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7 Attorney for Defendants
CITY OF HERCULES, DAN ROMERO, MYRNA
8 DE VERA, DAVID BIGGS, JOHN PATRICK
TANG, KRISTINA GRIFFITH, PEDRO
9 JIMENEZ, GREGORY DWYER, JOHN
DELGADO, and JUDY YAMAMOTO SORIANO
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF CONTRA COSTA

13 PIL LEE ORBISON, Individually and as
Founder, President and CEO Bay Area
14 Diversified Tennis Foundation,

15 Plaintiff,

16 v.

17 CITY OF HERCULES; DAN ROMERO, VICE
18 MAYOR IN 2015 AND MAYOR IN 2016;
MYRNA DE VERA, MAYOR IN 2014 AND
19 VICE MAYOR IN 2016; FORMER MAYOR
JOHN DELGADO; PEDRO J. JIMENEZ,
20 PARKS & RECREATION DIRECTOR;
GREGORY DWYER, RECREATION
21 MANAGER; DAVID C. BIGGS, CITY
MANAGER; KRISTINA GRIFFITH, SENIOR
22 CENTER RECREATION LEADER; JOHN
PATRICK TANG, CITY ATTORNEY; AND
23 JUDY YAMAMOTO SORIANO, and Does 1
24 through 25, inclusive,

25 Defendants.
26
27
28

Case No. MSC16-00638

**NOTICE OF ENTRY OF ORDER SUSTAINING
CITY DEFENDANTS' DEMURRER TO
PLAINTIFF'S AMENDED COMPLAINT**

BY FAX

Hon. Steve Austin

FILED
2017 JAN 26 P 1:36
CLERK OF SUPERIOR COURT
CONTRA COSTA COUNTY
BY _____

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that attached hereto as **Exhibit A** is a true and correct copy of the ORDER SUSTAINING CITY DEFENDANTS' DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT, filed on January 19, 2017.

Dated: January 25, 2017

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By:  _____

Gregory M. Fox
Ilana Kohn
Attorney for Defendants
CITY OF HERCULES, DAN ROMERO,
MYRNA DE VERA, DAVID BIGGS, JOHN
PATRICK TANG, KRISTINA GRIFFITH,
PEDRO JIMENEZ, GREGORY DWYER, JOHN
DELGADO, and JUDY YAMAMOTO
SORIANO

EXHIBIT A

EXHIBIT A

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10 Attorney for Defendants
11 CITY OF HERCULES, DAN ROMERO,
12 MYRNA DE VERA, DAVID BIGGS,
13 JOHN PATRICK TANG, KRISTINA GRIFFITH,
14 PEDRO JIMENEZ, GREGORY DWYER,
15 JOHN DELGADO and JUDY YAMAMOTO SORIANO

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF CONTRA COSTA

18 PIL LEE ORBISON, Individually and as
19 Founder, President and CEO Bay Area
20 Diversified Tennis Foundation,

21 Plaintiff,

22 v.

23 CITY OF HERCULES; DAN ROMERO, VICE
24 MAYOR IN 2015 AND MAYOR IN 2016;
25 MYRNA DE VERA, MAYOR IN 2014 AND
26 VICE MAYOR IN 2016; FORMER MAYOR
27 JOHN DELGADO; PEDRO J. JIMENEZ,
28 PARKS & RECREATION DIRECTOR;
GREGORY DWYER, RECREATION
MANAGER; DAVID C. BIGGS, CITY
MANAGER; KRISTINA GRIFFITH, SENIOR
CENTER RECREATION LEADER; JOHN
PATRICK TANG, CITY ATTORNEY; AND
JUDY YAMAMOTO SORIANO, and Does 1
through 25, inclusive,

Defendants.

FILED
JAN 19 2017

STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____, Deputy Clerk

Case No. MSC16-00638

**[PROPOSED] ORDER SUSTAINING CITY
DEFENDANTS' DEMURRER TO PLAINTIFF'S
AMENDED COMPLAINT**

Hon. Jill Fannin

COPY

1 Defendants CITY OF HERCULES, DAN ROMERO, MYRNA DE VERA, DAVID BIGGS,
2 JOHN PATRICK TANG, KRISTINA GRIFFITH, PEDRO JIMENEZ, GREGORY DWYER and JOHN
3 DELGADO demurrer to plaintiff PIL ORBISON's First Amended Complaint came on regularly for
4 hearing December 8, 2016 in Department 21 of this Court. Christine Lee appeared for the CITY
5 defendants and Plaintiff Pil Orbison appeared *in pro per*.

6 The Court, having considered the papers and pleadings on file herein and the oral argument of
7 counsel, and good cause appearing therefore, HEREBY ORDERS as follows:

8 Before the Court is a demurrer (the "Demurrer") filed by Defendants City of Hercules, Dan
9 Romero, Myrna de Vera, David Biggs, John Patrick Tang, Kristina Griffith, Pedro Jimenez, Gregory
10 Dwyer, and John Delgado (collectively, "Defendants" or "City Defendants"). The Demurrer relates to the
11 First Amended Complaint ("FAC") filed by Pil Lee Orbison ("Plaintiff"). Plaintiff is *in pro per*.
12 Defendants demurrer on several grounds, including a special demurrer under Civ. Proc. § 430.10(f) for
13 uncertainty, as well as demurrer under Civ. Proc. § 430.10(e) because Plaintiff did not allege compliance
14 with the Tort Claims Act.

15 Request for Judicial Notice

16 Defendants filed a Request for Judicial Notice ("RJN") with their demurrer to the original
17 Complaint on July 13, 2016. They request judicial notice of Plaintiff's Claims Presented to the City of
18 Hercules, Notices of Untimely Claim by the City of Hercules, and Notice of Denial of Leave to File Late
19 Claim by the City of Hercules. Plaintiff objected to this Request in a document filed September 30, 2016.
20 This Request is granted. The Court takes judicial notice of Exhibits A, B, and C of the Request. Evid.
21 Code § 452; see also *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368 n.1 (the Court may
22 take judicial notice of the filing and contents of a government claim, but not the truth of the claim).

23 Procedural Posture

24 Plaintiff submitted three claims for damages to the City of Hercules. On February 24, 2015,
25 Plaintiff presented a claim for damages to the City of Hercules through her then attorney. RJN, Ex. A at
26 1. It alleged that on October 1, 2012, November 8, 2012, and December 10, 2012 Plaintiff suffered
27 injury. The Plaintiff alleged that the City, through its mayors and employees, denied her nonprofit project
28 from which she was to get paid. The plaintiff alleged damages in the amount of \$91,126.34 based on "tax

1 exempted non-profit schedule[s].” Id.

2 On April 12, 2015 Plaintiff presented a claim for damages that alleged she suffered injury on June
3 4 and June 27-30, 2014. RJN, Ex. A at 2. It alleged “civic right issues – discriminating racism, violation
4 of FOIA (re grand jury of CC, Complaint) Tort.” Plaintiff alleged that various City of Hercules
5 employees were responsible for her lost business income and lost personal belongings. Id.

6 Also on April 12, 2015 Plaintiff presented a claim for damages allegedly suffered on September
7 23, 2014. RJN, Ex. A at 3. It alleged “violation of civil right (speech), violation of FOIA (re Contra Costa
8 grand jury complaint, 6/27 – 6/30/14), intentional tort, conspiracy” among other claims. Plaintiff alleged
9 that various City of Hercules employees were interfering with Plaintiff’s business regarding “grant-
10 related documents” as well as publicly criticizing Plaintiff for asking for her documents. Id.

11 The City of Hercules denied all three claims as untimely for failing to comply with the six month
12 time limit of sections 901 and 911.2 of the Government Code. RJN, Ex. B (notice dated March 2, 2015,
13 several notices dated May 26, 2015).

14 Plaintiff presented an Application for Leave to File a Late Claim on January 21, 2016 which was
15 denied on January 28, 2016. RJN, Ex. C. The Notice of Denial of Leave to File Late Claim read in part
16 that “If you wish to file a court action in this matter, you must first petition the appropriate court for an
17 order relieving you from the provisions of Government Code § 945.4 (the claims-presentation
18 requirement). See Government Code § 946.6. Your petition must be filed with the court within six (6)
19 months from the date, set forth above, on which your Application for Leave to Present a Late Claim was
20 denied.”

21 On April 7, 2016 Plaintiff filed a Complaint for 1) intentional interference with prospective
22 business relations; 2) breach of implied contract and quantum meruit; 3) conversion; 4) defamation; 5)
23 violation of California Public Records Act; 6) violation of civil rights / discrimination / racism; and 7)
24 infringement of copyrights. The Defendants demurred to this Complaint on July 13, 2016. Plaintiff did
25 not oppose the demurrer to the Complaint. Instead she filed the FAC on September 6, 2016. The FAC
26 pleads causes of action for: (1) fraud; (2) conspiracy and conversion; (3) violation of California’s Public
27 Records Act; (4) defamation and civil harassment; (5) business tort; and (6) petition for late claim.

28 Tort Claims Act

1 As a prerequisite to filing a claim against a public entity, a Plaintiff must substantially comply
2 with the California Tort Claims Statute, Gov. Code §§ 810 – 966.6. The Tort Claims Act requires that
3 any civil complaint for money or damages first be presented to and rejected by the pertinent public entity.
4 Gov. Code §§ 910, 912.4, 912.8, 945.4. Government Code section 911.2 requires the claim relating to a
5 cause of action for death or for injury to person or to personal property be presented not later than six
6 months after the accrual of the cause of action. No suit for money or damages may be brought against a
7 public entity on a cause of action for which a claim is required to be presented until a written claim has
8 been presented to the public entity and has been acted upon by the board, or has been deemed to have
9 been rejected by the board. Gov. Code, § 945.4. Under Government Code section 945.4, presentation of a
10 timely claim is a condition precedent to the commencement of suit against the public entity. However, if
11 the injured party fails to file a timely claim, a written application may be made to the public entity for
12 leave to present such claim. Gov. Code, § 911.4(a). If the public entity denies the application,
13 Government Code section 946.6 authorizes the injured party to petition the court for relief from the claim
14 requirements.

15 Plaintiff has not substantially complied with the Tort Claims Act. Her initial claims against the
16 City of Hercules were all outside the six month window proscribed by Government Code § 911.2. RJN,
17 Ex. A. The City of Hercules denied those claims as untimely. RJN, Ex. B. The City of Hercules also
18 denied Plaintiff's Application for Leave to File a Late Claim under Government Code § 911.4(a). As a
19 consequence, Plaintiff was required to petition the court under Government Code § 946.6 for relief from
20 these requirements before she filed her Complaint. She did not do so.

21 Plaintiff's initial Complaint, filed April 7, 2016, was filed without an order from the court
22 relieving Plaintiff from § 945.4. Plaintiff appears to acknowledge this error with her sixth cause of action
23 in the FAC for "Petition for Late Claim and its Amendment." However, to the extent that the Plaintiff
24 intends this cause of action to be a Petition for an Order relieving Plaintiff from the requirements of §
25 945.4, this request falls outside the six month deadline proscribed by § 946.6. Furthermore, even if the
26 Court were to consider the late-filed sixth cause of action as a proper petition under § 946.6, the plaintiff
27 provides only allegations and no facts in support of her request from relief. Subsection (c) of section
28 946.6 requires that Plaintiff show her failure to present the claim was through "mistake, inadvertence,

1 surprise, or excusable neglect” or that she “was physically or mentally incapacitated during all of the
2 time specified ... for the presentation of the claim.” The allegations of Plaintiff’s sixth cause of action do
3 not appear to include any facts which would show mistake, inadvertence, surprise, excusable neglect, or
4 incapacity during the relevant time period.

5 The Defendants’ Demurrer is sustained, without leave to amend.

6 **IT IS SO ORDERED.**

7
8 DATED: JAN 18 2017

STEVEN K. AUSTIN

Jill Farnitt
JUDGE OF THE SUPERIOR COURT

10
11 Approved as to form:

12 Date:

13
14 _____
Pil Lee Orbison

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1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am employed in the County of San Francisco, California; I am
3 over the age of eighteen years and not a party to the within cause; and my business address is 2749 Hyde
4 Street, San Francisco, California 94109.

5 I am readily familiar with the practice of Bertrand, Fox, Elliot, Osman & Wenzel with respect to
6 the collection and processing of pleadings, discovery documents, motions and all other documents which
7 must be served upon opposing parties or other counsel in litigation. On the same day that
8 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business
9 with the United States Postal Service in a sealed envelope with postage fully prepaid.

10 On **January 25, 2017**, I served the following document(s):

11 **NOTICE OF ENTRY OF ORDER SUSTAINING CITY DEFENDANTS' DEMURRER TO
12 PLAINTIFF'S AMENDED COMPLAINT**

13 on the following interested parties:

14 Pil Lee Orbison
15 1791 Solano Ave, #D06
16 Berkeley, CA 94707

Judy Yamamoto Soriano
121 Bluebird Court
Hercules, CA 94547

17 *In Pro Per*

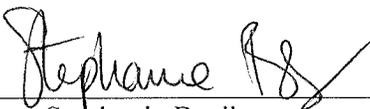
Defendant

18 Said service was performed in the following manner:

19 **(X) BY E-MAIL or ELECTRONIC TRANSMISSION:** I sent a true copy via-email or electronic
20 transmission to the persons at the above e-mail addresses.

21 **(X) BY U.S. POSTAL SERVICE (Mail):** I placed each such document in a sealed envelope
22 addressed at noted above, with first-class mail postage thereon fully prepaid, for collection and
23 mailing at San Francisco, California, following the above-stated business practice, on this date.

24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed **January 25, 2017**, at San Francisco, California.

27 
28 _____
Stephanie Bealby