

SUPREME COURT CASE NO. S253783

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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EDWARD STANCIL,

PETITIONER,

v.

SUPERIOR COURT OF SAN MATEO COUNTY,

RESPONDENT.

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SUPREME COURT  
FILED

JUN 20 2019

Jorge Navarrete Clerk

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Deputy

After a Decision by the Court of Appeal  
First Appellate District, Division Four  
Case No. A156100  
Petition from Order of the Superior Court  
State of California, County of San Mateo  
Honorable Susan L. Greenberg, Judge Presiding  
San Mateo County Superior Court Case No. 18UDL00903

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF AND AMICUS CURIAE BRIEF OF  
WESTERN CENTER ON LAW & POVERTY**

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TABLE OF CONTENTS

	<u>Page</u>
APPLICATION TO FILE AMICUS CURIAE BRIEF .....	4
I. Introduction .....	4
II. Interest of the Amicus Curiae .....	4
III. Conclusion.....	5
I. Introduction.....	6
II. Discussion .....	6
A. <i>Borsuk</i> misread <i>Delta</i> ; motions to quash are appropriate where plaintiff uses a five-day summons without stating a cause of action in unlawful detainer.....	6
B. The motion to quash is a significant tool for a tenant- defendant to challenge a defective five-day summons..	11
III. Conclusion .....	13

**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<b>Cases</b>	
<i>Borsuk v. Appellate Div. of Superior Court</i> , 242 Cal.App.4th 607 (2015).....	6, 7, 8, 9
<i>California Building Industry Association v. City of San Jose</i> , 61 Cal.4th 435 (2015).....	11
<i>Delta Imports, Inc., v. Municipal Court</i> , 146 Cal.App.3d 1033 (1983) .....	6, 7, 8, 9, 13
<i>Green v. Superior Court</i> , 10 Cal.3d 616 (1974) .....	4, 5
<i>Greene v. Municipal Court</i> , 51 Cal.App.3d 446 (1975) .....	6, 7, 8, 9
<i>Kwok v. Bergren</i> , 130 Cal.App.3d 596 (1982) .....	6, 7, 9
<b>Statutes</b>	
Cal. Code Civ. Proc. § 412.20 .....	8, 9
Cal. Code Civ. Proc. § 452.....	7
Cal. Code Civ. Proc. § 1161.....	7, 9
Cal. Code Civ. Proc. § 1167.....	8, 9
Cal. Code Civ. Proc. § 1167.4 .....	13
Cal. Code Civ. Proc. § 1170.5 .....	10
Cal. Code Civ. Proc. § 2031.260 .....	10
<b>Rules</b>	
California Rule of Court 8.520(f).....	4
California Rule of Court 8.520(f)(4) .....	5
<b>Other Authorities</b>	
AB590 .....	12

# APPLICATION TO FILE AMICUS CURIAE BRIEF

## I. Introduction

Pursuant to California Rules of Court, Rule 8.520(f), amicus curiae Western Center on Law and Poverty respectfully requests leave to file the accompanying brief in support of Petitioner Edward Stancil. This application is timely made within 30 days of the filing of the reply brief on the merits.

## II. Interest of the Amicus Curiae

Western Center on Law and Poverty is California's oldest and largest legal services support center, created in 1967 to lead the fight in the courts, counties, and capital to secure housing, health care, and a strong safety net for low-income Californians. Western Center is dedicated to protecting the rights of low-income tenants and to ensuring that affordable housing is produced and preserved. Western Center supports local legal services attorneys representing tenants in unlawful detainers through trainings, co-counseling on appeals, and technical assistance. Through this work, Western Center is uniquely positioned to assess the impact of the legal issues presented in this case.

Western Center regularly participates as *amicus curiae* in significant California appellate cases that, like the present one, may potentially have a substantial practical impact on the interests of low-income Californians. *See, e.g., Green v. Superior*

*Court*, 10 Cal.3d 616 (1974). We write to bring the Court's attention to several considerations that require affirming that a motion to quash is the proper means to test whether a complaint states a cause of action for unlawful detainer.

Amicus's counsel has examined the briefs on file in this case, are familiar with the issues involved and the scope of their presentation, and do not seek to duplicate that briefing. Proposed Amicus confirms, pursuant to California Rule of Court 8.520(f)(4), that no one other than Proposed Amicus, and its counsel of record, authored this brief in whole or in part or made any monetary contribution to fund the preparation of the brief.

### III. Conclusion

Western Center on Law and Poverty respectfully requests that the Court accept the accompanying brief for filing in this case.

Dated: May 24, 2019

WESTERN CENTER ON LAW & POVERTY

By: \_\_\_\_\_

  
RICHARD A. ROTHSCHILD

## I. Introduction

As advocates for tenants in unlawful detainers, we write in support of preserving the motion to quash as a means to test whether a complaint states a cause of action in unlawful detainer. In California's current housing crisis, an unlawful detainer is often the first step in a very short process that leaves a family homeless. It is critical that tenants defending unlawful detainers retain this important procedural right.

*Delta Imports* is consistent with a long line of cases holding that a notice to pay rent or quit may only be enforced by summary legal proceedings if the lessor strictly complies with the unlawful detainer statute. *See, e.g., Kwok v. Bergren*, 130 Cal.App.3d 596, 600 (1982); *Greene v. Municipal Court*, 51 Cal.App.3d 446, 450 (1975). This Court should preserve the *Delta* motion because the five-day summons confers significant advantage on the unlawful detainer plaintiff, and leads to forfeiture of defendant's possessory interest. A motion to quash is the only way for a tenant to challenge the improper use of the special summons without submitting to the court's jurisdiction.

## II. Discussion

### **A. *Borsuk* misread *Delta*; motions to quash are appropriate where plaintiff uses a five-day summons without stating a cause of action in unlawful detainer.**

In *Delta*, a commercial tenant moved to quash service of a five-day summons because the complaint for unlawful detainer failed to allege that a notice to quit was given "in writing, that it

specified the alleged breaches of the lease or that it unequivocally demanded possession.” *Delta Imports, Inc., v. Municipal Court*, 146 Cal.App.3d 1033, 1036 (1983). This deficiency, the failure to plead an essential element (notice), meant that the complaint did not support a cause of action for unlawful detainer, and it therefore could not support the five-day summons unique to this summary procedure. *Id.* at 1036.

*Delta* is consistent with the long-held principle that “the statutory situations in which the remedy of unlawful detainer is available are exclusive, and the statutory procedure must be strictly followed.” *Greene v. Municipal Court*, 51 Cal.App.3d at 450. Because unlawful detainer is an action seeking forfeiture and is a summary proceeding in which the defendant’s normal procedural rights are limited, the courts strictly construe the statutory procedural requirements. *Kwok v. Bergren*, 130 Cal.App.3d at 599. The rule of liberal construction of pleadings provided by Code of Civil Procedure section 452 is inapplicable in unlawful detainer actions. *Id.* at 599. Although service of a notice to pay rent or quit is not itself jurisdictional, it is an essential prerequisite for bringing an unlawful detainer action. *Id.* at 599; *see also* Code Civ. Proc. §1161.

*Borsuk* introduced confusion by misreading *Delta*. *Borsuk v. Appellate Div. of Superior Court*, 242 Cal.App.4th 607, 613 (2015). In *Borsuk*, a residential tenant moved to quash service of a three-day notice to pay rent or quit, relying upon *Delta*. *Id.* at 610. In denying the tenant’s petition for writ of mandate, the



Court of Appeal “disagree[ed] with the broad language of *Delta*.” *Id.* at 610. Primary among the grounds for disagreement was the incorrect assertion that *Delta* stood for the premise that “the court obtains personal jurisdiction over the tenant through the landlord’s service of a three-day notice to pay rent or quit.” *Borsuk*, 242 Cal.App.4th at 612. *Borsuk* misconstrues *Delta*, which did not hold that personal jurisdiction was acquired through service of a notice to quit. Rather, the court in *Delta* identified that an unlawful detainer plaintiff must plead all of the elements of unlawful detainer, including service of a notice, within the complaint in order to use the special five-day summons. *Delta Imports, Inc., v. Municipal Court*, 146 Cal.App.3d at 1036.

*Greene v. Municipal Court*, 51 Cal.App.3d 446, cited in both *Delta* and *Borsuk*, describes this principle. The parties were the vendor and purchaser of property, not a lessor and lessee, so the court found that the complaint did not state a cause of action in unlawful detainer. *Greene v. Municipal Court*, 51 Cal.App.3d at 449. The court explained that generally, a summons must direct the defendant to file a responsive pleading “within thirty days unless some specific statute modifies the time for response.” *Id.* at 451 (citing Code Civ. Proc. §412.20). The plaintiff in that case attempted to utilize Code of Civil Procedure Section 1167, which modifies the time for response laid out in the summons from the standard 30 days down to five. *Id.* at 451. The court rejected use of the five-day summons, stating, “The section 1167 summons is

inappropriate in the case at bench because the complaint, if it states a cause of action at all, states it on a theory other than unlawful detainer.” *Id.* at 52.

*Greene* therefore holds that a court cannot acquire personal jurisdiction over a defendant with a five-day summons where the complaint does not state a cause of action in unlawful detainer. *Id.* *Delta* and *Borsuk* can be harmonized insofar as they both agree with the holding of *Greene*—they agree that a court can acquire personal jurisdiction over a defendant *properly* served with a summons and complaint. The important clarifier here is that a special five-day summons is not properly served where a plaintiff has not clearly brought itself within the confines of an action for unlawful detainer, the only action that supports such a uniquely short response period. Where a tenant has not been properly served with a notice to quit, the plaintiff may not take advantage of the special five-day summons because service of a notice is an essential element of an unlawful detainer. Code Civ. Proc. §1161; *Kwok v. Bergren*, 130 Cal.App.3d at 600.

The default summons in California courts provides a 30-day window for responsive pleadings. Code Civ. Proc. §412.20. In contrast, the summons in unlawful detainer is special and distinct, providing only a five-day window for responsive pleadings. Code Civ. Proc. §1167. This timeline puts the tenant at significant disadvantage; it may be especially difficult for tenants with disabilities and those with limited English

proficiency to secure counsel and respond in less than a week.<sup>1</sup> The short summons timeline leads many tenants to lose their opportunity to be heard; Judicial Council data reveals that default judgments were as high as 62 percent of the total number of unlawful detainers filed in some counties, with a statewide average of 26 percent.<sup>2</sup>

A plaintiff-landlord who fails to fulfill and allege all of the essential elements specific to unlawful detainer should not benefit from the special timelines and summary proceeding. In addition to the very short period for response to the complaint, plaintiffs in unlawful detainer also benefit from an expedited discovery schedule and a rapid trial date. *See* Code Civ. Proc. §2031.260 (parties generally must respond to discovery requests in five days); Code Civ. Proc. §1170.5 (trial must be set no later than 20 days following request). Motions to quash should be permitted in these circumstances so that tenants are not be

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<sup>1</sup> Disability Access Consultants, Inc., *Americans with Disabilities Act (ADA) Title II, Self-Evaluation and Transition Plan* (March 2007), <http://www.elkgrovecity.org/common/pages/DisplayFile.aspx?itemId=1957130> (discussing barriers to access for people with disabilities); Report to the Judicial Council: *California's Language Access Plan: Strategic Plan for Language Access in the California Courts* (Jan. 6, 2015), <https://www.courts.ca.gov/documents/jc-20150122-itemK.pdf> (discussing barriers for LEP litigants).

<sup>2</sup> Inglis and Preston, *California Evictions are Fast and Frequent*, Tenants Together, 9 (May 2018), <http://www.tenants-together.org/tt-report-california-evictions-are-fast-frequent-and-underreported>.

forced to appear in order to challenge the improper use of the five-day summons.

**B. The motion to quash is a significant tool for a tenant-defendant to challenge a defective five-day summons.**

We continue to face a multi-decade housing crisis that this Court has acknowledged. *California Building Industry Association v. City of San Jose*, 61 Cal.4th 435, 441 (2015) (“the significant problems arising from a scarcity of affordable housing . . . have become more severe and have reached what might be described as epic proportions in many of the state’s localities”). Evictions through the unlawful detainer procedure play a serious role in the housing crisis by forcing people from their homes. A study based on 2014-16 data from the Judicial Council of California revealed that an average of 166,337 California households were named in unlawful detainer proceedings each year.<sup>3</sup> Given an average of 2.9 occupants per rental unit in the state, an estimated 1.5 million people were evicted over that three-year period.<sup>4</sup> Moreover, these numbers mean that an average of 1 in 36 California renter households faces an unlawful detainer action each year.<sup>5</sup> And when we look nationally at who

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<sup>3</sup> Inglis and Preston, *California Evictions are Fast and Frequent*, Tenants Together, 5 (May 2018), <http://www.tenants-together.org/tt-report-california-evictions-are-fast-frequent-and-underreported>.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> See California Dept. of Housing and Community Development, *California’s Housing Future: Challenges and Opportunities*, 1 (Feb. 2018) (stating that California has “almost 6 million renter households”).

faces eviction, research shows that women of color living in poverty face the highest risk of eviction.<sup>6</sup> Eviction is also significantly more likely for people with children in the household.<sup>7</sup>

Eviction cases are processed extremely quickly and cause profound hardship for low income families. According to the Judicial Council's 2017 Court Statistics Report, nearly 75% of eviction cases are resolved within 45 days of filing, and nearly 60% are resolved within a month.<sup>8</sup> Other civil cases, in contrast, take months or years to resolve. When a family is ultimately evicted, the loss of housing causes myriad harms, particularly for children, and is associated with reduced school achievement, lower test scores, and increased adolescent violence.<sup>9</sup>

Given these circumstances, it is vital that tenants facing unlawful detainer are afforded every procedural tool available to

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<sup>6</sup> Badger and Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. Times, (April 7, 2018),

<https://www.nytimes.com/interactive/2018/04/07/upshot/millions-of-eviction-records-a-sweeping-new-look-at-housing-in-america.html>; see also Eviction Lab, *National Estimates*, <https://evictionlab.org/national-estimates/>.

<sup>7</sup> NPC Research, *Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Housing Pilot Projects*, 24 (July 2017), <https://www.courts.ca.gov/documents/Shriver-Housing-2017.pdf>

<sup>8</sup> Judicial Council of California, *Court Statistics Report*, 66, Fig. 19, <http://www.courts.ca.gov/documents/2017-Court-Statistics-Report.pdf>.

<sup>9</sup> NPC Research, *Evaluation of the Sargent Shriver Civil Counsel Act (AB590) Housing Pilot Projects*, 24 (July 2017), <https://www.courts.ca.gov/documents/Shriver-Housing-2017.pdf>

contest their evictions in unlawful detainer proceedings. This includes the motion to quash service or stay or dismiss action. Code Civ. Proc. §1167.4. Where a plaintiff-landlord seeks to evict a family, but fails to fulfill and allege all of the essential elements specific to unlawful detainer, a tenant must be able to challenge the very grounds upon which she is being haled into court on such a short timeline. The tenant should not be forced to appear by way of demurrer in order to challenge the summons.

*Delta* motions are an important procedural tool because they allow for expeditious resolution of cases. Demurrers undoubtedly have ongoing importance in challenging deficient pleadings, but the motion to quash can be used to address a different need. The motion to quash, as opposed to a demurrer, allows for the jurisdictional issue of whether a five-day summons is appropriate to be rightfully tested. Resolution of this issue can be determined at the hearing upon declarations and affidavits without causing inordinate delay of the summary proceedings.

### III. Conclusion

In sum, we ask the Court to hold that a motion to quash is a proper vehicle to test whether a complaint states a cause of action for unlawful detainer.

Dated: May 24, 2019

WESTERN CENTER ON LAW & POVERTY

By:   
\_\_\_\_\_  
RICHARD A. ROTHSCHILD

**CERTIFICATE OF COMPLIANCE**

I certify that this Amicus Curiae Brief uses a 13-point Century Schoolbook font and contains 1,871 words.

Dated: May 24, 2019

WESTERN CENTER ON LAW & POVERTY

By: \_\_\_\_\_



RICHARD A. ROTHSCHILD

**PROOF OF SERVICE**

*Stancil v. Superior Court of San Mateo,*  
Appeal No. A156100  
Superior Court No. 18AD000039  
California Supreme Court No. S253783

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 3701 Wilshire Blvd., Suite 208, Los Angeles, CA 90010.

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<p><b><u>Via TrueFiling</u></b> Kevin D. Siegel Burke, Williams &amp; Sorsensen, LLP 1901 Harrison Street, Suite 900 Oakland, CA 94612 <a href="mailto:ksiegel@bwslaw.com">ksiegel@bwslaw.com</a></p> <p><i>Attorneys for Plaintiff and RPII City of Redwood City</i></p>	<p><b><u>Via TrueFiling</u></b> Alison Madden Madden Law Offices P.O. Box 620650 Woodside, CA 94062 <a href="mailto:Maddenlaw94062@gmail.com">Maddenlaw94062@gmail.com</a></p> <p><i>Attorneys for Petitioner Edward Stancil</i></p>
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**Via U.S. Mail**

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Executed on May 24, 2019 at Los Angeles, California.



Amanda Smith