

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings  
Temporary Judge David A. Foster  
Courtroom 8

627 W. 21<sup>st</sup> Street, Merced

March 22, 2018  
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4240 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call of your intent to appear does not satisfy the requirement of notifying the court.

---

**Case No. Title / Description**

CV002663 Taurino Aguilar, et al. vs. Regency Park Estates 1-4 LLC, et al.

OSC re: Dismissal

**Appearance required.**

---

15CV-00297 Richelle Zaragoza vs. Hometown Buffet, Inc.

Review of Case Status – Status of Bankruptcy

**The Court requests a voluntary update on the status of the bankruptcy stay. Appearance is not required.**

---

15CV-03200 Daniel Morales vs. Ford Motor Company

OSC re: Dismissal / Case Status

**Appearance required.**

---

16CV-03869 Jill Harmon vs. Infinity Insurance Company

Status Conference

**Appearance required.**

---

18CV-00162 Luz Alvarado vs. County of Merced, et al.

Demurrer to Complaint

**The Court GRANTS, pursuant to Evidence Code section 452, subdivision (h), defendant County of Merced's request for judicial notice of the facts (1) 257 W. Donna Drive in Merced has been within the City of Merced since 1978; and (2) the County of Merced does not own or control the sidewalk at 257 W. Donna Drive in Merced.**

**Defendant County of Merced's unopposed general demurrer to the first cause of action for dangerous condition of public property is SUSTAINED without leave to amend. The sidewalk where plaintiff allegedly tripped and fell is not public property owned or controlled by the County of Merced therefore plaintiff has not alleged sufficient facts to constitute a cause of action against the County. (See *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 382-383.)**

**Defendant County of Merced's unopposed general demurrer to the second cause of action for vicarious liability for the wrongful acts or omissions by public entity employees and/or for retention of unfit employee pursuant to Government Code section 815.2 is SUSTAINED without leave to amend. The second cause of action does not allege sufficient facts to constitute a cause of action against the County of Merced. First, it is undisputed that the public property where plaintiff allegedly tripped and fell is not owned or controlled by the County. Second, even assuming the public property is owned and controlled by the County, a public employee is not liable for injuries caused by a condition of public property where the condition exists because of any act or omission of the employee within the scope of their employment. (Gov. Code, § 840.) Since the employee is immune, the public entity cannot be held vicariously liable for the acts of the employee. (*Longfellow v. County of San Luis Obispo, supra*, 144 Cal.App.3d at 383.) Public entity liability for property defects is not governed by the general rule of vicarious liability provided in Government Code section 815.2 but rather by provisions in sections 830 to 835.4. (*Ibid.*) Third, plaintiff's vague allegations of negligent retention of an unfit employee are conclusory and insufficient to constitute a cause of action against the County.**

**Plaintiff has not filed any opposition indicating what new or different facts plaintiff could allege to state a viable cause of action against the County therefore the demurrer is sustained without leave to amend.**

**The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to temporary judge David A. Foster.**

---

18CV-00505 Petition of: Robyn Herring

Petition for Name Change

**Appearance required.**

---

18CV-00507 Petition of: Morgan Herring

Petition for Name Change

**Appearance required.**

---