Filed 4/6/23 Capito v. San Jose Healthcare System CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

TAYLOR CAPITO, Plaintiff and Appellant, v. SAN JOSE HEALTHCARE SYSTEM LP, Defendant and Respondent.	H049022, H049646 (Santa Clara County Super. Ct. No. 20CV366981)

On two occasions appellant Taylor Capito received treatment in the emergency room of respondent San Jose Healthcare System LP dba Regional Medical Center San Jose (Regional). The bill she received for her treatment included an "Evaluation and Management Services" fee (EMS fee) for each of the visits. Capito sued Regional for billing these fees, initially alleging one cause of action for violation of the Consumers Legal Remedies Act (CLRA) (Civ. Code, § 1750 et seq.) based on her contention that Regional charged its emergency patients an EMS fee without any advance notice to the patient. The trial court sustained Regional's demurrer to the first amended complaint and granted its motion to strike the class allegations with leave to amend. Capito thereafter filed a second amended complaint, to which she added causes of action for declaratory and injunctive relief, and violation of the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.). The trial court sustained Regional's demurrer to the second amended complaint without leave to amend. After denying Capito's motion for

reconsideration, the trial court entered a judgment of dismissal with prejudice in favor of Regional.

On appeal, Capito contends the trial court erred in striking the class allegations from the first amended complaint, and sustaining the demurrer to the second amended complaint. Based on the facts alleged in her complaint, and the recent decision in *Torres v. Adventist Health System/West* (2022) 77 Cal.App.5th 500 (*Torres*), Capito alleges that Regional had a duty to disclose its intention to charge an EMS fee, and its failure to do so constitutes a violation of the UCL and CLRA. She further alleges that the contract she signed with Regional for services neither authorized it to charge an EMS fee, nor included an agreement to pay such a fee, allegations which support her claims for declaratory judgment in addition to the UCL and CLRA causes of action. At minimum, Capito asserts that she should be allowed leave to amend her complaint to assert a cause of action for breach of contract. Discerning no error in the trial court's orders, we will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Regional is a major hospital in San Jose with an emergency room (ER). In June 2019, Capito sought emergency medical treatment at Regional on two occasions. At each visit, Capito signed Regional's "Conditions of Admission and Consent for Outpatient Care" (COA) form. In doing so, Capito promised to "pay the Patient's account at the rates stated in the hospital's price list (known as the 'Charge Master') effective on the date the charge is processed for the service provided, which rates are hereby expressly incorporated by reference as the price term of this agreement to pay the Patient's account."[1] (Emphasis omitted.) When she signed the COA, Capito acknowledged that

[1] " 'Charge description master' [chargemaster] means a uniform schedule of charges represented by the hospital as its gross billed charge for a given service or item, regardless of payer type." (Health & Saf. Code, § 1339.1, subd. (b)(1).)

she was given the opportunity to read and ask questions about the information in the COA, including the financial obligations provisions.

Regional initially billed Capito $41,016 for her two visits, including two " 'Level 4' Evaluation and Management Services Fee" charges of $3,780. Regional thereafter reduced Capito's total bill to $8,855.38, after deducting adjustments and discounts. Apart from the COA, which did not specifically reference the EMS fee, Capito did not receive advance notice that Regional would charge the EMS fee in addition to each item of service and treatment provided by the hospital. Capito alleges that had she been informed that she would be charged the EMS fee before incurring treatment, she would have left Regional and sought less expensive treatment elsewhere.

Regional's EMS fee is set at one of five levels, determined after the patient is discharged, based on a method known only to Regional. The five levels vary depending on the severity of treatment, ranging from minor to complex and life-threatening, and are disclosed in Regional's chargemaster, which is filed with the California Department of Health Care Access and Information (HCAI), formerly known as the Office of Statewide Health Planning and Development (OSHPD).[2] Capito alleges that the fee is designed to cover emergency room overhead expenses, separate from individual billable items of treatment or service. In 2019, the EMS fee amounts for Regional were as follows: Level 1: $672; Level 2: $1,660; Level 3: $2,836; Level 4: $3,780; and Level 5: $5,635. Regional charged Capito the Level 4 EMS fee for each of her visits, classified in the chargemaster as "high severity without significant threat."

[2] The court grants Regional's request for judicial notice and takes judicial notice of the exhibits attached thereto (text of first and second amended complaint, excerpts from Regional's chargemaster, the list of Regional's 25 most common procedures, legislative history documents authenticated by the Legislative Intent Service, and excerpts from the Federal Register and Code of Federal Regulations), as did the trial court.

B. Procedural History

Capito filed a complaint against Regional on behalf of herself and all others similarly situated for violation of the CLRA in June 2020, which she amended shortly thereafter, challenging Regional's "unfair, deceptive, and unlawful practice of charging [an EMS fee] without any notification of its intention to charge a prospective emergency room patient such a Fee for the patient's emergency room visit." Capito claimed that Regional charged the EMS fee simply for seeking care in the emergency room—describing it as designed to cover " 'overhead' type expenses of operating an emergency room"—without correlating the fee to the individual items of treatment and service that a patient received, and that the EMS fee "invariably comes as a complete surprise to unsuspecting emergency room patients." She further alleged that knowledge of the fee would be a substantial factor in a prospective patient's decision to remain at Regional and proceed with treatment, but claimed that ER patients could not reasonably be expected to be aware of the EMS fee, because Regional did not post signage notifying patients of the fee, and did not orally disclose the fee at the time of registration.

Capito acknowledged that Regional filed its chargemaster with OSHPD. She alleged that the chargemaster was not available on Regional's website or otherwise reasonably available to emergency room patients at the time of treatment, claiming that on June 20, 2020, a year after she received treatment at Regional, clicking on the " 'view our detailed price list' " link on Regional's website led to a "dead link." Because the chargemaster lists over 25,000 individual line items of treatment and services, Capito alleged that the inclusion of the EMS fee on the price list does not inform a prospective patient that the EMS fee will be added to their bill for seeking treatment in the emergency room. Capito asked the trial court to issue an order requiring Regional to notify patients of the EMS fee by posting "a simple, prominent sign placed in [Regional's] emergency room," setting forth the five levels of EMS fee with the explanation, "These fees are in addition to our charges for your actual treatment and services, and are intended to cover

the costs of your initial evaluation and management and the costs of operating and maintaining our 24-hour Emergency Department."

Capito brought the action on behalf of herself and "all individuals who, on or after June 10, 2017, received or will receive treatment at [Regional's] emergency room, and who were or will in the future be charged an [EMS fee]. . . ." Capito included one cause of action for violation of the CLRA, alleging that Regional "engage[d] in deceptive practices, unlawful methods of competition, and/or unfair acts to the detriment of [Capito] and the Class," in violation of Civil Code section 1770, subdivisions (a)(5) and (a)(14), by charging the EMS fee without advance notification to emergency room patients.[3]

Regional responded by filing a demurrer to the first amended complaint (FAC), as well as a motion to strike the class allegations, alleging that the proposed class did not meet California's standards for class certification as set forth in Code of Civil Procedure section 382.[4] The trial court overruled Regional's demurrer to the FAC, finding that Regional failed to establish as a matter of law that it had no duty to disclose the EMS fee under the CLRA. The court stated it would be "willing to entertain Regional's argument on a fuller record at the summary adjudication/judgment stage." It granted the motion to strike class allegations, with leave to amend, finding that while the class was "clearly

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[3] Civil Code section 1770 provides in relevant part: "(a) The unfair methods of competition and unfair or deceptive acts or practices listed in this subdivision undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful: [¶] . . . [¶] (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have. [¶] . . . [¶] (14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law."

[4] "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.)

ascertainable," "the face of the FAC reveals that individual issues of reliance and materiality will predominate in this case as currently framed." Capito timely filed a notice of appeal from the order granting the motion to strike plaintiff's class allegations.[5]

Capito filed a second amended complaint in March 2021 (SAC). She reiterated the allegations and CLRA cause of action that survived Regional's demurrer to the FAC. In addition, Capito alleged two causes of action, for declaratory judgment and injunctive relief under Code of Civil Procedure section 1060, and for violation of the UCL. Capito stated in the SAC, "The Complaint is not that [Regional] fails to list an EMS Fee as a line item in the Hospital's published Chargemaster, [fn. omitted] or that [Regional] fails to list the price of such EMS Fees in the Hospital's Chargemaster, but rather the fact that [Regional] gives no notification or warning that it charges a separate EMS Fee for an emergency room visit," as the EMS fee is not explicitly disclosed in the COA, or specifically set forth in any emergency room signage or on Regional's website. Capito contended that the fact Regional would charge an EMS fee was not known or reasonably accessible to herself or other class members at the time of their emergency room visits, and the existence of such a fee would have been an important factor in determining whether to remain and obtain treatment at Regional.

In seeking declaratory judgment, Capito contended that she and members of the class were entitled to a declaration that Regional's "practice of charging a substantial undisclosed EMS Fee, in addition to the charges for the specific services and treatments

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[5] Although the court afforded Capito the opportunity to amend her complaint as to the class action claims, she filed the notice of appeal to protect her appellate rights under the so-called "death knell doctrine," which renders appealable an order that effectively terminates the entire action as to a class, such as the trial court's order striking the class allegations in the instant matter, even if it allows leave to amend. (See *Williams v. Impax Laboratories, Inc.* (2019) 41 Cal.App.5th 1060, 1070-1071.) We assigned this appeal number H049022 and ordered it considered together with Capito's appeal from the later-filed judgment of dismissal (appeal number H049646, discussed *post*) for purposes of briefing, oral argument, and disposition.

provided, is not authorized by [Regional's] Contract." She further sought a declaration that she and members of the class "have a right to know about [Regional's] separate EMS Fees, and that [Regional] owed Plaintiff and Class members a duty to disclose, in advance of providing treatment that would trigger an EMS Fee, its intention to charge such an EMS Fee."

She alleged that Regional violated the UCL, "insofar as the UCL prohibits 'any unlawful, unfair or fraudulent business act or practice.' " Capito claimed that Regional's conduct in billing the EMS fee was "unfair" because it violated the CLRA, such that the claim was "tethered to a legislatively declared policy" and because Regional's practices "offend established public policies, and are immoral, unethical, oppressive, and unscrupulous." Capito further contended that Regional's conduct was "unlawful" under the UCL because it violated the CLRA. Capito alleged that Regional violated the CLRA "by engaging in and continuing to engage in deceptive practices, unlawful methods of competition, and/or unfair acts to the detriment of [Capito] and the Class," contending that Regional's "acts and practices constitute omissions/concealment that the services and/or supplies in question had characteristics, uses and/or benefits which they did not have," in violation of Civil Code section 1770, subdivision (a)(5), and that Regional "omit[ted]/conceal[ed] that a transaction involves obligations which it does have," in violation of Civil Code section 1770, subdivision (a)(14).

Regional demurred to the SAC and moved to strike the class allegations. In doing so, it briefed the legislative history behind the Payers' Bill of Rights (Health & Saf. Code, § 1339.50 et seq.) and other federal and state regulations governing its pricing disclosures. Capito opposed the demurrer, arguing that the trial court had already rejected most of the arguments Regional raised. The court issued a tentative ruling prior to the initial hearing overruling the demurrer and denying the motion to strike. Regional contested the tentative ruling, after which the trial court held a hearing and took the matter under submission.

The trial court thereafter issued an order sua sponte reconsidering its previous legal analysis concerning Regional's demurrer arguments, and asked for supplemental briefing from the parties regarding: the relevance of the legislative history of Assembly Bill No. 1627 (2002-2003 Reg. Sess.) on Capito's UCL claim; and the effect, if any, on Capito's other claims if the court were to determine that Regional's failure to provide additional notice about the EMS fee was not "unfair" under the UCL. After receiving additional briefs from both parties, the court issued a supplemental order sustaining the demurrer to the SAC without leave to amend, finding that Regional did not have a duty to disclose the EMS fee beyond what was already required by the Payers' Bill of Rights. Based on its ruling, it deemed Regional's motion to strike the class allegations moot.

Capito filed a motion for reconsideration of the trial court's order under Code of Civil Procedure section 1008, subdivision (a), alleging that new law decided after the court entered the order sustaining the demurrer without leave to amend required the court to revisit its ruling as to the declaratory judgment cause of action. In addition, Capito asserted that the trial court should have held a hearing before reconsidering its tentative ruling overruling the demurrer to the SAC, arguing that the court's order sustaining the demurrer without leave to amend included "rulings beyond the two supplemental questions asked by the Court" when it requested supplemental briefing after it heard argument on the demurrer.

After considering briefing from both parties and oral argument, the trial court denied Capito's motion for reconsideration, ruling that case law supported its order sustaining the demurrer. In doing so, the trial court noted, "[Capito] argues that the Court should have held a hearing on the motion for reconsideration. But [Capito] did not request oral argument when the Court stated in its July 2021 notice that it would likely not hold a hearing, but would ask for (and did receive and consider) supplemental briefing. The Court therefore provided the parties 'a reasonable opportunity to litigate the question.' (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1097 [*Le Francois*].)"

In December 2021, the trial court issued an "amended judgment of dismissal with prejudice," dismissing Capito's action with prejudice and entering judgment in favor of Regional.[6] Capito timely appealed from the judgment (appeal No. H049646).

II. DISCUSSION

We review the judgment of dismissal after a demurrer is sustained de novo, assuming the truth of all facts properly plead by the plaintiff, and exercising our independent judgment to determine whether the plaintiff stated a cause of action under any legal theory. We do not assume the truth of contentions, deductions, or conclusions of law. (See *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236, fn. 10 (*Gray*).)

A. Capito's UCL Claim

Capito contends that Regional's notice to patients of the EMS fee violates the UCL as an unfair business practice because there was no sign in the emergency room listing the five levels of EMS fee, no fee expressly set forth in the COA or on Regional's website, and no verbal notification of the EMS fee. She additionally asserts that Regional's notification practice is "unlawful" under the CLRA. Because Regional's practices violate the CLRA, Capito contends that the UCL is further violated as "tethered to a legislatively declared policy." As we discuss below, these arguments were rejected persuasively by Division One of the First District Court of Appeal in *Gray*, *supra*.

We first address Capito's claim that Regional's failure to disclose the EMS fee was an unfair business practice under the UCL.

The purpose of the UCL is "to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented." (Bus. & Prof. Code, § 17001.) " 'The UCL does not proscribe specific acts, but broadly prohibits "any

[6] Although entitled an "amended" judgment, the record indicates this was the only judgment entered by the trial court after it sustained the demurrer to the SAC.

unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. . . ." (Bus. & Prof. Code, § 17200.) "The scope of the UCL is quite broad. [Citations.] Because the statute is framed in the disjunctive, a business practice need only meet one of the three criteria to be considered unfair competition." [Citation.] " ' "Therefore, an act or practice is "unfair competition" under the UCL if it is forbidden by law or, even if not specifically prohibited by law, is deemed an unfair act or practice." ' " [Citation.]'[7] [Citation.]" (*Gray*, *supra*, 70 Cal.App.5th at pp. 236-237.)

An "unlawful" act or practice is "anything that can properly be called a business practice and that at the same time is forbidden by law." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*).) The UCL does not define the term "unfair" as it pertains to actions by consumers. Some courts will find a business practice to be unfair "if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits. [Citations.]" (*Gray*, *supra*, 70 Cal.App.5th at p. 238.) Others require that the alleged " 'unfairness' be 'tethered to some legislatively declared policy.' [Citations.]" (*Ibid.*) We agree with the court in *Gray* that, regardless of which standard is applied, Regional's failure to disclose the EMS fee is not an "unfair" practice that either violates established public policy or is immoral, unethical, oppressive or unscrupulous. (*Id.* at p. 242.)

The plaintiff in *Gray* alleged, as Capito does here, that the failure of a hospital to separately disclose in advance of medical treatment that its bill for emergency services would include an EMS fee—either by posting signage or verbally advising the patient during the registration process—was an unfair business practice under the UCL. (*Gray*, *supra*, 70 Cal.App.5th at p. 238.) Discussing at length the regulatory scheme governing

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[7] " 'Although the likelihood of deception is often too fact intensive to decide on the pleadings, courts can and do sustain demurrers on UCL claims when the facts alleged fail as a matter of law to show such a likelihood.' [Citations.]"

emergency room providers, the court rejected the contention that the hospital's practice provided the basis for a UCL claim. "[R]equiring individualized disclosure that the hospital will include an ER Charge in its emergency room billing, prior to providing any emergency medical services, is at odds with the spirit, if not the letter, of the hospital's statutory and regulatory obligations with respect to providing emergency medical care." (*Id.* at p. 240.) These obligations reflect "a strong legislative policy to ensure that emergency medical care is provided immediately to those who need it, and that billing disclosure requirements are not to stand in the way of this paramount objective." (*Id.* at p. 241.)

The court in *Gray* described the complex regulatory scheme applicable to medical providers under state and federal law that addresses billing transparency along with the imperative of providing emergency medical services. The Payers' Bill of Rights sets forth "numerous obligations California hospitals owe to consumers with respect to the pricing of medical services." (*Gray*, *supra*, 70 Cal.App.5th at p. 229.) The Legislature enacted and later amended the Payers' Bill of Rights in an effort to "increase transparency in hospital pricing to enable consumers to comparison shop for medical services." (*Id.* at pp. 229-230, citing Cal. Health & Human Services Agency, Enrolled Bill Rep. on Assem. Bill No. 1045 (2005-2006 Reg. Sess.).)

Under state and federal law, hospitals are required to provide emergency care to any person presenting to the emergency department for such care. The patient must first be stabilized before discussing the patient's ability to pay. (*Gray*, *supra*, 70 Cal.App.5th at pp. 240-241.) The hospital must make a copy of its chargemaster available online or at the hospital and post notice at various locations, including in the emergency department, that the chargemaster is available. (Health & Saf. Code, § 1339.51, subds. (a), (c).) Each hospital must file the chargemaster with OSHPD, as well as submit a list of 25 common outpatient procedures, compiled annually, to OSHPD, which OSHPD then publishes on its website. (Health & Saf. Code, § 1339.55, subds. (a), (c).) Although hospitals are

generally required to provide uninsured patients a written estimate of services upon request, that obligation does not apply when a patient is treated in the emergency department. (Health & Saf. Code, § 1339.585.)[8] "Together, this multi-faceted statutory and regulatory scheme reflects a strong legislative policy to ensure that emergency medical care is provided immediately to those who need it, and that billing disclosure requirements are not to stand in the way of this paramount objective." (*Gray*, at p. 241.)

Under federal regulations from the Centers for Medicaid and Medicare Services (CMS), hospitals bill emergency visits using a five-level system of current procedural terminology codes (CPT codes), which "are used to report [evaluation and management] services provided in the emergency department. . . ." (72 Fed.Reg. 66581, 66789, 66790; see *Gray*, *supra*, 70 Cal.App.5th at p. 235; *Torres*, *supra*, 77 Cal.App.5th at p. 505.) The codes "were defined to reflect the activities of physicians and do not necessarily fully describe the range and mix of services provided by hospitals during visits of clinic and emergency department patients and critical care encounters." (72 Fed.Reg. 66790.) CMS requires hospital guidelines for setting charges for EMS fee levels to meet certain standards. The guidelines must be designed to reasonably relate the intensity of hospital

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[8] "As originally introduced, this legislation required hospitals to provide an estimate of charges upon the request of any patient—including those receiving care in the emergency department. (Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as introduced Feb. 22, 2005.) As the bill moved through the legislative process, it was amended first to apply only to non-emergency patients (Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as amended May 27, 2005) and then amended again to apply only to uninsured persons. (Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as amended Sept. 6, 2005.)" (*Gray*, *supra*, 70 Cal.App.5th at p. 231.) Capito correctly observes that Civil Code section 1339.585 as first introduced applied "[u]pon admission of a patient," without reference to patients seen in the emergency department (Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as introduced Feb. 22, 2005), suggesting the *Gray* court misinterpreted the legislative history. However, the *Gray* court correctly described the evolution of the statute which ultimately included a specific exclusion of its application to emergency services' patients. (Compare Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as introduced Feb. 22, 2005, with Assem. Bill No. 1045 (2005-2006 Reg. Sess.) as amended April 20, 2005, May 27, 2005, June 22, 2005, July 6, 2005, and Sept. 6, 2005.)

resources to the different levels of effort represented by the code, and be based on hospital resources and not physician resources. (72 Fed.Reg. 66805.)

"Federal regulatory law, pursuant to the Patient Protection and Affordable Care Act (Pub.L. No. 111-148 (Mar. 23, 2010) 124 Stat. 119), imposes additional pricing disclosure requirements on Medicare participating hospitals—namely that they must file, in addition to their chargemaster, a 'list' of 'standard charges' in accordance with guidelines promulgated by the Secretary of Health and Human Services. (42 U.S.C. § 300gg-18(e).)" (*Gray*, *supra*, 70 Cal.App.5th at p. 232, fn. omitted.) In expanding the disclosure requirements, federal regulators made efforts to ensure that such obligations did not interfere with obligations under the Emergency Medical Treatment and Active Labor Act (EMTALA).[9] (*Id.* at p. 241.)

The court in *Gray* observed that while pricing disclosure requirements are focused on medical services that can be planned in advance (i.e., non-emergency services), the need for emergency treatment generally arises "for serious, and often grave, unplanned accidents or medical calamities." (*Gray*, *supra*, 70 Cal.App.5th at p. 241.) Though the CMS "applauded" hospitals who made efforts to provide information to patients in addition to meeting the posting requirements, the CMS confirmed that "the price transparency provisions . . . do not require that hospitals post any signage or make any

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[9] Under the EMTALA, an emergency department must provide appropriate screening to any person who presents to the department requesting examination or treatment. If the hospital determines that the person has an emergency medical condition, the hospital must provide treatment to stabilize the condition. " 'Under EMTALA, hospitals with emergency departments have two obligations. First, if any individual comes to the emergency department requesting examination or treatment, a hospital must provide for "an appropriate medical screening examination within the capability of the hospital's emergency department." (42 U.S.C. § 1395dd(a).) Second, if the hospital "determines that the individual has an emergency medical condition," it must provide "within the staff and facilities available at the hospital" for "such treatment as may be required to stabilize the medical condition" and may not transfer such a patient until the condition is stabilized or other statutory criteria are fulfilled. (*Id.*, § 1395dd(b) & (c).)' [Citation.]" (*Gray*, *supra*, 70 Cal.App.5th at p. 234, fn. 8.)

statement at the emergency department regarding the cost of emergency care or any hospital policies regarding prepayment of fees or payment of co-pays and deductibles." (84 Fed.Reg. 65536, 65577.)

In *Gray*, having considered the comprehensive scheme governing medical billing practices and those relevant to emergency room services, the appellate court determined that the signage and verbal pretreatment disclosure obligation that the plaintiff was claiming the hospital owed was the same obligation "the [CMS] has reassured hospitals does not exist." (*Gray*, *supra*, 70 Cal.App.5th at p. 241.)[10] Moreover, the court rejected the plaintiff's contention that a pretreatment duty to disclose the emergency room fee would make emergency departments less crowded because it would encourage patients with "relatively minor ailments" to seek treatment elsewhere. "[Plaintiff's] sweeping assumption that those seeking care at an emergency department can accurately diagnose whether their ailment is 'relatively minor' and whether they can safely transport themselves or be transported to a lower acuity facility, is unsupportable. And while [plaintiff] complains this is a 'paternalistic' attitude and asserts every person has a right to decide for him or herself whether to seek medical treatment at an emergency department, and to do so based on readily accessible cost information, this disregards the long standing regulatory environment within which emergency departments operate, which emphasizes that no one in need of emergency care should be deterred from receiving it because of its cost." (*Id.* at pp. 241-242.)

Noting that the plaintiff did not allege that the hospital violated "any of the statutory and regulatory duties" governing the provision of emergency room services, the appellate court determined that the hospital's failure to disclose the emergency room charge did not meet the substantive definition of an "unfair," actionable practice, as the alleged conduct did not " ' "violate[] established public policy," ' " nor was it

[10] Although the Gray court referenced the "CMC" in its discussion, it is clear from context that it is referring to the CMS. (See *Gray*, *supra*, 70 Cal.App.5th at p. 233.)

" ' "immoral, unethical, oppressive or unscrupulous." ' " (*Gray, supra,* 70 Cal.App.5th at p. 242, citing *Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1407-1408 (*Nolte*).)

The *Gray* court's thoughtful deference to the complex legislative and regulatory system relevant to emergency medical services is well placed. While we are not bound by the opinion of another appellate district, "we generally follow the decisions of other appellate courts unless there is good reason to disagree." (*County of Kern v. State Dept. of Health Care Services* (2009) 180 Cal.App.4th 1504, 1510.) Here we conclude that defining the circumstances under which hospitals should be required to disclose fees for services rendered to emergency room patients "is a task for which legislative and administrative bodies are particularly well suited," and "would involve matters that are peculiarly susceptible to legislative and administrative investigation and determination, based upon empirical data and consideration of the viewpoints of all interested parties." (*Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 552-553.) Capito's claim under the UCL would require this court to establish a notice requirement beyond that mandated by statute and regulation. Consistent with *Gray*, we conclude that Regional's failure to separately disclose the possible imposition of an EMS fee before providing emergency treatment does not meet the substantive definition of an "unfair" practice actionable under the UCL.

B. Capito's CLRA Claim

We next turn to Capito's CRLA claim. Capito asserts that Regional had exclusive knowledge of and concealed the material fact that an EMS fee could be charged to her, thus violating the CRLA. She then argues that the claim provides a "tether" to the UCL, and therefore separately forms the basis for a UCL violation.

" ' " 'The [CLRA], enacted in 1970, "established a nonexclusive statutory remedy for 'unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of

goods or services to any consumer. . . .' [Citation.]" ' [Citation.] 'The self-declared purposes of the act are "to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." ' " ' " (*Gray*, *supra*, 70 Cal.App.5th at pp. 242-243.) The appellate court in *Gray* held that the assertion that a hospital's failure to disclose an emergency room charge similar to the EMS fee at issue here does not state a CLRA claim under Civil Code section 1770, subdivision (a)(5) or (a)(14). (*Gray,* at p. 245.)

Since the opinion in *Gray* in 2021, two additional courts have addressed whether a failure to disclose a fee similar to the EMS fee at issue here can form the basis for a claim under the CLRA. In *Torres*, the Fifth District Court of Appeal determined that the plaintiff, in making a CLRA claim under Civil Code section 1770, subdivisions (a)(5) and (a)(14), had adequately alleged that the hospital failed to disclose facts that were known exclusively to the hospital and were not reasonably accessible to the plaintiff, which was one of four situations recognized by the court "where a failure to disclose a material fact constituted a deceptive practice actionable under the CLRA. . . ." (*Torres*, *supra*, 77 Cal.App.5th at pp. 509, 510-513.) As Capito did in the instant matter, the plaintiff in *Torres* alleged that the hospital charged an EMS fee set at one of five levels determined after discharge based on a formula known exclusively to the hospital. (*Id.* at p. 510.) The appellate court found that the plaintiff adequately alleged that she "did not know an EMS Fee existed, did not know the events that triggered its imposition, did not know there were five levels of EMS Fees, did not know the formula used to determine which level of fee to impose on an emergency room patient, did not know the amount charged for each fee level, and did not know she would be billed an EMS Fee." (*Id.* at p. 511.)

The appellate court also concluded, based on a "reasonable person standard," that the plaintiff sufficiently plead a lack of reasonable access to 1) the facts that would trigger the imposition of the EMS fee and 2) the formula used to determine which level of

fee would apply to a particular patient, despite the plaintiff's access to the chargemaster and list of 25 common outpatient procedures. (*Torres*, *supra*, 77 Cal.App.5th at pp. 512-513.) Unlike Capito, the plaintiff in *Torres* alleged that the "chargemaster was 'unusable and effectively worthless for the purpose of providing pricing information to consumers'; the chargemaster failed to include the standardized CPT codes recognized in the industry; and the chargemaster used coding and highly abbreviated descriptions that are meaningless to consumers. "[T]hese allegations [which the court accepted as true for purposes of a motion for judgment on the pleadings] are sufficient to allege the material facts were not reasonably accessible and the factual question of reasonable access cannot be resolved at the pleading stage." (*Torres*, *supra*, 77 Cal.App.5th at p. 512.)[11] The *Torres* court expressly relied on these allegations in reaching its decision. (*Id.* at pp. 512-513.)

However, the appellate court ultimately determined that the plaintiff in *Torres* failed to properly plead a CLRA claim because she did not sufficiently allege reliance as was necessary to claim that the misrepresentation or omission of fact was material. (*Torres*, *supra*, 77 Cal.App.5th at p. 513.) The plaintiff's allegation that she " 'relied on not being billed' " coupled with her failure to allege that she would have behaved differently if the information had been disclosed was "not sufficient to properly plead reliance for purposes of alleging a claim under the CLRA based on a failure to disclose a material fact." (*Id.* at p. 514.)

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[11] The *Torres* court acknowledged the seemingly inapposite holdings in *Gray* and *Nolte*, stating, "We note that this interpretation of the SAC does not contradict the conclusions reached in *Gray*[, *supra*, 70 Cal.App.5th 225] or *Nolte*[], *supra*, 236 Cal.App.4th 1401 because neither of those decisions addressed whether the hospital had a duty to disclose based on its exclusive knowledge of material facts. [Citation.] As a result, neither decision explicitly addressed the patient's lack of reasonable access of a material fact. Therefore, they did not establish that a disclosure of the price charged for a service also discloses the circumstances in which the charge is imposed." (*Torres*, *supra*, 77 Cal.App.5th at p. 513.)

Shortly after the Fifth District issued its opinion in *Torres*, Division Four of the First District Court of Appeal decided *Saini v. Sutter Health* (2022) 80 Cal.App.5th 1054 (*Saini*). As in the instant matter and *Torres*, the plaintiff in *Saini* alleged a violation of the CLRA based on a hospital's failure to separately disclose an EMS fee apart from the COA and chargemaster prior to providing emergency medical treatment.[12] (*Id.* at pp. 1056-1057.) Recognizing that a different division of the First District held otherwise in *Gray*, the plaintiff argued that *Gray* was wrongly decided; the appellate court was not persuaded and held that the trial court properly sustained the hospital's demurrer to the CLRA cause of action. (*Saini*, at pp. 1057, 1066.)

Like Capito, the plaintiff in *Saini* alleged that the EMS fee "is charged to emergency room patients simply for seeking treatment in the emergency room and is designed to cover 'overhead' and general operating and staffing expenses for operating an emergency room on a 24 hour basis. . . . Further, the fact that [the hospital] intends to charge an EMS Fee to patients simply for being seen in the emergency room is not visibly posted on signage in or around defendant's emergency rooms or at its registration windows/desks, where a patient would at least have the opportunity of knowing of its existence . . . .' " (*Saini*, *supra*, 80 Cal.App.5th at pp. 1057-1058.) The complaint alleged that the hospital complied with the requirements of the Payers' Bill of Rights by listing and publishing the EMS fee in its chargemaster, stating, as Capito did in her SAC, that plaintiff's claim was " 'not that defendant fails to list an EMS Fee as a line item in its published chargemasters, or that defendant fails to list the price of such fees in its chargemasters.' " (*Id.* at p. 1058.) The plaintiff contended that the requirement for hospitals to post their chargemasters was not intended to and did not inform emergency room patients of the EMS fee. (*Id.* at p. 1059.) The trial court sustained a demurrer to

[12] Capito's attorneys represented the appellants in *Gray*, *Torres*, and *Saini*.

the complaint without leave to amend, determining that the hospital did not have a duty to post notice of the EMS fee in the emergency room.

On appeal, plaintiff argued that the hospital "had a duty to disclose under the CLRA based on its 'exclusive knowledge' and 'intentional concealment' as alleged in his complaint." (*Saini*, *supra*, 80 Cal.App.5th at p. 1061.) Citing the "well-reasoned opinion" in *Gray*, the appellate court affirmed the trial court. (*Saini,* at p. 1059.) While the *Saini* court acknowledged that the hospital had a general duty to disclose medical fees based on exclusive knowledge of material facts, it agreed with the *Gray* court that the hospital did not have a duty to "call attention to the EMS Fee by additional signage in the emergency room visible to a person seeking emergency care" in addition to disclosing the fee in its chargemaster "to which signage in the emergency room directs those interested," noting that there was "no withholding of information that is provided on the hospital's chargemaster." (*Id.* at p. 1062.)

The court approved the *Gray* court's consideration of "the competing interests served by ensuring that patients are fully apprised in advance of the costs of emergency services and ensuring that patients have timely access to emergency services," and addressed the additional legislative history offered by the plaintiff, suggesting that the CMS has considered whether to require hospitals to provide more information about the cost of care in emergency departments. (*Saini, supra*, 80 Cal.App.5th at pp. 1062-1063.) "As *Gray* makes clear, the state and federal legislative bodies are in a superior position to balance these competing interests and have done so in crafting the applicable 'multifaceted statutory and regulatory scheme.' (*Gray*, *supra*, 70 Cal.App.5th at p. 241.) Our conclusion is consistent with the balance struck by the existing regulatory scheme and does not, as plaintiff suggests, disregard the 'important policy in favor of providing pricing transparency to medical patients.' " (*Saini*, at p. 1063.) The court further noted that claims concerning compliance with the laws governing a hospital's provision of a chargemaster could be raised with the HCAI. (*Ibid.*, citing Health & Saf. Code,

§§ 1339.54, 1339.55, subd. (a).) Thus, it declined to "imply that [the hospital's] chargemaster provides insufficient notice of the existence of the EMS Fee." (*Ibid.*)

Capito contends that the SAC sufficiently pleads her lack of reasonable access to material facts known exclusively to Regional. Thus, she asks this court to apply the holding in *Torres*. We decline to do so. As we have discussed, we agree with the *Gray* court's deferential approach to the legislative and regulatory determinations of what constitutes requisite notice of the costs of emergency medical services.

Further, the allegations in Capito's SAC are distinguishable from the plaintiff's in *Torres*. There the plaintiff alleged in the complaint that the chargemaster was "unusable and effectively worthless," that it failed to include the standard CPT codes, and that the coding and descriptions in the chargemaster were "meaningless to consumers" (*Torres*, *supra*, 77 Cal.App.5th at p. 512). In contrast, Capito, like the appellant in *Saini*, "expressly disavow[ed] any claim that 'defendant fails to list an EMS Fee as a line item in its published chargemasters, or that defendant fails to list the price of such fees in its chargemasters.' " (*Saini*, *supra*, 80 Cal.App.5th at p. 1062, fn. 8.)

Similarly, Capito, in the SAC, does not allege that Regional's chargemaster was " 'unusable and effectively worthless for the purpose of providing pricing information to consumers[,]' " nor is there any allegation that the chargemaster failed to include standardized codes recognized in the industry or that the chargemaster used " 'highly abbreviated descriptions that are meaningless to consumers.' " In effect, Capito concedes in the SAC that the chargemaster complies with the applicable " 'multifaceted statutory and regulatory scheme,' " and as in *Saini*, our conclusion that the SAC does not state a cause of action for violation of the CLRA is "consistent with the balance struck by the existing regulatory scheme." (*Saini*, *supra*, 80 Cal.App.5th at p. 1063; *Gray*, *supra*, 70 Cal.App.5th at p. 241.) Further, unlike the contract in *Torres*, in which plaintiff agreed to "promptly pay all hospital bills in accordance with the regular rates and terms of the medical center. . . ," Regional's COA expressly referenced the chargemaster and invited

Capito to request an estimate of costs before receiving treatment. (*Torres*, *supra*, 77 Cal.App.5th at p. 504.)

But Capito argues that Regional concealed exclusive knowledge that an EMS fee would be charged in violation of the CLRA because the hospital did not disclose the EMS fee in specific ways. She alleges in the SAC that the EMS fees are "effectively hidden by [Regional's] intentional failure to provide notice of them in its Contract, in any emergency room signage, on its website, during the patient registration process, or by any means reasonably designed to apprise prospective patients of such EMS Fees." Capito seeks to distinguish the SAC from the complaint considered in *Saini* by arguing that the SAC sought disclosure of the EMS Fee not only through signage posted in the ER, but also in the COA and on Regional's website. But this claim again presupposes that notice of the EMS fee should be provided in a manner exceeding that required by the scheme governing charging practices for emergency medical services.

Similarly, Capito contends in the SAC that "at least during part of the Class Period, [Regional] did not make its chargemaster available on its own website or reasonably available to emergency room patients at the time of their emergency room visits," alleging that clicking on " 'view our detailed price list' on [Regional's] website led to a dead link" as of July 20, 2020. We observe that while Capito clearly alleged that the EMS Fee was not specifically disclosed on signage in or around the ER, she did not allege in the complaint that Regional failed to comply with the requirements of Health and Safety Code section 1339.51, subdivision (c), requiring the hospital to "post a clear and conspicuous notice in its emergency department, if any, in its admissions office, and in its billing office that informs patients that the hospital's charge description master is available." Capito did not allege that the chargemaster was not available either online *or* at the hospital at the time she received treatment in June 2019. As we have determined that hospitals have no duty to disclose potential charges beyond the means established in the applicable regulatory scheme, and because the Payers' Bill of Rights requires

hospitals to make a written or electronic copy of the chargemaster available online *or* at the hospital, this allegation does not ameliorate the deficiency in Capito's pleading. (Health & Saf. Code, § 1339.51, subd. (a).) Absent an allegation that Regional did not have its chargemaster available to Capito either online *or* at the hospital at the time Capito received treatment, or that it failed to give proper notice of the availability of the chargemaster at that time, Capito cannot demonstrate causation under Civil Code section 1780, subdivision (a). (See *Gray*, *supra*, 70 Cal.App.5th at p. 243.)

Capito further contends that the reliance on *Gray* by the *Saini* court and the trial court in this matter was contrary to the California Supreme Court's decision in *Cel-Tech*, arguing that these decisions rely not on the language of a specific statute barring her action or clearly permitting Regional's conduct, but instead created an impermissible " 'implied' safe harbor." The *Saini* court rejected a similar argument. "In *Cel-Tech*[, *supra*,] 20 Cal.4th 163, 182 [83 Cal. Rptr. 2d 548, 973 P.2d 527], the court held that where specific legislation provides a 'safe harbor,' plaintiffs 'may not use the general unfair competition law to assault that harbor.' The court held further, however, that there is no implied 'safe harbor' under California law for claims asserted under the UCL. . . . *Cel-Tech* did not address claims asserted under the CLRA. In any event, the *Gray* court's conclusion that the proposed duty would interfere with the statutory and regulatory requirements that hospitals provide emergency care without first addressing the costs for care or the patient's ability to pay does not imply a 'safe harbor' for the alleged omission. (*Gray*, *supra*, 70 Cal.App.5th at p. 241.)" (*Saini*, *supra*, 80 Cal.App.5th at pp. 1064-1065.)

Consistent with the holdings in *Gray* and *Saini*, we conclude that Capito has not stated a cause of action under the CLRA for concealment of a material fact not accessible to Capito. The material fact—the existence of an EMS fee—was disclosed and available to the public, including Capito, in accordance with the procedure mandated by the Legislature, and Capito did not allege that Regional failed to comply with the statutory

procedure. (See *Nolte*, *supra*, 236 Cal.App.4th at p. 1408.) The SAC does not sufficiently plead a cause of action, either under the CLRA or the UCL.

C. Declaratory Relief/ Contract-Based Claims

In the SAC, Capito raised two bases for seeking declaratory judgment under Code of Civil Procedure section 1060: first, that she is not required to pay the EMS fee under the COA, because the "practice of charging a substantial undisclosed EMS Fee, in addition to the charges for the specific services and treatments provided, is not authorized by [the COA]"; second, that Regional had a duty to disclose its intention to charge a separate EMS fee to ER patients before they receive treatment triggering such a charge.

Based on our determination that Regional did not have a duty to separately disclose the EMS fee, Capito's declaratory relief claim fails in this regard, as it does not materially differ from the UCL and CLRA claims as discussed above. "The object of [Code of Civil Procedure section 1060] is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues." (*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470; accord *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324.) Capito does not explain how her declaratory relief cause of action based on a duty to disclose differs from similar UCL and CLRA claims.

As to the request for declaratory relief based on the terms of the contract-based claim, Capito alleged in the SAC that the COA does not allow Regional to charge an EMS fee, and that the COA did not effect an agreement that she would pay a separate EMS fee. In the COA, Capito agreed to pay her account "at the rates stated in the hospital's [chargemaster]," "in consideration of the services to be rendered to [her]." Capito admits in the SAC that she signed the COA, which includes an acknowledgement that she had the opportunity to read and ask questions about the information contained in the COA, including the financial obligations set forth therein. While Capito contends in the SAC that the EMS fee is billed not for services rendered to a patient, but rather as an

overhead cost unrelated to services, we are not required to assume the truth of such contention. (*Gray*, *supra*, 70 Cal.App.5th at p. 236, fn. 10.) Rather, we determine that the COA did authorize the EMS fee, as it was included in the chargemaster.

Despite Capito's contention to the contrary, the relevant authority reveals that the EMS fee charged by a hospital is dependent on the severity of a specific patient's condition and the resources required to render care for that condition. As discussed in section II(A), *ante*, the CMS requires hospitals to meet various standards in setting EMS fee levels, including the requirement that the fee "should be designed to reasonably relate the intensity of hospital resources to the different levels of effort represented by the code [citation]." (72 Fed.Reg. 66805.) The CMS further describes the CPT codes used for EMS fees as being "used to report [evaluation and management] *services* provided in the emergency department," (italics added) and confirms they were defined to reflect the activities of physicians without "necessarily fully describ[ing] the range and mix of services provided by hospitals during visits of clinic and emergency department patients and critical care encounters." (72 Fed.Reg. 66581, 66790.)

Thus, under the terms of the COA and the authority discussed above, the EMS fee is a fee for services rendered to a patient. Capito agreed to pay the rates set forth in the chargemaster in consideration for services rendered to her.[13] The EMS fee is set forth in the chargemaster. Capito has failed to state a cause of action for declaratory judgment based on contentions that the COA does not allow Regional to charge an EMS fee, and

[13] Capito argues that the reference to the chargemaster in the COA does not constitute an agreement to pay whatever items Regional chooses to bill her for, so long as they are included in the "thousands of items" listed in the chargemaster. We agree. If the billed item at issue was for a service that Regional did not provide to Capito, such as a CT scan that she did not receive, she would not be obligated to pay as she did not receive the consideration required by the COA. Here, Capito received evaluation and management services in the ER, and those services are reflected in the EMS fee charged to her.

does not constitute an agreement that she would pay a separate EMS fee. The trial court properly sustained Regional's demurrer on this basis.

Capito contends that her contract-based claims support not only her cause of action for declaratory judgment, but also her claims under the UCL and CLRA. For the reasons discussed, Capito has failed to state a contract-based claim for violation of the UCL or CLRA, as the facts as alleged in her complaint do not support her contention that the COA does not authorize the EMS fee and does not constitute an agreement that she would pay the EMS fee.[14]

D. Leave to Amend

Capito argues that the trial court erred in sustaining the demurrer without leave to amend, as she contends the allegations concerning the COA support a claim for breach of contract, citing *Gray*. In *Gray*, the appellate court suggested that while the plaintiff failed to state a cause of action under Civil Code section 1770, subdivision (a)(14) of the CLRA, the allegation that he was not required to pay the undisclosed EMS fee under the hospital's contract would "at most" suffice to allege a breach of contract. (*Gray*, *supra*, 70 Cal.App.5th at p. 245.) Based on this acknowledgment that the plaintiff "might have alleged a breach of contract," Capito seeks leave to amend her complaint to allege breach of contract as well.

"When any court makes an order sustaining a demurrer without leave to amend the question as to whether or not such court abused its discretion in making such an order is open on appeal even though no request to amend such pleading was made." (Code Civ. Proc., § 472c, subd. (a).)[15] "A plaintiff against whom a demurrer is sustained is entitled

[14] As we hold that the trial court properly sustained the demurrer to Capito's SAC, we need not consider whether the trial court erred in striking the class allegations from the FAC.

[15] Capito contends she did ask the trial court for leave to amend her complaint as part of her motion for reconsideration. Specifically, in her reply brief in support of the reconsideration motion, Capito noted the *Gray* court's comment regarding a potential breach of contract cause of action, and stated, "At the very least, then, even under the

to leave to amend the defective complaint if she can 'prov[e] a reasonable possibility that the defect can be cured by amendment.' [Citation.] The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case.' [Citation.]" (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.) To seek amendment for the first time on appeal, Capito must show how she can amend her complaint and how the amendment will change the legal effect of the complaint. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44.) It is not sufficient to assert an "abstract right to amend"; "[Capito] must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citation.]" (*Id.* at p. 43.)

Capito has not met her burden to demonstrate that leave to amend the complaint should be granted. While she asserts that the opinion in *Gray* somehow authorizes a breach of contract claim, she does not set forth the elements of or authority for the cause of action, and does not set forth the factual allegations that sufficiently state all required elements of the breach of contract cause of action. Thus, Capito's request for leave to amend the complaint is denied.

Gray case, Plaintiff should be granted leave to allege a claim for breach of contract here." She did not include an affirmative request for leave to amend in the conclusion of her brief. Nor did she submit supplemental briefing to the trial court based on the dicta in *Gray*.

E. Hearing Prior to Reconsideration

Citing *Le Francois*, *supra*, 35 Cal.4th at page 1108 and *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 238 (*Paramount*), Capito argues that the trial court erred in reconsidering its tentative ruling overruling the demurrer to the SAC without first holding a hearing. We disagree.

The trial court has inherent power to reconsider its prior orders "as long as it gives the parties notice that it may do so and a reasonable opportunity to litigate the question." (*Le Francois*, *supra*, 35 Cal.4th at p. 1097.) "To be fair to the parties, if the court is seriously concerned that one of its prior interim rulings might have been erroneous, and thus that it might want to reconsider that ruling on its own motion-something we think will happen rather rarely-it should inform the parties of this concern, solicit briefing, and hold a hearing." (*Id.* at p. 1108.) In *Le Francois*, the Supreme Court held that a trial court erred in granting a renewed motion for summary judgment that did not meet the statutory requirements. However, it determined that the trial court was not precluded, on remand, from reconsidering its previous ruling on the initial motion for summary judgment on its own motion, as long as it gives the parties notice and opportunity to litigate the question. (*Id.* at pp. 1097, 1109.) In *Paramount*, the appellate court determined that the trial court erred in reconsidering a prior order denying a motion for summary judgment without giving the parties an opportunity to provide further oral or written argument before issuing a new ruling. (*Paramount*, *supra*, 227 Cal.App.4th at pp. 237-238.)

Here, the trial court did not "reconsider" a previously issued order. It issued a tentative ruling on the demurrer to the second amended complaint, and then, after argument, issued a new order allowing the parties to provide supplemental briefing on specified issues without ruling on the demurrer. The trial court issued its order on the demurrer only after receiving the supplemental briefing. Capito does not cite legal authority precluding a trial court from changing its mind about a tentative ruling without

holding a new hearing. Even if the principles of *Le Francois* do apply to tentative rulings, the trial court did give the parties notice of its intention to reconsider the previous demurrer arguments and an opportunity to litigate the issue further through supplemental briefs. Moreover, in giving such notice, it stated it would issue its order based on the supplemental briefs, indicating "no further oral argument is likely." Capito did not request further oral argument in her supplemental brief. As required by *Le Francois*, the trial court gave appropriate notice and opportunity for the parties to litigate the proposed reconsideration of the tentative ruling overruling the demurrer to the SAC.

III. DISPOSITION

The February 24, 2021 order striking the class allegations in the first amended complaint (appeal No. H049022) and the December 14, 2021 judgment of dismissal with prejudice (appeal No. H049646) are affirmed.

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Greenwood, P. J.

WE CONCUR:

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Grover, J.

_____
Lie, J.

H049022
Capito v. San Jose HealthCare System LP