

20 CVC 11702 ADAMS, JAMES et al. vs. FAR HORIZONS TRAILER VILLAGE, et al.

On the court's own motion Defendant Sun 49er Village RV, LLC's Motion for Summary Judgment and/or Adjudication and Defendant Sun Communities, Inc. Demurrer is continued to July 25, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

20 CVC 11892 SIMON BUILDING vs. AMADOR COUNTY

On the court's own motion, Defendant's Motion for Summary Judgment is continued to August 1, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

20 CVC 11790 BRENDA MOODY vs. MELINDA BISSELL

The court finds Defendant's Motion to Set Aside and Vacate Default and Default Judgment fails to comply with local rule of court 4.03(d). Further, Defendant has failed to file a proof of service.

The court does not issue a tentative ruling. **Parties are ordered to appear.**

22 CVC 12590 KAREN KECKLEY vs. STACY CALHOUN

The court does not issue a tentative ruling. **Parties are ordered to appear.**

22 CVC 12591 DWAIN KECKLEY vs. REX LYMAN CALHOUN

The court does not issue a tentative ruling. **Parties are ordered to appear.**

21 CVC 12377 GERRY PORTER vs. JUDITH PENROSE

Plaintiff's unopposed Motion for Order Compelling Responses to Form and Special Interrogatories, Request for Documents, Requests for Admission, and for Monetary Sanctions is GRANTED.

Sanctions are awarded to Plaintiff. The court finds it reasonable and supportable to order Defendant to pay sanctions in the amount of \$510.00, which represents attorney's fees and costs necessarily expended on the instant motion. Sanctions shall be paid to Plaintiff's counsel within thirty (30) days.

Moving party to submit to the court an order conforming to this ruling

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21 CVC 12591 MICHELE RAGAN vs. SHORT CIRCUIT ELECTRIC, INC. ET AL

Plaintiff's demurrer to Defendant SHORT CIRCUIT ELECTRIC, INC.'s Answer is OVERRULED.

Defendant RAYMOND RYAN's demurrer to Plaintiff's complaint is GRANTED, in part.

Plaintiff's Request for Judicial Notice is GRANTED.

Defendant's Request for Judicial Notice is GRANTED.

A) Demurrer to Answer

Plaintiff demurs to Defendant SCE's Answer as follows:

1. Defendant's response to Plaintiff's allegation in paragraph 10 of the Complaint that Plaintiff informed Defendant Ryan that Plaintiff needed her job at Short Circuit Electric (SCE) and wanted to keep their relationship professional and not cross any lines. Defendant SCE responded that that Defendant "has insufficient information or belief to answer".
2. Defendant's First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Fourteenth, Sixteenth, Seventeenth, Twentieth, Twenty-First, Twenty-Fifth, Twenty-Sixth, and Twenty Seventh Affirmative Defendants are improper in that they fail to state facts and analysis sufficient enough to constitute an affirmative defense. (CCP 430.20(a), 430.20(b).)

A party against whom an answer has been filed may object by demurrer where the answer does not state facts sufficient to constitute a defense. (Code Civ. Proc., § 430.20(a).) The ground for objection must appear on the face of the answer, or from any matter of which the court is required to or may take judicial notice. (Code Civ. Proc., § 430.30(a).)

A defendant must set forth only the "essential facts" of the affirmative defense, "sufficient to acquaint [plaintiff] with the nature, source and extent" of the defense. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608.) This is known as the "fair notice" test. "Generally speaking, the determination whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.)

The court finds each of the affirmative defenses, as pled by Defendant SCE in the Answer, sets forth "essential facts" of the affirmative defense, "sufficient to acquaint [plaintiff] with the

nature, source and extent” of the defense. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608.)

B) Defendant Raymond Ryan’s Demurrer to Plaintiff’s Complaint

Defendant Raymond Ryan demurs to the Complaint as follows:

1. The First through Sixteenth Causes of Action fail to state facts sufficient to constitute a cause of action. (CCP § 430.10(e).)
2. The First Cause of Action for quid pro quo sexual harassment is uncertain, ambiguous, and unintelligible for failing to allege any job benefit conditioned upon any request for sexual favors (CCP § 430.10(f).)
3. The Second Cause of Action for quid pro quo sexual harassment is uncertain, ambiguous, and unintelligible for failing to allege any quid pro quo promise or unwelcome conduct of a sexual nature. (CCP § 430.10(f).)
4. The Sixteenth Cause of Action for intentional infliction of emotional distress is uncertain, ambiguous and unintelligible for failing to allege any extreme or outrageous conduct. (CCP § 430.10(f).)

A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (*Blank*, 39 Cal.3d at 318.)

Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should “treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

First Cause of Action – Quid Pro Quo Sexual Harassment:

The elements of quid pro quo sexual harassment are: (1) That plaintiff was an employee of defendant; (2) That the harasser made unwanted sexual advances to plaintiff or engaged in other unwanted verbal or physical conduct of a sexual nature; (3) That terms of employment, job benefits, or favorable working conditions were made contingent, by words or conduct, on plaintiff’s acceptance of the harasser’s sexual advances or conduct; (4) That at the time of his or

her conduct, the harasser was a supervisor or agent for defendant; (5) That plaintiff was harmed; and (6) That harasser's conduct was a substantial factor in causing plaintiff's harm.

Here, Plaintiff has plead insufficient facts to establish a cause of action of quid pro quo sexual harassment. Plaintiff has established that she was an employee of Defendant, that Defendant made unwanted advances in the form of gifts and continually asking Plaintiff out on dates, that the working conditions deteriorated after Plaintiff declined Defendant's advances and that Defendant was Plaintiff's supervisor and Plaintiff as harmed as a result of Defendant's conduct.

However, the complaint does not offer sufficient facts supporting the third element that "terms of employment, job benefits, or favorable working conditions were made contingent, by words or conduct, on plaintiff's acceptance of the harasser's sexual advances or conduct." In their points and authorities, Plaintiff alludes to the fact that Defendant was in a jealous rage after she received the flowers, but that is nowhere to be found in the complaint.

Defendant's demurrer is sustained as to the first cause of action.

Second Cause of Action – Sexual Harassment:

The elements of hostile work environment sexual harassment are: (1) that plaintiff was an employee of defendant; (2) that plaintiff was subjected to harassing conduct because the plaintiff had a protected status (e.g., sex/gender); (3) that the harassing conduct was severe or pervasive; (4) that a reasonable person with the same protected status would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive; (5) that the plaintiff considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive; (6) that the individual defendant engaged in the harassing conduct; (7) that the plaintiff was harmed; and (8) that the conduct was a substantial factor in causing the plaintiff's harm (CACI No. 2522A.)

Plaintiff's complaint has plead sufficient facts to establish a cause of action for hostile work environment sexual harassment. Defendant's demurrer as to the second cause of action is overruled.

Sixteenth Cause of Action – Intentional Infliction of Emotional Distress:

The elements of IIED are: (1) that the defendant's conduct was outrageous; (2) that the defendant intended to cause the plaintiff emotional distress or that the defendant acted with reckless disregard of the probability that the plaintiff would suffer emotional distress, knowing that the plaintiff was present when the conduct occurred; (3) that the plaintiff suffered severe emotional distress; and (4) that the defendant's conduct was a substantial factor in causing the plaintiff's severe emotional distress. (CACI No. 1600.)

Plaintiff's complaint has plead sufficient facts to establish a cause of action for intentional infliction of emotional distress. Defendant's demurrer as to the sixteenth cause of action is overruled.

First through Sixteenth Causes of Action:

Plaintiff has plead sufficient facts to constitute the remaining causes of action, but for the first cause of action as indicated previously in this ruling.

Defendant's general demurrer as to the first through sixteenth causes of action is overruled.

Leave to Amend:

A demurrer should be sustained without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. (*Levy v. Nelson* (2000) 83 Cal.App.4th 1061, 1063.) The burden is on the plaintiff to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. (*Goodman v. Kennedy* (1976) 18 Cal 3d. 335.) Plaintiff is granted leave to amend as to the first cause of action.

Unless the parties otherwise so stipulate, Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from the date of this ruling. New language must be set in boldface type.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.