Filed 1/13/17 Cannistraci v. City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STEVEN DOUGLAS CANNISTRACI, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B258559 (Los Angeles County Super. Ct. No. BC497150)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed.

Steven Douglas Cannistraci, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, David J. Michaelson, Chief Assistant City Attorney, and Vivienne A. Swanigan, Assistant City Attorney, for Defendants and Respondents.

INTRODUCTION

Plaintiff Steven Douglas Cannistraci appeals from a judgment of dismissal entered in favor of defendants City of Los Angeles (City), James Lefton (Lefton), and Corinne Ralph (Ralph). The dismissal followed the sustaining of defendants' demurrer to plaintiff's second amended complaint without leave to amend. We affirm.

FACTUAL BACKGROUND[1]

Plaintiff was employed by the City from September 1987 to his early retirement on November 1, 2009. Believing that he was the victim of employment discrimination, he filed suit against the City. (*Cannistraci v. City of Los Angeles* (Super. Ct. L.A. County, 2013, No. BC481982).) That action was dismissed after the trial court sustained demurrers to his third amended complaint without leave to amend. Subsequent to the filing of the opening brief in this appeal, we affirmed the judgment of dismissal.

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[1] On appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, we assume the truth of the properly pleaded factual allegations in the complaint but do not assume the truth of the contentions, deductions or conclusions of law. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100.) We also deem to be true facts contained in the exhibits attached to the complaint (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 225, fn. 1) and those subject to judicial notice (*Van Horn v. Department of Toxic Substances Control* (2014) 231 Cal.App.4th 1287, 1292).

(*Cannistraci v. City of Los Angeles* (Apr. 27, 2015, B253495) [nonpub. opn.].)[2]

Plaintiff is a professional in the field of heavy and medium duty vehicle design, procurement, maintenance, repair, and related areas. He has his own company, Triple C Consulting Services, Inc. (Triple C).

Lefton is an executive officer with the Los Angeles Department of Transportation (LADOT) and functions as a head of the Bureau of Transit Programs. Ralph is the head of LADOT's Operations Division in the Transit Bureau and is largely responsible for selecting contractors to perform work assignments for LADOT.

On June 23, 2010, LADOT circulated a request for proposals to provide transit bus maintenance audit/inspection and specialized services. On August 10, 2010, plaintiff on behalf of Triple C submitted a proposal. It was accepted, and the City entered into a five-year contract with Triple C to provide services on an as-needed basis, effective April 6, 2011 through April 5, 2016. Four other companies received identical contracts, including STV Inc. (STV).[3] The contracts enabled them to compete for work assignments called Scopes of Work (SOW).

On October 12, 2011, the City sent out a request for proposal for a SOW for vehicle line inspection and final vehicle

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[2] The Supreme Court denied plaintiff's petition for review in that case on July 22, 2015, No. S226998.

[3] Plaintiff's second amended complaint also contains allegations regarding the impropriety of awarding a contract to STV, based on lies in its proposal and the failure to complete an assignment under a previous contract with the City.

acceptance inspection for 50 wheelchair-accessible minivans which the City was purchasing. Plaintiff responded with a proposal on October 19. On November 1, the City notified plaintiff LADOT had selected Triple C "as the most responsive proposer" to perform the SOW.

In early November 2011, the City sent out a request for proposal for a SOW for CNG DASH vehicle line inspections. Both Triple C and STV submitted proposals. On November 28, plaintiff received an email from Ralph thanking him for his proposal but stating that STV had been selected to perform the SOW.

On December 15, 2011, Michael Pascual and Christopher Knowlton initiated a verbal confrontation with plaintiff in the LADOT offices. Knowlton then sent an email to Ralph documenting his version of the event. In response, Ralph restricted plaintiff's future interaction with LADOT staff.

In January 2013, the City sent out a second request for proposal for a SOW for CNG DASH vehicle line inspections. Plaintiff submitted his proposal on January 27. STV also submitted a proposal. On January 31, Ralph sent plaintiff an email and a letter thanking him for his proposal and stating that "LADOT determined that STV Inc.'s proposal was the most responsive."

On February 4, 2013, plaintiff went to the LADOT Transit Bureau offices to review public records, and specifically STV's proposal. Plaintiff concluded that STV's proposal was not "the most responsive" and attempted to speak to Ralph about the matter. In response to plaintiff's "honest, sincere, and probative questions to determine what possible methodology LADOT had utilized to come to such a conclusion," Ralph spoke to plaintiff in

a manner he considered to be disrespectful and nonresponsive. She told him that his proposal included things the City did not ask for, "referring to the significant and beneficial Options that he had included within his proposal." She also told him that the decision was made by a group and was not arbitrary, but she did not provide him with what he considered to be "defensible rating criteria" or the names of the people in the group.

Plaintiff thereafter went to Lefton's office "to share these experiences with him." He complained that Ralph's decisions "were personally defamatory, harassing, and debilitating to him" and requested that Lefton "take leadership" and oppose the decisions. He followed this up with an email protesting the decision and LADOT's shameful treatment of him.

Lefton responded by email on February 8, 2013. He stated that he had reviewed the proposals by Triple C and STV and discussed the evaluation process with Ralph. "Based on my review I support Transit Operation's selection of STV for this work assignment. One suggestion for future work requests would be for Triple C to complete the cost proposal forms as required by LADOT including a breakdown of costs by category."

Plaintiff believed this explanation was fabricated and that he had completed his cost proposal as required by LADOT. He also believed his proposal was "objectively superior" to STV's.

PROCEDURAL BACKGROUND

Plaintiff filed his original complaint against the City in this action on December 10, 2012, after the first SOW for CNG DASH vehicle line inspections was awarded to STV and the confrontation in the LADOT offices which resulted in a

restriction on his future interaction with LADOT staff. In his 171-page complaint, he alleged causes of action for breach of good faith, harassment, defamation, negligence, invasion of privacy, theft of intellectual property, negligent infliction of emotional distress, and mechanic's lien/constructive trust. It included numerous allegations related to his employment with the City.

At the same time, plaintiff filed a notice of related case, referring to his employment discrimination case. On February 1, 2013, the trial court found the two cases were not related and would remain in their original departments.

The City filed its demurrer on February 5, 2013. It claimed plaintiff had failed to state a cause of action and that the complaint was ambiguous, unintelligible, and uncertain. Plaintiff opposed the demurrer and requested that the trial court take judicial notice of his third amended complaint in the employment discrimination case.

At the hearing on the demurrer, the trial court stated, "I think it would be fair, sir, to characterize your complaint as unintelligible, and let me tell you why. This complaint is 171 pages long. It contains well in excess of 300 paragraphs of allegations. The first 144 pages are sort of your background facts, which are then apparently reincorporated by reference into your various eight causes of action, regardless whether any of those facts have anything whatsoever to do with a particular cause of action. And that's not an acceptable way to plead this."

"You have given us, as far as I can see, the entire history of your relationship . . . with the City of Los Angeles and with whatever sort of later relationship you had with them going back into" the 1980's. "You also have these other cases in which you have apparently raised many of these same factual issues.

Certainly at a cursory review it appears to me that many of the things that you have alleged in this present complaint are also alleged in many cases in virtually identical words in those other pieces of litigation. I do not know why you think we would be litigating the same facts or the same claims over and over again." The court told plaintiff that "the way you have pleaded this makes it virtually impossible to tell the court whether you've got a claim."

In discussing the complaint with plaintiff, the court noted plaintiff had referred to the Fair Employment and Housing Act and asked what it had to do with plaintiff's breach of contract—"good faith"—claim. Plaintiff responded that it had nothing to do with his claim, "it was cut and paste. And that's maybe hard for the court to understand." Because of his schedule and the fact he lived out of town, he "did a lot of cut and paste" from his other lawsuits.

The court stated that as far as it could tell, the only new allegations raised in this lawsuit were that the City "'awarded the job to another contractor based on allegedly discriminatory motives,'" and the City's "'employees allegedly harassed you for trying to access public documents without a request.'" The rest of the allegations were "clutter" and did not belong in the complaint. The court suggested that plaintiff go through his complaint and "essentially rethink your approach to this. You need to boil this claim down to its essentials." The court told plaintiff to eliminate everything prior to 2009, be concise, and formulate the essence of his claim. It sustained the demurrer with leave to amend.

Plaintiff filed a first amended complaint, to which he added Lefton and Ralph as defendants. Defendants demurred and filed a motion to strike. At the hearing on the demurrer on August 7,

2013, the court told plaintiff that "one of the things that I find in your first amended complaint, as was the case in the original complaint, is that you've got a plethora of material about things that happen between you and the City prior to your retirement." All these facts relating to plaintiff's other lawsuits "clutter up and obscure your claims, and it makes it very difficult to understand it."

Another problem raised by the court was the complaint's lack of organization: "everything is incorporated by reference into everything else" rendering it "unintelligible" in the court's opinion. The court told plaintiff, "I don't know why you have done it this way, and I can't . . . tell what you're claiming. . . . Apparently, you've put your life's history into this. Is there some reason why you can't just plead the elements of each claim?" Plaintiff explained, "The reason I'm giving this history is to show how unsustainable and how malformed the employment relationship was with me and the City of Los Angeles."

The trial court went over the various causes of action with plaintiff, pointing out how it was impossible to tell from the allegations of the complaint the bases of the causes of action. The court suggested that plaintiff get an attorney or at least look at the California Jury Instructions to determine the elements of his claims. It told plaintiff, "[Y]ou ought to be able to set forth the facts briefly including the dates which are material to articulate this. But what you've got here looks like something that is a cut and paste job from different lawsuits all thrown together in an incredible mishmash. With the best will in the world, sir, I have no idea what this case is about. I cannot discern what your claims are from reading your complaint. And I'm going to give you . . . one more opportunity to plead these." The court warned

plaintiff that if his "next pleading comes back the same way, if it is simply unintelligible in the same fashion this is, this complaint is going down in flames." Plaintiff stated that he understood. The trial court again sustained defendants' demurrer with leave to amend.

On September 6, 2013, plaintiff filed his second amended complaint for breach of contract, harassment, defamation, negligence, invasion of privacy, and theft of intellectual property. The second amended complaint is 89 pages long, mostly facts—including facts regarding plaintiff's previous employment relationship with the City—and includes nearly 100 additional pages of exhibits.

Defendants again demurred on a number of grounds, including that plaintiff failed to state a cause of action and that the complaint was uncertain. Defendants requested that the trial court take judicial notice of the judgment in plaintiff's employment discrimination case, in which the court sustained the demurrer to plaintiff's third amended complaint without leave to amend.

At the November 6, 2013 hearing on the demurrer, the trial court told plaintiff it was "a little concerned that you seemed to have not taken my prior suggestions about how to plead this case to heart." The second amended complaint was still unintelligible, and "[y]ou spent most of your second amended complaint describing the alleged injustice of your employment with defendant from 1987 to 2009," with "the allegations concerning events after November 2009 . . . in the very distinct minority. As I understand the allegations of the second amended complaint, the thrust of this is that defendant awarded some jobs to a

different contractor or contractors based on, allegedly, discriminatory motives."

After reviewing why the second amended complaint failed to state a cause of action, the trial court asked plaintiff, "[N]ow, I've gone through and explained to you why each of these claims, individually, is deficient. Is there any reason why I should not sustain this demurrer without leave to amend at this point?" Plaintiff responded that he had run out of time while making the amendments, but he explained the basis of his claims. He added that he was not attempting to re-litigate anything, but his employment history was important because it formed the foundation of the City's motives.

The trial court told plaintiff it had listened to him and allowed him to make his presentation. "The problem I have is, I don't see how you're going to fix any of . . . the fundamental structural problem[s] with your complaint. You have had three opportunities to amend. We have discussed the issues that I have raised with you here today on prior occasions. And I'm just not persuaded that there is any point [to] extend any further leave to amend." It therefore sustained defendants' demurrer as to all causes of action without leave to amend. On June 17, 2014, a judgment of dismissal was entered. Plaintiff timely appealed.

DISCUSSION

A. *Standard of Review*

"'The standard of review on an appeal from judgment of dismissal following sustaining of a general demurrer is guided by long settled rules. We treat the demurrer as admitting all material facts properly pleaded, as well as those which

reasonably arise by implication, but not contentions, deductions or conclusions of fact or law. [Citations.] "Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." [Citation.] . . . "'[T]he allegations of the complaint must be liberally construed with a view to attaining substantial justice among the parties.'" [Citation.] A demurrer challenges only the legal sufficiency of the complaint, not the truth of its factual allegations or the plaintiff's ability to prove those allegations. [Citation.]' [Citation.] Consequently, '[t]he reviewing court assumes the truth of [the] allegations in the complaint that have been properly pleaded . . . . [Citations.]' [Citation.]" (*Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 309-310.)

We "'first review[] the complaint de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory or to determine whether the trial court erroneously sustained the demurrer as a matter of law.' [Citation.] 'Second, we determine whether the trial court abused its discretion by sustaining the demurrer without leave to amend.' [Citation.]" (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 826.)

Plaintiff bears the burden of demonstrating that the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. (*Loeffler v. Target Corp.*, *supra*, 58 Cal.4th at p. 1100.) To meet this burden, plaintiff "'"must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the "applicable substantive law" [citation]

and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.]' [Citation.]" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.)

To this we add the following: "'Perhaps the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.'" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383.) "'To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

We acknowledge a self-represented litigant's understanding of the rules on appeal is, as a practical matter, more limited than an experienced appellate attorney's. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing. However, when, as here, the total lack of compliance with the California Rules of Court results in our inability to conduct a meaningful review of the trial court's decision, we cannot ignore the fundamental rules of appellate

practice. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

B. *Plaintiff Has Not Met His Burden of Demonstrating That the Trial Court Erred in Sustaining Defendants' Demurrer or Abused Its Discretion in Denying Him Leave To Amend*

As he did in the trial court, plaintiff insists upon reviewing his employment history with the City, claiming that this case and his employment discrimination case are "extremely related and intermingled." He also complains that he has been significantly injured by "[t]he deeming of these cases to be Not Related." His employment discrimination case has been dismissed, and the dismissal affirmed. Nothing at issue in the employment discrimination case is relevant to this appeal, and any complaints about the determination that the two cases are not related, even if properly presented, are moot. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.)

In his opening brief, after setting forth the facts and the standard of review on demurrer, plaintiff simply states that defendants' "demurrer should not have been sustained without leave to amend under these standards." He does not discuss the individual causes of action or their elements. He does not discuss the judgment, in which the trial court set forth the bases for sustaining defendants' demurrer as to each cause of action. He makes no attempt whatsoever to "'clearly and specifically set forth the "applicable substantive law" [citation] and the legal basis for amendment, i.e., the elements of the cause of action and

authority for it.'" (*Rossberg v. Bank of America, N.A.*, *supra*, 219 Cal.App.4th at p. 1491.)

Instead, plaintiff apologizes for the incompleteness of his brief and claims he "can cure the honestly identified defects in his pleading by amending." He has been given two opportunities to do so, with the trial court specifying what he needed to do, yet both times he has insisted on putting into his complaint what he believes to be important, not what the trial court told him was necessary. Given his failure, even on appeal, to limit his factual statement to the relevant facts and to address his individual causes of action, we are unconvinced that plaintiff would indeed cure the defects in his pleading if given another opportunity to do so. A demurrer may be sustained without leave to amend where multiple previous unsuccessful attempts to plead render it probable plaintiff cannot state a cause of action. (*Krawitz v. Rusch* (1989) 209 Cal.App.3d 957, 967; *Kately v. Wilkinson* (1983) 148 Cal.App.3d 576, 581.)

Defendants in their brief pointed out plaintiff's failure to comply with the principles of appellate procedure and his failure to demonstrate that the trial court erred in sustaining their demurrer or abused its discretion in denying leave to amend. In response, in his reply brief, plaintiff makes an attempt to address the individual causes of action. While ordinarily, we do not consider points raised for the first time in reply briefs unless good cause is shown for the failure to raise them in the opening brief (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4; *In re Marriage of Turkanis & Price* (2013) 213 Cal.App.4th 332, 355), because defendants have addressed the merits of the appeal and will suffer no prejudice if we do the

same, we will consider plaintiff's arguments (see *Rappleyea v. Campbell*, *supra*, 8 Cal.4th at pp. 984-985).

1. *Breach of Contract*

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. [Citation.]" (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Cutting through the extraneous factual allegations, rhetorical questions and attacks on defendants' brief, it appears plaintiff's cause of action for breach of contract is based on the following:

(1) The City entered into a contract with Triple C to perform transit bus maintenance audit/inspection and specialized transit services for a period of five years. The contract provides: "Individual consulting assignments will be granted by the City to firms included on the qualified contractor list as assignments become available, subject to fund availability. For each assignment, the City will solicit specific costs and other related information to perform the assignment from each qualified firm. Firms will be selected based on their proposed cost for the specific assignment, and their experience and skills with the specific assignment. The City reserves the right to select any firm on the qualified list as it deems appropriate." It further provides: "Disputes regarding the interpretation or application of any provisions shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. The City shall make every effort to limit the negotiations period for a time not to exceed 30 days. . . ."

(2) Triple C submitted superior proposals for SOW's for CNG DASH vehicle line inspections.

(3) The City awarded the SOW's to STV, in contravention of the criteria stated in the contract. When plaintiff challenged these awards, the City refused to resolve his challenges in a good faith manner, refusing to discuss the matter with him.

(4) As a result, plaintiff suffered economic and other damage.

The contract did not guarantee assignments to firms based on specific objective criteria, other than stating that proposals would be evaluated based on cost, experience and skills, and the City reserved the right to award assignments to any firm on its qualified list. Plaintiff admits that Triple C and STV were both on the qualified list. Therefore, even if Triple C's proposals were "objectively superior," the City did not breach the contract by awarding the SOW's to STV, since the written contract expressly gave the City the right to select any qualified contractor. (See *Cypress Security, LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003.)

The allegations of the complaint show that when plaintiff complained to Lefton about the award of the second SOW to STV, Lefton listened to plaintiff's complaints, stated that he had reviewed the proposals by Triple C and STV and discussed the evaluation process with Ralph. Lefton made suggestions about how to improve any future proposals. We perceive no breach of the negotiations provision of the contract, and plaintiff cites no authority to support his claim that he has alleged a breach of contract based on Lefton's (or Ralph's) actions. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457; *Rojas v. Platinum Auto Group, Inc.*, *supra*, 212 Cal.App.4th at p. 1000,

fn. 3.) To the extent plaintiff believes the City did not negotiate in good faith because it did not agree with him, the contract provides that if the parties are unable to settle the matter, the aggrieved party may sue, which plaintiff did. Therefore, he cannot allege a violation of the written contact's provision with respect to the dispute resolution process.

2. *Harassment*

Plaintiff argues that he is not re-litigating any of the claims he made in his employment discrimination lawsuit, and he challenges statements in defendant's brief regarding his harassment cause of action. He then launches into a confusing 11-page discussion of various attacks and perceived injustices, including some occurring prior to his termination. Nowhere does he set forth the elements of a cause of action for harassment or articulate the specific facts he is relying on to support his claim that he has stated, or can state, a cause of action for harassment.

Nor can we determine from Plaintiff's discussion the exact bases of his harassment claim. He references the confrontation with Michael Pascual and Christopher Knowlton, various comments by Ralph, and the award of two SOW's to STV. He concludes, however, "[c]onsidering the Totality of the Circumstances imposed on [plaintiff] from the perspective of a reasonable person in his situation would assist the Court in realizing how abusive [defendants] have been and how deeply they have fraudulently discounted [plaintiff] because he dared to try to hold them accountable to their own policies regarding non-discrimination," citing allegations in his complaint that the City infringed upon his inalienable rights guaranteed in the California Constitution and the Civil Code. Nothing in his conclusion

relates to a cause of action for harassment under the Fair Employment and Housing Act.

As we noted in our previous opinion, filed prior to the reply brief in this case, plaintiff "has presented virtually no analysis in [his] appellate briefs to support [his] challenge. There is no presentation of the elements of the causes of action, and, correspondingly, no attempt to cite the facts alleged in [his] amended complaint that correspond to such elements. Nor does []he cite to case or statutory authority." (*Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2.) Plaintiff did not learn from this previous warning. "The dearth of true legal analysis in [his] appellate briefs amounts to a waiver of the demurrer issue and we treat it as such. [Citation.]" (*Ibid*.)

3. *Theft of Intellectual Property*

Plaintiff appears to allege that while he worked for the City, he came up with ideas that benefited the City, the City still uses his ideas, and it owes him compensation for that use beyond what he was paid as a City employee. As with his cause of action for harassment, he does not set forth the elements of a cause of action for theft of intellectual property or "'present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim.'" (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457; accord, *Rojas v. Platinum Auto Group, Inc.*, *supra*, 212 Cal.App.4th at p. 1000, fn. 3.)

Neither does plaintiff address the principle, raised by defendants in their brief, that "[w]here an employee creates something as part of his duties under his employment, the thing created is the property of his employer unless, of course, by

appropriate agreement, the employee retains some right in or with respect to the product. [Citation.]" (*Zahler v. Columbia Pictures Corp.* (1960) 180 Cal.App.2d 582, 589; accord, *Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813, 826 (conc. opn. of Mosk, J.).) Plaintiff points to no allegations—and does not claim to be able to allege—that he had an agreement with the City whereby he retained rights to his ideas, policies, procedures, etc. created during his employment by the City.

Plaintiff does not specifically address any of his other causes of action in his reply brief. He has failed to meet his burden of demonstrating that the trial court erred in sustaining defendants' demurrer to those causes of action or abused its discretion in denying him leave to amend. (*Loeffler v. Target Corp.*, *supra*, 58 Cal.4th at p. 1100.)

Plaintiff "freely admits that there are flaws in his pleading," and he says that he "wants to correct these flaws." He claims to be "open to the Court's instructions and suggestions," stating that he did, in fact, take the trial court's suggestions to heart. Yet the record is clear that despite the trial court's suggestions as to how to amend his complaint to state a cause of action, plaintiff's amendments did not follow the court's suggestions and continued to result in unintelligible and insufficient complaints containing what he thought was important, not what the trial court told him was important. And despite our warning in our opinion in plaintiff's employment discrimination case that he needed to set forth the elements of his causes of action and relate the facts alleged to those elements, he has again failed to do so. He has failed to demonstrate a probability that, given another opportunity to amend his complaint, he could or would state a cause of action. (*Krawitz v.*

Rusch, *supra*, 209 Cal.App.3d at p. 967; *Kately v. Wilkinson*, *supra*, 148 Cal.App.3d at p. 581.)

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

KEENY, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.