SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: September 24, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

RECORDING IS PROHIBITED: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV423427	Malik Washington vs Alforde Joaquin et al	**Demurrer** Scroll down to LINE 1 for Tentative Ruling.
LINE 2	23CV427636	Mara Hernandez vs City of Santa Clara	**Demurrer** A dismissal of the entire action without prejudice was filed on September 19, 2024. This motion is therefore MOOT and ordered OFF CALENDAR.
LINE 3	24CV433621	Sedigheh Hajizadeh vs Magic Mountain, LLC	**Demurrer** On August 13, 2024, the court (Hon. Manoukian) issued an order granting Defendant's motion to change venue to Los Angeles County. The court clerk is directed to effectuate the change of venue and transfer this action to Los Angeles Superior Court forthwith. Moving party to prepare the formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 4	24CV433621	Sedigheh Hajizadeh vs Magic Mountain, LLC	**Motion to Compel (Discovery/Deposition)** On August 13, 2024, the court (Hon. Manoukian) issued an order granting Defendant's motion to change venue to Los Angeles County. The court clerk is directed to effectuate the change of venue and transfer this action to Los Angeles Superior Court forthwith. Moving party to prepare the formal order.
LINE 5	19CV360733	Edward Kellar et al vs Central Investments et al	**Motion to Seal Records** Scroll down to LINE 5 for Tentative Ruling.
LINE 6	22CV402218	Dolores Mattson vs Adi De La Zerda et al	**Motion to Withdraw as Attorney.** Motion of Attorney Paul Van Der Walde to be relieved as counsel for Plaintiff Dolores Mattson by and through her GAL Shelly Potvin. Notice of hearing was given to Plaintiff at her last known address. No opposition was filed. The Court has not been provided any information regarding any conservatorship of Plaintiff. Accordingly, the Motion is DENIED, without prejudice. Moving party to prepare the formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	22CV402218	Dolores Mattson vs Adi De La Zerda et al 4	**Petition for Approval of Compromise** By order dated January 18, 2024, filed January 19, 2024, the petition for approval of compromise was approved except for any payment that was due to United Healthcare. Paragraph 13 of that order dictates that $42,000 was to be held by Plaintiff's counsel until the dispute was resolved. Cotiviti (United's authorized recovery vendor) agreed to a reimbursement amount of $41,801.96. Plaintiff's counsel sent a check for $1,387.08 to Cotiviti, marking it as "Lien payment in full," accompanied by a letter stating that the payment was in full satisfaction of all liens; the check was deposited. Upon realizing the error, Cotiviti promptly notified Plaintiff's counsel on July 6, 2023, and August 18, 2023, and returned the erroneous $1,387.08 payment by check dated September 14, 2023, and mailed it on September 26, 2023 (Commercial Code § 3311(c)(2)). There was no dispute regarding the amount owed. Plaintiff's counsel had agreed to a reimbursement amount of $41,801.96 after a pro rata reduction for procurement costs. This Court ordered that the parties meet and confer regarding the disputed amount. According to United's briefing, Plaintiff's counsel failed to do so. Good cause appearing, United Healthcare shall be paid $41,801.96 as the final issue to be determined for the Petition for Approval of Compromise. Moving party to prepare and submit formal

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	22CV402218	Dolores Mattson vs Adi De La Zerda et al	**Review Re: Dismissal after settlement** This hearing is CONTINUED to January 23, 2025 at 10a.m. in Department 18b.
LINE 9	22CV409212	YEVGENIY DUKHOVNY et al vs MEGAN CARR et al	**Motion to Approve Good Faith Settlement (Alex Downin)** Defendant and Cross-Defendant Alex Downin's motion to determine that the settlement reached with Plaintiffs Yevgeniy Dukhovny as an Individual and on behalf of the Estate of Leonid Samoylovich aka Joseph Dukhovny, and Faina Karasina, is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6. The motion is UNOPPOSED and GRANTED. This order should not be construed as precluding Defendants Essex Management Corporation and Essex Regency Escuela, L.P. from pursuing their express contractual indemnity claims or any other claims that may fall outside the ambit of Code of Civil Procedure section 877.6, against Alex Downin, Heather Downin, or any other party. The moving party is instructed to prepare the order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 10	23CV415836	Jin Zhang vs Zhichao Lu et al	**Joinder to Motion to Stay for *Forum Non Conveniens*** OFF CALENDAR at counsel's request.

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LAW AND MOTION TENTATIVE RULINGS

LINE 11	24CV440630	Cavalry SPV I, LLC as assignee of Citibank vs Loan Duong	**Motion to Set Aside Default/Judgment** Defendant Loan Duong's motion to set aside and vacate the default that was entered. Plaintiff opposes the motion. Defendant filed a motion to stay based on a request to compel this matter to arbitration on July 8, 2024. A default was entered on August 20, 2024. A *proposed* default judgment was also filed on August 20, 2024, but was never entered. Defendant's motion for stay based on a request for arbitration is a sufficient response to the Complaint and the default should not have been entered. Good cause appearing, the motion is GRANTED. The default entered in this case is SET ASIDE, and the case is REINSTATED. Also before the Court is Defendant's motion for stay to compel arbitration. Plaintiff filed a non-opposition to that motion on August 22, 2024. Good cause appearing, the motion to compel this matter to arbitration and stay this litigation is GRANTED. Plaintiff shall commence arbitration. This matter is SET for status review of the arbitration on February 13, 2025 at 10a.m. in Department 18b. Plaintiff to prepare a formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 12	24CV440630	Cavalry SPV I, LLC as assignee of Citibank vs Loan Duong	**Motion for Stay (Arbitration)** See Tentative Ruling for LINE 11

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LAW AND MOTION TENTATIVE RULINGS

LINE 13	24CV442947	Citizens Bank, National Association vs Sobrante Venture, LLC	**Motion For Order Appointing Receiver and Injunction In Aid Of Receivership** Plaintiff Citizens Bank's Motion for an Order Appointing Receiver and Injunction in Aid of Receivership as against defendant Sobrante Venture, LLC, made pursuant to loan documents and Code Civ. Proc., §§ 564 (b)(9) and (b)(11), on the grounds that Defendant has defaulted under its obligations under the loan documents by (1) failing to pay the debt as of the March 26, 2024, Maturity Date, (2) failing to pay real estate taxes and assessments, and (3) failing to pay premiums on insurance policies, and Defendant cannot or will not cure said defaults. Citizens seeks to appoint Kevin Singer as a Receiver for the subject property and also requests an injunction, pursuant to Code Civ. Proc., §526(a)(2). No opposition to this motion was filed and according to the Milde Declaration, Defendant has conceded the Motion. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. A failure to oppose a motion leads to the presumption that Defendant has no meritorious arguments. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) Moving party meets its burden of proof. Good cause appearing, the motion is GRANTED: Kevin Singer is appointed as the Receiver and an Injunction in Aid of Receivership is GRANTED. Moving Party to prepare a formal order.

Calendar Line 1
Case Name: *Malik Alexander Washington v. Alforde M. Joaquin, et al.*
Case No.: 23CV423427

Before the Court is defendant East Side Union High School District's demurrer to plaintiff's first amended complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background.

Defendant Alforde M. Joaquin, individually and dba Getsportsfocus ("Joaquin"), organized, managed, and promoted a football game to be played at Oak Grove High School to be played on December 30, 2022. (First Amended Complaint ("FAC"), ¶10.) Defendant Joaquin received permission by way of a permit from defendant East Side Union High School District ("District") to use the school, specifically the football field and adjoining locker room facilities on December 30, 2022. (FAC, ¶11.) At no time during the permitting process for this event did defendant District communicate with defendant Joaquin about providing reasonable security measures for protection of the public while using the subject property. (*Id.*) Defendant District charged a fee for defendant Joaquin to use the subject property to host a football game where the public would be sold tickets to attend. (*Id.*)

The event was heavily promoted by defendant Joaquin in the month prior to the event. (FAC, ¶12.) Defendant Joaquin invited the public charging adults $15 and students $10 for admission. (FAC, ¶13.)

Plaintiff Malik Alexander Washington ("Washington") was a volunteer coach for a team participating in the football game. (FAC, ¶14.)

During halftime, a participant player became upset with plaintiff Washington, claiming a lack of playing time during the football game. (FAC, ¶15.) Plaintiff Washington told the participant player that he would receive more play time in the second half of the game. (*Id.*) The player declined to continue participating in the football game and instead chose to change out of his uniform and left the locker room. (*Id.*) After halftime, plaintiff Washington exited the locker room and was walking toward the field when an attendee, related to the participant player, approached plaintiff Washington from behind and struck plaintiff Washington with a football helmet. (*Id.*) Plaintiff Washington fell to the ground. (*Id.*) The attendee continued

assaulting plaintiff Washington with a football helmet, striking him repeatedly in the head and face. (*Id.*)

On September 27, 2023, plaintiff Washington filed a complaint against defendants Joaquin and District, among others, asserting causes of action for:

(1) Negligence

(2) Dangerous Condition of Public Property

On December 12, 2023, defendant Joaquin filed an answer to plaintiff Washington's complaint.

On March 25, 2024, defendant District filed a demurrer to plaintiff Washington's complaint.

On April 22, 2024, the court (Hon. Manoukian) issued an order granting plaintiff Washington leave to file a FAC. On that same day, plaintiff Washington filed the operative FAC which now asserts causes of action for:

(1) Negligence

(2) Negligence of Public Employee(s)

On June 5, 2024, defendant District filed the motion now before the court, a demurrer to plaintiff Washington's FAC.

II. DEFENDANT DISTRICT'S DEMURRER TO PLAINTIFF WASHINGTON'S FAC IS SUSTAINED.

A. NEGLIGENCE OF PUBLIC EMPLOYEE(S).

Only the second cause of action of plaintiff Washington's FAC is directed at defendant District. In contrast to the original complaint's second cause of action for dangerous condition of public property, plaintiff Washington's second cause of action is now entitled, "Negligence of Public Employee(s)." As argued by defendant District,

> "Under the Government Claims Act, '[a] public entity is not liable for an injury,' '[e]xcept as otherwise provided by statute.'" (*Hampton, supra*, 62 Cal.4th at p. 347, quoting Gov. Code, § 815, subd. (a);3 accord, *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897 [95 Cal. Rptr. 3d 183, 209 P.3d 89] ["there is no common law tort liability for public entities"].)

(*Grossman v. Santa Monica-Malibu Unified School Dist.* (2019) 33 Cal.App.5th 458, 466 (*Grossman*).)

Defendant District also recognizes that its liability can be premised upon Government Code section 815.2 , subdivision (a), which states, "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." "This section imposes upon public entities vicarious liability for the tortious acts and omissions of their employees." (Legislative Committee Comment to Gov. Code, §815.2; see also *Hoff v. Vacaville Unified School District* (1998) 19 Cal.4th 925, 932—"Through this section, the California Tort Claims Act expressly makes the doctrine of respondeat superior applicable to public employers. [Citation.] 'A public entity, as the employer, is generally liable for the torts of an employee committed within the scope of employment if the employee is liable. [Citations.]' [Citation.] Under section 820, subdivision (a), '[e]xcept as otherwise provided by statute . . ., a public employee is liable for injury caused by his act or omission to the same extent as a private person.' Thus, 'the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§815, subd. (b)).'")

In relevant part, the second cause of action alleges defendant District "owned, managed, and controlled the Subject Premises and had a non-delegable duty to exercise ordinary care to ensure the safety of all persons who were lawfully on the property." (FAC, ¶30.) Defendant District "had a duty to ensure that organizations using the Subject Property with their permission planned, implemented, and enforced adequate security measures based on the number of participants at scheduled events and/or the type of event scheduled." (*Id.*) Defendant District "so negligently managed, maintained, and/or performed the application procedures for the rental of the Subject Premises such that adequate safety measures were not prepared, implemented, or enforced based on the number of participants at scheduled events and/or the type of event scheduled." (*Id.*) Defendant District "had actual and constructive

knowledge that before, during and after football games hosted at the Subject Premises, patrons, participants, invitees, and volunteers are excited, anxious, and aggressive, thereby creating an unreasonable risk of injury to other patrons … [and] that this unreasonable risk of injury was even greater in during highly attended events with unsupervised or events with little to no security measures in place." (FAC, ¶33.)

Thus, it would appear that plaintiff Washington is alleging that unspecified employee(s)[1] of defendant District were negligent in renting the subject property to defendant Joaquin in that the unspecified District employee(s) failed to ensure defendant Joaquin planned, implemented, and enforced adequate security measures for a football game to be attended by approximately 500 persons.[2]

Defendant District demurs initially by relying upon *Grossman* where the plaintiff "suffered serious injuries when he fell off a 27-foot-tall inflatable slide while attending a carnival held at a school campus owned by the Santa Monica-Malibu Unified School District." (*Grossman, supra,* 33 Cal.App.5th at p. 460.) The *Grossman* court affirmed summary judgment in favor of the defendant school district.

> Under the Civic Center Act, "each and every public school facility and grounds" is designated "a civic center." ([Education Code] § 38131, subd. (a).) Pursuant to section 38134, subdivision (a)(1), a school district must allow nonprofit organizations "organized to promote youth and school activities" to use school facilities and grounds under its control. Section 38134, subdivision (i)(1), apportions liability between the school district and the entity using the school facilities or grounds. "***A school district authorizing the use of school facilities or grounds under subdivision (a) is liable for an injury resulting from the negligence of the school district in the ownership and maintenance of the school facilities or grounds.*** An entity using school facilities or grounds under

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[1] Plaintiff does not explicitly allege an "employee" acted negligently. However, at page 6, line 26 of plaintiff Washington's FAC, plaintiff entitles his second cause of action as "Negligence of Public Employee(s)." As such, the court reasonably infers that plaintiff's allegations against District and/or Doe defendants refers to unnamed District employee(s).

[2] Paragraph 11 of the FAC alleges defendant Joaquin's "application for the use of the Subject Premises stated the purpose of the rental was "Football" and there was an estimated attendance of 500 people."

this section is liable for an injury resulting from the negligence of that entity during the use of the school facilities or grounds.

(*Grossman, supra*, 33 Cal.App.5th at pp. 465-466; emphasis added.)

The *Grossman* court determined that the Civic Center Act did not affect the school district's liability under the Government Claims Act and thus, "it follows that the school district's liability for negligence 'in the ownership and maintenance of the school facilities or grounds' is limited to injuries caused by a dangerous condition of public property as defined by Government Code section 835." (*Grossman*, *supra*, 33 Cal.App.5th at p. 467.) Under a dangerous condition of public property theory, the *Grossman* court concluded, "Grossman's injuries resulted from the alleged negligence of the booster group and others 'during the use of' the school grounds, not from the school district's ownership and maintenance of the grounds." (*Id.* at p. 460.) Consequently, the school district had not liability and summary judgment was proper.

Grossman does not aid defendant District here where its liability is premised not upon a dangerous condition of public property (Gov. Code, §835), but rather upon the negligence of an employee (Gov. Code, §815.2.).

Defendant District argues next that, "Public entities are immune from liability for asserted failures to provide police and security services. (Gov. Code, § 845[3]; *Zelig*, *supra*, at pp. 1141–1147.)" (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1352.) However, plaintiff Washington's complaint does not allege ***defendant District*** failed to provide police or security services. Plaintiff Washington's allegation more specifically alleges employee(s) of defendant District failed to ensure ***defendant Joaquin*** (an organization using the Subject Property with District's permission) planned, implemented, and enforced adequate security measures for a football game to be attended by approximately 500 persons. Even so, if defendant District cannot be liable for its own failure to provide security services, the court finds it even more tenuous for plaintiff Washington to allege defendant District is liable for failure to ensure that a third party provide security.

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[3] Government Code section 845 states, in relevant part, "Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service."

In opposition, plaintiff Washington contends this particular immunity (Gov. Code, §845) is inapplicable because his allegation goes beyond the failure to provide police or security services and instead alleges the failure to provide "security measures," which is broader and encompasses "any action, including personnel, plans, protocols, and/or systems, created to manage risk and ensure a secure environment."

Neither party provides the court with adequate supporting legal authority to demonstrate whether this particular immunity applies or not to the facts alleged here. As such, the court will default to the rule that "a demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense." (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191.) Defendant District has not demonstrated that, on the face of the subject pleading, the second cause of action is necessarily barred by Government Code section 845.

Defendant District further contends it is not liable pursuant to Government Code section 815.2 because none of the relevant parties (defendant Joaquin, plaintiff Washington, or plaintiff Washington's assailant) are employees of a public entity. However, this is a misunderstanding of plaintiff Washington's allegation. As the court understands the allegations, the subject of this cause of action are the employee(s) who "negligently managed, maintained, and/or performed the application procedures for the rental of the Subject Premises such that adequate safety measures were not prepared, implemented, or enforced based on the number of participants at scheduled events and/or the type of event scheduled." (See FAC, ¶¶30 – 31.)[4]

Although not fully articulated, defendant District also demurs to plaintiff Washington's second cause of action on the basis that the "District duties alleged in the FAC do not exist, as

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[4] In his opposition, plaintiff Washington makes reference to a number of factual assertions not found in the FAC and submits a declaration from his counsel as further support for such factual assertions. For instance, plaintiff Washington asserts the subject game was organized not only by defendant Joaquin, but also by Joel Cordero, the head football coach at Oak Grove High School and a District employee. The court will not consider the extrinsic material proffered by plaintiff Washington. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed (Code Civ. Proc., §§ 430.30, 430.70). The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381 [296 P.2d 838])." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.)

a matter of law."[5] "[T]he existence of a duty is a question of law for the court." (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.) "The question of whether a duty exists is a question of law and must be decided by the court on a case-by-case basis." (*Dutton v. City of Pacifica* (1995) 35 Cal.App.4th 1171, 1175.) "Whether a legal duty of care exists in a given factual situation is a question of law to be determined by the court, not the jury." (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745, 754.) "The existence and scope of duty are legal questions for the court." (*Coldwell Banker Residential Brokerage Co. v. Superior Court* (2004) 117 Cal.App.4th 158, 163.)

In conducting its own research, the court is of the opinion that plaintiff Washington's FAC do not support the existence of a duty, under the factual circumstances alleged, to "ensure the safety of all persons who were lawfully on the property" or, more specifically, to ensure that organizations using the Subject Property with defendant District's permission planned, implemented, and enforced adequate security measures based on the number of participants at scheduled events and/or the type of event scheduled. (See FAC, ¶¶30 – 31.)

> Generally, "landowners [are required by law] to maintain land in their possession and control in a reasonably safe condition. [Citations.] In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures. [Citations.]" (*Ann M., supra*, 6 Cal.4th at p. 674.) However, "a duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated." (*Id.* at p. 676.)
>
> Our Supreme Court has reevaluated the scope of a landowner's duty to protect persons from random criminal conduct several times in the recent past. In general, the court has stressed the necessity of balancing the foreseeability of

[5] See page 2, lines 2 – 3, of the Notice of East Side Union High School District's Demurrer and Demurrer to Plaintiff's First Amended Complaint.

> the harm against the burden of the duty to be imposed. Where the burden of prevention is great, a high degree of foreseeability is usually required; whereas where there are strong public policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required. (*Ann. M., supra,* 6 Cal.4th at pp. 678–679.) Thus, duty is determined by balancing the foreseeability of the criminal acts against the " 'burdensomeness, vagueness, and efficacy' " of the proposed security measures, or as here, the supervision measures. (*Id.* at p. 679.)
>
> Although the Supreme Court has observed that "random, violent crime is endemic in today's society[, and i]t is difficult, if not impossible, to envision any locale open to the public where the occurrence of violent crime seems improbable" (*Ann M., supra,* 6 Cal.4th at p. 678), the court has also reiterated that landowners are not insurers of public safety and will have no duty to provide highly burdensome measures of protection ***absent a showing of a high degree of foreseeability of the particular type of harm, which normally requires evidence of prior similar incidents of violent crime on the premises***. (*Id.* at pp. 677–679.) In other words, "[t]he dispositive issue remains the foreseeability of the criminal act. ***Absent foreseeability of the particular criminal conduct, there is no duty to protect the plaintiff from that particular type of harm***." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1212 [122 Cal. Rptr. 2d 890].)

(*Rinehart v. Boys & Girls Club of Chula Vista* (2005) 133 Cal.App.4th 419, 430-431; emphasis added.)

Here, plaintiff Washington alleges he was criminally assaulted by an attendee of the football game. However, plaintiff Washington has not alleged defendant District had foreseeability of the particular criminal conduct which occurred in this case. Plaintiff Washington alleges only that defendant District had actual and constructive knowledge that "opposing sides and participant's anxiety/ excitement would foreseeably result in contentious

interactions between patrons, invitees, participant players and volunteers with the ***potential*** for violence." (FAC, ¶32; emphasis added.) Plaintiff Washington has not alleged the existence of "prior similar incidents of violent crime on the premises."

In opposition, plaintiff Washington asserts "violence at football games is alarmingly prevalent." As discussed in a footnote above, the court does not consider this extrinsic evidence on demurrer, but even if the court were to do so, such a generalized statement is insufficient to establish defendant District's foreseeability in this particular instance.

On the facts alleged in plaintiff Washington's FAC, the court finds defendant District did not owe a duty to protect plaintiff Washington from the particular type of harm he suffered. Accordingly, defendant District's demurrer to the second cause of action in plaintiff Washington's FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for negligence of public employee(s) is SUSTAINED with 10 days' leave to amend.

The Court will prepare the formal order.

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Calendar Line 5
Case Name:
Case No.:

Motion to Seal Records brought by Plaintiffs Edward and Janeen Kellar, Mary Lee Allen, Linda Costley (nee Shearer) and Matthew Shearer pursuant to California Rule of Court, rules 2.551 (b), to seal (1) the declarations of Plaintiffs Edward Kellar, Mary Lee Allen and Linda Costley which all contain highly confidential and sensitive health and medical information, (2) Exhibit 2 in support of the Declaration of Kimberly Pallen in support of the Motion for Preference which contains highly confidential and sensitive health and medical information, and (3) portions of the Motion for Preference that make reference to this highly confidential and sensitive health and medical information in the declarations.

Notice was given on July 17, 2024. A statement of non-opposition was filed by Defendants on September 16, 2024.

The identified declarations, exhibit and portions of the referenced Motion for Preference shall be filed under seal; the Court finds that Plaintiffs have submitted sufficient facts such that all of the following have been established:

(1) An overriding interest exists that overcomes the right of public access to the record and supports sealing the identified record;

(2) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(3) The proposed sealing is narrowly tailored, and Plaintiffs have met their burden in this regard; and

(4) There is no less restrictive means that exist to achieve the overriding interest.

Good cause appearing, the Motion is GRANTED. Cal. Rules of Ct 2.550 (d) and 2.551. This Order is limited to the declarations, exhibit and those portions of Plaintiff's Motion for Preference identified in Plaintiffs' Notice of Motion to Seal.

Moving parties to prepare the formal Order after hearing.

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