

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, July 24, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1-2. 24CV02169, Habtom v. The Permanente Medical Group

Defendant Allied Universal Security Services (“Allied”) demurs to the Second and Fourth Causes of Action in the Second Amended Complaint (“SAC”) pursuant to C.C.P. section 430.10(e) and moves to strike specific allegations related to punitive damages as requested by Plaintiff Sabir Habtom (“Plaintiff”) pursuant to C.C.P. sections 436(b) and 581(f)(2). Allied’s demurer is **OVERRULED**. Allied’s motion to strike is **DENIED**.

I. Procedural History

Plaintiff filed the Complaint in this action on April 4, 2024, naming The Permanente Medical Group (“Kaiser”), Rachel Brauer (“Brauer”), Kent Pena (“Pena”) (together with all other defendants as “Defendants”), and DOES 1–20 alleging seven causes of action against various Defendants. On February 10, 2025, Plaintiff filed the First Amended Complaint, which Allied demurred to and moved to strike portions. On August 6, 2025, this Court sustained Allied’s demurrer as to the Second and Fourth Causes of Action with leave to amend and granted Allied’s motion to strike, giving Plaintiff 30 days to file the SAC. (See Order on Demurrer, filed

December 19, 2025.) Plaintiff then filed the SAC on January 21, 2026. Allied now demurrers to the Second and Fourth Causes of Action and moves to strike portions of the SAC.

II. Governing Law

A. Demurrers Generally

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).) A party may demur to a pleading when there is another action pending between the same parties on the same cause of action. (C.C.P. § 430.10(c).) 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.)

B. Agency and Ratification

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." (Civ. Code § 2295.) An agent may bind a principle under their actual or ostensible authority, and any rights or liabilities derived from the actions of the agent under that authority are also attributable to the principal. (Civ. Code § 2330.)

"An agent's authority may be proved by circumstantial evidence." (*Tomerlin v. Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 644.) The burden of proving agency is upon the party asserting that relationship. (*Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247.) Although the existence of an agency relationship is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." (*Metropolitan Life Ins. Co. v. State Bd. of Equalization* (1982) 32 Cal.3d 649, 658.) Agency may be either actual or ostensible. (Civ. Code § 2298; *Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826.) Actual agency exists "when the agent is really employed by the principal." (Civ. Code § 2299.)

"[T]he principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350.) "[T]he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires

only in the result of the work, and not the means by which it is achieved.” (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179.) Additional factors which merit consideration are:

(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.”

(*S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351.) Some jurisprudence on the issue elects to “focus upon the principle that a principal may oversee the results, but not the means, of the work in question.” (*Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143.) To be under respondeat superior, the conduct must be “typical of, or broadly incidental, to their duties.” (*Juarez v. San Bernardino City Unified School Dist.* (2024) 106 Cal.App.5th 1213, 1226.)

The nexus required for respondeat superior liability—that the tort be engendered by or arise from the work—is to be distinguished from “but for” causation.⁴ That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for intentional and negligent torts): the incident leading to injury must be an “outgrowth” of the employment.

(*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 298.)

The respondeat superior doctrine is based on a “deliberate allocation of a risk”; the losses caused by torts of employees “which as a practical matter are sure to occur in the conduct of the employer’s enterprise, are placed upon that enterprise itself, as a required cost of doing business.” (*Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, 396 [internal citation omitted].) Thus, to hold an employer liable there must be a showing that the employee was engaged in duties she was “employed to perform” or acts which “incidentally or indirectly contribute to” the employer’s service, and conversely, the employer will not be liable “when the employee is pursuing ‘his own ends.’” (*Tryer v. Ojai Valley School* (1992) 9 Cal.App.4th 1476, 1481–82). The risk arising out of the employment should not be “so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer’s business.” (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968 [internal citation omitted].)

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that “the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or

ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ. Code § 3294(b).) “With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.” (*Ibid.*) An employer’s failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. (*Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228.) Where punitive damages are alleged against an employer under Section 3294(b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.)

C. Motions to Strike

A motion to strike lies where a pleading contains “irrelevant, false, or improper matter[s]” or is “not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (C.C.P. § 436(b).) However, “falsity,” must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. (*See* C.C.P. § 437.) In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a “general allegation of intent is sufficient.” (*Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632.) A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowed as a matter of law. (*See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 [motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law].) Punitive damages may be stricken where the facts alleged do not rise to the level of “malice, fraud or oppression” required to support a punitive damages award. (*Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.)

III. Analysis

A. The Court will Consider Plaintiff’s Untimely Opposition

In its Reply, Allied notes that Plaintiff’s Opposition is untimely but does not affirmatively ask the Court to disregard the Opposition. While the Opposition was late, it was only filed one day late and Allied timely filed its Reply to the Opposition. Therefore, the Court will consider Plaintiff’s Opposition.

B. Demurrer

1. Second Cause of Action – Defamation

i. Respondeat Superior is Adequately Pled

The Court previously sustained Allied’s demurrer to the Second Cause of Action for Plaintiff’s failure for not alleging that Brauer’s conduct was within the scope of her employment for

respondeat superior to apply to Plaintiff's claims and that the allegation of republication by "Defendants" was not specific enough to identify Allied.

Allied maintains that Plaintiff's allegations that Allied is vicariously liable for Brauer's complaint of sexual harassment and Brauer's report to Santa Rosa Police Department ("SRPD") are not supported by sufficient facts. The SAC alleges that Brauer complained about Plaintiff to Allied and/or Kaiser's company policy and procedure to allow her to make the complaint, therefore incidental to her employment and in the furtherance of Allied's business interest in providing its employees with a workplace free of unlawful retaliation and harassment. (SAC, ¶ 38.) Allied cites to *Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238 to support its contention that Plaintiff's theory of vicarious liability fails because Plaintiff fails to plead that Brauer was acting in the scope of her authority and in furtherance of the employer's business. The Court agrees with Plaintiff's arguments about the factual difference between the instant case and *Alexander* because the relevant holding was that the jury's verdict on plaintiffs' defamation claims was unsupported by substantial evidence. However, this holding does not abrogate the standard cited in *Alexander*— "To be vicariously liable for the publication of another under the doctrine of respondeat superior, the employee or agent must have been 'acting in the scope of his authority and in furtherance of the employer's business.'" (*Alexander, supra*, 46 Cal.App.5th at 264, quoting *Sanborn v. Chronicle Publishing Co.* (1976) 18 Cal.3d 406, 411.)

Here, Plaintiff has pled sufficient facts to show that Brauer was in the scope of her employment and acting in furtherance of Allied's business when she reported a complaint to Kaiser and Allied that Plaintiff was sexually harassing, stalking her, and threatened to rape her if he saw her outside of work. (SAC, ¶¶ 11–30, 45.) These preceding facts are also incorporated into the Second Cause of Action. (SAC, ¶ 59.) As the case law demonstrates, the scope of employment under the respondeat superior has been interpreted broadly and includes "an employee tending to his own business at the same time as that of his employer." (*Morales-Simental v. Genentech, Inc.* (2017) 16 Cal.App.5th 445, 452.) Plaintiff has sufficiently pled facts to demonstrate that Brauer's report was at least indirectly serving her employer by reporting alleged misconduct she experienced in the workplace. Thus, the demurrer to the Second Cause of Action is **OVERRULED**. Allied makes arguments about the truth of the facts pled in the SAC, but the Court does not examine the veracity of any facts pled.

The Court acknowledges the parties' arguments regarding *Rausman v. Baugh* (N.Y. App. Div. 1998) 248 A.D.2d 8, and the factual similarity to the instant case, but finds these arguments unpersuasive as California has substantial case law on respondeat superior and the Court need not reach to New York authority for such guidance.

Regarding the report to SRPD, Allied argues in its Reply that Plaintiff's failure to address Allied's arguments in Plaintiff's Opposition is a concession that Allied is not liable for Brauer's police report. However, "a general demurrer does not lie as to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the demurrer will be overruled." (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.) Here, Plaintiff's Second Cause of Action incorporates the preceding paragraphs of facts, which incorporates both the internal complaint to Kaiser/Allied and the SRPD report. Therefore, the Court may not adjudicate the portion of the Second Cause of Action only as to the police report when it has found that Plaintiff

sufficiently pled facts to support respondeat superior as to Allied for Brauer's actions for the internal complaint, which is also the basis of the Second Cause of Action.

ii. Ratification is Adequately Pled

While the Court has already found that Plaintiff has adequately pled respondeat superior as to Allied, the Court finds that Plaintiff has adequately pled ratification as identified in the demurrer to the First Amended Complaint. Plaintiff alleges that Allied did not discipline Brauer following their finding that her accusations were unsubstantiated and were only offered to take paid administrative leave after he requested not to work near Brauer. (SAC, ¶¶ 27, 41–52, 81.) Plaintiff has pled sufficient facts to show that Allied undertook action that confirmed and accepted Brauer's conduct. (*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 168.) Thus, Plaintiff has adequately pled Allied's liability via ratification.

iii. Conditional Privilege under Civil Code Section 47(c)

Lastly, Allied argues that it cannot be liable for any publication of Brauer's complaint because it is privileged under Civil Code section 47(c) and the SAC only pleads conclusions that the communication was made with malice. Section 47(c) extends a conditional privilege against defamation "[i]n a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." (Civ. Code § 47(c).) The statute explicitly states: "This subdivision applies to and includes a complaint of sexual harassment by an employee, without malice, to an employer based upon credible evidence and communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment." (*Ibid.*) Malice cannot be inferred from the communication itself. (Civ. Code § 48.) Plaintiff must plead actual malice, which requires "a showing that the publication was motivated by hatred or ill will toward the plaintiff or by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 740.) Here, Plaintiff has adequately pled actual malice by pleading facts supporting that Brauer's reports were motivated by ill will toward him. (SAC, ¶¶ 11–30, 68.)

2. Fourth Cause of Action Intentional Infliction of Emotional Distress

Allied makes no specific argument for intentional infliction of emotional distress ("IIED") other than a brief statement that Plaintiff fails to plead the facts necessary to impose liability. Neither party addresses IIED in the Opposition or Reply. Since the Court found that Plaintiff has sufficiently plead theories of vicarious liability related to Allied and Allied makes no other argument, Allied's demurrer is **OVERRULED** as to the Fourth Cause of Action.

C. Motion to Strike

Allied moves to strike the entire SAC as untimely or individual portions of the SAC in the alternative. The Court allowed Plaintiff to file his SAC 30 days from the date of the order on the

demurrer to the First Amended Complaint, which occurred on December 19, 2025. Pursuant to C.C.P. section 1019.5(a), the service of the court's order on the demurrer was to be given by Allied to all other parties, which then would start the clock for Plaintiffs 30 days. (See *Forrest v. Department of Corporations* (2007) 150 Cal.App.4th 183, 203.) Allied did not file a proof of service of the Court's December 19th Order on all other parties so the Court cannot determine when the 30-day clock started for Plaintiff and thus determine if the SAC was, in fact, filed late. Allied's motion to strike the entire SAC is **DENIED**.

In the alternative, Allied moves to strike paragraphs 40, 52, 81 of the SAC and paragraph 5 of the Prayer, which are all related to punitive damages. As the Court determined above, the Plaintiff has pled adequate facts to support Allied's vicarious liability for Brauer's acts and punitive damages, the motion to strike these paragraphs is **DENIED**.

IV. Conclusion

Allied's demurrer to the SAC is **OVERRULED**. Allied's motion is **DENIED**.

Plaintiff's counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

****This is the end of the Tentative Rulings.****