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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYLVIA SOUBLET,
Plaintiff,
v.
COUNTY OF ALAMEDA, et al.,
Defendants.

Case No. 18-cv-03738-JST
**ORDER GRANTING PARTIAL
MOTION TO DISMISS**
Re: ECF No. 12

Before the Court is Defendants County of Alameda and Lori Cox’s motion to dismiss Plaintiff Sylvia Soublet’s state-law claims. ECF No. 12. The Court will grant the motion and dismiss the challenged claims with prejudice.

I. BACKGROUND
A. Factual Background

As set forth in her operative First Amended Complaint (“FAC”), Soublet is the Director of Public Affairs and Community Relations for Defendant County’s Social Services Agency (“SSA”). ECF No. 7 ¶ 14. Soublet alleges that, on March 17, 2017, she had a conversation with a private individual, Olis Simmons, in which Simmons made comments indicating that Defendant Cox – the Director of the SSA – had revealed protected personal information about Soublet. Id. ¶¶ 14-15.

On April 22, 2017, Soublet emailed a letter to various County of Alameda officials, including the Board of Supervisors. Id. ¶ 19. In the letter, Soublet recounted in detail her history with SSA. Id. Soublet then asserted that Cox’s conduct over the prior year had created a hostile work environment, constituted an abuse of power, caused disparate treatment, and violated personnel practices. Id. For each category, Soublet briefly stated various examples, such as

1 “[m]anagement directive in violation of personnel and ADA laws.” *Id.* (italics in original). The
2 letter closed by stating:

3 I want to be clear, I do not have an axe to grind, and I can substantiate
4 the claims that I am setting forth. I understand the gravity of my
allegations, and the risks that I take in making them public.

5 I have played out every possible scenario and still decided to move
6 forward. I have always given my full support to [Cox’s] stated
7 objectives for the Agency. What I cannot continue to do is work in a
8 climate where I am devalued, concerns about my mental and
emotional health are raised and discussed openly with others, and I
do not know what to guard against from one day to the next.

9 As I’ve said, I could have brought my concerns to your board behind
10 the veil of anonymity but I choose not to. I have done nothing wrong
11 and I want you to know that. I now know what it feels like to be the
target of these types of actions, and I have personal empathy for those
who have also gone through it. It is not easy speaking truth to power,
but what is my alternative?

12 *Id.* On September 5, 2017, Soublet received a letter from the County Counsel stating that an
13 independent investigation had found that Cox “shared confidential information inappropriately
14 and in violation of County policy.” *Id.* ¶ 20.

15 On January 18, 2018, Cox issued a written reprimand to Soublet, citing willful
16 disobedience, insubordination, and discourteous treatment of the general public or fellow
17 employees. *Id.* ¶¶ 22-23.

18 On January 30, 2018, Soublet filed a formal “Claim for Damages” with the County, along
19 with the County’s standardized form for such claims. ECF No. 12-1.¹ On the form, under “Date
20 of Accident/Loss,” Soublet wrote: “Ongoing – continuing violation.” *Id.* at 10. The Claim for
21 Damages reproduced in its entirety Soublet’s April 22, 2017 email,² *id.* at 14-18, and then
22 provided a list of causes of action with no additional factual explanation, *id.* at 18-19.

23 _____
24 ¹ With their motion to dismiss, Defendants attached copies of (1) Soublet’s April 24, 2017 email
25 and attached letter; (2) Soublet’s January 31, 2018 Claim for Damages; and (3) the County’s
26 March 19, 2018 response to the Claim for Damages. See ECF No. 12-1. Because the FAC
27 references these documents, see FAC ¶ 12, and the County’s rejection of Soublet’s administrative
28 claim for damages “forms the basis” of Soublet’s state-law claims in this lawsuit, the Court
concludes that they are incorporated by reference into the FAC. *Khoja v. Orexigen Therapeutics,*
Inc., 899 F.3d 988, 1002 (9th Cir. 2018) (citation omitted). Soublet does not object to
consideration of these documents.

² The Court refers to the email and attached letter collectively as the “email.”

1 On March 19, 2018, the County mailed a “Notice of Return of Untimely Claim and
2 Rejection of Claim” to Soublet’s attorney. *Id.* at 21-22. The Notice explained that the County
3 was returning as untimely Soublet’s claim to the extent that it was based on causes of action
4 occurring prior to February 5, 2017. *Id.* at 21. The County also returned as untimely causes of
5 action accruing between February 5, 2017, and August 4, 2017, but informed Soublet that she
6 could apply for leave to file a late claim pursuant to California Government Code sections 911.4
7 and 911.6. *Id.* Finally, the Notice informed Soublet that the County rejected her claims on the
8 merits to the extent they accrued after August 5, 2017. *Id.*

9 **B. Procedural History**

10 On June 22, 2018, Soublet filed this lawsuit. ECF No. 1. Soublet then amended her
11 complaint on July 24, 2018. See FAC. The FAC raises numerous 42 U.S.C. § 1983 claims based
12 on alleged constitutional violations. FAC at 12, 16-18, 20, 21, 23. As relevant here, the FAC also
13 alleged state-law claims based on (1) invasion of the California constitutional right to privacy; (2)
14 violations of the Information Practices Act of 1977, Cal. Civ. Code § 1798.24; (3) retaliation
15 under the Fair Employment and Housing Act, Cal. Labor Code § 1102.5; (4) intentional infliction
16 of emotional distress; and (5) negligence. FAC at 25-26, 28, 30-31.

17 On October 8, 2018, Defendants filed this motion to dismiss the state-law claims under
18 Rule 12(b)(6) of the Federal Rules of Civil Procedure. ECF No. 12.

19 **II. JURISDICTION**

20 The Court has jurisdiction over Soublet’s § 1983 claims under 28 U.S.C. § 1331. The
21 Court exercises supplemental jurisdiction over Soublet’s related state-law claims pursuant to 28
22 U.S.C. § 1367(a).

23 **III. LEGAL STANDARD**

24 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain
25 statement of the claim showing that the pleader is entitled to relief.” While a complaint need not
26 contain detailed factual allegations, facts pleaded by a plaintiff must be “enough to raise a right to
27 relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To
28 survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter that,

1 when accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662,
2 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows
3 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
4 *Id.* While this standard is not a probability requirement, “[w]here a complaint pleads facts that are
5 merely consistent with a defendant’s liability, it stops short of the line between possibility and
6 plausibility of entitlement to relief.” *Id.* (internal quotation marks and citation omitted). In
7 determining whether a plaintiff has met this plausibility standard, the Court must “accept all
8 factual allegations in the complaint as true and construe the pleadings in the light most favorable”
9 to the plaintiff. *Kniesel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

10 **IV. DISCUSSION**

11 **A. California Government Claims Act**

12 Defendants first argue that the state-law claims must be dismissed because Soublet failed
13 to comply with the administrative claim presentation requirements in the California Government
14 Claims Act. ECF No. 12 at 6-9.

15 **1. Legal Standard**

16 With some exceptions not applicable here, the Government Claims Act “requires that ‘all
17 claims for money or damages against local public entities’ be presented to the responsible public
18 entity before a lawsuit is filed.” *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734 (2007)
19 (quoting Cal. Gov. Code § 905). A properly presented claim must contain:

- 20 (a) The name and post office address of the claimant.
- 21 (b) The post office address to which the person presenting the claim
22 desires notices to be sent.
- 23 (c) The date, place and other circumstances of the occurrence or
24 transaction which gave rise to the claim asserted.
- 25 (d) A general description of the indebtedness, obligation, injury,
26 damage or loss incurred so far as it may be known at the time of
27 presentation of the claim.
- 28 (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

1 estimated amount of any prospective injury, damage, or loss, insofar
2 as it may be known at the time of the presentation of the claim,
3 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.

4 Cal. Gov. Code § 910. In order to “to gauge the sufficiency of a particular claim,” courts ask two
5 questions: “Is there some compliance with all of the statutory requirements; and, if so, is this
6 compliance sufficient to constitute substantial compliance?” *City of San Jose v. Superior Court*,
7 12 Cal. 3d 447, 456–57 (1974). In other words, “[t]he doctrine of substantial compliance . . .
8 cannot cure total omission of an essential element from the claim or remedy a plaintiff’s failure to
9 comply meaningfully with the statute.” *Connelly v. County of Fresno*, 146 Cal. App. 4th 29, 38
10 (2006). A public entity presented with a sufficient claim under these requirements “must act
11 within 45 days or the claim is deemed to have been denied.” *Phillips v. Desert Hosp. Dist.*, 49
12 Cal. 3d 699, 707 (1989) (citing Cal. Gov. Code § 912.4).

13 If, on the other hand, “a claim as presented fails to comply substantially” with the Act’s
14 requirements, Cal. Gov. Code § 910.8, it triggers various requirements. See *Phillips*, 49 Cal. 3d at
15 707. Not every communication qualifies as a “claim as presented,” however. “[A] document
16 constitutes a ‘claim as presented’ . . . if it discloses the existence of a ‘claim’ which, if not
17 satisfactorily resolved, will result in a lawsuit against the entity.” *Id.* at 709; see also *California v.*
18 *Superior Court*, 32 Cal. 4th 1234, 1245 (2004) (“Courts have long recognized that [a] claim that
19 fails to substantially comply with sections 910 and 910.2, may still be considered a ‘claim as
20 presented’ if it puts the public entity on notice both that the claimant is attempting to file a valid
21 claim and that litigation will result if the matter is not resolved.” (internal quotation marks and
22 citation omitted)).

23 Where a document qualifies as “a claim as presented,” the public entity must give the
24 claimant notice of the defect, see Cal. Gov. Code § 910.8, or else waive that defense, see *id.*
25 § 911. But these notice-and-waiver provisions do not apply if “the claim as presented fails to
26 state either an address to which the person presenting the claim desires notices to be sent or an
27 address of the claimant.” *Id.* § 911.

28 A compliant claim must also be submitted to the public entity within certain time limits.

1 “Claims for personal injury and property damage must be presented within six months after
2 accrual; all other claims must be presented within a year.” City of Stockton, 42 Cal. 4th at 734
3 (citing Cal. Gov. Code § 911.2). The public entity must give the claimant notice that it is
4 returning a late-filed claim as untimely and advise the claimant of the ability to file an application
5 for leave to present a late claim. See Cal. Gov. Code § 911.3(a). As with other defects in the
6 claim, the public entity’s failure to give the claimant notice waives this defense, unless “the claim
7 as presented fails to state either an address to which the person presenting the claim desires
8 notices to be sent or an address of the claimant.” Id. § 911.3(b).

9 “Presentation of a claim against a public employee or former public employee for injury
10 resulting from an act or omission in the scope of his public employment is not a prerequisite to
11 the maintenance of an action against the employee, but presentation of a claim against the
12 employing public entity is a prerequisite to bringing such an action.” Olden v. Hatchell, 154 Cal.
13 App. 3d 1032, 1034 (1984); see also Cal. Gov. Code §§ 950, 950.2, 950.6.

14 2. Discussion

15 Soublet does not dispute that her compliance with the Government Claims Act’s
16 requirements turns solely on the adequacy of her April 22, 2017 email. See ECF No. 22 at 5-9.

17 The Court first considers whether this email substantially complied with the Act’s
18 requirements. Defendants argue that the email made no attempt to comply with the requirements
19 to include Soublet’s “name and post office address,” Cal. Gov. Code § 910(a), “[t]he post office
20 address to which [Soublet] desire[d] notices to be sent,” id. § 910(b), “a general description of the
21 indebtedness, obligation, injury, damage or loss,” id. § 910(d), or “[t]he amount claimed if it totals
22 less than ten thousand dollars” or “whether the claim would be a limited civil case,” id. § 910(f).
23 Moreover, Defendants argue, Soublet did not use the required claim form. See id. § 910.4.

24 The Court agrees with Defendants that Soublet’s email does not demonstrate substantial
25 compliance with the requirement to specify the amount claimed. Soublet’s sole argument is that it
26 was unnecessary to specify an amount because her damages exceeded \$10,000. ECF No. 22 at 8.
27 But in that case, the statute requires the claimant to “indicate whether the claim would be a limited
28 civil case,” Cal. Gov. Code § 910(f), which serves the purpose of apprising the public entity

1 whether the amount claimed exceeds \$25,000, see Cal. Code Civ. Proc. § 85(a); see also City of
2 Stockton, 42 Cal. 4th at 738 (“The claims statutes also enable the public entity to engage in fiscal
3 planning for potential liabilities and to avoid similar liabilities in the future.” (internal quotation
4 marks and citation omitted)). Nothing in the email provided any indication of the amount claimed,
5 or even that Soublet sought money damages, and therefore it did not constitute substantial
6 compliance with that requirement. See *Olson v. Manhattan Beach Unified Sch. Dist.*, 17 Cal. App.
7 5th 1052, 1061 (2017) (finding claim defective because, among other things, it did not contain
8 “the dollar amount claimed or whether the claim would be a limited civil case”); *Loehr v. Ventura*
9 *Cty. Cmty. Coll. Dist.*, 147 Cal. App. 3d 1071, 1083 (1983) (“Nowhere in the letter is there a claim
10 for money damages, nor, for that matter is there even an estimate of the amount of any prospective
11 injury, damage or loss.”); *Pac. Tel. & Tel. Co. v. County of Riverside*, 106 Cal. App. 3d 183, 191
12 (1980) (holding that claim did not satisfy substantial compliance where it did not give “notice of . .
13 . the extent of the damages claimed”).

14 Accordingly, the Court holds that the April 22, 2017 email did not substantially comply
15 with the claim presentation requirements.

16 Next, the Court considers whether the email constituted “a claim as presented.” The key
17 question is whether the email conveyed “the existence of a ‘claim’ which, if not satisfactorily
18 resolved, w[ould] result in a lawsuit against the entity.” *Phillips*, 49 Cal. 3d at 709. Here, it did
19 not. There was no express statement that Soublet would pursue a lawsuit absent some response
20 from the County. Cf. *id.* at 703 (notice titled “Intention to Commence Action” stating “Mr.
21 Phillips will claim damages for loss of consortium and for his mental and emotional suffering
22 resulting from the damages and disfigurement to his wife”); *Foster v. McFadden*, 30 Cal. App. 3d
23 943, 945 (1973) (letter requesting response to “eliminate the necessity for initiating formal
24 proceedings”). Soublet’s unadorned statements that certain of Cox’s practices violated particular
25 statutes and that “I can substantiate the claims that I am setting forth,” ECF No. 12-1 at 17-18,
26 falls far short of this standard. See ECF No. 22 at 8 n.4. Nothing in the email even “indicated that
27 a demand was being made for compensation for injuries.” *Green v. State Ctr. Cmty. Coll. Dist.*,
28 34 Cal. App. 4th 1348, 1358 (1995). Indeed, Soublet did not request that the County take any

1 particular action in response to her allegations, so the County could not reasonably perceive that
2 Soublet was issuing a pre-litigation demand.

3 The Court’s conclusion is bolstered by Soublet’s subsequent conduct. See Schaefer Dixon
4 Assocs. v. Santa Ana Watershed Project Auth., 48 Cal. App. 4th 524, 534 (1996) (observing that
5 claimant’s subsequent letter to agency “did not treat the [first disputed] letter as equivalent of a
6 ‘claim’ to which the agency had to respond within 45 days,” but instead “simply reiterated a
7 request for a meeting on the subject”). Soublet did not treat the County’s failure to respond to her
8 April 22, 2017 email within 45 days as a denial. Cf. Cal. Gov. Code § 912.4 (requiring board to
9 act within 45 days unless extended by written agreement with claimant). Nor did Soublet file suit
10 when the County did not provide compensation to satisfy her allegedly articulated demand for
11 relief. Instead, nine months later, she filed a formal claim for damages and merely reincorporated
12 the factual allegations of her earlier email. See ECF No. 12-1 at 14-18.

13 Because Soublet’s email did not constitute a claim as presented, the County did not waive
14 any defenses by failing to notify Soublet of any defects in the email. See Cal. Gov. Code
15 §§ 910.8, 911.3(b).

16 The Court therefore agrees with Defendants that Soublet did not present her claims to the
17 County until January 31, 2018. See ECF No. 12-1 at 10. The County properly returned Soublet’s
18 claims as untimely, *id.* at 21, and Soublet does not contend that she applied for leave to present a
19 late claim. Soublet’s claims are therefore barred. See Cal. Gov. Code § 945.4.³

20 **B. Information Practices Act**

21 Even if Soublet’s Tenth Claim were not barred by the failure to comply with the
22 Government Claims Act, it would still fail as a matter of law. Soublet concedes that the County is
23

24 ³ The Court notes that the County, seemingly out of an abundance of caution, rejected any timely
25 claims on the merits. ECF No. 12-1 at 21. But any claim that did not arise out of the April 22,
26 2017 email could not be fairly claimed to have been presented in the January 31, 2018 Claim for
27 Damages, because that document relied solely on the email as the factual basis for its claims. See
28 *id.* at 15-18; Loehr, 147 Cal. App. 3d at 1982 (“The document also fails to state in detail the
circumstances or occurrence that would give rise to certain of the wrongs which constitute the
basis of plaintiff’s causes of action for [specific claims].”). Moreover, Soublet does not argue that
she presented any timely claims for the first time in the Claim for Damages.

1 not subject to the provisions of the Information Practices Act, Cal. Civ. Code §§ 1724(d), 1798.45,
2 on which the claim is based. ECF No. 22 at 9-10; see also Cal. Civ. Code § 1798.3(b)(4)
3 (defining “agency” to exclude “[a] local agency” as defined in California Government Code
4 section 6252(a)). Similarly, Soublet does not allege, nor can it be inferred from the factual
5 allegations of her complaint, that the personal information allegedly disclosed was “maintained by
6 a state agency or from ‘records’ within a ‘system or records’ . . . maintained by a federal
7 government agency.” Cal. Civ. Code § 1798.53. Therefore, the Tenth Claim is facially defective
8 against Cox as well.⁴

9 **CONCLUSION**

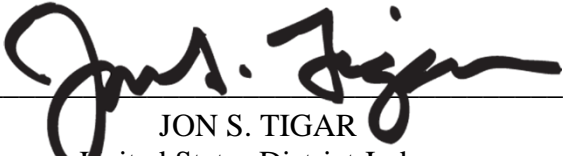
10 For the foregoing reasons, the Court holds that Soublet’s state-law claims must be
11 dismissed. Because Soublet failed to timely present her claims to the County, and there is no
12 indication that she could allege facts that would otherwise excuse her from the Government
13 Claims Act’s requirements, the Court concludes any further amendment would be futile. See Platt
14 Elec. Supply, Inc. v. EOFF Elec., Inc., 522 F.3d 1049, 1060 (9th Cir. 2008) (“However, because
15 [plaintiff’s] claims are barred by the statute of limitations, any amendments would have been
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21 futile.”). Accordingly, the Court GRANTS Defendants’ motion to dismiss Claims Eight, Nine,
22 Ten, Eleven, and Twelve with prejudice.

23 **IT IS SO ORDERED.**

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25 _____
26 ⁴ The Court does not reach Defendants’ other alternative argument that the California Workers
27 Compensation Act preempts Soublet’s negligence claim. ECF No. 12 at 9. The parties have not
28 adequately briefed whether Cox allegedly revealing Soublet’s protected personal information to a
third party “violated public policy and therefore fell outside the compensation bargain.” *Fermino*
v. Fedco, Inc., 7 Cal. 4th 701, 715 (1994). Soublet’s reliance on allegations of retaliation, see ECF
No. 22 at 11, which do not form the basis of her negligence claim, see FAC ¶ 107, are unhelpful to
this analysis.

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Dated: November 29, 2018



JON S. TIGAR
United States District Judge