

**DEPARTMENT THREE
JUDGE HARRY S. KINNICUTT
707-207-7303
TENTATIVE RULINGS SCHEDULED FOR
TUESDAY, MAY 23, 2017**

**ANGEL v. RM HQ, LLC dba CHEVY'S FRESH MEX RESTAURANTS
Case No. FCS048011**

Motion by Defendant RM HQ, LLC to Strike Plaintiff's 1st Amended Complaint

TENTATIVE RULING

Civil Code §3294 allows for recovery of punitive damages "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice"

Against a corporate defendant, the plaintiff must also allege and later prove that an officer, director or managing agent of the corporation had advance knowledge of the unfitness of the tortfeasor employee, or authorized or ratified his or her wrongful conduct, or was personally guilty of oppression, malice or fraud. Civil Code §3294(b).

The 1st amended complaint alleges that Smith was terminated after Plaintiff informed the restaurant manager, the regional manager and others who participated in a conference call of the sexual harassment. It does not allege any significant gap in time between Plaintiff's reporting of the sexual harassment and Smith's termination, nor any prior sexual harassment history on the part of Smith known to RM management. Thus, there do not appear to be any allegations supporting corporate advance knowledge, authorization or ratification of the sexual harassment.

There is a different type of wrongful conduct which is alleged to have been directed or ratified by corporate officers, directors or managing agents.

The 1st amended complaint also alleges that Plaintiff's work hours were drastically reduced a week after she made the complaint, "by management", in retaliation for her reporting of the sexual harassment. On information and belief, she alleges "that officers, directors and/or managing agents made the decision or ratified the decision to reduce Plaintiff's work hours [¶27, see also ¶45]. She further alleges that the decision "was made maliciously, oppressively, and in conscious disregard of Plaintiff's statutory rights" [¶27, see also ¶45].

Ordinarily, a complaint alleging punitive damages "must allege *specific facts* showing that defendant acted with 'oppression, fraud or malice' toward plaintiff."

California Practice Guide, Employment Litigation, §19:337, p. 19-47 (emphasis in original).

In one case, a telephone company was alleged to have retaliated against an attorney complaining about a wrong telephone number listed for his office, by terminating his phone service. Perkins v. Superior Court (1981) 117 Cal.App.3d 1. The focus was over whether those allegations were specific enough to plead “malice, fraud or oppression”, and the court found that they were.

No issue was raised, or discussed, as to whether the plaintiff in that case should have pled the names or titles, positions and responsibilities of the persons at the telephone company who directed the shutting off of his service.

Thus, this issue is one on which there appears to be no clear law.

The court therefore has considered a doctrine applicable to civil pleadings in general, which excuses particularity when the defendant has superior knowledge of the necessary facts.

Less particularity doctrine: Less particularity is required in pleading matters of which the defendant has superior knowledge; e.g., allegations as to D's knowledge or notice or intent. Such matters may be alleged on information and belief (§6:225); and the complaint will be upheld “so long as it gives notice of the issues sufficient to enable preparation of a defense.” [Doe v. City of Los Angeles (2007) 42 C4th 531, 549-550, 67 CR3d 330, 343-344]. Edmon, Rylaarsdam & Karnow (Weil & Brown), Civil Procedure Before Trial, §6:121.5, p. 6-35.

In this case, it seems clear that RM HQ, LLC (“RM”) has superior knowledge as to which person(s) made the decision to reduce Plaintiff’s hours, and whether such person is a corporate officer, director or managing agent.

For this reason, the court finds Plaintiff’s allegations sufficient at this time to support the claim for punitive damages.

RM’s motion to strike the allegations supporting Plaintiff’s punitive damage claims is therefore denied.

RM is to file an answer to the 1st amended complaint within 30 days.

**SWEENEY, ET AL. v. SAN FRANCISCO BAY CONSERVATION AND DEV.
COMM'N, ET AL.
Case No. FCS048136**

Motions for Stay

TENTATIVE RULING

Parties to appear.