

**Tentative Ruling ECU003561**  
**John Tigert v. Imperial County Superior court**  
**Demurrer**

**Sustained:** CCP Section 430.10 et seq.,

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

- (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.
- (b) The person who filed the pleading does not have the legal capacity to sue.
- (c) There is another action pending between the same parties on the same cause of action.
- (d) There is a defect or misjoinder of parties.
- (e) The pleading does not state facts sufficient to constitute a cause of action.
- (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.
- (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct.
- (h) No certificate was filed as required by Section 411.35.

In the case at bar, Defendant has averred that the Plaintiff's Complaint:

- 1) Is barred by absolute judicial and quasi-judicial immunity;
- 2) Plaintiff's request for money damages is barred by Plaintiff's failure to timely comply with the claim presentation requirements set forth in the Government Claims Act;
- 3) The First Cause of Action for General Negligence fails to allege a statutory basis for liability against Defendant;
- 4) The Second Cause of Action for Intentional Tort fails to allege a statutory basis for liability against Defendant;
- 5) The Third Cause of Action for Premises Liability, Count One Negligence fails to allege a statutory basis for liability against Defendant;
- 6) The Complaint fails to set forth facts sufficient to constitute a cause of action against Defendant;
- 7) The Complaint is fatally uncertain.

A demurrer can only be used to challenge defects on the face of the pleading under attack, or from matters outside of the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal 3d 311). Thus, the Court will not consider any extrinsic evidence in making this ruling.

In the case at bar, the Plaintiff has made a variety of allegations in the Complaint, as well as attaching a large number of Exhibits. In construing allegations, the Court is to give effect to specific allegations that may modify or limit inconsistent general or conclusory allegations (*Financial Corporation of America v. Willburn* (1987) 189 Cal. App. 3d 764, 769). However, Plaintiff herein has failed to properly request Judicial Notice of any of the items attached to the Complaint, so the Court is unable to make a determination whether or not those Exhibits are part of the Complaint or not. Thus, the Court will not consider those items attached to the Complaint for purposes of this Demurrer.



It would appear that for the most part Plaintiff's claims are based on dissatisfaction with orders issued in another case by various Court personnel: Honorable Jeffrey Jones, Judge of the Superior Court of California, County of Imperial, Maria Rhinehart, Court Executive Officer Superior Court of California, County of Imperial and Henry Halcon, Deputy Clerk, Superior Court of California, County of Imperial along with a variety of unnamed personnel of the Court and ancillary services. As Defendant indicated in the Demurrer points and authorities, the US Supreme Court has established the rule that Judges are immune from Civil lawsuits arising out of the exercise of their judicial function (*Mireles v. Waco* (1991) 502 US 9, 11. There is no question that under California law, judicial immunity is recognized and is "deeply rooted..." (*Howard v. Drapkin* (1990) 222 Cal. App. 3d 843). Thus, Plaintiff's dissatisfaction with Court orders made by Judge Jones and the Court of Appeal would not be a proper subject of a Cause of action herein. Immunity also extends to Court personnel performing tasks integral to the judicial process (purely administrative acts).

Further, there is no allegation in the Complaint that the Plaintiff has complied with the Government Claim act, which is an element of a cause of action demanding monetary damages (Cal. Gov. Code Sections 911 et seq., *Phillips v. Desert Hospital District* (1989) 49 Cal. 3d 699; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal. 4th 983, 990). In the Judicial form Complaint submitted by Plaintiff, it is indicated, "Plaintiff is required to comply with a claims statute, and b. is excused from complying because DEFNEDANT ET AL (sic) ARE ADVERSE PARTIES TO PENDING CASE ECU002486." There is not indication how, if this allegation is true, that it would excuse compliance with the Government Claim Act. Nor is there a showing that the parties in each case are the same.



With respect to Common Law causes of action, Government Code 815 is controlling. It essentially requires that liability of any kind must be based on a specific Federal or State Constitutional ground or, in the absence of a Constitutional ground, a statute which declares the public entity to be liable (California Government Code section 815; Miklosy v. Regents of the University of California (2008) 44 Cal. 4th 876, 899; Becerra v. County of Santa Cruz (1998) 68 Cal. App. 4th 1450, 1457). Thus, there is no liability against any governmental entity based upon common law negligence unless the legislature has created a statutory basis therefore. As a matter of law, the two causes of action pleaded for negligence against the Court and the cause of action for intentional tort cannot be maintained in this action.

Finally, the pleading appears to be uncertain. There is some discussion of legal conclusions, but no factual allegations to support them. It is quite difficult to ascertain the Plaintiff's intent since much of the Complaint is ambiguous or unintelligible. Beyond checkmarks in the various boxes on the Judicial Council form, there are a few statements which are, at a minimum, puzzling and perhaps incomprehensible. For example, after stating the elements of negligence, Plaintiff states: "As a result of the defendant's actions/conduct, the Plaintiff was subjected to racial profiling, stalking and harassment by private 3rd party security caring (sic) hand guns that caused the Plaintiff to fear for his immediate safety and life. Plaintiff suffered general negligence caused by the defendant's knowingly, willful and intentional disregard (sic) to Plaintiff's welfare who is particularly dependant (sic) on the Defendant. Plaintiff suffers ADA uncontrollable diabetes." There is no indication how the Imperial County Superior Court would be responsible for any action/conduct by a private third party security, nor what actions/conduct caused the Plaintiff to fear for his immediate safety and life. Plaintiff goes on to describe general negligence as a knowing, willful and intentional disregard to Plaintiff's welfare, improperly describing negligence as such. It is unknown what

the initials ADA mean (is it an acronym or something else) nor is there a described connection between any of the foregoing items and Plaintiff's uncontrollable diabetes. As a description of the reasons for liability, this does not provide the Defendant in this case with sufficient information to understand the cause of action for General Negligence. The "elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; (and) © the breach as the proximate cause of the resulting injury.'" (Ladd v. County of San Mateo (1996) 12 Cal. 4th 913, 917). Neither here, nor in other parts of the case where negligence is asserted are there any showing of the true elements of negligence nor any supporting facts to show that those elements can be proven.

In the next cause of action for Intentional Tort the Plaintiff alleges that the Defendant mailed a letter making allegations that "my behavior is of concern while at a particular location." Thereafter is a recitation of a Court policy for Workplace Security. There is no statement in this description of reasons for liability, why the defendant is liable, nor what harm was caused, nor what is the particular intentional tort that is being alleged.

In the Cause of Action for Premises Liability, the allegation is that there was a false and defamatory statement published about "me." and "unprivileged publication was made about me and fault amounting to negligence on the part of the publisher alleging false allegations against me and actionability of the statement. It is uncertain what is being alleged here under a Cause of Action for Premises Liability. There seems to be a conflation of some misstated elements of defamation in this cause of action. Then there are a variety of persons listed who have not been named in the Complaint.

In the Exemplary Damages Attachment there is reference to an Appeal that was filed seeking disqualification of Judge Jeffrey Jones and Trial de Novo. There has not been a trial set in this action. There are several sentences complaining about actions



of various persons: Deputy Clerk Henry Halcon, Judge Jeffrey Jones, CEO Maria Rhinehart security and Lindsay Frazier-Krane, none of whom are defendants in this action. The language is very confusing, referring to various persons denying access to certain places or persons, being defaulted by the Court of Appeal, intimidating, stalking and racially profiling me. "My activity did not contribute to the conduct The Superior Court ascted (sic) to and towards myself causing me great fear for my life." It is unknown from the language used and the general tenor of the sentences what is being asserted here for exemplary damages or the malice, fraud and oppression which is asserted for punitive damages.

The code and case law provide for leave to amend, "where there is a reasonable possibility of successful amendment." (Goodman v. Kennedy (1976) 18 Cal. 3d 335, 348). The burden is on the complainant to show the Court that a pleading can be amended successfully.

In the case at bar, the Court will Sustain the Demurrer with 30 days leave to amend.

### **Tentative Ruling**

### **Motion to Strike**

This is moot, in light of the ruling on the Demurrer

### **Tentative Ruling**

### **Motion for Entry of Default**

Denied without Prejudice: Premature (CCP Section 585)