

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 11/07/2014

TIME: 09:00:00 AM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Robert J. Moss

CLERK: Betsy Zuanich

REPORTER/ERM: Sherri Lynn Kuebler CSR# 12339

BAILIFF/COURT ATTENDANT: Angelina Bernal

CASE NO: **30-2010-00425532-CU-OE-CXC** CASE INIT.DATE: 11/16/2010

CASE TITLE: **Quiles vs. Koji's Japan Incorporated**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 71971392

EVENT TYPE: Motion for Summary Judgment and/or Adjudication

APPEARANCES

William M Crosby, counsel, present for Cross - Defendant,Plaintiff,Appellant(s).

Bryan J. Schwartz, from Bryan Schwartz Law, present for Cross - Defendant,Plaintiff,Appellant(s).

Tentative Ruling posted on the Internet .

The Court hears oral argument and confirms the tentative ruling as follows:

Parent defendants' motion for summary judgment/adjudication. **Motions denied.**

The Court makes the following findings:

The issues of joint employer and alter ego liability are fact intensive, and normally are not suited for summary judgment/ adjudication. This motion just reemphasizes that notion.

Defendants have failed to carry their burden to show that Parent and AJ Parent Company are not Plaintiffs' joint employers, as a matter of law.

Based merely on the evidence presented by Defendants, it is a question of fact, for the trier of fact, as to whether Parent and AJ Parent Company are joint employers.

The motion, and its evidence, raise more questions than they resolve.

The recent case of *Castaeda v. Ensign* and the Supreme Court decision of *Guerrero v. Superior Court*, among others, direct this result. Parent cannot absolve himself from liability merely by delegating duties to someone else and burying his head in the sand. A joint employer is not just one who *directly* controls the wages, hours, etc. of the employees, but one who *directly or indirectly, through agent excises just such control* (*Guerrero*.) And, as noted by the Supreme Court in *Martinez*, a joint employer can be a

proprietor "who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work by failing to prevent it, while having the power to do so."

Here, Mr. Parent's asserted, selective involvement, with full knowledge of the manner in which the businesses he owns are operated, does not and cannot support his lack of liability as a joint employer. In addition, the evidence presented by plaintiffs presents further numerous issues of material facts which must be adjudicated by the trier of fact. It factually disputes almost every assertion made by defendants.

Defendants have failed to carry their burden to show that Koji's and AJ Parent Company are not Parent's alter egos, as a matter of law. Much the same evidence that defeats the motion in terms of joint employer liability, defeats the motion on alter ego liability.

For example, Defendants' assertion that because Koji's operated for more than 10 years proves it was adequately capitalized, is an improper opinion not based on supporting facts. What was the exact capitalization for the 10 years, what were the expenses for the 10 years, was the restaurant on the edge of bankruptcy for those 10 years, were all bills met on a timely basis for those 10 years, and, if it was so adequately capitalized, why did it have to have an infusion of money from elsewhere? Defendants' assertion that there is no evidence of wrongdoing on the part of Parent or AJ Parent Company is not itself supported by evidence. Isn't the failure to pay proper wages wrongdoing?

The Declaration of Allen and the timing of the termination of plaintiff Quiles are sufficient to raise triable issues of material facts to defeat the motion as to the issue of retaliatory termination.

As to the PAGA claims, the notice here was sufficient.

Section 2699.3(a)(2)(C) allows an existing complaint to be amended to add a cause of action under PAGA, so it contemplates and positively affirms, as adequate, what transpired here. As to Parent's liability, defendant incorrectly asserts that Parent is only being held liable only because he is a corporate officer. That simply is not so.

Court orders counsel for defendant to give notice.