

**Judge Benson – Law & Motion – Wednesday, February 4, 2026 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 24CV00627 Norcal Home Design, Inc. v. First Response, Inc. et al.**

*EVENT: First Response, Inc.'s Motion to Reopen Discovery and for Imposition of Monetary Sanctions Against Plaintiff and its Counsel*

First Response, Inc.'s Motion to Reopen Discovery and for Imposition of Monetary Sanctions Against Plaintiff and its Counsel is GRANTED in PART. Discovery is reopened, however the request for sanctions is denied. First Response shall prepare the form of order.

**2. 24CV04001 Capital One Bank (USA) NA v. Mata, Eduardo**

*EVENT: Defendant's Motion to Set Aside Default and Default Judgment*

Defendant's Motion to Set Aside Default and Default Judgment is DENIED.

Preliminarily, the moving papers did not cite CCP 473(b) as grounds to set aside the judgment, but even if it had CCP 473(b) would not apply as the motion is outside the 6-month period.

The Court finds Defendant's position that he was not served with the summons and complaint not credible. As Plaintiff noted, the proof of service executed by the process server creates a rebuttable presumption that service did in fact occur.

It is an unlikely coincidence that a fraud dispute was submitted only days after the summons and complaint was served. Further, in December 2025, less than a month before the instant motion was filed, Defendant sent a letter with the New Dawn address, the same address where the summons and complaint was served, listed in the header. Based on the proof of service on file and the aforementioned evidence, the Court makes the factual finding that Defendant was properly served with the summons and complaint.

For these same reasons, the Court finds Plaintiff did mail default papers to the last known address. Accordingly, the motion is denied.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**3-4. 25CV01196 Andrew J Morrissey, Attorney & Counselor at Law v. Dan Fitzgerald & Associates, Inc.**

*EVENT: (1) OEX (CFO Nicole McHenry)*

*(2) OEX (Daniel Fitzgerald)*

The Court will swear in the witnesses.

**5-6. 25CV03654 Fugate, Bryce v. Buxton, Bill et al.**

*EVENT: (1) Defendants' Demurrer to First Amended Complaint*

*(2) Motion to Strike*

Demurrer

*Uncertainty*

The Demurrer is overruled on this ground.

Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, (2019) 38 Cal. App. 5th 677, 695) The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. (*Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 533)

Here, we can easily assume defendants have at least equal knowledge to Plaintiff as to which entity or entities were Plaintiff's employer, and who was or was not controlling working conditions, wages, hours, etc. Thus under these circumstances Plaintiff's pleading bar is low. Further paragraph 12(d) of the FAC adequately alleges facts from which it can be inferred both entity defendants were employers.

### *First Cause of Action – Hostile Work Environment*

The demurrer is overruled.

Defendants contend the elements of hostile work environment, specifically that the harassing conduct was “because of sex or gender”, and that the conduct was “sufficiently severe or pervasive”, have not been sufficiently plead. The FAC relies on a single incident that occurred in a restroom between Plaintiff and Defendant Marks.

Severity – Pursuant to GC 12923(b), “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.” Many employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper. (*Nazir v. United States, Inc.* (2009) 178 Cal.App.4th 243, 286)

Here, whether the allegations in paragraph 21 amount to sufficiently severe conduct is not an issue determinable on paper, especially at the pleading stage. The Court emphasizes that this ruling is limited to the pleading context and should not be construed beyond the pleading context.

Gender – The Court appreciates Defendants arguments that there is nothing on the surface of the pleading indicating Defendant Mark’s alleged conduct was motivated by gender. But there in lies the problem. As noted per *Nazir, supra*, issues of intent and motive are not “determinable on paper.” For this reason, the demurrer is overruled. Again, this ruling is limited in scope to this challenge to the pleading.

### *Second Cause of Action – Discrimination*

For the same reasons stated regarding the first cause of action, the demurrer is overruled.

### *Third Cause of Action – Failure to Prevent Harassment*

For the same reasons stated in the first cause of action, the demurrer is overruled.

### *Fourth Cause of Action – Constructive Termination*

The demurrer is overruled

Preliminarily, the allegations in the moving papers that Plaintiff voluntarily quit after punching a co-worker is not in the FAC. As such it is extrinsic matter which the Court cannot consider on demurrer.

In most instances constructive termination requires a pattern of conduct, see *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1247. The standard by which a constructive discharge is determined is an objective one--the question is whether a reasonable person

faced with the allegedly intolerable employer actions or conditions of employment would have no reasonable alternative except to quit. (*Id at p. 1248*)

Here, the FAC alleges that Plaintiff's supervisor was regularly on drugs including cocaine. A trier of fact might find that such conduct by a supervisor would leave plaintiff with no reasonable option other than to quit. In any event the factual allegations are the type of which "cannot be decided on paper".

### *Sixth Cause of Action for Failure to Pay Wages*

The demurrer is sustained without leave to amend.

Plaintiff's allegation that the "skip the line" policy was a "gratuity" is a legal conclusion. We do not accept legal conclusions on demurrer. (*See Evans v. City of Berkeley*, (2006) 38 Cal. 4th 1, 6) The question is whether money provided to defendants by customers to advance in the line constitutes a gratuity.

Labor Code 350(e)

"Gratuity" includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity.

[Emphasis Added]

The critical inquiry is whether the money was left for the employee or the employer. Here, the allegations are that the money was given to Defendant, not Plaintiff. Defendant collected the money. Thus, the Court struggles to see how money not given to Plaintiff and not collected by him through a policy instituted by Defendants is a gratuity.

Plaintiff's argument that these funds are wages under Labor Code § 200 is not persuasive. There are no allegations that Defendant agreed to provide additional compensation to Plaintiff for this so called "skip the line service".

### *Seventh Cause of Action - The Seventh Cause of Action for Failure to Provide Accurate Wage Statements*

The demurrer is sustained without leave to amend.

This claim fails for the reason that the so called "skip the line" funds are not wages as discussed in the preceding cause of action.

### *Eight Cause of Action – Unfair Competition*

The demurrer is overruled.

Both sides acknowledge this claim is derivative of the other claims subject to this demurrer. Because the court has overruled the demurrer as to some of those claims, the demurrer is necessarily overruled as to this cause of action.

### Motion to Strike

#### *Alter Ego Allegations*

The motion is denied. Plaintiff has sufficiently plead alter ego liability. The Court is aware of no authority requiring heightened pleading for alter ego liability. Information such as corporate formalities and capitalization is not something one would expect to be within Plaintiff's control at the pleading stage. Rather such information would be expected to be in Defendant's possession, *see Roger v. County of Riverside, supra*.

#### *Plaintiff's Prayer for Relief for Wage Statement Violations*

The motion is granted without leave to amend.

The motion to strike is not being used to challenge the wage causes of action (that was challenged by demurrer). Rather, the motion is simply seeking to strike the request for relief on the premise that the demurrer would be sustained. Here, because we are sustaining the demurrers to the wages causes of action, striking the requested relief is appropriate.

#### *Punitive Damages*

The motion is denied.

As Defendants point out, the existence of tort liability alone does not support punitive damages. However, in the context of this case, punitive damages (and specifically malice/oppression) are inextricably connected with the hostile work environment and related claims, as both involve questions of intent. Because the Court finds those causes of action have been adequately pled, the motion is denied at this time.

Defendants shall prepare an order consistent with this ruling within 2 weeks.

7. **25CV05051 Nadine C Bourell-Montoya, Trustee of the NRT Revocable Living Trust v. Young, James et al.**

*EVENT: Petition for Partition in Kind*

The Court requires clarification from Petitioner whether she is the sole settlor (creator) of the trust. The general rule is that a trustee cannot represent the trust without a licensed attorney, but if there is one settlor and the settlor and the trustee are the same, self-representation is permitted.

The hearing is continued to April 8, 2026 at 9:00am for Petitioner to serve the Summons and Petition on Respondents and to accommodate Respondents' time to file a responsive pleading as authorized by the Code.

Meanwhile, per CCP § 872.25 a Lis Pendens must be filed and recorded.

8. **26CV00104 Jennifer L. Mitchell LLC v. Burgess and Sons Construction LLC**

*EVENT: Petition for Release of Property from Lien*

Petition for Release of Property from Lien is GRANTED. The Court will sign the proposed order.