

## Tentative Rulings for June 30, 2026 Department 2

**To request oral argument, you must notify Judicial Secretary  
Crystal Marias at (760) 904-5722  
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at [Riverside Superior Court-Tentative Rulings](#). If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 2 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear remotely, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

For information and instructions on remote appearances via **ZOOM**, visit the court's website at [Riverside Superior Court-Remote Appearances](#)

You may also make a Telephonic Appearance: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252,  
1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **161 143 8184**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

**Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.**

1.

CASE #	CASE NAME	HEARING NAME
CVRI2203266	HARB VS COUNTY OF RIVERSIDE	MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION

**Tentative Ruling:**

**On City’s Motion: DENY.**

**The request for judicial notice is GRANTED. The evidentiary objections are OVERRULED.**

**On Design Service’s Motion: GRANTED. Enter summary judgment in favor of Design Services on the Fourth Amended Cross-Complaint.**

This is a wrongful death case. On August 4, 2024, Plaintiffs Ali Harb, Ibrahim Harb and Lama Harb, individually and as the successors-in-interest of Decedent Ferial Harb (“Plaintiffs”) filed a Complaint against Defendants City of Riverside (the “City”), County of Riverside (the “County”), State of California, Brian Gene Bozarth, III (“Brian”), and Melissa Bozarth (“Melissa”) (together “Defendants”) asserting causes of action for: (1) Dangerous Condition of Public Property; (2) Negligence; (3) Wrongful Death; and (4) Recovery under C.C.P. § 377.34.<sup>1</sup> In the Complaint, Plaintiffs allege that on January 19, 2022, Decedent was walking near the intersection of Lincoln Avenue and Victoria Avenue in the Riverside (the “Intersection”) when she was struck by a vehicle driven by Brian, who owned the vehicle with Melissa. (Complaint at ¶ 12.) Decedent sustained fatal injuries because of the collision. (*Ibid.*) Brian was inattentive to his driving, negligent in approaching the Intersection, and failed to check for pedestrians. (Complaint at ¶¶ 31-33.) Additionally, the Intersection was designed and/or maintained to create a dangerous condition due to lack of visibility and insufficient traffic signals and warnings, and the City had actual or constructive knowledge of the dangerous condition. (Complaint at ¶¶ 15-19.)

On October 18, 2024, the City filed a Cross-Complaint against Brian and Melissa for: (1) Equitable Indemnity; (2) Contribution; and (3) Declaratory Relief. On April 25, 2025, the City filed the operative Fourth Amended Complaint (“FACC”) against Brian and Melissa and several contractors, including Cross Defendants West Coast Arborists (“West Coast”), Pacific Coast Landscape & Design (“Pacific Coast”), and Design Services, Inc. dba Benya Burnett Consultancy (“Design Services”), and their insurers. Starr Indemnity and Liability Company (“Starr”), Greenwich Insurance Company (“Greenwich”), Sentinel Insurance Company (“Sentinel”), RLI Insurance Company (“RLI”) and Continental Casualty Company (“Continental”).<sup>2</sup> The FACC contains four causes of action for: (1) Equitable and/or Statutory Indemnity; (2) Contribution; (3) Declaratory Relief; (4) Express Indemnity Breach of Contract; and (5) Breach of Implied Covenant of Good

<sup>1</sup> The State of California was dismissed on September 14, 2022, and the County of Riverside was dismissed on April 11, 2023.

<sup>2</sup> West Coast, Pacific Coast, Greenwich, Continental, and Sentinel have been dismissed.

Faith and Fair Dealing. The City asserts that it entered into contracts with West Coast to provide tree-trimming services in the area of the Intersection; with Pacific Coast to provide landscaping services; and with Design Services for LED street light conversion. The contracts require the contractors to obtain liability insurance with the City named as an additional insured. The City tendered defense of Plaintiffs' Complaint to the contractors and insurers, but each refused the defense.

**City** moves for summary judgment/adjudication of Plaintiffs claims on the following grounds: the Intersection is not a dangerous condition of public property because there were no prior similar accidents and Brian's negligence caused the incident; the City had no notice of an alleged dangerous condition; it is entitled to design immunity and trail immunity; it had no duty to install warning signs or additional lights; the Intersection was not a concealed trap; and the wrongful death and C.C.P. § 377.34 claims also fail because the Intersection was not a dangerous condition.<sup>3</sup>

In opposition, Plaintiffs argues that the motion should be denied because the Intersection was a dangerous condition because it created 4 conflict points for drivers and no safe path for pedestrians to cross; the danger of the Intersection was compounded by incorrect signage and pavement markings; the configuration of the Intersection did not comply with engineering standards or the plans submitted by City in support of its argument for design immunity; there was no fixed lighting and limited visibility; and City had notice of the dangerous condition and ignored repeated complaints. They also argue there is a triable issue of material fact as to whether Brian's negligence caused the incident, and even if it did, the dangerous condition created by the Intersection increased the risk. Plaintiffs further argue that City fails to establish all elements of design immunity, and design immunity doesn't apply because the Intersection was a concealed trap and changed circumstances made the design unreasonably dangerous. They contend City also fails to establish trail immunity because the roadway where Decedent was struck is not a trail. Finally, they argue that City's arguments about subsequent remedial measures and Gov. Code §§ 830.4 and 830.8 are insufficient to support summary judgment, and while City generally does not have a duty to light its streets, their claims are based on multiple factors creating a dangerous condition, including poor visibility, so this does not dispose of Plaintiffs' entire claim.

In reply, City argues that there is no dangerous condition at the Intersection because the risk of harm was created by Brian's failure to use due care, and residents' complaints about the Intersection do not establish notice. It also argues that it provided plans regarding the Intersection since 1892, including updates, and have sufficiently established design immunity. Finally, it argues that trail immunity exists because the Intersection is an integral part of the trail.

**Design Services** moves for summary judgment/adjudication of the declaratory relief and indemnity causes of action in the FACC (the only causes of action asserted against it) on the ground that it has no duty to defend or indemnify City under the Consultancy

---

<sup>3</sup> City also argues that subsequent remedial measures are inadmissible to show a dangerous condition of public property. While this may be true, it is not a ground for summary judgment/adjudication, as it does not resolve any claim.

Agreement between them. It argues that it entered into the Agreement with the City to assist in upgrading LED bulbs in City's streetlights, and the Agreement has nothing to do with maintenance or placement of lights. It also argues that the pleadings frame the issues, indemnification claims are tied to the claims of the Plaintiffs, and Plaintiffs' claims have nothing to do with any of its tasks under the Agreement. Finally, it argues that even City has no duty to provide lighting.

In opposition, City argues that the Agreement with Design Services was for consulting services related to changing lighting in the City, including at the Intersection, and Plaintiffs' Complaint and discovery responses raise the issue of lighting at the Intersection, so there is a triable issue of material fact as to Design Service's duty to defend and indemnify City, and the motion should be denied.

In reply, Design Services argues there is no triable issue of material fact regarding its duties under the Consultancy Agreement, and since contractual triggers did not occur, it had no duty to defend or indemnify City as a matter of law.

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (C.C.P. § 437c(c).) A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (C.C.P. § 437c(p)(2); *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Importantly, a moving defendant establishes a right to summary judgment by showing that the plaintiff lacks the evidence to support at least one element of the cause(s) of action pleaded. (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 756. See also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.)

Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar, supra*, 25 Cal.4th at 849.) The opposing party may not rely upon the allegations or denials in its pleadings but must "set forth the specific facts showing that a triable issue of material fact exists." (C.C.P. § 437c(p)(2).) Claims and theories not supported by admissible evidence do not raise triable issues of fact. (*Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 219, disapproved on another ground in *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238.) However, while summary judgment is no longer considered a "disfavored" procedure, the moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) If the plaintiff does not meet his burden of establishing a triable issue of material fact, summary judgment in favor of the defendant is appropriate.

City asks the Court to **take judicial notice** of Plaintiffs' government claims; the Complaint; City's Answer to the Complaint; City Charter; and Google Maps images of the Intersection. Plaintiffs do not object to the request for judicial notice, and the documents are the proper subject of judicial notice, so the request should be granted. (Evid. Code § 452(d), (h).)

City **objects** to the entire Corrected Decl. of Andrew Kwasniak (“Kwasniak Decl.”) on the ground that it is untimely. All opposing papers were due on May 27, 2026, and the Kwasniak Decl. was not filed until June 2, 2026, so City is correct that the Decl. is untimely. However, the Court has discretion to consider an untimely opposition. (See, CRC 3.1300(d); *Slayton v. Superior Court* (2006) 146 Cal.App.4th 55, 58, n. 2; *Kapitanski v. Von’s Grocery Co.* (1983) 146 Cal.App.3d 29.) Additionally, challenging a motion or opposition on the merits rather than only objecting to the inadequate notice/untimeliness may constitute a waiver of any objection to its untimeliness or insufficient notice. (See, *Clark v. Stabond Corp.* (1987) 197 Cal.App.3d 50, 59.) In the present case, the Court should consider the Kwasniak Decl. despite it being filed late because City still had sufficient time to file a substantive reply, so it was not prejudiced by the delay.

City also objects to the entire Kwasniak Decl. on the grounds that it is improper opinion, is based on outdated studies, and lacks foundation. These objections are overruled. City’s objections to ¶¶ 2-5 of the Kwasniak Decl., regarding Kwasniak’s qualifications, why he was retained, and what documents he relied on are also overruled.

Finally, City objects to ¶¶ 6, 7.a.-7.kkk., and 8, and Figures 3-5 on the grounds that they lack foundation, are speculative, are vague and ambiguous, are improper opinions and legal conclusions, and are misleading and assume facts not in evidence. These objections are overruled, as Kwasniak has provided sufficient support for his qualifications and opinions.

The ***Intersection where the incident occurred***, at Lincoln Avenue and Victoria Avenue, is configured as follows:

- Lincoln runs eastbound/westbound, with a single lane in each direction.
- Victoria runs northbound/southbound, also with a single lane in each direction, and intersects Lincoln.
- A 40-foot median separates the two lanes of traffic on Victoria.
- There is a bicycle lane on the southbound side of Victoria.
- Lincoln is also intersected by Victoria Avenue Frontage Road.
- The main lanes on both Lincoln and Victoria have stop signs.
- The right-hand turn lane from southbound Victoria to westbound Lincoln (the “Right-Turn Lane”) is a channelized slip lane with a sign that states (with words and symbols) “Turning Vehicles Yield to Pedestrians and Bicyclists;”
- There is also a white yield limit line and a symbol-based yield to pedestrian sign in the Right-Turn Lane just before the Intersection.
- There is no stop sign in the Right-Turn Lane.
- To turn right from southbound Victoria to westbound Lincoln, a driver is required to cross a bicycle lane, then a pedestrian crossing, and then merge into westbound traffic.

(UMF ## 5-10; Kwasniak Decl. at ¶¶ 7.b., 7.d., 7.e.)

Government Code § 835 allows a government entity to be sued for injury caused by a **dangerous condition** on its property. To assert such a cause of action, there must be: (1) a dangerous condition on the public property; (2) a causal connection between the condition and the injury sustained by the plaintiff; (3) injury was reasonably foreseeable; and (4) either the entity created the condition, or had actual or constructive notice of the dangerous condition and there was sufficient time before the injury for the government entity to take remedial action. (*Id.*; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132; *People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484.) A condition is dangerous if it is “a condition of property that created a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” (Government Code § 830(a); see also, *City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139.) “The existence of a dangerous condition is ordinarily a question of fact but ‘can be decided as a matter of law if reasonable minds can come to only one conclusion.’” (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.)

City seeks summary judgment/adjudication of the dangerous condition of public property cause of action by first arguing that the Intersection was not a dangerous condition as a matter of law because Brian’s negligence caused the incident, and there were no prior accidents. (Motion, 7:13-9:22; Reply, pp. 2:14-3:6, 4:4-19.)

City cites *Thimon v. City of Newark* (2020) 44 Cal.App.5th 745 for the proposition that because Brian’s negligence was the cause of the accident, it cannot be held liable for a dangerous condition at the Intersection. (Motion, pp. 8:18-9:13.) While the court in *Thimon* did uphold summary judgment in favor of the city there, it was undisputed between the parties that the driver’s negligence was the proximate cause of the accident in that case. (*Id.* at 751, 753.) Further, there was no evidence of contributing factors from the intersection itself. Here, City contends it is undisputed that Brian violated Veh. Code § 21950 by failing to yield, and he therefore failed to use due care. However, Plaintiffs present evidence that Brian was driving 20 mph down Victoria; he was not on his phone or otherwise distracted; he slowed down as he approached the Intersection to check for pedestrians but did not see Decedent because of the lack of light; and any charge against him was dropped. (Decl. of Thomas C. Seabaugh [“Seabaugh Decl.”], Ex. B, pp. 10:20-11:6, 15:1-15, 39:21-40:22, 42:19-24.) Thus, City has not established that Brian’s negligence caused the accident.

Furthermore, the *Thimon* court noted that there can be liability for a dangerous condition of public property even if the driver’s negligence was a proximate cause of the accident:

“[[I]f a condition of public property ‘creates a substantial risk of injury even when the property is used with due care’ [citation], a public entity ‘gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party’s negligent conduct to inflict injury.’” ... When a third party’s conduct is the immediate cause of a plaintiff’s harm, the question becomes whether the dangerous condition “increased or intensified” the risk of injury from the third party’s conduct.

(*Id.* at 754; see also, *Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1187 [“A public entity may be liable for a dangerous condition of public property even where the immediate cause of a plaintiff’s injury is a third party’s negligent or illegal act ... if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality.”])

Here, Plaintiffs present evidence that the traffic control signage and the configuration of the Intersection created a hazardous condition that led to the incident because, among other things, they deprived drivers of clear instructions when crossing the bicycle lane, the pedestrian crossing, and merging into traffic, as well as the necessary perception-reaction time to navigate the Intersection safely. (Kwasniak Decl. at ¶¶ 7.h.-7.v.) This evidence is sufficient to create a triable issue of material fact as to whether a dangerous condition existed at the Intersection that at least increased the risk of injury suffered by Decedent. Further, while “the occurrence or nonoccurrence of prior similar accidents at the same site is ‘relevant to the determination of whether a condition is dangerous,’” it is not determinative. (*Stack v. City of Lemoore* (2023) 91 Cal.App.5th 102, 119.)

Finally, Plaintiffs’ evidence of citizens’ prior complaints about the Intersection [see, Seabaugh Decl., Ex. M, Decl. of Tina Sartin, at ¶¶ 5-13, Exs. D-I], while not evidence that the Intersection was dangerous, “are relevant to the issue of whether City had notice of a potentially dangerous intersection.” (*Sun, supra*, 166 Cal.App.4th at 1188.) Therefore, Plaintiffs have established that triable issues of material fact exist as to whether a dangerous condition exists at the Intersection that City knew or should have known about. Accordingly, the motion is denied on this basis.

City next argues that Plaintiffs’ claims fail due to **design immunity** under C.C.P. § 830.6, which provides immunity to a public entity whenever there is prior approval of the design and the decision was one which a reasonable employee or legislative body could have reached. (*Moritz v. City of Santa Clara* (1970) 8 Cal.App.3d 573.) The rationale is to prevent a jury from reweighing the same factors considered by the public entity and second-guessing the wisdom of governmental design decisions. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 349-350.) A public entity claiming design immunity must establish three elements: (1) the injury was caused by the plan or design; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design. (*Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 66; see also, *Higgins v. Cal.* (1997) 54 Cal.App.4th 177, 185.)

“The first element, a causal relationship between the plan and the accident requires proof that the alleged design defect was responsible for the accident, as opposed to some other cause.” (*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 940.) A public entity may establish causation by relying on the allegations in the complaint that the design of the subject property caused the accident. (*Alvis v. County of Ventura* (2009) 1978 Cal.App.4th 536, 550.) Here, Plaintiffs allege that the design of the Intersection created a dangerous condition that caused the incident. (Complaint at ¶¶ 15-19.) Thus, the first element of design immunity is met.

The second element simply requires approval in advance by the legislative body or officer exercising discretionary authority of the construction. (*Grenier, supra*, 57 Cal.App.4th at 940.) “A detailed plan, drawn up by a competent engineering firm, and approved by a city engineer in the exercise of his or her discretionary authority, is persuasive evidence of the element of prior approval. (*Ibid.*) The third element requires substantial evidence of the reasonableness of the design. (*Id.* at 941.) “Generally, a civil engineer’s opinion regarding reasonableness is substantial evidence sufficient to satisfy this element.” (*Ibid.*; *Hefner v. County of Sacramento* (1988) 197 Cal.App.3d 1007, 1015 [“Ordinarily, the opinion of a civil engineer as to the reasonableness of a design constitutes ‘any’ substantial evidence sufficient to support a design immunity defense under section 830.6.”]) Gov. Code § 830.6 does not require a perfect design, and as long as reasonable minds can differ concerning whether the design should have been approved, the public entity is entitled to immunity. (*Ramirez v. City of Redondo Beach* (1987) 192 Cal.App.3d 515, 525; *Dobbs v. City of Los Angeles* (2019) 41 Cal.App.5th 159, 162; *Compton v. City of Santee* (1993) 12 Cal.App.4th 591, 597 [as long as there was a substantial basis on which a government official could conclude that the design was reasonable, “it is irrelevant that a contrary opinion might have been offered”]; *Grenier, supra*, 57 Cal.App.4th at 941 [if reasonable minds can differ whether the design should have been approved, the governmental entity must be granted immunity].) “[W]hether there is any substantial evidence of the reasonableness of the public entity’s approval of the plan or design, is a question statutorily reserved for the court, not a jury.” (*Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929, 946.)

In the present case, City presents the following evidence of design plans related to the Intersection:

- the original plans for the construction of the Intersection were approved by the City in 1959 [Decl. of Edward Lara (“Lara Decl.”) at ¶ 5, Ex. Z].
- in 1975, plans to modify the Intersection and add an asphalt bicycle lane were approved by the City [Lara Decl. at ¶¶ 6-7, Ex. AA, BB].
- in 1989, plans for street maintenance at the Intersection were approved by the City [Lara Decl. at ¶ 8, Ex. EE].
- in 2013, in response to multiple request for residents for a marked crosswalk at the Intersection, the City approved and installed a sign stating “Turning Traffic Must Yield to Pedestrians” before the Intersection on Victoria [Decl. of Gilbert Hernandez (“Hernandez Decl. at ¶ 12; Decl. of Dawna Fuller (“Fuller Decl.”) at ¶ 4; Decl. of Rock Miller, P.E. (“Miller Decl.”) at ¶ 44];
- in 2016, in response from a request from the Mayor’s office for the placement of a crosswalk at the Intersection, the City approved the removal of the above sign, and replaced it with a sign stating “Turning Vehicles with Right Arrow Yield to Pedestrians and Bicycles,” a white yield limit line, and “Stop Ahead” warning sign [Hernandez Decl. at ¶ 14; Fuller Decl. ¶ 8, Ex. Q; Miller Decl. at ¶ 46]; and
- in 2019, the City approved and implemented plans for arterial street maintenance that included signing and striping at the Intersection [Lara Decl. at ¶ 10, Ex. CC].

In response, Plaintiff presents evidence that none of the plans submitted by the City show the change at the Intersection from a four-way stop to the channelized, free-flow Right-Turn Lane with only a Yield (as opposed to a Stop) sign. (See, Seabaugh Decl., Ex. J, pp. 17:19-19:22, 28:9-29:23, 36:12-37:15, 43:18-44:18.)

Since there is no evidence that any design or plan approved by the City included the creation of the Right-Turn Lane requiring drivers to cross the bicycle lane, pedestrian crossway, and merge into traffic on Lincoln without a stop sign or crosswalk at the Intersection, which is what Plaintiffs contend created the dangerous condition [Kwasniak Decl. at ¶¶ 7.h.-7.v.], City fails to establish its right to design immunity. (*Cameron v. State of California* (1972) 7 Cal.3d 318, 326, questioned on other grounds in *Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 75.) Accordingly, the motion is denied on this ground.

Finally, City contends it is immune from liability to Plaintiffs under the **recreational trail immunity** provided under Gov. Code, § 831.4. Government entities are shielded from liability for injury caused by a condition of any recreational trail or unpaved access road to scenic or recreational areas. This immunity overrides any liability arising from a “dangerous condition” on such trails or roads. (Gov. Code § 831.4; *Montenegro v. City of Bradury* (2013) 215 Cal.App.4th 924, 929-931; *Reed v. City of Los Angeles* (2020) 45 Cal.App.5th 979, 981-984; *Arvizu v. City of Pasadena* (2018) 21 Cal.App.5th 760, 766-769; see *Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391, 1400 [dual use of park trail for recreational purposes and to provide maintenance access to various park locations did not circumvent immunity where bicyclist killed in collision with maintenance truck]; compare *Toeppe v. City of San Diego* (2017) 13 Cal.App.5th 921, 931 [“This is not a case about trails. It is about trees.”]; *Garcia v. American Golf Corp.* (2017) 11 Cal.App.5th 532, 543-547 [private golf course next to a public street].)

“The plainly stated purpose of immunity for recreational activities on public land is to encourage public entities to open their property for public recreational use, because ‘the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.’” (*Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 417 (quoting Legis. Committee com., 32 West’s Ann.Gov.Code (1980 ed.) § 831.2, p. 293). Governmental immunity from liability is not an affirmative defense but is jurisdictional. (*Richardson-Tunnell v. School Ins. Program for Employees* (2007) 157 Cal.App.4th 1056, 1061).

Gov. Code, § 831.4 provides:

A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:

- (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3)

public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.

(b) Any trail used for the above purposes.

(c) Any paved trail, walkway, path, or sidewalk on an easement of way which has been granted to a public entity, which easement provides access to any unimproved property, so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of any condition of the paved trail, walkway, path, or sidewalk which constitutes a hazard to health or safety. Warnings required by this subdivision shall only be required where pathways are paved, and such requirement shall not be constructed as a standard of care for any unpaved pathways or roads.

“The trail immunity provided in subdivision (b) of the statute extends to trails that are used for the activities listed in subdivision (a), and to trails that are used solely for access to such activities. [Citation.] The immunity applies whether or not the trail is paved.” (*Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078, 49 Cal.Rptr.3d 631 [paved walkway through a dog park qualified as a “recreational trail”]; *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1335-1338 [“a paved class I bikeway is a ‘trail’ within the meaning of section 831.4” and a city had “absolute immunity under [section 831.4] from liability for injuries suffered by a bicyclist who collided with a chain link fence immediately after exiting a class I bikeway located” along a river”]; *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1100-1103; *Burgueno v. Regents of Univ. of Calif.* (2015) 243 Cal.App.4th 1052, 1058-1061 [immunity applied to paved bike path used for recreation notwithstanding its primary use of allowing bicycle transportation through university campus separate from automobile traffic]; *Loeb v. County of San Diego* (2019) 43 Cal.App.5th 421, 432-437 [concrete pathway leading to restroom in park qualified as “recreational trail” because the pathway, restroom, and adjacent campground were all integrally related and used for recreational purposes].)

“Whether a property is considered a ‘trail’ under section 831.4 turns on ‘a number of considerations,’ including (1) the accepted definitions of the property, (2) the purpose for which the property is designed and used, and (3) the purpose of the immunity statute.” (*Lee, v. Department of Parks & Recreation* (2019) 38 Cal.App.5th 206, 211, quoting *Amberger-Warren, supra*, 143 Cal.App.4th at pp. 1078-1079, 1077, [extending trail immunity to “a paved pathway in an urban park setting”].) Although this “is ordinarily viewed as an issue of fact [citation], it becomes one of law if only one conclusion is possible.” (*Montenegro, supra*, 215 Cal.App.4th at p. 929.)

City presents evidence that the Victoria Avenue Bikeway, aka the Victoria Trail, is a paved bicycle path along Victoria that was planned as a recreational trail, and it crosses the Intersection. (Decl. of Alisa Sramala at ¶¶ 4-6.) It also contends that Decedent was walking to or from the Victoria Trail when she crossed the Intersection. However, the evidence cited does not actually show that Decedent was walking to or from the Victoria

Trail. (See, UMF # 86.) Additionally, Plaintiffs present evidence that a driver who witnessed the incident saw Decedent walking on the sidewalk along Victoria [Seabaugh Decl., Ex. A, pp. 13:11-16, 17:16-21:10, 27:16-28:10], and even City officials agree that the sidewalks adjacent to the Intersection and the Intersection itself are not trails. (Seabaugh Decl., Ex. C, pp.205:19-206:3, Ex. F, pp. 58:1-22, 62:1-63:9, Ex. H, pp. 22:19-23:1, Ex. L, p., 50:18-24.) Accordingly, City fails to establish that it is protected by trail immunity, and the motion should therefore be denied.

City argues that Plaintiffs' **wrongful death and C.C.P. § 377.34 claims** fail because there is no statute upon which to base liability. (Motion, p. 21:1-8.) However, as discussed above, a triable issue of material fact exists as to whether the Intersection created a dangerous condition of public property, for which City can be held liable. As the wrongful death/C.C.P. 377.34 causes of action are based on the same facts, a triable issue of material fact exists as to these causes of action as well.

Design Services moves for summary judgment/adjudication of City's claims for express indemnity and declaratory relief, arguing that, as a matter of law, it has no duty to defend or indemnify City under the Consultancy Agreement. It first argues that Plaintiffs do not assert any claims related to lighting, and the pleadings frame the issues on summary judgment, so as a matter of law, it has no duty to defend or indemnify. (Points and Authorities iso Motion, p. 10:8-12.)

"On motion for summary judgment, the issues are framed by the pleadings since it is those allegations to which the motion must respond." (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640.) In addition, "material facts" that preclude the entry of summary judgment or summary adjudication are those that relate to the issues in the case as framed by the pleadings. (*Zamora v. Security Industry Specialists, Inc.* (2021) 71 Cal.App.5th 1, referencing *Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 67.)

In the Complaint here, Plaintiffs allege the existence of a dangerous condition at the Intersection due to multiple factors, including "inadequate visibility, including lacking a reasonable line of sight." (Complaint at ¶¶ 15(e) and (g).) Additionally, in discovery responses, Plaintiff stated that one of the factors contributing to the dangerous condition at the Intersection was that "the corner where the subject incident occurred had insufficient lighting on the roadway. The provided lighting at the subject location was inconsistent with lighting with other homogenous intersections." (Decl. of Jessica Rico-Zuber ["Rico-Zuber Decl."], Ex. C, nos. 36-46, 48-53.) Therefore, the sufficiency of the lighting at the Intersection is at issue in this case.

Design Services also attack the merits of the indemnity and declaratory relief claims, arguing that it has no duty to defend or indemnify City under their contract.

Indemnity refers to the obligation resting on one party to make good a loss or damage another party has incurred." (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal. 4th 1151, 1157.) In an indemnity action, the trier of fact must determine whether the indemnitee was held legally responsible for damages to a third party, whether the indemnitor's conduct was a substantial factor in causing the harm, and if so, the

indemnitee and indemnitor's percentages of responsibility. (*Great Western Drywall, Inc. v. Interstate Fire & Casualty Co.* (2008) 161 Cal. App. 4th 1033, 1041.) "Express indemnity refers to an obligation that arises by virtue of express contractual language establishing a duty in one party to save another harmless upon the occurrence of specified circumstances." (*Prince, supra*, 45 Cal.4th at 1158 [citation and internal quotation marks omitted]; see also, Civil Code § 2778(4) [an indemnitor under an express indemnity agreement is bound on the request of the indemnitee, to defend actions or proceedings brought against the latter in respect to the matters embraced in the agreement].) Unlike implied indemnity, express indemnity is not subject to joint legal obligation to an injured party; rather, it is enforced in accordance with the terms of the controlling agreement. (*Prince, supra*, 45 Cal.4th at 1158.) A cause of action for express indemnity "accrues when the indemnitor sustains the loss by paying the money sought to be indemnified from the indemnitee." (*Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 481.)

Indemnity and/or defense obligation agreements are construed under the same rules as govern the interpretation of other contracts. "The overriding goal of contract interpretation is to give effect to the mutual intentions of the parties at the time of contracting, 'so far as the same is ascertainable and lawful.'" (*South Pacific Transportation Co. v. Santa Fe Pacific* (1999) 74 Cal.App.4th 1232, 1240 [citing Civ. Code §1636].) The language of a contract governs its interpretation, if said language is clear, unambiguous and does not involve absurdity. (Civ. Code § 1638; *National Marble Co. v. Bricklayers & Allied Craftsmen* (1986) 184 Cal.App.3d 1057, 1067; *Hot Rods, LLC v. Northrop Grumman Systems Corp.* (2015) 242 Cal.App.4th 1166, 1178.) If two or more interpretations of a contract provision are reasonable it will be considered ambiguous. (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 878.) In order to resolve ambiguities, the court generally looks at the ordinary meaning of the words of the contract, the circumstances under which it was made and the intent of the parties. (*Ibid.*) If the uncertainty is still not resolved, the contract must be interpreted most strongly against the party who prepared it. (*Badie v. Bank of America* (1999) 67 Cal.App.4th 779, 801.)

On September 9, 2016, Design Services and City entered into a Professional Consultant Services Agreement for City-Wide Street Light LED Conversion Program (the "Consulting Agreement"). (UMF # 4.) Pursuant to the Consultancy Agreement, Design Services was to prepare a plan for the City "to upgrade its streetlights to the new LED technology." (FACC, Ex. B, Scope of Work (Ex. A), p. 3.) The Consultancy Agreement contains the following indemnity and defense provisions:

**11.2 Defense Obligation for Design Professional Liability.** Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of

the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party. Consultant agrees to provide this defense immediately upon written notice from the City, and with well-qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of consultant and shall survive the termination of Consultant's Services under this Agreement.

**11.3 Indemnity for Design Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect and hold harmless the City and the City's employees, officers, managers, agents, and Council Members ("Indemnified Parties") from and against any and all claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fines and penalties, liabilities or losses of any kind or nature whatsoever to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

**11.4 Defense Obligation for Other Than Design Professional Liability.** Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings which arise out of, or relate to, or are in any way connected with: 1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Agreement by the Consultant. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any or all of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be Defended are responsible, in whole or in part, for any loss, damage or injury. Consultant agrees to provide this defense immediately upon written notice from the City, and with well-qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of consultant and shall survive the termination of Consultant's Services under this Agreement.

**11.5 Indemnity for Other Than Design Professional Liability.** Except as to the sole negligence or willful misconduct of the City, Consultant agrees to indemnify, protect and hold harmless the Indemnified Parties from and

against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with the performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

(UMF # 11; FACC, Ex. B at §§ 11.2-11.5 [bold in original].)

Pursuant to the clear language, sections 11.2 and 11.3 create a duty in Design Services to defend and indemnify City against claims that arise out of or relate to “the negligence, recklessness or willful misconduct of Consultant.” (UMF # 11; FACC, Ex. B at §§ 11.2, 11.3.) However, City admitted in discovery that Design Services was not negligent or reckless, and it did not engage in any willful misconduct. (UMF ## 12-14; Design Services Compendium of Exhibits [“COE”], Ex. C, nos. 49-51.) Thus, Design Services has met its burden of establishing it had no duty to defend or indemnify City pursuant to sections 11.2 and 11.3 of the Consultancy Agreement, and City has provided no evidence to the contrary. (See, UMF ## 12-14.) However, sections 11.4 and 11.5 also provide defense and indemnity obligations, so those provisions must be analyzed as well.

Section 11.4 creates a duty to defend City against claims that arise out of or relate to “1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Agreement by the Consultant.” (FACC, Ex. B at §11.4.) Section 11.5 creates a duty to indemnify for claims that arise out of or relate to “the performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement.” (FACC, Ex. B at § 11.5.)

Design Services presents evidence that the scope of work under the Consultancy Agreement does not include “designing, servicing, maintaining, repairing, operating or otherwise deciding where to place lights, but addresses conversion to a modern technology,” and “specifically excluded tasks such as repairs, renovations or modifications to lighting power sources and poles.” (UMF ## 5-6.) Additionally, City admitted in discovery that under the Consultancy Agreement, Design Services had no responsibilities regarding the design, maintenance, repair, or testing of the lighting conditions at the Intersection [UMF ## 15-18]; it was not responsible for moving or adding any light poles [UMF ## 19-20]; it was not responsible for the design or lighting conditions at the Intersection, or for determining or ensuring the sufficiency of the

lighting at the Intersection [UMF # 21-25;<sup>4</sup> COE, Ex. 6, nos. 41-42]; City was responsible for the maintenance, inspection, and repair of the streetlights at the Intersection [UMF ## 28, 37-38, 43-45]; City had the sole authority and discretion to modify and/or repair the lighting at the Intersection [UMF # 29]; City had full responsibility for ensuring the proper functioning of the lighting at the Intersection [UMF # 31]; and the design and installation of all streetlights at or near the Intersection was done by the original developer of the area, and the change of the streetlights to LED lights was done by a third-party and occurred after the accident [UMF ## 27, 42]. This evidence is sufficient to establish that Design Services had no duties and performed no services related to the sufficiency of the lighting at the Intersection, which is the only issue raised by Plaintiffs. (See, Rico-Zuber Decl., Ex. C, nos. 36-46, 48-53, Ex. E, p. 9.) As Plaintiffs' claims do not arise out of or relate to any "services, work, activities, operations or duties" provided by Design Services under the Consultancy Agreement, Design Services has established that it has no duty to defend or indemnify City against Plaintiffs' claims. City has presented no evidence to the contrary, so Design Services' motion is granted.

**2.**

CASE #	CASE NAME	HEARING NAME
CVRI2203266	HARB VS COUNTY OF RIVERSIDE	MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION

**Tentative Ruling:** See Above.

**3.**

CASE #	CASE NAME	HEARING NAME
CVRI2203266	HARB VS COUNTY OF RIVERSIDE	MOTION TO BIFURCATE

**Tentative Ruling:** Deferred for Trial Judge.

**4.**

CASE #	CASE NAME	HEARING NAME
CVRI2406268	OLMEDO VS CORONANDO	PETITION RE: ARBITRATION AWARD

**Tentative Ruling:** Granted.

---

<sup>4</sup> While City states that this fact is disputed, City did, in fact, admit it in discovery. (See, COE, Ex. 6, nos. 41-42.) Additionally, the evidence cited as support for the dispute is only Plaintiffs' discovery responses, in which Plaintiffs claim that one of the factors contributing to the dangerous condition at the Intersection was that "the corner where the subject incident occurred had insufficient lighting on the roadway," and the "lights were not properly working in the area and had not been changed and/or repaired." (Rico-Zuber Decl., Ex. C, nos. 36-46, 48-53, Ex. E, p. 9.) This evidence in no way disputes City's admission that Design Services was not responsible for determining or ensuring the sufficiency of the lighting at the Intersection.

5.

CASE #	CASE NAME	HEARING NAME
CVRI2406695	SOLORZANO VS HYUNDAI MOTOR AMERICA	MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFFS' REQUEST FOR ADMISSIONS, SET ONE AND REQUEST FOR SANCTIONS

**Tentative Ruling:** Off-Calendar. Motion Withdrawn.

6.

CASE #	CASE NAME	HEARING NAME
CVRI2406695	SOLORZANO VS HYUNDAI MOTOR AMERICA	MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE AND REQUEST FOR SANCTIONS

**Tentative Ruling:** Off Calendar. Motion Withdrawn.

7.

CASE #	CASE NAME	HEARING NAME
CVRI2406695	SOLORZANO VS HYUNDAI MOTOR AMERICA	MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFFS' FORMS INTERROGATORIES, SET ONE AND REQUEST FOR SANCTIONS

**Tentative Ruling:** Off Calendar. Motion Withdrawn.

8.

CASE #	CASE NAME	HEARING NAME
CVRI2500063	THE PEOPLE OF THE STATE OF CALIFORNIA VS YANG & CHANG INTERNATIONAL	MOTION TO APPOINT RECEIVER

**Tentative Ruling:** GRANT. NO OPPOSITION FILED. SERVICE QUESTIONS  
REMAIN.

9.

CASE #	CASE NAME	HEARING NAME
CVRI2503303	GIPSON EL VS 2017-2 IH BORROWER LP	MOTION TO STRIKE PORTIONS OF THE FIRST AMENDED COMPLAINT

**Tentative Ruling:** GRANTED. Notice of Non-Opposition filed.

10.

CASE #	CASE NAME	HEARING NAME
CVRI2503303	GIPSON EL VS 2017-2 IH BORROWER LP	DEMURRER ON 1ST AMENDED COMPLAINT

**Tentative Ruling:** GRANTED. Notice of Non-Opposition filed.