TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, April 4, 2025 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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Department 19 Hearings
MeetingID: 160-421-7577
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1. 23CV01987, Cignetti v. FM Restaurants HQ, LLC

Plaintiff Alessandra Cignetti ("Plaintiff") filed a complaint 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 the motion by Defendant for summary judgment, or in the alternative adjudication, of the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 437. The motion for summary judgment is **DENIED**. The motion for summary adjudication is **GRANTED in part and DENIED in part**.

I. Evidentiary and Pleading Issues

Plaintiff's objections are incorporated into their separate statement and therefore fail to conform with the Rules of Court. Objections must be asserted in a separate document. Cal. Rule of Court 3.1354. Plaintiff's objections are therefore OVERRULED as failing to conform to the Rules of Court.

Defendant's objections on reply are asserted as a separate document but nonetheless are interposed in a method rendering them unintelligible. Defendant has included the language to which they object in each objection, and Plaintiff's cited evidence, but with no citation to the relevant material fact (which is the only form of evidence to which they object). In this manner, the objections also fail to conform to an allowable format under Cal. Rule of Court 3.1354. Defendant's objections are therefore OVERRULED.

Defendant's initial notice of motion is also deficient. Defendant requests summary judgment, or in the alterative, summary adjudication. However, the request for summary adjudication fails to comport with the provisions of CCP § 437c and the Rules of Court. Rather than requesting summary adjudication of any individual causes of action, Defendant requests summary adjudication of ten discrete issues, which apply variously to different causes of action. Adjudication of "issues" is not generally permitted absent stipulation of the parties. CCP § 437c(t). Despite this, Plaintiff expresses no prejudice, and the Court examines the summary adjudication on its merits (though by cause of action).

II. Underlying Facts

Plaintiff was hired by Defendant on January 2, 2023. Defendant's Separate Statement of Undisputed Material Facts ("DUMF") ¶ 2. Defendant maintains a book of policies and [procedures that it provided to employees during their onboarding, and which was in use during Plaintiff's entire employment. DUMF ¶ 5-6. The handbook contains an anti-harassment policy. DUMF ¶ 7. The policy, "prohibit(s) unlawful harassment . . . in the workplace, including sexual harassment, by any employee…" DUMF ¶ 8. The handbook states, "Unwelcome sexual advances, requests for sexual favors, widespread sexual favoritism, and other verbal, physical or visual conduct of a sexual nature constitute unlawful sexual harassment if (i) submission to such conduct is made an explicit or implicit term or condition of employment; (ii) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; or (iii) such conduct has the purpose or effect of either (a) unreasonably interfering with an individual's work performance or (b) creating an intimidating, hostile, or offensive working environment." DUMF ¶ 9. It further states, "Examples of conduct which may violate this policy include, but are not limited to: offensive or unwelcome sexual flirtations, advances or propositions; threats and demands to submit to sexual requests; offering employment benefits in exchange for sexual favors; making or threatening reprisals after a negative response to sexual advances; widespread sexual favoritism; verbal abuse of a sexual nature; graphic verbal commentaries about an individual's body; sexually degrading words used to describe an individual; sexually-oriented jokes, emails, or written materials; visual conduct, including leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters; accessing sexually explicit, pornographic and/or socially offensive websites, chat rooms or other material on the internet or other computer systems; and the unwelcome physical touching of others." DUMF ¶ 11. Anti-harassment training is also required as part of the hiring process and is provided again periodically. DUMF ¶ 12-13.

The handbook provides that employees who violate the anti-harassment policy "will be subject to disciplinary action, up to and including termination of employment." DUMF ¶ 15. When an employee has been subject to unlawful discrimination, the handbook tells employees to

"immediately notify the employee's supervisor, Human Resources or any member of Management." DUMF ¶ 16. If an employee has been exposed to harassment or a violation of law, the employee has "a duty to immediately bring the incident(s) to the attention of the employee's supervisor. As an alternative, the employee may report any complaints directly to Human Resources or to any member of Management." DUMF ¶ 17. Any supervisor who receives a complaint must report it to Human Resources. DUMF ¶ 20. The handbook informs employees that ""The Company will investigate all reports or complaints of harassment or discrimination thoroughly, promptly, fairly, and discreetly." DUMF ¶ 22. It further provides that ""The investigator will be impartial and qualified, and will document his or her progress throughout the investigation." DUMF ¶ 23.

The handbook also obligates employees to "cooperate fully in the investigation process by making themselves reasonably available to meet with the investigator and providing any information (including documentation) they may have regarding any improper conduct that has occurred." DUMF ¶ 24. The handbook states that ""The Company considers any discrimination and/or harassment to be a serious offense which can result in disciplinary action for the offender, up to and including termination," and "[i]f an investigation has concluded that harassment or discrimination occurred, the Company will take appropriate remedial corrective action, up to and including termination." DUMF ¶ 25.

Roberto Torres ("Torres") was also employed by Defendant in January 2023, and worked as a prep cook. DUMF ¶ 26. Torres was not a supervisor. DUMF ¶ 27. On January 20, 2023, Kevin Foulke ("Foulke"), a manager, recorded into the store log that Plaintiff had reported an incident between herself and Torres. DUMF ¶ 28. Plaintiff reported (and Foulke placed into the log) that Torres had followed her into the walk-in freezer and placed her in a hug that was uncomfortable and inappropriate. DUMF ¶ 29. Foulke also recorded that Plaintiff had heard stories from other female coworkers about similar incidents with Torres. DUMF ¶ 30. When confronted by Foulke, Torres denied the incident. DUMF ¶ 31. Foulke placed in the log that he advised Torres not to follow co-workers into the freezer with the door shut, and not to make "uninvited contact". DUMF ¶ 32.

Plaintiff had gone into the walk-in freezer looking for a brownie. DUMF ¶ 34. Torres came in behind her, and when she turned around, he placed his arms around Plaintiff "like a hug". DUMF ¶ 34-35. Torres grabbed Plaintiff's lower back, but did not touch her buttocks. DUMF ¶ 37-38; Defendant's Exhibit 13, Plaintiff's Deposition. Torres did not pull Plaintiff's lower body to him, or squeeze her. DUMF ¶ 40-41. Torres did not kiss Plaintiff. DUMF ¶ 42. The "hug" lasted around two seconds before Plaintiff escaped, leaving Torres in the freezer. DUMF ¶ 43-44. Plaintiff reported the matter to Foulke at end of shift. DUMF ¶ 45. Foulke helped Plaintiff identify Torres and told her he would talk to Torres and "we're going to handle it". DUMF ¶ 46-47.

On January 23, 2023, the store's general manager, Sue Shuster ("Shuster") emailed Human Resources regarding the January 20, 2023, incident. Shuster reported that she had spoken with Plaintiff, and that Torres had been advised against touching other employees. DUMF ¶ 48-50. HR responded to Shuster by asking that Plaintiff submit a written statement. DUMF ¶ 51.

Plaintiff worked shifts for Defendant on January 22, 24, 25 and 26. DUMF ¶ 52. Plaintiff resigned on January 29, 2023. DUMF ¶ 3. On January 30, Shuster emailed HR stating that she had asked Plaintiff to write a statement, but Plaintiff had resigned. DUMF ¶ 53. Plaintiff never saw Torres again on her remaining shifts with Defendant. DUMF ¶ 54. Human Resources reached out twice to contact Plaintiff via her cell phone, and left voicemails, but never received a response from Plaintiff. DUMF ¶ 55-58. There were no cameras in the refrigerator, and no witnesses to the incident. DUMF ¶ 59-60. When questioned by management, Torres denied hugging Plaintiff. DUMF ¶ 61. Torres had never before been the subject of a similar investigation by Defendant. DUMF ¶ 62. Plaintiff told both Foulke and Shuster that Torres had behaved this way toward other employees, but did not provide names. DUMF ¶ 63-64. Torres was made to sign an anti-harassment policy reminder as a result of Plaintiff's report. DUMF ¶ 67. While Plaintiff alleges that Torres had harassed her in other manners, she never reported that conduct to Defendant during her employment. DUMF ¶ 68-72. Defendant carried workers compensation insurance during January 2023. DUMF ¶ 76.

During the incident, Plaintiff was placed into a hug against her will. Plaintiff's Separate Statement of Additional Material Facts ("PAMF") ¶ 7. Plaintiff recounts that during the incident, Torres moved his mouth toward her, as if to kiss her. PAMF ¶ 8. Torres rubbed her lower back while she was in the hug. PAMF ¶ 9. Plaintiff told a female co-worker, Vanessa Carreon about the incident immediately afterward. PAMF ¶ 11. Carreon told Plaintiff that Torres had done similar things to her. PAMF ¶ 13. Two more female employees told Plaintiff about their own similar experiences. PAMF ¶ 17. When Plaintiff made the report of the incidents to Foulke, he told Plaintiff that he would talk with Torres, which Plaintiff pressed would not be an adequate response. PAMF ¶ 20-22.

Plaintiff called out of work the day following the incident due to associated anxiety. PAMF ¶ 24. When Plaintiff returned on January 22, Shuster met with her. PAMF ¶ 26. Shuster told Plaintiff that Torres would not be fired, and it was "her word against his". PAMF ¶ 27. Plaintiff was advised by Shuster to "keep her distance" from Torres. PAMF ¶ 28. Plaintiff told Shuster that Torres should be fired. PAMF ¶ 30. Plaintiff subsequently received permission from Shuster to leave a shift early because Torres was going to be working at the same time as Plaintiff. PAMF ¶ 39. Plaintiff was sufficiently worried about crossing paths with Torres, that she felt she had to resign to avoid Torres. PAMF ¶ 40. Accordingly, her resignation email told Shuster that she no longer felt comfortable working for Defendant. PAMF ¶ 41. Torres suffered no disciplinary action other than the policy reminder and verbal counseling. PAMF ¶ 43.

Shuster's email to Human Resources on January 23 acknowledged that in the past, she had heard about "this kind of behavior" by Torres a couple years prior. PAMF ¶ 36. No interviews were performed other than those of Plaintiff and Torres by management. PAMF ¶ 37.

III. The Burdens on Summary Judgment and Adjudication

A. *Generally*

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." CCP § 437c(c). "Summary adjudication of an affirmative defense is properly granted when there is no triable issue of material fact as to the defense, and the moving party is entitled to judgment on the defense as a matter of law." *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 977–978.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. If the moving plaintiff does not meet its initial burden, the defendant has no evidentiary burden. CCP § 437c(p)(1).

If a plaintiff meets its initial burden, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

B. *Ratification*

"An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification." Civil Code, § 2307. "Ratification is not an element of a claim; it is a choice to adopt someone's act as one's own." *Ratcliff v. The Roman Catholic Archbishop of Los Angeles* (2022) 79 Cal.App.5th 982, 1003. "The failure to investigate or respond to charges that an employee has committed an intentional tort or the failure to discharge the employee may be evidence of ratification." *Samantha B. v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, 109. "Whether an employer has ratified an employee's conduct is generally a factual question." *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170. "An employer is not relieved of liability for ratification simply because it eventually terminates the employee." *Samantha B. v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, 109.

C. *Sexual Harassment*

"The employer is liable for harassment by a nonsupervisory employee only if the employer (a) knew or should have known of the harassing conduct and (b) failed to take immediate and appropriate corrective action." *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1419–1420, citing Gov. Code § 12940 (j)(1).

An employer may also be held liable for failure "to take all reasonable steps necessary to prevent discrimination and harassment from occurring." Gov. Code, § 12940 (k). "When a plaintiff seeks to recover damages based on a claim of failure to prevent ... harassment ... she must show three essential elements: 1) plaintiff was subjected to ... harassment ...; 2) defendant failed to take *all reasonable steps* to prevent ... harassment ...; and 3) this failure caused plaintiff to suffer injury, damage, loss or harm." *Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 43–44 (Internal quotations omitted). "There can be no liability for an employers' failure to prevent harassment claim unless actionable harassment occurred." *Ibid*.

"A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment." Gov. Code, § 12923 (statutorily rejecting the standard in *Brooks v. City of San Mateo* (9th Cir. 2000) 229 F.3d 917, 925).

> Once an employer is informed of the sexual harassment, the employer must take adequate remedial measures. The measures need to include immediate corrective action that is reasonably calculated to 1) end the current harassment and 2) to deter future harassment. (*Sarro v. City of Sacramento* (E.D.Cal.1999) 78 F.Supp.2d 1057, 1061–1062.) The employer's obligation to take prompt corrective action requires 1) that temporary steps be taken to deal with the situation while the employer determines whether the complaint is justified and 2) that permanent remedial steps be implemented by the employer to prevent future harassment once the investigation is completed. (*Swenson v. Potter* (9th Cir.2001) 271 F.3d 1184, 1192.) An employer has wide discretion in choosing how to minimize contact between the two employees, so long as it acts to stop the harassment. (*Id.* at pp. 1194–1195.) "[T]he reasonableness of an employer's remedy will depend on its ability to stop harassment by the person who engaged in harassment." (*Ellison v. Brady* (9th Cir.1991) 924 F.2d 872, 882.)

Bradley v. Department of Corrections & Rehabilitation (2008) 158 Cal.App.4th 1612, 1630.

D. *Constructive Discharge*

"Constructive discharge occurs when the employer's conduct effectively forces an employee to resign. . . (A) constructive discharge is legally regarded as a firing rather than a resignation." *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1244-1245 ("*Turner*")."In order to establish a constructive discharge, an employee must plead and prove, by the usual preponderance of the evidence standard, that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." *Id.* at 1251. "For purposes of this standard, the requisite knowledge or intent must exist on the part of either the employer or those persons who effectively represent the employer, i.e., its officers, directors, managing agents, or supervisory employees." *Ibid*.

"[T]he applicable standard is whether the adverse working conditions [are] so intolerable or unusually adverse that any reasonable employee would resign rather than endure [them]." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 827, quoting *Turner* at 1247. "Whether conditions were so intolerable or aggravated under that standard is usually a question of fact; however, summary judgment against an employee on a constructive discharge claim is appropriate when, under the undisputed facts, the decision to resign was unreasonable as a matter of law." *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1022.

E. *False Imprisonment*

"The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief." *Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 496; see also Civil Code § 43. An appreciable period "can be as brief as 15 minutes." *Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715.

F. *Affirmative Defense - Exclusive Remedy of Workers Compensation*

"Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death," so long as the necessary conditions are met. Labor Code § 3600. As long as the conditions of Lab. Code § 3600 are met, workers compensation benefits are the exclusive remedy available to an injured worker. Labor Code § 3602.

"Every employer except the state shall secure the payment of compensation … (b)y being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state" or by following the process for being self-insured. Labor Code § 3700. Where workers' compensation is the exclusive remedy, trial courts lack subject matter jurisdiction over the employee's claim. *Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 737. "If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply." Lab. Code, § 3706.

One of the purposes of the Workers Compensation Act is "to guarantee prompt, limited compensation for an employee's work injuries, regardless of fault, as an inevitable cost of production". *Bradshaw v. Park* (1994) 29 Cal.App.4th 1267, 1276. Once an employer has received notice of an injury, the employer must submit the claim to the worker's compensation insurer within five days. Lab. Code, §§ 3760 & 6409.1. "(G)enerally speaking, a defendant in a civil action who claims to be one of that class of persons protected from an action at law by the provisions of the Workers' Compensation Act bears the burden of pleading and proving, as an affirmative defense to the action, the existence of the conditions of compensation set forth in the statute which are necessary to its application." *Doney v. Tambouratgis* (1979) 23 Cal.3d 91, 96. Ratification of intentional torts serves to abrogate the exclusive remedy of workers compensation. *Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1432.

IV. Analysis

A. *First Cause of Action - Sexual Harassment and Hostile Work Environment*

1. Defendant Shifts the Burden on one Issue, but Fails on Others

Defendant asserts that Plaintiff's first cause of action for sexual harassment and hostile work environment is deficient, because Plaintiff cannot meet several essential elements of her claims, or that affirmative defenses apply. Some of these arguments prevail sufficiently to shift the burden at summary judgment. Defendant particularly argues that the harassment was not severe or pervasive, that the harassment cannot be imputed to Defendant, and that Workers Compensation is the exclusive remedy for Plaintiff's alleged harm.

First, to Defendant's contention that it cannot be imputed with Torres's conduct, Defendant shifts their burden. Defendant avers that it gave Torres a verbal warning after Plaintiff reported the incident, reached out to Plaintiff to investigate, and that during the balance of Plaintiff's time working with Defendant, she was never working at the same time as Torres. Defendant provided evidence of its substantive anti-harassment policies and procedures. These appear to be immediate and appropriate corrective action as would be required to prevent liability for Torres's conduct as a non-supervisor. *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1419–1420.

As to severity, Defendant fails to shift their burden. While Defendant urges this Court to follow jurisprudence which predates Government Code "Gov. Code" § 12923, subsequent cases have made clear that the standard has continued to evolve. Defendant argues that Gov. Code § 12923 is merely a restatement of modern law on the subject, and that prior jurisprudence still holds up to scrutiny, citing *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865. This is not an entirely accurate representation of the holding of that case. The *Beltran* court did find that the passage of Gov. Code § 12923 did not "change" the law sufficient to prevent it from being retroactive. *Id*. at 879. Despite this, the *Beltran* court opines on the status of prior jurisprudence, stating "These cases are no longer good law when it comes to determining what conduct creates a hostile work environment in the context of a motion for summary judgment or adjudication. (§ 12923; CACI No. 2524.)" *Id*. at 880. This is to say, Gov. Code § 12923 was a *clarification* of prior law, and did not substantively change the intended effect of the statute, but that does not mean it does not affect the jurisprudence thereon which misapprehended the statute.

In another case cited by Defendant, the Second District Court of Appeal recently provided further clarification:

> To the extent *Hughes* suggests that 'an isolated incident of harassing conduct may qualify as 'severe'" only if "it consists of 'a *physical* assault or the threat thereof' " (*Hughes*, at p. 1049, 95 Cal.Rptr.3d 636, 209 P.3d 963), such a suggestion is no longer the law. Under section 12923 an isolated incident of harassing conduct need only have "unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive work environment." (§ 12923, subd. (b).) A physical assault or threat is not required.

Wawrzenski v. United Airlines, Inc. (2024) 106 Cal.App.5th 663, 698–699, *review denied (Feb. 11, 2025)*; quoting *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1049.

To this effect, the Court analyzes the facts presented by Defendant. Defendant provides evidence that Plaintiff was assaulted by another employee. She was placed into a hug against her will, her lower back was rubbed, and her assailant attempted to kiss her. Torres was simply told not to touch other employees, and not to go into the walk-in freezer with female employees. Defendant was provided with knowledge that other female employees had experienced similar treatment from Torres, to which the response was that those employees "should have come forward earlier." Defendant's Exhibit 1, Plaintiff's Depo., pg. 123:1-6.

Defendant presents its own evidence on this issue in a manner which raises concern. Defendant avers that Plaintiff was not kissed by Torres (DUMF 43), but Defendant's own Exhibit 7 states that Plaintiff informed Defendant that Torres tried "to kiss her neck". This appears to be misleading. Defendant's attempt to downplay the severity of the incident fails to meet its burden on this issue. At summary judgment, Defendant does not show that the incident here fails to meet the modern definition of severe as a matter of law. It seems apparent that a reasonable person would find this conduct disrupted their "emotional tranquility in the workplace". Gov. Code § 12923 (a); see also *Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 697. Indeed, the instruction from the legislature could not be more clear. "Harassment cases are rarely appropriate for disposition on summary judgment." Gov. Code, § 12923 (e). The facts posed by Defendant fail to show that there are not triable issues of material fact as to the severity of the incident.

As to the last contention related to Plaintiff's first cause of action, Defendant fails to shift their burden. Plaintiff's FEHA related claims are clearly not barred by the workers compensation exclusivity rule. Defendant provides no applicable case to this effect. Meanwhile, the jurisprudence to the contrary is clear and unambiguous. "[S]ection 132a does not provide an exclusive remedy and does not preclude an employee from pursuing FEHA and common law wrongful discharge remedies." *Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1485, quoting *City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143, 1158. Defendant simply makes this contention without even the most basic authority in support.

2. Plaintiff Meets the Shifted Burden

Most of Defendant's raised issues as to the first cause of action failed to show a lack of triable fact. As to whether Defendant can be attributed Torres's actions, Plaintiff meets the shifted burden. Upon the report of sexual harassment, the burden on Defendant was to take "immediate and appropriate corrective action". *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1419–1420, citing Gov. Code § 12940 (j)(1). Plaintiff offers countervailing evidence against Defendant's contention that there was appropriate corrective action taken. Plaintiff reported the incident on January 20, 2023. That same day, the manager on duty spoke to Torres. Plaintiff presents evidence that no other employees were interviewed as part of Defendant's investigation, even though Plaintiff told them Torres had previous incidents with other female employees. This is despite the fact that Schuster had heard of similar incidents before the events of January 20, 2023. Plaintiff presents evidence that Torres was not, as Defendant asserts in their papers, required to undertake additional sexual harassment training, but merely had to sign an affirmation of policy. These issues appear to raise sufficient triable issues of fact regarding

whether the conduct of Defendant was "appropriate" corrective action. This is a determination for a finder of fact, and not appropriate for summary judgment.

There being triable issues of material fact, summary judgment is inappropriate. Summary judgment is DENIED. Summary adjudication of the first cause of action is DENIED.

B. *Fourth Cause of Action – Failure to Prevent Sexual Harassment*

Defendant raises the severity of the harassment, that Torres's actions cannot be attributed to them, and that they responded promptly and appropriately. Analysis of these issues follows the same analysis as Section III(A) above. Defendant also asserts that their actions thereafter were reasonable. Defendant cites to *California Fair Employment & Housing Com. v. Gemini Aluminum Corp.* (2004) 122 Cal.App.4th 1004, 1025, which relates to discrimination claims under Gov. Code § 12940 (k). Based on largely the same facts as their assertion of lack of liability for Torres's acts, they shift the initial burden as to this cause of action.

Though Defendant has shifted their burden on this issue, Plaintiff met the shifted burden with the same evidence already expounded upon above. Plaintiff presents evidence that she was placed on shift overlapping with Torres mere days after the incident. Defendant was aware that Torres might have engaged in "this kind of behavior" before. Defendant's Exhibit 7. Defendant's investigation involved manager contact with Torres, and Plaintiff's initial report. Defendant attempted to receive some form of supplemental interview with Plaintiff, but did not have the Human Resources representative interview Torres at all. These are adequate facts to raise triable issues regarding the sufficiency of Defendant's investigation. In combination with Plaintiff being placed on overlapping shifts as an alleged assailant so shortly after reporting an incident appears to be sufficient to raise a triable issue of fact in whether Defendants acted reasonably.

Accordingly, there are triable issues of material fact as to failure to prevent sexual harassment. Summary adjudication thereon is accordingly DENIED.

C. *Fifth Cause of Action - Constructive Termination*

As with the sexual harassment allegations, Defendant shifts their initial burden as to constructive termination. The same evidence shows that Defendant's actions were reasonable and that they appropriately responded to the report of harassment.

Defendant also contends that Plaintiff did not raise that her conditions were intolerable. This fails at the first step. Plaintiff's deposition (even in the excerpts provided by Defendant) makes clear that Plaintiff communicated to Shuster her dissatisfaction that Torres would not face repercussions beyond being counseled. Shuster was also the person who told Plaintiff that she would be working with Torres the same day as their conversation. Shuster was the person who released Plaintiff for the day, but had also told her to "keep her distance", and that its "just something that happens". See Defendant's Exhibit 13, pg. 121. Defendant fails to show that they did not have notice of the condition. The remaining question is whether Plaintiff can produce evidence that conditions meet the definition of intolerable.

In the same vein, as Defendant shifts their initial burden, Plaintiff presents evidence to meet it. The primary jurisprudence, *Turner*, states that Plaintiff may not merely "quit and sue". *Turner, supra,* 7 Cal.4th at 1246. Plaintiff must provide evidence that conditions were so intolerable that a reasonable employee would quit. *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 827. Plaintiff provides evidence of intolerable conditions sufficient to survive summary judgment.

The Court finds *Atalla v. Rite Aid Corp.* (2023) 89 Cal.App.5th 294 ("*Atalla*"), instructive, mostly due to its distinguishing facts. In that case, plaintiff was sexually harassed by a district manager through text messages. *Id.* at 305. Prior to this they had established a friendship, and this was the single incident of harassment in their relationship. *Id.* at 304. Plaintiff reported the harassment six days later through legal counsel. *Id.* at 305. Defendant suspended the district manager the following day. *Id.* at 306.Three days later, he was fired. *Ibid*. While defendant offered plaintiff to come back to work, her legal counsel informed them that she would not be returning. *Ibid*. Accordingly, defendant sent plaintiff a separation letter, while reiterating that she was welcome to return. *Ibid*. Plaintiff filed suit claiming, among other causes of action, constructive termination. *Ibid*. The trial court, and the court of appeal thereafter, found the claim deficient. *Id*. at 321-322. Given that defendant had speedily suspended, and subsequently fired, the district manager, plaintiff had willingly separated herself from defendant without any risk of exposure to further harassment. *Id*. at 322.

This is distinguishable from the case at bar. While Plaintiff reported the incident mere hours after its occurrence, Plaintiff presents evidence that within two days Defendant had acted in three ways which appears relevant for the consideration of constructive termination. First, Defendant informed Plaintiff within two days after the incident that Defendant would not be fired, before any substantive investigation had occurred. She was placed back on shift in a manner which would have exposed her to Torres within a matter of days after the incident. Plaintiff avers that she was told that she should just avoid eye contact with Torres, and that these things happen. Defendant performed no interviews beyond those of Torres. While Plaintiff did not provide further information to Defendant, Defendant provides no authority showing that Plaintiff's initial report is somehow insufficient to trigger their obligations. It is also worth noting that even Defendant's evidence shows that this would be the *third* discussion with Plaintiff regarding the incident, having already done the initial report to Foulke, and a discussion with Shuster on or about January 22. Given the evolved definition of sexual harassment since 2019, there appears to be adequate evidence of intolerable conditions for the matter to be properly submitted to a finder of fact. As such, Plaintiff has raised a triable issue of material fact as to the constructive discharge cause of action.

Therefore, summary adjudication of constructive discharge is DENIED.

D. *Second Cause of Action - Assault and Battery*

Defendant asserts that they cannot be held liable for Torres' alleged assault and battery as an intentional tort outside the scope of his job duties. As an initial matter, Defendant shifts the burden as to this issue. As with the issue of sexual harassment by a non-supervisor, Defendant

shows that they would not be adopted automatically but rather require sufficient showing of ratification. Defendant therefore shifts the burden.

Defendant also argues that workers compensation is Plaintiff's exclusive remedy for this harm. Defendant misapplies the argument. It is not the case that Plaintiff's exclusive remedy is workers' compensation. Rather, Defendant has statutory immunity for intentional torts, absent some exception. Lab. Code, § 3601 (b); *Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1487. Accordingly, the burden is shifted to Plaintiff.

While Defendant shifts their burden, Plaintiff argues that Defendant is vicariously liable due to ratification. As the Court has extensively explored above, Defendant's actual actions taken in response to the incident appear de minimus. Defendant's posturing of making Torres re-sign the sexual harassment policy appears to be triable in light of being informed of not just Plaintiff's incident, that there were other employees who had experienced similar incidents, and their ongoing knowledge of Torres's prior incidents of "this kind of behavior". Defendant's Exhibit 7. As a result, there appears to be a triable issue of material fact as to ratification. Ratification stands not just to imbue vicarious liability for Torres's intentional tort, but to abrogate the immunity granted by Labor Code § 3601 (b). *Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1432.

There are triable issues of fact as to Plaintiff's second cause of action for assault and battery. Accordingly, summary adjudication of this cause of action is DENIED.

E. *Third Cause of Action - False Imprisonment*

Defendant also shifts their burden as to Plaintiff's false imprisonment cause of action. The Court has already addressed Defendant's arguments regarding workers compensation, and therefore analysis turns to the substance of the claim. Plaintiff pleads that she was restrained by Torres for a period of seconds. While the law on false imprisonment makes clear that the imprisonment relates to a period of confinement "for an appreciable period of time, however brief." *Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 496, the cases on the subject do not contemplate a period of seconds satisfying this standard. Rather, as the Supreme Court opines, "(t)hat length of time can be as brief as 15 minutes." *Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715, citing *Alterauge v. Los Angeles Turf Club* (1950) 97 Cal.App.2d 735, 736. Given that Plaintiff alleges (and affirmed in deposition) that her restraint was approximately two seconds in duration, Defendant has adequately provided prima facie evidence that Plaintiff cannot meet her evidentiary burden as to an element of the cause of action.

Plaintiff offers no factual discrepancy from her pleading in this regard. Plaintiff merely asserts that the facts alleged meet the standard for false imprisonment. This is a purely legal argument appropriate for determination as summary adjudication. Plaintiff provides neither countervailing authority regarding the duration of false imprisonment, nor provide evidence meeting the jurisprudence on that cause of action. There is no triable issue of fact as to false imprisonment.

Summary adjudication of false imprisonment is GRANTED.

IV. Conclusion

Based on the foregoing, the motion for summary adjudication is **GRANTED**.

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).

2-3. 24CV01805, Briscoe v. Morales

Plaintiff Jandon Brisco ("Plaintiff") filed the complaint (the "Complaint") against Eriberto Morales ("Morales"), Debroah A. Caron ("Caron"), Cindy K. Silversmith ("Silversmith"), Tracy L. Stevenson Howell ("Stevenson-Howell", together with Caron and Silversmith, "440 Defendants"), the 440 Club (the "Club"), and Does 1-50, with two causes of action related to allegations that Morales struck Plaintiff with a vehicle.

This matter is on calendar for 440 Defendants' motions to compel further responses to requests for production of documents and special interrogatories. The parties met with a discovery facilitator, Mr. Michael Brook, and Plaintiff agreed to provide supplemental responses. As of February 28, 2025, Plaintiff has provided subsequent responses, and therefore the motion to compel appears to be moot, and the current controversy is predicated on responses which are not before the Court.

The Court has the jurisdiction to make determinations regarding the sufficiency of the supplemental responses. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411. This matter is continued to Friday May 30, 2025 at 3:00 pm in Department 19.

The parties are ORDERED to meet and confer regarding the sufficiency of the current round of responses. 440 Defendants are ordered to file an updated separate statement 21 court days prior to hearing. Plaintiff will file any opposition 12 court days prior to hearing. 440 Defendant's reply is due 7 court days prior to hearing.

4. 24CV03925, Petaluma City Schools v. Greenbacker Renewable Energy Corporation

Petaluma City Schools ("Plaintiff") filed their original complaint on July 2, 2024, against Greenbacker Renewable Energy Corporation ("Greenbacker"); MP2/IRG-Petaluma City Schools, LLC ("MP2/IRG"); MP2 Capital, LLC, ("MP2 Capital"), and DOES 1 through 50, (collectively referenced as "Defendants"). The complaint alleges causes of action for (1) breach of contract, (2) negligence, and (3) nuisance. Plaintiff then filed its first amended complaint ("FAC") on November 22, 2024, before any defendant appeared. The FAC now contains the following claims: (1) breach of contract, (2) promissory estoppel, and (3) nuisance.

Defendants Greenbacker and MP2/IRG then filed their demurrer on January 8, 2025, attacking only the 1st and 2nd causes of action. The **Demurrer to the First Amended Complaint is OVERRULED in full.** Defendants are required to answer within 10 days of service of the

notice of entry of the order. California Rule of Court ("CRC") 3.1320(g). Plaintiff is to serve the notice of entry of this order within 5 days of entry of this order. CRC 3.1320(g).

I. Facts

In the FAC, Plaintiff complains that Defendants breached an agreement (the "Agreement") for the installation and maintenance of a solar-power energy system on the roofs of Plaintiff's school campus at Kenilworth Junior High School ("Kenilworth"). It alleges that it entered into the Agreement on December 12, 2006 with RGD Energies, Inc. ("RGD"), by which RGD agreed to "arrange for, at its own expense, the design, installation, operation and maintenance of a photovoltaic electricity generation system" (the "System") and Plaintiff would purchase electricity which the System generated based on performance guaranties. The Agreement also allegedly required RGD to repair and maintain the system and operate at least 80% of the rated operational capacity. It alleges that it and RGD entered into Amendment One (the "Amendment") to the Agreement on February 29, 2008, which provided specific details on issues such as System performance. The Amendment, among other things, detailed the requirement for the System to provide the 80% operational capacity throughout its life and that the Amendment would last 20 years starting in about 2007.

Plaintiff now alleges that Defendant Greenbacker is the parent company of Defendants MP2Capital, LLC ("MP2 Capital") and MP2/IRG-Petaluma City Schools, LLC ("MP2/IRG") and that they are the successors in interest to RGD under the Agreement. It asserts that Defendants "all agreed in writing to be bound by all rights, benefits, privileges, duties, liabilities, and obligations under the Agreement, as amended."

Plaintiff alleges that RGD "and/or" Defendants had elected to use peel-and-stick solar panels attached to the metal roofs of Kenilworth. The roof panels have a 30-year life expectancy and were installed in around 2005. Plaintiff alleges that it "had issues with the underperformance of" the System, which failed to meet and warranted 80% operational capacity, and on June 26, 2019, it issued a notice of default for the underperformance. It also alleges that it eventually discovered that Defendants failed to maintain and repair the System as required. Plaintiff on February 2, 2024, gave Defendants 72-hour notice of major leaks on a Kenilworth roof which allegedly resulted from the adhesive used to attach the System panels to the roof. Greenbacker allegedly inspected the roof on February 22, 2024, finding that one System panel had caused the leak. It accordingly unpeeled the panel and patched the entire bay where the panel had been located. Plaintiff complains, however, that the method of installing the System and the compounds used caused further rot and water damage to various buildings at Kenilworth and that Defendants "have refused to replace the defective Solar Panels and repair the roofs at Kenilworth."

II. Demurrer

Defendants demur separately to the first and second causes of action in the FAC on the grounds that each fails to state facts sufficient to constitute a cause of action. They argue that Plaintiff fails to set forth the essential terms of the Agreement or attach a copy of the Agreement to the complaint and the allegations show the causes of action to be untimely based on Code of Civil Procedure section 337.1.

Plaintiff opposes the demurrer. It contends that the allegations sufficiently set forth the contract terms and do not show the claims to be untimely. Regarding dates, it points out that the allegations require the minimum 80% output throughout the life of the system, and in February 2024, only about five months before filing the complaint on July 2, 2024, it notified Defendants of its discovery that the System was not properly maintained and caused damage to its building.

Defendants reply to the opposition, reiterating their arguments. They contend that Plaintiffs must plead their claims with reasonable precision sufficient to acquaint them with the nature of their alleged breach, Plaintiff's allegations are based on Defendants' assumed knowledge, and the allegations are uncertain and inconsistent with the referenced contracts. They note that Plaintiff has not attached the contract documents to the complaint or FAC but they provide these in their reply papers. They also argue that Plaintiff relies improperly on authority governing summary judgment.

III. Discussion

A demurrer can only challenge a defect appearing on the face of the complaint, exhibits thereto, and judicially noticeable matters. Code of Civil Procedure ("CCP") section 430.30; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The grounds for a demurrer are set forth in CCP section 430.10. One of the grounds, in subdivision (e), is the general demurrer that the pleading fails to state facts sufficient to constitute a cause of action.

Demurrer for failure to state facts sufficient to constitute a cause of action is a general demurrer, which must fail if there is any valid cause of action. CCP section 430.10(e); *Quelimane Co., Inc. v. Steward Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39. For example, if a party directs a general demurrer against a cause of action labelled "fraud" based on failure to state that cause of action, the demurrer will fail if the complaint sets forth a valid cause of action for malpractice. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908

A written contract may be pleaded either *in haec verba*, i.e. verbatim, *or* generally "according to its legal intendment and effect." *Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189. 198-199. A party may plead the contract terms by attaching a copy to the complaint and incorporating it therein. See *Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1091. Normally, a party may also generally plead contract conditions and their satisfaction, unless the allegations show the condition to be an event or show incomplete performance or where the plaintiff is alleging waived or excused performance. *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390.

By contrast, a plaintiff must allege more than a mere conclusion that the defendant "breached" or violated the terms and must allege some facts showing what constituted the breach. *Bentley v. Mountain* (1942) 51 Cal.App.2d 95, 98; *Wise v. Southern Pac. Co.* (1963) 223 Cal.App.2d 50, 60.

A general demurrer lies where the allegations set forth dates affirmatively showing the statute of limitations to bar the cause of action. See, e.g., *Iverson, Yoakum, Papiano & Hatch v. Berwald*

(1999) 76 Cal.App.4th 990, at 995; *Vaca v. Wachovia Mortg. Corp*. (2011) 198 Cal.App.4th 737, at 746. However, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42. The failure to allege dates is irrelevant and will not support any demurrer because a party does not need to allege any specific dates. *Union Carbide Corp. v. Sup.Ct*. (1984) 36 Cal.3d 15, 25. In *Union Carbide,* the Supreme Court rejected the argument that the plaintiff needed to plead facts negating the statute-of-limitations defense where the complaint did not allege any dates at all, explaining that because the complaint alleged that the events occurred "at a time unknown," the allegations were sufficient. The *United Western* court similarly rejected the argument on demurrer that a party needed to plead dates for a "potentially time-barred claim" in order to determine if the claim is timely or not.

The applicable limitations period for claims based on breach of written contract is four years, pursuant to CCP section 337, the provision on which Defendants specifically rely.

In their reply, Defendants argue that Plaintiff relies improperly on authority governing summary judgment. The court notes that it is relying on the above authority governing the standards for demurrer and no authority which Plaintiff provides alters the court's understanding of the standards to apply on demurrer.

A. Contract Terms and Their Breach

Plaintiff sufficiently pleads the essential contract terms and their breach, as explained in the facts above. Plaintiff alleges that it entered into the Agreement with RGD. Defendants are the successors in interest to RGD and "all agreed in writing to be bound by all rights, benefits, privileges, duties, liabilities, and obligations under the Agreement, as amended." The Agreement requires RGD, and thus each Defendant, to "arrange for, at its own expense, the design, installation, operation and maintenance of" the System for photovoltaic electricity generation, requires them to repair and maintain the system, and requires them to operate the System at a minimum of 80% of the rated operational capacity. It alleges that it and RGD entered into the Amendment which, among other things, details the requirement for the System to provide the 80% operational capacity throughout its life and that the Amendment would last 20 years starting in about 2007.

Defendants' argument is based on the erroneous view that Plaintiff must plead more details of the contract terms, or attach a copy. Plaintiff has sufficiently pleaded the essential terms. These show that Defendants must provide the required operational output at a minimum of 80% capacity and are responsible for installing, maintaining, and operating the System. It also alleges that Defendant have failed to provide the required output and have failed to maintain the System so that it caused the specified alleged roof damage and leaks.

In their reply, Defendants contend that Plaintiffs must plead their claims with reasonable precision sufficient to acquaint them with the nature of their alleged breach, Plaintiff's allegations are based improperly on Defendants' assumed knowledge, and the allegations are uncertain and inconsistent with the referenced contracts. These arguments are unpersuasive and, moreover, improper. Defendants are incorrect that the allegations are insufficiently clear to put

them on notice of the alleged breaches and damages. The allegations are sufficiently clear, as set forth above. Moreover, Defendants' claims that they do not sufficiently understand what Plaintiff claims they did to breach any obligations is improper because it is a new argument not raised in the actual demurrer. As explained above, Defendants base their demurrer on two arguments only: lack of sufficient allegation of the contract terms and untimeliness. They may not raise entirely new arguments in their reply, which they have improperly done. Defendants also improperly in reply raise an entirely new demurrer ground, uncertainty. They asserted only the general demurrer on the ground that the FAC fails to state facts sufficient to constitute a cause of action. They did not assert the demurrer for uncertainty and therefore may not do so in their reply.

Finally, Defendants improperly argue, based on extrinsic evidence, that the allegations conflict with the actual Agreement terms. They note that Plaintiff has not attached the Agreement documents to the complaint or FAC or alleged specific terms which Defendants contend conflict with the allegations. Instead, Defendants provide purported Agreement documents in their reply papers as evidence and rely on these. As explained above, a demurrer may only be based on the face of the complaint, exhibits thereto, and judicially noticeable matters. Defendants' exhibits are therefore improper extrinsic evidence outside the scope of a demurrer.

B. Timeliness

Defendants contend that the causes of action accrued when Plaintiff first discovered the underperformance of the System, by June 2019. However, that is not correct. Plaintiff alleges that the Agreement requires Defendants to maintain the required output throughout the life of the System, it had "issues" with the System not operated at that output, and it simply gave a notice of an underperformance in June 2019. This does not apply to subsequent instances of underperformance but is instead, on the face of the pleading, merely potentially nothing more than an example of one instance of underperformance. By the allegations, it is possible that subsequent instances of underperformance occurred and that claims for those may not be untimely. Moreover, even if Defendants were correct as to the claims for underperformance, this allegation and date of 2019 has no bearing on the claims for the lack of maintenance and resulting building damage. Plaintiff has pleaded only one date for that, February 2024, and that date is only about five months before Plaintiff filed the complaint.

On the face of the pleadings, no cause of action is necessarily untimely. The fact that a cause of action may possibly be untimely, as explained above, is not the standard. The cause of action must necessarily be untimely on the face of the pleading for a demurrer to lie on this basis.

IV. Conclusion

The court OVERRULES the demurrer in full. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

5. 24CV06452, Redwood Credit Union v. Segura

Plaintiff Redwood Credit Union ("Plaintiff") filed the complaint in this action against defendants Kristian J. Segura ("Defendant"), seeking possession of personal property and for breach of contract, claim and delivery, and declaratory relief, arising out of a retail installment sales contract for the sale of a 2015 GMC Yukon XL, VIN 1GKS2HKC7FR588612 (the "Vehicle").

Defendant has filed a motion to dismiss, and to compel arbitration pursuant to CCP § 1281.2.

I. Governing Law

A. Compelling Arbitration

A party seeking to compel arbitration pursuant to CCP § 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." *Mansouri v. Sup. Ct*. (2010) 181 Cal.App.4th 633, 640-641. "The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute." *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236. "Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability [or waiver]." *Id*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.

II. Motion to Dismiss and Demurrer

Defendant has filed a motion to dismiss, however such motions are not the norm in California. However, Defendant cites the statute relating to demurrers, and therefore this Court treats it as such. Defendant fails to raise a basis under which the Complaint is insufficient as a matter of law.

Defendant has filed a notice of non-opposition but did so before the time when an opposition would be due. Therefore, it has no effect. Plaintiff's opposition was due nine court days before the hearing. CCP § 1005. They have filed a timely opposition.

Defendant raises argument averring that this court does not have jurisdiction, specifically contending that this court has no jurisdiction, because jurisdiction is vested with an arbitrator. There are various reasons why this is incorrect. It is worth noting that Defendant asks this Court to compel Plaintiff to arbitration, which seems to concede the issue of jurisdiction that he asserts. This Court has various powers over the arbitration proceedings. See CCP § 1286.2.

Confusingly, despite having no issue with the result of being compelled to arbitration, Plaintiff feels the need to assert that Defendant cannot bring the motion, because Plaintiff never refused to arbitrate. The filing of a lawsuit by a plaintiff is sufficient to show that plaintiff has refused to arbitrate claims, allowing a defendant to move for arbitration. *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577. Regardless of Plaintiff's extraneous arguments, the

matter must be arbitrated under federal rules, which bears no impact on the sufficiency of the Complaint. The Court has jurisdiction.

Defendant's demurrer is OVERRULED.

III. Compelling Arbitration

Defendant moves the Court to compel arbitration. Defendant has provided evidence of an arbitration agreement. Plaintiff has filed a non-opposition to that motion.

The motion to compel arbitration is GRANTED. Defendant's request to dismiss the action is DENIED.

A. Stay

Issuance of the stay is mandatory upon granting the motion. CCP § 1281.4; see also *OTO, supra*, 8 Cal.5th at 140. A stay of the present proceedings is GRANTED. This matter shall be stayed pending the outcome of the Arbitration.

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).

6. 25CV01332, Brumley v. Iron Oak Home Loans, Inc.

Plaintiff Verrina Brumley ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Iron Oak Home Loans, Inc. ("Iron Oak"), Forge Trust co. ("Forge"), CFBO Beverly Shane IRA Account No. 844275 ("CFBO"), John Shane and Beverly Shane, in their capacity as co-trustees of the Shane Family Trust dated November 17, 2005 (the "Shanes"), Sunwest Trust ("Sunwest", together with all other defendants, "Defendants"), and Does 1-20. This matter is on calendar for Plaintiff's motion for preliminary injunction under CCP §§ 526 and 527. It is GRANTED conditioned on Plaintiff posting a bond of $66,003.73.

I. Facts and Procedural History

Plaintiff is the current owner of the property located at 8520 and 8522 Alden Lane, Windsor, California (the "Property"). Plaintiff resides there. Defendants, other than Iron Oak, are the mortgagor for the Property. Iron Oak is the mortgage servicer and mortgage broker. On October 1, 2018, Plaintiff obtained a loan through Defendants secured by the Property, with an interest rate of 10.5%. This is a balloon mortgage with a maturity date of November 1, 2020, at which point the full amount became due. Plaintiff has a monthly interest-only payment of $2,712.50. Plaintiff and Defendants executed a loan modification agreement with an extension on the maturity date to May 1, 2021.

Plaintiff is in default of the payments on her loan. She is also in arrears on property taxes and has failed to make homeowners insurance payments. Defendants issued a notice of Default on July 3, 2024. On November 19, 2024, Plaintiff filed for bankruptcy protection under Chapter 13.

Defendants received an exemption to proceed with foreclosure proceedings from the bankruptcy court.

Prior to the issuance of the Temporary Restraining Order, Defendants had initiated foreclosure on the property and scheduled a foreclosure sale for March 14, 2025. The Complaint was filed on March 10, 2025. Plaintiff's application for TRO and the injunction followed on March 12, 2025, and the TRO issued. This hearing follows to determine whether a preliminary injunction is appropriate.

II. Motion for Preliminary Injunction

The matter now before the court is the Plaintiff's motion for preliminary injunction. Plaintiff seeks to enjoin Defendants from effectuating a foreclosure sale.

The ultimate purpose of a preliminary injunction is to preserve the status quo. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528. The court may only grant such a preliminary injunction where the Plaintiff has a right to equitable relief if the case goes to trial. *Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995-998. CCP §526 lists the specific circumstances where an injunction would be appropriate. These grounds include whether Plaintiff appears entitled to the requested relief, whether the requested relief includes a prayer to restrain the actions at issue, whether continued activity would create waste or great or irreparable injury to a party, and whether a party is about to do something regarding the subject matter of the action and tending to render judgment ineffectual, among others. CCP §526(a).

As is usual with all injunctions, a preliminary injunction will issue only if there is no adequate legal remedy. CCP § 526. The party seeking the injunction must show an imminent threat of irreparable injury, often equated with an "inadequate legal remedy." CCP § 526(a)(2); *Korean Philadelphia Presbyterian Church v. Cal. Presbytery* (2000) 77 Cal.App.4th 1069, 1084.

The requirement that the injury be "imminent" simply means that the party to be enjoined is, or realistically is likely to, engage in the prohibited action. *Korean Philadelphia Presbyterian Church*, supra. The court should not grant the injunction if the conduct or injury complained of is not occurring. *Cisneros v. U.D. Registry, Inc*. (1995) 39 Cal.App.4th 548, 574. The irreparable injury will exist if the party seeking the injunction will be seriously injured in a way that later cannot be repaired. *People ex rel. Gow v. Mitchell Bros., Etc.* (1981) 118 Cal.App.3d 863, 870-871.

The party seeking a preliminary injunction must also demonstrate a reasonable probability of success. See CCP § 526(a)(1); *San Francisco Newspaper Printing Co., Inc. v. Sup.Ct. (Miller)* (1985) 170 Cal.App.3d 438, 442. Plaintiff must make a prima facie showing that he is entitled to relief under these standards but need not rise to the requirements for a final determination. *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 138. *Scaringe v. J.C.C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, at 1543, provides an example of how to determine whether the plaintiff has satisfied this requirement. The plaintiff in *Scaringe* sought to halt construction that would block his view. The court stated that in order to show a reasonable probability of success, the plaintiff had to demonstrate an enforceable servitude or CCRs.

The court must conduct a two-prong equitable balancing test, weighing the probability of prevailing on the merits against the determination as to who is likely to suffer greater harm. *Robbins v. Sup.Ct.* (1985) 38 Cal.3d 199, 206. *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633. This determination involves a mix of the two elements, and the greater the Plaintiff's showing on one element, the weaker it may be on the other. *Butt v. State of Calif.* (1992) 4 Cal.4th 668, 678.

If the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529.

III. "Prohibitory" vs. "Mandatory" Injunctions

"[A]n injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties." *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-448. (rejecting "preservation of status quo" as test for prohibitory injunction). An order that a party not encumber or dispose of assets is prohibitory because "[i]t directs affirmative inaction by defendant, not affirmative action" *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048.

With respect to preliminary injunction, courts should only grant mandatory preliminary injunctions "in extreme cases where the right thereto is clearly established." *Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493; see also, *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184; *Brown v. Pacifica Found., Inc.* (2019) 34 Cal.App.5th 915, 925; *Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295; *Hagen v. Beth* (1897) 118 Cal. 330, 331.

The injunction sought here is prohibitory. It orders that Defendants not take affirmative actions in foreclosing on the property. Preventing Defendants from pursuing or causing to be completed a foreclosure sale is a prohibitory request. Defendants need only take no action to comply.

IV. Irreparable Injury

There is a threat of irreparable harm where there is an "inadequate legal remedy" or where the injury cannot be readily repaired or undone. CCP § 526(a)(2); see *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.

Real property is generally considered unique so that damages cannot readily make up for any loss or injury. See CC § 3387. However, this is not necessarily true where the real property is solely for investment, in which case damages may be an adequate remedy, rendering an injunction unnecessary. *Jessen v. Keystone Sav. & Loan Ass'n* (1983) 142 Cal.App.3d 454, 458. Plaintiff offers evidence that she currently resides at the Property, and accordingly, will be subject to irreparable harm if the injunction is not granted. Given that real property is unique, this seems inarguable. Iron Oak makes no argument in response as to the irreparable nature of the harm. Based on the evidence Iron Oak's harm appears to be entirely monetary. Accordingly, however frustrating to Defendants the delay caused by an injunction may be, the balance of this factor weighs strongly in favor of Plaintiff.

V. Likelihood of Success on the Merits

Plaintiff argues that she has a substantial likelihood of prevailing on the matter because the loans were usurious, and Defendants seek to foreclose on properties not secured by the loan. Iron Oak opposes, averring that Plaintiff cannot prevail on her causes of action.

It is worth noting that Plaintiff offers no evidence that the loans were usurious beyond their conclusion to this effect and the rate charged. Non-consumer loans are capped according to the rate charged at the San Francisco Federal Reserve Bank ("SFFRB"). See Cal. Const., art. XV, § 1 (2)(b). Consumer loans are always capped at 10%. Cal. Const., art. XV, § 1 (1). No evidence is offered as to the current rate of the SFFRB at the time the loan was issued. Iron Oak offers evidence that this was a business loan, offered substantially less protection. Furthermore, usury claims only void the interest on the transaction, and make no impact on the principle still owed. *Gregg v. Phillips* (1930) 105 Cal.App. 132, 133. Plaintiff even concedes that she owes in excess of $100,000 if the usury claims are found to prevail, and is without explanation as to how she can avoid foreclosure thereon.

Defendants also argue that loans by brokers are generally exempt from usury laws. Cal. Const., art. XV, § 1. Plaintiff points out on reply that this expectation is not without limits, and that the broker must be acting for compensation in their capacity of arranging the loan. Civ. Code, § 1916.1. Defendants present no evidence related to their compensation, but Plaintiff offers no evidence to refute the position. It appears a dubious contention that Iron Oak performed this function for free. No party has made a persuasive showing on this issue.

Iron Oak also offers evidence that while there are two APNs associated with the property, Plaintiff avers in her bankruptcy documents that it is a single parcel. Furthermore, Plaintiff offers no evidence that the addresses are distinguishable beyond the fact that they have two different street addresses. Defendants do not show evidence of when the second APN was issued, or whether its omission on the loan documents occurred. Accordingly, this minimal information weighs lightly in favor of Defendants.

Based on the evidence presented, the Court finds that Plaintiff has made a relatively weak showing that she will prevail.

VI. Balancing Test

While Plaintiff has shown relatively low probability of prevailing on the merits, the irreparable harm is obvious. The great weight of the irreparable harm to be suffered by Plaintiff in the event injunction issues means that it appears erroneous to deny Plaintiff's right thereon.

VII. Undertaking

As noted above, if the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine

the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should consider lost profits or other damages as well as costs of defense where trial is necessary to defeat the preliminary injunction but should not consider the strength of plaintiff's case on this point. *Id*. at 15-16. The court also has the authority to waive the bond requirement if it finds that the plaintiff is indigent or unable to obtain sufficient sureties, but the court must weigh all relevant factors. CCP § 995.240

Plaintiff argues that the security against the home is sufficient to allow the Court to waive the bond amount. For this proposition, Plaintiff cites various unpublished federal authority. The authority does not stand for the proposition for which Plaintiff offers it. The federal cases cited offer no salient analysis of this Court's obligations under the CCP. Plaintiff's cases only relate to the Federal Rules of Civil Procedure. See, e.g., *Dougherty v. Bank of America, N.A.* (E.D. Cal., Feb. 17, 2017, No. 2:15-CV-01226-TLN-DB) 2017 WL 1349012, at *6. Accordingly, they are entitled to no weight in interpreting the Court's obligations under CCP § 529. Plaintiff also cites one superior court case, which similarly provides no authority upon which this Court may rely. In the alternative, Plaintiff proposes a single month's mortgage payment as security. This is entirely unpersuasive, as the probability that this action will terminate in a single month is not anchored in the realities of civil litigation. A single month's mortgage does not reasonably represent the expected damages of granting the injunction.

Iron Oak avers that Plaintiff should have to put forward the full amount due as the undertaking, totaling $371,614.76. This does not appear synonymous with the harm in granting the injunction, which is the standard by which the bond is set. In large part, the value of real property remains relatively constant. However, Iron Oak raises several meritorious categories of items which appear to be articulable damages in the event the injunction is wrongly issued. Plaintiff ostensibly has overdue taxes on the property which Defendants may have to pay to avoid county foreclosure, amounting to $4,293,20. Defendants have, to date, $6,385.53 in insurance costs. Iron Oak also avers an estimated $6,500 in attorney's fees.

Furthermore, it appears appropriate to guard against the possibility that the Property may devalue while Defendants are enjoined, sufficient that it will limit their recovery when foreclosure occurs. Plaintiff's estimation of mortgage payments bears some value on the ongoing harm to Defendants. Assuming an optimistically speedy adjudication of this litigation, it may last at least eighteen months. Plaintiff's monthly payment is $2,712.50. Calculating for a year and a half, that totals $48,825.

Therefore, between ongoing mortgage payments, overdue taxes, attorney's fees, and insurance costs, the appropriate bond amount is $66,003.73.

VIII. Conclusion

Based on the foregoing, the request for Preliminary Injunction is GRANTED, conditioned on Plaintiff posting a bond of $66,003.73. Upon Plaintiffs' posting of the undertaking the preliminary injunction will issue, prohibiting Defendants from pursuing or causing to be completed a foreclosure sale on the Property.

Plaintiff shall post a bond of $66,003.73 within seven (7) days of this order.

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(a) and (b).

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