Tentative Rulings for July 24, 2024
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.

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(35)

Tentative Ruling

Re: ***Gorrill v. Tinajero et al.***
Superior Court Case No. 22CECG03284

Hearing Date: July 24, 2024 (Dept. 403)

Motion: By Defendant City of Coalinga for Summary Judgment

If oral argument is timely requested, it will be entertained on Wednesday, July 31, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. Defendant City of Coalinga is directed to submit a proposed judgment consistent with this order within five days of service of the minute order by the clerk.

Explanation:

On October 17, 2022, plaintiff Ralph Gorrill ("Plaintiff") filed the instant action for two causes of action: (1) premises liability; and (2) negligence. The Complaint is brought against defendants Steven Tinajero, Esther Tinajero, the Tinajero Family Trust, and the City of Coalinga. Plaintiff alleges that on February 13, 2022, at the intersection of West Cedar Avenue and North 6th Street in Coalinga, California, Plaintiff sustained damages as a result of holes and defects of the sidewalk. Defendant City of Coalinga ("Defendant") now seeks summary judgment of the Complaint.

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c, subd. (c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

Defendant submits that there is no triable issue of material fact in general as to itself on each of the first cause of action, for premises liability, and the second cause of action, for negligence. Defendant submits the following facts based on deposition

testimony and deemed admissions. Plaintiff fell solely from losing his balance after his dog lunged while he was holding the leash. (Statement of Undisputed Material Facts ["SUMF"], No. 8.) Plaintiff's fall was not caused by Defendant's sidewalk. (*Id.*, No. 9.) Defendant did not cause Plaintiff to fall. (*Id.*, No. 11.) Defendant was not negligent in regards to Plaintiff's fall. (*Id.*, No. 10.)

Based on the above, Defendant has met its burden to show no triable issues of material fact as to the first and second causes of action for premises liability and negligence. Accordingly, the burden shifts to Plaintiff to demonstrate a triable issue. Plaintiff did not oppose.

The motion for summary judgment is granted, in favor of Defendant City of Coalinga, and against Plaintiff Ralph Gorrill.

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: JS on 7/23/2024.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Jones v. Hiller Aircraft Corp.***
Case No. 18CECG04044

Hearing Date: July 24, 2024 (Dept. 403)

Motion: Defendant City of Firebaugh's Motion for Contribution

If oral argument is timely requested, it will be entertained on Wednesday, July 31, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant defendant City of Firegbaugh's motion for an order requiring defendant Hiller Aircraft to contribute $4,307,349.06 to the City as payment of its pro rata share of the judgment.

Explanation:

Under Code of Civil Procedure section 875, subdivision (a), "[w]here a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided." "Such right of contribution shall be administered in accordance with the principles of equity." (Code Civ. Proc., § 875, subd. (b). "Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment." (Code Civ. Proc., § 875, subd. (c).)

Here, the City of Firebaugh and Hiller Aircraft were held to be jointly liable for plaintiff's damages after a jury trial. The City was found to be liable for 25% of plaintiff's total damages, Hiller was found to be 25% liable, and its employee Steven Palm was found to be 45% liable. The jury originally awarded total damages of $9,28,323.69 against all defendants, but later the court reduced the amount to $8,593,907.51. (Exhibit A to Walls decl.) The City subsequently paid plaintiff $6,602,165.53 to satisfy the judgment. (Exhibit F to Walls decl.) Plaintiff then filed an acknowledgment of satisfaction of judgment as to the City. Therefore, the City has paid more than its pro rata share of the judgment, and it is entitled to contribution from Hiller for the share owed by Hiller.

Hiller argues that the City cannot recover any contribution here because the City dismissed its cross-complaint before trial and admitted in open court that it had no pending cross-claims. However, where a defendant has dismissed its cross-complaint voluntarily and without prejudice, it can still seek contribution from the other tortfeasors based on principles of equitable indemnity. (*Cobb v. Southern Pac. Co*. (1967) 251 Cal.App.2d 929, 933–934.) Here the City voluntarily dismissed its cross-complaint against Hiller Aircraft without prejudice before trial. (See Request for Dismissal filed on October

19, 2022.) Nevertheless, it still has the right to seek contribution under principles of equitable indemnity, as set forth in section 875. (Code Civ. Proc., § 875; *Cobb, supra*, at p. 933-934.)

Hiller also argues that the City's motion is without merit because Hiller has entered into a settlement with plaintiff, and it has sought an order for determination that its settlement is in good faith. Thus, Hiller contends that the City's claim for indemnity or contribution will be barred by Code of Civil Procedure section 877.6. However, the court has already denied Hiller's request to determine that the settlement with plaintiff was in good faith under section 877.6. The court found that section 877.6 does not apply to the settlement because the settlement was entered into after the verdict and judgment were entered in the case. (April 17, 2024 Order Adopting Tentative Ruling.) Therefore, the fact that Hiller entered into a settlement with plaintiff does not prevent the City from seeking contribution from Hiller here.

Hiller also claims that, if it is forced to pay the City for its pro rata share of the judgment, it will be forced into bankruptcy as it has no insurance to cover the judgment, which would prevent plaintiff from recovering anything from it. It also denies that it has $30 million in assets with which to pay the judgment, as the City has asserted. It claims that it is struggling to even pay installments to plaintiff under the settlement. Hiller contends that it would not be equitable to force it into bankruptcy and deny recovery to the plaintiff, so the court should deny the motion for contribution.

However, Hiller has not presented any admissible evidence that it has no assets with which to pay the judgment. The declaration of its attorney says nothing about Hiller's actual assets or cash on hand. He only states that Hiller will file for bankruptcy, not that it has no insurance, cash, or assets to pay the judgment. (Frankenberger decl., ¶ 21.)

In any event, even assuming that Hiller is insolvent, its insolvency does not mean that it cannot be ordered to pay contribution to the City of Firebaugh. As discussed above, the City has paid more than its pro rata share of the judgment, so it is presumptively entitled to contribution from Hiller as a co-debtor on the judgment. Hiller should not be "given a pass" on the judgment just because it allegedly does not have the money to pay its share. Nor should the taxpayers of the City of Firebaugh be forced to pay more than their share of the judgment simply because Hiller is allegedly insolvent. It would not be equitable to allow Hiller to escape its duty to pay its share of the judgment that was already paid off by the City.

Finally, while Hiller has objected to the amount sought by the City as contribution, it has not explained which specific amounts are incorrect and what the total contribution amount should be. The City's request for a contribution amount of $4,307,349.06 appears to be correctly calculated, as it is consistent with Hiller's 70% share of liability based on the jury verdict. Therefore, the court intends to grant the City's motion for an order requiring Hiller to pay contribution to the City in the amount of $4,307,349.06.

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: JS on 7/23/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Hudson v. Hudson***
Superior Court Case No. 23CECG04453

Hearing Date: July 24, 2024 (Dept. 403)

Motion: Defendant's Motion to Compel Initial Responses to Form Interrogatories, Set One and Request for Production of Documents, Set one and for Monetary Sanctions

If oral argument is timely requested, it will be entertained on Wednesday, July 31, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To continue to Thursday, August 15, 2024, in Department 403. Defendant must file a supplemental declaration addressing the issue explained below, on or before August 8, 2024.

Explanation:

Defendant argues that plaintiff served "incomplete responses" to the discovery defendant served on her. (Memo., p. 3:14-15.) However, defendant did not include exhibits showing the at-issue responses, so it is not clear whether there was *no response at all* to some of the discovery requests, or whether plaintiff responded to all items, but in an incomplete manner. If the latter, then a motion to compel *initial* responses would not lie, and defendant would instead be required to comply with The Superior Court of Fresno County, Local Rules, rule 2.1.17 and obtain permission to file a motion to compel *further* responses.

The letter at Exhibit 3 to counsel's declaration (a letter to plaintiff's counsel) gives more clear detail, and appears to state that plaintiff failed to respond *at all* to five items on the Form Interrogatories, and to one item on the Request for Production of documents. However, this letter is insufficient evidence to establish this as a fact; it seems to be the clearest indication of *no response at all* to discrete items, but this letter is not made under penalty of perjury, and the statements made in the declaration are as imprecise as those made in the memorandum.

In fairness to plaintiff, the court must see the plaintiff's responses to determine whether defendant has a right to compel responses via a motion to compel initial responses as opposed to a motion to compel further responses. Counsel must file a supplemental declaration attaching the at-issue responses.

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: JS on 7/23/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***CVE Contracting Group, Inc. v. Disaster Restoration International - DRI, Inc., et al.***
Superior Court Case No. 22CECG01744

Hearing Date: July 24, 2024 (Dept. 403)

Motion: by Plaintiff for Summary Adjudication

If oral argument is timely requested, it will be entertained on Wednesday, July 31, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To continue the hearing on the motion to Wednesday, August 14, 2024 at 3:30 p.m. in Department 403. Moving party must file its separate statement with proof of service by 5:00 p.m. on Wednesday, July 24, 2024.

Explanation:

Code of Civil Procedure section 437c, subdivision (b)(1) states in relevant part:

> The supporting papers *shall include a separate statement* setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

(Emphasis added.)

The memorandum filed in support of the motion references multiple numbered undisputed material facts, however no separate statement was filed with the moving papers. There is also no proof of service indicating a separate statement was served on the opposing parties. As such, the court intends to continue the hearing on plaintiff's motion for summary adjudication to allow the separate statement with proof of service to be filed, correcting what appears to be a filing error.

Filing deadlines for the opposing and reply papers remain based on the original hearing date.

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: JS on 7/23/2024.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Kirsten Krejcik v. City of Fresno***
Superior Court Case No. 23CECG03634

Hearing Date: July 24, 2024 (Dept. 403)

Motion: 1) Defendant J. Francisco Alvarez's Demurrer to the Second Complaint;
2) Defendant J. Francisco Alvarez's Motion to Strike as to the Second Amended Complaint; and
3) Defendant City of Fresno's Demurrer to the Second Complaint

If oral argument is timely requested, it will be entertained on Wednesday, July 31, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To sustain defendant City of Fresno's demurrer to the second and third causes of action in the Second Amended Complaint, with leave to amend.

To sustain defendant J. Francisco Alvarez's demurrer to the fifth cause of action, with leave to amend. To sustain defendant Alvarez's demurrer to the sixth cause of action, without leave to amend.

To grant defendant J. Francisco Alvarez's motion to strike as to the fourth cause of action as alleged against him. To strike the eighth and ninth causes of action entirely.

Plaintiff is granted 10 days' leave to file the Third Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

MOTION TO STRIKE

Code of Civil Procedure section 436 subdivision (b) provides the court with discretion to strike a pleading which is not filed in conformity with the laws of this state, a court rule, or a court order. Here, the court previously ruled on March 7, 2024, that the fourth cause of action could not be alleged against defendant Alvarez. (See Minute Order, March 7, 2024.) As such, the court strikes the fourth cause of action as to defendant Alvarez in the Second Amended Complaint ("SAC").

Plaintiff did not properly seek leave of the court to add causes of action to the amended complaint. (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) As such, the court strikes the eighth and ninth causes of action in their entirety.

DEMURRER

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

Alvarez

Defendant Alvarez demurs as to the fourth, fifth, sixth, eighth, and ninth causes of action. The court has already found that the fourth, eighth, and ninth causes of action are subject to striking. As such, the court will only address the demurrer as to the fifth and sixth causes of action.

Nuisance

A "nuisance" includes anything that is injurious to health (including, but not limited to, the illegal sale of controlled substances), or is indecent or offensive to the senses, or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property. (Civ. Code, §3479.) In the SAC, the acts alleged against defendant Alvarez consist of 1) failing to properly list a property for sale (SAC, ¶ 10), 2) being a friend and associate of the City's Code Enforcement Director (SAC, ¶ 11), and 3) being in a vehicle near plaintiff's property while plaintiff's property was inspected (SAC, ¶ 16). Plaintiff alleges that defendants' acts constitute a private nuisance because they caused a substantial and unreasonable interference with the quiet enjoyment of her property. (SAC, ¶ 59.) As with the First Amended Complaint, it remains unclear what conduct Alvarez engaged in to cause a private nuisance. As such, the court sustains the demurrer to the fifth cause of action, with leave to amend.

Trespass

Trespass is the unlawful interference with possession of property. (*Ralphs Grocery Co. v. Victory Consultants, Inc*. (2017) 17 Cal.App.5th 245, 261.) To demonstrate a trespass, a plaintiff must show 1) plaintiff's ownership or control of property, 2) defendant's intentional, reckless, or negligent entry onto the property, 3) lack of permission or acts in excess of permission, 4) harm, and 5) the defendant's conduct was a substantial fact in causing the harm. (*Id*. at p. 262.) Here, plaintiff has not alleged that defendant Alvarez entered her property, only that the City's Director of Code Enforcement entered her property. (SAC, ¶ 66.) Government Code section 820.2 provides that public employees are not liable for injuries where their actions are the result of exercising discretion, regardless of whether their discretion was abused. (Gov. Code, § 820.2; *Odello Bros. v. County of Monterey* (1998) 63 Cal.App.4th 778, 792.) The court in *Odello* found that trespass was a tort claim, making Government Code section 820.2

potentially applicable, if the acts were discretionary. (*Odello Bros. v. County of Monterey, supra*, 63 Cal.App.4th at p. 793.)

Here, plaintiff has not provided any information suggesting that code enforcement is not discretionary. Additionally, plaintiff has not alleged trespass against the City, suggesting that plaintiff agrees that this could not be alleged against the City. While it is true that a trespass claim can be made for causing another to trespass property, here, where the allegations are that a public employee entered the property to engage in code enforcement, the claim for trespass is insufficiently alleged. (*Martin Marietta Corp. v. Insurance Co. of North America* (1995) 40 Cal.App.4th 1113, 1132.) As such, the court sustains the demurrer to the sixth cause of action, without leave to amend as it does not appear that an amendment would cure the defective pleading.

City of Fresno

Defendant City demurs to the second and third causes of action.

Breach of Mandatory Duty

For the second cause of action, the City asserts that this is barred by plaintiff's failure to file a government claim pursuant to the Government Claims Act. Government Code section 900 et seq. provides the procedure for filing a lawsuit against a public entity. *Prior* to filing such, a plaintiff must first timely file a claim with the public entity. (Gov. Code, § 911.2) Failure to file a claim bars plaintiff from bringing a lawsuit against that entity. (Gov. Code, § 945.4.)

The City argues that the second cause of action here is subject to the Government Claims Act and that plaintiff has failed to allege compliance with the Act. For the second cause of action alleging breach of mandatory duty, pursuant to Government Code section 815.6, compliance with the Government Claims Act is required. (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) Here, the SAC now alleges a claim was filed on March 18, 2024. (SAC, ¶ 36.) This is the same day the SAC was filed. As such, plaintiff has not alleged *timely* filing of a claim. Plaintiff's failure to allege compliance with the claims presentation requirement does act as a bar to this cause of action. Thus, the court sustains the City's demurrer as to this cause of action, with leave to amend as to any further details regarding compliance.

Additionally, plaintiff has not stated facts sufficient to show this cause of action. Breach of a mandatory duty, pursuant to Government Code section 815.6, must be based on an enactment creating an obligatory duty, not a discretionary or permissive duty. (*Thompson v. County of Los Angeles* (2022) 85 Cal.App.5th 376, 380.) Three elements are required to establish breach of a mandatory duty: 1) a mandatory duty imposed on the public entity by an enactment, 2) the enactment was designed to protect against the particular kind of injury suffered, and 3) the injury was proximately caused by the entity's failure to discharge its mandatory duty. (*All Angels Preschool/Daycare v. County of Merced* (2011) 197 Cal.App.4th 394, 400.) Here, plaintiff alleges "several mandatory ministerial duties requiring sufficient due process prior to assessment of code enforcement fines." (SAC, ¶ 45.) However, plaintiff still only cites Fresno Municipal Code section 15-104(A)(2), a code regulating land use. This particular

portion of the municipal code does not indicate any duties requiring due process for enforcement fines. As such, plaintiff has not shown the first element. The court sustains the demurrer as to the second cause of action, with leave to amend.

Government Policy Violating Constitutional Rights

For plaintiff's claim of a government policy violating constitutional rights pursuant to 42 U.S.C. section 1983, plaintiffs must allege 1) that plaintiff was deprived of a constitutional right, 2) the government entity had a policy, 3) the policy amounted to deliberate indifference to plaintiff's constitutional right, and 4) the policy was the moving force behind the constitutional violation. (*Perry v. County of Fresno* (2013) 215 Cal.App.4th 94, 105-106.) Here, plaintiff has alleged that she was informed by contractors that the City and the Code Enforcement Director Mark Medina are "shady". (SAC, ¶ 22.) It is unclear how being shady amounts to a policy. Additionally, the complaint still makes reference to juvenile court proceedings, which are not at issue here. (SAC, ¶ 52.) The court sustains the demurrer to the third cause of action, with leave to amend.

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: JS on 7/23/2024.
(Judge's initials) (Date)