

IN THE SUPREME COURT OF CALIFORNIA

**LUIS SHALABI**

Plaintiff and Appellant,

v.

**CITY OF FONTANA, et al.**

Defendants and Respondents.

SUPREME COURT  
**FILED**

NOV 20 2019

Jorge Navarrete Clerk

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Deputy

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REVIEW OF DECISION BY THE COURT OF APPEAL  
FOURTH APPELLATE DISTRICT, DIVISION TWO, CASE NO. E069671  
SAN BERNARDINO COUNTY SUP. CT., CASE NO. CIVDS1314694

**APPELLANT'S ANSWER BRIEF ON THE MERITS**

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**LUIS SHALABI**

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## I. ISSUE

Code of Civil Procedure section 12 provides: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, then it is also excluded.” In cases where the statute of limitations is tolled, is the first day after tolling ends included or excluded in calculating whether an action is timely filed?

In cases where the statute of limitations is tolled, the first day after tolling ends is included in calculating whether an action is timely filed. However, that has at no point been Mr. Shalabi’s contention. Instead, Mr. Shalabi submits that in cases where the statute of limitations is tolled, the day tolling ends is excluded in calculating whether an action is timely filed.

## II. RELEVANT FACTS

1. Mr. Shalabi’s date of birth is December 3, 1993;
2. Mr. Shalabi reached the age of majority on December 3, 2011; and
3. Mr. Shalabi filed his original complaint in this suit on December 3, 2013.

## III. ARGUMENT

### A. IN CASES WHERE THE STATUTE OF LIMITATIONS IS TOLLED, THE DAY TOLLING ENDS IS EXCLUDED IN CALCULATING WHETHER AN ACTION IS TIMELY FILED

As was recognized by this Court in *Ley v. Dominguez*, 212 Cal. 587, “[t]he gravest considerations of public order and security require that the method of computing time be definite and certain. Before a given case will be deemed to come under an exception to

the general rule the intention must be clearly expressed that a different method of computation was provided for.” (*Id.* at 594.)

These considerations relative to the computation of time for all acts provided for in the Code of Civil Procedure, including its limitations of actions provisions, and the tolling provisions thereof, are codified in section 12 of Code of Civil Procedure. Section 12 provides:

**Computation of time. The time in which ANY act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded (emphasis added).**

Alternatively stated, in computing the period of time “from and after” a specified day, date, act or event, such day or date of such act or event is excluded, and any computation of time is commenced on the following day. (*Ziganto v. Taylor* (1961) 198 Cal.App.2d 603.)

In *Wixted v. Fletcher* (1961) 192 Cal.App.2d 706, the Court recognized and relied on *Ley*’s, and its progeny’s, recognition that the method of computation of time be definite and certain and that the provisions of Section 12 be applied to any and all acts provided by law. The issue in *Wixted* was whether a complaint for personal injuries allegedly suffered on February 5, 1959 was barred by the controlling one-year statute of limitations if the complaint was filed on February 5, 1960. In finding the action timely filed pursuant to section 12 of the Code of Civil Procedure, the court reasoned:

[n]ot only do ‘considerations of public order and security require that the method of computing time be definite and certain,’ but some measure of uniformity in the law is achieved by adherence to

the principles declared . . . Thus, for years the rule of the first day's exclusion has been applied in a variety of situations: It is applicable in computing the time for filing notice of appeal (*O'Donnell v. City County of San Francisco* 147 Cal.App.2d 63); the period for service of notice to dismiss an action (*Welden v. Davis Auto Exchange* 153 Cal.App.2d 515); the time within which a writ of attachment is issued (*Scoville v. Anderson* 131 Cal. 590); whether a year has elapsed between interlocutory and final divorce decrees (*Overby v. Overby* 154 Cal.App.2d 813); and whether an action to foreclose a mechanic's lien was filed within the prescribed period (*Pacific Sash Door Co. v. Bumiller* 162 Cal. 664.) There are already enough legal subtleties without adding the further refinement that one rule of time computation must be applied to certain statutes of limitation and still another to procedural situations.

*Id.* at 710.

As recognized above, uniformity in the computation of time is required. There does not exist any provision within the Code of Civil Procedure that provides for a different method for the computation of time as to any of its provisions. Indeed, Section 12 specifically includes "any" act provided for by law, that would include the tolling provisions of the Code of Civil Procedure within its computation provisions.

Case law supports the foregoing statutory interpretation of section 12 and applicability to the tolling provisions of section 352. In *West Shield Investigations and Security Consultants v. Superior Court of Santa Clara* (2000) 82 Cal.App.4th 935, the subject of the action became an emancipated minor on May 8, 1995. (*Id.* at 942.) The action was filed on September 9, 1996. The applicable statute of limitations provided for a limitation period of one year. (*Id.* at 935.) The Court in *West Shield* discussed the applicability of the **tolling** provisions of section 352 of the Code of Civil Procedure and the rationale behind that section. (*Id.* at 947.) The Court explained:

The rationale for the minor's tolling provision relates to a minor's disability. "Because a minor does not have the understanding or experience of an adult, and because a minor may not bring an action except through a guardian . . . special safeguards are required to protect the minor's right of action." (*Amie v. Superior Court* (1979) 99 Cal.App.3d 421, 426 [160 Cal.Rptr. 271.]) Therefor, statutes of limitations are tolled to protect the minor's rights from being destroyed during the period of disability. (See *Williams v. Los Angeles Metropolitan Transit Authority* (1968 68 Cal.2d 559, 602 [68 Cal.Rptr. 297, 440 P.2d 497.]; *Tzolov v. International Jet Leasing, Inc.* (1991) 232 Cal.App.3d 117, 121[28 Cal.Rptr. 314].) *Id.* at 947.

Ultimately, the Court held that the period of tolling ended the day the subject was no longer disabled, a minor, on May 8, 1995-the day she was emancipated. The Court further held that it meant that the one-year statute of limitations began running on the date of emancipation, May 8, 1995. The Court excluded the day of emancipation (the date tolling ended) and the first day counted was May 9, 1995, the first day after tolling ended. (*Id.* at 950). The Court held that the minor had until May 8, 1996 in which to commence his action as the limitations period expired on May 9, 1996. (*Id.*)

Here, as in *West Shield*, the limitations period began to run the day Mr. Shalabi was no longer disabled, December 3, 2011. The day Mr. Shalabi was no longer disabled, a minor is to be excluded. The first day counted is December 4, 2011. Consequently, Mr. Shalabi had until December 3, 2013 to the file this action as the limitations period expired on December 4, 2013. This action was commenced on December 3, 2013 and is therefore timely.

The same analysis relative to a different **tolling** provision of section 352, the result, and the applicability of section 12 was reached in *Cabrera v. City of Huntington*

*Park* 159 F.3d 374. In *Cabrera*, the plaintiff suffered a disability for purposes of section 352 in that he was incarcerated. (*Id.* at 377.) Mr. Cabrera was released from custody on August 8, 1992. *Id.* The issue in *Cabrera* was what day was counted as the first for statute of limitations purposes. (*Id.* at 378.) Relying on section 12 of the Code of Civil Procedure, Mr. Cabrera contended that the first day after his disability ended, when he was released from custody-August 9, 1992, should be excluded from the calculation and that August 10, 1992 should be the first day counted. (*Id.*) The Court in *Cabrera* disagreed. It held that the first day **after** the disability ceases is to be included in the computation of the period of time limited by statute. (*Id.* at 378-379.) As such, since Mr. Cabrera's disability ended on August 8, 1992, that date was excluded. The Court counted August 9, 1992, the first day after tolling ended, as the first day of the limitation period calculation. (*Id.*)

Pursuant to the *Cabrera* analysis, since Mr. Shalabi's disability ended pursuant to section 352 on December 3, 2011, the day he reached the age of majority. That day, the delay tolling ended, is to be excluded and the first day counted is December 4, 2011. Mr. Shalabi commenced this action on December 3, 2013. Consequently, pursuant to *Cabrera*, this action was timely filed.

In *Snyder v. Boy Scouts of America* (1988) 205 Cal.App.3d 1318, the plaintiff commenced a personal injury action for injuries he sustained as a minor. (*Id.* at 1320.) The Court held that pursuant to Code of Civil Procedure 352, if the plaintiff is under the age of majority when a cause of action accrues, the period of minority is not a part of the time limited for the commencement of the action. The age of majority is 18 years



pursuant to Civil Code section 25. Consequently, the Court held that the plaintiff had one year from his 18<sup>th</sup> birthday, his 19<sup>th</sup> birthday, to commence this tort action. (*Id.* at 1323.) To reach this calculation, the Court excluded the day tolling ended, the Plaintiff's 18<sup>th</sup> birthday, from the computation of time.

Here, as in *Snyder*, the limitations period began to run the day Mr. Shalabi was no longer disabled, December 3, 2011. The day Mr. Shalabi was no longer disabled, his 18<sup>th</sup> birthday is to be excluded. The first day counted is December 4, 2011. Consequently, Mr. Shalabi had until December 3, 2013—his 20<sup>th</sup> birthday—to file this action as the limitations period expired on December 4, 2013. This action was commenced on December 3, 2013 and is therefore timely.

Petitioner's reliance on *Ganahl v. Soher*, purports to be an argument that *Ganahl* created an exception to the general rule for computation under section 12 as to one of the tolling provisions of section 352 of the Code of Civil Procedure. However, as recognized by this Court, and most, if not all of the Courts of Appeal of this State, before an exception to the general rule for computation of time requiring exclusion of the first day and inclusions of the last day may be invoked, intention to provide for a different method of computation must be clearly expressed by the legislature. (*Ley v. Dominguez*, 212 Cal. 587; *Union Oil Co. of Cal. v. Domengeaux* (1939) 30 Cal.App.2d 266). There is absolutely nothing in the plain language of either section 12 or 352 that clearly expresses an intention to provide for a different method of computation. Further, there is absolutely nothing in the legislative history of either section 12 or 352 that makes that indication, or even hints at it.

“The gravest considerations of public order and security require that the method of computing time be definite and certain. Before a given case will be deemed to come under an exception to the general rule the intention must be clearly expressed that a different method of computation was provided for.” (*Ley v. Dominguez*, 212 Cal. 587, 594). There is no clear expression, whatever, that a different method of computation of time is provided for any of the Code of Civil Procedures tolling provisions much less the specific tolling provision of section 352 as it relates to minors, who require “special safeguards” to “protect” their “right of action.” (*Amie v. Superior Court* (1979) 99 Cal.App.3d 421, 426).

Section 12 controls the computation of time here. December 3, 2011, the date Plaintiff turned eighteen years of age was the date his disability ended. (Code Civ. Proc. 352.) It is of no significance whether he turned 18 at 12:01 a.m. Pursuant to section 12 and the case law cited above, the first day—the day the disability ended—is to be excluded from the calculation. The “first day after” the disability ended, December 4, 2011, is the first day in the calculation. The last day in which Mr. Shalabi had to commence this action was December 3, 2013. The applicable limitations period ran on December 4, 2013. Mr. Shalabi’s Complaint was filed on December 3, 2013, his 20<sup>th</sup> birthday—within two years of the date the statute began to run. Accordingly, the Complaint was filed within the limitations period. It was timely.

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**B. THIS COURT LIMITED BRIEFING TO THE LIMITED ISSUE TO THE APPLICABILITY OF SECTION 12 TO THE TOLLING PROVISIONS OF THE CODE OF CIVIL PROCEDURE**

On August 14, 2019 this Court specifically Ordered that “the issue to be briefed and argued is limited to the following: Code of Civil Procedure section 12 provides: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, then it is also excluded.” In cases where the statute of limitations is tolled, is the first day after tolling ends included or excluded in calculating whether an action is timely filed?”

The Brief submitted by Petitioner goes well beyond the Court’s limitation, and arguably does not even address the issue raised by the Court. As such, Mr. Shalabi will not address the issues briefed by Respondent that are beyond the scope of briefing and argument set forth by the Court. If the Court would like Petitioner to respond to the issues raised by Petitioner that are beyond the scope of the Court’s limitation, Mr. Shalabi will so do.

**IV. CONCLUSION**

For each of the foregoing reasons, Mr. Shalabi respectfully submits that 1) this Court should hold that no exception to any of the tolling provisions, and specifically the tolling provision of section 352 as it relates minors, of the Code of Civil Procedure exist; 2) this Court should overrule *Ganahl v. Soher*; 3) this Court should affirm the judgment of the Court of Appeal and deem this action timely filed and remand to the trial court; and 4) this Court to award Mr. Shalabi his costs.

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Dated: November 19, 2019

**ORTIZ LAW GROUP, P.C.**

By: /s/ Jesse Ortiz  
Jesse Ortiz  
Attorneys for Respondent  
Luis Shalabi

**CERTIFICATE OF WORD COUNT**

I, Jesse Ortiz, counsel for Appellant Luis Shalabi, hereby certify that the word count for this brief is 2371 words, which does include the covers or tables. I certify that I prepared this document on Microsoft Word 365, and that this is the word count Microsoft Word 365 generated for this document.

Dated: November 19, 2019

**ORTIZ LAW GROUP, P.C.**

By: /s/ Jesse Ortiz  
Jesse Ortiz  
Attorneys for Respondent  
Luis Shalabi

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Fourth District Court of Appeal 3389 Twelfth Street Riverside, CA 92501	

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Supreme Court of California  
350 McAllister St.  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and was executed on **November 20, 2019** at Sacramento, California.

/s/ Nolan Berggren  
Nolan Berggren