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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

HILDA ARANDA, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, et al., Defendants and Respondents.	B279481 (Los Angeles County Super. Ct. No. BC586063)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel S. Murphy, Judge. Affirmed.

Law Offices of Carlin & Buchsbaum and Ana L. De La Torre for Plaintiff and Appellant.

Gutierrez, Preciado & House, Calvin House, Nohemi Gutierrez Ferguson and Nicholas P. Weiss for Defendants and Respondents.

Plaintiff and appellant Hilda Aranda (Aranda) appeals a judgment following a grant of summary judgment in favor of her employer, defendant and respondent County of Los Angeles (the County), and two of her former supervisors, Kelly Saldivar (Saldivar) and Tatiana Moskova (Moskova) (sometimes collectively referred to as the County).

The issues presented include whether certain actions taken by the County amounted to adverse employment actions, whether Aranda raised a triable issue that she was denied certain positions on account of her age, and whether conduct by the County occurring outside the limitations period is actionable under the continuing violations doctrine.

We reject Aranda's claims of error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. *Facts*.

Aranda began working for the County in 1989. Aranda has had one child, born in 1994. Aranda began working at the County's Child Support Services Department (CSSD), in the Commerce location, in 2005. Saldivar was Aranda's direct supervisor, and Moskova, the division chief of CSSD Human Resources (HR), was Saldivar's superior.

Aranda alleges that she has a disability of severe postpartum depression, which commenced in 2009, " 'following the birth of her baby.' " She took a period of medical leave in 2009. She never told anyone at the County that she suffered from postpartum depression.

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[1] The pertinent facts will be discussed in greater detail in the Discussion portion of the opinion.

In 2010, Aranda agreed to a transfer to the County's Department of Beaches and Harbors in Marina del Rey. She transferred back to CSSD in May 2012. On May 14, 2012, Aranda presented a doctor's note supporting her request not to work with Saldivar based on "work-related" issues between them. Aranda was then placed under another supervisor, Nancy Canosa, while Saldivar remained in the same department as Aranda. Aranda alleged that Saldivar continued to harass her, as by calling her names such as "schizo" and "nutso."

In February 2013, Canosa instructed Aranda and her coworkers to communicate with Saldivar's HR unit only by email, because Canosa wanted all their interactions documented.

In May 2014, Aranda was given a Notice of Expectations reiterating office policies and stating that she was expected to be courteous to her supervisors and coworkers.

In June 2014, Aranda was notified that she was being investigated for improperly accessing the County's Absence Management System and attempting to change her own information.

On June 6, 2014, Aranda presented a letter from her doctor stating that her then supervisor, Rose Duran-Jimenez, was causing her health issues, including stress. On June 19, 2014, Aranda presented another letter from her doctor stating that Aranda was permanently not to be supervised by Duran-Jimenez, and was not to attend Moskova's mandatory divisional meetings until January 31, 2015.

Due to Aranda's work restrictions, it was determined that she would be best accommodated by being reassigned from CSSD's HR section. On June 27, 2014, Aranda was notified of her transfer to the Central Administrative Team (CAT), in a

different building in the same location, with the same pay, title, and benefits, and with work duties within the scope of her job title.

On October 8, 2014, Aranda requested a promotion and more work. In December 2014, she met with David Kilgore, chief deputy director of the CSSD, to discuss alternative placements. Kilgore suggested that Aranda be transferred to the Torrance office because it was near her home, had an opening that matched her skills, and would continue to fulfill her work restrictions. Kilgore offered the Torrance position to Aranda but did not coerce her into taking it. Kilgore told her that she could decline the position or return to her previous position at any time. Aranda voluntarily accepted the position in Torrance.

With respect to exhaustion of administrative remedies, on June 9, 2014, Aranda filed a complaint with the Department of Fair Employment and Housing (DFEH), which alleged discrimination and retaliation but not harassment. She filed another administrative complaint on May 27, 2015, which added a claim of harassment based on a hostile work environment, and also named Saldivar and Moskova as individual respondents.

2. *Pleadings*.

Aranda commenced this action in June 2015, and filed the operative first amended complaint two months later. She pled the following causes of action pursuant to the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.: (1) retaliation for complaining about harassment and discrimination; (2) discrimination on the basis of age; (3) disability discrimination; (4) failure to accommodate her disability; (5) failure to engage in the interactive process to determine a proper accommodation; and (6) hostile work

environment harassment.[2] With respect to her disability claims, Aranda alleged, inter alia, that she was subjected to retaliation for having taken medical leave due to depression, that her depression was aggravated by harassment, and that she was denied a reasonable accommodation for her disability.

Aranda specifically complained of eight allegedly adverse employment actions: (1) her temporary transfer to the Department of Beaches and Harbors in 2010; (2) the requirement that she email questions to Saldivar's HR unit, as opposed to asking questions in person; (3) the failure to promote her to Operations in March 2013; (4) a failure to promote her to a position in risk management after July 2013; (5) a failure to promote her to a Senior Departmental Personnel Technician (SDPT) position in March 2014; (6) the 2014 investigation into Aranda's alleged abuse of the Absence Management System; (7) Aranda's 2015 transfer to Torrance; and (8) Aranda's receipt of the Notice of Expectations memo in May 2014.

3. *Motion for summary judgment*.

The County, Saldivar, and Moskova moved for summary judgment, contending that "[a]lthough Aranda alleges that she was discriminated against based on age and retaliated against, she cannot establish a *prima facie* case as to any County action about which she complains. Several of the alleged adverse actions are time-barred. Others do not rise to the level of a material adverse action. And for some, Aranda lacks evidence of causation or discriminatory motive. The County had legitimate business reasons for all of them and Aranda lacks evidence to

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[2] All further statutory references are to the Government Code, unless otherwise specified.

show pretext. Aranda's harassment cause of action is time-barred for failure to file a timely charge of harassment with the [DFEH]."

4. *Opposition to summary judgment motion*.

In opposition, Aranda contended: conduct prior to June 9, 2013 was not time-barred pursuant to the continuing violations doctrine; she had been subjected to adverse employment actions; a triable issue existed as to whether the County's reasons for denying her a promotion were a pretext for age discrimination; and triable issues existed on her claims for disability discrimination, failure to accommodate, failure to engage in the interactive process, and hostile work environment harassment.

5. *Trial court's ruling*.

After taking the matter under submission, the trial court granted summary judgment, ruling in relevant part as follows:

Because Aranda filed her initial DFEH complaint on June 9, 2014, any alleged adverse actions occurring before June 9, 2013 were time-barred and could not be rescued by the continuing violations doctrine. Therefore, Aranda's claims arising out of her transfer to the Beaches and Harbors Department in September 2010, the requirement implemented in June 2012 that she email her questions to HR rather than asking questions in person, and the failure to promote her to Operations in March 2013, all were time barred.

On the issue of whether certain conduct by the County amounted to adverse employment actions, the 2014 investigation into Aranda's accessing the Absence Management System, Aranda's 2015 transfer to the Torrance location, and her receipt of a Notice of Expectations in May 2014, were not adverse employment actions that materially altered her terms or

conditions of employment. While these employer actions may have caused Aranda anger or upset, there was no evidence that they impaired her job performance or prospect for advancement, and further, she voluntarily accepted the transfer to the Torrance location.

Also, the County proffered legitimate non-retaliatory reasons for not promoting Aranda, and Aranda failed to meet her burden to show that the proffered reasons were pretextual.

Thus, the trial court concluded that the purported adverse employment actions alleged by Aranda were not actionable, stating "[t]he purported adverse employment actions are either (1) barred by the statute of limitations, (2) do not constitute an adverse employment action for the purposes of FEHA, or (3) were based on legitimate non-retaliatory reasons. Having failed to show an actionable adverse employment action, which is an essential element to both retaliation and discrimination claims, Plaintiff's retaliation and discrimination claims necessarily fail."

The trial court also determined that Aranda's cause of action for harassment based on a hostile work environment was time-barred because it was predicated on events occurring more than one year before she filed her May 27, 2015 DFEH complaint for harassment.

Aranda filed a timely notice of appeal from the judgment.

CONTENTIONS

Aranda contends the trial court erred in granting summary judgment because: she was retaliated against in violation of FEHA by being subjected to adverse employment actions; she was discriminated against on the basis of age and presented evidence of an illegal motive; and the trial court should have applied the continuing violations doctrine to her causes of action

for disability discrimination and hostile work environment harassment.

DISCUSSION

1. *Standard of appellate review*.

"Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.]" (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1037 (*Yanowitz*).)

2. *No merit to Aranda's contention the trial court erred in finding that certain incidents did not amount to adverse employment actions; no triable issue in that regard.*

a. *General principles re adverse employment actions*.

In order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) she engaged in a protected activity, (2) the employer subjected the employee to an "adverse employment action," and (3) a causal link existed between the protected activity and the employer's action. (*Yanowitz*, *supra*, 36 Cal.4th at p. 1042.) Similarly, to establish a prima facie case of discrimination under the FEHA, a plaintiff must provide evidence that (1) she was a member of a protected class, (2) she was qualified for the position she sought or was performing competently in the position she held, (3) she suffered "an adverse employment action," such as termination, demotion, or denial of

an available job, and (4) some other circumstance suggests discriminatory motive. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355 (*Guz*).)

Yanowitz addressed the appropriate standard for determining whether an employee has been subjected to a retaliatory adverse employment action. (*Yanowitz*, *supra*, 36 Cal.4th at p. 1049.) *Yanowitz* concluded an adverse employment action is one "that materially affects the terms, conditions, or privileges of employment, rather than simply that the employee has been subjected to an adverse action or treatment that reasonably would deter an employee from engaging in the protected activity." (*Id.* at p. 1051.)

Although an adverse employment action includes termination, demotion, or the denial of an available job (*Guz*, *supra*, 24 Cal.4th at p. 355), it is not limited to those circumstances. "Retaliation claims are inherently fact specific, and the impact of an employer's action in a particular case must be evaluated in context. Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim." (*Yanowitz*, *supra*, 36 Cal.4th at p. 1052.) The protections against discrimination in the workplace therefore are "not limited to adverse employment actions that impose an economic detriment or inflict a tangible psychological injury upon an employee." (*Ibid.*) Rather, the FEHA protects an employee against unlawful discrimination with respect to "the entire spectrum of employment actions that are reasonably likely to

adversely and materially affect an employee's job performance or opportunity for advancement in his or her career." (*Id.* at pp. 1053–1054.)

b. *The alleged adverse employment actions at issue on appeal.*

The trial court found that of the eight alleged adverse actions, three were not actionable. It stated: "Based on the standard articulated in *Yanowitz*, the Court finds that (6) the 2014 investigation [into] Plaintiff's 'use and abuse of the Absence Management System'; (7) Plaintiff's 2015 transfer to the Torrance location; and (8) Plaintiff's receipt of a 'Notice of Expectations' memo in May 2014 are not actionable adverse employment actions. There is no evidence that the 2014 investigation into alleged abuse of the Absence Management System or Plaintiff's receipt of a 'Notice of Expectations' materially altered her terms or conditions of employment. While the aforementioned disciplinary actions may have caused Plaintiff 'anger or upset,' there is no evidence that it impaired Plaintiff's job performance or prospect for advancement.' It is undisputed that Plaintiff voluntarily accepted the position in the Torrance office. (UMF l04.) As such, Plaintiff cannot assert that her transfer to Torrance was an adverse employment action."

Aranda contends the trial court erred in concluding these three events did not qualify as adverse employment actions. As explained below, we disagree.

c. *Analysis of the three events that the trial court found not to be adverse employment actions.*

(1) *The May 2014 Notice of Expectations.*

On May 22, 2014, Aranda was given a "Notice of Expectations" that reminded her of various office policies and

advised her that she was expected to be courteous to her supervisors and coworkers.

In moving for summary judgment, the County asserted the Notice of Expectations was not a formal reprimand and did not result in any lost pay or other negative outcomes.

In opposition, Aranda disputed the County's position that the Notice of Expectations did not have an adverse impact on her. In support, Aranda cited her deposition testimony that she attempted suicide in September 2014.

However, the cited portion of Aranda's deposition testimony simply states that she attempted to overdose in September 2014, but does not link the suicide attempt to the employer's Notice of Expectations. As indicated, actions by an employer that *cause* "tangible psychological injury" may constitute adverse employment actions (*Yanowitz*, *supra*, 36 Cal.4th at p. 1052), but Aranda failed to show any nexus between the Notice of Expectations and her asserted psychological injury. Therefore, the trial court properly concluded the 2014 Notice of Expectations did not constitute an adverse employment action.

(2) *The 2014 investigation into Aranda's alleged misuse of the Absence Management System.*

In 2014, the County investigated Aranda for improperly accessing her own records in the Absence Management System and attempting to make changes to her records. Following the investigation, she received a written reprimand.

The County argues this incident did not constitute an adverse employment action because the investigation merely resulted in a reprimand and there was no evidence that it had any negative workplace impact on Aranda.

Aranda, in turn, contends that being placed under investigation "for misusing a system had the affect of tarnishing [her] reputation at [the County] and made it unlikely that she would be promoted in the future." However, Aranda cites no evidence to support her conclusion with respect to her future career prospects. This bare assertion by Aranda, unsupported by any citation to evidence in the record, is insufficient to raise a triable issue in this regard.

(3) *The 2015 transfer to Torrance*.

In 2015, Aranda was transferred to the Torrance office. She alleged the transfer was an adverse employment action.

In moving for summary judgment, the County made the following showing, which was undisputed: In December 2014, Aranda met with David Kilgore, the chief deputy director of her department. Kilgore suggested that Aranda be transferred to the Torrance office because it was near her home, had an opening that matched her skills, and would continue to fulfill her work restrictions. He offered Aranda the position "and did not order, force, or coerce her into taking it." Further, he "specifically informed Aranda that she could refuse the position, or return to her previous placement any time after accepting the position." Aranda "voluntarily accepted the Torrance position that Kilgore offered her."

In opposition, Aranda asserted any transfers were "due to the harassment and discrimination [she] received after taking medical leave in 2009."

We conclude this was insufficient to raise a triable issue in this regard. As indicated, Aranda's opposing separate statement conceded that she voluntarily accepted an optional transfer to Torrance, and that following the transfer she retained the ability

to return to her previous placement. Accordingly, the trial court properly determined the transfer to Torrance did not constitute an adverse employment action.

In sum, Aranda failed to raise a triable issue of material fact as to whether any of the above three incidents amounted to an adverse employment action.

3. *No triable issue with respect to Aranda's claim she was denied promotions on account of her age.*

Aranda claims she was discriminated against on the basis of her age. She argues as follows: During 2013 and 2014, she applied for various promotions. She was 45 years of age at the time and did not receive any of the promotions for which she applied. Instead, younger employees were promoted. Further, Moskova, who was doing the hiring for positions, told Aranda that she was "a crazy old lady that should just retire."

As discussed below, these arguments by Aranda lack support in the record.

a. *General principles*.

To establish a prima facie case of discrimination, the plaintiff must provide evidence that (1) she was a member of a protected class, (2) she was qualified for the position she sought or was performing competently in the position she held, (3) she suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive. (*Guz*, *supra*, 24 Cal.4th at p. 355.) If the plaintiff establishes a prima facie case, a presumption of discrimination arises. (*Ibid*.) The burden then shifts to the employer to rebut the presumption by producing admissible evidence that its action was taken for a legitimate, nondiscriminatory reason. (*Id*. at pp. 355–356.) If the

employer sustains this burden, the presumption of discrimination disappears. (*Id*. at p. 356.) The plaintiff then has the burden to attack the employer's proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive. (*Ibid*.)

b. *Aranda's March 2013 application for a promotion to a position in Operations; the position was filled before Aranda applied for it.*

In March 2013, Aranda applied for a promotion to a position in Operations. However, the County's moving papers showed the Operations position was filled before Aranda applied for it.

In opposition, Aranda disputed that the Operations position had been filled prior to her application. In support, she cited paragraph 14 of her declaration, wherein she stated that civil service rules required lateral transfers be posted in a bulletin. However, this statement by Aranda failed to controvert the County's showing that the Operations position was filled before she applied for it. Thus, Aranda failed to raise a triable issue that she was denied the Operations position on account of her age.

c. *The Examinations Unit position was filled in 2014 by lateral transfer; Aranda did not apply for it.*

The undisputed facts showed that in February 2014, the County decided to add the position of an Administrative Services Manager I to the Examinations Unit, and it filled the position by lateral transfer. This position was not announced in the bulletin, and Aranda did not apply for it.

Here again, Aranda attempted to raise a triable issue by asserting that the Examinations Unit position was required to be

posted in a bulletin so that employees countywide could apply for it. However, this assertion did not controvert the County's showing that the position was filled without Aranda applying for it, and it is insufficient to raise a triable issue as to whether Aranda was denied the Examinations Unit position on account of her age.

d. *Aranda's March 2014 application for the SDPT position; a more qualified candidate was selected*.

In March 2014, Aranda applied for the SDPT position. The application process consisted of initial Band placement, followed by an interview. At the time, Aranda was in Band 5 on the SDPT promotional list, which was the lowest Band for that list. Aranda could be, and was, considered for the SDPT position despite her low Band placement. Neither Saldivar, Moskova, nor any other CSSD manager had any input over any candidate's Band placement, which was determined by the County's central HR office. Cynthia Martinez, the candidate who was ultimately selected, was placed in Band 4 prior to her interview.

Assuming arguendo that Aranda met her burden to make a prima facie showing that she was not selected for the SDPT position on account of her age, a conclusion we do not reach, the County met its burden to show its decision to hire Martinez rather than Aranda was based on legitimate, nondiscriminatory factors. (See, e.g. *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52,74–75 [decision makers met their burden by submitting declarations setting forth specific job-related reasons why another applicant was selected].) The County showed that Martinez, unlike Aranda, would require minimal or no training to fill the position. Moskova explained in a supporting declaration that Martinez was selected because she

was the most qualified candidate and had indicated in her interview that she had worked with the relevant e-HR system since June 2013. As for Aranda's qualifications, Moskova stated that in the interview, Aranda "indicated that she did not have experience with several applicable County systems, including the main system that the selected candidate would be tasked with operating, the 'e-HR' system. As a result, [Aranda] would need 'considerable training and supervision.' "

In opposition, Aranda disputed that Martinez would need minimal or no training, citing her own deposition testimony that she had hired Martinez and that she had trained Martinez previously. However, the fact that Aranda had trained Martinez in the past did not controvert the County's evidentiary showing that Aranda required training on the e-HR system and that Martinez would need minimal or no training.

To establish discriminatory intent, Aranda also asserts in her opening brief that Moskova told her in the summer of 2014 that she was "a crazy old lady that should just retire." However, Aranda's opening brief draws this fact from her opposition to the summary judgment motion, which in turn cited to her declaration. This fact was *not* identified in Aranda's 30-page responsive separate statement that enumerated 149 discrete facts, including 19 additional facts that Aranda was relying on to demonstrate the existence of triable issues. Because Moskova's alleged remark was not mentioned in Aranda's responsive separate statement, the trial court had discretion to disregard it (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315; see generally, Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) §§ 10:95.4, 10:196.3) and Aranda has not shown the trial court

abused its discretion in doing so. Merely because "the factual underpinning for [this] claim can be found somewhere in some document filed or lodged below" (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30) was insufficient to raise a triable issue below or to preserve the issue for appeal.

In sum, Aranda failed to raise a triable issue of material fact with respect to any of her claims that she was not selected for various positions on account of her age.

4. *Trial court properly refused to apply the continuing violations doctrine to three alleged violations that occurred more than one year before she filed her initial DFEH complaint.*

Aranda filed her initial complaint with the DFEH on June 9, 2014, alleging discrimination and retaliation. A litigant must file an administrative complaint with the DFEH within one year of the date of the alleged unlawful practice, before suing for a violation of the FEHA.[3] (*Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724.) Because of the one-year filing requirement, the trial court found that three alleged adverse actions that occurred prior to June 9, 2013, were time-barred. The three untimely employer actions were "(1) her temporary transfer [to the Beaches & Harbors Department] in September 2010; (2) the requirement implemented in June 2012 that she email questions to the HR section as opposed to asking questions in person; and (3) the failure to promote her to 'Operations' in March 2013."

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[3] "No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice . . . occurred . . . ." (§ 12960, subd. (d).)

The trial court further found that suit on these three incidents "cannot be rescued by the continuing violations doctrine. . . . . The Court finds that the time gaps between these incidents fail to satisfy the requirement that the actions occur 'with reasonable frequency.' Furthermore, Plaintiff fails to show that these actions were related or 'sufficiently similar in kind.' In general, 'discrete discriminatory acts are not actionable if time-barred, even when they are related to acts alleged in timely filed charges.' [Citation.] Here, the three actions occurring prior to June 2013 were discrete acts, and achieved permanence. As such, these actions are time-barred."

On appeal, Aranda contends the trial court erred in not applying the continuing violations doctrine to these alleged violations. The argument is unavailing.

"[T]he continuing violation doctrine comes into play when an employee raises a claim based on conduct that occurred in part outside the limitations period." (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 812 (*Richards*).) In *Richards*, a disabled employee resigned from her job after a five-year period during which she claimed her employer was unwilling to effectively accommodate her disability. (*Id.* at p. 801.) The Supreme Court was called upon to decide whether "an employer [is] liable for actions that that take place outside the limitations period if these actions are sufficiently linked to unlawful conduct within the limitations period." (*Id.* at p. 812.) *Richards* concluded that an employer's conduct over a period of time would be deemed a continuing violation "if the employer's unlawful actions are (1) sufficiently similar in kind . . . ; (2) have occurred with reasonable frequency; (3) and have not acquired a degree of permanence. [Citation.]" (*Richards*, *supra*, 26 Cal.4th at p. 823.)

For example, an employer may engage in a continuing course of conduct under the FEHA by refusing reasonable accommodation of a disabled employee, or by engaging in a course of harassment. (*Richards*, *supra*, 26 Cal.4th at p. 823.) In *Richards*, the issues related to the employer's failure to accommodate an employee who was disabled with multiple sclerosis; the employer's failure to accommodate outside the limitations period included numerous issues of the employee's access to and treatment within the workplace that continued into the limitations period. (*Id*. at pp. 803–809.)

Here, as the trial court found, the three actions outside the limitations period were not sufficiently similar to the later purported violations to amount to a single course of conduct. As already discussed, with respect to the alleged violations occurring *within* the limitations period, Aranda failed to raise a triable issue with respect to her multiple claims of failure to promote, and she also failed to show that the 2014 investigation, the 2014 Notice of Expectations, or the 2015 transfer to Torrance, amounted to adverse employment actions. Therefore, the three alleged violations that occurred prior to June 9, 2013, were not part of a single "course of conduct" (*Richards*, *supra*, 26 Cal.4th at p. 823) linked to violations occurring inside the limitations period.

Also, those three alleged violations that occurred outside the limitations period did not occur with "reasonable frequency." (*Richards*, *supra*, 26 Cal.4th at p. 823.) Rather, the transfer to the Beaches and Harbors Department in 2010, the 2012 requirement that Aranda email questions to the HR section as opposed to asking questions in person, and the alleged failure to

promote in 2013, were discrete events that occurred over a period of years.

Further, those acts acquired "a degree of permanence" at the time they occurred. (*Richards*, *supra*, 26 Cal.4th at p. 823.) For example, the denial of the promotion in March 2013 attained finality at that time.

For these reasons, the trial court properly determined the three alleged adverse actions that occurred prior to June 9, 2013, "cannot be rescued by the continuing violations doctrine."

5. *Trial court properly refused to apply the continuing violations doctrine to Aranda's cause of action for hostile work environment harassment.*

In this regard, the trial court ruled: "Defendants contend that Plaintiff's harassment claims are barred by the statute of limitations. It is undisputed that Plaintiff's June 9, 2014 DFEH complaint did not allege harassment, and that harassment was first alleged in Plaintiff's May 27, 2015 DFEH complaint. (UMF 128-130.) It is undisputed that the alleged harassment ceased by February 2014. (UMF 125.) Because the last incident of harassment occurred more than a year before Plaintiff's harassment claim was filed with the DFEH on May 27, 2015, Plaintiff's harassment claim is barred by the statute of limitations. Plaintiff does not address the statute of limitations issue in her opposition, and instead merely reiterates the allegations of the complaint. As such, Defendants have shown a complete defense to Plaintiff's harassment claim based on the statute of limitations."

On appeal, Aranda argues that any harassing conduct that occurred between May 26, 2012 up until 2014 is actionable under the continuing violations doctrine. Aranda asserts that during

this time frame, she was subjected to comments from Saldivar such as "schizo" and "nutso", and that in 2012, when she returned to CSSD, Moskova told her, "I don't know why you came back, everyone in H.R. hates you." However, Aranda did not rely on that remark by Moskova to support her harassment claim against Moskova. The respective separate statements of undisputed facts established as an undisputed fact that Aranda's harassment claim against Moskova was based solely on Moskova's failure to respond adequately to Saldivar's harassment of Aranda.

Further, the undisputed evidence establishes that Aranda's harassment claim is time-barred, with respect to both Saldivar and Moskova.

The parties' respective separate statements establish the following: Aranda alleged that Saldivar repeatedly insulted her upon her return to CSSD in 2012. Saldivar's alleged harassment ceased by February 2014, and on March 19, 2014, Aranda presented a doctor's note stating that she was no longer restricted from working under Saldivar because Aranda had " 'overcome any differences between them and no issues or problems have occurred while working together.' " Therefore, the trial court properly determined that Aranda's claim of harassment by Saldivar, which Aranda first raised more than one year later in the DFEH complaint she filed in May 2015, is time-barred.

With respect to Moskova, Aranda's theory was that Moskova harassed her by inadequately responding to her complaints about Saldivar. Because Saldivar's harassment of Aranda ended in February 2014, and Aranda's harassment claim against Moskova was predicated on Moskova's allegedly

inadequate handling of Saldivar's misconduct, the trial court properly determined that Aranda's harassment claim with respect to Moskova (which Aranda first raised in the DFEH complaint filed in May 2015) likewise is time-barred.

DISPOSITION

The judgment is affirmed. The parties shall bear their respective costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.