUMF No. 31. Therefore, there is insufficient evidence to establish liability for harassment on the part of the employer defendants because Defendant Ali was not Plaintiff Padaong's supervisor and the employer defendants had no knowledge of the alleged conduct prior to Plaintiff Padaong's resignation.

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Order

Id. The Motion as to this cause of action for Plaintiff Padaong is granted.

As to Plaintiff O'Neill, there does not appear to be any argument that Defendant Ali was his supervisor. Further, any alleged harassing conduct on the part of Defendant Ali as a non-supervisory employee fails to rise to the level of actionable harassment in its severity or pervasiveness. UMF 22-41, 58 (Issue 2); RUMF 22-41, 58. In addition, as discussed below, the employer defendants took reasonable steps to prevent and/or correct any alleged harassment that the employer defendants knew or should have known about after Plaintiff O'Neill complained. UMF 42-57 (Issue 2); RUMF 42-57. Therefore, there is insufficient evidence to establish liability on the part of the employer defendants for the harassment of Plaintiff O'Neill and the Motion as to this cause of action is granted.

(2) The Motion for Summary Adjudication of the claim that Defendants failed to Take Reasonable Steps to Prevent and/or Correct Harassment is GRANTED as to both Plaintiff Padaong and Plaintiff O'Neill. The Court determined that there is no viable claim for harassment for either Plaintiff. Thus, this claim for failure to take steps to prevent harassment necessarily fails. However, even if there were a viable claim for harassment for either Plaintiff, the Court finds that there is insufficient evidence that Defendants failed to take reasonable steps to prevent or correct such harassment. See, e.g., UMF 42-57 (Issue 2); RUMF 42-57. An investigation was conducted and Defendant Ali was disciplined. Id. Thus, the Motion as to this claim is granted.

(3) The Motion for Summary Adjudication of the claim for Retaliation is GRANTED as to both Plaintiff Padaong and Plaintiff O'Neil. A prima facie claim for retaliation requires some adverse employment action on the part of an employer that results from an employee engaging in "protected activity". See *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042 (2005). Plaintiffs have failed to submit sufficient evidence to demonstrate that, even if they engaged in protected activity, they suffered an adverse employment action. Id.

As to Plaintiff Padaong, it is undisputed that she did not complain of any alleged harassment until she resigned. UMF 110-112 (Issue 4); RUMF 110-112. Thus, even if Plaintiff Padaong engaged in alleged "protected activity", there was no adverse employment action because she resigned. Id. Further, without establishing any knowledge of the alleged harassment on the part of the employer defendants, Plaintiff's argument that she was constructively terminated (and that, therefore, serves as an adverse employment action) fails. Thus, the Motion as to this claim is granted.

As to Plaintiff O'Neill, although it is undisputed that he complained of alleged harassment while working for Defendants, it is likewise undisputed that Plaintiff O'Neill was never suspended, demoted or terminated, and he was disciplined in the same manner as other co-workers both prior to and after making a complaint of alleged harassment. UMF 112-116 (Issue 4); RUMF 112-116. Thus, there is insufficient evidence that Plaintiff O'Neill suffered any adverse employment action and his claim for retaliation fails. The Motion as to this claim is granted.

(4) The Motion for Summary Adjudication of the claim that Defendants failed to Take Reasonable Steps to Prevent and/or Correct Retaliation is GRANTED as to both Plaintiff Padaong and Plaintiff O'Neill. The Court determined that there is no viable claim for retaliation for either Plaintiff. Thus, any claim for failure to take steps to prevent retaliation necessarily fails.

(5) The Motion for Summary Adjudication of the claim for Violation of California Civil Code section 51.7 is GRANTED as to both Plaintiffs. The claims for harassment and retaliation fail as to both Plaintiffs. See supra sections 1-4. There is insufficient evidence of actionable conduct under Section 51.7. UMF 117-123 (Issue 5); RUMF 117-123.

(6) The Motion for Summary Adjudication of the claim for Intentional Infliction of Emotional Distress is GRANTED as to both Plaintiffs. The claims for harassment and retaliation fail as to both Plaintiffs. See supra sections 1-4. There is insufficient evidence of "outrageous" conduct to support a claim for Intentional Infliction of Emotional Distress. UMF 124-134 (Issue 6); RUMF 124-134.

(7) The Motion for Summary Adjudication of the claim for Wrongful Termination and/or Constructive Discharge is GRANTED as to Plaintiff Padaong. It is undisputed that Plaintiff Padaong was not terminated. UMF 161 (Issue 7); RUMF 161. Further, there is insufficient evidence to support the claims for harassment or retaliation. See supra sections 1-4. Thus, there is insufficient evidence to support a claim for any "hostile work environment" and resulting constructive discharge. The Court notes that this claim appears to be brought only on behalf of Plaintiff Padaong.

(8) The Motion for Summary Adjudication of the claim for Failure to Provide Meal Breaks and/or Rest Periods is DENIED. There is a triable issue of material fact as to whether Plaintiff Padaong received the meal breaks and rest periods to which she was entitled. UMF 181-186 (Issue 8); RUMF 181-186. The Court notes that this claim appears to be brought only on behalf of Plaintiff Padaong.

(9) The Motion for Summary Adjudication of the claim for Defamation is GRANTED. There is insufficient evidence to raise a triable issue of material fact as to this claim. UMF 187-191 (Issue 9); RUMF 187-191. Further it appears that many of the alleged statements supporting this claim are privileged and/or statutorily protected. The Court notes that this claim appears to be brought only on

behalf of Plaintiff O'Neill.

Defendants' Objections to Plaintiffs' Evidence are SUSTAINED.

Dated: 03/16/2010



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Judge George C. Hernandez, Jr.