

**Judge Mosbarger – Law & Motion – Wednesday, January 28, 2026 @ 9:00 AM
TENTATIVE RULINGS**

1. 24CV01155 DUTRO, MARK V. ED DUTRO CORPORATION

EVENT: Defendant Ed Dutro Corporation's Motion for Summary Judgment

Defendant Ed Dutro Corporation's ("Defendant" herein) Request for Judicial Notice is granted. Defendant's Objection to Evidence in Support of Reply are overruled as to Objection No. 1, and sustained as to Objection No. 2 [relevance].

As to the Statute of Limitations issue, a signed written promise to pay or acknowledge of a debt "take[s] the case out of the operation of" the statute of limitations. See, *Code of Civil Procedure* §360; *Foristiere v. Alonge* (1929) 98 Cal.App.563, 566-567. To prove a debtor's acknowledgment of a debt simply means to prove that there is an admission of a subsisting obligation. It is not necessary to prove that the debtor articulated that it is willing to pay the debt. See, *Western Coal & Min. Co. v. Jones* (1946) 27 Cal.2d 819, 825. Here, the Court finds that there is evidence of multiple written acknowledgements of the debt owed to Plaintiff that occurred between 2018 through 2024, which would make the filing of this action on April 11, 2024 within the applicable statute of limitations. [See Additional UMF No 21]. The MSJ is therefore denied on this basis.

Plaintiff Mark Dutro ("Plaintiff" herein) pleads two common counts: account stated [See Complaint at ¶CC-1.a.(2)] and money lent [See Complaint at ¶CC-1.b.(4)]. Here, the Motion for Summary Judgment ("MSJ" herein) addresses only the account stated theory. Because the MSJ fails to address all theories raised in the Complaint, pursuant to *Hedayati v. Interinsurance Exchange of the Automobile Club* (2021) 67 Cal.App.5th 833, the motion could be denied on this basis. However, the Court has also considered the merits of the MSJ and finds that were the Court to reach the merits, a triable issue of material fact exists.

First, the common count of account stated is found in *Code of Civil Procedure* §425.30(2) ["An account stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff." The essential elements of an account stated are: 1) previous transactions between the parties establishing the relationship of debtor and creditor; 2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and 3) a promise by the debtor, express or implied, to pay the amount due. *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, citing *Bennett v. Potter* (1919) 180 Cal. 736, 745. Here, there are triable issues of material fact as to whether there were previous transactions between the parties establishing the relationship of debtor and creditor [UMF Nos. 3-5, 9-10; Additional UMF Nos. 11-14, 16-21]; an agreement between the parties, express or implied, on the amount due from the debtor to the creditor [UMF Nos. 3, 5, 9, 10; Additional UMF Nos. 11, 13, 16-21]; and a promise by the debtor, express or implied, to pay the amount due [UMF Nos. 4, 9; Additional UMF Nos. 16, 19-21]. Moreover, the common count of money lent is found in CCP §425.30(6) ["Money lent by plaintiff to defendant at defendant's request."] The elements for this theory/cause of action are not discussed by either party beyond broad terms, but I will provide a full analysis on this specific theory. The elements required are: (1) indebtedness in a specific sum; (2)

consideration given; (3) nonpayment; and (4) implied or express promise to repay. See, e.g., *Rubinstein v. Fakher* (2020), 49 Cal.App.5th 797; *Moya v. Northrup* (1970) 10 Cal.App.3d 276. Based upon the same facts cited above, a triable issue of material fact exists.

The Motion is denied. Counsel for the Plaintiff shall prepare and submit a form of order consistent with this ruling within two weeks.

2-3. 25CV03655 HARDY, KATARINA V. MARKS, JOSHUA RUBEN ET AL

EVENTS: (1) Demurrer by Defendants to Plaintiff's First Amended Complaint

(2) Motion to Strike by Defendants to Plaintiff's First Amended Complaint

Demurrer by Defendants to
Plaintiff's First Amended Complaint

The Demurrer to the First Amended Complaint on the basis of uncertainty is overruled, the Court finding that the Plaintiff has sufficiently alleged and identified Plaintiff's employer [See First Amended Complaint at ¶14].

To state a *prima facie* claim for whistleblower retaliation, Plaintiff must allege the following: 1) he or she engaged in a protected activity, (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. CACI 4603; *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042. Plaintiff has done so. [See First Amended Complaint at ¶¶17-19]. Therefore, the Demurrer to the First Cause of Action for Retaliation in Violation of Public Policy under *Labor Code* §1102.5, is overruled.

As to the Second Cause of Action for Unfair Business Practices the pleading requirements for a cause of action under California's Unfair Competition Law (UCL), codified in Business & Professions Code §17200, require a plaintiff to allege that the defendant engaged in an "unlawful, unfair, or fraudulent business act or practice." The statute is written in the disjunctive, meaning that a business practice may be actionable if it falls under any one of these three prongs: unlawful, unfair, or fraudulent. Here, Plaintiff has met these pleading requirements. [See First Amended Complaint at ¶¶32-39.] Therefore, the Demurrer to the Second Cause of Action for Unfair Business Practices *Business & Professions Code* §17200, et seq. is overruled.

As to the Third Cause of Action for the Court finds that whether the "skip-the-line" fee can or cannot constitute a gratuity under *Labor Code* §351 is a question of fact that should no be resolved on demurrer. Plaintiff has sufficiently plead a cause of action for failure to pay all wages under the *Labor Code* [See, First Amended Complaint at ¶¶40-45]. Therefore, the Demurrer to the Third Cause of Action for Retaliation in Failure to Pay All Wages And Waiting Time Penalties under *Labor Code* §§201, 202, 203, 351 and 558.1 is overruled.

Although Defendants argue that the Fourth Cause of Action fails to state facts sufficient to constitute a cause of action because Plaintiff only includes legal conclusions and does not allege any facts regarding why her wage statements are inaccurate. The Court disagrees and finds that Plaintiff has sufficiently stated a basis for the inaccuracy of her wage statements. [See, First Amended Complaint at ¶¶14, 21, 41, 48]. The Demurrer to the Fourth Cause of Action for Retaliation in Failure to Provide Accurate Itemized Wage Statements under *Labor Code* §§226 and 558.1 is overruled.

To establish a *prima facie* case for wrongful termination in violation of public policy, Plaintiff must show that she was (1) employed by Defendants; (2) discharged by Defendants; (3) the alleged violation of public policy was a substantial motivating reason for her discharge; (4) she was harmed; and (5) the discharge was a substantial factor in causing her harm. CACI 2505; *Garcia-Brower v. Premier Automotive Imports of CA, LLC* (2020) 55 Cal.App.5th 961, 973. Plaintiff has done so. [See First Amended Complaint at ¶¶17-19, 52-57]. Therefore, the Demurrer to the Fifth Cause of Action for Wrongful Termination in Violation of Public Policy is overruled.

Finally, as to the Sixth Cause of Action for Violation of the Private Attorneys General Act, the Court finds that Plaintiff has alleged that she personally suffered from the various Labor Code violations, and the claims alleged are properly representative, not merely individual [See First Amended Complaint at ¶¶1-3, 14, 18, 20-21, 27, 41, 48-49, 54]. The Demurrer to the Sixth Cause of Action for Violation of the Private Attorneys General Act, is overruled.

The Demurrer is overruled in its entirety.

**Motion to Strike by Defendants
to Plaintiff's First Amended Complaint**

Because the arguments by Defendants in relation to the request to strike from the First Amended Complaint allegations and the prayer for both waiting time penalties and wage statement damages are based solely on the arguments raised in the Demurrer, based upon the Court's ruling on those issues, the Motion to Strike is likewise denied as to waiting time and wage statement penalties.

On the issue of alter ego, the Court agrees with the Plaintiff that joint employer and alter ego are distinct, non-mutually exclusive theories and may be pled in the alternative. Thus, the determination the Court must make is whether such allegations are "irrelevant, false, or improper". This determination necessitates a finding that the specific factual allegations of the complaint demonstrate that justice cannot otherwise be accomplished or that recognizing the corporate entity would sanction fraud or promote injustice, here the Court finds that it does. [See First Amended Complaint at ¶¶11-14.] The Motion to Strike as to the alter ego allegations, is denied.

Finally, in pleading punitive damages, a party must plead facts from which it can be reasonably inferred that the defendant acted with malice, fraud within the meaning of *Civil Code* §3294. "The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages . . . Not only must there be

circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." *Grieves v. Superior Court* (1984) 157 Cal.App.3d. 159, 166. Here, the Court finds that there are sufficient allegations of fraud and therefore the claim for punitive damages is appropriate. [See First Amended Complaint at ¶¶9, 16-20, 28.] The Motion to Strike is denied in this regard as well.

The Motion to Strike is denied in its entirety.

Defendants are ordered to file and serve their Answers to the First Amended Complaint within 20 days. Counsel for the Plaintiff shall submit a form of order within two weeks.

4. 25CV03662 REGO, JAYDEN ET AL V. KHANG, ZER ET AL

EVENT: Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability

The Petition for Approval of the Minor's Compromise is granted. The minor is not required to attend the hearing, the Court finding good cause to dispense with his personal appearance. The hearing on March 18, 2026 at 10:30 a.m. shall remain on calendar for status of deposit of the funds into the blocked account and status of dismissal. The Court will sign the forms of order submitted by counsel.