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9 LOS ANGELES COUNTY OFFICE OF EDUCATION
and LOS ANGELES COUNTY SUPERINTENDENT
10 OF SCHOOLS DEBRA DUARDO

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 FREEDOMTOCHOOSEL.A., a) Case No.: 21STCV45243
15 grassroots humanitarian effort commonly)
known as F2C on behalf of its members) JUDGE: Hon. Jon R. Takasugi
16 including Founders NEIL and)
KIMBERLY STILLER, et al.,) **NOTICE OF RULING**
17)
18 Plaintiffs,) Exempt from Fees Pursuant to California Government
vs.) Code section 6103
19)
20 THE STATE OF CALIFORNIA, as an) Complaint Filed: December 13, 2021
Employer and GOVERNOR GAVIN)
21 NEWSOM, sued in his official capacity,)
et al.,)
22)
Defendants.)

23 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD HEREIN:

24 PLEASE TAKE NOTICE that on December 14, 2022 at 9:30a.m. in Department 17,
25 Defendants LOS ANGELES COUNTY OFFICE OF EDUCATION and LOS ANGELES
26 COUNTY SUPERINTENDENT OF SCHOOLS DEBRA DUARDO (“Defendants”) Demurrer to
27 the First Amended Complaint came on for hearing before the Court, the Honorable Jon R.
28 Takasugi presiding. Jean Phan Buchanan, Deputy General Counsel for the Los Angeles County

1 Office of Education, appeared on behalf of Defendants. Helena S. Wise appeared on behalf of
2 plaintiffs.

3 After reviewing the papers, hearing oral argument, and taking the matter under
4 submission, the Court sustained the Demurrer to the First Amended Complaint with 30 days leave
5 to amend pursuant to the Minute Order, attached hereto as Exhibit “A.”

6
7 DATED: December 16, 2022

VIBIANA M. ANDRADE, General Counsel
JEAN PHAN BUCHANAN, Deputy General Counsel
PATRICK SALDAÑA, Deputy General Counsel

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By: /s/Jean Phan Buchanan
Vibiana M. Andrade
Jean Phan Buchanan
Patrick Saldaña
Attorneys for Defendants
LOS ANGELES COUNTY OFFICE OF EDUCATION
and LOS ANGELES COUNTY SUPERINTENDENT
OF SCHOOLS DEBRA DUARDO

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9300 Imperial Highway, Downey, California 90242-2890.

On December 16, 2022, I served a true copy of the following document described as **NOTICE OF RULING** on the interested parties in this action as follows:

[SEE ATTACHED SERVICE LIST]

- BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Los Angeles County Office of Education’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- BY EMAIL:** I sent such document by use of email to the email address(es) of the person(s) listed in the attached Service List.
- BY ELECTRONIC SERVICE:** I served the document(s) on the person(s) listed in the attached Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 16, 2022, at Downey, California.

Richelle Marroquin

Richelle Marroquin

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in her official capacity as Chief
Executive Officer for the County of
Los Angeles, LISA M. GARRETT, in
her official capacity as Director of
Personnel for the County of Los
Angeles, and DR. MUNTU DAVIS,
and BARBARA FERRER Ph.D, in
their official capacities with the Los
Angeles County Department of Public
Health

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TANYA ORTIZ FRANKLIN AND
JACKIE GOLDBERG) AND LAUSD
SUPERINTENDENT (MEGAN
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 17

21STCV45243

December 14, 2022

**FREEDOMTOCHOOSEL.A., A GRASSROOTS
HUMANITARIAN EFFORT COMMONLY KNOWN AS F2C
ON BEHALF OF ITS MEMBERS, et al. vs THE STATE OF
CALIFORNIA, AS AN EMPLOYER, et al.**

9:30 AM

Judge: Honorable Jon R. Takasugi
Judicial Assistant: L. Gomez
Courtroom Assistant: J. Shuton

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Helena Wise

For Defendant(s): Vibiana Maria Andrade (VIA LA COURTCONNECT); Jean Phan Buchanan (VIA LA COURTCONNECT); Jennifer Maria Gregg (VIA LA COURTCONNECT) -- See additional appearances below.

Other Appearance Notes: GARY RODGERS PLAINTIFF (VIA LA COURTCONNECT)RAY MOILANEN PLAINTIFF (VIA LA COURTCONNECT)KAREN PHILLIPS COURT REPORTER (VIA LA COURTCONNECT)VALERIE ALTER DEFENDANT (VIA LA COURTCONNECT)BRYAN EPSTEIN PLAINTIFF(VIA LA COURTCONNECT)NEIL STILLER PLAINTIFF (VIA LA COURTCONNECT)JORDAN BERES DEFENDANT (VIA LA COURTCONNECT)KAREN PHILLIPS DEFENDANT (VIA LA COURTCONNECT)NARMIN SHAHIN DEFENDANT (VIA LA COURTCONNECT)TRAVIS HALL DEFENDANT (VIA LA COURTCONNECT)JOANNA CENTENO PLAINTIFF (VIA LA COURTCONNECT)CONNIE L MICHAELS DEFENDANT (VIA LA COURTCONNECT)

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike; Case Management Conference; Hearing on Demurrer - without Motion to Strike; Hearing on Demurrer - without Motion to Strike; Hearing on Demurrer - without Motion to Strike; Hearing on Demurrer - with Motion to Strike (CCP 430.10)

The Court's tentative ruling is posted online for parties/counsel to review.

The matter is called for hearing.

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9:30 AM

Judge: Honorable Jon R. Takasugi
Judicial Assistant: L. Gomez
Courtroom Assistant: J. Shuton

CSR: None
ERM: None
Deputy Sheriff: None

The parties have seen and read the Court's written tentative ruling.

The matter is heard and argued.

The Court takes the matter under submission,

Later, out of the presence of parties and counsel, the Court issues its ruling as the Order of the Court as follows:

On 12/13/2021, Freedom to Choose L.A. and 4,499 other Plaintiffs filed suit against 80 Defendants alleging 15 causes of action related to COVID-19 mandates.

Now, Defendants Los Angeles Unified School District (LAUSD), LA County, Governor Gavin Newsom, Los Angeles County Office of Education, City of Los Angeles and Barbara Romero demur to Plaintiff's FAC.

While Defendants' demurrers were filed separately, the Court has consolidated its analysis due to the substantively similar arguments advanced by the moving parties.

Requests for Judicial Notice

Defendant's requests for judicial notice are granted. Plaintiffs' requests for judicial notice are denied.

Discussion

As a preliminary matter, the Court agrees with Defendants that its FAC does not comply with Rule 2.112.

With over 80 Defendants and nearly 5,000 purported Plaintiffs, a clear assertion as to which parties are making the claims and against whom they are bringing them is vital. While Defendant's FAC now adds "against all Defendants" at the beginning of each cause of action, no statement is made as to which individuals are asserting such claims against each defendant. As such, this amendment does not achieve the fundamental purpose of Rule 2.112 which is to provide notice of the claim, the specific parties asserting the claim, and the specific parties against whom the claim is being asserted.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

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21STCV45243

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FREEDOMTOCHOOSEL.A., A GRASSROOTS

9:30 AM

HUMANITARIAN EFFORT COMMONLY KNOWN AS F2C

ON BEHALF OF ITS MEMBERS, et al. vs THE STATE OF

CALIFORNIA, AS AN EMPLOYER, et al.

Judge: Honorable Jon R. Takasugi

CSR: None

Judicial Assistant: L. Gomez

ERM: None

Courtroom Assistant: J. Shuton

Deputy Sheriff: None

Indeed, it is not ever clear who all of the Plaintiffs are supporting this case. As explained in LAUSD’s demurrer:

While 32 named individuals are labeled “Plaintiffs” in the caption, the caption also indicates that the Plaintiffs include “Members more fully identified in Appendix ‘A’, hereto.” This is confirmed within the FAC, where the parties are described as follows: “All lead Plaintiffs and those separately identified in Appendix ‘A’ are also speaking out on behalf of their children and grandchildren and have authorized this legal action...” and students subject to the mandates “now and in the future.” (FAC ¶¶ 21, 42, fn. 12.) Appendix A has columns purporting to identify “Spouses/Other” and “Dependents 0-26 years old,” both groups of whom are presumably also Plaintiffs in this matter.

Further, there is insufficient identifying information for the 2,657 “members” and 2,240 “dependents” of members. Instead, vague identifiers are used, such as “Children,” “Wife,” “Husband,” “Girlfriend,” “Ex-Wife,” “Fiancee [sic],” “Fiance [sic],” “Stepdaughter,” “Son,” “Daughter,” “Partner,” “Spouse,” acronyms and initials. (FAC, Appendix A.) This problem is compounded by the fact that the list of alleged members includes multiple individuals that do not appear to have ever been employed LAUSD and their relationship to LAUSD is not sufficiently specified. For example, the list of members references employees of other state agencies, self-employed individuals, employees of private businesses, retirees, unemployed individuals, and those whose status is unidentified. (Id.)

In fact, it appears that only three “Plaintiffs” that are specified within the FAC as having any relation to LAUSD. One is described as SUSANNA HERNANDEZ, an “adult teacher.” (FAC ¶ 21.) However, even this description is clouded in confusion for the FAC also refers to her as a “city employee” (Id. at page 18, line 28), but refers throughout to the City of Los Angeles as a separate entity from LAUSD. A similar lack of clarity continues throughout the FAC. For example, when Plaintiffs’ refer to “City employees,” it is not always apparent if they are referring to individuals who work in the city of Los Angeles (which may include some LAUSD employees) or for the city. (See, e.g., FAC ¶ 1 [alleging “numerous City and County employees were greeted with notice of firing...]; FAC ¶ 25 [indicating the City of Los Angeles is referred to in the FAC as “CITY, “ all caps].)

SEE NUNC PRO TUNC MINUTE ORDER OF 12/15/2022 2:24 PM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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ERM: None

Courtroom Assistant: J. Shuton

Deputy Sheriff: None

(LAUSD's Demurrer, 13: 14-14:10.)

Substantially similar issues are identified by all demurring parties. Plaintiff may not avoid pleading requirements by merely adding all Defendants to each claim. Plaintiff's pleadings must allow Defendants to determine which claims are actually being asserted against them by which Plaintiffs. If, in fact, each cause of action is asserted against each Defendant, then those causes of action must contain factual allegations which concern all Defendants.

While this issue alone is a sufficient basis to sustain Defendants' demurrers, the Court also addresses pertinent substantive arguments raised by the different Defendants, in anticipation of future motion practice:

I. LAUSD

Defendant argues that LAUSD's board members and Superintendent are immune from this lawsuit as a matter of law.

Government Code section 820.9 provides:

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

The FAC fails to identify any wrongful conduct by these individuals that would not be subject to this immunity. Specifically, these individuals are alleged to "have insisted that each school enforce the mandates upon students and staff members alike," which is insufficient. (FAC ¶32.)

In opposition, Plaintiffs did not identify any authority or advance any argument which persuasively indicates otherwise.

Accordingly, the Court agrees that the LAUSD Board members appear to be immune, based on the immunities granted to them in Government Code section 820.9.

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Judicial Assistant: L. Gomez

ERM: None

Courtroom Assistant: J. Shuton

Deputy Sheriff: None

The Court also agrees that LAUSD’s Superintendent appears to be immune on the face of the FAC.

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. (Gov. Code § 820.2.) Nor is a public employee liable for his act or omission, when exercising due care in the execution or enforcement of any law. (Gov. Code § 820.4.) If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable. (Gov. Code 820.6.)

Plaintiffs’ FAC names as a Defendant Megan Reilly, superintendent of LAUSD. They allege that Ms. Reilly is “charged with the daily operations of LAUSD, including implementing the policies and mandates established by [the] former Superintendent.” (FAC ¶ 30.) The FAC fails to allege that, in enacting any specific policy, Ms. Reilly acted outside of the authority or discretion afforded her, or with malice or lack of good faith.

Based on the foregoing, Defendant’s demurrer is sustained. Given that the exact nature of Plaintiffs’ allegations remain uncertain, the Court will afford one final opportunity to show that the individual board members and Superintendent are not immune as a matter of law. The Court also grants leave to amend as to the claims against LAUSD itself.

II. Governor Newsom

Governor Newsom argues that the claims against him are barred by the broad immunity provided under the Emergency Powers Act (ESA) at Government Code section 8655, as well as under additional immunity provisions. Governor Newsom also argues that Plaintiffs’ constitutional tort claims fail because they do not allege exhaustion of claims filing requirements.

Government Code section 8655 provides that the “state or its political subdivisions shall not be liable for any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of this chapter.” (Gov. Code, § 8655.)

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Courtroom Assistant: J. Shuton

CSR: None
ERM: None
Deputy Sheriff: None

The “immunity granted by the [ESA] is broad and specifically extended to encompass not only discretionary actions, but also the performance of or failure to perform those discretionary actions. (Thousand Trails, Inc. v. California Reclamation Dist. No. 17 (2004) 124 Cal.App.4th 450, 458.) “Under the severe time constraints inherent in a declared state of emergency, decisions must be made quickly and often without the time necessary to analyze all of the potential repercussions” and therefore “the immunity granted under this section is significantly broader” than other governmental immunities. (LaBadie v. State of California (1989) 208 Cal.App.3d 1366, 1369) Thus, it “is clear that the Governor’s proclamation under express authority of Government Code section 8625, and the subsequent [actions] were policy level decisions” subject to immunity. (Farmers Ins. Exchange v. State of California (1985) 175 Cal.App.3d 494, 504-505.) That “would be true as well with respect to the myriad decisions regarding the implementation of the program” and since Plaintiffs’ claims are “based directly upon these acts, section 8655 applies to provide the State with immunity from liability.” (Ibid.)

Here, Plaintiffs base their claims against the Governor on the following actions taken after his COVID-19 emergency declaration – (1) an agreement with Kaiser Permanente “to make California a ‘fully vaccinated state’,” (2) the Healthcare Worker Mandate, and (3) the Vaccination Press Release. (FAC ¶¶ 36(1)(a)-(c), 46, 149.) These are discretionary actions by the Governor and related discretionary actions by state departments responding to the COVID-19 pandemic and the state of emergency. As such, these decisions appear to fall squarely within ESA immunity.

As to Defendant’s remaining arguments, Court notes that Plaintiffs have not alleged any facts to show an employer-employee relationship existed between them and the Governor for FEHA purposes, have not attached any DFEH charges or Right-to-Sue letters, and the Vaccine Mandate is rationally related to the government’s interest in protecting public health and safety during a pandemic.

Based on the foregoing, Defendant’s demurrer is sustained with 30 days leave to amend. Given that the exact nature of Plaintiffs’ allegations remain uncertain, Plaintiffs will be afforded one final opportunity to allege facts which could show that the claims against Defendant here are not barred by ESA immunity, and which resolve the other substantive issues identified here.

III. Los Angeles County Office of Education and Superintendent Debra Duardo

SEE NUNC PRO TUNC MINUTE ORDER OF 12/15/2022 2:24 PM

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CSR: None

Judicial Assistant: L. Gomez

ERM: None

Courtroom Assistant: J. Shuton

Deputy Sheriff: None

Defendants argue that it cannot reasonably respond to a complaint based on moral, rather than justiciable, claims. The Court agrees that, as alleged, the FAC is replete with moral allegations which distract from the underlying justiciable causes of action to such a degree that it renders the claims unintelligible and ambiguous. Plaintiffs will be afforded one final opportunity to remove irrelevant moral claims and judgments and advance factually supported justiciable claims against Defendants here.

Defendant's demurrer is sustained, with 30 days leave to amend.

IV. City of Los Angeles and Barbara Romero

Defendants argue that Plaintiffs have failed to allege timely exhaustion of administrative remedies as to the 5-12 causes of action brought under FEHA. Defendants argue that Plaintiffs also fail to state a claim as to the remaining causes of action.

The exhaustion requirement is a "jurisdictional prerequisite." (Johnson v. City of Loma Linda (2000) 24 Cal.4th 61, 70.) "It is the plaintiff's burden to plead and prove the timely filing of the DFEH complaint." (Jumaane v. City of Los Angeles (2015) 241 Cal.App.4th 1390, 1402.) The DFEH charge must name the individuals or entities Plaintiffs claim violated the FEHA. (Alexander v. Comm. Hosp. of Long Beach (2020) 46 Cal.App.5th 238, 251; Medix Ambulance Serv., Inc. v. Superior Court (2002) 97 Cal. App. 4th 109, 116-18.) Additionally, "[t]o exhaust his or her administrative remedies as to a particular act made unlawful by [FEHA], the claim must specify that act in the administrative complaint." (Martin v. Lockheed Missiles & Space Co. (1994) 29 Cal.App.4th 1718, 1724.) Allegations in the civil complaint that are outside of the scope of the administrative charge are barred for failure to exhaust. (See Rodriguez v. Airborne Express (9th Cir. 2001) 265 F.3d 890, 897.)

Here, no DFEH complaint or Right-to-Sue letter is attached to the FAC, and the City has no record of any such administrative complaints. Instead, the FAC alleges in a conclusory fashion that Plaintiffs have "collectively" filed charges of discrimination, harassment and retaliation with the DFEH, and "have sought or been immediately issued Right to Sue letters on said charges." (See FAC, ¶¶ 104, 157, 169, 182, 195, 209, 223, 243, 258.) This is insufficient to show compliance with exhaustion requirements. Still, because it is possible that Plaintiffs could attach the requisite administrative documents, leave to amend will be afforded.

SEE NUNC PRO TUNC MINUTE ORDER OF 12/15/2022 2:24 PM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 17

21STCV45243

December 14, 2022

FREEDOMTOCHOOSEL.A., A GRASSROOTS

9:30 AM

HUMANITARIAN EFFORT COMMONLY KNOWN AS F2C

ON BEHALF OF ITS MEMBERS, et al. vs THE STATE OF

CALIFORNIA, AS AN EMPLOYER, et al.

Judge: Honorable Jon R. Takasugi

CSR: None

Judicial Assistant: L. Gomez

ERM: None

Courtroom Assistant: J. Shuton

Deputy Sheriff: None

However, the Court also agrees that Plaintiffs have failed to allege sufficient facts to state a claim for the non-FEHA-based claims.

As to the Equal Protection, a prerequisite to a meritorious equal protection claim is a showing that two or more similarly situated groups have been treated in an unequal manner. (See *Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434.) The FAC here alleges that unvaccinated and vaccinated employees are similarly situated because both groups can contract and spread COVID-19. (FAC, ¶¶ 50, 51, 134.) However, setting this aside, a rational basis exists for treating vaccinated and unvaccinated individuals differently for employment purposes. (In re Brian J. (2007) 150 Cal.App.4th 97, 125.) The City Vaccine Mandate is rationally related to the City’s interest in protecting public health and safety during a pandemic. Furthermore, it is well settled that compulsory vaccination laws are constitutional. (*Jacobson v. Massachusetts* (1905) 197 U.S. 11, 39; *Zucht v. King* (1922) 260 U.S. 174, 176; *French v. Davidson* (1904) 143 Cal. 658, 662.)

As for the right to refuse medical treatment, Plaintiffs’ 4th cause of action for violation of the right to refuse medical treatment is entirely premised on its erroneous assertion that “COVID-19 vaccines in circulation continue to hold only emergency use authorization [EUA], while Cominarity [sic] is not yet available....” (FAC ¶ 146.) Contrary to Plaintiffs’ assertions, the Pfizer vaccine has received full FDA approval, and is no longer merely under the EUA. (See Press Release, U.S. Food & Drug Admin., FDA Approves First COVID19 Vaccine (Aug. 23, 2021))

Plaintiffs will be afforded a final opportunity to allege facts which could show that they complied with exhaustion requirements, and to allege facts which support their causes of action. Defendant’s demurrer is sustained, with 30 days leave to amend.

V. Los Angeles County

Defendant argues that the claims against it fails because Plaintiffs’ FAC is uncertain and unintelligible. As set forth above, the Court agrees. Plaintiff will be afforded one final opportunity to allege facts which could state a claim against Defendant here.

Based on the foregoing, Defendant’s demurrer is sustained, with 30 days leave to amend.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 17

21STCV45243

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Deputy Sheriff: None

The Demurrer - without Motion to Strike filed by The Los Angeles Unified School District, recognized government entities on 08/25/2022, Demurrer - without Motion to Strike filed by The County of Los Angeles, a government entity on 08/29/2022, Demurrer - with Motion to Strike (CCP 430.10) filed by Governor Gavin Newsom, sued in his official capacity on 08/29/2022, Demurrer - without Motion to Strike filed by Los Angeles County Office of Education, a recognized government entities on 08/29/2022, and Demurrer - without Motion to Strike filed by The City of Los Angeles, a municipality, Barbara Romero, General Manager, Bureau of Sanitation on 09/28/2022 are Sustained with Leave to Amend. Defendant's demurrer is sustained, with 30 days leave to amend.

A Copy of the ruling is enclosed with this minute order.

Certificate of Mailing is attached.

Additional appearances for Defendant(s):

Nicholas Wade McKinney (VIA LA COURTCONNECT)

Vivienne Alexis Swanigan (VIA LA COURTCONNECT)

Darin Lee Wessel (VIA LA COURTCONNECT)

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