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Attorneys for Defendant
COUNTY OF LOS ANGELES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

OCT 07 2010
Exempt from payment of filing fee
pursuant to Gen. Code § 6103
BY Raul Sanchez Executive Officer/Clerk
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES — CENTRAL DISTRICT

11 JAMES MEE,

12 Plaintiff,

13 vs.

14 COUNTY OF LOS ANGELES; and DOES 1
15 through 50, inclusive,

16 Defendants.

) CASE NO. BC444914
) [Assigned to the Hon. John A. Kronstadt in Dept. 30]
)
) NOTICE OF INTENT TO DEMUR AND
) DEMURRER OF COUNTY OF LOS ANGELES
) TO PLAINTIFF'S COMPLAINT;
) MEMORANDUM OF POINTS &
) AUTHORITIES
)
) DATE: January 19, 2011
) TIME: 8:30 a.m.
) DEPT: 30
)
) Complaint Filed: September 7, 2010
)
) TRIAL DATE: None

22 TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD HEREIN:

23 PLEASE TAKE NOTICE that on *January 19, 2011* at or about *8:30 a.m.*, or as soon
24 thereafter as the matter may be heard in Department "30" of the above-entitled Court, located at 111
25 North Hill Street, Los Angeles, California, Defendant, COUNTY OF LOS ANGELES (hereinafter
26 "COUNTY"), will Demur to the Complaint of Plaintiff, JAMES MEE (hereinafter "PLAINTIFF").

27 The demurrer of COUNTY to the Complaint is made and based upon the Code of Civil
28 Procedure §§ 430.10 and 430.30 and specifically on the following grounds:

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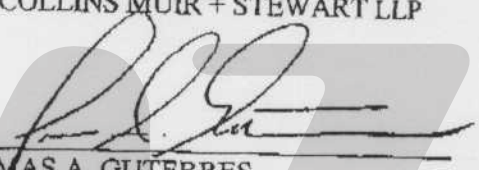
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- (1) The Complaint as a whole and each cause of action asserted therein is barred by the statute of limitations;
- (2) The Complaint as a whole and each cause of action asserted therein fails to state facts sufficient to support a cause of action as against COUNTY pursuant to Code of Civil Procedure § 430.10(e);
- (3) The Complaint as a whole and each cause of action asserted therein is uncertain pursuant to Code of Civil Procedure § 430.10(f);

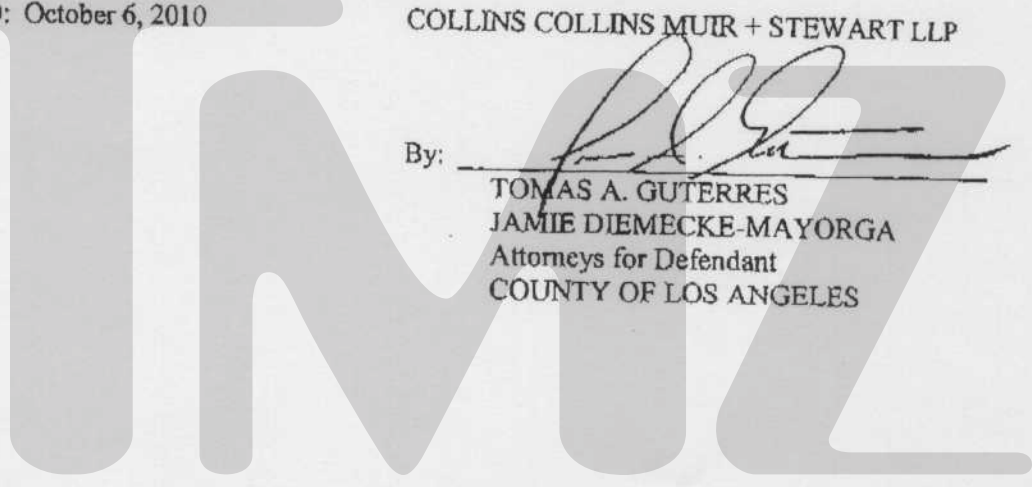
Pursuant to Code of Civil Procedure § 430.30, the grounds for this demurrer appear on the face of the Complaint. This demurrer is made and based on this Notice, the records, pleadings and files herein, the attached Memorandum of Points and Authorities and upon such oral or documentary evidence as may be presented at the hearing of this motion.

DATED: October 6, 2010

COLLINS COLLINS MUIR + STEWART LLP

By: 

 TOMAS A. GUTERRES
 JAMIE DIEMECKE-MAYORGA
 Attorneys for Defendant
 COUNTY OF LOS ANGELES



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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This action is brought by PLAINTIFF, a Sheriff Deputy who claims that he was discriminated against on account of his Jewish religion and was retaliated against when he was transferred to a different patrol station and was not selected for certain job positions he applied for.

PLAINTIFF filed this action on *September 7, 2010*. The Complaint attempts to assert Three (3) separate causes of action against COUNTY namely, (1) For Violations of the California Fair Employment and Housing Act (Discrimination on Account of Religion); (2) Retaliation in Violation of the California Fair Employment and Housing Act; and (3) For Violations of the California Fair Employment and Housing Act (Harassment/Hostile Work Environment). PLAINTIFF alleges that he was discriminated and retaliated against when he became the subject of an investigation of a leaked police report and that COUNTY took four years to complete the investigation which impacted PLAINTIFF's ability to promote. (See Complaint page 5, ¶12). PLAINTIFF also alleges that he was given negative performance reviews which negatively impacted his ability to promote within the COUNTY. (Complaint page 5 ¶14).

For the reasons set forth herein, the Complaint as plead and each cause of action asserted therein fails to state facts sufficient to support a cause of action against COUNTY; and is further vague and uncertain; among other things COUNTY hereby requests that the Demurrer be sustained, without leave to amend.

II.

STATUTORY AUTHORITY AND STANDARDS FOR DEMURRER

A. **Authority for General Demurrer**

When any ground for objection to a complaint appears on the face thereof, the objection on that ground may be taken by a demurrer to the pleading. Code of Civil Procedure, § 430.30(a). The party against whom a complaint has been filed may object by demurrer to the pleading on the ground that the pleading does not state facts sufficient to support a cause of action. Code of Civil Procedure, § 430.10(e). Additionally, the party against whom a complaint has been filed may object by a

1 demurrer to the pleading on the grounds that the pleading is uncertain. Code of Civil Procedure, §
2 430.10(f).

3 A trial court does not abuse its discretion by sustaining a general demurrer without leave to
4 amend if it appears from the complaint that under applicable substantive law there is no reasonable
5 possibility that an amendment could cure the complaint's defect. Heckendorn v. San Marino (1986)
6 42 Cal.3d 481, 486. Moreover, when a complaint is successfully challenged by a general demurrer,
7 the burden is on the plaintiff to demonstrate how the complaint might be amended to cure it of the
8 defect. Association of Community Orgs. For Reform Now v. Department of Indus. Rel. (1995) 41
9 Cal.App.4th 298, 302.

10 Code of Civil Procedure, § 430.10 states, in pertinent part, as follows:

11 "The party against whom a complaint or cross-complaint has been filed may
12 object, by demurrer or answer as provided in § 430.30 to the pleading on any
13 one or more of the following grounds:

14 (e) **The pleading does not state facts sufficient to support a cause of
15 action."**

16 (f) **The pleading is uncertain.** As used in this subdivision, 'uncertain'
17 includes ambiguous and unintelligible." [Emphasis Added].

18 A court should sustain a general demurrer if the complaint, liberally construed, fails
19 to state a cause of action under any theory. (Kiseskey v. Carpenters' Trust for So.
20 California (1983) 144 Cal.App.3d 222, 228.).

21 **B. Particular Pleading Required Against Public Entity**

22 In California, all public entity liability must be based upon a statute; see Government Code
23 §815(a), and Susman v. City of Los Angeles (1969) 269 Cal.App.2d 803, 808. COUNTY is a
24 "public entity" (Government Code § 811.2) and therefore entitled to the protection of this rule.

25 Accordingly, "the general rule that statutory causes of action must be pleaded with
26 particularity is applicable. Thus, 'to state a cause of action against a public entity, every fact
27 material to the existence of its statutory liability must be pleaded with particularity.' [citations];"
28 Lopez v. Southern Cal. Rapid Transit Dist. (1985) 40 Cal.3d 780, 795.

///

1 This requirement of particularity in pleading applies to the present case, where all of
2 PLAINTIFF's causes of action are alleged to have a statutory basis. PLAINTIFF's complaint is
3 subject to demurrer because although PLAINTIFF pleads numerous facts regarding acts he deems to
4 be "retaliatory" and "discriminatory" in nature, none of the facts pled by PLAINTIFF establish that
5 these actions were taken in order to discriminate against PLAINTIFF based on his religion or that
6 they were done in an effort to retaliate against PLAINTIFF for complaining of the alleged treatment.

7
8 **III.**

9 **PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS**

10 PLAINTIFF contends that he has been subjected to harassment, discrimination and retaliation
11 since 2006 (See Complaint at Page 4, ¶ 10). However, Government Code Section 12960(d) provides
12 for a ONE year statute of limitations for a plaintiff to file a complaint "upon which the alleged
13 unlawful practice or refusal to cooperate occurred." Accordingly, there can be no dispute based
14 upon the allegations in the Complaint that PLAINTIFF did not timely file his complaint. In light of
15 PLAINTIFF's failure to comply with the requirement that he file a complaint of discrimination with
16 the DFEH within one year of the adverse employment action, PLAINTIFF cannot pursue his claims
17 in this action. Timely filing of an administrative complaint is a prerequisite to bringing a civil action
18 for damages under the Fair Employment and Housing Act. Romano vs. Rockwell Int'l (1996) 14
19 Cal.4th 479, 493-494.

20 **IV.**

21 **A DEMURRER IS PROPER WHERE A PLEADING IS UNCERTAIN OR FAILS TO**
22 **STATE SUFFICIENT FACTS IN SUPPORT**

23 The Complaint characterizes the nature of the action as a one for religious discrimination and
24 retaliation based upon PLAINTIFF's religion pursuant to the California Fair Employment and
25 Housing Act, Government Code § 12940 et seq.

26 The Complaint as plead asserts various claims with little to no *facts* to support any of the
27 causes of action, but instead simply asserts conclusions of law by mimicking the statutory language.
28 That maneuver is insufficient to satisfy the requirements of law for pleading a case against a public
entity, as to which "every *fact* material to the existence of its statutory liability *must be pleaded with*

1 particularity;" Lopez v. Southern Cal. Rapid Transit Dist., *supra*, 40 Cal.3d at 795 (citation omitted,
2 emphasis supplied). PLAINTIFF's transparent quotation of a statute is subject to a demurrer which
3 mandates that "conclusions of fact or law" are not admitted; Blank v. Kirwan, *supra*, 39 Cal.3d at
4 318. "We do not include these characteristics in the recitation of facts, because a demurrer, while
5 admitting all properly pleaded material facts, does not embrace contentions, deductions or
6 conclusions of fact or law;" Droz v. Pacific National Ins. Co. (1982) 138 Cal.App.3d 181, 182, fn. 1.

7 Further, a trial court is *not permitted* to consider such allegations when measuring whether a
8 complaint states facts sufficient to constitute a cause of action. As recognized in our own Second
9 Appellate District, the trial court "**may not consider** contentions, deductions or **conclusions of fact**
10 **or law**;" Young v. Gannon, *supra*, 97 Cal.App.4th at 220 (citations omitted; emphasis added). This
11 directive has the force of law in guiding a trial court's decision; Auto Equity Sales, Inc. v. Superior
12 Court (1962) 57 Cal.2d 450, 455 ("Decisions of every division of the District Courts of Appeal are
13 binding upon all the justice and municipal courts and upon all the superior courts of this state").

14 **A. PLAINTIFF Has Failed to Establish a Claim Against COUNTY for Discrimination**
15 **Based on Religion**

16 PLAINTIFF has stated little to no facts to support any of the claims asserted in the
17 Complaint. The Complaint alleges that COUNTY discriminated against PLAINTIFF based on his
18 religion when he was ordered to remove anti-Semitic slurs from a police report so that the anti-
19 Semitic slurs would be written in a Supplemental Report and marked "confidential." (Complaint,
20 page 4 ¶10). PLAINTIFF alleges that this "Order to delete the anti-Semitic slurs was discriminatory
21 toward Plaintiff who is Jewish." (Complaint page 4, ¶ 10). However, without any additional facts,
22 simply receiving a directive to proceed in one manner with respect to a police report cannot in and of
23 itself be considered discriminatory. Said directive would have been made whether PLAINTIFF was
24 Jewish or any other type of religion. PLAINTIFF cannot correlate the directive to remove this
25 language to discrimination against him because of his religion because there is simply no causal
26 connection. Simply alleging that this directive was discriminatory toward PLAINTIFF because of
27 his Jewish religion does not make it true without any other facts to support this claim. PLAINTIFF
28 further claims that he was discriminated against when he was transferred from the Lost Hills Station-

1 Malibu Patrol Area to the Agoura Patrol Area. PLAINTIFF does not provide any facts whatsoever
2 to establish that this transfer was made in an effort to discriminate against PLAINTIFF. There are no
3 facts to remotely suggest that PLAINTIFF was transferred due to his Jewish religion. The fact that
4 PLAINTIFF had to "re-establish his seniority and contacts with the public" does not mean that he
5 was discriminated against because of his religion. PLAINTIFF uses conclusory allegations without
6 providing any factual evidence to support these allegations. For example, PLAINTIFF states that he
7 was suspended for three days and that the "suspension was motivated in whole or in part by
8 Plaintiff's religion and his report of anti-Semitic remarks" (Complaint page 7 ¶22). There is no basis
9 whatsoever to support PLAINTIFF's statement that his suspension was a result of his religion.

10 Next, PLAINTIFF provides facts regarding negative performance reviews and his failure to
11 be promoted to positions he applied for. Again, there are absolutely no facts to establish that
12 PLAINTIFF was not selected for these job positions as a result of his religion. Instead, PLAINTIFF
13 relies on conclusory allegations such as "[a]gain, the failure to promote was the result of religious
14 discrimination and retaliation for Plaintiff's religion and his report of anti-Semitic
15 remarks." (Complaint page 7 ¶23). Such conclusory allegations cannot be considered by this Court
16 and as such, PLAINTIFF cannot establish that he was discriminated or retaliated against based on his
17 religion.

18 **B. PLAINTIFF Has Failed to Establish a Claim Against COUNTY for Retaliation**

19 As stated above, PLAINTIFF provides instances in which he believes he was retaliated
20 against when he was not promoted to certain job positions and attributes such conduct to his Jewish
21 religion. PLAINTIFF alleges that the retaliatory conduct "was motivated in whole or in part, by
22 Plaintiff's report of religious epithets against Jews by Mel Gibson...and Plaintiff being a member of
23 the Jewish religion." (Complaint page 11, ¶ 40). This statement alone does not establish that
24 PLAINTIFF was retaliated against as a result of his Jewish religion. The Complaint is void of any
25 facts to support PLAINTIFF's allegations that he suffered alleged adverse actions as a result of his
26 being Jewish. The Complaint does not set forth any facts to describe with particularity, as required
27 against a public entity, the protected activity PLAINTIFF engaged in, how he was purportedly
28 retaliated against, and how this alleged conduct was due to his Jewish religion.

1 C. The conduct Pled in The Complaint Does Not Amount to Harassment or Constitute
2 a Hostile Work Environment

3 Similar to his other causes of action, PLAINTIFF's third cause of action for
4 harassment/hostile work environment does not state a claim against COUNTY as the Complaint does
5 not set forth any facts to describe with the required particularity, the nature and severity of the
6 actions that would constitute severe or pervasive conduct sufficient to give rise to a harassment
7 claim. PLAINTIFF alleges that he suffered harassment and a hostile work environment because he
8 was not hired for certain jobs, was transferred to a different patrol area and was the subject of an
9 investigation pursuant to Department policy. None of these actions – alone, or taken together –
10 constitute harassment or a hostile work environment.

11 To demonstrate hostile work environment, a plaintiff must show that his workplace was
12 permeated with misconduct that was so severe or pervasive, it altered the terms and conditions of his
13 employment. Muller v. Automobile of Southern California (1998) 61 Cal.App.4th 431 at 446 (citing
14 Fisher v. San Pedro Peninsula Hosp., (1989) 214 Cal.App.3d 609). Courts have held that "offhand
15 comments, and isolated incidents... will not amount to [harassment]." Faragher v. City of Boca Raton
16 (1998) 118 S. Ct. 2275, 2283-87. Further, "[t]he standards for judging hostility are sufficiently
17 demanding to ensure that Title VII does not become a general civility code." Id. The actions pled by
18 PLAINTIFF in the Complaint fall short of amounting to severe or pervasive conduct and
19 accordingly, COUNTY's demurrer should be sustained without leave to amend.

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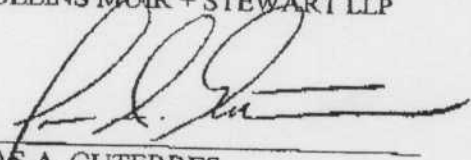
V.

CONCLUSION

For the reasons set forth herein, this Court must find that the Complaint is defective, uncertain and fails to state facts sufficient to support any cause of action against COUNTY. Accordingly, COUNTY respectfully requests that the Court sustain the Demurrer without leave to amend. COUNTY further requests any additional relief this court deems just and proper.

DATED: October 6, 2010

COLLINS COLLINS MUIR + STEWART LLP

By: 

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COUNTY OF LOS ANGELES

