Tentative Rulings

DEPARTMENT 47 LAW AND MOTION RULINGS

Case Number: 18STCV06276 **Hearing Date:** August 10, 2020 **Dept:** 47

State of California, et al. ex rel. Jobs to Move America v. New Flyer of America, Inc., et al.

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(1) DEMURRER TO COMPLAINT;
(2) MOTION TO STRIKE PORTIONS OF *QUI TAM* PLAINTIFF'S COMPLAINT

MOVING PARTY: (1) & (2) Defendant New Flyer of America, Inc.

RESPONDING PARTY(S): (1) & (2) Relator Jobs to Move America Coalition

STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:

This is a *qui tam* action under the False Claims Act. Relator/*Qui Tam* Plaintiff Jobs to Move America seeks to recover damages and civil penalties on behalf of the State of California and the LA Metro against Defendant New Flyer of America. Plaintiff alleges that Defendant did not pay the wages and benefits it promised in connection with a $500 million contract to provide Metro with transit buses.

Defendant New Flyer demurs to the complaint and move to strike portions of it.

TENTATIVE RULING:

Defendant New Flyer of America, Inc.'s demurrer is OVERRULED.

Defendant's motion to strike is DENIED.

DISCUSSION:

Demurrer

Meet and Confer

The Declaration of Attorney John Danos reflects that the meet and confer requirement of CCP § 430.41 was satisfied.

Defendant's Request for Judicial Notice

Defendant requests that the Court take judicial notice of (1) Jobs to Move America's trial brief in *New Flyer of America, Inc. v. Los Angeles County Metropolitan Transportation Authority*, BC621090 [erroneously identified by Defendant as "No. 621090"]; (2) the judgment in the same case; (3) Jobs to Move America's revised reply brief on fees motion in the same case; (4) the Declaration of Madeline Janis in support of Jobs to Move America's reply on fees motion in the same case; and (5) four news articles available on the internet about the previous case: (a) *Op-Ed: Corporate America's Latest Trick: The Reverse Public Records Act*, L.A. Times (Oct. 10, 2017); *Public Contracts Shrouded in Secrecy*, Reveal News (Nov. 16, 2016); (c) *California Court Brings Sunshine to Government Contracting*, The Project on Government Oversight (Oct. 24, 2017); and (d) *Bus Company To Pay Legal Fees in LA Public Records Case*, Reveal News (Apr. 24, 2018).

Requests (1) to (4) are GRANTED per Evidence Code § 452(d) (court records), but not as to the truth of any facts or hearsay asserted therein. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.4th 428, 437.) Judicial notice may be taken as to the existence of these documents, but not as to the truth of their contents. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 ["A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in

documents such as orders, findings of fact and conclusions of law, and judgments."].) A court may, however, examine the contents of a document for which judicial notice is requested "where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114.)

The Court notes that Defendant only included every other page of Exhibit 1 (Jobs to Move America's trial brief), and therefore it is of limited value.

Request (5) is GRANTED per Evidence Code § 452(h) (facts and propositions not reasonably subject to dispute), as to their existence and contents, but not as to the facts stated therein. (*McKelvey v. Boeing North America, Inc.* (1999) 74 Cal.App.4th 151, 162.)

Plaintiff's Request for Judicial Notice

Plaintiff requests judicial notice of (1) the final ruling on petition for writ of mandate in BC621090 on October 12, 2017; and (2) the ruling on intervenor Jobs to Move America's motion for attorneys' fees on March 26, 2018.

These requests are GRANTED per Evidence Code § 452(d) (court records).

Defendant's Supplemental Request for Judicial Notice

Defendant requests that the Court take judicial notice of (1) JMA's trial brief in *New Flyer of America, Inc. v. Los Angeles County Metropolitan Transportation Authority*, BC621090 [again erroneously identified by Defendant as "No. 621090"]; (2) the Declaration of Madeline Janis in support of JMA's motion for attorney's fees in the same case; (3) JMA's memorandum of points and authorities in opposition to preliminary injunction in the same case; (4) Declaration of Madeline Janis in support of JMA's trial brief in the same case; (5) the Declaration of Songsing Matmanivong in support of JMA's opposition to preliminary injunction in the same case; and (6) the Declaration of Deborah Pitts in support of JMA's opposition to preliminary injunction in the same case.

Request (1) is DENIED AS MOOT, given that the Court already granted judicial notice of this document (though the Court recognizes that Defendant has now provided all pages of the document, whereas it had only provided every other page previously).

Requests (2) through (6) are GRANTED per Evidence Code § 452(d) (court records).

Plaintiff's Supplemental Request for Judicial Notice

Plaintiff requests judicial notice of (1) the final ruling on petition for writ of mandate in BC621090 on October 12, 2017; (2) the ruling on intervenor Jobs to Move America's motion for attorneys' fees on March 26, 2018; and (3) November 13, 2017 emails from Gregory S. Levine, Senior Deputy County Counsel, Los Angeles County, to JMA Executive Director Madeline Janis and others.

Requests (1)-(2) are DENIED AS MOOT, as the Court already granted Plaintiff's request for judicial notice of these documents.

As for Request (3), although Plaintiff requests judicial notice of these emails under Evidence Code § 452(h), the authorities cited by Plaintiff do not support taking judicial notice under that provision. In both cases cited by Plaintiff, judicial notice was taken of emails or letters as official acts of an executive department under Evidence Code § 452(c). It is understandable why Plaintiff did not rely on § 452(c), given its substantive arguments. It is less understandable why Plaintiff would rely exclusively on cases in which § 452(c) as the basis for the judicial notice.

Nevertheless, although Plaintiff's support for its request leaves a lot to be desired, Defendant does not contest the propriety of taking judicial notice of these emails under § 452(h), arguing only that Plaintiff conceded that these emails were "official acts" by citing cases decided on that basis. Thus, Defendant has not argued that these emails are "reasonably subject to dispute" or that they are not "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452(h).) Indeed, Defendant itself has not disputed the accuracy of these emails, arguing only that Plaintiff should not be heard to argue that they are not "official acts." (Defendant's Supp. Brief, at pp. 5-6.) If Defendant would agree that these emails are official acts, Defendant presumably does not dispute their accuracy. Therefore, it is appropriate to take judicial notice of these emails.

Analysis

First Cause of Action: Presentation of False Claims of Compliance with U.S. Employment Plan (Gov't Code § 12650 *et seq.*; § 12651(a)(1)); Second Cause of Action: Making and Using False Records and Statements Material to False Claims (Gov't Code § 12650 *et seq.*; § 12651(a)(2)); Third Cause of Action: Failure to Disclose False Claims (Gov't Code § 12650 *et seq.*; § 12651(a)(8)).

Plaintiff brings this complaint under the California False Claims Act (Govt. Code §12650, *et seq.*) ("CFCA"). The CFCA authorizes private parties with knowledge of past or present fraud on the State to sue on the government's behalf to recover civil penalties and damages.

"The Legislature designed the CFCA "to prevent fraud on the public treasury," and it "should be given the broadest possible construction consistent with that purpose. In other words, the CFCA must be construed broadly so as to give the widest possible coverage and effect to the prohibitions and remedies it provides. The CFCA is intended to supplement governmental efforts to identify and prosecute fraudulent claims made against state and local governmental entities. (*San Francisco Unified School Dist. ex rel. Contreras v. First Student, Inc.* (2014) 224 Cal.App.4th 627, 638 (*Contreras II*).) Given the similarity of the CFCA to the federal False Claims Act, "it is appropriate to turn to federal cases for guidance in interpreting the CFCA." (*City of Pomona v. Superior Court* (2001) 89 Cal.App.4th 793, 802; *see also State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1299 ["[T]he CFCA is patterned on similar federal legislation and it is appropriate to look to precedent construing the equivalent federal [FCA]."].)

Defendant demurs to all three of Plaintiff's causes of action on the grounds that (1) the Court has no subject-matter jurisdiction over this cause of action; (2) Plaintiff does not have legal capacity to sue; (3) all three causes of action fail to allege facts sufficient to constitute a cause of action against it; and (4) all three causes of action are uncertain. (CCP § 430.10(a), (b), (e), (f).)

1. **Uncertainty**

Beginning with the last of these bases, the demurrer on the basis of uncertainty is OVERRULED. Demurrers for uncertainty are strictly construed, because discovery can be used for clarification, and apply only where defendants cannot reasonably determine what issues or claims are stated. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) That is not the case here. Moreover, a failure to specify what aspects of a complaint are uncertain generally results in a demurrer being overruled as to uncertainty. (*Fenton v. Groveland Community Services Dist*. (1982) 135 Cal.App.3d 797, 809, overruled on other grounds by *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300, 328.) Here, Defendant lumped uncertainty in with its arguments regarding failure to state a cause of action and never specified any particular aspects of the complaint that are so uncertain Defendant would not reasonably be able to answer, as compared with allegations that are missing and therefore invoke CCP § 430.10(e) (failure to allege facts sufficient to constitute a cause of action).

2. **Subject-Matter Jurisdiction**

a. Public Disclosure Bar

The CFCA requires courts to dismiss false claims suits based on information already disclosed publicly unless the relator is an "original source" of the information:

(A) The court shall dismiss an action or claim under this section . . . if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in any of the following:

(i) A criminal, civil, or administrative hearing in which the state or prosecuting authority of a political subdivision or their agents are a party.

(ii) A report, hearing, audit, or investigation of the Legislature, the state, or governing body of a political subdivision.

(iii) The news media.

(B) Subparagraph (A) shall not apply if . . . the person bringing the action is an original source of the information.

(Govt. Code § 12652(d)(3).)1[1]

The "substance of the [public] disclosure need not contain an explicit 'allegation' of fraud … so long as the material elements of the allegedly fraudulent 'transaction' are disclosed in the public domain." (*A-1 Ambulance Serv. Inc. v. California* (9th Cir. 2000) 202 F.3d 1238, 1243 [interpreting parallel provisions of the federal False Claims Act].). The bar applies "when the prior public disclosures

1[1] Defendant also cites Government Code § 12652(d)(2), which bars suits "based upon allegations or transactions that are the subject of a civil suit . . . in which the state or political subdivision is already a party." Plaintiff is correct that this provision is inapplicable to the facts of this case, and Defendant concedes as much in its reply, though Defendant had explicitly argued in its Demurrer that the transactions at issue were "the subject of" (and, confusingly, "subject to") the previous lawsuit. (Demurrer, at p. 11; Reply, at p. 4 & n.1.)

are 'sufficient to place the government on notice of the alleged fraud' or practice prior to the filing of the qui tam action." (*State ex rel. Grayson v. Pac. Bell. Tel. Co.* (2006) 142 Cal.App.4th 741, 748.) The purpose of the public disclosure bar is to eliminate parasitic suits by persons who merely echo allegations already in the public domain and play no role in exposing the fraud in the first instance. (*People ex rel. Allstate Ins. Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 564.) However, given that the CFCA is to be construed broadly as discussed above, the public disclosure bar "should be applied only as necessary to preclude parasitic or opportunistic actions, but not so broadly as to undermine the Legislature's intent that relators assist in the prevention, identification, investigation and prosecution of false claims." (*City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109 Cal.App.4th 1668, 1683.) At the same time, dismissal is warranted "whenever a plaintiff files a *qui tam* complaint containing allegations or describing transactions substantially similar to those already in the public domain so that the publicly available information is already sufficient to place the government on notice of the alleged fraud." (*Grayson, supra*, 142 Cal.App.4th at 748.)

To determine whether "substantially the same allegations or transactions" alleged in the complaint were publicly disclosed in any of the ways outlined in § 12652(d)(3), the Court must review Plaintiff's allegations. Here, Plaintiff alleges that Defendant entered into a contract with LA Metro to manufacture and deliver up to 900 transit buses. (Complaint ¶ 6.) The contract required Defendant to implement an employment program "consistent with the U.S. Employment Program" Defendant submitted as part of the bidding process. (¶ 11.) The implementation was to "contain at least the same level of effort in terms of overall Contractor financial commitment, hours of work, expenditures for training activities, creation of Full Time Equivalent (FTE) employment positions, and related substantive commitments." (*Ibid.* [quoting the contract].) Defendant was required to submit quarterly progress reports detailing its adherence to these commitments. (¶ 12.) Defendant was also required to apply for its milestone payments, including a certification that the work done to date was "in full accordance with the terms of the Contract." (¶ 15.)

Plaintiff alleges that Defendant's quarterly progress reports "contained false information about the remuneration paid to New Flyer employees." (¶ 22.) For example, Defendant reported that every "new-hire, A&D Specialist at New Flyer's

Ontario facility received $11.75 per hour in 'paid benefits,'" when "many, and perhaps all, A&D Specialists at New Flyer's Ontario facility received less than $11.75 per hour in employer-paid fringe benefits." (¶ 23.) A particular A&D Specialist identified in the reports as receiving $11.75 per hour in fringe benefits "received no more than $6.00 per hour in employer-paid fringe benefits." (¶ 25.) Plaintiff also alleges that Defendant "misrepresented the wages, employer-paid fringe benefits, and allocable hours of other . . . employees in the Quarterly Reports." (¶ 26.) In other words, Plaintiff alleges that Defendant presented false claims for payment or approval as follows:

The claims were false or fraudulent because they impliedly or expressly certified that New Flyer and its subcontractors were paying employees working on the Contract the wages and fringe benefits promised in the U.S. Employment Plan; that New Flyer's Quarterly Reports accurately represented the wages, fringe benefits, and allocable hours worked by the employees for whom it was claiming credit; and that the aggregate employment value of the wages, benefits, and allocable hours worked on the Contract matched the promises contained in the U.S. Employment Plan and the representation contained in the Quarterly Reports.

(¶ 34.)

Defendant first argues that "substantially the same allegations or transactions" were publicly disclosed in a previous hearing in which the LA Metro was a party, *New Flyer v. Los Angeles Country Metropolitan Transit Authority*, Case No. BC621090. In that case, Defendant sought to prevent LA Metro from disclosing unredacted wage and benefit documents to Plaintiff. (Demurrer, at p. 11.) Plaintiff, which intervened in that suit, prevailed and sought attorney's fees as the prevailing party, arguing that its analysis of the documents "found that New Flyer actually paid to non-management employees for many classifications are [sic] significantly lower than what was promised in the U.S. Employment Plan, amounting to at least $500,000 in wage underpayments over the life of the contract." (Defendant's Request for Judicial Notice, Exh. 6, at p.6.)

It follows that Plaintiff's allegations that form the basis of this lawsuit – that Defendant underpaid its employees compared to what it had promised in the U.S. Employment Plan – were publicly disclosed in a previous lawsuit in which the LA

Metro was a party. (Gov't Code § 12652(d)(3)(A)(i).) For these purposes, "whether or not the Government was actually pursuing the allegations . . . is irrelevant." (*State of California v. Pacific Bell Telephone Co.* (2006) 142 Cal.App.4th 741, 748.) "All that is required is a finding that the publicly disclosed allegations were sufficient to put the government on notice of the alleged FCA violations." (*Ibid.*)

Plaintiff argues that its current allegations were not publicly disclosed in the previous litigation under Government Code § 12652(d)(3)(A)(i) because that litigation did not involve allegations of fraud; rather, it involved Plaintiff's effort to obtain public records. (Plaintiff's Supp. Brief, at p. 1.) This argument is persuasive. Although Plaintiff sought the records so that it could determine whether Defendant had committed fraud, the records themselves did not disclose the fraud that Plaintiff alleges in this lawsuit. Rather, after obtaining the records, Plaintiff performed its own investigation into the wages and benefits paid by Defendant, including interviewing the workers and analyzing the differences in pay. (*Ibid.*)

Defendant also argues that, even if the previous allegations were not sufficiently similar, the information Plaintiff received under its California Public Records Act ("CPRA") request qualifies as a "report" disclosing the alleged transactions. (Gov't Code § 12652(d)(3)(A)(ii).) Under analogous federal law, "[i]f an allegation or transaction is disclosed in a record attached to a FOIA [Freedom of Information Act] response, it is disclosed 'in' that FOIA response and, therefore, disclosed 'in' a report for the purpose of the public disclosure bar." (*Schindler Elevator Corp. v. U.S. ex rel. Kirk* (2011) 563 U.S. 401, 411.) Here, Plaintiff received the unredacted wage and benefit documents that allegedly prove Defendant submitted false claims to the government through Plaintiff's CPRA request, to which Defendant was ordered to respond in the previous lawsuit. (Defendant's Request for Judicial Notice, Exh. 2.) Plaintiff argues that *Schindler* is distinguishable because FOIA requires a written response and CPRA does not, but that is a distinction without a difference when Plaintiff was provided with the written documents.

Plaintiff argues that the response to its CPRA request does not satisfy the statute because it did not come from LA Metro's board of directors and therefore did not

come from a "governing body of a political subdivision" as required by Government Code § 12652(d)(3)(A)(ii). (Plaintiff's Oppo., at p. 8.) In its supplemental briefing, Plaintiff has now provided judicially noticeable documents to support this argument. The emails in which the Senior Deputy Counsel for Los Angeles County forwarded the unredacted documents Plaintiff successfully obtained in the previous litigation did not contain any "report" of a "governing body" of LA Metro; they appear to have simply forwarded the unredacted documents to Plaintiff without comment. (Plaintiff's Supp. RJN, Exh. 3.) Thus, the records obtained by Plaintiff do not qualify as a "report" disclosing the alleged transactions under § 12652(d)(3)(A)(ii). "The mere fact that the disclosures are contained in government files someplace . . . does not itself constitute public disclosure." (*Mao's Kitchen, Inc. v. Mundy* (2012) 209 Cal.App.4th 132, 149.)

Finally, Defendant also argues that substantially similar allegations were disclosed in the news media. (Gov't Code § 12652(d)(3)(A)(iii).) One of the articles, for example, describes the information Plaintiff sought in the previous lawsuit and notes Plaintiff's argument that Defendant had entered into the agreement with LA Metro voluntarily but was "saying that the public is not entitled to know whether those promises are actually being fulfilled." (Defendant's Request for Judicial Notice, Exh. 5 [*Op-Ed: Corporate America's Latest Trick: The Reverse Public Records Act*, L.A. Times (Oct. 10, 2017), at p.3].) The article also noted that the attempt to prevent this type of disclosure "has implications for rooting out corruption, breach of contract, and the public's right to know." (*Id.* at p. 4.) This article does not, however, report that Defendant had committed fraud or knowingly filed false statements with LA Metro. Likewise, the other articles also note Defendant's promise to create new jobs and the fact that Plaintiff was attempting to uncover the documents that would answer that question. (Defendant's Request for Judicial Notice, Exh. 5.) These articles do not disclose allegations substantially similar to Plaintiff's allegations in this case.

Ultimately, the previous lawsuit, the CPRA information obtained by Plaintiff, and the news coverage of the previous lawsuit all indicate that the facts that are the basis for the allegations in this lawsuit were publicly disclosed. (*Mao's Kitchen, Inc. v. Mundy* (2012) 209 Cal.App.4th 132, 147.) In other words, the "allegation of fraud or the critical elements of the fraudulent transaction themselves were in the public domain." The Court's review process in this regard is guided by the analysis

contained in *Mao's Kitchen, supra*, in which the appellate court adopted the public disclosure standard contained in *U.S. ex rel. Springfield Terminal Railway v. Quinn* (D.C. Cir. 1994) 14 F.3d 645, 654.

Ultimately, although Defendant has raised persuasive arguments to the contrary, applying the public disclosure bar under these circumstances would be antithetical to its purpose, given that Plaintiff is precisely the type of organization with precisely the type of mission that the Legislature intended to encourage to file these types of lawsuits. As noted above, "the public disclosure bar should be applied only as necessary to preclude parasitic or opportunistic actions, but not so broadly as to undermine the Legislature's intent that relators assist in the prevention, identification, investigation, and prosecution of false claims." (*State ex rel. Bartlett v. Miller* (2016) 243 Cal.App.4th 1398, 1407 [quoting *Wohler*, *supra*, 109 Cal.App.4th at 1687].)

2. Original Source

Given that the Court has concluded that the public disclosure bar does not apply, it is unnecessary to address whether Plaintiff qualifies as an "original source" of the information, in which case the bar would not apply. (Gov't Code § 12652(d)(3)(B).) However, if the Court reached this argument, it would grant Plaintiff leave to amend to allege that it is the original source of the information it alleges.

An "original source" is defined as an "individual" who either:

(i) Prior to a public disclosure under subparagraph (A), has voluntarily disclosed to the state or political subdivision the information on which allegations or transactions in a claim are based.

(ii) Has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state or political subdivision before filing an action under this section.

(Gov't Code § 12652(d)(3)(C).)

Here, Plaintiff argues that it could amend the complaint to allege that it has "knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions," based on the independent investigation it conducted. If the Court reached this issue, it would give Plaintiff the opportunity to allege this independent knowledge.

Conclusion

Because the public disclosure bar does not apply, the demurrer is OVERRULED on that basis.

3. **Plaintiff's Capacity to Sue**

It does not appear that Defendant makes any separate argument regarding Plaintiff's capacity to sue. This argument is, rather, lumped in with the jurisdictional argument above.

4. **Failure to State a Claim Upon Which Relief May Be Granted**

Defendant also argues that Plaintiff fails to state a claim upon which relief may be granted.

Plaintiff's causes of action are all statutory in nature, and statutory causes of action must be pled with particularity. (*Lopez v. So. Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795). The causes of action must also be pled with particularity because CFCA claims are fraud-based. (*City of Pomona v. Superior Court* (2001) 89 Cal.App.4th 793, 803.) In this context, this means that Plaintiff must allege the "time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained." (*Ibid.*)

Here, Plaintiff has alleged where and when the alleged false representations were made and has alleged that New Flyer made them, as described above, and obtained payments from LA Metro to which it was not entitled if it had not complied with every aspect of the contract. (Complaint ¶¶ 17-27.) Although Defendant may ultimately be right that Plaintiff will not be able to show that LA Metro suffered any damages or otherwise will not be able to show all of the required elements of

its causes of action, "[i]t is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. (*Whitcombe v. County of Yolo* (1977) 73 Cal.App.3d 698, 702.) The "question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496.)

Defendant also argues that Plaintiff's allegations are insufficient because the alleged misrepresentations are immaterial to payment, and they must relate to payment to fall under the CFCA. (Gov't Code §§ 12650, 12651.) However, Plaintiff alleges that Defendant was required to include information on its compliance with the U.S. Employment Plan in its applications for milestone payments. (¶ 15.) Plaintiff also notes that payment could be withheld if Defendant was out of compliance. Thus, at least at the demurrer stage, Plaintiff has satisfied this requirement.

Accordingly, the demurrer on the ground that Plaintiff fails to state a claim upon which relief may be granted is OVERRULED.

To the extent that Defendant discusses damages in the demurrer, those arguments are best addressed in the context of Defendant's motion to strike, immediately below.

Motion To Strike

Meet and Confer

The Declaration of Attorney John Danos reflects that the meet and confer requirement of CCP § 435.5 was satisfied (although the declaration refers only to the statute governing the meet-and-confer requirement for demurrers, CCP § 430.41).

Analysis

Defendant moves to strike the portions of the complaint seeking treble damages and civil penalties.

Defendant's motion does not comply with CRC 3.1322, which requires the notice of motion to "quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, causes of action, count, or defense." (CRC 3.1322(a).) Here, Defendant moves to strike portions of paragraphs but does not quote them. Nevertheless, especially given that Plaintiff did not object on this basis, the Court will consider the motion.

As to treble damages, the motion to strike is DENIED. Plaintiff's primary case – *San Francisco Unified School District ex rel. Contreras v. Laidlaw Transit, Inc.* (2010) 182 Cal.App.4th 438 – is distinguishable, given that the contractual breaches at issue related to the safety of the buses provided. (*Id.* at 457.) At the same time, the case Defendant claims is controlling – *Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720 – is not a pleading case; it was decided following a jury trial. (*Id.* at 726.) Plaintiff has sufficiently pled damages at this stage.

As to civil penalties, the motion is also DENIED. As Plaintiff notes, Government Code § 12651(a) now provides for civil penalties "for each violation" of the CFCA. Accordingly, the Quarterly Reports alleged in the complaint may be the basis for civil penalties.

Moving party to give notice, unless waived.

IT IS SO ORDERED.

Dated: August 10, 2020

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Randolph M. Hammock
Judge of the Superior Court