August 1, 2025
Dept. 9
Tentative Rulings

1.	**22CV1082**	**NAJAFPIR v. VISIONARY REALTY GROUP et al**
Attorney Withdrawal		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that the client is in breach of the agreement for legal services.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Plaintiff at his last known address was filed on June 27, 2025. <u>There is no proof of services showing notice to any of the Defendants or other parties.</u>

No hearing dates are currently scheduled for the case.

TENTATIVE RULING #1:

HEARING CONTINUED TO FRIDAY, SEPTEMBER 12, 2025, AT 8:30 AM IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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2.	**22CV1137**	**KUMAR v. PAR ELECTRICAL CONTRACTORS**
Motion to Release Bond and Return Collateral		

Par Electrical Contractors, Llc ("Par") hereby moves this court for an order releasing the surety bond it obtained in to appeal the Labor Commissioner's award in favor of Salesh Kumar and to return collateral issued to the bonding company back to Par. Par has settled with Salesh Kumar, dismissed its appeal and paid the full amount of the award, such that the appeal is now moot and there is no potential for liability against Par.

In July 2022, the Labor Commissioner issued an award in favor of Salesh Kumar for the amount of $22,407.00, in Case number WC-CM-793434. [Decl. of H. Anderson, ¶ 2, Ex. 1, Award.] Par timely appealed the award to this court, resulting in the instant action. [Decl. of H. Anderson, ¶ 3.] Par was required to and did post an undertaking to appeal the award, obtaining a surety bond from Suretec for the amount of the award, bond number 4458613 for $22,407.00, through collateral in the form of a letter of credit number IS000308808U. [Decl. of H. Anderson, ¶ 3; Vance Decl., ¶ 3, Ex. 3, Bond.] In an effort to avoid further legal fees, Par ultimately settled with Salesh Kumar, paid the full amount of award ($22,407.00), and thereafter dismissed its appeal. [Decl. of H. Anderson, ¶ 3, Ex. 2, Settlement Agreement.] Although the award has been satisfied in full, Suretec has not and will not release the surety bond or Par's collateral without a court order. [Decl. of H. Anderson, ¶ 4.]

An alleged employer who appeals a decision and award of the Labor Commissioner must post an undertaking with the court for the full amount of the award. Labor Code 98.2(b). The undertaking shall be on the condition that, "if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision or award of the Labor Commissioner, unless the parties have executed a settlement agreement for payment of some other amount." Labor Code 98.2(b).

There is no Opposition.

TENTATIVE RULING #2:

MOTION TO RELEASE BOND AND RETURN COLLATERAL IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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3.	**24CV1230**	**HAYES v. ENVISION EDH MB AUTO, LLC**
Motion to Set-Aside		

A default was entered against Defendant on December 30, 2024. On June 27, 2025, Defendant filed its Motion to Set Aside Default pursuant to California Code of Civil Procedure section 473(b) on the grounds that the interests of justice are advanced by setting aside the defaults because they were entered through mistake, inadvertence, surprise, or excusable neglect. The Parties have agreed to set aside the default judgment so that this case can be decided on its merits. The Parties have agreed that Defendant will file its responsive pleading to the Complaint within twenty-one (21) days of this Court's Order granting this Stipulation and setting aside the default.

The Court granted the Joint Stipulation of the parties on July 24, 2025.

TENTATIVE RULING #3:

THIS HEARING IS DROPPED FROM CALENDAR.

4.	**24CV2404**	**DEMTECH SERVICES, INC v. DM SOLUTIONS, INC et al**
Motion for Reconsideration		

TENTATIVE RULING #4:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 1, 2025, AT 8:30 AM IN DEPARMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5.	**25CV1717**	**PERDICHIZZI v. CA DEPT. OF FOOD AND AG. et al**
Preliminary Injunction		

Plaintiff's Notice does not comply with Local Rule 7.10.05. Repeated violations will be subject to sanctions pursuant to Local Rule 7.12.13.

Plaintiff filed an Amended Motion for Preliminary Injunction, regarding a $1 million grant she alleges was previously awarded to Wopumnes Nisenan and Mewuk Heritage Preservation Society. Defendant opposes, first arguing that the case cannot proceed until Plaintiff retains an attorney. Defendant's Motion to Strike regarding the validity of Plaintiff's Complaint is set for hearing on August 15, 2025 at 8:30 AM in Department Nine.

TENTATIVE RULING #5:

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION IS CONTINUED TO FRIDAY, AUGUST 15, 2025, AT 8:30 AM IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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6.	**24CV0344**	**MORRIS v. MATAGRANO et al**
Terminating Sanctions		

As previously pointed out in the Court's April 18, 2025 tentative ruling, Defendant's Notice still does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions under Local Rule 7.12.13.

Defendant moves for an Order issuing terminating sanctions for Plaintiff's alleged failure to comply with a Court Order to serve verified, compliant discovery responses to Defendant's form interrogatories, special interrogatories, and requests for production of documents before May 16, 2025. The Court also awarded sanctions, which Plaintiff was to pay before June 20, 2025. Defendant alleges that Plaintiff has failed to comply.

"If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." Code Civ. Proc. § 2030.290(c). Additionally, the Court may impose terminating sanctions against anyone engaging in misuses of the discovery process. Code Civ. Proc. §§ 2023.010, 2023.030. Such misuse includes, among other reasons, a failure to respond or submit to an authorized method of discovery. Code Civ. Proc. § 2023.010(d). *Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1214.

Under California Code of Civil Procedure section 2030.290(c), "where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279–80. Repeated refusal to participate in discovery is tantamount to a refusal to litigate in good faith, giving rise to terminating sanctions. *Van Sickle v. Gilbert* (2011) 196 Cal. App. 4th 1495 (terminating sanctions were justified against a party who disobeyed an order compelling responses to a production demand and interrogatories).

The Court is not satisfied that Defendant has demonstrated Plaintiff's disregard of the Court's April 18, 2025 Order is "preceded by a history of abuse" under CCP § 2030.290(c). The issuance of terminating sanctions is a drastic measure without a history of willful violations and disregard of the Court's orders.

Defense counsel requests sanctions in the amount of $1,980.00 for the cost of the Motion for Terminating Sanctions. Pursuant to the declaration of attorney Stephanie Drenski, she states it took 6 hours at $240.00 per hour to prepare the simple 5 ½ page Motion. She also requests 2 hours for preparing a reply to the Motion and attendance at the hearing, neither of which has been required at this point. Part of the sanctions requested also include the $60 filing fee.

TENTATIVE RULING #6:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 1, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7.	**24CV0481**	**MATTER OF TIMOTHY SAUER**
Pre-Commencement Discovery		

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, AUGUST 1, 2025, AT 8:30 AM IN DEPARTMENT NINE.

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8.	**24CV0417**	**RUDAS v. THD AT-HOME SERVICES INC. et al**
Demurrer		

Defendant Home Depot U.S.A., Inc. ("Home Depot" or "Defendant") demurs to Plaintiff's Second Amended Complaint ("SAC"). This case involves roof and gutter work completed on Plaintiffs' home by Defendants. Defendant's Notice does not comply with Local Rule 7.10.05. Repeated violations will be subject to sanctions pursuant to Local Rule 7.12.13.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

The SAC includes 5 causes of action: (1) Breach of Contract/Warranty; (2) Negligence; (3) Fraud and Misrepresentation; (4) Negligent Misrepresentation; and (5) Unfair and Deceptive Business Acts and Practices, Business and Professions Code §§17200 et. seq.

Home Depot demurs to all four causes of action on the following grounds:

1. Pursuant to Code of Civil Procedure ("CCP") §430.10(e) all causes of action are barred by the statute of limitations, because the statute started to run by May 2015, based on the Plaintiffs' allegation that they reported the defects within one year from the completed installation.
2. Pursuant to CCP §431.10(e) and (f), Plaintiffs failed to plead facts based in fraud with sufficient specificity to support the third, fourth, and fifth causes of action.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

The Court finds sufficient efforts by Home Depot to meet and confer with Plaintiffs.

Argument

Statute of Limitations for Breach of Contract or Breach of Prospective Warranty

"An action upon any contract, obligation or liability founded upon an instrument in writing" must be commenced within four years. (Code Civ. Proc., § 337, subd. (1).)

Plaintiffs allege in their Complaint that "[i]n or about May, 2014 Defendant's DOES 1-40 and each of them completed the installation of the above referenced new roof and gutters at Plaintiffs' home. At all times herein mentioned, after installation of the roof and gutters, including, but not limited to, within one year from the completion of the installation of the above referenced new roof and gutters, Plaintiffs notified and complained to Defendant HOME DEPOT[,] DOES 1-40 and each of them the roof and/or gutters were defectively installed, including but not limited to the roof leaked water." (SAC at ¶¶ 6-7) Therefore, Defendant argues that the tender of delivery and alleged breach occurred "in or about May, 2014... after installation of the roof and gutters," at which point the applicable statutes of limitations began to run. Defendants argue that the four-year statute of limitations expired nearly 6 years before Plaintiffs filed their complaint, and Plaintiffs' first cause of action for breach of contract/warranty is time-barred.

Statute of Limitations for an Action to Recover Damages Related to Construction

As a baseline rule, "Sections 337.1 and 337.15 apply to actions for damages against persons involved in the construction of improvements to real property . . . and establish four year and 10-year statutes of limitation for patent and latent defects, respectively. (*Mills v. Forestex Co.* ("*Mills*") (App. 5 Dist. 2003) 108 Cal.App.4th 625, 643, citing *Winston Square Homeowner's Assn. v. Centex West, Inc.* (1989) 213 Cal.App.3d 282, 290.) Defendants argue that "[t]he limitation periods in sections 337.1 and 337.15 start to run upon 'substantial completion' of the improvement and establish the outside limit within which an action must be filed, regardless of when the defect is discovered. (*Id.,* at p. 644, citing *Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc.* (2001) 89 Cal.App.4th 638, 649).

Defendant argues that in this case, substantial completion occurred in or about May 2014 (SAC ¶ 6) and discovery of the alleged defect also occurred in or about May 2014. (*Id.* ¶ 7) Therefore, Defendant argues the alleged defects at issue were patent defects that were obvious upon completion of construction, and thus under Code of Civil Procedure section 337.1, the four-year statute of limitations expired in or about May 2018, nearly six years before Plaintiffs filed their Complaint on March 4, 2024, and this action is time-barred.

Alternatively, Defendant argues that under Code of Civil Procedure section 337.15, the discovery of the alleged defect in or about May 2014 or in or about May 2015, triggers the statutes of limitations under either section 337 (four years) or section 338 (three years) – which expired in May 2017 to May 2018 or May 2018 to May 2019 – nearly six or seven years prior to

the filing of this action. As such, Defendant argues that all four of Plaintiffs' claims, which all arise out of alleged defects in the construction of the roof and gutters, are time-barred.

Statute of Limitations for an Action for Negligence, Fraud, or Misrepresentation

There is a three-year statute of limitations for "an action for trespass upon or injury to real property." (Code Civ. Proc., § 338, subd. (b).) A claim for injury to real property based on fraud is subject to a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) Defendants argue that Plaintiffs allege in their SAC that "[i]n or about May, 2014 Defendant's DOES 1-40 and each of them completed the installation of the above referenced new roof and gutters at Plaintiffs' home. At all times herein mentioned, after installation of the roof and gutters, including, but not limited to, within one year from the completion of the installation of the above referenced new roof and gutters, Plaintiffs notified and complained to Defendant HOME DEPOT[,] DOES 1-40 and each of them the roof and/or gutters were defectively installed, including but not limited to the roof leaked water." (SAC at ¶¶ 6-7) Therefore, Defendant argues that the alleged injury, whether based in negligence or fraud, occurred in or about May 2014 or May 2015. As such, Defendant argues that the three-year statute of limitations expired nearly six to seven years before Plaintiffs filed their complaint, and thus Plaintiffs' second, third, and fourth causes of action for negligence, fraud/misrepresentation, and negligent misrepresentation are time-barred.

Statute of Limitations for Violation of CA Business and Professions Code

"Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued." (Cal. Bus. & Prof. Code, § 17208.) Plaintiffs allege Home Depot violated Business & Professions Code ("BPC") sections 17200 et seq. by violating their "duty to disclose they knew the new roof and/or gutters [were] leaking and knew they were obligated to repair or replace the roof and gutters." (SAC ¶ 50) Defendant argues that the violation of the duty to disclose, as alleged by Plaintiffs, occurred at the time the parties entered into a written home improvement contract, or in March 14, 2014 and April 13, 2014. (SAC ¶ 6.) Therefore, Defendant alleges that the four-year statute of limitations expired nearly six (6) years before Plaintiffs filed their SAC, and thus Plaintiffs' fifth cause of action for violations of BPC sections 17200 et seq. is time-barred.

Failure to Plead and Prove Discovery Exception to Statute of Limitations

The "discovery rule," an exception to this principle, provides that a cause of action does not accrue until the plaintiff discovers, or reasonably should discover, the existence of the cause of action. (*Krieger*, supra, at p. 205, 221, citing *Neel*, supra, at p. 194.) Since the doctrine of discovery is an exception to the statute of limitations, Defendant argues that Plaintiffs must justify their failure to discover the alleged facts within three years by alleging facts showing that they were not negligent in failing to make the discovery sooner and that they had no actual or presumptive knowledge of facts sufficient to put them on inquiry notice. (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 437.

Defendants argue that the word "discovery" as used in the statute is not synonymous with "knowledge"; the Court must determine as a matter of law when, under the facts pled, there was a discovery by the plaintiff, in the legal sense of that term. (*Bainbridge v. Stoner* (1940) 16 Cal.2d 423, 430.) A complaint seeking equitable relief on the ground of fraud or mistake which shows on its face that the fraud was perpetrated or the mistake occurred more than three years prior to the commencement of the action must contain full and complete showing of the times and circumstances under which the facts constituting the fraud or mistake were brought to plaintiff's knowledge so that a court may determine whether the discovery of the facts was within the time alleged. (*Goodfellow v. Barritt* (1933) 130 Cal.App. 548, 559.)

Defendant argues that where an action is brought more than three years after the commission of the fraud, the plaintiff must plead and prove: (1) when and how the facts concerning the fraud became known to him; (2) lack of knowledge prior to that time; and (3) that he had no means of knowledge or notice that, followed by inquiry, would have shown at an earlier date the circumstances upon which the cause of action is founded. (*People v. Zamora* (1976) 18 Cal.3d 538, 562.) The "statute of limitations precluded an action for latent defect in construction of retaining wall, in light of owner's discovery of drainage problem more than three years before filing suit." (*North Coast*, supra, at p. 22.)

Here, as alleged in the SAC, Defendant argues that Plaintiffs discovered the alleged facts giving rise to all causes of action in or about May 2014. (SAC ¶¶ 86-87.) Defendant asserts that to the extent there were any other facts that were unknown to Plaintiffs at that time, which Plaintiffs have not alleged, Plaintiffs allege no facts to justify their failure to discover the alleged facts within the applicable statute of limitations.

Plaintiffs' allege that "[i]n or about September, 2023, Plaintiffs discovered the aforementioned new roof and gutters not only leaked water, but also had caused extensive damage by woodpeckers and a rat infestation and the water leakage had caused the growth of mold in their home..." (SAC ¶ 17) Defendant argues that this statement is inconsistent with the admission that the roof and gutter leaks were discovered in or about May 2014. (SAC ¶¶ 6-7) Defendant asserts that Plaintiffs' SAC does inform the Court when and how the facts concerning the fraud became known to Plaintiffs, and that was shortly after completion of installation in or about May 2014.

In sum, Defendant argues that Plaintiffs alleged that they discovered the facts giving rise to their causes of action in or about May 2014. (SAC ¶ 6) According to Defendant, even if there were any other facts unknown to Plaintiffs in or around May 2014, which Plaintiffs have not alleged, Plaintiffs allege no facts to justify their failure to discover such facts within the applicable statute of limitations.

<u>The Court agrees that Plaintiffs admitted they discovered the defects in or around May 2014.</u>

Opposition

Plaintiffs' argue that equitable estoppel or equitable tolling extended or tolled the statute of limitations. Equitable estoppel "comes into play only after the limitations period has run and addresses itself to the circumstances in which a party will be estopped from asserting the statute of limitations a as a defense to an admittedly untimely action because [their] conduct has induced another into, forbearing suit within the applicable limitations period." *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847. Equitable tolling is "a judge-made doctrine which operates independently of the literal wording of the Code of Civil Procedure to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. Courts apply equitable tolling ...to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice. The effect of equitable tolling is the limitations period stops running during the tolling event and begins to run again only when the tolling event has concluded." *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384. [To allege equitable tolling a plaintiff only need to allege defendant's conduct actually misled them and they reasonably relied on that conduct. "Bad faith or an intent to mislead is not required."] Plaintiffs argue that Defendant continually led Plaintiffs to believe they would honor the warranty claims (SAC ¶ 8 and 4:1 to 6:25) including an offer to settle (SAC ¶ 18) all to stall Plaintiffs from timely filing their suit for damages. The repairs occurred in July 2019, and Plaintiffs allege they temporarily stopped the leaks." (SAC ¶ 8) It is unclear how long Plaintiffs define temporarily, but there may have been time under the statute to timely file their claims at that point. The alleged settlement offer did not occur until September 2023 (SAC ¶ 18), by which time the statute of limitations had already run for all five causes of action and cannot be said to have induced Plaintiffs not to "timely" file as it was already untimely.

Plaintiffs argue that the continuing violation doctrine should apply. The continuing violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them. *Richards v. CH2M Hil (*2001) 26 Cal.4™ 798, 811-818. Plaintiffs cite to the May 18, 2023 letter from Sedgwick and a settlement offer on September 28, 2023. As addressed in the Court's previous tentative ruling, the Sedgwick letter came from Sedgwick. Plaintiffs have not provided any authority for Sedgwick's correspondence being sufficient to alter the statute of limitations, nor do Plaintiffs demonstrate how a settlement offer is a "wrong" or "injury." The case cited to by Plaintiffs demonstrates an actual series of wrongs or injuries, unlike the case before us.

Plaintiffs next argue under the theory of continuous accrual, a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period. *Howard Jarvis Tax. Assn. v. City of La Habra* (2001) 25 Cal.4" 801, 818-822. As stated above, the Court does not find that the facts of this case demonstrate a series of wrongs or injuries.

Plaintiffs argue agency between Home Depot, Sedgwick, and Genpact, but state they do not yet know the relationship between those companies. As addressed in the prior tentative ruling, a warranty – an offer to repair or settle – should not be conflated with the statute of limitations.

Plaintiffs further argue that Home Depot waived the statute of limitations defense based on the email and text messages from the Sedgwick claims adjuster and the Sedgwick letter identifying the date of loss with reference to a 3-year statute of limitations. Waiver "may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right." *Wind Dancer supra*, 10 Cal.App.5th at 78. ("Courts will find waiver when a party intentionally relinquishes a right or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished."]

For all the reasons outlined above, the Court sustains the demurrer as to all five causes of action, without leave to amend, as the statute of limitations bars all claims brought by Plaintiffs. The Court will not address the issue of whether the fraud causes of action are pled with sufficient particularity, as the statute of limitations wipes out all causes of action.

TENTATIVE RULING #8:

DEMURRER SUSTAINED WITHOUT LEAVE TO AMEND AS TO ALL FIVE CAUSES OF ACTION.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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9.	**24CV1592**	**MAIER et al v. SPRINGER et al**
Demurrer		

Pursuant to Code of Civil Procedure section 430.10, subdivisions (e) and (f), defendants Norcal Gold Inc., Salameh Naser, Lucy Naser, and Evelyn Calopiz-Springer (collectively, the "Demurring Defendants") generally and specially demur to the first, third, fourth, and fifth causes of action in plaintiffs Patrick Maier's, Tina Maier's, Vivian Maier's and Connor Clark's (collectively, "Plaintiffs" or the "Buyers") first amended complaint ("FAC") on the grounds that each cause of action is uncertain and fails to state a claim.[1] There is an additional individual Defendant, Terrence Springer ("Defendant Springer"), who has separate counsel and is not a party to this demurrer.

Counsel for the Demurring Defendants declares he sent a meet and confer letter to plaintiffs' counsel prior to filing the instant demurrer and received no substantive response. (Corsaut Decl., ¶ 2 & Ex. A.)

Plaintiffs filed a timely opposition to the demurrer. Demurring Defendants filed a timely reply.

1. Background

This action arises from the sale of real property located at 2001 Sweet Valley Road in El Dorado Hills, California (the "Property"). Plaintiffs were the Buyers in the transaction and currently own the Property. Defendants Salameh Naser, Lucy Naser, and Evelyn Calopiz-Springer (collectively, the "Defendant Sellers" or "Selling Defendants") were the sellers. Defendant Springer is a licensed real estate agent with the brokerage firm, Defendant Norcal Gold. Defendant Springer is also the husband of Defendant Evelyn Calopiz-Springer, one of the sellers.

On January 26, 2022, the Buyers and Defendant Sellers entered into a Residential Purchase Agreement ("RPA") to purchase the Property for $1,195,000. (FAC, ¶ 10.) The Property consists of three separate structures: a main house, a barn, and a Junior Accessory Dwelling Unit ("JADU"). (FAC, ¶ 11.) The Defendant Sellers disclosed there were tenants occupying the barn and JADU, and represented via a Tenant Occupied Property Addendum that the tenants would

[1] The court exercises its discretion to consider the demurrer even though it appears to be untimely. (*Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750.) The FAC was served upon defendants electronically on February 20, 2025, making their responsive pleading due March 26, 2025. The demurrer was not filed until April 1, 2025. Plaintiffs raise no objection.

be evicted by close of escrow, i.e., on or before March 14, 2022. (FAC, ¶ 11.) The Defendant Sellers also disclosed that the barn and JADU were not permitted. (FAC, ¶ 11.)

At some time before March 2022, one of the tenants reported to El Dorado County Code Enforcement that the barn and JADU were not permitted, and therefore, illegal units. (FAC, ¶ 13.) This resulted in "red tagging" the two structures. (FAC, ¶ 13.) The Defendant Sellers did not disclose to the Buyers that the tenant had submitted this report to Code Enforcement. (FAC, ¶ 13.)

On March 15, 2022, the Buyers arrived at the Property to take possession of it and learned that the tenants of the barn and JADU were still residing at the Property. (FAC, ¶ 12.) Defendant Springer said his office made a clerical error on the transaction documents and mistakenly noted the close of escrow was scheduled to occur on April 11, 2022. (FAC, ¶ 12.) The Buyers were offered $30,000 to accept the Property with tenants but the Buyers refused. (FAC, ¶ 12.)

"In order to salvage the transaction," Defendant Sellers authorized Defendant Springer, in his capacity as Defendant Sellers' agent, to amend the RPA via Addendum A. (FAC, ¶ 14.) Defendant Sellers "contributed" $30,000 to Defendant Springer to "complete" the terms of Addendum A, "thereby ratifying Defendant Springer's conduct on their behalf." (FAC, ¶ 15.) On April 8, 2022, the Buyers and Defendant Springer executed Addendum A, which states: "The following terms and conditions are hereby incorporated in and made a part of the Purchase Agreement… dated 1/26/2022, on property known as 2001 Sweet Valley Road, El Dorado, Hills, CA 95762…. Terence springer to act as buyer's representative in all dealings with the county in order to get one bedroom unit permitted as a Junior ADU, the barn permitted as a workshop, and the addition in the main home converted to a porch and windows reinstalled. This also includes: providing architectural plans and structural engineering report, paying all required fees, making all required improvements and repairs and attending all required meetings. Terrence to remain buyer's representative through the entire process and until permitting is complete (even after escrow closes)." (FAC, ¶ 14 & Ex. 1 at Addendum A.) Defendant Springer's signature appears on the line reserved for "Seller/Landlord;" however, the term "Seller/Landlord" is crossed out with a single line and replaced with the term, "Listing Agent." None of the Defendant Sellers signed Addendum A. (FAC, Ex. 1 at Addendum A.)

Escrow ultimately closed on April 8, 2022. (FAC, ¶ 16.) Almost immediately thereafter, Defendant Springer began to make excuses as to why he could not complete the terms of Addendum A. (FAC, ¶ 17.)

The FAC alleges that all defendants never intended to perform their promise when they made it; instead, all defendants intended to induce Plaintiffs into accepting the promises in Addendum A. (FAC, ¶ 66.)

Additionally, the FAC alleges all defendants failed to: (1) act as Plaintiffs' representative with the County in order to make the barn and JADU permitted; (2) convert the addition to the main house into a permitted porch and reinstall windows; (3) provide architectural plans and structural engineering report; (4) pay all required fees; and (5) make all required improvements and repairs, and attend all required meetings through the entire process until permitting is complete. (FAC, ¶ 27.)

2. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

3. Discussion

3.1. First C/A for Breach of Contract

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) the resulting damages to the plaintiff. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 439.)

Defendants argue (1) the FAC fails to include a copy of the underlying contract or allege the relevant terms verbatim; (2) defendants were not parties to Addendum A as they did not sign the agreement (the only defendant to sign Addendum A was Defendant Springer); (3) the FAC fails to allege defendants proximately caused plaintiffs' injury; (4) the FAC fails to properly allege a breach of the contract where the contract is silent as to the deadline for fulfilling the contractual obligations; and (5) the FAC fails to allege any specific damages resulting from the alleged breach.

Defendants first argument, that the FAC fails to incorporate the agreement or allege the relevant terms verbatim, is unavailing because the agreement defendants refer to is the Tenant Occupied Property Addendum. The breach of contract claim, however, is based on Addendum A, which is incorporated into the FAC as Exhibit 1.

Turning to defendants' second argument, Plaintiffs respond that Demurring Defendants are bound by the terms of Addendum A because, as the FAC alleges, Demurring Defendants granted actual or ostensible authority to Defendant Springer and Defendant NorCal Gold to draft

and complete the terms of Addendum A. (Opp. at 5:21–23.) Specifically, the FAC alleges that: (1) Selling Defendants "contribut[ed] $30,000 to Defendant Springer in order to complete the terms of [Addendum A], thereby ratifying Defendant Springer's conduct on their behalf;" (2) Seller Defendants were aware of Defendant Springer's conduct because close of escrow closed one month later; and (3) Defendant Evelyn Calopiz-Springer is married to Defendant Springer. (FAC, ¶ 15.)

Plaintiffs cite to Civil Code section 2334, which provides, "A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof." (Civ. Code, § 2334.)

"An agency is either actual or ostensible." (Civ. Code, § 2298.) "An agency is actual when the agent is really employed by the principal." (Civ. Code, § 2299.) "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (Civ. Code, § 2300.)

Ostensible agency is established where (1) a party, "when dealing with the agent, did so 'with [a reasonable] belief in the agent's authority,' " (2) "that 'belief [was] generated by some act or neglect by the principal,' " and (3) the party "was not negligent in relying on the agent's apparent authority." (*Pereda v. Atos Jiu Jitsu LLC* (2022) 85 Cal.App.5th 759, 768.)

The court addresses the demurrer with respect to Defendant NorCal Gold first. As it relates to Addendum A, Defendant NorCal Gold was not the principal; the Seller Defendants were. Therefore, the FAC does not allege a breach of contract claim against Defendant NorCal Gold.

With respect to the Selling Defendants, the only allegation that supports an inference that Selling Defendants granted Defendant Springer actual authority to bind Selling Defendants to the terms of Addendum A is that Selling Defendants allegedly paid Defendant Springer $30,000 to perform the obligations under Addendum A. It is unclear how the allegations that Seller Defendants were aware of Defendant Springer's conduct, and Defendant Springer was married to one of the sellers, supports the Seller Defendants' position.

The court also considers that the first sentence to Addendum A states it is incorporated into the RPA concerning the Property dated January 26, 2022; and is signed by the "Listing Agent." The court finds that these are sufficient facts to support a finding that Defendant Springer had ostensible authority to bind the Selling Defendants to the terms of Addendum A.

With respect to Defendant NorCal Gold only, the demurrer to the first cause of action is sustained without leave to amend, as there does not appear to be a reasonable possibility that further amendment can cure the defect. With respect to Selling Defendants, the demurrer is overruled.

3.2. Third C/A for Negligence

"The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.' " (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917–918.) The existence and scope of duty are questions of law for the court. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 614.)

Defendants argue the FAC fails to allege a legal duty owed to plaintiffs. Plaintiffs contend that all defendants are in a special relationship with Plaintiffs by virtue of Addendum A, which Demurring Defendants allegedly directed/authorized Defendant Springer to enter on Plaintiffs' behalf. Plaintiffs' argument is unconvincing. The allegations of negligence in the FAC rest entirely on the contractual duties arising from Addendum A (i.e., the alleged duty to act as plaintiffs' representative with the County to make the barn and JADU permitted, the alleged duty to convert the addition to the main house into a permitted porch and reinstall windows, etc.) Even assuming that Demurring Defendants were parties to Addendum A, contracts do not automatically impose duties of care on the parties. (See *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922 ["the [economic loss] rule functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties"].)

Plaintiffs have not alleged that Demurring Defendants owed them a duty of care independent from the contractual terms of Addendum A that would support a negligence cause of action. The demurrer to the third cause of action for negligence is sustained. Because Plaintiffs have previously had an opportunity to amend and there does not appear to be a reasonable possibility that the pleading can be further amended to cure the defect, the court denies further leave to amend. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

3.3. Fourth C/A for Fraudulent Inducement

"A promise to do something necessarily implies the intention to perform; hence where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) To establish a claim of fraudulent inducement (or "promissory fraud"), one must show that the defendant did not intend to honor its contractual promises when they were made. (*Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30.)

The initial issue here is whether the *Demurring Defendants* made an alleged promise without intention to perform; the only defendant who signed Addendum A was Defendant Springer. The FAC alleges upon information and belief that defendants, as principal to their agent, Defendant Springer, approved and authorized Defendant Springer "to draft the Addendum by contributing $30,000 to Defendant Springer in order to complete the terms of the Addendum, thereby ratifying Defendant Springer's conduct on their behalf." (FAC, ¶ 63.)

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.]" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) A plaintiff cannot allege fraud on information and belief without also alleging the facts on which that belief is founded. (*Dowling v. Spring Valley Water Co.* (1917) 174 Cal.218, 221 ["[I]t is not sufficient to allege fraud or its elements upon information and belief, unless the facts upon which the belief is founded are stated in the pleading."].)

As previously discussed, Defendant NorCal Gold was not the principal. Therefore, the demurrer to this cause of action is sustained without leave to amend as to NorCal Gold only.

Similar to the breach of contract claim, the court considers the facts that (1) the first sentence to Addendum A states that it is incorporated into the RPA concerning the Property dated January 26, 2022; and (2) Addendum A is signed by the "Listing Agent." These facts sufficiently bind Selling Defendants to the promise made in Addendum A.

However, there is still an issue of particularity because the FAC alleges "on information and belief" only that Selling Defendants had no intention to perform under Addendum A. The FAC does not allege the facts that such information and belief is based upon. Therefore, with respect to the Selling Defendants, the demurrer is sustained. The court will grant one further leave to amend.

3.4. Fifth C/A for Declaratory Relief

To state a claim for declaratory relief, the plaintiff must allege facts showing there is a dispute between the parties concerning their legal rights, constituting an "actual controversy" within the meaning of the declaratory relief statute. (Code Civ. Proc., § 1060; *Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 930.) A claim for declaratory relief fails when it is " ' "wholly derivative" of other failed claims.' " (*Smyth v. Berman* (2019) 31 Cal.App.5th 183, 191–192, quoting *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

Because the other claims against Defendant NorCal Gold fail, the court sustains the demurrer to the fifth cause of action with respect to Defendant NorCal Gold only, without leave to amend.

The court overrules the demurrer with respect to the Selling Defendants.

TENTATIVE RULING #8: THE DEMURRER IS SUSTAINED IN PART WITH AND WITHOUT LEAVE TO AMEND AND OVERRULED IN PART. SPECIFICALLY:

(1) <u>FIRST C/A FOR BREACH OF CONTRACT</u>: WITH RESPECT TO DEFENDANT NORCAL GOLD, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND; WITH RESPECT TO DEFENDANTS SALAMEH NASER, LUCY NASER, AND EVELYN CALOPIZ-SPRINGER, THE DEMURRER IS OVERRULED.

(2) <u>THIRD C/A FOR NEGLIGENCE</u>: THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND AS TO ALL DEMURRING DEFENDANTS.

(3) <u>FOURTH C/A FOR FRAUDULENT INDUCEMENT</u>: WITH RESPECT TO DEFENDANT NORCAL GOLD, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND; WITH RESPECT TO DEFENDANTS SALAMEH NASER, LUCY NASER, AND EVELYN CALOPIZ-SPRINGER, THE DEMURRER IS SUSTAINED WITH ONE FURTHER LEAVE TO AMEND.

(4) <u>FIFTH C/A FOR DECLARATORY RELIEF</u>: WITH RESPECT TO DEFENDANT NORCAL GOLD, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND; WITH RESPECT TO DEFENDANTS SALAMEH NASER, LUCY NASER, AND EVELYN CALOPIZ-SPRINGER, THE DEMURRER IS OVERRULED.

TENTATIVE RULING #9:

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10.	**PC20200622**	**MANSOUR v. STONE et al**
MSJ (2)		

MSJ FILED BY STATE OF CA

On March 28, 2025, Defendant State of California, by and through California State Parks, ("Defendant") filed and served a Notice of Motion for Summary Judgment, and supporting documents thereto.

Plaintiff filed and served Plaintiff's Opposition to Defendant's Motion for Summary Judgment, and all supporting documents thereto, on July 11, 2025. Defendant John David Stone ("Stone") filed his Opposition to Defendant's Motion for Summary Judgment and all supporting documents thereto, on July 14, 2025.

On July 18, 2025, Defendant filed their Reply to Plaintiff's Opposition and Stone's Opposition.

Request for Judicial Notice

No request for judicial notice was filed.

Motion for Summary Judgment/Adjudication

Defendant brings its motion as a Motion for Summary Judgment. A motion for summary judgment or adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co.*, (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro*, (1996) 42 Cal. App. 4th 1591, 1601.

The moving party bears the initial burden of making a prima facie case for summary judgment. *White v. Smule, Inc.*, (2022) 75 Cal. App. 5th 346. In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital*, (2018) 23 Cal. App. 5th 653, 661. Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. *Zoran Corp. v. Chen*, (2010) 185 Cal. App. 4th 799, 805. "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier 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* 25 Cal. 4th at 850.

The Second Amended Complaint ("SAC") contains 2 causes of action against Defendant – the second cause of action for Dangerous Condition of Public Property and the third cause of action for Public Employee/Contractor Liability for Dangerous Condition. Defendant brings its Motion on the grounds that there is no triable issue of material fact with respect to the following issues:

1. **The alleged dangerous condition was not a "dangerous condition" under the definition contained within Government Code section 830, subdivision (a);**
2. **Defendant is immune from suit pursuant to Government Code section 831.4 (trail immunity);**
3. **The alleged dangerous condition was a trivial defect pursuant to Government Code section 830.2 (trivial defect doctrine);**
4. **Defendant is immune from suit pursuant to Government Code section 831.7 (hazardous recreational activity immunity).**

Defendant argues that Plaintiff's claims for dangerous condition of public property fail because the facts do not support a finding of liability against the state. Government Code § 830, subdivision (a), provides that a "Dangerous condition" is "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used."

Government Code § 835 provides that, "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property 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."

Defendant argues that the first element and second elements are not met, because the property was not in a dangerous condition at the time of the injury, and Plaintiff's injuries were not proximately caused by the alleged condition. The alleged dangerous condition was "the presence of large bushy trees impairing the view of the truck and the road…creat[ing] a visual obstruction making it difficult for drivers to see anyone entering the access road." (SAC ¶ 28) Based on the Court's review of the Mansour Deposition and the Stone Deposition, there is a triable issue of material fact as to whether the alleged dangerous condition existed.

Defendant's next argument is that Plaintiff's claims for dangerous condition of public property are barred by Government Code § 831.4 ("Trail Immunity"). Pursuant to Government Code § 831.4:

> "A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
>
> (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways.
>
> (b) Any trail used for the above purposes."

The trail immunity provides that a public entity is absolutely immune from liability for injuries caused by any condition of a public trail; dangerous or not. (Govt. Code, § 831.4; *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 929; see *Arvizu v. City of Pasadena* (2018) 21 Cal.App.5th 760, 766-769 [the trail immunity overrides any liability arising from a "dangerous condition" on public trails or roads.].) Analysis of the "trail immunity" is generally straightforward. The Court must shield a public entity defendant from liability under the trail immunity if: (1) the roadway or pathway where the injury took place is actually a "trail"; and (2) the subject injury was caused by a "condition" of the trail. (Gov. Code, § 831.4; See also, *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074.)

The SAC alleges that the subject accident occurred at the intersection of an access trail and the paved access road commonly referred to as "Browns Ravine Park Road." Plaintiff argues that Trail Immunity cannot apply because Plaintiff's injury was caused by a condition of the paved access road, not a condition of the trail. Defendant argues that like *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, the intersection of the access trail and access road, is clearly a "gateway to or from" the trails and that any claimed dangerous condition related to the "gateway" from the access road to the access trail is an "integral" part of the trail, and is therefore a condition of the trail, and the immunity applies. (*Prokop, supra,* at 1342.) Additionally, as the court in *Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413 found, the "plainly stated purpose of immunity for recreational activities on public land is to encourage public entities to open their property for public recreational use...."

However, Plaintiff argues that this case is distinguishable from *Prokop* because the dangerous condition in *Prokop* was patently integral to the trail since no gateway for ingress to or egress from the bike path would have existed if the bike path itself had not existed. In this case, if the bike trail did not exist, it cannot be said that the access road would not exist. Even if the Court were to determine that the access road falls within Government Code § 831.4, there

would be an issue of material fact as to whether the subject injury was caused by a condition of the trail or not.

Defendant next argues that Plaintiff's claims for dangerous condition of public property are barred by Government Code § 830.2 ("Trivial Defect Doctrine"). In order for the property to be considered to be in a dangerous condition "it must create '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.'" (*Laabs v. City of Victorville, supra,* 163 Cal.App.4th at p. 1251 (quoting Gov. Code, § 830(a).)

Government Code section 830.2 defines what constitutes a "minor, trivial or insignificant" risk: "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."

Defendant argues that the correct approach in applying the Trivial Defect Doctrine is to determine first whether the defect is too trivial, as a matter of law, to be dangerous, and then to determine whether the nature of the defect and the surrounding circumstances is sufficient to raise a jury question concerning notice. (*Barone v. City of San Jose* (1978) 79 Cal.App.3d 284.) A determination of whether a condition on public property creates a risk so trivial as a matter of law that it does not constitute a dangerous condition under Government Code § 835 involves consideration of such matters as the size and location of the defect with respect to surrounding areas and lighting conditions, and whether it has been the cause of other accidents. (*Id*.)

Plaintiff did not oppose this argument. However, Stone opposes, arguing that there is a triable issue of fact as to whether the intersection of the trail and the access road created a dangerous condition substantial enough to impose liability on the state. The Court agrees.

Defendant's final argument is that Plaintiff's claims for dangerous condition of public property are barred by Government Code § 831.7 ("Hazardous Activity Immunity"). This section provides, in relevant part, that a public entity is not liable "to any person who participates in a hazardous recreational activity ..." (Gov. Code, § 831.7, subd. (a).) Subsection (b) further defines "hazardous recreational activity" as "a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator." (Gov. Code, § 831.7, subd. (b).) A "hazardous recreational activity" includes "mountain bicycling" and "bicycle racing or jumping." Gov. Code, § 831.7, subd. (b)(3).

Defendant argues that there is no dispute that Plaintiff was mountain biking at the time of the incident – he was riding a Giant Talon hybrid bike purchased for riding on mountain and

rough trails, Plaintiff admitted he was riding his mountain bike from his home down Browns Ravine Trail to the access trail, and then down the access trail to the access road, and mountain bikers frequently used the access trail and access road as part of their mountain biking activities within the park. (UMF 4-5, 18, 21). Plaintiff opposes, arguing that § 831.7(b)(3) expressly provides that: "For the purposes of this subdivision, 'mountain bicycling' does not include riding a bicycle on paved pathways, roadways, or sidewalks." The Court agrees.

MSJ FILED BY N.L. CHRISTENSEN ENTERPRISES, INC DBA FOLSOM LAKE MARINA ("DOE 2")

On April 3, 2025, Defendant N.L. Christensen Enterprises, Inc. dba Folsom Lake Marina ("Doe 2")("Defendant") filed and served a Notice of Motion for Summary Judgment, and supporting documents thereto.

Plaintiff filed and served Plaintiff's Opposition to Defendant's Motion for Summary Judgment, and all supporting documents thereto, on July 11, 2025. Defendant John David Stone ("Stone") filed his Opposition to Defendant's Motion for Summary Judgment and all supporting documents thereto, on July 14, 2025.

On July 17, 2025, Defendant filed their Reply to Plaintiff's Opposition and Stone's Opposition.

Request for Judicial Notice

No request for judicial notice was filed.

Motion for Summary Judgment/Adjudication

Defendant brings its motion as a Motion for Summary Judgment. A motion for summary judgment or adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co.*, (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro*, (1996) 42 Cal. App. 4th 1591, 1601.

The moving party bears the initial burden of making a prima facie case for summary judgment. *White v. Smule, Inc.*, (2022) 75 Cal. App. 5th 346. In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital*, (2018) 23 Cal. App. 5th 653, 661. Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. *Zoran Corp. v. Chen*, (2010) 185 Cal. App. 4th 799, 805.

"There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier 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* 25 Cal. 4th at 850.

The Second Amended Complaint ("SAC") contains 2 causes of action against Defendant – the fourth cause of action for negligence – premises liability, and the fifth cause of action for negligence. Defendant brings its Motion on the grounds that there is no triable issue of material fact with respect to the following issues:

1. **The alleged negligence of Defendant was not a cause of any harm to Plaintiff;**
2. **Defendant had no duty to trim the tree that *arguendo* interfered with Plaintiff's sightline; and,**
3. **Defendant breached no duty to trim the tree that *arguendo* interfered with Plaintiff's sightline because Defendant had no actual or constructive notice of an obvious dangerous condition.**

Defendant argues that it is a concessionaire at the Browns Ravine Recreation Area, who operates a tollbooth, boat slips, boat launch ramps, a fuel dock, restrooms, and a snack shop, but does not own/lease/occupy/control the tree at issue, the hillside, or the access trail. (UMF 23-26). Plaintiff opposes this argument, stating that Defendant maintains the areas adjacent to the paved road, such as maintaining/trimming/pruning trees, and that Defendant's employee trimmed the tree at issue just weeks before the accident. (Deposition of Julie Schanrock)

Plaintiff alleges two causes of action against Defendant - premises liability and general negligence. "The elements of a negligence claim, and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." *Kesner v. Superior Court* (2016) 1 Cal. 5th 1132, 1159. Defendant argues that Plaintiff cannot establish causation, based on Plaintiff's deposition testimony. However, as explained above, between Plaintiff's and Stone's deposition testimonies, there exists a triable issue of material fact as to whether a dangerous condition existed.

Defendant next argues that it had no duty to trim the tree in question, despite its employee's testimony that he trimmed the subject tree within weeks of the accident to prevent a future accident. Under California law, parties who own, lease, or exercise control over property owe a duty of care to maintain the premises in a reasonably safe condition. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 119) This duty extends to protecting foreseeable users of the property from dangerous conditions. (*Annocki v. Peterson Enterprises, LLC* (2104) 232 Cal.App.4th 32, 37. California law imposes a duty of care on a party who exercises control over property, even absent ownership or lease rights. (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156–1157). Defendant exercised control over the property, by undertaking maintenance.

In terms of Defendant's final argument, a defendant has constructive notice if it should have discovered the dangerous condition through reasonable inspection. (*Ortega v. Kmart* (2001) 26 Cal.4th 1200) Defendant's maintenance of the area controverts its argument that it had no notice of potentially dangerous overgrowth of vegetation.

The Court does not find that Defendant has met its burden of demonstrating no triable issues of material fact.

TENTATIVE RULING 10:

1. **DEFENDANT STATE OF CALIFORNIA'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**
2. **DEFENDANT N.L. CHRISTENSEN ENTERPRISES, INC. dba FOLSOM LAKE MARINA'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.