Tentative Rulings for September 16, 2026
Department 403

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.***

25CECG04568 ***Arreola v. Zenith Insurance Company***

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

25CECG00038 ***In Re: Angel Eduardo Antonio Kuripeth*** **is continued to Tuesday, October 6, 2026 at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

<u>Tentative Rulings for Department 403</u>

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(41)

Tentative Ruling

Re:	***Fernando Santillan v. City of Selma*** Superior Court Case No. 25CECG04748
Hearing Date:	September 16, 2026 (Dept. 403)
Motion:	By Defendants to Strike (Anti-SLAPP) Plaintiff's First Amended Complaint By Defendants Demurring to Plaintiff's First Amended Complaint

Disclosure:

The Court discloses that, many years ago as a practicing attorney, the Court represented Mr. Robertson in an unrelated matter. The Court does not believe the prior representation affects its ability to be fair and impartial matter.

Tentative Ruling:

To deny defendants' special motion to strike plaintiff's first amended complaint.

To overrule the demurrer to the first amended complaint 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, City of Selma (City) and Scott Robertson (collectively, Defendants) filed a demurrer and an anti-SLAPP (Strategic Litigation Against Public Participation) motion or a special motion to strike portions of the first amended complaint (FAC) filed by plaintiff Fernando Santillan.

<u>Anti-SLAPP Motion</u>

An anti-SLAPP motion provides a procedural remedy to dismiss nonmeritorious litigation brought "primarily to chill the valid exercise of constitutional rights of freedom of speech and petition for redress of grievances." (Code Civ. Proc., § 425.16, subd. (a).) The anti-SLAPP statute "allows defendants to seek early dismissal of unmeritorious claims arising from protected speech and petitioning activities." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1004 (*Bonni*).)

A defendant may invoke the statute to challenge suits based on four different categories of protected activity:

(1) The defendant's statements made before a legislative, executive, judicial, or other official proceeding;

> (2) The defendant's statements made in connection with an issue being considered by a legislative, executive, or judicial body;
> (3) The defendant's statements made in a public forum or in connection with an issue of public interest; or
> (4) The defendant's "other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech, in connection with a public issue or an issue of public interest [the 'catchall provision']."

(Code Civ. Proc., § 425.16, subd. (e).) Categories (1) and (2) are not limited to issues of public interest, while categories (3) and (4) are limited to issues of public interest. (*Ibid*; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1109 [a defendant moving to strike under categories (1) or (2) need not demonstrate separately that a statement concerns an issue of public significance].)

The California Supreme Court has established a two-step process to litigate an anti-SLAPP motion:

> First, the moving defendant bears the burden of establishing that the challenged allegations or claims arise from protected activity in which the defendant has engaged. Second, for each claim that does arise from protected activity, the plaintiff must show the claim has at least minimal merit. If the plaintiff cannot make this showing, the court will strike the claim.

(*Bonni, supra,* 11 Cal.5th at p. 1009, internal quotation marks and citations omitted.) The court must broadly construe the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (a).) "The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384, (*Baral*) italics original [holding court may strike portions of a "mixed" cause of action arising from protected and unprotected activities].)

<u>First Prong—Threshold Burden</u>

The first prong requires the moving defendant to make a prima facie showing that the cause of action arises from the defendant's constitutionally-protected free speech or petition activity. In the FAC Mr. Santillan lists 13 causes of action, which include Labor Code violations, breach of an employment contract and settlement agreement, wrongful termination, retaliation, racial discrimination, sexual harassment, hostile work environment, and intentional infliction of emotional distress (IIED).

Defendants contend Mr. Santillan cannot prevail on his IIED claims alleged in Mr. Santillan's seventh and thirteenth causes of action. (As part of his title, Mr. Santillan labels the seventh cause of action against "All Defendants" and the thirteenth cause of action against "City of Selma.")

Although Defendants title their motion "Special Motion to Strike Plaintiff's First Amended Complaint Pursuant to Anti-SLAPP Statute," Defendants move to strike only "certain allegations" of the FAC. (Ntc., p. 2:2-4.) Specifically, Defendants move to strike paragraph 28 in its entirety. Defendants also move to strike, in part, specifically-identified portions of paragraphs 16, 17, 18, 21, 24, 25, 26, 27, 172, 173, 174, 175, 176, 253, 254, 255, 256, 257, and part of paragraph 5 of the prayer for relief requesting damages for emotional distress.

The California Supreme Court succinctly summarized the first prong in an anti-SLAPP motion as follows:

> Again, a claim is subject to an anti-SLAPP motion to strike if its elements arise from protected activity. (*Park* [*v. Board of Trustees of California State University* (2017)] 2 Cal.5th 1057,] 1063 [*Park*].) Courts deciding an anti-SLAPP motion thus must consider the claim's elements, the actions alleged to establish those elements, and whether those actions are protected. (*Ibid*.)

(*Bonni, supra,* 11 Cal.5th at p. 1015.)

To state an IIED cause of action a plaintiff must allege the following elements:

> (1) [E]xtreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. [Citations.] A defendant's conduct is "outrageous" when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citation.] And the defendant's conduct must be intended to inflict injury or engaged in with the realization that injury will result. [Citation.]

(*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051, internal quotation marks omitted.)

To establish that the IIED claims arise from protected activity, Defendants rely on the first, second, and fourth categories set forth in Code of Civil Procedure section 425.16, subdivision (e), and contend:

> The allegations challenged in this motion arise from statements made by City officials in connection with City governance, legal compliance, and ongoing City Council proceedings. Such statements fall within the scope of Code of Civil Procedure section 425.16, subdivisions (e)(1) and (e)(2), and also implicate issues of public interest under subdivision (e)(4). The seventh and thirteenth [c]auses of action for IIED incorporate and rely on these same allegations.

(Memo., p. 12:15-19.) Defendants fail to meet their burden to show how the elements of the IIED causes of action arise from their protected activity.

Paragraph 28

The court denies Defendants' motion to strike paragraph 28 in its entirety. In this paragraph Mr. Santillan alleges:

> Mayor Robertson broadcasted publicly additional public reprimands of Mr. Santillan and asserted that Mr. Santillan's concerns about the Elections Code and the letter from the Fresno County District Attorney amounted to Mr. Santillan engaging in "belligerent conduct," again in an attempt to reprimand, shame, and bully Mr. Santillan for raising his concerns and engaging in a protected activity. These comments affected Mr. Santillan's ability to perform his work duties at work, as these comments were coming from one of the people he reported to and, on information and belief, other employees at work also reviewed the comments made by Mayor Robertson. This caused Mr. Santillan's work to become more difficult and Mr. Santillan's workplace to feel more hostile as he was worried other employees would feel empowered to undermine his work or question his intent.

Admittedly, paragraph 28 includes a description of Mayor Robertson's speech. But the allegations of the FAC do not establish that the mayor publicly broadcasted his statements in an official proceeding—such as a Selma City Council meeting. Mr. Santillan states the FAC refers only to conduct that occurred outside of official proceedings, yet Defendants supply no evidence to show the mayor's alleged statements were made in an official proceeding—either before a legislative, executive, judicial, or other official proceeding, or in connection with an issue being considered by a legislative, executive, or judicial body, as required by Code of Civil Procedure section 425.16, subdivision (e)(1) and (e)(2). The remaining allegations of paragraph 28 describe how the comments affected Mr. Santillan's ability to perform his work duties.

Defendants also rely of the catchall provision of Code of Civil Procedure section 425.16, subdivision (e)(4) to show paragraph 28 is based on Defendant's protected activity. But the catchall provision "does not extend protection to every bit of conduct factually related to actual speech or petitioning." (*Bonni, supra,* 11 Cal.5th at p. 1023.) In *Park,* the Supreme Court addressed a difficult question "that has generated uncertainty in the Courts of Appeal: What nexus must a defendant show between a challenged claim and the defendant's protected activity for the claim to be struck?" (*Park, supra*, 2 Cal.5th at p. 1060.) Under *Park*, the court must distinguish between cases where the protected activity itself is the wrong and cases where the protected activity is just evidence of liability:

> [A] claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.

(*Ibid*, italics original.)

In *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, the Supreme Court explained the importance of context—including the speaker, the audience, and the purpose of the speech—to determine what constitutes a "matter of public interest." The trial court must also consider:

> [W]hether the subject of the speech or activity "was a person or entity in the public eye" or "could affect large numbers of people beyond the direct participants" [citation]; and whether the activity "occur[red] in the context of an ongoing controversy, dispute or discussion" [citation], or "affect[ed] a community in a manner similar to that of a governmental entity" [citation].

(*Id.* at pp. 145–146.)

The high court then established (another) two-part analysis to determine if an activity falls within the catchall provision:

> First, we ask what "public issue or [ ] issue of public interest" the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest. It is at the latter stage that context proves useful.

(*Id.* at pp. 149–150.) The high court then observed "that virtually always, defendants succeed in drawing a line—however tenuous—connecting their speech to an abstract issue of public interest." (*Id.* at p. 150.)

Here, Defendants contend the challenged "statements evaluating a public official's performance," are connected to the abstract issue of "legislative decision-making." (Memo., p. 13:15-16.) Defendants contend the statements are protected, whether relying on subdivision (e)(1), (e)(2) or (e)(4). "Legislative decision-making" is a broad, abstract issue of public interest. Defendants fail to analyze the context of the alleged speech, such as the audience beyond the direct participants (Mr. Santillan and the mayor) and the time, place, and purpose of the "public broadcast," to identify a specific public concern connected to the statements.

Assuming, without deciding, that Mr. Santillan is a "high ranking public official," Defendants still fail to satisfy the public interest two-step analysis to show the statements fall within the catchall provision. They do not establish a "functional relationship" between the challenged speech and an ongoing public conversation about Mr. Santillan's performance as the city manager, such as a specific Selma City Council meeting to discuss Mr. Santillan's performance, newspaper coverage, social media posts, etc.[1] Also,

[1] Defendants contend the challenged speech was "connected to issues before the City Council." (Rpy., p. 2:19.) Defendants rely on the FAC's allegations that Mr. Santillan objected to the December 12, 2024, special City Council meeting. But Defendants fail to identify an allegation of the FAC wherein Mr. Santillan alleges the topics of his employment or job performance were addressed at the December 2024 meeting or at any other official proceeding.

Defendants fail to show how the IIED claims arise from the alleged protected activity alleged in paragraph 28—with reference to the IIED elements and the protected actions alleged to establish those elements.

Paragraphs 16, 17, 21, and 24

Defendants move to strike specific portions of several paragraphs. The court denies the motion to strike portions of paragraphs 16, 17, 21, and 24, because these paragraphs refer exclusively to speech by Mr. Santillan. To establish his right to raise concerns about potential violations of law without fear of retaliation, Mr. Santillan relies on Government Code section 54963, subdivision (f), which provides: "Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code." Defendants offer no authority to strike Mr. Santillan's statements about potential violations of law, such as compliance with quorum, Brown Act, or Elections Code requirements, or other alleged legal violations.

Paragraphs 18, 25, 26, and 27

The court denies the motion to strike portions of paragraphs 18, and 25, 26, and 27. These paragraphs include allegations of Defendants' speech and the reasons cited by Defendants to reprimand and discharge Mr. Santillan. Defendants offer no authority to strike the allegations of their unofficial statements about governance disputes, or general "City decision-making." Defendants acknowledge "[a]s the first step of the anti-SLAPP analysis, the court must consider the elements of the challenged claim and identify the acts alleged to supply those elements." (Rpy, p. 4:9-10, citing *Park, supra,* 2 Cal.5th at pp. 1062-1064; and *Bonni, supra,* 11 Cal.5th at pp. 1009-1011.) But Defendants fail to explain how the protected activity supplies the necessary elements, as the court in *Pechkis v. Trustees of California State University* (2026) 119 Cal.App.5th 497, recently explained:

> Our Supreme Court detailed the procedure for the first step of the anti-SLAPP analysis in *Bonni*, *supra*, 11 Cal.5th 995: In "determining whether the plaintiff's claims arise from protected activity ..., courts are to 'consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.' [Citation.] The defendant's burden is to identify what acts each challenged claim rests on and to show how those acts are protected under a statutorily defined category of protected activity." (*Id*. at p. 1009.) Thus, "[i]f a cause of action contains multiple claims and a moving party fails to identify how the speech or conduct underlying some of those claims is protected activity, it will not carry its first-step burden as to those claims. [Citation.] The nonmovant is not faced with the burden of having to make the moving party's case for it." (*Id*. at p. 1011.)

(*Pechkis v. Trustees of California State University, supra,* 119 Cal.App.5th at p. 504.)

The court agrees with Mr. Santillan that Defendants fail to establish a connection between the challenged activity and any official proceeding, nor do they provide sufficient analysis to establish that Defendants' activity is entitled to protection under the catchall provision. (Opp., pp. 12:9 – 15:7.)

Paragraphs 172 Through 176 and 253 through 257

The court denies the motion to strike paragraphs 172 Through 176 and 253 through 257. Defendants contend "t]he FAC clearly demonstrates that the alleged speech itself is the basis for [Mr. Santillan's] IIED claims and bases alleged liability for these claims upon protected speech." (Memo., p. 4:16-17.) Defendants correctly summarize paragraphs 172 through 176 and paragraphs 253 through 257 as incorporating prior allegations to assert "Defendants' conduct was outrageous, was intended to cause emotional distress or undertaken with reckless disregard of that result and directly caused reputational harm, humiliation, mental anguish, and severe emotional distress." (*Id*., p. 4:18-20.) Defendants again contend the incorporated allegations "make clear" the IIED claims are based on Defendant's protected speech. (*Id*., p. 4:21-22.)

The court disagrees that based on the allegations of the FAC alone, Defendants have "clearly" established that the IIED claims are based upon Defendants' protected speech. "The only means specified in section 425.16 by which a moving defendant can satisfy the [‘arising from’] requirement is to demonstrate that *the defendant's conduct by which plaintiff claims to have been injured* falls within one of the four categories described in subdivision (e)....” (*Park, supra,* 2 Cal.5th at p. 1063, italics original, internal quotation marks omitted.)

In sum, the court finds Defendants have not carried their burden to show their own conduct, by which Mr. Santillan claims to have been injured, falls within one of the four categories described in Code of Civil Procedure section 425.16, subdivision (e). Furthermore, in a mixed cause of action, where the challenged allegations may support other claims, the court must strike allegations of protected activity "unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (*Baral, supra,* 1 Cal.5th at p. 396.) Defendants fail to meet their burden to show the challenged allegations do not support other distinct claims Mr. Santillan alleges in the FAC.

In summary, Defendants fail to establish protected activity. Therefore, the court denies the anti-SLAPP motion on that ground alone, making it unnecessary for the court to determine the probability of success on the merits.[2]

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[2] To address the second prong, "[t]he court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment." (*Baral, supra,* 1 Cal.5th at p. 396.) As an additional ground to deny the motion to strike, the court finds, based on the reasons set forth in Mr. Santillan's opposition, that Mr. Santillan proffers sufficient evidence to establish that his IIED claims have the "requisite minimal merit [to] proceed." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94.) Mr. Santillan demonstrates that the purpose of his suit, which has at least minimal merit, is to recover damages for alleged wrongs—not to chill Defendants' free speech rights. In short, the challenged claims are not within

Demurrer

Defendants also demur to the second through thirteenth causes of action alleged by Mr. Santillan in the FAC.

Meet and Confer

The parties have complied with the obligation to meet and confer.

Demurrer Principles

In deciding a demurrer, the court is guided by well-established principles that the test is whether the plaintiff has succeeded in stating a cause of action—the court does not concern itself with the plaintiff's possible difficulty or inability to prove the allegations of the complaint. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.)) The complaint is liberally construed (Code Civ. Proc., § 452), which "means that the reviewing court draws inferences favorable to the plaintiff, not the defendant." (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.) The court applies the following principles when the demurrer is based on the failure to state a cause of action:

> The rule is, that if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, *although the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged*. In other words, plaintiff need only plead facts showing that he may be entitled to some relief.

(*Gruenberg v. Aetna Ins. Co., supra,* 9 Cal.3d at p. 572, citations and internal quotation marks omitted, italics added.

A special demurrer based on uncertainty, though disfavored, is nevertheless sustained where a pleading is so uncertain or incomprehensible that the defendant cannot reasonably respond to the subject pleading. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.) In other words, "[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 Calif., Inc., supra*, 14 Cal.App.4th at p. 616.)

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the type of meritless, chilling claims arising from protected activity the anti-SLAPP statute is designed to weed out at an early stage.

Duplicative Causes of Action

Defendants argue that several causes of action are duplicative and should be either dismissed or merged into one. Defendants rely on *Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290, for the rule that "[a] duplicative count adding no factual or legal basis may be eliminated on demurrer." (Rpy., p. 3:20-22.)

To the extent there is a split of authority on whether the court may properly sustain a demurrer on the ground that a cause of action is duplicative, redundancy is not a statutory ground to sustain a demurrer. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 889-890 (*Blickman*), citing Code Civ. Proc., § 430.10.) Under prior law, the elimination of a duplicative claim would have been grounds for a motion to strike; however, the statute that authorized such a basis was repealed in 1982. (*Blickman, supra,* 162 Cal.App.4th at p. 890, comparing former Code Civ. Proc., § 453 to current § 436, subd. (a), which eliminates reference to redundancy.) Under the current rules, a claimed defect of redundancy, "if it justifies any judicial intervention at all, is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment." (*Blickman, supra,* 162 Cal.App.4th at p. 890.)

Therefore, the court overrules the demurrer to the challenged causes of action on the ground that the claims present duplicative theories of liability. The court will consider the additional grounds for demurrer to the challenged causes of action separately, following the order set forth in Defendants' moving memorandum of points and authorities.

Fourth Cause of Action for Wrongful Termination

In the FAC, Mr. Santillan alleges various violations of Government Code section 12940, which generally prohibits the employment practices set forth in the section's subdivisions, such as discrimination or harassment, and retaliation for complaining about such conduct.[3] The subdivisions of section 12940 set forth different standards to impose liability for a person's conduct. Mr. Santillan's fourth cause of action is titled generally for "wrongful termination" under section 12940.

Government Code section 12940, subdivision (a), based on discrimination, makes it an unlawful employment practice:

> For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from

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[3] "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.)

> a training program leading to employment, or to discriminate against the
>
> person in compensation or in terms, conditions, or privileges of employment.

Government Code section 12940, subdivision (h), based on opposing unlawful workplace practices (the "opposition clause"), makes it an unlawful employment practice:

> For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

Government Code section 12940, subdivision (j)(1), based on harassment, 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.

Subdivision (j)(3) of Government Code 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.

Government Code section 12940, subdivision (k), based on prevention, makes it unlawful:

> For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

The California Supreme Court has 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].)

Defendants demur to the fourth cause of action on the ground that it "is either a barred common-law *Tameny* claim" or it is redundant of Mr. Santillan's FEHA claims. (Rpy. 3:23-24.)[4] Defendants rely on Government Code section 815, which provides that a public entity is not liable for any injury (including common law tort claims), unless otherwise provided by statute. As the California Supreme Court has explained (with reference to Government Code sections):

> The Government Claims Act (§ 810 et seq.) establishes the limits of common law liability for public entities, stating: "Except as otherwise provided *by statute:* [¶] (a) A public entity is *not liable* for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (§ 815, subd. (a).) The Legislative Committee Comment to section 815 states: "This section *abolishes all common law or judicially declared forms of liability for public entities,* except for such liability as may be required by the state or federal constitution, e.g., inverse condemnation...." [Citation.] Moreover, our own decisions confirm that section 815 abolishes common law tort liability for public entities.

(*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899, all italics added by Supreme Court.)

Defendants acknowledge that Mr. Santillan alleges a statutory violation, but they argue that "it is not pled *solely* as a statutory FEHA claim" (memo., p. 15:11-12, italics added), and "there is no basis to maintain a parallel common law wrongful termination claim against a public entity" (memo., p. 16:7-8). Mr. Santillan emphasizes that Government Code section 815 applies only when the potential claim against a public entity *does not* arise under a statute, and it does not apply to FEHA claims. (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d 861 [Government Claims Act does not apply to claims arising under FEHA].) Defendants cite no case holding that the Government Claims Act *does* apply to claims arising under the FEHA, nor do they cite any authority for their contention that Mr. Santillan is "asserting a classic *Tameny* claim" by pleading public policy violations based on "statutes beyond FEHA." (Memo., p. 15:17-18.)

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[4] A "*Tameny* claim" is a common law claim for wrongful termination in violation of public policy, which was judicially created in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178. If a claim against a public entity is based solely on common law torts, rather than statutory violations, Government Code section 815 bars the claim.

The court finds the fourth cause of action is not a common-law *Tameny* claim. Mr. Santillan sufficiently alleges statutory violations of Government Code section 12940 in paragraphs 37. 44, 45, 46, and 138 through 149 of the FAC, wherein he alleges Defendants violated various fundamental public policies *codified in the FEHA* and other California laws. To the extent the claim is duplicative of other statutory remedies, Defendants may raise this contention at trial, or on a subsequent dispositive motion, such as summary judgment. Therefore, the court overrules the demurrer to the fourth cause of action.

<u>Fifth Cause of Action for Retaliation</u>

Mr. Santillan alleges the fifth cause of action for retaliation against his employer, the City. Defendants contend Mr. Santillan fails to allege sufficient fact to show that he engaged in the requisite protected activity under the FEHA.

Mr. Santillan's allegations, among others, include an allegation that Mayor Robertson and his family were sexually harassing him, demeaning him, and suggesting he had used sexual favors to garner support with council members. (FAC, ¶ 45.) In paragraph 154, Mr. Santillan alleges he reported the previously-described concerns of workplace bullying and harassment, discrimination, intimidation, and sexual harassment.

In paragraph 154, Mr. Santillan alleges:

> In retaliation for engaging in such protected activities and making such complaint, the City of Selma retaliated against Mr. Santillan, as described above, and by reprimanding Mr. Santillan, making Mr. Santillan's work duties more difficult, harassing and bullying Mr. Santillan, and ultimately wrongfully terminating his employment.

Defendants cite *Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368 (*Dinslage*), where the court explained the elements and the requirements to plead a FEHA cause of action based on retaliation as follows:

> Section 12940, subdivision (h) makes it unlawful "[f]or any employer ... to discharge, expel, or otherwise discriminate against any person because the person has opposed *any practices forbidden under this part* [FEHA] ...." To make out a prima facie case of retaliation under the statute, [the plaintiff] had to show (1) he engaged in a protected activity, (2) [his employer] subjected him to an adverse employment action, and (3) a causal link existed between the protected activity and the [Employer's] action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 (*Yanowitz*).)
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> "For protection under the 'opposition clause,' an employee must have opposed an employment practice made unlawful by the statute." [Citations.] The question, therefore, is whether the [employer] took adverse action against [the plaintiff] "because [he] ... *opposed practices prohibited by the Act....*" [Citation.] Of course, "an employee's conduct may constitute protected activity ... not only when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under

> the FEHA, but also when the employee opposes conduct that the employee reasonably and in good faith believes to be discriminatory, whether or not the challenged conduct is ultimately found to violate the FEHA." (*Yanowitz, supra,* 36 Cal.4th at p. 1043.) As we have held, "a mistake of either fact or law may establish an employee's good faith but mistaken belief that he or she is opposing conduct prohibited by FEHA." [Citation.] In such cases, the question is the reasonableness of the employee's belief that he was opposing a practice prohibited by the FEHA.

(*Id.,* at pp. 380–381, italics added by *Dinslage* court.)

In *Dinslage*, the appellate court affirmed the trial court's granting of summary judgment where the plaintiff had never complained to his employer about any discrimination prohibited by the FEHA against himself or another employee. The plaintiff's complaints of discrimination were limited to expressing his belief that his employer's actions resulted in discrimination against members of the general public. The plaintiff failed to make out a prima facie case of retaliation because he failed to show that he had engaged in protected activity under the FEHA. (*Dinslage, supra,* 5 Cal.App.5th at p. 384.)

In *Yanowitz*, the plaintiff refused to carry out her supervisor's order to fire a sales representative for not being "hot" enough. The Supreme Court concluded the plaintiff's refusal to follow the order that she reasonably believed "to be discriminatory constitutes protected activity under the FEHA and that an employer may not retaliate against an employee on the basis of such conduct[.]" (*Yanowitz, supra,* 36 Cal.4th at p. 1036.)

Santillan sufficiently alleges he engaged in protected activity under the FEHA that caused the City to subject him to adverse employment actions. This is sufficient to plead a prima facie case of retaliation under the FEHA. Therefore, the court overrules the demurrer to the fifth cause of action.

<u>Eighth Cause of Action for Race Discrimination</u>

Generally, to state a cause of action for racial discrimination a plaintiff must allege:

> (1) [H]e was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive.

(*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355.)

Defendants contend Mr. Santillan fails to allege the fourth element because the FAC also includes a "non-discriminatory explanation for the challenged conduct and fails to allege facts connecting the adverse action to race or national origin[.]" (Memo. pp. 18:27-19:2.) As Mr. Santillan correctly notes, and Defendants concede in the reply, a plaintiff may plead alternative theories of recovery—Mr. Santillan may plead Defendants took adverse employment activities against him motivated by not only race, but also other factors.

In the reply, Defendants cite *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, which confirms a "plaintiff is required only to set forth the essential facts of his case with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action." (*Id.* at p. 382, internal quotation marks and citation omitted [trial court erred in sustaining demurrer, rejecting employers' contention that plaintiffs failed to plead "the statutory elements" necessary to state a FEHA claim].) The court finds Mr. Santillan sufficiently pleads the required elements for a racial discrimination claim to acquaint Defendants with the nature, source and extent of the eighth cause of action. Therefore, the court overrules Defendants' demurrer to the eighth cause of action.

<u>Ninth Cause of Action for Sexual Harassment</u>

In his ninth cause of action for sexual harassment, Mr. Santillan incorporates his previous allegations and alleges "he was subject to sexual harassment and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, and abusive." (FAC, ¶ 192.)

The required elements to establish a prima facie case of a hostile work environment, include: (1) the plaintiff is a member of a protected class; and (2) the plaintiff was subjected to unwelcome harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.) Defendants contend Mr. Santillan fails to allege either element.

Defendants cite *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254 (Shea) for the rule that "[c]onclusory assertions that the conduct was 'based on sex' are insufficient." (Memo., p. 19:15-16.) The court is unable to locate support for this rule in *Shea*, which did not mention the word "sex" or "FEHA" in the opinion. The court finds Mr. Santillan sufficiently alleges he is a member of a protected class.

Next, Defendants contend Mr. Santillan fails to allege conduct that is severe or pervasive because the FAC "identifies only a single category of comments, without alleging frequency, context, repetition, or any ongoing pattern of sexually charged behavior." (Memo., p. 19:17-19.) Defendants' cited authority arises from a summary judgment case where the United States Supreme Court concluded no reasonable person could have believed that the alleged single incident of sexual harassment violated Title VII, thereby precluding a retaliation claim based on an employee's internal complaints about one single comment. (*Clark County School Dist. v. Breeden* (2001) 532 U.S. 268.) The notice pleading requirements in California do not require such particularity:

> In permitting allegations to be made in general terms the courts have said that the particularity of pleading required depends upon the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff, and that less particularity is required where the defendant may be assumed to possess knowledge of the facts as least equal, if not superior, to that possessed by the plaintiff.

(*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 474.)

Defendants also contend the adverse employment actions in the FAC are nothing more than routine personnel management actions that cannot constitute harassment as a matter of law. In *Reno v. Baird* (1998) 18 Cal.4th 640, the high court explained the difference between routine personnel decisions and decisions that might support a FEHA claim of harassment or discrimination:

> "We conclude, therefore, that the Legislature intended that commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like, do not come within the meaning of harassment. These are actions of a type necessary to carry out the duties of business and personnel management. 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. Harassment, by contrast, consists of actions outside the scope of job duties which are not of a type necessary to business and personnel management. This significant distinction underlies the differential treatment of harassment and discrimination in the FEHA."

(*Id.* at pp. 646–647, quoting *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63–65, fns. omitted.)

In *Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 582–583, the appellate court reversed the trial court's summary judgment and noted Government Code section 12923, subdivision (b) now provides that a single incident may support of FEHA claim:

> 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 working environment. In that regard, the Legislature hereby declares its rejection of the United States Court of Appeals for the 9th Circuit's opinion in *Brooks v. City of San Mateo* (2000) 229 F.3d 917 and states that the opinion shall not be used in determining what kind of conduct is sufficiently severe or pervasive to constitute a violation of the California Fair Employment and Housing Act.

The statute also provides:

> "The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecisionmaker, may be relevant, circumstantial evidence of discrimination.

(Gov. Code, § 12923, subd. (c).)

The court finds Mr. Santillan sufficiently pleads the elements of the ninth cause of action for sexual harassment. Therefore, the court overrules the demurrer to the ninth cause of action.

Sixth Cause of Action for Failure to Prevent Discrimination

Defendants demur to the sixth cause of action for failure to prevent discrimination on the ground that this claim is derivative, and an employer cannot be liable for failing to prevent discrimination that did not occur. In light of the court's determination that Mr. Santillan sufficiently alleges discrimination in the FAC, the court overrules the demurrer to the sixth cause of action.

The Tenth Cause of Action for Abusive Conduct Harassment/Hostile Work Environment

In paragraph 205 of the FAC Mr. Santillan alleges "he was subject to abusive conduct, bullying, and constant undermining of his job performance." Defendants contend this claim is not legally cognizable and adds no distinct theory. The court has already determined that Mr. Santillan may plead alternative theories of recovery. The parties agree that Government Code section 12950.1 addresses abusive conduct in the workplace and provides:

> For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(Gov. Code, § 12950.1, subd. (h)(2).) To the extent this claim is duplicative, Defendants may raise this contention at trial or on a subsequent dispositive motion.

Second and Eleventh, Third and Twelfth, and Seventh and Thirteenth Causes of Action as Redundant

Defendants contend Mr. Santillan's causes of action for breach of employment contract (second and eleventh), breach of settlement agreement (third and twelfth) and IIED (seventh and thirteenth) are barred because they are "duplicative causes of action [that] are barred by 'res judicata," the doctrine of claim preclusion." (Memo., p. 21:17-18, citing *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-[8]97.) But the doctrine of "'[r]es judicata' describes the preclusive effect of a *final judgment* on the merits." (*Mycogen, supra,* at p. 96, italics added.)

In *Crowley v. Katleman* (1994) 8 Cal.4th 666, cited by Defendants, the Supreme court explained the narrow application of the primary right theory to situations involving more than one suit:

> The primary right theory has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits. The theory prevents this result by either of two means: (1) if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement [citations]; or (2) if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata [citation]. The latter application of the primary right theory appears to be most common: numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory [citation] or seeks a different remedy [citation]. [Fn.]

(*Id.* at p. 682.)

Defendants contend *Colebrook v. CIT Bank, N.A.* (2021) 64 Cal.App.5th 259, establishes the rule that "[w]here multiple counts arise from the same alleged contractual obligation, the same breach, and the same resulting harm, they do not constitute separate causes of action and are subject to demurrer." (Memo., p. 21:21-23.) Defendants fail to note that in *Colebrook*, the trial court properly sustained a demurrer because the subject complaint was based on the same primary right as the plaintiff's three prior lawsuits that the plaintiff lost on the merits. The prior *judgments* barred the subsequent action. (*Id.* at p. 264.) Here, the claims are raised in the same action. Therefore, the court overrules the demurrer to the second, third, seventh, eleventh, twelfth, and thirteenth causes of action on the ground the claims are duplicative causes of action that barred by the doctrine of res judicata or claim preclusion.[5]

<u>Public Entity Defenses to IIED</u>

Government Code section 815 abolishes all public entity direct common law tort liability, such as negligence, unless a statute expressly authorizes liability. Government Code section 815.2 provides that public entities may be vicariously liable for the "tortious acts and omissions of their employees." (Gov. Code, § 815.2, Legislative Committee Comments.) But if the employee is immune, the public entity is also immune. (*Ibid*; *Leon v. County of Riverside* (2023) 15 Cal.5th 90 [public entity ordinarily immune from liability when its employees are immune].)

In *Caldwell v. Montoya* (1995) 10 Cal.4th 972, the Supreme Court summarized the Tort Claims Act as follows (all quoted statutory references are to the Government Code):

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[5] Mr. Santillan explains that he filed the FAC to add the 11th, 12th, and 13th causes of action in response to Defendants' assertion that Mr. Santillan had failed to file a Government Claim Act notice. Out of an abundance of caution, Mr. Santillan timely served a new notice, waited until the notice was rejected, then filed the FAC to allege the new claims. (Hamamjian decl., ¶ 3.)

> [The Tort Claims Act] establishes the basic rules that public *entities* are immune from liability except as provided by statute (§ 815, subd. (a)), that public *employees* are liable for their torts except as otherwise provided by statute (§ 820, subd. (a)), that public entities are vicariously liable for the torts of their employees (§ 815.2, subd. (a)), and that public entities are immune where their employees are immune, except as otherwise provided by statute (§ 815.2, subd. (b)).

(*Id.*, at p. 980, Italics original.)

Defendants rely on Government Code section 820.20 for discretionary immunity based on "policy-level acts." Section 820.20 provides:

> Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

Mr. Santillan counters that the FAC is based on more than the discretionary decision to terminate Mr. Santillan's employment, such as the allegations of bullying, racial and sexual harassment, threats of legal action, and public reprimand. The court finds the IIED claims are directed at both Defendants, based on Mayor Robertson's unprotected acts, which may establish the City's vicarious liability. Therefore, the court overrules the demurrer to the IIED causes of action based on the additional independent grounds applicable to public entities and their employees.

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: SMC on September 15, 2026.

(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Kurdi v. Frontline Construction Services***
Superior Court Case No. 22CECG01797

Hearing Date: September 16, 2026 (Dept. 403)

Motion: Motion for Summary Judgment

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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: SMC on September 15, 2026 .
(Judge's initials) (Date)