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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RONNIE BARNES, Plaintiff and Appellant, v. STATE COMPENSATION INSURANCE FUND et al., Defendants and Respondents.	B287239, B289008 Los Angeles County Super. Ct. No. NC061385

APPEALS from judgments and purported appeal from an order of the Superior Court of Los Angeles County, Ross M. Klein and Patrick T. Madden, Judges. Affirmed in part, dismissed in part.

Ronnie Barnes, in pro. per., for Plaintiff and Appellant.

Margie R. Lariviere, Anthony Lewis, Gina Marie Ong, Linda S. Platisha and Gary R. Soliman for Defendant and Respondent State Compensation Insurance Fund.

Department of Industrial Relations, Division of Workers' Compensation, Legal Unit, Yvonne M. Hauscarriague and Winslow F. West for Defendants and Respondents Workers' Compensation Appeals Board and Hon. Jessie Louie.

Howard Russell, Principal Deputy City Attorney; Alderman & Hilgers and Allison R. Hilgers for Defendant and Respondent City of Long Beach.

INTRODUCTION

Self-represented plaintiff and appellant Ronnie Barnes appeals from separate judgments entered after the trial court sustained the demurrer of defendants Workers' Compensation Appeals Board (WCAB) and the Honorable Jessie Louie (Judge Louie) and granted the motion for judgment on the pleadings by defendant City of Long Beach (City). Barnes also purports to appeal from the trial court's minute order sustaining the demurrer of State Compensation Insurance Fund (SCIF). In a nutshell, Barnes's complaint alleges defendants engaged in fraud and conspired to deprive him of the benefits of a workers' compensation award he originally received in 1982. We conclude the trial court properly found it lacked jurisdiction to hear Barnes's complaint. The trial court also properly sustained the WCAB's and Judge Louie's demurrer without leave to amend on immunity grounds and properly granted the City's motion for judgment on the pleadings based on Barnes's failure to allege compliance with the claim presentation requirement. We therefore affirm the order of dismissal and judgment as to the WCAB and Judge Louie and the judgment as to the City. We dismiss the appeal from the minute order sustaining SCIF's demurrer because it is an appeal from a nonappealable order.

FACTS AND PROCEDURAL BACKGROUND[1]

1. *The complaint*

On September 14, 2017, Barnes filed a form complaint against SCIF, the City, the WCAB, Judge Louie, SCIF's attorney Kristine Nelson, and the City's attorney Susan Oakley. The complaint alleges a cause of action for fraud based on intentional or negligent misrepresentation and concealment, and a second cause of action that appears to be an attempt to allege a conspiracy to defraud for an unspecified intentional tort. Both seemingly allege defendants conspired to defraud Barnes of his workers' compensation benefits, as follows.

Barnes's original industrial injury occurred in March 1981 when he fell down steps while working for the State of California Employment Development Department (EDD). He received his initial medical award on April 28, 1982. The award was modified and amended in 1982 and 1984 ultimately to include future medical treatment and a 10 percent penalty against EDD and its insurer, SCIF, for delayed payments (future medical award). (*Barnes, supra*, 23 Cal.4th at p. 682.)

At some point SCIF filed a petition to terminate this future medical award. Barnes alleges all three defendants—presumably, though it is not clear, SCIF through Nelson, the City through Oakley, and Judge Louie—conspired to defraud him out of his future medical award, including the 10 percent penalty. He alleges the following acts formed the conspiracy. In September 1992, SCIF stopped paying for and authorizing medical treatments for Barnes's 1981 injury. In April 1993,

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[1] We state the facts as alleged in the complaint and include background facts where needed as described in *Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679 (*Barnes*) and other judicially noticed documents.

Judge Louie issued an order disallowing medical charges and liens from Barnes's treating doctor. SCIF then made an appointment for Barnes to be examined by an agreed medical examiner (AME).[2] After Barnes did not attend the examination, Judge Louie allegedly told Barnes at a March 1995 status conference that she would rule against him if he did not submit to an examination by an AME. Barnes agreed to the examination.

At that point, SCIF's attorney Nelson and Barnes were sent to the presiding judge to seek a continuance. When the presiding judge learned Barnes was representing himself, the judge told Nelson that SCIF "could not do what [it] was trying to do" because Labor Code section 4062.1 "[s]tates otherwise."[3] Barnes then told the presiding judge that "SCIF is trying to get my Future Medical Award dismissed." When the presiding judge learned the award related to a 1981 injury, the judge responded that Labor Code section 5804[4] precluded termination of the award and refused to grant the continuance.

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[2] We also use "AME" to refer to "agreed medical examination."

[3] That section provides: "If an employee is not represented by an attorney, the employer shall not seek agreement with the employee on an agreed medical evaluator, nor shall an agreed medical evaluator prepare the formal medical evaluation on any issues in dispute." (Lab. Code, § 4062.1, subd. (a).)

[4] Under Labor Code section 5804, "[n]o award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition" filed within that five-year period. In *Barnes, supra,* 23 Cal.4th at p. 687, our Supreme Court clarified that the WCAB "retains jurisdiction, even after five years, to determine whether a *particular* medical treatment, claimed by an applicant who

Nelson and Barnes returned to Judge Louie, and Nelson told her what the presiding judge had said. Judge Louie allegedly stated, "I know just how to get around that," and consolidated Barnes's case against EDD with his worker's compensation case against the City. (Barnes had sustained additional unspecified industrial injuries in May 1989 and July 1990 while working for the City.) Barnes alleges the City's attorney Oakley at that point became "[ ]part of the [c]onspiracy to defraud [Barnes]," and conspired with Judge Louie and Nelson, "and went along with [the] pla[n] to send [Barnes] to an AME" on May 10, 1995. The complaint further alleges Oakley was part of the conspiracy "to have [Barnes's treating doctor's] bill and liens terminated on" March 13, 1995.

Barnes alleges he "submitted himself to a medical examination" that violated his rights under Labor Code section 4062.1. Barnes filed a "petition" asking Judge Louie to dismiss the AME's report.[5] Barnes alleges "[a]ll three defendant[s] knew that they were br[e]aking the law by agreeing to force plaintiff to submit[ ] to the AME even though [Barnes] was in [p]ro[.] [p]er.[,]" and Labor Code section 5804 prohibited the petition to terminate Barnes's future medical award.

Barnes alleges his future medical award was terminated in May 1998, at which point he filed a "[w]rit in the California

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previously had been granted a provisional award of future medical benefits, is justified to treat his industrial injury."

[5] The AME's report concluded Barnes's continuing pain was due not to his 1981 injury, but to Paget's disease (a degenerative bone disease). (*Barnes, supra*, 23 Cal.4th at pp. 682-683.) Judge Louie granted EDD's and SCIF's petition to terminate their liability for Barnes's future medical treatment primarily based on the AME's reported findings. (*Id.* at pp. 683-684.)

Supreme Court." In July 2000, the Court reversed the award's termination and sent the matter back to the WCAB to resolve various issues, including whether the AME's examination violated Labor Code section 4062.1.[6] On May 11, 2017, a different WCAB judge found, "It was not appropriate for a pro per applicant to have an AME based upon Labor Code Section 4062.1."

Barnes seeks damages in the amount of $30,000,000. He alleges he has been damaged by defendants' conduct because he has had to seek medical treatment over the past 25 years for the injuries he sustained in 1981, he has had to pay out-of-pocket for physical therapy, he has had to rely on doctors to treat him who believed they would be paid (but presumably were not), and he has been denied treatment for his neck—an injury stemming from his injuries suffered while working for EDD and for the City.

2. *The demurrers and motion for judgment on the pleadings*

The City answered the complaint on October 26, 2017. WCAB and Judge Louie filed a joint demurrer to the complaint on October 31, 2017, on the grounds (1) it arose out of matters within the exclusive jurisdiction of the WCAB and within the exclusive appellate jurisdiction of the courts of appeal and

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[6] The California Supreme Court held Barnes "correctly argued the petition to terminate liability for medical benefits was subject to [Labor Code] section 5804's limitation that '[n]o award of compensation shall be rescinded, altered, or amended after five years from the date of the injury . . . .' [Barnes's] victory may be a Pyrrhic one, however, for if and when he makes a demand for reimbursement, EDD and SCIF remain free to introduce [the AME's] reports to dispute the validity of the claim." (*Barnes, supra*, 23 Cal.4th at p. 690.)

Supreme Court; (2) its causes of action were barred by absolute judicial immunity and the immunity provided to the WCAB under Government Code section 815.2; (3) its fraud claims were barred by the three-year statute of limitations; and (4) its causes of action were barred because the complaint failed to allege Barnes timely filed a claim with the state's Government Claims Program. SCIF filed its demurrer on November 15, 2017, but the demurrer itself is not part of the appellate record. Finally, on November 21, 2017, the City filed a motion for judgment on the pleadings on the grounds (1) the City is immune from suit under Government Code sections 818.8 and 822.2; (2) the statute of limitations barred Barnes's claims; and (3) Barnes failed to file a government claim under Government Code section 905 et seq.[7]

On November 28, 2017, before the demurrers and motion were heard, Barnes filed a document entitled "Plaintiff[s'] Object[ion] to Defendant State Com[p]ensation Insurance [Proposed] Order & Judgment of Dismissal." (Capitalization omitted.) The face of that document states: "To all Parties and Attorneys of Record[ ]: Come now plaintiff . . . Barnes in pro-per and his objection to Workers; [*sic*] Compensation Appeals Board hereafter called (WCAB) and WCJ, Jessie Louie, hereafter call[ed] (WCJ) Proposed Order & Judgment of Dismissal of Complaint filed, September 14, 2017." (Capitalization omitted.)

In this opposition document, Barnes argued his complaint was not subject to the exclusive jurisdiction of the WCAB because it was not an action between employee and employer, but alleged an action of conspiracy or fraud on the court. He also argued the

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[7] As of December 12, 2017, Barnes had not served Nelson or Oakley with the summons and complaint. The court set an order to show cause re dismissal of all unserved defendants for January 2, 2018.

statute of limitations did not bar his conspiracy and fraud claims because the WCAB did not decide Barnes should not have been required to undergo an AME until May 2017. Barnes also purportedly addressed the judicial immunity argument, asserting: "Whenever any officer of the court commits fraud during a proceeding the court he/she is engaged in fraud." (Underlining and citation omitted.) The document does not address the unique arguments raised by SCIF and by the City.

The court heard WCAB's and Judge Louie's demurrer on November 30, 2017. Barnes appeared in pro. per. No reporter was present. The court adopted its tentative ruling as its final ruling. The court construed the complaint as alleging causes of action for fraud and conspiracy to defraud. It found the complaint arose from "WCAB Judge Louie's rulings in [Barnes's] workers' compensation case." It thus concluded it was without jurisdiction to hear the case, explaining that only the court of appeal and California Supreme Court had jurisdiction to review WCAB decisions under Labor Code section 5955.

The court found the complaint also failed based on the other grounds asserted in the demurrer. The court sustained the demurrer without leave to amend and signed the order of dismissal and judgment dismissing WCAB and Judge Louie with prejudice that same day. WCAB and Judge Louie served Barnes with notice of entry of the judgment of dismissal on December 7, 2017, and filed it December 11, 2017.

The court heard SCIF's demurrer on December 12, 2017. Barnes again appeared in pro. per. and there was no reporter. The court adopted its tentative ruling as its final ruling. The court again concluded Labor Code section 5955 deprived it of jurisdiction to hear the case. It noted the WCAB has exclusive jurisdiction over disputes relating to an employee's right to workers' compensation or the employer or insurer's liability for

payment. The court concluded the complaint also failed against SCIF because its acts were protected by the litigation privilege under section 47, subdivision (b), of the Code of Civil Procedure. Finally, the court found Barnes had not demonstrated "a reasonable possibility of successfully amending his Complaint" and sustained the demurrer without leave to amend. SCIF filed a notice of ruling on December 15, 2017.

On December 26, 2017, Barnes filed a notice of appeal from "[j]udgment of dismissal after an order sustaining a demurrer" and listed the dates as November 30, 2017 and December 12, 2017 (appeal number B287239).

The City's motion for judgment on the pleadings was not heard until March 6, 2018. Barnes again appeared in pro. per. This time, a reporter was present. The court granted the motion having found "the three grounds offered by [the City] in support of the motion [are] true." The minute order then states: "The motion is granted with leave to amend.[8] [¶] Defense counsel is to submit a proposed judgment of dismissal for the Court's signature."

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[8] As the City notes, it seems likely the granting of the motion with leave to amend was a typographical error given the court ordered the City to prepare a judgment of dismissal and had sustained SCIF's and WCAB's demurrers on similar grounds without leave to amend. In any event, our analysis is not affected by whether Barnes was granted leave to amend. He has forfeited any argument that he can amend his complaint if he was granted leave to amend as he never proposed or filed an amendment with the trial court. (E.g., *Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 296.) If he was not granted leave to amend—the more likely scenario—as we will discuss, we conclude he has not proved he can successfully cure the complaint's defects.

On March 14, 2018, a different judge from the one who heard the City's motion signed the judgment prepared by the City. The judgment states the court found Barnes did not file an opposition to the City's motion; the complaint is barred by the statute of limitations; Barnes failed to file the required government claim; and "the Superior Court lacks subject matter jurisdiction over plaintiff's complaint as it arises out of matters within the exclusive subject matter jurisdiction of the WCAB and only the Court of Appeal and California Supreme Court have appellate jurisdiction over the WCAB's decisions."

Barnes filed a notice of appeal from that judgment on March 9, 2018, after the court granted the City's motion but before judgment was entered (appeal number B289008).[9]

3. *Barnes's consolidated appeal*

On May 3, 2018, we granted Barnes's motion to consolidate and consolidated appeal number B289008 with B287239 for purposes of briefing, oral argument, and decision with all documents to be filed under number B287239. We also granted Barnes's motion to augment the record.

a. *Requests for judicial notice*

We granted the WCAB's and Judge Louie's unopposed request that we take judicial notice of certain court records filed in Barnes's underlying workers' compensation case and a copy of the complaint Barnes filed in the trial court.

Barnes also filed, on December 13, 2018, a request for judicial notice of various documents relating to the proceedings before the WCAB, as well as the California Supreme Court's decision in his case. SCIF opposed the request, except as to

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[9] We treat Barnes's premature notice of appeal as filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1)(B), (d).)

the *Barnes* decision. We deferred ruling on the request until consideration of the merits of the appeal. Having considered the moving and opposing papers, we now grant Barnes's request in part and deny it in part.

We take judicial notice of Exhibits 1, 3, 7, 8, 9, and 10, all of which are documents that appear to be WCAB court records, and Exhibit 11, the Supreme Court decision. (Evid. Code, § 452, subd. (d).) We also take judicial notice of Exhibit 2, a petition brought by SCIF and signed by SCIF's attorney Nelson, a named defendant in Barnes's complaint, for an order from Judge Louie. Although a file stamp from the WCAB is missing, the stamp "copy to claims" is on the document (the same stamp appears on Exhibit 1 that SCIF agrees is a WCAB record), and the document includes a signed proof of service on Judge Louie. We do not take judicial notice of Exhibits 4, 5, and 6, pages from a purported settlement agreement among one of Barnes's doctors, SCIF, and EDD, a stipulation about that settlement not signed by the judge, and a request for change of venue or change of judge with neither a file stamp nor signature.

We note that while we take judicial notice of the court records themselves, we do not judicially notice the truth of any factual assertions or findings made in those documents. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483-484; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1565.)

b. *Barnes's appeal as to SCIF*

On August 16, 2019, we requested supplemental briefing on whether Barnes's appeal as to SCIF should be dismissed because there is no appealable order of dismissal or final judgment in the record to serve as a basis for appellate jurisdiction. We noted that appellant should move to augment the record on appeal if he

obtained a judgment of dismissal as to SCIF from the trial court or filed a stipulated judgment of dismissal with the trial court.

Barnes responded that he had never been served with a pleading from SCIF, he had never received a judgment of dismissal as to SCIF from the trial court, and no one had filed a stipulated judgment of dismissal. SCIF also responded. It confirmed that it had not filed a proposed judgment concurrent with its demurrer and to date no judgment has been entered as to it. Nevertheless, in the interests of judicial economy, SCIF asks us to "save th[is] appeal by incorporating a judgment of dismissal into the order sustaining [SCIF's] demurrer without leave to amend."

DISCUSSION

1. *Preliminary Matters*

a. *Appeal from order sustaining SCIF's demurrer*

The record on appeal does not include an order dismissing SCIF or a judgment entered in favor of SCIF. Rather, Barnes purports to appeal from the court's *unsigned* minute order sustaining SCIF's demurrer without leave to amend. Because this is an unappealable order (see Code Civ. Proc., § 904.1), and Barnes has not obtained a judgment from the trial court or filed a stipulated judgment,[10] we have no jurisdiction to hear Barnes's appeal. We will not "save" the appeal, as SCIF requests, by incorporating a judgment of dismissal into an unsigned minute order. "An order that is not signed by the trial court does not qualify as a judgment of dismissal under section 581d" of the Code of Civil Procedure. (*Powell v. County of Orange* (2011)

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[10] SCIF noted Barnes had not contacted it about filing a stipulated judgment of dismissal. Of course, SCIF's counsel could have prepared the stipulated judgment, but apparently chose not to do so.

197 Cal.App.4th 1573, 1578.) We therefore dismiss Barnes's appeal as to SCIF.[11]

b. *No reporter's transcripts*

The hearing on the WCAB's and Judge Louie's demurrer also was not reported, and Barnes elected to proceed without a reporter's transcript of the hearing on the City's motion that was reported. Barnes refers to statements made at the hearings in his briefs. We do not consider those statements as they are not part of the record. We consider forfeited any arguments Barnes makes on appeal that do not appear in the written record. (*Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1034, fn. 5.)

2. *Standard of review*

On appeal from a judgment of dismissal following the sustaining of a demurrer or from a judgment on the pleadings, "we review the complaint de novo to determine whether it alleges facts stating a cause of action on any possible legal theory. [Citation.] ' " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " [Citations.]' [Citation.] 'Further,

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[11] We note Barnes asserts in his regular and supplemental briefing that he was not served with SCIF's demurrer. Nothing in the record reflects that Barnes objected to SCIF's demurrer on this ground below. Barnes appeared at the hearing, but it was not reported. Based on the silent record, Barnes has forfeited any argument concerning lack of service of SCIF's demurrer. (See, e.g., *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 [party who appears at hearing of a motion and opposes it on the merits cannot object on appeal that he had no or insufficient notice of the motion]; *Pacific Std. Life Ins. Co. v. Tower Industries, Inc.* (1992) 9 Cal.App.4th 1881, 1888 [party "waived" its right to complain of insufficient notice of motion for judgment where its counsel appeared at hearing and did not object on the ground of lack of notice].)

"we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." [Citations.]' " (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1490; *Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1213; *Orange Unified School Dist. v. Rancho Santiago Community College Dist.* (1997) 54 Cal.App.4th 750, 764 [motion for judgment on the pleadings is "tantamount to a general demurrer"].)

When the trial court denies leave to amend, "we consider whether there is a 'reasonable possibility' that the defect in the complaint could be cured by amendment. [Citation.] The burden is on plaintiff[ ] to prove that amendment could cure the defect." (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1050.) "To satisfy that burden on appeal, a plaintiff 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.' " (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*).) The requisite showing can be made for the first time on appeal, as the "issue of leave to amend is always open on appeal, even if not raised by the plaintiff." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 746.)

3. *The court properly found it lacked jurisdiction to hear Barnes's complaint*

a. *The WCAB has exclusive jurisdiction over claims relating to workers' compensation benefits, and the court of appeal and Supreme Court have exclusive appellate jurisdiction over WCAB decisions*

The Worker's Compensation Act (WCA) is "a comprehensive statutory scheme governing compensation given to California employees for injuries incurred in the course and scope of their employment." (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810 (*Vacanti*).)

The system is based on what has been termed the " ' "compensation bargain." ' " (*Id.* at p. 811.) Under this "bargain, 'the employer [or its insurer][12] assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort.' " (*Ibid.*)

To effectuate this compensation bargain, a plaintiff's injury that occurs in the course and scope of an employment relationship is covered by the workers' compensation laws—and their exclusive remedies—and the WCAB has the exclusive authority over those claims. (*La Jolla Beach & Tennis Club, Inc. v. Industrial Indemnity Co.* (1994) 9 Cal.4th 27, 35-36; *Vacanti, supra*, 24 Cal.4th at p. 811.) Thus, the WCAB has sole jurisdiction to adjudicate claims for workers' compensation benefits, including claims "concerning any right or liability arising out of or incidental" to the recovery of those benefits. (Lab. Code, § 5300, subd. (a).) In turn, only the Supreme Court and the courts of appeal have "jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the [WCAB], or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the [WCAB] in the performance of its duties." (*Id.* § 5955; see also *id.* §§ 5302 [WCAB orders and decisions "conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by" the WCAB or upon review by appellate courts], 5810 ["orders, findings, decisions, or awards" of the WCAB "may be

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12 The WCA defines " 'employer' " to include the employer's insurer—here, SCIF. (Lab. Code, § 3850, subd. (b).)

reviewed" by the appellate courts "and not otherwise"], 5950 [person affected by WCAB decision may apply to appellate courts for a writ of review].)

"Where the alleged injury is 'collateral to or derivative of' an injury compensable by the exclusive remedies of the WCA, a cause of action predicated on that injury may be subject to the exclusivity bar. [Citation.] Otherwise, the cause of action is not barred. [¶] If the alleged injury falls within the scope of the exclusive remedy provisions, then courts consider whether the alleged acts or motives that establish the elements of the cause of action fall outside the risks encompassed within the compensation bargain. '[I]n some exceptional circumstances the employer is not free from liability at law for his intentional acts even if the resulting injuries to his employees are compensable under workers' compensation.' [Citation.] Where [1] the acts are 'a "normal" part of the employment relationship' [citation], or workers' compensation claims process [citation], or [2] where the motive behind these acts does not violate a 'fundamental policy of this state' [citation], then the cause of action is barred. If not, then it may go forward." (*Vacanti, supra*, 24 Cal.4th at pp. 811-812.)

Denying or objecting to claims for benefits is considered a normal part of the claims process. (*Vacanti, supra*, 24 Cal.4th at p. 821.) "Indeed, California courts have invariably barred statutory and tort claims alleging that an insurer unreasonably avoided or delayed payment of benefits even though the insurer committed fraud and other misdeeds in the course of doing so." (*Ibid.*) On the other hand, "[w]here the tortious act is not closely connected to a normal employer or insurer action, it is not subject to exclusivity." (*Id.* at p. 822 [allowed torts have included fraud where employer concealed employee's injury and where insurer denied existence of policy, false imprisonment, trespass, and

violent criminal conduct, such as assault].) Thus, "[o]nly when the entity commits tortious acts *independent of its role as a provider of workers' compensation benefits* may an employee maintain a private cause of action." (*Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal.3d 1, 10, cited by *Vacanti*, at p. 822, italics added.)

"[T]he motive element of a cause of action" also "excepts that cause of action from exclusivity," but "*only if* it violates a fundamental public policy of this state." (*Vacanti, supra*, 24 Cal.4th at p. 823 [tort causes of action held to have motive element that violates public policy have included violations of the Fair Employment and Housing Act, tortious discharge in violation of public policy, and whistleblower claims under the Government Code].) Thus, we consider a defendant's motive " 'not to determine whether [the defendant] intentionally or knowingly injured the employee, but rather to ascertain whether [the defendant's] conduct violated public policy and therefore fell outside the compensation bargain.' " (*Ibid.*)

b. *Barnes' complaint asks the court to review the decisions of the WCAB*

Barnes's causes of action arise from the proceedings in his workers' compensation case before the WCAB and rulings made during those proceedings. The fraud and fraudulent conspiracy allegations against the WCAB and Judge Louie specifically are based entirely on decisions of the WCAB made by Judge Louie. Barnes alleges Judge Louie improperly forced him to submit to an AME and wrongfully terminated his workers' compensation medical award, and on appeal he alleges Judge Louie denied his claim against the City "for new disabilities."[13] Finally, Barnes

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[13] Barnes does not allege Judge Louie denied his claims against the City in his complaint, but he makes that assertion in

alleges Judge Louie participated in a conspiracy to deprive Barnes of his medical award, but that participation occurred *through her decisions* made in the WCAB proceedings.

Although the complaint appears to allege Judge Louie made either misrepresentations or concealed facts while presiding over Barnes's case, in essence it alleges Judge Louie's orders and decisions were wrongful. In effect, therefore, to grant Barnes relief the superior court would be required to review the orders and decisions of the WCAB. The superior court has no jurisdiction to interfere with the WCAB's orders concerning Barnes' workers' compensation benefits, however. As the WCAB and Judge Louie note, "[t]he only method by which *any* decision or process of the WCAB may be attacked" is by an application to the court of appeal under Labor Code section 5950 for a writ of review or by application to the Supreme Court or court of appeal under Labor Code section 5955 for a writ of mandate.[14]

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his brief. We consider the allegation for purposes of determining whether Barnes could amend his complaint successfully.

[14] Indeed, Barnes already—seemingly successfully—availed himself of this process. As we have said, in response to his petition for writ review the Supreme Court held the WCAB could not terminate Barnes's medical award (*Barnes, supra*, 23 Cal.4th at p. 690), and the WCAB later found the AME was improper. In declarations Barnes filed with the WCAB in 2014, he makes the same allegations as in his complaint—that SCIF, its attorney, and Judge Louie conspired to defraud him of his award and forced him to undergo the AME, and SCIF denied payment for his medical treatment. Moreover, Barnes's workers' compensation case has remained pending before the WCAB, at least as of January 2019 when a mandatory settlement conference was scheduled.

Accordingly, the trial court properly sustained the WCAB's and Judge Louie's demurrer without leave to amend because it lacks jurisdiction to review the WCAB's orders and decisions made by Judge Louie.

c. The complaint arises out of matters that fall within the exclusive jurisdiction of the WCAB

Barnes's alleged injury from defendants' fraud and fraudulent conspiracy—the nonpayment and termination of his workers' compensation award, denial of treatment, and his subjection to an AME—are " 'collateral to or derivative of' " his underlying workplace injuries. We therefore must consider whether defendants' alleged acts are a " 'normal part of . . .' . . . the workers' compensation claims process" to determine if the superior court lacked jurisdiction to hear Barnes's fraud claims. (*Vacanti, supra*, 24 Cal.4th at p. 820.)

Our Supreme Court's analysis of the application of the workers' compensation exclusivity in *Vacanti* is instructive. There, the Court held plaintiffs, providers of medical services to employees with workers' compensation claims, were barred from asserting fraud and abuse of process causes of action against insurance carriers that allegedly conspired to delay or deny payments on plaintiffs' lien claims in bad faith. (*Vacanti, supra*, 24 Cal.4th at pp. 807, 823.) The Court concluded the alleged acts supporting plaintiffs' fraud and abuse of process claims—including false statements made during the insurers' processing of the providers' lien claims and filing sham petitions and documents with the WCAB—were closely connected to normal insurer activity of processing and paying medical lien claims. (*Ibid.*) The Court further explained plaintiffs' allegation of a conspiracy was not enough to "insulate plaintiffs' fraud claim from preemption" because "the alleged acts in furtherance of the conspiracy—i.e., the fraudulent statements—are closely

connected to claims processing, a normal insurer activity." (*Id.* at p. 824 [noting a "scheme does not establish an element of a fraud claim"].) Finally, the court noted neither fraud nor abuse of process required a motive element that violated fundamental public policy. (*Ibid.* [explaining "fraud requires only an 'intent to induce' another 'to alter his position to his injury or risk' and not an intent that violates a public policy rooted in a constitutional, statutory, or regulatory provision"].)

We conclude defendants' acts alleged in Barnes's complaint similarly are part of the normal workers' compensation claims process and thus fall within the WCAB's exclusive jurisdiction. Defendants allegedly conspired to defraud Barnes of his future medical award—an award SCIF insured; allegedly forced him to submit to the prohibited AME; SCIF and the City denied him payment for treatment for his earlier suffered industrial injuries; and defendants conspired to terminate his doctor's medical lien. Barnes's damages arising from this alleged misconduct all relate to his entitlement to benefits or SCIF's or the City's liability to pay for them

Like the misconduct of the insurers in *Vacanti* who allegedly delayed or did not pay lien claims through fraud and in bad faith, these acts are "closely connected" to SCIF's and the City's normal insurer and employer activity—denying, objecting to, and litigating workers' compensation claims for which they had potential liability. They thus fall within the "compensation bargain" and are subject to the WCAB's exclusive jurisdiction.

To the extent the complaint alleges the City conspired with defendants to deprive Barnes of his medical award insured by SCIF or to deny his doctor's medical lien for treatment unrelated to Barnes's workers' compensation claim against the City, it may not be preempted by the WCA, however. The Court in *Vacanti* permitted plaintiffs' other tort claims to the extent they alleged

the defendant insurers conspired "to coordinate the economic destruction of plaintiffs through the mishandling of their lien claims." (*Vacanti, supra*, 24 Cal.4th at p. 828.) The Court concluded those alleged acts fell outside normal insurer activity because "each individual defendant necessarily became involved in claims *it did not insure*." (*Ibid.*)[15] Barnes's causes of action against the City nevertheless are barred for Barnes' failure to allege compliance with the Government Claims Act, as we will discuss.

We also conclude Barnes cannot amend his complaint to bring his causes of action outside the exclusive jurisdiction of the WCAB. In his opposition document filed before the hearing on WCAB's and Judge Louie's demurrer, Barnes asserted SCIF forced his doctor to sign a settlement agreement, with the WCAB's and Judge Louie's approval, to prevent the doctor from treating Barnes. Adding that allegation to Barnes's complaint would not bring it within the exception to workers' compensation exclusivity: reaching a settlement over medical liens and approving such a settlement are part of the normal claims process and part of the WCAB proceedings.

Nor do Barnes's allegations of fraud and a fraudulent conspiracy involve an intent element that violates a public policy rooted in a constitutional, statutory, or regulatory provision that otherwise would except the complaint from the WCAB's exclusive jurisdiction. (*Vacanti, supra*, 24 Cal.4th at p. 824.) Barnes

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[15] The causes of action were barred, however, to the extent they were based on "individual acts of a defendant that establish a pattern or practice of mishandling plaintiffs' lien claims" that the defendant insured. (*Vacanti, supra*, 24 Cal.4th at p. 828.) That alleged misconduct was closely connected to normal insurer activity like the insurers' alleged fraud. (*Ibid.*)

argues, as he did in his opposition document, that his causes of action are not subject to the WCAB's jurisdiction because they are asserted against "officers of the court"—the attorneys for SCIF and the City—based on their fraud against the court and Judge Louie's participation in that fraud. He also contends his complaint is "not work related," newly asserting it is "a Civil Right[s] Violation where officers of the Court ha[ve] colluded and conspired to defraud" him of his future medical award and penalties. He argues defendants violated his civil rights by forcing him to submit to an AME in violation of Labor Code section 4062.1 as part of their conspiracy to deprive him of his future medical award.

Barnes's blanket assertions that defendants violated his civil rights will not bring his complaint within the exception to workers' compensation exclusivity. Barnes has not alleged how defendants' alleged conspiracy to defraud him of his future medical award or how defendants' violation of Labor Code section 4062.1 violated his civil rights. He thus has not met his burden to demonstrate the reasonable possibility of curing the jurisdictional defect in his complaint through amendment. (*Rakestraw, supra*, 81 Cal.App.4th at pp. 43-44 [plaintiff must "clearly and specifically" state the substantive law and legal basis for amendment, and the proposed allegations "must be factual and specific, not vague or conclusionary"].)

Barnes's reliance on *Bulloch v. United States* (10th Cir. 1985) 763 F.2d 1115, 1121, does not help his cause. That federal case discussed the ability to set aside a judgment, under equitable grounds and the Federal Rules of Civil Procedure, where it has been obtained through a fraud on the court, i.e., "where the impartial functions of the court have been directly corrupted." (*Id.* at pp. 1116, 1121.) But even if defendants' alleged conspiracy caused Barnes to be forced to

undergo an AME, caused his award to be terminated, and caused his payment and treatment requests to be denied, *Bulloch* does not stand for the proposition that those acts constitute civil rights violations outside the scope of the WCA. Nor does *Bulloch* provide that a judicial officer loses immunity from suit if she commits misconduct while exercising her judicial functions (discussed below) as Barnes seems to contend.

Because the complaint's allegations relate to alleged injury "arising out of and in the course of the workers' compensation claims process," we conclude they fall within the scope of the workers' compensation exclusive remedy provisions. (*Vacanti, supra*, 24 Cal.4th at p. 815 ["all claims based on 'disputes over the delay or discontinuance of [worker's compensation] benefits' " are barred].) Therefore, the court properly sustained the WCAB's and Judge Louie's demurrer and properly granted the City's motion for judgment on the pleadings on the ground the court did not have jurisdiction to hear Barnes's complaint.

4. *Barnes's causes of action against Judge Louie and WCAB also are barred based on their immunity*

To the extent Barnes's claims against the WCAB and Judge Louie do not concern review of the WCAB's decisions, they otherwise are barred based on Judge Louie's absolute judicial immunity and the WCAB's immunity under Government Code section 815.2.

"Judges enjoy absolute immunity from liability for damages for acts performed in their judicial capacities. [Citations.] Immunity exists for 'judicial' actions; those relating to a function normally performed by a judge and where the parties understood they were dealing with the judge in his official capacity." (*Olney v. Sacramento County Bar Assn.* (1989) 212 Cal.App.3d 807, 811.)

California and federal courts have extended this doctrine of judicial immunity to administrative law judges and those who act in a "judicial or quasi-judicial capacity," though technically not judges. (*Taylor v. Mitzel* (1978) 82 Cal.App.3d 665, 670-671 [citing federal law and finding hearing examiner who presided over "an official fair hearing on Medi-Cal entitlement"—an administrative hearing—was immune from suit on the basis of judicial immunity].)

The WCAB " 'exercises a portion of the judicial powers of the state and "in legal effect is a court." ' " (*Fremont Indemnity Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 970-971; see also *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 355 [the WCAB has "been legislatively endowed with judicial powers pursuant to a specific constitutional authorization"].) Workers' Compensation Administrative Law Judges (WCJ), like Judge Louie, are authorized by the WCAB to conduct trials, hold hearings, and make any order, decision, or award that the WCAB is authorized to make. (Lab. Code, §§ 5309, subds. (a) & (b), 5310.) WCJ's therefore perform judicial functions and thus are immune from civil suit for acts relating to their normal functions as a WCJ performed in their official capacity.

The complaint's allegations against Judge Louie are all based on her alleged misconduct while presiding over the hearings in Barnes's workers' compensation case. All the acts Judge Louie allegedly committed were done within her judicial jurisdiction as a WCJ. Barnes has not alleged misconduct by Judge Louie outside of the hearing of his case, nor can he. The court thus properly sustained the demurrer without leave to amend as to Judge Louie on the additional ground she is entitled to absolute judicial immunity from the causes of action asserted against her.

Barnes's allegations that Judge Louie violated the Labor Code, committed fraud, and engaged in a conspiracy against Barnes do not deprive her of absolute judicial immunity. "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' " (*Stump v. Sparkman* (1978) 435 U.S. 349, 356-357 & fn. 7 [clarifying that a probate judge with jurisdiction over only wills and estates who tried a criminal case "would be acting in the clear absence of jurisdiction," while a criminal judge who convicted a defendant of a nonexistent crime "would merely be acting in excess of his jurisdiction and would be immune"].) Nor can Judge Louie be liable as an alleged co-conspirator, as tort recovery for conspiracy cannot attach to one immune from the underlying substantive tort. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 511, 513-514.)

The WCAB, a public entity,[16] also is immune from Barnes's complaint. Barnes's allegations against the WCAB all are based on Judge Louie's actions committed within her and the WCAB's jurisdiction over Barnes's workers' compensation claims. Under Government Code section 815.2, subdivision (b), "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Because Judge Louie is immune from Barnes's suit, so too is the WCAB.

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[16] Government Code section 811.2 defines " 'public entity' " to include the state and its agencies.

5. Barnes's causes of action against the City also are barred because he did not allege he complied with the Government Claims Act

To the extent Barnes's causes of action against the City fall outside of the exclusive jurisdiction of the WCAB, Barnes's failure to file a government claim before suing the City is—as the City puts it—fatal to his complaint.

A plaintiff must present a timely claim for money or damages to a local public entity,[17] like the City, before suing the public entity for money or damages. (Gov. Code, §§ 905, 945.4.) If the public entity denies the claim, the plaintiff has six months from that denial to bring a lawsuit against the public entity. If the public entity fails to act on the claim, the plaintiff has two years from the accrual of the cause of action to sue. (*Id*. § 945.6, subds. (a)(1), (a)(2).) The claim must describe the "circumstances of the occurrence or transaction which gave rise to the claim asserted" and the names of the public employees who caused the damage or loss, if known. (*Id*. § 910, subds. (c), (e).) The purpose of the claim presentation requirement is " '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. [Citations.]' " (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705.)

A plaintiff filing an action on a claim must allege facts showing compliance with the claim presentation requirement or excusing compliance. A complaint that fails to so allege is subject

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[17] The term " '[l]ocal public entity' includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State." (Gov. Code, § 900.4.)

to a general demurrer. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243.)

Plaintiff did not check the box on his form complaint stating he complied with (or was excused from) the relevant claims statute. Nor does he allege elsewhere in the complaint that he filed a claim with the City.

Barnes implicitly argues that he could amend his complaint to allege that he presented a claim to the City. Citing to his notice designating the record on appeal, Barnes asserts he made a demand on the City for "medical treatment" for his work-related injuries on November 24, 2016, and the City responded on January 13, 2017, that it "would not [a]uthorize any medical treatments."[18]

This alleged demand for medical treatment cannot cure the complaint's failure to allege compliance with the Government Claims Act. Barnes is making a claim for money damages against the City based on its alleged fraud. The claim Barnes allegedly made to the City in November 2016, however, was for payment for medical treatment, not to demand money damages due to the City's attorney's alleged fraud. The alleged November 2016 claim thus does not apprise the City of the circumstances giving rise to the damages Barnes alleges in his complaint or provide it with sufficient information to investigate Barnes's claim.

Accordingly, we conclude the trial court properly granted the City's motion for judgment on the pleadings on

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[18] Barnes made these assertions in an attachment to his notice under the directive, "If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal." The attachment refers to an "attached letter" but none is attached.

the alternative ground that Barnes failed to comply with the Government Claims Act.

In light of our conclusions, we need not address the other grounds asserted by the parties. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 ["The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' "].)

DISPOSITION

The order and judgment of dismissal entered for respondents WCAB and Judge Louie and the judgment following order granting motion for judgment on the pleadings in favor of the City are affirmed. Appellant's appeal from the December 12, 2017 minute order sustaining the demurrer by SCIF without leave to amend is dismissed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, Acting P. J.

We concur:

DHANIDINA, J.

HANASONO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.