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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

KAMELIA BEGLEY, Plaintiff and Appellant, v. DELTA DENTAL OF CALIFORNIA, Defendant and Respondent.	A159983 (City and County of San Francisco Super. Ct. No. CGC18568943)

Kamelia Begley sued Delta Dental of California (Delta) for pregnancy-related and sex discrimination and failure to prevent discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA); discrimination, retaliation and failure to reinstate in violation of the California Family Rights Act (CFRA); and wrongful termination in violation of public policy. Her complaint alleged that Delta laid her off and failed to offer her a new position during a corporate reorganization because she was undergoing fertility treatment. Delta successfully moved for summary judgment on the ground that Begley could not show its legitimate business reason for terminating her employment was a pretext for discrimination or

retaliation. Our de novo review confirms the trial court's assessment of the evidence, so we affirm.

DISCUSSION

I.

Summary Judgment Standards

Summary judgment is proper when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).[1]) We review a ruling granting summary judgment de novo. (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 805 (*Horn*).) "We accept as true the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences that can be drawn from them. [Citation.] However, to defeat the motion for summary judgment, the plaintiff must show ' "specific facts," ' and cannot rely upon the allegations of the pleadings." (*Ibid.*) We review the court's ruling, not its rationale, and we affirm if it is correct for any reason.[2] (*Ibid.*)

II.

Burden Shifting in Employment Discrimination Cases

California has adopted the federal burden-shifting test for assessing wrongful discharge claims. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354 (*Guz*). First, the plaintiff must establish a prima facie case of discrimination. "While the plaintiff's prima facie burden is 'not onerous' [citation], he must at least show ' "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than

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[1] Further statutory citations are to the Code of Civil Procedure.

[2] Because we review the evidence independently, Begley's claim that the *trial court* failed to view the evidence in the light most favorable to her is irrelevant to the analysis and outcome here.

not that such actions were 'based on a [prohibited] discriminatory criterion . . . .' " ' " (*Id.* at p. 355.) If the employee meets this burden, a presumption of discrimination arises and the burden shifts to the employer to show that its action was taken for a legitimate, nondiscriminatory reason. If the employer proffers a legitimate reason for acting, the presumption of discrimination disappears and the employee must prove the employer's reason was pretextual, or produce other evidence of discriminatory motive. (*Id.* at pp. 355–356.) The ultimate burden of persuasion remains with the plaintiff. (*Id.* at p. 356.)

III.

Application of the Burden Shifting Test to Summary Judgment in FEHA Cases

In a FEHA case, when an employer moves for summary judgment and "presents admissible evidence . . . that the adverse employment action was based on legitimate, nondiscriminatory factors, the employer will be entitled to summary judgment unless the plaintiff produces admissible evidence which raises a triable issue of fact material to the defendant's showing." (*Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 203.) When the employer meets its burden to show a legitimate reason for its actions, to avoid summary judgment the employee " 'must offer substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination.' " (*Horn, supra*, 72 Cal.App.4th at pp. 806–807, quoting *Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1004–1005; accord, *Le Bourgeois v. Fireplace Manufacturers, Inc.* (1998) 68 Cal.App.4th 1049, 1058; *Sada v. Robert F. Kennedy Medical Center* (1997)

56 Cal.App.4th 138, 154; *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1735.)

"Although an employee's evidence submitted in opposition to an employer's motion for summary judgment is construed liberally, it 'remains subject to careful scrutiny.' [Citation.] The employee's 'subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations.' [Citation.] The employee's evidence must relate to the motivation of the decision makers and prove, by nonspeculative evidence, 'an actual causal link between prohibited motivation and termination.' " (*Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1159 (*Featherstone*).)

IV.

Application

Delta offers dental benefits plans that provide its insureds access to a network of dentists. Begley worked as a professional relations representative in Delta's Clinical Affairs department, recruiting new dentists into its provider network and providing customer service to its existing dental providers. She asserts Delta terminated her in 2018 because she was attempting to become pregnant through in vitro fertilization (IVF).

Delta moved for summary judgment based on evidence that (1) it eliminated Begley's position as part of a company-wide reorganization that entailed a layoff of 33 employees; and (2) Begley lost her job in the reorganization because her average performance scores based on her evaluations for the preceding years placed her in the bottom tier of professional relations representatives in her group—the metric Delta had adopted for the reorganization. The relevant evidence is as follows.

A. Begley Requests Medical Leave.

In mid-2017 Begley and her husband started to undergo IVF procedures. Through a third-party benefits administrator she requested and was granted medical leave for IVF procedures on four occasions in 2017 and 2018, totaling approximately two weeks.

Begley shared the reason for her leave requests with her manager, Aliza Canciller. Canciller never said anything negative about Begley taking time off for her procedures or about the IVF treatments generally.

In November 2017 Canciller asked Begley if she could inform her (Canciller's) boss, Dr. Daniel Croley, about the IVF treatments because, she explained, she wanted to inquire about budgeting for an employee to cover while Begley was on her anticipated maternity leave. Begley felt uneasy and told Canciller, "I hope I don't lose my job over this." Canciller laughed and assured her not to worry because they were "short here on people already." Begley agreed that Canciller could inform Dr. Croley about her treatments. There is no evidence that anyone at Delta other than Canciller and Croley were aware that Begley was undergoing IVF or attempting to get pregnant.

B. Delta Undergoes a Reorganization.

In late 2017 Delta decided to reorganize its Clinical Affairs department to increase efficiency, reduce duplication, and improve the experience of its dental providers. As part of the realignment the professional relations representative position was divided into two roles, with one to service existing Delta providers and the other to recruit new providers.

Delta management informed its Clinical Affairs employees about the planned realignment in January 2018. Senior Vice President and Chief Clinical Officer Dr. Kenneth Yale explained that Delta would make every effort to place existing employees within the new organization, but there was

no guarantee all employees would be retained. An internal memo acknowledged the possibility that not all positions would survive the reorganization.

In early February 2018 Dr. Croley informed Canciller and the leaders of the other professional relations representatives teams that he, with the support of Delta's human resources leaders, had decided that the two lowest-performing employees on each team would be laid off. To make that determination Delta calculated average performance scores for employees based on their performance evaluations for the preceding two years. Begley's average performance score was the lowest on her team, so she was included in the layoff.

Delta planned to announce the details of its reorganization in early March 2018. On February 22 Begley emailed Canciller that her IVF transfer was scheduled for February 26, and asked to take February 26 through 28 off work. Canciller forwarded the email to Croley with the comment, "Just letting you know from a timing perspective when communications/HR sends the letter. Ayy, this does not get any easier and she writes 'I hope this one takes.' "

Croley was aware that Begley's job was being eliminated and was concerned that the stress might interfere with her IVF treatment. He and a colleague decided Begley should not be told she was being laid off until she returned from medical leave on March 5, 2018.[3] On that day Canciller gave her the news. She told Begley that new Clinical Affairs positions would be

[3] Although Begley initially told Canciller she would be out until Wednesday, February 28, her leave ended up extending through Friday, March 2.

posted and she could apply for them, but that her last day of employment with Delta would be June 1 if she did not obtain a new position by then.

Begley asked Canciller about Delta's criteria for the layoffs and whether her job performance or medical situation played a part in the decision to eliminate her position. Canciller assured her that the decision had nothing to do with her job performance or fertility treatments.

Jennifer Souders is Delta's manager of employee and labor relations. According to Souders, Delta laid off 33 employees in the realignment. This number included men, women without pregnancy-related disabilities, and employees who had never taken family or any other protected leave.

C. Begley Unsuccessfully Seeks Other Positions Within Delta.

Delta's records reflect that Begley applied for two positions after Canciller told her about the layoff: an account manager position based in Mississippi and a professional relations representative position in Southern California. Begley withdrew both applications when she learned the positions would require her to relocate.

Begley testified that she also applied for several local positions through LinkedIn and Delta's employee search portal, including at least one network recruiting specialist position in Oakland. She applied for the Oakland position in April or May 2018 but did not hear back from Delta about it. She apparently provided no documentation of this application. On June 1, 2018, the last day of Begley's employment, Delta posted another network recruiting specialist position in Oakland. It appears that Begley never applied for this position.

Begley also contacted network development manager Deanne Frere to ask about network recruiter positions, but Frere responded that her two openings were in the Rancho Cordova office, not the Bay Area. Begley

responded by email that Rancho Cordova was too far for her to travel but asked Frere if there were any openings in Oakland or San Francisco. She also followed up with Frere by voicemail. But Frere never responded to her email or voicemail. Begley also set up a call with another Delta manager, Carla Grooms, to explore job openings in Grooms's project management group, but Grooms cancelled the call and never rescheduled.

D. The Litigation

Begley sued Delta, asserting seven causes of action: (1) pregnancy-related discrimination in violation of FEHA; (2) sex discrimination in violation of FEHA; (3) discrimination and retaliation in violation of CFRA; (4) failure to reinstate in violation of CFRA; (5) failure to prevent discrimination in violation of FEHA; (6) retaliation in violation of FEHA; and (7) wrongful termination in violation of public policy. She also sought punitive damages.

Delta moved for summary judgment as to the entire action, asserting that Begley had no evidence she was terminated because of her efforts to become pregnant; Delta had a legitimate, nondiscriminatory reason for her termination; and Begley could not establish Delta's legitimate reason was pretextual.

The trial court granted summary judgment. It reasoned: "Assuming Plaintiff Kamelia Begley has provided sufficient evidence to establish the prima facie elements of her discrimination and retaliation causes of action, the burden shifts to Defendant to show a legitimate, non-discriminatory reason for Plaintiff's termination. [Citation.] Defendant meets that burden by showing that it eliminated her position as part of a company-wide reorganization which necessitated a layoff of 33 employees, and that Plaintiff was laid off because she had the lowest average performance score among the professional relations representatives who reported to her manager in her

region. The burden then shifts back to Plaintiff to prove intentional discrimination, and the Court finds Plaintiff has not met her burden of producing substantial evidence that Defendant's articulated non-discriminatory reasons were pretextual."

Specifically, the court found the temporal proximity of Begley's medical leaves and her termination, the fact that other network relations specialists in other groups with lower scores than Begley's retained their jobs, and evidence that other employees were offered new positions while she was not did not establish pretext. Further, it denied Begley's request for a continuance to take additional discovery because it lacked the required specificity.

Begley moved for a new trial, and, when the court denied her motion, filed this timely appeal from the judgment.

E. Analysis

Viewed in accord with the applicable standard of review, the evidence satisfied Delta's burden of showing its decision to terminate Begley's employment was based on a legitimate business reason.[4] Critically, Delta's evidence established that as part of its reorganization plan it determined to lay off the two lowest performance-rated professional relations representatives on each team. Begley's score was one of the two lowest on her team, so she was included in the layoff.

Begley contends that this was insufficient to show her termination was not "tainted by unlawful bias," even if effected as part of the reorganization, because Delta's evidence failed to show how many of the 33 laid-off employees

[4] Like the trial court, we assume without deciding that Begley's showing was sufficient to establish a prima facie case of discrimination and retaliation.

were professional relations representatives or how many of those were not given different positions. We disagree with her premise that it was Delta's burden to establish those factual propositions. Delta introduced uncontradicted evidence that it made a valid business decision to lay off the two lowest-scoring members of each professional relations representative team, and that Begley fell within that metric. That satisfied Delta's burden as moving party to show a nondiscriminatory reason for the discharge. (*Kelly v. Stamps.com Inc.* (2005) 135 Cal.App.4th 1088, 1097–1098; *Featherstone, supra,* 10 Cal.App.5th at pp. 1158–1159; *Guz, supra,* 24 Cal.4th at p. 357 [employer's facially creditable evidence of nondiscriminatory reasons for termination shifted burden to employee to rebut employer's showing].)

While Begley argues that Delta's evidence that men, non-pregnant women, and employees who had never taken protected leave were also laid off did not conclusively prove a non-discriminatory animus, this observation does not help her.[5] Delta satisfied its burden as moving party by showing it laid Begley off pursuant to the metric devised for the reorganization. That was

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[5] Begley asserts the court erred in overruling her objection to Jennifer Souders' declaration to that effect because, she asserts, Souders was not employed by Delta at the time of the reorganization, had no personal knowledge of the layoffs and failed to lay a foundation as to the source of her information. We need not address this point because Delta satisfied its moving burden without this particular testimony. In any event, our review satisfies us the trial court reasonably found that Souders testified on the basis of Delta records and was competent to do so. (See *Weathers v. Kaiser Foundation Hosps.* (1971) 5 Cal.3d 98, 106 [" 'It is the general rule that statements in affidavits are presumed to be made on personal knowledge unless stated to be on information and belief and unless it appears affirmatively or by fair inference that they could not have been, and were not, on such knowledge . . .' "].)

sufficient to shift the burden to Begley to produce substantial evidence showing Delta's proffered reason was pretextual or that Delta had a discriminatory motive such that a jury could find it engaged in intentional discrimination. (*Featherstone, supra,* 10 Cal.App.5th at pp. 1158–1159; *Horn, supra*, 72 Cal.App.4th at pp. 806–807.) We turn now to whether she did so.

Begley argues a factfinder could infer from Canciller's wish to budget for a new employee during her maternity leave that Delta terminated her so it could hire someone who would *not* take leave. We disagree. "Circumstantial evidence of ' "pretense" must be "specific" and "substantial" in order to create a triable issue with respect to whether the employer intended to discriminate' on an improper basis." (*Morgan v. Regents of University of Cal.* (2000) 88 Cal.App.4th 52, 69.) Begley's suggested inference does not satisfy that standard.[6] Canciller mentioned budgeting for a new employee in November 2017, before the realignment was announced. The realignment reduced her team's duties from servicing existing dental providers and recruiting new ones to only servicing existing providers. That Canciller hoped to add a new employee to her team as it existed before that reduction is not "substantial" or "specific" evidence that Delta reorganized its Clinical Affairs department as a subterfuge to terminate an employee for potentially taking maternity leave. (*Id.* at p. 69.)

Begley argues Delta's evidence failed to show how many other professional relations representatives were laid off, if any, and how many of

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[6] It is not always clear from Begley's briefing whether this and her other criticisms of Delta's evidence are meant to indicate Delta failed to satisfy its burden as moving party or, alternatively, that Begley rebutted its initial showing, or both. Given our conclusion Delta made the requisite prima facie showing, we will primarily assess these points to determine whether the circumstantial evidence Begley relies on satisfied her rebuttal burden.

those laid off representatives were offered new positions in the company. This, she contends, supports an inference that she was "the *only* Professional Relations Representative who was ousted altogether from the company," and, by extension, that its failure to rehire her was tainted by unlawful bias. But Delta was not required to rule out any possible negative inferences, no matter how attenuated. " ' "[A]ll that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action . . . [;] the defendant need not himself conclusively negate any such element . . . ." [Citation.]' " (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 415.) The burden then shifts to the plaintiff to "produce ' "substantial" ' responsive evidence sufficient to establish a triable issue of fact. [Citation.] '[R]esponsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact.' " (*Ibid*.) The absence here of evidence that any other professional relations representatives were permanently terminated supports nothing more than a highly speculative inference.

Begley next asserts a spreadsheet containing personnel information from two different Clinical Affairs teams, not Canciller's, rebuts Delta's evidence that it used a strictly objective metric to select employees for the layoff because it includes supervisors' subjective recommendations as to retention. This, she contends, raises a question of fact as to whether Delta's layoff metric included a subjective component, which she maintains supports an inference she was selected for termination because of her fertility treatments. It does not. Although Begley obtained the spreadsheet in discovery before Delta moved for summary judgment, she did not present it to the trial court until she moved for new trial following the summary judgment ruling. Since it was not before the court when it ruled on the summary

judgment motion, we may not consider it in reviewing the ruling. (See *Yanowitz v. L'Oreal USA, Inc.* (2004) 36 Cal.4th 1028, 1037; *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 608.)

Begley argues a jury could infer discrimination from evidence that Delta retained at least three professional relations representatives whose performance scores were lower than hers. However, she does not dispute that (1) those employees were not on her team, and (2) did not have the lowest scores in their own teams. We agree with the trial court that this was entirely consistent with Delta's layoff metric, and, therefore, that it does not support an inference of discrimination. [7]

Likewise, Begley's claim that Delta's retention of Maria Cuevas, the second-lowest rated representative on her team, supports an inference of discrimination does not compel a contrary conclusion. Begley concedes that Cuevas was slated to be laid off by Delta. While Cuevas ultimately obtained a new position, the record sheds no light on the circumstances of her rehiring—e.g., including what position she obtained and whether she applied for different positions within or beyond the Clinical Affairs department, or in different geographic areas where Begley was unwilling to relocate. Absent evidence regarding such relevant circumstances, the mere fact that Delta ultimately retained Cuevas gives rise to nothing more than speculation; it does not establish a triable issue of fact.

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[7] Delta objected to this evidence on grounds including hearsay and lack of authentication, foundation, and personal knowledge. The trial court did not expressly rule on them, so they were preserved for appeal. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534.) Nonetheless, we need not resolve them in view of our conclusion that the spreadsheet, assuming it to be admissible, does not rebut Delta's showing.

Begley's assertion that Delta discriminated against her by failing to rehire her into a new position after the realignment is also unavailing. She relies for this claim on evidence that Delta advertised two Oakland-based network recruiter positions (one in April or May and one on June 1, 2018) after selecting her for termination, but never discussed the positions with or offered them to her despite her inquiries about local openings. But it is undisputed that Canciller informed Begley (and other employees) that new positions would be posted and that she was welcome to apply for them. Although Begley alleged she applied for "all posted positions at offices in California, or remote positions, in Provider Relations, up until her final termination on June 1," other than the out-of-area positions she decided against, she was unable to identify specific jobs she applied for or provide documentation of such efforts. Moreover, it is undisputed that Begley could not recall applying for *any* positions that were posted on or after June 1, 2018, and there is no evidence that she did so. Nor is there evidence that anyone at Delta, including recruiters who would have received any applications Begley did submit, knew about her medical leave or efforts to become pregnant.

Delta's records, in contrast, reflect that Begley applied for only two positions, both of which she declined to pursue after learning they were outside of the geographic region in which she was willing to work. In this context, Begley's general testimony that she applied for "several" jobs, "anything that [she] was qualified for," "so many, I don't remember all of them," is insufficient to establish a triable issue of material fact as to discrimination. "[S]ummary judgment for the employer may thus be appropriate where, given the strength of the employer's showing of innocent reasons, any countervailing circumstantial evidence of discriminatory motive,

even if it may technically constitute a prima facie case, is too weak to raise a rational inference that discrimination occurred." (*Guz, supra*, 24 Cal.4th at p. 362; *Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163 ["responsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact"].)

Finally, the failure of Frere and Grooms to respond to Begley's inquiries about positions in their departments is not sufficient to establish a triable issue of material fact as to discrimination. Begley presents no evidence that Frere or Grooms was aware of her IVF treatment or layoff. Absent more, any inference of discrimination derived from their failure to respond to Begley's inquiries would be wholly speculative.[8]

The authorities Begley cites for her assertion that Delta's failure to rehire her was discriminatory do not support it. In *Dollman v. Mast Industries, Inc.* (S.D.N.Y. 2010) 731 F.Supp.2d 328, 339, the employer informed an employee she was being terminated as part of a corporate restructuring and then immediately advertised the same position. In *Kelly v. Stamps.com Inc., supra,* 135 Cal.App.4th at pages 1099–1100, a pregnant employee was told her position had been eliminated, but after her discharge the employer gave the same job title and functions to a man. In *Lomeli v. Hull & Co., Inc.* (C.D.Cal., Nov. 9, 2010, No. 09-1110) 2010 WL 11596125,

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[8] Begley also argues that the failure of Alex Korzeniewski, a "Senior Talent Acquisition Partner, Human Resources," to respond to her email asking about positions in the Bay Area creates an inference of discrimination. But Begley raises this argument for the first time in her reply brief. She has therefore forfeited it. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1050.) In any event, Korzeniewski's failure to respond, without more, cannot establish a triable issue of material fact as to discrimination.

pages *3–*5, the employer hired a new technical assistant shortly after terminating the plaintiff because it purportedly could afford to retain only two of its three existing technical assistants. In this case, in contrast, there is no real dispute that Begley's professional relations representative position was eliminated in the realignment and its functions reallocated between other, newly created positions. There is no evidence that the two positions eliminated from Canciller's team nevertheless survived the realignment in name or fact, or that Delta advertised or filled such a position after Begley was terminated.

In sum, our de novo review confirms that Begley failed to rebut Delta's showing of a legitimate, nondiscriminatory reason for its actions. This unrebutted showing also disposes of Begley's cursory assertion that Delta refused to rehire her in retaliation for asking Canciller whether her selection for layoff was due to her fertility treatments or taking protected leave. (See *Yanowitz v. L'Oreal USA, Inc., supra,* 36 Cal.4th at p. 1042 [retaliation claims under FEHA are governed by burden-shifting test for discrimination claims]; *Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 885 [same, claims of retaliation for taking protected leave under CFRA].)[9] Summary judgment was thus properly granted as to Begley's claims for discrimination and retaliation in violation of FEHA and CFRA. As for her claim of interference with leave under CFRA, it is undisputed that, as the court found, Begley was never denied any requested leave and returned to work after her leave ended. Nor can she establish interference with her right to leave under CFRA simply because the decision regarding layoffs was made

[9] CFRA prohibits employers from refusing to hire, discharging or discriminating against employees because they exercised their right to take leave for qualifying family care and medical leave. (*Faust v. California Portland Cement Co., supra,* 150 Cal.App.4th at pp. 878, 885.)

while she was on leave. (*Tomlinson v. Qualcomm, Inc.* (2002) 97 Cal.App.4th 934, 939-943 [CFRA does not immunize employees from layoffs while on leave].) Her remaining causes of action for violations of public policy and her request for punitive damages derive completely from her FEHA and CFRA claims, so they fail along with them.

V.

Denial of Begley's Request for Continuance

Lastly, Begley asserts reversal is warranted by the trial court's denial of her request to continue the summary judgment hearing to permit her to conduct additional discovery. Here too, we disagree.

In her opposition to summary judgment, Begley asserted she had not been able to depose the Person Most Qualified (PMQ) (§ 2025.230) on Delta's decision to reorganize its Clinical Affairs department and the factual bases it relied on in deciding which employees would be laid off.[10]

Pursuant to section 437c, subdivision (h), "If it appears from the affidavits submitted in opposition to a motion for summary judgment . . . that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had . . . ." The opposing party's declaration must show "(1) the facts to be obtained are essential to opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why additional time is needed to obtain these facts.

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[10] Begley also claimed she needed additional discovery of communications between Canciller, Croley and Yale regarding the reorganization and Delta's decision not to offer her a new position after the reorganization. Her opening brief does not address those requests, so we deem them forfeited on appeal. (See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685.)

[Citation.] The reason for this 'exacting requirement' [citation] is to prevent 'every unprepared party who simply files a declaration stating that unspecified essential facts may exist' [citation] from using the statute 'as a device to get an automatic continuance.' [Citation.] 'The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented.' " (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 643.)

Begley's request did not satisfy those requirements. As to the facts sought to be discovered and the reasons they were not yet available, her counsel's declaration merely stated that Begley sought PMQ testimony on "various topic[s] including the alleged reorganization of Delta Dental's business in 2018, which Defendant alleges in its Motion for Summary Judgment (or in the alternative, Summary Adjudication) was the non-discriminatory cause of Plaintiff's termination." The PMQ deposition notice referenced in the declaration broadly sought testimony on "Delta Dental's decision to reorganize the Clinical Affairs department and all factual bases relied upon in deciding which employees would be terminated or laid off." Neither the declaration nor the deposition notice identified "particular essential facts" counsel believed might exist.[11] (*Chavez v. 24 Hour Fitness USA, Inc., supra,* 238 Cal.App.4th at p. 643.) Moreover, Begley's counsel had already deposed Kenneth Yale, Dr. Croley's boss and the senior corporate

[11] In this regard, we observe that Begley's new trial motion improperly attempted to argue new issues not raised in her request for a continuance in opposition to summary judgment, based on evidence (including the spreadsheet discussed *ante* at pp. 12-13) that she had obtained in discovery before the summary judgment motion but failed to present until she moved for a new trial.

executive responsible for the entire reorganization. On this record it was well within the court's discretion to determine Begley had not shown good cause for a continuance. (See *ibid.* [absent a sufficient declaration, trial court must determine whether the party seeking a continuance has established good cause].) Moreover, Delta offered to continue the opposition deadline and hearing date by one or two weeks so Begley could take the PMQ deposition. The court could reasonably have found her rejection of that offer indicated gamesmanship, rather than a valid need for additional discovery.

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

CHOU, J.*

We concur.

PETROU, Acting P.J.

JACKSON, J. †

* Judge of the San Mateo Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.

† Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.