

TENTATIVE RULINGS

FOR: May 18, 2017

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Day Crush, LLC d/b/a Day Wines v. Ehren Jordan Wine Cellars, LLC, et al.

17CV000087

DEMURRER TO THE COMPLAINT

TENTATIVE RULING: The demurrer is MOOT in light of the filing of the amended complaint on May 5, 2017.

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Carlo Juan Gabriel Teruel v. American Canyon Fire Protection District, et al.

17CV000119

(1) DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Plaintiff Carlo Juan G. Teruel improperly relies on facts and evidence falling outside the four corners of the first amended complaint, including the Jennifer Liu declaration. The Court has not considered this information as its introduction is not proper on demurrer. (See Code Civ. Proc., § 430.30; *Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14 [“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.”].) As a result, defendants the City of American Canyon and American Canyon Fire Protection District’s (“ACFPD”) four evidentiary objections to the Jennifer Liu declaration are SUSTAINED.

Defendants' request for judicial notice submitted in support of their reply of excerpts from the City of American Canyon's Municipal Code is GRANTED.

The City's demurrer to each cause of action on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Teruel has not adequately alleged an employer-employee relationship with the City or alleged facts to demonstrate the City should be deemed a joint employer. (See *Vernon v. State of Cal.* (2004) 116 Cal.App.4th 114, 123-27.) The allegation that ACFPD is a "special district," standing alone, does not automatically classify the City as an employer without supporting factual allegations. (Gov. Code, § 16271, subd. (e).)

Defendants' demurrer to the first cause of action for retaliation [Gov. Code, § 12945.2] on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. The elements of a cause of action for retaliation in violation of the Moore-Brown-Roberti California Family Rights Act ("CFRA") are as follows: "(1) the defendant was an employer covered by CFRA; (2) the plaintiff was an employee eligible to take CFRA leave; (3) the plaintiff exercised her right to take leave for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension, because of her exercise of her right to CFRA leave." (*Dudley v. Dep't of Transp.* (2001) 90 Cal.App.4th 255, 261.) Defendants challenge the first three elements. Under the first element, the CFRA applies only to employers who employ more than 50 employees within 75 miles of the worksite where the employee is employed. (Gov. Code, § 12945.2, subd. (b).) Teruel has not pled that ACFPD employs 50 or more employees within a 75 miles of his worksite. As for the City, as noted, Teruel has not adequately pled that the City was his employer or that the City is a joint employer. Under the second element, the CFRA applies only to employees who have worked for at least 12 months and completed 1,250 hours of service. (*Id.*, § 12945.2, subd. (a).) Teruel alleges he completed 1,250 hours of work. (First Amended Compl. ("FAC"), ¶¶ 47-50.) Under the third element, Teruel must establish the leave he took qualified as CFRA leave. (*Dudley, supra*, 90 Cal.App.4th at p. 264.) Teruel did so by alleging he was eligible to take CFRA leave, and that he took leave to care for family members suffering from serious medical conditions. (FAC, ¶¶ 47-50.) The City additionally argues Teruel did not exhaust his administrative remedies to maintain the claim. This argument lacks merit considering Teruel's complaint to the Department of Fair Employment and Housing lists the City as a co-respondent. (See FAC, Ex. A.)

Defendants' demurrer to the second cause of action for gender discrimination [Gov. Code, § 12940 et seq.] on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. Teruel has not adequately alleged circumstances suggesting discriminatory motive for failure to conform to gender stereotypes. (FAC, ¶¶ 35-39 [alleging terminated shortly after using sick leave to care for family], ¶ 40 [alleging ACFPD's chaplain told Teruel he was terminated because "sometimes our families need to sacrifice so that we can take care of them the way they want to be taken care of."], *id.*, ¶ 44 [alleging other firefighters were reprimanded for using sick time to care for family members]; see *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 355 [elements of a gender discrimination claim].) The demurrer is sustained as to the City because Teruel has not adequately pled that the City was his employer or that the City is a joint employer.

Defendants' demurrer to the third cause of action for disability discrimination [Gov. Code, § 12940 et seq.] on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. To plead a claim for associational disability discrimination, a plaintiff must show he was associated with a person who suffers from a disability, he was otherwise qualified to do his job, and

he was subjected to adverse employment action because of his association with a disabled person. (*Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1037.) The disability must be a substantial factor motivating the employer's adverse employment action. (*Id.*) Teruel alleges his wife suffers from an anxiety disorder. (FAC, ¶ 34.) Teruel shared this information with one of his supervisors, Captain David Medina. (*Id.*) Teruel, however, alleges he used sick leave to care for his sons and when his wife came down with a severe case of Hand-Foot-Mouth disease. (*Id.*, ¶¶ 35-37.) He also shared this information with one of his supervisors and a firefighter on duty. (*Id.*, ¶ 37.) Thus, Teruel has not alleged sufficient facts to show that his wife's anxiety disability was a substantial factor motivating his termination. The demurrer is sustained as to the City because Teruel has not adequately pled that the City was his employer or that the City is a joint employer.

Defendants' demurrer to the fourth cause of action for failure to prevent discrimination [Gov. Code, § 12940, subd. (k)] on the ground of failure to state sufficient facts is SUSTAINED WITH LEAVE TO AMEND. This claim is based on the discrimination claims. Because those claims are not adequately alleged, this cause of action necessarily fails.

Defendants' demurrer to the fifth cause of action for retaliation (sick leave to care for kin) [Lab. Code, § 233] on the ground of lack of jurisdiction is SUSTAINED WITH LEAVE TO AMEND.¹ Defendants argue the claim fails because Teruel failed to timely comply with the Government Claims Act. Teruel asserts he need not comply with the act because he is bringing a cause of action under Labor Code section 233, which contains no exhaustion requirement. Labor Code section 244 provides if no exhaustion requirement is explicitly set forth in the relevant provision of the Labor Code, then a plaintiff may pursue a claim without exhausting administrative remedies. (*Neushul v. Regents of the Univ. of Cal.* (C.D. Cal. 2016) 168 F. Supp. 3d 1242, 1246-47.) In other words, according to Teruel, he was not required to file a claim under the Government Claims Act. The Court disagrees. The Government Claims Act and the exhaustion doctrine serve different purposes. The purpose of the Government Claims Act is to provide an entity with notice of the claim to allow investigation and settlement. (*Roberts v. Cnty. of Los Angeles* (2009) 175 Cal.App.4th 474, 480.) By contrast, the purposes of the exhaustion doctrine are to bolster administrative autonomy, permit the agency to resolve factual issues and apply its expertise, to mitigate damages, and to promote judicial economy. (*Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 930-31; see *Bozaich v. State of Cal.* (1973) 32 Cal.App.3d 688, 698 ["The claim-filing requirements of the Government Code are directly related to the doctrine of governmental immunity and exist for the benefit of the state, not the judicial system; they were adopted by the Legislature in the exercise of its legislative prerogative to impose conditions as a prerequisite to the commencement of any action against the public entity."].) The amendments to the Labor Code do not supplant the requirements of the Government Claims Act. (See *Lozada v. City & Cnty. of S.F.* (2006) 145 Cal.App.4th 1139, 1155 ["The origin and purposes of the government claim filing requirements and the administrative remedies exhaustion doctrine differ, and elimination of the exhaustion requirement does not release a litigant from the need to comply with Government Claims Act requirements."].) *Kappelman v. City & Cnty. of S.F.* (N.D. Cal. Oct. 27, 2015, No. 14-cv-04434-MEJ) 2015 U.S. Dist. LEXIS 145684, *7, is not persuasive as it did not discuss this

¹ The Court has not considered Teruel's averment that he is excused from complying with the Government Claims Act due to Government Code section 946.4 because ACFPD did not properly file its statement of facts as required pursuant to Government Code section 53051. Teruel improperly relies on facts not alleged in the first amended complaint.

distinction. Although exhaustion of administrative remedies under the Labor Code was not required, Teruel still was required to file a timely government claim. The failure to file a timely government claim bars the cause of action.

Defendants' demurrer to the fifth cause of action for retaliation (sick leave to care for kin) [Lab. Code, § 233] on the ground of failure to state sufficient facts is **OVERRULED**. Teruel alleges his use of sick leave was a substantial motivating factor in defendants' decision to terminate his employment. (FAC, ¶¶ 35-39, 40, 44, 77, 85.)

Defendants' demurrer to the sixth cause of action for breach of implied-in-fact contract and seventh cause of action for breach of the covenant of good faith and fair dealing on the grounds of lack of jurisdiction and failure to state sufficient facts is **SUSTAINED WITHOUT LEAVE TO AMEND**. Plaintiff acknowledges these claims cannot be brought against public entities. (Opp. at p. 1 n.1.)

If Teruel elects to do so, he shall file a second amended complaint within 10 calendar days of service of notice of entry of order.

(2) PETITION FOR RELIEF FROM GOVERNMENT CODE SECTION 945.4

TENTATIVE RULING:

Plaintiff Carlo Juan G. Teruel's petition for relief from Government Code section 945.4 due to his attorney's mistake of law surrounding the fifth cause of action for retaliation (sick leave to care for kin) [Lab. Code, § 233] is **GRANTED**. (Gov. Code, § 946.6, subd. (c)(1).) Teruel has been diligent in pursuing his claim. Defendants the City of American Canyon and American Canyon Fire Protection District have not established that they will be prejudiced in the defense of the claim. (*Id.*) Teruel shall file his "suit on the cause of action to which the claim relates" within 30 calendar days (i.e. with the filing of the second amended complaint). (*Id.*, § 946.6, subd. (f).)