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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MAURICE JONES and LEONEL R.
LEON, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

SAN DIEGO METROPOLITAN TRANSIT
SYSTEM; SAN DIEGO TROLLEY, INC.;
and DOES 1–50,

Defendants.

CASE NO. 14cv1778-LAB (KSC)

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS**

Maurice Jones and Leonel R. León filed this putative class action against San Diego Metropolitan Transit System and San Diego Trolley, Inc.—both public entities—alleging violations of the Fair Labor Standards Act (FLSA) and California labor laws. Defendants now move to dismiss these claims.

I. Discussion

A. Legal Standards

A 12(b)(6) motion to dismiss for failure to state a claim challenges the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The Court must accept all factual allegations as true and construe them in the light most favorable to Plaintiffs. *Cedars Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). To defeat Defendants' motion to dismiss, Plaintiffs' factual allegations need not be detailed, but they must be sufficient to "raise a right to relief above the speculative level" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

1 **B. Analysis**

2 Defendants argue that Plaintiffs' claims must be dismissed since: (1) Plaintiffs fail to
3 allege compliance with the California Government Claims Act (CGCA); (2) the lawsuit is
4 barred by res judicata and collateral estoppel; and (3) the collective bargaining agreement
5 requires arbitration.

6 **1. CGCA Compliance**

7 Under the CGCA, before suing a public entity for money or damages, a plaintiff must
8 first file a claim with the public entity. *See State of CA v. Super. Ct. (Bodde)*, 32 Cal. 4th
9 1234, 1240–44 (2004). A plaintiff's complaint "must allege facts demonstrating or excusing
10 compliance with the claim presentation requirement." *Id.* at 1243.

11 While Plaintiffs don't dispute that Defendants are public entities, their complaint
12 doesn't allege CGCA compliance. Instead, they allege compliance for the first time in their
13 opposition to Defendants' motion to dismiss. But on a 12(b)(6) motion, the scope of review
14 is generally limited to the contents of the complaint. *See Broam v. Bogan*, 320 F.3d 1023,
15 1026 n.2 (9th Cir. 2003) ("In determining the propriety of a Rule 12(b)(6) dismissal, a court
16 may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum
17 in opposition to a defendant's motion to dismiss.") (internal quotation marks omitted).
18 Because the complaint doesn't allege CGCA compliance, Plaintiffs failed to allege a legally
19 sufficient claim. But since Plaintiffs may be able to allege compliance, the Court dismisses
20 the complaint with leave to amend. *See, e.g., Randolph v. City of E. Palo Alto*, 2007 WL
21 1232057, at *2 (N.D. Cal. Apr. 26, 2007).

22 **2. Res Judicata and Collateral Estoppel**

23 Defendants seek dismissal on res judicata and collateral estoppel grounds based on
24 an earlier state court action. But these defenses may not be raised in a motion to dismiss
25 unless they raise no disputed issues of fact. *See, e.g., Scott v. Kuhlmann*, 746 F.2d 1377,
26 1378 (9th Cir. 1984). It's not clear whether Plaintiffs were parties to that action, and Plaintiffs
27 contend they weren't. Since privity is a necessary element for both res judicata and collateral
28 estoppel to apply, *see Allen v. McCurry*, 449 U.S. 90, 94 (1980), and the factual record

1 before the Court on this motion is disputed, the Court denies Defendants' motion to dismiss
2 on res judicata and collateral estoppel grounds.

3 **3. Arbitration**

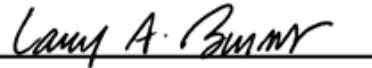
4 Defendants argue that Plaintiffs have failed to exhaust grievance procedures, which
5 require arbitration of any claims arising under their collective bargaining agreements (CBAs).
6 But a CBA waives the right of a union member to pursue employment-related statutory
7 claims in court only when the waiver is "clear and unmistakable." *Wright v. Universal*
8 *Martime Serv. Corp.*, 525 U.S. 70, 75, 80 (1998) (holding that arbitration clause which
9 provided for arbitration of "[m]atters under dispute," was not sufficiently clear to waive a union
10 member's right to file a claim under the ADA in a federal district court). Here, the CBAs are
11 "very general" and contain "no explicit incorporation" of statutory claims. *Id.* at 80. Plaintiffs
12 therefore need not arbitrate their statutory claims.

13 **II. Conclusion**

14 The motion to dismiss is **GRANTED IN PART** and **DENIED IN PART**. This action is
15 **DISMISSED WITH LEAVE TO AMEND**. Any amended complaint alleging compliance with
16 the CGCA must be filed within **TWO WEEKS OF THE DATE OF THIS ORDER**.

17
18 **IT IS SO ORDERED.**

19 DATED: August 12, 2015

20 
21 **HONORABLE LARRY ALAN BURNS**
22 United States District Judge