TENTATIVE RULINGS

FOR: May 25, 2021

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
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Dept. B Zoom
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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.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Terrance P. Clapp **20PR000036**

FIRST AND FINAL ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY'S FEES, AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: GRANT petition, including fees as prayed. The conservatorship is terminated.

Estate of Lee Andrew Dunham, Sr. **20PR000128**

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING: The motion is GRANTED.

In Matter of the Botsch Family Trust **20PR000246**

PETITION FOR ORDER TO COMPEL ACCOUNTING BY TRUSTEE; TO COMPEL TRUSTEE TO PROVIDE INFORMATION TO TRUST BENEFICIARIES; AND FOR DAMAGES FOR BREACH OF TRUST

APPEARANCE REQUIRED for a status update.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Estate of Richard David Carey Jones **20PR000193**

WAIVER OF ACCOUNT FOR EXECUTOR; PETITION FOR ITS SETTLEMENT; AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition.

Estate of Gladys Mae White **21PR000071**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition.

Estate of Leon R. Allen **21PR000089**

PETITION FOR PROBATE OF LOST WILL AND FOR LETTERS TESTIMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The Petition is GRANTED.

Conservatorship of Lynden Laseter **26-67781**

THIRD AND FINAL ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY'S FEES, AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: GRANT petition, including fees as prayed. The conservatorship is terminated.

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

John P. McGill, et al. v. Gene Webb **19CV000903**

(1) PLAINTIFF WANDA MCGILL'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES AS TO DEFENDANT GENE WEBB

(2) PLAINTIFF WANDA MCGILL'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS AS TO DEFENDANT GENE WEBB

TENTATIVE RULING: Plaintiff Wanda McGill's motion to compel further responses to special interrogatories (set 4) as to defendant Gene Webb and her motion to compel further responses to request for production of documents (set 4) related to special interrogatories (set 4) as to defendant Gene Webb are GRANTED. Webb's objections are overruled. Webb has not shown why or how the interrogatories relate to the cross-complaint. Nor has Webb justified his position that the discovery seeks information unrelated to the operative pleading. Upon review of the separate statements, the discovery relates to Webb's responses to earlier propounded discovery. McGill simply is seeking clarification and information as to why Webb responded the way he did with particular verbiage, which she is allowed to do. Webb also has not indicated why each discovery request violates Code of Civil Procedure section 2030.060, subdivisions (d)-(f). Webb shall serve verified code-compliant further responses, without objections, within 10 calendar days of service of notice of entry of order.

Mary Elizabeth Jackson v. Alexandra Varellas, *et al*. **20CV000021**

DEFENDANT'S DEMURRER TO COMPLAINT

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

City demurs to Plaintiff's First Amended Complaint (FAC), pursuant to Code of Civil Procedure section 430.10, on the grounds that the Plaintiff fails to allege facts sufficient to establish a dangerous condition of public property, 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.)

City argues that the "FAC contains a litany of allegations purportedly establishing the existence of a dangerous condition….[N]one of the allegations in the FAC are sufficient to establish the existence of a dangerous condition of public property as a matter of law." (Support Memo at 5:1-4.)

"[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." (Gov. Code §835.) Government Code Section 830 defines a "[d]angerous condition" as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." "Property is not 'dangerous' within the meaning of the statutory scheme if the property is safe when used with due care and the risk of harm is created only when foreseeable users fail to exercise due care." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 (*Brenner*).) "[I]t is also important to note the Legislature has expressly provided that '[a] condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code.' Thus, the statutory scheme precludes a plaintiff from imposing liability on a public entity for creating a dangerous condition merely because it did not install the described traffic control devices." (*Ibid*. quoting Gov't Code § 830.4.)

"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.) Therefore, "a claim alleging a dangerous condition may not rely on generalized allegations [citation] but must specify in what manner the condition constituted a dangerous condition." (*Brenner, supra,* 113 Cal.App.4th at 439.)

The Court agrees that the allegations contained in the FAC fail to identify a "dangerous condition" as a matter of law. "As a general rule, the issue of whether a given set of facts and circumstances amounts to a dangerous condition poses a question of fact. [Citation.] Nevertheless, that question may be decided as a matter of law if no reasonable person could conclude the property's condition is dangerous as that term is statutorily defined." (*Biscotti v. Yuba City Unified School Dist.* (2007) 158 Cal.App.4th 554, 558-559 (*Biscotti*).)

As noted herein above, "[p]roperty is not 'dangerous' within the meaning of the statutory scheme if the property is safe when used with due care and the risk of harm is created only when foreseeable users fail to exercise due care." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 (*Brenner*).) Although not dispositive, the Court finds that certain analysis set forth in *Kalfus v. Fraze* (1955) 136 Cal. App. 2d 415 at 431 is particularly germane to the present discussion. "A pedestrian who crosses a busy thoroughfare at night well beyond the crosswalk looking straight ahead and is struck by a car approaching from the quarter from which traffic was to be expected may well be regarded as not having exercised the vigilance required of a reasonably prudent person." (*Id.*)

With the foregoing in mind, the Court turns to the allegations of the FAC. "On January 15, 2019, Plaintiff was struck and injured by a motor vehicle while walking across Soscol Avenue in the City of Napa. (Hereinafter the 'INCIDENT'.)" (FAC at ¶ 8.) "[A]ccording to the Traffic Collision Report prepared by the Napa Police Department in this matter, the subject accident took place at approximately 6:39 p.m. on January 15, 2019. According to a search of publicly available information on Google.com, sunset in Napa CA was at approximately 5:13 p.m. on January 15, 2019." (*Id.* at 7, fn. 1.) "The INCIDENT occurred in the southbound lanes of Soscol Avenue, approximately 226 feet south of the intersection of Soscol Avenue and Lincoln Avenue. Plaintiff was struck by a vehicle moving south on Soscol Avenue…." (FAC at ¶ 8.) The Complaint defines the term "PROPERTY" as, "Soscol Avenue in the area bounded by the intersection of Soscol Avenue and Lincoln Avenue to the north, and the intersection of Soscol Avenue and Jackson Street to the south." (*Id.* at ¶ 9.) "At the collision location Soscol Avenue is north-south avenue [*sic*] with two lanes and a bike lane in each direction…." (*Id.* at ¶ 15.) "[T]he portion of Soscol Avenue crossing the PROPERTY was…a heavily trafficked thoroughfare with motor vehicle traffic frequently traveling at speeds equal to or in excess of the posted speed limit of 40 miles per hour." (FAC at ¶ 10.) "There was no stop sign or stoplight for southbound traffic after passing Lincoln Avenue…[for] a distance of slightly more than .3 miles…." (*Id.*) Defendants "failed to have any pedestrian crossings at any point south of the intersection of Soscol Avenue and Lincoln Avenue…[and]…allowed the center median dividing the northbound

and southbound lanes of Soscol Avenue to be overgrown with vegetation, thus inhibiting visibility for…pedestrians…[and the area] was dimly lit, thus further worsening the visibility impairments caused by the overgrown vegetation after sundown…."[1] (*Id.* at ¶ 13.)

Assuming the truth of the allegations in the FAC, at the time she was struck and injured, Plaintiff was a pedestrian who, an hour and a half after sunset, elected not to walk 226 feet north to a crosswalk in a controlled intersection, but instead undertook to cross, roughly half way between intersections, a dimly-lit, divided, four-lane road, with inhibited visibility as she exited a median with "overgrown vegetation" onto southbound lanes over which cars were traveling at or in excess of 40 miles per hour while their drivers anticipated approximately 1/4 mile of open travel before the next stop sign, stoplight, or crosswalk. Even assuming, *arguendo*, that pedestrians would be "foreseeable users" of the PROPERTY, the Court finds that no reasonable trier of fact could conclude that Plaintiff exercised due care in attempting to use the PROPERTY in the manner alleged. (See *Brenner, supra*, 113 Cal.App.4th at 439; see also *Biscotti, supra*, 158 Cal.App.4th at 558-559.)

This conclusion is reinforced by the Vehicle Code which provides that while, "the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway *within any marked crosswalk or within any unmarked crosswalk at an intersection*…[t]his section does not relieve a pedestrian from the duty of using due care for his or her safety." (Vehicle Code §21950, subds. (a) & (b). Emphasis added.)

The foregoing, alone, is not dispositive. The Court acknowledges that even though Plaintiff alleges facts from which the only reasonable inference is that she was acting without due care in her use of the PROPERTY at the time of the INCIDENT, if she alleges facts from which a trier of fact could reasonably conclude one or more dangerous conditions existed for a foreseeable user who *did* exercise due care, and this/these dangerous condition(s) contributed to Plaintiff's injuries, her FAC would survive the present demurrer.

The Court finds that the FAC fails, however, to allege such facts. The FAC contains a list of conditions that Plaintiff alleges describe the subject PROPERTY at the time of the INCIDENT. (See, *e.g.*, FAC at ¶¶ 9-13.) These allegations, however, describe conditions that are typical of heavily-trafficked four-lane urban roadways. It is axiomatic that while, "a public entity may be held liable if its property is in a *dangerous* condition…[it] is not required to go beyond the elimination of danger and maximize every safety precaution." (*Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 136.)

Again, a condition, or a combination of conditions, is only dangerous, for purposes of a claim made pursuant to Government Code section 835, if it "creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (Gov. Code § 830.) The FAC contains no allegations that the PROPERTY conditions alleged, whether individually, or taken together, create such "risk of injury when [the] property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Rather, with one

[1] The Court uses the terms "INCIDENT" and "PROPERTY" herein pursuant to the definitions given by Plaintiff in the FAC.

exception discussed hereinbelow, the FAC simply relies on the allegation that Plaintiff *was* injured using the PROPERTY to create an inference that the conditions must be dangerous. However, because the only reasonable conclusion from the allegations is that Plaintiff's use was made without due care, her alleged injuries are insufficient to make the showing of a dangerous condition pursuant to Government Code section 830.

In the one exception mentioned hereinabove, Plaintiff alleges that "[Defendants] had known for some period of time prior to the INCIDENT…pedestrians often cross the section of Soscol Avenue running through the PROPERTY between the intersection of Soscol Avenue and Lincoln Avenue to the north, and the partially controlled intersection of Soscol Avenue and Jackson Street to the south. Based on this knowledge, it was *reasonably foreseeable that pedestrians would be crossing the roadway between the intersections on the PROPERTY, and that even if both pedestrians and drivers exercised due care, there was a reasonably foreseeable risk of collision* between such pedestrians and motor vehicles droving on Soscol Avenue if the visibility of pedestrian cross-traffic was obscured by overgrown and/or improperly maintained vegetation in the median, inadequate lighting for the conditions, and by the failure of DEFENDANTS, in these conditions, to warn pedestrians and drivers of this known danger by the placement of appropriate signs, crosswalks, and/or other traffic safety devices." (FAC at ¶ 12. Emphasis added.)

From the Court's perspective, however, no reasonable trier of fact could find that a pedestrian's election to cross the section of Soscol Avenue running through the PROPERTY instead of walking a few hundred feet to a crosswalk at a controlled intersection is consistent with the exercise of due care. Put another way, the Court finds as a matter of law that upon that election, the hypothetical pedestrian has already failed to exercise due care in using the PROPERTY. "'The 'dangerous condition' of the property should be defined in terms of the manner in which it is foreseeable that the property will be used by persons exercising due care in recognition that any property can be dangerous if used in a sufficiently abnormal manner.' [Citation.] Even though it is foreseeable that persons may use public property without due care, a public entity may not be held liable for failing to take precautions to protect such persons.' [Citation.]" (*Biscotti, supra*, 158 Cal.App.4th at 561.)

Caselaw and statutory authority support the Court's finding. Plaintiff alleges that the failure to install and/or maintain lighting created or contributed to the allegedly dangerous condition of the PROPERTY. (See, *e.g.*, FAC at 4:16-24.) However, "a public entity is under no duty to light its streets." (*Mixon, supra*, 207 Cal.App.4th at 133.) The claim "that a public entity may be negligent for failing to provide streetlights…has long been rejected." (*Ibid*.)

Plaintiff alleges that the failure to install and maintain traffic signs and warnings created or contributed to the allegedly dangerous condition. (See, *e.g.*, FAC at 4:16-24.) "[T]he Legislature has expressly declared that '[a] condition is not a dangerous condition … merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings [of parallel dividing lines] as described in Section 21460 of the Vehicle Code.' (Gov. Code, § 830.4.) 'Thus, the statutory scheme precludes a plaintiff from imposing liability on a public entity for creating a dangerous condition merely because it did not install the described

traffic control devices.' [Citation.]" (*Mixon, supra*, 207 Cal.App.4th at 135; see also Gov. Code § 830.8.)

Allegations that the PROPERTY lacked warning signs are similarly insufficient to create liability. "Neither a public entity nor a public employee is liable … for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in [Government Code] Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care." (Gov. Code, § 830.8.) "In other words, a concealed dangerous condition that is a trap to motorists or pedestrians may require the posting of a warning sign but the absence of a warning sign itself is not a dangerous condition." (*Mixon, supra*, 207 Cal.App.4th at 135-36.)

The allegation that Defendants failed to install "other equipment at or alongside the PROPERTY for the purpose of facilitating the safe use of the PROPERTY…" is insufficiently specific to support Plaintiff's claim. (See FAC at 3:10-11; see also *Brenner, supra*, 113 Cal.App.4th at 439.)

Plaintiff variously argues that she was "forced by default to cross in the middle of the street" because of Defendants' failure to provide adequate crosswalks (See, *e.g.* Complaint at 3:28-4:4.) This allegation is directly undermined, however, by the more specific allegation, quoted herein above, that "The INCIDENT occurred in the southbound lanes of Soscol Avenue, approximately 226 feet south of the intersection of Soscol Avenue and Lincoln Avenue," and Plaintiff's acknowledgement that there is a crosswalk at that intersection. (*Id*. at 2:23-25, 3:26-27.) "It is well established that in the context of a demurrer, specific allegations control over more general ones." (*Chen v. Paypal, Inc.* (2021) 61 Cal.App.5th 559, 571.)

Plaintiff's allegations regarding the condition of the intersection of Soscol Avenue and Jackson Street, to the south of the PROPERTY, appear to be immaterial as the FAC clearly alleges that Plaintiff was not attempting to cross at that intersection, but rather, roughly halfway between the Soscol Avenue intersections with Lincoln Avenue and Jackson Street. (See Complaint at ¶ 8, 9, and 12.)

The only other allegations that would tend to support Plaintiff's assertion of a dangerous condition are that Defendants' "allowed the center median dividing the northbound and southbound lanes of Soscol Avenue to be overgrown with vegetation, thus inhibiting visibility for motorists and pedestrians alike…." (Complaint at 5:3-4.) Again, "'[t]he 'dangerous condition' of the property should be defined in terms of the manner in which it is foreseeable that the property will be used by persons exercising due care in recognition that any property can be dangerous if used in a sufficiently abnormal manner.' [Citation.] Even though it is foreseeable that persons may use public property without due care, a public entity may not be held liable for failing to take precautions to protect such persons.' [Citation.]" (*Biscotti, supra*, 158 Cal.App.4th at 561.) As discussed herein above, pursuant to the allegations of the Complaint, the median lies between two northbound, and two southbound lanes of Soscol Avenue with traffic flowing at or

above 40 miles per hour. (See Complaint at ¶¶ 10, 13, and 15.) Based on these allegations, therefore, in order to obtain the median, a pedestrian would need to eschew the nearby crosswalk at the intersection of Soscol and Lincoln Avenues, and cross one set of these two-lane thoroughfares. Moreover, accepting as true that the vegetation on the median was "overgrown," the pedestrian would most certainly recognize the need to pass through this overgrown vegetation in order to step out into the oncoming traffic on the other side. As discussed in detail below, the Court finds, as a matter of law, that it is unforeseeable that pedestrians exercising due care in their use of the PROPERTY would obtain the median in the first place. As a result, the presence of overgrown vegetation blocking their view of traffic on the other side of the median is insufficient, as a matter of law, to be constitute a "dangerous condition" for purposes of a Government Code section 835 claim. (See (*Biscotti* at 561.)

Finally, even assuming, *arguendo*, that the pedestrian-crossing of Soscol Avenue within the PROPERTY outside of the crosswalk at the intersection of Lincoln Avenue could be a foreseeable use by persons exercising due care, the Court finds that the City is immune from liability for the conditions alleged on the ground that the danger of being struck by a car through such use is "so obvious that a person could reasonably be expected to see it." (*Zuniga v. Cherry Ave. Auction, Inc.* (2021) 61 Cal.App.5th 980, 993.) "Stated in general terms, the no-duty exception for open and obvious dangerous conditions provides that ''if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition.'' [Citation.] Thus, the rationale for the exception to the general duty of ordinary care is that the foreseeability of harm usually is absent because third parties will perceive the obvious and take action to avoid the danger. [Citation.]" (*Id*. at 993-94.)

The Court finds, from the same allegations quoted and discussed at length herein above, that the conditions of the PROPERTY alleged to be dangerous were so open and obviously dangerous to a pedestrian seeking to cross a divided, four-lane Soscol Avenue "mid-street" after sunset, that the conditions themselves served "as a warning, relieving the City from any further duty to remedy or warn of the condition." (*Zuniga v. Cherry Ave. Auction Inc.*, *supra*, 61 Cal.App.5th at 993-94.)

Plaintiff counters by noting an exception to the open and notorious exception. (Opposition at 10:13-15.) "[I]f it is foreseeable that the danger may cause injury despite the fact that it is obvious (e.g., when necessity requires persons to encounter it), there may be a duty to remedy the danger, and the breach of that duty may in turn form the basis for liability, if the breach of duty was a proximate cause of any injury." (*Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 122.) Plaintiff argues that, "it is reasonably foreseeable that Plaintiff is required to encounter the condition as described in *detail* in her FAC ¶18, and such requirement of necessity or other circumstances negates the issue of open and obvious even if it is not apparent." (Opposition at 11:6-11.)

The only allegation in paragraph 18 of the FAC that touches on the issue of necessity is the following. "[P]edestrians walking south from the bus stop located near the Chevron Gas station on the eastern side of Soscol avenue south of Lincoln Avenue, including employees, such as Plaintiff of Vine Transport, operated by Defendant Napa Valley Transportiation…who were

required by NVT to transfer drivers at the subject bus stop, would frequently be forced to cross Soscol Avenue mid-street as there was no crosswalk at the intersection of Soscol Avenue and Jackson Street at the southern end of the Property." (FAC at ¶ 18.) First, neither the allegation itself, nor any allegation in the Complaint that the Court can find provides any factual support for the conclusion that employees, such as Plaintiff, would be forced to cross Soscol Avenue mid-street. Assuming the truth of the allegation that, "there was no crosswalk at the intersection of Soscol Avenue and Jackson Street at the southern end of the Property," no reasonable trier of fact could conclude, from that fact alone, that such an employee was thereby "forced to cross Soscol Avenue mid-street." (*Id*.) The employee would, of course, be able to cross at the intersection of Jackson Street and Soscol, which, though lacking a crosswalk, is (pursuant to the allegations of the Complaint) an intersection. Moreover, and again, Plaintiff affirmatively alleges that there was an intersection with a crosswalk across Soscol, some 226-feet to the north of the site of the incident. (FAC at ¶ 8.) This specific allegation affirmatively undermines the contention that an employee at that location "would be forced to cross Soscol Avenue mid-street. Based on the foregoing, the Court finds that no reasonable trier of fact could conclude, from the facts alleged, that Plaintiff or others in her position were forced, or otherwise had any necessity to cross Soscol Avenue mid-street. (*Chen v. Paypal, Inc.*, *supra*, 61 Cal.App.5th at 571.) As such, Plaintiff fails to allege facts to support a finding that the necessity exception applies.

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 suggests ways in which the FAC could be amended. (See Opposition at 11-26-13:2.) The Court is not convinced that any of the possible amendments identified therein adequately resolve the deficiencies discussed herein above. However, the Court is unable to conclude, at this juncture, that there is no reasonable possibility that Plaintiff can state a good cause of action. Therefore, the Court grants Plaintiff 10 days' leave to amend the Complaint.

In the Matter of Jamie Rose Perez **21CV000291**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Pursuant to Code of Civil Procedure section 1277, the non-petitioning parent must be personally served with the order to show cause and given 30 days' notice of the hearing. The court file contains no proof of service on the minor's father. If a proper proof of service is filed before the hearing, the petition shall be granted. If no proof of service is filed, the matter will be denied without prejudice.

In the Matter of Raymond Allen Fair **21CV000459**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: There is no proof of publication in the court file. If one is filed before the hearing, the petition will be GRANTED without need for appearance. If no proof of publication is filed, the petition will be DENIED without prejudice.

In the Matter of Larry Darnell Wright, III **21CV000469**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.