Tentative Rulings for October 1, 2025
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.***

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

23CECG00847 ***Joseph Yzaguirre v. Clovis Unified School*** **District is continued to Thursday, November 6, 2025 at 3:30 p.m. in Department 501.**

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(46)

Tentative Ruling

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

Hearing Date: October 1, 2025 (Dept. 501)

Motion: Demurrer and Motion to Strike

Tentative Ruling:

To overrule the demurrers to the first seven causes of action on the basis of Code of Civil Procedure section 430.10, subdivision (a). To sustain the demurrers to the second, third, fifth, sixth and seventh causes of action on the basis of Code of Civil Procedure section 430.10, subdivision (e), with leave to amend. To overrule the demurrer to the eighth cause of action on the basis of Code of Civil Procedure section 430.10, subdivision (e).

To grant the motion to strike in its entirety, with leave to amend.

Explanation:

Demurrer

Legal Standards for Demurrers

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

Exemption from the Government Claims Act

Plaintiff's Second Amended Complaint (SAC) arises under the Fair Employment and Housing Act ("FEHA"). A plaintiff must exhaust administrative remedies by filing a complaint with the Civil Rights Department ("CRD") and obtaining a right-to-sue notice before initiating a FEHA action in state court. (See Gov. Code §§ 12960, 12965.) There is a recognized California exemption to the Government Claims Act ("GCA") for actions arising under FEHA due to it having its own administrative procedures prior to filing a

lawsuit. (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d 86, *Garcia v. Los Angeles Unified School Dist.* (1985)173 Cal.App.3d 701.)

Defendants the County of Fresno ("the County"), Ida Rogers, Enoc Perez, and Mayra Gonzalez (collectively "defendants") argue that because plaintiff Shayna Feuersinger ("plaintiff") obtained an immediate right-to-sue letter, she bypassed the administrative procedures of FEHA meant to provide the same protections as the Government Claims Act ("GCA"), and therefore the exemption should not apply and plaintiff should have complied with the GCA.

"Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may forgo having the department investigate a complaint and instead obtain an immediate right-to-sue notice." (Cal. Code Regs., tit. 2, § 10005, subd. (a).) Plaintiff was certainly able to receive an immediate right-to-sue letter. In the Second Amended Complaint ("SAC"), plaintiff asserted that she filed an administrative complaint with the Department of Fair Employment and Housing ("DFEH")[1] alleging discrimination and harassment by all defendants prior to receiving her immediate right-to-sue letter. Thus, plaintiff has alleged compliance with subdivision (d) of section 10005.

Defendants cite to a few cases in which the California exemption to the GCA is discussed. In these cases, it was held that complaints based on alleged unlawful employment practices proscribed under the Fair Employment and Housing Act are not subject to the claim presentation requirement. (*Snipes v. City of Bakersfield*, *supra*, 145 Cal.App.3d at p. 865, *Garcia v. Los Angeles Unified School Dist. supra,* 173 Cal.App.3d at p. 711.)

Defendants argue that because plaintiff received an immediate right-to-sue letter when she filed her complaint with the Civil Rights Department, she "bypass[ed] the administrative investigation entirely." (Demurrer, 14:2-3.) However, what is not addressed is that employees have been given the right to obtain an immediate right-to-sue letter by following the requirements set forth in the Code of Regulations, title 2 section 10005. Here, plaintiff alleges that she filed her complaint as required and received her right-to-sue notice as a result. None of the cases cited address this provision. Defendants provide no authority to show that by following this procedure allowing her to obtain an immediate right-to-sue notice, plaintiff is now required to comply with the Government Claims Act from which her FEHA causes of action have been previously held to be exempt. Plaintiff did not deceive the process, but followed procedures allowing her to obtain the immediate right to sue. As there is a recognized exemption for FEHA claims from the Government Claims Act, and plaintiff did not inappropriately request and receive an immediate right-to-sue notice, the court is inclined to overrule the demurrer on this basis.

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

Defendants demur to the second and fifth causes of action on the grounds that they are duplicative. This is not one of the grounds set forth in Code of Civil Procedure

[1] Defendants point out that the DFEH became the Civil Rights Department ("CRD"), pursuant to Senate Bill 103, passed in 2023, making this allegation compliant with the requirement to file the complaint the Civil Rights Department.

section 430.10 on which a defendant may demur. While some courts have recognized duplicity as a basis for sustaining a demurrer (*Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290), other courts have not (see *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890).

Defendants argue that there are only two types of harassment causes of action, hostile work environment and quid pro quo, citing to *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409. However, *Mogilefsky* specifically states that "California case law recognizes two theories upon which *sexual harassment* may be alleged." (*Mogilefsky v. Superior Court, supra,* 20 Cal.App.4th at p. 1414.) Sexual harassment is not alleged in this case, and it is not shown that this contention applies to other types of harassment.

It is common practice to allege alternative theories arising out of one event. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 691.) Focusing specifically on employment discrimination cases, the court in *Brown v. Superior Court* (1984) 37 Cal.3d 477, 486 noted that "employment discrimination cases, by their very nature, involve several causes of action arising from the same set of facts. A responsible attorney handling an employment discrimination case must plead a variety of statutory, tort and contract causes of action in order to fully protect the interests of his or her client." The court will not sustain the demurrers to these causes of action on the basis of duplicity.

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

Plaintiff identifies the elements of a claim for hostile work environment in violation of FEHA as demonstrating that 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. (Citing to *Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 627.) The court in *Bailey* dealt with harassment based on race, and quoted the elements from *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 279, which applied to sexual harassment, demonstrating the elements to be generally applied to various types and forms of alleged harassment. In this case, plaintiff alleges it was due to her disability.

Plaintiff in her SAC has alleged that she sustained 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). (SAC, ¶ 15.) Defendants do not appear to dispute that this qualifies as a disability. Plaintiff has alleged that the "harassing conduct" was unwelcome. (*Id*., ¶ 51.) However, plaintiff has not alleged that the conduct was so severe or pervasive. While the keywords were used (see *Id*., ¶¶ 50, 53) the facts and allegations pled do not sufficiently support these mere conclusions. The demurrer to the second cause of action for Hostile Work Environment is sustained with leave to amend.

"[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.)

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.)

Plaintiff's SAC fails to allege how the alleged harassing conduct as to her disability interfered with her work performance. As the demurrer to the second cause of action is sustained, it also reflects here that the hostile work environment affecting performance has not been sufficiently shown. The demurrer to the fifth cause of action for Harassment should is sustained 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 opposition, plaintiff argues that she engaged in a protected activity by reporting and complaining about the discrimination she experienced in the workplace. (Opp., 21:9-10.) She also suggests that requesting a reasonable accommodation for a disability is also a protected activity. (*Id*., 21:10-11, see Gov. Code § 12940 subd. (m)(2).) However, plaintiff does not make these allegations in the SAC. Plaintiff merely states, "Plaintiff's physical disability was the reason the County retaliated against her." (SAC, ¶ 63.) This is an insufficient allegation to establish that plaintiff engaged in a protected activity for which she was subjected to adverse employment action. The demurrer to the third cause of action is sustained with leave to amend.

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. (SAC, ¶ 86.) She argues 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's failed to engage in a good faith interactive process with her after she reported her disability. (*Id*., ¶ 94.)

Plaintiff alleges that she had several restrictions such as not turning her neck, and lifting and pulling restrictions. (SAC, ¶ 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*., ¶ 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*., ¶ 25.) The SAC 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.*, ¶¶ 24, 25, 32 33.)

Plaintiff has not alleged whether she was qualified to perform the essential functions of her position, with or without accommodation. While she has alleged that she was not accommodated, she must allege that her employer failed *reasonably* to accommodate her disability. Plaintiff's allegations are general and non-specific. Plaintiff must allege more than "lack of accommodation" to allege that however her employer responded or failed to respond was not "reasonable." The demurrer to the sixth and seventh cause of action is sustained with leave to amend.

Eighth Cause of Action: Wrongful Termination

Defendants argue that the eight cause of action for wrongful termination in violation of public policy should fail as a matter of law, as "[p]ublic entities are not liable for any injury unless otherwise provided by statute, meaning no wrongful termination in violation of public policy claim can lie against the County." (Demurrer, 21:26-28.) Plaintiff argues that defendants misread the cause of action, which is actually for wrongful termination in violation of FEHA.

The eighth cause of action in the SAC is titled "Wrongful Termination in Violation of FEHA, Govt. Code §§12940 et seq." The cause of action mentions the policies that exist to prohibit wrongful termination of an employee due to disability, alleging that these policies are set forth in various laws including Government Code section 12940. The SAC states: "The County wrongfully terminated Plaintiff in violation of important and well-established public policies, including, but not limited to, policies against employment discrimination based upon disability and against harassment." (SAC, ¶ 104.)

First, it has previously been recognized that a former employee may assert a claim for wrongful termination in violation of public policy against his or her former employer, so this cause of action does not fail as a matter of law. (See discussion in *Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 154.)

To state a claim for wrongful termination in violation of public policy, plaintiff must plead: (1) an employer-employee relationship; (2) the employer terminated the plaintiff's employment; (3) the termination was substantially motivated by a violation of public policy; and (4) the discharge caused the plaintiff harm. (*Yau v. Santa Margarita Ford, Inc. supra,* 229 Cal.App.4th at p. 154; *Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 641.)

Here, the first two elements are not disputed. Of note, defendants only demurred to the first cause of action for Disability Discrimination on the basis that plaintiff did not comply with the Government Claims Act, which was overruled. Given that the disability discrimination claim survives, this alone is sufficient to support the remaining two elements of this cause of action. The demurrer to this cause of action is overruled.

Motion to Strike

Defendants move to strike the following from the SAC:

1. Paragraph 57 – punitive damages against Enoc and Mayra
2. Paragraph 83 – punitive damages against Enoc, Mayra, and Ida
3. Prayer for Relief, Item 4 – compensatory damages for office supply expenses
4. Prayer for Relief, Item 5 – compensatory damages for purchase of clothing
5. Prayer for Relief, Item 6 – preliminary and permanent injunction
6. Prayer for Relief, Item 8 – punitive damages against Enoc, Mayra, and Ida

Plaintiff only addresses the motion to strike as it relates to the punitive damages claims. She does not address Requested Items 3, 4 or 5, which defendants assert are remedies prayed for in conjunction with causes of action that were voluntarily dismissed from plaintiff's original Complaint. As plaintiff has not disputed that contention nor addressed these items in any other manner, the Prayer for Relief, Items 4-6, are stricken.

Requested Items 1, 2 and 8 relate to plaintiff's request for punitive damages against individual defendants Enoc, Mayra and Ida. Defendants argue that the SAC fails to allege facts sufficient to support a punitive damages award.

Civil Code section 3294 provides that punitive damages may be awarded in an action for breach of an obligation not arising from contract, if the plaintiff proves by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. Malice is "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." (Civ. Code, § 3294, subd. (c)(1).) Oppression means "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.*, § 3294, subd. (c)(2).) "[W]rongful termination, without more, will not sustain a finding of malice or oppression." (*Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 717.)

The SAC makes the following mentions of the individual defendants:

"17. On or about December 6, 2023, Plaintiff reported her injury to **Ida**. Initially, **Ida** did not want to write a report claiming that it had been more than 24 hours since the injury took place."

"21. Thereafter, Plaintiff received a call from **Ida**. **Ida** told Plaintiff that she was being placed on a leave of absence since the County could not accommodate her since they needed employees on the floor to help with clients."

"24. Upon her return to work, **Enoc** scolded Plaintiff for her short attendance, caused due to injury, stating "this is ridiculous how much time you have taken off." **Enoc** was aware of Plaintiff's injury occurred in work place and doctor's suggestions."

"26. **Mayra** Gonzalez made constant comments on Plaintiff to Ida for taking time off and her breaks, as instructed by doctor, causing Plaintiff to feel bad about herself.

"27. Laura and **Mayra**, both approached Plaintiff stating that Plaintiff needs to accompany them and it is non-negotiable and asked her to bring her personal belongings, or **Mayra** could get the security involved.

"28. **Mayra** informed Plaintiff that her probation was rejected due to her attendance."

"31. Plaintiff verbally informed **Ida** of her Lupus and Ida suggested Plaintiff apply for FMLA."

The factual allegations of the SAC against individual defendants Ida, Enoc and Mayra are insufficient evidence of malice and oppression to support an award of punitive damages. Paragraphs 17, 21, 27, 28 and 31 of the SAC appear to describe instances of communication between the parties related to various workplace procedures. Paragraphs 24 and 26 reference comments made to plaintiff (only one quotation) that have the potential to be considered rude or inappropriate, but are so vaguely or insufficiently described that they cannot be considered so despicable, cruel and unjust as to warrant punitive damages. The motion to strike requested Items 1, 2 and 8 is granted.

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 9/30/2025.
(Judge's initials) (Date)