IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Thursday, October 18, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. **YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.**
2. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case	Title / Nature of Case

9:00

LINE: 1

17-CIV-03337 FAIZAN BUZDAR VS. CONVO CORPORATION, ET AL.

FAIZAN BUZDAR	BRIAN T. HAFTER
CONVO CORPORATION	S. ASHAR AMED

MOTION TO QUASH

TENTATIVE RULING:

This motion is dropped from calendar. A dismissal was filed 10-9-18.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 2

17-CIV-05348 AMANDA ORTIZ, ET AL. VS. DAVID ALPHONSO LOPEZ, ET AL.

AMANDA ORTIZ	RICHARD E. QUINTILONE
DAVID ALPHONSO LOPEZ	TREVA R. STEWART

MOTION TO COMPEL FURTHER

TENTATIVE RULING:

OFF CALENDAR. This matter has been assigned for all purposes to Department 10, the Hon. Gerald Buchwald, pursuant to an Order entered on December 13, 2017. Counsel for Defendant DAVID ALPHONSO LOPEZ is directed to contact Judge Buchwald's clerk at (650) 261-5110 to reschedule Defendant's Motion to Compel Further in that department.

The Court notes that Plaintiffs AMANDA ORTIZ, JAUN FUDGE, and JOAN ELLIOTT also have an upcoming Motion for Relief from Waiver of Objections on October 26, 2018, which was erroneously scheduled for the Law & Motion Department. The motion is taken OFF CALENDAR. Plaintiffs' counsel is directed to contact Judge Buchwald's clerk to reschedule this motion in Department 10.

9:00
LINE: 3
17-CIV-05350 FAYE GO VS. CHILDCARE CAREERS, LLC, ET AL.

FAYE GO	DANIEL L. FEDER
CHILDCARE CAREERS, LLC	SHANE K. ANDERIES

MOTION FOR SUMMARY JUDGMENT
TENTATIVE RULING:

Defendant's motion for summary judgment or, in the alternative, summary adjudication, is GRANTED, in part, and DENIED, in part.

Plaintiff has demonstrated the existence of a triable issue of material fact with respect to the question of whether Defendant's termination of Plaintiff's employment was based on her pregnancy. Defendant acknowledges that each of Plaintiff's causes of action turns on the question of improper or discriminatory motive for termination of Plaintiff's employment. According to Defendant "For purposes of this pleading, the 'material issue of fact' is whether Plaintiff can point to any facts linking Defendant's termination of Plaintiff to her pregnancy. From the facts presented above, she cannot, and, therefore, Summary Judgment and/or Summary Adjudication must be granted." The court disagrees that Plaintiff has not raised disputed issues of material fact with respect to the question of whether Defendant's termination of Plaintiff was due to her pregnancy.

Perhaps most significantly, the parties dispute when Defendant was informed about Plaintiff's pregnancy. According to Plaintiff, she informed Defendant about her pregnancy on May 5, just three weeks prior to her first negative performance review on May 24. According to Defendant, however, Plaintiff did not inform Defendant of her pregnancy until May 30, after the first negative performance review. This disputed fact has material bearing on the question of whether Defendant's termination was based on Plaintiff's pregnancy. Defendant has not produced evidence of criticism of Plaintiff's job performance prior to May 24. Although timing alone is not a sufficient indication of discriminatory intent, it is nonetheless a factor to be considered in determining the reason for Plaintiff's termination. *Arteaga v. Brink's, Inc.*, 163 Cal. App. 4th 327, 353–54, 77 Cal. Rptr. 3d 654, 674–75 (2008). Notably, Defendant has failed to acknowledge or address, either in its moving papers or in its reply to Plaintiff's opposition, the dispute as to when Plaintiff informed Defendant of her pregnancy – i.e. before or after her May 24 performance review – and the potential impact of this dispute on the question of discriminatory intent.

Plaintiff has raised additional disputed issues of material fact. Plaintiff asserts in her declaration, supported by her deposition testimony, that her recruiting targets were changed without explanation after she informed Defendant of her pregnancy. [Plaintiff's Decl., ¶ 12]

Further, Plaintiff has produced evidence, in the form of Ms. DeMent's testimony, that her goal was changed from three to five hires per month to three to six hires per month without explanation after she informed Defendant of her pregnancy. Additionally, Plaintiff has produced evidence indicating that she was terminated prior to expiration of Defendant's requirement that she recruit ten new hires in July. The parties dispute whether Plaintiff would have been able to reach this target, and both parties present evidence in support of their claim. Plaintiff has provided the names and hiring progress of specific individuals she would have been able to hire to meet her target before July 31. The dispute is material because, if Plaintiff would have been able to meet her target, the evidence that Defendant terminated her prior to giving her the chance to do so is highly suggestive of an improper motive. Further, any uncertainty as to whether Plaintiff would have met the ten-hire target should arguably be resolved in favor of Plaintiff, considering that Defendant terminated her employment approximately five days prior to the July 31 deadline. Ultimately, whether Plaintiff would have been able to meet the ten-hire target in July is a question of fact, to be resolved by a trier of fact.

Taken together, the disputed facts set forth above create a triable issue as to whether Defendant's termination of Plaintiff was based on an improper and discriminatory motive.

The question, then, is whether Defendant is entitled to summary adjudication of any of Plaintiff's causes of action for other reasons.

Defendant contends that Plaintiff cannot proceed on her third cause of action for retaliation in violation of FEHA because she has produced no evidence to support the allegation, as stated in her complaint, that she complained to her managers about retaliatory, discriminatory or harassing conduct she experienced based on her pregnancy. The court agrees. It appears from Plaintiff's opposition, however, that she may be able to state a cause of action for retaliation in violation of FEHA based on her request for time off for doctor visits or anticipated leave. Accordingly, the court agrees that Defendant is entitled to summary judgment on Plaintiff's third cause of action, as alleged in her complaint, but grants Plaintiff leave to amend the complaint to allege additional facts relating to her claim for retaliation.

Defendant further contends it is entitled to summary adjudication on Plaintiff's fourth cause of action because she has not alleged or produced evidence demonstrating that she disclosed information regarding a violation of law, as required to assert a claim under Labor Code § 1102.5. Plaintiff has not responded to this argument. As a result, the court agrees that Defendant is entitled to summary judgment on Plaintiff's fourth cause of action for violation of Labor Code § 1102.5.

Finally, Defendant contends Plaintiff cannot proceed on her fourth and fifth causes of action because they are duplicative of her other causes of action. The court disagrees. Plaintiff's fifth cause of action for wrongful termination in violation of public policy is a common law cause of action distinct from any statutory cause of action for wrongful termination. *Stevenson v. Superior Court*, 16 Cal.4th 880, 941 P.2d 1157 (1997). Further, Plaintiff's 5th & 6th causes of action allege wrongful termination, as opposed to wrongful discrimination (1st & 2nd causes of action) or wrongful retaliation (3rd & 4th causes of action).

For the foregoing reasons, Defendant's motion for summary adjudication on Plaintiff's fourth cause of action for violation of Labor Code § 1102.5 is GRANTED. Defendant's motion for summary adjudication with respect to Plaintiff's third cause of action for retaliation is GRANTED with leave to amend. Defendant's motion for summary adjudication on Plaintiff's remaining causes of action is DENIED.

Plaintiff's objections to Defendant's evidence in support of its motion are OVERRULED. Defendant's objections to Plaintiff's evidence in support of her opposition are also OVERRULED. Notwithstanding these evidentiary rulings, however, the court reaches the same conclusion with respect to Defendant's motion regardless of whether the challenged evidence is considered.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 4

17-CIV-05465 BRITTANY JAMES VS. PARK 'N FLY, INC., ET AL.

BRITTANY JAMES	MICHAEL HOFFMAN
PARK 'N FLY, INC.	KRISTEN J. NESBIT

MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

TENTATIVE RULING:

OFF CALENDAR. Motions for preliminary approval of class action settlement are not handled by the Law & Motion Department. The parties are directed to apply to the Presiding Judge to have this matter deemed complex, and the motion heard by the Complex Civil Department, pursuant to Local Rule 2.30 and CRC Rule 3.400(c)(6).

9:00

LINE: 5

18-CIV-03050 FAI-HE, II LLC VS. MORGAN LAWLEY, ET AL.

FAI-HE, II LLC STEVEN L. POLLAK
MORGAN LAWLEY

MOTION FOR CHANGE OF VENUE
TENTATIVE RULING:

Defendants MORGAN LAWLEY; BARBARA LAWLEY; and WORLD ENTERPRISES' Motion for Change of Venue is GRANTED pursuant to Code Civ. Proc. § 395(a).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 6

18-CIV-04355 ANDRIGHETTO PRODUCE INCORPORATED, ET AL. VS. DAVID AMDRIGHETTO

ANDRIGHETTO PRODUCE INCORPORATED — DAVID J. MICLEAN
DAVID ANDRIGHETTO

PETITION TO STAY
TENTATIVE RULING:

The Petition is not supported by any evidence. The Opposition consists of matters lodged under seal, but with no motion to permit the matter to be filed under seal; the public redacted versions of the opposing papers are devoid of any information, and the Court may not consider matter that is merely lodged but not filed. Thus, the record contains no evidence supporting or opposing the petition.

The parties are ordered to appear.

9:00

LINE: 7

18-CIV-04508 CHASSY BAGELS, INC. VS. DAVID NICHOLAS PUENTE, ET AL.

CHASSY BAGELS, INC. GREGORY J. RUBENS
DAVID NICHOLAS PUENTE

WRIT OF ATTACHMENT
TENTATIVE RULING:

Plaintiff CHASSY BAGELS, INC. dba House of Bagels' Application for Right to Attach Order and Order for Issuance of Writ of Attachment is DENIED WITHOUT PREJUDICE. Plaintiff's application seeks to attach property of Defendant "DAVID NICHOLAS PUENTE, dba David's Bagels", despite not properly serving the Summons and Complaint on Defendant in this capacity. Code Civ. Proc. § 484.040.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00
LINE: 8
18-UDL-00811 CITY OF REDWOOD CITY VS. EMILIO DIAZ

CITY OF REDWOOD CITY	MICHELLE MARCHETTA KENYON
EMILIO DIAZ	VINCENT J. BARTOLOTTA

MOTION TO QUASH
TENTATIVE RULING:

Defendant EMILIO DIAZ's Motion to Quash, or in the Alternative, to Stay or Consolidate, is ruled on as follows:

Code of Civil Procedure section 418.10(a) provides for a motion to quash service of summons and complaint on the ground that the court lacks jurisdiction over defendant. Defendant brings this motion to quash, but also raises a ground for demurrer in support of this motion and if the motion to quash is denied, seeks to consolidate and/or stay this lawful detainer action.

First, Defendant asserts that service of the summons and complaint should be quashed because the branch of the Superior Court is not identified. In support, Defendant cites to Code of Civil Procedure sections 392(b) and 396a(a). Neither of these statutes support Defendant's argument. Furthermore, Defendant's argument regarding venue is without merit as the Complaint alleges venue is proper in San Mateo because the premises at issue are located here. (See Comp., 9.) The motion to quash on this ground is therefore DENIED.

Second, Defendant contends that Plaintiff CITY OF REDWOOD CITY does not have the legal capacity to sue, which is one of the statutory grounds for a demurrer. (See C.C.P. sec. 430.10(b).) In raising this ground for demurrer via a motion to quash, Defendant relies on *Delta Imports, Inc. v. Mun. Ct.* (1983) 146 Cal.App.3d 1033 ("*Delta Imports*"). *Delta Imports* held that a tenant in an unlawful detainer action is entitled to quash service of summons where the underlying complaint fails to state a cause of action for unlawful detainer. (*Delta Imports, supra*, 146 Cal.App.3d at 1034-1035.) In *Delta Imports*, the complaint failed to include any allegations regarding a written notice to quit, and therefore the court found that the complaint failed to state a cause of action for unlawful detainer such that use of the five-day summons was improper and entitled to be quashed. (Id. at 1035.)

However, *Borsuk v. Appellate Division of the Sup. Ct.* (2015) 242 Cal.App.4th 607 ("*Borsuk*"), disagreed with and limited the holding of *Delta Imports*. In *Borsuk*, the tenant filed a motion to quash claiming that the court lacked jurisdiction because the landlord failed to properly serve the three-day notice to quit in the manner required by law. (*Id*. at 610.) The complaint alleged service of three-day notice to pay rent or quit by posting though. (*Id*.) *Borsuk* recognized that *Delta Imports* had created confusion about whether a tenant must challenge a landlord's failure to

comply with the notice requirement for an unlawful detainer complaint by demurrer or by motion to quash. (*Id.* at 612.) *Borsuk* found that *Delta Imports* expanded the scope of a motion to quash beyond its purpose. (*Id*. at 613-614.) *Borsuk* further held that the *Delta Imports* holding is limited to the circumstances in *Delta Imports*, i.e. a motion to quash where the complaint was defective on its face and therefore a five-day summons was improper. (*Id.* at 616.) Beyond such an issue though, a motion to quash is not the proper way to cannot challenge an unlawful detainer complaint that is valid on its face. (*Id*.)

After reviewing *Delta Imports* and *Borsuk*, the court finds the reasoning and holding in *Borsuk* to be persuasive. Accordingly, Defendant needs to raise this ground in a demurrer, not by a motion to quash. The motion to quash is therefore DENIED, as Defendant fails to raise any valid ground for quashing service of the summons and complaint.

Moreover, San Mateo Court's Local Rules provide that a demurrer in an unlawful detainer action may be brought on the law and motion calendar. (See Local Rule 3.15(b).) While a motion to quash may be brought on three to seven days' notice, a demurrer must be brought on notice pursuant to C.C.P. section 1005(b), which requires sixteen court days' notice. (Local Rule 3.15(a), (b); C.C.P. sec. 1167.4(a).) Any party desiring a hearing date for a demurrer on less than 16 court days' notice shall be required to obtain an ex parte order shortening time pursuant to CRC 3.1200 to 3.1207. (Local Rule 3.15(b)(2).) In this case, Defendant filed and served his motion on October 9, 2018 for a hearing on October 18, 2018. Such notice is inadequate for a demurrer, and no order shortening time has been granted. Thus, Defendant's demurrer argument is DENIED WITHOUT PREJUDICE to raising it on proper notice.

Defendant further moves in the alternative to consolidate and/or stay this action. Such motion is DENIED WITHOUT PREJUDICE to bringing such a motion based on notice under C.C.P. section 1005(b), unless an order shortening time is granted.

Defendant is to file a demurrer, answer or other responsive pleading within 15 days after service of written notice of entry of order by Plaintiff.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00
LINE: 9
CIV536208 JILA VAUGHAN, ET AL. VS. PARVIZ DARABI

EMILIA VAUGHAN ALBERT M.T FINCH
JILA VAUGHAN

MOTION FOR SUMMARY JUDGMENT
TENTATIVE RULING:

This motion is dropped from calendar. The case settled 10-16-18 during settlement conference with Judge Grandsaert.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

POSTED: 3:00 PM