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**PARTIES/ATTORNEYS**

Petitioner	Clinton Cellona	Sanger Law Firm Miguel A. Avila
Respondent	County of Santa Barbara	County Counsel Mary Pat Barry, Sr. Deputy

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**TENTATIVE RULING**

For all the reasons discussed below, the petition is denied.

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The petition alleges that on August 6, 2022, petitioner Clinton Cellona was injured when he was struck in the head by a bean bag round fired by a Santa Barbara County Sheriff's deputy. To pursue a civil action against the County of Santa Barbara for the injury, he must have presented a claim to the County within six months of August 6, 2022. (Gov. Code § 911.2) He did not do so. On August 4, 2023, Cellina presented an application for leave to present a late claim to the County, which was denied. (Petition, Exhs. A & B.) On November 17, 2023, Cellona filed with this court a Petition for Relief from Government Claim Filing Requirements. A Notice of Hearing was not filed until October 24, 2024, setting the hearing 13 months after the petition was filed. Opposition has been filed. As of December 12, 2024, no reply had been filed.

*Request for Judicial Notice*

County requested judicial notice of selected records from criminal case Nos. 22CR05632 (People v. Cellona) and 22CR05664 (People v. Cellona). Not all matters contained in court records (e.g., pleadings, affidavits, etc.) are indisputably true. While the existence of any document in a court file may be judicially noticed, the truth of matters asserted in such documents is not necessarily subject to judicial notice. (*Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483-484; see *Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29 CA5th 1, 14; *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400-401.) The court takes judicial notice subject to these limitations.

These records reveal that Cellona's criminal proceedings in Santa Barbara County Superior Court case numbers 22CR05632 and 22CR05664 were suspended from September 6, 2022 through January 17, 2023, under Penal Code 1368 for a

hearing into defendant's mental competence. The date the suspension expired is not subject to reasonable dispute. The court therefore takes judicial notice of the dates of the suspension.

### Applicable Law

The law is settled. Generally, no suit for money or damages may be brought against a public entity until a written claim has been presented to the public entity and has been acted upon or has been deemed rejected. (Gov. Code, § 945.5.)<sup>1</sup> Presentation of a timely claim is condition precedent to the commencement of a suit against the public entity. A claim for personal injury or death, as is alleged here, must be presented to the governmental entity within six months of accrual. (§ 911.2.)

However, if the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present such claim. (§ 911.4, subd. (a).) If the public entity denies the application, section 946.6 authorizes the injured party to petition the court for relief from the claim requirements. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776-1777.) Section 946.6 is a remedial statute intended to provide relief from technical rules which otherwise provide a trap for unwary. A denial of such relief by the trial court is examined more rigorously than where relief is granted, and any doubts that may exist should be resolved in favor of the application. (*Id.* at p. 1778; see also *JJ v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1220-1221.)

The following rules are critical in resolving the merits. The court shall relieve the petitioner from the claim requirements if the court finds that the application to the public entity for leave to present a late claim under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and that one or more specified conditions apply. (§ 946.6, subd. (c).) As is relevant for our purposes, the petition asserts the following conditions apply:

- The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the public entity establishes that it would not be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4 (§ 946.6, subd. (c)(1).)
- The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time. (§ 946.6, subd. (c)(4).)

The petitioner has the burden of proving one of the statutory grounds for relief by a preponderance of the evidence. (*Rodriguez v. County of Los Angeles*

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<sup>1</sup> All future statutory references are to the Government Code unless otherwise indicated.

(1985) 171 Cal.App.3d 171, 175.) The court will make an independent determination as to whether the claimant has shown grounds for relief (i.e., minority, disability, “excusable neglect,” etc.) based on the petition, attached affidavits and any evidence received at the hearing. (Gov.C. § 946.6(e); *Bettencourt v. Los Rios Comm. College Dist.* (1986) 42 Cal.3d 270, 275.)

If the claimant meets the burden of showing “mistake, inadvertence, surprise, or excusable neglect,” the burden shifts to the public entity to prove prejudice. It must prove that granting such relief would prejudice its defense of the claim. (Gov.C. § 946.6(c)(1); see *Moore v. State of Calif.* (1984) 157 Cal.App.3d 715, 726-727.) Unreasonable delay between the time the petition is served on the public entity and the date a hearing is set creates a presumption of prejudice to the public entity, justifying denial of the petition. (*Han v. City of Pomona* (1995) 37 Cal.App.4th 552, 560—petition for relief timely filed in April 1991 but not served or set for hearing until Oct. 1993.) But “[p]rejudice to the public entity is relevant only where relief is sought on the ground of “mistake, inadvertence, surprise, or excusable neglect” (Gov.C. § 946.6(c)(1).) The other grounds (physical incapacity, minority, etc.) carry no such condition. Thus, for example, if petitioner establishes that he was physically or mentally incapacitated during the claims-filing period, he is entitled to relief even though the public entity was prejudiced by the delay. (*County of Alameda v. Sup.Ct. (Moos)* (1987) 196 Cal.App.3d 619, 625, fn. 3.)

Courts exercise their power to grant relief liberally, so as to preserve meritorious claims wherever possible. Any doubts are to be resolved in favor of permitting the suit to proceed. (*Viles v. California* (1967) 66 Cal.2d 24, 28-29.)

### Analysis

#### 1. Incapacity

To establish incapacity as a justification for relief from the claim filing requirements, a claimant must establish that he or she “was physically or mentally incapacitated during all of the [six-month period] for the presentation of the claim and by reason of that disability failed to present a claim during that time.” (Gov.Code, § 946.6, subd. (c)(3).) The relevant time frame for the incapacity is the time frame in which the claim must have been presented to the County, i.e., within six months of August 6, 2022 (§911.2), which is February 6, 2023. ([www.timeanddate.com](http://www.timeanddate.com), last accessed 12/6/24.)

The only evidence of incapacity offered comes from the declaration of Miguel Avila, attorney for petitioner. He testifies to facts “based on [his] review of the incident reports and the available body camera video worn by the Sheriff’s deputies during this encounter, and medical records.” He states: “On information and belief, the head injury, and other disabilities, [petitioner] suffered from being shot in the

head by Deputy Hossli contributed to Petitioner’s inability to understand the legal proceedings.” (Avila Decl., ¶ 6.) In support of this assertion, he observes the head injury “and other disabilities” ultimately led to the suspension of criminal proceedings for a period in excess of six months. (*Id.*)

None of this evidence is submitted independently. There is no declaration from petitioner’s doctor in support of petitioner’s physical or mental condition during the relevant time period. County objects to paragraphs 2-8 of the Avila declaration based on lack of personal knowledge, hearsay, and as to some statements, improper expert opinion and unqualified expert opinion. The objections are well-taken and therefore sustained. This effectively undermines petitioner’s argument. (See *Draper v. City of Los Angeles* (1990) 52 Cal.3d 502, 505; *Martin v. City of Madera* (1968) 265 Cal.App.2d 76, 81 [court found affidavits of plaintiff’s doctors not persuasive, in part, because neither physician provided a comprehensive diagnosis of plaintiff’s physical or mental condition].)

Petitioner also seems to suggest that this court should infer an incapacity from the suspension of criminal proceedings itself. However, that suspension ended on January 17, 2023, which was before the claim filing period expired. Even if the court were convinced that such an inference was appropriate, it falls short.

Petitioner has failed to show that he was incapacitated “during all of [the six-month period].” (*Barragan v. County of Los Angeles, supra*, 184 Cal.App.4th at 1384.)

## 2. Excusable Neglect

To obtain relief under section 946.6, subdivision (c)(1), “[t]he mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant’s failure to timely present a claim was reasonable when tested by the objective ‘reasonably prudent person’ standard.” (*Dept. of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1293.) Under the reasonably prudent person standard, “[e]xcusable neglect is that neglect which might have been the act of a reasonably prudent person under the circumstances.” (*Id.* at p. 1296.)<sup>2</sup>

In most cases, a petitioner may not successfully argue excusable neglect when he or she fails to take any action in pursuit of the claim within the six-month period, such as attempting to retain counsel. (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 44.) However, in certain exceptional cases, excusable neglect may be found based on extreme instances of physical or mental disability, or on debilitating emotional trauma, even if the petitioner failed

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<sup>2</sup> Petitioner focuses exclusively on excusable neglect as the basis for his argument; so will the court.

to take any action whatsoever in the initial six-month period. (*Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373, 1385–1386 [trial court did not abuse its discretion in excusing late claim by petitioner who became quadriplegic from a car accident, and who for six months had to relearn life skills, could not sit up without assistance, and did not leave her bedroom]; *County of Santa Clara v. Superior Court* (1971) 4 Cal.3d 545, 552 [affirming trial court ruling excusing late claim by parents who were emotionally traumatized by their son's death in the middle of his own trial seeking damages for severe injuries suffered in a car accident].)

Under this line of cases, “[i]f a claimant can establish that physical and/or mental disability so limited the claimant's ability to function and seek out counsel such that the failure to seek counsel could itself be considered the act of a reasonably prudent person under the same or similar circumstances, excusable neglect is established.” (*Barragan, supra*, 184 Cal.App.4th at p. 1385.) However, because “every claimant is likely to be suffering from some degree of emotional upset, ... it takes an exceptional showing for a claimant to establish that his or her disability reasonably prevented the taking of necessary steps.” (*Ibid.*) A petitioner makes an exceptional showing by establishing that emotional trauma has “substantially interfered with his [or her] ability to function in daily life, take care of his [or her] personal and business affairs, or seek out legal counsel.” (*Dept. of Transportation, supra*, 105 Cal.App.4th at p. 46.) As one court has observed, “[s]ignificant emotional anguish and depression on the part of those immediately affected may be expected in virtually every major personal injury and wrongful death case. [Citation.] The Legislature obviously did not believe these conditions could provide an escape hatch from the claim-filing requirement, as evidenced by the fact that ‘incapacitation’ is listed as a separate ground for relief, and is available only where the condition exists throughout the entire course of the claim-filing period. (§ 946.6, subd. (c)(3).)” (*Ibid.*) As noted above, petitioner has submitted no evidence to support a finding of the incapacity necessary to justify this basis.

Even if he had, there is a good argument that prejudice to the County is presumed under these circumstances. As noted above, unreasonable delay between the time the petition is served on the public entity and the date a hearing is set creates a presumption of prejudice to the public entity, justifying denial of the petition. (*Han v. City of Pomona* (1995) 37 Cal.App.4th 552, 560—petition for relief timely filed in April 1991 but not served and no hearing set until Oct. 1993.) In *Han*, plaintiff waited two and one-half years between the time he filed his petition and the time he served it. The court observed that the only excuse given for such delay was the attorney lost contact with the client. (*Han, supra*, 37 Cal.App.4th at 560.) Here, no excuse has been provided for the delay. Under these circumstances. The delay appears to be unreasonable, and thus there is a presumption of prejudice in favor of County.

The petition is denied. The court need not address County's argument that the instant petition was untimely filed.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)