

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Joy Orji v. Walmart Superstores, Inc.

Orji v. Walmart Superstores, Inc., No. 2:23-cv-1795-TLN-SCR (E.D. Cal. Sept. 29, 2025) · No. 2:23-cv-1795-TLN-SCR · Decided September 30, 2025

SUMMARY

The United States District Court for the Eastern District of California reviewed objections to a magistrate judge’s findings and recommendations concerning dismissal of Joy Orji’s claims against Walmart Superstores, Inc. The court dismissed the false-imprisonment claim without leave to amend, but denied dismissal of claims under 42 U.S.C. § 1981 and California’s Unruh Civil Rights Act. The court also denied Walmart’s motion to strike and referred the matter back to the magistrate judge for further pretrial proceedings.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 30, 2025
DOCKET	2:23-cv-1795-TLN-SCR
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's findings and recommendations on Defendant's motion to dismiss under 28 U.S.C. § 636(b)(1), after Plaintiff filed timely objections.
STANDARD OF REVIEW	The district court presumed the magistrate judge's factual findings correct and reviewed the magistrate judge's legal conclusions de novo. For the Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true, drew reasonable inferences in Plaintiff's favor, and required sufficient factual content to state a facially plausible claim.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order

TOPICS

- motions to dismiss
- civil rights
- contracts
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff plausibly alleged that Walmart discriminated against her on the basis of race in the making, performance, modification, or enforcement of a contractual relationship under 42 U.S.C. § 1981.
2. Whether Plaintiff plausibly alleged intentional racial discrimination and denial of full and equal privileges or services under California's Unruh Civil Rights Act.
3. Whether Plaintiff stated a claim for false imprisonment.
4. Whether portions of Plaintiff's requested relief should be stricken.

HOLDINGS

1. Plaintiff plausibly stated a § 1981 claim by alleging that Walmart employees subjected her to racial discrimination while she was attempting to contract with Walmart. A retail customer need not allege that she was completely prevented from making a purchase when the alleged discrimination occurred during the formation, performance, modification, or enjoyment of the contractual relationship.
2. Plaintiff plausibly stated a claim for intentional racial discrimination under the Unruh Civil Rights Act. She was not required at the pleading stage to allege or prove that she was treated differently from a specific white customer, and the fact that she ultimately received the items did not preclude the claim.
3. Plaintiff failed to state a claim for false imprisonment.
4. The motion to strike was denied because striking Plaintiff's requests for relief was improper.

KEY QUOTATIONS

"To do so would lead to results that run contrary to the intent behind § 1981 — retail stores would be allowed to use racial epithets against a customer so long as the customer was allowed to complete their purchase."
(Order at 5)

"Plaintiff's contractual relationship was modified in violation of § 1981 when she was subjected to endure racial epithets." (Order at 6)

"While disparate impact allegations may support the element of intentional discrimination, such allegations are not required." (Order at 7)

FACTUAL BACKGROUND

Plaintiff, who alleged that she is Black and of African ancestry, attempted to leave a Walmart store after a cashier bagged items without charging her for all of them. Security personnel stopped her at the exit, and a supervisor allegedly became enraged when Plaintiff asked to pay without waiting in line and directed racial and national-origin epithets at her. A store manager later apologized, paid for the items, and gave them to Plaintiff for free. Plaintiff alleged that the incident constituted racial discrimination in violation of § 1981 and the Unruh Act, as well as false imprisonment.

PROCEDURAL HISTORY

Plaintiff filed a pro se complaint asserting claims under 42 U.S.C. § 1981, California's Unruh Civil Rights Act, and for false imprisonment. Defendant moved to dismiss all claims and to strike portions of the complaint. The magistrate judge recommended granting the motion to dismiss in full without leave to amend. On de novo review of the legal conclusions, the district court adopted the recommendations in part, denied dismissal of the § 1981 and Unruh Act claims, granted dismissal of the false-imprisonment claim without leave to amend, denied the motion to strike, and referred the matter back for further pretrial proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The matter was referred back to the assigned magistrate judge for further pretrial proceedings consistent with the order.

CASES CITED

- Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979)
- Robbins v. Carey, 481 F.3d 1143, 1147 (9th Cir. 2007)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)
- Ashcroft v. Iqbal, 556 U.S. 662, 677-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002)
- Cruz v. Beto, 405 U.S. 319, 322 (1972)
- Retail Clerks International Ass'n v. Schermerhorn, 373 U.S. 746, 753 n.6 (1963)
- U.S. ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th Cir. 1986)
- Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983)
- Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc)
- Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995)
- Runyon v. McCrary, 427 U.S. 160, 168 (1976)
- Patterson v. McLean Credit Union, 491 U.S. 164, 171 (1989)
- Rivers v. Roadway Express, Inc., 511 U.S. 298, 298 (1994)
- Allen v. U.S. Bancorp, 264 F. Supp. 2d 945, 947-50 (D. Or. 2003)
- Hammond v. Kmart Corp., 733 F.3d 360, 364 (1st Cir. 2002)
- Benzinger v. NYSARC, Inc. N.Y.C. Chapter, 385 F. Supp. 3d 224, 234 (S.D.N.Y. 2019)
- Clark v. Safeway, Inc., 478 F. Supp. 3d 1080, 1090-91 (D. Or. 2020)

- Rogers v. Elliott, 135 F. Supp. 2d 1312, 1315 (N.D. Ga. 2001)
- Munson v. Del Taco, Inc., 46 Cal. 4th 661, 665 (2009)
- Stamps v. Superior Court, 136 Cal. App. 4th 1441, 1452 (2006)
- Liapes v. Facebook, Inc., 95 Cal. App. 5th 910, 922, 926 (2023)
- Thomas v. Costco Wholesale Corp., No. 2:24-CV-00986-TLN-SCR, 2024 WL 5125813, at *3-*4 (E.D. Cal. Dec. 16, 2024)
- Bridges v. Kohl's Stores, Inc., No. 23-CV-00685-DAD-JDP, 2024 WL 4647621, at *3 (E.D. Cal. Oct. 31, 2024)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JOY ORJI, 12 Plaintiff, No. 2:23-cv-1795-TLN-SCR 13 v. 14 WALMART
SUPERSTORES, INC., ORDER 15 Defendant. 16 17 Plaintiff Joy Orji (“Plaintiff”) proceeds in
this action pro se.

The matter was referred to a 18 United States Magistrate Judge pursuant to Local Rule 302(c)(21)
and 28 U.S.C. § 636(b)(1). 19 The magistrate judge filed findings and recommendations, (ECF
No. 34), and Plaintiff timely 20 filed objections (ECF No. 35). 21 The Court presumes that any
findings of fact are correct. See *Orand v. United States*, 602 22 F.2d 207, 208 (9th Cir.

1979). The magistrate judge’s conclusions of law are reviewed de novo. 23 See *Robbins v. Carey*,
481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the 24 magistrate judge are
reviewed de novo by both the district court and [the appellate] court[.]”). 25 Having carefully
reviewed the entire file, and for the reasons discussed below, the Court declines 26 to adopt the
findings and recommendations as they relate to Plaintiff’s 42 U.S.C. § 1981 27 (“§ 1981”) and
California Civil Code § 51 (“Unruh Act”) claims.

The Court finds the remainder 28 of the findings and recommendations are supported by the
record and by the proper analysis and 1 adopts the remainder of the findings and recommendations
in all other respects. 2 I. BACKGROUND1 3 Plaintiff, “who is Black with African ancestry,”
alleges Defendant Walmart Superstores, 4 Inc. (“Defendant”) discriminated against her and
deprived her of the “full and equal enjoyment” 5 of Defendant’s facilities in violation of § 1981
and the Unruh Act.

(ECF No. 1 ¶¶ 3, 46–53, 54– 6 61.) Plaintiff alleges the incident transpired when she was trying to
leave Defendant’s store on 7 January 2, 2023. (Id. ¶ 24.) According to Plaintiff, a cashier rung her
up and bagged all the items 8 in Plaintiff’s shopping cart without Plaintiff’s assistance. (Id. ¶ 16.)
Plaintiff alleges that when 9 she was attempting to leave the store, she was stopped at the exit by
Defendant’s security 10 personnel who discovered Plaintiff had not been charged for all the items
in her cart.

(Id. ¶¶ 19– 11 20.) Plaintiff alleges the security guard was loud and rude and when a supervisor came over, the 12 supervisor “became enraged” when Plaintiff asked if she could pay without standing in line again 13 given the cashier’s mistake. (Id. ¶¶ 23–25.) Plaintiff states the supervisor told her to “go back to 14 where ever [she] came from... we don’t do that here in America” and started making “other 15 racial epitaphs” leaving Plaintiff feeling “shocked” and “utterly humiliated.” (Id. ¶¶ 26, 50.)

16 Plaintiff requested to see a manager on duty to report the incident. (Id. ¶ 28.) The manager came 17 and after listening to Plaintiff, the manager apologized as did the cashier. (Id.) The store 18 manager then paid for the items with a credit card and gave those items to Plaintiff for free. (Id. 19 ¶¶ 28–29.) 20 Plaintiff filed the relevant Complaint on August 23, 2023, alleging three causes of action: 21 (1) violation of § 1981; (2) violation of the Unruh Act; and (3) false imprisonment.

(See 22 generally ECF No. 1). Defendant subsequently moved to dismiss the Complaint in its entirety. 23 (ECF No. 9.) The assigned magistrate judge recommended the Motion to Dismiss be granted in 24 full without leave to amend. (ECF No. 34.) Plaintiff filed timely objections. (ECF No. 35.) 25 /// 26 /// 27 1 For purposes of this order, the Court reiterates the following factual allegations pertinent 28 to the § 1981 and Unruh Act claims.

1 II. STANDARD OF LAW 2 A motion to dismiss for failure to state a claim upon which relief can be granted under 3 Federal Rule of Civil Procedure (“Rule”) 12(b)(6) tests the legal sufficiency of a complaint. 4 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Rule 8(a) requires that a pleading contain a 5 “short and plain statement of the claim showing that the pleader is entitled to relief.” See 6 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).

Under notice pleading in federal court, the 7 complaint must “give the defendant fair notice of what the... claim is and the grounds upon 8 which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). 9 “This simplified notice pleading standard relies on liberal discovery rules and summary judgment 10 motions to define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

12 On a motion to dismiss, the factual allegations of the complaint must be accepted as true. 13 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give the plaintiff the benefit of every 14 reasonable inference drawn from the “well-pleaded” allegations of the complaint. *Retail Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege ““specific 16 facts’ beyond those necessary to state his claim and the grounds showing entitlement to relief.” 17 *Twombly*, 550 U.S. at 570.

18 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of 19 factual allegations.” *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). 20

While Rule 8(a) does not require detailed factual allegations, “it demands more than an 21 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678.

A 22 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the 23 elements of a cause of action.” *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678 24 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory 25 statements, do not suffice.”).

Moreover, it is inappropriate to assume the plaintiff “can prove 26 facts that it has not alleged or that the defendants have violated the... laws in ways that have not 27 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 28 U.S. 519, 526 (1983). 1 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough 2 facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim 3 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the 4 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 5 678.

While the plausibility requirement is not akin to a probability requirement, it demands more 6 than “a sheer possibility that a defendant has acted unlawfully.” *Id.* This plausibility inquiry is “a 7 context-specific task that requires the reviewing court to draw on its judicial experience and 8 common sense.” *Id.* at 679. 9 In ruling on a motion to dismiss, a court may only consider the complaint, material 10 incorporated by reference, and matters which may be judicially noticed pursuant to Federal Rule 11 of Evidence 201.

See *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Khoja 12 v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). If a complaint fails to state a 13 plausible claim, “a district court should grant leave to amend even if no request to amend the 14 pleading was made, unless it determines that the pleading could not possibly be cured by the 15 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.

2000) (en banc) (quoting 16 *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). 17 III. ANALYSIS 18 Defendant moves to dismiss each of Plaintiff’s claims — (1) violation of § 1981, (2) 19 violation of the Unruh Act, and (3) false imprisonment — arguing Plaintiff fails to state plausible 20 claims for relief. (ECF No. 9-1 at 8–14.) Defendant also moves to strike portions of Plaintiff’s 21 Complaint.

(ECF No. 8.) 22 The Court agrees with the magistrate judge that Plaintiff fails to plead a claim for false 23 imprisonment (ECF No. 34 at 11–13) and striking Plaintiff’s requests for relief is improper (id. at 24 14–15).

Accordingly, for the reasons set forth in the findings and recommendations, the Court 25 GRANTS Defendant’s Motion to Dismiss Plaintiff’s claim for false imprisonment and DENIES 26

Defendant's motion to strike. However, the Court disagrees with the recommendation to grant 27 Defendant's Motion to Dismiss Plaintiff's § 1981 and the Unruh Act claims.

The Court addresses 28 these claims in turn. 1 A. Plaintiff's 42 U.S.C. § 1981 Claim 2 Section 1981 "prohibits racial discrimination in the making and enforcement of private 3 contracts." *Runyon v. McCrary*, 427 U.S. 160, 168 (1976).

Before the enactment of the Civil 4 Rights Act of 1991, the Supreme Court limited the application of § 1981 to two areas of law — 5 (1)contract formation and (2) enforcement of contract rights through the legal process. *Allen*, 6 264 F. Supp. 2d at 948 (citing *Patterson v. McLean Credit Union*, 491 U.S. 164, 171 (1989)). 7 However, in 1991, Congress amended the law and broadened the language in § 1981 to "embrace 8 all phases and incidents of the contractual relationship[.]" *Rivers v. Roadway Exp., Inc.*, 511 U.S. 9 298, 298 (1994).

10 Now, to state a claim under § 1981, a Plaintiff must allege: (1) she is a member of a racial 11 minority; (2) Defendant discriminated against her on the basis of her race; and (3) the 12 discrimination involved the making or enforcing of a contract. *Allen v. U.S. Bancorp*, 264 F. 13 Supp. 2d 945, 948 (D. Or. 2003).

The phrase "making or enforcing" contracts includes: "the 14 making, performance, modification, and termination of contracts, and the enjoyment of all 15 benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). 16 Defendant argues Plaintiff fails to state a claim under § 1981 because Plaintiff is unable to 17 show Defendant's actions were racially motivated.

(ECF No. 9-1 at 8–11.) According to 18 Defendant, "apart from the allegation itself... Plaintiff has not provided any credible evidence to 19 support her accusation." (*Id.* at 10.) However, at the motion to dismiss stage, that is all Plaintiff 20 is required to do — make sufficient allegations demonstrating she is entitled to relief. See *Iqbal*, 21 556 U.S. at 677–78.

The Court must then give Plaintiff the "benefit of every reasonable 22 inference[.]" *Retail Clerks Int'l Ass'n*, 373 U.S. at 753 n.6. Here, the Court finds Plaintiff has 23 sufficiently pleaded Defendant's actions were racially motivated. Plaintiff alleges she is "Black 24 with African ancestry" and was subjected to Defendant's employee shouting at Plaintiff to "go 25 back to where ever you are from... we don't do that here in America' and other racial 26 epitaphs[.]" (ECF No. 1 ¶ 26.)

Plaintiff further alleges the introduction of "race and national 27 origin in the conversation clearly betrayed" the motivation behind the offending statements. (*Id.* 28 ¶ 35.) The Court finds these allegations go beyond threadbare recitals of the elements of the 1 cause of action and are sufficient at this stage to infer Defendant discriminated against Plaintiff 2 due to her race.

3 Defendant also argues Plaintiff's claim fails because she was able to enter into a 4 contractual relationship with Defendant — she ultimately purchased her items or was given them 5 for free. (ECF No. 9-1 at 10.)

In the findings and recommendations, the magistrate judge 6 focused on this argument. (See generally ECF No. 34.) Relying on cases from outside the Ninth 7 Circuit, the magistrate judge concluded racial discrimination did not deprive Plaintiff of her 8 ability to contract with Defendant because the “limited offensive comments” did not preclude her 9 from completing her transaction.

(ECF No. 34 at 9–10 (citing *Hammond v. Kmart Corp.*, 733 10 F.3d 360, 364 (1st Cir. 2002); *Benzinger v. NYSARC, Inc. N.Y.C. Chapter*, 385 F. Supp. 3d 224, 11 234 (S.D.N.Y. 2019).) 12 The Court finds this reasoning unpersuasive and inaccurate for two reasons.

First, in the 13 retail context, § 1981 guarantees patrons of a retail store the ability to enter into a contract free 14 from racial discrimination. *Clark v. Safeway, Inc.*, 478 F. Supp. 3d 1080, 1090 (D. Or. 2020). 15 While this Court acknowledges other courts have found § 1981 requires a plaintiff to demonstrate 16 she was prevented from making a purchase in the retail context, the Court declines to follow this 17 line of non-binding caselaw.

See *Rogers v. Elliott*, 135 F. Supp. 2d 1312, 1315 (N.D. Ga. 2001) 18 (“Virtually all federal courts that have analyzed Section 1981 claims in the retail merchandise 19 context have required the plaintiff to show that he was actually prevented from making a 20 purchase.” (internal citations omitted)).

To do so would lead to results that run contrary to the 21 intent behind § 1981 — retail stores would be allowed to use racial epithets against a customer so 22 long as the customer was allowed to complete their purchase. This Court finds such a 23 construction of § 1981 untenable. 24 For example, as the District Court of Oregon reasoned in *Allen*, if outright denial of 25 services was a required condition, restaurants could utilize segregated seating without running 26 afoul of §1981.

Allen, 264 F. Supp. 2d at 947 (noting “African American patrons could still enjoy 27 the ‘fundamental characteristic of the contractual relationship’ because they would ‘get their 28 meal,’ albeit in a segregated setting”) In *Allen*, the plaintiff, an African American man, entered a 1 bank that designated separate lines for business related transactions and personal transactions.

Id. 2 at 947. The plaintiff entered the bank wearing sunglasses and a hat and stood in the business 3 related transaction line. *Id.* The plaintiff alleged he was viewed suspiciously, told to remove his 4 sunglasses, denied service, and forced to move over to the line designated for individual 5 customers. *Id.* During this confrontation, the plaintiff viewed a white customer conducting 6 business in the bank without being forced to remove his sunglasses.

Id. Based on these alleged 7 facts, the Allen court determined the plaintiff had sufficiently alleged race played a central role in 8 the modification and performance of the contractual relationship between the plaintiff and the 9 bank. Id. at 950.

Thus, the court denied the request to dismiss the §1981 claim. 10 Applying this logic to the instant action, the Court finds Plaintiff has similarly sufficiently 11 alleged she was discriminated against in the modification and performance of the contractual 12 relationship. Like the plaintiff in Allen, Plaintiff's contractual relationship was modified in 13 violation of § 1981 when she was subjected to endure racial epithets.

According to Plaintiff, it 14 was when she was discussing how to pay for the items — during the contract formation — that 15 she was subjected to racial epithets. (ECF No. 1 ¶¶ 21–26.); cf. Clark, 478 F. Supp. 3d at 1090– 16 91 (noting Plaintiff's § 1981 claim failed because “the discrimination did not occur while Plaintiff 17 was attempting to consummate the contract”).

In other words, Plaintiff alleges she was subjected 18 to discrimination while attempting to contract with Defendant. 19 Notwithstanding the Court's disagreement with the narrow interpretation of §1981, the 20 Court also finds Plaintiff never completed the contract. It was the store manager who ultimately 21 gave Plaintiff the contested items for free. (ECF No. 1 ¶¶ 28–29.)

Plaintiff never bought the 22 items herself. Therefore, on multiple grounds, the fact that Plaintiff ultimately received the 23 unpaid items does not nullify Plaintiff's § 1981 claim. (Id. ¶¶ 28–29); see, e.g., Allen, 264 F. 24 Supp. 2d at 950 (“Defendant's contractual obligations to plaintiff are not satisfied merely because 25 plaintiff was ultimately able to deposit his check.”) 26 Absent further argument from Defendant, the Court DENIES Defendant's motion to 27 dismiss Plaintiff's § 1981 claim.

28 /// 1 B. Plaintiff's Unruh Civil Rights Act Claim 2 The Unruh Civil Rights Act (“Unruh Act”) prohibits business establishments, such as 3 Defendant, from discriminating against any person based on protected characteristics such as 4 race. Cal. Civ. Code § 51(a), (b); see also Stamps v. Superior Ct., 136 Cal. App. 4th 1441, 1452 5 (2006) (citation omitted).

Plaintiff may establish an Unruh Act claim either by proving an 6 Americans with Disabilities Act (“ADA”) violation or intentional discrimination. See Munson v. 7 Del Taco, Inc., 46 Cal. 4th 661, 665 (2009). Here, Plaintiff appears to base her claim on 8 intentional discrimination — not the ADA. (ECF No. 1; ECF No. 10.) 9 To state a claim for intentional discrimination under the Unruh Act, Plaintiff must 10 sufficiently allege Defendant intentionally discriminated against and/or denied Plaintiff full and 11 equal privileges or services based on Plaintiff's race.

See Liapes v. Facebook, Inc., 95 Cal. App. 12 5th 910, 922 (2023), review denied (Jan. 10, 2024); Jud. Council of Cal. Civil Jury Instructions, 13 CACI No. 3060 (Unruh Civil Rights Act – Essential Factual Elements) (2024); see also Bridges 14 v.Kohl's Stores, Inc., No. 23-CV-00685-

DAD-JDP, 2024 WL 4647621, at *3 (E.D. Cal. Oct. 31, 15 2024). “Intentional discrimination requires willful, affirmative misconduct.” Liapes, 95 Cal. 16 App.

5th at 922 (internal quotation marks and citation omitted). “[W]hile a disparate impact 17 analysis does not apply to Unruh Civil Rights Act claims, nothing precludes the admission of 18 relevant evidence of disparate impact in Unruh Act cases because it may be probative of 19 intentional discrimination.” Id. at 926 (internal quotations and citation omitted).

20 Defendant argues Plaintiff’s Unruh Act claim must be dismissed because Plaintiff cannot 21 prove her treatment was unequal compared to that of a white customer. (ECF No. 9-1 at 12.) 22 Further, Defendant argues Plaintiff’s claim fails for the same reasons her § 1981 claim fails. (Id.) 23 In the findings and recommendations, the magistrate judge concluded it was unclear whether a 24 white customer in Plaintiff’s situation would have been treated differently.

(ECF No. 34 at 11.) 25 Without firmly answering this question, the magistrate judge concluded that as with Plaintiff’s 26 §1981 claim, Plaintiff could not show that the discriminatory comments impacted her ability to 27 purchase the disputed items because she was gifted them for free. (Id.) Similar to the above, the 28 Court finds Defendant’s argument that Plaintiff’s ability to complete her transaction precludes her 1 from claiming a violation of the Unruh Act unavailing.

See Thomas v. Costco Wholesale Corp., 2 No. 2:24-CV-00986-TLN-SCR, 2024 WL 5125813, at *3 (E.D. Cal. Dec. 16, 2024) (“Costco 3 fails to persuade the Court that Plaintiffs’ ability to proceed with their transaction precludes their 4 Unruh Act claim.”). 5 As to Defendant’s argument about whether Plaintiff can “prove” her treatment was 6 unequal compared to a white customer, the Court notes at the outset that there is no such 7 requirement for Unruh claims.

See Liapes, 95 Cal. App. 5th at 926. While disparate impact 8 allegations may support the element of intentional discrimination, such allegations are not 9 required. Id. 10 Here, the Court finds at this stage there are enough allegations to infer intentional 11 discrimination. Plaintiff alleges when the security guard started yelling, the “multitude of 12 shoppers in the store started gathering and looking at the plaintiff as if she stole something from 13 the store[.]” (ECF No. 1 ¶ 31.)

Additionally, Plaintiff alleges the “introduction of race and 14 national origin into the conversation clearly betrayed its motivation for treating the Plaintiff 15 differently[.]” (Id. ¶ 35.) Taken together, the Court finds this is enough to infer that Plaintiff, 16 someone who is “Black with African ancestry” was intentionally discriminated against. See 17 Thomas, WL 5125813, at *4 (finding allegation that Costco only asked people of color to show 18 their cards sufficient to infer discriminatory intent); Bridges v. Kohl’s Stores, Inc., No. 23-CV- 19 00685-DAD-JDP, 2024 WL 4647621, at *3 (E.D.

Cal. Oct. 31, 2024) (finding allegations that 20 “other non-Black customers who were inside the store during the incident were not treated in the 21 same way” was sufficient to establish Unruh

Act claim). Without more, Defendant's motion to 22 dismiss Plaintiff's Unruh Act claim is DENIED. 23 IV. CONCLUSION 24 Accordingly, IT IS HEREBY ORDERED that: 25 1.

The findings and recommendations filed January 14, 2025, (ECF No. 34), are adopted 26 in part. 27 2. Defendant's Motion to Dismiss, (ECF No. 9), is GRANTED in part and DENIED in 28 part as follows: 1 a. DENIED as to Plaintiff's first cause of action for denial of "full and equal" 2 enjoyment and use under 42 U.S.C. § 1981; 3 b. DENIED as to Plaintiff's second cause of action for violation of California's 4 Unruh Civil Rights Act; and 5 c. GRANTED as to Plaintiff's third cause of action for false imprisonment 6 without leave to amend.

7 3. Defendant's Motion to Strike, (ECF No. 8), is DENIED 8 4. The matter is referred back to the assigned magistrate judge for further pretrial 9 proceedings consistent with this order. 10 11 DATE: September 29, 2025 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28