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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
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8 **ANDREA BIRDWELL,**

9 **Plaintiff,**

10 **v.**

11 **WAL-MART STORES, INC., et al.,**

12 **Defendants.**

Case No.: 15-CV-4051 YGR

**ORDER GRANTING MOTION OF DEFENDANTS
TO DISMISS FOURTH CAUSE OF ACTION AND
CLAIMS AGAINST INDIVIDUAL DEFENDANTS
WITHOUT LEAVE TO AMEND**

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14 Plaintiff Andrea Birdwell (“Birdwell”) brings this action against Defendants Wal-Mart
15 Stores, Inc., Michael Hamilton, Janelle Walton, Colleen O’Baugh, and Nicholas Gonnella (named
16 in the complaint as Nicholas “Gionella”). Plaintiff alleges claims for wrongful termination in
17 violation of the California Fair Employment and Housing Act, Cal. Gov’t Code section 12900, on
18 account of gender discrimination and medical condition/pregnancy, as well as termination in
19 violation of public policy, and intentional infliction of emotional distress.

20 Defendants have filed a motion seeking: (1) to dismiss the First, Second, and Third Causes
21 of Action as against individual defendants who cannot be liable for wrongful termination-based
22 claims; (2) to dismiss the Fourth Cause of Action against all defendants for failure to allege facts
23 sufficient to state a claim and because it is barred by the exclusivity provisions of the California
24 Workers’ Compensation Act, Cal. Labor Code section 3600 et seq.; and (3) to dismiss individual
25 defendants as fraudulently joined “sham” defendants. (Dkt. No. 6.)

26 In her response to the motion, Birdwell concedes that the claims against the individual
27 defendants and the Fourth Cause of Action for intentional infliction of emotional distress should be
28 dismissed.

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Accordingly, and based upon Plaintiff's non-opposition, the Motion to Dismiss is

GRANTED.

The Fourth Cause of Action for intentional infliction of emotional distress is hereby

DISMISSED WITH PREJUDICE.


Defendants Michael Hamilton, Janelle Walton, Colleen O'Baugh, and Nicholas Gonnella (named in the complaint as Nicholas "Gionella") are **DISMISSED WITH PREJUDICE.**

Plaintiff shall file an amended complaint reflecting the partial dismissals set forth above no later than **October 28, 2015**. Defendants shall have 20 days thereafter to file their responsive pleading.

This terminates Docket No. 6.

IT IS SO ORDERED.

Date: October 20, 2015


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE