1. SLATER v. RALEY'S SOUTH Y CENTER, SC20210019

Motion to Continue Trial

To date, there is no proof of service for the instant motion in the court's file.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 21, 2025, IN DEPARTMENT FOUR.

2. CITIBANK N.A. v. LaCROIX, 24CV1876

Motion to Deem Matters Admitted

Plaintiff moves under Code of Civil Procedure section 2033.280 to deem matters admitted. Plaintiff's proof of service indicates that plaintiff served the notice of motion and motion upon defendant by mail on February 27, 2025. However, the deadline to serve plaintiff's motion by mail was February 21, 2025. (Code Civ. Proc., § 1005, subd. (b) [requiring notice of 16 court days plus five calendar days for mail].)

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 21, 2025, IN DEPARTMENT FOUR.

3. LIBERTY INS. CORP. v. K.P. INVESTMENTS, ET AL., 24CV1766

Motion to Consolidate (See Related Item No. 7)

TENTATIVE RULING # 3: THE COURT HAVING GRANTED THE MOTION ON MARCH 19, 2025, MATTER IS DROPPED FROM THE CALENDAR.

4. MOUNTAIN MEN, LLC v. STARR, ET AL., 24UD0319

Motion for Summary Judgment (See Related Item No. 5)

TENTATIVE RULING # 4: THE COURT HAVING GRANTED THE REQUEST FOR DISMISSAL ON MARCH 19, 2025, MATTER IS DROPPED FROM THE CALENDAR.

5. ON SKI RUN, LLC v. MOUNTAIN MEN, LLC, ET AL., 24CV1953

Motion for Judgment on the Pleadings (See Related Item No. 4)

On February 13, 2025, cross-defendants On Ski Run LLC dba Thai On Ski Run, Thanya Starr, and Supaporn Phillips (collectively, "cross-defendants") filed a motion for judgment on the pleadings as to the third cause of action for libel in the first amended cross-complaint ("FACC") filed by cross-complainants Mountain Men, LLC, Lynn Odvody, and Joshua Hepburn (collectively, "cross-complainants").

On February 14, 2025, the court granted cross-defendants' motion to strike portions of the FACC with leave to amend. Notice of entry of this order was served electronically on February 18, 2025. On March 3, 2025, cross-complainants filed a timely second amended cross-complaint ("SACC"). On March 14, 2025, the court granted cross-complainants' request to dismiss the third cause of action for libel in the SACC without prejudice.

Based on the above, cross-defendants' motion for judgment on the pleadings is deemed moot.

TENTATIVE RULING # 5: CROSS-DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS DROPPED FROM THE CALENDAR AS MOOT.

6. MELENDEZ v. BARTON HEALTHCARE SYSTEM, 24CV2038

Demurrer, or in the Alternative, Motion to Stay Proceedings

Pursuant to Code of Civil Procedure section 430.10, subdivision (c), defendant specially demurs to plaintiff's first amended complaint ("FAC") on the ground that there is another action pending between the same parties on the same cause of action. Alternatively, defendant moves to stay the proceedings pending a final determination in *Figueroa v. Barton Healthcare System* (El Dorado Superior Court, Case No. 24CV0883).

Defense counsel declares she met and conferred with plaintiff's counsel prior to filing the instant demurrer, as required under Code of Civil Procedure section 430.41, subdivision (a). (Wang Decl., ¶ 2.)

1. Background

On April 30, 2024, Cynthia Enriquez Figueroa ("Figueroa"), a former Food Service Worker at Barton Memorial Hospital in South Lake Tahoe, California, filed a putative class action against Barton Healthcare System ("defendant" or "Barton") in El Dorado Superior Court, entitled *Figueroa v. Barton Healthcare System* (Case No. 24CV0883). On July 19, 2024, Figueroa filed the operative FAC, which asserts causes of action for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate wage statements and maintain payroll records; (6) failure to pay all wages due upon termination of employment; (7) failure to pay all wages due during employment; (8) failure to reimburse business expenses; (9) civil penalties pursuant to the Private Attorney General Act of 2004 (Lab. Code, § 2698, et seq. ["PAGA"]); (10) unlawful business practices; and (11) unfair business practices. Figueroa seeks to represent a putative class defined as: "All persons who worked for Defendants as non-exempt hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial."

On September 18, 2024, plaintiff Roxanna Rodriguez Melendez ("plaintiff" or "Melendez"), a former Certified Nursing Assistant at Barton Memorial Hospital in South

Lake Tahoe, California, filed the instant putative class action against Barton. On November 22, 2024, plaintiff filed the operative FAC, which asserts causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate wage statements; (6) failure to pay wages upon termination of employment; (7) failure to pay reporting time premiums; (8) unfair business practices; and (9) civil penalties pursuant to PAGA. Plaintiff seeks to represent a putative class consisting of "[a]ll current and former non-exempt employees of Defendants in the State of California who were subject to Defendants' timekeeping and payroll policies and/or practices, during the four years immediately preceding the filing of this action through the present."

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's unopposed request for judicial notice of Exhibit A (Figueroa's Complaint in Case No. 24CV0883) and Exhibit B (Figueroa's FAC in Case No. 24CV0883).

The court denies defendant's request for judicial notice of Exhibit C (defendant's Case Management Statement in Case No. 24CV0883), Exhibit D (Los Angeles County Superior Court order granting demurrer in Case No. BC677948), Exhibit E (Orange County Superior Court order granting demurrer in Case No. 30-2016-00881545-CU-OE-CXC), and Exhibit F (Contra Costa County Superior Court order granting demurrer in Case No. CIVMSC16-01150). The court finds that these materials are not "necessary, helpful, or relevant" to the instant demurrer (see *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6) because (1) the court cannot take judicial notice of the truth of the matters stated in the Case Management Statement (see *In re Joseph H.* (2015) 237 Cal.App.4th 517, 541–542); and (2) the superior court orders (from unrelated cases) are not binding precedent (see *Santa Ana Hosp. Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831 ["a written trial court ruling has no precedential value."]).

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

Defendant seeks abatement of the instant action based on "another action pending between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).) Defendant's second contention is that under the exclusive concurrent jurisdiction rule, the *Figueroa* court has exclusive jurisdiction. " 'An order of abatement issues as a matter of right [i.e., mandatory] not as a matter of discretion [i.e., discretionary] where the conditions for its issuance exist.' [Citation.] This is the case whether a right to abatement exists under the statutory plea in abatement [citation] or the judicial rule of exclusive concurrent jurisdiction [citation]. Where abatement is required, the second action should be stayed, not dismissed. [Citation.]" (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 770–771.)

Alternatively, defendant moves to stay the instant action in its entirety pursuant to the court's inherent power to stay proceedings.

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4.1. Statutory Abatement

Code of Civil Procedure section 430.10 states: "The party against whom a complaint … has been filed may object, by demurrer … as provided in Section 430.30, to the pleading on any one or more of the following grounds: [¶] … [¶] (c) There is another action pending between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).) A plea in abatement " 'is not favored in law, is to be strictly construed, and must be supported by facts warranting the abatement' at the time of the plea." (*Traub Co. v. Coffee Break Service, Inc.* (1967) 66 Cal.2d 368, 370 [citations omitted].)

Defendant contends the parties in the instant action are "effectively identical" to the parties in *Figueroa*. (Mtn. at 7:27.) There is no dispute that both actions name the same defendant, Barton. The issue is whether the plaintiffs are considered the "same parties." Defendant argues they are. The plaintiffs in both actions are former, non-exempt employees of Barton who worked at Barton Memorial Hospital in South Lake Tahoe, California, and who seek to represent a putative class of current and former non-exempt Barton employees who worked in California within four years prior to the filing of the respective complaint in each case.

Plaintiff, however, argues that: (1) the plaintiffs are not identical, but rather two different people (Opp. at 3:21–22); (2) because no class has yet been certified in *Figueroa*, plaintiff is not represented in the *Figueroa* action at this time (Opp. at 4:1–5); and (3) even if plaintiff was a member of the certified class in *Figueroa*, plaintiff would opt out of any such class to pursue her claims in the instant case (Opp. at 4:6–10).

Although the representative or lead plaintiffs, Figueroa and Melendez, are different people, the court finds that the members of the putative classes represented are "the same parties" as required by Code of Civil Procedure section 430.10, subdivision (c). The putative class in the instant case is encompassed in the class definition proposed in the *Figueroa* action.

Additionally, both actions assert the same causes of action against defendant for: (1) unpaid overtime; (2) unpaid minimum wages; (3) meal period violations; (4) rest period violations; (5) wage statement penalties; (6) waiting time penalties; (7) unfair business practices; and (8) PAGA violations. Plaintiff argues that, unlike *Figueroa*, plaintiff's suit includes a unique "reporting time" claim. However, as defendant correctly argues, the "primary right" attached to plaintiff's reporting time claim is the right to seek payment of wages due. (Reply at 7:4–15; see *Shine v. Williams-Sonoma* (2018) 23 Cal.App.5th 1070, 1077.) Therefore, for purposes of this analysis, it is the same cause of action. (*Ibid.*)

The court finds that the requirements for a statutory plea in abatement are met.

4.2. Exclusive Concurrent Jurisdiction

Even if the requirements for statutory abatement were not met, the court finds that abatement is required under the doctrine of exclusive concurrent jurisdiction. Under this doctrine, when two California superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, " ' "the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved." ' " (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769–770 (*Garamendi*).) "Although the rule of exclusive concurrent jurisdiction is similar in effect to the statutory plea in abatement, it has been interpreted and applied more expansively, and therefore may apply where the narrow grounds required for a statutory plea of abatement do not exist. [Citation.] Unlike the statutory plea of abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions. [Citations.] If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same

so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. [Citations.]" (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 788.)

Plaintiff again argues that because she and Figueroa are different persons, the two actions are not between the same parties. The exclusive concurrent jurisdiction rule, however, "does not require absolute identity of parties." (*Plant Insulation Co.*, *supra*, 224 Cal.App.3d at p. 788.) Both Figueroa and plaintiff allege they were non-exempt employees who worked for Barton from approximately March 2007 to November 2023 (RJN, Ex. B, ¶ 4) and June 2021 to July 19, 2024 (FAC, ¶ 10), respectively. And both plaintiffs seek to represent essentially the same putative class. In fact, plaintiff appears to be a putative member of Figueroa's proposed class.

Based on the above, the court finds that abatement is required. The instant action shall be stayed pending a final determination in *Figueroa*.

TENTATIVE RULING # 6: THE DEMURRER IS SUSTAINED. THE INSTANT ACTION IS STAYED PENDING A FINAL DETERMINATION IN *FIGUEROA v. BARTON HEALTHCARE SYSTEM* (EL DORADO SUPERIOR COURT, CASE NO. 24CV0883). NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

7. BOONE v. KHERA, ET AL., 24CV1765

Motion to Consolidate (See Related Item No. 3)

TENTATIVE RULING # 7: THE COURT HAVING GRANTED THE MOTION ON MARCH 19, 2025, MATTER IS DROPPED FROM THE CALENDAR.

8. VELOCITY INVESTMENTS v. GRIFFIN, SCL20170121

Motion to Set Aside

This matter was continued from February 21, 2025, because there was no proof of service for the notice of motion in the court's file, as required under Code of Civil Procedure section 1005, subdivision (a)(10). To date, there is still no proof of service in the court's file.

TENTATIVE RULING # 8: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 21, 2025, IN DEPARTMENT FOUR.