SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16
HON. BENJAMIN T REYES II
Judge of the Superior Court
HEARING DATE: 07/16/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 16

The tentative ruling will become the ruling of the Court unless by 4:00 P.M. of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 16 (Dept16@contracosta.courts.ca.gov) to request argument and **must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why**. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00 P.M. of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.

Zoom link-
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ID: 161 950 4895
Password: 812674

Courtroom Clerk's Session

1. 9:00 AM CASE NUMBER: C23-02465
CASE NAME: KIM GILBERT BROWN VS. CLARKE WILSON
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:
This is a Case Management and Trial Setting Conference that trails the Motion for Trial Preference, Line #4. Counsel are ordered to meet and confer to discuss their trial calendars and to jointly present trial date availability at the trial setting conference following the hearing for Line #4.

2. 9:00 AM CASE NUMBER: C24-00834
CASE NAME: THE NORTH STAR CAPITAL FUND, LLC VS. JONATHAN PAE
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:
This is a Case Management Conference 9 (CMC) that trails the Motion to Set Aside / Vacate Default, Line #7. Counsel are ordered to appear for the CMC.

Law & Motion

3. 9:00 AM CASE NUMBER: C22-01911
CASE NAME: TYSHAUN BUTLER VS. HYATT HOTELS CORPORATION
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL RE: ILAN N. ROSEN JANFAZA, ESQ**
FILED BY: BUTLER, TYSHAUN
****TENTATIVE RULING:****

Summary

Counsel Ilan N. Rosen Janfaza's Motion to Withdraw as Counsel for Plaintiff Tyshaun Butler is **granted**.

Background

On March 26, 2025, Counsel Ilan N. Rosen Janfaza, who represents Plaintiff Tyshaun Butler, filed a Motion to be Relieved as Counsel. The Motion was supported by a Notice, Counsel's declaration, and Proof of Service by mail and electronic service. Counsel cites to a breakdown in the attorney-client relationship as the reason for withdrawal. Plaintiff Tyshaun Butler did not file an opposition or response with the Court. The next Court date for this matter is a case management conference scheduled for October 28, 2025 at 8:30 a.m..

Analysis

Cal. Rules of Court Rule No. 3.1362 and Cal. Code of Civ. Proc. §§284(1) and (2) sets forth the standard and procedure to be relieved as counsel of record. The Code and Rules permit an attorney to be changed at any time before or after judgment or final determination "upon the consent of both client and attorney," or "upon order of the court, upon the application of either client or attorney, after notice from one to the other." Plaintiff's Counsel has complied with the provisions of this rule and statute providing notice to Mr. Butler and supporting the motion with a declaration articulating the reasons for withdrawal.

Ruling

After reviewing the papers and arguments submitted by counsel and after considering and weighing the prejudice to both sides, and reviewing the relevant statutory and decisional authority, the Court finds that there is good cause to grant the Motion of Plaintiff's Counsel to be Relieved as Counsel of Record. This motion **is Granted**. Counsel shall submit a Proposed Order Granting Attorney's Motion to be Relieved as Counsel (Judicial Council Form MC-053) that includes notice of the Case Management Conference set for October 28, 2025 at 8:30 a.m. within five (5) days from the date of this hearing. The withdrawal is effective upon service of the executed Order to Plaintiff by mail and e-mail. Plaintiff's Counsel shall serve a copy of the Order to Plaintiff by mail at his last known address.

4. 9:00 AM CASE NUMBER: C23-02465
CASE NAME: KIM GILBERT BROWN VS. CLARKE WILSON
***HEARING ON MOTION IN RE: FOR TRIAL SETTING PREFERENCE - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**

FILED BY: GILBERT BROWN, KIM L
TENTATIVE RULING:

Before the Court is plaintiff, Kim L. Gilbert Brown's motion for trial preference, filed on December 18, 2024. Plaintiff seeks a preferential trial date no later than 120 days from the hearing of this motion (now set for hearing on July 16, 2025, after being reset twice due to Court unavailability).

Code of Civil Procedure, § 36(d) states that, in its discretion, a court may grant a motion for trial preference where it is accompanied by "clear and convincing medical documentation" concluding that a party suffers from an "illness or condition raising substantial medical doubt" that the party will survive beyond six months, and that satisfies the court that the interests of justice will be served by granting the preference.

Plaintiff argues that she is 63 years old and in declining health. In support of the motion, plaintiff provides a declaration from her doctor, Raymond Roque, M.D., as well as a declaration from counsel attaching various medical records. Counsel states that the plaintiff "has experienced three (3) separate fall episodes since the date of the incident; the last of which was August of 2024 and required extended rehabilitation." (Declaration of Tomas Ross, ¶8.) The records submitted do not reflect the alleged fall history, or the medical import of these falls.

Dr. Roque recites aspects of plaintiff's medical history, mentions plaintiff's ongoing need for dialysis, and states that plaintiff has not fully recovered from the incident at issue in this case. He further concludes plaintiff "should be granted an expedited trial due to the substantial medical doubt of survival beyond six (6) months and in the interest of justice." (Dr. Roque Decl., ¶12.)

However, defendants (Transdev Services, Inc., Tri-Delta Transit, Eastern Contra Costa Transit, and Clarke Wilson) oppose the motion, pointing out that none of the medical records introduced by the plaintiff are recent.

Dr. Roque's declaration was executed on November 27, 2024, i.e., over six months before this motion is being heard on July 16, 2025. The records provided do support a complex medical history and ongoing difficulties. However, as supplemented by the records in opposition to this motion, the prognosis is not abundantly clear since plaintiff does seem to have experienced some improvement. (See, e.g., Declaration of Counsel Natalie Garcia Lashinsky in Support of Opposition, Ex. 4.)

Where a motion for preference is granted, a court "shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party." (Code Civ. Proc., § 36 (f).)

The Court finds that Dr. Roque's conclusion that there is substantial medical doubt plaintiff will survive beyond six months is not clear and convincing medical documentation based on her current conditions, as required by Code of Civil Procedure section 36, subdivision (d). The Court is nevertheless sympathetic to plaintiff's diagnoses and conditions and acknowledges there is significant uncertainty where a plaintiff has a medical history as complex as the one here.

Accordingly, while the Court **denies** the motion for trial preference, it will endeavor to set a trial as soon as practicable for all involved. The Court trial setting conference is on calendar following this Motion.

5. 9:00 AM CASE NUMBER: C24-00551
CASE NAME: CHARLES DIMICK VS. MERCEDES-BENZ USA, LLC
***HEARING ON MOTION IN RE: FOR ORDER GRANTING RELIEF FROM WAIVER OF DISCOVERY OBJECTIONS FOR FAILURE TIMELY TO RESPOND TO SPECIAL INTERROGATORIES - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: MERCEDES-BENZ USA, LLC
****TENTATIVE RULING:****

See Line No. 6, Below.

6. 9:00 AM CASE NUMBER: C24-00551
CASE NAME: CHARLES DIMICK VS. MERCEDES-BENZ USA, LLC
***HEARING ON MOTION IN RE: FOR ORDER GRANTING RELIEF FROM WAIVER OF DISCOVERY OBJECTIONS FOR FAILURE TIMELY TO RESPOND TO SPECIAL INTERROGATORIES - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: MERCEDES-BENZ USA, LLC
****TENTATIVE RULING:****

Summary

This Tentative Ruling is for Lines 5 and 6. Both of Defendant's Motions are **Granted** as set forth herein.

Background

On December 17, 2024, Defendant Mercedes-Benz, LLC ("Defendant") filed a motion for an order granting Defendant relief from the statutory waiver of discovery objections due to Defendant's failure to timely to serve responses to Plaintiff's First Set of Requests for Inspection and Copying. The Notice of this Motion is erroneously captioned as "NOTICE OF MOTION FOR ORDER GRANTING RELIEF FROM WAIVER OF DISCOVERY OBJECTIONS FOR FAILURE TIMELY TO RESPOND TO SPECIAL INTERROGATORIES (C.C.P § 2031.300)" But, upon further review, the Court notes that this Motion is related to the first set of requests for inspection and copying, served by Plaintiff Charles Dimick ("Plaintiff") on April 18, 2024. The Motion is based on the ground that the failure to timely respond resulted from mistake, inadvertence, or excusable neglect and that prior to filing this motion, Defendant has served a response in substantial compliance with the requirements of Code of Civil Procedure sections 2031.210-2031.240, and 2031.280. The motion is based on Code of Civil Procedure § 2031.300.

On the following day, December 18, 2024, Defendant Mercedes-Benz, LLC ("Defendant") filed a second motion for an order granting Defendant relief from the statutory waiver of discovery objections due to Defendant's failure timely to serve responses to Plaintiff's Special Interrogatories, Set One also served on April 18, 2024. The second Motion is based on the same grounds that the failure to timely respond resulted from mistake, inadvertence, or excusable neglect and that prior to filing this motion, Defendant has served a response in substantial compliance with the requirements of Code of Civil Procedure sections §§ 2030.210-2030.280. The motion is based on Code of Civil Procedure § 2030.290.

Both Motions are supported by Notices, Memoranda of Points and Authorities, Declaration of Counsel

Vanessa Dao and Brian Hom, and were accompanied by proofs of service. The Court reviewed the declarations submitted by Counsel. Counsel Dao, who was the attorney responsible for responding to the discovery requests served by Plaintiff, declared under oath, that she had experienced health and medical issues that prevented her from timely responding to the Plaintiff's Request for Inspection and Copying and Special Interrogatories, Set One, served on April 18, 2024. Ultimately, as a result of her health issues, Counsel Dao had left the firm. Defendant claims to have served discovery responses, but said responses were admittedly late. Now, Defendant seeks an order granting Defendant relief from the statutory waiver of discovery objections in order to preserve said objections.

As of the date of this tentative ruling, Plaintiffs did not file a timely opposition.

Analyses

California Rules of Court, Rule 8.54(c) states, "A failure to oppose a motion may be deemed a consent to the granting of the motion."]; see *Cravens v. State Bd. of Equalization* (1997) 52 Cal. App. 4th 253, 257; *Gwaduri v. I.N.S*. (9th Cir. 2004) 362 F.3d 1144, 1146 [Where a party fails to file timely opposition to a motion, it is "well-within" the court's discretion to determine that such failure is "tantamount to a concession that its position in the litigation was not substantially justified."] (citing *Weil v. Seltzer*, 873 F.2d 1453, 1459 (D.C. Cir. 1989) [holding that a party who fails to file an opposition to a motion is deemed to have waived opposition and may not be heard to complain.]; see also *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue.]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779,784–785 [failure to support a point with reasoned argument and citations to relevant authority constitutes waiver].) Applied here, the Court finds that Plaintiff's failure to timely oppose both Motions is a deemed to be his consent to the granting of both motions.

Additionally, the Court also finds that Counsel Dao and Defendant demonstrates facts that support good cause for relief under the doctrine of mistake, inadvertence, surprise or excusable neglect pursuant to Cal. Code of Civ. Proc § 473(b). After reviewing the moving papers and applying the applicable statutory and decisional authorities, the Court makes the following findings and orders.

Ruling

Defendant's Motions for relief pursuant to Cal. Code of Civ. Proc § 473(b) are **granted**. The Court grants relief from the statutory waiver of discovery objections for Defendant's responses to Plaintiff's Request for Inspection and Special Interrogatories, Set One, served to Defendant on April 18, 2024. The objections contained in Defendant's responses are not waived and are preserved, pending future determination and ruling.

Defendant's Counsel shall prepare and e-file a proposed order conforming to the Court's ruling within five (5) days from the date of this hearing.

7. 9:00 AM CASE NUMBER: C24-00834
CASE NAME: THE NORTH STAR CAPITAL FUND, LLC VS. JONATHAN PAE
***HEARING ON MOTION IN RE: TO SET ASIDE/VACATE DEFAULT - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: PAE, JONATHAN

TENTATIVE RULING:

Defendant Jonathan Pae's motion to set aside the default is **granted.** Attorney Harrison is ordered to pay Plaintiff $4,000 in reasonable attorney fees.

Plaintiff North Star Capital Fund, LLC filed a complaint for breach of contract, fraud and interference with contractual relations and prospective economic advantage. Plaintiff made loans to various LLCs with Defendant Pae as a member of the LLC and/or guarantor of the loan. The complaint was filed in March 2024. Pae was served at his home in Porter Ranch by substitute service on June 11, 2024. Pae's default was taken on August 16, 2024. A motion to set aside was originally filed on September 24, 2024, however, that motion was taken off calendar on December 18, 2024 because it was not served on Plaintiff.

Defendant then filed this motion on December 18, 2024, which is within six months of the entry of default. Defendant's attorney attached a proposed answer to the motion papers. Defendant brings this motion under Code of Civil Procedure section 473(b), arguing both mandatory relief based on attorney fault and discretionary relief.

Code of Civil Procedure Section 473, subdivision (b), authorizes the trial court to relieve a party from a default judgment entered because of the party's or his or her attorney's mistake, inadvertence, surprise, or neglect. The section provides for both mandatory and discretionary relief. Discretionary relief applies when the default was taken due to the party or his representative's "mistake, inadvertence, surprise, or excusable neglect." Mandatory relief is available "whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect … ." (§ 473, subd. (b).) For mandatory relief, an attorney is not required to admit fault if the facts show that the attorney was at fault. (*Carmel, Ltd. v. Tavoussi* (2009) 175 Cal.App.4th 393, 401.)

Defendant explains that another one of his entities, 714 Alexandria, LLC, bought a property using a loan from Plaintiff with a personal guarantee from Pae. Plaintiff and 714 Alexandria tried to work out a deal in 2022 and 2023 regarding that dispute. Defendant's attorney Harrison represented Pae and 714 Alexandria in that dispute. 714 Alexandria was not named in the complaint here and in April 2024, 714 Alexandria filed for bankruptcy. Initially, 714 Alexandria was represented by attorney Bullock, but she became ill and was unable to continue. Defendant's current attorney then substituted in as counsel in the bankruptcy proceeding. (Harrison dec. ¶8.) Defendant argues that the bankruptcy proceeding for 714 Alexandria and this case are linked, however, Defendant has not provided any documents from the bankruptcy proceeding.

Defendant argues that Plaintiff took his default without informing attorney Harrison, which Plaintiff was familiar with given their communications in the bankruptcy proceeding. (Harrison dec. ¶¶9-11.) In opposition, Plaintiff's attorney includes a letter sent to Defendant and a copy sent to Harrison on April 29, 2024, informing them of this lawsuit and noting that they were unsure if attorney Harrison was representing Defendant in this case. (Furlow dec. 2 and ex. 1.) This is no evidence that Harrison responded to this letter.

Defendant argues that there is also mistake, surprise and excusable neglect because of the unexpected withdrawal of attorney Bullock. (Harrison dec. ¶¶7-8.) An email shows that someone emailed Bullock with a CC to Pae with an unspecified attachment and the subject line referring to this

email number and name. (Harrison dec. exhibit.) In September 2024, this same person forwarded the email to Harrison.

There are two possible avenues to find attorney fault here. First, someone related to Pae sent the summons and complaint to Bullock in early May. Yet, Bullock did not file an answer or other responsive pleading. Although there are still unanswered questions (and no declaration from Bullock), the Court accepts the representation from Harrison that Bullock was handling this case and that she became seriously ill before the default was entered in this case. Thus, the evidence shows that Defendant Pae sent the summons and complaint to his attorney and then the default was entered. That is sufficient to grant mandatory relief based upon attorney fault.

Next, the evidence shows that Harrison was sent a copy of the summons and complaint with a letter seeking to clarify if he represented Pae, but Plaintiff received no response. While it is not clear when Harrison started representing Pae in regard to this case, these facts coupled with the evidence regarding Bullock, show attorney fault by Bullock and/or Harrison.

Based upon this evidence, the Court finds that the default was taken due to attorney Bullock's and/or Harrison's neglect. Without a declaration from Bullock or Pae, there is insufficient evidence to show the default was due to a mistake, inadvertence, surprise, or *excusable* neglect. Thus, the facts here do not support discretionary relief under section 473(b).

Defendant also argues that Plaintiff should have notified Harrison before a default was entered. The cases that discuss the ethical importance of notifying opposing counsel before taking a default apply in situations where plaintiff's attorneys are aware of opposing counsel or know who to contact. Here, Plaintiff sent a letter to Harrison in April 2024 seeking to clarify if Harrison represented Pae and there is no evidence that Harrison contacted Plaintiff's attorneys until after the default was taken. Further, there is no evidence from Bullock regarding whether she reached out to Plaintiff's attorneys between the filing of this complaint and the default to inform them of her representation of Defendant or for any other reason.

In granting mandatory relief under section 473(b), the Court must order the attorney to pay reasonable attorney fees and costs to Plaintiff. Plaintiff requests $10,787.50 in attorney fees. In October 2024, Plaintiff estimated its fees related to the default at $3,777.50. (Furlow dec. ¶9.) Ultimately, Plaintiff incurred $6,047.50 in fees related to the default and preparation of the default judgment. (Furlow dec. ¶11.) Plaintiff then incurred $4,740 in fees associated with opposing this motion. (Furlow dec. ¶13.)

The Court has considered the request for attorney fees in the amount of $4,000. The Court has discounted the amount of fees because, while Plaintiff was not formally served with the first motion to set aside the default, they became aware of the motion and at that point continuing to prepare the default judgment packet was not reasonable. Further, it should not take much attorney time to request a default. Finally, while Plaintiff was entitled to spend some time preparing and researching the opposition to this motion, not all of the work was reasonable given the high likelihood of the motion being granted.

Finally, the Court is required to order the at-fault attorney to pay fees. Here, the evidence shows that both attorneys Bullock and Harrison were at fault. The Court has not heard from Bullock and without notice to Bullock (who might have evidence of excusable neglect) the Court declines to order her to pay fees. Therefore, attorney Harrison is ordered to pay $4,000 in fees.

Defendant shall prepare a proposed order that conforms to this tentative ruling, attaching the

ruling as an exhibit, and e-file it within five (5) days of the hearing.

8. 9:00 AM CASE NUMBER: C24-01096
CASE NAME: FRANCISCO CORDOVA ALFARO VS. MENLO WESTRIDGE AFFORDABLE PARTNERS, L.P.
***HEARING ON MOTION FOR DISCOVERY FOR MOTION FOR ORDER COMPELLING MENLO WESTRIDGE TO RESPOND TO INTERROGS & DOC DEMANDS, PRODUCE RESPONSIVE DOCS & IMPOSING MONETARY SANC - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: CORDOVA ALFARO, FRANCISCO
****TENTATIVE RULING:****

Summary

Plaintiff's Motion to compel discovery responses and for monetary sanctions is **granted** in part and **denied** in part.

Factual and Procedural Background

This case involves two fires that occurred at an apartment building located at 2493 Lancaster Drive, Richmond, CA. Defendant Menlo Westridge Affordable Partners LLP owns the building, and Plaintiffs Francisco Cordova Alfaro and Karina Cordova were tenants living in unit #F18. On January 21, 2023, there was a fire on the second floor of the building, and on October 29, 2023, another fire started on the first floor above the electrical room. Each time there was a fire, Plaintiffs were forced to vacate their unit. After the second time Plaintiffs were not allowed back into the building as it was deemed unsafe. Although Defendant offered to house Plaintiffs in another building, Plaintiffs' tenancy there lasted only thirty days. Plaintiffs were never able to recover their property from Unit #F18 at 2493 Lancaster Drive.

In its complaint Plaintiff alleges negligence, breach of contract, and breach of covenant of quiet enjoyment among other claims against Defendant. On August 5, 2024, Plaintiff served requests for discovery on Defendant's attorney, Mr. Andrew Gabriel. Defendant's responses became due on September 6, 2024. Having yet to receive Defendant's responses, Plaintiff demanded late responses on September 30. On December 16, 2024, Plaintiff filed the present motion to compel discovery. On March 7, 2025, Defendant filed an association of counsel (Mr. Joseph O'Neil). On April 16, 2025, Plaintiff filed substitution of attorney. On June 8, 2025, Mr. O'Neil met with Karan Suri (owner of Defendant Menlo) in order to produce discovery responses. As of June 26, 2025, Mr. Andrew Wolff represents Plaintiffs Francisco Cordova Alfaro and Karina Cordova. On July 2, 2025, Defendant sent responses to discovery to Plaintiff's counsel and filed opposition to Plaintiff's motion to compel and monetary sanctions.

Analyses

Sanctions
On the issue of sanctions, Defendant requests that this Court take judicial notice of the ruling in the *Cheng v. Greystar* matter, along with Karan Suri's declaration. The Court's ruling in that case denies sanctions while granting a motion to compel discovery responses against Menlo's property manager, Greystar. (Def. Req. Judicial Notice, Exhibit B). The Court has examined Defendant's declaration and the Commissioner's ruling in that matter. However, Plaintiff claims that the case at bench is distinguishable because Mr. O'Neil was notified of outstanding discovery requests after this Motion was filed, whereas additional counsel in *Cheng v. Greystar* was notified before moving to compel

(Decl. of McGee at 2). This Court reserves the right to issue its own ruling on the case at bench.

Six (6) months passed after Defendant's counsel Mr. Gabriel received Plaintiff's discovery requests and before Mr. O'Neil associated into this case. Not until June 8, 2025, did Mr. O'Neil meet and confer with Mr. Suri to prepare discovery responses. According to Mr. O'Neil, he had not received any files after associating to this case and only obtained the discovery requests on June 8, 2025 (Def. Opp. at 1-2, Decl. O'Neil at 2). Mr. Suri also stated that "at no point in November or December" did Mr. Gabriel inform Defendant of the outstanding discovery, and that he met with Mr. O'Neil shortly after learning of the discovery requests on June 8, 2025 (Decl. of Karan Suri). After considering these representations made to the Court under oath, the Court finds that Mr. O'Neil and Mr. Suri do have a substantial justification (under Cal. Code of Civ. Proc. § 2025.450(c)) for their delay in issuing discovery responses to Plaintiff.

The Court finds that Counsel Gabriel neglected his obligation to respond to Plaintiff's discovery. The intent behind the Civil Discovery Act was to remove gamesmanship from the discovery process and ensure a swift and fair exchange of information prior to adjudicating disputes. Here, Counsel Gabriel has hindered the discovery process by his failure to respond to discovery requests and his lack of communication with Mr. O'Neil and Mr. Suri. Counsel Gabriel has not provided sufficient justification, nor does the Court find circumstances here that would make the imposition of sanctions unjust. Therefore, such conduct is sanctionable under Cal. Code of Civ. Proc. § 2023.010.

Because Plaintiff's counsel, Mr. Wolff, substituted into this matter only six (6) days before discovery responses were sent by Mr. O'Neil, the Court finds no prejudice as to Plaintiff's counsel. However, the Court cannot ignore the significant amount of time it has taken to produce this discovery. Originally propounded on August 5, 2024, it has taken just short of a year for a response to be tendered. Such a lengthy delay without justification is unacceptable, notwithstanding the changes in counsel. Both parties have a right to a timely resolution of civil disputes. Cal. Code of Civ. Proc. § 1775. *See also* Cal. Gov. Code § 68603. In this case, the right of Plaintiffs Francisco Cordova Alfaro and Karina Cordova to a timely resolution has been prejudiced, principally by Counsel Gabriel's inaction.

Sanctions for an attorney's failure in failing to respond to a request for discovery may be imposed on counsel and not on the represented party. Cal. Code of Civ. Proc. § 575.2. *Id*. at § 2023.030. *See also* Cal. Rules of Court, Rule 2.30 (If failure to comply with rules is responsibility of counsel, penalty must be imposed on counsel and not adversely impact party's defense). After being given an opportunity to be heard, the court may order the responsible party to pay monetary sanctions to the court, a party, a party's attorney, or a party's witness. *Id*. An award of sanctions against Mr. Gabriel would not prejudice Defendant's case, as Mr. O'Neil is also working on Menlo's defense.

<u>Scope of Discovery</u>

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultant*s (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc*., supra, 148 Cal.App.4th at 402.

On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information

sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a).

If the propounding party is not satisfied with the responding party's responses to discovery, it may move the court to compel further responses. Code Civ. Proc. § 2030.300, 2031.310. The propounding party must show that the responses were incomplete, inadequate, or evasive, or that the responding party's objections are without merit or too general. Code Civ. Proc. § 2030.300(a)(1-3), see also *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, (2007) 148 Cal. App. 4th 390, 403.

Documents

Although Defendant has submitted untimely responses to Plaintiff's requests for documents, the Court can exercise its discretion not to waive a respondent's objections to discovery if it finds excusable neglect. Code Civ. Proc. § 2030.290 (a)(2). As stated above, Defendant and counsel represent that they were not on notice of this discovery request and served responses in a timely manner once they became aware of the outstanding discovery. The Court will not waive Defendant's objections to discovery as a matter of law.

Defendant labels Plaintiff's requests for production as "abusive" (Def. Opp. at 3). However, Plaintiff is within its rights to make such requests. *See* Code of Civ. Proc. § 2031.300. Defendant further argues that its property manager, Greystar, is the principal entity in this case and thereto redirects all of Plaintiff's document requests. Defendant explains that it was Greystar that communicated with the Plaintiffs during their tenancy and not Menlo (Def. Opp. at 4). Given this representation, Defendant's redirect to Greystar for responses regarding communications with Plaintiffs seems appropriate.

However, as Plaintiff points out, Defendant claims that it could not find documents regarding basic information such as ownership of the premises (Request 1) and insurance coverage limits (Request 14). At the same time, Defendant provides documents such as its property management agreement and evidence of commercial property insurance (Decl. of O'Neil at 74-108). Defendant provides documents that indicate its ability to respond to Plaintiff's requests, while claiming to be unable to answer such requests. Where Plaintiff's requests for documents do not pertain to Menlo's communications with Plaintiffs, or routine maintenance delegated to Greystar as per the "Management Agreement" (Decl. of O'Neil 74-97), Defendant must provide code compliant responses.

Furthermore, the documents Defendant did provide are not compliant with Code of Civ. Proc. § 2031.280(a) ("[a]ny documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request to which the documents respond"). Per code, Defendant must attribute produced documents to the relevant discovery requests.

Interrogatories

In its reply to Defendant's opposition to this motion, Plaintiff does not raise any specific issues regarding Defendant's responses to interrogatories served on July 2, 2025. As per Code of Civ. Proc. § 2030.290(a), the Court finds that Defendant subsequently served substantially compliant responses and that Defendant's failure to serve timely responses was due to excusable neglect. Therefore, compelling responses and/or imposition of sanctions is inappropriate.

Ruling

The Court makes the following rulings:

Form Interrogatories
Denied, Defendant subsequently produced code compliant responses to form interrogatories.

Requests for Documents
Granted, Defendant shall produce code compliant responses to Plaintiff's requests for documents (excluding requests 4, 9, 21, 22, 43, 44, 48, 70-85, 96-101) within thirty (30) days of this order.

Sanctions
$4,650 in sanctions against Mr. Andrew Gabriel **granted**, to be paid to Plaintiffs Francisco Cordova Alfaro and Karina Cordova. Sanctions shall be paid within thirty (30) days of the date of this order.

$2,625 in additional sanctions for time spent by Plaintiff's counsel responding to Defendant's opposition to this motion is **denied**.

Plaintiff's counsel shall prepare a proposed order that conforms to this ruling no later than five (5) days from the date of this order, attaching the tentative ruling as an exhibit, and shall e-file with the Court.

9. 9:00 AM CASE NUMBER: C24-01926
CASE NAME: PETER HO VS. CITY OF CITRUS HEIGHTS
HEARING ON DEMURRER TO: TO PLAINTIFF'S COMPLAINT, FILED BY DEFT CITY OF CITRUS HEIGHTS - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY
FILED BY:
TENTATIVE RULING:

Before the Court is a demurrer to the complaint. For the reasons set forth, the demurrer is **sustained, with leave to amend**.

Background

Plaintiff Peter Ho filed a "Complaint for Wrongful and Fraudulent Home Receivership" against the City of Citrus Heights ("City") initiating this action on July 26, 2024. It is not clear from the Complaint whether Plaintiff names other defendants ("Code Enforcement Police Dept., City Law Firm Jones & Mayer, City Designated Receiver Eric Beatty").

The Complaint generally alleges that a "wrongful and fraudulent home receivership for building health and safety code" issues. (Compl. p. 1.) He alleges his rights were violated by the home receivership from January 2021 through June 2024 and continuing. (Compl. p. 2.) The Complaint refers to prior litigation and rulings in the prior litigation apparently in Sacramento County. Plaintiff contends he was denied a fair trial. (Compl. pp. 3-5, 11, 16.)

Ho's Complaint disputes actions taken by Eric Beatty, who was a court-appointed receiver in the prior litigation initiated by the City for Health & Safety Code violations (see Def. RJN Exhs. 1-4), and the applicability of the Health & Safety Code receivership provisions. (Compl. p. 6-7, 9.) He asserts claims for monetary damages based on what he contends was the wrongful imposition of the receivership and wrongful conduct of the receivership. (Compl. pp. 7-9.) The Complaint also alleges other wrongdoing, including allegations or perjury, false evidence, and false testimony in the underlying Receivership Case, defined below (Compl. pp. 1-19) and also misconduct related to Ho's subsequent

lawsuit filed against the City in 2023 in the Sacramento County Superior Court, discussed further below (Compl. pp. 20-24).

Legal Standards Governing Demurrer

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the complaint, but not legal or factual conclusions or contentions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 374.) The Court gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation omitted.]" (*Evans v. City of Berkeley* (2006) 38 Cal. 4th 1, 6.) (*See also* Code Civ. Proc. § 452.) Statutory causes of action must be pleaded with particularity; the "complaint must plead every fact which is essential to the cause of action under the statute.'" (*Baskin v. Hughes Realty, Inc.* (2018) 25 Cal.App.5th 184, 207.) (*See also Fischer v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 604.)

In ruling on a demurrer, the Court also considers matters of which the Court can properly take judicial notice. (*Carloss v. County of Alameda* (2015) 242 Cal. App.4th 116, 123.) "[I]t is well established a trial court may take notice of an earlier judgment in deciding whether to sustain a demurrer on *res judicata* grounds." (*Kirkpatrick v. City of Oceanside* (1991) 232 Cal.App.3d 267, 281 [citing *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 486].) "The court may sustain a demurrer on claim preclusion grounds '[i]f all of the facts necessary to show that the action is barred are within the complaint or subject to judicial notice . . . .' [Citation omitted.]" (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1190-1191 [quoting *Carroll v. Puritan Leasing Co., supra,* 77 Cal.App.3d at 485].)

"The plaintiff bears the burden of establishing that the facts pleaded establish every element of the cause of action. [Citation omitted.] Plaintiff must overcome each legal ground upon which the trial court sustained the demurrer. [Citation omitted.] Finally, plaintiff must prove there is a reasonable possibility that he can amend his pleading to overcome any legal defects. [Citation omitted.]." (*Gillies v. JPMorgan Chase Bank, N.A.* (2017) 7 Cal.App.5th 907, 912.)

Meet and Confer Satisfied

The Court continued the hearing on the City's demurrer for the parties to comply with the meet and confer requirements of Code of Civil Procedure section 430.41(a). In its tentative ruling issued for the March 12, 2025 hearing, the Court informed the parties that the meet and confer obligation is imposed on both the plaintiff and the defendant. Defendant City has demonstrated in its supplemental brief and declaration that it made multiple efforts to schedule a call with Plaintiff and that Plaintiff failed to respond. Ho filed a supplemental reply disputing the City's version of events again, but to some extent acknowledging he did not respond to the meet and confer request. Under Code of Civil Procedure section 430.41(a)(4), the Court cannot sustain or overrule a demurrer based on the adequacy or inadequacy of the meet and confer process. Under the circumstances, the Court finds that given the considerable delays, the parties' efforts to meet and confer regarding the issues raised in the demurrer have been sufficient and that the Court should rule on the merits.

City's Request for Judicial Notice

The City asks the Court to take judicial notice of Court filings and orders of the Sacramento County Superior Court in the actions *City of Citrus Heights v. Peter Y. Ho*, Case No. 34-2021-00292266 ("Receivership Case") (Def. RJN Exhs. 1-4), and *Peter Y. Ho v. City of Citrus Heights*, Case No. 34-2023-

00335222 ("2023 Ho Action") (Def. RJN Exhs. 5-11.) The request is unopposed, and the Court grants the request, subject to the applicable limitations on judicial notice under the case law. (*StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9; *Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-115; *Sosinsky v. Grant* (1992) 6 Cal. App. 4th 1548, 1569 [judicial notice of prior order or judgment].) The Court notes that Ho filed a notice of related cases on February 28, 2025 which identifies the Receivership Case and the 2023 Ho Action as related cases.

Analysis

Plaintiff's claims all arise out of two prior actions between Ho and the City in the Sacramento County Superior Court. The City demurs to the Complaint on the ground that the Complaint fails to state a cause of action against the City because (a) the claims are barred by *res judicata* based on an order sustaining a demurrer without prejudice and for dismissal of the Ho 2023 Action; (b) Plaintiff fails to allege he filed a timely government claim against the City and did not obtain leave to file a late claim regarding his claim the receivership imposed in the Receivership Case was improper; (c) Plaintiff fails to allege the statutory basis under the Government Code for any alleged liability of the City in his Complaint; and (d) the City, and its employees and attorneys are immune from liability to Plaintiff under the Government Code.

A. Res Judicata

The Court may take judicial notice of prior orders in another action in ruling on a demurrer to determine if the claims asserted in the current litigation are barred by *res judicata* or collateral estoppel. (*Shine v. Willliams Sonoma Inc.* (2018) 23 Cal.App.5th 1070, 1076-1077.) In taking judicial notice of the content of the prior orders in the Receivership Case and the 2023 Ho Action, the Court does not accept that the findings are necessarily correct, but rather that the findings were made and the issues or claims therefore determined in the prior final orders such that the orders bar relitigation of issues or claims decided in those prior actions. (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120 ["Judicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding. [Citations omitted.] 'A court may take judicial notice of [another] court's action, but may not use it to prove the truth of the facts found and recited. [Citations.]' [Citations omitted, italics in original.]"]; *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 148 ["[E]ven though a factual finding in a prior judicial decision may not establish the truth of that fact for purposes of judicial notice, the finding itself may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action."].)

The City's *res judicata* argument is that the order sustaining the demurrer without leave to amend and dismissing the Ho 2023 Action with prejudice operates as a bar to litigation of the claims in the Complaint in this case. Code of Civil Procedure section 581(f)(1) allows a court to dismiss an action with prejudice when a demurrer is sustained without leave to amend, as the Court did in the Ho 2023 Action. (RJN Exh. 11.)

The City cites two decisions to support its brief argument that the claims alleged in the Complaint are barred by *res judicata*, *Torrey Pines Bank v. Superior Court* (1989) 216 Cal. App.3d 813 and *Estate of Redfield* (2011) 193 Cal. App. 4th 1526, 1533. The Court in *Torrey Pines* addressed a voluntary dismissal with prejudice of a complaint by a plaintiff. The Court explained, "A retraxit is equivalent to a judgment on the merits and as such bars further litigation on the same subject matter between the parties. [Citations omitted.] [¶] A dismissal with prejudice is the modern name for a common law

retraxit. [Citation omitted.] Dismissal with prejudice under section 581 "has the same effect as a common law retraxit and bars any future action on the same subject matter. [Citations omitted.] Dismissal with prejudice is determinative of the issues in the action and precludes the dismissing party from litigating those issues again. [Citation omitted.] " 'The statutory term "with prejudice" clearly means the plaintiff's right of action is terminated and may not be revived.' [Citation omitted.]" (*Torrey Pine*s, supra, 216 Cal.App.3d at 820-821.) (*See also Estate of Redfield, supra,* 193 Cal.App.4th at 1533.)

However, with respect to an order sustaining a demurrer without leave to amend and dismissal of an action, the *res judicata* effect of such an order depends on the grounds on which the demurrer was sustained. (*See, e.g., Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1427-1428; *Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 855.) Demurrers sustained on statute of limitations grounds, for example, are not "on the merits" and are not accorded *res judicata* effect. (*Boyd, supra,* 18 Cal.App.5th at 855.)

The order sustaining the demurrer in the Ho 2023 Action was on the ground that Ho did not allege he timely filed a government claim to challenge the imposition of the receivership in April 2021, and that the deadline for filing such a claim had passed by the time he filed the Ho 2023 Action, and that Ho did not allege he timely applied to the City to accept a late claim, and if the application was denied, timely moved for relief from the government claim filing requirement. (RJN Exh. 11.) The order does not address or rule on the alternative grounds for the City's general demurrer for failure to allege facts sufficient to state a cause of action against the City. (RJN Exh. 11.) The City has not addressed in its briefing whether an order sustaining a demurrer for an untimely government is a determination on the merits that is entitled to *res judicata* effect under applicable law.

While the City argues in its reply that Ho did not respond to the City's *res judicata* arguments, Ho's opposition raises the claim that the order sustaining the demurrer and dismissing the case should not be accorded *res judicata* effect because of "fraud." Certain fraud, specifically extrinsic fraud, can support a collateral attack on an order or judgment. (*Kremerman v. White* (2021) 71 Cal.App.5th 358, 370 [addressing void judgments under Code of Civil Procedure section 473(d) that may be set aside for "extrinsic" fraud where the fraud may only be demonstrated evidence rather than on the face of the record]; *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1071 [addressing elements to set aside a judgment based on extrinsic fraud].) It is not whether the allegations of the Complaint here allege extrinsic fraud; they appear to allege intrinsic fraud. (*See generally Buesa v. City of Los Angeles* (2009) 177 Cal.App.4th 1537, 1544-1545 [addressing and applying finality of judgment principles and intrinsic and extrinsic fraud in *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1].) Nevertheless, the City did not brief or address the fraud issue raised in the opposition as the basis Ho apparently contends for his collateral attack on the order in the Ho 2023 Action.

The Court is not persuaded that the City has met its burden on demurrer of demonstrating the claims Ho alleges in the Complaint are barred by *res judicata* as a matter of law. It may well be that issue preclusion and/or claim preclusion bar the claims Ho is asserting, but the Court cannot make that determination as a matter of law on the record before it.

B. <u>Failure to Allege Timely Presentation of Government Claim</u>

The City argues the timely filing of a government claim is a prerequisite to filing suit against the City

under Government Code section 945.4, and that such a claim must be filed within six months of the date the cause of action accrues. (Govt. Code §§ 911.2 and 954.4.) The timely presentation and rejection of a government claim before filing suit is an element of a plaintiff's cause of action against a public entity that must be alleged in the complaint. (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209.) (*See also State of California v. Superior Court ("Bodde")* (2004) 32 Cal.4th 1234, 1240-1241 [claims presentation requirements are "elements of the plaintiff's cause of action and conditions precedent to the maintenance of the action," citing *Williams v. Horvath, supra,* 16 Cal.3d at 841].) A plaintiff can seek leave from the public entity to file a late claim under Government Code section 911.4, but such an application must be filed within one year after the cause of action accrues. A plaintiff can also seek relief from the government claim filing requirement, but the petition must be filed within six months after the application for leave to file a late claim is denied by the public entity. (Govt. Code § 946.6(b).)

The City correctly argues that the Complaint does not allege anywhere that Ho filed a timely government claim covering the claims alleged in the Complaint within six months of their accrual. The failure to make such allegations means the Complaint is subject to a general demurrer for failure to state a cause of action against the City, because that essential element is a necessary allegation to state Ho's claim(s). (*Bodde, supra,* 32 Cal.4th at 1240-1241.)

C. <u>Failure to Allege Statutory Basis for Liability of City</u>

Under the Government Claims Act and principles of sovereign immunity, a public entity is only subject to tort liability if there is a statutory basis for governmental liability. (Govt. Code § 815; *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897 [no common law tort liability]; *Williams v. Horvath* (1976) 16 Cal.3d 834, 838 [sovereign immunity].) Because statutory claims must be alleged with particularity and all government tort claims are based on statute, the complaint against a public entity must identify the statutory grounds for liability and cite the specific statute or statutes on which liability is based. (*Searcy v. Hemet Unified School District* (1986) 177 Cal.App.3d 792, 802.) (*See also de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247 ["[T]he statutory framework requires, as a condition to the injured party's recovery on a direct liability theory against a governmental agency, that the injured party identify a 'specific statute declaring [the entity] to be liable, or at least creating some specific duty of care' by the agency in favor of the injured party. [Citation omitted.]," quoting *Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183].)

The Complaint fails to allege and cite the specific Government Code or other statutes that allow Ho to try to impose liability on the City as a public entity. The Complaint only refers to the Health & Safety Code and specifically Health & Safety Code sections 17980.1 through 17980.8, which are the statutes authorizing the appointment of a receiver for Health & Safety Code violations and related procedures. (Compl. pp. 12, 13.)

The City also argues there is no statutory basis for imposing liability on the City for conduct by the receiver. "A receiver is an officer of the court and is subject to the court's continuing control; a receiver only has those powers granted to it by statute or an order of the court. [Citations omitted.] The receiver, acting for the court, is not the agent of any party but acts for the benefit of all holding an interest in the receivership property. [Citations omitted.]" (*City of Sierra Madre v. SunTrust Mortgage, Inc.* (2019) 32 Cal.App.5th 648, 656.) (*See also* Code Civ. Proc. § 568; Cal. Rules of Court, rule 3.1179(a).) It is not clear what, if any, statutory basis Ho can allege to state a claim against the

City based on alleged acts or omissions of the Court-appointed receiver in light of the receiver's status as an officer of the Court, not an agent of the City or any other party to that action. Nevertheless, the Court will grant Ho leave to try to amend.

The general demurrer to the Complaint for failure to allege specific statutory grounds for the City's liability and cite the allegedly applicable statutes is **sustained, with leave to amend.**

D. Statutory Immunities

The City argues that the City itself, its City Council members, staff, and city attorneys are immune from liability under a number of Government Code immunity statutes. Based on the Court's finding demurrers for failure to allege the timely filing of a government claim and the statutory bases for Ho's claims are well-taken, the Court does not need to reach the City's arguments on immunity.

Summary Ruling

The City's general demurrer to the complaint is **sustained, with leave to amend**, on the grounds stated.

10. 9:00 AM CASE NUMBER: C24-02203
CASE NAME: KAREN COLEMAN VS. UNITED STATES FIRE INSURANCE COMPANY
***HEARING ON MOTION IN RE: TO CHANGE HEARING DATE FOR SECOND DEMURRER**
FILED BY: COLEMAN, KAREN
****TENTATIVE RULING:****

Before the Court is a motion by plaintiff Dr. Karen Coleman to change the hearing date on U.S. Fire Insurance Company's demurrer to the first amended complaint. The motion is **denied as moot** based on the Court's prior order of June 18, 2025 continuing the hearing on the demurrer and Coleman's motion for leave to file a second amended complaint to **9:00 a.m. on August 6, 2025**.

11. 9:00 AM CASE NUMBER: C24-02539
CASE NAME: SURPLUS PROPERTY AUTHORITY OF THE CITY OF RICHMOND VS. KEVIN BROWN
HEARING ON DEMURRER TO: COMPLAINT - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY
FILED BY: BROWN, KEVIN P.
****TENTATIVE RULING:****

Defendant Kevin P. Brown's Demurrer to Plaintiff Surplus Property Authority of the City of Richmond's Complaint is **overruled**. SPA shall prepare the order and serve and file notice of its entry. Brown shall have ten (10)days from notice of entry of order to serve and file an answer to the complaint.

Background

This action arises from a commercial lease dispute concerning premises located at 1325 Canal Boulevard, Richmond, California. Plaintiff Surplus Property Authority of the City of Richmond (SPA) alleges that on or about January 1, 2015, it entered into a written lease agreement (the Lease) with

defendant Riggers Loft Wine Company (RLWC), permitting RLWC to operate a winery and tasting room on the premises for a term of twenty years. Under the Lease, RLWC agreed to pay base monthly rent of $8,400, subject to annual CPI increases, as well as late fees and interest on delinquent amounts.

The complaint alleges that RLWC has struggled to pay rent since the early years of the tenancy, resulting in multiple payment plans and two stipulated judgments in prior unlawful detainer actions. SPA contends that RLWC fell behind again during the COVID-19 pandemic and requested rent forbearance, citing the *force majeure* event of government-mandated closures. SPA alleges it granted partial forbearance, allowing RLWC to defer certain monthly rent payments during the period of COVID-19 restrictions while requiring continued monthly payments of $3,148.81 under the prior stipulated judgment.

SPA alleges that although statewide COVID-19 restrictions were lifted on June 15, 2021, RLWC failed to resume full rent payments and did not repay deferred amounts within the agreed timeframe. SPA further alleges that RLWC remains in arrears for significant sums of rent, including several months' rent due in 2024, and that efforts to negotiate repayment were unsuccessful. SPA ultimately issued a Notice of Default on August 30, 2023, citing both monetary and non-monetary lease defaults, followed by a final pre-litigation demand. RLWC apparently remains in possession of the premises as of the filing of the complaint.

SPA filed this action on September 20, 2024, asserting a single cause of action for breach of contract against both RLWC and Kevin P. Brown (Brown), RLWC's principal and alleged alter ego. The complaint alleges that Brown dominated, influenced, and controlled RLWC; that Brown is RLWC's CEO, CFO, and sole principal; that Brown and RLWC commingled funds and shared bank accounts and business addresses; and that Brown organized RLWC as a shell entity to avoid personal liability. SPA pleads that adherence to RLWC's separate corporate existence would sanction fraud and promote injustice, potentially leaving SPA unable to collect a judgment in this case.

RLWC answered. However, defendant Brown now demurs to the complaint, arguing that SPA fails to state facts sufficient to constitute a cause of action for breach of contract against him individually. Brown contends that he is not a party to the Lease, that no contractual privity exists between himself and SPA, and that the complaint fails to allege sufficient facts to pierce the corporate veil under an alter ego theory. Brown further contends the breach of contract claim is uncertain.

SPA opposes the demurrer, asserting that the alter ego allegations are sufficiently pleaded, supported by factual detail rather than conclusory statements, and that the issue of alter ego liability presents a question of fact unsuitable for resolution on demurrer.

Legal Standards

The function of a demurrer is to test the sufficiency of the pleading it challenges by raising questions of law. (*Salimi v. State Comp. Ins. Fund* (1997) 54 Cal.App.4th 216, 219.) The Court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Court is required to give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Id*.)

Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (e) are

disfavored. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.)

Meet and Confer

Before filing a demurrer or a motion to strike, the demurring or moving party is required to "meet and confer in person or by telephone" with the party who filed the pleading demurred to or the pleading that is subject to the motion to strike for the purpose of determining whether an agreement can be reached through the filing of an amended pleading that would resolve the objections to be raised in the demurrer. (CCP §§ 430.41 and 435.5.)

The demurrer includes a declaration from counsel, Daniel Butt, stating that on December 3, 2024, he met and conferred via telephone with SPA's counsel, Alison Flowers, regarding the legal bases for the demurrer, but the parties did not reach agreement resolving the objections. This satisfies the requirements of CCP § 430.41(a)(3).

Uncertainty

A demurrer for uncertainty under CCP § 430.10(f) is disfavored and will only be sustained if the pleading is so unintelligible that the defendant cannot reasonably frame a response. (*Khoury v. Maly's of California, supra,* 14 Cal.App.4th at 616.)

The allegations in the complaint are sufficiently clear to enable Brown to respond and do not meet the standard for sustaining a demurrer on the ground of uncertainty. Thus, the demurrer for uncertainty is overruled.

Sufficiency of the Alter Ego Allegations

The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300.) There is no litmus test to determine when the corporate veil will be pierced; rather, the result depends on the circumstances of each particular case. Two general requirements must be met: (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that treating the acts as those of the corporation alone would result in an inequitable outcome. (*Mesler*, *supra*, 39 Cal.3d at p. 300; *Automotriz etc. de California v. Resnick* (1957) 47 Cal.2d 792, 796; *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)

"Among the factors to be considered in applying the doctrine are commingling of funds and other assets, holding out by one entity that it is liable for the debts of another, identical ownership, use of the same offices and employees, and use of one entity as a mere shell or conduit for the affairs of another. Other factors include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. No single characteristic

governs. Courts look to the totality of the circumstances. (*Sonora Diamond, supra,* at pp. 538–539.)

"The law as to whether courts will pierce the corporate veil is easy to state but difficult to apply." (*Talbot v. Fresno-Pacific Corp*. (1960) 181 Cal.App.2d 425, 432.) Because it is founded on equitable principles, application of the alter ego doctrine is not made to depend upon prior decisions involving factual situations which appear to be similar; rather, the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case. (*McLoughlin v. L. Bloom Sons Co., Inc*. (1962) 203 Cal.App.2d 848, 853.) The essence of the alter ego doctrine is that justice be done. What the formula comes down to, once shorn of verbiage about control, instrumentality, agency, and corporate entity, is that liability is imposed to reach an equitable result. (*Mesler*, *supra*, 39 Cal.3d at p. 301.)

A court may sustain a demurrer to alter ego allegations if the facts alleged are insufficient to demonstrate alter ego liability. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74; *Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 196, fn. 26.)

Here, the complaint sets forth sufficient allegations in support of SPA's alter ego theory. SPA alleges, on information and belief, that Kevin Brown is the CEO, CFO, and sole principal of RLWC (¶ 7(b)); that Brown dominates and controls RLWC's business, property, and affairs (¶ 7(a)); and that there exists such a unity of interest and ownership between Brown and RLWC that their separate personalities have ceased to exist. (¶ 7(c).) Plaintiff further alleges that RLWC is merely a shell corporation that Brown uses as a conduit for his personal business dealings. (¶ 7(d).) Specific factual allegations include that Brown and RLWC share the same bank and business banking address; and that Brown has made payments for RLWC's obligations from his personal bank account and from the accounts of another entity, R&B Cellars, Inc. (¶ 7(d).) Plaintiff also pleads that Brown organized RLWC as a device to avoid personal liability (¶ 7(e)), and that adherence to the corporate form would sanction fraud and promote injustice by leaving Plaintiff unable to collect a judgment in this case. (¶ 7(f).)

Brown argues that he is not a party to the lease and that the complaint fails to allege sufficient facts to disregard RLWC's corporate form. However, lack of privity does not defeat an alter ego claim as a matter of law if sufficient facts are alleged to justify disregarding the corporate entity. Whether Plaintiff ultimately can prove alter ego liability is a factual question inappropriate for resolution on demurrer. (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1072.)

Brown further argues in his reply that alter ego liability should only be pursued post-judgment, but he cites no legal authority for this proposition. California law permits a plaintiff to name alleged alter ego defendants in the original complaint. (*Misik*, *supra*, at p. 1072; *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 813–814.)

At the pleading stage, these allegations are sufficient to state a unity of interest and ownership and a potential inequitable result if the corporate form is respected. The complaint alleges specific facts regarding commingling of assets, use of personal funds to pay corporate debts, and shared business identity and operations, all of which are factors for consideration under the totality of circumstances analysis applied to alter ego claims. (See *Santa Clarita Organization for Planning & Environment v.*

Castaic Lake Water Agency (2016) 1 Cal.App.5th 1084, 1105–1106; *Sonora Diamond*, *supra*, 83 Cal.App.4th at pp. 538–539.) Whether SPA can ultimately prove alter ego liability remains a factual issue not suitable for resolution on this motion.

The Court notes that although some of the alter ego allegations are pleaded on information and belief, Brown's demurrer does not specifically challenge the propriety of pleading those allegations on that basis. Nor does the demurrer specifically argue that SPA has failed to plead facts establishing the inequitable result prong of alter ego liability.

Disposition

Accordingly, Brown's demurrer to the breach of contract cause of action is **overruled**. SPA shall prepare the order and serve and file notice of its entry. Brown shall have 10 days from notice of entry of order to serve and file an answer to the complaint.

12. 9:00 AM CASE NUMBER: C24-02750
CASE NAME: CURTIS CANNEDY VS. BJ'S RESTAURANT & BREWHOUSE, INC.
***HEARING ON MOTION IN RE: PROTECTIVE ORDER - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: CANNEDY, CURTIS
****TENTATIVE RULING:****
Summary

Plaintiff Curtis Cannedy's Motion for Protective Order filed on December 26, 2024 is **denied**. The Parties are ordered to retain a discovery referee forthwith as set forth in this ruling.

Background

In this case, Plaintiffs Curtis and Teresa Cannedy ("Plaintiffs") allege that Defendant BJ's Restaurant and Brewhouse, Inc. ("Defendant" or "BJ") maintained a policy of permitting its employees to drink during and immediately after an employee shift's end at Defendant's establishment in Brentwood, California. As a result of this policy, Plaintiffs allege that on February 10, 2024, an intoxicated BJ's employee, Andres Hernandez drove on Highway 4 after his shift and collided head-on with the vehicle driven by Plaintiff's son, Christopher Cannedy. Both Andres Hernandez and Christopher Cannedy ("Decedent") died in that accident.

On December 3, 2025, Defendant served Special Interrogatories, Set One, to Plaintiffs seeking answers to 148 interrogatories. The Special Interrogatories were accompanied by an affidavit pursuant to Cal. Code of Civ. Proc § 2030.50, justifying the number of interrogatories that exceed 35.

On December 26, 2025, Plaintiffs filed a Motion for a Protective Order under Cal. Code of Civ. Proc § 2030.090, specifically requesting this Court to limit the amount of interrogatories to 35, to require BJ's to seek future Court orders to exceed 35 interrogatories, and for sanctions. The Motion was supported by a Notice, Memorandum of Points and Authorities, and Declaration.

On July 1, 2025, Defendant filed an Opposition to the Motion for Protective Order. Defendant also seeks sanctions in the amount of $2,450. The Opposition asserts that the number of interrogatories

were not excessive, given the nature of Plaintiff's allegations against BJs. In reviewing Set One, the Court finds that the interrogatories seek basic facts about Plaintiffs' claims and seeks facts that support Plaintiff's contentions that BJ's policies contributed to Decedent's demise.

Analyses

Scope of Discovery

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultant*s (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc*., supra, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a).

Interrogatories and Protective Orders

Cal. Code of Civ. Proc § 2030.50 allows the propounding party, here Defendant, to serve more than 35 special interrogatories provided that the Defendant submits an affidavit that complies with Cal. Code of Civ. Proc § 2030.40.

Cal. Code of Civ. Proc § 2030.40 states:

(a) Subject to the right of the responding party to seek a protective order under Section 2030.090, any party who attaches a supporting declaration as described in Section 2030.050 may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(1) The complexity or the quantity of the existing and potential issues in the particular case.

(2) The financial burden on a party entailed in conducting the discovery by oral deposition.

(3) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

(b) If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

Moreover, under Code of Civil Procedure section 2030.090(b)(1), a party may seek a protective order when discovery propounded will result in "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." Upon such a showing, the

court may order that the discovery "need not be answered."

Objections and Sanctions

Under Cal. Code of Civ. Proc. § 2023.010(e),(f),(h), (i) it is a misuse of discovery to make, "without substantial justification, an unmeritorious objection to discovery, " to make "an evasive response to discovery" and to make or oppose "unsuccessfully without substantial justification a motion to compel or to limit discovery," or to fail to meet and confer to resolve discovery disputes informally.

After reviewing the papers submitted by Counsel, the arguments therein, and applying the relevant statutory and decisional authority, the Court makes the following findings and orders.

Ruling

1. Plaintiffs' motion for protective order is **denied**. The Court finds that Defendant has met their burden in justifying the number of interrogatories propounded to Plaintiff pursuant to Cal. Code of Civ. Proc § 2030.040(b). Upon review of the interrogatories, the Court finds that they are relevant in that they seek information that is likely to lead to the discovery of admissible evidence. The Court finds no objective facts that the interrogatories are propounded for any improper purpose, such as to annoy, harass or embarrass the Plaintiffs, or their attorney, or to cause unnecessary delay, burden or needless increase in the cost of litigation. Defendant is entitled to seek relevant facts that support each of Plaintiffs' numerous contentions contained in their complaint. Accordingly, Plaintiffs shall prepare and serve code-complaint verified answers to each of Defendant's special interrogatories within ten (10) days of this ruling.

2. Each Party's Motion for Sanctions is **denied**. The Court finds that neither party has engaged in conduct that amounts to a misuse of discovery. Each Party shall pay their own attorney's fees and costs for bringing and defending this motion.

3. **Discovery Referee is appointed**. The Court notes that there are four (4) pending discovery motions on calendar in the case, scheduled for October 29, November 12, and December 3, 2025 in this case. The foregoing Discovery Motions and any other discovery motion filed in this case after the date of this order, are taken off calendar and are referred forthwith to a Discovery Referee.

   The Court grants its motion, *sua sponte*, for the appointment of a Discovery Referee pursuant to Cal. Code of Civ. Proc. §§ 639(a)(5) and 640. The Referee shall hear all disputes relevant to the discovery in the action and report findings and make a recommendation thereon. Counsel shall prepare a written order with such finds and otherwise in compliance with all applicable law for the appointment of the referee, including Code Civ. Proc. § 639."

   The Court finds, in its discretion, that such an appointment is necessary. The Court finds that the multiple discovery motions, here, six (five filed, and one withdrawn), the existing disputes raised by the pending motions and complexity of such factual issues raised by Plaintiffs' complaint require discovery reference. (Cal. Code of Civ. Proc. Section 639(a)(5) which states: "When the court in any pending action determines that it is necessary for the

court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon."

By no later than July 31, 2025, the Parties are ordered to meet and confer pursuant to Cal. Code of Civ. Proc. § 640(a) or (b) and shall submit a stipulation and proposed order listing the proposed discovery referee to the Court along with the proposed referee's curriculum vitae and fee schedule by no later than July 31, 2025. If the Parties are unable to jointly agree to a proposed Discovery Referee by July 31, 2025, the Parties each shall submit the name of one proposed Discovery Referee and fee schedule along with his/her/their curriculum vitae to the Court by letter, e-mailed to dept16@contracosta.courts.ca.gov by Friday, August 1, 2025. The Court will select one of the proposed referees by unreported minute order. The Discovery Referee will be requested to sign the Judicial Council ADR-110 form. Upon receipt of the executed form by the Discovery Referee, the Court will sign the ADR-110 form.

No party has established an economic inability to pay a *pro rata* share of the referee's fee. Thus, the fees and costs for the initial retention of the Discovery Referee shall be split 50/50 between the parties. The Discovery Referee shall have the authority to make recommendations and proposed orders apportioning the fees, costs and sanctions relating to all discovery motions referred to the Discovery Referee.

4. Defendant's Counsel shall prepare a proposed order conforming to this ruling and shall submit it to the Court no later than ten (10) days from the date of the hearing.

13. 9:00 AM CASE NUMBER: C24-02750
CASE NAME: CURTIS CANNEDY VS. BJ'S RESTAURANT & BREWHOUSE, INC.
***HEARING ON MOTION IN RE: FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT - CONTINUED FROM 4/9/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: CANNEDY, CURTIS
****TENTATIVE RULING:****

Denied as moot following the ruling on Defendant's demurrer on July 9, 2025, which sustained the demurrer with leave to amend.

14. 9:00 AM CASE NUMBER: C25-01187
CASE NAME: AHSARFUN HAFIZ VS. AFFINIA DEFAULT SERVICES
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS**
FILED BY: NATIONSTAR MORTGAGE LLC
****TENTATIVE RULING:****

Summary
Defendants Nationstar Mortgage LLC dba Rushmore Loan Management Services LLC, Deutsche Bank Trust Company Americas, As Trustee for Residential Accredit Loans, Inc, Mortgage Asset-Back Pass-Through Certificates, Series 2006-Q04's ("Defendants") Motion to Quash Summons is **granted** as unopposed.

Background

On May 30, 2025, Defendants filed their Motion to Quash Summons. The Motion was supported by Notice, Amended Notice dated June 17, 2025, Memorandum of Points and Authorities, and Proof of Service. The Motion asserts that Defendants were never properly served.

Plaintiff did not file a timely response or opposition to the Motion.

Analyses

California Rules of Court, Rule 8.54(c) states, "A failure to oppose a motion may be deemed a consent to the granting of the motion."]; see *Cravens v. State Bd. of Equalization* (1997) 52 Cal. App. 4th 253, 257; *Gwaduri v. I.N.S*. (9th Cir. 2004) 362 F.3d 1144, 1146 [Where a party fails to file timely opposition to a motion, it is "well-within" the court's discretion to determine that such failure is "tantamount to a concession that its position in the litigation was not substantially justified."] (citing *Weil v. Seltzer*, 873 F.2d 1453, 1459 (D.C. Cir. 1989) [holding that a party who fails to file an opposition to a motion is deemed to have waived opposition and may not be heard to complain.]; see also *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue.]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779,784–785 [failure to support a point with reasoned argument and citations to relevant authority constitutes waiver].) Applied here, the Court finds that failure to timely oppose the Motion to Quash is a deemed to be Plaintiff's consent to granting the Motion.

Ruling

Defendants Nationstar Mortgage LLC dba Rushmore Loan Management Services LLC, Deutsche Bank Trust Company Americas, As Trustee for Residential Accredit Loans, Inc, Mortgage Asset-Back Pass-Through Certificates, Series 2006-Q04's ("Defendants") Motion to Quash Summons is **granted**.

15. 9:00 AM CASE NUMBER: N25-0926
CASE NAME: CLAIM OF:ZEPHANIAH SINGLETARY
***HEARING ON MINOR'S COMPROMISE**
FILED BY:
****TENTATIVE RULING:****

Summary

Petitioner Tanisha Jackson, parent and guardian *ad litem* for her minor child, Zephaniah Singletary, ("Minor") Petition for Compromise of Minor's Claim filed on May 7, 2025 is **granted**.

Background

On May 7, 2025, Petitioner Tanisha Jackson, parent and guardian *ad litem* for her child, Zephaniah Singletary, ("Minor") filed this Petition in *propria persona*, to compromise the claim that Minor had against Target Corporation occurring on November 14, 2022 in Richmond, CA. In that accident, Minor sustained injuries including her left knee when she slipped on hair oil at the Target Store. Petitioner represents that Minor has received treatment at Alta Bates Hospital, including imaging. She was fitted with a knee immobilizer and crutches. She has fully recovered and there are no permanent injuries. Target Corporation collectively offered settlement in the amount of $30,000, of which $

28,915.74 is to be paid to Petitioner behalf of Minor to be placed into a blocked account. The deduction of $ 1,084.26 represents a reimbursement to the taxpayers for Medicaid benefits used to pay for Minor's treatment. No funds are being used for attorney's fees. Petitioner prepared a proposed order to deposit funds into a blocked account for the benefit of the Minor.

Ruling

After careful examination of the Petition and proposed orders, the Court finds good cause to approve the Petition. Accordingly, the Petition is **granted**. The Court will execute the Proposed Order Approving Compromise of Minor's Claim and the Proposed Order to Deposit Funds into a Blocked Account lodged on May 7, 2025.

16. 9:00 AM CASE NUMBER: N25-0945
CASE NAME: PETITION OF:IN RE CLAIM OF W.Y.
HEARING IN RE: PETITION FOR ORDER FOR RELIEF 946.6
FILED BY:
TENTATIVE RULING:

Petitioner In Re Claim of W.Y. [Petitioner] brings this Petition requesting that this Court issue an Order relieving Petitioner of the requirements of Govt. Code § 945.4. with respect to claims against Contra Costa Health and Flynn Lewis M.D. [Petition]. The Petition is opposed by Respondent County of Contra Costa [Respondent].

For the following reasons, the Petition is **granted.**

Background

The Petition states that Jane Doe, as personal representative of the Petitioner, brings this Petition for an order for relief from the government claim requirements of Govt. Code § 945.4 in connection with an action brought on behalf of W.Y. (Petition, Intro.) The Petition argues that the claims are timely under Govt. Code § 911.4 (c)(1), and that, alternatively, relief from the denial of the Application for Late Filing is appropriate under Govt. Code § 946.6 (c)(2).

The Petition states that W.Y., a minor child, by and through his guardian ad litem, Jane Doe, brings this Petition. (Petition, ¶¶ 1, 8, Ex. 3.) The Petition seeks a determination that the claim is timely or, alternatively, relief from Govt. Code § 945.4 to state claims against Dr. Flynn Lewis and Contra Costa Health. (*Id*., ¶ 34)

Petitioner contends that under the equitable delayed discovery rule of accrual, the survival action did not accrue until Jane Doe adopted A.Y. and W.Y. on July 10, 2024. (*Id*., ¶ 2.) Petitioner argues that he had six months from the date that Jane Doe adopted A.Y. and W.Y. to present a claim for damages to Respondent pursuant to Govt. Code § 911.2, such that the claim was timely presented on October 8, 2024. (Id., ¶ 3.) Petitioner argues that this Petition is brought "out of an abundance of caution." (*Ibid*.)

Petitioner argues that, if the claim is not found to be timely, then Govt. Code § 946.6 (c)(2) applies because A.Y. and W.Y. were minors during the six-month accrual period. (*Id*., ¶ 6.)

Petitioner contends that if accrual is not found to be at the time of adoption, and then the relevant event took place on March 7, 2022, when Dr. Lewis examined W.Y. and documented a series of health concerns but did not remove W.Y. from his parents' care. (Id., ¶¶ 1, 8, Ex. 3, at ¶ 57.)

Respondent points out that a claim form was presented to Contra Costa County Board of Supervisors [County Board] on August 24, 2023. (Dec. J. Mauk, ¶ 4, Ex. B.) Respondent contends, essentially, that all claims related to the subject incident had to be raised at such time to be actionable.

The letter of the same date from counsel Brett Schreiber to the County encloses "the government claim form of minor children, A.Y. and her sibling W.Y." The letter notes that the "claim form is filed more than six months after the loss of the sibling O.Y. and … [it] could be construed as a late claim." (*Ibid*.) However, the letter contends that, pursuant to Govt. Code § 911.4, the claim is timely because "the Claimants have been without a guardian ad litem for purposes of filing civil actions." (*Ibid*.)

The claim form in Exhibit B to Counsel J. Mauk's Declaration states that the "Claim [is] by: A minor child, A.Y., and her minor child sibling W.Y., and the Estate of their minor child sibling O.Y." and asserts that the claims arise from the death of O.Y., a minor, which is described as the "result of systematic failures of the Child Protective Services Division for Contra Costa County ("CPS"), which is a department of defendant Contra Costa County ("County")." (*Ibid*.) The County Board subsequently granted the Claimants' Application to File Late Claim under Section 911.6 on October 3, 2023. (*Ibid*.)

The Petition states that Jane Doe adopted A.Y. and W.Y. on July 10, 2024. (Petition, ¶ 2; Dec. B. Koh, ¶ 2.)

Suit was filed suit in federal court on August 14, 2024 in the Northern District of California by "Plaintiffs A.Y. and W.Y." (Petition, ¶ 8, Ex. 3.) The caption of the action lists as Plaintiffs: "O.Y., decedent, by and through her successors in interest, W.Y. and A.Y.; W.Y., a minor by and through their Guardian ad Litem Jane Doe, individually, and as a successor in interest to, O.Y.; A.Y., a minor by and through their Guardian ad Litem Jane Doe, individually, and as a successor in interest to O.Y.," and as Defendants "County of Contra Costa; City of Antioch; Jessika Fulcher; Worren Young, Sr.; Colleen Sullivan; Flynne Lewis; Contra Costa Regional Health Foundation; The Learning Center; Raji Ponnaluri; and Does 1 through 50." (*Ibid*.)

Petitioner's counsel declares that on August 30, 2024, after filing and service of the federal suit, his "office discovered that Pittsburg Health Center is operated by Contra Costa Health, a public agency, and that Dr. Lewis was an employee of Contra Costa County." (Dec. B. Koh, ¶ 4.)

On October 8, 2024, Petitioner's counsel presented a second claim form on behalf of "A.Y. and W.Y., and the Estate of their minor child sibling, O.Y." to the County Board for claims against Flynne Lewis and Contra Costa Health [October 8 Claim Form and Application]. (Petition, ¶ 4, Ex. 1.) Petitioner's counsel's letter of the same date to the County Board enclosed the claim form stated that "Claimants contend their claim is timely, [but] if the County deems the claim late for any reason, Claimants request leave to submit a late claim." (*Ibid*.) The letter further explained that "[f]rom August 26, 2022,

to July 10, 2024, Claimants were dependent children without a guardian ad litem for purposes of filing civil actions[; t]hus, the instant claim is timely under Gov. Code § 911.4 (c)(3).” (*Ibid*.) On November 12, 2024, the County Board denied Petitioner’s Application to File Late Claim (Section 911.6). (Petition, ¶ 5, Ex. 2)

This Petition, filed May 9, 2025, follows seeking an order from this Court relieving Petitioner of the requirements of Government Code section 945.4, or alternatively, determining that the claim was timely submitted pursuant to Govt. Code 911.4 (c)(1).

Standard

Pursuant to Govt. Code §§ 905, 910 and 911.2, a claim against a public entity for money or damages for death or for injury to person or to personal property shall be presented within six months after the accrual of the cause of action.

Govt. Code 911.4 provides:

> (a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within that time, a written application may be made to the public entity for leave to present that claim.
>
> (b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) 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. The proposed claim shall be attached to the application.
>
> (c) In computing the one-year period under subdivision (b), the following shall apply:
>
> (1) The time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she … does not have a guardian or conservator of his or her person shall not be counted.

Pursuant to Govt. Code § 945.4: “Except as provided in Sections 946.4 and 946.6, no 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.”

Govt. Code 946.6 provides:

> If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. …
>
> …
>
> (c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court

> finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:
>
> …
>
> (3) The person who sustained the alleged injury, damage, or loss was a minor during any of the time specified in Section 911.2 for the presentation of the claim, provided the application is presented within six months of the person turning 18 years of age or a year after the claim accrues, whichever occurs first.
>
> …
>
> (6) The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

For minors, accrual is based not on the minor's knowledge, but on that of a parent or guardian legally capable of representing the minor's interests. (*Whitfield v. Roth* (1974) 10 CaL3d 874, 885.) If the minor has no such representative, his deadline to present an application to file a late claim is tolled. (*County of L.A. v. Sup. Ct.* (2001) 91 Cal.App.4th 1303, 1313.) "A trial court has broad discretion in ruling on a petition for relief from the claim-filing requirement as long as the issue is whether the late claim was presented within a 'reasonable time' not to exceed one year after the accrual of the cause of action." (*Ibid*.) Where a minor's youth and immaturity prevent him from recognizing the wrongfulness of his abuse, courts have applied the equitable delayed discovery rule to toll accrual of the deadline to present a government claim. (*Curtis T. v. County of L.A.* (2004) 123 Cal.App.4th 1405, 1422-1423.)

The court in *County of L.A.* explained with respect to minors that are in foster care:

> "[The m]inors' parents had no legal right to custody and control of Minors [during the pendency of] the dependency case … . … Officially, as dependent minors, Minors' legal custody and control was in the hands, metaphorically speaking, of the juvenile court, and, practically speaking, the juvenile court simply cannot personally monitor all the needs of the many dependents under its custody and control. It relies on the County, through the DCFS to discharge that function. It is patently obvious, however, that DCFS, as the department of County responsible for the proper care of Minors, was not a proper agency to … investigate and consider whether to file litigation against such agency."

(91 Cal.App.4th at 1310.) "[Prior] cases only penalize minors under the care of an authorized representative, in other words, a parent or a guardian, when such representative has knowledge concerning the claim but fails to present the claim within the one-year limitation period of section 911.4." (*Id*., at 1316.)

> [C]ases that indicate that the Legislature intends to accord special solicitude to the claims of an injured minor by requiring courts to protect minors from the neglect or ignorance of the adults in charge of their legal claims 'so long as the application is filed with the entity within

> one year of the accrual of the cause of action,' and so long as there is actually an adult specifically charged with protecting the minors' overall interests above all else. … this holding is in keeping with the Legislature's recent amendment of section 911.4 … that recognizes the special problems faced by minors who are dependents of the juvenile court during the time that they may have reason to file a tort claim.

(*Ibid*.) In proceeding on a petition for relief, the petitioner bears the burden of proving two elements by a preponderance of the evidence: first, that his or her application to the public entity for leave to file a late claim was presented within a reasonable time, not to exceed that specified in subdivision (b) of Section 911.4; and second, that one of four statutory grounds on which the court may grant relief is present. (*Rivera v. City of Carson* (1981) 117 Cal.App.3d 718, 723; .)

Analysis

Arguments

Petitioner argues that the claim is timely pursuant to Govt. Code § 911.4 (c)(1), because the claim did not accrue until he was adopted by Jane Doe and had a guardian to pursue the claim on their behalf. Petitioner also argues that relief is proper under Govt. Code § 946.6 (c)(2), because W.Y. was a minor during the pendency of the six-month period.

Respondent argues that the claim form was untimely, even under the timeframe provided by Govt. Code § 946.6, because Petitioner was able to submit a claim form on August 23, 2024 for his claim against the County. Respondent contends that if Jane Doe did not have authority to submit the initial claim form, then it should be stricken. Petitioner further argues that denial is proper because the October 8 Claim Form and Application were submitted after filing of the federal suit.

Whether Filing of Federal Suit Defeats the October 8 Claim Form and Application

Respondent first argues that claimant cannot file suit before presenting a claim for the same incidents, pursuant to *Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 247. Petitioner, in response, distinguishes *Le Mere*, and argues that Petitioner placed the County on notice that it was bringing a claim against Respondent based on the conduct of CPS employees, and Dr. Lewis was involved in the care of O.Y. while acting within the course of her employment with the County. Essentially, Petitioner argues that it substantially complied with the statutory requirements.

In *Le Mere*, the court held that "the purpose of claims is not to prevent surprise but rather 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." In *Le Mere*, the court declined to allow the case to proceed on its merits after an amended complaint had been filed and "particularly when the claim [was] filed a year after the lawsuit had commenced." (Id. at p. 247.)

"A claim has been presented to the public entity when the public entity 'receives a document which contains the information required by section 910 and is signed by the claimant … .' [Citation.]" (Simms v. Bear Valley Community Healthcare Dist. (2022) 80 Cal.App.5th 391, 400.) "The information required by section 910 includes the 'date, place and other circumstances of the occurrence or transaction

which gave rise to the claim asserted' and '[a] general description of the … injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.' (§ 910, subds. (c), (d).)" (*Ibid*.)

Distinguishing *Le Mere*, in *Malear v. State of California* (2023) 89 Cal.App.5th 213, the court found that an inmate substantially complied with the statutory notice requirements where he filed his prematurely filed a lawsuit but then submitted his government claim form, amended his complaint to address such compliance and then served the amended complaint. (89 Cal.App.5th at 224-225.) "[T]he doctrine of substantial compliance, by its nature, does not require strict compliance. Rather, it excuses strict compliance when there has been actual compliance in respect to the substance essential to every reasonable objective of the statute." (Id., at 225, internal quotes omitted.)

The court in *Malear* held that "the statutory objectives of section 945.4 are '"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"' and to '"enable the public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future."' [Citation.]" (Id., at 224.) The court found that application of the substantial compliance doctrine under the facts of the case did not unduly expand the rights of plaintiffs against governmental entities or otherwise frustrate the statute's purpose to confine potential governmental liability to rigidly delineated circumstances. (*Id*., at 225.)

Here, the evidence shows that both the initial claim form and the October 8 Claim Form were submitted to Respondent with information regarding the basis for the claims, namely the failure to protect O.Y. and W.Y. from abuse by their parents. The facts presented in the declaration of counsel show that Petitioner initially believed that Dr. Lewis was not an employee of Respondent. The claim on October 8, 2024 was submitted less than two months after the complaint was filed, shortly after it was determined that Dr. Lewis was an employee of Respondent via Contra Costa Health. Petitioner asserts that to date, no amended complaint has been filed.

The court finds that here, the filing of the federal suit does not prevent this court from considering whether Petitioner's suit against Contra Costa Health and Dr. Lewis may proceed pursuant to the October 8 Claim Form. The initial claim form placed Respondent on notice of this claim and the circumstances surrounding Petitioner's claims. The October 8 Claim Form was submitted promptly upon Petitioner's counsel learning that the claims against Contra Costa Health and Dr. Lewis were subject to the government claim requirements. Also, no amended complaint has been filed. As such, the court finds that the facts of this case are distinguishable from *Le Mere*, that the County had notice and there was substantial compliance by Petitioner, such that this court declines to deny the Petition as a result of the premature suit filing, as Respondent urges.

Respondent's Request to Strike Initial Claim Form

With respect to the argument that the initial claim form and application for late filing should be stricken, the court does not find that the case law cited supports this court's authority to grant such relief.

Respondent argues that the claim form can be disregarded where the claimant knowingly lied pursuant to *Estill v County of Shasta* (2018) 25 Cal.App.5th 702. However, there is no representation in the claim form that Jane Doe was presenting the claim or that she was a legal guardian. The claim form is characterized as being presented by the minors. The cover letter to the initial claim form states that the Claimants are without a guardian since at least August 26, 2022, when O.Y. died. Respondent accepted the form and allowed the late claim.

Respondent also cites *County of L.A.*, *supra*, 91 Cal.App.4th at 1310-1311 to support its position that the initial claim form should be stricken. However, as discussed above, *County of L.A.* stands for the position that minors should be given adequate opportunity to submit their claims where they did not have a legal guardian to pursue their interests. It does not hold that claims submitted by an attorney on behalf of the minors should be stricken, particularly, where the late filing is allowed by the County Board.

As such, this court declines to strike the initial claim form submitted August 24, 2023.

Whether Relief Under Section 946.6 Is Appropriate

Petitioner argues that this claim is timely based on equitable delayed discovery rule of accrual. Before addressing this contention. The court looks to the dates and statutes that apply to determine whether the strict six-month claim period under 911.2 was met and whether the one-year claim period was met under 911.4.

Petitioner asserts W.Y. was removed from their parents' care on August 26, 2022 and adopted by Jane Doe on July 10, 2024.

Petitioner contends that the earliest relevant event occurred on March 7, 2022, when W.Y. was examined by Dr. Lewis and Dr. Lewis documented a series of health concerns. Pursuant to Govt. Code § 911.2 (a), a claim relating to a cause of action for death or injury … shall be presented no later than six months after the accrual of the cause of action. Under Govt. Code § 911.4, when a claim is not presented in that six-month period, a written application may be made to the public entity for leave to present that claim within a one-year period. "In computing the one-year period … [t]he time during which [a minor] … does not have a guardian … shall not be counted." (Govt. Code § 911.4 (c), (c)(1).)

Using March 7, 2022 as the accrual date, and without addressing the equitable delayed discovery rule, the sixth month period under Govt. Code § 911.2 has run. Thus, the court must look to whether the October 8 Claim Form and Application was submitted within a reasonable time, not to exceed one year pursuant to Sections 911.4 and 946.6.

There is no evidence that A.Y. and W.Y. had a legal guardian prior to being adopted on July 10, 2024. *County of L.A.* makes clear that children in foster care are not considered to have a legal guardian.

Although there are arguments that Petitioner's parents should not be considered "guardians" as they were the ones inflicting the abuse that led to this claim, under the strictest view of Petitioner's argument and pursuant to Govt. Code § 911.4, the court counts the period of March 7, 2022 to August 26, 2022 (5 months and 19 days) as part of the one-year period referenced in Govt. Code 911.4.

However, the period from August 26, 2022 to July 10, 2024, when Jane Doe adopted A.Y. and W.Y. are not counted pursuant to Govt. Code § 911.4 (c) and (c)(1).

Thus, when accounting for the period that is not counted, the October 8 Claim Form and Application was presented less than one year after the earliest potential accrual date of March 7, 2022. As such, even under strict reading of the accrual date of this claim and the term "guardian," the October 8 Claim Form and Application was timely under Govt. Code §§ 946.6 (c) and 911.4 (b) and (c)(1). Also, Petitioner acted within less than two months of discovering the new claim was needed. Relief under Govt. Code § 946.6 (c)(2) does not involve or require an analysis of prejudice.

This court, thus, determines that Petitioner established that the October 8 Claim Form and Application were submitted to the County Board within a reasonable time, not to exceed that specified in Govt. Code § 911.4, and the Petition establishes sufficient basis for this court to relieve the petitioner from the requirements of Section 945.4, pursuant to Govt. Code § 946.6 (c)(2), because W.Y. was a minor during the relevant period.

For such reasons, the Petition is granted.