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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LILY CASSANDRA ALPHONSIS, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B276418 (Los Angeles County Super. Ct. No. SC125554)

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

Lily Cassandra Alphonsis, in pro. per., for Plaintiff and Appellant.

Severson & Werson and Jan T. Chilton for Defendant and Respondent Bank of America, N.A.

Snell & Wilmer, Elizabeth M. Weldon, Todd E. Lundell and Jamie N. Furst for Defendant and Respondent Geico General Insurance Company.

Sheppard, Mullin, Richter & Hampton, Peter H. Klee, Karin Dougan Vogel and Matthew G. Halgren for Defendant and Respondent Allstate Indemnity Company.

Collinson Law, Laura E. Inlow and Matthew W. McAleer for Defendants and Respondents County of Los Angeles and Susan Jung Townsend.

Xavier Becerra, Attorney General, Richard J. Roho, Supervising Deputy Attorney General, and Jessica R. Marek, Deputy Attorney General, for Defendant and Respondent State of California Department of Motor Vehicles.

Lily Cassandra Alphonsis, in propria persona, appeals from the trial court's entry of judgment of dismissal after the court sustained without leave to amend the demurrers of defendants and respondents GEICO General Insurance Company (Geico), Allstate Indemnity Company (Allstate), Bank of America, N.A. (Bank of America), the County of Los Angeles (County), Susan Jung Townsend (Townsend), and the State of California (State) acting by and through the Department of Motor Vehicles (DMV).[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2016, appellant filed a first amended complaint (the operative complaint) against all respondents. The complaint is difficult to decipher, but appears to be based on events that occurred after the Los Angeles County District Attorney's office (District Attorney) allegedly confused appellant with someone named Lily Alphonsis Majdoub following a car accident, resulting in appellant's criminal convictions for insurance fraud and perjury and in immigration consequences.

According to the complaint, on April 5, 2007, appellant was in a car accident with a blue SUV, which fled the scene.[2] Appellant called

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[1] Anschutz Entertainment Group was named as a defendant below but is not a party to this appeal, and there is no indication in the record of any proceedings regarding this defendant.

[2] We set forth the allegations at the basis of appellant's complaint and discuss other allegations in more detail below.

911 and reported the accident but was advised to go home because she had not sustained any injury. Appellant decided to call Geico, her insurance company, the following morning. A few days later, Geico told appellant that her "information had been used to report an accident three days prior to [her] call to [Geico] about the blue SUV." Appellant paid her mechanic to repair her car and canceled her Geico insurance policy. Appellant called the DMV "and was told that [her] driver license was active and that there was no recorded accident on [her] record." A month later, Geico told appellant they had received an accident report from Allstate.

In July 2007, appellant was pulled over by a police officer and told that her driver's license was suspended. Appellant went to the DMV office and learned that her license had been suspended because Allstate had reported an accident on her record. The DMV employee reviewed the information and told appellant that the name on the Allstate claim was different from appellant's name and that appellant needed to either pay a fine or schedule a court hearing to be identified by the woman who had reported the accident, Alice Lewis (formerly Alice McCanally). Appellant scheduled a hearing, and the DMV temporarily removed the suspension.

At the October 3, 2007 hearing before the DMV hearing officer, Lewis testified that she had never seen appellant and that appellant was not the other party to her accident. The DMV investigated and learned that appellant and someone named Lily Alphonsis Majdoub had the same social security number and DMV record. The DMV corrected

the problem, relying on appellant's social security card, birth certificate, and United States passport.

In May 2011, Juan Flores, an investigator with the District Attorney's office, allegedly "compiled and combined two different identities, with various false statements" from Allstate and Geico in order to obtain a warrant for appellant's arrest. Appellant was arrested in April 2012 and learned that she was facing a charge of insurance fraud, in violation of Penal Code section 550.

The day before appellant's preliminary hearing on February 28, 2013, appellant's public defender told her that Susan Jung Townsend, a Deputy District Attorney at the time, had added six perjury charges (Pen. Code, § 118) based on statements by a DMV employee, Eduardo Castellon, that appellant used false documents to obtain her driver's license. Townsend also sent a copy of appellant's passport and a DNA sample to a United States Homeland Security agent, Thomas May, to verify appellant's identity. May told Townsend that appellant was Lily Alphonsis Majdoub, a native of Ghana.

Lewis testified at appellant's preliminary hearing that appellant was the person with whom she had an accident on April 2, 2007, and that she lied at the DMV hearing because "she was afraid for her life." Appellant decided that a plea deal was her "only chance to get out of jail" and therefore, on May 6, 2013, she pled no contest to insurance

fraud and two counts of perjury. (See *People v. Alphonsis* (May 14, 2014, B249896) 2014 Cal.App. Unpub. LEXIS 3411.)[3]

In May 2013, appellant learned that Townsend allegedly was working with agents from Immigration and Customs Enforcement to present false charges of terrorist activity against her. In July 2014, appellant received permission from her probation officer to travel to North Dakota. However, when she arrived in North Dakota, she was arrested on immigration-related charges and placed in federal custody. All the charges eventually were dropped, and appellant was released from federal custody in February 2015.

Appellant asserted a cause of action for negligence against all respondents in a complaint filed in March 2016. On June 3, 2016, the trial court sustained without leave to amend the demurrer of Geico and dismissed with prejudice appellant's complaint against Geico. On June 29, 2016, the trial court sustained without leave to amend the demurrer of Allstate and dismissed Allstate from the case.

On June 14, 2016, the court sustained without leave to amend the State's demurrer. The court reasoned that appellant's claim for general negligence failed to set forth a statutory basis for liability against the DMV as required by Government Code section 815. The court further found that appellant's action was barred by the two-year statute of limitations set forth in Code of Civil Procedure section 335.1.

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[3] We grant Allstate's motion to take judicial notice of the opinion in the criminal case.

On July 8, 2016, the court sustained without leave to amend the demurrer of the County and Townsend. The court found that appellant did not state a negligence claim, there is no statutory authority for a generalized negligence claim against a public entity, and that the County defendants enjoyed prosecutorial immunity.

On July 27, 2016, the court sustained without leave to amend the demurrer of Bank of America and dismissed with prejudice the action as to Bank of America.

DISCUSSION

I. *Deficiency of Briefs*

Appellant's briefs on appeal provide no citations to the record to support her arguments, and therefore her contentions are forfeited. "Rule 8.204(a)(1)(C) of the California Rules of Court requires all appellate briefs to '[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.'" (*Conservatorship of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253.) "'The appellate court is not required to search the record on its own seeking error.' [Citation.] Thus, '[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]' [Citations.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

"The rules of appellate procedure apply to [appellant] even though [s]he is representing [her]self on appeal. [Citation.] A party may choose to act as his or her own attorney. We treat such a party like any other party, and he or she "'is entitled to the same, but no greater

consideration than other litigants and attorneys. [Citation.]"' [Citation.]" (*Scholes v. Lambirth Trucking Co.* (2017) 10 Cal.App.5th 590, 595 [review granted June 21, 2017, S241825].) Even if appellant's contentions were not forfeited, we would find them unmeritorious. We therefore affirm.

II. *Standard of Review*

"'"On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law."' [Citation.] 'A judgment of dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer, whether or not the court acted on that ground.' [Citation.] In reviewing the complaint, 'we must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable.' [Citation.]" (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153 (*Gomes*).) Where, as here, the trial court sustains the demurrer without leave to amend, "'we must decide whether there is a reasonable possibility the plaintiff can cure the defect with an amendment. . . . If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. . . . The plaintiff has the burden of proving that an amendment would cure the defect.' [Citation.]" (*Ibid.*) We find no error or abuse of discretion.

III. *Allegations Against Bank of America*

Appellant alleged general negligence against Bank of America for the bank's refusal to return money taken from her business account. According to the complaint, appellant opened business and personal accounts with Bank of America in April 2011. In May 2011, her personal account was emptied. Bank of America informed her that her "accounts profile had been changed and replaced with another person's information," rectified the information and replaced the money. At an unspecified date "not long after this incident," appellant traveled to India and found upon her arrival that "someone" had canceled her hotel reservations. Appellant demanded that Bank of America return her wire transfer of funds. Bank of America allegedly refused appellant's demand to return her $27,000, resulting in the delay of appellant's launch of a business organization and the cancellation of her medical insurance. Appellant asserts in her opening brief that Bank of America claimed the money from her business account "was spent on a card that was issued and sent to an address other than the address on the account."

After appellant filed a complaint against Bank of America in November 2013, Bank of America allegedly "convinced [appellant] to withdraw the case" and give Bank of America "the opportunity to reopen the investigation" and return the funds to her account. Appellant agreed to do so, but Bank of America allegedly did not conduct an investigation and refused to return the $27,000. Appellant missed a March 2014 court date in her case against Bank of America because she was incarcerated by Homeland Security.

Bank of America demurred to the complaint on the ground that appellant failed to state facts sufficient to constitute a cause of action for negligence. The demurrer asserted that the complaint was barred on res judicata and statute of limitations grounds, and that the complaint failed to plead the elements and facts sufficient to establish negligence. Even if the complaint could be construed as properly pleading elements and facts sufficient to establish negligence by Bank of America (and it does not appear to be sufficient), the action is barred by the statute of limitations and res judicata. (See *Gomes*, *supra*, 192 Cal.App.4th at p. 1153 ["'A judgment of dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer'"].)

A. *Statute of Limitations*

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' [Citations.] . . . [¶] A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' [Citations.]" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807.) Bank of America asserts that appellant's action is barred under either the two-year statute of limitations in Code of Civil Procedure section 339 or the three-year period for recovery of personal property in Code of Civil Procedure section 338. We agree.

The events that form the basis for appellant's negligence cause of action against Bank of America occurred in 2011. Appellant's complaint

was not filed until March 2016 and therefore is barred by either statute of limitations.

Appellant asserts that the limitations period was tolled under Code of Civil Procedure section 352.1 because she was "constantly arrested and incarcerated" from February 2013 to September 7, 2017.[4] We disagree. The tolling provision requires that the person be imprisoned at the time the cause of action accrued. (Code Civ. Proc., § 352.1, subd. (a).) Appellant's incarceration for various periods between February 2013 and September 2017 is not pertinent to the limitations period.

B. *Res Judicata*

"The term 'res judicata' is often used as an umbrella term encompassing the principles of claim preclusion and issue preclusion, viewed as two separate aspects of a single doctrine. [Citation.] 'Claim preclusion, the '"'primary aspect'"' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. [Citation.] Issue preclusion, the '"'secondary aspect'"' historically called collateral estoppel, describes the bar on

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[4] The statute provides: "If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335), is, *at the time the cause of action accrued*, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years." (Code Civ. Proc., § 352.1, subd. (a), italics added.)

relitigating issues that were argued and decided in the first suit.' [Citation]. [Citation.] [¶] . . . Generally, '[c]laim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit.' [Citation.]" (*Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 854 (*Boyd*).) Under the rule of claim preclusion, "'a judgment for the defendant serves as a bar to further litigation of the same cause of action.' [Citation.]" (*Ibid.*)

Appellant has filed two prior complaints against Bank of America based on the same allegations set forth in the current lawsuit. In her second action, filed in December 2013, appellant relied on the same factual allegations as she makes here to set forth causes of action for financial damages, defamation, conspiracy, negligence, and emotional distress. Bank of America demurred to the complaint in the second action on the grounds that the complaint failed to state facts sufficient to constitute a cause of action and was uncertain, pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f). The trial court sustained the demurrer without leave to amend.

Appellant's complaint in the instant case relies on the same factual allegations as her prior complaint–the removal of funds from her personal bank account, the change of her profile on the account, the cancellation of her hotel reservations in India, and Bank of America's refusal to return $27,000 from her business account. The instant action accordingly is barred by claim preclusion. (See *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1428 ["'a judgment on a general demurrer will have the effect of a bar in a new action in which

the complaint states the same facts which were held not to constitute a cause of action on the former demurrer'"]; *Boyd*, *supra*, 18 Cal.App.5th at p. 855 [explaining that "'it is generally held that a demurrer which is sustained for failure of the facts alleged to establish a cause of action, is a judgment on the merits'"].)

IV. *Allegations Against Allstate*

Appellant alleged that Allstate negligently reported Lewis' accident to the DMV, contributing to appellant's prosecution for insurance fraud. Allstate demurred to the complaint on the grounds that (1) appellant failed to allege that Allstate owed her a duty of care; (2) she failed to state facts to establish the breach of any duty; and (3) the claim was barred by the two-year statute of limitations in Code of Civil Procedure section 335.1.

According to the complaint, Allstate was not appellant's insurer. The complaint does not set forth any facts that would establish that Allstate owed appellant a duty of care. (See *Day v. Lupo Vine Street, L.P.* (2018) 22 Cal.App.5th 62, 69 ["'The elements of a cause of action for negligence are: the "defendant had a duty to use due care, that he [or she] breached that duty, and that the breach was the proximate or legal cause of the resulting injury"'"].) "'Liability for negligent conduct may only be imposed where there is a duty of care owed by the defendant to the plaintiff or to a class of which the plaintiff is a member. [Citation.]' [Citation.]" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 918.) Nor are there any allegations that would support breach of duty or causation. The complaint alleges that Allstate reported to the DMV

that its insured was in an accident with someone named Lily Majdoub. The DMV's alleged confusion between appellant and Majdoub was not caused by Allstate. We affirm the trial court's dismissal of Allstate from the action.

V. *Allegations Against Geico*

Appellant asserted that Geico refused to pay damages for her April 5, 2007 accident and subsequently made false statements regarding her claim for payment to District Attorney investigator Flores, resulting in appellant's prosecution for insurance fraud.

Geico demurred to the complaint on three grounds: (1) appellant's claim was barred by the statute of limitations (Code Civ. Proc., § 335.1); (2) the negligence claim was barred by the litigation privilege (Civ. Code, § 47, subd. (b)); and (3) the complaint failed to state a cause of action and failed to plead the elements of duty, breach, and causation (Code Civ. Proc., § 430.10, subd. (e)).

Appellant's claim for negligence against Geico is barred by the statute of limitations.[5] Code of Civil Procedure section 335.1 provides a two-year limitations period for "injury . . . caused by the wrongful act or neglect of another." Geico allegedly denied appellant's insurance claim in April 2007 and presented "falsified statements" at appellant's preliminary hearing in February 2013. The complaint was filed on March 15, 2016 and therefore was untimely. Appellant's claim of

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[5] Our reliance on statute of limitations grounds should not be taken as an indication of the merits of Geico's other grounds for demurrer.

tolling under Code of Civil Procedure section 352.1 is not meritorious for the reasons discussed above.

VI. *Allegations Against County*

Appellant asserted that the District Attorney's office and Townsend negligently pursued false charges against her, disregarding the inconsistencies between Lewis' statements at appellant's DMV hearing and at her preliminary hearing. Appellant further alleged that Townsend knew the allegation that appellant was from Ghana had been proven false but continued to seek to imprison appellant, resulting in appellant's incarceration in federal custody.

In addition to the allegations regarding appellant's prosecution for perjury and insurance fraud, appellant alleged that the Los Angeles County Probation Department presented false statements that resulted in her arrest by federal agents. Appellant also asserted that the Los Angeles County Sheriff's Department provided inadequate meals and medical care during her incarceration and inappropriate contact by a deputy in her jail cell.

The County's demurrer was based on three grounds: (1) appellant failed to comply with Government Code section 911.2, which requires a plaintiff to file a claim against the government "not later than six months after the accrual of the cause of action." (Gov. Code, § 911.2, subd. (a)); (2) the County defendants were entitled to prosecutorial immunity; and (3) the complaint failed to allege that the County defendants owed appellant "a mandatory duty."

The Government Claims Act (Gov. Code, § 810 et seq.)[6] ("the Act") provides that "[e]xcept as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (§ 815, subd. (a).) "As part of the . . . Act, Government Code section 900 et seq. establishes certain conditions precedent to the filing of a lawsuit against a public entity. . . . [A] plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 945.4.)" (*State of California v. Superior Court* (*Bodde*) (2004) 32 Cal.4th 1234, 1237 (*Bodde*), fn. omitted.) In *Bodde*, our Supreme Court held that the "failure to allege facts demonstrating or excusing compliance with this claim presentation requirement subjects a complaint to a general demurrer." (*Ibid.*)

Not only has appellant has failed to allege any facts demonstrating or excusing compliance with the Act, but appellant's claims against Townsend are barred by immunity principles. The Act "generally affords a public employee personal immunity from suit when the act or omission for which recovery is sought resulted from 'the exercise of the discretion vested in him.' (§ 820.2.)" (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 976; see also *Bocanegra v. Jakubowski* (2015) 241 Cal.App.4th 848, 858 ["'A prosecutor acts within his official capacity [and thus is entitled to prosecutorial immunity] when his conduct is an "'integral part of the judicial process"' or "intimately

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[6] Unspecified statutory references will be to the Government Code.

associated with the judicial phase of the criminal process"""].) The trial court properly sustained without leave to amend the demurrer of the County and Townsend.

VII. *Allegations Against State*

Appellant alleged that Castellon, the DMV employee, presented misleading statements at the preliminary hearing, tampered with appellant's DMV applications, and sent them to Townsend as evidence of the perjury charges. Appellant's claims against the State are barred for failure to comply with the requirements of the Act. (*Bodde*, *supra*, 32 Cal.4th at p. 1237.)

VIII. *No Showing of Reasonable Possibility of Amendment*

"'The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.] . . . [¶] To satisfy that burden on appeal, a 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 (*Rossberg*).)

In support of her request to amend the complaint, appellant asserts that amendment "would not have delayed the trial, as the trial date was not set." She further contends that amendment would "enable her to deal with the defects in her complaint, legal theories[], discrepancies[], elements of the action and the statute of limitations claims raised in Respondents' Demurrers." Appellant has not met her burden of setting forth the legal basis for amendment and specific factual allegations that would support her causes of action. (*Rossberg*, *supra*, 219 Cal.App.4th at p. 1491.)

DISPOSITION

The judgment of dismissal as to all respondents is affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J. MICON, J.*

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