TENTATIVE RULINGS

FOR: October 7, 2020

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09
Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZWs1UFJYZz09
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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Michael Paul Mahoney v. Miguel Ceja, et al. **20CV000494**

DEMURRER TO THE COMPLAINT

TENTATIVE RULING: The demurrer is SUSTAINED with 10 days' leave to amend.

This action arises out of a motor vehicle accident in which Plaintiff Michael Paul Mahoney alleges he suffered injuries. (See Complaint at ¶1.) Plaintiff asserts a single cause of action, for dangerous condition of public property, against moving Defendant City of Napa (City).

City demurs, pursuant to Code of Civil Procedure section 430.10, on the grounds that the Complaint fails to allege facts sufficient to establish a dangerous condition of public property,

fails to allege that a dangerous condition of public property caused his injuries, and that Defendant is immune from liability pursuant to Government Code sections 830.4, and 830.8.

A complaint must contain "facts constituting the cause of action." (Code Civ. Proc. §425.10, subd. (a)(1).) A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code. Civ. Proc., §430.30, subd. (a).) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Community on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213 14.) In reviewing a demurrer, the court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the complaint has included allegations that clearly disclose some defense or bar to recovery." (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.)

Defendant argues that while "Plaintiff alleges a laundry list of various 'failures' on the party of the CITY" he fails to "plead with specificity what the CITY actually failed to do or how this failure caused or contributed to Plaintiff's injuries." (Support Memo. at 5:25-27.) Defendant argues that the allegations are conclusory and fail to identify, with the requisite particularity, what the dangerous condition was and further fails to allege how that condition caused or contributed to Plaintiff's injuries. (*Id*. at 5:24-6:11.) The Court agrees.

"Ordinarily, negligence may be pleaded in general terms and the plaintiff need not specify the precise act or omission alleged to constitute the breach of duty. [Citation.] However, because under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, 'to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity.'" (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)

"[Government Code] section 835 sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property." (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829.) That statute provides as follows.

> Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
> (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. (Govt. Code §835.)

Plaintiff counters that paragraph 12 of the Complaint contains specific allegations of dangerous conditions sufficient to overcome Defendant's challenge. (See, *e.g.*, Opposition Memo. at 2:12-13.) The Court disagrees. Each of the several allegations of that paragraph are pleaded generically. There is no single allegation contained in that paragraph that, by the Court's reading, is tied to the accident alleged in paragraph 1 of the Complaint. Rather, the paragraph could be copied and pasted, without alteration, into any complaint asserting government liability for dangerous condition of a roadway. The lack of specificity is augmented by the "laundry list" nature of that paragraph. Importantly, the Court finds no allegation that effectively puts the City on notice regarding what condition, or conditions, Plaintiff complains of.

An example that Plaintiff discusses in his Opposition Memo. is illustrative of the defective nature of the Complaint. Plaintiff asserts that "a reasonable mind could conclude that (to pick but one defect) the absence of a turn lane contributed to causing an accident where a waiting, left-turning vehicle was struck from behind and propelled into oncoming lanes." (Opposition Memo. at 2:23-3:1.) The Court agrees. However, the Complaint provides none of this specific detail. Instead, as relevant to this point, the Complaint alleges that, "THE PUBLIC ENTITIES negligently and carelessly designed, warned, failed to warn, constructed, created, maintained, repaired, owned, operated, controlled, signed, and regulated the aforementioned SUBJECT ROADWAY, thereby creating a dangerous condition by…[f]ailure to provide adequate roadway, lanes, channelization, shoulders, turn lanes and/or lane markings on the SUBJECT ROADWAY…." (Complaint at ¶12.) While the language in Plaintiff's Opposition Memo. arguably provides the type of specificity required to adequately plead a statutory cause of action for dangers condition of public property, the Court finds that the Complaint does not. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)

Again, this example is illustrative of the overly-abstract, conclusory nature of the allegations of the Complaint. This defect is not, however, limited to the element of the defective condition. The Court finds that the allegations of the Complaint are similarly deficient as to the remaining elements: proximate causation by the dangerous condition; foreseeability of the risk of the kind of injury which was incurred; and, either negligent or wrongful act or omission of an employee of the public entity within the scope of his employment creating the dangerous condition, or actual or constructive notice of the dangerous condition. (See Govt. Code §835.)

Based on the foregoing, the City's demurrer is SUSTAINED.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiff prays leave to amend, and the Court finds that there is a reasonable possibility that Plaintiff can state a good cause of action. (Opposition Memo. at 7:10-11.) Therefore, the Court grants Plaintiff 10 days' leave to amend the Complaint.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Monica Davis v. Hamilton Nicholsen **16CV000201**

DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

TENTATIVE RULING: The motion came on originally for hearing on August 19, 2020. The Court's Minute Order of that date granted the motion, in part, as to enforcement of the parties' settlement agreement (Settlement Agreement) and denied the motion in all other respects. The Court continued, to this date, hearing on the lone remaining issue – Defendant's request for entry of judgment against Plaintiff "consistent with the terms of the signed settlement agreement," and requested supplemental briefing from the parties.

The Court finds good cause to grant Defendant's request to enter judgment "pursuant to the terms of the settlement." (See Code Civ. Proc. §664.6.) However, the Court finds that the proposed judgment filed by Defendants deviates from the terms of the Settlement Agreement, and on that basis the Court declines to sign. Specifically, the proposed judgment contains language that is similar, but not identical to that found in the Settlement Agreement. (Proposed Judgment at 2:1-3.) The Proposed Judgment contains terms not found in the Settlement Agreement. (*Id*. at 2:3-5.) Finally, the Proposed Judgment omits several points contained in the Settlement Agreement.

Defendant is invited to prepare and submit, pursuant to California Rules of Court, rule 3.1312, a new proposed order entering judgment. In drafting, Defendant is encouraged to conform the judgment to the terms of the Settlement Agreement by attaching a copy of thereof to the proposed order and incorporating its terms into the judgment, by explicit reference.

Julie Simon Van Leeuwen, et al. v. Vintners Court LLC **16CV000999**

PLAINTIFF'S MOTION FOR ESCALATING SANCTIONS AGAINST VINTNERS COURT

TENTATIVE RULING: On September 24, 2020, filed plaintiff a conditional notice of settlement of the entire case. Plaintiff's motion for escalating sanctions is taken off-calendar. The motion for escalating sanctions set for October 14, 2020, similarly is taken off-calendar. Both motions are subject to re-calendaring per plaintiff's written request to the Court, and notice to the other side, should the settlement fall apart.

The case management conference remains on calendar for the parties to discuss the schedule for the class approval process.