

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

**Department 20, Judge Carrie Zepeda, Presiding
(covering for Judge Manoukian)**

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

DATE: Tuesday, December 19, 2023

TIME: 9:00 A.M.

If you are appearing remotely, please use the Zoom link below.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of
California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff
concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try
to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to
be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in
court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

**You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal
Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.**

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1jYmg5dDdsc3NKNFBpSjIEm5xUT09>
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California **Rules of Court**, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22CV403850	AATISHRAJ KALAWADE vs CHITRANGNA CHAUHAN	Defendant’s demurrer to the eighth cause of action for promissory fraud is sustained with 20 days leave to amend. See below.
LINE 2	23CV416347	Enma Hernandez vs US Hispanic Ventures, Inc.	Defendant has filed an amended answer. Plaintiff’s demurrer to the answer is moot and the matter is taken off calendar. (CCP §472.)
LINE 3	23CV419211	Emad Waqfi vs County of Santa Clara et al	Defendant’s Demurrer is OVERRULED. See Line 3 below.
LINE 4	23CV419211	Emad Waqfi vs County of Santa Clara et al	Defendant’s Motion to Strike is GRANTED. See Line 3 below.
LINE 5	23CV412051	Knack Systems, LLC vs ReqRoute, In	Notice was proper and timely and no opposition was filed. Plaintiff’s motion to compel and sanctions in the amount of \$2,060.00 are GRANTED. Defendant shall provide the requested documents within 20 days. Plaintiff shall submit an order.
LINE 6	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 7	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.
LINE 8	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.
LINE 9	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.
LINE 10	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.
LINE 11	21CV392006	Cuong Quach vs Kristy Tran et al	Notice was proper and timely and no opposition was filed. The Motion to Be Relieved as Counsel is GRANTED. Counsel shall submit an order modifying the next scheduled CMC hearing date to February 15, 2024, at 10:00 a.m. in D-20.
LINE 12	22CV394300	Knights Flooring, Inc. vs FPC Builders, Inc. et al	A Substitution of Attorney has been filed. The matter is taken off calendar.
LINE 13	22CV400997	ERIC BARROW vs JOHN DOE et al	Attorney Daniel Azizi is ordered to appear at the hearing. Counsel may not appear by substitute counsel.
LINE 14	22CV402004	Del's Fresh Produce, LLC vs Falafel Stop, LLC	Attorneys Roni Rotholz and George Benetatos are ordered to appear at the hearing. Counsel may not appear by substitute counsel.
LINE 15	22CV407185	CREDITORS ADJUSTMENT BUREAU, INC., vs PERFECTVIPS,	Notice was timely and proper. No opposition was filed. For good cause shown and defendant and defendant's attorney continued absence from the litigation and proceedings, the Motion for Terminating Sanctions is GRANTED. Defendant's answer is stricken. Monetary sanctions in the sum of \$1,876.65 are GRANTED. Plaintiff shall submit an order.
LINE 16	23CV411590	Mark Porter vs County of Santa Clara Sheriffs Office	This matter is continued to January 16, 2024, at 9:00 a.m.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 17	23CV417953	Western Surety Company vs David Duff et al	Plaintiff's motion to deposit and discharge stakeholder is DENIED. The authority cited by Plaintiff applies to a procedure relevant to a defendant, not a plaintiff.
LINE 18	22CV402338	ARGO CONSTRUCITON, INC. vs FPC BUILDERS, INC., et al	A Substitution of Attorney has been filed. The matter is taken off calendar.
LINE 19	22CV398679	Architecture, Inc. vs Full Power Properties, LLC et al	Motion to be Relieved as Counsel is GRANTED. (The Substitution of Attorney forms that were filed have been rejected. A separate form must be filed for each party.)

---oooOooo---

Calendar Line 1

Case Name: *Aatishraj Kalawade v. Chitrangna S. Chauhan, et al.*

Case No.: 22CV403850

(1) Demurrer to Plaintiff's Verified Complaint

Factual and Procedural Background

In or about July 2016, plaintiff Aatishraj Kalawade ("Kalawade") and defendant Chitrangna Chauhan ("Chauhan") purchased certain real property commonly known as 3279 Julio Avenue in San Jose ("Julio Property"). (Complaint, ¶7.) Title to the Julio Property was taken by plaintiff Kalawade and defendant Chauhan as joint tenants by a grant deed recorded on July 12, 2016 ("Julio Vesting Deed"). (Complaint, ¶8.) The purchase price for the Julio Property was \$850,000 financed in part by a loan from Bank of America in the amount of \$680,000 evidenced by a note executed by plaintiff Kalawade and defendant Chauhan as borrowers ("BOFA Mortgage") and secured by a deed of trust executed by plaintiff Kalawade and defendant Chauhan as trustors and recorded against the Julio Property on July 12, 2016. (Complaint, ¶9.)

On or about August 10, 2016, plaintiff Kalawade and defendant Chauhan began occupying and cohabiting in the Julio Property. (Complaint, ¶10.)

Pursuant to the parties' agreement, between August 2016 and December 2018, plaintiff Kalawade paid all of the BOFA Mortgage for the Julio Property, at least half of the property taxes, insurance, and repairs for the Julio Property, plus additional sums to defendant Chauhan or for her benefit, of about \$42,000 as consideration for plaintiff Kalawade's 50% interest in the Julio Property. (Complaint, ¶11.)

In or about June 2018, plaintiff Kalawade and defendant Chauhan acquired certain real property commonly known as 15105 Charlotte Avenue in San Jose ("Charlotte Property"). (Complaint, ¶12.) Title to the Charlotte Property was taken by plaintiff Kalawade and defendant Chauhan as joint tenants by a grant deed recorded on June 12, 2018 ("Charlotte Vesting Deed"). (Complaint, ¶13.) The purchase price for the Charlotte Property was \$1,547,000 financed in part by a loan from Union Bank in the amount of \$1,237,600 evidenced by a note executed by plaintiff Kalawade and defendant Chauhan as borrowers ("Union Bank Mortgage") and secured by a deed of trust executed by plaintiff Kalawade and defendant Chauhan as trustors and recorded against the Julio Property on June 12, 2018. (Complaint, ¶14.)

Plaintiff Kalawade paid \$15,910 of the down payment to the seller for the Charlotte Property through escrow prior to closing. (Complaint, ¶15.) After closing, plaintiff paid \$21,090 to defendant Chauhan or to defendant Chauhan's family for defendant Chauhan's benefit. (*Id.*) In addition, in or about January and February 2021, plaintiff Kalawade paid \$2,000 for repairs of the Charlotte Property. (*Id.*)

In or about February 2019, plaintiff Kalawade and defendant Chauhan vacated the Julio Property and began residing at the Charlotte Property and began leasing the Julio Property to tenants. (Complaint, ¶16.)

The parties agreed defendant Chauhan would be responsible for collecting rent for the Julio Property and applying said revenue to expenses for the Julio Property. (Complaint, ¶17.) Rental income for the Julio Property exceeded expenses and defendant Chauhan kept the surplus. (*Id.*)

On or about December 2, 2021, plaintiff Kalawade vacated the Charlotte Property. (Complaint, ¶18.)

On or about December 5, 2021, defendant Chauhan threatened to falsely report to police and her employer, Apple, that electronic devices defendant Chauhan gave to plaintiff Kalawade two years earlier had been stolen by plaintiff Kalawade, thereby threatening to jeopardize plaintiff Kalawade's immigration status under his existing work visa. (Complaint, ¶19.) Defendant Chauhan threatened to make false reports unless plaintiff Kalawade signed deeds transferring the Julio Property and Charlotte Property to defendant Chauhan. (*Id.*) Under duress, plaintiff Kalawade signed grant deeds purporting to transfer his interest in the two properties to defendant Chauhan ("Purported Julio Deed" and "Purported Charlotte Deed") on the condition that said deeds would be held by defendant Chauhan and would not be valid or recorded unless and until plaintiff Kalawade was paid an agreed amount for his interest in the two properties ("2021 Oral Agreement"). (*Id.*)

On August 31, 2022, plaintiff Kalawade discovered that defendant Chauhan had breached the 2021 Oral Agreement by recording the Purported Charlotte Deed and the Purported Julio Deed on April 6, 2022. (Complaint, ¶20.)

On September 29, 2022¹, plaintiff Kalawade filed a complaint against defendant Chauhan asserting causes of action for:

- | | |
|-----|-------------------------|
| (1) | Resulting Trust |
| (2) | Constructive Trust |
| (3) | Quiet Title |
| (4) | Partition |
| (5) | Declaratory Relief |
| (6) | Accounting |
| (7) | Breach of Oral Contract |
| (8) | Promissory Fraud |

On June 1, 2023, defendant Chauhan filed the motion now before the court, a demurrer to the eighth cause of action of plaintiff Kalawade's complaint.

I. Defendant Chauhan's demurrer to the eighth cause of action [promissory fraud] of plaintiff Kalawade's complaint is SUSTAINED.

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*); see also CACI, No. 1900.)

"'Promissory fraud' is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such

¹ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract.” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973 – 974; see also CACI, No. 1902.)

“Fraud actions are subject to strict requirements of particularity in pleading. ... Accordingly, the rule is everywhere followed that fraud must be specifically pleaded.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) “The pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.” (*Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518.) The *Lazar* court did not comment on how these particular allegations met the requirement of pleading with specificity in a fraud action, but the court did say that “this particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Lazar, supra*, 12 Cal.4th at p. 645.)

Defendant Chauhan demurs initially on the ground that plaintiff Kalawade has not alleged promissory fraud with sufficient specificity. Namely, plaintiff Kalawade has not alleged how, where, and by what means the fraudulent representations were made. In opposition, plaintiff Kalawade points the court to paragraph 19 of the complaint which states, in relevant part:

On or about December 5, 2021, Defendant [Chauhan] threatened to falsely report ... that electronic devices ... had instead been “stolen” by Plaintiff [Kalawade] ... unless Plaintiff [Kalawade] signed deeds transferring the [Julio Property and Charlotte Property] to Defendant [Chauhan]. Under duress, Plaintiff signed grant deeds ... on the condition that said deeds would be held by Defendant [Chauhan] and would not be valid or recorded until and unless Plaintiff [Kalawade] was paid an agreed amount for his interest in those properties (“2021 Oral Agreement”).

Certainly, this allegation does not state “where” the representation was made. Furthermore, while the court can reasonably infer that the statement was oral, it is unclear whether defendant Chauhan affirmatively promised to hold, and not record, the deeds until paying plaintiff Kalawade or whether plaintiff Kalawade posed this condition and defendant Chauhan stated her agreement thereto.

Defendant Chauhan contends further that plaintiff Kalawade has not alleged his justifiable reliance. In opposition, plaintiff Kalawade directs the court’s attention to paragraph 56 which alleges, “Chauhan made such promises with the intent to induce Plaintiff to rely upon said promises to Plaintiff’s detriment, including signing and delivering the Purported Deeds.” As noted above, the intent to defraud or induce reliance is one element. Actual and justifiable reliance is a separate element. The court agrees with defendant Chauhan that plaintiff Kalawade has not separately alleged his justifiable reliance. Moreover, paragraph 19 is vague since it can be read and understood that plaintiff Kalawade signed the Purported Julio Deed and Purported Charlotte Deed because of defendant Chauhan’s threats rather than in reliance on any promise by defendant Chauhan.

Finally, defendant Chauhan contends plaintiff Kalawade has not alleged damage resulting from the promissory fraud. While plaintiff Kalawade has alleged damages generally, what is lacking is an allegation that such damages resulted from defendant Chauhan’s fraud. As noted above, paragraph 19 is vague with regard to whether plaintiff Kalawade signed the

Purported Julio Deed and Purported Charlotte Deed because of defendant Chauhan's threats or in reliance on a promise by defendant Chauhan or both.

Accordingly, defendant Chauhan's demurrer to the eighth cause of action of plaintiff Kalawade's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for promissory fraud is SUSTAINED with 20 days' leave to amend.

---oooOooo---

Calendar Line 2

---oooOooo---

Calendar Line 3

Case Name: *Emad Omar Waqfi v. County of Santa Clara, et al.*

Case No.: 23CV419211

1) Demurrer to Plaintiff's Complaint

2) Motion to Strike Portions of Plaintiff's Complaint

Factual and Procedural Background

On or about October 14, 2022, due to mechanical issue with his vehicle, plaintiff Emad Omar Waqfi ("Plaintiff") was walking along northbound Highway 101 near Tully Road when he fell in an unmarked open constructed hole between the freeway retaining wall and the roadway resulting in serious bodily injury and harm to Plaintiff. (Complaint, ¶¶12 – 13.) The walkway was situated within improved public property owned, occupied, and controlled by defendants County of Santa Clara ("County"), City of San Jose ("City"), State of California ("State"), and California Department of Transportation ("Caltrans"). (Complaint, ¶12.) Defendants carelessly and negligently installed, used, controlled, maintained, and/or inspected the subject area so as to permit a dangerous and defective condition to become and remain unsafe. (Complaint, ¶14.)

On July 13, 2023², Plaintiff filed a complaint against defendants asserting a single cause of action for Dangerous Condition of Public Property.

On October 20, 2023, defendant Caltrans filed the two motions now before the court: (1) a demurrer to Plaintiff's complaint; and (2) a motion to strike portions of Plaintiff's complaint.

II. Defendant Caltrans's demurrer to Plaintiff's complaint is OVERRULED.

The only cause of action asserted against defendant Caltrans in Plaintiff's complaint is dangerous condition of public property.

A public entity is not liable for an injury arising out of the alleged act or omission of the entity except as provided by statute. (§ 815.) Section 835 is the sole statutory basis for a claim imposing liability on a public entity based on the condition of public property. (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 829 [15 Cal. Rptr. 2d 679, 843 P.2d 624].) Under section 835, a public entity may be liable if it creates an injury-producing dangerous condition on its property or if it fails to remedy a dangerous condition despite having notice and sufficient time to protect against it. (*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 939 [67 Cal. Rptr. 2d 454].)

To state a cause of action against a public entity under section 835, a plaintiff must plead: (1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition

² This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it. (§ 835; *Vedder v. County of Imperial* (1974) 36 Cal. App. 3d 654, 659 [111 Cal. Rptr. 728].) Section 830 defines a “[d]angerous condition” as “a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” 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. (*Chowdhury v. City of Los Angeles, supra*, 38 Cal.App.4th 1187, 1196.

...

Because this action was dismissed at the pleading stage, we outline the rules for pleading a claim against a governmental entity. The limited and statutory nature of governmental liability mandates that claims against public entities be specifically pleaded. (*Susman v. City of Los Angeles* (1969) 269 Cal. App. 2d 803, 809 [75 Cal. Rptr. 240].) Accordingly, a claim alleging a dangerous condition may not rely on generalized allegations (*Mittenhuber v. City of Redondo Beach, supra*, 142 Cal. App. 3d at p. 5) but must specify in what manner the condition constituted a dangerous condition. (*People ex rel Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1485–1486 [7 Cal.Rptr.2d 498].)

(*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 (*Brenner*); see also *Mohler v. County of Santa Clara* (2023) 92 Cal.App.5th 418, 428—also noting a “heightened pleading standard applicable to claims against government entities.”)

“[A] claim alleging a dangerous condition may not rely on generalized allegations [citation] but must specify in what manner the condition constituted a dangerous condition.” (*Brenner, supra*, 113 Cal.App.4th at p. 439.) “A plaintiff’s allegations, and ultimately the evidence, must establish a physical deficiency in the property itself. [Citations.] 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. [Citation.]” (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347–48.)

Defendant Caltrans contends Plaintiff does not specify “how the subject location was in a dangerous condition” and the complaint “contains no tenable description of the alleged defect itself” while acknowledging the allegation that a “constructed hole was left open and unmarked.” In this court’s view, Plaintiff has specifically alleged the constructed hole was dangerous because it was left open (as opposed to being covered) and was unmarked (as opposed to being marked with signs, barriers, etc.). The court did not consider the photos offered by Plaintiff in opposition nor did the court consider Plaintiff’s statement that his “entire body fell inside the hole.”

Defendant Caltrans argues next that such a condition is not dangerous.

“As to what constitutes a dangerous or defective condition no hard-and-fast rule can be laid down, but each case must depend upon its own facts.” (*Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206 [157 P.2d 625].) A dangerous

condition of public property can come in several forms and may be based on an “amalgam” of factors. (*Constantinescu v. Conejo Valley Unified School Dist.* (1993) 16 Cal.App.4th 1466, 1476 [20 Cal. Rptr. 2d 734].)

(*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1069.)

“In general, ‘whether a given set of facts and circumstances creates a dangerous condition is usually a question of fact and may only be resolved as a question of law if reasonable minds can come to but one conclusion.’” (*Peterson v. San Francisco Community College District* (1984) 36 Cal.3d 799, 810.) “[A]lthough the question of whether a dangerous condition exists is often one of fact, the issue may be resolved as a question of law when reasonable minds can only draw one conclusion from the facts.” (*Dina v. People ex rel. Dept. of Transportation* (2007) 151 Cal.App.4th 1029, 1054; see also *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.)

Government Code section 830.2 permits the court 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.)

Defendant Caltrans seemingly asks this court to make a determination, as a matter of law, that the condition, as alleged by Plaintiff, is not dangerous. However, there are no allegations or evidence concerning the risk, the surrounding circumstances, the amount of care exercised by Plaintiff, etc., for the court to draw any conclusions and certainly not at the pleading stage.

Defendant Caltrans argues next that Plaintiff’s cause of action for dangerous condition of public property is also premised upon alleged violations of Government Code sections 815.6³, 840.2⁴, and 840.4⁵, but that Plaintiff has not alleged such violations with the requisite

³ Government Code section 815.6 states, “Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.”

⁴ Government Code section 840.2 states, “An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity 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) The dangerous condition was directly attributable wholly or in substantial part to a negligent or wrongful act of the employee and the employee had the authority and the funds and other means immediately available to take alternative action which would not have created the dangerous condition; or

(b) The employee had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under Section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.”

specificity needed to sufficiently state statutory causes of action. However, these alleged violations make up only a portion of Plaintiff's sole cause of action for dangerous condition of public property. A defendant cannot demur to a portion of a cause of action. (See *Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 778—" [A] defendant cannot demur generally to part of a cause of action;" see also *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682—"A demurrer does not lie to a portion of a cause of action;" *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 274—" A demurrer challenges a cause of action and cannot be used to attack a portion of a cause of action.")

Nevertheless, for the reason discussed above, defendant Caltrans's demurrer to Plaintiff's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for dangerous condition of public property is **OVERRULED**.

///

///

///

III. Defendant Caltrans's motion to strike portions of Plaintiff's complaint is GRANTED.

Defendant Caltrans moves to strike Plaintiff's prayer for prejudgment interest. Defendant Caltrans contends public entities are not liable for prejudgment interest pursuant to Civil Code section 3291.⁶

⁵ Government Code section 840.4 states, "(a) A public employee had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 if he had actual personal knowledge of the existence of the condition and knew or should have known of its dangerous character.

(b) A public employee had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 840.2 only if the plaintiff establishes (1) that the public employee had the authority and it was his responsibility as a public employee to inspect the property of the public entity or to see that inspections were made to determine whether dangerous conditions existed in the public property, (2) that the funds and other means for making such inspections or for seeing that such inspections were made were immediately available to the public employee, and (3) that the dangerous condition had existed for such a period of time and was of such an obvious nature that the public employee, in the exercise of his authority and responsibility with due care, should have discovered the condition and its dangerous character."

⁶ In any action brought to recover damages for personal injury sustained by any person resulting from or occasioned by the tort of any other person, corporation, association, or partnership, whether by negligence or by willful intent of the other person, corporation, association, or partnership, and whether the injury was fatal or otherwise, it is lawful for the plaintiff in the complaint to claim interest on the damages alleged as provided in this section.

If the plaintiff makes an offer pursuant to Section 998 of the Code of Civil Procedure which the defendant does not accept prior to trial or within 30 days, whichever occurs first, and the plaintiff obtains a more favorable judgment, the judgment shall bear interest at the legal rate of 10 percent per annum calculated from the date of the plaintiff's first offer pursuant to Section 998 of the Code of Civil Procedure which is exceeded by the judgment, and interest shall accrue until the satisfaction of judgment.

In opposition, Plaintiff does not dispute defendant Caltrans' assertion that public entities are not liable for prejudgment interest and indicates he has already agreed to remove prejudgment interest from his prayer.

To the extent Plaintiff has not already done so, defendant Caltrans's motion to strike portions of Plaintiff's complaint is GRANTED.

---oooOooo---

This section shall not apply to a public entity, or to a public employee for an act or omission within the scope of employment, and neither the public entity nor the public employee shall be liable, directly or indirectly, to any person for any interest imposed by this section.

(Civ. Code, § 3291; emphasis added.)

Calendar Line 4

---oooOooo---

Calendar Line 5

---oooOooo---

Calendar Line 6

---oooOooo---

Calendar Line 7

---oooOooo---

Calendar Line 8

---oooOooo---

Calendar Line 9

---oooOooo---

Calendar Line 10

---oooOooo---

Calendar Line 11

---oooOooo---

Calendar Line 12

---oooOooo---

Calendar Line 13

---oooOooo---

Calendar Line 14

---oooOooo---

Calendar Line 15

---oooOooo---

Calendar Line 16

---oooOooo---

Calendar Line 17

---oooOooo---

Calendar Line 18

---oooOooo---

Calendar Line 19

---oooOooo---

Calendar Line 20

---oooOooo---

Calendar Line 21

---oooOooo---

Calendar Line 22

---oooOooo---

Calendar Line 23

---oooOooo---

Calendar Line 24

---oooOooo---

Calendar Line 25

---oooOooo---

Calendar Line 26

---oooOooo---

Calendar Line 27

---oooOooo---

Calendar Line 28

---oooOooo---

Calendar Line 29

---oooOooo---

Calendar Line 30

---oooOooo---