# Superior Court of California
# County of San Benito

## Tentative Decisions for January 5, 2026

**Courtroom #1: Judge J. Omar Rodriguez**

**CU-18-00041 PXLP, LLC vs. Shahbaz, Ahad**

The Hearing regarding Plaintiff's and Cross-Defendants' Motion for Attorney's Fees, Costs, and Interest is continued to February 23, 2026 at 10:30 a.m.

**CU-23-00238 Heron, Kaylee et al vs. W. Ranch, LLC et al.**

The Request for Statement of Decision on Motion to Set Aside is DENIED. The request was made pursuant to California Code of Civil Procedure section 632 and Rule of Court 3.1590 which apply on the trial of a question of fact by the court.

Regardless of whether this is a motion made pursuant to Code of Civil Procedure section 663 or 1008, the Court denies the Motion to Set Aside.

As to the Seventh and Eighth causes of action, which were decided on the ground of the anti-SLAPP statute, *Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, established that statements that are preparatory to or in anticipation of commencing official proceedings come within the protection of the anti-SLAPP statute. While it is correct that making a false police report or false CPS report is a crime under Penal Code section 11172, Plaintiffs failed to submit sufficient evidence to support this contention as required under the anti-SLAPP statute. This Court previously outlined the two-step process in resolving Anti-SLAPP motions: 1) the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from a protected activity; and 2) if the court finds that such a showing has been made, then it determines whether the plaintiff has demonstrated a probability of



****Please contact Judicial Courtroom Assistant, Lesley Pace, at (831) 636-4057 x127 or lpace@sanbenitocourt.org with any objections or concerns.**

prevailing on the claim. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal. 4th 728, 733.) Here, defendant made a threshold showing that the challenged cause of action is one arising from protected activity.

As to the remaining causes of action, one, two, four, five and six, there is no judgment. The demurrers were sustained with leave to amend. Therefore, Code of Civil Procedure 1008 would apply for a motion for reconsideration. The motion is procedurally improper as the Cross Complainants have failed to present the requisite affidavits as required by statute. (Cal. Code Civ. Proc. CP§1008(a).) Moreover, the court notes that the Cross Complainants have failed to present any new or different facts, law, or circumstances which would support reconsideration of the decision rendered October 13, 2025.

The Case Management Conference is continued to March 9, 2026, at 10:30 a.m.

**CU-24-00259 Damian vs. Custom Ag-Pak, LLC et al.**

The unopposed Motion of Plaintiff for PAGA Settlement Approval Order is GRANTED as requested.

**CU-25-00151 Wash vs. Endemic Environmental Services Inc. et al.**

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA*. (2016) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Id*. at 831.) For demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) As such, "the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action." (*Rakestraw v. Cal. Physicians' Serv*. (200) 81 Cal.App.4th 39, 43.) "If the complaint fails to

plead, or if the defendant negates, any essential element of a particular cause of action," the demurrer should be sustained. (*Id*.) For the purpose of testing the sufficiency of a cause of action, contentions, deductions, or conclusions of law are not admitted as true, and must be ignored. *(Aubry v. Tri-City Hosp Dist.* (1992) 2 Cal.4th 962, 966-67.) Generally, leave to amend is granted liberally. (*Foroudi v. Aerospace Corp*. (2020) 57 Cal.App.5th 992, 1000.) Leave to amend may be denied where in all probability that no amount of amendment will cure the defects, rendering the process futile. (*Ibid*.)

In order to make out a claim of harassment and hostile work environment, Plaintiff must plead that: 1) she belongs to a protected group; (2) plaintiff was subject to harassment; (3) the harassment complained of was based upon plaintiff's membership in the protected group; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior liability, if an employer is the defendant. (*Fisher v. San Pedro Peninsula Hotel* (1989) 214 Cal.App.3d 590, 608.) To show that any alleged harassment amounted to a hostile work environment, Plaintiff must plead facts that support a position that "the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to the employees because of their disability" or other protected basis. (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 927; *Hope v. California Youth Auth*. (2005) 134 Cal.App.4th 577, 588.)

In determining what constitutes "sufficiently pervasive" harassment, California courts have held that "acts of harassment cannot be occasional, isolated, sporadic, or trivial, rather the plaintiff must show a concerted pattern of harassment of a repeated, routine or a generalized nature." (*Fisher, supra*, 214 Cal.App.3d at 610; *Hope, supra*, 134 Cal.App.4th at 588.) Plaintiff must allege facts sufficient to show that the alleged conduct "would have interfered with a reasonable employee's work performance and would have seriously affected the psychological well-being of a reasonable employee and that [she] was actually offended." (*Fisher, supra*, 214 Cal.App.3d at pp. 609-610.) To further illustrate this point, commonly necessary personnel management actions do not come within the meaning of harassment, but these actions may be found discriminatory if based on improper motives, but in that event the

remedies provided by the FEHA are those for discrimination, not harassment. (*Roby v. McKesson Corp*. (2009) 47 Cal.4th 686, 707.)

As to the second cause of action, Plaintiff's FAC conflates allegations of discrimination and retaliation with a claim of a hostile work environment claim. Plaintiff fails to plead facts to support her claim that she was subjected to harassment, that any alleged harassment was based on her protected statute or that any harassment created an intimidating, hostile, or offensive work environment which interfered with her work performance. Plaintiff's allegations arise, at most, to a showing of occasional, isolated or sporadic events that do not rise to the level of activity that would constitute harassment. Therefore, the demurrer is sustained with leave to amend as to the Second Cause of Action.

As to the Seventh Cause of Action regarding negligent hiring, supervision and retention, to establish a prima facie case for negligent hiring, Plaintiff must plead facts showing that the employer either: (1) knew the employee was unfit, (2) had reason to believe the employee was unfit, or (3) failed to use reasonable care to discover the employee's unfitness before hiring the employee. (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 843.) Here, Plaintiff fails to allege facts sufficient to show Defendant knew or should have known that hiring any particular employee was unfit. Instead, the FAC uses conclusory language in support of this cause of action without stating any facts. (*See* FAC ¶¶17, 72-73.) Therefore, the demurrer is sustained with leave to amend as to the Seventh Cause of Action.

As to the Tenth Cause of Action, "(t)he elements of a cause of action for intentional infliction of emotional distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering, and (4) actual and proximate causation of the emotional distress." (*Molko v. Holy Spirit Assn*. (1986) 46 Cal.3rd 1092, 1120.) Conduct is extreme and outrageous when it exceeds all bounds of decency usually tolerated by a decent society and is of a nature which is specifically calculated to cause and does cause mental distress. (*Id*. at 1122.) Liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. (*Ibid*.) Severe emotional distress is "emotional distress of such substantial quality or enduring quality that no reasonable [person] in a civilized society

should be expected to endure it." (Hughes v. Pair (2009) 46 Cal.4th 1035, 1051.) Here, Plaintiff's FAC states in conclusory terms that Defendants engaged in extreme and outrageous conduct relying on facts that Defendants sidelined Plaintiff after her injury, ignoring her attempts to return to work and subjecting her to prolonged silence regarding her employment status. (*See* FAC ¶¶18, 88-91.) These allegations, without more, do not establish the extreme and outrageous conduct necessary to support a cause of action for intentional infliction or emotional distress. Therefore, the demurrer is sustained with leave to amend as to the Tenth Cause of Action.

Defendants' Motion to Strike is GRANTED. "In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code § 3294. (*Turman v. Turning Point of Cent. Cal, Inc*. (2010) 191 Cal.App.4th at 63.) These statutory elements include allegations that the defendant has been guilty of oppression, fraud, or malice. (*Ibid*., citing Civ. Code, § 3294(a).) "In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) A wrongful termination claim, without more, is insufficient to find malice or oppression. Similarly, the remaining factual allegations of the Complaint do not rise to the required level to meet the rigorous standard for punitive damages. Even if Plaintiff were to plead facts that are "merely consistent" with the hypothesis of malice, oppression, or fraud, those allegations still do not meet the high standard of "clear and convincing" evidence that is "sufficiently strong to command the unhesitating assent of every reasonable mind." (Tomaselli v. Transamerica Ins. Co. (1994) 25 Cal.App.4th 1269, 1287-88.) The express allegations in Plaintiff's Complaint are insufficient to support that Defendant engaged in any conduct that is sufficiently malicious, oppressive, or fraudulent to give rise to an award for punitive damages.

The controlling law regarding the imposition of punitive damages requires that Plaintiff show the wrongful act giving rise to punitive damages was committed by an officer, director, or managing agent who exerts substantial control over business decisions such that his or her decisions ultimately determine company policy. (*White v. Ultramar, Inc*. (1999) 21 Cal.4th 563, 566-67, 572.) The FAC fails to plead facts showing that an officer, director or

managing agent engaged in or had knowledge of any alleged wrongful conduct carried out by an unfit employee. In light of the ruling on the demurrer, the order granting the motion to strike is made with leave to amend.

The Case Management Conference is continued to March 9, 2026 at 10:30 a.m.

The Order to Show Cause is dismissed.

**PR-23-00039 In the Matter of Kathleen Olschowka**

The Petition is APPROVED as requested.

**PR-25-00113 Estate of Bryan Christopher Kunic**

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on July 13, 2026, at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

**PR-25-00115 Petition for Order Modifying Irrevocable Trust**

The Petition for Order is APPROVED as requested.

**PR-25-00116 In re the Henry G. and Dorothy M. Gonzales Family Trust**

The Petition for Confirmation of Trust Assets is APPROVED as requested.

**PR-25-00118 In re the 2009 Minhoto Revocable Trust dated May 11, 2009**

The Petition for Order Confirming Trust Assets is APPROVED as requested.

**END OF TENTATIVE DECISIONS**



****Please contact Judicial Courtroom Assistant, Lesley Pace, at (831) 636-4057 x127 or lpace@sanbenitocourt.org with any objections or concerns.**