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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

GREGORY CHATTEN STOCKMAN,

Plaintiff and Appellant,

v.

JOHN R. ABRAHAMS et al.,

Defendants and Respondents.

A133471

(Sonoma County  
Super. Ct. No. SCV-247304)

Plaintiff Gregory Chatten Stockman, appearing in propria persona, appeals from an order sustaining without leave to amend a demurrer by defendants John R. Abrahams and Barry Collins. He contends the trial court erred in sustaining the demurrer on the ground that he failed to comply with the California Tort Claims Act (the Act) (Gov. Code, §§ 810-996.6).<sup>1</sup> We shall affirm.

**Factual and Procedural History**

Having been committed to a state hospital in 1993 based on a finding that he was not guilty of certain offenses by reason of insanity, in May 2009 plaintiff filed a petition in the Sonoma County Superior Court seeking a transfer to outpatient treatment on the ground that he had been restored to sanity. At a hearing on the petition, plaintiff was represented by Collins, a Sonoma County deputy public defender, employed in the office of the county public defender, Abrahams. On October 30, 2009, the trial court denied plaintiff's petition.

<sup>1</sup> All statutory references are to the Government Code unless otherwise noted.

In April 2010, plaintiff filed a complaint against Collins and Abrahams seeking monetary damages based on a claim of malpractice in the handling of the prior petition. The complaint failed to allege compliance with the claims requirement of the Act or any facts excusing such compliance. After the summons and complaint were eventually served on defendants in January 2011, the defendants demurred on the ground, among others, that the complaint was fatally defective because plaintiff failed to allege compliance with the Act. Plaintiff failed to file timely opposition to the demurrer but appeared at the hearing and presented oral argument. On March 28, 2011, the trial court sustained the demurrer with leave to amend.

On March 30, 2011, plaintiff presented a “claim” letter to the Sonoma County Board of Supervisors with attachments describing his dissatisfaction with Collins’s representation. The letter contained no explanation why plaintiff had been unable to present a timely claim. In April 2011, the board responded by letter stating that plaintiff’s claim would “not be accepted for consideration because it was not presented within one (1) year of the date of accrual of the cause of action as required by law. See Sections 901 and 911.2 . . . . Because the claim was not presented within the time allowed by law, no action was taken on the claim.”

In May 2011, plaintiff filed an amended complaint to which the defendants again filed a demurrer, accompanied by a request for judicial notice. Defendants argued, among other things, that the amended complaint was fatally defective because plaintiff had not complied, and was unable to comply, with the requirements of the Act. Plaintiff again failed to file timely opposition to the demurrer and the court issued a tentative ruling sustaining the demurrer without leave to amend. Plaintiff failed to make a timely request to appear and dispute the tentative ruling in conformity with the local rules. He did make an untimely request on the day of the hearing but the court rejected the request and, on August 17, 2011, entered an order adopting its tentative ruling sustaining the demurrer

without leave to amend. Plaintiff filed a timely notice of appeal.<sup>2</sup>

### Discussion

On appeal from a judgment dismissing a complaint after a demurrer is sustained without leave to amend, we review de novo the trial court's decision to sustain the demurrer, and we review under the abuse of discretion standard the decision to deny the plaintiff leave to amend. (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501.) "If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) "The plaintiff has the burden of proving that an amendment would cure the defect." (*Ibid.*)

The Act provides that "[e]xcept as otherwise provided by statute . . . , a public employee is liable for injury caused by his act or omission to the same extent as a private person." (§ 820, subd. (a).) Actions against public employees on the basis of acts or omissions occurring within the scope of their employment must be preceded by the filing of a claim against the public-entity employer. (§§ 945.4, 950.2, 950.6, subd. (a).) "[A] salaried full-time public defender engaged in representing an assigned client is a public employee acting in the scope of his or her employment within the meaning of the . . . Act." (*Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 618.) " '[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefore has been presented to the public entity and has been acted upon by the board, or has been deemed to have been

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<sup>2</sup> Although no judgment apparently has been entered, we treat the August 17 order as incorporating a judgment and therefore appealable. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 528, fn. 1.) Generally, " '[a]n order sustaining a demurrer without leave to amend is not appealable, and an appeal is proper only after entry of a dismissal on such an order.' " (*Ibid.*) But " 'when the trial court has sustained a demurrer to all of the complaint's causes of action, appellate courts may deem the order to incorporate a judgment of dismissal, since all that is left to make the order appealable is the formality of the entry of a dismissal order or judgment.' " (*Ibid.*) " 'We will accordingly deem the order on the demurrer to incorporate a judgment of dismissal and will review the order.' " (*Ibid.*)

rejected by the board. . . .’ ” (*Ibid.*, quoting § 945.4.) “ ‘Unless a specific exception applies, “[a] suit for ‘money or damages’ includes all actions where the plaintiff is seeking monetary relief, regardless whether the action is founded in ‘ ‘tort, contract or some other theory.’ ” ’ ” ’ ” ( *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1152.)

Plaintiff contends his letter to the Sonoma County Board of Supervisors satisfied the claim presentation requirement. However, plaintiff’s petition to transfer to outpatient treatment was denied in October 2009 and he did not present his letter claim to the board of supervisors until March 30, 2011—17 months after the accrual of the cause of action. (*K.J. v. Arcadia Unified Sch. Dist.* (2009) 172 Cal.App.4th 1229, 1239.) “A claim relating to a cause of action . . . for injury to person or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action.” (§ 911.2.) Plaintiff’s claim letter was untimely under either limitations period. “[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.” (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.)

“Timely claim presentation is not merely a procedural requirement, but rather, a condition precedent to plaintiff’s maintaining an action against defendant, and thus, an element of the plaintiff’s cause of action. [Citation] A complaint which fails to allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action.” (*K.J. v. Arcadia Unified School Dist.*, *supra*, 172 Cal.App.4th at p. 1238.) Plaintiff has failed to allege facts demonstrating that his claim was timely presented or that compliance with the claims statute was excused. Plaintiff acknowledges that he failed to present a timely claim and the documents properly judicially noticed demonstrate that the deficiencies are incurable. Granting leave to amend would have been pointless and was properly denied.

**Disposition**

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.