

**Morris
Polich &
Purdy**^{LLP}

ATTORNEYS AT LAW

www.mpplaw.com

August 10, 2016

Writer's e-mail address:
LStayton@mpplaw.com

Writer's Direct Dial:
(213) 417-5180

Via Email

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**Re: Antekeier v. State of California, et al.
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

A handwritten signature in black ink, appearing to read "L. Stayton".

Laurie N. Stayton, Esq.

LNS/hzh
Encl.

1055 West Seventh Street, Twenty-Fourth Floor, Los Angeles, California 90017-2503

Ph: 213.891.9100

Fx: 213.488.1178

Los Angeles ♦ San Diego ♦ San Francisco ♦ Las Vegas

1 Theodore D. Levin, Esq., SBN: 124946
2 Laurie N. Stayton, Esq., SBN: 238026
3 **MORRIS POLICH & PURDY LLP**
4 1055 West Seventh Street, 24th Floor
5 Los Angeles, California 90017
6 Telephone: (213) 891-9100
7 Facsimile: (213) 488-1178
8 TLevin@mpplaw.com
9 LStayton@mpplaw.com

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

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

AUG 09 2016

BY 
JESSICA MORALES, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO – CIVIL DIVISION**

10 ANDREW ANTEKEIER,

11 Plaintiff,

12 vs.

13 STATE OF CALIFORNIA; CALIFORNIA
14 DEPARTMENT OF TRANSPORTATION;
15 DOLLAR GENERAL CORPORATION,
16 Individually and dba DOLLAR GENERAL;
17 DYNAMIC REAL ESTATE
18 INVESTMENTS 1 LLC; DYNAMIC
19 DEVELOPMENT COMPANY, LLC;
20 WALKER ENGINEERING, LLC; DEBRA
21 M. YAMACHIKA; THE EFTHEMIA T.
22 STAVROS TRUST; EFTHEMIA T.
23 STAVROS; and DOES 1 to 100,

19 Defendants.

24 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]

26 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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

1 247 West Third Street, San Bernardino, California 92415, Defendants WALKER
2 ENGINEERING, LLC and DEBRA M. YAMACHIKA will demur to Plaintiff ANDREW
3 ANTEKEIER's Complaint.

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

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

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

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

22 Dated: August 9, 2016

23 Respectfully submitted,

24 **MORRIS POLICH & PURDY LLP**

25
26 By: 

Theodore D. Levin

Laurie N. Stayton,

Attorneys for Defendants

WALKER ENGINEERING, LLC and

DEBRA M. YAMACHIKA

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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)

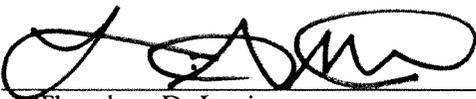
1. The Second Cause of Action for Dangerous Condition of Public Property (Gov. Code, § 835) is subject to general demurrer pursuant to California *Code of Civil Procedure* section 430.10(e) because it does not state facts sufficient to constitute a cause of action against Walker Engineering and Debra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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT.**

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

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

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

27 **II. PLAINTIFF’S ALLEGATIONS**

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

1 Route 18, west of Highland, in or about Lucerne Valley, California. (Stayton Declaration (“Stay
2 Decl.”) ¶2). On or about March 15, 2016, Plaintiff filed a civil complaint in the Superior Court
3 of California – County of San Bernardino against Walker Engineering LLC and Debra
4 Yamachika, as well State of California, California Department of Transportation, Dollar General
5 Corporation, Dynamic Real Estate Investments, Dynamic Development Company, LLC, The
6 Eftehemia R. Stavros Trust and Eftemia T. Stavros. (Stay Decl. ¶3.) On or about June 27,
7 2016, Plaintiff added Shamrock Group, Inc., Muro Concrete, Inc., Dustin Smith Equipment, Inc.
8 and Traffic Maintenance and Control and Services as defendants. (Stay Decl. ¶4.)

9 Plaintiff’s complaint includes causes of action for “Negligence” and “Dangerous
10 Condition of Public Property” against all defendants. (Stay Decl. ¶5.)

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

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

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

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

6 **III. GROUNDS FOR DEMURRER**

7 **A. *Demurrer Based on Failure to State Sufficient Facts***

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

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

22 Plaintiff's complaint fails to state facts sufficient state a claim against Walker
23 Engineering and Ms. Yamachika for Dangerous Condition of Public Property (Gov. Code, §
24 835).

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

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

2 Specifically, Government Code section 835 provides:

3 Except as provided by statute, a **public entity** is liable for injury
4 caused by a dangerous condition of *its property* if the plaintiff
5 establishes that the property was in a dangerous condition at the
6 time of the injury, that the injury was proximately caused by the
7 dangerous condition, that the dangerous condition created a
8 reasonably foreseeable risk of the kind of injury which was
9 incurred, and that either:

10 (a) A negligent or wrongful act or omission of an employee of the
11 public entity within the scope of his employment created the
12 dangerous condition; or

13 (b) The public entity had actual or constructive notice of the
14 dangerous condition under Section 835.2 a sufficient time prior
15 to the injury to have taken measures to protect against the
16 dangerous condition. (Emphasis added.)

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

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

27 Here, Plaintiff does not and cannot allege that Walker Engineering and Ms. Yamachika
28 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

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

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

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

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

10 "Before filing a demurrer pursuant to this chapter, the demurring party
11 shall meet and confer in person or by telephone with the party who filed the
12 pleading that is subject to demurrer for the purpose of determining whether an
13 agreement can be reached that would resolve the objections to be raised in the
14 demurrer."

14 On June 22, 2016, pursuant to California *Code of Civil Procedure* section 430.41,
15 Plaintiff and Defendants Walker Engineering and Ms. Yamachika ("Defendants") met and
16 conferred by telephone regarding Defendants' objections to Plaintiff's complaint, including,
17 Plaintiff's second cause of action for Dangerous Condition of Public Property against Walker
18 Engineering and Ms. Yamachika. Pursuant to California *Code of Civil Procedure* section
19 430.41(a)(1), Defendants explained that Plaintiff's second cause of action for Dangerous
20 Condition of Public Property is subject to general demurrer because Walker Engineering and
21 Yamachika are not public entities; therefore, Plaintiff cannot sue them under this cause of
22 action. Defendants requested Plaintiff to voluntarily dismiss his second cause of action. Plaintiff
23 agreed to further evaluate the validity of the cause of action against Defendants and granted
24 Walker Engineering and Ms. Yamachika a thirty (30) day extension of time up to, and including,
25 July 27, 2016, in which to respond to Plaintiff's Complaint. The extension was memorialized in
26 writing. (Stay Decl. ¶10).

27 On June 30, 2016, Defendants sent Plaintiff a correspondence to follow-up on the June
28 22, 2016 meet and confer conversation, including Defendants' request to dismiss the second

1 cause of action for Dangerous Condition of Public Property. (Stay Decl. ¶11). On July 07,
2 2016, Defendants sent Plaintiff a follow-up correspondence to discuss the status of Plaintiff's
3 decision to dismiss the Dangerous Condition of Public Property claim against Defendants. (Stay
4 Decl. ¶12). Plaintiff indicated he was not available and requested to discuss the matter on July 8,
5 2016. (Stay Decl. ¶13). After not hearing from Plaintiff on July 8, 2016, or anytime thereafter,
6 on July 14, 2016, Defendants sent Plaintiff a further correspondence requesting a return phone
7 call to discuss Defendants' request to dismiss the second cause of action. Plaintiff did not
8 respond. (Stay Decl. ¶14).

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

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

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

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

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

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

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

15 Plaintiff’s second cause of action for Dangerous Condition of Public Property against
16 Defendants Walker Engineering and Ms. Yamachika was brought in bad faith. There is no legal
17 or factual basis for this cause of action. Plaintiff has not, and cannot, allege that Defendants are
18 public entities liable under this cause of action. Further, Plaintiff continues to advocate this
19 frivolous claim without providing any legal support for his position that this second cause of
20 action is legally sufficient as to Walker Engineering and Ms. Yamachika. Instead of providing
21 legal support, Plaintiff has forced Defendants to incur unnecessary time, expense and court
22 resources to file a Demurrer to dispose of this frivolous claim. Such tactics are solely intended
23 to harass defendants and cause unnecessary delay in this action. Defendants, therefore,
24 respectfully request the Court to issue sanctions pursuant to California *Code of Civil Procedure*
25 section 128.5 in the amount of \$4,070.00 against Plaintiff and Plaintiff’s counsel of record, The
26

27 ¹ California Code of Civil Procedure section 430.11(a)(1) provides “As part of the meet and confer process, the
28 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.)

1 Law Offices of Clay R. Sides.

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

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

16 Here, Plaintiff has not, and cannot, provide any legal basis or evidentiary support for his
17 cause of action for Dangerous Condition of Public Property (Gov. Code, §835) against Walker
18 Engineering and Ms. Yamachika. Based on the plain reading of the statute, as well as case law,
19 it is clear Government Code section 835 does not provide for liability on the part of a private
20 company or individual. Govt. Code §835; *Chemical Corp. of California* (1992) 788
21 F.Supp.1485, 1492. Walker Engineering and Ms. Yamachika are not public entities; therefore,
22 they could never be held liable for plaintiff’s damages for violating Government Code section
23 835 - Dangerous Condition of Public Property. It is in bad faith and frivolous for Plaintiff and
24 Plaintiff’s counsel to plead, and to continue to advocate, this cause of action against Walker
25 Engineering and Ms. Yamachika. No reasonable attorney would believe that a private entity or
26 person could be held liable for violating Government Code 835 - Dangerous Condition of Public
27 Property.

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

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

9 Even assuming *arguendo* the Court overrules Defendants' Demurrer because it finds that
10 Plaintiff's complaint alleges sufficient facts to state a cause of action for Dangerous Condition of
11 Public Property (Gov. Code, §835) against Walker Engineering and Ms. Yamachika, which
12 Defendants dispute, such a finding is irrelevant to the Court's determination whether to issue
13 128.5 sanctions. In *San Diegans For Open Government v. City of San Diego*, the Court held that
14 the trial court erred in determining a cause of action had legal merit because the claim survived
15 demurrer. The Court reasoned as follows:

16 "The trial court erred in determining a cause of action had legal merit because the claim
17 survived demurrer. The issue on demurrer is whether a claim alleges facts sufficient to
18 state a cause of action, assuming the truth of all properly pleaded material facts. The
19 issue on a sanctions motion is whether the claim was "frivolous" meaning "totally and
20 completely without merit or for the sole purpose of harassing an opposing party." An
21 objective reasonable attorney standard applies to this determination. Whether a claim is
22 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).

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

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

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

10 **VII. CONCLUSION.**

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

16 Dated: August 9, 2016

Respectfully submitted,

17 **MORRIS POLICH & PURDY LLP**

18 By: 

19 Theodore D. Levin
20 Laurie N. Stayton,
21 Attorneys for Defendants
22 WALKER ENGINEERING, LLC and
23 DEBRA M. YAMACHIKA
24
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28

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

<p>Clay R. Sides, Esq. LAW OFFICES OF CLAY R. SIDES 120 South Main Street Fallbrook, CA 92028 Tel: (760) 723-2275 / Fax: (760) 723-2725 claysides@aol.com</p> <p><i>Attorneys for Plaintiff</i> ANDREW ANTEKEIER</p>	<p>Richard S. Endres, Esq. Angela M. Rossi, Esq. LONDON FISHER LLP 2505 McCabe Way, Suite 100 Irvine, CA 92614 Tel: (949) 252-0550 / Fax: (949) 252-0553 rendres@londonfischer.com; arossi@londonfischer.com</p> <p><i>Attorneys for Defendants and Cross-Complainants</i> DYNAMIC REAL ESTATE INVESTMENTS I, LLC and DYNAMIC DEVELOPMENT COMPANY LLC</p>
<p>Jeffrey M. Lenkov, Esq. MANNING & KASS ELLROD, RAMIREZ, TRESTER LLP 801 South Figueroa Street, Suite 1500 Los Angeles, CA 90017 Tel: (213) 624-6900 / Fax: (213) 624-6999 jml@manningllp.com</p> <p><i>Attorneys for Defendant</i> DOLLAR GENERAL CORPORATION</p>	<p>Robert Baggs, Esq. DEPARTMENT OF TRANSPORTATION, LEGAL DIVISION 100 South Main Street, Suite 1300 Los Angeles, CA 90012-3702 Tel: (213) 687-6000 / Fax: (213) 687-8300 robert.baggs@dot.ca.gov</p> <p><i>Attorneys for Defendant</i> CALIFORNIA DEPARTMENT OF TRANSPORTATION</p>