

**Tentative Rulings for December 19, 2024**  
**Department 503**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 503**

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**Tentative Ruling**

Re: ***Truck Insurance Exchange v. The Reserve Apartment Home, LLC, et al.***  
Superior Court Case No. 24CECG01909

Hearing Date: December 19, 2024 (Dept. 503)

Motion: by Plaintiff for an Order Compelling Defendant's Responses to Discovery and an Order Deeming Requests for Admissions Admitted

**If oral argument is timely requested, it will be entertained on Thursday, January 9, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To grant Plaintiff Truck Insurance Exchange's motions to compel Defendant The Reserve Apartment Homes Fresno, LLC to provide initial verified responses to Form Interrogatories, Set One, Special Interrogatories, Set one, and Request for Production of Documents, Set One. (Code Civ. Proc. §§ 2030.290, subd. (b); 2031.300, subd. (b).) Defendant is ordered to serve complete verified responses to the discovery set forth above, without objection, within 20 days of the clerk's service of the minute order.

To deem Plaintiff's Request for Admissions, Set One, admitted by Defendant The Reserve Apartment Homes Fresno, LLC, unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure, section 2033.220. (Code Civ. Proc. §2033.280, subd. (b) and (c).)

To impose monetary sanctions in favor of Plaintiff Truck Insurance Exchange and against Defendant The Reserve Apartment Homes Fresno, LLC. (Code Civ. Proc. §§ 2023.010, subd. (d), 2030.290, subd. (c), 2031.300, subd. (c), 2033.280, subd. (c).) Defendant is ordered to pay \$730 in sanctions to Selvin Wraith, LLP within 30 days of the clerk's service of the minute order.

**Explanation:**

A party that fails to serve a timely response to a discovery request waives "any objection" to the request. (Code Civ. Proc. §§ 2030.290(a), 2033.280(a).) The propounding party may move for an order compelling a party to respond to the discovery request. (Code Civ. Proc. § 2030.290(b).) In the case of requests for admission, the propounding party may move for an order that the truth of any matters specified in the requests be deemed admitted. (Code Civ. Proc. § 2033.280(b).)

Where responses are served after the motion is filed, the motion to compel may still properly be heard. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.) Unless the propounding party takes the





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**Tentative Ruling**

Re: **Jones, et al. v. Walls, et al.**  
Superior Court Case No. 21CECG02820

Hearing Date: December 19, 2024 (Dept. 503)

Motion: by Defendants to Dismiss the Action

**If oral argument is timely requested, it will be entertained on  
Thursday, January 9, 2025, at 3:30 p.m. in Department 503**

**Tentative Ruling:**

To grant defendants' motion to dismiss. The action is dismissed as to all three defendants without prejudice. (Code Civ. Proc., §§ 583.210, 583.250.)

To take judicial notice of each document included in defendants' request for judicial notice. (Evid. Code, § 452, subd. (c).)

**Explanation:**

Late-filed Papers

The court notes that plaintiffs' opposition is untimely filed, as it is filed only five court days prior to the hearing. (Code Civ. Proc., § 1005, subd. (b).) However, the court exercises its discretion to consider the late-filed papers in this instance only. (*Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202.)

Motion to Dismiss

Defendants move to dismiss the action pursuant to Code of Civil Procedure section 583.210 and 583.250, for plaintiffs' failure to serve defendants within three years of the commencement of the action.

Code of Civil Procedure section 583.210 requires that the summons and complaint be served on a defendant within three years of the commencement of the action against that defendant. (Code Civ. Proc., § 583.210, subd. (a).) If service is not made in the statutory time prescribed, Section 583.250 indicates that the court must dismiss the action. (*Id.*, at subd. (a)(2).) Further, "[t]he requirements of [Section 583.250] are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute." (*Id.*, at subd. (b).)

The period for service runs from the time "the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed." (Code Civ. Proc., § 583.210, subd. (a).) The period of service begins to run when the plaintiff files his original complaint, and is not extended by subsequent filings of amended complaints, unless the gravamen of the complaint is changed. (See *Perati*

v. *Atkinson* (1964) 230 Cal.App.2d 251, 253-254 [finding no extension of statutory time for service despite subsequent amendments based on Code Civ. Proc., § 581a, the predecessor to section 583.240]; see also *Barrington v. A.H. Robins Co.* (1985) 39 Cal.3d 146, 154 [statutory time period runs from the time of filing amended complaint when the gravamen of the complaint is based on different operative facts].)

A defendant is served when plaintiff has completed all required acts required for such service in accordance with statutory procedure, and filing a proof of service with the court. (See *Johnson & Johnson v. Superior Court* (1985) 38 Cal.3d 243, 250.)

Here, plaintiffs filed the Complaint commencing the action against defendants on September 20, 2021. A Summons was not issued for the original Complaint. The court's record reflects that plaintiff made multiple attempts to electronically file the Summons, but each attempt was rejected because the parties' names listed on the Summons did not match those listed on the Complaint filed. On February 7, 2023, plaintiffs filed their First Amended Complaint, which appears to correct a typo in defendant Patricia L. Walls' name. The Summons for the First Amended Complaint was issued and filed on February 15, 2023. Plaintiffs do not contend that the gravamen of the allegations in the First Amended Complaint are altered from that of the Complaint. Therefore, the three-year statutory period began to run from the filing of the Complaint on September 20, 2021. The court computes the end of the statutory period for service to be on Friday, September 20, 2024.

However, to date, plaintiffs have not effectuated service on defendants. Plaintiffs contend that the action should not be dismissed, because they exercised reasonable diligence to effectuate service and defendants were evading service.

As previously provided, “[t]he requirements of [Code of Civil Procedure section 583.250] are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.” (*Id.*, at subd. (b).) The conditions for tolling the statutory time for service are enumerated in Code of Civil Procedure section 583.240:

- (a) The defendant was not amenable to the process of the court.
- (b) The prosecution of the action or proceedings in the action was stayed and the stay affected service.
- (c) The validity of service was the subject of litigation by the parties.
- (d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision.

(Code Civ. Proc., § 583.240, subds. (a)-(d).)

However, the tolling provisions of Section 583.240 are liberally construed consistent with the specific statutory policy preference favoring trial on the merits. (Code Civ. Proc., § 583.130.) “[T]he burden of establishing facts bringing the case within an exception to the general rule requiring dismissal” falls on the party claiming such exception. (*Perez v. Smith* (1993) 19 Cal.App.4th 1595, 1597.) Each statutory tolling provision is considered in turn.

### *Amenable to the Process of the Court*

"An examination of appellate opinions in this state predating the Legislature's employment of the phrase 'amenable to process,' in its redefinition of the permissible exclusions from the calculation of the statutory period in which service must be accomplished, reveals that this and related phrases commonly were employed to refer to the state's jurisdictional authority, whether constitutional or statutory, with regard to a particular defendant. Such examination affords clear support for the conclusion that the Legislature intended thereby to refer to the state's authority to exercise jurisdiction over a defendant, i.e., the determination whether he or she is subject to being served, rather than to the reasonable availability of that defendant for service of process." (*Watts v. Crawford* (1995) 10 Cal.4th 743, 755.)

"Prior to 1970, [Code of Civil Procedure] section 581a, the predecessor to section 583.240, provided that 'no dismissal shall be had [for failure to serve within three years of filing of the complaint] because of the failure to serve summons on [defendant] during his absence from the State, or while he has secreted himself within the State to prevent the service of summons on him....' [Citation.] In 1970 this language was deleted, and the statute was amended to state: 'The time during which the defendant was not amenable to the process of the court shall not be included in computing the [three-year] time period....' [Citation.] When the 1970 amendment was submitted to the Legislature for final passage, the Legislative Counsel's digest accompanying it stated that the amended statute '[e]xcludes, from computation of time period after which action may be dismissed for want of prosecution, time during which defendant was not amenable to process of court and during which jurisdiction of court to try action is suspended, rather than time during which defendant was absent from state or concealed therein, his whereabouts unknown to plaintiff and not discoverable to plaintiff upon due diligence....' [Citation.]" (*Perez v. Smith* (1993) 19 Cal.App.4th 1595, 1598, citations omitted.)

"As this legislative history makes clear, a finding that a defendant cannot, despite reasonable diligence, be served by one of the preferable methods, i.e., in person, by mail, or by substituted service [Citations.], is not tantamount to a finding that a defendant is outside the jurisdiction of the court. Service by publication presupposes the defendants are subject to the court's jurisdiction and is employed only after the plaintiff has exhausted all other avenues to discover their whereabouts. However, so long as defendants remain within the jurisdiction of the court they are amenable to service of process by any means, including the method of last resort—publication." (*Ibid*, citations omitted.)

Plaintiffs' counsel's declaration does not contain any facts to demonstrate that defendants was ever outside the court's jurisdiction. Accordingly, there is no evidence to suggest that defendants, at any point, were not amenable to service.

### *Stay and Validity of Service*

The court's record does not reflect that the prosecution of the action or the proceedings were ever stayed. Similarly, the court's record does not show that the validity of service was the subject of litigation.



### *Impracticable or Impossible*

Plaintiffs contend that they diligently attempted service, but that defendants were evading service. However, plaintiffs have not provided sufficient evidence to show that they exercised reasonable diligence *throughout* the statutory period of three years. Plaintiffs only provide evidence to show that service was attempted on April 21, 2024, and then again from September 10 – September 30, 2024. (Murillo Decl., ¶¶ 1-2, Exs. 1-2.) No facts are provided to show why plaintiffs did not attempt service at any point throughout the remainder of the three-year period.

Moreover, even if defendants were evading service, plaintiffs have not shown how these facts would have prevented them from otherwise serving the defendants, since there are multiple methods available in order to effectuate service—substitute service (§ 415.20), service by mail accompanied with acknowledgment of receipt (§415.30), or service by publication (§415.50).

Plaintiffs attach proofs of service, that have not been filed with the court, to show that they attempted personal service and substitute service, but were unsuccessful. This is insufficient to establish that service to defendants was impracticable or impossible. To the extent that personal service was unavailable, plaintiffs do not describe why service could not be effectuated through alternative means of service throughout the three-year statutory period.

The court's electronic filing system indicates that on April 23, 2024, plaintiffs attempted to e-file two proofs of service for defendants Robert Perry Walls and Patricia L. Walls, but these were rejected for a number of reasons: (1) the proofs of service indicated that the summons and complaint were served, when the First Amended Complaint was the operative complaint; (2) the person to which the substituted service was made upon was not described in Item 3b; (3) a due diligence affidavit was not attached to either filing; and (4) the proofs of mailing were not attached or incomplete. Despite these rejected filings, plaintiffs do not indicate why corrective action was not or could not be taken in the five months from April to September.

Accordingly, plaintiffs have not shown that service was impracticable, impossible, or futile throughout the statutory period. The court does not find any reasonable ground to toll the statutory period for service in this case.

### Service to Robert Louis Walls

It is unclear whether plaintiffs have successfully served defendant Robert Louis Walls within the statutory period. A proof of service purporting to have served him the summons and complaint is attached to plaintiffs' counsel's declaration; however, the document does not show that the First Amended Complaint was served. Nor does the document indicate when the personal service was completed. Thus, there is no evidence to show that he has been properly served prior to September 30, 2024.

Since there is no evidence that plaintiffs have served defendants within the three-year statutory period, the court must dismiss the action.

