

GRAHAM v. CHANCE, et al

23CV46928

DEFENDANTS' DEMURRER

Plaintiff alleges eight causes of action; defendants have generally demurred to all causes of action except the fourth for battery.

A demurrer admits the truth of all material factual allegations in the complaint; thus, to defeat a demurrer, plaintiffs need only plead facts showing they may be entitled to some relief (*Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal. App. 3d 882); for defendants to prevail on a demurrer they must establish the complaint 'has included allegations that clearly disclose some defense or bar to recovery. [Citation omitted] Thus, a demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense. [Citation omitted]" (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182-183).

Plaintiff's objections to defendants' evidence presented in support of the demurrer are sustained in toto.

Plaintiff has sufficiently pled all causes of action under California's liberal pleading practice. ("If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a general demurrer" *Quelimane Co. Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39.) Additionally, the Court concurs with plaintiff's assertion that many of the arguments raised in the demurrer cite to irrelevant and/or inapropos code sections and the demurrer attempts to include "evidence" not germane at the pleading stage which is limited to the four corners of the pleading.

The demurrer is **OVERRULED**. Defendants to file an answer within 20 (twenty) calendar days of service of this ruling.

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.

HANNINK, et al. v. HERNANDEZ

23CV46522

DEFENDANT'S MOTION TO SET-ASIDE PLAINTIFFS' MOTION TO COMPEL AND COURT'S RULING RE SAME

This action arises from an alleged breach of contract relating to three loans made to defendant.

This motion is brought by the Individual In pro per whose presence in the matter is under a power of attorney she holds from the defendant. Generally, a trustee or executor who is not a lawyer cannot appear in pro per in legal proceedings to protect assets of third parties, their estate or trust "because in this capacity such trustee would be representing interests of others and would therefore be engaged in the unauthorized practice of law." (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548). The Court cautions ZMs. Greenmoot to abstain from any further improper court appearances.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754- 6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court.

Failure to include this language in the notice is a basis for the Court to deny the motion.

In addition to this procedural shortcoming, the Court notes no legal basis is provided for defendant's claimed relief or her standing in this matter.

Based on the foregoing, the motion is DENIED on both procedural and substantive grounds.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

HINES, et al v. UNITED PARCEL SERVICE, INC., et al

23CV46772

**DEFENDANT JEREMY PRATT'S RENEWED MOTION TO
COMPEL ARBITRATION OF ALL CLAIMS**

Defendant Pratt has moved for an order compelling all claims to arbitration and dismissing this lawsuit (curing the prior failure to comply with Local Rule 3.3.7), under the Federal Arbitration Act ("FAA") and the terms of the arbitration agreements between UPS and plaintiffs.

FAA (9 U.S.C. §§ 1, et seq.) applies to any "contract evidencing a transaction involving commerce." (9 U.S.C. § 2.) The US Supreme Court has interpreted the FAA's application broadly, stating that the FAA is a "body of substantive law ... enforceable in both state and federal courts." (*Perry v. Thomas*, (1987) 482 U.S. 483, 489 [citing *Southland Corp. v. Keating* (1984) 465 U.S. 1, 11–12]. Here, the arbitration agreements signed by each plaintiff expressly provide that the FAA governs their terms and that they evidence a transaction involving commerce. Accordingly, the FAA governs the arbitration process here. (See *Rodriguez v. Am. Techs., Inc.* (2006) 136 Cal. App. 4th 1110, 1116.)

California similarly has a "strong public policy in favor of arbitration." (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal. App. 4th 227, 229; see *United Trans. Union, AFL CIO v. Southern Cal. Rapid Transit Dist.* (1992) 7 Cal. App. 4th 804, 808; *Evenskaas v. California Transit, Inc.* (2022) 81 Cal. App. 5th 285.)

Further support is afforded by the plaintiffs' non-opposition to the Motion to Compel. The court is entitled, but not required, to consider that lack of opposition to be an admission the motion is meritorious. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

Motion to Compel Arbitration is GRANTED. (The request to dismiss is untimely and not ripe, as the Court retains jurisdiction over this matter until the arbitration process is fully completed and plaintiffs then are to dismiss this matter.)

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant Pratt to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

PETTINCHIO v. TISCORNIA

23CV47094

PLAINTIFF'S MOTION TO CEASE AND DESIST; INJUNCTION; EMERGENCY RELIEF

Plaintiff filed a two page complaint and a two page motion requesting a cease-and-desist order preventing his landlord from entering his rented premises to repair its electrical service.

(The pleadings are confusing to say the least. Plaintiff Pettinichio filed an initial complaint; Jim W. Hildreth for Gretel Tiscornia prepared the Answer, but it reversed the parties, i.e. listing Tiscornia as Plaintiff and Pettinichio as Defendant.)

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754- 6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m., the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court.

Failure to include this language in the notice is a basis for the Court to deny the motion.

In addition to this procedural shortcoming, the Court notes no legal or factual basis is provided for the claimed relief in either the complaint or the present motion.

Based on the foregoing, the motion is DENIED on both procedural and substantive Grounds, without prejudice to refile an appropriate motion.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

**SURVIVOR'S TRUST, JODY GRAHAM, TRUSTEE v.
STATE OF CALIFORNIA, ET AL.**

20CV44999

**DEFENDANT CALIFORNIA STATE TEACHER RETIREMENT
SYSTEM'S ['CalSTRS'] DEMURRER AND MOTION TO STRIKE
RE PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff's First Amended Complaint was filed on Sept. 6, 2023; defendant CalSTRS has demurred and filed a Motion to Strike.

When any ground for objection to a complaint appears on its face, or from any judicially noticed matter, the objection may be made by demurrer to the complaint. (Code of Civil Procedure §430.30(a).) Objections to a complaint may be made on grounds including the court lacking subject matter jurisdiction of the cause of action alleged, and the complaint not stating facts sufficient to constitute a cause of action. (CCP. § 430.10.) "Where written documents are the foundation of an action and are attached to the complaint and incorporated therein by reference, they become a part of the complaint and may be considered on demurrer." (*Qualcomm, Inc. v. Certain Underwriters at Lloyd's, London* (2008) 161 Cal.App.4th 184, 191.)

A demurrer admits the truth of all material factual allegations in the complaint; thus, to defeat a demurrer, plaintiffs need only plead facts showing they may be entitled to some relief. (*Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal. App. 3rd 882.) For a defendant to prevail on a demurrer they must establish the complaint 'has included allegations that clearly disclose some defense or bar to recovery [Citation omitted] Thus, a demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense. [Citation omitted.]" (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182-183.) A cause of action is subject to demurrer for failure to state a claim if the complaint discloses an affirmative defense on its face and the plaintiff has not "pleaded around" that defense." (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 824-825.)

Key points raised in the demurrer are the timeliness and content of the government claim submission and the question of the exhaustion of administrative remedies.

The applicable claims statute is found in Government Code § 945.4, which provides a six-month claim period for a suit for money or damages. Plaintiff's FAC includes a claim form submitted in this matter (Exhibit B), identifying date of incident as May 6, 2019. Therefore, the claim against CalSTRS was required to be filed within six months by November 6, 2019 but the claim was not filed until April 20, 2020.

Plaintiff's Government Claim form is "DGS ORIM 006 (Rev. 08/19), the form provides the following language: "LATE CLAIM EXPLANATION (Required, if incident was more than six months ago). The space after the foregoing simply identifies the plaintiff as the Trustee but provides no factual basis for a late claim request.

Even if one were to consider the Form as Plaintiff's application for leave to present a late claim, Government Code § 911.6, sub.(c) states that "[i]f the [Department of General Services ("DGS")] board fails or refuses to act on an application [for leave to present a late claim] within the time prescribed by this section, the application shall be deemed to have been denied on the 45th day..." This is different than the situation outlined in Government Code § 912.4, subsection (c) which deems a rejection of a timely claim on the 45th day and provides an automatic right to sue under Government Code §§ 913 and 945.6. However, that is not the case with Gov. Code § 911.6(c) where there is no automatic right to sue.

Thus, on its face, plaintiff failed to timely file a governmental claim, an absolute bar to this suit.

Plaintiff cites two federal cases in support of their position that there is no requirement to exhaust administrative remedies – *Yates v. Symetra Life Ins. Co.* (8th Cir. 2023) 60 F.4th 1109, and *McQuillin v. Hartford Life & Accident Ins. Co.* (2d Cir. 2022) 36 F.4th 416. (Id.) Neither case is applicable or binding authority for this Court because they potentially are persuasive, not mandatory, authority. (*Taylor v. Lockheed Martin Corp.* (2003) 113 Cal.App.4th 385-386.) Further, neither case discusses the California statutes or regulations about the administrative remedy process that applies to this case.

Plaintiff also argues that CalSTRS did not advise Plaintiff or Ms. Hess (the decedent) of the administrative remedies when forwarding the supplemental benefit arrearages, and that the decedent was not required to exhaust such remedies.

A pension plan, such as the one CalSTRS administers, is a contract, the terms of which – including rights to administrative remedies – were accepted by the decedent when she became a CalSTRS member. (See *Hannon Engineering, Inc. v. Reim* (1981) 126 Cal.App.3d 415, 425; see also *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 392; additionally, decedent was not required to "search" for the administrative remedies as they are outlined in the California Code of Regulations. (See Education Code § 22219(b); 5 CCR § 27101(b).

In determining whether to sustain a demurrer with or without leave to amend, the court evaluates whether there is any reasonable possibility that the defect can be cured by amendment. (*Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636.) "If there is any reasonable possibility that the plaintiff can state a good cause of action, it is error to sustain a demurrer without leave to amend." (*Youngman v. Nevada Irr. Dist.* (1969) 70 Cal.2d 240, 245.)

The failure to properly challenge the denial of leave to present a late claim is not something that can be remedied or addressed over three years after the untimely submission of the Claim. Therefore, this Court lacks subject matter jurisdiction over this dispute, plaintiff did not attempt to address the challenges in an administrative forum and the allegations fail to state causes of action, all of which cannot be remedied by any potential amendment.

The demurrer to the First Amended Complaint is SUSTAINED, Without leave to amend. The Motion to Strike is Denied as moot.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant CalSTRS to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.