

**DEPARTMENT SIX
JUDGE D. SCOTT DANIELS
707-207-7306
TENTATIVE RULINGS SCHEDULED FOR
THURSDAY, JUNE 21, 2018**

**SCOTTSDALE INSURANCE COMPANY vs. VAL SECURITY
INCORPORATED
Case No. FCS048439**

Motion for Admissions / Motion to Compel

TENTATIVE RULING

There is no proof of service for the motions, which are therefore denied without prejudice.

**KETCHUM v. CITY OF VALLEJO
Case No. FCS049889**

Demurrer to Complaint filed by Defendant CITY OF VALLEJO

TENTATIVE RULING

The demurrer filed by the CITY OF VALLEJO is sustained, with leave to amend in 30 days.

The demurrer was not untimely. Counsel for defendant CITY OF VALLEJO filed a declaration under CCP Section 430.41, which provided for a 30-day extension of time to file the demurrer.

The action against the CITY is barred under Government Code Section 850.4. The complaint alleges that plaintiffs' father died because of the CITY'S firefighting activities. Thus, the action falls squarely within the absolute immunity provided under Government Code Section 850.4. (*Heimberger v. City of Fairfield* (1975) 44 Cal.App.3d 711).

Plaintiffs contend that the CITY does not have qualified immunity under Health & Safety Code Section 1799.107 because CITY firefighters acted with gross negligence. The provisions of Section 1799.107 do not preclude the absolute immunity provided under Government Code Section 850.4. Moreover, the complaint does not allege facts indicating gross negligence on the part of the CITY firefighters.

Plaintiffs further contend that the CITY firefighters had a mandatory duty to plaintiffs' decedent under OSHA regulations 1910.134(g)(4)(i) and (ii), thus, the CITY is liable under Government Code Section 815.6. However, the OSHA regulations may not serve as a basis for liability in a third party action. They were not enacted to prevent the kind of injury alleged to have been sustained by plaintiffs' decedent. (*Brock v. State of California* (1978) 81 Cal.App.3d 752).

POLINTAN v. CITY OF VALLEJO, ET AL.
Case No. FCS049920

Motion for Determination of Good Faith Settlement

TENTATIVE RULING

Parties to appear.

NIXON v. WILLENS
Case No. FCS050029

Motion for Leave to File 2nd Amended Complaint

TENTATIVE RULING

Parties are to appear, with Plaintiff to provide a proposed 2nd amended complaint.