

Tentative Rulings for May 1, 2025  
Department 502

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

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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: ***Fridoon Alvand (David) v. Pinedale County Water District***  
Superior Court Case No. 22CECG03586

Hearing Date: May 1, 2025 (Dept. 502)

Motion: Defendant Pinedale County Water District's Demurrer to Complaint, Special Motion to Strike Third Cause of Action, and for Attorney's Fees

**Tentative Ruling:**

To sustain the demurrer to the entire complaint on the grounds of failure to state facts sufficient to constitute a cause of action and uncertainty. Also, to the extent that plaintiff is alleging a breach of contract claim, he fails to allege whether the contract was written, oral, or implied by conduct. To sustain the demurrer without leave to amend, plaintiff has not shown how he could amend the complaint to cure its deficiencies.

To deny the special motion to strike the third cause of action as moot in light of the ruling on the demurrer. To deny defendant's request for an award of attorney's fees in connection with the motion to strike.

Defendant shall submit a proposed judgment consistent with this order within 10 days of the date of service of this order.

**Explanation:**

**Demurrer:** First, the entire complaint is so vague and ambiguous that it is impossible to determine exactly which claims plaintiff is attempting to allege and what facts support each claim. The complaint is not broken down into separate causes of action, and instead simply recites a series of facts and contentions without clearly explaining what claims plaintiff is bringing, how he was injured by the District, and what type of remedies he seeks. The complaint is on a Judicial Council form for breach of contract actions, but plaintiff does not seem to be alleging that there was a contract between himself and the District. Plaintiff alleges that defendant Pinedale County Water District overcharged him for water deliveries despite promising to only charge him a flat rate of \$45 per month, failed to respond to his questions, and labeled him as being "delinquent" on his property tax assessments. Again, however, it is not clear what types of claims he is seeking to allege or even how he was harmed by the District. Thus, the court intends to sustain the demurrer to the entire complaint on the ground of uncertainty.

In addition, the complaint fails to state facts sufficient to constitute any valid causes of action. To the extent that plaintiff seeks to state a claim for breach of contract, he never clearly alleges any of the elements of a contract claim. "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th

1182, 1186, citation omitted.) Here, plaintiff never alleges that there was a contract between himself and the District, that he performed under the contract, or that the District breached the contract and caused him injury as a result. His allegation that the District overcharged him for water after promising to charge only a flat fee of \$45 per month does not show that there was a contract between the parties, that plaintiff performed under the contract, that defendant breached its duties under the agreement, or that plaintiff was damaged as a result of the breach. Also, if plaintiff is seeking to allege a contract claim, he does not allege whether the purported contract was written, oral, or implied by conduct. (Code Civ. Proc., § 430.10(g).) Therefore, the contract cause of action fails to state a claim and the court intends to sustain the demurrer to the purported contract cause of action.

Also, to the extent that plaintiff seeks to allege some type of common law claim based on the alleged overcharges, plaintiff cannot state a claim against a public entity like the District. Under Government Code section 815, "Except as otherwise provided by statute: [¶] (a) 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."

"The Legislative Committee Comment to section 815 states: 'This section *abolishes all common law or judicially declared forms of liability for public entities*, except for such liability as may be required by the state or federal constitution, e.g., inverse condemnation....' Moreover, our own decisions confirm that section 815 abolishes common law tort liability for public entities." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899, citations omitted, italics in original.)

Thus, a public entity is only liable to the extent that a statute expressly provides for liability. Here, plaintiff has not alleged any statutory basis for his claims, and it appears that he is attempting to state common law claims for some type of tort liability. However, all such common law claims have been abolished by the Government Claims Act, so plaintiff cannot state a valid claim for any common law tort.

Furthermore, plaintiff has not alleged any facts showing that he complied with the Tort Claims Act by filing a timely claim with the District before filing his complaint. Any plaintiff seeking to bring a civil action against a government entity like the District must allege that they filed a timely claim with the entity. (Gov. Code, § 911.2.) If the plaintiff fails to allege they filed a timely claim, their complaint is defectively alleged and their cause of action is barred. (*California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1591.)

In the present case, plaintiff has not checked the box on the Judicial Council form complaint stating that he filed a claim with the District before he filed his complaint, or that he was excused from complying with the claim requirement. Nor has he alleged elsewhere in the complaint that he filed a claim and that it was rejected or deemed rejected by the District. Nor has he attached a copy of any claim that he might have filed with the District or a rejection letter from the District. Therefore, he has failed to show that he complied with the Government Claims Act, and the entire complaint fails to state a valid cause of action against the District. As a result, the court intends to sustain the demurrer to the entire complaint for uncertainty and failure to state a valid cause of action.

Moreover, the court intends to deny leave to amend, as plaintiff has not filed any opposition to the demurrer or made any attempt to show how he could amend the complaint to cure its defects. When opposing a demurrer, “ [t]he plaintiff has the burden of proving that [an] amendment would cure the legal defect...” ( *Sierra Palms Homeowners Assn. v. Metro Gold Line Foothill Extension Construction Authority* (2018) 19 Cal.App.5th 1127, 1132; see also *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 687.) Here, plaintiff has not met his burden of showing how he could amend his complaint to state a valid cause of action. By failing to oppose the demurrer, plaintiff apparently has conceded that he never filed a timely claim with the District before filing suit and that he cannot state a valid cause of action. Thus, granting leave to amend would be a futile act, as plaintiff would not be able to truthfully allege compliance with the Government Claims Act. Consequently, the court intends to sustain the demurrer without leave to amend.

**Special Motion to Strike:** Defendant has also brought a special motion to strike the plaintiff's third cause of action<sup>1</sup>, which seems to be based on the theory that the District defamed or slandered plaintiff by accusing him of being "delinquent" on his water payments when it sent him a property tax bill listing the overdue payments. Defendant contends that its actions in sending out the bill were protected speech and official acts, and thus plaintiff has the burden of showing by admissible evidence that he has a probability of prevailing on his claim. (Cal. Code Civ. Proc., § 425.16.) Defendant further contends that plaintiff cannot meet his burden, since the District's statements and actions in sending out the tax bill were privileged under Civil Code section 47(b). Therefore, the District concludes that the court should strike the third cause of action and award it attorney's fees for the cost of bringing the motion.

However, the special motion to strike is moot, as the court intends to sustain the demurrer to the entire complaint without leave to amend, as discussed above. Since the court intends to dismiss the entire complaint for failure to state a valid cause of action, there is no need to also grant the motion to strike as to the third cause of action. As a result, the court intends to deny the motion to strike as moot in light of the ruling on the demurrer. The court will also deny the District's request for attorney's fees, as there is no basis for fees where the motion to strike has been 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 04/30/25  
(Judge's initials) (Date)

1 As discussed above, plaintiff's complaint is not broken down into separate causes of action, so  
2 defendant's reference to a "third cause of action" is not accurate. However, it appears that  
3 defendant is moving to strike the portion of the complaint that states, "I would like to make a claim  
4 for \$50,000 compensation for their slander branding me as an [sic] 'Delinquent' and causing me  
5 distress for nearly a decade!" (Complaint, p. 4, ¶ 6.)

(35)

**Tentative Ruling**

Re: ***J.C. v. Fresno Unified School District***  
Superior Court Case No. 23CECG03952

Hearing Date: May 1, 2025 (Dept. 503)

Motion: (1) By Plaintiff J.C. to Compel Further Responses to  
Supplemental Request for Production of Documents;  
(2) By Plaintiff J.C. for Issue and Evidence Sanctions;  
(3) By Plaintiff J.C. to Reopen Discovery

**Tentative Ruling:**

To grant the motion to compel further responses and compel defendant Fresno Unified School District, within 10 days of service of the order by the clerk: to serve further responses as to the documents pertaining to Ethan Lunsford and produce responsive documents; and to produce a privilege log as it pertains to "counsel's notes" regarding teacher interviews. To deny the motion to compel further responses as to "ATLAS" documents.

To deny the motion for issue and evidence sanctions.

The court intends to deny the motion to reopen discovery. The court intends to vacate the May 27, 2025 trial and set a Trial Setting Conference for May 28, 2025 at 3:30 p.m. in Department 502.

**Explanation:**

*Compel Further Responses*

Plaintiff J.C. ("Plaintiff") seeks to compel further responses to Supplemental Request for Production of Documents from defendant Fresno Unified School District ("Defendant"). Specifically, Plaintiff seeks documents pertaining to an investigation conducted regarding Ethan Lunsford by Rick Meador, an investigator designated as a non-retained expert witness by Defendant.

The specific discovery at issue seeks documents regarding non-party witness statements; and all documents regarding the incident referring, relating, or reflecting: interviews of witnesses conducted by Defendant; recorded witness statements; correspondences, reports, or memorandums by Defendant and its staff; complete student cumulative files for Plaintiff from date of enrollment to present; correspondence, reports, and memorandums by Defendant, its staff, or Plaintiff; and statements made by any employee.

As to each of these, Defendant objected, among other grounds, that responsive documents were subject to attorney work product. The party asserting the privilege bears

the burden. (*State Farm Fire & Casualty Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 639.)

As considered by the California Supreme Court, witness statements procured by an attorney may not always reveal the attorney's thought process. (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 495.) As such, these statements are not automatically entitled as a matter of law to absolute work product protection. (*Ibid.*)<sup>1</sup> The applicability is determined case-by-case, and the attorney resisting discovery must make a preliminary or foundational showing that disclosure would reveal his or her impressions, conclusions, opinions, or legal research or theories. (*Ibid.*)

Here, with regards to investigations and interviews of Ethan Lunsford, Defendant submits no evidence to make the requisite preliminary or foundational showing that documents responsive to these requests will reveal impressions, conclusions, opinions, or legal research or theories. (See generally Chahal Decl., ¶¶ 9-13.) Neither does the opposition demonstrate why a qualified protection is warranted. No evidence was submitted to suggest that responsive documents were obtained through attorney-directed interviews. The motion to compel further responses as to the issues pertaining to Ethan Lunsford is granted.

Defendant submits that certain counsel's notes exists as to interviews with Plaintiff's teachers. As Plaintiff complains, the opposition does not make clear the scope of the notes that may exist, and the general substances thereof to determine whether any scope of privilege should apply. Without such information, Plaintiff cannot reasonably evaluate and argue against whether denial of disclosure is unfairly prejudicial. Accordingly, the motion to compel further responses is additionally granted as to directing Defendant to produce a privilege log regarding these counsel's notes.<sup>2</sup>

#### *Issue/Evidence Sanctions*

Code of Civil Procedure section 2023.010, subdivision (d) makes "[f]ailing to respond or to submit to an authorized method of discovery" a "misuse of the discovery process". Where there is a misuse of the discovery process, the court may impose, among other things, issue and evidence sanctions. (Code Civ. Proc. § 2023.030, subd. (d).) However, sanctions are only authorized to the extent permitted by each discovery procedure. (*Id.*, § 2023.030.) Plaintiff submits that Defendant acted with egregious misconduct.

Here, as Defendant notes, there is no prior order of which Defendant has disobeyed. Neither is there any evidence that Defendant failed to respond to discovery, made unmeritorious objections, or made evasive responses. Plaintiff's dissatisfaction with

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<sup>1</sup> Only where a witness statement was obtained through an attorney-directed interview is such statement entitled as a matter of law to a qualified work product protection. (*Id.* at p. 499.)

<sup>2</sup> Plaintiff additionally raised issues regarding the production of certain "ATLAS" records. These ATLAS records were not a subject raised in Plaintiff's Request for Pretrial Discovery Conference. Moreover, in opposition, Defendant affirmatively states that the ATLAS records issues were resolved through additional meet-and-confer efforts. (Chahal Decl., ¶ 14.) No reply brief was filed to refute this representation. The motion as it pertains to ATLAS records is denied as moot.

## Reopen Discovery

In what appears to be an implied acknowledgment that further fact discovery is warranted, Defendant in opposition submits that it also has necessary depositions to take that it did not seek due to the parties' prior stipulation. Given the parties' clear and complete abandonment to trial preference previously granted, in favor of more thorough discovery, evidenced by the present motions and arguments therein, the court intends to vacate the trial presently set for May 27, 2025, and set a Trial Setting Conference for May 28, 2025. The court intends to treat any further setting of trial as the original trial date for purposes of discovery. Accordingly, the court intends to deny the motion to reopen discovery as moot. The court intends to direct the parties to meet-and-confer as to the setting of trial, subject to the court's availability, on or before September 2025.

## Tentative Ruling

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