APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

EARNEST A. DAVIS, Plaintiff and Appellant, v. GOVERNMENT EMPLOYEES INSURANCE COMPANY et al., Defendants and Respondents.	E074317 (Super.Ct.No. RIC1806371) OPINION

APPEAL from the Superior Court of Riverside County. Chad W. Firetag, Judge. Affirmed.

Earnest A. Davis, in pro. per., for Plaintiff and Appellant.

Scali Rasmussen, John P. Swenson, and J. Stephen Lewis for Defendants and Respondents, Walter's Auto Sales and Service, Inc. and Conrad Castillon.

Law Office of Mark W. Hansen and Mark W. Hansen for Defendant and Respondent, Government Employees Insurance Company.

Plaintiff Earnest A. Davis sued a car repair shop, its manager, and his car insurance company alleging they engaged in a ploy to damage his convertible Porsche so that he couldn't afford to repair it and another customer of the repair shop could purchase it. On appeal, he challenges the trial judge's rulings sustaining the defendants' demurrers and dismissing his lawsuit in its entirety. We affirm. Davis's claims against the repair shop defendants are time-barred, and he forfeited his challenge to the insurance company's demurrer by not opposing it.

I

FACTS

A. *General Overview*

Before his claims were dismissed on demurrer, Davis filed four complaints over the course of this litigation. For a short time—to defend against the first round of demurrers—Davis was represented by counsel. For the remainder of the litigation, he represented himself, as he does on appeal.

The gravamen of Davis's lawsuit is his claim that defendants and respondents Walter's Auto Sales and Service, Inc. and their service manager Conrad Castillon (collectively, Walter's) intentionally vandalized his 1998 Porsche 993 Series 911 Carrera Cabriolet so they could pressure him into selling it to another customer. Later in the litigation, Davis added as a defendant his car insurance company, defendant and respondent Government Employees Insurance Company (GEICO), alleging they conspired with Walter's to deem his car a total loss.

According to Davis, his car sustained severe damage to its electrical system when a tow truck operator dispatched by GEICO placed the cables on the wrong battery terminals when trying to jump start the engine, resulting in an unusual electrical surge. GEICO selected Walter's to perform the repairs, and over the ensuing weeks issued checks for the parts and labor.

Davis claims that after Walter's installed a new passenger compartment main wiring harness (essentially fixing the issue), they engaged in the following ploy to get him to sell his car to another customer for a salvage price. First, they removed the main wiring harness they'd just installed and secretly shipped it back to the manufacturer. This, according to Davis made it extremely difficult and costly to install another harness because the existing one acts as a template for installing the new one. Next, they told Davis they couldn't complete the repair because they (1) couldn't connect the main harness to the wiring harness in the convertible top (commonly called the "top harness") because parts of the top harness had melted and (2) couldn't obtain a new top harness because that part was permanently out of stock. Walter's then told GEICO the car was nonrepairable and GEICO issued a total loss declaration, which resulted in the Department of Motor Vehicles (DMV) giving the car a salvage designation.

During the first round of demurrers, Riverside County Superior Court Judge Chad Firetag dismissed the claims against GEICO with prejudice because Davis failed to oppose the insurance company's demurrer. He also dismissed, without prejudice, the claims against Walter's on the ground they were time-barred under the applicable three-

year statute of limitations, because Davis alleged he'd learned of Walter's misconduct by *January 2015* at the latest and didn't sue until three years and three months later, in *April 2018*. When Davis filed an amended complaint that failed to cure the timing defect, the judge dismissed his claims against Walter's with prejudice.

The relevant allegations and proceedings before the trial judge are as follows.

B. *The Initial Complaint*

On April 3, 2018, Davis filed a Judicial Council form complaint for property damage against Walter's. He alleged that on August 20, 2014, they accepted his car and agreed to install a new passenger compartment main wiring harness, and that GEICO issued checks totaling about $14,000 to cover the repairs.

On September 22, 2014, Walter's sent Davis an email saying they installed the new harness and it was connected "to all power sources." But then, on November 6, 2014, Walter's changed course and sent him an email saying the installation hit a road block when they discovered portions of the top harness (to which the passenger compartment wiring harness needed to connect) had "melted in some spots." Davis alleged he knew this was a lie to "justify deeming the vehicle a total loss or a salvage vehicle, which reduced its value from $107,522 to $12,500." Davis explained he was a licensed mechanical engineer and had inspected the vehicle and saw there were no melted wires in the convertible top harness.

Davis alleged that the following day, November 7, 2014, Walter's "secretly removed" the passenger compartment wiring harness they had installed "as an act of theft, vandalism and sabotage of the repair" and "quietly shipped [the harness] back to a Porsche parts warehouse."

Then, on January 26, 2015, Castillon sent Davis an email saying the top harness for his car "is no longer available." Davis said he also knew this to be false because he had contacted a Porsche dealership in San Diego and confirmed the part "was not discontinued and could be ordered." Walter's then conveyed this false information to GEICO, which resulted in their deeming his car a total loss and a salvage title designation from the DMV.

Davis alleged that removing the passenger harness without simultaneously installing a new one is problematic because the old harness acts as a road map for installing the new one. He alleged it's extremely costly and difficult to install a wiring harness without that template. According to Davis, Walter's plan was to have his car deemed a salvage so they could sell it to another customer who was eager to purchase it and who "has a private garage larger than that of Walter's."

Davis did not name GEICO as a defendant or make any allegations of wrongdoing against the insurance company. He sought a total of $2.2 million in damages against Walter's and an order directing them to provide GEICO with accurate information about his car so that GEICO could provide it to the DMV.

C. *The First Amended Complaint (FAC)*

The FAC, filed on July 2, 2018, makes the same basic allegations of misconduct against Walter's but asserts a total of 12 causes of action. As relevant here, Davis alleged Walter's installed a new passenger compartment wiring harness then "secretly removed [it], . . . quietly repacked [it]" and "shipped it offsite" before the investigator from the Bureau of Automotive Repair could inspect it, in an attempt to convince the investigator they'd never even tried to install the part.

He again alleged Walter's sent him a "disingenuous" email on January 26, 2015, saying a new top harness was permanently unavailable. He added that he inspected his car at Walter's the following day—January 27, 2015—and to his shock and dismay "discovered [they] had completely removed the newly installed new wiring harness," leaving his car "vandalized."

Like the original complaint, the FAC did not name GEICO as a defendant or make any allegations of wrongdoing against the insurance company. Rather, Davis alleged only that GEICO had authorized and paid for the repairs, and later, had declared the car a total loss with the DMV in reliance on misinformation from Walter's.

D. *The Second Amended Complaint (SAC)*

The SAC, filed on November 30, 2018, asserted 16 causes of action against Walter's, and is 90 pages long with over 170 pages of attachments. This time, Davis named GEICO as a defendant because, as he explained in his motion for leave to amend, GEICO was the only entity who could restore his car's status with the DMV. The SAC asserted three causes of action against GEICO—fraud, insurance fraud, and a claim labeled "False Promise (CC § 3294)" (which appears to be a reference to punitive damages, which are authorized by Civ. Code, § 3294).

As with the previous two pleadings, the SAC alleged Walter's had intentionally sabotaged the repair of Davis's car so they could sell it at a salvage price to another customer. Davis again alleged Walter's sent him an email on January 26, 2015 saying they couldn't repair his car because the necessary top harness was permanently out of stock and that, the following day (January 27), he inspected his car and discovered they had vandalized it by removing the new wiring harness they had previously installed. He said that, moments after he discovered "the vandalism of his vehicle," Castillon told him there was a "special VIP client of Walter's" who wanted to buy his car and could afford the astronomic repair costs.

Davis said he emailed photos of his vandalized car to a mechanic named Loren Beggs at "a particular independent Porsche shop called '911 Design'" on January 27, 2015. After viewing the photographs, Beggs wrote him back the same day and said, "The original wire harness is removed from the car. I think that totals the car."

Davis repeated the allegation that he knew, based on his experience as a mechanical engineer, Walter's was lying when they told him on November 6, 2014 that parts of the top harness had melted. He explained that "from an engineering perspective, it's IMPOSSIBLE for the abnormal surge in electrical current to travel from the battery terminals, along circuitry in the vehicle's wiring harness that leads all the way to the top harness, to cause extensive damage in the cab top harness, without causing intermediate damage to wiring along the way." He said it was a "ridiculous insinuation" for Walter's to claim wires in the top harness melted due to the jumper cable incident "as that would violate physical laws of nature and Ohm's Law, in particular."

Davis also repeated the allegation that he knew Walter's was lying on January 26, 2015 when they told him the top harness was out of stock because—months earlier—he had emailed the service director of a San Diego Porsche dealership asking about the availability of the part. The director had responded on November 12, 2014 that the top harness could be ordered.

As for Davis's allegations against GEICO, in one place in the SAC he alleged "GEICO *conspired* with Walter's to use misinformation to wrongly deem [his car] a total loss," but in multiple other places he simply alleges that GEICO deemed his car a total loss based on the misinformation provided by Walter's. (Italics added.) Davis also alleged that the umpire appointed to determine the loss value of his car under his insurance contract with GEICO issued a binding award of "approximately $34,000," which he claimed was too low and should have been $107,522.

The SAC sought $1.1 million in damages.

E. *Walter's Cross-Complaint*

On January 18, 2019, Walter's filed a cross-complaint against Davis seeking $4,320 for unpaid work on the car plus daily storage fees. According to Walter's, after GIECO's claim adjuster authorized the electrical damage repair, they ran a diagnostic and determined the car's top harness was destroyed. They tried to repair the top harness over the next several months—to the tune of $4,320—but Porsche no longer manufactured it and they were unable to find another compatible one. Walter's informed Davis and GEICO of the issue and, on November 7, 2014, GEICO deemed the car a total loss.

On January 21, 2015, GEICO issued Walter's a two-party check requiring Davis's signature for $4,320 to cover the unsuccessful repair attempts, but Davis refused to sign. Walter's informed him they couldn't return his car until he signed the check, and on January 30, 2015, he entered into a written agreement with the repair shop to store his car on their premises for a daily fee. In the ensuing months, Walter's repeatedly made payment demands and gave Davis notice of the storage fees he was incurring. At the time of filing, Davis had not signed the check or picked up his car.

F. *Defendants' Demurrers*

Around the same time as the cross-complaint, both sets of defendants filed demurrers to the SAC. In response, Davis hired an attorney, Dennis Moore, to represent him, effective March 25, 2019.

Walter's demurrer argued, among other things, that Davis's claims were barred by the applicable three-year statute of limitations because his allegations demonstrated he knew of the alleged wrongdoing by at least January 27, 2015 yet didn't file his lawsuit until April 2018—nearly three months past the deadline to sue. Moore filed an opposition to Walter's demurrer asking for leave to file a third amended complaint asserting just two causes of action—trespass to chattels and negligence. He argued the delayed discovery rule should apply, claiming that although his client "learned the wiring harness was removed in January of 2015, *he did not learn that [removal] was a mistake or an error until the summer of July 2016.*" (Italics added.)

GEICO's demurrer argued Davis's claims against them failed as a matter of law and were time-barred. When Davis did not file an opposition to this demurrer, GEICO's counsel sent Moore an email informing him the filing deadline had passed and asking him if he intended to file an opposition. Moore never responded to the email, but did call GEICO's counsel several days later on May 6, 2019 and during that conversation confirmed he'd received the demurrer.

The day before the hearing, the trial judge issued a tentative ruling to sustain GEICO's demurrer with prejudice and Walter's with leave to amend. He explained he couldn't find anything in the SAC's 90 pages of allegations to support a valid claim against GEICO, adding "it is telling that [Davis's] new counsel has filed an opposition against the other defendant's demurrer . . . but not against GEICO." Citing the liberal policy supporting amendment, the judge explained he was inclined to give Davis an

opportunity to amend his claims against Walter's to show how the delayed discovery rule applied to a trespass to chattel and a negligence claim.

Walter's and GEICO requested oral argument on the tentative ruling, but Davis did not. At the hearing, Moore was silent during the discussion of GEICO's motions and, when asked by the judge, said he had nothing to add.[1] The judge adopted his tentative ruling, explaining he was giving Davis "one more opportunity" on the claims against Walter's "to see if [he] can plead around delayed discovery issues."

G. *The Third Amended Complaint (TAC)*

Davis filed the TAC on June 18, 2019, while still represented by Moore. It was eight pages long, asserted just two causes of action against Walter's—trespass to chattels and negligence—and alleged a different theory of wrongdoing than the three previous complaints. Whereas in the first three complaints Davis alleged Walter's installed a new wiring harness then removed it, the TAC claimed Walter's error was to completely remove the old, damaged harness before attempting to install the new one, making it impossible to install the new one. And, without explanation, the TAC omitted all the allegations that Davis knew Walter's was lying to him in November 2014 and January 2015.

Instead, under the heading, "Delayed Discovery," the TAC alleged Davis didn't learn that removing the damaged harness was negligent until over a year and a half later, in July 2016. It alleged Davis started "speaking with various customer service

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[1] GEICO filed two other motions that are not at issue here.

representatives, technicians, and mechanics from various Porsche Dealerships" and that "on or about July of 2016," he learned "that all of Porsche's technicians are trained to not remove the old wiring harness before installing the new wiring harness because [otherwise] technicians and mechanics will not know how a vehicle is wired."

On July 10, 2019, Moore stopped representing Davis, and Davis assumed his own representation.

On July 23, Walter's demurred to the TAC, arguing the three previous complaints contained judicial admissions that he knew Walter's had engaged in alleged misconduct by January 27, 2015 at the latest. Walter's argued Davis could not plead around these judicial omissions by omitting them without explanation and adding a conclusory allegation of a later discovery.

At the hearing on August 20, 2019, the judge said he agreed with Walter's but gave Davis an opportunity to explain why the allegations in the TAC contradict those in his previous complaints. Davis responded that he didn't uncover the conspiracy between Walter's and GEICO to sell his car to another customer until he was doing research to file the SAC. He said it was at that point he realized GEICO had intentionally selected chosen Walter's as the repair shop. He characterized the November 6, 2014 email about the melted wires in the top harness as the "smoking gun." And, contradicting the TAC's theory, he clarified that Walter's misconduct was not in removing the damaged passenger compartment wiring harness before installing the new one but in installing a new harness and then intentionally removing it so as to total the car.

The judge concluded the pleadings demonstrated the claims against Walter's accrued on January 27, 2015 at the latest, and he sustained the demurrer with prejudice.

II

ANALYSIS

A. *Standard of Review*

We independently review a ruling sustaining a demurrer without leave to amend, meaning "we exercise our independent judgment about whether the complaint alleges facts sufficient to state a cause of action under any possible legal theory." (*Moe v. Anderson* (2012) 207 Cal.App.4th 826, 830.) "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . [And] we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [cleaned up].)

B. *Davis Forfeited Any Opposition to GEICO'S Demurrer*

Davis argues the judge erred by sustaining GEICO's demurrer because they dispatched the negligent tow truck operator who caused the electrical damage and because they are contractually liable for repairing his car. Putting aside the fact that these were not the theories of liability he alleged in his complaint, Davis has forfeited his challenge to the judge's ruling by failing to object to the ruling (and in fact acquiescing to it) in the trial court.

"It is well established that issues or theories not properly raised or presented in the trial court may not be asserted on appeal, and will not be considered by an appellate

tribunal. A party who fails to raise an issue in the trial court has therefore [forfeited] the right to do so on appeal." (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 117; *Steele v. Totah* (1986) 180 Cal.App.3d 545, 551-553.) Because Davis failed to raise these—or any—arguments against GEICO's demurrer at the appropriate time in the trial court, he has waived the right to do so now. As we've seen, Davis did not file an opposition to GEICO's demurrer (even after GEICO asked if he planned to do so) nor did he request oral argument after receiving the judge's tentative ruling. And, when directly asked if he had anything to add at the hearing on GEICO's demurrer, Davis's attorney said no, thereby acquiescing in the judge's decision to sustain the demurrer.

The forfeiture rule applies with special force when the appealing party received the judge's tentative ruling and raised no objection to it. "It is axiomatic that a party may not complain on appeal of rulings to which it acquiesced in the lower court. . . . It is unfair to the trial judge and the adverse party to attempt to take advantage of an alleged error or omission on appeal when the error or omission could have been, but was not, brought to the attention of the trial court in the first instance. [Citations.] . . . . It follows that when a trial court announces a tentative decision, a party who failed to bring any deficiencies or omissions therein to the trial court's attention forfeits the right to raise such defects or omissions on appeal." (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 912, citing *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134.) Simply put, Davis had ample

opportunity to oppose GEICO's demurrer or object to the trial judge's ruling, but he didn't.

On appeal, Davis ridicules the judge's failure to understand his allegations, says the ruling was motivated by racism, and also says his attorney told him he "would NOT dare oppose the [judge's] 'personal opinion' directly," for fear of tarnishing his reputation among Riverside County judges. These arguments have no basis in the record, and Davis's self-serving assertions about what he claims his attorney told him are not evidence. What is clear to us from our review is the judge treated Davis and his counsel with dignity and respect throughout the proceeding.

As for Davis's disagreement with his attorney's decision not to oppose GEICO's demurrer, that is not a reason to excuse his forfeiture. A party is bound by their counsel's judgment call on tactical matters like whether to oppose a demurrer, and we hold Davis to that rule. (See, e.g., *Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 26 ["as a general matter clients are bound by the judgments and decisions of their chosen counsel"].) And, because we hold self-represented litigants "to the same standards as attorneys," it doesn't matter that he is no longer represented by counsel and represents himself on appeal. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation"].)

Next, we reject Davis's argument that the judge's ruling sustaining GEICO's demurrer impermissibly "overrules" the prior decision of a different judge to grant his motion for leave to add GEICO as a defendant. The argument conflates the pleading stage of litigation with the adjudication of a case's merits.

At the pleading stage, the law is designed to give plaintiffs the opportunity to bring their best case so that "each contested cause [may] be tried on its merits." (*County of Los Angeles v. Financial Casualty & Surety Inc.* (2015) 236 Cal.App.4th 37, 43; Code Civ. Proc., §473.) "California courts have 'a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits.'" (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158.) Because of this policy, "it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleading so that he may properly present his case.'" (*Ibid.*) However, a ruling granting a plaintiff leave to amend their pleading is not a comment on the merits of the claims against that party. Such a ruling gives the plaintiff an *opportunity* to plead a valid claim; it's not a determination that the plaintiff can do so. Under Davis's view, a party added as a defendant after the initiation of a lawsuit could never challenge the claims against them on demurrer.

Finally, we note that Davis's challenge to GEICO's demurrer would fail even if we were to consider its merits. This is because all of his claims against GEICO are based on fraud, which requires an intentional misrepresentation *by GEICO*. (Civ. Code, § 1709; *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255 [to be liable

for fraud the defendant must have made "a misrepresentation . . . with knowledge of its falsity . . . [and] the intent to induce another's reliance on the misrepresentation"].) But here, Davis didn't allege GEICO intentionally misrepresented the condition of his car to the DMV. Instead, he alleged GEICO relied on misrepresentations Walter's made. Thus, because the only intentional misrepresentations alleged were those made by Walter's *to GEICO*, Davis's claims against the insurance company fail as a matter of law.

C. *The Claims Against Walter's Are Time-Barred*

Davis argues the judge erred by concluding his negligence and trespass to chattels claims against Walter's were time-barred. Specifically, he argues Loren Beggs's January 27, 2015 email opining his car was totaled can't serve as the basis for the ruling because Beggs is a mechanic, not a lawyer, and therefore isn't qualified to comment on Walter's liability.

This argument misunderstands claim accrual. Unless the discovery rule applies, a claim "accrues on the date of injury." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109 (*Jolly*).) Under the discovery rule, however, "the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." (*Id.* at p. 1110.)

Thus, the triggering event is not when Davis knew or reasonably should have suspected that he could *succeed* against Walter's in court—that is, when he suspected Walter's ultimate liability. Rather, his claims accrued when he suspected or reasonably should have suspected that Walter's had done something wrong to him and caused him

injury. In other words, the discovery rule does not require the plaintiff to know with certainty that the defendant is liable for their harm, only that the defendant wrongly caused their harm. "A plaintiff need not be aware of the specific 'facts' necessary to *establish* the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Jolly, supra,* 44 Cal.3d at p. 1111, italics added.)

Here, the statute of limitations for both trespass to chattels and negligence resulting in damage to personal property is three years. (Code Civ. Proc., § 338 subd. (c)(1).) And without dispute, the allegations in Davis's first three complaints—which, at the demurrer stage, we assume are true—reveal that he suspected wrongdoing from Walter's as early as November 2014, when they told him the top harness had melted in spots. Davis alleged he knew that to be "impossible," given his experience as a mechanical engineer.

But, certainly, the allegations in the first three complaints show that Davis knew Walter's had wronged him by January 27, 2015 at the latest. That is the day he alleged he inspected his car and discovered they had "vandalized" it by removing the new wiring harness they had just installed. According to Davis's own allegations, that "act of sabotage" made future repairs much more costly. And Davis suspected malfeasance on Walter's part even without Beggs's email telling him the car was totaled without the

harness. Not only did he consider the car vandalized and sabotaged, but he also suspected a *motive* for the foul play, when, moments after he inspected his car, Castillon told him about a VIP customer who wanted to purchase it. According to Davis, Castillon made it seem as if this were Davis's only option, given how costly and difficult it would be to surmount the removed harness issue.

Davis tried to avoid the import of these allegations when he drafted the TAC by simply deleting them, but a party may not "avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings." (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 384.) In such cases, a trial judge is permitted to treat the prior pleadings as true and disregard the subsequent, contrary allegations. (*Ibid.*) As a result, the judge was correct to disregard the TAC's conclusory allegation that Davis didn't realize Walter's had engaged in wrongdoing until July 2016. And in any event, Davis relied on his original version of the events in this appeal, by repeating the November 2014 and January 2015 allegations in his statement of facts.

Davis made another attempt to disclaim the dispositive allegations at oral argument by asserting that he suffers from short term memory loss, the implication presumably being his condition caused him to allege the same wrong dates in three separate pleadings over a span of several months.[2] Putting aside the vagueness of this claim (Davis provides no details of when the memory loss began or how, if at all, it

[2] We granted Davis's request to submit a written statement in lieu of oral argument.

affected his pleadings), the bottom line is it comes too late, as Davis had multiple opportunities to amend his pleadings to explain why his claims were not time-barred.

Based on this record and the applicable legal principles, we conclude the trial judge properly dismissed Davis's lawsuit in its entirety.

III

DISPOSITION

We affirm the judgment. Davis shall bear costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.

APPENDIX B

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

EARNEST A. DAVIS,
Plaintiff and Appellant,
v.
GOVERNMENT EMPLOYEES INSURANCE COMPANY et al.,
Defendants and Respondents.

E074317

(Super.Ct.No. RIC1806371)

The County of Riverside

THE COURT

Appellant's petition for rehearing is DENIED.

RAMIREZ
Presiding Justice

cc:

Superior Court Clerk
Riverside County
P.O. Box 431 – Appeals
Riverside, CA 92502

Mark W. Hansen
Law Office of Mark W. Hansen
501 W Broadway, Suite 1480
San Diego, CA 92101-8475

Earnest A. Davis
P.O. Box 420249
San Diego, CA 92142

John Patrick Swenson / J. Stephen Lewis
Scali Rasmussen, PC
800 Wilshire Blvd Ste 400
Los Angeles, CA 90017-2618

APPENDIX C

Department 1
Riverside County Superior Court
4050 Main Street
Riverside, CA 92501

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
NOV 04 2019
S. Portillo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

Davis

Plaintiff

v.

Walter's Auto Sale and Service

Defendant

CASE NO. RIC 1806371

ORDER OF DISMISSAL

____ The entire action is dismissed, including any consolidated complaints, cross-complaints, and complaints in intervention. All future hearings currently scheduled in this action are vacated except for any hearing on a motion to determine good faith settlement.

✓ The complaint is dismissed [ ] in its entirety [✓] only as to defendant(s) GEICO Corporation

[ ] only as to the claims of plaintiff(s) _____.

____ The cross-complaint[s] of _____

_____

[is][are] dismissed [ ] in [its][their] entirety [ ] only as to cross-defendant(s) _____

_____

[ ] only as to the claims of cross-complainant(s) _____.

____ The complaint in intervention filed by _____

_____ on _____ is dismissed in its entirety.

____ Other _____

_____.

✓ The dismissal[s] [is] [are] at the request or with the consent of [✓] plaintiff(s) [ ] plaintiff(s) in intervention [ ] cross-complainant(s) and [is] [are] [ ] with [✓] without prejudice.

___ The dismissal is *with* prejudice and is entered for the following reason(s):

___ Demurrer sustained without leave to amend (Code Civ. Proc., § 581, subd. (f)(1).)

___ Failure to amend after demurrer sustained. (Code Civ. Proc., § 581, subd. (f)(2).)

___ Other: _____

___ The dismissal is *without* prejudice and is entered for the following reason(s):

___ Failure of [ ] plaintiff(s) [ ] plaintiff(s) in intervention [ ] cross-complainant(s) to file in a timely fashion a declaration in response to an order to show cause why the matter should not be dismissed. (See RSC Local Rule 3116.)

___ Failure of [ ] plaintiff(s) [ ] plaintiff(s) in intervention [ ] cross-complainant(s) to show good cause why the matter should not be dismissed.

___ Failure to comply with Fast Track rules. In light of the plaintiff's persistent failure to prosecute this action in the diligent manner required by the Code of Civil Procedure and the California Rules of Court, the failure of the prior sanctions imposed by the Court to improve the plaintiff's compliance with those requirements, and the plaintiff's failure to appear today or otherwise oppose the dismissal of this action by filing a declaration in response to the OSC, the Court finds that it is not reasonable to expect that the imposition of sanctions less severe than dismissal would be effective in gaining plaintiff's compliance. Accordingly, the matter is dismissed pursuant to Government Code section 68608, subdivision (b).

___ Failure of [ ] plaintiff(s) [ ] cross-complainant(s) to seek relief from stay.

___ Failure of [ ] plaintiff(s) [ ] cross-complainant(s) to retain counsel.

___ Failure to serve summons within 2 years. (Code Civ. Proc., § 583.420, subd. (a)(1).)

___ Failure to serve summons within 3 years. (Code Civ. Proc., § 583.250, subd. (a)(2).)

___ Failure to bring to trial within 2 years. (Code Civ. Proc., § 583.420, subd. (a)(2)(B).)

___ Failure to bring to trial within 3 years. (Code Civ. Proc., § 583.420, subd. (a)(2)(A).)

___ Failure to bring to trial within 5 years. (Code Civ. Proc., § 583.310.)

___ Failure of [ ] plaintiff(s) [ ] cross-complainant(s) to appear at trial. (Code Civ. Proc., § 581, subds. (b)(5) & (*l*).)

___ The Court previously imposed monetary sanctions without effect on _____.

___ Other: _____

Date: November 4, 2019

Craig G. Riemer, Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

EARNEST A DAVIS

vs. CASE NO. RIC1806371

WALTER'S AUTO SALE AND SERVICE INC

TO:

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached ORDER of Dismissal; Judge Craig G Riemer on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 11/04/19 by: _____
SANDRA PORTILLO, Deputy Clerk

Notice 'CCMN' has been printed for the following Attorneys/Firms or Parties for Case Number RIC1806371 on 11/04/19:

EARNEST A DAVIS
PO BOX 420249
SAN DIEGO, CA 92142

SCALI RASMUSSEN
800 WILSHIRE BLVD #400
LOS ANGELES, CA 90017

LAW OFFICE OF MARK W HANSEN
501 W. BROADWAY
SUITE 14080
SAN DIEGO, CA 92101

APPENDIX D

Court of Appeal, Fourth Appellate District, Division Two - No. E074317

S276592

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EARNEST A. DAVIS, Plaintiff and Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Porsche Parts Technical Assistance

Report Number: 00251-9Q5MW2125737 created on 2014/10/22 12:57 PM
Priority Escalation? No

Dealer # : 00251

Your Full Name: Michael Butler_00251

Customer Name:

Vehicle Information

Model: 993 Type: 630 Style: 1998 Carrera Cab Transmission: Tiptronic

VIN: WP0CA299XWS340311 Mileage/Kilometers: 0 Warranty Start 10/20/1997

Delivery Date: 10/20/1997 Production Date: 09/08/1997

Recalls:

Previous Repairs

Interior Code: Paint Code:

Relevant Option Codes:

Parts Information

Type: Genuine Part
Tread Relevance Non-Tread Relevant

Part Number: 99361201905

Part ID:

Part Name:

Part Description: main wiring harness

PET Information

Year: Illustration: Item number:

Question/Inquiry 10/22/2014 1:13:54 PM - IS THERE A WAY TO HAVE PAG CHECK FOR CORRECT PART? WE RECIEVED WHAT SEEMS TO BE A COUPE HARNESS IN THE BOX. IT IS MISSING THE CONNECTER POINTS FOR THE CABRIO TOP MOTORS. I HAVE FILED A RFC FOR THIS TODAY. PO# RFC106937 OR#50218749 ORG INV#0094037514 THANKS attn: Todd

Response Response from PCNA:Michael, unfortunately PAG states their stock of that harness is incorrect. Furthermore, the harness has been discontinued without replacement.
10/28/2014 1:47:16 PM , Todd Haskell:

PTARRes:

Additional Information

Priority: High - Contact within 24 hours

Car or customer status:
Is the car in the workshop? Yes