Tentative Rulings for August 20, 2025
Department 502

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

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.***

24CECG00695 ***Skyrun, LLC v. Oracio Saiz, Jr.***

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 502

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(03)

Tentative Ruling

Re: ***Shank v. Ono Hawaiian BBQ, Inc.***
Case No. 24CECG01869

Hearing Date: August 20, 2025 (Dept. 502)

Motion: Plaintiff's Motion for Final Approval of Class Settlement

Tentative Ruling:

To grant plaintiff's motion for final approval of class settlement.

Explanation:

1. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, the court has already made a preliminary determination that the settlement is fair and reasonable. Since the last hearing, nothing has occurred that would change the court's determination. In fact, notice has been provided to the class through publication in USA Today, and no class members have objected or asked to be excluded from the class. Thus, the court intends to find that the settlement is fair, adequate, and reasonable.

2. Attorney's Fees and Costs

The court has already made a preliminary determination that the requested attorney's fees are fair, adequate, and reasonable in its order granting preliminary approval of the settlement, and nothing has changed since the court made its order that would change that finding. Plaintiff's counsel will receive $62,500 for fees and costs from defendant if the settlement is approved. The amount of attorney's fees and costs does not appear to be unreasonable, especially since it will not reduce the overall amount paid to the class. Also, counsel has provided a declaration summarizing the hours worked on the case and the attorneys' hourly rates, which states that counsel's total lodestar fees are over $78,000. As a result, the fees that counsel will receive through the settlement appear to be reasonable, as they are actually less than their lodestar fees. In addition, no class members have objected to the requested fees, which further supports a finding

that the fees are reasonable. Therefore, the court intends to grant final approval of the requested fees and costs.

3. Payment to Class Representative

The named plaintiff will receive a $1,500 payment under the settlement. Again, the court has already made a preliminary determination that the incentive payment is reasonable, and nothing has happened since the court made its order that would cause the court to change its determination. In fact, the lack of objections from the class tends to support the court's conclusion that the amount of the incentive award is reasonable. As a result, the court intends to grant final approval of the incentive award to plaintiff.

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: KCK on 08/19/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Samcha LLC v. City of Fresno***
Superior Court Case No. 24CECG03168

Hearing Date: August 20, 2025 (Dept. 502)

Motion: Demurrer to Second Amended Complaint

Tentative Ruling:

To sustain the City of Fresno's demurrer to the fourth cause of action. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiff is granted 15 days leave to file the Third Amended Complaint. The time in which the complaint may be amended will run from service of the order by the clerk.

Explanation:

Defendant City of Fresno demurs to the fourth cause of action of the second amended complaint alleging trespass. As pled, the statutory basis for the City's liability is Government Code sections 815.2 and 815.4, which provide for vicarious liability of the City for tortious acts or omissions of its employees or independent contractors (hereinafter cumulatively "City workers") within the scope of their employment where such acts or omissions would give rise to a cause of action against that employee or contractor. (SAC, ¶¶ 60-62.) Although referenced in the opposition as a basis for liability, Government Code section 821.8 is not alleged as a basis of for the City's or its employees' liability to plaintiff in the second amended complaint. The inclusion of such allegations would not avoid the court sustaining the demurrer.

Government Code section 821.8 states, "A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law. Nothing in this section exonerates a public employee from liability from an injury proximately caused by his own negligent or wrongful act or omission."

Plaintiff alleges City employees entered onto plaintiff's property during the construction of the public sidewalk abutting its property and that the City employees were negligent in the construction, maintenance, and repair of the property (SAC ¶ 17) and negligent in the repair, maintenance and construction of the abutting sidewalks (SAC ¶ 25) resulting in water damage to the property. (SAC ¶¶ 16-18, 25, 56-57.) The factual basis for the alleged negligent acts or omissions of the City workers are the same acts or omissions alleged to have created the dangerous condition of public property in the first cause of action for which the workers are not liable. (Gov. Code § 840.)

Although plaintiff has now alleged an entry on to its property by defendant City workers, the acts or omissions during the sidewalk construction creating the conditions allowing water to invade plaintiff's property do not support a cause of action for negligence against the City workers. The City workers are not liable for acts or omissions

within the scope of their employment creating the condition of the public property that is alleged to have caused plaintiff's water damage. (Gov. Code §840.) No cause of action for vicarious liability is stated against the City where there is no cause of action against a City worker.

Plaintiff has not alleged acts or omission of the City workers outside of the sidewalk construction to support the cause of action for trespass. Neither has plaintiff alleged facts that would support finding the City workers were not authorized to be present on the property during construction of the adjacent sidewalk. As a result, the demurrer is sustained, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

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: KCK on 08/19/25.
(Judge's initials) (Date)