

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHARLES HUGHES,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,

Defendant and Respondent.

B245752

(Los Angeles County  
Super. Ct. No. BC355143)

APPEAL from an order of the Superior Court of the County of Los Angeles, Terry A. Green, Judge. Affirmed.

Law Offices of Stephen J. Horvath, Marcus J. Berger, Stephen J. Horvath; Benedon & Serlin, Douglas G. Benedon, and Gerald M. Serlin for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Alicia M.B. Fowler, Senior Assistant Attorney General, Michael E. Whitaker, Supervising Deputy Attorney General, Bruce Reynolds, Deputy Attorney General, for Defendant and Respondent.

## INTRODUCTION

Plaintiff and appellant Charles Hughes (plaintiff) appeals from the trial court's order denying his motion for prejudgment interest as untimely. According to plaintiff, the trial court erred when it followed the judicially created timing rule for motions for prejudgment interest set forth in *North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824 (*North Oakland*), which rule requires that such motions be made prior to entry of judgment or as part of a motion for new trial.

Based on the undisputed facts of this case, there is no reason to depart from the longstanding timing rule articulated in *North Oakland, supra*, 65 Cal.App.4th 824. We therefore affirm the order denying plaintiff's motion for prejudgment interest.

## PROCEDURAL BACKGROUND

In July 2011, the jury returned a special verdict in favor of plaintiff in the total amount of \$1,670,393, which amount included \$420,396 for lost earnings and lost overtime earnings. The trial court entered judgment on the verdict in September 2011, without including any amount for prejudgment interest on the lost earnings awards. In October 2011, defendant and respondent State of California Department of Corrections and Rehabilitation (the Department) filed motions for new trial and judgment notwithstanding the verdict. The trial court heard and denied both motions on November 22, 2011.

In November 2011, plaintiff filed a motion for an award of attorney fees and a memorandum of costs, neither of which filings sought an award of prejudgment interest. In February 2012, plaintiff filed his initial motion for prejudgment interest. In March 2012, plaintiff filed a second motion for prejudgment interest. In June 2012, the Department filed its opposition to the motion for prejudgment interest, arguing, inter alia, that the motion was untimely under *North Oakland, supra*, 65 Cal.App.4th 824. The trial court heard the motion for prejudgment interest in September 2012 and denied it as

untimely, reasoning as follows: “The Court: And there also really is no reason why I should . . . ignore the clear mandates of *North Oakland*. I mean, [the Court of Appeal] announced a rule— . . . but that is the rule in California, what *North Oakland* said. And that being the rule and the fact that we have such enormous periods of time here where no one should have been caught by surprise or prejudice[d] . . . [because] these motions could easily have been brought within the time frame announced in *North Oakland*. [¶] I have to deny the motion for prejudgment interest on back pay.”

## DISCUSSION

### A. Standard of Review

The parties disagree as to whether a de novo or an abuse of discretion standard governs our review of plaintiff’s contention that the timing rule announced in *North Oakland, supra*, 65 Cal.App.4th 824 should not apply to this case. “Generally, ‘a determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles. [Citations.]’ (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3 [139 Cal.Rptr. 700, 566 P.2d 602].)” (*Nat’l Farm Workers Serv. Ctr., Inc. v. M. Caratan, Inc.* (1983) 146 Cal.App.3d 796, 809.) Here, plaintiff’s challenge to the denial of his motion for prejudgment interest requires us to determine whether the timing rules set forth in *North Oakland* apply to the procedural posture of this case. Our review is therefore de novo.

### B. Analysis

Plaintiff contends that the trial court erred in denying his motion for prejudgment interest on timeliness grounds. According to plaintiff, the court’s decision in *North Oakland, supra*, 65 Cal.App.4th 824 is inapposite and was wrongly decided. We disagree.

The parties do not dispute on appeal that plaintiff was entitled to prejudgment interest on the awards of lost earnings and lost overtime earnings, but they do disagree on whether plaintiff’s request for such interest was timely. “Under [Civil Code] section 3287, subdivision (a) the court has no discretion, but must award prejudgment interest upon request, from the first day there exists both a breach and a liquidated claim. (See Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 1997) ¶¶ 17:185, 17:189, pp. 17-40.23, 17-40.24 (hereafter Wegner, Civil Trials).)” (*North Oakland, supra*, 65 Cal.App.4th at p. 828.) “That a party is entitled to prejudgment interest does not make an award automatic (except in the case of postjudgment interest). A request for interest must be made in the trial court; it cannot be made for the first time on appeal. (Wegner, Civil Trials, *supra*, ¶ 17:194, p. 17-40.26; *Peoples Finance etc. Co. v. Mike-Ron Corp.* (1965) 236 Cal.App.2d 897, 904 [46 Cal.Rptr. 497].) [¶] A general prayer in the complaint is adequate to support an award of prejudgment interest. ‘No specific request for interest need be included in the complaint; a prayer seeking “such other and further relief as may be proper” is sufficient for the court to invoke its power to award prejudgment interest. [Citations.]’ (Wegner, Civil Trials, *supra*, ¶ 17:194.1, p. 17.40.26; *Segura v. McBride* [(1992)] 5 Cal.App.4th 1028, 1041; *Newby v. Vroman* (1992) 11 Cal.App.4th 283, 286 [14 Cal.Rptr. 2d 44].)” (*Id.* at p. 829.)

Although plaintiff made a request for prejudgment interest under Civil Code section 3287, the trial court ruled that the request was untimely under *North Oakland, supra*, 65 Cal.App.4th 824. In *North Oakland*, the court was faced with a case of first impression—i.e., the timing of and proper procedure for requesting an award of prejudgment interest under Civil Code section 3287. The court began its analysis by observing that “no statute or rule of court establishes a procedure for requesting an award of prejudgment interest, or a time limit therefor, in the superior court.” (*Id.* at pp. 829-830.)

To provide guidance to the trial courts and litigants concerning prejudgment interest requests, the court in *North Oakland, supra*, 65 Cal.App.4th 824 announced the following rule concerning the timing of motions for prejudgment interest. “It is well

established that prejudgment interest is not a cost, but an element of damages. (*Lineman v. Schmid* (1948) 32 Cal.2d 204, 208-209 [195 P.2d 408, 4 A.L.R.2d 1380]; *Harris v. Northwestern National Ins. Co.* (1992) 6 Cal.App.4th 1061, 1067 [8 Cal.Rptr.2d 234]; *Lawrence Tractor Co. v. Carlisle Ins. Co.* (1988) 202 Cal.App.3d 949, 955 [249 Cal.Rptr. 150].) [Fn omitted.] This distinction persuades us that the cost bill is *not* an appropriate vehicle for requesting interest under [Civil Code] section 3287. In our view, prejudgment interest should be awarded in the judgment on the basis of a specific request therefor made *before* entry of judgment. This view is buttressed by [former] California Rules of Court, rule 875, which provides: “The clerk shall include in the judgment any interest awarded by the court and the interest accrued since the entry of the verdict.” [¶] It further appears that, at the latest, a request for prejudgment interest under [Civil Code] section 3287 may be sought as part of a motion for new trial pursuant to Code of Civil Procedure section 657, on the grounds of ‘[e]xcessive or inadequate damages.’ (Code Civ. Proc., § 657, subd. 5.) [¶] While the time frame we prescribe may be thought arbitrary, it provides the essential elements of certainty and finality now missing from the law. Pending the promulgation of a rule by the Judicial Council, which we think appropriate, *requests for prejudgment interest* under [Civil Code] section 3287 by a successful plaintiff *must be made by way of motion prior to entry of judgment, or the request must be made in the form of a motion for new trial no later than the time allowed for filing such a motion.* (Code Civ. Proc., § 659.)” (*North Oakland, supra*, 65 Cal.App.4th at pp. 830-831, italics added.)

Since the announcement of its timing rule for requests for prejudgment interest in 1998, neither the appellate courts nor the legislature have questioned the holding in *North Oakland, supra*, 65 Cal.App.4th 824 or the reasoning behind it. Moreover, the Rule of Court relied upon by the court in *North Oakland* has been maintained.<sup>1</sup> Although the

---

<sup>1</sup> Former California Rules of Court, rule 875 was renumbered as rule 3.1802 and amended effective January 1, 2007 to read: “The clerk must include in the judgment any interest awarded by the court and the interest accrued since the entry of the verdict.” It

court in *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285 cited by plaintiff distinguished *North Oakland* from the facts before it, including the fact that the parties in that case stipulated that the request for prejudgment interest would be adjudicated in a postjudgment hearing, it did not disagree with the holding in *North Oakland*. (*Id.* at p. 294.) Here, as in *North Oakland, supra*, 65 Cal.App.4th 824, there was no stipulation that the request for prejudgment interest could be made after judgment or after the time within which a motion for a new trial could have been made. The parties only agreed that the motion regarding interest would be heard at the same time as the motion regarding costs and attorney fees, not that the interest could be adjudicated at that time.

There is no reason to depart from the timing rule articulated in *North Oakland, supra*, 65 Cal.App.4th 824. As noted by the court in *North Oakland*, prejudgment interest is viewed as “in the element of damages.” (*Lineman v. Schmid, supra*, 32 Cal.2d at p. 209.) As such, logically it should be included in the judgment as part of any damage award, either prior to the entry of the judgment or pursuant to a ruling on a motion for new trial. Plaintiff asserts that the rule in *North Oakland* is impractical because of the difficulty in having a motion heard prior to the filing of a judgment. But under *North Oakland*, plaintiff could have brought his motion even after entry of judgment, so long as it was within the time allowed for filing a motion for new trial.

Plaintiff did not file his motion for prejudgment interest within the time allowed for filing a motion for new trial. Instead, he waited until February 2012, i.e., well after judgment had been entered in September 2011 and the Department’s motion for new trial had been denied in November 2011. Under the rule set forth in *North Oakland, supra*, 65 Cal.App.4th 824, plaintiff’s motion was untimely, as the trial court correctly ruled. The order denying the motion is therefore affirmed.

---

was amended effective January 1, 2014 to read, “The clerk must include in the judgment any interest awarded by the court.”

## DISPOSITION

The order denying the motion for prejudgment interest is affirmed. The Department is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

MINK, J.\*

---

\* Retired Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.