July 11, 2025 Civil Tentative Rulings

1. CU0001307 Rick Ewald vs. Gary Liardon, et al.

- **Specially Appearing Defendants Blair Gertmenian and Peter Fidler's Motion to Quash Service**

The motion of specially appearing Defendants Gertmenian and Fidler to quash summons is granted.

Plaintiff's Request for Judicial Notice

The Court declines to take judicial notice of the court file and exhibits A-D. As an initial matter, Plaintiff's request for judicial notice does not furnish the court with sufficient information to enable it to do so. *See* Evidence Code § 453(b).

Plaintiff's request for judicial notice of exhibits A-D are printouts from the California Secretary of State's website. However, California law suggests a court may not take judicial notice of the factual content of a website. (*Searles Valley Minerals Operations, Inc. v. State Board of Equalization* (2008) 160 Cal.App.4th 514, 519.) Additionally, the Secretary of State's website itself warns, "Although every attempt has been made to ensure that the information contained in the database is accurate, the Secretary of State's office is not responsible for any loss, consequence, or damage resulting directly or indirectly from reliance on the accuracy, reliability, or timeliness of the information that is provided. All such information is provided "as is." Therefore, the documents do not qualify for judicial notice under Evidence Code § 452(h) because they are not facts that are not reasonably subject to dispute" or "capable of immediate and accurate determination."

The Court may take judicial notice of its own file, but Plaintiff did not specify which part of the file he seeks to judicially notice. *See* California Rules of Court, Rule 3.1306(c)(1).

Motion

The motion of specially appearing Defendants Gertmenian and Fidler to quash summons is granted.

Defendants Gertmenian and Fidler are not subject to general jurisdiction. Plaintiff's First Amended Complaint alleges that Defendants Gertmenian and Fidler are officers of nonparties Domus Construction and Design, Inc. and DSWR, Inc. A non-resident officer or director of a corporation is not subject to general personal jurisdiction simply because the entity they serve would be subject to personal jurisdiction. *LeDuc v. Kentucky Cent. Life Ins. Co.*, 814 F. Supp. 820, 824 (N.D. Cal. 1992). Therefore, Plaintiff has not established that Defendants Gertmenian and Fidler are subject to general personal jurisdiction.

A court may exercise specific jurisdiction over a nonresident defendant if three prongs are met: 1) the defendant has purposefully availed himself or herself of forum benefits; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of personal

jurisdiction would comport with fair play and substantial justice. *Pavlovich v. Superior Court* (2002) 29 Cal. 4th 262, 269. To establish each prong, the facts of each case must be weighed, focusing on the nature and quality of the defendant's activities in the state or with state residents. *Id.* at 268; *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 474–475. If the plaintiff establishes the first two prongs, "the burden shifts to the defendant to show the exercise of jurisdiction would be unreasonable under the third prong." *Strasner, supra,* 5 Cal. App. 5th at 226. If the plaintiff fails to establish the first two prongs, a court is not required to analyze the third prong. *Id*. "The relevant time period for measuring the nature and quality of a nonresident defendant's contacts with the forum for purposes of specific jurisdiction is at the time the plaintiff's cause of action arose." *Id*.

As to the first prong, the purposeful availment inquiry must a relationship among the defendant, the forum, and the litigation. *Pavlovich, supra*, 29 Cal. 4th at 269 And "that relationship must arise out of contacts that the 'defendant himself' creates with the forum." *Walden v. Fiore,* 134 S. Ct. 1115, 1122 (2014) (emphasis in original). This prong is only satisfied when a plaintiff can establish that the defendant purposefully and voluntarily directed his activities to the forum so that he should expect to be subject to the court's jurisdiction based on his contacts with the forum. *Pavolovich, supra*, 29 Cal.4th at 269. The "'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person'." (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. at p. 475 (internal citations omitted).) Personal jurisdiction is proper when a defendant's contacts "proximately result from actions by the defendant *himself* that create a substantial connection with the forum State." *Id.* (emphasis in original.) Therefore, where a defendant has deliberately engaged in significant activities within a state or has created continuing obligations between himself and residents of the state, it is not unreasonable to find that the defendant is subject to the court's jurisdiction. *Id.*

Here, Plaintiff has not established that Defendants Gertmenian and Fidler purposefully availed themselves of forum benefits. To be subject to personal jurisdiction, Defendants must be "primary participants in an alleged wrongdoing intentionally directed at a California resident. *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal. App. 3d 103, 112–14. Rather than establish that Defendants Gertmenian and Fidler themselves made decisions to conduct substantial business in California during the relevant time frame and direct the Domus and DSWR to engage in the alleged activities plead in the complaint, Plaintiff simply states because they allegedly served as officers or directors of Domus and DSWR at some point, the court can conclude they set the business models of those companies or refused to take action to prevent the corporations from violating the law. Thus there is a gap between Plaintiff's allegations and any information that could reasonably support or negate the allegations. Such a gap prevents the court from finding that the first prong has been met, because Defendant provides no factual evidence to show that Defendants directly authorized or actively participated in any of the allegations, beyond simply asserting that they did.

Plaintiff also argues that because his claims involve a construction, which is subject to special regulation, the omissions of Defendants Gertmenian and Fidler caused the act that gave rise to Plaintiff's judgment in a previous case. The court first notes that the judgment referred to by Plaintiff was entered through default, rather than by a judgment on the merits. In making the argument of Defendants' omissions, Plaintiff again fails to state any factual evidence of

Defendants' involvement, or lack thereof, and rather asserts they exercised authority that a director of a corporation would, and directed corporate strategy or omitted the corporations from violating California law. Again, Plaintiff has not established that Defendants Gertmenian and Fidler have purposefully and voluntarily directed their activities towards California, and in fact fails to establish any contacts Defendants Gertmenian and Fidler themselves created with California. Simply alleging that Plaintiffs were directors of Domus and DSFW, without more, does not establish that Defendants Gertmenian and Fidler conducted any suit-related activities in California. Plaintiff cannot rely on "vague and conclusory assertions of ultimate facts" to meet his burden. *Strasner, supra,* 5 Cal. App. 5th at 222. Therefore, Plaintiff fails to establish Defendants purposeful availment by Defendants Gertmenian and Fidler.

Plaintiff has also not established the second prong of specific personal jurisdiction, which is that the "controversy is related to or arises out of the defendant's contacts with the forum." *Pavlovovich, supra*¸29 Cal.4th at 269. As discussed above, Plaintiff has presented no evidence establishing that Defendants Gertmenian and Fidler controlled, directed, or managed the corporate strategy behind the claims alleged by Plaintiff.

Defendant has established the third prong of the specific jurisdiction test, that is, that it would not be "fair or reasonable", but would "offend notions of fair play and substantial justice", to require this out-of-state business to defend itself in a California court (*Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 392–393).

- **Specially Appearing Defendants' Demurrer to First Amended Complaint**

Because the Court has granted Specially Appearing Defendants' Motion to Quash, the Demurrer is dropped as moot.

2. CU0001430 Bertha Shuman vs. William Larsen

Defendant's Motion for Order Directing Compliance with Records Subpoena is Granted. Non-party Western Sierra Medical Clinic is ordered to comply with Defendant's deposition subpoena and produce relevant records identified in the subpoena within ten (10) days. The requests are limited in scope to records related to "concussion/headaches, hands, right hip, upper body (front and back), left arm and sternum only" from January 9, 2015 on (ten years prior to the issuance of the deposition subpoena).

Courts must carefully balance a right to privacy against the interest in having just litigation. *Pioneer Electronics (USA), Inc. V. Sup. Ct.* (2007) 40 Cal.4th 360, 371; *Valley Bank of Nevada v. Sup. Ct.* (1975) 15 Cal.3d 652, 657; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2012) ¶¶8:320 - 8:325.1. The right to privacy is enshrined in the California Constitution, Article I, and medical records are included in the privacy rights protected. (*Davis v. Superior Cou*rt (1992) 7 Cal.App.4th 1008, 1013; *Britt v. Superior Court* (1978) 20 Cal.3d 844; *Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553; *Tylo v. Superior Court* (1997) 55 Cal.App.4th 1397, 1387.)

In order to determine whether Plaintiff has waived her privacy rights, and to what degree, the Court must examine the issues raised in the complaint. (*Davis, supra,* 7 Cal.App.4th at 1015.) Plaintiff's

complaint alleges that Plaintiff has suffered various damages, including hospital and medical expenses. (*See Plaintiff's Complaint*.) Plaintiff's responses to Defendant's Form Interrogatories indicate that Plaintiff received treatment for orthopedic injuries from Western Sierra Medical Clinic. (Declaration of G. Rich Gillespie, Ex. A.) Therefore, medical, billing, and x-ray records from non-party Western Sierra Medical Clinic appear to be relevant. Moreover, Plaintiff made no objection to the deposition subpoena.

However, the Court independently notes that while the request is limited to records of "concussion/headaches, hands, right hip, upper body (front and back), left arm and sternum only", the request is for records from December 29, 2012 to present. This is a time period of 10 years prior to the subject incident to present. Even though Plaintiff has filed a lawsuit alleging injury to a part(s) of her body, Defendant is not entitled to Plaintiff's entire medical history. (*See*, e.g., *Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553, 555-57) (where plaintiff claimed that injuries to his arm and shoulder forced him to take an early retirement, court held that defendant was not entitled to all medical records in plaintiff's physician's possession, despite defendant's argument that such records were discoverable because information concerning prior physical and emotional conditions which affected the plaintiff's ability to work were necessary so that the defendant could "ascertain whether there were other medical and/or emotional reasons why the plaintiff took an early retirement").

Pursuant to the Court's authority to Code of Civil Procedure section 1987.1, the Court can direct compliance with the subpoena "upon those terms or conditions as the court shall declare." The Court orders Western Sierra Medical Group comply with Defendant's subpoena request and produce medical, billing, and x-ray records limited to records of "concussion/headaches, hands, right hip, upper body (front and back), left arm and sternum only" from January 9, 2015 on, within ten (10) days of this Order.

3. CU0001605 Andrew Alan Johnson vs. Donald Judas

- **Plaintiff's Motion to Quash Deposition and Request for Sanctions**

Plaintiff's Motion to Quash Deposition Subpoenas is granted in part and denied in part. Plaintiff's request for sanctions is granted in part.

Courts must carefully balance a right to privacy against the interest in having just litigation. *Pioneer Electronics (USA), Inc. V. Sup. Ct.* (2007) 40 Cal.4th 360, 371; *Valley Bank of Nevada v. Sup. Ct.* (1975) 15 Cal.3d 652, 657; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2012) ¶¶8:320 - 8:325.1. The right to privacy is enshrined in the California Constitution, Article I, and medical records are included in the privacy rights protected. (*Davis v. Superior Cou*rt (1992) 7 Cal.App.4th 1008, 1013; *Britt v. Superior Court* (1978) 20 Cal.3d 844; *Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553; *Tylo v. Superior Court* (1997) 55 Cal.App.4th 1397, 1387.)

While the filing of a lawsuit putting medical records at issue includes an implicit partial waiver of the right to privacy, "the scope of such waiver must be narrowly, rather than expansively construed." (*Davis, supra*, 7 Cal.App.4th at 1014.) Such waiver only extends "to information

relating to the medical conditions in question, and does not automatically open all of a plaintiff's past medical history to scrutiny." (*Britt*, supra, 20 Cal.3d at 849.)

In order to determine whether Plaintiff has waived his privacy rights, and to what degree, the Court must examine the issues raised in the complaint. (*Davis, supra*, 7 Cal.App.4th at 1015.) Plaintiff's complaint alleges Defendant's negligence was a substantial factor in causing a motor vehicle accident, which resulted in Plaintiff sustaining injuries that have caused mental and physical damages, incurred medical and incidental expenses, and prevented him from performing his usual occupation. (*See Plaintiff's Complaint*.) Plaintiff's claim involves pain and suffering and damages incurred as a result of injuries to his body, and thus Defendant is entitled to seek records directly relevant to such claims by narrowly drawn discovery requests. (*Davis, supra*, 7 Cal.App.4th at 1018.)

Here, Defendant served 19 deposition subpoenas seeking medical, billing, and radiology records. While Plaintiff's motion seeks to quash Defendant's subpoenas because of their overbreadth in requesting "all" documents, Plaintiff does not argue that the medical providers and/or healthcare facilities do not have relevant records. Additionally, Plaintiff's complaint has put the injuries sustained in the accident at issue. Therefore, the Court declines to quash the subpoenas in their entirety.

Code of Civil Procedure section 1987.1 allows the Court to, "make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare."

In the present case, Plaintiff's medical records relating to the injury sustained in the motor vehicle accident on December 13, 2022 are relevant and discoverable. However, the deposition subpoenas seek "all" medical records for a ten-year period. These requests are not narrowly tailored to information relating to the medical conditions at issue. Plaintiff did send a meet and confer letter to Defendant, requesting that the deposition subpoenas be limited "to the areas of the body at issue within the ten-year period." (Declaration of Rosibeth Cuevas, Ex. 2.) However, Plaintiff did not define "the areas of the body at issue," and Defendant never substantively responded to the meet and confer.

Therefore, in an effort to safeguard Plaintiff's privacy, and pursuant to Code of Civil Procedure section 1987.1, the Court orders compliance with the deposition subpoenas under the following terms. The parties are directed to meet and confer via telephone or videoconference regarding the terms of the subpoenas to determine "the areas of the body at issue" within ten (10) days. Thereafter, subpoenaed records for the past ten (10) years will be produced by the deposition officer directly to Plaintiff's attorney's office, who will review the records and produce them to Defendant with a log of anything removed or redacted. If there is any dispute regarding the documents removed, the parties are ordered to meet and confer further, or proceed with a motion to compel as necessary.

Under Code of Civil Procedure section 1987.2(a), the Court has discretion to award reasonable expenses incurred in making a motion to quash, including reasonable attorneys' fees, if the Court finds the subpoena was oppressive or if the motion was opposed without substantial justification,

or if the Court finds that one or more of the requirements of the subpoena were oppressive. In this case, Plaintiff attempted to meet and confer with Defendant to limit the overly broad term of "all" records. Defendant's failure to substantively respond or engage in the meet and confer process necessitated Plaintiff's filing of the motion. Thus, sanctions are granted in part, but limited to $250 per hour. Plaintiff's counsel declared she spent one hour drafting the motion, and anticipated one hour to review any opposition and write a reply, and one hour to attend the hearing. No opposition was filed, and Plaintiff filed his Notice of Non-Opposition on May 20, 2025. Therefore, the Court grants sanctions of $500 from Defendant's attorney of record.

- **Plaintiff's Motion to Compel Deposition and Requests for Sanctions**

Plaintiff's Motion to Compel Defendant Judas' Deposition Attendance is continued on the Court's own motion to Friday August 1, 2025. The parties are ordered to meet and confer in good faith, via telephone or videoconference, regarding Defendant's competence to attend deposition, written or oral, as well as a mutually agreeable date, time, and location within five (5) days of this order, and file a joint status report by July 25, 2025 regarding the status of any outstanding discovery reports after said meet and confer efforts. If the parties are able to resolve the dispute and schedule the deposition, written or oral, on a mutually agreeable date if applicable, Plaintiff is to file a notice of withdrawal of the motion. If the parties are unable to resolve, the Court will consider sanctions at that time. If the parties are unable to resolve, the Court will also request Defendant file his motion for protective order.

Under *Code of Civil Procedure* § 2025.450(a), a party may move to compel deposition attendance if, after service of a deposition notice, the person noticed to be deposed, without having served a valid objection, "fails to appear for examination, or to proceed with it…." Under *Code of Civil Procedure* § 2025.450(b)(2), the motion "shall be accompanied by a meet and confer declaration" or, if the deponent fails to attend the deposition, "by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." "Implicit in the requirement that counsel contact the deponent to inquire about the nonappearance is a requirement that counsel listen to the reasons offered and make a good faith attempt to resolve the issue," including by rescheduling. *Leko v. Cornerstone Bldg. Inspection Serv.* (2001) 86 Cal. App. 4th 1109, 1124. *See also* L.A. SUP. CT. L.R. 3.26, Appendix 3.A(e) (reasonable consideration should be given to accommodating schedules in setting depositions).

In this case, Plaintiff made eight email attempts to schedule the deposition of Defendant. (*See* Declaration of Rosibeth Cuevas, Exs. 1-3.) Defendant responded that he would provide a deposition date, but failed to do so. On the date of the deposition, before the time communicated for the deposition, Plaintiff informed Defendant he would proceed with his motion rather than contacting Defendant after the nonappearance to inquire about the same. (*Id*., Ex. 3.) Plaintiff did not subsequently attempt to meet and confer with Defendant after the nonappearance. Defendant obtained a letter from his doctor stating his testimony would not be reliable only after the filing of this Motion.

Plaintiff did not conform to the requirements of Code of Civil Procedure § 2025.450(b)(2). Plaintiff did not contact deponent about the nonappearance, because all contact occurred prior to the nonappearance. Therefore, the Court finds Plaintiff's meet and confer efforts insufficient under

the statute. The Court also notes the lack of communication from Defendant to Plaintiff, with Defendant failing to respond substantively to any of Plaintiff's requests for a date. Additionally, Defendant only obtained a letter stating Defendant's recall would not be reliable two weeks after the filing of the underlying motion. If Defendant had engaged with Plaintiff in setting a deposition date, the competency issue may have been discovered earlier, and a resolution could have been negotiated without the need for court intervention.

Therefore, Plaintiff's Motion to Compel Defendant Judas' Deposition Attendance is continued on the Court's own motion to Friday August 1, 2025. The parties are ordered to meet and confer in good faith, via telephone or videoconference, regarding Defendant's competence to attend deposition, written or oral, as well as a mutually agreeable date, time, and location if applicable, within five (5) days of this order. The Parties shall file a joint status report regarding the status of any outstanding discovery reports after said meet and confer efforts by July 25, 2025. If the parties are able to resolve the dispute and schedule the deposition, written or oral, on a mutually agreeable date if applicable, Plaintiff is to file a notice of withdrawal of the motion. If the parties are unable to resolve, the Court will consider sanctions at that time. Moreover, if the parties are unable to resolve, the Court will also request Defendant file his motion for protective order.

3. CU0001910 Anabel Sanchez vs. Michael Salmon, et al.

Defendants' demurrer is overruled in part and sustained with leave to amend in part. Plaintiff is granted leave to amend causes of action five and six, and must file her amended complaint within ten (10) days of this Court's order.

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that '"a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action."'" *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. The pleadings are to be liberally construed with "a view towards substantial justice between the parties[,]" and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827.

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958. "Moreover, where a demurrer is made on the ground that "the pleading does not state facts sufficient to constitute a cause of action" pursuant to the Code of Civil Procedure section 430.10 (e), it is not necessary that the cause of action be the one intended by plaintiff. So long as the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. *Quelimane Co., Inc.*

v. Stewart Title Guar. Co. (1988) 19 Cal.4th 26, 38-39; *Adelman v. Associated Internat. Ins. Co.* (2001) Cal.App.4th 352, 359.

Plaintiff's First Cause of Action for Sexual Harassment and Hostile Work Environment, Cal. Gov. Code § 12940(i), (j);

The demurrer to the first cause of action is overruled.

Pursuant to Government Code section 12940(i) it is an unlawful employment practice for any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so, and under Government Code section 12940(j)(1), harassment of an employee…shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.

Defendants' demurrer as to the first cause of action is focused both on the claim that the cause is barred by the statute of limitations and that the continuing violation doctrine does not apply. Defendants contend that to bring a claim under the Fair Employment and Housing Act ("FEHA"), Plaintiff must have filed an administrative charge with the California Civil Rights Department ("CRD") within three years of the allegedly unlawful act. Government Code § 12960(e)(5), and that Plaintiff's "central allegation of sexual harassment – physical touching by Salmon – occurred on December 3, 2021. *See* Defendants' Motion, 9:1-2. Defendants also argue that the allegations in Plaintiff's FAC fall short of the requirements to establish a continuing violation because they consist of isolated incidents of physical touching followed by "several scattered and vague workplace interactions." *Id.* at 10:2-3.

Plaintiff's ability to prove allegations is not of concern to the court in ruling on a demurrer. *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496. A complaint will be deemed sufficient when it contains facts that simply "apprise the defendant of the basis upon which the plaintiff is seeking relief." *Perkins v. Sup. Ct.* (1981) 117 Cal.App.3d 1, 6. If there is any viable theory of recovery under a cause of action, the demurrer must be overruled. *Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 119. To the extent there are factual issues in dispute, the court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint. *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.

Under FEHA, it is an unlawful employment practice for an employer to harass an employee on the basis of sex and/or gender. Gov. Code § 12940(j). "An employer who knows or should have known of unlawful harassment and retaliation, and fails to take immediate and appropriate corrective action, may be liable for the resulting damages, pursuant to Government Code section 12940, subdivision (j)(1)." *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 880.

The continuing violation doctrine allows liability for unlawful employer conduct occurring outside the statute of limitations if it is sufficiently connected to unlawful conduct within the limitations period. *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 802. Under the continuing violation doctrine, two questions are potentially raised: are the alleged acts outside the limitation period admissible as background evidence, and whether the employer is liable for actions that took place

outside the limitations period if they are sufficiently linked to unlawful conduct within the limitations period. *Id.* at 812.

The question then is whether Plaintiff has sufficiently pled that the harassment, which began on December 3, 2021, was sufficiently linked to ongoing instances and her alleged denial of a job promotion in September 2024. Affording every inference in favor of Plaintiff, as the Court must on demurrer, the Court concludes for the purposes of the demurrer that Plaintiff's allegations meet the pleading standards set forth in Government Code §§ 12940(i) and 12940(j). Plaintiff's First Amended Complaint ("FAC") states the that the harassment began in December 2021, after which she reported Defendant Salmon's sexual harassment to Defendant TDPUD shortly thereafter, and that the only corrective action offered was a face-to-face meeting with her alleged harasser. Plaintiff further alleges that she was required to work with and attend meetings with Defendant Salmon, that she experienced ongoing discomfort in the presence of Defendant Salmon, that her complaints and harassment was discussed in the work environment, that she made further reports to Human Resources in which her allegations were not sufficiently addressed, and that she ultimately was denied a job promotion. See FAC ¶¶ 13-20.

Defendants' demurrer also argues that Plaintiff's claim for aiding and abetting under Government Code § 12940(i) is deficient because a claim of ratification unsupported by detail is not assumed true at the demurrer stage. Ratification generally applies where an employer fails to investigate or respond to charges that an employee committed an intentional tort, and may exist when an employer learns of misconduct and fails to discharge an agent or employee. *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1112. It and may be based on evidence inferring an intention to consent to or adopt the act. *Id.*

Plaintiff has sufficiently pled facts to allege that the employer failed to investigate or respond to Plaintiff's complaints of sexual harassment, as described above. While Defendant argues that Plaintiff only alleges two Human Resources employees failed to adequately respond to her complaints, the Court finds that the FAC sufficiently alleges that Plaintiff's employer learned of the misconduct and failed to investigate or respond.

Therefore, assuming the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the FAC, the Court finds that Plaintiff's first amended complaint states facts to constitute sexual harassment and hostile work environment. Thus, for the foregoing reasons, Defendants' demurrer as to the first cause of action is overruled.

<u>Plaintiff's Second Cause of Action for Failure to Take All Reasonable Steps to Prevent Sexual Harassment and Discrimination Gov. Code §12940(k);</u>

The demurrer to the second cause of action is overruled.

A claim under Government Code section 12940(k) alleges that an employer failed to "take all reasonable steps necessary to prevent discrimination and harassment from occurring." "The employer's duty to prevent harassment and discrimination is affirmative and mandatory." *Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 1021, 1035.

Defendants' demurrer as to the second cause of action is focused on the cause being derivative of untimely FEHA claims. As discussed above, Plaintiff's SAC alleges not only that an incident of harassment in December 2021, but ongoing instances of harassment as well as failure to sufficiently address Plaintiff's concerns.

Therefore, the Court finds that the first amended complaint adequately pleads a violation of Government Code § 12940(k). Defendants' demurrer is thus overruled as to the second cause of action.

Plaintiff's Third Cause of Action for Retaliation for Reporting Sexual Harassment in Violation of FEHA, Cal. Gov. Code §12940(h);

The demurrer to the third cause of action is overruled.

A claim under Government Code section 12940(k) alleges that an employer has discriminated against any person has opposed any practices forbidden. Defendants' demurrer as to the third cause of action is focused both on the claim being time barred, as well as a failure to state facts sufficient to constitute a cause of action. Defendant argues that Plaintiff's cause of action is based on conduct which occurred in December 2021, and so is time barred by a three-year statute of limitations. Defendant also argues that Plaintiff alleges no facts showing that the promotion decision was retaliatory or that it materially affected the terms, conditions, or privileges of her employment.

Under CACI 2505, a plaintiff must show that: (1) plaintiff engaged in a protected activity; (2) the employer subjected plaintiff to an adverse employment action; (3) plaintiff's protected activity was a substantial motivation for the employer's adverse employment action; (4) plaintiff was harmed; and (5) that the employer's decision to engage in the adverse employment action against plaintiff was a substantial factor in causing her harm. Plaintiff does not have to prove harassment in order to be protected from retaliation. Retaliation may occur in cases which involve a pattern of employer harassment consisting of acts that might not individually be sufficient to constitute retaliation, but taken as a whole establish prohibited conduct. *See Yanowitz v. L'Oreal USA, Inc.* (2005) 36Cal.4th 1028, 105 1056.

The question then is whether Plaintiff has sufficiently pled her reporting of harassment and whether her denial of a promotion was retaliation for her protected activity. Assuming the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the FAC, Plaintiff has pled this cause of action with sufficient necessary facts. The FAC asserts that Plaintiff made multiple reports of harassment, including months prior to her denial of a promotion, as well as the use of potential pretext for denial of the promotion.

Affording every inference in favor of Plaintiff, the Court concludes for the purposes of the demurrer that Plaintiff's allegations meet the pleading standards set forth in Government Code §§ 12940(h). Defendants' demurrer is thus overruled as to the third cause of action.

Plaintiff's Fourth Cause of Action for Discrimination on the Basis of Gender and Sex, Cal. Gov. Code § 12940(a);

Defendants' demurrer is overruled as to the fourth cause of action.

Defendants' demurrer as to the fourth cause of action is focused both on the claim being time barred, as well as a failure to state facts sufficient to constitute a cause of action. Defendants argue that the claim is time barred because the alleged physical touching falls outside the limitations period and that any additional incidents are not dated. Defendants additionally argue that even if the promotion denial falls within the statutory period "only speculation…links that employment decision to her sex." Defendants' Reply, 8:26-27.

To prove a prima facia case of discrimination, 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…." *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354-355. The courts have recognized that direct evidence of intentional discrimination is rare, and that such claims must usually be proved circumstantially. *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307. Therefore, discrimination can be inferred from facts that create a reasonable likelihood of bias. *Id.*

The question is whether Plaintiff has sufficiently pled a prima facia case of discrimination. Assuming the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the FAC, Plaintiff has pled this cause of action with sufficient necessary facts. The FAC asserts not only that that Plaintiff was subject to ongoing sexual harassment by Defendant Salmon, but that her complaints were discussed at meetings and known to supervisors at the company. Because direct evidence of discrimination is rare, facts can be inferred from Plaintiff's FAC to indicate circumstantial evidence creating a reasonable likelihood of bias sufficient to plead this claim.

Affording every inference in favor of Plaintiff, the Court concludes for the purposes of the demurrer that Plaintiff's allegations meet the pleading standards set forth in Government Code § 12940(a). Defendants' demurrer is thus overruled as to the fourth cause of action.

<u>Plaintiff's Fifth Cause of Action for Sexual Battery (California Civil Code §1708.5);</u>

Defendants' demurrer is sustained with leave to amend as to the fifth cause of action.

Defendants' demurrer as to the fifth cause of action focuses on the cause of action being barred because Plaintiff fails to plead compliance with the Government Claims Act, which is a prerequisite to suing both Defendants. Defendant argues that Plaintiff does not allege any facts indicating that she timely presented a government claim to the district, as required by the California Government Claims Act.

Plaintiff's Opposition states that Plaintiff submitted a Government Damage Claim form to Defendant TDPUD on October 1, 2024 specifying her claims, damages, and names of witnesses, and that Defendant TDPUD had notice of Plaintiff's intent through its own investigation.

A demurrer should only be sustained without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. *Levya v. Nelson* (2000) 83 Cal.App.4th 1061, 1063. It

is considered an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that the plaintiff can correct the defects contained therein. *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501. The burden is on the plaintiff to show in what manner she can amend her complaint and how the amendment would change the legal effect of his pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d. 335. Here, Plaintiff has asserted that she did timely present a government claim to the district, and that Defendant TDPUD engaged in its own investigation of the claims which would support her assertion that she timely presented her claim to the public entity before initiating suit.

Plaintiff has made a satisfactory showing that she can amend her complaint to sufficiently plead a cause of action under California Civil Code §1708.5. Therefore, Defendants' demurrer is sustained with leave to amend as to the fifth cause of action.

Plaintiff's Sixth Cause of Action for Assault and Battery

Defendants' demurrer is sustained with leave to amend as to the sixth cause of action.

Defendants' demurrer as to the sixth cause of action focuses on the cause of action being time barred and lack of statutory authority. Defendants argue that under Code of Civil Procedure § 335.1, an action for assault and/or battery must be brought within two years, and that there is no statutory basis to hold TDPUD liable for common law assault and battery.

As to whether Plaintiff's claims are time barred, a claim for battery requires for a plaintiff to establish that a plaintiff prove the defendant touched the plaintiff without consent and with the intent to harm or offend, and that the plaintiff was harmed or offended by the defendant's conduct. *So v. Shin* (2013) 212 Cal.App.4th 652, 669. A claim for battery requires that a plaintiff believed a defendant was about to touch her in a harmful or offensive manner based on a defendant acting in a way to do so, or that it reasonably appeared to a plaintiff that a defendant was about to carry out the threat, that the plaintiff did not consent to the conduct, and that the plaintiff was harmed by the conduct. *Id.*

Addressing the potential liability of Defendant TDPUD first, Government Code § 815.2 holds a public entity liable for injury proximately caused by an act of an employee within the scope of his employment. However, courts have consistently held that physical assaults and sexual misconduct are often deemed outside the course and scope of employment and so do not give rise to vicarious liability for the employer. *See Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1005; *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447-452; *Maria D. v. Westec Residential Sec., Inc.* (2000) 85 Cal.App.4th 125, 146-147.)

Defendant argues that the alleged incident giving rise to Plaintiff's claim for assault and battery occurred in December 3, 2021, but that Plaintiff's complaint was not filed until February 10, 2025, over three years later. Plaintiff's first amended complaint does plead that "Defendant Salmon approached Plaintiff and stood extremely close to her while in the communal kitchen at TDPUD." FAC ¶ 79. In deciding a demurrer, the court is allowed to imply or infer facts from those expressly alleged. Here, the court can infer that Defendant Salmon's actions in the kitchen may have caused her to believe Defendant was about to touch her in a harmful or offensive manner without her

consent. However, Plaintiff's complaint does not state the date upon which this occurred. Additionally, Plaintiff makes no allegations that Defendant Salmon actually touched her without consent after December 3, 2021.

A demurrer can only be utilized where the complaint, on its face, is incomplete or discloses a defense barring recovery. *Guardian North Bay, Inc. v. Sup. Ct.* (2001) 94 Cal.App.4th 963, 971-972. A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable probability the defect can be cured by amendment. *See Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233.

Based on the facts alleged in Plaintiff's first amended complaint, the Court finds the possibility that the defect may be cured by amendment. Therefore, Defendants' demurrer is sustained with leave to amend as to the sixth cause of action.