Tentative Rulings for November 3, 2026
Department 403

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.

25CECG04899 ***Persevere Lending, Inc. v. Nino*** **is continued to Tuesday, December 29, 2026, at 3:30 p.m. in Department 403.**

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Tentative Rulings for Department 403

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(20) **Tentative Ruling**

Re: ***Cole v. Bunnel, Jr., et al.***
Superior Court Case No. 24CECG03389

Hearing Date: November 3, 2026 (Dept. 403)

Motion: By City of Fresno for Summary Judgment

Tentative Ruling:

To grant summary judgment in favor of the City of Fresno as to plaintiff George Cole's First Amended Complaint. (Code Civ. Proc., § 437c, subd. (c).) Within 10 days of service of the order by the clerk, the City shall submit a proposed judgment consistent with this summary judgment order.

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

Explanation:

In his First Amended Complaint ("FAC") plaintiff George Cole seeks to recover for personal injuries he sustained when he tripped on a raised sidewalk in Fresno on E. Jensen Street near the intersection of Cherry Avenue. The FAC alleges that the property was owned, controlled or maintained by defendants William R. Bunnell Jr. and Bunnell & Almanns Petroleum, Inc. It also alleges that the City of Fresno ("City") owned the public property where the accident occurred. The FAC alleges causes of action for premises liability and general negligence. The City moves for summary judgment on the ground that the defect is trivial as a matter of law. Plaintiff does not oppose the motion as to the second cause of action for negligence.

The elements of negligence are duty, breach, causation and damages. (*McGarry v. Sax* (2008) 158 Cal App 4th 983, 994.) Plaintiffs have the burden of proof as to each essential element. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) Premises liability is a more particularized type of negligence, and requires plaintiffs offer evidence of a dangerous condition of property. (*Stathoulis v. City of Montebello* (200 8) 164 Cal.App.4th 559, 566.) To sustain a cause of action for an unsafe condition of property California law requires that it be established that: (1) a condition of the property created an unreasonable risk of harm and (2) the owner or possessor of the land knew or should have known about that condition. (*Ortega*, *supra*, 26 Cal.4th 1200, 1206; *Moore v. Wal-Mart Stores, Inc*. (2003) 111 Cal.App.4th 472, 479.) This is an element of a claim against a public entity as well. (*Stathoulis, supra,* 164 Cal.App.4th at p. 566.)

> The law imposes no duty on a landowner—including a public entity—to repair trivial defects, or "to maintain [its property] in an absolutely perfect condition." (*Ursino v. Big Boy Restaurants* (1987) 192 Cal.App.3d 394, 398–399, 237 Cal.Rptr. 413 (*Ursino*).) **"[A] property owner is not liable for damages caused by a minor, trivial or insignificant defect in property."** (*Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927, 19 Cal.Rptr.3d 254

(*Caloroso*).) Some defects are bound to exist even in the exercise of reasonable care in the maintenance of property and cannot reasonably be expected to cause accidents. (*Johnson v. City of Palo Alto* (1962) 199 Cal.App.2d 148, 151, 18 Cal.Rptr. 484 (*Johnson*), superseded on other grounds by statute as stated in *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 831, 15 Cal.Rptr.2d 679, 843 P.2d 624.)

(*Stathoulis, supra,* 164 Cal.App.4th at p., emphasis added.)

The trivial defect doctrine negates both the element of dangerousness of the defect and the element of notice. (*Barone v. City of San Jose* (1978) 79 Cal.App.3d 284, 289-290.) "Obviously a defect that is too 'minor, trivial or insignificant,' as a matter of law, to be dangerous could hardly impart notice of its dangerous character." (*Id.* at pp. 290.) Whether a defect is trivial is a question of law if reasonable minds can reach only one conclusion. (*Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1113.)

In cases involving no other contributing factors, defects of a magnitude greater than 1/2 inch were deemed trivial. (See *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74 [3/4 to 1-1/2 inch].) "… [W]here a sidewalk slab is raised in elevation by only about three-fourths of an inch, such a 'defect' is not dangerous as a matter of law. … It is to be noted that when the size of the depression begins to stretch beyond one inch the courts have been reluctant to find that the defect is not dangerous as a matter of law." (*Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, emphasis added.)

Having considered the evidence submitted by both sides, the court concludes that the *undisputed* evidence establishes the following. When plaintiff tripped on the sidewalk he was walking to reach a stopped bus. (UMF No. 5.) Plaintiff was travelling in the center of the sidewalk. (UMF No. 6.) Plaintiff was looking at the bus driver standing in the bus doorway to ensure he did not leave without him. (UMF No. 7.) He was not watching where he was walking. The weather conditions on that day were clear and no weather factors contributed to this incident. (UMF No. 8.) The lighting was clear in the area (UMF No. 9.) There was no debris covering the sidewalk or defect and the sidewalk was clean.[1] (UMF No. 10.) There was nothing obstructing plaintiff's view of the sidewalk. (UMF No. 11.) Plaintiff claims that he tripped on an elevation in the middle of the sidewalk. (UMF No. 13.) The sidewalk deviation was no more than one inch high where plaintiff tripped. (UMF No. 14; RJN[2].) There were no aggravating circumstances. (UMF Nos. 8-18.) There were no cracks, jagged edges, or broken pieces of sidewalk in the area of the subject deflection. (UMF No. 16.) The elevation did not span the entirety of the sidewalk but tapered from the northern edge to the center with the highest point at the far north end measuring 1-1/4 inch (where plaintiff did not trip), the middle measuring 1", and the far south end with no difference in elevation. (UMF No. 17.) Plaintiff tripped in the center of the sidewalk at which the elevation was no more than one inch high. (UMF No. 18.)

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[1] Plaintiff purports to dispute this fact with a photograph of the sidewalk location showing a few leaves and twigs in the area. (Manucharyan Decl., ¶ 6, Exh. C.) However, the photograph was taken a couple days *after* the accident. Aside from the fact that there is no evidence that this debris was present at the time of the accident, none of it obscured in any way the defect in the sidewalk. UMF No. 10 is undisputed.

[2] The court grants judicial notice of the fact that a credit card is 2.125 inches in height. A photograph of the crack take just days after the fall and produced by plaintiff shows clearly that the defect was about half the credit card height, or no more than one inch high.

One of the major points of dispute attempted by plaintiff is the height of the defect. The undisputed evidence shows that at the point on the sidewalk where plaintiff tripped the elevation was no more than one inch high in the middle of the sidewalk where plaintiff tripped, and 1-1/4 inch at the north side of the sidewalk. Plaintiff attempts to stretch the height to 1-1/2 inch high, but the documentary evidence clearly does not support this assertion. Plaintiff's own evidence, a photograph taken just days after the incident, clearly shows a height elevation of about 1 inch where plaintiff tripped.

Plaintiff attempts to establish a 1-1/2 inch height by relying on measurements taken by Jace Badertscher, a Street Maintenance Supervisor for the City, who states that on 2/25/2025 he went to the location of the fall, removed a prior patch done on the defect plaintiff tripped on, and measured the defect, showing it to be tapered from the norther edge to the center with the highest point at the far north end measuring 1-1/4", the middle measuring 1", and the far south end with no difference in elevation. The court finds this characterization of the measurements to be factually accurate. This measurement is consistent with plaintiff's credit card photograph evidence.

Plaintiff also relies on Google Street View images taken over numerous years, which purportedly show two elevation changes 30-feet apart. The City objects to this evidence. Whether the objection is sustained or not is inconsequential, as the court cannot make anything out of these images. There simply is not enough detail to conclude that they show what plaintiff seeks to establish. In fact, court declines to rule on the City's evidentiary objections, as the motion would be granted even considering all of plaintiff's evidence. (Code Civ. Proc., § 437c, subd. (q).)

And even if there were two elevation changes 30-feet apart, plaintiff fails to establish how this would increase the risk where plaintiff fell. Plaintiff relies on *Stack v. City of Lemoore* (2023) 91 Cal.App.5th 102, 115, where a defect existed alongside other similar defects in the same stretch of sidewalk, separated by 20 feet, the court held that the defendant was not entitled to a finding of triviality as a matter of law. However, as pointed out in the opposition, in *Stack* it was a back-to-back defect connecting concrete slabs, not 30 feet down the sidewalk like in this case. (*Id.* at p. 107.) And in any case the second defect did not make the property more dangerous in this case. Plaintiff admitted that he was going to get on the bus, and therefore would not have encountered the other elevation change 30 feet away. This is a clear red herring.

Plaintiff relies on the expert declaration of Gary M. Gsell, who inspected and repaired sidewalks for the City of Los Angeles for forty-six years. Mr. Gsell opined that beyond three-quarters of an inch displacement is a condition that is reasonably foreseeable as a tripping hazard and is not trivial. He says that the displacement was caused by the roots of trees on the adjacent private property. (Gsell Decl., ¶ 9.) Root-caused sidewalk displacement is a progressive condition: roots increase in diameter gradually, over successive growing seasons, and lift the overlying panel incrementally. (Gsell Decl., ¶ 14.) In forty-six years of inspecting and repairing sidewalks for a California municipality, Mr. Gsell has never encountered a root-caused displacement of this magnitude that appeared suddenly. (Gsell Decl., ¶ 14.) It is his opinion that a displacement of this size and character would have taken years to develop and would

have existed in a smaller but still observable form for a substantial period before September 29, 2023. (Gsell Decl., ¶ 15.)

This declaration is not sufficient to create a triable issue of fact. The court finds as a matter of law that the sidewalk defect on which plaintiff tripped was trivial. "Many decisions have held that sidewalk defects greater than this were trivial as a matter of law. (See cases cited in *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74, 256 P.2d 977 [elevations ranging from three-fourths inch to one and one-half inches found minor] and in *Fielder v. City of Glendale, supra,* 71 Cal.App.3d at p. 724, fn. 4, 139 Cal.Rptr. 876 [same].)" (*Caloroso, supra*.) Here, the defect was one inch high where plaintiff tripped, and no more than 1-1/4 inch high at the far edge of the sidewalk; plaintiff was not watching where he was walking because he was rushing to catch a bus; and there were no environmental factors that impeded plaintiff's ability to observe the defect.

Additionally, in order for liability to be imposed on a public entity, plaintiff must show that the City's "employees had either actual or constructive notice of the dangerous condition in sufficient time to effectuate a remedy. . ." (*State v. Superior Court* (1968) 263 Cal.App.2d 396, 399.) The City had no actual or constructive notice of the defect in the sidewalk prior to receiving plaintiff's Government Tort Claim. (UMF 23-25, 28-31.) This is a heavily-trafficked sidewalk with no other accidents, which favors find the defect trivial as a matter of law. (See *Whiting v. National City* (1937) 9 Cal.2d 163, 165.) Moreover, even if there is actual notice of a condition, the City is under no duty to repair a trivial defects. (*Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 27.)

Accordingly, the court intends to grant summary judgment in favor of the City on plaintiff's FAC.

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: SMC on November 2, 2026 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Marcos Mejia Juarez v. Rey Garcia Diaz***
Superior Court Case No. 23CECG04588

Hearing Date: November 3, 2026 (Dept. 403)

Motion: by Defendant Harvest Kings LLC to Bifurcate the Issue of Its Liability from Other Defendant's Liability and the Plaintiffs' Damages

Tentative Ruling:

To grant the motion to bifurcate the trial of the issue of defendant Harvest Kings LLC's liability from defendant Rey Garcia Diaz's liability and the issue of damages.

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

Explanation:

Defendant Harvest Kings LLC ("defendant" or "Harvest Kings") moves to bifurcate the issue of its liability from defendant Rey Garcia Diaz's liability and the issue of damages. Plaintiffs Marcos Mejia Juarez and Yolanda Ruiz Noyola ("plaintiffs") filed a Notice of Non-Opposition to the motion.

Under Code of Civil Procedure section 598, court is given great discretion in regard to the order of issues at trial:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order…that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case….

Similarly, Code of Civil Procedure section 1048, subdivision (b), specifies the court's discretion in regard to bifurcating issues for separate trial:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action … or of any separate issue or of any number of causes of action or issues.

The decision to grant or deny a motion to bifurcate issues, and/or to have separate trials, lies within the court's sound discretion. (See *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.App.3d 496, 503-504.)

While plaintiffs filed a notice of non-opposition, they "opposed" the bifurcation of the issues of each defendant's liability. However, they offer no arguments, evidence, or authorities in support. Defendant argues that bifurcation of the issues as requested would promote judicial economy, prevent jury confusion, and prevent prejudice, as it could dispose of trial on the other issues.

It appears that bifurcating the trial of the issues of each defendant's liability and the issue of damages would promote economy and efficiency. The court intends to grant the motion to bifurcate the trial.

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: SMC on November 2, 2026.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Olivas v. Clovis Unified School District***
Superior Court Case No. 24CECG01778

Hearing Date: November 3, 2026 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant and sign the proposed orders. No appearances required.

The court sets a status conference for Wednesday, February 3, 2027, in Department 403, for confirmation of deposit of claimant's funds into the blocked account. If petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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: SMC (Judge's initials) on November 2, 2026 (Date).

(35)

Tentative Ruling

Re: ***LS Power Grid California, LLC v. Coleman Land Co, LLC et al.***
Superior Court Case No. 26CU00788

Hearing Date: November 3, 2026 (Dept. 403)

Motion: By Plaintiff LS Power Grid California LLC for Prejudgment Possession

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. 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: SMC on November 2, 2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***City of Selma v. Santillan***
Superior Court Case No. 25CECG05076

Hearing Date: November 3, 2026 (Dept. 403)

Motion: Motion to Lift Stay on Discovery

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

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: SMC on November 2, 2026.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***559 Pro Landscape, Inc. v. Sharp, et al.***
Superior Court Case No. 25CECG04667

Hearing Date: November 3, 2026 (Dept. 403)

Motion: by Cross-Complainants for Leave to File First Amended Cross-Complaint

Tentative Ruling:

To grant, with Cross-Complainants granted 10 days' leave to file the First Amended Cross-Complaint. The time in which the cross-complaint can be amended will run from service by the clerk of the minute order. All new allegations are to be set in **boldface** type.

If oral argument is timely requested, it will be entertained on Thursday, November 5, 2026, at 3:30 p.m. in Department 403.

Explanation:

The policy favoring amendment is so strong that denial of leave to amend can rarely be justified: "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

California Rules of Court, Rule 3.1324 requires a declaration to accompany the motion to amend, and further requires it to specify: "(1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) The reasons why the request for amendment was not made earlier." (Cal. Rules of Court, rule 3.1324(b).)

Cross-complainants Thomas Sharp and Debbie Sharp have complied with California Rules of Court, Rule 3.1324, subdivision (a), by providing a copy of the proposed pleading with the additions clearly designated. (Waters Decl., ¶ 8, Ex. C.)

Cross-complainants have substantially complied with subdivision (b). The proposed amended pleading would add three cross-defendants, Cole Hagar, Danny Hagar, and Chase Hagar, as well as two causes of action for alter ego and fraudulent transfer with supporting allegations related to the new individual cross-defendants. (Waters Decl., ¶ 8.) The need for the amendment to include the individuals associated with the corporate defendant and believed to have listed for sale or sold the corporation and its assets. (*Ibid*.) Cross-complainants learned of a formal accusation against the corporation and individuals as well as the closure and possible sale of the business and

promptly secured a date for the motion at bench. (*Id*., ¶¶ 4-6.) Cross-defendants subsequently received notice of a bankruptcy case pertaining to proposed cross-defendant Chase Hagar. (*Id*., ¶ 7.)

Cross-defendant 559 Pro Landscape, Inc.'s opposition is limited to a request to continue the hearing on the motion until after counsel's withdrawal from representation currently set to be heard January 20, 2027. Counsel states she does not represent the individuals associated with the corporation and desires to allow the corporation time to obtain new counsel to prepare a response to the motion to amend. (Lovegren-Tipton Decl., ¶¶ 5-6, 8-9.) Counsel attests to meeting and conferring with counsel for the moving party and that were is no opposition to the requested continuance. (*Id*., ¶ 10.) No reply has been filed to challenge the request to continue the hearing on this motion.

Although the court acknowledges the request to allow cross-defendant 559 Pro Landscape, Inc. to submit an opposition on the merits, it is unclear how effective such an opposition would be given the strong policy favoring leave to amend.

Cross-complainants have met their burden in moving for leave to file the First Amended Cross-Complaint. Accordingly, the motion for leave to amend is granted.

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: SMC on November 2, 2026.
(Judge's initials) (Date)