

FILE
Superior Court of California
County of San Francisco



APR 1 - 2022

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 613

JUSTICE JOHN TROTTER (RET.), TRUSTEE
OF THE PG&E FIRE VICTIM TRUST,

Plaintiff,

v.

WILLIAMS et al.,

Defendant.

Lead Case No. CGC-17-562591

(Consolidated with Case No. CGC-17-562553
and CGC-18-572326)

ORDER OVERRULING OFFICER AND
DIRECTOR DEFENDANTS' DEMURRERS
TO SECOND AMENDED COMPLAINT

INTRODUCTION

This case came on regularly for hearing on February 24, 2022, in Department 613, the Honorable Andrew Y.S. Cheng, presiding. Mark C. Molumphy and Francis A. Bottini appeared for plaintiff John Trotter, Trustee of the PG&E Fire Victim Trust. Steven S. Scholes appeared for the Officer Defendants. Stephen Blake appeared for the Director Defendants and Former Director Defendants. All other appearances are as noted in the record.

Having reviewed and considered the arguments, pleadings, and written submissions of all parties, the Court **OVERRULES** defendants' demurrers.

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1 **BACKGROUND**

2 This direct action includes plaintiff’s two breach of fiduciary duty claims asserted on behalf of the
3 trustee of the PG&E Fire Victim Trust (“FVT”) – one for the 2017 North Bay Fires and one for the 2018
4 Camp Fire. Plaintiff asserts these claims against seven former officers (the “Officer Defendants”) and 12
5 former directors (the “Director Defendants”) of the Holding Company (PG&E Corporation), the Utility
6 (Pacific Gas and Electric Company), or both. (Second Amended Complaint (“AC”) ¶¶ 254-373.)

7 **I. North Bay Fires Allegations**

8 On October 8, 2017, wildfires occurred in the North Bay region of California. Contact between
9 vegetation and the Utility’s electrical distribution lines ignited several of the North Bay Fires. The CPUC
10 determined that some of the fires involved the Utility’s violations of wildfire safety rules governing the
11 Utility’s vegetation management practices.

12 Plaintiff alleges defendants breached their fiduciary duties by failing to implement a program
13 proactively to de-energize power on its electrical distribution system; correct deficiencies in its
14 distribution line vegetation management practices; and reprogram reclosers on its distribution line during
15 the wildfire season.

16 **II. Camp Fire Allegations**

17 On November 8, 2018 another fire occurred in Butte County known as the “Camp Fire.” Plaintiffs
18 allege the Utility’s steel transmission line tower caused the Camp Fire, and defendants breached their
19 fiduciary duties by failing to have policies and procedures to inspect, maintain, and upgrade its
20 transmission equipment, including the at-issue steel transmission line tower.

21 **REQUESTS FOR JUDICIAL NOTICE**

22 The Court **GRANTS** Officer Defendants’ unopposed request for judicial notice of Holding
23 Company and Utility’s Restated Articles of Incorporation. (Johns’ RFJN, Exs. A-B; Earley and Williams’
24 RFJN, Exs. A-B. with Plaintiffs’ [Proposed] Order Overruling Officer and Director Defendants’
25 Demurrers to Second Amended Complaint, at 2.) The request is otherwise **DENIED** to the extent Officer
26 Defendants ask this Court to take judicial notice of the proper interpretation, scope or application of the
27 Restated Articles to the facts alleged in this case.

28 The Court **GRANTS** Director Defendants’ request for judicial notice of Ex. 1 (Director Defendant

1 Eric Mullins' interrogatory responses), Exs. 2-9 and 11-12¹ (excerpts of Board of Director meeting
2 materials). Ex. 10 (CPUC staff report). The request is otherwise **DENIED** to the extent Director
3 Defendants ask this Court to take judicial notice of the documents as evidence and/or proof of the truth of
4 the statements made within these exhibits.

5 LEGAL STANDARD

6 A demurrer lies where "the pleading does not state facts sufficient to constitute a cause of action."
7 (Code Civ. Proc. § 430.10(e).) A demurrer admits "all material facts properly pleaded, but not
8 contentions, deductions, or conclusions of fact or law." (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318;
9 see also *C&H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal. App. 3d 1055, 1062 ["material facts allege
10 in the complaint are treated as true for the purpose of ruling on the demurrer"].) The plaintiff "must set
11 forth factual allegations that sufficiently state all required elements of [a] cause of action . . . and,
12 [a]llegations must be factual and specific, not vague or conclus[ory]." (*Rakestraw v. Cal. Physicians'*
13 *Serv.* (2000) 81 Cal.App.4th 39, 43-44 [internal citations omitted].) The complaint is given "a reasonable
14 interpretation, reading it as a whole and its parts in their context." (See *Blank, supra*, 39 Cal.3d at 318;
15 see also *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713 [the court must "draw [] all reasonable
16 inferences . . . in favor of the plaintiff"].)

17 "Leave to amend should be denied where the facts are not in dispute and the nature of the claim is
18 clear, but no liability exists under substantive law." (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d
19 431, 436.) The burden to show that any pleading defects can be cured by amendment lies with the
20 opposing party. (*Shimmon v. Franchise Tax Bd.* (2010) 189 Cal.App.4th 688, 692; *Blank v. Kirwan* (1985)
21 39 Cal.3d 311, 318.)

22 DISCUSSION AND ANALYSIS

23 In its prior demurrer order, this Court sustained defendants' demurrers with leave to amend on two
24 primary grounds: (1) the claims failed because they were not pled with particularity as to each Officer or
25 Director nor did they describe how or to what extent they were involved in the purported breaches, and
26 (2) plaintiffs failed to cite case law that *Utility Officer Defendants* owed any fiduciary duty to the *Holding*
27 *Company*, and vice versa. The Court addresses each in turn.

28

¹ Plaintiff also does not oppose the request for Exs. 2, 3, 5, 9, 11, and 12.

1 **I. Officer Defendants: Partial Demurrers**

2 To the extent the Officer Defendants' demurrers challenge allegations, rather than the entire cause
3 of action, the Court **OVERRULES** the demurrer on this ground. (*PH II, Inc. v. Superior Court* (1995) 33
4 Cal.App.4th 1680, 1682 ["A demurrer does not lie to a portion of a cause of action."].)

5 **II. Group Pleading/Particularized Pleading Standard**

6 Plaintiffs have now provided individualized facts for each Officer and Defendant. (SAC ¶¶376-
7 422 [director-specific allegations]; SAC ¶¶197-231, 376-422 [director-specific allegations of meeting
8 attendance where they obtained knowledge of red flags regarding the North Bay Fires and failed to act];
9 SAC ¶¶ 157-158, 167-174, 240-253, 268, 290, 305, 325, 338, 357, 372, 376-422 [director-specific
10 allegations of Camp Fire red flag knowledge, including meetings, and directors failure to act]; SAC ¶¶
11 254-373 [officer specific allegations]; SAC ¶¶ 3-4, 7, 8, 68-69, 105-138, 148-180, 189-196 [director
12 defendants' abdication allegations]; SAC ¶¶ 101-106, 198-240, 376-422 [director defendants'
13 recklessness allegations].) Officers Johns, Lemler, and Malnight and all Director Defendants challenge
14 the sufficiency of the facts alleged regarding their breaches that purportedly caused the North Bay and
15 Camp Fires with respect to abdication, recklessness, and/or the duty of loyalty. The Court finds the facts
16 sufficiently pled as to each Officer and Defendant with respect to abdication, recklessness, and/or the duty
17 of loyalty and will not otherwise resolve factual disputes at the pleading stage. (*Marzec v. Public*
18 *Employees' Retirement System* (2015) 236 Cal.App.4th 889, 915 ["Whether the defendant breached that
19 duty towards the plaintiff is a question of fact."]; *Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 186-187
20 [causation is an issue of fact]; *cf. UFCW Local 1500 Pension Fund v. Mayer* (N.D. Cal., Oct. 19, 2016)
21 2016 WL 6122458, at *13, *aff'd* (9th Cir. 2018) 895 F.3d 695 ["Failure to State Claims Against Officer-
22 Defendants by Pleading *Only Biographical Information*."] [emphasis supplied]; *cf. Fischman on behalf of*
23 *Sempra Energy v. Reed* (S.D. Cal., Mar. 29, 2017) 2017 WL 1166349, at *11-12; *cf. In re Hecla Mining*
24 *Co. Deriv. S'holder Litig.*, (D. Idaho Feb. 20, 2014) 2014 WL 689036, at *9-10 ["Plaintiffs provide no
25 allegations of fact beyond these conclusory assertions regarding either the information made available to
26 the board or what the board did in response to such information. . . . [Plaintiffs] fail to then connect the
27 dots with particularized factual allegations that Hecla's board consciously failed to act after learning about
28 [the red flags]. There are no particularized facts about the board's conduct generally in that regard, nor

1 particularized facts speaking to whether the board was actually aware of the red flags, what the board was
2 told about any red flags, or what was the board's response to those red flags.”].)

3 The Court **OVERRULES** the Officer Defendants’ and Director Defendants’ demurrers on this
4 ground.

5 **III. Officer Defendant’s Status as Officer’s of Holding Company versus Utility**

6 Because Plaintiff clarifies he was assigned the right to bring direct claims on behalf of *both* the
7 Holding Company and the Utility against *both* the Holding Company and the Utility, he has standing.
8 (Pitre Decl., Ex 1, §§ 1.8, 1.215, 1.41.)

9 The Court **OVERRULES** the Officer Defendants’ demurrers on this ground.

10
11 **CONCLUSION**

12 The Court **OVERRULES** defendants’ demurrers.

13
14 IT IS SO ORDERED.

15
16 Dated: April 1, 2022



17 ANDREW Y.S. CHENG
18 Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, CLARK BANAYAD, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 1, 2022, I electronically served the ATTACHED DOCUMENT(S) via File&ServeXpress on the recipients designated on the Transaction Receipt located on the File&ServeXpress website.

Dated: April 1, 2022

T. Michael Yuen, Clerk

By: 

CLARK BANAYAD, Deputy Clerk