

**Judge Benson – Law & Motion – Wednesday, October 1, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 23CV01108 Linson, Joseph D v. Super Shopper Auto Sales, Inc et al.**

*EVENT: Petition to Confirm Arbitration Award*

The Court will hear from defense counsel. While it appears Defendant is entitled to costs under CCP § 1293.2, there is no explanation given as to how the amount requested was calculated. If the amount is based on attorney fees, the Court is not seeing an attorney fee clause in the copy presented.

**2. 24CV04261 Newrez LLC v. Ampere Solar Owner IV, LLC et al.**

*EVENT: Plaintiff's Motion for Entry of Judgment re: Defendant The Testate and Intestate Successors of Charles Hess, Believed to Be Deceased, and all Persons Claiming By, Through or Under Such Person Pursuant to Stipulate Pursuant to CCP 664.6*

The Court takes judicial notice of 25PR00119 and the fact that Charles Harold Hess, Jr. is the personal representative of the estate of Charles Harold Hess, Sr. However, there are procedural issues which need to be corrected before the Court can proceed:

- 1) Amend the pleading and name Charles Harold Hess, Jr. as personal representative of the estate of Charles Harold Hess, Sr., as a defendant.
- 2) Serve the amended pleading along with an amended summons on Charles Harold Hess, Jr. and file a corresponding proof of service.
- 3) Resubmit a stipulation that correctly refers to Charles Harold Hess, Jr. as the personal representative of the estate.
- 4) Resubmit a judgment that correctly refers to Charles Harold Hess, Jr. as the personal representative of the estate.

3. **25CV00289 Wells Fargo Bank, NA v. Garretson, Kylee**

*EVENT: Plaintiff's Motion for Order Deeming the Truth of Matters Specified in Plaintiff's Request for Admissions as Admitted*

Plaintiff's Motion for Order Deeming the Truth of Matters Specified in Plaintiff's Request for Admissions as Admitted is GRANTED. The Court will sign the proposed order.

4. **25CV00758 Mathisen, Kendall Lloyd et al v. Enloe Medical Center et al.**

*EVENT: Enloe Medical Center's Demurrer to Plaintiff's Complaint*

First Cause of Action – Neglect of a Dependent Adult

The demurrer is OVERRULED.

*Custodial Relationship*

Welf. And Institutions Code 15610.57

(b) Neglect includes, but is not limited to, all of the following:

...

(2) Failure to provide medical care for physical and mental health needs. A person shall not be deemed neglected or abused for the sole reason that the person voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment

Plaintiff's allegations must be accepted as true for the purpose of ruling on demurrer. (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 CA3d 593, 603) Here, we accept as true decedent was admitted to Enloe Hospital on a 5150 hold. There is no indication from the pleading that the hold was released prior to decedent leaving the hospital.

The 5150 hold allegations sufficiently allege a custodial relationship. As noted, the plain language of section 15610.57 specifically identifies mental health needs.

*Oroville Hospital v. Superior Court* (2022) 74 Cal.App.5th 382, 403:

We agree with plaintiffs that, to be deemed a caretaker or custodian for present purposes, Winn does not require that a defendant assume responsibility for all of the elder's needs. As our high court stated in *Winn*, what three statutory examples of neglect “each seem to contemplate is the existence of a robust caretaking or custodial relationship—that is, a relationship where a certain party has assumed a significant measure of responsibility for attending to one or more of an elder's basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” (*Winn, supra*, 63 Cal.4th at p. 158, italics added.)

[Emphasis Added]

Allegations of a 5150 hold fits the category “where a certain party has assumed a significant measure of responsibility for attending to one or more of an elder's [or in this case dependent adult's] basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance.” On demurrer we draw all reasonable inferences in favor of the plaintiff (see *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713)

By placing or accepting decedent as a 5150 hold, Enloe assumed a responsibility of one of his basic needs – to protect him from himself. This need is something that a competent able body adult would be capable of managing. By permitting decedent to leave the facility while he was on a 5150 hold, Enloe potentially failed to provide for his mental health need.

#### *Allegations re: “Dependent Adult”*

Welf. And Ins Code§ 15610.23. “Dependent adult”

(a) “Dependent adult” means a person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

[Emphasis Added]

The 5150 allegations sufficiently establish decedent was a dependent adult for purposes of demurrer. 5150 holds are typically not issued arbitrarily and presumably there were some serious reasons for the hold. These are reasonable inferences which we must make in favor of Plaintiffs at this stage.

#### *Allegations re: Recklessness are Sufficiently Plead*

The Court agrees with Enloe – the allegations concerning recklessness are, on the whole, conclusory. However, less particularity is required when it appears that defendant has superior knowledge of the facts, so long as the pleading gives notice of the issues sufficient to enable preparation of a defense. (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 458)

That appears to be the case here. Ostensibly, plaintiffs have no personal knowledge and were not present at the hospital when the events surrounding decedent's escape occurred. It follows that defendant has superior knowledge as to the underlying facts and circumstances.

#### Second Cause of Action – Willful Misconduct – Wrongful Death

The demurrer is SUSTAINED WITH LEAVE TO AMEND. Willful misconduct is not a separate tort, rather it is an aggravated form of negligence, differing in quality rather than degree from ordinary lack of care. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 526) Consequently, Plaintiff cannot allege a willful misconduct cause of action in addition to their negligence cause of action. However, Plaintiffs can amend to supplement their negligence cause of action with the willful misconduct allegations.

#### Fourth Cause of Action - Violation of State and/or Federal Laws/Regulations and/or the Patient's Bill of Rights Health & Safety Code §§ 1430, 1424, and 1424.5

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND as unopposed.

Plaintiffs shall amend, if they so choose, within 20 days' notice of this order. Enloe shall prepare the order.

### **5. 25CV00842 Bruce, Stephanie v. Cross, Michael et al**

*EVENT: Defendants Northern Rural Training and Employment Consortium and Michael Cross' Demurrer to Plaintiff's First Amended Complaint*

The Demurrer is sustained in part and overruled in part.

#### Fourth Cause of Action – Retaliation in Violation of Public Policy.

Defendant acknowledges a cause of action for retaliation would be viable (at least at this stage of the proceeding), and the issue raised in the Demurrer is as to the inclusion of the words "in violation of public policy." It is error for a trial court to sustain a demurrer when Plaintiff has stated a cause of action under any possible legal theory. See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966. In *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94 the Court stated:

"Although plaintiffs ground their request for injunctive relief solely on the basis of Civil Code section 3369, HN2 we are not limited to plaintiffs' theory of recovery in

testing the sufficiency of their complaint against a demurrer, but instead must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have, of course, long since departed from holding a plaintiff strictly to the "form of action" he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. (See, e.g., *MacIsaac v. Pozzo* (1945) 26 Cal. 2d 809, 815 [161 P.2d 449]; *Zellner v. Wassman* (1920) 184 Cal. 80, 88 [193 P. 84]; 3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 301, p. 1974.)”

*Id.* at 103. To establish a prima facie case of retaliation, a plaintiff must show that (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028): (1) the plaintiff was engaged in a protected activity; (2) the plaintiff suffered an adverse employment action; and (3) there was a causal link between the activity and the employment decision. Here, Plaintiff has so alleged. [See, First Amended Complaint at ¶¶28, 29, 30, 33, 70]. Thus, the demurrer is overruled as to the Fourth Cause of Action for Retaliation in Violation of Public Policy.

#### Sixth Cause of Action – Failure to Accommodate Physical Disability in Violation of Public Policy.

Although Defendants cite to *Hernandez v. Rancho Santiago Cmty. College Dist.* (2018) 22 Cal.App.5th 1187, 1193-1194, the elements differ slightly from those proffered in the Defendants’ Motion. The *Hernandez* opinion states:

“There are three elements to a failure to accommodate action: “(1) the plaintiff has a disability covered by the FEHA; (2) the plaintiff is a qualified [\*1194] individual (i.e., he or she can perform the essential functions of the position); and (3) the employer failed to reasonably accommodate the plaintiff's disability. [Citation.]” (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1192 [87 Cal. Rptr. 3d 439].) The district does not dispute Hernandez had a disability protected by the FEHA or that she is a qualified individual. The disputed issue is whether the district failed to reasonably accommodate Hernandez's disability.

*Id.* at 1193-1194. As such, the three elements required for sufficient pleading of a failure to accommodate cause of action are: (1) the plaintiff has a disability covered by the FEHA; (2) the plaintiff is a qualified individual (i.e., he or she can perform the essential functions of the position); and (3) the employer failed to reasonably accommodate the plaintiff's disability. However, the Court agrees with the Defendants that it is unclear what accommodation was requested, as the allegation in Paragraph 85 states in a conclusory fashion that “Plaintiff requested that TNRTEC make a reasonable accommodation for her physical disability so that she would be able to perform the essential job requirements”, without further specifics. The Court concludes that in regard to this cause of action, the pleading is so unintelligible the responding party cannot reasonably respond, given that they don’t know what accommodation was requested and therefore cannot determine whether they failed to make such accommodations. See, *Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616. The Demurrer is sustained with leave to amend as to the Sixth Cause of Action for Failure to Accommodate Physical Disability in Violation of Public Policy.

Seventh Cause of Action – Failure to Engage in a Good Faith Interactive Process in Violation of Government Code §12940(n).

FEHA requires that “in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition, an employer engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any.” *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 88-89 (emphasis added). As discussed above, Plaintiff has failed to allege any facts suggesting she requested an accommodation for a disability. The Demurrer is sustained with leave to amend as to the Seventh Cause of Action – Failure to Engage in a Good Faith Interactive Process in Violation of Government Code §12940(n).

Eighth Cause of Action – Hostile Work Environment in Violation of Gov’t Code §12940 et seq.

A plaintiff may plead both harassment and hostile work environment causes of action, as they are not inherently duplicative but rather distinct legal theories under FEHA. Harassment focuses on the social environment of the workplace and the communication of an offensive or hostile message, while a hostile work environment claim is a specific type of harassment that arises when the conduct is severe or pervasive enough to alter the conditions of employment and create an abusive working environment. Government Code §12923, *Roby v. McKesson Corp.*, 47 Cal.4th 686, *Pollock v. Tri-Modal Distribution Services, Inc.*, 11 Cal.5th 918. The Court finds that here, Plaintiff’s Fifth and Eighth Causes of Action are duplicative, based on the same facts and alleged harassment. However, because Plaintiff indicates in the Opposition that there may be other facts (e.g., harassment of others) that could be included as specific to a hostile work environment cause of action, the Demurrer to the Eighth Cause of Action – Hostile Work Environment in Violation of Gov’t Code §12940 et seq. is sustained with leave to amend.

Ninth Cause of Action – Failure to Promote

The Court agrees with the Defendants, that FEHA does not recognize “failure to promote” as an independent cause of action. Such an allegation, if actionable, is properly pled as an adverse employment action supporting a cause of action for discrimination or retaliation under the FEHA. See *Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1380 [adverse employment action includes hiring, firing, demotion or failure to promote.] The Demurrer to the Ninth Cause of Action – Failure to Promote is sustained without leave to amend.

Tenth Cause of Action – Wrongful Constructive Termination in Violation of FEHA

Plaintiff provides no specific statutory authority for a separate cause of action for “wrongful constructive termination in violation of the FEHA”, nor could this Court find any such authority. Government Code §§12940-12953. To the extent it is alleged as a common law claim for wrongful constructive termination in violation of public policy under *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178, 164 Cal. Rptr. 839, 610 P.2d 1330), the Court finds that Defendants, as a government entity, are immune from common law tort

liability. See, Government Code §815(a); See also, *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899. The Demurrer to the Tenth Cause of Action – Wrongful Constructive Termination in Violation of FEHA is sustained without leave to amend.

Fifth Cause of Action – Harassment Due to Physical Disability (as to Defendant Michael Cross ONLY)

The Court finds that the First Amended Complaint fails to allege facts supporting a harassment cause of action against Defendant Michael Cross, specifically the First Amended Complaint fails to allege any facts to suggest that Defendant Michael Cross engaged in “harassment” as that term is defined for purposes of FEHA violations. The Demurrer to the Fifth Cause of Action is sustained with leave to amend.

As indicated above, the Court has in part granted leave to amend. Any amended Complaint shall be filed and served within 10 days’ notice of this order. Counsel for the Defendants shall prepare and submit a revised form of order consistent with this ruling within two weeks.

**6. 25CV02661 In re: Carrillo, Ilda Zamora**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**7. 25CV02808 In re: Shaddox, Carolina Ann**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**8. 25CV02932 In re: Dias, Ruben Anthony**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**9. 25CV02942 In re: Wilson-James, Marisa**

*EVENT: Change of name (minor)*

The Court will conduct a hearing.

**10. 25CV02982 In re: Imperial, Jose Luis**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.