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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DEBBIE PALMER, Plaintiff and Appellant, v. GTE CALIFORNIA INCORPORATED, Defendant and Appellant.	B133517 (Los Angeles County Super. Ct. No. PC014620Z)

APPEALS from a judgment and order of the Superior Court of Los Angeles County, John P. Farrell, Judge. Judgment affirmed; order reversed.

Law Offices of Kerry R. Tepper, Kerry R. Tepper; Law Offices of Louis E. Goebel, and Louis E. Goebel for Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker, Paul Grossman, George W. Abele, Heather A. Morgan; Sullivan, Sottile & Taketa, Mark Sullivan, Timothy B. Sottile, and Donn S. Taketa for Defendant and Appellant.

Plaintiff Debbie Palmer appeals an order granting a new trial and judgment notwithstanding the verdict in favor of defendant GTE California Incorporated (GTE), her employer, and also challenges a partial nonsuit. Her primary contention is that her service on GTE of a file-stamped copy of the judgment was "written notice of entry of judgment" under Code of Civil Procedure sections 659 and 660[1] so as to commence the

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1 All statutory references are to the Code of Civil Procedure unless otherwise specified.

Section 659 states, "The party intending to move for a new trial must file with the clerk and serve upon each adverse party a notice of his intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court or both, either

"1. Before the entry of judgment; or

"2. Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest; provided, that upon the filing of the first notice of intention to move for a new trial by a party, each other party shall have 15 days after the service of such notice upon him to file and serve a notice of intention to move for a new trial.

"Said notice of intention to move for a new trial shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The time above specified shall not be extended by order or stipulation or by those provisions of Section 1013 of this code which extend the time for exercising a right or doing an act where service is by mail."

Section 660 states, "On the hearing of such motion, reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions and documentary evidence offered at the trial and to the report of the proceedings on the trial taken by the phonographic reporter, or to any certified transcript of such report or if there be no such report or certified transcript, to such proceedings occurring at the trial as are within the recollection of the judge; when the proceedings at the trial have been phonographically reported, but the reporter's notes have not been transcribed, the reporter must upon request of the court or either party, attend the hearing of the motion and shall read his notes, or such parts thereof as the court, or either party, may require.

"The hearing and disposition of the motion for a new trial shall have precedence over all other matters except criminal cases, probate matters and cases actually on trial, and it shall be the duty of the court to determine the same at the earliest possible moment.

"Except as otherwise provided in Section 12a of this code, the power of the court to rule on a motion for a new trial shall expire 60 days from and after the mailing of

15-day period for any party to move for a new trial or for judgment notwithstanding the verdict and the 60-day period for the court to rule on the motions. GTE contends a notice of entry of judgment must comply with section 664.5[2] to be effective under sections 659

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notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days from and after service on the moving party by any party of written notice of the entry of the judgment, whichever is earlier, or if such notice has not theretofore been given, then 60 days after filing of the first notice of intention to move for a new trial. If such motion is not determined within said period of 60 days, or within said period as thus extended, the effect shall be a denial of the motion without further order of the court. A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed. The minute entry shall in all cases show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order."

[2] Section 664.5 states, "(a) In any contested action or special proceeding other than a small claims action or an action or proceeding in which a prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service by mail. This subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

"(b) Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall mail notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such mailing and place it in the court's file in the cause.

"(c) For purposes of this section, 'judgment' includes any judgment, decree, or signed order from which an appeal lies.

"(d) Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable.

"(e) The Judicial Council shall, by January 1, 1999, adopt a rule of court for the purposes of providing that, upon entry of judgment in a contested action or special proceeding in which a state statute or regulation has been declared unconstitutional by the court, the Attorney General is promptly notified of the judgment and that a certificate of that mailing is placed in the court's file in the cause."

and 660. We agree with Palmer and conclude that GTE's posttrial motions were untimely and the order granting the motions is void. We also conclude that Palmer's appeal from the judgment was untimely.

GTE appeals the judgment contending there is no substantial evidence to support the verdict on counts for false imprisonment and harassment, and also appeals an order denying in part its motion for judgment notwithstanding the verdict. We conclude that GTE's appeal from the judgment was timely, substantial evidence supports the verdict, and GTE's appeal from the denial of its motion for judgment notwithstanding the verdict is moot.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Palmer's Employment*

We view the facts in the light most favorable to Palmer as prevailing party in accordance with the standard of review on appeal, discussed *post*.

Palmer worked for GTE as an equipment maintainer beginning in January 1981 after two years as a telephone operator. Oscar Celis was a coworker, Jeffrey Ast was their immediate supervisor, Bruce Lee supervised another unit, and Gale Jordan was head supervisor.

Celis sometimes referred to Palmer as "honey," "babe," and "stupid woman," and characterized women in the office as overweight in Palmer's presence, in the fall of 1993. She considered the comments demeaning and asked him not to speak in that manner, but he persisted. Palmer complained to Ast, their supervisor, about Celis's behavior, and some of the comments were made in Ast's presence. When she complained to Ast, Ast

remained silent and appeared indifferent. Ast spoke privately with Celis and told him to behave appropriately around Palmer but did not caution him specifically about the demeaning language. Celis continued the behavior through the spring of 1994, and Palmer continued complaining to Ast, to no avail.

Ast subjected Palmer to unwelcome conversation of a sexual nature. He discussed his vasectomy in detail and sang a song about it. Palmer asked him to stop, but he persisted until she walked away and complained to Jordan. Jordan did not reprimand Ast for his behavior. While Ast and Palmer were alone in a company vehicle, he spoke of having sex all night with his girlfriend, who worked as a clerk in the same office, until Palmer asked him more than once to stop. On another occasion, he told Palmer that reading romance novels to his girlfriend enhanced their sex together. Palmer told him that she did not want to hear about it and walked away. He also stated that he liked the way Palmer dressed and that his girlfriend should dress the same way.

Jordan once commented to Palmer in 1993 or 1994 that he had thought she would go a long way in the company, but she happened to date the wrong person. The comment apparently related to her former boyfriend who had worked for GTE but was fired in 1982.

Palmer reviewed her personnel file in June 1994 and discovered a safety reminder that she had not been informed of. She requested a meeting with Lee, who had placed the item in her file, and they met in a conference room. When she told him that she was never advised of the safety reminder as required by company policy, he offered to cross it out. She asked him to remove it entirely and requested union representation in the

meeting. He told her not to call the union. She called out loudly for Jordan, the head supervisor, to enter the conference room and then attempted to telephone the union.

Lee raised his voice making it difficult for her to hear the telephone, and he walked to the door. She told him that she wanted to leave the room and walked toward the door where he was standing. Holding the door knob with his hand and bracing his foot against the door, he told her in a raised voice that she was not going anywhere until he was through with her. He then insisted that he had counseled her regarding the safety reminder and she denied it, asked to leave the conference room, and said that she would start to pound on the door if he did not allow her to leave. She then began to pound on the door with her fists and screamed "Let me out of here" for what seemed like ten minutes but probably was closer to five minutes, according to Palmer, until another supervisor forced the door open from the outside. Jordan, who was at standing at his desk nearby, commented to her, "Well, he didn't lock it, did he?" Palmer then called the union.

Palmer began a leave of absence two days later due to a broken arm and returned to work in August 1994. She filed a grievance concerning the conference room incident at that time. She did not receive prior notice of the meeting that was scheduled to discuss the grievance and learned of the meeting while she was away from work receiving physical therapy. A coworker picked her up and drove her to the meeting, but she arrived late. Ast and Lee were waiting for her, and Ast berated her for arriving late and told her that she must reschedule the meeting.

Palmer walked away toward a telephone. Ast followed her and directed her to go to another job site, continuing to speak in a loud voice with an angry tone. He told her that she could call the union later. She explained that she was calling her coworker who had driven her from physical therapy who had her purse and keys. Ast told her to put the phone down. She walked toward the area where keys to the company vehicles were kept and Ast followed stating in a loud voice that he was her supervisor and demanded her respect. She retrieved the company keys as Ast followed her, still yelling. She then stated that she was ill, was still on vacation time, and could not lift manhole covers because of her arm, and asked him to call Jordan.

Palmer, Ast, and Jordan then met in the hallway outside the conference room. She stood with her back to the wall while Ast yelled at her and demanded respect. She explained to Jordan that her coworker had her purse, driver's license, and keys. She felt beleaguered and humiliated and, apparently in exasperation, asked them to suspend her. They then left her alone.

The rescheduled grievance meeting took place in August 1994. Ast suspended her for five days at that time for making him "look like an idiot," he stated.

Palmer also experienced other instances of alleged mistreatment. Ast failed to notify her that she had been invited to a banquet to receive an award, and then kept the award in his drawer for three months before giving it to her. He also purportedly misplaced her 15-year service award and did not formally present it to her when two male workers received 15-year service awards in a formal presentation at about the same time. She also contends she was denied training opportunities and favorable work assignments.

Palmer experienced prolonged depression, insomnia, and anxiety and suffered severe weight loss beginning after the conference room incident.

2. *Pretrial and Trial Proceedings*

Palmer sued GTE, Ast, and Lee in April 1995 alleging causes of action for sexual harassment and gender discrimination under FEHA, false imprisonment, and other causes of action. The court granted summary judgment for Ast and Lee in September 1998.

A jury trial commenced in January 1999. The court instructed the jury on false imprisonment and harassment. The jury returned special verdicts finding that GTE had falsely imprisoned Palmer and harassed her based on her gender in a manner that was so severe and pervasive that a reasonable person would have found the workplace to be a hostile and abusive environment. The jury also found that GTE had not exercised reasonable care to prevent harassment from occurring and was guilty of fraud, oppression, or malice on both counts. It awarded damages of $175,000 for false imprisonment and $615,000 for harassment.

The court granted a nonsuit on punitive damages because Palmer was not prepared to present evidence promptly after the first phase of trial, and stated that there was no evidence of ratification by a managing agent so it would not have allowed punitive damages in any event.

3. *Posttrial Proceedings*

The court entered judgment for Palmer on February 24, 1999. Palmer served a file-stamped copy of the judgment by mail on GTE on February 26. GTE's counsel telephoned Palmer's counsel on March 3 to express GTE's position that service of the

file-stamped copy was not a proper notice of entry of judgment for purposes of commencing the time to file posttrial motions pursuant to *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51. The court clerk also called Palmer's counsel that day to state the same.

Palmer served a separate document entitled "Notice of Entry of Judgment" on March 9, 1999, and filed it on March 10 together with a proof of service. Also attached to the document was a proof of service pertaining to the service on February 26 of the file-stamped copy of the judgment.

GTE filed a notice of intention to move for a new trial and a motion for judgment notwithstanding the verdict on March 24, 1999, 26 days after Palmer's service of a file-stamped copy of the judgment. The court granted judgment notwithstanding the verdict on the harassment count but denied the motion on the false imprisonment count, granted a new trial on the harassment count on the grounds of excessive damages and insufficiency of the evidence to justify the verdict, and granted a new trial on the false imprisonment count on the ground of excessive damages conditional upon Palmer's rejection of a remittitur, in an order filed on May 3, 66 days after Palmer's service of a file-stamped copy of the judgment.

Palmer moved to strike the order on the ground that the motions and the order were untimely. The court denied the motion to strike in June 1999 based on *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th 51. Palmer then petitioned this court for a writ of mandate to invalidate the order. We denied the petition in August 1999.

Palmer filed a notice of appeal from the order granting a new trial and judgment notwithstanding the verdict and from the judgment on July 1, 1999. GTE filed a notice of appeal from the judgment and the order denying in part the motion for judgment notwithstanding the verdict on July 22.

CONTENTIONS

Palmer contends (1) her service on GTE of a file-stamped copy of the judgment was "written notice of entry of judgment" under sections 659 and 660 so as to commence the 15-day period for any party to move for a new trial or for judgment notwithstanding the verdict and the 60-day period for the court to rule on the motions, GTE's motions filed more than 15 days later therefore were untimely, and the court had no jurisdiction to grant the motions; (2) substantial evidence supports the verdict as to harassment, so GTE is not entitled to judgment notwithstanding the verdict on that count; (3) the court erred in granting a new trial on her counts for harassment and false imprisonment; and (4) the court erred in granting a nonsuit as to punitive damages.

GTE contends (1) Palmer's service of a file-stamped copy of the judgment did not comply with section 664.5 and therefore was not "written notice of entry of judgment" under sections 659 and 660, so the motions for a new trial and judgment notwithstanding the verdict were timely; and (2) in any event, there is no substantial evidence to support the verdict on either count.

DISCUSSION

1. *GTE's Posttrial Motions Were Untimely*

a. *Construction of Sections 659 and 660*

Palmer's first contention turns on the construction of sections 659 and 660. We review de novo the construction of a statute and its application to undisputed facts. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562; *Kurtz v. Calvo* (1999) 75 Cal.App.4th 191, 193.) Our objective is to ascertain and effectuate the legislative intent. (§ 1859; *Burden*, at p. 562.) We begin with the statutory language and interpret its plain meaning. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632; *Burden*, at p. 562.) We cannot insert qualifying language where it is not stated or rewrite the statute to conform to a presumed intention that is not expressed. (§ 1858; *California Teachers Assn.*, at p. 633; *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) Rather, we must assume that the Legislature would have included qualifying language if it so intended, particularly where the Legislature included similar qualifying language in related provisions but omitted it in the provision being construed. (*California Fed. Savings & Loan Assn.*, at p. 349.)

A party moving for a new trial must file a notice of intention to move for a new trial either before the entry of judgment or by the earliest of three dates: (1) 15 days after "mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5"; (2) 15 days after "service upon him by any party of *written notice of entry of judgment*"; or (3) "180 days after the entry of judgment." (§ 659, italics added.) The same time limits apply to a motion for judgment notwithstanding the verdict. (§ 629) The time to

file a motion for new trial or judgment notwithstanding the verdict cannot be extended by order of the court or by stipulation of the parties. (§ 659.)

The trial court must decide the motions within a certain time period, or else it loses the power to rule on the motions and they are denied by operation of law. The time to rule on the motions is within 60 days after the earlier of "mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5" or "service on the moving party by any party of *written notice of the entry of the judgment*," or within "60 days after filing of the first notice of intention to move for a new trial" if no notice of entry is given. (§ 660, 3d par., italics added.)

Sections 659 and 660 state that "notice of entry of judgment" *mailed by the clerk* must be mailed by the clerk "pursuant to Section 664.5" to invoke those time limits under sections 659 and 660 that are measured from the date of the clerk's mailing.[3] Sections 659 and 660 do not state, however, that "written notice of entry of judgment" (§ 659) or "written notice of the entry of the judgment" (§ 660) *served by a party* must be served pursuant to section 664.5 to invoke those time limits under sections 659 and 660 that are measured from the date of a party's service. According to the plain language of the statute, there is no such requirement when a party serves notice of entry. This notable difference between otherwise largely parallel provisions causes us to conclude that the Legislature intended the provisions to be different in this respect. That is, written notice

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3 Section 664.5 requires the clerk to mail notice of entry of judgment only if a prevailing party is not represented by counsel (*id*., subd. (b)) or upon order of the court (*id*., subd. (d)).

of entry of judgment served by a party need not be served pursuant to section 664.5 to commence the 15-day period (§ 659) for a party to move for a new trial or for judgment notwithstanding the verdict or the 60-day period (§ 660) for the court to rule on the motions.

Section 664.5, subdivision (a) requires a party submitting an order or judgment for entry not only to "prepare and mail a copy of the notice of entry," but also to file with the court the original notice of entry and proof of service. Sections 659 and 660, in contrast, state that the time limits are triggered by a party's "service" of written notice of entry, not by service *and* filing of notice of entry and filing of proof of service. We presume that if the Legislature had intended the time limits of sections 659 and 660 to be triggered by a party's service *and* filing of notice of entry and filing of proof of service, sections 659 and 660 would so state or would incorporate the requirements of section 664.5 by reference.

Moreover, section 664.5 does not purport to govern the requirements for notice of entry by "any party" or for all purposes. Section 664.5, subdivision (a) states that its requirements apply only to the party submitting the order or judgment for entry. The time limits under sections 659 and 660, in contrast, are triggered by service by "any party" of a notice of entry of judgment on the moving party, including service by a party who did not submit the order or judgment for entry. This difference also cautions against an inference, unsupported by the language of sections 659 and 660, that service by "any party" under sections 659 and 660 must comply with the requirements for service and

filing by "the party submitting an order or judgment for entry" under section 664.5, subdivision (a).

Section 659 formerly referred to service of written notice of entry of judgment by any party and section 660 referred to service of notice of entry of judgment on the moving party, but neither section referred to mailing notice of entry of judgment by the clerk. (Stats. 1961, ch. 604, § 2, p. 1753; Stats. 1959, ch. 468, § 1, p. 2403.) Section 664.5 as originally enacted in 1965 required the clerk to mail notice of entry of judgment in all contested actions and did not require notice of entry of judgment by the parties. (Stats. 1965, ch. 1890, § 3, p. 4360.) The Legislature amended section 659 in 1965 to refer to the date of the clerk's mailing notice of entry of judgment "pursuant to Section 664.5" (Stats. 1965, ch. 1890, § 1.5, p. 4359), and similarly amended section 660 in 1969 (Stats. 1969, ch. 87, § 1, p. 209).

The Legislature amended section 664.5 in 1981 and 1982 to require the party submitting an order or judgment for entry to serve notice of entry of judgment and file the original and proof of service, and relieved the clerk of the duty to mail notice of entry of judgment in most cases. (Stats. 1981, ch. 904, § 1, p. 3437; Stats. 1982, ch. 559, § 1, p. 2505.) It has not amended section 659 or 660 since that time, however, to state that a party's service of notice of entry of judgment must be "pursuant to Section 664.5." Such amendments would parallel the prior amendments concerning the clerk's mailing of notice of entry of judgment "pursuant to Section 664.5" and would make it clear that a party's service of notice of entry must comply with section 664.5 to be effective under

sections 659 and 660. Absent such amendments, we cannot assume that the Legislature so intended.

California Rules of Court, rule 2(a) also refers to notice of entry of judgment.[4] Rule 2(a) states that a party appealing from a judgment ordinarily must file a notice of appeal by the earliest of three dates: "(1) 60 days after the date of mailing by the clerk of the court of a document entitled 'notice of entry' of judgment; (2) 60 days after the date of service of a document entitled 'notice of entry' of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment." Rule 2(a) expressly provides that for purposes of determining the time to appeal from a judgment under rule 2(a), "a file-stamped copy of the judgment may be used in place of the document entitled 'notice of entry' of judgment." The fact that the Judicial Council has made it clear that a file-stamped copy of the judgment can substitute for "a document entitled 'notice of entry' of judgment" for purposes of rule 2(a) does not affect our construction of provisions by the Legislature in sections 659 and 660 that do not expressly require "a document entitled 'notice of entry' of judgment" or expressly provide for service of a file-stamped copy of the judgment in lieu of "a document entitled 'notice of entry' of judgment." We must

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[4] The California Rules of Court that we cite are those effective in 1999, before the recent extensive revision of the rules.

assume that the Legislature is aware of rule 2(a) and has elected not to adopt its language in sections 659 and 660, and we must construe sections 659 and 660 as written.[5]

b. *Prior Cases*

Several courts have held that a party's service of a file-stamped copy of the judgment satisfies the requirements for service by a party of written notice of entry of judgment under sections 659 and 660. The California Supreme Court, however, has stated in dicta that a party must comply with the service and filing requirements of section 664.5, subdivision (a) to commence the 60-day period for a court to rule on a new trial motion under section 660. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th 51, 65.)

Tri-County Elevator Co. v. Superior Court (1982) 135 Cal.App.3d 271 held that a party's service of a file-stamped copy of the judgment commenced the 15-day period to move for a new trial under section 659, rejecting the argument that a party's notice of entry of judgment under section 659 must comply with section 664.5. The court explained that section 659 states that a clerk's notice of entry must be made "pursuant to Section 664.5" but does not state that a party's notice of entry of judgment must be made pursuant to section 664.5. (*Tri-County*, at p. 275.) If the Legislature had intended section 664.5 to govern the requirements for notice of entry of judgment under section 659, the

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[5] The requirement of service of "a document entitled 'notice of entry' of judgment" or "a file-stamped copy of the judgment" (Cal. Rules of Court, rule 2(a)) is clear and unambiguous. The amendment of sections 659 and 660 to include this language would eliminate any uncertainty as to what constitutes service of written notice of entry of judgment for purposes of sections 659 and 660.

court reasoned, section 659 would so state. (*Tri-County*, at pp. 275-276.) The court explained that in counties that do not enter judgments in a judgment book, the filing of a judgment is entry of judgment (§ 668.5), so service of a file-stamped copy of the judgment in such a county provides written notice of the entry of judgment and date of entry. (*Tri-County*, at p. 276.) Since section 659 states that the 15-day period commences upon service by a party of written notice, the court concluded that the time began to run upon service of the file-stamped copy regardless of the party's delay in filing a proof of service. (*Tri-County*, at p. 277.)

Ramirez v. Moran (1988) 201 Cal.App.3d 431 also held that a party's service of a file-stamped copy of the judgment commenced the 15-day period to move for a new trial under section 659, despite the fact that the party did not file a proof of service. The court held that the party's service of a file-stamped copy of the judgment with a cover letter, as later shown by declaration, was written notice of entry of judgment by a party for purposes of section 659. (*Ramirez*, at p. 436.) The court also held that the untimely new trial motion was not a "valid" motion under rule 3 of the California Rules of Court, and therefore did not extend the time to appeal from the judgment under rule 3, so the appeal from the judgment was untimely. (*Ramirez*, at p. 437.)

The California Supreme Court in *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th 51 held that the clerk's mailing of a file-stamped copy of the judgment did not commence the 60-day period for the court to rule on a new trial motion under section 660 because the mailing was not "pursuant to Section 664.5" (§ 660). The court stated that a file-stamped copy of the judgment in a

county that does not maintain a judgment book (§ 668.5) provides notice of the date of entry of judgment, but the question was whether the clerk's mailing of notice was "[u]pon order of the court" as provided under section 664.5, subdivision (d). (*Van Beurden*, at p. 57 & fn. 2.)

A clerk's mailing is "pursuant to Section 664.5" (§ 660) only if a prevailing party is not represented by counsel or the court ordered the clerk to mail notice of entry of judgment. (§ 664.5, subds. (b), (d).) The *Van Beurden* court held that the fact that the clerk mailed notice of entry of judgment does not indicate that the mailing was "[u]pon order of the court" (§ 664.5, subd. (d)) unless "the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment." (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th at p. 64.)[6] It held that to qualify as a clerk's notice of entry of judgment "[u]pon order of the court" under section 664.5, subdivision (d), the mailed notice must state or bear the notation that it was given "upon order of the court" or "under section 664.5" and the clerk must execute and file a certificate of mailing. (*Van Beurden*, at p. 64.) It announced this rule to avoid uncertainty as to the jurisdictional time to file an appeal. (*Ibid*.) The court also stated in dicta that if the clerk's notice is not given pursuant to section 664.5, "the time for ruling on a motion for a new trial will be shortened only if the party submitting the order or judgment for entry serves notice of entry of judgment on all parties, files the original

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6 Although the *Van Beurden* court stated that "the order itself" must indicate that the court directed the clerk to mail notice of entry of judgment, it also stated that there need not be a "separate written order." (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th at p. 65, fn. 4.)

notice with the court, and files a proof of service. (Code Civ. Proc., § 664.5, subd. (a.).) [Fn. omitted.]" (*Van Beurden*, at p. 65.)

People ex rel. Dept. of Transportation v. Cherry Highland Properties (1999) 76 Cal.App.4th 257, 262-263, held that service of notice of entry of judgment by the party moving for a new trial was not "service on the moving party" (§ 660) and therefore did not commence the 60-day period for the court to rule on the new trial motion. The court also held in an alternative holding that a party's service of notice of entry of judgment did not commence the 60-day period for the court to rule on a new trial motion under section 660 until the party later filed the notice of entry as required by section 664.5, subdivision (a). (*Cherry Highland*, at pp. 261, 263.) The court stated that *Van Beurden* "held that" a party's notice of ruling commences the 60-day period for the court to rule on a new trial motion only if the party complies with section 664.5, subdivision (a), and that *Van Beurden* "seems to indicate" that a party's notice of entry is not effective until the proof of service is filed. (*Cherry Highland*, at p. 261.) The court did not independently analyze section 660 to reach that conclusion, but deferred to the Supreme Court's perceived holding. (*Cherry Highland*, at p. 261.)

Dodge v. Superior Court (2000) 77 Cal.App.4th 513 held that a party's personal service of a file-stamped copy of the judgment commenced the 60-day period for the court to rule on a new trial motion under section 660 even though the party did not comply with section 664.5, subdivision (a). The court stated that a file-stamped copy of the judgment in a county where judgments are entered immediately upon filing provides unequivocal notice of the entry of judgment and date of entry, and therefore constitutes

written notice of entry of judgment under section 660. (*Dodge*, at pp. 518-519.) It rejected the argument that a party's notice of entry of judgment under section 660 must comply with section 664.5, because section 660 does not state that a party's service of notice of entry must comply with section 664.5 and because section 660 states that the 60-day period commences upon the party's service, not upon filing of proof of service. (*Dodge*, at pp. 519-520, 522.) The court stated that the Legislature's failure to amend section 660 to require a party to file proof of service of notice of entry of judgment despite related amendments to other statutes and to rule 2 of the California Rules of Court and comment by the courts suggests that section 660 says what the Legislature wants it to say. (*Dodge*, at p. 522 & fn. 11.) The court concluded that section 660 is plain on its face and must be enforced as written. (*Dodge*, at pp. 522, 524, fn. 12.)

The *Dodge* court rejected the argument that a party serving notice of entry under section 660 must file proof of service as required under section 664.5, subdivision (a) in order to inform the court of the jurisdictional time limit to rule on a new trial motion. It explained that section 660 states that the time runs from a party's service of notice of entry and does not require filing of proof of service, and noted that the party moving for a new trial can ensure that the court is aware of the time limit. (*Dodge v. Superior Court*, *supra*, 77 Cal.App.4th at p. 524.)

The *Dodge* court distinguished *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th 51 on the grounds that *Van Beurden* involved a clerk's mailing of notice of entry of judgment, not service by a party, and involved the express requirement under section 660 that the clerk's mailing must be

"pursuant to Section 664.5." (*Dodge v. Superior Court*, *supra*, 77 Cal.App.4th at p. 520.) It distinguished *People ex rel. Dept. of Transportation v. Cherry Highland Properties*, *supra*, 76 Cal.App.4th 257 on the grounds that *Cherry Highland* involved service *by* the moving party and not *on* the moving party as expressly provided under section 660, and that *Cherry Highland* involved service by mail while the defendants in *Dodge* personally served notice of entry so that section 664.5 did not "come into play."[7] (*Dodge*, at pp. 520, 521-522.)

c. *Conclusion*

We conclude that Palmer's service of a file-stamped copy of the judgment was written notice of entry of judgment under sections 659 and 660 so as to commence the 15-day period for any party to move for a new trial or for judgment notwithstanding the verdict and the 60-day period for the court to rule on the motions, GTE's motions for new trial and judgment notwithstanding the verdict were untimely, the court had no jurisdiction to rule on the motions, and the order granting the motions is void.

Our construction of sections 659 and 660 is consistent with *Tri-County Elevator Co. v. Superior Court*, *supra*, 135 Cal.App.3d 271, *Ramirez v. Moran*, *supra*, 201 Cal.App.3d 431, and *Dodge v. Superior Court*, *supra*, 77 Cal.App.4th 513, and

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[7] The *Dodge* court deemed it significant that the party personally served notice of entry of judgment and did not serve notice of entry by mail. It stated "Because notice was not mailed, the provisions of section 664.5 never come into play." (*Dodge v. Superior Court*, *supra*, 77 Cal.App.4th at p. 520.) We consider the distinction between personal service and service by mail to be immaterial to the question of whether a party's noncompliance with section 664.5, subdivision (a) vitiates service, whether personally or by mail, under sections 659 and 660.

inconsistent with the alternative holding in *People ex rel. Dept. of Transportation v. Cherry Highland Properties*, *supra*, 76 Cal.App.4th 257 and dicta in *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th 51. We agree that a file-stamped copy of the judgment in a county where judgments are entered upon filing (§ 668.5) provides unequivocal notice that judgment was entered and constitutes written notice of entry of judgment under sections 659 and 660. (*Van Beurden*, at p. 57, fn. 2 [§ 660]; *Dodge*, at pp. 518-519 [§ 660]; *Tri-County*, at p. 276 [§ 659].)[8] We also agree with the opinions holding that the 15-day period for a party to move for a new trial and the 60-day period for a court to rule on a new trial motion commence upon a party's service of written notice of entry of judgment, and that section 664.5, subdivision (a) does not govern the requirements for a party's notice of entry of judgment under sections 659 and 660 (*Dodge*, at pp. 519-520, 522 [§ 660]; *Tri-County*, at pp. 275-276 [§ 659]; see *Ramirez*, at p. 436 [§ 659]), and we respectfully disagree with the alternative holding (*Cherry Highland*, at pp. 261, 263) and dicta (*Van Beurden*, at p. 65) stating otherwise.

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8 The courts in these cited cases apparently considered it significant that a file-stamped copy of the judgment not only provides notice that judgment was entered but also indicates the date of entry. Discussing an analogous issue under rule 2(a) of the California Rules of Court, the court in *Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 85, held that a notice of entry of judgment for purposes of commencing the time to appeal need not state the date of entry, based on a literal interpretation of rule 2(a). Since a file-stamped copy of the judgment in a county where a judgment is entered upon filing always discloses the date of entry, we express no opinion on the question whether written notice of entry of judgment under sections 659 and 660 must disclose the date of entry.

An opinion by the Court of Appeal holding on point cannot be overruled by dictum in a Supreme Court opinion. (*Trope v. Katz* (1995) 11 Cal.4th 274, 287.) Dictum by the Supreme Court may be persuasive, but it is not binding. (*County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 388; *Grange Debris Box & Wrecking Co. v. Superior Court* (1993) 16 Cal.App.4th 1349, 1358; *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1990) 219 Cal.App.3d 1265, 1272.)

d. *GTE's Arguments*

GTE argues that section 664.5 is "all-inclusive," establishes mandatory requirements for all notices of entry of judgment, and therefore governs the validity of notice of entry for purposes of sections 659 and 660. Apart from the other reasons for our conclusion to the contrary stated *ante*, we again note that section 664.5, subdivision (a) does not govern notice of entry of judgment by "any party" or in all circumstances. It applies only to the party submitting an order or judgment for entry and does not apply to a party who serves notice of entry but did not submit an order or judgment for entry. (§ 664.5, subd. (a).) Sections 659 and 660, in contrast, refer to notice of entry by "any party." The limited scope of notices of entry governed by section 664.5, subdivision (a) compared with the wider range of notices of entry referenced in sections 659 and 660 argues against an inference that the Legislature intended the requirements of section 664.5, subdivision (a) to govern the validity of notice of entry under sections 659 and 660. Moreover, we will not presume that the Legislature intended the anomaly that would result if section 664.5, subdivision (a) governed the validity under sections 659

and 660 of notice of entry by some parties but not others, absent a statutory expression of such an intent.

GTE argues that the trial court should be informed when the jurisdictional time to rule on posttrial motions will run, and that compliance with section 664.5, subdivision (a), including filing the original notice of entry and proof of service, would ensure that the court is aware of the time limits. This is a policy argument and does not compel us to so construe sections 659 and 660. Although a court must construe a statute to avoid an absurd result that the Legislature did not intend (*Younger* v. *Superior Court* (1978) 21 Cal.3d 102, 113), it is not absurd for the trial court to rely on the party moving for a new trial and judgment notwithstanding the verdict to inform it of the time to rule on the motions. Moreover, the court's reliance on the moving party in this manner is not inconsistent with the court's reliance on the moving party generally in ordering a new trial, in that the court cannot grant a new trial on its own motion (*Sanchez-Corea* v. *Bank of America* (1985) 38 Cal.3d 892, 899) and cannot grant a new trial on a ground not specified in the moving papers (*Malkasian* v. *Irwin* (1964) 61 Cal.2d 738, 745; *Wagner* v. *Singleton* (1982) 133 Cal.App.3d 69, 72).

GTE also argues that the requirements of section 664.5, subdivision (a) that a party submitting an order or judgment for entry must "prepare and mail a copy of the notice of entry" and file "the original notice of entry" with the court imply that notice of entry of judgment must be given in a document separate from a file-stamped copy of the judgment. This argument assumes that sections 659 and 660 incorporate the requirements of section 664.5, subdivision (a), as GTE acknowledges. Since we

conclude that sections 659 and 660 do not incorporate the requirements of section 664.5, subdivision (a) and that noncompliance with section 664.5, subdivision (a) does not vitiate notice of entry under sections 659 and 660, we need not decide whether section 664.5, subdivision (a) requires notice of entry to be given in a separate document.

GTE argues further that rule 2(a) of the California Rules of Court indicates that "notice of entry of judgment" means "a document entitled 'notice of entry' of judgment" and that a file-stamped copy of the judgment ordinarily is not notice of entry of judgment. GTE maintains that the absence of an express provision allowing a file-stamped copy of the judgment to serve as notice of entry under section 659 and 660, as expressly provided in rule 2(a), indicates that service of a file-stamped copy of the judgment does not constitute notice of entry for purposes of sections 659 and 660. We disagree. Rule 2(a) refers to "a document entitled 'notice of entry' of judgment," making it clear that notice of entry must be given in a separate document for purposes of rule 2(a) and that if not for the express exception in rule 2(a) allowing service of a file-stamped copy of the judgment in lieu of a document entitled "notice of entry," service of a file-stamped copy of the judgment would not suffice for purposes of rule 2(a). Sections 659 and 660, in contrast, do not require "a document entitled 'notice of entry' of judgment," but require only "written notice of entry of judgment" (§ 659) or "written notice of the entry of the judgment" (§ 660), and do not incorporate the requirements of rule 2(a). The absence of an express provision in sections 659 and 660 allowing service of a file-stamped copy of the judgment does not limit the meaning of "written notice of entry of judgment" or

affect our conclusion that service of a file-stamped copy of the judgment constitutes "written notice of entry of judgment" for purposes of sections 659 and 660.[9]

Finally, we reject GTE's argument that Palmer's service of a document entitled "notice of entry of judgment" on March 9, 1999, estops her from asserting that her earlier service of a conformed copy of the judgment was effective. The time limits of sections 659 and 660 are jurisdictional, and a court has no authority to excuse them based on a party's conduct. (*Fong Chuck v. Chin Po Foon* (1947) 29 Cal.2d 552, 554; *Tabor v. Superior Court* (1946) 28 Cal.2d 505, 507-508; *Meskell v. Culver City Unified School Dist.* (1970) 12 Cal.App.3d 815, 825.)

The result of our holding and the prior opinions consistent with our holding is that in the absence of a filed proof of service of notice of entry of judgment, it is incumbent upon the party moving for a new trial or judgment notwithstanding the verdict to inform the court of the date of service of notice of entry of judgment and the time limit for the court to rule on the motion and to ensure that the court is aware of the time limit. If the moving party served with written notice showing unequivocally that judgment was entered bears this responsibility, neither the parties nor the court will be uncertain as to the jurisdictional time limits to move and rule on the posttrial motions.

2. *Palmer's Appeal from the Judgment Was Untimely and GTE's Was Timely*

Service and filing of a "valid" notice of intention to move for a new trial or "valid" notices of intention to move for a new trial and for judgment notwithstanding the verdict

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[9] We construe "written notice of entry of judgment" to be the same as "written notice of the entry of the judgment" for purposes of sections 659 and 660.

extends the time to appeal from the judgment and from the denial of judgment notwithstanding the verdict to 30 days after entry of the order denying the motions or denial of the motions by operation of law. (Cal. Rules of Court, rule 3(a), (d).) A "valid" notice of intention to move for a new trial or for judgment notwithstanding the verdict must be timely. (*Ramirez v. Moran*, *supra*, 201 Cal.App.3d at p. 437.)

GTE's motions for new trial and for judgment notwithstanding the verdict were not timely, as discussed *ante*, and therefore were not "valid" and did not extend the time to appeal from the judgment. Palmer's notice of appeal from the judgment filed on July 1, 1999, was untimely because it was filed more than 60 days after her service of notice of entry of judgment on February 26. (Cal. Rules of Court, rule 2(a).)

GTE's appeal from the judgment and from the order denying judgment notwithstanding the verdict was timely, however. If a party timely appeals an order granting a motion for new trial, any other party may appeal from the judgment or from an order denying judgment notwithstanding the verdict within 20 days after the clerk mails notice of the initial appeal. (Cal. Rules of Court, rule 3(c).) GTE's notice of appeal filed on July 22, 1999, was timely because it was filed within 20 days after the clerk mailed notice of Palmer's appeal from the order granting a new trial.

3. *GTE Is Not Entitled to Reversal of the Judgment*

a. *Standard of Review*

An appellant challenging a verdict by the trier of fact must show that there is no substantial evidence to support the verdict. We view the evidence in the light most favorable to the verdict, accept as true all evidence tending to support the verdict and all

reasonable inferences from the evidence, and resolve all conflicts in the evidence in favor of the verdict. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) We reverse the judgment only if the evidence viewed in this light and on the entire record does not support the verdict as a matter of law. (*Ibid*.; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

The fact that the trial court in its void order granted the motion for new trial on the grounds of excessive damages and insufficiency of the evidence and granted in part the motion for judgment notwithstanding the verdict does not affect our standard review on appeal from the judgment. We must independently determine whether substantial evidence supports the verdict and cannot defer to the trial court's ruling in its void order. (*Sanchez-Corea v. Bank of America, supra,* 38 Cal.3d at pp. 903, 907 [held that the trial court's order after the 60-day period allowed by section 660 specifying insufficiency of the evidence as an additional ground for granting a new trial was in excess of jurisdiction, and viewing the evidence in the light most favorable to the verdict independently determined that substantial evidence supported the verdict].) Although a trial court's ruling on a new trial motion is entitled to great deference when there is substantial evidence to support the ruling (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412), we cannot defer to the trial court on the question of whether there is substantial evidence in the record. Moreover, a void order has no effect and is entitled to no deference. (See *Sanchez-Corea*, at p. 907.) The jurisdictional deadline to rule on a new trial motion under section 660 (*Sanchez-Corea*, at p. 903; *Siegal v. Superior Court* (1968) 68 Cal.2d

97, 101) would have little significance if the reviewing court accorded the same deference to the ruling regardless of whether the ruling was timely.

The cases cited by GTE do not convince us otherwise. The California Supreme Court in *Mercer v. Perez* (1968) 68 Cal.2d 104, 119, reversed an order granting the plaintiff's new trial motion on the ground of insufficiency of the evidence to justify the verdict because the trial court failed to file a timely specification of reasons. Since section 657 states that an order granting a new trial based on insufficiency of the evidence is conclusively presumed to be made only for the reasons stated in the specification of reasons, the *Mercer* court held that the scope of review on appeal is limited to the reasons specified and where there is no specification of reasons the reviewing court cannot affirm the order based on insufficiency of the evidence. (*Mercer*, at p. 119.) The trial court did not exceed its jurisdiction in granting the motion, as occurs where the notice of intention to move for a new trial or the ruling is untimely, but the failure to file a timely specification of reasons prevented the reviewing court from affirming the order based on insufficiency of the evidence. (*Mercer*, at pp. 118-119.)

The *Mercer* court then addressed the plaintiff's appeal from the judgment and reversed the judgment based on instructional error. (*Mercer v. Perez*, *supra*, 68 Cal.2d at pp. 124-127.) The court stated that the weight of the evidence indicated that it was reasonably probable that the plaintiffs would have obtained a more favorable result absent the error, and stated that because the trial court "was far better situated to appraise the facts than we can ever be" the reviewing court gave "considerable weight" to the trial

court's statement in the new trial order that "'there has been a definite miscarriage of justice.'" (*Mercer*, at pp. 126-127.)

Mercer v. Perez, supra, 68 Cal.2d 104 is distinguishable and does not support GTE's argument that we should give considerable weight to the trial court's ruling in this case. The *Mercer* court did not consider the trial court's ruling for the purpose of determining whether there was substantial evidence to support the verdict and did not reverse the judgment on that ground. Rather, it considered the trial court's ruling for the purpose of determining whether the instructional error was prejudicial based on the weight of the evidence and other factors. (*Mercer*, at pp. 126-127; see *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580-581.) Moreover, the new trial order in *Mercer* was not void or made in excess of the court's jurisdiction (*Mercer*, at p. 118), so the court was not compelled to disregard it as we are compelled to disregard the void order in this case. The other authorities cited by GTE in support of its argument also are not on point and are unconvincing.

b. *False Imprisonment*

False imprisonment is defined as the nonconsensual, intentional confinement of a person without lawful privilege for an appreciable length of time, however short, by physical force, threat of force, physical barrier, or other means. (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715.) The intent element requires only an intent to confine, regardless of motive. (*Id*. at p. 716.)

An employer is privileged to restrain an individual if there is probable cause to believe that restraint is necessary to protect persons or property in the workplace. (Cf.

Fermino v. Fedco, Inc., supra, 7 Cal.4th at p. 716; *Collyer v. S. H. Kress & Co.* (1936) 5 Cal.2d 175, 180-181.) The restraint must be reasonable in time and manner. (*Fermino*, at p. 716; *Collyer*, at pp. 180-181.) The reasonableness of the restraint is a question of fact. (*Fermino*, at p. 723, fn. 8.) The trial court here so instructed the jury.

Lee confined Palmer in the conference room against her will for approximately five minutes. Despite her vociferous objections and pounding on the door, neither Lee nor any other employee opened the door or allowed her to leave. The jury reasonably could conclude from the circumstances that Lee did not confine Palmer to protect the workplace and allow her to calm down, but confined her for an illegitimate purpose and in an unreasonable manner. We conclude that substantial evidence supports the verdict.

c. *Harassment*

FEHA prohibits harassment in the workplace motivated by, among other things, the perpetrator's sexual desire or the victim's gender. (Gov. Code, § 12940, subd. (j)(1), (4)(C).)[10] Harassment based on gender is a form of gender discrimination and need not be motivated by sexual desire to be actionable. (*Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81;[11] *Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 348, disapproved on another ground in *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 816-817, 823.)

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[10] References to Government Code section 12940 are to the current version, which for purposes relevant here is identical to the former version effective in 1994 except for the designation of subdivisions.

[11] Federal opinions under title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) may be persuasive authority in the interpretation and application of

An employer is liable for harassment of an employee by an "agent" or supervisor, and is liable for harassment by an employee who is not an agent or supervisor only if the employer, or its agent or supervisor, knew or should have known of the conduct and failed to take immediate and appropriate corrective action. (Gov. Code, § 12940, subd. (j)(1); *Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1328; *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 415.) An employer must take all reasonable steps to prevent harassment from occurring. (Gov. Code, § 12940, subd. (j)(1).)

Sexual harassment or gender harassment that does not involve a quid pro quo of sexual conduct in exchange for an employment benefit must be so severe and pervasive that it alters the conditions of employment and creates a hostile or abusive work environment, in light of all the circumstances. (*Faragher v. Boca Raton* (1998) 524 U.S. 775, 786-788; *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 21-23; *Fisher v. San Pedro Peninsula Hospital*, *supra*, 214 Cal.App.3d at p. 608.) The conduct must have this effect both subjectively on the plaintiff and objectively from the perspective of a reasonable person in the plaintiff's position. (*Oncale v. Sundowner Offshore Services, Inc.*, *supra*, 523 U.S. at p. 81; *Harris*, at pp. 21-22.) Whether the conduct creates a hostile or abusive work environment depends on factors such as the frequency of the conduct, its severity, including whether it is physically threatening or humiliating or merely an offensive utterance, and whether it unreasonably interferes with the employee's work performance. (*Faragher*, at pp. 787-788; *Harris*, at p. 23; *Fisher*, at

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FEHA where the statutory provisions indicate a similar legislative intent. (*Fisher* v. *San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 606.)

p. 610.) The United States Supreme Court has stated that " 'simple teasing,' [citation], offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.' " (*Faragher*, at p. 788.)

The trial court instructed the jury in accordance with this applicable law.

The demeaning comments by Celis repeated over a period of several months, Ast's apparent indifference concerning Celis's misconduct and failure to address it effectively, the unwelcome and sexually suggestive talk by Ast, and Jordan's apparent indifference concerning some of Ast's misconduct and failure to address it effectively would be offensive to a reasonable female employee and was offensive to Palmer. That misconduct was compounded by Palmer's involuntary confinement in the conference room despite her yelling and pounding on the door, Jordan's dismissive comment that the door was not locked, and Ast's later verbal assault and humiliation of Palmer in the hallway. Although the later events did not necessarily bear the hallmarks of patent gender harassment or discrimination, the events and actors were sufficiently interrelated that the trier of fact reasonably could conclude that all of the demeaning conduct toward Palmer was motivated by the same discriminatory animus toward her as a woman and that it was sufficiently severe and pervasive that it objectively and subjectively created a hostile or abusive work environment. We conclude that GTE has not shown error.

DISPOSITION

The judgment is affirmed and the order granting judgment notwithstanding the verdict and a new trial is reversed. Palmer shall recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.