

**ENDORSED**

NOV 08 2012

Clerk of the Napa Superior Court  
By: Y. O'DONNELL  
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA

SANDRA MOSLEY, et al.,

Plaintiffs,

v.

ST. SUPERY VINEYARDS AND WINERY,  
et al.,

Defendants,

Case No.: 26-57246

ORDER ON SUBMITTED MOTIONS FOR  
SUMMARY JUDGMENT/SUMMARY  
ADJUDICATION OF ISSUES

The motions of Defendant Skalli Corporation (Skalli) for summary judgment or, in the alternative, summary adjudication against Plaintiffs Mosley and Stukey came on for hearing on November 1, 2012. The court having read and considered all papers submitted in support of and in opposition to the motions, and having heard and considered the arguments of counsel, took the matter under submission, adopts the Tentative Ruling without amendment, and now rules as follows:

(1) MOTION OF DEFENDANT SKALLI FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AGAINST PLAINTIFF SHERI STUKEY

The motion of Defendant Skalli for summary judgment is GRANTED as to both Defendant St. Supery Vineyards and Winery and Skalli as against Plaintiff Sheri Stukey. The alternative motion for summary adjudication of issues is moot.

Plaintiff Stukey alleges six causes of action against defendants for: (1) disparate treatment age discrimination; (2) disparate impact age discrimination; (3) failure to pay overtime; (4) failure to provide meal periods and rest breaks; (5) wrongful termination in violation of public policy; and (6) unlawful business practices. Defendant Skalli moves for summary judgment as to the entire complaint, or alternatively, for summary adjudication of the various causes of action. (Plaintiffs do not dispute that Defendant St. Supery Vineyards and Winery is only a dba of Skalli rather than an independent legal entity. Thus, both motions for summary judgment are granted as to that defendant without further analysis by the court.) The court addresses the viability of each of Plaintiff Stukey's causes of action with respect to Skalli as follows:

**The first and fifth causes of action for discriminatory treatment and termination.**

California has adopted the three-stage burden-shifting test established by the United States Supreme Court for trying claims of employment discrimination, including age discrimination. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354.) The initial burden, while not an onerous one, requires the employee to make a prima facie showing of discrimination, i.e. "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a [prohibited] discriminatory criterion....'" (*Id.* at p. 355.) In other words, the employee must have substantial evidence of circumstances surrounding the adverse action that give rise to an inference of discrimination. (*Coleman v. Quaker Oats Co.* (9th Cir. Ariz. 2000) 232 F.3d 1271, 1281.) Only if plaintiff can meet the initial burden of making a prima facie showing will the burden shift to defendant to show legitimate, non-discriminatory reasons for the adverse employment action.

In this case, defendant presents evidence that plaintiff was one of the only two remaining full-time employees working in the bottling department who were both laid off after the bottling work for the winery had slowed significantly. Plaintiff attempts to meet her burden of showing circumstances giving rise to an inference of discrimination based on the fact that both of the employees were in the protected class of people over age forty, that they could have taken over jobs of younger people in departments other than bottling, and that, after the lay offs, the person who made the termination decision

referred in an email to other long-term employees as “old-timers.” The court finds this evidence insufficient to meet plaintiff’s initial prima facie burden.

The fact that two out of the two employees defendant laid off were over the age of forty and possessed skills that may have qualified them for positions held by younger employees in other departments simply does not give rise to an inference of discrimination. Even with no explanation as to defendant’s reasons for laying off the last two full-time employees in the bottling department, one cannot infer from plaintiff’s facts alone that the lay offs were more likely than not based on discriminatory criterion. Moreover, the email reference to old-timers, when taken in context, was referring to the emotional effect the layoffs had on remaining employees of longer tenure and does not in any manner support an inference of a discriminatory motivation for plaintiff’s layoff. Because plaintiff has failed to present evidence supporting a prima facie claim of discrimination, the motion is properly granted as to the first and fifth causes of action.

**The second cause of action for discriminatory impact.**

Discriminatory impact claims are based on facially neutral employment practices that result in a discriminatory impact on a protected class of people. (*Carter v. CB Richard Ellis, Inc.* (2004) 122 Cal.App.4th 1313, 1321.) Here, plaintiff has not alleged a facially neutral employment policy or practice, but rather a one-time act directed at two particular people in the bottling department. This action simply is not the type contemplated under a theory of discriminatory impact. Even if it was, the statistical decrease in the average age of employees remaining after the two layoffs is insufficient to show an impact of any significance on the protected class of workers over the age of forty. (See *Diaz v. Eagle Produce, Ltd.* (9th Cir. Ariz. 2008) 521 F.3d 1201, 1209 (statistical disparity must be stark enough to suggest bias rather than pure chance, unless also coupled with other circumstances suggesting bias).) In claiming a discriminatory impact resulted from the layoffs, plaintiff again has the initial burden of making a prima facie showing of disparate impact. This she has not done. Thus, the motion is properly granted as to the second cause of action as well.

**The third and fourth causes of action for overtime and meal and rest violations.**

The basis of defendant's motion for summary adjudication as to Plaintiff Stukey's claims for overtime and meal and rest violations is that she was an exempt employee under either the "administrative" exemption or the "executive" exemption.

An exempt administrative employee is a person:

"(a) Whose duties and responsibilities involve either:

(i) The performance of office or non-manual work directly related to management policies or general business operations of his/her employer or his/her employer's customers; or

(ii) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or

(d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(e) Who executes under only general supervision special assignments and tasks; and

(f) Who is primarily engaged in duties which meet the test of the exemption...."

An exempt executive employee is a person:

"(a) Whose duties and responsibilities involve the management of the enterprise in which s/he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretion and independent judgment; and

(e) Who is primarily engaged in duties which meet the test of the exemption.

In an attempt to establish the applicability of either of the foregoing exemptions, defendant presents the evidence set forth in its separate statement of material facts in Facts Nos. 1-55, which includes, generally, evidence that plaintiff supervised other workers, oversaw the bottling department, evaluated subordinate employees, had input and control over when and which seasonal workers to hire and provided training, etc. The court finds this evidence sufficient to meet defendant's initial burden of presenting evidence to show that Plaintiff Stukey spent the majority of her employment performing duties that satisfied the administrative exemption.

In its tentative ruling of September 11, 2012, the court ordered the parties to amend their separate statements, and very explicitly instructed plaintiffs: "In the right hand column of their responsive statements, plaintiffs should list as 'disputed' only those facts that are truly disputed, as opposed to merely a dispute regarding the proper inferences to be drawn from the facts. Plaintiffs' arguments regarding the relevancy of and proper inferences to be drawn from defendant's facts should be confined to the opposition brief, which will be carefully read and considered by the court." In her amended separate statement, Plaintiff Stukey has once again provided some sort of dispute or objection to every listed fact, generally using the separate statement to make her arguments regarding the proper inferences to be drawn from the evidence. The court does not appreciate counsel's decision to disregard the court's clear instruction for the amended statement.

Regardless, the court has waded through plaintiff's responses and finds that she has failed to provide adequate rebuttal evidence in response to raise a triable issue of fact as to whether Stukey qualified as an exempt employee for purposes of overtime and meal and rest periods. Thus, the motion is properly granted as to the third and fourth causes of action.

**The sixth cause of action for unlawful business practices and the claims for waiting time penalties and punitive damages.**

The sixth cause of action for unlawful business practices, as well as the claims for waiting time penalties and punitive damages, are all dependent upon the viability of one of the other causes of action. Because the court has found there is no triable issue of

material fact in existence as to any other claims, the motion is also properly granted as to the claims for unlawful business practices, waiting time penalties and punitive damages.

(2) MOTION OF DEFENDANT SKALLI FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AGAINST PLAINTIFF SANDRA MOSLEY

The motion of Defendant Skalli for summary judgment is GRANTED as to both Defendant St. Supery Vineyards and Winery and Skalli as against Plaintiff Sandra Mosley. The alternative motion for summary adjudication of issues is moot.

As noted above, the motion is GRANTED as to Defendant St. Supery Vineyards and Winery because plaintiff has not disputed that it is a mere dba of Defendant Skalli. The viability of each of the six causes of action alleged by Plaintiff Sandra Mosley against Defendant Skalli is analyzed as follows:

**The first and fifth causes of action for discriminatory treatment and termination.**

California has adopted the three-stage burden-shifting test established by the United States Supreme Court for trying claims of employment discrimination, including age discrimination. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354.) The initial burden, while not an onerous one, requires the employee to make a prima facie showing of discrimination, i.e. “actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were ‘based on a [prohibited] discriminatory criterion....’” (*Id.* at p. 355.) In other words, the employee must have substantial evidence of circumstances surrounding the adverse action that give rise to an inference of discrimination. (*Coleman v. Quaker Oats Co.* (9th Cir. Ariz. 2000) 232 F.3d 1271, 1281.) Only if plaintiff can meet the initial burden of making a prima facie showing will the burden shift to defendant to show legitimate, non-discriminatory reasons for the adverse employment action.

In this case, defendant presents evidence that plaintiff was one of the only two remaining full-time employees working in the bottling department who were both laid off after the bottling work for the winery had slowed significantly. Plaintiff attempts to meet her burden of showing circumstances giving rise to an inference of discrimination based on the fact that both of the employees were in the protected class of people over age forty, that they could have taken over jobs of younger people in departments other than

bottling, and that, after the lay offs, the person who made the termination decision referred in an email to other long-term employees as “old-timers.” The court finds this evidence insufficient to meet plaintiff’s initial prima facie burden.

The fact that two out of the two employees defendant laid off were over the age of forty and possessed skills that may have qualified them for positions held by younger employees in other departments simply does not give rise to an inference of discrimination. Even with no explanation as to defendant’s reasons for laying off the last two full-time employees in the bottling department, one cannot infer from plaintiff’s facts alone that the lay offs were more likely than not based on discriminatory criterion. Moreover, the email reference to old-timers, when taken in context, was referring to the emotional effect the layoffs had on remaining employees of longer tenure and does not in any manner support an inference of a discriminatory motivation for plaintiff’s layoff. Because plaintiff has failed to present evidence supporting a prima facie claim of discrimination, the motion is properly granted as to the first and fifth causes of action.

**The second cause of action for discriminatory impact.**

Discriminatory impact claims are based on facially neutral employment practices that result in a discriminatory impact on a protected class of people. (*Carter v. CB Richard Ellis, Inc.* (2004) 122 Cal.App.4th 1313, 1321.) Here, plaintiff has not alleged a facially neutral employment policy or practice, but rather a one-time act directed at two particular people in the bottling department. This action simply is not the type contemplated under a theory of discriminatory impact. Even if it was, the statistical decrease in the average age of employees remaining after the two layoffs is insufficient to show an impact of any significance on the protected class of workers over the age of forty. (See *Diaz v. Eagle Produce, Ltd.* (9th Cir. Ariz. 2008) 521 F.3d 1201, 1209 (statistical disparity must be stark enough to suggest bias rather than pure chance, unless also coupled with other circumstances suggesting bias).) In claiming a discriminatory impact resulted from the layoffs, plaintiff again has the initial burden of making a prima facie showing of disparate impact. This she has not done. Thus, the motion is properly granted as to the second cause of action as well.

**The third cause of action for unpaid overtime.**

The basis of defendant's motion for summary adjudication as to Plaintiff Mosley's third cause of action for unpaid overtime is that the unpaid amount was inadvertently caused by an improperly calibrated rounding time card system, that the underpaid amount was de minimus (.16 hours), and that she has since been compensated for it. Plaintiff has not addressed these arguments in her opposition brief and apparently concedes the amount of overtime is properly disregarded as de minimus. Thus, the motion is properly granted as to the unpaid overtime claim.

The court does wish to note that, in complete disregard of the court's instruction regarding an amended responsive separate statement, plaintiff purports to dispute facts that are not truly in dispute. For example, in Fact No. 59, defendant seeks to establish that the sole basis for plaintiff's overtime claim is the time card rounding system. Plaintiff never actually disputes the fact, but instead plugs in a large amount of superfluous information, evidence and objection for the court to parse through. This type of sloppiness with the responsive separate statement does a disservice to the court, to opposing counsel, and to counsel's own client.

**The fourth cause of action for meal and rest period violations.**

Defendant moves for summary adjudication as to the fourth cause of action for meal and rest period violations on the ground that plaintiff was never denied meal or rest periods and that, to the extent she missed any, it was voluntary on her part. In support of this contention, defendant presents sufficient evidence establishing that it provided Mosley the required meal and rest periods and that, if the employees had to stay on the line during the normal break period, a break would be provided shortly thereafter.

Although plaintiff purports to dispute defendant's evidence in this regard, none of the evidence she presents is actually contrary to that presented by defendant. Because plaintiff has failed to meet her burden of showing the existence of a triable issue of material facts regarding defendant's provision of meal and rest periods, the motion is properly granted as to the fourth cause of action.



**The sixth cause of action for unlawful business practices and the claims for waiting time penalties and punitive damages.**

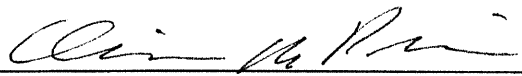
The sixth cause of action for unlawful business practices, as well as the claims for waiting time penalties and punitive damages, are all dependent upon the viability of one of the other causes of action. Because the court has found there is no triable issue of material fact in existence as to any other claims, the motion is also properly granted as to the claims for unlawful business practices, waiting time penalties and punitive damages.

The court also notes that in ruling on these motions it did not consider the declaration statements of Michael Sholz or Sheryl Johnson as to their understanding regarding the operation of the time card rounding system. The court sustains plaintiffs objections to that evidence as lacking in foundation. All other of plaintiffs' evidentiary objections are overruled.

In light of the court's ruling granting summary judgment in favor of both named defendants and against both plaintiffs, all remaining hearing dates in the matter are vacated.

Dated:

11/2/12

  
\_\_\_\_\_  
Diane M. Price, Judge

# NAPA SUPERIOR COURT

## Certificate of Mailing/Service

Mosley, S. vs. St. Supery Vineyards and Winery, et al.

26-57246

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\*\*\*\* CERTIFICATION \*\*\*\*

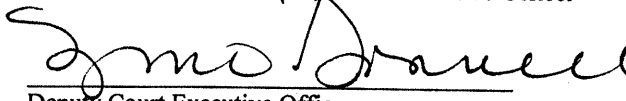
I hereby certify that I am not a party to this cause and that a copy of the foregoing document was:

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 personal service: personally delivered to the party listed above  
 placed in attorney/agency folders in the  Criminal Courthouse  Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this date.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

RICHARD D. FELDSTEIN, Court Executive Officer

  
Deputy Court Executive Officer

Date

11-2-12