

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-14-536636

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ORDER

AZAR AFSHARIPOUR VS. SAKS FIFTH AVENUE, INC. et al

001C05011896

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

19 AZAR AFSHARIPOUR,  
20 Plaintiff,  
21 v.  
22 SAKS FIFTH AVENUE, INC.; SAKS &  
23 COMPANY; SAKS INCORPORATED;  
24 NIKOLAY NIKOLAEV, an individual; and  
25 DOES 1 THROUGH 50, INCLUSIVE,  
26 Defendants.

) CASE NO. CGC-14-536636

) ~~PROPOSED~~ ORDER DENYING  
) DEFENDANT'S MOTION FOR  
) SUMMARY JUDGMENT AND  
) GRANTING IN PART AND DENYING IN  
) PART DEFENDANT'S MOTION FOR  
) SUMMARY ADJUDICATION

) Date: July 29, 2015

) Time: 9:30 a.m.

) Dept: 302

) Action Filed: January 7, 2014

**FILED**  
Superior Court of California  
County of San Francisco

JUL 29 2015

CLERK OF THE COURT

BY: Rosie Nequera  
Deputy Clerk

1 Defendant SAKS & COMPANY's ("Defendant") Motion for Summary Judgment or in the  
2 Alternative, Summary Adjudication pursuant to Code of Civil Procedure Section 437c, came on for  
3 hearing on July 29, 2015 at 9:30a.m., in Department 302 of the above-entitled Court.

4 The Court, having considered the moving and opposition papers and the argument of counsel,  
5 finds there are triable issues of material fact as to Plaintiff's causes of action for sex- and age-based  
6 harassment, , failure to take reasonable steps to prevent harassment ~~retaliation~~ and prayer for punitive  
7 damages. The Court therefore DENIES Defendant's Motion for Summary Judgment. Additionally, the  
8 Court DENIES Defendant's Motion for Summary Adjudication regarding Defendant's Noticed Issues,  
9 Nos. 1-3, 5, and 6 on the basis that there are triable issues of material fact regarding those issues. The  
10 Court GRANTS Defendant's Motion for Summary Adjudication as to Issue No. 4.

11 There is a triable issue of material fact regarding the existence of the age and sex harassment and  
12 defendant's knowledge of the conduct that supports the claims. Whether the conduct was sufficiently  
13 severe or pervasive to constitute harassment is a factual issue. *See Nazir v. United Airlines, Inc.* (2006)  
14 178 Cal.App.4th 243, 264. Plaintiff's and Ms. Wald's declarations show that Mr. Nikolaev routinely  
15 verbally and physically assaulted both of them and plaintiff witnessed some of the mistreatment of Ms.  
16 Wald.  
17

18 The court grants summary adjudication as to issue 4. Plaintiff fails to present evidence of an  
19 adverse employment action that supports the retaliation claim. The single formal discipline of plaintiff  
20 and the litigation hold memorandum are insufficient as a matter of law to constitute an adverse  
21 employment action. Those acts did not materially alter the terms or conditions of plaintiff's employment.  
22 In *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1060, the employer engaged in a pattern of  
23 systematic retaliation.

24 The court denies summary adjudication as to issue 5. Plaintiff's and Ms. Wald's declarations  
25 show that defendant had sufficient notice of the misconduct and it did not respond in an appropriate  
26 manner to support the failure to prevent cause of action.

27 The court denies summary adjudication as to issue 6. Defendant failed to maintain its burden of  
28 production. At most, defendant has shown that Mr. Hagman was not a managing agent. Defendant fails,

1 however, to demonstrate that any of the other employees of defendant that had notice of Mr. Nikolaev's  
2 conduct and/or had a role in his discipline were not managing agents.

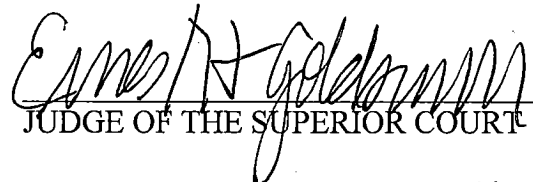
3  
4 **Conclusion**

5 Defendant's Motion for Summary Judgment is DENIED, and the Motion for Summary  
6 Adjudication is DENIED as to issues 1-3, 5, and 6, and GRANTED as to issue 4.

7  
8 IT IS SO ORDERED

9  
10  
11  
12 JUL 29 2015

13 Dated: \_\_\_\_\_

14   
15 JUDGE OF THE SUPERIOR COURT

16 ERNEST H. GOLDSMITH