

Tentative Rulings for September 15, 2026
Department 501

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.

25CECG04455	<i>Michael Quick v Genuine Parts Company</i> is continued to Tuesday, October 20, 2026 at 3:30 p.m. in Department 501
25CECG04965	<i>Asa Baker v ABC Cooling & Heating Services LLC</i> is continued to Tuesday, October 20, 2026 at 3:30 p.m. in Department 501
26CECG00745	<i>John Hovanissian v Fresno Mechanical and Services Inc.</i> is continued to Tuesday, October 27, 2026 at 3:30 p.m. in Department 501

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Tentative Rulings for Department 501

Begin at the next page

(47)

Tentative Ruling

Re: **A. M. v. Fresno Unified School District**
Superior Court Case No. 22CECG02656

Hearing Date: September 15, 2026 (Dept. 501)

Motion: Defendant Fresno Unified School District's Motion for Summary Judgment and/or Summary Adjudication

Tentative Ruling:

To deny defendant Fresno Unified School District's motion for summary judgment and/or summary adjudication.

Explanation:

This case arises from the alleged sexual assault of plaintiff A.M. ("plaintiff"), then a student within Fresno Unified School District ("FUSD"), by defendant Maximo Parayno III ("Parayno" or "defendant"), then employed by FUSD and assigned to Vinland Elementary School ("Vinland"), a school operated by FUSD. (Undisputed Material Fact ("UMF") No. 1.) Plaintiff alleges Parayno sexually assaulted her once in 2002, while Parayno and plaintiff were in Parayno's classroom. (UMF No. 2.)

Plaintiff's First Amended Complaint ("FAC") alleges four causes action: (1) Negligence (against FUSD); (2) Negligence (against DOES 2 through 25); (3) Negligent Hiring, Retention, and Supervision (against FUSD); and (4) Negligent Hiring, Retention, and Supervision (against DOES 2 through 25). FUSD now moves the court for summary judgment or, alternatively, summary adjudication, on grounds no triable issues of material facts exist as to the two negligence causes of action against FUSD.

A defendant moving for summary judgment or summary adjudication has met his or her burden of showing that a cause of action has no merit if he or she shows one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (Code Civ. Proc., §437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense. (*Ibid.*) A cause of action has no merit if either (1) one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded; or (2) a defendant establishes an affirmative defense to that cause of action. (Code Civ. Proc., § 437c, subd.(o).)

FUSD's Objections

Objections 15, 16, 18, 19 20 - Overruled

FUSD objects to and moves to strike various documents that comprise Exhibit F to plaintiff's counsel's declaration:

- Objection 15 - Exhibit F at Bates Nos. FUSD.AM.000070-000071 (pages 309-310 of the Felton Decl.) referred to as "FUSD Letter to Parayno Produced by Defendant" in support of PAMF Nos. 15 and 18.
- Objection 16 - Exhibit F at Bates No. FUSD.AM.000072 (page 311 of the Felton Decl.) referred to as "Email to Parayno Produced by Defendant" in support of PAMF No. 15.
- Objection 18 - Exhibit F at Bates No. FUSD.AM.000425 (page 385 of the Felton Decl.) referred to as "Letter on Impermissible Field Trips Produced by Defendant" in support of PAMF No. 15.
- Objection 19 - Exhibit F at Bates Nos. FUSD.AM.000090-000102 (pages 316-329 of the Felton Decl.) referred to as "FUSD Resolution Formulating Charges Produced by Defendant" in support of PAMF No. 15.
- Objection 20 - Exhibit F at Bates Nos. FUSD.AM.000348-000349 (pages 383-384 of the Felton Decl.) referred to as "Letter on Impermissible Field Trips Produced by Defendant" in support of PAMF No. 20.

FUSD argues that each of the proffered documents are inadmissible hearsay and multiple hearsay (Evid. Code., §§ 1200, 1201), and are unauthenticated. (Evidence Code §§ 1400, 1401.)

Plaintiff contends that the documents in Exhibit F are not properly authenticated, citing *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 855, ("*Serri*"). Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (Evid. Code, § 1400.) First, these documents were produced by FUSD and purport to have been prepared by FUSD or its agents. (Felton Decl., ¶18.) Second, *Serri* is inapplicable.

The *Serri* appellate court excluded "dozens" of exhibits consisting of "handwritten notes by unidentified authors," agreeing with defendants that " '[n]ot every document that comes out of an opposing party's files is automatically admissible even against that party, much less as to all others'" (*Serri, supra*, 226 Cal.App.4th at p. 855.) However, the limits of *Serri*'s holding is demonstrated in *Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323 ("*Hooked Media*");

Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (Evid. Code, § 1400.) Relying on *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 855, 172 Cal.Rptr.3d 732, *Hooked* asserts that Apple's evidence was not adequately authenticated by a sworn statement from Apple's counsel that the documents were produced by *Hooked* and third parties during discovery. But *Serri* did not hold that an attorney's declaration that documents were obtained through discovery can never suffice for authentication. Rather, *Serri* found such a declaration

inadequate because the documents at issue were unsigned handwritten notes, and there was no evidence indicating they were written by the person the proponent claimed. (*Ibid.*) The documents here are much different. They are mostly e-mails bearing clear indicia that they are what Apple claims they are.

Hooked Media, supra, 55 Cal.App.5th at 337–338.

As in *Hooked Media*, the documents challenged by FUSD are clearly what they purport to be: letters and emails by FUSD's own personnel pertaining to defendant Parayno. As such, they have been properly authenticated by plaintiff's counsel's declaration.

Furthermore, hearsay is “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).) A statement is not hearsay if offered for a purpose other than to prove the truth of the matter, i.e., to show only that the statement was made or to show a certain effect on the hearer or reader. (See *Taylor v. Centennial Bowl, Inc.* (1966) 65 Cal.2d 114, 125 [Bowling alley's request for police assistance admissible to show its knowledge of violence on premises].)

Here, the challenged evidence shows that FUSD had notice of prior allegations against Parayno, had placed Parayno under a number of restrictions as a result, and that Parayno did not comply with these directives. Specifically, FUSD was on notice that Parayno was reported to have been alone with a female student in his classroom, and continued to take students off campus.

FUSD Failed to Meet its Burden with Respect to Negligence

Under Civil Code section 815, public entity tort liability is exclusively statutory. Plaintiff seeks to hold FUSD liable pursuant to Civil Code section 815.2, which provides 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.”

It is undisputed that FUSD owed plaintiff a duty of care. FUSD's argument is that it met its standard of care by adequately providing the requisite supervision of Parayno:

Here, because Parayno's alleged abuse of Plaintiff is outside source and scope of employment as a matter of law (see *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438), **FUSD's liability in this case, if any, must arise from the negligent hiring, training, supervising and/or retention of Parayno.** (See *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879 [“a public school district may be vicariously liable under section 815.2 for the negligence of administrators or

supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student."].)

(Moving Papers, pg. 2:19-25 (emphasis added); see also UMF Nos. 6-9)

However, plaintiff's complaint further alleges in the first cause of action for general negligence that FUSD was negligent, not just in the supervision of Parayno, but in placing plaintiff with Parayno:

SCHOOL was negligent in the placement and supervision of Plaintiff while at SCHOOL, and in the failure to keep Plaintiff safe.

(Milton Decl., Exhibit A, ¶63.)

Here, FUSD never negated the contention it acted negligently by placing plaintiff with Parayno. Accordingly, motion for summary adjudication is denied. A defendant who seeks a summary judgment must define all of the theories of liability alleged in the complaint and challenge each factually; if the defendant fails to do so, he or she does not carry the initial burden of showing the nonexistence of a triable issue of material fact. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1165; *Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 714.)

FUSD Failed to Meet its Burden with Respect to Negligent Hiring, Retention, and Supervision

Courts have found schools owe a greater duty to protect students than the typical duty of care. "[A] school district and its employees have a special relationship with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, 'analogous in many ways to the relationship between parents and their children.' " (C.A. v. *William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 869.)

"[S]chool authorities, by the nature of their special relationship with their students, have 'a duty to supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection,' which 'includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties.' " (*D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 223.) This principle has been applied in cases of employees' alleged negligence resulting in injury to a student . . . resulting from a teacher's sexual assault. (C.A. v. *William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 870.) A school district and its employees owe a duty to protect students from a teacher's sexual abuse when they knew or should have known that the teacher posed a reasonably foreseeable risk of harm to students under his supervision. (*Id.* at 870-71.)

"Once a court determines a defendant owes a duty to a plaintiff, 'the remaining liability questions—breach as well as factual and legal causation—are usually questions for the jury.'" (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 126. ("Lawndale.") "For example, a defendant's arguments 'about specific measures it has

already taken . . . concern[] whether defendant in fact took reasonable care, a question of breach usually for the jury.' [Citations.] Similarly, 'argument[s] about specific foreseeability'—such as whether [a teacher's] sexual abuse of [a student] was foreseeable under the circumstances—'would be relevant to whether plaintiff had established proximate cause, also usually a question for the jury.' " (*Id.* at 126-27.)

A cause of action for negligent hiring, supervision, or retention of an employee requires the following elements: (1) the employer hired employee; (2) the employee was/became unfit or incompetent to perform the work for which he was hired; (3) the employer knew or should have known the employee was/became unfit or incompetent and that this unfitness or incompetence created a particular risk to others; (4) the employee's unfitness or incompetence harmed plaintiff; and (5) the employer's negligence in hiring/supervising/ retaining the employee was a substantial factor in causing plaintiff's harm. (CACI No. 426; see also *Federico v. Superior Court* (1997) 59 Cal.App.4th 1207, 1213-1214.) To establish a cause of action for negligent hiring, retention, or supervision, a plaintiff must show that the employer knew or should have known that hiring or retaining the employee created a particular risk or hazard and that particular harm occurs. (See *Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 902; *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054.) Negligent hiring, retention, or supervision is a form of direct negligence. (*Ibid.*)

FUSD argues it met the standard of care with respect to supervising Parayno. FUSD first argues that it took no adverse action against Parayno's teaching credentials after the Fresno County District Attorney declined to criminally charge Parayno for a case involving a former Vinland Elementary School student name Sarah Ochoa ("Ochoa"), who accused Parayno of sexually assaulting her in 1997-1998, three years before Parayno's alleged abuse of plaintiff, and the California Commission on Teacher Credentialing ("CTC") determined Ochoa's allegations were unfounded. Second, according to Dr. Zimring, under the Child Abuse and Neglect Reporting Act ("CANRA"), once Ochoa's allegations against Parayno were reported to law enforcement, FUSD's obligations with respect to supervising and retaining Parayno were to cooperate and assist with the investigations of the Fresno Police Department and CTC, and not to conduct an independent investigation as to whether Ms. Ochoa's claims were founded. (Milton Decl., Tab C, Zimring Decl., ¶¶ 2.c., 2.d; see also FUSD's Moving Papers, pg. 5:4-18, citing *Lawndale, supra*, 72 Cal.App.5th at 140-141.) Further, during his employment with FUSD, Parayno was evaluated five times and received formal evaluations twice a year, which is consistent with expectations of evaluating teachers during the relevant timeframe. (Milton Decl., Tab C, Zimring Decl. at ¶ 2.e.) Parayno's evaluations included FUSD personnel coming into Parayno's classroom, witnessing Parayno's work, documenting their observations, and providing feedback. (*Ibid.*) Finally, FUSD asserts that even though the Ochoa allegations were determined to be unfounded, the Vinland Elementary School administration was active in supervising Parayno following the Ochoa allegations, even to the point of admonishing Parayno to avoid even the appearance of impropriety by strict compliance with school rules and policies. (Milton Decl., Tab C, Zimring Decl., ¶¶ 2.f., 2.g.)

FUSD fails to meet its burden that there is no triable issue of fact with respect to the cause of action pertaining to negligent hiring, retention, and supervision.

First, FUSD's reliance on *Lawndale* with respect to FUSD's argument it met its standard of care by cooperating with the Fresno Police Department and CTC by not conducting an independent investigation is distinguishable. School employees are mandatory reporters who must report if they have knowledge of or reasonably suspect child abuse pursuant to the Child Abuse and Neglect Reporting Act (CANRA). (Pen. Code, § 11166, subd. (a).) The relevant portion of *Lawndale* that FUSD cites pertains to the court of appeal ruling that the trial court did not err in granting summary adjudication on Doe's cause of action for breach of the mandatory duty to report suspected child abuse, which pertains to a separate cause of action. The court in *Lawndale* found that the employees supervising the alleged perpetrator had acted appropriately for purposes of CANRA where they did not see any red flags:

The District employees who supervised Farr or observed him with Doe all testified that they never saw any interactions between Doe and Farr that caused them to suspect Farr was behaving inappropriately and that they did not learn Farr had sexually abused Doe until his arrest. The trial court ruled this evidence met the District's burden to show Doe could not prove the District breached a mandatory duty to report. Doe contends that, because CANRA provides for an objective, rather than a subjective, standard for mandated reporters, there was a triable issue of fact regarding whether District employees had a reasonable suspicion of abuse.

Lawndale, *supra*, (2021) 72 Cal.App.5th at 138.

Even though FUSD's proffered citation to *Lawndale* is distinguishable, it can't be said that there were no red flags with respect to Parayno, and FUSD's own conduct contradicts its claims that supervision of Parayno was adequate. For instance, Navarette recounted seeing a female student alone in Parayno's classroom after he had been told not to do this. She admonished him again saying: "didn't you learn anything, I sure did":

Navarette reminded S-Parayno on several occasions after the investigation not to have students in the classroom alone with him. Navarette remembers one incident when she was walking to the resource lab after school and saw several students leaving S-Parayno's classroom. Navarette went into S-Parayno's class and saw him there with one other female student who was correcting papers. Navarette couldn't remember the girl's name, but does remember [SIC] telling the girl she needed to go home. The girl told Navarette it was okay because her parents gave her permission to be there. Navarette again told the girl again to go home, at which time she left. Navarette and Larry Peterson counseled S-Parayno after this incident and remembers telling him something similar to, "didn't you learn anything, I sure did." Navarette also wrote S-Parayno a disciplinary letter for allowing the student to be in the classroom alone with him.

(Milton Decl., Tab B, Exhibit D, Navarette Depo. at 25:13-30:13 and pages 12-13 of Exhibit 1.)

Even assuming arguendo FUSD did meet its preliminary burden of establishing that it adequately hired, supervised, and retained Parayno, plaintiff's Additional Material Facts Nos.15 and 18 prevent the court from entering judgment in FUSD's favor on the third cause of action. These AMFs establish FUSD's administration issued several "write-ups" to Parayno for using inappropriate language in the classroom, for taking students off campus on field trips without written permission, and for Parayno repeatedly being alone in a classroom with a student after school. As such, it cannot be said that the questions as to whether FUSD acted reasonably with regard to Parayno and/or whether the harm to plaintiff was foreseeable should now be resolved as a matter of law. (*Lawndale, supra*, 72 Cal.App.5th at p. 126.)

Furthermore, FUSD's argument pertaining to Labor Code section 432.7 and its failure to act based solely on the Ochoa allegations are inapplicable, given the so-called admonishments Parayno received with respect to his pattern of behavior that did not necessarily involve Ochoa, and FUSD's general duty to protect other children, such as plaintiff.

Accordingly, FUSD's motion for summary judgment and/or adjudication is denied.

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 09/14/26
(Judge's initials) (Date)

(48)

Tentative Ruling

Re: **Mohammed Shareek v. Rigo Hernandez**
Superior Court Case No. 25CECG00645

Hearing Date: September 15, 2026 (Dept. 501)

Motion: By Defendants for an Order to Compel Plaintiffs' Initial Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production of Documents, Set One, and to Deem Requests for Admission Admitted; Request for Monetary Sanctions

Tentative Ruling:

To grant defendants Rigo Hernandez and Trust RH Construction's motion to compel plaintiffs Mohammed Shareek, Pirsila Tubuna, Rayan Isaac Mohammed, Ayman Moses Mohammed, and Ayan Daniel Mohammed to provide verified responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production of Documents, Set One. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300.) Plaintiffs are ordered to serve complete verified responses to the discovery set forth above, without objections, within 10 days of the clerk's service of the minute order.

To grant defendants' motion to deem requests for admissions admitted by plaintiffs. The truth of the matters specified in the Request for Admissions, Set One, are to be deemed admitted **unless** plaintiffs serve, **before** the hearing, proposed responses to the requests for admission that are in substantial compliance with Code of Civil Procedure section 2033.220.

To impose monetary sanctions in favor of defendants and against plaintiffs. (Code Civ. Proc., §§ 2030.290, subd. (c), 2031.300, subd. (c), 2033.280, subd. (c), 2023.010, subd. (d).) Plaintiff is ordered to pay \$1,200.00 in sanctions to Pascuzzi, Pascuzzi & Stoker, LLP, within 30 days of the clerk's service of the minute order.

Explanation:

Where a party fails to serve a timely response to interrogatories or request for production of documents, the propounding party may move for an order compelling response. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300, subd. (b).) In the case of requests for admission, the propounding party may move for an order that the truth of any matters specified in the requests be deemed admitted. (*Id.*, § 2033.280, subd. (b).)

A party that fails to serve a timely response to interrogatories or an inspection demand waives "any objection" to the request. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a).)

Where a party fails to timely respond to a propounding party's request for admissions, objections are waived and the court must grant the propounding party's motion requesting that matters be deemed admitted, unless it finds that the party to

whom the requests were directed has served, prior to the hearing on the motion, a proposed response that is substantially in compliance with Code of Civil Procedure section 2033.220. (Code Civ. Proc. § 2033.280; see also *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778 ("*St. Mary*").) "Substantial compliance" means compliance with respect to "every reasonable objective of the statute." (*Id.* at p. 779, internal quotation marks and citations omitted.) The responding party can move the court for relief from waiving objections by (1) serving responses in substantial compliance and (2) demonstrating that the failure to serve responses was the result of mistake, inadvertence or excusable neglect. (Code Civ. Proc., § 2033.280, subd. (a)(1) and (2).) By simply serving substantive responses to the requests for admission prior to the hearing date for this motion the court must deny the motion. (Code Civ. Proc., § 2033.280(c); see also *St. Mary, supra*, 223 Cal.App.4th at 776.)

In the case at bench, on July 10, 2026, Defendants Rigo Hernandez and Trust RH Construction, (collectively "Defendants") served Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production of Documents, Set One, and Request for Admission, Set One, on plaintiffs Mohammed Shareek, Pirsila Tubuna, Rayan Isaac Mohammed, Ayman Moses Mohammed, and Ayan Daniel Mohammed (collectively "Plaintiffs"). The parties agreed to extend the deadline for discovery responses to April 24, 2026, May 15, 2026, and May 29, 2026. However, Defendants' counsel declared that discovery responses have not been received. The instant motions to compel responses were filed on June 12, 2026. Plaintiffs did not file an opposition to Defendants' motion to compel responses. Therefore, Defendants are entitled to an order compelling Plaintiffs to respond to the discovery at issue. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300, subd. (b).) All objections are waived. (*Id.*, §§ 2030.290, subd. (a), 2031.300, subd. (a).)

Request for Admissions, Set One, was served by email to Plaintiffs on April 2, 2026. Plaintiffs failed to serve responses. No opposition has been filed demonstrating any excusable reason for Plaintiff's failure to respond to the requests for admission. As such, the court intends to grant the motion unless responses to the requests are served before the hearing on the motion.

Sanctions

Generally, conduct subject to sanctions include failing to respond or submit to an authorized method of discovery. (Code Civ. Proc., § 2023.010, subd. (d).) If a party asks for monetary sanctions against the party who failed to respond to interrogatories, the court shall impose a monetary sanction against the losing party on the motion to compel unless it finds that the one subject to the sanction acted with substantial justification or circumstances make the sanctions unjust. (*Id.*, §§ 2030.290, subd. (c), 2031.300, subd. (c).) Sanctions are similarly authorized against a party who failed to respond to a demand for inspection or production. (*Id.*, § 2031.300, subd. (c).) The court must impose a monetary sanction against the party or attorney, or both, whose failure to respond necessitated the motion to deem matters admitted. (*Id.*, § 2033.280, subd. (c).) Sanctions must be for reasonable expenses in enforcing discovery, including attorney's fees. (*Id.*, § 2023.030, subd. (a).)

The notice for the motion to compel and the motion to have requests for admissions deemed admitted each include a request for sanctions for \$810.00, and a

fee for a court call appearance for \$72.00 totaling \$3,312.00. Because the motion to compel is for initial responses, the court must order reasonable sanctions unless an exception applies. Defendants' attorney's fee rates appear to be reasonable, however, the request is inclusive of attendance of the hearing for the instant motion, which has not occurred. Also, the hours billed for the substantially similar motions is unreasonably high. Thus, Defendants are granted sanctions in the reduced amount of \$1,200.00.

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 09/14/26
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Jasmin Loza v. Rolando Sanchez***
Superior Court Case No. 24CECG00666

Hearing Date: September 15, 2026 (Dept. 501)

Motion: by Defendant Del Rey Community Service District for
Summary Judgment

Tentative Ruling:

To deny. (Code Civ. Proc., § 437c.)

Explanation:

Consideration of Evidence

Defendant Del Rey Community Service District ("DRCSD") objects to all of Plaintiffs' arguments and evidence suggesting that the incident was not intentional. On summary judgment, the moving defendant has the burden to negate only those theories of liability as alleged in the operative complaint. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1254.) DRCSD argues the First Amended Complaint ("FAC") alleges only an intentional killing theory of liability; therefore, any argument or facts supporting a negligence claim should be disregarded. However, the FAC asserts three causes of action: a wrongful death action based on motor vehicle collision against defendant Rolando Sanchez ("Mr. Sanchez") only; a survival action based on motor vehicle collision against all defendants; and an intentional tort against all defendants. While there are allegations suggesting that Mr. Sanchez's actions were intentional, the FAC also specifically alleges "the acts of defendants were negligent. . ." (FAC, PLD-PI-001(1), Item MV-1.) "[A] party may plead in the alternative and may make inconsistent allegations. . ." (*Adams v. Paul* (1995) 11 Cal.4th 583, 593.) DRCSD has the burden on summary judgment to negate elements of all causes of actions pleaded, and thus, the evidence supporting a negligence theory of liability is considered.

Next, DRCSD relies upon *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1 ("D'Amico"), to object to the entirety of Mr. Sanchez's declaration, executed on June 19, 2026, on the ground that a party opposing summary judgment "cannot create an issue of fact by a declaration which contradicts his prior" sworn testimony. DRCSD states the *D'Amico* rule too broadly.

"In *D'Amico*, the California Supreme Court declared that '[w]here a plaintiff's admissions in a deposition contradict statements in the plaintiff's affidavits opposing the summary judgment, 'the rule of liberal construction loses its efficacy and the granting or denial of the motion for summary judgment depends upon the issues of credibility. Accordingly, when a defendant can establish his defense with the plaintiff's admissions sufficient to pass the strict construction test imposed on the moving party ... , the credibility of the admissions are valued so highly that the controverting affidavits may be

disregarded as irrelevant, inadmissible or evasive.” ’ [Citations.]” (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1521, citations and italics omitted.)

“Properly applied, *D’Amico* is limited to instances where ‘credible [discovery] admissions ... [are] contradicted *only* by self-serving declarations of a party.’ [Citations.]” (*Scalf v. D. B. Log Homes, Inc.*, *supra*, 128 Cal.App.4th at p. 1521, italics in original.) “In a nutshell, the rule bars a party opposing summary judgment from filing a declaration that purports to impeach his or her own prior sworn testimony.” (*Id.*, at pp. 1522.)

The *D’Amico* rule is inapplicable here, simply because plaintiffs have not presented on their own self-serving declaration. Plaintiffs are relying upon a declaration made by a defendant, a party opponent, in this case. Although the facts asserted in Mr. Sanchez’s declaration contradicts those in his sworn testimony at his criminal trial, on summary judgment, the court may not weigh the evidence to determine which version is more likely true. Nor may a summary judgment be based on the court’s evaluation of credibility. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal. App. 4th 832, 840.) Therefore, DRCSD’s objection to the entirety of Mr. Sanchez’s declaration is overruled. DRCSD’s objections number 4-9 are similarly overruled. DRCSD’s evidentiary objection number 5 on the ground of hearsay is also overruled. The statement was not offered for the truth of the fact asserted, and rather it was made to explain why Mr. Sanchez drove to the water tank. The court does not rule on the remaining evidentiary objections, as they were immaterial to the disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).)

Summary Judgment

DRCSD moves for summary judgment on the ground that Plaintiffs cannot establish that it was vicariously liable. DRCSD contends that Mr. Sanchez was not an employee of DRCSD, and even if he was, he was not acting in the scope of his duties as a board member and/or employee at the time of the incident.

On reply, DRCSD appears to withdraw its argument on Mr. Sanchez’s employee status, and instead argues that the critical issue is whether there is a triable issue of material fact as to whether Mr. Sanchez was acting within the scope of his duties as a board member of DRCSD. Accordingly, the discussion below is limited to this issue. To the extent that DRCSD argues that Government Code section 815.3 limits vicarious liability to acts that “arose from and w[ere] directly related to the elected official’s performance of his or her official duties[.]” the statute is strictly applied only to intentional torts, and as explained above, the FAC pleads both intentional and negligent theories of liabilities.¹

¹ It is also noted that even if the court were to exclude all of plaintiff’s evidence and only consider DRCSD’s evidence, i.e., that Mr. Sanchez intentionally struck decedent and he was not acting within the scope of his official duties, regardless of DRCSD’s liability, Government Code section 815.3 would require DRCSD to remain as a party to this action in the event plaintiff elects to seek a deficiency judgment against it. (Gov’t Code, § 815.3, subds. (a), (c) [“[i]f the trier of fact determines that the elected official’s act or omission did not arise from and was not directly related to the elected official’s performance of his or her official duties, upon a final judgment, . . . the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official’s assets are insufficient to satisfy the total judgment, . . . the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity.”].)

“Whether a tort was committed within the scope of employment is ordinarily a question of fact; it becomes a question of law, however, where the undisputed facts would not support an inference that the employee was acting within the scope of his employment. [Citation.]” (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447.) An employee’s willful, malicious and even criminal tort acts may fall within the scope of employment for the purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts. (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 209.) The requirement is that there is a causal nexus. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 297-299.) Accordingly, for liability to attach to the employer, the tort must be a generally foreseeable consequence of the employee’s duties. (*Id.* at p. 299.)

“One traditional means of defining this foreseeability is seen in the distinction between minor ‘deviations’ and substantial ‘departures’ from the employer’s business. The former are deemed foreseeable and remain within the scope of employment; the latter are unforeseeable and take the employee outside the scope of his employment.” (*Moradi v. Marsh USA, Inc.* (2013) 219 Cal.App.4th 886, 901–902 (“*Moradi*”).)

“... ‘The question is often one of fact, and the rule now established is that only a substantial deviation or departure takes the employee outside the scope of his employment. If the main purpose of his activity is still the employer’s business, it does not cease to be within the scope of the employment by reason of incidental personal acts, slight delays, or deflections from the most direct route. The term “deviation” is ordinarily used to describe these minor deflections, and “departure” to describe the abandonment which takes the acts outside the scope of employment.’ ... More recently, the test was stated in this way: ‘In assessing whether an employee’s wrongful act was required by or incidental to his duties, the law defines occupational duties broadly. The fact that an employee is not engaged in the ultimate object of his employment at the time of his wrongful act does not preclude attribution of *902 liability to an employer.... For example, acts necessary to the comfort, convenience, health, and welfare of the employee while at work, though strictly personal to himself and not acts of service, do not take him outside the scope of his employment.’ ... ” (*Moradi, supra*, 219 Cal.App.4th at pp. 901–902.)

“However, under the ‘going and coming’ rule, employers are generally exempt from liability for tortious acts committed by employees while on their way to and from work because employees are said to be outside of the course and scope of employment during their daily commute. [Citations.] ” (*Lobo v. Tamco* (2014) 230 Cal.App.4th 438, 443.) Courts have recognized several exceptions to the “going and coming” rule.

“ ‘ “A well-known exception to the going-and-coming rule arises where the [employee’s] use of [his or her own] car gives some incidental benefit to the employer. Thus, the key inquiry is whether there is an *incidental benefit* derived by the employer....’ This exception to the going and coming rule ... has been referred to as the ‘required-vehicle’ exception.... The exception can apply if the use of a personally owned vehicle is either an express or implied condition of employment ..., or if the employee has agreed, expressly or implicitly, to make the vehicle available as an accommodation to the employer and the employer has ‘reasonably come to rely upon its use and [to] expect

the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment." ' [Citation.] " (*Moradi, supra*, 219 Cal.App.4th at p. 895, citations omitted.)

In *Moradi*, an employee of an insurance broker "left the office at the end of the workday and began driving in the direction of her home. She had decided that, on the way, she would stop for some frozen yogurt and take a yoga class." (*Moradi, supra*, 219 Cal.App.4th at p. 890.) On her way to the frozen yogurt shop, she collided with plaintiff motorcyclist. (*Ibid.*) The employee was required to drive to and from the office in her personal vehicle. (*Ibid.*) "On the day of the accident, the employee had used her vehicle to transport herself and some coemployees to an employer-sponsored program, and the employee had planned to use her vehicle the next day to drive to a prospective client's place of business." (*Id.*, at pp. 890-891.) The Second District Court of Appeal determined her planned stops to be a foreseeable minor deviation from her commute and that the employee was acting within the scope of her employment at the time of the accident under the "required vehicle" exception to the "going and coming" rule. (*Id.*, at p. 891.)

In the case at bench, the undisputed facts are as follows: decedent Jaime Carlos Loza was killed as a result of injuries sustained when he was struck by a 2011 black Chevrolet Tahoe operated by Mr. Sanchez on March 16, 2023. (SSMF Nos. 1, 3.) The vehicle belonged to Mr. Sanchez's wife. (SSMF No. 3.) Mr. Sanchez was found guilty of involuntary manslaughter for the killing of decedent Loza. (SSMF No. 14.) Mr. Sanchez was sworn in as a board member for DRCSD on December 17, 2020, and served as a member of its board of directors until December 6, 2024. (PSSMF No. 8.) DRCSD did not provide transportation to Mr. Sanchez. (PSSMF No. 42.) Members were required to secure their own means of transportation. (PSSMF No. 43.) Mr. Sanchez regularly drove his own personal vehicles to and from board meetings. (PSSMF No. 49.)

However, DRCSD and Plaintiffs each present evidence to suggest contradicting versions of events. According to DRCSD, Mr. Sanchez was at home immediately prior to the incident and struck the decedent on his way to purchase snacks. (UMF Nos. 4, 5.)

According to Plaintiffs, on the date of the incident, Mr. Sanchez reviewed materials in preparation for the board meeting at his home before driving to the DRCSD board meeting. (PSSMF No. 50.) Mr. Sanchez arrived at the board meeting at approximately 6:00 p.m.; however, the meeting time had changed to 7:00 p.m. due to daylight savings time, so he left. (PSSMF No. 51.) Mr. Sanchez left the board meeting site and drove to see one of DRCSD's large water tanks, because he had been informed that it had been leaking. He also went to see the adjacent recreational area that was being developed in preparation for the board meeting. (PSSMF No. 53.) Mr. Sanchez then drove back toward the board meeting, when he decided to purchase a drink and snack to eat at the board meeting. (PSSMF No. 54, 58.) Mr. Sanchez struck decedent on the way to purchase the drink and snack. (PSSMF No. 56.) Due to a mechanical defect in Mr. Sanchez's vehicle and the neuropathy in his feet, he was unable to control the vehicle and struck decedent Loza. (PSSMF No. 57.)

The evidence presented by Plaintiffs undoubtedly raises a triable issue of material fact as to whether Mr. Sanchez intentionally or negligently killed decedent Loza. Additionally, viewing the evidence most favorably to Plaintiffs, there is a triable issue of

(29)

Tentative Ruling

Re: ***In re: Michael Ledger***
Superior Court Case No. 26CU02695

Hearing Date: September 15, 2026 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition and sign the proposed orders. No appearances necessary.

The court sets a status conference for Tuesday, December 15, 2026, at 3:30 p.m., in Department 501, for confirmation of deposit of claimant's funds into the 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: KCK on 09/14/26
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***In re: Francisco Marin-Perez***
Superior Court Case No. 26CU02654

Hearing Date: September 15, 2026 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

Explanation:

The petition has not been filled in. Accordingly, the petition is denied without prejudice.

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 09/14/26.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***In re: Maria Marin-Perez***
Superior Court Case No. 26CU02657

Hearing Date: September 15, 2026 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

Explanation:

The petition has not been filled in. Accordingly, the petition is denied without prejudice.

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 09/14/26
(Judge's initials) (Date)