

FILED
Superior Court of California
County of Riverside

6/11/2021

C. Mundo

Electronically Filed

1 **RIZIO LIPINSKY LAW FIRM PC**

Gregory G. Rizio, Bar No. 157008

2 grizio@riziolawfirm.com

Eric Ryanen, Bar No.: 146559

3 erylunen@riziolawfirm.com

2677 N Main St., Suite 225

4 Santa Ana, CA 92705

Telephone: (714) 547-1234

5 Facsimile: (714) 547-1245

6 Attorneys for Plaintiffs MALYAH JANE VANCE and JAYDE DOWNEY

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF RIVERSIDE**

10
11 MALYAH JANE VANCE; JAYDE
12 DOWNEY,

13 Plaintiffs,

14 v.

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

18 Defendants.

Case No. RIC 1905830

THIRD AMENDED COMPLAINT

Demand for Jury Trial

19 **THE PARTIES**

20 1. Plaintiffs MALYAH JANE VANCE (hereinafter "VANCE") and JAYDE DOWNEY
21 (hereinafter "DOWNEY") are and were at all times relevant herein individuals residing in, and
22 citizens of the state of California, and county of Riverside.

23 2. Plaintiffs are informed and believe and thereupon allege that at all times relevant
24 herein, defendant CITY OF RIVERSIDE (hereinafter "CITY") was and is a public entity duly
25 organized and existing under and by virtue of the laws of the state of California.

26 3. Plaintiffs are informed and believe and thereupon allege that at all times relevant herein
27 defendant EVAN THEODORE MARTIN (hereinafter "MARTIN") was and is an individual
28 residing in, and a citizen of the state of California, and county of Riverside.

1 4. Plaintiffs are informed and believe and thereupon allege that at all times relevant herein,
2 defendants ARA SEVACHERIAN and VAHRAM SEVACHERIAN were and are individuals
3 residing in, and citizens of the state of California.

4 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
5 defendants DOES 1 through 100, inclusive, and each of them, are unknown to plaintiffs.
6 Plaintiffs therefore sues said defendants by such fictitious names. Plaintiffs will seek leave of
7 court to amend this complaint when the identities of said DOES have been ascertained. Plaintiffs
8 are informed and believe and thereon allege that each defendant named herein as DOE is
9 responsible in some manner for the events and happenings referred to herein which proximately
10 caused damages to plaintiffs as hereinafter alleged.

11 6. Plaintiffs are informed and believe and thereon allege that defendants, and each of them,
12 were the agents, joint venturers, servants, employees, assistants and consultants of each other, and
13 were as such acting within the course, scope and authority of said agency, joint venture and
14 employment. In doing the things alleged in this complaint each defendant was acting within the
15 course and scope of their employment with the remaining defendants; or, each defendant
16 authorized, consented to or ratified the conduct of the remaining defendants, and each of them.
17 Each defendant, when acting as a principal, was negligent and reckless in the selection, hiring,
18 entrustment and supervision of each and every other defendant as an agent, servant, employee,
19 assistant or consultant.

20 **FACTUAL ALLEGATIONS**

21 7. On December 4, 2018, plaintiff VANCE was operating her 2006 Kia Spectra eastbound on
22 Via Zapata and entered the intersection of Via Zapata and Canyon Crest Drive, at which time
23 VANCE's vehicle was struck by a 2010 Ford Fusion owned and operated by defendant MARTIN,
24 which vehicle was traveling southbound on Canyon Crest Drive. As a result of said collision,
25 plaintiff VANCE suffered serious personal injuries.

26 8. Canyon Crest Road and Via Zapata are public streets in the city of Riverside, within
27 Riverside County. Plaintiffs are informed and believe, and thereupon allege, that at all times
28 relevant herein defendant CITY and/or Does 1 through 10 owned, managed, supervised, controlled,

1 and/or maintained Canyon Crest Drive at or near the intersection at Via Zapata (hereinafter the
2 “SUBJECT ROADWAY”).

3 9. Plaintiffs are informed and believe and thereupon allege that at all times relevant herein
4 defendants ARA SEVACHERIAN, VAHRAM SEVACHERIAN and Does 11 through 20 owned,
5 managed, supervised, controlled, and/or maintained the real property adjacent to the SUBJECT
6 ROADWAY, and located at 901 Via Zapata, Riverside, California (hereinafter the “SUBJECT
7 PROPERTY”).

8 10. At all relevant times, plaintiff DOWNEY was present, or virtually present, at the scene of the
9 collision, at the time of the collision and, then and there, had contemporaneous, sensory awareness
10 of the connection between the injury-causing traffic collision and the grievous injury suffered by
11 her daughter as a result of the collision, thereby causing Plaintiff DOWNEY suffered serious
12 emotional injuries and damages as a result of these events and conditions at the scene, in that,
13 among other things:

14 A/ Before the collision occurred, Plaintiff DOWNEY’s cell phone rang while she was at
15 work. Using earbuds, she answered the phone. The caller was her daughter, plaintiff VANCE. At
16 that time, plaintiff DOWNEY knew that plaintiff VANCE was driving to a realtor on 5055
17 Canyon Crest, to deliver a check for the rent on the family’s home. Plaintiff VANCE explained to
18 plaintiff DOWNEY that the navigation system in her car told her she had arrived, but she was
19 driving around or near an apartment complex. Plaintiff DOWNEY asked where she was. Plaintiff
20 VANCE responded with a location or address at or near 5505 Canyon Crest (close to the Via
21 Zapata/Canyon Crest intersection). Plaintiff DOWNEY then opened a map application on her
22 work computer, found directions to get from her daughter’s location to 5055 Canyon Crest and
23 told Plaintiff VANCE where to drive. The instructions included a direction to turn left on to
24 Canyon Crest from Via Zapata. Plaintiff DOWNEY was familiar with the intersection, and the
25 surrounding area: she had driven by and through that area many times. She knew plaintiff
26 VANCE would have to stop for a stop sign at the Via Zapata/Canyon Crest intersection. Plaintiff
27 DOWNEY heard plaintiff VANCE, in a self-talk voice said, something like “I’m gonna go left,
28 I’m gonna go left, OK...OK...OK” – in a manner and tone of voice that plaintiff DOWNEY

1 understood was consistent with plaintiff VANCE waiting to turn left and mentally ‘checking off’
2 traffic on Canyon Crest as it approached and cleared the intersection before she could turn left.

3 B/ Then, in rapid succession, plaintiff DOWNEY heard plaintiff VANCE take audibly
4 sharp, gasping breath; her frightened or shocked exclamation: “Oh!”; and the simultaneous, or
5 near-simultaneous sounds of an explosive metal-on-metal vehicular crash; shattering glass; and
6 rubber tires skidding or dragging across asphalt. Plaintiff DOWNEY had not heard the sounds of
7 skidding tires or squealing brakes in the seconds immediately preceding the impact. Then and
8 there, plaintiff DOWNEY knew from the combination of the sounds she heard, and from having
9 directed plaintiff VANCE where to drive, that plaintiff VANCE had been injured in a high-
10 velocity motor vehicle collision that had occurred at or near Via Zapata at Canyon Crest. As the
11 sound of tires skidding or dragging across asphalt diminished and having heard no sounds or
12 vocalizations from her daughter, plaintiff DOWNEY understood her daughter was injured so
13 seriously she could not speak.

14 C/ Plaintiff DOWNEY – who was already standing -- announced to the people in her
15 office, something like, “I have to go, my daughter has been in a car accident, I have to go”.
16 Plaintiff DOWNEY then ran to her car and started driving toward the scene of the incident. While
17 running to her car and driving to the scene, plaintiff DOWNEY – with her earbuds still in her ears
18 and her phone still connected to the phone of plaintiff VANCE -- called out to her daughter. For a
19 time, plaintiff DOWNEY heard nothing. She then heard the sound of rustling in her daughter’s
20 car. Plaintiff DOWNEY started screaming into her phone, “Can you hear me? Can you hear me?
21 I can hear you, can you hear me?” She then heard the voice of a stranger, a man who said,
22 something like, “Would you stop? I’m trying to find a pulse”. Plaintiff DOWNEY waited, and
23 then asked, “Is she alive?” Moments later, the voice said, “She breathed. I got a breath”, and
24 then, the voice said something like this: “What I am going to tell you to do is going to be the
25 hardest thing you will ever do in your life. I want you to hang up your phone and call 911, and
26 have them respond to Via Zapata and Canyon Crest Drive in Riverside.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION
DANGEROUS CONDITION OF PUBLIC PROPERTY
(Pursuant to Government Code § 835)
(Plaintiffs MALYAH VANCE and JAYDE DOWNEY
Against Defendants CITY and DOES 1 through 10, Inclusive)

11. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1 through 10 (A) through (C).

12. Government Code § 835 provides that a public entity such as defendants CITY is liable for the dangerous condition of its property when the property was in aforementioned dangerous condition at the time of the injury, the injury was proximately caused by the dangerous condition, the dangerous condition created a reasonably foreseeable risk of this kind of injury, and the public entity had actual or constructive notice of the dangerous condition with time to remedy or protect against the dangerous condition.

13. The collision referred to above resulting in injury to plaintiffs occurred because defendants created, or permitted to exist, a dangerous condition of public property; and/or its employees negligently and carelessly committed, or omitted, acts, so as to cause injury and damage to plaintiffs, as follows:

A) The traffic markings, signals, warnings, medians, and fixtures thereon (or lack thereof), were so located constructed, placed, designed, repaired, maintained, used, and otherwise defective in design, manufacture and warning that they constituted a dangerous condition of public property, in that, among other things, they created an unreasonable and foreseeable risk of injury and harm to occupants of vehicles in the intersection.

B) All of these conditions, combined with the condition of the pavement, road design and the speed limit, created a dangerous condition of public property. Plaintiffs further contend that the road itself and the surrounding area was so constructed, placed, designed, repaired, maintained, used, and otherwise defective in design, manufacture and warning that the involved section of road constituted a dangerous condition of public property, in

1 that, among other things, it created an unreasonable and foreseeable risk of injury and harm
2 to occupants of vehicles in the intersection.

3 C) Before this event occurred, the defendants knew that there had been numerous other
4 collisions in or about this area and intersection and that some of those collisions caused
5 injuries to occupants of motor vehicles. Defendants had sufficient time, notice and
6 resources to warn, advise and correct the dangerous conditions and take preventative
7 measures such as providing sufficient warnings, signals, traffic markings, etc. In addition,
8 or in the alternative, before this event occurred, the defendant's agent(s) and employee(s)
9 had sufficient notice of, among other things, other similar events that caused other injuries
10 to other drivers of other vehicles near the area where this incident occurred and resulting
11 from this same dangerous condition of public property.

12 D) Plaintiffs' investigation is ongoing and plaintiffs reserve the right to supplement this
13 claim at a later date.

14 14. Plaintiffs VANCE and DOWNEY timely served their original government claims in
15 accordance with Government Code §§ 905 and 910 *et seq.* on defendant CITY, which claims were
16 denied (Attached as Exhibit 1 are true and correct copies of the claims and their denials).

17 Plaintiffs filed this suit within six (6) months from the date of rejection of said government claims.

18 15. As a direct and proximate result of the dangerous condition of public property and the
19 collision between the VANCE and MARTIN vehicles, which collision was caused, in whole or in
20 part by those dangerous conditions:

21 A) Plaintiff VANCE suffered and will continue to suffer severe physical, mental and
22 emotional injuries, pain and suffering, and related damages, in sums according to proof at
23 the time of trial; and,

24 B) Plaintiff DOWNEY, who was present at the scene of the collision in that she was
25 talking to her daughter, plaintiff VANCE, on the phone, was made aware of the collision,
26 and the ensuing events, as they occurred. As a further direct and proximate result of the
27 dangerous condition of public property which caused the collision, as aforesaid, plaintiff
28 DOWNEY was caused to suffer severe emotional distress on account of the dangerous

1 condition of public property. Plaintiff DOWNEY thereby suffered and will continue to
2 suffer severe and serious emotional distress and general damages. Pursuant to California
3 Code of Civil Procedure §§ 425.10 and 425.11, the sum of said damages will be
4 determined at the time of trial.

5 16. As a direct and proximate result of the dangerous condition of public property and the
6 ensuing collision, as aforesaid, plaintiff VANCE was required to employ the services of hospitals,
7 physicians, surgeons, nurses and other professional services for treatment and management of her
8 injuries; and, plaintiff DOWNEY was required to employ the services of health and behavioral
9 health care professionals for her severe emotional distress. Both plaintiffs incurred expenses for
10 these and other professional health and emotional injuries and are informed and believe and
11 thereon alleges that further services of said nature will be required by plaintiffs for an
12 unpredictable period in the future, all to the damage of plaintiffs in a sum according to proof.

13 17. As a further direct and proximate result of the dangerous condition of public property and
14 the ensuing collision, as aforesaid, plaintiff VANCE was prevented from attending to her usual
15 occupation, and plaintiff is informed and believes and thereupon alleges that plaintiff VANCE will
16 thereby be prevented from attending to her usual occupation for a period of time in the future, and
17 thereby will also sustain a loss of earning capacity, in addition to lost earnings, past, present and
18 future; the exact amount of such losses is unknown to plaintiff at this time, and when said amounts
19 are ascertained, the plaintiff will ask leave of court to amend this Complaint and allege said
20 amounts according to proof, pursuant to California Code of Civil Procedure § 425.10.

21 18. As a further direct and proximate result of the dangerous condition of public property and
22 the ensuing collision, as aforesaid, plaintiff VANCE'S property was damaged or destroyed and
23 she will lost and will continue to lose the use of that property in the future, all to her damage in
24 sums according to proof at the time of trial.

25 19. Upon compliance with California Code of Civil Procedure section 998, both plaintiffs will
26 seek awards of costs, pursuant to California Civil Code section 3291, in sums according to proof.

1 **SECOND CAUSE OF ACTION**

2 **NEGLIGENCE**

3 **(Plaintiffs MALYAH JANE VANCE and JAYDE DOWNEY Against Defendants MARTIN**
4 **and DOES 21 through 30, Inclusive)**

5 20. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1
6 through 19.

7 21. On information and belief, defendants MARTIN and DOES 21 through 30, owned, leased,
8 managed, maintained, controlled, and operated a motor vehicle that was registered to, and
9 entrusted to them by MARTIN and DOES 21 through 30.

10 22. At the times, places and in the manner as aforesaid, defendants MARTIN and DOES 21
11 through 30, so negligently and owned, operated, maintained, controlled, entrusted, employed and
12 drove their vehicle, as aforesaid, so as to legally cause same to collide with plaintiff VANCES's
13 motor vehicle, as aforesaid, thereby causing plaintiff VANCE to suffer severe personal injuries
14 and related damages, in a sum within the jurisdiction of this court and in an amount according to
15 proof at the time of trial; and causing plaintiff DOWNEY to suffer severe emotional distress, in a
16 sum according to proof at the time of trial.

17 23. By reason of the foregoing, said plaintiff VANCE was required to employ the services of
18 hospitals, physicians, surgeons, nurses and other professional services for treatment and
19 management of her injuries; and, plaintiff DOWNEY was required to employ the services of
20 health and behavioral health care professionals for her severe emotional distress. Both plaintiffs
21 incurred expenses for these and other professional health and emotional injuries and are informed
22 and believe and thereon alleges that further services of said nature will be required by plaintiffs for
23 an unpredictable period in the future, all to the damage of plaintiffs in a sum according to proof.

24 24. As a direct and proximate result of the negligence of defendants, and each of them,
25 plaintiff was hurt and injured in her health, strength, and activity, sustaining injury to her nervous
26 system and person, all of which injuries have caused, and continue to cause, plaintiff great mental,
27 physical, and nervous pain and suffering. As a result of such injuries, plaintiff has suffered
28 general damages in an amount in excess of the jurisdictional minimum of this Court.

1 25. Upon compliance with California Code of Civil Procedure section 998, plaintiffs will seek
2 an award of prejudgment interest and costs, pursuant to California Civil Code section 3291, in a
3 sum according to proof.

4 26. By further reason of the foregoing, said plaintiff incurred and continues to incur lost wages
5 and diminished earning capacity in a sum within the jurisdiction of this court and according to
6 proof at the time of trial.

7 **THIRD CAUSE OF ACTION**

8 **NEGLIGENCE**

9 **(Plaintiffs MALYAH JANE VANCE and JAYDE DOWNEY Against Defendants ARA**
10 **SEVACHERIAN, VAHRAM SEVACHERIAN, and Does 1 through 10, Inclusive)**

11 27. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs 1
12 through 26.

13 28. Defendants ARA SEVACHERIAN, VAHRAM SEVACHERIAN, and Does 1 through
14 10, inclusive, and each of them, negligently caused, owned, managed, operated, maintained,
15 and/or inspected the SUBJECT PROPERTY in such a manner as to cause The SUBJECT
16 PROPERTY to be unsafe, specifically including but not limited to, overgrown and untrimmed, or
17 improperly trimmed vegetation and trees along Canyon Crest Drive, north of Via Zapata, and in
18 the parkway between the CITY's sidewalk and the west curb of Canyon Crest Drive, just north of
19 where the collision occurred. Plaintiff hereinafter refers to this area within The SUBJECT
20 PROPERTY as "The Landscaped Area."

21 29. Said vegetation and trees constituted a dangerous condition in that they caused an unsafe
22 obstruction to the view of vehicular traffic turning left from eastbound Via Zapata onto
23 northbound Canyon Crest Drive, which obstruction was a cause of the collision between plaintiff
24 and defendant Martin. The collision between plaintiff's vehicle, and the vehicle operated by
25 defendant Martin was caused in whole or in part by said vegetation obstructing, or interfering with
26 the view of plaintiff, and/or defendant Martin, as plaintiff was making a left turn from Via Zapata
27 onto northbound Canyon Crest Drive.

1 30. The SUBJECT PROPERTY was further rendered dangerous by the lack of warnings that
2 there existed such a dangerous condition. The SUBJECT PROPERTY was rendered dangerous by
3 the negligence of defendants, and each of them, in that defendants failed to properly operate,
4 inspect, maintain, repair, and manage The SUBJECT PROPERTY and The Landscaped Area, and
5 failed to provide proper warnings with respect to said dangerous condition.

6 31. Plaintiffs are informed and believe and thereon allege that defendants, and each of them,
7 had actual notice of said dangerous condition because said dangerous condition was created by
8 defendants. Plaintiffs are further informed and believe, and thereon allege that defendants, and
9 each of them at least had constructive notice of the above described dangerous condition, in that,
10 among other things, said dangerous condition existed for such a length of time that defendants, if
11 they did not actually know of said dangerous conditions, would, and should have known of said
12 dangerous condition had they performed an adequate inspection of The SUBJECT PROPERTY,
13 including The Landscaped Area. Despite having actual or construction knowledge of said
14 dangerous condition, failed to take reasonable and necessary steps to protect their patrons, and
15 those visiting The SUBJECT PROPERTY from said dangerous condition.

16 32. Said dangerous condition violated certain provisions of the Riverside Municipal Code,
17 including but not limited to: Section 13.06.010 ("Obstructions on Private Property"), 13.06.090
18 ("Vegetation Property Owner Maintenance Responsibility and Duty to Public"), 13.10.010
19 ("Maintenance and Repair of Sidewalks and Trails"), 13.10.030 ("Liability for Injuries to Public"),
20 and Section 6.14.020 ("Landscape Maintenance"). By virtue of their violations of said statutes
21 and ordinances, which ordinances were designed and intended to protect persons such as plaintiffs,
22 defendants were negligent per se, and plaintiffs will be entitled to evidentiary presumptions
23 consistent therewith, as provided by California Evidence Code section 669.

24 33. As a result of the above described incident, plaintiff VANCE sustained physical and
25 emotional injuries and damages in an amount in excess of the jurisdictional minimum of this court
26 and according to proof at the time of trial, including but not limited to past and future medical
27 expenses, property damage, loss of earnings, and loss of earning capacity. In addition, plaintiffs
28 VANCE and DOWNEY have suffered, and will continue to suffer, and claim herein damages for

1 pain and suffering, anxiety, emotional distress and other general damages, in an amount according
2 to proof at the time of trial, but which damages fall within the jurisdiction of this Court.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs pray for judgment against the defendants, as follows:

5
6 On the first cause of action of plaintiffs, Malyah Vance and Jayde Downey against City of Riverside
7 and DOES 1 through 10,

- 8 (a) General damages in an amount to be established by the trier of fact;
- 9 (b) Special damages, including but not limited to, hospital and medical expenses
10 incurred, hospital and medical expenses to be incurred in the future, property damage, lost
11 wages incurred to date, future lost wages, and loss of earning capacity, all in an amount to
12 be established by the trier of fact;
- 13 (c) Statutory costs, including expert witness fees, and,
- 14 (d) Such additional relief as this Court should deem proper;

15
16 On the second and third causes of action of plaintiffs, Malyah Vance and Jayde Downey against
17 defendants Evan Theodore Martin, Ara Sevacherian, Vahram Sevacherian and DOES 11
18 through 100,

- 19 (a) General damages in an amount to be established by the trier of fact;
- 20 (b) Special damages, including but not limited to, hospital and medical expenses
21 incurred, hospital and medical expenses to be incurred in the future, property damage, lost
22 wages incurred to date, future lost wages, and loss of earning capacity, all in an amount to
23 be established by the trier of fact;
- 24 (c) Statutory costs, including expert witness fees;
- 25 (d) Prejudgment interest in a sum according to proof, and,
- 26 (e) Such additional relief as this Court should deem proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 6-10-21

RIZIO LIPINSKY LAW FIRM PC

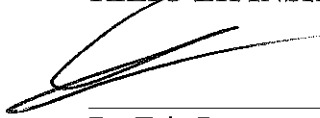


By Eric Ryanen

Plaintiffs hereby demand a trial by jury.

Dated: 6-10-21

RIZIO LIPINSKY LAW FIRM PC



By Eric Ryanen

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
3 not a party to the within action; my business address is 2677 N. Main Street, Suite 225, Santa
4 Ana, California 92705.

5 On June 10, 2021, I served on all interested parties in this action the foregoing document
6 described as:

- 7 1. SUMMONS ON THIRD AMENDED COMPLAINT
- 8 2. THIRD AMENDED COMPLAINT

9 I served the above document(s) by electronic mail in the United States during normal business
10 hours by causing the within document(s) to be transmitted to attorneys of record of the parties
11 herein at the email addresses of said attorneys as set forth below. The electronic service was in
12 compliance with CRC Rule 2.251 and was transmitted complete without error.

13 **ATTORNEY FOR CITY OF RIVERSIDE:**

14 Michael A. Verska, Deputy City Attorney
15 City of Riverside, Office of the City Attorney
16 3750 University Avenue, Suite 350
17 Riverside, CA 92501
18 mverska@riversideca.gov
19 vbeauregard@riversideca.gov

20 **ATTORNEY FOR SEVERACHERIAN DEFENDANTS:**

21 Gary H. Klein, Esq.
22 CP Law Group
23 655 North Central Avenue, Suite 2100
24 Glendale, CA 91203
25 p: 818-853-5145
26 f: 818-638-8549
27 gklein@cplawgrp.com
28 achikuami@cplawgrp.com

ATTORNEY FOR MARTIN:

D.W. Duke
Law Office of D.W. Duke
41593 Winchester Rd., Ste. 200
Temecula, CA 92590-4857
951-265-1756
duke@duke-law.org

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

25 Executed this 10th day of June, 2021, at Santa Ana, California.

26 
27 _____
28 Michele A. Markus