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ELECTRONICALLY
FILED

**Superior Court of California,
County of San Francisco**

12/10/2015

Clerk of the Court
BY: MADONNA CARANTO
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JERAE RUSSELL,
Plaintiff,
vs.
APPLE AMERICAN GROUP, LLC,
and DOES 1-20,
Defendants.

) Case No.: CGC-15-543480
)
DEFENDANT APPLE AMERICAN
GROUP, LLC'S REPLY IN SUPPORT OF
DEMURRER AND MOTION TO STRIKE
FIRST AMENDED COMPLAINT
)
Date: December 17, 2015
Time: 9:30 a.m.
Dept.: 302
Reservation Number: 08121217-11
Action Filed: 1/2/15
)
)

Plaintiff Jerae Russell (“Plaintiff”) has failed to file any response or opposition to Defendant’s Demurrer to the First Amended Complaint.

Plaintiff filed her original complaint on January 2, 2015. Defendant filed a demurrer on February 3, 2015, arguing that the Court has no jurisdiction over the matter because workers' compensation is Plaintiff's exclusive remedy. Plaintiff did not oppose the demurrer. The court issued an order sustaining the demurrer to the original complaint with leave to amend.

On July 17, 2015, Plaintiff filed a First Amended Complaint. On August 14, 2015, Defendant filed a Demurrer and Motion to Strike to Plaintiff's First Amended Complaint. The Demurrer and Motion to Strike were served on Plaintiff's counsel at his updated address on that date. Based on the hearing date, an opposition was due for filing and service by no later than

1 December 4, 2015 per CCP §1005. Again, no oppositions were filed. The Demurrer and
2 Motion to Strike should be granted for that reason alone.

3 The Demurrer and Motion to Strike should also be granted on their merits. In its
4 Demurrer, Defendant argues that Plaintiff's injuries arose out of and in the course of her
5 employment with Defendant and thus her exclusive remedy is workers' compensation under the
6 Workers' Compensation Act (California Labor Code, Section 3200 *et seq.*). While Plaintiff's
7 First Amended Complaint conveniently makes no mention of the fact she was an employee of
8 Defendant when the alleged injury occurred, her original complaint is clear on that fact. Where a
9 Plaintiff fails to satisfactorily explain a factual omission of harmful facts alleged in a former
10 pleading, the original defect infects the subsequent pleading as well such that the harmful
11 allegations of the original pleading will be "read into" the amended pleading. *Wennerholm v.*
12 *Stanford Univ. School of Medicine* (1942) 20 Cal.2d 713, 716. Defendant also argues that
13 Plaintiff was not given leave to allege new causes of action, and that in any event the Second
14 Cause of Action for Strict Liability and Third Cause of Action for Batter do not state facts
15 sufficient to constitute causes of action.

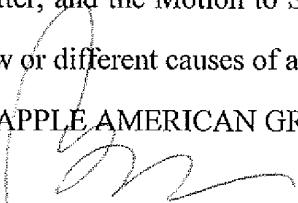
16 In its Motion to Strike, Defendant argues that the Second and Third Causes of Action for
17 Strict Liability and Assault, respectively, and her claim for punitive damages, must be stricken
18 because Plaintiff did not have leave of court to add new causes of action and there is no basis for
19 a claim for punitive damages.

20 Plaintiff has not presented any facts or arguments why her claim does not fall under the
21 exclusive jurisdiction of the Workers' Compensation Act. Accordingly, Defendant's demurrer to
22 Plaintiff's First Amended Complaint should be sustained without leave to amend because the
23 court does not have jurisdiction over this matter, and the Motion to Strike should be granted as
24 Plaintiff did not have leave of court to add new or different causes of action to the complaint.

25 Dated: December 10, 2015

APPLE AMERICAN GROUP, LLC

26 By:


BETH FRUECHTENICHT-ANEY
Attorneys for Defendant,
APPLE AMERICAN GROUP, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 225 Bush Street, Suite 1800, San Francisco, CA 94104.

On December 10, 2015, I caused the following documents:

- DEFENDANT'S REPLY IN SUPPORT OF DEMURRER AND MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

to be served on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Stephen Jaffe, Esq.
The Jaffe Law Firm
101 California Street, Ste. 2710
San Francisco, CA 94111
Tel (415) 618-0100
Attorneys for Plaintiff**

(BY MAIL) I caused such envelope(s) fully prepaid to be placed in the United States Mail at San Francisco, California. I am "readily familiar" with the firm's practice of collection and processing correspondence or mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 10, 2015, at San Francisco, California.

BETH FRUECHTENICHT ANEY