Tentative Rulings for February 23, 2022
Department 403

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Williams v. John Paul Mitchell Systems***
Superior Court Case No. 20CECG00645

Hearing Date: February 23, 2022 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Wednesday, March 2, 2022 at 3:30 p.m. in Dept. 403

Motion: Defendant's Motion for Protective Order

Tentative Ruling:

Having failed to comply with Local Rule 2.1.17, the motion is 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 02/22/22 .
(Judge's initials) (Date)

(03)

Tentative Ruling

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

Hearing Date: February 23, 2022 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Wednesday, March 2, 2022 at 3:30 p.m. in Dept. 403

Motion: Defendants' Demurrer to First Amended Complaint and Motion to Strike Portions of the First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the first amended complaint in part and overrule in part for failure to state facts sufficient to constitute a cause of action, as discussed in detail below. (Code Civ. Proc. § 430.10, subd. (e).)

To grant the motion to strike the portion of paragraph 17 of the first amended complaint which states, "I am familiar with the owner of Pacific Grain & Foods, LLC, Lee Perkins, the petitioner in this case, as I have witnessed him engage in an unprofessional and aggressive manner toward his employees that was shocking and unforgettable" as irrelevant and improper. (Code Civ. Proc. §§ 435, 436.) To grant the motion to strike the allegations and prayer for punitive damages with regard to defendants Abina and Ramirez, but to deny as to defendant Perkins. (*Ibid*.)

To grant leave to amend the complaint. Plaintiffs shall serve and file their second amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer to First Cause of Action for Disparate Treatment: Plaintiffs' first cause of action for disparate treatment based on race or national origin in violation of FEHA is alleged against all defendants, including Pacific Grain & Food, Perkins, Abina, and Ramirez. However, individual, non-employer supervisors are not liable under FEHA for discriminatory treatment of employees. (*Reno v. Baird* (1998) 18 Cal.4th 640, 644–645; *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55.) Since individual, non-employer supervisors cannot be liable for discrimination under FEHA, the amended complaint fails to state a claim for discrimination against the individuals unless they were also "employers" of plaintiffs.

Plaintiffs do allege that Perkins, Ramirez, and Abina were "supervisors" of plaintiffs, and also that Perkins was an officer, director, and managing agent of Pacific Grain. (FAC, ¶¶ 13-15.) However, plaintiffs do not allege any facts showing that the individual defendants were employers of plaintiffs such that they could be subjected to individual liability for discrimination under FEHA. Therefore, the court intends to sustain the demurrer to the first cause of action as to the individual defendants for failure to state a claim

against them for discrimination. However, the court intends to grant leave to amend, as it is possible that plaintiffs might be able to allege more facts to show that the individual defendants were employers of plaintiffs.

Defendants also argue that the first cause of action fails to state a claim for disparate treatment because there are no facts showing that their actions were motivated by race or national origin. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 231-232.) However, while plaintiffs must prove at trial that race or national origin was a motivating factor behind the defendants' adverse employment action, plaintiffs may rely on either direct or circumstantial evidence to make the required showing. (*Ibid*.) In addition, plaintiffs do not have to plead any evidentiary facts in order to state a valid claim. When ruling on a general demurrer, the court only looks to whether the plaintiffs have alleged facts sufficient to state a claim, not whether the plaintiffs can ultimately present evidence to prove their claim. (*Del E. Webb Corp. v. Structural Materials Co*. (1981) 123 Cal.App.3d 593, 604.)

In the present case, plaintiffs have alleged that defendant Pacific's allegedly discriminatory conduct was motivated by their race or national origin, as plaintiffs are Hispanic. (FAC, ¶ 39.) While these allegations are somewhat vague and conclusory, plaintiffs are not required to allege specific evidentiary facts at this early stage in the litigation regarding defendants' motivations. Plaintiffs cannot be expected to have direct or even circumstantial evidence of defendants' motivations without first being allowed to conduct discovery. Under the circumstances, it is enough that they have pled that defendants were motivated by bias based on plaintiffs' race or national origin. As a result, the court intends to overrule the demurrer as to the discrimination claim against Pacific Grain.

Demurrer to Second and Third Causes of Action for Harassment: Defendants again argue that plaintiffs have not alleged any facts to show that the alleged harassment against them was based on race or national origin. However, plaintiffs have alleged that defendants subjected them to harassment because of their race or national origin, as they were Hispanic. (FAC, ¶ 46, 55, 56.) While plaintiffs do not allege any specific facts to show that defendants were motivated by racial or national origin animus, they are not required to allege more facts here as they cannot be expected to provide evidence of defendants' motivations before discovery has been conducted.

Also, to the extent that defendant Perkins demurs to the second and third causes of action on the ground that there are no facts to show he engaged in harassment, the plaintiffs have alleged sufficient facts to support their harassment claims against Mr. Perkins. Plaintiffs allege that Mr. Perkins yelled and cursed at all of them when they attempted to meet with him to discuss their concerns about a co-worker testing positive for Covid-19. (FAC, ¶¶ 18-30.) Perkins implicitly threatened plaintiffs with termination when they asked for more measures to protect them from Covid and for time off work to get tested and quarantine, stating that there would be no work for them the next week even though he had previously stated that they were going to be very busy. (*Id*. at ¶¶ 21-22.) He also told them that he would only pay them for four hours to get tested, and that they would have to return to work immediately after being tested if they wanted to get paid for the rest of the day. (*Id*. at ¶ 23.)

When plaintiffs began to discuss the matter amongst themselves, Perkins became enraged and started screaming and yelling at plaintiffs and other employees. (*Id*. at ¶ 24.) He denied the Covid exists, and stated that "they" just wanted money for testing, and that wearing a face mask does not do anything. (*Ibid*.) When Mr. Zavala asked Perkins why he was screaming and being disrespectful, Perkins told him to be quiet and used strong profanity. (*Id*. at ¶ 25.) Perkins then told Mr. Zavala to "shut up" and "get out!" (*Id*. at ¶ 26.) Perkins rushed Zavala and grabbed him, then pushed him toward the exit. (*Id*. at ¶ 27.) He only started to lower the volume of his voice when a woman started to record the incident on her phone. (*Id*. at ¶ 28.) Zavala then left the premises. (*Id*. at ¶ 29.)

These facts are more than sufficient to support a harassment claim against Mr. Perkins, as he allegedly yelled at plaintiffs, threatened them with loss of work, refused to allow them to take time off for quarantine or testing after being exposed to an infected person, cursed at Mr. Zavala, and physically grabbed and shoved Mr. Zavala. While Perkins claims that there are no facts to show that his actions were motivated by race or national origin, plaintiffs have alleged that they were motivated by the fact that they are Hispanic. As a result, plaintiffs have sufficiently alleged claims for harassment against Mr. Perkins.

On the other hand, plaintiffs have not stated a valid claim for harassment against defendant Ramirez. Plaintiffs allege that, when Mr. Zavala went to pick up his paycheck on December 31, 2020, defendant Ramirez tried to make him sign a paper. (FAC, ¶ 31.) Zavala reminded Ramirez that Perkins had fired him on December 15, 2020, so he did not have to sign any papers. (*Ibid*.) Ramirez refused to pay Zavala unless he signed the paper. (*Ibid*.) Defendant Abina then approached Zavala in a threatening manner and began yelling at him to "Sign the fucking papers and get out of here!" (*Id*. at ¶ 32.) Zavala feared that Abina might harm him, 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*.) Zavala denies that he ever threatened any violence toward Ramirez or Abina, or any other employee. (*Id*. at ¶ 34.)

However, while these facts do support a harassment claim on behalf of Mr. Zavala against Mr. Abina, who allegedly cursed and yelled at Zavala and then physically pushed him out of the office, they do not state a claim for harassment against Ms. Ramirez. At most, Ms. Ramirez refused to give plaintiff his paycheck until he signed a paper, and then threw the check at him when he finally signed the paper. Plaintiffs allege no facts showing that Ms. Ramirez engaged in any harassment, or that her refusal to give him a check until he signed for it was unreasonable or illegal. Therefore, the court intends to sustain the demurrer to the second cause of action for harassment against Ms. Ramirez, but overrule the demurrer as to the second cause of action against Mr. Abina.

Next, plaintiffs have not alleged sufficient facts to support their third cause of action for harassment directed at others with regard to Mr. Abina or Ms. Ramirez, although they have alleged sufficient facts with regard to Mr. Perkins. In order to state a claim for hostile work environment harassment directed at someone other than the plaintiff, "the plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does not witness the incidents involving others, 'those

incidents cannot affect ... her perception of the hostility of the work environment.'" (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 285, internal citations omitted.)

Here, plaintiffs have not stated any facts showing that any plaintiff other than Mr. Zavala witnessed the alleged harassment that took place against him on December 31, 2020 when he went to pick up his paycheck. Thus, plaintiffs have not alleged a valid claim for witnessing harassment against other employees as to Mr. Abina or Ms. Ramirez based on the December 31, 2020 incident. Therefore, the court intends to sustain the demurrer to the third cause of action as to Mr. Abina and Ms. Ramirez with leave to amend.

On the other hand, plaintiffs have alleged facts to support their harassment directed against others claim as to Mr. Perkins, since all of the other plaintiffs were allegedly present when Mr. Perkins verbally abused the employees and physically grabbed and pushed Mr. Zavala. As a result, the court intends to overrule the demurrer to the third cause of action as to Mr. Perkins.

Demurrer to Fourth Cause of Action for FEHA Retaliation: Defendant Pacific Grain demurs to the fourth cause of action for retaliation in violation of FEHA on the ground that plaintiffs have not alleged any facts showing that defendants engaged in any racist conduct, or that plaintiffs complained to their supervisors about such conduct.

Government Code section 12940, subdivision (h), states that it is an unlawful employment practice "[f]or any employer, labor organization, employment agency, or person 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, testified, or assisted in any proceeding under this part." (Gov. Code, § 12940, subd. (h).)

"Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1042, internal citations omitted.)

Here, plaintiffs allege that they engaged in a protected activity by opposing Perkins' and Ramirez' "ongoing racist conduct" and that they complained to their superiors about defendants' conduct. (FAC, ¶ 62.) Pacific then discharged and constructively discharged plaintiffs. (*Id*. at ¶ 63.) Plaintiffs' protected activity was a substantial motivating reason for Pacific's decision to discharge plaintiffs or cause them to resign. (*Ibid*.)

Plaintiffs' allegations are somewhat vague and confusing, as it is unclear exactly what "ongoing racist conduct" Perkins and Ramirez are accused of committing. It appears that plaintiffs are referring to Perkins' behavior on December 15, 2020, when he yelled at plaintiffs and refused to let them take time off for Covid testing and quarantine after being exposed to an infected employee, as well as physically grabbing and shoving Zavala and forcing him to leave. Zavala was apparently fired or constructively

discharged after this incident. Plaintiffs allege that this behavior was motivated by plaintiffs' race or national origin. Also, while defendants contend that plaintiffs have not alleged that they made a complaint to a supervisor about Perkins' conduct, plaintiffs have alleged that Zavala protested Perkins' conduct at the time that it was taking place, and that Perkins was a supervisor. Therefore, it does appear that plaintiffs have sufficiently alleged a claim for retaliation against Pacific Grain, and the court intends to overrule the demurrer to the fourth cause of action.

Demurrer to Fifth Cause of Action for Failure to Prevent Harassment, Discrimination, and Retaliation: Defendants demur to the fifth cause of action, contending that plaintiffs cannot allege a claim for failure to prevent harassment, discrimination or retaliation against non-employer supervisory defendants. They also contend that the cause of action fails to state a claim because the underlying claims for harassment, discrimination, and retaliation fail to state valid causes of action.

Under Government Code section 2940, subdivision (k), it is an unlawful employment practice "[f]or an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." (Gov. Code, § 12940, subd. (k).)

In *Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, the Second District Court of Appeal held that a supervisor who was not personally guilty of harassment could not be held liable under FEHA for failing to prevent another employee from harassing the plaintiff. "In the first place, mere failure to act does not constitute the giving of 'substantial assistance or encouragement' to the tortfeasor. Moreover, a supervisory employee owes no duty to his or her subordinates to prevent sexual harassment in the workplace. That is a duty owed only by the employer. We conclude a supervisory employee is not personally liable under the FEHA, as an aider and abettor of the harasser, for failing to take action to prevent the sexual harassment of a subordinate employee." (*Id.* at p. 1326, internal citations omitted.) However, the court also noted that a supervisor could be held personally liable for harassment if the supervisor personally engaged in harassment or aided and abetted the harasser, but that mere inaction was not enough to hold the supervisor liable. (*Id*. at pp. 1327-1328.)

Here, plaintiffs allege that all of the defendants, who were supervisors and agents, failed to take all reasonable steps to prevent them from being harassed, discriminated against, or retaliated against, despite knowledge of the harassment, discrimination, and retaliation. (FAC, ¶¶ 68-70.) However, since section 12940, subdivision (k), only applies to "employers" and does not mention other persons such as supervisors, plaintiffs cannot state a claim for failure to prevent harassment, discrimination or retaliation against the individual supervisory defendants unless they were employers of plaintiffs. Plaintiffs have not alleged any facts to show that Perkins, Abina, or Ramirez were their employers. Therefore, the fifth cause of action fails to state a claim as to the individual defendants and the court intends to sustain the demurrer to the fifth cause of action as to the individual defendants, with leave to amend.

On the other hand, plaintiffs have stated a claim for failure to prevent harassment, discrimination, and retaliation against their employer, Pacific Grain. While individual

supervisory employees are generally not liable for failing to prevent the unlawful conduct of other employees, their employer can be held liable for failure to prevent such conduct. (Govt. Code § 12940, subd. (k).) Also, while defendants argue that there are no facts alleged to support the underlying harassment, discrimination and retaliation claims, as discussed above with regard to the other causes of action, the plaintiffs have sufficiently alleged their underlying FEHA causes of action. Therefore, the court intends to overrule the demurrer to the fifth cause of action as to Pacific Grain.

Demurrer to Sixth Cause of Action for Retaliation against Whistleblower (Labor Code § 1102.5), Seventh Cause of Action for Retaliation against Whistleblower (Labor Code § 6310), and Eighth Cause of Action for Constructive Discharge: Finally, defendants have demurred to the sixth, seventh, and eighth causes of action for retaliation against whistleblowers and constructive discharge. Again, defendants contend that only an employer can be held liable under these theories, and thus the individual defendants have not been properly sued.

It does appear that the plaintiffs have failed to state a valid claim against the individual defendants for retaliation against whistleblowers under Labor Code section 1102.5, as such claims can only be brought against the employer, not individual supervisors.

Under Labor Code section 1102.5, "[a]n 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 person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance … 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).)

Courts have held that section 1102.5's prohibition against whistleblower retaliation only applies to employers and not to individual supervisors who are not also employers, especially since only an employer can discharge an employee. (*Vierria v. California Highway Patrol* (2009) 644 F.Supp.2d 1219, 1244.) Here, the plaintiffs seek to hold both the individual supervisors and the company liable for violating Labor Code section 1102.5 by retaliating against them. However, Labor Code section 1102.5 only applies to employers, not individual non-employer supervisors. Thus, the court intends to sustain the demurrer to the sixth cause of action for violation of Labor Code section 1102.5 to the extent that it attempts to state a claim against Perkins, Abina, and Ramirez. However, the court intends to overrule the demurrer as to the sixth cause of action to the extent it is alleged against Pacific Grain, which is alleged to be the employer of plaintiffs.

On the other hand, defendants have not cited to any authorities holding that Labor Code section 6310 does not apply to individual supervisors. Under Labor Code section 6310, "[n]o *person* shall discharge or in any manner discriminate against any employee because the employee has done any of the following… Participated in an occupational health and safety committee established pursuant to Section 6401.7." (Lab. Code, § 6310, subd. (a)(3), italics added.)

The use of the word "person" in the statutory language would seem to imply that individuals may be held liable for retaliation against whistleblowers under section 6310. However, courts have held that only an employer may discharge or retaliate against an employee. For example, the California Supreme Court has held that, "there is no law ... to support the notion that anyone other than an employer can discharge an employee." (*Miklosy v. Regents of the University of California* (2008) 44 Cal.4th 876, 901.) Thus, the Supreme Court rejected the theory that an employee can state a common law *Tameny* cause of action for wrongful termination in violation of public policy against an individual supervisor. (*Ibid*.) The California Supreme Court has also rejected the theory that individual supervisory employees can be held personally liable for retaliation. (*Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173-1174.)

By the same token, then, it appears that plaintiffs cannot sue individual supervisors for retaliation against them as whistleblowers under section 6310. If only an employer can retaliate against or discharge an employee, then it would not make sense to allow the employees to sue their individual supervisors for the actions of their employer. As a result, the court intends to sustain the demurrer to the seventh cause of action to the extent that it attempts to state a claim against the individual defendants. However, to the extent that Pacific Grain seeks to demur to the seventh cause of action, the demurrer will be overruled, as Pacific Grain may be held liable for whistleblower retaliation as it was the employer of plaintiffs.

Finally, the court intends to sustain the demurrer to the eighth cause of action for constructive discharge to the extent that it seeks to state a claim against the individual defendants. Again, constructive discharge claims may only be brought against employers, not individual supervisors.

"[T]he focus in a constructive discharge case is *the employer's* knowledge and conduct in forcing the employee to resign in light of the intolerable working conditions." (*Turner v. Anheuser-Busch, Inc*. (1994) 7 Cal.4th 1238, 1251, internal citation omitted, italics added.) Thus, "[i]n order to establish a constructive discharge, an employee must plead and prove, by the usual preponderance of the evidence standard, that *the employer* either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." (*Id*. at p. 1251, italics added.) Also, because only an employer can discharge an employee, only an employer can be guilty of wrongful discharge in violation of public policy. (*Miklosy v. Regents of the University of California*, *supra*, 44 Cal.4th at p. 901.)

Here, plaintiffs seek to hold all defendants liable for constructive discharge in violation of public policy, but they only allege that Pacific Grain was their employer. Therefore, the eighth cause of action fails to state a valid claim against the individual defendants, and the court intends to sustain the demurrer to the eighth cause of action as to the individuals with leave to amend. On the other hand, to the extent that defendant Pacific Grain seeks to demur to the eighth cause of action, the court intends to overrule the demurrer, as Pacific Grain was plaintiffs' employer and thus can be liable for constructively discharging plaintiffs.

Motion to Strike: First, the court intends to grant the motion to strike the portion of paragraph 17 of the first amended complaint that reads, "I am familiar with the owner of Pacific Grain & Foods, LLC, Lee Perkins, the petitioner in this case, as I have witnessed him engage in an unprofessional and aggressive manner toward his employees that was shocking and unforgettable." (FAC, ¶ 17, lines 4-7.) The statement appears to be cut and pasted from another document, it adds nothing to the claims alleged in the complaint, and it appears to be nothing more than an opinion of an unidentified person. Since the statement is irrelevant and improper, the court will grant the motion to strike it from the complaint. (Code Civ. Proc. §§ 435, 436 [court may strike any irrelevant, false, or improper matters from any pleading].)

Defendants also move to strike the allegations regarding punitive damages from several paragraphs of the amended complaint, as well as the prayer for punitive damages. They contend that there are no facts alleged in the complaint that would tend to show that they acted with the malice, fraud, or oppression necessary to support a prayer for punitive damages. (Civil Code § 3294.)

"As used in this section, the following definitions shall apply: [¶] (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 defined in BAJI No. 14.72.1 (1989 rev.) as 'conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' Such conduct has been described as '[having] the character of outrage frequently associated with crime.' As well stated in *Flyer's Body Shop Profit Sharing Plan v. Ticor Title Ins. Co*. (1986) 185 Cal.App.3d 1149, 1154 [230 Cal.Rptr. 276]: '[A] breach of a fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive damages. [Citation.] The wrongdoer "must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. [Citations.]"' Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate." (*Tomaselli v. Transamerica Ins. Co*. (1994) 25 Cal.App.4th 1269, 1287, internal citations omitted.)

Here, plaintiffs have alleged that they tried to meet with defendants to discuss their concerns about a co-worker testing positive for Covid-19 and to request that the workplace be sanitized, they be allowed to take time off from work to get tested, and to be allowed to quarantine. (FAC, ¶ 19.) Perkins refused to meet with the workers outside and forced them to go indoors. (*Id*. at ¶ 20.) When the plaintiffs requested that changes

be made to allow them to work safely and to have the workplace disinfected, to be allowed time off to get tested, and to be allowed to quarantine, Perkins told them that there was not going to be any work the following week. (*Id*. at ¶¶ 21-22.) Plaintiffs believed that this was a threat to terminate their employment if they continued to request safety precautions, as Perkins had previously stated that there was a lot of work to be done. (*Id*. at ¶ 22.) Perkins also stated that, if they wanted to get tested, he would only pay for four hours of work, and that they needed to immediately return to work after testing if they wanted to be paid for the rest of the day. (*Id*. at ¶ 23.)

When plaintiffs started to discuss the matter amongst themselves, Perkins became incensed and began screaming and acting aggressively toward plaintiffs and other employees. (*Id*. at ¶ 24.) He claimed that Covid did not exist, that they just wanted to get money from testing, and that wearing a mask does not do anything. (*Ibid*.) Mr. Zavala asked Perkins why he was screaming and being disrespectful, Perkins told him to "Be quiet!" and "Why are you talking?" He began using strong profanity. (*Id*. at ¶ 25.) When Zavala continued telling him to stop screaming, Perkins yelled "Shut up! I'm talking!" at Zavala, and then told him to "Get out!" Perkins then rushed toward Zavala, grabbed him, pulled him, and then pushed him toward the exit. (*Id*. at ¶ 27.) He only lowered the volume on his voice when a woman started to video the incident on her phone. (*Id*. at ¶ 28.) Zavala then left the premises. (*Id*. at ¶ 29.) Zavala denies that he committed any violence or made any threats against Perkins or anyone else. (*Id*. at ¶¶ 29-30.)

Thus, plaintiffs have alleged sufficient facts to support their claim that Perkins acted with malice or oppression. During the midst of a deadly pandemic, Perkins allegedly refused to grant plaintiffs' requests to have their workplace sanitized, take more than four hours off work to get tested, and quarantine from work after testing, even though they had been potentially exposed to an infected co-worker. Perkins also refused to allow plaintiffs to meet with him outside, and instead insisted on meeting indoors, where the chance of infection was higher. He threatened to terminate plaintiffs if they continued to insist that safety measures be taken to prevent the spread of Covid, and denied that Covid was real or that protocols like masks work. He then yelled and screamed at plaintiffs, used profanities at them, and physically grabbed and pushed Mr. Zavala when he refused to be silent. He also constructively discharged Zavala, allegedly because he spoke out and reported the health and safety issues at the facility.

Perkins' alleged conduct could be considered intolerable and extreme indifference to plaintiffs' rights, especially considering the dangers of Covid-19 infection during the winter of 2020, when infections were surging and vaccines were not yet widely available. His conduct could also be considered to be a blatant violation of policies instituted to mitigate the spread of Covid and prevent further infections and deaths, including use of masks, limiting close contact between workers, and limiting time spent indoors with other people. Consequently, the court will not strike the punitive damage allegations or prayer for relief with regard to Mr. Perkins.

Likewise, the court will deny the motion to strike punitive damages with regard to Pacific Grain & Foods, as plaintiffs have adequately alleged that Perkins was acting as the officer, director, or managing agent of Pacific when he committed the malicious or oppressive conduct.

On the other hand, the court does intend to grant the motion to strike with regard to defendants Mr. Abina and Ms. Ramirez. The only allegations against Ms. Ramirez are that she refused to give plaintiff Zavala his last paycheck until he signed a paper, and when he finally signed the paper, she threw the check at him. (FAC, ¶¶ 31, 33.) These allegations fail to show any intentional, intolerable, vile, loathsome, contemptible or reckless behavior that would justify punitive damages. At most, they show that Ms. Ramirez insisted that plaintiff sign paperwork before he received his last paycheck, which does not indicate any illegal or harmful act on her part. Therefore, the court intends to grant the motion to strike the punitive damages allegations and prayer with regard to Ms. Ramirez.

Likewise, plaintiffs have not alleged any malicious or oppressive conduct by Mr. Abina. Plaintiffs allege that, when Mr. Zavala started to argue with Ms. Ramirez about signing the papers to receive his paycheck, Mr. Abina approached Zavala in a threatening manner and began yelling at him to "Sign the fucking paper and get out of here!" (FAC, ¶ 32.) Zavala became afraid of physical harm and signed the paperwork, at which point Ms. Ramirez threw the check at him. (*Id*. at ¶ 33.) Mr. Abina then physically pushed Zavala out of the office. (*Ibid*.)

While these allegations support a claim for harassment or technical assault and battery, they do not rise to the level of "vile, base, contemptible, miserable, wretched or loathsome" conduct that "would be looked down upon and despised by ordinary decent people" or conduct "[having] the character of outrage frequently associated with crime." (*Tomaselli v. Transamerica Ins. Co., supra*, 25 Cal.App.4th at p. 1287.) Mr. Zavala does not allege that he was seriously injured by Mr. Abina's conduct, or that Abina did anything to him other than yell at him and push him out of the office. Such a brief and minor encounter does not support a claim for punitive damages.

Therefore, the court intends to grant the motion to strike the prayer for punitive damages at to Mr. Abina. However, the court intends to grant leave to amend, as it is possible that plaintiffs might be able to allege more facts to support their claim if given an opportunity to do so.

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 2/22/22.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Regional Acceptance Corporation v. Summers, et al.***
Superior Court Case No. 21CECG01915

Hearing Date: February 23, 2022 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Wednesday, March 2, 2022 at 3:30 p.m. in Dept. 403

Motion: Application for Writ of Possession

Tentative Ruling:

To deny without prejudice.

Explanation:

Defendants were served with the Summons and Complaint, as well as the instant moving papers, and have not filed any opposition. The court finds that all statutory requirements, other than the submission of the Order for Writ of Possession (CD-120) and Writ of Possession (CD-130) forms, have been met. Thus, if plaintiff calls for a hearing and submits the required judicial council forms, the court will consider granting plaintiff's application.

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 2/22/22.
(Judge's initials) (Date)