



# Superior Court of California County of San Benito

## Tentative Decisions for November 6, 2024

**Courtroom #1: Judge J. Omar Rodriguez**

**10:30 a.m.**

### CU-23-00168 Ochoa v. Vasquez, et al.

The Petition to Confirm the Contractual Arbitration Award is GRANTED as requested, including the request provided in the supplement to the petition. Attorney's fees are awarded in the amount of \$39,903.00, routine costs of \$5,255.12 and the cost of JAMS and arbitrator is \$93,309.92. Defendants are ordered to submit a single proposed order/judgment to the Court.

The case management conference is continued to January 13, 2025 to address any outstanding issues.

### CU-24-00156 Gomonet v. Pacific Scientific Energetic Materials Company, LLC.

The Demurrer is SUSTAINED as to the Second and Third Causes of Action with leave to amend. Plaintiff shall file an amended complaint no later than December 6, 2024.

The Case Management Conference is continued to January 13, 2025 at 10:30 a.m.

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's

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case. (*Tenet Health System Desert Inc. v. Blue Cross of CA.* (2016) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Id.* at 831.) For demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) As such, “the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action.” (*Rakestraw v. Cal. Physicians’ Serv.* (200) 81 Cal.App.4th 39, 43.) “If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action,” the demurrer should be sustained. (*Id.*)

Generally, leave to amend is granted liberally. (*Foroudi v. Aerospace Corp.* (2020) 57 Cal. App. 5th 992, 1000.) Leave to amend may be denied where in all probability that no amount of amendment will cure the defects, rendering the process futile. (*Id.*)

In order to make out a claim of FEHA harassment and hostile work environment, the plaintiff must plead that: 1) she belongs to a protected group; (2) plaintiff was subject to harassment; (3) the harassment complained of was based upon the plaintiff’s membership in the protected group; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior liability, if an employer is the defendant. (*See Fisher v. San Pedro Peninsula Hotel* (1989) 214 Cal.App.3d 590, 608.)

“Although discrimination and harassment are separate wrongs, they are sometimes closely interrelated, and even overlapping, particularly with regard to proof.” (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707.) Harassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee. (*Ibid.*) Commonly necessary personnel management actions do not come within the meaning of harassment, but these actions may be found discriminatory if based on improper motives, but in that event the remedies provided by the FEHA are those for discrimination, not harassment. (*Ibid.*)

Here, as to Plaintiff's Second and Third Causes of Action, Plaintiff does not allege facts to show that she was subjected to conducted based on her protected status. Moreover, Plaintiff fails to allege facts outside the scope of her employer's official actions or necessary supervisory job functions. Therefore, the Demurrer is sustained with leave to amend.

**PR-23-00098 In re Estate of Federico Acosta**

After reviewing the Status Report, the Court continues the Review Hearing to March 10, 2025 at 10:30 a.m.

**3:30 p.m.**

**CU-24-00071 Negrete v. County of San Benito, et al.**

The Demurrer is OVERRULED. The Case Management Conference is continued to January 13, 2025 at 10:30 a.m.

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA.* (2016) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Id.* at 831.) For demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) As such, "the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action." (*Rakestraw v. Cal. Physicians' Serv.* (200) 81 Cal.App.4th 39, 43.) "If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action," the demurrer should be sustained. (*Id.*)

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To be able to recover for damages under a negligence theory of liability, the following must be present: a “legal duty to use due care; a breach of that legal duty; and the “breach as the proximate or legal cause of the resulting injury.” (*City of Sacramento v Superior Court* (1982) 131 Cal.App.3d 395, 402.) A public entity is not liable for an injury, except as otherwise provided by statute. (Cal. Govt C §815(a).) “Government Code section 815.2, subdivision (a), is one such statute.” (*Tom Jones Enterprises, Ltd. v. County of Los Angeles* (2013) 212 Cal.App.4th 1283, 1291.) Although no negligence cause of action may be asserted directly against a public entity, under Government Code section 815.2(a) vicarious liability may be imposed on public entities for the “tortious acts and omissions of their employees.” (See Comment to Govt C §815.2.) A public entity, as the employer, is generally liable for the torts of an employee committed within the scope of employment if the employee is liable. (*Tom Jones Enterprises, Ltd.*, 212 Cal.App.4th at 1291.)

Here, the Complaint alleges that the driver of Defendant’s vehicle 2 acted within the course and scope of his duties as an employee of Defendant City, carelessly and negligently operated, maintained, inspected, controlled and drove Vehicle 2 so as to chase Vehicle 1 so as to strike Plaintiff’s vehicle. (Complaint ¶14.) The Complaint also cites Government Code section 815.2(a) as a legal basis for liability against the City. (Complaint ¶17.) As a result of these allegations, the Complaint has sufficiently pled facts to support the sole cause of action.

**CU-24-00157 Tate v. Armon**

The Case Management Conference is continued to January 27, 2025 at 10:30 a.m. The California Truckers Safety Associations’ Motion for Leave to File Complaint in Intervention is to continued to that date and time as well.

**PR-24-00090 Conservatorship of Jorge Jesus Rodriguez**

This matter is continued to December 18, 2024 at 10:30 a.m. to allow for the completion of the investigation.

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**PR-24-00100 Guardianship of Pricilla Reign Sisneros**

This matter is continued to January 13, 2025 at 10:30 a.m. to allow for the completion of the investigation.

**END OF TENTATIVE DECISIONS**

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