Filed 8/9/11

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

VICENTE SALAS, Plaintiff and Appellant, v. SIERRA CHEMICAL CO., Defendant and Respondent.	C064627 (Super. Ct. No. CV033425)

APPEAL from a judgment of the Superior Court of San Joaquin County, Elizabeth Humphreys, Judge. Affirmed.

Rancaño & Rancaño and David C. Rancaño; Stevens Law and Margaret P. Stevens for Plaintiff and Appellant.

Freeman D'Aiuto Pierce Gurev Keeling & Wolf, Arnold J. Wolf and Thomas H. Keeling for Defendant and Respondent.

Plaintiff Vicente Salas appeals from a summary judgment entered in favor of defendant Sierra Chemical Co. (Sierra Chemical). We affirm the judgment.

BACKGROUND

Sierra Chemical manufactures, packages, and distributes chemicals primarily used for water treatment. Demand for Sierra Chemical's products rises in the spring and summer due to the increased use of swimming pools, and declines during the fall and winter. Because of this, the company employs a number of seasonal production line workers.

In May 2003, Sierra Chemical hired Salas to work on its production line, filling containers with various chemicals. Salas provided the company with a resident alien card and a Social Security card. After Salas signed an Employment Eligibility Verification Form (I-9), on which he wrote the Social Security number, Sierra Chemical's general manager used the resident alien card as verification of Salas's identity and eligibility to work in the United States. Salas also signed an Employee's Withholding Allowance Certificate (W-4), which included the same Social Security number. Salas also printed this number on his employment application and signed the application verifying the truth of the information contained therein and acknowledging that any false statements would be grounds for dismissal.

In October 2003, Salas was laid off as part of Sierra Chemical's annual reduction in production line staff. He was recalled to work in March 2004, laid off in December 2004, and again recalled to work in March 2005. When Salas was rehired in 2004, he provided Sierra Chemical with the same resident alien card and Social Security card used to secure his initial

employment. He also filled out and signed an I-9 and W-4, both of which included the same Social Security number. By December 2005, Salas had accrued enough seniority to avoid being laid off that year.

In March 2006, Salas injured his back while stacking crates at the last stage of the production line. He reported the injury to Leo Huizar, the production manager, and went to Dameron Hospital Occupational Health Services (Dameron Hospital) for treatment. The next day, Salas returned to work with the following restrictions: "1) no lifting over 10-15 pounds, 2) no prolonged sitting, 3) no prolonged standing or walking, and 4) limited bending, twisting or stooping at the waist." Sierra Chemical accommodated these restrictions by allowing Salas to sweep the work area, rinse empty containers, and perform other production line duties that did not require lifting crates. When Salas provided Huizar with a doctor's release in June 2006, he was returned to full duty.

In August 2006, Salas again injured his back while stacking crates at the end of the production line. He returned to Dameron Hospital for treatment and was placed on the same work restrictions. Following this injury, Salas brought a workers' compensation claim against Sierra Chemical and its insurance carrier, State Compensation Insurance Fund. In December 2006, Salas was again laid off as part of Sierra Chemical's annual reduction in production line staff.

In May 2007, Salas received a letter informing him that Sierra Chemical was recalling employees who were laid off the

previous year. The letter instructed Salas to contact Huizar to "make arrangements to return to work" and also stated: "Bring a copy of your doctor's release stating that you have been released to return to full duty." According to Huizar, Salas contacted him after receiving this letter and stated that he could not return to work because he had not received a medical release, but that he expected to receive such a release following his doctor's appointment in June. Huizar agreed to hold the job open until Salas received the release, but never heard back from Salas.

However, according to Salas, Huizar contacted him in March 2007. When Salas said that he wanted to return to work, Huizar asked whether he was "100% recovered" from his back injury. Salas informed Huizar that he was "not completely healed," to which Huizar responded that allowing him to return to work would violate Sierra Chemical's policies. After receiving the recall letter in May 2007, Salas again talked to Huizar, who said that "he wanted [Salas] to work with them but only if [he] was fine, a hundred percent well with [his] back. If not, then [he] should not show up to work." Salas did not return to work.

The Litigation

Salas sued Sierra Chemical, alleging disability discrimination in violation of the Fair Employment and Housing Act (FEHA) and denial of employment in violation of public policy. Specifically, Salas alleged that Sierra Chemical failed to make reasonable accommodation for his disability and failed to engage in an interactive process to determine such a

reasonable accommodation. (Gov. Code, § 12940, subds. (a), (m), (n).) Salas also alleged that Sierra Chemical denied him employment to punish him for filing a claim for workers' compensation benefits, and to intimidate and deter him and others from bringing such a claim.

Following an in limine motion filed by Salas in which he advised the trial court that he would assert his Fifth Amendment right against self-incrimination in response to any questions concerning his immigration status, Sierra Chemical discovered that the Social Security number used by Salas to secure employment with the company belonged to a man in North Carolina named Kelley R. Tenney.

The Summary Judgment Motion

Sierra Chemical moved for summary judgment claiming the doctrine of after-acquired evidence barred Salas's causes of action as a matter of law. This was so, argued Sierra Chemical, because there was no genuine factual dispute concerning (1) Salas's use of a counterfeit Social Security card with another person's Social Security number in order to secure employment with the company, and (2) Sierra Chemical would not have hired or recalled Salas had it known that he was using a counterfeit Social Security card with another person's Social Security number. Sierra Chemical also claimed the doctrine of unclean hands barred Salas's causes of action because the misrepresentation of his eligibility to work in the United States and fraudulent use of another person's Social Security

number amounted to inequitable conduct that directly related to his causes of action.[1]

In support of the motion, Sierra Chemical provided a declaration from Tenney stating that the Social Security number Salas used to secure employment with the company was Tenney's Social Security number and declaring that Tenney neither knew Salas nor gave Salas or anyone else permission to use his Social Security number. Sierra Chemical also provided a declaration from the president of the company, Stanley Kinder, stating that Sierra Chemical had "a long-standing policy that precludes [the] hiring of any job applicant who is prohibited by federal immigration law from working in the United States. That policy also precludes the hiring of any applicant who submits false information or false documents in an effort to prove his or her

---

[1] Sierra Chemical also claimed the doctrine of unclean hands barred Salas's causes of action for another reason. Despite the undisputed fact that Salas's doctor had released him to regular work duty in January 2007, Salas misrepresented to Huizar that he had not been released to full duty. This misrepresentation, argued Sierra Chemical, directly related to Salas's claim of failure to accommodate because there would have been no need to provide a reasonable accommodation or engage in an interactive process had Salas told the truth about his release to full duty. Sierra Chemical also asserted that this misrepresentation estopped Salas from pursuing his claims, that he suffered no damages because he was ineligible to work in the United States, and that his employment denial claim was not a legally cognizable cause of action. Because Sierra Chemical defends the trial court's grant of summary judgment solely on "the defenses of unclean hands and after-acquired evidence arising from Salas's use of a Social Security number which had been issued to someone else in order to obtain a job with Sierra Chemical," we do not further address these additional arguments. Nor do we address Salas's responses to them.

eligibility to work in the United States." Kinder further stated: "If it is learned that a Sierra Chemical employee submitted false information and/or false documents to establish his or her eligibility to work in the United States, that employee would be immediately terminated."

Salas opposed the motion, arguing that whether or not he misrepresented his Social Security number to Sierra Chemical is irrelevant because the company "may be held liable for disability discrimination under FEHA, regardless of [his] immigration status." Salas also argued that Tenney's statement that the Social Security number in question belonged to him was "a mere conclusion, unsupported by any foundation and completely uncorroborated," and was therefore insufficient to establish that the Social Security Administration assigned the number to Tenney as opposed to Salas, or that the number was not mistakenly assigned to both Tenney and Salas. Salas further argued that, even if Tenney's declaration is "taken at face value," because Salas swore under penalty of perjury when he filled out his employment paperwork that the Social Security number belonged to him, this created a triable issue of material fact. Finally, Salas argued that Sierra Chemical provided no evidence that he submitted a counterfeit Social Security card to secure employment with the company.

In opposition to the motion, Salas submitted his own declaration. This declaration did not state that the Social Security number Salas used to secure employment with Sierra Chemical, and claimed by Tenney to belong to him, actually

belonged to Salas. Instead, Salas declared: "In late 2004 or early 2005, I received a letter from the Social Security Administration, stating my name and Social Security number do not match their records. During the same period, several of my coworkers . . . at Sierra Chemical also received letters from the Social Security Administration. We talked among ourselves at work, and at an informal meeting we compared the letters we received. We all received identical form letters. A few days later, [Huizar] spoke to us as a group and stated we need not worry about any discrepancies with Social Security numbers. [Huizar] said [Kinder] was happy with our work and that as long as he remained happy, he would not fire us over a discrepancy with a Social Security number." Salas also stated: "During the three years I worked for Sierra Chemical, I personally knew several immigrants working at Sierra Chemical, some of whom admitted to being undocumented workers. I never heard of Sierra Chemical discharging any person due to a discrepancy with a Social Security number, or for any other immigration-related issue."

The Trial Court's Ruling

The trial court initially denied the motion, finding the following to be triable issues of material fact: (1) "Did the Social Security Administration err in issuing the same number to two separate people, or did [Salas] submit a false Social Security card as well as a false Alien Registration card to [Sierra Chemical]?"; (2) "Did [Salas] have the right to work in the United States of America based upon his Alien Registration

card?"; (3) "Was [Salas's] Alien Registration card valid?"; and (4) "Did [Salas] apprise [Sierra Chemical's] agent of the notice he claims he received from the Social Security Administration regarding his name and number not matching and, if so, did [Sierra Chemical] take any action or just ignore this information?"

Sierra Chemical filed a petition for writ of mandate and prohibition in this court seeking reversal of the trial court's decision denying the summary judgment motion. We issued an alternative writ directing the trial court to either grant the relief requested or show cause why the relief requested should not be granted. Thereafter, the trial court vacated its order denying the summary judgment motion and entered judgment in favor of Sierra Chemical. Salas appeals.

DISCUSSION

I

Summary Judgment Principles

We begin by summarizing several principles that govern the grant and review of summary judgment motions under section 437c of the Code of Civil Procedure.

"A defendant's motion for summary judgment should be granted if no triable issue exists as to any material fact and the defendant is entitled to a judgment as a matter of law. [Citations.] The burden of persuasion remains with the party moving for summary judgment. [Citation.]" (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1002-1003 (*Kahn*); Code Civ. Proc., § 437c, subd. (c).) Thus, a defendant moving

for summary judgment "bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto. [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850, (*Aguilar*); Code Civ. Proc., § 437c, subd. (*o*)(2).) Such a defendant also "bears the initial burden of production to make a prima facie showing that no triable issue of material fact exists. Once the initial burden of production is met, the burden shifts to [plaintiff] to demonstrate the existence of a triable issue of material fact." (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1250, citing *Aguilar*, *supra*, 25 Cal.4th at pp. 850-851.)

On appeal from the entry of summary judgment, "[w]e review the record and the determination of the trial court de novo." (*Kahn*, *supra*, 31 Cal.4th at p. 1003.) "While we must liberally construe plaintiff's showing and resolve any doubts about the propriety of a summary judgment in plaintiff's favor, plaintiff's evidence remains subject to careful scrutiny. [Citation.] We can find a triable issue of material fact 'if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' [Citation.] Moreover, plaintiff's subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations. [Citations.]" (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433; see also *Sangster v. Paetkau* (1998) 68

Cal.App.4th 151, 163 ["responsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact"].)

II

After-Acquired-Evidence

The after-acquired-evidence doctrine operates as a complete or partial defense where, after an allegedly discriminatory termination or refusal to hire, the employer discovers employee or applicant wrongdoing that would have resulted in the challenged termination or refusal to hire. (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842 (*Murillo*); *Camp v. Jeffer, Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, 632 (*Camp*); *Shattuck v. Kinetic Concepts, Inc.* (5th Cir. 1995) 49 F.3d 1106, 1108 ["the pertinent inquiry, except in refusal-to-hire cases, is whether the employee would have been fired upon discovery of the wrongdoing, not whether he would have been hired in the first instance"].)

This is a refusal to hire case. Salas claims that Sierra Chemical refused to hire him following his seasonal lay off as retribution for his previous workers' compensation claim. Salas also claims that Sierra Chemical discriminated against him because of his back injury, and rather than provide a reasonable accommodation for this disability or engage in an interactive process to determine whether such an accommodation could be reached, the company instead refused to allow him to return to work. Sierra Chemical asserts that the after-acquired-evidence

doctrine provides a complete defense to these claims because (1) Salas used a Social Security number that belonged to another person in order to secure his employment with the company, and (2) Sierra Chemical would not have hired Salas had it known of this misrepresentation. Thus, in determining whether the trial court properly granted summary judgment for Sierra Chemical, the pertinent inquiry is whether there exist any triable issues of material fact concerning these points, and if not, whether the doctrine provides a complete or partial defense.

In *Camp*, *supra*, 35 Cal.App.4th 620, the Camps, husband and wife, sued their former employer for wrongful termination. (*Id.* at pp. 627-628.) Kendra Camp claimed to have been discharged for informing management about insider trading. Ronald Camp claimed to have been fired solely because he was married to Kendra. (*Id.* at pp. 631-632.) During discovery, the former employer, Jeffer Mangels, discovered that the Camps had been convicted of a felony, which they fraudulently omitted from their employment applications. Because Jeffer Mangels was a contractor for the Resolution Trust Company (RTC), an agency of the federal government with responsibility for the sale and liquidation of savings and loan associations, federal law required the company to certify that none of its employees had ever been convicted of a felony. (*Id.* at pp. 626-628.) Jeffer Mangels moved for summary judgment based on the after-acquired-evidence doctrine and prevailed. (*Id.* at p. 632.)

The Court of Appeal affirmed, holding that the doctrine barred the Camps' wrongful termination claims. (*Camp*, *supra*, 35

Cal.App.4th at p. 638.) While acknowledging that the doctrine does not always operate as a complete defense to a wrongful termination claim (citing *Cooper v. Rykoff-Sexton, Inc.* (1994) 24 Cal.App.4th 614 [age discrimination case in which plaintiff's employment application misrepresented employment history and failed to disclose that two previous employers had fired him] and *McKennon v. Nashville Banner Publ. Co.* (1995) 513 U.S. 352 [130 L.Ed.2d 852] [age discrimination case in which plaintiff removed and copied several confidential documents concerning company's financial condition]), the court explained that "the nature of the Camps' misrepresentations and their potential detrimental impact on Jeffer Mangels distinguish this case from prior decisions." (*Id.* at pp. 635-636.)

Unlike cases where an employer's "self-imposed" policies are violated by applicant misrepresentations or employee misconduct, "the Camps misrepresented a job qualification imposed by the federal government, such that they were not *lawfully* qualified for the job." (*Camp*, *supra*, 35 Cal.App.4th at p. 636.) The court also explained that "the Camps' misrepresentations placed Jeffer Mangels in the risky position of certifying to the federal government -- inaccurately -- that all of the firm's employees met the RTC's qualifications. The Camps thus put Jeffer Mangels not only in jeopardy of losing its contract with the RTC but also of being accused of making false statements itself." (*Id.* at p. 637.)

The court further explained that "the use of after-acquired evidence must 'take due account of the lawful prerogatives of

the employer in the usual course of its business and the corresponding equities that it has arising from the employee's wrongdoing.' [Citation.]" (*Camp*, *supra*, 35 Cal.App.4th at pp. 637-638.) And "where an employee who is disqualified from employment by government-imposed requirements nevertheless obtains a job by misrepresenting the pertinent qualifications[,] . . . the employee should have no recourse for an alleged wrongful termination of employment. As stated by another court, '[t]he present case is akin to the hypothetical wherein a company doctor is fired [for improper reasons] and the company, in defending a civil rights action, thereafter discovers that the discharged employee was not a "doctor." In our view, the masquerading doctor would be entitled to no relief . . . .' [Citation.]" (*Id.* at p. 638.)

In *Murillo*, *supra*, 65 Cal.App.4th 833, Murillo sued her former employer, Rite Stuff Foods, for wrongful termination, breach of contract and the covenant of good faith and fair dealing, discriminatory sexual harassment, and several tort claims tied to the harassment. (*Id.* at pp. 838-839.) The sexual harassment claim was based on the conduct of Murillo's supervisor, Atilano, who allegedly touched her inappropriately and made repeated sexual propositions throughout her employment with the company. During discovery, Murillo admitted to being an undocumented alien who had used counterfeit resident alien and Social Security cards to obtain employment. (*Id.* at p. 839.) Defendant moved for summary judgment, relying on Murillo's admission and a declaration from the president of the

company stating that Murillo would have been immediately fired had her undocumented status been known. (*Ibid.*) The trial court granted the motion. (*Id.* at p. 840.)

The Court of Appeal reversed. With respect to the wrongful termination and contract claims, the court explained that Murillo raised a genuine factual question as to whether defendant would have fired her immediately upon learning of her undocumented status. (*Murillo*, *supra*, 65 Cal.App.4th at p. 846.) This question was raised by evidence that Atilano knew Murillo was an undocumented alien and told her how to procure false documents, defendant's general manager knew the company hired undocumented workers and took no steps to discharge them, and the president of the company once stated that "most of his employees were undocumented." (*Id.* at pp. 840, 846.) Thus, defendant "failed to establish as a matter of law that, as a matter of settled company policy, it would have fired plaintiff immediately upon learning of her undocumented status." (*Id.* at p. 847.) However, as we will explain more fully in the next section of this opinion, the court also held that the doctrine of unclean hands barred Murillo's wrongful termination and contract claims. (*Id.* at p. 845.)

With respect to the discrimination and tort claims based on the sexual harassment, the court found "no sound reason" the after-acquired-evidence doctrine should bar these claims. (*Murillo*, *supra*, 65 Cal.App.4th at p. 847.) As the court explained, "the plaintiff need not resign or be discharged to have a cause of action for sexual harassment. Plaintiff

therefore need not hitch her sexual harassment wagon to the wrongful discharge star." (*Id.* at p. 848.) While plaintiff "cannot complain of having lost her employment, in that she was never entitled to it in the first place," during the period of employment she was "entitled to all the protections available under employment law." (*Id.* at pp. 848-849.) The court concluded: "Where, as here, the discriminatory conduct was pervasive during the term of employment, therefore, it would not be sound public policy to bar recovery for injuries suffered while employed. In applying the after-acquired-evidence doctrine, the equities between employer and employee can be balanced by barring all portions of the employment discrimination claim tied to the employee's discharge." (*Id.* at p. 850.)

In this case, unlike *Murillo*, there is no evidence that Salas used a counterfeit resident alien card to obtain employment. Thus, we cannot rely solely on the federal requirement, found in the Immigration Reform and Control Act of 1986 (IRCA), that employers refrain from knowingly hiring or continuing to employ unauthorized aliens. (8 U.S.C. § 1324a, subds. (a), (b) [valid resident alien card sufficient to establish both employment authorization and identity].) However, IRCA also "prohibits aliens from using or attempting to use '*any* forged, counterfeit, altered, or falsely made document' or '*any* document lawfully issued to or with respect to a person other than the possessor' for purposes of obtaining employment in the United States." (*Hoffman Plastic Compounds, Inc. v. NLRB*

(2002) 535 U.S. 137, 148 [152 L.Ed.2d 271, 282] (*Hoffman*) italics added; 8 U.S.C. § 1324c, subd. (a).) Federal law also "requires that employers gather and report the [Social Security numbers] of their employees to aid enforcement of . . . immigration laws." (*Cassano v. Carb* (2d Cir. 2006) 436 F.3d 74, 75; 8 C.F.R. § 274a.2, subds. (a), (b)(1)(i) [employer must ensure that employee completes section 1 of I-9 form, which requires employee to verify his or her Social Security number].)

Additionally, federal law requires all employers "to withhold certain income taxes and Social Security taxes and file a report with the Internal Revenue Service as to each individual employee. These reports require identification of the employee by Social Security number." (*Sutton v. Providence St. Joseph Med. Ctr.* (9th Cir. 1999) 192 F.3d 826, 831; *Seaworth v. Pearson* (8th Cir. 2000) 203 F.3d 1056, 1057; 33A Am.Jur.2d (2009) Federal Taxation, ¶ 9110, p. 488 [employers must file quarterly employment tax returns with Internal Revenue Service and annual information returns (Form W-2) with Social Security Administration]; 26 U.S.C. § 6109, subds. (a), (d) [employer making information return must include Social Security number of person or persons with respect to whom information is being furnished].) Employers who file inaccurate returns are subject to penalties. (26 U.S.C. § 6721.)

Here, Sierra Chemical produced evidence, in the form of Tenney's sworn statement, that the Social Security number Salas used to obtain employment belonged to Tenney. Sierra Chemical also provided a declaration from Kinder stating that Sierra

Chemical had "a long-standing policy" that "precludes the hiring of any applicant who submits false information or false documents in an effort to prove his or her eligibility to work in the United States."

These facts, if not genuinely disputed by Salas, would entitle Sierra Chemical to judgment as a matter of law based on the complete defense of the after-acquired-evidence doctrine. Like *Camp*, and unlike the cases it distinguished, Salas misrepresented a job qualification imposed by the federal government, i.e., possessing a valid Social Security number that does not belong to someone else, such that he was not lawfully qualified for the job. Further, Salas placed Sierra Chemical in the position of submitting a perjurious I-9 form and filing inaccurate returns with the Internal Revenue Service and the Social Security Administration. In these circumstances, Salas should have no recourse for an allegedly wrongful failure to hire.

Moreover, unlike the sexual harassment claim in *Murillo, supra,* 65 Cal.App.4th 833, Salas's discrimination claims are tied to the failure to hire. As already indicated, Salas claimed that Sierra Chemical discriminated against him because of his back injury, and rather than provide a reasonable accommodation for this disability or engage in an interactive process to determine whether such an accommodation could be reached, the company instead refused to hire him. Unlike *Murillo*, this is not a case of pervasive discriminatory conduct that caused injuries during the term of employment. Instead,

much like the husband's discrimination claim in *Camp* was tied to the wrongful discharge, Salas's discrimination claims are tied to the failure to hire and would also be barred.

Salas claims that he raised a triable issue of fact with respect to whether the Social Security number he used belonged to him or Tenney. We disagree. All Salas had to do to raise such a factual issue was submit a declaration stating that the number belonged to him. But instead of doing this, Salas stated in his declaration that he received a letter from the Social Security Administration informing him that the number he was using did not match their records. Thus, Salas's own declaration corroborates Tenney's statement that the number in question belonged to Tenney.[2] And while it is possible that the Social Security Administration mistakenly gave the same number to two people, such speculation is insufficient to establish a triable issue of material fact. (See *Sangster v. Paetkau*,

---

[2] Salas also claims the trial court erred by admitting Tenney's statement that the Social Security number in question belonged to him because "[h]is testimony fails to establish that the Social Security Administration ever assigned him this number, or that he has used this number for any purpose (including for his taxes or employment), or for how long he has used this number." He also complains that Tenney did not attach to his declaration a copy of his Social Security card or another document showing that he has used the number. The only legal authority cited in support of this argument is Evidence Code section 702, requiring a witness to have personal knowledge of the matter concerning which he or she testifies. We conclude that a witness has personal knowledge of his or her Social Security number, such that corroborating documentation is not required in order to make such a statement admissible.

supra, 68 Cal.App.4th at p. 163.) Nor does the fact that Salas signed W-4 and I-9 forms containing the number create a triable issue of material fact. The question is not whether Salas claimed the number to be his when he filled out the forms. He clearly did. The question is whether the number actually belonged to him. Sierra Chemical submitted evidence that the number did not belong to Salas. And while Salas could have disputed this evidence with evidence of his own, he chose not to do so.

Salas also claims that he raised a triable issue of fact with respect to Sierra Chemical's policy of refusing to hire applicants who submit a false Social Security number. We are not persuaded. Unlike *Murillo, supra* 65 Cal.App.4th 833, where plaintiff submitted direct evidence that the company knowingly hired undocumented aliens and took no steps to discharge them, Salas submitted mere speculation. According to his declaration, he and several other employees had an informal meeting with Huizar to discuss the letters they received from the Social Security Administration. Huizar told the employees that Kinder "was happy with [their] work and that as long as he remained happy, he would not fire [them] over a discrepancy with a Social Security number." In order to find a triable issue of fact, we would have to draw the inference that Sierra Chemical did not have a settled policy of refusing to hire an applicant who submits a *false* Social Security number from the fact that Huizar told Salas that he would not be fired over a *discrepancy* with a Social Security number. However, as Salas himself observed in

his opposition to the summary judgment motion, a discrepancy with a Social Security number could be caused by typographical errors, unreported name changes, or inaccurate or incomplete records. Thus, the fact that Sierra Chemical would not fire him over a discrepancy with a Social Security number is not inconsistent with Kinder's declaration that Sierra Chemical had a settled policy of refusing to hire applicants who submit a false Social Security number.[3]

Nor does Salas create a triable issue of fact by stating that he "personally knew several immigrants working at Sierra Chemical, some of whom admitted to being undocumented workers," and "never heard of Sierra Chemical discharging any person due to a discrepancy with a Social Security number, or for any other immigration-related issue." The fact that Salas knew of undocumented aliens working at Sierra Chemical does not establish that Sierra Chemical knew that these employees were undocumented. And the fact that Salas never heard of an employee being fired for these reasons does not establish that the company did not have a settled policy of refusing to hire applicants who submit a false Social Security number.

Because Salas's claims are barred by the doctrine of after-acquired-evidence, the trial court properly granted summary judgment in favor of Sierra Chemical.

---

[3] Because we have concluded that Huizar's statements do not create a triable issue of fact, we need not address whether, as Sierra Chemical argues, the trial court erred by admitting these statements over hearsay and foundation objections.

III

Unclean Hands

The unclean hands doctrine "demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.]" (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) This doctrine "protects judicial integrity and promotes justice. It protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system. . . . The doctrine promotes justice by making a plaintiff answer for his own misconduct in the action. It prevents 'a wrongdoer from enjoying the fruits of his transgression.' [Citations.]" (*Id.* at pp. 978-979.)

"The doctrine of unclean hands requires unconscionable, bad faith, or inequitable conduct by the plaintiff in connection with the matter in controversy. [Citations.] Unclean hands applies when it would be inequitable to provide the plaintiff any relief, and provides a complete defense to both legal and equitable causes of action. [Citations.] 'Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries.' [Citation.]" (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 56; *California School Employees Assn., Tustin Chapter*

No. 450 v. Tustin Unified School Dist. (2007) 148 Cal.App.4th 510, 523.)

In both *Murillo* and *Camp*, the Court of Appeal held that, aside from the doctrine of after-acquired-evidence, plaintiffs' wrongful termination claims were barred by the doctrine of unclean hands. (*Murillo*, *supra*, 65 Cal.App.4th at pp. 844-845; *Camp*, *supra*, 35 Cal.App.4th at pp. 638-639.) As the *Camp* court explained: "[T]he Camps' misrepresentations about their felony convictions relate directly to their wrongful termination claims. Since the Camps were not lawfully qualified for their jobs, they cannot be heard to complain that they improperly lost them. Given the nature of the misrepresentations, their potential damage to Jeffer Mangels, and the fact that the Camps were disqualified from employment by means of governmental requirements, the public policies of the state are adequately served by barring the Camps' claims and allowing them, if they so desire, to report Jeffer Mangels's alleged wrongdoing to the appropriate authorities." (*Camp*, *supra*, 35 Cal.App.4th at p. 639.) In *Murillo*, it was undisputed that plaintiff obtained false resident alien and Social Security cards and used them to obtain employment with Rite Stuff Foods. The court held that the unclean hands doctrine barred plaintiff's wrongful discharge and contractual claims because "[p]laintiff's misrepresentations went to the heart of the employment relationship and related directly to her wrongful discharge and contractual claims." (*Murillo*, *supra*, 65 Cal.App.4th at p. 845.)

Similarly, here, Salas's use of another person's Social Security number to obtain employment with Sierra Chemical went to the heart of the employment relationship and related directly to his claims that Sierra Chemical wrongfully failed to hire him following his seasonal lay off and discriminated against him by failing to provide a reasonable accommodation for his back injury. Because Salas was not lawfully qualified for the job, he cannot be heard to complain that he was not hired. This is so even though he alleges that one reason for the failure to hire was Sierra Chemical's unwillingness to accommodate his disability.

In light of the nature of the misrepresentation, the fact that it exposed Sierra Chemical to penalties for submitting false statements to several federal agencies, and the fact that Salas was disqualified from employment by means of governmental requirements, we conclude that Salas's claims are also barred by the doctrine of unclean hands.

IV

Senate Bill No. 1818

Nevertheless, Salas claims that Senate Bill No. 1818 (SB 1818) precludes application of the after-acquired-evidence and unclean hands doctrines in this case. We disagree.

In *Hoffman*, *supra*, 535 U.S. 137 [152 L.Ed.2d 271], the United States Supreme Court held that the policies underlying IRCA prohibited the National Labor Relations Board (NLRB) from awarding backpay to illegal immigrants who, in violation of the National Labor Relations Act, were terminated because of their

participation in the organization of a union. (*Id.* at pp. 140-141, 148-152.) Declining to permit the NLRB to "award backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud," the high court explained: "Congress has expressly made it criminally punishable for an alien to obtain employment with false documents. There is no reason to think that Congress nonetheless intended to permit backpay where but for an employer's unfair labor practices, an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities." (*Id.* at p. 149.)

Shortly after *Hoffman* was decided, our Legislature enacted SB 1818, which added four identical provisions to California's statutes: "The Legislature finds and declares the following: [¶] (a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state. [¶] (b) For purposes of enforcing state labor, employment, civil rights and employee housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the

inquiry is necessary in order to comply with federal immigration law. [¶] (c) The provisions of this section are declaratory of existing law. [¶] (d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application." (Stats. 2002, ch. 1071, § 1, pp. 6913-6915; Lab. Code, § 1171.5; Civ. Code, § 3339; Gov. Code, § 7285; Health & Saf. Code, § 24000.)

Salas argues that because *Hoffman, supra,* 535 U.S. 137, precludes the NLRB from awarding backpay to illegal immigrants, and because SB 1818 was enacted to "limit the potential effects of [this decision] on the state's labor and civil rights laws . . . ." (Sen. Com. on Labor and Industrial Relations, Analysis of SB 1818 (2001-2002 Reg. Sess.) as amended May 9, 2002, p. 1), the enactment must allow him to recover backpay for the allegedly discriminatory failure to hire regardless of whether the after-acquired-evidence or unclean hands doctrines would otherwise preclude him from bringing claims tied to the failure to hire. We are not persuaded.

Issues of statutory interpretation are questions of law subject to de novo review. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1492.) "'When construing a statute, we must "ascertain the intent of the Legislature so as to effectuate the purpose of the law."' [Citation.] 'In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according

significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.' [Citation.] At the same time, 'we do not consider . . . statutory language in isolation.' [Citation.] Instead, we 'examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts.' [Citation.] Moreover, we '"read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'"'" (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043; *San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 831.)

Read together, the provisions of SB 1818 make explicit California's preexisting "public policy with regard to the irrelevance of immigration status in enforcement of state labor, employment, civil rights, and employee housing laws. Thus, if an employer hires an undocumented worker, the employer will also bear the burden of complying with this state's wage, hour and workers' compensation laws." (*Hernandez v. Paicus* (2003) 109 Cal.App.4th 452, 460, disapproved on another ground in *People v. Freeman* (2010) 47 Cal.4th 993.) However, while SB 1818 provides that undocumented workers are entitled to "[a]ll protections, rights, and remedies *available under state law*," the enactment does not purport to enlarge the rights of these workers, instead declaring that its provisions are "*declaratory of existing law*." (Stats. 2002, ch. 1071, pp. 6913-6915, italics added.)

Existing law precluded an employee who "misrepresented a job qualification imposed by the federal government," such that he or she was "not *lawfully* qualified for the job," from maintaining a claim for wrongful termination or failure to hire. (*Camp*, *supra*, 35 Cal.App.4th at p. 636; *Murillo*, *supra*, 65 Cal.App.4th at p. 847; see also *Shattuck v. Kinetic Concepts, Inc.*, *supra*, 49 F.3d at p. 1108.) This rule applies regardless of immigration status. And it does not frustrate the purposes of SB 1818 because it allows undocumented immigrants to bring a wide variety of claims against their employers as long as these claims are not tied to the wrongful discharge or failure to hire. (See *Murillo*, *supra*, 65 Cal.App.4th at p. 848.) Accordingly, at the time SB 1818 was enacted, an undocumented immigrant possessed no right under state law to maintain a claim for an allegedly discriminatory termination or failure to hire when the claim would otherwise be barred by the after-acquired-evidence or unclean hands doctrines.

Salas's reliance on the legislative history is also unpersuasive. The purpose of SB 1818, *as amended May 9, 2002*, was to "limit the potential effects of [the *Hoffman* decision] on the state's labor and civil rights laws by establishing a separate civil penalty against employers that violate the laws." (Sen. Com. on Labor and Industrial Relations, Analysis of SB 1818, *supra*, p. 1.) This civil penalty was to be equal to the amount of a backpay award, and would be available if existing law provided for a backpay remedy and a court or administrative agency determined that the person seeking the

remedy was ineligible because he or she was unauthorized to work under federal immigration laws. (*Id.* at pp. 1-2.) However, this civil penalty was eliminated by subsequent amendments to the bill. (Assem. Floor Analysis, 3d reading analysis of SB 1818 (2001-2002 Reg. Sess.) as amended Aug. 22, 2002.)

We cannot conclude from the fact that the Legislature considered enacting a provision imposing a civil penalty that would have been equal to a backpay award, that by failing to enact such a provision, the Legislature must have intended backpay awards to be available under state law for a wrongful failure to hire regardless of whether plaintiff misrepresented that he was lawfully qualified for the job. Indeed, far from authorizing a backpay award regardless of federal employment requirements, SB 1818 has been held to be consistent with the backpay prohibition of *Hoffman, supra,* 535 U.S. 137, because "[u]nder existing law, backpay is not recoverable by an employee who would not be rehired regardless of any employer misconduct. [Citation.] Thus, where reinstatement is prohibited by federal law, [Labor Code] section 1171.5 would also prohibit backpay, which was the intent of the Legislature in passing [Labor Code] section 1171.5 and related statutes." (*Farmer Brothers Coffee v. Workers' Compensation Appeals Bd.* (2005) 133 Cal.App.4th 533, 541, citing *Rivcom Corp. v. Agricultural Labor Relations Bd.* (1983) 34 Cal.3d 743, 773-774.)

DISPOSITION

The judgment is affirmed. Vicente Salas shall reimburse Sierra Chemical Co. for its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

HOCH, J.

We concur:

RAYE, P. J.

HULL, J.