Tentative Rulings for October 27, 2026
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.

23CECG04115 ***Angela Fullilove v. Lisa Ann Golik M.D.*** **is continued to Tuesday, December 8, 2026, at 3:30 p.m. in Department 501.**

24CECG03125 ***Cearíaco Dixon v. County of Fresno*** **is continued to Tuesday, December 15, 2026, at 3:30 p.m. in Department 501.**

24CECG05595 ***Mark Blanton v. Eric Medina*** **is continued to Tuesday, December 8, 2026, at 3:30 p.m. in Department 501.**

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Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Hovanissian v. Fresno Mechanical and Services Inc.***
Superior Court Case No. 26CECG00745

Hearing Date: October 27, 2026 (Dept. 501)

Motion: Plaintiff's Demurrer to Answer

Tentative Ruling:

To sustain the demurrer as to the 1st through 19th, 22nd through 29th, 34th through 54th, and 58th through 69th affirmative defenses, with leave to amend. To sustain the demurrer as to the 20th, 21st, 30th, 31st, 55th, 56th, 57th affirmative defenses, without leave to amend. To overrule the demurrer to the 70th affirmative defense.

Defendants are to file a Second Amended Answer consistent with this ruling within 10 days of service of the minute order by the clerk.

Explanation:

An answer to a complaint must contain a "general or specific denial of the material allegations of the complaint controverted by the defendant." (Code Civ. Proc., § 431.30, subd. (b)(1).) Additionally, where a defendant seeks to introduce new matter which has not been introduced in the complaint, the defendant must do so in the answer. (Code Civ. Proc., § 431.30, subd. (b)(2); *Carranza v. Noroian* (1966) 240 Cal.App.2d 481, 487.) Further, a defendant who fails to plead an affirmative defense waives it. (*California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.)

Code of Civil Procedure section 431.30, subdivision (g) provides, "The defenses shall be separately stated, and the several defenses shall refer to the causes of action they are intended to answer, in a manner by which they may be intelligibly distinguished." Here, the answer separately states 70 affirmative defenses. Each defense asserts it is as to each cause of action raised in the complaint.

The grounds of a demurrer to answer may be a failure to state sufficient facts to constitute a defense, uncertainty, or where an answer pled a contract, that it cannot be ascertained whether the contract was written or oral. (Code Civ. Proc., § 430.20.) General demurrers to answers raise an objection that there are insufficient facts to constitute a defense. (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 880.)

A unique aspect of a demurrer to an answer is that "the defect in question need not appear on the face of the answer." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733.) The sufficiency of the answer requires analysis of the complaint. (*Ibid*.) Also unique to demurrers to answers, where a defense "is free from the objections urged by demurrer, then a demurrer to the entire answer must be overruled." (*Id*. at p. 734.)

The general rule is that the same pleading of "ultimate facts" rather than evidentiary matter or legal conclusions is required in pleading an answer as in pleading a complaint. The answer must aver facts "as carefully and in as much detail as the facts which constitute the cause of action and which are alleged in the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384, quoting Pomeroy, Code Remedies (5th ed. 1929) § 563, at p. 917.) Conclusions of law are not sufficient to state a valid defense, and will not withstand a general demurrer. (*Ibid*.)

1st-31st, 34th-69th

Defendants have asserted 70 affirmative defenses. Plaintiff generally demurs that the 1st through 31st and 34th through 69th affirmative defenses each fail to state sufficient facts to constitute a defense. For each of these, defendants, on information and belief, merely laid out the affirmative defense or its elements without any provision of facts. Thus, the answer pleads conclusions of law and is replete with boilerplate defenses. Notably, for many of these affirmative defenses, these appear to be based on new information not raised in the underlying complaint. Defendants are to plead the ultimate facts in their answer. The demurrer is sustained as to the 1st through 31st and 34th through 69th affirmative defenses, with leave to amend.

12th

Plaintiff further demurs to the 12th affirmative defense of failure of consideration. Plaintiff asserts the complaint alleges a written contract and plaintiff's payment thereunder. As such, plaintiff contends that consideration is pled on the face of the complaint. Notably, this goes to the merits. The court does not sustain a demurrer as to the 12th affirmative defense on this ground.

20th, 21st, 30th, 31st, 51st

Plaintiff demurs to the 20th, 21st, 30th, 31st, and 51st affirmative defenses relating to indemnity and contribution. Plaintiff asserts the complaint pleads direct claims and that indemnity and contribution are not sought by plaintiff. For the 20th, 21st, 30th, and 31st affirmative defenses, these do appear to assert a defense as to causes of action not present in the complaint. For the 51st affirmative defense, this appears to be a defense raised in anticipation of defendants asserting indemnification. The court sustains the demurrer, without leave to amend, as to the 20th, 21st, 30th, and 31st affirmative defenses, but not as to the 51st affirmative defense.

22nd

Plaintiff demurs to the 22nd affirmative defense relating to privity. Plaintiff asserts that privity is alleged on the face of the complaint. This demurrer goes to the merits. The court does not sustain the demurrer as to the 22nd affirmative defense on this ground.

24th

Plaintiff demurs to the 24th affirmative defense relating to a breach of implied warranty of suitability by owners, developers, or general contractors. Plaintiff asserts he is the property owner, and that no developer or general contractor is implicated in the complaint. This demurrer goes to the merits. The court does not sustain the demurrer as to the 24th affirmative defense on this ground.

34th

Plaintiff demurs to the 34th affirmative defense relating to the statute of frauds. Plaintiff asserts that the complaint alleges and attaches a written contract. This demurrer goes to the merits. The court does not sustain the demurrer as to the 34th affirmative defense on this ground.

37th

Plaintiff demurs to the 37th affirmative defense relating to the parol evidence rule, asserting that it is not an affirmative defense. Defendants assert they should not be barred from asserting underlying contractual defenses that invoke the parol evidence rule. The court does not sustain the demur to the 37th affirmative defense on this ground.

43rd

Plaintiff demurs to the 43rd affirmative defense relating to product misuse or abuse. Plaintiff asserts that no product-liability claim was pled, rather the complaint alleges services and installation. This demurrer goes to the merits. The court does not sustain the demurrer as to the 43rd affirmative defense on this ground.

55th, 56th

Plaintiff demurs to the 55th and 56th affirmative defenses relating to declaratory relief. Plaintiff asserts the complaint does not allege a cause of action for declaratory relief. These do appear to assert defenses as to a cause of action not present in the complaint. The court sustains the demurrer as to the 55th and 56th affirmative defenses, without leave to amend.

57th

Plaintiff demurs to the 57th affirmative defense relating to design defects. Plaintiff asserts that the complaint does not allege design defects in construction documents. This does appear to assert a defense as to a cause of action not present in the complaint. The court sustains the demurrer as to the 57th affirmative defenses, without leave to amend.

59th

Plaintiff demurs to the 59th affirmative defense relating to lack of standing. Plaintiff asserts the complaint sets forth that he is the property owner and contracting party. This demurrer goes to the merits. The court does not sustain the demurrer as to the 59th affirmative defense on this ground.

69th

Plaintiff demurs to the 69th affirmative defense relating to the Right to Repair Act. Plaintiff asserts this Act does not apply to the claims pled against defendants. This demurrer goes to the merits. The court does not sustain the demurrer as to the 69th affirmative defense on this ground.

70th

Plaintiff demurs to the 70th affirmative defense reserving the right to assert further defenses. Plaintiff asserts such a non-waiver is not an affirmative defense. The court overrules this demur as defendants merely leave open the opportunity to raise further defenses.

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 10/26/26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Barajas v. Acosta et al.***
Superior Court Case No. 25CECG02965

Hearing Date: October 27, 2026 (Dept. 501)

Motion: Motion to Compel Arbitration

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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 10/26/26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***McBride v. Siligo et al.***
Superior Court Case No. 26CU02404

Hearing Date: October 27, 2026 (Dept. 501)

Motion: By Plaintiff Kathryn McBride for Preliminary Injunction

Tentative Ruling:

To deny. (Code Civ. Proc., § 527.)

Explanation:

Plaintiff Kathryn Lindberg McBride ("Plaintiff") seeks an injunction as to defendants Jerry Robert Siligo, Kelsey Marie Siligo, and Cuauhtemoc Montano (together "Defendants") to unlock and open a physical gate.

A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if they show satisfactorily that sufficient grounds exist therefore. (Code Civ. Proc. § 527, subd. (a).) The overarching concern of injunctions is to avoid injuries from the premature enforcement of a determination which may later be found to have been wrong. (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1044.) The status quo runs from the time before the contested conduct began. (*Id.* at p. 1046.) Thus, a preliminary injunction issued to preserve the status quo seeks to maintain the conditions at the time the injunction would issue. (*See id.* at p. 1048.) Injunctive relief is available to prevent threatened injury and is not a remedy designed to right completed wrongs. (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403, fn. 6.)

A preliminary injunction is warranted on a showing that (1) the interim harm that the applicant will sustain if the injunction is denied as compared to the harm to the defendant if the injunction issues; and (2) the likelihood of success on the merits at trial. (*Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, 422.) The applicant must demonstrate a real threat of immediate and irreparable injury due to the inadequacy of legal remedies. (*Triple A Machine Shop, Inc. v. State of Cal.* (1989) 213 Cal.App.3d 131, 138.)

Here, the preliminary injunction sought seeks to right completed wrongs. Whether Defendants were entitled to place and lock a gate on the subject property at issue, one exists and appears to be controlled by Defendants. Accordingly, Plaintiff does not seek to maintain the status quo. (*Davenport v. Blue Cross of Cal.* (1997) 52 Cal.App.4th 435, 446-448.) The orders sought do not leave the parties in the same position, and requires Defendants to relinquish access. In other words, Plaintiff seeks a mandatory injunction. (*See id.* at p. 447 ["It has been held that an injunction which compels a party to perform some physical act or surrender property is mandatory."]) Mandatory injunctions are not

permitted except in extreme cases where the right thereto is clearly established. (*Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.)

Here, Plaintiff fails her burden to demonstrate a likelihood of prevailing on the issue of a prescriptive easement. Though it is not their burden, as defendants Jerry Robert Siligo and Kelsey Marie Siligo note, Plaintiff appears to seek outright possession of the subject property at issue, to control all aspects of subject property at issue. Plaintiff seeks to restrain Defendants "from tearing up, demolishing, damaging, and altering the existing asphalt pavement" and "from constructing or erecting any fence, gate, or barrier." This is materially different from the prescriptive easement sought in the Complaint, for access and use, not control as would an owner. At most, Plaintiff attests that the prior owner, not Plaintiff, laid the asphalt. (McBride Decl., ¶ 4; *see also* Bullock Decl., ¶ 3.) This further tends to demonstrate, which Defendants note that the use and access were by consent by the prior owners, for a necessary dual-access loop for heavy vehicles. (McBride Decl., ¶ 4.) Accordingly, solely for the purposes of evaluating whether to issue a preliminary injunction, Plaintiff fails to meet her burden to demonstrate, by clear and convincing evidence, a likelihood of prevailing. The motion for mandatory preliminary injunction is denied.

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 10/26/26.
(Judge's initials) (Date)