**1. WEILAND v. EL DORADO COUNTY ASSESSMENT APPEALS BD., 22CV0341**

**Petition for Writ of Administrative Mandate**

On the court's own motion, due to the need for additional time to finish reviewing the voluminous administrative record, this matter is continued to March 3, 2023. The court apologizes to the parties for any inconvenience and assures the parties that no further continuance will be necessary.

**TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MARCH 3, 2023, IN DEPARTMENT FOUR.**

**2. MAKSIMOW v. CITY OF SOUTH LAKE TAHOE, SC20210070**

**Defendant's Motion for Summary Judgment**

This action arises from injuries sustained by plaintiff Lorenza Maksimow on March 26, 2020, as a result of slipping and falling on a patch of ice in a public parking lot located at 3079 Harrison Avenue. Plaintiff's First Amended Complaint ("FAC") alleges a single cause of action for dangerous condition of public property against defendant City of South Lake Tahoe ("City") pursuant to Government Code sections 830 and 835. Pending is the City's motion for summary judgment.

**1. STANDARD OF REVIEW**

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (Aguilar v. Atl. Richfield Co. (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (Ibid.)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (Raven H. v. Gamette (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (Stationers Corp. v. Dun & Bradstreet, Inc. (1965) 62 Cal.2d 412, 417.)

**2. PRELIMINARY MATTERS**

The City's request for judicial notice is granted. (Evid. Code, § 452, subds. (c), (h).)

The City's objections to plaintiff's request for judicial notice, numbers 2 and 3, are overruled.

The City's objection to plaintiff's request for judicial notice, number 4, is sustained on the basis of relevance.

Plaintiff's objection number 1 to the City's request for judicial notice is overruled.

Plaintiff's evidentiary objection numbers 1–8 are overruled.

**3. DISCUSSION**

The City's motion is made on the grounds that (1) the City had no actual or constructive notice of a dangerous condition of public property, and (2) there was no dangerous condition of public property where plaintiff slipped and fell.

The elements of a cause of action for a dangerous condition of public property are: "(1) a dangerous condition of public property; (2) a foreseeable risk, arising from the dangerous condition, of the kind of injury the plaintiff suffered; (3) actionable conduct in connection with the condition, i.e., either negligence on the part of a public employee in creating it, or failure by the entity to correct it after notice of its existence and dangerousness; (4) a causal relationship between the dangerous condition and the plaintiff's injuries; and (5) compensable damage sustained by the plaintiff." (Cole v. Town of Los Gatos (2012) 205 Cal.App.4th 749, 757–758; Code Civ. Proc., § 835.)

**3.1 Failure to Assert Affirmative Defense**

As a initial matter, plaintiff argues that the City's motion must be denied because the City failed to plead an affirmative defense of lack of notice of a dangerous condition. The court disagrees that lack of notice is necessarily an affirmative defense. "An affirmative defense is an allegation of new matter in the answer that is not responsive to an essential allegation in the complaint. In other words, an affirmative defense is an allegation relied on by the defendant that is not put in issue by the plaintiff's complaint." (The Bank of New York Mellon v. Preciado (2013) 224 Cal.App.4th Supp. 1, 8.)

Here, it is the plaintiff who must prove that the City "had actual or constructive notice of the dangerous condition under [Government Code] Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous

condition." (Gov. Code, § 835, subd. (b).) Plaintiff's FAC, which is a Judicial Council form complaint, alleges on page 4, paragraph Prem.L-4, Count Three, that the City had "actual" and "constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it." (Ibid.) Thus, the issue of notice to the City was clearly put in issue by plaintiff's complaint. Accordingly, lack of notice does not constitute an affirmative defense in this action that the City needed to plead.

**3.2 Actual Notice**

The City contends it had no actual notice of a dangerous condition in the parking lot.

A public entity has "actual notice of a dangerous condition" if it has (1) "actual knowledge of the existence of the condition" and (2) "knew or should have known of its dangerous character." (Gov. Code, § 835.2, subd. (a).) To establish actual notice, "[t]here must be some evidence that the employees had knowledge of the particular dangerous condition in question"; "it is not enough to show that the [public entity's] employees had a general knowledge" that the condition can sometimes occur. (State of Cal. v. Superior Court (1968) 263 Cal.App.2d 396, 399.)

The City provided evidence that other than plaintiff's claim, the City was not presented with any other liability claims or lawsuits involving injuries or dangerous conditions of any kind in the subject parking lot between January 1, 2017, and March 26, 2020. (Def. Separate Statement of Undisputed Material Facts ("UMF"), p. 9, ¶¶ 10, 11.) Further, the City has no records of complaints, claims, or injuries involving snow or ice at the subject parking lot for the year prior to plaintiff's accident. (Id., pp. 8–9, ¶¶ 9, 12, 13.) Plaintiff never notified the City or any of its employees about any ice in the parking lot prior to her accident. (Id., p. 8, ¶ 8.) The City first became aware of the ice patch when plaintiff filed her liability claim with the City Clerk. (Id., p. 12, ¶ 25.)

The court finds this evidence is sufficient to make a prima facie showing that the City did not have actual notice of a dangerous condition, including from snow or ice, prior

to plaintiff's accident. Thus, the burden of production shifts to plaintiff to produce a prima facie showing of the existence of a triable issue of material fact as to actual notice.

Plaintiff provided evidence that purportedly shows that South Lake Tahoe received over a foot of snow on March 15, 2020, and received an additional 6.5 inches of snow on March 25, 2020, the day before the accident. (Pl. Notice of Lodgment and Exhibits ("NOL"), Ex. L.) Plaintiff also provided evidence that there was a vehicle, a white Mitsubishi, parked next to the area where plaintiff slipped and fell, and which vehicle was allegedly preventing snow removal in that area of the parking lot following the snowstorms on March 15 and 25, 2020. (Pls. NOL, Exs. A, B.) The City tagged the vehicle on March 13, 2020, with a Notice of Intent to Abate – Order for having expired tags. (Id., Ex. A) The City did not tow away the vehicle until April 21, 2020, due, in part, to the COVID lockdown. (Id., Ex. E, pp. 54–55 & Ex. O.)

Based on that evidence, plaintiff contends the City had actual notice because the amount of snowfall presented a clear and obvious notice of a dangerous condition, the City had notice of the vehicle abandoned in the parking lot, and that said vehicle hindered snow removal activities. (Id., Exs. A, E.) Further, that the City violated its own policies and procedures by failing to tow away the vehicle and failing to remove snow and ice at any point between March 12, 2020, and March 26, 2020. (See Def. UMF, p. 12, ¶ 24.) Plaintiff asserts that due to the City's failure to tow the vehicle, it allowed the accumulation of ice and snow in the area of plaintiff's accident and which resulted in her injuries.

The court finds that plaintiff has not produced a prima facie showing of the existence of a triable issue of material fact as to whether the City had actual notice. First, the undisputed evidence shows that the City had not received any complaints, claims, or lawsuits about any dangerous condition in the subject parking lot, including from snow or ice, between January 1, 2017, and March 26, 2020. Plaintiff provided no contrary evidence on this point. As to the danger being clear and obvious, the weather information provided by plaintiff—particularly the snow accumulations—is for Tahoe City, not South

Lake Tahoe. (See Pl. NOL, Ex. L; Pl. RJN, Ex. D.) As such, the court denied plaintiff's request for judicial notice of that weather information on the basis of relevance. Further, plaintiff mischaracterizes the evidence about whether the City cleared snow and ice at any point between March 12, 2020, and March 26, 2020. The City provided evidence that its staff performs snow removal once there is an accumulation of three inches or more of snow. (Def. UMF, p. 12, ¶ 23.) The City went on to state that it would not have removed snow from the parking lot since the City believed there was less than 3 inches total of accumulation during that time period. (Def. UMF, p. 12, ¶ 24.) However, the City's evidence in support of the amount of accumulation is for water accumulation, not snow accumulation. As such, the court is not considering either the City's inaccurate statements about snow accumulation between March 12 and 26, 2020, or plaintiff's irrelevant evidence about snow accumulation in Tahoe City.

For the foregoing reasons, the court finds there is no triable issue of material fact as to whether the City had actual notice of the condition.

**3.3 Constructive Notice**

"A public entity has 'constructive notice of a dangerous condition' 'only if' (1) 'the condition had existed for' some period of time prior to the plaintiff's accident, and (2) 'the condition ... was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.' [Citations.] The second element—that the defect be so 'obvious,' 'conspicuous[,]' or 'notori[ous]' that it should have been discovered by the public entity [citations]—is critical because it is the public entity's failure to discover and repair an obvious defect that makes it appropriate to impute knowledge of that defect to the entity, which is what renders that entity negligent for failing to correct a defect despite that imputed knowledge. [Citations.] Because it is the failure to discover and repair an obvious defect that renders the public entity negligent (and hence potentially liable for injuries caused by that defect), it becomes relevant whether (1) the entity had a 'reasonably adequate' 'inspection system'

in place 'to inform [it] whether the property was safe for the use or uses for which [it] used or intended others to use the public property and for uses that the public entity knew others were making of the public property' and (2) the entity 'operated such an inspection system with due care' and still 'did not discover the' defect. [Citation.] Although constructive notice of a defect may be imputed to a public entity that fails to have a 'reasonably adequate' inspection system [citation], constructive notice will not be imputed if the defect is not sufficiently obvious [citation with parenthetical]." (Martinez v. City of Beverly Hills (2021) 71 Cal.App.5th 508, 519–520.)

The City provided the following evidence. Plaintiff's accident occurred on March 26, 2020, at approximately 7:30 a.m. (Def. UMF, p. 7, ¶¶ 1–2.) She was walking towards her car and talking with an acquaintance when she slipped and fell on a patch of ice. (Def. UMF, p. 2, ¶ 5.) At the time she slipped, plaintiff was "looking towards the car, focusing on the car" and not at the ground. (Id., p. 3, ¶ 6.) She was wearing suede winter boots that have a small heel. (Id., p. 3, ¶ 7.) The patch of ice she slipped and fell on was about three feet by four feet. (Id., p. 3, ¶ 8.) She did not see the patch of ice until she slipped and fell on it. (Id., p. 3, ¶ 9.) She did not recall seeing other ice in the parking lot before the incident. (Ibid.) Plaintiff testified that the weather was cold, but she could not recall whether there was snow or precipitation. (Id., p. 3, ¶ 10.) The court takes judicial notice that the National Weather Service reports that on March 26, 2020, in South Lake Tahoe, the temperature was a high of 30 degrees and a low of 12 degrees. (Def. Appendix of Exhibits ("AOE"), Ex. E.)

In photos included with plaintiff's Liability Claim Form presented to the City—taken some time between after her accident and approximately April 24, 2020—no ice is visible in the approximate spot where she slipped and fell. (Def. UMF, p. 8, ¶¶ 6–7.) In photos taken on March 12, 2020, by a City Code Enforcement Officer, there is no patch of ice visible in the approximate spot where plaintiff fell, and the pavement appears to be flat, dry, and free of slipping or tripping hazards. (Id., p. 10, ¶ 15.) As previously stated, plaintiff

did not notify the City or any of its employees about any ice in the parking lot prior to her accident. (Id., p. 8, ¶ 8.) Other than plaintiff's claim, the City was not presented with any liability claims or lawsuits involving injuries or dangerous conditions of any kind in the subject parking lot between January 1, 2017, and March 26, 2020. (Id., pp. 8–9, ¶¶ 9–11.) Further, the City has no records of complaints or other issues involving ice or snow at the subject parking lot for the year prior to plaintiff's incident. (Id., pp. 8–9, ¶¶ 9, 12, 13.) The City first became aware of the purported ice patch when plaintiff filed her liability claim with the City Clerk. (Id., p. 12, ¶ 25.)

The City also presented evidence concerning its standards for snow and ice removal. Specifically, the City's Snow and Ice Removal Plan ("Plan") sets forth different priority areas for snow removal operations of the City's 225 miles of roadway and other paved assets. (Id., p. 11, ¶ 19.) Parking lots are within Priority 3 and Priority 4 areas, which also include residential streets, bicycle trails, and sidewalks. (Id., p. 11, ¶ 20.) Snow removal is performed in those priority areas only when storms produce snow accumulation of three or more inches. (Id., p. 11, ¶¶ 21–23.) The City's streets and facilities are monitored by a street maintenance supervisor as well as the Director of Public Works. (Pl. NOL, Ex. D, pp. 31, 36.)

The City also provided evidence about its use of traction abrasives. The City's Maintenance Manager, who oversees snow removal operations, declares that "traction abrasives such as sand and salt are not typically placed on walkways and other paved areas where Park maintenance staff performs snow removal, such as parking lots. If an accumulation of ice is reported to Parks staff, sand and salt may be used as appropriate." (Def. AOE, Ex. F, ¶ 9.) The City's Director of Public Works testified that sanding is reserved for city streets and not parking lots, and that they "try to minimize what [they] do in terms of the sanding operations" because "there's a lot of environment impacts in terms of sanding, especially in the Tahoe region." (Pl. NOL, Ex. D, pp. 31–32.) He further testified that they only use brine for "special locations where [they] have difficulty in terms of

plowing the roadways. (Id., Ex. D, pp. 32–33.) He also testified that they use "very minimal" snow melt because "snow melt and salt are regulated here in this environment in the Tahoe region. So TRPA does not allow us to use extensive amount of bring or salt." (Id., Ex. D, p. 32.) A longtime, former Maintenance 4 employee for the City testified that the City will chip ice at certain facilities, such as the senior center or recreation center. (Id., Ex. G, pp. 104, 108.)

These statements by City employees are consistent with the City's Plan, which states that anti-icing operations using a brine mixture are to be "used sparingly, and only on Arterial and Collector class roadways." (Def. AOE, Ex. 1 to Ex. F., p. 13.) "The use of brine has been studied and developed with support from the Tahoe Regional Planning Agency and Lahontan Regional Water Quality Control Board as an effective way of reducing the need for sand and rock salt in traction and deicing operations for public safety." (Ibid.) "Sanding operations are very important in providing safety to key micro-zones of the city. … [¶] … While public safety is paramount in sanding operations, the City is aware that traction sand has been identified as a significant contributor to fine sediment particles (FSP) in urban runoff, which are the primary pollutant impacting the clarity of Lake Tahoe." (Id., p. 14.)

The court finds this evidence is sufficient to make a prima facie showing that the City lacked constructive notice of a dangerous condition from ice prior to plaintiff's accident, and that the City has an adequate inspection system and procedures to handle the removal of snow and ice, which is, in part, uniquely regulated in the Tahoe region due to environmental concerns. Thus, the burden of production shifts to plaintiff to produce a prima facie showing of the existence of a triable issue of material fact as to constructive notice.

Plaintiff cites to the same evidence about the tagged white Mitsubishi in the parking lot which hindered snow removal in the area of plaintiff's accident. To reiterate, plaintiff provided evidence that purportedly shows that South Lake Tahoe received over a foot of

snow on March 15, 2020, and received an additional 6.5 inches of snow on March 25, 2020, the day before the incident. (Pl. NOL, Ex. L.) Plaintiff also provided evidence that there was a vehicle, a white Mitsubishi, parked next to the area where plaintiff slipped, and which vehicle was allegedly preventing snow removal in that area of the parking lot following the snowstorm on March 15, 2020. (Pl. NOL, Ex. A.) The City tagged the vehicle on March 13, 2020, with a Notice of Intent to Abate – Order for having expired tags. (Ibid.) The City had not towed the vehicle out of the parking lot prior to plaintiff's accident. (Id., Ex. O.)

Plaintiff contends the City had constructive notice because the amount of snowfall presented a clear and obvious notice of a dangerous condition. Further, that the City violated its own policies and procedures by failing to tow away the vehicle and failing to remove snow and ice at any point between March 12, 2020, and March 26, 2020. Plaintiff asserts that due to the City's failure to tow the vehicle, it allowed the accumulation of ice and snow in the area of plaintiff's accident and which resulted in her injuries.

The court finds that plaintiff has not produced a prima facie showing of the existence of a triable issue of material fact as to whether the City lacked constructive notice. First, as stated earlier, the undisputed evidence shows that the City had not received any complaints or been presented with any claims or lawsuits about ice or snow in the subject parking lot in the year prior to plaintiff's accident. Plaintiff provided no contrary evidence on this point.

As to the danger being clear and obvious, the weather information provided by plaintiff—particularly the snow accumulations—is for Tahoe City, not South Lake Tahoe. (See Pl. NOL, Ex. L; Pl. RJN, Ex. D.) As such, plaintiff did not provide admissible evidence about snow accumulations in South Lake Tahoe around the time of plaintiff's accident which would raise an inference that the failure to tow away the Mitsubishi allowed an accumulation of ice to build in the area of plaintiff's accident and caused her to slip. Moreover, plaintiff provided no evidence that the ice existed for a sufficient period of

time prior to plaintiff's accident and was of such an obvious nature that the City should have discovered the ice. Indeed, in early spring in South Lake Tahoe, the ice could have melted during the afternoon and then evaporated.

For the foregoing reasons, the court finds there are no triable issues of material fact as to the City's lack of constructive notice of the condition.

**3.4 Dangerous Condition of Public Property**

Because the court finds there are no triable issues of material fact as to whether the City lacked actual or constructive notice, it is not necessary for the court to determine whether the ice patch constituted a dangerous condition as a matter of law, or whether there are triable issues of material fact on that issue.

**TENTATIVE RULING # 2: CITY OF SOUTH LAKE TAHOE'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS v. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.**

**3. MATTER OF JORGE UTRILLA, 22CV1814**

**OSC Re: Name Change**

Mother petitions to change her minor child's last name. The minor's natural father has not joined in the petition. On December 28, 2022, petitioner filed proof of service stating that the natural father was personally served with the Order to Show Cause on December 24, 2022. (Code Civ. Proc., § 1277, subd. (a)(4).) Accordingly, the court finds that notice was given as required by law. To date, the natural father has not filed an objection to the petition. Proof of Publication was filed on January 23, 2023.

**TENTATIVE RULING # 3: PETITION IS GRANTED.**

**4. MATTER OF WILLIAM UTRILLA, 22CV1815**

**OSC Re: Name Change**

Mother petitions to change her minor child's last name. The minor's natural father has not joined in the petition. On December 28, 2022, petitioner filed proof of service stating that the natural father was personally served with the Order to Show Cause on December 24, 2022. (Code Civ. Proc., § 1277, subd. (a)(4).) Accordingly, the court finds that notice was given as required by law. To date, the natural father has not filed an objection to the petition. Proof of Publication was filed on January 23, 2023.

**TENTATIVE RULING # 4: PETITION IS GRANTED.**

**5. CAGAN v. KAUR, 22CV1084**

**Order of Examination (Small Claims)**

Proof of service of the order to appear for examination was filed January 31, 2023, showing that personal service on the judgment debtor was effected more than ten (10) days prior to the hearing. (Code Civ. Proc., § 708.110, subd. (d).)

**TENTATIVE RULING # 5: SANJEPP KAUR'S PERSONAL APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 17, 2023, IN DEPARTMENT FOUR.**