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CITY ATTORNEY
2011 MAY 16 AM 11: 21

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS, Plaintiffs, v. BURBANK POLICE DEPARTMENT; CITY OF BURBANK; AND DOES 1 THROUGH 100, INCLUSIVE, Defendants.	Case No. BC 414602 Date: June 8, 2011 Time: 9:00 a.m. Location: 37 Judge: The Honorable Joanne O'Donnell **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION *IN LIMINE* NO. 6 FOR AN ORDER EXCLUDING *EVIDENCE OR ARGUMENT RELATING TO ANY PROTECTED CLASS OF WHICH KARAGIOSIAN IS NOT A MEMBER, INCLUDING AFRICAN-AMERICANS, HISPANICS AND FEMALES;* MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING DECL. OF LINDA MILLER SAVITT** File Date: May 28, 2009 Trial Date: June 8, 2011 (Plff. Karagiosian); July 27, 2011 (Plff. O. Rodriguez) Discovery Referee: Hon. Diane Wayne, Ret
BURBANK POLICE DEPARTMENT; CITY OF BURBANK, Cross-Complainants, v. OMAR RODRIGUEZ, an Individual; Cross-Defendant.	

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Plaintiff's only remaining cause of action is for harassment based on his being Armenian.

By this motion *in limine*, Defendant City of Burbank ("Burbank") seeks an order precluding Plaintiff Steve Karagiosian ("Karagiosian") from introducing evidence or argument of any comments relating to any protected class of which Karagiosian is not a member, including African-Americans, Hispanics and females.

Burbank anticipates that Karagiosian will seek to admit evidence of purported actions and comments he alleges were derogatory to African Americans, Hispanics or females as well as to support his harassment claims:

For example, Karagiosian testified that he heard statements and terms he believed to be derogatory towards African-Americans and Hispanics.

As a matter of law, none of these comments can support Karagiosian's hostile work harassment claims, which are based on his own ethnicity (Armenian). Such comments are completely irrelevant to his claims, would be unduly prejudicial, confusing, misleading and waste time if admitted into evidence, and must be excluded. *See* Cal. Evid. Code §§ 350 and 352.

II. ARGUMENT

A. Comments Related To Protected Classes Of Which Karagiosian Is Not A Member Are Not Relevant To His Claims And Should Be Excluded

Karagiosian does not claim to be African American or Hispanic. *See* First Amended Complaint, ¶ 3 (allegation that Karagiosian is "Armenian ancestry"). The California Supreme Court has noted that comments must be directed at the plaintiff or other members of the class of which plaintiff is a member in order to be actionable.

> [A] hostile work environment sexual harassment claim ***is not established*** where a supervisor or coworker simply uses crude or inappropriate language in front of employees or draws a vulgar picture, ***without directing sexual innuendos or gender-related language toward a plaintiff or toward women in general***. (E.g., *Brown v. Henderson* (2d Cir. 2001) 257 F.3d 246, 250, 256 [coworkers' steady stream of obscene conversation and vile talk, posting of sexual pictures, and

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> drawing of a vulgar picture, did not constitute harassment because of sex]; *Moore v. Grove North America, Inc.* (M.D. Penn. 1996) 927 F. Supp. 824, 830 [male supervisor's repeated use of offensive four-letter word to and in front of the plaintiff did not create a hostile work environment, where he also swore at her male counterparts and did not make sexual innuendos or use gender-related language toward the plaintiff or women in general].)

Lyle v. Warner Brothers Television Productions, 38 Cal. 4th 264, 282 (2006) (emphasis added); *see also Thompson v. City of Monrovia*, 186 Cal. App. 4th 860, 877-78 (2010) (citing authority which **rejects** "the notion that an employee who observes workplace hostility but is not a member of the class of persons at whom the harassment was directed may bring a derivative claim for the harassment"). Neither Hispanic comments nor African American comments have anything to do with Karagiosian's own ethnicity. They are irrelevant and must be excluded, as must any other comments Karagiosian seeks to admit into evidence that are unrelated to his own. *See* Cal. Evid. Code § 350.

B. <u>Comments Related To Protected Classes Of Which Karagiosian Is Not A Member Should Be Excluded Because Their Admission Will Waste Time, Confuse The Issues, Mislead The Jury, And Unduly Prejudice Burbank</u>

Evidence Code Section 352 states that "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

First, any evidence or argument relating to a protected class of which Guillen is not a member will necessitate "mini-trials" in which the parties will have to present witness testimony and other evidence to determine whether each comment or incident occurred as alleged, and (in some cases, whether it was based on the protected class (*see, e.g.,* footnotes 1 and 2, *supra*). This will waste a significant amount of time, given that none of this evidence is at all related to Guillen's harassment claims.

Second, there is substantial danger that any evidence of any such comments will confuse the issues, mislead the jury, and severely prejudice Burbank. If admitted into evidence, the

comments and conduct may lead the jury to hold Burbank liable for behavior that could not as a matter of law have contributed to any hostile work environment Guillen claims to have endured.

III. CONCLUSION

For the foregoing reasons, Burbank respectfully request that this Court grant this motion *in limine* precluding Guillen, her counsel, and her witnesses in this action from arguing, suggesting, submitting evidence, or attempting to submit evidence relating to any protected class of which Guillen is not a member, including African-Americans and Armenians.

Dated: May 6, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP
Linda Miller Savitt

By: Linda Miller Savitt
Linda Miller Savitt
Attorneys for Defendants and Cross-Complainant CITY OF BURBANK, including the POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an independent entity named "BURBANK POLICE DEPARTMENT")

DECLARATION OF LINDA MILLER SAVITT

I, LINDA MILLER SAVITT, hereby declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court. I am, through my professional corporation, a partner in the law firm of Ballard, Rosenberg, Golper & Savitt LLP, attorneys of record for Defendant and Cross-Complainant City of Burbank, including the Police Department of the City of Burbank (erroneously sued as an independent entity named "Burbank Police Department") ("Burbank"). I have personal knowledge of these facts and, if called and sworn as a witness, could and would competently testify thereto.

2. Burbank will be unduly prejudiced if the evidence upon which the instant motion is based (evidence relating to any protected class of which Karagiosian is not a member, including African-Americans and Hispanics) is admitted because such evidence will waste time, unduly prejudice Burbank, confuse the issues and mislead the jury. The evidence may lead the jury to hold Burbank liable for comments and conduct that could not as a matter of law have contributed to any hostile work environment that Karagiosian claims to have endured.

3. On April 26, 2011, I sent a letter to Karagiosian's counsel, Solomon Gresen, by email in an effort to meet and confer with him about Burbank's motions *in limine*. In that letter, I notified him of Burbank's intent to file a motion *in limine* seeking an order precluding Karagiosian, his counsel and his witnesses in this action from arguing, suggesting, submitting evidence, or attempting to submit evidence relating to any protected class of which Karagiosian is not a member, including African-Americans and Hispanics. A true and correct copy of this letter is attached as Exhibit A. As of the date below, Mr. Gresen has declined to stipulate that such evidence will not be mentioned or displayed in the presence of the jury unless and until it is admitted into evidence.

Executed this May 6, 2011, at Los Angeles, California.

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

Linda Miller Savitt

BRG&S BALLARD ROSENBERG GOLPER & SAVITT, LLP

LABOR AND EMPLOYMENT LAW
ON BEHALF OF MANAGEMENT
AND RELATED LITIGATION

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E-MAIL: Lsavitt@brgslaw.com

Via Facsimile and Mail

April 26, 2011

Solomon E. Gresen, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Blvd., Suite 1610
Encino, CA 91436

Re: Karagiosian v. Burbank Police Department, et al.

Dear Mr. Gresen:

Pursuant to Local Rule 8.92, the purpose of this letter is to meet and confer with respect to several motions *in limine* Burbank intends to file in this matter.

Absent your agreement that the evidence that is the subject of such motions will not be offered at trial, Burbank intends to file the following motions:

(1) motion *in limine* to exclude evidence or argument relating to the disbanding of SED since the Court has already ruled that this was not discrimination;

Agreed ___ Not Agreed ___

(2) motion *in limine* to exclude evidence or argument relating to Karagiosian not being returned to FTO in light of the ruling on the MSJ;

Agreed ___ Not Agreed ___

(3) motion *in limine* to exclude evidence or argument relating to statements made by Juli Scott during her September 2009 training; (The Court previously granted this in Guillen)

Agreed ___ Not Agreed ___

(4) motion *in limine* to exclude evidence regarding discipline of Chief Stehr over 20 years ago;

Agreed ___ Not Agreed ___

(12) motion *in limine* to exclude evidence or argument relating to ethnic comments made by the Sheriff's Department;

Agreed ___ Not Agreed ___

(13) motion *in limine* to exclude evidence or argument relating to Bruce Slor's testimony re:

(a) Kerry Schilf having a nickname of Hitler;

(b) comments made about Armenians for which he has no foundation for, which are hearsay, and for which he does not know who said them;

(c) can't recall comments being made to Karagiosian; and

(d) racial profiling of suspects.

Agreed ___ Not Agreed ___

Please give me a call to discuss the above-referenced motions. I am hopeful that you will stipulate to exclude the evidence described above, thereby preventing unnecessary motions.

Alternatively, you can check the Agreed boxes next to each one.

Very truly yours,

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

Linda Miller Savitt

Linda Miller Savitt

LMS:dmc
cc: Larry Michaels, Esq.
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