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No Stay; Response Tolled CCP §418.10
Master Cal. UD - Jury Trial Demanded; Not Yet Set

IN THE SUPREME COURT OF CALIFORNIA

Edward Stancil,[1]
Defendant/Petitioner,

v.

Superior Court of California, County of San Mateo,
Respondent;

City of Redwood City,
Real Party in Interest.

Review of a Decision by the Court of Appeal
First Appellate District, Division One
1DCA Case #A156100; Super. Ct. Case #18UDL00903; Super. Ct. App. Div. Case #18-AD-000039

PETITION FOR REVIEW OR, IN THE ALTERNATIVE, GRANT AND TRANSFER BACK

(No Stay - Tolled by Statute CCP §418.10)

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[1] Petitioner is one of 11 UD defendants, all with UDs filed Sept. 4, 2018 in San Mateo Co. Super. Ct. re: Docktown Marina, all with the same issues (evictions claimed to be *ultra vires* to charter jurisdiction and therefore illegal acts; wrongful evictions), with names and case #s noted herein; UD defendants ask this Court to relate, combine & consolidate the Petitions for hearing and briefing, if any, and for final determinations, for judicial efficiency in this Petition for Review and any Transfer Back and further proceedings.

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ISSUES PRESENTED

1. Whether the Motion to Quash ("MTQ") is available to a Defendant as a first responsive pleading in Unlawful Detainer ("UD"), to challenge a facial, fatal defect in a UD Complaint, as *Delta Imports, Inc. v. Mun. Ct.* (1983)[2] held; or whether *Borsuk v. App. Div. of Super. Ct.* (2015)[3] overruled *Delta*; thereby requiring Motion to Strike ("MTS") or Demurrer to assert any such challenge(s); and if *Borsuk* did not overrule *Delta*, in full, for all of California, then:
2. Whether the heightened statutory venue-pleading provisions of CCP §§392 & 396a(a) (mandatory dismissal of non-compliant Complaint) may therefore be enforced via MTQ under a *Delta/Borsuk* harmonization, or must be brought by other responsive pleading, i.e. without limitation MTS; and
3. Whether the legislature's provision of a statutory writ proceeding with tolling (in this case CCP §418.10) already weighs the balance of harms so that the Superior Court Appellate Division erred in requiring Petitioners to allege irreparable harm.

A. Timeliness

Petitioner brings this Petition for Review per CRC 8.500(a)(1) (right to petition for review any Appeals Court decision, exclusive of denial of transfer) and 8.500(b)(1) & (4) (important questions of law and where transfer back to the Appeals Court is desired (see infra, "B." for more specificity). Pursuant to CRC 8.500(d), because the Superior Court ("Super. Ct.") did not consolidate the 12 (twelve) UD Actions (one as to a deceased tenant now-dismissed) nor the 12 MTQs, and because the Super. Ct. Appellate Division ("App.

[2] *Delta Imports, Inc. v. Mun. Ct. (Missimer)* (1983) 146 Cal.App.3rd 1033.
[3] *Borsuk v. App. Div. Super. Ct. (LA Hillcreste Apts., LLC)* (2015) 242 Cal.App.4th 607.

Div.") did not consolidate the 12 Writ Petitions, nor did the 1DCA, Petitioners now file 11 (eleven) identical Petitions for Review. Rehearing is not available for denied Writ Petitions, they are final on filing. The 1DCA filed its Orders in the past 10 (ten) days. *See* CRC 8.500(e)(1) (Petition to be filed w/i 10 days); 8.25(b) (timely if filed prior to expiry).

B. Grounds for Review: Important Question; Split; First Impression; Transfer Back

This Petition is proper under CRC 8.500(b)(1), in that it presents important questions of law, and under CRC 8.500(b)(4), in that transfer back is appropriate if the Court vacates, and directs the Appeals Court to reconsider, or enter a different Order, on any or all Issues Presented.

The question of law is important because it is encountered weekly, if not daily, statewide in UD practice. Whether a UD defendant may interpose a MTQ to challenge defects, and thus make a special, not general, appearance which, if successful, requires amendment and personal re-service, is an important tool that has been available since 1983 under *Delta*, until *Borsuk* drew it into question.

The question also involves an unsettled area of law as the *Delta* / *Borsuk* split is *within* the 2nd District and *among* the 2nd and 1st District Courts of Appeal (*Parsons & Garber*[4], *infra*) that approved, adopted and applied *Delta*, as noted in the Issues and Argument. This Court has also noted the undecided status since *Greener v. Workers' Comp. Appeals Bd*. (1993) 6 Cal.4th 1028, 1036-37 & fn. 5 (cited and discussed *infra*)[5].

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[4] *Parsons v. Super. Ct. (Arques Shipyard Mgmt. Co. LLC)* (2007) 149 Cal.App.4th Supp. 1 (App. Div. Marin Super. Ct. 2007); *Garber v. Levit* (2006) 141 Cal.App.4th Supp. 1 (App. Div. S.F. Super. Ct. 2006).

[5] *Greener* noted: "The challenge may not, however, be made in a "special appearance" by a motion to quash service of summons. The only situation in which a motion to quash service of summons has been approved as a procedure by which to challenge the sufficiency of the complaint is in unlawful detainer, where a demurrer is unavailable. (*See Delta Imports, Inc. v.*

Finally, there is an issue of first impression as to ruling on the facial, fatal defect claimed here in the MTQ -- failure to plead the "location" of where the UD case shall be tried and decided, under mandatory, statutory heightened venue-pleading burden specific to UD. *See* CCP §§392 & 396a(a), which carry a remedy of Complaint dismissal for defects. UD is a statutory creation and is exacting, and to be strictly construed. There is no "*de minimus*", nor substantial compliance, rule to save defective pleading. *See infra*.

Related to the prior point, is that the Legislature has already "balanced harms" in providing a statutory writ for denial of MTQ, *see* CCP §418.10. Thus, the Super. Ct. App. Div. erred in ordering that Petitioners had not proven "irreparable harm" under a general balancing of harms test. Being unable to dismiss a Complaint, having a "*de minimus*" standard applied, and having to Answer or Demur, is clearly irreparable harm in the context of a UD, where one course vacates the Action and the other mandates a general appearance and moving toward an at-issue summary proceeding.

INTRODUCTION

This case involves nearly a dozen UD Actions, all of which have the same procedural history and involve the same legal issues. They all pertain to claimed wrongful evictions of "liveabaords" (people living on houseboats or vessels) from Docktown Marina in Redwood City. Defendants claim an affirmative defense that goes to the right of possession (lack of jurisdiction of the Council of Redwood City vs. its co-equal Port Dept.

Municipal Court (1983) 146 Cal.App.3d 1033, 1035-1036 fn. 5) (secondary citation omitted; italics added); and *Greener*, fn. 5 reads: "We do not intend, by noting this decision, to express approval of the conclusion that an exception should be recognized in unlawful detainer actions. That question is not presented here." 6 Cal.4th at 1036-37 fn. 5.

to be acting (by specific delegation in City charter)), and shall demand trial. But they have not yet been required to Answer, as the entire procedural history has involved interposing 12 Motions to Quash (each a "MTQ") for a fatal pleading defect.

Defendants sought mandatory dismissal of Complaint on MTQ below, due to Plaintiff's complete failure to satisfy statutory venue pleading burdens heightened for UD (to wit, CCP §§392(a), (b) and 396a(a), which provide for dismissal for failure to plead venue location adequately), as more fully briefed herein.

The 12 MTQs were denied by the Super. Ct. Law & Motion ("L&M") Dept., the Hon. Susan E. Greenberg (each Super. Ct. Order in the App. Ex., Ex. 3)[6]. Thereafter, each Defendant petitioned for writ of mandate under CCP §418.10, in these Limited Jurisdiction cases to the Super. Ct. Appellate Division. The App. Div. denied the Writs and Defendants petitioned to the 1DCA, which denied the Petitions without opinion (each App. Div. and each 1DCA denial in the App. Ex., Exs. 2 and 1, respectively).

For the reasons herein, this Court should grant review to resolve the Issues Presented. In the alternative, Petitioner seeks "Grant and Transfer Back" to the 1DCA, with instructions to vacate the denials and dismissals and issue an Alternative Writ or OSC to address the Issues Presented and rule in Petitioners' favor.

BACKGROUND

A. The Superior Court - Procedure and Orders

Due to service spanning several weeks and in varying methods, the 12 MTQs were filed, heard and decided in phases: Fleming was served Sept. 6, 2018 with response due

[6]Ex. 1 in each Petition is the 1DCA denial of Petition; Ex. 2 is the Super. Ct. App. Div. denial of Petition, and Ex 3 is the Super. Ct. Law & Motion ("L&M") Order.

Sept. 11, 2018; a MTQ was filed and calendared for L&M hearing first, on Sept. 20, 2018. Chambers was served Sept. 8, 2018 with response due Sept. 13, 2018; a MTQ was filed and calendared for L&M hearing, combined with *Fleming* for Sept. 20, 2018. The Super. Ct. continued the *Fleming* & *Chambers* hearings and heard them both Oct. 2, 2018

Counsel for Fleming and Chambers, Ms. Frostrom and Madden, appeared and contested the tentative ruling. After hearing, Judge Greenberg altered the tentative as to response time, but otherwise maintained it in all respects. This Oct. 2, 2018 hearing is the only hearing at which counsel made appearance; the remaining MTQs either: (a) received the same tentative as the final *Fleming/Chambers* Order (*Diaz*); or (b) were resolved by Stipulation of counsel and identical Order entered for all remaining MTQs (*Behrend, Groce, Madden, Peschcke-Koedt, Reid, Humphries, Slanker, & Stancil* (spread out over weeks due to service and amending Complaint issues to cure defects)). [7]

Accordingly, all L&M Orders are identical, although by different procedures; each is attached as App. Ex., Ex. 3; moreover, in all Petitions, Ex. 4 is the 10/2/2018 transcript.

The Superior Court ruled that *Borsuk, supra* overruled *Delta Imports*, *supra* and that Demurrer was the sole manner in which to bring the venue-pleading challenge. The Judge also found a *de minimus* or substantial compliance standard applied, even though Defendants cited applicable authority that UD pleading is statutory and thus, exacting. *See infra*, Legal Discussion. Although MTS is clearly available for further challenge if this

[7]The Superior Court UD Actions are: Super. Ct. San Mateo Co. – all "*Redwood City v.*"…: 18UDL809 (*Behrend, Mark*); 810 (*Chambers, John*); 811 (*Diaz, Emilio*); 812 (*Fleming, William Michael*); 813 (*Groce, Aimee*); 816 (*Madden, Alison*); 817 (*Peschcke-Koedt*); 818 (*Reid, Jon & Tina)*; 820 (*Humphries, Jed*); 822 (*Slanker, Dan & Dawn*); and 903 (*Stancil, Edward*).

Court should rule *Delta* does not permit the MTQ, the Order purported to limit the option solely to Demurrer to challenge pleading deficiency, contrary to applicable law.

Petitioners maintain that UD defendants "may" bring a MTQ in a UD action to challenge fatal, facial defects under *Delta*, and that *Borsuk* did not overrule *Delta* for the First District, nor all of California. Moreover, Petitioners maintain that in any event, *Borsuk* only applies to defects alleged to be elements of the "UD cause of action", not heightened venue-pleading requirements made mandatory in UD by statute, with the remedy of mandatory dismissal for failure to comply. Thus, the venue-pleading deficiencies may be brought by MTQ, or at a minimum MTS.

B. The Superior Court Appellate Division - Procedure and Orders[8]

Like the L&M MTQs, the Writs of Mandate to the Super. Ct. App. Div. pursuant to CCP §418.10 followed the sequence of having been heard in the L&M Dept. below, and proceeded according to the details of the particular UD Action (the App. Div. had required Plaintiff to re-do some Orders and re-Serve of Notice of Entry of Order, and some UD Defendants were late-served with Amended Complaints to remedy pleading defects (but never the venue deficiency)).

On Dec. 17, 2018, the App. Div. rendered 11 of its Orders, and a few days later it rendered the 12th in *Humphries* (*Logan*, who was deceased before being sub-served, was dismissed by Plaintiff in the meantime, hence 11 now on Petition). The App. Div. upheld the Super. Ct. L&M Dept. and added the point that Petitioners had failed to prove

[8] The App.Div. Case #s are (in the same order as referenced above, and corresponding to each of 18UDL00809-903, *supra* (alphabetical order), the following: 18-AD-000036 (Behrend); 45 (Chambers); 44 (Diaz); 42 (Fleming); 43 (Groce); 37 (Madden); 48 (Peschcke-Koedt); 41 (Reid); 47 (Humphries); 40 (Slanker); 39 (Stancil).

irreparable harm, despite that the outcome was dismissal of UD Action had they prevailed, and moving to summary at-issue procedure after the App. Div. Orders.

C. The First District Court of Appeals Procedure and Orders[9]

Within the time frame provided for by statute, on Jan. 1, 2019 Petitioners took their Writ Petition to the 1DCA. On Jan. 16, 2019 the 1DCA denied the Petitions without opinion. Each 1DCA Order denying Petition is found in App. Ex., Ex. 1. Within 10 days we now file this Petition for Review. *See* CRC 8.500(e)(1), and *supra*.

D. Related Actions

For background and disclosure (Writ Petitions pertaining to points of law and denial of injunction have been taken), Petitioners advise the Court below of pending Actions. Petitioners take the position that, One - they have a full affirmative defense going to the right of possession, *see Green v. Super. Ct. (Sumski)* (1974) 10 Cal.3d 616 (any defense going to the right of possession is triable), and Two - the instant UDs will be proven to have been wrongful evictions if the City succeeds in UD in the short term, exposing it to damages for such wrongful eviction, in addition to the Actions below.

The pending Actions challenge jurisdiction of the Council to have forced the instant leases, to have adopted a plan of eviction and relocation, and to have denied relocation benefits to residents in violation of CRAL, the Cal. Relocation Assistance Act, or Law, Gov. Code §§7260 *et seq*. The Actions are (all San Mateo Co. Super. Ct.):

1. 17CIV00276 (Jan. 2017 CEQA – resolved);

[9] The 1DCA Case #s are (in the same order as referenced above, and corresponding to each of 18UDL00809-903, *supra* (alphabetical order), the following: A156109 (*Behrend*); A156108 (*Chambers*); A156107 (*Diaz*); A156105 (*Fleming*); A156104 (*Groce*); A156103 (*Madden*); A156102 (*Peschcke-Koedt*); A156101 (*Reid*); A156131 (*Humphries*); A156111 (*Slanker*); A156100 (*Stancil*).

2. 17CIV00316 (Jan. 2017 CCP §526a taxpayer suit alleging illegal and void acts *ultra vires* to charter jurisdiction for Council usurping Port jurisdiction in violation of Charter (which provides for sole and exclusive jurisdiction in the Port Dept.);
3. 17CIV04680 – "collective writ" challenging Docktown Plan administrative proceeding (admin/traditional mandate) as insufficient under CRAL, *supra*;
4. 17CIV04898 – an individual admin and traditional writ of mandate;
5. 17CIV05387 – putative class or mass action challenging denial of relocation benefits in violation of CRAL, *supra*;
6. 18CIV03991 – illegal act Complaint pertaining to adoption of marina size restrictions, settled before at-issue.

LEGAL DISCUSSION

I. The *Delta Imports* Case Articulates a Better-Reasoned Approach than *Borsuk*, which Criticizes the "*Delta*" Motion: *Delta Imports* Approved the MTQ as a UD Defendant's First Response to Challenge Facial, Fatal Defects in a UD Complaint over 20 Years Ago; this Court Should Approve and Adopt *Delta*'s Reasoning and Result.

For over 20 years, California practitioners have availed themselves of the "*Delta*" motion, recognized by the *Delta Imports* case, *supra*, which permits a MTQ to challenge facial, fatal defects in a UD Complaint, thereby quashing service of a 5-day Summons for UD, and by necessary implication requiring, at a minimum, amendment to cure the defect, and personal re-service under the CCP. In *Delta*, the defect was failure to attach the 3-day notice to cure or quit, ostensibly an "element of the UD cause of action".

CCP §418.10(a)(1) provides the means for bringing a MTQ-the first available response; if not brought, the opportunity for MTQ is waived, and lost. *Id.*, (e)(3); *see also Hollywood Park Land Co., LLC v. Golden State Transp. Fin. Corp*. (2009) 178 Cal.App.4th 924, 940; *McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 257; *Amer. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387.

CCP §418.10(c)-(e) also provides the means for challenging denial of a MTQ - statutory writ of mandate. Timely Writ Petition suspends the trial court action by tolling

further response and preventing default being taken, thus operating as the functional equivalent of a temporary stay, until the mandate proceeding is concluded. *Id*., (d).

Making a MTQ is a special, not general, appearance. CCP §§418.10(e)(1), (2). If a MTQ is successful in the UD context, at a minimum this requires amendment of the Complaint and personal re-service. It is an important tool available since 1983 under *Delta*, until *Borsuk* drew it into question.[10] Here, 12 UD defendants brought MTQs under *Delta*, to challenge the facial, fatal defect of failure to plead heightened venue specificity for UD, namely CCP §§392(a) and (b) and 396a(a), which require pleading the specific *location* of the Superior Court where the action shall be tried. Those sections together require dismissal of a non-compliant Complaint as a remedy, not merely amendment and re-service on counsel, which is the method for curative amendment and re-service after Demurrer.

Petitioners ask this Court to approve *Delta*, especially in light of the published opinions from the Appellate Districts of Superior Courts in the First Appellate District. *See, infra*, discussion of *Parsons v. Super. Ct*. & *Garber v. Levit,* cited fn.4, *supra*. At a minimum, *Delta* and *Borsuk* can be harmonized to allow MTQ when the facial, fatal defect is not an "element of the UD cause of action" requiring challenge by Demurrer.

A. Delta's reasoning is more sound, and the *Delta* / *Borsuk* split within the 2nd District Court of Appeals is also counterweighted by the reasoning of two published First District (Appellate Division) cases adopting and applying *Delta*.

Delta Imports held that a 5-day Summons is only *e*-ffective if the Complaint is not

[10] Moreover, response on return to the trial court in the Action must be made within ten (10) days of service of notice of entry of order resolving the mandate proceeding, unless extended by the court for good cause up to twenty (20) days, with time for service by mail. CCP §1013; *Citicorp North America, Inc. Inc. v. Super. Ct.* (*KF Dairies, Inc*.) (1989) 213 Cal.App.3d 563, 567-68.

de-fective. 146 Cal.App.3d at 1035. Its brevity should not be a strike against it. The ruling is clear and based on sound reason and policy, despite assertions to the contrary in *Borsuk*. The logic and holding of *Delta* are deceptively simple; and later assertions that it has "created confusion" are not true; *Delta* has consistently been applied simply and directly. *See, e.g.*, *Parsons v. Super. Ct. (Arques Shipyard Mgmt. Co. LLC)* (2007) 149 Cal.App.4th Supp. 1 (App. Div. Marin Super. Ct. 2007); *Garber v. Levit* (2006) 141 Cal.App.4th Supp. 1 (App. Div. S.F. Super. Ct. 2006).

The Delta / Borsuk Split – 2nd District Court of Appeals Only

Borsuk is a circular and confusing opinion in nearly all respects and points raised in it seriously misconstrue UD law in general, and the holding of *Delta* in particular.

First, *Delta* held:

> A motion to quash service is the proper method for determining whether the court has acquired personal jurisdiction over the defendant through service of the five-day unlawful detainer summons. … If the underlying complaint fails to state a cause of action for unlawful detainer, then use of the five-day summons is improper and the defendant is entitled to an order quashing service as a matter of law. … If the municipal court erroneously refuses to quash service, the defendant is entitled to a writ of mandate from the superior court.

Id. (citing CCP §418.10; collateral case & secondary reporter citations omitted).

Second, *Delta*'s on-point pin-point holding is:

> We disagree with the view expressed by the superior court in its notice of intended decision that defendant's remedy is a demurrer to the complaint, not a motion to quash service. A motion to quash service is the only method by which the defendant can test whether the complaint states a cause of action for unlawful detainer and, thereby, supports a five-day summons. A general demurrer only tests whether the complaint states a cause of action for *something* even if it is on a theory other than unlawful detainer. … Moreover, if the defendant appears in the action by filing a demurrer, he moots the very point he is seeking to raise.

Id., at 1036 (citing CCP §418.10; collateral case & secondary reporter citations omitted).

In other words, unless the "four corners" of the entire Complaint reveal an unassailable UD Action (and "Cause of Action"), the Summons itself is invalid and cannot confer personal jurisdiction, at least not for a 5-day response in UD. On the reverse, if the Complaint on its face clearly shows a fatal defect, the Summons is *per se* invalid and cannot confer such jurisdiction (likewise if the Complaint attempts to assert more than a UD cause; a 5-day Summons must be quashed). This is true whether a defect is an "element of the cause of action" or another defect, in our cases failure to meet a statutory UD venue-pleading requirement of location of Super. Ct. branch in which the action shall be decided.

Of course, a UD defendant may waive any such defects by making a general appearance, but we did not do so here, nor did the defendants in *Delta* and *Borsuk*.

Borsuk*'s Attempt to Question the Holding and Foundation of* Delta *is Misguided*

Borsuk found *Delta*'s holding "not supportable", 242 Cal.App.4th at 612, but Borsuk has itself been criticized for faulty reasoning. *See, e.g.*, http://costa-hawkins.com/unlawful-detainers/division-four-disagrees-with-delta-imports-could-borsuk-lead-to-the-death-of-the-delta-motion/ (thoughtful, in-depth analysis opining that, "*Borsuk* will make a poor adversary for *Delta*.").

Borsuk held that, "First, [the] *Delta* [court], "apparently assumed, without expressly stating, that the court obtains personal jurisdiction over the tenant through the landlord's service of a three-day notice to pay or quit. That is incorrect." 242 Cal.App.4th at 612. However, the *Delta* court said no such thing. The *Delta* court was clear that if the Complaint shows *any* defect, the 5-day Summons is invalid, hence there is no personal jurisdiction over the UD defendant. As shown by our cases, and any number of

hypotheticals, the defect could be something "other than" whether a 3-day notice was properly served or not. *Delta* never said jurisdiction is obtained by the 3-day notice.

The *Borsuk* court then wrote:

> "Second, in approving the use of a motion to quash to challenge an unlawful detainer complaint and service of a notice to pay or quit, *Delta* shunted aside the limitations of a motion to quash under section 418.10. Section 418.10 provides that a defendant may file a motion "[t]o quash service of summons *on the ground of lack of jurisdiction* of the court over him or her."

242 Cal.App.4th at 613.

But this is exactly the holding of *Delta*; it "shunted" nothing "aside". The *Borsuk* court's sentence is circular in light of the point it just discussed; *Delta* was express, and *Borsuk*'s panel seems unable to grasp that the *Delta* court indeed had a novel, but solid, logical basis in policy, statute and practice for its holding. It is the better reasoned case.

Here, the *Borsuk* court objects to the introduction of evidence at a MTQ stage (when needed--our issue is facial and needs no "speaking motion"). But *Borsuk* ignores that a MTQ specifically provides for external evidence going to personal jurisdiction, and is intended to "be" a "speaking motion". Artful UD pleading by a plaintiff alleging falsehoods could not be tested on MTQ, MTS "or" Demurrer if *Borsuk* were correct, as Demurrer accepts the pleaded Complaint as true (unlike MTQ). This means a justified UD defendant could not prevail until trial, not an efficient outcome.

The *Borsuk* court only objects here, for the circular reasoning that it objects to looking into an "element of the cause of action" on MTQ. But the *Borsuk* court simply creates an argument of circles, it doesn't matter if it's an "element of the cause of action" or another statutory omission, if the Complaint is faulty at all, there is no personal jurisdiction under a 5-day Summons if the UD Cause or statutory requirement is not pleaded.

Borsuk even asserts the incredible claim that:

> If the landlord has properly served the summons and unlawful detainer complaint, the court necessarily has acquired personal jurisdiction over the tenant, regardless of *whether the unlawful detainer claim is joined with other claims* and regardless of whether, as it did at the time of *Delta,* the filing of a demurrer constituted a general appearance.

242 Cal.App.4th at 615 (emphasis added). But this is untrue, if a claim "other" than UD is pleaded, the Action is no longer for "UD" (only UD may be pleaded in a UD Action, no other cause nor claim), and the Action "must" be transmuted to a regular civil Action. The 5-day Summons "would" then be quashed, it does not "turn into" a 30-day Summons! *Borsuk* is full of such statements and reasoning, nearly every point from "First" to "Fifth" ("Finally" after "Fourth") is deficient in its reasoning or foundation.

Judicial efficiency is served by quashing within 7 to 10 days (the time period within which a MTQ in UD must be heard in UD), after solely 5 "calendar" days to respond in UD. This total 15 day time period is even less time than the time to notice a Demurrer, or even a Motion to Strike. The argument of "wasted time" and "mini trials" is inapposite; "all" MTQs are speaking motions. To criticize this aspect of the operation of a *Delta* Motion flies in the face of both reason and logic, as to time frame, and is a criticism of the MTQ procedure applicable to all Actions (that it is a "speaking motion"). These are basic procedural aspects that the *Borsuk* court ignored.

The *Borsuk* court's third error is that it inherently makes the questionable jump that a specific statutory service requirement is an "element of the cause of action". That would make our UD heightened pleading burden also an "element of the cause of action for UD". This is silly; a statutory scheme that requires compliance with specific procedural steps does not automatically turn every provision in the CCP (here §§1161 *et*

seq. all the way to §1179a) into an "element of the cause of action". Some things are just mandatory statutory requirements that flow from an exacting statutory framework, and if not pleaded, the Complaint is deficient and therefore the MTQ lies under *Delta*. We would even argue the 3-day notice falls into this bucket (at least particulars as to method and manner) and certainly that the statutory venue-pleading requirement is such (not an element of the cause of action but quite simply a mandatory, statutory pleading burden.

Fourth, *Borsuk* criticizes the *Delta* court, saying that the cases cited don't support the holding. But *Delta* was clear that it was articulating a holding for the first time in the specificity of its holding. That it relied on prior UD cases for elements of its analysis doesn't render *Delta* suspect or invalid. All of law is based on drawing from aspects and elements of prior holdings to articulate the case at hand.

Two published First District (App. Div.) opinions support Delta clearly

Parsons and *Garber* rely on *Delta* to consider whether a 60-day service statute for floating homes was met (in *Parsons* the court held no, and quashed the 5-day Summons, 149 Cal. App. 4th Supp. 1); and whether San Francisco's laws provided for a landlord 25% or 50% ownership interest to evict in UD for an "owner move-in" (the *Garber* court recognized 25% in Garber and decided the case on that basis, 141 Cal.App.4th Supp. 1).

Both *Parsons* and *Garber* were lucidly and solidly reasoned, and grasped *Delta*'s intent and holding without the confusion evidenced by *Borsuk*. Indeed, *Parsons* even discussed and corrected the mistaken interpretation that the *Delta Imports* complaint purported to state something "other than" UD. *Parsons* recognized that if any element of UD is "not" pleaded (or any statutory requisite not met) then the Action is simply ***not one of and for UD***. 149 Cal.App. Supp., at 7.

B. The distinction in outcome of a MTQ vs. Demurrer, Answer or other Response militates in favor of permitting MTQ as first Response to challenge facial, fatal defects in a UD Complaint.

The predicates for this point are discussed above. Both *Delta* and *Parsons* call out in detail the different outcomes. A UD defendant should not be forced to Demur or Answer, make a general appearance and be put to summary proceeding when MTQ is well founded.

C. The defect at issue in the instant case is properly attacked on MTQ, whether an "element of the UD Cause of Action" or other defect defeating UD.

Borsuk focused on defects that are "elements of the cause of action", but any defect that shows UD has not been properly alleged is fair game. And because MTQ is a speaking motion, it is in the interests of justice and judicial efficiency to enable any MTQ that defeats even false or careless allegations and shows the Action is not one for UD. In our cases, the heightened venue-pleading allegations for UD "must" be alleged. Here, UD plaintiffs only captioned the Action as "Superior Court of San Mateo County", no location, address, nor branch name. This is insufficient, as "Superior Court and County" per CRC is the "title of the Court. It is not enough to State "Alameda County Superior Court" or "Los Angeles Superior Court". Almost all Counties have multiple branches and locations, and many specifically provide for UD Actions to be heard in one or more particular "location(s)".

II. The Field Practice Guides Discuss the "Location" Requirement, Which is an Issue of First Impression; No Court Appears to Have Interpreted a UD Plaintiff's Heightened Venue-Pleading Burden Made Mandatory by Statute.

A. Venue is not ordinarily required to be pleaded; when statute mandates a specific venue-pleading standard for UD, it is exacting and must be met.

Although venue is not required to be pleaded in civil actions generally (in either limited or unlimited jurisdiction cases), certain statutory venue pleading statutes do exist,

and one applies to UD, requiring a fatally deficient Complaint to be "dismissed" for failure to meet the specific venue pleading requirement. CCP §§392(a), (b), §396a(a).

CCP §396a(a) provides (emphasis in italics and underscore added):

> [I]n an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure:
> (a) The plaintiff shall *state facts in the complaint*. . . showing that the action has been commenced in the proper superior court *and the proper court location for the trial of action or proceeding*, and showing that the action is … for unlawful detainer . . . . Except as provided in this section, if the complaint . . . is not filed pursuant to this subdivision, *no further proceedings may occur in the action or proceeding*, *except to dismiss the action* or proceeding without prejudice.

San Mateo County has two branches, and until recently had three (with public freeway directional signs still pointing to the former Humboldt location of the Central Branch). Indeed, as of Jan. 1, 2019 various classes of Civil Actions have been assigned and reassigned among the Northern and Southern Branches.

Alameda County Superior Court has no fewer than five locations where civil actions may be heard, but all UDs are decided in Hayward, and it would be devastating for a UD defendant not to have proper pleading in the Complaint that "Hayward Branch" is hearing the case, and "location" is "Hayward Hall of Justice". *See, e.g*. Alameda Co. Local Rules ("L.R."), providing for Hayward Hall of Justice to be the sole location in the Superior Court for Alameda County, to hear UDs, at **http:/www. alamedacourts.ca.gov / Pages.aspx/law_motion**; *see also* Rutter Group, Civil Proc. Before Trial ("TRG: CP") S 8.21, 8-8 (citing CCP §§392(a)(1)&(b) and concluding and advising practitioners to plead branch, at a minimum); TRG: CP 8:38 ("proper venue" is alleged by "showing the action has been filed in the proper superior court (county of proper venue) and (if there are branch courts in the county) the proper court location." (cross citing §8:21 above).

The pleading burden has not met. A caption is required on every pleading. If solely "County" is stated, the entire underpinning of even having the statute is frustrated –which is to advise of the *location* of the court where the matter will be heard. Plaintiffs here failed to do that, and the defect is facial, and fatal.

B. The remedy for failure to meet the heightened mandatory statutory venue-pleading requirements for UD is dismissal of the Complaint; clearly an outcome in a UD Defendant's favor.

The Code Sections cited provide for dismissal of a Complaint that does not comply with the mandatory heightened pleading burden. The Super. Ct.'s failure to have quashed the 5-day Summons for failure of UD plaintiff to have complied with such an important requirement was clear error, and a prejudicial outcome.

C. There is no *de minimus* doctrine, nor substantial compliance standard, regarding any aspect of UD practice; it is a creation solely of statute, and is therefore exacting and must be strictly complied with.

UD is a creature of statute and is exacting, there is no "*de minimus*" rule, nor substantial compliance standard. *See WDT-Winchester v. Nilsson* (1994) 27 Cal.App.4th 516, 520, 27 (citing authority and stating burden is on UD plaintiff to strictly comply with UD statutory scheme, holding so even in commercial context; here, in a public agency taxpayer tenancy, the policy is even more compelling); *see also Baugh v. Consum. Assocs., Ltd*. (1966) 241 Cal.App.2d 672, 647-75. Indeed, the *Baugh* court stated:

> The remedy of unlawful detainer is a summary proceeding to determine the right to possession of real property. Since it is purely statutory in nature, it is essential that a party seeking the remedy bring himself clearly within the statute."

Id., at 674 (italics added).

Here, UD plaintiff City could have brought non-summary general civil actions for ejectment, but it chose UD and must abide by all of the specific, statutory requirements pertaining to UD.

III. The Legislature has Already Balanced Harms in Providing a Statutory Writ Remedy and Process for Challenging Denial of a MTQ; Thus, the Super. Ct. App. Div. Erred in Requiring a Showing of Irreparable Harm, and in any Event Not Having a UD Complaint Dismissed, Which Requires Re-Filing and Re-Service, is Clearly Irreparable in the Context of a UD Action, as it Occasions the Difference Between Dismissal and Proceeding to an At-Issue Summary Proceeding.

Finally, the Legislature has already balanced harms in providing a statutory writ remedy, the Super. Ct. App. Div. erred in ordering that UD defendants had to plead irreparable harm.

However, in any event, having to face a summary proceeding when the alternative is dismissal, requiring UD plaintiff to remedy the defect, re-file, obtain new Summons and re-serve the Complaint is obvious. Many things change in the interim and a second UD may or may not be forthcoming. Defendants are entitled to strict compliance with the UD statutory framework, and to the Delta MTQ to vigorously test UD pleadings.

CONCLUSION

Defendants respectfully request that this Court Grant Review, Vacate the Appellate Court's Orders denying relief, and require entry of order in favor of defendants, or in the alternative, grant and transfer back with instructions for Alternative Writ or OSC to fully decide the issues presented.

Dated: Jan. 25, 2019

By:___//AM//_____
Alison M. Madden, In Pro Per; SBN 172846
(e-filing is signature)

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, 8.204(c)(1))

The text of this Petition consists of 5700 words as counted by the Microsoft Word word processing program v. 2007 or later, exclusive of those portions permitted by rule or statute to be excluded (e.g., such as Tables, this Word Count, Cover Page, etc.).

Dated: Jan. 25 2019

By:___//AM//_____
Alison M. Madden, In Pro Per; SBN 172846
(e-filing is signature)

S253783

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

EDWARD STANCIL,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO,

Respondent;

REDWOOD CITY,

Real Party in Interest.

A156100

San Mateo County Super. Ct.
No. 18AD000039

THE COURT*:

The petition for writ of mandate, prohibition, or other appropriate relief is denied. Petitioner's request for consolidation and to set a briefing schedule is also denied.

Date: JAN 16 2019

Pollak, P.J. P.J.

* Pollak, P.J., Streeter, J., and Tucher J.

S253783

S_____ **No Stay; Response Tolled CCP §418.10**
Master Cal. UD - Jury Trial Demanded; Not Yet Set

IN THE SUPREME COURT OF CALIFORNIA

Edward Stancil,[1]
Defendant/Petitioner,

v.

Superior Court of California, County of San Mateo,
Respondent;

City of Redwood City,
Real Party in Interest.

Review of a Decision by the Court of Appeal
First Appellate District, Division One
1DCA Case #A156100; Super. Ct. Case #18UDL00903; Super. Ct. App. Div. Case #18-AD-000039

PROOF OF SERVICE; PETITION FOR REVIEW APPENDIX OF EXHIBITS TO PETITION FOR REVIEW

(No Stay - Tolled by Statute CCP §418.10)

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[1] Petitioner is one of 11 UD defendants, all with UDs filed Sept. 4, 2018 in San Mateo Co. Super. Ct. re: Docktown Marina, all with the same issues (evictions claimed to be *ultra vires* to charter jurisdiction and therefore illegal acts; wrongful evictions), with names and case #s noted herein; UD defendants ask this Court to relate, combine & consolidate the Petitions for hearing and briefing, if any, and for final determinations, for judicial efficiency in this Petition for Review and any Transfer Back and further proceedings.

PROOF OF SERVICE

Pursuant to e-filing rules of court, the documents below and captioned on the cover page are served on real party by true-filing upload – filing and service selected. Service on respondents is made on the first court day on which the clerk's office is open, to be deposited with the Superior Court, L&M and App. Div. Depts/Divisions.

I certify by my e-signature below that I did/shall serve via TrueFiling and the methods and manners set forth above the known attorneys for Real Party, as follows: Randall Block, Attorney for Redwood City, Burke, William & Sorensen, LLP.

Dated: Jan. 25, 2019

By:___//AM//_____
Alison M. Madden, In Pro Per; SBN 172846
(e-filing is signature)