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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10 TERRI HUGHES,
11
12 Plaintiff,

vs.

13 PLAYBOY ENTERTAINMENT GROUP,
14 INC., a Delaware corporation; FARRELL
15 HIRSCH, an individual; MELISSA
16 CONWAY, professionally known as
17 "Christy Canyon," an individual; and
18 DOES 1 to 100, inclusive,
19 Defendants.

Case No. BC 398409

Hon. Aurelio Munoz

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION OF DEFENDANTS
PLAYBOY ENTERTAINMENT GROUP,
INC., FARRELL HIRSCH, AND MELISSA
CONWAY; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: August 26, 2009
Time: 8:30 a.m.
Department: 47

Complaint Filed: September 18, 2008
Trial Date: October 6, 2009

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TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 26, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 47 of the above-entitled Court, Defendants Playboy Entertainment Group, Inc. ("Playboy"), Farrell Hirsch, and Melissa Conway will and hereby do move this Court for an order granting Defendants' Motion for Summary Judgment Or, In the Alternative, Motion for Summary Adjudication, pursuant to Section 437(c) of the California Code of Civil Procedure as follows:

FIRST CAUSE OF ACTION AGAINST PLAYBOY FOR RACE AND SEX DISCRIMINATION IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

Issue No. 1: Playboy is entitled to summary judgment on Plaintiff's first cause of action for race and sex discrimination in violation of the Fair Employment and Housing Act because Plaintiff was not qualified for the position she sought as Producer of Night Calls.

Issue No. 2: Playboy is entitled to summary judgment on Plaintiff's first cause of action for race and sex discrimination in violation of the Fair Employment and Housing Act because Playboy did not take any adverse employment action against Plaintiff.

Issue No. 3: Playboy is entitled to summary judgment on Plaintiff's first cause of action for race and sex discrimination in violation of the Fair Employment and Housing Act because Playboy had no discriminatory motive.

Issue No. 4: Playboy is entitled to summary judgment on Plaintiff's first cause of action for race and sex discrimination in violation of the Fair Employment and Housing Act because Playboy's actions were legitimate and non-discriminatory.

Issue No. 5: Playboy is entitled to summary judgment on Plaintiff's first cause of action for race and sex discrimination in violation of the Fair Employment and Housing Act because there is no evidence of pretext.

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SECOND CAUSE OF ACTION AGAINST PLAYBOY FOR RACE AND SEX
DISCRIMINATION IN VIOLATION OF PUBLIC POLICY

Issue No. 6: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because Plaintiff was not qualified for the position she sought as Producer of Night Calls.

Issue No. 7: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because Playboy did not take any adverse employment action against Plaintiff.

Issue No. 8: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because Playboy had no discriminatory motive.

Issue No. 9: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because Playboy's actions were legitimate and non-discriminatory.

Issue No. 10: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because there is no evidence of pretext.

Issue No. 11: Playboy is entitled to summary judgment on Plaintiff's second cause of action for race and sex discrimination in violation of public policy because there is no common law claim for race and sex discrimination in California.

THIRD CAUSE OF ACTION AGAINST PLAYBOY FOR RETALIATION IN VIOLATION
OF THE FAIR EMPLOYMENT AND HOUSING ACT

Issue No. 12: Playboy is entitled to summary judgment on Plaintiff's third cause of action for retaliation in violation of the Fair Employment and Housing Act because Plaintiff did not engage in protected activity.

Issue No. 13: Playboy is entitled to summary judgment on Plaintiff's third cause of action for retaliation in violation of the Fair Employment and Housing Act because Playboy did not take any adverse employment action against Plaintiff.

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Issue No. 14: Playboy is entitled to summary judgment on Plaintiff's third cause of action for retaliation in violation of the Fair Employment and Housing Act because there is no causal link between any protected activity and adverse employment action.

Issue No. 15: Playboy is entitled to summary judgment on Plaintiff's third cause of action for retaliation in violation of the Fair Employment and Housing Act because Playboy's actions were legitimate and non-discriminatory.

Issue No. 16: Playboy is entitled to summary judgment on Plaintiff's third cause of action for retaliation in violation of the Fair Employment and Housing Act because there is no evidence of pretext.

FOURTH CAUSE OF ACTION AGAINST PLAYBOY FOR RETALIATION IN VIOLATION OF PUBLIC POLICY

Issue No. 17: Playboy is entitled to summary judgment on Plaintiff's fourth cause of action for retaliation in violation of public policy because Plaintiff did not engage in protected activity.

Issue No. 18: Playboy is entitled to summary judgment on Plaintiff's fourth cause of action for retaliation in violation of public policy because Playboy did not take any adverse employment action against Plaintiff.

Issue No. 19: Playboy is entitled to summary judgment on Plaintiff's fourth cause of action for retaliation in violation of public policy because there is no causal link between any protected activity and adverse employment action.

Issue No. 20: Playboy is entitled to summary judgment on Plaintiff's fourth cause of action for retaliation in violation of public policy because Playboy's actions were legitimate and non-discriminatory.

Issue No. 21: Playboy is entitled to summary judgment on Plaintiff's fourth cause of action for retaliation in violation of public policy because there is no evidence of pretext.

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FIFTH CAUSE OF ACTION FOR RACE HARASSMENT IN VIOLATION OF THE FAIR
EMPLOYMENT AND HOUSING ACT

PLAYBOY

Issue No. 22: Playboy is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 23: Playboy is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

FARRELL HIRSCH

Issue No. 24: Farrell Hirsch is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 25: Farrell Hirsch is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

MELISSA CONWAY

Issue No. 26: Melissa Conway is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 27: Melissa Conway is entitled to summary judgment on Plaintiff's fifth cause of action for race harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

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SIXTH CAUSE OF ACTION FOR RACE HARASSMENT IN VIOLATION OF PUBLIC
POLICY
PLAYBOY

Issue No. 28: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 29: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 30: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because there is no common law claim for race harassment in California.

FARRELL HIRSCH

Issue No. 31: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 32: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 33: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because there is no common law claim for race harassment in California.

MELISSA CONWAY

Issue No. 34: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

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Issue No. 35: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 36: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for race harassment in violation of public policy because there is no common law claim for race harassment in California.

FIFTH CAUSE OF ACTION FOR SEX HARASSMENT IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT

PLAYBOY

Issue No. 37: Playboy is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged harassment was not motivated by her gender.

Issue No. 38: Playboy is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 39: Playboy is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

FARRELL HIRSCH

Issue No. 40: Farrell Hirsch is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged harassment was not motivated by her gender.

Issue No. 41: Farrell Hirsch is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 42: Farrell Hirsch is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

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MELISSA CONWAY

Issue No. 43: Melissa Conway is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged harassment was not motivated by her gender.

Issue No. 44: Melissa Conway is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 45: Melissa Conway is entitled to summary judgment on Plaintiff's fifth cause of action for sex harassment in violation of the Fair Employment and Housing Act because the alleged conduct was not objectively or subjectively offensive.

SIXTH CAUSE OF ACTION FOR SEX HARASSMENT IN VIOLATION OF PUBLIC

POLICY

PLAYBOY

Issue No. 46: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged harassment was not motivated by her gender.

Issue No. 47: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 48: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 49: Playboy is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because there is no common law claim for sexual harassment in California.

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FARRELL HIRSCH

Issue No. 50: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged harassment was not motivated by her gender.

Issue No. 51: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 52: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 53: Farrell Hirsch is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because there is no common law claim for sexual harassment in California.

MELISSA CONWAY

Issue No. 54: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged harassment was not motivated by her gender.

Issue No. 55: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not sufficiently severe or pervasive so as to constitute harassment.

Issue No. 56: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because the alleged conduct was not objectively or subjectively offensive.

Issue No. 57: Melissa Conway is entitled to summary judgment on Plaintiff's sixth cause of action for sex harassment in violation of public policy because there is no common law claim for sexual harassment in California.

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SEVENTH CAUSE OF ACTION AGAINST PLAYBOY FOR NEGLIGENT HIRING,
TRAINING AND SUPERVISION

Issue No. 58: Playboy is entitled to summary judgment on Plaintiff's seventh cause of action for negligent hiring, training and supervision because Plaintiff cannot establish that Playboy had any knowledge or reason to believe that Hirsch or Conway posed a threat of discrimination or harassment to others.

Issue No. 59: Playboy is entitled to summary judgment on Plaintiff's seventh cause of action for negligent hiring, training and supervision because Plaintiff cannot establish that Hirsch or Conway posed a threat of discrimination or harassment and that that harm materialized.

Issue No. 60: Playboy is entitled to summary judgment on Plaintiff's seventh cause of action for negligent hiring, training and supervision because workers' compensation provides the exclusive remedy for Plaintiff's alleged injuries.

EIGHTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS
PLAYBOY

Issue No. 61: Playboy is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff was not subjected to any extreme and outrageous conduct.

Issue No. 62: Playboy is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff did not suffer from severe emotional distress.

Issue No. 63: Playboy is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because workers' compensation provides the exclusive remedy for Plaintiff's alleged injuries.

FARRELL HIRSCH

Issue No. 64: Farrell Hirsch is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff was not subjected to any extreme and outrageous conduct.

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Issue No. 65: Farrell Hirsch is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff did not suffer from severe emotional distress.

Issue No. 66: Farrell Hirsch is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because workers' compensation provides the exclusive remedy for Plaintiff's alleged injuries.

MELISSA CONWAY

Issue No. 67: Melissa Conway is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff was not subjected to any extreme and outrageous conduct.

Issue No. 68: Melissa Conway is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because Plaintiff did not suffer from severe emotional distress.

Issue No. 69: Melissa Conway is entitled to summary judgment on Plaintiff's eighth cause of action for intentional infliction of emotional distress because workers' compensation provides the exclusive remedy for Plaintiff's alleged injuries.

This Motion is made pursuant to California Code of Civil Procedure § 437(c) on the grounds that there is no triable issue of fact and summary judgment should be granted as a matter of law. In the event that this Court denies summary judgment for any reason, Defendants move for summary adjudication on each of Plaintiff's causes of action on the ground that there is no triable issue of fact.


Defendants' Motion is based upon this Notice of Motion and Motion, Defendants' Memorandum of Points and Authorities in Support thereof, Defendants' Separate Statement of Undisputed Material Facts, and Defendants' Evidence, all of which are filed and served concurrently herewith, the complete files and records in this action, and such other oral and documentary evidence as may be presented to the Court at or before the hearing on this Motion.

1 Dated: June 12, 2009

MORGAN, LEWIS & BOCKIUS LLP

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By 

Jason S. Mills
Attorneys for Defendants
PLAYBOY ENTERTAINMENT GROUP,
INC., FARRELL HIRSCH, and MELISSA
CONWAY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Plaintiff Terri Hughes (“Plaintiff” or “Hughes”) was an enthusiastic crew member and
 4 participant in Playboy Radio’s sexually-themed show “Night Calls” until her sudden and
 5 inexplicable change of heart. Indeed, after rising to the rank of “producer” in record speed,
 6 Hughes suddenly turned on the very person who made her successful — the executive producer
 7 responsible for her hiring and promotions, Farrell Hirsch — claiming he was an “obvious racist.”
 8 Not to stop there, Hughes turned on the show’s long-time host, Christy Canyon, claiming
 9 (belatedly) that Canyon’s on-air conduct amounted to sexual harassment. Hughes now brings
 10 claims against Playboy, Hirsch, and Canyon, alleging causes of action for “race and sex”
 11 discrimination, retaliation, harassment, negligence, and intentional infliction of emotional
 12 distress. But while her motives may be forever unclear, the underlying facts of this case are not.
 13 The undisputed evidence establishes that Hughes claims’ all fail as a matter of law, as set forth
 14 below.

15 Hughes’ First and Second Causes of Action for “race and sex discrimination” fail (as with
 16 her other claims) because she cannot set forth evidence establishing the necessary elements.
 17 First, Hughes cannot even show she was qualified for the only conceivable position she held that
 18 could give rise to an “adverse employment action” — the Producer of Night Calls. She admitted
 19 this when she asked to step down because of her lack of experience. Second, Hughes cannot
 20 point to an adverse employment action. Hughes was never terminated; she just decided to quit
 21 when she did not get her way. And she cannot set forth evidence to meet the very high standard
 22 for “constructive termination.” Third, Hughes cannot establish any discriminatory intent on the
 23 part of Playboy. Despite Hughes’ ongoing calculated effort to overreact to otherwise harmless
 24 incidents, the evidence establishes that Playboy made every effort to accommodate her
 25 unreasonable demands.

26 Hughes’ Third and Fourth Causes of Action for “retaliation” fail because, in addition to
 27 the reasons noted above, she cannot establish that she engaged in any legally protected activity.
 28 Hughes’ “complaint” about Hirsch amounted to her overblown and theatrically hysteric reaction

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1 to his use of the term “Negro” on a single occasion; and her “complaint” about Canyon
 2 constituted nothing more than Hughes’ opinion that Canyon was “insubordinate.” Neither of
 3 these complaints, thus, was directed at any illegal practice. In any event, Playboy sought to work
 4 with Hughes to address her concerns. But Hughes, who could not be satisfied, quit before
 5 Playboy could reach a resolution.

6 Hughes’ Fifth and Sixth Causes of Action against all Defendants for “race and sex
 7 harassment” fail because she cannot establish that any treatment she received at Playboy was so
 8 “severe or pervasive” as to alter the conditions of her employment. Indeed, Hirsch’s single use of
 9 the word “Negro,” while discussing the contents of a prospective radio show, cannot meet this
 10 high standard. Hughes racial harassment claim against Canyon is even more baseless. Hughes
 11 admits that Canyon’s allegedly “discriminatory” conduct was simply Canyon reacting to Hughes
 12 and co-host Vanessa Blue’s attempt to “ban her out.”

13 Hughes’ sexual harassment claims fare no better. Hughes’ allegations against Hirsch
 14 follow from, among other similarly minor interactions, Hirsch’s direction to Hughes to keep
 15 “sex” in a show that *is all about sex*. Such conduct does not even begin to touch upon
 16 “harassment.” And Hughes’ allegations against Canyon simply defy reality. First, the key
 17 allegation in this entire case — the “ass-waxing” incident — is based on Hughes’ confirmed
 18 misrepresentation of events. Moreover, Hughes cannot dispute that she was a knowing and active
 19 participant on a sexually-charged radio show, hosted by former adult film stars, that was designed
 20 to appeal to listeners’ and guests’ sexual fantasies. Hughes thus cannot now characterize on-air
 21 segments from Night Calls as “sexual harassment.”

22 Moreover, to the extent Hughes offers other petty incidents to evidence harassment on the
 23 part of Playboy (i.e. her receipt of business cards after a month rather than instantaneously), such
 24 allegations are entirely baseless.

25 Finally, Hughes’ Seventh and Eighth Causes of Action for “negligent hiring, training, and
 26 supervision,” and “intentional infliction of emotional distress” are mere after-thoughts. Simply
 27 put, aside from both claims being barred entirely by workers compensation preemption, Hughes
 28 can set forth no evidence to establish either. No evidence suggests that Playboy “knew or had

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1 reason to know” that Hirsch and/or Canyon “posed a threat” to Hughes or anyone else. And
 2 Hughes can provide no evidence of “extreme and outrageous conduct” or of her own “severe
 3 emotional distress.” As with all her claims, these causes of action fail as a matter of law.

4 For the above reasons, Defendants’ Summary Judgment Motion should be granted in full.

5 **II. STATEMENT OF FACTS**

6 **A. Playboy Radio and the Show “Night Calls”**

7 Playboy Radio (“PR”) is an adult-oriented radio channel (available by satellite) that
 8 presents a variety of shows throughout the day. Such shows include “Friday Night Three-Way,”
 9 “Sexy Stories,” “Private Calls,” “Playmate Hour,” “Afternoon Advice,” and the “Morning
 10 Show.” The show at issue in the present case is Night Calls, which has been hosted by Defendant
 11 Melissa Conway (aka “Christy Canyon”), along with different co-hosts, since September 2002.
 12 Night Calls is billed as a “three-hour parade of the sexiest women in the adult industry doing what
 13 they do best, what they do most and what nobody else would dare do on radio.” The daily
 14 introduction to Night Calls notifies listeners that they are “about to enter another dimension. A
 15 sexually explicit dimension in a sexually explicit show. A show not only of sexy sights and
 16 sounds, but dildoes, squirting, splashing, threesomes, foursomes, and sometimes twelvesomes.”
 17 Plaintiff in this case, Terri Hughes, worked on Night Calls as an intern, engineer, and then
 18 producer from January 7, 2008 until she resigned in September 2008. UF 1, 284, 22, 286, 287.

19 **B. Plaintiff Receives Employment Offer at Playboy Radio as Intern**

20 Plaintiff, who had no prior experience in radio, initially interviewed for an intern position
 21 with Playboy Radio in November 2007. Hughes did not receive an offer for this position, but
 22 Farrell Hirsch, PR’s executive producer, and Marie Lanza, the Night Calls producer, called her
 23 back later to interview for a different intern position that had opened on Night Calls. During the
 24 interview, Hirsch and Lanza explained to Hughes that Night Calls was a sexually explicit radio
 25 show. Hughes understood that, as an intern working on the show, she would be exposed to the
 26 show’s sexual content. Hirsch and Lanza offered Hughes the position and Hughes accepted.
 27 Hughes was hired as an at-will freelancer. UF 2, 82, 285, 288, 19, 20.

1 On about January 7, 2008, Hughes started working as an intern on Night Calls. At the
 2 time, Night Calls was hosted by former adult film stars Christy Canyon and Ginger Lynn.
 3 Hughes' responsibilities on the show included answering the phones and screening callers who
 4 wanted to talk with the hosts. Hughes also participated in the show, engaging the hosts in the
 5 show's typical sexual banter. Canyon and Lynn gave Hughes the nickname "Sexy." Hughes
 6 admits she liked the nickname and participated on the show as "Sexy" thereafter. UF 3, 22, 4, 5,
 7 293, 294.

8 **C. Plaintiff is Promoted to Engineer in Less Than Two Months**

9 In March 2008, fewer than two months after starting, Hughes was promoted to the
 10 position of "engineer." She was pleased with her relatively quick advancement. As an engineer,
 11 Hughes was responsible for operating the "sound board," by which she controlled the
 12 microphones, volume, and breaks. Hughes also continued to participate in the show's dialogue.
 13 UF 6, 24, 7, 8.

14 Around the same time Hughes was promoted to engineer, Lanza left Nights Calls. Lanza
 15 traded shows with Kevin Dalton, who had been producing Playdate and Private Calls. Lanza and
 16 Dalton proposed the switch to Hirsch, explaining that by trading shows, Lanza and Dalton would
 17 eliminate unnecessary downtime between the shows they produced. Hirsch agreed, and Lanza
 18 and Dalton traded shows. At the time, Lanza was an experienced producer who had been with
 19 Playboy Radio since its inception. Dalton, as well, was an experienced producer who had been
 20 with Playboy since 2006 (and in radio since 1998). UF 25-30.

21 **D. Hughes Participated in the Show's Sexually-Themed Segments**

22 The Night Calls' hosts and crew participated in various sex-related segments throughout
 23 the run of the show. These segments included "The ABCs of Sex," "Dick of the Day," "You Bet
 24 Your Panties," "How to Be In Porn," "Lover Tips," "How to Keep Erections," "Titty Tushy
 25 Tuesday," "Marvelous Muff Monday," "Wax My Ass," "Splashing," "Fresh Girl Friday," "Show
 26 Me Yours," "Trivia Pussute," "Sex Positions," and segments where the hosts and crew used and
 27 discussed sex toys. Hughes participated in many of the show's segments, during which she,
 28 among other things, demonstrated sex positions with the hosts; had the hosts describe her panties;

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1 described her panties herself; reviewed, commented upon, and “scored” photographs of listeners’
 2 penises; commented upon photographs of listeners’ vaginas; rewarded listeners who answered
 3 trivia questions correctly by sending them a pair of her panties signed “Sexy”; demonstrated sex
 4 toys and explained on air the ensuing sensation, and otherwise engaged in the daily sexual banter
 5 with the hosts and guests. Hughes also observed segments where the hosts appeared to
 6 masturbate themselves while they “talked dirty” to listeners. Hughes admits she did not have a
 7 problem participating in or observing these segments. Hughes chose to participate in Night Calls’
 8 segments and understood that if she did not want to participate, she could decline. UF 295, 296,
 9 298-300.

10 Hughes also participated directly in the “Jokes” segment. As part of this segment, Canyon
 11 would tell a joke and Hughes would respond from the sound board, in her own discretion, with
 12 either applause or “crickets.” If Hughes responded with “crickets,” Canyon would enter the
 13 sound room and “slap” Hughes with her breasts. Hughes willingly participated in the segment
 14 and knew that “crickets” would result in a “titty slap.” Hughes testified that she eventually told
 15 Canyon that she no longer wanted to participate in this segment. As a result, Canyon stopped
 16 directing “titty slaps” toward Hughes. UF 301, 302.

17 Hughes also observed and, at least once (and without objection), participated in the “Wax
 18 My Ass” segment. During this segment, Hughes entered the studio, placed wax strips on
 19 Canyon’s “butt,” and pulled off the strips. UF 303.

20 In March 2008, Hughes asked to participate in “Sexy Stories.” For this segment, Hughes
 21 drafted and recorded (to be played on air) a very explicit story about a fictional sexual encounter
 22 with a man she met at the park. UF 304, 305.

23 **E. Vanessa Blue Joins the Show as a Co-Host**

24 Around April 2008, PR (specifically, Farrell Hirsch) hired Vanessa Blue, a former adult
 25 performer and African-American, to take Ginger Lynn’s place as a permanent Night Calls co-
 26 host. Blue introduced a new approach to the show that was not well-received by listeners. PR
 27 received numerous complaints from listeners that Blue was too focused on money, tended to

1 insult callers, and failed to keep with the “sexy” theme of Night Calls. In addition, tension
2 developed between Canyon and Blue over the show’s direction. UF 93, 94.

3 Hughes and Blue became friends and socialized during and outside of work. Indeed,
4 through her relationship with Blue, Hughes met and socialized with Blue’s boyfriend, Michael
5 Fattorosi—Hughes’ attorney in this matter. UF 95.

6 **F. Plaintiff is Promoted to Producer in Record Time**

7 At the end of June 2008, just six months after Hughes started in the radio industry, Hirsch
8 promoted Hughes to the position of Producer. Hirsch had noted the tension developing between
9 Blue and Canyon and was concerned that it was affecting the show’s appeal. He was impressed
10 by Hughes’ maturity and believed she was capable of negotiating the conflict. The show’s then-
11 current producer, Kevin Dalton, willingly stepped aside. Dalton continued to produce other
12 shows and assumed further responsibilities, in line with his extensive experience, as a production
13 director. UF 9, 32, 11, 301.

14 Prior to her promotion, Hughes shared a cubicle (with two desks and separate phone lines)
15 with assistant producer Elizabeth Meza. After her promotion, Hughes understood that Meza
16 would be moved. Although planned, Meza’s move had not occurred prior to Hughes quitting her
17 employment. Hughes also understood she would receive business cards, which she received no
18 later than a month after becoming a producer. UF 99, 101, 102, 104.

19 Hughes was unable to resolve the ongoing conflict between Canyon and Blue. Hughes
20 also started to notice a distancing between herself and Canyon. Canyon expressed to Producer
21 Hughes her belief that Hughes was siding with Blue in the conflict. As Hughes explained, “it was
22 obvious ... she thought that we had joined together to ban her out.” As a result, Hughes noted
23 that Canyon withdrew from her responsibilities with the Show. According to Hughes, Canyon
24 stopped “paying attention” to Hughes, she came late to meetings, and she stopped speaking with
25 both Hughes and Blue. It was this alleged “treatment” by Canyon, all of which occurred after
26 Hughes was promoted to producer, which Hughes later would characterize as “discrimination.”
27 UF 40, 41, 42, 43, 44.

1 Also, while Hughes worked as a producer, Hirsch counseled her on multiple occasions to
 2 better focus her efforts on booking women for the show. He also reminded her to ensure that the
 3 segments she produced were related to "sex." Hughes would later characterize Hirsch's efforts as
 4 "harassment." UF 14, 311.

5 **G. The July 14, 2008 Radio Show**

6 On July 14, 2008, Hughes produced a Night Calls episode with both Canyon and Blue.
 7 About 90 minutes into the episode, the following dialogue occurred on air, as part of the show:

8 Canyon: "Sexy Terri, not to diver[g]e here, will you put it on the books this week
 9 to wax my little pucker hole?"

10 Hughes: "Uh, maybe next week."

11 Canyon: "What the fuck's wrong with this week? I don't have my period, if
 12 that's what you're worried about."

13 Hughes: Um, I'm not in the butt-waxing mood this week."

14 This exchange, which forms the crux of Plaintiff's harassment claim, continued briefly, with the
 15 hosts then moving on to a different segment. Canyon mentioned the issue several more times
 16 during the show to note that she was "still miffed." UF 334-336.

17 On July 17, 2008, Hughes sent Hirsch an email explaining that she no longer wanted to
 18 produce Night Calls because of Canyon's "insubordinate" behavior. According to Hughes,
 19 Canyon "was not going to do the things that [Hughes] had asked her to do."¹ Hughes further
 20 explained that she believed she had been promoted amid preexisting problems with the show, and
 21 had been "set up to fail." Hughes, thus, asked to be taken off Night Calls, but to continue
 22 producing Private Calls and Friday Night Three-Way. Hughes explained that she "didn't have
 23 much experience in radio production," and these latter shows were "more geared to someone with
 24 her experience" because they required little producer intervention. During a conversation on July
 25 17, 2008, Hirsch explained to Hughes that her current position required that she produce all three
 26 shows. UF 45, 46, 48-51.

27 ¹ Although Blue missed shows and skipped meetings as well, Hughes did not consider Blue to be
 28 insubordinate. UF 47.

1 **H. Hirsch Offers Plaintiff the Opportunity to Work with Blue on New Show**

2 In August 2008, Hirsch removed Blue from Night Calls with the intention of giving her
3 her own show. Hirsch knew that Hughes desired to leave Night Calls, and asked her if she would
4 be interested in producing Blue's new show once it was created. During this conversation, Hirsch
5 described for Hughes shows that he did not think would work. Such shows included "porn news"
6 shows, co-hosted shows, "puppet" shows (Blue had previously proposed a "minstrel puppet
7 show"), and "angry" shows (though "bondage" was okay). Hirsch also expressed to Hughes that
8 a "Negro" show would not work. Hughes did not understand what Hirsch meant by this
9 comment, nor did she ask. Hirsch, however, intended to convey that Blue's new program should
10 not be geared toward any particular race (in this case, African-Americans), but rather to the
11 widest possible audience. UF 56-61, 63.

12 **I. Human Resources Responds to Plaintiff's Alleged Concerns**

13 Following her conversation with Hirsch, Hughes submitted a written statement regarding
14 Hirsch's comment on "Negro" shows to Human Resources Director Brenda Villa. Villa
15 immediately investigated the complaint and exchanged emails with Hughes. In their email
16 exchange, Hughes claimed she could not return to work for an "obvious racist." Hirsch, however,
17 was the executive producer, as well, for the shows to which Hughes was willing to return (Private
18 Calls and Friday Night Three-Way). Hughes refused to return to work pending the outcome of
19 the investigation and started a period of paid leave. UF 65-68.

20 On or about August 28, 2008, Villa sent to Hughes a memo reflecting the results of the
21 investigation. The investigation concluded that, while Hirsch had made an arguably inappropriate
22 comment, his comment did not amount to unlawful harassment. The letter further noted that
23 Hirsch hoped to apologize to Hughes, and that PR had issued him a disciplinary letter. The letter
24 to Hughes indicated that she could return to her position on Night Calls or accept an available, but
25 lower-paid, position on another show and not report directly to Hirsch. No other producer
26 positions were open at that time. UF 69-73.

1 **J. Plaintiff Quits Her Employment with Playboy**

2 Hughes never returned to work after taking leave during Playboy's investigation into her
3 complaint. She did not call anyone at Playboy to discuss the letter from Villa or her options.
4 Rather, she simply "decided" she would not return. Hughes' attorney (Blue's boyfriend)
5 communicated to Playboy her decision. UF 74-77. Within days of quitting her position, Hughes
6 filed the instant Complaint and, before even serving it, had it published on TMZ.com.

7 **III. THE COURT SHOULD GRANT DEFENDANTS' MOTION IN FULL.**

8 As Plaintiff cannot establish essential elements of her claims, Defendants' Motion for
9 Summary Judgment should be granted in full.²

10 **A. Plaintiff's Claims Against Playboy For Race And Sex Discrimination In**
11 **Violation of the FEHA and Public Policy Should Be Dismissed.**

12 Plaintiff's First and Second Causes of Action against Playboy allege "Race and Sex
13 Discrimination in Violation of FEHA" and "Public Policy." Compl., pp. 9,12. To establish a
14 *prima facie* case of race or sex discrimination, Plaintiff must prove (1) she was a member of a
15 protected class; (2) she was qualified for the position held or sought; (3) she suffered an adverse
16 employment action³; and (4) some other circumstance suggesting a discriminatory motive. *See*
17 *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 355 (2000).

18 ² A motion for summary judgment or adjudication should be granted where a plaintiff cannot
19 establish an essential element of a cause of action or where a complete defense is shown. Cal.
20 Civ. Proc. Code § 437c (o)(2). A defendant need not disprove a claim; it need only show "that
21 one or more elements of the cause of action ... cannot be established[.]" *Id.*; *Aguilar v. Atlantic*
22 *Richfield Co.*, 25 Cal. 4th 826, 849 (2001). To defeat summary judgment, Plaintiff must
23 demonstrate that a triable issue of material fact exists. *See Aguilar*, 25 Cal. 4th at 849. In making
24 this showing, she may not rely upon the mere allegations or denials of her pleadings. Rather, she
25 must set forth admissible evidence of specific facts that demonstrate the existence of a triable
26 issue as to each cause of action. *See id.*; *Union Bank v. Sup. Ct.*, 31 Cal. App. 4th 573 (1995). A
27 triable issue of material fact can only be created by a conflict of evidence, not by speculation,
28 conjecture, imagination or guess work. *See Wiz Tech., Inc. v. Coopers & Lybrand LLP*, 106 Cal.
App. 4th 1, 15 (2003).

29 ³ To constitute an "adverse employment action" the employment action at issue must have "a
30 detrimental and substantial effect" on the plaintiff's employment. *Akers v. County of San Diego*,
31 95 Cal. App. 4th 1441, 1455 (2002); *Thomas v. Department of Corrections*, 77 Cal. App. 4th 507,
32 512 (2000); *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1050-52 (2005) (must be a
33 "material" change affecting the terms and conditions of employment). "A change that is merely
34 contrary to the employee's interests or not to the employee's liking is insufficient. Requiring an
35 employee to prove a substantial adverse job effect 'guards against...judicial micromangement of

1 Here, Plaintiff's Complaint alleges that her "race and sex" were motivating factors behind
 2 Playboy's decision to "constructively terminate" her employment, and that she was "treated ...
 3 differently" than other non-protected employees. *Id.*, ¶¶ 46, 49, 58-60. Plaintiff's Complaint and
 4 deposition testimony confirm two events that she characterizes as "discrimination" for purposes
 5 of her claims: (1) Hirsch's alleged decision in March 2008 to replace the current producer of
 6 Night Calls, Lanza, with fellow producer Dalton (rather than Hughes) and (2) Hughes' departure
 7 from Playboy, which she claims was a "constructive termination" based on her race and gender.
 8 *Id.*, ¶¶ 17, 21, 37. Plaintiff cannot satisfy the *prima facie* elements for either of these claims.

9 **1. Plaintiff's Claim that She Should Have Been Promoted to Producer in**
 10 **March 2008**

11 Hughes' argument that she was not promoted to the producer position due to her race or
 12 gender in March 2008 fails outright. First, Hughes cannot set forth any facts to establish that she
 13 was qualified for the position. Indeed, Hughes had worked for Playboy as an intern for less than
 14 two months, and had no prior radio experience. Hughes even admits she was unqualified. After
 15 receiving the promotion to Night Calls producer several months later, she asked to leave the
 16 position due to her lack of experience. Even Hughes, thus, understood she was unqualified for
 17 the position — months later.

18 In addition, Hughes cannot set forth evidence suggesting any discriminatory motive on the
 19 part of Playboy, based on either race or sex. Her allegation is particularly weak given that, just
 20 months earlier, Hirsch and Lanza had called Hughes back to interview for a position for which
 21 she had not even applied. Moreover, Hughes' quick promotion through the ranks, which Hughes
 22 herself recognized, simply confirms Playboy's non-discriminatory intent. Last, no one was ever
 23 selected instead of Hughes. Dalton and Lanza simply switched positions as a matter of

24 business practices." *Akers*, 95 Cal. App. 4th at 1455. Otherwise, "courts will be thrust into the
 25 role of personnel officers, becoming entangled in every conceivable form of employee job
 26 dissatisfaction." *Id.* "[N]itpicking" and criticism by a supervisor does not equal adverse
 27 employment action even when the employee is "angered, displeased or even insulted." *Pinero v.*
Specialty Rests. Corp., 130 Cal. App. 4th 635, 647 (2005); *see Akers*, 95 Cal. App. 4th at 1457
 ("A mere oral or written criticism of an employee...does not meet the definition of an adverse
 employment action").

1 convenience. As such, no “open” producer position existed for which Hughes conceivably could
 2 be considered. For these reasons, Plaintiff fails to establish a *prima facie* case that her failure to
 3 be promoted to producer in March 2008 constituted discrimination as set forth in her first two
 4 causes of action.

5 **2. Plaintiff’s Claim That Her “Constructive Termination” Was**
 6 **Discriminatory Fails as a Matter of Law**

7 Plaintiff likewise fails to establish a *prima facie* case that she was “constructively
 8 terminated” due to discrimination. Specifically, she cannot set forth facts establishing that an
 9 “adverse employment action” occurred (*i.e.*, that she was constructively terminated). Nor can
 10 Hughes establish that she was qualified for the producer position in July 2008, or that Playboy
 11 harbored any discriminatory motive.

12 **a. Plaintiff Was Not “Constructively Terminated”**

13 Plaintiff’s Complaint loosely alleges that she was “constructively terminated,” though she
 14 sets forth no facts to support this contention. Under California law, a “constructive termination”
 15 – where the employee claims, essentially, that she was forced to resign – occurs only when the
 16 following two requirements are satisfied: (1) the employee’s working environment is so unusually
 17 adverse that a reasonable employee would have felt compelled to resign, and (2) the employer
 18 must have either intended to force the employee’s resignation or had actual knowledge of the
 19 intolerable working conditions. *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1251 (1994).
 20 An employee’s subjective belief that her work conditions are intolerable is insufficient. Indeed,
 21 the employee must show that “the conditions giving rise to the resignation were sufficiently
 22 extraordinary and egregious to overcome the normal motivation of a competent, diligent, and
 23 reasonable employee to remain on the job[.]” *Turner*, 7 Cal. 4th at 1246. Here, Plaintiff’s claim
 24 fails because she cannot establish that she worked in an objectively intolerable work environment.

25 Plaintiff’s testimony confirms that no “sufficiently extraordinary and egregious”
 26 conditions existed that forced her resignation. As an initial matter, Plaintiff admits that she
 27 “decided” not return to Playboy after receiving Villa’s investigation results. UF 76. Plaintiff’s
 28 own words, thus, confirm that her departure was voluntary.

1 Playboy revolved around the emergence of a personality conflict between her and Canyon, not
 2 gender discrimination. And the only inkling of evidence relating to race is Hirsch's stray
 3 "Negro" comment, which (aside from being innocuous) does not evidence any discriminatory
 4 intent on the part of Playboy. Indeed, Hughes simply cannot set forth evidence to show that her
 5 self-described "constructive termination" was in any way related to her gender or race.

6 3. Playboy's Actions Were Legitimate And Non-Discriminatory

7 Even if Plaintiff could otherwise establish a *prima facie* case of discrimination, which she
 8 cannot, Playboy rebuts any presumption of discrimination simply by articulating a legitimate,
 9 non-discriminatory reason for its decisions.⁴ This burden is one of production, not persuasion; an
 10 employer need only produce "some" evidence that its decision was not based on an unlawful
 11 consideration. *See Bodett v. Coxcom, Inc.*, 366 F.3d 736, 743 (9th Cir. 2004). Playboy meets its
 12 burden here.⁵

13 Playboy sets forth a legitimate non-discriminatory reason for Hughes' departure. First,
 14 Hughes orchestrated her own departure, not Playboy. Hughes left because her unreasonable
 15 demands were not met. She refused to continue working on Night Calls, and finding that no other
 16 producer positions were open, she quit her employment rather than take an available, but lower-
 17 paying position. Playboy offered Hughes the only other position available at the time, an
 18 associate producer position on another show. UF 72. Playboy's reason for offering Hughes an
 19 alternative, but lower paying, position was wholly unrelated to any discriminatory motive—the

20 ⁴ Only if Plaintiff first establishes a *prima facie* case for discrimination does the Court apply the
 21 *McDonnell Douglas* burden-shifting analysis. *See Martin v. Lockheed Missiles & Space Co.*, 29
 22 Cal. App. 4th 1718, 1730 (1994); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). If
 23 Plaintiff succeeds in establishing a *prima facie* case, the burden shifts to Playboy to present some
 24 evidence of a non-discriminatory reason for its decision. Once that burden of production is
 25 satisfied, any presumption of discrimination disappears, and summary judgment is required unless
 26 Plaintiff presents *specific* and *substantial* evidence of intentional discrimination. *See Horn v.*
 27 *Cushman & Wakefield Western, Inc.*, 72 Cal. App. 4th 798, 806-07 (1999); *Martin*, 29 Cal. App.
 28 4th at 1735.

29 ⁵ For the sake of completeness, Playboy sets forth a legitimate non-discriminatory reason for its
 30 decision to assign Dalton (rather than Hughes) to the Night Calls Producer position, as set forth in
 31 Section A.1.

1 associate producer position was the only position available, and Hughes had demanded to leave
 2 her current position at Night Calls.⁶ UF 73. Hughes, thus, cannot dispute Playboy's legitimate
 3 and non-discriminatory explanation for her departure.

4 As Plaintiff fails to set forth evidence establishing a *prima facie* claim for discrimination
 5 and, in any event, Playboy has set forth legitimate non-discriminatory reasons for the alleged
 6 "adverse employment actions," summary judgment is properly granted on Hughes' First and
 7 Second Causes of Action.

8 **B. Plaintiff's Claims Against Playboy For Retaliation In Violation of the FEHA**
 9 **and Public Policy Should Be Dismissed.**

10 Hughes' Third and Fourth causes of action are for retaliation in violation of FEHA and
 11 public policy. To establish a claim for retaliation under FEHA or any other public policy,
 12 Plaintiff must prove (1) that she engaged in a protected activity; (2) that she was subjected to
 13 adverse employment action, and (3) that there was a causal link between her alleged protected
 14 activity and the purported adverse employment action. *Fisher*, 214 Cal. App. 3d at 614; *Flait v.*
 15 *North American Watch Corp.*, 3 Cal. App. 4th 467, 476 (1992).⁷ Here, Plaintiff's complaint and
 16 deposition testimony imply two alleged "complaints" she made, which she contends amount to a
 17 protected activity sufficient to give rise to a retaliation claim. First, Hughes claims that she
 18 "informed" Hirsch that Canyon's "behavior was sexually harassing." *Id.*, ¶ 24. Second, though
 19 not specifically addressed in the Complaint, Hughes apparently contends that she was retaliated

20 ⁶ Since Playboy has articulated non discriminatory reasons for its actions, Plaintiff is required to
 21 demonstrate that Playboy's proffered reasons were a pretext for discrimination. Plaintiff's burden
 22 at this stage is heavy. To avoid summary judgment, she must offer "specific, substantial
 23 evidence" of intentional discrimination beyond her subjective belief. *See Horn*, 72 Cal. App. 4th
 24 at 806-07; *Hersant v. Dept. of Soc. Servs.*, 57 Cal. App. 4th 997, 1004 (1997); *Rodriguez v. IBM*,
 25 960 F. Supp. 227, 231 (N.D. Cal. 1997) (plaintiff's subjective belief not sufficient to withstand
 26 summary judgment); *Moore v. Home Ins. Co.*, 601 F.2d 1072, 1075 (9th Cir. 1979) ("[plaintiff's]
 27 suspicion of improper motives, unsupported by stronger evidence, is insufficient to raise an issue
 28 of fact"). Only discriminatory actions made by decisionmakers are persuasive as to whether an
 impermissible factor motivated the decision. *See Bergene v. Salt River Project Agr. Imp. and*
Power Dist., 272 F.3d 1136, 1141 (9th Cir. 2001).

26 ⁷ The courts apply the familiar *McDonnell Douglas* burden-shifting analysis discussed above to
 27 retaliation claims under the FEHA. *See Horn v. Cushman & Wakefield Western, Inc.*, 72 Cal.
 App. 4th 798, 806-07 (1999); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

1 against after reporting to Brenda Villa Hirsch's "Negro" comment. Each of these claims fails.

2 **1. Hughes Fails to Establish the Requisite *Prima Facie* Elements.**

3 **a. Plaintiff Did Not Engage In A Protected Activity.**

4 The first element of a retaliation claim requires Plaintiff to demonstrate that she engaged
5 in statutorily protected conduct. *See EEOC v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1013 (9th
6 Cir. 1983). She cannot make this showing and, thus, her retaliation claims fail.

7 Plaintiff's alleged complaint to Hirsch about Canyon's conduct cannot constitute a
8 protected activity. Although the Complaint alleges that Plaintiff told Hirsch that Canyon's
9 conduct was "sexually harassing," the evidence confirms that, in actuality, Hughes' complaints
10 addressed Canyon's *insubordination*. Compl. ¶24. For example, Hughes' email to Hirsch, which
11 followed the July 14, 2008 Night Calls show, summarized her complaints, none of which alleged
12 sexual harassment by Canyon. Rather, Hughes cited "all the changes, the ass waxing incident, the
13 existing insubordination allowed, [her] being promoted in the mi[d]st of all these pre-existing
14 problems," as well as the "lack of support" she felt she received. Indeed, the mere reference to
15 "that whole ass waxing thing" does not, in itself, constitute a claim of sexual harassment,
16 particularly when the surrounding context confirms that Hughes simply was upset by Canyon's
17 allegedly poor attitude. *See* UF 45. And a radio show host's alleged "insubordination" cannot, as
18 a matter of law, amount to an "illegal activity" upon which a wrongful termination claim can be
19 based. *See* Cal. Gov't Code § 12940(h) ("insubordination" not included as "forbidden practice").

20 In the same manner, neither can Hughes' disproportionate and overblown reaction to
21 Hirsch's "Negro" comment constitute a "protected activity." As addressed more fully below,
22 Hirsch's use of the term "Negro" on a single occasion, and in the context of discussing possible
23 radio shows with the show's prospective producer (Hughes), cannot, as a matter of law, amount
24 to an illegal company practice. *Chen v. County of Orange*, 96 Cal. App. 4th 926 (2002) ("[a]
25 simple assertion that an employer is personally bigoted, without more, is not statutorily protected

1 opposition to an “unlawful employment practice”).⁸ Nor can Hughes’ efforts to reflect an
 2 extreme reaction in her email exchanges with Brenda Villa change the relatively benign nature of
 3 the underlying incident. *See Clark County School District v. Breeden*, 532 U.S. 268, 271 (2001)
 4 (despite plaintiff’s complaint, conduct could not “remotely be considered extremely serious”). As
 5 such, Hughes’ “complaint” that Hirsch used the term “Negro” does not constitute a protected
 6 activity.

7 **b. Plaintiff Was Not Subjected To Any Adverse Employment**
 8 **Action.**

9 Likewise, Plaintiff cannot establish that she was subjected to any adverse employment
 10 action. In this regard, Hughes’ testimony confirms only one potential “adverse” employment
 11 action that she conceivably could advance — her September 2008 departure from Playboy, which
 12 Hughes coins a “constructive termination.”⁹ As addressed above, however, Hughes cannot
 13 establish a constructive termination as a matter of law.

14 **c. There Is No Causal Link.**

15 Even if Plaintiff could establish some adverse employment action, which she cannot, her
 16 claim fails because she still cannot satisfy the causal link element of the *prima facie* case. To
 17 establish a causal link, Plaintiff must produce evidence of a retaliatory motive.¹⁰ Plaintiff cannot
 18 produce such evidence.

19
 20 ⁸ *See also, Silver v. KCA, Inc.*, 586 F.2d 138 (9th Cir. 1978) (employee who objected when her
 21 superior referred to black employee as a “jungle bunny” did not engage in statutorily protected
 22 conduct).

23 ⁹ To the extent Hughes argues that her alleged failure to receive in a timely fashion business cards
 24 and her own cubicle constituted adverse employment actions, her claim fails. These alleged
 25 events occurred prior to any of Hughes’ alleged complaints. The same reasoning applies to
 26 Hughes’ March 2008 failure to be promoted. Hughes does not claim that she made any
 27 complaints prior to this time frame. In addition, these events cannot constitute “adverse
 28 employment actions.”

29 ¹⁰ *See Morgan v. Regents of University of Cal.* 88 Cal. App. 4th, 52, 69-71 (2000). A causal link
 30 is a critical component of Plaintiff’s *prima facie* case; it prevents “the problem of conferring a de
 31 facto immunity on the complainant despite poor job performance or the meritlessness of any
 32 complaint.” *Chen v. County of Orange*, 96 Cal. App. 4th 926, 948-51 (2002).

1 The undisputed evidence in this case establishes that no retaliation occurred. Playboy
 2 made every effort to accommodate Hughes' demand to leave Night Calls. Playboy investigated
 3 her allegations regarding Hirsch, responded to her emails, counseled Hirsch, and, as an alternative
 4 to Night Calls, offered her the only other position available at the time. And, as for any
 5 "complaints" regarding Canyon's conduct, Hirsch (understanding Hughes' desire to leave Night
 6 Calls) already met with Hughes to discuss prospects for a different show she could produce with
 7 Blue. The undisputed evidence thus establishes that Playboy sought to work with Hughes.
 8 Hughes cannot set forth any evidence to establish that Playboy's response to her demands was in
 9 any way retaliatory—no such evidence exists.

10 **2. Playboy's Actions Were Legitimate And Non-Retaliatory.**

11 Even if Plaintiff could somehow establish a *prima facie* case of retaliation, as addressed in
 12 Section A.3, Playboy has articulated legitimate, non-discriminatory reasons for Hughes' departure
 13 from Playboy. And Hughes cannot set forth evidence to establish that such stated reasons were
 14 mere pretext for retaliatory motives. Consequently, her retaliation claim still fails.

15 **C. Plaintiff's Claims Against All Defendants For "Race and Sex" Harassment In**
 16 **Violation of the FEHA and Public Policy Should Be Dismissed.**

17 Plaintiff's Fifth and Sixth causes of action, both premised on FEHA, allege "race and sex"
 18 harassment. To establish a claim for harassment in either form, Plaintiff must prove she
 19 experienced harassment based on her race or gender that was "sufficiently severe or pervasive 'to
 20 alter the conditions of [her] employment and create an abusive working environment.'" *Fisher v.*
 21 *San Pedro Peninsula Hosp.*, 214 Cal. App. 3d 590, 609 (1989) (quoting *Meritor Savings Bank v.*
 22 *Vinson*, 477 U.S. 57, 67 (1986)). See *Guthrey v. State of California*, 63 Cal. App. 4th 1108,
 23 1122-23 (1998) (harassment complained of must be because of race or gender). This
 24 determination depends on the totality of the circumstances, including the nature and severity of
 25 the conduct, whether or not it is physically threatening or humiliating, the frequency, the number
 26 of days over which it occurs and the context. *Id.* In addition, Plaintiff must demonstrate that the
 27 work environment was "both objectively and subjectively offensive," in that her workplace was
 28 one that would have interfered with a reasonable employee's performance and well-being, and

1 that such circumstances actually affected Plaintiff in this manner. *See Lyle*, 38 Cal. 4th at 284;
 2 *Fisher*, 214 Cal. App. 3d at 609-10; *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998).

3 1. Hughes' Claims of Racial Harassment Fail

4 Here, Hughes' racial harassment claim against Hirsch is premised entirely on his use of
 5 the term "Negro" on a single occasion during a conversation with Hughes. Plaintiff's racial
 6 harassment claim against Canyon is based on Canyon's alleged "insubordinate" behavior toward
 7 Hughes after Hughes became the producer for Night Calls. Each of these claims fails.

8 a. Plaintiff's Race Harassment Claim Against Hirsch

9 Plaintiff's harassment claim against Hirsch fails because the alleged conduct was not
 10 severe or pervasive, nor was it "objectively" offensive. As an initial matter, the mere use of the
 11 term "Negro," on a single occasion, cannot constitute "severe and pervasive" conduct for
 12 purposes of FEHA harassment. Even Plaintiff admits that the term "Negro" is not a racial slur.
 13 UF 62. And the term "Negro," while antiquated, does not carry with it the stigma attached to
 14 other, more racially-charged terms, such as those addressed (and found insufficient to amount to
 15 harassment) in other cases.¹¹

16 The context of the conversation that gave rise to Hirsch using "Negro" only further
 17 confirms that it was not "objectively" offensive. First, Hirsch did not direct the term toward
 18 Hughes. Rather, in a conversation with Hughes about potential show themes, Hirsch used the
 19 term "Negro" when describing one of a variety of shows he believed would not appeal to a wide
 20

21 ¹¹ For example, in *Etter v. Veriflo Corporation*, the court found that harassment requires more
 22 than "occasional, isolated, sporadic, or trivial" acts, and upheld the jury's finding that conduct
 23 allegedly consisting of a six week period where a co-worker called plaintiff "boy" almost daily,
 24 "Buckwheat" five to ten times, "Jemima" twice on day, "Stymie" one or twice, and asked why
 25 some Black people pronounce the word "ask" as "axe" was insufficient. *See Etter*, 67 Cal. App.
 26 4th 457. Moreover, "[t]he law does not exhibit 'zero tolerance' for offensive words and
 27 conduct." *Id.* at 467. "[A]cts of harassment cannot be occasional, isolated, sporadic, or trivial,
 28 rather the plaintiff must show a concerted pattern of harassment of a repeated routine or a
 generalized nature." *Fisher*, 214 Cal. App. 3d at 610. Where no tangible job detriment results
 from the harassment, Plaintiff must make a higher showing that the alleged conduct was
 destructive of the work environment. *See Mokler v. County of Orange, et al.*, 157 Cal. App. 4th
 121, 142 (2007).

1 audience. *See Lyle v. Warner Bros.*, 38 Cal. 4th 264, 284 (2006) (conduct aimed at persons other
 2 than plaintiff is considered less offensive and severe). Hirsch's point was that a Playboy Radio
 3 theme should not be directed solely to an African-American audience. This is an objectively
 4 reasonable statement that was made to the intended producer of the show who would be involved
 5 in developing the show's content. The undisputed context thus confirms that Hirsch's comment
 6 was not "objectively" offensive. As Hirsch's conduct was not "severe," "pervasive," or
 7 "objectively offensive," Hughes' claim for race harassment against Hirsch (and, to the extent it is
 8 based on this incident, Playboy) fails as a matter of law.

9 **b. Plaintiff's Race Harassment Claim Against Canyon**

10 Hughes' claim against Canyon for racial harassment is based entirely on her subjective
 11 "belief" that Canyon treated her (and Blue) differently than other non-African-American crew
 12 members. Hughes' testimony, however, confirms that the conduct she seeks to cast as
 13 "discriminatory" was, in fact, Canyon's "insubordinate" conduct that resulted from Canyon's
 14 apparent belief that Hughes and Blue were "teaming up" against her. Hughes cannot set forth
 15 evidence to suggest that such conduct was based on her race. Moreover, it is undisputed that
 16 Canyon and Hughes had a positive working relationship prior to Blue's arrival. And Hughes does
 17 not allege that any discriminatory conduct occurred before she started producing Night Calls with
 18 Blue and Conway as co-hosts. Canyon's alleged "insubordinate" conduct, thus, resulted from a
 19 personality conflict — not discrimination.¹² Hughes' claim for "race harassment" against Canyon
 20 (and Playboy) thus fails.

21 **2. Hughes' Claims of Sexual Harassment Fail**

22 Hughes' Fifth and Sixth Causes of Action also allege against all Defendants claims for
 23 sexual harassment.¹³ As with her "race" harassment claim, this claim fails because she cannot

24
 25 ¹² In the absence of evidence establishing that Canyon's conduct was based on Hughes' race, no
 26 analysis is necessary as to whether Canyon's conduct was sufficiently "severe or pervasive," or
 objectively offensive. Needless to say, however, Hughes fails to set forth evidence to establish
 these requirements.

27 ¹³ No common law claim for discrimination or harassment exists in California. *See, e.g. Medix*
Ambulance Service, Inc. v. Superior Court, 97 Cal. App. 4th 109, 118 (2002).

1 establish that the alleged conduct was related to her gender, nor can she establish that the conduct
2 was "severe," "pervasive," or "objectively offensive."

3 **a. Hughes Cannot Set Forth Evidence Establishing that Hirsch**
4 **Sexually Harassed Her.**

5 Although far-fetched, Hughes directs her sexual harassment claim at Hirsch. Hughes'
6 deposition testimony confirms her belief that Hirsch harassed her by treating her "passively,"
7 emphasizing the importance of "sex" in Night Calls programming, and asking her if she was
8 interested in posing for a Playboy pictorial. *See* UF 342. These allegations fail outright.

9 The above alleged conduct simply cannot amount to illegal sexual harassment. As noted
10 above, actionable sexual harassment must be "severe" or "pervasive." Hirsch's alleged conduct is
11 neither. First, Hughes sets forth no facts to establish that Hirsch's alleged "passive" treatment of
12 her (an inherently vague allegation) was related to her gender or somehow amounted to hostile
13 conduct, let alone severe or pervasive conduct. Second, Hirsch's emphasis on keeping "sex" in
14 Night Calls is a perfectly legitimate request, unrelated to gender, made to the producer of a show
15 that is entirely about sex. Finally, Hughes cannot set forth facts establishing that Hirsch's inquiry
16 about a Playboy-sponsored photo shoot was a hostile act. Given Hughes' eager participation in
17 Night Calls segments (not to mention her participation in *Sexy Stories*), Hirsch's harmless inquiry
18 seems particularly innocuous. In short, Hughes cannot set forth facts to establish that Hirsch's
19 alleged conduct in any way was related to her gender, created an abusive working environment,
20 or that it negatively impacted her ability to perform her job. For these reasons, Hughes' claim
21 against Hirsch (and Playboy) is properly dismissed.

22 **b. Hughes Cannot Set Forth Facts Establishing that Canyon**
23 **Sexually Harassed Her**

24 Hughes sexual harassment claim against Canyon is based on conduct that occurred while
25 Night Calls aired. Hughes contends that, during the July 14, 2008 Night Calls show, Canyon
26
27
28

1 “demanded that [Hughes] enter the studio to ‘wax’ [Canyon’s] ‘ass[,]” and “repeatedly made this
 2 demand throughout the three hour show.” Compl., ¶23. Hughes further contends that Canyon
 3 created a “sexually hostile environment” by “exposing her genitals and breasts to guests and co-
 4 workers, making requests to guests and co-workers to touch her genitals and breasts, and
 5 masturbating herself[,]” all during the airing of the radio show. *Id.*, ¶25. Hughes’ claim for
 6 sexual harassment against Canyon fails as a matter of law because Canyon’s alleged “harassing”
 7 conduct was not in any way related to Hughes’ gender, nor was the specific conduct that Hughes
 8 argues amounts to harassment “severe or pervasive,” or “objectively offensive.”

9 i. No Evidence That Conduct Related to Gender

10 The conduct that Hughes now seeks to describe as “harassment” was in no way related to
 11 her gender; it was related to her position as a crew member on a “sexually explicit” radio show.
 12 Indeed, Hughes does not even *plead* facts to suggest that she was harassed because of her gender.
 13 Rather, as Hughes’ deposition testimony confirms, the conduct to which she refers occurred to
 14 everyone, including guests and co-workers, male and female. Compl., ¶25. Thus, even putting
 15 aside the failings of her factual allegations, Hughes’ claim fails outright because she cannot
 16 establish that Canyon’s alleged conduct was related to Hughes’ gender.

17 ii. No Severe and Pervasive Conduct

18 In addition, Hughes’ claim against Canyon fails because the alleged conduct was not
 19 “severe” or “pervasive.” First, the crux of Hughes’ entire complaint, Canyon’s purported demand
 20 that Hughes “wax” Canyon’s “ass,” is based on Hughes’ misrepresentation of events. Hughes,
 21 both in the Complaint and at her deposition, stated that Canyon demanded that Hughes
 22 immediately enter the studio to perform the “ass waxing” segment. Compl., ¶ 23. The transcript
 23 of the July 14, 2008 show, however, confirms that Canyon simply asked Hughes to “put it on the
 24 books[,]” (meaning to calendar it). As such, the event, as it actually occurred, is a far cry from
 25 Hughes’ allegations. Canyon made no “demand” at all. And Hughes simply declined (a single
 26 time) to put the segment on the calendar. *See* UF 335. Thus, even putting aside Hughes’
 27 misrepresentation of events, the actual exchange at issue (refusing to calendar a bit) cannot
 28 amount to “severe,” “pervasive,” or “objectively offensive” conduct.

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1 Second, the circumstances surrounding Hughes' sexual harassment claim against Canyon
 2 reveal the utter absurdity in her allegations. *See Fisher*, 214 Cal. App. 3d at 609 (court must
 3 review totality of circumstances); *Lyle*, 38 Cal. 4th at 283 (court looks to "common sense"). In
 4 addition to the above-addressed on-air exchange, the remainder of Hughes' claim consists of
 5 allegations that Canyon engaged in nudity and sexually-explicit conduct while on air. Given the
 6 obvious nature of the show, none of this conduct can amount to illegal sexual harassment. *See id.*

7 Hughes cannot dispute that Canyon's alleged conduct was part of a sexually-themed radio
 8 show. Before every show, Night Calls warns listeners (and the production crew, in case they
 9 forgot from the previous show) that "they are about to listen to a show not only of sexy sights and
 10 sounds, but dildoes, squirting, splashing, threesomes, foursomes, and sometimes twelvesomes."
 11 In short, Night Calls is a show about sex. It is hosted by former adult film stars who talk vividly
 12 about sex, and it is designed to appeal to listeners' sexual fantasies. Hughes knew this when she
 13 started working on the show in January 2008; she had no concerns for months as she watched
 14 Canyon engage in sexually-related conduct; she engaged in it herself as the personality "Sexy";
 15 and she even went beyond her responsibilities in seeking to write and perform highly explicit
 16 "sexy stories." Canyon's alleged on-air conduct occurred in the context of the radio show; it
 17 followed precisely the show's very theme; and she rightfully believed that Hughes was a willing
 18 (and, indeed, enthusiastic) participant. Canyon's on-air conduct, thus, cannot, as a matter of law,
 19 amount to sexual harassment.¹⁴

20 Finally, for the activities that Hughes claims she later (though inexplicably) protested,
 21

22 ¹⁴ Courts hold unequivocally that this type of conduct bars a plaintiff from prevailing on a sexual
 23 harassment claim. *See Mangrum v. Republic Indus., Inc.*, 260 F. Supp. 2d 1229 (N.D. Ga. 2003),
 24 *aff'd*, 88 F.App'x 390 (11th Cir. 2003) (granting and affirming summary judgment because
 25 plaintiff participated in sexual banter, sat on co-workers' laps, gave shoulder massages, and used
 26 profanity); *Scusa v. Nestle U.S.A. Co. Inc.*, 181 F.3d 958, 966 (8th Cir. 1999) (affirming summary
 27 judgment because "[t]he undisputed evidence showed that [plaintiff] engaged in behavior similar
 to that which she claimed was unwelcome and offensive," including profanity, off-color
 comments, teasing, and displaying an aggressive attitude); *Easton v. Crossland Mortgage Corp.*,
 905 F. Supp. 1368 (C.D. Cal. 1995), *rev'd on other grounds*, 114 F.3d 979 (9th Cir. 1997)
 (granting summary judgment because plaintiffs initiated sexual discussions, participated in sex-
 themed parties, disrobed in front of co-workers).

1 even Hughes agrees that such conduct stopped. *See* UF 297, 302. As such, even if the conduct
 2 *could be* considered harassment, it could not be severe or pervasive. Canyon stopped upon
 3 request. *See Brown v. Smith*, 55 Cal. App. 4th 767 (1997) (key factor is whether “conduct
 4 continued after a request by plaintiff that it stop”). Hughes’ claim for sexual harassment against
 5 Canyon (and Playboy) is therefore properly dismissed.

6 3. The Other Petty Incidents to Which Hughes Refers Cannot Constitute 7 Actionable Harassment of Any Sort

8 In a strained effort to find “harassment” where none exists, Hughes references a host of
 9 other incidents that she evidently offers in support of her harassment claims. Such incidents
 10 include (1) her allegation that Canyon drew a mustache and horns on Blue’s picture, (2) her
 11 perceived failure to receive business cards in a timely manner (she received them within a
 12 month); (3) her contention that she was “forced” to share a desk (which was actually a cubicle)
 13 with Elizabeth Meza, a Hispanic employee, after being promoted to producer; (4) Marie Lanza’s
 14 inquiry into who left a “stain” on one of the host’s chairs; and (5) and a freelance host’s comment
 15 about adding “color” to the show when Blue came aboard. Compl., ¶¶ 18, 19, 21, 29; *see also* UF
 16 34-38, 110-112, 207-208. These petty allegations, as a matter of law, cannot even begin to create
 17 an actionable claim for racial or sexual harassment. Indeed, Hughes cannot set forth evidence to
 18 convert these otherwise innocuous events into “severe or pervasive” conduct. Nor can she
 19 establish that such occurrences were related to her race or gender, that they were otherwise
 20 “objectively” offensive, or that they impacted her ability to do her job. As such, Hughes’
 21 harassment claim against Playboy, to the extent it relies on the above instances (or any other such
 22 petty instances that she may cite in opposition), fails as well.

23 D. Plaintiff’s Claim For Negligent Hiring, Training, and Supervision Should Be 24 Dismissed.

25 Plaintiff’s Seventh Cause of Action alleges negligent hiring, training, and supervision. As
 26 with all negligence claims, Plaintiff must establish three elements: (1) the existence of a legal
 27 duty to use due care, (2) breach of that duty, and (3) proximate cause. *Federico v. Sup. Ct.*, 59
 28 Cal. App. 4th 1207, 1210-11, 1214 (1997). To be liable upon a negligent hiring, training, or

1 supervision theory, an employer must have (or should have) been aware that the employee posed
 2 a particular harm to others, and that the particular harm occurred. *Doe v. Capital Cities*, 50 Cal.
 3 App. 4th 1038, 1054-55 (1996); *Golden West Broadcasters, Inc. v. Superior Court*, 114 Cal. App.
 4 3d 947, 954 (1981) (burden on plaintiff to establish knowledge). Hughes' claim fails.

5 Hughes cannot set forth evidence to establish negligence. As an initial matter, Hughes'
 6 claim is barred entirely by the workers' compensation preemption. *See, e.g. Arendell v. Auto*
 7 *Parts Club, Inc.*, 29 Cal. App. 4th 1261, 1264-65 (1994); *see* UF 424. Moreover, as addressed
 8 above, Hughes fails to set forth any evidence to establish that she suffered any legal harm that
 9 even conceivably could have resulted from a "breach of duty." Hughes also cannot set forth
 10 evidence to suggest that Playboy had any reason to believe that Hirsch or Canyon posed a
 11 particular harm to others (*i.e.*, that they were known "harassers"). *See Lamb v. Household Credit*
 12 *Services*, 956 F. Supp. 1511 (N.D. Cal. 1997) (summary judgment appropriate no evidence that
 13 employer had any information suggesting employee had a propensity to harass women); *see* UF
 14 422. To the extent Hughes relies on her own alleged "complaints" to Hirsch and Villa, her claim
 15 fails. As addressed above (Section C), Hughes' complaints did not address legally actionable
 16 conduct; and, in any event, her complaints were addressed and the conduct did not occur again
 17 (*i.e.*, Hirsch was counseled for his comment and no further incidents occurred). Based on the
 18 absence of any evidence to support this claim, therefore, Hughes' Seventh Cause of Action is
 19 properly dismissed.

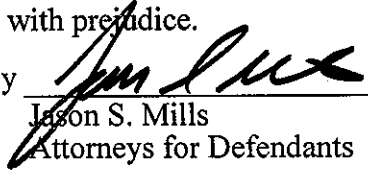
20 **E. Plaintiff's IIED Claim Should Be Dismissed.**

21 For Plaintiff to prevail on her claim for intentional infliction of emotional distress
 22 ("IIED"), she must establish the following elements: (1) *extreme and outrageous conduct*; (2)
 23 intent or reckless disregard; (3) conduct directed at Plaintiff or occurred in the presence of
 24 Plaintiff of whom defendant was aware; (4) *severe emotional distress*; and (5) actual causation.
 25 *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 129 Cal. App. 4th
 26 1228, 1259 (2005) (emphasis added); *Trerice v. Blue Cross of California*, 209 Cal. App. 3d 878,
 27 883 (1989). Plaintiff cannot meet her burden on establishing the above elements.

1 Based on Hughes' deposition testimony, she bases her IIED claim on Hirsch's and
 2 Canyon's alleged conduct (addressed above). As Hughes' underlying claims fail as a matter of
 3 law, her related IIED claim fails as well. And her claim further is barred by the workers'
 4 compensation preemption. *See, e.g. Arendell*, 29 Cal. App. 4th at 1264-65; *see* UF 428. In
 5 addition, Hughes' IIED claim fails because the conduct upon which her claim is based was not, as
 6 a matter of law, "extreme and outrageous." *See Trerice*, 209 Cal. App. 3d at 883 (conduct is
 7 outrageous when it is "so extreme as to exceed all bounds of common decency usually tolerated
 8 by a civilized society."); *Molko v. Holy Spirit Ass'n*, 46 Cal. 3d 1092, 1122 (1988); *Cervantes v.*
 9 *J.C. Penny Co.*, 24 Cal. 3d 579, 593 (1979). Indeed, Canyon's alleged conduct occurred in
 10 course of the show that is designed to appeal to listeners' sexual fantasies. Hughes knew this and
 11 was a willing and eager participant. Hirsch's stray "Negro" comment, likewise, was an isolated
 12 occurrence, it was not directed at Hughes, and it arose in the context of a conversation regarding a
 13 prospective show's content.¹⁵ Such conduct does not constitute "extreme and outrageous"
 14 behavior. Finally, Hughes cannot set forth facts establishing that she suffered "severe emotional
 15 distress." For the above reasons, Hughes fails as a matter of law to establish her IIED claim
 16 against Defendants.¹⁶

17 **IV. CONCLUSION**

18 Based on the foregoing, Defendants respectfully request that this Court grant this Motion
 19 in full and dismiss all of Plaintiff's causes of action with prejudice.

20 Dated: June 12, 2009
 21 By 
 22 Jason S. Mills
 Attorneys for Defendants

23 ¹⁵ *See, e.g., Alcorn v. Ambro Eng., Inc.*, 2 Cal. 3d 493, 499 (1970) ("mere insults, indignities,
 24 threats, annoyances, [and] petty oppressions" are insufficient to support an IIED claim);
 25 *Braunling v. Countrywide Home Loans, Inc.*, 220 F.3d 1154, 1158 (9th Cir. 2000) ("conduct
 26 which exhibits mere rudeness and insensitivity does not rise to the level required for a showing of
 27 [IIED]"); *Schneider v. TRW, Inc.*, 938 F.2d 986, 992 (9th Cir. 1991).

28 ¹⁶ To the extent Hughes claims that an adverse employment action caused her extreme emotional
 distress, her claim fails. Personnel management conduct is not outrageous conduct as a matter of
 law. *See Janken v. GM Hughes Electronics*, 46 Cal. App. 4th 55, 80 (1996).