Tentative Rulings for July 29, 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.***

23CECG03156 ***Lerma v. Savemore*** **(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.

24CECG02869 ***Jane Doe No. 1 v. Kerry Hirahara*** **is continued to Tuesday, August 12, 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

(41)

Tentative Ruling

Re: ***Kylie Byrd v. City of Clovis***
Superior Court Case No. 25CECG00550

Hearing Date: July 29, 2025 (Dept. 502)

Motion: Demurrer by Defendant Clovis Unified School District

Tentative Ruling:

To sustain defendant's demurrer with leave to amend. Plaintiff is granted leave of 20 days to file a first amended complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

Plaintiff Kylie Byrd, a minor by and through her guardian ad litem, Tyla Byrd (Plaintiff), initiated this action by filing a form complaint (Complaint) against codefendants Clovis Unified School District (CUSD) and the City of Clovis. Plaintiff alleges Kylie Byrd was injured at a softball practice session, when another student swung a metal bat and struck Kylie Byrd in the mouth. The Complaint has two causes of action—the first for general negligence and the second for premises liability. CUSD demurs to the second cause of action for premises liability only.

Meet and Confer

CUSD's counsel filed and served a declaration stating counsel met and conferred by telephone with Plaintiff's counsel on two occasions, at least five days before a responsive pleading was due to be filed, but the parties were unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party.

CUSD's Demurrer

CUSD demurs generally to the second cause of action for premises liability for failure to plead facts sufficient to constitute a cause of action and specially based on the Complaint's ambiguous and unintelligible allegations. CUSD correctly contends a public entity has no liability based on a dangerous condition of property for injuries caused solely by the acts of third parties. To state a cause of action against CUSD Plaintiff must specify in what manner the condition of the softball practice field constituted a dangerous condition.

In testing a pleading against a demurrer, the alleged facts are deemed true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials* Co. (1981) 123 Cal.App.3d 593, 604.) A demurrer tests only the legal sufficiency of the pleading--not the truth of the plaintiff's allegations or the accuracy of the plaintiff's

description of the defendant's conduct. (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 47.)

To be "demurrer-proof," a complaint must allege sufficient *ultimate facts* to state a cause of action under a statute or case law. (*People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484 [adoption of official forms does not relieve plaintiff from alleging essential ultimate facts to state cause of action]; Code Civ. Proc., § 425.10, subd. (a).) Although California courts take a liberal view of inartfully-drawn complaints, "[i]t remains essential...that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of . . . what remedies are being sought." (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.)

A plaintiff may plead negligence in general terms. But a plaintiff must plead all statutory causes of action with particularity. All claims against a governmental entity alleging a dangerous condition are statutory; therefore, a plaintiff must plead such claims with specificity. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 ["Ordinarily, negligence may be pleaded in general terms. . . . . However, because . . . all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable"]; *Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802 [sustaining school district's demurrer where dangerous property was not owned or controlled by district and district had no mandatory duty]; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 ["claim alleging a dangerous condition may not rely on generalized allegations [citation] but must specify in what manner the condition constituted a dangerous condition"]; *People ex rel. Dept. of Transportation v. Superior Court, supra,* 5 Cal.App.4th at p. 1484 ["claims for damages against governmental entities must be pled with specificity"].)

Government Code section 835 sets forth the statutory elements of a public entity's liability for a dangerous condition of its property, with certain inapplicable exceptions, as follows:

> [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 Government Code section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

CUSD contends Plaintiff fails to plead facts to establish the existence and nature of the alleged dangerous condition. Government Code section 830 defines a condition as "dangerous" if it creates a "substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property ... is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code, § 830, subd. (a).) Conversely, a condition is "not dangerous," if:

> [T]he trial ... court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

(Gov. Code, § 830.2.) Ordinarily, the existence of a dangerous condition is a question of fact. "But it can be decided as a matter of law if reasonable minds can come to only one conclusion." (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148 (*Bonanno*), citing *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133 (*Zelig*).)

Plaintiff relies on *Bonanno*, where the California Supreme Court addressed only the existence of a "dangerous condition" of public property, as an element of liability under Government Code section 835. (*Bonanno, supra,* 30 Cal.4th at p. 154.) The Supreme Court held that a "dangerous condition" of public property might exist based on: (1) the location of the property that subjects users to hazards on adjacent property; or (2) the "physical condition of the public property that increases the risk of injury from *third party conduct*." (*Ibid.*, italics original.)

Plaintiff suggests she has alleged the physical condition of the school premises increased the risk of injury to Kylie Byrd from third party conduct. She relies on the allegation on page five of the Complaint that "KYLIE BYRD, while at the premises . . . repaired . . . by Defendants . . . was caused to come into contact with a dangerous condition." As CUSD correctly states, "[A] claim alleging a dangerous condition may not rely on generalized allegations [citation] but must specify in what manner the condition constituted a dangerous condition." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347, quoting *Brenner v. City of El Cajon, supra,* 113 Cal.App.4th at p. 439.) Furthermore, "third party conduct by itself, unrelated to the condition of the property, does not constitute a 'dangerous condition' for which a public entity may be held liable. [Citation.]" (*Zelig, supra,* 27 Cal.4th at p. 1134 [finding no liability where plaintiff's decedent was killed at the courthouse by the criminal act of a third party].) The Supreme Court in *Zelig* emphasized, "that the defect in the physical condition of the property must have some *causal relationship* to the third party conduct that actually injures the plaintiff." (*Id.*, at p. 1136, italics original.) And the state's high court noted "it does not appear that the addition of a physical barrier, by itself, would have had any effect on the risk of harm faced by . . . persons using the courthouse." (*Id.* at p. 1139.)

Here Plaintiff fails to allege any facts to identify an actual physical defect in the property or that the property's condition increased or intensified the risk of injury. Nor does she allege any facts to establish a causal connection between the condition of the property and another student's independent act. Therefore, when the court gives the Complaint a reasonable interpretation, reading it as a whole and in context, and taking all material allegations as true, the court finds Plaintiff fails to allege the necessary elements with the requisite specificity to state a claim under Government Code section 835. Plaintiff's allegations, even if proved, fail to demonstrate that her injury "'was caused

by a dangerous condition of [the] property,' as required by Government Code section 835." (*Zelig, supra,* 27 Cal.4th at p. 1137.) Accordingly, the court must sustain CUSD's demurrer.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Ordinarily, given the court's liberal policy of amendment, the court will grant leave to amend an original complaint. (See *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304 ["Liberality in permitting amendment is the rule" unless complaint "shows on its face that it is incapable of amendment"].) Plaintiff requests leave to amend, but fails to show how she can amend the Complaint to cure its defects. Out of the abundance of caution, and given the court's liberal policy of amendment, the court grants leave to amend since this is Plaintiff's original 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 07/28/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Stearns Bank, NA v. Rohan Panakkal***
Superior Court Case No. 23CECG03385

Hearing Date: July 29, 2025 (Dept. 502)

Motion: for Summary Adjudication

Tentative Ruling:

To grant plaintiff's request for judicial notice.[1]

To grant as to the first cause of action for breach of written agreement in favor of plaintiff Stearns Bank, NA and against defendant Thomsons Logistics, Inc. To grant as to the second cause of action for breach of personal guaranty in favor of plaintiff Stearns Bank, NA and against defendant Rohan Panakkal.

Plaintiff Stearns Bank, NA is directed to submit a proposed judgment for consideration, as described below, within five days of service of the order by the clerk.

Explanation:

Plaintiff Stearns Bank, NA moves for summary adjudication against defendants Thomsons Logistics, Inc. and Rohan Panakkal for the First and Second Causes of Action of breach of written agreement and breach of personal guaranty. Plaintiff moves under Code of Civil Procedure section 437c on the grounds that there are no material issues of fact.

Summary adjudication works the same way as summary judgment, except it acts on specific causes of action, rather than on the entire complaint. (*Oroville Hospital v. Superior Court* (2022) 74 Cal.App.5th 382, 398.) A plaintiff moving for summary judgment or adjudication of a cause of action must "prove[] each element of the cause of action entitling the party to judgment on that cause of action." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241; Code Civ. Proc., § 437c, subd. (p)(1).) Issue finding, and not issue determination, is the pivot upon which the summary adjudication turns. (*Walsh v. Walsh* (1941) 18 Cal.2d 439, 441.) Summary adjudication must only be granted if it completely disposes of an affirmative defense, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) Summary adjudication is not to be used for

[1] In conjunction with the present motion, plaintiff requested judicial notice of the parties' filed pleadings, including defendants' General Denial to the Complaint filed February 21, 2024. In the Memorandum of Points and Authorities, plaintiffs state that "In their Answer to the Complaint, Defendants admit all statements in the Complaint are true." (Memo. p. 1, ln. 22.) This erroneously refers to filings that are not the operative responsive pleading. While the court makes note of the plaintiff's oversight in referencing an inoperative pleading, this does not appear to have any bearing on the declaration and exhibits of Ms. Tschida, which are the basis of the UMFs, nor does the separate statement otherwise rely on the previously filed Answers.

piecemeal adjudication of facts. (*Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97.) As the moving party, plaintiff bears the burden.

Where plaintiff seeks summary judgment, his burden is to produce admissible evidence on each element of a cause of action entitling plaintiff to judgment. (Code Civ. Proc., § 437c subd. (p)(1).) The burden then shifts to defendant to show that a triable issue of one or more material facts "exists as to that cause of action or a defense thereto." (*Ibid*.) The defendant cannot rely upon the allegations or denials of its own pleadings to show that a triable issue of material fact exists, but instead must set forth specific facts. (*Ibid*.)

To prevail on a cause of action for breach of contract, a plaintiff must prove (1) the contract; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's breach; and (4) the resulting damages to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Here, plaintiff submits that it entered into an agreement with defendant Thomsons Logistics Inc. (Plaintiff's Separate Statement, No. 1.) Plaintiff performed its obligations under the agreement to provide equipment to defendant. (*Id*., No. 2.) Defendant then breached the agreement. (*Id*., Nos. 5, 7.) Consequently, plaintiff was damaged in the amount of $42,472.87. (*Id*., No. 10.) Plaintiff additionally incurred expenses in the amount of $9,234.81 in connection with defendant's default. (*Ibid*.) Late fees were incurred in the amount of $11,927.16. (*Id*., No. 11.) Such fees are available to plaintiff under the terms of the agreement. (*Id*., Nos. 10, 11, Tschida Decl. ¶¶ 10, 11, Exh. 1.) An accounting was attached in support of the amount in damages. (Tschida Decl., ¶ 10, Exh. 9.) No opposition was filed to refute these material facts.[2] Accordingly, summary adjudication of the first cause of action for breach of written agreement is granted in favor of plaintiff Stearns Bank, NA and against defendant Thomsons Logistics Inc. in the amount of $63,634.84. Plaintiff is entitled to seek an award of costs, including reasonable attorney fees. (Civ. Code, § 1717, subd. (a); Tschida Decl., ¶ 13, Tiberi Decl., ¶ 2.)

Under the same set of facts, plaintiff submits that the agreement with Thomsons Logistics Inc. carried an additional agreement of guaranty by Rohan Panakkal. (Plaintiff's Separate Statement, No. 14.) Thus, defendant Panakkal became obligated to guarantee Thomsons Logistics Inc.'s payments and failed to pay said payments. (*Id*., Nos. 15, 16.) Consequently, plaintiff has been damaged in the amount of $42,472.87, including late fees of $11,927.16 and additional expenses of $9,234.81. (*Id*., Nos. 16, 17.) Such fees are available to plaintiff under the terms of the agreement by virtue of the default by defendant Thomsons Logistics Inc. (*Id*., Nos. 16, 17, Tschida Decl. ¶¶ 16, 17, Exh. 1.) No opposition was filed to refute these material facts. Accordingly, summary adjudication of the second cause of action for breach of guaranty is granted in favor of plaintiff Stearns

[2] The mere presence of the defendants' general denial is insufficient to defend against a motion for summary adjudication. "A party cannot rely on the allegations of his own pleadings to make the evidentiary showing required in the summary judgment context. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7.)

Bank, NA and against defendant Rohan Panakkal in the amount of $63,634.84. Plaintiff is entitled to seek an award of costs, including reasonable attorney fees. (Civ. Code § 1717, subd. (a); Tschida Decl., ¶ 19, Tiberi Decl., ¶ 2.)

The court notes that there can be no double recovery. As a matter of guaranty, there is only one debt, and the consequence of the granting of summary adjudication here is for one amount, joint and several across these defendants.

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 07/28/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Brandy Ferris v. Lee Investment Company et al.***
Superior Court Case No. 23CECG03425

Hearing Date: July 29, 2025 (Dept. 502)

Motion: By Defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation for Monetary Sanctions

Tentative Ruling:

To grant the motion and impose monetary sanctions against plaintiffs and their counsel, Jacob Partiyeli, jointly and severally, in the amount of $7,875, payable no later than thirty (30) days from the date of service of the order by the clerk, to counsel for defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation.

Explanation:

On April 25, 2025, plaintiffs Brandy Ferris, Mark Ferris Jr., Corey Barnett, Dana Rucker, James Hollis Jr., Heather Makely, William Makely, Stacey Towers, Courtney Simmons, Darrel Whittle Jr., Vanessa Garcia, Nikole Williams, Timiya Lowe, David Grayson, Wykeita Barnett, Clarence Pennywell, Karen Vir Deol, and Lilian Serato (together "Plaintiffs") served notices of taking of depositions on defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation (together "Defendants"). The notices in question sought the person most knowledgeable from each of Defendants. The depositions were noticed for counsel for Plaintiffs' office in Los Angeles, California, for May 15, 2025.[1] On May 8, 2025, Defendants lodged objections to the notices, but indicated that they would produce the witnesses for deposition.

On May 13, 2025, Defendants sought to confirm the depositions for May 15, 2025. Plaintiffs did not respond. On May 14, 2025, Defendants again sought to confirm the depositions for May 15, 2025. Again, Plaintiffs did not respond. On May 15, 2025, Defendants appeared for deposition at Plaintiffs' office in Los Angeles, at the time indicated. Counsel for Plaintiffs was not present, and staff for counsel for Plaintiffs confirmed roughly an hour later that the depositions would not go forward. Thereafter, counsel for Defendants emailed counsel for Plaintiffs regarding the morning. Counsel for Plaintiffs responded that there was an understanding the depositions would not go forward due to objections based on distance.

Plaintiffs did not file an opposition. Rather, counsel for Plaintiffs filed a naked declaration stating that he acted in good faith and decided not to proceed with the

[1] Defendants submit that the person most knowledgeable as to each of them was the same person, and proposed to produce that individual for the three depositions in question on May 15, 2025, understanding that the person produced would only respond on behalf of one entity at a time. (Leventhal Decl., Ex. 8.)

depositions due to objections lodged as to distance and that deponents would not be produced.

Upon review of the evidence, Defendants lodged no objections as to form. (Code Civ. Proc., § 2025.410; *see also* § 2025.210 *et seq.*) Specifically, the objections did not have a distance-based objection. (*E.g.*, Leventhal Decl., Ex. 17, pp. 2:21-3:25.) Moreover, the objections expressly stated that the deponent would be produced. (*Id.*, Ex. 17, p. 2:17-19.) Finally, the objections to taking of depositions attached to counsel for Plaintiffs' naked declaration show parties not at issue in this motion.

These issues and more could have, and should have been resolved with communication by counsel for Plaintiffs. Defendants clearly indicated that deponents would be produced as noticed. Defendants further sought confirmation that the depositions would go forward as noticed several times prior to the date in question. Counsel for Plaintiffs failed to respond at every turn. Only after the date and time noticed in the depositions did counsel for Plaintiffs respond for the first time, confusing Defendants' lodged objections with entirely different parties. Accordingly, monetary sanctions are entirely warranted. (Code Civ. Proc., § 2025.430.) The court finds no justification to avoid the imposition of the mandatory sanctions.

Cody M. Leventhal submits an hourly rate of $250 per hour and seeks 1 hour for deposition preparation; 4 hours of travel; 3 hours of client preparation; an additional 2.5 hours of travel; 1 hour to appear at deposition; and 13.5 hours preparing the present motion. The court approves the hourly rate, and credits 21.5 hours of time sought, for a total of $5,375.[2]

Co-counsel, F. James Feffer submits an hourly rate of $600. The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The rate sought exceeds those of the local community for similar work. The court sets the hourly rate at $500. Feffer seeks 2.5 hours of travel and attendance and implies 3 hours for personal prep and aiding in the preparation of this motion. The court credits 5 hours, for a total of $2,500.

From the above, the court imposes monetary sanctions in the total amount of $7,875, joint and several as to Plaintiffs and their counsel of record, Jacob Partiyeli, in favor of Defendants.

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 07/28/25.
(Judge's initials) (Date)

[2] Plaintiffs further sought 5 hours for preparation of a reply brief. However, no reply brief was filed.