Filed 2/13/18 Delgado v. County of Los Angeles CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| RAQUEL DELGADO,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>COUNTY OF LOS ANGELES,<br><br>Defendant and Respondent. | B271913<br><br>(Los Angeles County Super. Ct. No. BC564676) |

APPEAL from a judgment and a postjudgment order of the Superior Court of the County of Los Angeles, Barbara A. Meiers, Judge. Judgment affirmed; postjudgment order reversed.

Law Offices of Gregory W. Smith, Gregory W. Smith and Diana Wells; Benedon & Serlin, Douglas G. Benedon and Judith E. Posner, for Plaintiff and Appellant.

Kessel & Associates, Elizabeth M. Kessel and Victoria N. Jalili, for Defendant and Respondent.

Plaintiff Raquel Delgado sued her former employer, the Los Angeles County Coroner's Department (the County), for discrimination, harassment, and retaliation in violation of the Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.) and for retaliation (Lab. Code, § 1102.5).[1] The trial court granted the County's motion for summary judgment and entered judgment in its favor. Postjudgment, the trial court granted the County's motion for attorney fees, although awarding less than the County requested.

Having independently reviewed the record, we agree summary judgment was properly entered in favor of the County. We reverse the award of attorney fees, however, finding insufficient evidence that the section 1102.5 cause of action was brought in bad faith.

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff began working for the County as a coroner investigator in 2007. As a trainee, she had the opportunity to work with Denise Bertone, the coroner investigator assigned to pediatric death cases. At the time, only nurses were assigned to these cases and Bertone was the sole nurse so assigned. By 2008, Bertone was encouraging plaintiff to attend nursing school because she believed plaintiff had the skills to investigate pediatric cases; Bertone's goal was to eventually have plaintiff assist her with the County's pediatric caseload. According to Bertone, supervisors were aware of this plan and promised any such position to plaintiff. In particular, Bertone discussed the

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[1] Undesignated statutory citations refer to the Labor Code.

plan with then-Lieutenant Brian Elias and he "enthusiastically agreed" with her.

Throughout 2009 and 2010, Elias and Bertone continued to encourage plaintiff to attend nursing school. They indicated support for her sharing the pediatric caseload with Bertone.

In 2011, plaintiff entered nursing school as a full-time student, attending school during the day and working the night shift. In 2012, she took a break from the rigorous schedule and dropped out of school for a semester. Believing she would not be assigned to pediatric cases without a nursing degree, she resumed her studies the following semester. She obtained her nursing degree in mid-May 2013.

Meanwhile, as relevant here, the first claimed incident of sexual harassment occurred June 14, 2012. On that date, plaintiff arrived at the scene of a fatal shooting. She brought a pair of knee pads to be able to examine the fallen victim. One of her supervisors, Captain John Kades, said, "'Did you bring those because I'm here?'" Plaintiff believed Kades was referring to the knee pads, considered the comment to be sexual in nature, and was "offended and humiliated." Kades then said, "'I'm sorry. I shouldn't have said that.'" Plaintiff reported the incident to the County two days later on June 16, 2012. She asked that Kades not be assigned to accompany her on investigations.

Following plaintiff's report of the incident, plaintiff believed she received inappropriate field call assignments and was ridiculed by coworkers. In July 2012, she filed a Los Angeles County Policy of Equity complaint alleging retaliation for reporting the Kades comment.

In October 2012, plaintiff told her supervisors she was pregnant. She provided a physician's note listing duty

restrictions, including no body examinations or duties in the autopsy rooms or areas where chemicals were used. According to plaintiff, the disclosure of her pregnancy and the work restrictions began "a long course of turmoil at work . . . regarding her pregnancy." She asserted at least two supervisors made disparaging remarks concerning her pregnancy.

On October 25, 2012, plaintiff received a "light duty" assignment in line with the physician's restrictions. The assignment required her to sit at the watch commander's desk, placing her in frequent contact with supervisors. This made plaintiff uncomfortable, however, and she asked for another assignment. The County initially denied her request.

In response to the denial, plaintiff initiated the paperwork for a federal Equal Employment Opportunity Commission (EEOC) claim. On November 19, 2012, she described the Kades incident on an EEOC "Intake Questionnaire."

A supervisor and another County employee made derogatory comments about her pregnancy in November 2012. In December, she asserted her case files were unfairly scrutinized and she was assigned a disproportionate number of "rush" cases. In early February 2013, plaintiff again complained about her assignment at the watch commander's desk and the frequent contact with supervisors. The County then reassigned plaintiff.

Also in February 2013, two coworkers smoked outside an exterior door to a stairwell, fouling the air in her office. Plaintiff asked her coworkers to stop smoking at that location because she was pregnant, but she continued to smell smoke. Plaintiff complained to human resources about the smoke, and the problem was promptly resolved.

On February 22, 2013, plaintiff submitted formal workplace discrimination charges to the EEOC and the state Department of Fair Employment and Housing (DFEH), claiming a hostile work environment, gender discrimination, and retaliation. Plaintiff listed the "earliest date" of discrimination as June 14, 2012 (the Kades incident), the latest date as January 18, 2013, and checked the box alleging the discrimination was "continuing." Plaintiff described the incident with Kades and added her supervisors threatened to investigate plaintiff's boyfriend for making a criminal threat against Kades.[2] According to plaintiff, from June 2012 through the date of the charge, she had been subjected to a hostile work environment and different terms and conditions of employment. She believed she was being discriminated against because she was female.

The EEOC assigned case no. 480-2013-00591 to plaintiff's complaint (first charge). DFEH deferred its investigation to the EEOC and issued an immediate right-to-sue letter.

One week later, on February 28, 2013, plaintiff and another pregnant investigator met with human resources personnel to discuss what they contended were discriminatory requirements being placed on them because of their pregnancies. During the meeting, plaintiff experienced abdominal pain and suffered an anxiety attack, causing the human resources employee to place plaintiff on a two-week paid administrative leave.

After plaintiff returned from the administrative leave in March 2013, she contended her caseload, including the number of

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[2] This was one of a number of disputed fact issues that did not preclude summary judgment in the County's favor based on the statute of limitations.

"rush" cases, increased.[3] In April 2013, plaintiff learned a captain was reviewing the case notes in her files, but other investigators' files were not being subjected to the same scrutiny. She also believed her caseload had again been increased, including even more rush cases.

On June 1, 2013, several weeks after graduating from nursing school and receiving her degree, plaintiff began her maternity leave. She took this leave earlier than she planned because she could no longer tolerate the hostile working conditions. She believed the County was looking for a reason to terminate her.

In October 2013, while plaintiff was on maternity leave, Elias, now a captain, gave her a "competent" job performance evaluation. Plaintiff considered this a negative evaluation, but offered no evidence to support her opinion. That same month, Elias failed to approve her time sheets, causing a one-month delay in her paycheck.[4]

On October 30, 2013, plaintiff submitted a one-page, typewritten document to the EEOC entitled, "Federal Charge re Pregnancy Discrimination and Harassment." The EEOC treated it as a supplement to the first charge and included it in the file for case no. 480-2013-00591.

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[3] The County produced computer-generated data showing her caseload had not been increased. This was another disputed fact, but not a material one, as summary judgment was based on the statute of limitations.

[4] The parties do not explain the procedures an employee on leave must follow, but apparently they include the submission of time sheets.

In November 2013, plaintiff received a job offer for a nursing position. That same month, Elias sent two communications to coroner investigators, including plaintiff. The first was a letter that addressed "investigators shift bid[s] for 2014." The shift bids did not include administratively assigned positions, such as the pediatric investigator position. Plaintiff formed the opinion the letter was sent to her as "a clear signal that the County was not going to give her the pediatric investigator position." She did not articulate this concern with anyone in the coroner's department, however.

Later in November, Elias sent an email to coroner investigators asking whether anyone was interested in a pediatric investigator position. Interested investigators were instructed to respond no later than December 13, 2013. Again, without speaking to anyone, plaintiff assumed the email meant she had been passed over for the pediatric investigator position. Plaintiff never responded to it.

According to Elias, however, the email listed five County administrative assignments for the purpose of compiling a list of investigators interested in the positions should one became available. The pediatric position was one of the five administrative assignments, but the email advised no such assignments were currently available.

In December 2013, plaintiff and a union representative met with Elias to discuss plaintiff's performance evaluation. During the meeting, plaintiff informed Elias she now had a nursing degree, but neither one of them broached the subject of a pediatric investigator position. Elias did not refer to his November 2013 email soliciting the interest list.

Plaintiff returned from maternity leave on January 6, 2014. She left the coroner's department on January 27, 2014, to take a nursing position with the County.[5]

On March 21, 2014, after terminating her employment with the coroner's department, plaintiff submitted a second formal EEOC charge alleging discrimination based on gender, retaliation, and disability (second charge). Plaintiff claimed she had been discriminated against because of her "gender (female/pregnancy)." On March 24, 2014, plaintiff submitted a DFEH complaint alleging discrimination based on gender and pregnancy. The second charge specifically alleged denial of the pediatric investigator position and constructive discharge.[6] The DFEH issued a right-to-sue notice the same day.

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[5] While the salary for the nursing job was higher, the position did not offer the same overtime opportunities available to coroner investigators.

[6] Plaintiff asks this court to take judicial notice of portions of the 2014 EEOC claim file for the second charge, case no. 480-2014-00962. Plaintiff concedes these records were not presented to the trial court for its consideration in ruling on the County's summary judgment motion. With that admission, we deny the request for judicial notice.

We note, however, that plaintiff's attorney of record, Diana Wang Wells, filed a declaration in opposition to the County's motion for summary judgment. There, Wells declared under penalty of perjury that her firm did not learn of the existence of the separate EEOC case file for the second charge until more than one year after the lawsuit alleging pregnancy discrimination was filed. According to Wells, that knowledge was imparted to her by an EEOC representative in a December 2015 telephone conversation.

On April 23, 2014, plaintiff's attorney submitted a written request to the EEOC for an immediate right-to-sue letter in connection with the first charge. The EEOC complied on May 6, 2014, advising plaintiff she had 90 days from "receipt of this Notice," i.e., on or before August 4, 2014, within which to file suit on that charge.

Plaintiff initiated this lawsuit more than 90 days later, on November 25, 2014. As noted, according to the Wells declaration, plaintiff's attorneys of record were not even aware the EEOC had opened a separate claim file based on the second charge when they filed this lawsuit alleging pregnancy discrimination.

## DISCUSSION

### A. Standard of Review

Summary judgment is proper when the moving party establishes "either (1) one or more elements of the employee's cause of action cannot be established, or (2) a complete affirmative defense to the cause of action exists. (Code Civ. Proc., § 437c, subds. (*o*)(1), (2), (p)(2).) . . . . Once the [moving party] has met its initial burden, the burden shifts to the [opposing party] to produce evidence showing a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).) [¶] On appeal from summary judgment, we review the record de novo and must independently determine whether triable issues of material fact exist. [Citations.] We resolve any evidentiary doubts or ambiguities in favor of the party opposing summary judgment." (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370-371.) On appeal, we concern ourselves with the ruling, not the

trial court's rationale. (*Shephard v. Loyola Marymount Univ.* (2002) 102 Cal.App.4th 837, 842.)

### B. Claims Within the Scope of the First Charge Were Barred by the Statute of Limitations

In the typical case, a plaintiff submits a FEHA claim, exhausts administrative remedies with DFEH, and then has one year from the issuance of a DFEH right-to-sue notice to file a civil action. (Gov. Code, § 12965, subd. (b).). Here, however, because plaintiff submitted concurrent claims with the state DFEH and the federal EEOC, the state FEHA statute of limitations—which otherwise would have run in February 2014—was tolled.

This meant plaintiff had 90 days after the EEOC's May 6, 2014 right-to-sue notice, i.e., until August 4, 2014, to commence litigation on all discrimination allegations encompassed within the first charge. (Gov. Code, § 12965, subd. (d).)[7] Plaintiff did

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[7] Government Code section 12965, subdivision (d) provides in pertinent part, "the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met: [¶] (A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing. [¶] (B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission. [¶] (C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission. [¶] (2) The time for commencing an action for

not meet this deadline. Summary judgment on these claims was properly granted.

All discrimination claims stemming from the Kades incident and its aftermath are, accordingly, barred by the applicable statute of limitations. Because the first charge was formally submitted in February 2013, months after plaintiff claims to have been subjected to discrimination based on her pregnancy, the county contends the pregnancy claims are also barred. Plaintiff disagrees, asserting the first charge included only the sex/gender discrimination triggered by her complaint concerning Kades's offensive comment. She maintains the second charge raised separate pregnancy discrimination claims.[8]

Government Code section 12926, subdivision (r)(1) defines the term "sex" broadly: "'Sex' includes, but is not limited to, the following: [¶] (A) Pregnancy or medical conditions related to pregnancy. [¶] (B) Childbirth or medical conditions related to childbirth. [¶] (C) Breastfeeding or medical conditions related to breastfeeding." The fact the first charge did not mention pregnancy specifically is not dispositive of the issue; the first

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which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later."

[8] Plaintiff's counsel makes no attempt to explain the apparent discrepancy between initiating this lawsuit on November 25, 2014, which sought damages for pregnancy discrimination, when the firm contends it was not even aware of the second charge based on pregnancy discrimination until the December 2015 telephone call.

charge mentions sex discrimination generally, which includes discrimination based on pregnancy.

*Baker v. Children's Hospital Medical Center* (1989) 209 Cal.App.3d 1057, 1064 (*Baker*) supports this conclusion. The court in *Baker* explained "'the specific words of the charge of discrimination need not presage with literary exactitude the judicial pleadings which may follow. [¶] . . . [T]he allegations in a judicial complaint filed pursuant to Title VII "may encompass any kind of discrimination like or related to allegations contained in the charge and growing out of such allegation during the pendency of the case before the [EEOC]." [Citation.] In other words, the "scope 'of the judicial complaint is limited to the "scope" of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.'" (*Id.* at p. 1064.)

*Baker* also observed that where an employee's allegations may be characterized as describing a series of related actions, the employee is not required to file new charges every time an incident occurs: "'To force an employee to return to the state agency every time he claims a new instance of discrimination in order to have the EEOC and the courts consider the subsequent incidents along with the original ones would erect a needless procedural barrier.' Because the employee's allegations could be characterized as describing 'a chain of related actions designed to punish him for offending his employer' [citation], it could not be said as a matter of law that each of the four incidents was separate, as opposed to being reasonably related or growing out of the first incident." (*Baker, supra*, 209 Cal.App.3d at p. 1065.)

Here, although the Kades comment triggered the first charge, plaintiff did not pursue it until well after she told her

employer in October 2012 that she was pregnant and required duty restrictions. According to plaintiff, that disclosure precipitated incidents of harassment and retaliation related to her pregnancy, such as offensive comments, an increased workload, and other discriminatory job actions. By the time plaintiff filed the first charge in February 2013, a pattern of discriminatory treatment had already been established based, in part, on pregnancy and work restrictions unrelated to the Kades incident. Given those facts, the EEOC would have investigated whether plaintiff suffered retaliation as a result of her pregnancy.

The EEOC investigated the first charge from February 2013 to early May 2014, when it issued the right-to-sue notice. The October 2013 document plaintiff filed with the EEOC expressly referenced pregnancy discrimination, but it was part of the EEOC case file for *the first charge*. There was no evidence the EEOC treated the October 2013 document as anything other than an update to the first charge.[9] On this undisputed evidence, the first charge is fairly characterized as being based on a chain of related events that included plaintiff's pregnancy discrimination claims.

Plaintiff seeks to avoid this result by asserting the exhaustion of administrative remedies doctrine required her to

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[9] Plaintiff argues the October 30, 2013 document raised a new discrimination claim based on pregnancy, pointing to the testimony of her attorney describing a telephone conversation with an EEOC representative. (See fn. 6.) The hearsay testimony of plaintiff's attorney about a conversation with an unspecified EEOC representative was insufficient to raise a triable issue of fact concerning the statute of limitations defense.

file separate charges based on pregnancy claims and that she did so on October 30, 2013, and again on March 21 and 24, 2014. We cannot agree. Plaintiff contended she endured pregnancy-related discrimination before she submitted formal charges in February 2013. She advised that discrimination was "continuing." The time to file a lawsuit on the pregnancy-related charges expired in August 2014, months before she initiated this action. Plaintiff's second charge was leveled after she left the coroner's department. It was based on the 2014 complaints to the EEOC and DFEH alleging she was denied the pediatric investigator position and was constructively discharged. The second charge did not extend the time to sue on the first charge. (*Acuna v. San Diego Gas & Electric Co.* (2013) 217 Cal.App.4th 1402, 1417 ["Although [the plaintiff] timely alleged her racial discrimination claim . . . in her first DFEH complaint under section 12960, she did not timely file suit under section 12965 once she received her right-to-sue letter on this complaint. [¶] [The plaintiff] cannot revive these expired claims by filing a new DFEH complaint . . ."].)

Because there was no triable issue of fact on the statute of limitations defense to the FEHA claims, including pregnancy-related discrimination, the trial court's order summarily adjudicating those claims must be affirmed.

### C. No Triable Issues of Material Fact Existed as to Adverse Employment Actions Under Section 1102.5

Plaintiff also contends the County retaliated against her for engaging in protected activities by denying her the pediatric investigator position and constructively discharging her in

violation of section 1102.5.[10] The purpose of section 1102.5, the "whistleblower" statute, is to encourage employees to report unlawful employer activity without fear of retaliation. "To establish a prima facie case of retaliation, a plaintiff must show that she engaged in protected activity, that she was thereafter subjected to *adverse employment action* by her employer, and there was a causal link between the two." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 287-288 internal quotation marks omitted, italics added.)

A prerequisite to a suit under section 1102.5 is the submission of a claim under the Government Claims Act within six months of the accrual of the cause of action. (Gov. Code, § 911.2, subd. (a).) Because plaintiff did not present her section 1102.5 whistleblower claim to the County until May 22, 2014, the parties agree the only actionable adverse employment actions are those that occurred on and after November 21, 2013. The alleged adverse actions plaintiff seeks to redress after that date were denial of the pediatric investigator position and constructive

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[10] Section 1102.5, subdivision (b) provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

discharge. As to those alleged adverse actions, however, there are no triable issues of material fact.

To defeat summary adjudication of her adverse employment action claim based on the alleged denial of the pediatric investigator position, plaintiff was required to demonstrate the existence of a triable issue of material fact demonstrating she was qualified for and applied to become a pediatric investigator; the County rejected her application despite her qualifications; and the position remained open, with the County seeking other candidates with similar qualifications. (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802.)

Accepting plaintiff's representation that she would share a pediatric investigator position with Bertone once she obtained her nursing degree as evidence, there was no evidence such a position was ever available after plaintiff became a nurse. Even assuming the position was available, the evidence was undisputed plaintiff never applied for the position. She admittedly did not respond to Elias's solicitation of interest, nor did she request the assignment during the December 2013 performance evaluation meeting with him and her union representative, even though she announced then that she had earned a nursing degree. Nor did she apply for the position during her brief stint back at work in January 2014.

Without a request or application for the assignment, there was nothing for the County to reject. After plaintiff left the coroner's department, the only evidence concerning the pediatric investigator position was that it never became available and was never offered to anyone. In short, plaintiff failed to raise a triable issue of material fact to demonstrate she requested the assignment once she earned her nursing degree, the County

denied her the position, or the assignment was offered to another employee.

Plaintiff's claim of constructive discharge similarly fails. To defeat summary adjudication of this claim, plaintiff was required to demonstrate the existence of a triable issue of material fact "that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251.)

During most of the period in question, plaintiff was on maternity leave. No evidence concerning the Elias November 2013 communications, the December 2013 meeting with him, or her January 2014 return from maternity leave supports an inference that working conditions were intolerable. Instead, the undisputed evidence was that plaintiff voluntarily left her position at the coroner's department within days of returning from maternity leave to take a nursing position at a County medical facility.

Given the foregoing undisputed evidence, there was no triable issue of fact concerning plaintiff's claim that she was constructively discharged. As a matter of law, plaintiff could not prevail on her claim under section 1102.5.

### D. Award of Attorney Fees Under Section 1038

The trial court awarded the County its attorney fees pursuant to Code of Civil Procedure section 1038 (section 1038), finding "no reasonable good cause and no good faith and no belief

that there was a justifiable and actionable controversy" as to the section 1102.5 claim. The County was awarded $17,945, which amounted to 25 percent of its claimed fees.

Section 1038, subdivision (a) authorizes trial courts to award public entities the attorney fees they incur to defend "'unmeritorious and frivolous'" lawsuits. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1270.) Reasonable costs, including attorney fees, may be awarded to the prevailing public entity if "the court should determine that the proceeding was not brought in good faith and with reasonable cause . . . ." (§ 1038, subd. (a).) The public entity requesting attorney fees has the burden to establish it is entitled to them.

What constitutes "good faith" presents a question of fact based on "the equitable principle of fairness." (*Carrol v. State of California* (1990) 217 Cal.App.3d 134, 141.) Reviewing courts have determined "reasonable cause" as that phrase is used in section 1038 is synonymous with "probable cause" and "is defined as '. . . whether any reasonable attorney would have thought the claim tenable . . . .'" (*Ibid.*)

The defeat of plaintiff's claims by summary judgment demonstrates they lacked merit, but that does not mean plaintiff lacked good faith and reasonable cause in bringing them. The County has conceded at least part of the section 1102.5 action was timely. Although we agree there was no evidence plaintiff suffered an adverse employment action during the applicable time period, the evidence suggested plaintiff in good faith believed she had been promised the pediatric investigator position and attended and graduated from nursing school in reliance on that promise. Bertone corroborated plaintiff's testimony that at one time a plan existed to split the pediatric

caseload with plaintiff if she became a nurse. That evidence was insufficient to raise a triable issue of fact as to an adverse employment action, but sufficient to negate a finding of bad faith or an absence of reasonable cause. The award of attorney fees under section 1038 must be reversed.

## DISPOSITION

The judgment is affirmed; the postjudgment order awarding attorney fees is reversed. In the interests of justice, no costs are awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

I concur:

KRIEGLER, Acting P. J.

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* Judge of the Orange Superior Court appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.

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BAKER, J., Concurring

I concur in the result reached by the majority. I do not join the statute of limitations discussion, but I agree judgment was properly entered for defendant County of Los Angeles because plaintiff Raquel Delgado did not "produce "'*substantial*'" responsive evidence sufficient to establish a triable issue of fact" (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 415) on her discrimination, harassment, and retaliation claims. I agree the majority correctly resolves the remaining issues, i.e., plaintiff's whistleblower claim and the award of attorney fees to defendant.

BAKER, J.