PROPOSED TENTATIVE

The original complaint was filed on October 15, 2024. On February 13, 2025, plaintiff John Baeke (plaintiff) filed a first amended complaint (FAC) against defendant Lompoc Valley Medical Center (defendant), alleging two causes of action – breach of contract and breach of the covenant of good faith and fair dealing. Plaintiff is a physician. Defendant is a "California Healthcare district and subdivision of the State of California." On February 1, 2019, plaintiff and defendant entered into a Professional Services Agreement (the agreement), attached as Exhibit A to the complaint, in which plaintiff agreed to perform medical servicesDefendant agreed to bill for services performed by plaintiff at Lompoc Valley Medical Center, and also agreed to withhold 5% of net collections as a billing fee and pay the balance to plaintiff. According to plaintiff, defendant performed services for defendant between November 1, 2018, through January 31, 2019, for which plaintiff has received no compensation. Plaintiff claims he did not discover defendant's breach of the agreement until April 20, 2023, when it was revealed during a phone conversation with defendant's CEO, Steven Popkin; plaintiff claims his delayed discovery was reasonable. He filed his government claim within year of this claimed accrual date, first on October 18, 2023 (Exhibit it 1 of Defendant's Request for Judicial Notice[1]) and then on April 2, 2024 (Exhibit C of operative pleading).

Plaintiff explains the delayed discovery as follows:

> "With respect to the services performed by Plaintiff from November 1, 2018, through January 31, 2019, it would not have been unreasonable for Plaintiff to assume there would be a several month delay initial claim filing by Defendants billing subcontractor, plus several more months of delay awaiting third-party payers to process said claims. This process is further delayed while the hospital responses to insurance companies request for additional information, or to correct reasons for claim denial. This can result in more months of delay. If diligence is demonstrated by Defendants via its subcontractor in disputing claim denials, then exercising full rights of appeal, can add many more months to exhaust all rights of adjudication. Lastly, in the case of the uninsured patient who has insurance assigning a 'patient-responsible' amount, it is expected that these individuals will pay at their whim, adding yet more months delay in payment to Defendants and then to Plaintiff." (FAC, ¶ 12.)

Plaintiff goes on in the FAC as follows:

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[1] Plaintiff in the operative pleading does not make reference to the October 19, 2023, government claim plaintiff filed with defendant. He references only the April 2, 2024, government claim. The October 19, 2023, claim was rejected by defendant on November 17, 2023.

> "Since 2019, Plaintiff had multiple meeting and sent multiple communications to various members of [defendant's] C-suite (and their subordinates) requesting audits and progress reporting on his claim submissions/collections. All of the Defendants and their officers, subordinates, and representatives assured Plaintiff that all manners of billing were being performed and to remain patient. Only now is known these statements were dishonest and made with the intent to deceive Plaintiff." Specifically, "Plaintiff was assured by the CEO and CFO that all insurance claims submitted had been diligently processed and filed, and that Plaintiff would be receiving 95% compensation. Plaintiff fully understood that some insurance carries allow up to 1 year for timely filing," and plaintiff understood "that payments can be delayed for many more months during any review/appeal/adjudication processes. Plaintiff fully understood that some insurance carriers allow up to 1 year for timely filing; Plaintiff fully understood that payments can be delayed for many more months during any review/appeal/adjudication processes; Plaintiff fully understood stat it is not uncommon for insurance carriers to take still many more months to pay; and Plaintiff fully understood that patients only get billed for their copays & deductibles after the hospital receives insurance payments and reconciliation/explanation of benefits (EOB) statements and finally Plaintiff fully understood that even when patients are billed, they pay this co-pays & deductibles at their whim. . . . Plaintiff has been abundantly gracious in the amount of time he has allowed [defendant] to perform their responsibilities . . . ." Plaintiff "suspects that either defendants kept 100% of the collected fees; and/or most/all claims were never filed timely, if at all." (FAC, ¶¶23-24.)

Defendant demurs to both causes of action, advancing two arguments. First, defendant contends (based on the facial allegations of the complaint) that plaintiff failed to comply with Government Code section 911.2, which requires that plaintiff must submit a government claim without one year after the accrual of the cause of action. Defendant contends that the latest the government claim could have been filed was May 31, 2021, "because defendant's billing and payment obligations did not survive the termination of the agreement," looking to Section 6.8 of the agreement. Second, and alternatively, defendant contends that even if both the October 18, 2023, and April 2, 2024 government claims were timely filed within one year after accrual (i.e., within one year of accrual on April 23, 2023), plaintiff failed to comply with Government Code section 945.6, subdivision (a)(1), which requires that plaintiff file a lawsuit no more than six months after the "the date such notice is personally delivered or deposited in the mail." According to defendant (based on Exhibit 2 of the documents judicially noticed, see fn. 1, *ante*), the October 18, 2023, claim was rejected in a letter deposited by mail on November 17, 2023, meaning the lawsuit had to be filed by May 17, 2024; the complaint was filed on February 13, 2025, after the six months had expired.

Plaintiff filed opposition on April 30, 2025, claiming he has adequately pleaded the delayed discovery rule (and the date of accrual was April 20, 2023), and further, he filed the complaint within six months of defendant's April 25, 2024, rejection of his April 2, 2024, government claim. Plaintiff does not address the impact of his October 18, 2023, earlier government claim. A reply was filed on May 6, 2025. All briefing has been reviewed.

A) Judicial Notice

Defendant asks the court to take judicial notice of two documents (see fn. 1, *ante*). The first is a government claim submitted by plaintiff to defendant on October 18, 2023, involving the contentions advanced in the present action. The second document is defendant's letter rejection of the October 18, 2023, government claim, dated November 17, 2023. Judicial notice of such documents appears to be proper. (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368, fn. 1 ["[a] court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim"].) The request is granted (and in any event is unopposed).

B) Legal Background

"Suits for money or damages filed against a public entity are regulated by statutes contained in division 3.6 of the Government Code, commonly referred to as the Government Claims Act." (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 989). These statutory provisions "define with precision and clarity the respective rights and duties of both the individual claimants and the public entities." (*Stanley v. City & County of San Francisco* (1975) 48 Cal.App.3d 575, 579.) "[Government Code] [s]ection 905 requires the presentation of 'all claims for money or damages against local public entities,' subject to exceptions not relevant here. Claims for personal injury and property damage must be presented within six months after accrual; all other claims must be presented within a year." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737–738; A*ndrews v. Metropolitan Transit System* (2022) 74 Cal.App.5th 597, 604.)

Government Code section 911.2 is the first statutory provision plaintiff was required to satisfy. Pursuant to subdivision (a), a claim relating to any other cause of action (not involving injury to person or to personal property or growing crops, such as breach of contract) "shall be presented . . . not later than one year after the accrual of the cause of action." Government Code section 901 provides, in relevant part, " '[f]or the purpose of computing the time limits prescribed by [Government Code] [s]ections 911.2, 911.4, 945.6, and 946.6, the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon.' " (*Rubenstein, supra*, 3

Cal.5th at p. 910.) Thus, " '[a]ccrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants.' " (*Id.* at p. 906; *McCurdy v. County of Riverside* (2024) 106 Cal.App.5th 1103, 1113.)

The second statute relevant here is Government Code section 945.6, subdivision (a)(1). Under this provision, "if written notice is given in accordance with [Government Code] section 913," the "suit" must be filed not " later than six months after the date such notice is personally delivered or deposited in the mail." A "suit" for purposes of this provision is an adversarial proceeding against a public entity to enforce a right or redress an injury. (*Orr v. City of Stockton* (2007) 150 Cal.App.4th 622, 630.) The six-month limitation period is triggered not by the rejection of the claim but by giving written notice of that rejection.

C) Merits

The court is not persuaded by defendant's claim that the "accrual date" for the cause of action was not April 20, 2023, as claimed by plaintiff in the operative pleading, at least for pleading purposes. As noted above, Government Code section 901 indicates that courts look to the rules establishing the date of accrual that would otherwise apply between private litigants. Courts have interpreted this as allowing the delayed discovery rule to define the "accrual" date for purposes of Government code section 911.2. (*S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 717.) Under the delayed discovery rule, a cause of action does not accrue until the plaintiff discovers, or has reason to discover, the cause of action. (*Ibid.*) In order to rely on the discovery rule, plaintiff must specifically plead facts to show the time and manner of discovery, and the inability to have made earlier discovery despite reasonable diligence. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.) Plaintiff has pleaded sufficient allegations (as detailed above) that if believed would potentially support a delayed discovery accrual date of April 20, 2023 (at least sufficient to survive demurrer). Defendant does not meaningfully argue to the contrary.

Nor is the court persuaded by defendant's claim that pursuant to section 6.8 of the agreement, "the latest possible date on which plaintiff's causes of action could have accrued would be May 31, 2021, because defendant's billing and payment obligations did not survive the termination of the agreement," making both the October 18, 2023, and April 2, 2024, claims untimely. True, Section 6.8 of the agreement reads in full as follows: "Survival. The provisions of Section 3.7 (Professional Liability Insurance), 5.1 (Assignment), 5.2 (District Responsibility, 6.5 (No Hearing Rights), 9.2 (Indemnification), 11.1 (No sharing of Proprietary Information), 11.2 (Records), 11.3 (No Existing Obligations), 11.4 (Confidential Proprietary and trade Secret Information of Others), 11.5 (Access to Records), 11.7 (Arbitration and Dispute Resolution),

11.9 Attorney's Fees), 11.11 (Choice of Law), and 11.13 (Notices) shall survive the termination of this Agreement."

But Section 5.2 of the agreement, which ***expressly*** survives termination of the agreement, has direct relevance in this lawsuit. It reads as follows: "[Defendant] shall be solely responsible for billing and collecting for all professional services provided to Clinic and Hospital patients, and for managing all Clinic receivables. . . . [Defendant] shall bill in accordance with industry standards and good billing practices." Plaintiff contends in the first amended complaint that defendants either have kept "100% of the collected fees; and/or most/all claims," or they were never filed at all (i.e., defendant failed to bill clients for receivables as required under the agreement). Simply put, the termination of the contract has no impact on the plaintiff's claims as the claims for breach of contract are based on plaintiff's billing practices, claims that survived termination of the contract. This is no basis to sustain the demurrer as alleged by defendant.

Defendant's challenge based on time frames contemplated by Government Code section 946.5, subdivision (a) requires a different analysis. The original complaint was filed on October 15, 2024, which is less than six months from the date of the April 25, 2024, rejection of plaintiff's second government claim made on April 2, 2024. However, the October 15, 2024, complaint would have been filed more than six months after rejection of the October 18, 2023, claim on November 17, 2023. Which of the two dates should the court look to do determine the six-month time frame contemplated by Government Code section 945.6?

Defendant presents ***no*** case authority to show that the rejection date of an earlier government will always trigger the six-month clock. This may not be surprising, however, because it appears settled that the rejection date of a subsequent government claim (when all claims are timely made within either six-months or a year of accrual depending on the nature of the cause of action) will be the appropriate triggering date for the six months calculation when the subsequent claim raises *additional factual and/or legal bases for the claims*. (See, e.g., *Janis v. California Lottery Commission* (1998) 68 Cal.App.4th 824, 830-831 [first administrative claim was based on theory defendant has been operating an "illegal" Keno claim; second administrative claim did not relate back to the first, and thus itself had to meet the statutory requirements].) Here, a close examination of the two government claims submitted by plaintiff to defendant reveal different legal predicates. In the April 2, 2024, claim, plaintiff, while advancing the same two contract causes of action at issue in the October 18, 2023, government claim, advanced two ***new*** legal theories– intentional and negligent misrepresentation, which are tort-based, not contract-based, causes of action. The legal predicate for the lawsuit was thus expanded from contract to tort. Accordingly, as the April 2,

2024, government claim was timely filed, the triggering date was April 25, 2024, meaning the claim was timely filed for purposes of Government Code section 945.6.[2]

Summary: The court overrules the demurrer to both causes of action. Defendant has 30 days to file an answer.

[2] For the record, it appears plaintiff did not actually advance any tort causes of action, only contract-based causes of action, in the original and first amended complaints. It nevertheless remains possible that any future amendment (adding these causes of action) is permissible without running afoul of the Government Claims Act. In the end, because of these additions, the April 25, 2024, not the November 17, 2023, rejection date is the trigger for purposes of the six-month deadline per Government Code section 945.6. The court does not determine the appropriate triggering date if the subsequent claim is an exact copy or mirror of its antecedent.