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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GEORGE OCEGUEDA et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B267795 (Los Angeles County Super. Ct. No. BC563103)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Barbara Scheper, Judge. Judgment affirmed; order affirmed as modified.

The Figari Law Firm and Barbara E. Figari for Plaintiffs and Appellants.

Sheppard, Mullin, Richter & Hampton, Ronda D. Jamgotchian and Paul Berkowitz for Defendants and Respondents.

* * * * * *

Appellants,[1] current and former employees of respondent Los Angeles County,[2] appeal from a judgment dismissing their claims against respondent for violations of the Labor and Health and Safety Codes, and two orders imposing sanctions against appellants and their counsel. We affirm the judgment, and affirm the sanctions orders with a modification.

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[1] Appellants' notice of appeal identifies appellants as "Plaintiffs George Ocegueda, et al." In the absence of any indication in the record to the contrary, we presume this designation includes all plaintiffs listed in the first and second amended complaints, as these are the pleadings relevant to the judgment and orders on appeal. The appellants in this case therefore are Tsovinar Arevyan, Dora Mabel Calero, Carol Christensen, Luis Colato, Irene Ephriam, Armineh Gorkian, Nicole Oliver Hamilt, Alma Kucenski, Wayne Lavender, Blake Lindgren, Nance Lopez, Mary Marsh, Christlyn McKay, Michael Montoya, George Ocegueda, Gloria Pass, Melissa Perlstein, Irma Salcedo, Elizabeth Sanchez, Ani Sinanyan and Nance Silva Welch. In appellants' opening brief, Deborah Marshall is also listed as an appellant; we presume this is an error, as she is not listed in either the first or second amended complaints, and do not deem her a party to this appeal.

[2] While appellants assert in their appellate briefing that Los Angeles County is the defendant in this case, appellants never amended their complaint to reflect this. The parties nonetheless have proceeded as if the county were the named defendant. For purposes of this appeal we will consider this a de facto substitution. (See *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 988, fn. 6 (*DiCampli-Mintz*).)

BACKGROUND[3]

1. First Amended Complaint

Appellants are current and former employees of an acute care hospital facility operated by respondent. They brought suit against respondent in November 2014. In their first amended complaint (FAC), appellants alleged respondent's agents had retaliated against them for reporting unsafe or unlawful health, safety, and working conditions at the hospital, in violation of the whistleblower protections of Health and Safety Code section 1278.5 and Labor Code section 1102.5. Appellants also alleged that respondent had failed to pay their wages upon termination and comply with various record keeping requirements, in violation of Labor Code sections 201, 202, 203, and 226, and had failed to provide proper rest and meal breaks in violation of Labor Code sections 226.7, 512, and California's Industrial Welfare Commission wage order No. 4-2001 (Wage Order 4-2001), subdivision 12 (Cal. Code Regs., tit. 8, § 11040, subd. (12)). Appellants sought their unpaid wages, compensatory and punitive damages, and civil penalties. In the prayer, appellants also requested "declaratory and injunctive relief, in the form of a Court Order prohibiting [respondent] from continuing to engage in practices that continue to endanger the safety of [respondent's] patients and employees, and other such declaratory and injunctive relief deemed proper by the Court."

Respondent filed a motion for judgment on the pleadings, asserting that appellants had failed to allege compliance with the

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[3] For the sake of brevity, the summaries herein of the various motions and orders in the trial court are limited to the issues relevant to the appeal.

Government Claims Act (Gov. Code, § 810 et seq.),[4] which required appellants to submit a timely written claim to respondent before bringing suit for money or damages. Respondent further argued that with the exception of the claim under Labor Code section 1102.5,[5] none of appellants' claims were cognizable against a public entity like respondent.

Respondent also moved for sanctions under Code of Civil Procedure section 128.7 (hereinafter section 128.7), arguing that appellants' claims were not supported by the law and were frivolous. Respondent further claimed the request for punitive damages was improper and "merely meant to harass."

Appellants opposed both motions. They argued that their claims were exempt from the Government Claims Act, or, in the alternative, that appellants had complied with that act by filing grievances with their union and by reporting various statutory violations to the Labor and Workforce Development Agency (LWDA), a state agency. Appellants further argued that under Supreme Court precedent their Health and Safety Code claim was cognizable against respondent, and that their union's memorandum of understanding (MOU) with respondent granted them protections under the Labor Code. Appellants requested the opportunity to amend the complaint to the extent it was deficient.

The trial court granted the motion for judgment on the pleadings, ruling that appellants' claims were not cognizable against respondent (except the claim under Labor Code section

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[4] See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 741-742 (directing that Gov. Code, § 810 et seq. be referred to as the Government Claims Act).

[5] Labor Code section 1102.5 expressly applies to employees of counties. (Lab. Code, § 1106.)

1102.5) and that appellants had not alleged compliance with the Government Claims Act as to any cause of action. The court granted leave to amend "only as it relates to whether the plaintiffs can allege compliance with the Government Claims Act" as to the claim under Labor Code section 1102.5. The court ordered that appellants and their counsel be jointly and severally liable for $8,000 in sanctions.[6]

2. Second Amended Complaint

Appellants filed their second amended complaint (SAC) on June 29, 2015. As they had in their opposition to the motion for judgment on the pleadings, they alleged that their claims were exempt from the Government Claims Act, and, in the alternative, that they had complied with the act through a petition sent to respondent via appellants' union, reports made on respondent's "Patient Safety Net," a grievance filed with the California Department of Public Health with a copy sent to respondent, and a letter sent to the LWDA and respondent. Appellants alleged violation of Labor Code section 1102.5 and requested "nominal, actual, compensatory, and exemplary damages," as well as civil penalties. In the prayer, appellants omitted reference to punitive damages and repeated the request for declaratory and injunctive relief from the FAC.

Respondent filed a demurrer and moved to strike portions of the SAC. Respondent argued that the Government Claims Act did apply to appellants' remaining claim, and that the documents appellants allegedly provided to respondent did not comply with the act. Respondent also asserted that the SAC did not sufficiently allege violations of Labor Code section 1102.5 as to all plaintiffs,

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[6] The court's orders regarding the two motions for sanctions are described in detail in Discussion, part 4, *post*.

and that portions of the SAC should be stricken as they applied solely to issues resolved in the court's order granting judgment on the pleadings. Respondent again moved for sanctions under Code of Civil Procedure section 128.7, arguing that the allegations in the SAC regarding the Government Claims Act were frivolous and in violation of the court's order granting leave to amend.

Appellants filed a single opposition, ostensibly to the motion to strike, arguing again that their claims were exempt from the Government Claims Act or that they had complied with the act. Appellants additionally asserted that their claims for declaratory and injunctive relief were exempt from the act.

The court sustained the demurrer without leave to amend and granted the motion to strike. The court again found that appellants' claim was subject to the Government Claims Act and that the allegations concerning various documents provided to respondent did not sufficiently establish compliance with the act. The court acknowledged that claims for declaratory and injunctive relief were not subject to the act, but found that the allegations regarding that relief were "vague and ambiguous and bear[] no relationship to the allegations of the complaint." The court also concluded the individual plaintiffs lacked standing "to address alleged violations of unidentified patient safety requirements," and the SAC only contained allegations regarding two of the 21 plaintiffs.

The court imposed $4,000 in sanctions against appellants' counsel. Having sustained the demurrer, the court dismissed the case with prejudice. Appellants timely appealed.

STANDARD OF REVIEW

We review de novo both a judgment on the pleadings and a dismissal after a demurrer is sustained. (*People ex rel. Harris v.*

Pac Anchor Transportation, Inc. (2014) 59 Cal.4th 772, 777 (*Harris*).) " 'All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law . . . .' " (*Ibid.*)

Denial of leave to amend a complaint is reviewed for abuse of discretion. "If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).)

We review an order imposing sanctions under section 128.7 for abuse of discretion.[7] (*McGee v. Balfour Beatty Construction, LLC* (2016) 247 Cal.App.4th 235, 241-242.)

DISCUSSION

1. Exemption from Labor Code

Appellants argue that the trial court wrongly concluded that their Labor Code claims were not cognizable against respondent. We reject this argument.

There is clear authority that, with the exception of the claim under Labor Code section 1102.5, appellants' Labor Code claims cannot be brought against a county. Labor Code section 220 expressly exempts "employees directly employed by any county" from the provisions of Labor Code sections 201, 202, and 203. Similarly, Wage Order 4-2001, subdivision 1(B), states that, apart

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[7] Appellants argue that the court's decision to impose sanctions should be reviewed de novo to the extent it was based on conclusions of law. This is correct; under the abuse of discretion standard, " 'the trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' " (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.)

from provisions not applicable here, the order "shall not apply to any employees directly employed by . . . any city, county, or special district." Courts have held that Labor Code sections 226.7 and 512 do not apply to public entities, based on the rule that " 'absent express words to the contrary, governmental agencies are not included within the general words of a statute,' " (*California Correctional Peace Officers' Assn. v. State of California* (2010) 188 Cal.App.4th 646, 653 (*Peace Officers' Assn.*); *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 736 (*Johnson*)), and the concern that statutes involving employee compensation infringe on a public entity's sovereign powers. (*Johnson, supra*, at pp. 738-739.) Under this reasoning, respondent would be exempt from Labor Code section 226 as well.

Appellants do not dispute this authority or even discuss it. Instead, they argue that because their union's MOU with respondent contains provisions "substantively identical to the requirements of the California Labor Code," the MOU "covers liability for these causes of action under the Labor Code." Appellants also contend that the Los Angeles County charter, "read in conjunction with the MOU," necessitates that they be provided with meal and rest breaks pursuant to the Labor Code.

Appellants cite no authority in support of their arguments. The excerpt of the MOU included in the record makes no reference to the Labor Code, and instead appears to be based on the federal Fair Labor Standards Act of 1938. (29 U.S.C. § 201 et seq.) The excerpt does not discuss enforcement at all. Appellants do not direct us to any portion of the county charter relevant to their claims. Given the authority in support of the trial court's ruling, and in the absence of any reasoned argument or authority to the

contrary, we decline to find any error in the court's dismissal of the Labor Code and wage order claims.[8]

2. Government Claims Act

Appellants argue the trial court erred in concluding that appellants had failed to allege compliance with the Government Claims Act. This argument lacks merit.

Under the Government Claims Act, subject to certain exceptions, a party cannot bring suit for "money or damages" against a public entity unless "a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board." (Gov. Code, § 945.4; see *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239 (*Bodde*).) "It is well settled that the purpose of the claims statutes 'is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.' " (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705 (*Phillips*).) The claim must be delivered to or actually received by "the clerk, secretary or auditor" of the entity (Gov. Code, § 915, subds. (a), (e)). "If an appropriate public employee or board never receives the claim, an undelivered or misdirected claim fails to comply with the statute." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 992.) "The claimant bears the burden of ensuring that the claim is presented to the appropriate public entity." (*Id.* at p. 991.)

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[8] Citing to *Peace Officers' Assn.* and *Johnson*, the trial court also ruled that appellants' claim under Health and Safety Code section 1278.5 was not cognizable against respondent. Appellant disputes this on appeal. Because we hold that this claim is barred by appellants' failure to allege compliance with the Government Claims Act (see *post*), we do not reach the issue.

The claim must include the name and address of the claimant; the address where notices are to be sent; the date, place, and circumstances of the occurrence giving rise to the claim; a general description of the "indebtedness, obligation, injury, damage or loss incurred"; the names of any public employees causing the injury, damage, or loss, if known; and the dollar amount claimed if less than $10,000. (Gov. Code, § 910.) If the claim does not substantially comply with these requirements, but nonetheless discloses "the existence of a claim for monetary damages and an impending lawsuit," the burden shifts to the public entity to notify the plaintiff of the insufficiency in the claim; failure to do so waives any defense on that basis. (*Phillips, supra*, 49 Cal.3d at pp. 701-702, 705; see Gov. Code, §§ 910.8, 911.)

"[F]ailure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action."[9] (*Bodde, supra*, 32 Cal.4th at p. 1239.)

In this case, the trial court did not specify which claims it dismissed for failure to comply with the Government Claims Act. "Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances" are exempt from the claims requirements. (Gov. Code, § 905, subd. (c).) Although neither the court nor the parties addressed this, presumably appellants' claims

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[9] It follows that failure to comply with the Government Claims Act can be raised in a motion for judgment on the pleadings as well, as failure to "state facts sufficient to constitute a cause of action" is a permitted basis for such a motion. (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) For this reason, we reject appellants' argument that respondent has waived their Government Claims Act argument by not asserting it in the answer.

under Labor Code sections 201, 202, 203, 226, 226.7, 512, and Wage Order 4-2001, which concern wages upon termination, unpaid wages for missed meal and rest breaks, and proper recordkeeping of wages, would fall into this exemption. We need not reach this, as these claims were properly dismissed on another ground, as discussed above. Hence, our discussion of the Government Claims Act will be limited to appellants' whistleblower claims under Health and Safety Code section 1278.5 and Labor Code section 1102.5.

As they did below, appellants assert that their claims were exempt from the claims requirements or, in the alternative, that they complied with the requirements. We discuss each argument in turn.

a. Exemption from Government Claims Act

Appellants argue that case law, including Supreme Court precedent, holds that claims under Labor Code section 1102.5 or the Health and Safety Code are exempt from the claims requirements of the Government Claims Act. They also argue that their "claims for declaratory and injunctive relief" are exempt. We reject these arguments.

Appellants seek compensatory damages and civil penalties for retaliation and discrimination in violation of the whistleblower protections under Labor Code section 1102.5 and Health and Safety Code section 1278.5. These constitute claims for "money or damages," and thus would be within the ambit of the claims requirements of the Government Claims Act. (Gov. Code, § 945.4.) Appellants do not argue that these claims fall under the exceptions to the claims requirements listed in Government Code section 905, nor do we find any exceptions that might apply.[10]

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[10] Although appellants alleged they suffered a "loss of wages" as a result of the purported retaliation against them, there were no

Instead, appellants cite four cases purportedly holding that their whistleblower claims are exempt. But these cases do not support appellants' position, or even address the issue of the Government Claims Act claims requirements.

The first case, *Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320 (*Lloyd*), held in relevant part that a litigant was not required to exhaust internal administrative remedies under the county's civil service rules or the Labor Code prior to filing a whistleblower claim. (*Id.* at pp. 328, 331-332.) The court reached this conclusion through analysis of the specific civil service rule and Labor Code provision at issue. (*Id.* at pp. 327-328, 331-332.) The case did not address whether the plaintiff had complied, or was required to comply, with the claims requirements under the Government Claims Act. "Ordinarily, filing a claim with a public entity pursuant to the [Government] Claims Act is a jurisdictional element of any cause of action for damages against the public entity [citations] that must be satisfied *in addition to* the exhaustion of any administrative remedies [citations]." (*Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 938.) Thus, the fact that

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allegations that wages to which they were entitled were withheld as a retaliation tactic. A fair reading of the allegations is that appellants lost potential *future* wages by being terminated or denied other employment benefits, for which they sought compensatory damages. Such claims do not fall under the Government Claims Act exception for claims for "fees, salaries, wages, mileage, or other expenses and allowances." (Gov. Code, § 905, subd. (c).) That exception applies to claims for wages that are earned but unpaid, not potential wages lost due to wrongful termination or similar adverse employment action. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080-1081.)

administrative exhaustion was deemed unnecessary in *Lloyd* sheds no light on the applicability of the Government Claims Act.[11]

Appellants characterize their second cited case, *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, as holding that the Government Claims Act "does not apply whatsoever to cases brought under provisions of the Health and Safety Code." This is a gross mischaracterization of Supreme Court authority. In fact, the case merely holds that the Government Claims Act's prohibition on punitive damages against public entities does not bar imposition of civil penalties under the Long-Term Care, Health, Safety and Security Act of 1973. (Health & Saf. Code, § 1417 et seq.; *Kizer*, at p. 146.) The opinion does not discuss the claims requirements of the Government Claims Act. Nor would it, since the party seeking civil penalties was the State Department of Health Services (*Kizer*, at pp. 141-142), and claims "by a state department" are expressly exempt from the claims requirements (Gov. Code, § 905, subd. (i)).

Appellants' third cited case, *Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, held that an employee could assert a whistleblower claim under Labor Code section 1102.5 even if the government entity to which she disclosed information was her own employer. (*Gardenhire*, at p. 243.) Their fourth cited case, *Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, holds that a report by a government employee to a supervisor in the normal course of duties could be a disclosure protected by Labor Code section 1102.5. (*Mize-Kurzman*, at pp. 856-858.) Neither case mentions the Government Claims Act.

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[11] Nor does the case hold, as appellants contend, that a plaintiff is "*not* required—for a *whistleblower claim specifically*—to take any action putting the County on notice prior to filing his claim."

In sum, none of appellants' cited cases supports their exemption argument.

We also reject appellants' contention that their "claims for declaratory and injunctive relief" should survive dismissal. The claims requirements do not apply to purely nonpecuniary actions, such as declaratory and injunctive relief; however, if we determine that "the recovery of money or damages was the primary purpose of [appellants'] claims," the claims requirements apply. (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1493.)

Here there is no doubt that the primary purpose of all of appellants' causes of action was to recover money or damages, because all expressly include a request for such relief, while saying nothing about nonpecuniary relief. The only reference in the FAC or SAC to declaratory and injunctive relief comes in the prayer. As the trial court noted, the request is completely unrelated to the causes of action: appellants sought an order prohibiting "practices that continue to endanger the safety of [respondent's] patients and employees," but appellants have not asserted any claims regarding safety. The trial court did not err in finding that this isolated fragment was insufficient to assert claims for nonpecuniary relief.

b. Compliance with Government Claims Act

Appellants alternatively argue that they complied with the Government Claims Act by providing notice of their claims to respondent on numerous occasions. This argument lacks merit.

The SAC alleges that appellants notified respondent of "patient safety issues and resulting retaliatory action" via respondent's Patient Safety Net, then later filed a "grievance with the California Department of Public Health," copied to respondent. Appellants' union also filed a "petition" with respondent on behalf of

appellants. Appellants sent a letter to both respondent and the Labor and Workforce Development Agency giving "notice of the claims." The LWDA responded that appellants "could proceed with their claim," and a copy of this response was sent to respondent.

We cannot conclude from these allegations that appellants' measures complied with the requirements of the Government Claims Act. Missing is any indication that appellants made a communication to respondent asserting legal claims, such that respondent knew litigation was imminent and its obligations under the Government Claims Act were triggered. (See *Phillips, supra*, 49 Cal.3d at pp. 707-708 [requiring, at minimum, a "notice . . . which discloses the existence of a claim that if not paid or otherwise resolved will result in litigation"].) Appellants included no allegations as to the specific content of the documents submitted such that we can determine whether that content met the claims requirements. Simply providing notice is insufficient. "Even if the public entity has actual knowledge of facts that might support a claim, the claims statutes still must be satisfied." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 990.)

Our conclusion is reinforced by the documents appellants submitted to the trial court along with their opposition to the motion for judgment on the pleadings in order to establish compliance. Appellants claim the trial court erroneously declined to take judicial notice of these documents.[12] But even if the court had considered them, they would not help appellants.

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[12] The record does not appear to contain an order denying appellants' request for judicial notice, although during a hearing the trial court stated the documents were "not the proper subject of judicial notice."

The first set of documents consists of what appellants characterize as a "petition" filed by appellants via their union. It was purportedly sent to "the County" and the "California Department of Public Health." The "petition" itself consists of two union grievance forms, a two-and-a-half-page description of the petitioners' complaints, and several signature pages listing a number of names. This "petition" cannot satisfy the Government Claims Act, because it does not "disclose[] the existence of a claim that if not paid or otherwise resolved will result in litigation." (*Phillips, supra*, 49 Cal.3d at pp. 707-708.) Instead, it states that the employees are "expressing [their] concerns in an effort to make changes to [their] hostile work environment" and "protecting the hospital by exposing the violations that are currently going on." None of this suggests imminent litigation; instead, it suggests the employees are seeking to cooperate with the relevant authorities to bring about changes to their workplace.

The second set of documents is a letter sent by appellants' counsel to the LWDA "pursuant to Labor Code section 2699 *et seq*[.]," giving notice of violations of the Labor Code, and the LWDA's response declining to investigate.[13] Both letters are copied to the Los Angeles County Department of Health Services. Appellants' letter fails to comply with the Government Claims Act because it was not sent to "the clerk, secretary or auditor" of respondent, as required under Government Code section 915, nor is there any indication that any of these designated parties received

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[13] Under Labor Code section 2699.3, an employee cannot file certain claims for civil penalties under the Labor Code until he or she has provided notice to the LWDA of the purported violations and the LWDA has declined to investigate. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981.)

the letter. The requirement of section 915 is strictly construed; in *DiCampli-Mintz*, for example, the Supreme Court held that a letter from a patient suing a Santa Clara County hospital for malpractice did not substantially comply with the Government Claims Act because it was never received by the county clerk,[14] even though it had been sent to the hospital and later received by the department responsible for dealing with legal claims against the county. (*DiCampli-Mintz, supra*, 55 Cal.4th at pp. 987-988, 991-992.) Thus, even if appellants' letter served as notice of impending litigation, that notice was not given to a statutorily designated party, and therefore cannot be deemed to have substantially complied with the Government Claims Act.[15]

Appellants argue that to the extent their notifications were deficient, respondent has waived the argument by failing to inform them of the deficiencies as required by Government Code section 910.8. But respondent's obligation would only be triggered if it received "notice . . . which discloses the existence of a claim that if not paid or otherwise resolved will result in litigation." (*Phillips, supra*, 49 Cal.3d at pp. 707-708.) As discussed above, the "petition" does not meet this test, and the LWDA letter was never received by the correct party.

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[14] The court did not decide whether "clerk" referred to the county clerk or the clerk of the board of supervisors, given that neither had received the letter. (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 993, fn. 9.) We need not address the question for the same reason.

[15] There also is no indication that the petition filed through appellants' union was received by the proper party; this is an additional reason why the petition does not satisfy the Government Claims Act.

Appellants also argue that at the pleadings stage the trial court was required to accept all allegations as true, including appellants' allegations that the documents complied with the Government Claims Act, or that appellants were not required to comply. This is incorrect; the court was required to accept all properly pleaded facts as true, but not conclusions of law. (*Harris, supra*, 59 Cal.4th at p. 777.) Whether appellants' claims were subject to the Government Claims Act, and whether appellants' documents satisfied the act, are determinations of law, not fact.

At oral argument, appellants' counsel argued that because respondent had agreed to certain grievance procedures in the MOU with appellants' union, respondent thereby had implicitly agreed that those procedures either satisfied or substituted for the Government Claims Act claims requirements. This argument was not raised in the appellate briefs, and therefore is forfeited. (See *St. Cyr v. California FAIR Plan Assn.* (2014) 223 Cal.App.4th 786, 794, fn. 4.) But even were we to address the argument on the merits, we would reject it. Setting aside the question of whether a public entity can contractually modify or waive its rights under the Government Claims Act, appellants have not provided any evidence that respondent intended to do so by entering into the MOU. Indeed, appellants' counsel conceded that the MOU has no language expressly modifying or waiving respondent's rights under the Government Claims Act.

Nor does appellants' counsel's analogy to claims under the California Fair Employment and Housing Act (FEHA) (Gov. Code, 12900 et seq.) support the argument. Although courts have held FEHA claims to be exempt from the claims requirements of the Government Claims Act, that conclusion is based not on contractual agreement, but on statutory law. (See, e.g., *Snipes v. City of*

Bakersfield (1983) 145 Cal.App.3d 861, 865, 868.) Specifically, courts have held that the FEHA's "comprehensive scheme for combating employment discrimination" indicates the legislature's intent to exempt claims under that act from the general requirements of the Government Claims Act. (*Snipes*, at p. 865.) Here, however, respondent has not enacted law arguably superseding the Government Claims Act (which, of course, respondent has no power to do), but simply agreed to certain grievance procedures in a specific contract with a union. We cannot infer from this a general intent to modify or waive respondent's rights under the Government Claims Act.

We therefore hold that appellants have not alleged compliance with the Government Claims Act, and the trial court properly dismissed the whistleblower claims.[16]

3. Leave to Amend

Appellants argue the trial court abused its discretion in limiting amendment of the FAC to the Labor Code whistleblower claim, rather than permitting amendment as to all claims. We disagree.

The trial court did not abuse its discretion because amendment could not have cured the defects in the complaint. (*Schifando, supra*, 31 Cal.4th at p. 1081.) As discussed above, with the exception of the whistleblower action, all Labor Code claims were barred by statute or established case law, and appellants' arguments to the contrary are unsupported and unconvincing.[17] To

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[16] Because we hold that dismissal was proper for failure to state a claim upon which relief could be granted, we do not reach the parties' arguments concerning the statute of limitations.

[17] Appellants assert that they "could have amended the pleadings to allege a breach of contract cause of action . . . since

the extent the court should have allowed the Health and Safety Code claim to be included in the SAC, an issue we decline to reach, it would have nonetheless been dismissed for failure to comply with the Government Claims Act, along with the Labor Code whistleblower claim. Appellants propose no amendments that would have prevented dismissal, nor can we conceive of any.

4. Sanctions

Appellants claim the trial court erred in granting respondent's two motions for sanctions. Except in one limited respect, we disagree.

Section 128.7 states that "[b]y presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney . . . is certifying that" certain conditions are met. (*Id.*, subd. (b).) As is relevant here, one of those conditions is that "[t]he claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law."[18] (*Id.*, subd. (b)(2).) A court may impose sanctions for failure to meet these conditions. (*Id.*, subd. (c).)

Respondent violated the MOU." Appellants devote only a sentence to this in their briefing, and provide no basis to determine if such a claim would be viable, given respondent's civil service rules, the MOU's dispute resolution procedures, and appellants' union rules (none of which appellants provide or cite). It is not even clear that appellants actually wish to assert this claim, or are merely speculating. We are unconvinced that such a claim would save the complaint from dismissal.

[18] The other conditions to be met are "[the filing] is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of

a. First sanctions order

The trial court's first sanctions order was based on the FAC and appellants' arguments in opposition to respondent's motion for judgment on the pleadings. The court found the FAC "frivolous," because it "asserted causes of action against defendant which cannot be maintained against a public entity," and "failed to allege compliance with the Government Claims Act." The court found appellants' arguments that their claims were exempt from the Government Claims Act or, alternatively, that they had complied, were "frivolous and not supported by existing law or any nonfrivolous extension of existing law." The court also noted that appellants had made a claim for punitive damages barred by statute.

As discussed above, we agree with the trial court's legal conclusion that appellants brought claims that are clearly not cognizable against respondent, which appellants could have determined with a minimum of legal research. On the issue of the Government Claims Act, appellants cited the same cases in the trial court that they cite on appeal to argue their claims are exempt; as discussed, those cases unquestionably do not support appellants' position, and appellants' mischaracterization of authority, including Supreme Court precedent, is egregious. Appellants' documentation purportedly establishing compliance is also indisputably

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litigation" (§ 128.7, subd. (b)(1)); "[t]he allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery" (*id.*, subd. (b)(3)); and "[t]he denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief" (*id.*, subd. (b)(4)).

inadequate. A reasonable assumption is that appellants were not aware of the requirements of the Government Claims Act when they filed their lawsuit; once they learned of those requirements, rather than dismissing their lawsuit and attempting to comply with the act, they instead put forth meritless arguments to avoid compliance. The court did not abuse its discretion in imposing sanctions.

b. Second sanctions order

The court's second sanctions order was based on the SAC and appellants' opposition to respondent's motion to strike.[19] The court summarized its earlier ruling on the motion for judgment on the pleadings "that plaintiffs must allege compliance with the Government Claims Act and that plaintiffs' allegations regarding letters and other communications did not satisfy that requirement." The court then stated that "[i]n spite of that ruling[,] plaintiffs filed their [SAC] asserting the identical allegations and making the same argument that compliance [with the Government Claims Act] was not necessary or had been satisfied." The court again found appellants' arguments to be "frivolous and not supported by existing law or any nonfrivolous extension of existing law."[20]

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[19] As the court noted, appellants did not file an opposition to the second sanctions motion.

[20] The court further stated that appellants' claim for punitive damages was barred by existing law. Appellants had in fact removed the request for punitive damages from the prayer in the SAC, although they still listed "exemplary damages" in the allegations underlying the whistleblower cause of action. Because it is unclear if appellants were continuing to assert a baseless claim for punitive damages, or were merely guilty of careless editing, we do not consider that claim in our analysis of the second sanctions order.

Again, we find no abuse of discretion in the trial court's ruling. Having been told expressly (and correctly) by the court that their sole remaining claim was subject to the Government Claims Act, and that they had not adequately alleged compliance, appellants continued to press their already-rejected and meritless arguments to the contrary, even citing one of the mischaracterized cases, *Lloyd*, in the SAC. Sanctions were appropriate.

c. Section 128.7, subdivision (d)(1)

The court's first sanctions order requires modification. The court imposed the sanctions against appellants and their counsel jointly and severally.[21] Section 128.7, subdivision (d)(1), however, states that "[m]onetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b)," the subdivision quoted above that requires that legal contentions be warranted by existing law or by nonfrivolous argument for new law. We requested supplemental briefing from the parties as to whether the first sanctions order should be modified to impose sanctions against plaintiffs' counsel alone, pursuant to section 128.7, subdivision (d)(1). Having reviewed that briefing, we hold that modification is appropriate.

Although the court did not cite a particular subdivision in imposing sanctions, the language it chose closely resembles that of section 128.7, subdivision (b)(2), and does not correspond with any other bases for sanctions under section 128.7. The court used nearly identical language in the second sanctions order, in which sanctions were imposed only against plaintiffs' counsel. We therefore conclude, as do appellants in their supplemental brief,

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[21] Appellants' counsel on appeal was also their counsel below. To correspond to the trial court's order, we will refer to counsel as "plaintiffs' counsel."

that the court intended to impose sanctions pursuant to section 128.7, subdivision (b)(2). Under section 128.7, subdivision (d)(1), sanctions should have been imposed only against plaintiffs' counsel.

Respondent asserts that its motions for sanctions also argued that appellants had violated section 128.7, subdivision (b)(1) by requesting punitive damages in order to harass respondent. But the court does not seem to have relied on that argument; on the issue of punitive damages, it said only that the request was "clearly barred by existing law," again borrowing language from section 128.7, subdivision (b)(2). There is no indication that the court relied on any other basis.

DISPOSITION

The first sanctions order, dated July 15, 2015, is modified to impose sanctions on plaintiffs' counsel only. As modified, we affirm the judgment and the two sanctions orders. Respondent is entitled to costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

SORTINO, J.