

May 30, 2025 Civil Tentative Rulings

1. CL0002037 Joseph Pryor v. S.A.

No appearances are required. The court, on its own motion, continued the hearing by written order from May 30, 2025, to July 25, 2025, at 10:00 a.m.

2. CU0000090 Matthew Palleschi, et al v. Daniel Fraiman Construction, Inc. et al

Plaintiffs' motion for leave to file an amended complaint is granted.

"The Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading" Cal. Code Civ. Proc. § 473(a)(1). Leave to amend may be granted at any stage in the proceedings, including trial. *See id.* § 576; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761. Motions for leave to amend are directed to the sound discretion of the trial court. *See Hirsu v. Superior Court* (1981) 118 Cal.App.3d 486, 488-489.

Firstly, the court finds the declaration filed in support of the motion and the attached pleading (tracking the changes) are sufficient to put the court and parties on notice of the complaint changes sought and substantially comply with the requirements of California Rules of Court, rule 3.1324.

Secondly, while the instant motion has been filed close to the currently set trial date, the court is persuaded that the interests of justice favor allowance of the amendment and resolution of the same, as necessary, by the trier of fact. In order to avoid any potential prejudice to any party, the court will entertain any request to continue the trial date or reopen limited discovery for the purpose of addressing the new cause of action.

The proposed amended complaint shall be filed and served by June 9, 2025.

3. CU0001605 Andrew Johnson vs. Donald Judas

Defendant's motion to quash the deposition of Donald Judas is continued on the court's own motion to July 11, 2025, at 10:00 am in Dept. 6, to be heard with plaintiff's motion to compel the deposition of Donald Judas.

4. CU21-085893 Tom Amesbury, et al. vs. Barbara Heger, et al.

Defendant Heger's motion to exclude broker claims from arbitration is denied.

Defendant contends that the Third District Court of Appeal found that defendant acted solely as a seller, not a broker, and that the broker claim is not subject to arbitration. The court is not persuaded.

In its decision, the Court of Appeal made it clear that when a broker, like Heger, sells her own property, rather than the property of another, she is not acting as a broker. "[A] broker like Heger who sells her own property... wears only one hat (i.e., the hat of a seller who just so happens to be a broker)." Based in part on that conclusion, the appellate court rejected the suggestion by plaintiffs that the third-party exception barred arbitration and instead directed the trial court to grant Heger's motion to compel arbitration. The appellate court did *not* specifically opine that the broker claims were *not* subject to arbitration.

In any event, the issue raised by defendant is a non-issue for purposes of arbitration. Heger was a seller who happened to be a broker. Heger is named as seller/trustee in all six claims. (There are four claims in the December 2021 amended complaint against defendant in both her capacity as trustee and broker (claims 1, 2, 5 and 6) and two against defendant in her capacity as trustee solely (claims 3 and 4)). All six trustee claims are indisputably subject to arbitration. To the extent that the amended complaint includes claims against Heger as broker, those appear to be superfluous given the conclusion of the Court of Appeal that Heger was acting in the legal capacity of seller, not broker.

The motion is denied and the parties are directed to proceed with arbitration forthwith.

5. CU0001902 Travis Gould vs. PHH Mortgage Corporation, et al.

No appearances are required. Defendants' demurrer to the complaint has been continued by stipulation of the parties to July 18, 2025, at 10:00 a.m. in Dept. 6.

6. CU0001945 Jaymon Maxwell Campbell v. Jersey Mike's Subs, et al.

Defendants' unopposed demurrer to the complaint is sustained with leave to amend in part and without leave to amend in part.

Standard of Review

A demurrer tests the sufficiency of the factual allegations in the complaint and whether facts are pled with sufficient certainty and particularity. *See Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610-611; *see also* Code Civ. Proc., § 430.10(e). Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. *See Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43. Where a complaint fails to adequately plead all necessary elements of a cause of action, a demurrer is properly sustained. *See Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 884- 85. "Where a demurrer is sustained ... as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852.

Second Cause of Action: Labor Code section 351

The demurrer to the second cause of action is sustained without leave to amend.

First and foremost, Labor Code "section 351 does not provide a private cause of action." *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal.4th 592, 603. In addition, Labor Code section 351 prohibits employers and their "agents" from taking any portion of gratuities left for employees, but it does not prohibit mandatory tip pooling arrangements among employees who are not agents. Plaintiff's complaint fails to allege any specific facts establishing that either the general or assistant managers at issue exercised any of the enumerated powers necessary to qualify as "agents" under the Labor Code. *See, e.g., Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th 1439, 1451 ("Section 350, subdivision (d), defines 'Agent' as "every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.' ").

Fourth Cause of Action: Labor Code section 558

The demurrer to the fourth cause of action is sustained without leave to amend.

Labor Code section 558 does not create a private right of action. *See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1132 (“Although PAGA actions can serve to *indirectly* enforce certain wage order provisions by enforcing *statutes* that require compliance with wage orders ..., the PAGA does not create any private right of action to *directly* enforce a wage order.”), *disapproved on other grounds by ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.

Fifth & Sixth Causes of Action: Retaliation

The demurrer to the fifth and sixth causes of action is sustained with leave to amend.

As currently pled, the claims lack sufficient factual allegations. A prima facie claim under Labor Code section 1102.5(b) requires the plaintiff to plead (1) a protected disclosure of information, (2) a reasonable belief that the disclosure revealed a legal violation, (3) an adverse employment action, and (4) a causal connection between the two. *See Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592. Plaintiff does not allege that he made a disclosure to a person with authority or to a government agency, nor does he identify any specific law he believed was violated. Instead, he vaguely alleges that he “raised concerns” about tip pooling to coworkers, which is legally insufficient to constitute a protected disclosure.

Similarly, a claim under Labor Code section 98.6 requires a showing of (1) protected activity, (2) an adverse employment action, and (3) a causal nexus. *See Yau v. Allen* (2014) 229 Cal.App.4th 144, 154. Plaintiff claims his hours were reduced after complaining about the tip pool, but fails to allege when or how he complained, to whom the complaints were made, or who made the decision to alter his schedule. Moreover, plaintiff concedes he remains employed. A mere temporary reduction in hours, without a formal adverse action such as suspension, demotion, or termination, is not sufficient to establish a materially adverse employment action under section 98.6. *See McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 386.

Seventh Cause of Action: Failure to Pay Wages

The demurrer to the seventh cause of action is sustained with leave to amend.

Plaintiff’s seventh claim for failure to pay wages under Labor Code sections 1194 and 204 is legally deficient. As to section 1194, plaintiff fails to allege facts sufficient to support a claim for unpaid minimum wages. Section 1194 only provides a remedy where an employer fails to pay minimum wage for hours actually worked. Plaintiff’s allegations—that he was required to participate in “off-the-clock group chats, training, or other tasks”—are vague and conclusory.

Plaintiff also fails to state a claim under section 204, which governs the timing—not the amount—of wage payments. Plaintiff alleges no facts showing that wages earned in any particular pay period were paid late.

First Cause of Action: Unfair Competition

The demurrer is sustained with leave to amend as to this claim.

Because the Unfair Competition Law (UCL) does not create independent rights, a plaintiff must plead a predicate unlawful, unfair, or fraudulent business act or practice. The underlying statutory claims, *i.e.*, the second, fourth, fifth, sixth and seventh causes of action, have failed; as such, a UCL claim necessarily fails as well. *See Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 178.

Third Cause of Action: Failure to Pay Itemize Wages

The demurrer is sustained with leave to amend as to this cause of action.

Labor Code section 226 requires plaintiffs to demonstrate not only that wage statements were inaccurate but that the employer's failure was knowing and intentional. *See* Lab. Code, § 226 (“(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee ... an accurate itemized statement in writing showing [nine categories of information related to wages and hours]”;“(e)(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or [fifty to one hundred dollars per pay period], not to exceed an aggregate penalty of four thousand dollars (\$4,000)....”). Plaintiff's claim, as pled, does not adequately allege what specific data was inaccurately reported or that the employer acted with the required *mens rea*.

Conclusion

The demurrer is sustained with leave to amend, in part, as noted. Any amended complaint must be served and filed by June 9, 2025.