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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JANET ANDERSON, Plaintiff and Appellant, v. CATHOLIC HEALTHCARE WEST, Defendant and Respondent.	A127934 (San Francisco City & County Super. Ct. No. CGC-07-461080)

Janet Anderson appeals from a judgment after a court trial in favor of her former employer, Catholic Healthcare West (CHW) doing business as Mercy Medical Center (Mercy). Anderson, a registered nurse, sued Mercy for failing to make a reasonable accommodation to allow her to continue working after she developed a serious latex allergy. Mercy contended no reasonable accommodation was possible due to Anderson's medical restrictions. On appeal, Anderson contends (1) the trial court erred in ruling on pretrial discovery and summary adjudication issues, and (2) the judgment after trial is not supported by substantial evidence. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Facts*[1]

CHW owns and operates medical facilities in California and other states, including Mercy Medical Center Redding, a hospital and related facilities located in Redding, California. Anderson started working at Mercy as a registered nurse in 1979. Before

[1] The following is adapted from the trial court's statement of decision.

being selected as the head nurse in the operating room (OR) in 1986, Anderson worked as a float, scrub, and circulating nurse in the OR. In 1992, Anderson injured her lower back while lifting a patient. Shortly thereafter, the position of OR data coordinator was created, and Anderson successfully applied for it. She had no clinical nursing duties in that role, other than to occasionally provide assistance in a relief capacity as both the OR manager and the manager of the outpatient surgery center. During her long career with Mercy, Anderson was considered a valued employee and received regular pay increases.

On February 10, 2005, Anderson experienced medical symptoms—itching all over her arms and torso—that were consistent with an allergic reaction. She had never had a reaction like that, and had no idea what caused it. An allergic reaction to latex was first suggested to her as a possible cause a few days later. On February 15, Anderson went to the employee health department to consult with Sandra Anberg. Anberg ordered a "RAST" test for sensitivity to latex.

Before the results of the RAST test were known, Anderson was called to a meeting with the director of perioperative services, Jeanette Smith, and the OR manager, Kirk Williams. Smith had been hired by Mercy five months earlier to make the OR department financially more efficient and attract more physicians to perform surgeries at Mercy. As part of that effort, Smith evaluated Anderson's position and duties and found them to be nonessential. Smith informed Anderson the position of OR data coordinator was being eliminated as part of a reorganization of the OR. The subject of alternative positions in the OR was discussed with Anderson, including an open position as a circulating nurse. At no time during the meeting was Anderson's allergic reaction or the possibility the reaction was caused by latex exposure discussed. The results of the RAST test were not known until after the meeting between Anderson and Smith had taken place. Ultimately, the test came back with a negative result for latex sensitivity, which proved to be a false negative.

Anderson applied for and obtained a position as a circulating nurse in the outpatient surgery center. In her application, Anderson mentioned her 1992 back injury, but not any possible allergy. When she took the position, Anderson for the first time

joined a nurse's union—the California Nurses Association (CNA)—which made her job seniority for any position covered by CNA's collective bargaining agreement equivalent to that of a newly hired nurse. Anderson worked her first full day in the outpatient surgery center without incident on March 1, 2005. She awoke the next morning with severe hives, and had to be driven to the emergency room by her husband.

Dr. Ronald Renard, an allergist, examined Anderson on March 8, 2005. His impression was that Anderson's symptoms were related to latex sensitivity. This was confirmed by a positive skin test although other etiologies could not be ruled out. Anderson returned to work, but experienced another allergic reaction at work on March 11, 2005, and went to the emergency room. Anderson discussed the latex allergy with her supervisor at the outpatient surgery center who then designated one of the rooms as a latex-free area for Anderson to perform many of her duties. She continued to be reactive at work. Anderson stopped working and filed a workers' compensation claim relating to the allergic reactions in March.

Anderson's personal physician, Dr. John Moore, issued a series of orders taking her off work beginning on April 11, 2005, due to an acute anaphylactic reaction to latex, and ultimately kept her off work through July 2005. She never returned to her outpatient surgery position. In notes and letters written during 2005, Drs. Moore and Renard described the extent and severity of Anderson's latex allergy and the limitations imposed by it. In summary, her doctors recommended she be removed from any work environment that was not latex-free. Dr. Renard stated, "As long as this patient has ongoing exposure to latex, she will continue to have ongoing medical needs, and her condition may escalate." Anderson's medical records described subsequent allergic reactions to latex in non-hospital settings and to such products as automobile tires, furniture, food products and food packaging. She was found to be sensitive to foods handled by food workers wearing latex gloves, and to latex on chairs and seats in movie

theaters and restaurants. Dr. Moore wrote on March 19, 2007, that Anderson "remains unemployable outside of her own home, which she has purposefully made latex free."[2]

Following Anderson's initiation of her workers' compensation claim, Mercy's human resources department began making inquiries as to her ability to return to work, either in outpatient services or in a temporary modified duty position.[3] An inquiry was made to Dr. Renard to see if it was sufficient for Anderson to work with latex-free gloves or if she needed to avoid possible airborne latex as well. A June 29, 2005 letter from Mercy's employee health department to Dr. Moore referred to Mercy's modified duty program, and inquired as to what modifications would be necessary to work in a modified duty setting. After examining Anderson, Dr. Moore released her to transitional (modified) work, full-time depending on location, with no exposure to latex products.

Myrna Dorman, Mercy's human resources department's benefits coordinator, testified she could not find any temporary modified duty positions for Anderson due to the severity of her allergy and the specified medical restrictions. She could not be returned to outpatient surgery, or to any other clinical locations within or outside of the hospital proper due to possible latex exposure. Anderson herself feared exposure to latex in Mercy's main administrative building. Dorman testified the only area she could think of that might be safe was the building that housed payroll and accounting, but those departments had no need of any modified duty employees at that time. Dorman looked for modified duty positions until October 2005 when Anderson began receiving long-term disability benefits, at which point she was not allowed to perform modified duty. While Anderson was free to apply for other permanent positions, she was never explicitly advised of this alternative as Dorman assumed Anderson would know the relevant procedures due to the length of her employment with Mercy.

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[2] Moore later testified in his deposition, "I think it's overstated that she was unemployable outside the home as I read it now . . . ."

[3] Mercy's modified duty program was designed to allow employees who are on leave due to an on-the-job injury or medical condition to do other work not violating their medical restrictions, on a short-term basis.

Between October 2005 and June 2006, Mercy was waiting to review the results of a medical examination being performed as part of the workers' compensation process to see what types of work Anderson's doctor would release her to perform. Meanwhile, Anderson had begun regularly reviewing Mercy's online job postings in April 2005. She also reviewed job listings for other hospitals and healthcare providers placed in the newspapers or on the Internet. She did not take any jobs as a registered nurse out of concern for latex exposure. From mid-2005 through most of 2006, Anderson was putting extensive time and effort, 50 to 60 hours per week, into starting a business to provide services for geriatric patients. The venture ended when her business partner closed it in December 2006.

In June 2006, the physician engaged to evaluate Anderson in the workers' compensation proceeding submitted his report, concluding she needed "to be precluded from all exposure to latex." The worker's compensation insurer's administrator, Octagon Risk Services, Inc. (Octagon), thereafter arranged a meeting between Anderson, Mercy's benefits coordinator, Myrna Dorman, and a return-to-work specialist hired by Octagon, Linda Durrer, to discuss whether Anderson could return to her employment with Mercy in light of the medical report. As explained in Durrer's letter to the participants describing the parameters of the meeting, the purpose was to discuss whether Anderson's position could be permanently modified to accommodate her latex allergy, and if not, whether any other available positions would be suitable. Dorman was asked to bring the job description for Anderson's position at outpatient surgery to the meeting, as well as a listing of all open positions then available at Mercy.

All of those present at the meeting agreed Anderson could not perform the essential functions of a nurse working in outpatient surgery.[4] Dorman, Durrer, and

[4] Anderson testified the other participants repeated many times that she could not perform the essential functions of her job as a nurse *in general*, but "did not go into depth as to why they kept saying that." She said she argued with them on that point, but Durrer could not recall any disagreement about it. Anderson agreed the only limitation specifically discussed in terms of her ability to do her job was the latex allergy.

Anderson went over the list of current job openings, but did not find any positions that were appropriate, either due to the potential for latex exposure or Anderson's lack of qualifications. A letter prepared by Durrer memorializing the meeting stated, "We reviewed the list of openings and agreed that no positions currently exist that would be appropriate given Ms. Anderson's restrictions. She can not be in a hospital setting due to her exposure to latex dust. Some work for Mercy Medical Center is handled off-site, however, no appropriate openings exist off-site. [¶] Ms. Anderson was invited to apply for any future employment situations, which may come available if outside the hospital setting."

Anderson did not reply to the letter or apply for any open positions within Mercy. Two weeks after the meeting, Anderson was removed from Mercy's employment rolls under a CHW policy that terminates employment after any absence of six months. Due to fears of latex exposure, Anderson turned down a number of positions in the healthcare field. She testified she did not believe there were any nursing jobs in any clinical nursing arena, such as a hospital, clinic, or surgery center, she could do safely in light of her allergy unless it was made "latex free or reasonably free."

B. *Proceedings*

Anderson's first amended complaint (FAC) alleged (1) five causes of action under the California Fair Employment and Housing Act (Gov. Code,[5] § 12900 et seq.; FEHA) for disability and age discrimination, failure to accommodate disability, retaliation, and failure to prevent discrimination; (2) wrongful termination in violation of public policy; and (3) intentional infliction of emotional distress.

Mercy moved for summary judgment or, in the alternative, for summary adjudication. The court denied the motion for summary judgment, but granted summary adjudication of Anderson's causes of action for age discrimination, retaliation, and intentional infliction of emotional distress. The remaining causes of action were tried to

[5] All further statutory references are to the Government Code unless otherwise indicated.

the court commencing April 13, 2009.[6] The court found in Mercy's favor on all causes of action, and a judgment in Mercy's favor was entered on December 24, 2009. Anderson timely appealed from the judgment.

II. DISCUSSION

Anderson contends the trial court erred or abused its discretion by (1) denying her motions to compel discovery of CHW's job vacancies in Northern California and to reopen discovery on job vacancies a month before the scheduled trial date, (2) granting summary adjudication on her causes of action for retaliation and intentional infliction of emotional distress, and (3) adopting a statement of decision that was unsupported by substantial evidence as to several causes of action.

A. *Denial of Discovery Motions*

1. *Facts*

The trial court denied a motion by Anderson to compel discovery of all documents "relating or pertaining" to (1) all job openings, advertisements, recruitment, and hiring for registered nurses, off-campus administrative positions, or "Mercy Home Care" positions in Northern California from February 5, 2005; and (2) qualifications required, criteria for hiring or transfer, and hiring or transfer of registered nurses to positions within "Mercy Home Care" during the same period. Mercy objected to the document requests as overbroad and unduly burdensome, and responded that it could not "comply with that demand because the particular items [were] no longer in [Mercy's] possession, custody or control." In its opposition to the motion to compel, Mercy stated: "Mercy Medical Center employs hundreds of employees and has a large number of job openings at any given time. Mercy does not keep a centralized storage system for outdated job listings, advertisements, or job requirements for available positions. . . . [¶] . . . Documents relating to the hiring or reassigning of employees to Mercy Home Health

[6] At trial, Anderson also presented evidence of an unpleaded violation of section 12940, subdivision (n), failing to engage in a timely, good faith interactive process to determine effective reasonable accommodations.

Care are contained in the personnel file of the individuals assigned to Mercy Home Health Care."[7]

In March 2009, one month before trial was scheduled to begin, Anderson moved to reopen discovery based on new law assertedly established by *Nadaf-Rahrov v. Neiman Marcus Group, Inc*. (2008) 166 Cal.App.4th 952 (*Nadaf-Rahrov*) to the effect that a plaintiff alleging a cause of action for failing to engage in an interactive process has the burden of proving an effective reasonable accommodation existed. She sought a "deposition/document production . . . regarding the existence or non-existence of job vacancies that Plaintiff could have performed with or without an accommodation . . . ." The trial court denied the motion.

2. *Analysis*

We review trial court rulings on discovery issues for abuse of discretion. (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 383; *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 388–389.) " 'Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

We note first, the trial court denied Anderson's motion to compel "without prejudice to a further motion in the event new evidence concerning defendants' records or document retention policies is discovered." In other words, the court denied the motion not because it believed responsive documents in Mercy's possession were irrelevant or outside the scope of permissible discovery, but because it credited Mercy's assertion that it did not maintain records responsive to Anderson's requests. On appeal,

[7] We note Anderson did have a copy of the job listings given to her at the interactive process meeting with Durrer and Dorman, which was admitted into evidence.

Anderson acknowledges Mercy did not maintain paper or electronic records of the job vacancy information she was seeking. She cites trial testimony by Mercy witnesses confirming that fact. Her sole colorable appellate argument on this issue—that the documents sought were relevant and discoverable—is simply beside the point. If the documents did not exist, the trial court did not abuse its discretion by declining to order Mercy to produce them.[8]

Anderson's belated request to reopen discovery was also properly denied. It was unrealistic and unreasonable to expect Mercy to be able to produce a witness knowledgeable about all job vacancies throughout its hospital system which Anderson "could have performed with or without an accommodation." There was no evidence CHW had a centralized human resources department that kept track of openings at all of its California facilities, much less that any person with such comprehensive knowledge of job vacancies would also be sufficiently familiar with Anderson's medical condition and restrictions to be able to cross-check them against all job vacancies. As Mercy points out, there would have been further, unanswerable questions as to whether Anderson had more union seniority than all other qualified applicants for any position that could be identified.[9] Either Anderson would have obtained nothing from the discovery sought or

[8] Anderson also suggests we should reverse the judgment because CHW "actually and willfully destroyed" its records of job openings. However, Anderson did not claim or seek sanctions for spoliation of evidence in the trial court, and nothing in the record supports such a claim. CHW explains it did not keep paper copies of outdated job postings, and did not maintain data on such postings after switching over to a new computer system before the lawsuit was filed. We have no basis on this record to fault or penalize CHW for those decisions.

[9] For example, trial testimony by Mercy's director of home health care established that all home health care nurses and case managers hired for Mercy's program are subject to CNA seniority rules. She further testified a minimum qualification for these positions was that the nurse have at least one year of hands-on, acute care nursing work in the preceding five years, preferably in the last two years. This would have excluded Anderson who had not worked a full year in a hands-on nursing job for more than 20 years. It is unreasonable to believe any one deponent could have testified knowledgably about all of the relevant considerations for all of the nursing and administrative job vacancies CHW had.

she would have had to expand it to cover multiple deponents and work locations, unavoidably requiring postponement of the trial.

We are also not convinced the *Nadaf-Rahrov* decision changed either Anderson's discovery needs or the scope of permissible discovery. The issue of whether a reasonable accommodation was possible was logically relevant to Anderson's claims under section 12940, subdivisions (m) and (n)—and an important subject of discovery for the plaintiff—no matter which party had the burden of proving it. Anderson clearly appreciated that before *Nadaf-Rahrov* was decided. Before the cutoff date, her attorneys had vigorously pursued discovery on the issue of possible accommodations Mercy could have made on her behalf. That was the objective of the document requests and motion to compel she had filed in March 2008 (six months before *Nadaf-Rahrov*). Anderson had also deposed Mercy witnesses, including Mercy's home health care director, on possible jobs for which she might have been considered, and to identify persons within Mercy who were knowledgeable on this subject. There is no evidence the trial court ever held such discovery was impermissible, or that Mercy sought to prevent it on the mistaken grounds that Anderson had no burden of proving a reasonable accommodation existed. The "deposition/document production" Anderson sought in her motion to reopen discovery broke no new ground. It was merely an attempt, albeit an impracticable one, to resume discovery Anderson had been pursuing before the discovery cutoff date. *Nadaf-Rahrov* was not a sufficient justification for allowing this to continue down to the eve of trial.

The trial court did not abuse its discretion in denying Anderson's discovery motions.

B. *Summary Adjudication*

Anderson contends the trial court erred in granting summary adjudication on her retaliation and intentional infliction of emotional distress causes of action.

1. *Retaliation*

Section 12940, subdivision (h) bars employers from discharging or discriminating against employees because they oppose practices violating FEHA, or file a FEHA

complaint against the employer with the California Department of Fair Employment and Housing (DFEH), or otherwise participate or testify in a proceeding brought under FEHA. The court found Anderson's "only complaint is the 2006 DFEH complaint and [she] has not shown a causal link between the complaint and her termination." The court cited a declaration of Mercy's benefits coordinator, Myrna Dorman, stating Mercy did not become aware of Anderson's 2006 DFEH complaint until *after* Anderson filed her civil complaint in March 2007. Anderson contends her own FAC created a factual issue on this point apparently because it alleged "the DFEH transmitted Right to Sue Letters" in response to her DFEH complaint on March 6, 2006, and Mercy's attorney attached a copy of the FAC to his declaration in support of the motion for summary adjudication. She further contends Mercy admitted it responded to the DFEH complaint in a sworn interrogatory response.[10]

As to the alleged transmission of right-to-sue letters, the allegations of Anderson's complaint do not create a triable issue of material fact. Allegations in a pleading are not evidence. (*Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 154.) The fact Mercy submitted a copy of the FAC to the court as part of its moving papers for the court's convenience does not mean it admitted any fact alleged in the FAC. Even if the allegation made in the FAC is treated as evidence, the complaint does not in fact assert or prove anything was transmitted to Mercy on March 6, 2006, or at any other time. With regard to Mercy's interrogatory response, the response does not establish *when* Mercy learned of Anderson's DFEH complaint or responded to it. In fact, none of the evidence Anderson references, either within the trial court record or outside of it,

[10] We do not consider other documents and evidence Anderson cites in her appellate briefs that she did not originally cite or rely on in her opposition to summary adjudication of her retaliation claim in the trial court. Absent unusual circumstances, we do not look outside the opposing party's separate statement to evidence not called to the trial court's attention when it ruled on the motion. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30–32; *Jacobs v. Retail Clerks Union, Local 1222* (1975) 49 Cal.App.3d 959, 966.)

establishes when Mercy learned of the DFEH complaint. The trial court properly granted summary adjudication on the retaliation cause of action.

2. *Emotional Distress*

The trial court also found no triable issue as to Anderson's seventh cause of action for intentional infliction of emotional distress, ruling there was insufficient evidence of extreme and outrageous conduct on Mercy's part. On appeal, Anderson asserts the evidence submitted in opposition to the motion "clearly demonstrated the existence of a material dispute" as to whether Mercy's conduct was sufficiently extreme and outrageous to reach a jury. However, she does not cite to or specify any of that evidence, or explain why it is sufficient to demonstrate a triable issue of material fact. Her sole argument is that the trial court had previously allowed her to amend her complaint to add a prayer for punitive damages under a statute, Code of Civil Procedure section 425.14, that requires plaintiffs seeking punitive damages against a religious corporation to demonstrate the "existence of sufficient evidence to establish a *prima facie* case for punitive damages." (*Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1723.) But the standard of evidence for proving extreme and outrageous conduct is higher than that for proving malice. (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 496.) We see no triable issue of fact shown in the record as to whether Mercy's conduct was " 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.' " (*Ibid.*) Anderson fails to demonstrate the trial court erred in granting summary adjudication to Mercy on her seventh cause of action.

C. *Substantial Evidence Issues*

Anderson contends the statement of decision as to the issues tried to the court is not supported by substantial evidence.

Where the sufficiency of the evidence is challenged on appeal, we "start with the presumption that the record contains evidence sufficient to support the judgment; it is the appellant's burden to demonstrate otherwise." (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 368.) We consider all of the evidence in the light most

favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630.) "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment." (*Id*. at pp. 630–631.)

1. *Disability Discrimination/Wrongful Discharge*

Relative to her causes of action for disability discrimination and wrongful termination, Anderson claims the following finding of fact in the statement of decision is not supported by any credible evidence: "Plaintiff was not discharged because she was allergic to latex. Mercy decided to discharge plaintiff because she was not released to return to work within six months of her leave." According to Anderson, Dorman was the decision maker and she "admitted that the real reason Anderson lost her employment was 'because she had a latex allergy.' " Anderson takes Dorman's response to one question out of context, and ignores the actual import of what she said. Dorman testified, consistent with the trial court's findings, that Anderson was discharged after the interactive process meeting when it was clear no position acceptable to Anderson and consistent with her medical safety could be found for her. Dorman testified, and the termination notice substantiated, that Mercy discharged her pursuant to CHW's policy of terminating employees after any absence of six months. Although Dorman stated under cross-examination that Anderson's latex allergy was the "reason" for her termination, it was clear from the context she meant it precipitated the events leading to termination, not that Anderson's allergy was the reason Mercy terminated her. Dorman's testimony and other substantial evidence presented at trial, if credited, showed Anderson was discharged because she was unable to perform the essential functions of her job, no reasonable accommodation could be found for her, and she had been on leave from her employment for more than six months. "[A]n employer is not liable for discharging a person with a disability because of the disability if the person is unable to perform the essential

functions of the job with or without reasonable accommodations." (*Nadaf-Rahrov, supra,* 166 Cal.App.4th at p. 976.)

Anderson fails to demonstrate the trial court's statement of decision with respect to disability discrimination and wrongful termination based on disability was unsupported by substantial evidence.

2. *Failure to Accommodate*

Regarding her cause of action for failure to accommodate, Anderson asserts the trial court failed to fully consider evidence Mercy's accommodation efforts fell short of the legal standard. Without discussing any specifics of their testimony, she faults the trial court for not considering the testimony of her treating physicians and human resources expert.[11]

Section 12940, subdivision (m) provides it is unlawful for an employer to "fail to make reasonable accommodation for the known physical . . . disability of an . . . employee," as long as it can do so in a manner that does not "produce undue hardship . . . to its operation." An employer is liable under this subdivision "only if the work environment could have been modified or adjusted in a manner that would have enabled the employee to perform the essential functions of the job." (*Nadaf-Rahrov*, *supra*, 166 Cal.App.4th at p. 975.) Substantial evidence supported the following trial court findings on these issues: (1) Anderson was unable to perform the duties of a registered nurse in the outpatient surgery center due to her latex sensitivity; (2) Mercy could not alter the hospital environment to make it suitable for Anderson's degree of latex sensitivity, even in nonclinical settings; and (3) reassignment to a home health or hospice position was not feasible due to the risk of exposure to latex, the infeasibility of prescreening the patient residences in which Anderson would be required to work, and Anderson's inability to meet the minimum requirements for the position including recent clinical care experience. Mercy's hospital administration expert testified Mercy

[11] We assume she refers to the deposition testimony of her treating physicians since they did not provide live testimony at trial.

responded appropriately to Anderson's medical condition, conducted an appropriate interactive process, and made reasonable efforts to determine whether she could function effectively in another position. While some of the relevant evidence was certainly in conflict, Anderson fails to demonstrate no substantial evidence supported the trial court's findings and legal conclusions.

3. *Failure to Engage in Interactive Process*

Section 12940, subdivision (n) makes it unlawful for an employer "to fail to engage in a timely, good faith, interactive process with the employee . . . to determine effective reasonable accommodations, if any, in response to [the employee's] request for reasonable accommodation . . . ." To prevail on a claim under this subdivision, the plaintiff must prove not only that the employer failed to engage in an appropriate interactive process, but that a reasonable accommodation was possible. (*Nadaf-Rahrov, supra,* 166 Cal.App.4th at p. 984.)

The trial court made the following findings, among others, on this cause of action: (1) Anderson did not request any specific accommodations or apply for any positions at Mercy; (2) Mercy and its workers' compensation administrator timely requested information from Anderson's treating physicians as to the extent of her allergy and whether she could return to work if she avoided latex gloves; (3) Mercy actively sought modified duty options for Anderson until she began receiving long-term disability in October 2005; (4) Mercy promptly scheduled an interactive process meeting once the results of the agreed-upon workers' compensation evaluative process were known (finding Anderson's disability to be permanent and stationary); and (5) the testimony of Dorman and Durrer and related documentation concerning the meeting established Mercy met its obligations under section 12940, subdivision (n). In addition, the court pointed out Anderson failed to meet her burden of proving a reasonable accommodation was possible, a prerequisite to relief under this subdivision.

On appeal, Anderson quotes at length from *Nadaf-Rahrov* and then asserts in conclusory fashion the interactive process broke down in this case due to Mercy's "complete lack of compliance with the requisite process." She does not address the

court's findings, the evidence in the record supporting them, or the testimony of Mercy's expert about the appropriateness and completeness of the interactive process that took place, discussed above. She fails to meet her burden of demonstrating no substantial evidence supported the court's determination on this cause of action.

4. *Other Causes of Action*

Anderson offers no separate arguments discussing the court's findings in favor of Mercy on her causes of action for (1) failing to investigate or prevent harassment or discrimination under section 12940, subdivisions (j) and (k); and (2) wrongful termination in violation of public policy. She merely asserts in cursory fashion these must be reversed for lack of substantial evidence based on the "same analysis" as her other claims. We treat these claims as forfeited due to Anderson's failure to make any reasoned argument supported by legal authority in support of them. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].)

III. DISPOSITION

The judgment is affirmed.

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.