

**Calaveras Superior Court
Civil Law & Motion Calendar
Friday, June 5, 2020
Courtroom #2; Hon. David M. Sanders**

9:00 AM	18CV42976	Ptff's Motion for Reconsideration on Order Sustaining Demurrer to Cause of Action for Violation of Govt. Code §12940(A) And Constitutional Torts; Request for Leave to File Third Complaint with Amendments and Additional Causes of Action	08/28/2020 Motion-Summary Judgment/Adjudication 09/09/2020 Case Management Conference
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Ptff/Pet:	Barr, Howard Todd	Atty:	Shepardson, John Arthur
Def/Res:	County Of Calaveras	Atty:	Angelo, Kilday & Kilduff

Tentative Ruling: On January 5, 2018, plaintiff filed the Complaint. Defendant timely demurred and on September 4, 2018, plaintiff filed the First Amended Complaint. Defendant timely demurred and on December 20, 2018, plaintiff filed the Second Amended Complaint. On January 24, 2019, defendant answered. Plaintiff filed this motion on May 8, 2020. (Plaintiff withdrew the request for reconsideration in his Reply filed May 27, 2020.) CCP section 576 provides “[a]ny judge, at any time before or after commencement of the trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading” The Court finds plaintiff timely filed this motion as no trial date has been set.

On January 10, 2020, the Court denied plaintiff’s request to file an amended third complaint because plaintiff did not comply with California Rules of Court 3.1324(b) which states that a separate declaration must accompany the motion specifying the following: the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and the reasons why the request for amendment were not made earlier. Although plaintiff’s declaration is somewhat lacking, it substantially complies with California Rules of Court 3.1324(b); therefore, the Court exercises discretion to rule on the merits of the motion.

Plaintiff’s motion to amend the complaint to include a cause of action for violation of Government Code section 12940(d) is DENIED. The Court sustained defendant’s demurrer, without leave to amend, to plaintiff’s previous cause of action for violation of Government Code section 12940(a) because it sought to confer a benefit that is not provided in the statute which only addresses adverse discrimination. By alleging this new violation, the plaintiff is attempting to skirt the Court’s previous ruling as section 12940(a) similarly does not confer the benefit plaintiff claims it does. The Court finds the doctrine of *stare decisis* applies.

Plaintiff’s motion to amend the complaint to include a cause of action for violation of Labor Code section 1102.5(b) is GRANTED. Labor Code sections 1102.5(b) and (c) provide different protections for employees. Labor Code section 1102.5(b) provides protections for an employee for disclosing information to a government or law enforcement agency and (c) provides protection for an employee against retaliation for refusing to participate in an activity that would result in a violation of state or federal statute. Amending the complaint to include Labor Code section 1102.5(b), will not be duplicative and/or unnecessary. The Court further finds the filing of the third amended complaint to include a cause of action for violation of Labor Code section 1102.5(b) does not unduly prejudice the defendant as no trial date has been scheduled. Plaintiff shall file and serve the amended third complaint within fifteen (15) court days.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.