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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JANE DOE,

Plaintiff and Appellant.

v.

WELLS FARGO BANK, N.A.,

Defendant and Respondent.

B344642

Los Angeles County

Super. Ct. No.

23STCV02273

APPEAL from a judgment of the Superior Court of Los Angeles County, Tony L. Richardson, Judge. Affirmed.

Singleton Schreiber, Benjamin I. Siminou; West Coast Employment Lawyers, Ronald L. Zambrano, and Crystal F. Mohsin for Appellant.

Munger, Tolles & Olson, Erin J. Cox, Malcolm A. Heinicke, and Aditi Ghatlia for Respondent.

In this Fair Employment and Housing Act case, we must decide whether the strict liability or negligence standard applies to an employer when a sexual harassment claim is based on the conduct of a supervisor who is not the plaintiff's supervisor. Plaintiff Jane Doe contends the relationship between the harassment victim and the alleged harasser is not determinative; all that is required for strict liability to apply is that the alleged harasser supervises other employees. Defendant Wells Fargo Bank, N.A. (Wells Fargo) contends strict liability applies only if the alleged harasser is *the plaintiff's* supervisor. We conclude that where the alleged harasser is not plaintiff's supervisor and only supervises other employees, strict liability does not apply.

BACKGROUND

I. Plaintiff's Position and Her Alleged Harasser's Position in Wells Fargo's Private Bank Division

Plaintiff first worked for Wells Fargo from 1994 to 2014. She returned in 2018 as a "wealth advisor" in Wells Fargo's private bank division, which serves clients with assets in the millions. Wealth advisors like plaintiff assemble teams of specialists such as investment strategists, financial advisors, and private bankers, to assist their clients. Before Wells Fargo hired plaintiff for this position, she was interviewed by several people, including Eric Pagel. Plaintiff would later accuse Pagel of sexual harassment and assault.

Pagel is an investment strategist at Wells Fargo. In that role, he manages clients' investment portfolios. Of over 200 investment strategists across the country, Pagel regularly ranked in the top three in sales. He was the investment strategist for many of plaintiff's clients. Some of her colleagues recommended

including him in her teams of specialists. Plaintiff considered Pagel “a superior” with “power and influence.” Pagel was classified as a senior vice president until 2019, when Wells Fargo named him a managing director, with no change in pay or responsibilities.

Employees in plaintiff’s and Pagel’s positions had support staff known as associates. Wells Fargo assigned associates (also known as “investment management specialists”) to specific investment strategists, but associates sometimes supported several strategists. These associates’ full-time duty was to support the investment strategists. Associates’ tasks included executing trades (as directed by investment strategists), communicating with clients, scheduling meetings, and organizing binders.

Pagel was not designated by Wells Fargo as a “supervisor” of any associates or other employees. Rather, Pagel and the associates supporting him reported directly to the same person, the “regional fiduciary and investment manager.” Pagel had no power to hire or fire employees or to approve their expenses or requests for time off. Although Pagel did not review other employees’ performance, he provided input to those who did.

II. Business Trip to Bakersfield in 2020

In January 2020, plaintiff, Pagel, and three other employees (David Weitzel, Mark Peterson, and Meena Kotak) went to Bakersfield for client meetings arranged by a local employee, Brian Ray. After work, the six coworkers had drinks and dinner at the hotel where the visitors were staying. During dinner, plaintiff and Kotak went to the women’s restroom. Kotak was concerned plaintiff was drunk and asked if she was done

drinking. Plaintiff later described herself as having “blacked out” that night.

When she and Kotak went to the bathroom, plaintiff left her purse, wallet, and phone at the table. The four men used her phone to take photos of themselves, including photos of Peterson holding her wallet. Plaintiff stated the men also used her phone to take photos of pornography displayed on another phone. The men denied taking any pornographic photos.

After dinner, the group walked to a bar. Later, plaintiff, Weitzel, and Kotak walked back to the hotel together. At about 11:00 p.m., Pagel sent plaintiff a text message asking which room she was in. She told him her room number, and Pagel came over. Plaintiff cannot fully remember what happened but recalls Pagel “barged in” and kissed her. They had sex. Plaintiff asserts she was too intoxicated to consent, possibly because she had been drugged.

Pagel claims plaintiff invited him to the room and instigated their sexual encounter. He maintains that she consented.

III. Plaintiff’s Complaints and Wells Fargo’s Investigation

About one month after the Bakersfield trip, plaintiff told Weitzel that Pagel had sexually harassed her. Plaintiff reported Pagel had commented about her body and was “becoming more and more aggressive” over time, but she did not tell Weitzel that Pagel sexually assaulted her in Bakersfield. Plaintiff testified that Weitzel generally dismissed her concerns and said Pagel was “harmless.” Weitzel did not escalate plaintiff’s complaint against Pagel, and Wells Fargo did not investigate it.

On November 9, 2020, plaintiff reported to Wells Fargo’s ethics hotline that Pagel had sexually harassed and assaulted

her. She also complained to her direct supervisor. Additionally, around the same time, plaintiff reported the alleged assault to law enforcement.

On November 17, 2020, Wells Fargo flagged plaintiff's complaint for expedited investigation. Wells Fargo assigned the case to an internal investigator, Kimberlee Whitman. Soon after, Pagel was placed on paid administrative leave.

Over the next 10 months, Whitman interviewed the employees involved and gathered evidence including text messages and photos. Whitman then wrote a 28-page report on her findings. She concluded plaintiff's allegations regarding the sexual assault at Bakersfield and Pagel's other alleged sexual harassment were unsubstantiated.

Whitman did, however, conclude the men on the Bakersfield trip used plaintiff's phone without her consent. Based on her findings, Whitman could not determine any employee violated Wells Fargo's sexual harassment policy. But she did conclude that everyone at the dinner in Bakersfield (including plaintiff) violated the workplace conduct policy and Pagel violated the company's professionalism policy.

After Whitman's investigation, Wells Fargo issued Pagel a "final notice." The notice states it may affect Pagel's performance evaluation, as well as his eligibility for raises, bonuses, and promotions. It further states he could be "terminated immediately" for future policy violations.

IV. Proceedings Below

In February 2023, plaintiff filed this action against Wells Fargo, Pagel, and the other three men present at the dinner in Bakersfield (Weitzel, Peterson, and Ray). Against all defendants, she brought a cause of action for sexual harassment in violation

of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) (FEHA).¹ Against Wells Fargo, she also brought causes of action for failing to prevent harassment and retaliating against her for reporting harassment. We do not discuss the latter causes of action because plaintiff's briefs address only her first cause of action for sexual harassment against Wells Fargo.

Wells Fargo moved for summary judgment. It argued plaintiff could not establish her claim for sexual harassment for two reasons. First, Wells Fargo argued it could not be strictly liable for any harassment by Pagel because it was undisputed that he never supervised plaintiff. Second, Wells Fargo argued it could not be liable under the alternative negligence standard because it immediately and appropriately responded to plaintiff's complaints of sexual harassment.

In opposition, plaintiff asserted there were triable issues of material fact on whether Pagel was a supervisor. She further argued Wells Fargo was strictly liable for sexual harassment by any supervisor regardless of whether the harasser supervised her. Plaintiff's opposition did not address the alternative basis for liability under the negligence standard.

The court granted summary judgment. It ruled Wells Fargo could not be strictly liable for harassment by Pagel because he did not supervise plaintiff. It further found that Wells Fargo was not liable under the negligence standard because it took prompt and appropriate corrective action. The court entered judgment for Wells Fargo.

¹ All undesignated references to statutes are to the Government Code.

DISCUSSION

We review summary judgment de novo. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249 (*Conroy*).) Summary judgment should be granted “‘where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.’” (*Id.* at p. 1250.) A defendant moving for summary judgment meets its initial burden on a cause of action by showing that the plaintiff cannot establish “one or more elements of the cause of action . . . or that there is a complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant does so, the burden shifts to the plaintiff to show a triable issue of at least one material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) We “‘liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.’” (*Conroy*, at pp. 1249–1250.)

I. Employer Liability for Sexual Harassment

Under the FEHA, an employer can be liable for sexual harassment in two ways, “depending on whether the person engaging in the harassment is the victim’s supervisor or a nonsupervisory coemployee.” (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040–1041 (*Health Services*).) Employers are “strictly liable for harassment by a supervisor.” (*Id.* at p. 1041.) For harassment by nonsupervisory employees, the employer is liable only if it was negligent in that it “(a) knew or should have known of the harassing conduct and

(b) failed to take immediate and appropriate corrective action.”
(*Ibid.*)²

The FEHA does not use the term “strict liability” for sexual harassment claims. That standard was created by courts after reviewing the language and legislative history of the relevant statute. (*Health Services, supra*, 31 Cal.4th at pp. 1041–1042.) “Because the FEHA imposes [a] negligence standard only for harassment ‘by an employee other than an agent or supervisor’ (§ 12940, subd. (j)(1)), by implication the FEHA makes the employer strictly liable for harassment by a supervisor.” (*Health Services*, at p. 1041.)

II. Strict Liability Does Not Apply

Wells Fargo is not strictly liable for harassment by Pagel because the undisputed evidence established Pagel held no supervisory authority over plaintiff and he did not abuse his authority as an alleged supervisor in his actions toward plaintiff. Plaintiff concedes Pagel was not her supervisor. She instead relies on evidence purportedly showing Pagel supervised support staff known as associates or investment management specialists. Assuming Pagel was a “supervisor” of other, lower-level employees,³ Wells Fargo cannot be strictly liable for Pagel’s conduct under the facts of this case.

² The FEHA also makes an employer strictly liable for workplace harassment by its “agent.” (§ 12940, subd. (j)(4)(A); *Health Services, supra*, 31 Cal.4th at pp. 1040, 1041.) Plaintiff does not contend that Pagel was an agent of Wells Fargo and we have no occasion to discuss liability for sexual harassment caused by an employer’s agent.

³ The FEHA broadly defines “supervisor” to mean “any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or

Section 12940, subdivision (j)(1) prohibits sexual harassment in the workplace. Harassment by an employee “other than an agent or supervisor, shall be unlawful if the [employer], or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.” (*Ibid.*) The issue here is whether strict liability is imposed on the employer when the alleged harassment is committed by a supervisor who is not the harassment victim’s supervisor.

We interpret the statute de novo. (*Tufeld Corporation v. Beverly Hills Gateway, L.P.* (2022) 86 Cal.App.5th 12, 20.) Our fundamental task is to determine the Legislature’s intent and to effectuate the statute’s purpose. (*Ibid.*) “ ‘If the statute’s text evinces an unmistakable plain meaning, we need go no further.’ ” (*Ibid.*) If the statute is ambiguous, we may consider extrinsic sources such as the legislative history and the public policy underlying the statute. (*Ibid.*)

We may also “consider the consequences of each possible construction and will reasonably infer that the enacting legislative body intended an interpretation producing practical and workable results rather than one producing mischief or

discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” (§ 12926, subd. (t).) While plaintiff concedes that Pagel was not her supervisor under this definition, she contends he supervised others. Wells Fargo contends that, as a matter of law, Pagel supervised no employees. We do not decide the issue of whether Pagel was a supervisor of other employees under the FEHA. Rather, we affirm the judgment assuming, without deciding, that Pagel was a supervisor of employees other than plaintiff.

absurdity.” (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567.) This means giving the statute a reasonable construction consistent with the Legislature’s apparent purpose. (*Ibid.*) In other words, we must “avoid a construction that would lead to unreasonable, impractical, or arbitrary results.” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1291.)

Contrary to plaintiff’s assertion, section 12940, subdivision (j)(1) does not have an unmistakable plain meaning with respect to the imposition of strict liability on an employer under the circumstances of this case. As noted, section 12940, subdivision (j)(1) does not mention “strict liability.” Only in cases where the harasser is the plaintiff’s supervisor have the courts held that the statute, “by implication,” makes the employer strictly liable. (See *Health Services, supra*, 31 Cal.4th at p. 1041.)

Section 12940, subdivision (j)(1) can reasonably be interpreted to support Wells Fargo’s position. The term “supervisor” in section 12940, subdivision (j)(1) is defined by section 12926, subdivision (t). Under this definition, whether an employee is a supervisor depends on that person’s relationship with other employees. When an employee supervises people other than the plaintiff and has no supervisory authority over the plaintiff, that employee’s role as a supervisor has no relevance to his or her *relationship with the plaintiff*. As to the plaintiff, the harasser is a coworker. Thus, when the two statutes are read together, section 12940, subdivision (j)(1)’s reference to “supervisor” can reasonably interpreted to mean *the plaintiff’s* supervisor.

Because the text of section 12940, subdivision (j)(1) does not clearly support either party’s position, we must look at other sources. The parties have not cited and we have not found

legislative history that helps us interpret section 12940, subdivision (j)(1). We must therefore interpret the statute in a manner consistent with its purpose of protecting employees from sexual harassment in the workplace, while avoiding a construction that leads to unreasonable, impractical, or arbitrary results. We must also consider the available case law, though we have not found a case directly on point.

Plaintiff's mechanical interpretation of section 12940, subdivision (j)(1) disregards "a realistic assessment of the dynamics of sexual harassment in the workplace." (*College-Town, Div. of Interco, Inc. v. Massachusetts Commission Against Discrimination* (1987 Mass.) 508 N.E.2d 587, 593 (*College-Town*) [interpreting Massachusetts law].) Sexual harassment by the plaintiff's supervisor is a more pernicious social problem than harassment by a coworker and, as we shall explain, harassment by supervisors (like Pagel) who do not supervise the plaintiff. Harassment by the plaintiff's supervisor is "qualitatively worse" (*Sangamon County Sheriff's Dept. v. Illinois Human Rights Com.* (2009 Ill.) 908 N.E.2d 39, 49 (dis. opn.) (*Sangamon*)) because of the power differential between the supervisor and the plaintiff and the potential for abuse. (See *Health Services, supra*, 31 Cal.4th at p. 1048 ["reporting acts of harassment by a supervisor carries risks that are both professional and economic"]; *Faragher v. City of Boca Raton* (1998) 524 U.S. 775, 803 ["an employee generally cannot check a supervisor's abusive conduct the same way that she might deal with abuse from a co-worker"]; *College-Town*, at p. 593 ["harassment by a supervisor carries an implied threat that the supervisor will punish resistance through exercising supervisory powers"].) Additionally, when the plaintiff's supervisor, acting in the capacity of a supervisor,

sexually harasses the plaintiff, the harassment is imputed to the employer because the supervisor is acting on behalf of and with the authority of the employer. (See *Meritor Savings Bank, FSB v. Vinson* (1986) 477 U.S. 57, 75–77 (conc. opn. of Marshall, J.) [interpreting Title VII].)

In plaintiff's view, whether the strict liability or negligence standard applies does not turn on the relationship between the harassment victim and the alleged harasser. If, as in this case, the alleged harasser is not exercising supervisory authority over the plaintiff and only supervises employees who are at a lower level than the plaintiff, the strict liability standard would apply. But such a supervisor's relationship with the plaintiff is the same as the plaintiff's relationship with a nonsupervisory coworker. The alleged harasser's role as a supervisor does not, by itself, create the power differential that exists between the plaintiff and her supervisor. And the employer has not vested the alleged harasser with authority to direct and manage the plaintiff on its behalf.

Plaintiff's interpretation of section 12940, subdivision (j)(1) creates a rule that imposes strict liability based on irrelevant facts and does not further the goals of the FEHA. This is because whether the strict liability or negligence standard applies is untethered to the alleged harasser's relationship with the plaintiff. Instead, the alleged harasser's relationship with *other employees* determines which standard applies. Thus, a different standard would apply to two coworkers of equal rank in the same profession if one colleague's responsibilities included directing subordinates, making her ("Pat") a supervisor (see § 12926, subd. (t)), and the other colleague ("Morgan") had equally important responsibilities but was not a supervisor. The strict liability

standard applies if Pat sexually harasses Morgan; the negligence standard applies if Morgan sexually harasses Pat. The relationship between Pat and Morgan (coworkers of equal rank) is irrelevant. This is not a reasonable interpretation of section 12940, subdivision (j)(1).

We recognize that the FEHA must be “construed liberally to accomplish its purposes.” (*Health Services, supra*, 31 Cal.4th at p. 1040, citing § 12993, subd. (a).) But liberally construing the FEHA does not mean interpreting it in a manner that would lead to arbitrary results disconnected with the purposes of the statutory scheme. If we were to adopt plaintiff’s position, an employer would be strictly liable for a mid-level manager’s sexual harassment of her own boss. Likewise, because “supervisor” is defined broadly, an employer would be strictly liable for the harassment of a high-level employee by a relatively low-level supervisor (e.g., a shop foreman or assistant manager harasses an executive). The alleged harassers are not acting as “supervisors” in these scenarios. At the same time, if we adopt plaintiff’s position, employers would still only face liability if they act negligently when one nonsupervisory coworker harasses another (e.g., the most senior salesperson harasses a maintenance worker).

Plaintiff dismisses potential “absurd results” by presuming a lower-level supervisor “will have no ability to control the plaintiff’s working environment.” We are unpersuaded. An employee can sexually harass his own supervisor or a higher-level co-worker. (See *Madsen v. City of Phoenix* (D. Ariz. 2022) 635 F.Supp.3d 772, 783 [interpreting Title VII]; *Lyles v. District of Columbia* (D.D.C. 2014) 17 F.Supp.3d 59, 70; *Cronin v. United Service Stations, Inc.* (M.D. Ala. 1992) 809 F.Supp. 922, 931–932.)

But when that occurs, an employer is not strictly liable and is only liable if it was negligent.

In *Health Services*, our Supreme Court stated strict liability applies when the harasser is “*the victim’s* supervisor.” (*Health Services, supra*, 31 Cal.4th at p. 1041, italics added.) Importantly, the court cautioned its “analysis assumes the supervisor is acting in the capacity of supervisor when the harassment occurs. The employer is not strictly liable for a supervisor’s acts of harassment resulting from a completely private relationship unconnected with the employment and not occurring at the workplace or during normal working hours.” (*Id.* at p. 1041, fn. 3.) Following *Health Services*, the Courts of Appeal have repeatedly made similar statements. (See, e.g., *Chapman v. Enos* (2004) 116 Cal.App.4th 920, 922 [“The pivotal issue for [the employer’s] liability was whether the alleged harasser . . . was [plaintiff’s] supervisor”]; *Atalla v. Rite Aid Corp.* (2023) 89 Cal.App.5th 294, 309–310 [“an employer is only strictly liable under FEHA for harassment by a supervisor if the supervisor is acting in the capacity of a supervisor when the harassment occurs”].)

Whether an alleged harasser is the plaintiff’s supervisor is also relevant in determining whether the harasser’s conduct is work related. Addressing this issue, *Kruitbosch v. Bakersfield Recovery Services, Inc.* (2025) 114 Cal.App.5th 200 (*Kruitbosch*) compared and contrasted cases involving harassment by supervisors and harassment by coworkers. (*Id.* at pp. 213–219.) The court concluded, “where the conduct at issue occurred offsite and/or during nonworking hours, the question of whether the employer is strictly liable for a supervisor’s conduct tends to overlap with whether the conduct is sufficiently work related.

Specifically, if the supervisor is, in some fashion, acting in his or her *capacity as supervisor* (or misusing his or her supervisory powers) *when the conduct occurs*—necessary for imputability to the employer [citing *Health Services*]*—then the harassing conduct is inevitably going to be work related.*” (*Kruitbosch*, at p. 217, italics added.)

Quoting *Health Services*, Wells Fargo argues “an alleged harasser who is not *the alleged victim’s* supervisor at all does not and cannot act in the ‘capacity of supervisor’ of that victim ‘when the harassment occurs,’ no matter how broadly supervisory capacity is defined.” We agree. An employer can only be strictly liable for sexual harassment by a supervisor if the harasser is the plaintiff’s supervisor acting in the capacity of a supervisor when the harassment occurs.

To be clear, we are not holding that an employer can only be strictly liable for sexual harassment by the plaintiff’s direct or immediate supervisor or a supervisor successively higher in the employer’s hierarchy. The broad definition of supervisor stated in section 12926, subdivision (t) makes others, too, the plaintiff’s supervisor. But where, as here, the alleged harasser is not the plaintiff’s supervisor and only supervises other employees, strict liability does not apply.

Plaintiff acknowledges there is no California case holding an employer is strictly liable for sexual harassment by a supervisor who is not the plaintiff’s supervisor. She asks that we extend strict employer liability in this case. We decline to do so.

It is true, as plaintiff asserts, *Health Services* discussed strict liability based on the conduct of “a supervisor.” (*Health Services, supra*, 31 Cal.4th at p. 1041.) But the court used that term immediately after specifying strict liability arose from acts

of “the victim’s” supervisor. (*Ibid.*) Further, the harasser in *Health Services* was the victim’s supervisor. (*Id.* at p. 1035.) When read in context, *Health Services*’ references to “a supervisor” do not stand for the proposition that an employer may be strictly liable for the conduct of *any* supervisor regardless of whether he or she supervises the plaintiff.

Unable to persuasively cite any controlling California case law, plaintiff relies on two decisions by the Fair Employment and Housing Commission (FEHC), a body abolished in 2013. (Stats. 2012, ch. 46.) An administrative agency’s interpretation of a statute is entitled to consideration and respect, though ultimately statutory interpretation is a question of law the courts must resolve. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

Both FEHC decisions cited by plaintiff ruled that strict liability applies to all supervisors, regardless of their authority over a plaintiff. (*Dept. of Fair Employment and Housing v. Hart & Starkey, Inc.* (1984) FEHC Dec. No. 84-23 at p. 23 (*Hart & Starkey*)⁴; *Dept. of Fair Employment and Housing v. Community Hospital of San Gabriel* (1986) FEHC Dec. No. 86-08 at p. 7.) When the FEHC rendered these decisions in the 1980s, however, it did not have guidance from the many court decisions filed since then, including *Health Services*. At that time, moreover, the FEHA did not define “supervisor.” (Former § 12926, subd. (q), added by Stats. 1999, ch. 591, § 5.) The FEHC thus did not and could analyze whether the harassers were the complainants’

⁴ Plaintiff requests judicial notice of *Hart & Starkey*. Because the decision may be cited as legal authority, judicial notice is unnecessary. (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440, fn. 18.) We therefore deny plaintiff’s request.

supervisors under the current definition of that term. Although we respectfully consider the FEHC's rulings, we decline to follow them, at least under the facts of this case.

Plaintiff also cites authority interpreting state law in Massachusetts and Illinois. For the former jurisdiction, plaintiff relies on two decisions. She first cites an unpublished two-page memorandum and order from an intermediate appellate court. (*Gonsalves v. Bristol County Sheriff's Dept.* (Mass.App.Ct. 2010) 932 N.E.2d 311 (*Gonsalves*) [table].) There, the alleged harasser was a sheriff department officer with "command authority" over the plaintiff. (*Ibid.*) Here, by contrast, Pagel had no authority over plaintiff. The Massachusetts court did not, of course, analyze whether the alleged harasser was a supervisor under California law. *Gonsalves* is distinguishable from this case.

Additionally, plaintiff cites *Morehouse v. Berkshire Gas Co.* (D. Mass. 1997) 989 F.Supp. 54 (*Morehouse*). In *Morehouse*, the district court distinguished sexual harassment committed by a supervisor against a " 'non-subordinate co-worker' " from harassment committed against "a rank-and-file employee" who was "clearly subordinate in the company hierarchy." (*Id.* at p. 64.) No similar facts exist here.

Similarly, in *Sangamon*, the harasser was a sergeant, while plaintiff was "a records clerk." (*Sangamon, supra*, 908 N.E.2d at p. 40.) Among other reasons for holding strict liability applied, the Illinois Supreme Court noted the harasser's "higher status as a supervisor in the Sheriff's Department afforded him greater power to harass a lower-level employee such as" the plaintiff. (*Id.* at p. 47.) Here, as noted, plaintiff relies solely on evidence of Pagel's relationship with support staff who were at least one level beneath plaintiff.

We acknowledge the majority opinion in *Sangamon* stated that whether the harasser has “direct supervisory authority” over the victim is “irrelevant under the plain text” of the Illinois statute prohibiting workplace sexual harassment. (*Sangamon, supra*, 908 N.E.2d at p. 137.) To the extent the Illinois statute is analogous to section 12940, subdivision (j)(i), we respectfully disagree with *Sangamon*.

Applying our holding to this case, we conclude Wells Fargo met its initial burden on summary judgment by presenting evidence Pagel did not supervise any employees, including plaintiff. In response, plaintiff submitted only evidence purportedly showing Pagel supervised a class of employees below her; she produced no evidence that Pagel was her supervisor. Accordingly, the undisputed evidence demonstrates the strict liability standard does not apply here.

III. Plaintiff Forfeited Her Negligence/Ratification Theory

Although plaintiff’s operative complaint asserted Wells Fargo was liable for sexual harassment based on negligence, she did not argue on appeal that there was a triable issue of material fact on that theory. Plaintiff thus forfeited the issue. (*County of Los Angeles v. Niblett* (2025) 116 Cal.App.5th 454, 474–475.)

In her opening brief, plaintiff argues for the first time that Wells Fargo’s motion for summary judgment should have been denied for another reason. She contends there are triable issues of material fact on whether Wells Fargo is liable for Pagel’s alleged harassment because it “ratified” his conduct.⁵ But

⁵ Plaintiff contends “ratification and the failure to take immediate and appropriate corrective action are effectively one [and] the same.”

plaintiff forfeited this argument, too, because she did not raise it below. (*Bitner v. Dept. of Corrections & Rehabilitation* (2023) 87 Cal.App.5th 1048, 1065.)

Plaintiff contends she was not required to raise her ratification theory below because Wells Fargo did not meet its initial burden of showing there was no triable issue of material fact on that theory.⁶ (See *Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 366–367.) But where a plaintiff’s trial court opposition does not argue that the defendant failed to meet its initial burden on summary judgment on a specific theory of liability, the plaintiff cannot make the argument for the first time on appeal. (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 677; *Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 872–873.)

Finally, plaintiff urges us to consider, as a question of law, her forfeited ratification argument. We have discretion to address pure questions of law not raised in the trial court. (*W. Bradley Electric, Inc. v. Mitchell Engineering* (2024) 100 Cal.App.5th 1, 11–12.) But “ ‘[m]erely because an issue is one of law, does not give a party license to raise it for the first time on appeal.’ ” (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 699–700.) Plaintiff gives no convincing reason

We do not reach this issue. We also do not reach the issue of whether a FEHA plaintiff can base a claim on common law ratification.

⁶ Wells Fargo’s motion did not address the ratification theory. In her reply brief on appeal, plaintiff contends her pleadings raised this theory. We need not decide whether plaintiff’s ratification theory was adequately framed by the pleadings.

to depart from the general principles of forfeiture here. We thus decline to consider plaintiff's forfeited ratification argument.

DISPOSITION

The judgment is affirmed. Neither party shall recover costs on appeal.

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TAMZARIAN, Acting P. J.

We concur:

DAUM, J.

KIM (D.), J.*

* Justice of the Court of Appeal, Second Appellate District, Division Five, assigned to Division Four, by the Chief Justice pursuant to article VI, section 6 of the California Constitution.