

**Tentative Rulings for February 18, 2026**  
**Department 502**

**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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| 23CECG02591 | <i>Tacos San Marcos, Inc. v. Darrell Jones</i> is continued to Wednesday, February 25, 2026, at 3:30 p.m. in Department 502.                       |
| 25CECG02406 | <i>Usman Bhatti v. General Motors LLC</i> is continued to Wednesday, March 18, 2026, at 3:30 p.m. in Department 502.                               |
| 25CECG03386 | <i>Min Wang v. Yanjiu Tan</i> is continued to Wednesday, March 18, 2026, at 3:30 p.m. in Department 502.   |
| 25CECG03716 | <i>Sanger Fence Company, Inc. v. Security Contractors Services, Inc.</i> is continued to Thursday, March 26, 2026, at 3:30 p.m. in Department 502. |
| 25CECG04670 | <i>Stacy Brock v. County of Fresno</i> is continued to Thursday, March 26, 2026, at 3:30 p.m. in Department 502.                                   |

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 502**

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(03)

**Tentative Ruling**

Re: ***Paramveer Food & Fuel v. Campus Pointe Commercial, L.P.***  
Case No. 22CECG03151

Hearing Date: February 18, 2026 (Dept. 502)

Motion: Defendant Campus Pointe Commercial's Motion for Summary Judgment, or in the Alternative Summary Adjudication

**Tentative Ruling:**

To deny defendant's motion for summary judgment, and the alternative motion for summary adjudication.

**Explanation:**

**First and Second Causes of Action:** Campus Pointe Commercial (CPC) argues that plaintiffs cannot prevail on their breach of contract claims because the only reason that the project failed was due to the University Entities' refusal to approve the project, which included a gas station that required separate environmental review and approval. CPC points out that the Ground Sublease specifically provides that the University had to approve the project, that CPC made no representations as to whether such approval would be granted, and that CPC was not liable for failure to obtain the University's approval as long as it made good faith efforts to obtain the University's approval. (Defendant's UMF Nos. 3-12, 25-34, citing Ground Sublease, § 30.21.) Thus, CPC contends that it did not cause the project to fail, as it was the University's refusal to approve the project that resulted in the termination of the project. CPC also claims that it had no duty under the sublease to force the University to approve the project, and that the language of the sublease expressly relieved it from any liability if the University refused to approve the project.

Also, while CPC admits that the sublease required it to make reasonable efforts to obtain the University's approval of the project, it contends that plaintiffs have admitted that CPC acted in good faith and made efforts to reverse the University's decision to deny approval of the project, including filing a lawsuit against the University. (Defendant's UMF Nos. 14-16, 36-39.) In addition, while plaintiffs have alleged that CPC represented that it had already obtained all necessary approvals for the project and that any remaining approvals were merely "ministerial", defendant claims that the integration clause in the contract means that any such alleged representations are ineffective to impose any liability on it. Therefore, CPC concludes that plaintiffs cannot prevail on their breach of contract claims.

However, CPC has not met its burden of showing that it had no duty to conduct environmental reviews and obtain approval for the project from the University, and that it did not breach any of its duties under the Ground Sublease. While CPC argues that it had no duty to conduct an environmental review and obtain approval from the

University for the gas station, the sublease does not state which party is responsible for conducting environmental reviews or obtaining the University's approval of the gas station.

The Ground Sublease states that, "Tenant acknowledges that many of the approvals or consents to be given by the Landlord hereunder are subject to approval by the BOT and/or the Association. Landlord shall reasonably cooperate with Tenant to obtain any such required approval or consent; provided, however, that Landlord makes no representation as to whether any such approval or consent may be granted or that any consent or approval granted by Landlord shall indicate that the attendant approval or consent from the BOT and/or the Association is forthcoming. Landlord shall not be in breach of any obligation under this Lease requiring the consent, approval or other action of the BOT and/or the Association if such consent, approval or other action has not been given or completed within the applicable period set forth herein, provided that Landlord is then taking all reasonable steps to obtain the required response from the BOT and/or the Association." (Ground Sublease, Article 30.21.)

However, these provisions are ambiguous at best with regard to which "approvals or consents" needed to be obtained by the parties, when they needed to be obtained, and which party had the responsibility for obtaining the approvals. Article 30.21 only states that the Board and Association may have to give their approval to "many of the approvals or consents" by CPC, without specifying which parts of the project that Board and Association might need to approve. Also, the article goes on to state that the "Landlord shall reasonably cooperate with Tenant to obtain any such required approval or consent", which implies that both parties have some duty to take steps to ensure that all necessary approvals from the Board and Association are obtained. In addition, the lease does state that the Landlord will not be liable for the failure to obtain approvals from the Board and Association, but only "provided that Landlord is then taking all reasonable steps to obtain the required response from the BOT and/or the Association."

There is nothing in the Article 30.21 that clearly shows whether plaintiffs or CPC had a duty to seek approval from the University for the project, or who might need to seek environmental review and approval of the project. In fact, it does not discuss the issue of environmental review or approval at all. On the other hand, it does state that plaintiff will be allowed to store, dispense and use hazardous materials like gasoline and petroleum products on the property in connection with operating the gas station. (Ground Sublease, Article 30.30.) Thus, the sublease implies that, since plaintiffs will be allowed to store, release, and dispose of hazardous petroleum products, plaintiffs did not have to conduct environmental reviews or do anything further in order to obtain approval to operate their gas station.

The fact that the sublease included a short 450-day timeframe for completing the project also appears to be inconsistent with the defendant's position that the plaintiffs were the ones responsible for obtaining any CEQA review and approval of the project. (Exhibit E to Ground Sublease, Schedule E-1.) Environmental reviews tend to be very time-consuming, so it is unlikely that the parties would have given plaintiffs only 15 months to conduct all necessary environmental reviews, obtain the University's approval, and construct the gas station and convenience store. There is also no contingency provision in the sublease for delaying the project in order to complete the environmental review, despite the obvious risk that the review process might take longer than 15 months. Instead, under Article 30.8 of the sublease, "Time is of the essence of this Lease and each

of its provisions.” If the parties intended to have plaintiffs complete an environmental review of the gas station project before commencing construction, then it would not make sense to impose such a short timeframe for construction of the project.

CPC argues that the language of the Ground Sublease clearly stated that the project was subject to approval by the University, and that CPC made no representation as to whether the requisite approval would be granted or not. (Ground Sublease, Article 30.21.) Also, CPC points out that the sublease stated that CPC was not liable if the University refused to approve the project, as long as CPC took reasonable steps to obtain the approval. (*Ibid.*) Thus, CPC concludes that plaintiffs cannot prevail on their breach of contract claims, because CPC was not responsible for the University's decision not to approve the project, and it did take reasonable steps to obtain the University's approval, including suing the University.

However, CPC has not presented any evidence that shows that it conducted environmental reviews for the gas station, or that tried to obtain approval for the gas station from the University *before* the University refused to approve the project. Defendant's evidence does not show what steps it took to obtain the University's approval. It merely argues that it had no duty to seek such approval, and implies that plaintiffs were responsible for obtaining for obtaining any necessary approvals. However, as discussed above, the Ground Sublease is vague as to which party had the duty to seek approval of the project from the University, and it says nothing at all about who was responsible for obtaining environmental reviews for the project. It appears from the language of the sublease that both parties may have had a duty cooperate with each other to obtain the approvals. (Ground Sublease, Article 30.21.) Therefore, CPC has not met its burden of showing that it did everything it was required to do to help obtain the University's approval for the project.

CPC argues that it took reasonable and good faith steps to reverse the University's decision to deny approval for the project, including writing letters to Deborah Astone, hiring an attorney to challenge the rejection, proposing an alternative plan to develop the property without a gas station, and ultimately suing the University to attempt to reverse the denial. (Defendant's UMF Nos. 14-17.) However, the fact that defendant attempted to reverse the University's decision to deny the project after it had already been made, does not establish that it did anything to obtain the University's approval in the first place. Thus, defendant has not met its burden of showing that it took reasonable steps to obtain the University's approval.

Defendant also argues that the court should disregard plaintiffs' allegations that CPC's CEO Edward Kashian promised them that all necessary approvals had already been obtained, and that any additional approvals were purely “ministerial”, as the sublease contains an integration clause that supersedes any prior oral representations. The sublease also expressly states that CPC makes no representations as to whether the University will grant approval for the project. (Ground Sublease, Article 30.21.)

However, plaintiffs have alleged that CPC negligently misrepresented that no further approvals or environmental reviews were required for the project. Where a plaintiff alleges that defendant made oral misrepresentations, the court may consider evidence of extrinsic statements to prove up the fraud even if the contract contains an integration clause. (*Thrifty Payless, Inc. v. The Americana at Brand LLC* (2013) 218 Cal.App.4th 1230, 1241-1242; *Riverisland Cold Storage, Inc. v. Fresno-Madera Production*

*Credit Assn.* (2013) 55 Cal.4th 1169, 1182.) “[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.” (*Riverisland, supra*, at p. 2282, quoting *Ferguson v. Koch* (1928) 204 Cal. 342, 347.) Therefore, the fact that the sublease contains an integration clause does not make Kashian's alleged statements prior to the execution of the sublease inadmissible.

According to George Beal, Kashian assured him in 2018 that he had obtained all entitlements to lease the property for use as a gas station and convenience store, and that no further environmental review would be required. (Beal decl., ¶ 5.) He told Beal that they were allowed to bring in anything sold at retail, and that a gas station and convenience store fell within the allowed use. (*Ibid.*) Kashian and the University never told Beal that there were any significant environmental, zoning, or contractual contingencies related to the project. (*Ibid.*) Beal understood that they just had to obtain the same state and local approvals that they routinely obtain in constructing any other Johnny Quik unit. (*Ibid.*) It was not until June 25, 2019 that Beal was informed that the Trustees might require a CEQA compliance review of the gas station. (*Id.* at ¶ 6.) After 17 months of work to prepare the site for the new gas station and convenience store, plaintiffs were informed by Kashian in the fall of 2019 that the CSU Board of Trustees would not approve of the construction of the gas station. (*Ibid.*) Thus, there is at least a triable issue of material fact as to whether CPC represented that it had already obtained all necessary approvals and environmental reviews for the project, and that no further approvals were needed.

Next, defendant argues that plaintiffs cannot show that CPC's failure to perform under the contract was unjustified, as it was the University's decision to deny approval for the project that caused defendant to repudiate the sublease agreement. CPC contends that it was ready and willing to perform its part of the agreement, but that the University's refusal to approve the project made performance impossible.

“A contract is totally breached and an anticipatory repudiation occurs when the promisor without justification and before he has committed a breach, makes a positive statement to the promisee indicating that he will not or cannot substantially perform his contractual duties.” (*Gold Mining & Water Co. v. Swinerton* (1943) 23 Cal.2d 19, 29, citations omitted.) “[T]he rationale of the cases dealing with failure of consideration is that where the consideration fails in whole or in part through the fault of a party whose duty it is to render it, the other party may invoke such failure as a basis for rescinding or terminating the contract, provided the failure or refusal to perform constitutes a breach in such an essential particular as to justify rescission or termination.” (*Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 412, citations omitted.)

Here, while defendant contends that the consideration failed due to no fault of its own, as it had no control over the University's decision to refuse approval of the gas station, as discussed above, defendant has not shown that it did anything to obtain the University's approval of the gas station. The language of the sublease is vague and ambiguous as to which party had the duty to seek approval of the project. However, it appears that both parties had at least some duty to cooperate with each other to obtain the necessary approvals. CPC has not provided any evidence that it actually sought to obtain the University's approval for the project prior to the University's decision to reject it.

Plaintiffs' evidence also indicates that CPC did not believe that it needed to do anything further to seek approval of the project, as the project was already covered under the prior environmental reviews and the Master Lease. (Beal decl., ¶ 5.) Nor did Kashian or CPC ever ask plaintiffs to take any steps to reverse the University's decision to deny approval of the project. (*Id.* at ¶ 8.) Therefore, defendant has not met its burden of showing that the agreement failed due to no fault of its own. As a result, the court intends to deny defendant's motion for summary adjudication of the first and second causes of action.

**Third Cause of Action:** Next, CPC moves for summary adjudication of the third cause of action for breach of the implied covenant of good faith and fair dealing. CPC argues that plaintiffs' cause of action seeks to impose additional duties on CPC that go beyond the duties included in the language of the sublease, including a duty to seek project approval from the University and a duty to force the University to approve the gas station project. Defendant points out that a claim for breach of the implied covenant of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract. (CACI 325.) "If there exists a contractual relationship between the parties, ... the implied covenant is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated in the contract." (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032, citation omitted.)

"'Every contract imposes on each party a duty of good faith and fair dealing in each performance and in its enforcement.' Simply stated, the burden imposed is "'that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.'" Or, to put it another way, the 'implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose.' This rule was developed 'in the contract arena and is aimed at making effective the agreement's promises.' The 'precise nature and extent of the duty imposed ... will depend on the contractual purposes.'" (*Careau & Co. v. Security Pacific Business Credit, Inc.*, *supra*, 222 Cal.App.3d at p. 1393, citations and footnote omitted.)

"'The covenant of good faith is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purposes.' In short, it is an implied-in-law term of the contract. Therefore, its breach will always result in a breach of the contract, although a breach of a consensual (i.e., an express or implied-in- fact) contract term will not necessarily constitute a breach of the covenant." (*Id.* at pp. 1393–1394, citations omitted.)

"A "'breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself" and it has been held that "[b]ad faith implies unfair dealing rather than mistaken judgment ...." [¶] Thus, allegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet these criteria must be determined on a case by case basis and

will depend on the contractual purposes and reasonably justified expectations of the parties." (*Id.* at pp. 1394–1395, citations omitted.)

Here, while CPC contends that plaintiffs are trying to impose duties on it that are beyond those required under the contract, the contractual language is vague and ambiguous with regard to whether CPC or plaintiffs, or both, had a duty to conduct environmental reviews and seek the University's approval of the project. It appears that both parties may have had some duty to cooperate together to obtain the University's approval. Since CPC has not shown that it actually made any effort to obtain approval for the gas station before the University rejected the project, it has not met its burden of showing that it did not frustrate the plaintiffs' expectations by failing to do anything to obtain the University's approval for the project.

Also, plaintiffs have alleged that defendant breached the implied covenant of good faith and fair dealing by at first promising to represent their interests in the litigation against the Association, and then settling the case without obtaining any relief or compensation for plaintiffs. (Beal decl., ¶¶ 9,10.) Plaintiffs allege that Kashian promised to attempt to either overturn the Association's decision, or at least obtain monetary compensation for plaintiffs' losses. (*Id.* at ¶ 9.) However, he later settled his case against the Association without obtaining any relief for plaintiffs. (*Id.* at ¶ 10.) Plaintiffs were harmed as a result, since they did not receive either the approvals they needed to perform under the contract or compensation for their lost profits. (*Ibid.*) They did not even receive a refund of their deposit and first month's rent from Kashian. (*Ibid.*)

While defendant argues that there was nothing in the contract that required it to represent plaintiffs' interests in the litigation against the Association, the lease did require defendant to "reasonably cooperate with Tenant to obtain any such required approval or consent" from the BOT and/or the Association. (Sublease, Article 30.21.) Defendant was also required to "take all reasonable steps to obtain the required response for the BOT and/or the Association." (*Ibid.*) Thus, the lease agreement did contemplate that CPC should "reasonably cooperate" and "take all reasonable steps" to obtain project approvals from the BOT and the Association as needed to carry out the terms of the lease.

Plaintiffs' breach of implied covenant claim is based on the theory that defendant did not act reasonably and in good faith when it failed to take all reasonable steps to obtain the required project approvals from the BOT and the Association. At first, defendant attempted to obtain a reversal of the Association's decision to deny approval of the project, including by filing a lawsuit against the Association. However, it then settled its lawsuit without obtaining any relief on behalf of plaintiffs, which plaintiffs allege was conduct that constituted bad faith. As a result, there is at least a triable issue of fact with regard to whether defendant acted in bad faith when it settled its lawsuit without obtaining relief for plaintiffs. Therefore, the court intends to deny the motion for summary adjudication of the third cause of action.

**Fourth Cause of Action:** Defendant also moves for summary adjudication as to the fourth cause of action for negligent misrepresentation, arguing that plaintiffs could not have reasonably relied on any representations that Kashian allegedly made about obtaining the Association's or Board's approval of the project, as the publicly recorded CC&Rs clearly stated that no hazardous materials could be on the property and thus the gas station was not permitted. Defendant contends that plaintiffs had actual or

constructive knowledge of the CC&Rs, and thus they cannot claim to have reasonably relied on Kashian's representations. Also, defendant argues that it was plaintiffs' responsibility to obtain any necessary project approvals, not CPC's.

"The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true." (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231, citations omitted.)

First, while a party is usually deemed to be on constructive notice of recorded CC&Rs, there is an exception to the rule where the party has alleged a fraud claim. "Civil Code section 1213 provides that every 'conveyance' of real property recorded as prescribed by law provides 'constructive notice' of its contents to subsequent purchasers. The term 'conveyance' is broadly defined to include 'every *instrument* in writing ... by which the title to any real property *may be affected* ....' Constructive notice 'is the equivalent of *actual knowledge*; i.e., knowledge of its contents is conclusively presumed.' [¶] CC&R's, which affect title to real property, have long been recorded under these provisions." (*Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 355, citations omitted, italics in original.)

There was a caveat in *Anderson*, however. "'If future takers purchase a piece of property with notice of a restriction made by a predecessor, then, *in the absence of duress or fraud*, they may ordinarily be thought to have bargained for the property with the restriction in mind, and to have shown themselves willing to abide by it.'" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, quoting *Citizens for Covenant Compliance v. Anderson, supra*, at p. 366, italics in original.)

"'Under a long line of cases, the fact that the victim had constructive notice of the truth from public records is no defense to fraud. The existence of such public records may be relevant to whether the victim's reliance was justifiable, but it is not, by itself, conclusive.' The rationale for this exception is, 'The purpose of the recording acts is to afford protection not to those who make fraudulent misrepresentations but to *bona fide* purchasers for value.'" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc., supra*, at pp. 1385–1386, citations omitted.)

In the present case, plaintiffs have alleged that Kashian negligently and falsely misrepresented that no further approvals were needed, or that any approvals were purely ministerial in nature, and that plaintiffs relied on his misrepresentations when they entered into the lease and spent money on preparing to develop the property. (Beal decl., ¶¶ 5, 6.) Plaintiffs also allege that they relied on Kashian's representations because of Kashian's experience and superior knowledge of the CSU parties and the approval process. (Singh decl. at ¶ 6.) Therefore, plaintiffs have alleged that Kashian made false and reckless statements to them to the effect that no further approvals or environmental reviews were needed for the project. As a result, since plaintiffs have alleged a fraud claim, the usual rule regarding constructive notice of the CC&Rs does not mean that plaintiffs cannot show that they reasonably relied on defendant's representations.

Next, defendant argues that plaintiffs cannot show that CPC made any actionable misrepresentations to them and that it is clear from the language of the sublease that it was plaintiffs who had the duty to obtain the University's approval of the project. Again, however, the language of the sublease does not specify who had the duty to obtain the University's approval for the project, and it appears that both parties may have had a duty to obtain the approval. Plaintiffs have also alleged that Kashian told them that they did not need to do anything to obtain approval for the project, and that all approvals had already been obtained or were purely ministerial. (Beal decl., ¶ 5.) As a result, there is at least a triable issue of fact as to whether defendant made misrepresentations to plaintiffs about the need to obtain approval for the project.

Defendant has also argued that the integration clause in the sublease bars plaintiffs from relying on any prior oral representations by Kashian, so they cannot prevail on their negligent misrepresentation claim. However, as discussed above, where a plaintiff alleges that defendant made oral misrepresentations, the court may consider evidence of extrinsic statements to prove up the fraud even if the contract contains an integration clause. (*Thrifty Payless, Inc. v. The Americana at Brand LLC*, *supra*, 218 Cal.App.4th at pp.1241-1242; *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.*, *supra*, 55 Cal.4th at p. 1182.) Exculpatory language in the contract also does not necessarily bar a fraud claim, as a party cannot draft a contract to exempt themselves from the consequences of their own fraud. (Civil Code, § 1668; *Continental Airlines, Inc. v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 404.)

Here, plaintiffs have alleged a claim for negligent misrepresentation, which is a type of fraud. Therefore, even though the sublease contains an integration clause and an exculpatory clause, plaintiffs can still rely on Kashian's alleged statements prior to the execution of the sublease in order to prove up their fraud claim. Nor does the exculpatory clause bar plaintiffs' claim, as defendant cannot contract itself out of the consequences of its own allegedly fraudulent conduct.

Defendant also argues that the alleged statement by Kashian that obtaining the University's approval of the project would be "ministerial in nature" is not actionable, because this was merely a representation regarding the future act of a government entity. (*Borba v. Thomas* (1977) 70 Cal.App.3d 144.) However, plaintiffs have alleged that Kashian made representations as to existing facts, not predictions of future actions by the Association or Board.

George Beal alleges that, "When I spoke with Ed Kashian on the phone in 2018 before we signed the lease, he assured me in multiple discussions that he had all his entitlements to lease this property for use as a gas station and convenience store, and no further environmental review would be required beyond the CEQA review that had been completed. He told me clearly that they were allowed to bring in 'anything sold at retail' and that a gas station/convenience store fell within that allowed use. I was not informed by anyone from either Kashian or the university that there were significant environmental, zoning, or contractual contingencies related to this project. It was my understanding that our companies had to obtain the same state and local approvals that we routinely obtain in constructing and opening our other Johnny Quik units." (Beal decl., ¶ 5.) Beal and Singh relied on Kashian's representations and spent about 17 months preparing plans and obtaining permits to construct the gas station and convenience store. (*Id.* at ¶ 6.) They did not learn until the fall of 2019 that the University had denied approval for the project. (*Ibid.*)

Thus, plaintiffs have provided sufficient evidence to raise a triable issue of fact as to whether Kashian misrepresented existing facts regarding whether the already completed CEQA approvals covered the gas station and convenience store project, and whether any further approvals would be needed. These were present, existing matters of fact, and not merely predictions of what the Board and Association might do in the future. As a result, there is a triable issue of material fact with regard to whether CPC made false representations to plaintiffs.

Next, defendant argues that the statute of limitations bars the misrepresentation claim. Defendant notes that there is a two-year statute for negligent misrepresentation. (*Ventura County Nat. Bank v. Macker* (1996) 49 Cal.App.4<sup>th</sup> 1528, 1531.) Here, defendant claims that plaintiffs have admitted that they learned on June 25, 2019 that the Trustees might require CEQA review of the gas station, and that plaintiffs also learned in October of 2019 that the Association was denying approval of the project. Defendant contends that the statute began to run at that moment, and yet they did not file their complaint until more than two years after they first learned of the true facts underlying their claim. Therefore, defendant concludes that the misrepresentation claim is time-barred.

However, plaintiffs have presented evidence that defendant lulled them into delaying in filing their own action against the Association and the Trustees, and thus defendant should be estopped from raising the statute of limitations in defense to the negligent misrepresentation action.

"It is well settled that the doctrine of estoppel *in pais* is applicable in a proper case to prevent a fraudulent or inequitable resort to the statute of limitations. Apropos to this rule are the following established principles: A person, by his conduct, may be estopped to rely on the statute; where the delay in commencing an action is induced by the conduct of the defendant, it cannot be availed of by him as a defense; one cannot justly or equitably lull his adversary into a false sense of security and thereby cause him to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his conduct as a defense to the action when brought; actual fraud in the technical sense, bad faith or intent to mislead are not essential to the creation of an estoppel, but it is sufficient that the defendant made misrepresentations or so conducted himself that he misled a party, who acted thereon in good faith, to the extent that such party failed to commence the action within the statutory period; a party has a reasonable time in which to bring his action after the estoppel has expired, not exceeding the period of limitation imposed by the statute for commencing the action; and that whether an estoppel exists—whether the acts, representations or conduct lulled a party into a sense of security preventing him from instituting proceedings before the running of the statute, and whether the party relied thereon to his prejudice—is a question of fact and not of law." (*In re Pieper's Estate* (1964) 224 Cal.App.2d 670, 690–691, citations omitted.)

In the present case, Beal alleges that Kashian assured him after the Association had denied approval of their project that he would sue the Association and Astone, and that he would attempt to either reverse the disapproval of the project or obtain monetary compensation for the plaintiffs' project costs. (Beal decl., ¶¶ 7-9.) He expressed confidence that the lawsuit would lead to a reversal of the decision. (*Id.* at ¶ 9; Krebsbach decl., ¶ 8.) Kashian did in fact sue the Association and attempt to either reverse the decision or obtain compensation for the Association's unjustified refusal to approve the project. However, Kashian then reached a settlement with the Association

in July of 2022, and then abandoned any legal representation of plaintiffs in obtaining performance of the lease or damages. (Beal decl., at ¶ 10.) Plaintiffs did not even receive their deposit and first month's rent back from Kashian. (*Ibid.*)

Thus, plaintiffs have adequately alleged facts showing that Kashian induced them not to file a lawsuit and lulled them into a false sense of security that he would represent their interests by filing his own lawsuit against the Association. He then settled his lawsuit without obtaining any of the relief that plaintiffs needed to make them whole, such as approval of their project or money damages for its cancellation. By the time the Kashian lawsuit was settled, the statute had already run on plaintiffs' claims. As a result, plaintiffs have provided sufficient evidence to raise a triable issue of fact as to whether defendant is estopped from raising the statute of limitations as a defense to their misrepresentation claim, and the court intends to deny the motion for summary adjudication with regard to the negligent misrepresentation claim.

**Fifth Cause of Action:** Finally, defendant moves for summary adjudication with regard to the fifth cause of action for promissory estoppel. "The elements of a promissory estoppel claim are '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3)[the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.'" (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901, citation omitted.)

Here, plaintiffs' evidence indicates that Kashian made promises to them that he would file a lawsuit against the University, and that he intended to use the lawsuit to either force the University to approve the project, or at least obtain compensation for plaintiffs' for their project costs. (Beal decl., ¶ 9; Krebsbach decl., ¶ 8.)<sup>1</sup> Thus, plaintiffs have provided evidence to raise a triable issue of material fact with regard to whether defendant made a clear and unambiguous promise to sue the University with the goal of either reversing its decision or obtaining reimbursement for plaintiffs' costs. Defendant also allegedly promised to use the money from the lawsuit to reimburse plaintiffs. While defendant did in fact file a lawsuit against the University, it never obtained any relief for plaintiffs because it chose to settle the action without obtaining any money or a reversal of the decision to deny approval of the project. Thus, there is a triable issue of fact with regard to whether plaintiffs can prevail on their promissory estoppel claim.

Therefore, the court intends to deny defendant's motion for summary judgment, or in the alternative summary adjudication.

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<sup>1</sup> Defendant has objected to plaintiffs' evidence, as well as plaintiffs' request for judicial notice of the prior case filed by defendant and the court's prior rulings on demurrers. The court intends to deny plaintiffs' request for judicial notice, as the matters plaintiffs seek to have the court notice are not material to the issues presented by the present motion.

The court also declines to rule on the evidentiary objections, as defendant has only objected to evidence that the court does not need to rely on in order to rule on the motion. "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc., § 437c, subd. (a).)











(41)

### **Tentative Ruling**

Re: **Nick Mercado, JR v. County of Fresno**  
Superior Court Case No. 24CECG03425

Hearing Date: February 18, 2026 (Dept. 502)

Motions: 1. By Defendant for Summary Judgment;  
2. By Plaintiff for Leave to File Third Amended Complaint for Damages.

### **Tentative Ruling:**

1. To grant summary judgment in favor of defendant and against plaintiff. The prevailing party is directed to submit to this court, within 10 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.
2. To deny defendant's motion for leave to amend.

### **Explanation:**

The plaintiff, Nick Mercado (Plaintiff), filed suit against the defendant, the County of Fresno (County). In the operative second amended complaint (SAC), Plaintiff alleges the County violated his civil rights when a jail classification officer failed to classify him properly as a former Bulldog gang member and sent him to a pod of current Bulldog gang members, who later assaulted and seriously injured Plaintiff.

### **Motion for Summary Judgment**

On October 14, 2025, the County moved for summary judgment. On January 21, 2026, Plaintiff moved for leave to file a third amended complaint (TAC), set for hearing on the same day as the County's summary judgment motion. On the due date for Plaintiff's opposition (January 29, 2025), at 8:53 a.m., Plaintiff filed an ex parte application to continue the hearing on the summary judgment motion, which the court denied. Later that day, at 6:09 p.m., Plaintiff purported to oppose the summary judgment motion by filing essentially the same declaration by his attorney previously submitted for the motion to continue, changing the title to include "in opposition to defendant's motion for summary judgment" (all caps omitted), and correcting the date the action was filed.<sup>2</sup> Plaintiff timely filed no other documents to oppose the summary judgment motion. One day after the due date, Plaintiff filed his declaration, separate statement, and memorandum of points and authorities in opposition to the summary judgment motion.

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<sup>2</sup> Plaintiff's ex parte application appears to use a form template from a different case with a female plaintiff. (See, e.g., memo., p. 1 [action filed July 17, 2024, not August 9, 2024]; p. 6 [references to Plaintiff as "her"].)

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*.) If the defendant satisfies this initial burden, then the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

"The pleadings delimit the issues to be considered on a motion for summary judgment." (*Turner v. State of California* (1991) 232 Cal.App.3d 883, 891.) As the California Supreme Court has explained: "The materiality of a disputed fact is measured by the pleadings [citations], which 'set the boundaries of the issues to be resolved at summary judgment.' [Citations.]" (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1250; *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1275 [court is limited to assessing only theories alleged in plaintiff's pleadings].) "The complaint measures the materiality of the facts tendered in a defendant's challenge to the plaintiff's cause of action. [Citation.]" (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.) "A defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in [the] opposing papers." (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98-99, fn. 4.)

### The County Satisfies Its Initial Burden

The County contends it is entitled to summary judgment because Plaintiff cannot establish the necessary element of causation required for each of Plaintiff's causes of action. The parties agree that to impose liability on the County, whether based on a violation of Title 42 United States Code section 1983 (section 1983), negligence, negligence per se, assault, battery, or infliction of emotional distress (intentional or negligent), Plaintiff must show the County's conduct caused his injuries.

### The County's Undisputed Material Facts

To support its motion, the County presents seven material facts. Fact number one correctly restates Plaintiff's allegations in the operative complaint (SAC):

Plaintiff contends the County and Doe Number One (the jail classification officer) are liable for his injuries because a Fresno County Jail classification officer failed to properly classify him as a former/dropout Bulldog gang member and sent him to a pod of current Bulldog gang members where he was consequently assaulted.

Fact number two establishes that Plaintiff was booked into the Fresno County Jail on August 15, 2023, and interviewed by a jail classification officer. The County relies on a Classification Intake Questionnaire listing Plaintiff as "a dropout member of the Bulldog gang" (fact no. 3), who was classified as a Protective Custody Dropout (PC Dropout)

gang member at all times during his subject incarceration. (Fact nos. 4, 5.) “Plaintiff was not housed with active Bulldog gang members at any point during the period of incarceration at issue.” (Fact no. 6.) “On August 16, 2023, Plaintiff was assaulted by other inmates in his pod.” (Fact no. 7.)

### Causation

To establish liability under any of Plaintiff's theories, he must prove the necessary element of causation. The County contends Plaintiff cannot establish causation because he no longer claims the alleged misclassification caused his injuries. In the SAC, Plaintiff alleges “[i]n the past, when incarcerated at [the County's] main jail facility Plaintiff MERCADO was properly placed in a gang drop out pod while in custody at the Fresno County Jail.” (SAC, ¶ 22.) The County meets its burden to show Plaintiff was properly classified as a PC Dropout and housed in a pod with no active Bulldog gang members. Plaintiff's alleged misclassification as a current bulldog member, which he cannot prove, is an essential element of each of his causes of action.

For example, the parties agree that the elements of Plaintiff's first cause of action based on a failure-to-protect claim under section 1983 are as follows:

Putting these principles together, the elements of a pretrial detainee's Fourteenth Amendment failure-to-protect claim against an individual officer are: [¶] (1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; [¶] (2) Those conditions put the plaintiff at substantial risk of suffering serious harm; [¶] (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and [¶] (4) By not taking such measures, the defendant caused the plaintiff's injuries.

(*Castro v. County of Los Angeles* (9th Cir. 2016) 833 F.3d 1060, 1071, fn. omitted.)

To prove the element of causation for any of Plaintiff's causes of action, he “must establish, by nonspeculative evidence, some actual causal link between [his] injury and the defendant's [act or omission].” (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 774 [causation is an essential of negligence alleged to have caused criminal assault].) “ ‘A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, *it becomes the duty of the court to direct a verdict for the defendant.*’ [Citation.]” (*Id.* at pp. 775-776, italics added by *Saelzler* court.)

In its motion, the County addresses the sole claim raised by Plaintiff in the operative pleading (SAC)—that Plaintiff was assaulted by Bulldog gang members because he was misclassified as an active Bulldog gang member, rather than a PC dropout. By showing Plaintiff was correctly classified, the County meets its initial burden to show Plaintiff has

not established, and cannot reasonably expect to establish, the necessary element of causation. The burden then shifts to Plaintiff to raise a triable issue of material fact.<sup>3</sup>

### Plaintiff Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, deposition, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra*, 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) Plaintiff submits nothing more than argument and his attorney's declaration requesting a continuance. (See Escamilla decl.)

The court exercises its discretion to disregard Plaintiff's late-filed opposition papers. Even if the court were to consider the papers, the court finds Plaintiff fails to raise a triable issue of material fact. Fact number one is a correct summary of Plaintiff's allegations in the operative complaint (SAC). Plaintiff does not dispute fact numbers two, four, and seven. Plaintiff fails to submit admissible evidence to dispute fact numbers three and five (Plaintiff was properly classified as a PC dropout at all relevant times). Nor does Plaintiff submit admissible evidence to dispute fact number six—that he was not housed with active Bulldog members at any time. Therefore, Plaintiff fails to meet his burden to dispute at least one of the County's material facts.

In summary, the County meets its burden to show Plaintiff cannot prove an essential element of each cause of action, and Plaintiff fails to show the existence of a triable issue of fact based on his claims in the SAC. Therefore, the County is entitled to summary judgment unless Plaintiff can show the need for a continuance to obtain additional relevant discovery.

### Plaintiff's Request for a Continuance

Plaintiff implicitly acknowledges that the County is entitled to summary judgment based on the SAC. Instead of presenting admissible evidence to oppose the motion, Plaintiff timely submits nothing more than his attorney's declaration, wherein counsel requests a continuance under Code of Civil Procedure section 437c, subdivision (h)" because facts essential to justify opposition may exist but cannot, for reasons stated herein, be presented at the hearing on February 18, 2026." (Escamilla decl., ¶ 3.)

Code of Civil Procedure section 437c, subdivision (h) provides:

If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery

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<sup>3</sup> Because the court finds the County meets its initial burden to show Plaintiff cannot establish a necessary element for each cause of action, it need not reach the County's additional ground for summary judgment based on public entity immunity.

may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

Under the express provisions of subdivision (h), continuance of the hearing is not mandatory if the opposing party fails to make the necessary showing that essential facts exist but cannot be presented for the reasons specified in the declaration. (*Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 532 (*Johnson*)).

The County provides ample evidence to show Plaintiff's lack of diligence in pursuing discovery. The County also correctly contends Plaintiff fails to make the statutory showing for a mandatory continuance. As the court in *Johnson* explained:

An opposing party's declaration in support of a motion to continue the summary judgment hearing should show the following: (1) "Facts establishing a *likelihood that controverting evidence may exist* and why the information sought is *essential* to opposing the motion"; (2) "The *specific* reasons why such evidence cannot be presented at the present time"; (3) "An estimate of the *time* necessary to obtain such evidence"; and (4) "The specific steps or procedures the opposing party intends to utilize to obtain such evidence." [Citation.]

(*Johnson, supra*, 205 Cal.App.4th at p. 532, italics original.)

Here, the court previously denied Plaintiff's last-minute ex parte motion. Plaintiff submits nothing new in his second request for a continuance to overcome his lack of diligence in conducting discovery. As he did in his ex parte motion, Plaintiff describes his discovery propounded to oppose the summary judgment motion as one set of form interrogatories and one set of document production requests, which he propounded on the County on January 28, 2026--the day before his opposition was due. The only additional discovery Plaintiff requests "is the deposition of the PMK regarding the policies and procedures of the Fresno County jail and its classification and housing of inmates." (Escamilla decl., p. 4:15-17.)

As the County summarizes, "Plaintiff's claims [in the SAC] all depend upon his allegation that the County failed to classify him as a dropout Bulldog gang member and placed him with active Bulldog gang members who assaulted him based on his dropout status." (Memo., p. 15:2-5.) Plaintiff fails to explain the relevance of his additional requested discovery to the issues raised by him in the SAC. Instead, Plaintiff clarifies the rationale for his continuance by suggesting, without citation to authority, that while Code of Civil Procedure section 437c, subdivision (h) "often relates to needing more discovery, it is commonly used to continue an [sic] Motion for Summary Judgment hearing to file a Motion for Leave to Amend to bring the complaint in line with evidence already discovered." (Escamilla decl., p. 3:19-21.) But Plaintiff does not move to amend the complaint to bring it "in line with evidence already discovered." The source of Plaintiff's "discovered" evidence is his own testimony.

In other words, Plaintiff is relying on Code of Civil Procedure section 437c, subdivision (h), which provides for a *continuance* to obtain necessary discovery, as authority for his motion to *amend* his complaint to change his own version of his story.

Plaintiff does not meet any of the standards necessary to obtain a mandatory continuance for additional discovery under Code of Civil Procedure section 437c, subdivision (h). Therefore, the court denies the motion on this basis. Although the court also has broad discretionary power to grant a continuance (*Johnson, supra*, 205 Cal.App.4th at p. 533), it also denies Plaintiff's request for a discretionary continuance.

### **Motion for Leave to File TAC**

Plaintiff moves for leave to amend his complaint to file his proposed TAC. Plaintiff bases his motion on Code of Civil Procedure sections 473, which gives the court discretion to allow an amendment to any pleading in the furtherance of justice and on such terms as may be proper to correct a mistake. Plaintiff also relies on Code of Civil Procedure section 576, which provides: "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order."

In *Falcon v. Long Beach Genetics, Inc., supra*, 224 Cal.App.4th 1263, the court explained the legal principles the court must consider when ruling on a motion to amend as follows:

A trial court has wide discretion to allow the amendment of pleadings, and generally courts will liberally allow amendments at any stage of the proceeding. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) On a motion for summary judgment " '[w]here the complaint is challenged and the facts indicate that a plaintiff has a good cause of action which is imperfectly pleaded, the trial court should give the plaintiff an opportunity to amend.' " (*Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760, 1773.) But if the proposed amendment fails to state a cause of action, it is proper to deny leave to amend. (*Oakland Raiders v. National Football League, supra*, 131 Cal.App.4th at p. 652.)

Further, unwarranted delay in seeking leave to amend may be considered by the trial court when ruling on a motion for leave to amend (*Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746), and appellate courts are less likely to find an abuse of discretion where, for example, the proposed amendment is " 'offered after long unexplained delay ... or where there is a lack of diligence' " (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159). Thus, when a plaintiff seeks leave to amend his or her complaint only after the defendant has mounted a summary judgment motion directed at the allegations of the unamended complaint, even though the plaintiff has been aware of the facts upon which the amendment is based, "[i]t would be patently unfair to allow plaintiffs to defeat [the] summary judgment motion by allowing them to present a 'moving target' unbounded by the pleadings." (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 176; [citation].)

And, under the sham pleading doctrine, the trial court may disregard amendments that omit harmful allegations in the original complaint or add allegations inconsistent with it. (*State of California ex rel. Metz v. CCC*

*Information Services, Inc.* (2007) 149 Cal.App.4th 402, 412; *Oakland Raiders v. National Football League*, *supra*, 131 Cal.App.4th at pp. 652–652 [applying sham pleading doctrine to request for leave to amend in summary judgment context].)

(*Falcon v. Long Beach Genetics, Inc.*, *supra*, 224 Cal.App.4th at pp. 1280–1281.)

In his proposed TAC, Plaintiff omits his judicial admission in paragraph 22 of the SAC that his past placements in a gang dropout pod were proper. He also omits his allegation that he was assaulted by current Bulldog gang members. Instead he proposes an entirely different factual scenario. Plaintiff now seeks permission to allege he told certain Fresno County correctional officers that he objected to being housed with certain jail inmates who had prior grievances and personal issues with Plaintiff (TAC, ¶ 26) and:

Upon information and belief, Plaintiff MERCADO was not properly classified and protected by being placed in pod NJ-05-F32 during his incarceration that commenced on or about August 15, 2023. Defendant CHRISTOPHER HENSLEY and other Fresno County Correctional Officer[s] placed Plaintiff MERCADO in pod NJ-05-F32 despite Plaintiff MERCADO advising him that other jail inmates in pod NJ-05-F32 would assault him and cause him great bodily injury and physical harm.

(TAC, ¶ 27.)

Plaintiff seeks to change his story, not based on newly-discovered facts, but based on his own testimony. First, Plaintiff claimed he was improperly housed with current Bulldog gang members, who assaulted him. After the County presented evidence that he was properly classified, Plaintiff now claims he was assaulted by individuals who had “issues” with Plaintiff after he had warned the correctional officers not to house him with such individuals. Plaintiff’s proposed amendments are inconsistent with the allegations of his SAC and the court may disregard them as sham amendments. Therefore, the court denies Plaintiff’s motion for leave to amend to file the proposed TAC.

## **Conclusion**

In conclusion, the court finds the County meets its burden to show Plaintiff cannot establish the essential element of causation for each of his causes of action. The burden then shifts to Plaintiff to raise a triable issue of material fact, which he fails to do. Plaintiff also fails to meet the criteria for a mandatory continuance and the court denies his dilatory request for a discretionary continuance. Therefore, the court grants the County’s motion for summary judgment against Plaintiff.

On Plaintiff’s motion for leave to amend, he seeks to omit harmful allegation in the SAC and to add inconsistent allegations in the TAC. Plaintiff seeks leave to amend only after receiving the County’s meritorious summary judgment motion. Therefore, the court exercises its discretion to deny Plaintiff’s motion for leave to amend.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

