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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOHN ROBINSON, Plaintiff and Appellant, v. CITY OF CHOWCHILLA et al., Defendants and Appellants.	F059608 (Super. Ct. No. MCV021963) **OPINION**

APPEAL from a judgment of the Superior Court of Madera County. James E. Oakley, Judge.

Bennett & Sharpe, Inc., Barry J. Bennett, Thomas M. Sharpe, Elaine M. Yama, Heather N. Phillips and Katwyn T. DeLaRosa for Plaintiff and Appellant.

Costanzo & Associates, Neal E. Costanzo; Cota Cole and Thomas E. Ebersole for Defendants and Appellants.

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*Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts III. and IV. of DISCUSSION.

A former chief of police sued the city that had employed him, alleging breach of contract, wrongful termination, and violations of the Public Safety Officers Procedural Bill of Rights Act (POBRA) (Gov. Code, § 3300 et seq.).[1]

The trial court determined that the city breached its obligations under POBRA when it removed the police chief from office without notice, a statement of reasons and an opportunity for an administrative appeal as required by section 3304, subdivision (c). The court also determined that the police chief's employment agreement automatically renewed for an additional three-year term in 2003, and the city breached the agreement when it dismissed the police chief in September 2003. The court granted defendants' motion for summary adjudication of the wrongful termination claim on the ground that the former police chief failed to comply with the claim filing requirement in the Government Claims Act.[2] (§ 810 et seq.)

First, we conclude that the trial court properly construed and applied the provisions of POBRA when it determined that the police chief had been removed from office without the requisite notice, statement of reasons, and opportunity for an administrative appeal. Second, the trial court properly interpreted the automatic renewal and notice provisions of the employment agreement when it determined those provisions permitted more than one automatic renewal and did not allow for oral notice of nonrenewal. Consequently, the court correctly found the city breached the employment contract when it terminated the police chief's employment and did not pay him the six months' severance benefits provided for in the contract. Third, the trial court properly applied the Government Claims Act when it concluded that the claim filing requirement had not been met or waived.

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[1]All further statutory references are the Government Code unless stated otherwise.

[2]Traditionally, the act was referred to as the Tort Claims Act. In *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, the California Supreme Court stated it henceforth would refer to the act by the more inclusive and accurate label, "Government Claims Act." (*Id*. at p. 742.) The court determined the act applied to breach of contract claims and stated that the informal short title of Tort Claims Act engendered confusion. (*Id*. at p. 734.)

The judgment will be affirmed.

FACTS AND PROCEEDINGS

Plaintiff John Robinson is a former chief of police of the City of Chowchilla. Defendants are the City of Chowchilla (City), its city council, and the city administrator, Nancy Red.

On September 29, 1997, Robinson and City entered an employment agreement under which City retained Robinson's services as chief of police. The parties agreed Robinson was employed as chief of police pursuant to a written contract for an initial three-year term, with a 12-month probationary period. The employment agreement addressed Robinson's duties, salary, vacation, automobile, health insurance and life insurance. It also addressed renewal of the agreement, suspension, disciplinary action, termination, severance pay, and disability. In this appeal, the provisions concerning the automatic renewal of the agreement and notice are in dispute. The text of the renewal and notice provisions is set forth later in this opinion.

By March 29, 2000, neither City nor Robinson had given six months' written notice of nonrenewal to the other party. As a result, the employment agreement was renewed automatically for another three-year term.

In late March 2003, Robinson and Red had a conversation in which she indicated that the city council wanted to renegotiate his employment agreement and would not let it renew automatically. Red testified that she prepared a letter dated March 26, 2003, to confirm their conversation and to notify Robinson that his contract would not automatically be renewed. Red testified that on Thursday, March 27, 2003, she put the letter in an envelope and took it to the police department. She stated that she either gave it to Robinson directly or put it on his desk because he was not in the office.

Robinson testified that he received no written notice in March 2003 and that the first time he saw the letter dated March 26, 2003, was on June 6, 2003, when he met with Red in her office. While in Red's office, Robinson wrote "Rcvd 6-6-03 1600 hrs" on the upper right-hand corner of the letter.

About three months later, during the afternoon of Friday, September 5, 2003, Robinson met with Red and a city attorney. Red told Robinson that the city council had decided not to renew his contract. When Robinson asked about the six months' notice and six months' severance pay, the city attorney told him the contract was expiring so the city council felt it was not required to pay it. Robinson was notified that his employment would terminate effective September 29, 2003, and was directed to remove his belongings and himself from the police department immediately. Also on September 5, 2003, City named an acting chief of police to replace Robinson effective immediately.

On September 29, 2003, Robinson's attorney sent a letter to City's mayor demanding Robinson's immediate reinstatement. The contents of the letter are described in greater detail in parts IV.D and IV.E, *post*, which are not published.

In a letter dated October 21, 2003, an attorney representing City informed Robinson's attorney that Robinson had not been terminated because his contract had expired. Based on this view, the letter asserted that Robinson was not entitled to notice under POBRA or severance pay under the terms of the contract.

On October 24, 2003, Robinson filed a petition for writ of mandate and complaint for injunctive relief, declaratory relief, and damages.

Robinson's petition for writ of mandate (first cause of action) sought to enforce rights he claimed under POBRA. Robinson alleged that defendants never provided him written notice, a statement of reasons for his termination, or an opportunity for an administrative appeal prior to his removal as police chief. Robinson alleged that these failures violated legal duties set forth in section 3304, subdivision (c).

Robinson's second cause of action requested injunctive relief under the provisions of POBRA. The third cause of action requested declaratory relief regarding the parties' rights and duties under the employment agreement. The fourth cause of action asserted defendants had breached the employment agreement. The fifth cause of action asserted City had wrongfully terminated Robinson in violation of public policy and denied him access to any administrative remedy.

The court bifurcated trial of the petition for writ of mandate and the complaint. As a result, in October 2004 the petition for peremptory writ of mandate was heard. On June 6, 2005, the trial court filed its written statement of decision on the petition. The trial court granted the writ of mandate, ordering City to provide Robinson with written notice of removal, the reasons for the removal, and an opportunity for an administrative appeal. (§ 3304, subd. (c).)

Defendants attempted to challenge the trial court's issuance of the peremptory writ of mandate through both a writ petition and an appeal filed with this court. We summarily denied the writ petition and dismissed the appeal. (*Robinson v. City of Chowchilla* (Oct. 27, 2006, F048561) [nonpub. opn.] [appeal dismissed because writ of mandate issued was not appealable under any exception to one final judgment rule].)

In February 2007, defendants filed a motion for summary adjudication. Robinson opposed the motion. In June 2007, the trial court filed an order granting the motion for summary adjudication as to the fifth cause of action (wrongful termination) on the ground that Robinson did not file any claim for damages with City as required by the Government Claims Act.

In July 2008, the trial court heard argument on the remaining causes of action. The next month, the court issued a tentative decision. After further filings and oral argument regarding the contents of the decision, the trial court issued its written statement of decision in February 2009.

The trial court found that Robinson was not given written notice of nonrenewal at least six months prior to September 29, 2003, and, therefore, the employment agreement was extended by its terms for an additional three-year term to September 2006. The court also found that City terminated Robinson's employment on September 5, 2003, and that when Robinson received written notice on June 6, 2003, the employment agreement already had been extended for another three-year term. The court concluded that Robinson's termination entitled him to six months' pay and benefits as provided in section 4.A of the employment agreement.

Subsequent disputes between the parties resulted in the trial court filing a first amended judgment in November 2009. The amended judgment addressed Robinson's first cause of action by (1) recounting the issuance of the peremptory writ of mandate in June 2005 and the filing of defendants' return in April 2008 and (2) denying Robinson's request for monetary damages under this cause of action that would be in addition to those awarded for breach of contract. On the second (injunctive relief) and third (declaratory relief) causes of action, judgment was in favor of defendants because Robinson had an adequate remedy at law for breach of contract. On the fourth cause of action (breach of contract), the amended judgment awarded Robinson damages and prejudgment interest of approximately $50,000.

In January 2010, defendants filed an appeal from the amended judgment. Ten days later, Robinson filed a notice of cross-appeal concerning, among other things, the trial court's dismissal of his cause of action for damages for wrongful termination.

DISCUSSION

I. Standards of Review

After a matter has been tried to a superior court, appellate courts generally apply the substantial evidence standard to a superior court's findings on questions of fact and independently review questions of law. (See *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429 [substantial evidence rule]; *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 801 [questions of law are subject to independent review].)

When a superior court grants a motion for summary adjudication, appellate courts conduct an independent review. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.) Appellate courts (1) take the facts from the record that was before the superior court when it ruled on the motion; (2) consider all the evidence set forth in the moving and opposing papers, unless the superior court sustained objections to that evidence; and (3) resolve doubts concerning the evidence in favor of the party opposing the motion. (*Id*. at pp. 716-717.)

II. Violation of Section 3304

A. Robinson's Request for a Writ of Mandate

The first cause of action in Robinson's pleading alleged that defendants breached their statutory duty by removing him as police chief without providing the notice, statement of reasons, and opportunity for an administrative appeal required by section 3304, subdivision (c) To remedy this statutory violation, Robinson requested a peremptory writ of mandate directing defendants to reinstate him, restore all of his wages and benefits, and renew the employment agreement for a three-year term ending in September 2006.

B. Trial Court's Decision Regarding the Writ of Mandate

On June 6, 2005, the trial court filed its statement of decision concerning Robinson's petition for writ of mandate. The trial court's findings included the following:

> "8. On September 5, 2003, [defendants] notified [Robinson] that [his] employment would terminate effective September 29, 2003, and directed [Robinson] to removed [*sic*] his belongings and himself from the Police Department immediately.
>
> "9. Also on September 5, 2003, an Acting Chief of Police was named by [defendants] to replace [Robinson] effectively immediately.
>
> "10. By the actions taken by [defendants] as described in Paragraphs 8 and 9 above, [defendants] 'removed' [Robinson] from his position as Chief of Police, as that term is used in … section 3304(c).
>
> "11. At no time prior to [Robinson's] removal as Chief of Police did [defendants] provide [Robinson] with written notice, the reason or reasons for said removal, and/or an opportunity for administrative appeal, as those terms are used in … section 3304(c)."

The trial court concluded defendants breached the duty imposed by section 3304, subdivision (c) and ordered the issuance of a peremptory writ of mandate directing defendants to provide Robinson with written notice of his removal, the reasons for the removal, and an opportunity for an administrative appeal before the city council.

The peremptory writ of mandate implementing the statement of decision was entered on June 8, 2005. Subsequently, the trial court decided that the employment agreement had renewed automatically in 2003 and that defendants breached the renewed agreement. Ultimately, in November 2009, an amended judgment was filed that (1) stated Robinson shall have judgment against defendants on his first cause of action for a writ of mandate pursuant to the terms of the court's statement of decision filed on June 6, 2005, and (2) denied Robinson's request for damages under the first cause of action.

C. Proper Interpretation of the Statute

Before discussing the statutory issues, we note that the employment agreement did not modify City's obligations under POBRA. Rather, section 6 of the employment agreement acknowledged that Robinson was covered by POBRA and stated: "Nothing in this Agreement is intended to be in conflict with [POBRA] and if there is an inconsistency, [POBRA] shall supersede this Agreement."

Defendants raise two issues of statutory construction that must be resolved before section 3304, subdivision (c) can be applied to the facts of this case. First, defendants contend that the notice and appeal provisions apply only if a trial court first determines that a police chief has a protected property or liberty interest. Second, defendants contend that a police chief is not "removed" for purposes of the statute so long as the city keeps paying his or her salary through the expiration date of the employment contract.

Section 3304, subdivision (c) provides in full:

> "No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.
>
> "For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute 'reason or reasons.'

> "Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police."

1. Principles governing statutory construction

Issues of statutory construction are questions of law subject to independent review by the appellate court. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1492.)

A reviewing court's "fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) This task begins by scrutinizing the actual words of the statute, giving them their usual, ordinary meaning. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.)

When statutory language is clear and unambiguous—that is, has only one reasonable construction—courts ordinarily adopt the literal meaning of that language. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775.)

When statutory language is ambiguous, courts must "'"select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]'" (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) Courts determine the apparent intent of the Legislature by reading the ambiguous language in light of the statutory scheme rather than reading it in isolation. (*Lungren v. Deukmejian*, (1988) 45 Cal.3d 727, 735.) Thus, the ambiguous language must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. (*Ibid*.) In addition, courts may determine the apparent intent of the Legislature by evaluating the ostensible objects to be achieved by the statute and examining the statute's legislative history. (*Day v. City of Fontana*, *supra*, at p. 272.)

2. Meaning of third sentence of section 3304, subdivision (c)

The third sentence of subdivision (c) of section 3304 provides: "Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police." Defendants present the following interpretation of this language:

> "The third sentence males [*sic*] clear that a determination of whether there is a property interest in the position of chief of police is a necessary prerequisite to determining whether the chief of police has been 'removed.'"

We disagree with this interpretation. The third sentence of subdivision (c) of section 3304 does not expressly create a condition or prerequisite to the application of the other provisions. The language stating that the subdivision does not create a property interest is not ambiguous. It cannot be construed to imply a police chief must satisfy a condition precedent (viz., having a property interest in his or her job) before being entitled to the procedural protections set forth elsewhere in the subdivision.

The Legislature included the third sentence so that the notice and administrative appeal protections given to police chiefs earlier in subdivision (c) of section 3304 would not be used to infer that police chiefs had a property interest in their job. Such an inference might be drawn because of the well-established principle that procedural due process requires notice and an opportunity to be heard before the government may deprive a person of a protected property interest. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Because the first sentence in section 3304, subdivision (c) provides for notice and an opportunity to be heard, courts and practitioners might have cited the foregoing due process principle and then reasoned backwards to infer the statute created a property interest in the job of police chief. The third sentence in subdivision (c) negates this argument.

Furthermore, defendants' interpretation would rewrite the beginning of subdivision (c) of section 3304, which provides that "[n]o chief of police may be removed" without a written notice, statement of reasons, and opportunity for an

administrative appeal. The phrase "no chief of police" and surrounding language does not limit the procedural protections to certain chiefs of police. Yet, defendants' position treats the phrase "no chief of police" to mean that (1) no chief of police *with a property interest in his or her job* may be removed without the required notice and other procedural protections and (2) police chiefs with no such property interest have no procedural protections. We conclude that if the Legislature had intended the notice and appeal procedures to be limited in this manner, it would have expressed such a limitation. (See Code Civ. Proc., § 1858 [when construing a statute, judge should not include what Legislature has omitted].)

In summary, the provisions of subdivision (c) of section 3304 are not reasonably susceptible to being interpreted to mean that the notice and administrative appeal procedures apply only if the police chief has a property interest in his or her job as police chief.

3. Meaning and application of the term "removed"

Defendants argue that the trial court misinterpreted the word "removed" when it concluded that Robinson had been removed as police chief on September 5, 2003. Defendants contend that the ordinary and generally accepted meaning of "removed" is "discharged" or "terminated." They also contend "removed" means "to force out of" employment, position or office. In defendants' view, Robinson was not "terminated" because City continued to pay him until the employment agreement expired in accordance with its own terms on September 29, 2003.

Our analysis begins with the plain meaning of the word "remove." Webster's Third New International Dictionary (1986) defines the verb "remove" to mean: "**3 :** to force (one) to leave a place or to go away: as **a :** to dismiss from office …." (*Id.* at p. 1921.) The foregoing dictionary definition provides the plain meaning of the word "remove" in the context of employment or appointed office. Consequently, it is the definition of remove that we will apply in this case. We note that this definition does not mention cessation of pay as a necessary component of removal from office. (See

Caviness v. Board of Education (1978) 59 Ill.App.3d 28 [375 N.E.2d 157] [words "removed" and "dismissed" in school code interpreted as encompassing any reduction in the extent of employment].)

Applying the foregoing definition to the facts of this case, we agree with the trial court's determination that Robinson was removed from office on September 5, 2003, despite the fact that City continued his pay and benefits through September 29, 2003. The question whether Robinson remained in office or had been removed from office for the three-and-a-half week period in September 2003 requires the consideration of factors besides payment of salary and benefits because holding the office of chief of police involves more than receiving compensation.

On September 5, 2003, defendants directed Robinson to pick up his belongings and leave the police department immediately. City then appointed an acting chief of police in his place. These acts took away Robinson's authority to exercise the powers residing in the office of police chief as well as forced him to leave the physical office space within the police department's building. After September 5, 2003, Robinson no longer held the office of police chief because the authority and responsibilities of the police chief were no longer his. That authority and responsibility had been given to another person, the person appointed as acting chief. The acts of forcing Robinson to leave the physical office, taking the authority of police chief away from him, and giving both the physical office and the authority of police chief to someone else constitute a removal from office.

Consequently, we conclude that the trial court correctly interpreted and applied the statute when it determined that Robinson had been removed as police chief for purposes of section 3304, subdivision (c) on September 5, 2003.

Our interpretation of the verb "removed" is consistent with the purposes identified in the legislative history for section 3304, subdivision (c) as well as the general legislative findings in section 3301. An Assembly Public Safety Committee analysis of

Senate Bill No. 2215 (1997-1998 Reg. Sess.) included the following background information about the protections proposed for chiefs of police:

> "According to the bill's sponsor, 'Senate Bill 2215 is a very simple bill. It provides that the Chief of Police may not be disciplined without just cause. Historically, California law enforcement has been the finest in the nation precisely because the Legislature has seen the wisdom of separating police organizations from the political process. This is why police officers, once they pass probationary status, are protected from termination except for just cause.
>
> "'Ironically, a Chief of Police, who has reached the apex of his or her law enforcement career, reverts to the status of a mere probationary employee. In other words, a Chief of Police may be dismissed for any reason. Senate Bill 2215 does not guarantee that police chiefs cannot be fired. If a chief fails to perform as expected, fails to follow the policy direction of the city council, or fails to properly lead the department, they can, and should be terminated or otherwise disciplined by the city council. What Senate Bill 2215 does do is protect chiefs from whimsical pressures that diminish the professionalism of the law enforcement mission.'" (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 2215 (1997-1998 Reg. Sess.) June 29, 1998, p. 3.)[3]

The analysis also described instances of abuse where chiefs of police were threatened with removal for inappropriate reasons by local politicians. (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 2215 (1997-1998 Reg. Sess.) June 29, 1998, pp. 3-4.) In noting the arguments presented for and against the bill, the analysis included a comment from a police chief who stated the simple protections provided in the bill would help insulate chiefs from the politics in the community, which would lessen the likelihood of corruption and favoritism. (*Id.* at p. 5.)

Section 3301 includes the legislative findings that effective law enforcement depends upon stable employer-employee relations between public safety employees and

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[3]Legislative committee reports are cognizable legislative history. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.) Furthermore, statements by a bill's sponsor appearing in a committee report have been quoted and relied upon by our Supreme Court in determining the meaning of a statute. (E.g., *Barnett v. Superior Court* (2010) 50 Cal.4th 890, 897-898; *In re Marriage of Fellows* (2006) 39 Cal.4th 179, 189.)

their employers and POBRA helps assure stable relations, which assure that effective services are provided to all people of the state.

If we were to interpret "removed" to mean that a police chief could be deprived of the authority of office and his or her successor installed so long as a city continued to pay the police chief's salary, then city councils could effectively end the chief's ability to enforce laws in a manner contrary to their interests and bypass the notice and statement of reasons requirement contained in section 3304, subdivision (c). In that situation, the city council would not have to take a public stand and subject its statement of reasons to the scrutiny of the electorate, which would undermine the protections given to police chiefs and allow the "whimsical pressures" referenced by the legislation's sponsor to affect law enforcement.

In summary, the trial court correctly interpreted and applied the statute when it determined that Robinson had been removed as police chief on September 5, 2003.

III. Breach of Contract*

A. Number of Automatic Renewals

Defendants contend that the automatic renewal provision in the employment agreement provided for one and only one 3-year renewal. Robinson argues that the agreement provided for an automatic renewal at the end of each three-year term, unless the required six months' notice was given. The renewal provision states:

> "This Agreement shall be in force and effect for a period of three (3) years after its date of execution and shall be automatically renewed for *an* additional three (3) year term unless one party gives *notice* of non-renewal to the other party at least six (6) months prior to the automatic extension *dates*." (Italics added.)

Defendants' single renewal interpretation is based on the assertions that (1) the word "an" qualifies the words "additional three-year term" and all of those terms are singular and (2) the "dictionary definition of the word 'an' is synonymous with the word

*See footnote, *ante*, page 1.

'one.'" Defendants discount the importance of the use of the plural "dates" by arguing that (1) "dates" is a general term that follows the specific enumeration of the precise number of automatic renewals permitted by the employment agreement and (2) the specific term controls under the rules of contract interpretation. (Code Civ. Proc., § 1859 ["particular intent will control a general one that is inconsistent with it"]; Civ. Code, § 3534 [particular expressions qualify general expressions]; *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1235 [in contract interpretation, the specific provision is paramount to the general provision].)

The trial court determined that the employment agreement was ambiguous regarding the number of automatic renewals. The court considered the entire agreement and evidence presented and found "that the contract provided for an additional automatic three-year renewal on September 29, 2003, unless terminated by either party by proper notice to the other party at least six months prior."

The first point disputed by the parties concerns the role of extrinsic evidence and whether the trial court's interpretation of the renewal provision is subject to independent review. Robinson argues that conflicting extrinsic evidence was admitted and, therefore, the trial court's interpretation should be given deference and upheld if it is reasonable. In contrast, defendants argue that no conflicting evidence concerning the interpretation of the renewal provision was presented and, therefore, this court must undertake a de novo review and interpret the agreement without regard to the trial court's decision. Defendants further argue that "the contract is susceptible to one interpretation only. It provides for a single automatic renewal."

For purposes of this appeal, we will assume that defendants are right in asserting there is no conflict in the *relevant* extrinsic evidence and that we may render a de novo decision regarding the meaning of the renewal provision. A court's de novo determination of the meaning of a contract is designed "to give effect to the mutual intention of the parties as it existed at the time of contracting …." (Civ. Code, § 1636.) The relevant intent is the objective intent as evidenced by the words used by the parties

and not either party's subjective intent. (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 838.) When contractual language is uncertain or ambiguous, it "must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it." (Civ. Code, § 1649.) This statute's reference to the promisor's belief means an objectively reasonable belief about the promisee's understanding. Consequently, this rule of interpretation protects the objectively reasonable expectations of the parties. (*Building Industry Assn. of Central California v. City of Patterson* (2009) 171 Cal.App.4th 886, 896.)

The foundation for defendants' interpretation of the renewal provision is their position that the word "an" unambiguously means "one" and, therefore, the provision contains a "specific enumeration of the precise number of automatic renewals …." When the word "one" is substituted for the word "an," the renewal provision states that the term of the agreement "shall be automatically renewed for [one] additional three (3) year term …."

A difficulty with this argument is that the word "an" does not unambiguously mean "one." There is a reason why the words "a" and "an" are referred to as *indefinite* articles. The fact that they are indefinite gives them flexibility in their meaning and use. For example, Black's Law Dictionary (5th ed. 1979) at page 77 defines "an" as follows: "The English indefinite article, equivalent to 'one' or 'any'; seldom used to denote plurality."[4] This definition recognizes that, while "an" often means "one," it can be used to indicate more than one or one of several. Indeed, in some contexts courts treat the indefinite articles as referring to one or more and will not interpret them as referring to only one unless such an intention is demonstrated. For example, in a patent law context,

[4]The idea that "an" may be used to indicate more than one is consistent with how another indefinite article, "a," is used. The definition of "a" provides that the "article 'a' is not necessarily a singular term." (Black's Law Dict., *supra*, at p. 1; see *State of California v. Superior Court* (1967) 252 Cal.App.2d 637, 639 [indefinite article "a" may mean "one of several"].)

a court referred to "the general rule that 'a' or 'an' means more than one …." (*Baldwin Graphic Sys., Inc. v. Siebert, Inc.* (Fed.Cir. 2008) 512 F.3d 1338, 1342-1343.)

A more important difficulty with defendants' interpretation is that it does not address the possibility that the prepositional phrase "for an additional three (3) year term" used the singular "term" to indicate that renewals would occur one *at a time*, rather than to limit the total number of renewals to one.

We conclude that the renewal provision's reference to an additional three-year term is ambiguous. We further conclude that this ambiguity is resolved by the renewal provision's use of the phrase "automatic extension dates." The word "dates" is unambiguously plural, and it makes sense to use the plural term only if the agreement allows for more than one automatic renewal. Therefore, we conclude that an objectively reasonable person reading the renewal provision would not understand it to provide for a single automatic renewal only. Instead, the objectively reasonable person would understand that multiple renewals were possible if no notice was given. In other words, we conclude that the automatic renewal provision should be interpreted to mean: "This Agreement … shall be automatically renewed for [one] additional three (3) year term [at a time,] unless one party gives notice of non-renewal to the other party at least six (6) months prior to the automatic extension dates."

B. Notice by Letter

Defendants argue that the trial court erroneously interpreted the notice provisions of the employment agreement and, thus, wrongly concluded that notice of nonrenewal had not been given to Robinson in accordance with the employment agreement.

The trial court addressed the topic of notice by finding that a letter dated March 26, 2003, from the city administrator addressed to Robinson was received by Robinson for the first time on June 6, 2003. Based on this finding, the court also found that Robinson "was not given notice of non-renewal of the agreement at least six months prior to September 29, 2003 …." Because Robinson was not given timely notice of

nonrenewal, the court concluded that the employment agreement was extended by its terms for an additional three-year period ending September 29, 2006.

Defendants contend the trial court's determinations are erroneous. Defendants assert "the automatic renewal provision itself does not require that notice be in writing or any particular manner of communicating notice to the other party …." They further assert that the notice language in the renewal provision "is properly interpreted to refer only to the communication to the other party in any proper or permissible legal manner of the intended future action of the party giving the notice." Under this interpretation, defendants contend, the notice of nonrenewal need not be in writing and need not be actually received. They further contend that the city administrator's placement of the letter dated March 26, 2003, on Robinson's desk, whether he received it or not, was effective notice of nonrenewal. Thus, in defendants' view, the "trial court's conclusion that the notice was ineffective because it was placed on Robinson's desk amounts to an erroneous[] interpretation of the 'notice' provision of the Agreement."

A fatal flaw in defendants' argument is that they have failed to establish the facts upon which it is based. First, defendants' appellate brief does not include a citation to the appellate record demonstrating that the trial court made an express finding that the letter dated March 26, 2003, was placed on Robinson's desk in March of 2003. (See *Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 936, fn. 4 [factual assertions in appellate brief should be supported by specific citations to the record]; Cal. Rules of Court, rule 8.204(a)(1)(C).)

Second, our review of the trial court's statement of decision has not located any express finding that the letter actually was placed on Robinson's desk in March 2003.

Third, defendants have cited no authority for the proposition that this court should infer that the trial court impliedly found the letter was placed on Robinson's desk. Rather, the doctrine of implied findings requires appellate courts to infer the trial court made all factual findings necessary to support the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.) Defendants have not addressed this

doctrine of appellate practice, much less shown that they should benefit from an implied finding in their attempt to reverse the judgment.

Fourth, even if a rule of law existed that gave the party who loses at trial the benefit of implied findings, we would not interpret the trial court's statement of decision as including an implied finding that the March 26, 2003, letter was placed on Robinson's desk in March 2003. Such an implied finding would be inconsistent with the trial court's express finding that Robinson's testimony regarding his receipt of the *original* letter was credible. The trial court accepted Robinson's assertion that he immediately wrote "Rcvd 6-6-03 1600 hrs" on the original letter when it was handed to him by the city administrator on that date. This finding directly contradicts the defendants' version of events—namely that Robinson received the original letter in March 2003 and was given only a copy in June. Thus, the stronger inference to be drawn from the trial court's statement of decision is that the court found the story about the letter being placed on Robinson's desk in March was not credible.

Based on the foregoing, we conclude that defendants have failed to establish that City provided Robinson with written notice of nonrenewal in March 2003.

C. Oral Notice

Defendants also contend "that Robinson clearly testified that he received oral notice of the City's intention not to renew his contract prior to March 29, 2003," and that this notice was sufficient because the employment agreement does not require written notice of nonrenewal. Consequently, we will address whether the employment agreement required *written* notice of nonrenewal.

Section 2.D of the employment agreement provides for automatic renewal "unless one party gives *notice* of non-renewal to the other party at least six (6) months prior to the automatic extension dates." (Italics added.) Section 18 of the employment agreement discusses notice as follows: "Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addresses as follows." Section 18 of the employment agreement proceeds to set forth an address for

the city clerk and Robinson's address in Atwater. It further provides: "Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice."

The notice referenced in section 2.D of the employment agreement unambiguously qualifies as a "[n]otice[] pursuant to this Agreement" as that phrase is used in the first sentence of section 18 of the employment agreement. Thus, a notice of nonrenewal was subject to the mandatory language indicating that the notice "shall be given by deposit in the custody of the United States Postal Service, postage prepaid," to the address specified in the employment agreement.

Defendants argue that notice of nonrenewal is not "required" in the sense that the word "required" is used in the provision stating: "Alternatively, notices required pursuant to this Agreement may be personally served …." In defendants' view, because a party is not required to prevent automatic renewal, the notice is not required pursuant to the employment agreement. This argument has two flaws. First, it overlooks the "[n]otice[] pursuant to this Agreement" phrase at the beginning of section 18 of the employment agreement. The notice of nonrenewal clearly is a notice pursuant to the employment agreement. Second, defendants' narrow interpretation of the word "required" is not objectively reasonable in the context of the employment agreement. Under the employment agreement, a party wishing to avoid automatic renewal must give timely notice of nonrenewal to the other party. Consequently, notice is *required* in the sense that if it is not given, automatic renewal will occur. An objectively reasonable person reading the employment agreement would understand that the notice provision in its section 18 encompasses the notice that must be given to prevent automatic renewal.

Because defendants did not give Robinson notice of either type referenced in section 18 of the employment agreement, the trial court properly concluded that the employment agreement was automatically renewed in 2003. Because Robinson was not allowed to serve out that additional three-year term or provided with severance benefits

as specified in the employment agreement, we will uphold the judgment in favor of Robinson on his fourth cause of action (breach of contract).

IV. Notice of Claim for Damages under the Government Claims Act*

A. Motion for Summary Adjudication and Order

Defendants' motion for summary adjudication challenged, among other things, Robinson's fifth cause of action for wrongful termination. The defendants' separate statement of undisputed facts asserted that Robinson did not file or serve City with any claim for damages of the type referred to in the Government Claims Act.

Robinson's separate statement contested defendants' assertion on three grounds. First, Robinson contended a claim under section 910 was not required. Second, he asserted his attorney's letter of September 29, 2003, to City's mayor constituted substantial compliance with section 910. Third, he contended that if the letter did not substantially comply with the claim filing requirement, it triggered City's statutory obligation to provide him with notice of the insufficiency. Robinson argues that because City never notified him of any defects, it waived its right to assert those defects as an affirmative defense.

The trial court determined defendants were entitled to judgment as a matter of law on Robinson's wrongful termination claim for damages. The court's written order stated the following rationale:

> "The determination that [Robinson] has no cause of action for damages for wrongful termination in violation of public policy is based on the following evidence: (1) the City of Chowchilla is a public entity; (2) the fifth cause of action for wrongful termination in violation of public policy seeks awards of monetary damages for items of claimed loss or damage other than wages, salary, fees or benefits actually earned but unpaid, including but not limited to lost wages, lost benefits, all damages proximately caused by alleged wrongful termination in violation of public policy including a loss of reputation and future earnings and benefits; and (3) [Robinson] did not file or serve on the City of Chowchilla any claim for damages of the

*See footnote, *ante*, page 1.

type referred to in … § 910 prior to the filing of the Complaint in this action."

Based on the absence of a claim under the Government Claims Act, the trial court granted the motion for summary adjudication as to the fifth cause of action. Robinson's cross-appeal challenges this order.

B. Background on Claim Filing Requirement

Under the Government Claims Act, a person may not sue a public entity for personal injury unless he or she presents a timely written claim for damages to the public entity. (§§ 911.2, subd. (a), 945.4.) The claim filing requirement is not merely procedural, but is a condition precedent to maintaining a cause of action and, thus, is an element of the plaintiff's cause of action. (*K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1238.)

Section 905 requires that "all claims for money or damages against local public entities" must be "presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) …."[5] City is a "local public entity" for purposes of the Government Claims Act. (§ 900.4.)

Section 910 governs the contents of claims presented to both state and local entities:

> "A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:
>
> "(a) The name and post office address of the claimant.
>
> "(b) The post office address to which the person presenting the claim desires notices to be sent.

[5]Section 905 also contains several exceptions to the claims filing requirement. The exception in subdivision (c) of section 905 concerns claims made "by public employees for fees, salaries, wages, mileage, and other expenses and allowances." The court in *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071 construed this exception narrowly, concluding it applied to earned but unpaid salary or wages (which the court characterized as vested property rights). (*Id.* at p. 1080.)

"(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

"(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

"(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

"(f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case."

Courts have identified various purposes underlying the requirement for advance notice of the claim. First, it provides the public entity with sufficient information to enable it to perform an adequate investigation of the claim and, if appropriate, settle it without the expense of litigation. (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446.) Second, the written claim informs the public entity of potential liability so it can better prepare for the upcoming fiscal year. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) Third, in certain situations, the claim provides the public entity an opportunity to fix a dangerous condition and avoid further injuries. (*San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847.)

The claim filing requirement is not designed to eliminate meritorious lawsuits or to snare the unwary when the requirement's purpose has been satisfied. (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority*, *supra*, 34 Cal.4th at p. 446.) Thus, claims are not required to be technically perfect. The claim need only substantially comply with all of the statutory requirements. (See *Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38 [doctrine of substantial compliance].) Furthermore, if a claim presented does not substantially comply with the claim filing

requirement, the public entity must advise the claimant of the deficiencies or lose the right to assert the noncompliance as an affirmative defense. (*Ibid*.)

Section 910.8 sets forth the public entity's obligation to warn the claimant of defects:

> "If, in the opinion of the board or the person designated by it, a *claim as presented* fails to comply substantially with the requirements of Sections 910 and 910.2, … the board or the person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein." (Italics added.)

Section 911 sets forth the consequences of failing to notice the claimant of the defects:

> "Any defense as to the sufficiency of the claim based upon a defect or omission in the *claim as presented* is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8 …." (Italics added.)

"For a document to constitute a 'claim as presented' under section 910.8, it must 'disclose[] the existence of a "claim" which, if not satisfactorily resolved, will result in a lawsuit against the entity.' (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 709.)" (*City of Stockton v. Superior Court*, *supra*, 42 Cal.4th at p. 744.)

C. A Claim Was Required

Robinson argues the primary relief sought was reinstatement and back pay and other monetary damages were merely incidental to that reinstatement. In these circumstances, Robinson contends that the claim filing requirement does not constitute a defense to the wrongful termination cause of action.

Defendants argue that Robinson's reliance on cases that involve awards of back pay as incidental to mandate petitions or other equitable claims is misplaced because Robinson's fifth cause of action is not a petition for mandate or a request for injunctive relief, but rather a cause of action seeking damages for wrongful termination in violation of public policy.

In *Loehr v. Ventura County Community College Dist.*, *supra*, 147 Cal.App.3d 1071, the plaintiff filed a lawsuit against his former employer, a community college

district. His complaint and petition for extraordinary relief asserted causes of action for breach of contract, tortious breach of the covenant of good faith and fair dealing, and conspiracy to induce breach. (*Id*. at p. 1080.) The plaintiff's fourth and fifth causes of action were both denominated as "writ[s] of mandate and injunctive relief …." (*Id*. at p. 1081.) The defendants filed a demurrer, asserting that the plaintiff had failed to comply with the claim filing requirements of the Government Claims Act. (*Loehr*, at p. 1076.) The trial court sustained the demurrer to all causes of action and filed a judgment of dismissal. (*Ibid*.) The Court of Appeal affirmed. (*Id*. at p. 1087.)

The appellate court concluded that the first three causes of action, which sought monetary recovery for emotional and mental distress, pain and suffering, humiliation, and damage to reputation, obviously were causes of action for "money or damages" and, thus, fell within the terms of the Government Claims Act. (*Loehr v. Ventura County Community College Dist.*, *supra*, 147 Cal.App.3d at p. 1081.)

In *Loehr*, the plaintiff had argued that he did not need to file a claim because of the "general rule that the claims statutes do not impose any requirements for nonpecuniary actions, such as those seeking injunctive, specific or declaratory relief. [Citations.]" (*Loehr v. Ventura County Community College Dist.*, *supra*, 147 Cal.App.3d at p. 1081.) The appellate court determined that the rule did not apply to the causes of action labeled as writs of mandate and injunctive relief because the court, after reviewing the complaint as a whole, was "convinced that the primary purpose of these claims [wa]s pecuniary in nature" in that the claims sought recovery for loss of future earnings, emotional and mental distress, pain and suffering, humiliation, and damage to reputation. (*Id*. at pp. 1081-1082.) The court concluded that these damages were anything but incidental or ancillary to the plaintiff's request for extraordinary relief. (*Id*. at p. 1082.)

Based on our reading of *Loehr*, it appears the Court of Appeal considered whether the demurrer was proper as to each cause of action separately. Consequently, we agree with defendants' position in this appeal that the order granting summary adjudication as to Robinson's wrongful termination cause of action must be analyzed separate from his

other causes of action. This analytical approach is compatible with the principle that the claim filing requirement is an element of the plaintiff's cause of action. (*K.J. v. Arcadia Unified School Dist.*, *supra*, 172 Cal.App.4th at p. 1238.) Furthermore, it is consistent with the statutory language that provides that "no 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 …." (§ 945.4, italics added.)

Therefore, we will examine Robinson's fifth cause of action separately and determine whether it is a claim for damages or whether it seeks extraordinary relief with the request for damages being incidental or ancillary to the extraordinary relief.

Robinson's combined prayer for relief for his breach of contract and wrongful termination causes of action requested a judgment that finds defendants have breached their contract, wrongfully terminated Robinson in violation of public policy, or both. It also sought an award of damages including, but not limited to, "lost pay, benefits, loss of reputation and future career earnings, retirement benefits, and all other losses …."

Based on the language in Robinson's complaint, his cause of action for wrongful termination is a "claim[] for money or damages" for purposes of section 905. Therefore, we conclude that Robinson's wrongful termination cause of action is subject to the claim filing requirement.

D. Substantial Compliance

This court has stated that the doctrine of substantial compliance may validate a claim if the document substantially complies with *all of the statutory requirements* even though the document is technically deficient in one or more particulars. (*Connelly v. County of Fresno*, *supra*, 146 Cal.App.4th at p. 38; see § 910 ["claim … shall show all of the following"].)

In this case, the letter from Robinson's attorney to City's mayor did not address the requirement in subdivision (f) of section 910. That subdivision provides in full:

> "The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of

> any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case."

The letter did not state the amount claimed or otherwise indicate whether it was more or less than the $10,000 threshold set forth in the statute. Therefore, we will discuss both alternatives. First, if Robinson was claiming less than $10,000 on the date he presented the claim (i.e., September 29, 2003), he should have included an estimate of any prospective injuries or damages insofar as they were known at that time along with the basis used to calculate the amount claimed. The letter from Robinson's attorney included no such estimate and no basis for computing the amount claimed.

Second, if Robinson was claiming an amount in excess of $10,000, the letter should have stated whether the claim would be a limited civil case. A lawsuit will not qualify as a "limited civil case" if the amount in controversy exceeds $25,000. (Code Civ. Proc., § 85.) The letter failed to indicate whether the claim would be a limited civil case. Alternatively, the letter did not provide enough information for someone aware of the $25,000 limit to determine whether any lawsuit would be a limited civil case.

Our review of the contents of the September 29, 2003, letter from Robinson's attorney shows it made no attempt to comply with section 910, subdivision (f). Consequently, we conclude that the letter did not substantially comply with the claim filing requirement. "Substantial compliance demands at least some compliance with all the statutory claim requirements. [Citation]." (*City of Stockton v. Superior Court*, *supra*, 42 Cal.4th at p. 745, fn. 11.)[6]

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[6]We note that subdivision (d) of section 910 requires the claim to include a "general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim." The letter described City's obligation to pay six months' severance benefits, and these benefits were recovered by Robinson under his breach of contract cause of action. The letter did not describe the additional injuries and damages sought under the wrongful termination cause of action. (*State of California ex rel. Dept. of Transportation v. Superior Court* (1984) 159 Cal.App.3d 331, 337-338 [landowners presented claim for diminution in property value caused by mudslide; claim did not mention physical

E. Notice of Noncompliance

Robinson contends the letter from his attorney to City's mayor constituted a "claim as presented" and, therefore, triggered City's obligation under section 910.8 to notify him of any deficiencies in the claim or lose its right to assert the claim filing requirement as a defense under section 911. Robinson supports this position by citing *State of California v. Superior Court* (2004) 32 Cal.4th 1234. In that case, the California Supreme Court stated that a claim that fails to substantially comply with the claim filing requirements of the Government Claims Act may still be considered a "claim as presented" if (1) it puts the public entity on notice both that the claimant is attempting to file a valid claim and (2) that litigation will result if the matter is not resolved. (*Id*. at p. 1245.) We will apply this two-part test to the September 29, 2003, letter from Robinson's attorney.

Robinson argues that the letter constituted a "claim as presented" because it put City on notice of his attempt to file a claim, and the letter implied that if City did not respond Robinson would file a lawsuit.

The letter asserted that (1) Robinson had received notice of nonrenewal prior to June 2003; (2) Robinson had received no written notice of termination; (3) Robinson had not been provided with the notice and opportunity for administrative appeal in accordance with section 3304, subdivision (c); and (4) if Robinson was terminated, he was entitled to six months' severance pay and benefits under section 4 of the employment agreement. The letter also stated: "You may take this letter to be a demand for his immediate reinstatement, on the assumption that the Employment Agreement has once again rolled over for three years, by operation of law, since the City's course of action appears to suggest no other result." The final sentence of the letter reads: "If I receive no response from you, or the City's representative, within ten days of this letter, I will

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injuries or mental distress of plaintiffs and, thus, these claims were barred]; see *Munoz v. State of California, supra,* 33 Cal.App.4th at p. 1776 [Ct. App., Fifth Dist. stated each theory of recovery must have been reflected in a timely claim].)

assume that the City does not intend to comply with its legal obligations, and will consult with Chief Robinson about how he directs me to proceed."

The first element of our Supreme Court's two-part test for whether a document constitutes a "claim as presented" for purposes of the Government Claims Act is whether "'it puts the public entity on notice … that the claimant is attempting to file a valid claim ….'" (*State of California v. Superior Court, supra*, 32 Cal.4th at p. 1245.) Our Supreme Court's alternate phrasing of this element is whether the document "discloses the existence of a 'claim' …." (*Phillips v. Desert Hospital Dist., supra*, 49 Cal.3d at p. 709; see *City of Stockton v. Superior Court, supra*, 42 Cal.4th at p. 744.) We infer that the court's placing the word "claim" inside quotation marks means the document must disclose the existence of a claim made *under the Government Claims Act*. (See Cal. Style Manual (4th ed. 2000) §§ 4:23, 4:24 [use of quotation marks].)

Whether a document notifies the public entity that the claimant is attempting to file a valid claim is a question most easily answered when the claim (1) is made against the state on the form created for that purpose and (2) is submitted with the required filing fee. (See §§ 910.4 [claims against the state shall use form specified by Victim Compensation and Government Claims Board], 911.2, subd. (b) [$25 filing fee].) Also, when a local governmental entity has designated a claims form, use of the form provides an obvious indication that the claimant is attempting to file a valid claim. (See *Mabe v. San Bernardino County, Dept. of Soc. Serv.* (9th Cir. 2001) 237 F.3d 1101, 1111 [plaintiff's written claim on form provided by county satisfied threshold notice requirement of claim submission]; Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2011) ¶ 5:12.1, 5-14 [City and County of Los Angeles have downloadable forms].)

In this case, however, Robinson did not use a preprinted form and nothing in the appellate record indicates that City prescribed any forms for use in making claims under the Government Claims Act against City. Consequently, we must determine whether the

letter from Robinson's attorney to the mayor put City on notice that Robinson was attempting to file a valid claim under the Government Claims Act.

Our evaluation of the letter begins by listing things the letter does not include. First, the letter makes no reference to the Government Claims Act or any section of the Government Code included in that act.[7] Second, the letter does not use the word "claim" or any variation of that word such as "claimant" or "claiming." Third, the letter's structure does not parallel the structure of section 910. In other words, the letter does not address each topic presented by the subdivisions of section 910 in the same order set forth in the statute. Thus, the structure or organization of the letter does not suggest an attempt to comply with the requirements of section 910.

The letter informs the mayor that he "may take this letter to be a demand for immediate reinstatement …." This demand for reinstatement is not an express claim for money or damages.

The letter also states if a response is not received in 10 days, Robinson's attorney will assume City does not intend to comply with its legal obligations and will consult with Robinson "about how he directs me to proceed." The reference to a 10-day time period does not suggest that Robinson is making a claim under the Government Claims Act. Under the act, the public entity is allowed 20 days to provide notice of deficiencies in the claim and 45 days to act upon the claim by accepting, rejecting, or compromising the claim. (§§ 910.8, 912.4, subd. (a).) Because the Government Claims Act does not contain a 10-day deadline, the letter's reference to such a period implies the letter is something other than a claim under the Government Claims Act. In addition, the letter's statement that the lawyer will consult with Robinson about how to proceed is ambiguous and can be read as an implied threat of litigation. This veiled threat of litigation, even if sufficient to satisfy the second element of the two-part test, did not provide enough information to notify City that Robinson was attempting to submit a valid claim under the

[7]Also, the letter does not use the older phrase, "Tort Claims Act."

Government Claims Act and trigger City's statutory obligation to notify Robinson that the letter is a defective claim.

In summary, considering the contents of the letter as a whole (rather than in isolation), we conclude that an objectively reasonable person would not construe the letter as an attempt to file a valid claim under the Government Claims Act for the type of damages sought in Robinson's wrongful termination cause of action. Therefore, we further conclude that the letter does not constitute a "claim as presented" for purposes of section 910.8 and did not trigger City's obligation to notify Robinson of the defects in the claim or be deemed to have waived those defects. Consequently, the trial court correctly granted summary adjudication as to Robinson's fifth cause of action for wrongful termination.

DISPOSITION

The judgment is affirmed. Robinson shall recover his costs on appeal.

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DAWSON, J.

WE CONCUR:

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GOMES, Acting P.J.

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DETJEN, J.