

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 03/11/2019

TIME: 02:03:00 PM

DEPT: 30

JUDICIAL OFFICER PRESIDING: James McFetridge

CLERK: J. Bell

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **JCCP 4974**

CASE INIT.DATE: 08/02/2018

CASE TITLE: **Oroville Dam Cases**

CASE CATEGORY: Civil - Unlimited

APPEARANCES

Nature of Proceedings: Ruling on Defendant Department of Water Resources ("Defendant" or "DWR") Motion to Strike

The Court, having taken the above-entitled matter under submission on February 15, 2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: .

This coordinated proceeding concerns claims arising out of the failure of the Oroville Dam, located in Butte County, California. In the face of numerous related lawsuits, the matter was consolidated into a coordinated proceeding. While various groups of Plaintiffs have filed separate complaints, those complaints essentially mirror each other verbatim and contain the same causes of action: (1) dangerous condition of public property pursuant to Government Code section 835; (2) private nuisance; (3) public nuisance; and, (4) premises liability. Specifically at issue here are the First Amended Complaint filed by the City of Oroville, the Akers Ranch Complaint, and the JEM Farms Complaint.

Code of Civil Procedure section 436 empowers the trial court to strike out any irrelevant, false, or improper matter inserted in a pleading or all or any part of a pleading not drawn or filed in conformity of the laws of the state, a court rule, or order of the court. (CCP § 436(a)-(b).) The courts have "inherent authority to strike scandalous and abusive statements in pleadings." (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1070.) Further, an allegation that is not essential to the statement of a claim or defense is an immaterial allegation that is subject to be stricken as an irrelevant matter. (Code Civ. Proc. §§ 431.10(b)(1), (c); 436 (a).) That said, motions to strike must be utilized very cautiously, as they are not procedural "line item vetoes" for the civil defendant. (*PHII, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.) Courts considering such motions must presume the allegations contained therein are true and must consider those allegations in context. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) A motion to strike must be determined solely by the face of the complaint and matters properly subject to judicial notice; extraneous evidence cannot be considered. (Code Civ. Proc. § 437.)

Within the factual allegations of the operative pleadings are the following statements, now at issue:

- "Over the decades, DWR has perpetuated a toxic culture and hostile work environment at the Oroville Dam. DWR management at the Oroville Dam was openly hostile to women and minorities. This toxic culture has not only impacted its workers but also undermined the maintenance and safety of the dam."

- "For example, in 2010 or 2011, supervisors at DWR condoned and allowed a noose to be hung at a meeting room used daily by DWR staff. It was directed at an African American employee. The noose

remained therefore two to three months in plain view of supervisors until the African-American employee took it down himself."

- "As but another example of the atmosphere of workplace harassment, the same African American DWR employee at the dam found a doll hanging in his locker. It is believed that DWR has hired no more than one or two African Americans at the Oroville Dam over the past 20 years."

- "In or around 2010, a white DWR employee told an African American employee that 'This job is not like picking cotton.' A DWR supervisor, Maury Miller[,] was present and hear the racist comment, but took no action when confronted, stating[,] 'I heard nothing.'"

- "This African-American employee was also called '[the n-word],' but no action was taken by DWR management to address the racist behavior."

- "DWR has also allowed sexual harassment against female employees to proceed with impunity."

- "For example, one of the few female employees at Oroville Dam was constantly harassed by her male supervisors and counterparts. One supervisor repeatedly asked her out of lunch dates. She was exposed to graphic images, including a CPR mannequin posed in a sexual position at one of her worksites. DWR employees described a woman's conference attended by a female employee as a 'Dyke conference,' and regularly referred to female employees as dykes."

- "When employees spoke up on behalf of the victims of harassment, they were at times physically threatened by other DWR employees outside of the work site."

- "For years, DWR supervisors were more interested in lining their own pockets than ensuring the safety of the facility and its workers."

- "DWR's management at the Oroville Dam was at times corrupt, with supervisors and other employees stealing state equipment and supplies for their own personal use."

- "It is reported that at least one supervisor frequently stole gasoline from the Oroville field division for his own personal use."

- "It is reported that another DWR maintenance supervisor, Chuck Saiz, was denied a promotion after it was discovered that he had stolen state property, including asphalt and tools, from Oroville Dam worksites. Saiz has also encouraged a crony system at Oroville Dam, offering overtime work to the employees whom he considers to be close friends. This was in direct violation of DWR's official overtime policy. The work and the joke among staff was that DWR supervisors were the 'water mafia.'"

- "DWR managers would on occasion purchase overpriced tools and supplies from friends with state money for use at the Oroville Dam."

- "This culture of corruption extended all the way to DWR senior management. It is reported that DWR maintains two sets of accounting books. DWR's 'official' accounting system is maintained on an SAO server. However, DWR also maintains a second set of books at a data center located at 1416 9th Street in Sacramento. This second set of books reflects DWR's actual finances. It is alleged that the books show that DWR often expended funds that had been earmarked for one projects on various other projects. This was reported to DWR senior management."

- "After the Oroville Dam's failure, there were rumors that DWR issued a directive that any notes, files,

memos, or other documents regarding the crisis be destroyed."

- "DWR also disposed of key physical evidence of its inadequate maintenance."
- "DWR disposed of the concrete before it could be inspected or tested according to some at DWR."
- "DWR also barred Robert Bea, a renowned expert in catastrophic risk management and the head of CCRM from inspecting the Oroville Dam site after the crisis, claiming potential 'terrorism concerns.'"
- "DWR's redaction of these key documents constitutes a blatant attempt to keep the public in the dark about the safety of the Oroville Dam and DWR's failure of maintenance and supervision."
- "... and that they are now being brought on to cover-up the fact that supervision and maintenance of the dam was lacking."

(Oroville FAC, ¶¶ 4, 71-81, 85-86, 137, 140-142, 151, 153; Akers Ranch Compl. ¶¶ 5, 79-89, 93-94, 145, 148-149, 159, 161; JEM Farms Compl. ¶¶ 5, 116-126, 130-131, 182, 185-187, 196, 198.)

In sum, the portions of the operative pleadings which Defendant now moves to strike fall into four particular categories: racism in the workplace at DWR, sexual harassment in the workplace by DWR, allegations of theft and self-dealing by DWR employees and a conspiracy by DWR employees to deliberately destroy evidence pertaining to events leading up to failure of the Oroville Dam.

Defendant moves to strike all of the foregoing references to purported racism, racial discrimination, racial harassment, and sexual harassment on the grounds that they are irrelevant since Plaintiffs plead no facts to support a claim of harassment whatsoever, including the essential elements of such a claim.

In opposition, Plaintiffs generally contend that those references are relevant and provide context and explanation for the alleged systemic failure of DWR in fulfilling its duties regarding maintenance of the dam. In support of their contentions in this regard, Plaintiffs submit numerous declarations from former employees, university professors (who, it must be noted, do not specialize in any sort of field related to dam construction or maintenance), and others claiming that the discrimination and harassment in the DWR workplace was so extreme that it must have led to poor employee performance and morale, and that the discrimination and harassment resulted for inattentive or indifferent leadership. According to Plaintiffs, those purported scenarios underlie the failure of the dam because they caused various critical, yet unidentified, employees to be doing their job, or at least to perform them poorly.

Defendant moves to strike allegations of theft, workplace favoritism, self-dealing and destruction of evidence as unrelated to proof of facts pertaining to the failure of the Oroville Dam. Plaintiffs argue in opposition that those allegations are necessary to show mismanagement and removal of items that pertain to repairs of the dam.

The Court cannot use the declarations Plaintiffs submitted in support of their Opposition because Code of Civil Procedure section 437 precludes the court from making a decision based extraneous material. The motion must be decided based on the contents on the operative pleading alone or on matters of which the court is required to take judicial notice. (Code Civ. Proc. § 437(a).)

Granting Defendant's motion, however, will not remove the allegations sought to be stricken from the lawsuit. The court notes that the same Plaintiffs' counsel that filed the Complaints now at issue also filed a complaint on behalf of Plaintiffs Mary's Gone Crackers and Wilbur Ranch ("MGC Complaint"). The

MGC Complaint contains the same factual allegations that the motion seeks to have stricken here. Defendant answered that Complaint on July 16, 2018. Those allegations therefore remain active in this consolidated action, and there is no motion pending pertaining to them. At the hearing on this motion the Court raised this issue with counsel for the moving party; at that time, counsel for DWR argued that the Court has the ability to strike the allegations from the MGC Complaint to conform it to the other pleadings, but failed to provide any legal authority to support this assertion. The court concludes that the allegations in the MGC Complaint, which were not included in this motion to strike, cannot be stricken.

Because the Court cannot strike the contested allegations from the MGC Complaint, those allegations necessarily remain included in this case. Striking the allegations from the pleadings that are the focus of this motion would serve no purpose or benefit.

Defendant's motion to strike is therefore DENIED.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: March 14, 2018

J. Bell, Deputy Clerk _____ s/ J. Bell _____

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