

**Tentative Rulings for May 21, 2026**  
**Department 502**

**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.

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| 25CECG01086 | <i>Christy Cabral v. Spacetel LLC</i> is continued to Thursday, July 2, 2026, at 3:30 p.m. in Department <u>501</u> .                |
| 25CECG03565 | <i>Annette Raygoza v. Mazda Motor of America Inc</i> is continued to Thursday, July 2, 2026, at 3:30 p.m. in Department <u>501</u> . |
| 25CECG01586 | <i>Philip Marin vs. Estate of Vera Lee Dyes</i> is continued to Thursday, June 18, 2026, at 3:30 p.m. in Department <u>501</u> .     |

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 502**

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(03)

**Tentative Ruling**

Re: ***In re Foster Farms Wage and Hour Cases***  
Case No. 21JCCP05166

Hearing Date: May 21, 2026 (Dept. 502)

Motion: Plaintiffs' Motion for Final Approval of Class Settlement

**Tentative Ruling:**

To grant plaintiffs' motion for final approval of class action settlement.

**Explanation:**

**1. Fairness, Reasonableness, and Adequacy of Settlement**

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, the court has already made a preliminary determination that the settlement is fair, reasonable, and adequate under the circumstances. Nothing has happened since the court made its order granting preliminary approval that would cause the court to change its decision. Since the court made its order granting preliminary approval, the class administrator sent out notices to the class members. No class members have objected, and only 57 out of over 46,000 class members have opted out of the settlement. The lack of objections and minimal number of opt-out requests indicates that the class overwhelmingly approves of the settlement. Therefore, the court intends to find that the settlement is fair, reasonable and adequate.

**2. Attorney's Fees and Costs**

Plaintiffs' counsel seeks attorney's fees of \$3,000,000, which is 1/3 of the gross settlement, plus costs of \$169,594.87. The court has already granted preliminary approval of the requested fees and costs, and no objections have been received from the class regarding the requested fees and costs. Therefore, the court intends to grant final approval of the request for \$3,000,000 in fees and costs.

**3. Payment to Class Representatives**





(34)

**Tentative Ruling**

Re: **Jane Doe No. 1 v. Hirahara, et al.**  
Superior Court Case No. 24CECG02869

Hearing Date: May 21, 2026 (Dept. 502)

Motion: by Plaintiffs for Terminating Sanctions, or in the Alternative, Issue and Evidentiary Sanctions

**Tentative Ruling:**

To deny.

**Explanation:**

Plaintiffs move for terminating sanctions, or evidentiary and issue sanctions in the alternative, pursuant to Code of Civil Procedure section 2023.030 against defendant Costco Wholesale Corporation due to its alleged spoliation of electronic evidence.

Under Code of Civil Procedure section 2023.030 sanctions for misuse of the discovery process are monetary, issue, evidence, terminating, or contempt sanctions. Where the discovery at issue is electronically stored information that has been deleted or altered pursuant to routine operations sanctions are limited. Code of Civil Procedure section 2023.030 states in pertinent part, "Notwithstanding subdivision (a), or any other section of this title, absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system. [¶] This subdivision shall not be construed to alter any obligation to preserve discoverable information." (Code Civ. Proc., § 2023.030, subd. (f)(1)-(2).)

Thus, where a party is under a duty to preserve electronically stored information, discovery sanctions may arise from the material alteration or deletion of electronically stored information. (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal.Appl.5th 1121, 1138.) "The duty to preserve evidence arises when the party in possession and/or control of the electronically stored information was objectively aware the evidence was relevant to reasonably foreseeable future litigation, meaning the future litigation was probable or likely to arise from an event, and not merely when litigation was a remote possibility." (*Ibid.*)

In the case at bench, plaintiffs seek sanctions in connection with defendant having failed to provide electronically stored video surveillance footage, metadata from a laptop used to open the memory card found in the recording device, and the laptop used to open the memory card. Defendant's responses to requests for production and a demand for forensic inspection indicate the surveillance footage for the requested time was written over and lost, and the laptop used to open the memory card had been sold in July 2024. (Milazzo Decl., Ex. L, M.)

There does not appear to be any dispute as to the timeline set forth in plaintiffs' moving papers: A recording device was found on January 10, 2024 and Costco personnel used a laptop from the display floor to open the memory card in the device. An internal investigation ensued between January 11 and 12, 2024. On January 24, 2024 Costco was served with a search warrant from the Fresno Police Department seeking records from December 13, 2023 to January 11, 2024. On May 30, 2024, plaintiffs' attorneys served a notice to preserve electronic and digital evidence on servers used by Costco and related entities, computers, smart phones, and other electronic devices used by current and former employees, owners, directors and management of Costco and relevant third parties. The notice also requested mirror image copies be made of the hard drives of desktop and laptop computers of all relevant officers, directors, managing agents and employees to preserve the electronic information. This action was initiated on July 5, 2024 and the initial discovery requests were served July 29, 2024.

Plaintiffs argue this timeline supports finding Costco was aware that it was in possession and control of electronically stored information relevant to reasonably foreseeable future litigation. Costco asserts that the conduct giving rise to the incident was criminal and wholly outside of defendant Hirahara's scope of employment and, thus unforeseeable as a basis of litigation against Costco. Defendant also asserts there is no relevant evidence within the surveillance footage or laptop to trigger a duty to preserve.

The court finds the circumstances support finding Costco was on notice of a duty to preserve the surveillance footage but not the laptop.

Costco has indicated that the surveillance footage at issue was provided in response to the Fresno Police Department search warrant and later over-written in accordance with its policies. The search warrant evinces foreseeable litigation regarding the incident and, in line with the standard set forth in *Victor Valley Union High School Dist. v. Superior Court*, Costco was under a duty to preserve relevant electronically stored information. The surveillance footage provided to the police is clearly relevant to the incident.

The necessity to preserve the laptop used to initially open the memory card from the device is less clear. The laptop was a floor display and subject to a procedure where the devices are regularly cleared and would have been cleared again before being sold to a Costco member. The device did not belong to any Costco employee nor was it used for regular business. Although there may have been relevant information in the laptop there is no evidence Costco was objectively aware that this laptop was relevant to foreseeable litigation and it does not fall into the categories of information or devices Costco was later given written notice to preserve.

### *Sanctions*

The court is guided by several principles in determining what sanctions to impose for a discovery violation. First, the sanction should not result in a windfall to the party seeking the discovery. The choice of sanctions should not give that party more than would have been obtained if discovery had been provided. (See *Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1194.)



(47)

**Tentative Ruling**

Re: **Alexandra Seifert v. Paul Michaelides**  
Superior Court Case No. 25CECG03846

Hearing Date: May 21, 2026 (Dept. 502)

Motions (x2): Defendants, Paul Leon Michaelides, D.D.S., and Paul L. Michaelides, D.D.S., M.Sc.D., Inc.'s, Demurrer and Motion to Strike Plaintiff Alexandra Seifert's Complaint

**Tentative Ruling:**

To sustain Paul Leon Michaelides, D.D.S., and Paul L. Michaelides, D.D.S., M.Sc.D., Inc.'s, demurrer to the third, and fifth through ninth causes of action. (Code Civ. Proc., § 430.10, subd. (e).) Leave to amend is denied with respect to the third, and sixth through ninth causes of action. Leave to amend is granted with respect to **only** the fifth cause of action.

To grant defendants' motion to strike allegations relating to punitive damages, as set forth in defendants' notice of motion (i.e., Complaint, p. 2 at ln. 12, pg. 7 at lns. 17-18, pg. 8 at ln. 23, pg. 9 at ln. 18, pg. 11 at ln. 3 and lns. 26-27, pg. 12 at lns. 9-10 and 25-27, pg. 12 at ln. 28 through pg. 13 at ln. 10, and pg. 13 at lns. 11-12) as well as the references declaratory relief (i.e., Complaint, pg. 2, lns. 12-13 and pg. 12 from ln. 28 to pg. 13, ln. 10.)

The motion to strike is denied in all other respects as moot due to the Court's ruling on the demurrer or as premature

Plaintiff is granted 20 days leave to file her First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

**Explanation:**

Plaintiff, Alexandra Seifert, ("Seifert" or "plaintiff") filed her complaint against defendants Paul Leon Michaelides, D.D.S., and Paul L. Michaelides, D.D.S., M.Sc.D., (collectively "defendants") asserting nine causes of action pursuant to state and federal civil rights laws, as well as the state and federal constitutions. Seifert's claims arise from a visit to Dr. Michaelides' dental office on August 15, 2022 when COVID-19 restrictions were in place including a mask mandate for healthcare settings. Seifert alleges that, upon presenting to the dental office for treatment, plaintiff was asked to wear a face mask. (Complaint ¶¶7-9.) The complaint was filed on August 15, 2025.

Seifert's complaint contended she had an unspecified disability which prevented her from being able to wear a face mask and that, despite requesting an accommodation, she was refused treatment unless she wore a mask. (Complaint ¶¶10-12.) It is further alleged that Seifert was then threatened and intimidated by office staff, causing her to leave the office. (Complaint ¶¶13-18.)

## *Demurrer*

Defendants demur to the third, fifth through ninth causes of action because the claims are time barred or insufficient.

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) As relates to a complaint, the test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of the complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

### *Third Cause of Action – Violation of the Bane Act*

Under the third cause of action, Seifert alleges defendants violated Civil Code section 52.1, the Bane Act. Seifert's Bane Act claim is specifically premised on alleged assault, battery, threats, physical confrontation, and being coerced and intimidated. (Complaint, ¶138, pg.9:12-18.) Seifert's attempt to reframe her Bane Act claim as one limited to merely an alleged denial of a "reasonable accommodation" (Opposition, p.5:23-25), and not an action for assault, battery, or injury, is contradicted by her own complaint.

A cause of action under the Bane Act based on the violation of a constitutional right is subject to the two-year statute of limitations for injury caused by the wrongful act of another. (Code Civ. Proc., § 335.1; *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 760.) Here, the incident at defendants' business occurred August 15, 2022 and the complaint was filed three years later, on August 15, 2025.

Accordingly, Seifert's third cause of action is time-barred by the two-year statute of limitations under Code of Civil Procedure section 335.1, and defendants' demurrer to the third cause of action as time barred, is sustained, without leave to amend.

### *Fifth Cause of Action - California Civil Rights Laws and Enforcement of Mask Policy*

Seifert's fifth cause of action is for an alleged violation of "California Civil Rights Laws Based on Arbitrary and Discriminatory Enforcement of Mask Policy".

A plaintiff pleading a violation of a statutory duty "must specifically allege the applicable statute or regulation," as that is the only way for the defendant to be advised of the factual and legal basis of the claim against it. (*Lehto v. City of Oxnard* (1985) 171 Cal.App.3d 285, 292–293.) If a plaintiff fails to identify the provision of law allegedly violated by the defendant, they "fail to meet their burden of stating and substantiating

a legally sufficient claim of unlawfulness.” (*Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 901–902.)

Furthermore, contrary to plaintiff's assertions, a defendant may file a demurrer and answer at the same time. (Code Civ. Proc., §430.0, subd. (c).)

Accordingly, defendants' demurrer to the fifth cause of action is sustained. (Code Civ. Proc., §430.10, subd. (e).) Leave to amend will be granted to the extent Plaintiff can allege an applicable statute or regulation that Defendant allegedly violated.

#### *Sixth through Ninth Causes of Action – Statute of Limitations*

In California, the general statute of limitations for personal injury actions is the two-year period set forth at California Civil Procedure Code section 335.1. This applies to Seifert's personal injury actions premised on: the sixth cause of action pertaining to the invasion of privacy (*Maheu v. CBS, Inc.* (1988) 201 Cal. App. 3d 662, 676); the seventh cause of action premised on the California Equal Protection Clause (*W. Shield Investigations & Sec. Consultants v. Superior Court* (2000) 82 Cal. App. 4th 935, 953); and the eighth and ninth causes of action which are premised on personal injury actions under 42 U.S.C. § 1983 claims. (*Maldonado v. Harris* (9th Cir. 2004) 370 F.3d 945, 954).

The complaint was filed on August 15, 2025, which is three years after the date of the alleged incident that took place on August 15, 2022 (Complaint, ¶17, pg. 3:13), and well past the two-year statute of limitations.

Accordingly, defendants' demurrer to the sixth through ninth causes of action is sustained as being time barred without leave to amend.

#### *Sixth Cause of Action – Constitutional Rights to Privacy, Bodily Integrity and Dignity*

Seifert's sixth cause of action asserts three types of violations pursuant to Article 1, section 1 of the California state Constitution, specifically, the rights to bodily integrity, dignity, and privacy.

With respect to the right to privacy, Seifert alleges: “Defendants violated Plaintiff's right to privacy by enforcing policies that result in discrimination and without proper accommodation and by making false claims regarding Plaintiff's conduct to law enforcement.” (Complaint, ¶41, pg.10:27-11:2.) Furthermore, Seifert's integrity and dignity claims are based on allegation pertaining to assault and battery. (Complaint, ¶41, pg.10:18-11:4.)

California Constitution, Article I, Section 1, provides, “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” In *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1 (“*Hill*”), the California Supreme Court laid out the standards to be used in assessing whether particular conduct should be considered a violation of an individual's privacy rights. Under *Hill*, “[t]he party claiming a violation of the constitutional

right of privacy established in Article I, Section 1 of the California Constitution must establish (1) a legally protected privacy interest, (2) a reasonable expectation of privacy under the circumstances, and (3) a serious invasion of the privacy interest." (*Id.*, pgs. 39–40.)

Under these circumstances, Seifert's allegations do not allege a protected privacy interest. Seifert's allegations may violate other rights, but not necessarily privacy rights.

Furthermore, the right to bodily integrity is implied from the right to privacy. (*In re Luis F.* (2009) 177 Cal. App. 4th 176, 183 (*Luis*).) Under these circumstances, the complaint is insufficient as to what the privacy right has been infringed upon, whether there is a reasonable expectation of privacy under the circumstances, and whether in fact there was a serious invasion of that privacy interest.

Finally, defendants articulate that "Article 1, Section 1, does not explicitly include a "right to dignity". There is an explicit right to dignity set forth in Article 1, Section 28(b), but that right is afforded only to victims of crime and so has no application herein." (*Moving Papers*, pg. 4:24-26.) Plaintiff does not contest this argument.

Accordingly, the demurrer to the sixth cause of action is sustained. (Code Civ. Proc., §430.10, subd. (e).)

*Seventh through Ninth Causes of Action – Violation of California's and the United States Equal Protection Clause; Violation of Federal Constitutional Privacy Rights*

Seifert's seventh cause of action asserts a violation of the California Equal Protection Clause, under Article I, Section 7. Seifert alleges "Defendants arbitrarily enforced a mask requirement, changing grounds therefore, against Plaintiff without affording reasonable accommodations or an interactive process. Plaintiff was denied equal access and treatment." (Complaint, ¶42, p11:12-14.)

Seifert's eighth cause of action asserts a violation of the Equal Protection Clause under the Fourteenth Amendment of the United States Constitution. Seifert alleges that "Defendants under color of state law via purported enforcement of a state agency requirement, deprived Plaintiff of these constitutional rights by discriminating based on disability and denying reasonable accommodations." (Complaint, ¶43, p11:24-26.)

Seifert's ninth cause of action contends that defendants violated the "Federal Constitutional Rights to Privacy and Bodily Integrity." Seifert alleges "Defendants' acts of physical interference, false reporting, and discriminatory enforcement of policies violated these fundamental rights." (Complaint, ¶44, p.12:7-8.)

Each of these causes of action require state action or persons acting under color of state law. (See *Martin v. Heady* (1980) 103 Cal.App.3d 580, 586 [with respect to Article I, Section 7]; *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 714 [provides that "Section 1983 [which applies to causes of action with respect to the Fourteenth Amendment or generally any action for relief from a deprivation of "any rights, privileges, or immunities secured by the Constitution] applies to persons acting 'under color of' state law,... and

normally does not apply to private actors,... 'A private individual may be liable under section 1983 if she conspired or entered joint action with a state actor....' "; *Graham v. Connor* (1989) 490 U.S. 386, 393–94.)

Seifert fails to allege how defendants acted under color of state law. Seifert does not dispute that defendants acting under state law is an essential element with respect to the seventh through ninth causes of action, but rather argues that her complaint is sufficient in establishing this element:

“Defendants acted under color of state law by enforcing what they claimed was a state-issued health requirement and by affirmatively invoking the coercive power of the state through a knowingly false police report in order to secure Plaintiff's removal and denial of services. By doing so, Defendants effectively acted as state actors under the joint action doctrine, using state authority to further discriminatory goals. Defendants' conduct deliberately denied Plaintiff equal protection under the law based on her disability, interfered with her rights to bodily integrity, autonomy, and personal safety, and subjected her to foreseeable harm.”

(Seifert's Opposition Papers, pg. 9:6-12.)

This Court disagrees. The US Supreme Court provided in *Lugar v. Edmondson Oil Corp.* (1982), 457 U.S. 922, 939 (“*Lugar*”) that the analysis begins first by determining the following two questions: “the first question is whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority. The second question is whether, under the facts of this case, respondents, who are private parties, may be appropriately characterized as “state actors.”

“When addressing whether a private party acted under color of law, we therefore start with the presumption that private conduct does not constitute governmental action. See *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir.1992) (“Only in rare circumstances can a private party be viewed as a ‘state actor’ for section 1983 purposes.”); *Price v. Hawaii*, 939 F.2d 702, 707–08 (9th Cir.1991) (“[P]rivate parties are not generally acting under color of state law.”). In order for private conduct to constitute governmental action, “something more” must be present. See *Lugar*, 457 U.S. at 939, 102 S.Ct. 2744 (“Action by a private party pursuant to this statute, without something more, was not sufficient to justify a characterization of that party as a ‘state actor.’ ”). Courts have used four different factors or tests to identify what constitutes “something more”: (1) public function, (2) joint action, (3) governmental compulsion or coercion, and (4) governmental nexus. See *id.*; *Johnson v. Knowles*, 113 F.3d 1114, 1118 (9th Cir.), cert. denied, 522 U.S. 996, 118 S.Ct. 559, 139 L.Ed.2d 401 (1997); *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1486 (9th

Cir.1995); *Gorenc v. Salt River Project Agric. Improvement and Power Dist.*, 869 F.2d 503, 506 (9th Cir.1989)."

(*Sutton v. Providence St. Joseph Medical Center* (9th Cir. 1999) 192 F.3d 826, 835–836.)

Seifert contends that her complaint does not necessarily need to address how the defendants were state actors where Seifert provides that "[w]hile Defendants argue there was no "state action", this is a factual issue and subject to discovery, which so far Defendants have blatantly [SIC] evaded." (Seifert's Opposition Papers, pg. 10:4-5.)

A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05.) Questions of fact cannot be decided on demurrer. (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) Because a demurrer tests only the sufficiency of the complaint, a court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718, fn.7.)

Furthermore, Seifert has not adequately alleged what right or privilege has been deprived. Generally speaking, there is no fundamental constitutional right to not wear a mask. (See *Denis v. Ige*, 538 F. Supp. 3d 1063, 1080-81 (D. Haw. 2021) (dismissing a substantive due process challenge to a state-wide mask mandate, since " 'the right to breathe oxygen without restriction' is not a fundamental right"); See *Branch-Noto v. Sisolak*, 576 F. Supp. 3d 790, 799 (D. Nev. 2021) ("[T]he right to parent as one sees fit does not entitle parents to undermine local public-health efforts during a global pandemic by refusing to have their children comply with a school mask requirement, particularly when they've affirmatively chosen that option over the maskless, distance-learning alternative that [the district] also made available."); *Gunter v. N. Wasco Cnty. Sch. Dist. Bd. of Educ.*, 577 F. Supp. 3d 1141, 1155-56 (D. Or. 2021); *Guilfoyle v. Beutner*, No. 2:21-CV-05009-VAP (MRWx), 2021 WL 4594780, at \*17 n.8 (C.D. Cal. Sept. 14, 2021).)

Since Seifert did not allege any facts demonstrating that defendants were state actors, or adequately allege what right or privilege has been deprived, the demurrer with respect to seventh through ninth causes of action are sustained. Further, it is obvious to the court that there is no way Seifert can plead that the defendants are state actors. Therefore, the demurrer to these causes of action is sustained, without leave to amend.

#### *Motion to Strike*

Defendants move to strike portions of Seifert's complaint for several reasons such as the pleadings are not supported by law, mootness, etc.

The court may, upon a motion ... or at any time in its discretion, and upon terms it deems proper: (a) [s]trike out any irrelevant, false, or improper matter inserted in any pleading[:];... [and/or] (b) [s]trike 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. Pro., § 436.) An "irrelevant matter," or "immaterial allegation," means: (1) an allegation that is not essential to the statement of a claim or defense; (2) an allegation that is neither

pertinent to nor supported by an otherwise sufficient claim or defense; or (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (Code Civ. Pro., § 431.10(b).)

### *Punitive Damages*

Defendants make the motion to strike the claim and prayer for punitive damages and the allegations set forth in paragraphs 1, 33, 36, 41, 42, 43, 44 of Seifert's Complaint and paragraph 48 of plaintiff's prayer for relief without leave to amend on the basis that plaintiff's prayer for punitive damages against defendants as pled is not supported by law.

A plaintiff may seek punitive damages only "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294(a).) "In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff." (*Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1255 [internal citations omitted].) "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Id.*) Furthermore, there is a heightened pleading requirement regarding a claim for punitive damages. (*Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041-1042.).

Civil Code section 3294, subdivisions (c)(1)-(3) define "malice," "oppression" and "fraud" as follows:

(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

"California has traditionally allowed punitive damages to be assessed against an employer (or principal) for the acts of an employee (or agent) only where the circumstances indicate that the employer himself was guilty of fraud, oppression, or malice. Thus, even before section 3294, subdivision (b) was added to the Civil Code in 1980, the courts required evidence that the employer authorized or ratified a malicious act, personally committed such an act, or wrongfully hired or retained an unfit employee. For corporate or other large organizations, such conduct must have been performed by an " 'agent ... employed in a managerial capacity and ... acting in the scope of

employment,' " or ratified or approved by a " 'managerial agent' " of the organization. [Citations Omitted.] The obvious point is that in performing, ratifying, or approving the malicious conduct, the agent must be acting as the organization's representative, not in some other capacity." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 723 [34 Cal.Rptr.2d 898, 882 P.2d 894], as modified on November 23, 1994.)

With respect to the eighth and ninth causes of action, punitive damages may be permitted if a defendant's "conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." (*Smith v. Wade* (1983) 461 U.S. 30, 56.)

Here, Seifert has made broad allegations in her complaint that do not rise to the levels that are prescribed under Civil Code section 3294, subdivisions (c)(1)-(3). The complaint does not allege the requisite intent required, the factual circumstances demonstrating this intent, or facts explaining why defendants should be subject to punitive damages for the acts of its employees. Accordingly defendants' motion to strike is granted, without leave to amend.

#### *Civil Penalties*

Defendants move to strike the civil penalty allegations pursuant to Civil Code section 52.1 at paragraph 38 and paragraph 47 of plaintiff's prayer is moot as the Court has sustained the demurrer as to the Bane Act.

Furthermore, Seifert's contention that she is allowed to claim a civil penalty pursuant to the Bane Act because defendants did not meet and confer on this issue, lacks merit. Any alleged failure to meet and confer does not authorize denial of a motion to strike. (Code Civ. Proc., § 435.5, subd. (a)(4).)

#### *Declaratory Relief*

Defendants seek to strike mention of declaratory relief (Complaint, ¶11, pg. 2:12-13) and declaratory relief sought. (Complaint, ¶149, pgs. 12:28-13:10.)

“Declaratory relief is appropriate where there is a justiciable controversy, but not where the dispute is moot, or only hypothetical or academic.’ (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 481 [6 Cal. Rptr. 3d 367].) When questions presented by an action for declaratory relief are, or have become, moot, a court has no duty to proceed to determine rights and duties of the parties and the action should be dismissed. (Citations omitted.)” (*Ghost Golf, Inc. v. Newsom* (2024) 102 Cal.App.5th 88, 100.)

Evidence Code section 452, subdivision (b), the court may take judicial notice of the “Regulations ...issued by or under the authority of ...any public entity.” Pursuant to Evidence Code section 452, subdivision (c), the court may take judicial notice of “Official acts” of the state, including information on government agency websites (*Moehring v. Thomas* (2005) 126 Cal.App.4th 1515, 1523, fn. 4; *Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1050, fn. 7 [courts may take judicial notice of information published on

