

Tentative Rulings for May 28, 2026
Department 501

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.*

24CECG01648 *Licea v. Western Dental Services, Inc. – note: hearing will go forward in Department 502*

20CECG01307 *Zart Transmission, Inc. v. Loveman – note: hearing will go forward in Department 502*

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

25CECG02378 *Elisa Wheeler v. Sara Spane is continued to Wednesday, July 8, 2026, at 3:30 p.m. in Department 403.*

25CECG03165 *Rodolfo Chavez v. Genessee Villa is continued to Wednesday, July 8, 2026, at 3:30 p.m. in Department 403.*

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(37)

Tentative Ruling

Re: **Feuersinger v. Rogers**
Superior Court Case No. 25CECG00927

Hearing Date: May 28, 2026 (Dept. 501)

Motion: Defendants' Demurrer to the Third Amended Complaint

Tentative Ruling:

To overrule the demurrers to the second cause of action; the third cause of action; the fifth cause of action as to defendants Fresno County, Perez, and Gonzalez; the sixth cause of action; and the seventh cause of action.

To sustain the demurrer to the fifth cause of action, as to defendant Ida Rogers only, with leave to amend. Plaintiff is granted 10 days' leave to file the Fourth Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

If oral argument is timely requested, such argument will be entertained on Friday, May 29, 2026, at 1:30 p.m. in Department 501.

Explanation:

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is 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 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).) Leave to amend should be granted if there is a reasonable possibility that plaintiff could state a cause of action. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318.)

Second Cause of Action: Hostile Work Environment and Fifth Cause of Action: Harassment

Defendants demur to these causes of action on the grounds that plaintiff fails to state causes of action. In the second cause of action, plaintiff alleges a Hostile Work Environment against defendants the County, Perez, and Gonzalez, in violation of Government Code section 12940 subdivision (j). In the fifth cause of action, she alleges Harassment Due to Physical Disability against all defendants in violation of Government Code section 12940, subdivision (a).

To allege hostile work environment in violation of FEHA, a plaintiff must allege she was subjected to harassing conduct that was (1) unwelcomed, (2) because of a disability, and (3) was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment. (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 627.)

Plaintiff in her Third Amended Complaint ("TAC") has alleged that she sustained a neck and trapezius muscle injury, resulting in neuropathy and nerve damage, and that this constitutes a physical disability under Government Code section 12926, subdivisions (m)(1)(A) and (B). (TAC, ¶ 15.) Defendants do not appear to dispute that this qualifies as a disability. Plaintiff has alleged that the "harassing conduct" was unwelcome. (*Id.*, ¶ 54.) Plaintiff has alleged that "Gonzalez made constant comments" to Rogers about plaintiff taking time off and breaks and "constantly told" plaintiff that plaintiff was faking her injuries. (*Id.* at ¶ 26.) Plaintiff has also added allegations that Gonzalez would constantly stare at plaintiff in a way plaintiff perceived as expressing disapproval. (*Ibid.*) Plaintiff has also alleged that Perez scolded her for the amount of time she took off work following the injury. (*Id.* at ¶ 24.) Plaintiff has added allegations describing the alleged severity and pervasiveness. The court overrules the demurrer to the second cause of action.

To establish a prima facie case of unlawful harassment under FEHA, a plaintiff must show (1) she was a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on the plaintiff's membership in an enumerated class; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. (*Galvan v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 549, 563.) "[H]arassment 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[.] [C]ommonly necessary personnel management actions do not come within the meaning of harassment." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707, quoting from *Reno v. Baird* (1998) 18 Cal.4th 640, 646.)

As discussed above, plaintiff alleges the fifth cause of action against all defendants. However, for defendant Rogers, plaintiff has not alleged any conduct which is not related to personnel management actions. Plaintiff alleges Rogers' reluctance to prepare an injury report based on timing of the injury, a call regarding placing plaintiff on a leave of absence, receiving a complaint from plaintiff, and instructing plaintiff to pursue FMLA for a diagnosis of lupus. (TAC, ¶¶ 17, 21, 27, 32-33.) While the court is satisfied that plaintiff has sufficiently alleged the fifth cause of action as to defendants County of Fresno, Perez, and Gonzalez, the court would agree that the pleadings are insufficient as to defendant Rogers. Thus, the court overrules the demurrer as to defendants County of Fresno, Perez, and Gonzalez, but sustains as to defendant Rogers, with leave to amend.

Third Cause of Action: Retaliation

"Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee 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, internal citations omitted.)

In her TAC, plaintiff has alleged that she needed time off to attend medical appointments, that these appointments were related to her disabilities, that she requested such as an accommodation, but was ultimately denied and placed on a PIP due to her absences when she attended medical appointments. (TAC, ¶ 63.) Plaintiff has sufficiently alleged the third cause of action. The court overrules the demurrer to this cause of action.

Sixth Cause of Action: Failure to Accommodate and Seventh Cause of Action: Failure to Engage in Good Faith Interactive Process

To establish a failure to accommodate claim, plaintiff must show (1) she has a disability covered by FEHA; (2) she can perform the essential functions of the position; and (3) her employer failed reasonably to accommodate her disability. (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 256–257.) Related to the reasonable accommodation, under FEHA, it is an unlawful practice for an employer to fail to engage in a good faith interactive process with the employee to determine an effective reasonable accommodation if an employee with a known physical disability requests one. (Govt. Code, § 12940, subd. (n).)

Plaintiff claims that she requested the County make reasonable accommodations for her physical disability so that she would be able to perform the essential job requirements. (TAC, ¶ 90.) She asserts that the County refused to accommodate her and also refused to discuss any other potential reasonable accommodation it might afford to plaintiff. (*Ibid.*) She argues that the County failed to engage in a good faith interactive process with her after she reported her disability. (*Id.* at ¶ 99.)

Plaintiff alleges that she had several restrictions such as not turning her neck, and lifting and pulling restrictions. (TAC, ¶ 19.) The County accommodated her for about two weeks, but then plaintiff claims she was told that was being placed on a leave of absence since the County could not accommodate her as they needed employees on the floor to help with clients. (*Id.* at ¶ 21.) When she returned from her leave, plaintiff alleges that she was placed on a Performance Improvement Plan ("PIP") due to her absences caused by lack of accommodation. (*Id.* at ¶ 25.) The TAC purports that she was terminated under the context of attendance issues, which stemmed from the County's failure to accommodate her despite knowing about her injury, doctor's advice, and her approval for FMLA accommodation. (*Id.* at ¶¶ 23-35.)

Plaintiff has added allegations that she was able to perform her job duties, if provided the accommodation of one extra day off per month for attending medical appointments. (TAC, ¶ 33.) Plaintiff alleges her job duties were clerical and administrative, including tasks such as phone calls, making copies, managing correspondence, and providing information to the public. (*Ibid.*) As such, plaintiff has alleged her ability to perform her job duties, what these duties were, and the accommodation requested. She has also alleged that while the accommodation was approved, she was terminated for using the day off accommodation. (*Id.* at ¶¶ 33-35.) To the extent defendants challenge plaintiff's claims, these challenges would go to the

merits, which is inappropriate on demurrer. Plaintiff has sufficiently alleged the sixth and seventh causes of action. The court overrules the demurrers to these causes of action.

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

Tentative Ruling

Issued By: DTT **on** 5/26/2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Martinez v. Lelievre et al.**
Superior Court Case No. 22CECG02979

Hearing Date: May 28, 2026 (Dept. 501)

Motion: by Plaintiffs to Compel Deposition

Tentative Ruling:

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

If oral argument is timely requested, such argument will be entertained on Friday, May 29, 2026, at 1:30 p.m. in Department 501.

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: DTT on 5/27/2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Reich v. Srabian et al.**
Superior Court Case No. 21CECG02078

Hearing Date: May 28, 2026 (Dept. 501)

Motion: Motion for Summary Judgment

Tentative Ruling:

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

If oral argument is timely requested, such argument will be entertained on Friday, May 29, 2026, at 1:30 p.m. in Department 501.

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: DTT on 5/27/2026.
(Judge's initials) (Date)