

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Feb-18-2015 10:40 am

Case Number: CUD-15-651037

Filing Date: Feb-18-2015 10:39

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MEMORANDUM OF POINTS AND AUTHORITIES

THOMAS NICHOLSON VS. PAUL DICKERSON ET AL

001C04796277

Instructions:

Please place this sheet on top of the document to be scanned.

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FILED
Superior Court of California
County of San Francisco

FEB 18 2015

CLERK OF THE COURT
BY: *Susan Liu* Deputy Clerk
POWMAN LIU

7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 CITY AND COUNTY OF SAN FRANCISCO

11 UNLIMITED CIVIL JURISDICTION

12 THOMAS NICHOLSON/ELIZABETH) No. CUD-15-651037
13 NICHOLSON THE NICHOLSON 2010)
14 TRUST; ANNE GARDNER and) **MEMORANDUM OF POINTS**
15 WILLIAM NICHOLSON,) **AND AUTHORITIES IN**
16 Plaintiffs,) **OPPOSITION TO DEFEN-**
17 v.) **DANT'S DEMURRER**
18 PAUL DICKERSON, an individual,) Date Noticed: March 3, 2015
19 individually and d.b.a. PAUL'S) Time: 9:00 a.m.
20 DETAILING; and DOES 1 through 30,) Dept: 501
21 inclusive,) Complaint filed: January 2, 2015
22 Defendants.) Trial Date: None

23 Defendant's demurrer on the ground of lack of subject matter jurisdiction is
24 without merit as the Complaint was filed as unlimited civil jurisdiction and \$450.00 filing
25 fee paid at the outset. The only error was the caption, corrected by the First Amended
Complaint.

26 This is a commercial unlawful detainer following termination of a month to
27 month Lease and ancillary claim for damages. The Complaint, filed January 2, 2015,

1 was filed as an unlimited jurisdiction action. See Receipt for filing fee, \$450.00, Exhibit
2 A.

3 Defendant filed a demurrer on or about January 29, 2015, on grounds that
4 the court lacked subject matter jurisdiction over the Complaint alleging past due rent of
5 \$30,500.00 when the caption stated "LIMITED JURISDICTION." Plaintiffs corrected
6 the caption by filing and serving a First Amended Complaint on February 4, 2015. This
7 is proper under Code of Civil Procedure Sec. 403.020. No additional fee was required
8 since it had already been paid and the action appropriately classified as "UNLIMITED
9 CIVIL JURISDICTION". The filing merely corrected the caption. This was noted in
10 boldface on page 1, lines 21-22.

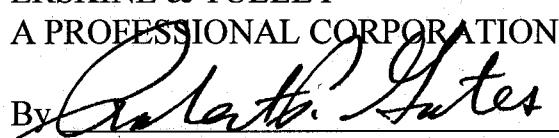
11 However, as a dilatory tactic, without basis or merit, defendant again filed a
12 demurrer on or about February 6, 2015, with a hearing date of March 3, 2015. Although
13 I have notified defendant's counsel of the baseless demurrer (and offered a 10-day
14 courtesy period for defendant to file an Answer), he has refused to take this demurrer off
15 calendar.

16 While no specific appellate court case speaks to this, the matter is resolved
17 by application of Code of Civil Procedure Sec. 403.020. Also, there is some authority by
18 analogy to the situation of where a party's name is incomplete or erroneous; "*Idem
sonans*" doctrine, absolute accuracy in spelling names is not required in legal
19 proceedings. TRG Weil, Brown Civil Procedure Before Trial Par. 6:92 (cases cited
20 therein).

21 An unlawful detainer is a summary proceeding and this demurrer is without
22 merit and an injustice to plaintiffs and should be overruled and defendant ordered to
23 answer the First Amended Complaint.

24
25 DATED: February 17, 2015.

Respectfully submitted,
ERSKINE & TULLEY
A PROFESSIONAL CORPORATION

26
27 By 
28 Robert P. Gates
Attorneys for Plaintiffs

Exh A

EXHIBIT A

Superior Court of California,
County of San Francisco
Civil/Small Claims

Jan-02-2015 W1015102F008 RDELAVEGA
11:21:13

CASE NUMBER: CUB-15-651037

THOMAS NICHOLSON VS. PAUL DICKERSON ET A
L

CIVIL COMPLAINT/PETITION/OTHER FIRST PAP
ER

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Fee: \$450.00 PAID BY CHECK

THANK YOU

EXHIBIT A