RIZIO LIPINSKY
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April 17, 2024

**Via True Filing**

Jorge Navarette, Clerk/Executive Officer of the Court
Supreme Court of California
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102

Re: Downey (Jayde) v. City of Riverside
CA Supreme Court Case No. S280322

Dear Mr. Navarette:

In the matter of the appeal of Downey v. Riverside/Savacherian, I believe this might need to be brought to the attention of the Court, as it may have an effect on how the Court wishes to proceed with this case:

As the Court already knows, Malyah Vance is Downey's daughter. Both are plaintiffs below, but Downey is the only appellant. Downey's NIED claim is based on Vance's personal injuries that were caused by the acts and omissions of Riverside, Sevacherian and the driver of the other car, Martin.

The 'related' case of Vance v. Riverside/Sevacherian and Martin continues to litigate in the courts below because grounds did not appear to exist to request a stay in the Vance (personal injury) claim pending this Court's review of the Downey (NIED) claim. Most recently, the trial court ordered summary judgment in favor of both defendants/appellees in the Vance claim. The trial court ruled that Riverside nor Sevacherian were legally responsible for Vance's injuries. Parenthetically, I was also recently notified that the pro per defendant (Martin), who appeared but who has refused to participate in the underlying litigation in any meaningful capacity, has filed a Chapter 7 bankruptcy petition. A copy of that petition is also attached.

It would seem to follow that Riverside and Sevacherian may be entitled to raise the judgment in the Vance claim to collaterally estop the Downey NIED claim. Copies are attached of the proposed judgments in the Vance matter.

While Vance will appeal from the order/inchoate judgment against her, the viability of Downey's appeal to this Court could be tenuous or premature. Downey would certainly like to have her case determined by this Court without delay, but it seems prudent to notify the Court of these developments. If I selected an inappropriate or incorrect vehicle to notify the Court, I apologize.

The situation is unusual, and my research failed to disclose a particular means by which to get this type of information into the proper hands.

Sincerely,

RIZIO LIPINSKY LAW FIRM PC

ERIC I. RYANEN

EIR/mm

Enclosures: Martin Bankruptcy Petition
Proposed Judgment (Sevacherian)
Proposed Judgment (City)

| Information to identify the case: | | |
|---|---|---|
| Debtor 1: | Evan Theodore Martin<br>First Name Middle Name Last Name | Social Security number or ITIN: 542–53–1835<br>EIN: __–_____ |
| Debtor 2:<br>(Spouse, if filing) | First Name Middle Name Last Name | Social Security number or ITIN: ____<br>EIN: __–_____ |
| United States Bankruptcy Court: | District of Oregon | Date case filed for chapter: 7 3/30/24 |
| Case number: | 24–60788–tmr7 | |

Official Form 309A (For Individuals or Joint Debtors)

# Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline 12/20

**For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.**

**This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read all pages carefully.**

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at https://pacer.uscourts.gov).

**The staff of the bankruptcy clerk's office cannot give legal advice.**

**To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.**

**Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.**

| | About Debtor 1: | About Debtor 2: |
|---|---|---|
| 1. **Debtor's full name** | Evan Theodore Martin | |
| 2. **All other names used in the last 8 years** | | |
| 3. **Address** | 232 Talent Ave., #E–60<br>Talent, OR 97540 | |
| 4. **Debtor's attorney**<br>Name and address | MATTHEW A CASPER<br>POB 12829<br>Salem, OR 97309 | Contact phone (503) 362–9393 |
| 5. **Bankruptcy trustee**<br>Name and address | Candace Amborn<br>POB 580<br>Medford, OR 97501–0214 | Contact phone (541) 858–9591 |

**For more information, see pages 2 & 3 >**

| | | |
|---|---|---|
| **6. Bankruptcy clerk's office**<br>Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov. | 405 E 8th Ave #2600<br>Eugene, OR 97401 | Office Hours 9:00 a.m. – 4:30 p.m.<br>Contact phone 541-431-4000<br>Date: 3/30/24 |
| **7. Meeting of creditors**<br>Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so. | **May 13, 2024 at 03:00 PM**<br>The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket. Photo ID is required. Debtors must also provide proof of reported social security numbers (for example, social security card; medical insurance card; pay stub; W-2 form; IRS form 1099; or Social Security Admin.report). | Location:<br>**Telephone 341 meeting. Dial 877-260-5738, and enter passcode 1490579.** |
| **8. Presumption of abuse**<br>If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances. | The presumption of abuse does not arise. | |
| **9. Deadlines**<br>The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines. See line 13 for other important deadlines. | **File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:**<br>**You must file a complaint:**<br>• if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or<br>• if you want to have a debt excepted from discharge under 11 U.S.C § 523(a)(2), (4), or (6).<br>**You must file a motion:**<br>• if you assert that the discharge should be denied under § 727(a)(8) or (9). | **Filing deadline: 7/12/24** |
| | **Deadline to object to exemptions:**<br>The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection. | **Filing deadline:** 30 days after the *conclusion* of the meeting of creditors |
| **10. Proof of claim**<br>Please do not file a proof of claim unless you receive a notice to do so. | No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline. | |
| **11. Creditors with a foreign address** | If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case. | |
| **12. Exempt property** | The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at https://pacer.uscourts.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9. | |

| | | |
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| **13.** | **Notices Re Proposed Dismissal of Case/Undue Hardship Presumption; and Abandonment of Debtor's Residence (Real Property)** | This case may be dismissed without further prior notice if the debtors fail to complete the meeting of creditors, timely file any documents, or make fee payments ordered by the Court, unless within 21 days of the date in line 6 a party in interest files a written objection to dismissal, setting forth specific grounds, with the Court and sends copies to the debtors' attorney (or debtors if pro se) and trustee.<br><br>Any presumption of undue hardship that may exist in a reaffirmation agreement filed by the debtors shall remain in effect until the effective date of any discharge order entered in this case unless a party in interest objects by **7/12/24**.<br><br>At least 7 days prior to the date set in line 7 for the meeting of creditors, any party in interest who objects to abandonment of the debtors' residence (real property) must file with the Court a written objection and serve a copy on the debtors and debtors' attorney. If no timely objection is filed, the trustee can abandon the property upon request of the debtors or mortgage creditor without any further notice requirement. Mortgage creditors are authorized to negotiate a loan modification with a debtor either before or after the meeting of creditors, but any modification reached cannot become effective until the property is abandoned. Mortgage creditors may use the procedure outlined in LBF 751.7, available at https://www.orb.uscourts.gov, to obtain such abandonment. A creditor's contact with the debtors and/or debtors' attorney to seek, negotiate, and implement a modification shall be considered neither a violation of the automatic stay of 11 USC § 362 nor a violation of the discharge injunction of § 524. Negotiations with represented debtors must be with debtors' counsel who may consent to the creditor communicating directly with the debtors. |
| **14.** | **Trustee Appointment** | The trustee named above is hereby appointed as interim trustee in this case. The trustee's bond shall be the blanket bond previously approved and filed with the U.S. Bankruptcy Court Clerk. UNITED STATES TRUSTEE |
| **15.** | **Court Information and Legal Advice** | Court information is available at https://www.orb.uscourts.gov. For account numbers, etc. contact the debtor's attorney. Contact your own attorney with other questions and to protect your rights. The clerk's office staff is forbidden by law from giving legal advice. |

WED-59310 0979-6 309A 24-60788
MATTHEW A CASPER
POB 12829
Salem, OR 97309

040857 40857 1 AB 0.544 92705 9 6 10113-1-41292

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Attorney for Defendants, ARA SEVACHERIAN, and VAHRAM SEVACHERIAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

MALYAH JANE VANCE; JAYDE DOWNEY,

Plaintiffs,

vs.

CITY OF RIVERSIDE; EVAN THEODORE MARTIN; ARA SEVACHERIAN; VAHRAM SEVACHERIAN; DOES 1 through 100,

Defendants.

---

CITY OF RIVERSIDE, a California charter city and municipal corporation,

Cross-Complainants,

vs.

ARA SEVACHERIAN; VAHRAM SEVACHERIAN; EVAN THEODORE MARTIN; and ROES 1 through 50,

Cross-Defendants.

---

ARA SEVACHERIAN and VAHRAM SEVACHERIAN,

---

**CASE NO.: RIC1905830**

*Assigned for all Purposes to the Honorable Christopher B. Harmon in Dept. 10*

**[PROPOSED] JUDGMENT**

Complaint Filed: November 22, 2019
Trial Date: October 4, 2024

MSJ: March 25, 2024
Time: 8:30am
Dept.: 10

Cross-Complainants,

vs.

CITY OF RIVERSIDE, EVAN THEODORE MARTIN; and MOES 1 through 20,

Cross-Defendants.

On March 25, 2024, Defendants, Ara and Vahram Sevacherian's Motion for Summary Judgment came on for hearing in Department 10 of the Riverside County Superior Court, the Honorable Christopher B. Harmon presiding.

Having considered the Defendant's Motion for Summary Judgment, the Plaintiffs' Opposition, the evidence presented by both parties, the objections made by both parties, and the oral argument before this Court, the Court adopted its tentative ruling, a copy of which is attached hereto as Exhibit "A". A copy of the Court's Minute Order wherein it adopted its tentative ruling is attached hereto as Exhibit "B."

IT IS SO ORDERED, ADJUDGED, AND DECREED after having considered Defendant Ara and Vahram Sevacherian's Motion for Summary Judgment, Plaintiffs' Opposition and the evidence presented by both parties in support of the same, that Plaintiff Malyah Jane Vance shall take nothing, and Defendants Ara and Vahram Sevacherian shall have judgment entered in their favor as to all causes of action asserted against it.

DATED:

Honorable Christopher B. Harmon

CP LAW GROUP
655 NO. CENTRAL AVE.
SUITE 1125
GLENDALE, CA 91203

# EXHIBIT "A"

# Tentative Rulings for March 25, 2024
# Department 10

## To request oral argument, you must notify Judicial Secretary Vanessa Siojo 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 10 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.**

COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

**TELEPHONIC APPEARANCES**: 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: 161 888 5460

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.

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|---|---|---|
| CVRI2202337 | FEDERATED MUTUAL INSURANCE COMPANY VS CABLE TECH, CORP. | MOTION FOR JUDICIAL NOTICE |

**Tentative Ruling:** Denied without prejudice as the motion is premature. Requests for judicial notice are properly brought in conjunction with a corollary motion or evidentiary hearing. Request may be raised as a motion in limine at the appropriate time.

2.

| | | |
|---|---|---|
| CVRI2202984 | CARPENTER VS BALDI BROS, INCORPORATED | MOTION FOR LEAVE TO AMEND CROSS COMPLAINT ON CROSS-COMPLAINT OF BALDI BROS, INCORPORATED BY BALDI BROS, INCORPORATED |

**Tentative Ruling:** Grant motion.

3.

| | | |
|---|---|---|
| CVRI2302397 | LEE VS SAFECO INSURANCE COMPANY OF ILLINOIS (AN ILLINOIS CORPORATION) | DEMURRER ON 1ST AMENDED COMPLAINT FOR OTHER CONTRACT (OVER $25,000) OF WILLIAM K. LEE BY ASSET RECOVERY ASSOCIATION, INC. |

**Tentative Ruling:** The Demurrer is sustained with 30 days leave to amend as to the third, fourth and sixth causes of action and overruled as to the fifth cause of action.

Breach of Contract:

The Public Adjuster Contract ("Contract") is attached to the FAC as Ex. B. Plaintiff alleges that Claims XP breached the Contract by entering into an agreement with Safeco to with regard the value of the property without his consent in violation of Section 18(J) of the NAIC Model Laws, Regulations, Guidelines and Other Resources (October 2015), which provides that an adjuster may not agree to any loss settlement without the insured's knowledge or consent. (FAC, ¶31.) However, Plaintiff does not point to any contractual terms relating to Claims XP's obligation as far as the settlement of claims. The Contract provides that:

> The insured William Lee...grants CLAIMSXP the authority to represent the INSURED in connection with a first party claim and/or a third party claim to assist INSURED in the measurement, documentation, preparation, presentation, negotiation and, if necessary, litigation of the INSURED's first party or third party claim for damages relating to the peril(s) of Water occurring on or about 07/11/2020, that was sustained by INSURED property located at: 23148 Surtees Ct Moreno Valley CA 92553 , based upon those percentage fees and rights as outlined herein.

(FAC, Ex. B.) While the alleged failure to obtain consent to the settlement may be a violation of NAIC laws or regulations, this does not establish a breach of contract.

Plaintiff also alleges that CLAIMS XP violated the NAIC rule "when its adjuster stated to him that the claims was the resolution of the insurance claim was at $150,000.00," which was not an amount Plaintiff was going to approve, and then resolved the claim for $106,114.66, from which

Claims XP retained 25 percent per the Contract. (FAC, ¶ 32.) Again, these allegations, even if true, do not appear to be based on the Contract. The Contract does not provide that Claims XP is obligated to obtain an agreement from Safeco for the amount requested by Plaintiff. Although the Opposition alludes to a "secret agreement" between Claims XP and Safeco, this agreement is not alleged in the FAC.

Because the FAC does not allege the breach of any obligations under the terms of Public Adjuster Contract, the demurrer to this cause of action is sustained. 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.) Here, Plaintiff may be able to cure the defect to show that Claims XP failed to assist in the measurement, documentation, preparation, presentation, negotiation of the claim.

Material Misrepresentation in Bad Faith:

This cause of action is confusing because it does not indicate whether This cause of action is confusing because it does not indicate whether alleged the misrepresentations were negligent or intentional. Although in his Opposition to the Demurrer Plaintiff explains that this cause of action is based on negligent misrepresentations, this is not clear from the FAC.

Furthermore, this cause of action is not alleged with sufficient specificity. Plaintiff alleges that the $150,000 offer was a material misrepresentation, as was the fact that it would not have resolved the claim without Plaintiff's prior knowledge and consent, oral or written. (FAC, ¶ 34.) It is not clear how or when the alleged offer was made, or by whom. Because it is not clear when Claims XP represented to Plaintiff that the claim would settle for $150,000, it is not clear whether this offer was an existing fact or prediction. (See Cansino v. Bank of America (2014) 224 Cal. App. 4th 1462, 1469-1470 [""The law is well established that actionable misrepresentations must pertain to past or existing material facts. [Citation] Statements or predictions regarding future events are deemed to be mere opinions which are not actionable."]) The fact that $150,000 would not resolve the claim is not a misrepresentation. Because the misrepresentation cause of action was not pled with the requisite specificity, the demurrer should be sustained with leave to amend.

alleged misrepresentations were negligent or intentional. Although in his Opposition to the Demurrer Plaintiff explains that this cause of action is based on negligent misrepresentations, this is not clear from the FAC.

Furthermore, this cause of action is not alleged with sufficient specificity. Plaintiff alleges that the $150,000 offer was a material misrepresentation, as was the fact that it would not have resolved the claim without Plaintiff's prior knowledge and consent, oral or written. (FAC, ¶ 34.) It is not clear how or when the alleged offer was made, or by whom. Because it is not clear when Claims XP represented to Plaintiff that the claim would settle for $150,000, it is not clear whether this offer was an existing fact or prediction. (See Cansino v. Bank of America (2014) 224 Cal. App. 4th 1462, 1469-1470 [""The law is well established that actionable misrepresentations must pertain to past or existing material facts. [Citation] Statements or predictions regarding future events are deemed to be mere opinions which are not actionable."]) The fact that $150,000 would not resolve the claim is not a misrepresentation. Because the misrepresentation cause of action was not pled with the requisite specificity, the demurrer is sustained with leave to amend.

Intentional Infliction of Emotional Distress:

The delay or denial of insurance benefits generally does not support an IIED cause of action against the insurer. (See *Mintz, supra*, 172 Cal. App. 4th at 1608.) Allegations that an insurer and adjuster altered the scene of the accident, created a false claim report and conspired with an unlicensed contractor to wrongfully deny coverage are insufficient to constitute extreme or outrageous conduct. (*Bock v. Hansen* (2014) 225 Cal. App. 4th 215, 234.) Anger or dissatisfaction regarding a settlement payout is also insufficient to constitute emotional distress. (*Twaite v. Allstate Ins. Co.* (1989) 216 Cal. App. 3d 239, 258.)

The IIED cause of action is based on Claims XP's alleged acceptance of a settlement agreed for significantly less than the value of the insurance claim without authorization. (FAC, ¶ 39.) Again, this cause of action is not pled with specificity. Although in his Opposition Plaintiff claims that Claims XP entered into a secret deal with Safeco to deny coverage, this is not alleged in the FAC. The cause of action as currently pleaded is insufficient. The demurrer is sustained with leave to amend.

Other causes of action have been sufficiently plead and the demurrer to them is overruled.

4.

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| CVRI2302397 | LEE VS SAFECO INSURANCE COMPANY OF ILLINOIS (AN ILLINOIS CORPORATION) | MOTION TO STRIKE COMPLAINT ON 1ST AMENDED COMPLAINT FOR OTHER CONTRACT (OVER $25,000) OF WILLIAM K. LEE BY ASSET RECOVERY ASSOCIATION, INC. |

**Tentative Ruling:** The Motion to Strike is granted with 30 days leave to amend.

As stated above, the FAC was not pled with specificity. There are no facts showing fraud or despicable conduct. Nor are there any allegations showing that any misconduct was committed or ratified by a managing agent of Claims XP. Accordingly, the Motion to Strike is granted with leave to amend.

5.

| | | |
|---|---|---|
| CVRI2302760 | LEE VS MELENDREZ | ANTI-SLAPP MOTION (SPECIAL MOTION TO STRIKE) |

**Tentative Ruling:** Overrule Plaintiff's objections. Deny motion.

Defendant's position is not persuasive. None of the cases cited by Defendant support Defendant's position. RAA is not a City Council, Planning Commission, nor were the statements made in preparation to make a petition to a governmental body. The mere fact that RAA relies on public funds, and the City of Riverside is its fiscal agent that has to approve its expenditures, does not make every proposed action by the administrative board a petitioning activity before a governmental entity. Here administrative board meetings of a non-profit organization, even one whose fiscal sponsor and oversight falls to a City, cannot be deemed part of any "legislative," "judicial," or "official" proceeding, or indeed any proceeding "authorized by law" and reviewable by writ of mandate. (See *Slaughter v. Friedman* (1982) 32 Cal.3d 149, 156—"With respect to subdivision 2 of section 47, the private processing of dental claims cannot be deemed part of any "legislative," "judicial," or "official" proceeding, or indeed any proceeding "authorized by law" and reviewable by writ of mandate.) Therefore, Defendant is not entitled to absolute litigation privilege related to the statements at issue.

*Protected Activity*:

"The anti-SLAPP statute, section 425.16, allows a court to strike any cause of action that arises from the defendant's exercise of his or her constitutionally protected rights of free speech or petition for redress of grievances. (§425.16, subd. (b)(1).)" (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 311-312). Because not all speech or petition activity is constitutionally protected, not all speech or petition activity is protected by the anti-SLAPP statute. (*Id.* at 313.)

To prevail on an anti-SLAPP motion defendant must first make a prima facie showing that the claims arise from defendant's exercise of free speech or petition rights as defined in CCP §425.16(e). (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 330; see also

W&B ¶7:244.) "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them.

Defendant's motion fails to specifically identify the allegations in the FAC at issue and the claims associated with those allegations. Rather, Defendant's motion talks generally about the allegations in the FAC regarding his statements.

The pertinent provisions of the Complaint appear to be as follows:

- On or about June 30, 2022, the Arts Academy received a $25 million grant, with the City of Riverside being fiscal agent, from the State of California, at the request of assembly members Jose Medina and Sabrina Cervantes.
- In or about late December, 2022, Plaintiff and Melendrez had a conversation at the Arts Academy offices regarding an employee who had been hired on a temporary basis. Plaintiff shared with Melendrez that she was concerned about the employee, who had, on multiple occasions, failed to show up for work and had not even called.
- Plaintiff attributed the employee's absence to the possibility that the employee was distressed that her child's father was incarcerated, and parole was imminent.
- The employee had been open about this, and had spoken freely to Plaintiff about her child's father's incarceration to the point of communicating to the Plaintiff that her "life was hell" due to the foregoing. Plaintiff was speculating about a possible cause of the employee's absence.
- Melendrez assumed the role of the Arts Academy Board President on January 1, 2023.
- The Executive Board held an emergency meeting on January 13, 2023. During this meeting, Melendrez stated that Plaintiff had said the foregoing employee, not her child's father, would be paroled shortly. (Which makes no sense as the employee was not incarcerated).
- On or about January 14, 2023, another Board member contacted Melendrez to advise him that he must have misunderstood Plaintiff, and that it was indeed the employee's child's father on parole. She further stated that this was an interpersonal issue, not the Board's responsibility, and that Melendrez should contact Plaintiff directly to discuss the misunderstanding.
- **On January 23, 2023, Defendant Melendrez told members of the Arts Academy Board (after initiating a closed meeting during a regularly scheduled Board Meeting) that Plaintiff had been "visibly upset" during their prior conversation regarding the temporary employee, and reiterated that Plaintiff had twice stated that the employee was on parole.**
- Melendrez' account of the foregoing was incorrect, and he had been advised of the same beforehand by more than one individual. Plaintiff knew and understood that it was not the employee, but her child's father, that was soon to be paroled.
- **Notwithstanding the foregoing, Defendant Melendrez stated twice during the January 23, 2023, closed session Board Meeting that Plaintiff had "lied" about the employee's status.**
- Plaintiff denied making any statement regarding the employee being on parole, and (in an effort to neutralize the situation) stated that Melendrez must have misunderstood her.
- Ms. Freya Foley (Board secretary) and other executive committee members agreed with Plaintiff that there must have been a misunderstanding. Cervantes then immediately interjected during the meeting on January 23, 2023, that there were other instances in

which Plaintiff had lied, that she had heard from several people about Plaintiff lying, and that Plaintiff has a "history of lying.".

- Thereafter, another Board member attempted to deescalate the situation by stating that there must be a misunderstanding between the Parties. **Defendant reiterated that Plaintiff was lying.**
- **The minutes of the January 23, 2023, Board meeting issued on January 30, 2023, reflect that Mr. Melendrez "conclude4d (sic) that Collette ha (sic) lied about the employee and that the issue needed to be brought to the Board."** A true and correct copy of the Board meeting minutes is attached hereto as Exhibit B.
- **After the January 23, 2023, board meeting had concluded, Ms. Foley circulated the minutes to the board, asking for any and all modifications to the minutes. Defendant Melendrez responded in detail, reiterating that he "did not mis-understand, hear wrong or misinterpret" what Plaintiff said about the employee, adding that "in his opinion there was definitely friction" between Plaintiff and the employee. Finally, he went on to say that Plaintiff was "inaccurate in her allegation...created a problem in the Arts Academy office and definitely interrupted and affected" its operations.**
- The defamation by Melendrez and others has caused not only harm to Plaintiff's stellar reputation, but has caused her significant economic losses and emotional distress as well. Further, the aspersions cast by the Defendants have leaked out to the community at large and have caused harm to Plaintiff's reputation in the community (which she has diligently built for more than 30 years). Plaintiff's income has substantially decreased.
- On or about February 24, 2023, Plaintiff was informed by a fellow member of another organization that she was "sorry" for what was happening at the Arts Academy. Plaintiff was taken aback, but had a pressing meeting, so did not inquire further.
- On or about February 28, 2023, Plaintiff called the individual who had told her she was sorry about what was happening at the Arts Academy for more information. That individual told Plaintiff that Melendrez had told others in the community that Plaintiff did not serve the Arts Academy well, and had been using the Arts Academy for her own personal gain.
- Defendants intentionally communicated the false and defamatory statements identified hereinabove about Plaintiff to numerous third parties identified hereinabove.
- Third parties understood these false and defamatory statements to refer to Plaintiff since her name was referenced in every statement, and specifically, to mean that Plaintiff was a liar with a history of dishonesty, in addition to having poor performance and improper motives serving on the Board. This conduct is in violation of Cal. Civ. Code §46(3).
- The statements Defendants made were false and are per se defamatory as they are injurious to Plaintiff's professional reputation. 75. Defendants made the above-described defamatory statements with actual malice – i.e., with knowledge of their falsity, or alternatively, with a reckless disregard for their falsity.
- Plaintiff's reputation had been pristine before Defendants made such statements.
- Defendants' statements were not statements of opinion, and they are demonstrably false. Plaintiff has a reputation for truthfulness.
- Defendants' statements were not privileged and were made with the knowledge that they were false, or reckless disregard to their falsity.
- As a result of the publication of these statements, Plaintiff has suffered special damages, including but not limited to a dramatic loss of income, and general damages including extreme emotional distress.

C.C.P. §425.16(b)(1) provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech ... in connection with a public issue shall be subject to a special motion to strike ...." The pertinent provisions of C.C.P. §425.16(e) provide that an 'act in furtherance of a person's right of petition or free speech... in connection with a public issue' includes:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law,

(2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law,

(3) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

"[I]n determining whether a cause of action arises from conduct protected by the anti-SLAPP law, the focus is on the wrongful, injurious acts or omissions identified in the complaint, and whether those acts or omissions come within the statute's description of protected conduct...." (*Old Republic Const. Program Group v. Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 862.) Moving defendants must identify all allegations of protected activity and show the challenged cause of action arise from that protected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.)

Defendant asserts that the challenged statements (the only alleged statements found in the FAC are set out in bold above) satisfy at least three bases for anti-SLAPP protection, as follows:

(e)(1) the challenged statements were allegedly made in a closed session executive board meeting considering a personnel action involving questions raised as to company finances for which Defendant Melendrez was fiscal agent on behalf of both the City and State. The circumstances qualify as an "official proceeding" within the meaning of the statute as a matter of law;

(e)(2) the challenged statements were made in connection with an issue under consideration or review by the executive board of the non-profit company; namely personnel matter and financial issues involving taxpayer funds;

(e)(4) the challenged statements were made in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest (taxpayer funds from the State and City; children learning music, culture and art in the community).

A non-profit organization is not a legislative, executive, or judicial or other official proceeding. Accordingly, the statements are not protected under either CCP C.C.P. §425.16(e)(1) or (2). The statute does not apply to the proceedings of private organizations. (See *Olaes v. Nationwide Mutual Ins. Co.* (2006) 135 Cal.App.4th 1501, 1507.) More importantly, nonprofit charitable organizations are not "quasi-governmental entities" and a meeting between the board of directors by a non-profit is not an "official meeting authorized by law" for the purposes of CCP §425.16(e). (*Donovan v. Dan Murphy Foundation* (2012) 204 Cal.App.4th 1500, 1508.)

Lastly, Defendant asserts that the statements are protected pursuant to §425.16(e)(4), which applies to written or oral comments presented in a public forum in connection with an issue of public interest. This raises two questions: 1) whether the statements were made in a public forum, and 2) whether the statements had a connection to an issue of public interest. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1036-1039.)

A public forum is construed as a place open to the general public for the purposes of communicating between citizens and discussing public questions. (*Weinberg v. Feisel,* (2003) 110 Cal. App. 4th 1122, 1130.) The RAA Board meeting where these comments were made by Defendant Melendrez was completely closed to the public and in fact, were made in a closed Board session. The closed board RAA meeting on January 23, 2023 was not a public forum for the purposes of CCP §425.16(e)(3), and Melendrez has failed to carry his burden of proof to establish otherwise. Accordingly, the Motion is denied.

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| CVRI2304818 | CUEBAS JR VS MCINTYRE | MOTION TO AMEND FILING DATE BY RAYMOND CUEBAS JR |

**Tentative Ruling:** Grant motion.

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| RIC1905830 | VANCE VS CITY OF RIVERSIDE | CITY OF RIVERSIDE'S MOTION FOR SUMMARY JUDGMENT |

**Tentative Ruling:** Grant motion.

**A. Plaintiff's Evidentiary Objections**

C.C.P. § 437c(q) provides that "[i]n granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (C.C.P. § 437c(q).)

Plaintiffs object to Vance and Downey's own deposition testimony. These are not well-taken and are overruled.

Plaintiffs objections to portions of the traffic collision report regarding the officer's conclusion that Vance caused the collision by failing to stop at the stop sign at Via Zapeda and Canyon Crest Drive are sustained as hearsay. (*People v. Sanchez* (2016) 63 Cal.4th 665. 694-695.)

The objections to the declarations of Steve Libring and Nathan Mustafa, former and current City employees and traffic engineers, are overruled as they have presented adequate foundation for their conclusions.

**B. City's Evidentiary Objections**

City objects to declarations of Jeff Waller and Mayra Flores (apparently residents at 5505 Canyon Crest Drive), but the court is unable to find any such declarations filed with the Court.

City objections to declaration of Downey on the grounds of assumes facts, lack of foundation, calls for speciation, vague and ambiguous are well-taken and are sustained. (Evid. Code, §§ 702, 765.)

The Court declines to rule on City objections to declaration of Lynn Whitlock attaching deposition testimony of Guy Tanaka and Shawna Fuller as not material.

## C. Merits

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] ... [t]he 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; *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 146.)

Government Code section 830 defines a dangerous condition as "'a condition of property that creates a substantial ... risk of injury when such property or adjacent property is used with due care' in a 'reasonably foreseeable' manner." (*Bonanno*, *supra*, 30 Cal.4th at p. 147.) The existence of a dangerous condition generally is a question of fact but may be a question of law if "reasonable minds can come to only one conclusion." (*Id.* at p. 148.) The happening of the accident which results in the injury is not in and of itself evidence that public property was in a dangerous condition. (Gov. Code, § 830.5(a).)

In addition to showing the existence of a dangerous condition, a plaintiff must show, *inter alia*, that "the dangerous condition proximately caused his or her injury." (*Bonanno*, *supra*, 30 Cal.4th at pp. 154–155.) A public entity may be liable for a dangerous condition of public property that " 'caused the injury plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident.' " (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1104; see *ibid.* [summary judgment reversed because wrongful death plaintiffs did not have to show the alleged dangerous condition, a magnolia tree in a city median strip, caused the third party-conduct, a motorist's sideswiping the car driven by decedents which car then hit the tree].) With respect to public roadways, " 'a public entity is only required to provide roads that are safe for reasonably foreseeable careful use. [Citation.] "If ... it can be shown that the property is safe when used with due care [generally] and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not 'dangerous' within the meaning of section 830, subdivision (a).' " " (*Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, 754-755.)

Here, City meets its initial burden of presenting evidence to show Vance's injuries were not caused by any dangerous condition at the accident sight.

Even assuming a triable issue exists regarding whether a condition at or near the accident site created a substantial risk of injury when used with due care, Plaintiffs opposing papers fail to raise a triable issue regarding whether such a condition proximately caused the injuries. To establish causation, therefore, Plaintiffs must show that a physical condition of the City's property was a "'substantial factor'" in bringing about his harm. (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 312.) A plaintiff may prove causation through direct and circumstantial evidence and reasonable inferences drawn from that evidence. (*Ibid.*) But we cannot draw inferences " 'from thin air.' " (*Ibid.*)

To rebut the City's showing, Plaintiffs relied primarily on the opinions of its own accident experts Eisenbeisz and Dunlap and criticisms of the City's expert opinions. But, as discussed above, Plaintiffs offered no evidence that the Eisenbeisz and Dunlap theories represented reality. Plaintiffs argue Vance, "was not, however, suicidal, and so the evidence she never saw defendant's vehicle exists simply by virtue of her having driven directly into his path." (Oppo., 1:9-10.) This is statement is not evidence. There is no evidence that the condition of the intersection or parking of cars diverted Vance's attention, obscured her line of sight, caused her to enter the intersection with a false sense of security that there were no other vehicles approaching, or otherwise brought about the collision. Vance was on the telephone with her mother Downey, was lost while attempting to run an errand and does not remember any that happened at all on the date of the accident. There is simply no admissible evidence that the

alleged dangerous condition of the intersection was the legal cause of Vance's unfortunate injuries following her collision with an out of state, uninsured driver.

In the absence of evidence creating a triable issue of material fact regarding causation, summary judgment is properly granted. (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1105.)

Given this conclusion, there is no need to reach the design immunity arguments.

8.

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| RIC1905830 | VANCE VS CITY OF RIVERSIDE | SEVACHERIANS MOTION FOR SUMMARY JUDGMENT |

**Tentative Ruling:** Grant motion.

Here, the Sevacherians met their initial burden to present evidence that the condition of their property was not a cause of the accident when they submitted Vance's deposition and the declaration of Mark Porter (arborist). Vance testified she does not remember any of the events of the entire day of the accident. Porter also declares based on his experience and review of the scene and Google images, the trees could not have blocked Vance's view of traffic on Canyon Crest Drive from Via Zapata and the Sevacherians did not violate any Riverside Municipal Codes regarding maintenance of property. In opposition, Plaintiffs submit multiple objections to the Porter declaration.

In opposition, Plaintiffs object to Porter's declaration. Porter has adequately established his qualifications as arborist expert to testify as to the Sevacherians compliance with Municipal Code and lack of possibility of trees to block Vance's view. However, even without consideration of the Porter declaration, the Sevacherians meet their initial burden that Plaintiff has no evidence that their negligence in maintenance of their property was a substantial factor in causing plaintiff's harm and the Sevacherians. Thus, the burden shifted to the Plaintiffs to show the existence of a triable issue of fact. (*Aguilar*, *supra*, 25 Cal.4th at 850.)

In opposition, Plaintiffs do not meet their burden to show that any obstruction on the Sevacherians property was a substantial factor in bringing about their injuries. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) Causation is a "factual question[ ] for the jury to decide except in cases in which the facts as to causation are undisputed." (*Ibid.*) And a plaintiff need not prove the defendant's conduct was the sole cause. (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187.) Here, however, Plaintiffs fail to present <u>any</u> evidence that <u>any</u> trees or vegetation on the Sevacherians property obscured Vance's line of sight or otherwise prevented her from seeing Martin such that it was a substantial factor in causing her injuries. Plaintiff is the only party in the position to know essential facts regarding her line of sight at the time of the accident. In such cases, plaintiff's lack of knowledge shows inability to establish a prima facie case. (*McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1104.)

Plaintiffs presume that because a collision occurred, the parkway trees must have been the cause and they must have been in a dangerous condition which is a violation of Riverside Municipal Codes. However, Plaintiffs have not provided any discovery documents, photographs, arborist or landscape reports that evidence Sevacherians allowed the trees and vegetation on their private property, or in the parkway, to be overgrown or untrimmed, such that Plaintiff Vance's view of southbound Canyon Crest at the time of the accident was obstructed or violated any Riverside Municipal codes resulting in Vance's view being obstructed. This is because Plaintiff Vance herself cannot testify as to where she was looking immediately prior to when she began her left-hand turn. As Plaintiffs cannot meet their burden, the motion is granted.

EXHIBIT "B"

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
Ruling on Matter Submitted

03/26/2024
8:30 AM
Department 10

**RIC1905830**
**VANCE vs CITY OF RIVERSIDE**

Honorable Christopher B. Harmon, Judge
L. Howell, Courtroom Assistant
Court Reporter: None

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**APPEARANCES:**
No Appearances

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Court subsequently rules on matter taken under submission on: 03/25/2024 for Hearing on Motion for Summary Judgment on 3rd Amended Complaint MALYAH JANE VANCE.
**** SEVACHERIANS MOTION FOR SUMMARY JUDGMENT ****
Tentative ruling shall become the ruling of the court.
-
Motion Granted
Judgment on 3rd Amended Complaint MALYAH JANE VANCE for ARA SEVACHERIAN, VAHRAM SEVACHERIAN against MALYAH JANE VANCE, JAYDE DOWNEY.. Nothing Awarded.
Notice to be given by Clerk to RIZIO LIPINSKY LAW FIRM PC , Michael Andrej Verska , EVAN THEODORE MARTIN, Gary Howard Klein , SHELBY A. KENNICK.
Minute entry completed.

PHAEDRA A. NORTON, City Attorney, SBN 200271
REBECA L. MCKEE-REIMBOLD, Assistant City Attorney, SBN 279485
EDWARD J. REID, Deputy City Attorney, SBN 276872
**OFFICE OF THE CITY ATTORNEY – City of Riverside**
3750 University Avenue, Suite 250
Riverside, California 92501
Telephone: (951) 826-5567
Facsimile: (951) 826-5540
ereid@riversideca.gov

*Fee Exempt Per Govt. Code § 6103*

Attorneys for Defendant/Cross-Complainant/Cross-Defendant, City of Riverside, a California charter city and municipal corporation

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

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| MALYAH JANE VANCE and JAYDE DOWNEY,<br><br>Plaintiffs,<br>v.<br><br>CITY OF RIVERSIDE, EVAN THEODORE MARTIN, ARA SEVACHERIAN; VAHRAM SEVACHERIAN; DOES 1 through 100,<br><br>Defendants. | CASE NO. RIC 1905830<br>Assigned to the Hon. Christopher B. Harmon, Department 10<br><br>**[PROPOSED] JUDGMENT**<br><br>MSJ: March 25, 2024<br>Time: 8:30 a.m.<br>Dept.: 10 |
| AND RELATED CROSS-ACTIONS | Complaint Filed: 11/22/2019<br>Trial Date: 10/04/2024 |

On March 25, 2024, Defendant City of Riverside's Motion for Summary Judgment came on for hearing in Department 10 of the Riverside County Superior Court, the Honorable Christopher B. Harmon presiding.

Having considered the City's Motion for Summary Judgment, the Plaintiffs' Opposition, the City's Reply Brief, the evidence presented by both parties, the objections made by both parties, and the oral argument before this Court, the Court adopted its tentative ruling, a copy of which is attached hereto as Exhibit "A".[1]

[1] A copy of the Court's Minute Order wherein it adopted its tentative ruling is attached hereto as Exhibit "B".

IT IS SO ORDERED, ADJUDGED, AND DECREED after having considered Defendant City of Riverside's Motion for Summary Judgment, Plaintiffs' Opposition, Defendant's Reply Brief, and the evidence presented by both parties in support of the same, that Plaintiff Malyah Jane Vance shall take nothing, and Defendant City of Riverside shall have judgment entered in its favor as to all causes of action asserted against it.

DATED:

_____
Honorable Christopher B. Harmon



CITY ATTORNEY'S OFFICE
3750 UNIVERSITY AVE, STE. 250
RIVERSIDE, CALIFORNIA 92501
(951) 826-5567

EXHIBIT “A”

# Tentative Rulings for March 25, 2024
# Department 10

## To request oral argument, you must notify Judicial Secretary Vanessa Siojo 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 10 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.**

COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

**TELEPHONIC APPEARANCES**: 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: 161 888 5460

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.**

Lastly, Defendant asserts that the statements are protected pursuant to §425.16(e)(4), which applies to written or oral comments presented in a public forum in connection with an issue of public interest. This raises two questions: 1) whether the statements were made in a public forum, and 2) whether the statements had a connection to an issue of public interest. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1036-1039.)

A public forum is construed as a place open to the general public for the purposes of communicating between citizens and discussing public questions. (*Weinberg v. Feisel,* (2003) 110 Cal. App. 4th 1122, 1130.) The RAA Board meeting where these comments were made by Defendant Melendrez was completely closed to the public and in fact, were made in a closed Board session. The closed board RAA meeting on January 23, 2023 was not a public forum for the purposes of CCP §425.16(e)(3), and Melendrez has failed to carry his burden of proof to establish otherwise. Accordingly, the Motion is denied.

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| CVRI2304818 | CUEBAS JR VS MCINTYRE | MOTION TO AMEND FILING DATE BY RAYMOND CUEBAS JR |

**Tentative Ruling:** Grant motion.

7.

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| RIC1905830 | VANCE VS CITY OF RIVERSIDE | CITY OF RIVERSIDE'S MOTION FOR SUMMARY JUDGMENT |

**Tentative Ruling:** Grant motion.

**A. Plaintiff's Evidentiary Objections**

C.C.P. § 437c(q) provides that "[i]n granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (C.C.P. § 437c(q).)

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Plaintiffs objections to portions of the traffic collision report regarding the officer's conclusion that Vance caused the collision by failing to stop at the stop sign at Via Zapeda and Canyon Crest Drive are sustained as hearsay. (*People v. Sanchez* (2016) 63 Cal.4th 665. 694-695.)

The objections to the declarations of Steve Libring and Nathan Mustafa, former and current City employees and traffic engineers, are overruled as they have presented adequate foundation for their conclusions.

**B. City's Evidentiary Objections**

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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] ... [t]he 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; *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 146.)

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In addition to showing the existence of a dangerous condition, a plaintiff must show, *inter alia*, that "the dangerous condition proximately caused his or her injury." (*Bonanno*, *supra*, 30 Cal.4th at pp. 154–155.) A public entity may be liable for a dangerous condition of public property that " 'caused the injury plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident.' " (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1104; see *ibid.* [summary judgment reversed because wrongful death plaintiffs did not have to show the alleged dangerous condition, a magnolia tree in a city median strip, caused the third party-conduct, a motorist's sideswiping the car driven by decedents which car then hit the tree].) With respect to public roadways, " 'a public entity is only required to provide roads that are safe for reasonably foreseeable careful use. [Citation.] "If ... it can be shown that the property is safe when used with due care [generally] and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not 'dangerous' within the meaning of section 830, subdivision (a).' " " (*Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, 754-755.)

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To rebut the City's showing, Plaintiffs relied primarily on the opinions of its own accident experts Eisenbeisz and Dunlap and criticisms of the City's expert opinions. But, as discussed above, Plaintiffs offered no evidence that the Eisenbeisz and Dunlap theories represented reality. Plaintiffs argue Vance, "was not, however, suicidal, and so the evidence she never saw defendant's vehicle exists simply by virtue of her having driven directly into his path." (Oppo., 1:9-10.) This is statement is not evidence. There is no evidence that the condition of the intersection or parking of cars diverted Vance's attention, obscured her line of sight, caused her to enter the intersection with a false sense of security that there were no other vehicles approaching, or otherwise brought about the collision. Vance was on the telephone with her mother Downey, was lost while attempting to run an errand and does not remember any that happened at all on the date of the accident. There is simply no admissible evidence that the

alleged dangerous condition of the intersection was the legal cause of Vance's unfortunate injuries following her collision with an out of state, uninsured driver.

In the absence of evidence creating a triable issue of material fact regarding causation, summary judgment is properly granted. (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1105.)

Given this conclusion, there is no need to reach the design immunity arguments.

8.

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| RIC1905830 | VANCE VS CITY OF RIVERSIDE | SEVACHERIANS MOTION FOR SUMMARY JUDGMENT |

**Tentative Ruling:** Grant motion.

Here, the Sevacherians met their initial burden to present evidence that the condition of their property was not a cause of the accident when they submitted Vance's deposition and the declaration of Mark Porter (arborist). Vance testified she does not remember any of the events of the entire day of the accident. Porter also declares based on his experience and review of the scene and Google images, the trees could not have blocked Vance's view of traffic on Canyon Crest Drive from Via Zapata and the Sevacherians did not violate any Riverside Municipal Codes regarding maintenance of property. In opposition, Plaintiffs submit multiple objections to the Porter declaration.

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Plaintiffs presume that because a collision occurred, the parkway trees must have been the cause and they must have been in a dangerous condition which is a violation of Riverside Municipal Codes. However, Plaintiffs have not provided any discovery documents, photographs, arborist or landscape reports that evidence Sevacherians allowed the trees and vegetation on their private property, or in the parkway, to be overgrown or untrimmed, such that Plaintiff Vance's view of southbound Canyon Crest at the time of the accident was obstructed or violated any Riverside Municipal codes resulting in Vance's view being obstructed. This is because Plaintiff Vance herself cannot testify as to where she was looking immediately prior to when she began her left-hand turn. As Plaintiffs cannot meet their burden, the motion is granted.

EXHIBIT “B”

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
Ruling on Matter Submitted

03/26/2024
8:30 AM
Department 10

**RIC1905830**
**VANCE vs CITY OF RIVERSIDE**

Honorable Christopher B. Harmon, Judge
L. Howell, Courtroom Assistant
Court Reporter: None

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**APPEARANCES:**
No Appearances

---

Court subsequently rules on matter taken under submission on: 03/25/2024 for Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication on 3rd Amended Complaint MALYAH JANE VANCE.
**** CITY OF RIVERSIDE'S MOTION FOR SUMMARY JUDGMENT ****
Tentative ruling shall become the ruling of the court.
-
Motion Granted
Judgment on 3rd Amended Complaint MALYAH JANE VANCE for CITY OF RIVERSIDE against MALYAH JANE VANCE, JAYDE DOWNEY.. Nothing Awarded.
Notice to be given by Clerk to RIZIO LIPINSKY LAW FIRM PC , Michael Andrej Verska , EVAN THEODORE MARTIN, Gary Howard Klein , SHELBY A. KENNICK.
Minute entry completed.

PHAEDRA A. NORTON, City Attorney, SBN 200271
REBECA L. MCKEE-REIMBOLD, Assistant City Attorney, SBN 279485
EDWARD J. REID, Deputy City Attorney, SBN 276872
**OFFICE OF THE CITY ATTORNEY – City of Riverside**
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*Fee Exempt Per Govt. Code § 6103*

Attorneys for Defendant/Cross-Complainant/Cross-Defendant, City of Riverside, a California charter city and municipal corporation

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF RIVERSIDE**

| | |
|---|---|
| MALYAH JANE VANCE and JAYDE DOWNEY,<br><br>Plaintiffs,<br><br>v.<br><br>CITY OF RIVERSIDE, EVAN THEODORE MARTIN, ARA SEVACHERIAN; VAHRAM SEVACHERIAN; DOES 1 through 100,<br><br>Defendants. | CASE NO. RIC 1905830<br>Assigned to the Hon. Christopher B. Harmon, Department 10<br><br>**PROOF OF SERVICE** |
| AND RELATED CROSS-ACTIONS | Complaint Filed: 11/22/2019<br>Trial Date: 10/04/2024 |

**PROOF OF SERVICE**

*STATE OF CALIFORNIA, COUNTY OF RIVERSIDE*

I am employed in the county aforesaid; I am over the age of 18 years and not a party to the within above-entitled action; my business address is 3750 University Avenue, Suite 250, Riverside, California 92501.

On April 1, 2024, I served the within **[PROPOSED] JUDGMENT** on the interested parties in said action addressed as follows:

( X ) **VIA E-MAIL – ELECTRONIC TRANSMISSION** – I served the above-entitled document by electronic transmission or electronic notification from e-mail address kmoore@riversideca.gov to the persons at the e-mail addresses listed below pursuant to Code of Civ. Proc. § 1010.6. No error message was received within a reasonable period of time after the transmission, nor any electronic message or other indication that the transmission/notification was unsuccessful.

| | |
|---|---|
| Gregory G. Rizio<br>Eric Ryanen<br>Lynn Whitlock<br>**RIZIO LIPINSKY LAW FIRM, PC**<br>2677 N. Main Street, Suite 225<br>Santa Ana, CA 92705<br>grizio@riziolawfirm.com<br>eryanen@riziolawfirm.com<br>lwhitlock@riziolawfirm.com<br>Tel: 714-547-1234; Fax: 714-547-1245<br><br>Assistant: Michele A. Markus<br>mmarkus@riziolawfirm.com | Attorney for Plaintiffs **MALYAH JANE VANCE** and **JAYDE DOWNEY** |
| **CP LAW GROUP**<br>655 North Central Avenue, Suite 1125<br>Glendale, CA 91203<br><br>Shelby Kennick<br>skennick@cplawgrp.com<br>Tel: 818-853-5131; Fax: 818-638-8549<br><br>Amy Chikuami<br>Tel: 818-853-5151<br>achikuami@cplawgrp.com<br><br>**File# RL18-187** | Attorney for Defendants/Cross-Defendants **ARA SEVACHARIAN** and **VAHRAM SEVACHERIAN** |
| ( X ) **VIA MAIL** - In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Riverside, California, that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices pursuant to Code Civ. Proc. § 1013(a) as listed below: | |
| Evan Theodore Martin<br>1009 NE Elm Street<br>Grants Pass, OR 97526<br>Tel: 541-630-6601 | Pro Per Defendant/Cross-Defendant **EVAN THEODORE MARTIN** |



CITY ATTORNEY'S OFFICE
3750 UNIVERSITY AVE, STE. 250
RIVERSIDE, CALIFORNIA 92501
(951) 826-5567

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed on April 1, 2024, Riverside, California.

Karen Moore

Karen Moore



CITY ATTORNEY'S OFFICE
3750 UNIVERSITY AVE, STE. 250
RIVERSIDE, CALIFORNIA 92501
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**STATE OF CALIFORNIA**
Supreme Court of California

# *PROOF OF SERVICE*

**STATE OF CALIFORNIA**
Supreme Court of California

Case Name: **DOWNEY v. CITY OF RIVERSIDE**
Case Number: **S280322**
Lower Court Case Number: **D080377**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **eryanen@riziolawfirm.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

| Filing Type | Document Title |
|---|---|
| LETTER | 4-17-24 Letter to Court Clerk re Recent Action in Court Case |

Service Recipients:

| Person Served | Email Address | Type | Date / Time |
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| Pro Per<br>Nationwide Legal LLC<br>268279 | sfcourt@nationwideasap.com | e-Serve | 4/17/2024 1:38:25 PM |
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| | | | |
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| Freddi Lindsey<br>Cole Pedroza LLP | flindsey@colepedroza.com | e-Serve | 4/17/2024<br>1:38:25 PM |
| Erin Summers<br>Riverside City Attorney | esummers@riversideca.gov | e-Serve | 4/17/2024<br>1:38:25 PM |
| Michael Verska<br>Office of the City Attorney<br>207213 | mverska@riversideca.gov | e-Serve | 4/17/2024<br>1:38:25 PM |

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/17/2024

Date

/s/Michele Markus

Signature

Ryanen, Eric (146559)

Last Name, First Name (PNum)

Rizio Law Firm

Law Firm