

**Judge Benson – Law & Motion – Wednesday, August 31, 2022 @ 9:00 AM
TENTATIVE RULINGS**

*****For this week's calendar only, to request oral argument for any matter on Judge Benson's Law & Motion calendar, please call (530) 532-7125.*****

1. 22CV00032 BROWER, RICK V. AUTOMOTIVE ELITE INVESTMENTS, INC., A CALIFORNIA CORPORATION

EVENTS: (1) Plaintiff's Motion for an Order Approving Settlement of Claims Brought Pursuant to the Private Attorneys General Act of 2004, Awarding Attorneys' Fees, Costs, Enhancement Award, and Reimbursement of Settlement Administration Expenses, and Entering Judgment

*(2) Status Conference *Special Set**

Motion For Order Approving Settlement of Claims Brought Pursuant to the Private Attorneys General Act of 2004, Awarding Attorneys' Fees, Costs, Enhancement Award, and Reimbursement of Settlement Administration Expenses is Granted. The Court will sign the Proposed Order and Judgment.

2. 22CV00086 SYNCHRONY BANK V. NAVITSKY, CLAY

EVENT: Plaintiff's Motion to Vacate Judgment

Plaintiff's Motion to Vacate Judgment is Granted. An OSC re: dismissal is hereby scheduled for October 12, 2022 at 10:30am. The OSC shall come off calendar upon the filing of the dismissal. The Court will sign the proposed order with this modification.

3. 22CV00160 CITIBANK NA V. SORIA, HORTECIA

EVENT: Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted

Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted is GRANTED. The Court will sign the proposed order.

4. 22CV00916 KHAN, RUKHSANA V. PORCAYO, JOSHUA ET AL

EVENTS: (1) Defendants Children's Hope and Foster Family Agency, and Benjamin Payne's Demurrer to Plaintiff's Complaint

(2) Defendants Children's Hope and Foster Family Agency, and Benjamin Payne's Motion to Strike Portions of Plaintiff's Complaint

Defendants Children's Hope Foster Family Agency (hereinafter "CHFFA") and Benjamin Payne's Demurrer to Complaint is SUSTAINED in its entirety with leave to amend. Plaintiff shall file an amended pleading within 20 days if she so chooses.

Defendants Children's Hope Foster Family Agency and Benjamin Payne's Motion to Strike Certain Portions of the Complaint is GRANTED.

DEMURRER

Preliminarily, causes of action nos. 1-8 fail are sustained on the grounds Plaintiff has failed to allege sufficient facts establishing constructive discharge. As Defendants correctly note, constructive discharge is a required element of causes of action nos. 1-8.

In order to establish a constructive discharge, an employee must plead and prove, 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. (*Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1251) The conditions giving rise to the resignation must be sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the job to earn a livelihood and to serve his or her employer. (*Id* at p. 1246)

Additionally, CACI 2432 requires that the Plaintiff resigned because of the working conditions. In other words, there must be a connection between the condition and the resignation.

The complaint is vague as to what specifically caused Plaintiff to resign. Further the complaint is vague as to the timing of the alleged discriminatory conduct and Plaintiff's resignation. For example, the Complaint alleges that Plaintiff was diagnosed with cancer in 2018. However, she resigned in 2021. There is no indication as to when Plaintiff's meeting with CHFFA occurred in relation to her resignation nor is there an indication of when she presented her letter to Defendant in relation to her resignation.

Further, the second and third causes of action fail on the additional grounds that the allegations regarding race and gender discrimination are conclusory and fail to allege facts as to any discriminatory animus on the part of CHFFA. As to the fourth cause of action, the Court finds the allegation in paragraph 22 to be difficult to discern. The Court also notes that the allegations of bullying, harassment, and rude behavior are conclusory allegations, not facts. Additionally, as Defendants correctly note, the complaint fails to allege any facts as to Defendant Benjamin Payne connecting him to harassment liability.

In sum, causes of action nos. 1-8 fail to allege sufficient facts supporting each cause of action. The Court notes this ruling is not necessarily an exhaustive description of how causes of action nos. 1-8 are deficient.

Regarding the eleventh cause of action, allegations that Mr. Porcayo was bullying Plaintiff and was biased against her are conclusory. Further, although the Complaint alleges that CHFFA failed to properly train and educate its employees who were in charge of payroll, there are no allegations that CHFFA knew or should have known that its payroll department was failing to follow California law. The demurrer is sustained as to the eleventh cause of action.

As to the fifteenth cause of action for Intentional Infliction of Emotional Distress, in light of the Court's ruling concerning causes of action nos. 1-8, the Court finds the remaining allegations do not rise to the level of extreme and outrageous conduct.

MOTION TO STRIKE

Similar to the discussion concerning Intentional Infliction of Emotional Distress, and in light of the Court's ruling concerning causes of action nos. 1-8, the Court finds the remaining allegations do not rise to the level of malicious or oppressive conduct. The Motion to Strike Punitive Damages is GRANTED in its ENTIRETY. Consistent with the ruling on demurrer, Plaintiff is granted 20 days leave to amend.

Defendant shall prepare and submit a form of order consistent with this ruling within 10 days.

5. 22CV01440 IN RE: KEELEY, STEVEN STUART

EVENT: Petition for Change of Name

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

6. 22CV01551 IN RE: BARRETT, ANNE MARIE

EVENT: Petition for Change of Name

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