

Wednesday, May 12, 2021

The following tentative ruling is issued by Judge James LaPorte, assigned for all purposes:

Prasad, et al v. Department of Transportation (DOT) Case No. 18 CV 10752

Tentative ruling regarding Plaintiff's Motion for Judgment on the Pleadings

As an initial matter, the court notes the Complaint alleges each Plaintiff as an individual Plaintiff although the Complaint uses Plaintiffs (plural) to collectively allege the causes of action. Each Plaintiff's Opposition was filed separately for each Plaintiff, although all Plaintiffs joined in the Opposition and contentions of other individual Plaintiffs. The court is treating the Defendant's Judgment on the Pleading as against each and all Plaintiff's individually.

The court is granting the Defendant's Judgment on the Pleadings as to Plaintiff Bernice Prasad **only** because the court has no citation of authority under Evidence Code Section 452 regarding the policy or practice of the Department of General Services (DGS) regarding the contention that a rejection letter addressed to one Plaintiff, with a single claim number, is a rejection letter to all Plaintiffs.

The court is not granting the motion as to the other Plaintiffs Ram Prasad, Devi Prasad (deceased), nor Richard Prasad. And the court is specifically not making any evidentiary dispute findings, either way, regarding these Plaintiffs and alleged newly discovered Government Tort claim contentions.

As noted *infra*, the court notes that Paragraph 8 of the Complaint is not correct under the current facts or contentions of any Plaintiff. There is no document supplied to the court or attached to any pleading that shows the Defendant, Department of Transportation (DOT), rejected Plaintiffs tort claim on January 4, 2017. That issue may be left to another future motion.

Background

Plaintiff filed this action on June 28, 2017. Thereafter, Defendant filed its motion on January 24, 2020 for Judgment on the Pleadings. In their motion, Defendant contends that Plaintiffs failed to file the Complaint within 6 months of the date of rejections of the Plaintiff's Government Tort claims. Defendant claims that Plaintiffs personally served the State of California on December 8, 2016 with their Government claims forms for damages pursuant to Government Code Section 910. Thereafter, that State of California mailed their rejection of the claim number 16009562 on December 15, 2016 to Bernice Prasad pursuant to Government Code Section 945.6, notifying the Plaintiff, Bernice Prasad, she had 6 months to file a Complaint. Defendant's claim the Complaint had to be filed on or before June 15, 2017.

Plaintiff's filed their Complaint for all Plaintiffs on June 28, 2017. The court is inclined to grant the Defendant's Motion for Judgment on the Pleadings as to Bernice Prasad only. However, the court is also inclined as discussed *infra* to grant the Plaintiff Bernice Prasad an opportunity to amend the Complaint within 30 days of the date of this ruling because of the alleged subsequent discovery recently conducted by the Plaintiffs regarding the Government Tort Claims issues.

The Plaintiffs have, to date, failed to amend Paragraph 8 and Judgment on the Pleadings is appropriate as to Bernice Prasad.

Wednesday, May 12, 2021

A. Court takes judicial notice of DOT's documents disclosing noncompliance with the Government Tort claims requirements.

As stated in *Gong v. City of Rosemead* (2014) 226 Cal App.4th 363, 376, citing *Fowler v. Howell* (1996) 42 Cal.App.4th 1746,1752; California Government Tort Liability Practice (Cont. Ed Bar 4th ed. 2014) paragraph 5.17 page 181 (rev 2/13), if a Plaintiff alleges compliance with the claims presentation requirement, but the public records do not reflect compliance, the governmental entity can request the court to take judicial notice under Evidence Code Section 452 that the entity's records do not show compliance. Accordingly, the Court here takes judicial notice of 1) Plaintiff's Summons and Complaint (Exhibit A); 2) Plaintiffs Government Tort Claim to the Department of Transportation (Exhibit B); 3) The State of California rejection letter with the proof of service (Exhibit C); 4) Plaintiffs Government Tort Claim to Amador County (Exhibit D); 5) Amador County rejection letter (Exhibit E).

The court also takes judicial notice of the hearing transcripts under Evidence Code Section 452(d) and *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1565; *Espinsoza v. Calva* (2008) 169 Cal.App.4th 1393, 1396; of the Certified Court Transcript for the hearing which occurred on September 11, 2020 (Exhibit G); and the Certified Court Transcript for the hearing which occurred on February 23, 2021 (Exhibit H).

Plaintiffs have, to date, not amended their Complaint. An examination of Paragraph 8 and Plaintiff's own concessions during arguments on September 11, 2020, and February 23, 2021 go to the only rejection letter the Plaintiffs allegedly received on January 4, 2017, which was from Amador County.

Plaintiff's counsel then contended they received no rejection letter from the DGS. However, Paragraph 8 alleges "On January 4, 2017, Defendants (plural) sent notice of rejection of plaintiff's Government Tort Claims via mail. Plaintiffs now file this Complaint pursuant to Government Code Section 945.6 and within the allotted 6 months from the date of rejection of the claim".

Paragraph 8, in context, is as follows: "Prior to filing this Complaint, Plaintiffs (plural) presented a claim to Defendants California Department of Transportation and County of Amador pursuant to the provisions of Government Code Section 911.2." If Plaintiffs never received the California Department of Transportation rejection letter, then at the time the lawsuit was filed, Plaintiffs would have claimed that the State did not reject their claim. Plaintiffs have not amended their Complaint to allege that there was non-rejection, or non-mailing, from the State. In Plaintiff's Opposition to the Motion for Judgment on the Pleadings, bullet points addressed, contentions made, and depositions implying are attached as to alleged non rejection, or non mailing, nor service by the State to all Plaintiffs. Yet no amendment to the Complaint has been made by the Plaintiffs to the effect that the State did not create a rejection letter or that the State did not mail the State's rejection letter to Plaintiff Bernice Prasad. The Defendants exhibits specifically show that the Department of Gen. services (DGS) did send a rejection notice with proof of service for Bernice Prasad to her counsel, the York law firm on December 15, 2016. Neither Plaintiffs nor Defendant DOT has produced a rejection letter from DGS dated January 4, 2017.

Wednesday, May 12, 2021

B. Meet and Confer Requirement

The Court finds the parties did have insufficient meet and confer type discussions regarding the validity of Paragraph 8 during the hearing on September 11, 2020, and February 23, 2021. Plaintiff's counsel then contended that the meaning of Paragraph 8 regarding the word "Defendants" meant the Defendants generally including presumably the Department of Transportation which is mentioned in Paragraph 8 as one of the only two government Defendants. Plaintiffs, however, did not amend Paragraph 8 then, or subsequently. Plaintiff's continuing position that there was not a December 15, 2016 rejection letter and there was a lost or unsent rejection letter dated January 4, 2017 from DGS eliminates the possibility of meaningful good-faith meet and confer efforts. Under Civil Code of Procedure Section 439(a)(4), "A determination by the court that the meet and confer process was insufficient, is not grounds to grant or deny the motion for judgment on the pleadings."

But the court understands from the Plaintiffs Opposition that they contend that recent discovery of the tort claims process in this case allows for the ability to amend their pleadings to show compliance with the tort claims requirements or waiver of the 6 month rule or both. Meet and confer in compliance with Civil Code of Procedure Section 439(c)(1) would be appropriate under those circumstances after this ruling.

C. Single Rejection Letter of all 4 Claimants' Tort Claims

Plaintiffs impliedly allege in Paragraph 8 that Amador County's single rejection letter rejected all 4 of the Plaintiffs' tort claims. However, in opposition, Plaintiffs contend that the single rejection letter from the State of California does not apply to all four Plaintiffs and that a single rejection letter is improper. Despite this inconsistency, neither party supplied the court with a cognizable policy or practice of DGS under Evidence Code Section 452 regarding this issue. Looking at the face of the rejection letter to Bernice Prasad and the mailing Declaration to Bernice Prasad containing the single claim number 16009562, the court is left with the conclusion that the DGS rejected her claim alone. To date, what happened to the other claims is unknown to the court. Paragraph 8 does indicate that Plaintiffs presented "a claim" to Defendants DOT and County of Amador. And "On January 4, 2017, Defendants (plural) sent notice of rejection of Plaintiff's Government Tort Claims via mail. Plaintiffs now file this Complaint pursuant to Government Code Section 945.6 and within the allotted 6 months from the date of rejection of the claim".

The other Plaintiffs have not presented any rejection letter from DGS dated January 4, 2017 as alleged. And DOT has not provided such a rejection letter dated January 4, 2017, thus resulting in their current contention that the single rejection letter to Bernice Prasad on December 15, 2016 covered all 4 Plaintiffs.

As noted *infra*, the court is concluding that Plaintiff Bernice Prasad will be given leave to amend, if she can do so, to clarify these issues.

The other Plaintiffs are invited to also amend the Complaint with leave to amend granted in this

Wednesday, May 12, 2021

ruling.

D. Plaintiffs Receipt of the State’s Rejection Letter is Irrelevant to the Application of the 6-Month Statute of Limitation set forth in Government Code Section 845.6

Him v. City and County of San Francisco (2005) 133 Cal.App.4th 437 is the controlling case regarding the mailing of a rejection letter by a public entity. In *Him*, the decedent committed suicide while a patient at the City and County of San Francisco's Acute Psychiatric Service. Plaintiffs filed a Government Tort Claim in 2001. Representatives of the City and County mailed formal notice on November 19, 2001 that it was rejecting the claim. The Plaintiffs’ there contend that they never received the claim rejection notice. Plaintiffs filed their negligence action on March 3, 2003, beyond the six month period. The City moved that the action be barred by the late Complaint filing. To establish mailing, the City submitted the claim rejection letter and proof of service signed by the city claims adjuster. The City claims adjuster’s mailing declaration stated that she had sent a rejection letter in November 2001. The court found that the Plaintiffs had failed to file the complaint within the statutory period. The appellate court affirmed.

First, the *Him* case establishes that substantial compliance with Civil Code of Procedure Section 1013(a) is sufficient under the Government Tort Claims process to support a finding here that the rejection letter sent to the York firm was properly addressed and properly mailed based upon the form of the State’s Proof of Mailing of the rejection letter in a sealed envelope in the internal mail collection system.

Second, as with this case, *Him's* counsel contended that non receipt of the rejection letter was sufficient to demonstrate the claim wasn’t rejected by the agency nor sent, and the statute was effective for a two years statutory period instead. Plaintiffs here, in Opposition, likewise raised challenges to the sufficiency of compliance by the government to allow extending the 6 month statute of limitations, by non receipt of the rejection letter and other rejection and mailing issues . The *Him* court stated the statute of limitations period is triggered “**from the date the Notice is deposited in the mail by the public entity, not the date it is received by the claimant or counsel.**” (Citation omitted.)

In fact, a claimant is required to comply with the six month statute of limitations associated with Government Tort Claims upon proof that the notice of rejection was served even if it was not actually received by the claimant. Thus the legislature has placed upon the claimant the risk that a properly mailed notice of claim rejection is not delivered due to an error by the postal authorities. And, the legislature has provided the corresponding opportunity for the claimant to protect itself from this risk. Following presentation of a claim for personal injury or death (Government Code Section 911.2) the public entity must act within 45 days (Section 912.4(a)). If the entity fails to accept or reject the claim within that period, the claim is deemed to have been rejected (Section 912.4(c)). If the claim is rejected by the public entity expressly or by operation of law, notice must be sent to the claimant (Section 913). Thus, following a reasonable time after the expiration of the 45 days, a claimant should be aware the claim has been denied and the statutory notice of that denial has not been provided. The claimant then has the opportunity to inquire about the denial and determine, thereby, the limitations period. (Citations omitted.) The claimant should

Wednesday, May 12, 2021

not be permitted to forgo that opportunity and, then, rely on the fact no notice was delivered to extend the limitations period.” (*Him* at 445.) (**Emphasis supplied**)

Plaintiffs Opposition includes Ms. Roth’s testimony, which seems to state that she sent the State rejection letter to Bernice Prasad only. Defendants argue that Ms. Roth’s rejection letter attached and incorporated the Government Tort Claim prepared by the York law firm for all 4 plaintiffs. Notwithstanding her deposition testimony which appears to be consistent that she only rejected Bernice Prasad’s claim, which the court need not consider for this Motion. it is clear that Ms. Roth’s signed declaration under penalty of perjury in her proof of service to Bernice Prasad attached to the rejected claim form included a statement sufficient to show:

“On December 15, 2016, I served the attached letter by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Government Claims Program located at 707 3rd St., West Sacramento California 95605, addressed as follows: Wendy C. York, Attorney at Law; 1111 Exposition Boulevard, Building 500; Sacramento California 95815.”

Earlier in her Declaration of Service by Mail, Ms. Roth stated,

“I am employed by the Government Claims Program, I am 18 years of age or older. I am familiar with the business practice at the Government Claims Program for collection and processing of correspondence for mailing with the United States Postal Service. In accordance that practice, correspondence placed in the internal mail collection system at the Government Claims Program is deposited with the United States Postal Service with postage thereon fully prepaid the same day in the ordinary course of business.”

This is similar to the declaration offered by the claims adjuster in the *Him* case and found sufficient to grant judgment in the *Him* case.

Plaintiffs argue that they never received the rejection letter for Bernice Prasad or if they received it and cannot find it. Under the *Him* analysis this contention is irrelevant. Further this is inconsistent with the language of Plaintiffs Complaint in Paragraph 8. And according to Ms. Roth, in her original declaration filed with the Judgment on Pleadings, the rejection letter to Bernice Prasad was served on December 15, 2016, whether received or not. And Ms. Roth made a declaration of mailing to the York firm under penalty of perjury on the State’s proof of mailing form.

The court would grant the Defendants Judgment on the Pleadings as to Bernice Prasad based on the judicially noticed Exhibits and as the pleadings in Paragraph 8 as they now exist.

However, Plaintiff Bernice Prasad is granted leave to amend the pleadings to state the facts, under penalty of perjury, that the *Him* analysis does not apply,

Plaintiffs Contentions in Opposition

Plaintiff’s make various contentions of compliance with the Tort Claims Act and the statute of

Wednesday, May 12, 2021

limitations regarding the State of California Department of Transportation. Specifically, Plaintiffs in the separate memorandums of points and authorities joined by all Plaintiffs jointly and filed separately by Plaintiff Ram Prasad and by Plaintiffs' Devi Prasad (deceased), Bernice Prasad and Richard Prasad. They claim in summary that there are at least three reasons why the Defendant's motion must be denied. 1) Failure of Defendant to meet and confer prior to the filing of a motion under Civil Code of Procedure Section 439 (which the court rejects *supra*). 2) Failure because a Motion for Judgment on the Pleadings can only be decided from issues that appear on the face of the pleading, or from matters that are appropriately judicially noticed, and that Defendants request for certain judicially noticed documents have, through subsequent discovery, raised significant evidentiary disputes which require evidentiary resolution regarding what happened during the claims process, regarding whether the claims were appropriately rejected and mailed for all four Plaintiffs, and whether the six-month statute of limitations in government code section 945.6 is applicable, and 3) Examination of the Complaint alone shows that there is no defect in the Plaintiffs pleadings.

These newly discovered evidence claims largely go to the contentions of the other three Plaintiffs. The Court is not granting Judgment on the Pleadings as to these Plaintiffs.

The Court has addressed the second contention under the *Him* analysis (*infra*.)

Regarding the third contention: In one Plaintiffs opposition (joined by all Plaintiffs) there is a contention that the face of the complaint allows plaintiffs to contend that the DOT-as one of the Defendants-did reject the claim on January 4, 2017 and the six months did not expire until July 2017. This is contradicted by exhibit C, the Ram Prasad contentions that the only Claim rejection, occurring on January 4, 2017 came from the County of Amador, and the York argument and assertions in the exhibits G and H. Further neither Plaintiff nor Defendant DOT has produced a claim rejected by DGS on January 4, 2017.

As noted above the court finds, based upon the current Complaint, that Judgment on the Pleadings is granted as to Bernice Prasad alone,

Plaintiff's Opposition Based Upon Objections to Judicial Notice Requests of Defendant Department of Transportation:

#1: Plaintiffs make no objection to judicial notice of Plaintiffs' Complaint (Exhibit A)

#2 Plaintiffs Government Tort Claim as to Bernice Prasad (Exhibit B):

Under Evidence Code Section 452, once the tort claim has been stamped it becomes a record of the Department of General Services, a Department of the State of California Executive Branch. Under Evidence code Section 453, Plaintiffs have had notice as the originator of the Document and 17 months of notice.

In this case DOT provided a declaration of the manager of the Government Claims Program to note that Exhibit B to the request for judicial notice was a true and correct copy of the Government Claim Form submitted on behalf of the Prasad Plaintiffs and was received on December 8, 2016.

Wednesday, May 12, 2021

Further, Plaintiff's attorney, Eva Silva, declares that Exhibit 1 to her declaration which is identical (with the exception of the stamp) of Plaintiff's Government Tort Claim (which makes it an official document) is a true and correct copy. And Plaintiff's counsel York signed the document under penalty of perjury that the information contained in this claim was true and correct to the best of her information and belief.

Unlike the factual and legal situation here, the Plaintiffs cited the case of *Jolley v. Chase Home Finance LLC* (2013) 213 Cal.App.4th 872 for the proposition that judicial notice cannot be taken when there is a dispute over authenticity. In the *Jolley* case, the attorney declarant moved for Judicial Notice of an agreement found on the FDIC's website. Declarant was not a custodian of records, was not a party to the agreement, was not involved in negotiating or drafting the agreement, did not provide background as to how she acquired knowledge of the document. She did not even state it was a true and complete copy. There is no real dispute over authenticity here.

Plaintiffs cited *Mack v. State Board of Education* (1964) 224 Cal.App.3rd 370, 371 for the proposition the court could not take judicial notice of the ultimate fact in dispute, i.e. whether the Communist Party is an organization which advocates the overthrow of the United States government. However the court noted they "do not hold that evidence of legislative findings and judicial decisions bearing on such ultimate fact may not be supplied under the doctrine of judicial notice. But such evidence is not conclusive of the issue in dispute, it is simply to be weighted and considered together with all other evidence in the case." The *Mack* court does not stand for the proposition that evidence in dispute cannot be judicially noticed, but that evidence can be weighed by the court. (*Mack* at 273-274.) Plaintiffs do not identify what it is objectionable about the claim document that they prepared. Having an objection to the State's arguments is not the basis of an evidentiary dispute about a document itself, but how that document is being interpreted in the State's argument. This difference of opinion does not create a material factual dispute.

#3 Plaintiffs Objection to the Rejection Letter of December 15, 2016 (Exhibit C) as to Bernice Prasad

The court overrules the objection to the request for judicial notice of the December 15, 2016 rejection letter.

In *Him v. City and County of San Francisco* (supra) the appellate court affirmed the trial court's ruling the City only had to submit the claim rejection letter, and proof of service signed by the City claims adjuster, and a copy of the complaint to show that the Plaintiff there was barred because they filed a Complaint more than 6 months after a mailing by the City of the rejection letter.

The city claims adjuster in *Him* also filed a mailing declaration stating that she had sent a rejection letter by addressing the rejection letter, sealing the envelope, and placing the rejection letter in the outgoing City Department mail system. In this case the rejection letter of December 15, 2016 to Bernice Prasad was accompanied by a declaration from Laurie Roth Indicating that she had prepared the rejection letter addressed the envelope and placed it in the outgoing mail system at DGS with a proof of service.

Wednesday, May 12, 2021

In *Gong v. City of Rosemead* (supra), if a Plaintiff alleges compliance with the claims presentation requirement, but the public records do not reflect compliance, the governmental entity can request the court to take judicial notice under Evidence Code Section 452 that the entity's records do not show compliance. Clearly the rejection letter here is subject to judicial notice under Evidence Code Section 452(c) as an official act of the executive branch of the California Department of General Services. The manager of the Government Claims programs authenticated the document as a letter issued on December 15, 2016 by the Office of Risk Insurance. This is Exhibit C to the State's request for judicial notice.

Under *Him* it is clear that Plaintiffs argument here, that it did not receive the rejection letter, is of little relevance and does not raise an issue of authenticity.

Because Plaintiffs submitted duplicate claims for the same incident they contend that they should have received duplicate rejection letters. This is for another Motion as here the court is only granting judgment on the Pleadings as to Bernice Prasad.

Plaintiffs cite *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474 and *Shewry v. Wooten* (2009) 172 Cal.App.4th 741. Neither case distinguishes the *Him* case regarding the rejection letter and its applicability. In *Bonzer*, the City requested relief from a ruling arising from service on a Peremptory Writ of Mandamus. Neither the City nor City Attorney had received notice of the Writ Hearing. The standard for notice in *Bonzer* was governed by Evidence Code Sections 604 and 641 rather than the Government Tort Claims Act procedures.

In *Shewry* the case arose out of an action against the decedent's estate for reimbursement of Medi-Cal expenditures which had been made to the decedent. The court there analyzed the issue regarding service on the decedent's personal representative based upon the provisions of Probate Code Section 9200, not under the Government Code regarding the California Government Tort Claims Act sections. These cases are inapplicable

In the case *Childs v. California* (1983) 144 Cal.App.3d 155 there was no requested judicial notice of a rejection letter arising out of a tort claim. Instead, the California Attorney General requested judicial notice of a declaration from an employee of the State Board of Control. This was not an official act under Evidence Code Section 452(c), but only the individual's description of what occurred in general, not a statement about the actual rejection letter. In contrast, Defendant here is requesting judicial notice of a rejection letter containing proof of service signed under penalty of perjury.

In *Comings v. State Board of Education* (1972) 23 Cal.App.3d 94, the court was asked to take judicial notice by two teachers that marijuana is medically harmless, although illegal, and it's commonplace among students and adults in California. The court in *Comings* declined under Evidence Code 452 to take judicial notice of the truth that marijuana use is harmless and commonplace because there remained an intense scientific and popular controversy around this position. The two cases are inapplicable.

#4 and #5 Plaintiff's Tort claims to Amador County/Amador County rejection letter dated January 4 2017 (Exhibits D and E)

Wednesday, May 12, 2021

The objections are overruled on the basis of Evidence Code 452(d).

Plaintiff Ram Prasad's Memorandum of Points and Authorities in Opposition admits, on Page 3; lines 20-23 that "the only rejection letter the Plaintiffs had received was that dated January 4, 2017- from the County of Amador".

If another claims rejection letter was sent by the State Department of General Services on January 4, 2107 neither side has produced it.

The Court Grants Defendant Department of Transportation's Judgment on the Pleadings as to Bernice Prasad.

The Plaintiffs are granted leave to Amend

In Opposition, Plaintiffs discuss depositions of Roth and Wagner. Although the court declines to accept these depositions for the purposes of judicial notice on this Judgment on the Pleadings, the court assumes that Plaintiff Prasad should be allowed to attempt to amend their Complaint to allege what factual understanding they have gained from recent discovery regarding the Government Tort Claims procedure that they assert occurred in this case. The court, in accordance with Civil Code of Procedure Sections 438(h)(2) and 439(c)(1), will grant 30 days leave to amend the pleadings.

The court does not grant Judgment on the Pleadings as to the other Plaintiffs. The court does not have a policy or practice document as to how DGS treats multiple Plaintiffs where a rejection letter was sent to counsel for one Plaintiff where multiple claims had been sent to DGS for other Plaintiffs regarding the same accident from the same attorney. The court assumes that a Summary Judgment motion may be filed by Defendant if it can supply the court, consistent with Defendant's position, an official policy and practice regulation or statement issued by DGS, if one exists. Further, the Judgment on the Pleadings was of course not argued by either party as to when the Government Tort Claims time would expire for filing the Complaint by Plaintiffs, under the *Him* case analysis, where a rejection letter was not created nor sent, after one of the other Plaintiff's claim was received. The Court expresses neither findings nor opinion as to that issue. Accordingly, that issue is left to a possible later Motion.

Although it is clear that the court is only granting the Judgment on the Pleadings as to a single Plaintiff, the court notes that Paragraph 8 of the Complaint is, at best, factually untrue as to all the remaining Plaintiffs. Unless another rejection letter from DGS dated January 4, 2017 regarding one of the Plaintiffs claims is discovered, Paragraph 8 should be amended

The court declines to award attorneys fees at this time on this motion.