

Tentative Rulings for October 29, 2025
Department 501

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.

24CECG03048	<i>Frank Cruz v. Mortgage Default Services, LLC</i> is continued to Wednesday, November 19, 2025, at 3:30 p.m. in Department 501.
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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: **Kathryn McKenry v. Kathleen Hanlon**
Superior Court Case No. 25CECG01958

Hearing Date: October 29, 2025 (Dept. 501)

Motion: Defendant's Demurrer and Motion to Strike

Tentative Ruling:

To allow plaintiff Kathryn McKenry to file an amended complaint. Plaintiff is granted 10 days' leave to file a First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

If oral argument is timely requested, such argument will be entertained on Thursday, October 30, 2025, at 1:30 p.m. in Department 501.

Explanation:

On September 30, 2025, the court continued these motions for further meet and confer efforts in light of recent probate rulings impacting plaintiff's standing in this matter. On October 15, 2025, plaintiff filed a declaration indicating that the meet and confer efforts were incomplete, but that plaintiff intended to file an amended complaint in light of the probate rulings. The court grants plaintiff permission to file a First Amended Complaint. Should defendant take issue with the anticipated pleading, defendant will need to schedule and file the appropriate motion(s) to challenge the pleading.

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: DTT on 10/27/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: **Ron & Lynn Sawl Living Trust v. Fresno County Private Security**
Superior Court Case No. 23CECG01886

Hearing Date: October 29, 2025 (Dept. 501)

Motion: by Plaintiff for Entry of Judgment Pursuant to Stipulation for
Entry of Judgment

Tentative Ruling:

To deny.

***If oral argument is timely requested, such argument will be entertained on
Thursday, October 30, 2025, at 1:30 p.m. in Department 501.***

Explanation:

Plaintiff Ron & Lynn Sawl Living Trust ("plaintiff") brings this Application for Entry of Judgment¹ pursuant to Code of Civil Procedure section 664.6 and subject to the Stipulation for Entry of Judgment entered into by plaintiff and defendants Fresno County Private Security and Robert D. Simpson ("defendants") on April 29, 2025.

Code of Civil Procedure Section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." (Code Civ. Proc., § 664.6.) It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (*Ibid.*) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Here, plaintiff submits a writing, signed by the parties, made outside the presence of the court. (Pimentel Decl., ¶ 4, Exh. A.) The writing reflects that this court would retain jurisdiction to enforce the writing. (*Ibid.* [Agreement ¶ 22].)

Monetary Settlement Amount

¹ Plaintiff filed this Application as "Ex Parte" but the Application was calendared as a noticed motion rather than ex parte. Plaintiff did not provide a Notice of Motion. However, " 'It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion.' [citation] This rule applies even when no notice was given at all." (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7, 8.) Here, defendants filed an opposition on the merits of the Application, effectively waiving any defects in the notice (or the lack thereof).

The parties' stipulation contemplated the payment of \$250,000.00 by defendants with interest of 6.5% to settle the claims of this action against them. Plaintiff submits that defendants made payments between June 2024 and July 2025 in the amount of \$28,000.00, of which \$9,041.62 was principal, leaving an outstanding principal balance of \$240,958.38. (Sawl Decl., ¶¶ 11-12.) This Application was filed in July 2025. Thus, at the time of filing, defendants were not in default on their monthly payments of the settlement amount. There is no reason to believe that defendants are currently in default of the payments.

Option for Defendants to Purchase Plaintiff's Property

The stipulation further contemplated that defendants "**may** tender an offer to purchase the real property commonly known as 5151 North Gates, Fresno, County of Fresno, California, 93722, Assessor's Parcel Number 509-070-08" from plaintiff. (Pimentel Decl., ¶ 4, Exh. A. [Agreement ¶ 8(d), emphasis added].) If the property were purchased and escrow closed by January 1, 2025, plaintiff would waive the remainder of the settlement amount owed. (*Ibid.* [Agreement ¶ 8(d)].) The parties further stipulated that if defendants "do not close escrow on the purchase of 5151 N. Gates by January 1, 2025, then [plaintiff] may file the Stipulation for Entry of Judgment with the court." (*Ibid.* [Agreement ¶ 8(g)].)

The basis of this Application is that defendants failed to close escrow on the purchase of 5151 North Gates, Fresno. However, what plaintiff fails to demonstrate is that defendants made an offer on 5151 North Gates, Fresno that would trigger the opening and closing of escrow. The stipulation does not make the purchase of the property a mandatory term of the parties' agreement. In fact, the stipulation provides that "If [defendants] do not purchase 5151 N. Gates by January 1, 2025 but still comply with all of the payment terms and conditions of this Stipulation, paying the Settlement Amount in full pursuant to paragraph 8.b., [plaintiff] shall file a Request for Dismissal with thirty days of the final payment, which is due on or about June 1, 2029." (Pimentel Decl., ¶ 4, Exh. A. [Agreement ¶ 9].) This suggests that the stipulation may still be effective in the event that defendants do not purchase the Gates property.

Neither plaintiff's declaration nor plaintiff's counsel's declaration demonstrate that defendants tendered an offer on the Gates property. Defendants' opposition indicates that purchase of the property was considered and even potentially negotiated (see Opposition 2:19-25), but makes no assertion that an offer was made and accepted. Thus, the failure to close escrow by January 1, 2025, does not appear to put defendants in default of the parties' stipulation. In fact, Mr. Sawl's declaration demonstrates that defendants were current on their monthly payments at the time of filing. As such, the court will not enter judgment against defendants pursuant to the Stipulation and therefore denies the Application for Entry of Judgment.

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: DTT **on** 10/27/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: **Montes Paredes v. Negrete**
Superior Court Case No. 23CECG03079

Hearing Date: October 29, 2025 (Dept. 501)

Motion: by Defendant Abercrombie & Fitch Stores, Inc., for Summary Judgment

Tentative Ruling:

To deny. (Code Civ. Proc., § 437c.)

If oral argument is timely requested, such argument will be entertained on Thursday, October 30, 2025, at 1:30 p.m. in Department 501.

Explanation:

This motion arises out of a claim for negligence and premises liability based on a slip and fall. On July 31, 2021, plaintiff was shopping at defendant's store in Fresno when she slipped on fruit and water.

Evidentiary Objections

The court is not ruling on defendant's evidentiary objections. California Rules of Court, rule 3.1354, requires a party to file evidentiary objections separately from other papers and instructs that the objections are to be noted, but are not to be argued in the separate statement. (Cal. Rules of Ct., rule 3.1354(b).) The party submitting objections must also submit a proposed order. (Cal. Rules of Ct., rule 3.1354(c).) Defendant failed to file a proposed order. The court may refuse to rule on improperly formatted objections. (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 8-9.)

New Evidence on Reply

Defendant introduced new evidence in the reply. This is expressly forbidden in Code of Civil Procedure section 437c, subdivision (b)(4): "The reply shall not include any new evidentiary matter, additional material facts ..." The court will not consider the new evidence presented in the reply.

Merits

"Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 713, quoting Code Civ. Proc. § 437c(c).) Summary judgment is properly directed toward the entire complaint and not portions thereof. (see *Barnick v. Longs Drug Stores, Inc.* (1988) 203 Cal.App.3d 377, 384; *Khan v. Shiley, Inc.* (1990) 217 Cal.App.3d 848, 858-859.)

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1132 ["On a motion for summary judgment or summary adjudication, the pleadings delimit the scope of the issues . . ."].)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

If defendant carries this initial burden of production, the burden of production shifts to plaintiff to show that a triable issue of material fact exists. Plaintiff does this if she can show, by a preponderance of the evidence, that it is more likely than not that a given element can be established or that a given defense cannot be established. (*Aguilar, supra*, 25 Cal.4th at 850, 852.)

In determining whether plaintiff has met her burden of production, the court must evaluate plaintiff's evidence independently. That is, the court may not weigh plaintiff's evidence or inferences against defendant's, as if the court were sitting as a trier of fact. If plaintiff meets her burden, then the court must deny summary judgment, even if defendant has presented conflicting evidence. If plaintiff meets her burden, a reasonable trier of fact could find for plaintiff and a triable issue of fact does exist for the jury to consider. (*Aguilar, supra*, 25 Cal.4th at 856-857.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

In order to show negligence, a plaintiff must show a duty of care, breach of that duty, and that the breach was a proximate cause of the plaintiff's injury. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) Store owners are not insurers of the safety of their patrons. (*Ortega v. Kmart Corp., supra*, 26 Cal.4th at p. 1205.) The store's actual or constructive knowledge of the hazard is needed to establish liability. (*Id.* at p. 1206.) Actual notice exists where the hazard is either created by or observed by defendant's employee. (*Hatfield v. Levy Bros.* (1941) 18 Cal.2d 798, 806.) For constructive notice, the question is whether the hazard existed for a sufficient period of time to charge the store with notice of it. (*Ortega v. Kmart Corp., supra*, 26 Cal.4th at p. 1207.) Plaintiffs have the burden of producing evidence that a hazardous condition existed for a sufficient amount of time to put the store on constructive notice. (*Id.* at p. 1212.) A "failure to inspect the premises within a reasonable time prior to the accident [gives] rise to an inference that the defective condition lasted long enough to have been discovered and remedied." (*Id.* at p. 1211.)

Here, defendant argues that this is a “no notice” slip and fall case. Defendant asserts that plaintiff cannot present evidence that defendant had actual or constructive notice of the fruit and water on the floor and therefore defendant is entitled to summary judgment. As evidence, defendant presents excerpts from plaintiff's deposition and a declaration from the general manager at the time of the incident. Defendant argues that plaintiff was only in the store for eight minutes when she fell, walked the same path in and out of the store, and did not observe the fruit and water. (UMF Nos. 4, 7-9, 11-18.) Defendant argues the general manager conducted a visual sweep in the 10 to 15 minutes prior to plaintiff's fall and did not observe the fruit and water on the floor. (UMF Nos. 26-27.) Defendant also argues that employees were trained to clean the store prior to opening and to conduct continuous sweeps for spills and hazards. (UMF Nos. 20-25, 28.) Plaintiff counters that there are triable issues of fact on the issue of notice because video footage from the date of the incident shows a failure to remove debris on the floor, logs of sweeps were destroyed, and the Customer/Associate Accident Report indicates different timing of the incident. (UMF Nos. 20-26, 28.)

Defendant argues that the video footage is insufficient to demonstrate a triable issue of fact because the footage does not show the timeframe prior to the fall. However, the video footage is used to challenge whether continuous sweeps for hazards occurred consistent with the general manager's declaration. Also, defendant acknowledges in the Reply that “[v]ideo footage that was preserved, based on information known at the time, *all comes after Plaintiff's fall.*” (Reply, p. 4, emphasis added.) Plaintiff has presented triable issues of fact regarding whether the floor sweeps were actually conducted continuously by defendant's employees on the date of the incident.

Here, plaintiff has demonstrated an issue of triable fact as to notice. As such, the motion for summary judgment 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: DTT **on** 10/27/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Hall v. Fresno Unified School District Employee Health Care Plan***
Superior Court Case No. 20CECG00607

Hearing Date: October 29, 2025 (Dept. 501)

Motion: by Plaintiff Worldwide Aircraft Services, Inc., to Compel Attendance

Tentative Ruling:

To deny.

To grant the request for sanctions by defendant Fresno Unified School District Employee Health Care Plan and impose monetary sanctions in the amount of \$1,455.00 against plaintiff Worldwide Aircraft Services, Inc., in favor of defendant Fresno Unified School District Employee Health Care Plan. Within thirty (30) days of service of the order by the clerk, plaintiff Worldwide Aircraft Services, Inc., shall pay sanctions to defendant Fresno Unified School District Employee Health Care Plan's counsel.

If oral argument is timely requested, such argument will be entertained on Thursday, October 30, 2025, at 1:30 p.m. in Department 501.

Explanation:

Plaintiff Worldwide Aircraft Services, Inc., ("plaintiff") seeks an order compelling the attendance of the person most qualified and custodian of records of defendant Fresno Unified School District Employee Health Care Plan ("defendant") under, among other statutes, Code of Civil Procedure section 2025.450. Plaintiff submits that good cause is established because it expressly reserved time on the record to continue the deposition that occurred in August 2024.

Defendant initially contests the sufficiency of the meet-and-confer effort prior to filing the present motion. Specifically, defendant notes that plaintiff failed to request a Pretrial Discovery Conference as required by Fresno Superior Court Local Rules, and therefore failed to obtain leave to file the instant matter. The court notes that on April 25, 2025, it issued an Order After Pretrial Discovery Conference which determined that this action was exempt from Local Rule 2.1.17 in light of the volume and tenor of the discovery disputes juxtaposed with the then-impending trial date. The exemption did not absolve the parties of their statutory meet-and-confer obligations.

Defendant submits that it was not contacted prior to the filing of the instant motion for a face-to-face or telephonic meeting. In spite of the court's several admonishments on the matter, it does appear from plaintiff's meet-and-confer letters that plaintiff never once sought to discuss the issues telephonically. Based on the correspondence between the parties, the court finds that further meet-and-confer would have likely been futile. For

the final time, the court excuses the requirement for live discussion. (Fresno Superior Court Local Rules, rule 1.1.4.)

Though plaintiff suggests otherwise, it appears that plaintiff seeks to continue questioning on topics identified from a prior deposition notice, constituting a request to compel further responses. Thus, the basis of the motion is not Code of Civil Procedure section 2025.450, to compel the attendance of a deponent, but section 2025.480, to compel further answers. Plaintiff suggests that it expressly reserved time for further questioning at the August 2024 deposition of defendant's person most qualified. However, a review of the portions of the deposition submitted by plaintiff does not show that plaintiff reserved time for further questions. (Young Decl., Ex. 2.) Rather, plaintiff reserved, for example, "to further depose whoever's most qualified on this, understanding that Mr. Shubin's testimony is it's him." (Young Decl., Ex. 2, p. 45:13.) These are not express reservations of time. These are challenges to the competency of the person produced. Comparatively, plaintiff submits issues that Steven Shubin, defendant's produced person most qualified, failed to have sufficient knowledge to answer questions on the topics for which he was produced. (E.g., Young Decl., Ex. 2, p. 81:9-15.) By objective standards, plaintiff seeks to compel further deposition responses of the person produced to the topics identified, not to compel a further deposition.

To the extent that plaintiff suggests that the prior deposition was merely suspended, plaintiff fails to demonstrate where in the deposition record that was so indicated. A deposition officer may not suspend the taking of testimony without the stipulation of all parties present unless any party attending the deposition demands that the suspension to enable that party to move for a protective order. (Code Civ. Proc., § 2024.470.) Objections raised during deposition likewise do not suspend the deposition unless for the same reason. (*Id.*, § 2025.460, subd. (b).) It appears that plaintiff accepted the production of Shubin for the categories identified, except as to categories 10 and 17, and noting that category 9 would be limited to the 2017 year. Objections were otherwise lodged as to these three impacted categories, for which plaintiff did not timely seek to resolve on the corresponding deposition record, within 60 days of completion of the record. (*Id.*, § 2025.480, subd. (b).) Accordingly, the motion is denied.

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., § 2025.480, subd. (j).) The court finds that plaintiff was unsuccessful in its motion, and acted without substantial justification. The court imposes mandatory monetary sanctions for 3 hours at \$485 per hour, in favor of defendant and against plaintiff, for a total of \$1,455.²

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: Judge Tharpe on 10/28/2025.

² In the event oral argument is requested, the court will consider a request for additional sanctions to cover preparation for and attendance at oral argument.