

Carranza v. City of L.A.

Court of Appeal of California, Second Appellate District, Division Seven

May 23, 2025, Opinion Filed

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Reporter

2025 Cal. App. LEXIS 330 *; 2025 LX 36256

LILLIAN CARRANZA, Plaintiff and Respondent, v. CITY OF LOS ANGELES, Defendant and Appellant.

Notice: CERTIFIED FOR PARTIAL PUBLICATION*

Prior History: [*1] APPEAL from a judgment and an order after judgment of the Superior Court of Los Angeles County, No. 19STCV02594, Bruce G. Iwasaki, Judge.

Disposition: Affirmed.

Counsel: Lozano Smith, Mark K. Kitabayashi, Mark W. Waterman, and Fabiola M. Rivera for Defendant and Appellant.

Law Offices of Gregory W. Smith, Gregory W. Smith, Diana Wang Wells; Bendon & Serlin, Douglas G. Benedon and Judith E. Posner for Plaintiff and Respondent.

Judges: Opinion by Stone, J., with Martinez, P. J., and Feuer, J., concurring.

Opinion by: Stone, J.

Opinion

STONE, J.—Lilian Carranza, a captain in the Los Angeles Police Department (LAPD or Department), learned that a photo of a topless woman falsely said to be her was circulating electronically among LAPD personnel. One of her subordinates told her he had seen on-duty officers looking at the photo on a cellphone and making lewd comments about Carranza, and he told her everywhere he went officers were talking about the photo. Carranza asked the Department to notify its employees that the photo was not of her,

and to order they stop sharing it. The Department declined to do so. Its own investigation later confirmed that the photo, intended to depict Carranza, was distributed throughout the Department.

Carranza sued [*2] the City of Los Angeles, asserting a single cause of action for hostile work environment due to sexual harassment under the Fair Employment and Housing Act (FEHA). A jury found in Carranza's favor, determining she experienced severe or pervasive harassment and that the LAPD failed to take immediate and appropriate corrective action despite knowing of the conduct. It awarded her \$4 million in noneconomic damages.

In the published part of the opinion we address the City's contention that Carranza did not experience harassment directly and the conduct was not so severe or pervasive as to alter the conditions of her job. We conclude substantial evidence supported the jury's determination that Carranza endured severe or pervasive harassment that altered the conditions of her workplace, based on her secondhand knowledge that the photo was widely circulating around the Department.

In the unpublished portion of the opinion we address the City's contentions that the trial court abused its discretion (1) in denying the City's motion for a new trial based on alleged juror misconduct during deliberations, and (2) in setting the hourly rates and lodestar multiplier used to calculate Carranza's attorney [*3] fee award. We find no abuse of discretion in either regard, and affirm both the judgment and the attorney fee award.

FACTUAL AND PROCEDURAL BACKGROUND

A. Carranza Learns of a Nude Look-alike Photo and Submits a Complaint to the City

In November 2018, Carranza held the rank of "Captain III"—placing her among the top 115 sworn LAPD officers and the top one percent of the Department's 13,000 employees. She led the Commercial Crimes Division, overseeing about 100 employees stationed

* Under California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication except for Discussion sections B and C.

across the city of Los Angeles.

In mid-November 2018 while on vacation in Hawaii, Carranza received a call from her attorney, Gregory Smith. Smith told her a nude photo resembling her "was circulating" within the LAPD and sent her a copy. The photo depicted a closeup of the naked upper torso of a woman pursing her lips with her breasts prominently displayed. Though the woman was not Carranza, she had similar facial features. When Carranza received the call from Smith, she was "very hurt [and] confused" and "[f]elt betrayed, devalued, [and] objectified."

Carranza immediately lodged a complaint with MyVoiceLA, an independent City agency that fields sexual harassment complaints from employees, including LAPD officers. [*4] She cut short her vacation and flew home.

B. The LAPD Opens Its Investigation and Interviews Carranza

A little over two weeks after Carranza submitted her complaint to MyVoiceLA, the LAPD's internal affairs department assigned investigator Tracey Gray to the case. Once Gray received a copy of the photo from Smith, she attempted to obtain its metadata,¹ but the LAPD's information technology division advised her that identifying metadata required access to the device from which the photo originated.

Gray interviewed Carranza in mid-December with Smith present. When Gray asked where Carranza obtained the photo, Smith said it had come from one of his clients, whose identity he would not reveal due to attorney-client privilege. (Smith had an attorney-client relationship with all members of the association for LAPD commanding officers because he provided legal representation to that organization.)

Carranza confirmed the woman in the photo was not her but said the woman had similar features — especially the eyes. Carranza did not identify any LAPD employees who possessed the photo or describe any interactions she had with LAPD employees regarding the image.

Carranza told Gray she believed the photo [*5] was being shared within the LAPD and wanted it to stop. She asked that the LAPD find the source of the photo

and send a message that distributing it was misconduct. Specifically, Carranza requested that LAPD Chief Michael Moore issue a notice that sharing the photo was inappropriate.

Gray responded that she would try to facilitate Carranza's request. She forwarded the request up the chain of command, including to Deputy Chief Debra McCarthy, who led internal affairs and reported directly to Moore. Gray testified that her investigation primarily focused on discovering who originally circulated the photo, not identifying those who later possessed it.

C. A Detective Reports Officers Are Sharing the Photo, and Carranza Alerts the LAPD

On December 22, 2018, after Carranza had her initial interview with Gray, Detective Armando Munoz called Carranza. Munoz was assigned to the Commercial Crimes Division under Carranza's command. His assignment took him to different LAPD stations around Los Angeles.

Carranza testified that Munoz informed her there was "a naked picture of [her] being distributed throughout the city." Munoz testified he told her that in late November he had walked past three uniformed [*6] officers — including a supervisor — standing in a hallway at Mission Station in Mission Hills. He heard one of them say Carranza's name, which caught his attention. The officers were looking at a nude photo that Munoz believed depicted Carranza. He overheard them making comments about her body, "basically saying, you know, 'Look at her tits. Oh, look it. I knew she was like this.'"

Carranza told Munoz the woman in the photo was not her, and asked him where the photo was being circulated. Munoz replied, "I have heard people talking about it, you know, everywhere I go." Munoz testified the photo "was a hot subject at the time."

Munoz could hear from Carranza's voice that she was upset. Carranza testified that at this time she believed there were "dozens, if not hundreds" of officers passing the photo around. She felt sad and "desperate" because she believed LAPD was taking no action to stop the continuing distribution of the photo.

The same day Munoz called her, Carranza emailed McCarthy and wrote that the photo was "reportedly being shared by on duty personnel making derogatory comments." She added: "I am reaching out to you as the top official in charge of Professional Standards Bureau. [*7] During the interview the investigator

¹ Metadata is information such as the date, time, and location of a photo, and whether it was sent from one phone to another.

appeared confused as to how to proceed with the investigation." Carranza also copied Chief of Staff Robert Green.

The same day, McCarthy responded that there was an "an ongoing personnel complaint" and assured Carranza the matter was "being taken quite seriously." McCarthy followed up with another email, copying Munoz, Green, and another internal affairs employee, asking Carranza to identify the officers involved and explaining it would help to interview them. The next day, on December 23, Carranza replied: "I would request that corrective action be taken immediately informing members of the Department that the picture I'm referring to is not me and that distributing such photos is misconduct and could be a criminal offense. Simply investigating does not stop the action of 100s, if not 1000s, of employees. I would also like to review the email before it is sent." McCarthy responded the next day, again stating the investigation was being taken seriously, and wishing Carranza a Merry Christmas. Two months later, in February 2019, McCarthy forwarded Carranza's emails to Gray.

On December 24, Carranza was at home feeling "extremely sad" and "very upset [*8] about the lack of action by the Department or seemingly to take my personal complaint seriously." She experienced shortness of breath, palpitations, pain in her left arm, and high blood pressure. She went to the Simi Valley emergency room and was hospitalized overnight. She was released on Christmas Day.

Around the same time, McCarthy informed Moore that Carranza had requested he issue a Department-wide communication clarifying that the woman in the photo was not her and warning that distributing the image constituted misconduct. Moore testified he believed the photo was intended to "harass, intimidate, . . . [and] slander" Carranza, and "to cause ridicule or embarrassment or harassment of her," and that sharing the photo amounted to misconduct. Moore and McCarthy discussed the pros and cons of sending the communication to LAPD employees that Carranza was requesting. The benefit, Moore said, would be to "appease" Carranza. But he had greater concerns that it would cause "further embarrassment" or questions "by an organization of some 13,000 people that would say 'what photograph are we talking about and how can we find it.'" He also worried sending a communication could disrupt the [*9] pending investigation. In the end, Moore chose not to issue the message. No one ever informed Carranza of Moore's decision or his reasoning.

D. Additional Incidents

In mid-November 2018 a group of uniformed officers from various divisions were working an overtime shift at the Staples Center. One officer received the photo on his phone and shared it with the others. The officers believed the woman in the photo was Carranza, and one took a picture of it with his phone. Gray learned of the Staples Center incident when one of the officers who was present at the incident gave the photo to a third party, who alerted the LAPD. Gray later identified some of the officers involved and interviewed them but could not determine the source of the photo in part because one officer refused to turn over his personal phone.

Between late 2018 and February 2019 Lieutenant Amira Eppolito, the watch commander at the Topanga Community Station, saw a group of officers gathered around a phone. From several feet away, Eppolito "s[aw] a glimpse" of the photo, which she believed was Carranza, for "a few seconds." The officers had a joking demeanor. Eppolito testified she did not know the officers involved and could [*10] not remember if anyone said Carranza's name.

Eppolito also testified "there was a lot of discussion" about Carranza and the photo at the Department, and the photo continued to be a subject of discussion up to the time of trial. As watch commander, Eppolito oversaw around 75 officers and sergeants assigned to a patrol shift. Shortly after she saw officers looking at the photo, Eppolito felt "compelled to address personnel" because she "was upset and felt like [she] needed to do something about it." Eppolito asked about 30 officers and two or three sergeants how many of them had seen "compromising" photos of "Department women." More than half raised their hands. Eppolito told the officers the behavior was an inappropriate way to treat "your sister in blue."

Eppolito reported the incident she had witnessed to Moore's adjutant, whom Eppolito described as Moore's "No. 1 staff person" and his "confidant," and she urged that Moore should conduct a video roll call about the photo. Moore's adjutant told her there was a meeting to discuss the photo, but Eppolito never heard of any follow-up action.

At trial Carranza was not permitted to introduce evidence that she learned of the incidents at the [*11] Staples Center or the Topanga Community Station. The court granted the City's motion in limine and precluded her from "relating . . . conversation[s] in which she was

told that a picture of her had been circulated" for "lack of foundation, lack of relevance, likelihood of confusing the issues and misleading the jury, and hearsay." Carranza later submitted a trial brief arguing such statements would be admissible as non-hearsay (for the effect on the listener) and were relevant to prove Carranza's subjective reaction was reasonable, but the court again ruled the evidence was inadmissible. Thus, with respect to Carranza's knowledge of specific incidents, the jury received evidence only of Carranza's initial phone call from Smith and her subsequent conversation with Munoz following the incident at the Mission Station.

Carranza testified no one ever directly joked about the photo to her, directly harassed her, or made derogatory comments to her.

E. Carranza Sues the City

On January 25, 2019, Carranza filed suit against the City, asserting one cause of action for sexual harassment based on a hostile work environment.

F. The LAPD's Investigation Results

By August 2019 the LAPD completed its internal [*12] investigation. A "Commanding Officer's Adjudication" sustained Carranza's allegation that "an unknown Department employee, while on or off-duty, circulated a photograph of a nude woman throughout the Department and indicated it was Carranza in the photograph." The investigation identified 10 to 13 people who saw the photo and four separate incidents of people viewing or hearing about the photo in November 2018. Besides the incidents at the Staples Center and the Mission Station, the report indicated an officer working at the Metropolitan Transportation Authority heard about the nude photograph being circulated, and another officer heard a rumor about the Carranza photograph being circulated and then received the photograph on his personal cellphone. This same officer later heard employees discussing the photograph at Central Division. The adjudication report did not include the incident at the Topanga Community Station or discuss any incidents after November 2018.

The adjudication found that "[t]he fact that the photograph . . . had been received and discussed as being Carranza in least at four different locations at different times supports beyond a preponderance that the photograph [*13] was circulated throughout the Department and that the photograph was portrayed to various officers as an image of Carranza." It concluded that sharing the image violated both the City's and the LAPD's sexual harassment policies, which prohibit

sexual harassment, discriminatory conduct, and the dissemination of gender-based derogatory images, and require all LAPD personnel to report harassment they witness. The adjudication deemed the conduct "serious misconduct." However, the LAPD did not discipline any employees, stating it was unable to identify who was responsible for the distribution of the photo.

In September or October 2019 Carranza received a letter from the LAPD, on behalf of Moore, stating her allegations had been sustained. The letter said appropriate penalties would be imposed but did not disclose further details, citing confidentiality reasons. Carranza later learned no officers were disciplined.

G. The Trial

The jury trial began in September 2022 and lasted seven days. Gray, McCarthy, Moore, Eppolito, and Munoz testified as witnesses. In addition, there were two medical expert witnesses and an expert witness on communication within law enforcement agencies.

Carranza introduced [*14] evidence that after the incidents involving the photo she was diagnosed with major depressive disorder, generalized anxiety disorder, psychological factors affecting physical health, and a panic disorder. She experienced suicidal ideation, panic attacks, and physical symptoms like hypertension. Her doctor increased her blood pressure medication and prescribed psychiatric medication. Carranza presented expert testimony that she would continue to need regular treatment for at least six more years.

Since learning about the photo, Carranza had felt uncomfortable at work and had difficulty concentrating. She described interactions where officers stopped talking and looked at their phones when she approached, prompting her to wonder if they were looking at the photo. When she got into elevators, male officers looked her up and down and grinned. She felt ashamed, avoided public settings, and was no longer comfortable speaking to the public and the press — tasks that were part of her job. She believed her personal and professional reputations had been harmed.

The jury returned a special verdict for Carranza the day after deliberations began. Specifically, it found (1) Carranza was harassed because [*15] she is a woman; (2) the harassment was severe or pervasive; (3) a reasonable woman in her circumstances would have considered the environment to be hostile, intimidating, oppressive, or abusive; (4) Carranza considered the

environment to be so; (5) the City knew or should have known of the harassing conduct; (6) the City failed to take immediate corrective action; (7) Carranza was harmed; and (8) the harassing conduct was a substantial factor in causing harm. Ten jurors found the harassment severe or pervasive; two did not.

The jury awarded Carranza \$1.5 million in past noneconomic damages and \$2.5 million in future noneconomic damages, for a total of \$4 million. The trial court entered judgment against the City, and the City timely appealed.

H. *The City's Pertinent Post-trial Motions*

The City moved for a new trial, arguing in relevant part that (1) there was insufficient evidence of severe or pervasive harassment because Carranza had not "endured sexually harassing interpersonal . . . interactions," and (2) jury misconduct had occurred during the deliberations. The trial court denied the motion.

The court awarded Carranza \$610,050 in attorney fees and \$31,450 in expert witness fees, and [*16] the City timely appealed the fee award.

We consolidated the two appeals.

DISCUSSION

A. *Substantial Evidence Supports the Jury's Verdict That Carranza Was Subjected to a Hostile Work Environment*

1. *Standard of review*

When a party contends insufficient evidence supports a jury verdict, "[o]ur review 'begins and ends with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination.'" (*Caldera v. Department of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 37 (*Caldera*); see *Duncan v. Kihagi* (2021) 68 Cal.App.5th 519, 541.) "We must 'view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.'" (*Duncan*, at p. 541.) "Reversal for insufficient evidence 'is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support' the jury verdict.'" (*Casey N. v. County of Orange* (2022) 86 Cal.App.5th 1158, 1170-1171; accord, *Quintero v. Weinkauff* (2022) 77 Cal.App.5th 1, 5.)

Still, "substantial evidence" is not synonymous with "any" evidence. (*People v. Bassett* (1968) 69 Cal.2d 122, 138-139; see *Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 816.) To support the judgment, the evidence must be reasonable in nature, credible, and of solid value. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1006.) Moreover, "a judgment may be supported by inference, but the inference must be a reasonable conclusion from the evidence and cannot be based upon suspicion, imagination, [*17] speculation, surmise, conjecture or guesswork.'" (*Joaquin v. City of Los Angeles* (2012) 202 Cal.App.4th 1207, 1219.)

We review legal issues, including those involving statutory interpretation and the application of the law to undisputed facts, de novo. (*Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792, 804; *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912.)

2. *Applicable law for workplace sexual harassment claims*

FEHA prohibits sexual harassment in the workplace. (Gov. Code, § 12940, subd. (j)(1)² [it is unlawful "[f]or an employer . . . because of . . . sex . . . to harass an employee"]; see *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460, fn. 5 ["sexual harassment is a form of sexual discrimination"].) "[T]he prohibition against sexual harassment includes protection from a broad range of conduct, ranging from expressly or impliedly conditioning employment benefits on submission to or tolerance of unwelcome sexual advances, to the creation of a work environment that is hostile or abusive on the basis of sex." (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 277 (*Lyle*).) For a claim based on a hostile or abusive work environment, relevant here, the plaintiff "need not show evidence of unwanted sexual advances." (*Id.* at pp. 277-278.) Besides unwanted sexual advances, "prohibited harassment includes 'verbal, physical, and visual harassment. . . . [V]erbal harassment may include epithets, derogatory comments, or slurs on the basis of sex; . . . visual harassment may include derogatory posters, cartoons, or [*18] drawings on the basis of sex." (*Id.* at pp. 280-281; accord, *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1236.)

Sexual harassment in a workplace is imputable to an employer in two situations. "When the harasser is a

² Further undesignated statutory references are to the Government Code.

supervisor, the employer is strictly liable for the supervisor's actions." (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 635 (*Bailey*).) When the harasser is not the plaintiff's supervisor, an employer is liable "if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action." (*Ibid.*; see *Wawrzenski v. United Airlines, Inc.* (2024) 106 Cal.App.5th 663, 694 (*Wawrzenski*); § 12940, subd. (j)(1).)

To prevail on a hostile work environment claim under FEHA, a plaintiff must show "she was subjected to sexual advances, conduct, or comments that were (1) unwelcome [citation]; (2) because of sex [citation]; and (3) sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment." (*Lyle, supra*, 38 Cal.4th at p. 279; accord, *Wawrzenski, supra*, 106 Cal.App.5th at p. 692.) FEHA "harassment claims focus on 'situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee.'" (*Bailey, supra*, 16 Cal.5th at p. 627; see *ibid.* ["harassment refers to bias that is expressed or communicated through interpersonal relations in the workplace"].)

"The standard for [*19] workplace harassment claims strikes a 'middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury.'" (*Bailey, supra*, 16 Cal.5th at p. 628.) "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment — an environment that a reasonable person would find hostile or abusive — is beyond [FEHA's] purview." (*Ibid.*) "But [FEHA] comes into play before the harassing conduct leads to a nervous breakdown" and proscribes discriminatory conduct that "detract[s] from employees' job performance" or "keep[s] them from advancing in their careers." (*Ibid.*)

Whether harassment is sufficiently severe or pervasive that it creates a hostile work environment is not a "mathematically precise test," but rather a fact-specific inquiry that turns on the totality of the circumstances. (*Bailey, supra*, 16 Cal.5th at p. 628; accord, § 12923, subd. (c) ["existence of a hostile work environment depends on the totality of the circumstances"]; see *Caldera, supra*, 25 Cal.App.5th at p. 38 [the determination of whether harassment is severe or pervasive "is ordinarily one of fact"].) Relevant factors

include ""the frequency of the discriminatory conduct; its severity; whether it is physically threatening or [*20] humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."" (*Bailey*, at p. 628.) ""The required level of severity or seriousness varies inversely with the pervasiveness or frequency of the conduct." [Citation.] ""[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious)"" are not sufficient to create an actionable claim of harassment." (*Ibid.*) "The objective severity [or pervasiveness] of harassment should be judged from the perspective of a reasonable person in the plaintiff's position" (*id.* at p. 629), and requires consideration of the social context in which the behavior occurs and is experienced by its target (*Lyle, supra*, 38 Cal.4th at p. 283).

The City contends the "severe or pervasive" threshold is a "high standard" requiring "extreme" conduct and a "hellish" workplace. As we recently held, the "severe or pervasive" requirement was formerly "quite a high bar for plaintiffs to clear." (*Wawrzenski, supra*, 106 Cal.App.5th at p. 693.) In 2019, however, the Legislature added section 12923, which reaffirms a ""single incident of harassing conduct"" may constitute harassment ""if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or [*21] offensive work environment."" (*Wawrzenski*, at p. 693.) It also "clarified that a hostile work environment exists "when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being."" (*Ibid.*; accord, *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 878 (*Beltran*).) "The plaintiff is not required to show a decline in productivity, only "that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.'"" (*Wawrzenski*, at p. 693.) The City's proposed blanket requirement of a "high standard" of "extreme conduct" in all cases is not the law.³

³ The City relies on several older cases discussing hostile work environment standards, including *Brennan v. Townsend & O'Leary Enterprises, Inc.* (2011) 199 Cal.App.4th 1336 and *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, disapproved of on other grounds by *Lawson v. PPG*

3. *Carranza presented substantial evidence that the harassment was severe or pervasive*

On appeal, the City does not challenge the jury's findings that the challenged conduct was unwelcome, that it occurred because of Carranza's sex, and that the City failed to take immediate corrective action after learning that on-duty LAPD officers were viewing, electronically sharing, and joking [*22] with colleagues about the degrading photo of Carranza. Instead, the City contends only that there was insubstantial evidence that the harassment was sufficiently severe or pervasive to alter the conditions of Carranza's employment and create an abusive work environment. It argues she presented evidence about only one incident involving the photo at the Mission Station, which she did not witness or experience herself but merely learned about after the fact in a telephone call with Munoz.⁴

Substantial evidence supports the jury's finding that the harassment was sufficiently severe or pervasive to create a hostile work environment, i.e., that the harassing conduct sufficiently offended, humiliated, or distressed Carranza and that a reasonable person subjected to the same conduct would determine, as Carranza did, that the harassment so altered working conditions as to make it more difficult to do her job. (*Wawrzewski*, *supra*, 106 Cal.App.5th at p. 693; *Beltran*, *supra*, 97 Cal.App.5th at p. 878; § 12923, subd. (a).) The photo in question was an embarrassing and degrading closeup of the naked breasts of a woman (intended to depict Carranza) in a sexual pose. As the LAPD police chief acknowledged, the photo was meant to "harass, intimidate, . . . [and] slander" Carranza and "to cause ridicule [*23] or embarrassment or harassment of her."

Architectural Finishes, Inc. (2022) 12 Cal.5th 703. These cases are not useful because they do not take into account section 12923's definition of a hostile work environment. (See *Wawrzewski*, *supra*, 106 Cal.App.5th at p. 699 ["*Brennan* . . . is no longer good law"]; *Beltran*, *supra*, 97 Cal.App.5th at p. 880 [*Mokler* is "no longer good law when it comes to determining what conduct creates a hostile work environment in the context of a motion for summary judgment"].)

⁴We need not address the extent to which other incidents, such as the ones at the Staples Center and the Topanga Community Station, supported Carranza's claim. As discussed, at trial she was not permitted to introduce evidence regarding how and when she learned of them. The City argues these incidents "could not have impacted [Carranza's] perception of her work environment as she was not aware of them." Substantial evidence supported the jury's verdict without considering those additional specific incidents.

Contrary to the City's contention, Carranza's claim was not based on a single incident in which a few fellow officers outside her unit viewed the photo, but instead was based on her reasonable understanding that the circulation continued for some length of time and involved "dozens if not hundreds" of officers, both identified and unknown, throughout the LAPD.

Carranza first learned about the photo when her attorney relayed that a nude photo resembling her "was circulating" around the LAPD. Carranza understood not that the photo had been seen once or twice, but that it was being widely shared. This was confirmed over a month later by Munoz, who told Carranza that officers were talking about the photo everywhere he went. Indeed, LAPD's own investigation confirmed the widespread circulation of the photo within the Department; the Department sustained Carranza's allegation that "an unknown Department employee . . . circulated a photograph of a nude woman throughout the Department and that the photograph was portrayed to various officers as an image of Carranza." Carranza learned that officers in her organization were gathering together to ogle at [*24] the topless photo, believing it was her, and joking while looking at it, making comments such as "'Look at her tits. Oh, look it. I knew she was like this.'"

Compounding Carranza's distress was the fact that, despite her repeated requests, the Department did not order LAPD officers to stop sharing the photo, advise them that it was not Carranza in the photo, or discipline anyone involved in the distribution of the photo. That the LAPD allowed the distribution to continue unchecked not only speaks to the sufficiency of the LAPD's response to the harassment, but also to the pervasiveness and severity of the harassment itself and the impact on Carranza's work environment. (See *Schiano v. Quality Payroll Systems, Inc.* (2d Cir. 2006) 445 F.3d 597, 607, fn. 7 ["It seems reasonable to view unpunished misconduct as being more harmful or harassing than punished misconduct."].)⁵ A reasonable jury could determine these circumstances amounted to severe or pervasive harassment.

Moreover, notwithstanding the City's suggestions to the contrary, Carranza presented substantial evidence that

⁵"In interpreting [FEHA's] provisions, California courts often look for guidance in decisions construing . . . title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.," because of the similarities between the two schemes. (*Bailey*, *supra*, 16 Cal.5th at p. 626.)

her work conditions were altered as a result of the harassment, making it more difficult for her to do her job. She testified that after first learning of the photograph's circulation from Smith, [*25] she "felt dejected, very sad" and "didn't want to be in the presence of people at work." Carranza stated that in December 2018, she began having panic attacks for the first time and started therapy "[b]ecause [she] felt like [she] was in this dark hole and without any support." Carranza also canceled a vacation planned for mid-December because her blood pressure had "gone to levels that, according to [her] doctor, it was not safe for [her] to travel." She was "spiraling" and had to be hospitalized overnight on Christmas Eve. When she returned to work, male officers looked her up and down and grinned at her in elevators, and anytime she approached officers looking at their phones, she feared they were viewing the photo. She had trouble focusing and concentrating at work and felt ashamed, embarrassed, and uncomfortable in public settings. This interfered with her ability to perform her public-facing duties at work, which included press and community engagement.⁶ Ample evidence was thus presented that the harassment affected her work performance. (See *Bailey*, *supra*, 16 Cal.5th at p. 448 [evidence that plaintiff was treated for severe anxiety and depression as a result of workplace stress, cried at psychiatrist's office [*26] on several occasions, and was visibly upset 10 months after one-time harassing incident could support a finding that harassment interfered with plaintiff's work performance].)

Abbt v. City of Houston (5th Cir. 2022) 28 F.4th 601 (*Abbt*) is instructive. *Abbt*, a female firefighter, learned that years earlier two of her fellow firefighters had stolen and repeatedly watched an intimate video showing her in the nude. The Fifth Circuit focused on the fact that *Abbt* "did not know, and still does not know, how far and wide the video had spread throughout the Fire Department. What she did know was that . . . [s]he

would be returning to a work environment with no guarantees that copies of her intimate video were not still being shared amongst her coworkers. These possibilities stem directly from the harassment at issue, and subjectively affected *Abbt*'s employment." (*Id.* at pp. 608-609.) The court reversed the district court's grant of summary judgment in favor of the city, holding that "a reasonable person could consider the repeated viewing of [*Abbt*'s] intimate, nude video by her coworkers to be sufficiently severe to constitute sexual harassment," and that "the conduct was subjectively offensive to *Abbt* and affected a term or condition of her employment." (*Ibid.*; see [*27] also *Taylor v. Nabors Drilling USA, LP*, *supra*, 222 Cal.App.4th at pp. 1234, 1246 [upholding verdict finding plaintiff was subjected to severe or pervasive sexual harassment in part based on supervisor's hanging a photo of plaintiff inside the employees' restroom with a target drawn around plaintiff's mouth along with a notation referencing oral sex].)

Similarly here, considering the totality of the circumstances, the jury reasonably could determine that Carranza's knowledge of the widespread circulation of a sexualized nude image purporting to depict her, along with crude, objectifying commentary, "disrupt[ed] [*Carranza*'s] emotional tranquility in the workplace, affect[ed] [her] ability to perform the job as usual, or otherwise interfere[d] with and undermine[d] [her] personal sense of well-being." (§ 12923, subd. (a); see *Wawrzewski*, *supra*, 106 Cal.App.5th at p. 693.)

Contrary to the City's contention, FEHA does not require that Carranza have (1) had any direct interaction in which a coworker was disrespectful to her regarding the photo, (2) experienced direct "sexual hostility in her day-to-day work environment," or (3) been "assaulted, threatened, propositioned, subjected to physical contact, or subjected to explicit language in her presence." The City seizes on language that "'harassment refers to bias that is expressed [*28] or communicated *through interpersonal relations* in the workplace'" (*Bailey*, *supra*, 16 Cal.5th at p. 627, italics added; accord, *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686), and suggests Carranza had no such harassing interpersonal relations. However, the photo and related comments were shared *among* LAPD employees, and others then informed Carranza about the circulation and the humiliating jokes at her expense. That is a chain of interpersonal interactions that satisfies FEHA.

The City's position that a plaintiff must be harassed to her face is inconsistent with the long-standing principle that "a person can perceive, and be affected by,

⁶The jury also reasonably could have determined the inherently disturbing effect of the workplace circulation of the look-alike topless photo was heightened given Carranza's position as a high-ranking female captain in the hierarchical organization of the LAPD, with such a high-visibility role. "The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." (*Lyle*, *supra*, 38 Cal.4th at p. 283; see *id.* at p. 292 [noting "the importance of social context in which particular behavior occurs and is experienced"].)

harassing conduct' in the relevant environment 'by knowledge of that harassment' as well as by "personal observation." (Thomas v. Regents of University of California (2023) 97 Cal.App.5th 587, 616, fn. 10; accord, Beyda v. City of Los Angeles (1998) 65 Cal.App.4th 511, 521; see Abbt, supra, 28 F.4th at p. 607 [plaintiff experienced harassment even though coworkers watched her nude video outside her presence]; Herrera v. Lufkin Industries, Inc. (10th Cir. 2007) 474 F.3d 675, 681 ["It cannot be . . . that the fact that the harasser makes [harassing] references about the victim to others shields the harasser" from liability]; Torres v. Pisano (2d Cir. 1997) 116 F.3d 625, 633 ["The fact that many of [the harasser's] statements were not made in [the plaintiff's] presence is . . . of no matter; an employee who knows that her boss is saying things of this sort behind her back may reasonably find her working environment [*29] hostile."]; Lipsett v. Univ. of Puerto Rico (1st Cir. 1988) 864 F.2d 881, 905 [sexually explicit drawing of female plaintiff's body posted in the men's facility at the hospital where she worked supported her hostile work environment claim]; Ward v. Casual Restaurant Concepts Inc. (M.D. Fla., Mar. 1, 2012, No. 8:10-CV-2640-EAK-TGW) 2012 WL 695846, at *5 [a reasonable jury could find harassment severe or pervasive where a restaurant host's manager took a nude picture of the host from her phone, showed it to other employees and a restaurant patron, and told other employees he was having a sexual relationship with her, none of which occurred in her presence].)

FEHA does not reward discretion in harassing behaviors. Rather, it protects victims from workplace environments poisoned by inappropriate conduct — whether "sung, shouted, or whispered."⁷ (Sharp v. S&S Activewear, L.L.C. (9th Cir. 2023) 69 F.4th 974, 981.)

⁷ Nor is there any basis in the law to require that Carranza had "contemporaneous" knowledge of the officers viewing, sharing, or discussing the photo. (See Abbt, supra, 28 F.4th at p. 609 [lapse of time before plaintiff discovered co-workers had viewed her nude video did not necessarily mean she did not suffer harassment because "the pain the harassment caused is logically just as real . . . whether [plaintiff] learned of the actions immediately (by, say, walking in on a viewing), days later, or decades later"].)

Likewise, the City's reliance on cases involving claims based on harassing conduct outside the plaintiff's presence and directed at *third parties* is misplaced. (See, e.g., Lyle, supra, 38 Cal.4th at p. 289 [plaintiff barred from relying on offensive comments she was unaware of about *other women* to support *her own claim* for sexual harassment].)

Substantial evidence supported the jury verdict finding the City liable for sexual harassment.

B. The Trial Court Properly Denied the Motion for a New Trial Based on Alleged Juror Misconduct

[NOT CERTIFIED FOR PUBLICATION]

1. Applicable law and standard of review for claims of jury misconduct

[NOT CERTIFIED FOR PUBLICATION]

2. Juror and attorney declarations alleging misconduct

[NOT CERTIFIED FOR PUBLICATION]

3. The trial court did not abuse its discretion in determining portions of the declarations [*30] were inadmissible and that they did not show misconduct

[NOT CERTIFIED FOR PUBLICATION]

C. The Attorney Fee Award Was Proper

[NOT CERTIFIED FOR PUBLICATION]

1. Applicable law and standard of review

[NOT CERTIFIED FOR PUBLICATION]

2. The attorney fee award

[NOT CERTIFIED FOR PUBLICATION]

3. The court did not abuse its discretion in awarding Smith's hourly rate

[NOT CERTIFIED FOR PUBLICATION]

4. The court did not abuse its discretion in awarding a multiplier to Smith and Al Faiz

[NOT CERTIFIED FOR PUBLICATION]

DISPOSITION

The judgment and order regarding attorney fees are affirmed.

Martinez, P. J., and Feuer, J., concurred.