**AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS**

**Monday, April 5, 2021**

**TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.**

**IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.**

**20-CVC-11674** DORN, DEVON VS. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

**DEMURRER - DEFENDANT'S**

TENTATIVE RULING:
Defendant's demurrer is sustained with leave to amend.
A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (Blank, 39 Cal.3d at 318.) A court may consider judicially noticeable facts in ruling on a demurrer. (CCP §430.30(a); Stormedia Inc., v. Superior Court (1999) 20 Cal.4th 449, 457 n.9.)
Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (Semole v. Sansoucie (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact." (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.)
A negligence cause of action includes four required elements: (1) duty; (2) breach; (3) causation; and (4) damages. (Conroy v. Regents of University of Cal. (2009) 45 Cal.4th 1244, 1250; Hayes v. County of San Diego (2013) 57 Cal.4th 622, 629.) In addition, "[e]xcept as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person." (Gov. Code § 820.8.) Rather, he is only liable "for injury proximately caused by his own negligent or wrongful act or omission." (Ibid; see also Weaver v. State (1998) 63 Cal.App.4th 188, 197, 202-203.
Govt. Code §815(a) makes it clear that "except as otherwise provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person".
Plaintiff identifies Gov. Code §835 as the statue on which the public entity is liable for Plaintiff's injury.
Gov. Code §835 provides, in relevant part:
…a public entity is liable for injury cause by a dangerous condition of its property if 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 at the time of the injury, that dangerous condition created a reasonable 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 under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
Plaintiff's single cause of action of negligence fails to plead sufficient facts under Gov. Code §835 (a) and (b).
Further, the combining of common law negligence, premises liability for a dangerous condition of public property and negligence per se, into a single cause of action, creates uncertainty and ambiguity in the pleadings.
A demurrer should be sustained without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. (Levya v. Nelson (2000) 83 Cal.App.4th 1061, 1063.) The burden is on the plaintiff to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. (Goodman v. Kennedy (1976) 18 Cal 3d. 335.) Plaintiff is granted leave to amend.

Unless the parties otherwise so stipulate, Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from the date of this ruling. New allegations/language must be set in boldface type.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

**20-CVC-11803** BRENNAN, TAMARA VS. RAY PROPERTIES KIT CARSON INC

**CIVIL MISCELLANEOUS MOTION - PLAINTIFF**

TENTATIVE RULING:

The court does not issue a tentative ruling in this case. Parties are ordered to appear in person or remotely.