

October 24, 2025, Civil Law & Motion Tentative Rulings

1. CU0002160 Mimi Simmons vs. Craig Ruble

Petitioner Mimi Simmons' August 12, 2025, application for an order to serve respondent Craig Ruble is granted. Notice of court hearing on the request for restraining order shall be served by publication in The Santa Cruz Record a newspaper of general circulation published in Santa Cruz County, California, hereby designated as the newspaper most likely to give respondent actual notice of the hearing, and that the publication be made once a week for four successive weeks. Further, copies of the notice of the court hearing, the order on request to continue court hearing, the temporary restraining order, the request for civil harassment restraining order, CH-120-INFO, a blank response to request for civil harassment restraining order - CH-120, and this order shall be e-mailed to respondent.

Code Civ. Proc. Section 527.6, provides in pertinent part:

(m)(1) Except as provided in paragraph (2), upon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(2) *If the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.*

(Italics added).

Yu v. Pozniak-Rice (2025) 112 Cal.App.5th 1135, 1143, addresses what constitutes a “diligent effort” under section 527.6, subdivision (m)(2).

The plaintiff may serve a summons and complaint by various methods. (§§ 415.10-415.40.) If the plaintiff cannot serve the summons and complaint by another authorized manner, the court on a proper showing may authorize the plaintiff to serve the summons and complaint by publication under section 415.50. “To obtain an order directing service by publication, section 415.50, subdivision (a), requires a party to establish to the satisfaction of the court in which the action is pending ‘that the party to be served *cannot with reasonable diligence be served in another manner* specified in this article’ ” (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748-749, 42 Cal.Rptr.2d 81, 896 P.2d 807; see *Rios v. Singh, supra*, 65 Cal.App.5th at p. 880, 280 Cal.Rptr.3d 404.) “ ‘The term “reasonable diligence” ... denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney. [Citations.] A number of honest attempts to learn defendant's whereabouts or his address by inquiry of relatives, ... and by investigation of appropriate city and telephone directories, [voter registries, and

assessor's office property indices situated near the defendant's last known location], generally are sufficient. These are the likely sources of information, and consequently must be searched before resorting to service by publication.' ” (*Watts*, at p. 749, fn. 5, 42 Cal.Rptr.2d 81, 896 P.2d 807; see *Rios*, at p. 880, 280 Cal.Rptr.3d 404.) A “declaration supporting a section 415.50 application must state probative facts based on personal knowledge rather than hearsay or legal conclusion.” (*Rios*, at p. 882, 280 Cal.Rptr.3d 404; see *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 42, 283 Cal.Rptr. 271.)

Giorgio v. Synergy Management Group, LLC, *supra*, 231 Cal.App.4th 241, 179 Cal.Rptr.3d 465 illustrates the sort of information a plaintiff must provide to establish the “reasonable diligence” required to obtain an order for service by publication under section 415.50. There, the defendant successfully challenged the plaintiff's original attempts at service of process and claimed he no longer lived or worked in the United States. (*Giorgio*, at pp. 243-244, 179 Cal.Rptr.3d 465.) The plaintiff searched online and was able to locate an address associated with the defendant in Los Angeles; the plaintiff also confirmed the address with a European “bailiff firm.” (*Id.* at p. 244, 179 Cal.Rptr.3d 465.) The summons sent to that address was returned unclaimed, but the post office verified that the defendant continued to receive mail there and that there was no change of address on file. (*Id.* at pp. 244-245, 179 Cal.Rptr.3d 465.) The plaintiff also hired two process servers and unsuccessfully attempted personal service six times at the address, as well as at addresses of the defendant's family members. (*Id.* at pp. 244-245, 247-248, 179 Cal.Rptr.3d 465.) The plaintiff supported its application for service by publication not only with the declarations by counsel and the process server, but also with additional evidence the defendant lived at the Los Angeles address, including the written responses from the post office and the bailiff firm. (*Id.* at pp. 245 & fn. 5, 249, 179 Cal.Rptr.3d 465.) The court in *Giorgio* affirmed the trial court's finding the defendant “could not with reasonable diligence be served personally or by mail.” (*Id.* at p. 248, 179 Cal.Rptr.3d 465.)

A petitioner seeking an alternative to personal service under section 527.6 must make a similar showing of “diligent effort ... to accomplish personal service” before the court may authorize service by other another method. (§ 527.6, subd. (m)(2).) In particular, the petitioner should support the request for service under section 527.6, subdivision (m)(2), with declarations stating “probative facts” (*Rios v. Singh*, *supra*, 65 Cal.App.5th at p. 882, 280 Cal.Rptr.3d 404) based on personal knowledge and demonstrating a thorough investigation designed to learn the respondent's whereabouts.

Yu, 112 Cal.App.5th 1135, 1143–1144.

At bar, petitioner has described the efforts she has made to serve respondent. After conducting a skip trace search, petitioner attempted service at both identified addresses and was informed

respondent no longer resides at either residence. Petitioner's attorney also submitted a declaration stating he has communicated with respondent who acknowledged he was aware of the "temp restraining order;" stated he is homeless, "Good luck finding me!;" and has refused to respond substantively to counsel's requests as to service. Finally, petitioner identified a court hearing in Santa Cruz County Superior Court at which she was going to attempt service, but the hearing was vacated and service was not possible. Therefore, petitioner has conducted sufficient investigation and made honest attempts to serve respondent but has been unsuccessful. Service by publication is warranted.

2. CU0002182 County of Nevada v. Successors of Myrna Buettner

Appearances are required in connection with the June 18, 2025, petition for an order to abate a substandard building at 10121 Valley Drive, Rough and Ready, and appoint a receiver. On October 10, 2025, the court granted Richard Alton Jr.'s petition to administer the estate in probate case PR0000815. Mr. Alton has nominated a professional fiduciary, John DePiazza, to serve as administrator of the estate (including seemingly the instant property), and letters will issue once Mr. Alton has filed proof of bond with the court. Given the appointment of a professional fiduciary, the court directs all parties to meet and confer regarding the ability of the estate to timely abate the nuisance. Further proceedings shall be set as needed.

3. CU0002203 Eva Schauffler v. W. Gregory Klein, et al.

Defendant W. Gregory Klein's July 28, 2025, anti-SLAPP special motion to strike causes of action for legal malpractice, abuse of process, and intentional infliction of emotional distress against is continued on the court's motion until November 14, 2025, in Department 6, for status as to reassignment of the case and further setting of the motion. Judge Tice-Raskin has recused himself.

**4. CU0002207 Deborah J. Carver vs. Michael W. Horner
CU21-086089 George L Horner, et al. vs. Deborah Carver**

In case number CU0002207 (case 2207), plaintiff Deborah Carver's September 16, 2025, motion for preliminary injunction is denied. Moreover, plaintiff Deborah Carver's October 9, 2025, motion to disqualify referee Kalli Brzezinski is denied. In case number CU21-086089 (case 6089), plaintiff Michael W. Horner's October 14, 2025, motion to make the property available for inspection is granted.

Motion for Preliminary Injunction

Carver requests the court to enjoin the sale of 10727 E. Lime Kiln Road, Grass Valley (subject property). The court is not persuaded. The court entered its interlocutory judgment for sale of the subject property on February 26, 2024, in case 6089. The judgment was upheld on appeal. Carver filed case 2207 on June 26, 2025. Horner's demurrer to the complaint was sustained without leave to amend on October 16, 2025. Therefore, there are no legal grounds to support the issuance of injunctive relief to Carver. Her request for a preliminary injunction is denied.

Motion to Disqualify Referee

Carver moves to disqualify Ms. Brzezinski as referee for this matter pursuant to Code of Civil Procedure section 873.050, Code of Civil Procedure §§ 170.1-170.6, and California Rules of Court, rule 3.904. Per Carver, the referee previously served as a witness in this matter, maintains a longstanding professional relationship with opposing counsel and has failed to maintain neutrality. The court is not persuaded.

Under California Rules of Court, rule 3.904, a referee appointed under Code of Civil Procedure section 638, must make certain disclosures to parties prior to service and can be the subject of objections consistent with Rules of Court, rule 3.905. That provision, however, has no application to a referee appointed under the partition statutes, Code of Civil Procedure, section 872.010, *et. seq.*, the situation at hand.

Code of Civil Procedure section 873.050 describes those individuals disqualified to serve as partition referees. It provides that no person shall be appointed as a referee who is a clerk or deputy clerk of the court; a former or present partner or employee of the judge; a relative within the third degree of the judge or the judge's spouse or the spouse of such a relative; or an owner of any interest in the property that is the subject of the action. None of those disqualifications apply to Ms. Brzezinski.

A referee also is subject to disqualification in the same way that judges are under Code of Civil Procedure sections 170-170.5. *See* Code Civ. Proc. § 170.5. A party's failure to pursue that disqualification remedy promptly constitutes a waiver of the claim.

A party may seek a judge's disqualification for cause under the procedure set forth at section 170.3, subdivision (c). However, the party must do so “at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification.” [Code Civ. Proc.] § 170.3, subd. (c). This strict promptness requirement is not to be taken lightly, as a failure to comply constitutes forfeiture or an implied waiver of the disqualification. *In re Steven O.* (1991) 229 Cal.App.3d 46, 54–55. Thus, when a statement of objection is untimely filed, it is appropriate for the trial court to order it stricken. [Code Civ. Proc.] § 170.4, subd. (b); *PBA, LLC v. KPOD Ltd.* (2003) 112 Cal.App.4th 965, 972.

Tri Counties Bank v. Superior Court (2008) 167 Cal.App.4th 1332, 1337 (parentheses and citations omitted).

At bar, the court issued a proposed statement of decision on December 12, 2023, among other things, appointing Brzezinski as referee with authority to sell the property. Carver, through counsel, filed an objection to the same on December 13, 2023, but *did* not object to the referee. The court issued its final statement of decision on January 23, 2024. No objections were made to the referee until October 9, 2025 (over two years after the court's proposed appointment and nearly four months after the matter was remitted to the trial court on May 29, 2025, following affirmance on appeal.) All of the factual information set forth in Carver's October 9, 2025, declaration in support of disqualification was known to her prior to the December 12, 2023 proposed statement of decision. (The court did not consider any factual assertions in the brief other than those which were expressly supported by the October 9, 2025, Carver declaration.) In light of this, the court concludes that Carver has failed to raise her objections to the referee with reasonable diligence and

at the earliest practicable opportunity after discovery of the facts constituting the ground or grounds for disqualification. Carver waived her right to seek disqualification of the referee on the stated grounds. Carver's motion to disqualify the court appointed referee is denied.

Motion to Make the Property Available for Inspection

Horner requests an order directing Carver to make the subject property available for inspection. Such an order is warranted. As discussed above, the court appointed Brzezinski as referee with authority to sell the property. Pursuant to Code of Civil Procedure § 873.060, "[t]he referee may perform any acts necessary to exercise the authority conferred by this title or by order of the court." Inspecting the property in preparation for sale is necessary to exercise the authority conferred by the order of the court. Therefore, Carver is ordered to make the property available for inspection by October 31, 2025, at 5:00 p.m. at a mutually convenient time for the referee and Carver during the daytime. The referee must complete her inspection in no more than two (2) hours. The referee shall be mindful of and considerate to all household occupants, including Ms. Carver's mother. Compliance with the court's order is expected.

5. CU20-084651 Julian M. Backrak, et al vs. Grass Valley Mob. Home Park LLC, et al.

No motion was filed; the hearing is dropped.

6. CU0001910 Anabel Sanchez vs. Michael Salmon, et al.

Defendants' demurrer to plaintiff's second amended complaint is sustained without leave to amend.

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that "a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.""" *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. The pleadings are to be liberally construed with "a view towards substantial justice between the parties[.]" and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827.

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958. Contentions, deductions, and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.

Plaintiff's Fifth Cause of Action for Sexual Battery (California Civil Code section 1708.5)

Defendants argue the fifth cause of action is barred by the Government Claims Act due to untimely claim presentation. The court agrees.

Under Government Code section 911.2, “[a] claim relating to a cause of action for death or for injury to person or to personal property ... shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than six months after the accrual of the cause of action.” Government Code section 945.4 then provides that “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.” Gov. Code §§ 911.2, 945.4. “Thus, under these statutes, failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity.” *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239 (*Bodde*). Moreover, “failure to allege compliance or circumstances excusing compliance with the claim presentation requirement subjects a complaint to a general demurrer for failure to state facts sufficient to constitute a cause of action.” *Id.* at 1245.

Plaintiff does not argue that she presented her claim within six months as required by the Government Claims Act. Rather, she asserts the sixth-month deadline in Government Code section 911.2 is not absolute, and her pleading is in substantial compliance with the requirements. Not so. Timely claim presentation is not merely a procedural requirement, but is a condition precedent to a plaintiff’s maintaining an action against a defendant. *Bodde, supra*, 32 Cal.4th at 1240. The doctrine of substantial compliance only applies in instances where a plaintiff submitted a timely claim but prematurely filed a complaint, or a plaintiff timely filed a claim that is deficient in form or content, or timely filed a claim but later pursued additional legal theories arising from the same set of facts described in the claim. *See, e.g. Bodde, supra*, at 1244; *Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 39-43; *Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 447.

Plaintiff argues that even if her claim is time barred, she is entitled to relief under Government Code section 946.6. The court disagrees again. Government Code section 946.6 only applies when a written application has been made to a public entity for leave to present an untimely claim, such application is denied, and a petition is then made to the court for an order relieving plaintiff of the time constraints. Gov. Code §§ 911.4(a); 911.6; 946.6. Plaintiff does not allege she filed an application for leave to present a late claim, nor a petition for judicial relief after the denial of such application. Therefore, the relief under Government Code section 946.6 is not applicable in this instance.

Plaintiff has failed to allege compliance or circumstances excusing compliance with the claim presentation requirement; he has failed to state facts sufficient to constitute a cause of action. The demurrer as to the fifth cause of action is sustained. Plaintiff has failed to demonstrate any reasonable probability that the defect can be remedied. Accordingly, leave to amend is denied.

Plaintiff's Sixth Cause of Action for Assault and Battery

Defendants argue the sixth cause of action is time-barred, fails to state a cognizable claim for assault or battery, and the public entity cannot be held liable for common law torts such as assault and battery. The court agrees with the first contention and need not address the remaining contentions.

In ruling on defendants' demurrer to the FAC, the court allowed leave to amend because Defendant Salmon's actions in the workplace kitchen may have caused her to believe defendant was about to touch her in a harmful and offensive manner without her consent, but the complaint did not state the date upon which that occurred. Thus, the court permitted plaintiff the possibility to plead sufficient facts alleging conduct occurring within the two-year statute of limitations applicable to assault and/or battery. Plaintiff's SAC alleges the kitchen incident occurred in October 2022. SAC ¶¶ 16, 83. Plaintiff did not file her complaint until February 10, 2025, which is still outside the applicable statute of limitations. *See* Code Civ. Proc. § 335.1.

In opposition, plaintiff argues she has alleged a pattern of continuing misconduct and so her filing in February 2025 is timely under the continuing violation doctrine. The court disagrees. The continuing violation doctrine does not apply here. " 'An assault is complete when anticipation of harm occurs. A battery or a cause of action for negligently harming a person or a thing is complete upon physical contact even though there is no observable damage at the time of contact.' " *Sonbergh v. MacQuarrie* (1952) 112 Cal.App.2d 771, 774; *see So v. Shin* (2013) 212 Cal.App.4th 652, 669 (elements battery and assault).

Therefore, defendants' demurrer is sustained as to the sixth claim. Plaintiff has failed to demonstrate a reasonable probability this defect can be remedied. Leave to amend is denied.

7. CU0002112 Martin F. Ryan vs. Lisa Dunne

The demurrer of defendant Lisa Dunne is sustained with leave to amend since it cannot be determined whether the alleged agreement is written, oral or implied by conduct. *See* Code of Civil Proc. §§ 430.10 (g); *Otworth v. Southern Pacific Co.* (1985) 166 Cal. App. 3d 452, 459. Plaintiff shall file a second amended complaint within 10 days of the notice of ruling.

The court is cognizant that plaintiff filed and served a first amended complaint on October 14, 2025, eight days before the scheduled hearing. Pursuant to Code of Civil Procedure sections 472 (a) and 1005(b), plaintiff was required to file and serve the that complaint at least nine court days before the hearing on defendant's demurrer. The parties did not stipulate to late amendment. *See* Code Civ. Proc. 472(a).

8. CU0001237 Peter Lindley vs. Regional Emergency Medical Serv. Authority, et al

On the court's motion, defendant's May 30, 2025, motion for adjudication of stipulated legal issues is continued until December 19, 2025, at 10:00 a.m., in Department 6.

Further briefing is necessary.

1. What additional dictionary definitions are available for the relevant times (*i.e.*, 1976 and, perhaps, 1981) with respect to the following terms: ambulance, driver, attendant, vehicle. Some dictionaries to consider include, without limitation: The Oxford English Dictionary, The Cambridge Dictionary, The Merriam-Webster's Dictionary, The American Heritage Dictionary, and The American Dictionary of the English Language. Please include hard copies of the same and citations that indicate how the definitions can be referenced electronically.

2. The California Highway Patrol has supervisor authority over ambulances pursuant to Vehicle Code section 2510 *et seq.*; regulations have been propagated in connection therewith. *See* Cal. Code Reg. § 1100, *et seq.* Is this relevant to the interpretation question at issue and how?

3. The Vehicle Code defines the terms driver, vehicle, emergency vehicle. *See* Veh. Code §§ 165, 305, 670. Is this relevant to the interpretation question at issue and how?

The parties shall file simultaneous briefs of no more than five pages no later than November 24, 2025, noon.