

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 2, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

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

TO JOIN ZOOM BY PHONE:

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

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 24CV03857, Simpson v. Burbank Housing Property Corporation

The Court **GRANTS** Plaintiff Ariael Simpson's ("Plaintiff") unopposed motion for final approval of class and representative PAGA action settlement.

I. PROCEDURAL HISTORY

Plaintiff brought this class action alleging labor code violations against Defendant Burbank Housing Property Corporation ("Defendant") by way of their employment practices and policies. (Memorandum of Points & Authorities ["MPA"], 3:8-16.) After Plaintiff filed the Complaint, the parties exchanged information informally including statistical data and written policies and procedures relating to wages, meal breaks, rest breaks, overtime compensation, and expense reimbursement. (MPA, 3:18-26.) The parties then participated in a private mediation, which included arms-length, informed negotiations. (*Id.* at 3:26-27.) The parties ultimately agreed to settle this action on an all-inclusive basis for \$325,000.00. (MPA, 4:16-18.) Plaintiff moved unopposed for preliminary approval of the class and representative PAGA action settlement, which the Court granted on February 4, 2026,

setting a Final Fairness Hearing which later was continued per ex parte application to September 2, 2026. Plaintiff now moves for final approval of the parties' Settlement.

II. ANALYSIS

Legal Standard for Final Fairness and Approval

After preliminary approval of a settlement, the court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not for the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) In making this determination, the court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Plaintiff's Motion for Final Approval

The Court considers the following for final approval of Plaintiff's motion regarding settlement:

a. Class Members

The Class is all current and former non-exempt employees of Defendant who worked for Defendant in California as a non-exempt employee at any time during the Class Period, from June 28, 2020, through preliminary approval of the Settlement by the Court. (Otkupman Decl., Ex. B, Settlement Agreement, §§ 1.5, 1.12.)

b. Settlement

The Settlement means the disposition of this action effected by the parties' agreement and the Judgment entered by the Court after final approval, for the maximum settlement amount of \$325,000.00 to be paid by Defendant. (Otkupman Decl., Ex. B, Settlement Agreement, §§ 1.1, 1.19, 1.21, 1.22, 1.25, 1.28, 1.44.)

c. Administrator

The parties have agreed to ILYM Group as Settlement Administrator and seek approval of administrator expenses payment up to \$15,000.00. (*Id.* at Ex. B, Settlement Agreement, §§ 1.2, 1.3,

3.2.3.) In the motion, Class Counsel requests \$7,850.00 in total for ILYM Group's fees. (Castro Decl., ¶ 15.)

d. Attorney Fees and Costs

The settlement allows approval of Otkupman Law Firm, A Law Corporation, as Class Counsel and an approval of attorney fees of 35% of total settlement and costs up to \$20,000.00. (*Id.* at Ex. B, Settlement Agreement, §§ 1.6, 1.7, 3.2.2.) The motion seeks approval of \$113,750.00 in attorney's fees (35% of total settlement) and an approval of costs of \$8,477.85.

e. PAGA/LWDA Allocation

The PAGA Payment shall be \$15,000.00 with 75% for the LWDA award (\$11,250.00) and 25% for the Individual PAGA Aggrieved Employee award (\$3,750.00). (*Id.* at Ex. B, Settlement Agreement, §§ 1.34, 3.2.5.)

f. Class Representative Service Payment

Plaintiff as Class Representative seeks approval of up to \$10,000.00 for Plaintiff's Class Representative Service Payment. (*Id.* at Ex. B, Settlement Agreement, §§ 1.13, 3.2.1.)

g. Fair, Adequate, and Reasonable

A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

In making this determination, the court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Prior to settlement, the parties engaged in informal discovery and participated in private, arms-length mediation, and determined that the proposed settlement was fair and reasonable. (MPA, 7:9-14.) Plaintiff argues that the settlement amount and the payment and expenses requested are presumptively fair and reasonable under all relevant circumstances considering Plaintiff's claims. (MPA, pp. 7-9.) No party has filed any objection to the settlement or opposition to the final approval motion.

Application

The motion's arguments support the presumption of fairness in the parties' settlement, reached after the parties participated in arm's length mediation and extensive formal and informal discovery. The Settlement amount is substantial in total and both sides faced uncertainty and risks absent settlement. Class Counsel also has extensive experience in Class Action litigation. Overall, the Court finds that the settlement, payment of fees and costs, and distribution of funds is fair, reasonable, and adequate, and is in the best interests of the Class Members.

III. CONCLUSION

Final approval of Plaintiff's class action settlement is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order and judgment lodged with the motion.

2. 25CV05025, Najee v. Tribal First

The hearing on self-represented Plaintiff Errol Najee's Motion for Relief is **CONTINUED** to October 21, 2026, at 3:00 P.M. in Department 17. The motion is not accompanied by any Proof of Service showing that Plaintiff properly and timely served the moving papers and notice of the hearing date on all parties in this matter, as is required under California Rules of Court, Rule 3.1300(c). At least five court days prior to the next hearing on the motion, Plaintiff shall file a Proof of Service showing timely and proper notice of the hearing date and moving appears, otherwise the Court will deny the motion as procedurally deficient.

3. 25CV06321, Stewart v. Providence Medical Foundation

Plaintiff Samantha Stewart ("Plaintiff") moves to compel Defendant Gansevoort Dunnington Jr., M.D.'s further responses to Form Interrogatories – General, Set One. The hearing on the motion is **CONTINUED** to September 11, 2026, to be heard with the three other discovery motions filed by Plaintiff. The Court notes that Plaintiff's Reply makes reference to an Opposition filed by Defendant, but none is available on the Court's record for review. This may be due to a clerical error, but the Court will allow Defendant to file the missing Opposition for the Court's consideration prior to the next hearing date.

4. 25CV08806, Stockham Construction, Inc. v. Rudolph & Sletten, Inc.

Cross-Defendant Judicial Council California ("Judicial Council") moves for an order staying proceedings as to Cross-Complainant Rudolph & Sletten, Inc.'s ("R&S") Cross-Complaint until the completion of mediation in accordance with the Construction Manager at Risk Contract ("CMAR Contract") governing the parties' dispute. (Motion, 2:2-9.)

The Motion is **GRANTED**, for the reasons stated below.

I. PROCEDURAL HISTORY

The Judicial Council and R&S entered into the CMAR Contract in 2015, under which R&S was to construct the New Santa Rosa Criminal Courthouse Project, also known as the Sonoma County New Hall of Justice (“Project”). (Motion, 6:17-21.) Stockham Construction, Inc. (“Stockham”) filed its Complaint against R&S in 2025 alleging that it incurred damages related to the Project as a subcontractor of R&S. (*Id.* at 6:22-25.)

R&S filed a Cross-Complaint on March 9, 2026, naming the Judicial Council as a Cross-Defendant and asserting three of ten causes of action against the Judicial Council for breach of contract, breach of the implied covenant of good faith and fair dealing, and indemnity. (*Id.* at 6:27-28, 7:1-4.) These causes arise from the CMAR Contract, which also provides that all disputes between the two parties shall be resolved through a mandatory, nine-step dispute resolution process under Article 9 of the CMAR Contract. (*Id.* at 7:5-15; Ehrlich Decl., ¶¶ 2-3, Exhibit 1, § 9.4; Cross-Complaint, Exhibit 1, § 9.4.)

Now, the Judicial Council moves under Code of Civil Procedure (“C.C.P.”) section 128 for an order staying proceedings as to R&S’s Cross-Complaint until after the mandatory dispute resolution process is completed. R&S filed an Opposition to the Motion, to which the Judicial Council submitted a Reply. The parties’ arguments are considered below.

II. ANALYSIS

The Judicial Council’s motion relies on C.C.P. section 128(a)(8), which provides that, “every court shall have the power to... amend and control its process and orders so as to make them conform to law and justice.” Though the Judicial Council quotes language from *Walker v. Superior Court* (1991) 53 Cal.3d 257 stating “trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency,” the Court was not able to locate this quoted language in the text of that case. (Motion, 9:19-21.) It is unclear to the Court if this is an incorrect citation or misquote. They cite a separate case, *Federal Ins. Co. v. Superior Court* (1998) 60 Cal.App.4th 1370, 1372, in which a subcontractor and a prime contractor have a dispute on a public works project that was governed by an agreement providing for resolution of disputes through arbitration. In that case, the Court of Appeal held that the subcontractor's suit against the prime contractor's surety ought to be stayed until completion of the arbitration.

The Judicial Council argues that the CMAR Contract requires a mandatory dispute resolution process, which R&S did not first complete before filing the Cross-Complaint in this action. (Motion, 11:9-19.) The mediation date is already scheduled for October 20 and 21, 2026, through JAMS, so the Judicial Council argues that staying the action will honor the parties’ contractual obligations and promote judicial economy. (*Id.* at pp. 12-14.)

R&S argues that Article 9 in the CMAR Contract was designed to resolve disputes contemporaneously during the project and that mediation required the parties’ joint participation,

which the Judicial Council refused to do when R&S followed that procedure, submitted its claims, and requested mediation during the project. (Opposition, pp. 5-6.) R&S also points out that the authority that the Judicial Council cites in the motion is discretionary and should be denied.

The Reply argues that the Opposition fails because the Judicial Council never refused or prevented mediation and the Cross-Complaint and Opposition both fail to allege that any of the causes of action in the Cross-Complaint stems from a Stockham claim submitted by R&S to the Judicial Council under Article 9, which the Judicial Council refused to mediate. (Reply, pp. 3-5.) The Reply also reaffirms some of the arguments stated in the Motion.

The Court finds that it would promote judicial economy and honor the parties' contract to allow the pending contractual dispute resolution scheduled for October to complete and stay the Cross-Complaint until completion. In the Court's discretion, the Court will grant the motion.

III. CONCLUSION

The motion is **GRANTED**. The Judicial Council shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

5. 26CV02280, Habsburg v. WCV, LLC

Defendant WCV, LLC d.b.a. Nimble Vineyards ("Defendant") demurs to Plaintiff Gregor Habsburg's Complaint for Declaratory relief for failure to join indispensable parties necessary to the litigation. The Demurrer is **SUSTAINED with leave to amend**. Plaintiff shall file and serve the First Amended Complaint within 10 days of receiving notice of entry of this Court's order.

Also, Defendant's requests for judicial notice are **GRANTED**.

PROCEDURAL HISTORY

Plaintiff's Complaint alleges that Plaintiff owns real property located as 4900 Wallace Creek Road, Sonoma County, California (APN 11-130-044), and Defendant owns property nearby at 4300 Wallace Creek Road, Sonoma County, California, commonly known as the "Nimble Property" or "Nimble Vineyards." (Complaint, ¶¶ 12-13.) These properties are accessed via Wallace Creek Road, which includes a segment known as Camulos-Dahlgren Road that crosses Defendant's property. (*Id.* at ¶ 14.) The properties are also both subject to a recorded Covenant, attached to the Complaint as Exhibit A, regarding the repair and maintenance of that road. (Complaint, ¶ 15.) Other non-parties who are neighbors of Plaintiff and Defendant own properties in the area that are also subject to the Covenant. (*Id.* at ¶ 17.)

After severe storms damaged the shared road in 2025, Defendant proposed a repair project through a contractor known as Cats4U to repair the storm damage at an approximate total cost of \$251,000. (*Id.* at ¶¶ 22-25.) The other parcel owners that shared the road voted on other competing

repair proposals and ultimately voted in favor of work to be done by Rege Construction for a total cost of about \$79,000. (*Id.* at ¶¶ 25-27.) Even though the majority of the owners voted for this repair proposal, Defendant refused to recognize the validity of the vote and threatened legal action when they attempted to proceed with the repairs. (*Id.* at ¶¶ 28-31.)

Thereafter, Defendant moved forward with the repairs with Cats4U, unapproved by a majority of the parcel owners, and then demanded payment for the repairs. (Complaint, ¶¶ 32-35.) Now Plaintiff seeks declaratory relief from the Court that Plaintiff has no obligation to pay for costs associated with the unapproved repairs by Cats4U. (*Id.* at ¶¶ 36-41.)

Defendant takes issue with the parcel owners not being named as parties in the Complaint and the parties' counsel met and conferred regarding this, but were unable to reach an agreement on whether the Complaint should be amended to name these additional parties. (Withers Decl., ¶¶ 1-4.) Now Defendant demurs to the Complaint on this basis. Plaintiff opposes the demurrer, to which Defendant replied.

REQUESTS FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to these limitations, the Court **GRANTS** Defendant's requests for judicial notice of:

1. Plaintiff's Complaint
2. The Covenant Regarding Repair and Maintenance of Private Road recorded in Sonoma County on April 10, 1990
3. The Easement Agreement recorded in Sonoma County on April 10, 1990

ANALYSIS

Legal Standard

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

disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Demurrer

Plaintiff's Complaint failed to name any of the parcel neighbors that were subject to the Covenant and who were involved in the voting for repair proposals. (Demurrer Memorandum of Points and Authorities ["Demurrer"], 2:15-23.) The Covenant sets forth the repair and maintenance procedures and the other parcel owners are subject to these procedures yet they have not been named as parties. (*Id.* at pp. 3-4.) Defendant argues that, under Code of Civil Procedure section 389, these parcel owners are indispensable parties because they are materially interested in the action and complete relief cannot be accorded without all parcel owners involved. (*Id.* at pp. 4-8.)

Opposition

Plaintiff argues that the parcel owners are not indispensable because the action was not brought to enforce joint obligations of all the owners, but rather to determine if Defendants can charge Plaintiff for the Cats4U repairs. (Opposition, pp. 3-8.) On that issue, Plaintiff argues the Court can accord complete relief between the current parties without impacting the other parcel owners whose interests are aligned with Plaintiff's. (*Ibid.*)

Reply

The Reply reaffirms that complete relief cannot be accorded because the Court cannot declare that Plaintiff owes nothing to Defendant without first determining whether the majority vote was valid and whether the Cats4U repairs were properly approved under the Covenant's procedures, which issues affect every parcel owner and not only Plaintiff. (Reply, pp. 4-7.) They would be required to be joined to protect their interests as to these issues before the Court can decide on the issues. (*Id.* at pp. 7-9.)

Application

The Court finds that the underlying issue raised by Plaintiff's request for declaratory relief is whether the repairs by Cats4U were valid under the Covenant's procedures and whether the majority of parcel owners subject to the Covenant voted for these repairs. Before the Court may decide on this underlying issue, all interested parties must be joined. As such, the Demurrer is **SUSTAINED with leave to amend** so that Plaintiff may join all parcel owners subject to the Covenant and eligible to vote on the storm repairs.

IV. CONCLUSION

Based on the foregoing, Demurrer is **SUSTAINED with leave to amend**. The First Amended Complaint shall be filed within 10 days of notice of entry of this order. Defendant shall submit a written order on this motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. MCV-256077, Looney v. Singh

Self-represented Defendant Ajitpal “Ajit” Singh’s (“Defendant”) motion to vacate default judgment is **DENIED** under Code of Civil Procedure section 473.5.

I. PROCEDURAL HISTORY

Plaintiff’s Complaint asserts money due, breach of written contract for services sold and provided, open account, account stated, quantum meruit, and unjust enrichment, for collection services based on a written contract entered with Young’s Market Company for credit to provide wholesale wine and alcohol to Defendants. (Complaint, ¶ 6.)

On July 23, 2021, the Summons and Complaint were served by personal service on “AJIT SINGH, INDIVIDUALLY, DBA FW LIQUOR & GROCERY AND AS PERSONAL GUARANTOR OF THE FW LIQUOR & GROCERY.” (Proof of Service of Summons, ¶¶ 3.a., 5.a.) The address where he was served was 3127 Williamburg Drive, San Jose, California 95117. (*Id.* at ¶ 4.) On October 14, 2021, after a lack of response to the Complaint, Plaintiff requested entry of default. (See Request for Entry of Default dated October 14, 2021.) On November 3, 2021, a default judgment was entered against Defendant in the amount of \$7,322.27. (See Default Judgment dated November 2, 2021.)

However, Defendant claims he was never served claiming that the Proof of Service of Summons is facially defective and presumptively false because he did not reside at that address at the time, had no actual notice of the lawsuit, and in November of 2020 sold the business. (See Motion, pp. 1-2.) He moves to vacate the default judgment entered on November 3, 2021, and to be allowed leave to file an Answer and defend the action on the merits. Plaintiff opposes the motion.

II. ANALYSIS

Legal Standard

Per C.C.P. section 473.5(a), “when service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action.” The deadline to file a motion under this section is the earlier of the following: (1) within two years after entry of a default judgment against him or her; or (2) within 180 days after service on him or her of a written notice that the default or default judgment has been entered. (C.C.P. § 473.5.)

Per Civil Code section 1788.61(a)(1), notwithstanding C.C.P. section 473.5, a judgment debtor may move to set aside a default or default judgment where service of a summons in the action brought by a debt buyer has not resulted in actual notice to the judgment debtor in time to defend an action and a default has been entered against the person in the action.

Defendant's Motion to Vacate

Defendant argues that the Court should vacate the default judgment entered and allow him to file an Answer for the following reasons:

1. He was never served properly.
2. He had no actual notice of the lawsuit until receiving the Abstract of Judgment on May of 2026.
3. He sold the subject business, FW Liquor & Grocery, which was located at the location that the Proof of Service of Summons states personal service was effectuated, one year prior to the filing of the lawsuit.
4. California's ABC records confirm that his liquor license was transferred and cancelled on December 22, 2020.
5. He was residing at a different address at the time the lawsuit was filed.
6. The Proof of Service of Summons is facially defective and presumptively false because it purports to have completed service on Defendant at an address where he no longer had any presence.
7. Plaintiff has no admissible evidence that the debt was legally assigned to Collectronics of California.
8. Plaintiff unreasonably stayed enforcement of the judgment for over four and a half years which has resulted in prejudice to Defendant.

(Motion, pp. 3-5.)

Opposition

Plaintiff argues that labelling the Proof of Service of Summons as "facially defective" does not identify a specific error with it that shows the Summons and Complaint were not served in a manner authorized by statute. (Opposition, 1:3-17.) Even if Defendant sold his business or lived in an unidentified address different to the one identified in the Proof of Service, Defendant did not adequately establish that the method of service reflected in the Proof of Service was faulty. (*Ibid.*)

Application

Plaintiff filed a Proof of Service of Summons of the Complaint and Summons which declared that the Summons and Complaint were personally served on Defendant. Defendant has failed to invalidate this apart from claiming that he sold his business or cancelled his liquor license prior and other things. Defendant also failed to bring this motion in a timely manner under C.C.P. section 473.5. For these reasons, the Court will not grant Defendant's motion.

III. CONCLUSION

Based on the foregoing, Defendant's motion to quash is **DENIED**. 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).

7. SCV-269300, Garcia v. RAC Acceptance East, LLC

Defendant RAC Acceptance East, LLC's ("RAC" or "Defendant") motion for Judgment on the Pleadings ("JOTP") as to the First, Second, Third, Fourth, Sixth, Eighth, and Ninth Causes of Action in Plaintiff Isabel Garcia's ("Plaintiff") Second Amended Complaint ("SAC") is **GRANTED without leave to amend** only as to the Eighth and Ninth Causes of Action in the SAC and **DENIED** as to all else. Plaintiff shall file the Third Amended Complaint within 10 days of receiving notice of entry of this Court's order.

I. PROCEDURAL HISTORY

The SAC alleges that she worked as a Sales Manager for Acceptance Now out of the Ashley HomeStore in Rohnert Park, California. (SAC, ¶ 6.) During a part of that time, Defendant Rajan Singh was hired as a Sales Manager as well and Plaintiff alleges that he began to sexually harass her on a regular basis with conduct that included, but is not limited to, leering at her, staring at her breasts, making comments about her appearance, and brushing his hand against her body without consent while attempting to make the contact appear unintentional. (*Id.* at ¶¶ 7-9.) The alleged behavior culminated in him sexually assaulting her in his closed office, after which Plaintiff reported the incident to her supervisor immediately. (*Id.* at ¶¶ 9-12.)

Plaintiff alleges that she took a leave of absence from work thereafter feeling distraught and traumatized from the sexual assault incident, but during her absence her employer failed to remove Defendant Singh from his position and Plaintiff could not return to her position out of fear for her safety. (SAC, ¶ 14.) Plaintiff was forced to transfer into a lower paying position with Acceptance Now so that she would not be required to work in the same place as Defendant Singh, then later was informed that her employment would be terminated. (*Ibid.*)

The SAC alleges eleven causes of action, all of which are alleged against RAC or Acceptance Now except for the Seventh Cause of Action for Negligent Hiring, Training, Supervision, and Retention which is only alleged as to Ashley HomeStore. (SAC, ¶¶ 16-70.) RAC moves for Judgment on the Pleadings ("JOTP") as to the First, Second, Third, Fourth, Sixth, Eighth, and Ninth Causes of Action. (JOTP, 1:2-15.) RAC's counsel met and conferred with Plaintiff's counsel about the grounds for the JOTP motion, but the parties did not reach a resolution as to the seven causes of action that are the subject of the motion. Plaintiff opposes the motion, to which RAC replied.

II. JUDGMENT ON THE PLEADINGS

Legal Standard

A defendant may move for judgment on the pleadings on the grounds that the court has no jurisdiction of the subject of the cause of action alleged in the complaint or because the complaint does not state facts sufficient to constitute a cause of action against that defendant. (C.C.P. § 438(c).)

A motion for judgment on the pleadings functions the same way as a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) The grounds for a motion for judgment on the pleadings appear on the face of the challenged pleading or from any matter judicially noticed by the court. (C.C.P. § 438(d).) In considering a motion for judgment on the pleadings, trial courts accept plaintiff's factual allegations in the pleading as true and give them liberal construction. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp.*, supra, at p. 999.) The complaint must be viewed in isolation and matters set forth in the answer will not be considered. (*Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951.)

Before filing a motion for judgment on the pleadings, the moving party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. (C.C.P. § 439.) If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading. (*Ibid.*)

Leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. (*Gami v. Mullikin Med. Ctr.* (1993) 18 Cal.App.4th 870, 876.)

Plaintiff's First, Second, Third, Eighth, and Ninth Causes of Action

Arguing that RAC never employed Defendant Singh and that he never acted as RAC's agent, the JOTP Motion states that the following causes of action are not viable against RAC: (1) First Cause of Action for Sexual Battery; (2) Second Cause of Action for Battery; (3) Third Cause of Action for Unlawful Sexual Violence; (4) Eighth Cause of Action for Intentional Infliction of Emotional Distress ("IIED"); and (5) Ninth Cause of Action for False Imprisonment. (SAC, ¶¶ 16-26, 48-60.) RAC argues that Plaintiff is required to allege facts sufficient to support both the underlying tortious conduct and a basis for imputing that conduct to RAC at the pleadings stage. (JOTP, 6:4-9.) While the SAC does allege the tortious conduct, RAC argues that it fails to allege that there existed any employment relationship between RAC and Defendant Singh, that Defendant Singh was acting as RAC's agent while committing the tortious conduct, or that Plaintiff alleged that she believed Defendant Singh was acting on RAC's behalf when he allegedly sexually assaulted her. (*Id.* at pp. 6-9.) RAC also argues that RAC is not liable for falsely imprisoning her. (*Id.* at 13:5-15.)

Plaintiff argues that whatever facts RAC argues were established through discovery have not been properly introduced in the JOTP motion through a request for judicial notice or a declaration for the Court's review, so they should not properly be considered for this pleadings-based motion. (Opposition, 6:21-27.) Furthermore, Plaintiff argues that RAC's ratification and agency arguments do not warrant granting the JOTP motion because, at the pleadings stage, a plaintiff may allege vicarious responsibility in the way it is alleged in the SAC and it must be accepted as true and reasonably construed in Plaintiff's favor for the purposes of this motion. (*Id.* at pp. 9-11.) Plaintiff agrees to voluntarily dismiss the Eighth and Ninth Causes of Action. (*Id.* at 11:14-17.)

The Reply re-emphasizes the arguments made in the JOTP Motion and argues that Plaintiff's ratification theory cannot be saved by inference. (Reply, pp. 1-5.)

Plaintiff's Fourth and Sixth Causes of Action

RAC argues that Plaintiff's Fourth Cause of Action for Sexual Harassment – Hostile Work Environment is not viable because the SAC fails to impute Singh's conduct to RAC and fails to allege that RAC did not take immediate and appropriate corrective action, outside of the two conclusory allegations in which Plaintiff's SAC states that all Defendants failed to protect her from Defendant Singh and created and allowed to continue a sexually hostile work environment. (JOTP, pp. 9-12.) RAC argues that Plaintiff's Sixth Cause of Action for Failure to Prevent Harassment/Retaliation is derivative of her underlying harassment claim, which is not adequately stated against RAC, so this claim fails too. (JOTP, 12:23-28, 13:1-4.)

Plaintiff argues that the Fourth and Sixth Causes of Action state FEHA claims independent of agency and that because the harassment claim ought to survive the JOTP motion, so too should the claim for failure to prevent harassment. (Opposition, pp. 7-9.)

The Reply argues that Plaintiff misrepresents what is alleged in the SAC and relies on contradictory conclusion in the Opposition to support her harassment claims. (Reply, pp. 5-6.)

Application

The Court finds that, at the pleadings stage, Plaintiff has sufficiently alleged facts to support her claims against RAC for the First, Second, Third, Fourth, and Sixth Causes of Action. Plaintiff has conceded that there are not facts sufficient for the Eighth and Ninth Causes of Action and has agreed to voluntarily dismiss them against RAC.

As such, the JOTP Motion is **GRANTED** only as to the Eighth and Ninth Causes of Action.

III. CONCLUSION

The JOTP motion is **GRANTED without leave to amend** only as to the Eighth and Ninth Causes of Action in the SAC and **DENIED** as to all else. Plaintiff shall file the Third Amended Complaint within 10 days of receiving notice of entry of this Court's order. RAC shall submit a written

order on its motion to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).