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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 MIGUELINA GARCIA, GERARDO  
12 GARCIA, and CARLOS GARCIA,

13 Plaintiffs,

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v.

15 TERRA FIRMA FARMS, INC., a  
16 corporation, D. CAMPOS, INC.,  
17 a corporation, EFRAIN SYLVA  
18 CRUZ, an individual, and DOE  
1 through DOE 100, inclusive,

Defendants.

No. 14-cv-00904 JAM-KJN

**ORDER DENYING DEFENDANT'S MOTION  
TO DISMISS**

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This matter is before the Court on Defendant D. Campos  
Inc.'s ("Defendant's") Motion to Dismiss Plaintiff's Eleventh  
Cause of Action (Doc. #4). Plaintiff Miguelina Garcia

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("Plaintiff") opposes the motion (Doc. #6) and Defendant replied  
(Doc. #13).<sup>1</sup> For the reasons set forth below, Defendant's Motion  
to Dismiss is denied.

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<sup>1</sup> This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for June 18, 2014.

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1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff, Gerardo Garcia ("Gerardo"), and Carlos  
3 ("Carlos") Garcia (collectively "Plaintiffs") originally filed  
4 this action on January 13, 2014, in Sacramento County Superior  
5 Court (Doc. #2) against Defendant, Terra Firma Farms, Inc.  
6 ("Terra Firma"), and Efrain Sylva Cruz ("Mr. Cruz")  
7 (collectively "Defendants"). This action was removed to this  
8 Court on April 11, 2014, based on federal question jurisdiction,  
9 28 U.S.C. § 1331. Id. In the complaint, Plaintiffs allege  
10 eighteen causes of action: (1) discrimination in violation 42  
11 U.S.C. § 2000e et seq.; (2) sex discrimination in violation of  
12 California Government Code § 12940(a); (3) harassment in  
13 violation of California Government Code § 12940(j);  
14 (4) retaliation in violation of 42 U.S.C. § 2000e-3(a);  
15 (5) retaliation in violation of California Government Code  
16 § 12940(h); (6) breach of contract; (7) failure to prevent  
17 discrimination in violation of California Government Code  
18 § 12940(k); (8) assault; (9) sexual battery; (10) intentional  
19 infliction of emotional distress; (11) negligent infliction of  
20 emotional distress; (12) negligent hiring, supervision, and  
21 retention; (13) constructive discharge in violation of public  
22 policy; (14) wrongful discharge in violation of public policy;  
23 (15) violation of California Civil Code § 51.9 Unruh Act;  
24 (16) violation of California Civil Code § 51.7 Unruh Act;  
25 (17) violation of California Civil Code § 52.1 Unruh Act; and  
26 (18) violation of California Labor Code § 1102.5 Whistleblower  
27 Protection (Doc. #2).

28 Plaintiffs were allegedly employed by Defendant to provide

1 Terra Firma with farm labor. Compl. ¶¶ 16-19. From June 2012  
2 to July 2012, Plaintiff worked on the farms owned by Terra Firma  
3 and under Mr. Cruz's supervision. Id. ¶¶ 16, 26. On June 13,  
4 2012, Mr. Cruz allegedly whistled at Plaintiff and told her she  
5 was "pretty" and that she had "a big ass." Id. ¶ 24. On July  
6 29, 2012, Mr. Cruz allegedly approached Plaintiff and directed  
7 her to walk ahead of him into a nearby tomato field. Id. ¶ 28.  
8 Once in the field, he allegedly forced Plaintiff "to the ground,  
9 sexually assaulted her, committed battery against her and  
10 attempted to rape her." Id. ¶ 29. She escaped and called the  
11 police, who arrested Mr. Cruz. Id. Plaintiff did not return as  
12 an employee of Defendant or Terra Firma. Id. ¶ 32. Plaintiff  
13 alleges that she suffered serious emotional distress as a  
14 result. Id. ¶ 112.

15 Plaintiffs Gerardo and Carlos are Plaintiff's father and  
16 brother respectively. Id. ¶ 17. Gerardo and Carlos allege that  
17 they were terminated by Terra Firma for assisting in the police  
18 investigation of Mr. Cruz's sexual assault and battery. Id. ¶  
19 33.

## 21 II. OPINION

### 22 A. Judicial Notice

23 Defendant requests judicial notice of (1) Plaintiffs'  
24 Superior Court Complaint dated January 13, 2014; (2) Plaintiff's  
25 Workers Compensation Appeals Board Application dated August 14,  
26 2012; (3) Plaintiff's Workers Compensation Appeals Board  
27 Application for Increased Award for Serious and Willful  
28 Misconduct; (4) Defendant's Sacramento Superior Court Demurrer to

1 Plaintiffs' Complaint; and (5) Defendant Terra Firma's Notice of  
2 Removal to Federal Court. Def.'s Request for Judicial Notice  
3 ("DRJN"), Doc. #4-3, Ex. A-E. In response, Plaintiff objects to  
4 the third item in Defendant's request for judicial notice. See  
5 Opp. at 6.

6 Because Plaintiff's complaint (item #1) and the Notice of  
7 Removal (item #5) are already part of the record, the Court  
8 denies Defendant's requests. Further, the Court denies  
9 Defendant's request for judicial notice as to the remaining  
10 documents because they are not necessary for the determination of  
11 this motion.

12 B. Discussion

13 Defendant moves to dismiss Plaintiff's eleventh cause of  
14 action for negligent infliction of emotional distress ("NIED")  
15 because the claim is barred by the exclusive remedy provision in  
16 California's workers' compensation law. Plaintiff argues that  
17 she can pursue a NIED claim because the exclusivity provision  
18 does not bar NIED claims that do not result in personal physical  
19 injury or death.

20 Under California Labor Code section 3600 ("Section 3600"),  
21 an employer is liable under California's worker compensation law  
22 "for any injury sustained by his or her employees arising out of  
23 and in the course of the employment." Cal. Labor Code § 3600.  
24 Section 3602(a) provides that when an injury is compensable under  
25 Section 3600, recovery under Section 3600 is the employee's "sole  
26 and exclusive remedy." Cal. Labor Code § 3602(a).

27 The parties dispute the standard the Court should apply to  
28 determine whether the NIED claim is barred by the exclusive

1 remedy provision, in part, because there is a split in authority.  
2 See Opp. at 6 (alluding to the split in authority). The Ninth  
3 Circuit has held that California workers' compensation law does  
4 not bar claims for infliction of emotional distress if the  
5 injuries are purely emotional and do not result in physical  
6 injury. Robards v. Gaylord Bros., Inc., 854 F.2d 1152, 1157 (9th  
7 Cir. 1988) (interpreting Cole v. Fair Oaks Fire Protection Dist.,  
8 43 Cal.3d 148 (1987)). Contrastingly, a California court of  
9 appeal rejected the physical versus non-physical injury  
10 distinction outlined in Robards, holding that "an employee is  
11 confined to workers' compensation recovery for emotional injuries  
12 negligently inflicted as part of the normal employment  
13 relationship." Robomatic, Inc., v. Vetco Offshore, 225  
14 Cal.App.3d 270, 275 (1990).

15 This Court, however, must follow the binding Ninth Circuit  
16 decision if there is no California Supreme Court decision. See  
17 Brewster v. Cnty. of Shasta, 112 F. Supp. 2d 1185, 1188 n.5 (E.D.  
18 Cal. 2000) ("While in the absence of other evidence, the opinions  
19 of California courts of appeal on questions of California law  
20 cannot simply be ignored, a conflicting decision of the Ninth  
21 Circuit obligates adherence by this court to the Circuit's  
22 decision and rejection of the non-binding California precedent.")  
23 (Internal quotation marks and citations omitted). Therefore,  
24 Robards is binding. See Chavira v. Payless Shoe Source, 140  
25 F.R.D. 441, 447 (E.D. Cal. 1991) (noting the split in authority,  
26 but following Robards because "the California Supreme Court has  
27 not yet resolved the issue, and until it does this Court is bound  
28 by the Ninth Circuit's reading of California law, as set out in

1 Robards" ).

2 Here, Plaintiffs broadly allege that they suffered serious  
3 emotional distress and suffered "great anxiety, embarrassment,  
4 anger, loss of enjoyment of life, injury to reputation, and  
5 severe emotional and physical distress in an amount to be  
6 determined at trial." Compl. at ¶115. Even though Plaintiffs  
7 allege "physical distress," the term is too vague and refers to  
8 all three Plaintiffs. Therefore, the Court finds that Plaintiff  
9 has not alleged a resulting disabling or physical injury.  
10 Accordingly, as in Robards, Plaintiff's NEID claim is not barred  
11 by the exclusivity provision of workers' compensation law.

12 Further, even under the test established by the California  
13 court of appeal, Plaintiff's claim is not barred because her NIED  
14 claim is based on sexual harassment, conduct that violates  
15 California public policy and is therefore, beyond the normal  
16 risks of the employer and employee relationship. See Hernandez  
17 v. Hard Rock Cafe Int'l (USA), Inc., 2:07-CV-1088 FCD-DAD, 2007  
18 WL 2782624, at \*3 (E.D. Cal. Sept. 24, 2007) (holding that the  
19 plaintiff's NIED claim was not barred by workers' compensation  
20 law because it was based on sexual harassment, which exceeds the  
21 normal risks of the employment relationship.); Rascon v.  
22 Diversified Maint. Sys., 1:13-CV-1578 AWI-JLT, 2014 WL 1572554,  
23 at \*10 (E.D. Cal. Apr. 17, 2014) ("Courts have found that NIED  
24 claims based on sexual harassment or failure to prevent sexual  
25 harassment are not preempted by the workers' compensation law.")  
26 (citing Hernandez, 2007 WL 2782624).

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III. ORDER

For the reasons set forth above, the Court denies Defendant's Motion to Dismiss Plaintiff's Eleventh Cause of Action.

IT IS SO ORDERED.

Dated: July 30, 2014



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE