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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JANE DOE, Plaintiff and Respondent, v. THE MAYBOURNE BEVERLY HILLS OPERATOR, LLC, Defendant and Appellant.	B341400 (Los Angeles County Super. Ct. No. 24STCV05794)

APPEAL from an order of the Superior Court of Los Angeles County, Lynne M. Hobbs, Judge. Affirmed.

Fisher & Phillips, Todd B. Scherwin, Landon R. Schwob, Serineh V. Terzyan, and Joshua M. Halen for Defendant and Appellant.

Shegerian & Associates, Carney R. Shegerian, Mahru Madjidi and Rosie Zilifyan for Plaintiff and Respondent.

Maybourne Beverly Hills Operator, LLC (Maybourne) appeals from an order denying its motion to compel arbitration. Maybourne contends the trial court erroneously determined the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA, 9 U.S.C. §§ 401-402) precluded the enforcement of an otherwise valid arbitration agreement between The Maybourne Beverly Hills, a luxury hotel, and one of its former employees, Jane Doe. The EFAA creates an exception to the Federal Arbitration Act (FAA) and provides that an arbitration agreement is not enforceable (at the election of the plaintiff) when the lawsuit relates to a " 'sexual harassment dispute,' " defined as "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." (9 U.S.C. §§ 401(4), 402(a).) Maybourne chiefly argues the EFAA does not apply to Doe's allegations of gender and pregnancy harassment under the California Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.) and that the exception is limited to harassment claims involving sexual misconduct.

We conclude that the EFAA's exception for sexual harassment disputes is not limited to allegations of lewd or lascivious behavior. Because Doe alleged a cause of action for sexual harassment under FEHA, the EFAA requires that we look to FEHA's definition of sexual harassment, which encompasses harassment on the basis of gender or pregnancy.

Doe adequately alleged she experienced harassment based on her gender or pregnancy that created an objectively hostile work environment. Thus, the trial court correctly determined the EFAA applied to her case, and we affirm the order denying Maybourne's motion to compel arbitration.

FACTUAL AND PROCEDURAL BACKGROUND

Doe was employed by The Maybourne Beverly Hills from May 2015 to January 2024 as a guest reception manager. In June 2020 Doe signed an arbitration agreement. The first paragraph stated Doe "will utilize binding arbitration as the sole and exclusive means to resolve all disputes that may arise out of or is related in any way to [her] employment with [Maybourne]." The agreement provided Doe's claim would be subject to arbitration under the FAA.

In March 2024 Doe filed a complaint against Maybourne; The Maybourne Beverly Hills; Beverly Hills Acquisitions, LLC; and Maybourne Hotels Limited, alleging a cause of action for "Harassment (Hostile Work Environment) on the Basis of Sex/Gender/Pregnancy," contending she was "subjected to harassing conduct through a hostile work environment, in whole or in part on the bases of [her] sex, gender, and pregnancy." She also alleged causes of action for sex discrimination and retaliation in violation of FEHA, as well as a cause of action under California common law for wrongful termination of employment in violation of public policy.

The complaint alleged that all "key executive roles" at Maybourne were held by men, and "[w]omen, including Doe, were consistently treated as less than men and demoralized with consistent misogynistic underpay and mistreatment." After Doe disclosed her first pregnancy in October 2020, she "noticed a difference in how she was treated." Between October 2020 and February 2021 (when Doe began her first maternity leave), "comments were made to her that she would have to discontinue working after her pregnancy and that she would not be able to be

a career woman once she had children and related gender responsibilities."

In November 2021, several months after returning from maternity leave, Doe applied for the position of director of front office. She was never interviewed, despite following up twice with the director of human resources. Over the next six months, Doe spoke numerous times with the director of human resources, the hotel manager, and the general manager, but she was " 'brushed off' with various excuses," leading Doe to "realize that the reasons she was passed up for this opportunity were her gender and her recent pregnancy." Doe complained to the general manager in May 2022 that she should receive the same opportunity to interview as other candidates, but Maybourne closed the position without interviewing her and hired a man. Doe "felt discouraged and believed that she was not being taken seriously in terms of professional development, as she was given no opportunities for growth." This became more apparent as her second maternity leave beginning November 2022 approached.

When Doe returned from her second maternity leave in May 2023, she told the director of rooms that she "wanted to continue to grow in the company and to be considered for a promotion and more responsibility," but he told her "there would be 'no room for her to grow professionally' " at Maybourne. Later that year, after two employees left, Doe assumed additional responsibilities. But when she requested a raise and asked to be compensated for the extra work, her requests were ignored, and she was not considered for available positions. Doe was aware that other women employed by Maybourne were likewise not properly compensated for the extra work they did.

In December 2023, after Doe again inquired about advancement opportunities, the regional director told her "that she was a mother and that her first priority would always be her children." This director "further suggested that Doe not ask anyone for a promotion or a raise and that she look for other places to work, implying that, because of her gender and gender-plus responsibilities, she would have no opportunities to be promoted." When Doe responded that she wanted at a minimum to be fairly compensated for the work she was performing, she was told there was "no point in asking" for a raise. Dissatisfied with that response, Doe scheduled a meeting with the director of human resources. Shortly after, that director called her into a meeting and said Doe had been seen going into hotel rooms with another employee. The director insinuated Doe and the employee were engaging in a sexual relationship, a charge that was false.

Even after Doe provided the innocent explanation for coworkers accompanying her into hotel rooms, Maybourne placed her on unpaid suspension and terminated her employment five days later. Doe alleged she was terminated—based on the false pretext that she had engaged in inappropriate sexual activity at work—in retaliation for "ask[ing] for a raise to provide her gender pay equity."

Maybourne filed a motion to compel arbitration.[1] In opposition, Doe argued her claims were not arbitrable because

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[1] The other defendants did not join the motion to compel, and they are not parties on appeal. Maybourne contended in its motion that both defendants Beverly Hills Acquisition, LLC and Maybourne Hotels Limited did not employ Doe but "are entitled to enforce the Arbitration Agreement." Maybourne further contended the third named defendant, The Maybourne Beverly

they arose from a sexual harassment dispute and thus triggered the EFAA exception to mandatory arbitration under 9 U.S.C. sections 401 and 402.

The trial court denied the motion to compel. The court found Doe's claims "sounding in discrimination and harassment based on sex, fit the definition of sexual harassment under California state law, and thus under the EFAA." It further stated, "Although Defendants argue that the EFAA was targeted to prevent the forced arbitration of cases involving harassment founded upon lewd or lascivious motives [citation], it is 'applicable ... State law' which determines the definition of sexual harassment dispute here, and the applicable California law not only includes harassment based on pregnancy within its definition, but clarifies that '[s]exually harassing conduct need not be motivated by sexual desire.' " The court ruled that Doe had stated a viable sexual harassment claim: "Plaintiff alleges that after informing her employer of her pregnancy, she was subject to comments suggesting that she could not be a 'career woman' once she had children, was told by a company director that as a mother her priorities would always be outside of work, and when she complained of this behavior, [was] met with false accusations of a sexual relationship with a coworker."

Maybourne timely appealed from the order denying the motion to compel arbitration.

Hills, is the name under which Maybourne does business in California. The trial court's order denied the motion as to Maybourne only.

DISCUSSION

A. *Applicable Federal Law and Standard of Review*

The parties' arbitration agreement provides that any dispute "that may arise out of or is related in any way to [Doe's] employment with [Maybourne]" would be submitted to binding arbitration under the FAA. The parties agree the FAA governs, and we apply the FAA to their dispute. (See *Liu v. Miniso Depot CA, Inc.* (2024) 105 Cal.App.5th 791, 801 (*Liu*).)

The FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." (9 U.S.C. § 2.) The EFAA (Pub. L. No. 117-90 (Mar. 3, 2022) 136 Stat. 26, codified at 9 U.S.C. §§ 401-402) is the "chapter 4" referenced in section 2 of the FAA. Enacted by Congress in 2022, the EFAA is "the first major amendment in the history of the FAA." (*Olivieri v. Stifel, Nicolaus & Co., Inc.* (2d Cir. 2024) 112 F.4th 74, 84.) It amended the FAA to render predispute arbitration agreements unenforceable (at the election of the plaintiff) in cases relating to sexual assault or sexual harassment disputes. (See 9 U.S.C. §§ 401-402; *Liu*, *supra*, 105 Cal.App.5th at p. 801.)

Specifically, the statute provides: "Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, ... no predispute arbitration agreement ... shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." (9 U.S.C. § 402(a).) The EFAA defines a " 'sexual harassment dispute' " as "a dispute relating to conduct that is alleged to constitute sexual harassment

under applicable Federal, Tribal, or State law." (9 U.S.C. § 401(4).) It provides that "[a]n issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law." (9 U.S.C. § 402(b).)

Congress enacted the EFAA in response to concerns that mandatory arbitration clauses had become " 'virtually ubiquitous,' " depriving employees of access to the courts and allowing workplace harassment claims to remain confidential. (*Quilala v. Securitas Security Services USA, Inc.* (2025) 117 Cal.App.5th 75, 83 (*Quilala*); see H.R. Rep. No. 117-234, 2d Sess., p. 4 (2022).) The House Judiciary Committee "expressed concern that forced arbitration in such cases 'protect[s] the company by keeping the records of an arbitration secret,' which then enables employers to 'retaliate against a victim—rather than confront the harasser or the attacker—without fear of their actions becoming public through the courts'; 'allows for the growth of office cultures that ignore harassment'; and 'create[s] incentives for the corporate protection of rapists and other serial harassers.' [Citation.] Through the EFAA, Congress sought to correct this imbalance by ensuring that survivors of sexual harassment and assault can pursue their claims in court rather than in a system that 'often favors the company over the individual.' " (*Quilala*, at p. 83.)

While the FAA reflects "a strong federal policy favoring arbitration, the EFAA creates a targeted exception to that policy where allegations of sexual harassment or sexual assault are at issue," based on "Congress's determination that such claims warrant resolution through the public court system rather than through private arbitration." (*Quilala*, *supra*, 117 Cal.App.5th at p. 83; see *Casey v. Superior Court* (2025) 108 Cal.App.5th 575, 585

(*Casey*) [in cases relating to a sexual harassment dispute, "the EFAA rejects the policy of favoring enforceability of arbitration agreements, and replaces it with a rule of *unenforceability* of arbitration agreements"]; accord, *Diaz-Roa v. Hermes Law, P.C.* (2d Cir. 2026) 193 F.4th 219, 230-231 [the EFAA "mark[s] a deliberate departure from the FAA's general policy favoring arbitration"].)

"[W]hen, as here, the ruling presents a pure question of law (whether the EFAA applies and preempts [defendants'] motion to compel), we review the trial court's order de novo." (*Casey*, *supra*, 108 Cal.App.5th at p. 583; see *Kader v. Southern California Medical Center, Inc.* (2024) 99 Cal.App.5th 214, 221 [de novo review where trial court's denial of motion to compel arbitration rests on pure questions of law, including questions of statutory interpretation].)

B. *The EFAA Does Not Limit "Sexual Harassment Disputes" to Allegations of Sexual Misconduct*

Maybourne argues the phrase " 'sexual harassment dispute,' " as used in the EFAA (9 U.S.C. §§ 401(4), 402(a)), should be construed narrowly to mean allegations of sexual misconduct, i.e., a "tort '**sexual**' in nature," as opposed to harassing conduct motivated by the victim's gender or pregnancy. It asserts that "the #MeToo movement giving rise to the EFAA stemmed from horrific instances of suppressed misconduct of a **sexual** nature," and Congress did not intend the EFAA's arbitration exclusions to extend any more broadly. The EFAA is not susceptible to the interpretation urged by Maybourne.

Statutory interpretation of Congressional legislation "begins with the text." (*Ross v. Blake* (2016) 578 U.S. 632, 638.) "[A] court's proper starting point lies in a careful examination of the

ordinary meaning and structure of the law itself. [Citation.] Where … that examination yields a clear answer, judges must stop." (*Food Marketing Institute v. Argus Leader Media* (2019) 588 U.S. 427, 436; see *Bostock v. Clayton County, Georgia* (2020) 590 U.S. 644, 674 ["when the meaning of the statute's terms is plain, our job is at an end"]; accord, *Liu*, *supra*, 105 Cal.App.5th at p. 802 [where the language of the statute is clear, we have no choice but to " 'enforce it according to its terms' "].) "[W]hen deciding whether the language is plain, we must read the words 'in their context and with a view to their place in the overall statutory scheme.' [Citation.] Our duty, after all, is 'to construe statutes, not isolated provisions.' " (*King v. Burwell* (2015) 576 U.S. 473, 486.) Examining the legislative purpose and history is appropriate only when statutory language remains ambiguous after consideration of the text and its context. (See *Bostock*, at p. 674 ["[l]egislative history … is meant to clear up ambiguity, not create it"].)

The United States Supreme Court's recent jurisprudence reinforces that, if the plain text of the EFAA is clear, it is irrelevant whether the Congressional legislators had in mind a particular type of "#MeToo" allegation when they passed it. *Bostock v. Clayton County, Georgia*, *supra*, 590 U.S 644 is instructive. The Supreme Court held that firing someone for being gay or transgender violated Title VII of the federal Civil Rights Act of 1964, which outlawed discrimination in the workplace on the basis of sex. (*Bostock*, at p. 650.) The court observed: "Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. Likely, they weren't thinking about many of the Act's consequences that have become apparent over the years, including

its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." (*Id.* at p. 653.)

One cannot reasonably interpret the express terms of the EFAA to exclude allegations of gender- or pregnancy-based harassment, and to instead cover only allegations of sexual misconduct or conduct of a lascivious nature. The EFAA provides that a plaintiff can avoid application of a predispute arbitration agreement in a "case which is filed under Federal, Tribal, or State law" and "relates to ... [a] sexual harassment dispute." (9 U.S.C. § 402(a).) " '[S]exual harassment dispute' " is defined as "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." (9 U.S.C. § 401(4).) The EFAA thus plainly directs courts to apply the definition of "sexual harassment" applicable under the particular law invoked by the plaintiff. (See *Singh v. Meetup LLC* (S.D.N.Y. 2024) 750 F.Supp.3d 250, 254 (*Singh*) ["Because the EFAA looks to 'Federal, Tribal, or State law,' the Court must also consider the liability standards of … the state and local statutes on which [plaintiff] relies for her sexual harassment claims."].)

"[T]he EFAA does not require courts to impose a distinction between sexual harassment that is lewd, romantic, or sexual and that which is not when the state law itself does not do so." (*Ding v. Structure Therapeutics, Inc.* (N.D.Cal. 2025) 765 F.Supp.3d 897, 903, affd. *Ding v. Structure Therapeutics, Inc.* (9th Cir. 2026) 187 F.4th 1231 (*Ding*).) Because the text of the EFAA is

unambiguous on this point, there is no need to look to extratextual considerations. (See *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119 [concluding there was no need to examine legislative history of FAA exclusion provision where the statutory text was clear].)

C. *Sexual Harassment Under FEHA Encompasses Harassment Based on Gender or Pregnancy, Not Merely Conduct Motivated by Sexual Desire*

Because Doe's complaint alleged causes of action under FEHA and California common law, the EFAA requires that we examine whether she has alleged conduct that, if proven, would constitute sexual harassment under California law. Maybourne contends that Doe's allegations of harassment based on her gender and pregnancy, as opposed to harassment motivated by sexual desire, do not constitute "sexual harassment" under FEHA. Maybourne's interpretation of FEHA is incorrect.

FEHA provides "[i]t is an unlawful employment practice" to "harass an employee" "because of ... sex, gender, gender identity, gender expression, age, sexual orientation, [or] reproductive health decisionmaking," among other categories. (Gov. Code, § 12940, subd. (j)(1).) It states that " 'harassment' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions." (*Id.*, subd. (j)(4)(C).) It specifically provides that "[s]exually harassing conduct need not be motivated by sexual desire." (*Ibid.*) For purposes of "unlawful practices" under FEHA (including harassment), "sex" includes, but is not limited to, a person's gender or pregnancy. (Gov. Code, § 12926, subd. (r)(1), (2).) Conversely, "gender" means "sex." (*Id.*, subd. (r)(2).)

California Civil Rights Department regulations provide further guidance. They provide: "Sexual harassment is unlawful as defined in section 11019(b) [of the regulations], and includes verbal, physical, and visual harassment, as well as unwanted sexual advances. An employer may be liable for sexual harassment even when the harassing conduct was not motivated by sexual desire. A person alleging sexual harassment is not required to sustain a loss of tangible job benefits in order to establish harassment. Sexually harassing conduct may be either 'quid pro quo' or 'hostile work environment' sexual harassment: [¶] (1) 'Quid pro quo' (Latin for 'this for that') sexual harassment is characterized by explicit or implicit conditioning of a job or promotion on an applicant or employee's submission to sexual advances or other conduct based on sex. [¶] (2) Hostile work environment sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interfere with an employee's work performance or create an intimidating, hostile, or offensive work environment." (Cal. Code Regs., tit. 2, § 11034, subd. (f).) " 'Sex' has the same definition as provided in Government Code section 12926, which includes, but is not limited to, pregnancy; childbirth; … [and] gender." (Cal. Code Regs., tit. 2, § 11030, subd. (c).)

Nothing in the FEHA statute or the regulations specifies that, to constitute "sexual harassment," the challenged conduct must involve lewd or lascivious conduct. Rather, as discussed, FEHA provides that "[s]exually harassing conduct need not be motivated by sexual desire." (Gov. Code, § 12940, subd. (j)(4)(C); see Cal. Code Regs., tit. 2, § 11034, subd. (f).) "[S]exual harassment may be symptomatic of gender-based hostility, the employer or supervisor using sexual harassment primarily to

subordinate women, to remind them of their lower status in the workplace, and to demean them. In this latter circumstance, the 'sexual' element of the harassment is only secondary." (*E.E.O.C. v. Farmer Bros. Co.* (9th Cir. 1994) 31 F.3d 891, 897-898 [addressing claims brought under FEHA and Title VII]; see *Roby v. McKesson Corp.* (2010) 47 Cal.4th 686, 707 (*Roby*) [harassment may be " ' "engaged in for personal gratification, because of meanness or bigotry, or for other personal motives" ' "]; *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 609 (*Thomas*) [sexual harassment may be motivated by " 'defendant's bias against women,' " as opposed to sexual desire]; *Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 348, overruled on other grounds by *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798.)

Maybourne argues that in providing that " 'harassment' because of sex includes *sexual harassment*, *gender harassment*, and *harassment based on pregnancy*, childbirth, or related medical conditions" (Gov. Code, § 12940, subd. (j)(4)(C), italics added), the Legislature distinguished sexual harassment from gender harassment and harassment based on pregnancy. It contends "sexual harassment" is a narrower category of conduct that does not include gender or pregnancy-based harassment. Without articulating it, Maybourne is invoking "the well-settled maxim of statutory interpretation that different words or phrases in a statute must have different meanings." (*Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 347; accord *Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352 [" '[w]hen the Legislature uses different words as part of the same statutory scheme, those words are presumed to have different meanings' "].) However, "words or phrases can have different meanings without being mutually exclusive….

[D]ifferent words and phrases may have overlapping, but not coextensive, meanings." (*Orange County Water Dist.*, at p. 347.)

As discussed, FEHA provides that the terms "sex" and "gender" have the same meaning, and are interchangeable, in the context of claims for harassment under FEHA. (See Gov. Code, § 12926, subd. (r)(1), (2).) Further, the regulations provide "[h]ostile work environment sexual harassment occurs when unwelcome comments or conduct *based on sex* unreasonably interfere with an employee's work performance or create an intimidating, hostile, or offensive work environment." (Cal. Code Regs., tit. 2, § 11034, subd. (f)(2), italics added.) Because "sex" is equivalent to gender and pregnancy under FEHA, unwelcome comments or conduct based on sex *or* gender *or* pregnancy give rise to a hostile work environment sexual harassment claim if the conduct unreasonably interfered with an employee's work performance or created an intimidating, hostile, or offensive work environment. (See Gov. Code, § 12926, subd. (r)(1); Cal. Code Regs., tit. 2, §§ 11030, 11034, subd. (f)(2).)

Examining the FEHA statutory and regulatory scheme as a whole, we conclude the Legislature did not intend to draw any meaningful distinction between conduct that constitutes "sexual harassment" and conduct that constitutes gender- or pregnancy-based harassment. Rather, in providing that " 'harassment' because of sex includes *sexual harassment*, *gender harassment*, and *harassment based on pregnancy*, childbirth, or related medical conditions" (Gov. Code, § 12940, subd. (j)(4)(C), italics added), the Legislature intended to emphasize the breadth of FEHA's prohibition of workplace harassment. (See *Decloedt v. Radnet Management, Inc.* (2026) 121 Cal.App.5th 732, 743 (*Decloedt*) ["we read [Gov. Code] section 12940, subdivision (j)(4)(C) as a provision

by which the Legislature removed any doubt that harassment based on gender, pregnancy, childbirth, and medical conditions relating to pregnancy and childbirth constitute harassment because of sex, even though that form of harassment may not be motivated by sexual desire"].)

California courts have consistently interpreted the term "sexual harassment" under FEHA to include harassment based on gender, not just harassment that is lascivious in nature. In *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, the California Supreme Court explained that FEHA's "prohibition against sexual harassment includes protection from a broad range of conduct, ranging from expressly or impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances, to the creation of a work environment that is hostile or abusive on the basis of sex." (*Miller*, at p. 461.) "[A] plaintiff may establish a hostile work environment without demonstrating the existence of coercive sexual conduct directed at the plaintiff or even conduct of a sexual nature." (*Id.* at p. 469.) For instance, a plaintiff may state a cause of action based upon a hostile work environment when the plaintiff alleged she was the object of ridicule, insults, threats, and more exacting work requirements than male coworkers who resented a female employee's entry into their workforce. (*Id.* at p. 462.)

The next year, in the seminal case *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264 (*Lyle*), the Supreme Court reiterated, " 'To plead a cause of action for [hostile work environment] *sexual harassment*, it is "only necessary to show that *gender* is a substantial factor in the discrimination, and that if the plaintiff 'had been a man she would not have been treated in the same manner.' " ' " (*Id.* at p. 280, italics added.) The court

explained that "[i]t is the disparate treatment of an employee on the basis of sex—not the mere discussion of sex or use of vulgar language—that is the essence of a sexual harassment claim." (*Ibid*.) Since then, California courts have routinely held that the crux of a sexual harassment claim is that the harassment was " 'because of sex,' " not whether there was any sexual desire, interest, or misconduct. (See *Thomas*, *supra*, 97 Cal.App.5th at p. 609; *Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 586; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1239-1240; *Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 114, 132; *Singleton v. United States Gypsum Co.* (2006) 140 Cal.App.4th 1547, 1564.) The Ninth Circuit and a number of federal district courts addressing the applicability of the EFAA to harassment claims under FEHA have similarly construed "sexual harassment" under FEHA to include gender- or pregnancy-based harassment that did not involve lascivious conduct or statements. (See, e.g., *Ding*, *supra*, 187 F.4th at pp. 1239-1240; *Woodruff-Drouault v. Securitas Security Services USA Inc.* (C.D.Cal. Dec. 3, 2025, No. EDCV 25-529 JGB (SPX)) 2025 WL 4683972, *3; *Gill v. US Data Management, LLC* (C.D.Cal. Dec. 2, 2024, No. 2:24-CV-05255-MCS-MAR) 2024 WL 5402494, *2 ["Defendant contends that a claim for gender harassment under [FEHA] does not qualify as a sexual harassment dispute…. Not so."].)

We conclude that a "sexual harassment dispute" under the EFAA can include a FEHA hostile workplace claim based on harassment due to gender or pregnancy, without any lascivious acts, advances, or comments.

D. *Doe Adequately Pleaded a "Sexual Harassment Dispute" Under FEHA*

Maybourne argues Doe has not alleged a viable sexual harassment claim under FEHA and thus she cannot invoke the EFAA to avoid arbitration. According to Maybourne, Doe will "not be able to show that the alleged conduct was severe or pervasive" because "[a]t most, she has alleged two comments regarding her being a mother and focusing on her children." Doe sufficiently alleged a FEHA sexual harassment dispute and thus triggered the EFAA.

1. *The unsettled standard for evaluating whether the allegations of a complaint trigger the EFAA*

Congress did not specify the standard for determining whether a plaintiff has "alleged" a "sexual harassment dispute" such that it falls within the EFAA exception to arbitrability. (9 U.S.C. § 402(a); see *Bruce v. Adams & Reese, LLP* (6th Cir. 2026) 168 F.4th 367, 375 (*Bruce*) ["The EFAA … does not itself define what it means for a plaintiff to 'allege' [a sexual harassment] dispute" to trigger EFAA's safe harbor].) No California court has yet decided the question. (See *Decloedt*, *supra*, 121 Cal.App.5th at p. 744 ["[a]ssuming arguendo" that the most exacting standard applied]; *Liu*, *supra*, 105 Cal.App.5th at p. 799, fn. 2 [declining to reach "what threshold, if any, a plaintiff's sexual harassment related claims must meet before the EFAA becomes applicable"].)

The federal district courts have split on the appropriate standard. Many have held the EFAA applies only where the plaintiff's allegations relating to a sexual harassment dispute could survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure (Rule 12(b)(6)). (See, e.g., *Smith*

v. Meta Platforms, Inc. (S.D.N.Y. Sept. 30, 2025, No. 24 CIV. 4633 (JPC)) 2025 WL 2782484, *8-11; *Smith v. Boehringer Ingelheim Pharms., LLC* (D.Conn. Aug. 19, 2025, No. 3:24-CV-01266 (KAD)) 2025 WL 2403042, *5; *Kelly v. Rosenberg & Estis, P.C.* (S.D.N.Y. 2025) 804 F.Supp.3d 461, 465; *Mitura v. Finco Services, Inc.* (S.D.N.Y. 2024) 712 F.Supp.3d 442, 451; *Singh*, *supra*, 750 F.Supp.3d at p. 253; *Delo v. Paul Taylor Dance Foundation, Inc.* (S.D.N.Y. 2023) 685 F.Supp.3d 173, 180-182; *Yost v. Everyrealm, Inc.* (S.D.N.Y. 2023) 657 F.Supp.3d 563, 577, 586 (*Yost*).)

"To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " (*Ashcroft v. Iqbal* (2009) 556 U.S. 662, 678 (*Iqbal*), quoting *Bell Atlantic Corp. v. Twombly* (2007) 550 U.S. 544, 570 (*Twombly*); see *Decloedt*, *supra*, 121 Cal.App.5th at p. 745.) "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (*Ashcroft*, at p. 678.)

Some district courts have applied a more lenient standard, requiring only "nonfrivolous" allegations of sexual harassment, "with the sufficiency of those claims to be reserved for proper merits adjudication." (*Diaz-Roa v. Hermes Law, P.C.* (S.D.N.Y. 2024) 757 F.Supp.3d 498, 533 (*Diaz-Roa*), affd. *Diaz-Roa v. Hermes, P.C.*, *supra*, 193 F.4th 219; accord, *O'Donnell v. Magazzino Italian Art Found.* (S.D.N.Y. Mar. 31, 2026, No. 25-CV-2918 (JGLC)) 2026 WL 880646, *8.) This standard, borrowed from the one set forth in *Bell v. Hood* (1946) 327 U.S. 678 for analyzing the sufficiency of allegations for federal question jurisdiction, requires "that the conduct must be actually alleged

and with sufficient specificity that the court is able to determine the law that is applicable and that there is a real and nonfrivolous reason to believe that the conduct violates that law against sexual harassment." (*Diaz-Roa*, at p. 542.)

In *Yost*, the district court explained it rejected the less stringent "frivolousness" standard in favor of the *Twombly*/*Iqbal* plausibility standard because to read the EFAA to void arbitration agreements when plaintiffs are unable to plead claims of sexual harassment to meet a plausibility standard could "destabilize the FAA's statutory scheme" that favors arbitration. (*Yost*, 657 F.Supp.3d at p. 586.) "It would enable a plaintiff to evade a binding arbitration agreement—as to wholly distinct claims, and for the life of a litigation—by the expedient of adding facially unsustainable and quickly dismissed claims of sexual harassment." (*Ibid.*) The court further concluded the *Twombly*/*Iqbal* plausibility standard was "well-known to Congress," allowing a reasonable inference that in passing the EFAA, Congress "was aware that only [plausible] allegations of sexual harassment law had the capacity to proceed past the pleading stage in federal court." (*Yost*, at p. 585.)

The courts adopting the less stringent "frivolousness" standard reason that "plaintiffs commonly fail to state a claim in their initial complaint, only for the claim to survive after direction from the Court and an opportunity to amend. [Citation.] This iterative process between courts and litigants is baked into the procedural rules governing federal practice. [Citations.] To read the EFAA as requiring plausibility in order to survive a motion to compel would deny plaintiffs whose first pleadings were technically flawed the opportunity to amend, sending claims to arbitration that would have been clearly within the EFAA's scope

if the plaintiff had submitted a better initial complaint. [¶] Sending improperly pled but potentially viable claims to arbitration would be inconsistent with Congressional intent." (*Thomas v. Pooh Bah Enterprises, Inc.* (N.D.Ill. July 24, 2025, No. 25-CV-77) 2025 WL 2084159, *4; see *Diaz-Roa*, *supra*, 757 F.Supp.3d at p. 539 ["While in the ordinary course, a successful Rule 12(b)(6) motion gives rise to an opportunity to replead, no such practice exists when a motion to compel [arbitration] is granted because the complaint fails to meet the Rule 12(b)(6) standard."].)[2]

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[2] To counteract the concern that applying a Rule 12(b)(6) standard would be unfair to plaintiffs who would be denied an opportunity to replead their complaints before their cases were sent to arbitration, some courts have suggested that courts that apply this more exacting standard could still afford plaintiffs an opportunity to amend their complaints. (See *Collin v. HID Global Corp*. (N.D.Cal. Oct. 27, 2026, No. 26-CV-08982-WHO) 2026 WL 3219948, *3 [denying motion to compel arbitration without prejudice where complaint did not plausibly allege sexual harassment, and granting plaintiff leave to amend complaint "to state the numerous instances … described in her declaration that, combined with the other allegations in the complaint, may … trigger the EFAA"]; *Madison v. Niagara Bottling, LLC* (S.D.Tex. Apr. 17, 2026, Civ. A. No. CV H-25-5701) 2026 WL 1042477, *3, *6 [denying motion to compel arbitration without prejudice and allowing plaintiff leave to amend complaint to plausibly allege a sexual harassment claim such that EFAA would apply]; *Smith v. Meta Platforms, Inc.*, *supra*, 2025 WL 2782484, at *10, fn. 16 ["there is no reason a court could not allow a plaintiff to file an amended complaint while a motion to compel is pending"]; see also *Van De Hey v. EPAM Systems Inc.* (N.D.Cal. Feb. 28, 2025, No. 24-CV-08800-RFL) 2025 WL 829604, *3 ["in the event that a

Until recently no federal circuit court had addressed the issue. (See *Diaz-Roa v. Hermes Law, P.C.*, *supra*, 193 F.4th at p. 223, fn. 3 [concluding it was unnecessary in that appeal to resolve the question of the proper standard]; *Ding*, *supra*, 187 F.4th at p. 1239 [assuming without deciding that most stringent standard applied]; *Bruce*, *supra*, 168 F.4th at p. 376 ["leav[ing] for another day the question" of which standard applies].) However, in a split decision, a panel of the Ninth Circuit has now addressed the question in *Holland-Thielen v. SpaceX* (9th Cir. Nov. 10, 2026, No. 25-4811) __ F.4th __ [2026 WL 3403297] (*SpaceX*).

The majority in *SpaceX* declined to adopt either the *Twombly*/*Iqbal* plausibility standard or the "frivolousness" standard. The court held: "[T]he EFAA's definition of 'sexual harassment dispute' does not say that a plaintiff must 'adequately allege' sexual harassment [or] 'state a claim to relief that is plausible on its face.' " (*SpaceX*, *supra*, __ F.4th at p. __ [2026 WL 3403297, at *5].) Rather, "the phrase 'conduct that is alleged to constitute sexual harassment' [in § 401(4)] means 'conduct that is asserted to amount to sexual harassment.' Because the word 'allege' requires only an assertion, which may or may not eventually be proven meritorious, § 401(4)'s plain terms are not limited to conduct that *certainly* amounts to sexual harassment. Rather, to decide if § 401(4)'s definition is satisfied, courts must determine whether the plaintiff's complaint describes conduct asserted to be a basis for a sexual harassment claim." (*Ibid.*, fn.

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plaintiff is compelled into arbitration and later uncovers additional information that bolsters the plausibility of the sexual harassment claim … plaintiff may move to lift the stay in federal court in order to re-litigate the motion to compel arbitration"].)

omitted.) The court reasoned that "[section] 401(4)'s 'under applicable Federal, Tribal, or State law' clause simply makes clear that a plaintiff must contend that there was a legal violation under an applicable part of one of those bodies of law (as opposed to, for example, under foreign law or a law unrelated to sexual harassment)." (*Id.* at *7.) The majority determined that the plaintiff employees' complaint against SpaceX met this standard: it included at least one claim premised on alleged retaliation by SpaceX for the employees' complaints about Elon Musk's salacious and demeaning Twitter posts, which the plaintiffs alleged constituted sexually harassing conduct that created a hostile work environment in violation of California law. (*Id.* at *10-11.)

The dissent in *SpaceX* lamented that "[u]nder the majority's test, a plaintiff can escape an arbitration agreement if his complaint so much as *purports* to allege a sexual harassment dispute. In other words, the majority accepts a plaintiff's bare *legal* assertion, no matter how mistaken." (*SpaceX*, *supra*, __ F.4th at p. __ [2026 WL 3403297, at *13] (dis. opn. of Tung, J.).) The dissent concluded the majority's interpretation of the EFAA "replaces Congress's careful exception to the federal policy favoring arbitration with a gaping door no litigant can miss." (*Id.* at *20.)

Under the *SpaceX* standard, Doe's complaint is sufficient to allow her to invoke the EFAA to avoid arbitration: it includes a cause of action for sexual harassment under FEHA based on conduct by Maybourne supervisors that Doe asserts was harassment "on the bases of [her] sex, gender, and pregnancy" and that she asserts created a hostile work environment. However, we are not bound by the *SpaceX* majority's interpretation of the EFAA. (See *People v. Wilson* (2013) 219 Cal.App.4th 500, 518, fn.

10 [“ ‘we are not required to adhere to decisions by the federal appellate courts, even on questions of federal law’ ”].)

Doe urges us not to apply a federal standard at all to assess whether her complaint triggers the EFAA. She argues California courts should instead use our state standard for assessing a demurrer that is somewhat less stringent than the *Twombly*/*Iqbal* plausibility standard. (See *Thomas*, *supra*, 97 Cal.App.5th at p. 618, fn. 12 [“ ‘federal district judges have more latitude to dismiss claims at the pleading stage ... than California trial judges have under our traditional notice pleading standards’ ” because to survive a Rule 12(b)(6) motion a complaint must state a plausible claim to relief, while in considering a demurrer “ ‘the facts alleged in the pleading are deemed to be true, however improbable they may be’ ”].) However, we conclude state pleading rules do not apply to determine whether a complaint invokes the EFAA, despite the general rule that California courts apply state procedural rules even when assessing claims brought under federal law. (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 409; *Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 561-562.) This is because two exceptions to that general principle apply here.

The first exception applies when the federal statute specifies that federal law governs. (*Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1047; *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1603.) The EFAA provides that “[a]n issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law.” (9 U.S.C. § 402(b).) This language is reasonably read to refer to the determination whether the complaint has alleged conduct constituting sexual harassment.

The second exception applies when employing state pleading rules would result in unlawful substantive limitations on a federal statutory right or undermine the uniform application of federal law. (See *Rosenthal v. Great Western Fin. Securities Corp.*, *supra*, 14 Cal.4th at p. 409; *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 254; *Bach v. County of Butte*, *supra*, 147 Cal.App.3d at p. 563.) In particular, "[t]he rule of enforceability [of arbitration agreements] established by section 2 of the [FAA] preempts any contrary state law and is binding on state courts." (*Rosenthal*, at p. 405; see 9 U.S.C. § 2.) " 'Section 2 is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary.' " (*Rosenthal*, at p. 405.)

If a court applying California pleading standards could find a complaint alleges sexual harassment (and thus rule the EFAA precludes compelling a plaintiff to arbitration) but reach a different result if employing federal pleading standards, applying California's pleading standards would impermissibly impose a substantive limitation on a defendant's federal statutory right to arbitration under the FAA. By the same token, if using state pleading standards yielded the result that the EFAA does not apply, but federal standards would dictate the opposite result, applying state pleading standards would limit a plaintiff's statutory right under the EFAA to escape arbitration. Further, if California courts applied state pleading standards, whether a plaintiff files his or her lawsuit in federal versus state court (or, conversely, whether a defendant removes the lawsuit to federal court) could affect the result, leading to inconsistent application of the EFAA as well as forum shopping. (See *Rosenthal*, at p. 409 ["Uniform national application of a federal substantive law

requires … that state courts not apply procedural rules that would 'frequently and predictably produce different outcomes ... based solely on whether the [federal] claim is asserted in state or federal court.' "].)

Although we conclude that federal, rather than state, standards must govern whether a complaint triggers the EFAA safe harbor from mandatory arbitration, we need not enter the unsettled debate over which federal standard applies. This is because the allegations of Doe's complaint satisfy even the most stringent *Twombly*/*Iqbal* plausibility standard.

2. *Doe adequately alleged she experienced a hostile work environment because of sexual harassment*

To plead a hostile work environment sexual harassment claim under FEHA, Doe must allege "she was subjected to sexual advances, conduct, or comments that were (1) unwelcome [citation]; (2) because of sex [citation]; and (3) sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment." (*Lyle*, *supra*, 38 Cal.4th at p. 279; accord, *Carranza v. City of Los Angeles* (2025) 111 Cal.App.5th 388, 401; see Cal. Code Regs., tit. 2, § 11034, subd. (f)(2) ["Hostile work environment sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interfere with an employee's work performance or create an intimidating, hostile, or offensive work environment."].) Doe alleged conduct constituting sexual harassment under FEHA, even measured under the *Twombly*/*Iqbal* plausibility standard, the most stringent of the standards courts have used to assess whether a complaint triggers the EFAA.

FEHA "harassment claims focus on 'situations in which the *social environment* of the workplace becomes intolerable because

the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee.' " (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 627; see *ibid.* [" 'harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace' "].) "The standard for workplace harassment claims strikes a 'middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury.' " (*Id.* at p. 628.) " 'Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond [FEHA's] purview.' " (*Ibid.*) " 'But [FEHA] comes into play before the harassing conduct leads to a nervous breakdown' " and proscribes discriminatory conduct that " 'detract[s] from employees' job performance' " or " 'keep[s] them from advancing in their careers.' " (*Ibid.*; accord, *Carranza v. City of Los Angeles*, *supra*, 111 Cal.App.5th at p. 401.) " '[T]he plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment. It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to make it more difficult to do the job.' " (Gov. Code, § 12923, subd. (a).) "Whether conduct is sufficiently severe or pervasive is determined by the totality of the circumstances." (*Quilala*, *supra*, 117 Cal.App.5th at p. 86.)

Doe alleged she experienced verbal harassment based on her gender and pregnancy. (Cal. Code Regs., tit. 2, § 11019, subd. (b)(2) [harassment may include "derogatory comments"]; see *Lee v. Marriott International, Inc.* (N.D.Cal. Sept. 21, 2025,

No. 25-CV-01169-EMC) 2025 WL 2689263, *10 (*Lee*) [EFAA applied because plaintiff plausibly alleged sexual harassment under FEHA based on "a systematic campaign of harassment specifically targeting her pregnancy, childbirth, and status as a working mother," including statements expressing resentment toward employees who were mothers]; *Delo v. Paul Taylor Dance Foundation, Inc.*, *supra*, 685 F.Supp.3d at pp. 183-184 [EFAA applied where allegations stated claim under New York anti-harassment law in part based on supervisor's repeated comments suggesting plaintiff's pregnancy was an embarrassment and that motherhood made her an unsatisfactory employee]; *Solis v. Prime Comms Retail, LLC* (C.D.Cal. Apr. 7, 2025, No. 5:24-CV-02389-AH-(SHKX)) 2025 WL 1255143, *3-4 [plaintiff sufficiently alleged pregnancy-based harassment such that EFAA applied]; cf. *Singh*, *supra*, 750 F.Supp.3d at p. 258 ["singular comment" by defendant questioning whether plaintiff's " 'pregnancy would impact her commitment to her job' " did not rise to the level of sexual harassment as defined under New York law].)

After disclosing her first pregnancy in October 2020, Doe "noticed a difference in how she was treated." She was told "she would have to discontinue working after her pregnancy and that she would not be able to be a career woman once she had children and related gender responsibilities." Later, in December 2023, when Doe asked about growth opportunities, the regional director told her "that she was a mother and that her first priority would always be her children." He further suggested that she should stop seeking promotions or raises and look for work elsewhere, implying that because of her gender and family responsibilities she had no future for advancement at Maybourne. When Doe responded that she wanted to be fairly compensated for the work

she was performing, she was told there was " 'no point in asking' " for a raise. The multiple alleged comments referring to Doe's pregnancy and motherhood reinforce the stereotype that women, and mothers in particular, are less committed and less deserving of advancement in the workplace.

In addition, Doe alleged that when she pressed for a meeting with Human Resources, the director falsely accused her of having sex with a coworker in empty hotel rooms. An untrue accusation of inappropriate sexual conduct with a coworker could also betray gender-based hostility. (See *Accardi v. Superior Court*, *supra*, 17 Cal.App.4th at p. 346 [gender-based harassment included making unsubstantiated complaints about plaintiff's performance and "spreading rumors that she had slept with superior officers in order to receive favorable assignments"].)

Further, Doe alleged that all "key executive roles" at Maybourne were held by men, and "[w]omen, including Doe, were consistently treated as less than men and demoralized with consistent misogynistic underpay and treatment." (See *Pantoja v. Anton*, *supra*, 198 Cal.App.4th at p. 114 [evidence of harassment of other women at the workplace is relevant to issues of intent, motive, and gender bias]; *Nitkin v. Main Line Health* (3d Cir. 2023) 67 F.4th 565, 572, fn. 4 ["courts may look to conduct directed at individuals other than the plaintiff in determining whether a hostile work environment exists"].) Doe alleged that after returning from maternity leave, she applied for the position of director of front office but was never interviewed despite repeated inquiries. Over the next six months, she spoke "numerous times" with management but was repeatedly " 'brushed off' with various excuses," leading her to "realize that the reasons she was passed up for this opportunity were her

gender and her recent pregnancy." After she complained that she should receive the same opportunity to interview as other candidates, Maybourne closed the position without interviewing her and hired a man. As her second maternity leave approached, it "became more apparent" that "she was not being taken seriously in terms of professional development." When she returned from her second maternity leave in May 2023, she expressed interest in promotion and additional responsibility but was told there was " 'no room for her to grow professionally.' " Later, after assuming additional responsibilities, she sought a raise and compensation for the added work but was ignored and not considered for available positions. The complaint alleged this was not an isolated experience but part of a broader pattern affecting other female employees.

Maybourne contends that " 'managerial actions' " such as these "form the basis of a discrimination claim under FEHA, not a harassment claim." (See, e.g., *Reno v. Baird* (1998) 18 Cal.4th 640, 646-647 [" 'commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like, do not come within the meaning of harassment' "]; *Roby*, *supra*, 47 Cal.4th at p. 707 ["[D]iscrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace."].)

However, in *Roby*, the California Supreme Court clarified that "[a]lthough discrimination and harassment are separate

wrongs, they are sometimes closely interrelated, and even overlapping, particularly with regard to proof." (*Roby*, *supra*, 47 Cal.4th at p. 707.) "[I]n some cases the hostile message that constitutes the harassment is conveyed through official employment actions, and therefore evidence that would otherwise be associated with a discrimination claim can form the basis of a harassment claim." (*Id.* at p. 708.) The court further explained that "some official employment actions done in furtherance of a supervisor's managerial role can also have a secondary effect of communicating a hostile message. This occurs when the actions establish a widespread pattern of bias." (*Id.* at p. 709.) Thus, "evidence of biased personnel management decisions" may be relevant to prove harassment when those decisions are part of a widespread pattern with the effect of signaling that an employee is not valued because of his or her membership in the disfavored group. (*Id.* at p. 708.)

The district court in *Lee*, *supra*, 2025 WL 2689263, recently confronted the issue of whether and to what extent an employer's personnel decisions could be considered in determining whether a plaintiff has plausibly alleged that sexual harassment under FEHA took place such that the EFAA applied. (*Lee*, at *10-11.) The plaintiff "made allegations about 'a systematic campaign of harassment specifically targeting her pregnancy, childbirth, and status as a working mother that began with her prior manager['s] ... attempts to force her resignation before maternity leave and continued with [her current manager's] repeated statements expressing resentment toward 'everyday Mom' employees, his demands that she work during maternity leave while interviewing her as if for a new position, the immediate imposition of discriminatory travel requirements upon her return

from maternity leave, and the systematic exclusion and marginalization designed to force her resignation." (*Id.* at *10, fn. omitted.)

The defendants asserted the only conduct that arguably fit in the "harassment" category was the supervisor's "everyday Mom" comment that he resented a prior female manager because he had to " 'pick[] up the slack for her' " because she had children. (*Lee*, *supra*, 2025 WL 2689263, at *10, fn. 5.) The defendants argued this comment alone did not constitute severe or pervasive harassment, and otherwise, the alleged misconduct the plaintiff identified consisted of personnel decisions. (*Id.* at *10.) The defendants contended the plaintiff had "collapsed the distinction between harassment and discrimination." (*Ibid.*) They further maintained that despite *Roby*'s holding that biased personnel management actions could also communicate a hostile message (*Roby*, *supra*, 47 Cal.4th at p. 708), the plaintiff had " 'to allege severe and pervasive harassment, *separate and apart* from the personnel issues about which she also complains.' " (*Lee*, at *10.)

The court rejected the defendants' argument. The court concluded that *Roby* "did not hold that [harassing conduct apart from official employment actions] is essential to support a harassment claim, let alone that such conduct be severe or pervasive in and of itself before official employment actions may be considered." (*Lee*, *supra*, 2025 WL 2689263, at *11, fn. omitted.) The court further determined the allegations of discriminatory personnel actions in conjunction with the supervisor's comment disparaging employees who were mothers amounted to a plausible claim for gender harassment. (*Ibid.*) Accordingly, the court found the EFAA applied and denied the defendants' motion to compel arbitration. (*Lee*, at *12; see also

Reddy v. Genpact LLC (E.D.Cal. Aug. 27, 2026, No. 2:25-CV-02138-DAD-JDP) 2026 WL 2529764, *3 [EFAA applied because complaint alleged nonfrivolous cause of action for sexual harassment based on allegations "defendants took multiple official employment actions [that] together communicated 'a widespread, demeaning message to [p]laintiff that female employees who are pregnant are not wanted in the workplace' "]; *Solis v. Prime Comms Retail, LLC*, *supra*, 2025 WL 1255143, at *3, fn. 3 [allegations of adverse personnel decisions as well as hostile comments and actions directed at pregnant plaintiff adequately pleaded claim of sexual harassment under FEHA such that the EFAA applied]; *Kovalenko v. Kirkland & Ellis LLP* (N.D.Cal. Aug. 23, 2023, No. 22-CV-05990-HSG) 2023 WL 5444728, *8 [plaintiff adequately stated Title VII claim based on " 'widespread pattern' of behavior that communicated a hostile message" where employer "consistently gave male associates preferential treatment" and plaintiff observed an " 'obvious hierarchy between male and female associates' "]; *Landucci v. State Farm Insurance Co.* (N.D.Cal. 2014) 65 F.Supp.3d 694, 707 [sexual harassment claim adequately alleged under FEHA where widespread pattern of supervisory actions communicated in a demeaning manner signaled to female employees that they were "not valued"]; accord, *Shumway v. Space Exploration Technologies Corp.* (C.D.Cal. Dec. 3, 2025, No. 2:25-CV-05959-JAK (AGRX)) 2025 WL 4035293, *7, app. pending.)

Similarly, Doe alleged that Maybourne's widespread pattern of excluding her and other women from upper-level positions communicated a broader message that women—and pregnant women and mothers in particular—were less valued and less deserving of advancement than their male counterparts.

According to the complaint, Doe spent years seeking equal pay and advancement opportunities, only to be repeatedly ignored, dismissed, and treated poorly. The allegations regarding the preferential treatment of men and systematic discriminatory treatment of Doe and other women plausibly alleged the consistent communication of a "hostile message." Further, this message was reinforced by offensive comments from her supervisor based solely on gender stereotypes and by false accusations of a sexual relationship with a coworker. Accepting the allegations as true and drawing all reasonable inferences in Doe's favor, we conclude Doe plausibly alleged " 'an objectively hostile or abusive work environment.' " (*Bailey v. San Francisco Dist. Attorney's Office*, *supra*, 16 Cal.5th at p. 628; see *Ding*, *supra*, 187 F.4th at p. 1239 [in evaluating whether claim is plausibly pled under *Twombly*/*Iqbal* standard, all reasonable inferences are drawn in favor of plaintiff].)

A trier of fact ultimately may conclude the conduct was not "sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment." (*Lyle*, *supra*, 38 Cal.4th at p. 279.) However, we cannot say "as a matter of law" that the allegations in Doe's complaint, if true, could not raise a claim of entitlement to relief. (*Yost*, *supra*, 657 F.Supp.3d at p. 577.) Doe sufficiently alleged a "sexual harassment dispute," and the trial court properly denied Maybourne's motion to compel arbitration with respect to the entire case. (See *Decloedt*, *supra*, 121 Cal.App.5th at p. 740; *Quilala*, *supra*, 117 Cal.App.5th at p. 88*; Casey*, *supra*, 108 Cal.App.5th at p. 588; accord, *Bruce*, *supra*, 168 F.4th at p. 384.)

DISPOSITION

The order denying Maybourne's motion to compel arbitration is affirmed. Doe is entitled to her costs on appeal.

STONE, J.

We concur:

MARTINEZ, P. J.

FEUER, J.