Tentative Rulings for May 29, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

25CECG00386 ***Allegiant Partners Incorporated v. YR Transport, Inc.***

24CECG05087 ***Shawn Armor v. Walter C. Voigt, Inc.*** ***(See Tentative Ruling below)***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re:	***Ron Miller Enterprises, Inc. v. Alexandera Bobadilla*** Superior Court Case No. 24CECG02665
Hearing Date:	May 29, 2025 (Dept. 502)
Motion:	Plaintiff's Motion for Summary Judgment and/or Summary Adjudication

Tentative Ruling:

To deny plaintiff's motion for summary judgment and/or adjudication, without prejudice, for lack of evidence of proper service on defendant Bobadilla.

Explanation:

The proof of service submitted with the motion shows that defendant Bobadilla was served by mail at an address listed as 993 9th Street, Orange Cove, CA **93645**. However, according to the court's records, Ms. Bobadilla's address is 993 9th Street, Orange Cove, CA **93646**. Ms. Bobadilla's answer also lists the zip code for her residence as 93646. Therefore, defendant did not serve the motion for summary judgment at defendant's correct address, and as a result the court cannot grant the motion.

Service of papers to an incorrect address is not proper notice. (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 288.) "Section 1013, subdivision (a) provides that the mailing of a notice is complete when it is posted in an envelope 'addressed to the person on whom it is to be served, at his office address as last given by him on any document which he has filed in the cause and served on the party making service by mail; otherwise at his place of residence....'" (*Triumph Precision Products, Inc. v. Insurance Co. of North America* (1979) 91 Cal.App.3d 362, 365, italics omitted.) "[S]trict compliance with statutory provisions for service by mail is required, and improper service will be given no effect. [Citations.]" (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 511.) Fundamentals of due process are notice and an opportunity to be heard. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1286.) In *Gamet,* an order became effective only upon proof of service; because the order was not properly served, it did not become effective. (*Id.* at p. 1285–1286.) Thus, where documents are served by mail using an incorrect zip code, even if the rest of the address is correct, service is ineffective unless there is proof that the documents were actually received. (*Moghaddam v. Bone*, *supra*, 142 Cal.App.4th at p. 288 [holding service was ineffective where the documents were mailed to incorrect zip code that was off by two digits].)

Here, the proof of service states that motion was mailed to Ms. Bobadilla at the wrong zip code. Ms. Bobadilla has not filed any opposition, and there is no evidence that she actually received the motion. Therefore, service of the motion was ineffective, and the court has no power to grant the motion for summary judgment as to Bobadilla. Consequently, the court must deny the motion for lack of proper service. However, the

denial will be without prejudice, as the defect is purely procedural and plaintiff may be able to correct it by serving Ms. Bobadilla at her correct address of record.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/27/25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Newtek Small Business Finance, LLC v. Gurmej Bath***
Superior Court Case No. 24CECG04436

Hearing Date: May 29, 2025 (Dept. 502)

Motion: Plaintiff's Applications for Writs of Possession

Tentative Ruling:

To grant the application for a writ of possession as to defendant G.S. Bath Carrier, Inc. To deny the applications as to defendants Gurmej Singh Bath and Jaswinder Kaur Bath, as plaintiff has not filed valid proofs of service showing that they were served with the applications.

Explanation:

Under Code of Civil Procedure section 512.010, subdivision (a), "Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this chapter for a writ of possession by filing a written application for the writ with the court in which the action is brought."

Under section 512.010, subdivision (b), "The application shall be executed under oath and shall include all of the following: [¶] (1) A showing of the basis of the plaintiff's claim and that the plaintiff is entitled to possession of the property claimed. If the basis of the plaintiff's claim is a written instrument, a copy of the instrument shall be attached. [¶] (2) A showing that the property is wrongfully detained by the defendant, of the manner in which the defendant came into possession of the property, and, according to the best knowledge, information, and belief of the plaintiff, of the reason for the detention. [¶] (3) A particular description of the property and a statement of its value. [¶] (4) A statement, according to the best knowledge, information, and belief of the plaintiff, of the location of the property and, if the property, or some part of it, is within a private place which may have to be entered to take possession, a showing that there is probable cause to believe that such property is located there. [¶] (5) A statement that the property has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized under an execution against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure."

The court shall issue the writ if it finds that the plaintiff's claim is probably valid and the other requirements for issuing the writ have been satisfied. (Code Civ. Proc. §§ 512.040, subd. (b); 515.060, subd. (a)(1).) Under section 515.010, the court shall not issue a writ of possession until the plaintiff has filed an undertaking with the court, unless the exception under section 515.010, subdivision (b) applies. (Code Civ. Proc. § 515.010, subd. (a).) The undertaking shall be in an amount of not less than twice the value of the defendant's interest in the property or in a greater amount. (*Ibid*.) However, if the court finds that the defendant has no interest in the property, the court shall waive the requirement of the undertaking and shall include in the order for issuance of the writ the

amount of the defendant's undertaking sufficient to satisfy the requirements of section 515.020, subdivision (b). (Code Civ. Proc. § 515.010, subd. (b).)

"If the defendant desires to oppose the issuance of the writ, he shall file with the court either an affidavit providing evidence sufficient to defeat the plaintiff's right to issuance of the writ or an undertaking to stay the delivery of the property in accordance with Section 515.020." (Code Civ. Proc. § 512.040, subd. (c).)

"Prior to the hearing required by subdivision (a) of Section 512.020, the defendant shall be served with all of the following: (1) A copy of the summons and complaint. (2) A Notice of Application and Hearing. (3) A copy of the application and any affidavit in support thereof." (Code Civ. Proc. § 512.30, subd. (a).) "If the defendant has not appeared in the action, and a writ, notice, order, or other paper is required to be personally served on the defendant under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5." (Code Civ. Proc., § 512.030, subd. (b).)

Here, plaintiff has shown that it has a perfected security interest in the business and vehicle collateral, as it recorded UCC-1 financing statements regarding the collateral after defendants executed security agreements to secure the loans. The loan agreements contain clauses stating that, in the event of a default, the lender has the right to take immediate possession of the collateral. Plaintiff has also provided evidence that defendant defaulted on the loans by failing to make any payments since April 1, 2024. Defendants currently owe nearly $2 million on the loans. Thus, plaintiff has shown the basis for its claim, and it has provided evidence showing the probability validity of the claim.

Plaintiff has also stated the probable location of the collateral, which is believed to be at defendant's properties at 2778 South Willow Avenue, Fresno, CA 93725, 2784 South Peach Avenue, Fresno, CA 93725, or another location known to defendants. Plaintiff describes the collateral, which consists of about 34 vehicles as well as defendants' other business assets. Plaintiff also states that defendants are wrongfully withholding the collateral from plaintiff after plaintiff demanded its return. The collateral has not been taken on account of tax, assessment, or fine, nor has it been seized under an execution or attachment. Therefore, plaintiff has met the requirements of issuance of the writ of possession.

Furthermore, it does not appear that defendants have any equity in the collateral in light of the fact that they owe far more on the loans than the estimated value of the collateral, so plaintiff does not need to post a bond to take possession of the collateral.

Plaintiff has also filed a proof of service showing that G.S. Bath Carrier, Inc. was served with the summons, first amended complaint, and application for writ of possession by substituted service on April 3, 2025. Therefore, plaintiff is entitled to obtain a writ of possession for the collateral held by G.S. Bath Carrier.

Plaintiff also attempted to serve defendant Jaswinder Bath on the same day, but the clerk has deemed the proof of service defective. There is no proof of service on file showing that defendant Gurmej Singh Bath has been served with the application. Therefore, unless plaintiff files proofs of service showing that Jaswinder and Gurmej were served with the application, the court cannot grant the application as to them.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/27/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Jeffrey Seaberg v. Specific Properties, LLC***
Superior Court Case No. 20CECG00012

Hearing Date: May 29, 2025 (Dept. 502)

Motion: by Cross-Complainant John Foggy for Attorney Fees

Tentative Ruling:

To grant Cross-Complainant John Foggy's motion for attorney fees in the amount of $154,899.17.

Explanation:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . .." (Code Civ. Proc., § 1021.) Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) If a party has an unqualified win, the trial court has no discretion to deny the party attorney fees as a prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

Cross-complainant Foggy moves for an award of attorney fees as the prevailing party in the arbitration of the cross-complaints filed by Foggy and Seaberg Construction, Inc. Pursuant to the stipulation of the parties and ordered by the court, "[t]**the party** to whom the [Arbitration] Award grants money/damages to, shall be the "Prevailing Party" and entitled to their reasonable attorney's fees, regarding the cross-complaints herein, … ." (RJN No. 1, Exh. 1, ¶ 12.)

Foggy seeks a total of $199,443.17 which reflects $58,065.00 in fees paid to Wild, Carter & Tipton, $34,092.67 in fees paid to Whitney, Thompson, Jeffcoach, and $107,285.50 in fees paid to Cuttone & Associates. (Cuttone Decl., ¶¶ 15-16. Exh. 1; Gorman Decl., ¶ 16, Exh. 1; Foggy Decl., ¶¶ 9-10, Exh. 2, 3.) Foggy argues he is entitled to all fees incurred related to the Promissory Note underlying the disputes within the cross-complaints.

Seaberg opposes the motion on the basis that the fees to be awarded pursuant to the stipulation of the parties are limited to those incurred specifically for the arbitration of the parties' accounting disputes. The language of the stipulation does not support Seaberg's narrow interpretation. However, the language also does not support the breadth of tasks for which Foggy is seeking fees. The stipulation states the party to

received money or damages from the arbitrator is considered the prevailing party in regard to the cross-complaints. Thus, the fees related to the cross-complaints can be awarded to the prevailing party, Foggy.

In support of his opposition, Seaberg submits a table of objectionable billing entries for each of Foggy's three law firms. (Placido Decl., Exh. A.) Seaberg objects to entries deemed unrelated to the accounting arbitration, entries for clerical work, and block-billed time.

The court has reviewed the challenged entries and the objections have merit and has reduced the fees. Tasks related to discovery or conferences with clients who are not parties to the cross-complaints are deemed unrelated to the cross-complaints and will not be awarded. Clerical tasks such as scanning, filing, formatting and calendaring will not be awarded as attorney fees, regardless of the qualifications of the person performing the task. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) Where a task appears to be related to both the complaint and cross-complaints, such as the time related to Foggy's accounting consultant and designated expert Susan Thompson, the fees will be awarded. The court makes the following deductions:

From fees billed by Wild, Carter & Tipton, the court finds $4,519.00 was billed for activities unrelated to the cross-complaints, $275 was billed for clerical tasks, and finds it reasonable to reduce blocked billed time entries that include clerical or unrelated tasks by $680.25. The result is an award of fees of $52,590.75.

From fees billed by Whitney Thompson Jeffcoach, the court finds $8,700 was billed for tasks unrelated to the cross-complaints. The result is an award of fees in the amount of $25,392.67.

From fees billed by Cuttone & Associates, the court finds $6,007.00 was billed for tasks unrelated to the cross-complaints and $6,455.75 was billed for clerical tasks. The court further finds it reasonable to reduce the time billed to review the file after it was transferred from Whitney Thompson Jeffcoach as redundant, resulting in a reduction of $17,907.00. It is not reasonable to bill for what is a second review of the same pleadings and discovery reviewed by prior counsel. The result is an award of fees in the amount of $76,915.75.

The motion for attorney fees is granted and cross-complainant Foggy is awarded $154,899.17 for attorney fees incurred as the prevailing party on the cross-complaints.

Late Moving Papers

Seaberg asserts the motion must be denied on procedural grounds due to the moving papers having been filed and served only 16 court days before the hearing on the motion without the additional two days for electronic service. Seaberg argues he was prejudiced by the late filing but has submitted an opposition to the motion on its merits. In his reply, Foggy concedes the moving papers were filed and served late when taking into account the method of service. The court finds any jurisdictional defect in the tardy submission was waived by filing the opposition on the merits. Additionally, there was no apparent prejudice to the opposing party as a comprehensive, substantive opposition

to specific entries of time was presented to the court for consideration. The court is not inclined to deny the motion at bench for a purely procedural defect without a showing of prejudice to the opposing party.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/27/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Lee Borgioli v. Fresno's Chaffee Zoo Corporation***
Superior Court Case No. 24CECG04576

Hearing Date: May 29, 2025 (Dept. 502)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To grant and order plaintiff Lee Borgioli to arbitrate his claims against defendant Fresno's Chaffee Zoo Corporation. This action is stayed pending completion of arbitration. (Code Civ. Proc. § 1281.4.)

Explanation:

Legal Standard

In moving to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Written Arbitration Agreement

Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) A party opposing arbitration has the burden of showing that the arbitration provision cannot be interpreted to cover the claims in the complaint. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.)

Here, defendant attached a copy of the written and signed agreement. (Pedro Decl., Exh. A.) This is sufficient evidence to support the present motion. (*Cox v. Bonni* (2018) 30 Cal.App.5th 287, 301.) Plaintiff does not materially contest the existence of the written arbitration agreement, nor his signature on the document. Plaintiff's signature on the agreement creates the presumption that he read and understood its terms, absent a strong showing otherwise. The court finds that there is a valid written agreement to arbitrate.

Defenses to Enforcement: Unconscionability

If the court finds as a matter of law that a contract or any portion of it was unconscionable at the time it was made, the court may refuse to enforce it, or may enforce the contract without the unconscionable provisions, or limit their application to avoid any unconscionable result. (Civ. Code § 1670.5, subd. (a).) There are two prongs considered in this analysis: procedural unconscionability and substantive unconscionability. Both must be present for a court to exercise its discretion to refuse to enforce an arbitration agreement under the doctrine of unconscionability. (*Armendariz v. Foundation Health Psychcare Services., Inc.* (2000) 24 Cal.4th 83, 113, emphasis added.) They need not be present in equal amounts; essentially a sliding scale is used, and where there is substantive unconscionability, less procedural unconscionable need be shown. (*Id.* at pp. 113-114.)

Procedural Unconscionability

Plaintiff argues that the agreement is procedurally unconscionable because defendant provided only four relevant documents relating to plaintiff's employment, including the arbitration agreement. Plaintiff makes the assumption that plaintiff left out other relevant documents that may include terms and conditions affecting the terms of the arbitration agreement. He argues that such selective disclosure supports an "inference of surprise and concealment." (Opp., 9:12.) Defendant refutes this, stating that the arbitration agreement is the sole instrument governing dispute resolution and plaintiff has not (and cannot) assert or prove otherwise. Defendant argues that there are no other documents with which the arbitration agreement needs to be read in conjunction with to determine its unconscionability.

The evidence presented by plaintiff supports minimal procedural unconscionability. Although plaintiff argues an "inference of surprise and concealment" (Opp., 9:12), this is not in regard to the agreement itself but to potential *other* documents assumed to relate. The arbitration agreement was specifically titled "Agreement for At-Will Employment and Arbitration." The plaintiff's signature follows a paragraph specifically stating "This Agreement constitutes the entire agreement between the parties with respect to the terms and conditions of employment and the resolution of disputes[.]" (Pedro Decl., Exh. A.) Plaintiff has presented no evidence to support an argument that the agreement to arbitrate was "a surprise" or "concealed." There is no evidence plaintiff was not aware of the presence or nature of the arbitration agreement to contradict his signature acknowledging his agreement with the at-will and arbitration policies. Any lack of production of documents outside the bounds of the arbitration agreement does not establish procedural unconscionability.

Substantive Unconscionability

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five

minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: (1) a neutral arbitrator; (2) adequate discovery; (3) a written, reasoned, opinion from the arbitrator; (4) identical types of relief as available in a judicial forum; and (5) that undue costs of arbitration will not be placed on the employee. (*Armendariz, supra,* 24 Cal.4th at p. 102.)

Although defendant states the arbitration agreement was voluntary (Memo. P&A, 9:3), the agreement itself does not state this. However, plaintiff does not dispute defendant's assertion that it was voluntary.

Even when considering the *Armendariz* factors for unconscionability, plaintiff does not address them. He merely argues that the provision for attorney's fees *may* deprive plaintiff of the attorney's fee standard set forth in Labor Code section 1102.5 subdivision (j). This general provision states what the arbitrator "may" do and is not a requirement for the arbitrator. This does not render the agreement unconscionable. The agreement, in fact, appears to protect statutory attorney's fees rather than threaten them, as the arbitration agreement reads: "the arbitrator may award attorneys' fees and costs to a prevailing party under a statutory provision." (Pedro Decl., Exh. A, emphasis added.)

Plaintiff's repeat argument as to the alleged additional documents needed for consideration of the arbitration agreement is again heavily based in speculation. Plaintiff has not argued that the agreement itself, is substantively unconscionable, and is instead relying on the purported existence of other documents, despite the agreement stating it is "the entire agreement between the parties with respect to the terms and conditions of employment and the resolution of disputes[.]" (Pedro Decl., Exh. A.) Discovery is the common tool by which additional documents may be requested, and plaintiff has not shown that having further documentation is necessary prior to an assessment and ruling on this motion.

Plaintiff has not met his burden to demonstrate any defense against enforcement of the valid written arbitration agreement. While the court feels that the plaintiff has not demonstrated that the arbitration agreement is procedurally or substantively unconscionable, even presuming that an arbitration agreement arising from employment is inherently procedurally unconscionable to a degree, the court finds that the arbitration agreement is not so unconscionable as to be unenforceable. Accordingly, the motion to compel arbitration of plaintiff's individual claims is granted. Where the court orders arbitration, the court must also issue a stay upon motion of the same. (Code Civ. Proc. § 1281.4.) As such, the matter is stayed pending arbitration.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/27/25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Anthony Villarreal v. City of Reedley***
Superior Court Case No. 24CECG01776

Hearing Date: May 29, 2025 (Dept. 502)

Motion: Petition for Relief from Provisions of Government Code Section 945.4

Tentative Ruling:

To deny the petition for relief from the provisions of Government Code section 945.4.

Explanation:

The self-represented petitioner, Anthony Villarreal (Petitioner), petitions the court for relief from complying with the requirement to present a claim before suing a public entity. Petitioner's claim arises from an incident that occurred on September 19, 2022, wherein Petitioner alleges he was mistreated and injured by four Reedley police officers.

Petitioner presented a claim to the respondent, City of Reedley (City) on July 1, 2023, which the City denied as untimely because Petitioner failed to present the claim within six months from the date of injury. Petitioner presented the City with an application for leave to present a late claim on January 18, 2024—four months after the one-year anniversary of petitioner's injury, which the City denied on February 13, 2024. The City's denial included a warning advising Petitioner that "[i]f you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code [s]ection 945.4 (Claims Presentation Requirement)." (Pet. filed 5/2/2024, ex. 1.) Petitioner heeded the City's warning and filed his petition within six months from the City's denial, as required by Government Code section 946.6. (Petitioner filed a second petition with different exhibits on April 22, 2025.)

Claim Filing Requirements

Petitioner now asks the court to grant relief from the claim presentation requirement of Government Code section 945.4, which provides:

> [N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . .

Furthermore, "[s]uits against a public entity or public employees are governed by the specific statute of limitations provided in the Government Code, not the statute of limitations that applies to private defendants." (*Moore v. Twomey* (2004) 120 Cal.App.4th

910, 913.) Under Government Code section 911.2, a claim for personal injury must be filed within six months after accrual of the cause of action.

Government Code section 945.4 makes presentation of a timely claim a condition precedent to the commencement of suit against a public entity. Thus, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing suit against that entity. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237, 1239 [failure to comply with claim presentation requirement subjects complaint to general demurrer for failure to state cause of action].)

Government Code section 911.4, subdivision (a) permits an injured party to make an application for late claim relief to the public entity. Such an application must be made "within a reasonable time *not to exceed one year after the accrual of the cause of action* and shall state the reason for the delay in presenting the claim." (Gov. Code, § 911.4, subd. (b), italics added.)

If the public entity denied the application, Government Code section 946.6 allows the injured party to petition the court for relief from the claim requirements. In addition to the requirement that the injured party must file the petition within six months from the date the public entity denied the application for leave to present a late claim, this section requires the injured party to show, as applicable to Petitioner here, the application for relief:

> was made within a reasonable time *not to exceed that specified in subdivision (b) of Section 911.4* [one year after accrual of cause of action] and was denied or deemed denied . . . and that one or more of the following is applicable:
>
> (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect. . . . [¶] [¶]
>
> (4) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated *during all of the time specified in Section 911.2 for the presentation of the claim* [six months] and by reason of that disability failed to present a claim during that time.

(Gov. Code, § 946.6, subd. (c), italics added.)

Excusable Neglect and Mental Incapacity

Without citing Government Code section 946.6 or presenting competent evidence, Petitioner contends he is entitled to relief because he can establish "excusable neglect" based on "inadvertence" or "mental incapacity." The court finds both grounds lack merit.

To establish excusable neglect, Petitioner relies on two mistaken beliefs he previously held. He claims he "inadvertently believed he had to focus on criminal proceedings first, prior to civil litigation." (Pet. filed 4/22/2025, p. 2:12-13.) And Petitioner

"was under the inadvertent impression that he had a two-year statute of limitations." (*Id.* at p. 2:14-15.)

Petitioner acknowledges that "[e]xcusable neglect is neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances." (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435.) But when a petitioner relies on a mistake, the petitioner must establish diligence in investigating and pursuing the claim. " '[T]he mere ignorance of the time limitation for filing against a public entity is not a sufficient ground for allowing a late claim.' " (*N.G. v. County of San Diego* (2020) 59 Cal.App.5th 63, 74, citing *Harrison v. County of Del Norte* (1985) 168 Cal.App.3d 1, 7; *Drummond v. County of Fresno* (1987) 193 Cal.App.3d 1406, 1412 ["ignorance of the time limitation for filing a claim against a public entity is not a ground for allowing a late claim to be filed."]) Here, Petitioner admits "he neglected to diligently research California Tort Law, with regard to government entities." (Pet., filed 4/22/2025, p. 2:27-28.0.) In light of the cited cases and Petitioner's admissions, the court finds Petitioner's preoccupation with his criminal proceedings and his ignorance of the law about the time limitation and claim filing requirements do not make his delay reasonable and do not establish a ground to allow Petitioner to file a late claim.

Petitioner's discussion of his mental incapacity presents no competent evidence to establish Petitioner was "mentally incapacitated *during all of the time* specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time." (Gov. Code § 946.6, subd. (c)(4), italics added; see *Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373 [petitioner made an "exceptional showing" to establish excusable neglect where she was incapacitated during entire time (six-month period) for presentation of claim and failed to file claim due to disability].) Here, Petitioner admits he "was able to (at the very beginning) be proactive and act as a reasonably prudent person." (Rpy., p. 8:19-21.) Thus, Petitioner fails to establish the exceptional showing over the entire six-month period required for filing a late claim based on the ground of mental incapacity.

In any event, not only must Petitioner establish at least one factor from Government Code section 946.6, subdivision (c), Petitioner also must show his application to the City for relief was made within a reasonable time, not to exceed one year after accrual of the cause of action. (*Ibid.*) Petitioner's claim against the City accrued on September 19, 2022. But he failed to present his application to the City for leave to present a late claim within the outside limit of one year after his cause of action accrued. Thus, neither Petitioner's "excusable neglect" claim, nor his "mental incapacity" claim provide grounds for relief because Petitioner failed to file his claim within one year of the accrual of his cause of action. (Compare *Ebersol v. Cowan, supra,* 35 Cal.3d at p. 439 [uncontradicted evidence justified finding that late claim *filed with public entity less than one year after accrual of cause of action* was reasonable and due to excusable neglect].) For these reasons, the court denies Petitioner's request for relief from the provisions of Government Code section 945.4.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 05/28/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Caryn Brown v. Richard Brown***
Superior Court Case No. 22CECG01605

Hearing Date: May 29, 2025 (Dept. 502)

Motion: By Plaintiffs to Enforce Settlement

Tentative Ruling:

To grant. Plaintiffs are directed to submit a proposed judgment within 10 days of service of the order by the clerk.

Explanation:

Code of Civil Procedure Section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Here, Plaintiffs submit a writing, signed by the parties, made outside the presence of the court.[1] Though the matter is dismissed, the parties filed a stipulation for an order that the court retain jurisdiction prior to dismissal. Further, the writing reflects that this court would retain jurisdiction under section 664.6 to enforce the writing. (Hermelin Decl., ¶ 2, and Ex. A thereto.) The agreement contemplated the sale of four properties, the proceeds from which were to be distributed in accordance with ownership. Plaintiffs submit that defendant Richard Brown has made attempts to revoke the agreement, indicating an intent to not comply with the terms of the settlement. (*Id.*, ¶¶ 4, 5, and Ex. C, D.) No opposition was filed.

Based on the above, the court finds a valid written signed settlement agreement outside of the presence of the court, and judgment will be entered in accordance with the terms of the written settlement agreement. (Code Civ. Proc. § 664.6, subd. (a).)

[1] While the original agreement does not reflect a signature from Caryn June Brown as attached in Exhibit A to the Declaration of David Hermelin, attached to the same declaration as Exhibit C shows a version "revoked" by defendant Richard Brown that demonstrates a signature by Caryn June Brown. Accordingly, the court finds that the writing was signed by all parties.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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Issued By: KCK on 05/28/25.
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(27)

Tentative Ruling

Re: ***Shawn Armor v. Walter C. Voigt, Inc.***
Superior Court Case No. 24CECG05087

Hearing Date: May 29, 2025 (Dept. 502)

Motion: Attorney to be Relieved as Counsel

Tentative Ruling:

To deny, without prejudice, unless moving counsel appears for hearing with an amended order as detailed below.

Explanation:

The proposed order fails to include the August 27, 2025 Case Management Conference. Accordingly, the hearing shall go forward at the scheduled time. The relief requested will only be granted upon submission of a more complete proposed order.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

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