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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CAROLYN CLAXTON, Plaintiff and Appellant, v. RAY WATERS and PACIFIC MARITIME ASSOCIATION, Defendants and Respondents.	B141129 (Los Angeles County Super. Ct. No. NC 024284)

APPEAL from a judgment and an order of the Superior Court for the County of Los Angeles. Richard F. Charvat, Judge. Reversed and remanded.

Joseph R. Zamora for Plaintiff and Appellant.

Gibson, Dunn & Crutcher, David A. Cathcart and Michele L. Maryott for Defendants and Respondents.

SUMMARY

Carolyn Claxton appeals from a grant of summary judgment in favor of Ray Waters and her former employer, Pacific Maritime Association, on her claim for sexual harassment. Claxton asserts that a "compromise and release" she executed of her claims for workers' compensation benefits did not bar her civil claim, and that the trial court should have permitted her to amend her complaint to plead a constructive discharge. We conclude that (1) triable issues of material fact precluded summary judgment on the question whether Claxton released her claims for emotional distress damages from the sexual harassment, and (2) the trial court did not abuse its discretion in refusing to allow Claxton to amend her complaint because she cannot, as a matter of law, establish a claim for constructive discharge in violation of public policy.

FACTUAL AND PROCEDURAL BACKGROUND

Claxton was employed by PMA as an office assistant from February 1995 until her resignation on September 16, 1997. PMA is a multi-employer association that performs labor relations functions for stevedoring, shipping and marine terminal companies. Waters was employed by PMA as senior administrator for its Southern California training and accident prevention department and was Claxton's immediate supervisor.

After her resignation, Claxton filed this lawsuit, as well as two applications for adjudication of claims with the Workers' Compensation Appeals Board (WCAB), as follows:

- On December 16, 1997, she filed an application with the WCAB for adjudication of a claim for injury to her "left lower extremity & psyche," in connection with a fall on May 9, 1997.
- On January 16, 1998, she filed a second application with the WCAB, claiming injury to her "psyche" which occurred "due to sexual harassment."
- On January 29, 1998 the California Department of Fair Employment and Housing issued a right to sue notice, and on September 15, 1998, Claxton filed this lawsuit

against PMA and Waters.[1] The lawsuit asserted claims for sexual harassment, denial of civil rights, retaliation, disparate treatment, assault and battery and intentional infliction of emotional distress. The complaint alleged that on numerous occasions during Claxton's employment, Waters touched Claxton inappropriately and talked to her about sexual matters.

On February 25, 1999, Claxton executed a "Compromise and Release" of her workers' compensation claims on a pre-preprinted form, WCAB Form 15. The release stated that on "5-9-97" and "CT 2-1-95 – 9-16-97" she sustained injury "arising out of and in the course of employment to Psyche, Left Lower Extremity…." In the release Claxton and PMA agreed "to settle any and all claims on account of said injury" by the payment of $25,000. The release provided that:

> "Upon approval of this compromise agreement …, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury …."

Case numbers for both of Claxton's applications appeared in the blank space provided in the release for the case number. The WCAB approved the settlement on March 16, 1999.

After taking Claxton's deposition in April 1999, PMA sought summary judgment. PMA's motion, filed on June 3, 1999, asserted Claxton's claim for sexual harassment failed as a matter of law because Claxton could not establish the requisite "severe or pervasive" conduct within the limitations period.[2] On July 6, 1999, the trial court denied

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[1] Unless the context indicates otherwise, further references to "PMA" include Waters as well.

[2] Claxton cited 20 specific incidents over the course of Claxton's two and one-half years of employment. These consisted of 11 incidents that occurred from February through August 16, 1995; three in October 1996; and six between February 20, 1997 and September 11, 1997. The incidents included four instances of comments on sexual matters; the others involved touching, such as Waters touching Claxton's arm, leg, back

summary adjudication of the sexual harassment claim, but granted PMA's motion as to the other causes of action.

Meanwhile, on June 7, 1999, PMA filed a motion for leave to amend its answer to assert several additional affirmative defenses. These included defenses of release, waiver and res judicata, based upon the compromise and release of Claxton's workers' compensation claims. On July 13, 1999, the trial court granted the motion, and the amended answer was deemed filed.

Five months after filing its amended answer, PMA filed a second motion for summary adjudication of Claxton's sexual harassment claim. The motion asserted (1) recovery of emotional distress damages from the alleged harassment was barred by Claxton's settlement of her workers' compensation claims, and (2) she could not recover economic damages because her complaint did not allege her resignation was caused by sexual harassment, and even if it did, she failed to establish the necessary causal connection between the harassment and her resignation. PMA argued that Claxton's own deposition testimony established she resigned because she did not receive a prompt response from PMA to her request for an immediate raise.

On January 3, 2000, Claxton filed an ex parte motion seeking leave to amend her complaint to add allegations she was constructively discharged in violation of public policy. The court denied the motion.

On January 13, 2000, the trial court granted PMA's motion for summary judgment, finding that Claxton's claim was barred by the compromise and release signed in connection with her workers' compensation claim, and that she could not recover economic damages because she failed to plead constructive discharge "and otherwise cannot establish a causal connection between the alleged harassment and her voluntary resignation."

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and shoulders, placing his head on her shoulder, putting his hand between her arm and breast, and sitting and standing too close to her.

After an unsuccessful motion for a new trial, Claxton filed this appeal on April 4, 2000. Meanwhile, on March 24, 2000, PMA and Waters moved for an award of attorneys' fees. PMA argued that Claxton's continued pursuit of her sexual harassment claim after having signed the release of her workers' compensation claim was unreasonable and, at a minimum, PMA was entitled to partial attorneys' fees of $92,459.75. This amount was calculated from May 2, 1999, the date Claxton's counsel rejected a stipulation offered by PMA's counsel for amendment of the PMA answer to assert the release as an affirmative defense.

On May 9, 2000, the trial court granted PMA's motion for attorneys' fees. The court's order stated Claxton's claims "were unreasonable, frivolous and/or groundless, at least as of May 2, 1999," and allowed fees in the amount of $92,459.75. Claxton filed a notice of appeal from that order, and the two appeals were later consolidated.

DISCUSSION

I. The trial court erred in concluding Claxton's claim was barred by the compromise and release she signed in connection with her workers' compensation claim.

Claxton argues the compromise and release of her workers' compensation claims did not release her civil claims for sexual harassment against PMA and Waters.[3] Claxton points out that (1) sexual harassment is a form of sex discrimination and violates public policy, and (2) the exclusive remedy provisions of the workers' compensation law do not bar a civil suit for damages when the employer's conduct is outside the compensation bargain. On these general points of law, Claxton is correct. (*See, e.g.*, *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1100, 1101 [just as an individual employment agreement may not include terms which violate fundamental public policy, "so the more general 'compensation bargain' cannot encompass conduct, such as sexual or racial

[3] In July 2001 the Supreme Court accepted for review the case of *Jefferson v. Department of Youth Authority*, S097104, which presents a similar issue.

discrimination," that is contrary to public policy], overruled on other grounds by *Green v. Ralee Engineering Co.* (1998) 19 Cal. 4th 66, 80 n.6; *Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 352-353 [claim for emotional distress arising out of sexual harassment is not barred by the exclusivity provisions of workers' compensation laws].)

PMA does not disagree with these principles, and does not argue that Claxton's entire claim for sexual harassment was barred by her release. Instead, PMA argues that Claxton's harassment claim fails because she cannot establish any prospect for the recovery of damages, either economic or non-economic. This is so (a) as to economic damages, because she cannot show the harassment caused her resignation, and (b) as to non-economic damages, because she released any claim for emotional distress damages. Thus, so far as the compromise and release is concerned, PMA's argument is not that Claxton released her right to bring a lawsuit for sexual harassment, but that she released her claim to one of the types of damages–emotional distress–she could otherwise seek in that lawsuit. We do not agree.

First, a number of courts have held similar settlements of workers' compensation claims did not operate to bar civil lawsuits in various circumstances. For example, in *Delaney v. Superior Fast Freight* (1993) 14 Cal.App.4th 590, the court held that a workers' compensation compromise and release did not bar Delaney's cause of action for intentional infliction of emotional distress, since a question of fact existed as to the intent underlying the settlement. Delaney's application for adjudication of his workers' compensation claim was based on injuries to his psyche and continuing trauma, resulting from harassment on the basis of his sexual orientation. The compromise and release recited that Delaney sustained injuries to his back and his psyche, and released the employer from all claims and causes of action that might arise "as a result of said injury …." (14 Cal.App.4th at p. 599.) The court observed it would not be impossible for an employee with emotional distress claims to knowingly agree to abandon them at the same time as he or she settles a workers' compensation claim. However:

> "[T]he form release in issue here does not compel such a conclusion. That is to say, while its language is very broad, encompassing all claims and causes of action arising from the injury suffered, that expansive language is simply that which appears on all standard workers' compensation forms. [Citations.] It is preprinted and makes no specific reference to potentially independent civil rights or remedies. Consequently, it may reasonably be understood as releasing only those claims which traditionally fall within the scope of the workers' compensation system." (*Ibid.*)

(See also *Lopez v. Sikkema* (1991) 229 Cal.App.3d 31 [execution of a compromise and release by a worker's dependents, releasing the employer from liability for all claims arising out of the worker's death, did not preclude a civil lawsuit for wrongful death and for civil rights violations];[4] *Asare v. Hartford Fire Ins. Co.* (1991) 1 Cal.App.4th 856 [workers' compensation compromise and release did not bar the worker's racial discrimination claims].)

We perceive no reasoned distinction between this case and the circumstances in *Delaney*, *Lopez* and *Asare*. The preprinted WCAB release form is the same. It makes no reference to the pending civil suit. PMA presented no evidence the parties discussed the impact of the settlement on the pending civil claims. Claxton's April 26, 1999 deposition testimony–given before PMA sought to amend its answer to assert the release as an affirmative defense–indicated her belief the worker's compensation settlement was only for her knee injury. Moreover, the release makes no reference at all to Ray Waters, further supporting Claxton's claim there was no intent to release the civil claims.[5]

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[4] The court in *Lopez* observed there was no evidence the parties discussed the impact of the settlement on the civil claims then pending. The court found that if the compromise and release were intended to cover claims not compensable under the workers' compensation law–in that case, the employer's liability for hiring and arming the two strikebreakers who fatally shot the worker in the head–the release should have contained express language to that effect. (*Lopez v. Sikkema, supra*, 229 Cal.App.3d at pp. 38-39.)

[5] PMA argues that the release covers Waters because it states the parties "stipulate that the consideration for this Compromise and Release includes full compensation for all

PMA argues that the language of the preprinted form release is clear and unambiguous, and the trial court properly refused to consider Claxton's extrinsic evidence. The release states the parties agree to settle "any and all claims on account of said injury," and that "said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury …." We cannot agree that those words on a preprinted form, ordinarily used to release claims compensable only under workers' compensation, are unambiguous. As *Delaney* pointed out, that same expansive language appears on every workers' compensation release form. The "said injury" to which it refers in this case states: "Psyche, Left Lower Extremity."[6] The compromise and release itself nowhere refers to sexual harassment;[7] in order to find out that the injury to Claxton's psyche was due to sexual harassment, reference must be made to Claxton's application to the WCAB.

Under these circumstances, we agree with *Delaney* that the release "may reasonably be understood as releasing only those claims which traditionally fall within

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injuries sustained by the applicant while employed by defendants, including all specific injuries and continuous traumas." We do not see how this language encompasses Waters, who has no workers' compensation liability. PMA cites *Hollywood Refrigeration Sales Co. v. Superior Court* (1985) 164 Cal.App.3d 754 for the proposition that, if an employee's injuries are compensable under the workers' compensation law, the benefits provided under the law "constitute the exclusive remedy against the employer and any fellow employee." (*Id*. at p. 757.) However, as discussed above, sexual harassment is outside the compensation bargain and workers' compensation is not the exclusive remedy for such a claim.

[6] Claxton's first application, resulting from her knee injury, also claimed injury to her "left lower extremity & psyche."

[7] Moreover, it is difficult to see how, from the words of the release form, the employee can be expected to understand that – as PMA argues – she is not releasing her entire suit for sexual harassment, but she is releasing her right to recover a particular type of damage otherwise available in that suit – especially since workers' compensation benefits for the injury to her psyche are limited to medical expenses.

the scope of the workers' compensation system." (14 Cal.App.4th at p. 599.) A claim for sexual harassment plainly falls outside that system. (*Accardi v. Superior Court*, *supra*, 17 Cal.App.4th 341, 353.) In short, if a workers' compensation compromise and release is intended to release pending civil claims based on acts–here, sexual harassment –that fall "outside the risks encompassed within the compensation bargain" (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811-812), it should say so. Where it does not, we conclude it is ambiguous, and a triable issue of fact exists as to the intent of the parties.[8]

PMA also argues that Claxton recovered damages for emotional distress in her workers' compensation settlement, and that equitable principles preclude double recovery, citing *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1158, 1161. Certainly Claxton may not obtain a double recovery. That does not mean, however, that Claxton may obtain no other damages for emotional distress. The workers' compensation system compensates "only for medical costs and lost wages caused by the disability." (*Pichon v. Pacific Gas & Electric Co.* (1989) 212 Cal.App.3d 488, 500-501;

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[8] PMA relies on *Hollywood Refrigeration Sales Co. v. Superior Court*, *supra*, 164 Cal.App.3d 754, for the proposition that a civil suit for emotional distress is barred by settlement of workers' compensation claims based on a course of abusive or harassing conduct. We do not see the relevance of *Hollywood Refrigeration* to the issue in this case. In *Hollywood Refrigeration*, the plaintiff sued for intentional infliction of emotional distress. The court held that the WCAB had exclusive jurisdiction of the claim, and the plaintiff's compromise and release of his workers' compensation claim for stress due to his employer's harassment and abusive behavior was res judicata as to the civil action. (164 Cal.App.3d at p. 757.) The case did not involve sexual harassment or discrimination or other claims that have been held to be beyond the scope of the compensation bargain. Indeed, the Supreme Court subsequently held that suits for intentional infliction of emotional distress are barred by the exclusive remedy provisions of the Labor Code, when the employer's misconduct alleged consists of actions which are "a normal part of the employment relationship, such as demotions, promotions, criticism of work practices, and frictions in negotiations as to grievances …." (*Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 160.) In this case, however, the misconduct alleged is not a "normal part of the employment relationship …." (*Ibid.*)

see Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund, supra, 24 Cal.4th 800, 814 [workers' compensation system compensates only for injuries that cause a disability or the need for medical treatment].) The wider range of potential remedies for violation of the FEHA, however, may include compensatory damages for pain and suffering and punitive damages. (Chin et al., Cal. Practice Guide: Employment Litigation (The Rutter Group 2001) ¶ 7:1110, p. 7-112.) So, in addition to the medical expenses she recovered for injury to her psyche in her workers' compensation settlement, Claxton could potentially obtain emotional distress damages for the humiliation, embarrassment or anxiety caused by the alleged harassment. There is no danger of double recovery:

> "In the event of any overlap in the recovery of both compensation and damages, the employer must be allowed a credit against the judgment for any compensation already paid on account of an industrial injury arising from the same facts." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 23 n.12.)

(See also *Johns-Manville Products Corp. v. Superior Court* (1980) 27 Cal.3d 465, 478-479 ["although plaintiff filed an application for workers' compensation and may receive an award in that proceeding, double recovery may be avoided by allowing the employer a setoff in the event plaintiff is awarded compensation for the aggravation of his injury in that proceeding and in the present case as well"]; *Meninga v. Raley's, Inc.* (1989) 216 Cal.App.3d 79, 88-90 [plaintiff's cause of action for employment discrimination was not barred by exclusive remedy provisions of workers' compensation law, even though plaintiff applied for and received workers' compensation benefits due to cumulative stress; workers' compensation claim cannot address the employer's liability for employment discrimination].)

Accordingly, the trial court erred when it held that Claxton's claim for emotional distress damages from the harassment was barred by the compromise and release. It necessarily follows that the court also erred when it granted PMA's motion for attorneys' fees on the ground Claxton's lawsuit was frivolous after her execution of the release.

II. The trial court did not err in refusing to allow Claxton to amend her complaint to allege a constructive discharge in violation of public policy.

Claxton argues that she produced sufficient evidence to support a claim for constructive discharge in violation of public policy, and that the trial court abused its discretion in refusing to permit her to amend her complaint to allege a constructive discharge and substantial losses in earnings and job benefits.[9] We disagree on both points.

To establish a constructive discharge, "an employee must plead and prove … that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251.) We conclude Claxton's facts cannot pass the third element of the *Turner* test–the employer's actual knowledge of intolerable conditions–and Claxton therefore cannot prove a constructive discharge.[10] Accordingly, the trial court did not err in denying Claxton's motion for leave to amend her complaint.

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[9] The trial court ruled Claxton could not recover economic damages because she failed to plead constructive discharge, "and otherwise cannot establish a causal connection between the alleged harassment and her voluntary resignation." We question the latter conclusion. While Claxton's deposition testimony showed her resignation was precipitated by PMA's failure to respond to her request for a raise, both her testimony and her resignation letter (see footnote 12 *infra*) suggest the alleged harassment may have been a substantial factor in her resignation. We express no opinion on Claxton's argument that a plaintiff who has resigned to escape a hostile environment should not have to prove a constructive termination in order to recover for the job loss, and instead "should be allowed to plead and prove that the job loss is an element of damage flowing from the harassment." (Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed. 2001) § 3.45, pp. 147-148.) Claxton raised the point in her motion for a new trial, but there is no indication the trial court considered the issue.

[10] The Supreme Court explained that requiring the employer's actual knowledge of intolerable conditions "serves to emphasize a central aspect of constructive discharge law – the resignation must be employer-caused and against the employee's will. Consistent

The relevant circumstances surrounding the alleged harassment and Claxton's resignation were these. According to Claxton's testimony, eleven incidents of sexual comments or unwanted touching occurred between February and August 1995 (see footnote 2 *supra*). On March 23, 1995, Chuck Wallace, a PMA vice president, was made aware Claxton was having some problems with Waters, and came to Claxton to speak to her about it. Wallace told her Waters would not be touching her anymore, and Waters subsequently apologized to Claxton. Claxton never contacted Wallace again about Waters.

On September 8 and September 27, 1995, Claxton talked to two persons in management, Charlie Young and Carie Clements, about her concerns with Waters' behavior, and said she did not want Waters "touching me and talking to me in my face." Claxton was told by Clements that Clements would talk to Waters about it and that if Claxton had any more problems, she should tell Clements. Claxton testified that she did not go back to Clements about the harassment. According to Claxton's testimony, the next incident of harassment occurred more than a year later. Claxton identified three incidents of touching in October 1996, and six other incidents of touching or sexual comments between February 20 and September 11, 1997. After the September 1995 meetings, Claxton did not complain to anyone at PMA about any inappropriate touching or comments by Waters.

On July 17, 1997, Claxton had a meeting with Clements and Wallace, at which they discussed Claxton's absenteeism and her complaints that Waters had docked her vacation time and sick time. Claxton told Clements and Wallace that docking her vacation and sick time was "another form of harassment," and testified she "assume[d] that they knew that if it was another form, that they would know that he was still

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with this principle, the employer must either deliberately create the intolerable working conditions that trigger the resignation or, at a minimum, must know about them and fail to remedy the situation in order to force the employee to resign." (*Turner v. Anheuser-Busch, Inc.*, *supra*, 7 Cal.4th at pp. 1249-1250.)

harassing me in other ways sexually." However, Claxton testified that she did not actually tell Clements and Wallace that she had experienced any incidents of sexual harassment since their previous meetings. Her next indication to management that a sexual harassment problem existed occurred in her letter of resignation on September 16, 1997.[11]

At the end of July 1997, Claxton learned that she had not received an anticipated salary increase. She also learned a new manager, Bob Dodge, would be replacing Ray Waters at the training center in Wilmington where Claxton worked, and that Waters would no longer be her supervisor. In August she had a meeting with Waters about her performance, and was told that her performance would be reviewed again in December, at which time a salary increase would be considered.

On September 10, 1997, PMA's Vice President of Training and Accident Prevention, John Pavelko, told Claxton she would be promoted to a position as Dodge's assistant. She asked Pavelko if she could get a raise for the promotion. Pavelko told her to draft performance objectives, which would be reviewed after Dodge took over as manager. Her performance would be reviewed in December "and if objectives are being satisfactorily completed you may be recommended for a salary increase." Claxton responded to Pavelko by e-mail on September 11, 1997, asking for an immediate increase. She sent another e-mail to Pavelko on September 12, saying that with the added responsibilities as assistant to Dodge, she deserved a pay increase. On September 15, she sent a third e-mail message. It said:

> "John, [¶] Could you please let me know about the pay increase by this afternoon (4:00 p.m.), as I am expected to start training, and coordinating the crew tomorrow. I do not believe that PMA should ask me to perform all the extras duties and responsibilities without

[11] In an e-mail message to John Pavelko on September 11, five days before her resignation, she referred to "harassment" as the reason she did not get a raise, but again said nothing about sexual harassment.

> compensating me. I'm sorry to put you in a spot, but if this problem with Ray Waters had been settled years ago, we wouldn't be having this problem."

Claxton came to work the next day, found no answer to her e-mail message, and thereupon resigned her employment by e-mailing a resignation letter to Pavelko and others. In her letter, she stated that the company was ignoring her request for a pay increase, "ignor[ed] the problems and allow[ed] inappropriate behavior to be commonplace," and ignored her past complaint about sexual harassment and "many other forms of harassment."[12] At her deposition, Claxton testified that she decided to resign when she logged on to her computer on September 16 and found she had no response from Pavelko to her request for a raise. She testified she had not formed any intention to leave PMA prior to that time, and her decision to resign was triggered by the fact that Pavelko seemed to be ignoring her e-mail.

On these facts, we conclude Claxton cannot establish a constructive discharge, because she cannot establish the third necessary element: Claxton clearly cannot show that PMA knew about the intolerable conditions "and fail[ed] to remedy the situation in order to force [Claxton] to resign." (*Turner v. Anheuser-Busch, Inc., supra*, 7 Cal.4th at pp. 1249-1250.) Claxton's evidence that PMA was aware of the sexual harassment consists only of Claxton's conversations with management personnel in March and September 1995. After September 1995, (1) no incidents of harassment are alleged for more than a year, and (2) Claxton did not inform management about the sexual

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[12] The letter included the following comments: "…I have lived in hell the last 2 years, because you have chosen ignore this problem telling me 'That is just the way he is'. PMA teaches the longshoremen about sexual harassment maybe upper management should sit in one of the classes. (Also the diversity training class would be a great idea). I can no longer work under these conditions, as my health and mental well being is at stake, I can't sleep, I have nightmares of Mr. Waters, and I am sick to my stomach almost every morning. [¶] This is to inform you that I resign, effectively immediately, as I can not work for a company that allows this type of behavior to continue and putting their employee in danger."

harassment she now says occurred in October 1996 and in 1997 until she submitted her resignation letter.[13]

Accordingly, Claxton cannot prove at least one of the elements required to establish a constructive discharge. It necessarily follows that the trial court did not abuse its discretion in denying Claxton's motion to amend her complaint to allege she was constructively discharged in violation of public policy.

DISPOSITION

The judgment is reversed and the cause is remanded with directions to the trial court to vacate its orders granting defendants' motions for summary judgment and attorneys' fees and to enter new orders denying those motions. Claxton is to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.

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[13] Even if Claxton's September 11 e-mail referring to unspecified harassment could be considered a report of sexual harassment, Claxton resigned five days later, giving PMA no opportunity to correct the problem. (See *Turner v. Anheuser-Busch, Inc.*, *supra*, 7 Cal.4th at p. 1250 [standard requiring employees to notify someone in authority about intolerable working conditions "permit[s] employers unaware of any wrongdoing to correct a potentially destructive situation]".)