

# Tentative Rulings for July 24, 2024 Department 7

**To request oral argument, you must notify Judicial Secretary  
Vanessa Siojo at (760) 904-5722  
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 7 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear remotely, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

For information and instructions on remote appearances via **ZOOM**, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

You may also make a Telephonic Appearance: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252, 1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **161 766 6465**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

**Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.**

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CVPS2302133	ESTATE OF KIMBERLY CECILIA CAMPOS VS H & H EXPRESS, CO., INC	DEMURRER ON 3RD AMENDED COMPLAINT
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**Tentative Ruling:** Defendant State of California, DOT’s (CalTrans) Demurrer is overruled.

In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of University of California* (1990) 51 Cal. 3d 120, 125). The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (*Crowley v. Katleman* (1994) 8 Cal. 4th 666, 672). “A demurrer for failure to state facts sufficient to constitute a cause of action provides a quick way of getting the case decided on assumed facts. i.e., assuming the facts alleged in the complaint are true, do they state *any* valid cause of action?” If so, the general demurrer must be overruled. (Weil & Brown, CPG: Civ. Proc. Before Trial (TRG 2024) § 7:40.) Plaintiff “may be mistaken as to the nature of the case, or the legal theory on which plaintiff can prevail. But if the essential facts of *some* valid cause of action are alleged, the complaint is good against a general demurrer.” (*Id.* at § 7:41 citing *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39; *New Livable Calif. V. Assoc. of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714-715.) In addition, “[a] general demurrer does not lie to only part of a cause of action. If there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged by general demurrer.” (*Id.* at § 7:42.2 citing *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167 [disapproved on other grounds by *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 948.]

Further, “[a] demurrer for uncertainty will be sustained only where the complaint is so bad that defendant *cannot reasonably* respond – i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her.” (*Id.* at § 7:85 citing *Khoury v. Maly’s of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.) In general, “demurrer for uncertainty will almost certainly be overruled where: directed to *inconsequential* matters; the facts alleged in the complaint are *presumptively within the knowledge* of the demurring party or *ascertainable* by invoking discovery procedures (citations omitted); or not *dispositive* of one or more causes of action (citation omitted.) (*Id.* at § 7:86.)

### 3<sup>RD</sup> CAUSE OF ACTION FOR DANGEROUS CONDITION OF PUBLIC PROPERTY

CalTrans challenges this cause of action by general demurrer (failure to state facts sufficient to constitute a cause of action) and by special demurrer (uncertainty.) First, CalTrans argues that this cause of action improperly contains allegations of negligence and vicarious liability. The focus of this argument is that it includes citations to statutes that are inapplicable to this particular cause of action – Govt. Code §§ 815.2, 815.4, 840.2, and 840.4, which must be stricken. However, CalTrans acknowledges that Govt. Code §§ 835, and 835.2 (which are also alleged in the TAC) are properly alleged statutes to support a dangerous condition claim. Thus, presuming a Govt. Code § 835 claim is properly alleged, it would survive demurrer as any valid cause of action survives demurrer.

Second, CalTrans argues that this cause of action improperly combines several improper causes of action into one. CalTrans objects to the factual allegations of negligence (TAC ¶¶ 20, 21, 23-25, 30, 32, 33, 39, and 41) that are incorporated by reference into the 3<sup>rd</sup> cause of action. (TAC ¶ 43.) Such incorporation is not fatal to the 3<sup>rd</sup> cause of action if the statutory elements are properly alleged within this cause of action. Other allegations purportedly related to negligence *by the State* within the dangerous condition cause of action are not clearly unrelated at the pleading stage. (TAC ¶¶ 47, 48, 50, and 51.) CalTrans argues that the “negligence and vicarious liability allegations” fail because the State is immune from general negligence claims, and the cited

statutes improperly support negligence and vicarious liability against the State. Plaintiffs attempt to justify these allegations on the ground that they could apply to notice of the dangerous condition. Regardless, Plaintiffs are asking the Court to strategically strike out the purportedly improper and irrelevant factual allegations referenced above. This is the subject of a motion to strike.

Third, CalTrans argues that the cause of action for dangerous condition of public property is not adequately pled because too many overly broad and vague allegations of dangerous conditions are alleged (e.g., “road safety features”).

A cause of action for dangerous condition of public property is allowed by the Government Tort Claims Act (Govt. Code § 810, *et. seq.*) under certain conditions set forth in Govt. Code § 835. A public entity is liable if the property was (1) in a dangerous condition at the time of the injury; (2) the dangerous condition caused the injury; (3) that the kind of injury that occurred was reasonably foreseeable as a consequence of the dangerous condition; and, either: a) the dangerous condition was created by a public employee’s negligent or wrongful act or omission within the scope of his or her employment; or, b) the entity had actual or constructive notice of the condition a sufficient time before the injury occurred to have taken reasonable measures to protect against the injury. (Govt. Code § 835.)

Here, the TAC alleges that CalTrans is a public entity that owned, controlled and/or maintained State Route 86 and the subject intersection where the collision occurred. (TAC ¶ 44.) It is alleged that CalTrans was responsible for maintenance of the Botts’ dots located a half mile north of the subject intersection to alert drivers of the upcoming intersection. (*Id.* ¶ 45.) It is alleged the failure to properly design, maintain, construct, inspect, supervise, and/or repair the highway or intersection created a dangerous condition – specifically, the Botts’ dots, which had become worn. (*Id.* ¶¶ 46-47.) Alternatively, it is alleged that CalTrans agents/employees created additional dangerous conditions (e.g., inadequate lighting.) (*Id.* ¶ 48.) It is further alleged that CalTrans had actual or constructive notice a sufficient time before the accident to take measures to protect against the dangerous condition(s), but failed to do so. (*Id.* ¶ 50.) The dangerous condition(s) created a reasonably foreseeable risk of the kind of collision that occurred, and contributed to Plaintiffs’ injuries. (*Id.* ¶¶ 50-52.) The TAC also alleges damages. (*Id.* ¶¶ 53-55.) These allegations are sufficiently specific to state a cause of action for dangerous condition of public property against CalTrans, at least as to the Botts’ dots.

#### PRAYER FOR PREJUDGMENT INTEREST

CalTrans also requests the Court strike the prayer for prejudgment interest. “A motion to strike, not a general demurrer, is the procedure to attack an improper claim for punitive damages or other remedy demanded in the complaint.” (Weil & Brown, *supra.* at § 7:42.1.) The reason for this is that a general demurrer only challenges the sufficiency of a *cause of action* pleaded, and must be overruled if *any* valid cause of action is pled. (*Id.* citing *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 1547, 1561-1562.) “Substantive defects in a portion of the complaint can be challenged by a motion to strike.” (*Id.* at § 7:42.4 citing *Daniels, supra.*)