
PARTIES/ATTORNEYS

Plaintiff	Andrew Breda	Louis V. Kosnett, Esq. Dan B. Yakobian, Esq. Kosnett Law Firm
Defendant	City of Guadalupe	Elizabeth M. Kessel Armineh Megrabyan Warren M. Williams, Esq. Kessel & Megrabyan

RECOMMENDATION

For all the reasons discussed below, the demurrer to the 6th cause of action for violation of the California Whistleblower Protection Act is sustained with leave to amend should there be facts to support either the claim under the California Whistleblower Act or the Whistleblower Act. Plaintiff is further directed to attach a “redlined” version of the amended complaint identifying all additions and deletions of material as an appendix to the amended complaint. The amended complaint must be served and filed within 20 days of this ruling.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

For purposes of this demurrer, plaintiff Andrew Breda alleges as follows: he commenced employment with the Guadalupe Police Department on or about March 22, 2023, as a Lateral Police Officer. (First Amended Complaint [“FAC”] ¶25.) He was initially advised he would be subject to a four-week training program since he had an active Peace Officer Standards and Training (POST) certificate (FAC, ¶ 25), but it was subsequently changed to a sixteen-week training program since he was from out-of-state. (FAC, ¶ 31.) On or about June 19, 2023, plaintiff injured his shoulder while apprehending a suspect. He was placed on an eight-week medical of absence, and returned to work on August 21, 2023, with a light-duties restriction. (FAC, ¶¶ 32-33.) While plaintiff was on light duties, Chief Cash assigned him the task of conducting a full-scale audit and investigation of the Department by writing

a letter outlining his concerns about the Department, what needs improving, and plaintiff's recommendations. On or about August 29, 2023, Plaintiff submitted his letter to the Chief, in which he raised concerns about Police Officer salaries, the hiring and vetting process, the Department's cars and equipment, and the Office Environment/Station Set up and Equipment. When Chief Cash read the letter, he became upset and said, "this is nothing more than a bunch of complaints and problems." (FAC, ¶44.) On September 22, 2023, plaintiff was approved to return to his full duties at work without accommodations and he was sent back to field training. (FAC, ¶ 46.) On November 14, 2023, plaintiff sent an email to Lt. Limon, Sgt. Medina, FTO Ruiz, and Officer Kuhbander, questioning the length of his training compared to other officers, missing documents and training logs from his personnel file, and requested to be released from the training program into solo patrol. (FAC, ¶ 51.) Having not received a response, plaintiff sent the same email to Chief Cash, in which he disclosed numerous California Peace Officer Standards and Trainings regulatory violations as well as violations of Peace Officer Bill of Rights. (FAC, ¶ 52.) Two hours later, Chief Cash called plaintiff into his office and brought up a previous use-of-force incident in which plaintiff had used a taser on a suspect, accused him of acting improperly in doing so, and placed plaintiff on an administrative suspension while he performed an administrative investigation. (FAC, ¶ 53-54.) On December 4, 2023, plaintiff was terminated. (FAC, ¶ 57.)

Plaintiff's first amended complaint alleges the following causes of action: (1) discrimination; (2) retaliation; (3) failure to make reasonable accommodations; (4) failure to engage in the interactive process; (5) failure to prevent discrimination and retaliation; and (6) violation of the California Whistleblower Protection Act. City of Guadalupe demurs to the sixth cause of action on the basis that plaintiff has failed to allege sufficient facts in support of the claim and that plaintiff has failed to allege the timely filing of a government claim. Opposition has been filed.

1. Failure to State Sufficient Facts

The California Whistleblower Protection Act (Gov. Code, § 8547 et seq.)¹ prohibits retaliation against state employees who "report waste, fraud, abuse of authority, violation of law, or threat to public health" (§ 8547.1). The Act authorizes "an action for damages" to redress acts of retaliation. (§§ 8547.8, subd. (c) [acts against state employees], 8547.10, subd. (c) [University of California employees], 8547.12, subd. (c) [California State University Employees].) This Act is located in Title 2 of the Government Code, Division 1 [General], Chapter 6.5 titled "California State Auditor."

The Government Code contains another whistleblower provision, similarly titled Whistleblower Protection Act (§ 9149.20 et seq.).² This is also located in Title

¹ Unless otherwise noted, all statutory citations are to the Government Code.

² Both Acts are called the Whistleblower Act. To distinguish the Act located under the auspices of the California State Auditor from the Act located in the Legislative Department, it appears the word "California" has been added.

2 of the Government Code, Division 2 [Legislative Department], Part 1 [Legislature], Chapter 1.5 [General], Article 10. This Act provides: “An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a legislative committee improper governmental activities.” (§ 9149.23, subd. (a).) “Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.” (§ 9149.23, subd. (b).)

The FAC includes allegations referring to both Acts, without differentiating them in any meaningful way. (See FAC, ¶¶ 92, 94, 95, 100.) However, any valid cause of action overcomes demurrer, so the court must examine the allegations under both. (*Quelimane Co., Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39; *New Livable Calif. v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714-715.) To the extent the cause of action alleges a violation of the California Whistleblower Protection Act (CWPA), it fails. City points out that the CWPA applies only *state employees*, and that plaintiff has not alleged he was a state employee. (§ 8547.1—“The Legislature finds and declares that *state employees* should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The Legislature further finds and declares that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.” [Emphasis added].) Defendants are alleged to be the City of Guadalupe and the City of Guadalupe Police Department as a subdivision of the City. (FAC, ¶¶ 8-9.) Thus, plaintiff has failed to allege he is a state employee subject to the CWPA³

In his opposition, plaintiff focuses on the Whistleblower Protection Act, asserting that it does not likewise limit its application to state employees. As noted above, the Whistleblower Protection Act precludes “an employee” from attempting to prevent any person from “disclos[ing] to a legislative committee improper governmental activities.” The statutory scheme defines “[e]mployee” as “any individual appointed by the Governor or employed or holding office in a state agency, as defined by Section 11000, including the California State University and the University of California, *or any public entity as defined by Section 7260*, or any agency of local government, as defined in subdivision (d) of Section 8 of Article XIII B of the California Constitution. (§ 9149.22, subd. (b) [emphasis added].) A “public entity” includes “a county, city, city and county, district, public authority, public

Section 8547 states “This article shall be known and may be cited as the “California Whistleblower Protection Act.” Section 9149.20 states: “This article shall be known and may be cited as the Whistleblower Protection Act.” Despite this denomination, cases have nevertheless conflated the titles. (See *Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932—referring to the California Whistleblower Protection Act as simply the Whistleblower Protection Act.)

³ Plaintiff asserts that he can allege that a police officer is a state employee because they are tasked with enforcing state laws. Plaintiff is advised to examine the definition of employee in section 8547.2.

agency, and any other political subdivision . . .” (§ 7260 (a).) The City is a public entity as defined by section 7260, subdivision (a).

However, the Whistleblower Protection Act only permits actions against individual *employees*, not employers. (See § 9149.23, subd. (b) (“Any *employee* who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.” [Emphasis added].) As set forth above, plaintiff has not brought his claim against any of the individual defendant supervisors, but rather against the City alone. Moreover, it prohibits preventing a person from disclosing improper governmental activities to a legislative “committee,” which is defined as “any investigating committee of the Legislature.” (§ 9149.22, subd. (a).) No such allegation appears in the FAC. Accordingly, plaintiff has failed to state a claim for violation of the Whistleblower Protection Act.

Leave to amend will be allowed. Plaintiff is advised not to conflate the two Acts in any future pleading.

2. Claim Filing Requirement

City contends that plaintiff’s complaint does not allege that he filed a government claim setting forth claim for whistleblower retaliation. Under the Government Claims Act, subject to certain express exceptions, no suit “for money or damages” may be brought against a public entity unless a written claim has first been presented to the entity and the claim either has been acted upon or is deemed to have been rejected. (§§ 905, 945.4; see also *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 990.)

The court notes that the court in *Cornejo v. Lightbourne* (2013) concluded that no such claim was required where the California Whistleblower Protection Act (CWPA) was involved. The *Cornejo* court agreed that claims brought under the CWPA specifically were not subject to the Government Claims Act procedures, limiting its holding to CWPA claims. (*Id.* at pp. 938-942.) As the *Cornejo* court explained: “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.” (*Cornejo, supra*, 220 Cal.App.4th at p. 938.) The court recognized that while there are “certain types of claims ... expressly exempted from the presentation requirement,” “a court will infer a legislative intent to excuse compliance only where a claim is based on a statutory scheme with a ‘functionally equivalent claim process’ and a comparable scheme for administrative enforcement.” (*Ibid.*) The court observed, “Such exceptions to the presentation procedure are rarely found,” (*ibid.*) and that “other than a vintage decision ... involving a somewhat obscure flood repair law [the Emergency Flood Relief Act],” the “only claims to date found exempt from the presentation requirement ... are those arising under the FEHA.” (*Id.* at p. 939.) The court

thereafter added claims brought under the CWPA to the limited list of claims exempt from the presentation requirement because of the CWPA's own comprehensive administrative procedure. (*Id.* at pp. 942-943.)

Thus, if the CWPA applied to this action, the Government Claims Act would not require the filing of a government claim because of CWPA's own comprehensive administrative procedure. However, to the extent plaintiff is alleging a violation of the WPA, he will have to demonstrate compliance with the Government Claims Act or case law indicating it is exempt from the Government Claims Act requirements.

3. Ruling

The demurrer to the 6th cause of action for violation of the California Whistleblower Protection Act is sustained with leave to amend should there be facts to support either the claim under the California Whistleblower Act or the Whistleblower Act. Plaintiff is further directed to attach a "redlined" version of the amended complaint identifying all additions and deletions of material as an appendix to the amended complaint. The amended complaint must be served and filed within 20 days of this ruling.

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