Tentative Rulings for December 11, 2025
Department 502

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

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.***

25CECG01521 ***Williams v. Raxcaco*** **(Dept. 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.

24CECG00069 ***Sofian Dawood v. California Department of Transportation (Caltrans)*** **is continued to Thursday, December 18, 2025, at 3:30 p.m. in Department 502.**

24CECG00136 ***Isaac Munoz v. CVT, LLC*** **is continued to Tuesday, December 30, 2025 at 3:30 pm in Department 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Zavala v. Pacific Grain & Foods, LLC***
Case No. 21CECG01658

Hearing Date: December 11, 2025 (Dept. 502)

Motion: Plaintiffs' Motion for Summary Adjudication of the Fourth and Sixth Causes of Action

Tentative Ruling:

To grant plaintiffs' motion for summary adjudication of the fourth and sixth causes of action against defendant Pacific Grain & Food, LLC and in favor of plaintiff Juan Zavala only. To deny the motion for summary adjudication of the fourth and sixth causes of action as to the other plaintiffs.

Plaintiffs shall submit a proposed judgment consistent with this order within 10 days of the date of service of this order.

Explanation:

Fourth Cause of Action: "Under the FEHA, it is unlawful '[f]or any employer ... to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint ... under this [Act].' (Gov. Code, § 12940, subd. (h).)" (*Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1453.)

"To establish a prima facie case of retaliation, the 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 between the protected activity and the employer's action. Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. If the employer produces 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 prove intentional retaliation." (*Ibid*, citations omitted.)

In the present case, plaintiffs have submitted evidence showing that they engaged in protected activity, as they state that they complained to their employer about unsafe conditions at the workplace due to the employer's failure to follow Covid-19 safety protocols during the pandemic. (Plaintiffs' UMF Nos. 3-6.) Plaintiffs were concerned that one of their co-workers had just tested positive for Covid, and they requested that defendant implement changes to work conditions for safety, disinfect the workplace, and grant plaintiffs permission to get tested and quarantine. (UMF Nos. 6, 19.) Plaintiffs also complained about being mistreated on the basis of race, language, and national origin, in addition to their safety concerns. (UMF No. 6.) Therefore, plaintiffs have presented evidence to show that they engaged in protected activity, and they have met the first element of their FEHA retaliation claim.

In addition, plaintiffs' evidence shows that plaintiff Juan Zavala was subjected to an adverse employment action after he complained about the unsafe workplace conditions, since the owner of the company, Lee Perkins, threatened to fire him, yelled profanities at him, and ordered him to leave, then physically grabbed him and tried to forcibly remove him from the building. (UMF Nos. 7-12.)

Also, while it is somewhat unclear from plaintiffs' evidence, it appears that Zavala was fired either at the time he made his complaints or shortly thereafter. The second amended complaint alleges that he picked up a paycheck on December 31, 2020, about two weeks after the incident where Perkins told him to leave and tried to physically shove him out of the building. (SAC, ¶ 31.) At that time, Ms. Ramirez, the Human Resources administrator, tried to have him sign a paper. (*Ibid*.) Zavala reminded Ramirez that Perkins had fired him on December 15, 2020 during the incident, so he should not have to sign any papers. (*Ibid*.) Ramirez refused to allow Zavala to take the paycheck until he signed the paper. (*Ibid*.) Another employee of Pacific, Raymond Abina, then approached Zavala in a threatening manner and told him to "Sign the fucking paper and get out of here!" (*Id*. at ¶ 32.) Zavala was afraid of being harmed by Abina, so he signed the paper. (*Id*. at ¶ 33.) Ramirez then threw the check at Zavala. (*Ibid*.) Abina then began to physically push Zavala out of the office. (*Ibid*.)

Perkins subsequently filed a workplace violence restraining order petition against Zavala to chill Zavala's right to damages for Perkins' actions. (*Id*. at ¶ 35.) The petition falsely accused Zavala of threatening violence against Ramirez. (*Ibid*.) However, Zavala filed a response to the petition that included declarations of numerous other employees who were present during the incident where Perkins assaulted and battered Zavala, at which time Perkins' attorney withdrew the petition. (*Ibid*.)

Perkins and Abina have admitted these facts by failing to respond to plaintiffs' requests for admissions, which asked them to admit paragraphs 17 to 35 of the second amended complaint. (See court's orders of April 8, 2023 and June 3, 2023, deeming Abina and Perkins to have admitted the truth of the matters in the requests for admissions.) Thus, Zavala has submitted sufficient evidence to meet his burden of showing that he was subjected to an adverse employment action after he made a complaint about unsafe working conditions and racial discrimination. He was threatened, physically assaulted and battered by Perkins, who is the owner and managing agent of the company, told to leave, and then fired from his job. He was also physically assaulted and battered again by Abina when he went to pick up his paycheck two weeks after the incident. Perkins then filed a workplace violence restraining order petition against him, which falsely accused him of threatening Ramirez. As a result, plaintiff has shown that he suffered adverse employment actions, including being threatened, assaulted, fired, and having a false restraining order petition filed against him.

Zavala has also shown that there is a causal connection between his complaint and the adverse action, since Perkins started yelling and cursing at him, grabbed him, tried to push him out of the building, and fired him immediately after he made the complaint. Perkins also filed a false petition for a restraining order against Zavala shortly after the incident. Such close temporal proximity between the complaint and the adverse action strongly suggests that there was a causal connection between the complaint and the adverse action.

Defendants have not filed any opposition to plaintiffs' motion for summary adjudication of the fourth cause of action, nor have they submitted any evidence that would tend to show that they had legitimate reasons for firing Zavala or that there are triable issues of material fact with regard to the fourth cause of action. As a result, the court intends to grant summary adjudication in favor of Zavala on the fourth cause of action for FEHA retaliation.

On the other hand, the other plaintiffs have failed to meet their burden of presenting evidence proving that they suffered an adverse employment action after they made their complaint. As discussed above, in order to prove a retaliation claim under FEHA, the plaintiff must show that he or she was subjected to an "adverse employment action." (*Akers, v. County of San Diego*, *supra*, 95 Cal.App.4th at p. 1454.)

"We agree with those federal courts that have held an adverse employment action is not limited to 'ultimate' employment acts, such as a specific hiring, firing, demotion, or failure to promote decision. The legislative purpose underlying FEHA's prohibition against retaliation is to prevent employers from deterring employees from asserting good faith discrimination complaints, and the use of intermediate retaliatory actions may certainly have this effect. But we also agree with the *Thomas* court's observation that to be actionable, the retaliation must result in a substantial adverse change in the terms and conditions of the plaintiff's employment. A change that is merely contrary to the employee's interests or not to the employee's liking is insufficient. Requiring an employee to prove a substantial adverse job effect 'guards against both "judicial micromanagement of business practices," [citation] and frivolous suits over insignificant slights.' Absent this threshold showing, courts will be thrust into the role of personnel officers, becoming entangled in every conceivable form of employee job dissatisfaction." (*Id*. at p. 1455, citations omitted.)

"In balancing these policies and implementing FEHA's statutory objectives, we conclude an action constitutes actionable retaliation only if it had a substantial and material adverse effect on the terms and conditions of the plaintiff's employment. Although an employer's 'intermediate' action may be retaliatory, it does not form the basis of an FEHA retaliation claim unless it satisfies this test." (*Ibid*.)

"Retaliation claims are inherently fact specific, and the impact of an employer's action in a particular case must be evaluated in context. Accordingly, although an adverse employment action must materially affect the terms, conditions, or privileges of employment to be actionable, the determination of whether a particular action or course of conduct rises to the level of actionable conduct should take into account the unique circumstances of the affected employee as well as the workplace context of the claim." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1052, footnote omitted.)

"[W]e believe that the language in section 12940(a) making it an unlawful employment practice for an employer to discriminate against an employee on the basis of race, sex, or the other enumerated characteristics 'in compensation or in the terms, conditions, and privileges of employment' properly must be interpreted broadly to further the fundamental antidiscrimination purposes of the FEHA. Appropriately viewed, this provision protects an employee against unlawful discrimination with respect not only to so-called 'ultimate employment actions' such as termination or demotion, but also the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his

or her career. Although a mere offensive utterance or even a pattern of social slights by either the employer or co-employees cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment for purposes of section 12940(a) (or give rise to a claim under section 12940(h)), the phrase 'terms, conditions, or privileges' of employment must be interpreted liberally and with a reasonable appreciation of the realities of the workplace in order to afford employees the appropriate and generous protection against employment discrimination that the FEHA was intended to provide." (*Id*. at pp. 1053–1054, footnotes omitted.)

"As the high court recognized in *Harris,* the determination of what type of adverse treatment properly should be considered discrimination in the terms, conditions, or privileges of employment is not, by its nature, susceptible to a mathematically precise test, and the significance of particular types of adverse actions must be evaluated by taking into account the legitimate interests of both the employer and the employee. Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of sections 12940(a) and 12940(h)." (*Id.* at pp. 1054–1055, footnote omitted.)

In the present case, plaintiff's evidence indicates that only Mr. Zavala was actually assaulted and fired from his job by Mr. Perkins. There is no evidence that any of the other plaintiffs were terminated or directly retaliated against by Perkins or other agents of defendant Pacific Grain & Foods. On the other hand, they were present when Perkins yelled at Zavala and assaulted him, and they were upset and intimidated by his conduct. (UMF No. 14.) Perkins also threatened the other plaintiffs with termination for complaining about the unsafe conditions at the job site, became aggressive toward them, and screamed at them. (UMF Nos. 7, 8.) Because of Perkins' violent conduct, the plaintiffs are afraid and do not want to return to work at the defendants' facility. (UMF Nos. 32, 52, 71, 90, 109, 128.) It is not clear from the evidence whether they have returned to work at the defendants' facility since the incident, or whether they have resigned from their employment.

Plaintiffs allege in the SAC that they were discharged or constructively discharged after the incident, and that their protected activity was a substantial reason for the discharge or constructive discharge. (SAC, ¶ 62.) However, they have not provided any evidence to support their allegations regarding their constructive discharge. Simply citing to allegations in their unverified complaint are not sufficient to meet their burden on summary judgment, since such allegations are not admissible evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845 [if plaintiff moves for summary judgment, he or she must present *evidence* that would require a reasonable trier of fact to find any underlying material fact more likely than not].) While defendants admitted that some of the allegations of the SAC are true, specifically the allegations of paragraphs 17 to 35, they did not admit the allegations regarding the termination or constructive termination of the plaintiffs.

Therefore, there is no evidence before the court that the plaintiffs other than Zavala were terminated or resigned due to the incident. The evidence shows only that the other plaintiffs were present during a single incident on December 15, 2020, in which

Perkins yelled at them, threatened them with firing, and then yelled at and assaulted Zavala after they complained about unsafe working conditions and discrimination during the Covid pandemic. While such extreme conduct might arguably constitute an adverse employment action for the purpose of their section 12940(h) retaliation claim, plaintiffs have not shown that Perkins' conduct was so extreme that it constituted retaliation as a matter of law, particularly since they have presented no evidence that they were fired or constructively terminated after the incident. Retaliatory conduct that is short of termination or demotion may sometimes constitute "adverse employment action" for the purpose of FEHA, but the determination of whether such conduct is sufficient constitute adverse employment action is highly fact-specific and varies considerably in light of the circumstances of each case. (*Yanowitz, supra*, at pp. 1053-1055.) The evidence here does not conclusively show that Perkins' conduct was so severe or extreme that it constituted a material change to the terms and conditions of plaintiffs' employment. The trier of fact will need to determine whether Perkins' conduct during the incident was so extreme as to constitute an adverse employment action.

Therefore, the court intends to deny the motion for summary adjudication of the fourth cause of action with regard to plaintiffs Torres, Lopez, Rodriguez, Martinez, and Aguirre. However, it will grant summary adjudication of the fourth cause of action as to plaintiff Zavala, as discussed above.

Sixth Cause of Action: The sixth cause of action states a claim for whistleblower retaliation under Labor Code section 1102.5, subdivision (b). Under section 1102.5(b), "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." (Lab. Code, § 1102.5, subd. (b).)

Section 1102.5(b) thus prohibits an employer from retaliating against an employee who reports a violation of the law to a person with authority to correct the violation, even if that person already knew about the violation before the report. (*People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal.5th 719, 729-730.) "[U]nder California law, an employee disclosing information he or she reasonably believes to be a violation of law to a 'person with authority over the employee' is a protected disclosure under section 1102.5(b)." (*Killgore v. SpecPro Professional Services, LLC* (9th Cir. 2022) 51 F.4th 973, 986.)

"Accordingly, to establish a prima facie case of retaliation under section 1102.5(b), a plaintiff must show that: (1) he engaged in protected activity; (2) his employer thereafter subjected him to an adverse employment action; and (3) a causal link between the two." (*Fitzgerald v. El Dorado County* (E.D. Cal. 2015) 94 F.Supp.3d 1155, 1172, citations omitted.)

"Section 1102.6 provides the governing framework for the presentation and evaluation of whistleblower retaliation claims brought under section 1102.5. First, it places

the burden on the plaintiff to establish, by a preponderance of the evidence, that retaliation for an employee's protected activities was a contributing factor in a contested employment action. The plaintiff need not satisfy *McDonnell Douglas* in order to discharge this burden. Once the plaintiff has made the required showing, the burden shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the action in question for legitimate, independent reasons even had the plaintiff not engaged in protected activity." (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718.) "Under section 1102.6, a plaintiff does not need to show that the employer's nonretaliatory reason was pretextual. Even if the employer had a genuine, nonretaliatory reason for its adverse action, the plaintiff still carries the burden assigned by statute if it is shown that the employer also had at least one retaliatory reason that was a contributing factor in the action." (*Id.* at pp. 715–716.)

"An employee engages in protected activity when he 'discloses to a governmental agency reasonably based suspicions of illegal activity.' The employee must 'reasonably believe [ ]he was disclosing a violation of state or federal law.' To have a reasonably based suspicion of illegal activity, the employee must be able to point to some legal foundation for his suspicion—some statute, rule or regulation which may have been violated by the conduct he disclosed." (*Fitzgerald v. El Dorado County, supra*, 94 F.Supp.3d at p. 1172, citations omitted.)

"The employee must have an actual belief that the employer's actions were unlawful and the employee's belief, even if mistaken, must be reasonable." (*Tam v. Qualcomm, Inc.* (S.D. Cal. 2018) 300 F.Supp.3d 1130, 1148, citation omitted.) However, making a complaint about internal personnel matters involving a supervisor and her employee, rather than disclosure of a legal violation, is not "protected activity" under section 1102.5. (*Patten v. Grant Joint Union High School Dist*. (2005) 134 Cal.App.4th 1378, 1384-1385, disapproved on other grounds in *Lawson v. PPG Architectural Finishes, Inc., supra*, 12 Cal.5th 703.)

Here, plaintiffs made a complaint about unsafe working conditions to their supervisor and company owner, Lee Perkins. They claim that they believed that the working conditions constituted violations of "safety regulations and discrimination laws", although they do not specify which regulations or laws they believed were violated. Still, their SAC clarifies that plaintiffs believed that defendants had violated OSHA's Hazard Communication standard, OSHA's Personal protective Equipment standards, Cal/OSHA's Aerosol Transmissible Diseases standard, and other applicable Cal/OSHA standards. (SAC, ¶ 74.) Thus, they reasonably believed that defendants' policies violated federal, state, and local statutes, rules, and regulations. (*Id*. at ¶ 75.) As a result, plaintiffs have met their burden of showing that they made a complaint about work conditions that they reasonably believed were unlawful.

Plaintiff Zavala has also met his burden of showing that he was subjected to an adverse employment action as a result of his complaint and that there was a causal connection between his complaint and the adverse action. After Zavala complained about the unsafe working conditions, Perkins immediately started yelling and cursing at him, told him to get out, tried to shove him out of the building, and then fired him. (UMF Nos. 7-12, Zavala decl., ¶ 23.) Perkins also filed a petition for a restraining order that falsely accused plaintiff of making threats against Ramirez. (SAC, ¶ 35, the allegations of which were deemed admitted by Perkins and Abina per court orders of April 8, 2025 and June 3, 2025.)

Therefore, Zavala has met his burden of showing that defendant retaliated against him for making a report about unlawful activity in violation of Labor Code section 1102.5(b). Defendants have not filed any opposition or made any attempt to show that they had a legitimate reason for their actions, so the court intends to grant summary adjudication of the sixth cause of action in favor of plaintiff Zavala.

On the other hand, the court intends to deny the motion for summary adjudication on the sixth cause of action as to the other plaintiffs. As discussed above, other than Zavala, none of the plaintiffs have presented evidence that conclusively shows that they suffered an adverse employment action after they made their protected complaint about unsafe working conditions. There is no evidence that they were fired or demoted after making the complaint, or that working conditions became so intolerable that they had to quit. They have shown that they were present at the time Zavala was yelled at, assaulted, and fired by Perkins. Perkins also yelled at the other employees and threatened to fire them. They have also presented evidence that they were frightened and intimidated by Perkins' violent behavior, and they do not want to go back to work for him. However, they do not state that they resigned due to his violent actions, or that they were not able to keep working for him after the incident.

The evidence provided by the other plaintiffs is not sufficient to show that, as a matter of law, they suffered an adverse employment action due to their complaint. As previously discussed, where the defendant engages in conduct that is short of termination or demotion, the determination of whether plaintiff suffered an adverse employment action is inherently factual. (*Yanowitz, supra*, at pp. 1053-1054.) Based on the evidence presented here, the court cannot determine as a matter of law that the other plaintiffs suffered the type of adverse employment action that would support a whistleblower retaliation claim under section 11025. Therefore, the court intends to deny the motion for summary adjudication as to plaintiffs Torres, Lopez, Rodriguez, Martinez, and Aguirre.

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: KCK on 12/08/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Barajas v. Acosta, et al.***
Superior Court Case No. 25CECG02965

Hearing Date: December 11, 2025 (Dept. 502)

Motion: by Defendants to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

Pursuant to California Code of Civil Procedure section 1281.2, "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Cal. Civ. Proc. Code § 1281.2, subds. (a)-(c), paragraph breaks omitted.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

Here, defendants have met their burden of showing that the parties entered into an agreement to arbitrate any disputes that arise out of the employment relationship, including the types of claims that plaintiff has alleged here. Defendants have provided evidence that plaintiff signed the arbitration agreement as part of her onboarding when she was hired by defendants in May of 2023 and again following her name change in December of 2024. (Salinas Decl., ¶¶ 4-6, 8-10, Ex. B.) Defendants are seeking to enforce

the December 2024 agreement. The agreement states that it applies to "any dispute arising out of or related to Employee's employment with JDB Properties, Inc. …" (Ex. B to Salinas Decl.) The agreement applies to disputes the employee may have against the company or its employees. (*Ibid*.) The agreement is intended to apply to the resolution of disputes that would otherwise be resolved in a court of law. (*Ibid*.)

The agreement states that it is intended to cover "disputes arising out of or relating to the employment relationship, trade secrets, unfair competition, compensation, breaks and rest periods, termination, or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans with Disabilities Act, Age discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by the Company and covered by the Employee Retirement Security Act of 1974 or funded by insurance), Affordable Care Act, Genetic Information Non-Discrimination Act, and state statutes, if any, addressing the same or similar subject matters, and all other federal or state statutory and common law claims." (*Ibid*.)

Thus, defendants have presented sufficient evidence to meet their burden of showing that plaintiff entered into an agreement to arbitrate her claims against defendants, including her claims for gender discrimination, sexual harassment, retaliation, failure to prevent discrimination, harassment and retaliation, violations of the Civil Code and Labor Code, and wrongful termination. As a result, the burden shifts to plaintiff to show that the agreement is unenforceable.

In her opposition, plaintiff contends that the agreement is void and unenforceable because she has alleged claims for sexual harassment and failure to prevent harassment, and thus she cannot be compelled to arbitrate her claims, as the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) bars forced arbitration of such claims. Under the EFAA, "Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." (9 U.S.C.A. § 402, subd. (a).)

"An issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator." (9 U.S.C.A. § 402, subd. (b).)

"The term 'sexual harassment dispute' means a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." (9 U.S.C.A. § 401, subd. (4).)

There does not appear to be any dispute that plaintiff's claims constitute a sexual harassment dispute under the EFAA. There is, however, disagreement as to whether the

agreement can be considered a "predispute arbitration agreement" based on when the dispute arose in relation to the December 2024 arbitration agreement.

> [T]he date that a dispute has arisen for purposes of the Act is a fact-specific inquiry in each case, but a dispute does not arise solely from the alleged sexual conduct. A dispute arises when one party asserts a right, claim, or demand, and the other side expresses disagreement or takes an adversarial posture. (*Famuyide, supra*, at *3.) In other words, "[a] dispute cannot arise until both sides have expressed their disagreement, either through words or actions." (*Id*. at p.*8.) Until there is a conflict or disagreement, there is nothing to resolve in litigation. (*Ibid*.)

(*Kader v. Southern California Medical Center, Inc.* (2024) 99 Cal.App.5th 214, 222-223 (*Kader*), quoting *Famuyide v. Chipotle Mexican Grill, Inc*. (D. Minn., Aug. 31, 2023, No. CV-23-1127 (DWF/ECW)) 2023 WL 5651915.)

Plaintiff alleges she became the target of sexually explicit and offensive comments and actions beginning in April 2024. (Complaint, ¶ 12.) She complained to defendant's management and human resources in April 2024 and November 2024 asserting no action was taken by defendants. (*Id*., ¶¶ 12-13.) Plaintiff alleges she complained again in April 2025 and was told by defendants there was no problem. (*Id*., ¶ 14.) Shortly thereafter defendant terminated her employment. (*Id*., ¶ 15.) Plaintiff asserts her dispute arose in April 2025 when her complaints received an adversarial response. Thus, the arbitration agreement defendants are seeking to enforce is a predispute agreement and is unenforceable under the EFAA.

Defendants argue that plaintiff's dispute arose in advance of signing the December 2024 arbitration agreement and the EFAA is not applicable to a post-dispute agreement. Defendants cite to *Combs v. Netflix, Inc.* (C.D. Cal., Apr. 16, 2025, No. 2:24-cv-09037-MRA-MAA) 2025 WL 1423344 as supporting finding their alleged inaction to plaintiffs complaints as sufficient to establish a dispute. The court in *Combs* characterized the plaintiff's allegations that her employer did not respond to her complaints as having "effectively expressed disagreement with Plaintiff's complaints through silence – that is, it took a position adverse to Plaintiff by not addressing her concerns." (*Id*., at p. *4.) In *Kader Kader v. Southern California Medical Center, Inc.,* the court found the dispute arose once plaintiff filed charges with DFEH, rather than when the harassment is alleged to have began, in part because plaintiff never complained to defendants regarding the conduct that was the basis of the complaint before signing the arbitration agreement. (*Kader*, *supra*, 99 Cal.App.5th at p. 224.) Here, in contrast with the facts alleged in *Kader* and similar to *Combs*, plaintiff alleges she complained to her employer and no action was taken.

However, the evidence submitted by defendants in support of their motion is not consistent with their argument that their alleged inaction should be considered adversarial to plaintiff. Yulitza Salinas, Manager of Human Resources for defendant JDB Properties, Inc., attests to receiving plaintiff's written complaint in April 2024 and responding by separating plaintiff from the alleged harasser. (Salinas Decl., ¶ 7.) Salinas' notes taken in April 2025 indicate Salinas acknowledged plaintiff's concerns and explained the scope of action defendant could take was limited. (*Id*., ¶¶ 11-12, Ex. 3.) Salinas' response to the April 2024 complaint by separating plaintiff and alleged harasser neither expresses disagreement with plaintiff's complaint nor is adversarial to plaintiff's

position. Salinas' response to plaintiff's April 2025 complaint that the company's actions were limited is consistent with plaintiff's allegations and attestations that defendant did not respond to her complaints. (See Barajas Decl., ¶ 4.)

Based upon the facts submitted, the defendant's alleged inaction, which appears to be disputed, is does not support finding there was a disagreement or adversarial posture between the parties until April 2025 when plaintiff's employment was terminated or shortly before. Therefore, the dispute arose for purposes of the EFAA after the December 2024 arbitration agreement was signed.

As a result, plaintiff has shown that the EFAA applies to her complaint. Also, since her sexual harassment claims are intertwined with her other claims for retaliation, the EFAA bars enforcement of the arbitration agreement as to plaintiff's entire complaint. (*Turner v. Tesla, Inc.*, *supra*, 686 F.Supp.3d at pp. 925-926 [declining to sever sexual harassment claims from non-harassment claims and arbitrate non-harassment claims]; *Johnson, supra*, at pp. 558-561 [same].) Therefore, the court intends to deny the motion to compel arbitration of plaintiff's claims.

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: KCK on 12/08/25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re:	***Salina Brown v. Applebee's Restaurants, LLC*** Superior Court Case No. 24CECG00676
Hearing Date:	December 11, 2025 (Dept. 502)
Motion:	By Defendant for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant summary judgment in favor of defendant and against plaintiff. The prevailing party is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

The plaintiff, Salina Michelle Brown (Plaintiff), asserts causes of action for strict liability, breach of warranty, and negligence (including negligence per se), arising from the same operative facts. Plaintiff alleges she was eating food in her home she had ordered from defendant Apple Mid Cal II LLC (Applebee's or Defendant), via DoorDash, "when she bit into a food contaminated with worms. The contaminated food-product caused Plaintiff . . . to begin to feel sick. [She] began experiencing nausea, dizziness, and she became physically ill." (Comp., ¶ 7.) Defendant now moves for summary judgment or summary adjudication, based on Plaintiff's inability to prove causation.

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

Defendant Satisfies Its Initial Burden

Defendant contends it is entitled to summary judgment because Plaintiff cannot establish the necessary element of causation required for each of Plaintiff's causes of action. (*Setliff v. E. I. Du Pont de Nemours & Co.* (1995) 32 Cal.App.4th 1525, 1533-1534 [to impose liability on a defendant, whether based on strict liability, negligence, or breach of warranty, a plaintiff must show defendant 's conduct caused plaintiff's injury].)

Defendant's Undisputed Material Facts

To support its motion, Defendant presents 21 material facts, summarized herein. This case arises from an incident on February 14, 2022, resulting from a food order from Applebee's located in Clovis, California. (Fact no. 1.) Plaintiff alleges she was eating by herself when she bit into food contaminated with worms. She alleges she began to feel sick, experienced nausea, dizziness, diarrhea, abdominal pain, inability to eat food or keep liquids down, headache, chills, and became physically ill. (Fact no. 2.) "Plaintiff photographed the steak in the take-out container and the receipt at the time of the incident." (Fact no. 3.) Plaintiff did not test the steak and she destroyed it without giving Defendant an opportunity to test it or physically inspect it. (Fact nos. 4, 5.) Plaintiff admits the steak tasted good, she ate most of it, and "she does not know whether in fact that items pictured [Def.'s COE, ex. 2] are actually worms." (Fact no. 6.)

Defendant's fact number 7, which Plaintiff admits, is set forth below:

> Plaintiff claimed she became physically ill as a result of the eating [of] the meal. Plaintiff advised that she started experiencing symptoms after 24 to 48 hours. Plaintiff reported to Clinica Sierra Vista on February 16, 2022, reporting that she had experienced symptoms for a day. It was noted that "[s]he has had recent ingestion of possible spoiled or contaminated food or water at Applebee's restaurant." No tests or lab work were done by Clinica Sierra Vista on February 16, 2022, although it was indicated that "lab work needed." Her abdominal exam indicated it was "non-tender" with "normal bowel sounds." Plaintiff did not provide a stool sample or blood work on that date. Clinica Sierra Vista ordered a urine dip, but the test was "discontinued." The month prior Plaintiff had visited the emergency room at St. Agnes Medical Center for COVID-19, upper respiratory infection and dehydration.

No other customers have reported incidents or complaints about food with worms from this Applebee's. (Fact nos. 8, 9.) Fact number 10 begins with the following summary of Applebee's policies:

> It is Applebee's policy that the restaurant be kept in a reasonably safe condition at all times as set out in the Brand Standards Manuals and Hourly/Manager Handbooks. This includes the proper handling of storage of all food products in the restaurant. Depending on the type of food product, they are either held in dry-storage, refrigerated storage, or in freezer storage. All food products are regularly inspected for their expiration dates or best by dates. If any food product is discovered to be expired or past the best by date, it would be properly discarded.

In the last sentence of fact number 10, Defendant states, "Plaintiff has not provided any tangible evidence of the existence of worms in the food except photographs of a steak containing what appears to be veins/arteries." Plaintiff does not dispute the last sentence about her scant evidence of worms or the suggestion that her photograph may depict veins or arteries, not worms.

Fact number 11 lists the liability theories of Plaintiff's complaint filed on February 14, 2024, as strict liability, breach of warranty, negligence, and negligence per se. Fact numbers 12 through 21 describe relevant written discovery requests Defendant served on Plaintiff and her responses.

Causation

To establish liability under any of Plaintiff's theories, she must prove the necessary element of causation. (*Setliff v. E. I. Du Pont de Nemours & Co., supra*, 32 Cal.App.4th at pp. 1533-1534.) Defendant contends Plaintiff cannot establish causation because Plaintiff has produced no evidence that the food she consumed was contaminated or capable of causing illness. In her opposition memorandum, Plaintiff describes Defendant's burden as follows:

> A defendant making a "no evidence" motion must introduce admissible evidence (by declaration or otherwise) that, in response to the full panoply of discovery devices (request for production, interrogatories, depositions etc.), the plaintiff has produced factually devoid responses sufficient to support an inference that the plaintiff cannot make out a prima facie case on an element of its case. In addition, a defendant making a "no evidence" motion must also establish that, by the time the case comes up for trial, the plaintiff "cannot reasonably expect to obtain" the evidence necessary to raise a triable issue of fact on the issue. *Scheiding v. Dinwiddie Construction Company* (1999) 69 Cal.App. 4th 64, 83 [*Scheiding*].

(Opp., p. 9:4-13.)

In *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763 (*Saelzler*), the California Supreme Court discussed *Scheiding* and explained the essential requirements for a "no evidence" motion follows:

> As stated in *Scheiding,* [*supra*] 69 Cal.App.4th [at p.] 70, "We begin by observing that the nature of summary judgment in California has changed dramatically over the last 10 years. The shifting of the burden of producing evidence that lies at the heart of this appeal could not have occurred under the summary judgment law as it previously existed. *Formerly, a moving defendant had to affirmatively negate a cause of action and could not attempt to rely on a plaintiff's vague or otherwise insufficient responses to discovery.* Prior to the amendments of [Code of Civil Procedure] section 437c, the burden of proof rested entirely on the moving party to establish a right to summary judgment by demonstrating the negative proposition that the opposing party could not prevail. [Citations.] In most cases, this was a burden impossible to bear."
>
> *Scheiding* continued, pointing out that "The 1992 and 1993 amendments ... did not change the fundamental requirement that the moving party prove

> its right to summary judgment, but did adopt the federal mechanism of burden shifting. The new statute expressly provided that *the burden does not shift to a responding party until the moving party (in this context, as usual, a defendant or cross-defendant) has been able to 'show' that a cause of action has no merit 'because an element of the claim cannot be established or there is a complete defense.'* Thus, the amended language of [Code of Civil Procedure] section 437c, like its counterpart Federal Rules of Civil Procedure, rule 56 (28 U.S.C.), now places the initial burden on the moving party, and shifts it to the opposing party upon a 'showing' that one or more elements of the cause of action cannot be established. [Citation.]" (*Scheiding, supra,* 69 Cal.App.4th at pp. 71–72; see also *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 581–592 [legislative history of 1992 and 1993 amendments] (*Union Bank*).)
>
> Therefore, we must determine whether defendants in the present case have shown, through the evidence adduced in this case, including . . . deposition testimony, that plaintiff Saelzler has not established, and cannot reasonably expect to establish, a prima facie case of causation, a showing that would forecast the inevitability of a nonsuit in defendants' favor. If so, then under such circumstances the trial court was well justified in awarding summary judgment to avoid a useless trial. [Citation.]
>
> In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing her evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor. [Citations.] We have concluded that, even giving plaintiff the benefit of these favorable rules of construction, her submission in opposition to summary judgment lacked specific facts showing that defendants' alleged negligence was an actual, legal cause of her injuries. In other words, defendants have shown that plaintiff has not established, and cannot reasonably expect to establish, a prima facie case of causation.

(*Saelzler, supra,* 25 Cal.4th at pp. 767–769, all italics added by *Saelzler* court.)

The court must apply the *Saelzler* analysis to this case, and give Plaintiff the benefit of all favorable rules of construction. The court liberally construes Plaintiff's evidentiary submissions, while it strictly scrutinizes Defendant's showing. Here, Plaintiff admits she does not know whether worms were actually in her food. (Fact no. 6.) Plaintiff sought medical treatment, but she admits her providers conducted no lab tests, such as stool samples or blood work, to establish the cause of her alleged food poisoning. Plaintiff's inconclusive medical records include the statement, "[s]he has had recent ingestion of *possible* spoiled or contaminated food or water at Applebee's restaurant." (Fact no. 7, italics added.) Plaintiff's evidence of worms is limited to her photographs. Plaintiff admits she "saved the food for awhile in her freezer and then discarded it." (Pltf.'s resp. to fact no.

4.) Plaintiff later destroyed the steak without giving Applebee's a chance to inspect the steak or to test it. (Fact no. 4.) Had Defendant had an opportunity to inspect and test the steak, it could have determined conclusively whether the steak contained worms, veins, or arteries.

As recognized in *Saelzler*, in order to establish the element of causation, "the plaintiff must prove, by nonspeculative evidence, some actual causal link between the plaintiff's injury and the defendant's [act or omission]." (*Saelzler, supra,* 25 Cal.4th at p. 774.) " 'A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, *it becomes the duty of the court to direct a verdict for the defendant.*' [Citation.]" (*Id.* at pp. 775-776, italics added by *Saelzler* court.)

Restaurant food is not always available for testing after a customer experiences an adverse reaction, but food poisoning cases follow the same rules as other torts, as Defendant explains:

> Food poisoning cases are not unique. Alleged food poisoning claims, like the present one, follow the same rules as other tort cases and the basic elements of proof are essentially those of any personal injury action. (*Sarti v. Salt Creek Ltd.* (2008) 167 Cal. App. 4th 1187, 1202.) Causation cannot be established merely by showing that Plaintiff became sick after consuming food or drink. (*Minder v. Cielito Lindo Restaurant* (1977) 67 Cal. App. 3d 1003, 1008.) Specifically, "[j]ust because you get sick soon after eating at a restaurant does not prove bad food or some other contamination at the restaurant caused it. Any other rule will be untenable, since it would make restaurants de facto health insurers of their customers." (*Sarti, supra,* 167 Cal. App. 4th at 1196.)

(Mem., p. 16:10-17.) The court finds Defendant meets its initial burden to show Plaintiff has not established, and cannot reasonably expect to establish, a prima facie case of causation by the time her case comes up for trial. The burden then shifts to Plaintiff to raise a triable issue of material fact.

Plaintiffs Fail to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, deposition, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) Plaintiff fails to present the necessary admissible evidence. Without considering any new evidence submitted with Defendant's reply (Code Civ. Proc., § 437c, subd. (b)(4) [reply shall not include any new evidentiary matter]), Plaintiff has not demonstrated that she has evidence, or could reasonably obtain evidence before trial, that would allow a reasonable trier of fact to find that the food she ordered from Applebee's was contaminated with worms that made her sick.

Plaintiff has no direct evidence to prove the food she ate from Applebee's contained worms, contaminants, or any condition that could cause her subsequent illness. When she discarded the steak without giving Defendant an opportunity to inspect it, she destroyed all future possibilities of obtaining direct evidence. When the suspect food is unavailable, a plaintiff can present indirect evidence to establish food poisoning, such as: (1) the food was "outwardly deleterious"; (2) others who ate the same food at the same time also became ill; (3) others who ate everything plaintiff ate except the suspect item did not become ill; (4) evidence tending to exclude other causes of plaintiff's illness; or (5) evidence that the restaurant employed unsanitary food handling techniques. (*Minder v. Cielito Lindo Restaurant, supra,* 67 Cal. App. 3d 1003 at pp. 1008-1010.)

Here, Plaintiff has no evidence of the first factor based on her admission that the food smelled and tasted good and she ate most of it. (Fact no. 6.) For the second and third factors, she ate alone, and she has no evidence about the effect of Applebee's food on others. (Fact nos. 2, 8, 9.) For the fourth factor, she has presented no expert testimony to exclude other causes of her illness. Plaintiff failed to obtain a scientific analysis of the food itself, although it was in her possession. Plaintiff failed to obtain any contemporaneous medical tests to rule out or establish the cause of her illness, nor did she present expert testimony about the cause of her illness.

For the final factor, neither Plaintiff nor anyone else assessed the conditions at Applebee's for food handling to prove that unsanitary conditions at the restaurant might have caused Plaintiff's illness. Defendant presented evidence, through its moving papers and exhibits, including its verified responses to Plaintiff's Special Interrogatories, that Defendant maintains policies for the proper handling and storage of all food products at all times, to keep Applebee's in a reasonably safe condition. (Fact no. 10.) Defendant's evidence of its policies and practices provides circumstantial evidence tending to show the improbability that it served "possible spoiled or contaminated food or water" (see Fact no. 7). Defendant presented sufficient evidence, based on Plaintiff's admissions, circumstantial evidence, and Plaintiff's lack of evidence, to shift the burden to Plaintiff to raise the existence of a triable issue of fact. Plaintiff's reliance on speculation, conjecture, and argument, rather than specific facts, is insufficient to negate Defendant's showing that Plaintiff cannot establish the essential element of causation. (Code Civ. Proc., § 437c, subd. (p)(2) [after burden shifts, plaintiff must set forth specific facts to raise triable issue of material fact; *Union Bank v. Superior Court, supra,* 31 Cal.App.4th at p. 590 ["Once the burden shifts as a result of the factually devoid discovery responses, the plaintiff must set forth the specific facts which prove the existence of a triable issue of material fact.") Plaintiff presents no additional facts and fails to refute Defendant's showing show that Plaintiff has not established, and cannot reasonably expect to establish, a pima facie case of action by the time the case comes up for trial.

Conclusion

In conclusion, the court finds Defendant meets its burden to show Plaintiff cannot establish the essential element of causation for each of her causes of action. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants Defendant's motion for summary judgment against Plaintiff.

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: KCK on 12/08/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***I.C. Uber Technologies, Inc.***
Superior Court Case No. 24CECG05355

Hearing Date: December 11, 2025 (Dept. 502)

Motion: by Defendant Uber Technologies, Inc.
(1) To Compel Compliance with Subpoena for Business Records
(2) To Compel Plaintiff's Independent Medical Examination, and Request for Monetary Sanctions

Tentative Ruling:

To grant the motion to compel Valley Children's Hospital to comply with the subpoena. Within 20 days of service of the order by the clerk, Valley Children's Hospital shall produce all documents responsive to the subpoena issued on June 16, 2025.

To order the motion to compel plaintiff's independent medical examination off calendar, for defendant Uber Technologies, Inc.'s failure to comply with Fresno Superior Court Local Rules, Rule 2.1.17.

Explanation:

Motion to Compel Compliance with Subpoena for Business Records

"Unless otherwise limited by order of the court ... any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence[.]" *(Lipton* v. *Superior Court* (1996) 48 Cal.App.4th 1599, 1611.) "Discovery may relate to the claim or defense of the party seeking discovery or of any party to the action." (Code Civ. Proc. § 2017.010.) Discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. Thus, the scope of permissible discovery is one of reason, logic and common sense. Admissibility at trial is not required. Rather, the test is whether the information sought might reasonably lead to other evidence that would be admissible. (*Lipton* v. *Superior Court, supra,* 48 Cal.App.4th at p. 1611; see *Davies* v. *Superior Court* (1984) 36 Cal.3d 291, 301; *Volkswagen of America, Inc.* v. *Superior Court* (2006) 139 Cal.App.4th 1481, 1490-1491.) The court ruling on a discovery motion cannot determine whether the information sought will in fact be relevant and admissible at trial: "It can only attempt to foresee whether it is possible that information in a particular subject area could be relevant or admissible at the time of trial." (*Maldonado v. Superior Court* (2002) 94 Cal.App.4th 1390, 1397.)

Defendant Uber Technologies, Inc. ("defendant") issued a subpoena for plaintiff I.C.'s ("plaintiff") medical records and billing records from September 13, 2022 to the present from Valley Children's Hospital. (Palomino Decl., ¶ 6, Exh. D.) The date for production of the records responsive to the subpoena was July 14, 2025. The subpoena

complied with the requirements of Code of Civil Procedure section 1985.3 and included a Notice to Consumer to plaintiff via her attorney that her records were the subject of the subpoena. (*Ibid.*) Plaintiff objected to defendant's subpoena, citing his right to privacy. (*Id*., ¶ 7.) However, plaintiff did not file a motion to quash or modify the subpoena. (Code Civ. Proc., § 1985.3 subd. (g).) Plaintiff also has not opposed this motion.

Defendant argues that plaintiff has put his medical history and billing records at issue by seeking economic damages related to plaintiff's injuries from the underlying incident. As such, defendant contends that the subpoenaed materials are relevant, necessary, and proportional to the case. The records at issue appear to fall within the broad scope of discovery. Based on the evidence presented, and without any opposition to the present motion, the court intends to grant the motion for issuance of the requested order.

Motion to Compel Plaintiff's Independent Medical Examination

Fresno County Superior Court Local Rules, Rule 2.1.17 requires that before filing, *inter alia*, a motion under Code of Civil Procedure sections 2016.010 through 2036.050, inclusive, the party desiring to file such a motion must first request an informal Pretrial Discovery Conference with the court, and wait until either the court denies that request and gives permission to file the motion, or the conference is held and the dispute is not resolved at the conference. Forms for requesting the conference and opposing the request are available on the court's website. The parties are referred to Rule 2.1.17 for further particulars.

Here, defendant failed to obtain leave prior to filing the present motion to compel plaintiff's independent medical examination, which is brought pursuant to Code of Civil Procedure sections 2032.310, 2032.320, and 2032.020. No party requested an informal Pretrial Discovery Conference request prior to the filing of the instant motion. Leave to file the instant motion was not given. Accordingly, the motion will not be heard, and is ordered off calendar.

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

Tentative Ruling
Issued By: KCK on 12/09/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Rafferty, et al. v. Faieta, et al.***
Superior Court Case No. 23CECG01755

Hearing Date: December 11, 2025 (Dept. 502)

Motion: by Defendants Demurring to the Complaint

Tentative Ruling:

To sustain the demurrer to the entire complaint. (Code Civ. Proc., § 430.10, subds. (e), (f).) Leave to amend is granted to plead allegations against defendant Marielle Faieta only.

Plaintiffs are granted 10 days' leave to file a second amended complaint. The time to file the second amended complaint will run from service by the clerk of the minute order. All new allegations in the second amended complaint are to be set in **boldface** type.

Explanation:

Defendant Marielle Faieta, individually and on behalf of Fred Faieta, Jr.[1], demurs to the entirety of First Amended Complaint ("FAC") on the grounds that the claims are time barred by the applicable statute of limitations, plaintiffs fail to state facts sufficient to constitute any cause of action, the allegations are uncertain, and there is a misjoinder of parties since Fred Faieta, Jr. is deceased. The FAC asserts various causes of action for breach of contract, quiet title, common counts, account stated, and constructive trust.

Statute of Limitations

Defendant contends that each cause of action is barred by the applicable limitations period.

The statute of limitations is a legislatively prescribed time period to bring a cause of action. For breach of a written contract, that period is four years from the time the claim accrues. (Code Civ. Proc., § 337, subd. (a).) The limitations period is also four years on actions on (a) a book account of one or more entries; (b) an account stated based on an account in writing; and (c) a balance due on a mutual, open, and current account, items of which are in writing. (*Id*., subd. (b).) Also, the Legislature has not established a specific statute of limitations for actions to quiet title. "Therefore, courts refer to the underlying theory of relief to determine the applicable period of limitations." (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) "[A] claim accrues when [it] is complete

[1] The request for judicial notice of Mr. Faieta's death certificate is granted, and the court judicially notices that Fred Faieta, Jr. died on July 7, 2019. (Evid. Code, § 452, subd. (c).)

with all of its elements. . ." (*Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1341, internal quotations and citations omitted.)

Here, it is alleged that the parties executed a written agreement for plaintiffs to loan defendant Marielle and decedent Faieta, Jr. $65,000. (FAC, ¶ 5.) A copy of the agreement is attached to the complaint. The note is dated February 6, 2008. It provides that defendants promised to pay plaintiffs the sum of $65,000 with interest at rate of 7.5% to start on February 7, 2008. The entire balance of the principal and accrued interest was due and payable in full on February 5, 2009. The note is signed by both defendants. (FAC, Exh. A.) Defendants promised to repay the sums and secured that promise by granting plaintiffs a security interest in real property located at 1601 Wonderment Way, Placerville CA 95667. (*Id*., ¶ 5; See Deed of Trust with Assignment of Rents attached to Exh. A of the FAC.) Defendants failed to pay. Plaintiffs allege that the balance due is $198,947 which includes the sum of principal and interest from August 14, 2019, or $247,176 from August 14, 2022. (FAC, ¶¶ 7, 12.) It appears that each common count claim is based on the same facts as the first cause of action for breach of contract, with the exception of the account stated claim, wherein plaintiffs allege that an account was stated and settled on August 19, 2019. (*Id*., ¶ 15.)

Based on the allegations of the FAC, the causes of action for breach of contract, quiet title, and all common counts (potentially with the exception of the third cause of action for account stated which is addressed separately below) began to accrue on February 5, 2009.

Plaintiffs' opposition presents facts outside of the pleadings, arguing that they have timely commenced their claims by filing two previous suits arising from the same facts against defendants on March 12, 2014 in *Rafferty v. Faieta*, Fresno County Superior Court Case No. 14CECG00730 and on February 18, 2016 in *Rafferty v. Faieta*, Fresno County Superior Court Case No. 16CECG00514. The court grants defendants' request on reply to judicially notice the complaint and orders for dismissal in these prior actions, (Requests for Judicial Notice, filed on November 10, 2025, Exhs. A, B, D, and E), to the extent that such records exist and not for the truth of the contents of the documents filed therein. (Evid. Code, § 452, subd. (d).) However, plaintiffs' previously dismissed action have no bearing on the timeliness of the instant action, which was commenced on May 9, 2023.

- Account Stated

Plaintiffs allege that on or about August 19, 2019, an account was stated and settled between the parties. (FAC, ¶ 15.) There are no facts to support this conclusory allegation. The amounts due on the claim are identical to that alleged in the first and second causes of action for breach of contract and common counts. Defendants additionally demur to the account stated claim for uncertainty. Indeed, the claim is uncertain, as it is unclear as to whether plaintiffs are alleging the existence of a new cause of action, or simply reclassifying their breach of contract claim and attempting to allege a renewal of the limitations period based on a new or continuing contract. However, in order to accomplish either, as defendants point out, plaintiffs would have to be able to plead that the account stated on August 19, 2019 was based in writing, or

that the continuing contract was acknowledged in a signed document, which plaintiffs have failed to do. (Code Civ. Proc., §§ 337, subds. (b), (d); 360.)

- Constructive Trust

The fourth cause of action seeks to have the court impose a constructive trust for the benefit of the plaintiffs. A constructive trust is not a cause of action; rather it is an equitable remedy to compel the transfer of property by one who is not justly entitled to it to one who is. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 457.) A constructive trust may only be imposed when three conditions are met: the existence of a res, the plaintiff's right to the res, and the defendant's acquisition of the res by some wrongful act. (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 920.) "The statute of limitations to be applied is determined by the nature of the right sued upon, not by the form of the action or the relief demanded." (*Day v. Greene* (1963) 59 Cal.2d 404, 411.)

Despite having already asserted breach of contract claims, plaintiffs also plead that defendants had induced plaintiffs into transferring the funds to them by promising to "watch out" for the money on plaintiffs' behalf and that the signed documents attached to the operative complaint were simply a demonstration of defendants' sincerity.

Regardless of what the basis of the remedy sought here is—i.e., breach of contract (see above) or fraud, the limitations period has expired on plaintiffs' claims. Where fraud is the gravamen of the action, the three-year limitations period in Code of Civil Procedure section 338, subdivision (d) applies. Although a cause of action for fraud does not begin to accrue until the discovery of the facts constituting fraud (*ibid.)*, there does not seem to be any reasonable possibility that plaintiffs can cure the defect as to the potential fraud claim, as plaintiffs indicate in their opposition, that they discovered that defendants had no intention of repaying the funds sometime in 2013. (Opp., pp. 4-5.)

- Deceased Defendant

Defendant additionally demurs to the entire complaint as it is alleged against Fred Faieta, Jr., on the ground that it was not commenced within one year after his date of death.

> If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(Code Civ. Proc., § 366.2, subd. (a).)

Here, the court judicially notices that Fred Faieta, Jr. died on July 7, 2019. (See the unlabeled exhibit attached to RJN, filed on Sept. 15, 2025.) Plaintiffs' complaint was not filed until May 9, 2023 and the action is therefore untimely.

Accordingly, the demurrer to the entire complaint is sustained on the ground that the action is time barred. Leave to amend is granted to allow plaintiffs an opportunity to plead facts to state a claim for account stated or establish that the events that occurred on August 19, 2019 constitutes a new or continuing contract against defendant Marielle Faieta only.

Failure to State a Claim

Defendants further argue that the FAC fails to state facts sufficient to constitute a cause of action for quiet title. The requirements to plead a claim for quiet title are provided in Code of Civil Procedure section 761.020. Indeed, plaintiffs fail to meet any of these requirements and the cause of action is also sustained on this ground.

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: KCK on 12/09/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Jesus Limon v. David Zarucchi***
Superior Court Case No. 23CECG05095

Hearing Date: December 11, 2025 (Dept. 502)

Motion: Admissions Deemed Admitted

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were 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: KCK on 12/10/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: December 11, 2025 (Dept. 502)

Motion: By Eriksson LLC for Relief From Waiver of Objections to Defendant Loveland Products Inc.'s Request for Production of Documents, Set Two

Tentative Ruling:

To take the motion off calendar.

Explanation:

Local Rule 2.1.17(A) provides,

> No motion under sections 2017.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request has either been denied and permission to file the motion is granted via court order or the discovery dispute has not been resolved as a result of the Conference and permission to file the motion is expressly granted.

The motion is brought pursuant to Code of Civil Procedure section 2031.300, subdivision (a), and is therefore within the scope of the Local Rule, but Eriksson has done nothing to comply, never having filed a pretrial discovery conference request.

The motion is also taken off calendar because it is moot. Eriksson explains that it filed the motion in the event the court reaches the substantive merits of the motion to compel responses to this set of discovery. The motion to compel was taken off calendar due to Loveland's failure to comply with Local Rule 2.1.17. Ironically, this procedural error was raised by Eriksson in opposition to the motion to compel, yet Eriksson also failed to comply with the rule. In light of the fact that there is no pending motion to compel, there is no live discovery dispute.

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: KCK on 12/10/25 .
(Judge's initials) (Date)

(03)

Tentative Ruling

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

Hearing Date: December 11, 2025 (Dept. 502)

Motion: Plaintiffs' Motion for Preliminary Approval of Class and PAGA Settlement

Tentative Ruling:

To grant plaintiffs' motion for preliminary approval of class and PAGA settlement.

Explanation:

1. Class Certification

a. Standards

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

Here, the class is ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 45,046 class members who worked for defendant during the class period. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) [T]he adequacy inquiry should focus on the abilities of the class representative's

counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that the named plaintiffs' claims are typical of the rest of the class and that they seek the same relief as the other class members based on their allegations and prayer for relief in the complaints. There is no evidence that the named plaintiffs have any conflicts between their interests and the interests of the other class members that would make them unsuitable to represent their interests. Therefore, plaintiffs have shown that they have claims typical of the other class members.

Plaintiffs' counsel has submitted declarations showing that they are experienced and qualified to represent the class. The attorneys' declarations discuss their background, education, and experience in class action litigation. They clearly have extensive backgrounds and experience in class action litigation. There is no indication that they have any conflict of interest that would prevent them from being appointed as counsel for the class. Therefore, the declarations provide sufficient evidence to support counsels' assertion that they are experienced and qualified to represent the named plaintiffs and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, the value of each individual class member's claim is relatively small, so it would not be worthwhile for them to bring their claims on an individual basis. On the other hand, if they bring their claims as a class, then they can recover substantially more money and hopefully deter defendant from committing future violations of the law. Therefore, it does appear that class certification is the superior means of resolving the plaintiffs' claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Legal Standards

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting

to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness and Reasonableness of the Settlement

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

Here, plaintiffs' counsel has presented a detailed discussion of the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. Counsel explains that there were considerable problems with the case, including proving that the violations and occurred and that they were willful. Therefore, plaintiffs' counsel has shown that the settlement of $9 million is reasonable, fair, and adequate under the circumstances.

c. Proposed Class Notice

The proposed notice appears to be adequate. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives. As a result, the court intends to find that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiffs' counsel seeks attorney's fees of $3,000,000, which is 1/3 of the gross settlement. Plaintiffs' counsel has provided declarations to describe their education, skill, and experience, as well as the challenges presented in the litigation. The declarations generally discuss the attorneys' background, education, skill, and experience. They rely on the fact that courts have chosen to allow attorneys in class and representative actions

to recover fees based on a percentage of the common fund that they obtained for the class. Such fees are commonly in the range of one-third of the total recovery.

Also, counsel has stated the amount of hours they spent on the case, their hourly rates of pay, and the tasks that they performed. According to counsel, they have incurred at total of $3,367,410 in fees based on 4,306.5 hours of attorney time. Thus, counsel's lodestar fees are slightly higher than their requested fees.

It does appear that counsel have adequately shown that the requested fees of $3 million are fair and reasonable given the fact that courts routinely award fees of about 1/3 of the total gross settlement in class action cases. Also, the attorneys' lodestar fees are just over $3 million, which supports their request for fees of $3 million. Therefore, the court intends to grant preliminary approval of the requested attorneys' fees.

In addition, counsel have adequately explained their request for costs of up to $200,000. According to counsel, their costs are currently about $164,000, and those costs will presumably increase until the case is resolved. If costs are less than $200,000 after the final approval order is granted, then counsel will pay any additional amounts over the actual costs to the class. Therefore, the court intends to grant preliminary approval of the request for $200,000 in costs.

4. Payment to Class Representatives

Plaintiffs seek preliminary approval of a $15,000 service award to the named plaintiffs. Plaintiffs have provided their declarations, which support the request for a service award, as they state that they worked closely with plaintiffs' counsel, provided documents, answered questions, and participated in meetings about the case with counsel. Plaintiffs also took the risk that they might be blacklisted by other employers because they sued their former employer. The service award appears to be fair and reasonable in light of the work done by the named plaintiffs. Therefore, the court intends to grant preliminary approval of the $15,000 incentive award to the named plaintiffs.

5. Payment to Class Administrator

Plaintiff's counsel states that the class administrator, Apex Class Action, LLC will receive a maximum of up to $170,000 to administer the settlement. However, according to the declaration from the representative of Apex, Sean Hartranft, Apex's fees will not exceed $155,000. (Hartranft decl., ¶ 7, and Exhibit B thereto.)

Plaintiff's counsel has now provided supplemental briefing that explains the discrepancy between the amounts by stating that counsel has included a "cushion" to ensure that there will be enough money to pay any unforeseen costs in administering the settlement. Any unspent administration fees will be paid to the class as part of the net settlement payment, so there will no prejudice to the class. Therefore, plaintiff has shown that its request for settlement administration costs of $170,000 is reasonable. As a result, the court intends to grant preliminary approval of the settlement administration fees.

6. PAGA Settlement

Plaintiffs propose to allocate $250,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the aggrieved employees. Plaintiffs' counsel states that he has given notice of the settlement to the LWDA. Therefore, the court finds that the LWDA has been served with the settlement as required by statute.

Plaintiff's counsel has now provided a supplemental brief that explains the reasons why they allocated $250,000 of the total settlement to the PAGA claim, despite the claim being potentially worth millions of dollars. Counsel explains that, not only is there a risk that plaintiff would not prevail on the underlying claims that serve as the foundation for the PAGA claim, but there is also a risk, even if plaintiff did prevail, the court would exercise its discretion to reduce the total penalties and thus substantially reduce plaintiffs' recovery on the PAGA claim. Also, since the aggrieved employees are also class members, they will still receive a substantial amount to compensate them for the violations through the class settlement. The overall settlement of the class and PAGA claims will also serve as a deterrent to employers who might engage in future wage and hour violations. In addition, plaintiff's counsel notes that the LWDA has been provided with notice of the settlement, and it has not objected to the settlement. The LWDA will also be given notice of the preliminary approval order once it is granted, and it will have another opportunity to comment on the settlement prior to final approval.

Thus, plaintiff's counsel has adequately explained the reasons for settling the PAGA claim for $250,000, and the court intends to grant preliminary approval of the PAGA settlement.

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: KCK on 12/10/25.
(Judge's initials) (Date)