

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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DATE: Tuesday, 16 January 2024

TIME: 9:00 A.M.

**This Department prefers that litigants use Zoom for Law and Motion
in and for Case Management Calendars. Please use the Zoom link below.**

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are
outlined in Local Civil Rule 8(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument,
oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00
p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by
telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative
ruling being the final order in the matter.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal
Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09>
Meeting ID: 961 4442 7712
[Password: 017350](#)

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California **Rules of Court**, rule 3.672.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	23CV416159	Martin B. Miller, MD vs Lawrence McGlynn, MD; Stanford Health Care	<p>Further Case Management Conference.</p> <p>Good cause appearing, the Court will CONTINUE the Case Management Conference to 07 May 2024 at 10:00 AM in Department 20.</p> <p>SEE LINES #8 and #9.</p>
LINE 2	23CV421216	Phillips Medical Capital, Inc. vs Mark Ryvola	<p>Order of Examination.</p> <p>Odyssey shows a Proof of Service for the Notice Continued Judgment Debtor Examination etc. completed on 06 December 2023.</p> <p>Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 3	22CV393000	Kent Taylor vs City of Mountain View; John Lau.	<p>Demurrer of Defendant City Of Mountain View and John Lau to Plaintiffs' Amended Complaint.</p> <p>Defendants City and Lau's demurrer to plaintiff Taylor's FAC is SUSTAINED WITHOUT LEAVE TO AMEND. Counsel for defendants is to prepare the appropriate paperwork and submitted to this Department via the clerk's e-filing queue.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	23CV411590	Martin Porter vs Santa Clara County Sheriff's Office	<p>Demurrer of Defendant to Plaintiff's Second Amended Complaint.</p> <p>Defendant County's demurrer to plaintiff Porter's SAC is SUSTAINED WITHOUT LEAVE TO AMEND.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 5	23CV411590	Martin Porter vs Santa Clara County Sheriff's Office	<p>Motion of Defendant to Strike Portions of Plaintiff's second Amended Complaint.</p> <p>In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT. In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 6	23CV411590	Martin Porter vs Santa Clara County Sheriff's Office	<p>Motion of Plaintiff to Allow "Toll" on the Statute of Limitations.</p> <p>In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 7	23CV411590	Martin Porter vs Santa Clara County Sheriff's Office	<p>Motion of Plaintiff for Leave to File an Amended Summons and Complaint.</p> <p>In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 8	23CV416159	Martin B. Miller, MD vs Lawrence McGlynn, MD; Stanford Health Care	<p>Motion of Defendants to Strike Portions of Plaintiffs' Complaint.</p> <p>Plaintiff did not file opposition and therefore this Court intends to SUSTAIN the demurrer with 20 days leave to amend.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 9	23CV416159	Martin B. Miller, MD vs Lawrence McGlynn, MD; Stanford Health Care	<p>Demurrer of Defendants to Plaintiff's Complaint.</p> <p>Plaintiff did not file opposition and therefore this Court intends to GRANT the motion to strike.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 10	20CV370309	Gultaze Sever v. Emily Yang Tovar;	<p>Motion Of Defendant Emily Yang Tovar For Summary Judgment.</p> <p>On 04 December 2023, plaintiff filed a dismissal of the entire action with prejudice.</p> <p>OFF CALENDAR.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 11	23CV414574	Cappy Pottorf vs FCA US, LLC	<p>Motion of Plaintiff to Compel Defendant to Provide Further Responses to Requests for Admissions Numbered 1, 2, and 5, Set 2; Request for Monetary Sanctions; and to Overrule Preamble of General Objections.</p> <p>This Court suggests that the parties read Association of Business Trial Lawyers Report (Northern California Chapter) Volume 29, number 1 (Summer 2022) ON DISCOVERY: The Art of “Meet & Confer.”</p> <p>https://abtl.org/northerncalifornia/abtlreport/on-discovery/</p> <p>The moving papers show an insufficient attempt to “Meet & Confer” with defense counsel prior to the filing of this motion. Sending an email dated 26 July 2023 demanding responses by 03 August 2023 is more akin to a “drive-by shooting” than serious attempts to “Meet & Confer.”</p> <p>This Court believes that boilerplate objections to discovery requests are improper save for perhaps objections based on attorney-client privilege or work product when supported by an appropriate privilege log.</p> <p>Notwithstanding the objections, the responses appear appropriate. Defendant is ordered to reserve proper responses without boilerplate objections. If new information comes up that might cause the defense to change a response, well-known rules of professionalism would suggest that the defense voluntarily amends their responses.</p> <p>The motion to compel further responses is DENIED. The motion to strike the preamble of objections is GRANTED. Amended responses shall be served within 20 days of the filing and service of this order. The request for monetary sanctions is DENIED</p> <p>This Court is RW&A to meet and confer with counsel in an informal discovery conference should either side wish to discuss the matter further. A joint request may be made by ex parte application through the clerk’s e-filing queue.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 12	23CV414574	Cappy Pottorf vs FCA US, LLC	<p>Motion of Plaintiff to Compel Defendant to Provide Further Responses to Requests for Production, Set 1; Request for Monetary Sanctions; and to Overrule Preamble of General Objections.</p> <p>SEE LINE #11.</p>
LINE 13	23CV414574	Cappy Pottorf vs FCA US, LLC	<p>Motion of Plaintiff to Compel Defendant to Provide Further Responses to Special Interrogatories, numbered 2-27 and 30-36, Set 1; Request for Monetary Sanctions; and to Overrule Preamble of General Objections.</p> <p>SEE LINE #11..</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 14	17CV310716	Fareed Sepehry-Fard vs Nationstar Mortgage LLC, a Delaware Corporation; Clear Recon Corp, A California Corporation; U.S. Bank National Association, as Purported Trustee For Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-Ar2; Capital One, N.A.	<p>Motion of Defendants To Expunge Lis Pendens.</p> <p>The motion is GRANTED.</p> <p>On 14 April 2022, this Court entered its order granting defendants' motion to dismiss the case under the vexatious litigant statute and for lack of prosecution. Mr. Sepehry-Fard filed two notice of appeal from that order and the ensuing judgment. Both were dismissed after the Presiding Justice denied his application for leave to proceed despite his status as a vexatious litigant.</p> <p>The motion is also GRANTED on the merits. Plaintiff did not establish the probable validity of any real property claim by a preponderance of the evidence. (Code of Civil Procedure, §§ 405.30, 405.31, and 405.32; see Amalgamated Bank v. Superior Court (2007) 149 Cal.App.4th 1003, 1015; Mix v. Superior Court (2004) 124 Cal.App.4th 987, 995-996.)</p> <p>Since the judgment is self-executing, it simply dismisses the case. Self-executing judgments require no process for enforcement and are not subject to any automatic stay on appeal. (See Veyna v. Orange Co. Nursery (2009) 170 Cal.App.4th 146, 156.)</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 15	18CV326154	Richard Soukoulis vs Diana Ávila Southern, individually and as trustee of the Southern Family Revocable Trust dated 4-15-2003; Richard Southern, individually and as trustee of the Southern Family Revocable Trust dated 4-15-2003.	<p>Motion Of Cross-Defendants Richard D. Soukoulis And Robin G. Soukoulis For Leave To Amend Answer To Southern Cross-Complaint.</p> <p>The parties contend that demanding their answer to the cross-complaint is necessary so that they are not denied the opportunity to defend against the issues raised by the defendants/cross-complainants in their motion for summary judgment.</p> <p>Responding parties oppose the motion on the grounds that the proposed amendment will raise new issues.</p> <p>California courts are bound to a policy of great liberality in permitting amendments to the pleadings at any stage of the proceeding, up to and including trial. (See Atkinson v. Elk Corp. (2003) 109 Cal.App.4th 739, 761; Code of Civil Procedure, §§ 473, 576 ["Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading."].)</p> <p>This Court notes that there are motions for summary judgment and for bifurcation set on 19 March 2024. There is a Trial Setting Conference set for 30 January 2024, which in effect will result in a trial date in September or October of this year if not later.</p> <p>The Motion is GRANTED. Moving party should submit a copy of the amended answer to the clerk via the e-filing queue for endorsement and then serve a copy of the file-endorsed pleading to the responding parties, who will have 20 days leave within which to RESPOND.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 16	18CV382417	Kim Huong Trinh vs Thut Tran; Dennis Trinh; Hai Trinh; Phung Trinh; Tam Trinh; Yen Kim Thrinh.	<p>Motion of Defendant Thuy Tranto Dismiss Lawsuit against Her for Failure to Timely Prosecute.</p> <p>This lawsuit was filed on 16 May 2018. It was not brought to trial within five years and six months or by November 16, 2023. This motion to dismiss was filed on November 21, 2023.</p> <p>Code of Civil Procedure, § 583.310 requires that an action be brought to trial within five years after it is filed. The requirement of this article is mandatory and is not subject to extension, excuse, or exception except as expressly provided by statute. The five rule was extended six months by Emergency rule 10(a). (Barron v. Santa Clara County Valley Transportation Authority (2023) 97 Cal.App.5th 1115.)</p> <p>The opposition failed to prove it could not have obtained a courtroom between May of 2023 to February of 2024. (See Bruns v. E-Commerce Exchange Inc. (2011) 51 Cal.App.4th 717, 730-731; (Oswald v. Landmark Builders, Inc. (2023) 97 Cal.App.5th 240, 248 ["The unavailability of courtrooms for trial does not automatically lead to a finding of an impossible or impractical circumstance under section 583.340(c). Rather, the trial court is tasked with determining the extent to which the unavailability of courtrooms for trial interfered with a plaintiff's ability to move the case to trial' during the relevant periods." (Internal punctuation modified).])</p> <p>Who has the burden of showing that the unavailability of courtrooms interfered with the plaintiff's ability to move the case to trial?</p> <p>Finally, this Court does not believe that Mr. Gorman's silence during the trial setting conference is either a written stipulation or an oral agreement made in open court entered into the minutes of the Court.</p> <p>This Court is inclined to GRANT the motion.</p> <p>NO FORMAL TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise this Court if they wish to appear and argue on the merits or submit on the papers presented.</p>
LINE 17	19CV346678	Premise Data Corporation vs Moorea Brega; David Mendelson.	<p>Motion of Plaintiff to Seal Records.</p> <p>The motion is DENIED is the request is overbroad. See Ruling of the Court from 11 January 2024.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 18	23CV411785	Creditors Adjustment Bureau, Inc. vs Logistic Solutions Inc.	<p>Request for Entry of Default Judgment.</p> <p>The Clerk advises that on 09 November 2023 The Request of Plaintiff for Court Judgment was rejected because “def[endant]’s name and certified mail receipt attached to the POS-010 file [sic] on 8/14/23 does not match the complaint. must [sic] include a request [sic] for entry of default must be entered first before court judgment can be requested.”</p> <p>The Court will CONTINUE the matter to a date certain to provide the opportunity to rectify this request. Counsel should appear to obtain a new date.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 19	23CV414574	Cappy Pottorf vs FCA US, LLC	<p>Motion of Plaintiff to Compel Defendant to Overrule Preamble of General Objections and Compel Further Responses to Form Interrogatories, Set 1; Request for Monetary Sanctions.</p> <p>SEE LINE #11.</p>
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
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LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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Calendar Line 2

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Calendar Line 3

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 22CV393000

Kent Taylor v. City of Mountain View; John Lau

DATE: 16 January 2024

TIME: 9:00 am

LINE NUMBER: 03

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 12 January 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Defendants' Demurrer to Plaintiff Amended Complaint.

I. Statement of Facts.

According to the allegations of the first amended complaint ("FAC"), on 10 January 2019 at approximately 11:40 p.m., defendant John Lau ("Lau"), a police officer with defendant City of Mountain View ("City"), conducted an unreasonable search of plaintiff Kent Taylor's vehicle.

On 5 January 2022¹, plaintiff Taylor filed a Judicial Council form complaint against defendant City (also erroneously sued as Mountain View Police Department) asserting causes of action for (1) fraud and intentional deceit; and (2) fraud and negligent misrepresentation.

On 30 March 2023, defendant City filed a demurrer to plaintiff Taylor's complaint. On 27 June 2023, the court issued a minute order sustaining defendant City's demurrer to plaintiff Taylor's complaint without leave to amend. The court sustained defendant City's demurrer on the ground that plaintiff Taylor did not allege compliance with the government claims presentation requirement.

On 13 June 2023, prior to the court's ruling on defendant City's demurrer, plaintiff Taylor filed the operative Judicial Council form FAC against defendants City and Lau continuing to assert causes of action for (1) fraud and intentional deceit; and (2) fraud and negligent misrepresentation.

On 1 September 2023, defendants City and Lau filed the motion now before the court, a demurrer to plaintiff Taylor's FAC.

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¹ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).)

II. Demurrers In General.

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See **Williams v. Beechnut Nutrition Corp.** (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to “state facts sufficient to constitute a cause of action.” (**Code of Civil Procedure**, § 430.10, subd. (e).) “[C]onclusionary allegations . . . without facts to support them” are insufficient on demurrer. (**Ankeny v. Lockheed Missiles and Space Co.** (1979) 88 Cal.App.3d 531, 537.) “It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued.” (**Yolo County Dept. of Social Services v. Municipal Court** (1980) 107 Cal.App.3d 842, 846-847.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading.” (**Committee on Children’s Television, Inc. v. General Foods Corp.** (1983) 35 Cal.3d 197, 213.) “It ‘admits the truth of all material factual allegations in the complaint . . . ; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.’ [Citation.]” (*Id.* at pp. 213-214; see **Cook v. De La Guerra** (1864) 24 Cal. 237, 239: “[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.”)

III. Analysis.

A. Defendants City and Lau’s demurrer to plaintiff Taylor’s FAC is SUSTAINED.

“Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions ...].)” (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*).)

Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, “ ‘a condition precedent to plaintiff’s maintaining an action against defendant’ ” (*Bodde, supra*, 32 Cal.4th at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 842, 129 Cal.Rptr. 453, 548 P.2d 1125), and thus an element of the plaintiff’s cause of action. (*Bodde, supra*, at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Bodde, supra*, at p. 1245, 13 Cal.Rptr.3d 534, 90 P.3d 116.)

(*Shirk, supra*, 42 Cal.4th at p. 209; accord, *Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 65 [“plaintiff suing the state or a local public entity must allege facts demonstrating either compliance with the claim presentation requirement or an excuse for noncompliance as an essential element of the cause of action”].)

At paragraph 9, the FAC alleges, “Plaintiff is required to comply with a claims statute, and is excused from complying because this chose of action was reasonably discovered within applicable statute of limitations.” However, as this court previously explained in ruling on defendant City’s earlier demurrer, “This is not a lawful exception to the Government Tort Claim Act’s claim requirement. (See Government Code, [sections] 905, 945.4, 946.4, 946.6.)”

The FAC is similarly defective as against defendant Lau. (See Gov. Code, section 950.2—“Except as provided in Section 950.4, a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under Part 3 (commencing with Section 900) of this division or under Chapter 2 (commencing with Section 945) of Part 4 of this division.”)

In opposition, plaintiff Taylor tacitly concedes he did not present a claim to defendant City nor did he make an application for leave to present a late claim pursuant to Government Code section 911.4.² Government Code section 946.6, subd. (a) states, in relevant part, “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.”

However, Government Code section 946.6 imposes a deadline to file such a petition. Government Code section 946.6, subd. (b) states, in relevant part, “The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.” Here, plaintiff Taylor never filed a claim, never made an application for leave to present a claim, and never filed a petition with the court for relief from the claim presentation requirement. Instead, plaintiff Taylor commenced this action on 5 January 2022.

The procedure for determining the merit of a late claim application after 45 days of entity inaction is provided in section 946.6(b). The applicant has six months to seek relief *in court* “after the application to the [entity] is denied or deemed to be denied.” (*Ibid.*, italics added.) The six-month period “operates as a statute of limitations. It is mandatory, not discretionary.” (*D.C. v. Oakdale Joint Unified School Dist.* (2012) 203 Cal.App.4th 1572, 1582 [138 Cal. Rptr. 3d 421], citing cases.)

(*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 653.)

In opposition to the demurrer, plaintiff Taylor asserts he should be entitled to relief pursuant to Code of Civil Procedure section 473, subdivision (b) for mistake, inadvertence, surprise, and/or excusable neglect in failing to present a claim and/or timely petition the court for relief. However, plaintiff Taylor cites no legal authority applying Code of Civil Procedure section 473, subdivision (b) relief to a situation such as this.

In conducting its own research, the court does not believe Code of Civil Procedure section 473, subdivision (b) can be applied as a loophole to escape the six-month time limit (which, as stated above, operates as a statute of limitations) imposed by Government Code section 946.6, subdivision (b). (See *Castro v. Sacramento County Fire Prot. Dist.* (1996) 47 Cal.App.4th 927, 933—“the Legislature did not intend ... [Code of Civil Procedure] section 473 to ... create a loophole through which a plaintiff may escape the bar of the statute of limitations. Statutes of limitations are a fundamental aspect of our legal system. They are “vital to the welfare of society and are favored in the law.” (*Shain v. Sresovich* (1894) 104 Cal. 402, 406 [38 P. 51]). “[S]tatute[s] of limitations traditionally play[] a valid role in laying stale causes to rest and providing finality and repose without the need for any court adjudication. [Citations.]” (*Gallo v. Superior Court* (1988) 200 Cal. App. 3d 1375, 1382 [246 Cal.Rptr. 587].)”)

Consequently, defendants City and Lau’s demurrer to plaintiff Taylor’s FAC is SUSTAINED WITHOUT LEAVE TO AMEND.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

All future dates are VACATED. The Court will set a Dismissal review date of 09 May 2024 at 10:00 AM in Department 20.

² Gov. Code, §911.4, subd. (a) states, “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.”

VI. Order.

Defendants City and Lau's demurrer to plaintiff Taylor's FAC is SUSTAINED WITHOUT LEAVE TO AMEND. Counsel for defendants is to prepare the appropriate paperwork and submitted to this Department via the clerk's e-filing queue.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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Calendar Line 4

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 23CV411590

Mark Porter v. County of Santa Clara Sheriff's Office, et al.

DATE: 16 January 2024

TIME: 9:00 am

LINE NUMBER: 04, 05

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 12 January 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Defendant County of Santa Clara's:

- (1) Demurrer To Plaintiff's Second Amended Complaint; and**
(2) Motion To Strike Portions Of Plaintiff's Second Amended Complaint.

I. Statement of Facts.

Plaintiff filed this complaint on 01 March 2023.³

According to the allegations of the second amended complaint ("SAC"), on 29 October 2020, deputy correctional officers with defendant County of Santa Clara (erroneously sued as County of Santa Clara Sheriff's Office; hereafter, "County") pepper-sprayed plaintiff Mark James Porter ("Porter") in the face while plaintiff Porter was handcuffed with his hands behind his back, face down, in a prone position.

A deputy correctional officer then twisted plaintiff Porter's left arm. Another deputy correctional officer placed his left knee on the back of plaintiff Porter's neck while another deputy correctional officer ripped off plaintiff Porter's shoes and socks and violently twisted plaintiff Porter's legs and feet. Plaintiff Porter lost consciousness for seconds.

A deputy correctional officer escorted plaintiff Porter outside and hosed plaintiff Porter down and made plaintiff Porter walk barefoot through the jail and outside during COVID. Plaintiff Porter was placed into a holding cell in freezing temperatures without socks, shoes, shirt, and a toilet for over nine hours and not provided medical treatment or water.

On 1 March 2023, plaintiff Porter, acting as a self-represented litigant⁴, filed a Judicial Council form complaint against defendant County asserting a cause of action for general negligence and other unspecified causes of action.

³ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).

⁴ Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the Rules of Court or Code of Civil Procedure. "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App.

On 16 March 2023, plaintiff Porter filed a first amended Judicial Council form complaint (“FAC”) which apparently identifies the other causes of action to be: “excessive force, refused medical treatment, violated my constitutional rights, retaliation, ... civil rights 1983 act, eighth, fourth, fifth, fourteenth amendments.”

On 18 April 2023, defendant County filed a demurrer to plaintiff Porter’s FAC. On 8 August 2023, the Court sustained defendant County’s demurrer with leave to amend. In an order after hearing dated 24 August 2023, the Court explained that the demurrer was sustained on all three grounds asserted by defendant County in its demurrer: (1) “the action is governed by a two-year statute of limitations;” (2) “Plaintiff did not comply with the claims presentation requirements applicable to public entities;” and (3) “the County claims to be immune from liability for injuries to an inmate pursuant to Government Code, 844.6”

On 24 August 2023, plaintiff Porter filed the operative SAC which continues to assert the same causes of action previously identified in the original complaint and FAC.

On 25 August 2023, plaintiff filed the first of four motions now before the Court, a “motion to allow to ‘toll’ statute of limitations.”

On 27 September 2023, defendant County filed the second and third motions now before the Court, a demurrer and motion to strike portions of plaintiff Porter’s SAC.

On 3 October 2023, plaintiff Porter filed the fourth motion now before the Court, a “motion [for] leave to file amended summons and complaint.”

II. Demurrers in General.

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See **Gould v. Maryland Sound Industries, Inc.** (1995) 31 Cal.App.4th 1137, 1144⁵; **Williams v. Beechnut Nutrition Corp.** (1986) 185 Cal.App.3d 135, 139, fn. 2 (demurrers for uncertainty).)

Code of Civil Procedure, § 430.10(e) states “The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: The pleading does not state facts sufficient to constitute a cause of action.”

Code of Civil Procedure, § 430.20(a) states: “A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds: The answer does not state facts sufficient to constitute a defense.”

A demurrer tests the legal sufficiency of a complaint. It serves to test the sufficiency of a pleading by raising questions of law. (**Buford v. State of California** (1980) 104 Cal.App.3d 811, 818.) While a demurrer admits all material facts that were properly plead, a demurrer does not assume the truth of the contentions, deductions or conclusions of facts or law. (**Levy v. Nielson** (2000) 83 Cal.App.4th 1061, 1063.⁶)

3d 294, 303.) “A litigant has a right to act as his own attorney [citation] ‘but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.’” (**Lombardi v. Citizens Nat’l Trust & Sav. Bank** (1955) 137 Cal.App.2d 206, 208-209.)

⁵ “It is black-letter law a demurrer tests the pleading alone. (5 Witkin, **California Procedure** (3d ed. 1985) Pleading, § 895, p. 334.) When any ground for objection to a complaint or cross-complaint does not appear on the face of the pleading, the objection may be taken by answer. (**Code of Civil Procedure**, § 430.30 (b).) Defendants cannot set forth allegations of fact in their demurrers which, if true, would defeat plaintiff’s complaint. (**Fuhrman v. California Satellite Systems** (1986) 179 Cal.App.3d 408, 422-423.) (Internal quotations modified, modest editing used.)

⁶ While the allegations of the complaint must be accepted as generally true, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. (**Vance v. Villa Park Mobile-home Estates** (1995) 36 Cal.App.4th 698, 709.) Allegations of a complaint must be sufficiently clear to appraise the defendant of the issues which he (or she) is to meet and defend. (**Butler v. Sequeira** (1950) 100 Cal.App.2d 143.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct.⁷ A demurrer tests only the legal sufficiency of the pleading. (*Whitcombe v. County of Yolo* (1977) 73 Cal.App.3d 698, 702.) It ‘admits the truth of all material factual allegations in the complaint . . . ; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing Court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

Even though the complaint is in some respects uncertain, the Courts often hold it good against demurrer on the theory that, although not a model of pleading, “its allegations, liberally construed, are sufficient to apprise the defendant of the issues that he is to meet.” (*See Krieger v. Feeny* (1910) 14 Cal.App. 538, 544.) The objection that the complaint (or some part of it) is uncertain goes to a doubt as to what the plaintiff means by the facts he or she has alleged, and it is designed to require the pleader to clarify the doubtful part by more explicit averments.

A demurrer is properly sustained where the complaint or an individual cause of action fails to “state facts sufficient to constitute a cause of action.” (*Code of Civil Procedure*, § 430.10(e).) “Conclusionary allegations . . . without facts to support them” are insufficient on demurrer.” (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.) “It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued.” (*Yolo County Dept. of Social Services v. Municipal Court* (1980) 107 Cal.App.3d 842, 846-847.)

“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading. (*Whitcombe v. County of Yolo* (1977) 73 Cal.App.3d 698, 702.) It ‘admits the truth of all material factual allegations in the complaint . . . ; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214; see *Cook v. De La Guerra* (1864) 24 Cal. 237, 239: “[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.”)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. . . . [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 850.)

III. Analysis.

B. Procedural violation.

As a preliminary matter, the Court notes that plaintiff Porter’s opposition is untimely filed and served. *Code of Civil Procedure*, § 1005, subdivision (b) states, “All papers opposing a motion . . . shall be filed with the court and a copy served on each party at least nine court days . . . before the hearing.” Based on a hearing date of 16 January 2024 and a court holiday on 15 January 2024, plaintiff Porter’s opposition had to be filed and served no later than 2 January 2024. Plaintiff Porter did not file opposition until 5 January 2024, three court days late.

⁷ Compare with *Coyne v. Krempels* (1950) 36 Cal.2d 257, a summary judgment motion, and which stands for the proposition that allegations in the complaint alone cannot be used to defeat a summary judgment motion.

California **Rules of Court**, rule 3.1300, subdivision (d) states, “No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.”

Since the Court has discretion to consider a late filed paper, since defendant County has not suffered any prejudice from the late filing, and to avoid the expenditure of any further judicial resources, the Court will look past this procedural violation and consider the opposition on its merits. However, plaintiff Porter is hereby admonished for the procedural violation. Any future violation may result in the court’s refusal to consider the untimely filed papers.

C. Defendant County’s demurrer to plaintiff Porter’s SAC is SUSTAINED.

Defendant County demurs on several grounds. However, the Court finds the following to be dispositive. “Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (**Government Code**, § 911.2; **State of California v. Superior Court** (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see **Government Code**, § 905 [itemized exceptions ...].)” (**Shirk v. Vista Unified School Dist.** (2007) 42 Cal.4th 201, 208 (*Shirk*).)

Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, “ ‘a condition precedent to plaintiff’s maintaining an action against defendant’ ” (*Bodde, supra*, 32 Cal.4th at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116, quoting **Williams v. Horvath** (1976) 16 Cal.3d 834, 842, 129 Cal.Rptr. 453, 548 P.2d 1125), and thus an element of the plaintiff’s cause of action. (*Bodde, supra*, at p. 1240, 13 Cal.Rptr.3d 534, 90 P.3d 116.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Bodde, supra*, at p. 1245, 13 Cal.Rptr.3d 534, 90 P.3d 116.)

(*Shirk, supra*, 42 Cal.4th at p. 209; accord, **Ovando v. County of Los Angeles** (2008) 159 Cal.App.4th 42, 65 [“plaintiff suing the state or a local public entity must allege facts demonstrating either compliance with the claim presentation requirement or an excuse for noncompliance as an essential element of the cause of action”].)

At paragraph 9, the Judicial Council form SAC alleges, “Plaintiff is required to comply with a claims statute, and has complied with the applicable claims statutes.” However, as noted above, a plaintiff must allege facts demonstrating the claim was timely presented.

In opposition, plaintiff Porter asserts, “I emailed the Board of Supervisors several times and in my Amended Complaint are the emails and several claim Acts.” The Court has reviewed the 195 page SAC but did not locate any of the referenced emails from plaintiff Porter to the Board of Supervisors.

As defendant County points out, **Government Code**, § 911.2 states: “A claim relating to a cause of action for death or for injury to person ... shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action.” The alleged events which give rise to plaintiff Porter’s claim occurred on 29 October 2020. Plaintiff Porter had to present a claim by 29 April 2021. In anticipation that plaintiff Porter would assert that he presented a claim to the Board of Supervisors, defendant County requests judicial notice of said claim by plaintiff Porter, but notes that it is dated 1 March 2023, the same day plaintiff Porter filed his original complaint in this action.⁸ This judicially-noticed document establishes plaintiff Porter’s claim is untimely and plaintiff Porter has not alleged any legal basis for relief.

Consequently, defendant County’s demurrer to plaintiff Porter’s SAC is SUSTAINED WITHOUT LEAVE TO AMEND.

D. Defendant County’s motion to strike portions of plaintiff Porter’s SAC is deemed MOOT.

⁸ Defendant County’s request for judicial notice, exhibit 1, is GRANTED. “The court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim. (See Evid. Code, § 452, subd. (c); *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 14 [43 Cal. Rptr. 2d 350].)” (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1.)

In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT.

IV Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The Case Management Conference currently set for 27 February 2024 at 10:00 AM in this Department shall REMAIN AS SET.

VI. Order.

Defendant County's demurrer to plaintiff Porter's SAC is SUSTAINED WITHOUT LEAVE TO AMEND.

In light of the Court's ruling above, defendant County's motion to strike portions of plaintiff Porter's SAC is deemed MOOT.

Counsel for defendant is to prepare an appropriate order for execution by the Court

DATED:

HON. SOCRATES PETER MANOUKIAN

*Judge of the Superior Court
County of Santa Clara*

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