**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**IN AND FOR THE COUNTY OF SAN MATEO**

**Law and Motion Calendar**
**Judge: HONORABLE RICHARD H. DUBOIS**
**Department 16**

**400 County Center, Redwood City**
**Courtroom 7A**

**Friday, November 9, 2018**

## NOTICE TO ALL COUNSEL

**Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.**

**IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:**

1. **YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.**
2. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

**Failure to do both items 1 and 2 will result in no oral presentation.**

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

**All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.**

| Case | Title / Nature of Case |
|---|---|

9:00

LINE: 1

17-CIV-03516 BLANCA EVIA DEL PUERTO VS. MENLO PARK CHEVRON, ET AL

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| BLANCA EVIA DEL PUERTO | JOSEPH K. BRAVO |
| MENLO PARK CHEVRON | CHRISTOPHER J. BEEMAN |

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

By order signed November 7, 2018, this matter is continued to December 12, 2018 at 9:00 a.m. in the Law and Motion Department.

9:00

LINE: 2

17-CIV-04570 ALI TAGHAVI VS. THE LELAND STANFORD JUNIOR UNIVERSITY, A CALIFORNIA NONPROFIT CORPORATION, ET AL.

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|---|---|
| ALI TAGHAVI | FREDRICK A HAGEN |
| THE LELAND STANFORD JUNIOR UNIVERSITY, | AMBER A. EKLOF |
| ALTICOR, INC. | KAREN KUBIN |

MOTION FOR SUMMARY JUDGMENT BY ALTICOR INC.
**TENTATIVE RULING:**

Defendant Alticor, Inc.'s ("Amway") Motion for Summary Judgment, directed to Plaintiff Ali Taghavi's 2-9-18 First Amended Complaint (FAC), is DENIED. Code Civ. Proc. § 437c. Plaintiff's request to continue the hearing is DENIED AS MOOT, given the denial of the motion.

The FAC's Third Cause of Action for "intentional interference with prospective economic advantage," which is the only claim asserted against Amway, has five required elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512; CACI 2202. Notably, the issue of whether Amway committed the required "wrongful act" is not raised in the motion. See Reply brief at 5, fn 2 ("Alticor did not move for summary judgment based on the alleged existence of a wrongful act, so Plaintiff's discussion of that point is irrelevant."). Rather, Amway argues there is no evidence that Amway *did anything to interfere* with Plaintiff's employment with Stanford.

Drawing, as the Court must, all reasonable inferences in Plaintiff's favor, the evidence is sufficient to preclude summary judgment. See disputed material fact Nos. 1-3; Plaintiff's Index of Exhibits, Ex. D (Jan. 2016 email string [Plaintiff telling Amway that Stanford cannot grant Amway's requests]); Plaintiff's Index of Exhibits, Ex. J (internal Amway emails responding negatively to Plaintiff's remarks that he/Stanford cannot grant Amway's requests—"they [Stanford] are ridiculous" … "this is NOT good," and stating Amway needs to have a face-to-face with Amway's Audra Davies); Plaintiff's Index of

Exhibits, Ex. K (March 2016 email from Amway's Sam Rehnborg to Stanford's John Farquhar, stating Amway has had negative experiences with Stanford faculty members involved in the WELL program, and that Amway "needs to see a positive action that satisfies [Amway's] concerns within the next two months or we'll be forced to back away from the project … we may then have to cut the cord with Stanford"); Plaintiff's Index of Exhibits, Ex. N (6-6-16 internal Amway emails responding to news of Plaintiff's termination) ["*Well that was quick*! … Hopefully the next person will be easier to work with." … "Wow. Well I see this as an opportunity."]); see also Plaintiff's declaration (stating he regularly interacted with Amway employees; that beginning in Jan. 2016, Amway began aggressively making demands of Plaintiff, which Plaintiff refused; that in early 2016, Stanford faculty told Plaintiff several times that Amway was threatening to withdraw funding unless its demands were met; that Amway representatives expressed their frustration with Plaintiff several times; that following an April 2016 meeting between Stanford and Amway, Plaintiff's supervisor E. Wang dramatically increased her criticisms of Plaintiff, followed shortly thereafter by Plaintiff's termination).

As to the sole issue raised in this motion—namely, whether Amway engaged in any act(s) to interfere with Plaintiff's employment with Stanford, this evidence raises a triable issue sufficient to preclude summary judgment.

Alticor's Objections to Plaintiff's Declaration are ruled upon as follows:

- Obj. Nos. 1-2. SUSTAINED-IN-PART. The Gift Agreement is attached to the FAC, and is admissible. The objection is sustained, however, as to declarant's characterization of the Agreement, which is irrelevant. The document speaks for itself. Evid. Code §§ 702, 800, 803.
- Obj. Nos. 3-9. OVERRULED.
- Obj. No. 10. SUSTAINED-IN-PART, as to the declarant's speculation about Amway's motivations. Evid. Code § 702.
- Obj. No. 11. OVERRULED.
- Obj. No. 12. SUSTAINED-IN-PART, as to the declarant's speculation about Amway's motivations. Evid. Code § 702.
- Obj. Nos. 13-16. OVERRULED.
- Obj. Nos. 17-18. SUSTAINED. Evid. Code § 702.

Alticor's Objections to the Hagen Declaration are ruled upon as follows:

- Obj. Nos. 19-28. SUSTAINED. Evid. Code §§ 400, 403, 702.
- Obj. No. 29. OVERRULED.

Alticor's Objections to the Bates Declaration are ruled upon as follows:

- Obj. Nos. 30-31. OVERRULED.
- Obj. Nos. 32-33. SUSTAINED. Evid. Code §§ 400, 403, 702.
- Obj. No. 34. SUSTAINED-IN-PART, as to the comment that Plaintiff has received accolades from managers. Evid. Code §§ 400, 403, 702.
- Obj. No. 35. SUSTAINED. Evid. Code §§ 400, 403, 702, 800, 802.

Alticor's Objections to the Stevenson Declaration are ruled upon as follows:

- Obj. Nos. 36-37. SUSTAINED. Evid. Code § 702. The documents are not attached to the declaration or submitted, and counsel's characterization of them is not relevant.
- Obj. No. 38. SUSTAINED. Evid. Code §§ 400, 403, 702.
- Obj. No. 39. SUSTAINED. Evid. Code § 702. The documents are not attached to the declaration or submitted, and counsel's characterization of them is not relevant.
- Obj. Nos. 40-42. OVERRULED.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 3

18-CIV-02373 YAANA TECHNOLOGIES, LLC VS. MEERA KAUL, ET AL.

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|---|---|
| YAANA TECHNOLOGIES, LLC | ALFRED L. RINALDO |
| MEERA KAUL | FRANK E. MAYO |
| OPTIMUS VENTURES, LLC | FRANK E. MAYO |

MOTION TO COMPEL ANSWERS TO INTERROGATORIES
**TENTATIVE RULING:**

The motion to compel defendant/cross complainant Optimus Ventures, LLC to respond to form interrogatories is moot.

This matter was continued from October 4, 2018 for a verification showing it was signed by a person with the authority to do so. The evidence indicates that Optimus Ventures has now served an appropriate verified responses to the discovery.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 4

18-CIV-02373 YAANA TECHNOLOGIES, LLC VS. MEERA KAUL, ET AL.

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|---|---|
| YAANA TECHNOLOGIES, LLC | ALFRED L. RINALDO |
| MEERA KAUL | FRANK E. MAYO |
| OPTIMUS VENTURES, LLC | FRANK E. MAYO |

MOTION FOR ORDER ON ADMISSIONS
**TENTATIVE RULING:**

The motion to deem facts admitted with respect to requests for admission served on defendant/cross- complainant Optimus Ventures, LLC is denied. The evidence indicates that a proposed response in substantial compliance with CCP §2033.220 has been served.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 5

18-CIV-04267 JENNIFER CHIU, ET AL. VS. JOANNA QI CHEN, ET AL.

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| JENNIFER CHIU | LAWRENCE D. MILLER |
| JOANNA QI CHEN | MICHAEL G. ZATKIN |

DEFENDANT JOANNA QI CHEN'S DEMURRER TO COMPLAINT OF PLAINTIFF JENNIFER CHIU'S

**TENTATIVE RULING:**

On the Court's own motion, the present action is hereby STAYED pending appeal in the related actions currently before the Court of Appeals, First Appellate District, under Case Numbers A152114 and A154283.

The proceedings in San Mateo Case CIV537488 have been stayed pending appeal. The current proceedings must also be stayed because they are affected by the judgment and orders appealed from in CIV537488. The possible outcomes on appeal and the possible results of these proceedings may be irreconcilable if, for example, the appellate court determines that Mrs. Chiu is entitled to an exemption, and this court determines that she has no cause of action for quiet title or a declaration that she has no interest in the property.

The Court finds that the present matter is embraced in and affected by the judgment and orders appealed pursuant to CCP § 916. Accordingly, the Court declines to rule on Defendant's demurrer at this time. The parties should advise the Court upon resolution of the related appellate proceedings.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:01

LINE: 6

17-CIV-00046 SHAWN O'NEIL VS. CITY OF SOUTH SAN FRANCISCO, ET AL.

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|---|---|
| SHAWN O'NEIL | ROBERT E. CARTWRIGHT |
| CITY OF SOUTH SAN FRANCISCO | DAVID S. ROSENBAUM |

MOTION FOR SUMMARY JUDGMENT
**TENTATIVE RULING:**

The motion for summary judgment by Defendant City of South San Francisco is GRANTED. Under the undisputed material facts, Plaintiff's complaint lacks merit against Defendant City.

**A. The Condition of the Crosswalk, even if dangerous, did not Cause Plaintiff's Injury.**

Plaintiff sets forth several factors, when considered together, would raise an issue of fact as to whether this particular cross-walk did constitute a dangerous condition. However, there were undisputed material facts, primarily from Jesus Galvan, the negligent driver of the vehicle which hit plaintiff, which demonstrated most, if not all, of plaintiff's factual issues did not apply to the causation of the factual situation before the court.

*1. Defendant Galvan's Vision Was not Obstructed.*

The undisputed facts demonstrate that nothing obstructed Mr. Galvan's vision as he proceed toward and through the intersection when he struck Plaintiff. (UMF 24; Decl. of Kelkar § 6(e).))

a. Elevation variances: Plaintiff attempts to dispute that "no elevation variances" existed, citing testimony of Sam Bautista. That testimony reflects only that Mr. Bautista was reading a document that described "vertical curvature" in the road. He does not testify that any "vertical curvature" obscured Mr. Galvan's line of sight. (Bautista Depo. at 170-172.)

b. Trees, Plants, Shrubbery. Plaintiff attempts to dispute that "there were no trees, plants, or shrubbery that would have concealed the presence of pedestrians in the subject crosswalk," citing Defendant Galvan's deposition at pp. 62-66. However, Mr. Galvan testified only that the crosswalk was "covered by trees, garbage cans and recycling things." However, he also testified that "You could see them if they're in the crosswalk already . . . ." (Galvin Depo. at 65:18-21.) Although

trees were present, Mr. Galvan does not testify that they interfered with seeing persons *in the crosswalk*. Material Fact 24 is Undisputed.

c. Condition of Crosswalk. The condition of the sidewalk was not a cause of the incident. It is undisputed that Defendant Galvin was fully aware that the crosswalk was in front of him, regardless of whether it was visible. (UMF 10, 11, 13, 15; Galvin Depo. at 12, 21, 20, 24, 25, 82.)

Material Fact 25 also is undisputed: Trees in the northeast corner would not hide a pedestrian approaching the crosswalk from the north. (UMF 25; Decl Kelkar ¶ 6(e).) Plaintiff attempts to dispute this fact by citing to pages 62 through 66 of Mr. Galvan's deposition. Again, Mr. Galvan testified that the trees do not prevent seeing pedestrians in the crosswalk.

Further, visibility of pedestrians on the corner is moot, since it is undisputed that "Mr. Galvan was looking straight ahead through the intersection as he entered it." (UMF 15, Galvan Depo at 30, 82, 82, 101; see also UMF 20 ("Mr. Galvan was driving in the center of his lane and looking straight ahead through the intersection as he entered it." (Galvan Depo at 118).) Since Mr. Galvan was looking straight ahead, the foliage on the corner is not an issue.

*2. Insufficient Lighting, Signs, Signals Are not a Dangerous Condition.*

To the extent Plaintiff alleges that the accident was caused by insufficient lighting, the claim lacks merit because a municipality is under no duty to provide lighting on its streets. (*Mixon v. Pacific Gas & Electric Co*. (2012) 207 Cal.App.4th 124, 133-34.)

To the extent Plaintiff alleges that the accident was caused by a lack of signage or traffic signals, the claim lacks merit because a failure to provide signs, signals, or warning devices does not constitute a "dangerous condition" within the meaning of section 830. (Gov't Code § 830.4 & 830.8; *Durham v. City of Los Angeles* (1979) 91 Cal.App.3d 567, 577 ("The lack of regulatory traffic control signals does not produce a dangerous condition").)

*3. Conclusion*

Even if the intersection and crosswalk constituted a dangerous condition within the meaning of Government Code section 830, they were not a cause of Defendant Galvin's vehicle striking Plaintiff.

**B. Design Immunity.**

Under Government Code section 830.6, design immunity is a defense

against claims of a dangerous condition. A public entity must establish: (1) causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design. Whether each element of design immunity exists is a question of law. (*Fuller v. Department of Transportation* (2001) 89 Cal.App.4th 1109, 1114.)

*1. Causation.*

It is undisputed that Plaintiff contends that a dangerous condition caused the accident. (Complaint ¶¶ 37-42.)

*2. Discretionary Approval*

The City Council had discretionary authority to approve the plans/design. The design plans for the project were approved by the City Council, the City's governing body with authority to approve plans under the City's Municipal Code. (UMF 33, 34, 35; Decl. of Manjarrez ¶ 19; Decl. of Bautista ¶¶ 11(b)-(f), 11(k); Resolution 11-80; Resolution 2-79.)

Plaintiff contends that UMF 34 is disputed, but the cited evidence shows only that various matters relating to the crosswalk were not part of the plans. This, however, does not dispute Fact 34 that the City Engineer was instructed to draw up and submit plans to the City Council. Plaintiff contends that UMF 35 is disputed. Plaintiff's evidence, however, consists only of testimony that the plans should not have been approved. This opinion does not dispute, however, that the City did, in fact, approve the plans.

*3. Substantial Evidence Supported the Reasonableness of the Plans.*

Generally, a civil engineer's opinion regarding reasonableness is evidence sufficient to establish that substantial evidence supported approval of the plans. (*Hefner v. County of Sacramento* (1988) 197 Cal.App.3d 1007, 1015.) Defendant offers evidence that the Improvement Plan, as it pertains to the intersection and crosswalk, were "reasonable and appropriate." (UMF 40, 41, 44, 45, 47; Decl. of Manjarrez ¶¶ 19, 22, 23, 25, 30.) Plaintiff attempts to oppose these material facts, but the opposing evidence supports only an argument that a different expert disagrees about whether the plans were reasonable and appropriate. (Depositions of Cho, Bautista; Declarations of Dunlap; Decl Beith).

On summary judgment concerning the issue of design immunity, a disagreement between experts does not create a triable issue of fact, since the standard is whether any reasonable basis exists on which a

reasonable public official "could have" approved the design. (*Compton v. City of Santee* (1993) 12 Cal. App. 4th 591, 596.) "As long as there was any substantial basis on which a government official could have decided the design was reasonable, it is irrelevant that a contrary opinion might have been offered." (Id. at 597). That reasonable minds could differ over the reasonableness of the design "suffices to create design immunity." (Id.)

The Declaration of Manjarrez demonstrates that a reasonable State official could have approved the design. Approval of the plan by competent professionals can, in and of itself, constitute substantial evidence of reasonableness. (*Higgins v. State of California* (1997) 54 Cal.App.4th 177, 187.) That a plaintiff's expert may disagree does not create a triable issue of fact. (Id. at 186.)

*4. Conclusion.*

Under the undisputed material facts, Defendant City is entitled to the defense of design immunity.

**C. Ruling.**

The second cause of action, the only count alleged against Defendant City of South San Francisco, lacks merit. The motion for summary judgment is granted in favor of Defendant City of South San Francisco.

**D. Ruling on Objections.**

*1. Plaintiff's Objections.* All of Plaintiff's objections are overruled, since the objections are to Undisputed Material Facts, instead of evidence. To the extent Plaintiff should have objected to the evidence in support of the material facts, the Court overrules the objections concerning Material Facts 8, 22, 40, 41, 44, 45, and 47.

*2. Defendant's Objections.*

a. Declaration of Dunlap. Overruled as to Objection 1 ("declaration in its entirety." Sustained as to Objections 2, 3, 4, and 5. Overruled as to remainder.

b. Declaration of Beith. Sustained as to Objections 27, 28, 29, 30 (paragraph 18 only; overruled as to paragraph 19), 32, 33 (third sentence only; overruled as to remainder), 34, 35, 36, 37, 38 (except for first sentence), 39, 40, 41, 42, 43, 45 (last sentence only). Overruled as to Objection 26, 31 and 44.

3. Defendant's request for Judicial Notice is Granted as to Exhibits A-F to the extent these documents were filed with the Court, but not as to the truth of any matters asserted therein. Plaintiff's request for

judicial notice is granted as to Exhibit A to the extent these documents were filed with the court, but not as to the truth of any matters asserted therein.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:01

LINE: 7

18-UDL-00934 JACK KLINGELE VS. STEVEN JOHANN

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| JACK KLINGELE | TIMOTHY O'HARA |
| STEVEN JOHANN | STEVEN JOHANA |

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
**TENTATIVE RULING:**

The motion for summary judgment is DENIED.

**A. Rule 6 Permitted Defendant to "Repair or Replace" the Roof.**

Rule 6 addresses the physical appearance (cleanliness) of the renter's space. It prohibits tarps over storage, but makes an exception for emergencies. In the event of an emergency, a tarp may be placed on the roof. However, the tarp must be removed, and the roof must be replaced or repaired "as soon as weather permits." Here, there is no evidence of a tarp; there is only evidence of roof replacement. It is undisputed that Defendant replaced his roof. Since Rule 6 permits a roof replacement after an emergency "such as a wintertime roof leak," Rule 6 expressly permits a roof replacement. It is unreasonable to read Rule 6 as permitting a roof replacement only when a tarp had been in place but not when a tarp is not in place.

The issue is whether Defendant's specific manner of roof replacement violated Rule 1.

**B. A Triable Issue Exists About Whether Defendant's New Roof Violated Rule 1.**

Rule 1 prohibits "adding or building onto" trailers. Defendant replaced his roof with a new one. The new roof is a "peaked" roof, whereas the old one was flat. Reasonable minds can differ on whether the peaked roof is a mere "replacement" of the flat roof, since it is visibly different, or whether it constitutes "adding or building onto" the trailer.

Defendant contends that Rule 1 is intended to prevent increase in footprint of the RV unit. (Moving P&A at 8:17-24.) Plaintiff contends that the new roof "extended" the footprint of the RV (Declaration of Klingele at 3.) If the new roof increased the footprint of Defendant's

RV, a situation that Defendant admits would be within the subject of Rule 1, then a triable issue exists about whether Defendant's replacing his roof with an larger or entirely different kind of roof constituted "adding or building onto trailers" in violation of Rule 1.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties. Prevailing party shall provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

POSTED: 3:00 PM