Tentative Rulings for May 25, 2022
Department 06

To request oral argument, you must notify Judicial Secretary Charmaine Vital 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 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 6 at (760) 904-5722 and (2) inform all other parties of the request and 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.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CVRI2101291	ZAVALZA vs VOLKSWAGEN GROUP OF AMERICA INC	Motion to Compel

Off calendar.

2.

CVRI2103362	CHANDLER vs COUNTY OF RIVERSIDE	Demurrer on 2nd Amended Complaint for Other Employment (Over $25,000) of JANE DOE, II by KELLI CATLETT, SAM KALOUSTIAN, DANIEL DELIMON, LISA DIMARIA

This matter to be heard in Department 3

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: 161 692 7358

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.

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Tentative Ruling:

The Court sustains the Demurrer with 20 days leave to amend**.**

Factual / Procedural Context:

Alyssa Chandler, a former employee of Defendant County of Riverside, has brought this action against the County and individual defendants Daniel Delimon, Kelli Catlett, Sam Kaloustian, and Lisa DiMaria alleging that she and other former employees were harassed, discriminated and retaliated against for making complaints to both their male and female supervisors.

She filed her Complaint on 7/12/21, First Amended Complaint (FAC) on 12/3/21 and Second Amended Complaint (SAC) on 3/22/22 alleging causes of action for (1) discrimination on the basis of sex in violation of FEHA (against County only); (2) failure to prevent discrimination and harassment in violation of FEHA (against County only); (3) sexual harassment in violation of FEHA (against all defendants); (4) retaliation in violation of Labor Code section 1102.5 (against County only); (5) intentional infliction of emotional distress (against the individual defendants only); and (6) declaratory relief (against County).

Defendants Daniel Delimon, Kelli Catlett, Sam Kaloustian, and Lisa DiMaria (individual Defendants) demurrer to the entirety of the causes of action alleged against them (sexual harassment and IIED.) They claim the causes of action are not pled with the requisite specificity as the facts contained in the general allegations against them do not amount to sexual harassment or support a claim for IIED. Plaintiff opposes.

Analysis

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 these 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.) The complaint must be construed liberally… with a view to substantial justice between the parties." (CCP § 452; *Gressley v. Williams* (1961) 193 Cal.App.2d 636, 639.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318).

1. Sexual Harassment

The elements for a sexual harassment based on a hostile working environment are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome sexual harassment; (3) the harassment was based on sex; (4) the harassment was sufficiently pervasive to alter the conditions of employment; and (5) respondeat superior. (*Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1377.) Hostile work environment sexual harassment requires the conduct be sufficiently severe or pervasive to alter the condition of employment and create an abusive work environment. (*Muller v. Auto. Club of So. Cal.* (1998) 61 Cal.App.4th 431, 446). Isolated, sporadic, occasional instances of inappropriate conduct are not sufficient to constitute pervasive conduct. (*Id*.)

Here, the SAC incorporates various portions of the general allegations which Plaintiff alleges amount to acts of sexual harassment. (SAC ¶¶ 125-128.) However, as Defendants point out, Plaintiff's allegations contained in ¶¶ 125-128 of the SAC do not identify any specific facts that support a claim for harassment based on sex. For example, while Plaintiff alleges that DeLimon favored certain individuals (both males and females), gave her unfavorable working assignments and reviews and unfavorably supervised her, Plaintiff does not allege any actions on the part of DeLimon that were improper based on her sex. (SAC ¶ 125.) Similarly, the allegations related to DiMaria, Kaloustian and Catlett do not allege any specific facts that support a claim for harassment based on sex.

Plaintiff may be able to amend the SAC to allege facts and/or allegation of the individual Defendants that support a claim for harassment based on sex. Accordingly, the Court sustains the Demurrer to this cause of action with leave to amend.

2. Intentional Infliction of Emotional Distress

A cause of action for intentional infliction of emotional distress requires: (1) extreme and outrageous conduct with the intent of causing, or reckless disregard of the probability of causing, emotional distress; (2) suffering of sever or extreme emotional distress; and (3) actual and proximate cause resulting from the conduct. (*Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1050-51). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id*. at 1050 [*quoting Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001] [internal quotation marks omitted]). In order to avoid a demurrer, the plaintiff must allege with "great specificity" the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.)

It is not enough that a defendant's conduct be intentional and outrageous; the conduct must also be directed to the plaintiff or occur in the presence of a plaintiff of whom the defendant is aware. (*Potter*, *supra*, 6 Cal.4th at 1002 [*quoting Christensen v. Superior Court* (1991) 54 Cal.3d 868,

903].) Importantly, a court is not required to accept as true an allegation that a defendant's conduct was extreme and outrageous; rather, it may decide it does not suffice as a matter of law. (*Bock*, *supra*, 225 Cal.App.4th at 235; *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 781; *McClintock v. West* (2013) 219 Cal.App.4th 540, 556; *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1609.)

As to these individual Defendants, the SAC asserts the same actions of Defendants that support the claim for sexual harassment. (SAC ¶¶ 146-149.) These include allegations of improper or unsatisfactory assignment of workload, supervision and handling of her complaints as well as requiring Plaintiff to move her office and causing Plaintiff stress while pregnant. (*Id.*) While Plaintiff sets forth allegations of rude and offensive conduct, as alleged, the conduct is not so extreme as to exceed all bounds of that usually tolerated in a civilized community. However, Plaintiff shall be granted leave to amend if additional facts exist.

3.

CVRI2201191	GOMEZ-PADILLA vs PREP XPRESS INC	Demurrer to Complaint by Angelica Gutierrez

This matter to be heard in Department 3

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

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Tentative Ruling:

The Court sustains Defendant's demurrer.

The Court notes that this demurrer is unopposed, and unless Plaintiff requests oral argument and can articulate facts that would survive a further demurrer, the demurrer is sustained without leave to amend.

Procedural Facts

Plaintiff alleged 14 causes of actions against Defendant: (1) Breach of Agreement; (2) Intentional Misrepresentation; (3) Negligent Misrepresentation; (4) Perjury; (5) Forgery Violation of California Penal Code 470 PC; (6) Fraud Upon the Court; (7) Constructive Eviction; (8) Abuse of Process; (9) Violation of California Business and Professions Code Section 6451; (10) Violation of Cal. Business and Professional Code section 17200 Et, Seq (UCL); (11) Declaratory Relief; (12) Injunctive Relief; (13) Misconduct or Negligence of Legal Document Assistant/Unlawful Detainer and Collection Under Paralegal Bond; and (14) Quantum Meruit/ Unjust Enrichment.

Defendant has demurred to each cause of action; however, the theory of the demurrer is slightly different depending on Plaintiff's causes of action. For the 1st through 9th and 14th causes of

action, Defendant demurred on the grounds that Plaintiff failed to state sufficient facts to constitute a cause of action and that they fail to allege whether the contracts are written, oral or implied. Defendant demurred to the 1st, 3rd, 4th, 7th, 8th, 11th and 12th causes of action on the theory that there was another pending action between the same parties on the same cause of action, (*i.e.,* the previous "UD action in UDMV2100788). Defendant demurred to the 4th, 5th, 6th, 9th, 10th and 13th causes of action under misjoinder of parties. Lastly, Defendant demurrer that the 1st through 12th and 14th causes of action are uncertain, ambiguous, and unintelligible.

There was no opposition to this demurrer.

Analysis

In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal. 3d 120, 125). The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal. 4th 666, 672). However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 713.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318).

The Court has reviewed the Defendant's demurrer and the attached prior judgment in the UD action, UDMV2100788, attached as Exhibit A. The Court takes judicial notice of that prior action per Evidence Code section 452, and indeed, the Plaintiff's complaint essentially alleges that Defendant pursued the eviction of Plaintiff with "false verification and forged evidence." (Complaint, ¶ 14.) To that point, the thrust of Plaintiff's complaint is based on purported facts that occurred during the UD action. (*Id.* ¶ 11-31.) The Court finds that this prior action bars any relief sought by Plaintiff.

The Court also finds merit to Defendant's demurrer as for its misjoinder arguments. Plaintiff's complaint fails as well as to it being uncertain and ambiguous.

As stated, Plaintiff has not filed any opposition to this demurrer. The Court assumes that by not filing an opposition, Plaintiff has essentially conceded that he has no facts that could overcome a subsequent demurrer. Thus, unless Plaintiff requests oral argument and can articulate facts that could overcome a demurrer, the Court sustains the demurrer without leave to amend.

4.

RIC2003977	SACK vs HOBBY LOBBY STORES INC	Motion to Strike Complaint on 1st Amended Complaint BEVERLY SACK by HOBBY LOBBY STORES INC, YIHUA INTERNATIONAL INVESTMENT (U.S.A.), LLC, JOHNSON PROPERTY MANAGEMENT, INC.

This matter to be heard in Department 3

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Tentative Ruling:

The motion to strike should is granted with 20 days leave to amend.

Factual / Procedural Context:

Plaintiff Beverly Sack ("plaintiff" or "Sacks") alleges she was injured on 11/4/19, at a store owned, operated, and managed by defendants Hobby Lobby Stores, Inc. ("Hobby Lobby"); Yihua International Investment, (U.S.A.) ("Yihua"); and Johnston Property Management, Inc. ("Johnston Management") (collectively, "defendants") at 200 Hidden Valley Parkway, Suite B in Corona ("subject premises"). Plaintiff alleges that she was injured when she tripped on a two-inch hole/depression in the trench at the handicap accessible entrance to a Hobby Lobby store at the subject premises. Plaintiff alleges that defendants acted with a conscious disregard for the safety of plaintiff and were aware of the dangerous consequences of their conduct and willfully failed to avoid the consequences. (FAC, ¶ Prem.l-1.) That is, defendants had actual or constructive knowledge of the hole/depression, knew that injury to plaintiff was the probable result, and there was a conscious failure to prevent the danger to plaintiff. (Ibid.)

Plaintiff alleges that defendants knew of the problems with the asphalt no later than 9/30/19, but they sat on a repair contract for over one month before authorizing the repairs, which were scheduled to take place the day after plaintiff's fall and injury. (see FAC, ¶ GN-1.)

The first amended complaint ("FAC") alleges the following causes of action: 1. General Negligence; 2. Premises Liability.

The present motion is brought by defendants to strike the prayer for punitive damages in paragraph 14 of the FAC. Defendants argue the FAC states a claim for personal injuries based on a trip and fall accident and fails to state the oppression, fraud, or malice necessary to support a claim for punitive damages. Plaintiff opposes.

Analysis

The court may, upon a motion made pursuant to Code of Civil Procedure section 435: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.)

Motions to strike can be used to attack the entire pleading, or any part thereof. (Code Civ. Proc., § 435; *Warren v. Atchison, T. & S.F. Ry. Co.* (1971) 19 Cal.App.3d 24, 40.) As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice. (Code Civ. Proc., § 437(a).) "[T]he court treats as true the material facts alleged in the complaint, as well as any facts which may be implied or inferred from those expressly alleged." (*Washington Int'l Ins. Co. v. Superior Court* (1998) 62 Cal.App.4th 981, 984, fn. 2.) A motion to strike is the proper vehicle to attack a claim for punitive damages where facts alleged may not rise to the level of fraud, malice or oppression. (Code Civ. Proc., §§ 435-436; *Truman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.)

Civil Code section 3294 provides that to obtain punitive damages a plaintiff needs to prove by clear and convincing evidence that the defendant "has been guilty of oppression, fraud, or malice." Under section 3294, malice is defined, alternatively, as conduct "intended…to cause injury…or despicable conduct…with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294(c)(1).) Oppression is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294 (c)(1).) Fraud, requires "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294 (c)(3).) There are no allegations of fraud in the operative complaint.

A claim for punitive damages requires specific facts to support the claim, not mere statements that the defendant acted with malice, oppression, or fraud. (*Hilliard v. A.H. Robbins* (1983) 148 Cal.App.3d 374, 391; *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864.) It is not enough to allege a conscious disregard of the rights and safety of others, but the plaintiff must also allege defendant willfully engaged in despicable conduct. (Civ. Code, § 3294(c)(1); *College Hospital, Inc. v. Sup. Ct.* (1994) 8 Cal.4th 704, 712 [despicable conduct as base, vile, or contemptible].) Oppression also has a higher standard.

Recovery of punitive damages is predicated on a showing of "'[s]omething more than the commission of a tort. . .. There must be circumstances of aggravation or outrage, such as spite or 'malice' or a fraudulent or evil motive on the part of defendant, or such conscious and deliberate disregard for the interests of others that his conduct may be called willful or wonton.'" (*Taylor v. Sup. Ct.* (1979) 24 Cal.3d 890, 894-895 (italics in original; quoting Prosser, Law of Torts (4th ed. 1971) §2, at pp. 9-10); see also *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 328.) However, "[i]t has long been the rule that conduct classified only as unintentional carelessness, while it may constitute negligence or even gross negligence, will not support an award of punitive damages." (*Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d 279, 285-86.)

Plaintiff states two causes of action, both founded on negligence. The Court finds that based on the authorities above, allegations of delayed construction repair are insufficient to state the necessary despicable conduct required to support a claim for punitive damages. The allegations here are founded in negligence and not the type of vile, base and contemptible conduct required for a claim for punitive damages. At most, the allegations support a claim for gross negligence.

Although not a pleading case, *Nolin* is instructive regarding the facts needed to support a claim for punitive damages in a negligence/premises liability action. In *Nolin*, defendant operated a convenience store which included self-service gasoline pumps. (*Nolin*, *supra*, at 282.)

In *Nolin*, the court found substantial evidence supported a jury's punitive damages award against the corporate owner of a service station where the plaintiff slipped and fell in a puddle of motor oil and gasoline. The evidence established that for months both customers and employees had complained about a broken gasoline pump which tended to overflow onto the ground and onto customers. When management refused to fix the pump, employees tried to alert the public by posting signs or by making public service announcements. Management feared the loss of business and reputation and ordered the employees to stop their efforts. In addition, the service station sold oil cans and permitted customers to add oil to their cars in the pumping areas. As a consequence, the poorly lit surface was often covered with pools of oil and littered with empty oil cans. Cleanup around the service station was sporadic and haphazard, and employees were not trained to clean the area. (See *Nolin*, *supra*, at 282-84.) When the station supervisor was informed of prior accidents he allegedly responded that "the store didn't have anything to worry about because they had a team of lawyers that would tie it up in court for years." (*Id.* at 283 (internal quotation marks omitted).)

Given the evidence presented, the *Nolin* court found substantial evidence of conduct warranting the imposition of punitive damages: Defendant's established inattention to the danger showed a complete lack of concern regarding the harmful potential-the probability and likelihood of injury. The entire nature of defendant's operation, as it was presented to the jury, reflected defendant's overriding concern for a minimum-expense operation, regardless of the peril involved. This concern was evidenced by the method of deployment of clerks, the absence of maintenance personnel, and the absence of necessary equipment for handling oil sold to customers. The evidence also established that the employees who observed the danger daily communicated it upward to supervisory personnel, but to no avail. (Nolin, supra, at 288.)

In contrast to the facts here, there have been no repeated demands to fix a defect or where defendants had been cited for violation of city and county safety codes or ordinances; rather, the only allegation is that defendants delayed repairs for approximately a month. The facts alleged are insufficient to demonstrate a reckless disregard of plaintiff's rights to be tantamount to finding that they acted with malice. (See *Taylor*, *supra*, at 895-96 [malice involves awareness of dangerous consequences and a willful and deliberate failure to avoid them].)

Basis for leave to amend

"[W]hen [the demurrer or motion to strike] is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.)

It is unclear whether the Plaintiff can allege any additional facts to support a claim for punitive damages, however, the Court is not certain. Further, as the policy of the state is to liberally grant leave to amend, and as this is only the first amended complaint, the Court shall grant Plaintiff 20 days leave to amend.