

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/21/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200213

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: JOEY DALE

PLAINTIFF: SHOSHANA SKLARE

vs.

DEFENDANT: KAISER FOUNDATION
HOSPITAL, INC., ET AL

NATURE OF PROCEEDINGS: 1) MOTION TO COMPEL – DISCOVERY FACILITATOR PROGRAM; FURTHER RESPONSES DEF LARSON
2) MOTION TO COMPEL – DISCOVERY FACILITATOR PROGRAM; FURTHER RESPONSES DEF CRADDICK CANDLAND CONTI

RULING

Plaintiff Shoshana Sklare (“Plaintiff”) filed a motion to compel further responses to requests for production of documents. Thereafter, the parties entered into a stipulation for protective order. No opposition was filed. The parties do not appear to have participated in the Discovery Facilitator Program.

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for February, 2024 is as follows:

Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614

Meeting ID: 160 781 1385

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/21/24 TIME: 1:30 P.M. DEPT: H CASE NO. CV2201693

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: JOEY DALE

PLAINTIFF: K. MWASI

vs.

DEFENDANT: L. SULLENGER, ET AL

NATURE OF PROCEEDINGS: MOTION – TO RESUME CASE; FOR COURT TO RESUME JURISDICTION

RULING

Plaintiff filed a motion “to resume case; for Court to resume jurisdiction of the matter.” Plaintiff K. Mwasi (“Plaintiff”) filed a similar motion which was heard on July 19, 2023. At that time, the court informed Plaintiff that the matter had been removed to federal court and had not been remanded and therefore, the court had no jurisdiction.

The court does not have jurisdiction over this case, which should be closed. The motion is therefore, DENIED.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/21/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301648

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: JOEY DALE

PLAINTIFF: STANLEY TWOMEY
GRAY, ET AL

vs.

DEFENDANT: THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, ET AL

NATURE OF PROCEEDINGS: DEMURRER – OLIVER STRONG OSBORN, M.D. AND
MARY A. REDFERN TO FIRST AMENDED COMPLAINT

RULING

Defendant Patrick Bennet, M.D. (“Defendant”) filed a demurrer to the Second, Third, Fourth, and Fifth Causes of Action to Plaintiff Stanley Twomey Gray’s (“Plaintiff”) First Amended Complaint. Plaintiff did not oppose the demurrer.

Accordingly, Defendant’s demurrer is GRANTED. Plaintiff shall file his Second Amended Complaint within ten days of service of this order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/21/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV0000621

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER:

CLERK: JOEY DALE

PLAINTIFF: ELIAS ROSE, ET AL

vs.

DEFENDANT: COUNTY OF MARIN, ET
AL

NATURE OF PROCEEDINGS: DEMURRER – OTHER: TO FIRST AMENDED
COMPLAINT

RULING

Defendant the County of Marin’s (“County”) demurrer to the Second Cause of Action is
SUSTAINED, without leave to amend.

FACTUAL AND PROCEDURAL HISTORY

On January 4, 2023 a eucalyptus tree, allegedly on defendant Bolinas Community Public Utility District (“BCPUD”) property, fell onto plaintiffs Elias Rose and Annabelle Scott’s (“Plaintiffs”) vehicle when they were travelling on Mesa Road. Mesa Road is maintained by County. Plaintiffs claim physical and non-physical injuries as a result of the accident. Plaintiffs contend that the eucalyptus grove adjacent to Mesa Road created a dangerous condition and that County employees and/or agents knew, or should have known, of this condition and had a duty to act but failed to take preventative action to mitigate the risk.

On August 10, 2023, Plaintiffs filed this action against defendants County and BCPUD alleging two causes of action: 1) Dangerous Condition of Public Property; and 2) Negligence of Public Employees or Agents [Gov. Code, §§ 815.2, 815.4]. On November 15, 2023, the Court overruled County’s demurrer to the first cause of action, and sustained its demurrer to the second cause of action with leave to amend.

On November 7, 2023, Plaintiffs filed their operative First Amended Complaint (“FAC”) alleging the same two causes of action: 1) Dangerous Condition of Public Property; and 2) Negligence of Public Employees or Agents [Gov. Code, §§ 815.2, 815.4]).

Currently before the Court is County’s demurrer to the second cause of action.

LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) Generally, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) 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 Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) “The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.” (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

DISCUSSION

County demurs to the second cause of action for negligence on the grounds that it “fails to state facts sufficient to constitute a cause of action for negligence against the County.” (Code Civ. Proc., § 430.10, subd. (e).)

California public entities are liable, if at all, only pursuant to a specific statute imposing liability. (See Gov. Code, § 815, subd. (a).) “Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.” (Gov. Code, § 815.) “[A] public entity cannot be held liable for common law negligence standing alone.” (*McCarty v. State of California Dept. of Transp.* (2008) 164 Cal.App.4th 955, 977.)

Here, the FAC alleges their second cause of action against County based on Government Code sections 815.2 and 815.4 and Civil Code section 1714. However, these statutes are not a sufficient basis to state a claim against County.

Government Code section 815.2(a) provides: “A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.” (Gov. Code, § 815.2, subd. (a).) Government Code section 815.4 provides in relevant part: “A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person.” (Gov. Code, § 815.4.)

On their face, neither of the Government Code sections provide a plaintiff with a direct cause of action against a public employee for a dangerous condition of public property. Moreover, even assuming that the alleged dangerous condition of public property was created by the acts of a public employee or independent contractor, neither of these sections provide Plaintiffs with an additional cause of action. A public entity's liability for a dangerous condition of public property is governed by the specific provisions set forth in Government Code sections 830-835.4. (*Van Kempen v. Hayward Area Park Etc. Dist.* (1972) 23 Cal.App.3d 822, 825; *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 383.) Further, Government Code section 840 states: "Except as provided in this article, a public employee is not liable for injury caused by a condition of public property where such condition exists because of any act or omission of such employee within the scope of his employment." (Gov. Code, § 840.)

Further, Civil Code section 1714, provides, in pertinent part: "everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." (Civ. Code, § 1714.) However, direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care other than the general duty of ordinary care found in section 1714. (*Eastburn v. Reg'l Fire Prot. Auth.* (2003) 31 Cal.4th 1175, 1183.)

Plaintiffs argue in opposition that Government Code section 840.2 provides a basis for liability. This is not pled in the FAC. Nonetheless, Government Code section 840.2 provides:

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.

(Gov. Code, § 840.2, emphasis added.)

Plaintiff's complaint alleges that DOES 11 through 25 are employees or agents of Defendant. (FAC, ¶ 13.) However, County itself is not its own employee. If Plaintiff determines the identity of any employee who meets the requirements of Government Code section 840.2, he may substitute that person for a DOE defendant. However, this code section is not applicable to County itself.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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