

Tentative Rulings for October 15, 2025
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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(46)

Tentative Ruling

Re: **David Davis, JR v. Prieto Automotive, Inc.**
Superior Court Case No. 24CECG01212

David Davis, JR v. Manuel Prieto
Superior Court Case No. 24CECG01213

David Davis, JR v. Manuel Prieto
Superior Court Case No. 24CECG03400

Hearing Date: October 15, 2025 (Dept. 403)

Motion: to Consolidate

**If oral argument is timely requested, it will be entertained on
Thursday, October 16, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

To take the motion off calendar, as these three cases are stayed pending arbitration.

Explanation:

Once a trial court has compelled claims to contractual arbitration, the court has very limited authority with respect to the pending arbitration. (*Lew-Williams v. Petrosian* (2024) 101 Cal.App.5th 97, 105.) Sending a case to arbitration suspends all judicial proceedings until the completion of arbitration. (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 188.) Under its “vestigial jurisdiction,” the trial court *may* when necessary appoint arbitrators; grant a limited provisional remedy; and confirm, correct, or vacate the arbitration award. (*Lew-Williams v. Petrosian, supra*, 101 Cal.App.5th at p. 105.) Absent an agreement to withdraw the controversy from arbitration, “no other judicial act is authorized.” (*Id.*, at p. 106.)

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: img **on** 10-14-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: **Anastasio Diaz v. Sean Guynes**
Superior Court Case No. 25CECG01655

Hearing Date: October 15, 2025 (Dept. 403)

Motion: Demurrer

**If oral argument is timely requested, it will be entertained on
Thursday, October 16, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

To continue the hearing on this motion to Thursday, November 20, 2025 at 3:30 p.m. in Department 403. The parties are ordered to conduct a meet and confer session, **in person, by telephone, or by videoconference**, at least 15 days prior to the hearing. If the meet and confer resolves the issues, defendant shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, defendant shall file a declaration, on or before Friday, November 7, 2025 at 5:00 p.m. stating the efforts made. (Code Civ. Proc. § 430.41.)

Explanation:

Code of Civil Procedure section 430.41 applies to demurrers. The statute requires the party who is attacking the pleadings by way of demurrer to meet and confer in person, by telephone, or by videoconference prior to filing the motion, in order to determine if the parties can reach an agreement that would resolve the objections and avoid having to file the motion. Then, if these efforts do not result in reaching an agreement, the moving party must file a declaration, along with the moving papers, stating the means by which the parties met and conferred.

The statute states that if the plaintiff failed to respond to the meet and confer request or failed to meet and confer in good faith, the declaration should state this, and this could excuse the defendant from the requirement. (Code Civ. Proc., § 430.41 subd. (a)(3).) Therefore, before the merits of demurrers are considered, the moving party must first have demonstrated that they fulfilled the meet and confer duties set forth in section 430.41.

As such a meeting in person or by telephone is a prerequisite for filing a demurrer, it is defendant's responsibility to comply. Defendant J.S. Towing's ("defendant") counsel provided a declaration in support of the demurrer that does not demonstrate that sufficient efforts were exerted to comply with the meet and confer requirement. While defense counsel sent correspondence to initiate the meet and confer process and the parties communicated via letter, this does not fulfill the obligations set forth in the code section. The only time the parties had a telephone conversation was to confirm an extension for plaintiffs Anastasio Carmona Diaz and Teresa Rodriguez Mijangos ("plaintiffs") to respond to defendant's meet and confer letter. (Russell Decl., ¶ 4.) The

“A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.” (Code Civ. Proc., § 430.41 subd. (a)(4).) The insufficiency of the attempt to meet and confer is not a reason to overrule the demurrer, but also the failure to comply cannot then support that sustaining the demurrer is the correct decision. It is not a plaintiff's burden to meet and confer with a defendant prior to this motion, and the burden cannot be shifted to them if defendant's efforts are insufficient. It does not appear that defendant here exerted sufficient efforts to meet and confer in person or by telephone with plaintiffs.

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.

Issued By: img on 10-14-25
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Gahvejian Enterprises, Inc. v. Melonco, LLC, et al.***
Superior Court Case No. 21CECG03051

Hearing Date: October 15, 2025 (Dept. 403)

Motion: by Defendants for an Award of Attorney Fees and Costs

**If oral argument is timely requested, it will be entertained on
Thursday, October 16, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

To grant Defendants Gurdeep Billan, Ranjodh Billan and Melon Corp.'s motion for attorney fees in the amount of \$70,022.50. To award costs in the amount of \$4,254.63.

Explanation:

After prevailing on summary judgment, defendants Gurdeep Billan and Ranjodh Billan and Melon Corp. ("defendants") move for an award of attorney fees and costs. This motion is renewed following the denial of defendants' motion seeking the same fees and costs on August 12, 2025 due the absence of the billing records in the evidence supporting the motion. Although plaintiffs challenge the timeliness of the motion due to the initial denial, the court finds good cause to extend the time to file the instant motion under the circumstances. (Cal. Rules of Court, rule 3.1702(d).)

The court previously found defendants are entitled to recover attorney fees as the prevailing parties and determined the reasonable hourly rates of counsel to be \$375 per hour for Lenden Webb, \$200 per hour for Raza Khan, \$100 per hour for law clerks and \$150 per hour for paralegals. The court does not intend to deviate from these prior findings.

Defendants seek a total of \$111,113.09 which reflects the amount of fees charged to and paid by defendants to Webb Law Group, APC after professional courtesy discounts. (Amended Webb Decl., ¶¶ 11-12, Exh. 2 [billing records], 3 [invoices].) The billing records¹ provided are voluminous and not organized in such a way that the court can efficiently review the entries in the order they were made. The invoices are chronological but do not provide a summary of each timekeeper's hours billed. In calculating fees to be awarded in this motion, the court has used the total hours for each timekeeper as reflected in the billing records and made deductions based upon objections raised by plaintiffs in their opposition.

¹ The organization of timekeeping records in what appears to be alphabetical order of the description of the task performed rather than chronological made for an extremely inefficient review of these records.

In support of its opposition, plaintiff submits a table of billing entries with objectionable entries and supporting authority for each of the timekeepers. (Blyth Decl., ¶ 6.) Plaintiff objects to entries deemed unrelated to this action, entries for clerical work, and duplicate entries of a task by separate timekeepers. Plaintiff additionally objects to the aggregate amount of time spent on the motion for summary judgment, Request for Production of Documents, set two, and the motion for attorney fees itself as unreasonably high in relation to the task.

The court has reviewed the challenged entries and determined that many of the objections have merit and has reduced the fees. For example, tasks related to different federal action are deemed unrelated to this action and will not be awarded. Clerical tasks such as scanning, filing, formatting and calendaring will not be awarded as attorney fees, regardless of the qualifications of the person performing the task. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) Where a conference has been billed by several attendees the fees will be awarded only to the higher billing timekeeper. Where the entry is vague and does not include sufficient information to determine what the task was related to, the hours will not be awarded. Plaintiff additionally asserts certain conferences should be considered clerical based upon the purported subject of the discussion, however the citation to *Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1187-1188, does not appear to support deeming conferences as “overhead” and no deductions will be taken on this basis.

With respect to the objections to the excessive amount of time billed to complete the motion for summary judgment, the court agrees some discount is warranted. The motion for summary judgment was filed November 13, 2025 with the majority of hours billed for the preparation of the motion between October and November by attorney Raza Khan. The court calculated 19.6 hours of challenged entries attributed to the motion for summary judgment between May 2024 and July 2024 by law clerk Anthony Romano and 10.3 hours between July and August 2024 by attorney Raza Khan. The time elapsed between these preliminary drafting and the bulk of the time on the motion supports finding the efforts were likely duplicated once the drafting began in October. The court intends to disallow the May through August hours as excessive and duplicated in the significant time expended in October and November.

The plaintiff challenges the amount of time attributed to the responses to Request for Production of Documents, set two as excessive. In reviewing the challenged entries, the time includes preparation of the initial responses, amended responses, a privilege log and review and redaction of financial documents to be produced. This work was performed over several months and the court finds the time was reasonable and not excessive. No deductions will be taken.

Finally, plaintiff challenges the time spent on the original fee motion as excessive. Plaintiff calculates 32.1 hours attributed to the motion, notably all hours challenged are billed by a single timekeeper suggesting the excessive time is not attributable to duplicated efforts but rather counsel's lack of experience as a recently barred attorney. The court finds it reasonable to reduce the hours by 25%, calculated to be 8 hours.

The invoices provided as evidence reflect professional courtesy discounts and it appears certain of the challenged entries have been discounted. Due to the format of

the billing entries it is not possible to cross-reference every discount reflected in the invoice with the total time billed in the billing entries provided. Although narrative summary is provided in the Amended Declaration of Lenden F. Webb calculating a total number of hours after discounts, the format of the hours presented does not allow the court to efficiently cross-check the billing entries on Exhibit 2, the invoices reflecting discounts in Exhibit 3, and the comprehensive table of challenged entries within the Declaration of Stan D. Blyth. As a result the total hours from which discounts will be taken will be the amount of hours stated on both Exhibit 2 and the table in the opposition.

The court makes the following deductions:

From 100.1 hours billed by Anthony Romano, the court discounts 1.9 hours billed for activities unrelated to this action, 6.1 hours billed for clerical tasks, and 0.2 hours billed in vague entries. The court finds it reasonable to discount 19.6 hours billed toward the motion for summary judgment as excessive and duplicative. The result is total of 72.3 hours billed at \$100 per hour for an award of fees of \$7,230.00.

From 13.1 hours billed by Lenden Webb, the court discounts 0.4 hours billed for activities unrelated to this action and 0.6 hours billed for clerical tasks. The result is total of 12.3 hours billed at \$375 per hour for an award of fees of \$4,612.50.

From 48.2 hours billed by paralegal Madeleine Dearien, the court discounts 6.2 hours billed for clerical tasks and 1.2 hours billed for duplicate conferences. The result is total of 40.8 hours billed at \$150 per hour for an award of fees of \$6,120.00.

From 281.2 hours billed by Raza Khan, the court discounts 0.9 hours billed for activities unrelated to this action, 0.4 hours billed for clerical tasks, and 1.3 hours billed as duplicate conferences. The court finds it reasonable to discount 10.3 hours billed toward the motion for summary judgment as excessive and duplicative. The court finds it reasonable to discount 8 hours of time from the hours billed toward the motion for attorney fees. The result is total of 260.3 hours billed at \$200 per hour for an award of fees of \$52,060.00

The motion for attorney fees is granted and defendants are awarded \$70,022.50 as reasonable attorney incurred as the prevailing party.

Costs and expenses are sought via memorandum of costs in the amount of \$4,254.63.

If the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. (*See Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) The losing party does not meet this burden by arguing that the costs were not necessary or reasonable but must present evidence to prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr.* (2015) 237 Cal.App.4th 1217, 1224.) If the claimed items are not expressly allowed by statute and are objected to, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

No motion to tax costs has been noticed and no objection made to the memorandum. Accordingly, costs in the amount of \$4,254.63 are awarded.

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: Img on 10-14-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: **Perez v. Rossetti, et al.**
Superior Court Case No. 22CECG01150

Hearing Date: October 15, 2025 (Dept. 403)

Motion: by Defendants for Summary Judgment, or in the Alternative,
Summary Adjudication

**If oral argument is timely requested, it will be entertained on
Thursday, October 16, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

To deny Defendants City of Fresno, James Rossetti, Sean Calvert, and Chris Martinez's motion for summary judgment and alternative motion for summary adjudication.

Explanation:

Summary judgment law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schworer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[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); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

A summary judgment motion must show that the "material facts" are undisputed. (Code Civ. Proc., § 437c, (b)(1).) The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

A party moving for summary judgment or summary adjudication must support the motion with a separate statement that sets forth plainly and concisely all material facts

that the moving party contends are undisputed, and each of these material facts must be followed by a reference to the supporting evidence. (Code Civ. Proc., § 437c, subd. (b)(1), (f)(2).) A separate statement is required to afford due process to the opposing party and to permit the judge to expeditiously review the motion for summary judgment or summary adjudication to determine quickly and efficiently whether material facts are disputed. (*Parkview Villas Ass'n, Inc. v State Farm Fire & Cas. Co.* (2005) 133 Cal.App.4th 1197, 1210; *United Community Church v Garcin* (1991) 231 Cal.App.3d 327, 335.) As a result, the separate statement should include only *material* facts—ones that could make a difference to the disposition of the motion. (Cal. Rules of Court, rule 3.1350(f)(3); see also rule 3.1350(a)(2) [defining “material facts”].)

As a result, the moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the matters it contends are “undisputed,” and cite the specific evidence (pleadings admissions, or discovery, or declarations) showing there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law.

In the case at bench, the moving Defendants City of Fresno and its police officers James Rossetti, Sean Calvert, and Chris Martinez (“City Defendants”), move for summary judgment and, in the alternative have identified five issues for summary adjudication in their Notice of Motion. As there are disputes of material fact with respect to whether the decedent was resisting or fighting his detention as characterized by the moving parties, the court intends to deny the motion for summary judgment. (UMF Nos. 10, 13.)

Issue No. 1: Under the doctrine of res judicata, Plaintiffs are barred from relitigating any issue decided in *Anthony Perez et al. v. City of Fresno et al.*, Eastern District of California Case No. 18-cv-187 and the appeal taken therefrom in the Ninth Circuit, styled *Perez v. City of Fresno* and disposed of in the opinion published at 98 F.4th 919 (collectively, the “Federal Action”).

As framed, the issue for adjudication is simply a statement that the plaintiffs may not relitigate the issues within the Federal Action in the case at bench. There is no issue of duty, cause of action or affirmative defense disposed of in the adjudication of this issue. Therefore, issue is not proper for summary adjudication. (Code Civ. Proc. § 437c, subd. (f)(1).)

Issue No. 2: Plaintiffs' cause of action against the City Defendants for “Violation of Bane Act” fails because the Federal Action conclusively established the City Officers did not intend to deprive Decedent of his rights, negating an essential element of the claim. Because Plaintiffs' Bane Act cause of action against the City Officers must fail, any claim that the City is vicariously liable on this cause of action necessarily also fails.

In support of their motion for summary adjudication, defendants set forth the statements regarding the preclusive effect of the Federal Action as undisputed material facts. (UMF Nos. 38-41.) Plaintiffs correctly characterize these “facts” as legal arguments rather than material facts. Moreover, plaintiffs have demonstrated there is a dispute as to the preclusive effect of the Ninth Circuit ruling in the Federal Action, as stated in the September 11, 2025 order on plaintiffs' alternative writ of mandate. Although the Fifth Appellate District found there was no prima facie case for a Bane Act claim with respect

to the Ambulance Defendants it was on a different basis than argued by the moving defendants. Summary adjudication of Issue 2 is denied.

Issue No. 3: Plaintiffs' cause of action against the City Defendants for "Battery" fails because on the undisputed record and in light of the conclusive findings in the Federal Action, there is no triable issue of fact as to the reasonableness of the force used. Furthermore, the City Officers are immune from liability for pursuant to Welfare & Institutions Code section 5278. Because Plaintiffs' battery cause of action against the City Officers must fail, any claim that the City is vicariously liable on this cause of action necessarily also fails.

In support of summary adjudication of the battery claim defendants assert as undisputed that the decedent actively fought the officers and resisted detention. (UMF Nos. 10, 13.) Plaintiffs dispute that decedent actively resisted his detention based on the video of the incident produced by defendants (Carpenter Decl, Ex. A), testimony of civilian witnesses, and explaining his action based on his being asphyxiated. Plaintiffs have demonstrated there is a dispute as to whether decedent was resisting detention or reacting to his asphyxiation.

City Defendants additionally assert their actions are afforded immunity under Welfare and Institutions Code section 5278 based on their detaining decedent in the context of a Welfare and Institutions Code section 5150 hold. Plaintiffs challenge the immunity as not extending to the tortious manner of detention that resulted in decedent's death by asphyxiation. (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th, 360, 393.) As alleged, the conduct forming the basis of plaintiffs' claims is not the fact that decedent was detained but the manner of his detention. The court finds the actions are outside the scope of section 5278 immunity.

Accordingly, summary adjudication of Issue 3 is denied.

Issue No. 4: Plaintiffs' cause of action against the City Defendants for "Negligence" fails because no rational juror could find on the undisputed record that the City Officers' conduct was unreasonable when considering the totality of the circumstances. To the extent Plaintiffs allege additional negligent conduct beyond the use of force, that conduct is not independently actionable but is considered part of the totality of the circumstances in determining the reasonableness of the City Officers' use of force. Furthermore, the City Officers are entitled to statutory immunity under California Government Code section 820.2 for their discretionary acts. Because Plaintiffs' negligence cause of action against the City Officers must fail, any claim that the City is vicariously liable on this cause of action necessarily also fails.

As with Issue 3, City Defendants assert that it is undisputed that decedent actively fought officers and resisted detention and plaintiffs have demonstrated there is evidence to dispute this characterization. (UMF Nos. 10, 13.)

Here, the City asserts its officers are entitled to immunity for their discretionary acts pursuant to Government Code section 820.2. Plaintiffs counter that such immunity does not shield defendants from claims of excessive force. (See *Scruggs v. Haynes* (1967) 252 Cal.App.2d 256, 267.) Given the nature of the plaintiffs' claims, the court finds City

Defendants have not demonstrated the actions in detaining the decedent are entitled to immunity under section 820.2. As such, summary adjudication of Issue 4 is denied.

Issue No. 5: Plaintiffs cannot demonstrate their entitlement to punitive damages because the City Officers' lack of malicious intent has been conclusively established in the Federal Action, and because Plaintiffs have not adduced clear and convincing evidence of the City Officers' intent to harm Decedent, or despicable conduct, as required by Civil Code section 3294.

City Defendants' arguments that the Federal Action conclusively established the issue of malicious intent are not consistent with the September 11, 2025 order on plaintiffs' alternative writ of mandate. The court will not determine intent as a matter of law based upon the findings of the Federal Action.

Moreover, there are disputed facts with respect to decedent expressing whether he could breathe and the officers' response to decedent stating he could not breathe. (UMF 15.) Having determined that there are disputes of material fact, summary adjudication of Issue 5 is denied.

Evidentiary Objections

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

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:  **on** 10-14-25 .

(Judge's initials) (Date)