**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**Department 10**
**Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

**DATE: August 8, 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.

**The courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. 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.

**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.

**CourtCall is no longer available**: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

**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.

**Court reporters**: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 1 | 22CV397405 | Pricilla Gallego v. Spread Your Wings, LLC | Order of examination: parties to appear. |
| LINE 2 | 21CV390666 | Eric F. Hartman v. Koshy P. George et al. | Click on LINE 2 or scroll down for ruling. |
| LINE 3 | 23CV419866 | Cindy Cilia et al. v. General Motors, LLC | Click on LINE 3 or scroll down for ruling in lines 3-4. |
| LINE 4 | 23CV419866 | Cindy Cilia et al. v. General Motors, LLC | Click on LINE 3 or scroll down for ruling in lines 3-4. |
| LINE 5 | 19CV360439 | Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al. | Motion for summary judgment by City of Santa Clara: click on LINE 5 or scroll down for ruling. |
| LINE 6 | 19CV360439 | Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al. | Motion for summary judgment by Keith L. Booth and Pathens, Inc.: this motion is now OFF CALENDAR in light of the notice of settlement between the parties. |
| LINE 7 | 21CV389240 | Adolfo De Luna v. Garden City Sanitation, Inc. | Click on LINE 7 or scroll down for ruling. |
| LINE 8 | 23CV420674 | Vilma Aracely Jandres Umana v. Stephen Ballard et al. | Motion to compel responses to special interrogatories: per the discussion at the August 6, 2024 hearing, the moving party has WITHDRAWN this motion. |
| LINE 9 | 23CV420674 | Vilma Aracely Jandres Umana v. Stephen Ballard et al. | Motion to compel responses to form interrogatories: per the discussion at the August 6, 2024 hearing, the moving party has WITHDRAWN this motion. |

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 10 | 19CV349252 | Sumi Lim v. Gerald Bittner, Jr. DDS et al. | Motion to void judgment of nonsuit: this motion has been filed in the wrong department, as it must be heard by the same judge who entered the judgment. Parties to appear at the originally scheduled time in Department 13: August 8, 2024 at 9:00 a.m. |
| LINE 11 | 23CV417541 | Kristen Heger v. Vikas Seth | Motion to modify judgment: this hearing has been CONTINUED to August 26, 2024 at 1:30 p.m. in Department 19. |

**- oo0oo -**

**Calendar Line 2**
**Case Name:** *Eric F. Hartman v. Koshy P. George et al.*
**Case No.:** 21CV390666

This is an action by plaintiff Eric F. Hartman against a large number of defendants: Koshy P. George, KPGCPA Financial Services, Inc., America's Tax Solutions – Accountant and Advisors, Sheeba George, Lynn Dornon Kuehn, The Carpet Butler, John Lee, James Young, and William C. Dresser (collectively, "Defendants"). Dresser has now filed a motion to strike Hartman's request for punitive damages against Dresser, as well as to strike allegations regarding Dresser's alleged trespass on property.

## I. BACKGROUND

The original and still-operative complaint, filed on November 1, 2021, alleges causes of action for: (1) conspiracy to harm plaintiff; (2) unfair business practices; (3) abate public nuisance and private nuisance and criminal nuisance; (4) assault and battery; (5) temporary writ of injunction and permanent injunction to abate public and private nuisance and for damages; (6) trespass and willful invasion of private property; (7) breach of written contract; (8) slander per se and libel on its face.

Among other things, the complaint alleges that Hartman, Koshy George, and Sheeba George are neighbors, and that Hartman retained Koshy George ("George"), a certified public accountant, to assist Hartman in filing federal and state tax returns for several of Hartman's clients. (Complaint, ¶ 10.) According to the complaint, Hartman terminated George's services on January 21, 2021, as a result of George's alleged incompetence and dishonesty. (*Ibid*.) This firing then resulted in a "never ending 'revenge vendetta' to retaliate against Hartman and to 'get even' by recruiting and inciting and conspiring with a []gang of 9 criminal elements and countless unknown co-conspirators received via Social Media to inflict physical, emotional and financial and professional harm and injury to plaintiff attorney Hartman (75 years old) and his wife Joanna Hartman (70 years old)." (*Ibid*.)

The Georges live at 6201 McAbee Road in San Jose, California, and Hartman lives at 6203 McAbee Road. According to the complaint, on or about October 29, 2021, Dresser and George trespassed on Hartman's property at 6203 McAbee Road. (Complaint, ¶ 42.) These defendants allegedly "inspected and photographed" Hartman's real property. (*Ibid*.) Dresser and George also allegedly trespassed on an adjacent, unoccupied property at 6205 McAbee Road to take further photographs of Hartman's property. (*Id*. at ¶¶ 43-44.)

Only the sixth cause of action for trespass and invasion of property is currently asserted against Dresser.[1]

On May 14, 2024, Dresser filed the present motion to strike punitive damages and certain trespass allegations from the complaint.

[1] Although the first cause of action is listed as being against "all" defendants, Hartman filed a dismissal of the first cause of action as to Dresser on April 2, 2024.

## II. REQUEST FOR JUDICIAL NOTICE

Dresser requests that the court judicially notice a complaint filed by Eric Hartman in this court: *Eric F. Hartman v. Koshy P. George* et al., Santa Clara Superior Court Case No. 23CV413568. (Request for Judicial Notice, p. 2.) Dresser cites Evidence Code section 452 in support. (*Ibid*.)

"Evidence Code sections 452 and 453 permit the trial court to take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. [Citations.]" (*People v. Woodell* (1998) 17 Cal.4th 448, 455, internal citations omitted.) Evidence Code section 452, subdivision (d), states that a court may take judicial notice of "[r]ecords of any court of this state."

The court DENIES judicial notice of Exhibit A. Dresser's memorandum of points and authorities in support of Dresser's motion to strike does not include any reference to Exhibit A, and it is not relevant to determining the merits of the motion to strike. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [only relevant matters are subject to judicial notice].)

## III. MOTION TO STRIKE

### A. General Legal Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or any matter of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) A motion to strike should not be a procedural "line item veto" for the civil defendant. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.) Rule 3.1322(a) of the California Rules of Court requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) The court's decision to strike pursuant to section 436 is discretionary. (See Code Civ. Proc., § 436 ["The court may . . . strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].) A complaint must include specific factual allegations showing the defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages. (See *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation*

*Authority* (2022) 83 Cal.App.5th 1137, 1193.) Punitive damages may not be pleaded generally. (*Ibid*.)

**B. Discussion**

**1. Motion to Strike Punitive Damages**

Dresser seeks to strike the following portion of the complaint in the sixth cause of action: "The above mentioned conduct of defendant William C. Dresser and defendant Koshy P. George were wilful done with the intent to harm plaintiff and his family and done with malice and fraud and oppression and such despicable conduct subjected plaintiff to cruel and unjust hardship in conscious disregard of plaintiff's rights so as to justify an award of exemplary and punitive damage and plaintiff as proximate cause of defendants' tortious conduct has sustained general damages of $100,000." (Notice, p. 2:12-17, citing Complaint, p. 24:11-16.) Dresser argues that under Civil Code section 3294, Hartman has failed to allege sufficiently despicable or outrageous conduct such that Hartman may request punitive damages under the sixth cause of action for trespass. (MPA, pp. 5:22-6:17.)

"In order to state a prima facie claim for punitive damages, a complaint must set forth the elements as stated in the general punitive damage statute, Civil Code section 3294. [Citation.] These statutory elements include allegations that the defendant has been guilty of oppression, fraud, or malice. [Citation.] 'Malice' is defined in the statute as conduct 'intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.' [Citations.] 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. [Citation.] 'Fraud' is 'an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.' [Citation.]" (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

"In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages. [Citation.]" (*Monge v. Super. Ct.* (1986) 176 Cal.App.3d 503, 510.)

Dresser correctly notes that the complaint only discusses him within the context of the sixth cause of action. (MPA, p. 5:16-21.) Dresser also correctly notes that the only allegations against him in the entire complaint are for the alleged trespass, inspection, and photographs taken by him and George on Hartman's property and a neighboring property. (*Id*. at p. 6:12-17.) These bare allegations are insufficient to plead a claim for punitive damages. Although Hartman is correct that punitive damages are theoretically obtainable on a trespass cause of action, far more factual detail is needed to support such a damages claim. (See *Haun v. Hyman* (1963) 223 Cal. App. 2d 615, 620 (*Huan*) ["Where a trespass is committed from wanton or malicious motives, or a reckless disregard of the rights of others, or under circumstances of great hardship or oppression, it is clear that punitive damages may be awarded. [Citation]"].)

Here, apart from the allegation that Dresser "inspected and photographed" Hartman's property, the complaint includes no other details about him: his relationship with Hartman, for example, or his motives and his relationship with George. Thus, there is an inadequate factual basis to infer any malicious or untoward intent behind Hartman's alleged actions giving rise to "despicable conduct." The complaint alleges that Dresser's trespassing "caused injury and damage to plaintiff Hartman" by exposing Hartman and his family to home invasion, robbery, and personal injury by perpetrators" who could use this private information regarding Hartman's security systems, but the complaint contains no specific facts linking Dresser's conduct with the release of private information to any (unnamed) third-party. (Complaint, p. 24:4-10.) The allegation is conclusory. Dresser's photography of Hartman's security systems, on its own, does not suggest malice, oppression, or fraud in and of itself. (See *Huan, supra*, 223 Cal. App. 2d at pp. 619-620 [affirming award of punitive damages for trespass when the defendant trespassed by removing gravel from a gravel pit on property and constructing a road on the same property when the "principal attraction" of the property was its "natural beauty" and the defendant should have known a previous judgment regarding the property's ownership went against him); *Goshgarian v. George* (1984) 161 Cal. App. 3d 1214, 1224-1225 [affirming award of punitive damages for trespass where the cross-defendant siphoned water from a swimming pool long after law enforcement told him to desist, attempted to conceal his siphoning, improved his property such that the property encroached on cross-complainants' land after being warned the improvements would encroach, and asserted "he was entitled to do as he wished with cross-complainants' land."].)

Hartman cites a number of cases, singling out three, in support of his position that "as a matter of law . . . the Sixth Cause of Action for Punitive Damages states a prima facie case [] setting forth sufficient facts to award punitive damages because the trespass by Defendant Dresser on October 29, 2021 was committed with a malicious motive and oppression to injure Plaintiff Hartman by compromising his physical safety." (Opposition, p. 7:1-9, citing *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316 (*Cyrus*); *Beck v. State Farm. Mut. Auto. Ins.* Co. (1976) 54 Cal.App.3d 347 (*Beck*); *Richards v. Employers Liab. Assur. Corp*. (1972) 25 Cal.App.3d 232, 246 (*Richardson*).)

In *Cyrus*, the Court of Appeal determined that the plaintiff merely pled malice in general and conclusory terms on a trespass claim and omitted factual allegations of wrongful motive, intent, or purpose; the Court therefore set aside an award of punitive damages. (*Cyrus, supra,* 65 Cal.App.3d at pp. 317, 319.) Just as in *Cyrus*, the court here finds that Hartman has failed to plead any facts suggesting a wrongful motive, intent, or purpose by Dresser—indeed, Hartman has failed to plead any facts relating to Dresser at all, beyond the basic inspection and photography of Hartman's security systems. In *Beck*, the Court of Appeal modified the trial court's judgment by striking an award of punitive damages, because the defendant insurer's conduct did not rise to the level of oppression, fraud, or malice: in that case, the insurer, State Farm, took an unreasonable position on the validity of a defense to coverage under the plaintiff's insurance policy. This was not enough for punitive damages. (*Beck, supra,* 54 Cal.App.3d at pp. 355, 356.) In *Richardson*, the Court of Appeal held that plaintiffs did show malice and oppression where the defendant, in order to annoy the plaintiffs, forced an insurance claim into arbitration even though the defendant knew the insurance claim "was completely valid, was established." (*Richardson, supra,* 25 Cal.App.3d at p. 245.) None of these cases establish that a trespass cause of action states a prima facie case for punitive damages *as a matter of law*. These cases make it clear that the outcome depends on the adequacy of the allegations regarding a defendant's wrongful motive or intent. Here, there are

no facts suggesting Dresser's knowledge or state of mind regarding his alleged trespass. (*Id.* at p. 244.)

The court GRANTS the motion to strike the punitive damages allegations of the sixth cause of action against Dresser, with 20 days' leave to amend.

**2. Motion to Strike Portions of Complaint as Irrelevant**

Dresser also seeks to strike the following allegation in the complaint as it applies to him: "Defendants also unlawfully trespassed on Lot #3 (unoccupied residential home) at 6205 McAbee Road, San Jose, CA 95120 in which its homeowners and members asked that plaintiff Hartman safeguard their unoccupied home until it is sold." (Notice, p. 2:9-11, citing Complaint, 23:25-28.) Dresser contends that the complaint does not allege how he supposedly caused any damage to the property on 6205 McAbee Road. (MPA, p. 6:20-25.) Therefore, Desser argues that this allegation has no relevance to Hartman's cause of action for trespass. (*Ibid.*)

Code of Civil Procedure section 436, subdivision (a), states that matters that are "irrelevant, false or improper" are subject to a motion to strike. "Irrelevant" means any immaterial allegation in the complaint. Section 431.10, subdivision (b), defines an immaterial allegation as any of the following: (1) an allegation that is not essential to the statement of a claim or defense; (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; or (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.

The court agrees that the current allegations as to 6205 McAbee Road are insufficient to support any cause of action. The complaint does not allege that Hartman has any ownership interest in 6205 McAbee Road, such that Hartman has the ability to assert a trespass claim. Hartman argues that this allegation, when read in context, establishes that Dresser trespassed on 6205 McAbee Road for the purpose of taking unauthorized photographs of Hartman's security system on 6203 McAbee Road. (Opposition, p. 3:1-13.) Whether or not Dresser took photographs of Hartman's property on 6203 McAbee Road has no bearing on whether he trespassed on 6205 McAbee Road, as a cause of action for trespass requires Hartman prove "(1) [his] ownership or control of the property; (2) [Dresser's] intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) [Dresser's] conduct was a substantial factor in causing the harm." (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal. App. 5th 245, 262.)

The court GRANTS the motion to strike paragraph 43 from the complaint—at least as it applies to Dresser—with 20 days' leave to amend.

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**Calendar Lines 3-4**
**Case Name:** *Cindy Cilia et al. v. General Motors, LLC*
**Case No.:** 23CV419866

Plaintiffs Cindy Cilia and Israel Jesus Calvo Guerrero (together, "Plaintiffs") filed this Song-Beverly action against defendant General Motors, LLC ("GM"), based on Plaintiffs' purchase of a 2020 Chevrolet Silverado that allegedly suffered from a transmission defect. GM now demurs to the fifth cause of action in the first amended complaint ("FAC"). GM has also filed a motion to strike Plaintiffs' request for punitive damages.

## I. BACKGROUND

According to the allegations of the FAC, on May 30, 2020, Plaintiffs entered into a warranty contract with GM regarding a 2020 Chevrolet Silverado (VIN 3GCPWDET5LG229779) (the "Subject Vehicle"), that GM manufactured and/or distributed. (FAC, ¶ 6.) Plaintiffs purchased the Subject Vehicle at Stevens Creek Chevrolet, GM's authorized dealer. (*Ibid*.)

Plaintiffs presented the Subject Vehicle to GM's authorized repair facility for repairs on March, 17, 2020, August 28, 2020, December 14, 2020, December 30, 2020, February 2021, July 26, 2021, and August 2, 2021. (FAC, ¶¶ 24-30.) Plaintiffs continue to experience issues with the Subject Vehicle's transmission. (*Id.* at ¶ 31.)

Plaintiffs filed their original complaint on July 28, 2023. Plaintiffs filed a FAC on February 28, 2024, alleging causes of action for: (1) violation of subdivision (d) of Civil Code section 1793.2; (2) violation of subdivision (b) of Civil Code section 1793.2; (3) violation of subdivision (a)(3) of Civil Code section 1793.2; (4) breach of the implied warranty of merchantability; and (5) fraudulent inducement - concealment.

On April 29, 2024, GM filed the present demurrer to the fifth cause of action in the FAC and a motion to strike punitive damages from the FAC.

## II. DEMURRER

### A. General Legal Standards

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]he pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) A demurrer may be brought by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court, in ruling on a demurrer, treats it "as admitting all properly pleaded material facts, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. [Citation.] It 'admits the truth of all material factual allegations in the complaint . . . ; the

question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.' [Citation.]" (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee*), superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227.) Evidentiary facts found in exhibits attached to a complaint may also be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

**B. Discussion**

**1. Fifth Cause of Action: Fraudulent Inducement - Concealment**

**a) Statute of Limitations**

GM argues that Plaintiffs purchased their vehicle on May 3, 2020 and that under the three-year statute of limitations, the July 28, 2023 complaint was filed over two months too late. (Memorandum of Points and Authorities in Support of Demurrer ("MPA"), p. 7:3-8.) Plaintiffs respond that the repair doctrine, the delayed discovery rule, and GM's own concealment toll any applicable statute of limitations. (Plaintiffs' Opposition to Defendant's Demurrer to First Amended Complaint ("Opposition"), pp. 2:17-6:27.) GM argues in reply that Plaintiffs cannot invoke the delayed discovery rule because that rule tolls the applicable statute of limitations only if a plaintiff cannot discover potential defects, and the complaint pleads facts suggesting that if Plaintiffs had exercised reasonable diligence, they would have discovered the alleged defects. (Reply, pp. 2:22-3:5.) GM also contends that Plaintiffs have failed to plead facts supporting how the "repair doctrine" or equitable tolling would toll their claims. (*Id*. at pp. 3:6-4:11.)

The Song-Beverly Consumer Warranty Act's "repair doctrine" is codified in Civil Code section 1795.6, subdivision (b), which states that the warranty period shall not be deemed to have expired if "the warranty repairs or service has not been performed due to delays caused by circumstances beyond the control of the buyer or [] the warranty repairs or service performed upon the nonconforming goods did not remedy the nonconformity after the repairs or service was completed, and the buyer notified the manufacturer or seller of this failure within 60 days after the repairs or service was completed." (Civ. Code, § 1795.6, subd. (b); see also *Ruiz Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385, 397 [noting that "section 1795.6 governs the tolling of the warranty period, section 1793.1(a)(2) does not expand the circumstances under which the warranty period may be tolled"].)

The court agrees with GM that although the repair doctrine may toll the warranty period for a breach of warranty cause of action, Plaintiffs have not provided any support for the notion that the doctrine also tolls the statute of limitations for a common law fraud cause of action. (See Civ. Code, § 1795.6, subd. (b); Reply, p. 3:7-9.) The cases cited by Plaintiffs do not suggest otherwise, as they do not involve car repairs or discuss the Song-Beverly Act. (See Opposition, 6:10-27, citing *Aced v. Hobbs–Sesack Plumbing Co.* (1961) 55 Cal.2d 573, 585; *A&B Painting & Drywall, Inc. v. Sup. Ct.* (2002) 25 Cal.App.4th 349, 355; *Cardinal Health 301, Inc, v. Tyco Electronics, Corp.* (2008) 169 Cal.App.4th 116, 133-134.)

Plaintiffs also rely on their allegations of fraudulent concealment and the delayed discovery rule to toll the statute of limitations. To allege fraudulent concealment tolling, a

plaintiff must allege facts that show: (1) the time and manner of the discovery; (2) that plaintiff was not at fault for failing to discover the fraud or had no actual presumptive knowledge of facts sufficient to put him on inquiry; and (3) the substantive elements of fraud. (*Community Cause v. Boatwright* (1981) 124 Cal.App.3d 888, 900.) "When a plaintiff relies on a theory of fraudulent concealment, delayed accrual, equitable tolling, or estoppel to save a cause of action that otherwise appears on its face to be time-barred, he or she must specifically plead facts which, if proved, would support the theory. [Citation.]" (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) For reasons discussed further below, the court finds that Plaintiffs have not adequately pleaded the substantive elements of fraud, and therefore Plaintiffs have failed to allege fraudulent concealment tolling.

Finally, as to the delayed discovery rule: "'In order to rely on the discovery rule for delayed accrual of a cause of action, "[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence."' [Citations.]" (*NBC Universal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1232; see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832 ["plaintiff must plead facts sufficient to convince the trial judge that delayed discovery was justified"].) The court finds that Plaintiffs have adequately pleaded facts invoking the delayed discovery rule. Plaintiffs allege that they discovered GM's wrongful conduct on or about June 14, 2023, "when they requested a buyback and/or restitution of the Subject Vehicle from GM, as the Vehicle continued to exhibit symptoms of defects following GM's unsuccessful repair attempts." (FAC, ¶ 23.) Plaintiffs allege that they presented the Subject Vehicle on multiple occasions to GM's authorized repair facilities with complaints relating to the transmission. (See *id*. at ¶¶ 24-30.) GM's authorized repair facility performed repairs on these visits but never disclosed the existence of any defects with the transmission and represented that they had repaired the Subject Vehicle. (*Ibid*.) Plaintiffs also allege that "Plaintiffs had no way of knowing about Defendant's deception with respect to the defects until the defect manifested itself and Defendant was unable to repair it after a reasonable number of repair attempts." (See *id*. at ¶ 35.) "Making it even more difficult to discover that the Subject Vehicle suffered from a safety defect was Defendant's issuance of various TSBs and Recalls purporting to be able to fix the symptoms of the defects and/or that such symptoms were not the result of a defect." (See *id*. at ¶ 39.)

In its reply brief, GM contends that the FAC "is completely devoid of any factual allegations that would allow the Court to infer that GM, in any way, acted to prevent Plaintiffs from bringing this action before the limitations period had run." (Reply, p. 4:5-7.) This exaggerates and mischaracterizes the FAC, which expressly alleges that Plaintiffs brought the Subject Vehicle for repairs to GM-authorized dealerships and GM never disclosed the transmission defect during these visits. (See FAC, ¶¶ 24-30.) GM also cites a series of federal court cases suggesting that "repair center assurances that issues have been resolved do not alone serve to show a car owner could not have discovered a defect if there are signs of continued problems." (Reply, p. 3:15-25.) This suggestion is not directly on point, and in any event, these federal cases have no authority in state court. GM also argues that "Plaintiffs cannot invoke the delayed discovery rule because they affirmatively state that the Subject Vehicle contained or developed the alleged '[d]efects and nonconformities to warranty manifested themselves with the applicable express warranty period.'" (Reply, p. 2:16-18, citing FAC, ¶ 11.) According to GM, Plaintiffs fail to plead facts showing that they were not negligent in failing to make "the discovery sooner." (*Id*. at p. 2:24-26, *Hobart v. Hobart Estate*

*Co.* (1945) 26 Cal.2d 412, 437; *Johnson v. Ehrgott* (1934) 1 Cal.2d 136, 137.) The question of whether Plaintiffs were "not negligent" in their discovery is a factual issue that cannot be decided on a demurrer—it does not present a deficiency on the face of the pleading. Moreover, as already noted, Plaintiffs have alleged a detailed history of repair attempts in which they presented their transmission issues on multiple occasions, and GM's authorized repair facilities represented that they had repaired the Subject Vehicle. (See FAC, ¶¶ 24-30.)

The court concludes that GM has failed to show in its demurrer that the statute of limitations necessarily bars the fifth cause of action.

**b) Duty to Disclose**

GM's argument that Plaintiffs do not allege a transactional relationship between the parties sufficient to create a duty to disclose is unpersuasive. The FAC alleges a direct contractual relationship between Plaintiffs and GM via the warranty contract signed by Plaintiffs (see FAC, ¶ 6 ["Plaintiffs entered into a warranty contract . . ."]), and a relationship between parties giving rise to the duty to disclose "has been described as a 'transaction,' such as that between 'seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual arrangement.'" (*Burch v. CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 349-350 (*Burch*), citing *Shin v. Kong* (2000) 80 Cal.App.4th 498, 509.)

GM relies on *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal. App. 5th 276, 311 (*Bigler*) to argue that Plaintiffs have failed to allege a direct relationship giving rise to the duty to disclose. GM continues to misread and misapply *Bigler*, just as it has done in numerous previous motions before this same court. (See MPA, pp. 10:9-19, citing *Bigler*.) *Bigler* involved an appeal of a jury verdict, not a pleading challenge, and the decision does not discuss pleading standards. (*Bigler*, *supra,* 7 Cal.App.5th at p. 314.) Furthermore, the FAC alleges that Plaintiffs interacted with sales representatives, relied on GM's marketing materials, and purchased the Subject Vehicle from an authorized dealer and agent of GM. (See FAC, ¶¶ 6, 72.) These allegations contrast with the allegations in *Bigler*, where the manufacturer of a medical device "did not transact with [plaintiff] or her parents in any way. [Plaintiff] obtained her Polar Care device from Oasis, based on a prescription written by Chao, all without [defendant's] involvement. The evidence does not show that [defendant] knew—prior to this lawsuit—that [plaintiff] was a potential user of the Polar Care device, that she was prescribed the Polar Care device, or that she used the Polar Care device. The evidence also does not show that [defendant] directly advertised its products to consumers such as [plaintiff] or that it derived any monetary benefit directly from [plaintiff's] individual rental of the Polar Care device." (*Bigler*, *supra,* 7 Cal.App.5th at p. 314.)

Plaintiffs rely on *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 844 (*Dhital*) in opposing the demurrer, and GM does not address this case in its reply brief. (See Opposition, pp. 7:24-8:11.) The Supreme Court has granted review of *Dhital*. (See *Dhital v. Nissan North America, Inc.* (Feb. 1, 2023 No. S277568) [523 P.3d 392].) Although this divests the opinion of binding or precedential effect, it may still be cited for "potentially persuasive value." (Cal. Rules of Ct., rule 8.1115(e)(1).) The Court of Appeal in *Dhital* concluded that plaintiffs sufficiently alleged a duty to disclose on the basis that plaintiffs "bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's

authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers." (*Dhital, supra,* 84 Cal.App.5th at p. 844.) This court finds the conclusion to be persuasive.

In contrast to the parties in *Bigler*, GM is a manufacturer and distributor of automobiles who does direct advertising of its products to consumers such as Plaintiffs. While *Bigler* may potentially be applicable to companies who do not directly advertise to consumers, who do not issue warranties to consumers, or who do not derive monetary benefits directly from sales to those consumers, it does not apply to companies that do such things, such as GM.

**c) Failure to Plead with the Requisite Specificity**

Defendant further demurs to the fifth cause of action on the ground that the FAC fails to plead fraud with the requisite particularity. (MPA, pp. 7:26-9:10.) "The elements of fraudulent concealment are: (1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if the plaintiff had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage." (*Burch, supra*, 34 Cal.App.5th at p. 348, citing *Bigler, supra*, 7 Cal.App.5th at pp. 310-311.)

As a general rule, each element in a fraud cause of action must be pleaded with specificity. (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) In the case of fraud by concealment or omission, however, courts require less particularity because "[h]ow does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Improvement System & Planning Ass'n., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) "Less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy.'" (*Committee, supra,* 35 Cal.3d at p. 217, citing *Bradley v. Hartford Acc. & Indem. Co.* (1973) 30 Cal.App.3d 818, 825; see also *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47 ["the rule is relaxed when it is apparent from the allegations that the defendant necessarily possesses knowledge of the facts"].)

GM argues that the complaint does not meet even these relaxed standards, noting that Plaintiffs have failed to allege: the identity of the individuals at GM who purportedly concealed material facts or made untrue representations about the Subject Vehicle, their authority to speak and act on behalf of GM, GM's knowledge about alleged defects in the Chevrolet Silverado at the time of purchase, any interactions with GM before or during the purchase of the Silverado, or GM's intent to induce reliance by Plaintiffs to purchase the specific Silverado at issue. (MPA, p. 9:1-6.) Furthermore, the FAC does not set forth facts showing GM's intent to defraud Plaintiffs or that the Subject Vehicle was unsuitable for its intended use at the time of purchase. (*Id.* at p. 9:7-10.)

Plaintiffs again rely upon *Dhital* in opposing this argument, and GM (again) does not address it on reply. The *Dhital* court analyzed facts similar to those present here, ultimately holding that the plaintiffs sufficiently pleaded fraudulent concealment. (*Dhital, supra,* 84 Cal.App.5th at p. 845.) The plaintiffs in *Dhital* alleged that the continuously variable transmissions "installed in numerous Nissan vehicles (including the one plaintiffs purchased)

were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car." (*Id.* at p. 844.)

Unlike in *Dhital*, the court finds that Plaintiffs have not sufficiently pleaded that GM had knowledge that the vehicle purchased by Plaintiffs suffered from any defects with its transmission. (MPA, p. 9:3-4.) The FAC alleges facts suggesting that GM potentially had knowledge of various issues with Chevrolet Silverados between 2014 and 2019, alleging, for instance, that "from September 2014 to at least February 2019, Defendant GM issued many service bulletins . . . " (FAC, ¶ 75.) Among other examples, the FAC also alleges that an employee of GM "lamented in February 2019 that 'shift quality issues are an ongoing concern with the 8-Speed transmission'" and GM allegedly considered stopping production of Silverado transmissions *in 2015*. (*Id*., ¶¶ 73, 74.) None of these disparate (and rather general) examples speak to knowledge of issues with a specific "transmission defect" in the 2020 Chevrolet Silverado, however.

Thus, the court concludes that Plaintiffs have not pleaded fraudulent concealment with sufficient specificity. The court SUSTAINS GM's demurrer to the fifth cause of action with 20 days' leave to amend.

## III. MOTION TO STRIKE

### A. Legal Standard

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) A motion to strike should not be a procedural "line item veto" for the civil defendant. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.)

In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) The court's decision to strike pursuant to section 436 is discretionary. (See Code Civ. Proc., § 436 ["The court may . . . strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].)

### B. Discussion

Defendant moves to strike Plaintiffs' request for punitive damages, arguing that: (1) Plaintiff's Song-Beverly Act causes of action do not allow for the recovery of punitive damages; (2) Plaintiff's fraudulent concealment cause of action is time-barred and fails to state a cause of action; and (3) Plaintiff's fraudulent concealment cause of action cannot support the request for punitive damages because Plaintiff does not allege the cause of action with

sufficient facts to state a cause of action. (Memorandum of Points and Authorities in Support of Motion to Strike ("Motion to Strike"), pp. 4:20-7:13.)

For the reasons stated above in connection with GM's demurrer, the court finds that these arguments are now moot. The court has sustained the demurrer to the fifth cause of action with leave to amend.

Contrary to what Plaintiffs seem to suggest in their motion, if the conduct underlying each set of damages is distinct, a plaintiff may claim punitive damages under a theory of fraud while also seeking civil penalty damages under the Song-Beverly Consumer Warranty Act. (See *Dhital, supra,* 84 Cal.App.5th at p. 841 ["a defendant's conduct in fraudulently inducing someone to enter a contract is separate from the defendant's later breach of the contract or warranty provisions that were agreed to"]; *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 969 [holding a plaintiff may seek both punitive damages for fraud and civil penalties under the Song-Warranty Act when a plaintiff bases the damages on different conduct at different times, such as a "presale fraudulent inducement and [] postsale noncompliance with the Song-Beverly Act"].)

It is unnecessary for the court to consider at this time whether punitive damages are also available under the Song-Beverly Consumer Warranty Act.

The court DENIES GM's motion to strike as moot.

## IV. CONCLUSION

The court SUSTAINS, on the ground of failure to state a cause of action, GM's demurrer to the fifth cause of action with 20 days' leave to amend. The court DENIES GM's motion to strike as moot.

**- oo0oo -**

**Calendar Line 5**
**Case Name:** *Mesfin Regassa Ayle et al. v. Keith Laverne Booth et al.*
**Case No.:** 19CV360439

## I. BACKGROUND

In this wrongful death action, plaintiff Mesfin Regassa Ayle ("Ayle") and other members of his family (collectively, "Plaintiffs") have filed suit against the County of Santa Clara (the "County"), the City of San Jose ("San Jose"), the City of Santa Clara ("Santa Clara") and Keith Booth ("Booth") for an accident in which Ayle's father, Regassa Ayle Walkeba ("Decedent"), was struck and killed by a box truck driven by Booth. This occurred on the Central Expressway near San Jose Airport on December 28, 2018.

Plaintiffs filed their original and still-operative complaint on December 18, 2019, stating six causes of action: (1) Negligence (against Booth, his employer (Pathens, Inc.), and various Does); (2) Negligent Hiring, Training, Supervision and Retention (against Booth's employer and various Does); (3) Negligent Entrustment (against Booth's employer and various Does); (4) Dangerous Condition of Public Property (against the County, San Jose, Santa Clara, and various Does); (5) Dangerous Condition of Public Property (against various Does only); and (6) Negligence (against various Does only). There are no exhibits attached to the complaint. Plaintiffs' allegations against the public entity defendants (the fourth cause of action) are based on Government Code sections 835 and 840.2: i.e., a dangerous condition of public property.

The complaint alleges that Decedent was struck while he was "a pedestrian in or near a crosswalk and refuge island area near the intersection of Central Expressway and De La Cruz Boulevard." (Complaint, ¶ 23.) The complaint alleges in somewhat conclusory fashion that this location was a dangerous condition of public property to pedestrians because of: "a. A misleading, confusing and/or dangerous configuration; b. A misleading, confusing and/or dangerous refuge island; c. Lack of an adequate refuge island; d. Lack of any or adequate warning signs; e. Lack of traffic control signals; f. Lack of sufficient marked crosswalks; g. Lack of lighting/illumination or adequate lighting/illumination; h. Lack of adequate sight distance; i. Overabundance of visual distractions; j. Lack of adequate speed limitations; k. Unpredictable traffic gaps; *l*. Abnormally high traffic density; and/or [] m. Lack of devices to allow for safe pedestrian and traffic movement." (Complaint, ¶ 25.)

The complaint alleges that Decedent's "encounter" with the dangerous condition was a proximate cause of Decedent's injuries. (Complaint, ¶ 25.) The complaint's first cause of action also alleges that Booth's negligence was a proximate cause of Decedent's injuries. (Complaint, ¶ 36.)

The County filed an answer to the complaint on March 6, 2020, Santa Clara filed an answer on March 24, 2020, and San Jose filed an answer on March 30, 2020. Booth and Pathens, Inc. filed a joint answer on May 6, 2020, as well as an untimely amended answer on September 8, 2023.

Currently before the court is a motion for summary judgment by Santa Clara, filed on April 19, 2024. This motion was originally set for a different hearing date, but the court reset it

for August 8, 2024 in response to an ex parte application from the Plaintiffs seeking additional time. Plaintiffs filed their opposition to Santa Clara's motion on July 25, 2024.

On August 1, 2024, this court heard separate motions for summary judgment brought by San Jose and the County. The court granted the County's motion on the ground that it had established that plaintiffs did not have, and could not reasonably obtain, any evidence to support the essential element of proximate causation. The court granted San Jose's motion on the same basis, as well as on the basis that there was no material factual issue on the question of whether it owned or controlled the location where the accident occurred.

Booth and Pathens, Inc. also filed a summary judgment motion, which was scheduled to be heard on the same date as this motion. On the evening of August 1, 2024, Plaintiffs filed a notice of settlement between themselves, Booth, and Pathens, Inc. Consequently, that last motion has now been taken off calendar.

## II. REQUEST FOR JUDICIAL NOTICE

The City of Santa Clara has submitted a request for judicial notice in support of its motion. (This request should have been separately filed rather than included as Exhibit 4 in Santa Clara's packet of supporting evidence.) "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

Santa Clara seeks judicial notice of five documents and two "propositions" under Evidence Code section 452, subdivisions (b) and (c). (See Request, p. 1:20-21.) The body of the request also refers to subdivisions (d), (g), and (h) but does not tie them to any specific request. Copies of three of the documents are attached to the request as Exhibits M, N, and O. The other two documents are attached to the declaration of counsel Christopher Yamada ("Yamada Decl.") as Exhibits G and H.

The court grants the request for judicial notice of Exhibits M, N, and O under Evidence Code section 452, subdivisions (b) and (c). These are Santa Clara County ordinances and the "County Road Book" that indicate that the County owned and controlled the location where the collision occurred on December 28, 2018.

The court denies the request for judicial notice of Exhibits G and H to Yamada declaration. These are copies of previously filed declarations by Robert Salinas and Jim Weston, respectively, submitted in support of the County's motion for summary judgment on August 1, 2024. Deposition transcripts and declarations cannot be noticed as to the truth of their contents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1057 [court may take judicial notice of existence of declaration but not of facts asserted in it]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court

proceedings].) These declarations can be considered as evidence in support of Santa Clara's motion, but judicial notice of their contents is not appropriate.

While they have limited relevance to the material issues before the court, and subdivisions (b) and (c) are inapplicable, the court GRANTS judicial notice of the two "propositions"—*i.e.*, that on December 28, 2018 Central Expressway was an east/west roadway that intersected with De La Cruz Boulevard, among other streets; and that De La Cruz Boulevard was a north/south roadway that intersected with Central Expressway[2]—under Evidence Code section 452, subdivision (g).

## III. GENERAL LEGAL STANDARDS

### A. Summary Judgment

The pleadings limit the issues presented for summary judgment or summary adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258 (*Laabs*); *Nieto v. Blue Shield of Calif. Life & Health Ins*. (2010) 181 Cal.App.4th 60, 73 (*Nieto*) ["[T]he pleadings determine the scope of relevant issues on a summary judgment motion."].) "A moving party seeking summary judgment or adjudication is not required to go beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Jacobs v. Coldwell Banker Residential Brokerage Co*. (2017) 14 Cal.App.5th 438, 444 [quoting *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 421]; see also *California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 637, fn. 3 ["Evidence offered on an unpled claim, theory, or defense is irrelevant because it is outside the scope of the pleadings."].)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."]) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's (or opposing party's) favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64, parentheses added.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the

[2] Santa Clara's request confusingly states that De La Cruz intersects with itself. (Request, ¶ 5.)

opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

The moving party may generally not rely on additional evidence submitted with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.) Nevertheless, the court has reviewed the transcript of the August 1, 2024 hearing submitted with Santa Clara's reply papers, as it is not really "evidence," and there is no discernible prejudice to Plaintiffs, who were represented at that hearing.

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action . . . . The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; internal citations omitted.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, *supra*, at 850.) "[W]hen the evidence is in equipoise on a matter that a party must establish by a preponderance of the evidence, summary judgment will be granted against that party." (*Aguilar*, *supra*, 25 Cal.4th at p. 857, fn. 27.) "A party ""cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]" [Citation.]' [Citation.]" (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1379 (*Christina C.*); see also *McHenry v. Asylum Entertainment Delaware, LLC* (2020) 46 Cal.App.5th 469, 479 (*McHenry*) [because speculation is not evidence, speculation cannot create a triable issue of material fact].)

**B. Dangerous Condition of Public Property**

Government Code section 835 "sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property," to the exclusion of any more general negligence claim on this subject. (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829.) Section 835 provides that a public entity is liable for injury caused by a dangerous condition:

> . . . if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
>
> (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

(Gov. Code, § 835.)

> [A] claim alleging a dangerous condition may not rely on generalized allegations but must specify in what manner the condition constituted a dangerous condition. A plaintiff's allegations, and ultimately the evidence, must establish a physical deficiency in the property itself. A dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself, or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users.

(*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347-1348, internal citations and quotations omitted; see also *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 759 ["To establish a qualifying condition, the plaintiff must point to at least one physical characteristic of the property."], internal citations and quotations omitted.)

Regarding notice, "[t]he primary and indispensable element of constructive notice is a showing that the obvious condition existed a sufficient period of time before the accident." (*State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396, 400.) "Whether the dangerous condition was obvious and whether it existed for a sufficient period of time are threshold elements to establish a claim of constructive notice. Where the plaintiff fails to present direct or circumstantial evidence as to either element, his claim is deficient as a matter of law." (*Heskel v. City of San Diego* (2014) 227 Cal.App.4th 313, 317 [internal citation omitted].)

"Ordinarily, the existence of a dangerous condition is a question of fact, but whether there is a dangerous condition may be resolved as a question of law if reasonable minds can come to but one conclusion. It is for the court to determine whether, as a matter of law, a given defect is not dangerous. This is to guarantee that cities do not become insurers against the injuries arising from trivial defects. Moreover, expert opinions on whether a given condition constitutes a dangerous condition of public property are not determinative: The fact that a witness can be found to opine that such a condition constitutes a significant risk and a dangerous condition does not eliminate the court's statutory task pursuant to Gov. Code, § 830.2, of independently evaluating the circumstances." (*Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, 755 (*Thimon*) [internal quotations and citations omitted].)

Government Code section 830.2 expressly permits courts to decide the existence of a "dangerous condition" as a matter of law. That section states, "A condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that 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." (See also CACI no. 1102.)

The absence of similar accidents at a given location is relevant, but not dispositive on the issue of whether a property is dangerous. (*Salas v. California Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1071.) "Property is not 'dangerous' within the meaning of the statutory scheme if the property is safe when used with due care and the risk of harm is created only when foreseeable users fail to exercise due care." (*Brenner v. City of El Cajon* (2003) 113

Cal.App.4th 434, 439.) "A public entity is not required to assume that third parties . . . will act negligently or recklessly." (*Thimon, supra,* 44 Cal.App.5th at p. 754.)

"Property cannot be 'public property' unless owned or controlled by the public entity." (5 Witkin, *Summary of Cal. Law* (11th ed., 2017) Torts, § 303; see also Gov. Code § 830(c) ["'Property of a public entity' and 'public property' mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity."].)

Under Government Code section 830.4, "A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right–of–way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code." Government Code section 830.6 states: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability 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."

Darkness itself does not constitute a dangerous condition of public property. Several court decisions have held that that a public entity has no duty to provide street lighting and cannot be held liable for a failure to do so. (See *Antenor v. City of Los Angeles* (1985) 174 Cal.App.3d 477 (*Antenor*); *Plattner v. City of Riverside* (1999) 69 Cal.App.4th 1441; See also *Mixon v. State* (2012) 207 Cal.App.4th 124, 133-137 (*Mixon*), internal citations omitted ["A public entity is under no duty to light its streets . . . . A duty to light, 'and the consequent liability for failure to do so,' may arise only if there is 'some peculiar condition rendering lighting necessary in order to make the streets safe for travel.' In other words, a prior dangerous condition may require street lighting or other means to lessen the danger but the absence of street lighting is itself not a dangerous condition . . . . A public entity, which has no general duty to light its streets, cannot be held liable for failing to provide a consistent level of lighting between one street and the next . . . . Absent a duty to eliminate darkness—which, as discussed above, a public entity does not have—diminished visibility that comes with nightfall is not evidence of a dangerous condition subjecting a public entity to liability."].)

As noted above, the complaint alleges that Defendant Booth's negligence was a proximate cause of Decedent's injuries. As a general matter, such allegations against a co-defendant may intersect with the allegations against the public entity defendants:

> The fact that [a third party's] negligence was a proximate cause of [plaintiff's] injury does not preclude a finding of dangerous condition. "[I]f a condition of public property 'creates a substantial risk of injury even when the property is used with due care' [citation], a public entity 'gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury.' " (*Cordova, supra,* 61 Cal.4th at p. 1105, 190 Cal.Rptr.3d 850, 353 P.3d 773.)

> *When a third party's conduct is the immediate cause of a plaintiff's harm, the question becomes whether the dangerous condition "increased or intensified" the risk of injury from the third party's conduct.* (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1137, 119 Cal.Rptr.2d 709, 45 P.3d 1171; *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1348, 75 Cal.Rptr.3d 168.)

(*Thimon*, *supra*, 44 Cal.App.5th at p. 754 [emphasis added]; see also *Thimon*, *supra*, 44 Cal.App.5th at p. 759 ["Given that [the third party's] negligence was a proximate cause of [plaintiff's] injuries, [plaintiff must also explain how [defendant public entity's] painting of lines to demarcate the crosswalk along with installing signs warning motorists of the pedestrian crossing 'increased or intensified' the risk of injury to pedestrians crossing at that location. There is no evidence that these improvements did so."].)

## IV. SANTA CLARA'S MOTION FOR SUMMARY JUDGMENT

### A. The Basis for Santa Clara's Motion

The only cause of action in the complaint alleged against Santa Clara is the fourth cause of action for dangerous condition of public property. Santa Clara moves for summary judgment on the basis that plaintiffs cannot establish all the elements of that cause of action or overcome the city's immunity under Government Code section 830.8. (See April 19, 2024 Notice of Motion at pp. 1:27-2:2.)

In its supporting memorandum, Santa Clara argues, as San Jose did previously in its motion, that Plaintiffs cannot establish that Santa Clara owned or controlled either the location alleged in paragraph 23 of the complaint ("a crosswalk and refuge island area near the intersection of Central Expressway and De La Cruz Boulevard") or the location where the collision actually took place (in the westbound merge lane of Central Expressway, at least 200 feet west of the intersection), as both were owned and controlled by the County on December 28, 2018. (See Memorandum, pp. 4:25-6:3; Separate Statement of Undisputed Material Facts ("UMFs") Nos. 1, 2, 9, 10 and 12.)

Santa Clara also argues, as both the County and San Jose previously did, that plaintiffs cannot establish the essential element of causation, as plaintiffs do not have and cannot reasonably obtain any evidence explaining how Decedent came to be at the location where he was struck. This means that plaintiffs cannot show whether Decedent interacted with any of the purportedly dangerous conditions listed in paragraph 25 of the complaint. (See Memorandum, pp. 8:25-9:22; UMF Nos. 1, 19, 21 and 22.)

To support these arguments, Santa Clara relies on its request for judicial notice and three declarations. The first declaration (Exhibit 1 in Santa Clara's packet of evidence) is from Raymond Boales, a police officer with the City of Santa Clara Police Department ("SCPD"), who describes his observations of the scene on the night of the accident and authenticates photos taken by SCPD personnel and a sketch diagram he created (submitted as Exhibits A and B to his declaration). Officer Boales states that he determined that the collision occurred "approximately 260 feet west of" the Central Expressway-De La Cruz Boulevard intersection "in Central Expressway's westbound #3/merge lane." (Boales Decl., ¶ 8.)

The second declaration is from Steve Chan, Transportation Manager of the Department of Public Works for the City of Santa Clara. Attached as Exhibit C and D to this declaration

are copies of construction plans for service improvements prepared by the County of Santa Clara. Chan states that "[a]lthough Central Expressway and portions of De La Cruz Boulevard are within the City's limits, since at least 2007, the portions of Central Expressway between Lafayette Street and De La Cruz Boulevard were, and still are, owned, controlled, operated and maintained by" the County. (Chan Decl. ¶ 3.)

The third declaration is the Yamada declaration discussed above, which authenticates Exhibits E-L. Exhibit E consists of excerpts from the deposition testimony of Booth. Exhibit F consists of excerpts from the deposition testimony of Ayle. Exhibit G is a declaration of Roberto Salinas previously filed in support of the County's motion for summary judgment. Salinas is a civil engineer with the County's Roads & Airport Department, who attests to the County's ownership and control of the Central Expressway on December 28, 2018, and he describes the layout and features at that time, authenticating photographs and County records attached as exhibits (two of these, Exhibits 2 and 23, are included in Exhibit G). Exhibit H is a declaration of Jim Weston, also previously filed in support of the County's motion. Weston, a Division Manager, Records, in the Office of the Clerk of the Board of Supervisors for the County, authenticates certain County records attached as exhibits (two of which, Exhibits 3 and 23, are included in Exhibit H). Exhibits I though L are copies of plaintiff Ayle's responses to written discovery.

It is undisputed that, contrary to the allegation in paragraph 23 of the complaint (which states that Decedent was "in or near a crosswalk and refuge island near the intersection of Central Expressway and De La Cruz Boulevard"), the collision between Decedent and the truck driven by Booth actually took place in the westbound merge lane of the Central Expressway, more than 200 feet west of the intersection with De La Cruz Boulevard. (See Santa Clara UMF no 1.)[3]

**B. Analysis of Santa Clara's Motion**

The court GRANTS Santa Clara's motion for summary judgment, as follows.

First, Santa Clara has established through undisputed evidence that it did not own or control the location where the collision with Decedent occurred.

The declaration of Roberto Salinas, resubmitted as Exhibit G to Yamada declaration and cited in support of Santa Clara's UMF 2, is sufficient evidence by itself to meet Santa Clara's initial burden to demonstrate that the County, and not Santa Clara, owned and controlled the Central Expressway on December 28, 2018. The County owned and controlled both the location alleged in paragraph 23 of the complaint (the intersection) and the location where the collision actually occurred on December 28, 2018 (200-256 west of the intersection). The declaration of Steve Chan provides further support for this conclusion, as does the

[3] Plaintiffs dispute the distance of 256 feet put forward by the County and San Jose in their motions and the evidence cited in those motions. This is not a material dispute of fact. Paragraph 23 of the complaint does not include, and cannot reasonably be interpreted as including, the actual collision location, as there was no crosswalk or refuge island "in or near" the location of the collision, which was indisputably a significant distance from the intersection. There is no evidence that the Decedent interacted with the allegedly dangerous conditions in the intersection set forth in paragraph 25 of the complaint. Even Plaintiffs do not dispute that the collision occurred at least 200 feet from the intersection.

declaration of Raymond Boales (describing the actual location of the collisions based on his personal observations of the scene).

Plaintiffs' opposition disputes that Santa Clara's lack of ownership and control relieves it of any liability, based on the decision in *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139 (*Bonanno* ). (See Opposition, pp. 22:6-24:1.) Contrary to Plaintiffs' contention, *Bonanno* does not stand for the proposition that multiple public entities can own and control the same physical condition of a public property at the same time. Indeed, the Supreme Court expressly stated that the scope of its review was limited "to the question 'whether the location of a bus stop may constitute a dangerous condition of public property under [Gov. Code § 830] because bus patrons will be enticed to cross a dangerous crosswalk to reach the bus stop.'" (*Bonanno, supra,* 30 Cal.4th at p. 146.) While it upheld the jury verdict and concluded the location was in a dangerous condition, it stressed: "Our decision here, we emphasize, does not concern the question whether the crosswalk . . . was in fact an unsafe pedestrian route for crossing [the road], or even the broader question whether painted crosswalks at uncontrolled intersections are more dangerous than those at signal-controlled intersections. As the County, which controlled the intersection, settled with plaintiff before trial, our decision does not in any respect address the liability of a city or county for maintenance of an unsafe crosswalk. To be sure, plaintiff introduced evidence—which the jury apparently found persuasive—showing the DeNormandie crossing was more dangerous than that at Morello, in order to establish that CCCTA should have moved its bus stop to Morello. But the sufficiency of that evidence is not before this court. Our order limiting review, quoted earlier in this opinion, assumes the existence of a dangerous crosswalk, posing only the question whether a *bus stop* may be deemed dangerous because bus users, to reach the stop, must cross at that dangerous crosswalk." (*Id*. at pp. 146-147, italics in original.) Thus, *Bonanno* assumed the existence of a dangerous condition on property owned/controlled by one public entity defendant and concluded another adjacent property (the bus stop), owned by a different public entity defendant, could be found dangerous based solely on its placement next to the assumed dangerous condition. This is completely distinguishable from the present scenario. In addition, *Bonanno* does not change the general rule that a public entity can only be found liable for a dangerous condition of public property that it in fact owns or controls. For there to be liability for a dangerous condition of public property "the public entity must own or control the public property at issue at the time of the injury." (*Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 366 [citing *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 383].)

In disputing Santa Clara's UMFs 2 and 6, Plaintiffs rely on deposition testimony of Roberto Salinas, Mike Chan, and Raymond Boales as well as their declarations. This deposition testimony (generally referring to such things as SCPD's patrolling of the area and Santa Clara's participation with the County and/or San Jose in projects in the area years prior to the accident) does not raise any triable issues of material fact, as it does not support a reasonable inference that Santa Clara *owned or controlled* the location where the collision occurred on December 28, 2018. The declarations also do not support any such inference.

Even if Plaintiffs could raise a triable issue as to Santa Clara's ownership or control of the relevant property, Santa Clara would still be entitled to summary judgment on the same basis as the County and San Jose: Plaintiffs cannot establish a triable issue of material fact as to the essential element of causation.

A defendant may obtain summary judgment by demonstrating that a plaintiff has no evidence to establish an essential element, such as causation, by showing that "plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar, supra,* at pp. 854-855.) "Such evidence may consist of the deposition testimony of the plaintiff's witnesses, the plaintiff's factually devoid discovery responses, or admissions by the plaintiff in deposition or in response to requests for admission that he or she has not discovered anything that supports an essential element of the cause of action." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 110 [citing *Aguilar* among others]; see also *Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1102-1103.)

Santa Clara argues, as the County and San Jose did previously, that Plaintiffs do not have and cannot reasonably obtain any evidence to support the essential element of causation. Plaintiffs have no knowledge of how Decedent arrived at the location where the accident occurred or the path he took to get there. They therefore have no evidence as to how any alleged condition of public property caused or contributed to the collision. (See Memorandum, pp. 8:25-9:22; UMFs 21-22.)

This argument is supported by the deposition testimony of plaintiff Ayle and defendant Booth, submitted as Exhibits E and F to the Yamada declaration. Booth testified that he did not see Decedent until immediately before the collision, when he saw Decedent coming from his left side. Ayle testified that he did not know why Decedent was at the accident location at 8:00 p.m., did not know how Decedent came to be at that location, and did not know where he was going. Ayle also testified that he did not know what Decedent had been doing since leaving Ayle's house nine hours earlier that day.

Santa Clara's position is also supported by Ayle's responses to written discovery. In Ayle's April 2022 responses to requests for admissions, Ayle admitted that he did not know of any eyewitnesses to Decedent's movements within 60 seconds of the accident other than Decedent, Booth, and Fernando Garcia (a passenger in the truck driven by Booth). (See Responses to RFAs Nos. 4 & 5 (Yamada Decl., Exhibit I.) In his April 19, 2022 responses to Form Interrogatory No. 17.1, Ayle stated that he was "currently unaware" of the names of any eyewitnesses with personal knowledge of Decedent's "whereabouts or activities" for the time period after he left Ayle's residence until the accident, other than Booth and Garcia. (See Yamada Decl., Exhibit J.) In his April 19, 2022 responses to special interrogatories, Ayle similarly stated that he was "currently unaware" of the names of any eyewitnesses with personal knowledge of either the collision or Decedent's movements, other than Booth and Garcia, and was "currently unaware" of the names of any other eyewitnesses with personal knowledge of Decedent's "whereabouts or activities" from the time Decedent left Ayle's home until the accident. (See Responses to Interrogatories No. 14 & 19, Yamada Decl., Exhibit K.) In his August 18, 2023 response to the County's first supplemental interrogatory, Ayle stated that he "currently has no later acquired information bearing on answers previously made in response to interrogatories and currently has no changes or additions to make." (See Yamada Decl., Exhibit L.)

All of these written discovery responses are verified, and this evidence is sufficient to meet Santa Clara's initial burden to demonstrate that Plaintiffs' do not have, and cannot reasonably obtain, evidence to support the essential element of causation in the fourth cause of action.

With the burden shifted to Plaintiffs, they are unable to raise a triable issue of material fact as to causation. Indeed, Plaintiffs' opposition brief does not even respond to the causation argument. Instead, Plaintiffs rely solely on a July 25, 2024 declaration from Manuel Balam ("Balam Decl.") to dispute Santa Clara's UMF 21. UMF 22 is not disputed. (See Plaintiffs' Separate Statement, Response to UMFs 21-22.) The Balam declaration states that "[f]or the collision incident and events immediately before it in the roadway, as far as I and Plaintiffs currently know, there are no other currently known eyewitnesses identified in discovery responses by Plaintiffs, other than driver Keith Booth and Passenger Fernando Garcia; whether there, in fact, are other witnesses remains to be determined as discovery, depositions, and trial preparation continue." This is insufficient to establish a material issue regarding causation. Speculation as to the existence of other possible witnesses cannot raise a triable issue of material fact, as speculation is not evidence. (See *Christina C.* and *McHenry*, *supra*.)

The Balam declaration also authenticates Plaintiffs' Exhibits A-G. Exhibits A and B, the only exhibits cited in Plaintiffs' response to UMF 21, are excerpts from the deposition testimony of Booth and Garcia. These excerpts do not raise any triable issue of material fact as to causation. Plaintiffs highlight speculative statements by Booth, that he was "assuming" or "guessing" that Decedent was walking to the shoulder before the collision. (Ex. A, pp. 56:22-57:2 and 57:23-58:1.) In response to follow-up questions, Booth stated that he had no actual memory of Decedent heading to the shoulder, and he did not know where Decedent had been prior to the collision. (Ex. A, pp. 57:3-10 and 58:2-21.) Garcia testified that the "second before" the collision, he saw Decedent coming from his and Booth's left. (Ex. B, p. 10:8-12.)

Plaintiffs are bound by their complaint on summary judgment. Even if it is assumed that the conclusory allegations in the complaint's fourth cause of action adequately allege a claim against any of the public entity defendants, Santa Clara has demonstrated that Plaintiffs do not have, and cannot reasonably obtain, evidence to show proximate causation of injury. Plaintiffs do not have any evidence establishing: (1) how Decedent arrived at the location of the accident, (2) how long before the accident Decedent arrived at the location where the collision occurred; (3) from which direction Decedent was traveling when he arrived at the location; or (4) how long he may have been moving through the area—including how many times he crossed any of the streets in the vicinity—before the collision occurred.

Similarly, Plaintiffs have no evidence that could establish that Decedent encountered or interacted with any of the allegedly dangerous condition(s) of the Central Expressway-De La Cruz Boulevard intersection. As a result, even if the fourth cause of action could be reasonably construed as adequately alleging a "failure to warn" of a dangerous condition (and the court finds that the conclusory allegations in paragraphs 25d and 62 fail to do so), the same inability to show causation would apply. Moreover, because the complaint admits that the alleged negligence of Booth was a proximate cause of Decedent's injuries, Plaintiffs were required to show through evidence that an identified dangerous condition of public property "increased or intensified" the risk of injury from Booth's conduct. (See *Thimon*, *supra*, 44 Cal.App.5th at p. 754.) Plaintiffs have not done thisn

The court GRANTS Santa Clara's motion for summary judgment, based on Santa Clara's lack of ownership and control, and based on the absence of any potential evidence of causation. It is not necessary for the court to consider Santa Clara's additional arguments that Plaintiffs are unable to establish the existence of a dangerous condition of public property, or that Government Code section 830.4 provides it with complete immunity.

### C. Santa Clara's Objections to Evidence

Santa Clara has submitted evidentiary objections with its reply. Specifically, Santa Clara objects to portions of Exhibits E, G, L, and M to the Balam declaration as well as to a portion of Plaintiffs' responsive separate statement, which is not itself evidence. It is not necessary for the court to rule on these objections and it declines to do so. "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc. § 437c, subd. (q).)

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**Calendar Line 7**
**Case Name:** *Adolfo De Luna v. Garden City Sanitation, Inc.*
**Case No.:** 21CV389240

Plaintiff Adolfo De Luna moves to compel further discovery responses from defendant Garden City Sanitation, Inc. ("Garden City"). The court addresses each of the requests, as follows:

**Requests for Admissions Nos. 17-18**: Although Garden City's supplemental responses are somewhat vague as to time, the court ultimately finds that these responses are sufficiently responsive. Garden City admits that it became aware of the March 5, 2020 and April 21, 2020 letters "sometime after" the dates of the letters, "and after Plaintiff had accepted employment with Sunstate Equipment Co." The court does not discern what additional, potentially relevant information De Luna could possibly be hoping to obtain in response to these RFAs. Even more precise dates in the responses would be of questionable utility. The court has reviewed *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, relied upon by De Luna, and concludes that it does not mandate a more specific response. As Garden City points out, that case dealt with a "preferential rehire program" and retaliation that allegedly interfered with the plaintiff's participation in that program. (*Id.* at p. 56.) De Luna does not identify any analogous circumstances in this case. DENIED.

**Request for Admission No. 19**: Garden City's supplemental response is inadequate. This RFA seeks information that would not be expected to be in defendants' possession, even after a reasonable inquiry. DENIED.

**Form Interrogatory (Employment) No. 201.3**: Garden City's response is sufficient. This interrogatory expressly calls for an answer to subparts (a)-(d) only if the answer to the first question is in the affirmative. DENIED.

**Form Interrogatory (Employment) No. 217.1**: For the same reasons set forth above with respect to RFAs 17-19, the court finds the responses to this interrogatory to be code-compliant and adequate. DENIED.

**Request for Production of Documents No. 23**: Garden City's supplemental response states that it has "made a diligent search and reasonable inquiry and has no documents in its possession, custody or control." This response is satisfactory. DENIED.

The court denies both sides' requests for monetary sanctions.

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