**PROPOSED TENTATIVE**

On December 5, 2024, plaintiff Julie Baker (plaintiff), in propria persona, filed a complaint against defendant Central Coast Water District (defendant), advancing one cause of action pursuant to Penal Code section 502, subdivision (e)(1), which provides as follows: "In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of any of the provisions of subdivision (c)[1] may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. . . ." Plaintiff alleges that between July 1, 2003, and December 10, 2021, she worked for defendant During this period, she owned a "a personal computer, namely an HP Pavilion laptop" as well as an electronic mail account (juliebaker10@aol.com), in which she had an expectation of privacy. Despite this expectation of privacy, defendants (on information and belief) "unlawfully and without consent accessed [her] personal computer and electronic mail account during her period of employment," including calendars, contacts, emails, files, phone calls, voice data, and other personal data. Plaintiff only discovered in September 2024 that her computer and electronic email accounts were accessed after reading a phone log from defendant's security IT vendor, Compuvision. Plaintiff asks for damages following the unlawful access of her computer and electronic mail account.

Defendant demurs to the complaint, raising three claims. First, defendant argue that the criminal provision relied upon by plaintiff cannot be the source of the civil cause of action at issue. Second, defendant argues that plaintiff has failed to plead compliance with the Government Claims Act, which requires that she present her claim within one year of accrual. Finally, plaintiff claims the complaint is fatally uncertain, as it is ambiguous and unintelligible. Plaintiff (with counsel for the limited purpose of this demurrer) has filed opposition, challenging each of defendant's contentions, and claiming, in the end, that she has adequately pleaded a cause of action under Penal Code section 502, subdivision (e)(1). A substitution of attorney was filed on January 31, 2025. Defendant has filed a reply.

The court finds that defendant has *technically* complied with all meet and confer obligations, although it appears defendant's counsel and plaintiff's new counsel have not actually met or otherwise discussed the matter informally, for defendant's meet and confer letter was sent on December 24, 2024, by certified mail, and plaintiff's counsel did not substitute into the matter until January 31, 2025. The court directs the parties to address this issue at the hearing.

There is another predicate matter the court wishes to address. In his meet and confer declaration, defense counsel references an earlier case filed by plaintiff against defendant, submitted on December 7, 2023, with Judge James Rigali. (*Baker v. Central Coast Water Authority*, Case No. 23CV05414.) Plaintiff filed a first amended pleading on December 15, 2023, and a second amended complaint on January 2, 2024, which was 236 pages. Plaintiff alleged a claim of wrongful termination from her employment with defendant, as well as a cause of action

[1] This subdivision provides that except as provided in subdivision (h) of Penal Code section 502, any person who commits the following acts is guilty of a public offense. The provision provides for 14 different acts in serial fashion that can support a cause of action. For our immediate purposes, subpart 7 is relevant: "Knowingly and without permission causes, accesses or causes to be accessed a computer, computer system, or computer network."

for defamation. On May 14, 2024, the court sustained defendant's demurrer to the second amended complaint with leave to amend, and plaintiff was directed to file an amended pleading by June 28, 2024. On August 26, 2024, because plaintiff failed to file an amended pleading by the court's deadline, the court dismissed the complaint without prejudice and entered judgment accordingly. Notice of entry of judgment was sent on October 15, 2024. As that case was dismissed *without* prejudice, there is no indication that the prior lawsuit would preclude the claims advanced here. The court therefore will move forward to address the arguments raised by defendant in the demurrer.

The court will examine each claim raised by defendant and determine whether the challenges have merit. The court will conclude with a summary of its determinations.

The court overrules defendant's demurrer to the extent it argues that the complaint is fatally uncertain. Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (e) are disfavored. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612; *Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) The complaint is not so uncertain as to prevent an answer from defendant.

The court also overrules defendant's demurrer to the extent defendant contends that plaintiff cannot rely on Penal Code section 502, subdivision (e) as the source of her civil cause of action. While it is generally true that a Penal Code provision cannot be the source of a private right of action, in this context Penal Code section 502, subdivision (e)(1) ***expressly*** permits a "civil action to recover expenses related to investigating the unauthorized computer access." (*Verio Healthcare, Inc. v. Superior Court* (2016) 3 Cal.App.5th 1315, 1321, fn. 3.) The elements of the cause of action are contained in a CACI jury instruction, which permits the recovery of compensatory damages. (CACI 1812.) Plaintiff has properly relied on Penal Code section 502, subdivision (e )(1) as the source of the cause of action.

In reply, defendant seems to concede that the cause of action is viable based on the criminal provision, but goes on to advance arguments not raised or articulated in the original demurrer, all under the rubric of uncertainty. For example, in reply, defendant claims plaintiff spends "several paragraphs of her complaint alleging that her computer was unlawfully accessed," and then, for "an unknown reason," plaintiff argues in paragraphs 11 and 13 that she was terminated, and has "suffered loss," such as employment, benefits., social security benefits, [and] retirement. . . ." Defendant opines: "If Plaintiff is ultimately alleging a cause of action for Unauthorized Computer Access as she claims, why include facts regarding loss of employment benefits and social security? These damages have nothing to do with consequences of the alleged unlawful computer access . . . ." To compound the problem, according to defendant,

plaintiff does not allege "she has incurred any expenditures to verify that a computer system, program or data, was or was not altered, damaged, or deleted by access . . . ."

The court rejects defendant's arguments advanced in reply, for two reasons. First, any challenge to specific items of damages cannot be made by demurrer, but by a motion to strike, which has not been filed. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [a demurrer does not lie to a portion of a cause of action; that is the purpose of a motion to strike].) Second, as noted, *none of the arguments recounted above was raised in the original demurrer*. Defendant in the original demurrer argued that the "complaint is itself ambiguous and unintelligible as Plaintiff has simply made allegations of material facts which are left to surmise by the [defendant]. Thus, the demurrer should be sustained for failing to state facts sufficient to support any civil cause of action and for uncertainty." Nothing else of meaning or substance was argued. It is settled that new arguments raised for the first time in a reply are improper and need not be addressed. (*Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 108-109) The court will not explore the merits of defendant's more muscular reply arguments because plaintiff has not had an opportunity to address them.

Defendant's last challenge – that plaintiff has not pleaded compliance with the requirements of the Government Claims Act – requires a much more detailed analysis. Plaintiff appears to be a public governmental entity.[2] Generally, no suit for damages may be maintained against a government entity unless a formal claim has been presented to such entity and it has been rejected (or is deemed rejected by the passage of time). (Gov. Code, §§ 912.4, 945.4; see *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767, 1776.) Failure to allege facts in the complaint demonstrating compliance with the prelitigation government claims presentation requirements subjects the complaint to a general demurrer. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) Government Code section 911.2, subdivision (a) provides a one-year statute of limitations for presenting a government claim (when the claim does not involve death or personal injury, as is the case here). The time limit runs from the date the claimant's right to sue arises. (See Gov. Code, § 901 [date of accrual means the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented in the Government Claims Act]; see also *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209 (superseded by statute as stated in *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 905-906); *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118.) A cause of action generally accrues when the "cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 389.)

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[2] On its website, of which the court takes judicial notice, the following appears: "The Central Coast Water Authority is a public entity organized under a joint exercise of powers agreement dated August 1, 1991, by the cities and special districts responsible for the creation and maintenance of water resources in portions of the North County, Santa Ynez Valley, and the South Coast areas of Santa Barbara . . . ."

Plaintiff alleges as follows in paragraph 12 of the operative pleading: "On information and belief, [plaintiff] did not make any administrative claim or attempt to exhaust administrative remedies, as such actions have been futile and subject to [defendant's] bias. Further, Defendants did not provide [plaintiff] with any information regarding the process to make such claims." Plaintiff contends in opposition that she was excused from filing a government claim based on futility, and, according to the opposition, this court must accept the allegation as true.

Plaintiff has cited no authority to suggest courts can apply the futility exception to the prefiling claim requirements of the Government Claims Act. More significantly, the court's own research has identified authority that has rejected application of the futility doctrine with regard to the Government Claims Act filing requirements (based on a similar argument made by plaintiff here). As noted in *Olson v. Manhattan Beach Unified School Dist.* (2017) 17 Cal.App.5th 1052, 1063: "[] Appellant contends he was excused from filing a government claim because it would have been futile, as it was clear that [defendant] would deny his claim. Futility is a ' ' narrow exception' to the doctrine requiring exhaustion of administrative remedies. [Citations.] ***We reject appellant's argument***. [¶] First, appellant has identified no case applying the futility exception to the claim filing requirement. A 'futile' claim is not a claim statutorily excepted from the claim filing requirements. (See Gov. Code, § 905 [listing exceptions].) [¶] Moreover, futility is an exception to the exhaustion of administrative remedies, the claim filing requirement is not an administrative remedy. (See *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1155 ['the origin and purposes of the government claim filing requirements and the administrative remedies exhaustion doctrine differ, and elimination of the exhaustion requirement does not release a litigant from the need to comply with the Government Claims Act requirements'].) [¶] Finally, application of the futility doctrine would contravene the purposes of the claim filing requirements . . . . Even a 'futile' claim would provide a public entity with notice of a potential claim enabling adequate investigation and fiscal planning." (*Id.* at p. 1063, emphasis added.)[3] Under *Olson*, the futility doctrine is inapplicable as a basis to excuse compliance with the prefiling claim requirements contemplated by the Government Claims Act.

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[3] It is true the court in *Olson* concluded alternatively that even if it were to assume arguendo that the futility doctrine could be applied to excuse noncompliance with the claim filing requirement, plaintiff failed to allege what defendant's ruling would be had the claim been presented to it. (*Id.* at p. 1063.) Alternative holdings in published decisions, as was provided in *Olson*, are nevertheless binding on trial courts. (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485.) "It is well settled that where two independent reasons are given for a decision, neither one is to be considered mere dictum, since there is no more reason for calling one ground the real basis of the decision than the other. The ruling on both grounds is the judgment of the court and each is of equal validity." (*Bank of Italy etc. Assn. v. Bentley* (1933) 217 Cal. 644, 650; see also *Woods v. Interstate Realty Co.* (1949) 337 U.S. 535, 537 ["[W]here a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*"]; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 512, pp. 577-578; see generally *People v. Mendoza* (2020) 44 Cal.App.5th 1044, 1056, fn. 5.) *Olson*'s conclusion on the applicability of the futility doctrine as discussed in the body of this order is binding on this court.

The court's inquiry is not done. Defendant argues that the court should sustain the demurrer without leave to amend because defendant can no longer comply with the one-year filing requirements under the Government Claims Act, for defendant was terminated on December 10, 2021, meaning (according to defendant) the cause of action accrued on this date, and she had until December 10, 2022, to submit a claim – "over two years ago." It is nevertheless settled that at the demurrer stage the court is limited to allegations on the face of the pleading (or through facts judicially noticed) when determining whether any statute of limitations bar applies – a rule that seemingly applies when determining compliance with the Government Claims Act filing requirements. (See, e.g., *Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 524 ["A demurrer is properly sustained without leave to amend where the pleading discloses ***on its face*** that the action is barred by the applicable statute of limitations."].)

Plaintiff contends in her pleading that despite her termination in December of 2021, she only discovered defendant's violations per Penal Code section 502 *in September 2024*. With this allegation plaintiff clearly is relying on the delayed discovery exception to the general rule of accrual, which provides that a cause of action accrues and the statute of limitations begins to run when plaintiff has reason to suspect an injury and some wrongful cause, unless plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that particular cause of action. (*Fox v. Ethicon Endo-Surgery* (2005) 35 Cal.4th 797, 803.) In order to rely on the delayed discovery rule, however, plaintiff whose complaint shows on the face that the claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. (*Ibid.*) *Fox* made it clear that that suspicion of one or more of the elements of a cause of action, coupled with knowledge of the remaining elements, generally triggers accrual. (*Id.* at p. 807.)

Critically and for our immediate purposes, while *Fox* was not a Government Claims Act case, nothing therein or in any of its antecedents suggest the delayed discovery rule would not apply to a government claims requirement. In fact, case law appears to have acknowledged the delayed discovery rule applies in the Government Claims Act context, although many of the cases conclude that under the particular facts of the case the doctrine was inapplicable. (See, e.g., *Estill v. County of Shasta* (2018) 25 Cal.App.5th 702, 707–709 [discovery rule at least in theory applied, although on the facts is did not delay accrual of the invasion of privacy cause of action against defendant public entity, for claimant "had reason to suspect that someone had done something wrong to her long before" the date she claimed to have discovered the defendants' identities]; see also *J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1222, and cases cited therein [recognizing delayed discovery rule applies in Government Claims Act context].)

What this means for our immediate purposes is the following: Plaintiff cannot rely on the futility doctrine as an exception to the Government Claims Act, as she does in her operative pleading and her opposition to the demurrer. Plaintiff must therefore submit a claim to the government entity. Normally, the claim based on the type of cause of action at issue here (not involving personal injury or death) must be filed with the government entity within one year after the accrual of the cause of action. (Gov. Code, § 911.2, subd. (a).) Plaintiff, again in her operative pleading, alleges that while the violations occurred during her employment, which ended on December 10, 2021, the violations were not discovered until September 2024, meaning, if true, the accrual date would be one year from the date of discovery. Again, *if true*, the Government Claims Act filing period has not yet expired – it would expire sometime in September 2025, leaving plaintiff time to comply with the Government Claims Act filing requirements. Leave to amend therefore seems appropriate in order to allow plaintiff an opportunity to do so. This will require plaintiff to explain to defendant government entity in her application why the date of accrual occurred in September 2024, and not on December 10, 2021, the date of termination. (See, e.g., *Estill, supra*, 25 Cal.App.5th at pp. 708.) The matter can be stayed pending this application if the parties desire.

Nothing in the court's order should be construed as involving any determination about the merits of plaintiff's alleged delayed discovery claim; nor should anything in this order suggest how defendant government entity should decide a future application made by plaintiff. The court is simply acknowledging, based on existing law and the allegations made in the operative pleading, to which the court is limited when assessing the demurrer, that plaintiff should be afforded an opportunity to comply with the statutory scheme if the date of discovery as plaintiff alleges reflects the true state of affairs. Nothing more is intended or should be discerned from the court's order.[4]

**Summary**:

Counsel is directed to address whether they actually met and conferred, following plaintiff's counsel's recent notice of substitution.

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[4] As an example, plaintiff, if she referenced the alleged computer access violations in Case No. 23CV05414, may have pleaded or indicated a different date of discovery therein, which would have relevance on the claimed delayed discovery and accrual date alleged here. The court has not examined the earlier complaint, as there has been no request to take judicial notice of it. Further, Mr. Urbanic, in his declaration, indicates only that plaintiff "alleg[ed] similar facts of unlawful computer access" in the prior complaint; the declaration is silent about any allegation by plaintiff in the earlier complaint about a different date of discovery or date of accrual. The court of course is limited to the operative complaint in resolving the merits of demurrer here, as no other documents are before it. It makes no determination on the interplay between the two complaints on this issue.

The court overrules defendant's demurrer based on the fact a criminal provision affords plaintiff the basis for the civil cause of action. It also overrules defendant's demurrer based on uncertainty.

The court sustains defendant's demurrer for failure to comply with the prelitigation claim filing requirements of the Government Claims Act, as futility cannot be relied upon under extant and binding published authority. Leave to amend is granted, however, based on plaintiff's claim of delayed discovery and an accrual date of September 2024, as alleged in the operative pleading to which the court is bound at this stage, meaning plaintiff still could file a timely claim with defendant. It will be plaintiff's burden to convince defendant that the appropriate accrual date is September 2024, not December 10, 2021. Nothing in this order is intended to dictate how defendant government entity should determine the merits of the issue. The court at today's hearing will entertain a request to stay the present action pending resolution of the Government Claims Act filing process, and will schedule a CMC in 60 days from today's hearing to determine how things are progressing. The court can determine at the future CMC whether any stay imposed should be dissolved or lifted at that time. Once plaintiff complies with the claim filing requirement, if that can be done, and once any imposed stay is lifted, plaintiff will have 20 days to file an amended pleading. The court makes no determination about the course plaintiff should follow if defendant entity denies plaintiff's claim as untimely.