Tentative Rulings for June 7, 2022
Department 501

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

17CECG01480 ***Juana Reynoso v. Geil Enterprises, Inc.*** **is continued to Tuesday, June 14, 2022 at 3:30 p.m. in Department 501**

20CECG00238 ***Baldev Khela v. Cala Carter*** **is continued to Tuesday, June 14, 2022 at 3:30 p.m. in Department 501**

21CECG01880 ***Oscar Porras v. General Motors, LLC*** **is continued to Tuesday, June 14, 2022 at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(03)

Tentative Ruling

Re: ***Duong v. California State University Fresno***
Case No. 18CECG03478

Hearing Date: June 7, 2022 (Dept. 501)

Motion: by Defendant California State University for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant the motion for summary judgment as to plaintiff's entire Complaint. (Code Civ. Proc. § 437c.) Defendant shall submit a proposed Judgment consistent with this order within 20 days.

If oral argument is timely requested, such argument will be heard on Thursday, June 9, 2022, at 3:30 p.m. in Dept. 501.

Explanation:

With regard to the first, second, third and fourth causes of action for retaliation, racial discrimination, age discrimination, and national origin discrimination under FEHA, defendant contends that plaintiff has no evidence that he was ever subject to an "adverse employment action", which is an essential element of his prima facie claims for retaliation and discrimination.

"At trial, the *McDonnell Douglas* test places on the plaintiff the initial burden to establish a prima facie case of discrimination… Generally, the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354–355.)

Likewise, "[t]o establish retaliation (Gov. Code, § 12940, subd. (f)), the plaintiff must prove he or she was engaged in protected activity, the employer subjected him or her to an adverse employment action, there was a causal link between the protected activity and the employer's action and the defendant's proffered nonretaliatory explanation was a pretext for the illegal consequence. (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 367, internal citation omitted.)

"In some cases, adverse action affecting 'terms, conditions, or privileges of employment' (actionable) is contrasted with changes that merely displease the employee (not actionable). In other words, changes in terms and conditions of employment must be both substantial and detrimental to be actionable. 'Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an

employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of [Government Code] section 12940, subdivision (a).'" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 373, internal citations omitted.)

Here, plaintiff has alleged several different incidents that he contends constitute adverse employment actions that support his retaliation and discrimination claims. He alleges that (1) he was not paid in a timely manner for the "weighted teaching units" (WTUs) that he taught in the fall of 2016, (2) he received a negative peer evaluation in the fall of 2016, (3) he was initially denied a "range elevation" (i.e. a pay raise) in 2016, (4) he was not given the full number of WTUs that he should have received in the spring of 2017 and fall of 2018, and (5) the University investigation of his grievances was delayed and eventually found that there was no discrimination or retaliation against him, which he contends was itself evidence of bias.

However, none of these incidents resulted in any adverse employment action against plaintiff. In fact, the incidents caused no effect on plaintiff's job pay, benefits, or position, or caused him to lose a future position. With regard to plaintiff's allegation that he was not paid in a timely manner for the WTUs that he taught in 2016, plaintiff admitted that he was eventually paid in full for all of the WTUs, although he claims that it took about two years for him to obtain his full payment. (Defendant's Undisputed Material Facts Nos. 10-11.) Plaintiff has not shown that the delay in payment resulted in any significant change to the terms and conditions of his employment. Indeed, plaintiff continues to work for CSU, and he has not lost any pay or benefits since the incidents that he cites. (UMF No. 49.) While plaintiff did state that he was unable to pay some of his bills including his mortgage on time due to the delay, there is no evidence that he suffered any significant harm to his job pay, benefits, position, or any other harm that would have constituted an adverse employment action due to the failure to pay him in a timely manner.

Next, while plaintiff received a negative peer review from Dr. Kriehn in the fall of 2016, plaintiff has not pointed to any evidence that the negative review actually caused him to suffer a substantial loss of benefits, pay, position or a future job position. He appears to be complaining that the negative evaluation interfered with his ability to obtain future promotions or pay raises. However, he received a pay raise from the University just a few months after the negative evaluation. It is true that the committee at first recommended that he be denied the pay raise based on the negative performance review, but Dr. Nunna approved the pay raise despite the committee's recommendation. (UMF Nos. 25-27.) Plaintiff has also failed to point to any other evidence that he was denied promotions or pay raises based on Dr. Kriehn's evaluation. Therefore, the evidence indicates that plaintiff did not suffer an adverse employment action due to the poor evaluation.

Likewise, to the extent that plaintiff claims that he was denied a pay raise or "range elevation" due to the negative performance evaluation or other bias by the University, the evidence shows that he actually received the pay raise. (UMF Nos. 25-27.) Again, while the committee originally recommended denying the pay raise due to Dr.

Kriehn's evaluation, Dr. Nunna later granted the pay raise despite the negative evaluation. (*Ibid*.) Therefore, the evidence shows that plaintiff did not suffer an adverse employment action related to his request for a range elevation.

Plaintiff has also alleged that he was not given the full WTUs that he should have been assigned for the fall 2016 and spring 2017 term. Defendant admits that plaintiff was originally given five WTUs for the spring of 2017, but one of his classes was cancelled due to low enrollment, so he did not get all his teaching units for that term. (UMF No. 28.) However, plaintiff was still paid for a full five WTUs, even though he did not actually teach five classes. (UMF No. 30.) In fact, plaintiff received more WTUs that term than any other part-time lecturer except one, who received six WTUs. (UMF No. 31.) Thus, the evidence indicates that plaintiff did not suffer an adverse employment action even though he taught fewer WTUs than he had been assigned. In fact, he was paid for more classes than he actually taught and he was given more WTUs than most of the other part-time teachers, which does not constitute an adverse employment action.

Finally, plaintiff has alleged that the investigation into his union grievances was biased because it did not meet all of the deadlines under the collective bargaining agreement, the investigator made some allegedly inaccurate statements in her report, and she ultimately determined that plaintiff's complaints were unfounded. (UMF Nos. 32-37.) However, there is no evidence that the investigation resulted in any harm to plaintiff, such as a demotion, firing, loss of pay or benefits, loss of a future job position, or any other substantial harm to his ability to do his job. At most, plaintiff was dissatisfied with the way the investigator conducted the investigation and the conclusions she reached. He did not lose any pay or benefits, and he continues to work at the University. Therefore, plaintiff has not shown that he suffered an adverse employment action as a result of the investigation.

Consequently, defendant has met its burden of showing that there is no evidence that plaintiff suffered an adverse employment action, and the burden shifts to plaintiff to present admissible evidence and legal argument that would raise a triable issue of material fact with regard to the question of whether he suffered an adverse employment action. However, while plaintiff has filed an opposition to the summary judgment motion, his opposition fails to cite to any admissible evidence, does not contain any legal authorities or legal arguments, and fails to provide a separate statement of undisputed facts to respond to defendant's separate statement. (Cal. Rules of Court, rules 3.1113 and 3.1350(e)(1).) The brief is also almost twice as long as the 20 pages permitted by the Rules of Court regarding summary judgment briefs. (Cal. Rules of Court, rule 3.113(d).) Plaintiff also has not submitted a separate statement that responds to the defendant's undisputed material facts, and he has not admitted or denied any of defendant's facts. (Cal. Rules of Court, rule 3.1350(e)(2).)

In addition, while plaintiff has filed a compendium of evidence in support of his opposition, he has not provided any declarations to authenticate or lay a foundation for any of his purported evidence. Thus, plaintiff has failed to provide any admissible evidence that would tend to show the existence of a triable issue of material fact. (Cal. Rules of Court, rule 3.1350(e)(3), (f).) Furthermore, defendant has objected to all of plaintiff's evidence in support of his opposition, and the court intends to sustain the objections for lack of foundation, lack of authentication, and hearsay.

Therefore, since plaintiff has not presented any admissible evidence, legal authorities, legal argument, or other briefing to support his opposition, the court could disregard the entire opposition brief and compendium of evidence in support of the opposition. (See Cal. Rules of Court, Rule 3.1113(g) [brief that exceeds page limit may be treated by the court as a late-filed brief and disregarded]; (Code Civ. Proc., § 437c, subd. (b)(3); ["Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion"]; see also *Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568 [failure to provide separate statement in opposition to summary judgment motion justifies granting motion]; *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 418 [trial court not required to give plaintiff a continuance to cure failure to file a separate statement in opposition to summary judgment motion]; *Batarse v. Service Employees Int'l Union Local 1000* (2012) 209 Cal.App.4th 820, 831-833 [same].) While plaintiff is in *pro per*, he is not entitled to any special treatment due to his self-represented status, and must be treated the same as if he had been represented by an attorney. (*Kobayashi v. Sup. Ct.* (2009) 175 Cal.App.4th 536, 543; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985-986.)

Even if the court were to consider the opposition, it fails to raise any triable issues of material fact with regard to the question of whether plaintiff suffered an adverse employment action that would tend to support his FEHA discrimination and retaliation claims. Plaintiff's opposition simply repeats the allegations of his second amended complaint without adding any new facts or citing to any evidence that would tend to show that he suffered significant harm such as loss of pay, benefits, or future job promotions. Plaintiff appears to be arguing that he was denied a chance to become a full-time lecturer in the fall of 2017 because he was not given enough WTUs during that timeframe. However, plaintiff cites to no admissible evidence to support his assertion that he would have become a full-time lecturer in the fall of 2017. His claim that he suffered harm from the denial of WTUs thus appears to be nothing more than unsupported speculation.

Plaintiff also complains that several other lecturers and teaching associates were given jobs despite their lack of qualifications. However, even assuming plaintiff's allegations are true, he does not cite to any admissible evidence showing that he suffered any adverse job impacts from the hiring of the allegedly unqualified lecturers or teaching associates. Thus, plaintiff has failed to show that the hiring of other lecturers or teaching associates caused him any harm.

In addition, plaintiff claims that he was harmed because Dr. Kriehn gave him a negative performance review. However, he points to no evidence that he suffered any adverse job consequences like loss of pay or benefits as a result of the poor review, and defendant's evidence shows that he actually received a pay raise despite the negative review. Therefore, plaintiff has not raised a triable issue of material fact with regard to whether he suffered harm due to the negative performance evaluation.

Likewise, while plaintiff contends that the investigation into his grievances was a sham, was unduly delayed, and relied on false statements, such as the statement that he was required to teach C++ rather than C in his course, he fails to point to any evidence that would tend to show that he suffered any significant harm like loss of pay, benefits, or

future promotions due to the outcome of the investigation. Also, although plaintiff complains that CSU did not timely respond to his requests for information and did not promptly complete its investigation into his grievances, he fails to show how the delay in responding to his information requests and in resolving the investigation caused any actual harm to him.

Plaintiff has also claimed in his opposition that in February 2017 he was denied a range elevation based on the recommendation of the peer review committee, which relied on the negative peer review of Dr. Kriehn. However, while plaintiff alleges that the committee denied his range elevation request for retaliatory reasons, he also admits that Dr. Nunna later granted his range elevation. (Opposition, ¶ 61.) Plaintiff has not pointed to any other evidence that the original decision to deny his range elevation caused any adverse effect on his job, or otherwise harmed him.

Plaintiff also complains that the final report on the investigation into his grievances stated that he was required to teach C++ programming language as part of his course in the fall of 2016, which was false, as he was not required to teach C++ in the fall of 2016. He claims that Dr. Raeisi, Dr. Kriehn, Dr. Nunna, and Dr. Mouffak made these false statements about him to the investigator to retaliate against him. Again, however, he has not pointed to any evidence that would tend to show that he suffered any adverse job consequences as a result of the allegedly false statement, other than the fact that the investigation concluded that there was no discrimination or retaliation against him. He claims that he suffered lost wages, benefits, earning capacity, and opportunities for advancement in his career, but he does not cite to any admissible evidence to support his claim. He also claims that he was barred from teaching ECE 70/71 for two years, as well as suffering mental and emotional distress, but again cites no evidence to support his allegations. Therefore, he has failed to raise any triable issues of material fact that would tend to show that he suffered an adverse impact to his employment as a result of the false statements in the investigator's final report.

Also, even if defendant's actions are considered to be adverse employment actions, defendant has offered legitimate, non-discriminatory and non-retaliatory reasons for its actions. "If, at trial, the plaintiff establishes a prima facie case, a presumption of discrimination arises… Accordingly, at this trial stage, the burden shifts to the employer to rebut the presumption by producing admissible evidence, sufficient to 'raise[] a genuine issue of fact' and to 'justify a judgment for the [employer],' that its action was taken for a legitimate, nondiscriminatory reason. [¶] If the employer sustains this burden, the presumption of discrimination disappears. The plaintiff must then have the opportunity to attack the employer's proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive. In an appropriate case, evidence of dishonest reasons, considered together with the elements of the prima facie case, may permit a finding of prohibited bias. The ultimate burden of persuasion on the issue of actual discrimination remains with the plaintiff." (*Guz v. Bechtel Nat. Inc.*, *supra*, 24 Cal.4th at pp. 355-356, internal citations omitted.)

Here, defendant has given legitimate reasons for the decisions and actions of which plaintiff has complained. For example, with regard to the failure to pay plaintiff in a timely manner in the fall of 2016, defendant has presented evidence that it had a policy of only paying for up to 16 WTUs in a term, and that the CSU system defaulted to pay

plaintiff the maximum of 16 WTUs even though he taught more than 16 WTUs. (UMF Nos. 8, 9.) However, after plaintiff brought the matter to the attention of Human Resources, CSU paid him in full. (UMF Nos. 10, 11.) Thus, defendant has given a facially legitimate reason for its failure to pay him for all the WTUs he taught in the fall of 2016.

Likewise, while plaintiff has claimed that Dr. Kriehn gave him a negative performance evaluation due to his being biased against plaintiff, defendant has presented evidence that Dr. Kriehn is known for being a hard reviewer. (Kriehn decl., ¶ 4.) The purpose of peer evaluations is to ensure that students in lower division courses are being prepared to perform well in upper division courses and to be successful computer engineers. (*Ibid*.) Plaintiff had also received prior negative evaluations from other reviewers in 2015. (UMF Nos. 22-23.) Plaintiff did not dispute most of the factual assertions in Dr. Kriehn's evaluation. (UMF Nos. 16-21.) Therefore, defendant has given a legitimate reason for the negative peer review.

Next, to the extent that plaintiff complains about the fact that the peer review committee recommended denying his request for a range elevation, the committee's recommendation to deny the range elevation was based on the fact that plaintiff had recently received a negative performance review by Dr. Kriehn. (UMF No. 26.) However, Dr. Nunna later reversed the committee's recommendation and granted the range increase, even though he agreed with the committee's findings. (UMF No. 27.) Therefore, defendant has given a legitimate, non-discriminatory or retaliatory reason for the initial decision to deny his range elevation request.

Also, while plaintiff complains that he was initially assigned five WTUs in the spring and fall of 2017 but that he was later given fewer WTUs, defendant has presented evidence that, although plaintiff was not given all five WTUs as originally assigned, he was still paid as if he had taught all five WTUs. (UMF Nos. 28, 29.) Defendant assigns WTUs based on various neutral factors, including the days and times that classrooms are available, staff availability, and scheduling conflicts with other courses, as well as staff qualifications, ability and desire to teach each course. (Raeisi decl., ¶ 7.) One of plaintiff's courses was cancelled due to low enrollment. (UMF No. 28.) Dr. Raeisi did not assign plaintiff a new course because he did not want to disrupt the schedule and faculty who were already preparing for their new course. (UMF No. 29.) Plaintiff was actually assigned more WTUs than most other lecturers in the term. (UMF Nos. 31, 42.) As a result, defendant has given legitimate reasons for its decision to assign plaintiff fewer than five WTUs for the spring and fall of 2017.

Next, while plaintiff complains that the investigation of his union grievance was handled in a biased and untimely manner, defendant has presented evidence that the delay in the investigation was caused by plaintiff filing separate grievances and requesting that they be handled separately, which tolled the pending investigation of the first grievance. (UMF No. 39.) Plaintiff also amended his complaint and provided new information that he wanted investigated, which led to further delays. (*Ibid*.) In addition, plaintiff and his union representative had limited availability for interviews. (*Ibid*.)

Also, the investigator gave testimony that she handled the investigation as a neutral investigator, and she did not act as an advocate for the employer. (Corey depo., pp. 11:18-23; 35:19 - 36:12.) She based her conclusions on the interviews that she

conducted with plaintiff, Dr. Raeisi, Dr. Kriehn, and Dr. Nunna, as well as the evidence provided by plaintiff. (UMF Nos. 34-37.) Thus, defendant has met its burden of showing that it had legitimate, non-discriminatory and non-retaliatory reasons for its actions even if they were adverse to plaintiff.

As discussed above, plaintiff's opposition is not supported by any admissible evidence or citations to law or legal argument. In any event, plaintiff has not met his burden of showing that defendant's proffered reasons for its actions are a pretext for discrimination or retaliation. He claims that defendant had discriminatory and retaliatory reasons for its actions, but he points to no admissible evidence that would tend to show that defendant's stated legitimate reasons for its conduct were nothing more than a pretext for discrimination or retaliation. Also, in his deposition plaintiff conceded that he had no basis for his claim that defendant was acting out of a discriminatory or retaliatory motive, other than his own unsupported hunch or belief. (UMF Nos. 43, 45.) Such speculation is insufficient to raise a triable issue of material fact to defeat a summary judgment motion where the employer has provided facially legitimate reasons for an adverse employment action. (*Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1009.)

Plaintiff also admitted that he never heard Dr. Nunna, Dr. Raeisi, or Dr. Kriehn make any derogatory comments toward him that were related to his race or national origin. (UMF No. 44.) He has no knowledge of whether any other lecturers were treated more favorably than him. (UMF No. 45.) None of the other lecturers that plaintiff alleges were hired recently are still working for CSU, whereas plaintiff is still working for the University. (UMF Nos. 46, 49.) He also received some favorable treatment from Dr. Nunna, who granted his request for a range elevation despite an unfavorable performance review. (UMF. 27.) Dr. Raeisi assigned plaintiff as many or more WTUs than any other lecturer in 2017. (UMF Nos. 31, 42.)

In his opposition, plaintiff has not cited to any evidence that would tend to cast doubt on defendant's stated legitimate reasons for its actions. Therefore, plaintiff has failed to show that defendant had an illegal discriminatory or retaliatory motive when it took the allegedly adverse actions against him. As a result, the court intends to grant the motion for summary adjudication of the first, second, third and fourth causes of action.

Finally, the court intends to grant summary adjudication of the sixth cause of action for breach of contract. First of all, a public employee cannot state a valid cause of action for breach of contract against a public entity employer.

"Plaintiff has also attempted to state a cause of action for breach of contract or breach of the implied covenant of good faith and fair dealing. However, because plaintiff is a civil service employee, he cannot state such a cause of action." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 23.) "[I]t is well settled in California that public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law." (*Miller v. State of California* (1977) 18 Cal.3d 808, 813, internal citations omitted.)

Even where the employment is subject to a collective bargaining agreement, the employee still cannot sue the public employer for breach of contract. For example, in *Kim v. Regents of University of California* (2000) 80 Cal.App.4th 160, the Court of Appeal held that an employee of the University of California who was subject to a collective bargaining agreement could not sue the University for breach of contract or breach of the implied covenant of good faith and fair dealing for wrongful termination and failure to pay overtime. "In California public employment is held not by contract, but by statute. Relying on *Miller*, our Supreme Court has made it clear that civil service employees cannot state a cause of action for breach of contract or breach of the implied covenant of good faith and fair dealing. This same general principle of law applies to civil service and noncivil service public employees alike." (*Kim v. Regents of University of California* (2000) 80 Cal.App.4th 160, 164, internal citations omitted.) "The University is a statewide administrative agency with constitutionally derived powers. Its employees are public employees. The University is administered by the Regents. Regents have rulemaking and policymaking power in regard to the University; their policies and procedures have the force and effect of statute. [¶] *Miller* and *Hill* apply. [Plaintiff] cannot state a cause of action against the Regents for breach of contract or breach of the implied covenant." (*Id.* at p. 165, internal citations omitted.)

Likewise, here plaintiff is a public employee, and CSU is a public entity employer. Plaintiff's employment is by statute rather than pursuant to a contract. While plaintiff alleges a breach of the collective bargaining agreement, he is still a public employee and thus his breach of contract claim is barred as a matter of law. (*Kim*, *supra*, at p. 165.)

Also, plaintiff's contract claim is barred by his failure to comply with the Government Tort Claims Act. "Section 905 requires the presentation of 'all claims for money or damages against local public entities,' subject to exceptions not relevant here. Claims for personal injury and property damage must be presented within six months after accrual; all other claims must be presented within a year. '[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented ... until a written claim therefor has been presented to the public entity and has been acted upon ... or has been deemed to have been rejected....' "'Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity.'" (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737–738, internal citations omitted.) The California Supreme Court has also held that the claims filing requirement includes contract claims against the government. "Contract claims fall within the plain meaning of the requirement that 'all claims for money or damages' be presented to a local public entity." (*Id.* at p. 738, internal citation omitted.)

Here, plaintiff has not alleged that he complied with the claims filing requirement with regard to his breach of contract claim, and the evidence indicates that he never filed a claim with the State that alleged a breach of contract. (See SAC generally, see also UMF Nos. 32, 61, 67.) Nor has plaintiff submitted any evidence that he filed a timely claim before bringing the present action. While he contends that his union grievances are the equivalent of a government claim, the court has already rejected this argument previously in its ruling on the motion for judgment on the pleadings. (See court's July 16, 2020 order on motion for judgment on the pleadings, p. 4.) Therefore, the court intends to find that plaintiff has failed to comply with the Government Tort Claims Act with regard

to his breach of contract claim, and grant summary adjudication of the breach of contract cause of action.

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: DTT on 6/1/2022.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Estate of Patricia Rodriguez v. Sor***
Superior Court Case No. 20CECG02067

Hearing Date: June 7, 2022 (Dept. 501)

Motion: by Plaintiffs to Amend Complaint and Vacate Existing Default

Tentative Ruling:

To continue the hearing to Wednesday, July 20, 2022, to allow plaintiffs to correct the deficiencies in their motion as noted below. A supplemental declaration which corrects the deficiencies shall be filed and served no later than June 28, 2022.

If oral argument is timely requested, such argument will be heard on Thursday, June 9, 2022, at 3:30 p.m. in Dept. 501.

Explanation:

The motion fails to include a copy of the proposed amended pleading, as required by California Rules of Court, rule 3.1324(a)(1). Furthermore, the motion requests leave to file a First Amended Complaint, but a First Amended Complaint has already been filed, on July 31, 2020. Therefore, plaintiffs should be requesting leave to file a *Second* Amended Complaint, and the proposed pleading should be so designated.

Also, the supporting declaration fails to "[s]tate what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located" and fails to "[s]tate what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located." (Cal. Rules of Court, rule 3.1324(a)(2)-(3).)

Given the extreme congestion on the court's calendar, the court finds it is in the interest of judicial economy for both the court and the parties to grant a continuance to correct the deficiencies rather than to simply deny the motion.

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: DTT (Judge's initials) on 6/5/2022 (Date).