MC-013

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| **HOYOS**<br>**VS**<br>**CITY OF RIVERSIDE, A CALIFORNIA CHARTER CITY** | FILED<br>SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF RIVERSIDE<br>DEC 21 2022<br>K. Rahlwes |
| **DOCUMENT COVERSHEET** | CASE NUMBER<br>CVRI2201332 |

Full Document Title: Tentative Ruling dated 12-21-22 Ordered to be Final Ruling

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# Tentative Rulings for December 21, 2022
# Department 3

**To request oral argument, you must notify Judicial Secretary Amy Norton at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 3 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

**TELEPHONIC APPEARANCES**: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252, 1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: 161 692 7358

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

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**Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)**

1.

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| CVRI2100847 | SUMNER VS OREWYLER | MOTION TO COMPEL BY EMILIE OREWYLER |

**Tentative Ruling:**

The Court orders the parties to appear, however, the Court notes the following:

By this motion, Defendant is seeking to compel the IME of Plaintiff. Plaintiff did not file an opposition, however, Plaintiff sent to the Court, and apparently to Defense Counsel as well, a letter indicating that he intends on appearing at the IME in Boise, ID on 1/20/23. Plaintiff attached to the letter a number of documents, all of which contains Plaintiff's personal identifying information, including VA account numbers and other medical information. The Court did not file these documents as they contain private information, but if Plaintiff wants the documents to be filed, he should indicate so at the time of the hearing.

Given that Plaintiff has indicated that he will attend the IME on 1/20/23, the Court finds that the imposition of sanctions is unjust and that substantial justification exists not to award sanctions. However, if Plaintiff does not intend to attend the IME, or if he does not appear at the scheduled IME, the Court may revisit the issue of sanctions in the future.

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| CVRI2201332 | HOYOS VS CITY OF RIVERSIDE, A CALIFORNIA CHARTER CITY AND MUNICIPAL CORPORATION | DEMURRER ON COMPLAINT FOR CIVIL RIGHTS (OVER $25,000) OF FRANK HOYOS |

**Tentative Ruling:**

The Court sustains the demurrer as to the first cause of action for all defendants, as well as the second, fourth and fifth causes of action with 30 days leave to amend.

The Court overrules the third and sixth causes of action.

**Factual / Procedural Context**

Plaintiff Frank Hoyos was hired by the City of Riverside Police Department in 2001. Hoyos worked Patrol and as a member of the SWAT team for more than a decade. In 2016, after sustaining an injury, Hoyos was placed in charge of the Shooting Range and Firearms Training Unit. In December 2019, Hoyos was selected for promotion to Sergeant and was ultimately placed in charge of the Auto Theft Unit in June 2020. (Comp. ¶8.)

Hoyos alleges discriminatory treatment of Hispanic officers on the part of the City and various officers/supervisors within the police department. The Complaint alleges six causes of action against the City: (1) harassment/abusive working conditions; (2) whistleblower retaliation; (3) national origin discrimination; (4) association discrimination; (5) DFEH retaliation; and (6) failure to prevent discrimination and retaliation. The Complaint also alleges one cause of action for harassment/abusive working conditions against each of the individual defendants: Larry Gonzalez ("Chief Gonzalez"); Bruce Blomdahl ("Deputy Chief Blomdahl"); Matt Lackey ("Sgt. Lackey"); and Brian Smith ("Sgt. Smith").

Hoyos alleges that while working in the Narcotics Unit prior to becoming a Sergeant, he became aware of actions by Sgt. Lackey that compromised criminal investigations and threatened the livelihood and wellbeing of a member of the Riverside Police Department, Jeff Spencer. (Comp. ¶9.) In January 2021, there was a spike in vehicle burglaries in an affluent area of Riverside. The

Detective Unit ran by Hoyos identified the suspect as one on felony probation. (¶17.) Hoyos then told upper-level management that an operation had been set up to conduct surveillance in the area to catch the offender and recover stolen possessions. (¶17.)

Hoyos identified the suspect as the brother of a Major League Baseball (MLB) player who grew up in Riverside. (¶17.) Deputy Chief Blomdahl became involved in the case. Blomdahl's nephew is married to a cousin of the suspect's family. (¶18.) Blomdahl and his superior agreed to contact retired Sgt. Ron Whitt to arrange for the suspect to surrender. (¶18.) Hoyos asserts advising a known felon that he should turn himself in violates criminal laws and RPD policies. (¶18.) Hoyos reported Blomdahl and Gonzalez's actions to his superiors and internal affairs. (¶19.) After complaining about these matters, Spencer was promoted to Sergeant (and later to Lieutenant), while Lackey "remained in the good graces of the leadership of the Police Department." (¶9.)

Hoyos also alleges that Sgt. Lackey and Sgt. Smith refused to train him when he was promoted to Sergeant. (Comp. ¶10.) Hoyos alleges Lackey and Smith have benefitted from favoritism within the Department for years and have received a significant amount of overtime compensation that other minority employees did not receive. (¶¶11, 22.) Hoyos alleges Lackey and Smith manipulated the system in place for officers to sign up for overtime shifts, which resulted in minority officers not being able to work or receive overtime pay. (¶14.) Hoyos alleges Lackey and Smith labeled Hoyos a "rat" and caused senior officers to stop associating with Hoyos. (¶15.) Hoyos alleges the police department has monitored his whereabouts and his conversations. (¶15.) Hoyos alleges the department reserved coveted K-9 positions for Lackey and Smith, and eventually Billy Zackowski. (¶23.) Hoyos alleges Deputy Chief Blomdahl made remarks at a Command Staff Meeting about Hoyos causing problems, which polarized personnel against Hoyos. (¶24.)

Hoyos also alleges the department involved Hoyos in a use of excessive force case involving a female member of his unit who was assigned to "Mall duty." (Comp. ¶25.) Hoyos learned the female employee had a close relationship with the superior staff member in charge of the Academy, Lt. Milby. Hoyos then reported this to his superior. (¶25.) Milby approached Hoyos about the potential sexual harassment allegations that would be used as a defense by the female employee to her possible disciplinary action/termination and, shortly thereafter, Hoyos learned that there would not be an investigation into the merits of the defense. Instead, Milby was promoted to Captain and the female employee was to receive only minimal discipline. (¶25.)

After Milby approached Hoyos in June 2021 about the excessive force case, Brian Smith accused Hoyos of wrongdoing relative to investigating the female employee. Hoyos says it was well-known that Smith was now in a relationship with the female employee. (¶26.) Hoyos learned Smith was trying to have Hoyos removed from the Department for discussing "his gal's" issues with Milby and for asserting allegedly false allegations against Gonzalez and Blomdahl relative to the criminal investigation in February 2021. (¶26.)

Hoyos filed the initial Complaint in this action on April 4, 2022. Defendants bring the instant demurrer to all causes of action. Defendants assert the Complaint fails to state facts sufficient to support any cause of action for harassment against any Defendant. Defendants also argue the Complaint fails to state facts to support each of the causes of action alleged against the City. Hoyos opposes the demurrer and asserts that all causes of action are sufficiently pled. Hoyos argues that Gonzalez and Blomdahl do not have immunity.

**Analysis**

A general demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly

pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 713.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

## I. First Cause of Action – Harassment

To establish a hostile work environment, the employee must demonstrate that the harassment is sufficiently severe or pervasive to alter the conditions of the victim's employment. (*Etter v. Veriflo Corp.* (1998) 67 Cal.App.4th 457, 464-465.) "Whether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." (*Lewis v. City of Benicia* (2014) 224 Cal. App. 4th 1519, 1529.) A single harassing incident involving physical violence or the threat of violence may be sufficient to severe and pervasive harassment. (*Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1043.) "In many cases, a single offensive act by a co-employee is not enough to establish employer liability for a hostile work environment. But where that act is committed by a supervisor, the result may be different." (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 36.)

The California Supreme Court's decision in *Reno v. Baird* (1998) 18 Cal.4th 640, 646 defines harassing conduct as that which takes place "outside the scope of necessary job performance," and is "presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives." (*Reno v. Baird* (1998) 18 Cal.4th 640, 646.) The "exercise of personnel management authority properly delegated by an employer to a supervisory employee might result in discrimination, but not in harassment. [Citations.]" (*Reno v. Baird, supra*, 18 Cal.4th at 645.) Hence, "[p]ersonnel-related decisions involving discipline, performance evaluations, compensation, or job assignments do not inherently constitute unlawful harassment." (*Cofer v. Parker-Hannifin Corporation* (S.D. Cal. 2016) 194 F.Supp.3d 1014, 1018 (hereinafter "Cofer") [citing *Reno v. Baird, supra*, 18 Cal.4th at 646-647].)

Additionally, "harassment in the workplace consists of 'discriminatory intimidation, ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" (*Cofer, supra*, 194 F.Supp.3d at 1018.) Harassment that is occasional, isolated or sporadic is insufficient. Plaintiff must show harassment of a repeated, routine or generalized nature, especially when the harassing conduct is not severe. (*Lyle v. Warner Bros. Television Productions* (2006) 38 Cal.App.4th 264, 283.) To be actionable, the work environment must be subjectively hostile (i.e. perceived as hostile by the individual plaintiff) and objectively hostile (i.e., a reasonable person in plaintiff's position would perceive it to be hostile.) (Id. at 284-285.)

### *a. Chief Gonzalez*

Defendants argue the Complaint does not allege that Chief Gonzalez personally took any action against Plaintiff that was threatening, humiliating, or offensive. The Complaint alleges Gonzalez used others to effectuate a conspiracy to thwart a department investigation that Plaintiff was supervising. (Comp. ¶¶17-20.) Defendants argue these allegations are not sufficient to support this cause of action.

First, Defendants argue that Gonzalez has legislative immunity for his discretionary law enforcement decisions under Government Code §820.2, which states: "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." "Discretionary acts" are those that involve "reasoned policy decisions." (*County of Marin v.*

*Deloitte Consulting LLP* (N.D. Cal. 2011) 836 F.Supp.2d 1030, 1048; *see Johnson v. State of Calif.* (1968) 69 Cal.2d 782, 793-794.) In determining whether an act is discretionary, courts distinguish between "planning" and "operation" governmental functions. Immunity applies only to those "deliberate and considered policy decisions" that involve a conscious balance of risks and benefits. It does not apply to low-level ministerial decisions that merely implement a basic policy that has already been formulated. (*Caldwell v. Montoya, supra*, 10 Cal.4th at 981; *Barner v. Leeds* (200) 24 Cal.App.4th 676, 683.) The rule is intended to ensure that public officials are not deterred from the "zealous and unflinching discharge of their public duties" by the threat of civil lawsuits. (*Caldwell v. Montoya, supra,* 10 Cal.App.4th at 979.) For example, "[a]s a matter of law, section 820.2 ['discretionary'] immunity does not apply to an officer's decision to detain or arrest a suspect." (*Sharp v. County of Orange* (9th Cir. 2017) 871 F3d 901, 920, brackets in original.) Also, immunity did not apply because decision to enter premises without warrant and without "knocking and announcing" was operational. (*Mendez v. County of Los Angeles* (9th Cir. 2018) 897 F3d 1067, 1083-1084.)

Plaintiff argues Gonzalez is not immune because he had a mandatory/ministerial duty to comply with the Penal Code and his actions concerning the suspect related to an MLB player violated penal statutes. (Opp. P.11-12.) It is unclear whether the immunity applies in this instance, as the decision to approach a suspect and inform them that a probation search was about to be performed may be operational. (See *Sharp v. County of Orange* (9th Cir. 2017) 871 F3d 901, 920 ("immunity does not apply to an officer's decision to detain or arrest a suspect").) It is not clear that such action is illegal, and may indeed be a discretionary act.

Second, Defendants argue that the Complaint does not allege any facts that Gonzalez actually interfered with or made the operational command decision to seek a more peaceful solution to apprehending the burglary suspect (voluntary surrender) as opposed to Plaintiff's approach using undercover officers. Defendants argue in Reply that the Complaint does not inform any of the defendants of the bad acts they are allege to have done to Plaintiff. (Reply p. 2.) Defendants' point is well taken. The Complaint does not include many factual allegations against Gonzalez. The Complaint alleges that Blomdahl and Gonzalez "caused a known felon to be advised that he should turn himself in since a probation search was about to be conducted at his residence." (Comp. ¶18.) Plaintiff alleges that Gonzalez (and Blomdahl) compromised the subject investigation and gave the suspect time to dispose of stolen items. (Comp. ¶19.) The Complaint also alleges that Lackey and Smith have benefitted from favoritism, in part because of the positions they were given by Gonzalez. (¶22.) Finally, Plaintiff alleges Lackey and Smith were "given carte blanche by Gonzalez to openly attack Hoyos' good name and to discourage others from associating with Hoyos." (¶32.) There are no facts alleged to support this claim. This is the extent of the specific allegations made against Gonzalez. There are simply no allegations in the Complaint to support a harassment claim against Chief Gonzalez. It is unclear what harassing conduct did Gonzalez specifically engage in, or how that conduct adversely impact Hoyos. The Opposition does not point to any facts alleged in the Complaint to support this cause of action against Gonzalez.

The demurrer is thus sustained as to Gonzalez.

*b. Deputy Chief Blomdahl*

In addition to their immunity argument, Defendants also argue the Complaint does not contain any factual allegations against Blomdahl to allege that he personally took any direct action toward Plaintiff that was either harassing or abusive. The Complaint alleges that Blomdahl's nephew is married to a cousin of the burglary suspect. (Comp. ¶18.) Plaintiff alleges Blomdahl caused a known felon to be advised that he should turn himself in since a probation search was about to occur at his residence. (¶18.) The Complaint alleges Blomdahl gave the suspect time to dispose of stolen items. (¶19.) The Complaint also alleges that Lackey and Smith have benefitted from favoritism, in part because of the positions they were given by Blomdahl. (¶22.) For the reasons

discussed with respect to the similar allegations brought against Gonzalez, these allegations in the Complaint are not sufficient to support a cause of action against Blomdahl.

Plaintiff also alleges that Blomdahl stated at a Command Staff Meeting that management would weather the storm and overcome any obstacles Hoyos had caused. (¶24.) Plaintiff alleges that Blomdahl "polarized personnel against Hoyos even further" by way of his comments. (¶24.) However, it is not alleged that this comment was harassing or offensive. Plaintiff does not allege how this comment adversely impacted his employment. This is not sufficient to support a cause of action against Blomdahl.

The demurrer is sustained as to Blomdahl.

*c. Sgt. Lackey*

Defendants acknowledge the four allegations made against Sgt. Lackey: (1) he did not train Plaintiff (Comp. ¶10); (2) he accused Plaintiff of writing a memorandum (that was never actually written) (¶13); (3) he "labeled" Plaintiff a "rat," (¶15) and (4) he was "favored" with a K-9 special assignment and given overtime assignments such that Plaintiff was precluded from being considered for the work (¶11-12, 22).

The allegations against Lackey are few and are not enough to withstand demurrer. The allegations that Lackey labeled Plaintiff a "rat" is potentially harassing, as Plaintiff alleges this label "caused senior officers to stop associating with Hoyos." (Comp. ¶15.) It is still not entirely clear, though, how this action, or any of Lackey's actions, adversely impacted Hoyos' employment. It is also not clear if this comment was made more than once, or even under what circumstances this label was applied. (¶15.) Lackey being "favored" was not an action by Lackey to harass Plaintiff in any way. It is not clearly alleged that Lackey's failure to train Plaintiff was harassing conduct. (¶10.) It is also not clear how allegedly accusing Hoyos of writing a memorandum was harassing. (¶13.) The allegations made against Lackey are not sufficient to support a claim for harassment.

The demurrer is sustained as to Lackey.

*d. Sgt. Smith*

The allegations made against Smith are similar to those made against Lackey. Plaintiff alleges Smith was favored by the Department (¶11), accused Plaintiff of writing a memorandum (¶13), and labeled Hoyos as a "rat" (¶15). For the reasons discussed above, these allegations are not sufficient to support a claim of harassment against Smith.

Plaintiff also alleges that Smith "was trying to cause Hoyos' removal from the Department." (¶26.) However, there are no facts alleged to support this claim. How was Smith trying to have Hoyos removed? What actions did he take? It is also not alleged that Hoyos was in fact removed from the department due to Smith's actions, or that his employment was adversely impacted in any other way.

The demurrer is sustained as to Smith.

*e. City of Riverside*

"In many cases, a single offensive act by a co-employee is not enough to establish employer liability for a hostile work environment. But where that act is committed by a supervisor, the result may be different." (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 36.) Defendants acknowledge that a single act committed by a supervisor can create a hostile work environment. (Demurrer p.11.) However, as discussed above, there are not sufficient allegations made against any supervisor or individual to support a harassment claim. Thus, there are not any facts alleged to support a claim against the City.

However, as noted above, the demurrer is sustained with leave to amend.

## II. Second Cause of Action – Whistleblower Retaliation

Section 1102.5(b) prohibits an employer or anyone acting on behalf of the employer from retaliating "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...." "To establish a prima facie case of retaliation "a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two." (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138.)

An employee engages in activity protected by the statute when the employee discloses "reasonably based suspicions" of illegal activity. (*Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592.) "To have a reasonably based suspicion of illegal activity, the employee must be able to point to some legal foundation for his suspicions – some statute, rule or regulation which may have been violated by the conduct he disclosed." (*Ibid.*) Complaints about policies the plaintiff believed to be unwise, wasteful or constituting gross misconduct is not protected activity. (*Mize-Kurman v. Marin Community College District* (2012) 202 Cal.App.4th 832, 852-853.)

Hoyos alleges he made a report to his superiors and Internal Affairs after he learned that Gonzalez and Blomdahl "compromised the undercover operation" and violated Riverside Police Department policies and the Penal Code provisions prohibiting unlawful interference with a criminal investigation. (¶19.) This is a sufficient allegation of protected activity.

An adverse employment action are actions that "materially affect the terms and conditions of employment." (*Patten v. Grant Joint Union High School Dist.* (2005) 124 Cal.App.4th 1378, 1389 (the standard governing "adverse employment action" in retaliation lawsuits under the FEHA also applies to lawsuits under Labor Code § 1102.5).) The materiality test of an adverse employment action looks 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." (*Patten v. Grant Joint Union High School Dist.* (2005) 124 Cal.App.4th 1378, 1389.)

Hoyos alleges he was denied the opportunity to compete for a K-9 position (¶22) and the City "[e]ngaged in disparate treatment of Hoyos and other minorities relative to opportunities for overtime and compensatory time." (¶55.) Hoyos alleges the City encouraged Smith to "seek to discipline if not remove Hoyos from his position at the Riverside Police Department for reporting a defense of sexual harassment that was being contemplated in an excess force case." (¶55.) The inability to compete for a promotion or work overtime is sufficient to plead an adverse employment action.

"Essential to a causal link is evidence that the employer was aware that the plaintiff had engaged in the protected activity." (*Morgan v. Regents of Univ. of Calif.* (2000) 88 Cal.App.4th 52, 69-70.) The issue here is that the adverse employment actions are pled as though they are related to Plaintiff's national origin/race and not his protected activity of reporting Gonzalez and Blomdahl's actions. The Complaint is unclear with respect to what adverse employment actions were a result of what specific conduct.

As such, the demurrer is sustained with leave to amend.

## III. Third Cause of Action – Discrimination Based on Race

To state a prima facie case of employment discrimination in violation of the Fair Employment and Housing Act ("FEHA"), the plaintiff must establish that: (1) the plaintiff was a member of a protected class; (2) the plaintiff was performing competently in the position held; (3) the plaintiff suffered an adverse employment action, such as termination; and (4) some other circumstances that suggests a discriminatory motive. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355.) The

FEHA prohibits employers from discriminating against a person or discharge the person from employment based on race, color, or national origin. (Gov. Code, §12940(a).)

Plaintiff alleges he was discriminated against because he is Hispanic. (Comp. ¶53.) Plaintiff alleges he had been "repeatedly honored for his work." (¶53.) Plaintiff alleges he was denied the opportunity to compete for a K-9 position. (¶22.) Plaintiff alleges the City "[e]ngaged in disparate treatment of Hoyos and other minorities relative to opportunities for overtime and compensatory time." (¶55.) The Court finds that this is sufficient for pleading purposes, and the demurrer as to this cause of action is overruled.

## IV. Fourth Cause of Action – Discrimination Based on Association

Government Code section 12926(o) recognizes a clam for discrimination because of a person's associations: "'Race, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or veteran or military status' includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics."

Plaintiff alleges he suffered adverse employment actions because he "associated with African American officers, including William Outlaw and Brandy Merrill, as well as Hispanic officers Andy Leyva, Senon Saldana, Mario Dorado and other Hispanics who have sought to opposition discrimination against Hispanics within the ranks of the Riverside Police Department." (Comp. ¶66.) The Complaint does not allege any facts to support this conclusion. Plaintiff alleges that Outlaw managed to sign up for a backfill shift, Lackey and Smith caused the system to be changed so that Outlaw would not be given the shift. (¶12.) However, Plaintiff does not allege any facts that he was in any way associated with these individuals or that the City took adverse action against him because he was associated with these individuals. Other than the conclusory statement in paragraph 66 of the Complaint, there are no factual allegations to support this cause of action.

The Court sustains the demurrer as to this cause of action with leave to amend.

## V. Fifth Cause of Action – Redress of Prohibited Retaliation Against City

Plaintiff alleges he protested the actions of the defendants to Chief Gonzalez as well as investigators assigned to look into matters of harassment and hostile work environment. (Comp. ¶77.) Since protesting these actions, Hoyos asserts he was subjected to "further unbearable harassment and continuous retaliation by City ever since, with the Caucasian superiors and Hoyos' counterparts...deliberately refusing to provide Hoyos with a work environment that is neither hostile nor abusive." (Comp. ¶77.) The Complaint is not clear under what law this claim is brought, but the Opposition notes this claim is brought under FEHA.

Defendants argue this claim is insufficiently pled as Plaintiff does not identify a single adverse employment action that he suffered in retaliation for reporting the Department of Fair Employment and Housing claim. (Demurrer p.15.) Plaintiff argues the pleading is sufficient given the proximity in time between his February 2021 complaints and "the offensive conditions which ensued particularly as of April 2021 and up through October 2022, as well as the tangible adverse actions Hoyos has suffered before and after, including inappropriate investigative tasks, denigrating skills and abilities, a hostile work environment, contriving false accusation to blemish an 'unblemished' career, and then removing Hoyos from his position as Detective Sergeant can alone prove retaliation." (Opp. P.18.) However, Plaintiff does not cite to language in the Complaint itself to support this claim. The Complaint is not clear at all regarding what complaints Hoyos made and the adverse employment action he suffered as a result of making those complaints. The claim is not sufficiently pled.

The Court sustains the demurrer as to this cause of action with leave to amend.

## VI. Sixth Cause of Action – Failure to Prevent Discrimination and Retaliation

Gov. Code §12940(k) provides that it is an unlawful business practice for an employer to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring. This provision creates a statutory tort action, which must allege duty, breach, causation and damages. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 286.)

Defendants argue Plaintiff has failed to sufficiently allege claims for discrimination, harassment, or retaliation, meaning this cause of action must also fail. However, as noted above, the Complaint alleges facts sufficient to support the third cause of action for discrimination. Thus, this claim can also stand.

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| CVRI2201541 | MARTINS-GREEN VS REGENTS OF THE UNIVERSITY OF CALIFORNIA | ANTI-SLAPP MOTION (SPECIAL MOTION TO STRIKE) BY REGENTS OF THE UNIVERSITY OF CALIFORNIA, KIM WILCOX, RODOLFO TORRES, STEPHEN SPINDLER, ERTEM TUNCEL |

**Tentative Ruling:**

Continued on Court's own motion to 1/11/23.

4.

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| CVRI2204845 | YYC MANAGEMENT INC. VS LIN | PRELIMINARY INJUNCTION |

**Tentative Ruling:**

The Court grants the preliminary injunction; however, the Court shall modify the proposed order to allow defense counsel to communicate with the specified companies for purposes of defending against this lawsuit. The Court orders Plaintiff to post a bond in the amount of $385,000 within 60 days.

**Factual / Procedural Context:**

This is a trade secret misappropriation case. Plaintiff YYC Management Inc. alleges it is engaged in the business of shipping and logistics, providing shipping, warehousing, planning and cargo management for customers. Plaintiff's customers (primarily freight forwarders, manufacturers and/or distributors) place orders with Plaintiff to coordinate the shipping, warehousing and delivery of goods, including shipping container drayage. (Complaint, ¶ 7.)

In mid-2021, Plaintiff hired defendant Jianwei Lin aka Justin Lin ("Lin" or "Defendant") to serve as a Dispatch Operations Manager. (Complaint, ¶ 9.) In November 2021, Plaintiff started using a third-party human resources provider, Insperity PEO Services, L.P. ("Insperity") to coordinate payroll and personnel services. Lin remained an employee of Plaintiff, but payroll and personnel services were provided by Insperity under a "co-employment" relationship. (*Id.*, ¶ 9.)

As Dispatch Operations Manager, Lin was responsible for managing terminal container pickup, short-haul and long-haul truck cargo transportation, and other aspects of logistics. Such duties required Lin to contact and communicate with Plaintiff's customers, shipping company vendors and others, in order to place and coordinate customer orders. Lin solicited quotes from vendors, put together orders for customers, and coordinated fulfillment of the orders. As part of his responsibilities, Lin was also required to solicit new customers for Plaintiff. (Complaint, ¶¶ 10, 11.)