Tentative Rulings for September 11, 2024
Department 6

To request oral argument, you must notify Judicial Secretary Charmaine Ligon 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 https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. 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 6 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, 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.**

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number:

- 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: 161 830 3643

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.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php.

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.

CVRI2301054	BAZILE vs CITY OF RIVERSIDE	Motion for Summary Judgment on Complaint for Other Personal Injury/Property Damage/Wrongful Death Tort (Over $25,000) of EDNA BAZILE

Tentative Ruling:

FACTUAL/PROCEDURAL CONTEXT

This is a personal injury action. Plaintiff Edna Bazile ("Plaintiff") alleges that on August 26, 2022, she tripped and fell on an uneven, raised portion of a sidewalk outside her house. Plaintiff's complaint was filed on 3/2/2023. Relevant to this motion, the complaint brings a single cause of action for premises liability against Defendant City of Riverside ("City"). Plaintiff also brings a cause of action for general negligence against Orange Crest HOA, Action Properties Management, Ali Zolfaghari, and Stephanie Zolfaghari.

Procedurally, the City filed this Motion for Summary Judgment on 4/4/2024. Hearing on the MSJ was set for 6/18/2024. Plaintiff filed an Ex Parte on 5/28/2024 requesting that the Court continue the hearing on the MSJ so that the Plaintiff could conduct depositions (which the Ex Parte indicates were completed on 5/27/2024) and so that Plaintiff's retained expert could review the deposition transcripts of the depositions conducted on 5/27/2024. Plaintiff also requested additional time to conduct additional discovery based on the information disclosed at the aforementioned depositions. The Court agreed with Plaintiff and allowed the continuance, resetting the hearing on the MSJ from 6/18/2024 to 7/31/2024. On 7/8/2024 the parties filed a stipulation to continue the 7/31/2024 hearing on this motion to allow Plaintiff more time to prepare her opposition. The Court allowed the continuance and reset the hearing on the MSJ to 9/11/2024. On 9/5/2024, the parties filed another stipulation to continue the hearing a third time indicating that the parties agreed to mediate the matter and have a date set for 10/16/2024 with Tim Corcoran. Plaintiff has not filed an opposition to the MSJ.

EVIDENCE CONSIDERED BY THE COURT

- Request for Judicial Notice of: (A) Plaintiff's Complaint; (B) City's Answer; (C) City's Cross-Complaint; (D) Google Maps Photo of the sidewalk at issue; (E) a second Google Maps Photo of sidewalk at issue. The request for judicial notice IS granted.
- Declaration of City Attorney Nicholas J. Tomic.
- Declaration of David Webb.
- Declaration of Tina Grey.
- Declaration of William McKinley.

LEGAL ANALYSIS

MSJ Standard

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.) 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.) In response, 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. (*Aguilar, supra*, 25 Cal.4th at 849.)

Premises Liability

The only cause of action brought against the City is premises liability. The complaint alleges the sidewalk at issue constituted a dangerous condition of public property. Gov. Code § 835 sets out the exclusive conditions under which a public entity may be held directly liable for injuries caused by a "dangerous condition" of public property. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132.)

"Persons who maintain walkways – whether public or private – are not required to maintain them in absolutely perfect condition." (*Cadam v. Somerset Gardens Townhouse HOA* (2011) 200 Cal.App.4th 383, 388; *Strathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 566; *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 734.) A public entity may be held liable only if all of the following elements are satisfied: (1) the condition must be one that creates a substantial risk of injury when the property or adjacent property is used with due care in a reasonably foreseeable manner; (2) the condition must have existed at the time of the injury; (3) the injury must have been "proximately caused" by the condition; (4) the condition must have created a "reasonably foreseeable" risk of the kind of injury suffered; and (5) either (i) the condition must have been created by a negligent or wrongful act or omission of an employee within the scope of his or her public employment, or (ii) the entity must have had "actual or constructive notice" of the condition sufficiently before the injury to have taken measures to protect against the risk involved. (Gov. Code §§ 830(a), 835; *City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139.)

City argues: (1) they had no actual or constructive notice; (2) that the defect was trivial; and (3) Plaintiff cannot prove she used due care when using the sidewalk at the time of the incident.

Trivial Defect

A "dangerous condition" is defined as a condition of property that creates 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. (Gov. Code § 830(a); see also, Gov. Code § 830.2.) Thus, the definition of "dangerous condition" expressly excludes a condition that creates trivial risks. (Gov. Code § 830(a).)

"Several decisions have found height differentials of up to one and one-half inches trivial as a matter of law. [Citations.]" (*Stathoulis, supra*, 164 Cal.App.4th at 568; see, *Camden v. Somerset Gardens Townhouse HOA* (2011) 200 Cal.App.4th 383, 389 [unobstructed walkway separation with a height differential between 3/4 and 7/8 of an inch was a trivial defect, as a matter of law]; *Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927 citing, *Barrett v. City of Claremont* (1953) 41 Cal.2d 70, 74 [sidewalk defects greater than 3/4 of an inch were trivial as a matter of law]; *Fielder, supra*, 71 Cal.App.3d at 734 [same]; *Huckey v. City of Temecula* (2019) 37 Cal.App.5th 1092, 1108 [height differential between 9/16 of an inch and 1.2185 inches was a trivial defect]; and *Nicholson v. City of Los Angeles* (1936) 5 Cal.2d 361, 367-368 [1 1/2 inch sidewalk deviation was trivial defect].)

Further, the question of whether a crack in a public walkway on which a pedestrian tripped was trivial does not rest solely on the size of the crack, but also considerations such as whether the walkway had broken pieces or jagged edges, whether debris or other items obscured the defect, and whether the light or weather conditions obstructed the pedestrians view. (*Caloroso, supra*, 122 Cal.App.4th 922, 927; *Fielder*, *supra*, 71 Cal.App.3d at 734.)

Here, City presents evidence that on March 11, 2024, the height of the sidewalk uplift was 1 and ¼ inches. (Separate Statement of Undisputed Material Facts ("SSUMF"), Fact 25; Declaration of Webb, ¶¶ 16-21.) City presents additional evidence from an arborist that inspected the area as

well, identifying the tree that caused the sidewalk uplift. (SSUMF, Facts 41-41; Declaration of McKinley, ¶¶ 3-5.) Mr. McKinley provides unchallenged expert testimony that the sidewalk uplift would have been substantially smaller when Plaintiff fell on August 26, 2022. (SSUMF, Facts 48 and 51; Declaration of McKinley, ¶ 10.) To that end, it is Mr. McKinley's expert opinion that the sidewalk uplift was less than ½ inch when Plaintiff fell. (SSUMF, Fact 54; Declaration of McKinley, ¶¶ 11-12.) Additionally, there is no evidence that at the time of the fall, there were any other circumstances that would make such a small uplift (even if it was 1 and ¼ inches at the time of Plaintiff's fall) anything but trivial. (SSUMF, Fact 34, Plaintiff's Deposition transcript at pg. 20, lines 3-7 – the area where she fell was "very clean."; SSUMF, Fact 24, Declaration of Webb ¶¶ 12 – 21 – "The sidewalk in this location is flat and planar. There are no nearby hills. The sidewalk did not have any broken pieces or jagged edges. No dirt, debris, or other material obscured the view of the sidewalk area, nor was there any condition that hid the slight elevation of the sidewalk from pedestrian traffic.")

There is no competing and conflicting evidence of the size, nature and quality of the defect, or the circumstances surrounding the plaintiff's injury that would raise triable factual questions as to whether the defect or conditions or the surface presented a danger to pedestrians exercising ordinary care. (*Strathoulis, supra*, 164 Cal.App.4th at 569.) **The motion IS granted.**

Notice and Due Care

Because City established the defect was trivial as a matter of law and Plaintiff has not filed an opposition challenging same, the arguments regarding notice and due care are moot.

SUMMARY

GRANT the requests for judicial notice. GRANT the motion.

2.

CVRI2306682	GONZALEZ vs SWIPEJOBS LLC	Motion to Compel Arbitration by SWIPEJOBS LLC

Tentative Ruling:

This motion is unopposed. Motion to Compel Arbitration is granted in all respects. Proposed order submitted has been signed by the Court. The action is hereby STAYED pending completion of arbitration.

3.

CVRI2402203	BROOKS vs VOLKSWAGEN GROUP OF AMERICA, INC.	Motion to Compel by LAVANT D. BROOKS

Tentative Ruling:

This is a lemon law action involving alleged unrepairable structural, transmission and electrical defects in a 2023 Volkswagen ID.4, purchased by Plaintiff and manufactured and/or distributed by defendant General Motors, Inc. On 4/22/24, Plaintiff filed the Complaint for violation of the Song-Beverly Consumer Warranty Act.

On 8/14/24, Plaintiff served requests for production, set one ("RFPs"). Defendant timely responded, but Plaintiff contends the responses remain deficient despite meet and confer efforts. Plaintiff now moves to compel further responses to all RFP, 1-31. Defendant opposes, arguing that Plaintiff failed to sufficiently meet and confer in good faith, the responses are proper, its objections are valid and it has produced documents. In the Reply, Plaintiff argues that the scope

of discovery in Song-Beverly cases permit the documents sought by Plaintiff, he properly met and conferred and the objections are without merit

Analysis

A party may move for an order to compel a further response if it deems the responding party's objections are without merit or too general. In a motion to compel further responses as to document requests, the moving party must state specific facts demonstrating good cause justifying the discovery sought. (CCP §2031.310(b)(1).) To establish good cause, the moving party must demonstrate relevance and specific facts justifying discovery. (*Kirkland v. Superior Court (Guess? Inc.)* (2002) 95 Cal.App.4th 92, 98.) The burden to show good cause for production "is met simply by a fact-specific showing of relevance." *(Tbg Ins. Servs. Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Then, the burden shifts for the opposing party to justify its objections. (*Kirkland,* supra, 95 Cal.App.4th at 98.)

Meet & Confer

Importantly, before filing a motion to compel a further response to RFPs, the moving party must engage in a reasonable and good faith attempt to resolve informally each issue set forth in the motion and must file an appropriate declaration with the motion. (CCP §§ 2016.040, 2031.310(b)(2).) The purpose of the meet and confer requirement is to force lawyers to reexamine their positions, and to narrow their discovery disputes to the irreducible minimum, before calling upon the court to resolve the matter. (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016-17.) The factors in determining whether a party made a "reasonable" and "good faith" attempt to resolve the issues informally may include the size of case, complexity of discovery, previous relations with opposing counsel, the nature of the issues, the type and scope of discovery requests, the time available before the motion filing deadline and the prospects for success of the meet and confer. (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431. *See also Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294 [no exception based on speculation that prospects for informal resolution may be bleak].)

Here, Plaintiff's counsel sent a meet-and-confer letter on 6/13/24, identifying various deficiencies with each of the discovery items at issue in this motion. (Sogoyan Dec. ¶ 21.) On 6/25/24, Plaintiff's counsel sent another meet-and-confer letter, and asked Defendant to respond by 7/2/24. (*Id.* at ¶ 22 .) However, Plaintiffs filed the instant motion on 7/2/24. Moreover, on 7/5/24, Defendant served its confidential documents containing its policies and procedures responsive to Plaintiffs' RPFs subject to the Stipulation. (Kim Dec. ¶ 8.)

Based on what has been presented, the parties never substantively met and conferred regarding the alleged deficiencies in the RFPs at issue. Nor has there been any meet and confer after Defendant produced supplemental documents regarding its policies and procedures. Thus, the Court will continue the motion and order the parties to further meet and confer. At least ten days prior to the continued hearing, the parties are ordered to file a joint declaration identifying any discovery that is still in dispute and/or the status of the dispute regarding the protective order.

Hearing on the motion is continued to 10/21/2024 at 8:30 a.m. in Department 6.

4.

CVRI2403062	DOE vs CORONA-NORCO UNIFIED SCHOOL DISTRICT	Demurrer on Complaint for Other Non-Personal Injury/Property Damage/Wrongful Death Tort (Over $35,000) of JANE DOE as to Cause(s) of Action Plaintiff's Second Cause of Action

		of Complaint by CORONA-NORCO UNIFIED SCHOOL DISTRICT

Tentative Ruling:

This case arises from the alleged inappropriate sexual interactions by Chad Costello, a teacher, with Plaintiff Jane doe ("Plaintiff"), a student at Eleanor Roosevelt High School. (Complaint ¶¶ 7-36.) Defendant Corona-Norco Unified School District ("CNUSD") is a school district that maintains, operates, employs, supervises, and oversees the school district where Eleanor Roosevelt High School is located. (*Id.* at ¶ 7.)

On 5/30/24, Plaintiff filed her Complaint, alleging (1) negligence and (2) premises liability.

CNUSD now demurrers to the premises liability claim contending no dangerous condition of public property has been pled. Plaintiff contends she has properly pled the claim.

Analysis

I. Standard

A general demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (CCP, § 430.10(e).) In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.) However, a demurrer does not admit contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 713.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

II. Dangerous Condition of Public Property

CNUSD demurs to the cause of action for dangerous condition of public property on the grounds that Plaintiff has failed to state facts sufficient to identify a physical defect in CNUSD's property itself, as required by Gov. Code § 835.

A public entity, like CNUSD, is not liable for an injury arising out of an act or omission of the public entity or its employee except as provided by statute. (Gov. Code § 815(a).) Gov. Code § 835 provides that 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 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, a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Gov. Code § 835.) The element at issue in this case is the existence of a dangerous condition.

"A dangerous condition exists when public property 'is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself,' or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users. (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347 [quoting *Bonanno v. Central Contra Costa Transit Auth.* (2003) 30 Cal.4th 139, 148–49].) "'A claim alleging a dangerous condition may not rely on generalized allegations but must specify in what manner the condition constituted a dangerous condition.'" (*Cerna*, *supra*, 161 Cal.App.4th at 1347 [quoting

Brenner v. City of El Cajon (2003) 113 Cal.App.4th 434, 439].) “A plaintiff’s allegations, and ultimately the evidence, must establish **a physical deficiency in the property itself**.” (*Cerna*, *supra*, 161 Cal.App.4th at 1347 [emphasis added].)

In the Complaint, Plaintiff alleges that CNUSD created a dangerous condition by allowing teacher to have direct, “one-on-one access to students on the property, often in dark, secluded areas of the school’s theater facilities, and that through his role as teacher, supervisor, instructor and/or mentor, he was able to inappropriately touch minor students, including Plaintiff.” (Complaint ¶ 32.) These allegations, however, are not sufficient to state a cause of action against CNUSD under Gov. Code § 835.

As the California Supreme Court explained, “[l]iability under [Gov. Code § 835] for maintaining public property in a dangerous condition depends, however, upon **the existence of some defect in the property itself** and the existence of a causal connection between that defect and the plaintiff’s injury.” (*Zelig v. Cnty. of Los Angeles* (2002) 27 Cal.4th 1112, 1138 [emphasis added].) Here, Plaintiff has failed to allege any physical defect in the school premises which increased the risk of being sexually abused. Plaintiff’s allegations complain of dark areas in a theater which are not physical defects in the property. (*See id.* at 1138–39, 1141 [finding that Gov. Code § 835 does not provide a statutory basis for liability because the plaintiffs cannot point to any defective aspect of the purely physical condition of the property].) Absent allegations of a physical defect in CNUSD’s property itself, Plaintiff’s cause of action for dangerous condition fails. **Accordingly, the Court sustains the Demurrer with leave to amend within 21 days of this order.**