

Tentative Rulings for June 24, 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)

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.*

24CECG05596 *Iliana Garza v. Frank Vasquez* (Dept. 502)

24CECG05325 *Buchanan Crossroads, LP v. Franklin Dixon* (Dept. 502)

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

23CECG04659 *Silas Simental v. Levi Sanders* is continued to Wednesday, June 25, 2025 at 3:30 p.m. in Department 502

22CECG02916 *Luisa Perez v. Fresno Postacute Care, LLC* is continued to Tuesday, July 22, 2025 at 3:30 p.m. in Department 502

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(34)

Tentative Ruling

Re: **Sandra Borunda v. Benjamin Perez, Jr.**
Superior Court Case No. 24CECG02350

Hearing Date: June 24, 2025 (Dept. 502)

Motion: by Defendants for Judgment on the Pleadings

Tentative Ruling:

To grant. Moving party shall submit a judgment to the court within 5 days of service of the order by the clerk.

Explanation:

A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired, and so the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

As in demurrers, grounds for the motion must appear on the face of the challenged pleading or on facts which the court may judicially notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

When reviewing a pleading, a demurrer or motion for judgment on the pleadings admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

In the case at bench, defendants Benjamin Perez, Jr., Jeremy Bailey, Animal Capture Wildlife Control, and Angelica M. Salceido (collectively "Defendants") bring this common law motion for judgment on the pleadings with regard to Complaint's cause of action alleging violation of Civil Code section 1714.41 against all defendants. Defendants assert no cause of action is stated for violation of Civil Code section 1714.41 where the child support obligation at issue has been fully paid.

Defendants request judicial notice of an April 7, 2025 Minute Order from Department 302 of the Fresno County Superior Court confirming there is no outstanding child support owed by Benjamin Perez, Jr. (RJN No. 1, Exh. A.) The request for judicial notice of an order of this court is granted. A court may take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments. (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.)

The Complaint alleges defendant Perez owes \$38,789.02 in past due child support as the basis of plaintiff's cause of action alleging violation of Civil Code 1714.41. (Complaint, ¶ 10.) This allegation is contradicted the April 7, 2025 Minute Order finding there is no outstanding balance of child support.

Civil Code section 1714.41 states in pertinent part, "Upon the satisfaction of the unpaid child support obligation this section shall not apply." (Civ. Code § 1714.41, subd. (a).) Accordingly, in light of the facts contradicting the allegation of a balance of child support owed by defendant Perez, there is no cause of action for violation of Civil Code section 1714.41 stated in the Complaint.

Plaintiff opposes¹ the motion on the basis that pursuant to Code of Civil Procedure section 438, judgment on the pleadings does not lie on grounds previously raised by a demurrer which was overruled unless there has been a "material change in applicable case law or statute" since that time. (Code Civ. Prov. § 438, subd. (g)(1).) However, the moving papers indicate defendants bring the motion as a common law motion for judgment on the pleadings on the ground that the objection that a complaint fails to state a cause of action is never waived. (see *Smiley v. Citibank* (1995) 11 Cal.4th 138, 145 fn. 2; *Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650; *Tarin v. Lind* (2020) 47 Cal. App. 5th 395 [addressing merits of non-statutory motion for judgment on the pleadings made at the outset of trial].)

There is a gray area as to whether the nonstatutory, common law motion survives after section 438 was enacted in 1994. Prior to its enactment, the nonstatutory motion could be made at any time either prior to the trial or at the trial itself. The case most frequently cited for the nonstatutory motion surviving is *Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650, even though it did not actually comment on the issue of the statutory vs. nonstatutory motion at all, but merely cited the pre-CCP § 438 case of *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 877 in support of the aforementioned time parameters for the motion. Even the Rutter treatise, "Civil Procedure Before Trial," mentions that "[n]one of the cited cases expressly deal with this issue; they simply assume its existence." (Edmon & Karnow, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 7:279.) The treatise notes that this is a "practical result," since the court should always be able to decide at any time that there is no valid cause of action in order to avoid an unnecessary trial. (*Ibid.*)

The court finds that allowing the nonstatutory, common law motion for judgment on the pleadings to proceed is the practical result here.

Plaintiff further argues that the satisfaction of the child support obligation made *after* the litigation is initiated alleging violations of Civil Code section 1714.41 does not extinguish liability for the alleged statutory violation. Plaintiff cites no authority to support this interpretation. Moreover, plaintiff's interpretation conflicts with the plain language of the statute.

¹ The court will exercise its discretion to consider the late-filed opposition. (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 623.)

(37)

Tentative Ruling

Re: **Steven Carrillo v. Donald Wallace, JR**
Superior Court Case No. 24CECG01555

Hearing Date: June 24, 2025 (Dept. 502)

Motion: By Plaintiff to Appoint a Receiver and for Preliminary Injunction

Tentative Ruling:

To grant Plaintiff's motion to appoint a receiver. To appoint Bellann Raile of Cordes & Company to serve as court-appointed receiver. Raile is to provide a bond in the amount of \$50,000 pursuant to Code of Civil Procedure section 567, subdivision (b).

To deny the request for preliminary injunction.

Explanation:

Continuance

In the opposition, Defendants ask that the Court continue this matter for further discovery from Plaintiff. The Court denies Defendants' request to continue the motion. Plaintiff and Defendants both acknowledge that Defendants were responsible for the financial aspects of Security Resolutions of California Inc. ("SRC"). As such, Plaintiff's responses to discovery are not relevant to this motion. Defendants would be in possession of evidence which might exist to demonstrate whether or not they have been mismanaging or misappropriating funds. There is no prejudice in proceeding to the merits of Plaintiff's motion.

Judicial Notice

Plaintiff seeks judicial notice of 15 documents which consist of Statements of Information for various businesses connected with Defendants, "FBN Lookup" webpages for various businesses connected with Defendants, and portions of the court record in this case. Defendants have not objected. The Court takes judicial notice of each, but only to the extent that such records exist.

Appoint Receiver

Civil Code section 1803 provides for the appointment of a receiver where a complaint for involuntary dissolution has been filed when "the court has reasonable grounds to believe that unless a receiver of the corporation is appointed the interests of the corporation and its shareholders will suffer pending the hearing and determination of the complaint." Code of Civil Procedure section 564, subdivision (b)(1) similarly provides for appointment of a receiver in actions between partners jointly owning in any property or fund when 1) the right to or interest in the property or fund is probable and 2) the property or fund is in danger of being lost, removed, or materially injured. Appointment

of a receiver is to be “exercised with caution”. (*Cohen v. Herbert* (1960) 186 Cal.App.2d 488, 495.)

Here, it is clear that Plaintiff and Defendants are at an impasse with regard to SRC. Both Plaintiff and Defendants lob copious and serious accusations at one another regarding how and why court intervention is necessary here. Appointment of a receiver is appropriate here. First, both parties admit to the one-sided nature of the financial control over SRC by Defendants. Second, Plaintiff retained an accountant in August 2024 to audit the financial records for SRC. (Wallace Decl., ¶ 19; Nelson Decl., ¶ 4.) In August 2024 that accountant provided a draft letter detailing concerns with regard to incomplete financial records and the possibility of mismanagement and misappropriation of SRC funds to Defendants' advantage. (Wallace Decl., Exh. D.) The accountant has further clarified his professional opinion that Defendants have “mismanaged SRC to the detriment of SRC and Plaintiff's interest in same.” (Nelson Decl., ¶ 14.) Third, this Court has had to act to compel Defendants' production of documents in this matter. (Minute Order, March 11, 2025.) This resistance by Defendants to sharing financial records is particularly concerning in light of the claims of financial mismanagement and the one-sided nature of the financial control of SRC. Therefore, the Court grants the motion to appoint a receiver.

Plaintiff has requested the Court appoint Bellan Raile and she has provided a declaration regarding her experience as a court-appointed receiver. (Raile Decl., ¶ 3 and Exh. A.) Defendants have only argued that a receiver should not be appointed. They have not presented any issue with the appointment of Raile in the event the Court ruled in Plaintiff's favor. Her declaration is sufficient to show that she would be an appropriate choice as receiver. (Code Civ. Proc., § 566.)

No party has addressed the amount the receiver should provide as bond. (Code Civ. Proc., § 567, subd. (b).) The Court will set the amount at \$50,000.

Preliminary Injunction

A preliminary injunction may be granted any time before judgment upon affidavits that show sufficient grounds, and notice to the opposing parties. (Code Civ. Proc. § 527, subd. (a).) To decide whether to issue a preliminary injunction, the court weighs two factors: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the relative interim harm the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary injunction is issued. (E.g., *SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280.) The granting or denying of a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.)

The burden of proof is on the plaintiff as moving party. (*O'Connell v. Superior Court*, 141 Cal.App.4th 1452, 1481.) Competent evidence is required to create a sufficient factual showing on the grounds for relief. (See, e.g., *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.) Supporting declarations must contain specific and admissible evidence supporting the complaint's claims. (*Low v. Low* (1956) 143

(36)

Tentative Ruling

Re: ***Clovis Unified School District v. Dominic De La Cerda***
Superior Court Case No. 25CECG00955

Hearing Date: June 24, 2025 (Dept. 502)

Motion: by Plaintiff for Pre-Judgment Possession

Tentative Ruling:

To grant the motion for order for prejudgment possession of the property. (Code Civ. Proc., § 1255.410.)

Explanation:

Under Code of Civil Procedure section 1255.410, subdivision (a), "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article." (Code Civ. Proc. § 1255.410, subd. (a).)

"Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing." (Code Civ. Proc. § 1255.410, subd. (c).)

If the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited.

(D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession.

(Code Civ. Proc., § 1255.410, subd. (d)(2).)

Also, a public entity seeking to take property by eminent domain must first obtain a resolution of necessity from its governing body. (Code Civ. Proc. § 1245.220.) "Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030." (Code Civ. Proc., § 1245.250, subd. (a).) In other words, the resolution of necessity conclusively establishes that the public interest and necessity require the project, the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, and the property sought to be acquired is necessary for the project. (Code Civ. Proc. § 1240.030.)

However, Code of Civil Procedure section 1245.255, subdivision (b) provides: "A resolution of necessity does not have the [conclusive] effect ... to the extent that its adoption or contents were influenced or affected by gross abuse of discretion by the governing body." (*Ibid.*) "[T]he scope of the court's review under this section is limited to a determination of whether the resolution is supported by substantial evidence." (*Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25.)

"The burden of showing such lack of substantial evidence necessarily falls on the party challenging the resolution. ... [T]he party seeking review 'must make some showing that the body invested with discretion has acted arbitrarily, capriciously, fraudulently, or without due regard for his rights and that the action was prejudicial to him. [Citations.]' [Citations.]" (*Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 25, citations omitted.)

Here, plaintiff is entitled to take the subject property by eminent domain, since plaintiff is a public school district acting pursuant to a resolution of necessity adopted by the School board. (See plaintiff's Complaint, Ex. 1.) Defendants challenge plaintiff's entitlement to take the property by eminent domain for three reasons: (1) there is no showing that the public road improvements are a part of a school district's powers, functions and duties; (2) plaintiff failed to negotiate in good faith with defendants and make a code-compliant offer to defendants prior to adopting the resolution of necessity; and (3) plaintiff failed to complete an environmental impact report ("EIR") in compliance with the California Environmental Quality Act ("CEQA").

The governing board of any school district may acquire by eminent domain any property necessary to carry out any of the powers or functions of the district. (Ed. Code, § 35270.5.) Defendants contend that the acquisition of private property for the construction of road improvements located approximately 1.5 miles away from the Educational Center Project is outside the scope of plaintiff's powers. On reply however, plaintiff provides evidence indicating that as a condition of the City of Fresno extending water and sewer services to the Educational Center Project, the City has required plaintiff to complete several offsite improvements, including improvements to certain public

streets in the vicinity of the Educational Center Project, including the subject property. (Johnston Decl., ¶¶ 2-6, Ex. A.)

Second, defendants argue that plaintiff failed to make good faith negotiations with defendants and make a code-compliant offer for the subject property under Government Code section 7167.2. Defendant indicates that the February 4, 2025 offer of \$150,000 for the subject property contained an unsigned summary statement purportedly prepared by Gregg J. Palmer, that did not include an analysis of how the severance damages were calculated. Further, that Mr. Palmer did not explain how he came to a fair market valuation of \$3 per square footage of the acquisition area, since the comparable sales used to determine that valuation ranged in price from \$2.11 per square foot to \$327.81 per square foot. (De La Cerda Decl., Ex. 3.) However, defendants have not presented any competent evidence to rebut the expert's findings, e.g., a competing appraisal is not attached. Nor is there any evidence tending to challenge the qualifications of plaintiff's appraiser. Additionally, plaintiff provides that it has been involved in communications with defendants regarding the negotiations for acquiring the subject property since as early as June 13, 2024. (Mele Decl., ¶¶ 4-16 [detailing that he has attempted to contact defendants via four letters, five telephone calls, two emails, and four personal meetings at defendants' residence].)

Third, defendants contend that plaintiff has not prepared an EIR in compliance with CEQA prior to initiating the suit for eminent domain. The reply indicates plaintiff's governing board certified the Program EIR for the Fourth Education Center (since renamed to the Terry P. Bradley Educational Center on August 28, 2008, which included an analysis of traffic impacts to the surrounding area. (Stairs Decl., filed on June 9, 2025, ¶¶ 4-7, Ex. A.) The PEIR is not challenged.

Accordingly, defendants have not met their burden in showing that the adoption or the contents of the resolution of necessity were influenced or affected by gross abuse of discretion. Therefore, the adoption of the resolution of necessity establishes conclusively that (a) The public interest and necessity require the project; (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) The property sought to be acquired is necessary for the project. (Code Civ. Proc., § 1240.030, subds. (a), (b), (c).) Therefore, the first prong of the test under Code of Civil Procedure section 1255.410, subdivision (d) is satisfied.

Plaintiff also alleges that it has deposited the probable amount of compensation of \$150,000, which is the amount that plaintiff's appraiser determined to be the fair market value of the property, with the office of the Treasurer of the State of California as required by Code of Civil Procedure section 1255.010, subd. (a). thus, it appears that plaintiff has satisfied the second prong of the test.

Plaintiff has also shown an overriding need to take the property prior to judgment, since plaintiff needs to take the property for road improvements in order to be entitled to receive extraterritorial water and sewer services from the City of Fresno to operate the new school facilities which is scheduled to open in August 2025. (Johnston Decl., ¶ 4, Ex. A.) Students and staff have already been assigned to attend the new schools; therefore, if the opening of the school is delayed, there will be great hardship, including the inconvenience of reassigning these students to various schools throughout the District

