Tentative Rulings for January 21, 2026
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.***

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

Begin at the next page

(03)

Tentative Ruling

Re: ***Wild, Carter & Tipton v. Wood***
Case No. 24CECG05486

Hearing Date: January 21, 2026 (Dept. 502)

Motion: Plaintiff's Motion for Summary Judgment

Tentative Ruling:

To grant plaintiff's motion for summary judgment on its entire complaint against defendant Loel K. Wood. Plaintiff shall submit a proposed judgment consistent with this order within ten days of the date of service of this order.

Explanation:

Plaintiff has met its burden of showing that there are no disputed facts with regard to its breach of contract and common count claims, and that defendant has no valid defenses to its claims. (Code Civ. Proc., § 437c.) Plaintiff's evidence shows that, on April 26, 2023, defendant entered into a fee agreement with plaintiff in which he agreed to pay plaintiff to provide him with legal services in relation to three cases in which he was named as a defendant. (Gorman decl., ¶ 3.) Defendant provided a retainer payment of $5,000 at the time he signed the agreement. (*Id*. at ¶ 4.) Plaintiff sent him monthly invoices for its services rendered in all three cases. (*Ibid*.) However, while defendant made some sporadic payments, he became delinquent on the accounts. (*Ibid*.)

Eventually, defendant and plaintiff agreed to terminate the representation in July of 2024, and defendant signed a substitution of attorney form on July 29, 2024. (*Ibid*.) At the time the representation ended, defendant still owed plaintiff $85,631.60 in attorney's fees and costs for the three cases. (*Id*. at ¶ 5.) Plaintiff demanded payment, but defendant has failed to pay any of the outstanding balance. (*Id*. at ¶ 6.) Plaintiff then filed the present action against defendant for breach of contract and common counts. (*Ibid*.) These facts are sufficient to meet plaintiff's burden of showing that it is entitled to a judgment on its breach of contract and common count claims.

Defendant has not filed an opposition to the present motion or presented any evidence that would tend to raise a dispute as to any of these facts. Nor could defendant dispute the facts, as the court has granted an order deeming him to have admitted the truth of the facts in the requests for admissions, which includes the same facts set forth above. (See Court's Order of October 14, 2025. (Exhibit D to Defendant's Statement of Evidence.) Thus, defendant has been deemed to have conclusively admitted that he entered into the fee agreement with plaintiff, that plaintiff provided him with services under the agreement, that he owes $85,631.60 to plaintiff, and that he has failed to pay plaintiff. Consequently, defendant has not and cannot show that plaintiff has not stated a claim for breach of contract and common counts, or that he has any valid defenses to plaintiff's claims.

Since defendant has not pointed to any evidence showing a dispute about any of plaintiff's facts, the court intends to grant summary judgment in favor of plaintiff on the entire complaint.

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 01/16/26.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Elizabella Godina v. City of Fresno***
Superior Court Case No. 25CECG01225

Hearing Date: January 21, 2026

Motion: Demurrer

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were filed.

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 01/16/26.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Irma Arreola Hernandez v. Holy Trinity Armenian Apostolic Church***
Superior Court Case No. 24CECG01251

Hearing Date: January 21, 2026

Motion: Stay

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were filed.

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 01/16/26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Ortiz v. Cervantes***
Superior Court Case No. 24CECG02055

Hearing Date: January 21, 2026 (Dept. 502)

Motion: By Plaintiffs for an Order Compelling Further Responses to Special Interrogatories (Set One) and Requests for Production (Set One) and for Monetary Sanctions

Tentative Ruling:

To grant Plaintiffs' motion to compel further responses by Defendant Fernando Lugo Cervantes dba FLC Farm Labor Contracting to Request for Production of Documents (Set One), Numbers 4-8, 10-12, 15, and 17-23. Defendant shall serve verified supplemental responses within 30 days of the date of the service of this order.

To grant Plaintiffs' motion to compel further responses by Defendant Fernando Lugo Cervantes dba FLC Farm Labor Contracting to Special Interrogatories (Set One), Numbers 1-3, and 7. Defendant shall serve verified supplemental responses within 30 days of the date of the service of this order.

The Court will not address Plaintiffs' requests as to Form Interrogatories—General (Set One) or Employment (Set One). Plaintiffs did not reserve a hearing as to these two motions.

To deny the request for monetary sanctions as notice was insufficient. (Code Civ. Proc., § 2023.040.)

Explanation:

Discovery requests are generally afforded liberal construction. (See Code of Civ. Proc., § 2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.) The parties "must have an opportunity to conduct discovery on class action issues before filing documents to support or oppose a class action certification motion." (*Stern v. Superior Court* (2003) 105 Cal.App.4th 223, 232-233.) Here, Plaintiffs have demonstrated that the Requests for Production and Special Interrogatories at issue are needed in order to pursue a motion for class certification in this matter. Defendant has failed to justify the objections made to the document disclosure and interrogatories at issue. The motions for an order compelling further responses to Plaintiffs' Request for Production of Documents (Set One), numbers 4-8, 10-12, 15, and 17-23 and Special Interrogatories (Set One), numbers 1-3, and 7 are granted.

Plaintiffs seek sanctions against Defendant and former counsel. However, the Notice of Motion only mentions sanctions as to Defendant in the caption, no reference to sanctions is made in the body of the Notice. Sanctions are then addressed in the

memorandum, which is contained in the same document as the Notice. "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought." (Code Civ. Proc., § 2023.040.) Here, the Notice did not comply with the requirements of Code of Civil Procedure section 2023.040. As such, the request for monetary sanctions 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 01/16/26.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Jones v. Bruno, et al.***
Superior Court Case No. 24CECG02836

Hearing Date: January 21, 2026 (Dept. 502)

Motion: by Defendants to Set Aside Default

Tentative Ruling:

To grant and set aside the entry of default against defendant James Bruno. (Code Civ. Proc., § 473, subd. (b).) Defendant James Bruno is granted 10 days' leave to file responsive pleadings to the operative complaint, with the time to run from service by the clerk of the minute order.

Explanation:

The court is empowered to relieve a party "upon any terms as may be just … from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or **excusable neglect.**" (Code Civ. Proc. § 473, subd. (b), emphasis added.)

"[T]he court **shall**, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or **neglect**, vacate any (1) resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against the attorney's client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (Code Civ. Proc., § 473, subd. (b), emphasis added.)

Accordingly, where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary. The only limitation on the mandatory relief is that the court may deny relief if it finds the default "was *not* in fact caused by the attorney's mistake, inadvertence, surprise or neglect" (e.g. where the attorney is attempting to "cover up" for the client). (*Id.*)

The application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. §473, subd. (b).)

Here, the motion to set aside default was filed less than one month after default was entered against defendant James Bruno; therefore, the motion is timely filed. Plaintiff's argument that defendant delayed in filing the motion is unpersuasive.

Also, the motion is supported by counsel, James Gustafson's declaration. Mr. Gustafson indicates that a former legal secretary at his firm inadvertently filed an answer on behalf of defendants Alexis and Esther Bruno only, and due to the neglect of the firm's former employee, an answer on behalf of James Bruno was not filed. (Gustafson Decl., ¶ 4.) It matters not that it was a legal secretary's error that resulted in the default, since counsel is responsible for supervising the work of legal assistants. Therefore, it is clear that defendant James Bruno's default was caused by defense counsel's neglect and relief pursuant to Code of Civil Procedure section 473, subdivision (b) is mandatory.

Although the opposition contends that defendants have not met their burden in showing "excusable neglect," as opposed to "ordinary law office negligence," this is not the standard when the motion for relief is accompanied by an attorney's affidavit of fault. While excusable neglect must be shown when the neglect is on the part of the party, there is no requirement that the attorney's neglect be excusable. If the Legislature intended to require a showing that the attorney's neglect was excusable, the statute simply would have included the term "excusable" before the word "neglect" in the part of the statute that addresses an attorney's neglect, just as it does for the portion of the statute addressing a party's individual's neglect. (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 342 ["[w]hen the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning"].)

Additionally, no authority is provided to support plaintiff's contentions of a need to show lack of prejudice.

Since a copy of the proposed answer is accompanying the motion as required by statute, the court intends to grant the motion to set aside the default entered against defendant James Bruno.

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 01/16/26.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Grigsby v. Gonzales***
Superior Court Case No. 24CECG03986

Hearing Date: January 21, 2026 (Dept. 502)

Motion: Defendant's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Tentative Ruling:

To grant defendant Abraham Gonzales' motion for summary judgment as to the entire complaint.

Explanation:

Defendant Abraham Gonzales moves for summary judgment, or in the alternative summary adjudication of the separate causes of action, on the ground that plaintiff has been deemed to have admitted the truth of the matters in the requests for admission, set one, that defendant served on him. The court agrees that, based on the facts that plaintiff has admitted, plaintiff cannot prevail on his claims for "general negligence," "premises liability," and "motor vehicle." Plaintiff has admitted that he ran a red light on September 1, 2023, that defendant had the right-of-way, that he violated defendant's right-of-way, and he caused the subject accident. (UMF Nos. 8-10.) Plaintiff has also admitted that he did not suffer any personal injuries or wage loss as a result of the subject incident, and the property damage claim has been paid in full. (UMF No. 11.) Therefore, plaintiff has admitted that defendant was not negligent, that he was injured due to his own negligence, and he does not have a claim for damages. As a result, defendant has met his burden of showing that plaintiff cannot prevail on any of his claims.

Plaintiff has not filed any opposition or submitted any evidence that might raise a triable issue of material fact with regard to his claims. Nor could he do so, as he has been deemed to have conclusively admitted the facts in the requests for admission. Therefore, the court intends to grant summary judgment as to plaintiff's entire complaint in favor of defendant Gonzales.

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 01/16/26.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Regan v. County of Fresno Sheriff's Department, et al.***
Superior Court Case No. 22CECG00876

Hearing Date: January 21, 2026 (Dept. 502)

Motion: (1) by Defendant City of Fresno for Summary Judgment, or Alternatively, Summary Adjudication

(2) by Defendant City of Fresno to Bifurcate Issues for Trial

Tentative Ruling:

To deny the motion for summary judgment. To deny the motion for summary adjudication of the second and third causes of action.

To elect to treat the motion for summary adjudication of the first cause of action as one for judgment on the pleadings, and to grant the motion for judgment on the pleadings as to the first cause of action in favor of defendant City of Fresno. Plaintiff is granted 7 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order.

To reserve the determination of the motion to bifurcate the issues of liability and damages at trial for the assigned trial judge.

Explanation:

Defendant City of Fresno's Motion for Summary Judgment, or Alternatively, Summary Adjudication

Defendant City of Fresno ("City") moves for summary judgment, or alternatively summary adjudication, of plaintiff Jennifer Regan's complaint on the basis that there is no triable issue of material fact and defendant is entitled to judgment as a matter of law as to each of the three causes of action. The operative complaint is the First Amended Complaint filed on August 5, 2022. Plaintiff alleges three causes of action against the City: (1) Breach of Mandatory Duty, (2) Negligence premised on a Special Relationship, and (3) Negligent Misrepresentation.

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1132 ["On a motion for summary judgment or summary adjudication, the pleadings delimit the scope of the issues . . .."].)

The FAC alleges the City is liable for breach of mandatory duty in violation of Government Code section 815.6 for failure to comply with the mandatory obligations imposed by Penal Code sections 836, subdivision (c), 836, subdivision (b), 853.6

subdivision (a)(2), and 18250, subdivision (a). (FAC, ¶¶ 60-63.) Here, it cannot be overlooked that the complaint fails to state a cause of action for breach of mandatory duty as the Penal Code sections cited either do not create a mandatory duty for purposes of Government Code section 815.6 or the allegations do not constitute a breach of the statue.

As a result, the court intends to deny the defendant's motion for summary judgment as to the entire complaint and treat the alternative motion for summary adjudication of the first cause 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 complaint does not state a cause of action for breach of mandatory duty under any theory of liability alleged against the City.

Government Code section 815.6 makes a public entity directly liable for its breach of a "mandatory duty" created by a statute, under a three-pronged test for determining whether liability may be imposed: 1) an enactment must impose a mandatory, not discretionary or permissive, duty; 2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting §815.6 as a basis for liability; and 3) breach of the mandatory duty must be a proximate cause of the injury suffered. (*State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854; *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 638-639.)

"[A]pplication of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken." (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498 (*Haggis*).) Whether an enactment creates a mandatory duty is a question of law. (*Id.* at p. 499.)

"A mandatory duty is created only when an enactment requires an act that is clearly defined and not left to the public entity's discretion or judgment ... When the enactment leaves implementation to an exercise of discretion, 'lend[ing] itself to a normative or qualitative debate over whether [the duty] was adequately fulfilled,' an alleged failure in implementation will not give rise to liability." (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 350; *Guzman, supra*, 46 Cal.4th at p. 908 [county had no mandatory duty to act where regulations clearly called for county's exercise of discretion].) Accordingly, for purposes of liability under section 815.6, it is not enough "that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion." (*Haggis, supra*, 22 Cal.4th at p. 498.)

Penal Code § 836, subdivision (c)

Plaintiff alleges the City breached its mandatory duty pursuant to Penal Code section 836, subdivision (c) due to the failure of its officers to arrest Colombo following each instance of a violation of the protective order in place. (FAC, ¶ 60.)

Penal Code section 836 states in pertinent part,

> When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order … and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer.

(Pen. Code § 836, subd. (c)(1).)

The language of the statute suggests a mandatory duty based upon the use of "shall" in the context of making the arrest, however there is no direction within the statute as to when the arrest must be made, whether there must be a period of confinement, or what law enforcement agency must make the arrest. When the enactment leaves implementation to an exercise of discretion, "lend[ing] itself to a normative or qualitative debate over whether [the duty] was adequately fulfilled," an alleged failure in implementation will not give rise to liability. (*de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 260.) The statute allows for discretion in the implementation of the arrest which does not support finding the statute creates a mandatory duty for purposes of Government Code section 815.6. (See, *Fleming v. State of California* (1995) 34 Cal.App.4th 1378, 1383-1384 [considering the absence of language specifying who must arrest the parolee, or how long he must be held after his arrest in determining whether Penal Code section 3059 imposes a mandatory duty to arrest parolee].) Moreover, the inclusion of the word "shall" will not necessarily foreclose the use of discretion and create a mandatory duty. (*Guzman v. County of Monterey* (2009) 46 Cal.4th 877, 898-899.)

The court finds there is no mandatory duty created by Penal Code section 836, subdivision (c), within the meaning of Government Code section 815.6. As such, the

alleged violation of Penal Code section 836, subdivision (c) will not support plaintiff's cause of action for breach of mandatory duty.

Penal Code § 836, subdivision (b)

The FAC alleges that in each interaction with defendant's officers reporting Colombo's violation of the protective order that she was not informed of her right to make a citizen's arrest. (FAC, ¶¶ 35, 39, 41, 43, 51, 53.) This failure is alleged to be in violation of Penal Code section 836, subdivision (b), and which is alleged to create a mandatory duty for purposes of Government Code section 815.6. (FAC, ¶¶ 63, 75.)

Penal Code section 836, subdivision (b) states, "[a]ny time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of their right to make a citizen's arrest, unless the peace officer makes an arrest … . This information shall include advising the victim how to safely execute the arrest."

On its face, the language of the statute that the officer "shall make a good faith effort" does not support finding a specific action is required as opposed to making a good faith effort to do so. The court finds there is no mandatory duty created by Penal Code section 836, subdivision (b), within the meaning of Government Code section 815.6. As such, the alleged violation of Penal Code section 836, subdivision (b) will not support plaintiff's cause of action for breach of mandatory duty.

Penal Code § 853.6, subdivision (a)(2)

Plaintiff alleges the City violated a mandatory duty imposed by Penal Code section 853.6, subdivision (a)(2) in failing to bring Colombo before a magistrate, causing him to be free from custody. (FAC, ¶¶ 61, 73.)

Penal Code section 853.6, subdivision (a) states in pertinent part,

> When a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested.

(Pen. Code §853.6, subd. (a)(2).)

The plain language of the statute does not support that there is a requirement for officers to bring any person arrested for violation of a domestic violence protection order before a magistrate rather than releasing them. By its language, "unless the arresting officer determines that there is not a reasonable likelihood that ..." the statute gives officers discretion to cite and release under certain circumstances.

However, the court need not make a determination as to whether the statute creates a mandatory duty as the allegations of the FAC do not support finding a violation of Penal Code section 853.6, subdivision (a). The FAC alleges Colombo was in the custody of the Fresno County Jail beginning January 6, 2021 and released after posting bond on January 11, 2021. (FAC, ¶¶ 28-33.) A reasonable inference from the allegation is that Colombo was not cited and released but was brought before a magistrate where a bond amount was set. The FAC does not contain further allegations of Colombo having been arrested. As such, no violation of Penal Code section 853.6 is alleged.

As there is no violation of Penal Code section 853.6, subdivision (a)(2) alleged, no cause of action for breach of mandatory duty created by this enactment is stated.

Penal Code §18250, subdivision (a)

Plaintiff alleges the City breached a mandatory duty in its violation of Penal Code section 18250, subdivision (a) by failing to search and seize firearms from a violator of a domestic violence restraining order. (FAC, ¶¶ 62, 74.)

Penal Code section 18250, subdivision (a)(1) states in pertinent part, "If [police officer of a city] [at] the scene of a domestic violence incident involving a threat to human life or a physical assault, is serving a protective order …, or is serving a gun violence restraining order …, that [officer] shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present[.]

In contrast with the language of the previous Penal Code sections, section 18250, subdivision (a) viably creates a mandatory duty for purposes of Government Code section 815.6 by specifying the time of the search and seizure, who is to conduct the search and seizure, and the parameters of the search and seizure. However, the court need not make a determination as to whether a mandatory duty is created as the FAC fails to allege facts that would support finding a violation of Penal Code section 18250, subdivision (a). Where it is alleged that police officers responded to plaintiff's reports of threats by Colombo, there are no allegations that Colombo was present with a firearm or that a firearm belonging to Colombo was present. (See, FAC, ¶¶ 35, 39, 41, 43, 51, 53.) There are no allegations of an incident where the purported duty would have arisen or was violated. Plaintiff's allegations characterizing a violation as "permitting Colombo to keep firearms" are not consistent with the terms of the stature requiring search and seizure under specified circumstances not alleged in the FAC.

As there is no violation of Penal Code section 18250, subdivision (a) alleged, no cause of action for breach of mandatory duty created by this enactment alleged.

Therefore, the court grants the motion for judgment on the pleadings as to the first cause of action in favor of defendant, with plaintiff granted leave to amend.

Summary Adjudication of the Second and Third Causes of Action

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of

duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

If defendant carries this initial burden of production, the burden of production shifts to plaintiff to show that a triable issue of material fact exists. Plaintiff does this if he can show, by a preponderance of the evidence, that it is more likely than not that a given element can be established or that a given defense cannot be established. (*Aguilar*, *supra*, 25 Cal.4th at 850, 852.)

In determining whether plaintiff has met his burden of production, the court must evaluate the plaintiff's evidence independently. That is, the court may not weigh the plaintiff's evidence or inferences against the defendant's, as if the court were sitting as a trier of fact. If the plaintiff meets his burden, then the court must deny summary judgment, even if defendants have presented conflicting evidence. If the plaintiff meets his burden, a reasonable trier of fact could find for plaintiff and a triable issue of fact does exist for the jury to consider. (*Aguilar, supra,* 25 Cal.4th at 856-857.)

A summary judgment motion must show that the "*material* facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co*. (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

A party moving for summary judgment or summary adjudication must support the motion with a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, and each of these material facts must be followed by a reference to the supporting evidence. (Code Civ. Proc., § 437c, subd. (b)(1), (f)(2).) A separate statement is required to afford due process to the opposing party and to permit the judge to expeditiously review the motion for summary judgment or summary adjudication to determine quickly and efficiently whether material facts are disputed. (*Parkview Villas Ass'n, Inc. v State Farm Fire & Cas. Co*. (2005) 133 Cal.App.4th 1197, 1210; *United Community Church v Garcin* (1991) 231 Cal.App.3d 327, 335.) As a result, the separate statement should include only *material* facts—ones that could make a difference to the disposition of the motion. (Cal. Rules of Court, rule 3.1350(f)(3); see also rule 3.1350(a)(2) [defining "material facts"].)

As a result, the moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the

matters it contends are "undisputed," and cite the specific evidence (pleadings admissions, or discovery, or declarations) showing there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist*." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [superseded by statute on other grounds]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

Second Cause of Action: Negligence (Special Relationship)

> As a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct. Such a duty may arise, however, if '(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection.' [Citations.]

(*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203.)

> '[A] special relationship with a person in peril is not established simply because police officers responded to a call for assistance and took some action at the scene.' [Citation.] Cases finding a special relationship based on the performance of police duties are rare and involve situations in which the victim detrimentally relied on some conduct or representation by the officer. [Citations.] 'The reliance must have exposed the victim to a risk of harm which was greater than the harm to which the victim was already exposed.' [Citation.]

(*Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1149.)

The FAC alleges a special relationship between plaintiff and the City police officers arising from express promises that Colombo would be arrested pursuant to his violations of the restraining order and plaintiff's reliance on these representations in choosing to maintain her identity and continue her normal routine. (FAC, ¶¶ 80-84.)

The City moves for summary adjudication arguing the undisputed facts show no special relationship created between the police officers due to the failure to warn. (See, *Davidson v. City of Westminster* (1982) 32 Cal.3d 197; *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425; *Johnson v. City of Los Angeles* (1968) 69 Cal.2d 782.) Defendant's arguments and supporting case authority regarding the lack of special relationship created by its failure to warn plaintiff of danger unknown to her have no clear relevance to plaintiff's theory of liability based on affirmative representations made to her by City police officers.

The City aditionally argues plaintiff cannot establish her detrimental reliance as any alleged reliance by plaintiff on representations or conduct by the City's police officers did not act to affirmatively increase the harm to which plaintiff was already exposed. Defendant argues the facts demonstrate the police actions or inactions did not change the risk faced by Colombo as his threats were triggered by plaintiff having ended her relationship with him rather than any action of the City police officers. (UMF

Nos. 1-6.) Defendant cites to *Davidson v. City of Westminster*, where the court held there was no special relationship found where plaintiffs who were assaulted while a laundromat was under police surveillance did not rely on the police officers for protection and their presence did not change the risk. (*Davidson v. City of Westminster*, *supra*, 32 Cal.3d at pp. 208-209.) The court reasoned that the peril to plaintiffs was not created by the officers because plaintiffs were unaware of the police presence at the time of the assault. (*Id*. at p. 208.)

The arguments and authority cited by counsel, again, do not appear to address the allegations of plaintiff's complaint where the special relationship is premised on affirmative representations made to plaintiff by City police officers upon which plaintiff alleged detrimental reliance. The undisputed facts within the separate statement include no reference to plaintiff's allegations of the promises allegedly made by officers to arrest Colombo underpinning her theory of liability for the existence of a special duty. A defendant who seeks a summary judgment must address the complaint's allegations, including those pertaining to plaintiff's theory of liability, and failure to do so means 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.)

Accordingly, the court finds the City has failed to meet its burden in moving for summary adjudication of the second cause of action.

Third Cause of Action: Negligent Misrepresentation

Plaintiff alleges the City police officers wrongfully and negligently provided false information to plaintiff in stating that Colombo was going to be imminently arrested, that he did not possess firearms, and that he was not a physical threat to plaintiff. (FAC, ¶ 98.) Plaintiff alleges she relied on these representations to her detriment as she would otherwise have made changes in her routine to better shield herself from Colombo's threat and this reliance ultimately lead to Colombo shooting plaintiff while in her vehicle on her normal route to work. (FAC, ¶¶ 99-104.)

Defendant argues the undisputed facts show the City police officers did not provide plaintiff with false information. In support, defendant cites to *M.B. v. City of San Diego*, upholding a grant of summary judgment and disallowing a request to amend the complaint where the plaintiff alleged she relied upon representations of detectives "not to worry" and that the person making threatening phone calls would not follow up on the threat. (*M.B. v. City of San Diego* (1991) 233 Cal.App.3d 699, 708.) The court found the officers only gave generalized reassurances and there was no indication that such reassurances were false. (*Ibid*.)

Defendant cites to the undisputed facts referencing the instances of representations made by City police officers to plaintiff and asserting none are false. (UMF Nos. 10, 31, 33, 36, 43, 44.) However, absent from the moving defendant's separate statement of material facts is any reference or refutation of the alleged representations that Colombo would be imminently arrested, did not possess firearms, or that Colombo was not a threat to plaintiff, which are the basis of the cause of action. To the extent defendant may assert their absence is due to no such statements being made by its

police officers, such a representation is necessary within the separate statement to address plaintiff's theory of liability.

As a result, the court finds the City has failed to meet its burden in moving for summary adjudication of the third cause of action.

As defendant has failed to meets its burden in moving for summary adjudication of the second and third causes of action, the motion for summary adjudication of the second and third causes of action is denied.

Defendant City of Fresno's Motion to Bifurcate

Under Code of Civil Procedure section 598, the court is given great discretion in regard to the order of issues at trial: "The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order…that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case. …" (Code Civ. Proc. § 598.)

Similarly, Code of Civil Procedure section 1048 specifies the court's discretion in regard to bifurcating issues for separate trial: "The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action…or of any separate issue or of any number of causes of action or issues." (Code Civ. Proc. § 1048, subd. (b).)

The objective of bifurcation is to avoid wasting time and money on the trial of damages issues if the liability issue is resolved against plaintiff. (See *Horton v. Jones* (1972) 26 Cal.App.3d 952, 954.) It also "serves the salutary purpose of avoiding wasting time and money, and prevents possible prejudice to a defendant where a jury might look past liability to compensate a plaintiff through sympathy for his or her damages." (Edmon & Karnow (The Rutter Group 2025) California Practice Guide: Civil Procedure Before Trial, § 12:414.)

The City of Fresno moves for an order bifurcating the trial of the issues of liability and damages. As such a decision necessarily impacts the trial proceedings, the court intends to reserve the ruling for the assigned trial judge where the request can be made in limine at the time of assignment to trial.

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 01/20/26.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Rick Flake v. City of Fresno***
Superior Court Case No. 23CECG01808

Hearing Date: January 21, 2026 (Dept. 502)

Motion: By Defendant City of Fresno for Summary Judgment

Tentative Ruling:

To deny.

Explanation:

The plaintiff, Rick Flake (Plaintiff), filed a complaint based on claims of trespass and nuisance. Plaintiff alleges flooding began on Plaintiff's property (Subject Property) only after the defendant, City of Fresno (City), installed a new pipeline (Project) and destroyed a drainage culvert in the course of construction. Plaintiff seeks injunctive relief enjoining the City from flooding the Subject Property and ordering the City to take all steps necessary to stop the flooding. In paragraph 10 of his complaint, Plaintiff alleges:

> [The City has] the ability to stop the flooding on to the Subject Property by replacing the drainage that was removed or adding other drainage to move the water off the Subject Property or making other arrangements to make sure the water is draining without trespassing on to the Subject Property.

The City contends it is entitled to summary judgment because Plaintiff's complaint is time-barred.

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

The trial court must "carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion." (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.) The court must strictly construe the moving party's declarations and liberally construe the opposing party's declarations. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562,

575 [affirming trial court's granting of employer's summary judgment motion]; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839 [reversing summary judgment where evidence suggested strong possibility trier of fact would resolve issues in favor of moving defendant, but not necessarily so].) "A triable issue of fact is created when the evidence reasonably permits the trier of fact, under the applicable standard of proof, to find the purportedly contested fact in favor of the party opposing the motion." (*Loomis v. Amazon.com LLC* (2021) 63 Cal.App.5th 466, 475 [reversing summary judgment where genuine issues of material fact existed on consumer's strict products liability claim].)

The City Fails to Satisfy Its Initial Burden

The parties agree that a claim based on nuisance or trespass has the same statute of limitations—three years. The relevant inquiry for when the statute of limitations begins to run depends on whether the intrusion is "permanent" or "continuous." For a permanent intrusion, the statute of limitations begins to run upon creation of the intrusion. For a continuing intrusion, every continuation of the intrusion gives rise to a separate claim caused by the intrusion. (*Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1093 (*Mangini*).)[1]

For statute of limitations purposes, the same general rules apply to nuisance or trespass claims. (*Mangini, supra,* 12 Cal.4th at p. 1103 [California Supreme Court found no continuing nuisance where plaintiffs failed to show defendant reasonably could abate intrusive contamination, then high court succinctly stated "[t]he same result applies to the trespass count"] (*Mangini*).) The Court of Appeal, Fifth Appellate District, confirmed the same general principles apply to nuisance and trespass claims: "Although *Mangini* is a nuisance case, generally the principles governing the permanent or continuing nature of a trespass or nuisance are the same and the cases discuss the two causes of action without distinction." (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 594 (*Starrh*).) The court here will do the same.

In *Capogeannis v. Superior Court* (1993) 12 Cal.App.4th 668, 677, the court cited several cases to summarize the basic difference between a permanent and a continuing intrusion:

> The great weight of California authority has articulated the basic distinction between permanent and continuing nuisances in broad terms of whether the nuisance can be discontinued, or abated, "at any time": If the nuisance may be discontinued at any time it is considered continuing in character.

(*Id.* at p. 677, citations and internal quotation marks omitted.)

[1] In *Mangini*, the Supreme Court designated the first of two opinions previously filed in that matter (*Mangini v. Aerojet–General Corp.* (1991) 230 Cal.App.3th 1125) as "*Mangini I*." (*Mangini, supra,* 12 Cal.4th at p. 1092.) (The Supreme Court adopted portions of the second previously-filed opinion verbatim, which also used the same designation for *Mangini I*.)

Whether a nuisance or trespass is continuing or permanent is a question for the trier of fact. (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 980 [trial court erred in granting summary judgment where triable issue of fact existed on nature of nuisance as continuing or permanent].) The trial court may remove the question of whether a trespass is continuing or permanent from the jury "only if there is no evidence tending to prove the case of the party opposing the motion." (*Starrh, supra,* 153 Cal.App.4th at p. 597.)

In *Starrh*, the grower plaintiff sued the neighboring defendant energy company, alleging subsurface trespass caused by the defendant's water-ponding practice, which allowed waste ("produced') water to migrate on to the plaintiff's land from the defendant's oil production activities on its land. *T*he appellate court in *Starrh* summarized the basic principles to determine a permanent versus a continuing trespass as follows:

> Causing subsurface migration of oil field wastewater into a mineral estate (groundwater pore space) of another without that landowner's consent is a trespass under California law. [Citation.] Further, a trespass may be continuing or permanent. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1219–1222 (*Beck*).) A permanent trespass is an intrusion on property under circumstances that indicate an intention that the trespass shall be permanent. In these cases, the law considers the wrong to be completed at the time of entry and allows recovery of damages for past, present, and future harm in a single action, generally the diminution in the property's value. The cause of action accrues and the statute of limitations begins to run at the time of entry. [Citation.] . . . . [¶] In contrast, a continuing trespass is an intrusion under circumstances that indicate the trespass may be discontinued or abated. In these circumstances, damages are assessed for present and past damages only; prospective damages are not awarded because the trespass may be discontinued or abated at some time, ending the harm. (*Beck, supra,* 44 Cal.App.4th at p. 1216.) . . . . Continuing trespasses are essentially a series of successive injuries, and the statute of limitations begins anew with each injury. In order to recover for all harm inflicted by a continuing trespass, the plaintiff is required to bring periodic successive actions.

(*Starrh, supra,* 153 Cal.App.4th at p. 592.)

"The distinction between continuing and permanent trespass comes up when considering two key questions in these types of cases: what is the correct measure of damages, and is the action time-barred?" (*Starrh, supra,* 153 Cal.App.4th at p. 593.) In *Starrh,* after a jury trial, the trial court granted the plaintiff's motion for a directed verdict, characterizing the trespass as continuing as a matter of law because it was undisputed that the defendant made an economic decision to keep using its practice of putting produced water into substantial ponds located on its property, and thereafter the water continued to go onto the plaintiff's property. (*Ibid*.)

The appellate court further explained the considerations for the statute-of-limitations defense under *Starrh's* factual situation as follows:

> Over the years a number of tests have developed to determine the true nature of a trespass. A good review of the relevant case law and tests that have developed is presented in *Beck* and [*Mangini*]. These two cases, and the authorities they rely on, establish that the key question is whether the trespass or nuisance can be discontinued or abated and there are a number of tests used to answer this question. A respected legal treatise summarizes the various tests as follows: [¶] "[W]hether (1) the offense activity is currently continuing, which indicates that the nuisance is continuing, (2) the impact of the condition will vary over time, indicating a continuing nuisance, or (3) the nuisance can be abated at any time, in a reasonable manner and for reasonable cost, and is feasible by comparison of the benefits and detriments to be gained by abatement." (8 Miller & Starr, Cal. Real Estate (3d ed.2000) § 22.39, pp. 148–149.)

(*Starrh, supra,* 153 Cal.App.4th at pp. 593–594.)

In *Mangini,* the California Supreme Court clarified the term "abatable" means the intrusion can be remedied at a reasonable cost by reasonable means (not literal "abatability"):

> This principle was discussed in *Capogeannis v. Superior Court, supra,* 12 Cal.App.4th 668, where the court explained *Spaulding* [*v. Cameron* (1952) 38 Cal.2d 265 (*Spaulding*)] as follows: "[I]t would be a rare case in which an alleged nuisance could *not* be abated were countervailing considerations (such as expense, time, and legitimate competing interests) disregarded. Thus, for example, in a strictly literal sense even a nuisance represented by an encroaching building or an underlying public utility pipeline might be discontinued or abated, 'at any time,' by tearing down the building or digging up the pipeline. But as *Spaulding* makes clear, it was for just such situations that the concept of permanent nuisance, as an exception to the preexisting rule that all nuisances should be treated as abatable and thus continuing, was developed: Regardless of literal abatability, where as a *practical* matter either abatement or successive lawsuits would be inappropriate or unfair then the nuisance may be regarded as permanent and the plaintiff relegated to a single lawsuit, subject to a single limitation period, for all past and anticipated future harms.... Because a literal answer to the question whether a particular nuisance can be discontinued or abated will not invariably serve the purposes of the rules as discussed in *Spaulding,* the discontinued-or-abated rubric should be regarded as no more than a convenient shorthand for the fundamental considerations *Spaulding* outlined." (*Capogeannis, supra,* 12 Cal.App.4th at p. 678, original italics.)

(*Mangini, supra,* 12 Cal.4th at p. 1100, italics original, underscoring added.)

In a doubtful case, the plaintiff may elect whether to treat the intrusion as permanent or continuing. (*Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 870 (*Baker*) ["In case of doubt as to the permanency of the injury the

plaintiff may elect whether to treat a particular nuisance as permanent or continuing[,]" citing *Spaulding* at p. 268 (*Spaulding*).)

The City contends the court should grant its motion for summary judgment because the pipeline is permanent:

> In its moving papers, the City showed that the pipeline is permanent – six-foot diameter, concrete pipeline installed underground as part of a $45 million [] construction package to deliver water from the Kings River for treatment and use for the City's residents. (UMF 2-3. 15-16. 28-29[.]) [Fn.] Like the pipeline in *Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478 [*Bookout*], "there is nothing to suggest the pipe is temporary or might be modified at any time." (*Id.* at 1489.) Indeed, the California Supreme Court has said, **"[t]he clearest case of a permanent nuisance or trespass is the one where the offending structure or condition is maintained as a necessary part of the operations of a public utility."** (*Spaulding*[, *supra,*] 38 Cal.2d [at p. 267].)

(Rpy., pp. 4:23-5:5, boldface added by the City.)

Plaintiff is not suing for an injunction requiring the City to dig up its $45 million pipeline. Instead, it has requested an injunction requiring the City to replace the drainage that was removed, add other drainage, or make other arrangements to make sure *the water is draining without trespassing* on to the Subject Property. (Comp., 10.)

In *Mangini,* the Supreme Court overturned the plaintiff's favorable jury finding that the intrusion was continuing because the plaintiff there failed to introduce substantial evidence of abatability at trial. (*Mangini, supra,* 12 Cal.4th at pp. 1096-1103 [plaintiff presented no evidence about clean-up costs for toxic material dumped on plaintiff's property by defendant's activities]; *Starrh, supra,* 153 Cal.App.4th at p. 594.) Here, it will be Plaintiff's burden to prove the intrusion is abatable at trial. But to prevail on summary judgment, the City must prove Plaintiff cannot prove abatability as a matter of law. (*Shamsian v. Atlantic Richfield Co., supra,* 107 Cal.App.4th at p. 980 [no summary judgment where triable issue of fact exists on nature of nuisance as continuing or permanent]; *Starrh, supra,* 153 Cal.App.4th at p. 597 [to prevail on summary judgment movant must show no evidence exists tending to prove opponent's case].)

The City makes an argument similar to the defendant's argument in *Starrh*, which relied on cases involving permanent structures, such as pipelines, buildings, walls and fences, "long considered permanent nuisances for purposes of the three-year statute of limitations." (*Starrh, supra,* 153 Cal.App.4th at p. 595.) The appellate court in *Starrh* found the defendant's argument there "misses the point" because the structure on the defendant's land did not constitute the trespass. Instead, the water that permeated through the pond constituted the trespass. (*Id*. at p. 596.) Here, Plaintiff does not contend the City's pipeline constitutes the trespass or encroaches on his property. Instead, Plaintiff contends the trespass is the water that floods on to the Subject Property whenever the City uses the pipeline. To prevail on summary judgment, the City must refute, as a matter of law, Plaintiff's allegation that the City can stop the flooding it caused when it removed the drainage culvert by replacing the culvert or adding other drainage to ensure the City

can use its pipeline without trespassing on to the Subject Property. The City fails to meet its burden to prove the flooding cannot be remedied at a reasonable cost by reasonable means. (*Mangini, supra,* 12 Cal.4th at p. 1103 ["abatable"' means the intrusion "can be remedied at a reasonable cost by reasonable means"].)

The City's reliance on *Bookout* does not compel a different result. In *Bookout* the plaintiff alleged several defendants had caused flooding on the plaintiff's property. The court found one of the defendants "obviously" caused the flooding when it modified the former effective drainage by constructing an inadequate junction box and pipeline that redirected the flow of water and caused water to back up and flood the plaintiff's property. (*Bookout, supra,* 186 Cal.App.4th at pp. 1481, 1486.) The defendant who modified the drainage settled with the plaintiff. The court rejected the testimony of the plaintiff's expert to establish that the remaining defendants had contributed to the conditions causing the flooding. The appellate court found no reason to compel the trial court to accept the testimony of the plaintiff's expert. The court explained, "[a]s helpful as expert opinion can be, such testimony carries a built-in bias: experts are most often very well paid for their opinions." (*Id.* at p. 1487.) The reviewing court found the trial court had good reason to be skeptical of the testimony given by the plaintiff's expert and applied "the usual rule that the trier of fact is not required to believe the testimony of any witness, even if uncontradicted." (*Ibid.*) To absolve the remaining defendants from liability, the court also relied on the applicable case law for *a solid structure that encroaches on a plaintiff's land*. Plaintiff complains of no such encroachment here.

To support its summary judgment motion, the City cites an easement case where the court discussed the continuous-use element required to establish a prescriptive easement. The court noted:

> In *Hesperia Land* [*etc. Co. v. Rogers* (1890) 83 Cal. 10, 11] our Supreme Court held that a user of a water ditch need not use the ditch year-round in order to satisfy the requirement of continuous use. It was sufficient that he used the ditch during the growing season and then only when he needed it.

(*Fogerty v. State of California* (1986) 187 Cal.App.3d 224, 239.) Although *Fogerty* and *Hesperia*, hold to establish a prescriptive easement, intermittent use *satisfies* the continuous-use element, the City inexplicably cites these cases to argue that "[t]he fact the flow of water is seasonal or irregular does not make the trespass or nuisance continuing." (Memo., p. 10:11-12.)

The City next contends the pipeline alone causes the flooding: "it is the Project's infrastructure – six foot, ***concrete*** pipes installed underground – that is causing the flooding." (*Id.* at p. 10:12-13, emphasis original.) To support its causation argument, the City submits an expert opinion, which was issued before the completion date of the pipeline. (Fact Nos. 8, 9, 10.) The technical opinion is inconclusive, concluding nothing more than construction of the pipeline "was unlikely" to contribute to the flooding:

> Based on review of the topography survey and our piezometer data it is our opinion that the phreatic surface could daylight at the southern toe of road embankment adjacent to the Flake property. Based on our previously

> encountered groundwater (2015) and understanding of the pipeline construction *it is also our opinion that construction of the referenced pipeline was unlikely to contribute to the ponding of water at the [Subject Property]*.

(Fact No. 9, City's evid., ex. E, p. 4, italics added;.)

Not only does the City submit nothing more than its expert's inconclusive opinion, but the trier of fact is not required to believe any expert testimony, even unequivocal opinions. (*Bookout, supra,* 186 Cal.App.4th at pp. 1486-1487; *Madani v. Rabinowitz* (2020) 45 Cal.App.5th 602, 610 [trial court, as trier of fact in nuisance and trespass case, did not err by rejecting expert's testimony about appropriate measure of benefit received]; Sprague *v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1028 [trier of fact "not required to believe even uncontradicted testimony"].)

Furthermore, the City submits evidence that its expert recommended "minor" changes that could mitigate the flooding:

> Mitigation of the standing water could consist of minor remedial grading of the northern portion of the property and/or installation of a subdrain to collect and direct water to a proper point of discharge.

(City's evid., ex. E, p. 4.)

The City also submits evidence that Plaintiff informed the City on September 9, 2019, that the installation of the pipeline changed the underground soil structure enough to allow flooding to occur on the Subject Property. Plaintiff then suggested two "obvious" possible solutions, similar to the minor changes recommended by the City's expert: (1) raise the elevation of the Subject Property; or (2) "install a permanent sump pump at the seepage location near the road." (City's evid., ex. G.) The City's own evidence shows it only partially addresses the possible solutions and the cost to abate the intermittent flooding. Therefore, the City fails to make the necessary showing to remove the question of whether the intrusion is continuing or permanent from the jury because it does not conclusively prove that no reasonable remedy exists to prevent the flooding caused by the City. (*Starrh, supra,* 153 Cal.App.4th at p. 597 [movant must show intrusion cannot be remedied at a reasonable cost by reasonable means].)

In summary, the court finds the City fails to meet its burden to show Plaintiff's trespass and nuisance claims are permanent as a matter of law and thus time-barred. The City's failure to meet its burden of production and persuasion makes it unnecessary for the court to consider Plaintiff's opposition or the City's argument that Plaintiff failed to comply with the procedural requirements to oppose a summary judgment motion.[2]

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[2] The City submits Fact No. 7 to show repair costs were "prohibitively expensive." Fact No. 7 provides: "On July 30, 2018, Flake was informed and understood that the cost to repair was prohibitively expensive for the City." The City's supporting evidence show the fact is incomplete because the City fails to address other suggested solutions. The City cites only Plaintiff's email to Martin Wendels (Project Manager) dated July 30, 2018, to support Fact No. 7. In that email Plaintiff to Mr. Wendels Plaintiff states:

Evidentiary Objections

The court declines to rule on the parties' evidentiary objections because none are directed to evidence that is material to the disposition of the City's motion. (Code Civ. Proc., § 437c, subd. (q).)

Conclusion

In conclusion, the court has scrutinized the City's moving papers and resolved all doubts in Plaintiff's favor. The City fails to meet its burden to show Plaintiff's claims lack merit as a matter of law. Furthermore, Fact No. 7 is incomplete, material, and disputed by the City's own evidence. Therefore, the court must deny the City's motion for summary judgment.

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 01/20/26.
(Judge's initials) (Date)

> You've expressed to me that the cost estimates you've received to rectify this drainage pipe issue were in the range of $600,000 and that was obviously not feasible to the City of Fresno. I agree, that's a large amount of money, but that doesn't eliminate the need for the City to come up with some kind of cure for the potential flood damage that would result on my property. Keep I mind that your contractor and the City made a decision during your pipeline installation construction not to address the drainage pipe issue and instead simply destroy it so the City's pipeline project could continue on schedule.

Although the opponent need not raise a disputed fact when the moving party fails to meet its burden, the court finds Fact No. 7 is not only incomplete, but also admittedly material and disputed, based on the other solutions alleged in the complaint and the evidence of such solutions the City itself submits. (E.g., City's evid., ex. G [Sept. 9, 2019 email proposing obvious solutions].) At trial, Plaintiff has the burden to prove the intrusion is continuing, but on the City's motion for summary judgment, the nature of the intrusion as permanent or continuous remains an issue of fact that the City fails to resolve conclusively in its favor.

(35)

Tentative Ruling

Re: ***Atrat v. Savala***
Superior Court Case No. 24CECG04266

Hearing Date: January 21, 2026 (Dept. 502)

Motion: By Defendant Rayna Savala to Strike Complaint

Tentative Ruling:

To deny.

Explanation:

On July 22, 2025, defendant Rayna Savala ("Defendant") filed a declaration apparently seeking an order striking the Complaint filed by plaintiff Paul Atrat ("Plaintiff"). On January 6, 2026, Plaintiff filed an opposition addressing the declaration filed by Defendant. The court finds that notice of the hearing is waived, and proceeds.

Defendant moves under Code of Civil Procedure section 436, which provides that the court, upon motion, or at any time in its discretion, and upon proper terms, may strike any irrelevant, false, or improper matter inserted in any pleading, and strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, court rule, or order of the court. (Code Civ. Proc., § 436.) Ordinarily, a motion to strike is timely only within the time allowed to plead. (Cal. Rules of Ct., rule 3.1322(b).) As Defendant filed her Answer on November 13, 2024, this motion is untimely. The motion is considered only on the court's discretion.

Defendant submits that allegations made by Plaintiff are false and made in bad faith. Defendant fails to identify, with specificity, what portions of the Complaint she seeks to strike. (Cal. Rules of Ct., rule 3.1322(a).) Accordingly, Defendant fails to demonstrate a basis for this court to strike any portion of the Complaint as filed. The motion 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 01/20/26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Heetebry v. Baker et al.***
Superior Court Case No. 21CECG00475

Hearing Date: January 21, 2026 (Dept. 502)

Motion: By Plaintiff Irene Heetebry for an Award of Attorney Fees on Appeal

Tentative Ruling:

To grant the motion for an award of attorney fees and award $11,265.00 in appellate fees, and $442 in appellate costs, in favor of plaintiff Irene Heetebry.

Explanation:

Plaintiff Irene Heetebry, an individual and as Trustee of the Miller Family Trust of 2004, ("Plaintiff") seeks an award of attorney fees pursuant to Civil Code section 1717 following appeal, which was entered in favor of Plaintiff and Respondent against defendants Larry Oakander and Patricia Oakander (collectively "Defendants") and Appellants. Plaintiff initially sought an award of $48,626.50 over 164.9 hours of billed time. On reply and in response to the opposition, Plaintiff amends to seek an award of $17,343.50 over 48.6 hours.

The amount of attorney's fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.) In determining the reasonable amount to award, "the court should consider ... 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.'" (*Ibid*.) Plaintiffs as the moving party bear the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.) A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Lodestar refers to the "number of hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Lenden F. Webb asserts a rate of $675 per hour; Chandler R. Gietzen, who was a law student for a large portion of this action, asserts a rate of $295, up to $450 per hour; and Madeleine E. Dearien, a senior paralegal, asserts a rate of $295 per hour. No information was provided as to the timekeepers Kelley Kilgore on a rate of $135 to $150

per hour; Jack Wislar on a rate of $190 per hour; Jocelyn Arteaga on a rate of $135 per hours; Raza Khan on a rate of $450 per hour; or Karla Roman on a rate of $210 per hour. Based on the rates, the court reasonably infers Kilgore and Arteaga as legal secretaries; Wislar and Roman as paralegals, and Khan as an associate. These rates are high. The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1095.) The rate is measured in the market place, and reflects several factors: the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case. (*Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002.) The court sets Webb's rate at $550 per hour; Gietzen's rate as a law clerk at $200 per hour, and as an attorney $300 per hour; Dearien's rate at $125 per hour; legal secretaries at a rate of $75 per hour; general paralegals at $100 per hour; and Khan's rate at $300 per hour.

The entries submitted contained within the time kept are, as Defendants note, somewhat unreasonable with regards to the amount of interoffice meetings and memorandums, and countless reviews of the same document by secretary, paralegal, law clerk and partner. However, in light of the rate reduction, and recognizing that Plaintiff voluntarily revised the fee sought, the court finds for this occasion only that the entries as submitted on reply are reasonable.[1]

On the 48.6 hours submitted, the motion is granted in favor of Plaintiff and against Defendants in the amount of $11,265 in fees, and $442 in costs, a total of $11,707.

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 01/20/26.
(Judge's initials) (Date)

[1] The entries do appear to be truncated from entries submitted in the moving papers. The court finds that the evidence on reply is not new, and therefore not a denial of due process of Defendants.