

Tentative Rulings for August 26, 2026
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.*

23CECG04318 *John Chatman, III v. Muktyar Singh*

25CECG00648 *Adela Adame Donohoe v. Regal Entertainment Group*

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

25CECG03557 *Spencer v. Community Hospitals of Central California* is continued to Wednesday, September 23, 2026, at 3:30 p.m. in Department 403.

26CECG00228 *Morgan v. Volkswagen Group of America, Inc.* is continued to Wednesday, September 30, 2026, at 3:30 p.m. in Department 403.

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Tentative Ruling

Re: **Cardona, et al. v. County of Fresno, et al.**
Superior Court Case No. 23CECG01378

Hearing Date: August 26, 2026 (Dept. 403)

Motion: by Defendant County of Fresno for Summary Judgment

Tentative Ruling:

To deny. (Code Civ. Proc., § 437c.)

Explanation:

Burden on Summary Judgment

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

Courts usually follow a three-prong analysis: identifying the issues as framed by the pleadings; determining whether the moving party has established facts negating the opposing party's claims and justifying judgment in the movant's favor; and determining whether the opposition demonstrates the existence of a triable issue of material fact. (*Lease & Rental Management Corp. v. Arrowhead Central Credit Union* (2005) 126 Cal.App.4th 1052, 1057-1058.)

The moving party bears the initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a *prima facie* showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*)

Only if the moving party meets its initial burden does it shift to the opposing party, who is then subject to its own burden of production to make a *prima facie* showing that a triable issue of material fact exists. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.) If the moving party fails to meet the burden of production, the opposing party has no evidentiary burden to even oppose the motion. (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 467.) The defendant establishes a right to summary

judgment by showing the plaintiff "lacks the evidence to sustain one or more elements of the cause of action." (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 756.)

Affidavits of the moving party must be strictly construed and those of the opponent liberally construed. (*Petersen, supra*, 259 Cal.App.2d at p. 775.) The opposing affidavit must be accepted as true, and need not be composed wholly of strictly evidentiary facts. (*Ibid.*) Any doubts are to be resolved against the moving party. The facts in the affidavits shall be set forth with particularity. (*Ibid.*) The movant's affidavit must state all of the requisite evidentiary facts and not merely the ultimate facts or conclusions of law or conclusions of fact. (*Ibid.*) All doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

Defendant County of Fresno (the "County") moves for summary judgment as to the entirety of the operative complaint, the Third Amended Complaint ("3AC") . The County contends that plaintiffs cannot meet their burden to demonstrate that it violated Government Code section 835 because plaintiffs cannot demonstrate a dangerous condition within the meaning of the statute, or that any defect that existed was trivial as a matter of law.

Government Code section 835

A public entity may be liable for injuries caused by a dangerous condition of its property only as provided by statute. (*Thomas v. City of Richmond* (1995) 9 Cal.4th 1154, 1157.)

Government Code section 835 provides:

Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Gov't. Code, § 835.)

Thus, to establish liability, a plaintiff must show that: (1) the property was in a dangerous condition at the time of the injury; (2) the injury was proximately caused by the dangerous condition; and (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury which occurred. (*Cordova v. City of Los Angeles*

(2015) 61 Cal.4th 1099, 1105-1106.) However, it is not necessary to prove a negligent act and notice, either will suffice. (*Curtis v. State of Cal.* (1982) 128 Cal.App.3d 668, 693.)

Dangerous Condition

“Dangerous condition” means a condition “that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” (Gov’t. Code, § 830, subd. (a).) Thus, the elements of a dangerous condition are (1) “foreseeable use” by persons themselves acting with due care, and (2) a “substantial” risk of injury nevertheless. (*Swaner v. Santa Monica* (1984) 150 Cal.App.3d 789, 799.)

The phrase “used with due care” does not require the plaintiff to prove due care on the part of another tortfeasor, e.g., a bus driver, whose act contributed to the injury. “Rather, the statute means that the condition is dangerous if it creates a substantial risk of harm when used with due care by the public generally, as distinguished from the particular person charged as concurrent tortfeasor.” (*Murrell v. California* (1975) 47 Cal.App.3d 264, 267, 269.) If it is shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, the property is not dangerous within the meaning of Government Code section 830, subdivision (a). (*Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196.)

Additionally, “[a] condition is not a dangerous condition within the meaning of this chapter if the trial or appellate 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’t. Code, § 830.2.)

“The trivial defect doctrine is not an affirmative defense. It is an aspect of a landowner’s duty which a plaintiff must plead and prove. [Citation.] The doctrine permits a court to determine whether a defect is trivial as a matter of law, rather than submitting the question to a jury. [Citation.] ‘Where reasonable minds can reach only one conclusion—that there was no substantial risk of injury—the issue is a question of law, properly resolved by way of summary judgment.’” (*Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 567.)

The existence of a dangerous condition is ordinarily a question of fact, but can be decided as a matter of law if reasonable minds can come to only one conclusion. (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.) “ ‘[E]xpert opinions on whether a given condition constitutes a dangerous condition of public property are not determinative: “[T]he fact that a witness can be found to opine that such a condition constitutes a significant risk and a dangerous condition does not eliminate this court’s statutory task pursuant to [Government Code] section 830.2, of independently evaluating the circumstances.” ’ [Citation.]” (*Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, 755 citing *Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1189 (Sun).)

Here, plaintiffs allege that the intersection of Cedar Avenue and Mount Whitney Avenue in Fresno County was unsafe and dangerous, and that the County failed to eliminate the dangerous conditions as follows: narrow road going north and south, limited visibility, high speed traffic, and failure to erect appropriate traffic devices and/or signage. (Attachment to 3AC entitled "Second C.O.A.", ¶¶ 1-2.)

The County argues that the narrow north-south traffic lane is trivial as a matter of law, heavy traffic and the failure to erect traffic devices and signs do not constitute dangerous conditions, and there have been no reports of any substantially similar incident in the ten years prior to the subject incident.

The undisputed facts are as follows: on March 5, 2022, plaintiff Leticia Cardona was driving westbound on Mt. Whitney Avenue approaching the intersection with Cedar Avenue, which has no traffic-control devices for westbound traffic. (UMF No. 1.) At the same time, defendant Ashley Engen was driving northbound on Cedar Avenue approaching the intersection with Mt. Whitney Avenue, which is controlled by a posted stop sign. (UMF No. 2.)

At the time of the subject collision, Mt. Whitney Avenue was a straight and level two-lane road in the east-west direction with no curves approaching the intersection with Cedar Avenue, with a painted yellow centerline stripe, and a speed limit of 55 miles per hour, with no east-west traffic control device at the intersection. (UMF No. 3.) Cedar Avenue was a straight and level two-lane road in the north-south direction with no curves approaching the intersection with Mt. Whitney Avenue, with a painted yellow centerline stripe and a speed limit of 55 miles per hour and controlled by a posted "Stop Ahead" sign and "Stop Ahead" pavement marking in advance of the intersection and posted "Stop" sign at the intersection with white painted limit lines for northbound and southbound traffic. (UMF No. 4.)

Defendant Engen failed to stop at the posted "Stop" sign when entering the intersection, thereby causing the collision. (UMF No. 5.) The speed at which Defendant Engen was driving is in dispute, but this fact is irrelevant to the analysis, since plaintiffs need not prove due care on the part of another tortfeasor in order to prevail on their claim against the County. (See *Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196.)

The County contends that these facts are sufficient for the court to conclude as a matter of law that the alleged narrow condition of the road was trivial. However, the County has provided no evidence to allow the court to evaluate this condition. The County does not indicate the width of either road. Nor does it present the court with any evidence, such as expert testimony as to the safety of the size of the road. The County's summary conclusion that the condition is trivial is insufficient to prevail on summary judgment.

The County further asserts that the alleged conditions did not create a substantial risk of injury because there have been no reports of any substantially similar incident in the ten years prior to the subject incident.

There are several problems with this argument. First, on summary judgment we must strictly construe the County's affidavits. (*Thimon v. City of Newark, supra*, at p. 755.) Viewed through the prism of strict construction, the County's evidence did not establish an absence of any similar accidents at the subject intersection in the previous ten years. Rather, what the County's evidence established was that someone acting on behalf of the County had searched a computerized database of claims submitted to the County for records of claims that were "substantially similar" but found none. The County offered no evidence, however, on how the database was created or maintained, or how the search of the database was conducted. Nor does the County even define what the declarant understood the terms "substantially similar" to mean. Thus, there is no evidentiary basis for determining that the database constituted a complete and accurate record of claims submitted to the County, let alone for determining that the search the employee conducted retrieved all of the pertinent records within the database.

Therefore, the County has not met its burden in showing the absence of a triable issue on the existence of a dangerous condition. To the extent that the County argues for immunity under Government Code section 830.4, the code section only immunizes the failure to provide specific sign and signals.¹ Accordingly, the motion for summary judgment 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: SMC **on** August 25, 2026.
(Judge's initials) (Date)

¹ The court need not reach the parties' contentions regarding the remaining alleged dangerous conditions, since the County must show that plaintiffs cannot prove the existence of any dangerous condition to prevail on the instant motion for summary judgment.

² The court does not rule on either parties' evidentiary objections, as they were immaterial to the disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).)