

**Tentative Rulings for March 5, 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)**

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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.*

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

20CECG02910      *Judith Estrada v. Michelle Parker* is continued to Thursday, April 9, 2026, at 3:30 p.m. in Department 403.

25CECG00412      *Juana Padilla v. General Motors, LLC* is continued to Thursday, April 9, 2026, at 3:30 p.m. in Department 403.

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# **Tentative Rulings for Department 403**

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**Tentative Ruling**

Re: **Antonio Cuevas v. Stairway Fabricators, Inc.**  
Superior Court Case No. 24CECG02097

Hearing Date: March 5, 2026 (Dept. 403)

Motion: Demurrer and Motion to Strike

**If oral argument is timely requested, it will be entertained on Thursday, March 12, 2026, at 3:30 p.m. in Department 403.**

**Tentative Ruling:**

To overrule the demurrers to the Third Amended Complaint's first, second, third, fourth, fifth, seventh, and tenth causes of action. To sustain the demurrers to the sixth, eighth, and ninth causes of action, with leave to amend. Prior to filing any amended complaint, plaintiff's counsel is ordered to meet and confer in person or by telephone with opposing counsel about the substance and sufficiency of the proposed amendment as to the three causes of action against which the demurrers are sustained. (Code Civ. Proc., § 430.41, subd. (c).) Plaintiff is granted 10 days' leave to file a Fourth Amended Complaint; the time in which the complaint may be amended will run from service of the order by the clerk. New allegations/language must be set in **boldface** type.

To grant the motion to strike from the Third Amended Complaint those items specified in the Notice of Motion, without leave to amend.

**Explanation:**

Defendant Stairway Fabricators, Inc. ("defendant") demurs to all 10 causes of action stated in the Third Amended Complaint ("TAC")<sup>1</sup> filed by plaintiff Antonio Cuevas ("plaintiff"). Defendant demurs on the grounds that all causes of action fail to state facts sufficient to constitute a cause of action, and additionally that the fifth and sixth causes of action are uncertain. (See Code Civ. Proc., §§ 430.10 subds. (e) and (f).)

**Demurrer**

*Legal Standard*

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) On

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<sup>1</sup> Defendant's requests for judicial notice are granted.

general demurrer, the court determines if the essential facts of any valid cause of action have been stated. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; Code Civ. Proc. § 430.10 subd. (e).) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

#### *First Cause of Action: FEHA Discrimination (Disability)*

To assert a prima facie case of disability discrimination, including perceived disability discrimination, under the Fair Employment and Housing Act ("FEHA"), an employee must plead facts establishing that (1) he has a disability or medical condition; (2) he is qualified to perform the essential duties of his position, with or without reasonable accommodation; (3) he suffered an adverse employment action; and (4) the employer subjected him to the adverse action because of his disability or perceived disability. (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 254.)

Plaintiff alleges that he was diagnosed with an injury to his back and lumbar muscle. (TAC, ¶ 12.) The "touchstone of a qualifying [physical] disability is an actual or perceived physiological disorder which affects a major body system and limits the individual's ability to participate in one or more major life activities." (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1248.) Plaintiff amended his complaint to describe the injury as "severe back pain," (TAC, ¶ 12) alleging that the injury caused continued severe pain that was limiting his ability to stand, drive, or walk for long periods of time; and bending over. (*Ibid.*) His medical provider advised initial medical restrictions including but not limited to lifting, carrying, pushing, and pulling objects that are heavier than 10 pounds, and repetitive bending and twisting at the waist. (*Id.*, ¶ 13.) Plaintiff alleges his job position as a general physical laborer involved the primary duties of constructing stairs and welding. (*Id.*, ¶ 9.) He amended his complaint to allege that his job duties included lifting objects weighing over 10 pounds and repetitive engagement in bending over and twisting at the waist. (*Id.*, ¶ 16.)

Plaintiff alleges that he was initially placed on medical leave for five weeks. (TAC, ¶ 12.) When he returned to work, he notified his employer of his medical restrictions, but no steps were taken to accommodate him and he was "told to go home." (*Id.*, ¶ 14.) He was purportedly not informed of his right to take protected leave under the California Family Rights Act. (*Ibid.*) Even after being cleared to return to work without any restrictions, plaintiff alleges he was not placed on the schedule, not allowed to return to work, and ultimately informed of his termination. (*Id.*, ¶¶ 15, 17-18.) Throughout the factual allegations of the TAC, plaintiff alleges his actual and/or perceived disability was the motivating factor behind defendant's adverse employment actions.

Defendant emphasizes that the injury was temporary, as plaintiff was ultimately cleared to return to work without restrictions. However, while "[p]ain alone does not always constitute or establish a disability" (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 347-384, emphasis added), the plaintiff's symptoms must be "sufficiently severe to make a major life activity, such as working, difficult." (*Hodges v. Cedars-Sinai Medical Center* (2023) 91 Cal.App.5th 894, 908). The allegations of the TAC indicate that working was made difficult for a period of time by the injury.

As amended, sufficient facts are alleged at the pleading stage to state a discrimination claim, and the court intends to overrule the demurrer to the first cause of action.

*Second and Third Causes of Action: FEHA Failures to Accommodate Disability and to Engage in the Interactive Process*

It is an unlawful employment practice for an employer to fail to make reasonable accommodations for a known physical or mental disability. (Gov. Code, § 12940, subd. (m)(1).) It is also unlawful for an employer to fail to engage in a timely, good faith, interactive process with an employee to determine effective reasonable accommodations for an employee with a known physical or mental disability. (Gov. Code, § 12940, subd. (n).)

In the TAC, plaintiff alleges defendant's failure to make reasonable accommodations for his health conditions requiring accommodation, which he made known to defendant. (See TAC, ¶¶ 12-19.) He alleges that despite communicating with his employer, defendant failed to discuss accommodations or engage in the interactive process. Plaintiff alleges that he "was not provided an opportunity to discuss his medical status or ability to resume his job duties." (*Id.*, ¶ 17.) He was merely "informed that his employment had been terminated." (*Id.*, ¶ 18.) Accordingly, the court intends to overrule the demurrers to the second and third causes of action.

*Fourth Cause of Action: FEHA Retaliation*

To state a claim for retaliation under FEHA, plaintiff must allege that: (1) he engaged in a protected activity; (2) the employer subjected him to an adverse employment action; and (3) there is a causal link between the protected activity and the employer's action. (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 155-156.)

Defendant contends that plaintiff does not allege a protected activity that can be tied to an adverse employment action. This contention ignores and expresses no more than disagreement with the allegations of the TAC, which alleges that the adverse employment actions complained of were undertaken because of plaintiff's disability, request for reasonable accommodation, and complaints about the alleged failure to accommodate, discrimination, and retaliation. At the pleading stage, this is sufficient. The court intends to overrule the demurrer to the fourth cause of action.

*Fifth and Sixth Causes of Action: Violation of the California Family Rights Act and Retaliation in Violation of the California Family Rights Act*

A CFRA interference claim "consists of the following elements: (1) the employee's entitlement to CFRA leave rights; and (2) the employer's interference with or denial of those rights." (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 601, internal citations omitted.) To be eligible for leave under the California Family Rights Act ("CFRA"), an employee must have been employed for at least 12 months as of the date the leave begins, employed for at least 1250 hours during the 12 months immediately preceding the leave period, and employed at a worksite where the employer employs

at least five employees. (Gov. Code, § 12945.2, subd. (a)-(b).) Further, leave is allowed only for specified reasons. (Gov. Code, § 12945.2, subd. (h)-(j).)

Plaintiff alleges that his employment status meets the requirements to qualify for CFRA leave. (TAC, ¶¶62-63.) Defendant argues that CFRA requires that the employee *request* leave, not that the employer unilaterally *place* the employee on leave. However, defendant does not support this contention with authority. As pled, plaintiff has alleged that he was entitled to CFRA and that defendant unlawfully interfered with his right to take protected medical leave under the CFRA. (TAC, ¶ 65.) The court intends to overrule the demurrer to the fifth cause of action.

"The elements of a cause of action for retaliation in violation of CFRA are (1) the defendant was an employer covered by CFRA; (2) the plaintiff was an employee eligible to take CFRA [leave]; (3) the plaintiff exercised her right to take leave for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension, because of her exercise of her right to CFRA [leave]." (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 604, citations and internal quotes omitted.)

Here, while plaintiff has alleged he was eligible to take CFRA leave and that his employer was covered by CFRA, he has not demonstrated that he exercised his right to take leave for a qualifying CFRA purpose. The TAC states that "at no time did Defendants inform Plaintiff of his right to take protected CFRA leave which would have guaranteed his right to reinstatement." (TAC, ¶ 14.) Thus, the cause of action for retaliation in violation of CFRA is insufficiently alleged, and the court intends to sustain the demurrer to the sixth cause of action for failure to state facts sufficient to constitute a cause of action, with leave to amend.

#### *Seventh Cause of Action: FEHA Failure to Take All Reasonable Steps to Prevent Discrimination or Retaliation*

Under Government Code section 12940, subdivision (k), it is an unlawful employment practice "[f]or 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." (Gov. Code, § 12940, subd. (k).)

Defendant cites to *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925, fn. 4, to argue that "courts have required a finding of actual discrimination or harassment under FEHA before a plaintiff may prevail under section 12940, subdivision (k)[.]" However, while plaintiff must prove at trial that the underlying discrimination, retaliation, or harassment existed, plaintiff is not required to prove such facts at the pleading stage. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 [a demurrer is used to test the legal sufficiency of the complaint].) It is sufficient that plaintiff has adequately alleged their underlying FEHA causes of action and that plaintiff has alleged that defendant failed to take the reasonable steps necessary to prevent discrimination, harassment or retaliation. As discussed above with regard to the other causes of action, the plaintiffs have sufficiently alleged their underlying claims for

discrimination and retaliation. The court therefore intends to overrule the demurrer to the seventh cause of action.

*Eighth and Ninth Causes of Action: Violation of Lab. Code §§ 1102.5 and 232.5*

To establish a prima facie case of retaliation under California's whistleblower statute, a plaintiff must show that: (1) he engaged in protected activity; (2) his employer thereafter subjected him to an adverse employment action; and (3) a causal link between the two. (Lab. Code §1102.5, subd. (b).) Protected activity under Labor Code section 1102.5 requires the disclosure of, or opposition to, a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. (*Mueller v. County of L.A.* (2009) 176 Cal.App.4th 809, 821–822.) An express statement is not required, “only that an employee disclose information and that the employee reasonably believe the information discloses unlawful activity.” (*Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 593.)

Plaintiff does not identify any particular whistleblower activity, nor does he plead when, to whom, or what statutory violations he reported, and whether it was an agency or a supervisor with authority to investigate, discover, or correct the legal violations. Plaintiff argues that it is sufficient to allege that he disclosed information to his manager. (See Opp., 13:19-20.) However, the TAC only alleges that he “notifi[ed] Defendant of his restrictions, including his manager [...] [and] no steps were taken to determine whether Plaintiff's restrictions could be accommodated.” (TAC, ¶ 14, emphasis added.) The TAC does not allege that he reported information disclosing unlawful activity for which he was retaliated against.

Similarly, Labor Code section 232.5 prohibits an employer from discharging, formally disciplining, or otherwise discriminating “against an employee who discloses information about the employer's working conditions.” (Lab. Code, § 232.5, subd. (c).) Plaintiff fails to sufficiently allege that such a disclosure was made.

The court intends to sustain the demurrers to the eighth and ninth causes of action for failure to state facts sufficient to constitute a cause of action, with leave to amend.

*Tenth Cause of Action: Wrongful Termination in Violation of Public Policy*

Defendant demurs to this cause of action on the sole basis that it is derivative of the other claims of the TAC. As the court has determined that other claims of the TAC have not failed, the court intends to overrule the demurrer to this cause of action.

**Motion to Strike**

Defendant moves to strike the portions of the TAC whereby plaintiff requests and alleges support for punitive damages.<sup>2</sup>

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<sup>2</sup> Plaintiff's request for judicial notice is denied, and arguments relying on the evidence submitted for judicial noticed are disregarded. The court is not impressed by plaintiff's assertion that

## Legal Standard

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading; (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

Vague and conclusory allegations are not enough to justify a prayer for punitive damages. The plaintiffs must allege facts showing fraud, malice or oppression. (Civ. Code, § 3294; *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.) The plaintiff must also allege that defendant acted despicably. (Civ. Code, § 3294 subd. (c)(1)-(2); *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719-720.)

Civil Code section 3294, subdivision (a) provides:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Civil Code section 3294 was amended in 1987 to require a showing of despicable conduct as a predicate to the recovery of punitive damages. "Despicable conduct" is defined as conduct that is so vile, base or contemptible that it would be looked down on and despised by reasonable people.

Used in its ordinary sense, the adjective "despicable" is a powerful term that refers to circumstances that are "base," "vile," or "contemptible." (4 Oxford English Diet. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, "malice" requires more than a "willful and conscious" disregard of the plaintiffs' interests. The additional component of "despicable conduct" must be found. (Accord, BAJJ No. 14.72.1 (1992 Re-Rev.)); *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

(*College Hospital, Inc., v. Superior Court of Orange County, supra*, 8 Cal.4th at p. 725.)

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Super. Ct.* (1981) 117 Cal.App.3d 1, 6.) However, if, when looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid.*) Allegations that include conclusions of law or that are

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defendant should have independently located information not alleged in the TAC but "freely available" online. (See Strike Opp., 7:12-16.)



(27)

**Tentative Ruling**

Re: **Angela Moore v. William Ayyad**  
Superior Court Case No. 25CECG02042

Hearing Date: March 5, 2026 (Dept. 403)

Motion: Expedited Petition to Compromise Minor's Claim (Rhianna Moore)

**If oral argument is timely requested, it will be entertained on Thursday, March 12, 2026, at 3:30 p.m. in Department 403.**

**Tentative Ruling:**

To grant the amended petition filed on February 23, 2026. Orders Signed. No appearances necessary. The court sets a status conference for Thursday, June 4, 2026, at 3:30 p.m., in **Department 403**, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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:          on     3-4-26    .

(Judge's initials) (Date)