Filed 11/5/19 Knowledge and Intelligence Program etc. v. The State of Cal. ex rel. Commission on Peace etc. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KNOWLEDGE AND INTELLIGENCE PROGRAM PROFESSIONALS, INC., Plaintiff and Appellant, v. THE STATE OF CALIFORNIA ex rel. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING et al., Defendants and Respondents.	B266376 (c/w B278820) (Los Angeles County Super. Ct. Nos. NC058217, NC053503)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ross M. Klein, Michael P. Vicencia, Joseph E. DiLoreto and Margaret L. Oldendorf, Judges. Affirmed.

Plager Schack, Michael L. Schack and Mark H. Plager, for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Danielle F. O'Bannon, Assistant Attorney General, Elizabeth S. Angres and Betty Chu-Fujita, Deputy Attorneys General, for Defendants and Respondents the State of California ex rel. Commission on Peace Officer Standards and Training, California Governor's Office of Emergency Services, Anthony A. Lukin, Steven Craig, Dan Toomey and Robert Stresak.

Lane & McGowan, Scott R. Lane and John M. McGowan for Defendant and Respondent Lukin & Associates, Inc.

INTRODUCTION

This consolidated appeal concerns two trial court matters, *Knowledge and Intelligence Program Professionals, Inc. v. State of California ex rel. Commission on Peace Officers Standards and Training*, Los Angeles Superior Court case No. NC058217, and *Knowledge and Intelligence Program Professionals, Inc. v. Lukin*, Los Angeles Superior Court case No. NC053503. For clarity, we have divided our opinion into two sections—one concerning case No. NC058217 and one concerning case No. NC053503.

Case No. NC053503

This lawsuit concerns a training course called the Terrorism Liaison Officer (TLO) course that was developed by the State of California ex rel. Commission on Peace Officer Standards and Training (POST) and the California Governor's Office of Emergency Services (CalOES) Specialized Training Institute (the

Training Institute). Plaintiff and appellant Knowledge and Intelligence Program Professionals, Inc. (KIPP), a private vendor of TLO courses, challenges POST's temporary suspension of one such course, the 24-hour TLO course. At the heart of KIPP's complaint is its claims that (1) Anthony A. Lukin (Lukin) improperly participated in POST's decision to temporarily suspend the 24-hour TLO course, and (2) defendants violated the Political Reform Act (Gov. Code, § 87100) and the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.).

FACTUAL AND PROCEDURAL BACKGROUND

I. *Factual Background*

POST was established in 1959. It consists of 15 members, appointed by the Governor, who are charged with setting the minimum selection and training standards for law enforcement.

In 1977, POST recommended that its "staff take on all activity related to certification, presentation of courses." POST adopted the recommendation and, at all times relevant to the issues in this litigation, POST staff handled "everything" related to suspension of a POST course.

Following the terrorist attacks of September 11, 2001, representatives from POST and the Training Institute conceptualized the 24-hour TLO course. According to the parties' appellate briefs, the 24-hour TLO course is intended to educate and train law enforcement and others who serve the community to effectively respond to potential terrorist activities.

In 2008, POST and the Training Institute were the only POST-certified presenters of the 24-hour TLO course. At the

time, Lukin,[1] a Training Institute employee, was the course manager or primary instructor responsible for oversight and coordination of private instructors to co-teach the course.

Meanwhile, between 2004 and 2007, POST hired Harold Kempfer (Kempfer), who was doing business as KIPP,[2] as an independent contractor to teach courses that eventually became POST-certified courses.

Sometime in 2008, KIPP began contracting directly with local law enforcement agencies to teach the 24-hour TLO course with POST's knowledge or permission. Because KIPP contracted directly with local agencies who were not POST-certified presenters, the attendees of the course could not receive POST credit and the agencies were in jeopardy of not receiving reimbursement from federal funds.

On September 15, 2008, POST suspended presentation of the 24-hour TLO course, pending revisions. Specifically, POST staff made the decision to suspend the 24-hour TLO course. When the revisions were complete, POST notified training providers, including KIPP, that the curriculum revision was completed.

---

[1] At the relevant time, Lukin also ran a private consulting business, Lukin & Associates, Inc. (L&A).

[2] Kempfer incorporated KIPP in 2008.

II. *Procedural Background*

In September 2009, KIPP filed a lawsuit against Lukin and L&A.[3]

Third Amended Complaint

On September 2, 2010, KIPP filed the third amended complaint (TAC), the operative pleading. The TAC added POST and the Training Institute as defendants. It contains seven causes of action: Violation of the Political Reform Act (Gov. Code, § 87100), declaratory relief, interference with contract, interference with prospective business advantage, violation of Business and Professions Code section 17200, and breach of oral contract. The first cause of action, which was filed against all defendants, specifically incorporates and quotes Government Code section 87100. In connection with this cause of action, KIPP seeks monetary relief, including civil penalties pursuant to Government Code section 91005.

In the second cause of action for declaratory relief, KIPP alleges that defendants' actions violated the Economy Act (31 U.S.C. § 1535) and California's Open Meeting Act. In the third cause of action for declaratory relief, KIPP alleged that POST and the Training Institute engaged in certain misconduct, giving rise to an actual controversy, requiring a declaration "regarding application of the California Open Meeting Acts, the California [Cartwright] Act, and the Economy Act."

---

[3] The original pleading also named Ken Whitman (Whitman), a special consultant to POST. Whitman passed away prior to trial and was dismissed by stipulation in 2012.

KIPP's demand for judgment includes at least 16 separate declarations, injunctive relief, monetary damages, punitive damages, and civil penalties.

Demurrer

POST and the Training Institute filed a demurrer to the first cause of action (violation of the Political Reform Act) in the TAC. They argued, inter alia, that the first cause of action was barred because the Political Reform Act only applies to public officials, not to the state agencies. KIPP opposed the demurrer, asserting that the state agencies needed to be named as defendants so that the order KIPP sought could be enforceable.

After entertaining oral argument, the trial court sustained the demurrer without leave to amend, finding that the Political Reform Act did not apply to POST and the Training Institute because the statute is specific to public officials, not state agencies.

Defendants' Motion for Summary Adjudication

On October 15, 2015, Lukin, POST, and the Training Institute filed a joint motion for summary adjudication.

First cause of action (Political Reform Act)

Lukin argued that KIPP could not state a claim against him for violation of the Political Reform Act because he did not participate in making or influencing a governmental decision by POST regarding the suspension of the POST-certified 24-hour TLO course. Rather, POST made the decision to suspend presentations of the TLO course pending curriculum revisions. POST did not seek input from Lukin in making this decision, and Lukin did not benefit financially from POST's suspension of the 24-hour TLO course. He also did not engage in any activities that conflicted with his state employment with the Training

Institute. Moreover, the only times Lukin facilitated or taught the 40-hour or 24-hour TLO courses in California were either with the express authorization and approval of POST either as a Homeland Security Management Fellow or CSTI Course Coordinator/Lead Instructor. Any out of state courses that he taught were done separately, on his own time, and were paid for by the requesting jurisdictions; thus, they were not in conflict with his civil service employment with the Training Institute.

Second and third causes of action (Declaratory relief)

Defendants argued that they were entitled to summary adjudication of various portions of the second and third causes of action for declaratory relief, as reflected in the 16 specific requests for declaration in the prayer for relief.

KIPP's Opposition

KIPP opposed this motion. As part of its opposition, KIPP submitted numerous evidentiary objections to some of defendants' evidence. As is relevant to the issues in this appeal, KIPP objected to portions of Lukin's declarations.

Trial Court Order Granting Summary Adjudication in Part

On January 5, 2016, the trial court granted Lukin's motion for summary adjudication as to the first cause of action (violation of the Political Reform Act). It found undisputed that Lukin did not participate in any decision by POST to suspend the 24-hour training course. "While [KIPP's] points and authorities claim that Mr. Lukin . . . 'used his official authority to indirectly influence the decision,' these do not point to any specific evidence to show that."

Regarding KIPP's two causes of action for declaratory relief, pursuant to which it sought at least 16 separate declarations, the trial court granted the motion for summary

adjudication as to portions of KIPP's prayer for relief, specifically that portion of paragraph (a) in which KIPP sought a declaration that defendants violated the Political Reform Act, and paragraphs (b) [declaration that the alleged wrongful conduct violated the Sherman Antitrust Act], (c) [declaration that the alleged wrongful conduct violated the Cartwright Act], (f) ["declaration that none of the Defendants['] decisions (regardless of their validity or invalidity) nor their statements that the 3 day TLO course is under a purported suspension in California should have any impact whatsoever on any jurisdiction outside of the state of California which may decide to take the [Department of Homeland Security (DHS)] approved TLO 3 day Course"], (g) ["declaration that none of the Defendants nor its employees are authorized or permitted to advise other jurisdictions as to whether the TLO course can be taken by out of state jurisdictions"], (h) ["declaration that none of the Defendants can legally refuse to reimburse from DHS grant funds any state or local jurisdictions which chooses to take DHS approved course, regardless whether POST credit is granted"], (i) ["declaration that none of the Defendants have a copyright on the TLO Course materials, nor can they obtain a copyright thereon"], (*l*) ["declaration that POST does not have the authority to suspend certification of the TLO Courses and place a moratorium on the TLO courses without a public hearing, or instruct or advise the other Defendant agencies to withhold payment of federal grant monies to peace officers for reimbursement of such training, the effect of which is to prevent or preclude qualified persons and entities from providing training desired by the peace officers under federal grants specifically designed to reimburse trainees for such training, and prevent or preclude [POST] from

engaging in legitimate interstate and intrastate commerce"], and (m) [declaration that defendants cannot withhold payment of federal grant monies for reimbursement of training].

Writ of Mandate

KIPP filed a petition for writ of mandate challenging the trial court's order. On February 17, 2016, we summarily denied that petition.

Trial and Statement of Decision

On May 9, 2016, the matter proceeded to a three-week bench trial on KIPP's second and third causes of action for declaratory relief on alleged violations of the Open Meeting Act (Gov. Code, § 11120) and the Economy Act (31 U.S.C. § 1535) against POST and the Training Institute; fourth and fifth causes of action for interference with contract and prospective business advantage against L&A; sixth cause of action for violation of Business and Professions Code section 17200 against Lukin and L&A; and seventh cause of action for breach of oral contract against Lukin and L&A.

After hearing all of the evidence, the trial court issued a statement of decision in favor of defendants on all causes of action. Regarding Lukin, there was no basis for individual liability. Regarding POST and the Training Institute, the trial court found that the evidence did not support any Open Meeting Act violation. After all, POST's decision to temporarily suspend a course for modification has been properly delegated to executive staff. And, the temporary suspension did not amount to a de facto decertification of the course.

With respect to POST and the Training Institute's alleged violation of the Economy Act, the trial court determined that there was no private right of action under the Economy Act. And,

POST and the Training Institute were not acting as instrumentalities of the United States government. Even if the Economy Act applied and even if there were a private right of action, and even if KIPP had standing to sue, the trial court further determined that KIPP failed to demonstrate that the Economy Act had been violated.

Regarding the fourth and fifth causes of action for interference, the trial court found that KIPP failed to provide adequate proof of existing contracts and economic relationships. "The only existing contract(s) presented for TLO instructor fees prior to the course suspension were with the Orange County Sheriff's Department . . . . However, there was no evidence that these contracts were ever interfered with."

"Additionally, there was insufficient evidence of specific knowledge by [Lukin] or L&A, regarding the existence of specific contracts or relationships."

Regarding the sixth cause of action for unfair competition, the trial court did not find any supporting evidence. Rather, the trial court found trial testimony "unwavering and credible" that Lukin was not involved in POST's decision to suspend the 24-hour TLO curriculum. And, Lukin did not participate in POST's decision or any other decisions related to the allocation of DHS grant funds administered by California's Office of Emergency Services. Moreover, KIPP "failed to prove that [Lukin] and/or L&A were ever awarded any TLO contracts in the State of California by POST" or the Office of Emergency Services.

Finally, KIPP's seventh cause of action for breach of oral contract against Lukin and L&A failed because KIPP "failed to establish that any contract was formed" with Lukin and/or L&A. The trial court also found that KIPP was not the proper plaintiff

on this claim; while KIPP alleged that a contract had been formed in 2007, KIPP "did not come into existence as a corporation until 2008." And, the trial court was not convinced by Kempfer's oral testimony that he had assigned his purported contractual rights to KIPP. Moreover, even if there had been a valid contract, KIPP "failed to meet its burden that there was any breach by" Lukin and/or L&A.

KIPP's timely appeal ensued.[4]

DISCUSSION

I. Demurrer

A. Standard of review

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: '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

---

[4] While this lawsuit was pending, KIPP filed another lawsuit against POST and three individuals employed by POST. (Case No. NC058217) Ultimately, the trial court dismissed that lawsuit after sustaining those defendants' demurrer to the third amended complaint without leave to amend. KIPP appealed that judgment of dismissal. We discuss the issues concerning case No. NC058217, *infra*.

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.]' [Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

B. Analysis

As set forth above, in the first cause of action of the TAC, KIPP alleges that all defendants violated the Political Reform Act. As the trial court rightly found, KIPP could not pursue this claim against POST and the Training Institute because the Political Reform Act only applies to the conduct of public officials, not to state agencies.

Government Code section 87100 specifically provides, "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Government Code section 82048, subdivision (a), defines "public official" as "every member, officer, employee or consultant of a state or local government agency." It does not include the state agencies themselves. (See *Davis v. Fresno Unified School Dist.* (2015) 237 Cal.App.4th 261, 297 [contractor alleged to be a corporation falls outside the definition of consultant that refers to individuals; therefore, contract is not a public official subject to the Political Reform Act].)

In urging us to reverse, KIPP asserts that Government Code section 91003 allows it to pursue a claim for injunctive relief. KIPP seems to be arguing that because a plaintiff can seek to set aside an official's decision, it makes no sense not to include

the agency as a defendant as well. After all, "what assurance does a plaintiff or the Court have that its order will be followed by the agency if the agency has not been named in the action subjecting the agency to the order"?

The problem for KIPP is that it did not seek relief in the TAC pursuant to Government Code section 91003. Rather, it sought relief pursuant to Government Code section 91005.[5] Nothing in Government Code section 91005 suggests that a state agency can be held liable for violation of the Political Reform Act.

KIPP's reliance upon *Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511 (*Kunec*) is misplaced. KIPP cites *Kunec* for the proposition that an action pursuant to the Political Reform Act may be maintained against a governmental agency. While a governmental agency was named as a cross-defendant in *Kunec*, the Court of Appeal did not address the propriety of the agency as a defendant; an opinion is not authority for a proposition not considered. (See, e.g., *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 323.)

II. Lukin's Motion for Summary Adjudication

Lukin alone moved for summary adjudication of the first cause of action, violation of the Political Reform Act (Gov. Code, § 87100).[6]

---

[5] Government Code section 91005 provides for civil liability and penalties for certain Government Code violations.

[6] Although Lukin moved for summary adjudication, L&A did not. It is unclear from the parties' briefs and the appellate record whether KIPP pursued this cause of action against L&A at trial.

A. Standard of review

"Summary adjudication ""is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision to grant [defendants] summary [adjudication] de novo.' [Citation.]" [Citation.] An appellate court is not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not the rationale. [Citation.]' [Citation.]" (*County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 226.)

"In moving for summary adjudication, '[a] defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action.' (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) Once the moving party defendant meets its burden, the burden shifts to the plaintiff to show a triable issue of material fact exists as to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) To meet that burden, the plaintiff must set forth the specific facts showing the triable issue of material facts. (*Ibid.*) 'Where the plaintiff fails to satisfy this burden, judgment in favor of the defendant shall be granted as a matter of law. [Citation.]' [Citation.]" (*County of Los Angeles v. Superior Court*, *supra*, 181 Cal.App.4th at p. 226.)

"The issues to be addressed in a summary adjudication motion are framed by the pleadings. [Citation.] 'Summary [adjudication] will be upheld when, viewing the evidence in a light most favorable to the opponent, the evidentiary submissions

conclusively negate a necessary element of plaintiff[s'] cause of action, or show that under no hypothesis is there a material issue of fact requiring the process of a trial. [Citation.]' [Citation.]" (*County of Los Angeles v. Superior Court*, *supra*, 181 Cal.App.4th at p. 226.)

B. Analysis

The Political Reform Act was adopted by initiative in 1974. It declares that "[n]o public official . . . shall . . . participate in making . . . a governmental decision in which he knows or has reason to know he has a financial interest." (Gov. Code, § 87100; *Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 313–314.) "A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review." (2 C.F.R. § 18704(b).)

At the heart of this issue on appeal is whether Lukin "participate[d]" in POST's decision to temporarily suspend certification of the 24-hour TLO course. According to Lukin, it is undisputed that he did not participate in POST's decision to suspend the 24-hour TLO course. According to KIPP, it presented evidence demonstrating a triable issue of fact that Lukin participated in POST's decision—specifically, "directing leads received in his official capacity to his private corporation; and, separately, . . . POST's decision to suspend certification of the 24 Hour TLO course."

We conclude, as the trial court found, that there is no evidence to support KIPP's contention that Lukin participated in

POST's decision to suspend the 24-hour TLO course.[7] First, KIPP argues that Lukin *indirectly* participated in POST's decision to temporarily suspend the 24-hour TLO course, thereby giving rise to his liability under Government Code section 87100. But, KIPP's theory that indirect participation may give rise to a claim under Government Code section 87100 fails. KIPP offers no legal authority to support the proposition that indirect participation is sufficient. While KIPP directs us to *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569 (*Stigall*) for the proposition that "participation can be direct or indirect," *Stigall* holds no such thing. (See also *United States v. Selby* (9th Cir. 2009) 557 F.3d 968, 973 [finding that an individual may be liable for misconduct under 18 U.S.C. § 208 ["Acts affecting a personal financial interest"] if he or she "actively participate[s]" in an agency's decision].)

Not only is KIPP's contention not supported by any legal authority, but it also makes no sense. KIPP seems to make a giant leap—namely that Lukin indirectly participated in POST's decision by improperly directing leads that he received in his official capacity to his private corporation, L&A. But, KIPP never explains how Lukin's direction of leads to L&A amounts to Lukin's participation in the decision by POST to temporarily

---

[7] We reach this conclusion without consideration of Lukin's statements in his supporting declaration that: (1) he "did not participate in any decision by POST to suspend the 24-hour TLO course on or about September 15, 2008, pending curriculum revision"; and (2) he "never used [his] official government position with the State of California to influence any government decision to further [his] own private financial interests in" L&A.

suspend the 24-hour TLO course. And, there is no evidence that Lukin engaged in this conduct "for the purpose of affecting the decision without significant intervening substantive review." (2 C.F.R. § 18704(b).)

Second, KIPP asserts that Lukin did in fact *directly* participate in POST's decision to temporarily suspend the 24-hour TLO course. But KIPP offers no evidence in support of this argument. The undisputed facts referenced in KIPP's opening brief do not demonstrate that Lukin participated in any decision by POST. While he may have sent an e-mail to POST personnel regarding his concerns about Kempfer teaching a TLO course, that does not mean that he participated in the decision to temporarily suspend certification of a 24-hour TLO course.

It follows that the trial court rightly granted Lukin's motion for summary adjudication of this cause of action against KIPP.[8] Necessarily, the trial court rightly denied KIPP's motion for summary adjudication of this cause of action as well.

III. *Defendants' Motion for Summary Adjudication*

As set forth above, defendants argued that they were entitled to summary adjudication of specific portions of the declaratory relief causes of action. We address the joint motion here.

---

[8] In light of this conclusion, we need not reach the merits of KIPP's challenge to the trial court's order overruling its objections to certain portions of Lukin's declarations.

A. Standard of review

As set forth above, we review a trial court's order granting summary adjudication de novo. (*County of Los Angeles v. Superior Court*, *supra*, 181 Cal.App.4th at p. 226.)

B. Analysis

The trial court properly granted summary adjudication of the identified portions of the prayer for relief set forth in the TAC.[9]

1. *Paragraphs (b), (c), (f), (g), (h), (i), (l), and (m)*

As to all of these paragraphs of the prayer for relief, KIPP asserts that the trial court erred in adjudicating only portions of the second and third causes of action.

In the second and third causes of action, KIPP sought declaratory relief. It then went on to request at least 16 separate declarations in its prayer for relief.

Code of Civil Procedure section 437c, subdivision (f)(1), provides, in relevant part: "A party may move for summary adjudication as to one or more causes of action within an action . . . if the party contends that the cause of action has no

---

[9] In its opening brief, KIPP argues that the trial court made a host of evidentiary errors in connection with defendants' motion for summary judgment/adjudication. But, KIPP does not explain how alternate evidentiary rulings would have led to a different ruling on defendants' motion for summary adjudication. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) We find that the trial court's evidentiary rulings are moot in light of the arguments raised on appeal and in light of our legal conclusions herein.

merit . . . . A motion for summary adjudication shall be granted only if it completely disposes of a cause of action." The current wording of the statute, with its mandate for complete disposition, reflects a legislative judgment to "narrow summary adjudication from its [former] broad focus on 'issues' (sometimes interpreted to mean only asserted 'facts') to a more limited focus on causes of action." (*City of Emeryville v. Superior Court* (1991) 2 Cal.App.4th 21, 25.) As the Legislature explained in making the most significant changes to the summary adjudication provisions of the statute in 1990, "[i]t is . . . the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense." (Stats. 1990, ch. 1561, § 1, p. 7330; see also *Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120, 1135.)

In *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848 (*Lilienthal*), the Court of Appeal recognized that the Legislature's principal purpose in so narrowing the statute was to "eliminate summary adjudication motions that would not reduce the costs and length of litigation." (*Id.* at p. 1853.) That case involved a malpractice suit against a law firm that had represented the plaintiffs "at different times on two separate and distinct matters." (*Id.* at p. 1850.) Despite the distinct nature of the two matters, the plaintiffs combined their claims with respect to each into the same causes of action, in an apparent attempt to avoid the statute of limitations bar with respect to one of the matters. (*Id.* at pp. 1850–1851.) Observing that "the time and cost saving purposes of the [summary adjudication] statute] amendment" would be undermined by allowing a cause of action in its entirety to proceed to trial where a separately alleged claim within that cause of action could be

defeated by summary adjudication, the *Lilienthal* court held that "a party may present a motion for summary adjudication challenging a separate and distinct wrongful act even though combined with other wrongful acts alleged in the same cause of action." (*Id.* at pp. 1854–1855.)

In the instant case, we conclude that the trial court implicitly applied the principle articulated in *Lilienthal* to separately adjudicate nine distinct requests for declaratory relief combined into two causes of action. As defendants correctly observe, "while the [TAC] only has two causes of action for declaratory relief, the prayer sought [numerous] distinct declarations." Separately adjudicating the claims based on the particular declaratory request was wholly consistent with the time and cost saving purposes the Legislature sought to promote when it amended the summary adjudication statute. (See *Lilienthal*, *supra*, 12 Cal.App.4th at p. 1853.)

In so concluding, we reject KIPP's contention that defendants did not properly give notice of their request for summary adjudication of each cause of action. Defendants' notice of motion specifically provides that they were seeking summary adjudication of the second and third causes of action. And their memorandum of points and authorities clarifies the scope of their arguments, attacking certain requests for declaratory relief.

2. *Paragraph (a)*

KIPP argues that it was error for the trial court "to grant summary adjudication as to the Political Reform Act components of the Second Cause of Action" for the same reasons the trial court erred in granting Lukin's motion for summary adjudication

of this cause of action.[10] As set forth above, we conclude that the trial court properly granted Lukin's motion for summary adjudication of this cause of action. It follows that we reject KIPP's argument here.

3. *Paragraphs (h) and (m)*

KIPP argues that the trial court erred in adjudicating these two prayers against it on the grounds that it lacked standing. Specifically, regarding paragraph (h), the trial court found that KIPP "itself has no right to reimbursement." Similarly, as to paragraph (m), the trial court found that KIPP "has no standing to hold reimbursement as to peace officers." We agree that KIPP lacks standing to pursue these two declarations. After all, it is undisputed that CalOES "is responsible for administering grant funds based on specific training and delivery guidelines and availability of grant programs that may vary each fiscal year." In other words, any grant fund reimbursements for training is allocated to government enforcement agencies, not KIPP.

In urging us to reverse, KIPP directs us to Government Code sections 87100, 91000, and 11130 and asserts that because it "was injured by the wrongful actions of [POST and the

---

[10] We note that the trial court's minute order indicates that the trial court denied defendants' motion for summary adjudication as to paragraph (a) of the prayer for relief. But, at the hearing on the motion, the trial court stated that it was granting the motion for summary adjudication as to the Political Reform Act. "[W]hen there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls." (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.)

Training Institute] in refusing to honor legal duties to reimburse grant recipients for courses on which KIPP was to provide training," it has standing to pursue these two declarations. We are not convinced. Nothing in these statutes gives KIPP standing to seek the declarations requested in paragraphs (h) and (m). As set forth above, KIPP's first cause of action failed at both the demurrer and summary adjudication stage of the proceedings. Government Code section 91000 provides that any "person" who violates the Political Reform Act is guilty of a misdemeanor. (Gov. Code, § 91000, subd. (a).) The statute also provides for a monetary fine against the "person" who violated the statutory scheme. (Gov. Code, § 91000, subd. (b).) And, Government Code section 11130 allows for a right of action under the Open Meeting Act. It says nothing of monetary reimbursement.

Cates v. California Gambling Control Com. (2007) 154 Cal.App.4th 1302 (*Cates*) is readily distinguishable. *Cates* reaffirmed that pursuant to Code of Civil Procedure section 526a, a "taxpayer may sue to enjoin wasteful expenditures by state agencies . . . and also to enforce the government's duty to collect funds due the State." (*Cates, supra,* at p. 1308.) But, "'[a] taxpayer suit is authorized only if the governing body has a duty to act and has refused to do so. If the governing body has discretion and decided not to act, then the court is prohibited from substituting its discretion for the discretion of the governing body.' [Citation.]" (*Cates*, at p. 1308.)

Here, KIPP did not bring its suit pursuant to Code of Civil Procedure section 526a. And, even if it did, KIPP has not shown that POST and/or the Training Institute had a mandatory duty to withhold the use of grant funds for the 24-hour TLO course until POST completed the course modification. Rather, as set forth

above, POST's decision to temporarily withhold grant funds was within its discretion to safeguard the limited grant funds for the most up-to-date training.

4. *Paragraphs (f), (g), and (i)*

KIPP argues that the trial court erred in finding that it could not grant the relief requested in paragraphs (f), (g), and (i)[11] "based on lack of jurisdiction or some concern about 'prior restraint.'" According to KIPP, the trial court could grant the relief requested because it wanted an order preventing POST and the Training Institute "from exceeding their jurisdiction and telling other states what they can and cannot do."

KIPP offers no argument or legal authority in support of this proposition. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852.)

IV. *Trial*

A. Standard of review

It is well-established that "our review is guided by recognition that the judgment is presumed to be correct and we must indulge all presumptions in favor of its correctness. [Citations.] In keeping with that standard, we will infer findings in support of the judgment if such findings are supported by substantial evidence. [Citation.]" (*Alpha Mechanical, Heating &*

---

[11] At paragraph (i), KIPP seeks a declaration that defendants cannot obtain a copyright on the TLO cause materials. Counsel focused on the copyright issue during oral argument. As set forth above, KIPP has not shown on appeal how the trial court's order was erroneous.

Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America (2005) 133 Cal.App.4th 1319, 1338.)

"When applying the substantial evidence test, 'the power of the appellate court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, which supports the finding.' [Citation.] Evidence is 'substantial' for purposes of this standard of review if it is of ponderable legal significance, reasonable in nature, credible, and of solid value. [Citation.] The testimony of a single witness, even if that witness is a party to the case, may constitute substantial evidence. [Citation.] Furthermore, a trial court's credibility findings cannot be reversed on appeal unless that testimony is incredible on its face or inherently improbable. [Citations.]" (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 200–201.)

B. Analysis

1. Second and Third Causes of Action (Violation of the Open Meeting Act)

In the second and third causes of action of the TAC, KIPP seeks declaratory relief based upon alleged violations of the Open Meeting Act.[12] The Open Meeting Act, codified in Government

---

[12] The TAC alleges a host of statutory violations, pursuant to which KIPP seeks declaratory relief. Interestingly, not all are addressed by KIPP in its opening brief. We only consider the arguments raised by KIPP in its opening brief. "[A]n argument not raised in the opening brief is forfeited on appeal." (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 455.) "[A]n appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal." (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125.)

Code section 11120, requires that state bodies, including commissions, give prior notice of meetings and cause such meetings to be open and public. (Gov. Code, §§ 11121, subd. (a), 11123, 11125.)

According to KIPP, defendants violated the Open Meeting Act by (1) failing to have proper agendas that would have identified which courses were to be certified or decertified, and (2) delegating the "certification/decertification/suspension duties to the Executive Director, and in turn the staff under the Executive Director."

To the extent KIPP's argument depends upon its assumption that its TLO course was "a de facto . . . decertification," we are not convinced. As the trial court rightly found, ample evidence demonstrates that POST temporarily suspended the 24-hour TLO course; it did not decertify the class. The former executive director of POST, Paul Cappitelli (Cappitelli), testified that the TLO intermediate course was suspended pending revisions in September 2008. In April 2009, KIPP was notified that the revisions were complete. This evidence supports the trial court's determination that the TLO course was never decertified.

And, KIPP directs us to no legal authority to support its suggestion that POST was required to provide agendas identifying courses that were being temporarily suspended while being revised.

We also agree with the trial court's determination that the POST Commission properly delegated its authority regarding course certification duties. As Cappitelli testified, "POST staff had the authority to . . . suspend courses . . . . That was not a

function of the Commission themselves." KIPP offers no evidence or legal authority to the contrary.

2. Fourth Cause of Action (Interference)

In the fourth cause of action, KIPP alleges that L&A committed intentional interference with economic advantage and contract relations.

The elements of a cause of action for interference with contract: "'(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. [Citations.]' [Citation.]" (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 343–344.) The elements of a cause of action for intentional inference with prospective economic advantage are similar: "'"(1) [A]n economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." [Citations.]' [Citation.]" (*LiMandri v. Judkins*, *supra*, at p. 339.) In addition, "a plaintiff seeking to recover for an alleged interference with prospective contractual or economic relations must plead and prove as part of its case-in-chief that the defendant not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.)

As set forth above, the trial court determined that "[t]here was inadequate proof of existing contracts and economic relationships." In so ruling, the trial court "was not persuaded by Mr. Kempfer's testimony." While there was evidence of contracts between KIPP and the Orange County Sheriff's Department, "there was no evidence that these contracts were ever interfered with." And, "there was insufficient evidence of specific knowledge . . . regarding the existence of specific contracts or relationships" by Lukin or L&A.

In urging us to reverse, KIPP reargues the evidence, stating "[s]ubstantial evidence existed as to each element for intentional inference with contract relations." But we cannot, and will not, reweigh the evidence. Even if the evidence is in conflict, we must interpret the facts in the light most favorable to the prevailing party and indulge all reasonable inferences in support of the trial court judgment. (*Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1622–1623.)

It follows that we affirm the trial court judgment in favor of L&A on the fourth cause of action. Necessarily, KIPP's challenge to the trial court's finding that KIPP's alleged damages were speculative is moot.

3. Fifth Cause of Action (Negligent Interference)

In the fifth cause of action, KIPP alleges negligent interference with economic advantage and contract relations against L&A. The elements of these causes of action are (1) the existence of an economic relationship between plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with

reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; and (6) economic harm proximately caused by the defendant's negligence. (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1077–1078; *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786; *SCEcorp. v. Superior Court* (1992) 3 Cal.App.4th 673, 677.)

For the reasons set forth above, we affirm the judgment in favor of L&A on the fifth cause of action, and we do not consider KIPP's challenge to the trial court's finding that KIPP's claimed damages were speculative.

4. Sixth Cause of Action (Bus. & Prof. Code, § 17200)

In the sixth cause of action, KIPP alleges that Lukin and L&A violated Business and Professions Code section 17200. As KIPP explains in its appellate brief, "Lukin's actions on behalf of himself and L&A[] served one purpose: eliminate competition from KIPP." Thus, according to KIPP, the trial court erred in not finding a violation of Business and Professions Code section 17200.

"A business practice is unfair within the meaning of the [unfair competition law] if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1473.) Here, the trial court found no evidence that Lukin and L&A engaged in any unfair business practices. Specifically, there was "unwavering and credible" testimony that Lukin "was not involved in POST's decision to suspend the 24-Hour TLO curriculum in September 2008." And, KIPP "failed to prove that [Lukin] and/or L&A were ever awarded any TLO contracts in the

State of California by POST or CalOES." It follows that the trial court did not err by entering judgment on this cause of action in favor of Lukin and L&A.

5. Seventh Cause of Action (Breach of Oral Contract)

In the seventh cause of action, KIPP alleges that Lukin and L&A breached an oral contract that they had with KIPP.

"The elements of a breach of oral contract claim are the same as those for a breach of written contract: a contract; its performance or excuse for nonperformance; breach; and damages. [Citations.]" (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)

The trial court found that KIPP "failed to establish that any contract was formed" between KIPP and Lukin and/or L&A. In so ruling, the trial court noted that the testimony of the four individuals involved in the purported contract negotiations did not agree to any clear contract terms. Moreover, the trial court found that KIPP was not a proper plaintiff on this claim. Although KIPP alleged that a contract was formed in 2007, KIPP did not come into existence as a corporation until 2008. Furthermore, the trial court found Kempfer's "oral testimony regarding an assignment of any rights under any existing contract at the time of incorporation problematic because it [was] not supported by any other evidence."

Again, KIPP attempts to reargue its case by asserting that "[s]ubstantial evidence was presented in writing and oral testimony to support the elements of this claim." KIPP's efforts fail for the reasons set forth above. And, notably, KIPP does not challenge the trial court's finding that KIPP is not a proper plaintiff. On this ground alone, we could affirm the trial court judgment.

Because there is ample evidence to support the trial court's finding that there was no oral contract between KIPP and L&A and/or Lukin, we need not address KIPP's contention that the trial court erred in finding that KIPP's alleged damages were speculative.

6. Alter Ego Liability

Finally, KIPP argues that the trial court erred in failing to find that L&A was the alter ego of Lukin. Aside from the fact that KIPP fails to direct us to that portion of the appellate record in which the trial court purportedly made this ruling (Cal. Rules of Court, rule 8.204(a)(1)(C); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115 [appellate court is not required to make an independent, unassisted search of the appellate record]), the argument fails on the merits.

It is well-established under California law that the alter ego doctrine is only a means of imposing liability for an underlying cause of action, not an independent/stand-alone cause of action. (*Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1358–1359.) As KIPP has not demonstrated how it pleaded and proved a viable claim of liability against either Lukin or L&A, the question of alter ego liability is irrelevant.

Case No. NC058217

KIPP appeals from the judgment of dismissal entered after the trial court sustained without leave to amend the demurrer to KIPP's third amended complaint filed by defendants State of California, acting by and through POST, Robert Stresak (Stresak), Daniel Toomey (Toomey), and Steven Craig (Craig).

FACTUAL AND PROCEDURAL BACKGROUND

As set forth above, this litigation arises out of KIPP's claim that POST and others associated with POST prevented KIPP from conducting its TLO course.

Instant Lawsuit

KIPP initiated this lawsuit on October 12, 2012.

First Amended Complaint

The first amended complaint (FAC), filed January 9, 2013, against POST alone, alleges that "POST, a state agency, made a determination behind-closed-doors to withhold peace officer course credit . . . for a certified course approved to be presented by a certified presenter using approved instructors pursuant to a contract between the certified presenter and KIPP, which determination was made in violation of the Bagley-Keene Open Meeting Act. This determination was indefinite and amounted to a de-facto decertification of the course. POST failed to hold an open meeting or give notice to the public of any meeting regarding this determination to be made, and by law, the matter of certification is to be determined by the POST Commission. In so doing, POST also violated its own regulations as set forth in the POST Administrative Manual which require the POST Commission to make determinations as to certification and decertification." Specifically, the FAC alleges that in November 2004, POST incorporated KIPP's citizen information networking curriculum into its five-day TLO course curriculum "as a core component with the consent of KIPP." And, from 2005 through 2006, KIPP provided more than one instructor for TLO courses.

On August 14, 2012, KIPP alleges that POST violated Government Code section 11123 "by making a determination that peace officers would not receive course credit for attending the

certified TLO courses presented by certified TLO presenters who utilized KIPP as instructors, in effect decertifying the TLO course without complying with the open meeting requirement, and without notifying KIPP—which was directly affected by the decision—of the closed meeting at which the determination was made so that KIPP could be heard on the lack of merit of the decision. Furthermore, KIPP alleges that [POST] violated [Government Code section] 11125 by failing to provide Notice to the public."

Based upon these factual allegations, the FAC sets forth four causes of action: (1) Violation of Government Code section 11120 (the Bagley-Keene Open Meeting Act); (2) Intentional interference with economic advantage and contract relations; (3) Negligent interference with economic advantage; and (4) Violation of the Cartwright Act.

POST demurred to the FAC.

The trial court sustained POST's demurrer to the first cause of action with leave to amend and without leave to amend to the second, third, and fourth causes of action. Regarding the first cause of action, the trial court found that additional facts needed to be pled. Regarding the second and third causes of action, the trial court noted that government liability may only be imposed pursuant to an express statutory provision; the second and third causes of action for interference "have no such statutory grounding." Finally, regarding the fourth cause of action, the trial court determined that "[t]he State is not a 'person' subject to liability under the Cartwright Act. It is only a 'person' with respect to enforcing the Act." Leave to amend was denied because there was "no apparent restraint of trade, just a decertification of credit for a single course."

Second Amended Complaint

KIPP filed its second amended complaint (SAC) on June 11, 2013, against POST alone. The SAC contains six causes of action: (1) Violation of Government Code section 11120; and (2) Five constitutional claims. The first cause of action alleges that "[a]n actual controversy has arisen and now exists between [KIPP] and [POST] whereby [POST's] de-facto decertification of the TLO Course for which [KIPP] was under contract to provide instruction was a failure to follow the appropriate procedures set forth in the Bagley-Keene Open Meeting Act . . . to ensure public oversight, and prevent overreaching; was a failure to adhere to POST's own rules and regulations; and was the direct cause of [KIPP's] concrete injury."

The second and third causes of action reframe the earlier interference causes of action, with KIPP now alleging that it had contracts with third parties that POST knew about and that POST's suspension of the "federally approved TLO curriculum" induced breach of those contracts, in violation of both the United States and California constitutions. The fourth cause of action alleges that POST's closed door meeting violated article 1, section 3, subdivision (b), of the California Constitution, which provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." The fifth cause of action asserts that POST's holding of a closed door meeting denied KIPP of due process. The sixth cause of action alleges violation of Civil Code section 52.1.

POST again demurred.

The trial court sustained POST's demurrer to the first cause of action with leave to amend, reasoning that there were "insufficient facts [alleged] to establish that an open meeting was required to disallow credit for a course taught by [KIPP's] instructors, as opposed to decertifying a course." The trial court also agreed with POST "that the facts do not support the contention and conclusion of law that POST, in disallowing credit for courses taught by [KIPP's] instructors is the equivalent of 'decertifying the TLO course.'" The trial court sustained POST's demurrer to the five constitutional claims without leave to amend, finding: (1) the second and third causes of action failed because the "facts alleged [in the SAC] do not establish the passage of a law impairing contracts"; (2) the fourth cause of action failed because the "facts alleged do not establish a right to tort damages under Article 1, Section 3(b) of the California Constitution"; (3) the fifth cause of action failed because the "State of California is not a 'person' subject to liability under" 42 United States Code section 1983 (section 1983); and (4) the sixth cause of action failed because "Civil Code section 52.1 is not an explicit basis for State liability as required by Government Code section 815."

Third Amended Complaint

On April 10, 2014, KIPP filed its third amended complaint against POST, Stresak, Toomey, and Craig. According to this pleading, Stresak is the executive director of POST, Toomey is an individual employed by POST as a consultant, and Craig is an individual employed by POST.

The first cause of action, alleged against all four defendants, seeks declaratory relief, arising out of alleged closed door meetings on August 14, 2012, and in November 2012. The

second cause of action, against Toomey and Craig only, seeks declaratory and injunctive relief. According to KIPP, an "actual controversy has arisen and now exists between [KIPP] and [Toomey and Craig] whereby [KIPP] contends that these Defendants have engaged in purposeful efforts to treat KIPP in a disparate manner from the manner in which other vendors or providers of instructors to certified presenters are treated."

Defendants demurred to the third amended complaint.

After consideration of the parties' papers and entertaining oral argument, the trial court sustained defendants' demurrer to the third amended complaint without leave to amend. The trial court found that the third amended complaint "fail[ed] to state facts sufficient to constitute a cause of action against moving defendants and there is no actual, present, concrete controversy."

A judgment of dismissal was entered, and this timely appeal ensued.

DISCUSSION

I. Standard of review

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: '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.]' [Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. Analysis

A. First amended complaint

KIPP challenges the trial court's order sustaining POST's demurrer with leave to amend to the first cause of action in the FAC. But KIPP filed two amended complaints after the trial court's order, and the judgment from which KIPP appeals is based on the trial court's order sustaining POST's demurrer to the third amended complaint without leave to amend. It follows that any arguments concerning this cause of action in the FAC are irrelevant and do not provide a basis for reversing the judgment. (See, e.g., *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 [""[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading,"" and "the filing of an amended complaint renders moot a demurrer to the original complaint"].)

That said, we can review the trial court's order sustaining POST's demurrer to the second, third, and fourth causes of action without leave to amend because those claims were eliminated from the action at the time of the trial court's order.

The second cause of action alleges intentional interference with economic advantage and contract relations, and the third cause of action alleges negligent interference with economic advantage. In order to pursue these claims, KIPP has to

overcome Government Code section 815. As the trial court aptly found, it cannot do so.

Government Code section 815 provides, in relevant part: "Except 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." In other words, in California, all governmental tort liability is dependent on statute. (*Susman v. City of Los Angeles* (1969) 269 Cal.App.2d 803, 808.) "Since all governmental tort liability is dependent upon the existence of an authorizing statute, a public entity's duty created by statute must be identified by plaintiff." (*Foster v. County of San Luis Obispo* (1993) 14 Cal.App.4th 668, 672.) "[D]isregard of statutes is fatal to a plaintiff's claim of public liability." (*Ramsey v. City of Lake Elsinore* (1990) 220 Cal.App.3d 1530, 1541.)

Here, the FAC fails to identify a statute upon which KIPP's second and third causes of action are based, or could be based. As such, they fail as a matter of law.

In urging us to reverse, KIPP directs us to *H&M Associates v. City of El Centro* (1980) 109 Cal.App.3d 399, 406 (*H&M*), and argues that Government Code section 815 does not preclude tort liability for interference causes of action. *H&M* holds no such thing. All the court in *H&M* held was that governmental discretional immunity had not been established as a defense to the claims alleged against the defendant. (*H&M*, *supra*, at p. 406.) It did not hold, as KIPP posits, that interference claims are not subject to Government Code section 815.

As set forth above, the trial court sustained POST's demurrer to the fourth cause of action without leave to amend. KIPP does not challenge that ruling in its appellate briefs. Thus,

we deem any objection to that portion of the trial court's order forfeited on appeal. (*Evans v. CenterStone Development Co.* (2005) 134 Cal.App.4th 151, 165.)

B. Second amended complaint

For the reasons set forth above, we need not review the propriety of the trial court's order sustaining POST's demurrer to the first cause of action with leave to amend.

But, we consider the trial court's order sustaining POST's demurrer to the second through sixth causes of action without leave to amend. The second cause of action alleges violation of article I, section 10 of the United States Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." (U.S. Const., art. I, § 10.) Similarly, the third cause of action alleges violation of article I, section 9 of the California Constitution, which provides that California shall not pass any "law impairing the obligation of contracts." (Cal. Const., art. I, § 9.) Here, as the trial court found, the SAC does not allege any facts establishing the passage of a law impairing contracts. Thus, the demurrer was rightly sustained to these two causes of action.

In urging us to reverse, KIPP argues that "POST's determination that a POST-certified course would not be eligible for peace officer credit if offered by POST certified presenters, and taught by POST approved instructors effectively was an order or edict of POST that impaired KIPP's contracts in violation of the state and federal constitution prohibitions." Therefore, according to KIPP, the demurrer should have been overruled.

We are not convinced. While an order of a state administrative agency may be deemed a law, KIPP does not

allege that POST issued any order here impairing any contract between KIPP and any other entity. Thus, the trial court properly sustained the demurrer to these two causes of action without leave to amend.

The fourth cause of action alleges violation of the California Constitution, article I, section 3, subdivision (b)(1), which provides: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." According to KIPP's SAC, POST violated this constitutional provision by holding closed door meetings, during which it "agreed to the improper de [] facto decertification of the previously approved and certified TLO . . . [c]ourse." For this alleged violation, KIPP sought declaratory and monetary relief.

We agree with the trial court that KIPP did not state a proper cause of action. To the extent KIPP sought monetary damages for the alleged constitutional violation, we do not believe that the drafters of this provision intended that it include a damages remedy for its violation. (See, e.g., *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 317; *MHC Financing Limited Partnership Two v. City of Santee* (2010) 182 Cal.App.4th 1169, 1175 [any injury suffered as a result of the violation of a plaintiff's "right to petition was not *legally remediable* through an award of damages"].) In fact, KIPP points us to no evidence that the enactors intended to include a damages remedy for its violation. KIPP's unfounded assertion that "for this violation of [the California Constitution,] declaratory, injunctive and monetary relief should be available" is insufficient.

To the extent KIPP sought declaratory relief, the cause of action fails on the grounds that it does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) KIPP alleges on information and belief that POST had "planned further meetings from which [it] intend[s] to exclude [KIPP] in violation of" the Open Meeting Act and this constitutional provision. Thus, it sought "a declaration from the court that such meetings are illegal and improper and an order that such meetings not be permitted." But, as pointed out by POST below, this cause of action did not allege any facts to support its speculation that additional improper closed door meetings were planned. It follows that KIPP did not set forth a proper basis for declaratory relief.

The fifth cause of action alleges that POST violated KIPP's civil rights and denied it due process, in violation of the 14th Amendment to the United States Constitution and section 1983. The trial court's order was correct. "*[S]tates and state officers* sued in their official capacity are not considered persons under section 1983 and are immune from liability under the statute by virtue of the Eleventh Amendment and the doctrine of sovereign immunity." (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 829 (*Venegas*); see also *Will v. Michigan Dept. of State Police* (1989) 491 U.S. 58, 65–66 [a state is not a person under section 1983].)

KIPP seems to concede that it is not entitled to recover monetary damages in connection with this cause of action, but it contends that because it is entitled to injunctive relief, it should have been granted leave to amend to "name and pursue [claims] against those individuals who have taken the action resulting in deprivation of KIPP's rights." KIPP has not demonstrated that it

was entitled to leave to amend. Neither on appeal or below did KIPP identify which individuals it could state a proper claim against. Thus, it did not meet its burden of showing that the trial court abused its discretion by sustaining POST's demurrer without leave to amend. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Finally, we conclude that the trial court rightly sustained the demurrer to the sixth cause of action for violation of Civil Code section 52.1. Civil Code section 52.1, subdivision (b), provides, in relevant part: "If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief." (Civ. Code, § 52.1, subd. (b).) Subdivision (c) continues: "Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision [(b)], may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages." (Civ. Code, § 52.1, subd. (c).)

A plaintiff may pursue a claim for violation of Civil Code section 52.1 so long as the plaintiff alleges wrongful acts "accompanied by the requisite threats, intimidation, or coercion." (*Venegas*, *supra*, 32 Cal.4th at p. 843.) Here, POST's demurrer was rightly sustained because, other than the boilerplate

allegation that POST used "implied threats, intimidation and coercion," the SAC is silent regarding this required element. At best, the SAC is confusing—how could POST have used "threats, intimidation and coercion" by engaging in a "de [] facto decertification of the TLO . . . Course in August 2012, the refusal to allow submission of requests for certification of the TLO . . . Course, and the discriminatory handling of submissions in which [KIPP] is identified as an instructor"? Certainly the allegations do not allege physical harm and the use of physical force. (See, e.g., *Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1447 [noting that Civil Code section 52.1 "was intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence"].)

Moreover, KIPP does not appear to be a proper plaintiff. Civil Code section 52.1 refers to the enjoyment of constitutional rights by "any individual or individuals." We have reviewed extensive case law interpreting Civil Code section 52.1 and in all of those cases, the plaintiff is an individual—we have found no case (and KIPP directs us to none) in which a corporation is a proper plaintiff in this sort of cause of action.

C. Third amended complaint

The trial court sustained defendants' demurrer to the entire third amended complaint without leave to amend. We thus examine each cause of action to determine whether the trial court erred.

Both causes of action seek declaratory relief. Code of Civil Procedure section 1060 provides that "in cases of actual controversy" a court "may make a binding declaration" of a litigant's rights or duties. (See *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 646 (*Meyer*).) Code of Civil Procedure

section 1061 provides that a "court may refuse to [grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." (See *Meyer*, *supra*, at p. 647.)

"'"[D]eclaratory relief is appropriate only where there is an actual controversy, not simply an abstract or academic dispute." [Citations.]' [Citation.] 'The "actual controversy" language in Code of Civil Procedure section 1060 encompasses a probable future controversy relating to the legal rights and duties of the parties. [Citation.] For a probable future controversy to constitute an "actual controversy," however, the probable future controversy must be ripe. [Citations.] A "controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." [Citation.] [¶] Whether a claim presents an "actual controversy" within the meaning of Code of Civil Procedure section 1060 is a question of law that we review de novo.' [Citation.]" (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606, italics omitted; see also *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 539.)

KIPP's claims are based upon alleged violations of the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.). The Open Meeting Act requires that state bodies give prior notice of meetings and cause such meetings to be open and public. (Gov. Code, §§ 11121, subd. (a), 11123, 11125.) A "state body" is defined at Government Code section 11121. Nowhere does the statutory scheme suggest that a "state body" includes an individual. It follows that KIPP cannot pursue its declaratory relief claims against the three individual defendants: Stresak, Toomey, and Craig.

In urging us to reverse, KIPP argues that Stresak is a proper party because he is named in his official capacity and, pursuant to *Hafer v. Melo* (1991) 502 U.S. 21, 25 (*Hafer*) "official-capacity suits '"generally represent only another way of pleading an action against an entity of which an officer is an agent."' [Citation.] Suits against state officials in their official capacity therefore should be treated as suits against the State." *Hafer* is readily distinguishable. In that case, only the state official was named as a defendant; in the instant case, the state entity (POST) is named as a defendant. There is no need or basis for Stresak to remain in this lawsuit.

To the extent KIPP's claim is based upon its theory that POST was required to hold an open meeting regarding the alleged certification of the TLO course, it fails for the reasons set forth in our discussion concerning trial court case No. NC053503.

DISPOSITION

The judgments in case Nos. NC053503 and NC058217 are affirmed. Defendants are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT