



## **MEMBER ALERT**

### **Claim Presentation and Roster of Public Agencies Filing Requirement**

Before a lawsuit can be filed against a public agency, Government Code Section 945.4 generally requires that “all claims for money or damages” be timely presented to, and rejected by, the responsible public entity. Regardless of the merits of a claim, a lawsuit failing to plead and prove compliance with Section 945.4 may face an early (cost-effective) dismissal. This defense, however, is only available when the responsible public agency has complied with Government Code Section 53030, requiring that certain information about the public agency be provided and regularly updated with the California Secretary of State and the applicable County Clerk for inclusion in the Roster of Public Agencies (“Roster”). Failure to timely update the Roster information can result in the inability to obtain dismissal of a lawsuit even when plaintiff has entirely failed to comply with the Government Claim Presentation Act (“GCPA”).

This Member Alert highlights recent clarifications of California law regarding GCPA requirements. It also serves as a reminder to timely update all information required in the Roster with both the Secretary of State and County Clerk.

#### **I. CLAIM PRESENTATION REQUIREMENTS**

The GCPA (Government Code Section 905, et seq.)<sup>1</sup> is intended to “provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.”<sup>2</sup> Each claimant must file his/her own claim, regardless of the public entity’s actual knowledge of the circumstances surrounding a particular claim or the existence of other claimants who have submitted claims, so that the public agency can plan for “potential liabilities and to avoid similar liabilities in the future.”<sup>3</sup>

There are three primary categories of claims brought to which the GCPA does not apply: (1) claims primarily seeking equitable relief (declaratory relief, injunctive relief, or petitions for writ of mandate seeking corrective action),<sup>4</sup> (2) claims for wages or benefits that have been earned but unpaid,<sup>5</sup> and (3) claims brought under federal civil rights laws.<sup>6</sup> Of these three categories, there is one common fact pattern that keeps emerging and that requires particular care and attention by NBSIA and its Members.

The wage and benefit category is arguably the most confusing with respect to GCPA compliance considerations. In many instances, a Petition for Writ of Mandate is filed seeking reinstatement to a position from which an employee was terminated. The Petition then seeks past wages and benefits that would have been earned but for the wrongful termination, amounts that do not fall within the wage and salary exception to the GCPA. *Eureka Teachers, supra*.

While older authorities suggest that “incidental damages,” such as limited “lost wages,” do not trigger an obligation to file a GCPA claim if the primary relief being sought is equitable in nature (i.e., reinstatement), later authorities have rejected this concept, holding that the Government Code creates no excuse to GCPA

<sup>1</sup> For many years, the GCPA was incorrectly referred to as the “Government Tort Claims Act;” the GCPA actually applies to tort and most types of contract claims.

<sup>2</sup> *City of San Jose v. Superior Court*, 12 Cal.3d 447, 454 (1974).

<sup>3</sup> *Ibid*; *Baines Pickwick Ltd. v. City of Los Angeles*, 72 Cal.App.4th 298 (1999)

<sup>4</sup> Claims for “equitable” relief often involve property disputes (boundaries, right of use/interference with use), contractual interpretation, or compelled compliance with contractual obligations, and the legality of adopted board or administrative policies and procedures.

<sup>5</sup> *Eureka Teacher's Assn. v. Board Of Education*, 202 Cal.App.3d 469 (1988), and cited cases.

<sup>6</sup> Federal civil rights claims (e.g., Section 1981 and/or 1983 claims), are not subject to the GCPA, but are often subject to dismissal. School districts, their governing boards and employees are considered arms of the State for 11th Amendment immunity purposes (See, *Belanger v. Madera USD*, 963 F.2d 248, 251 (9th Cir., 1992)) are not considered “persons” subject to liability under (at least) Section 1983. *Carmen v. San Francisco USD*, 982 F.Supp. 1396 (N.D.Cal., 1997); *Kirchmann v. Lake Elsinore USD*, 83 Cal.App.4th 1098 (2000).

compliance for such amounts<sup>7</sup>. While this area of law continues to be clarified, Members are encouraged to actively raise the GCPA defense whenever a claimant seeks monetary relief (other than attorneys' fees/costs associated with the successful prosecution of an equitable relief claim).

NBSIA's Memorandum of Liability Coverage defines a Claim as a written demand asserting a Wrongful Act and a request for monetary relief. Even if a dispute does not rise to the level of a Claim (often the case with the categories of disputes not subject to the GCPA requirements), Members remain encouraged to provide NBSIA with notice of all disputes having a substantial likelihood of becoming a Claim. NBSIA might at least be of assistance in briefly analyzing exposures and determining whether certain legal defenses are available that might otherwise be overlooked, a valuable benefit in the protection for Members' finances.

## II. **ROSTER OF PUBLIC AGENCY REQUIREMENTS**<sup>8</sup>

Even though a claimant has failed to comply with the GCPA, a public agency will be unable to raise compliance with this obligation as a defense to a complaint if the Member has failed to substantially comply with Government Code Section 53051.<sup>9</sup>

In keeping with that Section 53051 and Members' Board Policies adopted to ensure compliance with its requirements (usually, BP 3320), Members are obligated to provide the Secretary of State and the local County Clerk with (1) the name of the Member, (2) the mailing address of the Member and governing board (if different), and (3) the names and addresses of (i) the governing board's presiding officer, (ii) clerk or secretary, and (iii) other members. **Notice of any change to this information must be given to the Secretary of State and County Clerk within 10 days.**

Members have, at times, failed to update the information required by Section 53051 or have not provided updated information to both the State and local County Clerks. Even when it was clear that a given claimant was not deceived by the lack of updated information such that he was prevented from filing a GCPA claim, dismissal of complaints for noncompliance could not be obtained. The courts have held that the loss of the GCPA defense serves as an incentive for public agencies to comply with Section 53051, even if a particular claimant was not "confused or prejudiced in any manner by the public agency's failure to update its information."

The question then becomes what constitutes "substantial" compliance under Section 53051. *Banfield v. Sierra View Local Dist. Hospital*<sup>10</sup> held the GCPA defense was lost because information regarding the new board representative, who served as the District's secretary for purposes of receiving GCPA claims, had not been timely updated within the 10-day period. *Wilson v. San Francisco Redevelopment Agency*<sup>11</sup> held that the GCPA defense was lost when the agency's address and current board members were inaccurate. Analyzing these cases, while the definition of "substantial compliance" remains uncertain, if the failure in any manner relates to the ability to deliver a GCPA claim to the right person or address, the GCPA defense will be lost.<sup>12</sup> Therefore, Members should continue to ensure that processes and procedures are established to ensure that all statutorily required Roster information is updated within the 10-day period of any change.

<sup>7</sup> *CSEA v. Governing Bd/South Orange County Comm. College Dist.*, 124 Cal.App.4th 574 (2004) [Government Code section 945.4 contains no exception for "incidental damages."]; *Canova v. Trustees of Imperial Irr. Dist. Employee Pension Plan*, 150 Cal.App.4th 1487 (2007); *Tapia v. County of San Bernardino*, 29 Cal.App.4th 375, 383 (1994) ["Where a petition for writ of mandate may seek either monetary damages or other extraordinary relief, failure to file a claim is fatal to the recovery of money damages."]

<sup>8</sup> See, <http://www.sos.ca.gov/business/sf/forms/np-sf-405.pdf> for required update form.

<sup>9</sup> *Wilson v. San Francisco Redevelopment Agency*, 19 Cal.3d 555, 560 (1977); *Government Code Section 946.4* [noting the loss of the defense if the "information contained therein is so inaccurate or incomplete that it does not substantially conform to the requirements of Section 53051].

<sup>10</sup> 124 Cal.App.3d 444 (1981)

<sup>11</sup> 19 Cal.3d 555 (1977)

<sup>12</sup> There is one exception to this general rule. If the claimant actually submitted a claim (late, incomplete, or otherwise "defective"), the claimant may be barred from arguing that there was no need to submit the claim due to the agency's noncompliance with Section 53051. E.g., *Tubbs v. Southern Cal. Rapid Transit Dist.*, 67 Cal. 2d 671 (1967).