

1. SLATER v. RALEY'S SOUTH Y CENTER, SC20210019

Case Management Conference

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, NOVEMBER 18, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. WEST v. LAKE TAHOE ALEWORX, LLC, 22CV0759**Demurrer to First Amended Complaint**

This is an employment-related action. Plaintiff's First Amended Complaint ("FAC"), filed July 8, 2022, asserts causes of action for (1) violation of Labor Code section 1102.5, (2) wrongful termination in violation of public policy, and (3) violation of Labor Code section 6310 against defendant Lake Tahoe Aleworx, LLC. Pending is defendant's demurrer to the FAC.

1. STANDARD OF REVIEW

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30(a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, 39 Cal.App.3d at p. 318.)

2. ALLEGATIONS OF THE FAC

Plaintiff began working for defendant in or about December 2019. He worked as a manager at both defendant's Nevada and California restaurant locations. During the Covid-19 public health emergency, plaintiff observed that defendant would not follow any mandated health regulations, such as mask-wearing and social distancing. As a result, plaintiff made complaints to defendant's owner, Luca Genasci. In response to his complaints, the owner reprimanded plaintiff and his complaints were dismissed. Plaintiff believed that defendant's refusal to compel with health regulations was unlawful. (FAC, ¶¶ 10–11.)

In August 2020 plaintiff was physically assaulted at work after a customer spat on his face. Plaintiff attempted to detain the customer so he could call the police, but he was stopped by defendant's security guard and was forcefully removed from the restaurant by the owner. The owner put plaintiff in a chokehold and grabbed plaintiff so hard that his shirt ripped. (FAC, ¶ 12.)

Following this incident, plaintiff complained to defendant regarding the owner's actions and the customer's actions. He informed the owner that he wanted to press charges against the customer. The owner demanded that plaintiff not press any charges against the customer and to not involve the business in any charges. When plaintiff informed the owner that he wished to proceed with pressing charges against the customer, the owner became visibly upset and he continued to demand that plaintiff not press charges. (FAC, ¶ 13.)

On or about September 8, 2020, plaintiff was notified that he was being terminated. (FAC, ¶ 14.)

3. DISCUSSION

3.1 1st and 3rd C/A for Violation of Labor Code § 1102.5 and § 6310

Plaintiff asserts two whistleblower causes of action based on alleged violations of two separate statutes, Labor Code sections 1102.5 and 6310.

Defendant argues that the 1st C/A fails because plaintiff does not plead that the alleged statements by plaintiff constituted protected disclosures within the meaning of Labor Code section 1102.5, or identify any disclosure made or intended to be made, or that he made any disclosure to a person with authority over the employee who has authority to investigate, discover, or correct the violation.

A. Statutory Language

Labor Code section 1102.5 provides in part:

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an

employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(Lab. Code, § 1102.5, subds. (a), (b).)

Labor Code section 6310 provides that “[a]ny employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by their employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative, of unsafe working conditions, or work practices, in their employment or place of employment, ... shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer....” (*Id.*, subd. (b).)

B. Discussion

Both causes of action have similar requirements and both require an adverse employment action. To establish a prima facie case under each, plaintiff must show (1) he

engaged in a protected activity, (2) his employer subjected him to an adverse employment action, and (3) a causal link between the two. (*St. Myers v. Dignity Health* (2019) 44 Cal.App.5th 301, 314.)

The demurrer to the 1st and 3rd C/A is overruled. The complaint “shall contain” a “statement of the facts constituting the cause of action, in ordinary and concise language,” and a demand for judgment for the relief to which the pleader claims to be entitled.” (Code Civ. Proc., § 425.10(a).) “Fact pleading” obligates “the plaintiff to allege ultimate facts that ‘as a whole apprise[] the adversary of the factual basis of the claim.’” (*Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415, citations omitted.) This pleading threshold is “minimal.” (*Id.* at p. 417.) The FAC adequately pleads a prima facie case under Labor Code sections 1102.5 and 6310. Defendant’s arguments raise disputed factual issues that cannot be determined on demurrer. Further, “[a] demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Khoury v. Maly’s of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.)

3.2 Wrongful Termination in Violation of Public Policy

Plaintiff’s 2nd C/A alleges wrongful termination in violation of public policy. “To support a wrongful discharge claim, the policy must be ‘(1) delineated in either constitutional or statutory provisions; (2) “public” in the sense that it “inures to the benefit of the public” rather than serving merely the interests of the individual; (3) well established at the time of the discharge; and (4) substantial and fundamental.’ [Fn.]” (*Phillips v. St. Mary Regional Medical Center* (2002) 96 Cal.App.4th 218, 226.)

Defendant demurs on the basis that plaintiff fails to identify the constitutional or statutory provisions upon which he relies that is of public importance.

The court disagrees. While not cited within the text of the 2nd C/A, the FAC asserts claims under two whistleblower statutes. Thus, in reading the FAC as a whole, the 2nd

C/A adequately pleads a common law wrongful termination claim. Accordingly, the demurrer to the 2nd C/A is overruled.

TENTATIVE RULING # 2: DEFENDANT'S DEMURRER TO THE FIRST AMENDED COMPLAINT IS OVERRULED. DEFENDANT MUST ANSWER THE FIRST AMENDED COMPLAINT NO LATER THAN 15 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. PEOPLE v. DAVIS, 22CV1476**Case Management Conference**

This matter was reassigned to Department 4 on October 31, 2022. Criminal defendant Ricky Davis filed a civil action pursuant to 42 U.S.C. section 1983 in the federal district court against multiple civil defendants, alleging his prosecution and conviction were unconstitutional.

On September 30, 2022, pursuant to California Rules of Court, rule 2.551, non-parties County of El Dorado, Richard Strasser, and Rick Fitzgerald filed a petition to unseal the criminal record in *People v. Davis*, El Dorado Superior Court Case No. P02CRF0272. Petitioners are defendants in the federal civil action. The petition is made on the basis that the civil defendants have an overriding interest in the protection of their rights, and the records are necessary so that they may fully and fairly defend themselves against Davis's civil rights lawsuit.

The petition was served by mail on September 28, 2022.

On October 7, 2022, a joinder to the petition was filed by non-party Robert Michael Anthony, M.D., who is also a defendant in the federal civil action.

On October 24, 2022, Ricky Davis filed a joinder with non-parties' petition.

To date, no objections to the petition have been filed.

TENTATIVE RULING # 3: PETITION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY

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