Tentative Rulings for April 10, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG02721 ***Dale Atlas v. Red Horse Trans Inc.*** **is continued to Thursday, May 16, 2024, at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(34)

Tentative Ruling

Re: ***Sandoval v. General Motors, LLC***
Superior Court Case No. 23CECG01802

Hearing Date: April 10, 2024 (Dept. 503)

Motion: Defendant General Motors, LLC's Demurrer and Motion to Strike the Complaint

Tentative Ruling:

To sustain the general demurrer to the fifth cause of action, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To grant the motion to strike, with leave to amend. Plaintiff Francisco Sandoval shall serve and file an amended complaint within ten (10) days of the service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer

Defendant GM demurs to the fifth cause of action for "Fraudulent Inducement-Concealment" on the basis that it is barred by the three-year statute of limitations. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiff purchased a 2020 Chevrolet Silverado 1500 truck on February 8, 2020 and this action was not filed until May 11, 2023. Defendant contends the first amended complaint ("FAC") fails to allege facts justifying the late filing. Defendant contends the attempt to invoke the delayed discovery rule is insufficiently plead, as plaintiff has failed to plead "facts showing he was not negligent in failing to make the discovery sooner and that [Plaintiff] had no actual or presumptive knowledge of facts sufficient to put [Plaintiff] on inquiry." (*Hobart v. Hobart Estate Co*. (1945) 26 Cal.2d 412, 437; *Johnson v. Ehrgott* (1934) 1 Cal.2d 136, 137.) Based on the allegations that defects and nonconformities manifested themselves during the express warranty period, defendant asserts plaintiff cannot demonstrate that he could not with reasonable diligence have discovered the action giving rise to his claim within the limitations period. (FAC ¶¶ 11, 21-23.) Defendant asserts the allegation that the vehicle was delivered to plaintiff with defects means he should reasonably have been able to discover the defects as of the date of purchase. This argument is not supported when the complaint is interpreted in a reasonable manner and the allegations read in context.

Plaintiff argues the allegations of the FAC do not support finding the plaintiff had discovered the facts constituting fraud at the date of sale. Plaintiff additionally argues the statute of limitations is delayed by the defendant's concealment of the alleged defect and the repair doctrine. In support of both of these arguments plaintiff relies on having taken the vehicle in to authorized service providers for complaints related to the transmission defect and relying on the representation that repairs were done to delay discovery of the defect. However, the allegations of the FAC do not indicate the vehicle was ever presented for repairs related to the transmission. Paragraphs 21 and 22 indicate the vehicle was presented to an authorized service center for repairs related to an

unspecified recall, a recall related to a seatbelt, and engine and body/structural concerns. Although the allegations include that plaintiff's vehicle experienced symptoms of the alleged transmission defect in paragraph 23, there is no clear allegation the vehicle was presented for repairs related to the defect. The absence of this allegation undermines plaintiff's arguments as to the plaintiff being unable to discover the defect being related to attempts to repair the defect.

However, the complaint's lack of specificity as to the date(s) plaintiff may have reasonably discovered the defective condition of the transmission rendered the court unable to determine if the statute of limitations bars the action from the allegations alone. As a result, the court intends to overrule the demurrer on the basis that the cause of action is barred by the statute of limitations.

Defendant GM additionally demurs on the basis that the fifth cause of action fails to state facts sufficient to constitute a cause of action for fraud because plaintiff has failed to plead specific facts identifying the individuals who concealed material facts or made the misrepresentations, their authority to speak, GM's knowledge of the alleged defects in plaintiff's vehicle at the time of purchase, interactions between plaintiff and GM, and GM's intent to induce reliance by plaintiff to purchase the vehicle at issue. Additionally, defendant contends that it cannot be held liable for fraudulent concealment because it had no duty to disclose any facts about the vehicle to plaintiff, as it did not sell the vehicle directly to him and it had no "transactional relationship" with him. (*Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 311.)

However, to the extent that defendant argues that plaintiff has not alleged specific facts about who made the representations about the vehicle to plaintiff, when they were made, etc., defendant is attempting to impose the standard for pleading a fraudulent misrepresentation claim rather than the standard for pleading a fraudulent concealment cause of action. Here, plaintiff has alleged a claim for fraudulent concealment, not fraudulent misrepresentation. Fraudulent concealment claims do not require an affirmative misrepresentation, so it is not necessary for plaintiff to allege specific facts about misrepresentations made by defendant or its agents or employees.

"'Not every fraud arises from an affirmative misstatement of material fact. "The principle is fundamental that '[deceit] may be negative as well as affirmative; it may consist of suppression of that which it is one's duty to declare as well as of the declaration of that which is false.' Thus section 1709 of the Civil Code provides: 'One who wilfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.' Section 1710 of the Civil Code in relevant part provides: 'A deceit, within the meaning of the last section, is either: ... 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact....'"'" (*Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1198, citations omitted.) As a result, the fact that plaintiff has not alleged any specific misrepresentations by defendant or its agents does not render the fraud cause of action defective.

"'[T]he elements of a cause of action for fraud based on concealment are: " '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must

have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.' "'" (*Ibid*, citation omitted.)

Here, plaintiff has alleged that defendant concealed or suppressed material facts from him, namely that the vehicle he purchased had a defective 8-speed transmission that was likely to have problems with hard or harsh shifts, jerking, lurching, and hesitation on acceleration, surging and/or inability to control the vehicle's speed, acceleration or deceleration. (FAC, ¶¶ 62-64.) The defects defendant failed to disclose are material, in that a reasonable person would have considered the performance of the transmission as important in deciding whether or not to purchase the vehicle. (*Id*. at ¶ 74.) Prior to the purchase plaintiff interacted with sales representatives, considered GM's advertising and marketing materials regarding its vehicles. (*Id*. at ¶ 65.) Had GM and its dealership(s) revealed the transmission defect in these disclosures, plaintiff would have been aware of it and not purchased the vehicle. (*Id*. at ¶¶ 65, 69.) Defendant concealed the design defect with the intent to induce plaintiff to purchase the vehicle. (*Id*. at ¶ 77.) Plaintiff was ignorant of the facts, and was damaged as a result of the defendant's concealment of the defective transmission, as he unknowingly exposed himself to the risk of liability, accident and injury due to the transmission defect. (*Id*. at ¶ 78.)

The 8-speed transmission also is alleged to present a safety risk to plaintiff and other consumers, as the defective transmission may cause the vehicle to suddenly and unexpectedly cause the driver to be unable to control the speed and acceleration or deceleration of the vehicle exposing plaintiff and passengers and those sharing the road to a serious risk of accident or injury. (*Id*. ¶ 63.) Also, GM was the only party with knowledge of the transmission defect, based on internal reports, testing data, customer complaints, and technical service bulletins. (*Id*. at ¶¶ 64, 72a-72b.) None of this information was available to the public, nor did defendant disclose the information to plaintiff. (*Ibid*.)

The FAC relies on general and conclusory allegations that defendant and its agents concealed material information to induce plaintiff to purchase the vehicle in question. (*E.g.*, FAC ¶¶ 65, 69.) Defendant is alleged to be a corporation. (FAC, ¶ 4.) A corporation can speak and act only through its officers and agents. (*Mason v. Drug, Inc.* (1939) 31 Cal.App.2d 697, 703.) It is material to state the names of the agents and officers, what they said and did, material to the cause of action which the pleader is attempting to set forth, when the event happened, and such facts and circumstances as the pleader relied upon as proof of the fraud or deceit. (*Ibid.*) Nothing in the FAC identifies how, when, or through whom defendant intentionally concealed *from plaintiff* the material information that the FAC alleges Defendant knew about. At best, the FAC contends that Plaintiffs "interacted with sales representatives, considered Defendant GM's advertisement, and/or other marketing materials concerning GM vehicles prior to purchasing the Subject Vehicle." (FAC, ¶ 65.) These allegations lack the specificity required to support a claim for a fraud cause of action.

Additionally, before these allegations are of consequence, there must be a duty for defendant to disclose the alleged defect. Defendant argues the allegations of the

first amended complaint fail to allege a transactional relationship giving rise to a duty to disclose these material facts. The court agrees.

Here, plaintiff has alleged GM and plaintiff entered into a warranty contract regarding the vehicle, and that advertising by GM and the sales representatives at GM's authorized dealer told plaintiff about key features and components of the vehicle but failed to mention it had a transmission defect. (FAC, ¶¶ 6, 65, 69.) Plaintiff's allegation that he and defendant entered into a warranty contract is conclusory and lacking the specificity required of a fraud-based cause of action. There are no allegations supporting interactions between plaintiff and defendant directly in the formation of the warranty contract such that defendant had the opportunity to disclose the alleged defect but did not.

The transactional relationship contemplated as giving rise to a duty to disclose "must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311.) Here, the only alleged "interaction" between plaintiff and defendant before the purchase of the vehicle is defendant's advertising, which was directed to the public at large rather than plaintiff specifically.

Accordingly, the demurrer to the fifth cause of action for fraudulent inducement is sustained, with leave to amend.

Motion to Strike

Defendant also moves to strike the prayer for punitive damages from the first amended complaint. Defendant contends that plaintiff has not alleged any facts to support his fraud claim, and there are no facts supporting the allegation that defendant acted with malice or oppression, so the prayer for punitive damages is improper and should be stricken. (Civil Code § 3294.)

Plaintiff argues that the motion to strike fails because punitive damages are available in Song-Beverly claims in cases of oppression, fraud, and malice. Punitive damages are awardable in an action for a breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice. (Civ. Code § 3294, subd. (a).) If the facts and circumstances are not set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, the pleading is insufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

As above, the FAC fails to plead fraud with sufficient specificity as to Defendant. Moreover, a corporate employer may be liable for punitive damages only if the knowledge, authorization, ratification or act of wrongful conduct was on the part of an officer, director or managing agent of the corporation. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 167.)

The court finds that the FAC is insufficiently pled to support a prayer for punitive damages under Civil Code section 3294.

Plaintiff additionally argues punitive damages are available under the Song-Beverly Act in cases of willful breach. This argument is not supported by the authority cited by plaintiff, which instead supports the proposition that the civil penalties under Civil Code section 1794, subdivision (d) are *akin* to punitive damages. (*Romo v. FFG Ins. Co.* (C.D. Cal. 2005) 397 F.Supp.2d 1237, 1240.) Moreover, the allegations of the complaint regarding plaintiff's attempts to repair the vehicle found in paragraphs 21, 22 and 23, are insufficient to support any conclusion that the alleged breach of the provisions of the Song Beverly Warranty Act was willful.

Accordingly, the motion to strike the prayer for punitive damage is granted, with leave to amend

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 4/8/24.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Westlands Water District No. 1 v. All Persons Interested in the Matter***
Superior Court Case No. 20CECG01011

Westlands Water District No. 2 v. All Persons Interested in the Matter
Superior Court Case No. 20CECG01012

Hearing Date: April 10, 2024 (Dept. 503)

Motion: Plaintiffs' Motions for Leave to File Amended Complaints

Tentative Ruling:

To deny plaintiffs' motions for leave to file amended complaints. To order defendants to submit proposed judgments and orders of dismissal within 10 days of the date of service of this order.

Explanation:

Under Code of Civil Procedure section 473, subdivision (a), "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars..." (Code Civ. Proc., § 473, subd. (a).)

"'Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend.' 'In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.'" (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.) "Inexcusable delay in presenting a proposed amendment, however, constitutes grounds for denial of leave to amend." (*Young v. Berry Equipment Rentals, Inc.* (1976) 55 Cal.App.3d 35, 39, citations omitted.)

In the present cases, plaintiffs Westlands DD1 and DD2 seek leave to file amended validation complaints in order allege that new contracts were executed on May 29, 2020, about four months after the Westlands Board approved the earlier draft versions of the contracts on January 21, 2020 and about two months after plaintiffs filed their original

complaints on March 18, 2020 to validate the Board's approval of the draft contracts. Plaintiffs also seek to attach and incorporate the executed contracts to the amended complaints. Plaintiffs contend that the amendments are necessary to address the concerns raised by the trial court in this case and the Court of Appeal in a related case, *Westlands Water District v. All Persons Interest* (2023) 95 Cal.App.5th 98, which held that similar draft contracts approved by the Board were not sufficiently complete and certain to be the subject of a validation action. (See Judge Gaab's Orders of November 5, 2021 in the present actions, and the Court of Appeal's opinion in *Westlands Water District v. All Persons Interest, supra,* 95 Cal.App.5th at p. 133.) Plaintiffs claim that they should be allowed to amend the complaints in order to cure the defects pointed out by the trial court and the Court of Appeal by alleging that the draft contracts have now been executed by the parties, and thus they are the proper subject of validation actions.

First of all, plaintiffs have not offered an adequate explanation for their substantial delay in seeking leave to amend their complaints. Plaintiffs admit that the final contracts were executed on May 29, 2020, almost four years before their brought their motions for leave to amend. Plaintiffs were clearly aware of the facts underlying their requested amendments, as they were parties to the executed contracts. Yet they do not state why they did not move to amend promptly after the contracts were executed, and instead waited until after the motions for validation judgments had been heard and denied, as well as after they brought unsuccessful appeals of the court's decision to deny their motions. While plaintiffs' counsel claims that they did not delay in bringing their motions because they had to wait until the appeals had been resolved before seeking leave to amend, counsel ignores the fact that the contracts were executed in May of 2020, over a year before the validation motions were heard and denied. If plaintiffs wished to amend their complaints to add allegations about the execution of the contracts, they should have moved to amend immediately after the contracts were executed. Instead, they waited almost four years, after the court had already heard and denied their validation motions and the Court of Appeal dismissed their premature appeals of the trial court's decision. Thus, plaintiffs have unjustifiably engaged in substantial delay in seeking leave to amend.

Also, the four-year delay in seeking to amend has been prejudicial to defendants, who have had to litigate the case for four years based on the existing complaints, which sought approval of a materially different set of contracts. Indeed, the cases were already heard on the merits and denied by the trial court on November 5, 2021. Plaintiffs then appealed from the trial court's orders, which resulted in a further delay of almost a year until the appeals were ultimately dismissed as premature by the Court of Appeal. During this time, defendants have had to incur the cost of litigating the matter, including the cost of defending against plaintiffs' premature appeals. Defendants have also relied on the allegations of the original complaint in their defense, which plaintiffs now seek to amend in order to allege a new set of contracts that did not come into existence until after the original complaint was filed. Therefore, defendants have shown prejudice from the lengthy delay in seeking to amend the complaints, which in itself would warrant denial of the motion to amend. (*Young v. Berry Equipment Rentals, Inc.*, *supra*, 55 Cal.App.3d at p. 39.)

Furthermore, the court is not required to grant leave to amend where it is clear from the allegations of the proposed amended complaint that the amended complaint does not state a valid cause of action as a matter of law and the defect cannot be

cured by further amendment. (*California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281, disapproved on other grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407.) For example, where the plaintiff's claims are clearly barred by the statute of limitations or the doctrine of res judicata, it is proper to deny leave to amend. (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230; *Yee v. Mobilehome Park Rental Review Bd. (City of Escondido)* (1998) 62 Cal.App.4th 1409, 1429.)

Here, the proposed amended complaints fail to state valid claims for validation, as the trial court has already ruled that the draft contracts approved by the Board on January 21, 2020 were incomplete and uncertain because they lacked material terms. As a result, the court denied plaintiffs' motions for validation judgments regarding the contracts. (See Judge Gaab's November 5, 2021 Order Denying Motions for Validation, pp. 4-5, § 3.) Plaintiffs then filed appeals of Judge Gaab's orders. However, the Court of Appeal dismissed plaintiffs' appeals as premature, so the trial court's order is now final and binding.

Plaintiffs do not contest the validity of Judge Gaab's November 5, 2021 order, and instead they claim that they need to cure the defects in their complaint in order to proceed. Yet the court has already made a final ruling on their validation motions and found that the contracts are not subject to validation. Allowing plaintiffs to amend their complaints to allege a new set of contracts would not cure the fundamental flaw in their claims, as the court has already found that the draft contracts that the Board purported to approve in January of 2020 were not subject to being validated. Plaintiffs are still seeking to obtain a validation order regarding the Board's January 21, 2020 approval of the contracts, which Judge Gaab has already denied. Plaintiffs are essentially seeking reconsideration of an order that has long since become final, which is improper. It would be futile to grant plaintiffs leave to amend their complaints to allege the execution of a different set of contracts at this late stage of the litigation after the court has already rejected plaintiffs' request for validation judgments regarding the earlier draft contracts. Granting leave to amend now would be tantamount to allowing a party to amend their complaint after they had already lost at trial. Any new allegations that plaintiffs seek to add to their complaints would not change the fact that the court has already ruled against them on the merits of their underlying validation claims. In other words, the proposed amended complaints fail to state any valid causes of action and there is no way for plaintiffs to cure the defects in the proposed complaints by amending them further.

Therefore, the court intends to deny plaintiffs' motions for leave to amend their complaints. In addition, the court will order defendants to submit proposed judgments and orders of dismissal so that the cases can be finally resolved.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 4/8/24.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***S.C. v. County of Fresno***
Superior Court Case No. 22CECG03629

Hearing Date: April 10, 2024 (Dept. 503)

Motion: Demurrer to first amended complaint by defendant County of Fresno

Tentative Ruling:

To sustain the demurrer by defendant County of Fresno to the first, third, and fifth causes of action against it alleged by plaintiff S.C. in his first amended complaint, without leave to amend. The prevailing party is directed to submit to this court, within seven days of service of the minute order, a proposed judgment dismissing the first amended complaint as to the demurring defendant.

Explanation:

Plaintiff, S.C., sued the County of Fresno (County), KTDA Group Home, Inc. (Facility), and Does 3 through 25, in a revival action under Code of Civil Procedure section 340.1. S.C. alleges he was sexually abused and assaulted in foster care when he was minor, while under the defendants' legal custody, care, and control. Previously, the court sustained the County's demurrer with leave to amend. S.C. filed a first amended complaint (FAC), in which he omitted paragraph 22 (a list of mandatory duties the County allegedly owed to S.C. based on various statutes) and the allegations regarding a cover up.[1] Now the County demurs to the FAC's first and third causes of action for negligence against the County and the County Doe defendants, and the fifth cause of action for negligent hiring, retention, and/or supervision against the County Doe defendants.

Demurrer Based on Statute of Limitations and Claim Presentation

The County contends the first, third, and fifth causes of action are time barred. Initially, the plaintiff urges the court to overrule the demurrer, based on Code of Civil Procedure section 430.41, subdivision (b), which provides that a defendant shall not demur to any portion of an amended complaint on grounds that could have been raised by demurrer to an earlier version of the complaint. The court finds the differences between the original complaint and FAC are sufficient to justify a ruling on the merits.

[1] At page 15 of the FAC, S.C. mistakenly labels the fifth cause of action against Does 3 through 25 for negligent hiring, retention, and/or supervision, as the sixth cause of action. Following the County's lead, the court will refer to this cause of action sequentially as the fifth cause of action.

The County correctly states the rule that if a plaintiff fails to allege facts demonstrating that a claim was timely presented or that compliance with a claims statute is excused, the complaint is subject to a general demurrer for failing to state facts sufficient to constitute a cause of action. The County relies on *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, decided before the most recent amendments to Government Code section 905. The plaintiff cites Assembly Bill 218, enacted on October 13, 2019, which made substantial amendments to the procedural requirements in childhood sexual assault cases. The applicable law now provides that victims seeking damages for childhood sexual assault under Code of Civil Procedure section 340.1 have no claim filing requirement. (Gov. Code, § 905, subd. (m) [no claim required for claims under Code Civ. Proc., § 340.1]; Gov. Code, § 905, subd. (p) [changes are retroactive]; Gov. Code, § 935, subd. (f) [exempting claims for childhood sexual abuse (assault) from procedural requirements of local entities].) "In Assembly Bill 218, the Legislature made clear its intent to revive causes of action previously barred by government claims presentation requirements." (*Coats v. New Haven Unified School District* (2020) 46 Cal.App.5th 415, 428.)

The County acknowledges "the most recent version of Government Code section 905, subd. (m) specifies that a claim need not be presented for damages stemming from a claim made pursuant to Code of Civil Procedure section 340.1[.]" (Rpy., p. 3:22-24.) The County then cites Government Code section 945.8, but fails to explain how this section applies to support its argument. Based on the retroactive changes to Government Code section 905, claims made under Code of Civil Procedure section 340.1 are exempt from filing a government claim. Therefore, the court overrules the demurrer on the ground that the plaintiff fails to state a cause of action because his claim was not timely presented.

Demurrer Based on Uncertainty and Immunity

In the first cause of action for negligence, S.C. alleges the County in 2005 placed him in the Facility, and the "Facility and its staff were approved, licensed, trained, supervised, and/or compensated by [the County]." (FAC, ¶ 24.) S.C. alleges Terry McCoy ("Perpetrator"), a night shift house parent at the Facility, sexually abused and assaulted S.C. 25-30 times over a one-month period in 2006. (Comp., ¶ 26.) The defendants entrusted Perpetrator with the plaintiff's care and custody. (FAC, ¶ 27.) In 2020 Perpetrator was arrested for sexually abusing a minor for several years, and suspected of abusing other children over the prior 20-year period. The defendants knew or should have known of misconduct by the Perpetrator that created a risk of childhood sexual assault against the plaintiff. (¶ 29.)

S.C. alleges the County owed a duty of care to S.C., which it breached, and the County had actual or constructive notice that S.C. was being sexually abused in his foster care placement, which the County approved, supervised, and monitored. (FAC, ¶¶ 56-58.) The County failed to take reasonable steps to prevent the abuse (FAC, ¶ 59) and allowed Perpetrator to have "unfettered access" to S.C. despite having "actual or constructive notice" of the abuse (FAC, ¶ 61). S.C. also contends the County is vicariously liable for his injuries proximately caused by the County's unnamed employees. (FAC., ¶ 62.)

Uncertainty

The County notes the plaintiff's allegations of vicarious liability refer generally to the acts and omissions of unspecified employees, agents, or independent contractors and are nothing more than legal conclusions. The FAC omits allegations relating to direct liability and a cover up to clarify that the plaintiff's legal theory is based on vicarious liability. But the plaintiff directs the court to no new allegations in bold. Although the FAC is short on factual allegations, less particularity is required when the information presumptively is within the defendant's knowledge. Liberally construing the FAC's allegations, the court overrules the demurrer based on uncertainty.

Immunity

The County also demurs to the first, third, and fifth causes of action on the grounds of immunity. The County contends its employees would be immune from liability for actions taken during the initial intake, and also have discretionary immunity under Government Code section 820.2 for alleged negligence in investigating reports of child molestation. S.C. twice alleges the basis for vicarious liability at paragraphs 51 and 62 of the FAC:

> COUNTY is vicariously liable for Plaintiff's injuries proximately caused by the acts and/or omissions of COUNTY's employees, agents, and/or independent contractors, including FACILITY and DOES 3-25. *See* Cal. Gov. Code 815.2, [subd.](a), 820.

(FAC, ¶ 62.)

The County contends its employees are immune from liability under Government Code section 820.2 for actions taken during the initial intake and thereafter in investigating reports of child molestation. Government Code section 820.2 restates the discretionary immunity rule "in statutory form to ensure that, unless otherwise provided by statute, public employees will continue to remain immune from liability for their discretionary acts with the scope of their employment." (Gov. Code, § 820.2, Legislative Committee Comments.)

The County cites *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627 ("*Terrell R.*"), and *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450 ("*Becerra*"), for the rule that County employees are immune from liability for foster care placement and supervision, including any alleged failure to investigate allegations of abuse. As the court explained in *Terrell R.*:

> "[T]he determination to place a child in a particular foster [family] home is ... immune from liability pursuant to Government Code section 820.2." (*Becerra v. County of Santa Cruz, supra,* 68 Cal.App.4th at p. 1462.) "[T]he choice of a foster [family] home for a dependent child is a complex task requiring the consideration and balancing of many factors to achieve statutory objectives." (*Id.* at p. 1464.) "'Selecting and certifying a foster [family] home for care of dependent children seems to us to be an activity loaded with subjective determinations and fraught with major possibilities

> of an erroneous decision. It appears to us that foster [family] home placement ... constitutes an activity of a co-equal branch of government, and that the discretionary decisions made in connection therewith should be deemed beyond the proper scope of court review.'" (*Ibid.*) A county social worker is immune from liability for negligent supervision of a foster child unless the social worker fails to provide specific services mandated by statute or regulation. (*Id.* at pp. 1465–1466.)

(*Terrell R., supra,* 102 Cal.App.4th at p. 644, punctuation, insertions and deletions original, last citation and footnote omitted by this court.)

The County also cites *Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, which summarizes the broad nature of the immunity for social workers' removal and placement decisions. The immunity applies to "lousy" decisions, decisions where the worker abuses discretion, decisions based on "woefully inadequate information," and decisions with "horrible" outcomes, including the murder of a child. (*Id*. at p. 1285 [affg. grant of summary judgment].)

S.C. contends unless a complaint's allegations affirmatively show a considered decision, sustaining a demurrer based on immunity is inappropriate at the pleading stage, citing *Elton v. County of Orange* (1970) 3 Cal.App.3d 1053 ("*Elton*"). The *Terrell R.* court distinguished *Elton* in a footnote for three reasons: (1) *Terrell R.* involved a summary judgment rather than the demurrer at issue in *Elton*; (2) *Elton* was decided before the adoption of statutes mandating the exercise of discretion by social workers, and (3) the court that decided *Elton* severely limited the holding and described the decision as "difficult" in *Ronald v. County of San Diego* (1993) 16 Cal.App.4th 887, 898 (on appeal from judgment rendered after full trial). (*Terrell R., supra,* 102 Cal.App.4th at p. 644, fn. 5.)

The County provides contrary authority—*Hayes v. State* (1974) 11 Cal.3d 469, 471-473, where the high court affirmed a judgment of dismissal following the sustaining of a demurrer based on the complaint's allegations showing immunity applied; and *Keys v. Santa Clara Valley Water Dist.* (1982) 128 Cal.App.3d 882, 885-886, where the appellate court found the trial court property sustained a demurrer based on the plaintiff's failure to meet his pleading burden to show statutory immunity did not apply, but reversed the denial of leave to amend.

Here, assuming the facts of the FAC are true, the plaintiff alleges the County placed him in the Facility; the County approved, licensed, trained, supervised and/or compensated the Facility and its staff; and the County entrusted the Perpetrator with the plaintiff's care and custody. (FAC, ¶¶ 24, 27.) Despite the County's actual or constructive knowledge of the plaintiff's sexual abuse, the County negligently placed the plaintiff in the Facility, negligently supervised the plaintiff, and failed to remove the plaintiff from the unsafe placement. The plaintiff does not allege a social worker failed to provide specific services mandated by an identified statute or regulation. Under *Becerra and Terrell R., t*he County's employees are immune from liability for their supervision of S.C. while in foster care placement, including the decision not to remove S.C. Therefore, the court sustains the demurrer to the first, third, and fifth causes of action on the grounds that the County and the County Doe defendants are entitled to immunity from liability for the alleged tortious conduct.

Leave to Amend

The plaintiff correctly states the well-settled rule that it is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. The corollary is also true—when a complaint shows upon its face that there is no reasonable possibility to cure the defect, the court should deny leave to amend. The plaintiff has the burden to demonstrate how the complaint might be amended.

Here the court previously granted leave to amend, but the plaintiff added no new facts. In his opposition, the plaintiff fails to suggest any facts he could allege to address the County's defense that the broad nature of immunity from liability extends to the removal and placement decisions of social workers. Accordingly, the court sustains the demurrer without leave to amend because the plaintiff fails to establish a reasonable likelihood that he can cure the defect by amendment.

Request for Judicial Notice

Under Evidence Code section 452, the court takes judicial notice of the statutes attached to the County's Request for Judicial Notice as exhibits 1 through 9.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: **jyh** (Judge's initials) **on** **4/8/24** (Date) .

(37)

Tentative Ruling

Re: ***Okechukwu Odimegwu v. Department of State Hospitals***
Superior Court Case No. 23CECG00022

Hearing Date: April 10, 2024 (Dept. 503)

Motion: Defendants' Demurrer and Motion to Strike

Tentative Ruling:

To overrule the demurrer, with defendants granted 10 days' leave to file their answer to the complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

To deny the motion to strike.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

Judicial Notice

In ruling on a demurrer, the court can consider only matters that appear on the face of the complaint or matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) No other extrinsic evidence can be considered. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) Here, defendants request judicial notice of a State Personnel Board decision regarding the termination of plaintiff. Plaintiff has not opposed the court taking judicial notice of such. The court will take judicial notice of the decision.

Collateral Estoppel[2]

"Issue preclusion prevents 'relitigation of issues argued and decided in prior proceedings.' [Citation.] The threshold requirements for issue preclusion are: (1) the issue

[2] In their reply, defendants argue that they have not argued collateral estoppel acts as a bar to plaintiff's first cause of action. However, the notice portion of the demurrer includes the doctrine of collateral estoppel for the first cause of action.

is identical to that decided in the former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding is final and on the merits, and (5) preclusion is sought against a person who was a party or in privity with a party to the former proceeding." (*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481.)

Identical Issues

"The 'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings…" (*Ibid*., citation omitted.) Defendants argue that the plaintiff's first, second, and fourth causes of action are based on an issue that was already litigated when plaintiff challenged his termination in the State Personnel Board decision. Since the decision there was that plaintiff's dismissal was warranted, defendants argue that the issue of plaintiff's termination has already been adjudicated.

Plaintiff argues that the State Personnel Board did not address the issues of harassment, discrimination, or retaliation in its decision. While plaintiff does not dispute that the State Personnel Board decided that his termination was warranted, he does dispute that the State Personnel Board did or could have considered plaintiff's harassment, discrimination, and retaliation claims because plaintiff had not yet filed a claim with the Department of Fair Employment and Housing ("DFEH"). As such, he was not in a position to bring these claims to the State Personnel Board's attention. Notably, plaintiff does not provide any case law addressing the issue of whether an appellant may address issues with the State Personnel Board for which a government claim has yet to be presented.

In reviewing the State Personnel Board's decision, there is no mention of any harassment, discrimination, or retaliation claims. There, the Board only appears to address plaintiff's own conduct and whether his own conduct warranted disciplinary action. The decision makes clear that dismissal was warranted based on plaintiff's inexcusable neglect of duty, willful disobedience, misuse of state property, and other failure of good behavior.

Issues Actually Litigated, Necessarily Decided, and Final on the Merits

"The second … requirement is that this issue was actually litigated in the former proceeding. 'An issue is actually litigated "[w]hen [it] is *properly raised*, by the pleadings or otherwise, and is submitted for determination, and is *determined*. ….'" (*Castillo, supra,* 92 Cal.App.4th 477, 482.) Also, the third requirement, "that the issue was 'necessarily decided,' has been interpreted to mean that the issue was not '"entirely unnecessary"' to the judgment in the prior proceeding." (*Ibid*.) The determination must also be final and on the merits. (*Ibid*.)

Here, defendants argue that plaintiff had the incentive to litigate and raise his claims of harassment, discrimination, and retaliation before the State Personnel Board because, if successful, then he would have been reinstated to his position. Defendants argue that plaintiff was present at the three-day hearing, his counsel made arguments,

plaintiff provided testimony and evidence, the Board did not restrict any evidence, and the Board decided plaintiff's dismissal was appropriate.

Plaintiff does not challenge defendants' characterization of the State Personnel Board proceedings. Plaintiff again relies on his claim that he could not have brought these issues to the State Personnel Board because he had not yet filed his claim with DFEH.

Same Party

Issue preclusion may be sought against a person who was a party or in privity with a party to the former proceeding. (*Castillo, supra,* 92 Cal.App.4th 477, 481.) Defendants argue that privity existed for the individual defendants because they were employed by DSH at the time of plaintiff's proceedings before the State Personnel Board. Plaintiff simply argues that because the State Personnel Board proceedings did not pertain to the individually named defendants, they have no ground to raise collateral estoppel. He does not address the question of privitiy.

Privity refers to the "relationship between the party to be estopped and the unsuccessful party in prior litigation which is 'sufficiently close'" justifying the application of collateral estoppel. (*Ceresino v. Fire Ins. Exchange* (1989) 215 Cal.App.3d 814, 820.) In the context of the issues presented to the State Personnel Board, it does not appear that any of the individually named defendants here would have had any interest in the State Personnel Board proceedings. Defendants have not presented any case law addressing that employees are a sufficiently close relationship in this context.

However, the focus is on the party to be estopped. Here, the party to be estopped is plaintiff and there is no question that he was a participant in the State Personnel Board proceedings as was Department of State Hospitals ("DSH").

Issues That Should Have Been Raised to State Personnel Board

Defendants argue that plaintiff should have raised his harassment, discrimination, and retaliation claims in the State Personnel Board proceedings. Defendants cite *Wassmann v. South Orange County Community College District* (2018) 24 Cal.App.5th 825, 847, for the position that the State Personnel Board's decision collaterally estops plaintiffs' harassment, discrimination, and retaliation claims here. While *Wassmann* did find, on a motion for summary judgment, that the plaintiff there was estopped from raising discrimination and harassment claims following an administrative law judge's finding that she had engaged in unprofessional conduct, had unsatisfactory performance, and was unfit for service, it also described the underlying administrative proceeding. (*Ibid*.) There, it noted that the Education Code section governing administrative proceedings for the community college board required the employee to notify the board of any reasons or grounds for objecting to the decision to terminate. (*Ibid*.) Thus, it was clear in *Wassman* that plaintiff was required to bring her harassment and discrimination claims to the board in those proceedings. (*Ibid*.) Here, no one has provided any legal authority addressing whether or not plaintiff would have been required to bring his harassment, discrimination, and retaliation claims to the State Personnel Board's attention during his appeal to them.

Defendants also cite *Basurto v. Imperial Irrigation Dis*t. (2012) 211 Cal.App.4th 866, 888, for the position that plaintiff cannot raise age and race discrimination claims where he unsuccessfully challenged his dismissal in the administrative proceedings. In *Basurto*, which like *Wassmann* involved a motion for summary judgment, while the plaintiff had not raised age and race claims, the administrative proceedings included whether the plaintiff there experienced disparate treatment. (*Id*. at p. 887.) There, the administrative proceedings included evidence of another employee who was similarly discharged. (*Id*. at p. 888.) Here, the State Personnel Board decision is silent on the issue of whether the board considered anything other than plaintiff's own conduct.

Defendants acknowledge that it can be difficult to determine what issues may be foreclosed by a prior judgment, citing *Burdette v. Carrier Corp*. (2008) 158 CAL.App.4th 1668, 1689.) In *Burdette*, the appellate court clarified factors the court may consider: 1) the overlap between evidence or argument presented, 2) whether new evidence or argument involves the application of the same rule as the prior proceedings, 3) whether pretrial preparation and discovery would have included the matter sought to be presented in the second proceeding, and 4) how closely the claims in the two proceedings are related. (*Ibid*.) Here, the State Personnel Board decision is silent as to much of these potential considerations. The decision does not address any harassment, discrimination, or retaliation claims made by plaintiff and plaintiff has admitted he did not present them. Again, defendants have not presented legal authority clarifying that plaintiff would have been required to present these arguments in the State Personnel Board proceedings. Given the court is restricted to considering only matters on the face of the complaint or judicially noticeable, there is insufficient information to consider these factors on this demurrer.

The court does not find that the doctrine of collateral estoppel will act to preclude any of plaintiff's causes of action on demurrer.

<u>First Cause of Action</u>

Plaintiff's first cause of action is for harassment pursuant to Government Code section 12940. In their notice, defendants indicate that this cause of action is subject to demurrer because of the collateral estoppel doctrine, failure to state facts sufficient to constitute a cause of action, uncertainty, and failing to allege malice, oppression, or fraud for punitive damages. As discussed above, the doctrine of collateral estoppel will not be a grounds for demurrer here.

To establish this cause of action, plaintiff must plead 1) membership in a protected class, 2) that he was subject to unwelcome racial harassment, 3) the harassment was based on his race, 4) the harassment unreasonably interfered with his work performance, and 5) defendant is liable for the harassment. (Gov. Code, § 12940, subd. (a),(j); *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 876.) Defendants then cite to three cases for the position that harassment must be severe and pervasive and characterize the allegations described here as "mild". (*Kelly-Zurian v. Wohl Shoe Co., Inc*. (1994) 22 Cal.App.4th 397, 409; *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283; *Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1378.) However, each of these cases addressed the issue of sexual

harassment, not race or age based harassment. (*Ibid*.) Additionally, even if defendants are correct that the complaint must allege severe and pervasive harassment, the complaint does so. Plaintiff has alleged that since 2018, on numerous occasions, each individually named defendant told him to speak English, made fun of his accent, and referred to him as a monkey. (Complaint, First Cause of Action, ¶ 6.)

Defendants also argue the first cause of action is uncertain because it fails to state which defendant(s) engaged in which conduct. Defendants cite to *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040-1041 for the position that because of differences in each employee defendant's position, DSH has a different level of liability. Again, this case is addressing employer liability for sexual harassment, not race or age based harassment. (*Ibid*.) Ultimately though, plaintiff has alleged each defendant's position at DSH. (Complaint, Preliminary Allegations, ¶¶ 3-10.) Additionally, the primary allegation for the first cause of action states each defendant told plaintiff to speak English, each defendant made fun of his accent, and each defendant referred to him as a monkey. (Complaint, First Cause of Action, ¶ 6.)

Defendants did not introduce any arguments in their demurrer addressing the issue of malice, fraud, or oppression for punitive damages.

The court overrules the demurrer to the first cause of action.

Second Cause of Action

Plaintiff's second cause of action is for discrimination pursuant to Government Code section 12940. Defendants argue this cause of action is subject to demurrer based on the collateral estoppel doctrine and for failure to state facts sufficient to constitute a cause of action. As discussed above, the doctrine of collateral estoppel will not be a grounds for demurrer here.

To establish this cause of action, plaintiff must plead 1) membership in a protected class, 2) that he was performing competently in his position, 3) that the employer subjected him to an adverse employment action, and 4) some other circumstance suggesting a discriminatory motive for the adverse employment action. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355.) Defendants argue that plaintiff has not alleged facts linking his termination to his age, color, or nationality. Here, plaintiff has alleged not only that defendants told him to speak English, made fun of his accent, and referred to him as a monkey, but also that he reported this to DSH and then was terminated. (Complaint, Second Cause of Action, ¶ 1.) By alleging that he reported the race based statements made by his co-workers, and then was terminated, plaintiff has sufficiently alleged a nexus between the discrimination and the termination. The court overrules the demurrer as to this cause of action.

Fourth Cause of Action

Plaintiff's fourth cause of action is for retaliation pursuant to Government Code section 12940. Defendants argue this cause of action is subject to demurrer based on

the collateral estoppel doctrine. As discussed above, the doctrine of collateral estoppel will not be a grounds for demurrer here. The court overrules the demurrer to this cause of action.

Motion to Strike

A motion to strike may be used to address defects in pleadings otherwise not challengeable by a demurrer. (See Code Civ. Proc., § 435.) A motion to strike can be used to attack either a portion or the entirety of a pleading. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.)

Defendants move to strike page 12, line 11-13 and page 17, line 4-11. The first is an allegation of malice, fraud, and oppression and the latter is for punitive damages. Defendants argue that plaintiff has failed to plead ultimate facts necessary for a claim for punitive damages and that plaintiff's claims are conclusory. They argue that the allegation that each named defendant 1) told plaintiff to speak English, 2) made fun of his accent, and 3) called him a monkey does not support a showing of malice, oppression, or fraud. Plaintiff argues that referring to a black employee as a monkey is sufficient to demonstrate malice.

Vague and conclusory allegations are not enough to justify a prayer for punitive damages. The plaintiff must allege facts showing fraud, malice or oppression. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.) Malice includes conduct which is intended to cause injury, or despicable conduct carried on by a defendant with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) Here, the allegation that each defendant referred to plaintiff as a monkey is sufficient to allege despicable conduct by each defendant. As such, the court denies the motion to strike.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 4/9/24.
(Judge's initials) (Date)