Julie Baker v. Central Coast Water Authority 24CV06776
Hearing Date: July 9, 2025
Demurrer/Motion to Strike (FAC)/CMC

PROPOSED TENTATIVE

The court on March 12, 2025, adopted its tentative ruling in full. The court sustained defendant's demurrer to the single cause of action alleged pursuant to Penal Code section 502, subdivision (e)(1), for failing to plead compliance with the Government Claims Act requirements. In so doing, the court rejected plaintiff's argument that the futility exception can act as a basis to excuse compliance with the prefiling claim requirements contemplated by Government Claims act, per *Olson v. Manhattan Beach Unified School Dist.* (2017) 17 Cal.App.5th 1052, 1063.) The court nevertheless granted leave to amend based on the delayed-discovery rule, following allegations made in the complaint that defendant discovered the violation on September 30, 2024, despite defendant's contentions that plaintiff made contrary allegations in an earlier lawsuit filed by plaintiff against defendant (*Baker v. Central Coast Water Authority*, Case No. 23CV05414, ultimately dismissed by Judge Rigali without prejudice). The reason for this was not complex – defendant failed to ask the court to take judicial notice of any documents from Case No. 23CV05414. The court incorporates the substance of its earlier tentative into this order.

Plaintiff in propria person (despite being represented by counsel for purposes of demurrer) filed a verified first amended complaint on March 27, 2025 (FAC). The first eleven (11) paragraphs, as well as paragraph 13 of the FAC, are the exact same as those alleged in the initial complaint. Notably, plaintiff recounts the same paragraph 10 contained in the original complaint, as follows: "On or around September 30, 2024, Baker read Fortinet's security procedures via their website. On information and belief, Baker asserts that [defendant's] IT Vendor, Compuvision, based their cybersecurity on Fortinet's cybersecurity platform procedures, which uses AI and advanced analytics to monitor activity across users, devices, networks, emails, applications, files and log monitoring. Compuvision also included cell phone log monitoring. It was this reading that caused [plaintiff] to realize the full scope of the fact that her systems were unlawfully accessed." In new paragraph 12, plaintiff alleges as follows: "On information and belief, Baker asserts that she did not make any administrative claim or attempt to exhaust administrative remedies, as such actions would have been futile and subject to [defendant's bias]… Despite this, given this Court's ruling on Defendant CCWA's demurrer to the Complaint, Baker has submitted via U.S. Mail a Government Claim against CCWA simultaneously with the submission of this first amended complaint." Plaintiff has attached a copy of the submitted claim to the FAC as Exhibit A.

Defendant demurs to the FAC, claiming 1) plaintiff's reliance on the delayed-discovery rule is "misplaced and disingenuous"; 2) the futility exception does not apply to the Government Claims process; and 3) since the accrual of plaintiff's cause of action occurred no later than December 21, 2022, based on allegations in her earlier complaint, the current March 24, 2025, government claim made by plaintiff is untimely. Defendant asks the court to sustain the demurrer without leave to amend, this time asking the court to take judicial notice of the earlier complaint (as well as other court documents). Defendant has also filed a motion to strike all requests for

punitive damages contained in the prayer for relief. Plaintiff has filed opposition, and defendant has filed a reply. All briefing has been examined.

A) *Judicial Notice*

The court grants defendant's request to take judicial notice of the complaint, as well as the "entire court file," in *Baker v. Central Coast Water Authority*, Santa Barbara Superior Court Case No. 23CV05414, which had been assigned to Judge Rigali. Plaintiff does not oppose the request.

The court gleans the following relevant facts from these judicially noticed documents. It is evident from the first amended complaint in Case No. 23CV05414 that plaintiff was suing defendant for "wrongful termination and defamation of character." In advancing these causes of action, plaintiff alleged that she was employed by defendant from July 1, 2003, to December 10, 2021. Further, as relevant for our immediate purposes, plaintiff alleged that prior to termination, she talked to maintenance supervisor Todd York "regarding my concern of unusual files activity running in the background on my workstation, and indications of being monitored by an outside agency outside of workplace." On November 4, 2021, plaintiff visited the offices of Brownstein, Hyatt, Farber and Schrek to speak with attorney Stephanie Hastings "regarding malicious activities on my workstation." She pleaded that "[m]alicious activity showed on computer logs I printed from my workstation, and a hand-written copy of a log from my personal laptop, indicating my personal laptop, indicating my personal Microsoft Office 365 credentials were used to connect me to my workstation." Plaintiff attached several exhibits to the first amended complaint, which involved copies of documents/logs from her personal computer. Plaintiff pleaded that the "attached logs showed" "unauthorized access of my personal credentials." On November 5, 2021, plaintiff was placed on administrative leave and was terminated via letter on December 10, 2021, for contacting an outside vendor (Hastings) about monitoring. Plaintiff also observed in the operative pleading that accessing "a personal email account using credentials that did not belong to [defendant] is actionable under the Computer Fraud and Abuse Act (CFAA), codified at title 18, United States Code, Seton 1030." Plaintiff expressly noted there were numerous other "unusual modifications on my workstation," such as hidden icons, amongst other things, that concerned her. Judge Rigali ultimately sustained defendant's demurrer; on August 26, 2024, Judge Rigali dismissed the matter without prejudice, and entered judgment accordingly.

B) *Legal Background*

Generally, no suit for damages may be maintained against a government entity unless a formal claim has been presented to such entity and it has been rejected (or is deemed rejected by the passage of time). (Gov. Code, §§ 912.4, 945.4; see *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767, 1776.) Failure to allege facts in the complaint demonstrating compliance with the prelitigation government claim requirements subjects the complaint to a general demurrer. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) Government Code section 911.2, subdivision (a) provides a one-year statute of limitations for presenting a government claim (when the claim does not involve death or personal injury, as is the case here). The time

limit runs from the date the claimant's right to sue arises. (See Gov. Code, § 901 [date of accrual means the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented in the Government Claims Act]); see also *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209 (superseded by statute as stated in *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 905-906); *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118.) A cause of action generally accrues when the "cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 389.)

This court made two conclusions in its previous order that frame the current inquiry. First, it determined that the futility doctrine, as alleged by plaintiff then and now, is inapplicable to excuse compliance with the Government Claims Act filing requirements. As noted above, the court cited to *Olson v. Manhattan Beach Unified School Dist.* (2017) 17 Cal.App.5th 1052, 1063, which concluded as follows: "[] Appellant contends he was excused from filing a government claim because it would have been futile, as it was clear that [defendant] would deny his claim. Futility is a ' ' narrow exception' to the doctrine requiring exhaustion of administrative remedies . [Citations.] ***We reject appellant's argument***. [¶] First, appellant has identified no case applying the futility exception to the claim filing requirement. A 'futile' claim is not a claim statutorily excepted from the claim filing requirements. (See Gov. Code, § 905 [listing exceptions].) [¶] Moreover, futility is an exception to the exhaustion of administrative remedies, the claim filing requirement is not an administrative remedy. (See *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1155 ['the origin and purposes of the government claim filing requirements and the administrative remedies exhaustion doctrine differ, and elimination of the exhaustion requirement does not release a litigant from the need to comply with the Government Claims Act requirements'].) [¶] Finally, application of the futility doctrine would contravene the purposes of the claim filing requirements . . . . Even a 'futile' claim would provide a public entity with notice of a potential claim enabling adequate investigation and fiscal planning." (*Id.* at p. 1063, emphasis added.) Under *Olson*, the futility doctrine is inapplicable as a basis to excuse compliance with the prefiling claim requirements contemplated by the Government Claims Act. Second, the court previously concluded that the delayed discovery rule applies to the government claims filing requirement (See, e.g., *Estill v. County of Shasta* (2018) 25 Cal.App.5th 702, 707–709 [discovery rule at least in theory applied, although on the facts is did not delay accrual of the invasion of privacy cause of action against defendant public entity, for claimant "had reason to suspect that someone had done something wrong to her long before" the date she claimed to have discovered the defendants' identities]; see also *J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1222, and cases cited therein [recognizing delayed discovery rule applies in Government Claims Act context].)

The court adds additional glosses to its legal background discussion considering the new arguments advanced. The scope of a demurrer is limited to the facial allegations of the complaint

and any documents judicially noticed. (*Panterra GP, Inc. v. Superior Court of Kern County* (2022) 74 Cal.App.5th 697, 710-711.) More importantly, after an amended pleading has been filed, courts will disregard the original pleading. However, an exception to this rule is found where an amended complaint attempts to avoid defects set forth in a prior complaint by ignoring them. The court may examine the prior complaint to ascertain whether the amended complaint is merely a sham. Any inconsistencies with prior pleadings must be explained; if the pleader fails to do so, the court may disregard the inconsistent allegations. Accordingly, a court is not bound to accept as true allegations contrary to factual allegations in former pleading in the same case. (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 946*State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 412[" '[u]nder the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment' "].) Critically for our purposes, this exception applies not only to an amended pleading filed in the same action, ***but also to a first pleading filed in a separate action, as was done here***. "Both trial and appellate courts may properly take judicial notice of a party's earlier pleadings and positions as well as established facts from both the same case *and other cases.* [Citations.] The complaint should be read as containing the judicially noticeable facts, 'even when the pleading contains an express allegation to the contrary.' [Citation.] A plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint or by suppressing facts which prove the pleaded facts false. [Citation.] Likewise, the plaintiff *may not plead facts that contradict the facts or positions that the plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false.* [Citation.]" (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 877, italics in original; see *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 343–344.)

Finally, Civil Code section 3294, subdivision (b) provides that an "employer shall not be liable for damages pursuant to subdivision (a) [punitive damages] upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness if the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which damages are awarded or was personally guilty of oppression, fraud or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." Further, if defendant is a corporate employer, plaintiff must allege facts that show corporate officer or director knew of, or authorized, the offending employee's conduct; nor has plaintiff alleged that that any "managing agent" pursuant to the standards enunciated in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 577 authorized or ratified the conduct, as required by Civil Code section 3294, subdivision (b). Irrespective of this, it is settled that a plaintiff cannot recover punitive damages against a public entity. (Gov. Code, § 818 [notwithstanding any other provision of law, a public

entity is not liable for damages awarded under Civ. Code, § 3294]; *Pearl v. City of Los Angeles* (2019) 36 Cal.App.5th 475, 486.)

C) *Merits of Demurrer*

As noted above, plaintiff in her first amended complaint filed in this action makes the following allegations: 1) she was employed by defendant between July 1, 2003 and December 10, 2021; 2) within this time period, she "owned a personal computer, namely an HP Pavilion laptop"; 3) in addition, she owned an electronic mail account, which existed prior to her employment; 4) defendant "unlawfully and without consent accessed Baker's personal computer and electronic email account during her period of employment," and this included access to "calendars, contacts, e-mails, files, phone calls, voice data, facial recognition, and personal data.": and (most significantly) 5) on or around "September 30 of 2024, [plaintiff] read Fortinet's security procedures via their website. On information and belief, [plaintiff] asserts that [defendant's] IT Vendor, Compuvision, based their cybersecurity on Fortinet's cybersecurity platform procedures, which uses AI and advanced analytics to monitor activity across users, devices, networks, emails, applications, files and log monitoring. Compuvision also included cell phone log monitoring. It was this reading that caused [plaintiff] to realize the full scope of the fact that her systems were unlawfully accessed." (¶ 10.)

There is a patent conflict between the allegations in the first amended complaint in Case 23CV05414 and the allegations contained in paragraph 10 of the FAC (recounted above). The court allowed plaintiff to file a government claim under the delayed-discovery rule, as the accrual date under the Government Claims Act is the same as under the applicable statute of limitations, and the court was required to give credence to the September 30, 2024, date from the face of the complaint. (Gov. Code,§ 901; *State of California v. Superior Court, supra*, 32 Cal.4th at pp. 1244-1245.) But the judicially noticed documents now before the court change the delayed-discovery calculus. "Simply put, in order to employ the discovery rule to delay accrual of a cause of action [or in this case, a government claim], a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of the injury. If such an investigation would have disclosed a factual basis for a cause of action, the statute of limitations [or, here, accrual for the Government Claims Act requirement] begins to run when the investigation would have brought such information to light." (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 808-809.)

The *Fox* court went further: "A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' [Citations.] Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." (*Fox, supra*, 35 Cal.4th at p. 807.) "The discovery rule only delays accrual until the plaintiff has,

or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have ' " 'information of circumstances to put [them] *on inquiry*' " ' or if they have ' " 'the opportunity to obtain knowledge from sources open to [their] investigation.' " ' [Citations.] In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id*. at p. 807; see also *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 405, fn. 5; *Jolly v. Eli Lilly & Co*. (1988) 44 Cal.3d 1103, 1110-1111.) Rather than examining whether plaintiff suspects facts supporting each specific legal element of a particular cause of action, courts look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them. (*Ross v. Seyfarth Shaw LLP* (2023) 96 Cal.App.5th 722, 741.) If plaintiffs have notice or information of circumstances that would put a reasonable person on inquiry notice, the accrual period is activated. (*Brewer v. Remington* (2020) 46 Cal.App.5th 14, 24; *Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 63.) Put another way, for a cause of action to accrue, the plaintiff need not suspect specific facts underlying each of its elements; it is enough that she at least has reason to suspect a type of wrongdoing has injured her. (*Ovando*, supra, at p. 66, fn. 10.)

Plaintiff in the first amended complaint in Case No. 23CV05414 admitted that she suspected there was illegal monitoring (wrongdoing) involving her laptop and her email account at least by her termination date in December 2021, if not earlier – the very type of wrongdoing at issue in this action. She described the violations in the earlier pleading as "monitoring" her laptop "by an outside agency," "accessing her email account," "malicious activity showed on computer logs I printed from my workstation," use of her "personal credentials" to access her computer, all "unauthorized." Plaintiff listed in that earlier pleading the many clues from her computer that supported this suspicion. Yet plaintiff in the first amended complaint here ignores ***all*** of these allegations, claiming that she discovered "on September 30, 2024" the "full scope" of the violations after she contacted plaintiff's IT vendor. Yet with this language plaintiff seems to concede that she was aware of and suspected the type of wrongdoing at issue in this action at least by December 2021, even if she did not know its "full scope," and yet in the end did nothing to pursue it in a timely way. (*Ross v. Seyfarth Shaw LLP* (2023) 96 Cal.App.5th 722, 741 [courts look to whether the plaintiffs have reason to suspect that a type of wrongdoing has injured them].) Distilled to its essence, plaintiff cannot ignore here her earlier allegations made concerning her suspicions about the very wrongdoing at play in this action. The fact she did not know the "full scope" of the violation is not the dispositive inquiry, for the delayed-discovery rule inquiry focuses on what plaintiff suspected earlier, thus triggering her duty to investigate, viewed objectively. A reasonable person in plaintiff's position would have clearly investigated the matter much earlier than September 30, 2024, based on the information plaintiff concededly possessed in December 2021. Plaintiff offers no explanation as to why she waited until September 2024 to investigate fully. The import of the judicially noticed documents (something

not examined in the first demurrer) renders the government claim filed on March 24, 2025, manifestly untimely.

The issue is whether leave to amend should be given to allow plaintiff another opportunity to explore the contours of the delayed discovery rule, and thus allowing her an opportunity to render the March 24, 2025, government claim a timely filing. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 319 [court looks to see if there is a reasonable possibility the defect can be cured by amendment].) The standard for the "delayed discovery rule" is an objective one – it is not hypertechnical, and plaintiff is required to conduct a reasonable investigation after becoming aware of an injury, and she is charged with knowledge of the information that would have been revealed by an investigation. Plaintiff admits in her first amended complaint in Case No. 23CV05414. that not only did she suspect the nature of the wrongdoing at issue, but she had ***actually*** contacted plaintiff's "IT Vendor, Compuvision" on November 4, 2021, through "Mike Husted of Compuvision ([defendant's outside I.T. Vendor)" – the very same company she contacted in September 2024. By her own admission therefore plaintiff was aware as of November 4, 2021, that Compuvision had relevant information for her, and yet she did nothing to pursue it from then until September 2024. The dormancy of her investigation, given all the information she admittedly possessed at the time of the first lawsuit, juxtaposed with the conclusory allegations here, is fatal to her ability to rely on the delayed discovery rule in order to show compliance with the Government Claims Act. The court therefore sustains the demurrer *without leave to amend*, as there is no reasonable possibility plaintiff can overcome the import/impact of her earlier admissions.

D) *Merits of Motion to Strike*

Although defendant's motion to strike is technically moot in light of the court's conclusion with regard to the demurrer, it is nevertheless settled that plaintiff cannot claim punitive damages against defendant, a public entity. Accordingly, the motion to strike all references to punitive damages is granted without leave to amend.

Summary:

The court sustains the demurrer without leave to amend. Although technically moot, the court also grants the motion to strike all references to punitive damages, without leave to amend. The court directs defendant to provide a proposed order and judgment of signature.

The parties are directed to appear either in person or by Zoom.