

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 James E. Robinson,

5 Plaintiff

6 v.

7 Dungarvin Nevada, LLC,

8 Defendant

2:16-cv-00902-JAD-PAL

**Order Granting Summary Judgment**

[ECF Nos. 53, 55, 58]

9  
10 Pro se plaintiff James E. Robinson is a 66-year-old, disabled, African-American male  
11 who used to work as a program counselor for defendant Dungarvin Nevada, LLC.<sup>1</sup> He applied  
12 for a promotion on multiple occasions. But, each time, the position was awarded to a younger  
13 female.<sup>2</sup> When a personnel audit revealed that Robinson had a sex-related arrest in his  
14 background,<sup>3</sup> he told Dungarvin that the charges were dropped and he was released before  
15 arraignment. Dungarvin suspended Robinson for 30 days and told him to get documentation  
16 supporting his story,<sup>4</sup> but he was unable to acquire it and was fired.<sup>5</sup>

17 Robinson now sues his former employer for discrimination based on his race, age,  
18 disability, and genetic information; retaliation in violation of Title VII; and intentional infliction  
19 of emotional distress.<sup>6</sup> Both parties move for summary judgment in their favor,<sup>7</sup> and after a  
20

21 <sup>1</sup> ECF No. 58-2.

22 <sup>2</sup> ECF Nos. 58-11; 58-13.

23 <sup>3</sup> ECF Nos. 58-7 at 11–12; 58-1 at 3, ¶ 10.

24 <sup>4</sup> ECF No. 58-8.

25 <sup>5</sup> ECF No. 58-10.

26 <sup>6</sup> ECF No. 5.

27 <sup>7</sup> ECF Nos. 53, 58.  
28

1 complete review of the record, I grant summary judgment for the defendants on all of Robinson's  
2 claims.

### 3 Discussion

#### 4 A. Summary-judgment standard

5 Summary judgment is appropriate when the pleadings and admissible evidence “show  
6 there is no genuine issue as to any material fact and that the movant is entitled to judgment as a  
7 matter of law.”<sup>8</sup> When considering summary judgment, the court views all facts and draws all  
8 inferences in the light most favorable to the nonmoving party.<sup>9</sup> If reasonable minds could differ  
9 on material facts, summary judgment is inappropriate because its purpose is to avoid unnecessary  
10 trials when the facts are undisputed, and the case must then proceed to the trier of fact.<sup>10</sup>

11 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue  
12 of material fact, the burden shifts to the party resisting summary judgment to “set forth specific  
13 facts showing that there is a genuine issue for trial.”<sup>11</sup> The nonmoving party “must do more than  
14 simply show that there is some metaphysical doubt as to the material facts”; he “must produce  
15 specific evidence, through affidavits or admissible discovery material, to show that” there is a  
16 sufficient evidentiary basis on which a reasonable fact finder could find in his favor.<sup>12</sup> The court  
17 only considers properly authenticated, admissible evidence in deciding a motion for summary  
18 judgment.<sup>13</sup>

---

21 <sup>8</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

22 <sup>9</sup> *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

23 <sup>10</sup> *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); see also *Nw. Motorcycle Ass'n*  
24 *v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

25 <sup>11</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

26 <sup>12</sup> *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v.*  
27 *NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

28 <sup>13</sup> FED. R. CIV. P. 56(c); *Orr*, 285 F.3d at 773–74.

1 **B. Dungarvin’s challenges to Robinson’s evidentiary offerings**

2 Dungarvin argues in its reply that Robinson’s evidence is untimely and inadmissible  
3 because “much of the evidence was first provided to Defendant *after* the close of discovery and  
4 for the first time with Plaintiff’s Opposition.”<sup>14</sup> Robinson’s evidence, Dungarvin urges, is also  
5 “not authenticated, by affidavit or otherwise,” and “no foundation is laid” for any of his exhibits,  
6 so his “[o]pposition remains entirely unsupported and relies solely on [Robinson]’s conclusory  
7 allegations and wild speculation.”<sup>15</sup>

8 Discovery closed on August 7, 2017.<sup>16</sup> Three days before that, Robinson had already  
9 filed his own motion for summary judgment with 53 pages of attached exhibits.<sup>17</sup> Instead of  
10 responding directly to Robinson’s motion, Dungarvin filed a summary-judgment motion of its  
11 own.<sup>18</sup> In a 10-days-late response to that motion, Robinson attached 38 pages of exhibits—all of  
12 which were included in Robinson’s own motion for summary judgment.<sup>19</sup> So, that Dungarvin  
13 received “much of the evidence . . . for the first time with Plaintiff’s Opposition” is just not true.

14 But I need not decide today whether Robinson’s evidence is worthy of consideration  
15 because even if I take all of Robinson’s exhibits into account, I find that no genuine issues of  
16 material fact exist to preclude me from granting summary judgment in Dungarvin’s favor on all  
17 claims.

18 **C. Evaluating Robinson’s claims**

19 Robinson alleges seven claims for relief stemming from his denied promotion  
20 applications and termination. He alleges that Dungarvin discriminated against him based on his  
21

---

22 <sup>14</sup> ECF No. 65 at 3 (emphasis in original).

23 <sup>15</sup> *Id.*

24 <sup>16</sup> ECF No. 45.

25 <sup>17</sup> ECF No. 53.

26 <sup>18</sup> ECF No. 58.

27 <sup>19</sup> ECF No. 64.

1 (1) race in violation of Title VII; (2) age in violation of the Age Discrimination in Employment  
2 Act (ADEA); (3) disability in violation of the Americans with Disabilities Act (ADA); and (4)  
3 genetic information in violation of the Genetic Information Nondiscrimination Act (GINA) when  
4 it declined to promote him to Program Coordinator.<sup>20</sup> Robinson also claims that his former  
5 employer (5) unlawfully discharged him; (6) terminated him in retaliation for filing a workplace-  
6 discrimination grievance;<sup>21</sup> and (7) intentionally inflicted emotional distress on him.<sup>22</sup> He “seeks  
7 an exemplary Award, in the amount of \$13 Million, as per the givens [sic] afforded, within FCSP  
8 [sic] Rule 55.”<sup>23</sup> I now evaluate each of Robinson’s claims and find that they all lack merit.

9 ***1. First claim for relief: racial discrimination in violation of Title VII***

10 In the pathmaking case of *McDonnell Douglas Corporation v. Green*,<sup>24</sup> the United States  
11 Supreme Court established a burden-shifting framework for courts to apply to Title VII-  
12 discrimination claims.<sup>25</sup> “A discrimination complainant must first establish a prima facie case of  
13 disparate treatment.”<sup>26</sup> “In general, a plaintiff must present evidence of ‘actions taken by the  
14 employer from which one can infer, if such actions remain unexplained, that it is more likely than  
15 not that such action was based upon race or another impermissible criterion.’”<sup>27</sup> If the plaintiff  
16 presents a prima facie case, “the burden shifts to the defendant to produce some evidence  
17

---

18 <sup>20</sup> ECF No. 5 at 3.

19 <sup>21</sup> Robinson’s grievance alleges that he was discriminated against based on his sex—a Title VII-  
20 protected class of discrimination—so I construe his retaliation claim as one brought under Title  
21 VII.

22 <sup>22</sup> *Id.*

23 <sup>23</sup> ECF No. 64 at 2.

24 <sup>24</sup> *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

25 <sup>25</sup> *Id.* at 802.

26 <sup>26</sup> *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 743 (9th Cir. 2004) (internal citations and quotations  
27 omitted).

28 <sup>27</sup> *Id.* (quoting *Gay v. Waiters’ Union*, 694 F.2d 531, 538 (9th Cir. 1982)).

1 demonstrating a legitimate, nondiscriminatory reason for the employee’s termination.”<sup>28</sup> And if  
2 the defendant meets that burden, “any presumption that the defendant discriminated ‘drops from  
3 the case,’ and the plaintiff must then show that the defendant’s alleged reason for termination  
4 was merely a pretext for discrimination.”<sup>29</sup>

5 To present a prima facie case of racial discrimination in the failure-to-promote context,  
6 Robinson must provide evidence to show that: (1) he is a member of a protected class; (2) he  
7 applied for and was qualified for an open job; (3) he was rejected for that job; and (4) Dungarvin  
8 filled the position with someone from outside of his protected class.<sup>30</sup> The first three elements  
9 are not in dispute: Robinson is an African-American male who was objectively qualified—but  
10 rejected—for the Program Coordinator position. Robinson fails, however, to present a prima  
11 facie case because he is unable to show that someone outside of his race filled the position.

12 In fact, Robinson never once describes the selected candidates’ races throughout this  
13 litigation. In his amended complaint, Robinson alleges that the positions were given to women  
14 who were approximately 40 years old.<sup>31</sup> In his motion for summary judgment, Robinson states  
15 that the “positions were afforded to women, whom [he] believe[s] were 40 years old, or  
16 younger.”<sup>32</sup> And in his opposition to Dungarvin’s motion for summary judgment, Robinson  
17 reinforces that all of the “supervisory positions were afforded to women, less than forty years of  
18 age.”<sup>33</sup> Not a single one of Robinson’s exhibits mentions these candidates’ races, and the only

---

19  
20 <sup>28</sup> *Id.*

21 <sup>29</sup> *Id.*

22 <sup>30</sup> *See McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1122 (9th Cir. 2004).

23 <sup>31</sup> ECF No. 5 at 4.

24 <sup>32</sup> ECF No. 53 at 9.

25 <sup>33</sup> ECF No. 64 at 4. Robinson includes the fact that all of the selected candidates were female,  
26 and he even filed an employee grievance alleging that a program director “did conspire to hinder  
27 [his] upward mobility in the Dungarvin workplace, based on [his] sex.” ECF No. 64 at 24. But  
28 Robinson does not allege a sex-discrimination claim in his amended complaint, and he

1 allusion to their race at all is an unsupported statement in Dungarvin’s summary-judgment  
2 motion that one of the women was a 27-year-old African American and another one was also  
3 African American but 45 years old.<sup>34</sup>

4 So, Robinson fails to provide any evidence at all that would allow a reasonable jury to  
5 conclude that non-African American candidates were selected for the positions for which he was  
6 denied. I therefore grant summary judgment in Dungarvin’s favor on this racial-discrimination  
7 claim.

8 **2. Second claim for relief: age discrimination in violation of the ADEA**

9 The *McDonnell Douglas* burden-shifting framework also applies to age-discrimination  
10 cases.<sup>35</sup> The prima facie case for an age-discrimination claim in the failure-to-promote context  
11 essentially mirrors that of a claim for racial discrimination. Robinson must show that he was  
12 “(1) at least forty years old, (2) qualified for the position for which an application was submitted,  
13 (3) denied the position, and (4) the promotion was given to a substantially younger person.”<sup>36</sup>  
14 None of these elements are in dispute. Robinson was 65 years old when he applied for the  
15 promotions, he was objectively qualified for them, he was denied, and the chosen candidates  
16 were at least 20 years younger than him.

17 But Dungarvin provides legitimate reasons for declining to promote Robinson, and  
18 Robinson provides no evidence that those reasons were pretextual. Robinson mentions multiple  
19  
20  
21

---

22 apparently declined the opportunity to amend his complaint a second time. *See* ECF No. 25  
23 (advising Robinson that he could file a motion for leave to amend his first-amended complaint);  
24 *see generally* docket report 2:16-cv-00902-JAD-PAL (showing that Robinson did not file a  
25 motion for leave to amend his first-amended complaint).

25 <sup>34</sup> ECF No. 58 at 14.

26 <sup>35</sup> *Diaz v. Eagle Produce Ltd. Partnership*, 521 F.3d 1201, 1207 (9th Cir. 2008); *Enlow v. Salem-*  
27 *Keizer Yellow Cab Co.*, 389 F.3d 802, 812 (9th Cir. 2004).

28 <sup>36</sup> *Shelley v. Geren*, 666 F.3d 599, 608 (9th Cir. 2012).

1 times that he applied for a promotion on four separate occasions.<sup>37</sup> But the only evidence in the  
 2 record of these applications comes from Dungarvin, and it confirms two applications at most.<sup>38</sup>

3 Robinson’s first application was for a “program coordinator” position. Program  
 4 coordinators are responsible for coordinating a wide range of tasks:

5 including, but not limited to: staff schedules, finances of persons  
 6 served, community integration, recreation, program services,  
 7 family involvement, education/vocational programs, health  
 8 care/nutrition, and household management, as well as assist[ing]  
 the program director in maintaining consistency in programming,  
 care of persons served, and communication with staff and  
 interdisciplinary team members.<sup>39</sup>

9 Robinson “appeared for the interview over thirty minutes late” and, “[b]ecause the position . . .  
 10 was responsible for creating and maintaining schedules for staff and persons served,” “he was  
 11 disqualified from that round of hiring as punctuality and reliability are essential criteria for the  
 12 position.”<sup>40</sup> And when Robinson applied a second time, “Program Director Diana Danescue was  
 13 unable to get in touch with Mr. Robinson to schedule an interview as he did not return her  
 14 attempts to get in touch with him,” and he “was not interviewed for the Program Coordinator  
 15 position . . . .”<sup>41</sup> Both of these reasons not to promote Robinson are legitimate and  
 16 nondiscriminatory, and Robinson presents absolutely no evidence to show that they are merely  
 17 pretext for age discrimination. So, I grant summary judgment in Dungarvin’s favor on this age-  
 18 discrimination claim.

19 **3. Third claim for relief: disability discrimination in violation of the ADA**

20 Robinson’s next claim is for disability discrimination in violation of the ADA. To

---

22 <sup>37</sup> ECF Nos. 5 at 4 (amended complaint); 53 at 11 (Robinson’s motion for summary judgment);  
 23 64 at 4 (Robinson’s response to Dungarvin’s motion for summary judgment).

24 <sup>38</sup> See ECF Nos. 58-11 (Robinson’s applications); 58-1 at 3, ¶¶ 11–12 (Dungarvin regional  
 25 director affidavit).

26 <sup>39</sup> ECF No. 58-14.

27 <sup>40</sup> ECF No. 58-1 at 3, ¶ 11.

28 <sup>41</sup> *Id.* at ¶ 12.

1 present a prima facie case of disability discrimination under the ADA, Robinson must show that  
2 he: “(1) is disabled; (2) is qualified; and (3) suffered an adverse employment action because of  
3 [his] disability.”<sup>42</sup> It appears, however, that Robinson has disavowed any facts to support this  
4 disability-discrimination claim.

5         Dungarvin deposed Robinson and asked if he believed that Dungarvin discriminated  
6 against him based on his disabilities.<sup>43</sup> Robinson responded: “I believe they discriminated  
7 against me because I’m black. If that’s a disability, yeah.”<sup>44</sup> Dungarvin then asked Robinson:  
8 “So you do not believe that Dungarvin discriminated against you because of your disability?”<sup>45</sup>  
9 Robinson responded: “No. But I am saying that I am disabled.”<sup>46</sup> And Robinson denies ever  
10 claiming that Dungarvin discriminated against him based on his type-II diabetes and knee-related  
11 injury.<sup>47</sup> If Robinson once believed that Dungarvin discriminated against him based on his  
12 disabilities, he no longer does, and he has offered no evidence to maintain this claim.  
13 Accordingly, I grant summary judgment for Dungarvin on Robinson’s disability-discrimination  
14 claim.

15                 **4.         Fourth claim for relief: genetic-information discrimination in violation of**  
16                 **GINA**

17         Robinson alleges in his fourth claim for relief that Dungarvin discriminated against him  
18 based on his genetic information in violation of GINA. GINA provides that “[i]t shall be an  
19 unlawful employment practice for an employer to fail or refuse to hire, or to discharge, any  
20 employee, or otherwise to discriminate against any employee with respect to the compensation,  
21

---

22 <sup>42</sup> *Snead v. Metropolitan Property & Cas. Ins. Co.*, 237 F.3d 1080, 1087 (9th Cir. 2001).

23 <sup>43</sup> ECF No. 58-9 at 22.

24 <sup>44</sup> *Id.*

25 <sup>45</sup> *Id.* at 22–23.

26 <sup>46</sup> *Id.* at 23.

27 <sup>47</sup> *Id.* at 22.



1 terms, conditions, or privileges of employment . . . because of genetic information with respect to  
2 the employee.”<sup>48</sup> “Genetic information” is “information about [the employee’s] genetic tests, the  
3 genetic tests of family members of [the employee], and the manifestation of a disease or disorder  
4 in family members of [the employee].”<sup>49</sup>

5 Robinson alleges no facts and provides no evidence that he was discriminated against  
6 based on his or his family’s genetic tests or diseases that run in his family. Dungarvin asked  
7 Robinson at his deposition if he believed that it discriminated against him based on his genetic  
8 information.<sup>50</sup> Robinson replied: “Genetic, being black? . . . Yeah, I think that.”<sup>51</sup> Race is  
9 protected under Title VII, not under GINA. So because Robinson’s sole basis for his genetic-  
10 information-discrimination claim is his race, the claim lacks merit. I therefore grant summary  
11 judgment in Dungarvin’s favor on this claim, too.

12  
13 **5. *Fifth and sixth claims for relief: tortious discharge from employment and  
retaliation in violation of Title VII***

14 I address these next two claims simultaneously because Robinson alleges the same  
15 basis—that he was terminated for filing an internal grievance of sex discrimination—for both.<sup>52</sup>  
16 Nevada does “not recognize a claim for tortious discharge when an adequate statutory remedy  
17 already exists.”<sup>53</sup> Title VII makes it “an unlawful employment practice for an employer to fail or  
18 refuse to hire or to discharge any individual, or otherwise to discriminate against any individual

19 \_\_\_\_\_  
20 <sup>48</sup> 42 U.S.C.A. § 2000ff-1(a)(1) (2017).

21 <sup>49</sup> 42 U.S.C.A. § 2000ff (4)(A) (2017).

22 <sup>50</sup> ECF No. 58-9 at 23.

23 <sup>51</sup> *Id.*

24 <sup>52</sup> See ECF Nos. 5 at 4, ¶ 8 (retaliation); 64 at 5 (“Once this Plaintiff filed the Discrimination  
25 Grievance and the Dungarvin Management did not respond, but suppressed the Discrimination  
26 Grievance, they became insecure and sought to terminate this Plaintiffs [sic] employment, with  
Dungarvin.”).

27 <sup>53</sup> *Ozawa v. Vision Airlines, Inc.*, 216 P.3d 788, 791 (Nev. 2009) (citing *D’Angelo v. Gardner*,  
28 819 P.2d 206, 217 (Nev. 1991)).

1 with respect to his compensation, terms, conditions, or privileges of employment, because of  
2 such individual's . . . sex."<sup>54</sup> Title VII also makes it unlawful "for an employer to discriminate  
3 against any of his employees or applicants for employment . . . because he has opposed any  
4 practice made an unlawful employment practice by this subchapter."<sup>55</sup>

5 Robinson's grievance alleges that the program director "did conspire to hinder [his]  
6 upward mobility in the Dungarvin workplace, based on [his] sex."<sup>56</sup> Robinson's grievance thus  
7 complained of what he believed to be an unlawful employment practice under Title VII. Because  
8 Title VII provides an adequate statutory remedy for Robinson's claim, his tortious-discharge  
9 claim is invalid. I therefore grant summary judgment in Dungarvin's favor on Robinson's  
10 tortious-discharge claim.

11 "To make out a prima facie case of [Title VII] retaliation, an employee must show that (1)  
12 he engaged in a protected activity; (2) his employer subjected him to an adverse employment  
13 action; and (3) a causal link exists between the protected activity and the adverse action."<sup>57</sup>

14 The parties dispute whether Robinson submitted his grievance to Dungarvin at all.  
15 Dungarvin argues that Robinson "never presented his grievance to Defendant Dungarvin"<sup>58</sup> who  
16 purportedly has "excellent records[-]keeping protocols, and if a grievance was submitted to his  
17 supervisor, whether in writing, in person, or via email, Dungarvin would have a record of such  
18 grievance."<sup>59</sup> Dungarvin then argues that "[t]he only grievance Plaintiff produced during the  
19  
20

---

21  
22 <sup>54</sup> 42 U.S.C. § 2000e-2(a)(1) (2012).

23 <sup>55</sup> 42 U.S.C. § 2000e-3(a) (2012).

24 <sup>56</sup> ECF No. 58-13 at 2.

25 <sup>57</sup> *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000) (citing *Steiner v. Showboat Operating*  
26 *Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994)).

27 <sup>58</sup> ECF No. 58 at 16.

28 <sup>59</sup> *Id.* at 9.

1 pendency of this litigation was sent only to his wife, Rosalind Robinson.”<sup>60</sup> But the exhibit does  
2 not show that the grievance was sent *only* to Mrs. Robinson. Instead, the exhibit shows that the  
3 grievance was originally written and sent to some unknown recipient on August 26, 2015, and on  
4 November 30, 2015, Robinson forwarded a copy of the grievance to his wife.<sup>61</sup> There’s no  
5 evidence of the original grievance, but Robinson claims that he filed it on an internal network.<sup>62</sup>

6 Even if I assume for the sake of argument that Robinson did file a sex-discrimination  
7 grievance with Dungarvin, he fails to present a prima facie case of retaliation because he doesn’t  
8 show a causal link between the grievance and his termination. An involuntary-termination-action  
9 form in the record indicates that Robinson was terminated because he didn’t clarify his  
10 background check during his 30-day suspension.<sup>63</sup> It also indicates that Robinson was eligible  
11 and recommended for rehire if he could “pass the background check.”<sup>64</sup> Robinson does not  
12 refute this exhibit in his opposition, and he fails to otherwise show with anything more than  
13 speculation that he was terminated because of his grievance. So, I grant summary judgment for  
14 Dungarvin on Robinson’s Title VII retaliation claim.

15 **7. *Seventh claim for relief: intentional infliction of emotional distress***

16 Lastly, Robinson claims that Dungarvin intentionally caused him emotional distress.<sup>65</sup>  
17 “[T]he elements of this cause of action are (1) extreme and outrageous conduct with either the  
18 intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff’s having  
19 suffered severe or extreme emotional distress and (3) actual or proximate causation.”<sup>66</sup> Conduct

---

21 <sup>60</sup> ECF No. 58 at 16.

22 <sup>61</sup> ECF No. 58-13.

23 <sup>62</sup> ECF No. 64 at 4–5.

24 <sup>63</sup> ECF No. 58-10.

25 <sup>64</sup> *Id.* at 2.

26 <sup>65</sup> ECF No. 5 at 3.

27 <sup>66</sup> *Star v. Rabello*, 625 P.2d 90, 91–92 (Nev. 1981).

1 is extreme and outrageous if it is “outside all possible bounds of decency and is regarded as  
2 utterly intolerable in a civilized community.”<sup>67</sup>

3         Robinson fails to allege—let alone show—that Dungarvin engaged in extreme and  
4 outrageous conduct. Dungarvin performed a personnel audit and discovered that Robinson had  
5 been arrested in the past for various sex crimes.<sup>68</sup> No disposition was recorded for those crimes  
6 on the background check, so Dungarvin gave Robinson 30 days to get disposition paperwork.<sup>69</sup>  
7 Because Robinson’s arrest had occurred nearly four decades prior, he was unable to get  
8 disposition paperwork from the courthouse, and he consciously decided not to take additional  
9 steps to have his background check corrected.<sup>70</sup> Fearing that its operating license was in jeopardy  
10 due to Robinson’s ambiguous, sex-crime-related-arrest history,<sup>71</sup> Dungarvin terminated  
11 Robinson’s employment but recommended him for rehire if he later passed the background  
12 check.<sup>72</sup> Based on the evidence, there is not even a whiff of conduct that is extreme and  
13 outrageous here. I therefore grant summary judgment for Dungarvin on this claim, too.

---

14  
15  
16  
17 <sup>67</sup> *Maduiké v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

18 <sup>68</sup> ECF No. 58-7 at 11–12.

19 <sup>69</sup> ECF No. 58-8.

20 <sup>70</sup> ECF No. 58-9 at 19–21.

21  
22 <sup>71</sup> Under NRS § 449.174, the Division of Public and Behavioral Health of the Department of  
23 Health and Human Services “may deny a license to operate a facility, hospital, agency, program  
24 or home to an applicant or may suspend or revoke the license of a licensee to operate such a  
25 facility, hospital, agency, program or home if the licensee has, in violation of NRS 449.125,  
26 continued to employ a person who has been convicted of [sexual assault, statutory sexual  
27 seduction, incest, lewdness or indecent exposure, or any other sexually related crime that is  
punished as a felony].” NEV. REV. STAT. § 449.174(1)(b) (2017). This statute became effective  
July 1, 2011, as NRS 449.188, but it was substituted in revision with NRS 449.174. NEV. REV.  
STAT. § 449.188.

28 <sup>72</sup> ECF No. 58-10.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Conclusion**

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion for summary judgment [ECF No. 58] is **GRANTED**.

IT IS FURTHER ORDERED that Robinson's motions for summary judgment [ECF No. 53] and to correct his summary-judgment motion [ECF No. 55] are **DENIED as moot in light of this order**.

The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly and CLOSE THIS CASE**.

DATED: January 24, 2018.

  
\_\_\_\_\_  
U.S. District Judge Jennifer A. Dorsey