Tentative Rulings for June 1, 2023
Department 501
Unless otherwise ordered, all oral argument in Department 501 will be presented in person or telephonically (not through Zoom).

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.

17CECG03679 — ***James Workman v. David Bray, Jr*** **is continued to Wednesday, August 9, 2023, at 3:30 p.m. in Department 501**

22CECG01388 — ***Edith Gallergos Ruiz v. General Motors LLC*** **is continued to Thursday, June 29, 2023, at 3:30 p.m. in Department 501**

22CECG03717 — ***Ricardo Cruz v. Ford Motor Company*** **is continued to Tuesday, June 6, 2023, at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(20)

Tentative Ruling

Re: ***R.P. v. Doe Defendant 1***
Superior Court Case No. 22CECG04187

Hearing Date: June 1, 2023 (Dept. 501)

Motion: by Plaintiff for Stay of Proceedings

Tentative Ruling:

To grant and stay this action until further order of the court.

Explanation:

This action involves claims against a Boy Scouts of America ("BSA") related entity. The action is therefore subject to the bankruptcy court's injunction set forth in *Boy Scouts of America v. A.A., et al.,* Adversary Proceeding No. 23 20-50527 (LSS), United States Bankruptcy Court, Delaware. The injunction prevents prosecuting an action, reaching the merits, or seeking recovery against BSA-related parties for substantially similar sexual abuse claims. The motion to stay should be granted. Plaintiff's counsel shall provide this Court notice when there is a resolution in the bankruptcy matter. In any event, if the bankruptcy matter has not been resolved within six months of the entry of this order, plaintiff's counsel shall file a notice informing this court of the status of the bankruptcy matter.

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 5/25/2023 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Martinez v. The City of Fresno***
Superior Court Case No. 23CECG00470

Hearing Date: June 1, 2023 (Dept. 501)

Motion: Petition for an Order Relieving Petitioner from Claim Filing Requirement Pursuant to Government Code Section 945.4

Tentative Ruling:

To deny.

Explanation:

The Government Claims Act articulates that a timely written claim must first be presented to a public entity prior to any lawsuit for money damages against it. (Gov. Code, § 810 et seq.; *N.G. v. County of San Diego* (2020) 59 Cal.App.5th 63, 72.) Government Code section 911.2, subdivision (a), provides that such a claim is to be presented no later than six months after the accrual of the cause of action. (Gov. Code, § 911.2; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) The policy behind the requirement to file a timely claim is threefold, as it 1) gives the entity an opportunity to promptly remedy the condition, 2) allows the entity to investigate while evidence is still available and witnesses' memories are fresh, and 3) gives the entity time to plan its budget accordingly. (*Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1776; *N.G. v. County of San Diego, supra*, 59 Cal.App.5th 63, 73; *Renteria v. Juvenile Justice, Department of Corrections & Rehabilitation* (2006) 135 Cal.App.4th 903, 909.)

Where a claim is not timely presented, a written application can be made to the public entity for leave to present the claim. (Gov. Code, § 911.4, subd. (a); *Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1777.) The application to present a late claim must be made to the public entity within one year of the accrual of the cause of action and state what caused the delay in presenting the claim. (Gov. Code, § 911.4, subd. (b); *Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1777.) Where the public entity denies the application to present a late claim, the party must petition the trial court for relief from the claim filing requirements. (Gov. Code, § 946.6; *Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1777.) The petition must be filed within six months after the application to present a late claim is denied. (Gov. Code, § 946.6, subd. (b).)

The decision to grant or deny such a petition is within the discretion of the trial court and will only be disturbed where there is an abuse of discretion. (*DeVore v. Department of California Highway Patrol* (2013) 221 Cal.App.4th 454, 459.) As a remedial statute, it is to be construed in favor of the applicant requesting the relief. (*Munoz v. State of California, supra,* 33 Cal.App.4th 1767, 1778.) Trial courts shall relieve the late petitioner where two requirements have been met: 1) the application to the public entity was made within a reasonable time, not to exceed one year, after the accrual of the cause of action and 2) one of the four circumstances set forth in Government Code section

946.6, subdivision (c) must be shown by a preponderance of the evidence. (*N.G. v. County of San Diego, supra,* 59 Cal.App.5th 63, 72.)

As relevant here, Government Code section 946.6, subdivision (c)(1), provides relief where the failure to present the claim timely was due to mistake, inadvertence, surprise or excusable neglect, unless the public entity can establish that it would be prejudiced in the defense of its claim if the trial court grants relief. (*Munoz v. State of California, supra,* 33 Cal.App.4th 1767, 1782.) The trial court considers the petition, affidavits, and other evidence presented when determining whether relief should be granted. (*Id*. at p. 1778.)

> The showing required of a petitioner seeking relief because of mistake, inadvertence, surprise or excusable neglect under section 946.6 is the same as required under Code of Civil Procedure section 473 for relieving a party from default judgment. In the cases applying section 473, it is not every mistake that will excuse a default, the determining factor being the reasonableness of the misconception. This principle likewise applies to excusable neglect, which is "'that neglect which might have been the act of a reasonably prudent person under the same circumstances.'"

(*Shank v. County of Los Angeles* (1983) 139 Cal.App.3d 152, 156-157 [internal citations omitted].)

Here, the alleged date of the accrual of the cause of action is January 4, 2022. Petitioner claims that a timely claim was filed on January 18, 2022, by mail, but that unbeknownst to petitioner, it was not received by the City of Fresno. A duplicate claim and application to file a late claim was simultaneously submitted to the City on December 22, 2022. The application to file a late claim was made on December 22, 2022, which was within one year of the accrual date of the cause of action. The City denied the application and claim on December 30, 2022. The instant petition was filed on February 8, 2023, which was within six months of the City's denial of petitioner's application to present a late claim. Therefore, petitioner has timely submitted her petition to the court for relief from the claim filing requirements.

Petitioner's verified petition declares that her counsel did, in fact, present a timely claim on her behalf to the City on January 18, 2022. (Ver. Petn., ¶ 4.) Although the City attempts to argue that petitioner did not present a timely claim because the City did not receive it, the claim is deemed presented and received when mailed, i.e., when placed in a properly addressed, sealed, postage prepaid envelope and deposited in the U.S. mail. (Gov. Code, § 915.2, subd. (a)(2).) However, the claim be delivered or mailed to the clerk, secretary, auditor, or to the governing body at its principal office, unless a party is expressly authorized to submit it electronically. (*Id*., subd. (a); *DiCampli-MIntz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991-992 [delivery to someone other than a statutorily designated recipient does not satisfy the claim presentation requirement].)

Other than simply presenting the verified petition itself, petitioner has submitted no evidence that the claim was actually mailed, much less mailed to the proper entity. In fact, petitioner fails to even specify who placed the envelope in the mail or otherwise provide any record or declaration (by the party who placed the claim in the mail) that

the claim was actually made. Although petitioner attaches a copy of her application for leave to present late claim, which includes a declaration by defense counsel indicating that his "office submitted [petitioner's] government claim for damages by mail…", the declaration fails to identify who placed the claim in the mail and where it was addressed to. (Ver. Petn., Exh 2.) The declaration also attaches an exhibit showing the metadata for the electronic file used to draft petitioner's claim; however, the metadata only shows that the claim was drafted on January 17, 2022, not that it was actually mailed. (*Ibid*.) Proof of mailing may also be made by filing a proof of service in accordance with Code of Civil Procedure, section 1013a, which petitioner has not done. (Gov. Code, § 915.2, subd. (c).) Thus, petitioner has failed to demonstrate that a timely claim was presented to the City.

Moreover, as the City points out, if petitioner presented her claim on January 18, 2022, as she alleges, this act would have started the clock for the City's 45-day timeframe, plus an additional five days if the claim was presented by mail, to either accept or reject the claim. (Gov. Code, §§ 912.4, subd. (a); 915.2, subd. (b).) Upon the public entity's failure to act within this time period, the claim is deemed rejected by operation of law. (Gov. Code, § 912.4, subd. (c).) If the claim is rejected by the public entity or deemed rejected by the public entity's inaction, the public entity is required to provide written notice of such rejection and warn the claimant of the 6-month statute of limitations on filing suit after rejection. (Gov. Code, § 913, subd. (b).)

Accordingly, if petitioner's counsel presented her claim by mail on January 18, 2022, it would follow that the City's opportunity to accept or reject the claim would have expired on March 9, 2022, and the 6-month statute of limitations for petitioner to file her action would have begun to accrue on that date. However, not only did petitioner fail to file her action within this 6-month timeline, but petitioner failed to reach out to the City to determine whether it received her claim until December 2022, when petitioner's counsel was preparing to file her action. There is no explanation for why petitioner's counsel was preparing her action in December 2022, three months *after* the 6-month statute of limitation would have expired if counsel filed petitioner's claim with the City on January 18, 2022.

"[A] petitioner or his attorney must show more than that they did not discover a fact until too late; they must establish that in the use of reasonable diligence they failed to discover it." (*Shank, supra,* 139 Cal.App.3d 152, 158.) Here, there is a total absence of evidence that petitioner or her attorney exercised reasonable diligence (or any diligence) in an effort to ascertain whether her claim was received (and accepted or rejected) by the City. And even if petitioner and her attorney were under the belief that a timely claim was filed on January 18, 2022, there has been no showing that petitioner or her attorney exercised reasonable diligence to timely file the action within the 6-month statute of limitations following the City's deemed rejection by inaction. As a result, petitioner has not demonstrated by a preponderance of the evidence that a timely claim was filed and that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect. Thus, the petition will be denied.

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 5/26/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Estrada v. United Parcel Services of America, Inc. et al.***
Superior Court Case No. 22CECG00447

Hearing Date: June 1, 2023 (Dept. 501)

Motion: by Defendant Fnu Surinder Kaur for Good Faith Settlement Determination

Tentative Ruling:

To grant.

Explanation:

Defendant Fni Surinder Kaur ("Kaur") seeks a determination of a good faith settlement under Code of Civil Procedure section 877.6, subdivision (a)(2). Under that section, a settlement entered by one or more of several joint tortfeasors may be determined by the court to be in "good faith." If the court does so, this bars any other joint tortfeasor from any further claims against the settling defendant for equitable comparative contribution, equitable indemnity or comparative fault. (Code Civ. Proc., § 877.6, subd. (c).)

Tech-Bilt v. Woodward-Clyde & Associates ("*Tech-Bilt*") provided the following non-exclusive list of factors for the court to consider in determining the "good faith" of a settlement: "…a rough approximation of plaintiff's total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement." (*Tech-Bilt v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, 499 [internal citations omitted].) The party asserting the lack of good faith shall have the burden of proof on that issue. (Code Civ. Proc. § 877.6, subd. (d).)

Kaur claims that her settlement with plaintiffs and nonparties Abigail Hernandez and Noemi Hernandez for a total of $100,000 is in good faith, and therefore all claims and cross-claims for contribution and equitable indemnity are barred.

Defendants United Parcel Service and Vincent Miranda Garcia (together "UPS") submit evidence in opposition to support their argument that Kaur's proportion of liability is more than other parties. (Nelson Decl., ¶¶ 2, 3, Ex. A, B [plaintiff Yesenia Hernandez Estrada's deposition testimony authenticating statements made by her and reported by the Traffic Collision Report].) UPS further submits that the settlement is not proportional to Kaur's liability, where at least plaintiff Eleuteria Hernandez Estrada testified having at least

one medical bill related to the incident that is the subject of this lawsuit in the amount of $460,000. (*Id.*, ¶ 4, Ex. C.) UPS thereon submits that Kaur's settlement for $36,000 with plaintiff Eleuteria Hernandez Estrada is demonstrative that Kaur's settlement at large is not in good faith. UPS argues that Kaur seeks to settle for only 8 percent of the medical damages which is not proportionate to Kaur's prospective share of liability.

On reply, Kaur argues that she has already stated she has no significant assets, and therefore settling on policy limits, as she did here, is sufficient to find a good faith settlement.

Based on the above, the court finds that UPS has not met its burden to demonstrate a lack of good faith. Bad faith is not established merely by a showing that a settling defendant with limited ability to satisfy a judgment will pay less than his or her theoretical proportionate share. (*Schmid v. Superior Court* (1988) 205 Cal.App.3d 1244, 1248.) Even where the claimant's damages are obviously great, and the liability certain, a disproportionately low settlement figure is often reasonable in the case of a relatively insolvent, and uninsured, or underinsured, joint tortfeasor. (*Id. citing Tech-Bilt*, *supra*, 38 Cal.3d at p. 499.) UPS bears the burden to demonstrate that Kaur has the financial capacity or insurance coverage limits to pay a reasonable settlement amount. (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 968 [finding that because the opposing party bears the burden to prove the settlement is not made in good faith, the opposing party could have presented evidence to show that the settling party had the financial capacity or insurance coverage limits to pay a reasonable settlement amount].)

The issue of the good faith of a settlement is on the basis of affidavits and counteraffidavits, or other evidence received for hearing. (Code Civ. Proc. § 877.6, subd. (b).) Nothing in evidence supports UPS's argument that Kaur is relatively solvent, or that she settled for less than policy limits.[1] Accordingly, Kaur's application for a good faith settlement determination under Code of Civil Procedure section 877.6, subdivision (a)(2), is granted.

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 5/30/2023.
(Judge's initials) (Date)

[1] Further, *Tech-Bilt* does not require that the settling defendants present such evidence. (*Cahill v. San Diego Gas & Elec. Co.*, *supra*, 194 Cal.App.4th at p. 968.)