Filed 9/24/18 Shen v. Ellithorpe 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

KUEI SHEN, Plaintiff and Appellant, v. RITA ELLITHORPE, Defendant and Respondent.	B280462 (Los Angeles County Super. Ct. No. BC595911)

APPEAL from a judgment of the Superior Court of Los Angeles County, Deirdre Hill, Judge. Affirmed.

Moore & Associates, Kevin J. Moore and Debby S. Doitch, for Plaintiff and Appellant.

Law + Brandmeyer, Bryan C. Misshore and Elizabeth A. Evans, for Defendant and Respondent.

INTRODUCTION

Kuei Shen appeals from a judgment the trial court eventually entered after sustaining a demurrer by Dr. Rita Ellithorpe without leave to amend. The trial court ruled Shen's action against Ellithorpe was barred by the applicable three-year statute of limitations because, in the course of litigating similar claims in a previous lawsuit, Shen discovered or had reason to discover the factual basis for his claims against Ellithorpe more than three years before he filed this action. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Shen Sues the Manufacturer of Detoxamin and the Treatment Center That Gave Him the Drug*

On November 29, 2011 Shen filed an action in Ventura County Superior Court against World Health Products, LLC, the developer and marketer of a "chelating agent/chelation therapy/health supplement product commercially known as Detoxamin,"[1] and Natural Healthcare Center, the treatment center that prescribed the drug for Shen. In his first amended complaint in that action, filed January 5, 2012, Shen alleged,

---

[1] Detoxamin "provides one method by which an individual can pursue chelation therapy. Chelation therapy involves the removal of heavy metals and other materials from the body." (*World Health Products, LLC v. Chelation Specialists, LLC* (D. Utah Aug. 28, 2006, No. 2:06 CV 633) 2006 WL 2527428, at p. 1.) The "method of delivery" of Detoxamin's "anal suppository chelation treatment" had "the advantage of a higher absorption rate than oral administration and was more attractive to some users of chelation therapy than intravenous delivery." (*Ibid.*)

among other things, World Health and Natural Healthcare manufactured, packaged, sold, distributed, recommended, promoted, endorsed, and advertised Detoxamin.

Shen alleged "Detoxamin Suppositories are 'new drugs,' as defined by section 201(p) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(p), because they are not generally recognized as safe and effective for use under the conditions prescribed, recommended, or suggested in their labeling." Shen alleged Detoxamin suppositories were unsafe, not approved by the Food and Drug Administration, and falsely or misleadingly labeled and branded.

Shen alleged he relied on representations by World Health and Natural Healthcare about "the safety of Detoxamin Suppositories," and "[a]s a result, [he] used Detoxamin Suppositories in the dosage, frequency, method and foreseeable manner recommended by defendants." Shen alleged he relied on "affirmative representations" by World Health and Natural Healthcare regarding the safety and side effects of Detoxamin on their "websites, their package inserts, and their brochures, that Detoxamin was in all respects, fit, safe, and effective and proper for such purposes represented by defendants." Shen also alleged World Health and Natural Healthcare "knew or should have known of the defects in the advertisement, statements, design and manufacture of Detoxamin which constituted a hazard for those coming into contact with [it] . . . and its ingredients . . . ."

Shen alleged that on December 4, 2009, while he was receiving treatment from Natural Healthcare and using Detoxamin in a foreseeable manner, he "was injured as a direct and legal result of the defective and unsafe condition of" the drug. He alleged that, after he took Detoxamin, he "was rendered sick,

sore, disabled and disordered, both internally and externally and suffered, among other things, severe dizziness and fainting, facial injury, severe fright, shock, pain, discomfort and anxiety."

Shen asserted causes of action for strict and negligent products liability, negligence, negligent misrepresentation, breach of implied and express warranty, and fraud. In his negligent misrepresentation cause of action, Shen alleged World Health and Natural Healthcare made representations about Detoxamin "with no reasonable ground for believing them to be true" and "falsely and fraudulently represented to [Shen] and members of the general public, that Detoxamin Suppositories were safe for use as a chelating agent/chelation therapy/health supplement product."

The parties to the Ventura County action apparently settled. On August 21, 2013 Shen dismissed the Ventura County action with prejudice.

B. *Shen Sues Ellithorpe in This Action for Fraudulently Marketing Detoxamin in a Video Presentation*

On September 25, 2015 Shen filed this action against Ellithorpe for fraud. Shen again alleged "Detoxamin Suppositories are 'new drugs,' as defined by section 201(p) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(p). They are not generally recognized as safe and effective for use under the conditions prescribed, recommended, or suggested in their labeling." Shen based his claims against Ellithorpe on statements she made "during a marketing video" for Detoxamin. Shen claimed Ellithorpe was "the marketer and publisher behind the video endorsing Detoxamin."

Shen alleged he "relied on the representations set forth in a video played for [him] while seeking treatment at the Natural Health[care] Center on or about December 4, 2009, represented to [Shen] as having been created by the manufacturer and endorsed by a medical doctor with respect to safety and side effects of Detoxamin and that it was fit for its intended purpose, safe and FDA approved." Shen further alleged that, "in reliance on the video and its contents viewed by [him] on or about December 4, 2009, [he] received treatment from Natural HealthCare Center, whereby Detoxamin was allegedly prescribed in the reasonable and intended manner." Shen alleged he "was injured as a direct result of using Detoxamin in that the product was defective and unsafe and not approved by the FDA contrary to misrepresentations made by . . . Ellithorpe within the video," which information Shen "later discovered" after the February 27, 2013 deposition of a witness in the Ventura County action named Kedal Svedeen. Shen alleged Ellithorpe "knew or should have known at the time of the creation of the video of the defects in the advertising, statements, design and manufacture of Detoxamin which constituted a hazard for those coming into contact with Detoxamin that had not been approved by the FDA."

According to Shen's allegations, Svedeen testified Ellithorpe gave lectures on Detoxamin, "was a believer in the product and used it on her own patients," and was a "participant and co-creator of the video" Shen saw before taking Detoxamin on December 4, 2009. Shen also alleged that, sometime prior to Svedeen's February 27, 2013 deposition, "Ellithorpe represented to the public in the form of a lecture on the same and initial video viewed by [Shen] that Detoxamin was safe and had been approved by the [FDA], and that [Ellithorpe] knew, or should

have known long before February 27, 2013, that Detoxamin was dangerous, unsafe, and had not been approved by the FDA." Shen alleged that, although he was represented by counsel in the Ventura County action, he did not learn about Svedeen's February 27, 2013 deposition testimony "until some time after the conclusion of the deposition . . . ."

C. *Ellithorpe Demurs*

Ellithorpe demurred, arguing that the statute of limitations and collateral estoppel barred Shen's complaint in this action and that Shen's allegations did not state a cause of action for fraud. After initially filing an opposition to the demurrer, Shen withdrew his opposition and filed a first amended complaint.

Shen's first amended complaint alleged causes of action for fraudulent misrepresentation and negligent misrepresentation. Shen alleged that "[o]n or around December 15, 2009" he "was enticed" to take Detoxamin by a video Ellithorpe had made. Shen alleged, however, that tolling of the statute of limitations "began" on February 27, 2013, when he attended Svedeen's deposition and discovered "Ellithorpe was the marketer and publisher behind the marketing video that pushed the drug Detoxamin."

Ellithorpe demurred again on the same three grounds on which she had demurred to Shen's original complaint. Regarding the statute of limitations, Ellithorpe argued: "Giving [Shen] the benefit of the doubt and calculating his date of discovery as January 5, 2012, when he filed the First Amended Complaint in the prior lawsuit [in Ventura County], [Shen's] cause of action for fraud against . . . Ellithorpe necessarily must have been filed by January 5, 2015 at the latest. While [Shen] attempts to allege delayed discovery," a "plaintiff['s] ignorance of the defendant's

identity does not toll the statutory period." In opposition to the demurrer, Shen argued that his complaint did "not run afoul of the statute of limitations because [he] only discovered the identity of [Ellithorpe] in February 2013" at the deposition of Svedeen in the Ventura County action and that "the delayed discovery rule tolls the statute where the identity of the defendant is unknown." Shen also argued collateral estoppel did not apply because the issues decided in the Ventura County action were not identical to the issues in this case.

D. *The Trial Court Rules This Action Is Barred by the Three-Year Statute of Limitations*

The trial court, after granting Ellithorpe's requests for judicial notice of the first amended complaint in the Ventura County action and the dismissal of that action with prejudice, sustained the demurrer without leave to amend. Relying on the Supreme Court's decision in *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, the trial court ruled "that as of January 5, 2012 when [Shen] filed his first amended complaint" in the Ventura County action "alleging fraud and negligent misrepresentation, the statute of limitations on those claims started to run. The only 'fact' that was 'concealed' to [Shen] from January 5, 2012, until the date of alleged discovery on February 27, 2013, was . . . Ellithorpe's identity." The court noted Shen admitted in his first amended complaint in this action "that the alleged fraudulent statements made by Ellithorpe were made on or around December 15, 2009, while the prior action was also based on events in December 2009 at the same 'Natural Health Center' that forms the basis of this lawsuit." After unsuccessful motions for reconsideration, to set

aside the order sustaining the demurrer without leave to amend, for a statement of decision, and to correct the clerk's transcript, Shen appealed.

DISCUSSION

A. *Standard of Review*

"A demurrer tests the legal sufficiency of the factual allegations in a complaint. When the court's ruling sustaining a demurrer is challenged on appeal, we independently review the allegations on the face of the complaint and matters subject to judicial notice to determine whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense." (*Sierra Palms Homeowners Association v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1132.) "We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken." (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 725-726 (*Ivanoff*).) We may disregard allegations that are contrary to law or to judicially noticed facts. (*Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 853; *Market Lofts Community Association v. 9th Street Market Lofts, LLC* (2014) 222 Cal.App.4th 924, 930.)

"'If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment.'" (*Arce v. Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1471.) "If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we

conclude that the trial court abused its discretion in denying leave to amend. If we determine otherwise, then we conclude it did not. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.)

B. *The Trial Court Did Not Err in Ruling Shen's Claims Against Ellithorpe Are Barred by the Statute of Limitations*

As noted, the trial court found Shen's causes of action for fraud and negligent misrepresentation, which have three-year statutes of limitations (Code Civ. Proc., § 338, subd. (d); *Broberg v. Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 920), accrued no later than January 5, 2012, the date Shen filed his first amended complaint in the Ventura County action.[2] The court ruled that, because Shen filed this action on September 25, 2015, the statute of limitations barred both causes of action.

Shen argues the trial court erred in ruling the three-year statute of limitations barred his action against Ellithorpe because the first amended complaint "contains affirmative allegations that [Shen] did not discover the facts constituting the fraud until February 27, 2013." Shen asserts he "did not discover the falsity" of Ellithorpe's representations in the video until Svedeen's February 27, 2013 deposition.

---

[2] Shen filed the original complaint in the Ventura County action almost a year earlier, on November 29, 2011, but that pleading is not in the record.

Maybe not, but when Shen discovered the facts giving rise to his fraud and negligent misrepresentation causes of action is not the test. Instead, the test is when Shen discovered, *or had reason to discover*, the factual basis for his fraud and negligent misrepresentation causes of action. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192; *Quarry v. Doe I* (2012) 53 Cal.4th 945, 960; *Otay Land Company, LLC v. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 851.) And Shen had reason to discover his claims against Ellithorpe no later than January 5, 2012, even if he did not actually discover them at that time. (See *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 105 ["[t]he word 'discovery' as used in Code of Civil Procedure section 338, subdivision (d) 'is not synonymous with actual knowledge'"].)

"The delayed discovery rule "'postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.'"" (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 918; see *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 73.) "'Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her.' [Citation.] 'A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.'" (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 192.)

"In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th at p. 808.)

These rules apply to fraud and negligent misrepresentation causes of action, where the three-year statute of limitations "commences when the plaintiff discovers or reasonably should have discovered the facts constituting the fraud. [Citations.] A plaintiff who acquires knowledge of facts that would cause a reasonable person to suspect fraud has a duty to investigate and is charged with knowledge of facts that would have been revealed by a reasonable investigation." (*Pedro v. City of Los Angeles*, *supra*, 229 Cal.App.4th at p. 105; see *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 956 ["with any claim for fraud subject to section 338," "[d]elayed discovery . . . is defeated by presumed or constructive notice"]; *Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374 [for fraud claims, """constructive and presumed notice or knowledge are equivalent to knowledge,""" so that """when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to [her] investigation," the "statute commences to run"""]; see also *Broberg v. Guardian Life Ins. Co. of America*, *supra*, 171 Cal.App.4th at p. 920 [applying discovery rule to negligent misrepresentation].)

Shen had sufficient knowledge and suspicion of wrongdoing at least by January 5, 2012, when he filed his first amended complaint in the Ventura County action, if not before. According to his allegations in the Ventura County action, of which the trial

court properly took judicial notice,[3] Shen knew Detoxamin was unsafe, not approved by the FDA, and improperly labeled. He knew the company that manufactured Detoxamin and the medical clinic that prescribed it for him had made misrepresentations about the drug's safety and side effects. He was aware of the "false marketing of Detoxamin as a safe product." He knew that statements and advertisements, including statements on the internet, about Detoxamin had "defects." And he knew he had relied on representations by the manufacturer and his prescriber of Detoxamin in taking the drug and becoming sick on December 4, 2009, the same date he initially alleged in this action he viewed and relied on a "video and its contents" in taking Detoxamin while he was receiving treatment at Natural Healthcare. Shen may not have known Ellithorpe "was a participant" in the video, but he knew someone was, and he knew no later than January 5, 2012 that whomever he saw in the video and whoever participated in producing it were making allegedly false statements about Detoxamin. (See *Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 323

---

[3] (See Evid. Code, § 452, subd. (d) [court may take judicial notice of records of "any court of this state"]; *Magnolia Square Homeowners Assn. v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049, 1056-1057 [judicial notice of allegations in first amended complaint in a prior action was proper because the cross-defendant offered them to show the cross-complainant's notice or knowledge, not the truth of the allegations]; see also *AL Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75 Cal.App.4th 1310, 1313 [judicial notice of complaint in a prior action was proper to show the plaintiff did not raise a compulsory cross-complaint in the prior action].)

["'[r]ather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them'"].) Shen smelled a chelation rat, and by January 5, 2012 he had more than enough information to conduct a reasonable investigation into the video and its participants and producers. (See *In re Interest Rate Swaps Antitrust Litigation* (S.D.N.Y. 2017) 261 F.Supp.3d 430, 489 [plaintiffs "were on inquiry notice" for purposes of the statute of limitations where they "had every basis, in real time, to smell a rat"].)

The only fact Shen may not have known was Ellithorpe's name (although he should have known what she looked like because he saw her in the video he alleges he saw in December 2009). Ignorance of the defendant's identity, however, does not prevent accrual of a cause of action. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 743; see *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399 ["the plaintiff may discover, or have reason to discover, the cause of action even if he does not suspect, or have reason to suspect, the identity of the defendant"]; *Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 932 ["[a]ggrieved parties generally need not know the exact manner in which their injuries were 'effected, nor the identities of all parties who may have played a role therein'"]; *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1114 ["ignorance of the identity of the defendant does not affect the statute of limitations"].) Shen's causes of action against Ellithorpe accrued by January 2012, even though discovery in the Ventura County action may not have revealed her name until February 2013.

Shen argues the trial court erred by not accepting Shen's allegations of discovery as true, basing its ruling "on facts and allegations outside" the first amended complaint, and ignoring "the various allegations of what was discovered during the" deposition of Svedeen in the Ventura County action. After all, as Shen correctly points out, Shen alleged in his first amended complaint in this action, after receiving Ellithorpe's first demurrer, that he "did not discover the falsity of [Ellithorpe's] representations until February 27, 2013," the date of Svedeen's deposition, and that "[i]t was only at this time that [Shen] learned that [Ellithorpe] knew the representations to be false prior to making such representations."

As discussed, however, even if Shen's allegations of actual discovery were true, the allegations in the Ventura County action showed that, at the very least, he reasonably should have discovered his causes of action against Ellithorpe no later than January 2012. And even if Shen had alleged he did not discover, and reasonably could not have discovered, the facts of his claims against Ellithorpe until after the Svedeen deposition in February 2013, the court could have disregarded such an allegation and not accepted it as true. "Under the doctrine of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts that are judicially noticed.' [Citation.] 'False allegations of fact, inconsistent with annexed documentary exhibits [citation] or contrary to facts judicially noticed [citation], may be disregarded . . . .'" (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; accord, *Ivanoff*, *supra*, 9 Cal.App.5th at p. 726; *Stella v. Asset Management Consultants, Inc.*, *supra*, 8 Cal.App.5th at p. 190;

see *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751 ["a demurrer may be sustained where judicially noticeable facts render the pleading defective [citation], and allegations in the pleading may be disregarded if they are contrary to facts judicially noticed"].)

C. *The Trial Court Did Not Abuse Its Discretion in Denying Leave To Amend*

Shen argues the trial court erred by denying him "an opportunity to amend and plead the additional facts that support both the delayed discovery rule and equitable tolling." Shen has the burden of proving there is a reasonable possibility he can cure the defect in his pleading. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; see *Minnick v. Automotive Creations, Inc.* (2017) 13 Cal.App.5th 1000, 1004 ["[t]he appellant has the burden to identify specific facts showing the complaint can be amended to state a viable cause of action"]; *Ivanoff*, *supra*, 9 Cal.App.5th at p. 735 [to show the trial court abused its discretion in denying leave to amend, the plaintiff must "identify any additional facts she can allege to refute the conclusion her claims are time-barred as a matter of law"].)

Shen has not meet his burden. He argues he can amend his complaint to add "[a]additional allegations as to what was discovered and revealed to [Shen] during the Svede[e]n Deposition"; "[a]dditional allegations as to the accrual of the fraud claims at the time of the Svede[e]n Deposition"; "[a]dditional allegations relating to the statute of limitations commencing as of the Svede[e]n Deposition, and that at all times prior to the Svede[e]n Deposition, [Shen] was unaware and did

not know or have any reason to believe or suspect a factual basis for the elements of a claim against [Ellithorpe]"; "[a]dditional allegations as to the inability of [Shen] to have made earlier discovery despite reasonable diligence"; and "[a]llegations differentiating the claims of the [Ventura County action] from the claims alleged against [Ellithorpe] that were only discovered at the Svede[e]n Deposition." Shen, however, does not reveal what any of these allegations are. He does not identify what additional facts he would allege to show that his fraud claims accrued on February 27, 2013 or that he could not have discovered the factual basis for his fraud claims against Ellithorpe any earlier than that date.

Finally, Shen argues the trial court should have given him leave to amend to allege equitable tolling. "The equitable tolling of statutes of limitations is a judicially created, nonstatutory doctrine. [Citations.] It is 'designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations—timely notice to the defendant of the plaintiff's claims—has been satisfied.' [Citation.] Where applicable, the doctrine will 'suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99.) "[T]he effect of equitable tolling is that the limitations period *stops running* during the tolling event, and begins to run again only when the tolling event has concluded. As a consequence, the tolled interval, no matter when it took place, is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling event previously

occurred." (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370-371.)

Again, Shen has failed to meet his burden. He argues the trial court "abused its discretion in failing to provide [him] an opportunity to amend . . . to set forth further allegations that would invoke equitable tolling and to correct any deficiencies as to allow [his] claims to proceed." But Shen does not identify what "further allegations" he would make that would invoke the doctrine. Moreover, equitable tolling applies only in limited, "carefully considered situations to prevent the unjust technical forfeiture of causes of action." (*Lantzy v. Centex Homes*, *supra*, 31 Cal.4th at p. 370; accord, *Reid v. City of San Diego* (2018) 24 Cal.App.5th 343; see *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 248 ["'the lynchpin of equitable tolling [is] the defendant's ability to conceal from a plaintiff the right to bring a lawsuit'"].) Here, there is no forfeiture, let alone an unjust or technical one. Shen knew he had the right to bring a lawsuit to recover for the injuries he suffered after taking Detoxamin, filed that lawsuit in Ventura County, and obtained a settlement. He had the opportunity to name Ellithorpe as a Doe defendant in the Ventura County action under Code of Civil Procedure section 474 after he learned, allegedly for the first time, from a deposition taken in that action (and almost six months before he dismissed it), of Ellithorpe's potential liability.[4] (See *McClatchy v. Coblentz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 371-372 ["[s]ection 474

---

[4] Shen sued 100 "Doe" defendants in the Ventura County action and alleged, among other things, that they, "and each of them," made the misrepresentations about Detoxamin.

allows a plaintiff who is ignorant of a defendant's identity to designate the defendant in a complaint by a fictitious name (typically, as a 'Doe'), and to amend the pleading to state the defendant's true name when the plaintiff subsequently discovers it"].) Shen has not shown this is one of the rare cases for invoking the doctrine of equitable tolling.

DISPOSITION

The judgment is affirmed. Ellithorpe is to recover her costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.