

Thursday, September 17, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

18-CVC-10898

ALVAREZ, BLACKIE

VS.

SUTTER CREEK POLICE CHIEF
INDIVIDUAL AND OFFICIAL

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

Defendant's unopposed demurrer to the complaint is SUSTAINED in its entirety without leave to amend. The court finds the pleading fails to state facts sufficient to constitute a cause of action. (CCP § 430.10(e).)

The complaint, against a public employee, also fails to allege compliance with the Government Claims Act.

The function of a demurrer is to test the legal sufficiency of a pleading. (Rakestraw v. Cal. Physicians' Service (2000) 81 Cal.App.4th 39, 42) In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, as well as matters which may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) However, contentions, deductions or conclusions of fact or law are insufficient to constitute a cause of action. (Id.) "A pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless." (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.)

When a pleading "does not state facts sufficient to constitute a cause of action" a party may object to the pleading. (CCP §430.10(e).)

No Statutory Basis for Liability

The complaint fails to allege facts demonstrating any statutory duty or other statutory basis for liability on the part of the Defendant. Public entity tort liability in California is not governed by common law principles of negligence, but is rather based exclusively on legislation. Absent a statute declaring liability of a public entity there can be no liability. (Government Code §815(a); Sierra Creason v. State Dept of Health Services (1998) 18 Cal.4th 623, 630; Lopez v. Southern Cal. Rapid Transit Dist. (1985) 40 Cal.3d 780, 785, fn.2.)

Failure to Comply with the Government Claims Act

The complaint fails to allege facts demonstrating compliance with Government Tort Claim presentation requirements, as required by statute and case law. No 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 has been presented to the public entity and has been acted upon, or has been deemed to have been rejected. (See Government Code § 810, et seq.)

Leave to Amend

Leave to amend is not warranted where the amendment would not serve any "useful purpose." (Routh v. Quinn (1954) 20 Cal.2d 488, 494.) Plaintiff bears the burden of proving the demurrable defect can be cured by amendment. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) Denial of leave to amend is a harsh result, but nonetheless appropriate "where the facts are not in dispute, and the nature of the plaintiff's claim is clear, but, under the substantive law, no liability exists. Obviously no amendment would change the result." (Haro v. Ibarra (2009) 180 Cal.App.4th 823, 835.)

Moving party is to prepare and submit a proposed order sustaining the demurrer and a judgment of dismissal.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.