June 26, 2026, Civil Law & Motion Tentative Rulings

1. CU0001285 17031 LLC vs. Jacks, Joseph, et al. (and consolidated case)

Defendants Dan Irish and 17031 LLC's motion for judgment on the pleadings in consolidated case no. CGC-24-613115, is granted with leave to amend.

Request for Judicial Notice

Dan Irish ("Irish") and 17031 LLC's ("17031") request for judicial notice of (1) the unlawful detainer complaint filed by 17031 against Joseph Jacks ("Jacks") and Blaine Schanfeldt ("Schanfeldt") on December 21, 2022, Case No. CL0000471 ("UD case"); (2) Answer, filed January 5, 2023 ("UD Answer"); (3) Minute Order of January 18, 2023; and (4) First Amended Complaint in Case No. CGC-24-613115 ("SF FAC"), are granted. *See* Evidence Code § 452(d).

Jacks and Schanfeldt's request for judicial notice of Exhibit A is denied as it is an *unofficial* transcript from the UD case. Under California Code of Civil Procedure section 273, the only transcript that is prima facie evidence of testimony and proceedings is the official certified transcript prepared and certified by the court's official reporter or reporter pro tempore. A rough draft transcript is not certified and cannot be used, cited, or transcribed as the official record. *Id.* In addition, there has been no sufficient showing that Exhibit A is subject to judicial notice under Evidence Code section 452(d) (records of any court of this state) or 452 (h) (facts 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).

Legal Standard

A party may bring a motion for judgment on the pleadings ("JOP") after filing an answer and the time to demurrer has expired. Code Civ. Proc. § 438(b)(1) and (f); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548. The grounds for a JOP shall appear on the face of the pleading or from any matter judicially noticed. Code Civ. Proc., § 438(d). Essentially, a JOP performs the same function as a general demurrer, *i.e.*, it attacks only the defects disclosed on the face of the pleading or by matters that are judicially noticed. *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999. "In deciding or reviewing a judgment on the pleadings, all properly pleaded material facts are deemed to be true, as well as all facts that may be implied or inferred from those expressly alleged." *Fire Ins. Exch. v. Super. Ct.* (2004) 116 Cal.App.4th 446, 452. "The trial court may grant a motion for judgment on the pleadings with or without leave to amend." *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1175 *citing* Code Civ. Proc. § 438(h)(1). "Whether a motion for judgment on the pleadings should be granted with or without leave to amend depends on whether there is a reasonable possibility that the defect can be cured by amendment." *Ibid.* (quotations omitted). "[I]t is an abuse of discretion to grant a motion for judgment on the pleadings without leave to amend if there is any reasonable possibility that the plaintiff can state a good cause of action." *Id.* at 1176 (quotations omitted).

Judgment on the Pleadings Based on Res Judicata

"Res judicata" describes the preclusive effect of a final judgment on the merits, and prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896. Collateral estoppel, or issue preclusion, precludes relitigation of issues argued and decided in prior proceedings. *Id*.

"Under the doctrine of res judicata, a valid, final judgment on the merits is a bar to a subsequent action by the parties or their privies on the same cause of action." *Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, 1076 (quotations omitted). "A second aspect of the res judicata doctrine is issue preclusion, also known as collateral estoppel." *Ibid.* "Under this aspect of the doctrine, the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable. ... " *Ibid.* "Collateral estoppel precludes the litigation of a claim that was related to the subject matter of the first action and could have been raised in that action, even though it was not expressly pleaded." *Ibid.* Res judicata can apply where a previous action was dismissed based on a court-approved settlement agreement. *Ibid.*

"[A] demurrer based on res judicata is properly sustained only if the pleadings and judicially noticed facts conclusively establish the elements of the doctrine." *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal. App. 4th 210, 231.

Discussion

17031 and Irish argue that all of the causes of action in the SF FAC, except the twelfth cause of action, are barred because the allegations are encompassed by the parties' settlement of "any and all claims related to the tenancy" in the prior UD case. The Court agrees.

At bar, the minute order in the unlawful detainer case states:

> This resolution resolves any and all claims Parties may have related to the tenancy, including but not limited to Defendants' right to claim they are owed sums of money for work performed at the residence. Exempt from this resolution are any claim Defendants may have that they are owed money for purchase of items utilized for installing or operating the network system, that will be left at the residence, that they have not previously been reimbursed for or any claims Plaintiff may have for claims of damage to the property.

Defendants' RJN, Ex. C. The minute order also reflects an agreement for Jacks and Schanfeldt's payment of rent, as well as a timeline and procedures for vacating the property. *Ibid*.

Based on the current record, 17031 and Irish are entitled to judgment on the pleadings with respect to causes of action one through eleven and thirteen as each of these claims are encompassed by the parties' settlement reflected in the minute order, which "resolv[ed] any and all claims related to the tenancy." None of these claims falls within the exemption as defined in the minute order (*i.e*., any claim Defendants may have that they are owed money for purchase of items utilized for … the network system).

That said, leave to amend shall be allowed as there is a reasonable possibility that Jacks and Schanfeldt can state a good cause of action. Any amended complaint shall be filed and served within 10 days after service of the order after hearing.

2. CU0001849 Gregory Thrush vs. Jose Antonio Valdovinos

Plaintiff Gregory Thrush's unopposed application for right to attach order and order for issuance of writ of attachment is granted. Plaintiff shall advise the Court whether the previously issued temporary protective order shall be dissolved or otherwise.

Legal Standard

" Attachment is an ancillary or provisional remedy to aid in the collection of a money demand by seizure of property in advance of trial and judgment." *Rreef America Reit II Corp, YYYY v. Samsara Inc.* (2023) 91 Cal.App.5th 609, 616–617 (quotations omitted).

"Upon the filing of the complaint or at any time thereafter, the Plaintiff may apply … for a right to attach order and a writ of attachment by filing an application for the order and writ with the Court in which the action is brought." Code Civ. Proc. § 484.010. "Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) …." Code Civ. Proc. § 483.010 (a).

"Before an attachment order is issued, the court must find all of the following: (1) the claim upon which the attachment is based is one upon which an attachment may be issued; (2) the applicant has established 'the probable validity' of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery upon which the request for attachment is based; and (4) the amount to be secured by the attachment is greater than zero." *Rreef America Reit II Corp, YYYY,* 91 Cal.App.5th at 617, *citing* Code Civ. Proc. § 484.090(a). "The plaintiff has the burden of establishing the probable validity of the claim upon which the attachment is based." *Ibid.* "If, in addition to the findings required by subdivision (a), the court finds that the defendant has failed to prove that all the property sought to be attached is exempt from attachment, it shall order a writ of attachment to be issued upon the filing of an undertaking as provided by Sections 489.210 and 489.220." Code Civ. Proc. § 484.090(b).

Analysis

Plaintiff seeks attachment based on a claim for breach of oral contract. "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.

At bar, Plaintiff's evidentiary showing rests primarily on the declaration of attorney Auerbach, as well as various discovery responses by Defendant. Included is an excerpt from a deposition of Defendant where, in substance, Defendant confirms that Plaintiff made a $200,000 investment agreement with Defendant and Defendant breached the agreement by failure to make required payment(s). *See* Auerbach Decl., Ex. 5 at 129:20-130:4.

On this record, Plaintiff successfully demonstrates probable validity of his claim, and that the claim is one upon which attachment is proper. Code Civ. Proc., § 484.090(a)(1)-(2). He has also demonstrated that the attachment is not sought for purposes other than recovery on the claim, which amounts to a sum greater than zero. Code Civ. Proc. § 484.090(a)(3)-(4). Furthermore, Defendant has failed to prove that any of the property sought to be attached is exempt from attachment. As such a writ of attachment shall be issued upon the filing of an undertaking as described below. Code Civ. Proc. § 484.090(b).

An undertaking is required prior to the issuance of a writ of attachment in order to pay the defendant for any wrongful attachment. Code Civ. Proc. § 489.210. "Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ten thousand dollars ($10,000)." Code Civ. Proc. § 489.210(a). If there is an objection to the undertaking, the court may order an increased amount. Code Civ. Proc. § 489.210(b). At bar, there is no objection to the undertaking. Accordingly, the amount of the undertaking remains set at $10,000.

<u>Temporary Protective Order</u>

The Court previously issued a temporary protective order. Plaintiff shall advise the Court whether that order can be dissolved or otherwise.

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

Defendant Truckee Donner Public Utility's and Defendant Michael Salmon's ("Salmon") motion for summary judgment is denied; the alternative motion for summary adjudication is granted in part as to the third and fourth causes of action.

<u>Request for Judicial Notice</u>

Plaintiff's request for judicial notice of court records is granted. Evid. Code § 452(d). However, judicial notice is limited to the fact that the documents were filed, not the truth of their contents. *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7.

<u>Defense Evidentiary Objections</u>

The following objections are overruled: 1, 4, 7[1], 11[2], 12[3].

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[1] The Court construes this to be an objection under Evidence Code section 1523(a) and assumes the reference to Evidence Code section "1532" is a typographical error. In any event, the Court would overrule an objection under Evidence Code section 1532.

[2] The Court construes this to be an objection under Evidence Code section 1523(a).

[3] The Court construes this to be an objection under Evidence Code section 1523(a)

The following objections are sustained on the basis of lack of personal knowledge *solely*: 3, 8, 9, 10.

The Court need not resolve the following objections: 2, 5, 6, 9, 10. *See* Code Civ. Proc. § 437c(q).

With respect to Objection 4, the Court observes as follows:

"In D'Amico, the California Supreme Court *did not* hold that declarations contradicting discovery responses must be 'excluded.' Rather, the court stated only that such declarations may be insufficient to create a triable issue of fact." *Harris v. Thomas Dee Engineering Co., Inc.* (2021) 68 Cal.App.5th 594, 604 (italics added). Moreover, "the decision does [not] require that a trial court give *no* weight to portions of a declaration contradicting a declarant's deposition testimony in *any* respect." *Id.* at 605. " '[A]admissions of a party obtained through discovery receive an unusual deference in summary judgment proceedings, and, absent a credible explanation, prevail over that party's later inconsistent declarations[,]... [however,] … *D'Amico* should not be read "as saying that admissions should be shielded from careful examination in light of the entire record." ' " *Ibid.* (citation omitted). "D'Amico does not require a court to give no weight to a declaration "where there is a 'reasonable explanation for the discrepancy' or 'countenance ignoring other credible evidence that contradicts or explains that party's answers or otherwise demonstrates there are genuine issues of factual dispute.' " *Id.*. at 606.

Legal Standard for Summary Adjudication and Summary Judgment

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741. Code of Civil Procedure section 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action…." Code Civ. Proc. § 437c(f)(1) (italics added).

A defendant moving for summary judgment/adjudication has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c(o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005)

128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an essential element or defense, a court must grant a motion for summary judgment/adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; *see also See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.

<u>First Cause of Action – Sexual Harassment and Hostile Work Environment</u>

The Fair and Employment and Housing Act's (FEHA) "prohibition against sexual harassment includes protection from a broad range of conduct, ranging from expressly or impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances, to the creation of a work environment that is hostile or abusive on the basis of sex." *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 461. A hostile work environment sexual harassment claim requires a plaintiff employee to show: (1) she was subjected to unwelcome sexual advances, conduct or comments; (2) the harassment was based on sex; and (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 279; *Kelley v. The Conco Companies* (2011) 196 Cal.App.4th 191, 202–203. To be a hostile work environment, it "must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." *Faragher v. City of Boca Raton* (1998) 524 U.S. 775, 787.

> We have agreed with the United States Supreme Court that, to prevail, an employee claiming harassment based upon a hostile work environment must demonstrate that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex. The working environment must be evaluated in light of the totality of the circumstances: '[W]hether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'

Miller v. Dept. of Corrections (2005) 36 Cal.4th 446, 462 (citations omitted).

> Before 2019 the "severe or pervasive" requirement "was quite a high bar for plaintiffs to clear, even in the context of a motion for summary judgment." Effective January 1, 2019, however, the Legislature added section 12923, which "clarified existing law" to provide "that '[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 work environment.' " Section 12923 also "clarified that a hostile work environment exists 'when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being.' The plaintiff is not required to show a decline in productivity, only 'that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to "make it more difficult to do the job." ' "

Wawrzenski v. United Airlines, Inc. (2024) 106 Cal.App.5th 663, 693 (citations omitted).

Defendants argue that the first cause of action is time barred. Defendants maintain the "only alleged physical contact occurred on December 3, 2021," and Plaintiff was required to file her Civil Rights Department ("CRD") charge by December 3, 2024. Mot., 8:11-13. In the alternative, Defendants argue that this claim fails because the conduct was not so severe or pervasive that it altered the conditions of employment. Mot. 9:24-27. The Court disagrees.

Under FEHA, a complainant must file an administrative charge with the CRD within three years of the alleged unlawful act or refusal to cooperate occurred. Govt. Code § 12960(e)(5). However, under the continuing violation doctrine, "an employer is liable for actions that take place outside the limitations period if these actions are sufficiently linked to unlawful conduct that occurred within the limitations period." *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1056. A continuing violation occurs where the "employer's unlawful actions are (1) sufficiently similar in kind…; (2) have occurred with reasonable frequency; (3) and have not acquired a degree of permanence." *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823 ("permanence" means that "an employer's statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile").

At bar, Plaintiff filed her CRD charge of discrimination alleging sexual harassment on January 16, 2025. UMF 30. Thus, any acts of harassment *after* January 16, 2022 would take place within the applicable limitations period.

The record includes evidence of purported unlawful conduct prior to January 16, 2022, specifically: Salmon's December 2021 unprompted hug of Sanchez (including squeezing and groping her buttocks) and later brush/stroking of Plaintiff's back until his hand reached her buttocks. PUMF 7, 9, 12-13.[4] The record also includes evidence of purported unlawful conduct after January 16, 2022, including: 1) September 2022 - after a $5 bill fell out of Plaintiff's pocket, Salmon looked from the $5 bill on the ground up to Plaintiff's back pocket, looked back to the ground, and thereafter picked up and gave the bill to Plaintiff, UMF 19;[5] 2) October 2022

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[4]In late 2021-early 2022, former employee Moore told Plaintiff that Salmon had told him Plaintiff "had a nice ass." UMF 28, PUMF 30-31.

[5]Even if the Court had not sustained Defense objection no. 3 to the Sanchez Declaration, the Court would afford no weight to the suggestion by Plaintiff that Salmon approached her from behind, stared at her backside, and checked her out multiple times before mentioning that cash had fallen out of his back pocket. *See* PUMF 27. These declaration statements are directly contrary to Plaintiff's prior deposition admissions that she heard Salmon say "I

- Salmon stood close enough to Plaintiff in the break room that an uncomfortable Plaintiff took a step back, UMF 23, P28-29; 3) mid-2023 - Salmon made a grunt or guttural-like noise at Plaintiff when walking past her, UMF 20[6]; and 4) 2024 - Salmon commented that it "really pains me to have that picture removed" referring to removal of a picture of Plaintiff's backside from a presentation. PUMF 37.

In addition, it appears undisputed that Plaintiff made complaints of harassment in 2021, 2022, and 2024, and the company initiated an internal investigation of the same in 2024. *See* PUMF 16-20, 29, 40-42.

At bar, there were plainly alleged acts of harassment within the statute of limitations period. Moreover, Plaintiff sufficiently demonstrates a triable issue of material fact concerning the application of the continuing violations doctrine to the December 2021 incident, that is: 1) Salmon's reported unlawful actions are sufficiently similar in kind (inappropriate actual or attempted physical contact with Plaintiff's body, or viewing or comments regarding Plaintiff's body), 2) occurred with reasonable frequency, and 3) had not acquired a degree of permanence. *See, e.g., Wawrzenski,* 106 Cal.App.5th at 696 ("Wawrzenski submitted evidence that the type of harassment she experienced before 2019 was similar in kind to the harassment she experienced after 2019 and that the harassment occurred with sufficient frequency. Wawrzenski stated in her declaration and at her deposition that before 2019 she regularly heard or learned about offensive comments directed at her body or at the way her uniform looked on her body. … These incidents were "sufficiently linked" to comments directed to Wawrzenski after January 2019 because they all focused on Wawrzenski's body.")

Lastly, Defendants have failed to demonstrate the alleged harassment was not severe and pervasive as a matter of law. Plaintiff here "had to show only that the harassing conduct sufficiently offended, humiliated, distressed, or intruded on her so that it disrupted her 'emotional tranquility in the workplace' or otherwise interfered with and undermined her 'personal sense of well-being.' " *Wawrzenski,* 106 Cal.App.5th at 697. "The evidence [Plaintiff] submitted [as described above] met this low bar." *Ibid.* There are triable issues of fact as to whether the harassment from 2021 to 2024 was severe and pervasive.

<u>Fourth Cause of Action - Discrimination</u>

FEHA prohibits an employer from discriminating against any employee based on race, age, sex or other protected characteristics. Gov. Code, § 12940(a). To prevail on such a discrimination claim, a plaintiff must prove that: (1) she was a member of a protected class; (2) she was adequately performing the essential functions of her position; (3) she suffered an adverse employment action; and (4) the circumstances suggest a discriminatory motive. *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355; see also *De Jung v. Superior Court* (2008) 169

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think somebody dropped this," and only then looked over and observed Salmon pick up and hand her the money. *See* Fozi Dec., Ex A. at 121-123.

[6] The Court affords no weight to the suggestion by Plaintiff that the grunt or guttural noise was "clearly directed" toward her, or that Salmon said "dang." PUMF 33. These declaration statements are directly contrary to Plaintiff's prior deposition admissions that Salmon did not say anything during the incident and she did not know if the noise was intended for her or not. *See* Fozi Decl., Ex. A at 154-157.

Cal.App.4th 533, 551 (requiring causal relationship between discriminatory animus and adverse employment action).

"California uses the three-stage burden-shifting test established by the United States Supreme Court for trying claims of discrimination based on a theory of disparate treatment," known as the *McDonnell Douglas* test. *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1004. Under the *McDonnell Douglas* test, "the plaintiff [first] has the burden of establishing a prima facie case of discrimination. Second, if the plaintiff meets this burden, the employer must offer a legitimate nondiscriminatory reason for the adverse employment decision. Third, and finally, the plaintiff bears the burden of proving the employer's proffered reason pretextual." *Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 129.

"'A defendant employer's motion for summary judgment slightly modifies the order of these [*McDonnell Douglas*] showings.'" *Scotch*, 173 Cal.App.4th at 1005. To prevail on summary judgment, the defendant employer is "required to show either that (1) plaintiff could not establish one of the [prima facie] elements of the FEHA claim, or (2) there was a legitimate, nondiscriminatory reason for its [adverse employment] decision…." *Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1247. In the face of a defendant's showing of nondiscriminatory reasons, plaintiff then has a burden to show there are nonetheless a triable issue that decisions leading to plaintiff's adverse employment decision were actually made on a prohibited basis. *See Guz,* 24 Cal.4th at 360. In that regard, "a plaintiff's showing of pretext, *combined* with sufficient prima facie evidence of an act motivated by discrimination, *may* permit a finding of discriminatory intent, and may thus preclude judgment as a matter of law for the employer." *Id*. at 361.

As for the scope of Government Code section 12940(a)'s protections, our Supreme Court notes:

> [T]he language in section 12940(a) making it an unlawful employment practice for an employer to discriminate against an employee on the basis of race, sex, or the other enumerated characteristics "in compensation or in the terms, conditions, and privileges of employment" properly must be interpreted broadly to further the fundamental antidiscrimination purposes of the FEHA. Appropriately viewed, this provision protects an employee against unlawful discrimination with respect not only to so-called "ultimate employment actions" such as termination or demotion, but also the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career. Although a mere offensive utterance or even a pattern of social slights by either the employer or co-employees cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment for purposes of section 12940(a) …, the phrase "terms, conditions, or privileges" of employment must be interpreted liberally and with a reasonable appreciation of the realities of the workplace in order to afford employees the appropriate and generous protection against employment discrimination that the FEHA was intended to provide.
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> [T]he determination of what type of adverse treatment properly should be considered discrimination in the terms, conditions, or privileges of employment is not, by its nature, susceptible to a mathematically precise test, and the significance of particular types of

> adverse actions must be evaluated by taking into account the legitimate interests of both the employer and the employee. Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of section[] 12940(a) ….

Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1053–1055; *see* CACI 2509 ("There is an adverse employment action if [*defendant*] has taken an action or engaged in a course or pattern of conduct that, taken as a whole, materially and adversely affected the terms, conditions, or privileges of [*plaintiff*]'s employment. An adverse employment action includes conduct that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion. However, minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee cannot constitute an adverse employment action.")

"[Courts] need not and do not decide whether each alleged [adverse] act constitutes an adverse employment action in and of itself. *Yanowitz,* 36 Cal.4th at 1055. Instead, "it is … appropriate that [courts] consider plaintiff's allegations collectively." *Id.* at 1056; *see Holmes v. Petrovich Dev. Co., LLC* (2011) 191 Cal.App.4th 1047, 1063("'[A] series of alleged discriminatory acts must be considered collectively rather than individually in determining whether the overall employment action is adverse and, in the end, the determination of whether there was an adverse employment action is made on a case-by-case basis, in light of the objective evidence.'")(citations omitted).

Ultimately, however, "changes in terms and conditions of employment must be both *substantial and detrimental* to be actionable." *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 373 (italics added).

At bar, Defendants argue, in general, that Plaintiff cannot establish an adverse employment action; specifically, Defendants argue that Plaintiff has failed to establish an improper refusal to promote. Def. Mot. 11: 2-4, 23-24. In opposition, Plaintiff asserts she suffered an adverse employment action based on a pattern of conduct: both by Defendants' refusal to promote her as well as the company's ostracizing of Plaintiff, and its "refusal to protect her from her harasser and from retaliation from other employees." Op. 14:15-15:8, see also Op.15:8-18:6. Defendants have the better argument.

In this case, Defendants met their initial burden to establish that Plaintiff had not suffered *an adverse employment action* based on a discriminatory motive *and* that there was *a legitimate, nondiscriminatory reason* to not promote Plaintiff to the position of Contract Administrator. UMF 36, 38, 39, 40. The burden shifted to Plaintiff to establish that there were triable issues of fact.

Plaintiff failed to meet her burden with respect to the element of adverse employment action.

The Court reviews Plaintiff's pattern of conduct evidence collectively. First, Plaintiff argues that she was improperly denied a promotion. Plaintiff, however, failed to produce any evidence to demonstrate that she, in fact, met the requirements of the skills test and was qualified for the promotion at issue. *See Quinn v. City of Los Angeles* (2000) 84 Cal.App.4th 472, 481.

Second, Plaintiff argues that she was actively ignored by or ostracized by "other employees" including Rives, Steward and Wright, *citing* PAMF 55-57; *see also* PAMF 54. In this regard, it should be noted that, ordinarily, "even a pattern of social slights by either the employer or co-employees cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment for purposes of section 12940(a)." *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054 and n. 13, *citing, inter alia,* "*Brooks v. City of San Mateo* (9th Cir.2000) 229 F.3d 917, 929 ("[b]ecause an employer cannot force employees to socialize with one another, ostracism suffered at the hands of coworkers cannot constitute an adverse employment action"); *Strother v. Southern Cal. Permanente Medical Group* (9th Cir.1996) 79 F.3d 859, 869 (mere ostracism in the workplace is insufficient to establish an adverse employment decision)."

Third, Plaintiff argues that she had to actively try to avoid Salmon in the workplace, *citing* PAMF 12, 26 and 34. In this regard it should be noted that during the pertinent time period from December 2021 through 2025, Plaintiff reported a general recollection of trying to avoid Salmon (without specificity as to time) and a specific recollection of trying to avoid him on three dates: the December 2021 company party, Halloween in 2022 and November 18, 2023 (when leaving work with her son).

Fourth, Plaintiff argues that she no longer feels comfortable participating in the culture club, citing PAMF 55-57. In this regard, courts have expressed skepticism as to whether exclusion from extracurricular activities, at least alone, constitutes an adverse action. *See Leon v. Dept. of Education* (E.D.N.Y. 2014) 16 F.Supp.3d 184, 202 ("exclusion from certain extracurricular school activities" not adverse action), overruled in part on other grounds by *Leon v. New York City Dept. of Education* (2d Cir. 2015) 612 Fed.Appx. 632; *Drakeford v. Ala. Cooperative Extension System* (M.D.Ala. 2006) 416 F.Supp.2d 1286, 1314-1315 ("complain[t] about what is essentially an extracurricular activity" that "has little if any impact on [employee's] job responsibilities, pay, or benefits" not adverse action where employee must "ask permission to perform a function that falls outside of [his] job scope").

Plaintiff lastly argues that she struggles with anxiety and fear of continuing harassment by Salmon, citing PAMF 55-57. Here again, courts have expressed skepticism as to whether such subjective feelings constitute an adverse employment action. *Yanowitz,* 36 Cal.4th 1028, 1054, n.13, *citing, inter alia*: "*Torres v. Pisano* [2d Cir. 1997] 116 F.3d [625,] 640 (fact that acts left employee feeling "frightened" and "humiliated" failed to establish that employee suffered an adverse employment action); *Ruggieri v. Harrington* (E.D.N.Y.2001) 146 F.Supp.2d 202, 216 (circumstance that plaintiff was embarrassed by employer's actions inadequate to demonstrate adverse employment action); *Flaherty v. Gas Research Inst.* (7th Cir.1994) 31 F.3d 451, 457 (plaintiff's "bruised ego" as a result of transfer that plaintiff found "personally humiliating" insufficient to constitute adverse employment action)."[7]

The Court considers all this evidence in the aggregate and liberally construes the evidence in the light most favorable to Plaintiff. Through that lens, the Court ultimately concludes that there is no triable issue of material fact with respect to the element of adverse employment action. As a matter of law, there is insufficient evidence to establish that Defendants have taken an action or engaged in a course or pattern of conduct that, taken as a whole, *materially and adversely* affected the *terms, conditions, or privileges* of Plaintiff's employment.

Third Cause of Action – Retaliation

In retaliation claims brought under FEHA, the elements of a prima facia showing for the cause of action are: 1) plaintiff engaged in protected activity; 2) the employer subjected plaintiff to an adverse employment action; and 3) a causal link exists between the protected activity and the employer's action. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042. "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." *Id.* at 1042 (quotations omitted).

The parties contest whether Plaintiff was subject to any adverse employment action for the same reasons noted previously with respect to the fourth cause of action.

The Court adopts the same factual and legal analysis here as the fourth cause of action. Ultimately, the Court considers all this evidence in the aggregate and in the light most favorable to Plaintiff. Through that lens, the Court ultimately concludes that there is no triable issue of material fact with respect to the element of adverse employment action. As a matter of law, there is insufficient evidence to establish that Defendants have taken an action or engaged in a course or pattern of conduct that, taken as a whole, *materially and adversely* affected the *terms, conditions, or privileges* of Plaintiff's employment.

Second Cause of Action – Failure to Prevent Discrimination and Harassment

Defendants argue Plaintiff's cause of action for failure to prevent harassment, discrimination, or retaliation fails because it is derivative of the underlying claims. The Court disagrees. As noted above, the Court concludes that the claim for harassment should proceed to trial.

Defendants also argues that the District took prompt and effective remedial action upon receiving Plaintiff's report. The Court disagrees again.

An employer may be held liable for failure "to take all reasonable steps necessary to prevent discrimination and harassment from occurring." Gov. Code, § 12940(k). "When a plaintiff seeks

[7] Plaintiff also summarily argues that the company refused to protect her from her harasser and from retaliation from other employees in the workplace. Def. Op. 14: 25-26. Plaintiff does not cite to specific evidence supporting the same.

to recover damages based on a claim of failure to prevent ... harassment ... she must show three essential elements: 1) plaintiff was subjected to ... harassment ...; 2) defendant failed to take all reasonable steps to prevent ... harassment ...; and 3) this failure caused plaintiff to suffer injury, damage, loss or harm." *Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 43–44 (internal quotations omitted). "There can be no liability for an employers' failure to prevent harassment claim unless actionable harassment occurred." *Ibid*.

> Once an employer is informed of the sexual harassment, the employer must take adequate remedial measures. The measures need to include immediate corrective action that is reasonably calculated to 1) end the current harassment and 2) to deter future harassment. The employer's obligation to take prompt corrective action requires 1) that temporary steps be taken to deal with the situation while the employer determines whether the complaint is justified and 2) that permanent remedial steps be implemented by the employer to prevent future harassment once the investigation is completed. An employer has wide discretion in choosing how to minimize contact between the two employees, so long as it acts to stop the harassment. "[T]he reasonableness of an employer's remedy will depend on its ability to stop harassment by the person who engaged in harassment."

Bradley v. Department of Corrections & Rehabilitation (2008) 158 Cal.App.4th 1612, 1630 (citations omitted).

At bar, it is undisputed that Plaintiff reported the December 3, 2021, incident to her supervisor on December 6, 2021, and thereafter reported the matter to the Human Resources director. UMF 6-7. Defendants then contends the Human Resources director would "speak with Salmon about the reported conduct." UMF 10. However, Defendants failed to present any evidence as to how they took prompt corrective action to deal with the situation temporarily while the initial complaint was being investigated. Moreover, Defendants failed to include any evidence regarding the temporary and/or permanent remedial response to Plaintiff's 2022 or 2024 reports to Human Resources. *See* PUMF 16-20, 29, 40-42. Defendants did not meet their initial burden to establish that it took all reasonable steps to prevent harassment. Defendants are not entitled to judgment as a matter of law as to this claim.

4. CU0001544 Caitlin Peters vs. Cara Krpalek, et al.

The June 26, 2026, demurrer by Defendant Jiri Krpalek is deemed waived.

The Court ruled on March 13, 2026, as follows: "If Defendant wishes to proceed with a demurrer he must file the same, notice the same for hearing, serve the same and provide proof of service of the same, all prior to March 27, 2026. If no demurrer is properly filed, served and noticed prior thereto, the Court shall conclude that Defendant is waiving his right to demur."

At bar, there is no proof filed with the Court that Defendant timely served the moving papers on Plaintiff as required by the Court's order and Code of Civil Procedure section 1005(b). As such, Defendant has waived his right to demur.

5. CU0002491 Malin Kumar Ram vs. Rodney Andrews, et al.

Defendant Andrews's March 19, 2026, demurrer to the December 1, 2025, complaint is denied. At bar, Plaintiff was allowed leave to amend after previous demurrers were granted. Plaintiff's first amended complaint (FAC) was filed and served on May 7, 2026. "[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 (quotations omitted). "The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading …. [¶] Because there is but one complaint in a civil action, the filing of an amended complaint moots a motion directed to a prior complaint. " *Ibid.* (quotations and citations omitted). Thus, the March 19, 2026, demurrer as to the original complaint is moot and denied as such.

The June 4, 2026, demurrer to the FAC by Defendant Andrews is confirmed for hearing on September 11, 2026. The June 8, 2026, demurrer to the FAC by Defendant Hasbun is advanced for hearing from October 2, 2026, to September 11, 2026. All remaining briefs shall be filed in accordance with the Rules of Civil Procedure.

6. CU0002718 Zachary J. Goepel v. U-Haul Co Of California et al

Plaintiff Zachary Goepel's motion for preliminary injunction is denied without prejudice.

The Court previously continued the order to show cause to June 26, 2026, ordering "Plaintiff to lodge an order to show cause and continuing [the] restraining order with the Court no later than 5/19/2026." The moving papers were filed one day late, on May 20, 2026. Due to clerical error, the proposed temporary order and order to show cause were not brought to the attention of the Court and did not issue. The Court apologizes for this clerical oversight. Moreover, there is no evidence that any of the moving papers have been served on the Defendants.

The above procedural issues notwithstanding, Plaintiff presently has not submitted any evidence to show he is entitled to relief. Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. See, e.g., *ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1016; *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint, sworn declarations, affidavits, or any combination of the foregoing provided facts sufficient for relief are contained there. Code Civ. Proc. §§ 527(a), (h); 2009; 2015.5.

The trial court considers two factors in determining whether to issue a preliminary injunction: (1) the likelihood the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the court grants a preliminary injunction. Code Civ. Proc. § 526(a). The balancing of harm between the parties "involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo." *Husain v. McDonald's Corp.* (2012) 205 Cal.App.4th 860, 866-867.

At bar, the declaration Plaintiff included with his motion is incomplete and ambiguous. For example, the Plaintiff's declaration states, "Beginning on or about [insert dates], my gate credentials stopped working and/or overlocks were placed on [identify units/dates], preventing access." Goepel Decl., 7:8-9. No specific dates or locations are noted. Subsequently, Plaintiff indicates that, “Attached as Exhibits 1 – [ ] are true and correct copies of….” Goepel Decl., 7:17. However, no exhibits are attached. On this record, Plaintiff has failed to provide sufficient competent evidence to demonstrate a likelihood he will prevail on the merits of his case.

7. CU0002182 County of Nevada v. Successors of Myrna Buettner

Appearances required by all parties for the review hearing regarding status as to the sale of the home and compliance agreement.