**Tentative Rulings for October 15, 2024**
**Department 403**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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**There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)** ***The above rule also applies to cases listed in this "must appear" section.***

**22CECG03074** ***Fresno Guest Home Holdings I, LP v. Fresno Irrigation District et al.***

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**The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 403

Begin at the next page

(37)

**Tentative Ruling**

Re: ***John DeCampos v. Matthew Billingsley***
Superior Court Case No. 23CECG00024

Hearing Date: October 15, 2024 (Dept. 403)

Motion: By Plaintiffs to Compel Defendant Matthew Billingsley's 1) Attendance at Deposition, 2) Responses to Form Interrogatories, 3) Deem Admissions Admitted, 4) Responses to Requests for Production, and 5) Responses to Special Interrogatories

**Tentative Ruling:**

To continue plaintiffs' motions to deem admissions admitted and to compel responses to form interrogatories to Thursday, November 7, 2024 at 3:30 p.m. in Department 403. Plaintiffs have filed the equivalent of ten motions in two pleadings and have only paid filing fees for two of these. Plaintiffs are to pay $480 in filing fees no later than October 28, 2024. If the additional payment is not made, the court will only consider one of the motions to deem admitted and one of the motions to compel responses to form interrogatories at the continued hearing.

To grant plaintiff's motion to compel defendant Matthew Billingsley's appearance at a deposition. (Code Civ. Proc., §§ 2025.450, 2025.280, subd. (a).) To impose monetary sanctions in favor of plaintiffs, and against defendant Matthew Billingsley. (Code Civ. Proc., §§ 2023.010, subd. (d), 2025.450, subd. (g).)

To grant plaintiff's motion to compel defendant Matthew Billingsley's responses to requests for production and to special interrogatories. Defendant is ordered to serve verified responses, without objections, to plaintiffs within 30 days of service of the minute order by the clerk. To impose monetary sanctions.

Defendant Matthew Billingsley is ordered to pay $1,492.50 in monetary sanctions to Williams, Brodersen, Pritchett & Ruiz, LLP, within 30 days of the clerk's service of the minute order.

**Explanation:**

Compel Attendance

Proper service of a notice of deposition compels the opposing party to appear, to testify, and to produce documents if requested. (Code Civ. Proc. § 2025.280(a); see Code Civ. Proc. § 2025.410 [party served with deposition notice may serve objections on party that noticed the deposition].) Where a party deponent fails to appear at a properly noticed deposition, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc. § 2025.450(a).) Where a party fails to appear for a properly noticed deposition, the party noticing the deposition is

entitled to sanctions. (Code Civ. Proc. § 2025.450(g).)

Here, plaintiffs have properly noticed defendant's deposition three times. The deposition notices did not draw an objection from defendant nor his appearance for the depositions. (Pritchett Decl., Exhs. A-F.) Defendant also has not filed an opposition to this motion.

Plaintiffs are entitled to depose defendant. (Code Civ. Proc. §§ 2017.010, 2019.010, 2025.010.) Defendant's failure to appear for deposition is impeding plaintiffs' ability to prepare for trial. Accordingly, plaintiffs' motion to compel defendant to appear for deposition is granted. Plaintiffs' request for sanctions is granted to include 1 hour to prepare the motion at $250 per hour, 0.5 hours to review the motion at $375 per hour, and the $60 filing fee, totaling $497.50.

Requests for Production and Special Interrogatories

Here, defendant was properly served with requests for production and special interrogatories on August 16, 2023. As of the filing of the motions on August 16, 2024, no responses had been received. Nothing has been filed indicating the responses were received and no opposition was filed.

Defendant has had sufficient time to respond to the discovery propounded by plaintiffs, and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., § 2030.290, subd. (a) [interrogatories]; Code Civ. Proc., § 2031.300, subd. (a) [production demands]; see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.) Here, no responses have been received.

Where a party seeks monetary sanctions, the court "shall" impose such a sanction against the unsuccessful party, unless the court finds that party acted with substantial justification or other circumstances would render such sanctions as unjust. (Code Civ. Proc., § 2030.290, subd. (c).) The sanction amount awarded allows 2 hours to prepare the motions at $250 per hour, 1 hour to review the motions at $375 per hour, and $120 in filing fees, totaling $995.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/11/2024.**
(Judge's initials) (Date)

(46)

**Tentative Ruling**

Re: ***N.S. v. Refinery Church West McKinley***
Superior Court Case No. 22CECG01483

Hearing Date: October 15, 2024 (Dept. 403)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

**Tentative Ruling:**

To grant. Orders signed. No appearances necessary.

Pursuant to Superior Court of Fresno County, Local Rules, Rule 2.8.4, the court sets a status conference on **Tuesday, January 7, 2025, at 3:30 p.m. in Department 403** for confirmation of deposit of the minors' funds into a blocked account. If petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least ten (10) court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/11/2024.**
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: ***GPP II, LLC v. Central Valley Community Sports Foundation***
Superior Court Case No. 24CECG02635

Hearing Date: October 15, 2024 (Dept. 403)

Motion: by Plaintiff for Preliminary Injunction

**Tentative Ruling:**

To deny. (Code Civ. Proc. § 526.)

**Explanation:**

Plaintiff moves for a preliminary injunction enjoining defendant Central Valley Community Sports Foundation, its officers, agents, employees, representatives, invitees, permittees, licensees, and anyone acting on its behalf or at its invitation from using the parking spaces owned by plaintiff in the development known commonly as Granite Park in Fresno, CA.

Under Code of Civil Procedure section 526, subdivision (a), an injunction may be granted in the following cases:

> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
> (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
> (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
> (4) When pecuniary compensation would not afford adequate relief.
> (5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
> (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
> (7) Where the obligation arises from a trust.

(Code Civ. Proc., § 526, subd. (a).)

"[A] *preliminary* injunction is an order that is sought by a plaintiff *prior to a full adjudication of the merits of its claim*. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554, citations omitted.) The purpose of such an order "is to preserve the status quo until a

final determination following a trial." (*Scaringe v. J.C.C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, 1542.)

"To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White v. Davis, supra,* 30 Cal.4th at p. 554; see generally Code Civ. Proc., § 526, subd. (a)(2) [preliminary injunction may issue when it appears the plaintiff would suffer great or irreparable injury from the commission or continuance of some act during litigation].)

Generally, an injunction will not issue to prevent breach of a contract, or where the plaintiff can be adequately compensated through money damages. (Code Civ. Proc. § 526; W*est Coast Construction Co. v. Oceano Sanitary Dist.* (1971) 17 Cal.App.3d 693, 700.) Plaintiffs must show that they would suffer irreparable harm if the injunction is not issued, and that money damages would not adequately compensate them for their injuries. "The concept of 'irreparable injury' which authorizes the interposition of a court of equity by way of injunction does not concern itself entirely with injury beyond the possibility of repair or beyond possible compensation in damages. Rather, by definition, an injunction properly issues in any case where 'it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.' (Civ. Code, § 3422.)" (*Wind v. Herbert* (1960) 186 Cal.App.2d 276, 285, citation omitted.) Also, a party is not entitled to injunction in case where he has a plain, speedy, and adequate remedy at law. (*Richards v. Kirkpatrick* (1879) 53 Cal 433.) Where party has an adequate remedy at law he may not resort to court of equity for injunctive relief. (*North Side Property Owners' Assn. v. Hillside Memorial Park* (1945, Cal App) 70 Cal App 2d 609.)

If the threshold requirement of irreparable injury is established, it has traditionally been held that the "trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]" (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

"The more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. Further, 'if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor.'" (*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 336, 338-39, citations omitted.)

In the present case, plaintiff has not met its burden of showing that it is entitled to issuance of a preliminary injunction. Regardless of whether plaintiff is likely to prevail on the merits of its claim against CVCSF, plaintiff has made no showing whatsoever of irreparable harm. Although plaintiff's memorandum of points and authorities suggests that plaintiff "face[s] inconvenience and <u>potential</u>[ ] loss or liability arising from the unauthorized use, and … [the] expendi[ture of] significant amounts of money in response to such use," (Plaintiff's Memo., 4:26-27.) plaintiff has not made a showing of any harm other than that which can be adequately compensated through money damages.

Accordingly, the motion is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/11/2024.**
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Velicescu v. City of Orange Cove***
Superior Court Case No. 24CECG02311

Hearing Date: October 15, 2024 (Dept. 403)

Motion: Demurrer and Motion to Strike the Complaint

**Tentative Ruling:**

To overrule the general demurrers to the third and eighth causes of action. To sustain, with leave to amend, the general demurrers to the second, fourth, fifth, sixth, and seventh causes of action. (Code Civ. Proc. §403.10, subd. (e).)

To deny the motion to strike.

Plaintiff is granted 10 days' leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

**Explanation:**

***Demurrer***

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v Poag* (1984) 150 Cal.App.3d 541, 545) The truth of the facts alleged in the complaint are assumed true as well as the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 2 Cal.4th 876, 883; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1168 [actual reliance in support of a fraud claim reasonably inferable from the plaintiff's complaint]; Code Civ. Proc., 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."].)

A general demurrer, "admits the truth of all material factual allegations in the complaint;" the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

Defendant City of Orange Cove demurs generally to the second through eighth causes of action.

*Second Cause of Action: Harassment in Violation of FEHA*

To establish a prima facie case of unlawful harassment under FEHA, a plaintiff must show "(1) he was a member of a protected class; (2) he was subjected to unwelcome ... harassment; (3) the harassment was based on [the plaintiff's membership in an enumerated class]; (4) the harassment unreasonably interfered with his work performance by creating an intimidating, hostile, or offensive work environment; and (5) [defendant] is liable for the harassment." (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 876.)

"In construing California's FEHA, this court has held that the hostile work environment form of sexual harassment is actionable only when the harassing behavior is *pervasive* or *severe*. This limitation mirrors the federal courts' interpretation of Title VII. To prevail on a hostile work environment claim under California's FEHA, an employee must show that the harassing conduct was 'severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex.' There is no recovery 'for harassment that is occasional, isolated, sporadic, or trivial.' [¶] Courts that have construed federal and California employment discrimination laws have held that an employee seeking to prove sexual harassment based on no more than a few isolated incidents of harassing conduct must show that the conduct was 'severe in the extreme.' A single harassing incident involving 'physical violence or the threat thereof' may qualify as being severe in the extreme. [¶] Under California's FEHA, as under the federal law's Title VII, the existence of a hostile work environment depends upon 'the totality of the circumstances.' We said in *Lyle*, that '[t]o be actionable, "a sexually objectionable environment must be both objectively and subjectively offensive." ' Therefore, 'a plaintiff who subjectively perceives the workplace as hostile or abusive will not prevail ... if a reasonable person ... considering all the circumstances, would not share the same perception.' " (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1043-1044, citations omitted, italics in original.)

"In determining what constitutes 'sufficiently pervasive' harassment, the courts have held that acts of harassment cannot be occasional, isolated, sporadic, or trivial, rather the plaintiff must show a *concerted pattern of harassment of a repeated, routine or a generalized nature*." '" (*Brennan v. Townsend & O'Leary Enterprises, Inc.* (2011) 199 Cal.App.4th 1336, 1347–1348, citations omitted, italics in original.)

The standard for determining whether an environment is hostile "is not, and by its nature cannot be, a mathematically precise test." (*Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 22.) It "can be determined only be looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required." (*Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 23.)

Thus, the level of severity or pervasiveness required to transform a merely annoying or uncomfortable work environment into an actionable, sexually harassing hostile environment is usually a question of fact and inappropriate for determination at the pleading stage of litigation.

Here, the complaint alleges that during work hours defendant's male managers and employees would make arrangements for social gatherings outside of work where work and policy would be discussed. Plaintiff was not invited to these gatherings. Management is alleged to know of plaintiff's exclusion and participated in the gatherings. Defendant challenges whether the alleged exclusion from gatherings outside of work constitute actionable harassment.

Plaintiff relies on *Roby v. McKesson Corp*. (2009) 47 Cal.4th 686 to argues the exclusion from non-work gatherings of male employees conveyed an offensive message to plaintiff as a female employee. (*Id*. at p. 708.) However, the actions complained of in *Roby* occurred in the office and included a number of negative actions directed toward the employee contributing to the hostile environment. (*Id*. at p. 708-709.) Although the determination of whether a work environment is hostile is ordinarily not appropriate for determination at the pleading stage, plaintiff's allegations based only on non-work social gatherings alone is insufficient to allege a work environment hostile to plaintiff based on her gender. The demurrer to the second cause of action is sustained with leave to amend.

*Third and Eighth Causes of Action: Retaliation in Violation of FEHA and Retaliation in Violation of Labor Code §1102.5*

"Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1042, internal citations omitted.)

Similarly, to establish a prima facie case of retaliation under California's whistleblower statute, a plaintiff must show that: (1) he engaged in protected activity; (2) his employer thereafter subjected him to an adverse employment action; and (3) a causal link between the two. (Lab. Code §1102.5, subd. (b).)

Defendant demurs on the basis that plaintiff's allegations supporting causation are conclusory and the complaint lacks factual allegations to support the conclusion that the termination of plaintiff's employment was caused by her complaints regarding the gender pay disparity. In opposition, plaintiff asserts that the timing of her termination within a month of her complaint to the City Manager allows for the reasonable inference of causation. (*Diego v. City of Los Angeles* (2017) 15 Cal.App.5th 338, 363.) This circumstantial evidence is sufficient to state a prima facie case of retaliation. The demurrers to the third and eighth causes of action are overruled.

*Fourth and Fifth Causes of Action: Violation of Labor Code §233 and Disability Discrimination*

Plaintiff's fourth and Fifth Causes of action for violations of Labor Code section 233 and discrimination in violation of FEHA are premised on plaintiff's termination from her employment while she was using sick leave related to her sleep apnea. Defendant argues the fourth and fifth causes of action fail to plead sufficient facts to establish causation and are therefore subject to demurrer. Plaintiff argues the she has pled her employer's knowledge of her disability and the timing of the termination to reasonably infer causation. (*Jordan v. Clark* (9th Cir. 1988) 847 F.2d 1368, 1376 ("The causal link may be established by an inference derived from circumstantial evidence, "such as the

employer's knowledge that the [employee] engaged in protected activities and the proximity in time between the protected action and the allegedly retaliatory employment decision.").)

In the context of a claim alleging retaliation, the temporal proximity of the employee's protected action and employer's adverse employment action is sufficient for purposes of making a prima facie showing. (*Diego v. City of Los Angeles* (2017) 15 Cal.App.5th 338, 363.) However, in a discrimination claim, to establish a prima facie case, "[g]enerally, the plaintiff must provide evidence that (1) [s]he was a member of a protected class, (2) [s]he was qualified for the position he sought or was performing competently in the position [s]he held, (3) [s]he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Guz v. Bechtel Nat. Inc.,* (2000) 24 Cal.4th 317, 355.)

Here, plaintiff has plead facts to establish she is a member of a protected class and was terminated after advising her employer of her disability and while on leave related to her disability. The complaint does not include allegations related to plaintiff's qualifications or work performance necessary to establish a prima facie case of discrimination. Additionally, the complaint does not include allegations to support a discriminatory motive connecting plaintiff's alleged disability with her termination. The demurrer to the fifth cause of action is sustained with leave to amend.

Labor Code section 233, subdivision (c) states in pertinent part, "[a]n employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against the employee for using, or attempting to exercise the right to use, sick leave … ." Plaintiff argues the allegation that she was terminated while using sick leave is sufficient to infer that she was terminated because she was using sick leave based on her employer's knowledge of her need for sick leave and the timing of her termination. The court disagrees. The bare allegation that she was terminated while using sick leave is not sufficient to support a causal link between the termination and use of sick leave. The demurrer to the fourth cause of action is sustained with leave to amend.

*Sixth and Seventh Causes of Action: Failure to Engage in Timely, Good Faith Interactive Process and Failure to Provide Reasonable Accommodation*

To establish a failure to accommodate claim, plaintiff must show (1) she has a disability covered by FEHA; (2) she can perform the essential functions of the position; and (3) her employer failed reasonably to accommodate her disability. (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 256–257.) Related to the reasonable accommodation, under FEHA, it is an unlawful practice for an employer to fail to engage in a good faith interactive process with the employee to determine an effective reasonable accommodation if an employee with a known physical disability requests one. (Govt. Code § 12940, subd. (n).)

Plaintiff argues her termination while on medical leave related to her disability constitutes a failure to continue to provide a reasonable accommodation for her disability and failure to engage in a good faith interactive process. The claims appear to presume the plaintiff's termination was related to her disability. As discussed above, plaintiff has not alleged sufficient facts to establish the termination was related to her

disability. Accordingly, the demurrer to the sixth and seventh causes of action is sustained with leave to amend.

***Motion to Strike***

Code of Civil Procedure section 436 provides, "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

Defendant moves to strike paragraph 13 from the Complaint on the basis that the allegations are facially deficient to state a cause of action for discrimination based on sex. Here, the first cause of action alleging sex discrimination is based on both plaintiff's exclusion from non-work employee gatherings (¶ 13) and being denied equal pay relative to the amounts paid to male directors in the City of Orange Cove (¶ 14). While a party may not demur to a *portion of a cause of action*, when a substantive defect is clear from the face of a complaint involving only a portion of a cause of action, *that portion may be attacked by filing a motion to strike*. (*See Moran v. Prime Healthcare Management, Inc.* (2023) 94 Cal.App.5th 166, 174, citing *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

In opposition, plaintiff argues that allegations of her exclusion from the non-work gatherings on the basis of her gender support the element of discriminatory animus required for her first and second causes of action.

"Generally, the plaintiff must provide evidence that (1) [s]he was a member of a protected class, (2) [s]he was qualified for the position he sought or was performing competently in the position [s]he held, (3) [s]he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Guz v. Bechtel Nat. Inc.,* (2000) 24 Cal.4th 317, 355.) That the adverse effects alleged may not rise to actionable adverse employment actions for purposes of her discrimination claim does not necessarily support striking the allegations. The allegations do appear relevant to the element of the employer's discriminatory animus. The court intends to deny the motion to strike.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/11/2024.**
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: ***Ruggiero v. Jimenez***
Superior Court Case No. 24CECG00163

Hearing Date: October 15, 2024 (Dept. 403)

Motion: by Plaintiff Alexandra Ruggiero for Leave to Amend Complaint

**Tentative Ruling:**

To grant. Plaintiff Alexandra Ruggiero may file the proposed amended complaint within 10 days of service of the order by the clerk. New allegations/language must be set in **boldface** type.

**Explanation:**

Motions for leave to amend the pleadings are directed to the sound discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . . ." (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where, as here, "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The validity of the proposed amended pleading is not considered in deciding whether to grant leave to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Absent prejudice, it is an abuse of discretion to deny leave to amend. (*Higgins v. DelFaro* (1981) 123 Cal.App.3d 558, 564-65.)

Here, plaintiff Alexandra Ruggiero has met the formalities required of a motion to amend the complaint. No opposition has been filed. Accordingly, the court finds that the granting of the motion will not prejudice the opposing party, and the motion is granted. Plaintiff Alexandra Ruggiero is directed to file her proposed amended pleading within 10 days of service of the order by the clerk.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/14/2024.**
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***Garcia v. Garcia***
Superior Court Case No. 20CECG02573

Hearing Date: October 15, 2024 (Dept. 403)

Motion: Default Prove-Up

**Tentative Ruling:**

To deny without prejudice.

**Explanation:**

Encumbrance of Record:

The proposed interlocutory judgment reveals a fact that is absent from the complaint (both the original and the two amended versions): that an encumbrance exists on the property in the form of a mortgage. It appears this is the first time plaintiff has disclosed this fact, so it was not address in the prior denials of plaintiff's request for default judgment. This encumbrance is only hinted at in the complaint's prayer for the proceeds of sale of the property be used, in part, to pay "any encumbrances thereon." (Complaint prayer [all versions], ¶3.) However, this is not sufficient. The complaint is required to name in the complaint "[a]ll interests of record or actually known to the plaintiff that persons other than the plaintiff have or claim in the property and that the plaintiff reasonably believes will be materially affected by the action[,]" and plaintiff must join any such persons/entities as defendants. (Code Civ. Proc., §§ 872.230, 872.510; *Stewart v. Abernathy* (1944) 62 Cal.App.2d 429, 433.) No judgment can issue at this time since a necessary party has not been joined. Plaintiff will need to amend the complaint to add this defendant.

Furthermore, the court will not assume that this mortgage is a debt for which the other named defendants are responsible without further evidence being presented, since the complaint states (and thus the defaulted defendants have admitted *only*) that "[n]o persons other than Plaintiff and Defendants have any interest of record thereto and Plaintiff reasonably believes that no other persons will be materially affected thereby." (SAC, ¶ 2, p. 2:4-6.) While, as already pointed out above, this is at odds with there being a mortgagee in existence, the fact remains that the defendants have not admitted that a mortgage exists that must be paid off *before* they receive their share of the proceeds of sale, as plaintiff's proposed judgment provides. If this is a debt incurred entirely by plaintiff, such a division would not be equitable.[1] The court is required to apply equitable principles in awarding a judgment of partition. (Code Civ. Proc., § 872.140.)

[1] It is also noted that even if the mortgage in question was executed after the complaint was filed, the mortgagee would have the right to intervene in this action to ensure proper payment of the lien. (*Towle Bros. Co. v. Quinn* (1903) 141 Cal. 382, 385.)

Referee:

Plaintiff's prove-up brief acknowledges that "a referee may be nominated and adjoined for the interlocutory stage," but does not establish: 1) that a referee is necessary; 2) who plaintiff nominates as referee; and 3) the qualifications of the nominee to serve as referee. Instead, he simply inserts in the proposed interlocutory judgment the name of someone the court appoints as referee. This is not acceptable. Also, other fragments of the relevant statutes are included at paragraphs 5 and 6 of the proposed judgment, but these do not give clarity on how the sale is meant to proceed.

In the usual case, a referee will need to be nominated and appointed for the interlocutory stage. In fact, the statutory scheme for partition actions appears to make this mandatory. (See, *e.g.,* Code Civ. Proc., § 873.010, subd. (a) ("The court *shall* appoint a referee to divide or sell the property as ordered by the court." Emphasis added.).) However, courts have held that the trial court has the discretion to examine the facts of a particular case and decide whether such appointment is necessary:

> The word "shall" as used in said section should be construed to require the appointment of a referee only where it is determined that a referee is necessary or would be desirable or helpful and that it should not be so strictly construed as to require the expense and time-consuming services of a referee where the court has adequate evidence before it to render its decision. The function of the interlocutory judgment is to permit the trial court to determine those matters which have been presented to it for determination, and which it can determine upon the evidence submitted to it without the necessity of a referee. The only function of a referee is to assist the court in determining those matters which cannot be so determined upon the evidence before it.

(*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 755.)

With the subsequent submission for default interlocutory judgment, plaintiff's prove-up brief should address whether or not a referee is needed in this case. If, instead, he maintains that it is only necessary to appoint a real estate broker to establish the fair market value of the property and facilitate the sale, he should provide the details supporting this (also including the details about the nominated broker, or alternatively, two or three brokers from which plaintiff desires the court to choose). (Code Civ. Proc., § 873.610, subd. (a); *Holt v. Brock* (2022) 85 Cal.App.5th 611, 622-623 (court-appointed broker entitled to quasi-judicial immunity.)

Division of Proceeds of Sale Premature:

The proposed interlocutory judgment, at paragraph 8, provides for a division of the proceeds of sale, including payment of costs, which cannot be made on the interlocutory judgment. The interlocutory judgment, by statute, is only to provide for finding whether plaintiff is entitled to partition, and if so, the respective interests of the parties in the land, and ordering the partition of the property, and the manner of partition.

(Code Civ. Proc., § 872.720, subd. (a); *Harrington v. Goldsmith* (1902) 136 Cal. 168, 170 (costs cannot be included on the interlocutory judgment).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: JS on 10/14/2024.**
(Judge's initials) (Date)