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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Travis Scott,

Plaintiff,

v.

Wenden Domestic Water Improvement
District,

Defendant.

No. CV13-01667-PHX-DGC

ORDER

Defendant Wenden Domestic Water Improvement District has filed a motion to dismiss. Doc. 6. The motion is fully briefed. Plaintiff Travis Scott has filed a motion to amend the complaint. Doc. 8. For the reasons set forth below, the Court will deny Defendant’s motion to dismiss and Plaintiff’s motion to amend.¹

I. Background Facts.

Plaintiff’s complaint asserts claims for nonpayment of wages, nonpayment of overtime, and quantum meruit. Plaintiff seeks three times the amount due as unpaid wages under A.R.S. § 23-355, double the amount due under the Fair Labor Standards Act, 29 U.S.C. § 216(b) (“FLSA”), reasonable attorneys’ fees and costs pursuant to 29 U.S.C. § 216(b) and A.R.S. § 12-341.01, and, alternatively, the reasonable value for his services.

¹ Plaintiff’s request for oral argument is denied because the issues have been fully briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 **II. Legal Standard.**

2 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), the
3 well-pled factual allegations are taken as true and construed in the light most favorable to
4 the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal
5 conclusions couched as factual allegations “are not entitled to the assumption of truth,”
6 *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), and therefore “are insufficient to defeat a
7 motion to dismiss for failure to state a claim,” *In re Cutera Sec. Litig.*, 610 F.3d 1103,
8 1108 (9th Cir. 2010) (citation omitted). To avoid a Rule 12(b)(6) dismissal, the
9 complaint must plead “enough facts to state a claim to relief that is plausible on its face.”
10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

11 **III. Analysis.**

12 **A. Plaintiff’s First and Third Claims.**

13 Defendant asserts that Plaintiff failed to file a notice of claim as required by
14 A.R.S. § 12-821.01(A). Doc. 6 at 1-2. Compliance with the notice of claim statute is a
15 mandatory prerequisite to filing a complaint against a public entity or employee in
16 Arizona and failure to comply with the statute bars any claim. *See Salerno v. Espinoza*,
17 115 P.3d 626, 628 (Ariz. Ct. App. 2005). Strict compliance with the notice of claim
18 statute is required. *See, e.g., Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 152 P.3d
19 490 (Ariz. 2007).

20 Defendant’s motion asserts a pleading defect. Defendant argues that Plaintiff’s
21 complaint must be dismissed because it does not allege that he complied with the notice
22 of claim statute. Doc. 6 at 2. But Defendant cites no authority for the proposition that
23 compliance with the notice of claim statute must be pled affirmatively in a complaint, and
24 the Court is aware of none. The Court will not dismiss Plaintiff’s complaint for this
25 alleged pleading defect.

26 **B. Plaintiff’s Second Claim.**

27 Plaintiff’s second claim, though not artfully pled, clearly asserts an FLSA claim.
28 It alleges that “Plaintiff has not been paid at the statutorily required rate of 1-1/2 times his

1 normal rate of pay for all hours worked in excess of 40 hours in one week.” Doc. 1 at 2.
2 The complaint also seeks damages under the FSLA. *Id.* As Plaintiff correctly notes, an
3 FSLA claim is not subject to Arizona’s notice of claim statute. Doc. 8 at 2; *see Felder v.*
4 *Casey*, 487 U.S. 131, 139-40 (1988).

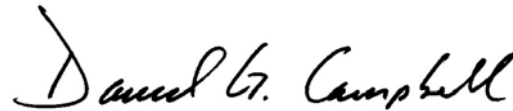
5 **C. Plaintiff’s Motion to Amend.**

6 Plaintiff has not provided a copy of the proposed amended complaint, properly
7 highlighted, as required by Local Rule of Civil Procedure 15.1(a). The Court therefore
8 will deny his motion to amend.

9 **IT IS ORDERED:**

- 10 1. Defendant’s motion to dismiss (Doc. 6) is **denied**.
11 2. Plaintiff’s motion to amend complaint (Doc. 8) is **denied**.

12 Dated this 17th day of October, 2013.

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17 David G. Campbell
18 United States District Judge
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