



Superior Court of California County of San Benito

Tentative Decisions for August 13, 2026

Courtroom #1: Judge Thomas P. Breen

CU-23-00274 Jacqueline Melndez-Zuniga, et al., v. State of California Dept. of Transportation , et al. 8-13-26

On calendar for Defendant Department of Transportation (CalTrans) Summary Judgment Motion.

Plaintiff: Roberto Dominguez Quiroga

Defendant: Alexis Legaspi, Philip DiBoise, Landa Low, David Austin.

6-25-2026: Matter is on calendar for Defendant's motions to compel. Court continues matters to 8-27-2026.

2-9-2026: Defendant CalTrans motion for leave to amend Answer and to assert 18th affirmative defense is GRANTED. Defendant's amended Answer which is attached as EX 1 to the declaration of Landa Low, is deemed filed upon Notice of Entry of Order Granting Leave to Amend.

Argument: Defendant requests summary judgment for the entire complaint and specifically the second cause of action therein for dangerous conditions on public property. The Plaintiffs cannot establish that CalTrans created or had actual or constructive notice of a dangerous condition with sufficient time to remedy the condition. In the alternative, they are entitled to weather immunity pursuant to Government Code section 831 and/or natural condition immunity pursuant to Government Code section 831.2.

In Opposition the defendants cannot ask the court to ignore the Plaintiff's version of events, including that the subject tree and surrounding eucalyptus grove had visible and long standing defects remediable with appropriate intervention and inspection. The 12-10-2022 tree fall at the

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

marker 1.63 gave the Defendant immediate, site specific and actual notice that the other portion of the tree would likely fail. The lack of records or evidence of any issues with the subject trees lacks any significance. Defendant has not shown weather immunity applies as a matter of law. Similarly, Defendant has not shown that the natural conditions immunity applies as a matter of law. Triable issues of material fact remain as to whether CalTrans had actual or constructive notice of the dangerous condition.

Defendant's reply : First, the Plaintiffs in their opposition put forward a previously unpled theory of liability which cannot be considered in opposition to this motion. Plaintiff's version of facts was served on the Defendants after the Motion for Summary Judgment was filed, and thus is not ignoring their version of facts, it is that those facts had not been pled until now. Plaintiffs have not met their burden of production with regard to the creation of a dangerous condition or on the issue of notice. There are no triable issues of material fact as to actual notice or as to constructive notice. The eucalyptus grove is a natural condition and thus there is no triable issue of material fact as to natural condition immunity.

7-8-2025: Matter on calendar for Manning v. State of CA, et al. CU-23-00241 (Ex Parte Application) Cu-24-00307 has been consolidated as the non-lead case and is heard in conjunction with the lead case; CU-23-00241 as different counsel is present. Cases Cu-24-00027, CU-23-00274, and CU-24-00230 are advanced to be heard together with CU-23-00241 ex parte request. The court does not take the bench. Defendant's CalTrans' ex parte application to continue the trial date is GRANTED. Trial dates shall be separated by six week. Defendants shall serve the plaintiffs with the order.. Jury trials are continued . . . CU-23-00274 is continued to September 14, 2026.

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Id., subd. (c).) There is a three-step analysis required of the trial court. First, we identify the issues framed by the operative complaint and answer since it is these allegations to which the motion must respond. Second, we determine whether the moving party's showing has established facts which negate the opponent's claim and justify a judgment in the moving party's favor. When a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable issue of material fact. (Hamburg v. Wal-Mart Stores, Inc. (2004) 116 Cal.App.4th 497, 503; Chevron U.S.A., Inc. v. Superior Court (1992) 4 Cal.App.4th 544, 548, disapproved on another point in Camargo v. Tjaarda Dairy (2001) 25 Cal.4th 1235, 1245.) In so doing, we view the evidence in the light most favorable to the party opposing the motion; we

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

liberally construe the opposing party's evidence, strictly construe the moving party's evidence, and resolve all doubts in favor of the opposing party. (Johnson v. American Standard, Inc. (2008) 43 Cal.4th 56, 64; Saelzler v. Advanced Group 400 (2001) 25 Cal.4th 763, 768.)

Analysis:

Here, the facts of the case speak clearly. On December 11, 2022, after a severe weather event with heavy rains and intense winds, a eucalyptus tree on the right of way maintained by CalTrans fell across Highway 101, near marker 1.63. As a result of the treefall, there were multiple fatalities and injuries to persons, spawning a group of lawsuits, including this one. The tree that fell across the roadway was a blue gum eucalyptus tree, a species nonnative to California, in a grove that had been planted on the right of way and maintained and trimmed by CalTrans. It is in this framework that the Defendant CalTrans is seeking summary judgment. The argument framed here is that CalTrans has absolute immunity from liability in part based on natural conditions, or for damages that result from weather events.

Natural Condition immunity:

While Government Code section 831.2 immunizes public entities for injuries caused by natural conditions on unimproved property, the California Supreme Court and the Courts of Appeal have held consistently that paved and maintained roadways constitute improved property. This is so even when the immediate hazard originates from natural sources such as trees or a slope. (*Milligan v. City of Long Beach, supra*, at 834-835.) The specific roadway at issue is demonstrably an improved property. It is paved, there is signage, there are drainage systems, and there is right of way vegetation management which all fall under CalTrans maintenance and Control. The second issue is that pursuant to statute the alleged injuries must be the result of a natural condition on the unimproved public property. In *Coates v. Chinn* (1958) 51 Cal.2nd 304, 308, the Court opined that eucalyptus trees that were planted alongside a highway are a “nonnatural or artificial condition” on the land, created there. While this case was decided well before the Government Claims Act was in force, it does speak to the underlying concern here. Thus, “irrespective of whether they are harmful in themselves or become so only because of the subsequent operation of natural forces,” their artificial nature does not change. (*Ibid.*) In *Coates* the case involved, specifically, the fall of a large limb from a eucalyptus tree across a roadway during heavy rain and windy conditions. The plaintiff’s decedent, unable to avoid the sudden appearance of the limb, collided with it. He succumbed to his injuries, his spouse was badly injured, all occurring with their young child in the backseat. The same argument against liability was essentially raised in *Coates*, that no liability should attach for this natural condition. The California Supreme Court disagreed, as noted above, and reversed the judgment in favor of the Defendants. To approach this analysis the court looks not just to the language of the relevant statute, Government Code section 831.2, but its legislative history and purpose. The immunity

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

conferred by this section is designed to encourage public entities to open their property for public recreational use, because the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use. This framework is noted in *Armenio v. County of San Mateo* (1994) 28 Cal. App. 4th 413, 417, citing to the legislative comment to section 831.2. Moreover, this immunity continues to apply even where the public entity had knowledge of a dangerous condition which amounted to a hidden trap.” (*McCauley v. City of San Diego* (1987) 190 Cal. App. 3rd 981, 986) In order for the immunity not to apply, the plaintiff must allege that there is a “causal nexus between the dangerous condition and either human conduct or an artificial improvement.” (*Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal. App. 3rd 882, 888.)

Thus, immunity applies unless an improvement or human conduct *created, contributed to, or exacerbated* the degree of the danger associated with a natural condition. (*Alana M., supra*, at 1489.)

The decision in *City of Chico v. Sup. Ct* (2021) 68 Cal. App. 5th 352, applied this analysis. The Court of Appeals held that natural condition immunity applied to a tree in a municipal park that had been pruned many years prior to a branch falling and injuring a jogger because the tree’s continued growth was a natural occurrence and the combination of human activity and natural forces produced a condition like those occurring in nature. No evidence of a causal nexus between the prior pruning or any other improvement and the falling branch was shown, and the tree was growing on unimproved public property because improving a portion of a park area did not remove immunity from unimproved areas. There was no evidence of any alteration in the natural condition of the land immediately surround the tree, and its location in a developed urban park between paved pathways was not shown to have weakened the tree or otherwise caused the branches to fall. In its analysis, they agreed with the concurrence in *Milligan*, in that it suggests that the natural growth of *indigenous trees* in a natural habitat is a natural condition. It did not however agree with the premise that a natural condition always loses its character for the purposes of immunity under 831.2 if changed by any act of a human being. By way of reference, they noted *Knight v. City of Capitola* (1992) 4 Cal. App. 4th 918, 928-929(disapproved on other grounds in *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 532, fn. 7.)

In *Knight*, the court noted “In sum[,], it appears as a matter of law that at most a combination of human activities and natural forces created the condition that resulted in [plaintiff’s injuries]. Such a combination of forces, particularly where it produces over a long period of time, a condition similar to those which occur in nature, has repeatedly been held to come within the immunity provided by section 831.2” (*Id.* 929) The court in *City of Chico* applied the same principles. The tree grew on its own accord for many years after it was last pruned or altered. Here, there is a pattern and history of cutting back, pruning, and otherwise altering this landscape

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

on the right of way to the west of the southbound 101 lanes of traffic. This occurs regularly, unlike the situation in *City of Chico*, where the tree in question (a native plant species) had been pruned back once, and then left for a substantial period of time to continue growing, or as in *Knight*, where the powerful force of the ocean eroded the transplanted sand on the beach over seventeen long years. In this case the subject trees are non-native flora. Many of the cases referenced throughout involving treefall or the falling of tree limbs differentiate between indigenous and non-indigenous species of flora. (*Meddock v. Cty of Yolo* (2013) 220 Cal. App. 4th 170; *Alana M. v. State of California* (2016) 245 Cal. App. 4th 1482, by way of example.)

Herein the alleged dangerous condition involves trees planted by people and maintained or managed as part of the right-of-way's regular maintenance for the use of the public entity, thus the condition is not "natural" within the meaning of the statute. The Court in *City of Chico* likened the situation to that described in *Knight*, they opined that the effect of the force of nature over time on the ongoing growth and development there had produced a condition similar to that which would occur in nature. In determining whether a tree branch, or tree fall for that matter, occurs in an area that is improved or unimproved one looks to where the trunk was growing, not where the branch fell (*City of Chico, supra*, at 364.) This appears to be the framing that the Defendants hope the court will adopt. However, the court must address the facts of this case, as have been presented in the Defendant's own documentation and information which no one has disputed. The right-of-way on the west side of southbound 101 is not a public park, or recreation area. It exists and serves a particular purpose for the public entity's use. Second, eucalyptus trees are non-native species of flora. To grow anywhere in California (or outside of Australia, where the species is indigenous) they must be *planted* there by humans. Even if, as is here that planting took place nearly a hundred years ago and the land was later acquired by the Defendants, the essential character of the trees as non-native flora does not change. In this instance the right of way alongside southbound 101 is not a natural landscape, rather it is a created one, developed for use by the public entity after the highway was constructed. The governing principles in enacting Government Code section 831.2 are to foster public recreation and enjoyment in natural lands by shielding governmental entities from liability in natural hazards in unimproved wilderness areas. (*Milligan, supra*, at 833.) This case involves the maintenance of a highway right of way by CalTrans, not recreational lands. This is a public corridor for transportation, and the public entities responsible for it have affirmative duties to maintain that public transportation corridor in reasonably safe condition, as noted in Government Code sections 830, 835. The assertion of immunity in this context by the Defendant upends the purpose of the law and abrogates the statutory duties noted here.

Weather Condition Immunity:

The argument for immunity based on Government Code section 831, weather conditions

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

affecting the roadway is interesting, but flawed. A clear reading of the statute and the legislative history behind it addresses the actual build of the roadway itself as affected by weather conditions. The falling of debris upon the road as a result of inclement or even severe weather conditions is not the kind of event that the statute envisions. For example, had the roadway visibility been blocked by an unseasonable and heavy fog absent deficiencies in the road's design, is the kind of event the statute contemplates. Section 831 states "Neither a public entity nor a public employee is liable for an injury caused by the effect on the use of streets and highways of weather conditions as such. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such effect if it would not be reasonably apparent to and would not be anticipated by, a person of due care. . . ." In short, weather immunity does not apply to situations where the effect of weather combines with other factors that make the road dangerous. (*Erfurt v. State of California* (1983) 141 Cal. App. 3rd 837, 845-846.) In *Erfurt* the plaintiff alleged that the combination of sunlight, fog, and a deceptive street layout created a dangerous condition resulting in his collision with an abutment. The court therein held that weather immunity fails because the dangerous condition was not merely the effect of the weather, but the improper layout of the road and lack of devices to properly warn and guide drivers around an abutment in the middle of the road.

Here the Plaintiff notes that the Defendant's own expert, Ms. Prociv, gave no opinion as to whether the weather conditions themselves caused the tree failure, or whether other factors that were present might have caused the tree to fail. The damage here was not the result of standing water on the road, icy conditions, fog, or weather induced conditions. In this instance, the gestalt of heavy rains, the condition of the tree's root system, the overall health of the subject tree, the patterns of maintenance raise questions as to the applicability of the weather immunity under statute. For there to be summary judgment based on immunity from the claim, the immunity must be complete. Here, the answer to that question is not obvious or certain.

Notice of Condition:

As to the primary argument with regard to whether CalTrans had notice of the alleged dangerous condition, to have immunity under section 835.2 sub (a) requires that there be actual knowledge of the condition and knowledge or reason to know of its dangerous character. The dispute between the Defendant and the Plaintiffs centers on the tree itself, whether its root system was connected or was a multi-stem system, as the Plaintiff asserts, or not, as the Defendants assert. The parties in their UMF and PUMF dispute whether the tree that fell on December 11, 2022, was part of a co dominant multi stem system or was a singular tree. To establish liability of a public entity for the dangerous condition of property pursuant to 830 and 835 the Plaintiff must establish all of the following elements: 1) the property was in a dangerous condition at the time of the injury; 2) the injury was proximately caused by the dangerous conditions; 3) the dangerous

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

condition created a reasonably foreseeable risk of the kind of injury which was incurred and 4)

Either a) Negligent or wrongful act or omission of an employee of the public entity within the scope of their 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. (Gov't Code §835, see also *Ducey v. Argo Sales Co.* (1976) 25 Cal. 3rd 707.) A plaintiff may either establish that an employee of the entity negligently created the dangerous condition, or that the entity had actual or constructive notice of it. Defendant avers that the Plaintiff can establish neither of these elements, thus the claim fails. Defendant notes that the allegation that the entity either created or maintained a dangerous condition is not sufficient to impose liability under the law, what is required is that the entity's employee did so negligently at the time of the creation of the condition. (*Metcalf v. County of San Joaquin* (2008) 42 Cal. 4th 1121, 1132-1134.) The occurrence of an accident or injury on its own does not establish that a public entity created a dangerous condition. (*Brown v. Poway Unified School District* (1993) 4 Cal. 4th 820 836.)

In the complaint the Plaintiffs assert that the dangerous condition existed because the State failed to properly maintain and inspect the eucalyptus grove, including the subject tree. The complaint asserts that additional trimming, inspection, or maintenance could have been performed. Defendant argues that this is insufficient to establish liability under Government Code section 835. At the time the summary judgment motion was filed, the Defendants aver that the Plaintiffs had not responded to discovery, specifically contention interrogatories, hence they had not identified any facts establishing a negligent act or omission by the Defendants.¹ Further Defendants aver that they did not have actual or constructive notice pursuant to Government Code section 835.2, requiring in relevant part that a) a public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character. (Gov't Code §835.2 sub (a).) "To establish actual notice, '[t]here must be some evidence that the employees had knowledge of the particular dangerous condition in question'; 'it is not enough to show that the [public entity's] employees had a general knowledge' that the condition can sometimes occur. (*Martinez v. City of Beverly Hills* (2021) 71 Cal.App.5th 508, 519 (quoting *State of California v. Superior Court (Rodenhuis)* (1968) 263 Cal.App.2d 396, 399)). General awareness that eucalyptus trees or trees generally may fail during a storm is not sufficient to show actual knowledge of a dangerous condition of the subject tree. The Defendant notes that there were no customer service requests indicating issues with the trees at the subject location within five years prior to the event. The IMMS records do not show any complaints, reports, or records of prior similar incidents five years prior showing a pattern of tree falls, or a

¹ At the time of this writing the Defendants motions to compel discovery, filed 3-12-26 remain pending.

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

latent issue with the trees in the area needing to be addressed. (UMF 23.) Defendant conducted annual inspections and again, there were no indications of a need for remediation other than trimming for sightlines. (UMF 17, 23.) The Plaintiff takes the position that the lack of such reports is not proof that there was no actual notice, when a different tree fell twenty-four hours prior to the subject event. They aver IMMS is not a complete history of knowledge and public complaints are as separate issue. They aver that the weather event was not extraordinary and was not the cause of the subject treefall. They assert that the tree was co-dominant/multi stem and the storm did not create that condition, and it was this condition existed for decades. Plaintiffs also assert there were hydrology issues causing soil saturation caused by the Defendant's construction of the freeway through the grove. The court notes that the hydrology claim is not asserted in the complaint and arises only in the opposition. It is the Plaintiff's position that after the tree fall of December 10, 2022, Cal Trans should have but failed to examine the remaining and allegedly interconnected tree or removed it, but instead it failed on the following day.

The court notes that the lack of any complaints or records in the five years prior remains an undisputed material fact. Contrary to the Plaintiff's argument that no records regarding the subject tree and no record of issues in the prior years' inspections does not meet the burden to show that there was no actual notice, case law observes that this is exactly the type of evidence to be considered. (*Restivo v. City of Petaluma* (2025) 111 Cal. App. 5th 267, 275-279; *Martinez v. City of Beverly Hills* (2021) 71 Cal. App. 5th 508, 515-516.) The argument made here is that the failure of the subject tree on December 11, 2022 was actually part of another tree which fell on December 10, 2022. Plaintiffs assert that the subject tree was part of a single multi-stem or co-dominant tree with connected trunks. The argument is that because there was sharing of the root systems, this was actually a single tree with multiple parts and the treefall of December 10 destabilized the remaining portion thus putting Defendants on notice of the hazard. The Plaintiffs offer the declaration of their arborist, Greely, who in her declaration states that she did not personally inspect the subject tree. (Greely dec ¶5.) Both Plaintiff and Defendant rely upon the photos taken by Juniper Karl on December 14, 2022. Karl testified that there was some root intertwinement, but denied the trees shared a trunk, were co dominant, or multi- stemmed, noting that the tree lacked the distinctive visible V shaped union. (Plaintiff's ex 12, Karl Depo 74.6 -18; Power's Depo 52:15-53.3) The Greely concludes differently based on observation of these same photographs. (Greely Declaration, Plaintiff's exhibits item 9)

For there to be constructive notice the plaintiff would need to present admissible evidence showing that the condition was obvious and had existed for a sufficient period of time. (Gov't Code §835.2 sub (b).) Absent that evidence, the claim fails as a matter of law. What is required is that the alleged defect be conspicuous or obvious as this is critical to the public entities' failure to discover and repair obvious defects making it appropriate to impute knowledge of that defect to them. (*Martinez, supra*, at 519.) The argument presented by the Plaintiffs is that the tree that

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

fell on December 11, 2022, was co dominant with the tree that fell on December 10, 2022, and had been so for its lifespan and thus the defect should have been obvious on reasonable inspection. Defendants assert this claim is contradicted by the photographs provided, even had the root structures been intertwined, such a defect would have been below the soil, not visible or obvious to an observer at the surface.. (UMF 15, ex I) and appeared to be relatively healthy. These are factual assessments based on evidence which, from the declarations provided by Plaintiff are disputed for the reasons stated above.

As noted in *Scott v. Harris* (2007) 550 U.S. 372, “The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact’ (citation). When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” (p 380.) In that case, the record at issue was the video footage of a high speed chase which materially contradicted the Plaintiff’s version of events, and which the Supreme Court determined should control as to the issue of whether there was a genuine issue of material fact to be tried. Here that distinction is much more opaque. The relevant question here is 1) whether the trees that fell on December 10 and December 11 were co dominant and multi-stemmed. In short; was it one tree that failed or two separate trees? Whether the trees that fell on these consecutive dates were one organism or two is material because it directly addresses whether there was actual or constructive notice of the potential failure on the second day.

The Defendant asserts that Greely’s observations should be disregarded, as an expert’s opinion is purely conclusory because it is not accompanied by a reasoned explanation connecting factual predicates to the ultimate conclusion, that opinion lacks evidentiary value as it is worth no more than the reasons upon which it rests. (*Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal. App. 5th 146, 155 (Sanchez).) Here, though the court must liberally construe the declarations of the plaintiff’s expert this in no way eliminates the need for some form of reasoned explanation and it remains the case that any inferences must be reasonably derived from that explanation. It also stands that the reasoned explanation must connect with the factual predicates of the ultimate conclusion. Here a single tree fell on December 11, 2022, across the roadway and was struck by the Plaintiff’s vehicle, resulting in personal injuries. The Plaintiffs argue that this tree was part of a tree that fell on December 10, 2022, opining that the two trees were actually a single multi stem or co-dominant tree with connected trunks, and that because those trees shared a root system the treefall of December 10 destabilized the subject tree putting CalTrans on notice of the hazard of the remaining portion of the tree. This claim rests on the declaration of the Plaintiff’s arborist, Ms. Greely. Greely did not identify a factual basis for her

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

conclusions, but they appear to be based on observation of the same photos taken by Caltrans's arborist Karl. However, the interpretation of these images differs markedly, this is ultimately a question of material fact for the court to resolve.

Proposed ruling: The motion for summary judgment is denied.

CU-26-00109 Danny Wiseman, et al. v. State of California (CalTrans), et al. 8-13-26

On calendar for Defendant State of California (CalTrans) motion to strike portions of Complaint. The motion is unopposed.

Plaintiffs: Jesse Burl Chrisp, Jesse Danoff

Defendants: Josephine Mendoza, Alex F. Pevzner (CalTrans); Martin Ambarcher (County of San Benito.)

4-10-2026: Complaint. This matter arises from a motorcycle accident occurring on 7-5-2025. Plaintiff Wiseman, and his passenger on the motorcycle were travelling on Route 25, southbound, and were within the approach and entry path of the SR-25/ SR-156 roundabout in San Benito County. The motorcycle struck one of the raised pavement delineators positioned on the travel path of vehicles entering the roundabout. Both Wiseman and Bailey were ejected from the motorcycle and suffered injury. This suit follows, on the following causes of action 1) Dangerous Condition of Public Property (Govt Code §835); 2) Failure to Warn (Gov't Code §835).

6-5-2026 County of San Benito Answers with a denial and asserting thirteen affirmative defenses.

6-15-2026 Defendant CalTrans files motion to strike portions of the complaint for pre judgment interest and post judgment interest (paragraph/ prayer 6, page 6, line 14 "Pre-judgment and post-judgment interest as permitted by law.") The Plaintiff concedes that the prayer for pre judgment interest against the state should be stricken out as it is not legally recoverable. Civil Code § 3291 states " this section shall not apply to a public entity, or to a public employee for an act or omission within the scope of employment, and neither the public entity nor the public employee shall be liable, directly or indirectly, to any person for any interest imposed by this section." Though the Plaintiffs agreed not to seek prejudgment interest from CalTrans, they have not amended their pleadings, thus the prayer is improper as it is not legally recoverable.

7-9-2026: Plaintiff files a partial dismissal as to any claim for prejudgment interest against the State of California. Legal Standard and analysis: Any irrelevant, false, or improper matter inserted in any pleading, or all or any part of any pleading "not drawn in conformity with the

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

laws of this state, a court rule, or an order of court” may be struck out. (CCP §436.) A motion to strike may attack an entire pleading, and various sub parts of a pleading, such as a cause of action or a component paragraph, words, or phrases. (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal. Ap. 5th 574, 589.) In reviewing a matters subject to a motion, matters are deemed immaterial if they are not essential to the claim, are neither pertinent nor supported by an otherwise sufficient claim, or are a demand or judgment or a request for relief not supported by the allegations. (CCP§431.10 sub (b).) Here, the Plaintiffs are seeking pre judgment interest in their prayer for relief which is not statutorily permissible.

Proposed ruling: Grant the motion to strike prayer 6, page 6, line 14 stating “Pre-judgment interest and post-judgment interest as permitted by law.”

CU-26-00011 **Russell Enz v. Enz Vineyards, et al**

5-14-2026

On calendar for 1) Defendant/ Cross Complainant Robert Enz’s motion for preference (CCP§36)

Plaintiff: Effie Anastassiou (Russell Enz, Karen Sims)

Defendant: Arif Virji (Enz Vineyards)

Defendant: Joseph Victor Harrison, Michael Russell Wanser (Robert Enz)

Defendant: Jaimee Amone Modica (Michael Enz)

Cross Complaint:

XPlaintiff: Arif Virji (Enz Vineyards)

XDefendant: Effie Anastassiou (Russell Enz)

2-18-2026 FAC Complaint for 1) Breach of Employment Contract with Russell Enz; 2) Breach of Employment Contract with Karrie Sims (aka Karen Sims); 3) Breaches of Implied Covenant of Good Faith and Fair Dealing in Employment Contracts; 4) Fraudulent Inducement; 5) Conversion; 6) Failure to Timely Make 401K Contribution; 7) Promissory Estoppel with Respect to Silverado; 8) Wrongful Eviction; 9) Breach of Oral Equipment Lease; 10) Intentional Interference with Business Relations; 11) Injunctive Relief re Personal Property; 12) Declaratory Relief re Residential Lease; 13) Declaratory and Injunctive Relief re Share Reversion Demand and Exercise of Shareholder Rights

2-19-2026 X Complaint: Defendant’s Cross Complaint for 1) Breach of Fiduciary Duties (Violation of Corp. Code §309); 2) Civil Recovery under Penal Code §496(c) (By Enz Vineyards, Robert Enz as Shareholder, Michael Enz as Conservator for Susan Enz as

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

Shareholder vs Russell Enz, Karrie Sims); 3) Civil Recovery under Penal Code 496 (c) (By Michael Enz as Conservator for Susan Enz in her individual capacity v. Russell Enz) ; 4) Fraudulent Concealment/Nondisclosure; 5) Conversion (By Enz Vineyards, Robert Enz as Shareholder, Michael Enz as Conservator for Susan Enz as Shareholder vs Russell Enz, Karrie Sims) ; 6) Conversion (By Michael Enz as Conservator for Susan Enz in her individual capacity v. Russell Enz); 7) Specific Performance of Shareholders' Agreement; 8) Financial Elder Abuse (W&I §15610.30)

Argument:

6-5-26 Cross Complainant/ Defendant Robert Enz moves for preference pursuant to CCP§36. He is 90 years of age, and has statistically speaking, average life expectancy for a man in the United States, with a less than 20% statistical probability of surviving to his next birthday. His health is compromised (congestive heart failure, hypertension, among other past and current medical issues.) (Enz dec ¶¶3-6) Whether he survives the year or not, his health likely will continue to deteriorate. He has a substantial interest in this action, and is a critical witness, hence warranting statutory preference. The claims in this suit are largely based on allegations of oral promises made by Robert and Susan Enz. Susan Enz is mentally incapacitated and conserved (Enz dec ¶7), rendering Robert's participation crucial. (Enz dec ¶8-11.) Mr. Enz meets the statutory requirements. He is over the age of 70 and in declining health, and his interests in the pending litigation are substantial.

Enz Vineyards does not oppose the motion.

7-31-2026 Russel Enz and Karrie Sims oppose granting preference. Robert Enz cannot satisfy the statutory requirement that his health is such that preference is necessary to prevent prejudice against his interest. He must be both over the age of 70 and have a showing that his health is such that preference is mandatory. No medical records have been produced; there is no physician's declaration or diagnosis or prognosis showing that his medical condition is deteriorating such that preference is needed. He is functioning normally, socializing, walking without assistance, driving, flying in his personal airplane, he was able to testify at deposition on 7-22-2026, and he is presently acting as CEO of Enz Vineyards. Nor is there a showing that granting the preference would be in the interests of justice. Robert Enz' declarations is insufficient on its own. Despite the lenient requirements of section 36, his counsel's declaration is only generalities and provides only statistical mortality rates. Mr. Enz's health conditions are either in the past or medically controlled and do not warrant preference.

Reply: The opposition argues that no preference is needed because Mr. Enz is currently able to engage in business and life activities and has thus far been able to participate in this litigation. This misses the point. He does not need to be incapacitated to be eligible for section 36 relief.

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

The statute is intended to prevent prejudice to a stricken litigant's interests (Fox v. Sup. Ct, supra, at 536.). He needn't be at death's door. At 90 years old with ongoing heart conditions, his age and health clearly mandate preference to avoid prejudicing his interests. Plaintiffs do not dispute any of Mr. Enz's declaration regarding his health, nor do they cite law to support the contention that Mr. Enz must provide medical documentation to support a claim for preference under section 36 subdivision (a). There is no such requirement. A section 36 (a) motion can be supported by nothing more than attorney's declaration made on information and belief. (CCP§36.5.)

Legal Standards and analysis: A party to a civil action over the age of 70 years may petition the court for preference at any time during the pendency of the action. (CCP§36 sub (a).) The court shall grant the application for preference if the court determines that the party 1) has a substantial interest in the action as a whole; and 2) the health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the action. (Ibid.) Preference may also be granted in the interests of justice (CCP§36 sub (e).) The statute was drafted to ensure that elderly people would not be denied their rights in civil litigation as a result of long delays in having the case set for trial. (Greenblatt v. Kaplan's Restaurant (1985) 171 Cal. App. 3rd 991, 994-995.) The legislative history notes that it provides for an early trial date for those individuals who "because of their advanced age or serious medical problems might die or become incapacitated before their cases come to trial." (Ibid.) The statute serves to safeguard this interest for those whose age or precarious health risks that they may perish or be incapacitated such that their cases could not be effectively tried and their chance to recover a just measure of damages or receive appropriate redress would be lost. (Kline v. Sup. Ct. (1991) 227 Cal. App. 3rd 512, 515.) The statutory requirements may be met by an attorney's declaration on information and belief. (CCP§36.5).

Once the statutory requisites are met, the granting of preference under section 36 is mandatory. (Miller v. Sup. Ct. (1990) 221 Cal. App. 3rd 1200, 1206.) The court may not consider countervailing interests, such as inconvenience in determining the motion. (Ibid.) Nor is it required that an eligible litigant wait to be at the brink of death to be entitled to relief; the statute requires granting calendar preference to prevent prejudice to a stricken party's interests. (Fox v. Sup. Ct. (2018) 21 Cal. App. 5th 529, 536.) There is no requirement to weigh the interests of the parties.

Here the Cross Complainant has met these statutory requirements. Contrary to the position taking in the opposition, there is no requirement that Mr. Enz produce his private medical records. Plaintiff can cite no such requirement because none exists. Even the declaration on information and belief of Mr. Robert Enz' attorney would be sufficient under the law. However, he has done more and provided his own declaration detailing his personal health concerns and provided the

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**

actuarial tables available through CACI from page 1023-1024, which provides life expectancies for men of the Cross Complainant's age. It is not required that Mr. Enz be knocking on death's door, or that he be completely incapacitated to be eligible for relief under the statute. The statute exists to prevent prejudice given the risk of his becoming incapacitated or dying so as to lose his right to redress and to be heard by the court.

Proposed ruling: The motion for preference pursuant to CCP §36 is granted.

END OF TENTATIVE DECISIONS

****Please contact Judicial Courtroom Assistant, Lesley Pace, at
(831) 636-4057 x127 or lpace@sanbenitocourt.org with
any objections or concerns.**