

**FILED**

**JAN 26 2023**

SAN LUIS OBISPO SUPERIOR COURT

BY: K. Hernandez  
K. Hernandez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

NICHOLAS DREYFUS, TYLER  
DREYFUS, and JOHNNY WATSON,

Plaintiffs,

v.

ROBERT BETTENCOURT and DOES 1  
to 100, Inclusive,

Defendants.

Case No.: 22CVP-0148

**RULING ON MOTION FOR RELIEF  
FROM GOVERNMENT CLAIM  
FILING REQUIREMENTS**

**Background/Procedural History.**

On June 3, 2022, Plaintiffs Nicholas Dreyfus, Tyler Dreyfus, and Johnny Watson filed a lawsuit against Robert Bettencourt and Does 1 through 100. As against Bettencourt, Plaintiff asserts a cause of action for negligence. As against Doe 1, Plaintiff asserts a cause of action for premises liability.

This lawsuit arises out of a series of shootings that occurred on June 10, 2020 in Paso Robles. A man named Mason Lira, now deceased, shot Plaintiff Nicholas Dreyfus in the face; Nicholas<sup>1</sup> survived. At the time, Nicholas was a San Luis Obispo County Sheriff's Deputy. Tyler is Nicholas's wife. Lira also shot and killed James Watson, the

<sup>1</sup> Due to the shared Dreyfus surname, the Court uses first names for ease of reference. No disrespect is intended.

1 father of Plaintiff Johnny Watson.

2       Plaintiffs have sued Robert Bettencourt, an attorney, whom Plaintiffs allege  
3 negligently stored firearms in an unlocked and readily accessible location in his office in  
4 San Luis Obispo. (Compl., p. 4.) Plaintiffs contend Lira obtained the firearm or firearms  
5 used in the shootings from Bettencourt's office.

6       Plaintiffs seek to add the City of Paso Robles (the City) as a Defendant in this  
7 lawsuit based on the following factual allegations.

8       Plaintiffs alleges it was initially reported that Lira's shooting spree began outside  
9 the City's Police Department around 3:07 a.m. on June 10, 2020. Plaintiffs allege Lira  
10 shot and killed James Watson at approximately 4:00 a.m., and shot Nicholas at  
11 approximately 4:25 a.m.

12       Plaintiffs claim this initial report is "inaccurate." Plaintiffs specifically allege that  
13 the City's Police Department received reports of Lira shooting a firearm at a woman in  
14 downtown Paso Robles around 12:11 a.m. on the morning of June 10, 2020. Plaintiffs  
15 alleges that after approximately three hours, during which time law enforcement  
16 attempted to locate and apprehend him, Lira walked to the Paso Robles Police Station  
17 and loitered outside the building lobby, brandishing a handgun.

18       At this time, Plaintiffs allege, three police officers and one police dispatcher  
19 were on duty and stationed inside the Paso Robles Police Department while Lira was  
20 loitering in front of the station with a handgun. Plaintiffs allege the officers observed  
21 Lira on video surveillance and deliberated as to whether they should move to the roof,  
22 leave the station, or turn off the lights. Plaintiffs allege the officers ultimately decided to  
23 stay in the station and not engage Lira because they were "a little weary (sic)" that Lira  
24 was "armed with a gun." Plaintiffs further allege that Lira fired several rounds into the  
25 City's police station, and that the officers inside chose not to return fire.

26       Plaintiffs allege the officers inside the police station instructed other City police  
27 officers, who were searching for Lira off-premises, not to return to the station. Plaintiffs  
28 allege the officers contacted other law enforcement agencies, including the Sheriff's

1 Department, California Highway Patrol, and Atascadero Police Department, for support.

2 After Lira was allegedly identified in front of the City's Police Department  
3 around 3:07 a.m., Lira murdered James Watson at approximately 4:00 a.m. Lira then  
4 was engaged by law enforcement, including Nicholas Dreyfus, who was shot in the line  
5 of duty at approximately 4:25 a.m.

6 Plaintiffs contend the police officers alleged "failure to engage" Lira outside of  
7 the police station was not communicated to them until August 6, 2021. Plaintiffs contend  
8 they learned about the officers' "failure to engage" on this date via receipt of the San  
9 Luis Obispo County District Attorney's Investigative Report, which allegedly confirms  
10 that the officers inside the City's Police Department were aware that Lira was a suspect  
11 in a shooting earlier that morning in downtown Paso Robles, chose not to engage with  
12 Lira when he was present at the police station around later that morning, thus allowing  
13 and permitted Lira to fatally shoot James Watson and wound Nicholas.

14 The Dreyfus Plaintiffs submitted a "Public Entity Tort Claim for Negligence and  
15 Premises Liability" to the City on December 3, 2021. (Plaintiffs' Ex. D.) The City  
16 rejected the Dreyfus's claim as untimely on January 14, 2022. (Plaintiffs' Ex. E.)

17 Plaintiff Watson submitted a "Public Entity Tort Claim for Negligence and  
18 Premises Liability" to the City on February 2, 2022. (Plaintiffs' Ex. F.) The City rejected  
19 Watson's claim as untimely on March 23, 2022. (Plaintiffs' Ex. G.)

20 On January 31, 2022, the Dreyfus Plaintiffs submitted an "Application for Leave  
21 to Present Late Claim" to the City. (Plaintiffs' Ex. H.) On March 28, 2022, Plaintiff  
22 Watson submitted an "Application for Leave to Present Late Claim" to the City.  
23 (Plaintiffs' Ex. I.) On April 5, 2022, the City rejected both Applications.

24 Now before the Court is Plaintiffs' motion for relief from government claim  
25 filing requirements. With the motion, Plaintiff seeks relief from the governing claim  
26 filing requirements in order to name the City as a Defendant in this lawsuit. (Gov. Code,  
27 §§ 954.4, 946.6.) The City has filed an opposition.

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1 **Legal Authority.**

2 Under the California Tort Claims Act, no suit for money or damages may be  
3 maintained against a public entity unless a claim is first presented to the public entity.  
4 (Gov. Code<sup>2</sup>, § 945.4.) A personal injury claim must be presented within six months of  
5 the date the cause of action accrued. (Section 911.2.) If a petitioner fails to timely  
6 present a claim, he may apply to the public entity for leave to present a late claim, so  
7 long as he does so no later than one year after the cause of action accrued. (Section  
8 911.4.)

9 If a petitioner's application for leave to file a late claim is rejected, he may,  
10 within six months, petition the Court for an order for relief from the claims-presentation  
11 procedures. (Section 946.6.) The petition must show:

- 12 (1) That an application was made, and was denied or deemed denied;  
13 (2) The reason for the petitioner's failure to timely present the claim; and  
14 (3) The information required by Section 910.

15 The Court "shall relieve the petitioner from the requirements of Section 945.4" if  
16 it finds that: (1) the application was made within a year as required by Section 911.4; (2)  
17 the application was denied; and, relevant to this lawsuit, (3) "the failure to present the  
18 claim was through mistake, inadvertence, surprise, or excusable neglect, unless the  
19 public entity establishes that it would be prejudiced in the defense of the claim if the  
20 court relieves the petitioner from the requirements of Section 945.4." (Section  
21 946.6(c)(1).)

22 **Analysis.**

23 As noted above, it is Plaintiffs' contention that their cause(s) of action against the  
24 City accrued on August 6, 2021. If this is the case, then all Plaintiffs' tort claims against  
25 the City were timely filed, as indicated above. If that is not the case, and Plaintiffs'  
26 cause(s) of action against the City accrued on the date of the shooting (June 10, 2020),  
27 then the Court lacks jurisdiction to grant relief under Government Code section 946.6.  
28 (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 488.)

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<sup>2</sup> All further statutory references are to the Government Code unless otherwise specified.

1 As argued at the hearing on this motion, and as indicated above, Plaintiffs do not  
2 contend that their claims against the City are untimely. Rather, Plaintiffs contend that  
3 their claims against the City are timely for the reasons outlined above. Thus, Plaintiffs'  
4 motion is arguably moot, because Plaintiffs do not actually seek the Court to excuse an  
5 untimely filing; rather, Plaintiffs wish the Court to make a factual determination as to  
6 whether their claims against the City are timely.

7 A motion for relief under Section 946.6, however, is not the appropriate  
8 procedural vehicle by which the Court can make such a factual determination. This point  
9 was reiterated in *Ngo v. County of Los Angeles* (1989) 207 Cal.App.3d 946:

10 "An argument that one filed a timely claim is inconsistent with a petition  
11 for relief under section 946.6, since such petition necessarily follows the  
12 denial of an application for leave to file a late claim... [¶] There is a proper  
13 forum for raising the issue of substantial compliance with the claim filing  
14 requirements of sections 911.2 and 945.4. One who has a cause of action  
15 against a public entity for personal injury or property damage, and who has  
16 filed therewith a timely claim substantially complying with the  
17 requirements of section 911.2 and 945.4, should file a complaint against  
that public entity within the appropriate statutory period and in the  
appropriate court. The complaint should allege that a timely claim for  
damages has been filed with the defendant. ..."

18 (*Id.* at p. 950, quoting *Toscano v. County of Los Angeles* (1979) 92 Cal.App.3d 775,  
19 783.)

20 "A proceeding under section 946.6 is not a trial of the action itself..." (*Id.* at p.  
21 951.) Rather, "[t]he procedure set forth in section 946.6 is simply an avenue of relief  
22 similar to Code of Civil Procedure section 473 in providing relief from default [citation]  
23 and is not designed to resolve the issue of actual compliance with the claim filing  
24 requirements." (*Ibid.*)

25 Here, with their motion, Plaintiffs seek the Court to resolve the factual issue of  
26 compliance with Section 946.6. As set forth above, the Court is unable to make such a  
27 determination at this stage of the litigation.

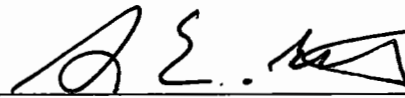
28 As in *Ngo*, Plaintiffs have taken the position that there was actual compliance.

1 (Supra, 207 Cal.App.3d at p. 952.) Thus, they are “free to proceed on a complaint which  
2 properly pleads compliance with the claims statute ... unaffected by the trial court’s  
3 rejection in these proceedings of petitioners’ claim of delayed discovery.” (Ibid.)

4 This matter came before the Court on Plaintiff’s Motion for Relief from Government  
5 Claim Filing requirements. Attorneys appeared and argued the matter on January 24,  
6 2023. The Court having reconsidered its tentative ruling, after review of additional cases  
7 provided by Mr. George, now issues a ruling denying the Motion. The motion is  
8 denied.

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10 Dated: January 26, 2023



Hon. GINGER GARRETT  
Assigned Judge of the Superior Court

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**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO  
CERTIFICATE OF MAILING**

Nicholas Dreyfus vs. Robert Bettencourt

22CVP-0148

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I, Kimberly Hernandez, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **01/26/2023** I deposited in the United States mail at Paso Robles California, first class postage prepaid, in a sealed envelope, a copy of the attached **RULING ON MOTION FOR RELIEF FROM GOVERNMENT CLAIM FILING REQUIREMENTS**. The foregoing document was addressed to each of the above parties.

OR

☒ Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 1/26/2023

Michael Powell, Clerk of the Court

By: /s/ Kimberly Hernandez, Deputy Clerk  
Kimberly Hernandez