Tentative Rulings for April 2, 2025
Department 503

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

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

24CECG02644 ***Flight Level Aviation LLC v. Bruce Rayner***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Gonzales v. City of Fresno***
Case No. 24CECG03343

Hearing Date: April 2, 2025 (Dept. 503)

Motion: Defendant City of Fresno's Demurrer to Complaint and Motion to Strike Portions of Complaint

Tentative Ruling:

To overrule the City's demurrer to the first cause of action. To sustain the demurrer to the second cause of action, without leave to amend. To deny the motion to strike, in its entirety. The City shall file and serve its answer to the complaint within 10 days of the date of service of this order.

Explanation:

Demurrer: With regard to the first cause of action, the City argues that the premises liability claim is uncertain because plaintiff has alleged multiple different code sections to support her claim, most of which the City claims do not apply to it and do not impose any liability upon it based on the facts that she has alleged. However, while it is true that plaintiff is required to allege a statutory basis for her claims against a public entity like the City, she has adequately alleged several Government Code sections that could support a claim for premises liability here.

Under Government Code section 815, a public entity is not liable except as provided by statute. "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." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183, citations omitted.)

Thus, plaintiff must allege some statute that provides a basis for suing the City here, as well as enough facts to infer that the statute applies to the City's conduct. In the present case, plaintiff has alleged that she tripped and fell on an uneven section of pavement on streets that are owned and maintained by the City, and that the City failed to repair or warn of the dangerous condition that arose from the uneven pavement. (Complaint, p. 4 of 5, ¶ Prem. L-1.) She also alleges that the City failed to install a crosswalk in the area, which resulted in a trap or nuisance that exacerbated the dangerous condition. (*Ibid*.) She further alleges that the City is liable under an exception to immunity under Government Code sections 815.2, 815.4, 815.6, 820, 830, 835, and 840.2, inter alia. (*Ibid*.) The cited Government Code sections all relate to liability for negligence and dangerous conditions against a public entity, its employees, or independent contractors hired by the entity. Thus, plaintiff has adequately alleged several statutes that provide a basis for holding the City liable for its alleged failure to repair or warn of the dangerous condition, as well as facts showing that a dangerous condition existed and caused her to fall and injure herself. Such allegations are sufficient to support plaintiff's claim for premises liability.

Nevertheless, the City contends that the first cause of action is uncertain and confusing because plaintiff has cited to multiple different Government Code sections, most of which do not apply to the City directly and only impose liability against individuals like employees or independent contractors. However, demurrers for uncertainty are disfavored, and will only be sustained where the complaint is so poorly alleged that it is impossible for the defendant to respond to it. "We strictly construe such demurrers because ambiguities can reasonably be clarified under modern rules of discovery." (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135, citing *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

Here, while the City claims that the complaint is uncertain because it cites to several different parts of the Government Code, it also seems to admit that the citation to Government Code section 835 is a proper basis for suing it for premises liability. 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, paragraph breaks omitted.)

Plaintiff has alleged that the property owned by the City was in a dangerous condition due to an uneven portion of pavement, that she tripped and fell on the uneven pavement, that she was injured as a result, and that the City was aware or should have been aware of the hazard and did not repair or warn of the condition. (Complaint, p. 4 of 5, ¶ Prem. L-1.) Plaintiff also cites to Government Code section 835, among other sections of the Government Code, to support her claim that the City can be held liable for failing to repair or warn of the condition. (*Ibid*.) Thus, she has clearly alleged a valid statutory basis for her premises liability claim, as well as facts that support the application of the statute to her claim.

The fact that plaintiff also cites to several other Government Code sections does not make the entire cause of action uncertain, as the City was clearly able to determine what plaintiff believes the statutory basis for liability is here. In fact, the City apparently concedes that section 835 is a valid basis for imposing liability as part of its argument on demurrer. Therefore, the complaint is not uncertain simply because it cites to other Government Code sections in addition to section 835.

In addition, contrary to the City's contention, the other Government Code sections are not necessarily inapplicable or irrelevant to the plaintiff's premises liability claim. For example, section 815.2 imposes liability on a public entity for the acts or omissions of its employees within the scope of their employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative. (Gov. Code, § 815.2, subd. (a).) Here, plaintiff appears to be alleging that the City's employees either created the dangerous condition or failed to repair it or warn of it, which would impose liability on the City as well. Thus, the citation to section 815.2 is not irrelevant or confusing given the facts alleged in the complaint.

Likewise, section 815.4 imposes liability on a public entity for the acts or omissions of an independent contractor hired by the public entity. (Gov. Code, § 815.4.) Here, plaintiff is alleging that the City or its agents, employees, or independent contractors caused or failed to repair or warn of the dangerous condition, which would then impose liability on the City as well. Therefore, the citation to section 815.4 is not irrelevant or confusing, as it supports the plaintiff's claim that the City is liable for the dangerous condition.

Several of the other Government Code sections cited by plaintiff also arguably support her claim against the City. Section 815.6 imposes liability against a public entity where the entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury. (Gov. Code, § 815.6.) Plaintiff has not alleged which enactment imposed a mandatory duty on the City to repair the pavement or warn of the danger, but she explains in her opposition that Streets and Highways Code section 27, subdivision (a), imposes a duty on public entities to maintain the properties under their control, including keeping the roadway or structure in a safe and usable condition. Thus, the reference to section 815.6 is not confusing or irrelevant, since plaintiff is alleging that the City violated its mandatory statutory duty to repair and maintain street or sidewalks.

Section 830 defines the terms "dangerous condition", "protect against" and "property of a public entity." (Gov. Code, § 830, subds. (a)-(c).) Since plaintiff is alleging that she was injured by a dangerous condition that existed on public property that the City failed to protect her from, the citation to section 830 is not confusing or irrelevant.

Section 840.2 imposes liability on an employee of a public entity for an "injury caused by a dangerous condition of public property…" (Gov. Code, § 840.2.) While here the plaintiff has only sued the City and not its employees who allegedly caused the dangerous condition, it appears that plaintiff is attempting to support her claim that the City is vicariously liable for the negligence of its employees in failing to repair or warn of the dangerous condition. Therefore, the reference to section 840.2 is not confusing or ambiguous. As a result, the court intends to overrule the special demurrer to the first cause of action on the ground of uncertainty.

The City also demurs to the first cause of action on the ground that it is immune for allegedly failing to install a crosswalk under Government Code section 830.8. However, the City's argument here appears to be an attempt to contend that the first cause of action fails to state a claim against it due to statutory immunity, which would support a general demurrer for failure to state facts sufficient to state a claim, not a special demurrer for uncertainty. Since the City has only brought a special demurrer for uncertainty with regard to the first cause of action, the issue of whether the first cause of action fails to state a claim is not properly before the court.

In any event, even if the court were to consider the merits of the City's argument, a general demurrer will not lie as to only a part of a cause of action. If the plaintiff has alleged enough facts to state a valid claim, even if it is not the claim that the plaintiff intended, then the court must overrule the demurrer. (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452; *Spencer v. City of Palos Verdes Estates* (2023) 88 Cal.App.5th 849, 861–862.) Here, plaintiff has properly alleged a claim for premises liability under Government Code section 835 based on the allegation that she was injured when she tripped on an uneven portion of pavement and that the City knew or

should have known of the dangerous condition and failed to warn of or repair it. Therefore, regardless of whether the plaintiff can validly state a claim against the City for having created a "concealed trap" by failing to install a crosswalk at the site of the incident, she has still stated a valid claim for premises liability and as a result a general demurrer based on the immunity provided under section 830.8 will not lie. Consequently, the court intends to overrule the demurrer to the first cause of action.

On the other hand, the court intends to sustain the general demurrer to the second cause of action for general negligence/violation of the Government Code. As discussed above, a plaintiff cannot state a common law negligence claim against a public entity like the City. (Gov. Code, § 815.) Any liability must be based on a statute that imposes a duty on the public entity. (*Ibid*.) Thus, the plaintiff must allege a specific statutory basis for his or her claim, as well as sufficient facts to show that the statute applies. (*Eastburn v. Regional Fire Protection Authority*, *supra*, 31 Cal.4th at p. 1183.)

Here, plaintiff has attempted to state a claim for "General Negligence/Violation of Government Code." (Complaint, p. 5 of 5.) She does not allege any new facts in her second cause of action, which is apparently based on the same allegations as the first cause of action, namely that she tripped and fell on an uneven portion of pavement that constituted a dangerous condition of public property owned by the City. She alleges that defendant "negligently owned, operated, maintained, entrusted, and/or controlled the subject premises", and that defendant is liable under Government Code sections 815.2, 815.4, 815.6, 820, 830, 835, and/or 840.2 "for the dangerous condition that existed." (*Id*. at ¶ GN-1.) She also alleges that "Defendants were subject to and violated, ADA, California Health & Safety Codes, building codes, and/or ordinances and these violations actually and legally caused Plaintiff's damages, the occurrence resulting in the damages was of a nature that the regulation was designed to prevent and Plaintiff was among the class of persons for whose protection the regulation was adopted." (*Ibid*.)

However, it appears that plaintiff's second cause of action is simply alleging a premises liability claim based on a dangerous condition of public property, which is the same claim that she alleged in her first cause of action. She does not allege any other facts that would support a different type of negligence claim against the City. Indeed, most of her allegations seem to confirm that the sole basis for her claim is that she was injured by a dangerous condition on the street owned by the City. To the extent that she is attempting to allege a general common law negligence claim, her claim is improper because the City is not subject to common law negligence liability.

Plaintiff's opposition relies on an alleged violation of Government Code section 835, but that section simply imposes liability on a public entity for a dangerous condition on its property, which is the same cause of action that she has already alleged in her first cause of action. She also cites to section 840.2, but section 840.2 also provides for liability for a public employee where a dangerous condition exists on public property. She also cites to section 815.6, which provides for public entity liability where the public entity breaches a mandatory statutory duty, and argues that the City had a duty to maintain the street and sidewalk in a safe and usable condition under the Streets and Highways Code. Again, however, plaintiff's citation would only support a claim for premises liability, not general negligence. In other words, her second cause of action is entirely redundant of her first cause of action for premises liability.

Plaintiff does allege that defendant is liable under Government Code section 820, which provides for liability for a public employee who causes an injury through his act or omission. However, plaintiff alleges no facts to show how section 820 would apply here. The only facts alleged are that there was a dangerous condition on the City's property due to the uneven portion of the pavement, which caused plaintiff to trip and injure herself. Even if the dangerous condition was caused by a City employee, plaintiff would only be able to state a premises liability claim, not a general negligence claim. Since she has already alleged a premises liability claim in the first cause of action, the second cause of action is redundant and superfluous.

Therefore, the court intends to sustain the demurrer to the second cause of action for failure to state a valid cause of action. Furthermore, the court will deny leave to amend, as plaintiff has not explained how she could cure the defect in her pleading by amending it.

Motion to Strike: Defendant City moves to strike the citations to Government Code sections 815.2, 815.4, 815.6, 820, 830, and 840.2, contending that the citations are irrelevant and improper, since the only valid basis for a claim against it here would be Government Code section 835, which imposes liability for a dangerous condition on public property. However, as discussed above, many of the Government Code sections cited by plaintiff are potentially applicable to her premises liability claim. (See the discussion above with regard to the special demurrer for uncertainty to the first cause of action.) Therefore, the court will not strike the citations to Government Code sections 815.2, 815.4, 815.6, 820, 830, and 840.2.

The City also moves to strike the allegations that it created a "concealed trap" by failing to install crosswalks at the location of the incident, contending that it is immune from liability under Government Code section 830.8. The City contends that section 830.8 provides immunity to public entities for failure to install signals, markings, or devices described in the Vehicle Code, and that the "concealed trap" exception to immunity only applies to dangerous conditions that are not reasonably apparent to motorists, not pedestrians like plaintiff. Since it is immune from liability for failing to install a crosswalk at the site of the accident, the City concludes that plaintiff's allegations are improper, irrelevant and should be stricken.

Section 830.8 states, "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code." However, section 830.8 then goes on to state that "Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care."

"Section 830.8 provides a limited immunity for public entities exercising their discretion in the placement of warning signs described in the Vehicle Code. 'The broad discretion allowed a public entity in the placement of road control signs is limited, however, by the requirement that there be adequate warning of dangerous conditions not reasonably apparent to motorists.' Thus, where the failure to post a warning sign results in a concealed trap for those exercising due care, section 830.8 immunity does

not apply." (*Kessler v. State of California* (1988) 206 Cal.App.3d 317, 321–322, citations omitted.)

"A public entity may be liable for accidents proximately caused by its failure to provide a signal, sign, marking or device to warn of a dangerous condition which endangers the safe movement of traffic 'and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.' This 'concealed trap' statute applies to accidents proximately caused when, for example, the public entity fails to post signs warning of a sharp or poorly banked curve ahead on its road or of a hidden intersection behind a promontory, or where a design defect in the roadway causes moisture to freeze and create an icy road surface, a fact known to the public entity but not to unsuspecting motorists, or where road work is being performed on a highway. (*Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196–1197, citations omitted.)

Here, plaintiff appears to be alleging that the failure to install a crosswalk at the location where she fell created a "concealed trap" that increased the dangerousness of the uneven pavement and increased the likelihood that someone would be injured by the condition. Thus, her allegations are an attempt to plead around the statutory immunity for failure to provide a crosswalk at the location of the accident.

Defendant contends that the "concealed trap" exception to section 830.8 immunity only applies to dangerous conditions that are not reasonably apparent to motorists, not to pedestrians like plaintiff. Defendant cites to *Chowdhury v. City of Los Angeles, supra,* 38 Cal.App.4th 1187 and *Kessler v. State of California, supra,* 206 Cal.App.3d 317 in support of its contention. However, *Chowdhury* and *Kessler* only discussed concealed traps in the context of auto accidents, not pedestrian trip and fall incidents. They said nothing about whether the concealed trap exception applies to pedestrians. Cases are not authority for propositions they do not consider. (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.) Therefore, defendant has not shown that the concealed trap exception does not apply to plaintiff's premises liability claim.

Also, as plaintiff points out, other cases have implied that the concealed trap exception might apply to pedestrians under some circumstances. "[A] concealed dangerous condition that is a trap to motorists *or pedestrians* may require the posting of a warning sign but the absence of a warning sign itself is not a dangerous condition." (*Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 136, emphasis added, citing to *Moritz v. City of Santa Clara* (1970) 8 Cal.App.3d 675, 576 and *Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 174.) Furthermore, courts have held that the immunity under section 830.8 only applies where the lack of a traffic signal, marking, or other device is itself alleged to be the dangerous condition, not where there are other circumstances that make the street dangerous and the signal, marking, or device merely increased the danger that already existed. (*Washington v. City and County of San Francisco* (1990) 219 Cal.App.3d 1531, 1534.) Here, plaintiff has alleged that she was injured by the uneven pavement, not by the lack of a crosswalk itself. The lack of a crosswalk simply increased the existing danger created by the uneven crosswalk. Therefore, the court will not strike the language from the complaint regarding the existence of a concealed trap.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 3/26/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Andy Wascher v. FMA Agency, Inc.***
Superior Court Case No. 24CECG01740

Hearing Date: April 2, 2025 (Dept. 503)

Motion: By Defendants to Set Aside Defaults

Tentative Ruling:

To grant the motions to set aside defaults. The moving defendants are to file and serve their answers on the plaintiff within 10 days of the clerk's service of the minute order.

Explanation:

The plaintiff, Andy Wascher (Plaintiff), filed a complaint against six named defendants. Plaintiff subsequently dismissed the complaint without prejudice against defendant MRR Brands LLC, erroneously sued as a California company; and added defendant MRR Brands, a Wyoming limited liability company (MRR Brands), as Doe 1. Plaintiff dismissed the complaint with prejudice against defendant Shawn Dougherty on October 29, 2024.

In his complaint Plaintiff seeks to recover for breach of contract and related causes of action against the remaining five named defendants. Three of the defendants, FMA Agency, Inc. (FMA), Matuz Venture Partners, Inc. (Matuz Venture) and Mike Matuz, were personally served on May 8, 2024, and the clerk entered their defaults as requested on July 3, 2024. Defendant Amanda Matuz was served by substituted service on June 22, 2024, and the clerk entered her default on August 5, 2024. MRR Brands was served on September 6, 2024, and the clerk entered its default on October 17, 2024.

On January 2, 2025, four of the remaining five named defendants filed motions to set aside their defaults—FMA, Matuz Venture, Mike Matuz, and Amanda Matuz (together Moving Defendants). (Defendant MRR Brands did not file a motion to set aside its default.) No trial date has been set.

The Moving Defendants bring their motion to set aside their defaults on the grounds of inadvertence, mistake, or excusable neglect under Code of Civil Procedure section 473, subdivision (b). The trial court has broad discretion to vacate the clerk's entry of default and any subsequent judgment. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495 [where defendant failed to articulate satisfactory excuse to show defendant was justified in failing to defend, trial court abused discretion by granting motion to set aside default].)

In order to obtain relief under Code of Civil Procedure section 473, the application for relief shall be made within six months after the judgment, dismissal, order, or proceeding was taken. "The six-month time limit for granting statutory relief is jurisdictional and the court may not consider a motion for relief made after that period has elapsed." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42.)

The law strongly favors trial and disposition on the merits and doubts in the application of Code of Civil Procedure section 473 must be resolved in favor of the party seeking relief. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [superseded by statute on other grounds]; *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696 [mistake or inadvertence, not on part of moving defendant, provided abundant grounds for discretionary relief to set aside default].) Where the party seeking relief seeks such relief promptly and no prejudice will result to the opposing party, "'very slight evidence will be required to justify a court in setting aside the default.' [Citations.]" (*Elston v. City of Turlock, supra*, 38 Cal.3d at p. 233 [trial court abused discretion by denying motion for relief under Code Civ. Proc., § 473, subd. (b)].)

Timeliness

Here, the Moving Defendants timely filed and served their motions on January 2, 2025, which is within the six-month time period for each of them.

Proposed Pleading

Code of Civil Procedure section 473, subdivision (b) specifies that the application for relief shall be accompanied by a copy of the proposed answer. Here, each Moving Defendant submitted a copy of a proposed answer as exhibit A to the memorandum of points and authorities.

Mistake, Inadvertence, Surprise, or Excusable Neglect

Excusable neglect is an act or omission that might be expected of a reasonably prudent person under similar circumstances. (*Zamora v Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 [clerical error provided grounds for relief from judgment].) The Moving Defendants each submit a declaration by Mike Matuz that he was served on behalf of each of them. In his declarations, Mike Matuz states, "there were multiple ongoing lawsuits against me and/or my entities." (See, e.g., Mike Matuz decl. for Matuz Venture, p. 2:9-10.) Mike Matuz mistakenly assumed the documents served upon him to initiate this lawsuit were related to the existing lawsuits. He told the process servers to deliver the documents to the attorney of record, because he "believed that all legal documents should be served to the retained attorneys who would accept them." (*Id.*, p. 2:12-13.) Based on this assumption, Mike Matuz did not open the documents or forward them to anyone. He did not realize the documents pertained to a different lawsuit until a dismissed defendant, Shawn Doughtery, mentioned the lawsuit to Mike Matuz eight weeks later, after the deadline to respond. A person under similar circumstances could reasonably make such a mistake.

Although Plaintiff filed a proof of service executed by a registered California process service to establish that Plaintiff served the Moving Defendants' counsel with

opposition papers to each motion, the court has no record of the opposition papers described in the proofs of service. Accordingly, the court has treated the motion as unopposed. The court finds it would not prejudice Plaintiff to grant the motion and permit the Moving Defendants to file their responsive pleadings. Therefore, the court grants the Moving Defendants' motions.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/1/2025.
(Judge's initials) (Date)