

December 22, 2017

Eric Broome  
Supervising Liability Claims Representative  
Department of Risk Management  
222 W. Hospitality Lane  
San Bernardino, CA 92415

RE: James Erwin Claim for Malicious Prosecution against the County of San Bernardino  
AMT: \$25,000,000.00  
FILE: 12725

2017 DEC 22 PM 1:51  
SAN BERNARDINO COUNTY  
RISK MANAGEMENT

We are in receipt of your communication dated December 14, 2017 wherein you indicate: *“the claim is being returned because it was not presented within the time required by law.”* You are mistaken.

My client has several claims against San Bernardino County, the State of California, and their employees and agents and these claims are not untimely. For example, my client’s federal civil rights claims under 42 U.S.C. § 1983 require no claim presentment and therefore cannot be untimely. (*Williams v. State v. Superior Court (Bodde)* (2004) 90 P. 3d 116, 120.)

Similarly, the malicious prosecution claim is not untimely because it did not accrue until September 2017. To establish a cause of action for malicious prosecution, a plaintiff must demonstrate that the underlying action:

- (1) Was initiated by or at the direction of the defendant and legally terminated in the plaintiff’s favor;
- (2) Was brought without probable cause; and
- (3) Was initiated with malice.

(*Siebel v. Mittlesteadt* (2007) 41 Cal. 4th 735, 740.)

Thus, had you consulted with your attorneys before returning Mr. Erwin’s claim, you would have determined that a malicious prosecution claim cannot accrue, as a matter of law, unless and until the plaintiff can demonstrate the prior action was legally terminated in the plaintiff’s favor. (*Roger Cleveland Golf Company, Inc. v. Krane & Smith, APC* (2014) 225 Cal.App.4th 660, 668 [A “cause of action for malicious prosecution **first accrues** at the conclusion of the litigation in favor of the party allegedly prosecuted maliciously.”], emphasis added.)

Page 2

As you know, Mr. Erwin's prior action (*People v. James Erwin FSB1102102-3*), the third and final in a series of three successive criminal cases, was legally terminated in Mr. Erwin's favor by a complete dismissal of all charges on September 22, 2017. As such, Mr. Erwin could not make a malicious prosecution claim prior to that date. Further, all three of the cases at issue shared common charges and alleged facts. The three cases arise from a continuous pattern of conduct by the State of California and County of San Bernardino. These wrongful acts are therefore part of a continuous tort that did not accrue until the wrongful action ceased in September 2017. (See *DC Comics v. Pacific Pictures Corp.* (C.D. Cal. 2013) 938 F.Supp.2d. 941, 949.) The time in which to present Mr. Erwin's claim began to run in exactly the same manner as the statute of limitations on this claim. (Gov. Code, § 901; *State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1244.)

Similarly, your other wrongful actions against Mr. Erwin are continuing torts that only accrued when the tortious action ceased. Mr. Erwin's claims for negligence and intentional infliction of emotional distress, for example, only accrued when the County ceased attempting to prosecute Mr. Erwin for crimes he did not commit. The County's ongoing wrongful acts did not cease until September 22, 2017. The time within which to file a government claim did not start running until that date at the earliest.

Under the circumstances, Mr. Erwin's claims are not only timely under the applicable statute of limitations and the California Government Code, they are expeditious. Mr. Erwin seeks immediate recompense for the wrongdoing of the County and its agents. The County's incorrect, dismissive response is a further example of the County's negligence, its stall tactics, and its undue delay.

Since you intentionally "returned" Mr. Erwin's claim with the above noted ambiguous language, we will treat this as bad faith and non-responsive for civil litigation purposes and seek remedies accordingly.

We now consider the timely and properly lodged claim of Mr. Erwin rejected under operation of law.

Sincerely,



RAJAN MALINE

Cc: Board of Supervisors – All Districts  
Office of County Counsel

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