

TENTATIVE RULINGS

FOR: March 12, 2019

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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of the John A. Silvestri Residual Trust

19PR000032

PETITION FOR INSTRUCTIONS RE MODIFICATION OF TRUST

TENTATIVE RULING: GRANT petition.

.....

In the Matter of the Clarke Family Trust

19PR000035

PETITION FOR APPOINTMENT OF SUCCESSOR TRUSTEE AND FOR INSTRUCTIONS

APPEARANCE REQUIRED. The Court notes the notice listed a March 13, 2019 hearing date while the petition listed a March 12, 2019 hearing date. Based on the representation from Coombs & Dunlap, LLP that the beneficiaries have agreed to have the petition heard on March 12, and that the beneficiaries do not intend to object, the Court intends to grant the petition. However, appearance is required because one beneficiary expressed an interest in attending the hearing to ask questions.

.....

In the Matter of James C. Metzger Trust

26-63772

SIXTH ACCOUNT AND REPORT OF TRUSTEE AND PETITION FOR SETTLEMENT OF ACCOUNT

TENTATIVE RULING: GRANT petition.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Humberto Loyola Cisneros, et al. v. Frog’s Leap Winery

18CV001453

DEFENDANT FROG’S LEAP WINERY’S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS’ COMPLAINT

TENTATIVE RULING: Defendant Frog’s Leap Winery’s request for judicial notice is GRANTED in part. Defendant’s Demurrer to Plaintiff’s first cause of action for retaliation is SUSTAINED without leave to amend; Defendant’s Demurrer is OVERRULED as to each of Plaintiff’s causes of action two through ten.

A. Defendant’s Request for Judicial Notice

Defendant’s Request for Judicial Notice is GRANTED in part. The Court agrees that California Evidence Code section 452, subsections (c) and (h) permit the taking of judicial notice of the records and files of the California Agricultural Labor Relations Board (ALRB). (*Medix Ambulance Service, Inc. v. Super. Ct.* (2002) 97 Cal.App.4th 109, 114, *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749-1750.)

The Court takes judicial notice of the following: (1) ALRB’s Notice opening Case No. 2017-CE-026-SAL and Plaintiffs’ charge filed June 30, 2017 as attached as Exhibit B to the Pliner Declaration, but not for the truth of the matters asserted therein; (2) ALRB’s Notice opening Case No. 2018-CE-069-SAL and Plaintiffs’ charge filed November 27, 2018 as attached as Exhibit C to the Pliner Declaration, but not for the truth of the matters asserted therein; (3) ALRB’s Discovery pursuant to 8 CCR 20236 issued in 2017-CE-026-SAL as attached as Exhibit D to the Pliner Declaration, but not for the truth of the matters asserted therein; (4) ALRB’s Discovery pursuant to 8 CCR 20236 issued in 2018-CE-069-SAL as attached as Exhibit E to the Pliner Declaration, but not for the truth of the matters asserted therein.

Defendant further requests the Court take judicial notice of the First Amended Complaint filed in Napa County Superior Court case number CV18001013. The Court notes that, by stipulation of the parties, a Second Amended Complaint has been filed in that matter. The Court, on its own motion, takes judicial notice of the Second Amended Complaint filed in Napa County Superior Court case number CV18001013.

B. Background

Plaintiffs’ Complaint alleges injuries stemming from Defendant’s wrongful conduct in the context of Plaintiffs’ employment with Defendant. The causes of action set forth therein are as follows: First Cause of Action by all Plaintiffs for Retaliation pursuant to Labor Code section 1102.5; Second Cause of Action by Plaintiffs Jesus, Rolando and Cisneros for Retaliation pursuant to Government Code section 12940, subsection (h); Third and Fourth Causes of Action by Plaintiff Cisneros for Age Discrimination and Age Harassment; Fifth Cause of Action by all Plaintiffs for Sex Discrimination; Sixth Cause of Action by Jesus and Rolando for Sex Harassment; Seventh Cause of Action by Rolando for Physical Disability Discrimination; Eight Cause of Action by Jesus, Rolando, Cisneros, Willer, and Bonilla for Wrongful Termination in

Violation of Public Policy; Ninth Cause of Action by Gallegos for Constructive Discharge in Violation of Public Policy; and a Tenth Cause of Action by all Plaintiffs for Intentional Infliction of Emotional Distress.

Defendant asserts the Court lacks subject matter jurisdiction, arguing that Plaintiff's claims are preempted by the Agricultural Labor Relations Act, California Labor Code section 1140, *et seq.*¹ (ALRA), or should otherwise be abated because of the pending action before the ALRB.

C. Analysis

i. Exclusive Jurisdiction Under the ALRA

The ALRA addresses issues relating to collective bargaining by agricultural workers. In passing the ALRA, the California Legislature, "intended to adapt to California needs the proved federal instrumentality for protecting rights of employees and employers *with respect to collective bargaining* (emphasis added)." (*Tex-Cal Land Management v. Agric. Labor Relations Bd.* (1979) 24 Cal.3d 335, 345.)

The ALRB has exclusive primary jurisdiction over all phases of the administration of the ALRA relating to unfair labor practices as defined therein. (*United Farm Workers v. Super. Ct.* (1977) 72 Cal.App.3d 268, 271.) The ALRB is empowered to prevent any person from engaging in such unfair labor practices. (Labor Code § 1160.) Pursuant to the ALRA, the procedures it contains "shall be the exclusive method of redressing unfair labor practices." (Labor Code § 1160.9.) The ALRA provides that "if any other act of the Legislature shall conflict with the provisions of this part, this part shall prevail." (Labor Code § 1166.3.)

The Court takes further guidance from analysis of the Federal National Labor Relations Act (NLRA). "Much of the [ALRA] is copied verbatim from the NLRA, and the [ALRA] goes so far as to provide that the Board must follow applicable NLRA precedent (Lab. Code, § 1148)." (*United Farm Workers v. Super. Ct., supra*, 72 Cal.App.3d at 271.) In analyzing the application of the NLRA, the U.S. Supreme Court held that where an "activity is arguably subject to [the NLRA], the States, as well as the federal courts, must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." (*San Diego Bldg. Trades Council v. Garmon* (1959) 359 U.S. 236, 245.) The Court concludes that pursuant to section 1148, and under the holding of *United Farm Workers*, the reasoning of the U.S. Supreme Court in *San Diego Bldg. Trades Council* directs that where a complained-of-activity is arguably subject to the ALRA, the Court should defer to the exclusive competence of the ALRB in order to avoid interference with ALRB policy.

ALRB policy is concerned with any activity that would constitute an "unfair labor practice" under the ALRA. Section 1153 of the ALRA provides:

"It shall be an unfair labor practice for an agricultural employer to do any of the following:

¹ All subsequent statutory references are to the California Labor Code unless otherwise noted.

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152. . . .

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

(d) To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part.”

Section 1152 provides:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.”

The central question before the Court is whether Plaintiff alleges facts sufficient to state causes of action based, at least in part, on grounds that do not implicate or involve “unfair labor practice” as defined in the ALRA. (See *Balog v. LRJV* (1988) 204 Cal.App.3d 1295, 1308-1310 (judgment on the pleadings properly denied where complaint states cause of action grounded on allegations not subject to federal pre-emption, even where also grounded on pre-empted allegations).)

ii. First Cause of Action

The First Cause of Action is based exclusively on claims that Plaintiffs (plural) were injured by CISNEROS’ filing a claim with the ALRB. In paragraph 124 of the Complaint, Plaintiffs allege that “DEFENDANTS retaliated against PLAINTIFFS for CISNEROS filing a claim against DEFENDANTS with the [ALRB] and disclosing information that CISNEROS reasonably believed disclosed violations of, and non-compliance with, California statutes.” Paragraph 125 continues: “CISNEROS’ act of filing a claim against DEFENDANTS with the [ALRB] was protected activity.”

The Court finds that any claim of wrongful retaliation by a Plaintiff other than Cisneros, based on Cisneros’ reporting activities, must necessarily be based on allegations of some concerted activity between that Plaintiff and Cisneros, otherwise there would be no causal connection between the retaliation and the other employees.

Moreover, the claim itself is based exclusively on alleged injury relating to retaliation for filing a claim with the ALRB. Plaintiffs argue that the alleged wrongdoing giving rise to liability was Defendant’s retaliation, actionable under the “whistleblower” statute at Labor Code section 1102.5. They argue that the fact that the event that precipitated the retaliation was a claim to the ALRB does not bring the retaliation cause of action under the exclusive jurisdiction of the ALRB.

The Court agrees with Defendant’s argument, however, that the ALRB has exclusive primary jurisdiction over all phases of the administration of the ALRA relating to unfair labor practices as defined therein. (*United Farm Workers v. Super. Ct.* (1977) 72 Cal.App.3d 268, 271.) The Court finds that any alleged retaliation against Plaintiffs for exercising their rights under the ALRA is itself a phase of the administration of the ALRA.

The Court further finds that because Plaintiff’s first cause of action is preempted by the ALRA, it is not susceptible to being saved through amendment or repleading. For the foregoing reasons, Defendant’s demurrer to Plaintiff’s first cause of action is SUSTAINED without leave to amend.

iii. Remaining Causes of Action

Unlike the first cause of action, the second through tenth causes of action are grounded on allegations that are separate and apart from those implicated under the ALRA. Under such circumstances, the complaint must stand as to those causes of action to give plaintiffs an opportunity to prove their non-pre-empted claims. If they are able to do so, then Defendants will be liable to Plaintiffs for damages caused by non-pre-empted retaliation/discrimination. (See *Balog v. LRJV, supra*, 204 Cal.App.3d at 1308-1309.)

The Court finds that the critical language in the ALRB charges is “engaging in concerted activity.” It is this phrase that implicates those “rights guaranteed in section 1152” (Labor Code § 1153, subd. (a)) to “to self–organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .” (Labor Code § 1152.) After careful review of the Complaint, the Court finds that Plaintiffs have alleged specific acts by each Plaintiff that do not implicate concerted activity, and retaliation by Defendants that, taken together, are sufficient to state claims outside of the exclusive jurisdiction of the ALRB.

Because the claims and remedies are distinct from those being pursued before the ALRB, there is no justification for abatement. (See *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787-788 ([i]n determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action”).)

For the foregoing reasons, the Court SUSTAINS Defendant’s demurrer to Plaintiff’s first cause of action without leave to amend and OVERRULES Defendant’s demurrer to each of Plaintiffs second through tenth causes of action.

.....
In the Matter of Terral Keith Litle

19CV000090

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: The matter is continued to March 21, 2019, at 8:30 a.m. in Dept. A to allow for the filing of the CLETS report.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Estate of Christina Eileen Kew

17PR000215

FIRST REPORT OF ADMINISTRATION ON WAIVER OF ACCOUNT AND PETITION FOR APPROVAL OF ATTORNEY'S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed.