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COMMISSION, MICHAEL PICKER, CARLA J. PETERMAN,
8 LIANE M. RANDOLPH, MARTHA GUZMAN ACEVES,
CLIFFORD RECHTSCHAFFEN
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 KAREN CLOPTON,

13 Plaintiff,

14 v.

15 CALIFORNIA PUBLIC UTILITIES
COMMISSION, MICHAEL PICKER,
16 CARLA J. PETERMAN, LIANE M.
RANDOLPH, MARTHA GUZMAN
17 ACEVES, CLIFFORD
RECHTSCHAFFEN,
18

19 Defendants.
20

Case No.: CGC-17-563082

[HON. HAROLD E. KAHN, DEPT. 302]

Complaint Filed: December 13, 2017
FAC Filed: March 8, 2018

**DEFENDANTS' REPLY TO PLAINTIFF'S
OPPOSITION TO DEMURRER BY
DEFENDANTS CALIFORNIA PUBLIC
UTILITIES COMMISSION, MICHAEL
PICKER, CARLA J. PETERMAN, LIANE M.
RANDOLPH, MARTHA GUZMAN ACEVES
AND CLIFFORD RECHTSCHAFFEN TO
PLAINTIFF'S VERIFIED FIRST AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

Date: May 29, 2018
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn

Reservation No.: 04040529-09

(*Exempt from filing fees pursuant to Gov.
Code, § 6103.)

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/21/2018
Clerk of the Court
BY: LINDA ALLSTON
Deputy Clerk

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I. INTRODUCTION

Plaintiff's opposition simply restates the allegations in her First Amended Complaint without addressing with any specificity the arguments in the Demurrer. Plaintiff has already taken one opportunity to amend her complaint, and it remains defective for the reasons stated in the Demurrer. Defendants therefore request that the Demurrer be sustained without leave to amend.

II. ARGUMENT

A. The Opposition Does Not Address the Lack of Any Allegation that Individual Defendants Aceves, Peterman or Rechtschaffen Took Any Retaliatory Action

Plaintiff's Opposition argues that individual defendants may be liable for retaliation under the WPA, which defendants do not dispute. Of course, for an individual to be liable, he or she must allegedly have taken a retaliatory act. The FAC fails to address the lack of any such allegations against Commissioners Aceves, Peterman or Rechtschaffen.

Plaintiff argues that the Commissioners "each voted individually to terminate" Plaintiff. (Opposition at 7:17-18.) But the Commissioners' role as decisionmakers in her termination does not render them Plaintiff's employer. The CPUC—not the individual Commissioners—terminated Plaintiff's employment.

Next, Plaintiff argues that "the Commissioners" acted as individuals when they "individually signed her evaluations over her objections." (Opposition at 7:16-17.) The FAC contains no such allegation, however.

Next, Plaintiff argues that the FAC does contain allegations that President Picker and Commissioner Randolph engaged in specific retaliatory conduct. Those allegations are certainly present in the FAC, but that does not vitiate the absence of similar allegations against Commissioners Aceves, Peterman and Rechtschaffen.

Accordingly, the WPA claim fails as alleged against Defendants Aceves, Peterman and Rechtschaffen.

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1 **B. The Opposition Fails to Address the Lack of a Causal Link Between Any Protected**
2 **Disclosure and Any Allegedly Retaliatory Act**

3 The section of Plaintiff's Opposition dedicated to this argument simply restates certain
4 allegations in the complaint and then concludes, "Ms. Clopton clearly cited in her complaint
5 significant evidence that she informed the Commissioners of her protected acts." Actually, she
6 did not, as Defendants pointed out in their moving papers.

7 **C. The Opposition Fails to Establish that the FAC Alleges that an Adverse Action**
8 **Occurred Because of Plaintiff's Race**

9 Though Plaintiff refused to amend the FAC during the meet and confer process on this
10 demurrer, she now claims in the Opposition that "the Commissioners terminated her, which is
11 clearly an adverse action." But the FAC does not state that and instead alleges only that she was
12 "treated differently" than other similarly situated employees. The Opposition also mentions the
13 allegation that Plaintiff complained to the CPUC about a training, and that President Picker
14 allegedly asked her if she was ready to meet with three white men with white hair. Neither of
15 those is an adverse action.

16 Plaintiff's Opposition establishes that her Race Discrimination cause of action, as pleaded,
17 is defective.

18 **III. CONCLUSION**

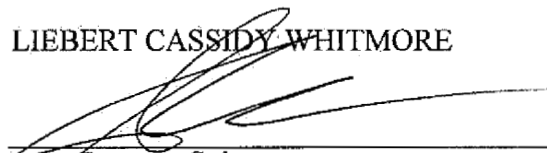
19 For the reasons stated herein, Defendants request that its demurrer to the First Amended
20 Complaint be sustained without leave to amend.

21 Dated: May 21, 2018

Respectfully submitted,

LIEBERT CASSIDY WHITMORE

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24 By:


Suzanne Solomon

Attorneys for Defendants CALIFORNIA
PUBLIC UTILITIES COMMISSION,
MICHAEL PICKER, CARLA J. PETERMAN,
LIANE M. RANDOLPH, MARTHA GUZMAN
ACEVES, CLIFFORD RECHTSCHAFFEN

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

3 I am employed in the County of San Francisco, State of California. I am over the age of
4 18 and not a party to the within action; my business address is: **135 Main Street, 7th Floor, San**
5 **Francisco, California 94105.**

6 On **May 21, 2018**, I served the foregoing document(s) described as **DEFENDANTS'**
7 **REPLY TO PLAINTIFF'S OPPOSITION TO DEMURRER BY DEFENDANTS**
8 **CALIFORNIA PUBLIC UTILITIES COMMISSION, MICHAEL PICKER, CARLA J.**
9 **PETERMAN, LIANE M. RANDOLPH, MARTHA GUZMAN ACEVES AND CLIFFORD**
10 **RECHTSCHAFFEN TO PLAINTIFF'S VERIFIED FIRST AMENDED COMPLAINT**
11 **FOR DAMAGES AND INJUNCTIVE RELIEF** in the manner checked below on all interested
12 parties in this action addressed as follows:

13 Dan Siegel, Esq.
14 Jane Brunner, Esq.
15 SIEGEL, YEE & BRUNNER
16 475 14th Street, Suite 500
17 Oakland, California 94612
18 Telephone: (510) 839-1200
19 Facsimile: (510) 444-6698

20 *Counsel for Plaintiff Karen Clopton*

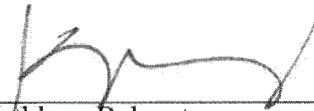
- 21 **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and
22 processing correspondence for mailing. Under that practice it would be deposited with
23 the U.S. Postal Service on that same day with postage thereon fully prepaid at San
24 Francisco, California, in the ordinary course of business. I am aware that on motion of
25 the party served, service is presumed invalid if postal cancellation date or postage meter
26 date is more than one day after date of deposit for mailing in affidavit.
- 27 **(BY FACSIMILE)** I am personally and readily familiar with the business practice of
28 Liebert Cassidy Whitmore for collection and processing of document(s) to be
transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by
facsimile from facsimile number 415.856.0306 to the facsimile number(s) listed above.
The facsimile machine I used complied with the applicable rules of court. Pursuant to
the applicable rules, I caused the machine to print a transmission record of the
transmission, to the above facsimile number(s) and no error was reported by the
machine. A copy of this transmission is attached hereto.
- (BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced
document(s) to be delivered to an authorized overnight courier service, FedEx, for
delivery to the addressee(s) above, in an envelope or package designated by the
overnight courier service with delivery fees paid or provided for.

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- (BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from kbaluat@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY PERSONAL DELIVERY)** I delivered the above document(s) by hand to the addressee listed above.

Executed on **May 21, 2018**, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Kathleen Baluat