

1 **I. Discussion**

2 **A. Legal Standard**

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

10 **B. CGCA Compliance**

11 Under the CGCA, before suing a public entity or public employee for money or
12 damages, a plaintiff must first file a claim with the public entity. *See State of CA v. Super.*
13 *Ct. (Bodde)*, 32 Cal. 4th 1234, 1240–44 (2004); *see also Karim-Panahi v. Los Angeles Police*
14 *Dep't*, 839 F.2d 621, 627 (9th Cir. 1988). Compliance with the CGCA is an element of a
15 cause of action against a public entity or a public employee acting in the scope of
16 employment. *Alcay v. City of Visalia*, 2013 WL 3244812, at *6 (E.D. Cal. June 26, 2013).
17 A plaintiff's complaint "must allege facts demonstrating or excusing compliance with the
18 claim presentation requirement." *Id.* at 1243. Wimer doesn't oppose MTS' motion. In his
19 opposition to Alamillo's motion, Wimer contends that Alamillo isn't an MTS employee. But
20 this contradicts his complaint, where he alleged that Alamillo was employed by both MTS
21 and UPS. (Docket no. 1 at ¶ 9.) "[T]he Court's analysis focuses on the actual allegations of
22 the . . . [c]omplaint." *In re Apple iPhone Antitrust Litig.*, 2013 WL 4425720, at *12 (N.D. Cal.
23 Aug. 15, 2013). Thus, because the complaint doesn't allege CGCA compliance, the motions
24 to dismiss (Docket nos. 4 and 13) are **GRANTED WITH LEAVE TO AMEND.**

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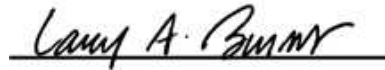
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1 If Wimer thinks he can successfully amend his complaint, he must seek leave by ex
2 *parte* motion no later than January 11, 2016. His proposed amended complaint must be
3 attached as an exhibit to the motion. If he files such a motion, MTS and Alamillo shall have
4 until January 25, 2016 to oppose it. No reply should be filed unless leave is obtained in
5 advance.

6 **IT IS SO ORDERED.**

7 DATED: December 21, 2015

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9 **HONORABLE LARRY ALAN BURNS**
10 United States District Judge

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