

**Judge Benson – Law & Motion – Wednesday, July 24, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV03048 Cortez, Alberto C v. Cambridge Real Estate Services, Inc

EVENT: Status Conference

The Court is in receipt of the status conference report. A further Case Management Conference is hereby scheduled for November 20, 2024 at 10:30am.

2. 17CV03587 Unipan, Mark v. Reetz, Kimberly et al

EVENT: Defendant Kimberly Reetz's Motion for Order Vacating Void Judgment

Defendant Kimberly Reetz's Motion for Order Vacating Void Judgment is DENIED WITHOUT PREJUDICE. The moving papers do not include a proof of service indicating Plaintiff was served with this motion and pursuant to the requirements of CCP § 1005 et seq. The Court will prepare the order.

3. 24CV01802 In re: Cervantes, Martin Gaona

EVENT: Change of name (minor)

There is no proof of service on the biological parents as required by CCP § 1277(f)(1). Unless Petitioner can provide legal authority to the contrary, there is no language in CCP § 1277 indicating termination of parental rights is an exception to the requirement that the biological parents be served. The Court will hear from Petitioner.

4-5. 20CV00578 Holman, Ryan v. County of Butte et al.

EVENT: (1) Plaintiff's Motion for Change of Venue

(2) Plaintiff's Motion for a New Trial

MOTION FOR CHANGE OF VENUE

On the Court's motion, Plaintiff's Motion for Change of Venue is continued to December 4, 2024 at 9:00am. Per CCP § 916, an appeal stays trial proceedings including proceedings which are affected by the judgment. The motion is premature at this stage in light of the appeal filed by Plaintiff. Should the appeal be resolved sooner, Plaintiff may file a request to advance the hearing to an earlier time.

MOTION FOR A NEW TRIAL

Plaintiff's Motion for a New Trial is DENIED. After careful consideration of the moving papers, the Court finds no grounds under CCP § 657.

The Court will prepare the order.

6. 23CV02465 Thao, Thai v. Callaway, Michael et al

EVENT: Defendant City of Chico's Demurrer to Plaintiff's First Amended Complaint

Defendant City of Chico's Demurrer to Plaintiff's First Amended Complaint is OVERRULED AS TO THE FIRST CAUSE OF ACTION AND SUSTAINED WITH LEAVE TO AMEND AS TO THE SECOND CAUSE OF ACTION. Plaintiffs shall amend, if they so choose, within 20 days of this order.

Preliminarily, Plaintiff's argument that the stipulation precludes the instant demurrer, the argument is without a factual basis. Nowhere does it state Defendants are waiving their ability to file a demurrer or any other motion attacking the pleading as authorized by the Code of Civil Procedure.

As to the first cause of action, the Court disagrees that the legal theories cited in the first cause of action are duplicative. Even if they were, a demurrer is not the appropriate procedural mechanism to address redundant matter. If there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado*, (2014) 232 Cal. App. 4th 696) [Emphasis Added]

Regarding the second cause of action, the Court preliminarily notes that based on the argument presented, Gov. Code § 911 is inapplicable. According to Defendants' contention, the loss of consortium claim was never presented in the first instance. If that's true, Gov. Code § 911 wouldn't apply. It is only a claim as presented that fails to comply substantially that triggers sections 910.8, 911 and 911.3. (*Phillips v. Desert Hospital Dist.*, (1989) 49 Cal. 3d 699, 707) [Emphasis Added]

The second cause of action for loss of consortium does not allege compliance with the claim presentation procedures. The filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an element that a plaintiff is required to prove in order to prevail. (*DiCampi-Mintz v. County of Santa Clara*, (2012) 55 Cal. 4th 983, 990) [Emphasis Added] Because the claim presentation requirement is an element, Plaintiffs must plead that they presented a claim which included a loss of consortium demand.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

7. 19CV00855 Weston, Caryl Lynn v. State of California Department of Transportation, et al.

EVENT: Defendants California Department of Transportation and Mark Allen Lawson's Demurrer to Plaintiff's First Amended Complaint

Defendants California Department of Transportation and Mark Allen Lawson's Demurrer to Plaintiff's First Amended Complaint is SUSTAINED WITH LEAVE TO AMEND. Plaintiff shall amend within 20 days of this order.

The Court acknowledges the First Amended Complaint alleges compliance with claim presentation requirements.

Defendant's Request for Judicial Notice is granted. Per *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 376, it is clear the Court can take judicial notice pursuant to Evidence Code section 452(c) that the entity's records do not show compliance when the pleading alleges compliance. Further, the Court notes that in the context of the issue raised, the contents of the claim and the attached police report have significance independent of their truth. The issue is not whether the police report is true or accurate, the issue is whether the contents of the claim, whether true or not, are consistent with the allegations in the FAC.

Before addressing that issue, Plaintiff argues the issue is waived pursuant to Government Code section 911.

Gov. Code § 911.

Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

As Defendants noted, the insufficiency of plaintiff's claim lies in its failure to set forth the factual basis for recovery alleged in the complaint. (See *Donohue v. State of California*, (1986) 178 Cal. App. 3d 795, 805) Thus Gov. Code § 911 is inapplicable.

Regarding the issue of material variance, the Court is unaware of any case law where material variance was found in omitting allegations which were present in the claim. All cases reviewed involve an addition or change from the claim to the complaint. Here, we are presented with an unusual situation where certain content in the claim was omitted.

The Court finds a material variance exists when the complaint omits a material allegation from the claim. In other words, a variance is a variance, whether it is the result of addition or omission.

Further, the omission was material.

Many California cases have established that the plain purposes of the public liability claim statutes are to require notice of the circumstances of an injury upon which a claim for damages is made, so that municipal authorities may be in a position to investigate the facts as to the time and place, and to make proper investigation of the condition of the premises and decide whether the case is one for settlement or litigation.

Johnson v. Oakland, (1961) 188 Cal. App. 2d 181, 183 [Emphasis Added]

From the City's perspective, it was impossible to evaluate the claim considering 1) the police report concludes Plaintiff was at fault and 2) there is no further explanation from Plaintiff in the claim as to why the conclusions of the officer are incorrect. Simply put, the claim does not put Defendants on notice in a meaningful way as to why they are liable and Defendants cannot reasonably evaluate the claim as presented.

Consequently, the demurrer is sustained.

Regarding Plaintiff's estoppel argument, the FAC alleges no facts supporting an estoppel theory. Plaintiff is granted leave to amend to allege facts supporting an estoppel theory.

Plaintiff shall prepare and submit the for of order within 10 days.

8. 24CV01502 In re: the Petition of DV

EVENT: Petition for Approval of Transfer of Structured Settlement

(Continued from 6/26/24 and 7/10/24)

The Court will conduct a hearing.