

A150816

(Alameda County Superior Court Case No. HG12615549)

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
Division 5**

**RWW PROPERTIES, LLC,
Petitioner,**

vs.

**SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF ALAMEDA,
Respondent,**

**MEGAN E. ZAVIEH,
Real Party in Interest**

**SUPPLEMENT TO PETITION FOR WRIT OF MANDATE AND/OR
PROHIBITION AND OTHER EXTRAORDINARY RELIEF**

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INTRODUCTION

Petitioner RWW PROPERTIES,, LLC submits this supplement to its March 20, 2017 Petition for Writ of Mandate at this Court’s direction to address the issue of timeliness of the March 20, 2017 Writ Petition under California Code of Civil Procedure § 405.39.¹ The March 20, 2017 Writ Petition was timely under CCP § 405.39.

CCP § 405.39 provides for a 20-day time limit as follows: “The petition for writ of mandate shall be filed and served *within 20 days of service* of written notice of the order by the court or any party.” CCP § 405.39 (emphasis added). The February 21, 2017 Order denying RWW’s fee motion was served by mail February 22, 2017. CCP § 1013(a) therefore extended RWW’s right or duty to file its writ petition by five calendar days for service by mail within the State of California. None of the exceptions to that statute apply in this situation.

The five (5) day extension provided for in CCP § 1013(a) extended the deadline in which to file the writ petition from March 14, 2017 (20 days from February 22, 2017), to March 19, 2017, a Sunday. Under Government

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All further references to California’s Code of Civil Procedure shall be to “CCP.”

Code § 6700(a)(1) and CCP § 135, Sundays are holidays.² Under CCP § 12a(a), if the last day to perform an act within a specified period of time falls on a holiday, then the period is extended to and including the next day that is not a holiday. Accordingly, March 20, 2017 was the last day for RWW to file its writ petition under CCP § 405.39 and since it was filed on that date it was timely filed.

**SUPPLEMENT TO PETITION TO: THE HONORABLE JUSTICES
OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT**

Petitioner RWW PROPERTIES, LLC respectfully supplements its petition to this Court for a Writ of Mandamus, Prohibition, or other extraordinary relief and in support thereof alleges:

- 32. RWW timely filed its Petition to this Court for a Writ of Mandate or Prohibition or other extraordinary relief pursuant to CCP §§ 12a, 135, 405.39, and 1013(a), and Gov. § 6700(a)(1).**

RWW timely filed the instant writ petition on March 20, 2017. CCP § 405.39 provides that the twenty (20)-day deadline begins to run from service of the written notice of the order from the court or any party. The Trial Court served written notice by mail February 22, 2017 (3 EXH. 689). CCP § 1013(a) extends the deadline to perform any act by five (5) days for

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All further references to California's Government Code shall be to "Gov."

mailing within the State of California where the date to perform such an act runs from “any period or a date certain after service of the document.” That five-day extension extended the time period for RWW to file this Petition to March 19, 2017 from March 14, 2017. Since March 19, 2017 fell on a Sunday, a holiday pursuant to Gov. § 6700(a)(1) and CCP § 135, under CCP § 12a(a), since the last day to perform an act fell on a holiday, RWW had through the next business day, March 20, 2017, in which to file the Writ Petition, and it was filed on March 20, 2017.

Dated: April 13, 2017

Respectfully submitted,

LAW OFFICES OF JOHN T.
SCHREIBER

By /s/ John T. Schreiber
JOHN T. SCHREIBER, attorney
for Petitioner RWW
PROPERTIES, LLC

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VERIFICATION

I, JOHN T. SCHREIBER, declare:

I am appellate counsel for Petitioner RWW PROPERTIES, LLC in this case. I am an attorney duly licensed to practice before all of the courts of the State of California. I have read the forgoing Petition for Writ of Mandamus, Prohibition, or other appropriate extraordinary relief and know its contents. The facts stated in this Petition are true and within my own personal knowledge. Additionally, because my client is absent from the County in which I have my office, I, rather than Petitioner, verify this Petition.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 13th day of April, 2017, at Benicia, California.

/s/ John T. Schreiber
JOHN T. SCHREIBER

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF SUPPLEMENT TO PETITION FOR WRIT OF MANDATE,
PROHIBITION, OR OTHER EXTRAORDINARY RELIEF**

A. RWW timely filed its Writ Petition under CCP § 405.39.

- 1. Since CCP § 405.39 commences a party's time to file their writ petition from service of an order, CCP § 1013(a) extends the time in which to file a writ petition under CCP § 405.39 by five (5) days for mailing within the State of California.**

RWW timely filed its Writ Petition on March 20, 2017. CCP § 405.39 states in pertinent part that “The petition for writ of mandate shall be filed and served within 20 days of service of written notice of the order by the court or any party.” The clerk served notice of the Trial Court’s order denying RWW’s motion on February 22, 2017 (Exh. 689). While twenty (20) days from February 22, 2017 would be March 14, 2017, CCP § 1013(a) provides for an extension.

CCP § 1013(a) provides that:

In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party’s place of residence. *Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or*

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make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court (emphasis added).

Here CCP § 405.39 sets the 20 day deadline to file the writ petition to begin following “service of written notice of the order by the court or any party.”

CCP § 405.39. The Trial Court clerk served the order by mail on February 22, 2017 (Exh. 689). Accordingly the five-day extension set forth in CCP § 1013(a) applies in this case.

While no case authority specifically cites CCP § 405.39 on this issue, a leading treatise on civil appellate practice specifically cites CCP § 1013 as extending the time to file a statutory writ when the order is served by mail, Express Mail, or fax:

CCP § 1013 expressly provides that any period of time to do any act or make any response within a time period prescribed by statute or rule of court is extended (as specified) when the triggering document has been served by mail, Express Mail,

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other overnight delivery method or fax “in the absence of a specific exception provided for by this section or other statute or rule of court.” Thus, the CCP § 1013 extensions apply to a statutory writ filing period that commences with *service* of a particular document (e.g., service of notice of court’s ruling) unless the applicable statute otherwise provides. [CCP § 1013(a), ©, & (e); see *L.C. Rudd & Son, Inc. v. Super. Ct. (Krystal)* (1997) 52 Cal.App.4th 742. 746...–5-day extension to file writ petition for review of CCP § 877.6 good faith settlement determination because written notice of determination served by mail; and see generally, *Citicorp North America, Inc. v. Super.Ct. (KF Dairies, Inc.)* (1989) 213 Cal.App.3d 563, 567-568...–§ 1013(a) extension applies *only* where prescribed time period triggered by “service”] Eisenberg, Horvitz, Weiner (J., retired), *Civil Appeals & Writs* (The Rutter Group 2016), Ch. 15, “Writs,” ¶ 15:92 at 15-49 (emphasis original).

L.C. Rudd, cited above, is analogous to this case. CCP § 877.6(e), at issue in *L.C. Rudd*, states:

When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.

As in CCP § 405.39, the trigger for filing the writ petition in CCP § 877.6(e) is 20 days following service of written notice. As in CCP § 405.39, CCP § 877.6(e) also allows for the trial court to grant additional time in which to file the writ, without making CCP § 1013(a) inapplicable.

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L.C. Rudd, 52 Cal.App.4th at 746.

The principle is hardly new. In *Shearer v. Superior Court* (1977) 70 Cal.App.3d 424, the Court held that CCP § 1013(a) applied to make a statutory writ filed pursuant to CCP § 418.10© timely, as it was filed 15 days following service of written notice of entry of order denying a motion to quash. *Shearer*, 70 Cal.App.3d at 426.

CCP § 1013(a) states that “the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal.” None of those exceptions apply here. This writ petition follows denial of a motion for fees filed pursuant to CCP § 405.38, not a new trial motion, motion to vacate pursuant to CCP § 663a, nor a notice of appeal (Exh. 686-689). The 5 day extension set forth in CCP § 1013(a) for service by mail therefore applies here.

- 2. Since March 19, 2017 fell on a Sunday, RWW had through the next non-holiday, here Monday March 20, 2017, in which to file its Writ Petition.**

CCP § 1013(a)’s 5 day extension made the deadline March 19, 2017.

Had that date fallen during the week, not on a holiday, then RWW would have a problem. However, March 19, 2017 fell on a Sunday.

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[https://www.timeanddate.com/calendar/monthly.html?year=2017&month=3](https://www.timeanddate.com/calendar/monthly.html?year=2017&month=3&country=1)
&country=1; <http://www.courts.ca.gov/holidays.htm>.

CCP § 12a(a) states:

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, “holiday” means all day on Saturdays, all holidays specified in Section 135 and, to the extent provided in Section 12b, all days that by terms of Section 12b are required to be considered as holidays.

Sundays are considered holidays. Gov. § 6700(a)(1). CCP § 135 provides in pertinent part that:

Every full day designated as a holiday by Section 6700 of the Government Code, including that Thursday of November declared by the President to be Thanksgiving Day, is a judicial holiday, except September 9, known as “Admission Day,” and any other day appointed by the President, but not by the Governor, for a public fast, thanksgiving, or holiday.

Since March 19, 2017 is considered a holiday, RWW had through March 20, 2017, the next non-holiday, in which to file its Writ Petition. RWW timely filed its Writ Petition on March 20, 2017.

http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2184816&doc_no=A150816.

CONCLUSION

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For all of the above-stated reasons, RWW's Writ Petition in this proceeding was timely filed March 20, 2017.

Dated: April 13, 2017

Respectfully submitted,

LAW OFFICES OF JOHN T.
SCHREIBER

By /s/ John T. Schreiber
JOHN T. SCHREIBER, attorney
for Petitioner RWW
PROPERTIES, LLC

CERTIFICATE OF WORD COUNT

The text of this brief contains 2,051 words as counted by the Corel WordPerfect version X7 word-processing software program used to generate this brief. CRC 8.204(c)(1), 8.486(a)(6).

Dated: April 13, 2017

s/ John T. Schreiber
John T. Schreiber