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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABARCA, RAUL VALENCIA, et al.,
Plaintiff,
v.
MERCK & CO., et al.,
Defendant.

1:07-CV-0388 OWW DLB

MEMORANDUM DECISION DENYING
FCWD'S MOTION FOR SUMMARY
JUDGMENT RE FLOOD-RELATED
CALIFORNIA TORT CLAIMS ACT
CLAIMS

Before the court for decision is Defendant Franklin County Water District's ("FCWD") motion for summary judgment, converted from a previously-filed motion to dismiss, concerning Plaintiffs' flood-related claims under the California Tort Claims Act ("CTCA"). See Doc. 284, 423, 473. Specifically, FCWD argues it is entitled to summary judgment on Plaintiffs Thirteenth, Fourteenth, and Eighteenth Claims for Relief because they exceed the scope of the nine sets of CTCA claims submitted to FCWD by Plaintiffs. Doc. 284 at 4.

Prior to filing suit under the CTCA, a Plaintiff must properly present his or her claim to the relevant public agency

1 pursuant to California Government Code § 910, which provides:

2 A claim shall be presented by the claimant or by a
3 person acting on his or her behalf and shall show all
4 of the following:

5 a) The name and post office address of the claimant;

6 b) The post office address to which the person
7 presenting the claim desires notices to be sent;

8 c) The date, place and other circumstances of the
9 occurrence or transaction which gave rise to the claim
10 asserted;

11 d) The general description of the indebtedness,
12 obligation, injury, damage or loss incurred so far as
13 it may be known at the time of presentation of the
14 claim;

15 e) The name or names of the public employee or
16 employees causing the injury, damage or loss, if known;
17 and

18 f) The amount claimed if it totals less than ten
19 thousand (\$10,000) as of the date of presentation of
20 the claim, ... If the amount claimed exceeds \$10,000,
21 no dollar amount shall be included in the claim.
22 However, it shall indicate whether the claim would be a
23 limited civil case.

24 A claim that provides the above information satisfies the
25 claims presentation requirement, even if it omits other
26 information requested on a claim form. *Blair v. Superior Court*,
27 218 Cal. App. 3d 221, 225 (1990). Technical defects will not
28 invalidate a claim, so long as there has been substantial
compliance with the claims filing requirement. *Phillips v.*
Desert Hospital District, 49 Cal. 3d 699, 706 (1989). The test
as to whether a claim has substantially complied with the
Government Code requirements, is whether sufficient information

1 is disclosed to "enable a public entity to investigate and
2 evaluate the claim to determine whether settlement is
3 appropriate." *Id.*

4 Within twenty (20) days after a claim has been presented,
5 the public entity may give the claimant written notice of any
6 substantial defects or omissions that prevent the claim from
7 complying substantially with requirements of Government Code §
8 911. *See* Cal. Gov. Code § 910.8. A public entity that fails to
9 provide such notice, waives any defense based upon a defect or
10 omission within the claim. *Martinez v. County of Los Angeles*, 78
11 Cal. App. 3d 242, 245 (1978); *Phillips*, 49 Cal. 3d at 705.

12
13 In *Crow v. State of California*, 222 Cal. App. 3d 192,
14 (1990), two of plaintiff's four causes of action were barred by
15 the CTCA because they exceeded the scope of the claims submitted
16 through the claim presentation process. The plaintiff, who was a
17 student at a state university, was assaulted by another student
18 in a dormitory. *Id.* at 197. The plaintiff's third and fourth
19 causes of action, which were based on contract and alleged that
20 the university breached the dormitory residence agreement in not
21 providing a reasonably safe and secure environment, did not fall
22 within the scope of the claim presented, which described the
23 assault and alleged that the university knew the student was
24 dangerous, but did not mention the contract with the university,
25 or allege any special relationship between the plaintiff and the
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1 university because of the contract. *Id.* This was insufficient
2 "to give the public entity the opportunity to evaluate the merit
3 and extent of its liability." *Id.* at 202.

4 The first group of claims presented to FCWD by Plaintiffs
5 list the date of accident/incident/loss as "on or about April 4,
6 2006, and continuing," and describe the incident as follows:
7

8 FCWD controls, constructed or authorized the
9 construction of a sewage plant adjacent to a portion of
10 channel known as El Capitan/Black Rascal Creek. The
11 sewage plant is in violation of federal and state
12 regulations in that contaminants have over time escaped
13 into adjacent public water ways and contaminated
14 property including that of claimant. Further, the
15 sewage plant has in the past and continues to discharge
16 sewage to surface and groundwater in close proximity to
17 claimant's property so as to interfere with claimant's
18 use and enjoyment of his/her property.

19 FWCD's Request for Judicial Notice ("RJN"), Doc. 285, at Exhs. A-

20 C. The resulting damage and injury is described as follows:
21

22 Damage and injury to property and person, including but
23 not limited to personal injury, emotional distress,
24 fear of illness, medial monitoring, exposure to
25 contaminants and toxins, damage to structures, loss of
26 use, loss of income, loss of business good will and
27 profits, loss of animals, relocation costs, restoration
28 costs, repair costs, remedial costs, cleanup costs,
investigative costs to determine nature and extent of
damages, including future costs associated with same,
diminution in value, stigma damages, mitigation costs,
past, present and future.

29 *Id.*

30 FWCD asserts that the flood claims included in the
31 currently-operative complaint exceed the scope of the underlying
32 CTCA claim, which does not mention the word "flood" or
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1 "flooding." Doc. 284 at 5. Plaintiffs rejoin that the claims
2 specifically list the date of the flood, April 4, 2006, and
3 continuing, as the date of loss. Plaintiffs argue that "FCWD
4 certainly was aware of the flooding that occurred on April 4,
5 2006, in Merced." Doc. 423 at 5. Plaintiffs emphasize that they
6 "are not making a claim, nor have ever made the claim that FCWD
7 somehow caused the flooding event or contributed in any
8 significant manner to the volume of water which ultimately made
9 its way on to plaintiffs' property. Rather, plaintiffs' theory of
10 liability against FCWD has always centered around the release of
11 sewage contamination from the facility that made its way into El
12 Capitan Canal and Black Rascal Creek, and ultimately released
13 onto plaintiffs' property at various times, including during the
14 flooding event in April 2006." *Id.* This allegation is arguably
15 covered by the claim's assertion that "on or about April 4, 2006,
16 and continuing.... contaminants have over time escaped into
17 adjacent public water ways [from the sewage plant] and
18 contaminated property including that of claimant." This put FWCD
19 on notice that Plaintiffs were claiming that FCWD maintained and
20 operated a sewage treatment plant to effect releases of
21 contaminants which damaged Plaintiffs' property. FWCD was also
22 on noticed that the flood event was one possible mechanism by
23 which contaminants from its sewage facility could have been
24 carried onto Plaintiffs' property.
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1 FWCD also complains about the following language from the
2 claims: "[T]he sewage plant has in the past and continues to
3 discharge sewage to surface and groundwater in close proximity of
4 claimant's property so as to interfere with claimants' use and
5 enjoyment of his/her property." See Doc. 473 at 2. FWCD argues
6 that this does not state that Plaintiffs' property was actually
7 impacted. But, other portions of the claim indicate that
8 Plaintiffs' property was actually "contaminated" by the escaped
9 sewage. The flood claims fall within the scope of the CTCA
10 claims presented to FCWD, and permitted FCWD to investigate,
11 evaluate, and defend against Plaintiffs' claims.
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13 FCWD's motion for summary judgment is DENIED.
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16 SO ORDERED

17 Dated: July 15, 2009
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19 /s/ Oliver W. Wanger
20 Oliver W. Wanger
21 United States District Judge
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