

PROPOSED TENTATIVE

On April 25, 2025, plaintiff Maria Quevedo filed a complaint on standard Judicial Council forms against defendants City of Santa Maria, City of Santa Maria Public Works, County of Santa Barbara, Maple Leaf Investments – II, LLC, Town Center West, LLC, and Town Center West, advancing two causes of action: 1) premises liability and 2) general negligence. According to the operative pleading, while at or near 237 Town Center E., Santa Maria, plaintiff tripped and fell into a pothole that involved a dangerous condition. Plaintiff alleges that defendants knew or should have known it was a dangerous condition at the time of the accident. In the second cause of action for general negligence, as relevant for our purposes, plaintiff alleges that defendants negligently owned, operated, maintained entrusted, and/or controlled the subject premises. She claims that “due to these acts and/or failures to act,” the public entity defendants, their agents, and/or employees, are liable pursuant to Government Code sections 815.2, 815.4, 815.6, 820, 830, 835, and/or 840.2. Additionally, plaintiff is informed and believes that defendants were “subject to and violated ADA, California Health & Safety Codes, building codes, and/or ordinances and these violations actually legally caused Plaintiff’s damages” Plaintiff filed an amendment to the complaint on November 3, 2025, to correct the address of the location to 237 Town Center W., Santa Maria. On December 1, 2025, plaintiff dismissed County of Santa Barbara without prejudice. On February 2, 2026, plaintiff dismissed Maple Leaf Investments – II, LLC from the lawsuit. No party has answered.

On January 21, 2026, defendant City of Santa Maria (erroneously sued as City of Santa Maria Public Works) filed a demurrer to the second cause of action for general negligence only. According to defendant, plaintiff has failed to properly identify any statutory basis for its liability pursuant to Government Code sections 815.2, 815.4, 815.6, 820, 835 or 840.2. Further, the catchall provision involving “ADA, California Health & Safety Codes, building codes and ordinances” is too vague to survive. According to defendant, there are no facts offered to support any statutory basis for its liability for “general negligence.” Plaintiff in opposition insists the general negligence (second cause of action) is adequately pled pursuant to any of the Government Code provisions cited. Plaintiff ***does not argue*** that the catchall allegations involving “ADA, California Health & Safety Codes, building codes, and/or ordinances” is sufficient to survive challenge. Defendant filed a reply on April 2, 2026. All briefing has been reviewed.

It is settled that tort liability (whether direct or vicarious) of a public entity must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care to the plaintiff, and not on the general tort provisions associated with the common law or Civil Code section 1714. (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183; Gov. Code, 815, subd. (a) [a public entity is not liable for an injury whether caused by the entity itself or one its employees, except as otherwise provided by statute]; see also *San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 428.) This is true because the California Tort Claims Act limits public entity liability to “rigidly delineated

circumstances.” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1113, 1127.) The court will examine each statute identified by plaintiff in the second cause of action to determine whether public entity liability has been adequately alleged.

It seems clear that the citation to either Government Code¹ section 815.2, subdivision (a) or section 815.4, both relied upon by plaintiff in the operative pleading, creates “general negligence” liability against defendant public entity. Section 815.2, subdivision (a) provides that a “public entity is liable for an injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against the employee or his personal representative.” Section 815.4 provides that a public entity is “liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person.” (See, e.g., *Summerfield v. City of Inglewood* (2023) 96 Cal.App.5th 983, 999 [“The two statutes cited [by plaintiff] – section 815.2, subd. (a) and 815.4 – both stand for the proposition that a public entity may be liable for an act of an employee if the act falls within the course and scope of employment].))

Here, all plaintiff claims is that defendant negligently “owned, operated, maintained, entrusted, and or controlled the subject premises.” Plaintiff cannot use these provisions to establish negligence based simply on the existence of a dangerous condition of public property. (*Summerland, supra*, at p. 999.) Plaintiff must allege the employee’s duty, breach, causation, and harm. (*C.I. San Bernardino City Unified School District* (2022) 82 Cal.App.5th 974, 983.) Plaintiff has not done so, for there is no basis upon which to find a duty of care within the scope of an employee’s employment, any breach, or any causation. More will have to be pleaded.² (*Koussaya v. City of Stockton* (2020) 54 Cal.App.5th 909, 945 [“in order for vicarious liability to attach, a public employee, either named as a defendant or at least identified [generically] by the plaintiff, must have engaged in an act or omission giving rise to that employee’s tort liability].)) Simply put, plaintiff has failed to allege any actions or inactions by any public employee under these provisions to establish defendant’s vicarious liability. (See, e.g., *Zelig, supra*, 27 Cal.4th at p. 1128 [we agree that plaintiffs did not allege facts giving rise to a cause of action based upon vicarious liability of the defendants for the asserted negligent acts of their employees].))

¹ All further statutory references are to the Government Code.

² The reason for this is clear. As noted by our high court, the statute “draws a clear distinction between the liability of a public entity based on its own conduct, and the liability arising from the conduct of a public employee.” While the Act provides that a public employee is generally liable for an injury caused by his or her act or omission “to the same extent of a private person” and that, when the act or omission of the public employee occurs in the scope of employment the public entity will be vicariously liable, the statute contains no provision similarly providing that a public entity is generally liable for its own conduct or omission to the same extent as private person. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1127.)

Section 815.6, another provision cited by plaintiff, provides that “[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” A claim under section 815.6 “has three elements that must be satisfied to impose public entity liability: (1) a mandatory duty was imposed on the public entity by an enactment; (2) the enactment was designed to protect against the particular kind of injury allegedly suffered; and (3) the breach of the mandatory duty proximately caused the injury.” (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 179.) An “enactment” is defined as “a constitutional provision, statute, charter provision, ordinance or regulation.” (§ 810.6.) “This definition is intended to refer to all measures of a formal legislative or quasi-legislative nature.” (*Wilson v. County of San Diego* (2001) 91 Cal.App.4th 974, 982.) The term “regulation” as used in section 810.6 means “a rule, regulation, order or standard, having the force of law, adopted . . . as a regulation by an agency of the state pursuant to the Administrative Procedure Act.” (§ 811.6.) “[A]pplication of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken.” (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498.) The complaint fails to identify any enactment, that is, a constitutional provision, statute, charge, provision, ordinance or regulation, and certainly nothing that creates an obligatory direction. (See, e.g., *Brenneman v. State of California* (1989) 208 Cal.App.3d 812, 817 [a plaintiff asserting liability under section 815.6 must specially allege the applicable statute or regulation].) It therefore is also inadequate.

Plaintiff relies on section 820 as a basis to support “general negligence” against defendant. Section 820, subdivision (a) provides in relevant part as follows: “Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.” Under this provision, public employees are generally liable for an injury caused by their own acts or omission to the same extent as private citizens. (*County of Los Angeles v. Superior Court* (2024) 107 Cal.App.5th 160, 179.) Even with that, plaintiff still must plead that the public employee was negligent – a duty of care, a breach of that duty, causation, and harm. For the same reasons as discussed above (i.e., for the same reasons associated with section 815.2 and 815.4), plaintiff has not done this. Ordinarily, while negligence may be pleaded in general terms and plaintiff need not specify the presence of omission alleged to constitute the breach, because “under the Tort Claims Act all government tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity applies]; *Susman v. City of Los Angeles* (1969) 269 Cal.App.2d 803, 809 [“In view of the fact that tort causes of action against public entities are now based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable.”].) That is the case here.

Plaintiff also relies on sections 835 and 830 as the basis for “general negligence” in the second cause of action. It is true that a public entity will be 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.” Section 830, subdivision (a) defines a “dangerous condition” as a “condition of property that creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” It appears the first cause of action for premises liability is predicated on subdivision (b) (as plaintiff alleges defendant was aware of the dangerous condition it did not create, and despite notice of the defect, did nothing to ameliorate it), while the second cause of action must be predicated on subdivision (a) – i.e., a negligent or wrongful act or omission of a public employee within the scope of employment.³ (See, e.g., *Transavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 653 [section 835 expressly authorizes two different forms of dangerous conditions liability, based on act or omission by government actor that created the dangerous condition, or otherwise by failure to prevent the dangerous condition it did not create based on notice of the dangerous condition].)

³ Defendant in its motion claims that “general negligence and tort principles are inapplicable” when assessing a public entity’s liability and argues that defendant is not subject to liability under general negligence standards. This is true, but it does not tell the full story. Courts have made it clear that a public entity’s ***direct liability*** must be determined exclusively through principles enunciated in section 835. (See, e.g., *Zelig, supra*, 27 Cal.4th at p. 1132 [“we conclude that in determining the public entity’s direct liability, we must evaluate plaintiff’s claim under the provisions of [] section 835”].) This statutory provision makes a public entity directly liable for a dangerous condition under either subdivision (a) or (b). While no doubt plaintiff labels the second cause of action as one in “general negligence,” the court will assume for the sake of argument that plaintiff, given the statutory reference to section 835 in the second cause of action, is relying on a theory of negligence per section 835, subdivision (a), meaning plaintiff is alleging a public employee negligently created the dangerous condition (as opposed to subdivision (b), in which the public entity did not create the danger, but had notice of it, and failed to act). ***Of course, if plaintiff is relying on general negligence principles as a way simply to supplement the first cause of action for premises liability (under section 835, subdivision(b)), a demurrer without leave to amend would be appropriate.*** The court will assume this is not the case, although the court wants plaintiff to clarify at the hearing given the vagaries of the operative pleading. Even with this assumption, the complaint does not survive demurer, for the reasons outlined in the body of this order.

Section 835 subdivisions (a) and (b) establish direct liability for the public entity under either theory, not a vicarious theory of liability. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) In order to rely on section 835, subdivision (a), plaintiff must plead 1) the property was in dangerous condition at the time of the injury; 2) the injury was proximately caused by the dangerous condition; 3) the dangerous condition created a reasonably foreseeable risk of the kind of injury the plaintiff sustained; and 4) (for our purposes) a public employee negligently or wrongfully created the dangerous condition. (*Transavatdi, supra*, 14 Cal.5th at p. 653.) The limited and statutory nature of governmental liability mandates that the claims against the public entity defendant be specifically pled. A claim alleging a dangerous condition may not rely on generalized allegations but must specify in what manner the condition constituted a dangerous condition. (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439.)

Plaintiff's operative pleading contains nothing more than general allegations that have been rejected under existing case law. (See, e.g., *Martinez v. City of Beverly Hills* (2021) 71 Cal.App.5th 508, 518 [even if there is a dangerous condition, a public entity is liable for injuries only for injuries if there was negligence, such as when an employee negligently created the dangerous condition].) A demurrer is therefore appropriate. Plaintiff manifestly has failed to indicate in any way the employee's negligent act or omission done or not done within the scope of employment that created the dangerous condition as required under section 835, subdivision (a). More must be pleaded to establish defendant's direct liability under this provision.

Finally, plaintiff relies on section 840.2, which reads in relevant part as follows: "An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of which was incurred," and that either one of two things occurred: (a) the dangerous condition was directly attributable wholly or in substantial part to a negligent or wrongful act of the employee and the employee had the authority and the funds and other means immediately available to take alternative action which would not have created the dangerous condition; or (b) the employee had the authority and it was his responsibility to take the adequate measures to protect against the dangerous condition at the expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. This statute creates *direct liability* for a public employee (which becomes vicarious liability for the public entity through section 815.2). (See, e.g., *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 383.) The complaint is completely silent about any facts that would implicate the direct liability of an employee under this provision. For example, there are no facts indicating any employee had the duty and/or authority and responsibility as well as the immediately available means to warn plaintiff about the dangerous condition. More must be pleaded.

The vague allegations to the effect that “Defendants were subject to and violated the ADA, California Health & Safety Codes, building codes, and/or ordinances” are far too amorphous and attenuated to survive demurrer, and as noted, plaintiff makes no effort to justify them.

The court has carefully reviewed plaintiff’s opposition. Nothing offered therein alters the court’s determinations.

The court sustains the demurrer to the second cause of action for “general negligence.” The court will afford plaintiff an opportunity to file an amended pleading to remedy the defects out of an abundance of caution.

Summary of Conclusions:

The court requires both parties to appear at the hearing, either in person or by Zoom.

Given the vagaries and generalities of the second cause of action in the operative pleading, the court directs plaintiff to address whether the “general negligence” second cause of action is in reality intended to supplement or bolster the first cause of action for premises liability (not challenged) based on general common law standards. If so, that is improper, and the demurrer will be sustained without leave to amend. The court has assumed that was not plaintiff’s intention, as summarized below, but wants clarification by plaintiff.

Assuming plaintiff is trying to articulate a statutory basis for “general negligence” against defendant as a public entity, the pleading fails. Plaintiff has not alleged a sufficient statutory basis to establish either direct or vicarious liability associated with any claim for “general negligence.” While plaintiff cites various enumerated statutory provisions in the pleading as the basis to support “general negligence,” as discussed and detailed above, not one is sufficiently pleaded, as liability of a public entity requires **specific factual pleading**, something not accomplished in the current pleading. The vague allegations offered by plaintiff that defendant violated the “ADA, California Health & Safety Codes, building codes, and/or ordinances” are too vague to withstand demurrer. Out of an abundance of caution the court will sustain the demurrer with leave to amend, and afford plaintiff 30 days from today’s hearing to file a first amended complaint. With all of this, the court puts plaintiff on notice – vague, attenuated allegations in the same vein as offered here, unmoored to any specific factual predicate to establish a statutory basis for “general negligence,” will not be sufficient and thus will not survive. Careful delineation rather than facial superficiality will be required.