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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAJI PIERCE; AYRIEL BLAND,

Plaintiffs - Appellees,

v.

EAST BAY MUNICIPAL UTILITY
DISTRICT; CRAIG SPENCER,

Defendants - Appellants,

and

LAURA ACOSTA,

Defendant.

No. 24-1260

D.C. No.

3:21-cv-04325-AGT

Northern District of California,
San Francisco

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Alex Tse, Magistrate Judge, Presiding

Argued and Submitted February 12, 2026
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Stanley Blumenfeld, Jr. United States District Judge for the Central District of California, sitting by designation.

Before: S.R. THOMAS and MILLER, Circuit Judges, and BLUMENFELD, District Judge.**

East Bay Municipal Utility District (“East Bay”) and Craig Spencer appeal the district court’s denial of their renewed motion for judgment as a matter of law on the Plaintiffs’ retaliation claims, the denial of their motion for new trial on damages, and the district court’s admission of expert testimony. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

I

The district court did not err in denying the renewed motion for judgment as a matter of law for Saji Pierce’s retaliation claims under Title VII, 42 U.S.C. § 1983, and California’s Fair Employment and Housing Act (“FEHA”). We review the denial of a renewed motion for judgment as a matter of law de novo. *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir. 2002). We uphold a jury’s verdict where “it is supported by substantial evidence, which is evidence adequate to support the jury’s conclusion, even if it is also possible to draw a contrary conclusion.” *Id.* We “review the record as a whole, [and we] must disregard evidence favorable to the moving party that the jury is not required to believe, and may not substitute [our] view of the evidence for that of the jury.” *Id.* (quoting

Johnson v. Paradise Valley Unified Sch. Dist., 251 F.3d 1222, 1227 (9th Cir. 2001)).

The district court properly concluded that there was sufficient evidence to support the verdict. For both state and federal claims of retaliation, a plaintiff must demonstrate that (1) she engaged in a protected activity; (2) the employer subjected her to an adverse employment action; and (3) there is a causal link between the two. *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal.4th 1028, 1042 (2005); *MacIntyre v. Carroll Coll.*, 48 F.4th 950, 954 (9th Cir. 2022).

A

Spencer and East Bay assert that Pierce has failed to establish an adverse employment action as a matter of law. Under FEHA, an adverse employment action is treatment “that materially affects the terms and conditions of employment.” *Yanowitz*, 36 Cal.4th at 1051. In the retaliation context, an adverse employment action under federal law is “one that ‘well might have dissuaded a reasonable [person] from making or supporting a charge of discrimination.’” *MacIntyre*, 48 F.4th at 954-55 (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

At trial, Pierce presented evidence of Spencer reprimanding her without justification, and reassigning some of her longstanding clients and subject areas.

Taken together, and viewed in the light most favorable to Pierce, this evidence was sufficient to constitute an adverse employment action to support a retaliation claim. *See Yanowitz*, 36 Cal.4th at 1055-56 (holding that a course of retaliatory conduct, including unwarranted criticism, public reprimanding, and an unwarranted negative performance evaluation, constituted an adverse employment action under FEHA). The evidence was sufficient for the jury to conclude that these actions would have dissuaded Pierce from filing a complaint. *MacIntyre*, 48 F.4th at 955.

B

“As a general rule, a general jury verdict will be upheld only if there is substantial evidence to support each and every theory of liability submitted to the jury.” *Portland Feminist Women’s Health Ctr. v. Advocs. for Life, Inc.*, 62 F.3d 280, 285 (9th Cir. 1994) (quoting *Kern v. Levolor Lorentzen, Inc.*, 899 F.2d 772, 777 (9th Cir. 1990)), *as amended*. Here, the jury was provided with a general verdict form. Pierce submitted two theories of liability on her retaliation claims to the jury: a general retaliation theory and a cat’s paw liability theory. Under a cat’s paw theory of retaliation, the discriminatory animus of a supervisor is imputed to the employer if the supervisor committed a retaliatory act with discriminatory intent, the supervisor intended for the act to cause an adverse employment action, and that act is a proximate cause of the ultimate adverse employment action. *See*

Staub v. Proctor Hosp., 562 U.S. 411, 422 (2011); *Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir. 2007).

To support her theory of cat's paw liability, Pierce argued that Spencer's false, negative statements about her that were included in an employment investigation were a substantial motivating reason why East Bay's board members did not select her as general counsel. At trial, one of the three board members who made the hiring decision testified that she had received the investigative report through the ordinary process for distributing confidential closed-session materials, that she read the report, and that board members ordinarily received such materials electronically and reviewed them in preparation for closed-session meetings. The evidence therefore permitted the jury to reasonably infer that the report had been made available to, and read by, all three board members. The evidence also permitted the jury to infer that Spencer's statements influenced the selection process. Before the selection process, one of the committee members had regarded Pierce as "a very competent, capable member of the legal team." Spencer, however, portrayed Pierce in the report as, among other things, an underperformer with poor communication skills who was unwilling to take on additional work. The committee members later identified Pierce's communication, breadth of legal experience, and teamwork and management skills for ranking her below the

candidates who advanced. And although the three members initially ranked the candidates separately, they thereafter discussed their rankings and collectively determined which candidates would advance.

Choochagi v. Barracuda Networks, Inc., 60 Cal.App.5th 444 (2020), does not compel a different conclusion. There, the evidence did not permit a reasonable inference that the allegedly biased supervisor caused the termination because the ultimate decision makers were unaware of the employee's complaint and independently observed the performance deficiencies underlying the termination. *Id.* at 460-61. Unlike in *Choochagi*, the board member's testimony in this case permitted the jury to infer that the report was before the decision makers and influenced the hiring decision, making Spencer's statements and retaliatory animus a substantial motivating reason for East Bay's failure to hire Pierce as general counsel. *See Poland*, 494 F.3d at 1183-84.

The evidence, when viewed in the light most favorable to Pierce, was sufficient to sustain her "cat's paw" retaliation theory to the jury against East Bay for failure to hire her as general counsel. Thus, "adequate evidence" supports the jury's retaliation verdict under FEHA against East Bay. *Pavao*, 307 F.3d at 918. Even if it is "possible to draw the contrary conclusion," we "may not substitute [our] view of the evidence for that of the jury." *Id.*

II

The district court did not err in denying East Bay and Spencer's renewed judgment as a matter of law for Ayriel Bland's constructive discharge and retaliation claims. Whether an employee has been "constructively discharged" is normally a question left to the trier of fact. *Watson v. Nationwide Ins. Co.*, 823 F.2d 360, 361 (9th Cir. 1987).

A

Constructive discharge occurs where "the working conditions are so unusually adverse that a reasonable employee in plaintiff's position would have felt compelled to resign." *Turner v. Anheuser-Busch*, 7 Cal.4th 1238, 1247 (1994) (internal quotation marks omitted); *see also Green v. Brennan*, 578 U.S. 547, 555 (2016). Although employees are not "guaranteed a working environment free of stress[,]" they are protected from "unreasonably harsh conditions, in excess of those faced by his or her co-workers." *Turner*, 7 Cal.4th at 1247 (citation omitted). While "a single incident is insufficient as a matter of law to support a finding of constructive discharge," a "continuous pattern of discriminatory treatment" can support a jury finding of constructive discharge. *Wallace v. City of San Diego*, 479 F.3d 616, 626 (9th Cir. 2007) (citation omitted).

Spencer and East Bay argue that any conduct that predated Bland's April 2020 internal complaint cannot be considered in evaluating her retaliation claims. But such conduct may provide context for determining whether the conditions resulting from the subsequent retaliation were sufficiently intolerable to constitute constructive discharge. In assessing the constructive discharge question, "the jury is entitled to consider all of the circumstances of the employment relationship." *Thompson v. Tracor Flight Sys., Inc.*, 86 Cal.App.4th 1156, 1169 n.1 (2001). And the jury is "entitled to conclude that [defendants'] retaliatory actions made what was previously just a bad situation into an intolerable situation." *Id.*

Bland testified to a significant disparity in both formal and informal training relative to her peers, which other witnesses corroborated. The jury also heard testimony that, contrary to East Bay policy, Bland did not receive a performance plan upon her arrival and was consequently kept in the dark about her responsibilities and how she would be evaluated. Bland also did not receive standard supplies. For example, Bland was the only attorney on the litigation team whom East Bay did not provide with a laptop, which impeded her participation in virtual hearings and depositions during the pandemic. Bland also testified that she received a disproportionately onerous workload, and her colleagues expressed concern that it would lead to burnout. Bland continued to receive excessive

assignments after returning from medical leave with a reduced schedule. This pattern of differential treatment can be sufficient for constructive discharge. *See Colores v. Bd. of Trs.*, 105 Cal.App. 1293, 1310 (2003) (finding “excessive” assignments contributed to intolerable work conditions); *Valdez v. City of Los Angeles*, 231 Cal.App.3d 1043, 1057–58 (1991) (finding that deprivation of training and advancement opportunities contributed to constructive discharge).

The jury heard testimony relating to both specific and general instances of hostility from Spencer at East Bay. This hostility resulted in both physical and psychological ramifications for Bland, including stress-induced shingles, anxiety, depression, and posttraumatic stress disorder. These manifestations of stress also support the jury’s finding that the working conditions were objectively intolerable. *See Brome v. Cal. Highway Patrol*, 44 Cal.App.5th 786, 802 (2020) (holding that anxiety, trauma, sleep disturbances, and suicidal ideation can support the conclusion that working conditions were objectively intolerable).

Taking all of the evidence together, a reasonable jury could conclude that Spencer “intentionally made it impossible for [Bland] to do her job[.]” *Thompson*, 86 Cal.App.4th at 1170 (2001); *see also Yanowitz*, 36 Cal.4th at 1060 (“Actions that threaten to derail an employee’s career are objectively adverse . . .”).

Viewing the evidence in the light most favorable to Bland, substantial evidence

supports the jury's verdict that Bland was constructively discharged from East Bay.

B

East Bay and Spencer also challenge the legal sufficiency of Bland's retaliation claims on the ground that she failed to demonstrate an adverse employment action. As stated above, an adverse employment action under California state law is one that "materially affects the terms, conditions, and privileges of employment." *Yanowitz*, 36 Cal.4th at 1054. Under federal law, it is an action that "might have dissuaded" a reasonable person from making a complaint. *MacIntyre*, 48 F.4th at 954-55.

"Constructive discharge, like actual discharge, is a materially adverse employment action." *St. Myers v. Dignity Health*, 44 Cal.App.5th 301, 315 (2019) (internal quotation marks omitted). The jury's verdict that Bland demonstrated constructive discharge alone establishes an adverse employment action. Thus, substantial evidence supports the jury's verdict on Bland's retaliation claims.

III

With respect to Pierce, East Bay and Spencer argue that the jury's economic damages award is not supported by the evidence and that the district court abused its discretion in declining to order a retrial on non-economic damages. "[A] jury's

award of damages is entitled to great deference, and should be upheld unless it is ‘clearly not supported by the evidence’ or ‘only based on speculation or guesswork.’” *In re First Alliance Mortg. Co.*, 471 F.3d 977, 1001 (9th Cir. 2006). We review the denial of a motion for new trial for abuse of discretion. *Id.* “A trial court may grant a new trial only if the verdict is against the clear weight of the evidence, and may not grant it simply because the court would have arrived at a different verdict.” *Id.*

The jury awarded Pierce \$1.35 million in economic damages and \$2 million in non-economic damages. The jury’s economic damages award is consistent with expert testimony and their verdict that Pierce established a retaliation claim but not a constructive discharge claim. Pierce’s trial testimony as to her emotional distress from the retaliation supports the non-economic damages awards.

Because evidence supports the jury’s damages awards, the district court did not abuse its discretion in denying new trial or remittitur for Pierce’s claims. *See id.*

IV

“We review evidentiary rulings for abuse of discretion and reverse if the exercise of discretion is both erroneous and prejudicial.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043 (9th Cir. 2014). Here, we need not determine

whether the district court abused its discretion in admitting expert witness D. Jan Duffy, because we conclude that any error was harmless. In evaluating whether an evidentiary error was harmless, “we begin with a presumption of prejudice. That presumption can be rebutted by showing it is more probable than not that the jury would have reached the same verdict even if the evidence had not been admitted.”

Estate of Barabin v. AstenJohnson, Inc., 740 F.3d 457, 465 (9th Cir. 2014)

(quoting *Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1159 (9th Cir. 2010)), *overruled on other grounds by United States v. Bacon*, 979 F.3d 766 (9th Cir. 2020).

Here, Duffy testified to her expert opinion that the investigations at East Bay were inadequate, deficient, and lacked the indicia of impartiality. However, two lay witnesses, who worked with East Bay’s human resources, testified to their perception that East Bay’s employment investigations were biased. This testimony included one lay witness’s knowledge that East Bay was paying for Spencer’s legal fees and that witness’s perception that doing so made the investigation biased. Because there was additional evidence supporting the inference of bias as it relates to East Bay’s investigation, any alleged error in admitting Duffy’s testimony was harmless, and we need not address the merits of the evidence admission. *See United States v. Echavarria-Olarte*, 904 F.2d 1391, 1399 (9th Cir. 1990) (finding

harmless error where the expert did not prejudice defendant because there was significant additional evidence to the defendant's involvement with the drug crimes).

V

In conclusion, adequate evidence supports the jury's verdict as to liability both Pierce and Bland's employment claims and the jury's damages award for Pierce, and there was no reversible error in admitting the expert testimony.

AFFIRMED.