

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, May 31, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 23CV01491, City of Santa Rosa v. Utility Partners of America, LLC

The Hon. Bradford DeMeo hereby recuses himself from this matter. This case is reassigned to the Hon. Oscar A. Pardo in Dept. 19. The Motion to Deposit Interpleaded Funds is **CONTINUED** to June 5, 2024, at 3:00 p.m. in Dept. 19. Tentative rulings may be obtained between 2:00 p.m. and 4:00 p.m. on the court day prior to the scheduled hearing at www.sonoma.courts.ca.gov. Notice of reassignment will be issued separately.

2. **23CV01507, Haygooni v. Solairus Aviation LLC**

Defendants Solairus Aviation LLC and Dan Drohan’s (“Defendants”) demurrer to Plaintiff Haygooni’s First Amended Complaint (“FAC”) is **SUSTAINED with leave to amend** as to all causes of action except the cause of action for Negligent Infliction of Emotional Distress, which Plaintiff has agreed to withdraw.

Defendants’ motion to strike is **partially GRANTED without leave to amend** as to paragraphs 23, 30, 31, 38, 39, 42, 45, 46, 53, 64, and 71, and Prayer for Relief paragraph 3, which all refer to and support Plaintiff’s request for exemplary or punitive damages. The motion is **partially DENIED** as to Prayer for Relief paragraphs 2 and 4.

Finally, Defendants’ motion for sanctions of \$37,500.00 per Code of Civil Procedure (“C.C.P.”) section 128.7 against Plaintiff is **DENIED**. All requests for sanctions made in the objections by Plaintiff as to the three motions are also **DENIED**.

PROCEDURAL HISTORY

Plaintiff is an experienced pilot who was employed by Defendants, who assist aircraft owners in managing and operating their planes. Plaintiff flew as a per diem or part-time pilot for a year but claims that Defendants refused to hire him full-time and replaced him with younger pilots on his scheduled flight trips when he was around 76 years of age at the time. Eventually, Plaintiff was told his services were no longer needed. He has not flown on any trips for Defendants since November of 2022. Plaintiff’s FAC alleges damages against Defendants for intentional interference with economic advantage, age discrimination under California’s Fair Employment and Housing Act (“FEHA”), veteran status discrimination, wrongful termination, failure to prevent discrimination, unjust enrichment from unlawful business practices, negligent infliction of emotional distress, and defamation.

Defendants have filed a motion for sanctions and a demurrer and motion to strike the FAC. Prior to filing the motions, defense counsel attempted to meet and confer on alleged deficiencies in the pleadings by e-mail and phone call. The parties could not come to a resolution. Defense counsel has filed an opposition to the declaration regarding the meet and confer stating that Plaintiff agrees to make certain amendments to his complaint based on the meet and confer, though he does not believe they are required. Defense counsel filed a response to this opposition to state that it was improper.

DEMURRER TO FAC

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Analysis

Defendants demur to each cause of action in the FAC pursuant to C.C.P. section 430.10(e) and 430.10(f). Plaintiff opposes because the demurrer was filed late and because according to plaintiff, defendants did not meet and confer properly before filing it. Should the Court sustain the demurrer, Plaintiff seeks leave to amend the FAC and has attached a proposed Second Amended Complaint ("SAC"). In the reply to opposition, Defendants reaffirm the arguments made in the demurrer.

Intentional Interference with Economic Advantage

Defendants argue that Plaintiff fails to establish that Plaintiff had a qualifying relationship, that Defendants knew of any such relationship, or that Defendants had the requisite intent required for this type of claim. Defendants also claim that Plaintiff also failed to adequately allege that Defendants committed any independently wrongful act. Finally, Defendants argue that this cause of action is uncertain because the facts alleged are ambiguous and unintelligible as to what relationship existed with Jett Group and between which entities.

Plaintiff claims the cause sufficiently alleges wrongful conduct because Plaintiff contracted with the Jett Group, because Defendants were one of Jett Group's clients, and Defendants intentionally denied Jett Group's request for Plaintiff to fly for them stating Plaintiff was not assignable because of an "age 65 rule." Plaintiff proposes to add allegations in the SAC that he had a one-year employment contract with Jett Group on January 27, 2023, and will change the title of the cause of action to "intentional interference with contract."

Age Discrimination in Violation of FEHA

Defendants argue Plaintiff fails to establish that any action taken by Defendants was motivated by Plaintiff's age.

Plaintiff argues that the age discrimination cause is viable because the FAC states that he was discriminated against on the basis of his age when he was terminated without cause, then set forth circumstances that further demonstrate his alleged age discrimination, including but not limited to these allegations: (1) Defendants were already contemplating Plaintiff's retirement in 2018 when writing to Sammy Hagar that they would take care of him for his last few years

because he was nearing retirement; and (2) Defendants told Plaintiff he was not a good fit for full-time employment and replaced him with younger pilots.

Veteran Status Discrimination under FEHA

Defendants argue Plaintiff's contention that Defendants discriminated against him by failing to grant him hiring preference based on his veteran status is not based on a recognized legal right.

Plaintiff claims that the veteran status discrimination cause is statutorily based per Government Code section 12940(a), which prevents discriminating against an employee based on their veteran military status. Plaintiff proposes to add allegations in the SAC that he served in Vietnam, that Defendants were aware of this, and to reference Government Code section 7280.

Wrongful Termination, Failure to Prevent Discrimination, and Unjust Enrichment

Defendants argue that Plaintiff's causes of action for wrongful termination, failure to prevent discrimination, and unjust enrichment all fail to state facts sufficient to constitute a cause of action because Plaintiff's underlying causes of action for discrimination fail.

Plaintiff argues that the derivative claims are valid because the factual allegations, as briefly described above, in the FAC support of his discrimination causes of action are sufficient to state causes of action for those claims. Otherwise, Plaintiff requests the Court to allow leave to file the SAC to supplement the causes of action with more factual allegations that support his claims.

Negligent Infliction of Emotional Distress

Defendants argue that the cause of action for negligent infliction of emotional distress fails to state facts sufficient to constitute a cause of action because Plaintiff fails to establish that he suffered any emotional distress over and above a normal emotional distress claim, and because workers' compensation would have exclusive jurisdiction over this claim.

Plaintiff has decided to withdraw this cause of action.

Defamation

Defendants argue that one of the allegations in support of this claim is barred by the statute of limitations, another one of them was never published to any third party, and because one other of the alleged statements was not defamatory.

Plaintiff specifically set forth allegations in the FAC that Defendants told Jett Group via the Certified Aviation Manager that he was not assignable due to his age. Plaintiff claims that these statements are false because he continues to fly and was recently awarded the Wright Brothers Master Pilot Award by the Federal Aviation Administration, which is highly coveted and seldom awarded.

Application

The Court will sustain the demurrer with leave to amend as there is reasonable possibility that Plaintiff can cure defects in the FAC through amendment and has proposed additional factual allegations to assert in the SAC to support his causes of action. However, the demurrer is sustained without leave to amend as to the claim for Negligent Infliction of Emotional Distress, which Plaintiff has agreed to withdraw.

MOTION TO STRIKE PORTIONS OF FAC

Legal Standard

Motion to Strike

The court may, “upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (C.C.P. §§ 435, 436.) Any party may serve and file a notice of motion to strike the whole or any part of a pleading within the time allowed to respond to the pleading, within the notice specifying the hearing date on a motion to strike the complaint. (*Id.* at § 435(a)-(b).)

Punitive or Exemplary Damages

When a plaintiff claims a breach of an obligation against a defendant, not arising from any contract, punitive damages may be recovered in addition to actual damages when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice against the plaintiff. (Cal. Civ. Code § 3294.) The code describes “malice” as conduct that the defendant intended 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.” (*Id.* at § 3294(c)(1).) “Oppression” is defined as “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.” (*Id.* at § 3294(c)(2).) Finally, “fraud” is defined as the “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.” (*Id.* at § 3294(c)(3).)

The mere allegation of an intentional tort, such as negligence, does not sufficiently warrant an award of punitive damages if facts are also not alleged that demonstrate intentional conduct. (*Grieves v. Superior Ct.* (1984) 157 Cal.App.3d 159, 166-167; *Taylor v. Superior Ct.* (1979) 24 Cal.3d 890, 894.) In the interpretation of section 3294, cases have made it clear that in order to warrant the allowance of punitive damages that act complained of must not only be “willful,” in the sense of intentional, but it must also be accompanied by aggravating circumstances, amounting to malice—which implies an act “conceived in a spirit of mischief or with criminal indifference towards the obligations owed to others.” (*Taylor v. Superior Ct.* (1979) 24 Cal. 3d 890, 894; *Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 893-894.) Gross negligence, mere spite, or ill will are not sufficient to justify an award of exemplary or punitive damages because facts must be specifically alleged that show an intent to vex, annoy, or injure. (*Ebaugh v. Rabkin*

(1972) 22 Cal.App.3d 891, 894; *Read v. Turner* (1966) 239 Cal.App2d 504-515-516; *Ellis v. City Council* (1963) 222 Cal.App.2d 490, 498-499; *Gombos v. Ashe* (1958) 158 Cal.App.2d 517, 526-527.)

Moving Papers

Defendant moves to strike portions of the FAC in paragraphs 23, 30, 31, 38, 39, 42, 45, 46, 53, 64, and 71, and Prayer for Relief paragraph 3, which paragraphs support Plaintiff's request for exemplary and punitive damages for all causes of action. Defendant also seeks to strike Prayer for Relief paragraph 2 which requests general, compensatory, and non-economic damages, and paragraph 4 which prays for costs of suit including reasonable attorney's fees.

Plaintiff opposes the motion to strike arguing that it was filed late and because Defendants did not properly meet and confer before filing. Plaintiff characterizes Defendants' actions as willful and intentionally discriminatory and arguing that Defendants' actions show the requisite malice by top ranking officials warrant punitive damages. Furthermore, because of their "frivolous and mean-spirited actions," Plaintiff argues that their motion should be denied, and Defendants should be sanctioned.

In reply, Defendants denies that the motion was filed late and that the meet and confer was improper. Defendants argue that Plaintiff's oppositions contained blatant misrepresentations and irrelevant accusations and fails to establish the requisite malice or the involvement of any sufficiently senior agent of Defendants to support the prayer for exemplary or punitive damages.

Application

The Court finds that Plaintiff has failed to sufficiently show requisite malice on the part of Defendants that shows their conduct was "conceived in a spirit of mischief or with criminal indifference towards the obligations owed to others." The Court will partially grant the motion to strike without leave to amend as to the relevant portion of paragraphs 23, 30, 31, 38, 39, 42, 45, 46, 53, 64, and 71, and Prayer for Relief paragraph 3, which support Plaintiff's request for exemplary and punitive damages. The Court will deny the motion to strike Prayer for Relief paragraph 2 which requests general, compensatory, and non-economic damages for all causes of action, and paragraph 4 which prays for costs of suit including reasonable attorney's fees.

MOTION FOR SANCTIONS PER C.C.P. § 128.7

Legal Standard

An attorney or unrepresented party who presents a pleading, motion, or similar paper to the court makes an implied "certification" as to its legal and factual merit and is subject to sanctions under C.C.P. section 128.7 for violating the certification. The implied certification per section 128.7 means that: (1) their paper is not being presented for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions asserted are warranted by existing law or by a non-frivolous argument for the extension or change in existing law; (3) their factual contentions have

“evidentiary support” or, if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery; and (4) the denials of factual allegations are warranted on the evidence or, if identified as such, are reasonably based on a lack of information and belief. (CCP § 128.7(b).) An attorney or unrepresented party “presents” a paper when he signs, files, submits, or later advocates the positions set forth in the document. (*Id.*) Whether this implied certificate is violated is tested objectively, *i.e.* whether the paper filed is frivolous, legally unreasonable, or without factual foundation. (*Bockrath v. Aldrich Chem. Co., Inc.* (1999) 21 Cal.4th 71, 82.)

The moving party must provide notice of the section 128.7 motion as least 21 days prior to filing with the Court to give the sanctioned party an opportunity to withdraw the challenged paper of prior to the sanction motion being filed with the Court. If the motion is not withdrawn after 21 days, the moving party may file the sanction motion. (C.C.P. § 128.7(c)(1).)

Moving Papers

Defendants seek sanctions of \$37,500.00 per C.C.P. section 128.7 arguing that Plaintiff’s first amended complaint lacks any merit and that the causes of action are utterly frivolous and are time barred.

In opposition, Plaintiff seeks sanctions against Defendants and argues that the claims stated in the FAC are not frivolous as required for a motion per C.C.P. section 128.7 because they are all based on the many factual allegations stated in support. Plaintiff also points out that he has requested leave to file the SAC to further clarify and factually support his claims.

In reply, Defendants reassert arguments made in the motion. Defendants and Plaintiff filed additional briefs after the Court continued the hearing to be heard on the same day as the demurrer and motion to strike. The Court will not consider the additional briefs filed without any basis and without leave of Court.

Application

The Court does not find that Plaintiff filed the FAC for any improper purpose such as to harass defendants or cause unnecessary delay because the claims alleged therein are supported by the factual allegations in the FAC and may be further supported by evidence obtained through discovery. For that reason, the Court denies this motion for sanctions and Plaintiff’s request for sanctions against Defendant in the opposition.

CONCLUSION

Based on the foregoing:

1. Defendants’ demurrer to the FAC is **SUSTAINED with leave to amend** as to all causes of action except the cause of action for Negligent Infliction of Emotional Distress, which Plaintiff has agreed to withdraw;

2. Defendants' motion to strike is **partially GRANTED without leave to amend** as to paragraphs 23, 30, 31, 38, 39, 42, 45, 46, 53, 64, and 71, and Prayer for Relief paragraph 3, which all refer to and support Plaintiff's request for exemplary or punitive damages. The motion is **partially DENIED** as to Prayer for Relief paragraphs 2 and 4.
3. Defendants' motion for sanctions of \$37,500.00 per Code of Civil Procedure ("C.C.P.") section 128.7 against Plaintiff is **DENIED**.
4. All requests for sanctions made in the objections by Plaintiff as to the three motions are also **DENIED**.

Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. SCV01081, Addington v. Ridgeway Distribution, LLC

Counsel's unopposed motion to be relieved as counsel for defendants Anthony Pizzarelli, NACC, Inc., and Ridgeway Distribution, LLC, is **CONTINUED** to June 26, 2024, at 3:00 p.m. in Department 17. Counsel filed two incomplete MC-051 forms with no evidence or declaration in support. There is no proof of service showing adequate notice to all parties of this motion. If counsel do not correct these errors before the next hearing, the Court will deny the motion.

4. SCV-270261, Arikat v. Grocery Outlet, Inc.

Defendant Basin Street Properties Inc.'s unopposed motion for abatement, or in the alternative joinder of Sawsan Abuhawat and Suhair Erikat as heirs of decedent Farida Arikat, is stayed pending the filing of Plaintiffs' Amended Complaint to which all parties have stipulated. An Order to Show Cause hearing is set for **July 11, 2024, at 3:30 p.m.** in Department 17. The Court will drop the motion if the parties timely file a stipulated proposed order for leave to file the Amended Complaint before the Order to Show Cause hearing.

5. SCV-271485, Sturm v. Zetzer

Counsel Richard E. Paris's unopposed motion to be relieved as counsel for all plaintiffs is **GRANTED**, per California Code of Civil Procedure section 284(2).

Counsel declares plaintiffs are in arrears and owe attorney fees, which they are not willing to pay though trial is approaching. (Paris Declaration, ¶ 2.) Plaintiffs did not wish to sign a substitution of attorney form. (*Ibid.*) Counsel timely served notice of this motion to all parties. (Proofs of Service dated March 25, 2024.) The next item scheduled in this matter is trial on September 13, 2024. The Court will sign counsel's proposed order unless oral argument is requested.