SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 09
JUDICIAL OFFICER: JOHN P DEVINE
HEARING DATE: 06/16/2025

ALL APPEARANCES WILL BE BY ZOOM

For matters where an appearance is required, the parties should appear by Zoom unless told to appear by another method. For all other matters, if argument is requested appearances will be by Zoom.

Please email Dept09@contracosta.courts.ca.gov and opposing counsel by 4:00 p.m. if oral argument is requested and include specification to be argued.

Zoom hearing information

https://contracosta-courts-ca.zoomgov.com/j/1602392251?pwd=WmE4bG5iK0J3WWtTOHpteVBjRlBMQT09

Law & Motion

1. 9:00 AM CASE NUMBER: C22-00877
CASE NAME: KARI WREDE VS. KEVIN'S CREATIONS LLC
***HEARING ON MOTION IN RE: LEAVE TO FILE CROSS-COMPLAINT**
FILED BY: HEADLANDS VENTURES, LLC DBA MIKE'S BIKE'S
TENTATIVE RULING:

Vacated.

2. 9:00 AM CASE NUMBER: C22-01552
CASE NAME: SCHAEFER VS. BNSF RAILWAY COMPANY
HEARING ON SUMMARY MOTION AS TO PLAINTIFF RONNY SCHAFFER'S SECOND AMENDED COMPLAINT. FILED BY BNSF RAILWAY COMPANY.
FILED BY:
TENTATIVE RULING:

Before the Court is Defendant BNSF Railway Company ("Defendant" or "BNSF")'s motion for summary judgment or in the alternative summary adjudication. The Motion relates to Plaintiff Ronny Schaefer, Melissa Welsh Schaefer, and Kaylee Mello (collectively, "Plaintiffs") Second Amended Complaint for

(1) Negligence; (2) Dangerous Condition of Public Property (Gov. Code § 835); (3) Negligent Hiring, Supervision, and Retention; and (4) Survival Action. Only the first, third, and fourth causes of action are alleged against Defendant.

As a threshold issue, the Court notes that Defendant failed to property request or support its alternative request for summary adjudication.

Code of Civil Procedure Section 437c(f)(1) provides:

> A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

Additionally, California Rules of Court, Rule 3.1350(b) provides, in relevant part:

> If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

Here, the notice of motion fails to set forth a proper issue or issues for summary adjudication. Even if the "issues" described generally in the notice of motion were proper, Defendant fails to repeat all of them, verbatim, in the separate statement as required. The Court determines that Defendant's alternate request for summary adjudication is deficient, and therefore treats the motion as a motion for summary judgment. (See CCP § 437c(b)(1).)

For the following reasons, Defendant's motion for summary judgment is **denied**.

Legal Standard

Code of Civil Procedure ("CCP") §§ 437c(o)(1) and 437c(p)(2) provide the relevant legal standard for deciding the Motion. Section 437c(o)(1) provides, in relevant part:

> A cause of action has no merit if one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

Section 437c(p)(2) provides, in relevant part:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that

> a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) Only if the moving party successfully meets this burden does the burden shift to the opposing party to make its own prima facie showing of the existence of a triable issue of material fact. (*Ibid*.; see also *Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The scope of the defendant's initial burden is defined by the pleadings. (See *580 Folsom Assocs. v. Prometheus Dev. Co*. (1990) 223 Cal.App.3d 1, 18.)

Factual Background

This case arises out of an accident at a railroad crossing. Plaintiffs allege that Decedent Joshua Schaefer was released from Delta Vista Middle School at approximately 12:30 p.m. on August 25, 2021. (SAC at ¶ 23.) Kaylee Mello was driving Decedent home from school when she proceeded over East Cypress Road toward Main Street. (*Id*. at ¶ 24.) Plaintiffs allege that Mello's vehicle proceeded over the railroad tracks and passed the crossbuck before any warnings were activated and before the crossing arm began to descend. (*Id*.)

Plaintiff alleges that "as a result of the lack of appropriate railroad preemption and improper signal light timing at surrounding intersections, the confusing and unsafe lane configuration changes, and simultaneous dismissal of a thousand students, and the failure to provide a reasonable TCP with adequate warnings to drivers, the subject railroad crossing became a trap and Mello's vehicle, as well as other vehicles, including vehicles driven by Kathryn Mandap and Carmen Ortiz-Guzman, became unexpectedly trapped on the subject railroad crossing." (SAC at ¶ 25.)

A BNSF freight train struck Mello's vehicle at approximately 12:51 p.m., "causing Joshua Schaefer to sustain multiple severe physical injuries which resulted in his death." (SAC at ¶ 26.)

Analysis

Public Utilities Code Section 1759

First, Defendant argues that the Court lacks jurisdiction over Plaintiffs' negligence claim based on the condition of the subjection crossing under Public Utilities Code section 1759, subdivision (a) ("Section 1759"), because the signage required on at-level crossings is regulated by the California Public Utilities Commission ("CPUC"). Section 1759 carves out an exclusive jurisdiction for the adjudicatory and rulemaking jurisdiction of the CPUC. (See *Cundiff v. GTE California Inc.* (2002) 101 Cal.App.4th 1395, 1405 ["Section 1759 defines and limits the power of courts to pass judgment on, or interfere with, what the commission does"]; Pub. Util. Code § 1759(a).) It does not establish an immunity to civil suit for public utilities merely because they are regulated under the CPUC's authority. (*People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1144 ["it is well established that section 1759(a) is not intended to, and does not, immunize or insulate a public utility from any and all civil actions brought in superior court"].) To the contrary, the Court has express statutory jurisdiction to hear and remedy claims arising from injuries caused by a public utility. (See Pub. Util. Code § 2106 ["Any public utility which does . . . any . . . thing prohibited or declared unlawful. . . shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.

... An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."].)

The test for whether Section 1759 bars this Court's exercise of jurisdiction is set by the Supreme Court's decision in *San Diego Gas & Electric Co. v. Superior Court* ("*Covalt*") (1996) 13 Cal.4th 893. That decision "set forth a three-part inquiry for evaluating whether an action is precluded by Section 1759: (1) whether the CPUC has authority to adopt regulatory policy on the issue in question; (2) whether the CPUC has exercised that regulatory authority; and (3) whether the superior court action would hinder or interfere with the CPUC's exercise of that regulatory authority." (*Goncharov v. Uber Techs., Inc*. (2018) 19 Cal.App.5th 1157, 1170, citing *Covalt*, *supra*, 13 Cal.4th at pp. 923, 926, 935.)

Whether the Action in This Case Would Hinder or Interfere with the CPUC's Exercise of Regulatory Authority

Plaintiffs do not dispute that the first two prongs of the *Covalt* test are met in this case (Opp. at 18:15); instead, the central issue of this motion is whether the present action would hinder or interfere with a policy regarding the subject premises.

Defendant argues, relying on *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256 and General Orders 75-D and 88-B, that it would "require the Court to second guess the decisions the CPUC made concerning modification of the Subject Crossing as part of the City's widening project." (MSJ at 12:8-9.)

Plaintiffs argue that their claims are not in conflict with the CPUC; instead, they contend that Defendant was in violation of General Order 88-B and failed to take reasonable steps to comply with General Order 88-B issued by the CPUC and the CPUC's subsequent directives. They argue that their claims "will enforce, not obstruct, the CPUC regulation." (Opp. at 19:4-5 [citing *PegaStaff v. Pacific Gas & Electric Co.* (2015) 239 Cal.App.4th 1303].)

On reply, Defendant argues that it is undisputed that it complied with the CPUC's procedures and requirements for designing or modifying railroad crossings, including the requirements of General Order 75-D and General Order 88-B, to ensure the Subject Crossing met the applicable safety standards. (Reply at 3:10-12 [citing UMF 6-8].)

The third prong of the *Covalt* test "does not turn solely or primarily on whether there is overlap between conduct regulated by the PUC and the conduct targeted by the suit." (*PegaStaff*, *supra*, 239 Cal.App.4th at p. 1318.) "Instead, the third prong requires a careful assessment of the scope of the PUC's regulatory authority and evaluation of whether the suit would thwart or advance enforcement of the PUC regulation." (*Ibid*.) "Also relevant to the analysis is the nature of the relief sought-prospective relief, such as an injunction, may sometimes interfere with the PUC's regulatory authority in ways that damages claims based on past harms would not." (*Ibid*.) The Court has jurisdiction to grant relief only if "the relief sought or the parties against whom the suit is brought fall outside the PUC's constitutional and statutory powers." (*Ibid*.)

In *Hartwell*, the California Supreme Court held that plaintiffs could bring suit against a regulated water utility for providing unsafe drinking water. It also held that plaintiffs' suit was preempted by Section 1759 to the extent that it attempted to establish higher standards for drinking water than those adopted by CPUC's "safe harbor" regulations. (*Id*. at p.276.)

Here, Defendant's material fact 8 is illustrative of the factual dispute in this motion. Defendant states that "[t]he CPUC originally recommended that signal preemption be installed at the E. Cypress Road crossing, but the interconnection was never installed because it was later found not to be a feasible

remedy." In support, they rely on the deposition testimony of Felix Ko. However, Ko's testimony is much more equivocal; he testified that "there were questions on what – how effective adding railroad preemption would actually be at this particular location" (Ko Decl. at 44:20-22.) He further testified that "the City approached the CPUC about adding railroad preemption. And they submitted a report with preemption details. We had a number of questions regarding their proposal and did not feel that the proposal would actually clear the queues at the crossing." (*Id*. at 45:21-46:1.) This testimony does not support the conclusion that signal preemption would not be a feasible remedy; rather, he testified that the specific proposal by the City would not actually mitigate the queues at the crossing.

Furthermore, Plaintiffs argue that the issue was unresolved, and the lack of signal preemption was an ongoing, unresolved problem and a violation of General Order 88-B up to the date of the incident. (See generally, Disputed Material Fact 8.) A jury could conclude that the communications regarding signal preemption between the City of Oakley, BNSF, and the CPUC reflect an unmet requirement with respect to General Order 88-B.

As a consequence, Plaintiffs' nuisance claim based on the theory that BNSF failed to meet the requirements of General Order 88-B would not be preempted by section 1759. A lawsuit for damages based on violations of CPUC standards would not interfere with the CPUC's ongoing regulatory supervision. (See *Hartwell*, *supra*, 27 Cal.4th at p. 275 ["superior courts are not precluded from acting in aid of, rather than in derogation of, the PUC's jurisdiction. [Citation]. Thus, a court has jurisdiction to enforce a . . . utility's legal obligation to comply with PUC standards and policies and to award damages for violations."].)

The Court finds that Plaintiffs' nuisance claim is not jurisdictionally barred.

Because the Court cannot consider Defendant's alternative request for summary adjudication, and because Defendant has not demonstrated that it is entitled to a jurisdictional bar of Plaintiffs' negligence claim, it need not reach Defendant's arguments regarding Plaintiffs' claim for negligent hiring, training, and supervision.

Defendants motion for summary judgment is **denied**.

Objections to Evidence

The Court need only rule on those objections to evidence that were material to the disposition of the MSJ. (See CCP § 437c(q).) Here, there were none.

3. 9:00 AM CASE NUMBER: C22-01552
CASE NAME: SCHAEFER VS. BNSF RAILWAY COMPANY
HEARING ON SUMMARY MOTION AS TO PLAINTIFFS MELISSA WELSH-SCHAEFER AND KAYLEE MELLO'S COMPLAINT.
FILED BY:
TENTATIVE RULING:

See Line 2.

4. 9:00 AM CASE NUMBER: C22-01552
CASE NAME: SCHAEFER VS. BNSF RAILWAY COMPANY
HEARING ON SUMMARY MOTION FILED BY CITY OF OAKLEY.
FILED BY:
TENTATIVE RULING:

Before the Court is Defendant City of Oakley ("Defendant")'s motion for summary judgment or in the alternative summary adjudication. The motion relates to Plaintiff Ronny Schaefer, Melissa Welsh Schaefer, and Kaylee Mello (collectively, "Plaintiffs") Second Amended Complaint for (1) Negligence; (2) Dangerous Condition of Public Property (Gov. Code § 835); (3) Negligent Hiring, Supervision, and Retention; and (4) Survival Action. Plaintiffs allege the first, second, and fourth causes of action against Defendant. They do not oppose Defendant's motion with respect to their first cause of action for negligence. (Opp. at p.16, fn. 4.)

For the following reasons, Defendant's motion for summary judgment is **granted**.

Request for Judicial Notice

Defendant requests Judicial Notice of several pleadings in this consolidated matter as well as sections of the California Vehicle Code and California Driver Handbook.

Plaintiffs request Judicial Notice of Chapter 1 of Title 6 of the Oakley Municipal Code as well as the Petition for Rehearing filed by counsel for Plaintiff in the matter *Walia v. CPX Carrier Inc., et al*. (First District Court of Appeal Case No. A165798).

Both unopposed requests for Judicial Notice are **granted**. (Evid. Code §§ 452, 453.)

Legal Standard

Code of Civil Procedure ("CCP") §§ 437c(o)(1) and 437c(p)(2) provide the relevant legal standard for deciding the Motion. Section 437c(o)(1) provides, in relevant part:

> A cause of action has no merit if one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

Section 437c(p)(2) provides, in relevant part:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic*

Richfield Co. (2001) 25 Cal.4th 826, 850.) Only if the moving party successfully meets this burden does the burden shift to the opposing party to make its own prima facie showing of the existence of a triable issue of material fact. (*Ibid*.; see also *Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The scope of the defendant's initial burden is defined by the pleadings. (See *580 Folsom Assocs. v. Prometheus Dev. Co*. (1990) 223 Cal.App.3d 1, 18.)

Factual Background

This case arises out of an accident at a railroad crossing. Plaintiffs allege that Decedent Joshua Schaefer was released from Delta Vista Middle School at approximately 12:30 p.m. on August 25, 2021. (SAC at ¶ 23.) Kaylee Mello was driving Decedent home from school when she proceeded over East Cypress Road toward Main Street. (*Id*. at ¶ 24.) Plaintiffs allege that Mello's vehicle proceeded over the railroad tracks and passed the crossbuck before any warnings were activated and before the crossing arm began to descend. (*Id*.)

Plaintiff alleges that "as a result of the lack of appropriate railroad preemption and improper signal light timing at surrounding intersections, the confusing and unsafe lane configuration changes, and simultaneous dismissal of a thousand students, and the failure to provide a reasonable TCP with adequate warnings to drivers, the subject railroad crossing became a trap and Mello's vehicle, as well as other vehicles, including vehicles driven by Kathryn Mandap and Carmen Ortiz-Guzman, became unexpectedly trapped on the subject railroad crossing." (SAC at ¶ 25.)

A BNSF freight train struck Mello's vehicle at approximately 12:51 p.m., "causing Joshua Schaefer to sustain multiple severe physical injuries which resulted in his death." (SAC at ¶ 26.)

Analysis

Legal Standard on Dangerous Condition of Public Property

As a public entity, the City of Oakley may be liable for injuries caused by a dangerous condition of its property. (Gov't Code § 835.) Public property is in a dangerous condition within the meaning of section 835 if it "is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself." (*Bonnano v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.)

A public entity has actual notice of a dangerous condition if it had "actual knowledge of the existence of the condition and knew or should have known of its dangerous character." (Gov't Code § 835.2(a).) A public entity has constructive notice if the dangerous condition "existed for such a time and 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." (*Id*. § 835.2(b).)

Government Code section 830 defines "dangerous condition" as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used."

"The existence of a dangerous condition is ordinarily a question of fact; however, it can be decided as a matter of law if reasonable minds can come to only one conclusion concerning the issue." (*City of San Diego v. Superior Court* (2006) 137 Cal.App.4th 21, 28; see Gov't Code § 830.2.)

1. Whether Cypress Road at the Railway Crossing was in a "Dangerous Condition"

Pursuant to section 830.2, a condition is not dangerous if the risk created by the condition was of such a minor, trivial, or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

Defendant argues that there was no physical condition of the roadway which created a substantial risk of injury as the danger posed by railroads is obvious and heavy traffic on a roadway does not constitute a physical defect of public property. (MSJ at § IV(A)(1).)

In opposition, Plaintiffs argue that the location of East Cypress Road as well as the "skewed and grade nature of the Crossing, all contribute to the existence of a dangerous condition." (Opp. at 21:25-28.) Plaintiffs rely on *Constantinescu* for their argument that traffic congestion may lead to a dangerous condition of public property where the public entity "helped create traffic congestion that was particularly dangerous." (*Id*. at 22:3-13 [citing *Constantinescu v. Conejo Valley Unified School Dist.* (1993) 16 Cal.App.4th 1466].)

First, Plaintiffs argument that the volume of traffic at the intersection of Cypress Road and the Railway Crossing adds to the danger is unpersuasive. Courts have long held that traffic volume does not make a road dangerous. (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 7 ["the heavy use of any given paved road alone does not invoke the application of Government Code section 835"]; accord, *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 441.) Instead, there must be some physical characteristic or deficiency in the property that makes it dangerous other than just its heavy use. (See, e.g., *Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1189-1190.)

Plaintiffs offer the opinion of Albert Letzkus for the contention that skewed crossings, such as the one at issue here, pose a heightened risk to motorists. (See Letzkus Decl. at ¶ 28.) However, Letzkus' opinion that the skew at the subject intersection contributed to a dangerous condition is not supported by any data. Instead, he relies on the recommendation of the California Manual on Uniform Traffic Control Devices that pavement markings be used to mark the clearance area of grade crossings and the absence of markings at the subject intersection. This is inadequate to support his conclusion. (*Id*. at ¶ 40(e); see also Evidentiary Objections, below.)

Furthermore, it is well established under California law that railroad tracks are inherently dangerous and constitute a self-evident warning. "The presence of railroad tracks is a warning of an open and obvious danger." (*Christoff v. Union Pacific R. Co*. (2005) 134 Cal.App.4th 118, 126.) As early as *Holmes v. South Pac. Coast Ry. Co*. (1893) 97 Cal. 161, the California Supreme Court held that "[a] railroad track upon which trains are constantly run is itself a warning to any person who has reached years of discretion, and who is possessed of ordinary intelligence, that it is not safe to walk upon it, or near enough to it to be struck by a passing train." (*Id*. at p. 167.) This principle has been consistently reaffirmed. (See *Green v. Los Angeles Terminal Ry. Co*. (1903) 143 Cal. 31, 36 [the railroad track must itself be regarded as a sign of danger].)

Moreover, the intersection is a dangerous condition only if it poses a substantial risk of injury when "used with due care in a manner in which it is reasonably foreseeable that it will be used." (§ 830, subd. (a); *Mathews v. City of Cerritos* (1992) 2 Cal.App.4th 1380, 1384 ["A condition is not dangerous within the meaning of [§ 830, subdivision (a)] 'unless it creates a hazard to those who foreseeably will use the property . . . with due care'"].)

Here, it is undisputed that in the past 10 years there were no reports to the City of Oakley of accidents substantially similar to the subject accident involving vehicles on the railroad tracks or

within the railroad crossing's boundaries. Also, there were no reports to the City of "near miss" accidents at the crossing. (UMF 44.) Additionally, Ms. Mello testified that she was aware of the limit line, behind which she should stop if the lights, bells, or gate arms activated, and understood that if traffic was backed up ahead on the other side of the tracks that she should stop behind the limit line and not try to cross the tracks. (UMF 56 [Mello Depo. at pp. 109:21-25 to 110:1-16].) The undisputed evidence supports the conclusion that when Cypress Lane at the railroad crossing is used with due care, there is not a substantial risk of injury.

2. Design Immunity

Additionally, the City of Oakley argues that even if the intersection of Cypress Road at the railway crossing were a dangerous condition of public property, they are entitled to design immunity.

A public entity may be liable for personal injuries caused by the "dangerous condition" of its property. (Gov. Code, §§ 830, 835.) An entity may avoid liability, however, through the affirmative defense of the design immunity. (Gov. Code, § 830.6.) "A public entity claiming design immunity must establish three elements: (1) a 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. [Citations.]" (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 66.)

"'[A]ny substantial evidence'" to support the third element of design immunity is "evidence of solid value and which reasonably inspires confidence. [Citation.]" (*Grenier*, supra, 57 Cal.App.4th at pp. 939–940.) "'[A]s long as reasonable minds can differ concerning whether a design should have been approved, then the governmental entity must be granted immunity. The statute does not require that property be perfectly designed, only that it be given a design which is reasonable under the circumstances.' [Citation.]" (*Id*. at p. 941.) "We are not concerned with whether the evidence of reasonableness is undisputed; the statute provides immunity when there is substantial evidence of reasonableness, even if contradicted." (*Id*. at p. 940.) Furthermore, "That a plaintiff's expert may disagree does not create a triable issue of fact. [Citations.]" (*Id*. at p. 941.)

Plaintiffs argue that Defendant fails to establish the second element of the design immunity defense, discretionary approval. Specifically, Plaintiffs argue that discretionary authority must be set forth in the municipal code, relying on *Martinez v. County of Ventura* (2014) 225 Cal.App.4th 364.

On reply, Defendant argues that discretionary authority can be established by a declarant with pertinent personal experience who can testify about the City's custom and practice. (See Reply at 9:17-21 [citing *Dobbs v. City of Los Angeles* (2019) 41 Cal.App.5th 159, 161].)

"Discretionary approval simply means approval in advance of construction by the legislative body or officer exercising discretionary authority. It is satisfied by showing the plan or design was *either* (1) approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or (2) prepared in conformity with standards previously so approved." (*Kabat v. Department of Transportation* (2024) 107 Cal.App.5th 651, 661 [internal citations and quotations omitted; emphasis original].)

"A detailed plan, drawn up by a competent engineering firm, and approved by [the public entity's] engineer in the exercise of his or her discretionary authority, is persuasive evidence of the element of prior approval." (*Kabat*, *supra*, 107 Cal.App.5th at p.662 [internal citation and quotation omitted].)

Plaintiffs reliance on *Martinez* and *Castro* is inapt. In *Martinez*, a statute vested discretionary authority to approve the relevant design—a drain system—in the county road commissioner, who had not approved the design. (*Martinez*, *supra*, 225 Cal.App.4th at p. 371.) Instead, the county road maintenance engineer allegedly approved the design, but there was no evidence the road commissioner had delegated his authority to that person or was even empowered to do so. (*Id*. at p. 372.) And the alleged decision maker's testimony that he had approved the design was "equivocal at best," stating only that he "'was involved probably with the approval of the installation, yes, sir.'" (*Ibid*.) Unlike in *Martinez*, here there is no evidence that the authority to approve the 2006 plans to widen the rail crossing and the 2020 lane modification plans was vested in anyone other than past and present City Engineers Jason Vogan and Kevin Rohani, respectively.

Similarly, in *Castro*, the alleged dangerous condition—a pedestrian warning beacon—was an "'add-on[],'" not part of any plan or design by the defendant city. (*Castro*, *supra*, 239 Cal.App.4th at pp. 1453–1454.) The court concluded the municipal code did not authorize the decision maker to approve a design for the add-on, and rejected declarations by current and former city employees that the decision maker was authorized to approve a design for it. (*Id*. at p. 1456.) The court explained that design immunity requires "an actual plan or design, i.e., something other than an oral 'after the fact' statement that 'I had authority and I approved my own safety idea.'" (*Id*. at p. 1457.) Here, the City of Oakley has set forth in detail the design and plans for westbound Cypress Road from 2004 through 2021, as well as evidence of their contemporaneous approval.

While a public entity may prove the decision maker's authority to approve a plan or design by pointing at governing law, alternatively, the entity may provide testimony by the decision maker or another person familiar with the entity's approval process. (See *Dobbs*, *supra*, 41 Cal.App.5th at 161 ["Testimony about the entity's discretionary approval custom and practice can be proper even though the witness was not personally involved in the approval process"; declaration by person with 14 years of experience in agency was "adequate"].) Here, City Engineer Kevin Rohani, Engineering Manager Billilee Saengchalern, and expert witness Christian Engelmann all testified about the City's custom and practice and the City Engineer's discretionary authority. (Rohani Decl. at ¶¶ 4, 15; Saengchalern Decl. at ¶¶ 3-4, 14; Engelmann Decl. at ¶¶ 30, 31.)

The City of Oakley has established statutory design immunity.

3. Concealed Trap

Finally, Defendant argues that it cannot be held liable under Government Code sections 830.4 and 830.8 based on its alleged failure to provide traffic or warning signals, signs, markings, or devices. In opposition, Plaintiffs argue that Defendant is not entitled to signage immunity because the subject intersection presents a concealed trap.

"Under the concealed trap exception, section 830.8 does not exonerate a public entity 'for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.' [Citations.]" (*Kabat*, supra, 107 Cal.App.5th at p. 665.) "Even if the dangerous condition is a concealed trap, 'the plaintiff must prove the public entity had notice of the dangerous condition' to prevail on a claim under section 835, subdivision (b). [Citation.]" (*Id*.)

As discussed further, above, Plaintiffs have not made the predicate showing of a dangerous condition. As a consequence, Defendant is entitled to summary judgment as a matter of law.

Objections to Evidence

The Court need only rule on those objections to evidence that were material to the disposition of the MSJ. (See CCP § 437c(q).)

Plaintiffs' Objections to Defendant's Evidence:

Objection No. 1. Overruled.

Objection No. 5. Overruled.

Objection No. 7. Overruled.

Objection No. 8. Overruled.

Objection No. 19. Overruled.

Objection No. 20. Overruled.

Defendant's Objection to Plaintiff's Evidence:

Objection No. 20. Sustained.

Objection No. 24. Sustained.

5. 9:00 AM CASE NUMBER: C23-00738
CASE NAME: SIDHANT DHIR VS. SAEED KHAN
***HEARING ON MOTION IN RE: TO QUASH SERVICE FOR LACK OF PERSONAL JURISDICTION**
FILED BY: HOUSTON FOODIE, LLC
****TENTATIVE RULING:****

Vacated.

6. 9:00 AM CASE NUMBER: C23-01184
CASE NAME: THEO LIM VS. DEBBY LAN IE
***HEARING ON MOTION IN RE: FOR ORDER FOR APPOINTMENT OF AN APPRAISER AND FOR DETERMINATION THE FAIR MARKET VALUE OF REAL PROPERTY**
FILED BY: LIM, THEO
****TENTATIVE RULING:****

Appearance required.

7. 9:00 AM CASE NUMBER: C23-01184
CASE NAME: THEO LIM VS. DEBBY LAN IE
***HEARING ON MOTION IN RE: FOR PREFERENCE**
FILED BY: LIM, THEO
****TENTATIVE RULING:****

Appearance required.

8. 9:00 AM CASE NUMBER: C23-03009
CASE NAME: RONALD ABBS, JR. VS. DAVID BOLES
***HEARING ON MOTION IN RE: TO DEEM CASE COMPLEX**
FILED BY: S&J PROPERTIES, CONSTRUCTION, INC.
****TENTATIVE RULING:****

S&J Properties Construction, Inc.'s motion to deem this case complex is granted for the reasons discussed in the moving papers. This case is reassigned to Department 39, Honorable Edward G. Weil, effective as of June 17, 2025. The case management conference is reset for August 8, 2025 at 8:30 a.m. in Department 39. All other hearing dates are vacated and the parties should request new hearing dates from Department 39. The Court will not stay discovery.

9. 9:00 AM CASE NUMBER: C24-00605
CASE NAME: VIKAS PRAKASH VS. WILSON AQUINO
***HEARING ON MOTION IN RE: IN SUPPORT OF MOTION FOR ORDERS COMPELLING FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS; EVIDENTIARY SANCTIONS AND AWARDING MONETARY SANCTIONS**
FILED BY: PRAKASH, VIKAS
****TENTATIVE RULING:****

Before the Court is Plaintiff/Cross-Defendant Vikas Prakash ("Plaintiff")'s "Motion in Support for Orders Compelling Further Responses to Request for Production of Documents: Evidentiary Sanctions and Awarding Monetary Sanctions." The motion is opposed by Defendants/Cross-Complainants Wilson Aquino, Jaime Guevara, Florencia Amezcua, and Does 1 to 50 ("Defendants").

Plaintiff moves pursuant to *Code Civ. Proc.* § 2031.300(b) for an order compelling Defendants to "provide further responses to the Request for Production of Documents (Set No. Two) along with all responsive documents." Plaintiff alleges that Defendants responses to the Plaintiff's discovery requests are "incomplete, and the objection to the discovery requests are without merit and/or too general."

For the following reasons, the motion is denied and the Plaintiff and Defendants are required to renew the meet and confer process. The parties' requests for sanctions is presently denied.

Background

On January 13, 2025, Defendants served Plaintiff a "Second Amended Response to Request for Production of Documents" ("Set Two"). (Pl.'s Reply to Opp'n Mot. for Order Compelling Further Resps. 3:17-19.) Set Two did not meet Plaintiff's expectations, and on February 20, 2025, Plaintiff served a meet and confer letter to Defendants. (*Id.* at 3:22-23.) Plaintiff requested that Defendants inform them by February 24, 2025, whether Defendants would amend Set Two. (*Id.* at 3:25-27.) Defendants did not respond to this request despite Plaintiff's February 27, 2025, statutory deadline to submit a corresponding Motion to Compel. (*Id.* at 3:19-21, 4:1-2.) On February 27, after not receiving a response, Plaintiff's counsel instructed his staff to submit a Motion to Compel. (*Id.* at 4:2-4.) At 2:00 PM on February 27, before the motion was filed, Defendants responded to Plaintiff's meet and confer letter, noting that substantive comments were forthcoming and offering to extend the deadline for Plaintiff to submit a Motion to Compel to April 1, 2025. (Defs.'Opp'n to Pl.'s Mot. Compel 3:6-15). Two hours after Defendants sent their response, Plaintiff submitted the Motion to the Court. (*Id.* at 3:16-17)

Legal Standard

"The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain 'an informal resolution to each issue." (*Townsend v Superior Court* (1998) 177 Cal.App.4th 1277, 1293.) When determining whether the moving party made a serious attempt, courts evaluate whether a reasonable person requesting discovery materials would believe that "additional effort appeared likely to bear fruit." (*Obregon v Superior Court* (1998) 67 Cal.App.4th 424, 432-433.) A reasonable effort "is different in different circumstances, and may vary with the prospects for success." (*Id.*)

Discussion

The parties did not make a reasonable effort to meet and confer prior to Plaintiff's submission of the motion. Defendants responded to Plaintiff's meet and confer letter before Plaintiff's deadline to file a Motion to Compel. (Defs.' Opp'n, *supra,* 3:6-17.) This, along with Defendant's proposal to extend the Plaintiff's deadline, indicates that the motion was unnecessary. (*Id.* 3:9-10.) While Defendant waited until the last minute to respond, Plaintiff could still have contacted Defendant, telephonically or by email, to resolve the issue before submitting the motion, similar to *Obregon*. (*See Obregon*, 67 Cal.App.4th at 432-433.) (Holding that the plaintiff did not sufficiently meet and confer before submitting a motion to compel because the plaintiff's attorney ignored defense counsel's invitation to speak after receiving plaintiff's initial meet and confer letter.)

The court continues the hearing for the motion to July 21, 2025, at 9:00 a.m. in Department 9.

Counsel for the parties are required to meet and confer, and then file a joint supplemental statement by July 14, 2025, indicating what discovery issues remain, if any, or how the discovery issues have been narrowed.

10. 9:00 AM CASE NUMBER: C24-01875
CASE NAME: AJAIB SINGH VS. ERIC MARTIN
***HEARING ON MOTION FOR DISCOVERY TO COMPEL PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE) AND FORM INTERROGATORIES, GENERAL (SET ONE)**
FILED BY: BAY CITIES PAVING & GRADING INC.
****TENTATIVE RULING:****

Before the court is defendant's unopposed motion to compel.

The court finds the following:

(1) Plaintiff is compelled to respond, without objections, to Defendant's Request for Production of Documents (Set One) and Form Interrogatories – General (Set One) within 15 days of the filing of the signed order.

No monetary sanctions are awarded.

11. 9:00 AM CASE NUMBER: C24-01875
CASE NAME: AJAIB SINGH VS. ERIC MARTIN
***HEARING ON MOTION FOR DISCOVERY TO DEEM THE TRUTH OF MATTERS SPECIFIED IN DEFENDANT'S REQUESTS FOR ADMISSIONS (SET ONE) ADMITTED AND CONCLUSIVELY ESTABLISHED**
FILED BY: BAY CITIES PAVING & GRADING INC.
****TENTATIVE RULING:****

Before the court is defendant's motion to deem the truth of the matters specified in Defendant's Requests for Admissions, Set One, and to have them admitted and conclusively established. The motion is unopposed. The court finds the following:

(1) Defendant's Requests for Admission, Set One propounded on Plaintiff are deemed admitted.

The court does not award any monetary sanctions.

12. 9:00 AM CASE NUMBER: C24-02210
CASE NAME: AMIRALI SHARIFY VS. LAW OFFICES OF CARISSA KRANZ, A FLORIDA PROFIT CORPORATION
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: MICHAEL C. SCRANTON, A PROFESSIONAL CORPORATION
****TENTATIVE RULING:****

Before the Court is a demurrer and motion to strike by defendants Michael C. Scranton and Jamie Vroman Retmier. For the reasons set forth, the hearings are continued to **9:00 a.m. on June 30, 2025**.

Defendants filed a demurrer and a motion to strike portions of the complaint, supported by two declarations of counsel Simone McCormick regarding the parties' efforts to meet and confer as required by Code of Civil Procedure sections 430.41(a) and 435.5(a). The McCormick Declarations each state that six exhibits, including meet and confer communications, are attached, but no exhibits are included with the Court-filed declarations. (McCormick Decls. ¶¶ 4-9 referring to Exhs. 1-6.)

The text of the declarations refer to the parties' exchange of email communications. (McCormick Decls. ¶¶ 5-8.) McCormick declares that the parties "met and conferred on January 23, 2024" (presumably 2025, a typographical error) and that "[a]ny further meet and confer were unsuccessful." (McCormick Decls. ¶¶ 9, 10.) While Exhibit 6 may reveal the manner in which the January 23, 2025 "meet and confer" was conducted, that exhibit is not before the Court. The Court cannot determine from the text of the declarations whether the parties' complied with the statutes by meeting and conferring by telephone, videoconference, or in person as the statutes require, particularly without the exhibits. (Code Civ. Proc. §§ 430.41(a) and 435.5(a).)

Defendants filed the McCormick "Further Declaration" in support of the demurrer and motion to strike with their reply briefs. While it is doubtful the Court can consider the content of the Further Declaration in ruling on a demurrer or motion to strike (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994), the Further Declaration refers to another six exhibits (Exhs. A-F), none of which are attached to the filed pleading. Since the exhibits are missing from the filed declarations, the Court assumes that none of the exhibits were served on opposing counsel.

Defendants are directed **to file and serve by June 23, 2025** amended/supplemental declarations of counsel with copies of the missing exhibits and attesting that the parties have met and conferred by telephone, videoconference, or in person, whether on January 23, 2025 or some other date, including a date up to the date of the filing of the amended/supplemental declarations.

13. 9:00 AM CASE NUMBER: C24-02210
CASE NAME: AMIRALI SHARIFY VS. LAW OFFICES OF CARISSA KRANZ, A FLORIDA PROFIT CORPORATION
***HEARING ON MOTION IN RE: TO STRIKE PORTIONS OF THE PLAINTIFF'S COMPLAINT**
FILED BY: MICHAEL C. SCRANTON, A PROFESSIONAL CORPORATION
****TENTATIVE RULING:****

See Line 12 above.

14. 9:00 AM CASE NUMBER: C24-02551
CASE NAME: ODK CAPITAL, LLC VS. THAI PHAM
***HEARING ON MOTION IN RE: TO SET ASIDE DEFAULT JUDGMENT**
FILED BY: PHAM, THAI
****TENTATIVE RULING:****

The motion to set aside default judgment is denied without prejudice for failure to file a proof of service.

15. 9:00 AM CASE NUMBER: C24-03440
CASE NAME: JIE HU VS. AMRISH PATEL
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: PATEL, AMRISH
TENTATIVE RULING:

Vacated.

16. 9:00 AM CASE NUMBER: C24-03440
CASE NAME: JIE HU VS. AMRISH PATEL
***HEARING ON MOTION IN RE: TO STRIKE PUNITIVE DAMAGES FROM PLAINTIFFS COMPLAINT**
FILED BY: PATEL, AMRISH
TENTATIVE RULING:

Vacated.

17. 9:00 AM CASE NUMBER: C25-00242
CASE NAME: ALLIED WORLD SURPLUS LINES INSURANCE COMPANY VS. WILLIAM JOHNSON
***HEARING ON MOTION IN RE: APPLICATION/MOTION TO APPEAR AS COUNSEL PRO HAC VICE**
FILED RE: DOUGLAS STEINKE
FILED BY: ALLIED WORLD SURPLUS LINES INSURANCE COMPANY
TENTATIVE RULING:

The application of Douglas Steinke to appear as counsel pro hac vice is granted.

18. 9:00 AM CASE NUMBER: MSC21-02266
CASE NAME: WITTENBERG VS ROADS OF HACIENDA HOMES, INC.
HEARING ON DEMURRER TO: 3RD AMENDED COMPLAINT
FILED BY: EAST BAY MUNICIPAL UTILITY DISTRICT
TENTATIVE RULING:

Defendant East Bay Municipal Utility District's Demurrer to Plaintiff Laura Wittenberg's Third Amended Complaint is **sustained with leave to amend**. EBMUD shall prepare the order and serve and file notice of its entry. Plaintiff shall have 15 days from notice of entry of order in which to amend.

I. Background

Plaintiff Laura Wittenberg alleges that she owns residential property located at 7 Mariposa Lane in Orinda, California. In December 2019, her property allegedly sustained water damage resulting from a nearby water main break. Plaintiff contends that the break occurred adjacent to a retaining wall and

drainage system constructed by co-defendant Hacienda Homes, Inc., and asserts or asserted that the resulting water intrusion was caused in part by negligent acts or omissions by both Hacienda and East Bay Municipal Utility District (EBMUD). On December 30, 2019, Plaintiff submitted a Government Code claim to EBMUD seeking compensation for the alleged property damage. Plaintiff filed this action on November 3, 2021, asserting claims solely against Hacienda. On December 12, 2022, she amended the complaint to designate EBMUD as Doe 1, but later voluntarily dismissed EBMUD from the action without prejudice on March 13, 2023.

On November 8, 2024, Plaintiff filed the operative Third Amended Complaint (TAC), reasserting a single cause of action for negligence against EBMUD as the ninth cause of action. The new theory of liability is not based on the original water main break, but instead alleges that EBMUD negligently failed to investigate or appropriately process Plaintiff's 2019 government claim. Plaintiff alleges she did not discover the factual basis for this claim until September 4, 2024, when EBMUD employee Kim Damico was deposed. According to Plaintiff, Damico's testimony revealed that EBMUD had failed to conduct a meaningful investigation, failed to maintain proper records, and improperly closed the claim without notifying Plaintiff. EBMUD now demurs to TAC, arguing that Plaintiff's negligence claim is time-barred under Government Code section 945.6(a)(2).

Plaintiff opposes the demurrer, asserting that the delayed discovery rule applies and renders the negligence cause of action timely.

II. Legal Standards

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.) 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." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.)

Before filing a demurrer, the demurring and moving party is required to meet and confer with the party who filed the pleading sought to be stricken or demurred to, in person or telephonically, for the purposes of determining whether an agreement can be reached through a filing of an amended pleading that would resolve the objections to be raised in the demurrer and motion to strike. (See CCP §§ 430.41.)

III. Discussion

EBMUD satisfied its meet and confer obligations before filing the demurrer. (See Mesrobian Declaration ¶ 9; Dawson Declaration ¶ 3.)

EBMUD demurs to the TAC's ninth cause of action for negligence on the ground that it is time-barred under Government Code section 945.6(a)(2). EBMUD argues the ninth cause of action accrued in December 2019, when Plaintiff submitted a Government Code claim following water damage resulting from a nearby water main break. EBMUD did not respond to the claim, which constituted a rejection by operation of law under Government Code section 912.4(c). EBMUD then argues that Plaintiff then had two years, plus six months of tolling under Emergency Rule 9, to file suit. Because Plaintiff did not assert any cause of action against EBMUD until a Doe amendment in December 2022, and did not file the operative complaint until November 2024, EBMUD argues the negligence cause of action is untimely as a matter of law.

In opposition, Plaintiff argues that her negligence cause of action against EBMUD is not based on the underlying water main break, but on newly discovered facts obtained through the September 4, 2024

deposition of EBMUD employee Kim Damico. According to Plaintiff, the deposition revealed for the first time that EBMUD failed to investigate her claim, failed to maintain records, and improperly closed the claim without communication or notice. Plaintiff argues she could not have discovered these internal failures earlier, and the statute of limitations was tolled until the alleged misconduct was uncovered through discovery. Plaintiff argues these new facts give rise to a separate claim against EBMUD for negligent administration of the government claim process.

"Except as otherwise provided by statute ... [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Cal. Gov't Code § 815(a).) Plaintiff's complaint does not identify his cause(s) of action and does not cite to any statutory basis for liability. To the extent Plaintiff's alleged facts support a claim for negligence or other tort, Plaintiff must provide a statutory basis for his claim. (*Eastburn v. Reg'l Fire Prot. Auth.* (2003) 31 Cal. 4th 1175, 1183 [holding that "direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care"].)

In addition, since "under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable." (*Lopez v. S. Cal. Rapid Transit Dist*. (1985) 40 Cal. 3d 780, 795.) "[T]o state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity." (*Id*.)

EBMUD did not argue in its opening brief that the ninth cause of action fails because EBMUD owed no duty to process Plaintiff's government claim in a particular way. Instead, EBMUD's demurrer was based solely on the statute of limitations under Government Code section 945.6(a)(2). It was only on reply that EBMUD raised the duty issue.

The Court is not required to consider an argument raised for the first time in a reply brief. (*Mansur v. Ford Motor Co*. (2011) 197 Cal.App.4th 1365, 1387-1388.) However, because this issue is potentially dispositive, the Court will sustain the demurrer with leave to amend for Plaintiff to plead with particularity the statutory basis of her negligence cause of action in light of the immunity against non-statutory claims for public entities under Government Code section 815. If EBMUD then demurs to Plaintiff's amended complaint, the Court will have the benefit of a full round of briefing on the issue.

19. 9:00 AM CASE NUMBER: MSC21-02266
CASE NAME: WITTENBERG VS ROADS OF HACIENDA HOMES, INC.
HEARING ON DEMURRER TO: HACIENDA HOMES, INC. CROSS-COMPLAINT
FILED BY: EAST BAY MUNICIPAL UTILITY DISTRICT
TENTATIVE RULING:

East Bay Municipal Utilities District's demurrer to Hacienda Homes, Inc. dba Roads of Hacienda Homes, Inc.'s cross complaint is **off calendar**. Hacienda filed a first amended cross complaint on June 3, 2025.

Background

Plaintiff Laura Wittenberg initiated this action on November 3, 2021, by filing an original complaint against Hacienda Homes, Inc., asserting property damage claims involving drainage issues and a water main break but not naming East Bay Municipal Utility District (EBMUD) as a defendant.

On December 27, 2021, Plaintiff filed her first amended complaint, modifying the defendant's name to Hacienda Homes, Inc. dba Roads of Hacienda Homes, Inc., repeating similar allegations against Hacienda and referencing EBMUD's involvement, though not naming EBMUD as a defendant.

On November 15, 2022, Plaintiff filed a second amended complaint, adjusting the defendant's name to Hacienda Homes, Inc. dba Roads of Hacienda, removing claims for punitive damages but continuing to assert allegations involving Hacienda's drainage system and a water main break attributed to EBMUD. At this point, Plaintiff had still not named EBMUD as a defendant.

On December 12, 2022, Plaintiff formally substituted the EBMUD for Doe 1 in the second amended complaint.

On January 20, 2023, Hacienda presented a government claim to EBMUD seeking indemnification. EBMUD rejected this claim on April 6, 2023.

On February 1, 2023, Hacienda filed its answer to the second amended complaint, along with a cross-complaint against Roe defendants 1 through 100 for indemnity and declaratory relief. Hacienda did not name EBMUD nor allege compliance with the Government Claims Act in the cross-complaint.

On March 13, 2023, Plaintiff dismissed EBMUD from her second amended complaint.

Plaintiff filed a third amended complaint on November 8, 2024, again naming both Hacienda and EBMUD and reasserting allegations of property damage.

Hacienda answered Plaintiff's third amended complaint on December 2, 2024. Shortly thereafter, on December 6, 2024, Hacienda sought to substitute EBMUD for Roe 1 in its previously filed cross-complaint.

On March 3, 2025, EBMUD filed the instant demurrer to Hacienda's cross-complaint. The EBMUD argues that Hacienda's attempt to substitute EBMUD as Roe 1 in its cross-complaint is procedurally improper, untimely under the statute of limitations, and barred by Hacienda's failure to comply with the Government Claims Act. Specifically, EBMUD contends that Hacienda presented a government claim for indemnification on January 20, 2023, which EBMUD rejected on April 6, 2023, triggering a six-month deadline (until October 6, 2023) for Hacienda to file an action against EBMUD. Hacienda did not timely file suit, instead attempting to substitute EBMUD as a Roe defendant on December 6, 2024. According to EBMUD, this substitution was improper under CCP section 474, because Hacienda was not genuinely ignorant of EBMUD's identity or involvement when the cross-complaint was initially filed.

On June 3, 2025, Hacienda filed a first amended cross-complaint, apparently believing this filing would moot EBMUD's pending demurrer.

Analysis

CCP section 472(a) provides, in pertinent part: "A party may amend its pleading once without leave of court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or

motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike."

Hacienda elected not to address EBMUD's demurrer on the merits, evidently believing that its June 3, 2025 first amended cross-complaint rendered the demurrer moot. In reply, EBMUD challenges whether that amendment was available as a matter of right under CCP section 472(a). Specifically, EBMUD contends that Hacienda's Doe substitution naming EBMUD as Roe 1 constituted Hacienda's single amendment under CCP section 472(a). On that view, any further amendment, such as the June 3, 2025 first amended cross-complaint, required leave of court under CCP section 473(a). EMBUD therefore maintains that the operative pleading remains the original cross-complaint (as amended by the Doe substitution), and that its demurrer should be heard as directed to that pleading.

The Court is not presented with any authority supporting the proposition that a Doe substitution exhausts the "one-amendment" allowance under CCP section 472(a). Accordingly, the Court finds it more efficient to treat the pending demurrer as moot. EBMUD may demur Hacienda's first amended cross-complaint, and it may also file a motion to strike as requested on page 4 of the reply brief, following a meet and confer with opposing counsel.

The Court declines to set a hearing date for any such motions at this time. EBMUD may obtain a hearing date from the clerk upon filing its motions. Should the assigned hearing date be unreasonably delayed, EBMUD may file an ex parte application to advance the hearing.

20. 9:00 AM CASE NUMBER: N25-0477
CASE NAME: CLAIM OF: DOMINIC MARINO
***HEARING ON MINOR'S COMPROMISE**
FILED BY:
****TENTATIVE RULING:****

The petition for minor's compromise is approved.

21. 10:00 AM CASE NUMBER: C22-02244
CASE NAME: RAMIREZ VS. RODRIGUEZ
COURT TRIAL HEARING 1-2 DAYS
FILED BY:
****TENTATIVE RULING:****

Appearance required.

Law & Motion
Add On

22. 9:00 AM CASE NUMBER: N24-2027
CASE NAME: CATHY DACANAY VS. STEVEN GORDON
***HEARING ON MOTION IN RE: MOTION TO QUASH SUBPOENAS FILED BY RESPONDENT STEVEN GORDON FOR THE DMV. FILED BY STEVEN GORDON**
FILED BY:
TENTATIVE RULING:

The court reviewed the joint supplemental brief filed by the parties on June 12, 2025.

The court continues the motion to quash to July 14, 2025, at 9:00 a.m. in Department 9.

The parties shall endeavor to refile a joint administrative record by July 7, 2025, after meeting and conferring further.

The court continues the Writ of Mandate hearing to July 28, 2025, at 9:00 a.m. in Department 9.