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**FILED**  
San Francisco County Superior Court

JUN 09 2014

CLERK OF THE COURT  
BY: *Marie M. Pera*  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 501

MERCY HOUSING CALIFORNIA, ) Case CUD-14-648384  
 )  
Plaintiffs, ) ORDER GRANTING DEFENDANT'S  
 ) MOTION TO QUASH SERVICE OF  
v. ) SUMMONS  
 )  
NURIA FLORES, ) Date: May 5, 2014  
 ) Time: 9:30 a.m.  
Defendant. ) Department: 501

Defendant's Motion to Quash Service of Summons came on regularly for hearing on May 5, 2014. Irina Naduhovskaya appeared for Defendant; Jonathan Bornstein appeared for Plaintiff; the Honorable Ronald Evans Quidachay, judge presiding.

Upon consideration of the parties written submissions and oral argument the Court requested supplemental briefing regarding split of authority regarding service of Notice of Termination on the Housing Authority per 24 C.F.R. 982.310(e)(2)(ii).

On May 20, 2014 Defendant submitted supplement briefing discussing a number of non-California published and unpublished cases.

1 On May 20, 2014 Plaintiff submitted supplemental briefing which was limited to the  
2 following statement on the issue for which supplemental briefing was requested: “[t]here is no  
3 ‘split of authority.’ Defendant cited unpublished federal cases- not one of which is a California or  
4 Ninth Circuit case.” Plaintiff’s supplemental briefing provided no helpful argument or analysis.

5 The Court now rules as follows:

6 Defendant’s Motion to Quash is GRANTED with leave to amend to allege in good faith  
7 service of Notice on the San Francisco Housing Authority:

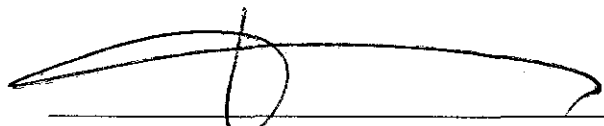
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- 9 1. In *Lamlon Development Corp. v. Owens* (N.Y. Dist. Ct. 1988) 141 Misc.2d 287, the  
10 Court analyzing 24 C.F.R. 982.310(e)(2)(ii) (“[T]he owner must notify the PHA in  
11 writing of the commencement of procedures for termination of tenancy, *at the same time*  
12 that the owner gives notice to the family under State or local law”) held “ that a landlord  
13 seeking to terminate a Section 8 tenancy must serve a copy of the termination notice (or  
14 equivalent notice) on the public housing authority at the same time that such notice is  
15 served on the tenant. Failure to do so is a jurisdictional defect which precludes the  
16 maintenance of a summary proceeding. The notice should be sent to the public housing  
17 authority by certified mail and the return receipt attached to the petition, or in the  
18 alternative, an affidavit of service should be submitted with the petition.” This Court  
19 agrees with the analysis and holding in *Lamlon Development Corp. v. Owens* (N.Y. Dist.  
20 Ct. 1988) 141 Misc.2d 287 that service of the Notice on the public entity is a  
21 jurisdictional requirement.
  - 22 2. However, in 1995 24 C.F.R. 982.310(e)(2)(ii) was amended and the notification  
23 provision was modified. Specifically, the words “at the same time” were deleted.  
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1 3. Analyzing the new version of 24 C.F.R. 982.310(e)(2)(ii) the Court in *Calciano v.*  
2 *Caldwell* (Conn. Super. Ct., May 3, 2010) 49 Conn. L. Rptr. 816 (unpublished  
3 opinion) held “[i]t is clear that the optimal landlord practice would be to provide a  
4 copy of the notice to quit at the earliest time in the eviction to allow the PHA an  
5 opportunity to preserve the subsidy, if practicable, or to ensure that the PHA does not  
6 inadvertently continue to make housing subsidy payments on behalf of a tenant who is  
7 no longer in possession. Under the specific facts and circumstances of this case, the  
8 court finds that the MHA was given ample time and opportunity to act after receipt of  
9 notice of the possible eviction of the defendant. The court finds that the plaintiff  
10 complied with the notice requirement of 24 C.F.R. § 982.310(e)(2)(ii) and finds for  
11 the plaintiff on the defendant's first special defense.” This Court agrees that the  
12 language of 24 C.F.R. § 982.310(e)(2)(ii) requires the Notice to be served on the  
13 Housing Authority in time for the Housing Authority to get involved, if it choses to  
14 do so.  
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16  
17 4. Therefore, Plaintiff, who terminates Section 8 Tenancy must serve the Housing  
18 Authority with a copy of the Notice at least in time for the Housing Authority to  
19 terminate the payments to the landlord, i.e. before the last date of expiration of the  
20 Notice.  
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22 **IT IS SO ORDERED.**

23 DATED: June 9, 2014



24 Ronald Evans Quidachay  
25 Judge of the San Francisco Superior Court  
26  
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**SUPERIOR COURT OF CALIFORNIA**  
**County of San Francisco**  
**Department 501**

MERCY HOUSING CALIFORNIA,

Plaintiff(s)

Vs.

NURIA FLORES,

Defendant(s),

Case Number: CUD-12-648384

**CERTIFICATE OF MAILING**  
(CCP 1013a (4))

I, Maria Olopernes-Pena, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On June 10, 2014, I served the attached ORDER GRANTING DEFENDANT'S MOTION TO QUASH SERVICE OF SUMMONS, by placing a copy thereof in a sealed envelope, addressed as follows:

IRINA NADUHOSVAKAYA, ESQ.  
BAY AREA LEGAL AID  
1035 Market Street, 6<sup>th</sup> Floor  
San Francisco, CA 94103

JONATHAN BORNSTEIN, ESQ.  
BORNSTEIN & BORNSTEIN  
507 Polk Street, Ste. 410  
San Francisco, CA 94102

I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: June 10, 2014

T. MICHAEL YUEN, Clerk

  
MARIA OLOPERNES-PENA

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

Maria Olopernes-Pena, Deputy Clerk