

**1. REYES v. DEPT. OF TRANSPORTATION, SC20200027****Defendants' Motion to Dismiss**

On August 25, 2025, pursuant to Code of Civil Procedure sections 583.310 and 583.360, subdivision (a), defendants California Department of Transportation and Nicholas Noah Hudspeth (collectively, "defendants") filed the instant motion to dismiss the entire action on the grounds that plaintiffs Maria Reyes and Fernando Gonzalez (collectively, "plaintiffs") failed to bring the case to trial within five years, as extended by Judicial Council Emergency Rule 10(a) ("Emergency Rule 10(a)").

On October 13, 2025, plaintiffs filed a timely opposition.

On October 17, 2025, defendants filed timely objections to plaintiffs' opposition evidence and a timely reply.

A hearing on defendants' motion was originally set for October 24, 2025. On October 23, 2025, the court issued its original tentative ruling. The court found that the five-year deadline, as extended by Emergency Rule 10(a), expired on August 21, 2025. The court also tolled the deadline 63 days (from February 24, 2025, to April 28, 2025, when trial was continued, technically upon defendants' request). This meant that the five-year time limit expired on October 23, 2025.<sup>1</sup> Because plaintiffs had not brought the case to trial by October 23, 2025, the court's tentative ruling was to grant defendants' motion to dismiss.

After the tentative ruling was issued, plaintiffs submitted a timely oral argument request pursuant to Local Court Rule 7.10.05. Plaintiffs argued, in part, that they are entitled to an additional six months to bring the case to trial pursuant to Code of Civil

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<sup>1</sup> As discussed below, the court amends its original tentative ruling to the extent it tolled the five-year time limit by 63 days in connection with the continuance of the February 24, 2025, trial date. Such tolling was ostensibly based on the ground that, due to *defendants'* request for a continuance, it was impossible, impracticable, or futile for plaintiffs to bring the case to trial during that time. (See Code Civ. Proc., § 583.340, subd. (c).) Upon further review of the facts, however, the court concludes this finding was incorrect.

Procedure section 583.350 (an argument plaintiffs raised in their opposition brief but the court did not address in its original tentative ruling). Plaintiffs also requested a short continuance, which the court granted, due to a personal matter.

As discussed below, the court finds that Code of Civil Procedure section 583.350 is inapplicable here because the court has not tolled or extended the five-year deadline “pursuant to statute.” (Code Civ. Proc., § 583.350; see *Ables v. A. Ghazale Brothers, Inc.* (2022) 74 Cal.App.5th 823, 828.) The five-year deadline to bring the case to trial, as extended by Emergency Rule 10(a), expired August 21, 2025. Because plaintiffs failed to bring the case to trial within the five-year limit, the court grants defendants’ motion to dismiss the entire case with prejudice.

### **1. Background**

Plaintiffs commenced this action against defendants on February 20, 2020. Since then, there have been multiple trial continuances, as well as an appeal.

During a trial setting conference on April 17, 2024, the court set trial for January 13, 2025. On November 27, 2024, plaintiff Maria Reyes filed an ex parte application<sup>2</sup> to continue the January 13, 2025, trial date due to “recent developments” in the case and a pre-paid vacation for Reyes’s attorney that was scheduled to begin on January 20, 2025. Reyes requested the court to continue trial to a date before October 20, 2025 (Reyes claimed in her ex parte application that the five-year deadline to bring the case to trial, as extended by Emergency Rule 10(a), expired on October 20, 2025). On December 2, 2024, plaintiff Fernando Gonzalez joined in Reyes’s ex parte application to continue the January 13, 2025, trial.

On December 11, 2024, defendants filed an opposition to Reyes’s ex parte application, arguing plaintiffs did not provide a sufficient basis for the requested continuance. Also on December 11, 2024, defendants filed their own ex parte

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<sup>2</sup> At the time Reyes filed her ex parte application, the plaintiffs were represented by different attorneys.

application requesting the court to: (1) strike portions of Reyes's ex parte application on the grounds that it included confidential settlement discussions; (2) grant a protective order prohibiting the parties and their counsel from disclosing confidential settlement discussions; and (3) impose monetary sanctions against Reyes and her attorney for disclosing confidential settlement discussions. Alternatively, defendants requested the court to continue the hearing on Reyes's ex parte application and issue an order shortening time for defendants' intended (1) motion to strike portions of Reyes's ex parte application; (2) motion for protective order; and (3) motion for sanctions.

On December 12, 2024, the court granted Reyes's ex parte application and continued trial to February 24, 2025.

On January 2, 2025, defendants filed another ex parte application – this time, for an order shortening time on defendants' motion to continue the February 24, 2025, trial on the grounds of witness unavailability (defendant claimed a custodian of records was unavailable). Defendants proposed a new trial date of April 7, 2025.

On January 3, 2025, the court heard defendants' ex parte application. The court found good cause to continue the February 24, 2025, trial date. The court vacated the January 13, 2025, and February 24, 2025, trial dates.<sup>3</sup> The court set a hearing for January 17, 2025, on defendants' motion for order shortening time; the court also set a trial setting conference for January 17, 2025. The court ordered plaintiffs to submit declarations or oppositions regarding a proposed April 7, 2025, date by January 10, 2025.

On January 17, 2025, the parties informed the court that they agreed to a new trial date of April 28, 2025. Pursuant to the stipulation of the parties, the court continued trial to April 28, 2025.

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<sup>3</sup> It appears that the court did not formally vacate the January 13, 2025, trial date when it granted plaintiffs' continuance request on December 12, 2024.

## 2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants plaintiffs' request for judicial notice of Exhibit 1 (Jan. 17, 2025, minute order) and Exhibit 2 (transcript from the Apr. 11, 2025, hearing).

The court denies plaintiffs' requests to take judicial notice of: (1) the fact that the court did not conduct any civil jury trials on August 8, 2022, because either no courtroom or judge was available for trial; and (2) "the court's records to confirm that no courtroom or judge was available for a civil jury trial the entire month of August 2022 because of [sic] either no courtroom or judge was available for trial."

## 3. Evidentiary Objections

With the exception of defendants' Objection No. 6, the court sustains each of defendants' 11 objections to plaintiffs' opposition evidence. The court overrules Objection No. 6.

## 4. Discussion

"An action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.) "This dismissal requirement is mandatory and 'not subject to extension, excuse, or exception except as expressly provided by statute.' [Citation.] 'Under the press of this statutory requirement, anyone pursuing an "action" in the California courts has an affirmative obligation to do what is necessary to move the action forward to trial in timely fashion.' [Citation.]" (*Seto v. Szeto* (2022) 86 Cal.App.5th 76, 85.)

In response to the COVID-19 pandemic, the Judicial Council of California enacted an emergency rule extending the period "for all civil actions filed on or before April 6, 2020 ... by six months[,] for a total time of five years and six months[.]" (Cal. Rules of Court, Appen. I, Emergency Rule, rule 10(a).)

Plaintiffs filed the instant lawsuit on February 20, 2020. Defendants argue that under Code of Civil Procedure section 583.010, as extended by Emergency Rule 10(a), plaintiffs

had until August 20, 2025, to bring the case to trial. Plaintiffs claim that Emergency Rule 10(a) actually extended the deadline to August 21, 2025, arguing that Government Code section 6804 defines the term, “month” as “a calendar month, unless otherwise expressed.” (Opp. at 6:3–6 (citing Gov. Code, § 6804; *Marchuk v. Ralphs Grocery Co.* (1990) 226 Cal.App.3d 1273, 1276, fn. 2 [“Reconciling Government Code sections 6803 [which defines a ‘year’ as a period of 365 days] and 6804 [which defines a ‘month’ as ‘a calendar month, unless otherwise expressed’], the Court of Appeal has determined that six months ‘mean[s] ... six calendar months or 182 days, whichever is longer.’ ”].) The court agrees with plaintiffs and finds that the six-month extension under Emergency Rule 10(a) extended the five-year deadline to bring the case to trial to August 21, 2025 (February 20, 2025, plus 182 days).

#### **4.1. Alleged Tolling Periods**

Plaintiffs argue the five-year time limit should be tolled for the following periods: (1) 63 days, from February 24, 2025, to April 28, 2025, due to the court granting defendants’ motion to continue the February 24, 2025, trial on January 17, 2025, (see Opp. at 6:7–13); (2) 455 days,<sup>4</sup> from August 8, 2022, to November 6, 2023, because on June 15, 2022, the court vacated the August 8, 2022, trial date sua sponte and ordered the parties back to a case management conference on August 16, 2022, at which time, the court reset trial for November 6, 2023 (see Opp. at 8:18–22); (3) 104 days, from April 16, 2025, to July 29, 2025, because on April 16, 2025, the court vacated the April 28, 2025, trial sua sponte and did not reset trial until July 29, 2025 (or August 27, 2025 – it is difficult to understand plaintiffs’ argument) (see Opp. at 12:15–13:1, 13:14–16); and (4) 101 days, from April 14, 2025, to July 24, 2025, while plaintiffs’ appeal of the court’s April 11, 2025, order denying plaintiffs’ motion to disqualify defense counsel was pending (see Opp. at 15:12–18:10).

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<sup>4</sup> Alternatively, plaintiffs submit that the five-year time limit should be tolled 62 days, from June 15, 2022, through August 16, 2022.

Code of Civil Procedure section 583.340 sets forth three circumstances in which the time to bring a case to trial is tolled: “(a) The jurisdiction of the court to try the action was suspended. [¶] (b) Prosecution or trial of the action was stayed or enjoined. [¶] (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.” (Code Civ. Proc., § 583.340, subds. (a)–(c).) “An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.” (Code Civ. Proc., § 583.360, subd. (a).)

The plaintiff bears the burden of proving that the circumstances warrant application of an exception to the five-year rule, and the trial court has discretion to determine whether that exception applies. (*Gaines v. Fidelity Nat. Title Ins. Co.* (2016) 62 Cal.4th 1081, 1100.)

“What is impossible, impracticable or futile must be determined in light of all the circumstances in the individual case, including the acts and conduct of the parties and the nature of the proceedings themselves. [Citations.] The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case.” (*Moran v. Superior Court* (1983) 35 Cal.3d 229, 238.) “ ‘ “Reasonable diligence places on a plaintiff the affirmative duty to make every reasonable effort to bring a case to trial within five years, even during the last month of its statutory life.” ’ ” (*Sanchez v. City of Los Angeles* (2003) 109 Cal.App.4th 1262, 1270, italics omitted.) “The exercise of reasonable diligence requires a plaintiff to ‘ “keep track of the pertinent dates which are crucial to maintenance of his lawsuit, and to see that the action is brought to trial within the five-year period.” ’ ” (*Wilcox v. Ford* (1988) 206 Cal.App.3d 1170, 1175.) A plaintiff “has an affirmative obligation to do what is necessary to move the action forward to trial in timely fashion.” (*Tanguilig v. Neiman Marcus Group, Inc.* (2018) 22 Cal.App.5th 313, 322.) It is not the trial court’s job to ensure a case is brought to trial within the five-year period. Instead, “if a trial court does

not take any action,” it is the plaintiff’s obligation “ ‘to seek an order from the trial court’ ” scheduling the trial by the statutory deadline. (*Oswald v. Landmark Builders, Inc.* (2023) 97 Cal.App.5th 240, 249.)

This court’s original tentative ruling issued on October 23, 2025, states: “The court finds that plaintiffs have established that the five-year period in which to bring the present case to trial was tolled 63 days from February 24, 2025, to April 28, 2025, due to the court granting *defendants’* motion to continue the trial from February 24, 2025, trial [sic] to April 28, 2025 (See *Rose v. Scott* (1991) 233 Cal.App.3d 537, 541 [“the general rule is that when a party seeks a continuance of trial, that party is estopped to assert limitation periods for bringing an action to trial.”].) Upon further consideration of *Rose v. Scott*, as well as the facts of this case, however, the court concludes there is no tolling as a result of the court continuing trial from February 24, 2025, to April 28, 2025.

In *Rose v. Scott*, the five-year statutory period expired August 14, 1989. (*Rose v. Scott, supra*, 233 Cal.App.3d at p. 539.) In October 1985, the defendants moved to continue the trial date in light of the pendency of an administrative action involving a related matter that would affect the civil case. (*Ibid.*) The plaintiff later amended its complaint, but due to unspecified delays, the defendants’ answer to the amended complaint was not filed until August 14, 1989, the day the five-year statute ran. (*Id.*, at p. 540.) The trial court sua sponte dismissed the complaint. (*Ibid.*) Ultimately, the dismissal was reversed because the appellate court determined the five-year period had been tolled for three separate periods, meaning the dismissal was premature; the court did not conclude the defendant was estopped to seek dismissal. The appellate court referred to “the general rule ... that when a party seeks a continuance of trial, that party is estopped to assert limitation periods for bringing an action to trial. (*Id.*, at p. 541.) But the cases cited for that general rule are more specific: they hold estoppel applies when the defendant seeks a continuance of the trial that pushes the trial date past the five-year limit, not when the defendant’s request for a continuance is still within the five-

year period. (See *Ward v. Levin* (1984) 161 Cal.App.3d 1026, 1034; *Borglund v. Bombardier, Ltd.* (1981) 121 Cal.App.3d 276, 281.)

Having considered the totality of the circumstances surrounding the continuance of the January 13, 2025, and February 24, 2025, trial dates, the court concludes that plaintiffs have failed to establish it was impossible, impracticable, or futile to bring the case to trial. (Code Civ. Proc., § 583.340, subd. (c).) The record shows that *plaintiffs* initially sought to continue the January 13, 2025, trial date. Upon plaintiffs' request (and over defendants' objection), the court continued trial to February 24, 2025. Shortly thereafter, defendants learned that one of their witnesses was unavailable for trial on February 24, 2025. As such, defendants requested another continuance, with a new proposed trial date of April 7, 2025. At the trial setting conference on January 17, 2025, the parties informed the court they agreed to a new trial date of April 28, 2025. Given the circumstances – that plaintiffs originally requested the trial continuance, but the continued date did not work for one of defendants' witnesses, thereby prompting defendants to file another continuance request – coupled with the fact that the parties *agreed* to a new trial date of April 28, 2025, the court denies plaintiffs' request to toll the five-year time limit on the grounds that it was impossible, impracticable, or futile for plaintiffs to bring the case to trial.

Similarly, the court finds plaintiffs have failed to meet their burden of establishing it was impossible, impracticable, or futile to bring the case to trial during the other claimed periods, namely: (1) the period of 455 days from August 8, 2022, to November 6, 2023; (2) (alternatively) the period of 62 days, from June 15, 2022, through August 16, 2022; or (3) the period of 104 days, from April 16, 2025, to July 29, 2025. The court notes there is no competent evidence of courtroom unavailability, as plaintiffs claim. Moreover, the fact that there may not have been a civil trial in August 2022 does not mean there was no available judge or courtroom. Indeed, this judicial officer took



the bench in May 2023 and did not preside over a civil jury trial until August 2025.

During that time period, there was still an available judge and courtroom.

The court also rejects plaintiffs' argument that the case was stayed from April 14, 2025, to July 24, 2025, while plaintiffs' appeal of the court's April 11, 2025, order denying plaintiffs' motion to disqualify defense counsel was pending. Plaintiffs' opposition brief quotes the court as stating during the April 11, 2025, hearing: "All right. So once that notice [of appeal] is filed, we I'll be vacating dates and staying this case, or at least vacating the dates. Yes, sir?" Plaintiffs argue, "[b]ased upon the comments of the Court at the April 11, 2025, hearing PLAINTIFFS believed that the pending case was stayed without the need to bring a motion to impose a stay of proceeding." (Opp. at 15:23–25.) "PLAINTIFFS request that the Court enter an order and acknowledge that it issued a stay of the trial when on April 16, 2025, when it ordered the trial of April 28, 2025, vacated. [¶] PLAINTIFFS are requesting that the court to enter its stay of the entire action nunc pro tunc to April 16, 2025." (Opp. at 16:14–18.)

The court rejects plaintiffs' arguments and denies the requests to enter an order staying the action. First, the court's comment that it would vacate and stay the case, or at least vacate the scheduled court dates, was based on representations made by plaintiffs' counsel during the hearing that plaintiffs' intended appeal would trigger an automatic stay, which turned out to be false. (See Code Civ. Proc., § 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 191 ["an appeal from an order denying a motion to disqualify counsel does not automatically stay further trial court proceedings on the merits because such proceedings would occur regardless of whether the reviewing court affirms or reverses the order"]; *Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 450 ["If, pending an appeal of an order denying disqualification of counsel, the unsuccessful moving party desires a stay or a continuance of the trial proceeding on the merits, which the trial court in its discretion

denies, the party must seek a writ of supersedeas or other discretionary stay from the appellate court.”].)

At the time the court made the statement, plaintiffs had not yet filed their appeal. Given that, the court could not make a preemptory order based on an event that had not yet occurred. The appeal was filed on April 14, 2025. At that point, the court researched whether the appeal triggered an automatic stay and determined it did not. Thus, on April 16, 2025, the court issued an ex parte minute order, which states: “Due to the filing of Notice of Appeal on 04/14/2025, all future hearing dates are vacate[d].” This minute order was served on all counsel and put plaintiffs’ counsel on notice that the court had not ordered a stay of the action. The burden was then on plaintiffs to bring the appropriate motion to obtain a stay. Plaintiffs filed no such motion.

#### **4.2. Additional Six Months under Code of Civil Procedure Section 583.350**

Code of Civil Procedure section 583.350 provides: “If the time within which an action must be brought to trial pursuant to this article is tolled or otherwise extended pursuant to statute with the result that at the end of the period of tolling or extension less than six months remains within which the action must be brought to trial, the action shall not be dismissed pursuant to this article if the action is brought to trial within six months after the end of the period of tolling or extension.” (*Ibid.*)

Plaintiffs argue that, under Code of Civil Procedure section 583.350, they are entitled to an additional six-month period in light of the tolling under Emergency Rule 10(a). However, the appellate court has expressly rejected this argument, reasoning that Emergency Rule 10(a) is an administrative rule, not a statute. (See *Ables, supra*, 74 Cal.App.5th at p. 828.) Because Emergency Rule 10(a) did not extend plaintiffs’ deadline to bring the case to trial “pursuant to statute,” it therefore did not trigger the extra six-month period under Code of Civil Procedure section 583.350. (*Ables, supra*, at p. 828.)

**5. Conclusion**

The five-year deadline to bring the case to trial, as extended by Emergency Rule 10(a), expired on August 21, 2025. Because plaintiffs failed to bring the case to trial by August 21, 2025, the court grants defendants' motion to dismiss the entire case with prejudice.

**TENTATIVE RULING # 1 (AMENDED): THE COURT GRANTS DEFENDANTS' MOTION TO DISMISS THE ENTIRE CASE WITH PREJUDICE. APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, DECEMBER 5, 2025, IN DEPARTMENT FOUR FOR ORAL ARGUMENT.**