TENTATIVE RULINGS FOR November 19, 2024
Department S24 - Judge Carlos M. Cabrera

This court follows California Rules of Court, rule 3.1308(a) (1) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (https://www.sb-court.org) by 3:00 p.m. on the court day immediately before the hearing.

If you do not have internet access or if you experience difficulty with the posted tentative ruling, you may obtain the tentative ruling by calling the Judicial Assistant. You may appear in person at the hearing but personal appearance is not required. (See www.sbcourt.org/general-information/remote-access)

If you wish to submit on the ruling, advise the Court when your case is called. If both sides do not appear, the tentative will simply become the ruling.

CIVSB2400833

Derrado v. Ryan Cole Stairs, et al
Motion: Compel Responses to Form Interrogatories (Set One)
Compel Responses to Production of Documents (Set One)
Movant: Ryan Cole Stairs (hereinafter "Defendant")
Respondent: None

RULING

1. Motion to Compel Responses to Form Interrogatories (Set One) is **GRANTED**. Plaintiff is ordered to deliver code compliant responses without objection with 20 days of service of the order. Court shall sign order provided.
2. Motion to Compel Responses to Production of Documents (Set One) is **GRANTED**. Plaintiff is ordered to deliver code compliant responses without objection with 20 days of service of the order. Court shall sign order provided.
3. Defendant is awarded monetary sanctions of $1,620.00 ($810 per motion). Plaintiff Camus Derrado and his attorney of record Victor R. Ujkic are ordered to pay the monetary sanctions forthwith.
4. Prevailing party to give Notice.

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If you wish to submit on the ruling, advise the Court when your case is called. If both sides do not appear, the tentative will simply become the ruling.

CIVSB2332433

Meares v. Cooperman, et al
Motion: Demurrer and Motion to Strike
Movant: Snow Valley Mountain Report, LLC, Snow Valley, (hereinafter collectively "Snow Valley") LLC, Jack Cooperman (hereinafter "Cooperman"), (hereinafter collectively "Defendants"). Joined by Craig Jasur (hereinafter "Jasur"), Dave Miller (hereinafter "Miller") and Kevin Somes (hereinafter "Somes")
Respondent: Kimberly Meares (hereinafter "Plaintiff")

ANALYSIS

A demurrer is a pleading used to test the legal sufficiency of other pleadings, i.e., it raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) It is not the function of a demurrer to challenge the truthfulness of the complaint; and for purposes of the ruling on a demurrer, all facts pleaded in the complaint are assumed to be true however improbable they may be. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967.) The court assumes the truth of all material facts that have been properly pleaded, of facts that may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.) However, the Court does

"not accept as true contentions, deductions, or conclusions of fact or law." *(In re Ins. Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1402, citing *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) "[T]he question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Agricultural Assn.* (1986) 42 Cal.3d 929, 936 (citations omitted).) The complaint is also to be liberally construed. (Code of Civ. Proc. §452.)

Meet and Confer

Under Code of Civil Procedure section 430.41, subdivision (a), before filing a demurrer, the objecting party shall meet and confer with the opposing party for the purpose of determining whether an agreement can be reached to resolve the objections to the pleading. The parties should meet and confer at least five days before the responsive pleading is due. Under Code of Civil Procedure section 430.41, subdivision (a)(3), the demurring party must file a declaration stating either:

> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Defense counsel Christopher Milligan filed a declaration which establishes that a meet and confer conference was held with Plaintiff's counsel that satisfies the meet and confer requirements under the Code Civ. Proc., § 430.41 (a)(3). The court will find that Defendant has met their meet and confer requirement and will thus rule on the merits of the demurrer.

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General Demurrer

A general demurrer challenges a complaint for failure to state a cause of action under Code of Civil Procedure section 430.10, subdivision (e). It is granted only where the facts alleged on the fact of the complaint fail to state a valid claim under any possible legal theory entitling the plaintiff to relief against the demurring defendant. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.) The plaintiff may be mistaken as to the nature of the case or the legal theory on which he or she can prevail, but if the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial § 7:41 (hereafter Weil & Brown), citing *Quelimane Co. v. Stewart Tile Guaranty Co.* (1989) 19 Cal.4th 26, 38-39.)

All that is necessary as against a general demurrer is to plead facts showing that the plaintiff may be entitled to some relief. In passing upon the sufficiency of a pleading, its allegations must be liberally construed with a view to substantial justice between the parties." (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955; *Michaelian v. State Compensation Insurance Fund* (1996) 50 Cal.App.4th 1093, 1104-1105.)

The complaint includes matters shown in attached exhibits and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) No other extrinsic evidence can be considered. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) A demurrer predicated on a complaint's failure to state facts sufficient to constitute a cause of action (Code of Civ. Proc. §430.10, subd. (e)) should be granted only when the facts alleged on the face of the complaint fail to state *any* valid claim entitled to the plaintiff or disclose a complete defense to relief. Even if a plaintiff is mistaken as to the nature of the case or the legal theory on which he/she

could prevail, the complaint is good against a general demurrer if the essential facts allege some valid cause of action. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.)

First and Second Causes of Action for Violation of the FEHA

To establish a prima facie case of retaliation, "a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two." (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138 (internal quotes omitted).) A "nexus" must be shown between the employee's protected activity and the adverse action taken against the employee. (See *Turner v. Anheuser-Busch, Inc*. (1994) 7 Cal.4th 1238, 1258-1259 [required nexus not shown].)

FEHA makes it an unlawful employment practice for an employer "to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has *filed a complaint, testified, or assisted in any proceeding under this part*." (Gov. Code, § 12940, subd. (h) (emphasis added).)

It is an unlawful employment practice in California for an employer to fail to take all reasonable steps necessary to prevent discrimination from occurring. (Gov. Code, § 12940, subd. (k).) But no action lies for failure to take necessary steps to prevent discrimination, retaliation, or harassment if no such conduct in fact occurs. (*Dickson v. Burke Williams, Inc*. (2015) 234 Cal.App.4th 1307, 1315-1316)

Under her first cause of action, Plaintiff alleges she was subjected to retaliation because she "complain[ed] about discrimination against students with disabilities and unsafe working conditions." (Compl. ¶55.) Under her second cause of action, Plaintiff vaguely alleges Snow Valley failed to investigate and prevent discrimination and harassment. (Compl. ¶66.)

As Defendants correctly argue, Plaintiff's first and second cause of action are subject to demurrer because Plaintiff failed to allege that she was subjected to retaliation for complaining about a FEHA violation. (*See* Gov. Code, § 12940, subd. (h).) Plaintiff's complaints involve safety issues involving disabled students. In her opposition, Plaintiff quotes paragraph 55, in which she alleges she complained "about discrimination against students with disability and unsafe working conditions [sic]." That is a conclusion, not a fact. As set forth above, Plaintiff's specific allegations involve safety, not employment discrimination.

Relatedly, the illegal activity that is the subject of the opposition must be directed toward employees or others covered by the FEHA rather than discrimination against members of the general public (though opposition to other forms of discrimination may be protected activity under other anti-retaliation laws). (*Dinslage v. City & County of San Francisco* (2016) 5 Cal.App.5th 368, 382-384. Even if Plaintiff had complained to her supervisors that Snow Valley was discrimination against its customers based on their disabilities (which she did not), those allegations would not establish a protected act because they would not involve Snow Valley's employment practices.

Plaintiff's Third and Fifth Causes of Action

To plead a prima facie case of retaliation under Section 1102.5, subd. (b), a plaintiff must show: (1) that she engaged in a protected activity; (2) her employer subjected her to an adverse employment action; and (3) there is a causal link between the protected activity and the adverse action. (*Lawson v. PPG Architectural Finishes, Inc*. (2022) 12 Cal.5th 703, 710.

Although based on different Labor Code statutes, Plaintiff's third cause of action is essentially the same as her fifth cause of action. (*See* Compl. ¶¶75, 101 [alleging safety complaints involving failure to follow laws as basis for retaliation claims]; *see also* Labor Code,

§ 98.6, subd. (a) [prohibiting retaliation against employees for, among other things, engaging in conduct described in Section 1102.5 ("Chapter 5 (commencing with Section 1101) of Part 3 of Division 2")].)[1]

Under Labor Code section 1102.5, the employee's disclosure that allegedly prompted the adverse employment action must have involved violation of a state or federal law or regulation or local, state, or federal rule or regulation . . . not merely improper conduct. (Labor Code, § 1102.5; see *Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592-593; *Patten v. Grant Joint Union High School Dist*. (2005) 134 Cal.App.4th 1378, 1384-1385).

Here, Plaintiff alleges she complained about a "violation of standard safety protocols" (Compl. ¶25), general "safety issues" (*id*. ¶27), "other instances of unsafe lessons, violations of safety protocols, and a flagrant disregard for the wellbeing of students with disabilities" (*id*. ¶29), "failure to adhere to Covid-19 rules, laws, and regulations" (*id*. ¶31), "unsafe" lessons and another instructor's "apparent lack of qualifications" (*id*. ¶¶33-35), and the need for training (see *id*. ¶¶37-41). She then alleges she "reasonably believed [these things] to be in violation of the law." (*See* Compl. ¶101.)

Defendants argue Plaintiff failed to allege the specific Labor Code provision giving rise to liability and failed to allege a factual basis for retaliation. The argument is not persuasive. While Plaintiff's allegations are somewhat conclusory, she clearly alleges she reported acts she believed to be in violation of the law.

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[1] There is a split of authority regarding whether a demurrer may be properly sustained on the ground that a cause of action is duplicative. (*Compare Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290 [demurrer properly sustained to cause of action for "breach of governing documents" on ground that cause of action was duplicative of cause of action for breach of fiduciary duty], with *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890, [that a cause of action is duplicative "is not a ground on which a demurrer may be sustained"].)

Defendants appear to be correct that individual supervisors are not liable for whistleblower retaliation claims. (See *Gonzalez v. Trojan Battery Co., LLC* (C.D. Cal., June 2, 2020) 2020 U.S. Dist. LEXIS 96918 at *5 ["the language of Cal. Lab. Code § 1102.5, while broader than that contained in [other Labor Code statutes], has consistently been construed by district courts in the Ninth Circuit to preclude individual liability by a manager or other non-employer"]; see also *Wilson v. City of Fresno* (E.D. Cal. Sept. 4, 2020) 2020 U.S. Dist. LEXIS 163765, at *57-58 ["The California Supreme Court has not spoken on the issue of whether individuals can be held liable under § 1102.5, but many district courts have found that 'section 1102.5 does not impose individual liability on supervisors.' . . . This court agrees that there is no individual liability under § 1102.5." (Citation omitted)].)

In her opposition to the motion to strike, Plaintiff notes that Section 1102.5 was amended in 2013 to add "or any person acting on behalf of the employer" language. While Plaintiff asserts that a reading of the plain language of this provision provides for individual liability, there is highly persuasive authority interpreting very similar language in a different statute and concluding that there is no personal liability.

The California Supreme Court found no individual liability exists for discrimination under the FEHA despite the definition of employer including "any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly . . . ." (*Reno v. Baird* (1998) 18 Cal. 4th 640, 645 [interpreting Govt. Code §12926, subd. (d)].)

Additionally, the California Supreme Court has held that the broad definition of "person" in Government Code section 12940, subd. (h), does not lead to "the conclusion that all persons who engage in prohibited retaliation are personally liable, not just the employer." (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1162.) *Jones* identifies statutory

language which shows an intent to permit individual liability by pointing to Government Code section 12940, subd. (j)(3), which provides: "An employee of an entity . . . is personally liable for any harassment prohibited by this section that is perpetrated by the employee . . . ." (*Id*.) District Courts have frequently come to this same conclusion. (See, e.g., *Dawson v. Caregard Warranty Serv., Inc*. (C.D. Cal., Jan. 12, 2024) 2024 U.S. Dist. LEXIS 33737, *9.)

In her opposition to the motion to strike, Plaintiff cites several unpublished state court minute orders. Not only do those cases lack precedential value (see *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, 1148), but Plaintiff's citation of them violates the California Rules of Court.[2]

Plaintiff's Fourth Cause of Action

California Labor Code section 232.5 prohibits employers from disciplining or terminating an employee "who discloses information about the employer's working conditions." (Labor Code, § 232.5, subd. (c).) Plaintiff alleges she was terminated for disclosing "information about working conditions to Defendant when she informed Defendant regarding, among other things, unsafe Adaptive ski lessons and protocols, and unsafe COVID-19 conditions and protocols, which she reasonably believed to be in violation of the law." (Compl. ¶87.) Defendants argue Plaintiff's claim fails because she has not alleged that she disclosed information about her working conditions to a "third party." (*See* Dem. 6:9.)

Defendants are correct to question the viability of Plaintiff's fourth cause of action. However, "working conditions" are not defined in the statute. Also, Defendants cite no authority

[2] California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts. Failure to comply with the applicable rules can result in sanctions against the attorney. (See, e.g., *Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 885-886 [$750 sanctions against attorney who repeatedly cited de-published case in briefs].)

supporting their argument that Plaintiff's complaints must be made to a third party (although that seems like a reasonable assumption). (See *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal.App.4th 927, 934 [trial court not required to "comb the record and the law for factual and legal support that a party has failed to identify or provide"].) There is no indication that Labor Code section 232.5 imposes liability on the individual defendants. For the same reasons discussed above, Plaintiff's claims fail as to the individual defendants.

Plaintiff's Sixth Cause of Action

Under Labor Code sections 6310 and 6311, employers are prohibited from retaliating against employees who: (1) make oral or written complaints regarding employee safety or health to government agencies, their employer or their representative; (2) institute or testify in safety or health related proceedings; or (3) refuse to perform work in an unsafe or unhealthy environment that creates a real or apparent hazard to the employee or the employee's co-workers. (*See* Labor Code, §§ 6310, 6311; *Sheridan v. Touchstone Television Productions, LLC* (2015) 241 Cal.App.4th 508, 517.)

Defendants argue Plaintiff's cause of action is subject to demurrer because Plaintiff failed to sufficiently allege that she was retaliated against for complaining about employee safety or health. (*See* Dem. 7-8.) The argument lacks merit. As set forth above, Plaintiff sufficiently alleged that she complained to her supervisors regarding employee safety or health concerns. As with the other retaliation statutes, Labor Code section 6310 references "person," but it references the liability of the "employer." Thus, there is no indication that Labor Code sections 6310 and 6311 provide for individual liability.

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Plaintiff's Seventh Cause of Action.

To prove wrongful termination in violation of public policy, the plaintiff must prove: (1) an employer-employee relationship; (2) the employer terminated plaintiff's employment; (3) the termination was substantially motivated by a violation of public policy; and (4) the discharge caused plaintiff harm. (*Nosal-Tabor v. Sharp Chula Vista Med. Ctr*. (2015) 239 Cal.App.4th 1224, 1234-1235.)

Whistleblower retaliation claims will support a wrongful termination cause of action. In fact, employees need not have actually reported statutory violations by the employer in order to be protected as a whistleblower; an employee who is merely perceived to be a whistleblower can state a claim for wrongful termination in violation of public policy. (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 922-924)

Defendants argue Plaintiff's wrongful termination cause of action fails because her underlying Labor Code claims fail. For the reasons discussed above, that argument lacks merit. Of course, "[a]s a matter of law, only an employer can be liable for the tort of wrongful discharge in violation of public policy." (*Khajavi v. Feather River Anesthesia Med. Group* (2000) 84 Cal.App.4th 32, 53; *Miklosy v. Regents of Univ. of Calif*. (2008) 44 Cal.4th 876, 901.) The "public policy" upon which Plaintiff relies applies to the employer, not supervisory employees. (*Reno v. Baird* (1998) 18 Cal.4th 640, 663.)

Plaintiff's Eighth Cause of Action

The elements of a cause of action for IIED include: (1) extreme and outrageous conduct by defendant; (2) intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of the emotional distress. (CACI 1600.) "To be outrageous, conduct must be 'so extreme as to exceed all bounds

of that usually tolerated in a civilized community.'" (*Ross v. Creel Printing & Publishing Co., Inc*. (2002) 100 Cal.App.4th 736, 745 (citation omitted).)

A simple pleading of personnel management activity is insufficient to support a claim of intentional infliction of emotional distress, even if improper motivation is alleged. If personnel management decisions are improperly motivated, the remedy is a suit against the employer for discrimination." (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 80.) Also, it has been held that firing an employee by itself does not constitute "outrageous" conduct, even if the firing was without cause. (*Buscemi v. McDonnell Douglas Corp*. (9th Cir. 1984) 736 F.2d 1348, 1352 (applying Calif. law); *Trerice v. Blue Cross of Calif*. (1989) 209 Cal.App.3d 878, 883)

In *McCoy v. Pacific Maritime Ass'n* (2013) 216 Cal.App.4th 283, the Court of Appeal held that, although an employer's continued isolation and ostracism of a female employee in retaliation for bringing a successful federal discrimination lawsuit might constitute unlawful retaliation, it did not go "beyond all bounds of decency" or constitute "extreme and outrageous" conduct as required for intentional infliction of emotional distress. (*Id*. at p. 295.)

In support of her argument that she sufficiently alleged extreme and outrageous behavior, Plaintiff cites paragraphs 129 and 130 of her complaint. But those allegations primarily involve inaction and dismissive behavior; not extreme and outrageous behavior. As set forth above, Plaintiff is simply alleging Defendants were dismissive and terminated her employment. That is insufficient to establish IIED.

Plaintiff's Ninth Cause of Action

Negligent hiring occurs where an employer knows or should know that an employee creates a risk of a particular harm, and that harm materializes. (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054.) The rule applies to negligence in hiring, retention *and* supervision.

(*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 240, fn. 28; *Conti v. Watchtower Bible & Tract Society of N.Y., Inc.* (2015) 235 Cal.App.4th 1214, 1232-1233)

Plaintiff alleges Snow Valley negligently hired the individual defendants. However, as Defendants correctly argue, Plaintiff failed to allege any facts showing Snow Valley knew or should have known that the individual defendants were unfit at the time they were hired or that such unfitness would have resulted in Plaintiff's harm.

Special Demurrer

A complaint may also be challenged on demurrer for uncertainty. (Code Civ. Proc., § 430.10, subd. (f).) Demurrers for uncertainty are not favored and this challenge is generally sustained only where the complaint is so ambiguous or unintelligible the defendant cannot reasonably respond. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.)

A special demurrer for uncertainty lies only where the complaint is so poorly drafted that the defendant cannot reasonably respond. That is, the defendant cannot reasonably determine what issues must be admitted or denied or what claims are asserted against him. (Ibid.) (Internal citations omitted.) Where it is alleged that a pleading is uncertain, the movant must specify how or why the pleading is uncertain, and where such uncertainty appears in the face of the pleading under attack. (*Fenton v. Groveland Comm. Services Dist.* (1982) 135 Cal.App.3d 797, 809 [overruled on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300, 328].)

Defendants' uncertainty argument is not well developed, and much of it is moot given the Court's ruling on the general demurrer. To the extent that the Court is not sustaining portion of the general demurrer, it cannot be said that those remaining claims are so ambiguous or

unintelligible that Defendants cannot reasonably respond. To the extent Defendants are demurring on the ground of uncertainty, their demurrer is not persuasive.

Defendants' Motion to Strike

Motions to strike can be used to strike any "irrelevant, false or improper matter inserted in any pleading," or to strike any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (Code Civ. Proc., § 436.)

Defendant moves to strike two categories of allegations in Plaintiff's complaint—allegations regarding the individual defendants (Items 1-3, 5, 9, 11, 13, and 15), and punitive damages claims (Items 6-8, 10, 12, 14, 16, 17 [¶¶49-51, 62, 71, 83, 95, 108, 135, 145], and 18 [prayer for relief]).

Defendants argue Plaintiff's whistleblower claims cannot be pleaded against the individual defendants, Plaintiff's IIED claim fails, and Plaintiff failed to allege facts supporting punitive damages claims against Snow Valley. Defendants are correct. Based on the Court's demurrer ruling, Defendants' motion to strike is largely moot. The only remaining claims are Plaintiff's third through seventh causes of action against Snow Valley, which involve Labor Code retaliation claims and a wrongful termination cause of action based on those same claims.

In order to plead punitive damages, Plaintiff must plead allegations of fraud, malice, or oppression with sufficient particularity. (*Hilliard v. AH Robbins Co*. (1983) 148 Cal.App.3d 374, 392.) "Not only must there be circumstances of oppression, fraud or malice, but *facts* must be alleged in the pleading to support such a claim." (*Grieves v. Superior Court* (1984) 157 Cal. App. 3d 159, 166 (emphasis added).) "[A] conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a patently insufficient statement of 'oppression, fraud, or

malice, express or implied,' within the meaning of section 3294." (*Brousseau v. Jarrett* (1977) 73 Cal. App. 3d 864, 872.)

Also, to impose punitive damages against a corporate employer, the plaintiff must establish one of the following: (1) advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others, (2) authorized or ratified the wrongful conduct for which the damages are awarded, or (3) was personally guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (b).) In actions against corporate employer, these employer's actions must be on the part of an officer, director, or managing agent. (*Id.*) A managing agent is more than a mere supervisory employee; they are "someone who exercises substantial discretionary authority over decisions that ultimately determine corporate policy." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 573.)

Even assuming, for the sake of argument, that Plaintiff's whistleblower claims are sufficient to support punitive damages claims, Plaintiff failed to allege oppression, fraud, or malice on the part of an officer, director, or managing agent of Snow Valley.

Leave to Amend

Courts are very liberal in permitting amendments, not only where a complaint is defective in form, but also where substantive defects are apparent: "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any *reasonable possibility* that plaintiff can state a good cause of action. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 484 [court should grant leave to amend if in all probability plaintiff will cure defect].)

However, no abuse of discretion will be found unless a potentially effective amendment is "both apparent and consistent with the plaintiff's theory of the case." (*Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.) "Leave to amend *should be denied* where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law." (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436 (emphasis added); *Schonfeldt v. State of Calif.* (1998) 61 Cal.App.4th 1462, 1465 [if no liability as a matter of law, leave to amend should not be granted].)

RULING

1. Plaintiff's Request for Judicial Notice is GRANTED.
2. Defendants Craig Jasgur, Jack Cooperman, Kevin Somes, and Dave Miller's demurrer to Plaintiff's complaint, is SUSTAINED WITH LEAVE TO AMEND.
3. Defendant Snow Valley, LLC's demurrer to Plaintiff's third through seventh causes of action is OVERRULED. Snow Valley, LLC's demurrer to Plaintiff's first, second, eighth, and ninth causes of action, is SUSTAINED WITH LEAVE TO AMEND.
4. Defendants' motion to strike Plaintiff's punitive damages claims against Snow Valley, LLC, is SUSTAINED WITH LEAVE TO AMEND. The remainder of the motion (regarding claims against individual supervisors) is **MOOT** as the result of the demurrer ruling.
5. Moving party to give notice.