

# Tentative Rulings for May 30, 2024 Department 2

**To request oral argument, you must notify Judicial Secretary  
Charmaine Ligon at (760) 904-5722  
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 2 at (760) 904-5722 and (2) inform all other parties of the request and **COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.**

**TELEPHONIC APPEARANCES:** On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252, 1 (669) 216-1590, 1 (551) 285-1373, or 1 (646) 828-7666
- Meeting Number: **161 143 8184**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>.

**Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.**

1.

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| CVRI2204480 | DAWODU vs IHMUD | Motion to be Relieved as Counsel for ADEBOLA DAWODU |
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**Tentative Ruling:** The Motion is granted. Counsel is to submit a completed order to the Court for signature. The order shall be effective upon filing a proof of service for the signed final order.

2.

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| CVRI2204983 | HUFFMAN-O'BRIEN vs TANTAWI | Motion for an Order Appointing a Replacement Arbitrator by JAKI HUFFMAN-O'BRIEN |
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**Tentative Ruling:**

On 11/15/22, Plaintiff Jaki Huffman-O'Brien filed a medical malpractice against Defendants DIYA Tantawi, MD, FACS and Beauty Refined Plastic Surgery. Plaintiff later dismissed Beauty Refined. Defendants filed a motion to compel arbitration, which on 7/17/23, the court granted.

Thereafter, Plaintiff sought an order to appoint an arbitrator, which on 10/2/23, the court appointed Retired Judge Mary Shulte.

Plaintiff now moves for a replacement arbitrator that Judge Shulte and the entire ADR Services will not serve as an arbitrator because Defendant is self-represented. The remaining neutrals are Thomas Dempsey, Jay Cordell Horton, Judge Bruce Minto, Judge Holly Kendig and Judge Jonathan Cannon.

Defendant provided its own list of arbitrators.

**Analysis**

After an order compelling arbitration has been granted, the court retains jurisdiction "to determine any subsequent petition involving the same agreement to arbitrate and the same controversy." (CCP § 1292.6.) CCP §1281.6 allows the court to appoint an arbitrator. Section 1281.6 permits the court to nominate five persons from a list of persons supplied jointly by the parties, or from a list. The parties may then jointly select from that list of five persons within a five-day period, and if not, the court shall appoint an arbitrator. The parties have each chosen their own five nominees, resulting in ten nominees. The court reduces that list to the following five neutrals: Hon, Elizabeth Allen White, Hon, Gail A. Andler, Thomas Dempsey, Hon. Holly Kendig and Hon. Bruce Minto. The parties are given five days to choose an arbitrator from this list. If the parties are unable to agree within the five days, a joint status memo shall be filed with the Court with a proposed order and the court will choose the arbitrator.

3.

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| CVRI2300691 | VELIZ ALVAREZ vs RODRIGUEZ | Demurrer on Complaint for Auto (Over \$25,000) of ERICK VELIZ ALVAREZ by PENSKE TRUCK LEASING |
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**Tentative Ruling:** The unopposed demurrer is sustained and Plaintiff is given 20 days leave to amend. Moving party is to give notice.

4.

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| CVRI2305295 | People of the State of California ex rel. LIBERTY | Motion to Strike Complaint on 1st Amended Complaint Under False Claims Act (Gov. Code 12650) of PEOPLE OF |
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|  | MUTUAL INSURANCE COMPANY vs TOSHER | THE STATE OF CALIFORNIA by FIRE RECOVERY USA, LLC |
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**Tentative Ruling:** The motion is off calendar pursuant to stipulation.

5.

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| CVRI2306843 | JIMENEZ vs DUENEZ | Motion to be Relieved as Counsel for DANIEL JIMENEZ |
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**Tentative Ruling:** The unopposed Motion to be Relieved is granted. The order shall be effective upon filing a proof of service for the final order.

6.

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| CVRI2401092 | RASHIDI vs COUNTY OF RIVERSIDE | Demurrer on Complaint for Other Employment (Over \$35,000) of HIRBOD RASHIDI |
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**Tentative Ruling:**

This is a FEHA case. Plaintiff alleges that he and his wife Jennifer Rashidi worked as attorneys for Defendant Riverside County since 2000. (Complaint ¶ 9.) He alleges they transferred to Riverside County in 2000 and married in 2019. (Complaint ¶¶ 7-9.) Prior to marriage, Plaintiff and Jennifer Rashidi worked together in the office, had regular court assignments together, and regularly were assigned to court and office work together and separately. (*Id.*) After marriage to his co-worker, Plaintiff was not allowed to appear in court together with his wife (Complaint ¶ 17), required to have supervision while appearing in court at the same time as his wife (Complaint ¶ 21), deprived of senior attorney responsibilities (Complaint ¶¶ 24,27) and required to perform non-attorney, support level duties for lower-level attorneys. (Complaint ¶ 31).

Plaintiff alleges he was denied promotion in 2020 to an Attorney IV-S position. (Complaint ¶ 18) Jennifer Rashidi was promoted in 2021 to a different Attorney IV-S position. (Complaint ¶ 26). Jennifer Rashidi rejected her promotion in 2021 due to the restrictions placed on Jennifer Rashidi and Plaintiff due to their marital status. (Complaint ¶28). Plaintiff and Jennifer Rashidi are the only Attorney IV'S in Riverside with the other two Attorney IV'S working in Indio. (Complaint ¶ 32). The non-married Attorney IV'S in Indio were not required to perform the lower-level support duties or operate under the other restrictions that were required of Plaintiff and Jennifer Rashidi (Complaint ¶ 32).

Plaintiff alleges that Defendant County's actions constituted discrimination based on marital status. (Complaint ¶ 35). 12. Plaintiff alleges that he was harassed by his supervisors Defendant Britt (Complaint ¶ 3), Defendant Lawrence (Complaint ¶ 4) and Defendant County. (Complaint ¶ 40). Plaintiff alleges that Defendants retaliated against Plaintiff for Plaintiff complaining about Defendants discrimination and harassment. (Complaint ¶ 62).

Based on the foregoing, Plaintiff's Complaint alleges the following causes of action: (1) Discrimination; (2) Harassment; (3) Failure to Prevent Discrimination and Harassment; (4) Retaliation for Reporting Discrimination and Harassment

Defendants demurrer to the entirety of the causes of action. They contend any events prior to 2/29/21 are time barred. They further assert that the discrimination cause of action fails as there was no adverse employment action and the harassment claim fails as no sever or pervasive conduct was alleged. They contend that the third and fourth causes of action fail for the same reasons the first two do.

In Opposition, Plaintiff asserts the actions prior to 2/29/21 are not time barred and the causes of action are properly pled.

The Reply reasserts many of the same arguments made in the moving papers.

## **Analysis**

### **I. Standard**

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack, or from matters outside the pleading that are judicially noticeable (*Blank vs. Kirwan* (1985) 39 Cal.3d 311, 318.) In evaluating a complaint under the general demurrer standards, if there is any valid cause of action stated, even if not the one intended, the complaint is sufficient. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) The sufficiency of the cause of action is tested by presuming all of the material factual allegations in the complaint are true. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967.) If judicially noticeable records disclose an absolute defense to the action or deficiency in the complaint, the matter can be adjudicated at the demurrer hearing. (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 192.)

### **II. On the Merits**

#### **A. Discrimination (First Cause of Action)**

##### **1. Actions prior to 2/29/21**

Defendants initially assert that any of the alleged conduct prior to 2/29/21 is time barred pursuant to Govt. Code § 12960 as Plaintiff did not file his claim with the CDR until 2/29/24. Under FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the California Civil Rights Department and must obtain a notice or right to sue in order to be entitled to file a civil action in court based on violations of the FEHA. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 492.) The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under FEHA. (*Id.*) The time limit for filing FEHA claims with the California Civil Rights Department is three years from the unlawful act. (Gov. Code § 12960(e)(5),(6).)

Under the continuing violations doctrine, provided at least one act occurs within the statutory period, the employer may be liable for the entire course of conduct, including acts predating the statutory period. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823-824; *Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1402.) The *Jumaane* court explained:

The continuing violation doctrine requires proof that the conduct occurring outside the limitations period was (1) similar or related to the conduct that occurred within the limitations period; (2) the conduct was reasonably frequent; and (3) the conduct had not yet become permanent. “ ‘[P]ermanence’ in the context of an ongoing process of accommodation of disability, or ongoing disability harassment, should properly be understood to mean the following: that an employer’s statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile.... [T]he statute of limitations begins to run ... either when the course of conduct is brought to an end, as by the employer’s cessation of such conduct or by the employee’s resignation, or when the employee is on notice that further efforts to end the unlawful conduct will be in vain.” (*Jumaane, supra*, 241 Cal.App.4th at 1403.)

Here, Defendants argue that the denial of Plaintiff’s application for the Attorney IV-S position in mid-2020 acquired permanence at that time and thus his complaint with the CRD should have been filed before mid-2023. Nevertheless, the Complaint alleges additional violations including removal of appellate work, assignment of non-attorney prep work and prevention from appearing

in court, all based on his marital status, which ranged from 2021-2024. (Complaint ¶¶ 25-36.) At the pleading stage, this is sufficient to allege a continuing violation based on Plaintiff's marital status.

## 2. Adverse Employment Actions

To plead a claim for race discrimination under FEHA, a plaintiff must allege the following elements: "(1) the employee's membership in a classification protected by the statute; (2) discriminatory animus on the part of the employer toward members of that classification; (3) an action by the employer adverse to the employee's interests; (4) a causal link between the discriminatory animus and the adverse action; (5) damage to the employee; and (6) a causal link between the adverse action and the damage." (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713.) [emphasis added].)

An adverse employment action is defined "generally as one that materially affect[s] the terms and conditions of employment." (*Featherstone v. S. Cal. Permanente Med. Grp.* (2017) 10 Cal.App.5th 1150, 1161 [quoting *Yanowitz v. L'Oreal USA Inc.* (2005) 36 Cal.4th 1028, 1051, fn. 9].) Further, "[a]n adverse employment action refers not only to 'ultimate employment actions such as termination or demotion, but also . . . actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement.' That said, '[m]inor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable.'" (*Doe v. Dep't of Corr. & Rehabilitations* (2019) 43 Cal.App.4th 721, 734 [quoting *Yanowitz, supra*, at 1054].)

Here, Defendants essentially assert that all the actions Plaintiff complains of were routine personnel actions, most done with the implementation of the PCIA process, that do not constitute adverse employment actions. However, as Plaintiff points out, the Complaint alleges the Indio Attorney IV's (who were not married to each other or to another department attorney) did not suffer the same detrimental job restructuring under the PCIA process as Plaintiff and his wife. (Complaint ¶ 32.) At this stage, the Court must accept as true all allegations of contained in the FAC. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The above allegations, accepted as true, could show that Defendants subjected Plaintiff to adverse employment actions that had detrimental and substantial effect on his employment, and that such actions were substantially motivated by his marital status. Accordingly, the Court overrules Defendants' demurrer to the first cause of action.

### B. Harassment (Second Cause of Action)

To establish a claim for harassment, a plaintiff must demonstrate that: (1) he is a member of a protected group; (2) he was subjected to harassment because he belonged to this group; and (3) the alleged harassment was so severe that it created a hostile work environment. (*See Aguilar v. Avis Rent A Car Sys., Inc.* (1999) 21 Cal.4th 121.) Whether harassment exists based upon a hostile work environment is determined by considering all of the circumstances, which may include frequency, severity, and job interference. (*Miller v. Dep't of Corrs.* (2005) 36 Cal.4th 446, 462.)

Harassment consists of "conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives." (*Reno v. Baird* (1998) 18 Cal.4th 640, 646.) Harassment does not include commonly necessary personnel management actions, such as hiring, firing, job assignments, promotion, demotion, performance evaluations, excluding from meetings, and laying off. (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 879.) To establish a hostile work environment, "[a] plaintiff must prove that the defendant's conduct would have interfered with a reasonable employee's work performance and would have seriously affected the psychological

well-being of a reasonable employee and that [she] was actually offended.” (*Hope v. California Youth Auth.* (2005) 134 Cal.App.4th 577, 588.)

Plaintiff argues that he has described a scenario “where, over the course of time, he was reduced in authority and job duties from an attorney performing high-level tasks including appellate work, court appearances involving complex issues, mentoring junior attorneys to effectively a paralegal or administrative assistant level employee performing largely non-attorney work.” (Opposition 7:13-16.) The change in assigned tasks does relate to work conditions and may act as a basis for harassment. The Demurrer to this cause of action is overruled.

C. Failure to Prevent Discrimination/Harassment and Retaliation (Third and Fourth Causes of Action)

Defendants assert that these causes of action fail as they are based off the same allegations and adverse employment actions as the first cause of action for discrimination. Given the ruling to overrule the Demurrer as to the prior causes of action, the Court overrules the Demurrer to these causes of action as well.