TENTATIVE RULINGS

FOR: August 1, 2017

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

In the Matter of The 1997 Shirley A. Quaini Trust **17PR000136**

PETITION FOR INSTRUCTION AND ORDER DETERMINING OWNERSHIP OF MANUFACTURED HOME

TENTATIVE RULING: Hearing on the Petition is continued to August 23, 2017 at 8:30 a.m. in Dept. F to be heard with the Motion to Quash Service of Petition for Instruction and Order Determining Ownership of Manufactured Home. A courtesy copy of the Petition and supporting exhibits should be delivered to the Court by August 15, 2017.

In the Matter of Anthony A Perez **17PR000148**

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM - MINOR

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Michelle Fuquay, et al. v. Timothy Gilman, et al. **16CV000974**

DEMURRER TO FIRST AMENDED COMPLAINT FOR DAMAGES

TENTATIVE RULING: The Demurrer does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact Plaintiff's

counsel forthwith and advise Plaintiff's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

The Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Government Code section 854.8, subdivision (a), provides that "a public entity is not liable for: (1) An injury proximately caused by a patient of a mental institution. (2) An injury to an inpatient of a mental institution." Government Code section 855, subdivision (a) creates an exception to the statutory immunity provided in Government Code section 854.8, subdivision (a):

> A public entity that operates or maintains any medical facility that is subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities required by any statute or any regulation of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities, unless the public entity establishes that it exercised reasonable diligence to comply with the applicable statute or regulation.

Plaintiffs allege in their First Amended Complaint that Defendant "failed to make adequate staff available to assure Decedent's safe and quick egress in direct violation of Cal. Code Regs. 71611." California Code of Regulations, Title 22, section 71611 requires that "**adequate** staff must be available to assure safe and quick egress of the patients [kept in locked wards or rooms]." (Emphasis added.) "Those regulations which require 'adequate' or 'sufficient' equipment, personnel or facilities cannot provide a basis for liability, as they do not 'prescrib[e] minimum standards for equipment, personnel or facilities." (*Lockhart v. County of Los Angeles* (2007) 155 Cal.App.4th 289, 310 (*Lockhart*).) "'[T]he plain language of Government Code section 855 clearly states that not all statutory or regulatory violations will provide a basis for liability, only those that prescribe minimum standards.'" (*Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 529, quoting *Lockhart*, *supra*, at p. 309.) Even if Plaintiffs alleged facts to claim that a lack of safe and quick egress was the proximate cause of Decedent's harm, Plaintiffs could still not rely on 22 CC&R 71611 as a basis for an exception to the immunity provided Defendant under Government Code section 854.8, subdivision (a). The Court is not allowing leave to amend because Plaintiffs have already had a chance to amend their complaint to address the immunity issues raised by Defendant above.

The Case Management Conference is continued to September 20, 2017 at 8:30 a.m. in Dept. F.

Tracy Descombes v. Lucky Penny Productions, Inc., et al. **16CV001046**

MOTION TO COMPEL THE NEUROPSYCHOLOGICAL/MENTAL EXAMINATION OF PLAINTIFF TRACY DESCOMBES

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact Plaintiff's counsel forthwith and advise Plaintiff's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

The Motion is GRANTED. Defendant has shown good cause to compel the requested mental examination as Plaintiff has made claims based in part on her mental condition after the incident. (See Plaintiff's Responses to Defendant's Form Interrogatories - Set One, Nos. 6.3, 6.6, and 9.1; Code Civ. Proc., § 2032.310(a).) Plaintiff's own Dr. James Cole conducted a similar, albeit lengthier, examination. Defendant's Motion, and proposed order, sufficiently specify the "time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination," as required by Code of Civil Procedure section 2032.310(b).

In the Matter of Beverly Jean Lorraine Lincoln **17CV000598**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.

Roy Powell, et al. v. Steven Belmont, et al. **26-64868**

MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

TENTATIVE RULING:

A. Request for Judicial Notice and Evidentiary Objections

Plaintiffs Roy Powell, Jennifer Powell, and Julia Powell's (collectively "plaintiffs") request for judicial notice of a memo from Meadowood Lane Neighborhood Group (Redmond Decl., Ex. 22) and El Dorado County Code, Chapter 5.56, Vacation Home Rentals in the Lake Tahoe Basin (*id*., Ex. 23) is DENIED. Defendants Cynthia Y. Hester and Don Marzetta's evidentiary objection number 3 to these exhibits is SUSTAINED. The memo is not the proper subject of judicial notice. The El Dorado County code provision is not relevant. Plaintiffs

otherwise cite no authority or explain why the Court should take judicial notice of these materials.

Defendants' evidentiary objection number 1 to Brad Wagenknecht's declaration (*id.*, Ex. 19) is OVERRULED. "Narratives of discussions and events leading to adoption of a resolution are extrinsic materials that may properly be considered; however [the Court] must disregard a legislator's statement of opinion, understanding, or interpretation of the resolution at issue." (*Baldwin v. City of L.A.* (1999) 70 Cal.App.4th 819, 838, citing *Terminal Plaza Corp. v. City & Cnty. of San Francisco* (1986) 186 Cal.App.3d 814, 828.) Wagenknecht is a member of the Napa County Board of Supervisors. (Redmond Decl., Ex. 19, ¶ 1.) He states the short-term vacation ordinance passed because the board wanted to "minimize criminal activity." (*Id.*, ¶ 6.) He explains the board had "significant concern" local residents could be "damaged by unknown people from another part of the state or country [and they] would not respect either the privacy or well-being of" Napa County's residents. (*Id.*, ¶ 4.) He goes on to provide the board was "concerned" allowing short-term vacation rentals "by people who would be using the properties for parties or night-time events where alcohol use was likely," and could subject "residents to loss of peace and quiet, damage to their property or to themselves, including the risk of physical confrontations, not exclusively." (*Id.*, ¶ 5.) These statements do not reveal Wagenknecht's personal opinion, understanding, or interpretation of the ordinance. (See *California Teachers Ass'n v. San Diego Cmty. Coll. Dist.* (1981) 28 Cal.3d 692, 701.) The statements instead reiterate the discussion and events which transpired with the board of supervisors and led to the adoption of the ordinance. (*Id.*) Accordingly, the declaration is the proper subject for consideration in determining the board's intent in drafting the ordinance. (*Id.*; see *Terminal Plaza Corp., supra*, 186 Cal.App.3d at p. 828.) The additional objections based on lack of personal knowledge, lack of foundation, and calls for speculation are overruled.

Defendants' evidentiary objection number 2 to the declarations of Roy Powell and Jennifer Powell on the ground their declarations contradict their interrogatory answers is OVERRULED.

Defendants' evidentiary objection number 4 to the chart depicting rentals (Redmond Decl., Ex. 12.) on the ground of lack of authentication and foundation is SUSTAINED. The declaration does not explain when Don Marzetta created the chart or what the document purports to represent.

B. Summary Judgment

Defendants' motion for summary judgment as to the fourth cause of action for negligence, fifth cause of action for negligent infliction of emotional distress, sixth cause of action for Dillon-Legg action, seventh cause of action for loss of consortium, eighth cause of action for nuisance, ninth cause of action for premises liability, and tenth cause of action for negligence/Civil Code section 1714) is DENIED for two reasons.[1] First, summary judgment may be granted only where it is shown the entire action has no merit. (Code Civ. Proc., § 437c,

[1] The Court noted in its prior summary judgment order that defendants "technically moved for summary judgment as to the original complaint, not the first amended complaint." Defendants again seek to adjudicate the complaint instead of the operative pleading. (See Ntc. at p. 1:25.) It is clear, however, defendants' motion applies to the first amended complaint. (See, e.g., Mem. at p. 21:19.)

subd. (a).) Defendants have not shown the entire action lacks merit (i.e. the negligence based claims contain different elements than the nuisance claim).

Second, the Court denied defendants' motion for summary judgment on April 12, 2017. Defendants raise the same grounds for summary judgment in the current motion, except for a new argument pertaining to the nuisance claim. This new argument really applies to the alternative request for summary adjudication. Code of Civil Procedure section 1008 limits the ability to file repetitive motions. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107; *Cottini v. Enloe Med. Ctr.* (2014) 226 Cal.App.4th 401, 426 [providing that section 1008 constitutionally prohibits a party from seeking reconsideration not based on new facts or law].) Defendants have not identified any newly discovered facts or circumstances or identified a change of law in order to re-bring the motion. (See *Bagley v. TRW, Inc.* (1999) 73 Cal.App.4th 1092, 1097 [reformatting, condensing, and cosmetically repackaging does not constitute newly discovered facts or circumstances]; *Pender v. Radin* (1994) 23 Cal.App.4th 1807, 1811-12 [renewed motion proper where there was a clear showing of newly discovered facts].) The Court did not invite defendants to file another motion, and consequently, the Court will not exercise its discretion to permit this portion of the motion.

Defendants did not previously file a motion for summary adjudication. Code of Civil Procedure section 437c, subdivision (f)(2), does not preclude consideration of this motion as there has been no prior motion for summary adjudication.

C. Summary Adjudication

1. Negligence Based Claims

Defendants' motion for summary adjudication as to the fourth cause of action for negligence, fifth cause of action for negligent infliction of emotional distress, sixth cause of action for Dillon-Legg action, seventh cause of action for loss of consortium, ninth cause of action for premises liability, and tenth cause of action for negligence/Civil Code section 1714 on the grounds of lack of duty and causation is GRANTED. "An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pac. Plaza Shopping Ctr.* (1993) 6 Cal.4th 666, 673.) Plaintiffs allege defendants violated their duty to obey the county ordinances by renting their property to defendants Steven Belmont and Timothy Anderson. (First Amended Compl., ¶¶ 38-39.) According to plaintiffs, if defendants had followed the law ─ and not rented their property ─ plaintiffs would not have been injured. (*Id.*) The County of Napa notified defendants that renting their property violated the local ordinance against short-term vacation rentals. (*Id.*, Ex. X-1.) A general notice to homeowners from the County of Napa, attached as Exhibit X-2 to the pleading, states the "[u]nauthorized and illegal short-term rentals can affect the . . . safety of a community . . . ."

Defendants owed no duty to plaintiffs to protect them from the short-term renters because defendants had no notice or reason to foresee that a criminal incident with a pitchfork was likely to occur. (Defendants' Undisputed Material Facts, Issue 1, Nos. 2, 12-15, 17, 19; Redmond Decl., Ex. 6 [Payne Depo.] at pp. 37:10-38:13; see generally *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, *Sturgeon v. Curnutt* (1994) 29 Cal.App.4th 301, *Wise v. Super. Ct.* (1990) 222 Cal.App.3d 1008.) There is nothing in the notice of violation or the notice to homeowners that

would have given notice to defendants that the ordinance violation was likely to result in the kind of harm experienced. (See *Martinez v. Bank of Am.* (2000) 82 Cal.App.4th 883, 895.) Although the notice to homeowners refers to the "safety of a community," this is in reference to the fact that a commercial use (i.e. a short-term rental) is incompatible with the county's agricultural and residential areas, not criminal conduct.

2. Nuisance Claim

Defendants' motion for summary adjudication as to the eighth cause of action for nuisance on the ground of lack of unreasonable interference causing harm is DENIED. Plaintiffs allege defendants' loud, disturbing noises disrupted plaintiffs' use and enjoyment of their land. (First Amended Compl., ¶¶ 11-12, 56.) This disturbance was the result of defendants' use of the property in violation of the county ordinance. (*Id*., ¶¶ 56-57.) Plaintiffs present a triable issue of fact that the short-term rentals obstructed them from being able to enjoy their home. (Plaintiffs' Additional Undisputed Material Facts, No. 52; Redmond Decl., Ex. 18, ¶¶ 3-4 [Jennifer Powell declaring she was not able to use her backyard for sunbathing due to the violation of her privacy by the short-term renters, and since the rentals were nearly every weekend, plaintiffs were constantly "interrupted by people next door"]; see *San Diego Gas & Elec. Co. v. Super. Ct.* (1996) 13 Cal.4th 893, 937 ["In distinction to trespass, liability for nuisance does not require proof of damage to the plaintiff's property; proof of interference with the plaintiff's use and enjoyment of that property is sufficient. (E.g., *Dauberman v. Grant* (1926) 198 Cal. 586, 590 [246 P. 319, 48 A.L.R. 1244] ['It was not necessary to the recovery of damages caused by the nuisance of smoke and soot to prove actual damage to plaintiff's property.'].)"]; *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302, quoting *Koll-Irvine Ctr. Prop. Owners Assn. v. Cnty. of Orange* (1994) 24 Cal.App.4th 1036, 1041 ["So long as the interference is substantial and unreasonable, and such as would be offensive or inconvenient to the normal person, virtually any disturbance of the enjoyment of the property may amount to a nuisance."].)

Defendants' motion for summary adjudication as to the eighth cause of action for nuisance on the ground the claim is a reframed negligence claim is DENIED. Because the Court denied summary adjudication on the ground of harm for this claim, this ground necessarily fails. The ground does not completely dispose of the cause of action. (Code Civ. Proc., § 437c, subd. (f)(1).)

PROBATE CALENDAR – Hon. Rodney Stone, Dept. H (Criminal Courts Bldg.-1111 Third St.)

Estate of Paul Schapiro **16PR000087**

FIRST AND FINAL REPORT OF ADMINISTRATOR ON WAIVER OF ACCOUNT AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF COMPENSATION TO ATTORNEYS FOR ORDINARY SERVICES, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT Petition.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. H (Criminal Courts Bldg.-1111 Third St.)

Portfolio Recovery Associates, LLC v. Paula L. Dunn **16CV000795**

MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED

TENTATIVE RULING: The unopposed Motion is GRANTED.

Portfolio Recovery Associates, LLC v. Alicia M. Kash **16CV000933**

MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED

TENTATIVE RULING: The unopposed Motion is GRANTED.

Carlo Juan Gabriel Teruel v. American Canyon Fire Protection District, et al. **17CV000119**

(1) DEFENDANT CITY OF AMERICAN CANYON'S DEMURRER TO THE SECOND AMENDED COMPLAINT

TENTATIVE RULING:

Defendant the City of American Canyon's request for judicial notice of Health & Safety Code sections 13861, 13862, 13961, and 13969 is GRANTED.

The City's request for judicial notice submitted in support of its reply of excerpts from the City of American Canyon's Municipal Code is GRANTED.

The City's demurrer to each cause of action on the ground of failure to state sufficient facts is SUSTAINED WITHOUT LEAVE TO AMEND. The Court previously ruled plaintiff Carlo Juan Gabriel Teruel did not adequately allege an employer-employee relationship with the City or allege facts to demonstrate the City should be deemed a joint employer because the allegation that defendant American Canyon Fire Protection District ("ACFPD") is a "special district," standing alone, did not automatically classify the City as an employer without supporting factual allegations. The Court cited Government Code section 16271, subdivision (e), and *Vernon v. State of Cal.* (2004) 116 Cal.App.4th 114, 123-27. The Court explained in a footnote that the allegations were conclusory to the extent the purported control over Teruel's employment as a firefighter-paramedic on probationary status for 18 months was not alleged or

how being part of a special district impacted that employment. Teruel has not corrected these deficiencies.

Teruel alleges, and contends in his opposition, the City is a joint employer because it had, and continues to have, the legal right to control ACFPD based on *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations* (1989) 48 Cal.3d 341 and *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522. (Second Amended Compl., ¶¶ 5, 8-16.) *Ayala* utilized the *Borello* right-to-control test, which Teruel seeks to apply to *Vernon*'s "totality of the working relationship" approach, and in particular, the use of the phrase "right to control" referenced in *Vernon*. (See Opp. at pp. 3-4.) These cases, and the right-to-control test utilized, are distinguishable from the approach applied in *Vernon*. *Ayala* and *Borello* did not determine whether entities were joint employers as is the situation in the case at bar. *Ayala*, for instance, did not involve joint employer allegations. This authority instead decided whether a single entity had accurately classified workers as employees versus independent contractors under the right-to-control test. (*See, e.g., Ayala, supra*, 59 Cal.4th at pp. 530-31.) Teruel does not raise any authority involving a court determining whether an entity counts as a joint employer by using the right-to-control test. Teruel's reliance on *Ayala* and *Borello*, therefore, does not persuade the Court that the right-to-control test applies to the purported relationship between the City and ACFPD. The Court finds the totality of the working relationship approach in *Vernon* controlling to the joint employer allegations here.

Whether the City is a joint employer and therefore an "employer" is determined by an examination of the totality of the working relationship of the parties. (*Vernon, supra,* 116 Cal.App.4th at p. 125 n.7.) "Factors to be taken into account in assessing the relationship of the parties include": (1) payment of salary or other employment benefits and Social Security taxes; (2) the ownership of the equipment necessary for performance of the job; (3) the location where the work is performed; (4) the obligation of the defendant to train the employee; (5) the authority of the defendant to hire, transfer, promote, discipline or discharge the employee; (6) the authority to establish work schedules and assignments; (7) the defendant's discretion to determine the amount of compensation earned by the employee; (8) the skill required of the work performed and the extent to which it is done under the direction of a supervisor; (9) whether the work is part of the defendant's regular business operations; (10) the skill required in the particular occupation; (11) the duration of the relationship of the parties; and (11) the duration of plaintiff's employment. (*Id*. at p. 125.) These factors cannot be applied mechanically, but the right to control the means and manner of plaintiff's performance is the most important factor. (*Id*. at pp. 125-26.) The Court finds "none of the indicia of an employment relationship with the [City] in the allegations of the [second] amended complaint." (*Id*. at p. 127). Paragraphs 10-11 alleging "control all of the aspects of [Teruel's] working conditions" and performance are conclusory. Consequently, Teruel has not alleged sufficient facts from which the Court may infer the City was his employer. Teruel did not seek leave to amend in his opposition or provide any additional allegations he could add to an amended pleading.

Because the City's demurrer as to each cause of action is sustained without leave to amend, the Court need not reach the City's demurrer to the first cause of action for retaliation [Gov. Code, § 12945.2], second cause of action for gender discrimination [Gov. Code, § 12940 et seq.], third cause of action for disability discrimination [Gov. Code, § 12940 et seq.], and the fourth cause of action for failure to prevent discrimination [Gov. Code, § 12940, subd. (k)] on the ground of failure to state sufficient facts.

(2) DEFENDANT AMERICAN CANYON FIRE PROTECTION DISTRICT'S DEMURER TO THE SECOND AMENDED COMPLAINT

TENTATIVE RULING:

Defendant American Canyon Fire Protection District's ("ACFPD") is admonished for citing to unpublished cases to support its demurrer. (Cal. Rules of Court, rule 8.1115(a).) The Court has not reviewed the cases. (*Id.*)

ACFPD demurrer to the first cause of action for retaliation [Gov. Code, § 12945.2] on the ground of failure to state sufficient facts is SUSTAINED WITHOUT LEAVE TO AMEND. One of the relevant elements of a claim for retaliation in violation of the Moore-Brown-Roberti California Family Rights Act ("CFRA") is showing the defendant was an employer covered by CFRA.[2] (*Dudley v. Dep't of Transp.* (2001) 90 Cal.App.4th 255, 261.) The Court previously ruled plaintiff Carlo Juan Gabriel Teruel did not satisfy this element. Teruel now alleges ACFPD and defendant the City of American Canyon are joint employers, and the City employs 50 or more employees within 75 miles of Teruel's worksite. (Second Amended Compl., ¶¶ 67-68.) The Court held in the City's demurrer to the second amended complaint that ACFPD and the City are not joint employers. Because Teruel does not allege ACFPD, by itself, satisfies this element, the claim fails. (Gov. Code, § 12945.2, subd. (b).)

ACFPD's demurrer to the second cause of action for gender discrimination [Gov. Code, § 12940 et seq.] on the ground of failure to state sufficient facts is OVERRULED. To present a claim for gender discrimination, plaintiff must allege circumstances suggesting discriminatory motive. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 355.) The Court previously sustained the demurrer because Teruel did not adequately allege circumstances suggesting discriminatory motive for failure to conform to gender stereotypes (i.e. the pleading was not clearly tailored to highlight the gender non-conforming aspect of his claim or the necessary factual allegations). Teruel has corrected this deficiency by tying the gender non-conforming behavior into the actions surrounding his termination. (Second Amended Compl., ¶ 46 [alleging culture "was changing" from expecting firefighters not to take time off to care for their families], ¶ 48 [alleging ACFPD leadership holds outdated beliefs and gender stereotypes that mothers, not fathers, should stay home and take care of children, and that male firefighters that do so are not dedicated to their jobs], ¶ 58 [alleging ACFPD's chaplain told Teruel he was terminated because "sometimes our families need to sacrifice so that we can take care of them the way they want to be taken care of."], ¶ 79 [alleging terminated after taking sick leave to care for family for because failed to conform to the gender stereotype of men acting as breadwinners and not as caregivers for family].) ACFPD's reliance on *Kelley v. Conco Companies* (2011) 196 Cal.App.4th 191, a sexual harassment case, is unpersuasive in this gender stereotyping case.

ACFPD's demurrer to the third cause of action for disability discrimination [Gov. Code, § 12940 et seq.] on the ground of failure to state sufficient facts is OVERRULED. To plead a claim for associational disability discrimination, a plaintiff must show he was associated with a

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[2] The third element a plaintiff must show is that he exercised his right to take leave for a qualifying CFRA purpose. The Court previously ruled Teruel satisfied this element. Thus, the arguments ACFPD raises on demurrer as to this element are improper.

person who suffers from a disability, he was otherwise qualified to do his job, and he was subjected to adverse employment action because of his association with a disabled person. (*Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1037.) The disability must be a substantial factor motivating the employer's adverse employment action. (*Id*.) The Court previously sustained the demurrer because Teruel did not allege sufficient facts to show that his wife's anxiety disability was a substantial factor motiving his termination. Teruel has corrected this deficiency. Teruel pleads ACFPD terminated his employment because ACFPD was concerned his wife's anxiety disorder disability would require him to take additional leaves of absence to care for her and the young children. (Second Amended Compl., ¶¶ 32, 51, 85, 88-89.) Despite ACFPD's argument to the contrary in its reply, Teruel specifically alleges a substantial motivating reason for his termination was his association with his disabled wife. (*Id*., ¶ 89.)

ACFPD's demurrer to the fourth cause of action for failure to prevent discrimination [Gov. Code, § 12940, subd. (k)] on the ground of failure to state sufficient facts is OVERRULED. This claim is based on the discrimination claims. Because two of those claims are adequately alleged, the demurrer to this cause of action necessarily fails.