April 18, 2025
Dept. 9
Tentative Rulings

1.	**22CV1554**	**VEGA v. VEGA**
Motion to Enforce Settlement		

The parties entered into a joint Stipulation to continue all hearing dates, including this one.

TENTATIVE RULING #1:

THIS HEARING IS DROPPED FROM CALENDAR. NEW HEARING DATE WILL BE PROVIDED BY EX PARTE MINUTE ORDER.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**25CV0172**	**AUSTIN v. HANSEN**
Motion to Dismiss		

The Notice does not comply with Local Rule 7.10.05. This Motion was not properly served, pursuant to California Rules of Court, Rule 2.251. Electronic service may be allowed where there is express consent to electronic service. The Court finds no such consent in this case. Further, this Motion is nonsensical. The statutory citations largely do not pertain to a motion to dismiss, or they do not apply to the facts of this case.

TENTATIVE RULING #2:

MOTION DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS**
Motion to Dismiss		

TENTATIVE RULING #3:

APPEARANCES REQUIRED ON FRIDAY, APRIL 18, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4.	**24CV0344**	**MORRIS v. MATAGRANO**
Motion to Compel x 3, Deem Matters Admitted		

The Notices do not comply with Local Rule 7.10.05.

Defendant Frank Matagrano ("Defendant") seeks an order deeming the genuineness of any documents and the truth of any matter specified in Defendant's Requests for Admission ("RFA"), Set One to Plaintiff Milton Morris, ("Plaintiff") to be deemed admitted. In separate Motions, Defendant also seeks orders compelling Plaintiff to respond to: 1) the Requests for Production ("RFP"), Set One; 2) the Special Interrogatories ("SI"), Set One; and 3) the Form Interrogatories ("FI"), Set One.

On November 20, 2024, Defendant served RFA, RFP, SI and FI on Plaintiff via e-mail to his counsel. (Declaration of Kelly Hill hereinafter "Dec KH" ¶4). All discovery documents were sent together in the same e-mail. (Dec KH ¶5). As of February 10, 2025, Plaintiff has not served any responses and has not requested an extension to respond from counsel or the court. (Dec KH ¶9).

On January 15, 2025, Plaintiff's counsel responded to Defendant's January 10, 2025, meet and confer letter stating Plaintiff would provide written responses to the Discovery Requests by January 20, 2025. (Dec KH ¶7). Defendant never received Plaintiff's written responses to the Discovery Requests on January 20, 2025. On January 28, 2025, Defendant's counsel sent a follow up e-mail to the meet and confer granting Plaintiff until Friday, January 31, 2025 to provide written responses to the Discovery Requests. (Dec KH ¶8). As of February 10, 2025, Plaintiff has not served any responses and has not requested any extensions to respond from counsel or the court. (Dec KH ¶9). Plaintiff has not served any responses nor did he attempt any communications or request any extensions to respond to the discovery served November 20, 2024. (Dec KH ¶6).

If a party to whom requests for admission have been directed failed to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. (Code Civil Procedure §2033.280(b)). The court shall make the requested order for deemed admissions, unless it finds that before the hearing on the motion the party to whom the requests for admissions have been directed have served a proposed response to the requests for admissions that is in substantial compliance with Code Civil Procedure §2033.210-2033.230 (Code Civil Procedure §2033.280(c)).

Code of Civil Procedure § 2031.300(b), states in pertinent part that if a party fails to timely serve responses to the requests for production, the propounding party may move the court for an order compelling responses to the demands. The court "shall" impose monetary

sanctions against a party who unsuccessfully opposes a motion to compel, unless it finds that the party acted "with substantial justification" or other circumstances that render sanctions “unjust”. Code of Civil Procedure § 2031.300(c).

Code of Civil Procedure §2030.290(b), states in pertinent part that if a party fails to timely serve responses to the interrogatories, the propounding party may move the court for an order compelling responses. The court "shall" impose monetary sanctions against a party who unsuccessfully opposes a motion to compel, unless it finds that the party acted "with substantial justification" or other circumstances that render sanctions “unjust”. Code of Civil Procedure §2030.290(c).

The court must impose a Code of Civil Procedure section 2023.030 monetary sanction on the party, attorney, or both, whose failure to serve a timely response to requests for admission necessitated the motion for deemed admissions. (Code of Civil Procedure section 2033.280(c)).

As a result of Plaintiff's failure to respond to discovery requests described above, the Defendant has unnecessarily incurred reasonable expenses in the amount of $3,542.00 collectively between the four separate motions pertaining to the discovery requests served on Plaintiff (Dec KH ⁋26). The requested sanctions are based on counsel’s hourly billing rate of $230.00 per hour. While the Court respects counsel’s declaration that the initial Motion was used as a template for the other three, the Court finds that 11.9 hours of review, research and drafting time for four standard discovery motions excessive. Counsel also expects additional time will be spent on these matters at the CMC, along with additional time spent on Plaintiff’s opposition, and a hearing appearance. The Court will not include these times in the determination of sanctions. At an hourly rate of $230.00 for 6.5 hours, the Court awards sanctions in the amount of $1,495.00.

Plaintiff to respond to: 1) the Requests for Production (“RFP”), Set One; 2) the Special Interrogatories (“SI”), Set One; and 3) the Form Interrogatories (“FI”), Set One.

TENTATIVE RULING #4:

1. **MOTION TO DEEM MATTERS ADMITTED GRANTED.**
2. **MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE, GRANTED. RESPONSES TO BE SERVED BEFORE FRIDAY, MAY 16, 2025.**
3. **MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES, SET ONE, GRANTED. RESPONSES TO BE SERVED BEFORE FRIDAY, MAY 16, 2025.**
4. **MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES, SET ONE, GRANTED. RESPONSES TO BE SERVED BEFORE FRIDAY, MAY 16, 2025.**
5. **SANCTIONS IN THE AMOUNT OF $1,495.00 AWARDED AGAINST PLAINTIFF, PAYABLE BEFORE FRIDAY, JUNE 20, 2025.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5.	**24CV0034**	**TAPIA v. TAPIA**
Demurrer		

Plaintiff Sonia Tapia ("plaintiff") demurs to defendants Santiago Tapia's and Sandra Villasenor's (collectively, "defendants") verified answer to the amended complaint. Plaintiff's counsel declares he sent defense counsel a meet and confer letter prior to filing the demurrer. (Anderson Decl., ¶ 6 & Ex. 4.)

Defendants oppose the demurrer on procedural grounds only. First, defendants contend plaintiff's notice of hearing is defective because it does not contain the hearing date and time, as required under California Rules of Court, rule 3.1110, subdivision (b). Additionally, defendants argue plaintiff did not file a formal demurrer that states each ground in a separate paragraph and whether it applies to the entire answer, or to specified defenses. (Code Civ. Proc., § 430.60; Cal. Rules Ct., R. 3.1320, subd. (a).) For these reasons, defendants request the court to overrule the demurrer.

Plaintiff did not file a reply.

Under California Rules of Court, rule 3.1110, subdivision (b), the first page of any motion papers must indicate the date and time of any scheduled hearing. In this case, although the body of the notice of motion contains blank spaces for the date and time, the caption indicates that the hearing is scheduled for April 18, 2025, at 8:30 a.m. in Department Nine. Additionally, defendants acknowledge they had actual notice of the hearing date and time by confirming the same on the court's online docket. Even if plaintiff's demurrer were procedurally defective on this ground, the court would exercise its discretion to hear the demurrer on its merits.

With respect to defendants' second argument, Code of Civil Procedure section 430.60 provides, "A demurrer shall distinctly specify the grounds upon which any of the objections to the … answer are taken. *Unless it does so, it may be disregarded*." (*Ibid.* [emphasis added].) In this case, plaintiff's memorandum of points and authorities organizes plaintiff's arguments under bold-faced font identifying the specific defense to which the argument applies and the specific grounds. The court declines to disregard plaintiff's demurrer under Code of Civil Procedure section 430.60.

The court, on its own motion, continues the matter to May 16, 2025, to allow defendants an opportunity to file a written opposition on the merits. Opposition and reply briefs shall be filed in accordance with the time requirements under Code of Civil Procedure section 1005, subdivision (b).

TENTATIVE RULING #5: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, MAY 16, 2025, IN DEPARTMENT NINE. OPPOSITION AND REPLY BRIEFS SHALL BE FILED IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE SECTION 1005, SUBDIVISION (b).

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6.	24CV2037	WELLS FARGO BANK v. GODINA CONSTRUCTION
Motion to Deem Matters Admitted		

The Notice does not comply with Local Rule 7.10.05.

On November 25, 2024, Plaintiff's counsel served four sets of discovery on each defendant, comprised of Form Interrogatories, Special Interrogatories, Requests for Production of Documents, and Requests for Admission.

Answers to the discovery were due on December 27, 2024. On December 22, 2024, defense counsel requested an extension to January 13, 2025, which was granted. On January 21, 2024, Defendants requested an additional extension to February 13, 2025, which was granted.

On March 4, 2025, Plaintiff's counsel mailed via First Class Mail, and emailed, a meet and confer letter. Defense counsel emailed on March 4, 2025, that the letter had been received. Plaintiff's counsel again emailed defense counsel on March 11, 2025, and defense counsel responded by email that the responses would be served March 12 or 13. As of the date of the filing of this motion, Plaintiff's counsel has received no responses to the discovery.

Code of Civil Procedure §2033.280 provides as follows:

> "If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply…
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion."

There is no opposition.

TENTATIVE RULING #6:

MOTION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE

COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7.	PC20210306	LAWRENCE & SONS TRANS. v. WASTE CONNECTIONS
MSJ		

On January 23, 2025, Defendant Waste Connections of California, Inc., dba El Dorado Service Inc. (hereinafter "Defendant") filed a Notice of Motion for Summary Judgment, or in the Alternative, Summary Adjudication. The motion was filed along with the requisite supporting documents and evidence.

Plaintiff, Ron Lawrence Transport, Inc. (hereinafter "Plaintiff") filed its opposition papers on March 28th.

Defendant Brian Oliver filed his opposition to the motion on April 4th. The court finds this to be late filed pursuant to Civil Procedure section 437c(b)(2) which states all opposition papers are to be filed and served not less than 20 days before the hearing date. Civil Procedure section 12c states, "[w]here any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, *excluding the day of the hearing* as provided by Section 12." Cal. Civ. Pro. § 12c. Section 437c in conjunction with Section 12c made March 31st the last day for filing the opposition. As such, the court has not considered this document.

Defendant filed its Reply documents on April 7, 2025.

This matter stems from an incident during which a commercial trailer owned by Plaintiff (the "Subject Trailer") was damaged by a falling tree. At the time of the incident the trailer was on property owned by Defendant, but the tree in question was on the adjacent property which was owned by Co-Defendant Brian Oliver.

The Complaint alleges causes of action for premises liability and negligence. Defendant now moves for summary adjudication on the basis that it did not own the property or the tree in question and therefore it did not owe a duty to Plaintiff under either theory of liability.

A motion for summary judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. Cal. Civ. Pro. § 437c. A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996). Because of the drastic nature of a motion for summary judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be liberally construed. A-H Plating, Inc. v. American National Fire Ins. Co., 57 Cal. App. 4th 427, 433-434 (1997).

The moving party bears the burden of making a prima facie case for summary judgment. White v. Smule, Inc., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment must show that it is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the complaint. Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018).

Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010).

Working with the applicable standard as outlined above, Defendant bears the burden of establishing that Plaintiff's claims for negligence and premises liability fail as a matter of law.

"Actionable negligence is traditionally regarded as involving the following: (a) a legal duty to use due care; (b) a breach of such legal duty; (c) the breach as the proximate or legal cause of the resulting injury." Jackson v. Ryder Truck Rental, Inc. 16 Cal. App. 4th 1830, 1837 (1993); Leslie G. v. Perry & Assoc. 43 Cal. App. 4th 472 (1996). Without a duty of care owed by the alleged wrongdoer to the person injured, no negligence is established. Southland Corp. v. Su. *Ct*. 203 Cal. App. 3d 656, 663 (1988). Whether a defendant owes a duty of care in a given situation is a question of law for the court to determine. Brown v. Dept. of Veterans Affairs, 178 Cal. App. 3d 392, 406 (1986).

Similar to a claim for general negligence, a duty of care owed to Plaintiff is a fundamental element of premises liability. *See* Kesner v. Sup. Ct., 1 Cal. 5th 1132, 1159 (2016). Generally, a landowner has no right to control and manage property owned by another. Donnell v. CA Western School of Law, 200 Cal. App. 3d 715, 725 (1988) *citing* Steinmetz v. Stockton City Chamber of Commerce 169 Cal. App. 3d 1142 (1985); *See also* Corcoran v. San Matea, 122 Cal. App. 2d 355 (1953). Accordingly, a defendant cannot be held liable for a defective or dangerous condition of property which defendant did not own, possess or control. Isaacs v. Huntington Memorial Hospital, 38 Cal. 3d 112, 134 (1985); Martinez v. Bank of American Nat'l Trust & Savings Assoc., 82 Cal. App. 4th 883, 892 (2000); Bisetti v. United Refrigeration Corp., 174 Cal. App. 3d 643, 648-649 (1985); Uccello v. Laudenslayer, 44 Cal. App. 3d 504, 512 (1975). "[T]he duty to take affirmative action for the protection of individuals…is grounded in the possession of the premises and the attendant right to control and manage the premises. Without the *crucial element of control over the subject premises, no duty to exercise reasonable care to prevent injury on such property can be found* [emphasis added]." *Gray v. America West Airlines, Inc*., 209 Cal. App. 3d 76, 81(1989).

The law of premises liability does not extend so far as to hold a property owner liable merely because it exists next to adjoining dangerous property and took no action to influence or affect the condition of such adjoining property. Donnell v. CA Western School of Law, 200 Cal. App. 3d 715, 720 (1988). "The mere possibility of influencing or affecting the condition of property owned or possessed by others does not constitute 'control' of such property." *Id.* at 725-6. Thus, "[w]here the absence of ownership, possession or control has been unequivocally established, summary judgment is proper." Donnell v. CA Western School of Law, 200 Cal. App. 3d 715, 720 (1988) *citing* Isaacs v. Huntington Memorial Hospital, 38 Cal. 3d 112, 134 (1985).

Here, the tree in question was on the property adjoining Defendant's. It was not owned, possessed, or controlled by Defendant. Without that crucial element, there can be no duty owed to remedy the dangerous condition of the tree.

In accordance with the relevant case law, Defendant cannot be held liable merely because its property existed next to adjoining property where the dangerous condition, the tree, was located and Defendant took no action to influence or affect the tree which was owned by its neighbor. *See* Donnell v. CA Western School of Law, 200 Cal. App. 3d 715, 720 (1988). Plaintiff argues that property owners may trim trees or branches which overhang onto their property from trees or foliage on adjacent properties. However, the mere possibility that Defendant may have been able to influence or affect the tree is not sufficient to establish a duty of care, especially where there has been no showing that there were any

branches hanging over Defendant's property or that failure to trim said branches actually caused the tree to fall. *See* Contreras v. Anderson, 59 Cal. App. 4th 188, 198 (1997) ("Simple maintenance" of adjoining land is not sufficient to establish duty.").

Plaintiff argues liability is imposed on Defendant as a bailee of the Subject Trailer. While it is true that a "bailee is responsible for the loss of or damage to the property bailed resulting from the failure to exercise that degree of care called for by the class of bailment in question" (Cal. Jur. 3d, Bailments § 35), the general tenant of the law remains that even a bailee is not responsible for the negligence of others. Continental Mfg. Corp. v. Underwriters at Lloyds London, 185 Cal. App. 2d 545 (1960); *See* Grosso v. Monfalcone, Inc., 13 Cal. App. 2d 405. The mere fact that it may be argued that Defendant was a bailee over the Subject Trailer, is not in and of itself sufficient to impose on Defendant liability for the loss stemming from a condition over which Defendant had no ownership, possession, or control and therefore a condition that Defendant could not have remedied.

In summary, there is no dispute between the parties that the tree in question was located on property adjacent to Defendant's. Thus, it has been established that Defendant did not own, possess or control the tree or the property on which the tree was located and as such summary judgment is proper. *See* Donnell v. CA Western School of Law, 200 Cal. App. 3d 715, 720 (1988) *citing* Isaacs v. Huntington Memorial Hospital, 38 Cal. 3d 112, 134 (1985). The motion for summary judgment is granted.

TENTATIVE RULING #7: THE MOTION FOR SUMMARY JUDGMENT IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.