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Case Name: *Terri Dikes v. Santa Clara Valley Water District*

Case No: 19CV346252

I. Background

Teri Dikes (“Plaintiff”) brings this action against Santa Clara Valley Water District (“Defendant”), and its employee Nancy Rodriguez for damages associated with negligent administration of pension benefits.

According to the allegations of the first amended complaint (“FAC”), Plaintiff was employed by Defendant from 2000 until she retired in 2018. (FAC, ¶ 24.) One of Plaintiff’s benefits as an employee was membership in the California Public Employees’ Retirement System (“CalPERS”). (*Id.* at ¶¶ 4, 6.) From September 2016 to October 2017, Plaintiff received a temporary promotion which included a 10% increase in her salary. (*Id.* at ¶ 24.) She applied for, but did not get the permanent position, so she resumed her prior position. (*Ibid.*)

Shortly thereafter, Plaintiff met with Defendant’s Benefits Program Administrator, Ms. Rodriguez, to discuss reportable compensation and retirement benefits. (FAC, ¶ 25.) Plaintiff was erroneously told that her retirement calculation would include the higher pay Plaintiff received during her temporary promotion. (*Ibid.*) Plaintiff calculated her prospective retirement benefits using the CalPERS website which generated a figure “based on the compensation reported by” Defendant. (*Id.* at ¶ 27.) Based on these projected retirement benefits, she decided to retire, and surrendered her California residence and moved to Nevada. (*Id.* at ¶ 28.)

Upon retirement, Plaintiff received notice that her calculation of benefits included income reported by Defendant not in compliance with California Employees’ Retirement Law. (FAC, ¶ 29.) This contradicted Defendant’s calculation of Plaintiff’s projected benefits. (*Id.* at ¶ 30.)

The notice gave Plaintiff an opportunity to appeal, and Defendant told her it would file the appeal on her behalf, but ultimately did not. (FAC, ¶ 33.) Defendant notified Plaintiff of its decision three days after the appeal deadline, leaving Plaintiff without recourse. (*Ibid.*) Plaintiff would not have retired but for the erroneous retirement calculation. (*Id.* at ¶ 28.)

As a result of the foregoing, Plaintiff alleges three causes of action pursuant to Government Code section 815.2, subdivision (a) for: (1) vicarious liability for breach of fiduciary duty; (2) vicarious liability for negligent performance by an employee; and (3) negligent supervision or retention of an employee.

Before the Court is Defendant’s demurrer and Plaintiff’s request for judicial notice in opposition to the demurrer.

II. Request for Judicial Notice

Plaintiff requests judicial notice of a document described as the “CalPERS Board of Administration and Executive Offsite – January 2017,” as well as an administrative decision

issued by the administrative board of the Public Employees Retirement System in the case of *In re Application of Smith* (1999), case number 1731. The request is made pursuant to Evidence code section 452, subdivisions (c) and (h).

Judicial notice may be taken of any matter authorized or required by law. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113, citing Evidence Code §§ 451 & 452.) A matter is subject to judicial notice only if it is reasonably beyond dispute. (*Ibid.*) Furthermore, any matter judicially noticed must be relevant to a material issue. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.)

The first document appears to be a “Power Point” presentation presented at a CalPERS “Board of Administration and Executive Offsite” regarding, among other things the roles and duties of a fiduciary. However, this does not appear relevant to Plaintiff’s opposition to demurrer as it relates to the fiduciary obligations of the CalPERS board, and not individual employers like Defendant. Similarly, the administrative decision discusses the fiduciary duty owed by CalPERS and does not support Plaintiff’s position.

Thus, the request for judicial notice is DENIED.

III. Demurrer

Defendant demurs to the complaint and each cause of action on the ground of failure to state sufficient facts. (See Code Civ. Proc., § 430.10, subd. (e)².)

A. Legal Standard

A demurrer tests the legal sufficiency of a pleading, but not the truth of a plaintiff’s allegations or the accuracy with which he or she describes the defendant’s conduct. (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958; citing *Committee on Children’s Television Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213.) The demurrer is treated as admitting all material facts, properly pleaded, but not contentions, deductions or conclusions of law. (*Ibid.*)

B. Duty Insufficiently Alleged

Defendant argues preliminarily that the entire complaint is barred by statutory immunities pursuant to Government Code Sections 818.8 and 822.2. However, the question of statutory immunity does not arise until it is determined that a defendant otherwise owes a duty of care to the plaintiff and thus would be liable in the absence of such immunity. (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 201-202.) As such, the question of duty is threshold, “beyond which remain the immunity barriers.” (*Id.* at 202.)

Therefore, the Court first considers Defendant’s arguments regarding the sufficiency of the pleading of duty for each cause of action.

1. First Cause of Action

² All further statutory references are to the Code of Civil Procedure, unless otherwise noted.

Defendant demurs to the first cause of action on the basis that it does not sufficiently allege a fiduciary duty.

Whether a fiduciary relationship exists is a question of law. (*Marzec v. California Public Employees Retirement System* (2015) 236 Cal.App.4th 889, 915.) “A fiduciary relationship is ‘any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.’” (*Hodges v. County of Placer* (2019) 41 Cal.App.5th 537, 546.) Section 17 of article 16 of the California Constitution grants “retirement boards of public pension systems ‘sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system, and sole and exclusive responsibility to administer the system...’” (*Meyers v. The Retirement Fund of Federated City Employees* (2014) 223 Cal.App.4th 1201, 1207.)

The FAC asserts in bare, conclusory terms that a fiduciary relationship exists between Plaintiff and Defendants on the basis that it “contracts with CalPERS and assumes the same fiduciary obligations applicable to CalPERS.” (FAC, ¶¶ 7, 15, 18, 19, 36.) However, the existence of a fiduciary relationship is a matter of law, not fact. Given the allegation that Plaintiff’s pension benefit plan is administered by CalPERS (*Id.* at ¶ 8), the only appropriate legal conclusion is that any fiduciary relationship exists between Plaintiff and the CalPERS board, not with Defendant. As Defendant argues, no case law extrapolates a fiduciary duty between an employee/beneficiary and the employer as Plaintiff attempts to allege.

Therefore, the demurrer to the first cause of action on the ground of failure to state sufficient facts is SUSTAINED, without leave to amend. Plaintiff has previously been given leave to amend her complaint, and has failed to allege a viable cause of action.

2. Second Cause of Action

Defendant demurs to the second cause of action for “vicarious liability for negligent performance by an employee in the scope of employment” based on the failure to allege a duty owed.

To assess a vicarious liability claim against a government employer based on the acts or omissions of its employee, the court must examine whether the employee would have been personally liable for the injury. (*deVillers v. County of San Diego* (2007) 156 Cal.App.4th 238, 249.) That liability turns on whether or not the employee owed a duty to the plaintiff. (*Ibid.*)

The FAC attempts to state a cause of action for negligence by Defendant’s employee when she advised Plaintiff that her retirement benefit calculation would include her higher, temporary salary and instructed her to log onto the CalPERS website to use the online calculator to obtain an estimate of her pension benefits. (FAC, ¶ 25.) Thereafter it is alleged that Plaintiff logged onto the CalPERS site, but received an incorrect calculation because “District erroneously reported the higher compensation.” (*Id.* at ¶¶ 25, 26.) Thus, the duty alleged is one owed to coworkers to correctly understand and report eligible compensation to CalPERS.

In opposition to the demurrer, however, Plaintiff fails to cite any cases where a duty was found owed by an employee to another employee or a similar relationship where the only alleged harm is economic, and the Court is not aware of any. *Evan F. v. Hughson United*

Methodist Church (1992) 8 Cal.App.4th 828, cited by Plaintiff, was a case decided on summary judgment where the issue was a church's hiring of a pastor who molested a child. *Biakanja v. Irving* (1958) 49 Cal.2d 647 was a case that found a duty owed by a notary in drafting a will, and though economic harm was at issue, the parties were not coworkers. In *Goodman v. Kennedy* (1976) 18 Cal.3d 335, also cited by Plaintiff, no duty was found owed by an attorney to non-client, third parties, and thus does not support Plaintiff's position. Finally, *Bily v. Arthur Young & Company* (1992) 3 Cal.4th 370 likewise found that accountants owed no duty of care to third parties for an audit, and is not on point.³

Furthermore, to the extent that Plaintiff alleges a fiduciary duty between employees outside of the context of CalPERS, an employment relationship or the mere placing of trust in another person does not create a fiduciary relationship. (*Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1392.)

As a duty cannot be found in these factual circumstances – between coworkers and for economic damage – the demurrer must be sustained.

Therefore, the demurrer to the second cause of action on the ground of failure to state sufficient facts is SUSTAINED, without leave to amend. Plaintiff has previously been given leave to amend her complaint, and has failed to allege a viable cause of action.

3. Third Cause of Action

Finally, Defendant demurs to the third cause of action for negligent supervision and retention of an employee on the basis that Plaintiff has not sufficiently alleged a special relationship between Plaintiff and Defendant.

A special relationship that gives rise to a duty in a cause of action for negligent hiring and retention imposes obligations beyond what each person generally owes others. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 870.) Cases which have found such a special relationship are confined to those involving school districts' hiring of personnel. (*Ibid.*) This is because the "special relationship" of student/district has been found "analogous to the relationship between parents and their children." (*Ibid.*; citations omitted.)

Plaintiff does not, and cannot allege that such a special relationship existed between her and a mere coworker responsible for hiring and retaining staff at a public works company. Likewise, Defendant persuasively argues that outside of the school district/student context, no court has found other instances that give rise to a "special relationship" sufficient to allege duty for this cause of action.

Therefore, the demurrer to the third cause of action is SUSTAINED, without leave to amend. Plaintiff has previously been given leave to amend her complaint, and has failed to allege a viable cause of action.⁴

³ This is not an exhaustive discussion of the cases Plaintiff cites. However, the remaining cases are all personal injury cases where physical harm was alleged and do not involve coworkers.

⁴ As Plaintiff fails to allege that Defendant owed her any duty, the Court need not reach the arguments in the demurrer regarding government immunity.