Filed 3/8/17 Raseknia v. County of Los Angeles CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOE RASEKNIA, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B264153 (Los Angeles County Super. Ct. No. BC521008)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Elizabeth Allen White, Judge. Affirmed.

Law Offices of Gloria Dredd Haney and Gloria Dredd Haney for Plaintiff and Appellant.

Peterson • Bradford • Burkwitz, Avi Burkwitz and Gil Burkwitz for Defendants and Respondents.

Plaintiff and appellant Joe Raseknia (Raseknia) appeals from the summary judgment entered in favor of defendant and respondent the County of Los Angeles (the County) and from the judgment of dismissal entered in favor of defendant and respondent Francine Jimenez (Jimenez)[1] in this action for discrimination and retaliation based on age, race or ethnic origin, and disability. Raseknia also appeals from the trial court's order denying his motion for a new trial and granting Jimenez $5,700 in attorney fees.[2] We affirm the judgment and the attorney fees award.

BACKGROUND

Raseknia is currently employed by the County Probation Department as a Deputy Probation Officer II at the Central Adult Investigations (CAI) office in Los Angeles.

The County Probation Department's promotion system

Promotions and appointments at the County's Probation Department are made pursuant to the Civil Service Rules of the County of Los Angeles (Civil Service Rules). The promotion and

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[1] Jimenez and the County are referred to collectively as defendants.

[2] Raseknia also purports to appeal from the order on the special motion to strike. That order, however, was entered in Raseknia's favor on April 24, 2014, denying defendants' special motion to strike pursuant to Code of Civil Procedure section 425.16, but denying Raseknia's request for attorney fees in opposing the motion. Raseknia forfeited any challenge to the April 24, 2014 order, in any event, because he provided no argument or analysis regarding that order in either his opening brief or his reply brief on appeal. (See *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41 & fn. 1 (*Frittelli*) [failure to challenge trial court's rulings on appeal "forfeit[s] any contentions of error regarding them"].)

appointment process for a supervising deputy probation officer position consists of two equally weighted parts: (1) an Appraisal of Training and Experience (ATE) based on application information and (2) an Appraisal of Promotability (AP).

The AP is a subjective test prepared by the applicant's immediate supervisor to assess how the applicant might perform at a higher/supervisory level. The AP evaluates supervisory abilities, job knowledge, work skills and abilities, analytical and decision making abilities, adaptability and stress tolerance, personal and public relations, social tolerance, and written and verbal communication skills. The ATE is an objective test based on an applicant's education and experience.

An applicant's scores on each of the AP and the ATE portions of the promotional exam are scaled and combined to arrive at an overall score. The overall score determines an applicant's placement into one of five "bands" prescribed by the Civil Service Rules. Band 1 is the highest, for individuals who score between 94.5 and 100. Band 2 is for individuals who score between 88.5 and 94.4, Band 3 for individuals who score between 82.5 and 88.4, Band 4 for individuals who score between 76.5 and 82.4, and Band 5 for individuals who score between 70.0 and 76.4. Individuals who score below 70 are not placed in a band and are ineligible for promotion. Eligible candidates are placed in the applicable band and on a certification list.

Under Civil Service Rules, rule 11.01E, promotions and appointments must be made from the highest band of the certification list. If the highest band has five or fewer candidates, then candidates in the next highest band become eligible for promotion. The County has subjective discretion to appoint qualified candidates who are eligible for promotion, but is limited by the Civil Service Rules to select only those individuals placed within the highest band.

Raseknia's application for promotion

Raseknia applied for the position of Supervising Deputy Probation Officer in promotional exam No. F8610G on July 20, 2012. On the objective portion of the exam, Raseknia received a score of 90 out of 100. On the subjective AP portion of the exam, Raseknia received a score of 90. Raseknia did not challenge his AP score in an appeal or before the Civil Service Commission.

The eligibility list for exam No. F8610G was promulgated on November 28, 2012. Raseknia received a combined overall score of 90, placing him in Band 2. More than 528 candidates applied for exam No. F8610G. Of the eligible candidates, 225 were placed in Band 1, 150 were placed in Band 2, 106 were placed in Band 3, 42 were placed in Band 4, and 5 were placed in Band 5. In light of the number of eligible Band 1 applicants, Raseknia was not qualified under the applicable Civil Service Rules for an appointment to the Supervising Deputy Probation Officer position.

Central Adult Investigation Unit's telecommuting program

In April 2009, Raseknia accepted a reassignment from the Probation Department's Long Beach Office to the Los Angeles CAI office. Prior to 2014, all employees at the CAI office could telecommute, subject to management approval, and regardless of any disability or work restrictions. Raseknia's supervisor allowed him to telecommute because of his work performance, and not as an accommodation for any disability.

The County terminated the CAI office's telecommuting program because of security and employee health and safety concerns. The County concluded that remote access and transmission of sensitive, confidential information by telecommuting employees made such information susceptible to interception by third parties, and that the most secure method of

protecting that information was to have all telecommuting employees return to the CAI office. Telecommuting also presented concerns about offsite employee injuries that were not addressed by existing health and safety policies. The County began notifying affected employees in October and December 2013 that the telecommuting program was being terminated. Actual termination of the CAI telecommuting program did not take place until September 2014. Termination of the telecommuting program applied to all CAI telecommuters and required them to return to a physical work location. At the time the program was terminated, there were 60 CAI employees who were telecommuting.

Raseknia's 2014 personnel evaluation rating

Raseknia received an annual performance evaluation drafted by his immediate supervisor, a supervising deputy probation officer. Before a performance evaluation is finalized, it must be approved by the supervising deputy probation officer's superior.

In 2014, Raseknia's immediate supervisor, Muriel Williams-Hooker (Hooker), conditionally rated his performance evaluation as "Outstanding." Hooker's supervisor, Elizabeth Garcia (Garcia), reviewed Raseknia's performance evaluation and determined that it did not contain the necessary supporting evidence to justify a rating of outstanding. Raseknia's performance evaluation contained one short paragraph under each subcategory that described accomplishment of normal job duties. The descriptions included statements such as "solid report writing skills," "thoroughly checks all provided information before submitting his reports," and "[d]resses appropriately." Garcia concluded that the written evaluation described expected job performance, and for this reason rejected the proposed overall "Outstanding" rating for Raseknia's 2014

evaluation. Garcia had never met Raseknia and was unaware of his race, religion, national origin, or any disability or medical restrictions he may have.

Previous lawsuits

Raseknia filed his first lawsuit against the County in June 2008 in Los Angeles Superior Court Case No. BC392940, alleging claims of retaliation and race or national origin discrimination based on an alleged failure to promote him in 2006. That action was subsequently settled.

Raseknia filed a second lawsuit against the County and Jimenez in June 2011 in Los Angeles Superior Court Case No. BC457999, alleging causes of action for discrimination, harassment, and retaliation based on race, ethnic origin, disability, and age. Raseknia's claims in this second lawsuit were based on two incidents -- purported attempts by one of Raseknia's supervisors to transfer him to another work assignment, and a March 2011 meeting between Raseknia and Jimenez regarding that work transfer. Summary judgment was entered in favor of Jimenez and the County in this second lawsuit, and Jimenez and the County were awarded their attorney fees. The case is currently pending on appeal.

The instant action

Raseknia commenced this action on September 11, 2013, asserting various causes of action, including violation of the Fair Employment and Housing Act. (Gov. Code, § 12940 et seq. (FEHA).) The County and Jimenez filed a demurrer and special motion to strike the entire complaint. The trial court denied the special motion to strike and sustained the demurrer, with leave to amend.

Raseknia filed a first amended complaint alleging causes of action for defamation, intentional infliction of emotional distress, age discrimination, race/ethnic origin discrimination, disability

discrimination, retaliation in violation of FEHA, harassment, and failure to prevent discrimination. Only the causes of action for defamation, intentional infliction of emotional distress, and harassment were alleged against Jimenez. Defendants demurred to those three causes of action.

The trial court sustained the demurrer, with leave to amend as to the cause of action for harassment, and without leave to amend as to the defamation and intentional infliction of emotional distress claims.

Defendants deposed Raseknia on August 6, 2014. At the deposition, Raseknia testified that he had not communicated with Jimenez since March 2011, and that he did not know what Jimenez had to do with the instant lawsuit.

On August 11, 2014, Raseknia filed a verified second amended complaint, the operative pleading in this action, alleging six causes of action against the County and Jimenez: (1) age discrimination; (2) race/ethnic origin discrimination; (3) disability discrimination; (4) retaliation in violation of FEHA; (5) harassment; and (6) failure to prevent discrimination.

Defendants demurred as to the cause of action for harassment, and the trial court sustained the demurrer without leave to amend, on the ground that the second amended complaint failed to allege facts constituting harassment. Because the harassment claim was the sole remaining cause of action against Jimenez, the trial court entered a judgment of dismissal in her favor on November 24, 2014.

The County then filed a motion for summary judgment, supported by a separate statement of undisputed material facts and declarations by Hooker, Garcia, and Johanna Prieto, a human resources manager in the Probation Department, who described the County's promotional examination process, the banding system prescribed by the Civil Service Rules, and

Raseknia's score on exam No. F8610G. The County also submitted a declaration by Tracy Jordan-Johnson, a special assistant in the Probation Department's Third Supervisorial District, who attested to the County's reasons for terminating the CAI telecommuting program.

Raseknia opposed the summary judgment motion, submitting a responsive separate statement that was supported principally by his own declaration and deposition testimony.

The County filed evidentiary objections to Raseknia's declaration and deposition testimony, and the trial court sustained the majority of those objections.

At the February 6, 2015 hearing on the County's motion for summary judgment, the trial court granted the motion in its entirety. Judgment was entered in favor of the County, and a subsequent motion by Raseknia for a new trial was denied.

Jimenez filed a motion for attorney fees and costs on February 9, 2015, arguing that Raseknia's action against her was unreasonable, frivolous, meritless, or vexatious. The trial court granted the motion, and a judgment awarding Jimenez $5,700 in attorney fees was entered on May 12, 2015.

This appeal followed.

DISCUSSION

I. Summary judgment

A. General legal principles and standard of review

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action, such as the statute of limitations. (Code Civ. Proc., § 437c, subd. (p)(2); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037 (*Cucuzza*).) Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar, supra*, 25 Cal.4th at p. 849.) If the plaintiff does not make such a showing, summary judgment in favor of the defendant is appropriate. In order to obtain a summary judgment, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action . . . . [T]he defendant need not himself conclusively negate any such element . . . ." (*Id.* at p. 853.)

On appeal from a summary judgment, an appellate court makes "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. [Citations.]" (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.) In doing so, we "[consider] all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. [Citation.]" (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*).)

B. Discrimination causes of action

Raseknia claims the County discriminated against him by denying him a promotion because of his age, disability, race, ancestry, and national origin.

FEHA prohibits employers from discriminating against a person in compensation or in the terms, conditions, or privileges of employment because of the person's age, race, ancestry or national origin, or physical or mental disability. (Gov. Code, § 12940, subd. (a).) A prima facie case of discrimination under FEHA requires evidence that the employee was a member of a protected class, had satisfactory job performance, suffered an adverse employment action, and that similarly-situated individuals outside the protected class were treated more favorably. (*Guz, supra*, 24 Cal.4th at p. 379.)

An employer seeking summary judgment in a discrimination case meets its burden by showing that one or more of these prima facie elements is lacking, or that legitimate, nondiscriminatory reasons existed for the adverse employment action. "'[L]egitimate reasons [citation] in this context are reasons that are facially unrelated to prohibited bias, and which, if true, would thus preclude a finding of discrimination. [Citations.]" (*Guz, supra*, 24 Cal.4th at p. 361, fn. and italics omitted.)

Following such showing by the employer, the burden shifts back to the employee to demonstrate that the reasons for the adverse employment action are a pretext and that the employer acted with a discriminatory motive. (*Guz, supra*, 24 Cal.4th at pp. 354-356.) To do so, the employee must present "'substantial responsive evidence' that the employer's showing was untrue or pretextual. [Citation.]" (*Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1735.) An employee may raise a triable issue of fact regarding pretext by presenting evidence of implausibilities, inconsistencies, or contradictions in an employer's proffered reason, or with direct evidence of a discriminatory motive. (*Guz, supra*, at pp. 356, 363.) To raise a triable issue of fact, however, the employee's evidence must do

more than present a "weak suspicion" that discrimination was a likely basis for the adverse employment action. (*Id.* at pp. 369-370.) "[A]n employer is entitled to summary judgment if, considering the employer's innocent explanation for its actions, the evidence as a whole is insufficient to permit a rational inference that the employer's actual motive was discriminatory." (*Id.* at p. 361, fn. omitted.)

The County met its burden of showing that it had a legitimate nondiscriminatory reason for not promoting Raseknia to a supervising deputy probation officer in 2012 by presenting evidence that Raseknia was not qualified for the promotion.

The evidence showed that the Civil Service Rules require the County Probation Department to make promotions and appointments from candidates within the highest band of the applicable eligible certification list. Raseknia's overall score on promotional exam No. F8610G placed him in Band 2 of the eligible certification list promulgated on November 28, 2012, for a Supervising Deputy Probation Officer position. Of the 528 applicants for that position, 225 were placed in Band 1 and 150 in Band 2. The foregoing evidence is sufficient to meet the County's initial burden of demonstrating that it had a legitimate nondiscriminatory reason for not promoting Raseknia to a Supervising Deputy Probation Officer position -- he was not qualified for the promotion.

Because the County met its burden of establishing a legitimate nondiscriminatory reason for not promoting Raseknia, the burden shifted to Raseknia to present admissible evidence raising a triable issue of material fact that the County's stated reason was a pretext for unlawful discrimination. (*Guz, supra*, 24 Cal.4th at pp. 354-356.) He failed to do so.

Raseknia offered his own declaration and deposition testimony to oppose the summary judgment motion,[3] and the trial court sustained nearly all of the County's evidentiary objections to that evidence.[4] The scant admissible evidence remaining after the trial court's evidentiary rulings is insufficient to raise any triable issue of material fact.

Raseknia's testimony that promotions within the Probation Department are determined by whether managers like or dislike a given candidate raises no triable issue as to whether he was denied a promotion because of his protected status or whether the County's proffered explanation for not promoting him was a pretext for discrimination. (*Guz, supra*, 24 Cal.4th at p. 384 [employee must present responsive evidence showing that employer acted with a discriminatory motive and that employer's explanation for its actions was false].) Raseknia's complaint that

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[3] During oral argument, Raseknia's counsel cited evidence, such as the declaration of Jimenez and deposition testimony by Garcia, submitted by the County in support of its special motion to strike. None of this evidence was offered by Raseknia to support his opposition to the summary judgment motion.

[4] Raseknia presented no argument in his opening brief challenging the trial court's evidentiary rulings and therefore waived any such argument on appeal. (See C*hristoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 (*Christoff*) ["appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal"].) The conclusory arguments Raseknia raises for the first time in his reply brief do not alter this result. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 844 & fn. 3 [although appellant characterized many of the trial court's rulings as erroneous, it failed to present argument (with citation to appropriate legal authorities) that the rulings were erroneous; accordingly, appellant forfeited all such contentions].)

the County reduced his score from 100 to 90 on the subjective portion of promotional exam No. F8610G is also insufficient to raise a triable issue as to whether the County acted with a discriminatory motive in doing so. His unsupported assertions that the County discriminated against him similarly raise no triable issue regarding discriminatory motive or pretext. "[A] party 'cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]' [Citation.]" (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144-1145.) There is no evidence in the record to support Raseknia's assertions that he was discriminated against or denied a promotion because of his age, disability, race, ethnic origin, or ancestry.

Although Raseknia did not allege that the County acted with any discriminatory motive when it discontinued the telecommuting program at the CAI office,[5] the County nevertheless presented evidence that it had legitimate, nondiscriminatory reasons for terminating the telecommuting program. Raseknia offered no evidence of pretext or discriminatory motive.

Summary judgment was therefore properly granted as to Raseknia's first, second, and third causes of action for unlawful discrimination based on his age, race, nationality, ethnic origin, or disability.

C. Retaliation

FEHA makes it unlawful for any employer to discharge, expel, or otherwise discriminate against any person because the person opposed any practices forbidden under the statute, filed a complaint, or testified or assisted in any FEHA proceeding. (Gov.

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[5] Raseknia did not plead any cause of action for failure to accommodate his alleged disability.

Code, § 12940.) "To establish a prima facie case of retaliation, the plaintiff must show (1) he or she engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) a causal link between the protected activity and the employer's action. [Citations.]" (*Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1453.)

Once a prima facie case has been established, the burden shifts to the employer to offer a legitimate nonretaliatory explanation for its conduct. If the employer offers such a legitimate reason, the burden then shifts back to the plaintiff to show that the employer's proffered explanation is merely a pretext for retaliation. (*Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 476.)

Raseknia claims the County denied him a promotion, terminated the CAI telecommuting program, and reduced the overall rating for his 2014 personnel evaluation in retaliation for his opposition to the County's summary judgment motion in Los Angeles Superior Court Case No. BC457999 and his appeal from the judgment entered against him in that case.

As discussed, the County provided legitimate, nonretaliatory reasons for denying Raseknia a 2012 promotion and for terminating the CAI telecommuting program. Raseknia provided no evidence that the County's stated reasons were pretextual.

The County also provided a legitimate, nonretaliatory reason for changing the initial, proposed "Outstanding" rating Raseknia received from his immediate supervisor in his 2014 performance evaluation to a rating of "Very Good." In her declaration, Garcia explained the County's procedures for reviewing and finalizing proposed employee performance evaluations and the criteria necessary for a rating of "Outstanding." She concluded that the information provided in

Raseknia's 2014 performance evaluation was insufficient to support an "Outstanding" rating. Garcia stated that she had never met Raseknia and was unaware of his age, race, national origin, of any lawsuits he may have filed, or of any disability he may have. Raseknia provided no evidence that the County's stated reason was a pretext for discrimination or retaliation.

Summary judgment was therefore properly granted as to Raseknia's cause of action for retaliation in violation of FEHA.

D. Failure to prevent discrimination

FEHA makes it unlawful for an employer "to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." (Gov. Code, § 12940, subd. (k).) Claims for failure to prevent unlawful harassment or discrimination, however, fail as a matter of law when no underlying discrimination or harassment occurred. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1021; *Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 283-284.)

Because Raseknia failed to establish any unlawful discrimination or retaliation by the County, his cause of action for failure to prevent discrimination similarly fails. Summary judgment was properly granted as to this claim.

II. New trial motion

An order denying a motion for a new trial is not directly appealable, but may be reviewed on appeal from the underlying judgment. (Code Civ. Proc., § 904.1; *Deschene v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 37, fn. 1.) The standard of review for denial of a new trial motion was stated by our Supreme Court as follows: "[A] trial judge is accorded a wide discretion in ruling on a motion for new trial and . . . the exercise of this discretion is given great deference on appeal. [Citations.] However, we are also mindful of the rule that on an appeal from

the judgment it is our duty to review all rulings and proceedings involving the merits or affecting the judgment as substantially affecting the rights of a party [citation], including an order denying a new trial. In our review of such order *denying* a new trial, as distinguished from an order *granting* a new trial, we must fulfill our obligation of reviewing the entire record, including the evidence, so as to make an independent determination as to whether the error was prejudicial. [Citations.]" (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871-872.)

Raseknia raised no argument concerning the denial of his new trial motion in his opening appellate brief and therefore forfeited the issue on appeal. (See *Christoff, supra*, 134 Cal.App.4th at p. 125.) The arguments Raseknia presented for the first time in his reply brief -- the trial court acted in a prejudicial manner by characterizing Raseknia's arguments in opposition to the summary judgment motion as "bare conclusions;" the evidence submitted by the County was insufficient to grant it any relief; and the trial court erred by considering an allegedly improperly served reply brief and a concurrently filed declaration by the County's counsel, without giving Raseknia the opportunity to file objections to the declaration -- demonstrate no prejudicial error by the trial court, and our independent review of the record discloses none. Raseknia has failed to demonstrate any entitlement to a new trial.

III. Judgment of dismissal as to Jimenez

Raseknia provided no argument or analysis in his opening brief challenging the judgment of dismissal entered in favor of Jimenez after the trial court sustained, without leave to amend, the demurrer to the sole cause of action asserted against her in the second amended complaint. In his reply brief, Raseknia cites

to various portions of his own deposition testimony regarding Jimenez's alleged role in reviewing his performance evaluation, and in receiving complaints of discrimination within the Probation Department, and describing the stress and mental disability he suffered as the result of purported workplace harassment.

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The legal sufficiency of the complaint is reviewed de novo. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.)

In his second amended complaint, Raseknia reiterates the allegations that he was denied a promotion and the ability to telecommute, and that he received a "Very Good" rating rather than an "Outstanding" rating on his 2014 performance evaluation. None of these actions constitute harassment within the meaning of FEHA. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 64-65 ["commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like, do not come within the meaning of

harassment"].) Raseknia also fails to allege any specific facts supporting a harassment claim against Jimenez specifically.

The demurrer was properly sustained as to the harassment cause of action and a judgment of dismissal properly entered in favor of Jimenez.

IV. Attorney fees award

Raseknia appealed from the trial court's order awarding Jimenez $5,700 in attorney fees under Government Code section 12965, subdivision (b). He provided no argument or authority on this issue, however, in either his opening brief on appeal or in his reply brief and therefore forfeited any challenge to the attorney fees award. (*Frittelli, supra*, 202 Cal.App.4th at p. 41, & fn. 1.)

DISPOSITION

The judgment is affirmed, as is the order awarding attorney fees. The County shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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