

FILED
 CLERK, U.S. DISTRICT COURT
 NOV 14 2008
 CENTRAL DISTRICT OF CALIFORNIA
 BY [Signature] DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TONY AMARKARIAN,)	NO. CV 08-980-PSG(E)
)	
Plaintiff,)	
)	
v.)	MEMORANDUM AND ORDER
)	
THE CITY OF GLENDALE, et al.,)	
)	
Defendants.)	
)	
)	

BACKGROUND

Plaintiff, proceeding pro se, filed this civil rights action on February 13, 2008, against the City of Glendale, the Glendale Police Department, and Glendale police officers Uebel and Young. The original Complaint alleged that, on February 15, 2006, Plaintiff went to a bank to cash a check assertedly sent to Plaintiff by someone in Nigeria after Plaintiff allegedly responded to an Internet ad purportedly stating that Plaintiff had won a sweepstakes contest (Complaint, ¶¶ 1, 7). Plaintiff alleged that Defendant police officers appeared at the bank, searched and arrested Plaintiff, and

1 caused Plaintiff's car to be towed, assertedly without heeding
2 Plaintiff's attempt to explain his possession of the check and
3 Plaintiff's protestations that a document in Plaintiff's car
4 assertedly supported Plaintiff's explanation (Complaint, ¶¶ 8-9).
5 After allegedly being held at the police station for ten hours,
6 Plaintiff assertedly was released (Complaint, ¶ 10). Plaintiff
7 allegedly was charged with making or passing a fictitious check in
8 violation of California Penal Code section 476, but the prosecution
9 assertedly declined to prosecute the case (Complaint, ¶¶ 11, 19). The
10 original Complaint alleged claims for violation of the Fourth and
11 Sixth Amendments and Due Process and a state law false imprisonment
12 claim.

13
14 On March 12, 2008, Defendants filed a motion to dismiss pursuant
15 to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the
16 alternative for a more definite statement pursuant to Rule 12(e) of
17 the Federal Rules of Civil Procedure. Defendants asserted, inter
18 alia, that Plaintiff's state law false imprisonment claim was
19 insufficient because Plaintiff failed to plead compliance with the
20 claims presentation procedures of the California Tort Claims Act. On
21 April 8, 2008, Plaintiff filed a verified Opposition to Defendants'
22 motion. In the Opposition, Plaintiff asserted:

23
24 *Just before I filed this lawsuit, I mailed a tort claim to*
25 *the City of Glendale, thereby exhausting my administrative*
26 *remedies. The tort claim was summarily rejected.*

27
28 ("Plaintiff's Opposition to Defendant's [sic] Motion to Dismiss

1 | Complaint," filed April 8, 2008, p. 5) (emphasis added). Plaintiff
2 | also attached to that opposition a copy of a two-page typed letter to
3 | the City of Glendale Department of Finance in which Plaintiff
4 | described the alleged incident and requested damages (*id.*, Ex. A).
5 | Both pages of this letter bore a date line on which was handwritten
6 | the date February 5, 2008. The letter also bore a stamp marked "City
7 | Clerk" and the date of February 11, 2008, and contained several
8 | handwritten notations.¹

9 |
10 | On April 24, 2008, the Court issued a Memorandum and Order
11 | granting in part and denying in part Defendants' motion to dismiss,
12 | denying Defendants' motion for a more definite statement as moot, and
13 | dismissing the Complaint with leave to amend. Among other things, the
14 | Court ruled that Plaintiff's state law claim was insufficient because
15 | the Complaint failed to plead timely compliance with the claims
16 | presentation requirements of the California Tort Claims Act.

17 |
18 | On May 19, 2008, Plaintiff filed a verified First Amended
19 | Complaint containing virtually the same factual allegations as
20 | contained in the original Complaint, and alleging Fourth Amendment
21 | claims and a state law claim for false imprisonment. On June 9, 2008,
22 | Defendants filed a Motion to Dismiss, seeking dismissal of Plaintiff's
23 | state law claim for false imprisonment on the ground that Plaintiff
24 | again had failed to plead compliance with the claims presentation
25 |

26 | ¹ Although the Court did not consider this letter in
27 | ruling on the sufficiency of the original Complaint, the Court
28 | did consider the letter in deciding whether to grant leave to
amend (*see* "Memorandum and Order Dismissing Complaint with Leave
to Amend," filed April 24, 2008, at n.2).

1 | procedures of the California Tort Claims Act. On July 3, 2008, the
2 | Court issued a Memorandum and Order dismissing the First Amended
3 | Complaint with leave to amend. The Court indicated, inter alia, that
4 | Plaintiff alleged that he "recently" had submitted a tort claim to the
5 | City of Glendale "just prior" to filing this lawsuit, and referenced
6 | an "Exhibit D." However, the First Amended Complaint contained two
7 | non-identical documents labeled "Exhibit D." One of the documents
8 | appeared to be a copy of the alleged February 5, 2008 letter to the
9 | Glendale Department of Finance previously attached to Plaintiff's
10 | Opposition to Defendants' Motion to Dismiss the original Complaint,
11 | including the City's stamp and handwritten notations. The other
12 | document appeared to be an identical copy of that letter, except that
13 | it bore a date of August 5, 2006 and did not contain the City's stamp
14 | or handwritten notations. The Court dismissed the First Amended
15 | Complaint with leave to amend, ruling that the First Amended
16 | Complaint's ambiguous references to "Exhibit D" failed to allege
17 | timely compliance with the California Tort Claims Act.

18 |
19 | On August 1, 2008, Plaintiff filed a Second Amended Complaint,
20 | containing factual allegations similar to those contained in
21 | Plaintiff's prior pleadings, and alleging Fourth Amendment claims and
22 | a state law false imprisonment claim. With respect to his state law
23 | claim, Plaintiff alleged: "I mailed a tort claim notice to the
24 | defendants, which was denied. See **Exhibits D and E.**" (Second Amended
25 | Complaint, p. 14, ¶ 30). Plaintiff also alleged:

26 |
27 | *I submitted a tort claim on or about August 5, 2006 to which*
28 | *I received no response and again I recently submitted a tort*

1 claim, just prior to the filing of this lawsuit, to the City
2 of Glendale, which was rejected out of hand, see **Exhibits D**
3 **and E**. As a result, I met the requirements of the
4 California Tort Claims Act.

5
6 (Second Amended Complaint, p. 8, ¶ 13) (original emphasis).
7

8 There were no exhibits attached to the Second Amended Complaint.²
9

10 Because the Second Amended Complaint failed to cure the ambiguity
11 infecting the First Amended Complaint with respect to alleging timely
12 compliance with the California Tort Claims Act, on August 14, 2008,
13 the Court issued a Memorandum and Order Dismissing the Second Amended
14 Complaint with Leave to Amend. On September 4, 2008, Plaintiff filed
15 a Third Amended Complaint. On October 3, 2008, Defendants filed a
16 Motion to Dismiss the Third Amended Complaint pursuant to Rule
17 12(b)(6) of the Federal Rules of Civil Procedure, once again asserting
18 that Plaintiff's state law false imprisonment claim is insufficient
19 because Plaintiff has failed to plead compliance with the claims
20 presentation procedures of the California Tort Claims Act. On
21 November 3, 2008, Plaintiff filed an Opposition to the Motion to
22 Dismiss.

23
24 _____
25 ² On August 4, 2008, several days after Plaintiff filed
26 his Second Amended Complaint, Plaintiff filed a Notice of Lodging
27 of Exhibits and lodged various Exhibits with the Court.
28 Plaintiff did not indicate that the lodged documents were the
exhibits to which Plaintiff refers in his Second Amended
Complaint, and there was no proof of service attached to the
Notice of Lodging of Exhibits indicating service of the documents
on Defendants.

DISCUSSION

1
2
3 Under California law, in order to allege a state tort claim
4 against a public entity or public employees, a plaintiff must allege
5 compliance with the presentment of claims requirements of the
6 California Tort Claims Act. See Cal. Gov't Code §§ 945.4, 950.2;
7 Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 627 (9th Cir.
8 1988); Fisher v. Pickens, 225 Cal. App. 3d 708, 718, 275 Cal. Rptr.
9 487 (1990). "Before a civil action may be brought against a public
10 entity, a claim must first be presented to the public entity and
11 rejected." Ocean Servs. Corp. v. Ventura Port Dist., 15 Cal. App. 4th
12 1762, 1775, 19 Cal. Rptr. 2d 750 (1993); Cal. Gov't Code § 945.4; see
13 also Brown v. Yates, 2008 WL 928119, at *3 (E.D. Cal. Apr. 4, 2008),
14 adopted, 2008 WL 2915085 (E.D. Cal. July 25, 2008) ("Presentation of a
15 written claim and action on, or rejection of, the claim are conditions
16 to suit.") (citations omitted). Claims for personal injury and
17 property damage must be presented within six months after accrual.
18 See Cal. Gov't Code § 911.2(a); City of Stockton v. Superior Court,
19 42 Cal. 4th 730, 738, 68 Cal. Rptr. 3d 295, 171 P.3d 20 (2007).
20 "[F]ailure to timely present a claim for money or damages to a public
21 entity bars a plaintiff from filing a lawsuit against that entity."
22 City of Stockton v. Superior Court, 42 Cal. 4th at 738 (citation and
23 internal quotations omitted). A plaintiff "must allege facts
24 demonstrating or excusing compliance with the claim presentation
25 requirement." State of Calif. v. Superior Court of Kings County,
26 32 Cal. 4th 1234, 1243, 13 Cal. Rptr. 3d 534, 90 P.3d 116 (2004).
27 California courts "employ a test of substantial compliance rather than
28 strict compliance in evaluating whether a plaintiff has met the

1 demands of the claims statutes." Life v. County of Los Angeles, 227
2 Cal. App. 3d 894, 899, 278 Cal. Rptr. 196 (1991).

3
4 Plaintiff's claim for false imprisonment accrued on the date
5 Plaintiff was released from custody. See Scannell v. County of
6 Riverside, 152 Cal. App. 3d 596, 606-07, 199 Cal. Rptr. 644 (1984).
7 The Third Amended Complaint alleges that Plaintiff spent approximately
8 ten hours in detention on February 15, 2006 and was released at about
9 11:45 p.m. that evening (Third Amended Complaint, ¶ 12, pp. 7-8).
10 Hence, for purposes of the California Tort Claims Act, Plaintiff's
11 false imprisonment claim accrued on February 15, 2006.

12
13 In the Third Amended Complaint, Plaintiff alleges:

14
15 *I submitted a tort claim on or about August 5, 2006 to which*
16 *I received no response and again I recently submitted a tort*
17 *claim, just prior to the filing of this lawsuit, to the City*
18 *of Glendale, which was rejected out of hand, see **Exhibits D***
19 *and **E**. As a result, I met the requirements of the*
20 *California Tort Claims Act.*

21
22 (Third Amended Complaint, ¶ 13, p. 8). Curing the ambiguity problems
23 with the First Amended Complaint and Second Amended Complaint,
24 Plaintiff has attached Exhibits D and E to the Third Amended
25 Complaint. Exhibit D is a copy of a letter, dated August 5, 2006,
26 addressed to the Glendale Department of Finance, complaining about the
27 incident and demanding compensation (Third Amended Complaint, Ex. D).
28 Exhibit E is a copy of a virtually identical letter, dated February 5,

1 2008, addressed to the Glendale Department of Finance, and bearing the
2 stamp of the City Clerk and a date stamp of February 11, 2008.
3

4 Defendants assert that Plaintiff has failed to plead compliance
5 with the California Tort Claims Act because Plaintiff addressed his
6 alleged August 5, 2006 claim to the Glendale Department of Finance
7 rather than to the City's "clerk, secretary, auditor or governing
8 body," as assertedly required by California Government Code section
9 915(a) (Motion to Dismiss, p. 4). Defendants also assert that
10 Plaintiff has failed to meet his "burden of proving actual receipt" of
11 the claim (id.). Defendants contend that the February 5, 2008 claim
12 (also addressed to the Department of Finance but bearing the City
13 Clerk's stamp) was untimely.
14

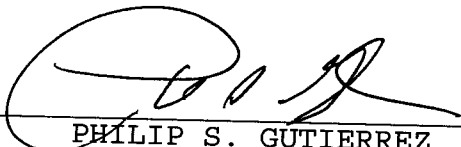
15 Defendants' assertions do not justify dismissal of the Third
16 Amended Complaint. Plaintiff's allegations and Exhibits do not show,
17 on their face, that Plaintiff failed to file a timely tort claim.
18 Whether Plaintiff will be able to prove (as well as plead) that he
19 filed a timely tort claim is an issue inappropriate for resolution on
20 a motion to dismiss. See Jiang v. Lee's Happy House, 2008 WL 706529,
21 at *1 (N.D. Cal. Mar. 14, 2008) ("On a motion to dismiss under Rule
22 12(b)(6) the issue is not what plaintiff has or will be able to prove,
23 but whether the allegations, which are presumed true, are
24 sufficient.") (citation omitted). For purposes of this Motion to
25 Dismiss, the allegations of the Third Amended Complaint, liberally
26 construed, suffice to plead timely compliance with the California Tort
27 Claims Act. The Court does not at this time determine whether
28 Plaintiff in fact timely complied with the California Tort Claims Act.

1
2
3 **CONCLUSION AND ORDER**

4 Defendants' Motion to Dismiss is denied, without prejudice to the
5 reassertion in a subsequent appropriate motion of Defendants'
6 assertion that Plaintiff failed to file a timely claim as required by
7 the California Tort Claims Act. Defendant shall file an Answer to the
8 Third Amended Complaint within thirty (30) days of the date of this
9 Memorandum and Order.

10 IT IS SO ORDERED.

11
12 DATED: 11/7/08

13
14
15 
16 PHILIP S. GUTIERREZ
17 UNITED STATES DISTRICT JUDGE

18
19 Presented this 5th day of
20 November, 2008, by

21
22 
23 CHARLES F. EICK
24 UNITED STATES MAGISTRATE JUDGE