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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CALIFORNIA CORRECTIONAL PEACE  
OFFICERS' ASSOCIATION,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

A113519

(San Francisco County  
Super. Ct. No. CGC 04-436452)

Plaintiff and appellant California Correctional Peace Officers' Association ("CCPOA") appeals entry of judgment in favor of the State of California ("State"), the California Youth and Adult Corrections Agency ("YACA"), the California Department of Corrections ("CDC") and Steve Westly, State Controller, sued in his representative capacity (collectively "respondents"). The trial court granted respondents' motion for judgment on the pleadings without leave to amend. We shall affirm.

**PROCEDURAL BACKGROUND**

On November 18, 2004, CCPOA filed its complaint alleging (1) breach of an oral contract and (2) enforcement of settlement agreement concerning the scheduling of CDC supervisors' shifts. On October 7, 2005, respondents brought a motion for judgment on the pleadings. In conjunction with their motion for judgment on the pleadings,

respondents also filed a Request for Judicial Notice.<sup>1</sup> Respondents requested the trial court take judicial notice of the following: (1) a copy of the Agreement between CCPOA and the State regarding the Amendment of the Bargaining Units 6 Memorandum of Understanding July 1, 2001, through July 2, 2006 (hereinafter "Agreement"); (2) a copy of Senate Bill 1110 (2004) [reflecting the Agreement]; (3) a copy of CCPOA's complaint. Additionally, respondents requested the trial court take judicial notice of the Ralph C. Dills Act (Government Code sections 3512 et seq.)<sup>2</sup>, as well as the Bill of Rights for State Excluded Employees (§ 3525 et seq.) governing the rights of excluded employees such as CDC supervisors.<sup>3</sup> In its opposition, CCPOA requested an opportunity to amend should the court grant respondents' motion.<sup>4</sup> The trial court heard oral argument on respondents' motion on November 1, 2005. On November 8, 2005, the trial court granted respondents' motion without leave to amend "[b]ased upon the pleadings filed in this case, the memorandum of points and authorities in support of and in opposition to the motion for judgment on the pleadings, requests for judicial notice, and the oral argument." Judgment was entered in favor of respondents on December 19, 2005, and Notice of Entry of Judgment was filed and served on December 27, 2005. CCPOA filed a timely Notice of Appeal.

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<sup>1</sup> In granting judgment on the pleadings, a trial court may rely not only on grounds appearing on the face of the complaint but also on matters properly amenable to judicial notice. (Code Civ. Proc., § 438, subd. (d).)

<sup>2</sup> Further statutory references are to the Government Code.

<sup>3</sup> Section 3513, subdivision (c) excludes supervisory employees from collective bargaining rights granted under the Ralph C. Dills Act (§§ 3512-3524), which generally governs relations between the state and its employees. Supervisors have limited rights of representation under the Bill of Rights for State Excluded Employees (§§ 3525-3539.5). (§§ 3530, 3533.)

<sup>4</sup> In its opposition, CCPOA also argued the trial court should deny respondents' request for judicial notice for failing to specify "the matters for which judicial notice is sought." CCPOA does not pursue this claim on appeal and has included the judicially noticed materials in its Appendix.

## FACTS

The complaint alleges CCPOA is the exclusive employee organization representing approximately 30,000 state employees in State Bargaining Unit 6, which includes all rank-and-file CDC peace officers; CCPOA also acts as a representative for certain CDC peace officers who are supervisors and managers of Unit 6 personnel.

The complaint further alleges the State approached CCPOA in May 2004 seeking employee concessions of over \$300 million. At that point, the terms and conditions of employment of CCPOA members were governed by an existing Memorandum of Understanding ("MOU").<sup>5</sup> Negotiations between the State and CCPOA began on May 11, 2004. Chief spokespersons for the State were DPA's Tim Virga and Bridget Hanson of the Youth and Adult Corrections Agency ("YACA"). According to the complaint, during negotiations "CCPOA representatives . . . indicate[d] that if a mutual accord was reached on the State's request for concessions, then CCPOA would agree to amend the MOU accordingly. [¶] CCPOA made it clear from the onset of negotiations that issues relating to supervisors would have to be a central part of any deal and that there would be no rank-and-file agreement unless supervisory employees received benefits."

The complaint alleges that on June 24, 2004, State and CCPOA representatives met in the Governor's office and "began to articulate a deal whereby rank-and-file wage concessions and the dropping of a grievance would be made in consideration for agreement on a number of rank-and-file and supervisor issues, including, but not limited to, supervisory post-and-bid." CCPOA wanted CDC supervisory employees to be able to "post-and-bid" for assignments on the same 70/30 split available to rank-and-file

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<sup>5</sup> The California Department of Personnel Administration's ("DPA") Labor Relations Division represents the Governor in all labor relations matters with respect to state employees. When DPA negotiates a collective bargaining agreement with the recognized employee organization, it becomes an MOU for that unit. An MOU is an official act of the Executive Branch. The existing MOU for Unit 6 was negotiated by the parties for years 2001-2006 and was approved by both the California State Legislature and CCPOA.

employees.<sup>6</sup> The complaint further alleges that at the conclusion of a further round of negotiations on June 30, 2004, the State and CCPOA reached a “global deal.”

The Agreement shows the final “global deal” was in the form of a series of separate Tentative Agreements covering a variety of subjects, each Tentative Agreement separately initialed by the representatives of the parties, and prefaced with a similarly initialed integration page stating the “agreement represents the full and complete understanding reached between the parties concluding on June 30, 2004[,]” and agreeing interpretation and application of the agreement is subject to grievance procedures. According to the complaint, the three major concessions agreed to by CCPOA under the global deal were as follows: first, CCPOA agreed to forestall a pay raise which its members were entitled to under the existing MOU, resulting in savings to the State of over \$100 million; second, CCPOA agreed to drop an existing grievance (worth about \$28 million) that its members should receive lunchtime pay like California Highway Patrol officers; third, CCPOA agreed to renegotiate a contract provision on the subject of Off-Post Training (worth \$6-8 million) by which CCPOA members could have 12 hours training “on post” even though they were entitled to receive 52 hours training annually away from their work facility.

The complaint alleges that in return for CCPOA’s concessions, the State agreed as part of the global deal to two benefits for CDC supervisors, viz., a pay raise to prevent “compaction” with the salaries of rank-and-file employees, and the 70/30 post-and-bid. However, the Agreement did not contain a signed or initialed Tentative Agreement covering the issues of supervisory salary or post-and-bid. According to the complaint, as the parties signed the deal, “CCPOA also requested that those parts of the global deal that concerned supervisors also be initialed.” The complaint states that after a caucus, the State’s negotiators informed CCPOA that they could not sign the Supervisors’ agreement

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<sup>6</sup> Under a ‘70/30’ split, 70 per cent of the supervisory post assignments at correctional facilities would be made at the choice of individual supervisors, leaving 30 per cent to be made at management’s discretion.

as it then existed, but needed to 'run the agreement past Agency' or words to that effect. It also states negotiator Brigid Hanson [YACA] asked Alexander and Weiss [lead CCPOA negotiators], to "trust me." The complaint alleges "[s]ince CCPOA had successfully negotiated prior deals with the State based on such representations by Ms. Hanson, it was prepared to enter into the wider agreement." It also alleges Tim Virga, the other State negotiator, said: "Don't worry, this virtually mirrors rank-and-file post-and-bid."

The complaint further alleges: After this global deal was struck, management representatives expected CCPOA to persuade its members to approve the deal by voting to amend the MOU accordingly and CCPOA expected "the State would act within a reasonable period of time to move the agreement through on its side." On July 2, 2004, CCPOA's State Board of Directors recommended approving the deal to the membership. CCPOA rank-and-file members were balloted on the deal. "Supervisory issues were not on the ballot. Nonetheless, CCPOA representatives promoted approval of the MOU modification, including supervisory post-and-bid, to the membership, since despite the requirements that rank-and-file issues be presented separately to the membership, the agreement was considered a 'global deal.'" The supervisory post-and-bid issue was of interest to rank-and-file members because it gave them a "stake in knowing who their supervisor would be." Rank-and-file members ultimately approved the deal, thereby granting the State \$108 million in concessions "in substantial part in exchange for supervisory '70/30' post-and-bid and the supervisory pay raise."

Further, the complaint states: "In early July 2004, the agreement, in the form of an amendment to the MOU, was sent, as required under the Ralph C. Dills Act (§§ 3512 et seq.), to the Legislature for ratification. Supervisory issues were not included in this package because CCPOA is not the exclusive certified representative for supervisors. Supervisory post-and-bid was, however, a subject of legislative hearings. The agreement regarding supervisory issues was not part of the amendment put before the Legislature because of the fact that it dealt with supervisory issues and not rank-and-file." The complaint states the Assembly and Senate approved the MOU amendments and the

Governor signed the bill on July 31, 2004. The complaint alleges that after the MOU amendments were ratified, "the State reneged on the agreement it had made" by imposing a supervisory post-and-bid ratio of 60/40 instead of 70/30. On these facts, CCPOA alleged causes of action for breach of contract and enforcement of settlement agreement. CCPOA prayed for an order requiring respondents to "implement supervisory post-and-bid in the '70/30' ratio agreed to by the parties, or, in other words, for specific performance of the agreement between the parties."

### DISCUSSION

"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. [Citations.] All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable matters may be considered. [Citation]" (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) Further, the court reviews the complaint liberally, giving it a "reasonable interpretation, reading it as a whole and its parts in their context." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1323; Code Civ. Proc., § 452.) Where the trial court grants judgment on the pleadings without leave to amend, we decide whether there is a reasonable probability that the defect in the complaint can be cured by amendment. (*Fiol v. Doellstedt, supra*, 50 Cal.App.4th at p. 1323.) If the defect can be cured, the trial court has abused its discretion and the judgment must be reversed. If not, there has been no abuse of discretion and the reviewing court must affirm. The plaintiff has the burden of proving that amendment of the complaint to state a cause of action is a reasonable possibility. (*Ibid.*)

#### A.

The essence of the complaint is that on June 30, 2004, the State entered into an oral agreement with CCPOA to allow 70/30 post-and-bid for CDC supervisors and

subsequently breached the agreement on August 13, 2004, when it announced a 60/40 post-and-bid arrangement for the supervisors. CCPOA avers its oral agreement with the State is enforceable on the facts alleged in the complaint under theories of promissory and equitable estoppel because it served as an inducement to enter into the separate written agreement amending the MOU. Accordingly, CCPOA contends the trial court erred by granting judgment on the pleadings. CCPOA's contention cannot prevail.

First, in our independent judgment, the facts alleged in the complaint do not support CCPOA's claim the State entered into a binding oral contract. The complaint states CCPOA wanted the State's negotiators to sign off on 70/30 post-and-bid procedures for CDC supervisors, but State negotiators specifically declined to do so, stating they "needed to 'run the Agreement past Agency,' or words to that effect." Clearly, that is why there is no signed or initialed Tentative Agreement in the global deal which addresses the issue of supervisory post-and-bid. Indeed, the complaint acknowledges State negotiators told CCPOA "they could not sign the Supervisor's [*sic*] agreement as it then existed[.]" After discounting contentions, deductions, and conclusory statements (*Kapsimallis v. Allstate Ins. Co. supra*, 104 Cal.App.4th at p. 672), we conclude the statements attributed to State negotiators in the complaint do not amount to an unequivocal and definite promise to perform as alleged by CCPOA. Accordingly, the facts alleged in the complaint fail to establish the existence of an oral contract. (See generally 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §§ 137-138 [discussing the rule requiring a definite offer with reasonable certainty of performance]; see also *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 771 ["An amorphous promise to 'consider' what employees at other companies are earning cannot rise to the level of a contractual duty"].)

Nor may CCPOA invoke promissory or equitable estoppel by characterizing the State negotiators' statements as an inducement to enter the written agreement. The elements of a promissory estoppel claim are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured

by his reliance.” (*Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60 Cal.App.3d 885, 890.) “To be binding, the promise must be clear and unambiguous. [Citations.]” (*Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th 1179, 1185.) Here, any promissory estoppel claim fails because the facts as alleged do not show the State made a clear and unambiguous promise.

An essential element of equitable estoppel is that the party to be estopped, here the State, “intended by [its] conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended.” (*Medina v. Board of Retirement, [Los Angeles County Employees Retirement Assn.]* (2003) 112 Cal.App.4th 864, 868 (*Medina*)). We fail to see how CCPOA could reasonably believe the State negotiators intended CCPOA to rely on an oral undertaking to bind the State to a 70-30 post-and-bid for supervisory personnel, particularly since the State negotiators had specifically refused to endorse a Tentative Agreement to that effect. Doubtless the experienced CCPOA negotiators were thoroughly familiar with the statutory framework governing their negotiations with State representatives. CCPOA negotiators knew full well supervisory employees are excluded from collective bargaining rights and that they have only limited rights of representation under the Bill of Rights for State Excluded Employees. (§§ 3525-3539.5). Under the Bill of Rights for State Excluded Employees, supervisory employees are entitled only to meet-and-confer discussions on issues affecting conditions of their employment. The Bill of Rights for State Excluded Employees does not provide for binding collective bargaining agreements between organizations representing supervisory staff (here CCPOA) and the State. Accordingly, it was unreasonable for CCPOA negotiators to believe the State negotiators attempted to bind the State by means of an oral agreement covering supervisory post and bid procedures when such an agreement exceeds the scope of their statutory authority. (§ 3533 [“[S]tate employer shall consider as fully as it deems reasonable” representations by supervisory employee organization . . . . “The final determination of policy or course of action shall be the sole responsibility of the state employer.”].)

Indeed, “principles of estoppel may not be invoked to directly contravene statutory limitations.” (*Medina, supra*, 112 Cal.App.4th at p. 869.) Accordingly, “estoppel is barred where the government agency to be estopped does not possess the authority to do what it appeared to be doing.” (*Id.* at p. 870.) Thus, even if the facts in the complaint alleged the inducement necessary for equitable estoppel, which they do not, the above limitations mean any application of the doctrine against respondents is unwarranted. CCPOA claims it negotiated and bargained with management on behalf of CDC supervisors, and as a result of such negotiations the State contracted to provide 70/30 post-and-bid procedures for supervisors. Such a process, however, is directly contrary to the statute governing supervisory organizations representing supervisory employees. As noted above, section 3533 extends only “meet and confer” rights to supervisory employees. (§ 3533.) These are not collective bargaining rights. Rather, “meet and confer” means “the state employer shall consider as fully as it deems reasonable, such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.” (*Id.*) However, “[t]he final determination of policy or course of action shall be the sole responsibility of the state employer.” (*Id.*) Here, the final determination of the state employer was a 60/40 post-and-bid schedule for supervisory employees, and we will not disturb that final determination by applying equitable estoppel against the state. (*Id.* at pp. 868-869 [equitable estoppel may not be invoked to directly contravene statutory limitations].)<sup>7</sup>

In sum, the facts alleged in the complaint do not establish the existence of a binding oral contract between CCPOA and respondents governing supervisors’ post-and-

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<sup>7</sup> We reject CCPOA’s assertion the discussions here did not fall under the aegis of section 3533. CCPOA asserts the discussions at issue here “did not constitute meet-and-confer negotiations.” In fact, meet-and-confer discussions are the only type provided for under section 3533 between representatives of supervisory employees and the state.

bid procedures.<sup>8</sup> Nor is the State estopped under promissory or equitable principles from denying the existence of such an oral contract.<sup>9</sup>

**B.**

CCPOA also contends the trial court erred by granting judgment on the pleadings without giving it the opportunity to amend the complaint. However, “[t]he well-established rule is that a proposed amendment which contradicts allegations in an earlier pleading will not be allowed in the absence of ‘very satisfactory evidence’ upon which it is ‘clearly shown that the earlier pleading is the result of mistake or inadvertence.’ [Citations.]” (*American Advertising & Sales Co. v. Mid-Western Transport* (1984) 152 Cal.App.3d 875, 879 (*American Advertising*).

CCPOA states no new facts it would add to the complaint by amendment. Rather, CCPOA contends it should be permitted to amend to seek rescission [of the amended MOU now ratified by the Legislature]. Respondents point out a claim or prayer for rescission would merely add a remedy based on the same facts and the same causes of action already alleged in the complaint. In its reply brief CCPOA attempts to avoid that consequence, clarifying it “intends to contradict nothing in the complaint” but merely

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<sup>8</sup> Because the facts alleged in the complaint do not establish the existence of an oral contract, CCPOA’s cause of action for enforcement of settlement agreement similarly fails. Thus, we reject CCPOA’s contentions that the motion for judgment on the pleadings did not include this cause of action and that the trial court erred by dismissing it with the breach of contract claim.

<sup>9</sup> Accordingly, we need not address the parties’ contentions concerning the application of the parol-evidence rule to the alleged oral contract. However, we note the written agreement finalized by the parties on June 30, 2004, contains a signed integration clause stating it “represents the full and complete understanding reached between the parties.” Generally, the parol-evidence rule prohibits the introduction of extrinsic evidence to add to, vary, or contradict the terms of an integrated written instrument (Code Civ. Proc., § 1856; *Masterson v. Sine* (1968) 68 Cal.2d 222, 225), because the law presumes “‘a written contract supersedes all prior or contemporaneous oral agreements’ [citation].” (*Wagner v. Glendale Adventist Medical Center* (1989) 216 Cal.App.3d 1379, 1385.)

seeks to add a cause of action for “fraud in the inducement — the elements of which [it] has already properly alleged.” We beg to differ.

“The essential allegations for an action in fraud or deceit are false representation as to a material fact, knowledge of its falsity, intent to defraud, *justifiable* reliance and resulting damage.” (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.) Moreover, “allegations in a fraud action [¶] . . . must be specifically pleaded. This means: (1) general pleading of the legal conclusion of fraud is insufficient; and (2) every element of the cause of action for fraud must be alleged in full, factually and specifically, and the policy of liberal construction of pleading will not usually be invoked to sustain a pleading that is defective in any material respect. [Citation] ‘It is bad for courts to allow and lawyers to use vague but artful pleading of fraud simply to get a foot in the courtroom door.’” (*Ibid.*)

CCPOA’s complaint wholly fails to meet these pleading standards. It contains no facts that would support allegations State negotiators made representations with knowledge of their falsity and with an intent to defraud. Nor does CCPOA provide facts of which it had knowledge, but either by mistake or inadvertence failed to include in the complaint (*American Advertising, supra*, 152 Cal.App.3d at p. 879), which permit even an inference the State’s conduct during negotiations was fraudulent rather than above board and ethical.

**DISPOSITION**

The judgment is affirmed.

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Parrilli, J.

We concur:

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McGuinness, P. J.

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Pollak, J.