

Tentative Rulings for November 17, 2021
Department 501

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

19CECG00709 *Cota v. Aaron's Inc.* is continued to Thursday, January 6, 2022 at
3:30 p.m. in Dept. 501

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(35)

Tentative Ruling

Re: **Rider et al v. McCann et al.**
Superior Court Case No. 21CECG01157

Hearing Date: November 17, 2021 (Dept. 501)

Motion: Defendant City of Clovis Police Department's Demurrer to Complaint

Tentative Ruling:

To sustain, with leave to amend. Plaintiffs are granted twenty (20) days, running from service of the minute order by the clerk, to file and serve a First Amended Complaint. All new allegations are to be set in **bold**.

If a timely request for oral argument is made, such argument will be entertained at 2:30 p.m.

Explanation:

Before filing a demurrer, the moving party "shall file and serve with the demurrer a declaration stating... (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer." (Code Civ. Proc. § 430.41, subd. (a)(3)(A) [emphasis added].) Here, though the moving party indicates an effort to meet and confer on May 6, 2021, and May 11, 2021, no declaration, and therefore no evidence, was submitted in compliance with the statute's explicit requirements. (*Id.*, § 430.41, subd. (a)(3).) However, on November 9, 2021, plaintiffs submitted an opposition to the demurrer.¹ As no other parties object, the court proceeds. (*Id.*, § 430.41, subd. (a)(4); see *Olsen v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 515-516.)

Plaintiffs bring suit against, among others, the City of Clovis Police Department ("Clovis PD"). The Complaint alleges that Clovis PD "is and at all times herein mentioned was, a California public entity of a form unknown located in the State of California, County of Fresno, City of Clovis." (Complaint, ¶ 2.)

Plaintiffs bring four causes of action against Clovis PD, for negligence, negligent supervision, public liability failure to perform a public duty, and negligent infliction of emotional distress. (*Id.*, ¶¶ 15-35.) For each of the four causes of action, plaintiffs allege that Clovis PD owed a duty to decedents Tierney Cooper McCann and Judith Cooper ("Decedents") to keep them free from assaults. (See *id.*, ¶¶ 9-35.) Plaintiffs allege that on May 6, 2016, and May 7, 2016, Clovis PD breached that duty by failing to provide

¹ The opposition was filed untimely. (Code Civ. Proc. § 1005, subd. (b). The court exercises its discretion and considers the untimely opposition. (Cal. Rules of Ct., rule 3.1300(d).)

reasonable supervision to decedents and exposing decedents to defendant Dave McCann to take their lives. (See *ibid.*)

Clovis PD demurs to the Complaint on one ground: that the Complaint is time-barred under Government Code section 900 et seq. sometimes referred to as the Government Claims Act. (Gov't Code § 810, subd. (b).)

The Government Claims Act requires, for all claims of money or damages against local public entities, a presentation of a claim. (Gov't Code § 905.) A claim relating to a cause of action for death or for injury to person shall be presented not later than six months after the accrual of the cause of action. (*Id.*, § 911.2.) A claim that is not presented in accordance with Government Code section 911.2 nevertheless may apply to the public entity to present a late claim. (*Id.*, § 911.4, subd. (a).) Such application to present a late claim shall not exceed one year after the accrual of the cause of action. (*Id.* § 911.4, subd. (b).) Accrual of the cause of action for the purposes of a government claim is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants as if there were no requirement to present a claim. (*Id.* § 901; *State of Cal. v. Sup. Ct.* (2004) 32 Cal.4th 1234, 1244-1245.)

Compliance with the claim requirement is a condition precedent to suing a public entity. (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 906.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Ibid.*)

Here, as the Complaint alleges that Clovis PD is a public entity, claims against it are subject to the Government Claims Act. (Gov't Code § 811.2.) The Complaint however fails to allege compliance with statutory requirement, and facts to support such a statement. As compliance with the claim requirement is a condition prerequisite to suing a public entity, plaintiffs have not stated a claim against Clovis PD as to each of the four causes of action naming Clovis PD. (*Rubenstein, supra*, 3 Cal.5th at p. 906.)

When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Though Clovis PD argues that plaintiffs have not and cannot allege timely compliance with the Government Claims Act, Clovis PD points to no allegations within the Complaint to support such a conclusion. Plaintiffs' failure to allege facts supporting a timely presentation of their claims is not the same as being incapable of alleging facts

supporting a timely presentation of their claims. Therefore, the court grants plaintiffs leave to amend. (*Scott, supra*, 6 Cal.3d at p. 549.)

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: DTT **on** 11/15/2021.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: **Cox v. Sikes**
Superior Court Case No. 19CECG01477

Hearing Date: November 17, 2021 (Dept. 501)

Motion: Petition for Approval of Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested, minor is excused from appearing.

If a timely request for oral argument is made, such argument will be entertained at 2:30 p.m.

Explanation:

The petition indicates the medical liens of Community Regional Medical Center, University Faculty Associates, Community Medical Imaging, Martin Functional Rehab, and Muscular Skeletal Medical Associates were reduced via negotiation with counsel. (Petn., Att. 12a [.pdf p. 92] and Kreit Dec. 99, ¶ 7.) However, the court must see something from each of the medical providers acknowledging their agreement to these reductions.

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: DTT on 11/15/2021.
(Judge's initials) (Date)