

**Tentative Rulings for August 28, 2025**  
**Department 502**

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

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

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

24CECG05626	<i>Bonnie Eubanks v. Patricia Berberian</i> is continued to Thursday, September 4, 2025 at 3:30 p.m. in Department 502.
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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 502**

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**Tentative Ruling**

Re: **C.F. v. County of Fresno**  
Superior Court Case No. 23CECG02616

Hearing Date: August 28, 2025 (Dept. 502)

Motion: By Defendant County of Fresno for Summary Judgment or, in the Alternative, Summary Adjudication

**Tentative Ruling:**

To deny the motion for summary judgment. To grant the alternative motion for summary adjudication in part, as to Issue 11 regarding Health and Safety Code section 1522. To deny the alternative motion for summary adjudication on all other grounds.

**Explanation:**

Defendant County of Fresno ("Defendant") seek summary judgment of plaintiff C.F. ("Plaintiff")'s Complaint. The Complaint states three causes of action for (1) negligence; (2) negligent hiring, retention, and supervision; and (3) negligent supervision of a minor.

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, subd. (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.)

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 the opposing party 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 the burden of showing that a cause of action has no merit if it is 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.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

Defendant submits 19 grounds upon which it seeks summary judgment or, in the alternative, summary adjudication:

1. The first cause of action fails as a matter of law;
2. Defendant cannot be held directly liable for general negligence;
3. No employee or agent of Defendant violated any general duty of care to Plaintiff;

4. Defendant and its employees are entitled to the Discretionary Immunity provided in Government Code section 820.2;
5. Defendant and its employees did not violate Penal Code section 11166;
6. Defendant and its employees did not violate Penal Code section 11166.5;
7. Defendant did not breach a mandatory duty under Government Code section 815.6;
8. Defendant did not breach a duty under Welfare and Institutions Code section 328;
9. Defendant did not breach a duty under Welfare and Institutions Code section 16501, subdivision (f);
10. Defendant did not breach a duty under Welfare and Institutions Code section 16504;
11. Defendant did not breach a duty under Health and Safety Code section 1522;
12. Department of Social Services Regulation No. 31-320 was not in effect at periods relevant to the Complaint;
13. Department of Social Services Regulation No. 31-320 was not breached;
14. Department of Social Services Regulation No. 31-401 *et seq.* was not in effect at periods relevant to the Complaint;
15. Department of Social Services Regulation No. 31-401 *et seq.* were not breached;
16. Department of Social Services Regulation No. 31-501 was not in effect at periods relevant to the Complaint;
17. Department of Social Services Regulation No. 31-501 was not breached;
18. The second cause of action fails as a matter of law; and
19. The third cause of action fails as a matter of law.<sup>1</sup>

The following are generally undisputed facts. Plaintiff became a dependent of Defendant at a certain age prior to the incident in question. (Defendant's Undisputed Material Fact ["UMF"] No. 1.) At some point, Plaintiff was placed in the home at issue. (*Id.*, No. 2.) Prior to the placement, at a group home, Plaintiff was told that the Foster Home (of Dorothy Foster) was not a place Plaintiff wanted to go, and that there were incidents of sexual abuse. (*Id.*, No. 3, 4.) Following a period in juvenile hall, Plaintiff was placed in the Foster Home. (*Id.*, No. 8.)<sup>2</sup> Plaintiff resided at the Foster Home for a period of time. (*Id.*, No. 12.) Plaintiff was raped by two teenage boys while at the Foster Home. (*Id.*, No. 13.) The two perpetrators are referred to as "Botney" and "JJ". (*Id.*, No. 14.) A social worker, Carolyn Chamberlain, picked Plaintiff up from the Foster Home the day Botney and JJ were arrested. (*Id.*, No. 17.) Chamberlain was also the individual who took Plaintiff to the Foster Home initially. (*Id.*, No. 25.) Plaintiff thereafter was taken to an inpatient facility named Kingsview. (*Id.*, No. 18.) These undisputed facts are reiterated as to all raised issues, except Issue 2, for which Defendant's UMF does not appear to submit on any facts.

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<sup>1</sup> Defendant's Request for Judicial Notice is granted to the extent that these things exist.

<sup>2</sup> Plaintiff appears to raise objections through his response to the Separate Statement. This is an improper means to raise objections. All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. (Cal. Rules of Ct., rule 3.1354(b).) Moreover, the objection must identify the evidence to which the objection is lodged. (*Id.*, rule 3.1354 (b)(1)-(3).) Objections to statements of material facts, and not evidence, is inappropriate. Defendant's objections raised in its response to Plaintiff's additional material facts in the same fashion are equally disregarded for the same reasons.

## Immunity

The court addresses the question of immunity in spite of the general approach of duty before immunity, for judicial economy. (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 978, fn. 3.)

As to Issue 1, Defendant submits that it cannot be liable for general negligence under Government Code section 815. Government Code section 815 abolishes common law tort liability for public entities. (*Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 899.) However, as demonstrated by this motion, Defendant is not immune from negligence claims insofar as its employees might have been liable. (Gov. Code, § 820 *et seq.*) Nor is it immune from negligence, not generally as the first cause of action is titled, but where the duty arises out of statute constituting a form of negligence *per se*. Thus, negligence, though styled as general, would be based on a statutory right. (*Lopez v. S. Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 785, fn. 2 [finding, among other things, that the statute does not have to provide on its face an applicability to public entities, but rather if the statute defines the tort in general terms].) while Issue 1 requires further evaluation, below, Issue 2, while a truism, does not have application here. Summary adjudication of Issue 2 is denied.

At the core of Issue 1, and also Issues 3 through 11, are whether the acts alleged to be in violation of a duty imposed fall within Defendant's discretion. (Gov. Code, § 820.2.) If the discretion immunity does not apply, the question turns to whether the acts of Chamberlain imputed on Defendant as a violation of some duty imposed by law.

Government Code section 820.2 provides that "[e]xcept as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion is abused." This section erects a separate barrier or hurdle of immunity at a point beyond the threshold issue of legal duty. (*Caldwell v. Montoya*, *supra*, 10 Cal.4th at p. 986.) Thus, there must be a clear indication of legislative intent that statutory immunity is withheld or withdrawn to remove the immunity. (*Ibid.*) Immune discretionary acts are reserved for those basic policy decisions which have been expressly committed to coordinate branches of government, and as to which judicial interference would thus be unseemly. (*Id.* at p. 981.)

Here, Defendant argues that Plaintiff's placement in the Foster Home, the selection of the custodian, and the selection of the adoption home are all discretionary acts as a matter of law. (*Becerra v. County of Santa Cruz* (1989) 68 Cal.App.4th 1450, 1464 [regarding the determination to place a child in a particular foster home]; *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 748-749 [regarding the selection of a custodian for a juvenile]; *Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887, 897 [regarding the selection of an adoptive home for a dependent].) Defendant further submits that social workers are generally immune on their investigations of child abuse complaints. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 881-883.)

In opposition to the above, Plaintiff submits that Chamberlain was generally aware of sufficient information to raise concerns immediately prior to placement. (Plaintiff's

Additional Material Facts ["AMF"], No. 5, 7, 9.)<sup>3</sup> However, these facts would be subsumed by the discretionary immunity regarding the decision to place Plaintiff at the Foster Home. Plaintiff appears to acknowledge this, and focuses instead on the maintenance of Plaintiff at the Foster Home, which he argues is ministerial. As Plaintiff notes, even where immunity surrounds the initial decision, immunity does not exclude the possibility of tortious conduct that follows. (See *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1560-1561 citing *Sava v. Fuller* (1967) 249 Cal.App.2d 281, 290 [finding that while a decision to analyze a plant substance was an act of discretion subject to immunity, the negligent performance of the analysis was not immune].) Once a discretionary decision is made, the government will be held to the same standards of care the law requires of its private citizens in performance of those duties imposed by law. (*Newton v. County of Napa*, *supra*, 217 Cal.App.3d at p. 1561; see also Gov. Code, § 815.2, subd. (a).)

Plaintiff submits that Defendant had a ministerial duty to continue administration of Plaintiff's welfare through supervision. Ministerial duties are those that amount to obedience to orders or the performance of a duty in which the officer is left with no choice. (*Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 141.) Ministerial duties are not subject to immunity, and are subject to negligence claims. (*Id.*; *Elton v. County of Orange* (1970) 3 Cal.App.3d 1053, 1057-1058.)

Based on the above, the court finds that the actions by Chamberlain up to and including placement at the Foster Home are subject to the discretion immunity of Government Code section 820.2. Placement into a home of a dependent over a spectrum of conditions, including the ones here are discretionary acts. (*E.g.*, *Becerra v. County of Santa Cruz*, *supra*, 68 Cal.App.4th at p. 1464.) Moreover, it is generally undisputed that Chamberlain exercised discretion to place Plaintiff at the Foster Home, particularly with consideration of information known at the time, disputed as that may be as to the amount of information known or knowable. As Plaintiff suggests in opposition, any subsequent acts by Chamberlain between placement and removal are not subject to immunity. Defendant does not suggest otherwise in its reply brief. Accordingly, the court proceeds to the general substance of the motion with the question of immunity considered.

### *Duties*

In light of the findings on immunity, the question of duties is limited to the duration of Plaintiff's placement at the Foster Home. Defendant's moving papers do not address this period of time with any particularity. (*Compare* Defendant's UMF, No. 5, 9-11, 19-21 [addressing the time period prior to placement].) A review of the Complaint shows allegations placing this period at issue. (Defendant's Index of Exhibits, Ex. A, Complaint, ¶¶ 37, 40-42, 46, 50, 63-67, 73-76, 78, 79, 81, 82.) Accordingly, Defendant fails its burden as the moving party to demonstrate no triable issues of material fact as to the period in

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<sup>3</sup> Defendant's "Response" to Plaintiff's Response to Defendant's Separate Statement are inappropriate. (Code Civ. Proc., § 437c, subd. (b) [authorizing a separate statement, and response, without a "reply"]; see also Cal. Rules of Ct., rule 3.1350.) The court disregards Defendant's Responses to Plaintiff's Responses.

question.<sup>4</sup> The motion for summary judgment is denied. The alternative motion for summary adjudication is denied as to, as listed above, Issues 1 through 10, 18 and 19.

As to Issue 11 regarding Health and Safety Code section 1522, as Defendant submits, the statute facially identifies the Department of Social Services as having any duty imposed therein. Plaintiff does not address this argument in opposition. The motion for summary adjudication is granted as to Issue 11.

### *Social Services Regulations*

Defendant submits that Social Services Regulations 31-320, 31-401, and 31-501 were not in effect during the periods of the Complaint. Defendant submits that: Regulation 31-320 was not in effect until 2011; 31-401 was not in effect until 1998; and 31-501 was not in effect until 2012. Plaintiff suggests in opposition that versions of these regulations existed during the period in question because they are referenced in case law. (*Scott v. County of Los Angeles, supra*, 27 Cal.App.4th at pp. 134-135.) The citation is from 1994, and references the existence of a "Regulation 31-320" as a successor to Regulation 30-342. This does not, by itself, establish that Regulation 31-320, and the others, were in effect during the periods of the Complaint. However, on summary adjudication, all reasonable inferences are to be made in favor of the opposing party. While there is no dispute that the versions submitted by Defendant exist from the periods Defendant identifies, the court finds that there are triable issues as to whether these regulations "were enacted" prior to the dates Defendant identifies.<sup>5</sup> Accordingly, summary adjudication is denied as to Issues 12, 14, and 16. Because Defendant insufficiently refutes the existence of these regulations as applicable to the periods of the Complaint, Defendant additionally insufficiently refutes that it did not breach the standards set by those regulations. Summary adjudication is denied as to Issues 13, 15, and 17.

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<sup>4</sup> The court further notes that there is a dispute as to the duration of Plaintiff's time at the Foster Home. Defendant submits that its records show Plaintiff was at the Foster Home from January 14, 1993 to January 22, 1993. (Defendant's UMF, No. 12.) Plaintiff submits that he was at the Foster Home for approximately a month and a half. (Plaintiff's AMF, No. 22.) While Defendant suggests that Plaintiff conceded the duration, the deposition testimony cited is not so definite. (Defendant's Index of Exhibits, Ex. C, Deposition of C.F., pp. 97:17-22 [stating that Plaintiff was placed in the Foster Home at the end of 1992], 99:22-100:16, 113:23-114:4 [stating uncertainty as to the accuracy of Defendant's represented duration of stay].) The duration of the placement appears to be material as to the claims that Defendant acted negligently in maintaining and supervising Plaintiff following placement. Whether Plaintiff testimony credibly refutes Defendant's evidence as to duration is a question for a finder of fact.

<sup>5</sup> Nothing in the exhibits actually show a date of enactment, only dates of effectiveness.

In conclusion, the motion for summary judgment is denied. The alternative motion for summary adjudication is denied except as to Issue 11, which is granted.<sup>6</sup>

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 08/27/25  
(Judge's initials) (Date)

<sup>6</sup> Defendant's Objections, in proper form, to the evidence submitted in support of Plaintiff's Opposition were not material to the disposition of the motion. The court issues no rulings as to the objections. (Code Civ. Proc., § 437c, subd. (q).) The court however notes that the substance of some objections appear to be to the question asked by Defendant, which specifically asked for answers that called for hearsay or speculation. (E.g., Objection 1 [regarding the answer to the question "What rumors did you hear?"])