Tentative Rulings for June 17, 2026
Department 503

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

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

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Great American Investment, Inc. v. Elalami***
Case No. 21CECG03674

Hearing Date: June 17, 2026 (Dept. 503)

Motion: Defendant Mamdouh Elalami's Motion for Leave to File Cross-Complaint

Tentative Ruling:

To grant defendant Mamdouh Elalami's motion for leave to file his cross-complaint. Defendant shall serve and file his cross-complaint within ten days of the date of service of this order.

Explanation:

"A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action." (Code Civ. Proc., § 426.50.) "Leave may be granted in the interest of justice at any time during the course of the action." (Code Civ. Proc., § 428.50, subd. (c).)

"California cases have generally 'approved a broad and liberal interpretation of [Code Civ. Proc., section 428.10's predecessor] to permit a declaration of the rights and liabilities of all parties involved in a particular case.'" (*Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1187, citations omitted.)

"The legislative mandate is clear. A policy of liberal construction of section 426.50 to avoid forfeiture of causes of action is imposed on the trial court. A motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith." (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 98–99.)

"Notwithstanding the holding in *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 559 [140 Cal.Rptr. 330], that 'the statutory terminology [of section 426.50] allows the court some *modicum of discretion* in determining whether or not a defendant has acted in good faith' (italics added), it is our view that *substantial evidence* must support the trial court's decision." (*Ibid*.)

"'"Bad faith" is defined as "[t]he opposite of 'good faith,' generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a

neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake ..., but by some interested or sinister motive[,] ... not simply bad judgment or negligence, but rather ... the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will.'" (*Id*. at p. 100, citations omitted.)

In *Silver Organizations v. Frank, supra*, the Court of Appeal reversed the trial court's denial of appellants' motion to file a cross-complaint, finding that there was no evidence that appellants' failure to file the cross-complaint earlier was a product of bad faith. "Our review of the entire record fails to reveal, directly or inferentially, any substantial evidence of bad faith by the appellants. Looking at the entire period between the filing of the complaint and the denial of the section 426.50 motion, a time frame of less than six months, we find nothing in appellants' words or conduct remotely suggesting dishonest purpose, moral obliquity, sinister motive, furtive design or ill will." (*Ibid*.) "While it may be argued that appellants, acting as their own counsel, may have been guilty of neglect, inadvertence or oversight, thereby causing delay, section 426.50 expressly disallows denial of a motion based on these grounds. There must be bad faith and this record fails to demonstrate that element. We conclude the late filing of the motion to file a compulsory cross-complaint absent some evidence of bad faith is insufficient evidence to support denial of the motion." (*Id.* at p. 101.)

On the other hand, in *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, the Court of Appeal found that the trial court has discretion to deny a motion to file a cross-complaint where the defendants acted in bad faith. "Where the defendant fails to act for a period of over 30 days and waits until the first day of trial, such conduct may be interpreted as evidence of a lack of good faith *especially* when coupled with the long history of litigation between the parties, which demonstrates that both sides were jockeying for position over the right to a jury trial." (*Id*. at p. 559, italics in original.)

In *Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, the Court of Appeal held that the trial court abused its discretion in denying the defendants' motion to file a cross-complaint, despite defendants' lengthy delay in seeking leave to file the cross-complaint. "Real party in interest Worth, in seeking to support the trial court's ruling in the instant case, points to the fact that petitioner waited 23 months after service of the complaint, and 16 months after it had filed its answer to the complaint, before asserting the right to file a cross-complaint. We have no doubt that petitioner, Foot's Transfer & Storage, as defendants are sometimes wont to do, engaged in as much delay in this litigation as possible. But section 426.50, however, expressly mentions a party's 'neglect' as one circumstance under which relief may be given. There is nothing in the record before us which suggests that petitioner was unusually reprehensible in this regard." (*Id*. at p. 903.)

In addition, the *Foot* court found that the real party in interest would not suffer any prejudice if the court allowed the filing of the cross-complaint. "[W]e fail to perceive any substantial injustice or prejudice to the real party in interest Worth in this litigation by the filing of petitioner Foot's Transfer & Storage's cross-complaint, as belated as it may be. The correspondence of counsel establishes that neither side was unaware of the claims of the other. Similarly, the discovery undertaken in 1979 also indicates a lack of any such unawareness. [¶] We hold, therefore, that the evidence to support the trial court's denial of petitioner's motion to file a cross-complaint was insufficient as a matter of law in view of the well established liberality with which section 426.50 of the Code of Civil Procedure

is to be applied. It is preferable that the parties have their day in court." (*Id*. at pp. 903–904.)

In the present case, while defendant Mamdouh Elalami[1] did engage in a lengthy delay before seeking leave to file his cross-complaint, there is no substantial evidence that his delay in seeking leave to file the cross-complaint was the result of bad faith, or that GAI would suffer any prejudice if the court grants leave to file the cross-complaint. As discussed above, there is a strong policy in favor of granting leave to file cross-complaints so that all of the parties' claims can be heard and resolved on the merits. (Code Civ. Proc., § 428.50.) Absent substantial evidence that the moving party has acted in bad faith, the court must grant a motion to file the cross-complaint, even up to the day of trial. (*Ibid*; see also *Silver Organizations v. Frank, supra*, at p. 99-101.)

Here, Mamdouh's new attorney claims that he sought to file the cross-complaint as soon as he reviewed the case file after being retained and determined that Mamdouh had viable claims for breach of contract and other claims based on GAI's alleged violation of the lease. (Sarabian decl., ¶¶ 4-6.) He then filed his motion for leave to file the cross-complaint in January of 2025, soon after being substituted into the case as Mamdouh's counsel. (*Id*. at ¶ 6.) Thus, Mamdouh has met his burden of showing that he has sought to file his cross-complaint in good faith.

In its opposition, plaintiff GAI argues that Mamdouh has substantially and prejudicially delayed in seeking to file his cross-claims, as the case has been pending since December of 2021 and Mamdouh filed his answer in February of 2022. The parties went to arbitration on the issue of ownership of the property and whether GAI had a right of first refusal with regard to the sale of the property in April of 2023. The arbitrator issued his final decision in August of 2023. The court then confirmed the arbitrator's decision and entered a judgment based on the decision on April 2, 2024. The Court of Appeal later reversed the trial court's decision and remanded the matter back to the lower court to rehear Zeyad's motion to vacate or correct the award.

Yet delay in seeking leave to file a cross-complaint is not enough to justify denying a party the right to bring a cross-complaint. (*Silver Organizations, supra*, at p. 101.) Here, while Mamdouh did delay substantially in seeking leave to file his cross-complaint, there is no evidence that he delayed in order to obtain an unfair advantage or for any other improper reason.

GAI also contends that Mamdouh and his former attorney have been aware of their potential cross-claims based on the failure to repair the property or pay Mamdouh the insurance proceeds from the fire since at least September of 2023. GAI claims that the parties met in September of 2023, after the arbitrator had issued his final award, to discuss the issue of whether GAI was going to repair the property. (Lovegren-Tipton decl., ¶ 16.) Mamdouh's then-attorney also sent a letter on November 10, 2023, demanding that GAI make repairs to the property or pay the insurance proceeds to him within ten days. (*Id*. at ¶ 17.) Thus, GAI concludes that Mamdouh and his attorneys have been fully aware since at least September of 2023 that they had potential cross-claims against GAI,

[1] The court will refer to defendant Mamdouh Elalami by his first name, as his brother Zeyad Elalami is also a party to the case. No disrespect is intended.

and their purported "epiphany" in late 2024 that they might have valid cross-claims is "disingenuous, at best." (*Id*. at ¶ 18.)

However, in his reply, Mamdouh contends that the only reason that he waited to file his cross-complaint against GAI was that GAI and Rassamni had promised repeatedly that they would use the insurance proceeds to repair the property. (Mamdouh Reply decl., ¶¶ 2, 3.) Mamdouh and Rassamni have been friends for over 20 years, so Mamdouh trusted Rassamni to keep his word and make the repairs. (*Id*. at ¶ 2.) Mamdouh also did not believe that it would make sense to bring his cross-claims until the arbitration had resolved the issue of who owned the property. (*Ibid*.)

Therefore, while Mamdouh did engage in a lengthy delay before seeking to bring his cross-claims, it does not appear that the delay was the product of bad faith on Mamdouh's part. Rather, it appears that he trusted his longtime friend Rassamni's promises that he would repair the property, and thus did not bring his cross-claims until after the arbitration had concluded. Also, there is no evidence that Mamdouh has gained any unfair advantage by delaying in filing his cross-complaint, or that GAI will be prejudiced by the delay. There is no trial date set in the case, and the parties have apparently not engaged in any discovery on the issues raised by the cross-complaint. Thus, it does not appear that Mamdouh has delayed in order to obtain an advantage over GAI.

While GAI accuses Mamdouh of seeking to relitigate the issues that have already been resolved by the arbitration, the arbitrator's award did not resolve the question of whether GAI had to pay for repairs to the property or whether it is liable for failing to pay the insurance proceeds to Mamdouh. The arbitrator's award only resolved the issues of who has the ownership of the property and whether GAI had the right of first refusal, as well as the question of damages related to the sale of the property. The award never directly addressed the question of who must pay for repairs to the property. Therefore, Mamdouh's cross-complaint is not seeking to relitigate the issues that have already been resolved by the arbitration, and allowing him to file the cross-complaint will not cause any real prejudice to GAI.

On the other hand, there would be considerable prejudice to Mamdouh if the court denies leave to file the cross-complaint, as he would be unable to seek any relief despite GAI's alleged failure to repair the property or pay the insurance proceeds to him. Therefore, in light of the strong public policy in favor of allowing parties to have their claims heard on the merits, the court intends to grant the motion to file the cross-complaint.

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

Tentative Ruling
Issued By: JS on 6/11/2026.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Elalami v. Great American Investments, Inc.***
Case No. 25CECG03513

Hearing Date: June 17, 2026 (Dept. 503)

Motion: Defendants' Demurrer to Complaint

Tentative Ruling:

To sustain defendants' demurrer to plaintiff's entire complaint, without leave to amend, for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Explanation:

First, defendants demur to the complaint on the ground that it is barred by the doctrines of *res judicata* or collateral estoppel. "'Res judicata' describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, 'precludes relitigation of issues argued and decided in prior proceedings.' Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896–897, citation omitted.)

"'As generally understood, "[t]he doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy." The doctrine "has a double aspect." "In its primary aspect," commonly known as claim preclusion, it "operates as a bar to the maintenance of a second suit between the same parties on the same cause of action." "In its secondary aspect," commonly known as collateral estoppel, "[t]he prior judgment ... 'operates'" in "a second suit ... based on a different cause of action ... 'as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.' [Citation.]" [Citation.] "The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding."'" (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 797, citations omitted.)

"[W]here the causes of action are different but the parties are the same, the doctrine applies so as to render conclusive matters which were decided by the first

judgment. As this court said in *Todhunter v. Smith*, 219 Cal. 690, 695 [28 Pac. (2d) 916]: 'A prior judgment operates as a bar against a second action upon the same cause, but in a later action upon a different claim or cause of action, it operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.'" (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 201–202.)

"But the rule goes further. If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." (*Id*. at p. 202, italics in original.)

Here, defendants argue that plaintiff's claims for fraud and promissory estoppel against them are all barred by the doctrines of either *res judicata* or collateral estoppel. They contend that the plaintiff's claims against them are directly related to the litigation in the previous case that GAI brought against Zeyad and Mamdouh Elalami involving the ownership and sale of the real property, and that, while plaintiff was not a party to the arbitration of that case, he was a defendant and could have raised his claims in that case. They also contend that he was in privity with his brother and business partner, Zeyad Elalami, who appeared in the arbitration, and thus he is bound by the arbitrator's decision. Since the arbitrator already determined the rights of the parties with regard to the sale and ownership of the property, defendants conclude that plaintiff cannot now relitigate the same issues in a new action for fraud.

However, the doctrines of *res judicata* and collateral estoppel do not apply to plaintiff's new fraud claims, as there has not yet been a final judgment in the previous action. The Court of Appeal conditionally reversed the trial court's decision to confirm the arbitrator's final award on December 22, 2025, with the remittitur issuing on February 23, 2026. The Court of Appeal remanded the matter back to the trial court, with the trial court directed to schedule and hear the petition submitted by Zeyad Elalami to vacate or correct the final arbitration award as it applies to GAI only. (Court of Appeal decision, p. 18, Disposition.) The trial court has now set a new hearing on the petition to vacate or correct the award, which is set for July 10, 2026.

Thus, at this time, there is no final judgment in the underlying case and there is no basis for finding that the judgment bars plaintiff's claims under the doctrines of *res judicata* or collateral estoppel. Consequently, the court will not sustain the demurrer to the complaint based on *res judicata* or collateral estoppel.

Next, defendants contend that the plaintiff's claims are barred by the litigation privilege as all of plaintiff's claims are based on statements made during or in contemplation of litigation. (Civil Code, § 47, subd. (b).) "[T]he privilege prescribed by section 47(2) has been given broad application. Although originally enacted with reference to defamation, the privilege is now held applicable to any communication, whether or not it amounts to a publication, and all torts except malicious prosecution. Further, it applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 211–212, citations omitted.)

"The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Id*. at p. 212, citations omitted.) Prelitigation communications that have "some relation" to an anticipated lawsuit also fall within the privilege, as long as litigation is actually contemplated in good faith and under serious consideration by a possible party to the proceeding. (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1194-1195.)

Here, plaintiff's fraud claims are all based on communications that were made either during the litigation or that were directly related to the matters that were subsequently raised during the prior litigation and arbitration. Therefore, plaintiff's claims are all barred by the litigation privilege.

Plaintiff alleges that, "After the fire [that occurred on March 6, 2021], AJ represented to Mamdouh and Zeyad that he would receive insurance proceeds from the fire and could use those funds to purchase the Property himself at a fair price, thereby proposing to replace Sharma as the buyer. AJ urged Mamdouh and Zeyad to terminate the Purchase Agreement with Sharma, assuring them that he would rebuild the car wash with the insurance proceeds to improve and restore the Property's value prior to completing the purchase. Mamdouh and Zeyad, who had a decades-long friendship with AJ, were amenable to selling to either Sharma or AJ, provided the price was fair and the car wash would be rebuilt to restore the Property's value." (Complaint, ¶ 9.)

"Based on AJ's representations and their longstanding relationship, Mamdouh and Zeyad agreed to AJ's proposal and to a temporary modification of the Lease terms *pending resolution of any arbitration*, whereby: (i) AJ would invoke the right of first refusal under the Lease to block the sale to Sharma; (ii) AJ would purchase the Property at a fair price using the insurance proceeds and pay past due rent; (iii) AJ would rebuild the car wash with those proceeds to improve and restore the Property's value; and (iv) Mamdouh and Zeyad would pay AJ $50,000 for moving expenses upon sale. In exchange, Mamdouh and Zeyad agreed to cooperate in blocking the Sharma sale and forbear from pursuing immediate legal remedies for the fire damage." (*Id*. at ¶ 10, italics added.)

"*To effectuate this understanding, AJ filed a lawsuit* invoking the right of first refusal to prevent Sharma's purchase. Subsequently, an arbitration commenced involving AJ, Zeyad, and Sharma. Mamdouh, a 50% owner of the Property, did not participate in the arbitration. *During the arbitration*, AJ and Zeyad agreed that Zeyad would support AJ's position to acquire the Property, based on their friendship and AJ's repeated assurances that he would rebuild the car wash, pay past due rent, and complete the purchase fairly." (*Id*. at ¶ 11, italics added.)

"In or around August 2021, GAI received approximately $1.8 million in insurance proceeds from the fire, a substantial portion of which was earmarked for rebuilding the car wash and repairing the Property." (*Id*. at ¶ 12.) "*Throughout the arbitration and thereafter*, AJ repeatedly represented, both orally and in writing, that he would rebuild the car wash using the insurance proceeds and pay rent. For example, in April 2021, AJ stated, 'I am fully responsible for rent payment and building repairs.' These representations induced Mamdouh and Zeyad to cooperate in the sales process." (*Id*. at ¶ 13, italics added.)

"Despite these promises, AJ betrayed Zeyad during the arbitration. Contrary to the parties' understanding, AJ sought and obtained an arbitration award granting him title to Zeyad's 50% interest in the Property without paying any consideration to Zeyad or Mamdouh. AJ failed to pay the agreed-upon fair purchase price, failed to pay the $50,000 moving expenses to himself, failed to rebuild the car wash, has not paid rent, and left the Property in a damaged and diminished state." (*Id*. at ¶ 14.) "To date, AJ and GAI have abandoned the Property, failed to use the $1.8 million in insurance proceeds to rebuild the car wash, and failed to compensate Mamdouh for the fire damage or the rent owed." (*Id*. at ¶ 15.)

Thus, according to the plaintiff's own allegations, defendants' allegedly fraudulent statements were all made either during the litigation, in anticipation of the litigation, or otherwise in connection with the litigation.

Plaintiff argues that the original statements were made months before GAI filed its complaint and before litigation was contemplated, and thus the litigation privilege does not apply. However, while the original statements by AJ were made after the fire in March of 2021, several months before he filed his complaint, it appears from plaintiff's allegations that the parties were already seriously considering having AJ file a complaint in order to assert that the sale to Sharma violated his right of first refusal to buy the property. In fact, plaintiff alleges that he, Zeyad, and AJ agreed at the time that "pending resolution of any arbitration… AJ would invoke the right of first refusal under the Lease and block the sale to Sharma", and then AJ would purchase the property from plaintiff and Zeyad at a fair price using the insurance money, as well as rebuilding the car wash. (Complaint, ¶ 10.) "To effectuate this understanding, AJ filed a lawsuit invoking the right of first refusal to prevent Sharma's purchase." (*Id*. at ¶ 11.) "During the arbitration," AJ also made repeated assurances to plaintiff and Zeyad that he would rebuild the car wash, pay past rent, and complete the purchase fairly. (*Ibid*.)

In other words, all of AJ's alleged representations regarding using the insurance proceeds to rebuild the car wash, paying rent, and completing the purchase of the property using the insurance money were made either in anticipation of filing his complaint to assert his right of first refusal, during the case, or as part of the arbitration of the case. Since defendants' alleged misrepresentations were all made during litigation or in anticipation of the litigation, the plaintiff's fraud and promissory estoppel claims are barred by the litigation privilege.

Plaintiff argues that the litigation privilege does not apply to his claim because it is based on statements that constitute extrinsic fraud, which he contends is an exception to the general application of the litigation privilege. However, "'extrinsic fraud' … relates to the narrow doctrine permitting a collateral attack on a judgment that has been obtained by 'extrinsic fraud,' i.e., under circumstances in which 'the aggrieved party [has been] deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.'" (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 643, fn. 5, citation omitted.) The Supreme Court in *Moore* found that "extrinsic fraud" was *not* a basis for avoiding the application of the litigation privilege. "The court in *Silberg* explicitly recognized that a 'fraudulent communication' or 'perjured testimony' made in the course of a judicial proceeding is absolutely privileged and does not provide a basis for avoiding the finality of the decision made in the litigation process itself." (*Ibid*, citing *Silberg v. Anderson, supra*, 50 Cal.3d at p. 218.) Thus, plaintiff's

contention that AJ's statements constituted extrinsic fraud does not assist him in avoiding application of the litigation privilege.

In any event, even if extrinsic fraud does constitute an exception to the litigation privilege, plaintiff has failed to show that defendants' statements constituted extrinsic fraud here. "Fraud is extrinsic where the defrauded party was deprived of the opportunity to present his or her claim or defense to the court, that is, where he or she was kept in ignorance or in some other manner, other than from his or her own conduct, fraudulently prevented from fully participating in the proceeding." (*In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051.)

"Any fraud is intrinsic if a party has been given notice of the action and has not been prevented from participating therein, that is, if he or she had the opportunity to present his or her case and to protect himself or herself from any mistake or fraud of his or her adversary, but unreasonably neglected to do so. [¶] When a claim of fraud goes to an issue involving the merits of the prior proceeding which the moving party should have guarded against at that time, or if the moving party was guilty of negligence in failing to prevent the fraud or mistake or in contributing thereto, or failed to take advantage of liberal discovery policies to fully investigate his or her claim, any fraud is intrinsic fraud." (*Id*. at p. 1069.)

Here, plaintiff has not alleged any facts showing that defendants' statements prevented him from appearing in the prior case, or that defendants did not give him notice of the case and an opportunity to defend himself in that action. In fact, he filed an answer in the case and raised affirmative defenses. (Request for Judicial Notice, Exhibit 4. The court will take judicial notice of Mamdouh and Zeyad's Joint Answer to GAI's Complaint.) He also had a full opportunity to appear in the arbitration and defend himself there, although he declined to personally participate in the arbitration. He clearly chose not to participate further in the case despite being on notice that it was pending against him. Therefore, any alleged fraud committed by AJ and GAI was intrinsic rather than extrinsic, and their statements are absolutely privileged under Civil Code section 47(b). Since plaintiff's complaint relies entirely on privileged statements as the basis for all of its claims, it fails to state a claim and the court intends to sustain the demurrer to it.

Furthermore, since the plaintiff's claims are based on statements that are absolutely privileged, there is no possibility that plaintiff could amend his complaint to cure the defects in his causes of action. Therefore, the court intends to sustain the demurrer to the complaint without leave to amend.

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

Tentative Ruling
Issued By: JS on 6/12/2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Yellow Brick Road, Inc. v. Watson et al.***
Superior Court Case No. 23CECG00594

Hearing Date: June 17, 2026 (Dept. 503)

Motion: Default Prove-Up

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: JS on 6/15/2026.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Cen-Cal Refrigeration, Inc. v. Maple Venture, LLC***
Superior Court Case No. 20CECG01342

Hearing Date: June 17, 2026 (Dept. 503)

Motion: By Defendants to Dismiss the Action in Fresno Superior Court Case Number 20CECG01342

Tentative Ruling:

To grant and dismiss the action in Fresno Superior Court Case Number 20CECG01342. (Code Civ. Proc., §§ 583.310, 583.360.) The consolidated matter in Fresno Superior Court Case Number 20CECG01485 will remain active.

In light of the above, the Mandatory Settlement Conference, Trial Readiness, and Trial dates are vacated.

Explanation:

Code of Civil Procedure section 583.310 provides that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." Dismissal is mandatory unless a statutorily provided extension or exception applies. (Code Civ. Proc., § 583.360, subd. (b).) Parties may extend the time to bring an action to trial either in a written stipulation or oral agreement in court. (Code Civ. Proc., § 583.330.) Here, the matter was filed May 4, 2020 and no extension or exception applies. The motion to dismiss the action in Fresno Superior Court Case Number 20CECG01342 is granted. The action in the consolidated case, Fresno Superior Court Case Number 20CECG1485, remains active.

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

Tentative Ruling
Issued By: JS (Judge's initials) on 6/15/2026 (Date).

(47)

Tentative Ruling

Re: ***Carlos Reyes v. Lee Farming & Packing LLC***
Superior Court Case No. 24CECG01603

Hearing Date: June 17, 2026 (Dept. 503)

Motion: Defendants Lee Farming & Packing LLC, Patty Hang, and Ken Lee motion for summary judgment, or in the alternative, summary adjudication to plaintiff Carlos Reyes' complaint.

Tentative Ruling

To deny summary judgment. To grant summary adjudication with respect to the thirteenth and fourteenth causes of action.

Explanation

Defendants Lee Farming & Packing LLC ("LFP"), Patty Hang ("Hang"), and Ken Lee ("Lee) (collectively "defendants"), make this motion for an order granting summary judgment, or in the alternative, summary adjudication for the fifteen causes of action filed by plaintiff, Carlos Reyes. ("Reyes" or "plaintiff.") Defendants file this motion pursuant to Code of Civil Procedure section 437c on the grounds that all of the causes of action in Reyes' Complaint against defendants fail as a matter of law.

The causes of action alleged are: (1) Disability Discrimination in Violation under the Fair Employment and Housing Act ("FEHA"): (2) Intentional Infliction of Emotional Distress; (3) Failure to Prevent and Investigate Disability Discrimination and Harassment in Violation of FEHA; (4) Failure to Accommodate; (5) Failure to Engage in Good Faith Interactive Process; (6) California Family Rights Act ("CFRA") Interference; (7) Retaliation in Violation of CFRA; (8) Retaliation in Violation of FEHA; (9) Retaliation for Reporting Workplace Safety Hazard [Cal. Labor Code § 6310]; (10) Retaliation for Use of Sick Leave; (11) Retaliation in Violation of California Labor Code section 1102.5; (12) Wrongful Termination in Violation of Public Policy; (13) Failure to Pay All Wages Owed; (14) Failure to Pay Wages Due Upon Termination and Waiting Time Penalties; and (15) Failure to Indemnify.

Defendant LFP hired Reyes on December 7, 2020. (Separate Statement of Undisputed Material Facts ("SSUMF") No. l.) Reyes began as a tally clerk in the production department and was promoted to shipping supervisor at the end of2022. (SSUMF Nos. 2 & 17.) In 2022, LFP utilized a timekeeping system that allowed employees the opportunity to indicate whether they had suffered an injury on the job. 0n January 6, 2022, Reyes reported that he had suffered an injury. (SSUMF Nos. 5 and 7.) Reyes returned to work in February 2022. (SSUMF No. 11.) Nearly two and a half years later, Reyes was terminated by LFP on April 11, 2023. (Houlihan Decl., Ex. 6.)

Evidentiary Objections

Plaintiff's Objections

Objection 1 – Reyes' objects to Hang's testimony, stating that "the forklift drivers. . . just said that Carlos just says to do whatever. . . . So the drivers were just saying, 'Carlos said to do whatever that customer wanted'" (Houlihan Decl., Ex. M) as hearsay (Evid. Code, § 1200); lacking personal knowledge (Evid. Code, § 702); foundation (Evid. Code, § 403); and improper lay opinion as to Plaintiff's directions (Evid. Code, § 800).

Objection 1 is **overruled**. The statements are for purposes of explaining Hang's conduct, and not the truth of those statements.

Objection 2 – Reyes objects to Hang's testimony at 54:19–25 that Reyes' "reported to work under the influence of alcohol in 2023" (Houlihan Decl., Ex. M) for lack of foundation (Evid. Code, § 403) and lack of personal knowledge (Evid. Code, § 702). Reyes' objection is **sustained**. Hang's testimony relates to Ken Lee's observations.

Defendants Objections

Defendants make 19 evidentiary objection. The Court declines to rule on these objections as they were not material to the Court's reasoning.

Legal Standard

A defendant moving for summary judgment or summary adjudication has met his or her burden of showing that a cause of action has no merit if he or she shows one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense. (*Ibid*.) A cause of action has no merit if either (1) one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded; or (2) a defendant establishes an affirmative defense to that cause of action. (Code Civ. Proc., § 437c, subd. (o).)

As defendants are the moving party, they must prove that Reyes cannot prove an essential element of the second, fourth through sixth, and thirteenth through fifteenth causes of action. Once they have done so, the burden shifts to Reyes to show that there is a triable issue of one or more material facts.

Second Cause of Action - Intentional Infliction of Emotional Distress

The elements of Intentional Infliction of Emotional Distress (IIED) are (1) outrageous conduct by defendant; (2) intentional or reckless causing of emotional distress; (3) severe emotional distress; and (3) causation. (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc*. (2005) 129 Cal.App.4th 1228, 1259.)

Defendants challenge whether Reyes suffered IIED by only submitting "Plaintiff's Responses to Defendants' RFP, Set One" (SSF, No. 41; Houlihan Decl., Ex. O) where Reyes objected to the questions on the basis that Reyes was not obligated to provide substantive responses because the request was passed the discovery cut off dates. An objection is not proof of any particular fact.

Here, defendants fail to meet their burden of proof. Accordingly, the Court denies summary adjudication of the second cause of action for IIED.

Fourth Cause of Action - Failure to Accommodate

Reyes alleges in his fourth cause of action that defendants failed to make reasonable accommodations for his disability.

There are three elements to a failure to accommodate action: '(1) the plaintiff has a disability covered by the FEHA; (2) the plaintiff is a qualified individual (i.e., he or she can perform the essential functions of the position); and (3) the employer failed to reasonably accommodate the plaintiff's disability." (CACI No. 2541; *Hernandez v. Rancho Santiago Cmty. College Dist.* (2018) 22 Cal.App.5th 1187, 1193-1194.)

Defendants argue that Reyes cannot establish that defendants failed to accommodate Reyes where defendants allowed Reyes approximately seven weeks off where Reyes had requested eight weeks off. (Defendants' Moving Papers, pps. 9:27-10:5) As part of their motion, defendants provide time sheets demonstrating the time off Reyes was given. (SSUMFF No. 10; Houlihan Decl., Ex. D, LFP000263-264.)

Reyes disputes that defendants accommodated him. Reyes initially requested leave on January 7, 2022, but asserts he was pressured to come back early, and as a consequence, missed his scheduled physical therapy. (Reyes Decl., ¶¶6-12.) Reyes' assertions of time missed and coming back a week after he requested time off are corroborated by the time sheets defendants introduced. (SSUMFF No. 10; Houlihan Decl., Ex. D, LFP000263-264.)

Accordingly, there is a triable issue of fact, as to whether defendants failed to accommodate Reyes, and summary adjudication is denied with respect to the fourth cause of action.

The Court notes that defendants switch gears and make a series of different arguments in support of their motion that Reyes cannot prove any harm even if there was a failure to accommodate. (Defendants' Reply Papers, pg. 7:12-17.) But those arguments were not made in the moving papers, and the Court cannot grant summary adjudication based upon arguments (or evidence) presented for the first time in a reply. (*SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 572 FN 18. "SCI California.")

Fifth Cause of Action - Failure to Engage in Good Faith Interactive Process

Reyes alleges that defendants failed to engage in a timely, good faith, interactive process with Reyes to determine effective reasonable accommodations for Reyes' disability.

FEHA requires employers to engage in a good faith interactive process to determine effective reasonable accommodations, if any, "in response to a request for reasonable accommodation by an employee . . . with a known physical or mental disability . . . ." (Gov. Code, § 12940, subd. (n); *Raine v. City of Burbank* (2006) 135 Cal.App.4th 1215, 1222.) To establish a claim for failure to engage in the interactive process, a plaintiff must show: (1) defendant was an employer; (2) plaintiff was defendant's employee; (3) plaintiff was disabled; (4) plaintiff requested reasonable accommodation; (5) plaintiff was willing to participate in a timely good faith interactive process with plaintiff to determine whether a reasonable accommodation could be made; (6) defendant failed to participate in this process; (7) plaintiff was harmed; and (8) defendant's failure to engage in a good-faith interactive process was a substantial factor in causing plaintiff's harm. (CACI No. 2546.)

Defendants' attack on the fifth cause of action is premised on the argument that they granted Reyes seven weeks of time off from work, which is the same basis as their attack on the fourth cause of action. (Defendants' Moving Papers, pps. 9:20-10:5) Reyes counters defendants offered no documented interactive process. Hang, as person most knowledgeable for LFP, admitted at deposition that she never discussed accommodations with Reyes. (Martirosyan Decl., Ex. A, Hang PMK Deposition 76:25-77:3.)

Accordingly, defendants have failed to establish their burden that defendants engaged in a timely, good faith, interactive process, and summary adjudication is denied for the fifth cause of action.

As with the fourth cause of action, cause of action, defendants make new arguments in their reply that Reyes cannot prove any harm even if there was a failure to engage in a good faith, interactive process. (Defendants' Reply Papers, pg. 7:12-17.) However, this argument was not introduced in defendants' moving papers, and accordingly, the Court will not consider it with respect to the motion for summary judgment. (*SCI California*, 203 Cal.App.4th at 572 FN 18.)

Sixth Cause of Action - CFRA Interference

Reyes asserts a CFRA interference cause of action where Reyes asserts the defendants interfered with Reyes' right to leave under CFRA by forcing him to return to work while taking protected leave under the CFRA.

"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." (*Choochagi v. Barracuda Networks, Inc.* (2020) 60 Cal.App.5th 444, 454.)

Defendants argue that "[b]ecause Defendant LFP provided Plaintiff with CFRA leave for seven weeks and there is no evidence indicating LFP, Hang, or Lee requested

or required Plaintiff to return to work on January 11, 2022 or prior to when he was ready, willing and able to return, Plaintiff's CFRA interference claim fails." (Defendants' Moving Papers, pg. 17:24-27.) Defendants argue that there is no evidence that Reyes required hospitalization or continuing treatment. (SSUMF Nos. 11 and 12.) Defendants further argue Reyes never provided any information to defendants regarding a "serious medical condition," (SSUMF No. 12) and that there is no evidence that Reyes' wrist injury prevented Reyes from performing the functions of his position. (*Id*.)

However, Reyes' rebuts defendants' contentions by providing documentation of his wrist fractures, surgical referral, and seven weeks of continuous medical leave constitute a serious health condition. (Martirosyan Decl., Ex. E (Medical Record – Wrist Injury). Furthermore, the time sheets defendants introduced demonstrate that the facts are disputed with respect to an interference of those rights, as Reyes did work immediately after he requested leave. (SSUMFF No. 10; Houlihan Decl., Ex. D, LFP000263-264.)

Defendants arguing in their reply papers that Reyes cannot prove any harm (Defendants' Reply Papers, pg. 7:27-28) was not made in the moving papers, and the Court cannot grant summary judgment based upon arguments presented for the first time in a reply. (*SCI California*, 203 Cal.App.4th at 572 FN 18.)

Accordingly, defendants have not met their burden in demonstrating that a triable issue of fact does not exist, and summary adjudication is denied for the sixth cause of action.

Thirteenth and Fourteenth Causes of Action: Failure to Pay All Wages Owed and Failure to Pay Wages Due Upon Termination; Waiting Time Penalties

California Labor Code sections 201 and 202 require defendants pay all compensation due and owing to former employees at the time their employment is terminated.

To establish this claim, a plaintiff, must prove all of the following:

1. That the defendant was an employer;
2. That the plaintiff was an employee of the defendant;
3. That defendant did not pay plaintiff for all earned and unused vacation time at the final rate of pay in accordance with the contract of employment/employer policy; and
4. The amount owed to plaintiff for earned and unused vacation time.

(CACI, no. 7253.)

Here, defendants establish they did not have a vacation policy. (SSUMF No. 3.) Defendants' Employee Handbook section 6.2 provides that sick days are not paid out on separation. (Houlihan Decl., Ex. D (LFP000071-072).) Furthermore, defendants provide in their response to Reyes' Special Interrogatory No. 187 that defendants do not have a paid time off policy, other than the "state mandated leave such as paid sick leave."

(Houlihan Decl., Ex. I, Defendant Lee Farming & Packing LLC's Responses to Plaintiff's Special Interrogatories, Set Two, Response to Special Interrogatory, Nos. 187-189.)

Thus, defendants have met their burden that Reyes was not entitled to vacation pay or PTO at termination.

Reyes' counters by arguing that "Defendant Hang's own statement to Plaintiff after termination that "they did not owe Plaintiff anything" suggests awareness of a wage obligation being refused, not the absence of any policy." (Reyes' Opposition Papers, pg. 8:14-16.) The Court cannot infer from this statement that defendants knew they owed something to Reyes, given that the explicitness of Defendants Employee Handbook section 6. (Houlihan Decl., Ex. D (LFP000071-081).)

Reyes' only evidence in opposition is his own declaration, where he claims he "believed" he was accruing paid vacation starting in late 2022. (Reyes Decl., ¶¶ 19, 21.) Reyes' self-serving conclusory statement does not satisfy his burden of proof. (*Van Komen v. Montgomery Ward & Co.* (C.D. Cal. 1986) 638 F.Supp. 739, 741.)

Reyes, raises an argument about unpaid wages due to alleged "off the-clock" work. (Reyes Opposition, pg. 15:17-21.) However, Reyes never plead any such theory and cannot do so now. (See, *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 67, citing *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382 ["The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues."].) It is well settled law that a party cannot avoid summary judgment by relying on theories that are not alleged in the pleadings. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 332–333; *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 CA5th 218, 224-225.)

Accordingly, summary adjudication is granted for the thirteenth and fourteenth causes of action.

Fifteenth Cause of Action - Failure to Indemnify

Reyes' complaint alleges he was never reimbursed for any portion of his cellphone expenses. Labor Code section 2802 requires an employer to indemnify its employee for all necessary expenditures incurred in direct consequence of the discharge of his duties. (Lab. Code, § 2802(a).)

Defendants' moving papers never addressed this issue. Accordingly, defendants have not met their burden with respect to the fifteenth cause of action.

Retaliatory and Discrimination Claims

For employment discrimination and retaliation claims, "California follows the burden shifting analysis of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 … to determine whether there are triable issues of fact for resolution by a jury." (*Loggins v. Kaiser Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1109 ("*Loggins*".) First, "[i]f the employee successfully establishes [the] elements and thereby shows a prima facie case exists, the burden shifts to the employer to provide evidence that there was a legitimate,

nonretaliatory reason for the adverse employment action. If the employer produces evidence showing a legitimate reason for the adverse employment action, the presumption of retaliation drops out of the picture, and the burden shifts back to the employee to provide substantial responsive evidence that the employer's proffered reasons were untrue or pretextual." (*Ibid*., citations and internal quotes omitted.)

However, '[w]hen seeking summary judgment or summary adjudication in an employment discrimination case, the burdens established by the *McDonnell Douglas* framework are altered.' (*Zamora v. Security Industry Specialists, Inc.* (2021) 71 Cal.App.5th 1, 32.) The employer, as the moving party, has the initial burden to present admissible evidence showing either that one or more elements of plaintiff's prima facie case is lacking or that the adverse employment action was based upon legitimate, nondiscriminatory factors. (*Hicks v. KNTV Television, Inc.* (2008) 160 Cal.App.4th 994, 1003.) If the employer satisfies its initial burden, the plaintiff then has the burden to offer 'substantial evidence' that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in discrimination. (*Hersant v. Department of Social Services* (1997) 57 CalApp.4th 997, 1004-05.

Like claims for discrimination, retaliation claims are subject to the McDonnell Douglas burden-shifting analysis. (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1193.)

Retaliation Claims

Seventh Cause of Action - Retaliation in Violation of CFRA

Reyes alleges in his seventh cause of action that defendants retaliated against him for taking leave during the first several weeks of 2022.

"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]." ' [Citation.] Similar to causes of action under FEHA, the McDonnell Douglas burden shifting analysis applies to retaliation claims under CFRA." (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 248.)

Defendants argue that Reyes cannot and does not meet the various prima facie elements because Reyes did not suffer an adverse employment action for taking CFRA leave where Reyes was promoted in 2022, after Reyes' took CFRA leave, from tally clerk to shipping supervisor. (SSUMF No. 17.) Defendants further argue that Reyes was fired for legitimate business reasons, where Reyes was terminated for an alleged drinking problem and embezzlement scheme. (Defendants' Moving Papers, pps. 14:1-15:9.)

Reyes' counters that he continued to suffer wrist pain and limitations throughout 2022-2023 as a result of his wrist injuries he suffered during December 2021. (Reyes' Decl.,

¶24.) Reyes also argues that it was taking leave, as well as several reasons combined together, that an adverse employment action was taken against him. (Reyes' Opposition Papers, pps. 12:6-14:3.) Reyes further disputes the legitimate business reasons that defendants assert. With respect to the embezzlement scheme and drinking allegations, Reyes points out that Hang admits LFP had no documents reflecting any investigation, (Martirosyan Decl., Ex. A (Hang PMK Depo.) 99:14-16), and conducted no drug or alcohol testing despite a reasonable-suspicion testing policy permitting it. (*Id*. at 105:1-21; Martirosyan Decl., Ex. D (Drug and Alcohol Policy).) Reyes disputes most of the legitimate business reasons defendants proffered in SSUMF Nos. 24-37 for lacking contemporaneous documentation. Reyes' succeeds in raising a triable issue of fact with respect to defendants' legitimate business reasons.

Accordingly, summary adjudication is denied for the seventh cause of action, as plaintiff has succeeded in raising a triable issue of fact pertaining to the reasons why he was terminated.

Eighth Cause of Action - Retaliation in Violation of FEHA

Like the seventh cause of action, Reyes alleges in his eighth cause of action that defendants retaliated against him for taking leave during the first several weeks of 2022, in violation of FEHA.

To state a claim for retaliation under FEHA a plaintiff must show that (1) the plaintiff engaged in a FEHA-protected activity, (2) the plaintiff was subject to an adverse employment action, and (3) there is a causal link between the protected activity and the adverse employment action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

Summary adjudication is denied for the eighth cause of action, for the same reasons stated above in the seventh cause of action.

Ninth Cause of Action - Retaliation for Reporting Workplace Safety Hazard [Cal. Labor Code § 6310]

Reyes alleges in his ninth cause of action he was retaliated against for reporting unsafe conditions.

CACI 4605 provides that in order to establish a claim under Labor Code section 6310, a plaintiff must allege the following: (1) plaintiff was an employee of defendant; (2) plaintiff, on his own behalf or on behalf of others, made an oral complaint to defendant regarding unsafe working conditions or exercised his rights to workplace health and safety; (3) defendant discharged plaintiff; (4) plaintiff's complaint was a substantial motivating reason for defendant's decision to discharge plaintiff; (5) plaintiff was harmed; and (6) defendant's conduct was a substantial factor in causing plaintiff's harm. (See CACI 4605.)

Defendants argue that Reyes is unable to meet the second and fourth elements. (Defendants' Moving Papers, pps. 13:14-15:9.)

Reyes provides that he personally complained to Hang two weeks before he was terminated that that there "were no 'chops' (wheel chocks) securing the trucks at LFP's loading docks. Without chops, the trucks could move while we were loading them, creating a serious danger to me and other employees." (Reyes Decl. ¶14.) Reyes also provides that the termination letter Reyes received with respect to alleged theft, alleged absenteeism, alleged policy violations does not provide any reference to any investigation, testing, or contemporaneous documentation. (Martirosyan Decl., Ex. B; SSF no. 37.) As discussed above, Reyes provides that Hang's deposition admits that defendants do not have any documents reflecting any investigation (Martirosyan Decl., Ex. A (Hang Depo. 99:14-16), and conducted no drug or alcohol testing despite a reasonable-suspicion testing policy permitting it. (*Id.* Ex. A at 105:1-21; Ex. D (Drug and Alcohol Policy).

In reply, defendants contend for the first time the first time defendants learned of the alleged unsafe condition of the "chops" missing from the loading area was after Plaintiff's termination, during a Cal/OSHA inspection. (SSUMF No. 23.) Defendants argue that Reyes' declaration letting Hang know of the dangerous conditions is nothing more than a self-serving declaration. (Defendants' Reply, pg. 8:24-27.) The Court notes the same could be said about defendants' attorney Moody specifically asking if Hang "recalled" any safety complaints. (Code Civ. Proc., § 437c, subd. (e).)

Here, summary adjudication is denied for the ninth cause of action. There is a triable issue of material fact, given the proximity of Reyes' termination, and alleged reporting of unsafe conditions.

Tenth Cause of Action - Retaliation for Use of Sick Leave

Like the seventh cause of action, Reyes alleges in his tenth cause of action that defendants retaliated against him for taking leave during the first several weeks of 2022.

"An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article." (Lab. Code, § 246.5, subd. (c)(1).)

Defendants move for summary adjudication for substantially the same reasons provided in the seventh cause of action. Summary adjudication is denied for the tenth cause of action, for the same reasons stated above in the seventh cause of action.

Eleventh Cause of Action - Retaliation in Violation of California Labor Code § 1102.5

Like the ninth cause of action, Reyes alleges that he was retaliated against for reporting unsafe conditions.

To prevail on a cause of action for retaliation under Labor Code section 1102.5, a plaintiff employee must demonstrate that the defendant employer retaliated against the plaintiff because the plaintiff disclosed or might have disclosed information to a government or law enforcement agency, or to a person with authority over the employee or has authority to investigate, discover, or correct the violation. (Lab. Code, § 1102.5, subd. (b).)

Defendants move for summary adjudication for substantially the same reasons provided in the ninth cause of action. Summary adjudication is denied for the eleventh cause of action, for the same reasons stated above in the ninth cause of action.

Discrimination Claims

Disability Discrimination Claims – First and Third Causes of Action

To establish a prima facie case for disability discrimination, the plaintiff must show that (1) the employee suffered from a disability, (2) the employee was otherwise qualified to do the job with or without reasonable accommodation, and (3) the employee was subjected to an adverse employment action because of the disability. (See *Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78, 84.) A cause of action for failure to prevent discrimination includes the following elements: (1) actionable discrimination or harassment by employees or non-employees; (2) defendant's legal duty of care toward plaintiff (defendant is plaintiff's employer); (3) breach of duty (failure to take all reasonable steps necessary to prevent discrimination and harassment from occurring); (4) legal causation; and (5) damages to plaintiff. (See *Trujillo v. North County Transit District* (1998) 63 Cal.App.4th 280, 287, 289.)

First Cause of Action - Disability Discrimination in Violation of FEHA

Reyes alleges in his third cause of action that he was discriminated against because of the wrist injury he suffered in 2022.

Defendants move for summary adjudication for substantially the same reasons provided in the seventh cause of action. Summary adjudication is denied for the first cause of action, for the same reasons stated above in the seventh cause of action.

Third Cause of Action - Failure to Prevent and Investigate Disability Discrimination and Harassment in Violation of FEHA

Reyes alleges in his third cause of action that defendants failed to prevent and investigate discrimination, in violation of FEHA, for injuries he suffered in 2022.

To state a claim for failure to prevent harassment or discrimination under FEHA, the plaintiff must allege: (1) actionable discrimination or harassment by employees or non-employees; (2) the defendant's legal duty of care toward plaintiff (defendant is plaintiff's employer); (3) breach of duty (failure to take all reasonable steps necessary to prevent discrimination and harassment from occurring); (4) legal causation; and (5) damages to plaintiff. (*Trujillo v. No. County Transit Dist.* (1998) 63 Cal.App.4th 280, 287, 289; Gov. Code § 12940, subd. (k).)

Defendants move for summary adjudication for substantially the same reasons provided in the seventh cause of action. Summary adjudication is denied for the first cause of action, for the same reasons stated above in the seventh cause of action.

Twelfth Cause of Action – Tameny Claims

"Tameny claims permit wrongful termination damages when a termination is undertaken in violation of a fundamental, substantial and well-established public policy of state law grounded in a statute or constitutional provision.") The implicated public policy " 'must be: (1) delineated in either constitutional or statutory provisions; (2) "public" in the sense that it "inures to the benefit of the public" rather than serving merely the interests of the individual; (3) well established at the time of the discharge; and (4) substantial and fundamental.' " (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1159.)

As discussed above, because triable issues exist with respect to the first, third, and seventh through eleventh causes of action, summary adjudication is denied for the twelfth cause of action.

Punitive Damages

As discussed above, pursuant to Code of Civil Procedure section 437c, subdivision (f)(1), a party may properly seek summary adjudication of one or more causes of action, one or more affirmative defenses, the issue of punitive damages or the issue of duty.

Here, although punitive damages are raised in the notice of motion, the memorandum of points and authorities did not discuss whether punitive damages should not apply to any of the individual claims. Accordingly, punitive damages may be sought for any applicable claims above where summary adjudication was not granted.

Accordingly, the Court denies summary judgment. The Court grants summary adjudication with respect to the first, third, seventh, eighth, tenth, thirteenth and fourteenth 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: JS on 6/15/2026.
(Judge's initials) (Date)