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August 10, 2016

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Re: <u>Antekeier v. State of California, et al.</u>
Case No.: CIVDS 1604074

To Whom It May Concern:

Pursuant to AB 2494 and § 128.5 of the California Code of Civil Procedure, attached please find Defendant Walker Engineering, LLC's and Debra M. Yamachika's "*Notice of Demurrer and Demurrer to Plaintiff's Complaint and Motion for Sanctions in the amount of $4,070.00.*"

If you have any questions please feel free to contact me.

Very truly yours,

Morris Polich & Purdy LLP

Laurie N. Stayton, Esq.

LNS/hzh
Encl.

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Attorneys for Cross-Defendants,
WALKER ENGINEERING, LLC and
DEBRA M. YAMACHIKA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 09 2016

BY _____
JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO – CIVIL DIVISION

ANDREW ANTEKEIER, Plaintiff, vs. STATE OF CALIFORNIA; CALIFORNIA DEPARTMENT OF TRANSPORTATION; DOLLAR GENERAL CORPORATION, Individually and dba DOLLAR GENERAL; DYNAMIC REAL ESTATE INVESTMENTS 1 LLC; DYNAMIC DEVELOPMENT COMPANY, LLC; WALKER ENGINEERING, LLC; DEBRA M. YAMACHIKA; THE EFTHEMIA T. STAVROS TRUST; EFTHEMIA T. STAVROS; and DOES 1 to 100, Defendants. AND ALL RELATED CROSS-ACTIONS.	Case No.: CIVDS1604074 **DEFENDANTS WALKER ENGINEERING, LLC'S AND DEBRA M. YAMACHIK'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S COMPLAINT AND MOTION FOR SANCTIONS IN THE AMOUNT OF $4,070.00** *Assigned to the Honorable Wilfred J. Schneider, Jr.* Date: September 15, 2016 Time: 8:30 a.m. Dept.: S32 Complaint Filed: March 15, 2016 [Declaration of Laurie N. Stayton in Support of Defendants Walker Engineering, LLC's and Debra M. Yamachika's Notice of Demurrer and Demurrer to Plaintiff's Complaint and Motion for Sanctions in the Amount of $4,070.00; Memorandum of Points and Authorities; Request for Judicial Notice and [Proposed] Order filed concurrently herewith]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **September 15, 2016 at 8:30 a.m.**, or as soon thereafter as this matter may be heard in department S32 of the above-entitled court located at

247 West Third Street, San Bernardino, California 92415, Defendants WALKER ENGINEERING, LLC and DEBRA M. YAMACHIKA will demur to Plaintiff ANDREW ANTEKEIER's Complaint.

This demurrer is made pursuant to California *Code of Civil Procedure* § 430.10 on the following grounds:

1. The demurrer to the second cause of action, for Dangerous Condition of Public Property (Gov. Code, § 835) should be sustained insofar as the operative pleading fails to state facts to constitute a cause of action for Dangerous Condition of Public Property against Walker Engineering LLC ("Walker Engineering") and Debra M. Yamachika. *See* California *Code of Civil Procedure* § 430.10(e).

PLEASE TAKE FURTHER NOTICE that Defendants Walker Engineering LLC and Debra M. Yamachika also move for an order for sanctions in the amount of **$4,070.00** pursuant to California *Code of Civil Procedure* Section 128.5 against Plaintiff ANDREW ANTEKEIER and his attorney of record, The Law Offices of Clay R. Sides. Sanctions are warranted as a result of Plaintiff's and Plaintiff's counsel's bad faith action and/or acts that are frivolous and/or solely intended to cause unnecessary delay.

This Demurrer and Motion for Sanctions is based on this notice, the attached Memorandum of Points and Authorities, the Declaration of Laurie N. Stayton and Exhibits thereto, Request for Judicial Notice, all pleadings, papers, and records in this action and upon such other oral and documentary evidence as may be presented at the hearing of this motion.

Dated: August 9, 2016

Respectfully submitted,

MORRIS POLICH & PURDY LLP

By: _____
Theodore D. Levin
Laurie N. Stayton,
Attorneys for Defendants
WALKER ENGINEERING, LLC and
DEBRA M. YAMACHIKA

DEMURRER TO PLAINTIFF'S COMPLAINT

Defendants Walker Engineering LLC ("Walker Engineering") and Debra M. Yamachika hereby demur to the Complaint of plaintiff ANDREW ANTEKEIER on the following grounds:

SECOND CAUSE OF ACTION

(Dangerous Condition of Public Property)

1. The Second Cause of Action for Dangerous Condition of Public Property (Gov. Code, § 835) is subject to general demurrer pursuant to California *Code of Civil Procedure* section 430.10(e) because it does not state facts sufficient to constitute a cause of action against Walker Engineering and Debra M. Yamachika.

WHEREFORE, defendants Walker Engineering and Debra M. Yamachika pray that their Demurrer to plaintiff ANDREW ANTEKEIER's Second Cause of Action for Dangerous Condition of Public Property be sustained without leave to amend, and that the Court grant such other and further relief as its deems just and appropriate.

Dated: August 9, 2016

Respectfully submitted,

MORRIS POLICH & PURDY LLP

By: _____
Theodore D. Levin
Laurie N. Stayton,
Attorneys for Defendants
WALKER ENGINEERING, LLC and DEBRA M. YAMACHIKA

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT. 1

II. PLAINTIFF'S ALLEGATIONS 1

III. GROUNDS FOR DEMURRER 3

A. Demurrer Based on Failure to State Sufficient Facts 3

IV. PLAINTIFF'S SECOND CAUSE OF ACTION FOR DANGEROUS CONDITION OF PUBLIC PROPERTY (GOVERNMENT CODE SECTION 835) FAILS TO STATE A CAUSE OF ACTION AS TO WALKER ENGINEERING AND DEBRA YAMACHIKA. 3

V. DEFENDANTS WALKER ENGINEERING AND DEBRA YAMACHIKA HAVE PROPERLY MET AND CONFER WITH PLAINTIFF PRIOR TO FILING THIS DEMURRER AS REQUIRED BY CALIFORNIA CODE OF CIVIL PROCEDURE §430.41 5

VI. SANCTIONS ARE WARRANTED AGAINST PLAINTIFF AND HIS COUNSEL AS A RESULT OF BAD-FAITH ACTIONS AND/OR TACTICS THAT ARE FRIVILOUS AND/OR SOLELY INTENDED TO CAUSE UNNECESSARY DELAY. 7

VII. CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

Cases

580 Folson Associates v. Prometheus Development Co. *(1990)* 223 Cal.App.3d 1 8

Chemical Corp. of California (1992) 788 F.Supp.1485 8

Moore v. Conliffe (1994) 7 Cal. 4th 634 3

San Diegans For Open Government v. City of San Diego (2016) 247 Cal.App.4th 1306 ..... 8, 9

Semole v. Sansoucie (1972) 28 Cal.App.3d 714 3

U.S. v. Montrose Chemical Corp. of California (1992) 788 F.Supp.1485 4

West Coast Development v. Reed (1992) 2 Cal.App.4th 693 9

Statutes

Code of Civil Procedure section 128(b)(2) 8

Code of Civil Procedure section 128.5 ..... 7, 8, 9, 10

Code of Civil Procedure section 340.31(a)(1) 7

Code of Civil Procedure section 425.10(a) 3

Code of Civil Procedure section 430.10(e) 3

Code of Civil Procedure section 430.41 5

Code of Civil Procedure section 430.41(a)(1) 5, 7, 9

Government Code section 811.2 ..... 2, 4

Government Code section 835 ..... 1, 3, 4, 6, 8, 9, 10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT.

Plaintiff ANDREW ANTEKEIER ("Plaintiff") alleges, as his second cause of action, that Walker Engineering LLC ("Walker Engineering") and Debra M. Yamachika ("Yamachika") violated Government Code section 835 - Dangerous Condition of Public Property. In order to properly state a claim for violation of Government Code section 835 – Dangerous Condition of Public Property, Plaintiff must first plead that Walker Engineering and Ms. Yamachika are ***public entities*** that owned or controlled the public property where the subject incident took place. Plaintiff, however, does not and cannot allege that Walker Engineering and Ms. Yamachika are public entities. It is undisputed that Walker Engineering is a private company and Ms. Yamachika is an individual.

Plaintiff's second cause of action; therefore, does not state facts sufficient to constitute a cause of action for Dangerous Condition of Public Property (Gov. Code, § 835) against Walker Engineering and Ms. Yamachika. This Demurrer to the second cause of action should be sustained without leave to amend.

Defendants also respectfully request the Court to issue sanctions pursuant to California *Code of Civil Procedure* section 128.5 in the amount of $4,070.00 against Plaintiff Antekeier and his attorney of record, The Law Offices of Clay R. Sides. Plaintiff's second cause of action for Dangerous Condition of Public Property against Defendants Walker Engineering and Ms. Yamachika was brought in bad faith. There is no legal or factual basis for this cause of action. Plaintiff continues to advocate this frivolous claim without providing any legal support for his position that this second cause of action is legally sufficient as to Walker Engineering and Ms. Yamachika. Instead of providing any legal support, Plaintiff has forced Defendants to incur unnecessary time, expense and court resources to file a Demurrer to dispose of this frivolous claim. Such tactics are solely intended to harass Defendants and cause unnecessary delay in this action.

II. PLAINTIFF'S ALLEGATIONS

Plaintiff Andrew Antekeier alleges that a single vehicle accident took place on State

Route 18, west of Highland, in or about Lucerne Valley, California. (Stayton Declaration ("Stay Decl.") ¶2). On or about March 15, 2016, Plaintiff filed a civil complaint in the Superior Court of California – County of San Bernardino against Walker Engineering LLC and Debra Yamachika, as well State of California, California Department of Transportation, Dollar General Corporation, Dynamic Real Estate Investments, Dynamic Development Company, LLC, The Eftchemia R. Stavros Trust and Efthemia T. Stavros. (Stay Decl. ¶3.) On or about June 27, 2016, Plaintiff added Shamrock Group, Inc., Muro Concrete, Inc., Dustin Smith Equipment, Inc. and Traffic Maintenance and Control and Services as defendants. (Stay Decl. ¶4.)

Plaintiff's complaint includes causes of action for "Negligence" and "Dangerous Condition of Public Property" against all defendants. (Stay Decl. ¶5.)

Plaintiff's second cause of action for Dangerous Condition of Public Property alleges, in part, that "[d]efendants, and each of them, so negligently, carelessly and/or recklessly designed, altered, constructed, occupied, controlled, managed, maintained and/or regulated SR-18 west of Highland, including the raised concrete median and/or median, in or about Lucerne Valley, County of San Bernardino, within this Court's judicial district, State of California, including at and around the location of the subject incident, so as to cause the vehicle then driven by Plaintiff ANDREW ANTEKEIRER in the course and scope of his employment with the San Bernardino County Sherriff's Department, to strike the raised concrete median and/or island, as well as other objects, all of which directly and proximately/legally caused the damages to Plaintiff as hereinafter set forth." (Stay Decl. ¶6.); Complaint, p.9 para. 1.

Plaintiff's second cause of action continues to allege, in part, that "[d]efendants, and each of them, were under a duty to inspect for and protect against dangerous condition of the subject location, which included repairing, remedying, correcting, providing safeguards, and/or warning of conditions that created substantial risk of injury to motorists using the road with due care under, among other laws, Government Code, Sections 830, et. seq. and 835, et seq..." (Stay Decl. ¶7.); Complaint, p.10 para. 5.

Plaintiff's Complaint does not, and cannot allege, that Walker Engineering and Debra Yamachika are public entities within the meaning of California Government Code section 811.2

in order to be held liable for Dangerous Condition of Public Property. (Stay Decl. ¶8.). Indeed, Walker Engineering is simply an active domestic limited liability company. (Stay Decl. ¶9.); *See* also Request for Judicial Notice, Business Entity Detail from the Nevada Secretary of State. Ms. Yamachika is an individual. Defendants, therefore, respectfully request the Court to sustain their Demurrer to the Second Cause of action without leave to amend.

III. GROUNDS FOR DEMURRER

A. Demurrer Based on Failure to State Sufficient Facts

A complaint must contain a statement of the facts constituting the cause of action in ordinary and concise language. California *Code of Civil Procedure*, section 425.10(a). A demurrer will lie where a complaint "does not state facts sufficient to constitute a cause of action." California *Code of Civil Procedure*, section 430.10(e). A complaint fails to state a cause of action if it omits an essential element of the cause of action sought to be stated. A plaintiff must set forth the essential facts of his or her cause of action with reasonable precision and with particularity sufficient to acquaint the defendant with the nature, source and extent of the causes of action. *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719. The Court must accept as true the complaint's well-pleaded material facts, but not its contentions, deductions or conclusions of law. *Moore v. Conliffe* (1994) 7 Cal. 4th 634, 638.

IV. PLAINTIFF'S SECOND CAUSE OF ACTION FOR DANGEROUS CONDITION OF PUBLIC PROPERTY (GOVERNMENT CODE SECTION 835) FAILS TO STATE A CAUSE OF ACTION AS TO WALKER ENGINEERING AND DEBRA YAMACHIKA.

Plaintiff's complaint fails to state facts sufficient state a claim against Walker Engineering and Ms. Yamachika for Dangerous Condition of Public Property (Gov. Code, § 835).

A cause of action for "Dangerous Condition of Public Property" is a tort that renders liability to the **public entity** that owns and controls a particular piece of property. According to section 835 of the California Government Code, a public entity is liable for injury if a dangerous condition on its property created a reasonably foreseeable risk of the kind of injury

suffered. The statute does not provide for liability on the part of a private company.

Specifically, Government Code section 835 provides:

> 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. (Emphasis added.)

Government Code section 811.2 defines "***public entity***" as "the state, the Regents of the University of California, the Trustees of the California State University and the California State University, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State."

Thus, in order to properly prove a claim for Dangerous Condition of Public Property, Plaintiff must prove that Walker Engineering and Ms. Yamachika are ***public entities*** that owned or controlled the public property where the subject incident took place. Gov.Code, §835. In *U.S. v. Montrose Chemical Corp. of California* (1992) 788 F.Supp.1485, 1492, the court specifically held that Government Code section 835 cannot be the basis of an action against a private person. *Id* at 1492.

Here, Plaintiff does not and cannot allege that Walker Engineering and Ms. Yamachika are "public entities" within the meaning of Government Code section 811.2. Indeed, Walker Engineering is simply an active Domestic Limited Liability Company ("LLC") and, therefore, a private rather than public entity. Further, Ms. Yamachika is a private person. As such, there is no legal basis or statutory authority to hold Walker Engineering and Ms. Yamachika liable for violating Government Code section 835 - Dangerous Condition of Public Property.

Walker Engineering and Ms. Yamachika respectfully request that this Court grant their

Demurrer to plaintiff's second cause of action without leave to amend.

V. DEFENDANTS WALKER ENGINEERING AND DEBRA YAMACHIKA HAVE PROPERLY MET AND CONFER WITH PLAINTIFF PRIOR TO FILING THIS DEMURRER AS REQUIRED BY CALIFORNIA CODE OF CIVIL PROCEDURE §430.41.

Pursuant to California *Code of Civil Procedure* section 430.41, Defendants Walker Engineering and Ms. Yamachika properly met and conferred with Plaintiff prior to filing this Demurrer.

California *Code of Civil Procedure* section 430.41 provides, in part, the following:

> "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."

On June 22, 2016, pursuant to California *Code of Civil Procedure* section 430.41, Plaintiff and Defendants Walker Engineering and Ms. Yamachika ("Defendants") met and conferred by telephone regarding Defendants' objections to Plaintiff's complaint, including, Plaintiff's second cause of action for Dangerous Condition of Public Property against Walker Engineering and Ms. Yamachika. Pursuant to California *Code of Civil Procedure* section 430.41(a)(1), Defendants explained that Plaintiff's second cause of action for Dangerous Condition of Public Property is subject to general demurrer because Walker Engineering and Yamachika are not public entities; therefore, Plaintiff cannot sue them under this cause of action. Defendants requested Plaintiff to voluntarily dismiss his second cause of action. Plaintiff agreed to further evaluate the validity of the cause of action against Defendants and granted Walker Engineering and Ms. Yamachika a thirty (30) day extension of time up to, and including, July 27, 2016, in which to respond to Plaintiff's Complaint. The extension was memorialized in writing. (Stay Decl. ¶10).

On June 30, 2016, Defendants sent Plaintiff a correspondence to follow-up on the June 22, 2016 meet and confer conversation, including Defendants' request to dismiss the second

cause of action for Dangerous Condition of Public Property. (Stay Decl. ¶11). On July 07, 2016, Defendants sent Plaintiff a follow-up correspondence to discuss the status of Plaintiff's decision to dismiss the Dangerous Condition of Public Property claim against Defendants. (Stay Decl. ¶12). Plaintiff indicated he was not available and requested to discuss the matter on July 8, 2016. (Stay Decl. ¶13). After not hearing from Plaintiff on July 8, 2016, or anytime thereafter, on July 14, 2016, Defendants sent Plaintiff a further correspondence requesting a return phone call to discuss Defendants' request to dismiss the second cause of action. Plaintiff did not respond. (Stay Decl. ¶14).

On July 25, 2016, Defendants and Plaintiff had a further meet and confer telephone conversation regarding Plaintiff's second cause of action for Dangerous Condition of Public Property against Walker Engineering and Ms. Yamachika. Defendants again explained that a cause of action for Dangerous Condition of Public Property is a tort that renders liability to a public entity that owns and controls a particular piece of property. Since Defendants are not public entities, Plaintiff cannot sue Defendants under this cause of action. Plaintiff admitted that Defendants "may be correct" and requested Defendants to memorialize their position in writing. (Stay Decl. ¶15). On July 25, 2016, Defendants provided Plaintiff with a detailed correspondence explaining the legal basis for Walker's and Ms. Yamachika's position that they cannot be held liable for a Dangerous Condition of Public Property under Government Code section 835. (Stay Decl. ¶16).

On July 26, 2016, Defendants agreed to provide Plaintiff an extension to August 2, 2016 to provide a response to Defendants' request to dismiss his second cause of action against Walker Engineering and Ms. Yamachika. In turn, Plaintiff granted Walker Engineering and Ms. Yamachika an extension to August 9, 2016 to file a responsive pleading to Plaintiff's Complaint. This agreement was memorialized in writing. (Stay Decl. ¶¶17-18).

Plaintiff failed to provide a response by August 2, 2016. On August 3, 2016, Defendants phoned and emailed Plaintiff requesting a return phone as soon as possible to discuss the dismissal of the second cause of action. Plaintiff did not respond. (Stay Decl. ¶19).

On August 5, 2016, Defendants phoned and emailed Plaintiff to discuss the issues

presented in this Demurrer. (Stay Decl. ¶20). On August 5, 2016, Plaintiff simply responded that "[a]s to amending the complaint, I do not intend on amending it at this time." In violation of California *Code of Civil Procedure* section 430.41(a)(1), Plaintiff failed to provide any legal support for his position that his second cause of action is legally sufficient as to Walker Engineering and Ms. Yamachika.[1] (Stay Decl. ¶21).

Defendants made reasonable and good faith attempts at an informal resolution of the issues presented in this Demurrer. Without providing any legal support or basis, Plaintiff refuses to voluntarily dismiss his second cause of action against Walker Engineering and Ms. Yamachika. As such, Defendants had no alternative then to seek the Court's intervention and file the instant Demurrer and seek all appropriate sanctions.

VI. SANCTIONS ARE WARRANTED AGAINST PLAINTIFF AND HIS COUNSEL AS A RESULT OF BAD-FAITH ACTIONS AND/OR TACTICS THAT ARE FRIVILOUS AND/OR SOLELY INTENDED TO CAUSE UNNECESSARY DELAY.

Plaintiff's second cause of action for Dangerous Condition of Public Property against Defendants Walker Engineering and Ms. Yamachika was brought in bad faith. There is no legal or factual basis for this cause of action. Plaintiff has not, and cannot, allege that Defendants are public entities liable under this cause of action. Further, Plaintiff continues to advocate this frivolous claim without providing any legal support for his position that this second cause of action is legally sufficient as to Walker Engineering and Ms. Yamachika. Instead of providing legal support, Plaintiff has forced Defendants to incur unnecessary time, expense and court resources to file a Demurrer to dispose of this frivolous claim. Such tactics are solely intended to harass defendants and cause unnecessary delay in this action. Defendants, therefore, respectfully request the Court to issue sanctions pursuant to California *Code of Civil Procedure* section 128.5 in the amount of $4,070.00 against Plaintiff and Plaintiff's counsel of record, The

[1] California Code of Civil Procedure section 430.11(a)(1) provides "As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. **The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient** or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. (Emphasis added.)

Law Offices of Clay R. Sides.

California *Code of Civil Procedure* section 128.5 provides that a "trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. Cal Code of Civ Proc. §128(b)(2).

Whether an action is frivolous enough to support an award of attorneys' fees is governed by an objective standard. *San Diegans For Open Government v. City of San Diego*, (2016) 247 Cal.App.4th 1306, 1319. "Whether a claim is meritless or for the sole purpose of harassment must be evaluated by examining whether the factual allegations of the claim had evidentiary support." *Id at 1319, citing 580 Folson Associates v. Prometheus Development Co. (1990)* 223 Cal.App.3d 1, 22. "The issue on a sanctions motion is whether the claim was "frivolous" meaning "totally and completely without merit or for the sole purpose of harassing an opposing party. An objective reasonable attorney standard applies to this determination." *Id* at 1319 (internal citations omitted).

Here, Plaintiff has not, and cannot, provide any legal basis or evidentiary support for his cause of action for Dangerous Condition of Public Property (Gov. Code, §835) against Walker Engineering and Ms. Yamachika. Based on the plain reading of the statute, as well as case law, it is clear Government Code section 835 does <u>not</u> provide for liability on the part of a private company or individual. Govt. Code §835; *Chemical Corp. of California* (1992) 788 F.Supp.1485, 1492. Walker Engineering and Ms. Yamachika are not public entities; therefore, they could never be held liable for plaintiff's damages for violating Government Code section 835 - Dangerous Condition of Public Property. It is in bad faith and frivolous for Plaintiff and Plaintiff's counsel to plead, and to continue to advocate, this cause of action against Walker Engineering and Ms. Yamachika. No reasonable attorney would believe that a private entity or person could be held liable for violating Government Code 835 - Dangerous Condition of Public Property.

Further, Plaintiff and Plaintiff's counsel continue to engage in bad faith and frivolous

tactics. Prior to filing their Demurrer, Defendants provided Plaintiff with ample legal authority to support their objection to Plaintiff's Dangerous Condition of Public Property cause of action. Instead of providing *any* legal or evidentiary support for Plaintiff's position that the cause of action is legally sufficient as to Walker Engineering and Ms. Yamachika, as required by California *Code of Civil Procedure* section 430.41(a)(1), Plaintiff forced Defendants to file a Demurrer and incur unnecessary time, expense, and court resources to dispose of this frivolous cause of action. Such tactics are solely intended to harass defendants and cause unnecessary delay in this action and provides further grounds for the Court to issue 128.5 sanctions.

Even assuming *arguendo* the Court overrules Defendants' Demurrer because it finds that Plaintiff's complaint alleges sufficient facts to state a cause of action for Dangerous Condition of Public Property (Gov. Code, §835) against Walker Engineering and Ms. Yamachika, which Defendants dispute, such a finding is irrelevant to the Court's determination whether to issue 128.5 sanctions. In *San Diegans For Open Government v. City of San Diego*, the Court held that the trial court erred in determining a cause of action had legal merit because the claim survived demurrer. The Court reasoned as follows:

> "The trial court erred in determining a cause of action had legal merit because the claim survived demurrer. The issue on demurrer is whether a claim alleges facts sufficient to state a cause of action, assuming the truth of all properly pleaded material facts. The issue on a sanctions motion is whether the claim was "frivolous" meaning "totally and completely without merit or for the sole purpose of harassing an opposing party." An objective reasonable attorney standard applies to this determination. Whether a claim is meritless or for the sole purpose of harassment must be evaluated by examining whether the factual allegations of the claim had evidentiary support. The order overruling the demurrer to the waste cause of action is not relevant to this issue." *San Diegans For Open Government v. City of San Diego*, (2016) 247 Cal.App.4th 1306, 1319 (internal citations omitted).

Further, "the bad faith requirement of section 128.5 does not impose a determination of evil motive. The concept of "harassment" includes vexatious tactics which, although literally authorized by statute or rule, go beyond that which is by any standard appropriate under the circumstances. *West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 703. Counsel, even if on technically correct legal ground, must not take action which unreasonably or unnecessarily injures the opposing counsel or party. *Id.*

As such, even if Plaintiff prevails at the Demurrer stage, which Defendants do not believe he will, sanctions are still warranted because Plaintiff will never be able to provide a legal basis to support his cause of action for Dangerous Condition of Public Property (Gov. Code, §835) against Walker Engineering and Ms. Yamachika. For Plaintiff to maintain and advocate a meritless cause of action is a tactic undertaken for the sole purpose of harassing defendants and hence sanctionable under section 128.5.

Based on the foregoing, Defendants respectfully request the Court to issue sanctions in the amount of $4,070.00 against Plaintiff and Plaintiff's counsel of record, The Law Offices of Clay R. Sides. See Stayton Declaration ¶ ¶ 22-24.

VII. CONCLUSION.

Defendants Walker Engineering LLC and Debra M. Yamachika respectfully request that their Demurrer to Plaintiff ANDREW ANTEKEIER's Second Cause of Action for Dangerous Condition of Public Property be sustained without leave to amend and the Court issue sanctions in the amount of **$4,070.00** pursuant to California *Code of Civil Procedure* Section 128.5 against Plaintiff ANDREW ANTEKEIER and his attorney of record, The Law Offices of Clay R. Sides.

Dated: August 9, 2016

Respectfully submitted,

MORRIS POLICH & PURDY LLP

By: _____
Theodore D. Levin
Laurie N. Stayton,
Attorneys for Defendants
WALKER ENGINEERING, LLC and
DEBRA M. YAMACHIKA

PROOF OF SERVICE

I, the undersigned, an employee of Morris Polich & Purdy LLP, located at 1055 W. 7th Street, 24th Floor, Los Angeles, California, 90017 declare under penalty of perjury that I am over the age of eighteen (18) and not a party to this matter, action or proceeding.

On August 9, 2016, I served the foregoing document, described as "**DEFENDANTS WALKER ENGINEERING, LLC'S AND DEBRA M. YAMACHIK'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S COMPLAINT AND MOTION FOR SANCTIONS IN THE AMOUNT OF $4,070.00**" in this action by placing ☐ the original ☒ a true copy of the document in separate sealed envelopes addressed to the following party(ies) in this matter at the following address(es):

SEE ATTACHED SERVICE LIST

☒ **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

I am readily familiar with Morris Polich & Purdy's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

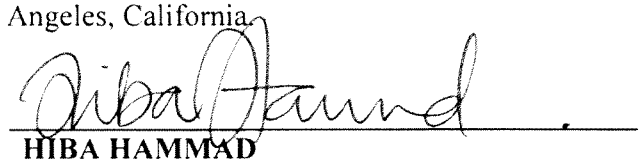
☐ **BY FEDERAL EXPRESS:** I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY E-MAIL** I caused the above-referenced document to be transmitted via e mail to the parties as listed on this Proof of Service.

☒ **STATE:** I declare under penalty of perjury under the laws of the state of California, that the above is true and correct.

Executed on August 9, 2016, at Los Angeles, California.



HIBA HAMMAD

SERVICE LIST

ANDREW ANTEKEIER vs. STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, et al.
Case No. CIV DS1604074

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