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14 Beevers, in his official capacity, the California
15 Military Department, erroneously sued herein as the
16 State of California, the State of California, acting by
17 and through the California Military Department, and
18 Governor Gavin Newsom, in his official capacity*

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

02/14/2025

By: A. Macias Deputy

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO
17
18

19 **BRIGADIER GENERAL JEFFREY W.**
20 **MAGRAM (RET.),**

21 Plaintiff,

22 v.
23

24 **MAJOR GENERAL MATTHEW P.**
25 **BEEVERS; STATE OF CALIFORNIA;**
26 **CALIFORNIA MILITARY**
27 **DEPARTMENT; GAVIN NEWSOM; AND**
28 **DOES 1-20,**

29 Defendants.

Case No. 24CV009096

**DEFENDANTS' NOTICE OF
DEMURRER, DEMURRER AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
DAMAGES¹; DECLARATION OF
LORINDA D. FRANCO**

**Filed concurrently with Defendant's
Request for Judicial Notice**

Date/Time: August 28, 2025, 1:30 p.m.
Dept: 53, Hall of Justice
L & M Judge: Hon. Richard K. Sueyoshi,
Dept. 53, Hall of Justice
CMC Judge: Hon. Thadd A. Blizzard,
Dept. 43, Gordon D. Schaber Ct
Trial Date: Not set.
Action Filed: 1/26/24, FAC Filed: 11/27/24
Venue Transferred: May 9, 2024
RESERVATION NO.: A09096-001

36 ¹ California Rules of Court 2.108, subdivision (1) requires lines on each page to be either
37 one-half spaced or double-spaced. This 37-line pleading paper is one-half spaced. All evidence
cited is contained in Defendant's Compendium of Evidence unless otherwise noted.

1 **TO PLAINTIFF AND PLAINTIFF’S ATTORNEY OF RECORD: PLEASE TAKE**
2 **NOTICE** that on August 28, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard
3 in Department 53 of the above-entitled court located at the Hall of Justice, 813 6th Street,
4 Sacramento, California 95814, pursuant to Code of Civil Procedure section 430.10, subdivision
5 (e), Defendants the California Military Department erroneously sued herein as the State of
6 California, the State of California, acting by and through the California Military Department
7 (“CMD²”), and Major General Matthew P. Beevers (“Major General Beevers”) (collectively,
8 referred to as Defendants³) will demur to all eight causes of action of Plaintiff Brigadier General
9 (RET.) Jeffery W. Magram’s First Amended Complaint. Pursuant to Code of Civil Procedure
10 section 430.41, the parties met and conferred but did not reach an agreement resolving the
11 objections raised in the demurrer. (Franco Declaration, ¶¶2-4.)

12 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Rule 1.06 (A) the court
13 will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the
14 hearing. The complete text of the tentative ruling for the department may be downloaded from the
15 court’s website. If the party does not have online access, they may call the dedicated phone
16 number for the department (Dept. 53 (916) 874-7858) or the Law and Motion Oral Request line
17 ((916) 874-2615) as referenced in the department’s rule and court local rule 2.40 between the
18 hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative
19 ruling. If you do not call the court and the opposing party by 4:00 p.m. on the court day before the
20 hearing, no hearing will be held. Defendants intend to appear remotely for this and all future
21 hearings.

22 **DEMURRER TO FIRST CAUSE OF ACTION**
23 (FEHA Religious Discrimination: Against the CMD)

24 1. Defendant the CMD demurs to Plaintiff’s first cause of action alleging
25 discrimination based on religion in violation of the California Fair Employment and Housing Act
26 (FEHA) pursuant to Code of Civil Procedure section 430.10, subdivisions (a) and (e): The court
27 lacks jurisdiction and Plaintiff fails to state facts sufficient to constitute a cause of action against
28 Defendant the CMD because the *Feres* doctrine bars him from suing the military and its
personnel, and the FEHA remedies do not apply to service members.

DEMURRER TO SECOND CAUSE OF ACTION
 (FEHA Religious Harassment: Against the CMD and Major General Beevers)

 2. Defendants the CMD and Major General Beevers demur to Plaintiff’s second
cause of action for harassment based on religion in violation of the FEHA pursuant to Code of

² The California Military Department, erroneously sued herein as the State of California, and the State of California, acting by and through the California Military Department, are the same single public entity referred to throughout this demurrer as the CMD.

³ All causes of action against Governor Gavin Newsom have been withdrawn and, therefore, dismissed.

1 Civil Procedure section 430.10, subdivisions (a) and (e): The court lacks jurisdiction and Plaintiff
2 fails to state facts sufficient to constitute a cause of action against Defendants the CMD and
3 Major General Beevers because the *Feres* doctrine bars him from suing the military and its
4 personnel, and the FEHA remedies do not apply to service members. Furthermore, Plaintiff fails
5 to state facts sufficient to constitute a cause of action against Major General Beevers as he is
6 immune to Plaintiff's claim pursuant to Military and Veterans Code section 392, subdivision (a).

7 **DEMURRER TO THIRD CAUSE OF ACTION**

8 (FEHA Retaliation for Reports of Religious Discrimination/Harassment:
9 Against the CMD)

10 3. Defendant the CMD demurs to Plaintiff's third cause of action alleging retaliation
11 in violation of the FEHA pursuant to Code of Civil Procedure section 430.10, subdivisions (a)
12 and (e): The court lacks jurisdiction and Plaintiff fails to state facts sufficient to constitute a cause
13 of action against Defendant the CMD because the *Feres* doctrine bars him from suing the
14 military, and the FEHA remedies do not apply to service members.

15 **DEMURRER TO FOURTH CAUSE OF ACTION**

16 (FEHA Failure to Prevent Discrimination, Harassment and Retaliation:
17 Against the CMD)

18 4. Defendant the CMD demurs to Plaintiff's fourth cause of action alleging failure to
19 prevent discrimination, harassment and retaliation in violation of the FEHA pursuant to Code of
20 Civil Procedure section 430.10, subdivisions (a) and (e): The court lacks jurisdiction and Plaintiff
21 fails to state facts sufficient to constitute a cause of action against Defendant the CMD because
22 the *Feres* doctrine bars him from suing the military, and the FEHA remedies do not apply to
23 service members.

24 **DEMURRER TO FIFTH CAUSE OF ACTION**

25 (Whistleblower Retaliation for Reports of Discrimination/Harassment:
26 Against the CMD)

27 5. Defendant the CMD demurs to Plaintiff's fifth cause of action alleging
28 whistleblower retaliation for reporting discrimination and harassment based on his protected
status in violation of the FEHA, Labor Code section 1102.5 and Military and Veterans Code
section 56 pursuant to Code of Civil Procedure section 430.10, subdivisions (a) and (e): The court
lacks jurisdiction and Plaintiff fails to state facts sufficient to constitute a cause of action against
Defendant the CMD because the *Feres* doctrine bars him from suing the military and its
personnel, FEHA and Labor Code remedies do not apply to service members, and Military and
Veterans Code section does not provide a private right of action.

DEMURRER TO SIXTH CAUSE OF ACTION

(FEHA Disability/Medical Condition Discrimination: Against the CMD)

6. Defendant the CMD demurs to Plaintiff's sixth cause of action alleging disability
discrimination pursuant to Code of Civil Procedure section 430.10, subdivisions (a) and (e): The

1 court lacks jurisdiction and Plaintiff fails to state facts sufficient to constitute a cause of action
2 against Defendant the CMD because the *Feres* doctrine bars him from suing the military and its
3 personnel, and the FEHA remedies do not apply to service members.

4 **DEMURRER TO SEVENTH CAUSE OF ACTION**
5 (Wrongful Termination in Violation of Public Policy:
6 Against the CMD)

7 7. Defendant the CMD demurs to Plaintiff's seventh cause of action alleging
8 wrongful termination in violation of public policy premised on the FEHA, Labor Code section
9 1102.5 and the California Constitution, because of his protected status and complaints of
10 discrimination and harassment pursuant to Code of Civil Procedure section 430.10, subdivisions
11 (a) and (e): The court lacks jurisdiction and Plaintiff fails to state facts sufficient to constitute a
12 cause of action against Defendant the CMD because the *Feres* doctrine bars him from suing the
13 military, the FEHA remedies do not apply to service members, and sovereign immunity bars
14 common law claims.

15 **DEMURRER TO EIGHTH CAUSE OF ACTION**
16 (Violation of Equal Protection Under Article I, Section 7 of the California Constitution:
17 Against the CMD)

18 8. Defendant the CMD demurs to Plaintiff's eighth cause of action alleging violation
19 of equal protection clause under article I, section 7 of the California constitution pursuant to Code
20 of Civil Procedure section 430.10, subdivisions (a), (e) and (f): The court lacks jurisdiction,
21 Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant the CMD,
22 and the claim is uncertain because the *Feres* doctrine bars him from suing the military, sovereign
23 immunity bars common law claims, a claim for damages for alleged violation(s) of the equal
24 protection clause of the California Constitution is not actionable against Defendant the CMD,
25 Plaintiff alleges no law or regulation that purportedly violates the equal protection rights of a
26 class of persons, of which Plaintiff is a member, the government claim presentation requirements
27 were not satisfied, and is an improper new cause of action.

28 This demurrer is made and based on this notice, the accompanying demurrer, and the
Memorandum of Points and Authorities in Support of Demurrer, and the Declaration of Lorinda
D. Franco.

PRAYER

Wherefore, Defendants pray that their demurrer be sustained without leave to amend and
that it be granted such other and further relief as this Court may deem just and proper.

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Lorinda D.
Franco

LORINDA D. FRANCO
Deputy Attorney General
*Attorneys for Defendants
Major General Matthew P. Beevers, in his
official capacity, the California Military
Department, erroneously sued herein as
the State of California, the State of
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INTRODUCTION

Plaintiff Brigadier General (RET.) Jeffrey W. Magram ("Plaintiff") served in the California Military Department ("CMD"⁴) on state active-duty until his separation from service on or about January 8, 2023. Plaintiff alleges that during his service with the CMD, he was harassed and discriminated against because of his religion and disability, and then ultimately terminated in retaliation for complaining about the harassment and discrimination. His factual allegations, all arising out of or in the course of activity incident to his service with the CMD, form the basis of Plaintiff's eight causes of action for discrimination based on religion and disability, harassment based on religion, retaliation for complaining of discrimination and harassment, failure to prevent discrimination, harassment and retaliation in violation of the California Fair Employment and Housing Act (FEHA), whistleblower statutes, wrongful termination in violation of public policy, and violation(s) of the equal protection clause of the California Constitution against not only the CMD, but against its Adjutant General, Major General Matthew Beevers. Because all of the underlying factual allegations challenge actions or conduct incidental to his military service, Plaintiff's First Amended Complaint, and each cause of action asserted in the First Amended Complaint are subject to demurrer without leave to amend.

Pursuant to Code of Civil Procedure section 430.10, subdivisions (a), (e) and (f), this demurrer challenges all eight causes of action of Plaintiff's First Amended Complaint ("FAC") on several grounds. First, the *Feres* doctrine bars Plaintiff from suing the CMD, its personnel and its leadership for alleged injuries arising from his service. Thus, Plaintiff's claims are barred and the Court lacks jurisdiction over the complaint. Second, even if the *Feres* doctrine is inapplicable to one or more claims, the first through six causes of action fail because FEHA remedies do not apply to Plaintiff as a CMD service member, and his seventh cause of action for wrongful termination in violation of public policy is premised on FEHA. Third, Plaintiff's fifth cause of action for retaliation premised on Labor Code section 1102.5 and Military and Veterans Code section 56, like the FEHA claims, are not actionable against the CMD, its personnel or its leadership. Fourth, Plaintiff's seventh and eighth causes of action for wrongful termination in violation of public policy and violation of the equal protection clause of the California Constitution are barred by sovereign immunity. Fifth, Plaintiff's harassment claim against Major General Beevers is barred by Military and Veterans Code section 392, subdivision (a). Sixth, Plaintiff's claim for damages for the alleged violation of the equal protection clause of the California Constitution, article I, section 7, is not actionable against Defendant the CMD, alleges no law or regulation that purportedly violates the equal protection rights of Plaintiff and persons similarly situated persons, and is barred because the government claim presentation requirements were not satisfied and it is an improper new cause of action.

STATEMENT OF FACTS AND FACTUAL ALLEGATIONS

A. The CMD and its Leadership

State law incorporates federal National Guard Regulations regarding appointment and termination of appointments of military officers. (Cal. Mil. & Vet. Code §§ 100, 101, 220.)

The California Military Department is an agency of the State, headed by the Adjutant General, Major General Beevers, and is composed of, among other entities, the California National Guard. (Mil. & Vet. Code, §§50, 51, 52, 160; see 32 U.S.C. §314.) Major General Beevers is the military chief of staff to the Governor, subordinate only to the Governor and is the commander of all state military forces. (Mil. & Vet. Code, §§51, 52, 160.) Governor Newsom is commander in chief of the state militia and the California National Guard. (Cal. Const. art. V, § 7; Mil. & Vet. Code, § 140; FAC, 3:15.) Governor Newsom and his appointee, Major General Beevers, command the National Guard in California. (*Stirling v. Brown* (2018) 18 Cal.App.5th 1144, 1151.) The California National Guard encompasses both the California Army National Guard and the California Air National Guard. (See <https://calguard.ca.gov/join/>, as of July 8, 2024; FAC, 2:28-3:7.)

B. Plaintiff's Allegations

Plaintiff alleges that this case is an action for religious and disability discrimination, harassment and wrongful termination in violation of FEHA arising out of Plaintiff's 37-plus years of employment with the California Air Guard and United States Air Force, which includes 14-plus years as a full-time officer on state active-duty with the CMD. (FAC, 2:6-10.) Plaintiff alleges that at all times relevant to his Complaint, he was a Brigadier General serving both on state active-duty with the CMD while at the same time holding an appointment as an officer assigned as part of the California Air National Guard in Sacramento, California. (FAC, 2:19-21.) Plaintiff alleges he was the most senior full-time general in the California Air National Guard, and was responsible for the oversight of 4,900 California air service members. (FAC, 2:21-24.) Plaintiff details in his Complaint that while he was under Major General Beevers' command, Plaintiff was subject to a Disciplinary Action Board ("DAB") following a complaint by him to the CMD Inspector General, and that there were defects and violations of protocols and military regulations in connection with the conduct of the DAB. (FAC, 4:12-5:11). He further alleges that he was given a letter of suspension that was later rescinded, barred from working in military department headquarters and other facilities, and that Major General Beevers brought a Military and Veterans Code Article 239 proceeding against him. (FAC, 5:28-6:2, 6:7, 6:12-17; 7:14-16.) Plaintiff alleges that all of these actions arose out of a religious animosity toward Plaintiff based, in part, on alleged statements made by Major General Beevers while interacting with Plaintiff in the work environment. (FAC, 4:8-27.)

1 Plaintiff further alleges that Governor Newsom and the CMD were aware of Major General
2 Beevers' discrimination, harassment and retaliation against Plaintiff but facilitated and ratified
3 such conduct. (FAC, 2:14-17.)

4 Plaintiff further alleges that he was separated from his active-duty service with the CMD on
5 or about January 8, 2023. (FAC, 8:3-5.)

6 STANDARD OF REVIEW

7 On demurrer, the trial court considers the properly pled material facts and those matters
8 which may be judicially noticed and tests their sufficiency. (*California Alliance for Utility etc.*
9 *Education v. City of San Diego* (1997) 56 Cal.App.4th 1024, 1028.) Courts treat as true all of the
10 complaint's material factual allegations, but not the contentions, deductions or conclusions of fact
11 or law. (*Id.* at 141; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Given the assumed truth of the
12 facts, the court construes the pleading liberally to determine whether it sufficiently states a cause
13 of action. (*Rogoff v. Grabowski* (1988) 200 Cal.App.3d 624, 628.) Courts, however, "will not
14 close their eyes to situations where a complaint contains allegations of fact inconsistent with
15 attached documents, or allegations contrary to facts which are judicially noticed." (*Del E. Webb*
16 *Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Thus, "a pleading valid on
17 its face may nevertheless be subject to demurrer when matters judicially noticed by the court
18 render the complaint meritless." (*Id.*; see also Code Civ. Proc., § 430.70 and Evid. Code, §§ 451,
19 452, 453.)

20 ARGUMENT

21 I. PLAINTIFF CANNOT STATE A CLAIM BECAUSE THE *FERES* DOCTRINE BARS SUIT

22 Plaintiff's first, second, third, fourth, fifth, sixth, seventh and eighth causes of action for
23 religious discrimination and harassment, retaliation, failure to prevent discrimination, harassment
24 and retaliation, disability discrimination, wrongful termination against policy, and violation of the
25 equal protection clause of the state constitution are barred by the holding in *Feres v. United States*
26 (1950) 340 U.S. 135, 146 (*Feres*), which has become known as the *Feres* doctrine. The *Feres*
27 doctrine applies here because all the causes of action arise from events that occurred while
28 Plaintiff was serving as a service member in the military service of the State of California, and
29 each of the underlying decisions and actions involve military personnel matters and decisions by
30 the chain of command that are shielded from suit pursuant to the *Feres* doctrine.

31 A. The *Feres* Doctrine

32 The *Feres* doctrine is a judicially created doctrine that bars lawsuits against the federal and
33 state military and their personnel for injuries that "arise out of or are in the course of activity
34 incident to service." (*Feres, supra*, 340 U.S. at 146; *Bowen v. Oistead* (9th Cir. 1997) 125 F.3d
35 800, 803.) This doctrine originally prohibited members of the armed forces from bringing claims
36 under the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.) "for physical injuries that 'arise out
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1 of or are in the course of activity incident to service.” (*Estes v. Monroe* (2004) 120 Cal.App.4th
2 1347, 1352 (*Estes*.) Courts have since expanded it to bar “a wide variety of statutory and
3 constitutional claims” brought by service members against the military. (*Ibid.*) Courts have
4 justified the doctrine “in significant part on the view that the judiciary ought not to intrude in
5 military affairs,” and courts have “interpreted [the *Feres* rule] as necessary to avoid the courts’
6 second-guessing military decisions, or impairing military discipline.” (*Stauber v. Cline* (9th Cir.
7 1988) 837 F.2d 395, 398.) A “central purpose of the *Feres* doctrine is not only to avoid liability,
8 but also to preclude a trial on the merits because the judicial inquiry itself, rather than just a
9 merits judgment, causes the disruption of military affairs the *Feres* doctrine is designed to
10 prevent.” (*Estes, supra*, 120 Cal.App.4th at 1362 (quoting *Lutz v. Secretary of the Air Force* (9th
11 Cir. 1991) 944 F.2d 1477, 1481).)

12 Since *Feres* was determined over 60 years ago, the courts have regularly applied the *Feres*
13 doctrine to bar lawsuits concerning military personnel actions. As the Ninth Circuit has
14 recognized, “[c]ourts regularly decline to hear lawsuits involving personnel actions integrally
15 related to the military’s unique structure.” (*Mier v. Owens* (9th Cir. 1995) 57 F.3d 747, 749
16 (*Mier*.) For example, military transfer decisions are nonjusticiable because “transfer decisions
17 go to the core of deployment of troops and overall strategies of preparedness.” (*Mier, supra*, at
18 749-750 (quoting *Sebra v. Neville* (9th Cir. 1988) 801 F.2d 1135, 1142.) Discrimination claims
19 under Title VII based on denied promotions are nonreviewable because decisions about “who is
20 promoted and why are central to maintenance of the military hierarchy.” (*Mier*, at 751.)
21 Similarly, discharge decisions by the National Guard “are nonjusticiable because judicial review
22 ‘would seriously impede[] the military in performance of its vital duties.’” (*Mier*, at 750 (quoting
23 *Christoffersen v. Washington State Air National Guard* (9th Cir. 1988) 855 F.2d 1437, 1444).)

24 Further, in *Estes v. Monroe, supra*, the Third District Court of Appeal has expressly applied
25 the *Feres* doctrine framework in concluding that a wrongful termination claim brought by a state
26 active-duty service member was barred, recognizing that “[c]ourts are loath to interfere with
27 military decision making and thereby compromise the combat readiness of the military.” (*Estes*,
28 at 1359.) Under the *Feres* doctrine, as the Court of Appeal has confirmed it applies to the
29 military forces of the State of California, Plaintiff’s claims against the CMD, Major General
30 Beevers and Governor Newsom are barred. (*Feres*, at 146; *Estes*, at 1362.)

31 **B. The *Feres* Doctrine bars Plaintiff’s claims**

32 *Feres* applies here because, as a Brigadier General on state active-duty with the CMD and
33 as an officer in the California Air National Guard, Plaintiff was a service member in the military
34 service of the State of California. (See Mil. & Vet. Code, §§130, 141.5 and 142 [governs service
35 members serving under SAD orders].) While serving on state active-duty, a State of California
36 service member remains “subject to nearly all of the same discipline and working conditions as
37 members of the federally recognized [National] Guard.” (*Frey v. California* (9th Cir. 1993) 982

1 F.2d 399, 403-404; see also Mil. & Vet. Code, § 389 et. seq. and § 564 [for privileges enjoyed by
2 state active-duty service members]; and see Mil. & Vet. Code § 450 et seq. and §§ 550, 551, and
3 560 [for discipline of state active-duty service members, including jurisdiction to subject them to
4 court-martial for criminal misconduct].)

5 Plaintiff's entire lawsuit against the CMD and Major General Beevers is a challenge to the
6 decision to terminate his status as a state active-duty service member, conduct appropriate
7 disciplinary and qualification proceedings, and regulate the military environment, all of which
8 would involve judicial review of discrete military personnel decisions, which would necessarily
9 implicate military reasoning and judgment. (See FAC, 2:6-10, 2:19-21, 4:12-5:11, 5:28-6:2, 6:7,
10 6:12-17, 7:14-16, 8:3-5.) Resolving that challenge would require this Court to second-guess
11 military decisions and intrude into military affairs--actions that *Estes* held California courts
12 should refrain from engaging in. (*Estes*, at 1359.) Thus, Plaintiff's dispute of a military personnel
13 decision to terminate his state active-duty service and related actions falls squarely within the
14 ambit of the *Feres* doctrine, because a challenge to the decision to investigate and terminate
15 Plaintiff's service requires "a fact-specific inquiry into an area affecting military order and
16 discipline, which implicates all the concerns upon which *Feres* [and progeny] are premised."
17 (*Watson v. Arkansas Nat. Guard* (8th Cir. 1989) 886 F.2d 1004, 1010 (*Watson*).)

18 In essence, Plaintiff is asking this court to review and second guess military chain of
19 command decisions to investigate allegations of wrongdoing by a military officer overseeing over
20 4,900 CMD personnel, undertake military personnel actions, reassign Plaintiff, secure military
21 facilities, and terminate Plaintiff's state active-duty service. These decisions are inherently
22 internal military personnel matters that involved military expertise. Permitting litigation of
23 Plaintiff's claims would put the CMD in limbo and negatively impact Major General Beevers'
24 and other senior military leaders' ability to ensure readiness and to staff the CMD and other
25 senior military leaders' ability to ensure readiness and to staff the CMD and California Air
26 National Guard using best military judgment as the Commander and senior leaders of those
27 forces.

28 Moreover, resolving Plaintiff's claims would require this Court to evaluate and rule on
29 Major General Beevers' military decision-making, judgment, and expertise. This type of
30 disruption to the military is exactly what the *Feres* doctrine was designed to prevent. The Court of
31 Appeal has stated that as in *Feres*, "we must be 'concern[ed] with the disruption of the "[t]he
32 peculiar and special relationship of the soldiers to his superiors"' that might result if the soldier
33 were allowed to hale his superiors into court[.]'" (*Estes*, at 1359 [internal citation omitted].)

34 "Judicial review of a discrete military personnel decision [] involves a fact-specific inquiry
35 into an area affecting military order and discipline and implicating all the concerns on which
36 *Feres* [and progeny] are premised." (*Watson, supra*, at 1010.) *Feres*, *Estes*, and their progeny bar
37

1 Plaintiff's claims in their entirety. Defendants' demurrer should therefore be sustained without
2 leave to amend as to all eight causes of action of Plaintiff's First Amended Complaint.

3 **II. PLAINTIFF CANNOT STATE A CLAIM BECAUSE FEHA, LABOR CODE SECTION**
4 **1102.5 AND MILITARY AND VETERANS CODE SECTION 56 DO NOT PROVIDE**
5 **REMEDIES TO SERVICE MEMBERS**

6 Even if the *Feres* doctrine does not foreclose all of Plaintiffs' claims, Plaintiffs' first
7 through seventh causes of action premised on FEHA fail because FEHA remedies do not apply to
8 state active-duty service members. Moreover, as more fully discussed below, the same holds true
9 for the fifth cause of action for retaliation premised on Labor Code Section 1102.5 and Military
10 and Veterans Code section 56.

11 **A. Plaintiff's FEHA and wrongful termination in violation of public policy**
12 **claims are barred**

13
14 In *Frey v. State of California, supra*, the Ninth Circuit held that the Age Discrimination in
15 Employment Act (ADEA) does not apply to service members on state active-duty. (See *Frey,*
16 *supra*, 982 F.2d 399.) In upholding the dismissal of Frey's complaint for failing to state a claim,
17 the Ninth Circuit found that what mattered was Frey's status as a service member of the
18 California state militia. (*Id.* at pp. 403-404.)

19 Citing *Frey*, the Court of Appeal in *Estes* expressly held that FEHA remedies do not apply
20 to state active-duty service members when the challenged personnel action is incident to or arises
21 from military service. (*Estes*, at 1365.) *Estes* sued the California National Guard and asserted a
22 claim for wrongful termination in violation of a public policy (a tort) alleging that he was
23 wrongfully terminated from state active-duty service due to his disability. (*Id.* at p. 1351.) The
24 Court of Appeal stated that although plaintiff did not sue under FEHA, "the viability of plaintiff's
25 [wrongful termination] tort claim is tethered to the meaning of the FEHA." (*Id.* at p. 1355.) The
26 court, therefore, analyzed whether FEHA applied to service members. (*Id.* at pp. 1355-1360.)

27 The Court noted several reasons for concluding that FEHA did not apply to service
28 members. First, the Court recognized the special nature of military life — the need for
29 unhesitating and decisive action by military officers and equally disciplined responses by enlisted
30 personnel — would be undermined by a judicially created remedy exposing officers to personal
31 liability at the hands of those they are charged to command." (*Estes* at 1359 (quoting *Chappell v.*
32 *Wallace* (1983) 462 U.S. 296, 303-304).) This is consistent with the concern that courts have
33 about disrupting the superior-subordinate relationship if a service member were allowed to "hail
34 his superiors into court." (*Id.*)

35 Also, the Court noted that the Legislature has not expressed an intent to extend FEHA
36 remedies to service members. (*Estes*, at 1630.) This is important because in California "[t]he
37 militia is governed by laws relative to military affairs and not by laws regulating civil matters

1 unless an unmistakable intention to the contrary clearly appears.” (*Martin v. Riley* (1942) 20
2 Cal.2d 28, 36.) Consistent with this principle, the *Estes* court cautioned that under “the *Feres*
3 doctrine, we must be careful not to create a remedy for soldiers, including National Guard
4 members, that the Legislature did not intend to provide.” (*Estes*, at 1360.) In this regard, the
5 *Estes* court stated that “the Legislature will have to explicitly extend a FEHA remedy to military
6 personnel to overcome a judicial predisposition to defer to military wisdom.” (*Id.*)

7 The *Estes* court ultimately concluded that “FEHA does not provide remedies to National
8 Guard members on state active-duty when the challenged personnel action is incident to military
9 service.” (*Id.*) Personnel actions involving termination are “incident to service as a matter of
10 law.” (*Id.*) Therefore, defendant’s demurrer was properly sustained without leave to amend. (*Id.*)

11 Here, as a state active-duty member of the California National Guard, Plaintiff is
12 challenging the personnel decision to essentially investigate, take military action and terminate
13 him. (FAC, 2:1-10.) As established by *Estes*, these personnel actions were incident to military
14 service. Therefore, as a matter of law, Plaintiff cannot state a claim under FEHA. Thus, the
15 demurrer to the six FEHA causes of action, and the seventh cause of action for wrongful
16 termination in violation of public policy premised on FEHA, should be sustained without leave to
17 amend. (See *Estes*, *supra*, at 1365 [affirming the trial court’s granting of a demurrer without leave
18 to amend].)

19 **B. Plaintiff’s fifth cause of action for retaliation under Labor Code section**
20 **1102.5 and Military and Veterans Code section 56 are barred**

21 Although there is no case law construing Labor Code Section 1102.5 as applied to service
22 member claims against the CMD or its leadership, each of the reasons articulated by *Estes* for
23 concluding the FEHA does not cover the CMD and its service members applies with equal force
24 to Plaintiff’s fifth cause of action for retaliation premised on Labor Code section 1102.5. It
25 would be non-sensical to conclude that FEHA’s retaliation provisions do not apply to the CMD
26 and its service members, but that the Labor Code whistleblower retaliation provisions do.
27 Allowing that claim to go forward would interfere all the same with the military department’s
28 operations and personnel decisions. Moreover, there has been no action by the Legislature to
29 expressly extend Labor Code remedies to CMD service members. Accordingly, the rationale of
30 *Estes* applies equally here and Plaintiff’s fifth cause of action should be dismissed.

31 With respect to Plaintiff’s citation of Military and Veteran’s Code section 56, nothing in
32 that statute provides a private right of action. As the Fourth District Court of Appeal noted in
33 *Stirling v. Brown* (2018) 18 Cal.App.5th 1144, 1154, Section 56 does three things: prohibits a
34 person from restricting a CMD member from communicating with specified persons (including
35 the inspector general and the Governor), prohibits retaliatory personnel actions, and sets forth
36 procedures and rights by which allegations made by CMD members are to be investigated and
37 reported upon. Nothing in that provision suggests that there is a private right of action for an

1 alleged violation. To the contrary, the sole remedy provided for in the statute is for the Inspector
2 General who receives an allegation of retaliation to further investigate and refer such allegations
3 to the Chief of the National Guard Bureau and the Governor. (Mil. & Vet. Code, § 56(d).)
4 Accordingly, to the extent the fifth cause of action is grounded in Military and Veteran's Code
5 section 56, that claim fails as a matter of law.

6 **III. PLAINTIFF'S WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY AND**
7 **EQUAL PROTECTION CLAIMS ARE BARRED BY SOVEREIGN IMMUNITY**
8

9 Plaintiff's seventh cause of action for wrongful termination in violation of public
10 policy and eighth cause of action for violation of the equal protection clause of the California
11 Constitution against the CMD are barred, because CMD, as a state public entity, is immune from
12 liability against any claims that are not expressly and specifically allowed by statute. (Gov. Code,
13 §815.) California law is very clear that "except as otherwise provided by statute" public entities
14 are not subject to liability for tortious injuries caused by a "public entity or a public employee or
15 any other person." (Gov. Code, §815.) Government liability can only be based on statutes that
16 specifically allow for it, not on common law. (See *Miklosy v. Regents of Univ. of Cal.* (2008) 44
17 Cal.4th 876, 899 (*Miklosy*); *Zelig v. Cnty of Los Angeles* (2002) 27 Cal.4th 1112, 1127.)
18 Plaintiff's common law claim for wrongful termination in violation of public policy, which is
19 duplicative and premised on the same alleged termination, fails as a matter of law because the
20 CMD is immune from liability against any claims that are not expressly and specifically allowed
21 by statute. (See *C.A. v. William S. Hart Union High School District* (2012) 52 Cal.4th 861, 868;
22 Gov. Code, §§815, subd. (a), 11000.) Likewise, Plaintiff's eighth cause of action, couched as an
23 equal protection violation, is in actuality a wrongful termination in violation of the public policy
24 premised on the equal protection clause of article I, section 7, and is barred by sovereign
25 immunity. (See *Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320, 324, 329
26 [Government Claims Act bars common law actions against public entities for wrongful
27 termination in violation of public policy set forth in state constitutional provisions (Const. Art. 1,
28 §§ 1, 8) affirming that people have inalienable rights, and stating that a person may not be
29 disqualified from entering or pursuing employment because of sex, race, creed, color, or national
30 or ethnic origin.].)

31 In his seventh and eighth causes of action, Plaintiff essentially alleges that he was
32 wrongfully terminated by the CMD in violation of the public policies set forth in state and federal
33 laws, including article I section 7. (FAC, ¶¶96, 106.) No statute specifically authorizes such
34 claims against a state entity. (Gov. Code, §815; *Miklosy, supra*, at 899-901 [foreclosing common
35 law claim of wrongful termination in violation of public policy against state entity]; *Eastburn v.*
36 *Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183 [applying section 815 immunity
37 to torts arising under general tort statute of Civil Code section 1714].)

1 In *Miklosy*, the California Supreme Court explained that the Government Claims Act
2 (Government Code section 810 *et seq.*), the Legislative Committee Comment to Government
3 Code section 815, and case law all preclude common law claims against public entity employers:

4 The Government Claims Act (§810 *et seq.*) establishes the limits of common law
5 liability for public entities, stating: “Except as otherwise provided by statute: [¶] (a) A
6 public entity is not liable for an injury, whether such injury arises out of an act or
7 omission of the public entity or a public employee or any other person.” (§815, subd.
8 (a).)

9 The Legislative Committee Comment to section 815 states: “This section abolishes
10 *all common law or judicially declared forms of liability for public entities*, except
11 for such liability as may be required by the state or federal constitution, e.g., inverse
12 condemnation...” (Legis. Com. Com., 32 West’s Ann. Gov. Code (1995) foll. §815,
13 p. 167, italics added.)

14 **Moreover, our own decisions confirm that section 815 abolishes common law**
15 **tort liability for public entities.** (See *Eastburn v. Regional Fire Protection Authority*
16 (2003) 31 Cal.4th 1175, 1179; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112,
17 1127-1128; see also *Adkins v. State of California* (1996) 50 Cal.App.4th 1802, 1817–
18 1818; *Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal.App.3d
19 859, 866–867.)

(*Miklosy*, at 899, italics in original, bold emphasis added.)

20 The Legislative Committee Comment to Section 815 also states that “**the practical effect**
21 **of this section [Section 815] is to eliminate any common law governmental liability for**
22 **damages arising out of torts.**” (Legis. Com. Com., West’s Ann. Gov. Code, §815 (1995),
23 emphasis added.) California courts have repeatedly held that state employees may not assert
24 claims for wrongful termination in violation of public policy. (*Miklosy*, at 900 [“section 815 bars
25 *Tameny* actions against public entities”]; *Ross v. San Francisco Bay Area Rapid Transit Dist.*
26 (2007) 146 Cal.App.4th 1507, 1514.) Plaintiff’s wrongful termination claims are barred by the
27 doctrine of sovereign immunity.

28 **IV. PLAINTIFF’S HARASSMENT CLAIM AGAINST MAJOR GENERAL BEEVERS IS BARRED**
29 **BECAUSE MILITARY AND VETERANS CODE SECTION 392 IMMUNIZES MEMBERS OF**
30 **THE MILITIA FOR ACTS DONE IN THE PERFORMANCE OF THEIR DUTIES**

31 “Members of the militia in the active service of the State shall not be liable for any act or
32 acts done by them in the performance of their duty.” (Mil. & Vet. Code, § 392, subd. (a).) Indeed,
33 Plaintiff’s allegations against Major General Beevers are premised on alleged acts taken in their
34 official capacity. (FAC, ¶5.) As stated in the First Amended Complaint, Major General Beevers’
35 purported unlawful conduct was the exercise of his military duties and discretion as a
36 commanding officer. Decisions regarding initiating an administrative investigation, taking
37 corrective action against military personnel under their supervision, assignment or placement of

1 service members, taking disciplinary action, securing military facilities and military service
2 separation are all decisions and acts done in the performance of their respective duties. (FAC,
3 4:12-5:11, 5:28-6:2, 6:7, 6:12-17; 7:14-16.)

4 Section 392's immunity is consistent with other law establishing that "commonly
5 necessary personnel management actions . . . do not come within the meaning of harassment."
6 (*Reno v. Baird* (1998) 18 Cal.4th 640, 646-647 (*Reno*); *Janken v. GM Hughes Electronics* (1996)
7 46 Cal.App.4th 55, 64-65 [interpreting FEHA].) Based on immunity, Major General Beevers
8 should be dismissed from this action.

9 **V. PLAINTIFF'S EIGHTH CAUSE OF ACTION FOR VIOLATION OF THE EQUAL**
10 **PROTECTION CLAUSE UNDER THE CALIFORNIA CONSTITUTION FAILS FOR**
11 **MULTIPLE OTHER REASONS**

12 As stated above, Plaintiff's eighth cause of action for an equal protection violation under
13 article 1, section 7 of the California Constitution merits dismissal as it is barred by the *Feres*
14 doctrine and sovereign immunity. Plaintiff's equal protection claim should also be dismissed
15 because it's not actionable against Defendant the CMD, it is uncertain, the government claim
16 presentation requirements were not satisfied, and the addition of this new claim is improper.

17 **A. Claim is not actionable against Defendant the CMD, a state agency**

18 An equal protection violation claim for damages is not actionable against a state agency.
19 (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 525 (*Gates*) [no cause of action for personal
20 injury damages for violations of the equal protection provision of article I, section 7 of the
21 California Constitution]; see also *Katzberg v. Regents of the Univ. of Cal.* (2002) 29 Cal.4th 300,
22 329 (*Katzenberg*).)

23 In *Katzenberg*, the California Supreme Court held that there is no right of action for
24 damages for an alleged violation of the due process clause of article I, section 7 of the California
25 Constitution. (*Katzberg*, 29 Cal.4th at p. 329.) The Court held that "there was nothing in the
26 language of article I, section 7, subdivision (a), nor was there any evidence in that section's
27 legislative history, 'from which we might find within that provision, an implied right to seek
28 damages for a violation of the due process liberty interest.'" (*Lu v. Hawaiian Gardens Casino,*
29 *Inc.* (2010) 50 Cal.4th 592, 602, quoting *Katzberg*, 29 Cal.4th at p. 324.) Before *Katzberg*, several
30 Courts of Appeal had adopted the same rule. (See, e.g., *Javor v. Taggart* (2002) 98 Cal.App.4th
31 795, 807; *Carlsbad Aquafarm, Inc. v. State Dept. of Health Services* (2000) 83 Cal.App.4th 809,
32 823; *Bradley v. Medical Bd. of Cal.* (1997) 56 Cal.App.4th 445, 462-463.)

33 Similarly, in *Gates*, the Second District Court of Appeal held that there is no cause of action
34 for damages for violation of the equal protection provisions of article I, section 7 of the California
35 Constitution. (*Gates*, 32 Cal.App.4th at p. 516; see also *Javor v. Taggart* (2002) 98 Cal.App.4th
36 795, 807 [stating that it "is beyond question that a plaintiff is not entitled to damages for a
37 violation of the due process clause or the equal protection clause of the state Constitution"].)

1 The court in *Gates* explained that “[t]he California Supreme Court has permitted the imposition
2 of damages for a violation of a provision of the California Constitution when the voters have
3 intended such,” and found “no evidence of any intent on the part of the voters to permit the
4 recovery of personal injury damages as a result of a violation of the equal protection provisions of
5 the California Constitution.” (*Id.* at p. 517.) Thus, Plaintiff’s equal protection violation claim
6 should be dismissed.

7 **B. Claim fails to plead sufficient facts and is uncertain**

8 From the face of the First Amended Complaint, it is apparent that the cause of action fails
9 to allege a facial equal protection violation. Plaintiff’s eighth cause of action fails to allege either
10 a facial or an as-applied violation under the California equal protection clause. “The concept of
11 equal protection recognizes that persons who are similarly situated with respect to a law’s
12 legitimate purposes must be treated equally.” (*People v. Valencia* (2017) 3 Cal.5th 347, 376; Cal.
13 Const., art. I, §7.) A meritorious equal protection claim must demonstrate “that the state has
14 adopted a classification that affects two or more similarly situated groups in an unequal manner”
15 through an enactment of a law or regulation. (*People v. Morales* (2016) 63 Cal.4th 399, 408.)
16 “Similarly situated” in this context means that the compared groups are “‘similarly situated for
17 purposes of the law challenged.’” (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Here,
18 Plaintiff fails to identify or challenge a law allegedly enacted by the state or implemented by the
19 CMD that was applied unequally to Plaintiff and persons similarly situated. Thus, Plaintiff’s
20 eighth cause of action fails to allege either a facial or an as-applied violation under the California
21 equal protection clause. In the absence of supporting allegations, Plaintiff has not set forth any
22 basis to find an equal protection violation under the California Constitution. Accordingly, the
23 demurrer to this cause of action should be sustained without leave to amend.

24 **C. Claim barred for failure to satisfy government claim presentation requirement**

25 Under the Government Claims Act, failure to timely present a claim for money or damages
26 to a public entity bars a plaintiff from filing a lawsuit against that entity. (*City of Stockton v.*
27 *Superior Court* (2007) 42 Cal.4th 730; *State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234.)
28 Government Code section 911.2 requires that a claim be filed “not later than six months after the
29 accrual of the cause of action,” otherwise the lawsuit is barred. (Gov. Code, § 911.2, subd. (a);
30 *City of Stockton v. Superior Court, supra*, 42 Cal.4th 730; *Moore v. Twomey* (2004) 120
31 Cal.App.4th 910, 913; Gov. Code, §901.) Plaintiff’s failure to show compliance with the tort
32 claim process or an acceptable excuse for failure to comply constitutes a failure to state a cause of
33 action. (*State v. Superior Court (Bodde), supra*, 32 Cal.4th at p. 1239.) Filing a timely claim is
34 not merely a procedural requirement, but “a condition precedent to the claimant’s ability to
35 maintain an action against the public entity.” (*Shirk v. Vista Unified School Dist.* (2007) 42
36 Cal.4th 201, 209; *Willis v. Reddin* (9th Cir. 1969) 418 F.2d 702.)

37 The government claim requirement applies to “all forms of monetary demands, regardless

1 of the theory of the action....” (*State of California v. Superior Court* (2004) 32 Cal.4th 1234,
2 1237.) Plaintiff seeks monetary damages: “Magram has suffered and continues to suffer
3 substantial harm, including but not limited to lost wages, lost benefits, damage to reputation, and
4 emotional distress.” (FAC, ¶108.) These constitute claims for “money or damages,” and are
5 within the ambit of the claim requirements of the Government Claims Act. (Gov. Code, § 945.4.)
6 Such claims do not fall under the Government Claims Act exception for claims for “fees, salaries,
7 wages, mileage, or other expenses and allowances.” (Gov. Code, § 905, subd. (c).) That exception
8 applies to claims for wages that are earned but unpaid, not potential wages lost due to wrongful
9 termination or similar adverse employment action. (*Loehr v. Ventura County Community College*
10 *Dist.* (1983) 147 Cal.App.3d 1071, 1080-1081.) Plaintiff filed his only government claim on or
11 about June 27, 2023, but that government claim failed to include a claim for damages premised
12 on alleged violations of the equal protection clause. (Defendant’s Request for Judicial Notice in
13 Support of Its Demurrer to First Amended Complaint Number 1 (“**RJN 1**”)); Franco Decl., ¶5.)
14 Nowhere in Plaintiff’s complaint does he allege that he ever filed a government claim that
15 satisfied the claim presentation requirements for his equal protection violation claim. Thus,
16 Plaintiff’s equal protection violation claim should be dismissed.

17 **D. Claim is an improper new cause of action**

18 Plaintiff’s addition of his eighth cause of action for violation of the equal protection clause
19 of the California Constitution is improper as it is a new distinct cause of action that was not pled
20 in the original complaint. (See *Bowman v. Wohlke* (1913) 166 Cal. 128, 129.) Plaintiff added his
21 eighth cause of action in November 2024 long after Defendant demurred to Plaintiff’s original
22 complaint. As a matter of law, an amended complaint must not state a new and distinct cause of
23 action from that contained in the original complaint. (*Bowman v. Wohlke, supra*, 166 Cal. 128.)
24 As discussed above, an equal protection violation claim requires Plaintiff to show that through
25 legislation or regulation, the state has adopted a classification that affects two or more similarly
26 situated groups in an unequal manner. These elements are unique to an equal protection violation
27 claim. Thus, Plaintiff’s eighth cause of action is an impermissible new distinct claim.

28 Moreover, assuming arguendo that Plaintiff’s June 27, 2023 government claim included his
29 equal protection violation claim for damages, Plaintiff was required to file an civil action on that
30 claim on or before February 7, 2024, within six months from the time Plaintiff’s government
31 claim was rejected to file his lawsuit. (Gov. Code, §§911.6, subd. (c), 945.6.) It is well settled that
32 the commencement of an action upon a given cause does not stop the running of the statute of
33 limitations against a wholly different cause of action, and hence amendments attempting to set up
34 such different cause of action should not be allowed. (See *Lambert v. McKenzie* (1901) 135 Cal.
35 100, 101-103; *Ridley v. Young* (1944) 64 Cal.App.2d 503, 509; *McKnight v. Gilzean* (1938) 29
36 Cal.App.2d 218, 220-221; *Burnett v. Boucher* (1951) 108 Cal.App.2d 37, 38.) Plaintiff’s timely
37 filing of his first seven causes of action does not toll the statute of limitations for his equal

1 protection violation cause of action. Plaintiff added his eighth cause of action on or about
2 November 27, 2024, which is beyond the statute of limitations. Thus, Plaintiff's eighth cause of
3 action is untimely and therefore barred under either statute of limitations, and is therefore barred.
4 Accordingly, the demurrer to Plaintiff's constitutional claim should be sustained without leave to
5 amend.

6 CONCLUSION

7 Plaintiffs' claims are barred for lack of subject-matter jurisdiction under *Feres*, and Plaintiff
8 has failed to state any claims in his complaint regardless. Therefore, this demurrer should be
9 sustained without leave to amend because amending would be futile.

10 Dated: February 14, 2025

Respectfully submitted,

11
12 ROB BONTA
13 Attorney General of California
14 GARY S. BALEKJIAN
Supervising Deputy Attorney General

15
16 Lorinda D.
17 Franco

Digitally signed by
Lorinda D. Franco
Date: 2025.02.14
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18 LORINDA D. FRANCO
19 Deputy Attorney General
20 *Attorneys for Defendants Major General*
21 *Matthew P. Beevers, in his official capacity,*
22 *the California Military Department,*
23 *erroneously sued herein as the State of*
24 *California, the State of California, acting by*
25 *and through the California Military*
26 *Department, and Governor Gavin Newsom,*
27 *in his official capacity*
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1. I am an attorney duly licensed to practice law before the courts of the State of California, and am a Deputy Attorney General with the Office of the Attorney General of the State of California, counsel of record for Defendants Major General Matthew P. Beevers, in his official capacity, the California Military Department, erroneously sued herein as the State of California, the State of California, acting by and through the California Military Department, and Governor Gavin Newsom, in his official capacity. I have personal knowledge of the facts set forth below and submit this declaration in support of Defendants' Demurrer to Plaintiff's First Amended Complaint for Damages.

3. Plaintiff's counsel, Joe Singleton, and I had two telephone discussions on June 14 and 24, 2024, and exchanged emails on or about June 14 and 24, 2024, January 2, 2025, and February 12, 2025.

4. Plaintiff's counsel agreed that Defendants may serve and file their demurrer on or before February 14, 2025.

5. On or about March 8, 2024, I instructed Akiko Syp, a Senior Legal Analyst with the Office of the Attorney General, to have a Public Records Act request submitted to the Department of General Services-Government Claims Program to determine if Plaintiff Jeffrey Magram filed a government claim for damages. I received copies of the email and letter that was sent to the Department of General Services-Government Claims Program on or about March 8, 2024 as they were transmitted. On or about March 14, 2024, I received the records of the Department of General Services-Government Claims Program in response to the March 8, 2024 Public Records Act request via email. True and correct copies of the Records of the Department of General Services-Government Claims Program are attached as **RJN 1** to Defendant's Request for Judicial Notice in Support of Its Demurrer to the First Amended Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of February 2025 in Los Angeles County, California.

Lorinda D. Franco

Lorinda D. Franco

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Magram (Ret.), Brigadier General Jeffrey W. v. State of California**

Case No.: **24CV009096**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On February 14, 2025, I served the attached **DEFENDANTS' NOTICE OF DEMURRER, DEMURRER AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES1; DECLARATION OF LORINDA D. FRANCO** by transmitting a true copy via electronic mail, addressed as follows:

Joseph W. Singleton, Esq.
JWS, PC

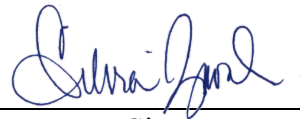
E-mail Address:

joesingleton.esq@verizon.net

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 14, 2025, at Los Angeles, California.

Silvia Zavala

Declarant



Signature