Tentative Rulings for October 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)

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 502

Begin at the next page

(03)

Tentative Ruling

Re:	***Dawood v. California Department of Transportation*** Case No. 24CECG00069
Hearing Date:	October 28, 2025 (Dept. 502)
Motion:	Defendants' Motion to Compel Plaintiff's Attendance at his Deposition, to Produce Documents, and for Monetary Sanctions

Tentative Ruling:

To grant defendants' motion to compel plaintiff's attendance at his deposition, to produce documents, and for monetary sanctions. Plaintiff shall appear at his next noticed deposition on November 18 and 19, 2025 and produce the documents listed in the deposition notice. Plaintiff shall pay monetary sanctions to defense counsel in the amount of $3,331.90 within 30 days of the date of service of this order.

Explanation:

Under Code of Civil Procedure section 2025.450, "If, after service of a deposition notice, a party to the action … without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (a).)

"A motion under subdivision (a) shall comply with both of the following: (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., § 2025.450, subd. (b)(1), (2), paragraph breaks omitted.)

Also, "If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).)

Here, defense counsel noticed the deposition of plaintiff for June 23 and 24, 2025 by emailing him a deposition notice on February 25, 2025 after the parties engaged in extensive discussions about acceptable deposition dates. (Amended Velasco decl., ¶¶ 2-8.) Plaintiff did not object to the deposition notice. (*Id*. at ¶ 8.) Defense counsel's secretary also called plaintiff on June 20, 2025 to confirm the deposition dates. (*Id*. at ¶ 10.) She left a voicemail with plaintiff to confirm the date, time, and location of the deposition. (*Ibid*.) However, plaintiff failed to appear for the June 23, 2025 deposition date, and defense counsel made a record of his nonappearance. (*Id*. at ¶¶ 11, 12.) She also attempted to call him and email him about his nonappearance, but he did not respond. (*Ibid*.)

On June 23, 2025, defense counsel's secretary also attempted to contact plaintiff to confirm that he was going to appear for the June 24, 2025 deposition date. (*Id*. at ¶ 13.) Again, she left a voicemail that gave the date, time, and location of the deposition. (*Ibid*.) Defense counsel sent another email to plaintiff on June 23, 2025, asking him to confirm that he was going to attend the June 24, 2025 deposition, and warning that they would seek to compel his attendance and request sanctions if he did not attend. (*Id*. at ¶ 14.) Again, plaintiff failed to appear for his June 24, 2025 deposition, and defense counsel took a record of his nonappearance. (*Id*. at ¶ 15.) Defense counsel sent plaintiff a meet and confer letter on June 25, 2025, stating that they would seek to compel his deposition and request sanctions against him for his nonappearance. (*Id*. at ¶ 17.)

Eventually, on June 27, 2025, plaintiff replied to defense counsel's emails, stating that he was "stopped paying attention to schedule any depositions" and "at this time, I cannot even find the last notice of deposition you sent me." (*Id*. at ¶ 18, and Exhibit 15 thereto.) He did offer to meet and confer about scheduling another deposition, but indicated that he stopped trying to schedule any depositions because the complaint is changing and the facts are being amended. (*Ibid*.)

Thus, defendants have shown that plaintiff failed to appear for his noticed deposition without first serving an objection, and as a result defendants are entitled to an order compelling plaintiff to appear for his deposition as well as monetary sanctions. While plaintiff claims that defendants never served him with a deposition notice, defense counsel states that the notice was served on his email address on February 25, 2025. (Amended Velasco decl., ¶ 8.) The parties have been serving each other with documents by email since the inception of the case, and plaintiff has never before claimed that he did not receive the documents. Defense counsel's secretary did not receive an error message after serving the notice, which indicates that plaintiff did receive it. (Suppl. decl. of Velasco, ¶ 2.)

In his own declaration in support of his opposition, plaintiff states that, "The Defendants' counsel sent me an email three months before the deposition; however, I did not see it." (Dawood decl., ¶ 5.) This appears to be an admission that he was served with the deposition notice by email, but for some reason he "did not see it." Also, plaintiff himself admitted that he had "stopped paying attention to schedule any depositions" and that he could not find the deposition notice served on him by defendants, which appears to be a concession that he was served with the notice and simply lost track of it through inattention. In light of this evidence, plaintiff's denial is not credible and the court will disregard it.

Therefore, the court intends to find that plaintiff was properly served with the deposition notice for the June 23 and 24, 2025 dates, that he failed to object to the notice, and that he failed to appear for the deposition as noticed on either June 23 or June 24, 2025. Consequently, defendants are entitled to an order compelling him to appear for his next deposition dates on November 17 and 18, 2025.

In addition, defendants are entitled to an order awarding sanctions against plaintiff for his unjustified failure to appear for his deposition. Sanctions are mandatory where the court grants a motion to compel a party's deposition, unless the failure to appear is justified or other circumstances make sanctions unjust. (Code Civ. Proc., § 2025.450, subd. (g)(1).) Here, defendant's failure to appear was not justified, as he apparently simply failed to calendar the deposition and forgot to appear. Nor are there any other circumstances that would tend to show that imposing sanctions would be unjust. Therefore, the court intends to grant defendants' request for sanctions against plaintiff.

However, the court will reduce the amount of sanctions to a more reasonable number. Defendants request deposition costs of $2,451.90 for the cost of the court reporter for both deposition dates. This amount is reasonable and the court will award it, since defense counsel has provided copies of the invoices from the court reporter service regarding the deposition dates. (Exhibit 13 to Amended Velasco decl.)

On the other hand, the court will reduce the amount of attorney's fees to a more reasonable number. Defense counsel claims to have incurred 16 hours of attorney time billed at $220 per hour on meet and confer efforts, drafting the motion to compel, reading the opposition, preparing the reply, and attending the hearing, for a total of $3,520 in attorney's fees. (Amended Velasco decl., ¶¶ 20, 21.) However, given the relatively simple nature of the motion to compel, billing 16 hours of time was excessive. The court will award sanctions of $880 based on four hours of attorney time billed at $220 per hour, plus the court reporter costs of $2,451.90, for a total of $3,331.90 in sanctions.

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 10/24/25.
(Judge's initials) (Date)

(47)

<u>Tentative Ruling</u>

Re: ***Carin Hodge vs. Dept. of Fish & Wildlife, State of CA***
Superior Court Case No. 25CECG02805

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

Motion: Demurrer

Tentative Ruling:

To sustain defendant's demurrer with leave to amend. Plaintiff is granted leave of 20 days to file a first amended complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) As relates to a complaint, 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 the complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against 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.)

Public entities are not liable for injuries from an alleged act or omission except where provided by statute. (Gov. Code, § 815; *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438.) Claims against public entities must be specifically pled. (*Brenner v. City of El Cajon, supra*, 113 Cal.App.4th at p. 439.)

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.)

Plaintiff's complaint fails to adequately describe how the swing-gate in question was in a "dangerous condition." Contrary to plaintiff's opposition to demurrer, a gate that crashes down on a plaintiff's thumb does **<u>NOT</u>** *ipso facto* establish a defect. Plaintiff asserting in its complaint that the swing gate was in a dangerous condition as per Government Code section 830 is a legal conclusion, devoid of facts as to what made the swing gate dangerous. Defendant makes a fair point in its Memorandum of Points and Authorities supporting its demurrer, that without any facts supporting how the swing-gate in question was in a "dangerous condition," the accident could just as likely have been caused by plaintiff's "inexpert use of the gate." (5:3-5).

Discussion of Design Immunity and Trail Immunity are premature at this juncture.

Leave to amend should be granted where there is a "reasonable possibility the pleading can be cured by amendment." (*Brenner v. City of El Cajon*, B (2003) 113 Cal.App.4th 434, 444.) Plaintiff is granted the opportunity to amend their complaint.

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 10/24/25 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re:	***S.N. v. Fresno Unified School District*** Superior Court Case No. 22CECG02655
Hearing Date:	October 28, 2025 (Dept. 502)
Motion:	by Plaintiff for Reconsideration, or in the Alternative, to Set Aside the Summary Judgment Order

Tentative Ruling:

To deny. (Code Civ. Proc., §§ 1008, subd. (a); 473, subd. (b).)

Explanation:

Plaintiff S.N. moves under Code of Civil Procedure section 1008, subdivision (a) to reconsider the summary judgment order, or alternatively to set it aside under Code of Civil Procedure section 473, subdivision (b), on the basis of mistake, inadvertence, surprise, or excusable neglect.

Reconsideration

Plaintiff filed her motion for reconsideration on September 24, 2025. Judgment in this case was entered on October 3, 2025. Once judgment is entered, the court loses jurisdiction to rule on a motion for reconsideration. (*Nave v. Taggart* (1995) 34 Cal.App.4th 1173, 1177 [construing the subsequent entry of judgment as an implied denial of the pending reconsideration motion].)

Even if the reconsideration motion could be considered on its merits, it would be denied for the lack of new or different facts, circumstances, or law.

> When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

(Code Civ. Proc., § 1008, subd. (a).)

"According to the plain language of [Code of Civil Procedure section 1008], a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances or law.' " (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500 ["a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances or law.' "].) This burden has been found to be comparable to that of a party seeking a new trial based on new evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213.) Thus, the party seeking reconsideration based on "new or different facts" must provide a satisfactory explanation for failing to present the information at the first hearing. (*Ibid*.)

Here, plaintiff has not established any new or different facts or circumstances. At the time plaintiff filed her opposition to the underlying summary judgment motion, plaintiff's counsel was in possession and aware of the existence of the documents plaintiff seeks to admit into evidence and judicial notice of—the stamped copy of the police report and complaint filed on April 2, 1999 by another plaintiff against defendants Fresno Unified School District and Max Poryeno. Plaintiff's explanation that she simply did not anticipate that defendant would object to the unauthenticated police report submitted in support of her opposition does not raise any new or different facts or circumstances. Therefore, the motion for reconsideration is denied.

<u>Relief Pursuant to Code of Civil Procedure section 473, subdivision (b)</u>

The court is empowered to relieve a party "upon any terms as may be just … from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc. § 473, subd. (b).) "[W]henever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect, [the court shall] vacate any (1) resulting default entered by the clerk … or (2) resulting default judgment or dismissal entered against his or her client." (*Ibid*.) Where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary.

- *Mandatory Relief*

"The provision of section 473 which mandates relief from a judgment of dismissal or default when the motion is based on an attorney's affidavit of fault does not mandate relief from other judgments. In all other cases, relief is discretionary. [Citation.] Relief from summary judgment is within the discretion of the court. [Citations.]" (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 681, citations omitted.) The court acknowledges however, there does appear to be a line of cases that applies the mandatory relief provisions to judgments that are the procedural equivalents of defaults or default judgments. (*Avila v. Chua* (1997) 57 Cal.App.4th 860 ("*Avila*").)

In *Avila*, plaintiff filed a motion for relief from summary judgment entered in favor of the defendant physician and hospital due solely to the failure of plaintiff's attorney to timely file and serve the oppositions. (*Id*., at p. 864.) There, the attorney indicated that he had incorrectly calendared the date the oppositions were due. The Court of Appeal concluded the situation was "directly analogous to a default judgment" because "the [trial] court decided the matter on the other parties' pleadings [and] [t]here was not litigation on the merits." (*Id.* at p. 868.)

Plaintiff contends that the situation at hand is directly analogous to that in *Avila*, because plaintiff's counsel testifies that he mistakenly provided his paralegal with an unstamped version of the police report that was not directly received from the Fresno Police Department, which purportedly contains evidence that would show that there is a triable issue as to whether any abuse occurred at school. As a result, the correct copy of the police report was inadvertently omitted from the opposition papers. (Karp Decl., ¶ 2.) Also, plaintiff proffers her own declaration explaining that during her deposition on May 1, 2024, she did not recall that she was abused at school until she reviewed the aforementioned police report. (Karp Decl., Ex. 2; S.N. Decl., ¶¶ 2-3.)

However, the instant case does not simply involve an attorney merely failing to timely file an opposition or a paper in support of that opposition. Plaintiff's counsel timely filed the opposition with the assumption that defendant would not object to the evidence filed in support of that opposition. (Memo, 6:1-3.) Additionally, in that opposition, plaintiff did not address her statements made at her May 1, 2024 deposition. Only after this court's tentative ruling granting the summary judgment, did plaintiff present supplemental declarations and evidence to address these issues. These were facts and evidence that were at all times known to plaintiff's counsel. The court does not find that this case is analogous to *Avila* and therefore, does not apply the mandatory portion of Code of Civil Procedure section 473, subdivision (b).

- *Discretionary Relief*

To determine whether the mistake or neglect was excusable, "... the court inquires whether 'a reasonably prudent person under the same or similar circumstances' might have made the same error ...." (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) "The distinction in the statute noted by the Supreme Court's use of the term 'reasonably prudent person' describes the obvious intent of the Legislature to mandate relief only from mistakes fairly imputable to the client, i.e., mistakes anyone could have made. The Legislature did not intend to eliminate attorney malpractice claims by providing an opportunity to correct all the professional mistakes an attorney might make in the course of litigating a case." (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 681–682.) "Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Ibid*.)

Here, the "inadvertence" asserted by plaintiff's counsel appears to be the late recognition of inadequate presentation of evidence. This is evidenced by the fact that plaintiff's supplemental briefing was not prepared and lodged until the day of the summary judgment hearing on September 11, 2025, <u>*after*</u> the court's September 10, 2025 tentative ruling, which outlined the court's intent on granting the motion. Despite having been served with defendant's reply and evidentiary objections on August 29, 2025, the record does not reflect any earlier attempt to seek leave to file the supplemental evidence. "An attorney acting within his or her professional capacity is held to a different standard of care and may not be excused by [Code of Civil Procedure,] section 473 from errors occurring during the discharge of strictly professional duties." (*Garcia, supra,* at p. 684.) The timely advancement of and proper admission of evidence is a professional responsibility ordinarily assumed by attorneys. Therefore, the failure to do so is not considered a mistake permitted to a "reasonably prudent person" within the meaning of Code of Civil Procedure section 473, subdivision (b).

Accordingly, the motion for relief under Code of Civil Procedure section 473, subdivision (b) 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 10/24/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Dolores Marin v. Jacob Colarian***
Superior Court Case No. 25CECG04585

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

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition. Order Signed. No appearances necessary.

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 10/27/25 .
(Judge's initials) (Date)