

APPENDIX A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

34-2020-00282764-CU-MC-GDS: Konanyah Bn Yahlazar vs. Alex Padilia, as the Secretary
of the State of California

02/20/2024 Default Prove Up Hearing in Department 53

Tentative Ruling

NOTICE:

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure:

To request limited oral argument on any matter on this calendar, you must call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing and advise opposing counsel. At the time of requesting oral argument, the requesting party shall leave a voice mail message: a) identifying themselves as the party requesting oral argument; b) indicating the specific matter/motion for which they are requesting oral argument; and c) confirming that it has notified the opposing party of its intention to appear and that opposing party may appear via Zoom using the Zoom link and Meeting ID indicated below. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

Unless ordered to appear in person by the Court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the Court and all other parties in accordance with Code of Civil Procedure §367.75. Although remote participation is not required, the Court will presume all parties are appearing remotely for non-evidentiary civil hearings. The Department 53/54 Zoom Link is <https://saccourt-ca.gov.zoomgov.com/join/ssdept53.54> and the Zoom Meeting ID is 161 4650 6749. To appear on Zoom telephonically, call (833) 568-8864 and enter the Zoom Meeting ID referenced above. NO COURTCALL APPEARANCES WILL BE ACCEPTED.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.pdf>.

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list.

Once the form is signed it must be filed with the clerk. If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO
Hall of Justice, Department 53

JUDICIAL OFFICER: HONORABLE RICHARD K. SUEYOSHI

Courtroom Clerk: P.Lopez

CSR: None

34-2020-00282764-CU-MC-GDS

March 4, 2024
10:20 AM

Konanyah Bn Yahlazar vs. Alex Padilla, as the Secretary
of the State of California

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Minute Order re: Request for Default Judgment

Plaintiffs Konanyah Bn Yahlazar and Dion Anderson's request for default judgment against defendant The State of California is DENIED, and the default entered on March 17, 2022 is VACATED.

Background and Preliminary Considerations

This action arises from the plaintiff(s)' dissatisfaction with the Secretary of State's refusal to file certain documents, and proceedings wherein this court sustained the Secretary of State's demurrer to Yahlazar and Anderson's petition for writ of mandate. (Sacramento Superior Court, 34-2019-80003240.) The operative First Amended Complaint lists causes of action for quiet title, the Uniform Voidable Transactions Act, tortious interference with a contract, cancellation of instrument, and declaratory relief. For reasons discussed below, the court will not address the sufficiency of the pleadings or adequacy of the evidence at this time.

As a preliminary matter, plaintiff(s) Konanyah Bn Yahlazar and Dion Anderson appear to be the same person. Only Dion Anderson's address appears in the caption, but according to the "Private Security Agreement" attached as Exhibit E to the First Amended Complaint, Anderson and Yahlazar share the same cell at Kern Valley State Prison. Footnote 1 to Judge Gevereer's ruling on respondents' demurrer in case no. 34-2019-80003240 states that the California Department of Corrections and Rehabilitation does not have records of an inmate named Konanyah Bn Yahlazar at Kern Valley State Prison. Judge Gevereer's ruling is attached to the First Amended Complaint as Exhibit D. The declaration in support of default judgment filed on November 13, 2023 commences, "I Dion Anderson/Konanyah Bn Yahlazar do declare as followed [sic]," and the body of the declaration uses the singular "plaintiff" and "I" instead of the plural forms of those words. For the sake of simplicity, the court will refer to plaintiff in the singular throughout this order. However, the issue of whether Anderson and Yahlazar are the same person or different people is irrelevant to the outcome. The request for judgment must be denied and the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

default vacated whether Konanyah Bn Yahlazar is an alias of Dion Anderson, or whether they are in fact two distinct persons.

Applicable Law

Under Code of Civil Procedure section 410.50, the court acquires jurisdiction over a party upon service of a summons, or by general appearance of the party. "A general appearance is one in which the defendant participates in the action in a manner which recognizes the court's jurisdiction." (*Factor Health Management v. Superior Court* (2005) 132 Cal. App. 4th 246, 250.)

Under Government Code section 955.4, service of the summons in all actions against the state shall be made on the Attorney General. Code of Civil Procedure section 415.10 states that personal service may be accomplished by delivery of the summons and complaint to the person to be served. Where, as here, the party to be served is the State of California, the person to be served would be the Attorney General. Under section 415.20(a), substituted service may be accomplished by leaving the summons and complaint with the person apparently in charge at the office of the person to be served, if the documents are thereafter mailed to the person to be served at the address where the documents were left.

Code of Civil Procedure section 585 requires the clerk to enter a defendant's default "if the defendant has been served" and no responsive pleading has been filed by the defendant. "The clerk has no authority to enter the default of a defendant in the absence of valid proof of service of summons." (*Woods v. Stallworth* (1960) 177 Cal. App. 2d 517, 520.)

Analysis

Plaintiff filed a proof of service on August 12, 2021. Items 4 and 5 purport to show that the defendant was personally served on July 13, 2021 at 1300 "I" Street in Sacramento. Item 2 on the proof of service lists the documents served as: "Attachments, Completed Proof of Service – Civil, Exhibits, Plaintiff's First Amended Complaint." Notably, the list of documents does not include a summons. Item 3(a) on the proof of service identifies the party served as "The State of California, Sacramento Attorney General." Notably, the "Sacramento Attorney General" is not a party to this action. Item 3(b) identifies the person served on behalf of the party as "Maldonado, Security Officer," not the Attorney General as required under Government Code section 955.4. The proof of service is accompanied by a declaration showing that the documents were mailed to the Attorney General at a P.O. Box, not 1300 "I" Street where the documents were left. The proof of service is signed by P. Yuan of the Sacramento Sheriff's Civil Bureau.

Plaintiff filed an amended proof of service on March 17, 2022. The amended proof of service appears identical to the August 12, 2021 proof of service, except that the party identified in item 3(a) is "The State of California" (omitting "Sacramento Attorney General.") The person served on behalf of the party is still listed as "Maldonado, Security Officer," not the Attorney General. No declaration of mailing was included with the amended proof of service.

At plaintiff's request, the clerk entered the default of The State of California on March 17, 2022.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Despite the clerk's entry of default, the court lacks jurisdiction to render a default judgment at this time. Neither the proof of service filed on August 12, 2021 nor the amended proof of service filed on March 17, 2022 establishes jurisdictional service of a summons. Indeed, a review of the register of actions discloses that no summons has yet been issued in this case.

While plaintiff's failure to serve a summons is fatal to the request for default judgment, the court notes additional defects in the proof of service. As stated above, item 3(b) on both proofs of service identify the person served on behalf of the State of California as a security officer, not the Attorney General. Even if the security officer was "the person who is apparently in charge" at the Attorney General's office (which has not been established here), the security officer's name and title should appear in item 5(b), not 3(b). Moreover, leaving the documents with the security officer would not accomplish personal service under Code of Civil Procedure section 415.10. At best, it would only be the first step toward substituted service under section 415.20(a). The second step would be mailing the documents to the Attorney General at the address where the documents were left. The declaration of mailing filed with the first proof of service shows the documents were mailed to a different address, and no declaration of mailing was included with the second proof of service.

"Statement of the Attorney General"

A "Statement of the Attorney General" was filed on August 11, 2022. The statement acknowledges plaintiff(s)' attempts to serve the State of California, but notes the absence of a summons and states that the service was rejected as improper. Although this court is not bound by the Attorney General's conclusion regarding the propriety of service, an independent review of the proofs of service confirm that the attempted service was improper for the reasons stated in the preceding paragraphs. Significantly, the Attorney General's statement does not qualify as a general appearance under Code of Civil Procedure section 410.50 because the statement does not indicate the State of California's participation in this action in a manner that recognizes this court's jurisdiction.

Conclusion

For the foregoing reasons, the default entered on March 17, 2022 was improper and must be vacated. Likewise, the request for default judgment must be denied.

Because plaintiff's request for default judgment is denied on jurisdictional grounds, the court has not considered the sufficiency of the pleadings or the evidence presented in support of plaintiff's request.

The Court orders the default entered on 03/17/2022 as to The State of California vacated.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

S. P. Lopez

By:

D. Lopez, Deputy Clerk

Minutes of 03/04/2024

Entered on 03/04/2024

AAPPENDIX B

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**34-2020-00282764-CU-MC-GDS: Konanyah Bn Yahlazar vs. Alex Padilla, as the Secretary
of the State of California**

**05/05/2025 Hearing on Motion to Dismiss for Failure to Serve Summons Within Three
Years in Department 53**

Tentative Ruling

NOTICE:

PLEASE TAKE NOTICE that pursuant to "Public Notice – Civil Division – Wednesday Law and Motion Calendar" any oral arguments regarding this tentative ruling will be heard in Department 25, located at 720 9th Street, Sacramento, CA, the Hon. Julie G. Yap presiding. Should argument be requested by either party, the requesting party must call the Law and Motion Oral Argument Request Line at (916) 874-2615, by 4:00 p.m. the Court day before the hearing, request the hearing, and notify the opposing party of the location and time of hearing pursuant to Local Rule 1.06.

At the time of requesting oral argument, the requesting party shall leave a voice mail message: a) identifying themselves as the party requesting oral argument; b) indicating the specific matter/motion for which they are requesting oral argument; and c) confirming that it has notified the opposing party of its intention to appear and that opposing party may appear via Zoom using the Zoom link and Meeting ID indicated below. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

The Court encourages parties to appear remotely for the hearing on the tentative ruling through the Court's Zoom Application. But, any party wishing to appear in person may do so, provided that party notifies the Court by 4:00 the Court day before the hearing.

The parties may join the Zoom session for hearing on the tentative ruling by audio and/or video through the following link:

<https://saccourt-ca-gov.zoomgov.com/jv/ssdept25>

SIP Address:

16113421868@sip.zoomgov.com

(833) 568-8864

ID: 16113421868

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TENTATIVE RULING

Appearance Required.

This matter was continued to May 5, 2025 at hearing on April 2, 2025. The original tentative ruling is republished below.

Defendant the State of California's ("Defendant") motion to dismiss Plaintiff in pro per Dion Anderson's ("Plaintiff") complaint for failure to serve within three years is ruled upon as follows.

The Court observes that the complaint identifies two plaintiffs, Konanyah Bn Yahlazar and Dion Anderson. Defendant asserts that the two plaintiffs appear to be the same person, and that according to the California Department of Corrections and Rehabilitation, there is no inmate, current or former, with the name Konanyah Bn Yahlazar. Plaintiff's filings only list one inmate number, which applies to Dion Anderson. Further, the caption at the top of the first page of the complaint lists Konanyah Bn Yahlazar as "(Secured Party)," but this is changed to Dion T. Anderson in the opposition. Additionally, Plaintiff has previously sought leave to file a second amended complaint to change the name of the plaintiff from Konanyah Bn Yahlazar to Dion Anderson. Even so, the Court is unable to definitively determine that the two plaintiffs are the same person. However, this determination is not necessary for the purposes of this motion. To the extent there are two plaintiffs, the Court's ruling will apply equally to both as it would if

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Years in Department 53

there is only one plaintiff. Finally, for simplicity purposes, the Court will refer to a singular "Plaintiff" in this ruling.

Background

Plaintiff filed this action for quiet title and declaratory relief on July 27, 2020. The original complaint names as a defendant "Alex Padilla, as the Secretary of the State of California" ("Padilla"). On February 10, 2021, the Court sustained a demurrer to the complaint filed by the Secretary of State and dismissed the Secretary of State from the action with prejudice. The Court granted Plaintiff leave to file an amended complaint. The Court's order granting leave to amend directed Plaintiff to file the amended complaint by "no later than March 2021, 2020 [*sic*]." Plaintiff ultimately filed the first amended complaint on July 7, 2021, naming Defendant and alleging causes of action for quiet title and other related claims.

On August 12, 2021, Plaintiff filed a proof of service listing the documents served as, "Attachments, Completed Proof of Service – Civil, Exhibits, Plaintiff's First Amended Complaint." The proof of service indicates that these documents were served on "The State of California, Sacramento Attorney General" via personal delivery to a person identified as "Maldonado, Security Officer" at 1300 I Street in Sacramento on July 13, 2021. On March 17, 2022, Plaintiff filed a request to file an amended proof of service to correct an apparent defect in the August 12, 2021 proof of service that Plaintiff contended was precluding him from obtaining a default. Plaintiff also filed the amended proof of service, with the only apparent difference being the removal of the phrase "Sacramento Attorney General" under the party served.

Also on March 17, 2022, Plaintiff filed a request for entry of default against Defendant. Apparently based on the amended proof of service, the clerk entered the default as requested that date. However, on March 4, 2024, the Court vacated the entry of default in its ruling denying Plaintiff's request for a default judgment. The Court stated, "Despite the clerk's entry of default, the court lacks jurisdiction to render a default judgment at this time. Neither the proof of service filed on August 12, 2021 nor the amended proof of service filed on March 17, 2022 establishes jurisdictional service of a summons. Indeed, a review of the register of actions discloses that no summons has yet been issued in this case." (03/04/2024 Minute Order, p. 3.) The Court also identified several other defects in the proof of service that warranted vacating the entry of default. Additionally, the Court noted that the Attorney General's Office filed a "Statement of the Attorney General" on August 11, 2022 that acknowledged Plaintiff's attempts to serve Defendant but stated that the service was rejected as improper. Importantly for the purposes of this motion, the Court stated, "Significantly, the Attorney General's statement does not qualify as a general appearance under Code of Civil Procedure section 410.50 because the statement does not indicate the State of California's participation in this action in a manner that recognizes this court's jurisdiction." (03/04/2024 Minute Order, p. 3.)

SUPERIOR COURT OF CALIFORNIA
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of the State of California

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Years in Department 53

On October 14, 2024, a Summons on the First Amended Complaint was issued. On December 19, 2024, Plaintiff file a proof of service of summons listing the documents served as "Attachments, Exhibits, Plaintiff's First Amended Complaint, Summons to First Amended Complaint," on Defendant via personal service on "Leo Eustaquio / Receptionist" at 1500 11th Street in Sacramento. The date of service on the December 15, 2024 proof of service is December 5, 2024.

Discussion

Code of Civil Procedure section 583.210(a) provides: "The summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed." If service of the summons and complaint is not made within this time, "[t]he action shall not be further prosecuted and no further proceedings shall be held in the action," and "[t]he action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties." (Code Civ. Proc. § 583.250(a)(1), (2).) Dismissal is mandatory unless an exclusion under Code of Civil Procedure section 583.240 applies. (Code Civ. Proc. § 583.250(b).) Once the statutory period to serve the summons and complaint has passed, the burden is on the plaintiff to show an exclusion applies. (*Putnam v. Clague* (1992) 3 Cal.App.4th 542, 549.)

Here, whether the action was commenced against Defendant with the filing of the original complaint on July 27, 2020 or with the first amended complaint on July 7, 2021, more than three years elapsed before service was made on December 5, 2024. The Court has already determined that the August 12, 2021 proof of service and March 17, 2022 amended proof of service were defective when it vacated the entry of default on March 4, 2024. Thus, the burden is on Plaintiff to show a statutory exclusion applies to extend the service deadline. As explained below, Plaintiff's opposition does not meet his burden.

Plaintiff generally argues that service was impossible, impracticable, or futile due to causes beyond his control under Code of Civil Procedure section 583.240(d). "[T]he exceptions codified in section 583.240(d) must be construed strictly against the plaintiff." (*Shipley v. Sugita* (1996) 50 Cal.App.4th 320, 326.) On this ground, Plaintiff appears to first argue that Defendant waived any objection to jurisdiction because the Secretary of State did not object to the lack of a summons. This argument is rejected. Defendant and the Secretary of State are not the same party, and Plaintiff has not shown how Defendant's right to object could be waived by the conduct of a separate party.

Plaintiff next argues that the time between August 20, 2022 and March 1, 2023 should be

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excluded. Plaintiff contends that he requested that the summons be issued on August 20, 2022 and September 22, 2022, but that the requests were rejected on September 9, 2022 and October 5, 2022, respectively. Plaintiff then filed a petition for writ of mandate with the Third District Court of Appeal on October 13, 2022, arguing that the issuance of summons was being impeded by the clerk of this Court. On November 1, 2022, the Court of Appeal directed the Attorney General's office to file an opposition to the petition. (See Exhibit B to Plaintiff's Motion.) On December 29, 2022, the Court of Appeal summarily denied the petition. Plaintiff claims his petition for review was denied by the California Supreme Court on March 1, 2023. This argument is also rejected. The August 20, 2022 request for issuance of a summons was actually a request for an order to serve the summons via publication. The September 22, 2022 request appears to have just been a resubmission of the first amended complaint. Thus, Plaintiff has not shown that he was impeded from obtaining a summons because he has not shown that he properly requested one in 2022. (See Code Civ. Proc. § 412.10; see also *Torrey Hills Comm. Coalition v. City of San Diego* (2010) 186 Cal.App.4th 429, 437-438 [plaintiff failed to show impossibility based on trial court's refusal to issue summons because no showing that plaintiff ever requested summons].) Indeed, the Register of Actions shows that once a Summons on the First Amended Complaint was filed with the Court on October 14, 2024, it was issued that same date. Further, even if Plaintiff's September 22, 2022 submission could be considered as a request for summons, and even if the Court excluded the time that Plaintiff sought appellate relief (which the Court does not find to be appropriate in this case), the exclusion of such time would not cure the violation of the three-year service requirement.

Plaintiff then argues that the period from November 1, 2022 to March 4, 2024, the date the Court vacated the default, should also be excluded. Plaintiff appears to argue that this time should be excluded because "[t]he validity of service was the subject of litigation by the parties." (Code Civ. Proc. § 583.240(c).) That is an inaccurate description of the events in the litigation during this period. The primary subject of the litigation during the initial months of this time period was Plaintiff's attempt to have a summons issued on the first amended complaint. The issue of the validity of Plaintiff's service of the first amended complaint did not arise until Plaintiff requested a default judgment and the Court determined that default had been improperly entered because there was no evidence Defendant was served with a summons. Plaintiff does not explain how this falls within the exception under section 583.240(c). To the extent Plaintiff argues that service was impossible or impracticable during this time period, the argument is also rejected. Plaintiff has not shown that it was impossible or impracticable to properly serve Defendant during this time. Further, the issues Plaintiff experienced with attempting to properly serve Defendant were within his own control. Plaintiff failed to request a summons on the first amended complaint, served the first amended complaint on Defendant without the summons, filed the defective proof of service, filed an amended defective proof of service, and obtained an invalid default against Defendant based on that defective proof of service. All of these acts were within Plaintiff's control, and the errors that precluded proper service are attributed to Plaintiff. (Code Civ. Proc. §

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583.240(d); *Bishop v. Silva* (1991) 234 Cal.App.3d 1317, 1322; *Graf v. Gaslight* (1990) 225
Cal.App.3d 291, 297 [disapproved on other grounds by *Watts v. Crawford* (1995) 10 Cal.4th
743, 758]; *Dale v. ITT Life Ins. Corp.* (1989) 207 Cal.App.3d 495, 502.)

Accordingly, Defendant's motion to dismiss is GRANTED. The Court need not address
Defendant's alternative arguments for dismissal.

Plaintiff's first amended complaint is ordered dismissed as to Defendant the State of California
without prejudice. (Code Civ. Proc. § 581(g).)

This minute order is effective immediately. No formal order or other notice is required. (Code
Civ. Proc. § 1019.5; Cal. Rules of Court, rule 3.1312.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Hall of Justice, Department 53

JUDICIAL OFFICER: HONORABLE JULIE G. YAP

Courtroom Clerk: L. Homsanith
Court Attendant: S. Carrera

CSR: None

34-2020-00282764-CU-MC-GDS

May 5, 2025
1:30 PM

**Konanyah Bn Yahlazar vs. Alex Padilla, as the Secretary
of the State of California**

MINUTES

APPEARANCES:

Plaintiff Dion Anderson appearing via virtual conference in pro per.
Plaintiff Dion Anderson appearing via virtual conference in pro per.
Appellant Dion Anderson appearing via virtual conference in pro per.
Defendant The State of California represented by Raye Leatherwood via virtual conference.

**NATURE OF PROCEEDINGS: Hearing on Motion to Dismiss for Failure to Serve
Summons Within Three Years**

TENTATIVE RULING

Appearance Required.

This matter was continued to May 5, 2025 at hearing on April 2, 2025. The original tentative ruling is republished below.

Defendant the State of California's ("Defendant") motion to dismiss Plaintiff in pro per Dion Anderson's ("Plaintiff") complaint for failure to serve within three years is ruled upon as follows.

The Court observes that the complaint identifies two plaintiffs, Konanyah Bn Yahlazar and Dion Anderson. Defendant asserts that the two plaintiffs appear to be the same person, and that according to the California Department of Corrections and Rehabilitation, there is no inmate, current or former, with the name Konanyah Bn Yahlazar. Plaintiff's filings only list one inmate number, which applies to Dion Anderson. Further, the caption at the top of the first page of the complaint lists Konanyah Bn Yahlazar as "(Secured Party)," but this is changed to Dion T. Anderson in the opposition. Additionally, Plaintiff has previously sought leave to file a second amended complaint to change the name of the plaintiff from Konanyah Bn Yahlazar to Dion Anderson. Even so, the Court is unable to definitively determine that the two plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

are the same person. However, this determination is not necessary for the purposes of this motion. To the extent there are two plaintiffs, the Court's ruling will apply equally to both as it would if there is only one plaintiff. Finally, for simplicity purposes, the Court will refer to a singular "Plaintiff" in this ruling.

Background

Plaintiff filed this action for quiet title and declaratory relief on July 27, 2020. The original complaint names as a defendant "Alex Padilla, as the Secretary of the State of California" ("Padilla"). On February 10, 2021, the Court sustained a demurrer to the complaint filed by the Secretary of State and dismissed the Secretary of State from the action with prejudice. The Court granted Plaintiff leave to file an amended complaint. The Court's order granting leave to amend directed Plaintiff to file the amended complaint by "no later than March 2021, 2020 [sic]." Plaintiff ultimately filed the first amended complaint on July 7, 2021, naming Defendant and alleging causes of action for quiet title and other related claims.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

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Discussion

Code of Civil Procedure section 583.210(a) provides: "The summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed." If service of the summons and complaint is not made within this time, "[t]he action shall not be further prosecuted and no further proceedings shall be held in the action," and "[t]he action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties." (Code Civ. Proc. § 583.250(a)(1), (2).) Dismissal is mandatory unless an exclusion under Code of Civil Procedure section 583.240 applies. (Code Civ. Proc. § 583.250(b).) Once the statutory period to serve the summons and complaint has passed, the burden is on the plaintiff to show an exclusion applies. (*Putnam v. Clague* (1992) 3 Cal.App.4th 542, 549.)

Here, whether the action was commenced against Defendant with the filing of the original complaint on July 27, 2020 or with the first amended complaint on July 7, 2021, more than three years elapsed before service was made on December 5, 2024. The Court has already determined that the August 12, 2021 proof of service and March 17, 2022 amended proof of service were defective when it vacated the entry of default on March 4, 2024. Thus, the burden is on Plaintiff to show a statutory exclusion applies to extend the service deadline. As explained below, Plaintiff's opposition does not meet his burden.

Plaintiff generally argues that service was impossible, impracticable, or futile due to causes beyond his control under Code of Civil Procedure section 583.240(d). "[T]he exceptions codified in section 583.240(d) must be construed strictly against the plaintiff." (*Shipley v. Sugita* (1996) 50 Cal.App.4th 320, 326.) On this ground, Plaintiff appears to first argue that Defendant waived any objection to jurisdiction because the Secretary of State did not object to the lack of a summons. This argument is rejected. Defendant and the Secretary of State are not the same party, and Plaintiff has not shown how Defendant's right to object could be waived by the conduct of a separate party.

Plaintiff next argues that the time between August 20, 2022 and March 1, 2023 should be excluded. Plaintiff contends that he requested that the summons be issued on August 20, 2022 and September 22, 2022, but that the requests were rejected on September 9, 2022 and October 5, 2022, respectively. Plaintiff then filed a petition for writ of mandate with the Third District Court of Appeal on October 13, 2022, arguing that the issuance of summons was being impeded by the clerk of this Court. On November

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

1, 2022, the Court of Appeal directed the Attorney General's office to file an opposition to the petition. (See Exhibit B to Plaintiff's Motion.) On December 29, 2022, the Court of Appeal summarily denied the petition. Plaintiff claims his petition for review was denied by the California Supreme Court on March 1, 2023. This argument is also rejected. The August 20, 2022 request for issuance of a summons was actually a request for an order to serve the summons via publication. The September 22, 2022 request appears to have just been a resubmission of the first amended complaint. Thus, Plaintiff has not shown that he was impeded from obtaining a summons because he has not shown that he properly requested one in 2022. (See Code Civ. Proc. § 412.10; see also *Torrey Hills Comm. Coalition v. City of San Diego* (2010) 186 Cal.App.4th 429, 437-438 [plaintiff failed to show impossibility based on trial court's refusal to issue summons because no showing that plaintiff ever requested summons].) Indeed, the Register of Actions shows that once a Summons on the First Amended Complaint was filed with the Court on October 14, 2024, it was issued that same date. Further, even if Plaintiff's September 22, 2022 submission could be considered as a request for summons, and even if the Court excluded the time that Plaintiff sought appellate relief (which the Court does not find to be appropriate in this case), the exclusion of such time would not cure the violation of the three-year service requirement.

Plaintiff then argues that the period from November 1, 2022 to March 4, 2024, the date the Court vacated the default, should also be excluded. Plaintiff appears to argue that this time should be excluded because "[t]he validity of service was the subject of litigation by the parties." (Code Civ. Proc. § 583.240(c).) That is an inaccurate description of the events in the litigation during this period. The primary subject of the litigation during the initial months of this time period was Plaintiff's attempt to have a summons issued on the first amended complaint. The issue of the validity of Plaintiff's service of the first amended complaint did not arise until Plaintiff requested a default judgment and the Court determined that default had been improperly entered because there was no evidence Defendant was served with a summons. Plaintiff does not explain how this falls within the exception under section 583.240(c). To the extent Plaintiff argues that service was impossible or impracticable during this time period, the argument is also rejected. Plaintiff has not shown that it was impossible or impracticable to properly serve Defendant during this time. Further, the issues Plaintiff experienced with attempting to properly serve Defendant were within his own control. Plaintiff failed to request a summons on the first amended complaint, served the first amended complaint on Defendant without the summons, filed the defective proof of service, filed an amended defective proof of service, and obtained an invalid default against Defendant based on that defective proof of service. All of these acts were within Plaintiff's control, and the errors that precluded proper service are attributed to Plaintiff. (Code Civ. Proc. § 583.240(d); *Bishop v. Silva* (1991) 234 Cal.App.3d 1317, 1322; *Graf v. Gaslight* (1990) 225 Cal.App.3d 291, 297 [disapproved on other grounds by *Watts v. Crawford* (1995) 10 Cal.4th 743, 758]; *Dale v. ITT Life Ins. Corp.* (1989) 207 Cal.App.3d 495, 502.)

Accordingly, Defendant's motion to dismiss is GRANTED. The Court need not address Defendant's alternative arguments for dismissal.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Plaintiff's first amended complaint is ordered dismissed as to Defendant the State of California without prejudice. (Code Civ. Proc. § 581(g).)

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. § 1019.5; Cal. Rules of Court, rule 3.1312.)

Court Ruling:

The matter was argued.

The Court affirmed the tentative ruling with the following modifications:

Defendant ordered to submit a judgment of dismissal for the Court's review and approval.

Certificate of Mailing is attached.

By: */s/ L. Homsanith*
L. Homsanith, Deputy Clerk
Minutes of: 05/05/2025
Entered on: 05/05/2025

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 9th Street, Sacramento, CA 95814		
PLAINTIFF/PETITIONER: Konanyah Bn Yahlazar et al		
DEFENDANT/RESPONDENT: Alex Padilla, as the Secretary of the State of California et al		
CERTIFICATE OF MAILING		CASE NUMBER: 34-2020-00282764-CU-MC-GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Motion to Dismiss for Failure to Serve Summons Wit...) upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Sacramento, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dion Anderson
 CDCR# P72476 NKSP Facility A
 P.O.Box 5000
 Delano, CA 93216-0567

Raye Leatherwood
 California Attorney General's Office
 455 Golden Gate Avenue
 Suite 11000
 San Francisco, CA 94102

Dated: 05/06/2025

By: */s/ L. Homsanih*
 L. Homsanih, Deputy Clerk

CERTIFICATE OF MAILING

APPENDIX C

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

DION ANDERSON,
Plaintiff and Appellant,

v.

STATE OF CALIFORNIA,
Defendant and Respondent. .

C103955

(Super. Ct. No. 34-2020-
00282764-CU-MC-GDS)

Appellant Dion Anderson¹ attempted to sue the State of California. Although the clerk of the superior court initially entered a default, the trial court later vacated the entry, finding the State of California had not been properly served. The court eventually dismissed the lawsuit because Anderson failed to effectuate service within three years. Anderson now challenges those rulings. We affirm.

¹ The trial court observed that the complaint identified two plaintiffs, Konanyah Bn Yahlazar and Dion Anderson, and opined that they were likely the same person. However, it did not need to confirm that opinion, finding “the Court’s ruling will apply equally to both as it would if there is only one plaintiff.” Neither party challenges these findings.

BACKGROUND

Anderson filed an action for quiet title and declaratory relief on July 27, 2020.

The allegations in the underlying action are not relevant to the instant appeal; we need only recount the procedural history.

The original complaint named the defendant as “Alex Padilla, as the Secretary of the State of California.” The Secretary of State demurred. The trial court sustained the demurrer and dismissed the Secretary of State from the action with prejudice. The court also granted Anderson leave to amend his complaint and, on July 7, 2021, Anderson filed a first amended complaint naming the State of California as the defendant.

The register of actions indicates that on August 12, 2021, “Proof of Service of 30-day Summons and Complaint — Personal” was filed. Between August 2021 and January 2022, the trial court rejected Anderson’s multiple requests for an entry of default. On March 17, 2022, Anderson filed an amended proof of service and another request for an entry of default. That same day, the clerk entered a default. The record does not contain either the August 12 proof of service or the proof of service amended on March 17.

In 2022, the trial court rejected Anderson’s multiple requests for service by publication. The documents associated with these requests do not appear in the record.

On July 10, 2023, Anderson filed proof of service by mail. An attached notation in the register states: “After Substituted Service of Summons and Complaint?: No.”

On November 13, 2023, Anderson asked the court to enter a default judgment.

The court scheduled a default prove-up hearing for February 20, 2024. On November 15, the Attorney General filed a “Statement.” Although the statement does not appear in the record, Anderson’s opposition to the statement is included. In this opposition, Anderson

characterized the Attorney General's primary contention as objecting to the lack of summons with the complaint.²

On February 20, 2024, the court removed the default prove-up hearing from the calendar.

On March 4, 2024, the court issued a written ruling vacating the clerk's default entered on March 17, 2022, and denying Anderson's request for default judgment. The court found, "Despite the clerk's entry of default, the court lacks jurisdiction to render a default judgment at this time. Neither the proof of service filed on August 12, 2021 nor the amended proof of service filed on March 17, 2022 establishes jurisdictional service of a summons. Indeed, a review of the register of actions discloses that no summons has yet been issued in this case." The court explained that the August 2021 proof of service was defective for several reasons, including the fact that it did not affirmatively show that a summons was served and that the party identified for the purposes of service, "the 'Sacramento Attorney General,' " "is not party to this action." Further, the court noted that the person served on behalf of the party, "Maldonado, Security Officer," was not the Attorney General as required under Government Code section 955.4. Finally, the court noted that the declaration attached to the proof of service indicated that the documents were mailed to an address different than the place the documents were left.

The court further found that the March 2022 amended proof of service identified the State of California as the relevant party but noted the person served on behalf of the party was still the security officer, not the Attorney General, and the proof of service did not include a certificate of mailing.

² The trial court found the Attorney General's statement did not qualify as a general appearance under Code of Civil Procedure section 410.50 "because the statement does not indicate the State of California's participation in this action in a manner that recognizes this court's jurisdiction." Anderson does not challenge this ruling.

On October 14, 2024, Anderson made his first request for a summons, which was issued that day.

Anderson served the summons and complaint on the Attorney General on December 5, 2024, and the Attorney General, on behalf of the State of California, moved to dismiss the complaint for failure to serve a summons within three years. The trial court agreed that service was beyond the three-year statutory period for both the original and amended complaints and dismissed the complaint.

Anderson filed a timely notice of appeal.

DISCUSSION

I. Applicable Law Regarding Service

The Code of Civil Procedure³ specifies the various methods by which service of a complaint and summons may be made upon defendants who are sued. “A summons is the process by which a court acquires personal jurisdiction over a defendant in a civil action” [citation], and a defendant has an absolute right to demand that process be issued against him in a manner prescribed by law.” (*Mannesmann DeMag, Ltd. v. Superior Court* (1985) 172 Cal.App.3d 1118, 1122.) Some acceptable forms of service of process are as follows.

Personal service is accomplished “by personal delivery of a copy of the summons and of the complaint to the person to be served.” (§ 415.10.) A defendant may also be personally served by delivering a copy of the summons and complaint to an agent authorized to accept service on behalf of that defendant. (§ 416.90; *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 389.) For example, when a defendant is a public entity, the plaintiff may have the summons served on “the clerk, secretary, president, presiding officer, or other head of its governing body.” (§ 416.50,

³ Undesignated statutory references are to the Code of Civil Procedure.

subd. (a).) A plaintiff suing the State of California must serve the summons on the Attorney General. (Gov. Code, § 955.4, subd. (a).)

In lieu of personal delivery of a copy of the summons and complaint to the person to be served, section 415.20 provides a method for substituted service that requires two coordinated acts: leaving a copy of the summons and complaint at an address designated by statute and also mailing a copy of the summons and complaint by first class mail to the person to be served at the place where a copy of the summons and complaint were left. (§ 415.20, subd. (a).)

In general, “[a]fter a summons has been served on a person, proof of service of the summons ... shall be filed.” (§ 417.30.) “[T]he filing of a proof of service creates a rebuttable presumption that the service was proper” but only if it “complies with the statutory requirements regarding such proofs.” (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441-1442.) “[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.” (*Id.* at p. 1444.)

Without proper service of process, a court lacks jurisdiction over a party. (See *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1206 [“The obligation to serve a party with process is not coextensive with merely providing the party with *notice* of the proceeding. Even undisputed *actual* notice of a proceeding does not substitute for proper *service* of the petition or complaint”].)

However, where service of the summons is defective, the trial court will still have jurisdiction over a defendant who makes a general appearance in the case. (§ 410.50, subd. (a); *Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1147.) A defendant makes a general appearance if they take part in the action in some way that recognizes the authority of the court to proceed and essentially consents to the court's jurisdiction in the matter. (*ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 210.)

II. Analysis

Anderson contends the trial court erred in vacating the clerk's entry of default and in dismissing the complaint. The record before us demonstrates that Anderson served the Attorney General, on behalf of the State of California, for the first time in December 2024, well after the initial entry of default and over three years after he named the State of California in his complaint. As we explain, this late service not only precluded the entry of a default judgment but also proved fatal to his suit against the state.

A. The trial court properly vacated the entry of default.

Anderson acknowledges he served the Attorney General in December 2024. He contends, however, that the court erred in vacating the clerk's default entry without a hearing, thus violating his right to due process. Had the court provided him an opportunity to be heard, Anderson claims, he could have explained "why service of a summons ... was not necessary to confer personal jurisdiction" over the State of California. In particular, he contends that the general appearance by the Secretary of State "waived the service of summons argument." Anderson alternatively contends that service was properly conducted on a security guard and the court erred in finding otherwise. We disagree.

1. No hearing was required to correct the clerk's erroneous entry.

"The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" [Citations.] Only after finding the deprivation of a protected interest do we look to see if the State's procedures comport with due process." (*American Mfrs. Mut. Ins. Co. v. Sullivan* (1999) 526 U.S. 40, 59; [citation])." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 214.) Given the administrative nature of the clerk's entry and the resulting error, due process is not implicated here.

After a defendant has been served with a summons and complaint and the time to file an answer has expired, "the clerk, upon written application of the plaintiff, shall enter

the default of the defendant. The plaintiff thereafter may apply to the court for the relief demanded in the complaint. The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief." (§ 585, subd. (b).)

Thus, there are two distinct stages in a default proceeding: the clerk's entry of default and the entry of default judgment.

" 'Where a clerk purports to enter a default ... prematurely, or otherwise exceeds the limited power conferred upon him by the statute, there is an entire absence of jurisdiction and his action ... is a nullity and open to attack at any time.' " (*Lewis v. Le Baron* (1967) 254 Cal.App.2d 270, 277.) As relevant here, "[t]he clerk has no authority to enter the default of a defendant in the absence of valid proof of service of summons" and where the void character of the entry of the default appears on the face of the record, it is "the duty of the court upon application of the party or of its own motion to vacate the void entry of the default." (*Woods v. Stallworth* (1960) 177 Cal.App.2d 517, 520-521; see also § 585, subd. (b).)

The trial court's order setting aside a default will not be disturbed absent a showing of clear abuse of discretion. (See *Yarbrough v. Yarbrough* (1956) 144 Cal.App.2d 610, 614.)

Here, the court clerk had no authority to enter the default in March 2022. As noted, the clerk's power and authority to enter a default is conferred by section 585, which is expressly limited to cases in which the defendant had been served. The trial court found, and we agree, that "the register of actions discloses that no summons ha[d] yet been issued in this case." Since there was no service of process upon which the default entry was based, the clerk had no power to enter it, and the clerk's act in doing so was void. Because Anderson had no protected interest in the clerk's unauthorized entry of default and was not in jeopardy of a serious loss (as there was no default judgment rendered), he has not demonstrated he had a due process right to a hearing. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education, supra*, 57 Cal.4th at p. 212

[“ ‘The essence of due process is the requirement that “a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it” ’ ” (italics added)).) Before ruling on a request for default judgment, the court has authority to set aside a default erroneously entered, which occurred here. (See *Brue v. Al Shabaab* (2020) 54 Cal.App.5th 578, 586-587 [a court should satisfy itself that it has personal jurisdiction before entering judgment against an absent defendant]; *Lee v. An* (2008) 168 Cal.App.4th 558, 564 [“if a defendant is not validly served with a summons and complaint, the court lacks personal jurisdiction and a default judgment in such action is subject to being set aside as void”].)

Nevertheless, Anderson cites *Brue v. Al Shabaab*, *supra*, 54 Cal.App.5th 578, in support of his argument that the court was required to afford him an opportunity to respond before vacating the default, but *Brue* is inapplicable here. In *Brue*, the court found that a state court can review sua sponte its jurisdiction over a defendant and that the court must afford the plaintiff the opportunity to be heard *when dismissing an action*. (*Id.* at p. 587.) Here, however, the trial court did not dismiss an action when it vacated the clerk’s entry of default. Rather, the court merely corrected a void order, which does not implicate the same due process rights as dismissing an action. Therefore, the court did not err in failing to hold a hearing.⁴

⁴ We also note that, in general, “due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 174.) Here, prior to the court’s act of vacating the clerk’s default entry, Anderson filed an opposition to the Attorney General’s statement and made several contentions as to why the Attorney General’s complaint about a lack of summons should not deny him entry of a default judgment. Thus, it appears Anderson had an opportunity to be heard on the issue of service.

2. Anderson never served a summons to the State of California.

Anderson also claims the court erred when it found that service on the security officer was improper.⁵ In support, he relies on *American Express Centurion Bank v. Zara, supra*, 199 Cal.App.4th 383. In that case, the court held a defendant may be personally served by delivering a copy of the summons and complaint to an agent authorized to accept service on behalf of that defendant. (*Id.* at p. 389.) But here, Anderson provides no authority to support his contention that the security officer is an authorized agent for the State of California. (See *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 873 [“A point not argued or supported by citation to authority is forfeited”].) To sue the State of California, a public entity, Anderson must have served the clerk, secretary, or the Attorney General himself, not a security guard. (Code Civ. Proc., § 416.50, subd. (a); Gov. Code, § 955.4.)

Anderson further contends that the trial court had jurisdiction over the State of California because the Secretary of State waived improper service by making a general appearance. He is incorrect.

First, “California’s state agencies are distinct and separate governmental entities.” (*Carian v. Department of Fish & Wildlife* (2015) 235 Cal.App.4th 806, 817; see also *People ex rel. Lockyer v. Superior Court* (2004) 122 Cal.App.4th 1060, 1078 [“Each agency or department of the state is established as a separate entity, under various state laws or constitutional provisions”].) Thus, even if the Secretary of State’s appearance “‘operate[d] as a consent to jurisdiction’” for itself and constituted a general appearance

⁵ The trial court’s decision to vacate the entry of default was based on the lack of summons on the Attorney General. The court also noted various defects in the proofs of service that Anderson filed with the court, including the difference between where the complaint was left and where it was mailed. The court noted that “[a]t best, it would only be the *first step* toward substituted service” (*Italics added.*) Contrary to Anderson’s contention, the trial court did not imply the substitution of service was *required*, it only pointed out the defects in that method of service, if that was the intent.

(*Fireman's Fund Ins. Co. v. Sparks Construction, Inc.*, *supra*, 114 Cal.App.4th at p. 1145; see *id.* at p. 1148), this had no impact on the State of California. The appearance of one agency does not constitute an appearance by all agencies. (See, e.g., *Carian*, at p. 817 [notice to one agency does not constitute notice to all]; *Lockyer*, at p. 1078 [because agencies are distinct and separate governmental entities, discovery had to be obtained from each one]; *Brock v. Fouchy* (1946) 76 Cal.App.2nd 363, 371 ["The appearance of [the defendant] by the filing of a demurrer was not a general appearance on behalf of any other defendant"].)

This is especially true where the State of California was not a party to the suit at the time of the Secretary of State's appearance. The Secretary of State was dismissed from the action with prejudice in February 2021 and Anderson did not amend his complaint to name the State of California as a defendant until several months later. Anderson offers no authority, and we are aware of none, for the proposition that the Secretary of State's appearance may be imputed to the state as a future defendant who was not a party to the lawsuit, at either the time of the Secretary of State's appearance and dismissal from the suit. (Cf. *Tidwell v. Henricks* (1954) 124 Cal.App.2d 64, 66 ["The filing of an amended complaint ... superseded the original complaint, and the original complaint is dropped out of the case and ceased to have any effect as a pleading or as a basis for a judgment." (italics omitted)].)

Therefore, the Secretary of State's general appearance has no effect on the court's jurisdiction over the State of California.

B. The trial court properly dismissed the complaint.

Section 583.210, subdivision (a) requires "the summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed." *Each* defendant must be served a summons within three years of

being added to the complaint. (See *Elling Corp. v. Superior Court* (1975) 48 Cal.App.3d 89, 96.)

Section 583.250 provides: “(a) If service is not made in an action within the time prescribed in this article: [¶] (1) The action shall not be further prosecuted and no further proceedings shall be held in the action. [¶] (2) The action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties. [¶] (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.”

A trial court’s ruling on a contested motion to dismiss under section 583.250 is often reviewed for an abuse of discretion. (See *Busching v. Superior Court* (1974) 12 Cal.3d 44, 53 [addressing predecessor to § 583.250]; *Republic Corp. v. Superior Court* (1984) 160 Cal.App.3d 1253, 1258.)

Here, Anderson filed the first amended complaint naming the State of California as a defendant on July 7, 2021. When a new party is added to the action, the action commences as to that party for purposes of the time limit for service on the date of filing of the pleading naming the new party. (*Nelson v. A. H. Robins Co.* (1983) 149 Cal.App.3d 862, 866.) Anderson served a summons and complaint on the defendant, for the first time, on December 5, 2024. This is well beyond the three-year limit.

Nevertheless, Anderson contends the trial court erred in dismissing the complaint for failure to serve the summons within three years because the amended complaint relates back to the original complaint and the Secretary of State’s appearance waived any defect in service.

First, Anderson forfeited this argument because we see no indication he raised the claim in the trial court. “It is well settled that the failure to raise an issue in the trial court typically forfeits on appeal any claim of error based on that issue.” (*Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, 489.)

Next, contrary to Anderson's contention, the three-year time limit is not excused by the "relation-back doctrine." California courts have established the rule that an amended complaint relates back to the filing of the original complaint, and thus avoids the bar of the statute of limitations, so long as recovery is sought in both pleadings on the same general set of facts." (*Smeltzley v. Nicholson Mfg. Co.* (1977) 18 Cal.3d 932, 934.) But as a general rule, "an amended complaint that adds a new defendant does *not* relate back to the date of filing the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed." (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal.App.4th 1497, 1503.) Therefore, the action only "commences as to him ... on the date of filing of the pleading naming him as a new party." (*Barrington v. A. H. Robins Co.* (1985) 39 Cal.3d 146, 150.) Anderson has not persuaded us as to why this general rule does not apply here, where the State of California was added as a new defendant months after the Secretary of State was dismissed from the lawsuit.

Anderson cites to *River's Side at Washington Square Homeowners Assn. v. Superior Court* (2023) 88 Cal.App.5th 1209 (*River's Side*) as support for this contention that the Secretary of State's appearance is attributed to the State of California under the relation-back doctrine. But *River's Side* does not stand for such a proposition nor is it factually similar. In *River's Side*, the plaintiff was a homeowners association that brought suit against a developer for construction defects. The defendants demurred to several causes of action asserted against them, arguing a homeowners association lacked standing to sue on behalf of its members for defects in residential units that it does not own and has no obligation to repair. The trial court sustained the demurrer without leave to amend, finding that the plaintiff lacked standing. (*Id.* at p. 1218.)

On appeal, the plaintiff challenged the trial court's ruling and alternatively argued it should have been granted leave to amend to cure any standing defect by alleging that its members assigned it their rights against the defendants, and that it was suing as the

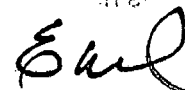
assignee of its members. (*River's Side*, *supra*, 88 Cal. App. 5th at pp. 1225, 1239.) The defendants argued that the trial court properly denied leave to amend because even if the proposed amendments cured the standing defect, the assigned claims would be barred by the statute of limitations because the amendment would not relate back to the original complaint. (*Id.* at pp. 1240-1241.) A different panel of this court disagreed. This court noted that an amended complaint relates back to the original complaint if it rests on the same general set of facts as the original complaint, and that "[a]n amendment that 'chang[es] nothing other than the identity of the plaintiff, would clearly pass the modern 'same general set of facts' test.'" (*Id.* at p. 1241.) This court reasoned that because the law allows a plaintiff to amend his or her complaint to sue in his or her representative rather than individual capacity without stating a new cause of action, "[w]e see no reason this same rule would not also allow Plaintiff to amend its complaint to sue as the assignee of its members rather than as the representative of its members." (*Ibid.*)

The instant case is wildly different. Here, Anderson did not seek to amend his own capacity to sue. Nor did he seek to amend the legal status of any other existing party to the suit. Rather, he amended the complaint to allege an entirely new defendant who had no prior notice of his claims. *River's Side* did not involve such an amendment much less address whether the relation-back doctrine applies to such a situation. In short, *River's Side* does not implicate or modify the general rule that an amended complaint that adds a new defendant does not implicate the relation-back doctrine. Although Anderson notes that he argued the applicability of other exceptions to the statute of limitations in the trial court, he does not raise those arguments on appeal. He cites to his entire "Opposition to Notice of Motion to Dismiss For Failure to Serve Summons Within Three Years" filed with the trial court, but does not specify which, if any, of the arguments he is raising on appeal. Since it is Anderson's responsibility to cite to the record and clearly raise issues in the argument of his opening brief, any argument regarding exceptions to the statute of limitations is forfeited. (See *In re Marriage of Carlisle* (2021))

60 Cal.App.5th 244, 255 ["Defendant's argument is not fully developed and is not supported by citation to any authority. 'The absence of cogent legal argument or citation to authority allows this court to treat the contentions as' forfeited"].)

DISPOSITION

The judgment is affirmed. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)


EARL, P. J.

We concur:


DUARTE, J.


WISEMAN, J.*

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Anderson v. State of California
C103955
Sacramento County
No. 34202000282764CUMCGDS

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

✓ Dion Anderson
CDC #: P72476
North Kern State Prison
P.O. Box 567
Delano, CA 93216

Oliver C. Wu
Office of the State Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Honorable Julie G. Yap
Judge of the Sacramento County Superior Court
500 G Street, Room 653
Sacramento, CA 95814
(By email)

STATE OF CALIFORNIA
California Court of Appeal,
Third Appellate District

E-NOTICE

STATE OF CALIFORNIA
California Court of Appeal, Third Appellate District

Case Name: **34202000282764CUMCGDS | Anderson v. State of
California**

Case Number: **C103955**

Lower Court Case Number: **34202000282764CUMCGDS**

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K. Yang, Court of Appeal, Third Appellate District	truefilingadmin@truefiling.com	04-24-2026 11:10:44 AM
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04-24-2026

Date

Colette M. Bruggman, Clerk

Clerk/Executive Officer

K. Yang

Deputy Clerk

Court of Appeal, Third Appellate District

Court

EXHIBIT

STATE OF CALIFORNIA

ALFONSO J. GARCIA

County of Santa Clara

Superior Court

In and to the County of Santa Clara

Do hereby certify that the following is a true and correct copy of the

APPENDIX D

Exhibit

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SUPREME COURT
FILED

JUL 08 2026

Court of Appeal, Third Appellate District - No. C103955

Jorge Navarrete Clerk

S296623

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DION ANDERSON, Plaintiff and Appellant,

v.

STATE OF CALIFORNIA, Defendant and Respondent.

The petition for review is denied.

GUERRERO

Chief Justice

APPENDIX E



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

July 20, 2026

SENT VIA USPS

Dion Anderson, CDC# P-72476
North Kern State Prison
P.O. Box 5000
Delano, CA 93216

Re: *Anderson v. State of California* – S296623

Dear Mr. Anderson:

No action may be taken on your "Petition for Re-hearing" received on July 17, 2026. The order denying your petition was final forthwith and may not be reconsidered or reinstated. Please rest assured, however, that the entire court considered the petition, and the contentions made therein, and the denial expresses the court's decision in this matter.

Sincerely,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

A handwritten signature in black ink, appearing to be "G. Muca", written over a horizontal line.

By: G. Muca, Deputy Clerk

cc: Oliver Wu, Counsel for Respondent
Rec.

1 Dion T. Anderson (Secured Party)
[UCC-1 File. No. 197713682751]

2 Dion Anderson P-72476
3 NKSP A1-209
4 P.O.Box 5000
Delano, Ca 93216

5 In Pro Se

6 IN THE CALIFORNIA SUPREME COURT OF THE STATE OF CALIFORNIA

7
8 DION ANDERSON
9 Plaintiff and Appellant,

10 v.

11 THE STATE OF CALIFORNIA
12 Dendant and Respondent.

Case No. S296623

(Sac.Sup.Court No. 34-2020-
00282764)

(3rd Appellate No. C103955)

PLAINTIFF'S PETITION FOR
RE-HEARING; Pursuant to Calif.
Rules of Court, Rule 8.536

13 TO: THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE
14 JUSTICES OF THE CALIFORNIA SUPREME COURT

15 Brief Summary

16 1. On May 27, 2026, Plaintiff had filed a "Petition for Review"
17 within the California Supreme Court. For which, Plaintiff's
18 specific question addressed to the State's Highest Court was-
19 if whether the State of California, i.e., the Defendants, were
20 considered new defendants upon Plaintiff's first amended
21 complaint; or, does not California's law classify the above
22 Defendant's as substitution of party's that would excuse
23 the Three Years statutorial limitations for Plaintiff to service
24 the above Defendant's with an entirely new summons? This
25 specific question is central to determining if whether or not
26 the Superior Court abused its discretion by not granting
27 Plaintiff's default judgment motion.

RECEIVED

JUL 17 2026

1 2. On July 8, 2026, Plaintiff had learned from calling the
2 California Supreme Court Clerks, that the Supreme Court had
3 summarily denied Plaintiff's petition without ever addressing
4 if whether or not the Third Appellate District Court's ruling
5 was in conflict with binding precedential law.

6 3. On July 13, 2026, Plaintiff is timely filing this motion
7 before the California Supreme Court for re-consideration!

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 1. Was the State of California Properly a Substitution of Party

10 In California Air Resources Board v. Hart (1993) 21 Cal.App.
11 4th 289; 26 Cal.Rptr.2d 153, the California Air Resources
12 Board (the Board) was classified as "an agency of the State
13 of California charged with protecting air quality in California,
14 administering California's air pollution control laws and
15 regulations, and enforcing the State's laws for the control
16 of air pollution emissions from motor vehicles in California"
17 (21 Cal.App.4th at p. 293).

18 However, as an state agency with permission to employ its
19 own counsel with direct permission from the State's Attorney
20 General (21 Cal.App.4th at p. 298-299). The "Board moved to
21 amend its complaint to substitute the People of the State of
22 California as plaintiff" (21 Cal.App.4th at p. 293). For
23 which, lead to the Board appealing the Superior Court's denial
24 to amend their complaint and requesting that remand be forth-
25 with, "to grant the Board's motion for leave to file an
26 amended complaint naming the People of the State of California
27 as plaintiff" (21 Cal.App.4th at p. 294).

1 L.Ed.2d 819, beneath the Federal Employees Liability Reform and
2 Tort Compensation Act of 1988, commonly known as the Westfall
3 Act, it was stated therein:

4 "When a federal employee is sued for wrongful or negligent conduct,
5 the Act empowers the Attorney General to certify that the employee
6 was acting within the scope of his office or employment at the time
7 of the incident out of which the claim arose. Upon the Attorney
8 General's certification, . . . the United States is substituted as
9 defendant in place of the employee" (549 U.S. at pp. 229-230)

10 In U.S. v. Smith (1991) 499 U.S. 160; 111 S.Ct. 1180; 113 L.Ed.
11 2d 134, the U.S. Supreme Court similarly allow a negligent action
12 against a doctor that worked at the United States Army Hospital,
13 to be substituted against the United States:

14 "The Government intervened and sought to have itself substituted
15 for Dr. Marshall as the defendant pursuant to the Gonzalez Act.
16 The Gonzalez Act provides that in suits against military medical
17 personnel for torts committed within the scope of their employment,
18 the Government is to be substituted as the defendant and the suit
19 is to proceed against the Government under the FTCA" (499 U.S. at
20 p. 162)

21 So, as likewise shown from above, Rule 15(c) of the Federal
22 Rules of Civil Procedure allowed amended lawsuits that only
23 had substituted the parties, i.e., from initially naming a
24 Federal employee or agency to being permitted to amend their
25 actions and naming the United States as the substituted defendant,
26 by retaining the relation back doctrine in order to evade
27 the statute of limitation from their untimely amended actions.

28 3. The Fourteenth Amendment Right to Redress:

29 In Swarthout v. Cooke (2011) 562 U.S. 216; 131 S.Ct. 859;
30 178 L.Ed.2d 732, the U. S. Supreme Court specified the following
31 concerning state created liberty interests:

32 "As for the Due Process Clause, standard analysis under that
33 provision proceeds in two steps: We first ask whether there
34 exists a liberty or property interest of which a person has

1 "been deprived, and if so we ask whether the procedures followed
2 by the State were constitutionally sufficient... When, however,
3 a State creates a liberty interest, the Due Process Clause
4 requires fair procedures for its vindication- and federal courts
5 will review the application of those constitutionally required
6 procedures" (562 U.S. at p. 220)

7 In Kentucky Department of Corrections v. Thompson (1989)
8 490 U.S. 454; 109 S.Ct. 1904; 104 L.Ed.2d 506, the U.S.
9 Supreme Court further specified what types of liberty and
10 property that is protected beneath the Fourteenth Amendment:

11 "The types of interests that constitute "liberty" and "property"
12 for Fourteenth Amendment purposes are not unlimited; the interest
13 must rise to more than 'an abstract need or desire, and must be
14 based on more than' a unilateral hope. Rather, an individual
15 claiming a protected interest must have a legitimate claim of
16 entitlement to it. Protected liberty interests 'may arise from
17 two sources - the Due Process Clause itself and the laws of
18 the State.'" (490 U.S. at p. 460)

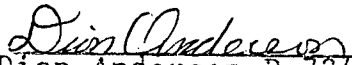
19 So, therefore, Plaintiff is requesting that the California
20 Supreme Court reconsiders Plaintiff's petition for review.
21 For Plaintiff's liberty interest is being denied from the fact
22 that Plaintiff's default judgment was denied on the basis that
23 Plaintiff had failed to service the State of California a
24 summons - when the State of California was a substituted
25 party to Plaintiff's original complaint. And since the Secre-
26 tary of State Department had waived their jurisdictional
27 argument against Plaintiff's original action having no summons
28 beneath California law there is no reservation to challenge
this jurisdictional defect from an amended substituted party.
So, Plaintiff's liberty interest is being legitimately asserted
in Plaintiff raising a protected right to release of Plaintiff's
person from the California Department of Correction and Rehab-
ilitation.

CONCLUSION

Plaintiff requests that the California Supreme Court reconsiders its prior denial order! And that remand be addressed back to Third Appellate District Court for order that the Sacramento Superior Court grant Plaintiff's default judgment motion, and release Plaintiff from CDCR's custody.

I declare under penalty of perjury under the laws of the State of California that the foregoing be true and correct to the best of my knowledge.
Executed at Delano, Ca 93216

Date: July 13, 2026


Dion Anderson P-72476

PROOF OF SERVICE

DION ANDERSON

Case No. S296623

v

PROOF OF SERVICE

STATE OF CALIFORNIA

I hereby certify that I am not a party to this action. On July 13, 2026, I am mailing a copy of the attached PLAINTIFF'S PETITION FOR RE-HEARING; Pursuant to Cali. Rules of Court, Rule 8.536, by placin a copy in a postage paid envelope addressed to the person(s) herein-after listed below. i am mailing or depositing the attached documents via mail at Delano, Ca 93216

(List Name and Addresses of each
Defendant or Attorney Served)

California Supreme Court
350 McAllister Street
San Francisco, Ca 94102-4797

Oliver C. Wu
Office of the State Attorney general
455 Golden Gate Ave, Suite 11000
San Francisco, Ca 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed at Delano, ca 93216

**Additional material
from this filing is
available in the
Clerk's Office.**