

1 SAN BERNARDINO SUPERIOR COURT
2 COUNTY OF SAN BERNARDINO
3 247 West Third Street
4 San Bernardino, California 92415-0210

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

SEP 15 2016

By Kim M. Allen
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO

11 ANDREW ANTEKEIER,
12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, et al.,
15 Defendants.

) CASE NO. CIVDS1604074
) RULING ON DEMURRER

) Date: September 15, 2016
) Time: 8:30 A.M.
) Department: S32

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18 The Court rules as follows:

19 Within the 2nd cause of action, Plaintiff alleges all the Defendants
20 (except the State), including Defendants Walker and Yamachika, were
21 provided a Cal. Trans Permit by the State that allowed them to design, alter,
22 construct, occupy, control, manage, maintain, and/or regulate the raised
23 concrete median and/or island that is west of Highland Rd in Lucerne
24 Valley, CA (¶4).

25 Antekeier, also, alleges Defendants had control of said median/island
26 (¶3). Defendants (except State) were the agents, servant, and/or employee of
27 the State (¶4).

28 Furthermore, the State provided the other Defendants with a permit

1 even though the plans were inadequate and violated the California Manual
2 on Uniform Traffic Control Devices. The Defendants failed to require the
3 installation of mandatory Keep Right, R4-7, signs at each end of the raised
4 concrete median/island, warning or regulatory signs, adequate
5 lighting/illumination, and/or reflectors (§6).

6 In Defendants Walker and Yamachika's Demurrer, they focus on the
7 title to the 2nd cause of action.

8 However, titles do not control. *Quelimane Co. v. Stewart Title*
9 *Guaranty Co.* (1998) 19 Cal.4th 26, 38-39.

10 By the factual allegations, Plaintiff pleads a dangerous condition of
11 public property claim against the State since the State's liability can only
12 flow from a statutory basis [Gov't Code §815], and pleads a premise liability
13 claim against the non-public entities, i.e., all other named Defendants.

14 Defendants offer no argument of how the broad allegations of all non-
15 public entity Defendants having the ability to control and occupy the
16 median/island could not support a premise liability theory against them.

17 Therefore, the Court will OVERRULE the Demurrer to the 2nd cause
18 of action and Defendants are ordered to Answer within 20 day.

19 In light of the analysis that the 2nd cause of action could be
20 interpreted as pleading a premise liability claim against the non-public
21 entity, it cannot be said that the 2nd cause of action is frivolous.

22 Therefore, the Court will DENY the request for sanctions.

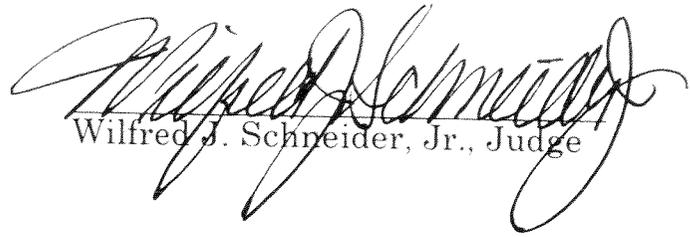
23 Lastly, the Court will GRANT Defendants Walker and Yamachika
24 request judicial notice of the business entity detail from Nevada Secretary of
25 State for Walker Engineering, LLC pursuant to Evid. Code §452(h).

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1 Dated: September 15, 2016

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Wilfred J. Schneider, Jr., Judge