

**Tentative Rulings for March 3, 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)**

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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.*

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 502**

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(03)

**Tentative Ruling**

Re: **McGrew v. Clovis Unified School District**  
Case No. 23CECG03559

Hearing Date: March 3, 2026 (Dept. 502)

Motion: Defendant Clovis Unified School District's Motion for Summary Judgment, or in the Alternative Summary Adjudication

**Tentative Ruling:**

To grant summary adjudication in favor of defendant Clovis Unified School District as to the first cause of action and the second cause of action, Counts One and Two. To deny summary adjudication of the second cause of action, Count Three, for dangerous condition on public property.

**Explanation:**

**First Cause of Action and Second (Counts One and Two) Cause of Action:** Plaintiff cannot prevail on her common law general negligence and premises liability claims because defendant Clovis Unified School District is a public entity, and thus is immune from common law liability. Under Government Code section 815, subdivision (a), "Except as otherwise provided by statute: ... A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Para. break omitted.)

"In other words, direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714. Otherwise, the general rule of immunity for public entities would be largely eroded by the routine application of general tort principles. As *Zelig* observed, quoting from an earlier case, ' " 'the intent of the [Tort Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances....' " ' ' " (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183, citations omitted.)

Thus, plaintiff can only allege claims against a public entity that are based on a statute that expressly provides for public entity liability, and the plaintiff must allege the statutory basis for liability as well as pleading with particularity all facts necessary to establish the existence of such liability. (*Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802, citations omitted.) "Duty cannot be alleged simply by stating 'defendant had a duty under the law'; that is a conclusion of law, not an allegation of fact. The facts showing the existence of the claimed duty must be alleged. Since the duty of a governmental agency can only be created by statute or 'enactment,' the statute or 'enactment' claimed to establish the duty must at the very least be identified." (*Ibid*, citations omitted.)

Here, plaintiff's first cause of action for general negligence and second cause of action for premises liability, Count One, appear to be attempting to allege common law negligence claims rather than statutory causes of action. Thus, they are improperly alleged to the extent that they are seeking to impose common law negligence on a public entity.

Count Two attempts to allege a claim under Civil Code section 846. However, section 846 does not apply to public entities like Clovis Unified. (*Pacific Gas & Electric Co. v. Superior Court* (2017) 10 Cal.App.5th 563, 568, fn. 3.) Therefore, the court intends to grant summary adjudication of the first cause of action, and Counts One and Two of the second cause of action.

**Second Cause of Action (Count Three):** On the other hand, plaintiff can state a valid claim against Clovis Unified for dangerous condition of public property, as Government Code section 835 provides for such a claim against a public entity. Under section 835, "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Gov. Code, § 835, subds. (a), (b), para. breaks omitted.)

Here, plaintiff has alleged that she was injured when she slipped and fell on a liquid that was spilled on the steps of defendant's bus, and that defendant had actual or constructive notice of the existence of the dangerous condition a sufficient time prior to the incident to have corrected it. (First Amended Complaint, p. 5, Prem. L-4.) However, defendant contends that plaintiff cannot prevail on her dangerous condition claim because the undisputed facts show that the bus driver, Mr. Duong, inspected and cleaned the bus before picking up plaintiff and the other students on the date of the incident, and that he inspected the bus again before letting the students off the bus. He claims that the bus was clean before he picked plaintiff up, and that it was still clean when she exited the bus. (Defendant's Undisputed Material Fact Nos. 3-7, 15, 18.) Mr. Duong states that he never threw any trash on the floor of the bus, and that he ever saw the Capri-Sun packet on which plaintiff slipped. (UMF Nos. 28, 29.) No one ever told Mr. Duong before the accident that there was a Capri-Sun wrapper on the floor of the bus. (UMF No. 30.) Thus, defendant concludes that it did not create the dangerous condition, and it was never on actual or constructive notice of the danger posed by the Capri-Sun package. (UMF Nos. 31, 32.) Defendant also alleges that it has a policy prohibiting any students from eating, drinking, or throwing trash in the bus. (UMF No. 25.) Therefore, defendant concludes that it cannot be held liable for plaintiff's injuries.

As discussed above, under Government Code section 835, the plaintiff must show that the defendant public entity's employee either created the dangerous condition, or that "[t]he public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Gov. Code, § 835, subds. (a), (b), para. breaks

omitted.) Thus, where plaintiff fails to show that defendant created the dangerous condition or had actual or constructive notice of the dangerous condition, summary judgment in favor of the defendant public entity is proper. (*Van Kempen v. Hayward Area Park, Recreation & Park Dist.* (1972) 23 Cal.App.3d 822, 827.)

Here, defendant alleges that Mr. Duong did not throw trash on the floor of the bus, nor did he see or know about the Capri-Sun wrapper that allegedly caused plaintiff to slip and fall. However, plaintiff has submitted evidence that raises a triable issue of material fact with regard to whether there was trash on the floor of the bus on the date of the incident, that it was a common practice for students to bring food and drinks onto the bus, and that Mr. Duong was aware of the fact that students brought food and drink onto the bus and threw trash on the floor of the bus.

According to Alexandria Otto, another student who was on the same bus on the date of the incident, the bus “was not in a sanitary condition, as it had a lot of trash throughout the entire school bus.” (Exhibit 1 to Plaintiff's Statement of Evidence, Otto decl., ¶ 4.)<sup>1</sup> “The trash included candy wrappers, drink wrappers, chip wrappers, snack wrappers, water bottles, and Styrofoam cups. These trashes [sic] were scattered throughout the entire bus and could be found on the bus walkway, underneath the bus seats, on top of the bus seats, and on the steps of the bus.” (*Ibid.*) Ms. Otto also claims that Mr. Duong was aware of the condition of the bus, but he refused to clean up the visible trash. (*Id.* at ¶ 5.) “The bus appeared like it had not been cleaned for over a week. The trash continued to pile up throughout the week.” (*Ibid.*) “On the week of the incident, I heard Bus Driver Tony [Duong] stated [sic] that he was tired of cleaning up after the students and confirmed that he would not clean up the mess. I cannot recall whether I overheard him make these statements, or if he made these statements over the bus intercom.” (*Id.* at ¶ 6.)

Ms. Otto also states that, while she is aware of the rules against eating and drinking on the bus, despite these protocols, “I have witnessed Bus Driver Tony allow many students to enter and exit the school bus with open drinks and snacks. These drinks and snacks are consumed by students on the school bus. Snacking and drinking on school buses were [sic] a daily occurrence, including the day of the incident.” (*Id.* at ¶ 7.) Ms. Otto states that she saw a shiny wrapper on the floor of the bus as she was exiting in front of plaintiff. (*Id.* at ¶ 8.) Other students were stepping on the wrapper and slipping on it. (*Ibid.*) She tried to push the wrapper further left to prevent other students from slipping on it. (*Ibid.*) Shortly after she exited the bus, she heard a commotion behind her. (*Id.* at ¶ 9.) She turned and saw that plaintiff had slipped and injured her arm as she was exiting the bus. (*Ibid.*) She then saw the same shiny wrapper, now on the steps in front of the bus. (*Ibid.*) “On information and belief, Angelica slipped and was injured because of the trash that littered the bus walkway and stairs that the bus driver knew about and failed to clean.” (*Id.* at ¶ 10.)

Thus, plaintiff has submitted sufficient evidence to raise a triable issue of material fact with regard to whether the bus was filled with trash that constituted a dangerous

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<sup>1</sup> Defendant has objected to the declaration of Otto on various grounds, including hearsay, lack of foundation, lack of personal knowledge, and impermissible conclusions. However, the court intends to overrule all of the objections, as Ms. Otto clearly has personal knowledge of the facts surrounding the incident since she was on the bus when the accident happened. The court will also overrule defendant's objections to the declaration of plaintiff's counsel.



(34)

**Tentative Ruling**

Re: **Dees v. The Dental Care Center, et al.**  
Superior Court Case No. 23CECG02695

Hearing Date: March 3, 2026 (Dept. 502)

Motion: by Defendants Alex Denes, D.D.S and C.M. Denes Dental Corporation for Summary Judgment

**Tentative Ruling:**

To grant Defendants Alex Denes, D.D.S and C.M. Denes Dental Corporation's motion for summary judgment as to the entire complaint. (Code Civ. Proc. § 437c.) Defendants shall submit a judgment consistent with the terms of this order within 10 days of service of the order.

**Explanation:**

As the moving party, Defendant bears the initial burden of proof to show that plaintiff cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (Edmon & Karnow, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2025) ¶ 10:205.5, citing *Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

Lastly, “[f]ailure to file opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion ‘may constitute a sufficient ground, in the court's discretion, for granting the motion.’” (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c(c).)

In the case at bench, Defendants Alex Denes, D.D.S. and C.M. Denes Dental Corporation dba Fresno Dental Studio rely on the declaration of Mark B. Lieberman,



(20)

**Tentative Ruling**

Re: **Jacques v. Maxco Supply, Inc.**  
Case No. 24CECG01797

Hearing Date: March 3, 2026 (Dept. 502)

Motion: Plaintiffs' Motion for Approval of PAGA Settlement and Reasonable Attorney's Fees and Costs

**Tentative Ruling:**

To deny without prejudice.

**Explanation:**

**1. Introduction**

Under Labor Code section 2699, “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” (Lab. Code, § 2699, subd. (s)(2).)

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, the Court of Appeal did provide some guidance. The court explained that “many federal district courts have applied the ‘fair, reasonable, and adequate’ standard from class action cases to evaluate PAGA settlements.” (*Id.* at pp. 75–76, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.) “Given PAGA’s purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA’s purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77, internal citations and footnote omitted.) On the other hand, “PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements... PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein.” (*Id.* at p. 79, internal citation omitted.)

**2. Notice to LWDA**

Labor Code section 2699, subdivision (s)(2), states: “The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” Plaintiff’s counsel has shown that notice of the settlement was provided to the LWDA on 2/5/2025. (Lazar Decl., ¶ 41.)

### **3. Is the Settlement Fair, Adequate, and Reasonable?**

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz, supra*, at pp. 75-77.)

The operative pleading, the Second Amended Complaint, alleges a sole cause of action for penalties pursuant to PAGA, based on various Labor Code violations.

Plaintiffs' counsel values the penalties based on the various alleged violations at \$8,095,400, assuming that every violation occurred every single pay period for every single non-exempt employee in the PAGA period. (See Lazar Decl., ¶ 30.) There is no showing that this is a realistic valuation – of what the data and documentation obtained actually revealed would be a realistic recovery. Nor is there any discussion of the strengths or weaknesses (including the defenses that defendant advances) of the various alleged violations. Counsel simply references the vague and generalized “risks of litigation, including, without limitation, the burdens of proof necessary to establish liability, the mixed case law on manageability, as well as the probability of appeal of a favorable judgment ...” (Lazar Decl., ¶ 33.) Lacking a reasoned analysis, plaintiffs have not shown that the settlement is fair, adequate, and reasonable.

### **4. Attorney's Fees and Costs**

Plaintiffs' attorneys seek an award of \$266,666.67 in attorneys' fees (1/3 of the gross settlement), and up to \$40,000 in costs.

Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Id.* at pp. 504-506.)

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* (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of “the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. ...” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Plaintiffs' attorneys, employed in two different firms, provide inadequate information to determine a reasonable fee award. The purported billing rates (reaching \$1,200 per hour) are excessive and unrealistic in the local market, and inadequate information is given as to the tasks performed. All that is provided is a generalized description of litigation tasks performed throughout the litigation. The court requires detailed billing records. The court anticipates there has been substantial duplication of efforts, in that what started out as a single plaintiff lawsuit was twice expanded to include three plaintiffs represented by two law firms. Counsel are encouraged to eliminate from billing details tasks that would have been duplicative had the three plaintiffs been named as plaintiffs from the start.



