Tentative Rulings for May 28, 2025
Department 503

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

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.***

23CECG04193 ***Zinc Auto Finance, Inc. v. U Drive Acceptance Corporation, Inc.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(47)

Tentative Ruling

Re: ***In Re: Jayden King***
Superior Court Case No. 25CECG01613

Hearing Date: May 28, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Jayden King

Tentative Ruling:

To grant petition. Order signed. No appearance necessary. The court sets a status conference for Wednesday, September 10, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 5/22/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***In Re: Hovannes John Hakobyan***
Superior Court Case No. 25CECG02114

Hearing Date: May 28, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Hovannes John Hakobyan

Tentative Ruling:

To grant petition. Order signed. No appearance necessary. The court sets a status conference for Wednesday, September 10, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS (Judge's initials) on 5/22/2025 (Date).

(34)

Tentative Ruling

Re: ***Ventresca v. Shannon, et al.***
Superior Court Case No. 23CECG05173

Hearing Date: May 28, 2025 (Dept. 503)

Motion: by Defendant Rebecca Shannon for Summary Judgment, or in the Alternative, Summary Adjudication

Tentative Ruling:

To grant Defendant Rebecca Shannon's motion for summary judgment. Defendant 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.

Explanation:

In this personal injury action plaintiff Lee Ventresca alleges that he tripped on a tree stump in the parkway, the grass strip between the curb and sidewalk adjacent to the premises at 1038 East Yale Avenue in Fresno. The Complaint alleges causes of action for (3) Premises Liability and (4) Negligence against defendant Rebecca Shannon.

As the moving party, defendant bear the burden of proving that there is a complete defense to each challenged cause of action or that plaintiff cannot establish one or more elements of each of its challenged causes of action. (*Barber v. Marina Sailing, Inc*. (1995) 36 Cal.App.4th 558, 562.) If that burden is met, plaintiff can defeat the motion by demonstrating a triable issue of material fact. (*Martinez v. Enterprise Rent-A-Car Co*. (2004) 119 Cal.App.4th 46, 52-53.) In determining whether a triable issue of material fact exists, the moving party's evidence is strictly construed, while that of their opponent's is liberally construed. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 20.)

Those who own, possess, or control property generally have a duty to exercise ordinary care in managing the property in order to avoid exposing others to an unreasonable risk of harm. (*Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 37.) In order to prevail on a negligence cause of action, a plaintiff must prove duty, breach, proximate cause, and damages. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 526.)

Streets and Highways Code section 5610 imposes "*duty of repair* on the abutting property owners for defects in sidewalks, regardless of who created the defects, but [the statute] does not itself create a *tort liability* to injured pedestrians or a *duty to indemnify* municipalities, except where a property owner created the defect or exercised dominion or control over the abutting sidewalk. [Citations.]" (*Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487, 1490, emphasis original.)

Defendant, as the owner of the property adjacent to the sidewalk and parkway argues she owed no duty of care to plaintiff as she neither owned nor controlled the

property where the alleged dangerous condition was present. (UMF No. 8.) Moreover, the tree and its stump were the responsibility of the City of Fresno to maintain. (UMF No. 5.) In deposition, Dan Turner, designated as the person most knowledgeable for the City of Fresno, testified that the property was a city park strip and the tree on the park strip was a city tree. (Garabedian Decl., ¶ 7, Exh. E, Turner Depo., 11:3-6, 20:17-19, 23-24.) The City of Fresno Municipal Code defines a parkway as the public property available for planting between the curb and abutting private property line and additionally gives responsibility to the City for the preservation and removal of trees on public property. (City of Fresno Mun. Code §§ 13-301, subd. (d), 13-305, subd. (b).)

Plaintiff disputes defendant's factual basis for her lack of control over the tree and parkway. (UMF Nos. 5, 8 and Plaintiff's response thereto[1].)

Plaintiff cites *Contreras v. Anderson* (1997) 59 Cal.App.4th 188, for its summary of *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1170, holding that the owner of adjacent private property owed a duty of care to warn of a known hazard on the adjacent property even though the owner does not exercise control of the property where the hazard is located. The court in Alcaraz found there was a dispute of material fact as to private property owner defendant's control of the land where the defendant's lawn was contiguous with and indistinguishable from the city-owned strip of land where the hazard was located, the defendant mowed the lawn, and demonstrated their possession by enclosing the strip of city-land where the hazard was located with a fence. (*Alcaraz v. Vece*, supra, at p. 1170.) The court in *Contreras* distinguished *Alcaraz* because there was no "dramatic assertion of a right normally associated with ownership or … possession" of the land where Contreras was injured. (Contreras v. Anderson supra, at p. 200.)

The facts of *Contreras v. Anderson* have many parallels with the case at bench. Contreras fell on a brick pathway within the city-owned parkway adjacent to the Anderson's home. (*Contreras v. Anderson*, *supra*, 59 Cal.App.4th at p. 192.) The parkway was between the curb and the city-owned sidewalk. (*Ibid*.) The Andersons denied adding the brick pathway to the parkway and did not know who added the brick or planted the tree within the parkway. (*Id*. at pp. 192-193.) The Andersons denied maintaining the tree but admitted to trimming the tree about twice a year and regularly sweeping leaves from the brick path. (*Id*. at p. 193.) A city ordinance required adjacent property owners to maintain the adjoining sidewalk in a condition to not interfere with the public use of the area. (*Id*. at p. 196.) The superior court granted summary judgment in favor of the Andersons on the ground that, "[a]s a matter of law, a property owner is not liable to [the] public merely for failing to maintain [a] public sidewalk." (*Id*. at p. 194, quoting *Williams v. Foster* (1989) 216 Cal.App.3d 510.) Relevant here, the court found that simple maintenance of an adjoining strip of land owned by another does not constitute an exercise of control over that property. (*Id*. at pp. 198-199.)

[1] In support of his dispute plaintiff lists multiple facts and cites to evidence purporting to support the fact. These same facts listed as demonstrating the existence of a dispute are found and numbered in the Plaintiff's Additional Undisputed Material Facts as Nos. 2, 3, 6, 7, 18, 19, 40, 41, 48, and 49.) For ease of reference the court will be referring to a particular fact by its Additional Material Fact ("AMF") number.

Plaintiff attempts to dispute the facts that the tree stump and parkway were the responsibility of and owned by the City of Fresno by citing to defendant Shannon's maintenance of the lawn on the parkway and the City ordinance imposing a duty on adjacent landowners to maintain and repair the public sidewalks. (UMF Nos. 5 and 8 and response thereto; AMF Nos. 2, 3, 6, 7[2], 18, 19, 40.) Neither the maintenance of the lawn nor the city ordinance will support finding plaintiff owed a duty to persons traversing the city-owned parkway. (*Contreras v. Anderson*, *supra*, 59 Cal.App.4th at pp. 196, 198-199.) Plaintiff has failed to demonstrate there is a dispute as to either material fact.

Plaintiff attempts to create a triable issue as to the existence of a duty through his expert, Zachary M. Moore. (Plf Evidence, Exh. E, ¶ 13; AMF No. 41.) Although Mr. Moore appears to be a qualified safety engineer and accident reconstruction expert, his expertise does not qualify him to determine whether or not a duty of care is owed. Defendant's objection[3] to paragraph 13 of the Moore declaration is sustained.

Plaintiff additionally cites to *Jones v. Awad* (2019) 29 Cal.App.5th 1200, 1208 to argue defendant Shannon had a duty to exercise reasonable care and failed to take any action despite her knowledge of the existence of the alleged dangerous condition of the stump. (See, AMF Nos. 39, 45, 48, 49.) *Jones v. Awad* is inapposite, as the defendant property owners were owners and possessors of the home where plaintiff fell on a step in their garage. (*Jones v. Awad*, *supra*, 29 Cal.App.5th at p. 1208.) Such a duty of care is owed by a property owner with regard to dangerous conditions on their property. The parkway is property of the City of Fresno and plaintiff's argument that defendant Shannon could have done something upon discovering the city tree had been removed and a stump left behind does not create a duty of care with regard to property defendant does not own and does not control.

Plaintiff further argues there is an underlying factual dispute as to who cut down the tree leaving the stump in the parkway. However, there does not appear to be any dispute of the fact that neither defendant Shannon nor the City of Fresno know who cut down the tree. (UMF Nos. 6-7, AMF No. 1.) Plaintiff presents no evidence to dispute defendant Shannon's lack of knowledge of who cut down the tree and argues only that this is a question of credibility for the jury. Plaintiff's speculation is insufficient to create a triable issue of material fact. "An issue of fact can only be created by a conflict of evidence. It is not created by 'speculation, conjecture, imagination or guess work.'" (*Sinai Memorial Chapel v. Dudler* (1991) 231 Cal.App.3d 190, 196, quoting *O'Neil v. Dake* (1985) 169 Cal.App.3d 1038, 1044–1045.)

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[2] Plaintiff cites to the Deposition of City of Fresno's person most knowledgeable, Dan Turner to support the asserted fact that homeowners of the property adjacent to the parkway maintained smaller trees due to their size. Defendant objects to the testimony as misstated and the objection is overruled. However, to the extent plaintiff appears to misconstrue testimony that homeowners voluntarily conducting maintenance of smaller city trees adjacent to their property as a requirement by the city that homeowners undertake such maintenance for smaller city trees, the deponent very clearly disputed this interpretation. (Turner Depo., 10:22-11:2.)

[3] Defendant's written objections include the information required by California Rules of Court, Rule 3.1354, subdivision (b)(1)-(4), however, the formatting does not number each objection individually to allow the court to reference a specific objection. As formatted, only the exhibit that is the subject of the objections is numbered. The deficient formatting will not prevent the court from ruling on the objections in this instance.

Defendant Shannon has met her burden of establishing there is no triable issue of material fact to support finding show owed Plaintiff a duty of care. Plaintiff has not met her burden to demonstrate there is a dispute of material fact or that there is any legal basis to impose a duty of care upon Defendant Shannon, as the adjacent property owner, for an alleged dangerous condition on City of Fresno's property.

In light of the court's determination that defendant Shannon owed no duty of care to plaintiff, it is not necessary to determine whether the tree stump was a trivial defect and/or open and obvious condition on the parkway in this motion.

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 5/22/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Christina Casarez vs. Andre Hill / Stayed***
Superior Court Case No. 19CECG03758

Hearing Date: May 28, 2025 (Dept. 503)

Motions: (1) Motion for Determination of Good Faith Settlement;
(2) Motion by Defendant County of Fresno to Contest Good Faith Settlement Between Plaintiffs and Defendant Andre Hill.

Defendants' counsel, Shamika K. Bains, is ordered to appear in person at the hearing and to bring full copies of each cited case. Counsel must highlight all quoted language and all supporting language corresponding to each pinpoint citation.

Tentative Ruling:

To grant the motion for good faith settlement between the settling parties; to deny the motion by the County of Fresno to contest the good faith settlement between the plaintiffs and defendant Andre Hill.

To order Christina Casarez's complaint filed on October 17, 2019, and Jaime Mendoza's cross-complaint filed on November 21, 2019, dismissed against the moving defendants.

Explanation:

This matter arises from a three-vehicle fatal accident, that occurred in September 2019 at the intersection of Clovis and Mountain View Avenues in Fresno County. A tractor-trailer operated by defendant Andre Hill (Hill) allegedly collided with a vehicle driven by 19-year-old Olivia Mendoza, causing her death. The decedent's parents, Christina Casarez, individually and on behalf of the estate of Olivia Mendoza, and Jaime Mendoza (collectively, Plaintiffs), filed the instant action.

All remaining parties, except defendant County of Fresno (County), have entered into a formal settlement agreement and mutual release (Settlement Agreement). Specifically, the Settlement Agreement is between: DMG Consulting & Development, Inc. dba Goldcoast Logistics Group (DMG), SIO Logistics, LLC (Doe 6, SIO),[4] and Dragos Sprinceana (Doe 7, DMG's owner and operator, Sprinceana) (collectively, Defendants), Plaintiffs, Hill, and their related parties as defined in the Settlement Agreement.

Defendants move for a good faith settlement determination under Code of Civil Procedure section 877.6 and ask the court to dismiss the "Complaint" against Defendants under California Rules of Court, rule 3.1382. As required by rule 3.1382, Defendants include in their notice a request to dismiss Christina Casarez's complaint filed on October 17, 2019, and Jaime Mendoza's cross-complaint filed on November 21, 2019,

[4] An appeal is pending after the court granted SIO's motion for summary judgment.

against Defendants. (Def.'s Ntc., p. 2:20-23.) The County opposes Defendants' motion and brings its own motion for an order that the Settlement Agreement between Plaintiffs and Hill is not in good faith. Defendants oppose the County's motion. Plaintiffs (Christina Casarez, joined by Jaime Mendoza) and Hill file separate memoranda to oppose the County's motion.

Good Faith Settlement

Under Code of Civil Procedure section 877.6, a settlement by one or more of several joint tortfeasors may be determined by the court to be in "good faith." The court determines whether a settlement is within the "good faith ballpark" by making an "educated guess" after considering the following factors (evaluated as of the time of the settlement): (1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settlor should pay less in settlement than if found liable after a trial; (4) the allocation of the settlement proceeds among plaintiffs; (5) the settlor's financial condition and insurance policy limits, if any; and (6) evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the nonsettling parties pay more than their fair share. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499 (*Tech-Bilt*); *North County Contractor's Assn. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1088 [affirming trial court's educated guess based on *Tech-Bilt* factors that settlement amount was well within the ballpark]; *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 432 ["[i]n other words, the superior court must understand the size of the settlement pie, how the pie is sliced, and who is getting which slice"].)

"The party asserting lack of good faith bears the burden of proof. ([Code Civ. Proc.,] § 877.6, subd. (d).) That party must show that the settlement is so far ' " 'out of the ballpark' " ' as to be inconsistent with the equitable goals of section 877.6. (*Long Beach Memorial Medical Center v. Superior Court* (2009) 172 Cal.App.4th 865, 873, citing *Tech–Bilt, supra,* 38 Cal.3d at pp. 499–500.) A determination that a settlement is made in good faith bars any other joint tortfeasor or co-obligor from further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. (Code Civ. Proc., § 877.6, subd. (c).)

Tech-Bilt Factors

Settlement Amount, Policy Limits, and Financial Situation of Settling Defendants: Plaintiffs provide evidence to show they carefully analyzed the financial situation of each defendant, with the help of experts. The settlement amount is $1million—the full amount of the only insurance coverage available to Defendants and Hill.

After Hill's release from prison, he has been working as an independent contractor. From his weekly earnings of $1,200 to $1,800 per week, he pays $520 in child support and makes restitution payments to the Estate of Olivia Mendoza. He has no assets that could be sold to satisfy a judgment.

Because DMG has no substantial assets, Plaintiffs have pursued DMG's sole shareholder, Sprinceana, based on an alter ego theory. Sprinceana appears to have

substantial assets, but Plaintiffs have determined Florida law makes recovery from him difficult, if not impossible. (The County fails to provide evidence to support its claim that Sprinceana has an estimated net worth of $10 billion. [See, e.g., County's Opp., p. 6:13-14.]) SIO was dismissed from this action, and any potential recovery from it depends on a successful appeal.

Proportionate Liability: Hill admits he rolled through a stop sign. Although this was the primary cause of the accident, the settling parties present evidence that the physical layout of the intersection may have contributed to visibility and reaction challenges, regardless of Hill's criminal conviction. The County was aware of complaints and collisions at the intersection, expert Zachary Moore opined that the intersection was dangerous, the County had previously designated the intersection as "high risk," and the County had actual and constructive notice of the dangers. The settling parties contend the accident could have been avoided, even with Hill's negligence, had the County followed the safety recommendations, including the installation of a four-way stop sign.

Total Potential Recovery: The parties present evidence of a total potential recovery of up to $1.9 million, but this does not account for comparative fault, such as the possibility that Olivia Mendoza was speeding, the risks and expenses of trial, and the difficulty of collecting from the Defendants and Hill.

Collusion: The settling parties contend there is no evidence of collusion.

The County contends the proposed settlement is too low and it is collusive. It suggests because Defendants and Hill are covered by only one insurance policy with liability limits of $1 million, this "clearly gives the impression of being a collusive settlement." (County's Opp., p. 7:28-8:1.) The County argues that the settlement amount is "grossly disproportionate" with DMG's fair share of the damages claimed by Plaintiffs. But the County's motion is not directed to Defendants (DMG, SIO, and Sprinceana). Instead, the County requests an order that the Settlement Agreement between Plaintiffs *and Hill* is not in good faith.

After considering the *Tech-Bilt* factors, the court finds the settling parties have provided evidentiary support to demonstrate the settlement amount is "within the ballpark," and the Settlement Agreement meets the standards for good faith. The County, as the party asserting lack of good faith, has failed to meet its burden of proof.

In summary, the court grants the Defendants' motion. The court finds the Settlement Agreement was made in good faith between the settling parties under Code of Civil Procedure sections 877 and 877.6, and it shall have the effect under law as provided by those sections. In accordance with California Rules of Court, rule 3.1382, Christina Casarez's complaint filed on October 17, 2019, and Jaime Mendoza's cross-complaint filed on November 21, 2019, against Defendants are ordered dismissed. The court denies the County's motion to contest the good faith settlement between Plaintiffs and Hill.

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

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 5/27/2025.
(Judge's initials) (Date)

(37) **Tentative Ruling**

Re: ***Emmanuel Nunez***
Court Case No. 25CECG01490

Hearing Date: May 28, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. The Court intends to sign the proposed orders. No appearances necessary.

The Court sets a status conference for Wednesday, June 18, 2025 at 3:30 p.m. in Department 503, for confirmation of deposit of the minor's funds into the blocked account. If Petitioner files the Acknowledgement of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS **on** 5/23/2025 .
(Judge's initials) (Date)

(37) **Tentative Ruling**

Re: ***In Re: Charmaigne Tyler***
Court Case No. 23CECG02836

Hearing Date: May 28, 2025 (Dept. 503)

Motion: Petition to Approve Compromise of Disabled Person's Claim

Tentative Ruling:

To grant. Orders have errors, as noted below, so they should be corrected and resubmitted for signature. Hearing off calendar.

Explanation:

The Orders submitted on April 16, 2025 have Item Number 7 selected to retain jurisdiction for a reduction of a Medi-Cal lien. According to the Declaration filed May 23, 2025, this is no longer requested and there is no Medi-Cal lien. As such, amended orders are to be submitted amending Item Number 7.

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS **on** 5/27/2025 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***In re: Mila Haro***
Superior Court Case No. 24CECG03153

Hearing Date: May 28, 2025 (Dept. 503)

Motion: Petition to Compromise Claim

Tentative Ruling:

To grant. No appearances necessary. Petitioner Melissa Sanchez is directed to submit a proposed Order Approving Compromise (Form MC-351), and proposed Order to Deposit Funds Into Blocked Account (Form MC-355).

To set a status conference for Tuesday, December 2, 2025, at 3:30 p.m. in Department 503, for confirmation of deposit of the funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356), at least five court days before the hearing, the status conference will come off calendar.

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 5/27/2025.
(Judge's initials) (Date)