

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MINUTE ORDER**

Date: 08/06/2009

Time: 04:04:04 PM

Dept: C21

Judicial Officer Presiding: Judge David T. McEachen

Clerk: Nora O'Bryan

Bailiff/Court Attendant:

Case Init. Date: 08/07/2008

Case No: 30-2008-00110303-CU-WT-CJC Case Title: Shirvan vs. Astech Engineered Products Inc

Case Category: Civil - Unlimited

Case Type: Wrongful Termination

Causal Document & Date Filed:

Appearances:

No appearances.

The Court, having taken the above-entitled matter under submission on 08/04/2009 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendant Astech Motion for Summary Judgment, and alternative motion for Summary Adjudication is **DENIED** as to the Summary Judgment because plaintiff has presented evidence to establish a prima facie case of discrimination and triable issues as to pretext. (Defendant's UMF Nos. 46, 47, 48, 60, 62, 240, and Plaintiff's Add'l UMF nos. 1, 2, 4, 7, 9, 10, 13, 20, 22, 24, 43, 44, 46, 50, 53, 57, 58, 69, 70, 77, 78, 79 and 96.) Defendant's motion for summary adjudication is **GRANTED** in part and **DENIED** in part. **GRANTED** as to plaintiff's claim for harassment in plaintiff's first cause of action because the conduct alleged is not sufficiently severe and pervasive. Yanowitz vs. L'Oreal USA, Inc. (2005) 36 Cal. 4th 1028. **GRANTED** as to plaintiff's third cause of action for unlawful workplace language policy because plaintiff failed to identify this as an alleged wrongful act in his DFEH claims. Okoli vs. Lockheed Technical Operations Co. (1995) 36 Cal. App. 4th 1607. **GRANTED** as to plaintiff's fifth cause of action of Intentional Infliction of Emotional Distress because no triable issue of fact as to any extreme and outrageous conduct or any severe emotional distress is shown. Defendant's UMF Nos. 400, 401, 402 and 403.)

DENIED as to plaintiff's claim for discrimination in plaintiff's first cause of action because plaintiff has established a prima facie case and there are triable issues as to pretext. Liu vs. Amway Corp. (6th Cir. 2003) 347 F. 3d 1125 and Guz vs. Bechtel National, Inc. (2000) 24 Cal. 4th 317. **DENIED** as to plaintiff's second cause of action for failure to prevent discrimination and harassment because plaintiff has presented evidence to support his claim for discrimination. Guz vs. Bechtel National, Inc. (2000) 24 Cal. 4th 317. **DENIED** as to plaintiff's fourth cause of action for wrongful termination in violation of public policy because plaintiff's discrimination claim in violation of FEHA supports this claim. Faust vs. Cal. Portland Cement Co. (2007) 150 Cal. App. 864. Also, **DENIED** as to plaintiff's sixth cause of action for unfair competition because plaintiff's discrimination claim will support this cause of action.

Date: 08/06/2009

MINUTE ORDER

Page: 1

Dept: C21

Calendar No.:

Plaintiff's Evidentiary Objections: SUSTAINED as to Objection Nos. 1, 2, 3, 4, 5, as to after acquired evidence. OVERRULED as to Objection No. 6 because this bears on Callihan's state of mind.

Defendant's Evidentiary Objections: Defendant's evidentiary objections were numbered in consecutive order based on the proposed order. Defendant's evidentiary objections are SUSTAINED in part and OVERRULED in part. OVERRULED as to Objection Nos. 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41. SUSTAINED as to Objection Nos. 8, 9, 16, 17, 42, 43 and 44.

Plaintiff's Request for Continuance: DENY plaintiff's request for a continuance to take the deposition of Astech's General Manager Mr. Callihan. Mr. Callihan's deposition would be most relevant to plaintiff's claim of discrimination, and defendant's motion to summary adjudication on plaintiff's cause of action for discrimination and causes of action associated with plaintiff's claim for discrimination are DENIED. Mr. Callihan's deposition does not significantly bear on the remaining claims, and the evidence demonstrates that plaintiff delayed in conducting discovery in this case.

Clerk is to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Shirvan vs. Astech Engineered Products Inc

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
30-2008-00110303-CU-WT-CJC

I certify that I am not a party to this cause. I certify that a true copy of Clerk's Certificate of Service by Mail was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Santa Ana, California, on 08/07/2009.

Clerk of the Court, by:

Nora O Bryan

, Deputy

SHEPPARD MULLIN RICHTER & HAMPTON LLP
12275 EL CAMINO REAL STE 200
SAN DIEGO, CA 92130-2006

JAFARI LAW GROUP, APLC
801 N PARKCENTER DR STE 220
SANTA ANA, CA 92705

Additional names and address attached.