July 18, 2025
Dept. 9
Tentative Rulings

1.	23CV2183	FELTON v. EL DORADO COUNTY et al
Demurrer		

Plaintiffs are property owners in Cameron Park, alleging flooding to their properties 6during the December 31, 2022 storm.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Declarations of Joe Little and James K. Ward, the Court is satisfied that both Defendant El Dorado County and Defendant Cameron Park Community Services District attempted to satisfy the meet and confer efforts but could not completely comply due to Plaintiff's refusal to cooperate. The Court expects the parties to actively engage in meet and confer efforts, in an attempt to resolve issues without Court involvement and to preserve judicial resources.

Requests for Judicial Notice

Cal. Rules of Court, rule 3.1113(l), also covers judicial notice, requiring that "[a]ny request for judicial notice shall be made in a separate document listing the specific items for which notice is requested and shall comply with rule 3.1306(c)."

Defendant El Dorado County requests that the Court take judicial notice of Plaintiff's Third Amended Complaint ("TAC") and Governor Gavin Newsom's January 3, 2024 Proclamation of a State of Emergency. Plaintiff opposes, arguing judicial notice of the TAC is unnecessary. In terms of the Proclamation of a State of Emergency, Plaintiff argues that it is irrelevant and prejudicial to Plaintiff, but does not offer any argument that persuades the Court. The Court finds that a Proclamation of a State of Emergency resulting from storm conditions is directly relevant to this case, where Plaintiffs are alleging damage to their properties from flooding.

Defendant Cameron Park Community Services District requests that the Court take judicial notice of Plaintiffs Second Amended Complaint, the Court's dismissal without prejudice of El Dorado Water Agency, the TAC, the Proclamation of a State of Emergency beginning December 27, 2022, and the Proclamation of Local Emergency from December 2022. Plaintiff opposes, raising the same arguments. The Court agrees that the Proclamation of Local Emergency may not be relevant since it concerns Sacramento County and the properties at issue are located in El Dorado County.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. (Evidence Code § 453)

Defendant El Dorado County's request for judicial notice is granted. Defendant Cameron Park Community Services District's request for judicial notice is denied as to the Proclamation of Local Emergency, but the remainder of the request is granted.

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The TAC includes 6 causes of action: (1) Inverse Condemnation; (2) Negligence; (3) Failure to Discharge a Mandatory Duty; (4) Trespass; (5) Nuisance; and (6) Dangerous Condition of Public Property.

There are two Demurrers to be addressed. The first is filed by Defendant El Dorado County, and the second is filed by Defendant Cameron Park Community Services District. Any references to Defendant will apply to only the Defendant bringing the subject Demurrer.

DEFENDANT EL DORADO COUNTY'S DEMURRER

Defendant El Dorado County ("Defendant") demurs to the Second, Third, and Fourth causes of action on the following grounds:

- The Second Cause of Action fails to state facts sufficient to constitute a cause of action, Plaintiffs do not identify any statutory basis for liability, and California law bars Plaintiffs from asserting common law claims against government entities.
- The Third Cause of Action fails to state facts sufficient to constitute a cause of action and Plaintiffs fail to allege any qualifying enactment creating a mandatory duty.
- The Fourth Cause of Action fails to state facts sufficient to constitute a cause of action, Plaintiffs do not identify any statutory basis for liability, and California law bars Plaintiffs from asserting common law claims against government entities.

Defendant argues that the Second and Fourth Causes of Action are barred under Government Code § 815(a) because they are common law claims, no statutory basis for liability is alleged, and therefore the claims cannot be brought against a government entity. Plaintiffs in their Opposition, state that the negligence and trespass claims can be amended to be brought under Government Code § 815.2 instead of § 815(a). Interestingly, in all four versions of the Complaint that have been filed, Plaintiffs have never once identified a statutory basis for the negligence or trespass claims. Plaintiffs further argue they should be allowed to explore the extent of the County employees' negligent actions through formal discovery. After stating that the negligence and trespass claims could be brought under Govt. Code § 815.2, Plaintiffs then state that the trespass claim could be brought under the California Constitution's Due Process Clause. Plaintiffs have not met their burden to show that the pleading could be amended to cure its defects, as it seems Plaintiffs do not have a clear plan for amendment.

Defendant does not seem to dispute that the causes of action could be brought against government entities under §815.2. However, Defendant replies, arguing that Plaintiffs cannot bring causes of action under § 815.2 (negligence and trespass) while maintaining a cause of action for dangerous condition of public property under §§ 830, et seq. Dangerous condition causes of action cannot coexist with a cause of action under § 815.2. See *Brown v. Poway Unified Sch. Dist.* (1993) 4 Cal.4th 820, 829 ("[Government Code] section 835 sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property."); *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129 (same); *Cerna*

v. City of Oakland (2008) 161 Cal.App.4th 1340, 1347 ("[t]he sole statutory basis for imposing liability on public entities as property owners is Government Code section 835."); *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 ("Section 835 is the sole statutory basis for a claim imposing liability on a public entity based on the condition of public property."); *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379 ("the law was settled by *Van Kempen v. Hayward Area Park etc. District* (1972) 23 Cal.App.3d 822 . . . that public entity liability for property defects is not governed by the general rule of vicarious liability provided in section 815.2, but rather by the provisions in sections 830 to 835.4 of the Government Code").

Defendant argues that the Third Cause of Action for failure to discharge a mandatory duty fails to state facts sufficient to state a cause of action because Plaintiff has failed to allege any "enactment," which is a threshold element of a cause of action brought under Gov. Code § 815.6. Government Code § 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." To establish public entity liability under § 815.6, Plaintiffs must plead and prove three elements: (1) a mandatory duty is imposed by enactment; (2) the duty was designed to protect against the kind of injury allegedly suffered; and (3) breach of the duty proximately caused by injury. *State Dept. of State Hospitals v. Super. Ct.* (2015) 61 Cal.4th 339, 348. A cause of action for breach of mandatory duty must specifically allege the particular enactment that creates the mandatory duty. *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1349. An "enactment" is specifically defined as a "constitutional provision, statute, charter provision, ordinance or regulation." Gov. Code § 810.6. Defendant argues that the County's General Plan and Drainage Manual are not part of the state constitution, a state statute, a County charter, a County ordinance, or a state regulation, and the TAC does not suggest otherwise. Therefore, Defendant argues, Plaintiffs have not identified with specificity any actual enactment that Defendant has plausibly violated.

Plaintiffs oppose, arguing that they could amend to allege specific ordinances that the County violated. Plaintiffs cite to *Green v. Citv of Livermore* (1981) 117 Cal.App.3d 82, 89, to argue that breach of mandatory duty can be alleged without identifying an enactment. They also argue that the application of specific regulations to the situation requires expert consultation and testimony.

Defendant replies, addressing each ordinance cited by Plaintiffs, and arguing that none of the ordinances impose a *mandatory* duty on the County, and the Court agrees. Therefore, Plaintiffs have not met their burden of showing that the pleadings could be amended to cure the deficiencies.

In addressing leave to amend, not only does the Court find that the Plaintiffs have not met their burden in showing how the pleading could be amended to cure its defects, but the

initial Complaint was filed December 7, 2023, and has since undergone three amendments. While the Court acknowledges the liberal policy in deciding cases on the merits, there is also policy in resolving cases. Not only did Plaintiff's counsel fail to engage in meet and confer efforts, but she also argues that leave to amend should be granted, in part, because this was the first Demurrer brought. However, in reading the Declarations of Joe Little and James K. Ward, it is clear that the pleading deficiencies have been raised at several points, as required of Defendants before bringing a Demurrer, and that instead of engaging in meet and confer efforts, Plaintiff has repeatedly filed amended Complaints.

DEFENDANT CAMERON PARK COMMUNITY SERVICES DISTRICT'S DEMURRER

Defendant Cameron Park Community Services District ("Defendant") demurs to the Second, Third, and Fourth causes of action on the following grounds:

- The Second Cause of Action fails to state facts sufficient to constitute a cause of action, Plaintiffs do not identify any statutory basis for liability, and California law bars Plaintiffs from asserting common law claims against government entities.
- The Third Cause of Action fails to state facts sufficient to constitute a cause of action and Plaintiffs fail to allege any qualifying enactment creating a mandatory duty.
- The Fourth Cause of Action fails to state facts sufficient to constitute a cause of action, Plaintiffs do not identify any statutory basis for liability, and California law bars Plaintiffs from asserting common law claims against government entities.

The arguments raised in Defendant's Demurrer and Plaintiffs' Opposition, align closely with those addressed above in Defendant El Dorado County's Demurrer, and will not be re-summarized. However, Defendant does raise some points in its Reply that have not yet been addressed. One of those arguments is that Plaintiff has not conducted any discovery since the initial filing in December 2023 and that the substance of the pleadings has not changed from the First Amended Complaint to the TAC, which the Court agrees with.

Defendant next addresses Plaintiffs' argument that the Inverse Condemnation Claim under the California Constitution can provide a statutory basis for the tort theories under negligence and trespass. Defendant cites to *Paterno v. State of California* (2003) 113 Cal.App.4th 998, for the proposition that this is not possible. The Court agrees. Defendant also cites to *Odello Brothers v. County of Monterrey* (1998) 63 Cal.App.4th 778, because in that case plaintiff sued the county in theories of inverse condemnation and trespass but the court dismissed the trespass cause of action, citing Government Code § 815 and the Legislative Committee Comment: "[T]he practical effect of this section is to eliminate any common law government liabilities for damages arising out of torts." (*Legis. Com. Comm., Deering Ann. Gov. Code §815*).

Plaintiffs cited *Green v. City of Livermore* (1981) 117 Cal.App.3d 82 for the argument that they can allege a mandatory duty breach without having to specifically plead the particular enactment. However, Defendant points out that *Green* follows *Peterson v. City of Long Beach*

(1979) 24 Cal.3rd 238, 224-245, which is a case under Evidence Code § 669 not Government Code § 815.6. Defendant argues that a case is not precedent for propositions not considered. (*Essick v. County of Sonoma* (2022) 81 Cal.App.5th 941, 952).

Otherwise, the Court's analysis does not differ from the analysis under the County's Demurrer.

TENTATIVE RULING #1:

1. **DEFENDANT EL DORADO COUNTY'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **DEFENDANT CAMERON PARK COMMUNITY SERVICES DISTRICT'S REQUEST FOR JUDICIAL NOTICE IS DENIED AS TO THE PROCLAMATION OF LOCAL EMERGENCY, BUT THE REMAINDER OF THE REQUEST IS GRANTED.**
3. **DEFENDANT EL DORADO COUNTY'S DEMURRER AS TO THE SECOND, THIRD, AND FOURTH CAUSES OF ACTION IS SUSTAINED WITHOUT LEAVE TO AMEND.**
4. **DEFENDANT CAMERON PARK COMMUNITY SERVICE DISTRCT'S DEMURRER AS TO THE SECOND, THIRD, AND FOURTH CAUSES OF ACTION IS SUSTAINED WITHOUT LEAVE TO AMEND.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**24CV0053**	**GRAY v. ZBS LAW**
Overrule Demurrer		

Plaintiff filed a "Motion to Overrule Demurrer & Request Sanctions on Bad Faith Conduct" ("Motion"). This appears to actually be an Opposition to Defendant's Demurrer, which is set for hearing on September 19, 2025, at 8:30 AM. It seems that Plaintiff's Motion was set for hearing based on clerical error. Therefore, this hearing is dropped and Plaintiff's Opposition will be addressed as such at the September 19, 2025 hearing.

TENTATIVE RULING #2:

HEARING DROPPED FROM CALENDAR.

THE COURT CONFIRMS THE HEARING SET ON FRIDAY, SEPTEMBER 19, 2025, AT 8:30 AM IN DEPARTMENT NINE TO ADDRESS DEFENDANT'S DEMURRER.

3.	**25CV0071**	**ISHSHALOM v. V3 ELECTRIC**
Motion to File Certain Records Under Seal		

The parties filed a Joint Motion to File Certain Records Under Seal ("Motion"). The Notice fails to comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

Defendant V3 Electric, Inc. ("Defendant" or "V3") has moved to compel arbitration of Plaintiff Shalev Shai IshShalom's claims. V3's Motion to Compel Arbitration ("MTC Arb") is predicated on a 5-page arbitration provision that is contained towards the end of a longer "Direct Seller Agreement" between Plaintiff and V3. While V3 included the arbitration provision with the MTC Arb, it did not include the other pages of the Direct Seller Agreement. Plaintiff intends to include many of those additional pages as exhibits in his Opposition.

Defendant argues that these additional pages of the Direct Seller Agreement contain several provisions that V3 contends contain trade secrets and confidential proprietary business information, including information pertaining to V3's services, operations, methods, know-how, and processes regarding V3's Direct Sellers sales, compensation, expenses, training, and commission schedules. (Declaration of Alec Smith ("Smith Decl."), ¶ 4.) The various sections at issue, as well as descriptions of the sensitive business information contained therein that V3 wants protected from public disclosure, are described in detail in the accompanying Declaration of Alec Smith, In-House Counsel for V3 ("Smith Declaration"). Notably, it is only these sections of the Direct Seller Agreement that V3 seeks to have shielded from public view; V3 will not object to the other portions of the Direct Seller Agreement being filed in the public record. (*Id*., ¶ 7.)

Pursuant to Rules of Court, Rules 2.550 and 2.551, a document may only be filed under seal pursuant to a Court Order. Specifically, to grant a motion to seal, the Court must find that "(1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Rules of Court, Rule 2.550, subd. (d*); NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1181.)

In NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, the California Supreme Court enumerated several "overriding interests" that would justify sealing a litigation record. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, supra*, 20 Cal.4th at 1222 fn. 46.) Among these overriding interests are "protection of trade secrets" and "enforcement of binding contractual obligations not to disclose." (*Id*.) "[A] trade secret ... has an intrinsic value which is based upon, or at least preserved by, being safeguarded from disclosure." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 304; *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4th

1279, 128.) "Public disclosure is the "absence of secrecy[,]" and as such, "is fatal to the existence of a trade secret." (*In re Providian Credit Card Cases, supra*, 96 Cal.App.4th at 304.) Based on the Smith Declaration, and the Joint Motion submitted by the parties, the Court finds the first two elements have been met.

The parties argue that a substantial probability exists that the overriding interests here will be prejudiced if the Direct Seller Agreement is not sealed because disclosure of the entire Direct Seller Agreement would expose V3's trade secrets and proprietary business information in a public filing and would cause a breach of the Agreement itself, which could subject Plaintiff to a $75,000 fine. Based on the Smith Declaration and the Joint Motion, the Court is satisfied that the third element has been met.

V3 only requests that specific sections of the Direct Seller Agreement be sealed. (Smith Decl., ¶¶ 6-7.) The rest of the Agreement remains unredacted and may be in the public record. (*Id*.) The parties also argue that there are no less restrictive means to achieve the overriding interests because sealing the specified portions is the only way to protect V3's interests in keeping portions confidential and the only way to protect Plaintiff's interest in not breaching his obligations under the Agreement. The Court is therefore satisfied that the fourth and fifth elements have been met as well.

TENTATIVE RULING #3:

MOTION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4.	**25CV0599**	**CARTER v. ROSS DRESS FOR LESS, INC.**
Motion for Preference		

The Court previously addressed this Motion in its June 27, 2025, tentative rulings. Plaintiff has since filed an Amended Declaration and proof of service, as requested by the Court.

TENTATIVE RULING #4:

MOTION GRANTED. APPEARANCES REQUIRED ON FRIDAY, JULY 18, 2025, AT 8:30 AM IN DEPARTMENT NINE TO SELECT DATES.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5.	**25CV1257**	**COVINGTON v. ALFORD**
Motion to Consolidate		

Plaintiff moves the Court to consolidate this action with 25UD0103 ("Unlawful Detainer action"), or in the alternative, to stay the Unlawful Detainer action until resolution of the present case. Plaintiff alleges that she and Defendant were in a committed relationship from 2012 through 2025, during which time they cohabited in the Shared Residence, raised two minor children together, Defendant placed Plaintiff on his employment funded healthcare insurance, and represented themselves to the public as domestic partners. Plaintiff states she significantly contributed to the Shared Residence and family finances, and held an undivided 25% interest in the residence of the parties that immediately preceded the residence that is now the subject of these proceedings. Plaintiff states the youngest child of the Parties suffers from developmental delays and requires intensive daily therapy, which is jeopardized by potential displacement. Plaintiff argues that Defendant has repudiated the relationship and now seeks to forcibly remove Plaintiff and the children from the Shared Residence through unlawful detainer proceedings.

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

California Rules of Court, Rule 3.350 (Consolidation of Cases) provides further requirements for consolidation of cases:

(a) Requirements of motion

(1) A notice of motion to consolidate must:

(A) List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;

(B) Contain the captions of all the cases sought to be consolidated, with the lowest numbered case shown first; and

(C) Be filed in each case sought to be consolidated.

(2) The motion to consolidate:

(A) Is deemed a single motion for the purpose of determining the appropriate filing fee, but memorandums, declarations, and other supporting papers must be filed only in the lowest numbered case;

(B) Must be served on all attorneys of record and all nonrepresented parties in all of the cases sought to be consolidated; and

(C) Must have a proof of service filed as part of the motion.

(b) Lead case

Unless otherwise provided in the order granting the motion to consolidate, the lowest numbered case in the consolidated case is the lead case.

(c) Order

An order granting or denying all or part of a motion to consolidate must be filed in each case sought to be consolidated. If the motion is granted for all purposes including trial, any subsequent document must be filed only in the lead case.

The Court finds that most of these requirements have been met, except that the Notice was not filed in the Unlawful Detainer action, as required by CRC, Rule 3.350. However, in checking that case, the Court notes that on July 7, 2025, Mr. Alford requested that the Unlawful Detainer action be dismissed, which was entered on the same date. Therefore, this hearing is no longer necessary.

TENTATIVE RULING #5:

HEARING DROPPED FROM CALENDAR.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6.	**PCL20190906**	**WELLS FARGO v. BAILEY**
Motion to Set-Aside		

The Court issued Judgment in this case on February 25, 2021. On May 14, 2025, Defendant filed a Motion to Set-Aside Default and Vacate the Judgment. Defendant alleges she was not aware of the lawsuit until 2025 and was not served with the Complaint or Judgment. Her Motion does contain a proposed Answer. However, her Motion has not been brought within 6 months after the Judgment, and therefore, under California Code of Civil Procedure § 473(b) the Court must deny it.

California Code of Civil Procedure § 473(b) provides:

> (b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. . . .

TENTATIVE RULING #6:

MOTION DENIED.

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7.	**24CV1014**	**AMERICAN EXPRESS v. DULANEY**
MSJ		

On April 23, 2025, Plaintiff filed a Motion for Summary Judgment, or in the alternative, Summary Adjudication. This is a collections case, with the Complaint alleging one cause of action for common counts.

Request for Judicial Notice

In support of its motion, Plaintiff filed a Request for Judicial Notice asking the court to take notice of 15 USC § 1666 and 12 CFR § 202.12.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts 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." Ev. Code § 452(h).

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

Here, the Court finds that 15 USC § 1666 and 12 CFR § 202.12 are not reasonably subject to dispute. Additionally, Plaintiff has complied with the requirements of Section 453, therefore the court is compelled to grant the judicial notice request. As such, Plaintiff's request is granted, and the court hereby takes judicial notice of 15 USC § 1666 and 12 CFR § 202.12.

Motion for Summary Judgment/Adjudication

Plaintiff brings its motion as a Motion for Summary Judgment or, in the Alternative, Summary Adjudication. The legal standard is the same for each form of relief in all material respects. A motion for summary judgment or adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co*., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely

than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro*, 42 Cal. App. 4th 1591, 1601 (1996).

The moving party bears the initial burden of making a prima facie case for summary judgment. *White v. Smule, Inc.*, 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital*, 23 Cal. App. 5th 653, 661 (2018).

Plaintiff alleges that within the last four years, the Defendant became indebted to Plaintiff for goods, wares, and merchandise obtained from Plaintiff at Defendant's request, pursuant to her line of credit. Plaintiff states that Defendant applied for a credit card account and entered into a written credit card agreement ("Agreement") with Plaintiff for account #1009. (UMF #1 and #10). Plaintiff argues that Defendant agreed to be bound by the terms and conditions of the Agreement and that use of the credit card constitutes acceptance of the agreement. (UMF #2 and #11). After receiving the card, Defendant made purchases and Plaintiff paid for the charges on the account. Defendant's account had a principal balance of $16,011.35. (UMF #3, #8, #12, and #17). Plaintiff states that Defendant received billing statements, did not dispute any portion of those statements, failed to make payments on the account, and that the last payment made was on August 16, 2023. (UMF #4-7, #13-16).

To state a common count for money lent, the plaintiff need only allege that the defendant is indebted in a certain sum for money loaned by the plaintiff and that the defendant has not repaid the money. See *Pleasant v. Samuels* (1896) 114 Cal. 34, 36-38. The Court finds that Plaintiff has established this cause of action.

The common count for money lent or paid alleges the indebtedness "for money lent by plaintiff to defendant," or "money paid" or "expended" to or for the defendant. See *Pleasant*, *supra*, 114 Cal. at 34. The Court finds that Plaintiff has established this cause of action.

To establish a claim for open book account, Plaintiff must prove (1) that Plaintiff and Defendant had a financial transaction; (2) that Plaintiff kept an account of the debits and credits involved in the transaction; (3) that Defendant owes Plaintiff money on the account; and (4) the amount of money that Defendant owes Plaintiff. CACI 372; see also *Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708. The Court finds that Plaintiff has established this cause of action.

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due." *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600. The Court finds that Plaintiff has established this cause of action.

Since the Court finds that Plaintiff has established all elements for common counts, the burden shifts to Defendant to show one or more triable issues of material fact, or a defense. There is no Opposition filed by Defendant. Therefore, Plaintiff's Motion for Summary Judgment is granted.

TENTATIVE RULING #7:

MOTION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8.	**25CV1492**	**MATTER OF IDELL**
Minor's Compromise		

On June 9, 2025, Tammy Idell, the mother of the minor who is the subject of this filed an ex parte application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on June 12, 2025.

This is a Petition to compromise a minor's claim arising from the wrongful death of her father in an automobile accident. The minor was not present and did not suffer any physical injuries. A copy of the accident investigation report was filed with the Petition, as required by Local Rule 7.10.12A(4). Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $7,500.00.

There are no medical expenses, attorney's fees, or costs to be subtracted from the settlement amount.

With respect to the $7,500.00 due to the minor, the Petition requests that they be deposited into an insured account with U.S. Bank, subject to withdrawal with court authorization. See attachment 18(b)(2), which includes the name and address of the depository, as required by Local Rules of the El Dorado County Superior Court**,** Rule 7.10.12A(7).

The Court finds good cause to waive the minor's presence at the hearing.

TENTATIVE RULING #8:

PETITION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9.	**24CV0887**	**ANDRIDGE v. NUNES et al**
Motion for Sanctions		

Defendant Michael Nunes filed a Motion for Sanctions pursuant to California Code of Civil Procedure § 128.7. There are other Defendants in the case, but the Motion specifically states it is brought by Michael Nunes only. The Motion was previously heard on May 16, 2025. As part of that Tentative Ruling, the Court informed Defendant that his Motion did not comply with Local Rule 7.10.05 and that repeated violations would be ground for sanctions. The Amended Motion filed on June 10, 2025, still does not comply with Local Rule 7.10.05.

Defendant argues there are several grounds to order sanctions against Plaintiff, including: perjury and contradictory sworn declarations; bad faith and frivolous filings; retaliatory filings with retaliatory motive; abuse of process; waste of judicial resources; and, litigation misconduct and willful deceit.

Plaintiff filed an Opposition.

TENTATIVE RULING #9:

APPEARANCES REQUIRED ON FRIDAY, JULY 18, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10.	**24CV0532**	**VILT v. POLSTON**
Motion to Set-Aside		

TENTATIVE RULING #10:

APPEARANCES REQUIRED ON FRIDAY, JULY 18, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11.	**22CV1554**	**VEGA v. VEGA**
Motion to Enforce Settlement		

The parties, Alden ("Alden") and Nelson Vega ("Nelson") are engaged in a dispute over their tenancy-in-common interests in a single-family residence located in El Dorado County that they acquired as an investment property in 1992. Alden owns one-third and Nelson owns two-thirds interest in the property. Issues related to the income and expenses from the property are the subject of separate litigation in Monterey County, where both parties reside. The related action pending in Monterey County Superior Court (Case No. 22CV001866) was filed on June 30, 2022, before this El Dorado County Superior Court case was filed on October 17, 2022.

The Defendant/Cross-Complainant in the El Dorado County action (Nelson Vega), is the Plaintiff in the Monterey County action. The Plaintiff in the El Dorado County action (Alden Vega) is the Defendant and Cross-Complainant in the Monterey County action.

The proceedings in Monterey County Superior Court relate to causes of action for breach of contract, breach of fiduciary duty, elder abuse and common counts (related to failure to pay property expenses). This action in El Dorado County is for partition of the property and the Cross-Complaint is for quiet title or, alternatively, equitable set-off in the partition action.

Nelson's Cross-Complaint in the El Dorado County action alleges that Alden sold Nelson his interest in the property in 1993 for $32,000, and seeks quiet title to the one-third interest claimed by Alden, or int the alternative, equitable set off against Alden's interest for the property expenses to which Nelson alleges Alden failed to contribute.

Nelson was deposed on November 15, 2023, in the Monterey County case, and as part of that deposition was requested to produce any documents substantiating his position that Nelson had purchased Alden's one-third interest in the property for $32,000 in 1993. The only responsive document produced was Nelson's 1993 tax return. See Declaration of Tracy Tumlin, dated February, 7, 2024. Alden represents that he never sold his one-third interest in the property and no agreement to sell his interest prior to the March, 2023 settlement agreement. Alden Declaration, ¶5.

Settlement Agreement

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13. Plaintiff moves to enforce the settlement agreement. The actual Motion does not appear in the Court's file – only the Notice of Motion, the proposed Order, and the Declarations of Tracy Tumlin and Alden Vega.

The parties executed a settlement agreement on March 27, 2023, pursuant to which Alden agreed to sell his interest in Nelson. See Exhibit 1 to Declaration of Alden Vega ("Alden Declaration"), dated March 6, 2024. An appraisal showed a value of $474,000, which the parties stipulated to be the value of the property for the purpose of their settlement. However, Nelson did not make the anticipated payment of $158,000, and instead filed an Answer and Cross-Complaint in this action on April 20, 2023.

Demurrer

Alden demurs to the Cross-Complaint on the following grounds:

1. Statute of Frauds – Civil Code § 1624
2. Statute of Limitations – Code of Civil Procedure §§ 430.10(c), 338, 343
3. Venue
4. Prior Settlement

Plaintiff's Motion to Enforce Settlement is unopposed. Defendant recently filed a "Response" to the Demurrer.

At the hearing on this demurrer held on July 28, 2023, the court on its own motion continued the matter to a date that was after the date for which the Monterey County trial was then scheduled. The matter was continued to April 18, 2025, and then further continued to July 18, 2025, based upon joint stipulation of the parties. Trial in the Monterey County action commenced and the parties then stipulated to dismiss that case and defer all matters to this case.

TENTATIVE RULING #11:

APPEARANCES REQUIRED ON FRIDAY, JULY 18, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12.	**23CV1370**	**FREEMAN v. JABBERGYM, LLC et al**
MSJ		

This is an employment discrimination, harassment, and retaliation lawsuit. Pursuant to Code of Civil Procedure section 437c, defendants Jabbergym LLC ("Jabbergym LLC") and Point Quest, Inc. ("Point Quest;" collectively referred to as "defendants") move for summary judgment on plaintiff Emily Freeman's ("plaintiff") complaint.

1. Plaintiff's Untimely Opposition

Defendants request the court to disregard plaintiff's untimely opposition in ruling on the instant motion. The deadline for plaintiff's opposition brief was June 6, 2025 (20 days preceding the noticed hearing date, which was June 27, 2025). (Code Civ. Proc., § 437c, subd. (b)(2).) Plaintiff did not file her opposition until June 9, 2025. The court notes that defendants' reply brief addresses the substantive arguments in plaintiff's opposition. The court exercises its discretion under California Rule of Court 3.1300, subdivision (d) to consider the untimely opposition.

2. Background

In July 2020, Jabbergym, Inc. (an entity distinct from Jabbergym LLC) hired plaintiff as an occupational therapist. (Defs.' Separate Stmt. of Undisputed Material Facts ("UMF") Nos. 1, 8.)

In November 2021, plaintiff became pregnant. (Defs.' UMF No. 9.)

In early December 2021, Kristin Mai and Polly Bowser, both of whom were plaintiff's supervisors at Jabbergym, Inc., placed plaintiff on a Performance Improvement Plan ("PIP").[1] (Defs.' UMF No. 31.)

Also in December 2021, Point Quest acquired Jabbergym, Inc. (Defs.' UMF No. 2.) As part of Point Quest's acquisition of Jabbergym, Inc., Point Quest hired plaintiff to begin working as an "at-will" employee of Point Quest effective January 1, 2022. (Defs.' UMF No. 5, 29.)

The parties dispute whether Jabbergym LLC ever employed plaintiff. Jabbergym LLC is a holding company that was formed for the purpose of Point Quest's acquisition of Jabbergym, Inc. (Defs.' UMF No. 3.) Defendants claim Jabbergym LLC has never had any employees; all employees previously employed by Jabbergym, Inc., who were hired as part of the acquisition process were hired as employees of Point Quest. (Defs.' UMF No. 4.) Plaintiff, on the other hand,

[1] Plaintiff acknowledges a December 3, 2021, performance review but claims it was not originally presented to her as a PIP. (Pltf.'s UMF No. 20.) Plaintiff claims she was told it was merely a "check-in." (Pltf.'s UMF No. 21.) However, plaintiff states that on February 25, 2022, she learned the December 3, 2021, meeting was considered a PIP. (Pltf.'s Opp. to Defs.' UMF No. 31; Pltf.'s UMF No. 22.)

claims Jabbergym LLC, in effectuating the transition from Jabbergym, Inc. to Point Quest, assumed the business assets and operations of Jabbergym, Inc. and functioned as a joint or de facto employer. (Pltf.'s Opp. to Defs.' UMF No. 4.)

On February 10, 2022, plaintiff sent an email to Karina Callahand, one of Point Quest's Human Resources employees, to ask questions about maternity leave for her pregnancy. (Defs.' UMF No. 13.) This was the first time plaintiff communicated an inquiry regarding maternity leave. (Defs.' UMF No. 448.) At deposition, plaintiff testified she was not requesting to go out on leave at a specific time when she sent this email. (Defs.' UMF No. 13.)

On February 11, 2022, Callahand responded to plaintiff's email stating, "Congratulations!" (Defs.' UMF No. 15.) Callahand provided information regarding the leaves of absence plaintiff was eligible for during and after her pregnancy. (Defs.' UMF No. 15.) Callahand also stated, "Unfortunately, you are not eligible for Family Medical Leave Act (FMLA) portion of the benefit as you have not been with the company a total of 12 months."[1] (Defs.' UMF No. 16.) But ultimately, Point Quest did offer plaintiff FMLA leave. (Defs.' UMF No. 26.) Plaintiff claims she received "mixed messaging" from Human Resources, undermining plaintiff's ability to make informed use of her rights. (Pltf.'s UMF No. 9.)

Following the aforementioned email conversation between plaintiff and Callahand, plaintiff requested to take maternity leave. (Defs.' UMF No. 27.) The parties dispute whether Point Quest granted plaintiff the requested maternity leave. Defendants claim Point Quest did grant plaintiff's requested leave. (Defs.' UMF No. 27.) But plaintiff claims Point Quest did not legally grant her request where the company did not guarantee plaintiff, in writing, the same or a comparable position upon the termination of the leave.[2] (Pltf.'s Opp. to Defs.' UMF No. 27.)

On February 18, 2022, Point Quest's Human Resources Director Monique Figueroa emailed plaintiff stating Figueroa had learned that plaintiff may have had a medical condition that might impact her ability to perform her job and that Figueroa was reaching out to plaintiff to initiate the interactive process. (Defs.' UMF No. 126.) At deposition, plaintiff testified it was her understanding that Figueroa was referring to plaintiff's pregnancy. (Defs.' UMF No. 127.)

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[1] Plaintiff disputes the legality of this statement but does not dispute that Callahand actually made the statement.

[2] Plaintiff cites Government Code section 12945.2, subdivision (a) and California Code of Regulations, Title 2, section 11091, subdivision (a)(3) for the proposition that a written guarantee is required to constitute a formal granting of the requested leave. Government Code section 12945.2 provides in relevant part, "Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave." (Gov. Code, § 12945.2, subd. (a).) But this statute does not require the employer to grant the requested leave in writing. The Code of Regulations citation concerns the employee's duty to provide the employer advance notice of the requested leave; it does not require the employer to put anything in writing.

On February 21, 2022, plaintiff responded to Figueroa's email stating plaintiff had requested to work from home during the week prior because she had developed flu-like symptoms that had turned out to be a brief bout of COVID-19 and that plaintiff's pregnancy had nothing to do with that request. (Defs.' UMF No. 128.) Plaintiff also stated she did not expect to work from home because of her pregnancy and that she would call Figueroa in the "near future to initiate the interactive process of identifying reasonable accommodations should [she] need them." (Defs.' UMF No. 128.)

At deposition, plaintiff testified she needed accommodation for her pregnancy in the form of shifting her caseload to provide her with less aggressive children, and that Point Quest provided this accommodation. (Defs.' UMF Nos. 130–131.)

In or around February or March 2022, Point Quest informed plaintiff she had a "clean slate" with regard to her employment with Point Quest, meaning that plaintiff's job performance at Point Quest would be assessed based on her work moving forward and not on any past work she had performed. (Defs.' UMF No. 32.)

Around early March 2022, plaintiff was given a new supervisor at Point Quest – Occupational Therapist Lead Sharron Smith. (Defs.' UMF No. 34.) Almost immediately after Smith began supervising plaintiff, Smith observed that plaintiff's job performance was deficient in multiple critical areas of plaintiff's work as an occupational therapist. (Defs.' UMF No. 35.) Of particular concern to Smith were the deficiencies she observed with respect to plaintiff's preparation and execution of Individualized Education Plans ("IEP") for her assigned students. (Defs.' UMF No. 35.) For example, plaintiff's errors on certain IEP reports caused several of those reports to be deemed non-compliant and returned to Point Quest by its funding sources. (Defs.' UMF No. 38.) At deposition, plaintiff acknowledged missing a scheduled IEP meeting in April 2022. (Defs.' UMF No. 53.)

Smith kept her supervisors – Kathryn Vigil (Point Quest's Director of Related Services) and Sarah Marohl (Assistant Director for the El Dorado Hills school site where plaintiff worked) – apprised of plaintiff's job performance issues. (Defs.' UMF No. 39.)

Vigil also observed instances of plaintiff's inadequate work performance relating to her preparation of IEPs. (Defs.' UMF No. 40.)

On March 21, 2022, plaintiff emailed Bowser (another supervisor) stating plaintiff was experiencing back pain as a result of having to lift one of her students, and that she would like to be reassigned to a different student that did not require lifting. (Defs.' UMF No. 133.) Plaintiff does not specifically recall whether Point Quest provided her with a reassignment in response to this email, but plaintiff testified at deposition that whenever she would ask for a reassignment of students as an accommodation, it would be provided to her. (Defs.' UMF No. 134.)

On March 24, 2022, Callahand emailed plaintiff stating Callahand had received an inquiry regarding possible restrictions plaintiff may have had that may have been preventing her from performing the essential functions of her job. (Defs.' UMF No. 135.) Callahand attached a medical certification form to her email and asked plaintiff to have her medical provider submit it or a work status report within 15 days so that Point Quest could be aware of any possible work

restrictions it may need to accommodate. (Defs.' UMF No. 135.) Plaintiff received the medical certification form but did not fill it out or return it, claiming"[i]t wasn't necessary," as plaintiff had already been provided with the changes to her student caseload that she had needed as an accommodation. (Defs.' UMF Nos. 137–138.)

At deposition, plaintiff testified that, at some point between January and May 2022, a male classroom aide (who was not plaintiff's supervisor) tried to touch plaintiff's stomach and asked her, "Is that a baby bump? Are you pregnant?" (Defs.' UMF No. 258.) He also asked plaintiff about her relationship status and did what plaintiff described as a "licking-his-lips thing" when he looked at her. (Defs.' UMF No. 258.) This conduct occurred over the course of three interactions between plaintiff and the classroom aide. (Defs.' UMF No. 258.) After the third interaction, plaintiff went to Brooke Warren, the director of Point Quest's El Dorado Hills location, to inform her for the first time of what the classroom aide had done. (Defs.' UMF No. 259.) Plaintiff testified that, after reporting the conduct to Warren, the classroom aide did not make any further comments or gestures to plaintiff that she found inappropriate. (Defs.' UMF No. 260.)

Plaintiff further testified that between January and May 2022, Mai, Vigil, and Marohl either asked plaintiff questions about her relationship status and pregnancy or made comments plaintiff found to be inappropriate. (Defs.' UMF No. 263.) At one point during plaintiff's employment, Mai allegedly told plaintiff she did not know plaintiff had a boyfriend and asked, "Are you guys going to get married?" (Defs.' UMF No. 264.) This prompted plaintiff to feel like she needed to tell Mai that plaintiff did not have a boyfriend. (Defs.' UMF No. 264.) Mai also allegedly talked about her church a lot to plaintiff and asked plaintiff if she went to church. (Defs.' UMF No. 265.) In January 2022, Mai allegedly told plaintiff something about "her kids needing their dad or something" and "how important a girl's relationship with her father is." (Defs.' UMF No. 266.) Plaintiff did not tell Mai that she believed these comments were inappropriate or express to Mai that it had upset her. (Defs.' UMF No. 267.)

During this time period (January through May 2022), Marohl allegedly gave plaintiff unsolicited advice about childbirth, newborns, pregnancy, and support approximately three times per week. (Defs.' UMF No. 273.)

Plaintiff testified that Smith told her that Vigil told Smith that Vigil does not like plaintiff and that plaintiff was a liar, and that Vigil had falsely claimed that plaintiff was Facebook friends with a lot of parents of plaintiff's assigned students. (Defs.' UMF No. 269.) Vigil had allegedly shared other similar pieces of "gossip" with Smith. (Defs.' UMF No. 270.)

From March through May 2022, Smith provided plaintiff with various written resources and "cheat sheets" that detailed the job duties of an occupational therapist and provided guidance on what was expected of plaintiff in fulfilling her job duties. (Defs.' UMF No. 42.)

In early May 2022, Smith placed plaintiff on another PIP. (Defs.' UMF No. 44.) On May 12, 2022, Smith, Vigil, and Marohl held a meeting with plaintiff to present the written PIP to her. (Defs.' UMF No. 46.) The PIP was set for a 30-day period but the plan stated that plaintiff's employment could be terminated before the end of that 30-day period if plaintiff failed to meet

her supervisor's expectations and did not exhibit significant improvement with her job performance. (Defs.' UMF No. 47.)

Plaintiff testified that, during the May 12, 2022, meeting, Vigil asked plaintiff the following with regards to plaintiff's pregnancy: whether plaintiff had any support, if she would be raising her baby alone, and when she was planning to take leave. (Defs.' UMF No. 271.)

Plaintiff claims the May 2022 PIP was retaliatory; any of plaintiff's alleged work deficiencies were either long-standing or minor. (Pltf.'s Opp. to Defs.' UMF No. 45.) At deposition, plaintiff testified she does not know whether other employees were placed on PIPs for the same types of concerns that were raised in plaintiff's May 2022 PIP. (Defs.' UMF No. 213.)

On May 19, 2022, Smith and Marohl held another meeting with plaintiff. (Defs.' UMF No. 49.) Defendants claim the purpose of the meeting was to follow up on plaintiff's progress under the May 2022 PIP. (Defs.' UMF No. 49.) However, plaintiff disagrees; she claims it was already pre-determined that Smith and Marohl would terminate plaintiff. (Pltf.'s Opp. to Defs.' UMF No. 49.) The parties dispute whether plaintiff's job performance "consistently" improved. (Defs.' UMF No. 43; Pltf.'s Opp. to Defs.' UMF No. 43.) Plaintiff claims that, on May 19, 2022, she was told she was improving.[1] (Pltf.'s UMF No. 11.)

On May 27, 2022, Point Quest terminated plaintiff's employment. (Defs.' UMF No. 50.) Defendants claim the reason for plaintiff's termination was inadequate job performance. (Defs.' UMF No. 50.) Plaintiff claims she was terminated as a result of discrimination based on her pregnancy, her need for maternity leave and accommodations. (See Pltf.'s Opp. to Defs.' UMF No. 182.) At deposition, plaintiff testified she thought she was discriminated against based on her decision to become a single mother by choice. (Defs.' UMF No. 222.)

3. Evidentiary Objections

The court sustains defendants' Objection Numbers 1, 2, and 3.

4. Requests for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendants' request for judicial notice of Exhibit A (plaintiff's complaint).

[1] Defendants claim plaintiff's cited evidence does not support this fact. In support of plaintiff's UMF Number 11, plaintiff cites several portions of her deposition transcript – however, one of the portions cited, page 186 lines 1 through 25, was not submitted by either party as evidence in support of or opposition to the motion. Plaintiff also cites the meeting minutes from May 19, 2022 (Dahm Decl., Ex. 5). The minutes state in relevant part, "Progress has been made on 2/3 areas, no reports due at this time" and "Thank you for initiating and planning the water day. Keep up the good work!" Based on these statements in the meeting minutes, the court finds plaintiff has cited evidence that supports her UMF Number 11.

Pursuant to Evidence Code section 452, subdivision (c), the court grants plaintiff's request for judicial notice of Exhibit 1 (Jabbergym LLC's Articles of Organization filed Jan. 25, 2020) and Exhibit 2 (Jabbergym LLC's Statement of Information filed Mar. 17, 2025); the court denies plaintiff's request for judicial notice of Exhibit 3 (screenshot of Point Quest's website) and Exhibit 4 (screenshot of Jabbergym LLC's website).

5. Legal Principles

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*) There is a triable issue of material fact if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of plaintiff. (*Ibid.*)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

6. Discussion

Plaintiff's complaint alleges the following causes of action against defendants: (1) interference and retaliation under the California Family Rights Act ("CFRA") (Gov. Code, §§ 12945.1, 12945.2); (2) disability and sex discrimination under the California Fair Employment and Housing Act ("FEHA") (Gov. Code, § 12900, et seq.); (3) failure to engage in the interactive process under FEHA; (4) failure to provide reasonable accommodation under FEHA; (5) retaliation under FEHA; (6) "whistleblower" retaliation under Labor Code section 1102.5; (7) harassment under FEHA; (8) failure to prevent discrimination, harassment, and retaliation under FEHA; and (9) wrongful termination in violation of public policy.

6.1. <u>Whether Jabbergym LLC Was Plaintiff's Employer</u>

As an initial matter, defendants argue that Jabbergym LLC is not liable for any of plaintiff's causes of action because Jabbergym LLC was never plaintiff's employer and, in fact, Jabbergym LLC employed no individuals at any time.

Plaintiff argues Jabbergym LLC operated as an arm or affiliate of Point Quest, retained business continuity with Jabbergym, Inc., and was involved in the transition and restructuring that affected plaintiff's employment rights. (Opp. at 5:17–19.)

FEHA "predicates potential 'liability on the status of the defendant as an "employer" ' " and the existence of " 'some connection with an employment relationship,' although this connection 'need not necessarily be direct.' " (*Vernon v. State of California* (2004) 116 Cal.App.4th 114, 123.) Consequently, more than one individual, company or organization may qualify as an individual's "employer," depending on the " 'totality of circumstances' that reflect upon the nature of the work relationship of the parties." (*Id.* at pp. 124–125; accord *Bradley v. Dept. of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1612, 1626 [no "magic formula" exists to determine whether an organization qualifies as an employer, but the "prevailing view is to consider the totality of the circumstances"]; *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 [recognizing that two corporations may be treated as a single employer under FEHA]; *Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1183 [labor law doctrine of "dual employers" applies to FEHA claims].)

In *Vernon*, the court listed several factors to consider when assessing whether a joint employment relationship exists, including the "payment of salary or other employment benefits and Social Security taxes, the ownership of the equipment necessary to performance of the job, the location where the work is performed, the obligation of the defendant to train the employee, the authority of the defendant to hire, transfer, promote, discipline or discharge the employee, the authority to establish work schedules and assignments, the defendant's discretion to determine the amount of compensation earned by the employee, the skill required of the work performed and the extent to which it is done under the direction of a supervisor, whether the work is part of the defendant's regular business operations, the skill required in the particular occupation, the duration of the relationship of the parties, and the duration of the plaintiff's employment. (*Vernon*, *supra*, 116 Cal.App.4th at p. 125.) These factors " ' "cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations." ' " (*Ibid.*)

" 'Of these factors, the extent of the defendant's right to control the means and manner of the workers' performance is the most important.' [Citations.] In all cases, an 'employer must be an individual or entity who extends a certain degree of control over the plaintiff.' " (*Vernon*, *supra*, 116 Cal.App.4th at p. 126.) This control must be "significant," and " 'there must be a "sufficient indicia of an interrelationship … to justify the belief on the part of an aggrieved employee that the [alleged co-employer] is jointly responsible for the acts of the immediate employer." ' " (*Ibid.*) In other words, "we look ' "to the degree an entity or person significantly affects access to employment" ' " when determining employer liability under FEHA. (*Ibid.*)

In addition to joint employers, Government Code section 12926, subdivision (d) states that, for purposes of the FEHA, the term " '[e]mployer' includes … any person acting as an agent of an employer, directly or indirectly …." (Gov. Code, § 12926, subd. (d).) The Supreme Court has held that a business-entity agent of an employer may fall within the FEHA definition of

employer, and may be directly liable for FEHA violations, when it carries out FEHA-regulated activities on behalf of the employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291.)

In this case, the court finds that defendants have met their initial burden of showing Jabbergym LLC was not plaintiff's employer. Therefore, the burden shifts to plaintiff to demonstrate a triable issue of material fact. Plaintiff's UMF Numbers 1 through 6 attempt to show that Jabbergym LLC is directly liable to plaintiff under the FEHA. However, plaintiff's evidence falls short.

Plaintiff's UMF Number 1 states plaintiff began her employment at Jabbergym, Inc. and was later transitioned into Point Quest via Jabbergym LLC. However, the court finds this to be a legal conclusion unsupported by the cited evidence.

Plaintiff's UMF Number 2 states that Point Quest Inc. was identified as a Manager or Member of Jabbergym LLC in Jabbergym LLC's Statement of Information filed with the Secretary of State on March 17, 2025. But, the cited evidence shows it was actually a different entity – Point Quest Group, Inc. – that was identified as the Manager of Member of Jabbergym LLC. (Pltf.'s RJN No. 2.) Additionally, the Statement of Information was filed in March 2025, after the relevant time period in plaintiff's complaint.

Plaintiff's UMF Number 3 states, "The homepage of Point Quest, Inc.'s website lists Jabbergym LLC in its network, and the homepage of Jabbergym LLC's website uses the domain 'pqg' referring to Point Quest Group." Again, this fact relates to a separate entity – Point Quest Group. It also does not show that Jabbergym LLC carried out FEHA-regulated activities on behalf of Point Quest.

Plaintiff's UMF Number 4 states, "Plaintiff's work email signature identified 'Jabbergym LLC as a Member of Point Quest Group." This fact also relates to Point Quest Group, not Point Quest, and does not show that Jabbergym LLC carried out FEHA-regulated activities on behalf of Point Quest. Plus, as defendants point out, what plaintiff chose to state as part of her email signature does not necessarily mean that she was in an employment relationship with Jabbergym LLC. (Defs.' Reply to Pltf.'s UMF No. 4.)

Plaintiff's UMF Number 5 states, "Plaintiff consistently received directives and performance feedback from individuals affiliated with Point Quest and Jabbergym LLC." In support of this fact, plaintiff cites to portions of her deposition transcript and an Organizational Chart of Jabbergym LLC and Point Quest Inc. The cited deposition testimony does not support plaintiff's UMF Number 5. Additionally, the court sustained defendants' objection to the Organizational Chart. (Simpson Decl., Ex. 10; see Defs.' Obj. No. 3.)

Plaintiff's UMF Number 6 states, "There was no meaningful interruption in business operations or employee management during the transition." Plaintiff again cites to the Organizational Chart, but the court has sustained defendants' objection to the Organizational Chart. Even accepting plaintiff's UMF Number 6 as true, it does not show that Jabbergym LLC carried out FEHA-regulated activities on behalf of Point Quest.

Based on the above, the court finds plaintiff has failed to produce a prima facie showing of the existence of a triable issue of material fact on the issue of whether Jabbergym was plaintiff's employer under the FEHA. Accordingly, the court grants Jabbergym, LLC summary judgment on each cause of action in plaintiff's complaint.

6.2. Interference and Retaliation (CFRA)

The CFRA makes it unlawful for a covered employer "to refuse to grant a request by an employee" for family care and medical leave and "to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right" provided by the CFRA. (Gov. Code, § 12945.2, subds. (a), (q).) To state a claim for CFRA interference, plaintiff must establish: "(1) the employee's entitlement to CFRA leave rights; and (2) the employer's interference with or denial of those rights." (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 601.)

The complaint alleges that, after plaintiff provided notice to defendants of her need for future medical leave due to her pregnancy, defendants failed to apprise plaintiff of her rights under the CFRA. (Compl. ¶ 57.) But, the undisputed material facts show that, when plaintiff asked Callahand about maternity leave in February 2022, Callahand provided plaintiff with information regarding the leaves of absence plaintiff was eligible for during and after her pregnancy. (Defs.' UMF No. 15.) Although Callahand originally indicated that plaintiff was not entitled to FMLA leave, Point Quest later changed its position and offered plaintiff FMLA leave. (Defs.' UMF No. 26.)

The court finds defendants have met their initial burden of showing there was no interference with or denial of plaintiff's rights; and plaintiff has failed to produce a triable issue of material fact.

The elements of a cause of action for retaliation in violation of CFRA are: "(1) the defendant was an employer covered by the CFRA; (2) the plaintiff was an employee eligible to take CFRA leave; (3) the plaintiff exercised her right to take [leave] for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension because of her exercise of her right to CFRA [leave]." (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 250.)

The complaint alleges, "[t]he requested missed workdays to care for Plaintiff's medical condition frustrated Defendant, and it retaliated against Plaintiff for her intention to take medical leave by creating the overall hostile terms and conditions of employment and terminating her employment." (Compl., ¶ 58.) The evidence shows that the requested missed workdays were for plaintiff's alleged COVID-19 symptoms, not her pregnancy. On February 21, 2022, plaintiff responded to Figueroa's email stating plaintiff had requested to work from home during the week prior because she had developed flu-like symptoms that had turned out to be a brief bout of COVID-19 and that plaintiff's pregnancy had nothing to do with that request. (Defs.' UMF No. 128.)

As such, defendants have met their initial burden of showing that at least one of the required elements – that plaintiff exercised her right to take leave for a qualifying CFRA purpose – cannot be established. Plaintiff has not produced a triable issue of material fact.

The motion for summary judgment is granted with respect to the interference and retaliation claims.

6.3. Disability and Sex Discrimination (FEHA)

FEHA prohibits discrimination against an employee based on his or her physical disability, or based on his or her sex. (Gov. Code, §§ 12940, subd. (a), 12926, subd. (r)(1)(A).) The complaint alleges, "Plaintiff was unlawfully discriminated against because of her decision to become pregnant as a single mother by choice, requesting accommodations such as medical leave for her medical condition and speaking out against an unwarranted and retaliatory PIP." (Compl., ¶ 72.)

Physical disability is defined as including any physiological condition that "[l]imits a major life activity," such as working. (Gov. Code, § 12926, subd. (m)(1)(B).) "Being unable to work during pregnancy is a disability for the purposes of [Government Code] section 12940." (*Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1340.)

A prima facie case requires a showing that (1) plaintiff suffered from a disability or was regarded as suffering from a disability; (2) plaintiff could perform the essential duties of the job with or without reasonable accommodations; and (3) plaintiff was subjected to an adverse employment action because of the disability or perceived disability. (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 310.) "To establish a prima facie case, a plaintiff must show ' " ' "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a [prohibited] discriminatory criterion…" ' " …' The prima facie burden is light; the evidence necessary to sustain the burden is minimal. As noted above, while the elements of a plaintiff's prima facie case can vary considerably, generally an employee need only offer sufficient circumstantial evidence to give rise to a reasonable *inference* of discrimination." (*Ibid.*, original italics, internal citations omitted.)

"If the employee meets this [prima facie] burden, it is then incumbent on the employer to show that it had a legitimate, nondiscriminatory reason for its employment decision. When this showing is made, the burden shifts back to the employee to produce substantial evidence that employer's given reason was either 'untrue or pretextual,' or that the employer acted with discriminatory animus, in order to raise an inference of discrimination." (Furtado v. State Personnel Bd. (2013) 212 Cal.App.4th 729, 744.)

Here, defendants argue that even if plaintiff can establish a prima facie case, the undisputed evidence shows that defendants had a legitimate, nondiscriminatory reason for placing plaintiff on the May 2022 PIP and ultimately terminating plaintiff – her deficient job performance. However, the court finds that, at the summary judgment level, plaintiff has

produced a triable issue of material fact as to whether the employer's given reason was either untrue or pretextual. The close temporal proximity of the alleged discrimination to plaintiff's maternity leave discussions supports plaintiff's position. Additionally, plaintiff has produced evidence that, during the May 19, 2022, meeting (shortly before she was terminated), she was told she was improving.

The motion for summary judgment is denied with respect to this cause of action.

6.4. Failure to Engage in the Interactive Process (FEHA)

FEHA makes it unlawful "[f]or an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." (Gov. Code, § 12940, subd. (n).) "Both employer and employee have the obligation 'to keep communications open' and neither has 'a right to obstruct the process.' [Citation.] 'Each party must participate in good faith, undertake reasonable efforts to communicate its concerns, and make available to the other information[,] which is available, or more accessible, to one party. Liability hinges on the objective circumstances surrounding the parties' breakdown in communication, and responsibility for the breakdown lies with the party who fails to participate in good faith.' " (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1014.) Thus, " 'the employer cannot prevail on summary judgment … unless it establishes through undisputed facts that … the employer did everything in its power to find a reasonable accommodation, but the informal interactive process broke down because the employee failed to engage in discussions in good faith.' " (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 598.)

In this case, the undisputed evidence shows that, upon informing defendants she was pregnant, defendants initiated the interactive process. At deposition, plaintiff testified she needed accommodation for her pregnancy in the form of shifting her caseload to provide her with less aggressive children, and that Point Quest provided this accommodation. (Defs.' UMF Nos. 130–131.) On March 24, 2022, Callahand emailed plaintiff stating Callahand had received an inquiry regarding possible restrictions plaintiff may have had that may have been preventing her from performing the essential functions of her job. (Defs.' UMF No. 135.) Callahand attached a medical certification form to her email and asked plaintiff to have her medical provider submit it or a work status report within 15 days so that Point Quest could be aware of any possible work restrictions it may need to accommodate. (Defs.' UMF No. 135.) Plaintiff received the medical certification form but did not fill it out or return it, claiming"[i]t wasn't necessary," as plaintiff had already been provided with the changes to her student caseload that she had needed as an accommodation. (Defs.' UMF Nos. 137–138.)

The court grants summary judgment on this cause of action.

6.5. Failure to Accommodate (FEHA)

FEHA requires employers to make reasonable accommodation for the known disabilities of applicants and employees to enable them to perform a position's essential functions, unless doing so would produce undue hardship to the employer's operations. (Gov. Code, § 12940, subd. (m).)

The essential elements of a failure to accommodate claim are: " '(1) the plaintiff has a disability under the FEHA, (2) the plaintiff is qualified to perform the essential functions of the position [held or desired], and (3) the employer failed to reasonably accommodate the plaintiff's disability.' " (*Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 969.) " 'Ordinarily, the reasonableness of an accommodation is an issue for the jury.' " (*Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 954.)

Here, defendants have met their initial burden of showing that one of the elements cannot be established – that the employer failed to reasonably accommodate plaintiff's pregnancy. Plaintiff has not raised a triable issue of material fact. The court grants summary judgment as to this cause of action.

6.6. Retaliation (FEHA)

"[I]n 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. Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation 'drops out of the picture,' and the burden shifts back to the employee to prove intentional retaliation." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 [internal citations omitted].)

For the same reasons as discussed under the discrimination cause of action, the court denies summary judgment on this cause of action.

6.7. "Whistleblower" Retaliation

"[Labor Code] Section 1102.5 provides whistleblower protections to employees who disclose wrongdoing to authorities. As relevant here, section 1102.5 prohibits an employer from retaliating against an employee for sharing information the employee 'has reasonable cause to believe … discloses a violation of state or federal statute' or of 'a local, state, or federal rule or regulation' with a government agency, with a person with authority over the employee, or with another employee who has authority to investigate or correct the violation." (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 709, citing Lab. Code, § 1102.5, subd. (b).)

The complaint alleges, "Plaintiff was inadequately denied the FMLA leave she was entitled to for her pregnancy. After she received notice of the denial, Plaintiff resisted the denial and asserted her rights to FMLA. Following Plaintiff's resistance to the denial of her FMLA rights, Defendant placed Plaintiff on a PIP, held her to heightened scrutiny, demoted her, before ultimately terminating Plaintiff's employment before she was able to take FMLA leave." (Compl., ¶ 123.) "Plaintiff's complaints regarding her disabilities, request for FMLA leave and resistance to accept Defendant's denial of her FMLA rights were substantial motivating reasons for Defendant's decision to terminate Plaintiff." (Compl., ¶ 126.)

Defendants argue (1) plaintiff cannot establish a prima facie case for whistleblower retaliation because plaintiff cannot show the existence of any protected activity that was a contributing factor for her termination; and (2) even assuming plaintiff could establish a prima facie case, defendants had a legitimate, independent reason for plaintiff's termination.

The court agrees that plaintiff cannot show the existence of any protected activity that was a contributing factor for her termination. The motion for summary judgment is granted as to this cause of action.

6.8. Harassment (FEHA)

Plaintiff makes a hostile work environment claim. (Compl., ¶ 137.) "To establish a prima facie case of a hostile work environment, [the plaintiff] must show that (1) [plaintiff] is a member of a protected class; (2) [plaintiff] was subjected to unwelcome harassment; (3) the harassment was based on [plaintiff's] protected status; (4) the harassment unreasonably interfered with [plaintiff's] work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment." (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.)

The complaint alleges, "Plaintiff was subjected to unwanted harassing conduct because of her disability, requests for medical leave, use of medical leave, and/or protected complaints of unlawful activity. This harassing conduct included failing to accommodate her disabilities, unduly criticizing her work, holding Plaintiff to unattainable standards not required of other employees, interfering with her right to take protected leave, denying her promotional opportunities and creating overall hostile terms and conditions of his [sic] employment." (Compl., ¶ 136.)

Defendants argue plaintiff cannot show that any of the alleged conduct was based on plaintiff's disability (i.e., her pregnancy). However, plaintiff has produced evidence showing that her supervisors made comment related to plaintiff's pregnancy.

"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." (§ 12923, subd. (b); see *Wawrzenski v. United Airlines, Inc., supra*, 106 Cal.App.5th at p. 693.)

"The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position." (*Bailey v. San Francisco Dist. Attorney's Office, supra*, 16 Cal.5th at p. 629; see *Miller v. Department of Corrections*, *supra*, 36 Cal.4th at p. 462; *Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 940.) "Harassment cases are rarely appropriate for disposition on summary judgment," and "hostile working environment cases involve issues 'not determinable on paper.' " (§ 12923, subds. (b) & (e); see *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286 ["many employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper"].)

The court finds that plaintiff has shown a triable issue of material fact as to whether she was subjected to unwelcome harassment that unreasonably interfered with her work performance. The motion is denied with respect to this cause of action.

6.9. Failure to Prevent Discrimination, Harassment, and Retaliation (FEHA)

"FEHA makes it a separate unlawful employment practice for an employer to 'fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.' " (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040; see Gov. Code, § 12940, subd. (k).) Under Government Code section 12940, subdivision (k), plaintiff must establish: (1) they were subjected to discrimination, harassment, or retaliation; (2) the employer failed to take all reasonable steps to prevent it; and (3) that failure caused harm. (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 877, accord, *Caldera v. Dept. of Corrections & Rehabilitation* (2018) 25 Cal.App.5th 31, 43–44.)

Defendants argue that plaintiff cannot show she was subject to unlawful discrimination, harassment, or retaliation. However, as previously discussed, plaintiff has produced a triable issue of material fact on these issues.

The motion for summary judgment is denied with respect to this cause of action.

6.10. Wrongful Termination in Violation of Public Policy (*Tameny* Claim)

"[W]hen an employer's discharge of an employee violates fundamental principles of public policy, the discharged employee may maintain a tort action and recover damages traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170.) "The elements of a claim for wrongful discharge in violation of public policy are (1) an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm." (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 154.) The third element of a common law wrongful termination claim–that the termination was substantially motivated by a violation of public policy–can be satisfied by showing a violation of FEHA. (*Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1383.)

For the same reasons as discussed under the discrimination cause of action, the court denies summary judgment on this cause of action.

TENTATIVE RULING #12: THE MOTION IS GRANTED IN PART AND DENIED IN PART. REFER TO FULL TEXT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

13.	24CV0499	HARMONY COMMUNITIES et al v. MORALES
Demurrer & Motion to Strike		

Pursuant to Code of Civil Procedure section 430.10, subdivision (e), cross-defendants Victor Martinez and Associates, Inc. and Adrian Garcia (collectively, "cross-defendants") generally demur to each cause of action in cross-complainant Larry Morales's ("cross-complainant") first amended cross-complaint ("FACC"). Pursuant to Code of Civil Procedure sections 435 and 436, cross-defendants also move to strike portions of the FACC related to disgorgement, attorney fees, and punitive damages. (FACC, ¶ 59 & Prayer for Relief ¶¶ B, C, D, H.)

A hearing on these motions was originally set for May 23, 2025. However, the court found that cross-defendants had not satisfied the meet and confer requirements and continued the hearing to allow the parties to meet and confer. On July 3, 2025, cross-defendants filed a report indicating the parties met and conferred by telephone on June 30 and July 1, 2025, but were unable to reach a resolution.

Demurrer

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

1. First C/A for Negligence

"A complaint in an action for negligence must allege (1) the defendant's legal duty of care towards the plaintiff, (2) the defendant's breach of that duty, (3) injury to the plaintiff as a proximate result of the breach, and (4) damage to the plaintiff. [Citation.]" (*Jones v. Grewe* (1987) 189 Cal.App.3d 950, 954.) A real estate broker is subject to a duty of skill, care, and diligence commensurate with the professional standards that the real estate industry has held out to the public and that the public can reasonably expect. (*Gardner v. Murphy* (1975) 54 Cal.App.3d 164, 168.)

The FACC alleges cross-defendants breached their duty of care to cross-complainant by: (1) failing to explain the agreement to cross-complainant; (2) failing to advocate for cross-

complainant; (3) failing to negotiate and failing to advise cross-complainant of potential counteroffers; (4) failing to properly advise cross-complainant on how to respond to due diligence; (5) failing to properly advise cross-complainant of the implications of responding to due diligence; (6) failing to properly document disclosures between the parties; and (7) failing to properly document "Seller's Mandatory Disclosure Statement" and the "Property Information Sheet" as required in the agreement. (FACC, ¶ 43, subds. (a)–(g).)

The court finds that the FACC adequately alleges a cause of action for negligence. The demurrer to this cause of action is overruled.

2. Second C/A for Breach of Fiduciary Duty

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432–433.) A real estate broker's fiduciary duty to his or her client under the common law "requires the highest good faith and undivided service and loyalty." (*Field v. Century 21 Klowden-Forness Realty* (1998) 63 Cal.App.4th 18, 25; *Nguyen v. Scott* (1988) 206 Cal.App.3d 725, 739; *Ford v. Cournale* (1973) 36 Cal.App.3d 172, 180.) A real estate broker owes his or her client a fiduciary duty to act in the client's best interest, with honesty and fair dealing. (*Nguyen v. Scott*, *supra*, at pp. 733, 740.)

The FACC alleges cross-defendants breached their fiduciary duties by: (1) failing to fully disclose cross-defendants' pre-existing relationship with plaintiff Harmony Communities, Inc.; (2) taking a position adverse to cross-complainant's interest and ensuring the buyer obtained the best price and contractual terms possible under the PSA; (3) failing to negotiate or advocate for cross-complainant's position in any way; (4) failing to review and explain the PSA and its contractual provisions to cross-complainant; (5) failing to protect cross-complainant or accommodate his lack of sophistication, vulnerable mental capacity, and other symptoms of confusion; and (6) failing to appropriately advise, assist, or represent cross-complainant throughout the transaction. (FACC, ¶ 47, subds. (a)–(f).)

Cross-defendants argue the FACC fails to allege sufficient facts to establish a fiduciary duty and its breach, reasoning that cross-defendants' duties were limited by the terms of the PSA. The court disagrees and finds that the FACC adequately alleges a cause of action for breach of fiduciary duty. The demurrer is overruled with respect to this cause of action.

3. Third C/A for Financial Elder Abuse

Financial abuse of an elder is defined by statute: " 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult

for a wrongful use or with intent to defraud, or both. [¶] (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70." (Welf. & Inst. Code, § 15610.30, subd. (a).) An elder is defined as "any person residing in this state, 65 years of age or older." (Welf. & Inst. Code, § 15610.27.)

The court finds the FACC fails to allege cross-defendants took, secreted, appropriated, obtained, or retained cross-complaint's real property – or assisted a third party in doing any of these things – for a wrongful use or with intent to defraud. The demurrer to this cause of action is sustained with leave to amend.

4. Fourth C/A for Constructive Fraud

Constructive fraud " ' " 'is a unique species of fraud applicable only to a fiduciary or confidential relationship.' " ' " (*Michel v. Moore & Associates, Inc.* (2007) 156 Cal.App.4th 756, 763.) "Constructive fraud 'arises on a breach of duty by one in a confidential or fiduciary relationship to another which induces justifiable reliance by the latter to his prejudice.' [Citation.] Actual reliance and causation of injury must be shown. [Citation.]" (*Tyler v. Children's Home Society* (1994) 29 Cal.App.4th 511, 548, italics omitted; see also *Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 516, fn. 14 [elements of constructive fraud cause of action are " (1) a fiduciary or confidential relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive, and (4) reliance and resulting injury (causation)"].) " ' "In its generic sense, constructive fraud comprises all acts, omissions and concealments involving a breach of legal or equitable duty, trust, or confidence, and resulting in damages to another. [Citations.] Constructive fraud exists in cases in which conduct, although not actually fraudulent, ought to be so treated–that is, in which such conduct is a constructive or quasi fraud, having all the actual consequences and all the legal effects of actual fraud." [Citation.]' " (*Estate of Gump* (1991) 1 Cal.App.4th 582, 601; see Civ. Code, § 1573; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 981–982, fn. 13.) "[W]hether a fiduciary duty has been breached, and whether [conduct] constitutes constructive … fraud, depends on the facts and circumstances of each case." (*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415.)

"A fiduciary must tell its principal of all information it possesses that is material to the principal's interests. A fiduciary's failure to share material information with the principal is constructive fraud…." (*Michel v. Moore & Associates, Inc.* (2007) 156 Cal.App.4th 756, 762, internal citations omitted.)

The FACC alleges cross-defendants had a fiduciary and confidential relationship with cross-complainant and persuaded cross-complainant to sell the Property under terms that were not in his best interest and without accurately or adequately disclosing all relevant information and obligations to cross-complainant. (FACC, ¶¶ 61, 63.) One of the relevant pieces of information that the FACC alleges cross-defendants failed to disclose was their pre-existing

relationship with Harmony. The court finds that the FACC has adequately alleged a cause of action for constructive fraud.

5. Fifth C/A for Fraud and Deceit

" 'The elements of fraud … are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988), § 676, p. 778.)

The FACC alleges cross-defendants failed to disclose their pre-existing relationship with Harmony and failed the terms and ramifications of executing the PSA. (FACC, ¶ 69.) Instead, cross-defendants allegedly instructed cross-complainant to sign the PSA. (FACC, ¶ 69.) Additionally, the FACC alleges that, although certain contractual contingencies by Harmony had not been met, giving cross-complainant the legal right to back out of the PSA, cross-defendants failed to advise cross-complainant of this right. (FACC, ¶ 75.)

Although the FACC alleges cross-defendants failed to disclose their pre-existing relationship with Harmony, the FACC fails to allege an intent to defraud. Accordingly, the demurrer to this cause of action is sustained with leave to amend.

6. Sixth C/A for Breach of Implied Covenant of Good Faith and Fair Dealing

The cause of action for breach of implied covenant of good faith and fair dealing is based on the principle that every contract contains an implied covenant of good faith and fair dealing providing that no party to the contract will do anything that would deprive another party of the benefits of the contract. (*Miller Marital Deduction Trust v. Zurich American Ins. Co.* (2019) 41 Cal.App.5th 247, 254.)

The FACC alleges cross-defendants breached the implied covenant of good faith and fair dealing "when they used their superior knowledge in real estate to intentionally facilitate the sale of the Property for less than fair market value and without accurately disclosing information known or accessible to them during the due diligence period." (FACC, ¶ 82.)

The court finds the FACC adequately alleges a cause of action for breach of implied covenant of good faith and fair dealing. The demurrer to this cause of action is overruled.

Motion to Strike

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) Further, "[t]he court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must

appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519.)

Cross-defendants move to strike the following portions of the FACC: Paragraph 59, and Prayer for Relief Paragraphs B (disgorgement of all profits, including commissions, earned by cross-defendants), C (imposition of a constructive trust over all profits, including commissions, earned by cross-defendants), D (reasonably attorney fees), and H (punitive damages).

Paragraph 59 falls under the third cause of action for financial elder abuse. Because the court has sustained cross-defendants' demurrer to that cause of action (with leave to amend), the motion to strike Paragraph 59, as well Prayer for Relief Paragraph H, is currently moot.

The motion to strike Prayer for Relief Paragraphs B, C, and D is denied.

TENTATIVE RULING #13: THE DEMURRER IS SUSTAINED IN PART WITH LEAVE TO AMEND AND OVERRULED IN PART. REFER TO FULL TEXT. THE MOTION TO STRIKE PARAGRAPH 59 AND PRAYER FOR RELIEF PARAGRAPH H IS MOOT. THE MOTION TO STRIKE PRAYER FOR RELIEF PARAGRAPHS B, C, AND D IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.