Tentative Rulings for December 18, 2025
Department 503

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

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

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

23CECG03443 ***Rosaura Miramontes v. Harbans Singh*** **is continued to Thursday, January 15, 2026 at 3:30 p.m. in Department 503.**

24CECG02394 ***Regina Sanchez v. General Motors LLC*** **is continued to Thursday, January 15, 2026 at 3:30 p.m. in Department 503.**

23CECG03466 ***Giumarra Brothers Fruit Co. v. Cesar Mora*** **is continued to Wednesday, January 21, 2026 at 3:30 pm in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(34)

Tentative Ruling

Re: ***Ochoa v. General Motors, LLC, et al.***
Superior Court Case No. 24CECG00484

Hearing Date: December 18, 2025 (Dept. 503)

Motion: Petitions to Compromise Minors' Claims

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny without prejudice.

Explanation:

The minor plaintiffs are the sole heirs of decedent Felipe Ochoa, Sr. and have filed an action for the wrongful death of their father against defendants General Motors LLC and Michael Cadillac, Inc. Petitioner, their mother and guardian ad litem Mona Leza, seeks court approval of the settlement of the minors' claims against defendant General Motors LLC. The petitions to compromise the minor's claims were filed conditionally under seal with an ex parte motion to seal set to be heard on December 2, 2025. The motion to seal was denied.

> If the court denies the motion or application to seal, the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(Cal. Rule of Court, rule 2.551(b)(6).)

The court has not been notified by plaintiffs that the unredacted petitions and orders are to be filed unsealed following the December 2, 2025 denial of their ex parte application. As such, the court has only the redacted versions of the documents to consider which do not contain sufficient information to determine whether the settlements are in the minors' best interests.

The petitions for approval of the minor plaintiffs' settlements are denied without prejudice.

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

Tentative Ruling
Issued By: JS on 12/16/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Kaye v. Fresno Surgery Center***
Case No. 17CECG04183

Hearing Date: December 18, 2025 (Dept. 503)

Motion: Defendant's Motion for Reconsideration, or in the Alternative, Motion for Renewal

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny defendant's motion for reconsideration, and the alternative motion for renewal. To deny plaintiff's request for sanctions against defendant.

Explanation:

Under Code of Civil Procedure section 1008, subdivision (a), a party moving for reconsideration of a court order must show that there are "new or different facts, circumstances, or law" that justify reconsideration of the order. (Code Civ. Proc. § 1008, subd. (a).) "The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Code Civ. Proc. § 1008, subd. (a).) Failure to submit an affidavit that complies with the requirements of section 1008(a) renders the motion invalid and deprives the court of jurisdiction to hear the motion. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048.)

Also, "[a] party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212, internal citations omitted.) "Case law after the 1992 amendments to section 1008 has relaxed the definition of 'new or different facts,' but it is still necessary that the party seeking that relief offer some fact or circumstance not previously considered by the court." (*Id*. at pp. 212-213, internal citations omitted.)

Section 1008, subdivision (b), sets forth the requirements for a motion for renewal of a prior motion, which are similar to the requirements for a motion for reconsideration. "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Code Civ. Proc., § 1008, subd. (b).) Thus, section 1008(b) also requires a showing of new or different facts, circumstances, or law to support the

motion for renewal. However, section 1008(b) does not include a 10-day time in which the motion must be brought.

"Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839, citing *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46–47 & fns. 14–15 and *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688–690.) "Section 1008's purpose is '"'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.'" To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional…" (*Id*. at pp. 839–840.) Thus, failure to comply with the requirement of demonstrating new facts, circumstances, or law requires denial of a motion for reconsideration. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.)

In the present case, defendant moves for reconsideration or renewal of the court's order of December 4, 2024 to grant the motion to compel production of documents after defendant failed to file a declaration from its person most knowledgeable and lodge copies of the documents for *in camera* review by December 2, 2024. Defendant contends that the court's order was issued in error because it had requested an extension of time to file the PMK declaration and documents, and that the court's order incorrectly stated that the PMK declaration had not been filed by December 4, 2024. In fact, defendant filed the PMK declaration on December 4, 2024 at 11:34 am. Defendant also contends that the court's order violates its rights under Evidence Code section 1157, the medical peer review privilege, and that it would be prejudiced if it had to produce privileged documents. Defense counsel also claims that he waited until November of 2025 to file the motion for reconsideration because he believed that the court would withdraw the order on its own motion once the PMK declaration was filed, and that the parties had stipulated to a continuance of the trial date, so he did not believe that the matter was urgent until plaintiff filed a motion for terminating sanctions based on his failure to comply with the discovery order.

However, defendant has not met its burden of showing that the court should reconsider its December 4, 2024 order. First, the motion is extremely tardy. As stated above, a motion for reconsideration must be brought within ten days of the date that the order was served. (Code Civ. Proc., § 1008, subd. (a).) Here, the court issued and served its order on December 4, 2024. The order was served by email on the parties. Thus, the motion for reconsideration needed to be filed no later than December 16, 2024 in order to be timely. However, defendant did not file its motion until November 24, 2025, about eleven months after the ten-day deadline expired. As a result, the motion is untimely under section 1008(a), and the court cannot hear it.

Nor has defendant provided a satisfactory explanation for its lengthy delay in bringing the motion. Defendant does not claim that it did not receive the order, or that it was unaware of the fact that it had been ordered to produce the documents and pay sanctions on December 4, 2024. In fact, defense counsel filed the PMK declaration within minutes of receiving the court's order, which implies that he knew the order had issued and he was attempting to cure his earlier lack of compliance. The parties also discussed the fact that the order had been issued and that defendant had not complied with it in

February of 2025, and plaintiff's counsel noted the defendant's lack of compliance several times. While defense counsel claims that he believed that the court was going to rescind its order on its own motion because he had filed a tardy PMK declaration on December 4, 2024, just after the order issued, he admits that he did not do anything to request that the court reconsider or revoke its order before filing the present motion. His belief that the court might revoke the order on its own motion was unreasonable, especially after weeks and months passed without any further orders from the court and defendant's failure to do anything to have the order revoked.

In addition, while defense counsel claims that the parties had stipulated to a trial continuance and that he assumed that plaintiff was no longer going to seek to enforce the order, his belief was unreasonable, as he knew that plaintiff's counsel had continued to insist that the documents were essential to his case and that he needed to obtain them. Plaintiff's counsel continued to email defense counsel and demand the documents be produced as ordered by the court in February of 2025, about two months after the court's order issued. The stipulation to continue the trial also noted that the court had ordered the documents be produced, and that plaintiff continued to believe the documents were essential to his case. Thus, defendant was on notice that the plaintiff still wished to obtain the documents, and that he was not waiving his right to enforce the court's order compelling their production.

Even if the court were to treat the defendant's motion as seeking renewal rather than reconsideration, defendant's failure to provide a reasonable explanation for the lengthy delay in bringing the motion still means that the defendant has not been diligent in bringing the motion. While there is no set deadline to bring a motion for renewal, the moving party must still provide a reasonable explanation for any delay in seeking relief. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC*, *supra*, 61 Cal.4th at p. 39.) The lack of any satisfactory explanation for the eleven-month delay in bringing the motion for renewal means that the court may not consider its merits.

In addition, even if the motion was timely, defendant has not pointed to any new or different facts, circumstances, or law that would support the request for reconsideration or renewal. Defendant claims that the "new facts" supporting the motion are that it filed the PMK declaration on the same day that the order issued, and that the court's order erroneously stated that no PMK declaration had been filed. However, the court's order was correct, as defendant admits that it had not yet filed the PMK declaration when the order issued at 11:22 am on December 4, 2024. Defendant did not file the PMK declaration until 11:34 am. on December 4, 2024, about 18 minutes after the court's order was issued and served on the parties. Also, defendant never lodged the documents for *in camera* review as previously ordered by the court. Thus, the court's order was correct at the time it was issued, as defendant had not complied with the order to file a PMK declaration and lodge documents for *in camera* review as it had been ordered to do.

In any event, the fact that defendant filed a PMK declaration two days late and several minutes after the court had granted the order compelling it to produce the documents does not constitute a new fact that warrants reconsideration of the order or renewal of defendant's request for an extension of time. As noted above, the court had ordered defendant to file its PMK declaration and lodge copies of the documents for *in camera* review by December 2, 2024. Defendant did not comply with the court's order, as it did not file the PMK declaration until December 4, 2024, and it never lodged the

documents for *in camera* review. In fact, it has yet to lodge the documents, despite being ordered to do so over a year ago. Thus, the fact that it filed a tardy PMK declaration without the accompanying documents does not provide any basis for reconsideration or renewal here.

Next, the court intends to deny defendant's request for reconsideration under the court's inherent authority to reconsider its own orders. (*Le Francois v. Goel, supra*, 35 Cal.4th at pp. 1104-1105.) Again, defendant has not provided any reasonable explanation for its lengthy delay in seeking relief from the court's order, nor has it pointed to any facts that would cause the court to reconsider its decision to grant the motion to compel. Indeed, the defendant's continued failure to even provide copies of the documents for *in camera* review as previously ordered indicates that defendant is simply refusing to obey the court's orders without any justification. Defendant has failed to show that the court's order was incorrectly issued and that the court should reconsider it on its own motion. Therefore, the court intends to deny the motion for reconsideration, and the alternative motion for renewal.

However, the court will also deny plaintiff's request for sanctions against defendant for bringing a meritless motion for reconsideration, as plaintiff has not complied with the requirements of Code of Civil Procedure section 128.7, including filing a separate motion for sanctions and serving a copy of the motion on defendant 21 days before filing the motion for sanctions. (Code Civ. Proc., § 128.7, subd. (c)(1).) Therefore, the court intends to deny plaintiff's request for sanctions.

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

Tentative Ruling
Issued By: JS on 12/16/2025.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Alfaro v. Medvedev***
Superior Court Case No. 23CECG00724

Hearing Date: December 18, 2025 (Dept. 503)

Motions (x3): Petitions to Compromise Minors' Claims

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant all three petitions. Orders signed. No appearances necessary.

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

Tentative Ruling

Issued by: JS on 12/16/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Wells Fargo Bank NA v. Key Island, LLC***
Superior Court Case No. 25CECG01764

Hearing Date: December 18, 2025 (Dept. 503)

Motion: by Intervenor to Determine Default Cure and Instruct Receiver

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny.

Explanation:

Intervenor NNN Capital Fund I, LLC ("Intervenor") seeks a court order to determine the default cure amount and to instruct the Receiver to use estate funds to pay the reinstated loan. Intervener also proposes replacement guarantors. Intervenor submits that it has a subordinate lien on the property at issue, and as a junior lienholder has the right to cure default under Civil Code section 2924c, subsequently reinstating the loan and halting foreclosure proceedings.

As far as this court is aware, the related Judgment case in the Superior Court of California, County of Orange remains at issue. The court has not been updated as to the status of that case and its perceived effect on the present action. The court maintains concerns of issuing potentially conflicting orders concerning the real property in question where matters are pending.

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

Tentative Ruling
Issued By: JS on 12/17/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Lux, et al. v. Georgeson Law Offices***
Superior Court Case No. 25CECG03944

Hearing Date: December 18, 2025 (Dept. 503)

Motion: by Defendant Demurring to the Complaint and to Strike Portions of the Complaint

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To overrule the demurrer. (Code Civ. Proc., § 430.10, subd. (e).) To grant the motion to strike as it pertains to the punitive damages, specifically page 10, paragraph 43, and line 11, and as it pertains to the general and special damages, specifically page 10, line 9, with leave to amend. (Civ. Code, § 3294.) To deny the motion to strike as it pertains to the prejudgment interest.

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

Explanation:

Defendant demurs to the second cause of action for breach of fiduciary duty and moves to strike the portions of the complaint seeking punitive damages, general and special damages, and prejudgment interest.

Demurrer

Defendant argues that the second cause of action for breach of fiduciary duty is duplicative of the first cause of action for legal malpractice and therefore, the demurrer should be sustained. Redundancy is not a basis to sustain a demurrer. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 889-890.) The elimination of a duplicative claim previously would have been grounds for a motion to strike; however, the statute that authorized such a basis was repealed in 1982. (*Id.* at p. 890.) This sort of defect is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment. (*Ibid.*) Although defendant cites to *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070 and *Parker v. Morton* (1981) 117 Cal.App.3d 751, 758 to contend that "California courts have consistently held that where a claim for breach of fiduciary duty is premised on the same facts as a malpractice claim, it is duplicative and must be dismissed. . ." (Memo., 4:4-7), neither of these cases stand for this proposition. While *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070 explains that "a breach of fiduciary duty is a species of tort distinct from a cause of action for professional negligence" and delineates the specific elements required for each tort, *Stanley* does

not provide that these claims cannot be premised on the same set of facts. *Parker* similarly does not address this issue. It is further noted that neither of these cases address the pleading standard for demurrer and involve cases which procedural posture is at trial and summary judgment.

Defendant further contends that plaintiffs have failed to allege the existence of a breach of fiduciary duty, because allegations that merely constitute negligence, without more, are insufficient to support a breach of fiduciary duty claim. Defendant argues that a breach of fiduciary duty requires some further violation of the obligation of trust, confidence and/or loyalty to the client. However, while defendant claims that this rule is the "majority national rule," defendant does not present any **binding** authority to support this argument. Defendant primarily relies upon secondary sources and one depublished case, *Broadway Victoria, LLC v. Norminton, Wiita & Fuster* (2017) previously published at: 10 Cal.App.5th 1185 to support its argument. "[A]n opinion . . . that is not certified for publication or ordered published [or here, depublished] must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Ct., rule 8.1115(a).)

Although defendant argues "a breach of fiduciary duty cause of action typically occurs when the attorney obtains an unfair advantage at his or her client's expense," and provides *examples* of cases where the facts gave rise to some unfair advantage, defendant does not provide any binding precedent that actually provides that a breach of fiduciary duty cannot be premised on negligence, i.e., a breach of competency.

Neither party provides any binding authority to address the issue and the case law presented seems to suggest there is an open-ended interpretation of what is considered an attorney's breach of a fiduciary duty. "The scope of an attorney's fiduciary duty may be determined as a matter of law based on the Rules of Professional Conduct which, 'together with statutes and general principles relating to other fiduciary relationships, all help define the duty component of the fiduciary duty which an attorney owes to his [or her] client.' [Citations.] Whether an attorney has breached a fiduciary duty to his or her client is generally a question of fact. [Citation.]" (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086–1087.) The allegations in the complaint are sufficient to allege that defendant breached its duty of competency under Rules of Professional Conduct, rule 1.1. It is unclear whether a violation of this rule, on its own, is sufficient to support a breach of an attorney's fiduciary duty; however, since an attorney's breach is generally a question of fact, the issue seems inappropriate to determine on demurrer.

Therefore, the demurrer is overruled.

Motion to Strike

Defendant moves to strike the portions of the complaint seeking punitive damages, general and special damages, and prejudgment interest.

Punitive Damages

In order to recover punitive damages, plaintiffs must plead specific facts to support allegations of malice, oppression or fraud. (Civil Code, § 3294; *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.) "[¶] (1) 'Malice' means conduct which is intended

by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. [¶] (2) 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. [¶] (3) 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c).) "Despicable conduct" is conduct that is described as "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

The alleged facts in the complaint do not support a claim for punitive damages. Here, plaintiffs allege that defendant law firm failed to properly lay a foundation in support of the expert's testimony, should have chosen a different expert with more first-hand knowledge, and/or failed to properly cross-examine the defense expert in the underlying case. These facts do not reach the requisite malicious or despicable conduct necessary to support a claim for punitive damages. Therefore, the motion to strike the punitive damages is granted, with leave to amend.

Special and General Damages

The parties seem to agree that the term "general" or "special" damages should be replaced with "compensatory damages." Accordingly, the motion to strike the terms general and special damages is granted, with leave to amend so that plaintiffs may plead a request for compensatory damages.

Prejudgment Interest

Defendant contends that plaintiffs are not entitled to prejudgment interest, because under Civil Code section 3287, subdivision (a), prejudgment interest is available for damages only when there is an amount "certain or capable of being made certain." (*Ibid*.) Defendant argues that plaintiffs' damages here, is not immediately ascertainable and therefore, plaintiffs are not entitled to prejudgment interest. However, just as plaintiff points out, the prejudgment interest sought in the complaint are not limited to those under Civil Code section 3287. Therefore, the motion to strike the prayer for prejudgment interest is denied.

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

Tentative Ruling
Issued By: JS on 12/17/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Cosio v. Border Transfer, Inc.***
Case No. 25CECG03333

Hearing Date: December 18, 2025 (Dept. 503)

Motion: Defendant Border Transfer's Demurrer to Complaint

If oral argument is timely requested, it will be entertained on Wednesday, December 31, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To overrule the demurrer to the complaint, in its entirety. To order defendant Border Transfer to file its answer to the complaint within ten days of the date of service of this order.

Explanation:

Second Cause of Action: With regard to the second cause of action for gender discrimination in violation of FEHA, defendant argues that plaintiff has not alleged facts showing that she was treated differently because of her gender, or that there was a causal link between the allegedly discriminatory conduct and the adverse employment action. While plaintiff alleges that she was mistreated by Godinez, she does not allege that she suffered an adverse employment action based on her sex or gender. Defendant contends that plaintiff's allegations that she was discriminated against based on her sex or gender are nothing more than conclusions, and that Mr. Godinez's actions merely constituted minor or trivial actions that do not constitute an adverse employment action. Since plaintiff has not alleged that she suffered an adverse employment action such as firing, demotion, or loss of benefits, defendant concludes that she has not stated a claim for sex or gender discrimination.

"To state a prima facie case of gender, race, color, or sexual orientation discrimination under FEHA, a plaintiff must show that: '(1) [s]he was a member of a protected class, (2) [s]he was qualified for the position [s]he sought or was performing competently in the position [s]he held, (3) [s]he suffered an adverse employment action ... and (4) some other circumstance suggests discriminatory motive.' Thus, a plaintiff must establish a causal nexus between the adverse employment action and [her] protected characteristic." (*Martin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 161–162, citations omitted.)

Here, plaintiff has alleged facts showing that she is a member of a protected class, as she is a woman, and that defendant took adverse employment actions against her because of her gender by refusing to investigate her complaints about ongoing harassment and discrimination based on her gender and retaliating against her for raising her complaints by failing to address, correct, or prevent such activity from continuing, and by constructively terminating her employment . (Complaint, ¶ 60.) Plaintiff has also

alleged that she lost earnings, employment benefits, and other economic losses as a result of defendant's discrimination. (*Id*. at ¶ 61.)

In addition, plaintiff has alleged that she was harassed by Mr. Godinez, who was an employee of Torres Installation, a company that worked closely with Border Transfer in the same distribution center where plaintiff worked. (*Id*. at ¶¶ 20, 21, 23-27, 30-36.) Godinez would use methamphetamine while on the job, come to work intoxicated, speak openly about his drug use, and smelled like meth. (*Id*. at ¶¶ 24-26.) His drug use was common knowledge among the employees of defendants Costco, Torres, and Border. (*Id*. at ¶ 27.) However, when plaintiff complained to her supervisor and Border's HR department, they failed to correct his behavior or prevent the conduct from continuing. Instead, they told her that she "need[ed] to learn how to get along with [Godinez]." (*Id*. at ¶ 28.) Torres' management also criticized her for challenging Godinez's conduct rather than addressing the conduct itself. (*Id*. at ¶ 29.)

Godinez would also arrive for his shift while clearly under the influence, hover over the female employees, and bother them as they tried to work. (*Id*. at ¶ 30.) Instead of addressing his conduct, defendants' management rolled their eyes and made comments like "the girls are complaining again" or "the girls don't matter, the guys are the ones who do the work." (*Ibid*.) Godinez even showed a video of himself snorting cocaine in one of the delivery trucks to plaintiff and two supervisors, and they laughed off his behavior. (*Id*. at ¶ 31.)

Godinez also sexually harassed plaintiff and other employees. (*Id*. at ¶ 32.) He told plaintiff that one of his co-workers was sexually interested in her, that he was a virgin, and that she needed to "go easy with him." (*Id*. at ¶ 33.) He also called plaintiff excessively outside of work on her personal cell phone, asking her out to dinner and sending her an unsolicited video of a strip club. (*Id*. at ¶ 35.) He shared explicit details about being bisexual and spoke about sexual acts he wanted to perform on employees. (*Id*. at ¶ 36.)

However, when plaintiff complained about Godinez's conduct, defendant's management claimed that "the females [were] being dramatic." (*Id*. at ¶ 37.) Despite her complaints, Godinez's behavior continued unchecked. (*Id*. at ¶ 38.) He mistreated plaintiff after she lodged complaints about him, snatching paper routes out of her hand, making derogatory remarks about her intelligence, and trying to prevent her from speaking with other drivers. (*Id*. at ¶ 39.) He also continued to work under the influence and spread offensive, vulgar rumors about her and other employees. (*Ibid*.)

When it became clear that defendants were not going to address Godinez's behavior or protect the victims of it, plaintiff gave her two weeks' notice and announced that she was resigning because of Godinez's unchecked conduct. (*Id*. at ¶ 40.) In turn, defendant's managers terminated her employment effective immediately and claimed that the incidents related to Godinez had been addressed. (*Ibid*.)

Such allegations are sufficient to support a claim for gender discrimination, as plaintiff has alleged facts showing that she was subjected to discrimination and harassment by Godinez based on her sex or gender, that she complained about his conduct to defendant's management, and that they refused to do anything about his conduct and allowed it to continue. When she continued to complain and stated she was going to resign, defendant terminated her employment "effective immediately."

Contrary to defendant's contentions, she has alleged facts showing that she suffered an adverse employment action, i.e. failure to correct the harassment and subsequent termination when she complained about it. She has also alleged facts showing a causal connection between the discriminatory behavior and her termination, as the termination occurred immediately after she made her last complaint about Godinez.

In addition, plaintiff has alleged facts showing that defendant allowed a severe and pervasive pattern of harassment and discriminatory conduct by Godinez without doing anything to address or prevent it. The conduct that she has alleged is more than a minor or trivial course of conduct, as Godinez continually showed up to work intoxicated and harassed her. Defendant's management made dismissive comments about her complaints, including that she was being "dramatic" and that she and the other "girls don't matter" and "the guys are the ones who do the work." They ultimately terminated her employment when she complained rather than addressing Godinez's conduct. These allegations are sufficient to support her gender discrimination claim. Therefore, the court intends to overrule the demurrer to the second cause of action.

Third Cause of Action: "[I]n 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.)

Here, plaintiff has alleged that she engaged in a protected activity, as she made complaints about Godinez's harassing and discriminatory conduct to management. She also alleges that defendant subjected her to an adverse employment action, as she was terminated immediately after she complained for the last time about his conduct. While defendant contends that plaintiff has not alleged an adverse employment action and that there was no causal link between her complaints and her termination because she voluntarily resigned, the complaint alleges that she was terminated immediately after she made her final complaint about Godinez. (Complaint, ¶ 40.) She had given her two weeks' notice and stated that she was resigning, but she also alleges that defendant's managers immediately terminated her after she made her complaint. (*Ibid*.) In addition, she alleges that defendants tolerated Godinez's behavior and refused to correct or prevent it, which in itself appears to be an adverse employment action because it forced plaintiff to continue working with Godinez despite his harassment of her. Thus, plaintiff has adequately alleged facts to support her third cause of action for retaliation.

Seventh Cause of Action: "[T]he cases are in agreement that the standard by which a constructive discharge is determined is an objective one—the question is 'whether a reasonable person faced with the allegedly intolerable employer actions or conditions of employment would have no reasonable alternative except to quit.'" (*Turner v. Anheuser-Busch, Inc*. (1994) 7 Cal.4th 1238, 1248, citations omitted.) "A constructive discharge is the practical and legal equivalent of a dismissal—the employee's resignation must be *employer*-coerced, not caused by the voluntary action of the employee or by conditions or matters beyond the employer's reasonable control." (*Ibid.*) "[A]n employer's intent to create or purposefully maintain working conditions that are intolerable from the standpoint of a reasonable employee has been deemed sufficient for a constructive discharge because it insures the claim is employer-coerced. An employer's actual knowledge of the existence of such conditions, and subsequent failure to remedy them,

may constitute circumstantial evidence that the employer deliberately forced the employee to resign." (*Id.* at p. 1249.)

Here, plaintiff has alleged that she was constructively discharged because she was forced to work in intolerable conditions due to Godinez's illegal and harassing behavior, and defendant's refusal to do anything to correct his conduct despite her complaints. Thus, she has adequately alleged that she was constructively terminated by defendant, who had actual knowledge of Godinez's conduct and refused to do anything to correct it.

Defendant argues that plaintiff has not alleged that the termination violated any fundamental public policy expressed in a constitutional or statutory provision. (*Turner, supra,* at pp. 1246-1247.) However, plaintiff alleges that defendant's termination of her violated state statutes and regulations, including FEHA, the Labor Code, and the Health and Safety Code. (Complaint, ¶ 103.) She also alleges earlier in the complaint that defendant's conduct represented gender or sex harassment, discrimination, and retaliation in violation of Government Code sections 12900, *et seq*. Thus, plaintiff has adequately alleged that defendant's termination of her violated a fundamental public policy as set forth in a statute. Consequently, the court intends to overrule the demurrer to the seventh cause of action.

Eighth Cause of Action: Finally, defendant demurs to the eighth cause of action for negligent hiring, supervision, and retention, contending that it cannot be held liable for negligently hiring, supervising or retaining Godinez because plaintiff has admitted that Godinez was not Border's employee, and was instead employed by Torres.

"California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee. Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054, citations omitted.)

Here, plaintiff has alleged that Godinez was a delivery driver for Torres Installation. (Complaint, ¶ 23.) However, she also alleges that all defendants acted as agents of the other defendants, and that the business entities are jointly and severally liable under FEHA, as they were acting as a single employer or joint employer, or they had an agency relationship with each other and/or aided and abetted the conduct prohibited under FEHA. (*Id*. at ¶ 11.) Defendants also allegedly ratified all of the acts and omissions alleged in the complaint. (*Id*. at ¶ 12.) Defendants employed plaintiff as a "single employer", as defendants have interrelated operations, common management, centralized control of labor relations, and common ownership or financial control. (*Id*. at ¶ 13.) Defendants jointly employed plaintiff at all times. (*Id*. at ¶ 14.) Defendants worked closely together in a distribution center owned by Costco. (*Id*. at ¶ 21.) Border hired contractors from Torres for deliveries and installation of furniture. (*Id*. at ¶ 20.) Plaintiff and Godinez worked closely together, and she assigned and monitored his delivery routes. (*Id*. at ¶¶ 22, 23.)

Plaintiff subsequently alleges that defendant retained Godinez as an employee despite its knowledge of his drug use and harassment of employees. (*Id*. at ¶ 110.) Instead of investigating his conduct, defendants criticized plaintiff for reporting the conduct. (*Ibid*.) Plaintiff suffered harm as a result, including emotional distress and loss of earnings and other employment benefits. (*Id*. at ¶ 114.)

Therefore, plaintiff has adequately alleged that Godinez was a joint employee of Border as well as Torres and Costco, and that Border is jointly and severally liable for failing to address his conduct. As a result, the court intends to overrule the demurrer to the eighth cause of action and order defendant to file its answer.

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

Tentative Ruling
Issued By: JS on 12/17/2025.
(Judge's initials) (Date)