Tentative Rulings for August 14, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Christy v. Hernandez***
Case No. 25CECG01053

Hearing Date: August 14, 2025 (Dept. 503)

Motion: Defendant Hernandez's Demurrer to Complaint

Tentative Ruling:

To overrule defendant Hernandez's demurrer to the entire complaint and each separate cause of action.

Explanation:

Defendant Carrie Hernandez demurs to the complaint on the grounds that it fails to state a claim against her and that it is uncertain because it fails to specify which defendants did which wrongful acts. She contends that she cannot be held individually liable for the Labor Code violations allegedly committed by the corporate employer, Fresno Enterprises, and that plaintiffs have not alleged facts to support their claim that she and the corporation are alter egos of each other.

Defendant cites to *Reynolds v. Bement* (2005) 36 Cal.4th 1075 to support her contention that individuals cannot be held liable for Labor Code violations committed by the corporate employer. In *Reynolds*, the California Supreme Court held that, "plaintiff cannot state a section 1194 cause of action [for unpaid overtime] against the individual defendants. Had the Legislature meant in section 1194 to expose to personal civil liability any corporate agent who 'exercises control' over an employee's wages, hours, or working conditions, it would have manifested its intent more clearly than by mere silence after the IWC's promulgation of Wage Order No. 9." (*Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1087–1088.)

However, the holding of *Reynolds* was partially abrogated by the California Supreme Court in *Martinez v. Combs* (2010) 49 Cal.4th 35, which held that the applicable wage order of the Industrial Welfare Commission, not common law, defines the employment relationship and thus who may be liable for failure to pay minimum wages to employees. (*Martinez, supra*, at pp. 62-66.)

Also, in 2015, after *Reynolds* and *Martinez* were decided, the Legislature amended the Labor Code to add section 558.1, which states that, "Any employer *or other person acting on behalf of an employer*, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." (Labor Code, § 558.1, subd. (a), italics added.) "For purposes of this section, the term 'other person acting on behalf of an employer' is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term 'managing agent' has the same

meaning as in subdivision (b) of Section 3294 of the Civil Code." (Labor Code, § 558.1, subd. (b).) "Nothing in this section shall be construed to limit the definition of employer under existing law." (Labor Code, § 558.1, subd. (c).) Thus, under Labor Code section 558.1, an owner, director, officer, or managing agent of an employer may be held liable for violating or causing to be violated laws regarding minimum wages, or hours or days of work.

In addition, a person other than the corporate employer who causes a violation of wage laws may be held liable to the aggrieved employee for civil penalties for the violation. (Labor Code, §§ 558, subd. (a); 1197.1, subd. (a).) "In California, the Legislature has decided that *both* the employer *and* any 'other person' who causes a violation of the overtime pay or minimum wage laws are subject to specified civil penalties. (§§ 558(a) [overtime], 1197.1(a) [minimum wage].) Neither of these statutes mentions the business structure of the employer, the benefits or protections of the corporate form, or any potential reason or basis for disregarding the corporate form. To the contrary, as we explain, the business structure of the employer is irrelevant; if there is evidence and a finding that a party *other than the employer* 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*." (*Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820, italics in original.) Furthermore, the employee is not required to show that the person who caused the violation is the alter ego of the employer in order to hold that person liable for the violation, as the statutes clearly impose liability for the violations on the person who caused the violations. (*Id.* at pp. 820-822.)

Here, plaintiffs have alleged that defendant Hernandez is the owner, managing agent, and/or officer of defendant Fresno Enterprises, and that she exercised control over plaintiffs' working conditions, hours, and wages. (Complaint, ¶ 9.) Hernandez allegedly violated or caused to be violated the Labor Code provisions referenced in the complaint, and is therefore liable under section 558.1. (*Ibid*.) They also allege that Hernandez is the alter ego of Fresno Enterprises. (*Ibid*.) Plaintiffs have also alleged that they were the employees of the "defendants", which would include both Fresno Enterprises and Hernandez, and that defendants controlled plaintiffs' hours, wages, and working conditions. (*Id*. at ¶¶ 13-18.) Defendants committed various Labor Code violations by misclassifying plaintiffs as independent contractors, failing to pay them any wages, failing to pay them overtime, failing to provide meal and rest breaks, failing to reimburse them for business expenses, failing to provide workers' compensation insurance or unemployment insurance, failed to provide accurate wage statements, and engaging in unfair business practices. (*Id*. at ¶¶ 19-38.)

Thus, plaintiffs have alleged sufficient facts to state a claim against Hernandez, who is alleged to be the owner, officer, director, or managing agent of Fresno Enterprises, and who allegedly caused the various wage and hour violations suffered by plaintiffs. Such allegations are adequate to state a claim against Hernandez under section 558.1, as well as sections 558(a) and 1197.1(a).)

While Hernandez argues that plaintiffs have not alleged enough facts to support their alter ego claim, this argument misses the point. Plaintiffs do not have to allege that Hernandez was acting as an alter ego of the corporate employer in order to state a claim against her under sections 558.1, 558(a), or 1197.1(a). They merely have to allege that Hernandez was the person who caused the violations of the wage and hour laws.

(*Atempa v. Pedrazzani*, *supra*, 27 Cal.App.5th at pp. 820-822.) Here, plaintiffs have alleged that Hernandez was the owner, officer, director, and managing agent of Fresno Enterprises, and she personally caused the violations. (Complaint, ¶ 9.) Therefore, they have stated a valid claim against her personally, regardless of whether they have adequately alleged their alter ego claim.

Finally, to the extent that defendant argues that the complaint is uncertain because it fails to allege which defendants did which wrongful acts, the court intends to overrule the demurrer for uncertainty. Demurrers for uncertainty are disfavored by the courts, and will not be sustained unless the complaint is so incomprehensible that it is impossible for defendant to respond to it. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, citations omitted.)

Here, the complaint is not so vague, confusing, or ambiguous that it is impossible for defendant to respond to it. The complaint clearly alleges that defendants (which includes Fresno Enterprises and its owner, officer, director, and managing agent Hernandez) misclassified plaintiffs as independent contractors when they were actually employees, failed to pay them any wages, failed to pay them overtime, failed to provide meal and rest breaks, failed to reimburse them for business expenses, failed to provide them with workers' compensation insurance or unemployment insurance, and failed to provide accurate wage statements. (Complaint, ¶¶ 9, 12-39.) While the complaint does not state which defendants committed which wrongful acts, plaintiffs are clearly alleging that both Fresno Enterprises and Hernandez committed or caused to be committed the various Labor Code violations, as Hernandez was the owner, director, and managing agent of Fresno Enterprises. Therefore, the complaint is not vague, ambiguous, or confusing with regard to Hernandez's conduct. Even if it is somewhat vague, defendant can always conduct discovery to clarify any ambiguities. As a result, the court intends to overrule the demurrer to the entire complaint.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 8/6/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re:	***E.M. v. County of Fresno, et al.*** Superior Court Case No. 22CECG04014
Hearing Date:	August 14, 2025 (Dept. 503)
Motion:	by defendant County of Fresno for Judgment on the Pleadings

Tentative Ruling:

To grant defendant County of Fresno's ("County") motion for judgment on the pleadings, without leave to amend. (Code Civ. Proc., § 438.) County shall submit to the court a proposed judgment within 10 days of service of the order by the clerk.

Each request for judicial notice is granted. (Evid. Code, § 452, subd. (c), (d), (h).)

Explanation:

Discretionary Immunity

The County moves for judgment on the pleadings as to the entire complaint against it, contending that the complaint fails to state a cause of action because it does not allege any facts showing that the County had a mandatory duty to report the alleged sexual abuse of plaintiff while she was in foster care. The County points to the Fifth District Court of Appeal's recent decision in *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606, which held under similar facts that the County of Merced was entitled to discretionary immunity under Government Code sections 815.2 and 820.2 for its social worker's failure to investigate the reported abuse of the minor plaintiff or remove her from the home.

"We conclude that Government Code section 820.2 applies in the instant case. The social workers' decisions at issue relate to 'the investigation of child abuse' 'based upon suspicion of abuse'. They not only 'involve[ ] the exercise of analysis and judgment as to what is just and proper under the circumstances' but also constitute 'sensitive policy decision[s] that require[ ] judicial abstention to avoid affecting a coordinate governmental entity's decisionmaking or planning process.' These qualities hold true for, as here, 'preliminary determinations' that 'reports of possible abuse' 'did not warrant initiation' of further action." (*K.C. v. County of Merced*, *supra*, at pp. 617–618, citations omitted.)

"We do not dispute that decisions pertaining to foster care placement are discretionary acts within the meaning of Government Code section 820.2. Nor do we question that 'maintenance of a child in a foster home involves an obligation of continued supervision' and much of what is required 'in terms of continued administration of the child's welfare undoubtedly constitutes simple and uncomplicated surveillance

which reasonably could be characterized as ministerial.' However, decisions as to whether to undertake investigative or corrective action in response to reported child abuse fall outside the ambit of such surveillance and are '[no] less "discretionary" for purposes of the immunity of Government Code section 820.2 than the original placement decision[.]' We do not accept the notion that a 'subjective decisionmaking process' 'could [be] transmute[d]' 'into a ministerial act' simply because that process assesses incidents that occurred within a foster home." (*Id.* at p. 619, citations omitted.)

"K.C. also contends that County's demurrer should have been overruled because the operative complaint did not indicate 'an employee of the County made a considered ... decision' or 'actually exercised' 'discretion ... by the weighing of risks and benefits in deciding on the challenged course of action.' While a finding of immunity is precluded 'solely on grounds that "the [affected] employee's general course of duties is 'discretionary'"' and 'requires a showing that "the specific conduct giving rise to the suit" involved an actual exercise of discretion, i.e., a "[conscious] balancing [of] risks and advantages"', 'a strictly careful, thorough, formal, or correct evaluation' is not mandatory. 'Such a standard would swallow an immunity designed to protect against claims of carelessness, malice, bad judgment, or abuse of discretion in the formulation of policy.' Here, under a 'fair reading' of the complaint, K.C. essentially alleged County's social workers were confronted with reports of sexual abuse that should have prompted investigative or corrective action, but they failed to properly exercise their discretion to do so. '[C]laims of improper evaluation cannot divest a discretionary policy decision of its immunity.'" (*Id.* at pp. 619–620, citations omitted.) "Because we conclude that Government Code section 820.2 applies in the instant case, County is immune by virtue of Government Code section 815.2, subdivision (b)." (*Id.* at p. 620, citations omitted.)

Plaintiff points out that in *D.G. v. Orange County Social Services Agency* (2025) 108 Cal.App.5th 465, the Fourth District Court of Appeal recently reached the opposite conclusion, holding that the trial court improperly granted summary judgment in favor of the defendant County of Orange because discretionary immunity did not apply to the social worker's failure to take action after receiving a report of child abuse.

The court does not find there is a split of authority between *K.C.* and *D.G.* This was addressed in footnote 9 of *K.C.*, in which the court acknowledged the *D.G.* opinion and noted that *D.G.* involved a summary judgment motion where *K.C.* involved a demurrer. It is further noted that both the *K.C.* and *D.G.* courts agree that the County has discretion about whether or not to investigate the report and take other action to remove the child, and they also agree there must be evidence that the social worker actually exercised their discretion by making a considered decision after consciously balancing the risks and benefits of leaving the child in the home. (*K.C., supra,* at pp. 619-620; *D.G., supra,* at pp. 473-474.) The *K.C.* court determined that the complaint alleged that the social worker made a considered decision not to take investigative or corrective action following suspicion of the sexual abuse since there were allegations of actual reports of sexual abuse. (*K.C., supra,* at pp. 619-620.) Whereas the *D.G.* court found there to be no evidence that the social worker made such a considered decision, since there was no evidence of any indicators of abuse in order to trigger a conscious balancing of risks and benefits. (*D.G., supra,* at p. 474.) In other words, the *K.C.* court determined there to be sufficient facts to allege that after being made aware of possible sexual abuse, the social worker made a conscious decision not to investigate or take corrective action; however,

the *D.G.* court determined there to be insufficient evidence that the social worker was ever in the position to make such a conscious decision since there were no indicators of abuse in the record.

Here, just as in *K.C.*, it is alleged that defendants were aware of the sexual abuse and both investigated and temporarily removed plaintiff from the home. Further, that defendants "knew, or had reason to know, or were otherwise on notice, of misconduct . . . that created a risk of childhood sexual assault and/or abuse against [p]laintiff and [defendants] failed to take reasonable steps and/or implement safeguards to avoid such acts of childhood sexual assault and abuse." (Compl., ¶¶ 25-28, 31-32.)

Moreover, even if there was a split of authority, this court is within the Fifth District Court of Appeals, and will follow *K.C.,* which the court finds to be dispositive of plaintiff's claims.

Plaintiff also alleges violation of various mandatory duties, including failure to report the abuse as required as a mandatory reporter under Penal Code section 11166. However, this would require the court to second-guess a social worker's determination of whether the facts reported rose to the level of mandatory reporting. It would make little sense for discretionary immunity to apply to the decision to leave a child in a home where the child alleges they were being sexually abused, but not cover the social worker's determination that the information did not rise to the level required for mandatory reporting.

Government Tort Claim Presentation

The County has also argued that plaintiff has not alleged a valid cause of action for negligence against it because she has not alleged that she filed a timely claim with the County within six months of the alleged abuse, nor has she alleged that she filed a petition for relief from the claims filing requirement within one year of the abuse. (Gov. Code, §§ 911.2; 911.8, 946.6.) As the County points out, failure to file a timely claim or obtain relief from the claims filing requirement bars a plaintiff's claim against a public entity because the filing of a timely claim is an element of the cause of action. (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1119-1120.) Therefore, the County concludes that plaintiff's complaint is barred by her failure to comply with the claims filing requirement.

However, as the County acknowledges, in 2019 the Legislature passed Assembly Bill 218, which took effect on January 1, 2020. AB 218 opened a three-year window for plaintiffs to file suit for childhood sexual abuse, regardless of how long ago the abuse occurred. More importantly for the purposes of the present case, AB 218 removed the claims filing requirement for all childhood sexual abuse claims, and made that change retroactive to all such claims. (Gov. Code, § 905, subds. (m), (p).) Therefore, under the amended language of section 905(m), plaintiff is no longer required to file timely claim before bringing suit against the County for her childhood sexual abuse claim.

Nevertheless, the County argues that the court should find that plaintiff was still required to comply with the claims filing requirement because AB 218 is unconstitutional as it constitutes a gift of public funds in violation of the "gift clause" of the California Constitution. (Cal. Const., art. XVI, § 6.) The County contends that AB 218 constitutes a

gift of public funds because it created a new liability that did not previously exist at the time that plaintiff was injured, and therefore it is unconstitutional.

"Section 6 of article XVI of the California Constitution provides that the Legislature has no power 'to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation ....' The term 'gift' in the constitutional provision 'includes all appropriations of public money for which there is no authority or enforceable claim,' even if there is a moral or equitable obligation. 'An appropriation of money by the legislature for the relief of one who has no legal claim therefor must be regarded as a gift within the meaning of that term, as used in this section, and it is none the less a gift that a sufficient motive appears for its appropriation, if the motive does not rest upon a valid consideration.'" (*Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450, citation omitted.)

However, the Court of Appeal recently considered the same argument raised by the County here and rejected it. In *West Contra Costa Unified School District v. Superior Court* (2024) 103 Cal.App.5th 1243, the First District Court of Appeal held that AB 218's retroactive removal of the claims filing requirement for childhood sexual abuse claims was not an unconstitutional gift of public funds, and thus the plaintiff was not required to comply with the claims filing requirement before filing her complaint against the District. "As we explain, waiver of the claim presentation requirement did not constitute an expenditure of public funds that may be considered a 'gift' because AB 218 did not create new 'substantive liability' for the underlying alleged wrongful conduct. Instead, AB 218 simply waived a condition the state had imposed on its consent to suit. (*Id.* at p. 1257, citations and footnote omitted.)

"Under the GCA, the claims presentation requirement is not part of the District's substantive liability, so retroactive waiver of the requirement does not 'create any liability or cause of action against the state where none existed before.'" (*Id*. at pp.1259–1260, citation omitted.) "Government Code section 905.8 states, 'Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.' The associated California Law Revision Commission comment explains that this section 'makes clear that the claims presentation provisions do not impose substantive liability; some other statute must be found that imposes liability.'" (*Id.* at p. 1260, citations and footnote omitted.)

"At the time of the alleged sexual misconduct (and today), Government Code section 820, subdivision (a) provided that 'a public employee is liable for injury caused by his act or omission to the same extent as a private person,' and Government Code section 815.2, subdivision (a) provided that 'A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.' The District does not dispute that those statutes impose liability for the type of conduct alleged in the present case." (*Id.* at p. 1260, citations omitted.) "As relevant in the present case, it is clear the claim presentation requirement is a condition on the state's consent to suit, and not an aspect of the state's substantive liability." (*Id.* at p. 1261.)

"Accordingly, the GCA itself makes clear that the District's substantive liability existed when the alleged wrongful conduct occurred; timely presentation of a claim was

a condition to waiver of government immunity, but it was not necessary to render the underlying conduct tortious. Because a statute imposing liability on the District existed at the time of the sexual assaults, AB 218 imposes no new substantive liability under *Chapman*'s gift clause analysis." (*Ibid*.) In addition, the Court of Appeal held that, even if AB 218 falls within the scope of the gift clause, it serves a public purpose and thus it does not violate the gift clause. (*Id*. at p. 1265.)

Thus, the Court of Appeal's lengthy and well-reasoned decision in *West Contra Costa* clearly holds that AB 218 does not violate the gift clause and is not unconstitutional. While the County urges this court not to follow the holding of *West Contra Costa*, this court is obligated to follow the holding of the Court of Appeal on this issue under the doctrine of *stare decisis*. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.)

Nonetheless, the court intends to grant the County's motion for judgment on the pleadings since the court finds that discretionary immunity applies in the instant case.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 8/8/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***City of Fresno v. Donald Dal Porto***
Superior Court Case No. 24CECG05293

Hearing Date: August 14, 2025 (Dept. 503)

Motion: By Plaintiff for Order for Prejudgment Possession

Tentative Ruling:

To grant. The court intends to sign the proposed order. Plaintiff is authorized to take possession of the property on the thirtieth (30th) day following the date of service of this order.

Explanation:

A plaintiff moving for prejudgment possession requires demonstration that it "is entitled to take the property by eminent domain and has deposited … an amount that satisfies the requirements of that article." (Code Civ. Proc., § 1255.410, subd. (a).)

Plaintiff has produced evidence that the City Council adopted the required Resolution of Necessity addressing the subject property, located at 1612 N. Blackstone Ave., Fresno, CA, more particularly described as Assessor Parcel Numbers 446-232-41 and 446-232-37S, thus establishing that the project is necessary, that is it planned and located in a manner that is most compatible with the public good and least private injury, and that the property to be acquired is necessary for a larger ongoing project. Plaintiff has also filed a notice of deposit, in the amount of $2,534,000, constituting the probable amount of compensation.

Code Civ. Proc., § 1255.410, subds. (d)(2)(A)-(D) provides that if the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

> (A) The plaintiff is entitled to take the property by eminent domain.
> (B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.
> (C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited.
> (D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession.

Defendant does not dispute plaintiff's entitlement to take the property.

Defendant argues that plaintiff did not deposit an amount that meets the statutory just compensation requirements as set forth in Code of Civil Procedure § 1255.010. Plaintiff met these requirements based on the appraisal report determining the fair market value of the Property to be $2,534,000. Defendant is not without recourse as they will be be able to litigate the issue of greater compensation for the Subject Property. (Code Civ. Proc., § 1255.040, subd. (e).) the owner of a business can make a claim for a loss of goodwill (Code Civ. Proc., § 1263.510)

Plaintiff has demonstrated an overriding need to possess the property prior to the issuance of final judgment in the case based on when construction plans to begin, which is expected to begin in the spring of 2026.

Plaintiff has also demonstrated that its hardships outweigh the defendant's hardship. Construction takes time to prepare, and City of Fresno not having the subject property puts the entire project at risk. Defendant's arguments are premised on the correct amount of compensation, which they have recourse to, as discussed above.

As such, the court intends to sign the proposed order in order for plaintiff to take possession of the property.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 8/11/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Alma Alvarado v. Guillermo Terriques***
Superior Court Case No. 25CECG00903

Hearing Date: August 14, 2025 (Dept. 503)

Motion: Demurrer to Fourth Cause of Action for Hostile Work Environment by Defendants Wawona Frozen Foods, Inc. and Alberto Anzaldo

Tentative Ruling:

To overrule the demurrer with defendants granted leave to answer within 10 days. The time to answer shall run from the date of service by the clerk of the minute order.

Explanation:

Defendants, Wawona Frozen Foods, Inc. (Wawona) and Alberto Anzaldo (together, Defendants), demur to the fourth cause of action for hostile work environment of the original complaint filed by plaintiff, Alma Canedo Alvarado (Plaintiff).

Meet and Confer

Defendants' counsel, Daniella M. Crisanti, filed and served a declaration stating counsel met and conferred by telephone with Plaintiff's counsel at least five days before a responsive pleading was due to be filed, but the parties were unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party.

Demurrer to Fourth Cause of Action—Hostile Work Environment Harassment

Defendants generally demur to Plaintiff's fourth cause of action on the ground that the facts pleaded in Plaintiff's complaint do not state a cause of action for hostile work environment harassment. (Code Civ. Proc., § 430.10, subd. (e).) In her fourth cause of action, Plaintiff sues for harassment in violation of Government Code section 12940, subdivision (j).[1] "Section 12940, within the FEHA [California Fair Employment and Housing Act], prohibits numerous 'employment practice[s]' specified in the subdivisions of the section—in general, invidious discrimination or harassment, and retaliation for complaining about such conduct." (*Fitzsimons v. California Emergency Physicians Medical Group* (2012) 205 Cal.App.4th 1423, 1426 (*Fitzsimons*).)

Section 12940 sets forth different standards to impose liability for an individual's conduct, based on whether the complaint is for discrimination or harassment. As Mr. Anzaldo states, a supervisor whose conduct rendered the employer liable for

[1] All subsequent undesignated statutory references are to the Government Code.

employment discrimination under section 12940, subdivision (a) cannot be held personally liable for the discrimination. (*Fitzsimons, supra,* 203 Cal.App.4th at p. 1427.) But "nonemployer individuals . . . can be held personally liable for harassment under section 12940, subdivision (j)[.]" (*Ibid.*) Section 12940, subdivision (j)(1) makes it an unlawful employment practice:

> For an employer . . . or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract."

Section 12940 expressly provides that an employee, including a supervisor, may be personally liable for harassment:

> An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(§ 12940, subd. (j)(3).)

The California Supreme Court explained the difference between harassment and discrimination as follows:

> 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. Commonly necessary personnel management actions do not come within the meaning of harassment. These actions may retrospectively be found discriminatory if based on improper motives, but in that event the remedies provided by the FEHA are those for discrimination, not harassment. This significant distinction underlies the differential treatment of harassment and discrimination in the FEHA.

(*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707, 710, internal quotations marks and citations omitted [finding evidence of manager's rude comments and behavior sufficient to allow jury to conclude hostility was pervasive to support a finding of harassment].)

To establish her cause of action for a hostile work environment based on harassment, Plaintiff must show:

> (1) [S]he is a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her protected status; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment.

(*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581 [trial court erred in granting summary judgment where plaintiff raised triable issues of fact on whether harassment based on age and national original was severe and pervasive].)

Mr. Anzaldo contends the conduct Plaintiff alleges fails to meet the "severe and pervasive" thresholds required by California law. In *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865 (*Beltran*), the court discussed the nature of a sexual harassment claim and recent amendments to California law, which allow a single incident of harassing conduct to be the basis of the claim:

> "Sexual harassment consists of any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. [Citation.] It usually arises in two contexts. 'Quid pro quo' harassment conditions an employee's continued enjoyment of job benefits on submission to the harassment. 'Hostile work environment' harassment has the purpose or effect of either interfering with the work performance of an employee, or creating an intimidating workplace." (*Rieger v. Arnold* (2002) 104 Cal.App.4th 451, 459, 128 Cal.Rptr.2d 295.) FEHA is to be construed liberally to accomplish its purposes. (§ 12993.)
>
> Sexual harassment law in California requires an employee to prove "severe or pervasive" harassment. (§ 12923.) Prior to 2019, this requirement was quite a high bar for plaintiffs to clear, even in the context of a motion for summary judgment. But section 12923, which went into effect on January 1, 2019, clarified existing law in numerous respects. One such clarification, codified in subdivision (b), stated that "[a] single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive work environment." (§ 12923, subd. (b).) The Legislature therefore explicitly rejected *Brooks v. City of San Mateo* (2000) 229 F.3d 917, 926 [holding that "If a single incident can ever suffice to support a hostile work environment claim, the incident must be extremely severe"].)

(*Beltran, supra,* 97 Cal.App.5th AT P. 878.)

Defendants' cited cases on the nature of the requirement to establish "severe or pervasive" harassment all predate the amendments to Government Code section 12923, which Defendants fail to mention. Here, Plaintiff alleges her status as a member of a protected class as "a Hispanic woman who was employed by Wawona." (Compl., ¶¶ 36, 49.) She alleges Mr. Anzaldo engaged in a pattern of public humiliation and harassment and subjected her to unprovoked verbal abuse in front of her coworkers. (Compl., ¶ 15.) She describes three specific incidents in paragraph 16, and alleges Mr. Anzaldo invaded "her personal space during confrontations while making violent hand gestures that suggested physical aggression." (Compl., ¶ 17, p. 5:7-8.)

Harassment claims are rarely appropriate for disposition as a matter of law. (*Beltran, supra,* 97 Cal.App.5th at p. 878 [citing § 12923, subd. (e): "Harassment cases are rarely appropriate for disposition on summary judgment."].) Plaintiff has pleaded

sufficient allegations to establish a cause of action for hostile work environment harassment against Mr. Anzaldo. Therefore, the court overrules Mr. Anzaldo's demurrer to the fourth cause of action.

"Under California law, an employer is strictly liable for harassing conduct of its agents and supervisors. (*Beltran, supra,* 97 Cal.App.5th at p. 877, citing § 12940, subd. (j)(1).) Wawona bases its demurrer on the claim that Plaintiff fails to allege the requisite severe of pervasive conduct. Plaintiff has pleaded sufficient facts to show harassment by both Mr. Anzaldo and her supervisor, defendant Guillermo Terriques. Wawona is strictly liable for the alleged harassment of its supervisors. Therefore, the court overrules Wawona's demurrer to the fourth cause of action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 8/12/2025.
(Judge's initials) (Date)