Tentative Rulings for August 1, 2023
Department 403

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.

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 403

Begin at the next page

(41)

Tentative Ruling

Re: ***Sue Thao v. Firebaugh-Las Deltas Unified School District***
Superior Court Case No. 23CECG01904

Hearing Date: August 1, 2024 (Dept. 403)

Motion: Motion by Defendants Firebaugh-Las Deltas Unified School District and Juan Enrique Anguiano for Summary Adjudication

Tentative Ruling:

To grant the defendants' motion for summary adjudication on the first issue of duty to establish that the moving defendants did not owe a duty under Vehicle Code section 23123; and to deny the remainder of the defendants' motion for summary adjudication.

Explanation:

After a motor vehicle collision between a car and a schoolbus, plaintiff Sue Thao, an incompetent adult, by his guardian ad litem, Susan Lee ("Plaintiff"), sued defendants Firebaugh-Las Deltas Unified School District (the "District"), bus driver Juan Enrique Anguiano, and the Estate of Trever James Lee Bohner. (Plaintiff was a passenger in a car driven by Mr. Bohner.) In the second amended complaint ("SAC"), Plaintiff alleges he sustained severe and permanent injuries, including major head trauma, as a result of the defendants' acts and omissions. The District and Mr. Anguiano (together "Defendants") now move for summary adjudication.

In their notice of motion, Defendants state they are moving for summary adjudication under Code of Civil Procedure section 437c, subdivision (f) on the grounds that Plaintiff cannot establish a violation of some of their alleged statutory duties. Plaintiff opposes the motion on two main grounds: (1) Defendants' motion fails to dispose of an issue of duty completely, as required by Code of Civil Procedure section 437c, subdivision (f), because the bus driver owed a statutory duty regarding the bus speed, which Defendants expressly exclude from their motion, as well as a common-law duty of due care; and (2) Defendants fail to show they owed no duty of care, but rather attempt to prove they did not breach specific duties.

Defendants Have the Initial Burden of Persuasion and Production

A party moving for summary adjudication based on an issue of duty must show one or more defendants either owed or did not owe a duty of care to the plaintiff as a matter of law:

> A party may move for summary adjudication as to . . . one or more issues of duty, if the party contends that . . . one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary

> adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(Code Civ. Proc., § 437c, subd. (f)(1).) Thus, a motion for summary adjudication based on an issue of duty is limited to the question of whether a defendant owed or did not owe an alleged duty to the plaintiff.

A defendant may also bring a motion for summary adjudication on an entire cause of action by showing it has no merit. As the moving party, a defendant bears the initial burden to make a prima facie showing that the action has no merit. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The burden does not shift to a plaintiff to show the existence of a disputed fact unless the defendant meets the defendant's burden. As set forth in Code of Civil Procedure section 437c, subdivision (p)(2):

> A defendant . . . has met [the] burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.

The Parties Agree Mr. Anguiano Did Not Owe a Duty Under Vehicle Code Section 23123

In the operative complaint Plaintiff alleges Mr. Anguiano owed a duty to Plaintiff under Vehicle Code Section 23123. (SAC, p. 5:18-21.) Now, the parties agree that Vehicle Code section 23123, which specifically provides that it does not apply to a person driving a schoolbus while using a wireless telephone, does not apply to Mr. Anguiano. Therefore, the court grants Defendants' motion for summary adjudication on Defendants' Issue No. 1 and finds that Defendants did not owe a duty under Vehicle Code section 23123.

Defendants Fail to Show That at Least One Element of Negligence Cannot Be Established

For the remaining issues of duty, Defendants do not argue that they did not owe a duty to Plaintiff under Vehicle Code sections 23123.5 and 23125. Instead, they argue that Mr. Anguiano *did not violate* these Vehicle Code sections. In other words, they claim Defendants did not *breach* the alleged duties. As the courts have explained, there is no statutory basis for summary adjudication on the issue of *breach* without completely disposing of a cause of action:

> [T]here is no statutory basis for summary adjudication on the issue of *breach*. We return to the language of Code of Civil Procedure section 437c, subdivision (f)(1). "A party may move for summary adjudication as to ... or one or more issues of duty, if that party contends ... that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." A plaintiff may seek summary adjudication on the existence or nonexistence of a contractual duty (*Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508, 519), but there is simply no statutory basis for an order summarily adjudicating that a party breached a duty.

(*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 243-244, italics original [holding plaintiff could not seek summary adjudication of liability only, leaving resolution of damages element for later trial]; see also, *Linden Partners v. Wilshire Linden Associates, supra,* 62 Cal.App.4th at p. 522 [on motion for summary adjudication "court may rule whether a defendant owes or does not owe a duty to plaintiff without regard for the dispositive effect of such ruling on other issues in the litigation, except that the ruling must completely dispose of the issue of duty"].)

By implication, Defendants do not seek a ruling on whether Mr. Anguiano owed or did not owe a duty under Vehicle Code sections 23123.5 and 23125, because Defendants admit Mr. Anguiano owed a duty under each statute. Instead, in their notice of motion Defendants move for summary adjudication on their Issue Nos. 2, 3, and 4 to establish that specific duties, and only those duties, were not breached (i.e., "Plaintiff Cannot Establish a Violation of the Duty to Uphold Vehicle Code Section[s] 23123.5 . . . [and] 23125 . . . ;" [Ntc., p. 2:10-15] and Plaintiff cannot establish vicarious liability based on violations of those sections). The court has no authority to rule on the issues of whether Mr. Anguiano *breached* these specific duties because such rulings do not dispose completely of the negligence cause of action.

Negligence Per Se Is Not a Separate Cause of Action

Negligence per se is an evidentiary doctrine to establish breach of duty—it is not a separate cause of action. Defendants miss the mark with their argument that Plaintiff's allegations based on negligence per se lump "separate and distinct wrongful acts of four Vehicle Code violations into one negligence per se cause of action." (Memo., p. 4:24-25.) Defendants rely on *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854-1855 (*Lilienthal*), which held that when separate and distinct acts of legal malpractice, which occurred in unrelated matters for different clients at different times, were combined in a single cause of action, the defendants could seek summary adjudication for one distinct malpractice matter that was barred by the statute of limitations, without disposing of the entire cause of action as pleaded. The court in *Lilienthal* acknowledged that although the plaintiffs used the pleading tactic of combining two separate and unrelated causes of action having nothing to do with one another (*id.* at p. 1852), this did not prevent the trial court from ruling on a summary adjudication motion that challenged only one of the separate and distinct wrongful acts. (*Id.* at pp. 1854-1855.) The *Lilienthal* decision was based on a dispositive affirmative defense (statute of limitations), not the existence of a duty owed. (*Id.* at p. 1851.)

Here, Plaintiff alleges Defendants acted negligently by violating both statutory and common law duties. (See SAC, ¶ 15 [Defendants' conduct was negligent and negligent per se].) Defendants cite *Jones v. Awad* (2019) 39 Cal.App.5th 1200 (*Jones*), for the rule that the trial court may conclude that the undisputed evidence shows no breach of duty as a matter of law. But *Jones* explains that the doctrine of negligence per se is within the scope of any complaint for general negligence. "Negligence per se is an evidentiary doctrine, rather than an independent cause of action. It can be applied generally to establish a breach of due care under any negligence-related cause of action." (*Id.* at p. 1210-1211, citations omitted.) The doctrine *is not a separate cause of action*; it is an evidentiary presumption that affects the standard of care for negligence.

(*Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 534 [on demurrer treating fourth and fifth causes of action (for negligence and negligence per se) as single cause of action for negligence].)

Another court explained the doctrine of negligence per se as follows: "Although compliance with the law does not prove the absence of negligence, violation of the law does raise a presumption that the violator was negligent. This is called negligence per se." (*Jacobs Farm/DelCabo, Inc. V. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, 1526.) At best, Defendants have established that Mr. Anguiano complied with certain statutes. No doubt, Mr. Anguiano complied with many laws. *But compliance with a particular law does not prove the absence of negligence*.

Defendants admit their motion does not address all of the potential statutory violations. They expressly state in the first footnote of their memorandum that they are not seeking summary adjudication with respect to Vehicle Code section 22406. (Section 22406 sets a maximum speed limit of 55 miles per hour for a schoolbus transporting any school pupil.) Furthermore, Defendants' moving papers entirely fail to address whether Mr. Anguiano owed a common-law duty of care to Plaintiff. The parties agree the District's liability is vicarious under Government Code section 815.2, so the District may be vicariously liable if Mr. Anguiano is liable.

In their motion for summary adjudication, Defendants concede a duty exists under Vehicle Code section 23123.5 and 23125—they are not seeking a ruling as to the existence of these duties. If the court were to construe Defendants' remaining issues as seeking summary adjudication to obtain a ruling that Defendants complied with these two sections, the court has no authority to make such a piecemeal ruling. Defendants fail to establish that Plaintiff cannot prove the essential element of breach of duty, which could be based on Defendants' common law or statutory duties. Unlike the case in *Lilienthal,* where the defendants established an affirmative defense, or *Jones*, where the plaintiff could not prove the element of breach of duty, Defendants' motion does not completely dispose of any essential element. Therefore, the court denies Defendants' remaining Issue Nos. 2, 3, and 4 in their motion for summary adjudication. Defendants fail to meet their burden of persuasion and production to prove Plaintiff cannot establish an essential element (breach of duty). Accordingly, the burden does not shift to Plaintiff to raise a triable issue of material fact.

Requests for Judicial Notice

The court grants Defendants' request for judicial notice of the SAC and Defendants' answer thereto. The court makes no ruling on Plaintiff's request for judicial notice of California Bill Analysis, Assembly Committee, for Assembly Bill Number 2785 for the 2003-2004 Regular Session, dated April 12, 2004, because the legislative history is unnecessary to the resolution of this motion for summary adjudication.

Evidentiary Objections

The court declines to rule on the evidentiary objections because none are directed to evidence that is material to the disposition of Defendants' motion.

Conclusion

The court grants Defendants' motion for summary adjudication on Defendants' Issue No. 1 and finds that Mr. Anguiano did not owe a duty under Vehicle Code section 23123. The court denies Defendants' motion on the remaining issues designated by Defendants as Issue Nos. 2, 3, and 4.

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 7/29/2024.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Reyes v. Portillo et al.***
Superior Court Case No. 24CECG00833

Hearing Date: August 1, 2024 (Dept. 403)

Motion: By Defendants Tule River Indian Health Center, Inc. and Katherine Portillo to Quash Service of Summons

Tentative Ruling:

To grant the motion to quash as to defendant Tule River Indian Health Center, Inc. To deny as to defendant Katherine Portillo.

Explanation:

As relevant here, plaintiff brings this FEHA employment action against Tule River Indian Health Center, Inc. ("TRIHC"), and an employee or officer of TRIHC, Katherine Portillo. Defendants move to quash service of summons on grounds of tribal sovereign immunity. Plaintiff concedes that sovereign immunity applies as to TRIHC, and the court grants the motion as to TRIHC without need for further discussion. The remaining issue is whether sovereign tribal immunity applies as to Portillo as well.

Against Portillo the First Amended Complaint ("FAC") asserts a single cause of action for defamation. The FAC alleges that Portillo created a procedure to perform drug testing on TRIHC employees. Avertest, LLC (the company with whom TRIHC contracted to perform drug testing), through its agent Jeanette Herrera, made false statements to Portillo about plaintiff's failure to pass a drug test, and that Portillo repeated those false statements in order to justify terminating plaintiff's employment. (FAC ¶ 48.) Clearly Portillo was acting in her capacity as an employee or officer of TRIHC, though the FAC avoids alleging what her position was with TRIHC. The opposition does not dispute this.

Defendants' arguments in support of the motion to quash depend in significant part of the notion that the Summons served by plaintiff only names TRIHC and that the FAC does not raise claims against Portillo in her individual capacity. The reply leans heavily on this notion, arguing, "… Plaintiffs Summons names only TRIHC. … Defendant Portillo was not served with a summons naming her at all." It is unclear how defendants reach this conclusion, as the Summons (as does the FAC) clearly names Portillo in her individual capacity:

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
Reyes v. Tule River Indian Health Center, Inc.	24CECG00833

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties *(Check only one box. Use a separate page for each type of party.)*:

☐ Plaintiff ☑ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

AVERTEST, LLC, a Virginia limited liability company, KATHERINE PORTILLO, an individual, JEANETTE HERRERA, an individual, and DOES 1 through 20, inclusive,

(Summons, highlight added.)

"[L]awsuits brought against employees in their official capacity 'represent only another way of pleading an action against an entity of which an officer is an agent,' and they *may* also be barred by sovereign immunity.'" (*Lewis v. Clarke* (2017) 581 U.S. 155, 162, emphasis added, quoting *Kentucky v. Graham* (1985) 473 U.S. 159, 165-166.) "The identity of the real party in interest dictates what immunities may be available. Defendants in an official-capacity action may assert sovereign immunity." (*Lewis v. Clarke* (2017) 581 U.S. 155, 162, citing *Kentucky v. Graham* (1985) 473 U.S. 159, 167.) The sole cause of action against Portillo is clearly based on conduct by Portillo while acting in her official capacity with TRIHC. (FAC ¶ 48.)

However, plaintiff points out that federal courts have undertaken a remedy-based approach to claims of sovereign immunity, such that even individual defendants acting in their official capacities may still be subject to suit. Although tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority, tribal defendants sued in their individual capacities for money damages are not entitled to sovereign immunity, even though they are sued for actions taken in the course of their official duties. (*Pistor v. Garcia* (9th Cir. 2015) 791 F.3d 1104, 1112.) "So long as *any remedy* will operate against the officers individually, and not against the sovereign, there is 'no reason to give tribal officers broader sovereign immunity protections than state or federal officers.' " (*Id.* at p. 1113, emphasis added, quoting *Maxwell v. County of San Diego* (9th Cir.2013) 708 F.3d 1075, 1089.)

The reply contends that the remedy-focused analysis should not preclude tribal sovereign immunity here because, in addition to damages, the FAC seeks unspecified injunctive relief from defendants, including Portillo. (FAC at p. 19.) However, *Pistor* states that *any* remedy sought against the individual would be sufficient to state a claim against an official who acted in their official capacity on behalf of an entity subject to sovereign immunity. Since the FAC does seek damages against Portillo as an individual, the court intends to deny the motion.

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 7/29/2024 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***City of Fresno v. Kertel Communications, Inc***
Superior Court Case No. 23CECG04334

Hearing Date: August 1, 2024 (Dept. 403)

Motions: (1) By Plaintiff and Cross-defendant City of Fresno for Summary Judgment
(2) By Defendant and Cross-complainant Audeamus, Successor-in-interest by Merger to Kertel Communications, Inc. dba Sebastian for Relief from the CCP 998 Settlement Under CCP 473(b)

Tentative Ruling:

To deny Sebastian's motion for relief from the Code of Civil Procedure section 998 settlement under Code of Civil Procedure section 473, subdivision (b).

To grant the City's motion for summary judgment and to order:

1. Sebastian's cross-complaint dismissed with prejudice, with instructions to the court clerk to enter the dismissal on the court's Odyssey system;
2. Sebastian shall pay the City $142,000 within 30 days of service of the minute order; and
3. Each party shall bear its own attorney fees and costs.

The City is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

The City's Motion for Summary Judgment

In October 2023 the City of Fresno (the "City") filed a complaint against Audeamus, Successor-in-interest by Merger to Kertel Communications, Inc. dba Sebastian, a California corporation ('Sebastian"), in which the City alleges Sebastian breached a written contract (the "Contract") to perform street lighting improvement work (the "Project") by: (1) failing to comply with the "Buy American" clause, and (2) failing to complete its work on time thereby entitling the City to liquidated damages. (Fact Nos. 1, 2.)

Sebastian, represented by its current counsel, filed an answer and a cross-complaint against the City on December 8, 2023. In the cross-complaint Sebastian seeks $180,981.21 in damages, which it alleges the City improperly "withheld since the Project was deemed substantially complete on or about January 14, 2020, which is inclusive of the City's wrongful and unlawful assessment of liquidated damages in the sum of $74,000.00 for delays attributable to the City and/or for which the City is partially

responsible, for which it cannot lawfully assess liquidated damages." (Fact No. 3, some capitalization omitted.) Sebastian also claims it is entitled to attorney fees. (Fact No. 8.)

On February 16, 2024, Sebastian served a Code of Civil Procedure section 998 settlement offer on the City (the "Settlement Offer"). (Fact No. 9.) (All further unspecified code sections refer to the Code of Civil Procedure.) The one-page Settlement Offer includes three numbered paragraphs, which basically provide: (1) Sebastian shall pay the City $142,000 (the "Funds"); (2) the City and Sebastian each shall bear their own costs, including attorney fees; and (3) Sebastian shall dismiss its cross-complaint within five days of service of the proof of acceptance of the Settlement Offer, and the City shall dismiss its complaint within five business days of the actual receipt of the Funds in the trust account. (Fact No. 10.) The Settlement Offer had no specific date for when Sebastian would be required to pay the Funds. (Fact No. 11.)

On February 22, 2024, the City's counsel sent an email to Sebastian's counsel to suggest the Settlement Offer might need to be revised to be effective. (Fact No. 11.) On February 23, 2024, Sebastian's counsel explained by email that he believed the Settlement Offer was enforceable as written. (See Fact No. 12.) On March 15, 2024 (28 days after receipt), the City served its acceptance of the Settlement Offer. (Fact No. 13,) A few days later, Sebastian's counsel sent an email to the City's counsel with the following inquiry, which revealed Sebastian's apparent misunderstanding:

> My client is asking when it will receive the remaining contract balance (approximately 38k) in light of the accepted offer of the 142 k (offset by the contract balance of $180k) and how the assessment of liquidated damages will be addressed (similar to how it was addressed under the terms of the prior mediated disputes as a deductive change order).

(Fact No. 14.)

The City's counsel responded to the inquiry by explaining the inquiry was inconsistent with the terms of the Settlement Offer, which provided that Sebastian had agreed to pay to City with no mention of any offsets, and the City had agreed to accept less than it was seeking for its own substantial damages. (Fact No. 15.) Sebastian has refused to dismiss its cross-complaint or make the required payment. It now contends the Settlement Offer and ensuing settlement (the "Settlement Agreement") should be deemed unenforceable due to a mistake or excusable neglect. (Fact No. 16.)

Section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A cross-defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the cross-complainant cannot establish an element of the cause of action or there is a complete defense. (§ 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853.) If the cross-defendant satisfies this initial burden, the burden shifts to the cross-complainant to present evidence demonstrating there is a triable issue of material fact. (§ 437c, subd. (p)(2); *Aguilar*, at p. 850.)

The Settlement Offer's language is clear and unambiguous. It has no mention of any offsets. The City presents evidence to show it gave Sebastian ample opportunity to revise the Settlement Offer to provide a payment date for the Funds before the City timely served its acceptance. The City has satisfied its initial burden to show it is entitled to have the Settlement Agreement enforced in accordance with the terms of the accepted Settlement Offer. The burden then shifts to Sebastian to raise a triable issue of material fact.

Sebastian has included disputed legal issues in its separate statement, but such disputes create questions the court may resolve when it considers Sebastian's motion for relief from the Settlement Agreement—not triable issues of material fact relating to the formation of the Settlement Agreement. For example, Fact No. 10 accurately states the terms of the Settlement Offer. Sebastian purports to dispute Fact No. 10 by providing evidence to show it had an entirely different intent and understanding of the Settlement Offer. But this is insufficient to dispute Fact No. 10, which accurately states the terms of the Settlement Offer actually conveyed to the City. The same analysis applies to Fact Nos. 9, 12, 13, 15, and 16, which the court finds to be undisputed.

The court has considered the declaration of Sebastian's counsel, in which he forthrightly admits he made a mistake, based on his misunderstanding that a credit was to be issued by Sebastian rather than the affirmative payment plainly stated in the Settlement Offer. The declaration includes evidence to show Sebastian reviewed and approved the Settlement Offer prior to its issuance. (Quall decl., ¶ 6.) There is no evidence Sebastian informed its counsel of the mistake after reviewing and approving it. Sebastian's counsel did not recognize the mistake until March 19, 2024, after the Settlement Agreement had been reached. (Quall decl., ¶ 13.) As discussed below in connection with Sebastian's motion, the mistaken belief that the Settlement Offer included a credit rather than a payment for Sebastian is not a proper basis to set aside the Settlement Agreement in this case.

The additional facts Sebastian submits, primarily about the value of its claim against the City, fail to raise a triable issue of material fact. To the extent the City disputes any of the additional facts, the disputes show that the parties disagree on the merits and value of their respective claims, both before and after agreeing to the terms of the Settlement Agreement. Such disputes provide a valid reason for both parties to reach an early settlement of this litigation, thereby avoiding the time, expense, risk, and uncertainty of a trial. The disputes do not raise a triable issue of *material* fact.

Sebastian also contends the court must deny the motion for summary judgment because the notice did not state the basis for the relief requested. But *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, cited by Sebastian, provides "[a]n omission in the notice may be overlooked if the supporting papers make clear the grounds for the relief sought." (*Id.* at p. 1125.) The City's supporting papers provide Sebastian with the grounds for the relief sought, as evidenced by the issues raised in Sebastian's opposing papers. Therefore, Sebastian has not met its burden unless it prevails on its motion for relief.

In a last–minute filing, Sebastian moves to strike the City's alleged late-filed reply brief and supporting declarations and evidence, based on section 1005, subdivision (b), which provides all reply papers shall be filed at least five court days before the hearing,

for certain motions. Section 1005 does not apply to summary judgment motions. Instead, the current provisions of section 437c, subdivision (b)(4), provide that reply papers must be served not less than five (calendar) days before the hearing, with discretion to the court to order otherwise. The court denies the motion to strike the reply papers, which were timely filed.

Evidentiary Objections

The court declines to rule on the parties' evidentiary objections because none were directed to evidence that was material to the disposition of the summary judgment motion. (Code Civ. Proc., § 437c, subd. (q).)

Sebastian's Motion for Relief Under Section 473, Subdivision (b)

Sebastian moves for relief from the Settlement Agreement under the discretionary relief provision of section 473, subdivision (b), which provides, in part:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

In Zamora v. Clayborn Contracting Group, Inc. (2002) 28 Cal.4th 249 (*Zamora*), the California Supreme Court held that the trial court properly granted relief from a mistake after a legal assistant made a "typo" in preparing a section 998 settlement offer by typing the word "against" instead of "in favor of." The defendant promptly accepted the offer, which was the exact opposite of the plaintiff's intent. The high court explained the analysis the trial court must apply to exercise its discretion to determine if an error is excusable--because it is a clerical or ministerial mistake that anyone with no legal training could have made—or inexcusable due to an attorney's failure to meet the professional standard of care:

> "A party who seeks relief under section 473 on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable because the negligence of the attorney is imputed to his client and may not be offered by the latter as a basis for relief." (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1399.) In determining whether the attorney's mistake or inadvertence was excusable, "the court inquires whether 'a reasonably prudent *person* under the same or similar circumstances' might have made the same error.' " (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276, italics added by Supreme Court.) In other words, the discretionary relief provision of section 473 only permits relief from attorney error "fairly imputable to the client, i.e., mistakes anyone could have made." (*Garcia* [*v. Hejmadi* (1997)] 58 Cal.App.4th [674,] 682.) "Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory

> requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Ibid.*)

(*Zamora, supra,* 28 Cal.4th at p. 258.)

Under the "reasonably prudent person standard," an attorney gets the benefit of relief under section 473, subdivision (b) only where the mistake might be made by a person with no special training or skill. (*Pazderka v. Caballeros Dimas Alang, Inc*. (1998) 62 Cal.App.4th 658, 671.) For example, an attorney's failure to include a provision for attorney fees and costs in an offer to compromise is not the type of mistake "'ordinarily made by a person with no special training or skill.'" (*Ibid.*; *Premium Commercial Services Corp. v. Nat. Bank of Cal.* (1999) 72 Cal.App.4th 1493, 1496-1497 [trial court abused its discretion by setting aside section 998 settlement based on counsel's mistaken belief that offer included provision for attorney fees and costs].)

Thus, to prevail, Sebastian has the burden to show the Settlement Offer contained a ministerial mistake "anyone could have made." (*Zamora, supra,* 28 Cal.4th at p. 258.) If an attorney fails to meet the professional standard of care, the appropriate relief is via an attorney malpractice action. (*Ibid.*) The preparation of a settlement offer that complies with section 998 is not a clerical task ordinarily performed by a person without legal training. A litigation attorney preparing a settlement offer has a professional duty to make sure the offer meets all of the technical requirements enumerated in section 998, which include "a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted." (§ 998, subd. (b).) The attorney also must make tactical decisions and carefully consider the amount offered and the potential consequences if the offer is rejected.

The entire one-page Settlement Offer does not contain language ordinarily used by a person with no special training or skill. Not only does it require Sebastian *to pay* the City $142,000 to settle the complaint and the cross-complaint, it has technical language requiring each party to bear their own costs, including attorney fees. It also requires Sebastian to "file a request for dismissal of its Cross-Complaint, including any amended filings of the same, in their entireties, with prejudice," within five days of "the service of the Proof of Acceptance set forth below of this Code of Civil Procedure section 998 Offer[.]" The short offer contains no time limit for Sebastian to pay the Funds, but it requires the City to file a request for dismissal with prejudice of its complaint, within five days after receiving the Funds.

Counsel for the City specifically informed Sebastian's counsel that the Settlement Offer did not provide a specific date for Sebastian to pay the Funds and gave Sebastian and opportunity to revise the Settlement Offer. Sebastian and its counsel made no revisions to the Settlement Offer after given the opportunity to do so.

Unlike *Zamora,* the mistake here is much more than a clerical error. Furthermore, in *Zamora* there was no evidence that the client had the opportunity to review and approve the mistaken offer before submission to the opposing party, whereas here, the Settlement Offer was presented to Sebastian for review and approval before issuance to the City. (Quall decl., ¶ 6.)

Two other factors the Supreme Court considered in *Zamora* were the strong possibility that the accepting party had no inkling of a mistake and no prejudice to the opposing party would ensue by granting relief. (*Zamora, supra,* 28 Cal.4th at p. 258.) Here, the City has presented credible evidence to show it was making a substantial compromise of the amount it believed it could recover as damages. (Yost decl., ¶¶ 8-16.) It also contends the undisputed fact that Sebastian never offered to pay the City any money before the City filed its complaint, but later changed its stance and agreed to make a payment, is not unusual. When matters later end up in litigation, litigants often have a change of heart when faced with the time, expense, risk, and uncertainty of litigation. The City's evidence includes an estimate of the labor cost to remove and replace the non-compliant poles to be $76,320, and the cost to purchase compliant replacement poles to be $198,000, for a total of $274,320 in damages. (*Id.* at ¶ 14.) It also estimates the most that would have been due to Sebastian had it completed the Contract according to its terms would have been $132,473.25. (*Id.* at ¶ 13.) Using round numbers, $274,000 minus $132,000 equals $142,000, the exact amount Sebastian offered in its Settlement Offer.

On the issue of prejudice, Sebastian offers the declaration of is president, William S. Barcus, in which Mr. Barcus states the City has not been damaged in any way as a result of the non-conforming materials. The court declines to rule on the City's evidentiary objections to the Barcus declaration for relief under section 473. Even if the court considers the declaration, the court finds the City has presented the more credible evidence to show it has been damaged by the non-conforming materials and faces a serious risk of losing the entire $1.75 million federal funding grant for the Project unless is replaces the poles. (Yost decl., ¶11.) The City also has presented evidence that it would be prejudiced if the court were to grant relief, because it has already begun incurring expenses to remove and replace the non-conforming light poles since accepting the Settlement Offer. (Wilkins supp. decl., ¶ 6.)

Finally, Sebastian's claim that "[c]learly Sebastian has contractual defenses of unilateral mistake and unconscionability" is without merit. The facts here differ from *Zamora*, in that there is insufficient evidence to establish that the City had a reason to suspect Sebastian made a mistake, there is no evidence of fraud or undue influence, and the Settlement Agreement is not unconscionable. As the court explained in *Pazderka*:

> Principles of contract law govern section 998 offers as long as general contract law principles "neither conflict with the statute nor defeat its purpose." (*T. M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 280.) Permitting the court to unravel such agreements based on mistake or evidence of no intent, as the trial court did here, would contravene the policy objectives of section 998. [¶] . . . . [¶] Our conclusion is consistent with the Supreme Court's holding that a " 'valid compromise agreement has many attributes of a judgment, and in the absence of a showing of fraud or undue influence is decisive of the rights of the parties thereto and operates as a bar to the reopening of the original controversy.' (*Shriver v. Kuchel* (1952) 113 Cal.App.2d 421, 425.)" (*Folsom [v. Butte County Assn of Governments* (1982)] 32 Cal.3d [668,] 677.) Here, there is no evidence of

> fraud or undue influence; thus, the court abused its discretion in vacating the judgment and granting rescission.

(*Pazderka, supra,* 62 Cal.App.4th at p. 672.)

Sebastian correctly notes that the law prefers to have cases litigated on the merits. But that goal does not relieve Sebastian of the obligation, when seeking discretionary relief under section 473, subdivision (b), to prove mistake, inadvertence, surprise, or excusable neglect by a preponderance of the evidence. The court finds Sebastian failed to meet its burden. Therefore, it denies the motion for relief under section 473, subdivision (b). The court acknowledges the harshness of this ruling, but believes it would be an abuse of discretion to hold otherwise. As the court stated in *Pazderka*:

> Although our conclusion may seem harsh, it will advance the clear purpose of section 998, which is to encourage the settlement of lawsuits prior to trial (*T.M. Cobb Co. v. Superior* Court, *supra,* 36 Cal.3d at p. 280). If courts could set aside compromise agreements on the grounds of mistake, section 998 judgments would spawn separate, time-consuming litigation. It bears repeating: Section 473, subdivision (b), was not intended to permit attorneys "to escape the consequences of their professional shortcomings" (*Hejmadi, supra,* 58 Cal.App.4th at p. 685) or to insulate them from malpractice claims.

(*Pazderka, supra,* 62 Cal.App.4th at p. 672.)

For these reasons and the additional reasons stated in the City's opposition, the court denies Sebastian's motion for relief from the Settlement Agreement under section 473, subdivision (b).

Conclusion

The court exercises its discretion to deny Sebastian's motion for relief from the Settlement Agreement under section 473, subdivision (b), because the unfounded belief that the Settlement Offer included offsets and required the City, rather than Sebastian, to pay is not a proper basis for setting aside the clear terms of the Settlement Agreement under the discretionary provisions of section 473, subdivision (b).

The court grants the City's motion for summary judgment and orders, as agreed by the parties: (1) Sebastian's cross-complaint is hereby dismissed with prejudice, with instructions to the court clerk to enter the dismissal on the court's Odyssey system; (2) Sebastian is ordered to pay to the City the total sum of $142,000, payable to the Wilkins,

Drolshagen & Czeshinski LLP's Trust Account within 30 days of service of the minute order; and (3) each party shall bear its own fees and costs, including attorney fees.

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 7/30/2024.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***1 Community Compact v. City of Fresno*** Superior Court Case No. 23CECG02740
Hearing Date:	August 1, 2024 (Dept. 403)
Motion:	(1) By Defendant City of Fresno on Demurrer to Second Amended Complaint (2) By Plaintiff 1 Community Compact for Preliminary Injunction

Tentative Ruling:

To sustain the demurrer to the second, third, and fifth causes of action, without leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To overrule the demurrer to the first and fourth causes of action. Defendant City of Fresno is directed to serve and file an answer to the Second Amended Complaint within 10 days of service of the order by the clerk.

To deny the motion for preliminary injunction.

Explanation:

Demurrer

On May 20, 2024, following the sustaining of a demurrer to the First Amended Complaint, plaintiff 1 Community Compact ("Plaintiff") filed a Second Amended Complaint ("SAC"). Formerly nine causes of action, the SAC now states five causes of action for: (1) violation of police power; (2) denial of due process under the California and U.S. Constitutions; (3) violation of free speech and free association rights under the California and U.S. Constitutions pursuant to Title 42 of the United States Code, section 1983; (4) public waste; and (5) violation of equal protection. Defendant City of Fresno ("Defendant") now demurs to each cause of action of the SAC.

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. Cal. Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause

of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Each of the five causes of action at issue state claims for declaratory relief. As such, the SAC seeks relief purely under Code of Civil Procedure section 1060, which provides, in pertinent part, that:

> Any person interested… who desires a declaration of his or her rights or duties with respect to another… may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action… for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.

On the first cause of action, the SAC seeks declaratory relief on an actual controversy between the parties as to the legitimacy of Defendant's action to rename Kings Canyon Road, Ventura Avenue, and West California Avenue (the "Streets"). (SAC, ¶ 24.) In support, the SAC alleges that Defendant exceeded its police power by renaming the Streets, which Defendant claims was its right (*id.*, ¶ 23), and which Plaintiff disagrees (*id.*, ¶ 24). Further, the SAC alleges that Defendant's City Council never discussed the necessity of the name change, and further alleges that Defendant's actions were therefore unreasonable, arbitrary, and capricious. (*Id.*, ¶ 10; *see also id.*, ¶ 23.) From these new allegations, there is an actual controversy as to whether Defendant exceeded its police powers by renaming the Streets that Plaintiff seeks a declaration of its rights as impacted residents.

Defendant submits that its right to rename streets is both an inherent power under the California Constitution, and granted to it by state law. As Plaintiff argues however, a complaint for declaratory relief is sufficiently pled if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties and requests that the rights and duties be adjudged. (*Jefferson Inc. v. City of Torrance* (1968) 266 Cal.App.2d 300, 302.) Where these requirements are met, the pleading is sufficient to proceed whether or not the allegations establish that the plaintiff is entitled to a favorable declaration. (*Ibid.*) Plaintiff has identified an actual controversy. Whether Plaintiff will ultimately receive a favorable declaration is not a basis for demurrer, and Defendant's arguments that Plaintiff's claim will fail due to, for example, statutory right, are premature. The demurrer to the first cause of action is overruled.

The second, third, and fifth causes of action seek declaratory relief regarding violations of due process, free speech, and equal protection. These causes of action, while more detailed, remain materially unchanged from the First Amended Complaint. As with the First Amended Complaint, these causes of action fail to identify how a right has been impinged to constitute an actual controversy. As to the second cause of action, the basis of the claim of denial of due process is that Defendant was required to act openly, including the deliberations thereon. (SAC, ¶ 27.) Affording reasonable inference to the SAC, the basis appears to be purely on historical precedent. (*Id.*, ¶ 26;

see id., ¶ 8.) As with the First Amended Complaint, and as Defendant argues, the SAC fails to identify the right upon which Plaintiff's alleged due process controversy is founded.

In opposition, Plaintiff submits that it had liberty interests by way of free speech and freedom of association; and that it had significant property interests and goodwill in the existing street names. However, the SAC is clear that what Plaintiff owns are real property and businesses. (*E.g.*, SAC, ¶ 18.) This is not the same as ownership of the street, or the street name. Nothing in the SAC otherwise supports the contention that Plaintiff has a property interest in the street name. Neither does the opposition present any legal authority in support of Plaintiff's assertion that an individual has a liberty interest in a street name. (*Compare Beck v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1187-1188 [finding that a moratorium on development of a property if not temporary in nature, would violate fundamental principles of due process].)[1]

For the same reasons, the third cause of action for violation of free speech and associational rights fails to state an actual controversy. Defendant again submits that there is no deprivation of a First Amendment right. Rather, Defendant argues that the change of the street name constitutes government speech, which is outside the purview of the First Amendment. (*See Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 497.) "When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." (*Id.*, *citing Walker v. Texas Div., Sons of Confederate Veterans, Inc.* (2015) 576 U.S. 200, 207 [internal citations omitted].)

In opposition, Plaintiff relies heavily on *Beeman v. Anthem Prescription Management, LLC* ("*Beeman*") for the proposition that a law requiring a speaker to adopt, endorse, accommodate, or subsidize a moral, political or economic viewpoint with which the speaker disagrees; compulsory allegiance, association with, or subsidization of a viewpoint is fundamentally an issue of freedom of expression. (*Beeman v. Anthem Prescription Management, LLC* (2013) 58 Cal.4th 329, 349.) At issue in *Beeman* was whether Civil Code section 2527's requirement that prescription drug claims processors transmit information on pharmacy fees to their clients implicated the right of freedom of speech. (*Id.* at p. 341.) Specifically, the information at issue was a study report that included a preface, explanatory summary of the results and findings, and statistics comparing pharmacy fees. (*Ibid.*) The California Supreme Court compared this study report to "true compelled-speech" cases, and drew distinctions. (*Id.* at pp. 348-349.) The California Supreme Court found that Civil Code section 2527 does not implicate compelled speech reflecting any viewpoint, belief or ideology because the study report discloses objective facts and statistics. (*Id.* at p. 349.) The speech requirement thus "'is simply not the same as' forcing the speaker to support or accommodate an idea, belief,

[1] Plaintiff relies on *Duarte Nursery, Incorporated v. California Grape Rootstock Improvement Commission* ("*Duarte*") to support a conclusion that the street name violates Plaintiff's liberty interests in free speech and association. *Duarte* has no application. There, the allegations of the complaint alleged fundamental civil rights to engage in scientific research and to refuse to fund the research of others based on mandatory assessments levied by a commission for research. (*Duarte Nursery, Inc. v. Cal. Grape Rootstock Improvement Com.* (2015) 239 Cal.App,4th 1000, 1002-1005.) These facts facially have no relation to the issues here. Moreover, on appeal, the plaintiff in *Duarte* expressly abandoned the issues of free speech and freedom of association claims. (*Id.*, at pp. 1010-1011.) Cases are not authority for propositions not considered. (*People v. Jennings* (2010) 50 Cal.4th 616, 684.)

or opinion…." (*Ibid.*) Accordingly, objective facts are not compelled speech where the statements thereof do not require the speaker to agree with the speech. (*Id.* at p. 350, *citing in comparison*, *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006) 547 U.S. 47, 65 [quoting *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* that "clients and the public at large 'can appreciate the difference between speech (a company) sponsors and speech (a company engages in) because legally required to do so.'"]) Fundamentally, this recitation of objective information, such as on bank accounts and loan documents, are of the same level as the study report stating statistical information. There is no requirement that the speaker agree with any of the information stated.

Plaintiff in opposition concedes that Defendant may in any event make a political statement, and merely contests the means of Defendant's objective. At its core, Plaintiff's claims under the second, third, and consequently fifth causes of action restate Plaintiff's challenge of Defendant's alleged exercise of police power. The court finds that the SAC fails to state an actual controversy as to the second, third, and fifth causes of action for violation of due process, free speech and freedom of association, and equal protection. The demurrer as to the second, third, and fifth causes of action is sustained, without leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

Finally, the fourth action is for public waste. Code of Civil Procedure section 526a creates a statutory taxpayer action against local governments. (Code Civ. Proc. § 526a, subd. (a).) It confers broad standing to any resident or corporation that pays or is assessed a tax that funds a local entity to sue the entity. (*Ibid.*) It prohibits illegal expenditure of, waste of, or injury to, the estate, funds or other property of the local entity. (*Ibid.*) It affords the specific relief of a judgment restraining and preventing the prohibited expenditure, waste or injury. (*Ibid.*)

Waste means something more than alleged mistake in the exercise of judgment or wide discretion. (*Sundance v. Municipal Court* (1982) 42 Cal.3d 1101, 1138.) Code of Civil Procedure section 527a does not apply to the vast majority of discretionary decisions made by local units of government. (*Chiatello v. City and County of San Francisco* (2010) 189 Cal.App.4th 472, 482-483.) It applies to expenditures that provide no public benefit, are totally unnecessary or useless, or impose significant additional cost without any additional public benefit. (*Mohler v. County of Santa Clara* (2023) 82 Cal.App.5th 418, 425.) The separation of powers precludes the courts' function to challenge every expenditure which does not meet with taxpayers' approval. (*Ibid.*)

Here, the SAC alleges that Plaintiff is comprised of taxpayers. (SAC, ¶ 40.) The SAC alleges that Defendant's acts had no legitimate purpose. (*Ibid.*) The SAC seeks injunctive relief. (*Id.*, ¶ 41.) Accordingly, the SAC sufficiently states a cause of action for public waste. Defendant submits that the expenditure was discretionary, and therefore not subject to a public waste action. The allegations of the SAC do not facially support this conclusion, only concluding that the act had no legitimate purpose. (SAC, ¶ 40.) The demurrer to the fourth cause of action for public waste is overruled.

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 issue a preliminary injunction, the court evaluates whether the plaintiff is likely to prevail on the merits; and the interim harm compared between the plaintiff and the defendant. (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.)

Here, it is unclear whether Plaintiff will prevail on either remaining causes of action, for violation of police power or public waste. The police power is the power of sovereignty or power to govern, the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare. (*Massingill v. Department of Food & Agriculture* (2002) 102 Cal.App.4th 498, 504.) A law is a valid exercise of the police power unless the law is manifestly unreasonable, arbitrary or capricious, and has no real or substantial relation to the public health, safety, morals or general welfare. (*Amezcua v. City of Pomona* (1985) 170 Cal.App.3d 305, 309-310.) A law is presumed to be a valid exercise of police power, and the party challenging the law has the burden of establishing it does not reasonably relate to a legitimate government concern. (*Hesperia Land Development Co. v. Superior Court* (1960) 194 Cal.App.2d 865, 870.)

Plaintiff submits that the renaming of the Streets was not reasonable because there were numerous other alternatives that would have had less impact. As Defendant notes in opposition, none of the authority cited in the moving papers supports a conclusion that an act is unreasonable simply because alternatives exist. Neither is an expenditure of public funds a waste merely because there are cheaper ways to effect the goal. (*County of Ventura v. State Bar* (1995) 35 Cal.App.4th 1055, 1060.)

Plaintiff otherwise submits a conclusory statement that Defendant's act had no substantial relation to public health, safety, morals or general welfare and is therefore irrational, unreasonable, arbitrary and capricious. Plaintiff, bearing the burden to demonstrate otherwise, submits no other basis in its moving papers as to how it intends to challenge Defendant's act as exceeding Defendant's police power. The court finds that Plaintiff as the moving party, for the purposes of issuing a preliminary injunction only, fails to demonstrate a likelihood of prevailing. The motion for a preliminary injunction is denied.[2]

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 7/31/2024.
(Judge's initials) (Date)

[2] Defendant's Request for Judicial Notice is granted to the extent that such official records exist. Plaintiff's Supplemental Request for Judicial Notice is granted to the extent that such official acts exist.

(35)

Tentative Ruling

Re: ***In re: 3220 E. Lamona Avenue, Fresno, CA 93703-4049***
Superior Court Case No. 24CECG00603

Hearing Date: August 1, 2024 (Dept. 403)

Motion: by Respondents Maryanne Perez and Gerardo Gaytan for Disbursement of Surplus Funds

Tentative Ruling:

To grant. Order signed. No appearances necessary.

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 7/31/2024.
(Judge's initials) (Date)