Doc. 1029 Att. 1

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Hovsepian v. Apple, Inc.

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1	September 2002:	UPS terminates plaintiff without cause. As plaintiff is a union
2		member, he grieves his termination.
3	August 17, 2004:	Plaintiff files his complaint in San Mateo Superior Court. The
4		complaint alleges a claim under Labor Code §132(a) [disability
5		discrimination], a violation of public policy [Bus. & Prof. Code
6		§17200] and negligence per se.
7	October 20, 2004:	The grievance procedure ends. The arbitrator's award is that UPS
8		terminated plaintiff without cause and plaintiff is ordered to be re-
9		instated. A copy of that award is attached as Exhibit 1.
10	Late October 2004:	Plaintiff returns to work at UPS.
11	March 2, 2005:	UPS removes the state court action to this court.
12	April 2005:	UPS again terminates plaintiff's employment because of his
13		disability and discriminates against him because of his disability.
14	July 11, 2005:	Plaintiff files a complaint with the DFEH against UPS and his
15		manager Robert Chase.
16	July 11, 2005:	DFEH issues plaintiff right-to-sue letters.
17		The First American ded Completed
18		The First Amended Complaint
19	3. On July 12, 20	005, I drafted a first amended complaint which is the complaint I
20	seek leave to file, a copy of v	which is attached as Exhibit 2.
21	The amended compla	int has the same Labor Code §132(a) claim and Bus. & Prof. Code
22	§17200 as were alleged in the	e original complaint.
23	The amended compla	int adds a discrimination claim and retaliation claim under Gov't.
24	Code §§12900 relating to pla	intiff <b>resumed</b> employment with UPS between October 2004 to
25	April 2005. Plaintiff's super	visor, Robert Chase, is also named as a defendant in connection
26	with the retaliation claim.	
27	On July 12, 2005, I tr	ansmitted the first amended complaint, and a stipulation to permit
28		
	1	

Declaration of Counsel in Support of Plaintiff's 2 Memorandum in Support of Motion for Leave to File a First Amended Complaint

1	it to be filed, to defense-attorney, Mr. John Post. A copy of that transmittal is attached as	
2	Exhibit 3.	
3	4. On July 13, 2005, Mr. Post transmitted the attached letter, Exhibit 4, stating the	
4	he would not execute the stipulation. Mr. Post states that plaintiff is attempting to amend the	
5	complaint for an "improper purpose". Mr. Post never explains what he means by an "imprope	
6	purpose.	
7	This motion ensues.	
8	<u>No Prejudice</u>	
9	<u> </u>	
10	5. No prejudice could befall defendants if the first amended complaint is filed.	
11	Discovery has not started. The case management conference is set for August 5, 2005.	
12	There is no Bad Faith	
13	THERE IS NO DAY I WILL	
14	6. There is no bad faith on plaintiff's part in seeking to file the first amended	
15	complaint. It is not plaintiff's fault that the defendants seek to engage in <b>additional</b> unlawful	
16	conduct [discrimination and retaliation] <b>after</b> UPS had removed the original action from state	
17	court to this court.	
18	Not Futile	
19	<u>ivori une</u>	
20	7. The claims alleged in the first amended complaint are cognizable state statutor	
21	claims.	
22	Also the defendant Robert Chase is fully liable for the retaliatory conduct alleged in the	
23	first amended complaint. Peterson v. Santa Clara County Valley Medical Center, No. C98-	
24	20367 JW, 2000 U.S. Dist. Lexis 953, 2000 DAR 1649 [N.D. Cal.]; <u>Walrath</u> v. <u>Sprinkel</u> , 99	
25	CA4th 1237, 1239 (2002).	
26	No Undue Delay	
27	110 Chate Delay	
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Declaration of Counsel in Support of Plaintiff's

Memorandum in Support of Motion for Leave to File a First Amended Complaint

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1	8. There has been no undue delay in seeking to file the first amended complaint.		
2	The causes of action of disability discrimination and retaliation arose in late April 2005. Plainting		
3	filed his charge with the DFEH on July 11, 2005 and by July 12, 2005 had presented the first		
4	amended complaint to opposing counsel with a request to stipulate to its filing.		
5			
6	I declare under penalty of perjury under the laws of California that the foregoing is true		
7	and correct, and that this declaration was executed in California.		
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11	Date: July 14, 2005		
12	Thomas E. Kotoske Attorney for Plaintiff		
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28	Declaration of Council in Support of Plaintiff's		
	Declaration of Counsel in Support of Plaintiff's 4 Memorandum in Support of Motion for Leave to File a First Amended Complaint		