Tentative Rulings for August 13, 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.***

22CECG03449 ***Orozco v. Employnet, Inc.*** **(Dept. 503)**

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: ***Vu v. State of California***
Case No. 21CECG02409

Hearing Date: August 13, 2025 (Dept. 503)

Motion: Defendant Employment Development Department's Motion to Compel Plaintiff's Deposition

Tentative Ruling:

To deny defendant EDD's motion to compel plaintiff's deposition, and its request for monetary sanctions against plaintiff and her attorney.

Explanation:

Defendant moves to compel plaintiff's deposition under Code of Civil Procedure section 2025.450, subdivision (a), which provides that, "If, after service of a deposition notice, a party to the action … without having served a valid objection under Section 2025.410, fails to appear for examination, … the party giving the notice may move for an order compelling the deponent's attendance and testimony..." (Code Civ. Proc., § 2025.450, subd. (a).) "The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., § 2025.450, subd. (b)(2).)

In addition, "[o]n motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of that party and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(2).)

Here, defendant has failed to meet its burden of showing that plaintiff failed to appear for her deposition after being served with notice of the deposition date. Defendant served plaintiff with a notice of deposition setting the deposition for May 19, 2025. (Curran decl., ¶ 5.) Plaintiff did not object to the notice, but she did request a Vietnamese interpreter on May 12, 2025, one week before the deposition date. (*Id*. at ¶¶ 5, 6.) Defense counsel objected to this request, as he claimed that plaintiff is fluent in English. (*Id*. at ¶ 6.) He also claimed that he was unable to locate a Vietnamese interpreter on such short notice. (*Ibid*.) Plaintiff's counsel did not withdraw the request for an interpreter, but he did offer to allow the deposition to begin without an interpreter, and "if a problem develops where an interpreter is needed, we can stop the deposition." (*Ibid*.) Defense counsel then cancelled the May 19 deposition, as he concluded that

there was no point in travelling to Fresno to attend the deposition if plaintiff's counsel was just going to stop it for lack of an interpreter. (*Ibid*.) Defense counsel told plaintiff's counsel by email on May 16, 2025 that the deposition was cancelled. (*Ibid*.) Nevertheless, plaintiff and her attorney appeared at the deposition site on May 19, 2025. (*Id*. at ¶ 8.)

Therefore, the evidence shows that plaintiff did not fail to appear for her noticed deposition on May 19, 2025. In fact, she did appear at the deposition site as scheduled, even though defense counsel had notified plaintiff's counsel that the deposition was cancelled. Since the last noticed deposition, defendant has not served any new deposition notices, and plaintiff has not failed to appear for any noticed deposition.

Because plaintiff did not fail to appear for her deposition, defendant is not entitled to an order compelling her to appear under section 2025.450(a). Nor is defendant entitled to an order imposing sanctions on plaintiff for her failure to appear, as she did not fail to appear. As a result, the court intends to deny the motion to compel plaintiff's deposition, as well as the request for sanctions against plaintiff and her counsel.

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 8/5/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re:	***Ventresca v. Shannon, et al.*** Superior Court Case No. 23CECG05173
Hearing Date:	August 13, 2025 (Dept. 503)
Motion:	(1) by West Coast Arborists, Inc. for Summary Judgment, or Alternatively, Summary Adjudication (2) by City of Fresno for Summary Judgment, or Alternatively, Summary Adjudication

Tentative Ruling:

To grant Defendant West Coast Arborists, Inc.'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.

To deny Defendant City of Fresno's motion for summary judgment. To deny the motion for summary adjudication of issues one and two. To elect to treat the motion for summary adjudication of issue three as one for judgment on the pleadings, and to grant the motion for judgment on the pleadings as to causes of action three and four in favor of the City of Fresno. Plaintiff is granted 15 days leave to file the First Amended Complaint, which will run from service by the clerk of the minute 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 (1) Liability for Dangerous Condition of Public Property pursuant to Government Code section 835, (2) Vicarious Liability for the Wrongful Acts or Omissions by Public Entity Employees and/or Retention of Unfit Employee pursuant to Government Code section 815.2, (3) Premises Liability and (4) Negligence against defendants City of Fresno and West Coast Arborists, Inc.

As the moving party, a defendant bears 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.)

Motion by West Coast Arborists, Inc.

Defendant West Coast Arborists, Inc. ("WCA") move for summary judgment, or alternatively summary adjudication of each cause of action against it, on the basis that it is a corporation not liable to plaintiff for violations of the Government Code as alleged (Issues 4 and 5), and that it owed no duty to plaintiff to support the causes of action for negligence or premises liability (Issues 2 and 3).

Plaintiff's opposition offers to dismiss the first and second causes of action alleging violations of the Government Code against WCA but has not done so. Given this representation and the absence of argument as to the application of the Government Code against the defendant corporation, plaintiff appears to concede that defendant WCA is not liable to plaintiff for the violations alleged in the first and second causes of action.

In support of summary judgment and summary adjudication, WCA submits the same sixteen undisputed material facts. WCA argues that it is undisputed that it did not own or legally possess the parkway where the incident occurred. (UMF No. 5.) Further, WCA asserts it is undisputed that it was contracted to perform tree work by the City of Fresno and was not authorized to perform tree-related services without prior authorization to do so from the City. (UMF Nos., 6-9.) With respect to the tree stump alleged to have caused plaintiff to trip, WCA asserts it was not asked by the City to perform services related to the tree and did not perform services related to the tree at any time. (UMF Nos. 12-13.) The defendant's material facts are supported with the declaration of Jason Pinegar, Vice President of Operations for WCA. Plaintiff's objections nos. 1 through 6 to the declaration are overruled. The court finds defendant WCA has met its burden as the moving party.

Plaintiff disputes WCA lacked control of the subject parkway such that it can be liable for the condition of the premises. (Plaintiff's response to UMF 4.) Plaintiff cites to defendant performing trimming services for other trees in the area and asserts the contract between WCA and the City requires WCA to perform an inspection and report problems to the City. Plaintiff relied upon the opinion of its expert, Zachary Moore, a licensed Mechanical Engineer and Forensic Engineer, who opines these facts support finding WCA knew or should have known of the existence of the stump and the risk it posed to pedestrians. (Plf SOE, Exh. D, Moore Decl., ¶ 13.) Defendant's objection to the Moore declaration is sustained, as Mr. Moore's expertise as an engineer does not provide foundation for his opinions regarding WCA's knowledge of the stump. (WCA Reply Obj. No. 4.) Moreover, the plaintiff's repetition of the facts set forth in Mr. Pinegar's declaration regarding the scope of work authorized in its contract with the City does not support finding WCA had control of the subject parkway. Rather, WCA's activities and presence in the area are controlled by the City of Fresno pursuant their contract.

Plaintiff additionally disputes defendant's assertion that it owed no duty to plaintiff, a member of the public. However, the duties of WCA with respect to any tree it services are controlled by the contract with the City of Fresno. (UMF Nos., 6-9.) Plaintiff again relies upon repetition of the facts asserted by defendant and the declaration of Zachary Moore, to which defendant's objection was sustained. Neither plaintiff's evidence nor arguments demonstrate the existence of a dispute of fact as to whether WCA owed a

duty to plaintiff outside of its contractual duties owed to the City of Fresno. (UMF Nos. 6-9, 12-13.)

Accordingly, the court intends to grant WCA's motion for summary judgment.

Motion by City of Fresno

Defendant City of Fresno moves for summary judgment of plaintiff's complaint, or alternatively summary adjudication of each cause of action alleged against the City on the basis that the alleged tree stump was a trivial defect of which the City had no notice. The City additionally argues the third and fourth causes of action alleging common law claims of general negligence and premises liability do not allege a required statutory violation to support the cause of action.

As an initial matter, the court notes that the notice of notion and separate statement do not comply with California Rule of Court, rule 3.1350 requiring the issues for summary adjudication to be set forth in the notice of motion and repeated verbatim in the separate statement. (Cal. Rules of Court, rule 3.1350(b).)

The City asserts it is entitled to summary judgment as the alleged tree stump in the parkway should be considered a trivial defect as a matter of law. (UMF No. 14.) The City supports its argument with measurements and descriptions of the height of the stump from the ground as compared to sidewalk height differentials found by courts to have been trivial defects. (*Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927; *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74; *Nicholson v. City of Los Angeles* (1936) 5 Cal. 2d 361.)

The trivial defect rule is codified at Government Code section 830.2: a claimed defect on public property is not a dangerous condition where the trial or appellate court views the evidence in the light most favorable to the plaintiff and determines as a matter of law that the risk created by the condition "was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used." This allows the issue to be tested by a motion for summary judgment.

> '[W]hen a court determines whether a given defect is trivial, as a matter of law, the court should not rely merely upon the size of the depression. While size may be one of the most relevant factors to the decision, it is not always the sole criteria. Instead, the court should determine whether there existed any circumstances surrounding the accident which might have rendered the defect more dangerous than its mere abstract depth would indicate. As such, the court should view the intrinsic nature and quality of the defect to see if, for example, it consists of the mere nonalignment of two horizontal slabs or whether it consists of a jagged and deep hole. The court should also look at other factors such as whether the accident occurred at night in an unlighted area. Furthermore, the court should see if there is any evidence that other persons have been injured on this same defect.'

[]

Moreover, ' "[a]s to what constitutes a dangerous or defective condition no hard and fast rule can be laid down, but each case must depend upon its own facts." (Citation.)'

(*Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 26-28, quoting *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 734.)

Here, the City's analysis of the height differential between the tree stump and the ground taken with the evidence that the incident occurred in the daylight with no obstructions to plaintiff's view may be adequate for trivial defect analysis for a raised sidewalk but the court finds it is not sufficient to demonstrate the defect alleged in the complaint should be considered a trivial defect. The nature of the defect as a tree stump in a grassy parkway could be more dangerous than its height alone would indicate. Accordingly, the court finds the City of Fresno has not met its burden in moving for summary judgment or summary adjudication of the first and second causes of action.

Defendant's third issue for adjudication asserts the third and fourth causes of action fail against the City because there is no statutory basis for liability pled in the common law claims for premises liability and negligence. The third issue for adjudication also relies upon finding the alleged defect is trivial. (UMF No. 36.) However, the grounds for adjudication are a challenge to the third and four causes of action as pled against the City, rather than a challenge to plaintiff's ability to prove these common law torts. As such, the court intends to treat the motion for summary adjudication of issue 3, seeking summary adjudication of the third and fourth causes of action, as one for judgment on the pleadings.

A motion for summary judgment necessarily tests the sufficiency of the pleadings, and thus its legal effect is the same as a demurrer or a motion for judgment on the pleadings. (*See Yancey v. Superior Court* (1994) 28 Cal. App. 4th 558, 561-62; *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.) Therefore, if the court concludes the complaint (or any claim or defense) is insufficient as a matter of law, it "may elect to treat the hearing of a summary judgment motion as a motion for judgment on the pleadings and grant the opposing party an opportunity to file an amended complaint to correct the defect." (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 624, disapproved of on other grounds by *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019.) But leave to amend will not be granted where all possible facts have been alleged and it can be determined as a matter of law that no cause of action exists. In such cases, a summary judgment motion is properly treated as a motion for judgment on the pleadings, and may be granted without leave to amend. (*Hansra v. Superior Court* (1992) 7 Cal.App.4th 630, 647.)

When a motion for summary judgment or adjudication is used to test whether the complaint states a cause of action, the court must accept the allegations of the complaint as true, and does not consider facts alleged in opposing declarations. (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1118.) Since the ruling is made on the pleadings only, all evidentiary objections are moot.

In the case at bench, the third and fourth causes of action do not state a cause of action against the City as neither pleads a statutory basis for the City's liability. (Gov.

Code §815.) The court therefore grants the motion for judgment on the pleadings as to the third and fourth causes of action in favor of defendant, with plaintiff granted 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 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 8/11/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***2SKEBENGAS v. Pacific Grain & Foods, LLC***
Superior Court Case No. 23CECG05130

Hearing Date: August 13, 2025 (Dept. 503)

Motion: By Petitioner 2SKEBENGAS Co. for Relief under Code of Civil Procedure section 720.110 *et seq.* x2

Tentative Ruling:

To take off calendar as moot.

Explanation:

Petitioner 2SKEBENGAS Company ("Petitioner") seeks relief under Code of Civil Procedure section 720.110 *et seq.*, not as a third-party claimant, but to determine third-party claims as to certain real property upon which it seeks to execute its judgment. On May 13, 2025, Petitioner filed the instant two petitions seeking determination of the putative claims of respondents Murphy Bank, and Schrupp LLC. On May 28, 2025, each of the respondents filed an opposition. On June 3, 2025, Petitioner filed reply briefs as to each respondent.

On July 31, 2025, hearings on the petitions occurred, for which the court issued tentative rulings. As no party requested argument, the tentative rulings were adopted as order of the court. Accordingly, the present hearing is moot, and is ordered 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 8/12/2025 (Date).