

**Judge Mosbarger – Law & Motion – Wednesday, May 21, 2025 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV02560 PETERSEN, CHELSEA ET AL V. 1271 WHITEWOOD WAY RESIDENCE ET AL

EVENT: Motion to Compel Plaintiffs Kyle Velazquez and Chelsea Petersen's Discovery Responses and Request for Monetary Sanctions Against Plaintiffs and Their Attorney of Record

The Motion is unopposed and is granted. Plaintiffs Kyle Velazquez and Chelsea Petersen are to provide verified responses to Defendant Jared Treat's Form Interrogatories, Set One, Special Interrogatories, Set One, and Requests for Production of Documents, Set One, without objections, within 14 days' notice of this Order. Sanctions are awarded against Plaintiffs Kyle Velazquez and Chelsea Petersen and their attorney of record, Ilan N. Rosen Janfaza in the amount of \$2,215.24 which are to be paid within 30 days' notice of this Order. The Court will sign the form of order submitted by counsel.

2. 24CV03383 JORGENSEN, CHRISTOPHER V. OROVILLE HOSPITAL ET AL

EVENT: Defendants' Demurrer to First Amended Complaint

Defendants' Request for Judicial Notice is granted.

As to the Third Cause of Action – Work Environment Harassment, specifically as to Defendant Robert Wentz's individual demur to this Cause of Action in the First Amended Complaint is sustained, the Court finding that Plaintiff has failed to state a cause of action for harassment against him. The Court grants leave to amend. As to the remainder of the demur to the Third Cause of Action, the Court finds that Plaintiff has set forth sufficient facts to state a cause of action for work environment harassment pursuant to Government Code §§12923, 12940(j). See, CACI 2521A, CACI 2522A, and Plaintiff's First Amended Complaint for Damages at ¶¶25, 28, 92-122. Further, the Court finds that the First Amended Complaint (specifically as it relates to the Third Cause of Action) is not so incomprehensible that Defendants cannot reasonably respond. See, *Lickiss v Financial Indus. Regulatory Auth.* (2012) 208 Cal.App.4th 1125, 1135. Thus, the Demurrer as to the Third Cause of Action is therefore otherwise overruled.

As to the Fifth Cause of Action - Wrongful Termination, the Court previously ruled that pursuant to *Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, an employee's cause of action for wrongful termination that is premised on a violation of FEHA is governed by the two-year statute of limitations for tort actions based on injuries caused by wrongful acts or neglect. *Id.* at 1382. Alternatively, a one-year statute of limitations could apply for filing a civil action after receiving a right-to-sue letter (*Government Code* §12965(b)). The Court previously permitted amendment to the Complaint to allege the date of the right-to-sue letter to allow for a determination as to whether there was compliance with the applicable procedure to invoke application of the above statute of limitation. The First Amended Complaint alleges that the right-to-sue letter was dated August 16, 2024. [See First Amended Complaint at ¶7.] However, the

Court finds that the Complaint filed with the Civil Rights Department was also dated August 16, 2024. See Request for Judicial Notice at Ex. "A". The Defendants' argument in this regard is compelling. Defendants argue that even if the two-year statute of limitations applicable to a wrongful termination claim could be tolled by the filing of an administrative complaint with the Civil Rights Department, Plaintiff failed to bring his administrative complaint within two years in time to take advantage of any argument for tolling. The Court agrees. The Court concludes that the Plaintiff's wrongful termination claim is barred by the two-year statute of limitations and the Demurrer to the Fifth Cause of Action is sustained without leave to amend.

Any amended Complaint, with amendments limited to the Third Cause of Action against Defendant Robert Wentz as an individual, shall be filed and served within 10 days' notice of this Order. Counsel for the Defendants shall submit a revised form of order consistent with this ruling within two weeks.

3. 24CV03933 SABRINA AHRENS GRAVELLE ADMINISTRATOR FOR THE ESTATE OF DEANNE ELIZABETH OSBORN V. OSBORN, RONALD ET AL

EVENT: Demurrer to First Amended Complaint

The Court first notes that the Defendant Newrez, LLC dba Shellpoint Mortgage Servicing (erroneously added as both Specialized Loan Servicing, LLC and Newrez dba Shellpoint LLC's ("Shellpoint" herein) Demurrer is unopposed. Shellpoint's Request for Judicial Notice is granted. The Court finds that Plaintiff has failed to state facts sufficient to satisfy any of the elements of a breach of contract claim as to Shellpoint (e.g., (1) the existence of a contract; (2) Plaintiff's performance or excuse for nonperformance, (3) Defendant's breach; and (4) the resulting damages to Plaintiff). The Demurrer is sustained as to the first cause of action – breach of contract. As to the remaining causes of action, the Court likewise finds that Plaintiff has failed to state facts sufficient to state a cause of action for intentional tort, fraud/identity theft/workmans comp, and general negligence, against Shellpoint. The Demurrer is thus sustained as to the second cause of action – intentional tort, third cause of action – fraud/identity theft/workmans comp, and fourth cause of action – general negligence. Failure to oppose a demurrer may be construed as having abandoned the claims. See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20. Further, because the Demurrer is unopposed, Plaintiff has failed to suggest how the complaint might be amended to state a cause of action, does not show that any allegations were omitted from the complaint which, if inserted, would change its legal effect, and does not show how the complaint could be amended to plead a triable cause of action. *Grossmont Union High School Dist. v. California Debt. of Educ.* (2008) 169 Cal.App.4th 869, 875-76. Thus, the Demurrer is sustained without leave to amend. The Court will sign the form of order submitted by counsel.

4. 25CV00015 MLAKAR, RYAN V. RCI GENERAL ENGINEERING

EVENT: Defendant's Demurrer to Plaintiff's Complaint

Defendant's Request for Judicial Notice is granted.

Plaintiff alleges he was paid \$38.62 per hour [Complaint at ¶9]. This is well over the statutory minimum wage at the time and the wage set forth in the applicable Collective Bargaining Agreements ("CBA" herein). *Labor Code* §1182.12(b)(1)(D)-(F) & (c)(1); 2018-2023 CBA at Supplement No. 1, p. 42; 2022-2027 CBA at §3.01; 2022-2027 CBA at Supplement No. 1, p. 36. Thus, Plaintiff, by his own allegations, fails to state a cause of action for failure to pay minimum wages. Any claim that he was not paid meal or rest breaks (to support *this* cause of action) is duplicative of the relief sought in the Second, Third and Fourth Causes of Action, and not properly considered here. The Demurrer to the First Cause of Action for Failure to Pay Minimum Wages is sustained without leave to amend.

The issue of whether the CBAs "provided equivalent protection" permitting workers to take rest breaks, as well as a "final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions" is a factual finding that is not proper on demurrer. See *Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429; *Bath v. State of California* (2024)105 Cal.App.5th 1184; *Shaw v. Metro-Goldwyn-Mayer, Inc.* (1974) 37 Cal.App.3d 587. The Court finds that Plaintiff has sufficiently stated a cause of action for failure to provide rest periods [Complaint at ¶¶10-11, 26-28]. The Demurrer to the Second Cause of Action for Failure to Provide Rest Periods is overruled.

Likewise, the issue of whether the CBAs provided the same benefits as enumerated in *Labor Code* §512(e)(2) is a factual finding that is not proper on demurrer. See *Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429; *Bath v. State of California* (2024)105 Cal.App.5th 1184; *Shaw v. Metro-Goldwyn-Mayer, Inc.* (1974) 37 Cal.App.3d 587. The Court finds that Plaintiff has sufficiently stated a cause of action for failure to provide meal periods [Complaint at ¶¶10-11, 29-32]. The Demurrer to the Third Cause of Action for Failure to Provide Meal Periods is overruled.

The argument that the Fifth Cause of Action is barred by a one-year statute of limitations is not addressed by Plaintiff in his Opposition, and the Court thus deems that argument unopposed. See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20 ("Plaintiffs did not oppose the County's demurrer to this portion of their seventh cause of action and have submitted no argument on the issue in their briefs on appeal. Accordingly, we deem plaintiffs to have abandoned the issue."). However, the Court further finds Defendant's arguments to have merit and the Demurrer to the Fifth Cause of Action for Failure to Provide Itemized Wage Statements is sustained without leave to amend.

Based upon the Court's overruling of the Demurrer to the Second Cause of Action for Failure to Provide Rest Periods and Third Cause of Action for Failure to Provide Meal Periods, the Demurrer to the Fourth Cause of Action for Failure to Pay Wages and Sixth Cause of Action for Violation of Business and Professions Code §17200 based on their derivative nature, is likewise overruled.

The issue of whether Plaintiff has clearly and unmistakably waived the right to litigate his statutory wage and hour claims, as well as the wrongful termination claim in a judicial forum based upon the argument that the applicable CBA, requires the Court to make a factual finding that is not proper on demurrer. The Court finds that Plaintiff has sufficiently stated a cause of action for violation of whistleblower protection pursuant to Labor Code §1102.5 [Complaint at ¶¶44-53], retaliation and discrimination in violation of Labor Code §6310 [Complaint at ¶¶54-59], and wrongful termination in violation of public policy [Complaint at ¶¶60-70]. The Demurrer to the Seventh Cause of Action for Violation of Whistleblower Protection Pursuant to Labor Code §1102.5, Eighth Cause of Action for Retaliation and Discrimination in Violation of Labor Code §6310, and Ninth Cause of Action for Wrongful Termination in Violation of Public Policy is overruled.

Finally, Defendant argues that all of Plaintiff's claims should also be dismissed with prejudice based upon his failure to grieve these claims in accordance with the CBA's terms. However, Plaintiff alleges in the Complaint that he "submitted a formal grievance to the union..." [Complaint at ¶17]. Whether Plaintiff's submission was sufficient is a factual determination not proper on Demurrer and the Demurrer on this basis is overruled.

Pursuant to Cal Rules of Court, Rule 3.1320, Defendant RCI General Engineering has ten (10) days to file an answer to the Complaint. Counsel for the Defendant shall submit a revised form of order consistent with this ruling within two weeks.

5. 25CV00069 NORLUND, RICHARD ET AL V. SCHALLER, JOHN C

EVENT: Request to Waiver Court Reporter Fees

Pursuant to the communication from the Third District Court of Appeal dated May 2, 2025, indicating that it is considering issuing a peremptory writ of mandate in the first instance; this Court hereby vacates the portion of its ruling of January 23, 2025, denying petitioners' request for waiver of court reporter's fees. The Court is inclined to issue new and different orders granting petitioners' request for the waiver of court reporter's fees for attendance at hearings and trials.