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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

LOS ANGELES UNIFIED SCHOOL DISTRICT, Plaintiff and Respondent, v. CARMEN FRISCH GARCIA, Defendant and Appellant.	B279197 (Los Angeles County Super. Ct. No. BC549641)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Affirmed.

Carmen Frisch Garcia, in pro. per., for Defendant and Appellant.

Koeller, Nebeker, Carlson & Haluck, and Dennis K. Wheeler, for Plaintiff and Respondent.

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A public school district mistakenly overpaid one of its teachers. When the error was brought to the teacher's attention, she refused to return the excess pay. The district sued her for the overpayment and prevailed. The teacher now appeals. Because none of her many arguments has merit, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

I. Facts

Since the mid-2000s, Carmen Frisch Garcia (Garcia) has been a full-time, certificated teacher with the Los Angeles Unified School District (the District).

Over the course of four school years, the District mistakenly overpaid Garcia $46,965.02 as follows:

- During the 2010-2011 school year, Garcia was overpaid $2,176.67. In November 2010, Garcia sustained an injury that precluded her from working until March 2012. During this period, Garcia received workers' compensation benefits totaling more than $41,000. However, because the school where Garcia was employed did not inform the District that Garcia was no longer working, the District continued to pay Garcia her regular salary on top of the workers' compensation benefits. Thus, Garcia was being "doubly compensated." Although Garcia was entitled to some period of continued salary payment (as part of "benefit time" that certificated teachers like Garcia accrued), Garcia used up all of that "benefit time" during this school year.

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1 Although no reporter's transcript was prepared, we are able to draw the facts and procedural background from the parties' filings and from the trial court's settled statement and other orders.

- During the 2011-2012 school year, Garcia was overpaid $43,899.62. This amount represented the amount of salary payments, between the beginning of the school year and March 2012 when she returned to work, that Garcia was (incorrectly) paid while also receiving workers' compensation benefits.
- During the 2012-2013 and 2013-2014 school years, Garcia was working as a substitute teacher but was paid for more hours than she actually worked. The overpayment in the 2012-2013 school year was $782.36; in the 2013-2014 school year, it was $115.37.

The District obtained a new payroll system in July 2011, which for the first time enabled it to match up what teachers *should* have been paid and what they were *actually* being paid. Using this system, the District discovered its overpayment to Garcia and asked Garcia to repay the overpayments. Garcia refused.

II. Procedural Background

In June 2014, the District sued Garcia "for a full return of the overpaid funds" on a legal theory of money paid by mistake.[2]

After Garcia answered, the matter proceeded to a one-day bench trial. The District called one of its payroll administrators as a witness, and Garcia testified.

The trial court issued a 14-page ruling. The court found that the District's records, "as explained by" its payroll

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2 The District also alleged claims for (1) money had and received, (2) common counts for money paid, and (3) an open book account, but dismissed those alternative theories prior to trial. The District also sued other overpaid employees in the same action, but only the case against Garcia is at issue here.

administrator, "prove[d]" by a preponderance of the evidence that the District had overpaid Garcia. Notwithstanding Garcia's "extensive cross-examination" of the payroll administrator, the court found that the District's data "was [not] erroneous in any respect." The court went on to find that Garcia "should have been immediately aware that the money she received was" "a windfall" because it "was neither earned nor correct." Further, the court found that Garcia offered "no evidence that she in any way altered her position to her detriment as a result of receiving [the] extra unearned money."

The court also rejected several of Garcia's proffered affirmative defenses. The court ruled that the District's claim for a refund of overpaid funds was not preempted by California's Workers' Compensation law because "this case has nothing to do with the work-related injury [Garcia sustained in November 2010] or compensation related to th[at] injury." The court ruled that the District's claim was not untimely under the applicable, three-year statute of limitations because its June 2014 complaint was filed within three years of the District's discovery of the overpayment in July 2011. And the court ruled that Garcia had elicited "no facts that would constitute an equitable basis to deny [the District its] right to recovery."

Following entry of judgment, Garcia filed a timely notice of appeal.

DISCUSSION

Garcia challenges the trial court's judgment on a number of grounds. Her chief challenge is to the sufficiency of the evidence underlying that judgment. This is a claim we review for substantial evidence "by examining the whole record, including conflicting evidence, in the light most favorable to the ruling

below to determine whether there is reasonable, credible evidence of solid value to support that ruling." (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 682.) Garcia's remaining claims either rest on questions of law or on the application of the law to undisputed facts; we review those claims de novo. (*Crocker National Bank v. City & County of San Francisco* (1989) 49 Cal.3d 881, 888 [questions of law]; *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912 [undisputed facts to law].)

I. Sufficiency of the Evidence

A plaintiff may "recover[]" "money paid under a mistake of fact," no matter "how[] negligent the party paying may have been in making the mistake, unless the payment has caused such a change in the position of the [payee] that it would be unjust to require [her] to refund" the money. (*National Bank of California v. Miner* (1914) 167 Cal. 532, 537 (*Miner*); *Frontier Refining Co. v. Home Bank* (1969) 272 Cal.App.2d 630, 636 (*Frontier*); see generally CACI No. 374.)

Substantial evidence supports the trial court's findings that the District paid Garcia money by mistake and that Garcia would suffer no detriment by having to refund the "windfall" of "extra unearned money" that she "should have been immediately aware" was a mistaken overpayment. The District's payroll administrator explained how the District's payroll records documented the overpayments during the four school years at issue. This is sufficient to show the overpayment because "[t]he testimony of a single witness may be substantial evidence." (*Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 314.) Further, the court found that Garcia had not offered any evidence that she "in any way altered her position" after

receiving the money, such that it would not be "unjust" to require its repayment.

Garcia levels three challenges to the trial court's findings.

First, she mounts a broadside attack on the District's payroll records and on the testimony of its payroll administrator, labeling the records "[in]accurate" and "riddled with errors" and the administrator's testimony as "false." However, attacks like these that ask us to reweigh the evidence or second-guess the trial court's credibility findings are not permissible. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1285 ["appellate courts do not reweigh facts"]; *People v. Tully* (2012) 54 Cal.4th 952, 984 ["we do not second-guess the trial court's credibility findings"].)

Second, Garcia asserts in her briefs on appeal that she *did* rely on the overpayments, but assertions made in appellate briefs cannot make up for a lack of evidence at trial.

Lastly, Garcia posits that the District's negligence in overpaying her is *itself* a bar to its claim. This position is legally incorrect because a plaintiff can recover money mistakenly paid "*however negligent th[at] party . . . may have been in making the mistake*." (*Miner*, *supra*, 167 Cal. at pp. 536-537, italics added; *Thresher v. Lopez* (1921) 52 Cal.App 219, 220.) Garcia's contrary rule would eviscerate any and all claims for money mistakenly paid; this is not the law.

II. Garcia's Remaining Arguments

A. *Bars to the District's claim*

Garcia offers four reasons why the District should not be able to bring its claim to recover its overpayment.

1. *Exclusivity of the Education Employment Relations Act*

Garcia contends that the Education Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.) covers the District's claim

to recover overpayments of salary and thus must be dismissed due to the District's failure to exhaust its administrative remedies with the Public Employment Relations Board (PERB). To be sure, the EERA confers "exclusive initial jurisdiction" to PERB over claims that involve actions by a school district that (1) constitute or "arguably" constitute unfair labor practices under the EERA, or (2) are directly prohibited by the EERA. (*California Teachers' Assn. v. Livingston Union High School Dist.* (1990) 219 Cal.App.3d 1503, 1511 (*California Teachers' Assn.*); *City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 604, 606; *Hott v. College of Sequoias Community College Dist.* (2016) 3 Cal.App.5th 84, 94 (*Hott*); Gov. Code, §§ 3543.5 [defining unfair labor practices under EERA], 3543.6 [defining unlawful conduct under EERA].) But the weight of authority holds that a school district's under-payment of the agreed-upon salary to a teacher "does not constitute an unfair [labor] practice" or otherwise fall under PERB's exclusive jurisdiction. (*Hott,* at pp. 94-95; *Dixon v. Bd. of Trs.* (1989) 216 Cal.App.3d 1269, 1279-1280 [same]; see also *California Teachers' Assn.*, at pp. 1518-1519 [actions to enforce labor contracts, including salary amounts, are outside PERB's exclusive jurisdiction]; *United Teachers v. Ukiah v. Board of Education* (1988) 201 Cal.App.3d 632, 639-640; but see *McCammon v. L.A. Unified Sch. Dist.* (1987) 195 Cal.App.3d 661, 664 ["incorrect placement on the salary table constitutes an unfair practice"].) If under-payment is outside PERB's exclusive jurisdiction, so is over-payment.

2. *Exclusivity of the Workers' Compensation Law*

Garcia argues that the Workers' Compensation Law (Cal. Lab. Code, § 3201 et seq.) encompasses the District's claim to

recover overpayments of salary and thus must be dismissed due to the Law's vesting of exclusive jurisdiction in the Workers' Compensation Appeals Board. To be sure, "California's workers' compensation system provides an injured employee's 'exclusive' remedy against an employer for compensable work-related injuries." (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1046.) But Garcia cannot invoke the exclusivity of the workers' compensation procedures for two reasons: She waived this argument on appeal by not raising it in her opening brief (e.g., *People v. Smithey* (1999) 20 Cal.4th 936, 1017, fn. 26), and the workers' compensation system does not in any event "preclude causes of action for noninjury-related claims." (*Bagby v. Civil Service Bd. of the City of Oakland* (1990) 221 Cal.App.3d 1560, 1568; *Pichon v. Pacific Gas & Electric Co.* (1989) 212 Cal.App.3d 488, 492.) Here, the District's overpayment of salary to Garcia based on the deficiencies of its payroll system does not have anything to do with her prior, work-related injury.

3. *Bar against wage garnishment*

Garcia asserts that the District's claim is barred because it constitutes an impermissible attempt by the District to garnish her wages (or to justify prior garnishment of her wages). To be sure, California law generally precludes creditors from garnishing a judgment debtor's wages (Code Civ. Proc., §§ 487.020, 706.011, subd. (b)), and more specifically precludes employers from collecting debts by deducting amounts owed to the employer from the employee's wages (*City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477, 1492). But the District's claim does not violate these mandates: The District did not deduct any overpayment amounts from Garcia's wages; instead,

it brought this lawsuit. And the District has yet to enforce the judgment obtained in this case.

4. *Statute of limitations*

Garcia posits that the District's claim is untimely because the statute of limitations for a claim for money paid by mistake is two years, such that the District's June 2014 complaint can only reach back two years (to capture the last two school years' worth of overpayments). This position is without merit for several reasons. To begin, Garcia never asserted the statute of limitations as an affirmative defense in her answer. Her failure to do so constituted a waiver of that issue. (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 581 [so holding].) Further, the statute of limitations for money paid by mistake is three years, not two. (*Holtzendorff v. Housing Authority of Los Angeles* (1967) 250 Cal.App.2d 596, 634-635; cf. *Trower v. San Francisco* (1910) 157 Cal. 762, 769 [limitations period for money had *not* based on mistake is two years].) Finally, substantial evidence supports the trial court's finding that the District had no way of knowing about the overpayment until it began using its new payroll system in July 2011. Because a claim "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the . . . mistake" (Code Civ. Proc., § 338, subd. (d)), the District's claim for money paid by mistake did not accrue until July 2011, such that the money the District sought to recover in its June 2014 complaint falls completely within the three-year window still open under the statute of limitations. For much the same reasons, we also reject Garcia's suggestion (in her settled statement) that the District's action is untimely under the doctrine of laches. Garcia counters that the District violated its duty to investigate its possible claims against her (e.g., *Slovensky*

v. Friedman (2006) 142 Cal.App.4th 1518, 1528-1529), but that duty kicks in only after a party "becomes aware of [its] injury" (*ibid.*), which in this case did not occur until the District began using its new payroll program.

B. *Incorrect calculation of overpayment amount*

Garcia asserts that she was entitled to additional "benefit time" under District Policy Bulletin BUL-5047.1, which provides for additional "benefit time" for District employees who "have suffered an industrial injury as a result of an Act of Violence,"[3] such that the period of "double compensation" was shorter than (and the amount of overpayment lesser than) the District believes. This assertion fails both legally and factually. It fails legally because, as far as we can tell, Garcia never presented this offset-type argument to the trial court and cannot raise it for the first time on appeal. (*Campbell v. Birch* (1942) 19 Cal.2d 778, 793-794 [declining to consider appellant's argument that damages should be reduced when "[n]o issue was made in the trial court on th[is] point[]"].) It fails factually because, even if Garcia had presented this argument to the trial court, she never established her entitlement to it. Indeed, the trial court specifically found that she "did not offer . . . any evidence that [the District] had a 'salary continuation plan' or 'other program to supplement temporary disability benefits,' or, if there were, that she was eligible for one or more such programs."

C. *Pleading-based claims*

Garcia mounts several attacks on the sufficiency of the District's complaint, alleging that (1) the District did not plead

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3 We have taken judicial notice of the Policy Bulletin. (Evid. Code, §§ 452, subd. (c), 459.)

the specifics as to *how* it overpaid her, (2) the District mis-joined certain claims, (3) the District did not properly plead damages because it never alleged a "certain sum" of overpayment, thereby rendering any damages "speculative." Because Garcia never raised these challenges prior to trial, she cannot raise them after trial. (*Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 303, fn.313; *Hansen v. Henever* (1924) 69 Cal.App. 337, 346; *Page v. Page* (1962) 199 Cal.App.2d 527, 532 [defects in pleadings "cannot . . . be[] prejudicial" "[a]fter . . . trial"].)

D. *Unclean hands*

Garcia contends that the District should be denied relief because its failure to respond to her pretrial requests for its payroll records and its proffer of its payroll administrator's false testimony at trial leave the District with "unclean hands" that bar its equity-based claim. We reject these contentions: Because the District ultimately produced the records and the trial court found the administrator's testimony to be credible, it would not be equitable to completely deny the District its day in court (even if we assume, for the sake of argument, that the District did not immediately comply with Garcia's pretrial demands for the payroll records).

E. *Wrongful exclusion of evidence and other arguments*

Garcia argues that the trial court wrongfully "exclud[ed] evidence" and erred in not admitting Garcia's Exhibit L. Because Garcia does not provide any further elaboration or explanation of these arguments, she has not given us enough information to evaluate their merits; we must treat them as waived. (E.g., *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) The same is true for the remaining criticisms that

Garcia makes of the trial court's ruling: We have too little to go on to evaluate them, so must treat them as waived.

DISPOSITION

The judgment is affirmed. The District is entitled to its costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
CHAVEZ