

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Lopez v. Lee

No. 23-cv-03660-HSG (N.D. Cal. Feb. 25, 2025) · No. 23-cv-03660-HSG · Decided February 25, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ANDREW LOPEZ, Case No. 23-cv-03660-HSG 8 Plaintiff, ORDER GRANTING
DEFENDANTS’ PARTIAL MOTION TO DISMISS 9 v. Re: Dkt. No. 18 10 M. LEE, et al., 11
Defendants. 12 13 Plaintiff, an inmate currently housed at San Quentin State Prison (“SQSP”), has
filed a pro 14 se civil rights action pursuant to 42 U.S.C. § 1983.

This order addresses Defendants’ partial 15 motion to dismiss. Dkt. No. 18. For the reasons set
forth below, the Court GRANTS Defendants’ 16 motion to dismiss, Dkt. No. 18, and DISMISSES
Plaintiff’s Bane Act claim. 17 BACKGROUND 18 The complaint sues defendants Pelican Bay
State Prison officers S. Cupp, Hammer, Cross, 19 M. Lee, Brewer, and K. Davis.

The complaint alleges that, between May 2020 to March 2021, in 20 retaliation for Plaintiff’s
grievance activity, Defendants threatened to deprive Plaintiff of phone 21 calls, out-of-cell time,
or showers, in violation of the First Amendment and California’s Bane Act 22 (Cal. Civ. Code §
52.1).

The complaint seeks declaratory and injunctive relief, damages, and fees 23 and costs. See
generally Dkt. Nos. 1, 12. 24 On August 23, 2024, Defendants filed a motion to dismiss Plaintiff’s
Bane Act claim for 25 failure to either allege compliance with the California Government Claims
Act (“CGCA”) or 26 allege facts excusing the failure to comply. Dkt. No. 18.

Plaintiff’s opposition was due 27 September 20, 2024. The Court granted Plaintiff an extension of
time to November 29, 2024, to 1 opposition, or sought a further extension of time to file his
opposition. The motion to dismiss is 2 therefore ripe for review. 3 DISCUSSION 4 I. Legal
Standard 5 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to
state a 6 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’”
Conservation 7 Force v. Salazar, 646 F.3d 1240, 1241-42 (9th Cir.

2011) (quoting Navarro v. Block, 250 F.3d 8 729, 732 (9th Cir. 2001)). In making this
determination, a court reviews the contents of the 9 complaint, accepting all factual allegations as
true and drawing all reasonable inferences in favor 10 of the nonmoving party. See Cedars-Sinai
Med. Ctr. v. Nat’l League of Postmasters of U.S., 497 11 F.3d 972, 975 (9th Cir.

2007). Notwithstanding this deference, the reviewing court need not 12 accept as true conclusory allegations that are contradicted by documents referred to in the 13 complaint, *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009), and need not accept as true 14 legal conclusions cast in the form of factual allegations, see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 15 (2009).

In ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b), the court “may 16 generally consider only allegations contained in the pleadings, exhibits attached to the complaint, 17 and matters properly subject to judicial notice.” *Outdoor Media Group, Inc. v. City of Beaumont*, 18 506 F.3d 895, 899 (9th Cir. 2007) (citation and quotation marks omitted).

19 II. Analysis 20 Defendants correctly argue that Plaintiff’s Bane Act claim must be dismissed for failure to 21 allege either (1) compliance with the claim presentation requirement set forth in the California 22 Government Claims Act (“CGCA”), or (2) facts excusing compliance. See generally Dkt. No. 18- 23 1 at 3-4. 24 The CGCA requires, as a condition precedent to civil suit for money damages against a 25 public entity or employee of such entity, the timely presentation of a written government claim 26 and the rejection of the claim in whole or in part.

Cal. Gov’t Code §§ 945.5, 950; *Mangold v. 27 California Pub. Utilities Comm’n*, 67 F.3d 1470, 1477 (9th Cir. 1995) (referring to CGCA by its 1 1029, 1043 (N.D. Cal. 2012) (“Before a person can sue a public entity or public employee for 2 money damages for actions taken within the scope of the person’s employment, he or she must 3 first file a government claim pursuant to the CGCA, codified at California Government Code 4 section 810 et seq.”).

Under the CGCA, a potential plaintiff must engage in a two-step process 5 within specified time periods to timely file a complaint in court. First, the potential plaintiff must 6 submit a written claim to the relevant public entity within six months of the date the action 7 accrued. Cal. Gov’t Code § 911.2; see also *Munoz v. California*, 33 Cal. App. 4th 1767, 1776 8 (Cal.

Ct. App. 1995). The public entity then must grant or deny the claim within 45 days. Cal 9 Gov’t Code § 911.6(a). Second, if the claim is rejected, the potential plaintiff must file any civil 10 claim in court within six months from the date the rejection is mailed. Cal. Gov’t Code § 11 945.6(a)(1). 12 Compliance with the CGCA’s claim presentation requirement is an element of a state-law 13 tort cause of action and must be alleged in a complaint to survive a motion to dismiss.

See Cal. v. 14 Sup. Ct. (Bodde), 32 Cal. 4th 1234, 1243-44 (Cal. 2004). When a plaintiff fails to allege 15 compliance or facts excusing compliance, it is fatal to the cause of action and results in the dismissal of the state-law claim. *Id.* at 1243 (“failure to allege facts demonstrating or excusing 16 compliance with the claim presentation requirement subjects a claim against a public entity to a 17 [motion to dismiss] for failure to state a cause of action.”).

Similarly, state-law tort claims brought 18 alongside federal constitutional claims may proceed in federal court only if the plaintiff alleges 19 compliance with the CGCA’s claim presentation

requirement. See *Karim-Panahi v. Los Angeles 20 Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988) (“[Plaintiff’s] pendent state law tort claims against 21 both the individual and public entity defendants are barred unless he presented them to the City 22 and the LAPD before commencing suit.”).

23 Here, Plaintiff has brought a state-law claim alleging a violation of the California Bane 24 Act; Plaintiff seeks money damages; and Defendants are public employees because they are 25 correctional officials and sergeants employed by the California Department of Corrections and 26 Rehabilitation.

Accordingly, Plaintiff’s Bane Act claim is subject to the CGCA’s claim- 27 presentation requirement. In requesting an extension of time to oppose the motion to dismiss, 1 Plaintiff states: 2 As an incarcerated person my ability to contact the Office of Risk Management is very limited. Due to obstructions to copying services and reliable mail services at Pelican Bay 3 prison where the incidents forming the basis of my claims occurred, I had to mail my State claim form to a family member for forwarding.

Currently, I am trying to have my family 4 member determine my State claim numbers and copies of my filings. 5 } Dkt. No. 32. While Plaintiff implies in this pleading that he presented a claim in accordance with 6 || the requirements set forth in the CGCA, he had not directly alleged compliance with the CGCA, 7 much less presented any evidence showing compliance.

8 The complaint does not plead compliance with the CGCA or facts excusing compliance. 9 || See Dkt. No. 1. The Court therefore GRANTS Defendants’ partial motion to dismiss and 10 DISMISSES Plaintiff’s Bane Act claim. *Manigold*, 67 F.3d at 1477; *Karim-Panahi*, 839 F.2d at 11 627; *Bodde*, 32 Cal. 4th at 1243-44.

The dismissal is without prejudice to seeking leave to amend 12 || the complaint to plead compliance with the CGCA. However, any request to amend the complaint 13 to plead compliance must be accompanied by a showing that Plaintiff has complied with the 14 || CGCA or is excused from compliance. 3 15 CONCLUSION a 16 For the reasons set forth above, the Court orders as follows.

3 17 1. The Court GRANTS Defendants’ motion to dismiss, Dkt. No. 18, and DISMISSES 18 Plaintiff’s Bane Act claim. 19 2. The Court will set a briefing schedule on the dispositive motion after addressing the 20 || pending discovery motion. 21 This order terminates Dkt. No. 18. 22 IT IS SO ORDERED. 23 || Dated: 2/25/2025 24 Aarpyrer k yd ☐ ☐ HAYWOOD S. GILLIAM, JR. 25 United States District Judge 26 27 28