

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

Tuesday, November 13, 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

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9:00

LINE: 1

16-CIV-02945 PETER TU VS. TSAI-LUAN HO, ET AL.

PETER TU  
TSAI-LUAN HO

JEFFREY S. GOODFRIED  
JEFFREY G. HURON

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MOTION TO AWARD ATTORNEY'S FEES BY PLAINTIFF AND CROSS-DEFENDANT CHIN I TU AKA PETER TU ("TU")

**TENTATIVE RULING:**

The parties are directed to appear and update the Court on the status of Defendant Ho's bankruptcy.

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.

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9:00

LINE: 2

16-CLJ-02913 CACH, LLC VS. MARISSA P. DIAZ

CACH, LLC  
MARISSA P. DIAZ

GLORIA ZARCO

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CACH, LLC'S MOTION FOR VACATING DISMISSAL AND ENTERING JUDGMENT  
PURSUANT TO DEFENDANT'S DEFAULT UNDER STIPULATION FOR ENTRY OF  
JUDGMENT

**TENTATIVE RULING:**

Plaintiff's motion for entry of judgment in accordance with the parties' settlement agreement is DENIED without prejudice.

The parties' settlement agreement provides, at ¶ 5, that "Plaintiff shall serve a copy of the application or motion upon Defendant (or, if applicable, Defendant's counsel) by mail at his/her/its address of record." [Haney Decl., Ex. 1] The proof of service of Plaintiff's motion indicates that the motion was sent to "Marisa P Diaz, c/o Crosby S. Connolly, 2221 Camino Del Rio South Ste 101, San Diego, CA 92108." This appears to be the business address of Hyde & Swigert, a law firm. However, Plaintiff has not made any showing to the court, by declaration or otherwise, that the address is an address of record for Defendant or counsel for Defendant. The court notes that no appearance has been made by or on behalf of Defendant in this action, except by operation of ¶ 8 of the parties' settlement agreement, which provides that "the filing of this Settlement Agreement shall, if Defendant has not already made his/her/its first appearance, constitute Defendant's general appearance." No address is set forth in the Settlement Agreement.

Plaintiff's request to vacate dismissal is also DENIED, as no dismissal has been entered in this action.

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.

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9:00

LINE: 3

17-CIV-01250 ADVANTAGE LEASING CORPORATION VS. STURM INDUSTRIES,  
INC., ET AL

ADVANTAGE LEASING CORPORATION  
STURM INDUSTRIES, INC.

SARA B. SPAETH  
PAULA K. CANNY

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DEFENDANT'S APPLICATION TO STAY PROCEEDINGS OR CONTINUE PLAINTIFF'S  
MOTION FOR SUMMARY JUDGEMENT

**TENTATIVE RULING:**

This matter is dropped from calendar. A dismissal was filed 10/23/18.

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.

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9:00

LINE: 4

17-CIV-03590 ALLAN REYNA VS. JAINENDRA KARAN, ET AL.

ALLAN REYNA  
JAINENDRA KARAN

JOHN C. BOLLIER  
ANTHONY F. PINELLI

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PLAINTIFF ALLAN REYNA'S MOTION FOR COURT ORDER COMPELLING DEFENDANT ALLIED BUILDING PRODUCTS CORP. TO SERVE FURTHER RESPONSES TO FORM INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS; AND REQUEST FOR SANCTIONS

**TENTATIVE RULING:**

This matter is dropped from calendar at the request of the moving party.

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.

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9:00

LINE: 5

18-CIV-02282 JOANN ALVAREZ VS. COUNTY OF SAN MATEO, ET AL.

JOANN ALVAREZ  
COUNTY OF SAN MATEO

TE'REISHA N. GRAVES

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DEMURRER OF DEFENDANTS COUNTY OF SAN MATEO, MARIA DE ANDA AND LINDA HOLMAN TO THE SECOND AMENDED COMPLAINT OF PLAINTIFF

**TENTATIVE RULING:**

Defendants COUNTY OF SAN MATEO; MARIA DE ANDA; and LINDA HOLMAN's Demurrer to Plaintiff's Second Amended Complaint is SUSTAINED as follows:

SUSTAINED WITHOUT LEAVE TO AMEND as to the First cause of action for failure to prevent discrimination; Fourth cause of action for failure to take corrective action; Fifth cause of action for hostile work environment; and Seventh cause of action for negligence. Plaintiff does not oppose the demurrer as to these causes of action, and states her willingness to stipulate to their dismissal. (Plaintiff's Opposition at 1:16-17.)

SUSTAINED WITHOUT LEAVE TO AMEND as to the Second cause of action for retaliation under the Fair Employment and Housing Act. A claim for FEHA retaliation requires the following elements: (1) Plaintiff engaged in a protected activity; (2) Plaintiff was subject to an adverse employment action, and (3) there is a causal link between the protected activity and the adverse employment action." *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 707.

Plaintiff fails to allege in her SAC or demonstrate in her Opposition papers that she engaged in "protected activity" under FEHA, and suffered retaliation as a result. As stated by the First District Court of Appeal in *Dinslage v. City and County of San Francisco* (2016) 5 Cal.App.5th 368, "discrimination by an employer against members of the general public is not a prohibited employment practice under the FEHA." *Id.* at 383 (emphasis in original). As Plaintiff has failed to demonstrate that she engaged in the requisite "protected activity", e.g. reporting unlawful employment practices that affected Plaintiff or other employees of the County, this cause of action fails.

Although a demurrer should not be sustained without leave to amend if there is a reasonable possibility that a defect in the complaint can be cured by amendment, the burden is on the plaintiff to show in what manner she can amend the complaint and how that amendment will affect the pleading. *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349. Plaintiff has not done so here; accordingly, the demurrer is sustained without leave to amend.

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SUSTAINED WITH LEAVE TO AMEND as to the Third cause of action for whistleblower retaliation under Labor Code § 1102.5. In order to state a claim, Plaintiff must allege that (1) she engaged in protected activity; 2) her employer subjected her to adverse action; and 3) that there is a causal link between the protected activity and the adverse action. *Patten v. Grant Joint Union High Sch. Dist.* (2005) 134 Cal.App.4th 1378, 1384. Under Section 1102.5, the “protected activity” is the reporting of suspected violations of or non-compliance with the law. The employee must have an actual belief that the employer’s actions were unlawful and the employee’s belief, even if mistaken, must be reasonable. *Carter v. Escondido Union High Sch. Dist.* (2007) 148 Cal.App.4th 922, 933-34.

Here, Plaintiff fails to provide sufficient allegations of unlawful conduct, as she does not “identify any specific laws” that may have been violated. The SAC only vaguely hints at “potentially illegal conduct”, which is insufficient to demonstrate that Plaintiff had a reasonable basis to suspect that violations of law were actually occurring. *Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1348. The demurrer to this cause of action is sustained with leave to amend, so that Plaintiff can allege with specificity the suspected violations or non-compliance with a “state or federal statute” or “a local, state, or federal rule or regulation” that prompted her to raise a complaint.

SUSTAINED WITHOUT LEAVE TO AMEND as to the Sixth cause of action for intentional infliction of emotional distress. Plaintiff acknowledges that in order to avoid the workers’ compensation exclusivity rule, she must successfully plead a violation of FEHA. *Light v. Dept. of Parks & Recreation* (2017) 14 Cal.App.5th 75, 101. She has not done so here. The Court in *Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809 makes clear that emotional distress damages are not recoverable in connection with a whistleblower retaliation claim brought pursuant to Labor Code § 1102.5. “Injuries sustained and arising out of the course of employment are generally subject to that exclusive remedy. The exclusive remedy applies even when the damages result from intentional conduct by the employer that is a normal part of employment relationships, and even though such conduct may be described as egregious, harassment, manifestly unfair, or intended to cause emotional distress.” *Id.* at 823.

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9:00

LINE: 6

CIV513968 LURINE BESS VS. EL CAMINO CHARTER LINES, INC.

LURINE BESS  
EL CAMINO CHARTER LINES, INC.

BRIAN L. LARSEN  
AARON HANCOCK

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DEFENDANT EL CAMINO CHARTER LINES, INC.'S MOTION TO DISMISS FOR  
FAILURE TO BRING TO TRIAL

**TENTATIVE RULING:**

Defendant El Camino Charter Lines, Inc.'s Motion to Dismiss is GRANTED pursuant to CCP §583.360(a) based on Plaintiff's failure to bring this matter to trial within the required 5-year period set forth in CCP §583.310.

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.

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POSTED: 3:00 PM