

**TENTATIVE RULINGS  
SPECIAL SET CALENDAR  
Thursday, December 12, 2024 9:30 a.m.  
Courtroom 17 – Hon. Bradford DeMeo  
3035 Cleveland Avenue, Santa Rosa**

**PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.**

**CourtCall is not permitted for this calendar.**

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

**TO JOIN ZOOM ONLINE:**

**D17 – Law & Motion**

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

**TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

**SPECIAL SET HEARING – APPEARANCES ARE EXPECTED; REQUEST FOR ORAL ARGUMENT NOT REQUIRED**

1. **24CV07004, Pfendler v. City of Petaluma**

Petitioners Nicholas Pfendler, Donald McKinney, James Heppelmann, Mary Hable, Richard Tavernetti, and Randall Smith (together “Petitioners”) filed this Petition for Judicial Relief from Government Code section 945.4. The Petitioner is **GRANTED**.

### **PROCEDURAL HISTORY**

On May 15, 2024, Petitioners submitted a claim to Respondent, alleging various issues with a permit that was approved by Sonoma County and, according to Petitioners, inaccurately stated that Respondent has a driveway to its property (“Lafferty Ranch”), which is situated on Petitioners’ land. (Petition, 2:16-22.) Respondent received and responded to Petitioners on July 2, 2024, stating that the claim was untimely made. (*Id.* at 2:22-25.) In the notice, Respondent stated that its use of and maintenance of the driveway providing access from Sonoma Mountain Road to the Lafferty Ranch commenced when Respondent acquired the Lafferty Ranch from a private water company in 1959. (Declaration of Carlstrom, Exhibit 3.) Subsequently, Petitioners submitted a request to file a late claim per Government Code section 911.4 on August 13, 2024, to preserve their rights even though they did not believe that their claim was untimely. (Petitioner, 2:26-28.) Respondent denied Petitioners request to present a late claim on September 4, 2024, (*Id.* at 3:10-11.) However, after Petitioners filed this action against Respondent on November 20, 2024, Respondent went back on their prior rejection and sent a letter stating that they were withdrawing its prior return of the May 15, 2024, claim as untimely and instead rejecting the claim via that letter on December 2, 2024. (Request for Judicial Notice, Exhibit 1.) The December 2, 2024, made no mention of the August 13, 2024, request to file a late claim, or the Respondent’s rejection of that submission.

Now, Petitioners seek permission from the Court to file a Complaint against Respondent, alleging the same causes of action noticed in the claims and relief from Government Code section 945.4. (*Id.* at 3:12-13.) Respondent opposed the Petition in their response, to which Petitioners submitted a reply.

### **REQUEST FOR JUDICIAL NOTICE**

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Respondent requests judicial notice of the December 2, 2024, Response to the Claim. The request is **GRANTED**.

### **ANALYSIS**

#### **Legal Standard**

Per Government Code section 945.4, 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 section 900 et. seq and 910 et. seq, until a written claim has been presented to the public entity and has been acted upon or rejected by the board.

Per Government Code section 946.6, if leave to present a claim is denied, then a party may petition the court for an order relieving the petition from the requirements of section 945.4. The petition filed must show that an application was made to the board under section 911.4 and was denied, but there was a reason for failure to present the claim within the time limit specified and other information as required by section 910 has been provided. (Govt. Code § 946.6(b).) The petition must be filed within six months after the denial. (Govt. Code § 946.6.)

If the application made to the board was within a reasonable time under section 911.4(b) and it was denied, then the Court may relieve the petition if: (1) the failure was through a mistake, inadvertence, surprise, or excusable neglect, unless the public entity can show it would be prejudiced in defense of the claim should the court relieve the petitioner; (2) the petitioner was a minor at the time of injury during the entire time period allotted for presentation of the claim; (3) the petitioner was a minor at some of the time allotted for presentation of the claim and the application was presented within six months of the person turning 18; (4) the petitioner was physically or mentally incapacitated during all of the time specified for the presentation of the claim and failed to present a claim during that time; (5) the petitioner was physically or mentally incapacitated during any of the time specified for presenting the claim and failed to do so, but the application was presented within six months of the person no longer being physically or mentally incapacitated; or (6) the injured person died before the expiration of the time to bring the claim. (Govt. Code § 946.6(c).)

### Petition for Relief

Petitioners argue that their initial claim was not untimely; they do not agree with Respondent's claim that the harms Petitioners suffered began in 1959, so the statute of limitations have run on their claims. (Petition, 3:16-18.) Respondent's permit application was approved on or about February 20, 2024, and Petitioners submitted their claim shortly after that because the Petitioners argue that the gravel that Respondent laid on Petitioners' properties in reliance of the permit is and continues to be a trespassory improvement. (Petition, 3:16-21.)

Even if the Court finds that Petitioners' claim is untimely, they seek relief per Government Code section 946.6(a) from the requirement to present the claim to the city. (Petition, 4:3-19.) They request relief under 946.6(c)(1) because they argue they submitted their claim within one-year as required by Government Code section 911.4 and also argue that Respondent would not be prejudiced by the presentation of their claim, especially when Respondents were aware that Petitioners disputed Respondent's right to pursue the project, challenged the validity of the permit. (*Id.* at 4:22-28, 5:1-5.)

### Respondent's Opposition

Respondent argues in its response that the Petition is moot and should be denied. Respondent claims that it accepted and formally responded to Petitioners' claim, so there is no longer an active dispute or controversy for the Court's adjudication. (Response, 3:8-9.) Government Code

section 946.6 allows a petitioner to ask for an order relieving the petitioner from section 945.4, but Respondent argues that it already accepted and acted on the claim as of December 2, 2024, so this Petition is moot. (*Id.* at 3:9-13.)

### Reply Brief

In the Reply brief, Petitioners point out that while Respondent took back its rejection of the initial claim on December 2, 2024, it failed to withdraw its decision entered on September 4, 2024, rejecting Petitioner's request to file a late claim filed August 13, 2024. Petitioners argue the August 13, 2024, claim continues to be at issue and Petitioners continue to seek relief from the bar to sue as related to that claim.

### Application

The Court finds that Petitioners met their burden of showing that they made an application to Respondent under 911.4, which was denied, and have shown they were entitled to relief because the denial was made in mistake. Petitioners timely brought this Petition within six months of the denial. Respondent cannot now attempt to moot the Petition by means of the December 2, 2024, withdrawal to circumvent the hearing and the potential that the Court might grant the Petition. The Court is not persuaded that the Petition is moot because, as Petitioners point out in their reply, after their claim was rejected, they submitted a request to file a late claim and that was also rejected on September 4, 2024. This decision was not included by Respondent in its December 2, 2024, letter and continues to be at issue in the Petition. The Court finds that the Petition was warranted and will grant the relief requested.

### CONCLUSION

Based on the foregoing, the Petition is **GRANTED**. Petitioners shall submit a written order on her Petition to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).