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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BUASHIE AMATOKWU,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES  
et al.,

Defendants and  
Respondents.

B266353

(Los Angeles County  
Super. Ct. No. BC564430)

APPEAL from judgments of the Superior Court of Los Angeles County, Michael Johnson, Judge. Affirmed.

Buashie Amatokwu, in pro. per., for Plaintiff and Appellant.

Office of the Los Angeles City Attorney, Michael N. Feuer, City Attorney, Paul L. Winnemore, Deputy City Attorney for Defendant and Respondent Los Angeles Police Department.

Benton, Orr, Duval & Buckingham, Kevin M. McCormick  
for Defendant and Respondent Los Angeles County Superior  
Court Clerk.

Collinson Law, Laura E. Inlow, Matthew W. McAleer for  
Defendant and Respondent County of Los Angeles.

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Plaintiff and appellant Buashie Amatokwu (plaintiff)  
brought a libel action against defendants and respondents the  
County of Los Angeles (County), the Los Angeles County Superior  
Court Clerk (Clerk), and the Los Angeles Police Department  
(LAPD) (collectively defendants). The trial court sustained  
without leave to amend defendants' respective demurrers, and  
plaintiff appeals from the ensuing judgments. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff was in Griffith Park in March 2005 with her dog  
and some friends; her dog was not on a leash. Two park rangers  
approached and asked for identification. She was not carrying  
any identification, and the rangers detained her at the park.  
“[W]hen it began to get dark [she] asked that they take [her] to  
the police station because it was not safe for [her] to be in the  
park with them.” At the police station, instead of verifying her  
identity, the rangers apparently caused her to be charged with  
two misdemeanors (resisting arrest and falsely representing  
herself as another person to a peace officer) and an infraction for  
having the dog off leash.

“Against [her] better judgment,” she acquiesced in  
representation by the public defender. The rangers had recorded  
the entire encounter in the park. After her attorney played the

recording in court, the misdemeanor charges were dropped, and she accepted community service for the infraction.

She was working on her doctoral dissertation at the time of the park incident and was awarded her degree, but could not obtain a job. In 2013, a potential employer that rejected her application advised her of a Department of Justice printout reflecting her record of multiple felony convictions. Somehow the court “mixed up [her] dog park incident case number with a young lady with multiple count of felonies. So, for nine plus years, [she] had been a [felon].” She cleared her name in the court system.

Representing herself, she filed a verified, single cause of action complaint for libel on November 19, 2014. She alleged she filed a claim on April 28, 2014 and “received a response from the county.” Plaintiff served the complaint on the Clerk, the County, and the LAPD.<sup>1</sup> Each defendant filed a demurrer. The County attached plaintiff’s claim to its moving papers. There, plaintiff stated, “11/13/13 I found out the court missed [*sic*] my name/incident with someone with multi-felonies.”<sup>2</sup> Plaintiff did not file opposition to any demurrer.

Defendants’ demurrers were argued together. Plaintiff was present at the hearing, which was not reported. The trial court

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<sup>1</sup> Plaintiff also named the California Department of Parks and Recreation as a defendant. Nothing in the record suggests this party was ever served.

<sup>2</sup> We take “judicial notice of the filing and contents of a government claim, but not the truth of the claim.” (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1.) We also take judicial notice that Griffith Park is a municipal park. (Evid. Code, § 452, subd. (g); Code Civ. Proc., § 430.30, subd. (a).)

issued detailed minutes and sustained the demurrers without leave to amend. The trial court determined: (1) with respect to the LAPD and the Clerk, plaintiff failed to allege compliance with the Government Claims Act; (2) plaintiff alleged no facts suggesting any County or LAPD involvement in the felony record mix-up; (3) plaintiff's action was barred by the one-year statute of limitations for libel in Code of Civil Procedure section 340, subdivision (c) because plaintiff alleged discovery of defendants' misconduct on November 13, 2013, but did not file her action until November 19, 2014; (4) plaintiff's action was subject to immunities for public employees in Government Code sections 818.8, 822.2, and 821.6; and (5) plaintiff's claims concerning litigation of the Griffith Park incident were subject to the litigation privilege in Civil Code section 47, subdivision (b).

Judgments in defendants' favor followed. Plaintiff timely appealed.

## DISCUSSION

We independently review the verified complaint and all matters we are entitled to judicially notice to determine “whether, as a matter of law, the complaint states facts sufficient to state a cause of action. [Citations.] We view a demurrer as admitting all material facts properly pleaded but not contentions, deductions, or conclusions of fact or law.” (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700-701.) If the complaint is insufficient, but there “is a reasonable possibility that the defect can be cured by amendment . . . we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] As plaintiff concedes, the burden of proving such reasonable possibility is squarely on [her].” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

As to the LAPD and the Clerk, our analysis goes no further than plaintiff's noncompliance with the Government Claims Act.<sup>3</sup> (Gov. Code, §§ 905, 945.4.) Plaintiff's failure to submit claims to the LAPD and the Clerk is fatal to her lawsuit against them. This defect cannot be cured. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239 ["failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity"].) The trial court properly denied plaintiff leave to amend when it sustained the LAPD and Clerk demurrers.

Plaintiff did file a timely claim with the County. There, plaintiff criticized the park rangers, the LAPD and the court. The claim identified the triggering incident in Griffith Park, but that is not a County recreational area. (See fn. 2.) As the County pointed out in the demurrer, its only involvement with plaintiff was through the Public Defender's Office. The complaint, however, did not suggest plaintiff's public defender or the office itself was involved in the record mix-up. The complaint failed to include facts sufficient to state a cause of action against the County for libel, and the demurrer was properly sustained. (Code Civ. Proc., § 430.10, subds. (a) & (e).)

On appeal, plaintiff has the burden to demonstrate she can amend the complaint to state a cause of action against the County. The Court of Appeal in *Rakestraw v. California*

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<sup>3</sup> In her opening brief, plaintiff claimed she filed a claim with the City of Los Angeles on April 28, 2014. Addressing her alleged failure to comply with the Government Claims Act in her reply brief, she confirmed the claim was with the Board of Supervisors of Los Angeles County—i.e., the County, and did not state she filed claims with the LAPD or the Clerk.

*Physicians' Service* (2000) 81 Cal.App.4th 39 explained what a plaintiff must do: “[P]laintiff may make this showing for the first time on appeal. [Citations.] [¶] To satisfy [her] burden, . . . plaintiff must clearly and specifically set forth the ‘applicable substantive law’ [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.] [¶] The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend.” (*Id.* at pp. 43-44.)

Plaintiff has not offered any proposed factual allegations or legal authority. Accordingly, we agree the court properly sustained the County’s demurrer without leave to amend.

### **DISPOSITION**

The judgments are affirmed. Defendants are awarded their costs on appeal.

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DUNNING, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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