SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: February 20, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	2005-1-CV-044225	Columbia Credit Services, Inc. v. Aaron Fontanilla	Order of examination: parties to appear.
LINE 2	22CV406506	Gerard Salinas v. County of Santa Clara et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	22CV407345	Vivian Wong v. Jeremy Louis Miranda Gandoza	Click on LINE 3 or scroll down for ruling.
LINE 4	20CV362511	Daron Landry v. Xin Yue Li et al.	Motion to compel discovery responses and for RFAs to be deemed admitted: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party (defendants) shall submit a proposed order.
LINE 5	20CV370667	Helena R. Chang et al. v. Angele J. Leong	Motion to compel discovery responses: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion, including the request for $990 in monetary sanctions. Moving party (defendant) shall submit a proposed order.
LINE 6	23CV414017	Alvaro Miranda Camargo v. Ford Motor Company et al.	OFF CALENDAR. The hearing on this motion has been continued via ex parte application to April 16, 2024 at 9:00 a.m. in Department 10.

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Calendar Line 2
Case Name: *Gerard Salinas v. County of Santa Clara et al.*
Case No.: 22CV406506

I. FACTS

This is an action for workplace discrimination by plaintiff Gerard Salinas against defendants Santa Clara County and Sara Cody, the public health officer of Santa Clara County (collectively, "Defendants").

According to the operative second amended complaint ("SAC"), Salinas was a Santa Clara County employee working as an "Electrical Electronic Tech" in the Roads and Airports Division. (SAC, ¶ 2) In mid-2021, the County required its employees to receive vaccinations for SARS-CoV-2, the virus that causes the COVID-19 disease. (*Ibid.*) From mid-2021 to November 15, 2021, Salinas sought a religious exemption or accommodation from Defendants, and he submitted a Religious Exception Request Form in August 2021. (*Id.* at ¶ 3; see also Exh. A.) On November 4, 2021, Defendants sent a notice of denial of the religious exemption, determining that his request "[was] not based on a sincerely held religious belief, practice, or observance" and was instead being made on a "non-religious basis."[1] (*Id.* at ¶¶ 4, 18.) Salinas was not afforded an opportunity to appeal or take part in an interactive process to discuss further this determination or any possible accommodations. (*Id*. at ¶¶ 5, 49.)

After Salinas sought a religious exemption, Defendants allegedly commenced a policy of harassment. (SAC, at ¶ 2.) Salinas claims that he struggled with intense discrimination and segregation from other employees because of his resistance to being vaccinated, and his employer required him to be separated from others at lunch, breaks, and in restrooms. (*Ibid.*) The harassment continued for five months until November 15, 2021, when Salinas received his first dose of the COVID-19 vaccine. (*Ibid*.)[2]

After he received the first dose of the COVID-19 vaccine, Salinas claims he suffered an adverse reaction on December 4, 2021, two and a half weeks later. (SAC, ¶¶ 2, 13.) As a result of health complications that he attributes to the vaccine, Salinas could not work for approximately six months, resulting in an equivalent loss of wages and benefits, in addition to a loss of a promotion opportunity at a higher base pay level. (*Id*. at ¶ 13.) Upon returning to work, Salinas faced harassment based on his partial vaccination status. (*Id*. at ¶ 14.) Salinas's physician advised against additional booster shots, and Salinas communicated the same to Defendants. (*Id*. at ¶ 15.) Defendants then required Salinas to undergo weekly COVID-19 testing to maintain employment. (*Ibid*.)

The SAC sets forth the following causes of action: (1) Religious Discrimination; (2) Failure to Accommodate Religious Belief or Observance and Coercion; (3) Failure to Prevent Discrimination; (4) Fair Employment and Housing Act ("FEHA") Retaliation; and (5) Harassment.

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[1] The SAC alleges that Defendants served the denial notice on November 4, ***2023***, an obvious typographical error.
[2] The first amended complaint alleges a date of initial vaccination of November 30, 2021; this has been changed in the SAC to November 15, 2021. (Compare FAC, ¶ 3, with SAC, ¶ 2).

On August 1, 2023, the court sustained Defendants' demurrer to the first amended complaint ("FAC"), with 30 days' leave to amend. (The court's original tentative ruling was to grant 10 days' leave, but the court changed this to 30 days' at Salinas's request at the hearing.) On August 30, 2023, Salinas filed the SAC. Now before the court is Defendants' demurrer to each cause of action on the ground that the SAC fails to state facts sufficient to constitute a cause of action. In essence, Defendants contend that Salinas's amendments are insufficient to overcome the deficiencies in the FAC.

II. JUDICIAL NOTICE

In support of their demurrer, Defendants submit the following exhibits for judicial notice:

1. Exhibit A: Plaintiff's "Claim Against the County of Santa Clara," dated April 1, 2022;

2. Exhibit B: County of Santa Clara's "Notice of Rejection of Claim," dated May 10, 2022;

3. Exhibit C: "Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19" published on or about March 17, 2020 in the Federal Register by the Office of the Secretary of the Department of Health and Human Services; and

4. Exhibit D: A true and correct copy of the Order entered by the Superior Court for the County of Los Angeles on August 8, 2023 in *King v. Venice Family Clinic*, Case No. 22CMCV00347.

Salinas submits a separate brief opposing the request for judicial notice of Exhibits A-C. Although Salinas correctly notes that Evidence Code section 451 does not *require* this court to take judicial notice of the proffered exhibits, section 452 nevertheless permits the court to do so for appropriate subject matter.

The court GRANTS judicial notice of Exhibits A and B. (Evid. Code, § 452, subd. (c) [official acts of public agencies].) "The court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim." (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1752-1753 ["Evidence Code section 452, subdivision (c), permits the trial court to take judicial notice of the records and files of a state administrative board."].) In taking judicial notice of these documents, a court may take notice of their existence only and not the truth of the statements contained within. (*Fremont Indem. Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.)

The court GRANTS judicial notice of Exhibit C as properly noticeable subject matter under Evidence Code section 452, subdivisions (b) and (c) (regulations and legislative enactments by a public entity, and official acts of a branch of government).

The court GRANTS judicial notice of Exhibit D under Evidence Code section 452, subdivision (d), but only as to the fact of the ruling. An order of the Superior Court of California may be judicially noticed, but not as to the correctness of the ruling or the truth of

the factual findings. (See *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 761 [a written trial court ruling has no precedential value]; *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409 [there is no "horizontal stare decisis"].)

Finally, the court also takes judicial notice of its own August 1, 2023 order on the prior demurrer. (Evid. Code, § 452, subd. (d).)

III. LEGAL STANDARDS

As noted in the court's prior order, the relevant legal standards on a demurrer are as follows:

> In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In liberally construing the allegations within a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)
>
> The general rule is that statutory causes of action must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) This rule applies to all causes of action [in] the [pleading].

(August 1, 2023 Order at pp. 5:23-6:11.)

IV. DISCUSSION

As in the prior demurrer, Defendants raise statutory immunity under the PREP Act as their primary defense, arguing that Salinas's "alleged losses—flowing from the denial of his requested religious exemption to COVID-19 vaccination, his adverse reactions to the vaccine, and County procedures for partially vaccinated employees—are all related to or arise from either his use or Defendants' administration of a pandemic countermeasure." (Demurrer, p. 6:11-14.) In opposition, Salinas repeats the argument from the prior demurrer that Defendants misunderstand the gravamen of his claim; he argues that the "issue to be decided" is whether Defendant can "harass the employee and create a hostile work environment because the Plaintiff was exercising his religious constitutional rights." (Opposition, p. 9:5-7.)

"Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.' [Citations.]" (*Robinson v. Shell Oil Co.* (1997) 519 U.S. 337, 340.) The PREP Act's immunity provision provides:

> [A] covered person shall be immune from suit and liability under Federal and State law with respect to *all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure* if a declaration [that a disease or other health condition or other threat to health constitutes a public health emergency] has been issued with respect to such countermeasure.

(42 U.S.C. 247d-6d, subds. (a)(1), (b)(1) [emphasis added].)[3] The statute goes on to state that immunity "applies to *any* claim for loss that has a causal relationship with the administration to or use by an individual of a covered countermeasure." (42 U.S.C. 247d-6d, subd. (a)(2)(B) [emphasis added].)

In a recent reported decision, cited by Defendants, the U.S. Court of Appeals for the Ninth Circuit reaffirmed the exceedingly broad scope of these immunity provisions and applied them to civil rights claims brought under 42 U.S.C. § 1983. (*Maney v. Brown* (9th Cir. Feb. 1, 2024, Nos. 22-35218, 22-35219) ___ F.3d ___ [2024 U.S. App. LEXIS 2221 at *1] (*Maney*) [describing PREP Act immunity as "plainly and unambiguously" broad].) *Maney* held that a claim for damages brought under 42 U.S.C. § 1983 "alleging a constitutional violation[,] is a suit under federal law" covered by the PREP Act. The Court noted that it has consistently understood the usage of "all" in statutes as indicating a "sweeping statutory reach." (*Id*. at *15 [quoting *AK Futures LLC v. Boyd St. Distro, LLC* (9th Cir. 2022) 35 F.4th 682, 690-691]; see also *Lambright v. Ryan* (9th Cir. 2012) 698 F.3d 808, 817 ["The common meaning of the word 'all' is 'the whole amount, quantity, or extent of; as much as possible.'].) The Court also held that "the PREP Act limits the scope of covered claims to those related to the administration or use of covered countermeasures. But that limitation does not categorically exclude constitutional claims." (*Maney, supra,* 2024 U.S. App. Lexis 2221 at *15.) Although *Maney* is not binding authority in California state courts, this court finds *Maney* to be persuasive and consistent with the court's own reading of the statutory language.

Reviewing the amended allegations in the SAC, including the additional allegations of harassment both before and after the date of Salinas's first vaccination—but especially before—the court finds that all of these alleged injuries or losses still "flow [from] or were causally related to his receipt of the vaccine and Defendants' administration of the vaccination program," just as the court concluded in its August 1, 2023 order. (See Order at p. 8:1-2.) Salinas repeatedly argues that his new allegations in the SAC are focused on "civil rights violations that took place prior to the [administration of the COVID-19 countermeasure]." (Opposition at p. 13:6-8.) The court strongly disagrees and finds otherwise. Just as in *Maney*, every single one of Salinas's material allegations in the SAC relate directly to the *administration* of the COVID-19 vaccine program; that includes his objections thereto, before he finally acquiesced to receiving the first dose. As noted by the *Maney* Court, "'administration' of a covered countermeasure includes prioritization of that countermeasure when its supply is limited." (*Maney, supra,* at *10.) In other words, "administration" is not limited to the actual receipt of the shot itself. Salinas's narrow misreading of the phrase "administration of covered countermeasures" to mean "the very moment one actually receives

[3] In the August 1, 2023 order, the court provided a longer discussion of its determination that both the County and Cody are "program planners" and "covered persons" under the Act, and that the "claims for loss" alleged by Salinas (including under FEHA) were barred by the Act. The court incorporates that order by reference and will not repeat that discussion here. (See August 1, 2023 Order, pp. 7:3-9:5.)

the COVID-19 shot and not a moment sooner" defies logic, common sense, and the plain language of the Act. It is without any support whatsoever.

In each cause of action, Salinas alleges that Defendants harassed, threatened, or discriminated against Salinas for his good-faith religious belief concerning the COVID-19 vaccine. (See e.g., SAC, ¶¶ 68, 77, 88, 94-95, 101.) Salinas alleges that he suffered substantial emotional distress "as a direct consequence of [County's] decision to coerce, intimidate and harass him into being vaccinated with the Covid-19 [*sic*] injections contrary to his stated religious convictions." (*Id*. at ¶ 33.) Salinas further alleges physical injury "as a result of the adverse effects of the 'administration to or the use by an individual of a covered measure'; here, the Covid 19 [*sic*] materials." (*Ibid*.) In all of these descriptions of his claims, the administration of the COVID-19 vaccination program is the precipitating event causing the entirety of Salinas's alleged loss. It is not just the "gravamen" of his complaint—it is his *whole complaint*.

Based on the foregoing, the court concludes that the entirety of Salinas's complaint is barred by the PREP Act. Having already received 30 days to try to remedy the problems of the FAC and having totally failed to do so, Salinas cannot show that another opportunity to amend the SAC would be anything but futile. The court SUSTAINS Defendants' demurrer to the SAC WITHOUT leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

Given the clear application of the PREP Act to immunize Defendants from the causes of action here, and given that the entire purpose of the Act was "to encourage during times of crisis the development and deployment of medical countermeasures (such as diagnostics, treatments, and vaccines) by limiting legal liability relating to their administration" (*Maney, supra*, 2024 U.S. App. Lexis 2221 at *4), the court will not address the remainder of the arguments on this demurrer, which are all secondary to the overarching and definitive immunity afforded to the Defendants here under the Act.

IT IS SO ORDERED.

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Calendar Line 3
Case Name: *Vivian Wong v. Jeremy Louis Miranda Gandoza*
Case No.: 22CV407345

I. BACKGROUND

This lawsuit arises from the alleged sexual assault of plaintiff Vivian Wong ("Wong") by defendant Jeremy Louis Miranda Gandoza ("Gandoza") at her home during the late evening/early morning of August 18-19, 2012. The operative complaint, filed by Wong on November 9, 2022, states eight causes of action against Gandoza and various Does: (1) Sexual Battery in Violation of Civil Code Section 1708.5; (2) Battery; (3) Gender Violence in Violation of Civil Code Section 52.4; (4) Assault; (5) Violation of the Ralph Civil Rights Act (Civil Code Section 51.7); (6) Violation of the Bane Act (Civil Code Section 52.1); (7) Intentional Infliction of Emotional Distress; and (8) Negligent Infliction of Emotional Distress. There are no exhibits attached to the complaint.

Currently before the court is Gandoza's demurrer to the complaint, filed on December 13, 2023. Wong filed her opposition on December 14, 2023, over a month and a half early.

II. DEMURRER TO THE COMPLAINT

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .' [Citation.]" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents for which judicial notice is properly requested and may be granted. The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. The court has therefore only considered the declaration of Gandoza's counsel, Nick Heimlich, to the extent that it discusses the meet-and-confer efforts required by statute; the court has not considered the attached exhibit.

B. Analysis

Gandoza demurs to the complaint on the grounds that each cause of action is time-barred, that the fifth and sixth causes of action are uncertain, and that the fifth and sixth causes of action fail to state sufficient facts. (See December 13, 2023 Notice of Demurrer and Demurrer at pp. 1:24-2:19.)

1. Uncertainty (Fifth and Sixth Causes of Action)

"'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695, internal citations omitted.) Here, the court does not find the fifth and sixth causes of action to be incomprehensible, and it is apparent from Gandoza's arguments that he, too, understands what the fifth and sixth causes of action purport to allege and that there is no true uncertainty. Indeed, the entirety of Gandoza's uncertainty argument consists of two vague statements in the opening brief that it is "wholly unclear from the complaint how an alleged sexual encounter one evening" relates to causes of action alleging civil rights violations under the Ralph Civil Rights Act of 1976 and the Tom Bane Civil Rights Act. (See Memorandum at pp. 4:21-23 & 5:12-14.) If anything is uncertain, it is this vague, poorly articulated argument, not the causes of action of which it complains. The court OVERRULES the demurrer to the fifth and sixth causes of action on the ground of uncertainty.

2. Statute of Limitations (All Causes of Action)

"A complaint showing on its face the cause of action is barred by the statute of limitations is subject to general demurrer." (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.) The running of the statute must appear clearly and affirmatively from the dates alleged—it is not enough that the complaint might be barred. (*Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42 (*Committee for Green Foothills*).) "Generally, the limitations period starts running when the last element of a cause of action is complete." (*NBCUniversal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1231.)

All of the complaint's causes of action are based on the alleged sexual assault that occurred on August 18-19, 2012. Code of Civil Procedure section 340.16, subdivision (a), which became effective January 1, 2019, states:

> In any civil action for recovery of damages suffered as a result of sexual assault, where the assault occurred on or after the plaintiff's 18th birthday, the time for commencement of the action shall be the later of the following:
>
> (1) Within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.
>
> (2) Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

"Sexual assault" is defined to mean any of a number of crimes described in the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes. (See Code Civ. Proc., § 340.16, subd. (b)(1).)

While the complaint was filed more than 10 years after the alleged August 2012 assault, it alleges that Wong discovered her assailant to be Gandoza on April 18, 2022, when "SCPD was notified that there was a DNA 'hit' from the Cal-DNA Data Bank Program ('CHOP'). The positive DNA match came from sperm cells recovered from the Plaintiff['s] Sexual Assault Forensic Examination ('SAFE') on or about August 19, 2012." (Complaint at ¶ 23.) This allegation is accepted as true on demurrer.

Gandoza's argument that Wong was required to file suit within 10 years of the assault under section 340.16, subdivision (a)(1), *or* within three years of the assault because it is "clear" that she "believed" that she was injured immediately after it happened under section 340.16, subdivision (a)(2), is not persuasive. (See Memorandum at p. 3:19-21.) It is not apparent from the face of the pleading that, for purposes of subdivision (a)(2), Wong "reasonably should have discovered" her injuries prior to April 18, 2022. *This is a factual issue* that cannot be resolved in a demurrer. The allegations of the complaint are accepted as true at this stage—including Wong's allegation that she was unconscious during the assault and has no memory of it. Again, for a demurrer based upon a statute of limitations to be sustained, the running of the applicable statute must appear "clearly and affirmatively" from the dates alleged in the pleading itself. It is insufficient that a claim "might" be time-barred. (*Committee for Green Foothills, supra*, 48 Cal.4th at p. 42.)

For the foregoing reasons, the court OVERRULES the demurrer to each cause of action on the ground that they are time-barred under Code of Civil Procedure section 340.16, subdivision (a).

Gandoza's further argument that each cause of action is time-barred under statutes of limitations other than section 340.16(a) is also unpersuasive. (See Memorandum at pp. 2:20-3:8 [citing Code Civ. Proc., § 335.1; Civ. Code, §§ 51.7, 52.1, 52.4(b)].) Section 340.16(a) expressly provides that the limitation period for "any civil action for recovery of damages suffered as a result of sexual assault" will be as stated in subdivisions (a)(1) and (a)(2), regardless of the particular causes of action alleged and regardless of what their limitations periods would be in lawsuits *not* seeking recovery of damages suffered as a result of sexual assault. This statutory language is unambiguous, and the California Legislature is assumed to have meant what it said: *i.e.*, "any" means "*any*." Gandoza does not develop this argument in any detail in his supporting memorandum, and he fails to explain how his interpretation of these statutes would not essentially nullify section 340.16(a).

To determine whether two or more statutes are in conflict, the court must "start[] with their respective texts." (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 956 (*Dept. of Public Health*).)

> We have recently emphasized the importance of harmonizing potentially inconsistent statutes. A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions . . . .
>
> But [this] is not a license to redraft the statutes to strike a compromise that the Legislature did not reach. The cases in which we have harmonized potentially conflicting statutes involve choosing one plausible construction of a statute

> over another in order to avoid a conflict with a second statute. This canon of construction, like all such canons, does not authorize courts to rewrite statutes.

(*Dept. of Public Health, supra*, 60 Cal.4th at pp. 955–956, internal citations and quotation marks omitted; see also *Dept. of Fair Employment & Housing v. Cathy's Creations, Inc.* (2020) 54 Cal.App.5th 404, 412-413 (*Cathy's Creations*).)

The Court's ultimate goal is:

> . . . to discern the probable intent of the Legislature so as to effectuate the purpose of the laws in question. We examine the statutes in their context and with other legislation on the same subject. If they conflict on a central element, we strive to harmonize them so as to give effect to each. If conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones.

(*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 309–310, internal citations omitted; see also *Cathy's Creations, Inc.*, *supra*, 54 Cal.App.5th at p. 413 ["'But when these two rules are in conflict, the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence.'"], quoting *Dept. of Public Health, supra*, 60 Cal.4th at p. 960.)

Here, Code of Civil Procedure section 340.16, subdivision (a), is not in conflict with the statutes cited by Gandoza because section 340.16 clearly states that it applies to "any civil action for recovery of damages suffered as a result of sexual assault" where the alleged victim is over 18. Even assuming arguendo that there is a conflict between section 340.16 and the statutes cited by Gandoza above, the former would still control as *both* the more specific and the more recently enacted statute.

Gandoza's alternative argument that the complaint does not adequately plead delayed discovery is also not a basis for sustaining the demurrer on statute of limitations grounds. "In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff *whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule* must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.'" (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 808 [internal citations omitted, emphasis added].) Delayed discovery allegations are unnecessary where a complaint does not show on its face that the claim is time-barred. As it is not apparent from the face of her complaint that Wong's causes of action are time-barred, for the reasons already discussed above, she was not required to plead delayed discovery.

Gandoza's demurrer to each cause of action on the ground that they are each time-barred by some statute of limitations other than Code of Civil Procedure section 340.16(a) is also OVERRULED.

3. Failure to State Sufficient Facts (Fifth and Sixth Causes of Action)

Gandoza also asserts that the fifth cause of action, alleging a violation of the Ralph Civil Rights Act of 1976, and the sixth cause of action, alleging a violation of the Tom Bane Civil Rights Act, both fail to state sufficient facts.

The general rule is that statutory causes of action must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) Simply parroting the language of a statute is insufficient. To plead a violation of a statute sufficiently, a plaintiff must plead facts supporting the elements of the claim with reasonable particularity.

The court generally agrees with Gandoza's argument that these two causes of action fail to state sufficient facts, as they currently consist of little more than legal conclusions parroting the language of the two statutes. Wong's two-page opposition does not acknowledge, let alone address, this argument; nor does she explain how the fifth and sixth causes of action could be amended to overcome this pleading deficiency. Nevertheless, because this is the first pleading challenge in the case, the court will SUSTAIN the demurrer to the fifth and sixth causes of action WITH 10 DAYS' LEAVE TO AMEND.

Wong is reminded that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp*. (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456, citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.)

IT IS SO ORDERED.

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