Tentative Ruling:

For all the reasons discussed below, the court sustains the demurrer for uncertainty, which undermines the allegations of the 1st, 4th, and 11th causes of action. The court sustains the demurrer to the 13th cause of action on the basis that the element of extreme and outrageous conduct has been insufficiently alleged. The motion to strike is granted. Leave to amend is granted. Plaintiff must file and serve an amended pleading within 20 days of this hearing.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

Background:

According to the FAC, plaintiff Gity Supervizer was hired on or around August 21, 2023, as a Nurse Practitioner in the Trauma/General Surgery Department at Marian Regional Medical Center in Santa Barbara County.

The FAC alleges that a hostile pattern of conduct began after plaintiff participated in the investigation of Steven Yi, the Director of Recruitment/Hiring, for sexual harassment. Following Mr. Yi's termination in October 2023, plaintiff alleges that management began treating her with hostility, singling her out for criticism, unequal discipline, and disparate enforcement of workplace rules. Plaintiff further alleges that she faced retaliation, including denial of appropriate OR assignments despite her extensive first-assist experience, unfair discipline, inconsistent scheduling demands, and targeted monitoring of her work. Beginning in early 2024, adverse actions escalated, including unwarranted disciplinary write-ups, removal from OR responsibilities, disparate enforcement of policies such as nail polish and shoe requirements, and performance evaluations resulting in lower wage increases than younger colleagues. Plaintiff also claims defendants ignored her medical conditions—stress-induced dermatological issues and later a mental-health-related disability—even after receiving documentation from her physicians and HR. Despite her requests for accommodation, the FAC alleges that defendants failed to engage in any interactive process.

By early 2025, plaintiff asserts that she was further marginalized through restrictions on her clinical duties, public criticism, and manufactured disciplinary actions, alleging several of these incidents in detail.

On April 4, 2025, plaintiff received a sudden directive to report to HR. At the meeting, defendants terminated her employment without prior notice of any specific allegations and without an opportunity to respond.

Plaintiff's FAC asserts thirteen causes of action: (1) Unfair Competition; (2) Sexual Harassment in Violation of FEHA; (3) Gender Harassment in Violation of FEHA; (4) Discrimination based on Medical Condition in Violation of FEHA; (5) Failure to Make Reasonable Accommodations in Violation of FEHA; (6) Failure to Engage in the Interactive Process in Violation of FEHA; (7) Failure to Prevent Harassment and Discrimination; (8)

Retaliation in Violation of FEHA; (9) Whistleblower Retaliation (Labor Code §1102.5); (10) Retaliation and Discrimination in violation of Health & Safety Code §1278.5; (11) Wrongful Termination in Violation of Public Policy; (12) Negligent Hiring/Supervision/Retention; and (13) Intentional Infliction of Emotional Distress. These causes of action are alleged against Dignity Health, CommonSpirit Health, Pacific Central Coast Health Centers, and Marian Regional Medical Center Foundation ("corporate defendants"), and individual defendants, Steven Yi and Lisa Abeloe.

Demurrer:

The corporate defendants demur on the basis that the entire complaint is uncertain, ambiguous, and conclusory. In addition, they demur to the first (Bus. & Prof. Code section 17200), fourth (discrimination based on medical condition), eleventh (wrongful termination in violation of public policy), and thirteenth (intentional infliction of emotional distress) causes of action on the basis the FAC fails to state facts sufficient to constitute a cause of action.

1. Uncertainty

A demurrer for uncertainty will be sustained only where the complaint is so bad that defendant cannot reasonably respond — i.e., defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against defendant. (*Khoury v. Maly's of Calif., Inc*. (1993) 14 Cal.App.4th 612, 616; *A.J. Fistes Corp. v. GDL Best Contractors, Inc*. (2019) 38 Cal.App.5th 677, 695.)

Corporate Defendants point out that plaintiff alleges that four different corporate entities (Dignity Health, CommonSpirit Health, Pacific Central Coast Health Centers and Marian Regional Medical Center Foundation) all employed her: "Defendants both directly and indirectly employed Plaintiff, as defined in the Fair Employment and Housing Act ("FEHA") at Government Code§ 12926(d)." (FAC, ¶ 5.) However, they assert she does not allege any facts to support this conclusion, such as how she was hired, who paid her, how her work supposedly benefitted any of the defendants, or who supervised or terminated her and whether those persons were employed by any of the defendant corporations.

FEHA defines "employer" to include "any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly." (Gov. Code, § 12926, subd. (d).) In determining whether an entity is an "employer" for purposes of liability for unlawful employment practices, courts "consider the 'totality of circumstances' that reflect upon the nature of the work relationship of the parties, with emphasis upon the extent to which the defendant controls the plaintiff's performance of employment duties. (*Vernon v. State of California* (2004) 116 Cal.App.4th 114, 124.) "[T]he precise contours of an employment relationship can only be established by a careful factual inquiry." (*Id.* at p. 125.) Factors to be taken into account in assessing the relationship of the parties include payment of salary or other employment benefits and Social Security taxes, the ownership of the equipment necessary to performance of the job, the location where the work is performed, the obligation of the defendant to train the employee, the authority of the defendant to hire, transfer, promote, discipline or discharge the employee, the authority to establish work schedules and assignments, the defendant's discretion to determine the amount of compensation earned by the employee, the skill required of the work performed and the extent to which it is done under the direction of a supervisor, whether the work is part of the defendant's regular business operations, the skill required in the particular occupation, the duration of the relationship of the parties, and the duration of the plaintiff's employment. (*Id.*)

In *Vernon*, plaintiff, a City of Berkeley firefighter, had a medical condition that disproportionately affected African American males and made shaving problematic. As a firefighter, he was often required to wear a breathing apparatus while fighting fires. He filed a complaint against the State of California for discrimination resulting from its regulations prohibiting facial hair that interfered with the respirator seal. The City of Berkeley implemented a new respiratory protection policy that prohibited a person who had visible facial hair from taking the necessary test to ascertain the apparatus was properly sealed. The policy was necessitated by State regulations. The impact was to preclude any employee with facial hair from working "in fire suppression." Plaintiff filed a complaint against the State, alleging it was an indirect or joint employer. The court held the complaint lacked sufficient facts to support that theory. The complaint did not allege, for example, the State compensated plaintiff or engaged his services. The State also had no apparent authority or discretion to discipline, promote, transfer, or terminate plaintiff. Nothing in the allegations or record indicated that plaintiff was covered by personnel policies that specifically governed State employees. (*Id.* at 126-127.)

Here, plaintiff alleges that from the outset of her employment, she was jointly employed by Dignity Health, CommonSpirit Health, Pacific Central Coast Health Centers, and Marian Regional Medical Center Foundation. According to the FAC, these corporate defendants collectively exercised control over "Plaintiff's hiring, compensation, work schedules, job assignments, discipline, and termination," and operated with "common ownership, management, and operational control" over the department where Plaintiff worked. (FAC, ¶ 12b.) The FAC further alleges that all defendants "both directly and indirectly employed Plaintiff" within the meaning of the FEHA. (FAC, ¶ 5.)

Within this structure, several individuals allegedly exercised authority on behalf of all corporate defendants. Trauma Manager Lisa Abeloe assigned work, scheduled shifts, imposed discipline, evaluated performance, and influenced termination decisions. Assistant Manager Bette Jenkins shared similar authority, and Trauma Director Dr. Sjoholm allegedly had final say over departmental operations and personnel matters. Steven Yi, involved in Plaintiff's recruitment and serving as Director of Recruitment/Hiring, also allegedly acted as a supervisor within this joint-employer setting. (FAC, ¶ 12c-d.)

While the court acknowledges that the determination whether defendants can be considered joint employers ultimately turns on a fact sensitive inquiry, the factual allegations in the FAC fall short of supporting the theory. Plaintiff does not allege, for example, which entity paid her, which entity controlled her schedule, or even which entity terminated her. While she identifies her managers and the trauma director, she has not alleged on behalf of which entity they were acting. More information is needed.

Plaintiff alleges that the defendants functioned as a unified enterprise whose managers, directors, and officers acted as agents of all other defendants. The FAC asserts a "unity of ownership and interest" among the defendant corporations such that their separate identities had effectively ceased, and each acted as the alter ego of the others. (FAC, ¶ 4.)

To recover on an alter ego theory, a plaintiff must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. (*A.J. Fistes Corporation v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 696*: Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415; cf. *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 235 [plaintiff sufficiently alleged unity of interest by alleging corporate entity was inadequately capitalized, failed to "abide by the formalities of corporate existence," and was dominated, controlled, and used by defendant as a "mere shell and conduit"].) The FAC fails to allege any such facts. The alter ego allegations are insufficient.

The court sustains the demurrer based on uncertainty with leave to amend.

The court accordingly sustains the demurrers to the first, fourth, and eleventh causes of action to the extent they are based on the failure to allege sufficient facts of employment or the liability of each corporate defendant.

2. *First* (*Bus. & Prof. Code section 17200) Cause of Action*

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) A plaintiff alleging unfair business practices under Bus. & Prof. Code section 17200 must state with *reasonable particularity* the facts supporting the statutory elements of the violation. (*Gregory v. Albertsons, Inc*. (2002) 104 Cal.App.4th 845, 851.) Defendants allege that plaintiff has failed to allege this cause of action *as to each defendant*. In other words, defendants assert that plaintiff has lumped together all four corporate defendants without specifying what conduct was committed by which defendant that supposedly amounts to unfair competition by each.

Under the unlawful prong, the statute "borrows" violations of other laws and makes them independently actionable. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) Here, the FAC alleges: "Defendants engaged in unlawful business acts and practices against Plaintiff by violating the California Labor Code and the Fair Employment and Housing Act as alleged in this Complaint. Defendants' unlawful business acts and practices, as described above, constitute unfair competition within the meaning of Business and Professions Code § 17200 et seq." (FAC, ¶¶ 21-22.)

However, as outlined above, the defendants have not been sufficiently alleged to be a joint employer, or alter egos, or any other legal relationship that would require one to be liable for the actions of another. "The concept of vicarious liability has no application to actions brought under the unfair business practices act." (*Emery v. Visa Internat. Service Ass'n* (2002) 95 Cal.App.4th 952, 960, citing *People v. Toomey* (1984) 157 Cal.App.3d 1, 14).) A defendant's liability must be based on his personal "participation in the unlawful practices" and "unbridled control" over the practices that are found to violate section 17200 or 17500. (*Emery* at 960.) This cause of action is thus insufficiently pled.

3. Fourth (Discrimination Based on Medical Condition)

As above, defendants argue that the allegations are insufficient to plead this statutory cause of action because plaintiff has failed to show that each of the four corporate defendants was her direct or indirect employer, or how each defendant participated in taking an adverse employment action against her or caused her harm. As above, the court concludes this failure permeates this cause of action and the demurrer is sustained with leave to amend.[1]

4. Eleventh (Wrongful Termination in Violation of Public Policy)

Likewise, this cause of action requires an allegation of the existence of an employer-employee relationship. (See CACI 2430.) For the same reasons above, the current allegations fail to satisfy this requirement.

5. Thirteenth (Intentional Infliction of Emotional Distress)

"A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1609 [cleaned up]; *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 780.)

For conduct to be considered outrageous for purpose of tort liability, it "must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883.) "Generally, conduct will be found to be actionable where the 'recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" ' " (*KOVR–TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.) The fact that conduct might be termed outrageous is not sufficient. "The tort calls for intentional, or at least reckless conduct — conduct intended to inflict injury or engaged in with the realization that injury will result." (*Davidson, supra,* 32 Cal.3d at p. 210.) The conduct must be of a nature that is especially calculated to cause mental distress of a very serious kind. (*Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 165, fn. 5.)

Defendants argue that the complaint fails to allege facts sufficient to support the element of extreme and outrageous conduct. Plaintiff characterizes the allegations as "far more than ordinary personnel management: a sustained, escalating, pretextual disciplinary campaign; admitted surveillance of the plaintiff (FAC, paragraph 12(o)); repeated disparate singling-out (FAC, paragraphs 12(m), 12(z)); pressure to abandon her position (FAC, paragraph 12(u)); and an abrupt, no-cause termination (FAC, paragraph 12(aa)), all by supervisors holding power over her livelihood." She cites the following cases in support of her argument that "[c]onduct by a supervisor who abuses a position of authority over the

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[1] Plaintiff alleges that her condition was disclosed to both Abeloe and Human Resources (FAC, ¶ 12p) but it is unclear for whom those individuals work.

plaintiff can be outrageous": *Robinson v. Hewlett-Packard Corp.* (1986) 183 Cal.App.3d 1108, 1129 and *Bundren v. Superior Court* (1983) 145 Cal.App.3d 784, 789-790.

In *Robinson*, the court held that an employer's intentional use of racial slurs, against an employee who is susceptible to such slurs, may constitute "outrageous" conduct. (*Robinson, supra,* at 1115, 1129-1130 ["According to Robinson, Rosso made contumelious remarks to him, saying (1) that she did not like Blacks; (2) that Black people in general do not like to work, they try to get something for nothing; (3) that Robinson himself, being Black, did not want to work; and (4) that Robinson was "faking it, i.e., magnifying the true measure of his back injury.]")

Bundren is inapposite, as it involves a creditor making a collection call rather than an employer.

The court finds the allegations in the FAC do not rise to the level of *Robinson* and are otherwise insufficient to support the element of extreme and outrageous conduct. (See *Crouch v. Trinity Christian Center of Santa Ana* (2019) 39 Cal.App.5th 995, 1007 [plaintiff's grandmother was officer of defendant organization; grandmother's tirade directed at 13-year-old plaintiff who had been drugged and raped by defendant's employee, including statement that attack was her fault, was extreme and outrageous]; *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1613 [defendants engaged in outrageous conduct when they aggressively rushed toward and confronted plaintiff, made rude comments, expressly threatened both plaintiff and the family dog, and made a veiled threat against plaintiff's wife while he was standing on his side of the property line photographing the fence]; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1046 [landlord changed the locks at the request of their tenant, Mobile Medical, on apartment occupied by plaintiff after her employment was terminated and just days after she returned home after reconstructive surgery due to an industrial injury with her arm in a cast]; see *Herrick v. Quality Motels & Resorts Inc*. (1993) 19 Cal.App.4th 1608 [supervisor pointed a gun at an employee threatening to kill him if he did not sign termination notice].)

The court sustains the demurrer to this cause of action with leave to amend.

Motion: Strike

Defendants move to strike the punitive damages allegations and all related references, as well as allegations for restitution and injunctive relief related to the UCL claim, and allegations for statutory penalties related to the Labor Code.

1. Punitive Damages

Plaintiff alleges entitlement to punitive damages under the "Fact Common to All Causes of Action" portion of her complaint (¶ 15), the second cause of action for sexual harassment (¶ 36), the third cause of action for gender harassment (¶46); the fourth cause of action for discrimination based on medical condition (¶59); the fifth cause of action for failure to make reasonable accommodations (¶68); the seventh cause of action for failure to prevent harassment and discrimination (¶84); the eight cause of action for retaliation (¶ 95); the eleventh cause of action for wrongful termination (¶119); and the thirteenth cause of action for intentional infliction of emotional distress (¶140).

To state a prima face case for punitive damages, a complaint must set forth the elements as stated in Civil Code section 3294, subdivision (a). (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193.) Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code § 3294, subd. (a).)[2] For corporate defendants, section 3294 subdivision (b) imposes a heightened standard. An employer shall not be liable for punitive damages based upon acts of an employee unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others, or authorized or ratified the wrongful conduct for which the damages are awarded, or was personally guilty of oppression, fraud, or malice (§ 3294, subd. (b).) Critically, with respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation. (*Id.*)

Here, while plaintiff identifies her managers, and that the trauma director had "final decision-making authority over trauma department operations and personnel matters" (FAC, paragraph 12(c)), she has not alleged on behalf of which entity they were acting. This undermines the pleading as to punitive damages. More is needed. The motion to strike is granted as to the punitive damages allegations.

2. UCL Remedies

Plaintiff seeks injunctive relief (¶25) and restitution (¶24) under the first cause of action (the UCL claim). Defendants move to strike both bases for relief. The court has sustained the demurrer to this cause of action, thus the motion to strike these damages is moot.

3. Statutory Penalties

Plaintiff seeks "penalties under the Labor Code in an amount according to proof," (Prayer for Relief, ¶ 5), "statutory penalties, according to proof," (FAC, ¶ 13, Prayer for Relief, ¶ 6) and "equitable relief, including reinstatement to Plaintiff's former position or front pay in lieu thereof, and expungement of unlawful disciplinary records." (FAC, ¶ 7.)

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[2] " 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) Despicable conduct" is conduct that is " 'so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people.' " (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 330.) Such conduct has been described as having the character of outrage frequently associated with crime. (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159.) "Conscious disregard" means " 'that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.' " (*Hoch v. Allied–Signal, Inc.* (1994) 24 Cal.App.4th 48, 61) Put another way, the defendant must "have *actual knowledge* of the risk of harm it is creating and, in the face of that knowledge, fail to take steps it knows will reduce or eliminate the risk of harm." (*Ehrhardt v. Brunswick, Inc.* (1986) 186 Cal.App.3d 734; *Butte Fire Cases, supra,* 24 Cal.App.5th at p. 1159; italics added.)

Defendants move to strike the allegation and prayers, and it appears that plaintiff does not oppose that motion. The court accordingly grants the motion.

Ruling

The court sustains the demurrer for uncertainty, which undermines the allegations of the 1st, 4th, and 11th causes of action. The court sustains the demurrer to the 13th cause of action on the basis that the element of extreme and outrageous conduct has not been sufficiently alleged. The motion to strike is granted. Leave to amend is granted. Plaintiff must file and serve an amended pleading within 20 days of this hearing.