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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANNIE LOGOAI, an individual; IANNA DUMAS-SMITH, an individual; CHERYL CRAFT, an individual; CHERYL ANDERSON, an individual; BRANDI CHERISE JOHNSON, an individual; LOKILANI LEOMITI; BRIANA MULIPOLA, an individual; OLOFA VAIFANUA, an individual; and MICHELLEANN MCDONALD, an individual;

Plaintiffs,

v.

ALAMEDA COURT, LLC, a California Limited Liability Company; FORTE RESOURCES, INC., a California Corporation; CHUANG-I LIN, and individual; TERESA TING d/b/a MASTERS REALTY, an individual; PHOENIX MASTERS INVESTMENT, INC., a California Corporation; DOUG BAKER, an individual; and DOES 1 through 25, inclusive;

Defendants.

Case No.: BC572165

PLAINTIFFS' OPPOSITION TO ISADORE HALL, III'S MOTION FOR PROTECTIVE ORDER

[DECLARATION OF BRANDON C. FERNALD; DECLARATION OF LOKILANI LEOMITI]

Date: September 22, 2016
Time: 8:45 a.m.
Dept.: 28

09/12/2016

I. INTRODUCTION

The Motion for Protective Order (the "Motion") of Isadore Hall, III ("Hall"), as with his actions taken prior to its filing, stoke the very fires he claims to be attempting to avoid. Hall could easily have cooperated with the subpoena issued to him over 14 months ago now, met and conferred, given a deposition and been done. Instead, Hall ignored the subpoena, ignored the following up meet and confer letter and ignored the motion to compel—until *2 days before the hearing*. At that point, Hall's counsel, in an email, took the position that Hall had not been *personally* served and thus had no obligation to respond.

Thereafter counsel for Plaintiffs attempted to locate Hall for personal service, and in the end chose a place and time that he would most certainly appear. Hall did appear and was personally served. The publicity was of Hall's own making.

Hall's hyperbole aside, Plaintiffs are not agents for an opposing campaign and the discovery being sought is in no way intended to demonize Hall. It is frankly intended to establish *inter-alia*, that certain of the defendants in this case have misled the Plaintiffs and this Court.

Hall has already shared his side of the story with the media, going so far as to allow the media to peruse his checks and bank statements. As such, he cannot now be heard to object to sharing the same at a duly noticed deposition.

The discovery at issue is both relevant and necessary. The evidence establishes, unequivocally, that Hall is a percipient witness to certain events at the core of this lawsuit, and that no other means are available to obtain *Hall's* perspective on these events. Hall is not a "top government executive" and even if it is assumed that he is entitled to the same qualified immunity with respect to discovery, the threshold showing has been met.

The Motion should be denied and the deposition ordered to proceed.

II. PROCEDURAL HISTORY

The Motion conspicuously ignores a large swath of procedural history leading up to Plaintiffs finally successfully serving Hall with the document subpoena at issue. On February 10, 2015, Plaintiffs filed this Complaint against Alameda Court, LLC; Forte Resources, Inc.; Chuang-

I Lin; Doug Baker (collectively, the "Alameda Court Defendants"), Teresa Ting d/b/a Masters Realty ("Ting") and Phoenix Masters Investment, Inc. (collectively, the "Masters Realty Defendants"). The Complaint alleges in pertinent part that the Defendants operated a rent to own scam, which lured in the Plaintiffs with promises that a portion of rent paid along with the security deposit would be held in escrow and applied toward the purchase of their respective units. At the time, the units were not saleable and Defendants knew it. When the Alameda Court Defendants became aware that Plaintiffs and other tenants were meeting to organize some sort of collective action against the Alameda Court Defendants, a campaign of harassment and intimidation began.

On March 27, 2015 a Preliminary Injunction was entered in this matter, enjoining the Alameda Court Defendants from harassing Plaintiffs or attempting to unlawfully evict them. On April 15, 2015, the Alameda Court Defendants filed an *Ex Parte* Application Authorizing Rent Increase, Evictions of Currently Non-Paying Tenants and For Evictions and Ejectments Initiated Before the Filing of this Lawsuit (the "4/15 Application"). The 4/15 Application was supported *inter-alia* by a declaration of Doug Baker in which he attested in pertinent part that as a result of the preliminary injunction at least four non-party tenants had ceased paying rent, including Isadore Hall. (Declaration of Brandon C. Fernald ["Fernald Decl."], Ex. A.) The 4/15 Application was subsequently denied.

The Alameda Court Defendants subsequently answered the Complaint on or about June 9, 2015 and Plaintiffs subsequently engaged in discovery. Among the discovery served was a Deposition subpoena on Isadore Hall dated July 27, 2015 (the "July Subpoena"). (Fernald Decl., Ex. B.) The July Subpoena was served on July 28, 2015 at Hall's offices at 222 W. 6th Street, Suite 320 in San Pedro, California. (Fernald Decl., Ex. C.) A member of Hall's staff, Heather Hutt, accepted service on his behalf.

After receiving no response to the July Subpoena, counsel for Plaintiffs sent a meet and confer letter to Hall's San Pedro office on September 25, 2015. (Fernald Decl., Ex. D.) Receiving no response, counsel filed a motion to compel on October 9, 2010. The hearing on the motion was ultimately set by the Court for December 11, 2015. On December 9, 2015 counsel for Hall sent an

email advising that the original subpoena had not been *personally* served on Mr. Hall and thus was invalid. (Declaration of David M. Huff filed in support of Motion ["Huff Decl"], Ex. F.) Plaintiffs ultimately took the motion off calendar.

Meanwhile, on August 18, 2016, the Alameda Court Defendants filed a Motion for Order Authorizing Rent Increase, Evictions of Currently Non-Paying Tenants and For Evictions and Ejectments Initiated Before Filing of This Case (the "8/18 Motion"). The 8/18 Motion was supported by another declaration from Doug Baker, wherein he attested that several tenants had ceased paying rent as a result of the preliminary injunction, including Isadore Hall. (Fernald Decl., Ex. E.) The 8/18 Motion argued that the Alameda Court Defendants required the Court's authorization to proceed with evictions against these nonpaying tenants. The 8/18 Motion was set for hearing on December 8, 2015.

In spite of its claim to this Court concerning Alameda Court's inability to evict non-paying tenants, Alameda Court LLC on or about November 23, 2015 (represented by the same counsel that at the time was representing Alameda Court, LLC in this case) filed a complaint for unlawful detainer against Mr. Hall in the Los Angeles Superior Court for nonpayment of rent in October 2015. (Fernald Decl., Ex. F.)

III. STATEMENT OF FACTS

The present suit arises out of the Alameda Court Defendants' scheme to defraud Plaintiffs by promising them, respectively, a rent to own property at the Alameda Court housing complex and then reneging on that promise and refusing to refund Plaintiffs' earnest money. (Complaint, ¶ 18.) Once it was discovered that Plaintiffs and other tenants were organizing, the Alameda Court Defendants engaged in a pattern of harassment and intimidation with the intent of forcing them out of the complex. (Complaint, ¶¶40-51.)

Mr. Hall was instrumental in obtaining approval of this project in the first instance. (Fernald Decl., Ex. G.) Mr. Hall was also apparently one of the first tenants to rent at Alameda Court, executing a lease in early 2010. (Fernald Decl., Ex. F.) Based on discovery conducted by Plaintiffs

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to date, the Alameda Court Defendants did not begin efforts in earnest to lease or sell the properties until early 2011. (Fernald Decl., Ex. H.)

While Plaintiffs suffered ongoing harassment at the hands of the Alameda Court Defendants, Hall appears to have received white glove treatment—e.g., meeting personally with the owner Chuang-I Lin and/or Doug Baker in his garage, parking multiple cars in areas where Plaintiffs' cars were towed, etc. According to Doug Baker, Hall was "government" and could not be touched. (Declaration of Lokilani Leomiti)

Turning finally, to Hall's allegations in his Motion, neither Plaintiffs nor their counsel have any affiliation with any political campaign. Mr. Hall has been very difficult to pin down in one location, and with personal service being required, the best opportunity to serve him presented itself in San Pedro at an event he surely would not miss. Mr. Hall has already discussed the issues on which discovery is being sought *at length* with the press, including but not limited to, permitting the press to review checks and bank statements purportedly showing payments to Alameda Court. (Fernald Decl., ¶¶10-15, Ex. I.)

I. ARGUMENT

A. The Requested Discovery Is Permitted Irrespective Of Which Standard Applies.

It is axiomatic that under the Discovery Act generally, the requested discovery is permitted. Personal service of any deposition subpoena is effective to require a resident of California to produce the documents or things specified in the subpoena as well as to attend a court session to enforce discovery. Code Civ. Proc. § 2020.220(c); *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1287. "If a deponent fails to answer any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production." Code Civ. Proc. §2025.480(a). The scope of permissible discovery in California is broad. "Any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved . . . if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible

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evidence." Code Civ. Proc. § 2017.010. These standards are applied liberally by courts in favor of permitting discovery. *Colonial Life & Acc. Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790; *Emerson Electric Co. v. Superior Court* (1997)16 Cal.4th 1101, 1107. In addition, the broad scope of permissible discovery "is equally applicable to discovery of information from a nonparty as it is to parties in the pending suit." *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1062.

While Hall's Motion casts Plaintiffs' discovery effort as a witch hunt directed *at him*, such is obviously not the case. Hall is not a defendant in this case, nor is he being accused of any wrongdoing whatsoever. Hall is, however, a percipient witness to multiple events at the core of this lawsuit:

- Hall was instrumental in greenlighting the Alameda Court project at the core of this lawsuit;
- Hall is a tenant in the Alameda Court development;
- Hall had multiple interactions with Alameda Court's ownership and management, all of which appeared to be overly amicable *until* the unlawful detainer;
- Hall's public statements concerning his payment of rent and the nature of the rent dispute are directly contrary to the statements made under oath by the Alameda Court Defendants in this case.

Taking the latter two points first, the Alameda Court Defendants have presented sworn statements twice in this case attesting to the fact that Hall stopped paying rent upon entry of the Preliminary Injunction in this lawsuit, and that modifications to the injunction were required in order to enable the Alameda Court Defendants to evict delinquent tenants such as Hall. Hall's public statements are to the contrary—he has always paid rent on time until a brief dispute over a water bill in the Fall of 2015. Both stories cannot be true.

Whether or not the Alameda Court Defendants were playing favorites—i.e., harassing Plaintiffs and other organizing tenants on the one hand and coddling those who played along is a key issue in this case. Plaintiffs have substantial evidence that Isadore Hall was coddled while they

were harassed. The Alameda Court Defendants' story is to the contrary—Hall was a delinquent tenant who needed to be evicted. There is no alternative source for Hall's story, than Hall.

If the Discovery Act applies in its basic form, there is no question that the discovery being sought is permissible. Hall does not contest this fact, and instead argues that due to his status as a California legislator, Plaintiffs must meet the threshold for discovery concerning a "top government executive" as set forth in *Nagle v. Superior Ct.* (1994) 28 Cal.App.4th 1465 and related decisions. In the first instance, counsel has located no authority in California applying the *Nagle* threshold to a member of the legislative branch, nor does Hall cite any. There is Federal authority for the proposition that members of the legislative branch of government are immune from discovery relating to their legislative activities under the Speech and Debate Clause of the United States Constitution. *See, e.g., Kay v. City of Rancho Palos Verdes*, Case. No. 02-03922, 2003 U.S. Dist. LEXIS 27311, 2003 WL 25294710 (C.D. Cal. Oct. 10, 2003). Such authority has no application here, nor does Hall contend otherwise—the discovery being sought has nothing to do with his time in the state legislature.

Even assuming for purposes of argument that *Nagel* and its progeny apply, Plaintiffs have met the threshold set forth therein. In *Nagel*, an employee of the California Employment Development Department had brought suit concerning his termination. Depositions were notices of the then Director of the California Employment Development Department as well as the former Director of the California Department of Health. The respective agencies moved for a protective order, supported by declarations *which attested to the fact that neither individual had any personal knowledge of the facts or circumstances surrounding the plaintiff's termination.* *Nagle*, 28 Cal.App.4th at 1467.

Here, Hall's own *public* statements reflect his *uniquely* personal knowledge of the facts and circumstances being sought in the discovery at issue. Indeed, Mr. Hall's statements *directly contradict* the statements previously made in this case by the Alameda Court Defendants. Hall has made no effort to assert otherwise.

Mr. Hall is the *only source* for much of the information being sought. Hall was instrumental in greenlighting this project. Hall was a tenant in this complex during the very period at issue. Plaintiffs already know the Alameda Court Defendants' story—e.g., Hall stopped paying rent following entry of the preliminary injunction necessitating a modification of the injunction, etc. The Alameda Court Defendants' have similarly denied any harassment of the Plaintiffs or preferential treatment of non-objectors like Hall. Hall's testimony on these subjects, as well as his experience with lease signing and discussions with the Alameda Court Defendants' can only be obtained from Hall.

B. Hall Provides No Justification For The Litany Of Discovery Protections Requested In His Motion.

1. Videotaping.

It is axiomatic that a deposition may be videotaped upon proper notice having been provided. Notice is not disputed. Hall argues merely that Plaintiffs have not demonstrated "any legitimate reason to videotape Senator Hall's deposition." The legitimate reason is stated quite plainly in Plaintiffs' counsel's response Hall's counsel's meet and confer request attached as "Exhibit I" to Hall's Motion. The fact is that absent the ability to use videotaped testimony at the upcoming trial, Plaintiffs will be stuck in the very same position there have been in over the last year—attempting to pin down Hall's location long enough to serve him personally with a trial subpoena. Plaintiffs' counsel had proposed a compromise whereby the videotape would be kept under seal under use at trial—in lieu of Hall's presence. Such compromise should resolve any concerns about distribution of the video.

2. No Document Production

Hall has already apparently produced many of the documents being sought herein to the media. Accordingly, his claims of undue burden and the like are disingenuous at best. The Alameda Court Defendants have been through three sets of counsel to date, and have continuously pushed back the depositions of key individuals, all of which are set to take place in the coming weeks. Hall's public disclosure of the documents he now claims should be held in abeyance until

Plaintiffs can establish that all such documents cannot be obtained from the Alameda Court Defendants.

3. Discovery Referee and Discovery Topics.

The topics on which discovery will be taken are made abundantly clear by the parties' meet and confer as well as the motion practices concerning this deposition. Plaintiffs seek to depose Mr. Hall concerning the history of this project, his experience at Alameda Court as a tenant including parking, payment of rent, etc., and his interactions with the Alameda Court Defendants. That's it. While an order seems unnecessary, Plaintiffs are more than willing to consider such if it resolves the issues set forth herein.

Turning to a discovery referee, no justification has been provided for such. While Hall claims that the service of a subpoena at his election night party is somehow an indication that the deposition will be some sort of politicized roadshow, nothing could be further from the truth. It was Hall who brought this on himself by refusing to respond to the first subpoena and then claiming days before the hearing on the motion to compel that service was ineffective. Hall's own actions made it apparent that he was not going to cooperate, which necessitated public service at an event he was sure to be at. That being said, if Hall is willing to foot the entire cost of a discovery referee to monitor the deposition, Plaintiffs have no objection.

CONCLUSION

For the above stated reasons, the Court should deny Hall's Motion for Protective Order in its entirety.

DATED: September 9, 2016

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