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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

RICK SANCHEZ,

Plaintiff,

vs.

MORT GOLDMAN DBA GOLDMAN'S
PHARMACY,

Defendant

CASE: 17CECL1173

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO QUASH

I. Introduction

The instant case involves an action for unlawful detainer filed by Plaintiff Rick Sanchez against Defendant Morty Smith in Fresno County Superior Court. For reasons more fully set forth below, Morty Smith now moves the Court for an order quashing service of the summons and complaint for alleged defects in service and failure of Plaintiff Rick Sanchez to abide by strict statutory compliance in unlawful detainer actions.

II. Statement of Facts

The dispute in Sanchez v. Smith involves a single-family residential property located at 736 11th Street Orange Cove, California. Rick Sanchez currently own the

1 property. Sanchez purchased the property sometime in March 2015 from the executor of
2 the estate of Summer Smith. Our client Morty Smith is currently the sole occupant of the
3 disputed property.
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5 Morty Smith moved into the disputed property with his father Jerry Smith
6 sometime in 1991. At the time the property was owned by Morty Smith's aunt, Summer
7 Smith. Morty and Summer executed an oral contract to rent the property for an annual
8 sum of \$3,600 to be paid in January of each year. The contract was never memorialized
9 in writing. When Rick Sanchez purchased the property in March 2015, Sanchez and
10 Morty Smith entered into an oral contract for Smith to continue renting the disputed
11 property under the same terms and conditions as the original rental agreement with
12 Summer Smith. The second contract was also never memorialized in writing. The most
13 recent annual rent payment on the contract between Sanchez and Smith was on January
14 2nd, 2017. Rick Sanchez cashed the rent payment three days later on January 5th, 2017.
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16 On or about January 12th, 2017, Morty Smith found an arrow sticking out of his
17 front door with documents attached to it. The attached documents have been identified as
18 a civil case cover sheet and civil complaint. These documents did not include a summons
19 or 3-day notice. The complaint seeks both monetary and non-monetary relief. The caption
20 on the civil complaint identifies the Defendant as Mort Goldman dba Goldman's
21 Pharmacy. Our client, Morty Smith, states that Mort Goldman dba Goldman's Pharmacy
22 is an unknown third party and not the occupant of or possessor of the disputed property.
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24 The prayer for relief in the civil complaint does not seek possession of the
25 disputed property located at 736 11th Street Orange Cove, California. Instead, the prayer
26 for relief makes various bizarre and unusual demands for monetary damages unrelated to
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1 the disputed real property as well as demand for costs of the suit. The prayer for relief
2 also includes a demand for mandatory injunctive relief requiring Mort Goldman dba
3 Goldman's Pharmacy to "get off this planet forever" and to wear a sandwich sign that
4 says "I cheat at foosball."
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6 On February 14, 2017, Plaintiff Rick Sanchez arrived at the residence of
7 defendant Morty Smith at some time in the early morning before 6:30 am. As Morty
8 Smith opened the door, he saw the Plaintiff Rick Sanchez holding a large heart-shaped
9 Whitman's Sampler candy box in his hand. Immediately after opening the door, Morty
10 Smith was allegedly pummeled about the face, neck, back, and head with the box by
11 Plaintiff Sanchez. After a few moments, Plaintiff Rick Sanchez ran off into the night. As
12 Morty Smith was cleaning up the mess of exploded chocolate, torn cardboard, and
13 mangled nougat, he noticed that there were documents inside the tattered remains of the
14 candy box. Morty Smith scanned copies of these documents which have been identified
15 as a civil case cover sheet, a five-day unlawful detainer summons, and a civil complaint.
16 Based on these facts, Defendant Morty Smith now moves the court to quash service.
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19 **III. Standard of Review**

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21 A motion to quash service is the proper method for determining whether the court
22 has acquired personal jurisdiction over the defendant through service of the five-day unlawful
23 detainer summons. *Delta Imports, Inc v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1035
24 [194 Cal.Rptr. 685, 686]. If the underlying complaint fails to state a cause of action for unlawful
25 detainer, then use of the five-day summons is improper and the defendant is entitled to an order
26 quashing service as a matter of law. West's Ann.Cal.C.C.P. §§ 418.10(c).
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1 A motion to quash service is the only method by which the defendant can test
2 whether the complaint states a cause of action for unlawful detainer and, thereby, supports a five-
3 day summons. A general demurrer only tests whether the complaint states a cause of action for
4 something even if it is on a theory other than unlawful detainer. (Code Civ. Proc., § 430.10(e),
5 *Greene*, supra, 51 Cal.App.3d at 451–452, 124 Cal.Rptr. 139.)
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8 The complaint in an unlawful detainer action must set forth the facts on which the
9 plaintiff seeks to recover. (Cal. Civ. Proc. Code § 1166.) At minimum, this requires
10 allegations that the defendant was served with a written notice, (*ibid.*), specifying the alleged
11 breach, (*Feder v. Wreden Packing & Provision Co., Inc.* (1928) 89 Cal.App. 665, 671, 265 P.
12 386) and unequivocally demanding possession within three days of service of the notice.
13 (*Horton-Howard v. Payton* (1919) 44 Cal.App. 108, 112, 186 P. 167.) See *Delta Imports, Inc*
14 *v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1036 194 Cal.Rptr. 685, 687.
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16 **IV. Legal Argument**

17 **1. Motion to Quash Is Appropriate Method to Test Personal Jurisdiction**

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19 A motion to quash service is the proper method for determining whether the court
20 has acquired personal jurisdiction over the defendant through service of the five-day
21 unlawful detainer summons. (*Castle Park No. 5 v. Katherine* (1979) 91 Cal.App.3d Supp. 6,
22 8, fn. 1, 154 Cal.Rptr. 498.) If the underlying complaint fails to state a cause of action for
23 unlawful detainer, then use of the five-day summons is improper and the defendant is entitled
24 to an order quashing service as a matter of law. (*Ibid.*, *Greene v. Municipal Court* (1975) 51
25 Cal.App.3d 446, 451–452, 124 Cal.Rptr. 139.) Moreover, if the defendant appears in the
26 action by filing a demurrer, he moots the very point he is seeking to raise. (Code Civ. Proc., §
27 1014, *Haverstick v. Southern Pac. Co.* (1934) 1 Cal.App.2d 605, 609, 37 P.2d 146.) See
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generally *Delta Imports, Inc v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1035–36.

2. Civil Complaint Pleads Insufficient Facts to Establish Personal Jurisdiction

Defendant Morty Smith respectfully submits that *Delta Imports, Inc v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1035–36 is both instructive and controlling in the instant case. *Delta Imports, Inc* sets forth three minimum requirements for an action in unlawful detainer. The complaint in an unlawful detainer action must set forth the facts on which the plaintiff seeks to recover. (Cal. Civ. Proc. Code § 1166.) At minimum, this requires allegations that the defendant was served with a written notice, (*ibid.*), specifying the alleged breach, (*Feder v. Wreden Packing & Provision Co., Inc.* (1928) 89 Cal.App. 665, 671, 265 P. 386) and unequivocally demanding possession within three days of service of the notice. (*Horton-Howard v. Payton* (1919) 44 Cal.App. 108, 112, 186 P. 167.) The civil complaint filed by the Plaintiff Rick Sanchez fails to allege written notice was given to defendant Morty Smith. Plaintiff Rick Sanchez has failed to allege any specific breaches of the rental agreement with Morty Smith and Plaintiff Sanchez fails to unequivocally demand possession of the disputed real property. Because of Plaintiff Sanchez failure to meet the minimum pleading requirements for an action in unlawful detainer set forth in *Delta Imports, Inc v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1035–36, the court lacks personal jurisdiction over the defendant, Morty Smith, and defendant Smith's motion to quash should be granted.

3. Personal Service by A Party to The Action Is Defective

Even when the defendant tenants (and/or subtenants) actually received summons and complaint and otherwise have actual notice of the lawsuit, a motion to quash will lie if process was not served in a statutorily-authorized manner. [*American Express Centurion Bank v. Zara* (2011) 199 CA4th 383, 391-392, 131 CR3d 99, 104-105; *Schering Corp. v.*

1 *Super.Ct.* (Ingraham) (1975) 52 CA3d 737, 741, 125 CR 337, 339]

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3 However, the service of process statutes are generally construed liberally to
4 uphold jurisdiction. Therefore, courts are inclined to deny a motion to quash so long as
5 plaintiff “substantially complied” with the Code service prerequisites (and especially if the
6 defendant received actual notice in time to defend). [*Pasadena Medi-Center Assocs. v.*
7 *Super.Ct.* (Houts) (1973) 9 C3d 773, 778, 108 CR 828, 832; *Bein v. Brechtel-Jochim Group,*
8 *Inc.* (1992) 6 CA4th 1387, 1394, 8 CR2d 351, 354-355; compare *American Express*
9 *Centurion Bank v. Zara*, supra, 199 CA4th at 390-392, 131 CR3d at 103-105—motion to
10 quash improperly denied where service of process failed to comply with statutory
11 requirements.
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13 Cal. Code Civ. Proc., § 414.10 plainly states “summons may be served by any
14 person who is at least 18 years of age and not a party to the action.” Service in the instant case is
15 defective because attempted service was executed by a party to the action, Rick Sanchez, during
16 a battery upon the Defendant Morty Smith. Plaintiff Sanchez has failed to comply with even the
17 most rudimentary statutory requirements for an action in unlawful detainer. Morty Smith’s
18 motion to quash should be granted because of Sanchez’s lack of statutory compliance.
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21 **4. Complaint Prays for Damages Not Allowed in Unlawful Detainer**

22 In general, a 5-day summons cannot be used to seek damages that are not
23 allowable in an unlawful detainer action. *See Vasey v California Dance Co.* (1977) 70 CA3d
24 742. Actions for unlawful detainer are limited to the issue of possession of disputed real property
25 *see* Cal. Civ. Proc. Code §1161. The prayer for relief in Plaintiff Rick Sanchez civil complaint
26 makes numerous demands for relief which are unrelated to possession. These demands include
27 an order for “LameWad” to get off this planet forever, an order for “LameWad” to pay for
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1 “Amazing’s” hair care products, an order for “LameWad” to wear a sandwich sign, and order for
2 \$17.8 trillion in monetary damages to “Amazing’s” mellow and swagger.
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4 The relief sought by Plaintiff Rick Sanchez is inappropriate for a 5-day summons.
5 Additionally, the prayer for relief fails to unequivocally demand possession of the disputed real
6 property as required for an action in unlawful detainer. Because the relief sought in Plaintiff
7 Sanchez civil complaint is improper for an action in unlawful detainer, defendant Morty Smith
8 motion to quash should be granted.
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10 **V. Conclusion**

11 Plaintiff, Rick Sanchez’s, civil complaint is fatally defective in terms of pleading
12 requirements to establish personal jurisdiction over defendant Morty Smith in an action for
13 unlawful detainer. Additionally, Plaintiff Sanchez attempted service of the civil complaint
14 and summons is fatally defective as it violates the statutory prohibition on service by a party
15 to the action. Finally, the prayer for relief is fatally defective as the relief sought by Plaintiff
16 Sanchez goes far beyond the issue of possession. For these combined reasons, the court
17 should grant defendant Morty Smith motion to quash.
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