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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

RICHARD COMPTON, JR., Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B283999 (Los Angeles County Super. Ct. No. BC590390)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ernest M. Hiroshige, Judge. Reversed.

Mobley Law Offices, Felicia A. Mobley and Thomas E. Maciejewski for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, and Matthew A. Scherb, Deputy City Attorney, for Defendants and Respondents.

Plaintiff Richard Compton, Jr. appeals from a judgment of dismissal after the trial court sustained a demurrer without leave to amend in favor of defendants City of Los Angeles and Sandra Brito, an employee of the City (collectively, the City). The trial court ruled that plaintiff 's causes of action were barred by the six-month statute of limitations under Government Code section 945.6, subdivision (a)(1)[1], and plaintiff 's allegations were insufficient to invoke equitable estoppel.

We hold that plaintiff adequately pleaded the elements of equitable estoppel. Although the City contended that it mailed written notice to plaintiff rejecting his prelawsuit claim, thereby triggering the six-month limitations period, plaintiff alleged that he did not receive any notice and that City employees told plaintiff 's counsel repeatedly that the claim had not been rejected. The City's alternative arguments that plaintiff 's prelawsuit claim was untimely or that his complaint impermissibly deviated from that claim lack merit. Accordingly, we reverse the judgment.

FACTUAL BACKGROUND

We accept as true the following facts pleaded in the first amended complaint (FAC), the pleading to which the trial court sustained the demurrer. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 156 (*T.H.*).)

Sometime in 2013, plaintiff, a detective with the Los Angeles Police Department (LAPD), submitted to his employer an "injury on duty" (IOD) report containing his personal medical information. About a year later, in May 2014, plaintiff

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[1] Further unspecified statutory references are to the Government Code.

learned from another police officer that plaintiff 's completed IOD form was being displayed on an LAPD website any time an officer used the website to access a blank injury report form. Plaintiff 's IOD form was also used in a "training video or display" and included "in every [IOD] package of forms to be completed by officers, either electronically or by handwritten response." Defendant Brito, "assigned to the LAPD Information Technology Department and/or Medical Liaison," was responsible for improperly disseminating plaintiff 's IOD.

Plaintiff informed supervisors and managers within the LAPD of the breach of the confidentiality of his medical information. Command staff contacted plaintiff and assured him that the release of his information would be terminated immediately and that it had occurred for only one day. This was untrue; Brito later told plaintiff that his medical information had been in circulation since the previous year.

Several months after the command staff had told plaintiff the release of his medical information had been rectified, plaintiff learned that his medical information had been printed on the ostensibly blank health forms provided in the patient reception area of U.S. Healthworks Medical Group (U.S. Healthworks), an entity contracted by the City to provide medical services to injured employees. A fellow police officer removed the forms and informed plaintiff. Several weeks later, a new stack of forms containing plaintiff 's medical information was placed in U.S. Healthworks's reception area, and again a fellow officer removed them to protect plaintiff 's privacy.

Plaintiff filed a claim for damages with the City on or around December 5, 2014.[2] Between April and the end of July 2015 plaintiff 's counsel contacted the City by telephone on at least six occasions to check the status of the claim, in the process speaking to "no fewer than seven City employees." Each time, plaintiff 's counsel was told "the Claim had not yet been rejected, but was instead still being actively investigated by the City." Plaintiff 's counsel often was referred to different departments within the City that purportedly could provide more information regarding the investigation, but those departments "invariably told Plaintiff 's counsel that she had been misdirected to them." As late as July 2015, City employees continued to inform plaintiff 's counsel that the claim had not been rejected and the investigation was continuing.

PROCEDURAL BACKGROUND

On August 6, 2015, plaintiff filed a complaint in the trial court, naming the City, the LAPD, and U.S. Healthworks as

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[2] Two court days before oral argument in this appeal, the City asked this court to take judicial notice of excerpts of the transcript of plaintiff 's 2017 deposition taken by counsel for U.S. Healthworks. In that transcript, plaintiff stated that he first learned that U.S. Healthworks had disseminated his health information in March 2015, months after he had filed his claim with the City in December 2014. Overlooking the fact that this late-filed testimony was available before the City prepared its appellate brief, and assuming arguendo that we may properly take judicial notice of such testimony in ruling upon a demurrer, we decline to do so. As set forth in Section D. of our Discussion, *post*, we conclude this appeal may be resolved without reference to plaintiff 's claims arising from the release of his health information in U.S. Healthworks' reception area.

defendants, and asserting causes of action for violation of the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.),[3] invasion of privacy, and negligence and negligence per se. The trial court sustained the City's demurrer based on the six-month statute of limitations under section 945.6, subdivision (a)(1), and granted leave to amend.

Plaintiff filed the FAC on July 1, 2016. The FAC added Brito as a defendant, and included the allegations summarized above regarding plaintiff 's counsel's efforts to contact the City and the City employees' assurances that plaintiff 's claim had not been rejected. The FAC listed the exact dates of five of the six calls plaintiff 's counsel made to the City and identified one of the City employees who allegedly told plaintiff 's counsel that "the Claim had not yet been rejected." Plaintiff alleged that "The City was aware of the facts surrounding the Claim and its processing status with the City," and based on the City's employees informing plaintiff 's counsel that the claim had not been rejected, "Plaintiff had a reasonable right to believe that the City intended that he could act on this information by delaying the filing of a complaint." Plaintiff alleged that "[a]s a result of the multiple assurances . . . Plaintiff held off on filing a complaint . . . until August 6, 2015." Plaintiff alleged that he "had no knowledge that anyone within the City contended that Plaintiff 's Claim had been rejected or that anyone within the City contended that notice of such a rejection had been served on Plaintiff."

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[3] The complaint's caption erroneously refers to Civil Code section 56 et seq. as "the California Confidentiality Information Act."

The City filed another demurrer, arguing again that plaintiff 's causes of action were barred by the six-month statute of limitations under section 945.6, subdivision (a)(1). The City contended that it had mailed written notice of its denial of plaintiff 's claim on December 19, 2014, thus triggering the six-month limitations period that expired on June 19, 2015, over a month before plaintiff filed his complaint on August 6, 2015. The City incorporated by reference its request for judicial notice filed with the demurrer to the original complaint. Among other things, the request sought judicial notice of plaintiff 's claim form submitted to the City, a letter from the City dated December 19, 2014 denying that claim, and a proof of service stating that the City's letter was mailed to plaintiff 's counsel's office, also on December 19. The City further argued that plaintiff 's allegations regarding his counsel's communications with City employees were insufficient to plead equitable estoppel.

Plaintiff opposed the demurrer, arguing that his allegations adequately established grounds for equitable estoppel.

The trial court sustained the demurrer and denied leave to amend. The court stated that "[a]s the Court found in ruling on the prior demurrer, City's judicially noticeable records establish that City denied Plaintiff 's claim on December 19, 2014." As for plaintiff 's equitable estoppel argument, the court stated that "[e]ven if City had not sent a rejection letter, the claim would have been deemed denied 45 days later" by operation of law.[4] "Thus," stated the court, "even under the most favorable factual scenario, Plaintiff would have been on notice that the complaint needed to be filed" within six months from the expiration of the

[4] The trial court cited section 911.6, subdivision (c), but the applicable section is 912.4, subdivisions (a) and (c).

45-day period. "As such, Plaintiff cannot allege ignorance of the true state of facts, a required element of the equitable estoppel defense." The court also found that plaintiff had failed to address "the heightened pleading standards for asserting [equitable estoppel] against a public entity."

The trial court entered judgment in favor of the City and Brito. Plaintiff timely appealed.

STANDARD OF REVIEW

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H.*, *supra*, 4 Cal.5th at p. 162.) We "adopt[ ] a liberal construction of the pleading and draw[ ] all reasonable inferences in favor of the asserted claims." (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1143.) "We accept as true all properly pleaded facts." (*T.H.*, *supra*, at p. 156.)

"If the complaint does not state facts sufficient to constitute a cause of action, the appellate court must determine whether there is a reasonable possibility that the defect can be cured by amendment." (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 847.) " 'Unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion.' " (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 1003.)

DISCUSSION

Plaintiff argues that the trial court erred in concluding that his causes of action were barred by the six-month statute of limitations under section 945.6, subdivision (a)(1). We agree.

A. Applicable Law

Under the Government Claims Act (§ 810 et seq.), subject to certain exceptions not applicable here, a party cannot bring suit for "money or damages" against a public entity unless "a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board." (§ 945.4; *State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239 (*Bodde*).) In the municipal context, "board" means "the governing body of the local public entity." (§ 900.2, subd. (a).)

A claim "relating to a cause of action . . . for injury to person" must be presented to the public entity "not later than six months after the accrual of the cause of action." (§ 911.2, subd. (a).) The public entity must act on the claim "within 45 days after the claim has been presented," unless the claimant and the entity agree in writing to extend the period. (§ 912.4, subd. (a).) If the public entity "fails or refuses to act on a claim" within the 45 days or whatever period the parties agree to, "the claim shall be deemed to have been rejected . . . on the last day of the period within which [the public entity] was required to act upon the claim." (*Id.*, subd. (c).) The public entity is required to provide the claimant with written notice of rejection regardless of whether that rejection is by an affirmative act "or the inaction that is deemed rejection under Section 912.4." (§ 913, subd. (a).)

Once a claim has been rejected or is deemed rejected, a claimant may file suit against the public entity in the trial court. (§ 945.4.) If the public entity has given the written notice required under section 913, subdivision (a), suit must be filed "not later than six months after the date such notice is personally delivered or deposited in the mail." (§ 945.6, subd. (a)(1).) If the

public entity does not give written notice, the suit must be filed "within two years from the accrual of the cause of action." (*Id.*, subd. (a)(2).)

Because under section 945.6, subdivision (a)(1) it is the mailing of the written notice, and not the receipt, that triggers the six-month period, "a claimant is required to comply with the six-month statute of limitations . . . upon proof that the notice of rejection was served even if it was not actually received by the claimant." (*Him v. City and County of San Francisco* (2005) 133 Cal.App.4th 437, 445 (*Him*).) "[T]he Legislature has placed upon the claimant the risk that a properly mailed notice of claim rejection is not delivered due to an error by the postal authorities." (*Ibid.*) If the 45-day period under section 912.4, subdivision (a), has elapsed and within a reasonable time thereafter the claimant has not received the statutory notice, the burden is on the claimant "to inquire about the denial and determine, thereby, the limitations period." (*Him*, *supra*, 133 Cal.App.4th at p. 445.)

B. Plaintiff Adequately Pleaded The Elements Of Equitable Estoppel

The doctrine of equitable estoppel "ha[s] been applied in the government claims context." (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 656.) " 'It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act.' " (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 744 (*Stockton*).) " 'Estoppel most commonly results from misleading statements about the need for or advisability of a claim; actual fraud or the intent to mislead is not

essential.' " (*Ibid.*) " 'The required elements for an equitable estoppel are: (1) the party to be estopped [here, the City] must be apprised of the facts; (2) the party to be estopped must intend his or her conduct shall be acted upon, or must so act that [plaintiff] had a right to believe it was so intended; (3) [plaintiff] must be ignorant of the true state of facts; and (4) [plaintiff] must rely upon the conduct to his or her injury.' " (*Castaneda v. Department of Corrections and Rehabilitation* (2013) 212 Cal.App.4th 1051, 1064 (*Castaneda*).) "The detrimental reliance must be reasonable." (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261 (*Schafer*).)

The trial court erred in finding that plaintiff had failed to plead the elements of equitable estoppel. Plaintiff alleged that the City "was aware of the facts surrounding [plaintiff 's] Claim and its processing status," specifically whether or not the claim had been rejected. This allegation established that the City was "apprised of the facts." (*Castaneda*, *supra*, 212 Cal.App.4th at p. 1064.) Plaintiff adequately established that he "had a right to believe" that the City intended him to "act[ ] upon" its conduct (*ibid.*), because he alleged that the City's employees repeatedly represented that plaintiff 's claim had not been rejected, and he had no reason not to believe them. Plaintiff alleged that he was not aware that anyone within the City contended that his claim had been rejected or a notice of rejection had been served; it necessarily follows, assuming such notice had been served, that plaintiff did not receive it and therefore was "ignorant of the true state of facts." (*Ibid.*) Finally, plaintiff alleged that, in reliance on the City employees' representations, he delayed filing his complaint until after the statute of limitations had expired, thus

establishing that he "rel[ied] upon the conduct to his . . . injury." (*Ibid.*)

The trial court found that plaintiff had failed to establish the third element, ignorance of the true state of facts. The court reasoned that regardless of what the City employees told plaintiff 's counsel, plaintiff 's counsel should have been aware that plaintiff 's claim was deemed rejected by operation of law after 45 days and thus plaintiff was "on notice that the complaint needed to be filed" within six months.

This was error. Under section 945.6, subdivision (a)(1), the trigger for the six-month period is not the rejection of the claim, be it by affirmative act or operation of law, but by the service or mailing of written notice of the rejection. Absent such written notice, the six-month period does not apply; instead, the two-year period under section 945.6, subdivision (a)(2) applies, triggered by the date of the accrual of the cause of action. Plaintiff was entitled to file suit after the 45 days had elapsed (§ 945.4), but the expiration of that period did not put him on notice that the six-month statute of limitations had been triggered.

Although the City contended, and the trial court apparently accepted, that a written notice of rejection was mailed on December 19, 2014, plaintiff alleged that he was unaware of any notice. Under *Him*, once the 45-day period elapsed and plaintiff had not heard from the City within a reasonable time thereafter, the burden was on plaintiff to inquire as to the status of his claim. (*Him*, *supra*, 133 Cal.App.4th at p. 445.) Plaintiff alleged that his counsel did so, and that the City employees' assurances that the claim had not been rejected led plaintiff to believe that notice had in fact not been served. Plaintiff thus has alleged that, based on the City's representations, he reasonably believed

that his claim was not subject to the six-month statute of limitations. In reliance on that belief, he delayed filing his lawsuit until it was too late. These allegations, if true, would be adequate to estop the City from asserting the six-month statute of limitations under section 945.6, subdivision (a)(1) as a defense.

The City raises a number of arguments in support of the trial court's conclusion, but they are unavailing. The City argues that plaintiff "cannot claim ignorance of the true facts when he was properly served with a claim denial notice. He does not specifically allege non-receipt of the notice, only that his attorney was not told of the receipt and then made unfruitful inquiries to the City." But plaintiff alleged that he "had no knowledge that anyone within the City contended that Plaintiff 's Claim had been rejected or that anyone within the City contended that notice of such a rejection had been served on Plaintiff." Given that allegation, the FAC cannot be interpreted to suggest that plaintiff received the notice; had he received the notice, he would know that the City took the position both that his claim was rejected and that plaintiff had been served notice. Even if there was ambiguity as to whether plaintiff denied receipt, it would not be grounds for dismissal because he could cure it by amendment.

The City argues that plaintiff reasonably could not rely on its employees' representations that the City had not yet rejected his claim. The City contends that plaintiff 's counsel was charged with the knowledge that plaintiff 's claim was deemed rejected after 45 days, "and she could not have reasonably believed her client's claim remained active." Given, however, plaintiff 's allegations that City employees, including one expressly named in the FAC, told plaintiff 's counsel on multiple specific dates that the claim was still active, it would have been unreasonable for

plaintiff 's counsel to believe otherwise. Given those representations, plaintiff 's counsel also would have had no reason to assume a notice of rejection had been sent but somehow had not reached her.

The City cites three cases in support of its argument, but they are inapposite. *Tubbs v. Southern Cal. Rapid Transit Dist.* (1967) 67 Cal.2d 671 (*Tubbs*) involved a former version of section 945.6 in which the six-month statute of limitations was triggered by rejection of the claim by operation of law after 45 days rather than by service of written notice. (*Tubbs*, *supra*, 67 Cal.2d at p. 675.) The court held that the plaintiff 's attorney was charged with knowledge of that statute, and therefore plaintiff could not assert equitable estoppel based on the defendant public entity's representation that her claim was still under investigation after the 45 days had elapsed. (*Id.* at pp. 678-679.)

Similarly, *Cal. Cigarette Concessions, Inc. v. City of L. A.* (1960) 53 Cal.2d 865 involved a city's claims presentation procedure in which a claim not acted upon within 90 days was deemed rejected, at which point tolling of the statute of limitations would cease. (*Id.* at p. 868.) The court presumed plaintiff 's counsel was aware of that provision and that the statute was running 90 days after the claim was submitted. (*Id.* at p. 870.) Therefore plaintiff had no basis to assume that the city would not invoke the statute of limitations even though the city clerk had informed plaintiff that it had yet to take action on the claim. (*Ibid.*)

Lundeen Coatings Corp. v. Department of Water & Power (1991) 232 Cal.App.3d 816 (*Lundeen*) involved the two-year statute of limitations that applies when a plaintiff presents a claim to a public entity but never receives written notice of

rejection. (*Id.* at p. 827; § 945.6, subd. (a)(2).) The plaintiff filed suit more than a year after that limitations period had elapsed, and asserted equitable estoppel based on the defendants' representation that the claim would be paid. (*Lundeen*, *supra*, 232 Cal.App.3d at pp. 828-829.) The court rejected plaintiff 's argument, holding that it was unreasonable for plaintiff to continue to believe it would be paid "for more than two years following the expiration of the forty-five-day period when plaintiff 's claim was deemed rejected by operation of law." (*Id.* at p. 829.) The court also noted that plaintiff had not alleged that defendants had encouraged it "to forestall filing suit." (*Ibid.*)

The City's cited cases are distinguishable. In each, the applicable law made clear that the statute of limitations was running, regardless of any indication to the contrary from the defendants. Under those circumstances, the plaintiffs had as much information regarding the statute of limitations as the defendants, and could claim neither ignorance of the true facts nor reasonable reliance on the defendants' representations. Here, in contrast, plaintiff could not determine whether the statute was running simply by reviewing the applicable law. He needed to know whether the City had rejected his claim and had no way to get that information other than from the City. The alleged representations of City employees led him to believe that his claim had not been rejected; this in turn led him to believe that no notice of rejection had been served, and thus that the six-month limitations statute had not been triggered. Unlike the plaintiffs in the City's cited cases, plaintiff adequately alleged both ignorance of the true facts and reasonable reliance on the City's representations.

The City notes that plaintiff did not allege that any City employee specifically stated that no notice of rejection had been sent; plaintiff instead inferred this after being told his claim was still active. The City argues that estoppel cannot be established "on such vague representations and passive implications," particularly when plaintiff 's counsel never asked about a rejection notice. But, as alleged by plaintiff, there was nothing vague about the City's representations. City employees, including one named in the FAC, told Plaintiff 's counsel on six different dates that plaintiff 's claim had not been rejected. Assuming what the City employees told plaintiff 's counsel was true, the only possible inference was that no notice of rejection had been sent, because logically the City would not send notice of rejection of a claim that had not been rejected.

The City argues that plaintiff 's reliance on the City's representations was unreasonable because plaintiff 's counsel "never expended the effort to reach the proper department to provide her with accurate information about her client's claim." The City questions why plaintiff 's counsel "insisted on making direct contact with a litigation section of the City Attorney's office and, most oddly, the City's planning department" as opposed to the "Claims and Risk Management" department. Given plaintiff 's allegations that his counsel repeatedly was directed to the wrong department, the City contends it was not reasonable for plaintiff 's counsel to conclude "she had enough information on which to stake the timeliness of her client's lawsuit."

The reasonableness of plaintiff 's counsel efforts to determine the status of the claim, including contacting the correct personnel within the city, involves issues of fact that cannot be resolved on demurrer. The FAC appears to provide

examples, but not a complete list of all personnel and departments plaintiff 's counsel contacted. Even if there were a complete list, neither the trial court nor this court has a basis to determine as a matter of law which departments and personnel would have been appropriate or inappropriate to contact. Also, as alleged, plaintiff 's counsel made sufficient inquiries to reach personnel who knew enough about the claim to assure her the claim was still active, even if they could provide no further information and directed her to another department.

The City also claims that plaintiff has failed to explain why his counsel waited until April 2015, months past the expiration of the 45-day period, to inquire as to the status of the claim or to file suit. To the extent the City is arguing that the delay was unreasonable, we disagree. Plaintiff 's counsel began her inquiries well within the six-month statute of limitations, and had she been told in April or even early June that plaintiff 's claim had been rejected, she would have had time to file a complaint. As for why plaintiff 's counsel waited until August 2015 to file, this also was reasonable given the information she had at the time, which was that the City had not rejected plaintiff 's claim, and therefore plaintiff 's counsel believed the two-year limitations period under section 945.6, subdivision (a)(2) applied.

The City asserts that equitable estoppel is appropriate against a public entity only in "unusual circumstances." The City cites *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298 (*Steinhart*), which stated that equitable estoppel " 'ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.' " (*Id.* at p. 1315.)

The City also quotes *Schafer*, *supra*, 237 Cal.App.4th at p. 1261, which states, "Even if the four elements of equitable estoppel are satisfied, the doctrine is inapplicable if the court determines that the avoidance of injustice in the particular case does not justify the adverse impact on public policy or the public interest." The City states that the purpose behind the statutes of limitations laid out in the Government Claims Act is "to protect the public fisc from tort liability," apparently suggesting that applying equitable estoppel in this case would adversely impact that purpose.

We disagree. If, as plaintiff alleged in detail, multiple City employees assured him his claim had not been rejected and was still being investigated, thus misleading him as to whether the event triggering the statute of limitations had occurred, it would be a "grave injustice" (*Steinhart*, *supra*, 47 Cal.4th at p. 1315) to allow the City to assert untimeliness as a defense and deny plaintiff his day in court. We fail to see how permitting a plaintiff to assert equitable estoppel at the demurrer stage under these circumstances threatens the public policy underlying the Government Claims Act, nor does the City cite any authority so holding (our research has not revealed any such authority either). Other courts agree, given the " 'well-settled' " principle that a plaintiff may invoke equitable estoppel precisely when a public entity's " 'agents or employees have prevented or deterred the filing of a timely claim by some affirmative act.' " (*Stockton*, *supra*, 42 Cal.4th at p. 744; see, e.g., *Ocean Services Corp. v. Ventura Port Dist.* (1993) 15 Cal.App.4th 1762, 1775-1776 [government entity estopped from invoking Government Claims Act when "because of [the entity's] correspondence and verbal assurances, [the plaintiff] reasonably believed that it need not

take any further action to perfect a claim"].) *Steinhart* and *Schafer*, neither of which concerned the Government Claims Act, do not say otherwise.[5]

Finally, we note that plaintiff 's invocation of equitable estoppel presumes the City actually sent a written notice of rejection triggering the six-month limitations period; otherwise plaintiff would have no need to assert estoppel. But whether the notice was sent as the City contends is an open question. The FAC alleges that plaintiff never received any notice of rejection, and his counsel was informed repeatedly by multiple City employees that his claim was still active. Construing those

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[5] In *Steinhart*, the Supreme Court held that a government entity was not estopped from asserting that the plaintiff had failed to exhaust her administrative remedies in seeking a tax refund. (*Steinhart*, *supra*, 47 Cal.4th at pp. 1314-1315.) The Court in fact did not analyze the potential for injustice or the public policy involved, instead concluding that the plaintiff was not ignorant of any facts, only the law of administrative exhaustion, and the government entity's purported misrepresentations could be interpreted in numerous ways and lacked the certainty to effect an estoppel. (*Id.* at pp. 1315-1318.)

In *Schafer*, the Court of Appeal held that a parking lot owner could not invoke equitable estoppel "to establish land use rights contrary to the zoning restrictions . . . despite its failure to comply with the normal land use approval process," when to do so "would adversely affect public policy and the public interest." (*Schafer*, *supra*, 237 Cal.App.4th at p. 1253.) The court stated, "Particularly in land use cases, '[c]ourts have severely limited the application of estoppel . . . by expressly balancing the injustice done to the private person with the public policy that would be supervened by invoking estoppel to grant development rights outside of the normal planning and review process.' " (*Id.* at pp. 1262-1263.)

allegations liberally and drawing all reasonable inferences in favor of the asserted claims, the logical implication is that the City never served written notice. Plaintiff asserts so expressly in his appellate briefing, stating, "There exists a factual dispute as to whether a notice of rejection was ever sent." So interpreted, the FAC withstands demurrer on the basis of section 945.6, subdivision (a)(1) even absent the elements of equitable estoppel.[6]

The City asserts that "judicially-noticed documents" established that the City mailed written notice on December 19, 2014. However, "judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed." (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134 (*Cruz*); accord, *Flores v. Kmart Corp.* (2012) 202 Cal.App.4th 1316, 1325.) In *Cruz*, the trial court sustained a demurrer on the basis of the six-month statute of limitations under section 945.6 after taking judicial notice of the public entity's claim rejection letter and its proof of service.[7] (*Cruz*, 173 Cal.App.3d at p. 1133.) The appellate court held that this was error: "[A]ssuming for purposes of argument that [the

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[6] Even if the FAC could not be interpreted to allege that notice was never sent, it could be amended to state so explicitly in light of plaintiff 's assertion on appeal. (See *Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 36 [plaintiff may make showing on appeal how complaint can be amended to state cause of action].)

[7] In *Cruz*, the trial court also permitted plaintiff 's counsel to depose the employee who executed the proof of service and took that testimony into account in sustaining the demurrer. (*Cruz*, *supra*, 173 Cal.App.3d at p. 1133.)

public entity's] customary practice in respect of mailing notices of rejection constituted an official act, of which judicial notice might be taken [citation], there was not incontrovertibly contained therein the fact that such practice had been followed in the present instance. On the contrary, it was the very dispute over that fact which occasioned the request for judicial notice of the practice." (*Id.* at p. 1134.) Here, similarly, where the parties dispute whether the rejection notice was mailed, the City's proffered documents are not dispositive on demurrer.

In sum, it was error to sustain the demurrer based on section 945.6, subdivision (a)(1). Our holding does not preclude the City, upon further development of the factual record, from addressing the issues of equitable estoppel and plaintiff 's compliance with the Government Claims Act, or any other issues, through an appropriate dispositive motion.

C. Plaintiff 's Claim To The City Was Timely

As an alternative basis to affirm the judgment, the City argues that plaintiff 's prelawsuit claim to the City was untimely under section 911.2, subdivision (a), which requires that a claim "relating to a cause of action . . . for injury to person" must be presented to the public entity "not later than six months after the accrual of the cause of action."[8] Because the FAC alleged that plaintiff 's medical information was displayed on the LAPD

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[8] Although the City raises this argument for the first time on appeal, "[a]n appellate court may . . . consider new theories on appeal from the sustaining of a demurrer to challenge or justify the ruling." (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 959; *Bocanegra v. Jakubowski* (2015) 241 Cal.App.4th 848, 857.)

website sometime in May 2014, the City argues that his claim accrued at the very latest by the end of May, and his claim had to be filed by the end of November, six months later. Therefore, the City contends, plaintiff 's December 5, 2014, claim was untimely.

We disagree. Although the FAC alleged that plaintiff 's medical information was displayed on the LAPD website in May 2014 at the latest, it alleged further releases of his medical information in other fora at unspecified dates. For example, plaintiff alleged that his information was included in a "training video or display" as well as packets of forms distributed to police officers, but did not allege when these releases took place or when he discovered them. Thus, the FAC does not provide a basis to conclude that plaintiff 's claim was untimely as to those later releases of his information, whether the event triggering the six-month period was the release itself or plaintiff 's discovery of the release (an issue we need not decide in the absence of an alleged date for either event).[9]

The City argues that plaintiff 's causes of action are subject to California's single-publication rule, which applies to defamation, invasion of privacy, "or any other tort founded upon any single publication or exhibition or utterance." (Civ. Code, § 3425.3; see *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1246 (*Shively*).) Under this rule, "one cause of action will arise, and

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[9] At oral argument plaintiff 's counsel represented that plaintiff actually first discovered the release of his information on or around June 12, 2014, within six months of filing his claim on December 5. Because we conclude the FAC survives demurrer even if plaintiff first discovered the release of his information in May, we decline to address plaintiff 's counsel's representation further.

the statute of limitations will commence running, upon the first general publication or broadcast of a tortious statement, notwithstanding how many copies of the publication are distributed or how many people hear or see the broadcast." (*Traditional Cat Assn. v. Gilbreath* (2004) 118 Cal.App.4th 392, 395 (*Traditional Cat*).) "Any subsequent republication or rebroadcast," however, "gives rise to a new single cause of action." (*Ibid.*) To the extent the single-publication rule applies to a particular cause of action, it also applies in assessing when that cause of action accrues for purposes of presenting a claim to a public entity under section 911.2. (*Shively*, *supra*, 31 Cal.4th at pp. 1246-1247 and fn. 9; *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 906 [" 'Accrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants.' "].)

Based on the single-publication rule, the City argues that plaintiff 's causes of action accrued "when the City allegedly disclosed his completed forms, sometime before his May 2014 discovery," and more than six months before he submitted his claim to the City. (Italics omitted.) Accepting for the sake of argument that all of plaintiff 's causes of action are subject to the single-publication rule, the City's position nonetheless is unavailing. As *Traditional Cat* states, even under the single-publication rule, a new cause of action arises upon "[a]ny subsequent republication or rebroadcast." (*Traditional Cat*, *supra*, 118 Cal.App.4th at p. 395; *Shively*, *supra*, 31 Cal.4th at p. 1245 [repetition of tortious statement in new publication gives rise to new cause of action with new accrual date].) Here, although plaintiff alleged that he discovered in May 2014 that his

information was on the LAPD website, he also alleged that his information was republished or rebroadcast numerous times, including in a training video and on medical forms given to police officers. Because it cannot be determined at the demurrer stage of the proceedings when these "publications" occurred, we cannot conclude on the face of the FAC that plaintiff 's claim to the City was untimely. Section 911.2, subdivision (a) does not provide a basis to affirm the judgment, regardless of the applicability of the single-publication rule.[10]

D. The FAC Is Consistent With Plaintiff 's Prelawsuit Claim

The City argues that the FAC, which alleged that plaintiff learned of the release of his information in May 2014, impermissibly deviated from plaintiff 's prelawsuit claim form, which listed the date of injury as July 1, 2014.[11] We reject this argument.

Section 910, subdivision (c) requires that claims include, among other things, the "date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted." "If the claim is rejected and the plaintiff ultimately files a complaint against the public entity, the facts underlying each cause of action in the complaint must have been fairly reflected in a timely claim." (*Stockett v. Association of Cal. Water*

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[10] Given our holding, we do not reach plaintiff 's argument that his causes of action are not subject to the six-month requirement applicable to personal injury claims.

[11] Plaintiff does not dispute that the document cited by the City is his claim form, and for purposes of this appeal we assume that it is.

Agencies Joint Powers Ins. Authority (2004) 34 Cal.4th 441, 447 (*Stockett*).) "The claim, however, need not specify each particular act or omission later proven to have caused the injury. [Citation.] A complaint's fuller exposition of the factual basis beyond that given in the claim is not fatal, so long as the complaint is not based on an 'entirely different set of facts.' [Citation.] Only where there has been a 'complete shift in allegations, usually involving an effort to premise civil liability on acts or omissions committed at different times or by different persons than those described in the claim,' have courts generally found the complaint barred. [Citation.] Where the complaint merely elaborates or adds further detail to a claim, but is predicated on the same fundamental actions or failures to act by the defendants, courts have generally found the claim fairly reflects the facts pled in the complaint." (*Ibid.*)

Plaintiff 's claim form, as noted, stated a date of injury of July 1, 2014. In describing how the injury occurred, it stated "Claimant's medical records and information were intentionally or negligently posted by the LAPD in public view electronically [and] exposed claimant's personal health history to over 5,000 viewers." In describing the acts or omissions responsible for the injury, it stated, "The negligence or malicious conduct of unknown LAPD in personnel [and] medical lia[i]son and outside contractors hired by LAPD."

The FAC included more detail than the claim form, but it was "predicated on the same fundamental actions or failures to act by the defendants," namely, the improper release of plaintiff 's medical information. (*Stockett*, *supra*, 34 Cal.4th at p. 447.) Unlike a discrete event resulting in a physical injury, it was understandably difficult for plaintiff to pinpoint when

exactly the injury occurred, as plaintiff did not know precisely when his information was released, and learned of different releases at different times. While the May 2014 date reflects when plaintiff first learned that his information had been released, the July 1 date is not inconsistent with his later discovery of further releases, such as in the training video or the form packets given to police officers. The FAC does not represent the sort of " 'complete shift in allegations' " that might violate the purpose of the claims presentation requirements. (*Ibid.*)

DISPOSITION

The judgment is reversed. Plaintiff is awarded his costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.