

Tentative Rulings for October 1, 2025
Department 503

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.*

23CECG03293 *Scott Raven v. The Testate and Intestate Successors of GEORGE ROCHA (deceased)*

24CECG03092 *Resendiz v. Marquez, M.D.*

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 Ruling

Re: **Cruz v. Bibiano**
Superior Court Case No. 24CECG03603

Hearing Date: October 1, 2025 (Dept. 503)

Motion: by Cross-Complainant Bibiano to Compel Nonparty
Deposition

Tentative Ruling:

To grant. Nonparty Armando Alaniz shall appear for deposition on a date, within two weeks from service of the order by the clerk, to be agreed upon by the parties. (Code Civ. Proc., § 2025.450, subd. (c)(1).) To impose \$1,259.95 in monetary sanctions against deponent Armando Alaniz and in favor of Cross-Complainant Oscar Bibiano, to be paid within 30 days to counsel for defendant, Proper Defense Law Corporation.

Explanation:

"Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency." (Code Civ. Proc. § 2025.010; see also Code Civ. Proc. § 2020.010(a)(1) [oral deposition of nonparty within the state is permitted method of discovery]; *Chronicle Pub. Co. v. Superior Court In and For City and County of San Francisco* (1960) 54 Cal.2d 548, 561 ["The discovery statutes make no distinction between a nonparty witness and a party witness."].)

Code of Civil Procedure section 2020.220(c) provides:

Personal service of any deposition subpoena is effective to require all of the following of any deponent who is a resident of California at the time of service:

- (1) Personal attendance and testimony, if the subpoena so specifies.
- (2) Any specified production, inspection, testing, and sampling.
- (3) The deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or photocopying, if the subpoena so specifies, or specified testing and sampling of the items produced.

"When a subpoenaed nonparty fails to appear for a deposition or produce documents that were properly requested, the party who subpoenaed the witness may move to compel compliance with the subpoena." (*Sears, Roebuck & Co. v. National*

Union Fire Ins. Co. of Pittsburgh (2005) 131 Cal.App.4th 1342, 1351; see also Code Civ. Proc. § 2020.240 [deponent who disobeys subpoena may be punished for contempt].)

"A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record." (Cal. Rules of Court, rule 3.1346.)

In the case at bench, deponent Armando Alaniz was personally served with a subpoena to appear for his deposition on August 6, 2025. (Vecchiarelli Decl., ¶ 2, Ex. A.) Counsel for the noticing party attempted to confirm the deposition with Mr. Alaniz in advance but received no response to his inquiries. (*Id.* at ¶¶ 3, 5-7.) No objection to the Subpoena or Notice of Deposition was served. (*Id.* at ¶ 8.) On August 6, 2025, Mr. Alaniz failed to appear for his deposition. (*Id.* at ¶9.) Mr. Vecchiarelli was able to contact Mr. Alaniz on the phone following his nonappearance and Mr. Alaniz agreed to produce the documents requested and to accept service of a new subpoena. (*Id.* at ¶ 10.) Mr. Alaniz did not follow through and has stopped communicating with Mr. Vecchiarelli. (*Ibid.*)

The deponent was personally served with notice of the motion on September 5, 2025. No opposition has been filed.

Deponent Armando Alaniz did not serve an objection to the deposition subpoena or notice of his deposition with request for production of documents nor did he seek a protective order from the court. As such, the motion to compel Armando Alaniz's appearance at his deposition is granted. (Code Civ. Proc. § 2025.450, subd. (a); *Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh*, *supra*, 131 Cal.App.4th at p. 1351.)

Sanctions

A non-party deponent who violates a subpoena may be punished under Code of Civil Procedure section 2023.010 *et seq.*, including for misuse of the discovery process. (*Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh*, *supra*, 131 Cal.App.4th 1342, 1350.) Misuses of the discovery process include but are not limited to: failing to respond or to submit to an authorized method of discovery; making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery; and failing to confer with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made. (Civ. Proc. Code, § 2023.010.)

Defendant seeks \$2,535.40 in sanctions reflecting attorney time to prepare the motion, the nonappearance fee from the court reporter, the filing fee for the motion, and anticipated attorney time to prepare a reply and appear at the hearing. The notice of motion indicates sanctions are sought pursuant to Code of Civil Procedure section 2025.450 which includes a meet and confer requirement. In support of compliance with

the meet and confer requirement, counsel attests to having contacted the deponent following the non-appearance in good faith to attempt to gain his cooperation. Sanctions appear warranted due to the deponent's failure to appear and testify at deposition, despite having been subpoenaed.

The court finds it reasonable to award sanctions in the reduced amount of \$1,259.95 reflecting a reduction in the hours submitted as preparation of the moving papers.

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** 9/25/2025.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Sally Marmolejo v. City of Kerman***
Superior Court Case No. 22CECG00394

Hearing Date: October 1, 2025 (Dept. 503)

Motion: Defendant City of Kerman's Demurrer to the Third
Amended Complaint

Tentative Ruling:

To overrule the demurrer. Defendant City of Kerman is granted 10 days' leave to file its answer to the Third Amended Complaint, which will run from service by the clerk of the minute order.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

Dangerous Condition of Public Property

Government Code section 835 provides the statutory basis for a claim of a dangerous condition on public property. (Gov. Code, § 835; *Brenner v. City of El Cajon*, *supra*, 113 Cal.App.4th at p. 438.) The elements for a dangerous condition on public property are: "(1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition in sufficient time to have taken measures to protect against it." (*Brenner v. City of El Cajon*, *supra*, 113 Cal.App.4th at p. 439.) A dangerous condition is one that creates a substantial risk of injury when used with due care. (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230.)

A dangerous condition may exist where public property is "physically damaged, deteriorated, or defective" in a way which is foreseeably dangerous. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.) It may also exist arising from the "design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use." (*Id.* a

p. 149, emphasis in original.) A plaintiff must allege a physical characteristic of the property, but the location of the property may be the qualifying characteristic. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 759.)

Defendant argues that Plaintiff has admitted the roadway at issue was properly constructed. However, Plaintiff alleges multiple issues with the roadway: 1) the physical design and configuration when combined with large vehicles parking there, 2) failure to maintain a red curb marking, 3) failure to install no parking signs, 4) failure to enforce municipal codes, 5) creation of a confusing regulatory environment, and 6) failure to implement other protective measures such as barriers. (TAC, ¶ 47.) Thus, even if Defendant's argument regarding the roadway complying with the California Highway Design Manual was accurate, more is alleged as contributing to the dangerous condition.

Special Relationship

Defendant argues that liability can only be imposed for criminal conduct of a third party where a special relationship exists. Third-party conduct which is unrelated to the condition of the property does not constitute a dangerous condition. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1134.) However, a public entity can be held liable where third-party conduct is related to a physical characteristic that exposes users to increased danger from third-party conduct. (*Hacala v. Bird Rides, Inc.* (2023) 90 Cal.App.5th 292, 307.) Here, while third-party conduct is alleged, it is alleged with regards to the condition of the property. (TAC, ¶ 47.) The TAC alleges that the City failed to maintain a red curb or post no parking signs meant to assist with enforcing ordinances the City adopted in an effort to make this portion of the road safe. (*Ibid.*) Third-party conduct of parking here is connected to the physical condition of the roadway, specifically the deterioration of the red curb and lack of signage. As such, a physical characteristic which exposes a user to an increased risk of danger from third party conduct is alleged. The Court will not sustain the demurrer on the basis of failure to allege a special relationship.

Immunity

Defendant argues it has immunity because 1) there is no liability for failure to enforce a no parking rule and 2) the third and fourth causes of action are premised on failure to provide or maintain red roadway markings and failure to provide no parking signs. Here, Plaintiff has alleged multiple issues with the roadway. Some of these may be subject to an immunity, but Defendant has not established that all are subject to immunity. As Plaintiff has alleged several bases for the defect, one or more, but not all, of them being subject to immunity will not result in the entire cause of action being subject to demurrer. The Court will not sustain the demurrer on the basis of immunity.

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** 9/29/2025.
(Judge's initials) (Date)