TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, February 11, 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.

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 23CV01246, Herbert v. Friedman's Home Improvement

Plaintiff Sharon Elizabeth Herbert ("Plaintiff"), individually and on behalf of other all other similarly situated, including employees pursuant to the California Private Attorney General Act, filed the currently operative first amended complaint against defendant Friedman's Home Improvement ("Defendant"), and Does 1-10 for causes of action arising out of Defendant's alleged Labor Code violations, and civil penalties thereon (the "Complaint"). This matter is on calendar for Plaintiffs' unopposed motion for conditional certification of the class and preliminary approval of the class action settlement (the "Motion"). The Motion is **GRANTED**.

I. The Complaint

The presently operative First Amended Complaint ("Complaint") alleges that Defendants failed to comply with California Labor Code ("LC") provisions during the course of Plaintiff's employment with Defendants and alleges on information and belief that these policies were also enforced on other employees.

The Complaint contains causes of action for: (1) Failure to Pay All Wages; (2) Failure to Provide All Meal Periods; (3) Failure to Authorize and Permit All Paid Rest Periods; (4) Failure to Timely Provide Accurate Wage Statements; (5) Derivative Violations of Labor Code §§ 201-202; (6) Independent Violations of Labor Code §§ 201-202; (7) Penalties Pursuant to Labor Code §2699, et seq., for PAGA civil penalties on a representative basis for themselves and other employees; and (8) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et *seq*.

II. The Settlement

According to the Motion, Plaintiffs asserted multiple causes of action for various Labor Code and Business and Professions Code violations centered around Labor Code violations. Defendant contends that Plaintiffs are unlikely to obtain class certification and the claims presented were based on individualized damages not easily proven in representative claims. *See generally* Manus Decl. ¶¶ 13-32.

The Manus Declaration establishes that Plaintiffs' counsel engaged in exchange of information and investigation. Manus Decl. ¶¶ 7, 17. On August 13, 2024, the parties mediated the matter before the Steven J. Serratore, a mediator with extensive wage and hour class action experience. Manus Decl. ¶ 5. Prior to the mediation, Defendant provided comprehensive discovery materials. Manus Decl. ¶ 17. Plaintiff employed Berger Consulting Group to analyze the data and do an exposure analysis. *Ibid*. The class is defined in the Settlement Agreement and Release of Class Action [attached to Manus Decl., Exhibit 1, hereinafter "Settlement Agreement"] as all non-exempt employees who were employed by Defendants in California during the Class Period from October 27, 2019, through July 14, 2025. Settlement Agreement § 5. Aggrieved Employees under PAGA are defined as all non-exempt employees who were employed by Defendants in California between October 27, 2022, through July 14, 2025. Settlement Agreement § 4.

Plaintiffs' counsel undertook a 20% sampling analysis of the data provided by Defendants. Manus Decl. ¶ 17. Based on that data, Plaintiffs' counsel was able to undertake a thorough assessment of potential damages for the claims alleged in the Complaint, including the number of instances and the corresponding monetary claim for each late or missed meal break, each missed rest break, and each resulting wage statement violation. Plaintiffs' counsel was able to then extrapolate that information to the entire class.

The class data encompasses 1,438 class members and approximately 128,000 work weeks. There are 19,655 PAGA pay periods, and the submitted information does not state the number of Aggrieved Employees.

Plaintiff estimates that the maximum amount of potential damages across the class for the alleged underlying violations equals $25,584,503.00. However, having undertaken extensive analysis of the claims, Plaintiff believes that probable recovery is likely $3,758,703.60 ($875,533.80 in failure to pay wages, $123,772.10 in failure to provide meal periods, $815,577.00 for failure to provide paid rest periods, $1,299,153.00 for failure to timely furnish wage statements, $192,990.00 in derivative Labor Code §§ 201-202 violations, and $451,677.70 for independent Labor Code §§ 201-202 violations) with an additional $1,046,200.00 for civil

penalties under PAGA. Manus Decl. ¶¶ 22-31. The estimated probable damage per class member for the core class claims is therefore $2,613.84 per class member ($3,758,703.60 / 1,438 class members). Probable recovery of PAGA penalties are $261,550 to the aggrieved employees ($1,046,200x.25), with the other $784,650 going to the LWDA. At the mediation, the parties came to an agreement based on the assistance of the mediator. Manus Decl. ¶ 17. Plaintiff provided a copy of the settlement agreement to the LWDA on August 13, 2025. Manus Declaration, ¶ 44.

Pursuant to the Settlement Agreement, Defendants will pay $2,200,000 as the Gross Settlement Fund. Settlement Agreement § 53. From that amount, the following may be deducted on court approval: 1) attorneys' fees of $733,333.33 (which is approximately 1/3 of the Gross Settlement Fund) and up to $30,000 of costs and expenses; 2) an incentive award to the Plaintiff of $10,000; 3) settlement administration costs, not to exceed $20,000; and 4) $30,000 in penalties under PAGA, 75% of which is paid to the California Labor and Workforce Development Agency (the remaining $7,500 of which is payable to the Aggrieved Employees). See Settlement Agreement §§ 56.1-56.3, 56.5. If these sums are all approved by the Court, this results in a Net Settlement Fund of $1,376,666.67 to be distributed to the members of the class. The Net Settlement Fund will be distributed pro rata to the members of the class who do not opt out, based on the number of workweeks worked by such individual as compared to the total number of aggregate number of workweeks by all such individuals during the Class Period. Settlement Agreement § 56.4. This results in an average Class settlement payment of approximately $957.35 ($1,376,666.67 / 1,438). This also leaves a PAGA settlement for distribution to an undetermined number of aggrieved employees of $7,500. Defendant will pay its share of payroll taxes for settlement funds classified as wages separate from the Gross Settlement Fund. Settlement Agreement §§ 53. The settlement is non-reversionary. Settlement Agreement § 53. For tax purposes, 10% is allocated to unpaid wages, and 90% is allocated to interest and penalties classified as miscellaneous income. Settlement Agreement § 56.4(a). Net settlement payments will be automatically sent to members of the class unless they opt out. See generally, Class Notice.

The Settlement Agreement and proposed notice to the Class (the "Proposed Notice") (Settlement Agreement, Ex. A) also set forth the procedure and timeline for providing notice to the class members (which will be sent by the administrator via first class mail), which includes a detailed explanation of the claims and defenses, terms of the settlement, opt out and objection procedures, an estimate of the individual class member's settlement payment and a description of how it was calculated, and that all participating members of the class will be paid without the need to submit a claim.

The Class Members who do not opt-out of the settlement releases Defendant from "all claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably could have been alleged, based on the facts alleged in the Operative Complaint, which occurred during the Class Period, including: failure to pay minimum wage; failure to pay overtime; failure to provide meal periods; failure to authorize and permit rest breaks; failure to timely pay wages during employment; failure to timely pay final wages upon separation from employment; failure to reimburse for business expenses; failure to provide complete and accurate wage statements; unfair business practices; California Labor Code sections 200-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and IWC Wage

Order Nos. 1, 3, 5, 7, 9, 12. Except as Set Forth in Paragraph 66 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Settlement Period." Settlement Agreement § 65.

Additionally, Plaintiff agrees to release "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period ("Released PAGA Claims"), including those claims for civil penalties under PAGA for underlying violations of the California Labor Code for: failure to pay minimum wage; failure to pay overtime; failure to provide meal periods; failure to authorize and permit rest breaks; failure to timely pay wages during employment; failure to timely pay final wages upon separation from employment; failure to reimburse for business expenses; failure to provide complete and accurate wage statements; unfair business practices; California Labor Code sections 200-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and IWC Wage Order Nos. 1, 3, 5, 7, 9, 12. The Released PAGA Claims apply to claims arising during the PAGA Period." Settlement Agreement § 66.

III. Analysis

The purpose of evaluating a proposed class action settlement on a preliminary basis is to determine whether the proposed settlement is within the "range of reasonableness" for possible approval, and whether it is worthwhile to issue notice to the class and schedule a formal hearing. *See* Cabraser, Cal. Class Actions and Coordinated Proceedings §14.02 (2d ed. 2011). A presumption of fairness applies if there has been arm's length bargaining; investigation and discovery have been sufficient to allow counsel and the court to act intelligently; class counsel is experienced in similar litigation; and the percentage of class members who object to the settlement is small. *Id. See also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.

The settlement appears generally within the reasonable range of settlement. The total possible claims based on the 1,438 Class Members is $25,584,503. Probable recovery is far lower, estimated at $3,758,703.60. Recovery of $1,376,666.67 after attorneys' fees and costs appears to be sufficiently reasonable return for the relative strength of the case, the risks inherent to litigation, and the possible defenses asserted by Defendant at the preliminary approval stage. The proposed costs appear reasonable.

Given that the Court is required at final approval to review the fees *independently* for fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801), counsel should always be prepared for analysis on either the lodestar or the common fund theory. It appears based on the memorandum and declaration that Counsel is prepared to address either.

No class has yet been certified, and Plaintiffs seek conditional certification in connection with approval of the settlement. The two basic requirements to sustain a class action are an ascertainable class and a well-defined community of interest in the questions of law and fact involved. Cal. Code Civ. Proc. ("CCP") §382; *see also Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800,

809. In this case the proposed class is defined as "all non-exempt employees who were employed by Defendants in California during the Class Period from October 27, 2019, through July 14, 2025." Settlement Agreement § 5. Members of the class can be ascertained from Defendant's records, and a class with an estimated 1,438 members is sufficiently numerous. The community-of-interest requirement embodies common questions of law or fact, a class representative with claims or defenses typical of the class, and a class representative who can adequately represent the class. *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021. The Court concludes that these requirements are met, the Court would approve the class.

"Notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.*

Plaintiff includes requests for the finding that the representative award and attorney's fees are both reasonable. At this juncture, this request is premature, as attorney's fees and representative awards are both matters which may be the subject of objections by the class members at final approval. Plaintiff presents arguments advancing the common fund theory, as opposed to lodestar. Given that the Court is required at final approval to review the fees *independently* for fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801), counsel should be prepared for analysis on either the lodestar or the common fund theory.

The notice appears to fully apprise the class members of the relevant considerations. Therefore, preliminary approval appears appropriate.

IV. Conclusion

1. The Motion is **GRANTED**. For the purpose of the Settlement only, the Court finds that certification of the Class is appropriate because (a) the Class is ascertainable and sufficiently numerous, (b) a well-defined community of interest exists, and (c) there are substantial benefits from certification that render proceeding on a class-wide basis superior to any alternatives. Furthermore, the Court finds that (a) the terms of the Settlement appear to be fair and reasonable to the Class when balanced against the probable outcome of further litigation relating to class certification, liability and damage issues, and potential appeals; (b) Class Counsel is experienced in wage-and-hour class-action litigation; (c) significant investigation was undertaken, and significant information was exchanged, enabling Plaintiff and Defendant to reasonably evaluate one another's positions; (d) approving the Settlement will avoid the substantial costs, delay, and risks that would be presented by further litigation; and (e) the terms of the Settlement were the result of intensive, serious, and non-collusive negotiations between Plaintiff and Defendant, including a private mediation. Accordingly, the Court preliminarily finds that the Settlement falls within the range of possible approval and therefore meets the requirements for preliminary approval.

2. The Court conditionally certifies the following Class for the purpose of the Settlement only: all nonexempt employees employed by Defendant in California at any time from October 27, 2019, through July 14, 2025. The Court preliminarily approves the class of Aggrieved Employees under the PAGA claims as all nonexempt employees employed by Defendant in California at any time from October 27, 2022, through July 14, 2025.

3. The Court conditionally appoints Emil Davtyan, David Yeremian, Enoch J. Kim, Marta Manus, and the other attorneys of D. Law, Inc. as Class Counsel.

4. The Court conditionally appoints Sharon Elzabeth Herbert as the Class Representatives.

5. The Court conditionally appoints Rust Consulting, Inc., as the Claims Administrator.

6. The Court conditionally approves, as to form and content, the Notice contemplated by the Settlement. The Court finds that the Notice and the notification procedures contemplated by the Settlement constitute the best notice practicable under the circumstances, and that the Notice and the notification procedures contemplated by the Settlement are in full compliance with the laws of the State of California, the laws of the United States (to the extent applicable), and the requirements of due process. The Court further finds that the Notice appears to fully and accurately inform Class Members of all material terms of the Settlement, including the manner in which Individual Settlement Payments will be calculated; the right to request, and procedure for requesting, exclusion from the Settlement Class, and the right to object, and procedure for objecting to the Settlement.

7. Because the Settlement is within the range of possible final approval, the Court adopts and incorporates the provisions of the Settlement, including, but not limited to, the dates for performance contemplated by the Settlement. Those dates include the following:

a. No later than fourteen (14) days after the date of Preliminary Approval, Defendant shall provide the Claims Administrator with the Class Data for purposes of preparing and mailing Notice to the Class.

b. No later than fourteen (14) calendar days after receipt of the class data, the Claims Administrator shall mail Notice to the Class. Settlement Class Members do not need to submit any claim forms to receive their respective Individual Settlement Payments. Any Notices returned undelivered must be re-mailed within 5 business days of return of the packet to the Claims Administrator. Claims Administrator shall either use any forwarding address provided by the USPS, or conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The time for objections, exclusions, or workweek challenges is extended by 14 days for any Class Member to whom the Notice Packet requires re-mailing.

c. Class Members shall have until forty-five (45) calendar days after the Claims Administrator mails Notice to submit requests for exclusion or challenge to workweek calculations to the Claims Administrator. The identity and intent of the

class member to be excluded must be reasonably ascertainable from the form provided. Any Class Member who validly requests to be excluded will not be entitled to any recovery under the Settlement; will not be bound by the terms of the Settlement; and will not have any right to object to, appeal from, or comment on the Settlement.

d. Class Members shall have until forty-five (45) calendar days after the Claims Administrator mails Notice to submit written objections to the Claims Administrator. A Class Member may also object by appearing at the Final Approval Hearing.

e. The Final Approval Hearing will be held on July 8, 2026, at 3:00 p.m. in Courtroom 19 of the above-captioned Court. Plaintiff shall file a motion for final approval by June 5, 2026. Plaintiff also shall file a motion for approval of any Fee and Expense Award, as well as any Incentive Award to the Class Representative, by June 5, 2026, to be heard at the same time as the motion for final approval.

8. Other than the proceedings contemplated herein, all discovery and other proceedings in the Action are stayed and suspended until further order of the Court.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312

2. 23CV01987, Cignetti v. FM Restaurants HQ, LLC

Plaintiff Alessandra Cignetti ("Plaintiff"), filed a complaint in this action against FM Restaurants HQ, LLC("Defendant"), and Does 1-20, with causes arising out an alleged incident of sexual harassment during the course of employment (the "Complaint").

This matter is on calendar for Plaintiff's motion to reopen discovery under CCP § 2024.050. The motion is DENIED.

I. Governing Law

Under CCP § 2024.020, the discovery cut-off is based on the date *initially* set for trial, and as such, a trial continuance or postponement of the trial date does not operate to reopen discovery. *See Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1575. Discovery is to be completed 30 days prior to initial trial date, and motions regarding discovery are to be heard no later than 15 days before the initial trial date. *Ibid*. "The purpose of imposing a time limit on discovery is to expedite and facilitate trial preparation and to prevent delay. Without a cutoff date, the parties could tie up each other and the trial court in discovery and discovery disputes right up to the eve of trial or beyond. Furthermore, as defendants point out, to be effective the cutoff date must be firm or some litigants will manipulate the proceedings to avoid the cut-off date." *Beverly Hosp. v. Sup. Ct.* (1993) 19 Cal.App.4th 1289, 1295 (articulating purpose of cut-off in context of holding that notwithstanding statutory reference to "initial trial date," permitting additional discovery following a mistrial, order granting new trial or reversal on appeal is consistent with the overall

purposes of the discovery rules). Where new trial or retiral is set in a case, the date initially set for trial is dependent on the new trial date. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 252.

Upon a motion to re-open discovery, the decision to reopen discovery must weigh: 1) The necessity and the reasons for the discovery; 2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; 3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; 4) the length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. See CCP § 2024.050.

II. Analysis

The parties participated in a jury trial which ended by mistrial on May 14, 2025. That day, the Court set the matter for new trial to begin on October 24, 2025. On June 13, 2025, Defendant moved to continue the newly set trial, which the Court granted on August 15, 2025, setting the trial to commence May 1, 2026. On October 16, 2025, Plaintiff filed the instant motion to reopen discovery. Plaintiff argues that discovery isn't closed (citing *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245 ["*Fairmont*"]), and that even if it was closed, the Court should re-open discovery indexed to the new trial date. Defendant has filed an opposition.

First, Plaintiff's averment that the continuance of the current trial, occurring before the second trial date led to the close of discovery, meant it was not the date initially set for trial, is without foundation. Plaintiff's argument regarding the obvious nature of the reopening of discovery after mistrial or continuance appears to significantly misread *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245. While Plaintiff is correct that *Fairmont* makes abundantly clear that the setting of the new trial after mistrial automatically reopened discovery, that is not the same as their conclusion that the postponement of the new trial keeps discovery open to the new trial date.

In this instance the date initially set for trial "plainly refers to the *first* date set for trial of the action" where no new trial or retrial has been set. *Id* at 250. Otherwise, "(a) case does not have one everlasting 'initial' trial date, but may have a new 'initial' trial date corresponding to a scheduled retrial or new trial of the action." *Ibid*. Notably, that court does *not* state the same regarding continuance of trial. Though *Fairmont* is predicated on prior versions of the discovery cutoff statute, then and now it states in no uncertain terms, "a continuance or postponement of the trial date does not operate to reopen discovery proceedings." CCP § 2024.020 (b). If Plaintiff's construal were accurate, the word "initial" would have no purpose in the statute, as continuance before the discovery cutoff would "extend" discovery automatically. Given the use of the term "initial", the Legislature's intent must differ from Plaintiff's interpretation.

This conclusion is further supported by the wording and caselaw of other related statutes. Illuminative is the examination of the former COVID-19 era statute CCP § 599 to see that the close of discovery is indexed to the first date set of any particular trial, and not indexed to any

trial date set before the close of discovery. That statute stated in relevant part, that "a continuance or postponement of a trial or arbitration date extends any deadlines that have not already passed as of March 19, 2020, applicable to discovery…" CCP § 599. The Legislature makes clear that it "extends" deadlines according to the length of the continuance. If this function were automatic as Plaintiff avers, there would have been no need for the emergency statute.

Plaintiff's position would also lead to illogical results. The close of discovery occurs 30 days before the initial date of trial, but motions must be heard on or before the 15th day. If trial is continued between the close of discovery and the close of motion practice, Plaintiff's position would necessitate that motions remain open while discovery has ended.

To the merits of Plaintiff's request to reopen discovery, she fails to meet her burden. First, Plaintiff does not persuasively argue the need for the current discovery. Plaintiff presents significant information that she *does* have, and that she wishes to present at trial. Plaintiff avers that she requires discovery to call witnesses that suffered the same harassment whom she names in the motion, present her own treatment history through her doctor, experts, and her parents as percipient witnesses. Of these four categories, only experts appear to implicate the need to reopen discovery processes. She does not offer what forms of experts she needs, nor what discovery is required to present them at the upcoming trial. Plaintiff does not specify what discovery she needs to present the other three categories, and none is apparent to the Court. Plaintiff has not shown particular necessity for the new discovery.

Plaintiff also offers no reason why the needed discovery was not completed earlier. The Court is understanding of the Plaintiff's position that juror feedback was the catalyst for the understanding that the now sought information would be beneficial to Plaintiff meeting her burden with a finder of fact. However, as is analyzed above, Plaintiff shows significant knowledge regarding the supposedly missing information. Plaintiff does not show why she had not completed any of this needed discovery in the months after the trial and before the September 24, 2025 discovery cutoff. Indeed, since the Court did not hear Defendant's motion to continue trial until August 15, Plaintiff had less than 40 days to complete all of the averred "missing" discovery at the time the continuance was granted. While Plaintiff did file this motion within 30 days of the close of discovery, her failure to timely perform the discovery in the first place is not explained. Plaintiff may have been diligent in bringing this motion, but she has not displayed diligence in seeking this discovery as required by the statute. CCP § 2025.050 (b)(2).

While Plaintiff argues that reopening discovery will not interfere with the upcoming May trial date, the time that has lapsed between the filing of Plaintiff's motion and this hearing casts dubiousness on that proposition. Assuming any motion practice is necessitated by the discovery, it is not clear based on the Court's currently impacted calendar whether it will be heard before any discovery cutoff indexed to the new date.

The original new trial date was in October 2025. The current trial date is May 2026. It is currently February 2026. This is a continuance of moderate duration. The length of time between the two trial dates does not weigh heavily on the result of the decision due to this relatively regular duration of continuance.

Weighing all these particularities, the Court does not find cause to re-open discovery. Plaintiff has neither displayed diligence, nor given reason why the lack of apparent diligence was reasonable under the circumstances.

Plaintiff's Motion is **DENIED**.

III. Conclusion

Based on the foregoing, Plaintiff's motion is **DENIED**.

Defendant 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. 24CV00781, American Express National Bank v. Wongking

Plaintiff American Express National Bank ("Plaintiff") filed the complaint in this action against defendant Tony Wongking ("Defendant"), with a cause of action for common counts. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed October 30, 2024 (the "Agreement") to enter judgment in the case in the amount of $1,060.40, as Defendant has defaulted on the agreement. There is no opposition to the motion.

The Motion is **GRANTED.**

I. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic

evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992.

II. Analysis

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiff asks for $762.79 in principle, and $297.61 in costs. The Agreement states that Defendant owes $2,157.79. The Agreement states that Defendant is to receive credit for any and all payments made. Defendant was to make monthly payments under the Agreement of $93 per month starting on May 20, 2024, with a final payment of $105 due on August 20, 2025. Plaintiff was entitled to a discount resulting in early payoff if he made all timely payments. Agreement ¶ 4. Plaintiff avers that Defendant made his last payment on the credit account on July 18, 2025. Defendant paid a total of $1,395.00. See Counsel's declaration ¶ 7.

This motion is unopposed. The Agreement states that upon Defendant's failure to make a timely payment, Plaintiff will be entitled to "immediately" "pursue all available remedies", including "have judgment entered against Defendant for $2,157.79, plus court costs, less any payments by Defendant." Agreement ¶ 6. This appears sufficient to place Defendant on notice that payments are due. The time for payment on all of Defendant's payments has passed before the filing of the motion. Therefore, the amounts of $762.79 in principle, and $297.61 in costs are appropriate.

Therefore, the Motion is **GRANTED. Judgment will be entered in the amount of $1,060.40.**

Plaintiff 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). Thereafter, the Court will enter the proposed judgment.

4. <u>24CV04912, Saldana v. Sunrise Farms, LLC</u>

Plaintiff Carmela Solano Saldana ("Plaintiff"), individually and on behalf of all others similarly situated, including employees pursuant to the California Private Attorney General Act, filed the currently operative first amended complaint against defendant Sunrise Farms, LLC ("Defendant"), and Does 1-100 for causes of action arising out of Defendants' alleged Labor Code violations, and civil penalties thereon (the "FAC"). This matter is on calendar for Plaintiff's unopposed motion for conditional certification of the class and preliminary approval of the class action settlement (the "Motion").

On review, the Court notes that while the notice of motion avers that the Declaration of James Clark is attached, no such declaration was ever filed with the Court. As such, the Court has no evidence to support the motion. The motion is therefore **DENIED without prejudice**.

5-6. <u>25CV01119, Christian v. Rancho Grande Manufactured Home Community</u>

Plaintiff, Emory D. Christian ("Plaintiff"), has filed the currently operative first amended complaint (the "FAC") against defendants Rancho Grande Manufactured Home Community, LP ("Rancho Grande"), Burt Hamernick, Lisa Hamernick (Together with Burt Hamernick, the

"Hamernicks", with Rancho Grande, "RG Defendants"), Barton Hotchkiss ("Hotchkiss"), Stacy Stephenson ("Stephenson", together with Hotchkiss, "Inspectors"), Susan Roberts ("Roberts", together with all other defendants, "Defendants"), and Does 1-20 with twenty-four causes of action related to alleged property disputes and civil rights violations.

This matter is on calendar for demurrers to the FAC filed by Inspectors and Roberts.

I. 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. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. 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. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. 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. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Statute of Limitations

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321. Where the demurrer based on statute of limitations is argued from judicially noticed documents, the truth of dates within those documents is inadmissible hearsay and is not appropriate for judicial notice. *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660-661. To sustain demurrer on such judicially noticed material is error. *Ibid*.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' (*Citation*.) An important exception to the general rule of accrual is the "discovery rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (internal citations omitted).

"The relation-back doctrine requires that the amended complaint must (1) rest on the *same general set of facts,* (2) involve the *same injury,* and (3) refer to the *same instrumentality,* as the original one." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408–409. Where a series of wrongs or injuries may be viewed as each triggering its own limitations period, a suit for relief may be partially time barred as to older events, but timely as to events within the statute of limitations, per the principle of continuing accrual. *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192.

Federal law provides automatic tolling while state law claims are pending before the federal court if the federal court declines to exercise jurisdiction over those claims. "The period of limitations for any claim [asserted under supplemental jurisdiction], and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period. 28 U.S.C. § 1367 (d). The tolling period applies equally to time spent appealing a federal decision dismissing federal claims and declining supplemental jurisdiction over state law claims. *Artis v. District of Columbia* (2018) 583 U.S. 71, 87–88.

Similarly, California law allows for application of equitable tolling of state claims while federal and state claims are pending before the federal court. *Addison v. State of California* (1978) 21 Cal.3d 313, 320. This tolling applies equally to claims against public agencies. *Id*. at 320-321. However, equitable tolling "applies only in a situation where the plaintiff commences a second action which is in reality a continuation of an earlier action 'involving the same parties, facts, and cause of action. ...'" *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 503.

C. Conspiracy, Aiding, and Abetting

"To support a conspiracy claim, a plaintiff must allege the following elements: '(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.'" *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022. "'Bare' allegations and 'rank' conjecture do not suffice for a civil conspiracy." *Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 333. "While a complaint must contain more than a bare allegation the defendants conspired, a complaint is sufficient if it apprises the defendant of the 'character and type of facts and circumstances upon which she was relying to establish the conspiracy.'" *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1022. "A (civil) conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve." *Moran v. Endres* (2006) 135 Cal.App.4th 952, 955.

"(A)ctual knowledge of the planned tort, without more, is insufficient to serve as the basis for a conspiracy claim. Knowledge of the planned tort must be combined with intent to aid in its commission." *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582. "Mere knowledge, acquiescence, or approval of an act, without cooperation or agreement to cooperate is insufficient to establish liability." *Michael R. v. Jeffrey B.* (1984) 158 Cal.App.3d 1059, 1069.

"Conspiracy is not an independent tort; it cannot create a duty or abrogate an immunity. It allows tort recovery only against a party who already owes the duty and is not immune from liability based on applicable substantive tort law principles." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514. "A cause of action for civil conspiracy may not arise, however, if the alleged conspirator, though a participant in the agreement underlying the injury, was not personally bound by the duty violated by the wrongdoing and was acting only as the agent or employee of the party who did have that duty." *Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 44.

"Liability may also be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person." *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 846.

D. Negligence

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages." *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572. "Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434. "Negligence is an unintentional tort, a failure to exercise the degree of care in a given situation that a reasonable man under similar circumstances would exercise to protect others from harm." *Donnelly v. Southern Pac. Co.* (1941) 18 Cal.2d 863, 869. "A negligent person has no desire to cause the harm that results from his carelessness, and he must be distinguished from a person guilty of willful misconduct, such as assault and battery, who intends to cause harm. (Citation.) Willfulness and negligence are contradictory terms. (Citations.) If conduct is negligent, it is not willful; if it is willful, it is not negligent." *Mahoney v. Corralejo* (1974) 36 Cal.App.3d 966, 972; quoting *Donnelly v. Southern Pac. Co.* (1941) 18 Cal.2d 863, 869.

E. Emotional Distress

Claims of intentional infliction of emotional destress require: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Whether treated as an element of the prima facie case or as a matter of defense, it must

also appear that the defendants' conduct was unprivileged. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209 internal citations and quotations omitted. To constitute a basis for emotional distress, the alleged conduct must extend beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. The conduct must be such that on hearing of the alleged conduct an average member of the community would resent the defendant and lead the community member to exclaim, "Outrageous!" *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. "In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 (Internal quotations omitted). "Without such pleading, no cause of action for intentional infliction of emotional distress will stand." *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536.

"Severe emotional distress means 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004, quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787–788. "(T)he requisite emotional distress may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry." *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397.

"Plaintiffs appear to assume that a cause of action for intentional infliction of emotional distress may be established on the same theory as that for negligent infliction of emotional distress. The two torts are entirely different." *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 165, fn. 5. "'[The] negligent causing of emotional distress is not an independent tort but the tort of negligence ....'[Citation.] 'The traditional elements of duty, breach of duty, causation, and damages apply. [¶] Whether a defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability of the risk and upon a weighing of policy considerations for and against imposition of liability.' " *McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1509. Negligent infliction of emotional distress claims are categorized according to whether plaintiff is a direct victim, or a bystander. *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1073. A direct victim may recover "damages for serious emotional distress are sought as a result of a breach of duty owed the plaintiff that is 'assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.'" *Id*. at 1073. Negligent infliction of emotional distress has no application to intentional torts, such as termination and retaliation, which are by their nature "inherently intentional", and therefore not subject to negligence claims. *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1105. "(I)n the absence of physical injury, the courts have never allowed recovery of damages for emotional distress arising solely from property damage or economic injury to the plaintiff." *Butler-Rupp v. Lourdeaux* (2005) 134 Cal.App.4th 1220, 1228.

F. The Bane Act

"(T)o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence. Second, the violence or threatened violence must be due to plaintiff's membership in one of the specified classifications set forth in Civil Code section 51.7 or a group similarly protected by constitution or statute from hate crimes." *Cabesuela v. Browning-Ferris Industries of California, Inc.* (1998) 68 Cal.App.4th 101, 111. Threats sufficient to constitute a hate crime do not require immediacy. *In re M.S.* (1995) 10 Cal.4th 698, 714.

Seizure of a property, threats of demolition of property, and threats of monetary penalties are not threats or coercion as contemplated by the Bane Act, and therefore the actual seizure of the property would not be sufficient to state the cause of action. *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 407. "A threat is an 'expression of an intent to inflict evil, injury, or damage on another.' " (*Certation*.) When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection." *In re M.S.* (1995) 10 Cal.4th 698, 710 (defining a threat for the purposes of Penal Code § 422.6, the criminal counterpart to the Bane Act). "As long as the threat reasonably appears to be a serious expression of intention to inflict bodily harm (*Citation*), and its circumstances are such that there is a reasonable tendency to produce in the victim a fear the threat will be carried out (*Citation*), the fact the threat may be contingent on some future event (e.g., 'If you don't move out of the neighborhood by Sunday, I'll kill you') does not cloak it in constitutional protection." *Id*. at 714.

G. Trespass

"Trespass is an unlawful interference with possession of property." *Girard v. Ball* (1981) 125 Cal.App.3d 772, 788. "The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm." *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 262. "Liability for trespass may be imposed for conduct which is intentional, reckless, negligent or the result of an extra-hazardous activity." *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1406. "The general rule is simply that damages may be recovered for annoyance and distress, including mental anguish, proximately caused by a trespass." *Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905. In actions for trespass, even where plaintiff cannot show actual damages, plaintiff may be entitled to nominal damages. *Allen v. McMillion* (1978) 82 Cal.App.3d 211, 219.

"'A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor has tortiously placed there, whether or not the actor has the ability to remove it.' Under this definition, 'tortious conduct' denotes that conduct, whether of act or omission, which subjects the actor to liability under the principles of the law of torts. (Rest.2d Torts, § 6.)" *Newhall Land & Farming Co. v. Superior Court* (1993) 19 Cal.App.4th 334, 345.

"'A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor or his predecessor in legal interest has placed on the land '(a) with the consent of the person then in possession of the land, if the actor fails to remove it after the consent has been effectively terminated, ...'" *Mangini v. Aerojet-General Corp.* (1991) 230

Cal.App.3d 1125, 1141–1142, quoting Restatement (Second) of Torts § 160 (1965). Mistaken belief by the trespasser that they have permission is not a defense to a cause of action for trespass, however reasonable that belief might be. *Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1780.

Officers and agents of the Department of Housing and Community Development have the power to "(e)nter and inspect all [mobilehome] parks, wherever situated, and inspect all accommodations, equipment, or paraphernalia used in connection therewith…" Health & Saf. Code, § 18400 (b)(2). "A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law." Gov. Code, § 821.8. "A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property…" Gov. Code, § 821.4.

H. Public Nuisance

Civil Code § 3479 defines nuisance as "(a)nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." "[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition." *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 ("*Gypsum*"); quoting Prosser and Keeton, Law of Torts (5th ed. 1984) § 86, p. 616.

"A public nuisance is 'one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.'" *Koll-Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1040 quoting Civ. Code § 3480. "A private party can maintain an action based on a public nuisance 'if it is specially injurious to himself, but not otherwise.'" *Ibid*. quoting Civ. Code § 3493. A plaintiff suing for public nuisance "must show special injury to himself of a character different in *kind*—not merely in degree—from that suffered by the general public." *Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 20. Failure to allege damages different in kind, and not just degree, means the cause of action for public nuisance is inadequately pled and cannot be maintained. *Brown v. Petrolane, Inc.* (1980) 102 Cal.App.3d 720, 726; *Koll-Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041. Failure to maintain common areas as required by the Mobilehome Residency Law is sufficient to plead the existence of a public nuisance. *Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 612. "Unlike the private nuisance—tied to and designed to vindicate individual ownership interests in *land*—the "common" or *public* nuisance emerged from distinctly different historical origins. The public nuisance doctrine is aimed at the protection and redress of *community* interests and, at least in theory, embodies a kind of collective ideal of civil life which the courts have vindicated by equitable remedies since the beginning of the 16th century." *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1103.

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agreement that it is incapable of any exact or comprehensive definition." *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 ("*Gypsum*"); quoting Prosser and Keeton, Law of Torts (5th ed. 1984) § 86, p. 616.

I. The Ralph Act

"Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive, or that the defendant aided, incited, or conspired in the denial of a protected right." *Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1291. "The test is: 'would a reasonable person, standing in the shoes of the plaintiff, have been intimidated by the actions of the defendant and have perceived a threat of violence?'" *Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1289; see also California Civil Jury Instruction 3064.

J. Fair Employment and Housing Act ("FEHA") Discrimination

It is unlawful "(f)or the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person." Gov. Code, § 12955(a).

K. Governmental Immunities

All claims for money or damages against a public entity must be presented in accordance with the provisions of the Government Code, unless it is subject to a specific exception. Gov. Code, § 905. These requirements are part of the "Government Claims Act" (the "Act"). See Gov. Code § 810, *et seq*. "The (Act) sets forth the general rule of immunity for public entities, abolishing all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, or if a statute ... is found declaring them to be liable." *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243, 1254 (internal quotations omitted).

The Government Claims Act does not just shield governmental entities but also insulates public employees in various forms of conduct that arise in the discharge of their duties. Gov. Code §§ 820-823. "A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law." Gov. Code, § 821.8. "A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property…" Gov. Code, § 821.4.

It is a requirement when filing an action for money damages against a public entity to present a claim to that entity prior to the filing of a legal action. Gov. Code, § 905. Claims submitted must include the date place and circumstances of the occurrence, a general description of the injury damage or loss, and the names of public employees causing the injury damage or loss. Gov. Code, § 910. "(F)ailure to file a claim is fatal to the cause of action." *City of San Jose v. Superior*

Court (1974) 12 Cal.3d 447, 454. Even actual knowledge of the alleged injuries on the part of the governmental entity is inadequate to cure the failure of a plaintiff to file a claim. *Johnson v. City of Oakland* (1961) 188 Cal.App.2d 181, 184.

The Government Code requires that "[a] claim relating to a cause of action for death or for injury to person or to personal property…shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action." Gov. Code §911.2(a). Claimants who fail to file a claim within the six month period have one year from the accrual of the cause of action to request leave to submit an untimely claim. Gov. Code § 911.4. "[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action." *Sparks v. Kern County Board of Supervisors* (2009) 173 Cal.App.4th 794, 798. "The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year." *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776-1779; see also, *Sparks v. Kern County Board of Supervisors* (2009) 173 Cal.App.4th 794, 798.

The "accrual date" is "the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable" if the action were between private litigants and it marks the starting point for calculating the claims presentation period. Gov. Code §901; see also, *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903; *Mosesian v. County of Fresno* (1972) 28 Cal.App.3d 493, 500. This statutory time limit is mandatory and is an essential element of a cause of action against a public entity. See, *Wood v. Riverside General Hospital* (1994) 25 Cal.App.4th 1113, 1119; see also, *Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 613. "Timely claim presentation is not merely a procedural requirement," but is a condition precedent to the claimant's ability to maintain an action against the public entity. *Shirk v. Vista Unified Sch. Dist.* (2007) 42 Cal.4th 201, 209. Thus, timely presentation is "an element of the plaintiff's cause of action." *Ibid.* "Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity." *Ibid*. The failure to bring a timely claim bars the plaintiff from bringing suit against that entity. Gov. Code §945.4; see also, *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237. "The claimant bears the burden of ensuring that the claim is presented to the appropriate public entity." *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.

Claims must be granted or denied within 45 days of submission, or thereafter they are rejected by operation of law. Gov. Code, § 911.6. If the governmental entity does not timely reject the claim, plaintiff has two years from the date the causes of action accrued. Gov/ Code § 945.6(a)(2). A plaintiff may request to be relieved from their failure to file a timely claim by filing a petition with the court within 6 months after the claim was denied or deemed denied. Gov. Code § 946.6(b)(3). Even with a timely claim, a plaintiff is obligated to bring their action within 6 months of the denial of their claim so long as the written notice under Gov. Code § 913 has been given. Gov. Code § 945.6(a)(1).

Governmental entities also have immunity for injures resulting from the acts or omissions of its employees, as well as any form of suit from which the employees themselves are immune. Gov. Code § 815. Government entities and their employees, acting within the scope of their employment, are generally not subject to liability for negligent or intentional misrepresentations. Gov. Code §§ 818.8, 822.2. This immunity extends to claims of intentional infliction of emotional distress and defamation. *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1050 (immunity under Gov. Code § 822.2 applied to both claims for intentional infliction of emotional distress and defamation); *Old Town Development Corp. v. Urban Renewal Agency of City of Monterey* (1967) 249 Cal.App.2d 313, 337 (governmental immunity applies to libel); *accord. Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1209 (County is immune from suit for intentional infliction of emotional distress); *contra City of Costa Mesa v. D'Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 383 (governmental immunity does not apply to trade libel). The government also maintains immunity to claims of negligence not rooted in specific statutory exceptions to their general immunities. *Harshbarger v. City of Colton* (1988) 197 Cal.App.3d 1335, 1349; *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809.

II. Pleading, Evidentiary and Procedural Issues

A. New Allegations

As an initial matter, Roberts raises in her demurrer that Plaintiff's FAC exceeds the scope of amendment allowed by the Court's order sustaining the three prior demurrers. While this conduct is usually properly raised by a motion to strike, demurrers may be sustained on the same basis. *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023. Roberts raises the issue substantially in her demurrer, and Plaintiff has had an opportunity to respond accordingly. The Court may exercise its power to strike any pleading or part thereof not filed in conformance with the laws of the state. CCP § 436.

"Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order." *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023 ("*Harris*"). "(S)uch granting of leave to amend must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained." *People By and Through Dept. of Public Works v. Clausen* (1967) 248 Cal.App.2d 770, 785 ("*Clausen*"). "The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." *Harris, supra,* 185 Cal.App.4th at 1023. Where an amendment exceeds the leave granted by the court, a motion to strike is the proper vehicle to remedy the issue. *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329.

Plaintiff's Fourth, Sixth, Ninth, and Twenty-first through Twenty-Fourth cause of action are entirely new and were not included in the original Complaint. Plaintiff's Eighteenth cause of action was included only in the caption, and Plaintiff raised no defense of this issue at oral argument after it was noted in the Court's tentative. Any pleading of the substance at this

juncture is a new issue outside the scope of the original complaint or the leave to amend thereon, as the Court merely noted it *was not asserted*, and therefore no demurrer was sustained to that cause of action. See, Court's Order, 8/20/2025, pg. 17:8-14. Plaintiff has also named Inspectors as defendants for the first time on the Fifth, Seventh, Eighth, Twelfth, Fourteenth, and Seventeenth causes of action without leave to do so. Against Roberts, Plaintiff has named her as a defendant for the first time on the Fifth and Fourteenth causes of action. As to the Hamernicks, Plaintiff has named them as a defendant for the first time on the Fifth and Fourteenth causes of action. These all represent Plaintiff asserting new matters not targeted to curing the defects previously identified. The Court turns to Plaintiff's arguments in favor of amendment raised in opposition to Robert's demurrer on this basis.

Plaintiff misapprehends the right to amend after a demurrer is sustained. The purpose of leave to amend after a demurrer is for Plaintiff to remedy the specifically identified deficiencies related to the objection under CCP § 430.10. It is not, unless the order permits otherwise, carte blanche to conjure fresh claims not previously asserted. Plaintiff's cited authorities are either inapposite or expressly address the impropriety of Plaintiff's conduct. Plaintiff's citation to *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045 ("*Kittredge*"), is inapposite. *Kittredge* relates to a noticed motion for leave to amend under CCP § 473, not amendment after a demurrer was sustained. *Id*. at 1047. It offers nothing salient to current circumstance as a result. Plaintiff's other citation is dispositive against her position. "The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023. Plaintiff offers no applicable authority allowing her insertion of claims on leave to amend from demurrer. There is no language within the prior order which gives leave to add claims, and it specifically noted that leave to amend was granted to allow the Court to see what allegations Plaintiff could offer to "cure the defects". Court's Order, 8/20/2025, pg. 34.

Plaintiff's amendment clearly exceeded the scope of what was allowable, and the excess is properly struck.

- The Fourth, Sixth, Ninth, Eighteenth, and Twenty-first through Twenty-Fourth causes of action are **STRIKEN in their entirety without leave to amend.**
- Plaintiff's inclusion of Inspectors as defendants for the Fifth, Seventh, Twelfth, and Fourteenth causes of action are **STRICKEN without leave to amend.**
- Plaintiff's addition of the Hamernicks and Roberts to the Fifth and Fourteenth causes of action are **STRICKEN without leave to amend.**

B. Judicial Notice

Each of the demurrers is accompanied by a request for judicial notice, each requesting judicial notice of complaints and rulings within the case Plaintiff filed against Defendants in federal court, 21-CV-07040-VC, and subsequent appellate litigation (the "Federal Case"). The Court takes judicial notice of each of the documents for their existence and legal effect, but not factual findings therein.

C. Citation Errors

Plaintiff's briefs contain multiple citation errors. While these are often, in the Court's experience, a result of utilization of information garnered from large language models (colloquially, "AI"), this instance does not bear similarity to those prior cases. Plaintiff cites to *Artis v. District of Columbia* (2018) 583, U.S. 387, 395-401 (case actually appears at 583 U.S. 71, 88) and *Sales v. City of Tustin* (2021) 65 Cal.App.5th 265, 280-284 (the case ends at page 278) in her Opposition to Inspector's Demurrer (pg. 6:26-7:2). At this time, the Court takes no corrective action other than this admonition for Plaintiff to ensure the accuracy of her citations going forward.

D. Appendices

Plaintiff, attached more than ten pages of appendices in each oppositions attempting to chart the relevant allegations of the elements of her claims to the FAC. Plaintiff is cautioned that this clearly constitutes additional "briefing" to her memorandum. In the future, the Court will not consider any briefing over the page limits contained in Cal Rule of Court 3.1113 (d) submitted by any party without leave of the court.

E. Defects in the Form of the FAC

The FAC is 190 pages, including 170 pages of pleading numbering to ¶ 895. Multiple paragraphs contain sub-paragraphs. The prior complaint (which while still extraordinarily long, only reached ¶ 490) and contained repetitious numbering errors. The FAC contains errors of even greater substance. Most substantially, Plaintiff repeatedly reiterates the same conclusory paragraphs dotted throughout the FAC too many times to catalogue. It appears that Plaintiff makes no effort to state her claims concisely, noting that ¶ 323-336 is the same seven paragraphs repeated word for word, with the exception of naming Stephenson instead of Hotchkiss. Other small errors include skipping paragraphs (¶ 433-442 and 456-465) and misnumbering (See ¶ 208-209, ¶ 218-219). It is not clear whether Plaintiff intends to use the proportions of her pleading as a shield against review, but regardless it has clearly grown to a size where it cannot be effectively managed by Plaintiff and serve as proper notice to the Defendants. As the pleadings narrow and become settled causes of action, the expectation is that this will benefit all parties.

III. **Inspectors' Demurrer**

The Court having struck portions of Plaintiff's FAC above, the remaining matters to which Inspectors demur is the Eighth, Tenth, Fifteenth, Sixteenth, Nineteenth and Twentieth (erroneously labeled as the nineteenth but specifically stating the cause of action for intentional infliction of emotional distress).

A. Exceeding the Government Claim

Inspectors demur to the complaint averring that the current facts significantly exceed what was included in the government claim filed. Plaintiff accurately points out that government claims need not meet the level of specificity attributable to a civil complaint.

Having reviewed the government claim filed here, it clearly identifies factual allegations which regarding Defendant Inspectors' conducts which are now alleged to be at issue in the FAC. Indeed, if only the FAC so concisely identified the facts, it may be more comprehensible. The government claim clearly identifies the same basic facts which are relevant to Plaintiff's pled causes of action and allegations of conspiracy. The demurrer on this basis is OVERRULED.

B. Statute of Limitations

Defendants also argue that the statute of limitations had passed at the time Plaintiff filed her suit here in state court, as at the time of dismissal, Plaintiff had only named Inspectors as defendants to federal claims, and not the claims which are now causes of action before this Court. Plaintiff argues that the statute of limitations was tolled for various reasons, either under the principles of continued accrual, relation back, equitable tolling, or automatic tolling as provided by federal statute.

Plaintiff's construal of 28 USC § 1367 ignores the express language of the statute and her own cited caselaw. As Plaintiff's own Opposition states, the requirement is that Plaintiff have asserted "identical claims". Plaintiff's Opposition to Inspector's Demurrer, pg. 6:26-28. In the federal context, claim equivocates to the California practice of causes of action. See Fed. Rules Civ.Proc., rule 8, 28 U.S.C; CCP § 425.10; *Graphic Arts Internat. Union v. Oakland Nat. Engraving Co.* (1986) 185 Cal.App.3d 775, 782 (Federal and California pleading standards are comparable, with California having greater fact pleading requirements). Plaintiff only asserted two causes of action against Inspectors in her Second and Third Amended Federal Complaints (see Kao Declaration in Support, Exhibits C and E) for Civil Conspiracy under 42 USC § 1985 and Violations of Civil Rights under 42 USC § 1983. That Plaintiff alleged many of these causes of action against other defendants appears immaterial, and she has produced no authority instructing otherwise. Given that the operative complaint in the Federal Case at the time of dismissal (being omitted starting from Plaintiff's March 2022 Second Amended Federal Complaint) contained no claim for the causes of action asserted here, §1367 has no application to toll Plaintiff's statute of limitations against Inspectors here.

Nor is Plaintiff persuasive that she has pled facts sufficient to "relate back" to the filing of her federal lawsuit. In her Second and Third Amended Federal Complaints, Plaintiff only named Inspectors as defendants for Civil Conspiracy under 42 USC § 1985 and Violations of Civil Rights under 42 USC § 1983. Relation back requires Plaintiff show the causes of action "(1) rest on the *same general set of facts,* (2) involve the *same injury,* and (3) refer to the *same instrumentality,* as the original one." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408–409. Plaintiff provides no authority that a party can drop a claim prior to final judgment, and subsequently re-assert it in an entirely different action while tolling the statute of limitations.

Plaintiff also argues for equitable tolling, but that argument fails for all the same reasons as the above. This case bears insufficient resemblance to *Addison v. State of California* (1978) 21 Cal.3d 313 for equitable tolling to apply. As the Court in *Addison* noted, "The present state action asserts the same state law claims that were raised in the federal suit." *Id.* at 320. Based on the facts before the Court, *Addison* does not require any greater protection than that already accorded by 28 USC § 1367 in this case. As courts after *Addison* have noted, "the doctrine (of

equitable tolling) applies only in a situation where the plaintiff commences a second action which is in reality a continuation of an earlier action "'involving the same parties, facts, and cause of action…" *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 503. There is no continuity of causes of action from the Second Amended Federal Complaint onward, and as such no tolling serves to make Plaintiff's claims timely. To the degree that any tolling might have been appropriate from Plaintiff's First Amended Federal Complaint until her Second, the time between the First and Second Amended Federal Complaints is less than two months, and would not be sufficient to make her claims timely.

Continued accrual also has no application here. Plaintiff makes various conclusory allegations regarding the conspiracy between Inspectors and the other defendants, but in pleading of articulable facts, Plaintiff provides specific instances of when Inspectors came to her property to allegedly move the lot line. This is a discrete action with immediate and articulable damages at the time. Given the nature of government claims, Plaintiff cannot sit on her claims of continued accrual when she has filed her government claim in December of 2021, and only has two years from *accrual of the claim* to file if her claim is not rejected in writing. Government Code § 945.6.[1] Plaintiff's pleading clearly shows that her claims against inspectors had fully accrued, at the latest, when she filed her government claim. Plaintiff did not file this case until February 11, 2025.

On this basis, there is sufficient cause for Inspector's demurrer to be SUSTAINED without leave to amend to Plaintiff's entire remaining complaint. However, the Court examines the sufficiency of Inspector's alternative bases for demurrer.

C. Conspiracy, Aiding and Abetting

Continued from the former complaint, Plaintiff continues to assert, as to each defendant, the existence of a conspiracy between them to effectuate a coordinated scheme to evict her from her property. The Court previously sustained the demurrer to this theory as applied to multiple causes of action, including Plaintiff's (renumbered) Fifteenth, Sixteenth, and Seventeenth causes of action for Bane Act violations, Ralph Act violations, and FEHA Discrimination. The Court's recitation of law on that issue was quite clear, though the FAC fails to reflect the result. Conspiracy cannot expand the duties attributable to a party. *Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 49. As to the Seventeenth cause of action, Plaintiff has failed to reflect that holding, still arguing that Inspectors are liable for violations of a statute which expressly targets landlords. Plaintiff offers no citation showing the duties under the statute may be expanded to non-landlord parties. Accordingly, conspiracy cannot give rise to Inspector's liability for this cause of action under the pled facts.

Plaintiff has identified no new violent conduct from her original Complaint, sufficient that the Court may find Bane Act violations where none were previously present. Plaintiff's continued assertion that the lot line change was "violent" is supported by no facts, and no authority. To

[1] It is not contested that Plaintiff never received a rejection of her claim, and if she had, she would have only had at most forty-five days (time for government to respond to the claim) plus six months to file her suit. This would have resulted in a substantially shorter period than two years from September 9, 2021, which applies due to the government's failure to respond.

quote the previous order, "Violence means, 'The use of physical force, usually accompanied by fury, vehemence, or outrage; esp., physical force unlawfully exercised with the intent to harm.' VIOLENCE, Black's Law Dictionary (12th ed. 2024). Jurisprudence applicable to other statutes conforms to this construction. *People v. Bamba* (1997) 58 Cal.App.4th 1113, 1123 ("In the context of section 237, 'violence' means ' "the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint." ' ")." Plaintiff has not adequately pled a Bane Act violation against any party, and accordingly Plaintiff cannot state a cause of action against Inspectors for a violation of the Bane Act due to conspiracy.

To the Ralph Act, the Court previously overruled the demurrer as to the Ralph Act causes of action as to Roberts but found that there were no allegations connecting Inspectors to the conduct which actually met the elements of the statute. This has not been cured, as Plaintiff continues to assert conspiracy in the lot line alteration and alleged nuisance, but makes no effectual allegations as to the conduct the Court has found is actionable under the Ralph Act. None of the lot line or nuisance allegations are sufficient to be "violence" as contemplated by that statute.

To the degree that Plaintiff has pivoted to "aiding and abetting" allegations in her FAC, aiding and abetting *does* allow Plaintiff to expand duties to Inspectors. *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823, fn. 10. However, it also requires Plaintiff to plead *facts* to show *substantial assistance* in the commission of the specific cause of action. Plaintiff's Bane Act and Ralph Act claims still fail for the reasons above as a result.

Inspectors' demurrer to the Fifteenth and Sixteenth causes of action is SUSTAINED without leave to amend.

D. Governmental Immunities and Negligence

Plaintiff alleges negligence and negligent infliction of emotional distress causes of action against all Defendants including Inspectors. Inspectors previously demurred, arguing that Gov. Code § 821.4 prohibits any negligence arising from an inspection, and accordingly Plaintiff cannot state a claim on these causes of action. Plaintiff in turn attempts to make arguments that the conduct of Inspectors was performed with malice, which she argues would abrogate any immunity.

Plaintiff argues that the Court cannot adjudicate intent at this stage, as that is an issue of fact, but again the failure is Plaintiff's ability to plead a duty. Plaintiff argues significant animus and vitriol from Inspectors, but these are not elements of negligence. Plaintiff must plead a duty, followed by a breach thereon. The applicable immunities here are clear, and while Plaintiff concludes there is a duty by Inspectors to Act, she does not identify one with any authority.

Plaintiff again argues that Inspectors have violated a ministerial duty but again fails to identify any authority imposing a "ministerial duty" proscribing the conduct alleged. "A duty is ministerial when it is the doing of a thing unqualifiedly required." *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1170. Plaintiff identified no ministerial duty in the cited sections of the Health and Safety Code (§§ 18300, 18400, 18610.5). All the duties attributable to the factual circumstances here do not appear to be the subject of a mandatory duty. Nothing Plaintiff alleges

factually presents a cause outside Inspectors inspection, whether attributable to malice and conspiracy or not.

Nor, even if Plaintiff identified a ministerial duty, does that waive the immunities of the Tort Claims Act. Plaintiff provides no authority allowing her to transmute allegedly intentional conduct (as necessitated by Plaintiff's repeated allegations of conspiracy) into negligence and yet bypass the Government Codes immunities attributable to that cause of action. Plaintiff's citation to *Lugar v. Edmondson Oil Co., Inc.* (1982) 457 U.S. 922 is unhelpful, as that court found that 42 USC § 1983 claims would give rise to liability, but Plaintiff's § 1983 claims were already found insufficient by the district court. See, Kao Declaration, Ex. D and F.

The Court's prior ruling also noted that these causes of action are negligence claims, and as such Plaintiff's claims fall under the express immunity conveyed by the statute. Plaintiff fails to address Gov. Code, § 821.4, which expressly provides immunities for negligence arising from inspections. Plaintiff's causes of action for negligence are precluded by statutory immunities.

Therefore, as to Inspectors, the demurrer to the Tenth and Nineteenth causes of action is SUSTAINED without leave to amend.

E. Trespass

Plaintiff has pivoted her arguments regarding Inspectors' trespass, averring that they "aided and abetted" the trespass of Roberts, and are accordingly liable. This too appears to be entirely precluded by immunities. Plaintiff's claim against Inspectors is their failure to cite RG Defendants and Roberts for the alleged nuisance posed by Robert's flora, and their alleged movement of the lot line. Any failure to cite is related to an inspection and therefore falls squarely under the immunity provided by Gov. Code, § 821.4. Nor can they be held liable for their own trespass related to the lot line assessment. See Gov. Code § 821.8, "The officers or agents of the enforcement agency may … (e)nter and inspect all parks, wherever situated, and inspect all accommodations, equipment, or paraphernalia used in connection therewith…" Health & Saf. Code, § 18400 (b). Accordingly, no liability for the trespass can attach. *Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 462.

Inspectors' demurrer to the Eighth cause of action is SUSTAINED without leave to amend.

F. Intentional Infliction of Emotional Distress

The Court already sustained the demurrer to the intentional infliction of emotional distress cause of action, and Plaintiff does not identify any change to the previous pleading of facts which would rise to outrageous conduct by Inspectors. "(W)hether conduct is 'outrageous' is usually a question of fact." *So v. Shin* (2013) 212 Cal.App.4th 652, 672. However, this does not abrogate Plaintiff's obligation to plead facts which may be found to meet the standard of outrageous conduct. *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832. Where determination of the outrageous conduct is so clear that it may be determined as a matter of law, it is appropriate to resolve at demurrer. *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1609.

Plaintiff's allegations regarding moving the lot line and failing to issue citations for the averred nuisance are not outrageous. On a similar note to the above, the limited conduct in the FAC which even approaches outrageous conduct is not related to those allegations where Plaintiff alleges conspiracy, aiding or abetting. As previously stated, cases where allegations were found to be outrageous sufficient to survive demurrer are marked by their allegations of conduct not acceptable in a civilized society. *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 229 (plaintiff received repeated harassing calls, threatening the safety of his family); *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 498 (use of racial epithets in combination with discriminatory employment action was sufficient to allege outrageous conduct). In contrast, courts of appeal have repeatedly held that alleged conduct must be sufficiently outrageous, or the matter is susceptible to demurrer. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 497 (even where defendant's comments were clearly threatening, where the threats lacked immediacy and had veiled meaning, the statements were not sufficiently outrageous and demurrer was properly sustained); *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536 (vague and conclusory allegations of outrageous conduct does not satisfy that element, and a cause of action for intentional infliction of emotional distress so plead will not withstand demurrer.) The outrageousness of conduct is only a matter for a finder of fact "(w)here reasonable men may differ". *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499. Nothing alleged against Inspectors rises to outrageous conduct. None of the conduct described, regardless of motivation, can be interpreted to denote outrageous conduct.

Plaintiff fails to plead outrageous conduct to support intentional infliction of emotional distress. The demurrer to the Twentieth cause of action is therefore SUSTAINED without leave to amend.

IV. Robert's Demurrer

Roberts has demurred to the Fourth, Sixth, Ninth, Nineteenth, Twentieth, Twenty-first, Twenty-second, and Twenty-third causes of action. Given the matters struck above, only the Nineteenth and Twentieth remain at issue.

a. Infliction of Emotional Distress

Plaintiff pleads both negligent and intentional infliction of emotional distress. Plaintiff's allegations against Roberts remain mostly unchanged from the Complaint. The Court has carefully reviewed both those paragraphs that Plaintiff identifies as satisfying the elements of the cause of action, as well as having found other unmentioned sections important. Again, the element which appears at issue is whether "the alleged conduct [] extend[s] beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities." *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.

The allegations against Roberts in the FAC are a web of racist motivations, conspiring to accomplish the seizure of real property, vandalism, and nuisance. Plaintiff's allegations depict Roberts as racist, rude (FAC ¶ 103), and destructive (FAC ¶ 270-282). However, the FAC lacks those markers of conduct which lend themselves to the designation of "outrageous" under the case law. Plaintiff makes many allegations of Roberts's intent, but intent is separate from the extreme and outrageous conduct. While Roberts's motivations are cast as racially motivated,

Plaintiff identifies no use of epithets. Plaintiff alleges Roberts has responded to Plaintiff's polite missives with profanities, but these are petty indignities which are not actionable. Finally, Plaintiff alleges that Roberts undertook several acts of vandalism targeted at her property. This continues to be, to the Court's review, a "petty oppression" which would fail to be outrageous under the facts alleged. The destruction of one's property, whatever the motivation, is itself an indirect action, and Plaintiff does not allege that she was present or witnessed any of the vandalism. The acts of property destruction and conspiracy to steal real property without due process are not sufficient here to meet the standard for outrageous conduct. The cause of action for intentional infliction of emotional distress fails as a result.

As to Plaintiff's alternative theory of negligence, again, Plaintiff's allegations against Roberts are intentional in nature. Nowhere does Plaintiff aver that Roberts was anything except deliberate in her actions against Plaintiff. Negligence itself contains the connotation that such conduct is unintentional. *Frisvold v. Leahy* (1936) 15 Cal.App.2d 752, 757 ("Negligence is misconduct without the element of intent to injure, and to that extent is negative in character."). Plaintiff alleges no unintentional conduct, arguing conspiracy and racially motivated vandalism. Plaintiff may not sidestep the "outrageous" conduct requirement of the intentional tort by attempting to plead down to negligent conduct in such a manner.

To this effect, Plaintiff misapprehends the distinction in the torts of negligent infliction of emotional distress, and its intentional counterpart. Importantly, the duties which can trigger a negligent infliction of emotional distress claim are incredibly narrow. Plaintiff fails to elucidate anywhere in her briefing whether she opines that Roberts's conduct has violated either bystander or direct victim duties, but facially neither applies. Direct victim duties are not supported, as Plaintiff would have to identify "a duty that is assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of the defendant's preexisting relationship with the plaintiff." *Huggins v. Longs Drug Stores California, Inc.* (1993) 6 Cal.4th 124, 129–130. She does not do so here. Bystander damages require Plaintiff to not be the direct victim of the averred conduct, along with a litany of other requirements. *Thing v. La Chusa* (1989) 48 Cal.3d 644, 647. Plaintiff's claim of negligent infliction of emotional distress claim is inadequately pled.

As to the Nineteenth and Twentieth causes of action, the demurrer is SUSTAINED without leave to amend.

V. Leave to Amend

The Complaint before this Court is the **sixth** permutation of Plaintiff's allegations against Roberts (and fifth against Inspectors). Plaintiff amended her Federal Case complaints three times before her claims were dismissed to be pursued in state court. To the degree that Plaintiff fails to state claims, she is substantially beyond what she might have been accorded if all these complaints had been before a state court. See CCP § 430.41 (e)(1). Nor can Plaintiff cure the statute of limitations issue raised by Inspectors through further amendment. *Engel v. Pech* (2023) 95 Cal.App.5th 1227, 1235. Plaintiff has not displayed, through her various stages of pleading, that she may make allegations which cure the defects raised. Leave to amend would be improper.

VI. Conclusion

Based on the foregoing, the Demurrer by Inspectors to each cause of action against them is **SUSTAINED without leave to amend.**

The Demurrer as to Roberts is **SUSTAINED without leave to amend** as to the Nineteenth and Twentieth causes of action.

The Court, on its own motion, **STRIKES the Fourth, Sixth, Ninth, Eighteenth, and Twenty-first through Twenty-Fourth causes of action in their entirety without leave to amend. Plaintiff's inclusion of Inspectors as defendants for the Fifth, Seventh, Eighth, Twelfth, Fourteenth, and Seventeenth causes of action are STRICKEN without leave to amend. Plaintiff's addition of the Hamernicks and Roberts to the Fifth and Fourteenth causes of action are STRICKEN without leave to amend.**

Inspectors 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).

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