

Demurrer (Judge Marc Marmaro)

Case Number: BC661064 **Hearing Date:** September 13, 2017
Dept: 37

CASE NAME: Martinez-Martinez v. Guzman et al.

CASE NO.: BC661064

HEARING DATE: 9/13/17

DEPARTMENT: 37

CALENDAR NO.: 9

TRIAL DATE: None

NOTICE: OK

SUBJECT: Demurrer

DEMURRING PARTY: Defendants Serafin Guzman and Daniel Guzman

OPPOSING PARTY: Plaintiff Jose Luis Martinez-Martinez

COURT'S TENTATIVE RULING

The court **OVERRULES** Defendants Serafin Guzman and Daniel Guzman's demurrer as to the seventh and eighth causes of action. The demurrer is **MOOT** as to the fifth and sixth causes of action. Counsel for Plaintiff to give notice.

STATEMENT OF THE CASE

This action arises from Plaintiff Jose Luis Martinez-Martinez (“Martinez”)’s employment with Defendants Serafin Guzman and Daniel Guzman (collectively the “Guzmans”). According to the Complaint, Defendants provide landscape construction services to architects, designers, and landscape construction companies. (Compl. ¶ 9.) Plaintiff alleges that he was employed by Defendants as a gardener from April 2004 until he voluntarily left in 2010. (Compl. ¶ 15.) He states he returned to work for Defendants in July 2012 and was discharged on March 4, 2016. (*Ibid.*) Plaintiff alleges he was forced to work approximately fourteen hours a day, six to seven days per week. (Compl. ¶ 17.) Plaintiff contends he was not paid overtime compensation by Defendants, and was only paid a flat rate of \$80 per day for his first year and \$90 per day afterwards. (Compl. ¶¶ 18-19.) According to the Complaint, he was not offered meal periods or rest periods while at work. (Compl. ¶¶ 18, 21.)

Plaintiff states that he previously filed a complaint with the California Department of Industrial Relations, Division of Labor Standards Enforcement (the “Labor Commissioner”), and that a full hearing took place on October 10, 2016. (Compl. ¶ 22.) According to Plaintiff, on October 9, 2016, an individual came to Plaintiff’s house and threatened to murder Plaintiff if he attended the Labor Commissioner hearing and testified against Defendants. (Compl. ¶ 23.) Plaintiff further alleges that this individual is a known Venice gang member who sold stolen goods to Defendants on an ongoing basis. (Compl. ¶ 24.) Plaintiff alleges that the individual was instructed or directed by Defendants to issue this threat and that he could have only obtained Plaintiff’s exact home

address and location from Defendants. (Compl. ¶¶ 26-28.) Plaintiff attended the hearing and dismissed his complaint before the Labor Commissioner. (Compl. ¶ 29.)

In the Complaint, Plaintiff alleges causes of action against Defendants for: (1) failure to pay all wages due, including minimum wage and overtime; (2) failure to provide meal and rest periods; (3) waiting time penalties; (4) failure to provide accurate wage statements; (5) conversion; (6) civil remedy for stolen or extorted property; (7) violation of Civil Code, § 51.7 (Ralph Act); (8) Violation of Civil Code, § 52.1 (Bane Act); and (9) Violation of Business & Professions Code, §§ 17200 *et seq.* (Unfair Competition Law “UCL”). On August 30, 2017, Plaintiff filed a request to dismiss his fifth and sixth causes of action; the dismissal was entered on the same date.

Defendants now demur to the seventh cause of action and the eighth cause of action on the grounds that Plaintiff fails to state facts sufficient to constitute these causes of action and that these causes of action are uncertain.[\[1\]](#) Defendants submit the Declaration of Sarah H. Scheinhorn (“Scheinhorn Declaration”) in which Scheinhorn states that she met and conferred with Plaintiff’s counsel Adam Romero (“Romero”) by email and by telephone on June 26, 2017, June 28, 2017, July 10, 2017, and July 11, 2017. This declaration is sufficient to meet the requirements of Code of Civil Procedure, section 430.41.

EVIDENTIARY OBJECTIONS

Defendants object to certain statements in the Declaration of Alan J. Romero (“Romero Declaration”). A demurrer is an objection to a pleading, and the court notes that the statements in the Romero Declaration may not be considered as evidence in connection with the subject demurrer. (See Code Civ. Proc., § 430.30, subd. (a).) Since the statements in the declaration are not considered, the evidentiary objections are moot.

DEMURRER

I. Legal Standard

A demurrer is an objection to a pleading, the grounds for which are apparent from either the face of the complaint or a matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a); see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The purpose of a demurrer is to challenge the sufficiency of a pleading “by raising questions of law.” (*Postley v. Harvey* (1984) 153 Cal.App.3d 280, 286.) The court “treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law” (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525.) “In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.” (Code Civ. Proc., § 452; see also *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) “When a court evaluates a complaint, the plaintiff is entitled to reasonable inferences from the facts

pled.” (*Duval v. Board of Trustees* (2001) 93 Cal.App.4th 902, 906.)

The general rule is that the plaintiff need only allege ultimate facts, not evidentiary facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 (*Doe*).) “All that is required of a plaintiff, as a matter of pleading, even as against a special demurrer, is that his complaint set forth the essential facts of the case with reasonable precision and with sufficient particularity to acquaint the defendant with the nature, source and extent of his cause of action.” (*Rannard v. Lockheed Aircraft Corp.* (1945) 26 Cal.2d 149, 156-157 (*Rannard*).) “Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

II. Special Demurrer

As an initial matter, Defendants contend that the seventh and eighth causes of action are uncertain. “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” (*Lickiss v. Fin. Indus. Reg. Auth.* (2012) 208 Cal.App.4th 1125, 1135.) In addition, even where a complaint is in some respects uncertain, courts

strictly construe a demurrer for uncertainty “because ambiguities can be clarified under modern discovery procedures.” (*Ibid*, citing *Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

The court finds that the Complaint is not “so incomprehensible that a defendant cannot reasonably respond.” Accordingly, Defendants’ special demurrer for uncertainty is OVERRULED.

III. Seventh and Eighth Causes of Action for Violation of the Bane and Ralph Acts

Defendants contend that Plaintiff’s seventh cause of action for violation of Civil Code, section 51.7 (the “Ralph Act”), and Plaintiff’s eighth cause of action for violation of Civil Code, section 52.1 (the “Bane Act”) fail because Plaintiff does not allege he was threatened or that his rights were interfered with because of his membership in a protected class.

Civil Code, section 51.7 (the “Ralph Act”) provides, in relevant part:

(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any

characteristic listed or defined in subdivision (b) or (e) of Section 51, *or position in a labor dispute*, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(Civ. Code, § 51.7, subd. (a), emphasis added.)

In the Complaint, Plaintiff alleges that he was threatened by an individual acting on behalf of Defendants because he had filed a complaint with the Labor Commissioner and was prepared to testify against Defendants at the hearing scheduled for October 10, 2016. (Compl. ¶¶ 22-29, 73-77.) As such, he alleges that he was threatened because of his position in a labor dispute, which is a category identified and protected under the Ralph Act.[\[2\]](#) At this stage of the proceedings, these allegations are sufficient for Plaintiff to state the seventh cause of action under the Ralph Act.

Defendants contend that Plaintiff alleges no factual support for the conclusion that the unnamed individual was “ordered, instructed or directed” to his home by Defendants to intimidate him. (Dem. 7-8.) At this stage of the proceedings, Plaintiff need only allege ultimate facts, not evidentiary facts, and these allegations are enough. (See *Doe, supra*, 42 Cal.4th at p. 550.) Defendants further cite the Scheinhorn Declaration to assert that Plaintiff appeared at the October 10, 2016 hearing with his counsel, without any mention of the alleged gang member and voluntarily dismissed his case stating that he wished to file a civil suit instead. (Dem. 8.) The statement from the Scheinhorn Declaration is not an objection that is apparent

from the face of the Complaint, nor is Scheinhorn's assertion a matter of which the court may take judicial notice. (See Code Civ. Proc., § 430.30, subd. (a).) Accordingly, the court may not consider the assertion in the Scheinhorn Declaration at this stage of the proceedings.

For these reasons, the court OVERRULES the demurrer as to the seventh cause of action.

Civil Code, section 52.1 (the "Bane Civil Rights Act") provides a civil remedy for persons whose exercise of constitutional rights has been interfered with by "threats, intimidation, or coercion." (Civ. Code, § 52.1, subd. (a).) Section 52.1 requires "an attempted or completed act of interference with a legal right, accompanied by a form of coercion." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329.) "Notably, the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff's membership in a protected class of persons." (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 956.) "Civil Code § 52.1 focuses specifically on the additional element present especially in hate violence, viz., putting persons in fear of their safety." (*Id.* at p. 959, emphasis in original.) "It is the element of threat, intimidation, or coercion that is being emphasized in Civil Code § 52.1." (*Ibid.*)

Defendants contend that Plaintiff fails to allege sufficient facts to support a Bane Act violation. (Dem. 7.) The court disagrees. In the Complaint, Plaintiff alleges that he was threatened with murder by an individual who was acting on behalf of Defendants and whom Defendants "ordered, instructed,

or directed” to intimidate Plaintiff and prevent him from exercising his legal right to attend the Labor Commissioner hearing and state his legal grievances. (Compl. ¶¶ 22-29, 80-84.) At this stage of the proceedings, these allegations of ultimate facts are sufficient to state Plaintiff’s eighth cause of action for violation of the Bane Act. (See *Doe, supra*, 42 Cal.4th at p. 550.)

The court therefore OVERRULES the demurrer as to the eighth cause of action.

[\[1\]](#) Defendants additionally demurred to the fifth and sixth causes of action; the demurrer as to these causes of action are MOOT because of the dismissal.

[\[2\]](#) Defendants cite *Cabesuela v. Browning-Ferris Indus.* (1998) 68 Cal.App.4th 101, 111 to contend that the violence or threatened violence must be due to a plaintiff’s membership in a classification set forth in Civil Code, section 51.7, or a group similarly protected by constitution or statute from hate crimes. Section 51.7 expressly states that a threat of violence based on a plaintiff’s “position in a labor dispute” is prohibited by the Ralph Act. The court thus disagrees with Defendants’ contention that Plaintiff has not alleged membership in a class covered under this section.