APPENDIX A

United States Court of Appeals
for the Federal Court

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC., et al.
Defendants-Appellees.

17-56029

Appeal from the United States District Court for the Central District of California in D.C. No. 8:16-cv-00478-DFM Douglas F. McCormick, Magistrate Judge, Presiding**

Submitted November 30, 2018***

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges

Regena Bryant appeals pro se from the district court's summary judgment and judgment following a jury trial in her employment action under Title VII and the Age Discrimination in Employment Act

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*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.
** With the parties' consent, a magistrate judge presided over the jury trial. See 28 U.S.C. § 636(c); see also Fed. R. Civ. P. 73

("[A] magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial."). *** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

("ADEA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. Saman v. Robbins, 173 F.3d 1150, 1155, 1157 (9th Cir. 1999) (summary judgment and judgment as a matter of law).We affirm.

The district court properly granted summary judgment on Bryant's retaliation claim because Bryant failed to raise a genuine dispute of material fact as to causation. See Westendorf v. W. Coast Contractors of Nev., Inc., 712 F.3d 417, 422 (9th Cir. 2013) (explaining that protected conduct must be a but-for cause of an adverse employment action in order to support a retaliation claim).

The district court properly granted summary judgment on Bryant's harassment claim because Bryant failed to raise a genuine dispute of material fact as to whether any hostile conduct was sufficiently severe or pervasive to constitute harassment as a matter of law. See Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) ("[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Bryant's disparate treatment claim based on the telecommuting policy because Bryant failed to raise a genuine dispute of material fact as to whether any similarly situated employees were treated more favorably. See Hawn v. Exec. Jet Mgmt., Inc., 615 F.3d 1151,1156-57 (9th Cir. 2010) (individuals are similarly situated "when they have similar jobs and display similar conduct" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Bryant's disparate impact claim because Bryant failed to identify any evidence as to the impact of the telecommuting policy on a protected class. See Hemmings v. Tidyman's Inc., 285F.3d 1174, 1190 (9th Cir. 2002) (listing elements of a prima facie case for disparate impact).

The district court reasonably concluded that Bryant's wrongful termination claim was redundant of her other claims.

Contrary to Bryant's contentions, the district court's denial of defendants' motion for summary judgment determined only that there were questions of fact for the jury with respect to some of Bryant's claims, and not that Bryant had proved her claims as a matter of law. See Simo v. Union of Needletrades, Indus. & Emps., 322 F.3d 602, 610 (9th Cir. 2003) ("Summary judgment is improper if there are any genuine factual issues that properly can be resolved

only by a finder of fact. . . ." (internal quotation marks omitted)).

We do not review the district court's denial of Bryant's motion for summary judgment because there was a jury trial on the merits of her race and age discrimination claims. See Affordable Hous. Dev. Corp. v. City of Fresno, 433 F.3d 1182, 1193 (9th Cir.2006). Bryant waived any challenge to the jury verdict by failing to raise the issue on appeal. See Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

The district court did not abuse its discretion in orally issuing pretrial orders during a pretrial conference. See C.F. v. Capistrano Unified Sch. Dist., 654 F.3d 975, 984 (9th Cir. 2011) (standard of review for pretrial orders).

The district court did not abuse its discretion in ruling on the motions in limine. See Branch Banking & Tr. Co. v. D.M.S.I., LLC, 871 F.3d 751, 759 (9th Cir. 2017) (standard of review).

The district court properly granted judgment as a matter of law on Bryant's demotion claim because Bryant failed to introduce evidence at trial from which a reasonable jury could believe that defendants discriminated against her on the basis of race or age when she was demoted, and because Bryant failed to timely file an EEOC charge. See Shelley v. Geren, 666 F.3d 599, 608 (9th Cir. 2012) (elements of ADEA claim); Hawn, 615 F.3d at 1156

(elements of prima facie Title VII claim); Leong v. Potter, 347 F.3d 1117, 1122 (9th Cir. 2003) (scope of an EEOC investigation).

To the extent that Bryant contends that the district court improperly granted judgment as a matter of law on any additional claims, her contention is inconsistent with the record as to what the district court actually did.

The district court properly denied Bryant's motion for judgment as a matter of law because significant factual issues remained for the jury. See Peralta, 744 F.3d at 1085.

The district court did not abuse its discretion in denying Bryant's motion to disqualify all judges in the Central District of California. See E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1294 (9th Cir. 1992) (standard of review).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See Padgett, 587 F.3d at 985 n.2.

AFFIRMED.

FILED
DEC 4 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS
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APPENDIX B

United States Court of Appeals
for the Federal Court

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

17-56029

ORDER DENYING EN BANC

Appeal from the United States District Court for the Central District of California in D.C. No. 8:16-cv-00478-DFM Douglas F. McCormick, Magistrate Judge, Presiding

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Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges.

The panel as constituted above has recommended to deny the petition for rehearing en banc. The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b). The petition for rehearing en banc is DENIED.

FILED, DEC 4 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS,
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APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

Case No. SACV 16-00478-CJC(JCGx)

Page 21-Excerpts from District Court's Opinion (Defendants' Summary Judgment-Docket 74)

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ii. Legitimate, Nondiscriminatory Termination Rationale

Since Plaintiff has successfully made a prima facie case of race and of age discrimination, the burden shifts to the Defendants to "articulate some legitimate, nondiscriminatory reason" for the termination. *McDonnell Douglas*, 411 U.S. at 802 (1973); *see also Wallis*, 26 F.3d at 889. Defendants fail to do so. In their briefing, Defendants state that a "reduction in force constitutes a legitimate business reason," (Mot. at 10; *see also id.* at 15), and Mr. Kim and Mr. Tucker rely on Mr. Kim's February 6, 2014, analysis as supporting their

decision to terminate Plaintiff, (Dkt. 67-5 ¶¶ 22–30; Dkt. 67-7 ¶ 17). However, the Ninth Circuit has made clear that a reduction in force alone does not constitute a legitimate, nondiscriminatory reason for terminating a particular employee. *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1211–12 (9th Cir. 2008) ("On its own, the explanation that Diaz was discharged as part of a general reduction in force fails this requirement. Workforce reduction explains why Eagle Produce laid off a group of its workers, but it does not explain why Diaz was chosen to be part of that group."). Furthermore, the evidence produced by Defendants supports the conclusion that the decision to terminate Plaintiff was made in either early November 2013 or early December 2013, (Dkt. 70 Ex. 5); Mr. Kim states that the decision to terminate Plaintiff was made in early January 2014, (Dkt. 67-5 ¶ 31). Needless to say, the legitimate, nondiscriminatory reason for termination must *predate* the decision to terminate. Even the evidence Defendants provide regarding the logistical challenges of Plaintiff's telecommuting occurred on November 22, 2013, and December 13, 2013, postdating the earliest plausible date when Mr. Kim and Mr. Tucker decided to terminate Plaintiff. (*See* Dkt. 68 Ex. 15.) Because Defendants have failed to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination, their motion for summary judgment on Plaintiff's age and race discrimination claims is DENIED.

Finally, Defendants seek summary judgment on Plaintiff's claim for punitive damages. (Mot. at 22–25.) However, since the Court denies summary judgment on Plaintiff's claims for age and race discrimination on the basis of, *inter alia*, disputed facts, the same disputes preclude granting summary judgment on whether Defendants acted with malice or reckless indifference. *See* 42 U.S.C. § 1981a(b)(1).

V. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment is GRANTED as to Plaintiff's claims other than her claims for race and age discrimination, her second and third causes of action.

DATED: February 21, 2017
/s/Cormac J. Carney
CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

8:16-cv-00478-DFM

JUDGMENT AFTER JURY TRIAL

This action came on regularly for trial on June 27, 2017, in the United States District Court for the Central District of California, Magistrate Judge Douglas F. McCormick presiding. Plaintiff REGENA BRYANT appeared in pro per. Defendants UNITED HEALTHCARE SERVICES, INC., OPTUM SERVICES, INC., UNITEDHEALTH GROUP, INC., and OPTUMRX, INC. ("Defendants") were represented by Michael S. Kalt and Christina C.K. Semmer of Wilson Turner Kosmo LLP.

A jury of 8 persons was impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and the arguments of the attorneys and parties, the jury was instructed by

the Court. The jurors retired to consider their verdict. After returning to Court, the jury announced its verdict in favor of Defendants on Plaintiff's race discrimination claim under Title VII of the Civil Rights Act of 1964 and further announced its verdict in favor of Defendants on Plaintiff's age discrimination claim under the Age Discrimination in Employment Act.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in the above-captioned action in favor of Defendants as the prevailing party and that Plaintiff shall take nothing by her Second Amended Complaint. In accordance with Federal Rules of Civil Procedure, Rule 54(d) and L.R. 54 of the Central District of California, Defendants are the prevailing parties for the purposes of recovering costs in this action.

DATED: July 18, 2017

/s/Douglas F. McCormick

THE HON. DOUGLAS F. MCCORMICK
UNITED STATES MAGISTRATE JUDGE

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

8:16-cv-00478-DFM

(In Chambers) Order re: Defendants' Motion for Judgment as a Matter of Law (Dkt. 170) and Plaintiff's Renewed Motion for Judgment as a Matter of Law (Dkt. 175)

On the final day of trial, the Court orally granted Defendants' motion for judgment as a matter of law as to the portion of Plaintiff's age- and race-discrimination claims that Defendants discriminated against her on the basis of race and age when she was demoted from GL 29 to GL 28 in June 2013 when she began telecommuting. The Court found that even when the evidence presented at trial was construed in the light most favorable to Plaintiff, the evidence allowed only one reasonable conclusion, which is that neither Plaintiff's race or age played any factor in Defendants' decision to downgrade her to a GL 28. The Court accordingly removed any references to Plaintiff's demotion from its jury instructions.

The jury's defense verdict disposed of all but one of Defendants' other arguments in their motion for judgment as a matter of law. Defendants' remaining argument is that Plaintiff did not timely file an EEOC charge with respect her June 2013 demotion. See Dkt. 170 at 2-3. The Court now rules on this separate argument by concluding as a matter of law that Plaintiff did not file a timely EEOC charge.

A plaintiff alleging a Title VII or ADEA violation must timely exhaust her administrative remedies before filing suit in federal court. Under Title VII, a plaintiff must file a charge with the EEOC within 180 days of the allegedly discriminatory employment action, but if the plaintiff elects to first file a charge with California's Department of Fair Employment and Housing, then the charge must be filed with the EEOC within 300 days. 42 U.S.C. § 2000e-5(e)(1); Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002); Liu v. UC Berkeley/UC Regents, No. 15-04958, 2017 WL 412639, at *5 (N.D. Cal. Jan. 31, 2017). Under the ADEA, a plaintiff must file a charge within 180 days of the allegedly discriminatory action, but in states such as California that have their own agencies for enforcing the state's antidiscrimination laws, a charge must be filed within 300 days. 29 U.S.C. § 626(d)(1); Dezham v. Macy's W. Stores, Inc., No. 13-1864, 2014 WL 4437300, at *4 (C.D. Cal. Sept. 9, 2014).

According to the testimony and exhibits at trial, in June 2013, Plaintiff was notified that she would need to return to her former GL 28 position as a condition of telecommuting from North Carolina to Irvine, California. See, e.g., Trial Ex. 72. Plaintiff initiated an EEOC charge in February 2014, within 300 days of when she was notified of her demotion, but that charge alleged only disability discrimination and retaliation under the Americans with Disabilities Act ("ADA"). See Dkt. 96-6, Ex. 6 at 45 (Feb. 12, 2014 EEOC notice of charge of disability discrimination and retaliation under ADA), 48-49 (Feb. 3, 2014 EEOC intake questionnaire stating that basis for claim was retaliation and disability discrimination), 53 (May 21, 2014 EEOC notice of charge of disability discrimination and retaliation under ADA).1 The charge and associated documents did not include any allegations of race or age discrimination. Id. On May 23, 2014, the EEOC issued a dismissal and notice of rights, stating that it was unable to conclude that the information obtained established a statutory violation. Id. at 54.

On July 1, 2014, more than a year after Plaintiff was notified of her demotion, she filed an "amended" charge in the same case, alleging that she was demoted because of her race and age. See id. at 59-60 (July 1, 2014 amended charge).2 On December 22, 2015, the EEOC issued a dismissal and notice of rights in that case. Id. at 57.

Even assuming that the 300-day deadline applied to both Plaintiff's race- and age-

discrimination claims, they are untimely. Plaintiff's race- and age-discrimination claims were not within the scope of her February 2014 EEOC charge because those claims were not like or reasonably related to her disability-discrimination and retaliation allegations, nor were they within the scope of an investigation that reasonably could be expected to grow out of the timely allegations. See Bower v. City & Cty. of S.F., 490 F. App'x 854, 856 (9th Cir. 2012) (finding that race and religion claims were not within scope of timely-filed EEOC charge raising ADA claim). And Plaintiff's untimely July 2014 amended charge, which raised new race- and age-discrimination claims, did not relate back to her February 2014 charge raising disability-discrimination and retaliation claims because the new claims arose out of different statutory schemes. Id. at 856-57 (finding that plaintiff's "untimely amended EEOC charge, in which he attempted to add his Title VII claims, did not relate back to

1 Defendants' request that the Court take judicial notice of Plaintiff's EEOC filings and associated documents is GRANTED. See Dkt. 170-1 at 2 n.1; Fed. R. Evid. 201(b)(2); Anderson v. Holder, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012) ("[A court] may take judicial notice of records and reports of administrative bodies."); Adetuyi v. City & Cty. of S.F., 63 F. Supp. 3d 1073, 1080-81 (N.D. Cal. 2014) (granting party's request that court take judicial notice of EEOC documents under Fed. R. Evid. 201).

2 On July 1, 2014, Plaintiff also filed a new EEOC charge, which was assigned a different case number, alleging that she was laid off because of her race and age. Dkt. 96-6, Ex. 6 at 44.

his timely EEOC charge, because the new Title VII claims arose out of a distinct statutory scheme from his original ADA claims"); Pejic v. Hughes Helicopters, Inc., 840 F.2d 667, 675 (9th Cir. 1988) (finding ADEA claim time barred when original charge alleged Title VII violation and "contain[ed] no hint of age discrimination"). Defendants' motion for judgment as a matter of law on Plaintiff's age- and race discrimination claims based on the demotion from GL 29 to GL 28 is therefore GRANTED on the additional basis that those claims are untimely.

Following the jury's verdict, Plaintiff filed a renewed motion for judgment as a matter of law. See Dkt. 175. Under Federal Rule of Civil Procedure 50(b), a court may grant a renewed motion for judgment as a matter of law if "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." "A renewed motion for [judgment as a matter of law] is properly granted 'if the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict.'" Escriba v. Foster Poultry Farms, Inc., 743 F.3d 1236, 1242 (9th Cir.2014) (quoting Pavao v. Pagay, 307 F.3d 915, 918 (9th Cir. 2002)).

Plaintiff argues that Defendants failed to establish a legitimate business reason for her termination. Dkt. 175 at 2. There was ample evidence presented at trial to support a jury finding that Plaintiff was terminated after her supervisors

evaluated that a reduction-in-force was necessary and that she was the appropriate person from Defendants' audit department to be terminated. The jury had substantial evidence on which it could have concluded that Plaintiff had not demonstrated either (a) that Plaintiff's race was a motivating factor in Defendants' decision to terminate her or (b) that Defendants discharged Plaintiff because of her age. Plaintiff's renewed motion for judgment as a matter of law is therefore DENIED.

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Initials of Preparer: mba for nb

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APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

Case No. SACV 16-00478-CJC (JCGx)

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING PENDING MOTIONS WITHOUT PREJUDICE AND VACATING TRIAL AND ASSOCIATED HEARINGS AND DEADLINES

On June 29, 2016, the Court issued a Scheduling Order setting trial in this matter to begin Tuesday, May 2, 2017, at 8:30 a.m., with a pretrial conference set for Monday, April 24, 2017, at 3:00 p.m. (Dkt. 42; *see also* Dkt. 78 (reiterating pretrial procedures and deadlines).) Currently pending before the Court are eleven motions in limine filed by Defendants and one filed by Plaintiff. (Dkts. 83–93; 97.)

Due to the Court's congested criminal trial calendar, the Court, on its own motion, hereby VACATES the current trial and pretrial conference

dates and DENIES WITHOUT PREJUDICE the parties' motions in limine. (Dkts. 83–93; 97.) The Court shall reset the trial and pretrial conference dates when there is availability in the civil trial calendar, most likely to occur no earlier than **the fourth quarter of 2018.**

Because the Court cannot guarantee a trial date before the fourth quarter of 2018, the Court ORDERS the parties to meet and confer and notify the Court no later than April 17, 2017, whether they consent to have their jury trial rescheduled before Magistrate Judge Douglas F. McCormick.

The Court strongly encourages the parties to seriously consider this alternative. Judge McCormick is an experienced and highly competent judge, and their trial would likely be scheduled this year.

cc: Magistrate Judge Douglas F. McCormick
nhm
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APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

8:16-cv-00478-DFM

(In Chambers) Order re: Defendants' Motion in Limine #2 and Part of Motion in Limine #6

On May 10, 2017, the Court ruled on the parties' motions in limine except for Defendants' motion in limine #2 and a portion of #6. The Court now rules as follows on those remaining motions:

Defendants' motion in limine #2 (Dkt. 84)

Defendants move for an order precluding Plaintiff from claiming that the June 2013 telecommuting decision, which resulted in her "demotion," was discriminatory. Dkt. 84. They argue that Plaintiff failed to properly exhaust her administrative remedies regarding that claim and thus it is time barred.1 Id. Plaintiff opposes the motion on various grounds. Dkt. 106.

Defendants' motion in limine #2 is DENIED. "A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area," United States v. Heller, 551 F.3d 1108, 1111 (9th Cir. 2009), and it "should not be used to resolve factual disputes or weigh evidence," C & E Servs., Inc. v. Ashland Inc., 539 F. Supp. 2d 316, 323 (D.D.C. 2008). Nor should a motion in limine be used as a substitute for a motion for summary judgment. Id. (noting that motion in limine is not subject to the same "crucial" procedural safeguards as motion for summary judgment). Defendants' argument calls for a factual determination as to whether Plaintiff Timely exhausted her administrative remedies, which could potentially foreclose one of Plaintiff's claims; such questions are not properly resolved on a motion in limine. Defendants, however, may raise

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1 Defendants state that they raised this issue on summary judgment and that the District Judge failed to rule on it. See Dkt. 84 at 1 n.1. But Defendants raised this argument only in a single sentence in a footnote of their summary judgment motion, see Dkt. 67-1 at 8 n.6, and in one paragraph in their reply, see Dkt. 72 at 14-15. "Arguments raised only in footnotes, or only on reply, are generally deemed waived." Estate of Saunders v. C.I.R., 745 F.3d 953, 962 n.8 (9th Cir. 2014) (finding that plaintiff had waived argument raised in footnote in opening brief and again on reply); see also United States v. Strong, 489 F.3d 1055, 1060 n. 4 (9th Cir. 2007) (holding that "[t]he summary mention of an issue in a footnote, without reasoning in support of the appellant's argument, is insufficient to raise the issue on appeal" (citation omitted)).

the issue of whether Plaintiff's demotion claim can be presented to jury in an appropriate motion.

Remaining portion of Defendants' motion in limine #6 (Dkt. 88)

In the remaining portion of Defendants' motion in limine #6, Defendants seek to preclude Plaintiff from recounting the Equal Employment Opportunity Commission ("EEOC") proceedings following her termination. Dkt. 88; Dkt. 125. This portion of motion in limine #6 is GRANTED IN PART AND DENIED IN PART. Plaintiff will be permitted to present evidence regarding the EEOC proceedings only to the extent necessary to rebut Defendants' affirmative defense that she failed to timely exhaust her claim. But other than that, evidence of the EEOC proceedings will be excluded.

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Nb
Nancy Boehme
Deputy Clerk

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APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

8:16-cv-00478-DFM

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for November 21, 2016, at 1:30 p.m. is hereby vacated and off calendar.

Plaintiff Regena Bryant brings this action against Defendants Unitedhealth Group, Inc., United Healthcare Services, Inc., Optum Services, Inc., and OptumRx, Inc. Plaintiff alleges they violated Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act related to her employment, her filing

of a discrimination complaint, and the subsequent termination of her employment. (*See* Dkt. 30.) Before the Court is Plaintiff's motion for summary judgment. (Dkt. 45.) Plaintiff's motion is **DENIED**. Plaintiff has not demonstrated through uncontested facts that the Reduction In Force was pretextual or that Defendants committed fraud through Mr. Van Ginkle.

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Melissa Kunig
Deputy Clerk
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APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC.; et al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

ORDER GRANTING DEFENDANTS' *EX PARTE* APPLICATION AND ORDERING PARTIES TO SCHEDULE SETTLEMENT CONFERENCE WITH MAGISTRATE JUDGE WITHIN NINETY DAYS

After considering the papers filed in support of Defendants United Healthcare Services, Inc., Optum Services, Inc., UnitedHealth Group, Inc., and Optumrx, Inc.'s ("Defendants") *ex parte* application for an order to (1) schedule a settlement conference with the Magistrate Judge, or alternatively, (2) compel plaintiff to engage in Alternative Dispute Resolution ("ADR")-related discussions (Dkt. 50); and considering the opposition to the *ex parte* application filed by Plaintiff, (Dkt. 51), and good cause appearing:

IT IS HEREBY ORDERED THAT the *ex parte* application is GRANTED, and the parties must schedule and attend a settlement conference with Magistrate Judge Jay C. Gandhi on a date within ninety (90) days of this Order.

DATED: October 13, 2016

/s/Cormac J. Carney

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC. et, al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS [Dkt. 33] **AND DENYING DEFENDANTS' MOTION TO STRIKE** [Dkt. 34]

Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for June 20, 2016 at 1:30 p.m. is hereby vacated and off calendar.

Plaintiff Regena Bryant brings this action against nine entity defendants based on her allegations that they committed violations of Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA) related to her

employment, her filing of a discrimination complaint, and the subsequent termination of her employment.

Two defendant entities—United Healthcare Services, Inc. and Optum Services, Inc.—indicated that they employed her and filed answers to Ms. Bryant's Amended Complaint. Several of the remaining defendants moved to dismiss, arguing that they could not be sued under any cause of action Ms. Bryant alleged because they were not her "employer" as required under the pertinent statutes. This Court entered an order granting with leave to amend the motion to dismiss because Ms. Bryant had not adequately alleged that these entities had employed her. (Dkt. 29.) Ms. Bryant later filed a Second Amended Complaint, (Dkt. 30), and multiple defendants again moved to dismiss on the basis that she had not properly alleged that they had employed her. (Dkt. 33.)

After reviewing the parties' briefing and the Second Amended Complaint (SAC), the Court determines that Ms. Bryant has raised plausible allegations indicating that four of the nine defendants qualify as her employer, but that she has failed to do so with the remaining five. The case can obviously proceed against the two entities that acknowledge employing her, United Healthcare Services, Inc. and Optum Services, Inc. In addition to those two entities, the Court concludes that Ms. Bryant has sufficiently pled that UnitedHealth Group (UHG) employed her: multiple allegations against it in the SAC pertain to the employment

actions undergirding her discrimination allegations, (see, e.g., SAC ¶¶ 65-67, 75, 84-86, 96, 98-102), and Ms. Bryant's offer letter indicates that she works for UHG. (Dkt. 30-10, SAC Ex. 9 at PageID# 1036.) The Court also concludes that it would be premature to dismiss OptumRx, Inc. at this time because the pleadings indicate that Ms. Bryant's location of work was at OptumRx, Inc., which operates under Optum Services, Inc., (SAC ¶ 4), and because her offer letter indicates that she will be working "within OptumRx." (SAC Ex. 9 at PageID# 1036.) Ms. Bryant names both OptumRx and United Healthcare Group in her administrative complaint—failure to exhaust her administrative remedy presents no obstacle to her with respect to those defendants. (Dkt. 19-3 at 13-15.)

Ms. Bryant's SAC does not allege sufficient facts for the Court to conclude that the remaining five defendants belong in the case under the Single/Joint Employer theory of liability, (See Dkt. 10 at 4-5), or any other.

Accordingly, Defendants' motion to dismiss the SAC with respect to OptumRx, Inc. and UHG is DENIED. She is free to pursue her claims against those two defendants and the two nonmoving defendants, United Healthcare Services, Inc. and Optum Services, Inc. Defendants' motion to dismiss is GRANTED with respect to defendants United Healthcare Corporation, Catamaran PBM of Illinois, Inc., Catamaran PBM of Illinois II, Inc., OptumRx

Pharmacy, Inc., and OptumRx PBM of Wisconsin, LLC. Because she has already once been given leave to amend her complaint to assert valid claims against those defendants and has given no indication that she will be able to do so, she will not be given leave to amend her complaint with respect to those defendants again.

Defendants have filed a separate motion to strike large portions of Ms. Bryant's complaint, (Dkt. 34), arguing that they are redundant, immaterial, or impertinent in various places. Upon reviewing the SAC, the Court concludes that though it is wordy in places, it appears to be a good-faith effort to thoroughly assert Ms. Bryant's allegations. Defendants' motion to strike is DENIED.

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Melissa Kunig
Deputy Clerk
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APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC. et, al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

The Honorable VIRGINIA A. PHILLIPS, CHIEF
UNITED STATES DISTRICT JUDGE

MINUTE ORDER DENYING MOTION TO RECUSE ALL DISTRICT JUDGES IN THE CENTRAL DISTRICT COURT AND TRANSFER CASE TO NEUTRAL COURT DISTRICT (IN CHAMBERS)

The Court has received and considered Plaintiff Regina Bryan's ("Plaintiff") "Motion to Recuse All District Judges in the Central District Court and Transfer Case to Neutral Court District" ("Motion"), filed on December 8, 2016. (See Dkt. No. 63.) The Motion was referred to the Chief Judge for ruling pursuant to General Order 16-05. This matter is appropriate for resolution without oral argument pursuant to Local Rule 7-15.

On December 2, 2016, Plaintiff filed a motion to disqualify Judge Carney and Magistrate Judge Gandhi from presiding over this action. That motion was referred to Judge Walter pursuant to General Order 16-05 and Local Rule 72-5. Judge Walter denied the motion on December 8, 2016. (See Dkt. No. 62.)

Shortly after Judge Walter issued his order, Plaintiff filed the instant Motion before the Chief Judge. In the Motion, Plaintiff argues that Judge Walter did not consider at least seventeen "essential disqualifying facts" that, according to Plaintiff, demonstrate "a material and substantial appearance of conflict of professional interest that would make it impossible for Plaintiff to have a fair shot at getting a [j]ury trial and ultimately a fair trial." (Mot. at 4-8.)

The Chief Judge does not have jurisdiction to reconsider Judge Walter's order denying the motion for recusal. To the extent Plaintiff intends to challenge Judge Walter's order, her only remedy is to file a motion for reconsideration or an appeal. Reconsideration motions may be filed only under limited circumstances and are governed by Local Rule 7-18, which states as follows:

A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to

the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

(L.R. 7-18.) Accordingly, the Court will consider only Plaintiff's motion to the extent it seeks recusal of all District Judges in the Central District of California.

A judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a); see United States v. McTiernan, 695 F.3d 882, 891 (9th Cir. 2012) (stating that the standard for disqualification is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned") (internal quotation marks and citation omitted). "Ordinarily, the alleged bias must stem from an 'extrajudicial source.'" McTiernan, 695 F.3d at 891 (quoting Liteky v. United States, 510 U.S. 540, 554-56 (1994)). "[T]he words 'bias or prejudice' . . . connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess." Liteky, 510 U.S. at 550 (emphasis in original).

The party seeking disqualification bears a "substantial burden" and affidavits in support of disqualification are strictly construed against the party seeking disqualification. Id. The affidavit must set forth "facts and reasons" establishing the judge's bias, including: material facts stated with particularity; facts that, if true, would convince a reasonable person that bias exists; and facts showing that the bias is personal, rather than judicial, in nature. Reiffin v. Microsoft Corp., 158 F. Supp. 2d 1016, 1021-22 (N.D. Cal. 2001).

In the Motion, Plaintiff argues several reasons exist to require recusal of all the Judges in the Central District of California. (See Mot. at 8-12.) Most of the proffered reasons concern the purported appearance of impropriety and impartiality created by several rulings issued by Judge Carney and Magistrate Judge Gandhi. (Id. at 8-11.) In addition, Plaintiff contends that a key witness is the former spouse of one of the active District Judges sitting in the Court's Southern Division in Santa Ana. (Id. at 4-8, 11-12.)

According to Plaintiff, "the district judges' ability to appear impartial is hampered by the probability of judicial bias involving their personal friendship and professional friendship with [the Judge]. Plaintiff also has serious reasons to question these judges in the Central District Court's ability to remain impartial through Jury Trial if allowed." (Id. at 11.)

As stated supra and as Judge Walter noted in his December 8, 2016 order, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion," and even remarks by a judge that are critical, disapproving of, or hostile to a party will not ordinarily support a challenge on the basis of bias or partiality. Liteky, 510 U.S. at 555; see also United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986) (judge's prior rulings adverse to a tax protestor defendant were not sufficient cause for recusal). Plaintiff's arguments regarding the purported appearance of impropriety caused by Judge Carney and Magistrate Judge Gandhi's rulings fail. She provides no evidence that the rulings were "wrongful or inappropriate." Liteky, 510 U.S. at 550. Plaintiff has not met her burden to show that any of Judge Carney or Magistrate Judge Gandhi's rulings, considered individually or cumulatively, might lead a reasonable person to question the impartiality of all Judges in the Central District of California.

Likewise, Plaintiff also fails to provide any evidence of the relationships among the Judges of the Central District that might give rise for a reasonable observer to question their impartiality because the former spouse of one of the District Judges will be a witness. The Central District of California has three divisions: the Eastern Division covers Riverside and San Bernardino Counties; the Western Division covers Los Angeles, San Luis Obispo, Santa Barbara, and Ventura Counties; and the Southern Division covers Orange County. See 28 U.S.C. § 84. There are currently 32 active and senior

District Judges and 24 Magistrate Judges spread across five separate courthouses. No reasonable observer could conclude that all of the Judges of the Central District's impartiality might reasonably be questioned by the participation of a former spouse of a colleague as a witness in the instant action. Without any evidence of the relationships among the Judges of the Central District, Plaintiff's contention is based on speculation alone. "Section 455(a) does not require recusal based on speculation." Clemens v. U.S. Dist. Ct. for the Cent. Dist. of Cal., 428 F.3d 1175, 1180 (9th Cir. 2005). For the foregoing reasons, the Motion to Recuse All District Judges in the Central District Court and Transfer Case to Neutral Court District is **DENIED. IT IS SO ORDERED.**

Initials of Deputy Clerk: BH
Beatrice Herrera
Deputy Clerk
December 19, 2016
Case 8:16-cv-00478-CJC-JCG Document 66 Filed 12/19/16 Page 1 of 3 Page ID #:3079

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC. et, al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

ORDER DENYING PLAINTIFF'S MOTION TO RECUSE JUDGE AND TRANSFER CASE TO NEUTRAL COURT DISTRICT [filed 12/2/16; Docket No. 59]

On December 2, 2016, Plaintiff Regena Bryant ("Plaintiff") filed a Motion to Recuse Judge and Transfer Case to Neutral Court District ("Motion to Recuse"), which was referred to this Court on December 2, 2016, pursuant to General Order 16-05 and Local Rule 72-5.1 Docket No. 61. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. After considering the moving papers, and the arguments therein, the Court rules as follows:

Two statutes govern Plaintiff's Motion to Recuse Judge Cormac J. Carney and Magistrate Judge Jay C. Gandhi: 28 U.S.C. § 144 and 28 U.S.C. § 455(a). The standard for disqualification or recusal is the same under both statutes, namely, "'[w]hether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" United States v. Hernandez, 109 F.3d 1450, 1453-54 (9th Cir. 1997) (per curiam) (citation omitted). Judicial impartiality is presumed. See First Interstate Bank v. Murphy, 210 F.3d 983, 987 (9th Cir. 2000); United States v. Zagari, 419 F. Supp. 494, 501 (N.D. Cal. 1976). The party seeking disqualification bears a "substantial burden" of showing otherwise, and affidavits in support of disqualification are strictly construed against the party seeking disqualification. Id. The affidavit must set forth "facts and reasons" establishing the judge's bias, including: material facts stated with particularity; facts that, if true, would convince a reasonable person that bias exists; and facts showing that the bias is personal, rather than judicial, in nature. Reiffin v. Microsoft Corp., 158 F. Supp. 2d 1016, 1021-22 (N.D. Cal. 2001).

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1 Although Plaintiff's Motion to Recuse was initially referred to Judge James V. Selna (see Docket No. 60), it was subsequently referred to this Court. See Docket No. 61.

The burden of showing the requisite bias or prejudice cannot be met by simply complaining about the judge's rulings. "[J]udicial rulings alone almost never

constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994). It is well-established that, when a litigant claims the existence of judicial bias, "[t]he alleged bias and prejudice . . . must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United States v. Grinnell Corp., 384 U.S. 563, 583 (1966); see also Hernandez, 109 F.3d at 1454. Opinions formed by a judge on the basis of facts or evidence introduced during the proceedings, even when they are coupled with remarks that are "critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge," unless there is evidence of such deep-seated favoritism or antagonism as would make a fair judgment impossible. See Liteky, 510 U.S. at 555; see also United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).

Plaintiff has not offered any facts which might lead a reasonable person to question the impartiality of Judge Cormac or Magistrate Judge Gandhi. Instead, Plaintiff merely speculates that Judge Cormac is biased against her because of his "friendship and professional acquaintance with Judge Josephine Staton" because Judge Stanton's ex-husband, although not named as a defendant, is purportedly "an accused in this case, and the key witness for Defendants." See Motion to Recuse, 3:17-20 and 7:14-15. Plaintiff argues that Judge Cormac's alleged bias is demonstrated by "the cumulative

negative effects of various unfavorable rulings by Judge Cormac on motions filed by Defendants against Plaintiff, approvals of consecutive Ex Parte applications as well as the very quick denial of Plaintiff's summary judgment motion prior to his Magistrate Judge's settlement conference requested by Defendants." Motion to Recuse, 3:21-27. In addition, to the extent Plaintiff believes that any of Judge Cormac's rulings were erroneous, Plaintiff's claim of error would be properly addressed through a reconsideration request and/or an appeal, not through an unsupported assertion of bias and prejudice. See, F.J. Hanshaw Enterprises, Inc. v. Emerald River Development, Inc., 244 F.3d 1128, 1145 (9th Cir. 2001) (even though "[j]udges are known to make procedural errors and even substantive errors on occasion," any such errors are a basis for appeal, not disqualification). In this case, no proof of bias or prejudice stemming from an extrajudicial source has been presented; indeed, no proof of any bias or prejudice has been made at all. Rather, all that has been shown is Plaintiff's dissatisfaction with Judge Cormac's rulings in this action. Plaintiff has not presented any facts that would warrant the disqualification of Judge Cormac or Magistrate Judge Gandhi or the reassignment of this case to another judge. Accordingly, Plaintiff's Motion to Recuse is **DENIED.** IT IS SO ORDERED.

Shannon Reilly, Initials of Deputy Clerk: sr Courtroom Deputy

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC. et, al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

REFERRAL OF MOTION TO DISQUALIFY JUDGE / MAGISTRATE JUDGE

A Motion to Disqualify Judge Cormac J. Carney was filed on 12/2/2016 . Pursuant to General Order 1605 and Local Rule 725, this motion is referred to **Judge John F.Walter** for determination.

Clerk, U.S. District Court
Date December 2, 2016
By /s/ *Maria Barr*
Deputy Clerk
Case 8:16-cv-00478-CJC-JCG Document 61 Filed 12/02/16 Page 1 of 1 Page ID #:3013

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

REGENA BRYANT,
Pro Se Plaintiff-Appellant,
v.

UNITEDHEALTH GROUP, INC. et, al.
Defendants-Appellees.

Case No. 8:16-cv-00478 CJC (JCGx)

REFERRAL OF MOTION TO DISQUALIFY JUDGE / MAGISTRATE JUDGE

A Motion to Disqualify Judge Cormac J. Carney was filed on 12/2/2016 . Pursuant to General Order 1605 and Local Rule 725, this motion is referred to **Judge James V. Selna** for determination.

Clerk, U.S. District Court
Date December 2, 2016
By /s/ *Maria Barr*
Deputy Clerk
Case 8:16-cv-00478-CJC-JCG Document 60 Filed 12/02/16 Page 1 of 1 Page ID #:3012