

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, August 16, 2021

**TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.**

**IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.**

**18-CVC-10670 MITCHELL, MICHAEL VS. PIFFER, SGT**

**DEMURRER - DEFENDANT'S**

TENTATIVE RULING:

Defendant's demurrer to Plaintiff's Complaint is SUSTAINED.

Defendant's Request for Judicial Notice:

The request is made pursuant to Evidence Code Section 452(d)(1). The request properly seeks judicial notice of the complaint filed in this case on June 25, 2018 (Exhibit A) and the Order issued by the United States District Court, Eastern District of California, on April 6, 2021. (Exhibit B.)

Evidence Code Section 453(b) provides that the trial court shall take judicial notice of any matter specified in Section 452 if the party requests it and:

Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Plaintiff objects to request for judicial notice of the Order issued by the United States District Court, Eastern District of California, on April 6, 2021, as irrelevant. Plaintiff's objection is OVERRULED.

Defendant's request for judicial notice is GRANTED.

Demurrer:

Defendants demur generally under CCP Section 430.10(e) on the following bases:

1. Plaintiff failed to timely exhaust an available administrative remedy, and;
2. The complaint is barred by Government Code Section 945.6(a)(1) which requires filing the complaint not later than six months after rejection of the claim.

The function of a demurrer is to test the legal sufficiency of a pleading. (*Rakestraw v. Cal. Physicians Service* (2000) 81 Cal.App.4th 39, 42) When a pleading does not state facts sufficient to constitute a cause of action a party may object to the pleading. (CCP Section 430.10(e).) In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, as well as matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) However, contentions, deductions or conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*) Further, the courts will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Government Code section 945.6 is a statute of limitation. (*Cole v. Los Angeles Unified School Dist.* (1986) 177 Cal.App.3d 1, 3.) To sustain a demurrer based on the statute of limitations, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. (*Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 781; emphasis added.) Here, the court may find the timing defect clearly identifiable from the face of the complaint and matters judicially noticed.

Suits against a public entity or public employees are governed by the specific statute of limitations provided in the Government Code, not the statute of limitations that applies to private defendants. Government Code section 945.6 requires any suit brought against a public entity<sup>2</sup> to be commenced no more than six months after the public entity rejects the claim. (Gov. Code Section 945.6(a)(1).) A civil action is commenced, by filing a complaint with the court. (CCP Section 411.10.) The statute of limitations for commencing a government tort claim action is not tolled by virtue of a plaintiff's imprisonment. (CCP Section 352.1(b); *Moore v. Twomey* (App. 3. Dist. 2004) 120 Cal.App.4th 910, 914.)

A trial court has broad discretion in ruling on a petition for relief from statutory requirement of presenting public entity with damages claim within six months of claim's accrual, 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; when an application to file a late claim is itself not timely filed, however, the court is without jurisdiction to grant relief. (*County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303.) Emphasis added.

Plaintiff filed a claim with the VCGCB dated January 22, 2018. (Complaint, Exhibit Government Claims Filing.) The late claim was denied by the VCGCB and notice of the denial was mailed to Plaintiff on February 22, 2018 instructing Plaintiff to file a petition in court for relief from the requirements of Government Code Section 945.4 within 6 months from the date of this notice (Exhibit Government Claims Filing.)

Plaintiff thereafter filed his complaint for negligence and intentional tort on June 18, 2018. Within his complaint, beginning on page 24, is a pleading titled Request to file Tort Claim; Relief from Provisions of Government Code Section 945.4; to Proceed in State Civil Court, Relief to Present Late Claim for Catch 22 Situation. (Request for Judicial Notice, Exh. A. pg. 24.) No hearing date was set on Plaintiff's request, because it was not filed separately, it was buried within the complaint, which Plaintiff did not yet have permission to file.

Plaintiff's application to file a late claim is untimely as it was not filed within six (6) months of the late claim denial and is yet unfiled. Defendant's demurrer is SUSTAINED.

Leave to Amend:

When a demurrer is sustained, leave to amend is usually granted even where substantive defects are apparent. It is generally considered an abuse of discretion to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (McDonald v. Sup.Ct. (1986) 180 Cal.App.3d 297, 303-304; City of Stockton v. Sup.Ct. (2007) 42 Cal.4th 730, 747.) However, the burden is on the plaintiff to show in what manner the complaint can be amended to change the legal effect of the pleading. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349). Albeit, leave to amend can be appropriately denied if the defect is one of law and additional fact will not change the result. (Lawrence v. Bank of America (1985) 163 Cal.App.3d 431, 436; Schonfeldt v. State of Calif. (1998) 61 Cal.App.4th 1462, 1465.)

The court finds that Plaintiff failed to file a petition for relief from the requirements of Govt. Code Section 945.4 within six (6) months. No additional facts will change the outcome, and the court is without jurisdiction to grant relief.

Demurrer is sustained without leave to amend. The moving party is ordered to prepare a judgment and dismissal conforming to the court's order within 10 days of the hearing date.

As per Amador Local Rules of Court, rule 4.03, subdivision F, the tentative ruling procedures do not apply in any case in which a self-represented party is in the custody of the California Department of Corrections and Rehabilitation.

Because Plaintiff is incarcerated, if he wishes to appear for oral argument he is ordered to appear telephonically for hearing on the above tentative ruling. Plaintiff is required to make arrangements with Courtcall to participate by telephone. Orders will be made at time of hearing.

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**19-CVC-11388** JACKSON VIEW OWNERS ASSOCIATION VS. JACKSON VIEW LLC A CALIFORNIA LIMITED LIABILITY CO

**DEMURRER - DEFENDANT'S**

TENTATIVE RULING:

On the court's own motion, Defendant's Demurrer is continued to August 30, 2021 at 8:30 a.m. in Department 1. Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

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**20-CVC-11856** GAASTERLAND, LAWRENCE VS. MATTHEWS, RYAN

**CIVIL MISCELLANEOUS MOTION**

TENTATIVE RULING:

1) Plaintiff's unopposed Motion to Compel Responses to Form Interrogatories and Request for Production of Documents, Motion to Deem Matters Admitted and for Monetary Sanctions as to Defendant RYAN MATTHEWS is GRANTED. Sanctions are awarded to Plaintiff. The court finds it reasonable and supportable to order Defendant to pay sanctions in the amount of \$510.00, which represents attorney's fees necessarily expended on the instant motion. Sanctions shall be paid to Plaintiff's counsel within thirty (30) days.

2) Plaintiff's unopposed Motion to Compel Responses to Form Interrogatories and Request for Production of Documents, Motion to Deem Matters Admitted and for Monetary Sanctions as to Defendant KRISTIN MATTHEWS is GRANTED. Request for Admissions, set one served by mail on February 3, 2021 are deemed ADMITTED. Sanctions are awarded to Plaintiff. The court finds it reasonable and supportable to order Defendant to pay sanctions in the amount of \$300.00, which represents attorney's fees necessarily expended on the instant motion. Sanctions shall be paid to Plaintiff's counsel within thirty (30) days.

3) Plaintiff's unopposed Motion to Deem Matters Admitted and for Monetary Sanctions as to Defendant KAREN MATTHEWS is GRANTED. Request for Admissions, set one served by mail on February 3, 2021 are deemed ADMITTED. Sanctions are awarded to Plaintiff. The court finds it reasonable and supportable to order Defendant to pay sanctions in the amount of \$300.00, which represents attorney's fees necessarily expended on the instant motion. Sanctions shall be paid to Plaintiff's counsel within thirty (30) days.

Defendant RYAN MATTHEWS and KRISTEN MATTHEWS are ordered to provide complete responses to Plaintiff's Form Interrogatories and Plaintiff's Request for Production of Documents, without objection, within ten (10) calendar days.

Moving party shall submit to the court proposed orders conforming to the court's ruling.

This ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.