

**Tentative Rulings for June 14, 2022**  
**Department 503**

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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).)

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

- 20CECG00682      *Askew v. Clovis Community Medical Center* is continued to Thursday, June 23, 2022, at 3:30 p.m. in Department 503.
- 21CECG00620      *Los Arboles Family Apartments v. Orange Cove* is continued to Wednesday, August 17, 2022 at 3:30 p.m. in Department 503
- 21CECG01732      *Maudiauna Corona v. Hyundai Motor America* is continued to Wednesday, July 7, 2022 at 3:30 p.m. in Department 503

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 503**

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(20)

**Tentative Ruling**

Re: ***Cantu v. State of California Department of Transportation et al.***  
Superior Court Case No. 20CECG00632

Hearing Date: June 14, 2022 (Dept. 503)

Motion: Defendants' Motion for Summary Judgment or Adjudication

**Tentative Ruling:**

To grant. (Code Civ. Proc., § 437c, subd. (c).) Prevailing parties are directed to submit to this court, within five (5) days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

**Explanation:**

This is a personal injury action arising out of an auto accident allegedly caused by defendant James Hinson, a defendant California Department of Transportation employee. The complaint alleges a single cause of action for motor vehicle negligence. The Judicial Council form complaint checks boxes indicating that plaintiff is required to comply with a claims statute and has complied. (Complaint ¶ 9(a).)

Defendants move for summary judgment on the ground that plaintiff did not comply with the Government Code claim presentation requirements. The main issue presented in this motion is whether plaintiff's counsel's August 17, 2018 letter of representation to the Department of Transportation substantially complies with the claim presentation requirements.

The parties disagree on the question of whether the moving papers establish that Hinson was acting in the course and scope of his employment at the time of the accident. The complaint clearly alleges that he was. Plaintiff, in the opposition, misconstrues his own complaint in arguing that the pleading is inconsistent. Paragraph MV-2(a) identifies Hinson as the driver of the vehicle. Paragraphs MV-2(b), (c) and (d) identify State of California/Department of Transportation as the employer of the driver, owner of the vehicle, and the defendant who entrusted the vehicle. Paragraph MV-2(e) alleges that the State of California/Department of Transportation and Hinson were the agents and employees of the other defendants acting in the course and scope of their employment. Read as a whole, the complaint clearly alleges that Hinson was employed by the State of California/Department of Transportation and was acting in the scope of his employment/agency at the time of the accident.

An action for "money or damages" may not be maintained against the "state" or a "public entity" unless a written claim has first been timely presented to the defendant and rejected in whole or in part. (Gov. Code, §§ 905, 905.2, 945.4.) Presentation of a claim, when required by law, is a mandatory prerequisite to maintaining a cause of action against a public entity, and failure to file a claim is fatal to the claimant's cause of action. (*State v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) It is an element of the cause of action. (*Id.* at pp. 1239-1244.)

The claim is required to be presented “not later than six months after the accrual of the cause of action.” (Gov. Code, § 911.2, subd. (a).) A claim must include: “(a) The name and post office address of the claimant. [¶] (b) The post office address to which ... notices [are] to be sent. [¶] (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. [¶] (d) A general description of the ... injury, damage or loss incurred.... [¶] (e) The name or names of the public employee or employees causing the injury, damage, or loss, if known. [¶] (f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.” (Gov. Code, § 910.)

To gauge the sufficiency of a particular claim against a public entity, two tests must be applied: Is there some compliance with all of the statutory requirements; and, if so, is this compliance sufficient to constitute substantial compliance. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447.)

Plaintiff's counsel sent the Department of Transportation a representation letter on August 17, 2018. Although it includes plaintiff's counsel's mailing address, it does not include “[t]he post office address of the claimant,” any “[monetary] amount claimed,” or “whether the claim would be a limited civil case,” and it fails to even indicate that plaintiff is seeking money damages at all. (Gov. Code, §§ 910, subds. (a), (d) and (f); see *Olson v. Manhattan Beach Unified School Dist.* (2017) 17 Cal.App.5th 1052, 1061 [finding claim defective because, among other things, it did not contain “the dollar amount claimed or whether the claim would be a limited civil case”]; *Loehr v. Ventura City. Cmty. Coll. Dist.* (1983) 147 Cal.App.3d 1071, 1083 [“Nowhere in the letter is there a claim for money damages, nor, for that matter is there even an estimate of the amount of any prospective injury, damage or loss.”]; *Pac. Tel. & Tel. Co. v. County of Riverside* (1980) 106 Cal.App.3d 183, 191 [holding that claim did not satisfy substantial compliance where it did not give “notice of ... the extent of the damages claimed”].) It is undisputed that plaintiff's August 17, 2018 letter does not contain this information.

Contending that the representation letter substantially complies with the presentation requirements, plaintiff relies on *Santos v. El Guapos Tacos, LLC* (2021) 72 Cal.App.5th 363, as “address[ing] the issue of the adequacy of notice to a defendant finding that the notice was adequate so long as it alerted the employer and the Labor and Workforce Development Agency of the existence of a potential claim.” (Oppo. 3:17-20.)

However, *Santos* did not involve compliance with the Government Code claim presentation requirements. It involved the prefiling notice requirements for a lawsuit brought against a private employer pursuant to the Private Attorneys General Act (PAGA). (*Santos, supra*, 72 Cal.App.5th at pp. 363, 366.) It does not address public entity liability or what constitutes “substantial compliance” with respect to the claim filing requirements set forth in Government Code section 910 in the Government Tort Claims Act. *Santos* is not relevant.

Since plaintiff's counsel's letter does not touch on many of the required elements of a claim as specified in Government Code section 910, there is no substantial compliance. Summary judgment must be granted, unless defendants have waived the defense.

Government Code section 910.8 provides that if, in the opinion of the board of the relevant government agency, a claim as presented fails to comply substantially with the requirements of sections 910, 910.2 or 910.4, the board or person designated may, within 20 days after the claim is presented, give written notice of the claim's insufficiency, stating with particularity defects or omissions therein.

"Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8." (Gov. Code, § 911.)

The court requested further briefing on the question of whether the August 17, 2018 representation letter constitutes a "claim as presented." After consideration of the parties' supplemental briefing, the court finds that it does not.

"A 'claim as presented' is a claim that is defective in that it fails to comply substantially with Government Code sections 910 and 910.2, but nonetheless puts the public entity on notice that the claimant is attempting to file a valid claim and that litigation will result if it is not paid or otherwise resolved. A 'claim as presented' triggers a duty on the part of the governmental entity to notify the claimant of the defects or omissions in the claim. A failure to notify the claimant of the deficiencies in a 'claim as presented' waives any defense as to its sufficiency." (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 643 ....) "[A] document constitutes a 'claim as presented' ... if it discloses the existence of a 'claim' which, if not satisfactorily resolved, will result in a lawsuit against the entity." (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 709, 263 ....)

(*Olson v. Manhattan Beach Unified School Dist.*, *supra*, 17 Cal.App.5th at pp. 1061–1062.)

When a public entity receives written notice that a claim for money damages exists and that litigation may ensue, it has the responsibility under sections 910.8 and 911 to notify the claimants of any defect that renders the document insufficient under sections 910 and 910.2. (*Phillips v. Desert Hosp. Dist.*, *supra*, 49 Cal.3d at p. 709.)

Where a letter from a claimant's attorney merely requests information and indicates that the attorney is evaluating the matter, the letter does not constitute a "claim as presented." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 770.) Two essential elements of a "claim as presented" can be distilled from the case law. First, the letter must indicate that a demand is being made for financial compensation. Second, it must indicate that failure to satisfy the plaintiff's demand could result in litigation. (*Green v. State Center Community College Dist.* (1995) 34 Cal.App.4th 1348, 1358-59; see also *Foster v. McFadden* (1973) 30 Cal.App.3d 943, 946; *Phillips v. Desert Hospital Dist.*, *supra*, 49 Cal.3d at p. 709.)



(35)

**Tentative Ruling**

Re: **Mercado v. Washington Unified School District**  
Superior Court Case No. 21CECG01671

Hearing Date: June 14, 2022 (Dept. 503)

Motion: Demurrer and Motion to Strike Portions of the Complaint

**Tentative Ruling:**

To sustain the demurrer to the first, third and sixth causes of action, with leave to amend. To sustain the demurrer to the fifth cause of action, without leave to amend. To overrule the demurrer to the second and fourth causes of action. Plaintiff shall serve and file an amended complaint within twenty (20) days of the date of service of this order. All new allegations shall be in **boldface**.

To grant the motion to strike the prayer for exemplary damages.

**Explanation:**

Plaintiff filed the instant complaint against defendant on seven causes of action: (1) disparate treatment based on race, color, national origin and ancestry; (2) hostile work environment harassment directed at plaintiff based on race, color, national origin and ancestry; (3) retaliation; (4) failure to prevent harassment, discrimination and retaliation; (5) constructive discharge in violation of public policy; (6) retaliation in violation of Labor Code section 1102.5; and (7) declaratory relief and reinstatement. Plaintiff alleges that he was employed by defendant, and was unjustly disciplined and demoted for complaining about preferential treatment for non-Hispanic staff, and the lack of response to teacher and student bullying of Hispanic students. The basis for the unjust discipline and demotion was due to plaintiff being Hispanic, which led to plaintiff being forced to resign and accept lower paying employment elsewhere.

On May 5, 2022, this court found insufficient meet and confer efforts by the parties to proceed, and directed the parties to meet and confer as required by the plain language of Code of Civil Procedure section 430.41, subdivision (a) and section 435.5, subdivision (a). On May 26, 2022, defendant filed a supplemental declaration demonstrating sufficient meet and confer efforts to proceed.

Defendant demurs to the complaint for failure to state facts sufficient to constitute a cause of action as to each cause of action except the seventh cause of action for declaratory relief and reinstatement.

In ruling on a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause

of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where the plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

A plaintiff is not required to plead evidentiary facts supporting the allegation of an ultimate fact; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Stated another way, a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source, and extent of his cause of action. (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. (*Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 879; see also *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028 [finding that "less specificity is required in pleading matters of which the defendant has superior knowledge"].) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

The court initially notes that defendant makes a consistent argument that each of the causes of action fail to plead facts with sufficient specificity, such that defendant cannot know when plaintiff made certain complaints that subjected him to adverse treatment, to whom such complaints were made, or when and from whom the alleged adverse treatment commenced.

While the complaint is not a model pleading, it alleges that defendant employed plaintiff; that plaintiff was unjustly disciplined and demoted; that such discipline and demotion was due to plaintiff's complaints; and the reasoning alleged to have motivated such acts. As alleged, defendant, as the employer, would be assumed to have knowledge of these facts equal to that of plaintiff on these allegations regarding plaintiff's employment with defendant. To the extent that defendant implies uncertainty, the court declines to proceed on those grounds for lack of notice of special demurrer for uncertainty.

#### First Cause of Action – Disparate Treatment

The specific elements of a prima facie case of disparate treatment may vary depending on the particular facts. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 355.) For a claim for disparate treatment, a plaintiff must generally show that (1) he was a

member of a protected class; (2) he was performing competently in the position he held; (3) he suffered an adverse employment action; (4) and there were circumstances suggesting that the employer acted with a discriminatory motive. (*Ibid.*)

Here, the complaint alleges that plaintiff is a member of a protected class, being Hispanic, who suffered adverse employment action due to being Hispanic. However, there are no allegations that plaintiff was performing competently in the position he held as an employee of defendant. The court sustains the demurrer to the first cause of action for disparate treatment, with leave to amend.

#### Second Cause of Action – Hostile Work Environment Harassment

To state a cause of action for hostile work environment harassment, a plaintiff must show that (1) he is a member of a protected class; (2) he was subjected to unwelcome harassment; (3) the harassment was based on his protected status; (4) the harassment unreasonably interfered with his work performance by creating an intimidating, hostile, or offensive work environment; and (5) the defendant is liable for the harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.)

Here, the complaint alleges that plaintiff is a member of a protected class, being Hispanic, which subjected him to severe and pervasive harassing conduct by defendant because he is Hispanic, which made the work environment hostile, intimidating, offensive, oppressive, and abusive. In other words, each element to a hostile work environment harassment claim is pled. The court overrules the demurrer to the second cause of action for hostile work environment harassment.

#### Third Cause of Action – Retaliation

To state a cause of action for retaliation, a plaintiff must show that (1) he engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) a causal link existed between the protected activity and the employer's action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

Here, the complaint states that plaintiff engaged in a protected activity by complaining of preferential treatment given to non-Hispanic staff and the lack of response to teacher and student bullying of Hispanic students. The complaint alleges that such activity is protected under Government Code section 12940, subdivision (h), which makes it unlawful for an employer to discriminate against a person who has opposed forbidden practices. However, the complaint does not clearly allege that defendant subjected plaintiff to an adverse employment action. The complaint only states that some adverse employment action was substantially motivated by plaintiff's complaining. The court sustains the demurrer to the third cause of action for retaliation, with leave to amend.

#### Fourth Cause of Action – Failure to Prevent Harassment, Discrimination and Retaliation

To state a cause of action for failure to prevent harassment, discrimination, and retaliation, a plaintiff must show that (1) he was subjected to harassment, discrimination or retaliation; (2) the defendant failed to take all reasonable steps to prevent the

harassment, discrimination or retaliation; and (3) the failure to do so caused plaintiff to suffer injury, damage, loss or harm. (*Caldera v. Dept. of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 43-44.)

As above, the complaint re-alleges the prior allegations, that plaintiff was the subject of harassment, discrimination and retaliation. The complaint further alleges that defendant failed to take all reasonable steps to prevent the harassment, discrimination, and retaliation, resulting in damages. Thus, each element is pled, based on the same nexus of facts that defendant employed plaintiff, and that plaintiff's acts caused him to suffer harassment, discrimination, or retaliation in the course of his employment with defendant. The court overrules the demurrer to the fourth cause of action for failure to prevent harassment, discrimination and retaliation.

#### Fifth Cause of Action – Constructive Discharge in Violation of Public Policy

Defendant argues that it is immune to such a cause of action because Government Code section 815 immunizes it from all common law causes of action. Government Code section 815 states that, “[e]xcept as otherwise provided by statute, [¶] (a) [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” In interpreting Government Code section 815, courts have concluded that all government tort liability must be based on statute. (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932.) Thus, Government Code section 815 abolishes all common law or judicially declared forms of liability for public entities. (See *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 899.)

A claim of wrongful discharge in violation of public policy, also known as a *Tameny* claim, is a common law cause of action subject to Government Code section 815's limitation. (*Miklosy, supra*, 44 Cal.4th at pp. 899-900 [“Although the Court of Appeal's discussion of section 815 was dictum, we agree with the *Palmer* court that section 815 bars *Tameny* actions against public entities.”], citing *Palmer v. Regents of the Univ. of Cal.* (2003) 107 Cal.App.4th 899, 910 & fn. 11.)

In opposition, plaintiff does not address this argument. The court sustains the demurrer to the fifth cause of action for constructive discharge in violation of public policy, without leave to amend.

#### Sixth Cause of Action – Retaliation Against Whistleblower

Defendant argues that plaintiff failed to exhaust administrative remedies prior to filing this claim. Specifically, defendant alleges that plaintiff failed to present a timely claim under the Government Claims Act, which now bars plaintiff from proceeding on this cause of action. (*State of Cal. v. Super. Ct.* (2004) 32 Cal.4th 1234, 1239.) As plaintiff has not pled that he has complied with the Government Claims Act, defendant argues that this cause of action is subject to demurrer.

In opposition, plaintiff argues that this cause of action falls under the Fair Employment and Housing Act, and, therefore, he is not required to submit a claim under the Government Claims Act and has exhausted administrative remedies when he

obtained a right-to-sue letter from the California Department of Fair Employment and Housing.

While plaintiff correctly states that actions brought under the Fair Employment and Housing Act are exempt from the requirements of the Government Claims Act, defendant also correctly identifies that the basis for this particular cause of action rests in Labor Code section 1102.5. In other words, this cause of action is not brought under the purview of the Fair Employment and Housing Act, which is codified at Government Code section 12900 et seq. (See also *Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 245-247 [evaluating a Labor Code section 1102.5 claim for compliance with the Government Claims Act].) Thus, this cause of action falls under the purview of the Government Claims Act. (Gov. Code, § 810 et seq.)

The Government Claims Act requires, for all claims of money or damages against local public entities, presentation of a claim. (Gov. Code, § 905.) A claim relating to a cause of action for injury to person shall be presented not later than six months after the accrual of the cause of action. (Gov. Code, § 911.2.) Compliance with the claims requirement is a condition precedent to suing a public entity. (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 906.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Ibid.*)

After careful review of the complaint, the court finds no facts alleging timely presentation of a claim or excuse from compliance with the Government Claims Act. Therefore, the court sustains the demurrer to the sixth cause of action for retaliation against a whistleblower, with leave to amend.

#### Motion to Strike

Defendant further seeks to strike portions of the complaint. Specifically, defendant seeks to strike the prayer for exemplary damages under Government Code section 818.

Government Code section 818 provides that, “[n]otwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.”

As plaintiff in opposition does not contest defendant's argument that the complaint improperly prays for exemplary damages, damages imposed for the sake of example, or that defendant is a public entity within the meaning of Government Code section 818, the motion to strike the prayer for exemplary damages is granted.

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



(27)

**Tentative Ruling**

Re: ***DiDonna v. City of Reedley***  
Superior Court Case No. 20CECG02331

Hearing Date: June 14, 2022 (Dept. 503)

Motion: By Defendants City of Reedley, Ofc. Keri Babcock and Sgt. Guillermo Garza for Summary Judgment or, in the Alternative, Summary Adjudication

**Tentative Ruling:**

To grant the motion for summary judgment of defendants City of Reedley, Ofc. Keri Babcock and Sgt. Guillermo Garza ("defendants"). (Code of Civ. Proc., § 437c, subd. (c).) Defendants are directed to submit to this court, within five (5) days of service of the minute order, a proposed judgment consistent with the court's summary judgment ruling.

**Explanation:**

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) "The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case....' [Citation.]" (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) In addition, "[t]o avoid summary judgment, admissible evidence presented to the trial court, not merely claims or theories, must reveal a triable, material factual issue. [Citations.] Moreover, the opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation." (*Wiz Technology, Inc. v. Coopers & Lybrand* (2003) 106 Cal.App.4th 1, 11.)

As framed by the pleadings, plaintiff's basis for liability on both causes of action is the alleged lack of probable cause supporting his arrest, which is an issue that can be decided as a matter of law in a motion for summary judgment. (*Giannis v. City and County of San Francisco* (1978) 78 Cal.App.3d 219, 225 ["The issue of whether an arrest was made with reasonable cause is an issue of law to be decided by the court."]; see also *Collins v. City and County of San Francisco* (1975) 50 Cal.App.3d 671, 677 [affirming summary judgment of false arrest claim].)

"Under California law, a police officer is not granted governmental immunity for false arrest and imprisonment. However, Penal Code section 847, subdivision (b) contains principles that parallel the immunity analysis." (*O'Toole v. Superior Court* (2006) 140 Cal.App.4th 488, 510, internal citations omitted.) Accordingly, "[t]here shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer ... , acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances: [¶] (1) The arrest was lawful,

or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.” (Pen. Code, § 847, subd. (b).)

Reasonable cause is defined as “less than proof beyond a reasonable doubt; less than a preponderance of the evidence; and less than a prima facie showing.” (*People v. Tuadles* (1992) 7 Cal.App.4th 1777, 1783, citations omitted; see also *Cornell v. City and County of San Francisco* (2017) 17 Cal.App.5th 766, 786 [“California courts speak of ‘reasonable cause’ and ‘probable cause’ interchangeably”].)

Furthermore, “[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.” (Gov. Code, § 821.6.) Accordingly, a police officer is generally not liable for torts such as false arrest if made under “‘due forms of law’ and ‘color of legal authority.’” (*Collins v. City and County of San Francisco, supra*, 50 Cal.App.3d at p. 677, citation omitted.) In other words, to constitute a false arrest, the officer’s actions must be alleged to have departed from “valid process or due authority apart from it ....” (*Ibid.*) Accordingly, where such circumstances are not alleged or proved, summary judgment of a false arrest claim is proper. (*Id.* at p. 679.)

Both of the causes of action alleged in the complaint are premised on plaintiff’s alleged false arrest, and it is undisputed that plaintiff was arrested for violating Health and Safety Code section 11350, which penalizes the unauthorized possession of controlled substances. Liability for unauthorized possession is typically established by “dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character.” (*People v. Martin* (2001) 25 Cal.4th 1180, 1184, internal quotations omitted.)

Defendants’ evidence indicates that at least one officer noticed plaintiff’s glossy and bloodshot eyes, slowed speech, and the smell of alcohol emitting from his breath (Olivas Dep. Tr., 12:20-13:10), and plaintiff later admitted to drinking 5-6 beers earlier in the evening (UMF No. 29). Around the same time as the initial observations were made, plaintiff identified himself as an off-duty police officer and stated that he had a firearm underneath him, i.e. he was sitting on it. (UMF No. 8.) Plaintiff disputes these facts, but does not offer any conflicting or opposing evidence.

Plaintiff contends defendant officers lacked probable cause to conduct a search for the firearm (UMF No. 9), but nevertheless admits that he voluntarily informed the officers that his firearm was “underneath him” (UMF No. 8). Plaintiff does not dispute that the firearm was “loaded with one round in the chamber and six in the magazine.” (UMF No. 10.) Plaintiff also does not dispute that he consented to the pat-down search and disclosed the presence of a pocketknife. (UMF Nos. 11, 12.)

Plaintiff essentially does not dispute that an unlabeled orange pill bottle was discovered during the pat-down search (UMF Nos. 13, 14), but instead contends that “upon inquiry” he informed the officers that the bottle contained his grandmother’s prescribed “Norco,” of which he was only “holding” at his grandmother’s direction. (*Ibid.*) Although he contends a dispute exists, plaintiff offers only the same explanation

in response to defendants' claim that 39 white pills were contained in the bottle. (UMF No. 15.)

Defendants' evidence is sufficient to establish that plaintiff admitted simultaneous possession of a firearm and a controlled substance, and thus the evidence is sufficient to shift the burden to show that triable issues of material fact exists such that the claims cannot be determined as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) Plaintiff's opposition insists that the explanation offered at the scene shows that probable cause dissipated. This explanation, however, is not dispositive of whether the officers had reasonable/probable cause to make the arrest. Rather, examination of the totality of the circumstances is required, and reasonable/probable cause will be found where facts existed which would lead "a person of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime." (*People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742.)

Here, plaintiff had exhibited articulable signs of intoxication, had been sitting on his loaded firearm, and, unlike his pocketknife, did not preemptively disclose the presence of the unlabeled pill bottle. Furthermore, plaintiff admitted the pills were not his, but he believed them to be narcotics. Finally, the sheer number of pills contained in the pill bottle was objectively inconsistent with plaintiff's statement that he had only been holding the medication for his grandmother's discretionary - but uncertain - use during the limited duration event. (See *People v. Memro* (1995) 11 Cal.4th 786, 843 [inconsistent statements furnished reasonable cause for arrest].)

In addition, defendants further contend that plaintiff's conduct violated Health and Safety Code section 11370.1, which criminalizes the possession of controlled substances while armed with a loaded firearm. It is essentially undisputed that plaintiff voluntarily informed the officers that he was armed and that he offered the post-search explanation that he was "holding" his grandmother's Norco pills. Consequently, there was a sufficient objective basis to support suspicion of a violation of Health and Safety Code section 11370.1, even if that was not ultimately the charged offense. (*Devenpeck v. Alford* (2004) 543 U.S. 146, 153 [an officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause"].)

Accordingly, defendants' evidence demonstrates that plaintiff cannot establish the absence of reasonable/probable cause, which is an essential element to his false arrest claim. Similarly, because plaintiff's claim for liability under Civil Code section 52.1 is also premised on the alleged absence of reasonable/probable cause for the arrest, it is also subject to summary judgment.

Therefore, defendants' motion for summary judgment is granted.

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

