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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

JOSE MANUEL DULANTO, Plaintiff and Appellant, v. WILLIAM E. LORI, et al., Defendants and Respondents.	B288458 (Los Angeles County Super. Ct. No. BC656164)

APPEAL from a judgment of the Superior Court of Los Angeles County, Terry Green, Judge. Reversed in part and remanded.

Jose Manuel Dulanto, in propria persona, for Plaintiff and Appellant.

Paul, Plevin, Sullivan & Connaughton, Aaron A. Buckley and Kara Siegel for Defendants and Respondents William E. Lori, the Knights of Columbus, Beth Elfrey, and Carl A. Anderson.

Wolflick, Simpson, Khachaturian & Bouayad, David B. Simpson and Eva Gramyk for Defendants and Respondents Joseph Martin Gutierrez and Steve Owens.

Clark & Trevithick and Michele B. Friend for Defendant and Respondent Jose H. Gomez.

Jose Manuel Dulanto filed the instant litigation against the Knights of Columbus, William E. Lori, Beth Elfrey, Carl A. Anderson, Martin Gutierrez, Steve Owens, and Jose Gomez. All defendants demurred to the complaint. The trial court sustained the demurrers without leave to amend and dismissed the action. Dulanto appeals. We affirm the judgment as to defendants Gomez, Owens, and Gutierrez, and reverse the judgment as to the remaining defendants.

FACTUAL AND PROCEDURAL BACKGROUND

I. Prior Litigation

In December 2014, Dulanto sued the Knights of Columbus and Steve Owens, alleging that they had employed him to sell life insurance policies and that they had breached the employment contract; failed to pay regular and overtime wages; failed to compensate him for all hours he worked in violation of Labor Code sections 557 and 1198; failed to maintain records required by Labor Code section 226; and engaged in unfair business practices as defined by Business and Professions Code section 17200.[1] Dulanto later amended his complaint to add two causes of action, asserted only against the Knights of Columbus, for

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[1] We take judicial notice of the record in this prior action (Case Nos. B279341 and B284429). (Evid. Code, § § 452, subd. (d), 459.)

unjust enrichment. Owens was dismissed from the litigation prior to trial.

Shortly before trial, Dulanto sought a continuance to amend his complaint to add approximately 12 new causes of action against the Knights of Columbus and seven new individual defendants, including William E. Lori, Carl Anderson, Beth Elfrey, and Joseph Martin Gutierrez. Dulanto advised the trial court that he wished to add causes of action for fraud, wrongful termination, "breach of the duty of care, discrimination, harassment, intentional infliction of emotional distress, spiritual and religious abuse, clergy economic abuse, violation of right of assembly, violation of equal pay and equal opportunity, and illegal interference with fraternity contract and due process, and breach of the contract of membership in the Knights of Columbus." Dulanto supported his request for a continuance to amend the complaint with an affidavit in which he declared that his request was based "in part" on positions taken by the Knights of Columbus in its motion for summary judgment. He acknowledged that "[s]ome of this may seem as though it was apparent from early in the case," and attributed his delay in amending the complaint to being "paralyzed by religious fear," "suffer[ing] spiritual and religious abuse," and being "economically and religiously tied to the Knights of Columbus." He advised the court that new discovery would be necessary when the complaint was amended. Dulanto does not appear to have submitted a proposed second amended complaint to the trial court with his application.

The court denied Dulanto's request for a continuance to amend the complaint because the request was made too close to trial. The Knights of Columbus prevailed after trial. Dulanto

filed a notice of appeal from the judgment in December 2016 (Case No. B279341), and later appealed the court's April 4, 2017 order on his motion to tax costs (Case No. B284429).[2]

II. Present Litigation

While the appeal in Case No. B279341 was pending and before the ruling was made on the motion to tax costs in the first action, on April 3, 2017, Dulanto filed a new action. The defendants listed in the caption of the complaint in this lawsuit were William E. Lori, Jose H. Gomez, Joseph Martin Gutierrez, Beth Elfrey, Carl A. Anderson, Steve Owens, and the Knights of Columbus.[3]

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[2] Our decision in these appeals is filed concurrently with this opinion.

[3] Dulanto identified Lori as an archbishop and alleged that he was a member of the board of directors "of the insurance company co-Defendant Knights of Columbus, representing the Roman Catholic Church as Supreme Chaplain." Dulanto alleged that Anderson was a member of the board of directors and CEO of the Knights of Columbus insurance company, and "Supreme Knight and personal financial adviser of His Holiness the Pope, head of the Roman Catholic Church and the Vatican." Dulanto alleged only that Elfrey was an adult living in Connecticut; she is identified elsewhere in the record as the Knights of Columbus's senior vice president and special counsel. Dulanto alleged that Owens was a member of the Knights of Columbus insurance company and its general agent, and that Gutierrez was a member of the Knights of Columbus insurance company acting as its agency administrator. Dulanto did not identify Gomez in the complaint beyond listing him as an archbishop in the caption.

In the text of the complaint, Dulanto asserted 23 causes of action against all defendants: religious discrimination; religious harassment; race and/or national origin discrimination; race and/or national origin harassment; disability discrimination; failure to accommodate; failure to engage in the interactive process; disability harassment; failure to prevent discrimination and harassment; failure to investigate discrimination; retaliation; failure to pay wages; failure to provide meal periods; failure to provide rest periods; violation of Labor Code section 226; unfair business practices; violation of Labor Code section 2699, et seq.; conversion; intentional infliction of emotional distress; fraud; wrongful termination; interference with membership agreement; and violation of due process.

All named defendants demurred to the complaint. One demurrer was filed by the Knights of Columbus, Lori, Elfrey, and Anderson. Together, Owens and Gutierrez filed a separate demurrer. Gomez filed a demurrer on behalf of himself alone.

On September 7, 2017, the court sustained the demurrer of the Knights of Columbus, Lori, Elfrey, and Anderson without leave to amend. On October 26, 2017, the court heard the remaining two demurrers and sustained them without leave to amend. The court ordered the case dismissed, and judgment was entered on December 19, 2017.

Dulanto moved for a new trial. After a hearing, the court denied his motion. Dulanto appeals.

DISCUSSION

I. Standard of Review

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967 (*Aubry*).)

Therefore, on review of a judgment of dismissal following a demurrer, "'[the appellant] has the burden to show either that the demurrer was sustained erroneously or that the court abused its discretion in sustaining the demurrer without leave to amend.' [Citation.] '[A]lthough we use a de novo standard of review . . . , we do not transform into a trial court. . . . Instead, the appellant must frame the issues for us, show us where the superior court erred, and provide us with the proper citations to the record and case law. '"'[D]e novo review does not obligate us to cull the record for the benefit of the appellant. . . . As with an appeal from any judgment, it is the appellant's responsibility to

affirmatively demonstrate error . . . by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed.""" [Citation.]" (*Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396, 404.)

II. Alleged Procedural Deficiencies in Demurrers

Dulanto alleges several procedural problems in conjunction with the three demurrers. First, Dulanto claims that all defendants neglected the mandatory meet and confer process required by Code of Civil Procedure section 430.41 before filing their demurrers, and that this failure "cannot be cured." Dulanto provides no authority to support his contention that the failure to meet and confer invalidates demurrers or rulings on demurrers, and the law is to the contrary. "Code of Civil Procedure section 430.41 does not contain any penalties for the failure to follow the meet-and-confer process set forth in subdivision (a)(1). Indeed, subdivision (a)(4) of that section provides that '[a]ny determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.'" (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 515.) Thus, even if the defendants did not comply with the meet-and-confer requirements, this provides no basis to reverse the judgment.

Next, Dulanto argues that the demurrers were invalid because they were set for hearing more than 35 days after the demurrers were filed. Dulanto construes California Rules of Court, rule 3.1320(d) as setting an outer limit of 35 days from filing, but the rule actually provides that demurrers "must be set for hearing not more than 35 days following the filing of the

demurrer or on the first date available to the court thereafter," and that for good cause shown, the court may order the demurrer hearing to be held on an earlier or later day on notice prescribed by the court. (Cal. Rules of Court, rule 3.1320(d).) Therefore, Dulanto is not correct that the mere fact that the demurrers were set for hearing more than 35 days after they were filed constitutes a violation of the California Rules of Court or invalidates the demurrers, and he has not argued that the demurrers were not set on the first date available to the court or on a date ordered by the trial court on good cause shown.

Dulanto also argues that the Knights of Columbus, Lori, Elfrey, and Anderson violated California Rules of Court, rule 3.1113 when they filed an amended notice of demurrer and demurrer without also filing a new memorandum of points and authorities. The demurrer filed by the Knights of Columbus, Lori, Elfrey, and Anderson was supported by a memorandum of points and authorities. When the hearing date for the demurrer changed, the defendants served Dulanto with an amended notice of motion stating the new date. Dulanto offers no legal support or analysis to support his claim that a new memorandum of points and authorities is required when a party amends its notice of motion to alert the opposing party to a date change, and he does not claim that he was prejudiced in any way by this alleged violation of the rule. Under these circumstances, any possible error is harmless. Moreover, a party's failure to comply with such rules does not prevent a court from hearing and deciding a demurrer. (*Johnson v. Sun Realty Co*. (1934) 138 Cal.App. 296, 299.)

III. Demurrer of Knights of Columbus, Lori, Elfrey, and Anderson

The demurrer filed by the largest group of defendants, the Knights of Columbus, Lori, Elfrey, and Anderson, was the first to be heard by the trial court. In its written ruling sustaining the demurrer, the court stated no basis for its ruling, in violation of Code of Civil Procedure section 472d, which provides that "Whenever a demurrer in any action or proceeding is sustained, the court shall include in its decision or order a statement of the specific ground or grounds upon which the decision or order is based which may be by reference to appropriate pages and paragraphs of the demurrer."

The court did, however, state its reasoning during the hearing on the demurrer. The court opened the hearing by describing the issue in the case as, "How many bites of the apple do you get on any given set of facts? And the answer is: one. You get one bite at the apple. And here you have attempted multiple bites of the apple." The court characterized the first action as arising "out of this employment relationship, and the dissatisfaction [Dulanto] had with the . . . relationship." "And that," the court told Dulanto, was a time and place to bring all the employment-related causes of action." Were there no rule against serial litigation, the court continued, no matter would ever be resolved, because a party could always file a new action. "You can't do that," the court told Dulanto. Speaking of the newly filed complaint, the court said, "All of your cases, all of your causes of action arise out of the employment relationship. All the people you sue are people who were part of the employment relationship arising out of the facts and complaint you had about that relationship. And that's why we can't just

have serial lawsuits. Your remedy there is from what you have done, you have appealed it."

The court acknowledged that the wrongful termination cause of action did not fit within this paradigm. The court told Dulanto, "The only question I had was the wrongful termination [claim], because that wasn't part of the initial employment dispute you had." The court acknowledged that Dulanto had attempted to amend his complaint in the initial action to add the wrongful termination claim but that the trial court had denied his request. The court nonetheless considered this cause of action to be foreclosed by the prior litigation: "I assume that's part of your appeal, that Judge Linfield wrongly denied that. If it is not, you may want to revisit your appeal. But it is not part of this case. I am not a court of appeal. So that's your major problem here. [¶] All of these causes of action belonged in the trial case in front of Judge Linfield."

The court referred generally to other possible defects in the complaint, defects that would only be "important if I were to grant leave to amend." The court said, "[Y]ou have other problems in this case. Apparently, you missed the year deadline for some of the FEHA [Fair Employment and Housing Act (Gov. Code, § 12940 et seq.)] causes of action. You had administrative remedies you had to seek before you could bring them. [¶] Apparently, that wasn't done. Some of the causes of action didn't really state causes of action." The court advised Dulanto that it would ordinarily grant him leave to amend for such pleading problems, but the prior litigation made leave to amend futile: "Now, if the only sin here was not spelling out, with specificity, what your causes of action were based on, then I would give you leave to amend. But because the big problem you have is the

second bite at the apple, there is no point in having leave to amend because that is not going to change."

A. Claim Preclusion

"Claim preclusion 'prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' [Citation.] Claim 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. [Citations.] If claim preclusion is established, it operates to bar relitigation of the claim altogether." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824, italics omitted.) Additionally, "'[i]f the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. The reason for this is manifest. A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable.' [Citation.]" (*Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 402, italics omitted (*Aerojet*).)

B. Erroneously Broad Application of Preclusion

The trial court addressed only one cause of action individually at the hearing: the wrongful termination claim (count 21). The trial court acknowledged that this cause of action was not only based on different allegedly wrongful conduct than that alleged in the initial action—conduct that had not yet occurred at the time the original and amended complaints were

filed—but also that Dulanto had been denied the opportunity to litigate the claim in the earlier action. As the court recognized, this cause of action did not raise the same cause of action, between the same parties or those in privity with them, after a final judgment on the merits in the first suit. (*DKN Holdings*, *supra*, 61 Cal.4th at p. 824.) The wrongful termination claim was not within the scope of the initial litigation, and Dulanto had not withheld it from the prior action. To the contrary, Dulanto had sought leave to amend the complaint in the first action to assert this claim, but with trial imminent the trial court in that case denied him the opportunity to litigate this claim and others that would have would have expanded the litigation and required new discovery. Moreover, the judgment in the first action was not yet final. (*Samara v. Matar* (2017) 8 Cal.App.5th 796, 805.) Accordingly, the trial court erred when it sustained the demurrer of the Knights of Columbus, Lori, Elfrey, and Anderson to the wrongful termination cause of action on the basis that it was precluded by the prior litigation.[4]

There is no indication in the record that the court reviewed the remaining causes of action individually. Instead, the trial court applied the claim preclusion doctrine so broadly as to conclude that the second action was barred in its entirety as to the Knights of Columbus, Lori, Elfrey, and Anderson because it arose from Dulanto's employment with the Knights of Columbus

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[4] We note that Dulanto also appears to allege that the termination was retaliatory, interfered with his membership agreement, and violated his due process rights (counts 11, 22, and 23), indicating that these causes of action may also be based, at least in part, on events occurring after the filing of the complaint in the first action.

and because Dulanto had already filed a lawsuit concerning his employment. We have found no authority that permits such a sweeping interpretation of the preclusion doctrine. Such a broad reading of the doctrine would insulate employers from suit for new allegedly wrongful actions toward employees who had filed suit against them once the employees' lawsuit had advanced to the point where amendment was no longer permitted—no matter what potentially wrongful conduct had occurred after the events alleged in the initial actions or how different the facts were that gave rise to the new claims.

While it does appear that some of Dulanto's remaining claims ultimately may be precluded by the prior lawsuit when it becomes final, most obviously the wage and hour and unfair business practices claims (counts 12-17) that at least superficially appear identical to or closely related to the causes of action litigated in the first action, the record demonstrates that the court did not perform the analysis necessary to make this determination. The trial court erred when it sustained the demurrer with respect to the remaining causes of action on the basis of the prior litigation without examining each claim individually to determine whether it was (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit; and even if it was not, whether the claim nonetheless was within the scope of the earlier action, related to the subject-matter and relevant to the issues, so that it could have been raised in the first case. (*DKN Holdings*, *supra*, 61 Cal.4th at p. 824; *Aerojet*, *supra*, 97 Cal.App.4th at p. 402.)

We note, however, that Dulanto's complaint is so unclear that it is not certain that such an analysis can be performed unless the complaint is amended. The complaint is extremely

difficult to decipher and fails in many instances to identify the conduct on which the causes of action are founded. It fails to provide a "statement of the facts constituting the cause of action, in ordinary and concise language" (Code Civ. Proc., § 425.10, subd. (a)(1)) and is inadequate to "'give[] notice of the issues sufficient to enable preparation of a defense.' [Citation.]" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.). Moreover, the court identified other deficiencies in the complaint, although it did not discuss them in detail due to its preclusion ruling: The court mentioned the failure of "some" unspecified causes of action to state a claim and the "apparent[]" failure to exhaust administrative remedies on the FEHA claims. The court indicated that it would have granted leave to amend to address these failings were it not for the court's overarching ruling that the entire lawsuit was precluded.[5] Because the complaint "is so incomprehensible that a defendant cannot reasonably respond" (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135), and because it is not clear on this record whether Dulanto can allege facts demonstrating that the claims asserted in this action are not identical to, and could not have been brought, in the prior action, we remand the matter to the trial court with instructions to permit Dulanto to amend his complaint to clarify his allegations. This will allow Dulanto to present his claims in a manner that will enable the court to

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[5] Additionally, Dulanto had shown a reasonable probability that he could amend his FEHA causes of action to state a claim by advising the court in his opposition to the demurrer that he had in fact exhausted his remedies by requesting and obtaining a right-to-sue letter (see Gov. Code, § 12960; *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724).

determine whether they are precluded by the prior litigation, and it will also allow Dulanto to remedy, if he can, the other pleading deficiencies identified by the trial court at the demurrer hearing as secondary problems in the complaint.

II. Other Demurrers

The remaining defendants' two demurrers, neither of which argued claim preclusion, were heard together in a subsequent hearing. In contrast to the first hearing, the trial court considered the causes of action either individually or in groups by type of claim. The trial court again failed to state the grounds on which its ruling was based in its minute order, but it spoke at length during the hearing. The trial court told Dulanto, "[T]here are so many ways to sustain this demurrer without leave to amend that it's—there are so many things wrong with the pleadings. . . . [Y]our actions 1 through 11, the FEHA claims, you filed against individuals, but they aren't employers. You also have statute of limitations issues here. [¶] On your labor claims, 12 through 17, same thing. You filed against individuals, and they can't be defendants. [¶] [Count] 18, cause of action, conversion. Unpaid wages cannot be conversion. [¶] Emotional distress is time-barred—that's 19—as is the fraud [count 20]. [¶] You know, but these are individuals. They didn't wrongfully terminate you. [¶] Interference with membership. This is the Knights. I know that was the last case, wasn't it? At any rate, that was—that's barred. [¶] Violation of due process. I'm not sure what that is, but I think Judge Linfield dealt with that. And that would also be barred. And my tentative would be to sustain this without leave."

Dulanto argued that the individual defendants were all his employers. The court asked Dulanto how he would amend the complaint to allege that the individual defendants were employers. Dulanto responded, "I am ready to provide the court, including photographs, including documents to show that my job, my relationship, my working relationship is and always has been under control of these two archbishop[s] and these four civil persons." Specifically with respect to Gomez, Dulanto said that he "is the man who controls the Catholicism here in Los Angeles," that Dulanto had "worked with him directly" throughout his employment, and that Gomez was in control.

Counsel for Owens and Gutierrez argued to the court that this offer of proof would not cure the defects in the complaint because establishing that a person is the manager, supervisor, or administrator for an employee does not establish that the person is an employer. The court said, "Right," and then asked counsel to "talk to the plaintiff and try to explain, since we're all here in court and he's an attorney[6] who has a passionate claim, and I can only use certain words, perhaps you can use other words to explain why this suit can't go forward." The attorneys for the defendants then addressed Dulanto and the court about employee-employer relationships, with one attorney suggesting a court decision Dulanto could read on the topic.

The trial court told Dulanto, "I understand that you feel wronged, and that you want to express how you feel wronged, but the—even though you've been wronged, you have to only sue certain people. The law doesn't let you come in here and say, 'I've been wronged' and then sue people who you think are somehow involved unless case law and statutes identify them as people

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6 Dulanto had been an attorney in another country.

who are proper defendants. [¶] And here, I think you have . . . been disappointed by the Catholic Church that I'm sure you believe in, and it's an important part of your life. You've been disappointed by the Church. These are Catholic-affiliated organizations and people who work with the Church or other organizations that are affiliated, and then you sue the archbishops, and then you sue people who you think are in charge, and they're just not defendants. They aren't people you can sue. They're not legally responsible for the causes of action you brought." The court sustained the demurrers without leave to amend and dismissed the action.

A. Gomez's Demurrer

Although Gomez was named in the caption of the complaint, he was not mentioned in any allegation of the complaint. Therefore, as to Gomez, the complaint failed to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10, subd. (e).)

On appeal, Dulanto appears to be under the impression that Gomez's demurrer was sustained on the mistaken belief that Gomez was not affiliated with the Knights of Columbus. He focuses his argument on appeal solely on asserting that other defendants stated that Gomez is affiliated with the Knights of Columbus. Without any facts alleging any conduct by Gomez that could give rise to liability, Dulanto has not demonstrated that an affiliation with the Knights of Columbus is sufficient to state a cause of action against Gomez. As Dulanto has not established any error in the trial court's ruling, nor has he identified any facts he could plead to state a cause of action against Gomez, this demurrer was properly sustained without leave to amend with respect to Gomez.

B. Demurrer of Owens and Gutierrez

Dulanto's entire argument on appeal with respect to Owens and Gutierrez is that they cannot be "exonerated" by demurrer on the "falsehood" that they are "co-workers." He asserts that he did not sue these defendants as co-workers and that he will provide "evidence enough to demonstrate that Steve Owens presented and represented himself as an independent contractor, and that Joseph Martin Gutierrez presented and represented himself as administrator of the insurance business with the insurance company Knights of Columbus being prohibited to work in the United States and in clear violation of the Immigration Laws and Insurance Regulations of the Department of Insurance of the State of California and in complicity with the insurance company Knights of Columbus and its management and his co-defendants."

This two-sentence argument is insufficient to meet Dulanto's burden on appeal to affirmatively demonstrate error. His argument does not "show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer," (*Scott v. JPMorgan Chase Bank* (2013) 214 Cal.App.4th 743, 752), nor has he demonstrated a reasonable possibility that he could amend the complaint to state causes of action against Owens and Gutierrez. (*Aubry*, *supra*, 2 Cal.4th at p. 967.) Dulanto has not established any error in denying this demurrer without leave to amend.

DISPOSITION

As to defendants Owens, Gutierrez, and Gomez, the judgment is affirmed. Owens, Gutierrez, and Gomez shall recover their costs on appeal.

As to the Knights of Columbus, Lori, Elfrey, and Anderson, the judgment is reversed and the matter remanded to the trial court with instructions to grant Dulanto leave to file an amended complaint to address the defects in the complaint and, if possible, to allege facts showing why the causes of action were not litigated, and could not have been brought, in the earlier litigation. These parties shall bear their own costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.