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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LARISSA ARAUJO (SURVIVAL ACTION), et al.,  
  
Plaintiffs,  
  
v.  
  
COACHELLA VALLEY WATER DISTRICT; THE COUNTY OF IMPERIAL; JOSUE GONZALEZ; and DOES 1 TO 25, inclusive,  
  
Defendants.

Case No.: 20-cv-01800-AJB-RBM

**ORDER GRANTING CROSS-DEFENDANT COUNTY OF IMPERIAL’S MOTION TO DISMISS**

**(Doc. No. 69)**

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COACHELLA VALLEY WATER DISTRICT,  
  
Cross-Complainant,  
  
v.  
  
ANDRE DOS-SANTOS DE-SA, an individual; COUNTY OF IMPERIAL, a Public Entity; and DOES 1-10, inclusive,  
  
Cross-Defendants.

Before the Court is Cross-Defendant County of Imperial’s (“County”) motion to dismiss the cross-claim brought by Cross-Complainant Coachella Valley Water District

1 (“CVWD”) pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 69.)  
2 Specifically, the County seeks to dismiss Counts I and III of CVWD’s cross-claim  
3 against the County as untimely under California Government Code § 900, et seq.  
4 (“Government Claims Act”). (*Id.*) CVWD opposed the motion. (Doc. No. 78.) The  
5 County replied. (Doc. No. 79). For the reasons set forth in detail below, the Court  
6 **GRANTS** the County’s motion to dismiss.

## 7 **I. BACKGROUND**

8 This action arises out of a tragic accident that occurred in unincorporated Imperial  
9 County. (Complaint, Doc. No. 1.) On or about October 2, 2019, Andre Dos-Santos De-Sa  
10 was driving a Hyundai Elantra when he, along with three passengers, were involved in a  
11 two-car, broadside collision with a truck driven by Josue Gonzalez, an employee of  
12 CVWD. (*Id.* ¶¶ 11–13.) The Complaint alleges that on or about October 2, 2019,  
13 Defendant Gonzalez was driving a van within the course and scope of his employment  
14 with CVWD. (*Id.* ¶ 13.) Plaintiffs allege Defendant Gonzalez recklessly sped into an  
15 uncontrolled intersection, with no stop signs, in which decedents were passengers in a  
16 vehicle which had already established the right-of-way. (*Id.* ¶¶ 20, 27.) The two vehicles  
17 collided at the uncontrolled intersection, resulting in the fatal accident. (*Id.* ¶ 20.) The  
18 automobile accident resulted in the death of two decedents, Larissa Araujo and Andressa  
19 Dos Santos. (*Id.* ¶¶ 23–24.) Plaintiffs Jose Carlos De Araujo, Helenilza Maria Oliveira  
20 De Araujo, Renato Alves Dos Santos, and Maria Tereza De Carvalho (collectively,  
21 “Plaintiffs”) are the parents of the decedents. (*Id.* ¶¶ 7–8.) All Plaintiffs are residents of  
22 Brazil. (*Id.*)

23 The surviving claims against Defendants Gonzalez, the County of Imperial, and  
24 CVWD are: (1) wrongful death, (2) battery (survival action), and (3) negligence (survival  
25 action). (Doc. No. 29.) On March 11, 2021, CVWD filed a cross-claim against the  
26 County and Andre Dos Santos De-Sa, the driver of the Hyundai. Relevant to this order is  
27 the cross-claim brought against the County. CVWD’s First Amended Cross-Complaint  
28 (“FACC”) brings separate and distinct causes of action against the County for indemnity

1 and contribution. (Doc. No. 61.) Subsequently, the County filed the instant motion to  
2 dismiss the indemnity and contribution claims for failure to state a claim. (Doc. No. 69.)  
3 This order follows.

## 4 **II. LEGAL STANDARD**

5 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff's  
6 complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “[A] court may  
7 dismiss a complaint as a matter of law for (1) lack of cognizable legal theory or  
8 (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta*  
9 *Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted). However, a  
10 complaint will survive a motion to dismiss if it contains “enough facts to state a claim to  
11 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
12 In making this determination, a court reviews the contents of the complaint, accepting all  
13 factual allegations as true and drawing all reasonable inferences in favor of the  
14 nonmoving party. *See Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497  
15 F.3d 972, 975 (9th Cir. 2007). Notwithstanding this deference, the reviewing court need  
16 not accept legal conclusions as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is  
17 also improper for a court to assume “the [plaintiff] can prove facts that [he or she] has not  
18 alleged.” *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459  
19 U.S. 519, 526 (1983). However, “[w]hen there are well-pleaded factual allegations, a  
20 court should assume their veracity and then determine whether they plausibly give rise to  
21 an entitlement to relief.” *Iqbal*, 556 U.S. at 664. “In sum, for a complaint to survive a  
22 motion to dismiss, the non-conclusory factual content, and reasonable inferences from  
23 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss*  
24 *v. U.S. Secret Serv.*, 572 F.3d 962 (9th Cir. 2009) (quotations and citation omitted).

## 25 **III. REQUESTS FOR JUDICIAL NOTICE**

26 Federal Rule of Evidence 201 states that a “court may judicially notice a fact that is  
27 not subject to reasonable dispute because it: (1) is generally known within the trial court’s  
28 territorial jurisdiction; or (2) can be accurately and readily determined from sources

1 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

2 The County first requests the Court take judicial notice of the claim presented by  
3 CVWD to the County and the rejection of the claim. (*See generally* Doc. No. 69-2.) The  
4 Court **GRANTS** the County’s request. *See Elliott v. Amador Cnty. Unified Sch. Dist.*, No.  
5 12-cv-117-MCE-DAD, 2012 WL 5013288, at \*7 (E.D. Cal. Oct. 17, 2012) (“Whether or  
6 not a Tort Claim has been presented to a public entity is subject to judicial notice.”);  
7 *Navarro v. City of Alameda*, No. 14-cv-1954-JD, 2014 WL 4744184, at \*2 (N.D. Cal.  
8 Sept. 22, 2014) (the court may take judicial notice of California government-claim  
9 documents); *see also Davis v. Zimmerman*, No. 17-cv-1230-BAS-NLS, 2018 WL  
10 1806101, at \*6 (S.D. Cal. Apr. 17, 2018) (taking judicial notice of claim and rejection).

11 Next, the County requests the Court take judicial notice of the California Judicial  
12 Council’s Emergency Rules re: COVID-19. (*See generally* Doc. No. 69-2.) It is a public  
13 record relevant to the County’s motion, and thus, the Court **GRANTS** the County’s  
14 request for judicial notice. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741,  
15 746 n.6 (9th Cir. 2006) (holding a court “may take judicial notice of court filings and  
16 other matters of public record”).

17 Lastly, the County requests the Court take judicial notice of Imperial County Code,  
18 Chapter 4.04, and CVWD District Code, Section 2.10.010. (*See generally* Doc.  
19 No. 79-1.) Because these codes can be accurately determined from other reliable sources,  
20 the Court **GRANTS** the County’s request for judicial notice. *See Wood v. City of San*  
21 *Diego*, No. 03cv1910-MMA (POR), 2010 WL 2382335, at \*5 (S.D. Cal. June 10, 2010)  
22 (taking judicial notice of sections of the San Diego Municipal Code relevant to the  
23 proceedings).

#### 24 **IV. DISCUSSION**

25 In its motion, the County argues CVWD’s cross-claim fails because it does not  
26 comply with the Government Claims Act. (Doc. No. 69-1 at 2.) CVWD counters that it  
27 “is statutorily excepted from the claim presentation requirement under *California*  
28 *Government Code* Section 905(i)[.]” (Doc. No. 78 at 4) (emphasis in original).

1 Specifically, CVWD argues it is exempt from the claims presentation requirement since it  
2 qualifies as a “local public entity” under Government Code 905(i). (*Id.*) The County  
3 responds that under Government Code § 935, it has adopted ordinances requiring all  
4 claimants, including public entities, to present government claims to the County prior to  
5 filing suit against it for money or damages. (Doc. No. 79 at 2.) As such, the County  
6 asserts, CVWD’s cross-claim is subject to Government Code § 945.6’s six-month statute  
7 of limitations. (*Id.*)

8 “Under the [Government Claims A]ct, . . . no suit for ‘money or damages’ may be  
9 brought against a public entity until a written claim therefor has been presented to the  
10 public entity and either has been acted upon or is deemed to have been rejected.” *All. Fin.*  
11 *v. City & Cnty. of S.F.*, 64 Cal. App. 4th 635, 641 (1998) (citing Cal. Gov’t Code  
12 § 945.4). “Compliance with the [Government Claims Act] is mandatory; and failure to  
13 file a claim is fatal to the cause of action.” *Hacienda La Puente Unified Sch. Dist. of L.A.*  
14 *v. Honig*, 976 F.2d 487, 495 (9th Cir. 1992) (internal quotation marks and citation  
15 omitted). Therefore, “[a] plaintiff suing . . . a local public entity must allege facts  
16 demonstrating either compliance with the claim presentation requirement or an excuse for  
17 noncompliance as an essential element of the cause of action.” *Ovando v. Cnty. of L.A.*,  
18 159 Cal. App. 4th 42, 65 (2008). Under California Government Code § 905(i), “[c]laims  
19 by [a] . . . local public entity” are exempt from the claims presentation requirement of the  
20 Government Claims Act. However, California Government Code § 935 states that  
21 “[c]laims against a local public entity for money or damages which are excepted by  
22 Section 905 from [the Act’s claim-presentation requirement], and which are not governed  
23 by any other statutes or regulations expressly relating thereto, shall be governed by the  
24 procedure prescribed in any charter, ordinance, or regulation adopted by the local public  
25 entity.” Cal. Gov’t Code § 935(a).

26 The County asserts CVWD’s cross-claim for indemnity and contribution is time  
27 barred because the cross-claim was filed thirty-six days late under the Government  
28 Claims Act. (Doc. No. 69-1 at 4); *see* Cal. Gov’t Code § 945.6(a)(1). CVWD counters

1 that it is a “local public entity” and thus exempt from both the pre-filing claim  
2 presentation requirement and the statute of limitations under § 905(i). (Doc. No. 78 at 5.)  
3 However, CVWD fails to address whether it is required to comply with Imperial  
4 County’s Code pursuant to Government Code § 935. (*See generally* Doc. No. 78.)

5 Here, the County has adopted its own “charter, ordinance, or regulation” under  
6 Government Code § 935. (*See* Doc. No. 79 at 3.) Section 4.04.010 of Imperial County’s  
7 Code states:

8 Pursuant to Section 935 of the Government Code, all claims against the  
9 county of Imperial for money or damages which are excepted by Section  
10 905 of the Government Code from the provisions of Division 3.6 of the  
11 Government Code (Section 810 et. seq.), and which are not governed by any  
12 other statutes or regulations expressly relating thereto, shall be governed by  
the procedures prescribed in this chapter.

13 (Doc. No. 79-1 at 4.) As such, CVWD’s cross-claim is governed by the Imperial County  
14 Code. Imperial County Code § 4.04.020 requires that a signed written claim be presented  
15 to the County of Imperial and must include the information required by Government  
16 Code § 910. (*Id.*) Moreover, § 4.04.040 states:

17 A claim relating to a cause of action for death, or for injury to a person . . .  
18 shall be presented not later than six months after the accrual of the cause of  
19 action. . . . The presentation and action on claims provided herein shall be a  
20 prerequisite to suit thereon, and such suit shall be subject to the provisions of  
Section 945.4 and 945.6 of the Government Code.

21 (*Id.*)

22 CVWD complied with Imperial County Code § 4.04.020 by presenting a claim to  
23 the County on March 12, 2020, to which the County served its notice of rejection on  
24 July 10, 2020. (Doc. No. 78 at 4–5.) CVWD thus had until February 3, 2021, to timely  
25 serve its cross-claim.<sup>1</sup> (Doc. No. 69-1 at 4; Doc. No. 79 at 2.) However, CVWD filed its  
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28 <sup>1</sup> The last day for CVWD to timely have filed its cross-claim would have been January 11, 2021. (Doc.  
No. 69-1 at 4.) However, due to the COVID-19 epidemic and pursuant to California Judicial Council


1 cross-claim on March 11, 2021. (*See* Doc. No. 34.) CVWD failed to comply with the six-  
2 month statute of limitation as set forth in Imperial County Code § 4.04.040 and  
3 Government Code § 945.6, which requires claims to be brought “not later than six  
4 months after the date such notice [of rejection of claim] is personally delivered or  
5 deposited in the mail.” Cal. Gov’t Code § 945.6(a)(1). As such, the Court finds that  
6 dismissal is appropriate.

7 **V. CONCLUSION**

8 Accordingly, the Court **DISMISSES** Counts I and III of CVWD’s First Amended  
9 Cross-Complaint as to the County with leave to amend. (Doc. No. 69.)

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11 **IT IS SO ORDERED.**

12 Dated: December 17, 2021

  
13 \_\_\_\_\_  
14 Hon. Anthony J. Battaglia  
15 United States District Judge  
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28 Emergency Rule 9(b), all six-month statutes of limitations were tolled from April 6, 2020, until October  
1, 2020. (*Id.*; Doc. No. 69-2 at 25.)