

N. Latt  
Box #92

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF HUMBOLDT

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***SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT***

ROBERT FIGAS,

Plaintiff,

vs.

REGINA SEYMORE-DAVIS, et al.,

Defendants.

CASE NO. CV160716

RULING AND ORDER ON  
DEFENDANTS' DEMURRER TO  
PLAINTIFFS' UNLAWFUL  
DETAINER COMPLAINT

Presently before the Court is Defendants' Demurrer to Plaintiff's Complaint in Unlawful Detainer. The Court has considered: (1) Plaintiff's initial pleading captioned "Complaint-Unlawful Detainer" filed August 18, 2016; (2) Defendants' "Notice of Hearing", including their demurrer and memorandum of points and authorities in support, filed August 23, 2016; (3) Plaintiff's "Opposition to Demurrer," filed September 1, 2016; (7) Defendants' "Reply in Support of Demurrer," filed September 9, 2016; and (8) the arguments presented at the hearing on the demurrer held on September 19, 2016. The Court now rules as follows.

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1 DISCUSSION

2 **A. BACKGROUND**

3 Plaintiff filed this unlawful detainer action seeking possession of certain real estate  
4 alleged to be occupied by Defendants. Plaintiff alleges that he is the lessee and that Defendants  
5 are his tenants. Plaintiff is not seeking damages, only possession of the property.

6 In response to the complaint, Defendants asserted special and general demurrers, on  
7 the grounds of: (1) uncertainty, in that the complaint fails to list which unit each Defendant  
8 occupies and the rent that each Defendant owes; (2) misjoinder, in that Defendants do not share  
9 a common issue of material fact or law with each other; and (3) failure to state a cause of action,  
10 because Plaintiff lacks standing to bring the unlawful detainer action and because the pre-lawsuit  
11 termination notice did not comply with statutory requirements.

12 **B. ANALYSIS**

13 **(1) The Complaint is Uncertain**

14 Defendants' first ground for demurrer is that the complaint is uncertain because it is  
15 ambiguous and fails to describe the premises with reasonable certainty; in particular, Plaintiff  
16 does not allege which Defendant occupies which unit number.

17 Assuming that a plaintiff in an unlawful detainer complaint is required to identify the unit  
18 occupied by each defendant, Plaintiff here has done so. The exhibits attached to Plaintiff's  
19 complaint establish which unit each Defendant occupies.

20 In ruling on a demurrer, the court must "accept as true both facts alleged in the text of the  
21 complaint and facts appearing in exhibits attached to it. If the facts appearing in the attached  
22 exhibit contradict those expressly pleaded, those in the exhibit are given precedence." *Sarale v.*  
23 *Pacific Gas & Elec. Co.* (2010) 189 Cal.App.4th 225, 245; and *Barnett v. Fireman's Fund Ins.*  
24 *Co.* (2001) 90 Cal.App.4th 500, 505 ("to the extent the factual allegations conflict with the

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1 content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits  
2 and treat as surplusage the pleader's allegations as to the legal effect of the exhibits”).

3 By providing the street address of the premise from which Plaintiff seeks to remove the  
4 Defendants, and stating the unit numbers for each Defendant in the exhibits, Plaintiff has  
5 described the premises with reasonable certainty. See Cal. Prac. Guide Landlord-Tenant Ch. 8-  
6 B, §8:39 (“Minimally, plaintiff should allege the common street address”). As one court  
7 described the requirement, if a description was sufficient for a tenant to take possession, then that  
8 same description “ought to be sufficient to enable him to know what property the plaintiff  
9 demanded that he surrender. The description afforded him sufficient information to find his way  
10 in, and it certainly ought to be deemed sufficient to enable him to find his way out, ....”  
11 *Olcovich v. Deremberg* (1915) 27 Cal.App. 194, 196.

12 Defendants can challenge the truth of those allegations – i.e., whether they are in fact in  
13 possession of the premise as described in the complaint and the exhibits -- but at this stage,  
14 Plaintiff’s allegations are accepted as true, and the complaint sufficiently describes the property.

15 Similarly, the pleading also contains the amount of rent each Defendant was to pay, as  
16 that information is contained in the exhibits. To the extent the allegation that Defendants pay  
17 rent of \$400 a month (Complaint, ¶6(a)(2)) conflicts with the statements in the exhibits to the  
18 complaint, the statements in the exhibits take precedence (*Barnett v. Fireman's Fun, supra*, 90  
19 Cal.App.4th at 505) and do not render the complaint uncertain.

20 When read together, the exhibits to the complaint and the allegations in the complaint  
21 sufficiently describe the property of which Plaintiff is seeking possession, and adequately alleges  
22 the amount of the monthly rent each Defendant was to pay.

23 Defendants’ demurrer on the grounds of uncertainty is overruled.

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1                   **(2) Special Demurrer for Misjoinder of Parties.**

2                   For the purposes of a special demurrer, defendants are misjoined where it appears from  
3 the face of the complaint that there is no common question of law or material fact between the  
4 defendants. CCP §430.10(d).

5                   Here, Plaintiff seeks possession of the specific premises described in the complaint and  
6 the exhibits thereto. All Defendants are alleged to be in possession of the property, or at least  
7 various parts of the property. Possession is an issue of material fact common to all Defendants,  
8 and right to possession of that particular property is a question of law common to all parties. In  
9 an unlawful detainer action, all persons in possession of the property in issue are proper  
10 defendants. CCP §1164. Plaintiff adequately alleges that all of the named Defendants are in  
11 possession of the property of which Plaintiff seeks possession.

12                   Though it may turn out that each Defendant has individual fact issues or unique legal  
13 questions that predominate for their particular situation, at this point in the proceedings, Plaintiff  
14 has adequately alleged sufficient facts to warrant joining all Defendants in one action.

15                   This special demurrer is overruled.

16                   **(3) General Demurrer for Failure to State Facts Sufficient to Constitute a Cause of**  
17                   **Action.**

18                   The final challenge asserted by Defendants to Plaintiff's complaint is a general demurrer  
19 for failure to state facts sufficient to constitute a cause of action, under Code of Civil Procedure  
20 section 430.10(e). At the pleading stage of an action, a complaint is sufficient if, assuming the  
21 facts alleged in the complaint are true, it states any valid cause of action, even if not the cause of  
22 action plaintiff intended to state. *Quelimane Co., Inc. v. Stewart Title Guarantee Co.* (1998) 19  
23 Cal.4<sup>th</sup> 26, 38-39.

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1 In support of their general demurrer, Defendants point to two specific defects: Plaintiff's  
2 standing to bring an unlawful detainer action and the validity of the pre-lawsuit termination  
3 notices.

4 (a) *Plaintiff's Standing*

5 Defendants challenge Plaintiff's standing to bring this unlawful detainer action, under  
6 Code of Civil Procedure section 367. That section provides the general standard for standing:

7 Every action must be prosecuted in the name of the real party in interest, except as  
8 otherwise provided by statute.

9 CCP § 367. A general demurrer can reach the question of standing if a plaintiff's lack of  
10 standing appears on the face of the complaint or from matters judicially noticeable. *County of*  
11 *Fresno v. Shelton* (1998) 66 Cal.App.4<sup>th</sup> 996.

12 In his complaint, Plaintiff alleges that his interest in the premise is as a lessee.  
13 Complaint, ¶4. The exhibits to the complaint also identify Plaintiff as the landlord, and  
14 identify Defendants as tenants in possession.

15 As a lessee or master tenant, Plaintiff has standing to evict those who claim possession  
16 underneath him as subtenants.

17 A tenant may take proceedings, similar to those prescribed in this chapter, to  
18 obtain possession of the premises let to a subtenant or held by a servant,  
19 employee, agent, or licensee, in case of his or her unlawful detention of the  
20 premises underlet to him or her or held by him or her.

19 CCP § 1161.

20 Plaintiff's terse allegation that he is a lessee, read in conjunction with the exhibits  
21 identifying him as the landlord, support a reasonable inference that Plaintiff holds a master lease  
22 on the property. Defendants may challenge the truth of those allegations as the case progresses,  
23 but at this stage those alleged facts must be assumed to be true.

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1           (b) *Pre-Lawsuit Notice of Termination*

2           Defendants contend that the pre-lawsuit termination notices served by Plaintiff failed to  
3 comply with the statutory requirements for such notices.

4           In unlawful detainer actions involving residential property, the notice of termination  
5 served on the defendant must comply with statutory requirements. Since an unlawful detainer  
6 action is purely statutory in nature, it is essential that a party seeking the remedy bring himself  
7 clearly within the statute. *Baugh v. Consumers Associates, Limited* (1966) 241 Cal.App.2d 672,  
8 674–75. If the pre-lawsuit termination notice served upon defendants is insufficient, the  
9 complaint fails to state a cause of action. *Id.* Strict compliance with the specifically prescribed  
10 notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer.  
11 *Parsons v. Superior Court (Arques Shipyard)* (2007) 149 Cal.App.4th Supp. 1, 5–6.

12           The pre-lawsuit termination notices served by Plaintiff did not comply with the  
13 requirements of the unlawful detainer law. In particular, Civil Code sections 1946 and 1946.1  
14 require termination notices to describe a tenant’s right to reclaim personal property he or she  
15 may have left behind when vacating. Though the statute does not require termination notices to  
16 contain the exact wording stated in the statute, the notice must be in “substantially the same  
17 form”. Civ. Code §§ 1946, 1946.1(h).

18           Here, Plaintiff’s Notices to Quit, attached as exhibits to the complaint, did not contain  
19 any information regarding reclaiming personal property as required by statute.

20           Plaintiff argues that the statutory language was not necessary in this matter, as  
21 Defendants were still in possession and so do not need the information on reclaiming personal  
22 property at this stage, and that the information on reclaiming personal property will be included  
23 in the writ of possession (should one be issued). Even though Plaintiff’s position makes  
24 practical sense, and might be a good argument to encourage the Legislature to amend the statute,  
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1 nonetheless the statute itself is clear, unambiguous and mandatory: termination notices must  
2 contain the language specified.

3 Plaintiff points out that he has since served termination notices on Defendants that  
4 contain the language required by statute, and should be given leave to amend his unlawful  
5 detainer complaint to add those notices. However, pre-lawsuit termination notices must be  
6 served before an unlawful detainer complaint can be filed and a five-day summons issued.  
7 Adding new notices served after the complaint was filed does not cure the defect that proper  
8 notices were not served prior to filing this action and obtaining a five-day summons.

9 (c) *Waiver*

10 Plaintiff's failure to serve proper notice prior to filing his unlawful detainer action  
11 renders the unlawful detainer summons and complaint open to challenge. However, that  
12 challenge must have been raised by a motion to quash, not by a general demurrer.

13 Defendants contend that Plaintiff failed to serve a pre-lawsuit notice that complies with  
14 the unlawful detainer law. In an unlawful detainer action, this issue must be raised by a motion  
15 to quash, as it is a required prerequisite to issuing the five-day summons issued on a complaint  
16 for unlawful detainer. *Delta Imports, Inc v. Municipal Court* (1983) 146 Cal.App.3d 1033,  
17 1036. As the pre-lawsuit notice was insufficient, the unlawful detainer complaint does not lie  
18 and the five-day summons should not have been issued.

19 By asserting a general demurrer without also moving to quash issuance of the five-day  
20 summons, defendants have made a general appearance in this action, thereby waiving their  
21 objections to the inadequate pre-lawsuit termination notice. *Delta Imports, Inc v. Municipal*  
22 *Court, supra*, 146 Cal.App.3d at 1036 (if the defendant appears in the unlawful detainer action  
23 by filing a demurrer, he moots the very point he is seeking to raise, *i.e.*, whether the complaint  
24 states a cause of action for unlawful detainer and, thereby, supports a five-day summons); see  
25 also *Parsons v. Superior Court* (2007) 149 Cal.App.4th Supp. 1, 5–6 (applying *Delta*, appellate





STATE OF CALIFORNIA, )  
COUNTY OF HUMBOLDT ) SS. AFFIDAVIT OF SERVICE BY MAIL

I, Andrey Ortiz, say:

That I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, 825 Fifth Street, Eureka, California, 95501; that I served a true copy of the attached RULING AND ORDER ON DEFENDANTS' DEMURRER TO PLAINTIFFS' UNLAWFUL DETAINER COMPLAINT by placing said copies in the attorney's mail delivery box in the Court Operations Office at Eureka, California on the date indicated below, or by placing said copies in envelope(s) and then placing the envelope(s) for collection and mailing on the date indicated below following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Eureka, California in a sealed envelope with postage prepaid. These copies were addressed to:

Neal Latt, Court Operations Box #92

Gregory Holtz, Legal Services of Northern Calif., Court Operations Box #93

Edrie Black, 4565 Lewis St, Eureka, CA 95503

DeMarcus Conley, 4565 Lewis St, Eureka, CA 95503

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 26 day of September, 2016, at the City of Eureka, County of Humboldt, State of California.

KIM M. BARTLESON, Clerk of the Court

By Andrey Ortiz  
Deputy Clerk