

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL

MINUTE ORDER

DATE: 07/26/2010

TIME: 01:55:00 PM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2010-00088794-CU-PN-CTL CASE INIT.DATE: 03/29/2010

CASE TITLE: **San Diego Police Officers Association vs. Jackson, DeMarco, Tidus & Peckenpaugh**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Professional Negligence

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EVENT TYPE: Demurrer / Motion to Strike

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APPEARANCES

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The Court, having taken the above-entitled matter under submission on 7/23/10 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on defendant Gregory Glenn Petersen's ("Petersen") demurrer as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

As a preliminary matter, the Court grants Petersen's request for judicial notice.

The demurrer on grounds of statute of limitations and causation/damages is overruled for the reasons stated below.

It is well settled that a court may only consider defects on the face of the Complaint or matters that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

*Statute of Limitations.* Generally, where as here, the Complaint contains no dates, a demurrer is improper. (*Union Carbide Corp. v. Super. Ct.* (1984) 36 Cal.3d 15, 25.)

Petersen's demurrer attacks the Complaint by introducing documents which the Court has judicially noticed. He presented the documents to show that plaintiff San Diego Police Officers Association ("SDPOA") was actually injured when the state trial court and federal district courts entered judgments against it. Thus, Petersen contends that the SDPOA suffered injury in December 2006 with respect to *McGuigan v. City of San Diego et al.* and May 2007 in *San Diego Police Officers Assn. v. Aguirre et al.* As a result, he contends that Plaintiffs' claims are time-barred under Code of Civil Procedure section

340.6 ("section 340.6").

The SDPOA does not contest the applicability of section 340.6 to this action. However, it correctly notes that it cannot be determined from the face of the Complaint when the actual injury occurred. More specifically, the Complaint contains no dates by which a determination can be made on this ground.

In *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 751, the California Supreme Court stated that "the one-year limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but the period is tolled until the plaintiff sustains actual injury." It went on to state that "determining when actual injury occurred is predominantly a factual inquiry." (*Ibid.*) Furthermore, only when the material facts are undisputed can the court resolve the question as a matter of law. (*Id.* at p. 764.) Here, the SDPOA does not concede that the dates upon which the state court and the federal district courts issued their rulings are the dates that they were actually injured. In addition, given the long and complicated history that has led the parties to this point, it would be premature for the Court to make a dispositive determination at this juncture based on the information that has been presented in this motion.

*Causation/Damages.* The SDPOA stated sufficient facts to assert this claim. (Complaint, ¶¶11-12.) Furthermore, as to Petersen's argument that the SDPOA's claim lacks merit because the underlying cases were decided as a matter of law, it should be noted that the court in *Ruffalo v. Patterson* (1991) 234 Cal.App.3d 341, 344, stated that "where an attorney's negligence has caused a court to make an erroneous adjudication of an issue, the fact that the court has made that adjudication absolves the attorney of all accountability and responsibility for his negligence...cannot be and is not the rule...." Finally, the dismissal of one state law case does not preclude the SDPOA for legal malpractice arising out of the underlying litigation in the federal courts.

Petersen is directed to file and serve his Answer by August 6, 2010.

**IT IS SO ORDERED.**

*Ronald S. Prager*

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Judge Ronald S. Prager

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

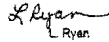
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330 West Broadway  
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**SHORT TITLE:** San Diego Police Officers Association vs. Jackson, DeMarco, Tidus & Peckenpaugh

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2010-00088794-CU-PN-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 07/27/2010.

Clerk of the Court, by: , Deputy

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