03-15-24
Dept. 9
Tentative Rulings

1. 23UD0287 EDH WATERFRONT, LLC v. WHITLEY SMITH, ET AL

Motion to Strike First Amended Complaint

The grounds asserted for this motion are that the Three-Day Notice to Pay Rent or Quit served on October 10, 2023 ("Notice") suffers from the following legal defects:

(1) It provides only an estimate of the amount due;
(2) It is ambiguous as to which months are past due;
(3) It improperly demands the payment of attorney's fees.

Estimate of Rent Due

The Defendants cite Code of Civil Procedure § 1161(2), which provides that a tenant is guilty of unlawful detainer if they continue in possession after receipt of a three-day notice, and requires such three-day notice to state "the amount that is due." Defendants argue that the statute requires "a precise amount of past due rent that is owed."

Plaintiffs responds that an estimate of back rent owing is expressly permitted by Code of Civil Procedure § 1161.1(a), which states:

> If the amount stated in the notice provided to the tenant pursuant to subdivision (2) of Section 1161 is clearly identified by the notice as an estimate and the amount claimed is not in fact correct, but it is determined upon the trial or other judicial determination that rent was owing, and the amount claimed in the notice was reasonably estimated, the tenant shall be subject to judgment for possession and the actual amount of rent and other sums found to be due. . . .

The Notice at issue, dated October 10, 2023, expressly indicates that the listed amount of unpaid rent "is an estimate of the rental obligations due and owing." The statute allows the determination of the "a precise amount of past due rent that is owed" to be made at trial or through "other judicial determination", and if the estimate is found reasonable at that time, the tenant will be responsible for the "precise amount of past due rent that is owed", even if that differs from the reasonable estimate contained in the three-day notice. Accordingly, nothing in Section 1161(2) invalidates the Notice based on its estimation of the past-due rent amount.

Ambiguity Regarding Months in Which Rent is Unpaid

Plaintiffs argue that the Notice fails to specify which months are unpaid, referencing "the strict drafting requirements of Section 1161" and the requirements of Code of Civil Procedure § 430.10(f) , which permits a demurrer on the grounds that "the pleading is uncertain." Leaving aside the fact that the motion before the court is a motion to strike and not a demurrer, the court refers to the late fee assessments included in the Notice for the months of September and

October, 2023. The monthly rent amount listed as owing in the Notice represents one month's rent according to the terms of the Lease, which is attached as Exhibit 1 to the First Amended Complaint. Defendants are presumably aware that they paid the rent for September "on or about September 13, 2023" according to the First Amended Complaint. It can be understood from the Notice, which was served on the tenth day of October, that it was the October, 2023 rent that was unpaid as of the date of the Notice.

Claim for Recovery of Attorney's Fees

In the Notice, Plaintiff includes $500 for "Attorney's Fees and Costs for Notice" in the amount that Defendants must pay to avoid forfeiture of the Lease, citing Section 24.6(a) of the Lease.

The Lease provides in Section 24.6(a) that if an action or proceeding is commenced arising out of the Lease, "the prevailing party in such action or proceeding . . . shall be entitled to have and recover from the unsuccessful party its actual attorney's fees and court costs . . . ."

Plaintiff argues that this language authorizes the demand for attorney's fees. However, that Lease provision authorizes that recovery in the event that the Landlord prevails in an "action or proceeding," not as part of the amount demanded in the Notice. Accordingly, Plaintiff is not entitled to recover attorney's fees as part of the collection of back rent that is demanded through the issuance of a Three-Day Notice to Pay Rent or Quit.

"A three-day notice must contain 'the amount which is due.' (§ 1161, subd. 2.) A notice which demands rent in excess of the amount due does not satisfy this requirement." Bevill v. Zoura, 27 Cal. App. 4th 694, 697 (1994).

"Under California statutory law a tenant is entitled to a three-day notice to pay rent or quit which may be enforced by summary legal proceedings (Code Civ.Proc., § 1161) but this notice is valid and enforceable only if the lessor strictly complies with the specifically described notice conditions." Kwok v. Bergren, 130 Cal. App. 3d 596, 600 (1982), citing Lamey v. Masciotra, 273 Cal.App.2d 709, 713 (1969).

Given that the Notice demands payment in excess of the amount that Plaintiff is legally authorized to recover under applicable statutes, the Notice is defective and Defendants motion is granted.

TENTATIVE RULING #1: DEFENDANTS' MOTION TO STRIKE IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2. PC20200155 FOSTER v. LYON REAL ESTATE ET AL

Good Faith Settlement

This case arises from a real property transaction in which the Plaintiffs, the buyers, were represented by Norcal Gold, Inc. dba Remax ("Remax") and Defendant Griffin, the seller, was represented by Lyon Real Estate ("Lyon"). The Complaint alleges intentional and negligent failure to disclose an easement and breach of contract. Plaintiffs allege damages in the range of $750,000 to over $1,000,000. Griffin has filed a Cross-Complaint for indemnity and contribution.

Lyon and Remax have both filed motions for the court's approval of their proposed settlements with the Plaintiff. Lyon proposes a settlement amount of $5,000, and Remax proposes to settle for $7,500.

Both Lyon and Remax request the court's approval of their respective settlements pursuant to Code of Civil Procedure § 877.6, the pertinent provisions of which are reproduced below:

> (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, ...
>
> * * *
>
> (b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
>
> (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.
>
> (d) The party asserting the lack of good faith shall have the burden of proof on that issue.

Griffin opposes both settlements.

<u>Request for Judicial Notice</u>

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" Cal. Ev. Code §

452(h). In some cases, "[w]hile the *existence* of a document, such as a document recorded in the official records of a government body, may be judicially noticeable, the truth of statements contained in the document and *their proper interpretation* are not subject to judicial notice. [Citation]." Tenet Healthsystem Desert, Inc. v. Blue Cross of California, 245 Cal. App. 4th 821 (2016) (emphasis original).

The court grants the requests for judicial notice to the extent the parties have requested to take judicial notice of "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). However, the Request for Judicial Notice most recently filed by Lyon relates to a printout from the website "Realtor.com" related to the Plaintiffs' property. Even if the contents of this website were an appropriate subject of judicial notice, the court could not take judicial notice of the truth of the statements contained in that document. If the parties wish to bring any factual matter to the court's attention in support of their position, they will have to produce admissible evidence at the hearing.

Standard of Review

The California Supreme Court defined the analysis required in applying Code of Civil Procedure § 877.6 in the case of Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal. 3d 488 (1985). The Court established the following factors to be considered by a trial court in determining whether to approve a proposed settlement meets the "good faith" standard, which is to be made on the basis of information available at the time of settlement:

(1) The amount paid in settlement;
(2) The allocation of settlement proceeds among plaintiffs;
(3) Whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries, which requires "a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability"; this settlement amount must not be "grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the defendant's liability to be." [1]
(4) A recognition that a settlor should pay less in settlement than he would if he were found liable after a trial;
(5) The financial conditions and insurance policy limits of settling defendants;
(6) The existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

Tech-Bilt at 499.

[1] "The party asserting the lack of good faith, who has the burden of proof on that issue . . . , should be permitted to demonstrate, if he can, that the settlement is so far "out of the ballpark" in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a "settlement made in good faith" within the terms of section 877.6." Tech-Bilt at 499-500.

The determination as to whether a settlement is in good faith is a matter left to the discretion of the trial court. Tech-Bilt*, at* 502. This evaluation requires a sufficient evidentiary basis, through affidavits, declarations and other evidence to allow the court to make findings to support the exercise of its discretion in approving or disapproving the proposed settlement. These findings must be supported by substantial evidence. Toyota Motor Sales U.S.A., Inc. v. Superior Ct., 220 Cal. App. 3d 864, 871 (1990). It is an abuse of discretion for the trial court to find a good faith settlement where there is insufficient evidence presented on the issues to be considered, and a continuance may be required for the purpose of gathering further evidence if there is not sufficient information already in the record before the court. City of Grand Terrace v. Superior Ct., 192 Cal. App. 3d 1251, 1264-1265 (1987).

In determining "a rough approximation" of the total amount of Plaintiff's damages, it is not sufficient to reply on the amount stated in the Complaint. West v. Superior Ct., 27 Cal. App. 4th 1625, 1636 (1994), citing Horton v. Superior Ct., 194 Cal. App. 3d 727, 735, (1987).

Griffin argues that the proposed settlements are disproportionate to the Plaintiffs' damages, but relies on the Complaint for this estimate. The record in this case establishes that an appraisal of the diminished value of the property resulting from the easement dispute yielded an estimate of a $75,000 loss, an amount which was then paid to the Plaintiffs by the title insurance company. In the Plaintiff's opposition pleadings to the summary adjudication motion that released the title insurance company from the litigation the Plaintiffs were not able to establish any greater amount of loss. The other element of damages alleged is the cost of moving the easement, estimated to be in excess of $1,000,000. Plaintiffs' Responses to Form Interrogatories, Set One, No. 7.2.

The court finds that there is insufficient evidence of Plaintiffs' damages on which to base an estimation of proportional shares of liability or potential exposure for damages at trial, and this lack of evidence renders it impossible to evaluate the settlement terms in accordance with applicable legal standards.

As to the question of collusion, fraud or tortious conduct injurious to the non-settling Defendant, Griffin argues that he has less culpability than the settling Defendants and that their proposed settlement would leave him responsible for a disproportionate share of the risk. Apart from this assertion based on fairness, however, he has produced no evidence or arguments supporting a finding of collusion, fraud or tortious conduct. Remax has submitted a Declaration asserting that its settlement was not the result of such conduct, and that Declaration is the only evidence in the record on this issue. *See* Declaration of Raja A. Hafed, dated February 20, 2024, ¶6.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 15, 2024, IN DEPARTMENT NINE.

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3. 24CV0356 IN THE MATTER OF J.G. WENTWORTH ORIGINATIONS, LLC

Transfer of Payment Rights

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibits B and E to the Petition. *See also,* Petition at p. 11.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority, including the requirement that the required disclosure statement be provided at least ten days prior to the execution of the transfer agreement, as required by Insurance Code § 10136. See Petition Exhibit B and Amended Exhibit A.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. See Declaration of Payee, dated February 16, 2024.

In addition to the express written findings required by the applicable statutes, Insurance Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests**.** The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction. The court finds that the transfer is fair and reasonable and in the payee's best interests, based on the totality of the circumstances. See Declaration of Payee, dated February 16, 2024.

TENTATIVE RULING # 3: ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED.

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4. 23CV1482 HADLOCK v. MILLER

Motion for Sanctions

Following a hearing on February 2, 2024, the court denied Defendant's motion to quash service of process. Plaintiff has filed this motion for sanctions pursuant to Code of Civil Procedure § 128.5 and 128.7. Section 128.5 provides, in pertinent part:

> (a) A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. . . .
>
> (b) For purposes of this section:
>
> (1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. . . .
>
> (2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party.
>
> (c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard. . . .
>
> * * *
>
> (f) Sanctions ordered pursuant to this section shall be ordered pursuant to the following conditions and procedures:
>
> * * *
>
> (C) If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .
>
> * * *

Plaintiff claims the amount of $4,500, and his motion references time spent doing research and attending hearings. However, Plaintiff has incurred no attorneys' fees and has not documented any costs that he seeks to recover by this motion. Accordingly, by the plain language of the statute, there are no "reasonable expenses" incurred by Plaintiff that the court is empowered to award. Further, while Defendant's arguments in support of the motion to quash were tenuous they were at least colorable and as such cannot be said to be "totally and completely without merit or for the sole purpose of harassing an opposing party**."**

TENTATIVE RULING #4: PLAINTIFF'S MOTION FOR SANCTIONS IS DENIED.

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COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5. 22CV1707 HARRIS v. KERN

Motion for Trial Setting Preference
Motion for Leave to File Amended Cross-Complaint

Motion for Trial Setting Preference

Defendant/Cross-Complainant ("Defendant") moves for trial setting preference pursuant to Code of Civil Procedure § 36.[2] The court finds that Kern is age-qualified under the statute and that he has a substantial interest in the action. Further, Defendant has submitted evidence of health conditions that support a finding that a preference is necessary to prevent prejudicing his interest in the litigation. The motion is unopposed.

Leave to File Second Amended Cross-Complaint

> The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code."

Code of Civil Procedure § 473(a)(1).

Plaintiff acknowledges the liberal standard governing this request, but nevertheless objects that this amendment would be prejudicial and properly denied for delay in raising new claims. To summarize Plaintiff's opposition:

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[2] (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:

(1) The party has a substantial interest in the action as a whole.

(2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

* * *

(e) Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.

(f) Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party.

* * *

1. The action was filed in November 2022, and Defendant filed the first Cross-Complaint in March 30, 2023 and a First Amended Cross Complaint ("FACC") on May 3, 2023, both of which are based on the same facts that underlie the proposed Second Amended Cross-Complaint ("SACC"). The amendments that are now proposed could have been included in those prior pleadings,
2. The motion is filed concurrently with a motion for a trial setting preference, which will shorten the time available for discovery, with a new discovery cutoff date of June 13, 2024. If the motion is granted on March 15, 2024, Plaintiff will have until April 15, 2024 to file a response and only 60 days thereafter to conduct discovery on four new causes of action.
3. The proposed SACC includes Ninth Cause of Action which newly asserts an intentional tort for which the SACC seeks punitive damages. This is based on actions that are independent of the facts which have been at issue in the case to date, and will require investigation of new issues of actual damages and defenses against claims of punitive damages.

Plaintiff argues that there is case law supporting the denial of leave to amend if the amendment raises new issues against which the opposing party has no opportunity to defend. Singh v. Southland Stone, U.S.A., Inc., 186 Cal. App. 4th 338, 354-355 (2010), citing Trafton v. Youngblood, 69 Cal.2d 17, 31 (1968). This determination is within the discretion of the trial court. Id. In exercising this discretion, Plaintiff cites authority for the court to consider delays in amending pleadings without a showing of the reason for the delay. People By & Through Dep't of Pub. Works v. Jarvis, 274 Cal. App. 2d 217 (1969) ("The trial court is entitled to be "skeptical of late claims" [citation]; and long-deferred presentation of a proposed amendment, without a showing of excuse for the delay, is a significant factor in support of the trial court's discretionary denial of leave to amend." Id. at 222.

At a minimum, Plaintiff requests that the court disallow the inclusion of the Ninth Cause of Action in the proposed SACC.

Defendant counters that there is no prejudice to Plaintiff in allowing the amendment because even with the trial setting preference there remain 90 days for conducting discovery, Defendant has been engaged in seeking deposition dates to which Plaintiff has not yet responded, and Defendant agrees to respond to discovery requests on shortened time if needed. Further, that three of the new causes of action are the same as affirmative defenses that were raised by Defendant in the First Amended Answer to the First-Amended Complaint and are based on the same set of facts contained in the FACC presented in alternative legal theories. Finally, that the entirely new Ninth Cause of Action (interference with easement) is based on a single alleged incident that has already been partially litigated. Additionally, that Ninth Cause of Action could be filed in a new lawsuit, and so as a matter of judicial economy the

proposed SACC would avoid prejudice to the Plaintiff by including them in the current action.

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1047.) "[I]t is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530. "[A]bsent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (Citations omitted.)" (Board of Trustees of Leland Stanford Jr. University v. Superior Court (2007) 149 Cal.App.4th 1154, 1163.)

It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. Kittredge Sports Co. v. Superior Court (1989) 213 Cal.App.3d 1045, 1048.

The Ninth Cause of Action of the proposed SACC does include a new fact that relates to events that took place on August 20, 2023; however, that incident took place after the date of the First Amended Cross-Complaint, so Defendant cannot be accused of delay in failing to raise the issue in a prior pleading.

With the understanding that the court will entertain motions to shorten time as needed for discovery responses given the expedited trial schedule, the court grants the motion for leave to amend.

TENTATIVE RULING #5:

(1) DEFENDANT'S MOTION FOR TRIAL PREFERENCE IS GRANTED.
(2) DEFENDANT'S MOTION FOR LEAVE TO FILE SECOND AMENDED CROSS-COMPLAINT IS GRANTED.

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6. PC20210494 ALLIANCE ONE v. JODAR VINEYARDS ET AL

Order of Examination Hearing

TENTATIVE RULING #6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 15, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7. 24CV0071 NAME CHANGE OF WILSON

Petition for Name Change

Petitioner filed a Petition for Change of Name on January 26, 2024.

Proof of publication was filed on February 28, 2024**,** as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING # 7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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8. 24CV0080 NAME CHANGE OF WENGER

Petition for Name Change

Petitioner filed a Petition for Change of Name on January 10, 2024.

Proof of publication was filed on February 21, 2024**,** as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file a background check with the court.

TENTATIVE RULING #8: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, APRIL 12, IN DEPARTMENT NINE TO ALLOW PETITIONER AN OPPORUTNITY TO FILE A BACKGROUND CHECK WITH THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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9. 22CV0482 PEOPLE v. MACEIUNAS

Petition for Forfeiture

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MARCH 15, 2024, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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10. PC20210440 HARRIS v. PROGRESS HOUSE

Summary Judgment/Summary Adjudication

This is an employment action by which Plaintiff alleges violations of the Fair Employment and Housing Act ("FEHA"), California Government Code §§ 12900-12951 & 12927-12928 & 12955 - 12956.1 & 12960-12976. Two causes of action were voluntarily dismissed (failure to accommodate disability and violation of Labor Code § 1102.5) since the Complaint was filed, leaving the First Cause of Action for disability discrimination and the Second Cause of Action for harassment based on disability that created a hostile work environment.

Summary Judgment Standard of Review

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42, 221 Cal. Rptr. 3d 119, 124–25 (2017)

Plaintiff's FEHA Disability Claim

The statute which provides the foundation for this claim is Government Code § 12940(a), which makes it unlawful for an employer, on the basis of an employee's disability:

> to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

The standard for evaluating this claim in the context of a summary judgment motion is discussed at length in the case of Guz v. Bechtel Nat. Inc., 24 Cal. 4th 317 (2000). As an initial matter:

> Generally, the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive. [Citations.]

Guz v. Bechtel Nat. Inc., 24 Cal. 4th at 355.

If the Plaintiff meets this burden, a presumption of discrimination arises, which the employer may rebut by "producing admissible evidence, sufficient to "raise [ ] a genuine issue of fact" and to "justify a judgment for the [employer]," that its action was taken for a legitimate, nondiscriminatory reason." Id. at 355-356. If the employer sustains this burden, the presumption of discrimination disappears, and the Plaintiff must produce evidence of discriminatory motives. Id. The ultimate burden of persuasion on the issue of actual discrimination remains with the plaintiff. Id. at 356. The Guz court held that the employer could meet the standard for summary judgment if it provides "competent, admissible evidence of its reasons, unrelated to [discrimination]" why it made the employment decisions that are the basis of the complaint.

In this case, the court finds that there are triable issues of material facts at almost every stage of the analysis of this cause of action.

First, the parties disagree on whether Plaintiff's asthma constitutes a disability for the purpose of the appliable statutes. The pertinent provision of the FEHA statute is Government Code § 12926(m):

> (m) "Physical disability" includes, but is not limited to, all of the following:
>
> (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:
>
> (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
>
> (B) Limits a major life activity. For purposes of this section:
>
> (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.
>
> (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

Defendant argues that Plaintiff's asthma is not a disability because it did not affect her job performance, Plaintiff disagrees, and further notes that a "major life activity" is not limited to work activities. "Undisputed" material Fact No. 9 reveals a dispute about the severity of Plaintiff's asthma, where Plaintiff claims approximately ten emergency room visits for severe asthma attacks during the ten years that she was employed. While this may not have affected her work performance, Plaintiff argues it affected a "major life activity" and thus qualifies as a disability.

Assuming that Plaintiff has made a prima facie case, the viability of the summary judgment motion would depend on whether Defendant had presented produced admissible evidence that the employment actions were taken for legitimate, non-discriminatory reasons.

Defendant claims there is no evidence that its employment decisions were motivated by asthma because it was not made aware of her asthma, as she did not disclose it as a medical condition that would affect her job performance when she started working. Plaintiff counters that she did disclose her asthma at that time, although she said that it would not affect her ability to work. UMF 9. Defendant argues that Plaintiff only discussed her asthma with her supervisor in two occasions, but Plaintiff counters that it was on "at least two occasions" and that emails on the subject of her asthma were also exchanged with her supervisor. UMF 16. Defendant states that Plaintiff's supervisor never said anything negative to her about her asthma, whereas Plaintiff claims that her supervisor mocked and berated her in the presence of others because of her asthma. UMF 13, 15, 18, 26.

Defendant argues that its employment decisions are supported by the results of a January, 2021, survey, but Plaintiff counters that the survey was not specific as to Plaintiffs job performance, that Plaintiff was not demoted until June, 2021 and thus there is no nexus between the survey and Plaintiff's demotion. UMF 13, 26, 27-29. Defendant claims that the demotion was based on Plaintiff's supervisor's determinations as to Plaintiff's competencies, while Plaintiff claims that her supervisor was objectively hostile, specifically with respect to Plaintiff's asthma. UMF 26, 30.

It is evident that there is a significant dispute and thus a triable issue regarding the material facts upon which the First Cause of Action depends, specifically whether Plaintiff's asthma meets the statutory definition of disability as a condition that affects a major life activity, and if so, whether Defendant's decision to demote Plaintiff was based on a legitimate business rationale unaffected by bias against her medical condition. That these factual issues remain

disputed is amply demonstrated by the lengthy back and forth between the parties on each critical fact listed in the Reply Separate Statement.

Plaintiff's Harassment Claim

The same is true of the Second Cause of Action alleging illegal harassment in the workplace. Government Code § 12923(a) defines "hostile work environment" by a "reasonable person" standard, the first indication that it is not an issue well-suited to the purely legal context of a summary judgment motion:

> [W]hen [] 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. . . . It suffices to prove 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.

Defendant claims its actions were legitimate personnel management activities that did not rise to the level of a "hostile work environment". Defendant asserts that Plaintiff was treated the same as her co-workers who did not have a disability, and that she can only point to a single incident on March 24, 2021. UMF 18.

Defendant cites an unreported federal district court case asserting age discrimination, Swirski v. Protec Bldg. Servs., Inc., No. 320CV01321LABMDD, 2021 WL 5771222 (S.D. Cal. Dec. 6, 2021) as factually analogous. However, in Swirski the plaintiff based her claim on four incidents, and the court found that in only one of those incidents referenced Swirski's age, and the nature of the comment was not sufficiently "severe or pervasive" as to "pollute" or "permeate" the workplace or to "alter the conditions" of the plaintiff's employment. Swirski at 8-9.

In contrast, the Plaintiff in this case has submitted evidence of an "aggressive and assertive" supervisor who "bullied certain employees," including Plaintiff. Declaration of Bonnie Fuchs, dated February 6, 2024, at ¶3 ("Fuchs Declaration"). Fuchs declared that she heard Plaintiff's supervisor "yelling aggressively" at Plaintiff, who later came into Fuch's office "crying and upset." Id. at ¶4. Fuchs heard Plaintiff's supervisor "yelling at and belittling" Plaintiff "on several occasions," and displaying a demeanor toward Plaintiff of "anger, disdain and aggression," and that on multiple occasions Plaintiff was "reduced to tears." Id. at ¶5. The Declaration of Kenneth Wiseman, dated November 19, 2023, ("Wiseman Declaration") states that Plaintiff's supervisor told other staff members that Plaintiff "could not be trusted to do good work, and that we should avoid talking to her about problems as she was unreliable." Wiseman Declaration, ¶6. Wiseman declared that to him it was "apparent that [Plaintiff's supervisor] disliked [Plaintiff]." Id. Wiseman further declared that "[e]ven after [Plaintiff] left

Progress House, [Plaintiff's supervisor] would occasionally make hateful statements about [Plaintiff]. Several times she has brought her up in conversation, saying that she is fat, dumb and wanted to play the victim." Id. at ¶8. The Declaration of Dinnelle Saravia, dated December 5, 2023, ("Saravia Declaration") stated that Plaintiff's supervisor "seemed to have an obsessive dislike for [Plaintiff]. She regularly made comments to [Plaintiff] that the office staff including myself could overhear. Her statements included 'You're unqualified,' 'you'll never make it in this field,' that Ms. Carlson would 'fire' her, that [Plaintiff] was 'the most unqualified but had the highest pay,' that she was 'worthless' and a 'drama queen.' Several times I saw [Plaintiff] shaken and upset by Ms. Carlson's derision." Saravia Declaration at ¶8.

The evidence offered by Plaintiff is well beyond the fact pattern of the Swirksi case, such that the court cannot conclude that no reasonable jury would find that Plaintiff experienced a hostile work environment. Whether the atmosphere in the workplace met the legal standard is a triable issue of fact. Defendant cites dicta quoting dicta to argue that "mere utterance of an . . . epithet" does not amount to a hostile work environment, Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67, quoting Rogers v. E.E.O.C., 454 F.2d 234 (5th Cir. 1971). Defendant also cites another unpublished federal district court opinion in which the court found that a "single, somewhat ambiguous comment" did not represent "severe or pervasive" harassment. To the extent that case provides viable authority for this court, it is likewise factually distinguishable from the evidence on the record in this case. Chiles v. Permanente Med. Grp., No. 12-CV-05796-MEJ, 2014 WL 4954274 (N.D. Cal. Sept. 30, 2014).

Defendant further cites Beltran v. Hard Rock Hotel Licensing, Inc., 97 Cal. App. 5th 865 (2023), review filed (Jan. 16, 2024), as a contrast to the facts in the present case. In Beltran, there was evidence of multiple incidents of sexual harassment over the period of several months, leading the court to conclude that the defendant in that case had not met the evidentiary burden that would support summary judgment in its favor. In that opinion, the court noted "several key principles" involved in the application of Government Code § 12923:

> including the definition of a hostile work environment, the clarification that "[a] single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct ... created an intimidating, hostile, or offensive work environment,"[6] and the instruction that "[h]arassment cases are rarely appropriate for disposition on summary judgment." ([Government Code] § 12923, subds. (a), (b), (e).)

Beltran v. Hard Rock Hotel Licensing, Inc., 97 Cal. App. 5th 865, 880 (2023), review filed (Jan. 16, 2024).

TENTATIVE RULING #10:

(1) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

(2) DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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