Tentative Rulings for June 5, 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.***

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

(03)

Tentative Ruling

Re: ***Smith v. Fresno Unified School District***
Case No. 24CECG02854

Hearing Date: June 5, 2025 (Dept. 503)

Motion: Defendants' Demurrer to Complaint

Tentative Ruling:

To sustain the demurrer to the entire complaint, with leave to amend. Plaintiff shall serve and file his first amended complaint within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

First, while defendant demurs to the entire complaint on the ground that "it does not fails [*sic*] to specify what he alleges to have been the dangerous condition of public property", this is not a valid statutory ground for a demurrer. Under Code of Civil Procedure section 430.10, there are several grounds for a demurrer, but "failure to specify the nature of the dangerous condition" is not one of them. It appears that defendant is actually demurring to the complaint for failure to state facts sufficient to constitute a cause of action, and possibly uncertainty as well. (Code Civ. Proc., § 430.10, subds. (e), (f).) However, plaintiff does not appear to have been prejudiced by the defect in defendant's demurrer, as plaintiff has filed an opposition that addresses the issue of whether he has stated facts sufficient to state a cause of action. Therefore, the court will deem the demurrer to be brought based on failure to state facts sufficient to constitute a cause of action.

Next, the court intends to find that the complaint fails to state a cause of action against the defendants. Since Fresno Unified School District is a public entity and Peter Fortuna is a teacher who was acting in the course and scope of his employment at the time of the incident, plaintiff must allege a specific statutory basis for any claim against defendants, as well as facts showing how the statute applies to defendants. (Govt. Code, § 815.) "[I]n California all government tort liability is dependent on the existence of an authorizing statute or 'enactment', and to state a cause of action every fact essential to the existence of statutory liability must be pleaded with particularity, including the existence of a statutory duty. Duty cannot be alleged simply by stating 'defendant had a duty under the law'; that is a conclusion of law, not an allegation of fact. The facts showing the existence of the claimed duty must be alleged. Since the duty of a governmental agency can only be created by statute or 'enactment,' the statute or 'enactment' claimed to establish the duty must at the very least be identified." (*Searcy v. Hemet Unified School Dist*. (1986) 177 Cal.App.3d 792, 802, citations omitted.)

"Ordinarily, negligence may be pleaded in general terms and the plaintiff need not specify the precise act or omission alleged to constitute the breach of duty. However, because under the Tort Claims Act all governmental tort liability is based on

statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, 'to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity.'" (*Lopez v. Southern Cal. Rapid Transit Dist*. (1985) 40 Cal.3d 780, 795, citations omitted.)

Here, plaintiff has not alleged the statute or statutes that form the basis for his claims against defendants, nor has he alleged sufficient facts to show that the statutes apply and that defendants breached a duty and caused plaintiff's injuries. He simply alleges that defendants were negligent and failed to supervise him properly because Fortuna guided him through an unsafe and restricted area, which led to him being injured after he tried to jump over a mud puddle and fell into a windowpane. These allegations are not enough to state a claim against a public entity or its employees, as plaintiff does not allege the statutory basis for his claims for negligence and dangerous condition of a public property, or allege facts showing how the statute applies to his claims.

Both parties seem to be assuming that the claims are based on Government Code section 835, which establishes public entity liability for dangerous conditions on public property. However, the complaint never actually cites to section 835, or any other statute that imposes liability on a public entity like the school district and its employees. Also, even if section 835 applies and supports a claim for dangerous condition on public property, it would not also support a claim for general negligence against Fresno Unified or its employee, Fortuna. The general negligence claim appears to be duplicative of the dangerous condition claim, unless plaintiff is alleging that there is some other statutory basis for liability that applies here. However, plaintiff has not alleged any other statute that would impose negligence liability.

Also, to the extent that plaintiff is alleging a claim for dangerous condition on public property, he has not alleged any facts showing what the dangerous condition of public property was, or how the dangerous condition led to his injury. "To state a cause of action against a public entity under section 835, a plaintiff must plead: (1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it. Section 830 defines a '[d]angerous condition' as 'a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used.' Property is not 'dangerous' within the meaning of the statutory scheme if the property is safe when used with due care and the risk of harm is created only when foreseeable users fail to exercise due care." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439, citations omitted.)

Here, plaintiff has alleged that he was injured when defendant Fortuna guided him through "an unsafe and restricted area that was not intended to be a walkway. The failure to maintain safe premises and promptly address hazards is a breach of legal obligations. As a result of this collective negligence, the Plaintiff fell in a window pain [*sic*] on the Defendants' premises, suffering serious injuries." (Complaint, p. 4, Prem. L-1.) He also alleges that he attempted to jump over a muddy puddle, and that, upon landing, the classroom window shattered, causing him severe injuries. (*Id*. at p. 5, GN-1.)

However, it is unclear from these allegations whether the plaintiff claims that the dangerous condition was the "unsafe" and "restricted" area where Fortuna had him walk, the mud puddle, or the windowpane, or some combination of these conditions. He seems to be alleging that the area where he walked was in an unsafe condition, but he has not alleged any facts explaining why the area was unsafe. Simply alleging the conclusion that the area was in an "unsafe" or "dangerous" condition is not enough to support a claim for dangerous condition on public property. Plaintiff needs to allege facts showing how the property was unsafe, and how the unsafe condition led to his injuries.

Therefore, the court intends to sustain the demurrer to the entire complaint for failure to state facts sufficient to constitute a cause of action. However, the court will grant leave to amend, as it is possible that plaintiff could allege more facts to cure the defect in his complaint if given leave to do so.

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 6/2/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Jones et al vs Gutierrez***
Superior Court Case No. 25CECG00400

Hearing Date: June 5, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Jane Doe

Tentative Ruling:

To grant petition. Order signed. No appearance necessary. The court sets a status conference for Wednesday, September 11, 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 6/2/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***DeLara v. Garcia***
Case No. 23CECG04948

Hearing Date: June 5, 2025 (Dept. 503)

Motion: Defendant Regency Property Management's Motion for Summary Judgment

Tentative Ruling:

To grant defendant Regency Property Management's motion for summary judgment.

Explanation:

First, Regency has met its burden of showing that the undisputed facts show that it is entitled to summary judgment as to plaintiff's negligence and strict liability claims. Plaintiff has alleged that Regency is liable for his injuries suffered in the dog attack because Regency was the owner and keeper of the pit bull dog on the property, that it was aware of the vicious and dangerous propensities of the dog, and that it failed to take precautions to prevent the dog from escaping and attacking plaintiff and his dog. (Complaint, p. 4, GN-1, p. 5, SL-1.)

However, Regency has presented evidence showing that it was not the owner of the subject dog, it had no knowledge that there was a dangerous and vicious dog on the property that it managed, and that the lease prohibited keeping any pets on the property. Regency managed the property for defendant Adrianna Cuellar, who is the property owner. (Hardie decl., ¶¶ 3-5.) The tenants, Cesar Martinez Garcia and Maria Patricio-Montez, are the owners of the dog that attacked plaintiff. (*Id*. at ¶¶ 6, 7.) Regency did not own, maintain, or control the dog. (*Id*. at ¶ 8.) Regency had no knowledge of the fact that the tenants were keeping a dog on the property. (*Id*. at ¶ 9.) Regency had no knowledge that the dog had vicious propensities. (*Id*. at ¶ 10.) Regency also had no knowledge of any issues with the fence on the property, and received no complaints or work orders about the fence. (*Id*. at ¶ 11.) The lease agreement also provided that no pets would be kept on the property, except with the express permission of the owner, which was never sought or granted. (*Id*. at ¶¶ 12-13.)

Thus, Regency has met its burden of showing that it cannot be held liable for plaintiff's injuries suffered in the dog attack, as a property owner or manager that is not in possession of the property cannot be held liable for injuries inflicted by a dog owned by the tenants if the manager did not have actual knowledge of the dog's existence and its dangerous or vicious propensities.

"[A] duty of care may not be imposed on a landlord without proof that he knew of the dog and its dangerous propensities. Because the harboring of pets is such an important part of our way of life and because the exclusive possession of rented premises

normally is vested in the tenant, we believe that actual knowledge and not mere constructive knowledge is required. For this reason we hold that a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 514, footnote omitted.)

"We point out, however, that a defendant's actual knowledge may be shown, not only by direct evidence, but also by circumstantial evidence. Hence, his denial of such knowledge will not, per se, prevent liability. However, actual knowledge can be inferred from the circumstances only if, in the light of the evidence, such inference is not based on speculation or conjecture. Only where the circumstances are such that the defendant 'must have known' and not 'should have known' will an inference of actual knowledge be permitted." (*Id*. at p. 514, fn. 4.)

Thus, "to impose liability on someone other than the owner, even a keeper, 'previous knowledge of the dog's vicious nature must appear.'" (*Lundy v. California Realty* (1985) 170 Cal.App.3d 813, 821, citations omitted, italics in original.) "Under California law, a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person. In other words, where a third person is bitten or attacked by a tenant's dog, the landlord's duty of reasonable care to the injured third person depends on whether the dog's vicious behavior was reasonably foreseeable. Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838.)

Here, Regency's evidence shows that it had no knowledge of the subject dog being on the premises, or that it had vicious or dangerous propensities. In fact, the lease expressly prohibited keeping pets on the property, except with the express written permission of the property owner. The tenants never sought or received permission from the owner to keep a dog on the premises. Regency also never received any complaints about the fence being dilapidated. Thus, Regency has met its burden of showing that it is not liable for plaintiff's injuries that he suffered in the dog attack.

The burden then shifts to plaintiff to present evidence showing that there is a triable issue of material fact with regard to whether Regency had actual knowledge of the dog and its vicious propensities and that it failed to take any reasonable measures to prevent the attack, such as requiring the tenants to remove the dog or repairing the fence so the dog could not escape. (*Uccello v. Laudenslayer, supra*, 44 Cal.App. at p. 514.)

In opposition to the motion, plaintiff points to Regency's responses to plaintiff's requests for admissions. However, the responses merely show that Regency was the property manager for the property, that it had a duty to maintain the property, and that it conducted one of more inspections of the property. (Exhibit A to Forsythe decl., Responses to RFA Nos. 2, 5, 6, 7, 9, 12, 13, 14, 15, 25.) Regency also denied that it had any knowledge of any dangerous dogs or animals on the property, or that it had any knowledge of the tenants breaching the lease agreement. (Response to RFA Nos. 16, 17, 18, 19, 21, 22, 23, 30, 31, 32.) It further denied breaching the lease agreement itself.

(Response to RFA No. 20.) Regency also denied that any persons hired to conduct maintenance on the property informed it of the presence of aggressive dogs on the property. (Response to RFA Nos. 28, 29, 30.) Thus, Regency's responses to the requests for admission actually support Regency's position that it had no knowledge of the dog or its vicious propensities, and fail to raise any triable issues of material fact with regard to whether it can be held liable for plaintiff's injuries.

Plaintiff also attempts to raise a triable issue of material fact by pointing to the fact that the tenants, Cesar Martinez Garcia and Maria Patricio-Montez, have recently been deemed to have admitted the truth of the matters in the requests for admission that plaintiff served on them after they failed to respond to the requests. (See Court's Order dated May 1, 2025 on Motion to Deem Matters in RFAs to be Admitted.) Garcia and Patricio Montez have thus been deemed to have admitted the truth of a number of statements, including that they notified Regency about the dilapidated fence on the property, that the fence was not repaired prior to the date of the incident, that Regency knew of the presence of pit bulls on the property prior to the incident as it called the tenants and asked them to restrain the dogs so that its repairmen could access the property, but Regency never asked the tenants to remove the dogs from the property. (Exhibit B to Forsythe decl., Motion to Deem RFAs Admitted, and Exhibit A thereto, Request Nos. 8, 9, 10, 11, 12.)

The admissions of the tenants might be enough to raise a triable issue of material fact if the tenants themselves were moving for summary judgment, since they have been deemed to have conclusively admitted the truth of the matters in the requests for admissions and cannot seek to deny them through other evidence. However, the tenants' admissions are only binding on the tenants, not the other defendants.

Under Code of Civil Procedure section 2033.410, subdivision (a), "Any matter admitted in response to a request for admission is conclusively established *against the party making the admission* in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300." (Code Civ. Proc., § 2033.410, subd. (a), italics added.) Also, under section 2033.410, subdivision (b), "Notwithstanding subdivision (a), any admission made by a party under this section is binding *only on that party* and is made for the purpose of the pending action only. *It is not an admission by that party for any other purpose*, and it shall not be used in any manner against that party in any other proceeding." (Code Civ. Proc., § 2033.410, subd. (b), italics added.)

"The only purpose of requests for admissions is that the matters admitted can be used *against* the party making them." (*Monroy v. City of Los Angeles* (2008) 164 Cal.App.4th 248, 261, citation omitted, italics in original.) "'[A] deemed admitted order establishes, by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained therein.' Any matter deemed to have been admitted 'is conclusively established against the party making the admission' but 'is binding only on th[e] party' that made the admission." (*Inzunza v. Naranjo* (2023) 94 Cal.App.5th 736, 742, citations omitted.) Thus, it was error to use one party's deemed admissions to bind another party, which did not make the same admissions and actually denied some of the same requests that the other party was deemed to have admitted. (*Id*. at p. 743.)

In the present case, while the tenants have been deemed to have admitted the truth of certain facts, their admissions are only binding on them, not Regency. The tenants' admissions may not be used for any other purpose, including raising a triable issue of material fact to defeat Regency's summary judgment motion. As a result, plaintiff cannot use the deemed admissions by the tenants here to raise a triable issue of material fact with regard to whether Regency had actual knowledge of the dog or its vicious propensities.

Plaintiff has not pointed to any other evidence that would tend to raise a triable issue of material fact regarding Regency's actual knowledge of the dog and its dangerous propensities. Therefore, plaintiff has failed to meet his burden of showing the existence of any triable issues of material fact, and the court intends to grant summary judgment in favor of Regency.

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 6/3/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Christian Solis v. Cali Smoke Shop, Inc.***
Superior Court Case No. 23CECG02253

Hearing Date: June 5, 2025 (Dept. 503)

Motion: by Plaintiff Christian Solis for Orders Deeming Matters in Requests for Admissions, Set One, Admitted and Imposing Monetary Sanctions

Tentative Ruling:

To deny, without prejudice, as untimely.

Explanation:

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. … [I]f the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days[.]" (Code Civ. Proc. § 1005 subd. (b).) Service by overnight delivery, such as e-mail, extends the time by two calendar days. (*Ibid*., see also Code Civ. Proc. § 1010.6 subd. (a)(3)(B).)

The present motion was filed on May 12, 2025. Pursuant to the proof of service, the motion was served that same day by electronic mail.[1] Taking into consideration the court closure on May 26, 2025 in observance of a judicial holiday (see Code Civ. Proc. § 135, Gov. Code § 6700 subd. (a)(9)), the requisite amount of time between filing and serving the motion and the hearing on the motion has not passed. The motion is therefore denied as untimely.

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 6/3/2025.
(Judge's initials) (Date)

[1] The proof of service indicates that personal service would also be effectuated, with a separate proof of service to follow. No subsequent proof of personal service was filed.

(03)

Tentative Ruling

Re:	***D.L. v. County of Fresno*** Case No. 22CECG02530
Hearing Date:	June 5, 2025 (Dept. 503)
Motion:	Defendant County of Fresno's Motion for Judgment on the Pleadings

Tentative Ruling:

To deny defendant County of Fresno's motion for judgment on the pleadings.

Explanation:

The County moves for judgment on the pleadings as to the entire complaint against it, contending that the complaint fails to state a cause of action because it does not allege any facts showing that the County had a mandatory duty to report the alleged sexual abuse of plaintiff while she was in foster care. The County points to the Fifth District Court of Appeal's recent decision in *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606, which held under similar facts that the County was entitled to discretionary immunity under Government Code sections 815.2 and 820.2 for its social worker's failure to investigate the suspected abuse of the minor plaintiff or remove her from the home.

"We conclude that Government Code section 820.2 applies in the instant case. The social workers' decisions at issue relate to 'the investigation of child abuse' 'based upon suspicion of abuse'. They not only 'involve[ ] the exercise of analysis and judgment as to what is just and proper under the circumstances' but also constitute 'sensitive policy decision[s] that require[ ] judicial abstention to avoid affecting a coordinate governmental entity's decisionmaking or planning process.' These qualities hold true for, as here, 'preliminary determinations' that 'reports of possible abuse' 'did not warrant initiation' of further action." (*K.C. v. County of Merced*, *supra*, at pp. 617–618, citations omitted.)

"We do not dispute that decisions pertaining to foster care placement are discretionary acts within the meaning of Government Code section 820.2. Nor do we question that 'maintenance of a child in a foster home involves an obligation of continued supervision' and much of what is required 'in terms of continued administration of the child's welfare undoubtedly constitutes simple and uncomplicated surveillance which reasonably could be characterized as ministerial.' However, decisions as to whether to undertake investigative or corrective action in response to reported child abuse fall outside the ambit of such surveillance and are '[no] less "discretionary" for purposes of the immunity of Government Code section 820.2 than the original placement decision[.]' We do not accept the notion that a 'subjective decisionmaking process' 'could [be] transmute[d]' 'into a ministerial act' simply because that process assesses incidents that occurred within a foster home." (*Id.* at p. 619, citations omitted.)

"K.C. also contends that County's demurrer should have been overruled because the operative complaint did not indicate 'an employee of the County made a considered ... decision' or 'actually exercised' 'discretion ... by the weighing of risks and benefits in deciding on the challenged course of action.' While a finding of immunity is precluded 'solely on grounds that "the [affected] employee's general course of duties is 'discretionary'"' and 'requires a showing that "the specific conduct giving rise to the suit" involved an actual exercise of discretion, i.e., a "[conscious] balancing [of] risks and advantages"', 'a strictly careful, thorough, formal, or correct evaluation' is not mandatory. 'Such a standard would swallow an immunity designed to protect against claims of carelessness, malice, bad judgment, or abuse of discretion in the formulation of policy.' Here, under a 'fair reading' of the complaint, K.C. essentially alleged County's social workers were confronted with reports of sexual abuse that should have prompted investigative or corrective action, but they failed to properly exercise their discretion to do so. '[C]laims of improper evaluation cannot divest a discretionary policy decision of its immunity.'" (*Id.* at pp. 619–620, citations omitted.) "Because we conclude that Government Code section 820.2 applies in the instant case, County is immune by virtue of Government Code section 815.2, subdivision (b)." (*Id.* at p. 620, citations omitted.)

On the other hand, in *D.G. v. Orange County Social Services Agency* (2025) 108 Cal.App.5th 465, the Fourth District Court of Appeal recently reached the opposite conclusion, holding that the trial court improperly granted summary judgment in favor of the defendant County of Orange because discretionary immunity did not apply to the social worker's failure to take action after receiving a report of child abuse.

"The decision to apply discretionary act immunity requires a two-part analysis. First, we decide whether the decision at issue is a discretionary, as opposed to a ministerial one. We agree with the trial court and the County that 'decisions of child welfare agency employees—regarding determinations of child abuse, the potential risk to a child, placement of a child, removal of a child, and other resultant actions—are subjective *discretionary* ones that are incidental to the employees' investigations.' But this is only part of our inquiry." (*Id*. at 473, citation omitted, italics in original.)

"The second part of the discretionary act immunity analysis is whether the employee who made the decision at issue 'actually reached a considered decision knowingly and deliberately encountering the risks that give rise to plaintiff's complaint.... [¶] [T]o be entitled to immunity the state must make a showing that such a policy decision, consciously balancing risks and advantages, took place. The fact that an employee normally engages in "discretionary activity' is irrelevant if, in a given case, the employee did not render a considered decision.' In *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 42 Cal.Rptr.2d 842, 897 P.2d 1320, the California Supreme Court applied the same test: '*Johnson* precludes a finding of immunity solely on grounds that "the [affected] employee's *general course of duties* is 'discretionary' ..." [citations], and requires a showing that "the specific conduct giving rise to the suit" involved an *actual* exercise of discretion, i.e., a "[conscious] balancing [of] risks and advantages."'" (*Id.* at pp. 473-474, some citations omitted, italics in original.)

"There is simply no evidence in the record that Tanasse, or anyone else, exercised discretion as described in *Johnson* and *Caldwell.*" *(Id.* at p. 474.) Thus, the Court of

Appeal found that the trial court should not have granted summary judgment in favor of the County, as there was at least a triable issue of fact as to whether the social worker had actually exercised her discretion about whether to leave plaintiff in the home after receiving the report of abuse. (*Ibid*.)

Thus, there is a split of authority between the districts about whether discretionary immunity applies where a social worker fails to investigate or remove a child from the home after a report of abuse. However, both the *K.C.* and *D.G.* courts agree that the County has discretion about whether or not to investigate the report and take other action to remove the child, and they also agree there must be evidence that the social worker actually exercised their discretion by making a considered decision after consciously balancing the risks and benefits of leaving the child in the home.

In the present case, plaintiff has alleged that she reported the sexual abuse to the County's social worker, who failed to take any action to investigate the abuse or remove her from the home. (Complaint, ¶¶ 28, 29.) There are no allegations that tend to show that the social worker made a considered, conscious decision to balance the risks and benefits of removing her from the home versus leaving her there. Instead, plaintiff seems to be alleging that the social worker simply ignored her reports of abuse and did nothing, which led to plaintiff suffering further sexual abuse. (*Id*. at ¶ 29.) Thus, the allegations of the complaint are sufficient to plead around the defense of discretionary immunity.

In addition, plaintiff has alleged another, alternative mandatory duty that would support a finding of liability against the County if her allegations are proven, as plaintiff has alleged that the County had a mandatory duty to report allegations of abuse to the police under Penal Code section 11166, and it failed to do so. (Complaint, ¶¶ 21, 29, 66.) "As relevant here, section 11166, subdivision (j), provides: 'A county probation or welfare department shall immediately, or as soon as practicably possible, report ... to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or reasonably suspected instance of child abuse or neglect ....'" (*Holman v. County of Butte* (Cal. Ct. App., May 12, 2025, No. C101517) 2025 WL 1409878, at *8.)

In *Holman*, the Third District Court of Appeal held that the defendant County could be held liable for its social worker's failure to "cross-report" suspected child abuse to the police after the abuse was reported to the County by a teacher, as the County had a mandatory duty to cross-report the abuse under Penal Code section 11166, subd. (j). (*Id*. at *8-11.) "Holman argues that when social workers receive a mandated report of suspected child abuse, section 11166, subdivision (j), imposes a *mandatory* duty to cross-report the alleged abuse to law enforcement and other agencies. We agree." (*Id.* at *8, italics in original.)

The *Holman* court noted that the California Supreme Court in *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168 had analyzed a closely related issue, namely whether the sheriff had a mandatory duty to cross-report suspected child abuse to the county child welfare agency under section 11166, subdivision (k), and found that it did. (*Holman, supra*, at *9, citing B.*H. v. County of San Bernardino, supra*, at p. 182.) "The Supreme Court additionally held that the determination of whether a reported incident involves child

abuse or neglect is a mandatory, not a discretionary, function. It explained: 'The term "child abuse or neglect" is clearly defined. [Citations.] Although in some instances it may require the exercise of judgment to identify whether a report involves child abuse or neglect, *such a determination does not involve the exercise of discretion*. Deciding if conduct falls into a defined category does not require the consideration of a host of potentially competing factors that is the hallmark of discretion." (*Holman, supra,* at *9, quoting *B.H., supra*, at 181, some citations omitted.)

"The California Supreme Court found further support for its conclusion in the legislative history of CANRA, noting that it reflects a legislative intent 'to rectify the problem of inadequate child abuse reporting by mandating [reciprocal] cross-reporting between law enforcement and child welfare agencies.' The court quoted committee hearing testimony that the legislation was intended to require ' "alternative reporting in the sense that ... if the police gets the report first, ... they immediately advise [child welfare services], and vice [v]ersa. If [child welfare services] gets it, they immediately advise the police."' The court also quoted with approval the following passage from *Planned Parenthood, supra*, 181 Cal.App.3d at pages 259-260, 226 Cal.Rptr. 361: ' "The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa."'" (*Ibid,* quoting *B.H., supra,* at p. 183, some citations omitted.)

"We find that the construction placed upon section 11166 by our Supreme Court in *San Bernardino, supra*, 62 Cal.4th 168, 195 Cal.Rptr.3d 220, 361 P.3d 319, applies to this case and controls the outcome. The California Supreme Court's opinion makes clear that, in general, the duty to cross-report is triggered by receipt of a mandated child abuse report, since such reports are made only when the mandated reporter 'knows or reasonably suspects' a child has been the victim of child abuse or neglect. Although 'in some instances' the agency may need to exercise 'judgment' to identify whether a particular report involves child abuse or neglect, 'such a determination does not involve the exercise of discretion.'" (*Id.* at *10, quoting *B.H., supra*, at pp. 181, 185, some citations omitted.)

Here, plaintiff has alleged that the County had a mandatory duty to report the suspected abuse under Penal Code section 11166, among other statutes. (See Complaint, ¶¶ 21, 66.) She also alleges that the County's social worker failed to take any action to prevent the abuse, despite the fact that she had told the social worker that she was being abused. (*Id*. at ¶¶ 28, 29.) As a result, the perpetrator continued to sexually abuse plaintiff. (*Id*. at ¶ 29.) While plaintiff has not expressly alleged that the social worker failed to report the abuse to the police, she does allege that the social worker failed to "take any action to prevent" the abuse, which would necessarily include a failure to report the abuse to the police. Therefore, plaintiff has adequately alleged that the County failed to carry out its mandatory duty under Penal Code section 11166(j) to report the abuse to the police. Since she has alleged that the County failed to carry out its mandatory duty, plaintiff has adequately alleged her claim for negligence against the County and the court intends to deny the motion for judgment on the pleadings.

The County has also argued that plaintiff has not alleged a valid cause of action for negligence against it because she has not alleged that she filed a timely claim with

the County within six months of the alleged abuse, nor has she alleged that she filed a petition for relief from the claims filing requirement within one year of the abuse. (Gov. Code, §§ 911.2; 911.8, 946.6.) As the County points out, failure to file a timely claim or obtain relief from the claims filing requirement bars a plaintiff's claim against a public entity because the filing of a timely claim is an element of the cause of action. (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1119-1120.) Therefore, the County concludes that plaintiff's complaint is barred by her failure to comply with the claims filing requirement.

However, as the County acknowledges, in 2019 the Legislature passed Assembly Bill 218, which took effect on January 1, 2020. AB 218 opened a three-year window for plaintiffs to file suit for childhood sexual abuse, regardless of how long ago the abuse occurred. More importantly for the purposes of the present case, AB 218 removed the claims filing requirement for all childhood sexual abuse claims, and made that change retroactive to all such claims. (Gov. Code, § 905, subds. (m), (p).) Therefore, under the amended language of section 905(m), plaintiff is no longer required to file timely claim before bringing suit against the County for her childhood sexual abuse claim.

Nevertheless, the County argues that the court should find that plaintiff was still required to comply with the claims filing requirement because AB 218 is unconstitutional as it constitutes a gift of public funds in violation of the "gift clause" of the California Constitution. (Cal. Const., art. XVI, § 6.) The County contends that AB 218 constitutes a gift of public funds because it created a new liability that did not previously exist at the time that plaintiff was injured, and therefore it is unconstitutional.

"Section 6 of article XVI of the California Constitution provides that the Legislature has no power 'to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation ....' The term 'gift' in the constitutional provision 'includes all appropriations of public money for which there is no authority or enforceable claim,' even if there is a moral or equitable obligation. 'An appropriation of money by the legislature for the relief of one who has no legal claim therefor must be regarded as a gift within the meaning of that term, as used in this section, and it is none the less a gift that a sufficient motive appears for its appropriation, if the motive does not rest upon a valid consideration.'" (*Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450, citation omitted.)

However, the Court of Appeal recently considered the same argument raised by the County here and rejected it. In *West Contra Costa Unified School District v. Superior Court* (2024) 103 Cal.App.5th 1243, the First District Court of Appeal held that AB 218's retroactive removal of the claims filing requirement for childhood sexual abuse claims was not an unconstitutional gift of public funds, and thus the plaintiff was not required to comply with the claims filing requirement before filing her complaint against the District. "As we explain, waiver of the claim presentation requirement did not constitute an expenditure of public funds that may be considered a 'gift' because AB 218 did not create new 'substantive liability' for the underlying alleged wrongful conduct. Instead, AB 218 simply waived a condition the state had imposed on its consent to suit. (*Id.* at p. 1257, citations and footnote omitted.)

"Under the GCA, the claims presentation requirement is not part of the District's substantive liability, so retroactive waiver of the requirement does not 'create any liability or cause of action against the state where none existed before.'" (*Id*. at pp.1259–1260, citation omitted.) "Government Code section 905.8 states, 'Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.' The associated California Law Revision Commission comment explains that this section 'makes clear that the claims presentation provisions do not impose substantive liability; some other statute must be found that imposes liability.'" (*Id.* at p. 1260, citations and footnote omitted.)

"At the time of the alleged sexual misconduct (and today), Government Code section 820, subdivision (a) provided that 'a public employee is liable for injury caused by his act or omission to the same extent as a private person,' and Government Code section 815.2, subdivision (a) provided that 'A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.' The District does not dispute that those statutes impose liability for the type of conduct alleged in the present case." (*Id.* at p. 1260, citations omitted.) "As relevant in the present case, it is clear the claim presentation requirement is a condition on the state's consent to suit, and not an aspect of the state's substantive liability." (*Id.* at p. 1261.)

"Accordingly, the GCA itself makes clear that the District's substantive liability existed when the alleged wrongful conduct occurred; timely presentation of a claim was a condition to waiver of government immunity, but it was not necessary to render the underlying conduct tortious. Because a statute imposing liability on the District existed at the time of the sexual assaults, AB 218 imposes no new substantive liability under *Chapman*'s gift clause analysis." (*Ibid*.) In addition, the Court of Appeal held that, even if AB 218 falls within the scope of the gift clause, it serves a public purpose and thus it does not violate the gift clause. (*Id*. at p. 1265.)

Thus, the Court of Appeal's lengthy and well-reasoned decision in *West Contra Costa* clearly holds that AB 218 does not violate the gift clause and is not unconstitutional. While the County urges this court not to follow the holding of *West Contra Costa*, this court is obligated to follow the holding of the Court of Appeal on this issue under the doctrine of *stare decisis*. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455.)

Even if this court had a choice, it would still follow the holding of the Court of Appeal here, as the *West Contra Costa* court's reasoning is persuasive and compelling. AB 218's removal of the claims presentation requirement did not create a new substantive liability that did not exist at the time plaintiff's claim accrued, as plaintiff had the right to sue the County for the personal injuries she suffered as a result of the sexual abuse she suffered from 1996 to 1999. While she was required to comply with the claims filing statute at the time the claim accrued, the claims filing statute does not create separate substantive liability, but only imposes a separate procedural step that must take place before the plaintiff could sue the County. (*West Contra Costa, supra*, at pp. 1260-1261.) Therefore, removing the claims filing requirement did not create a new substantive liability that did not previously exist. It simply removed one additional procedural step

that plaintiffs have to take before filing suit. As a result, AB 218 does not violate the gift clause, and the court intends to deny the motion for judgment on the pleadings.

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 6/3/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re:	***Sally Marmolejo v. City of Kerman*** Superior Court Case No. 22CECG00394
Hearing Date:	June 5, 2025 (Dept. 503)
Motion:	Defendant City of Kerman's Demurrer to the Second Amended Complaint

Tentative Ruling:

To sustain the demurrer to the third and fourth causes of action, with leave to amend. Plaintiff is granted 10 days' leave to file the Third Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

Statutory Basis

Public entities are not liable for injuries from an alleged act or omission except where provided by statute. (Gov. Code, § 815; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438.) Claims against public entities must be specifically pled. (*Brenner v. City of El Cajon, supra*, 113 Cal.App.4th at p. 439.) Here, the Second Amended Complaint ("SAC") fails to allege the statutory basis for Plaintiff's allegations against the City of Kerman. The Court sustains the demurrer on this basis, with leave to amend as to the statutory basis for the third and fourth causes of action.

Dangerous Condition of Public Property

Plaintiff has clarified that the causes of action alleged against Defendant City are based on Government Code section 835. Government Code section 835 provides the statutory basis for a claim of a dangerous condition on public property. (Gov. Code, § 835; *Brenner v. City of El Cajon, supra*, 113 Cal.App.4th at p. 438.) The elements for a dangerous condition on public property are: "(1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury;

(3) the condition created a foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition in sufficient time to have taken measures to protect against it." (*Brenner v. City of El Cajon, supra*, 113 Cal.App.4th at p. 439.) A dangerous condition is one that creates a substantial risk of injury when used with due care. (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230.)

A dangerous condition may exist where public property is "physically damaged, deteriorated, or defective" in a way which is foreseeably dangerous. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.) It may also exist arising from the "design or *location* of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use." (*Id*. a p. 149, emphasis in original.) A plaintiff must allege a physical characteristic of the property, but the location of the property may be the qualifying characteristic. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 759.)

Third-party conduct which is unrelated to the condition of the property does not constitute a dangerous condition. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1134.) Here, while third-party conduct is alleged, it is alleged with regards to the condition of the property. (SAC, ¶ 41.) For example, the SAC alleges that the City failed to maintain a red curb meant to assist with enforcing ordinances the City adopted in an effort to make this portion of the road safe. (Ibid.) As such, a physical characteristic of the property has been alleged as deteriorated.

Defendant argues that the complaint relies on allegations that the City failed to exercise its policing powers. The court in *Zelig* did note that a police function, there screening the public for weapons, was not related to the physical condition of the property. (*Zelig v. County of Los Angeles, supra*, 27 Cal.4th at p. 1137.) Here, it is alleged the City made efforts to make a particular stretch of road more safe, utilizing both policing powers and altering the physical condition of the property. (SAC, ¶¶ 39-41.) At demurrer, the Court will not be evaluating this interplay of policing powers and the physical characteristics of the property. The Court does not sustain demurrer on this basis.

Leave to Amend

Defendant requests the Court not allow Plaintiff to amend her pleadings, asserting this would be a second attempt to amend. The Court would note that the case initially included Defendant City as a defendant, but the parties stipulated to dismiss the City, without prejudice. (Stipulation for Dismissal, January 24, 2024.) After discovery, Plaintiff sought leave to amend to, among other things, assert causes of action against Defendant City. Leave was granted. (Minute Order, January 8, 2025.) As such, this is the first time causes of action alleged against the City have truly been at issue. The Court will permit Plaintiff to amend the pleadings.

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 6/3/2025.
(Judge's initials) (Date)