PARTIES

Plaintiff	Monica Araiza Ifrain Araiza	Isaac Toveg
Defendant	The State of California	Casper Gorner

PROPOSED TENTATIVE

In a fifth amended complaint, filed on September 12, 2023, Plaintiffs Monica Araiza and Ifrain Araiza filed suit against defendant State of California (defendant) for dangerous condition of public property (Monica only), negligence (Monica and Ifrain), and wrongful death (Monica only). Only the first and third causes of action are at issue in motions currently before the court. Defendant is the only named defendant as to both causes of action.-Defendant has answered.

The fifth amended complaint alleges defendant "improperly owned, operated, managed, designed, planned, engineered, maintained, installed, inspected, repaired, and/or failed to repair" the road at issue, "thereby creating dangerous conditions . . . and exposing drivers to dangerous conditions." Plaintiffs allege there should have been median walls and barricades to prohibit cross-traffic, there was a lack of a warning sign regarding the merging of the two lanes, and the defendant's "maintenance was done carelessly, negligently, inadequately, and improperly and created a hazard, trap and dangerous condition . . ." According to plaintiffs, the accident was foreseeable, defendant had "actual or constructive notice of the dangerous conditions a sufficient time prior to the injury to have taken measures to protect against the dangerous conditions," and the defendant failed to warn. Plaintiffs indicate the dangerous conditions proximately caused the decedent's injuries.

Plaintiffs describe the dangerous conditions beginning with paragraph 24 of the fifth amended complaint, listing the dangerous conditions in subparts (a) to (x). The dangerous conditions include the following: (1) the merging of lanes, which are not visible to drivers traveling northbound; (2) erosion from adjacent land causing the roadway to lack sufficient traction; (3) improper materials used to construct the road; (4) a dangerous road surface; (5) the absence of a clear zone on the right side of the roadway; (6) improper curvature, geometry, and elevation of the roadway; (7) the right shoulder was too narrow; (8) the signage was improper; (9) the rate of speed allowed when viewed with the actual volume of traffic at or near the accident site was "in excess of reasonable standards at the time of design, construction, repair, and the date of collision," exacerbated by improper use of signals/signage/sight-lines; (10) motorists could not "gauge and understand the speed and intentions of oncoming drivers"; (11) improper placement of roadway markings and signage; (12) obstruction of motorist's views; (13) lack of proper shoulder stripping/fog lines; (14) improper lighting; failure to repair the roadway; (15) failure to install speed bumps, strips and warning signs in both directions; (16) and failure to install "painted delineation" and "sight distances." Plaintiffs expressly claim that defendant was put on sufficient notice of all these dangers.

There are two motions before the court, both filed by defendant. Each motion concerns the first and third causes of action. The first is a "Motion for Terminating Sanctions," asking the court to dismiss both causes of action against defendant (or in the alternative, to issue evidentiary sanctions against plaintiffs). The second is a Motion for Summary Judgment as to both causes of action. Plaintiff has filed oppositions.

Each motion will be examined separately, starting with the termination motion.

A) Motion for Terminating Sanctions (or in the Alternative, Evidentiary Sanctions)

On December 19, 2025, defendant filed a motion to terminate the action involving both causes of action against it, or, in the alternative, for evidentiary and monetary sanctions against plaintiffs. According to defendant, plaintiffs have a long history of failing to comply with court discovery orders in this case, starting on March 15, 2023, when the court, after defendant filed two Motions to Compel because no responses had been filed, set a discovery deadline of April 19, 2023, which was ignored. On January 17, 2024, the defendant filed a third Motion to Compel, and this Court ordered Plaintiffs to produce further responses within 30 days and to pay monetary sanctions in the amount of $1,500.

On September 3, 2025, the defendant filed a fourth Motion to Compel Further Responses, which the court granted on October 1, 2025. In the order, this Court required plaintiff to further respond to Special Interrogatories, Set One, Nos. 31, 32, 34, 35, 40, 43, 49, 55, 57, 58 and 63 within 30 days of the written order. On November 10, 2025, plaintiffs served discovery responses in which plaintiffs' counsel's indicated in an email that the responses "are mostly the same as I emailed you back in August 2025."

In support of the motion to terminate, defendant also filed a "Separate Statement" on December 19, 2025, detailing plaintiff's responses after the court granted defendant's motion to compel further responses to Special Interrogatory Nos. 31, 32, 34, 35, 40, 43, 49, 55, 57, 58, and 63 on November 10, 2025. Plaintiff's objections in the November 10, 2025, responses, are substantively similar (if not functionally the same) as those that were rejected by the court on October 1, 2025.[1] According to defendant, it has attempted to obtain meaningful responses to the disputed interrogatories to no avail. Based on plaintiffs' dilatory and desultory responses, defendant urges the court to terminate the lawsuit in its entirety, pursuant to Code of Civil Procedures section 2023.030, subdivision (d), or in the alternative, preclude evidence (presumably at both summary judgment and if appropriate at trial) pursuant to Code of Civil

[1] The court made it very clear in its October 1, 2025, order that it was placing both parties on notice that their discovery efforts to date had been less than satisfactory (that is why no sanctions were awarded). Even with that, the court expressly rejected plaintiff's objections offered to Special Interrogatory Nos. 31, 32, 34, 35, 40, 43, 49, 52 (which was not in the signed order, erroneously referencing No. 53), 55, 57, 58, and 63. Plaintiffs, given this order, could neither renew old objections nor raise new ones (as they were not previously advanced in the context of the motion to compel further responses).

Procedure section 2023.030, subdivision (c). Defendant also asks for monetary sanctions in the amount of $4,675 no matter which course is chosen.

On March 2, 2026, plaintiffs filed a late opposition, including a "Statement in Response in Opposition," and counsel's declaration. Opposition motions must be filed nine (9) court days before the hearing. (Code Civ. Proc. § 1005, subd. (b).) The opposition was filed seven (7) court days before the hearing. Defendant filed a timely reply on March 3, 2026. These deadlines exist for a reason, and plaintiffs were clearly afforded more than ample time to file a timely opposition. As such, the court will strike plaintiffs' opposition filed on March 2, 2026, as untimely under the Code of Civil Procedure.

The Civil Discovery Act authorizes sanctions for conduct constituting misuse or abuse of various discovery methods. (*City of Los Angeles v. PricewaterhouseCoopers, LLP* (2024) 17 Cal.5th 46, 61.) Misuses of the discovery process " 'include, but are not limited to,' failures to respond or submit to authorized methods of discovery, making unmeritorious objections without substantial justification, and making evasive responses." (*Id.* at pp. 64–65; see Code of Civ. Proc., § 2023.010.) Available remedies for discovery misuse include "monetary sanctions, evidentiary sanctions, issue sanctions, and terminating sanctions." (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604; see *City of Los Angeles*, *supra*, at p. 62; § 2023.030, subds. (a)–(d).)

"Courts have articulated two major guidelines for imposing sanctions under . . . the . . . Civil Discovery Act . . . First, because the very purpose of discovery is to promote the efficient and effective conduct of trial, discovery sanctions are not to be used 'to provide a weapon for punishment, forfeiture and the avoidance of a trial on the merits.' " (*City of Los Angeles, supra*, 17 Cal.5th at p. 63; see *Lopez, supra*, 246 Cal.App.4th at p. 604 ["The trial court should select a sanction that is ' " 'tailor[ed] . . . to the harm caused by the withheld discovery.' " ' "].) "Second, a more severe sanction is disfavored if a lesser sanction is available." (*City of Los Angeles*, at p. 63; see *Lopez*, at p. 604.) "This means that a court ordinarily must consider monetary sanctions . . . before it proceeds to consider whether other nonmonetary sanctions are appropriate to address the misconduct at issue." (*City of Los Angeles, supra*, 17 Cal.5th at p. 63; see *Lopez, supra*, 246 Cal.App.4th at p. 604 ["The discovery statutes . . . 'evince an incremental approach to discovery sanctions, *starting* with monetary sanctions and *ending* with the ultimate sanction of termination.' "].) Indeed, under the Civil Discovery Act, monetary sanctions are generally considered mandatory, whereas nonmonetary sanctions are discretionary or permissive. (Compare Code Civ. Proc., § 2023.030, subd. (a) ["If a *monetary* sanction is authorized by any provision of this title, the court *shall* impose that sanction" (italics added)], with *id.*, subd. (b) ["The court *may* impose an issue sanction" (italics added)]; see *City of Los Angeles*, at p. 62, 324 Cal.Rptr.3d 410, 553 P.3d 1194 [noting that subds. (b)–(e) of § 2023.030 do not "mandate[ ] imposition of the[ ] various nonmonetary sanctions in the same manner as subdivision (a)" makes mandatory the imposition of monetary sanctions].) "Although in extreme cases a court has the authority to order a terminating sanction as a first measure [citations], a terminating sanction should generally not be imposed until the court has attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective."

(*Lopez, supra*, 246 Cal.App.4th at p. 604.) Further, "[a] trial court must be cautious when imposing a terminating sanction because the sanction eliminates a party's fundamental right to a trial, thus implicating due process rights." (*Ibid.*; see *Moofly Productions, LLC v. Favila* (2020) 46 Cal.App.5th 1, 12, 259 Cal.Rptr.3d 502 [" 'A decision to order terminating sanctions should not be made lightly.' "].) " 'But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.' " (*Moofly*, at p. 12; see generally *Higginson v. Kia Motors America, Inc.* (Jan. 9, 2026, No. D082322) ___ Cal.App.5th ___ [2026 WL 280643, at *15].)

The court finds plaintiff's discovery responses, most notably following the October 1, 2025, court order, to be inappropriate. The court made it clear on October 1, 2025, that plaintiff's evidentiary objections were without merit. Plaintiffs nevertheless renewed them.

The court finds monetary sanctions will not cure any discovery abuses. The court also rejects defendant's claim that terminating sanctions are appropriate, as less severe sanctions will cure the problem. Evidentiary sanctions are sufficient to remedy plaintiffs' discovery abuses, simultaneously protecting defendant from unanticipated evidence while reinforcing the sanctity of the court's discovery orders. The court will preclude plaintiffs from submitting evidence offered in opposition to defendant's Motion for Summary Judgment that involves evidence that should have been disclosed following the court's October 1, 2025, discovery order. Specifically, the court will preclude plaintiff from presenting evidence that was otherwise at issue in Special Interrogatory Nos. 31, 32, 34, 35, 40, 43, 49, 53, 55, 57, 58 and 63. The court discusses the impact of this determination at the conclusion of this order.

B) Summary Judgment Motion

The court will address some preliminary issues associated with defendant's Summary Judgment Motion; detail some evidentiary problems with plaintiff's opposition Separate Statement; examine the merits of plaintiff's two motions to exclude evidence and defendant's motion to exclude plaintiff's evidentiary proffer; explore the legal background that frames the issues to be addressed; and then discuss the merits of defendant's motion, focusing only on those arguments that are dispositive, concluding with a final discussion about the impact of the court's evidentiary sanctions noted above. The court will provide a summary of its conclusions.

1) Preliminary Matters

Defendant advances seven (7) arguments to support its claim for summary judgment in its "Separate Statement," as follows:1) Issue 1: ***First Cause of Action:*** the Property Was Not In a Dangerous Condition (pursuant to Gov. Code, § 835), listing undisputed issues 1 to 22 in support; 2) Issue 2: ***First Cause of Action:*** Defendant did not negligently create nor did it have notice of a Dangerous Condition at the Accident Location, listing as Undisputed Issues of Undisputed Fact Nos. 24 to 30; 3) Issue 3: ***First Cause of Action***: Defendant is Immune from Liability pursuant to Government Code section 830.6, design immunity, listing Undisputed Issues of Material Fact Nos. 31 to 50; 4) Issue 4: ***First Cause of Action:*** Defendant Fulfilled Any

Duty to Warn of any "Concealed" Dangerous Condition pursuant to Government Code section 830.8, listing Undisputed Issues of Material Fact Nos. 51 to 60; 5) Issue 5: ***First Cause of Action:*** Defendant had No Duty to Provide Lighting at the Accident Location, listing Undisputed issues of Material Fact Nos 61 to 66 thereunder; 6) Issue 6: ***First Cause of Action***; Plaintiff's Factually Devoid Discovery Responses Establish She Does not Have Evidence to Support Her Claims, listing Undisputed Issue of Material Fact Nos. 67 77; and 7) Issue 7: ***Third Cause of Action:*** Wrongful Death Claim Fails as a Matter of Law, advancing Undisputed Issues 78 to 80.)

Defendant is raising arguments associated with specific causes of action, which requires summary adjudication, not summary judgment. Yet defendant, in its "Notice of Motion," does not request summary adjudication, only summary judgment. There is of course a difference between the two: while the same standards that apply to a motion for a summary judgment also apply to a motion for summary adjudication, a summary adjudication motion only seeks summary resolution of a portion of a lawsuit (such as a particular cause of action) rather than the entirety of the complaint. It is settled that the "Notice of Motion" determines what the court has jurisdiction to determine between the two. (*Gonzales v. Superior Court* (1987) 189 Cal.App.3d 1542, 1545 ["Only the grounds specified in the notice of motion may be considered by the trial court. [Citations.]"]; see Cal. Rules of Court, rule 3.1350(b) ["If summary judgment is sought, the request must be stated separate in the notice of motion].)

In this case, given the relationship between the first and third causes of action, as alleged, any success with the first six issues necessarily impacts the viability of the third cause of action; that is, summary judgment is being requested despite the more limited focus. A problem exists as to defendant's seventh issue, which focuses exclusively on the viability of the third cause of action for wrongful death, with arguments that implicate summary adjudication only. The court has no power to assess the merits of that argument, and therefore, will not do so.

2) Plaintiff's Opposition Separate Statement Contains a Number of Defects

The court overrules all plaintiff's evidentiary objections offered in the opposition Separate Statement that are directed to a claimed issue of undisputed fact itself, because undisputed issues of fact are not evidence (and are not considered a judicial admissions). (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 747.)

Additionally, the court overrules all evidentiary objections advanced in the opposition Separate Statement that are made to evidence offered by defendant to support claims of undisputed issues of material fact when (as to those objections) plaintiff failed to file a separate motion (as he did to other evidence discussed in Subpart B (3) of this order). California Rules of Court, rule 3.1354 (b) requires that evidentiary objections must be served and filed ***separately*** from the other papers and not be made for the first and only time in a separate statement. (*Hodjat v. State Farm Mutual Automobile Ins. Co*. (2012) 211 Cal.App.4th 1, 8]; see also *Universal City Studios Credit Union v. CUMIS Ins. Society* (2012) 208 Cal.App.4th 730, 734, fn. 1 [including

evidentiary objections in separate statement, "as opposed to a *separate document raising only objections*, was improper"].)[2]

Finally, on a number of occasions in the opposition Separate Statement plaintiff in response "disputes" issues raised by defendant either by pointing to the unverified fifth amended complaint as the supporting evidence or by offering ***no*** evidence at all. This is inappropriate. (Code Civ. Proc., § 437c, subd. (p)(2) [plaintiff "shall not rely upon the allegations . . . of its pleadings to show that a triable issue of material facts exists']; Cal. Rules of Court, rule 3.1350(f)(2) ["an opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted," with citation to evidence based on exhibit, title, page, and line numbers].) The court does not view plaintiff's responses that fail to comply with these rules as creating disputed issues of material fact.

3) Evidentiary Objections Offered by the Parties

Plaintiffs have filed written objections to defendant's evidentiary proffer in two separate motions, as required by California Rules of Court, rule 3.1364. In the first motion, filed on February 5, 2025, plaintiff offers 25 separate objections to statements made in the declaration of Robert Copp, defendant's expert civil engineer. In the second motion, filed on February 6, 2026, plaintiff offers 16 objections to the exhibits attached to the declaration of Corie Hancock. Each motion will be examined separately.

a) Robert Copp's Declaration

Robert Copp is defendant's expert, a civil engineer with over 33 years of experience. He explored whether the accident site was "in a dangerous condition at the time of the subject collision creating a reasonably foreseeable risk of injury to drivers when they exercise due care"; whether the design of the subject road was reasonable and adequately visible to drivers; whether the "design of the subject roadway that existed on the day of the subject collision was reasonably and adequately visible to drivers exercising due care"; whether a "median barrier was necessary based on the operations of this roadway"; and whether "an override drain was properly installed along the roadway." As for the dangerous condition, Mr. Copp assessed whether the conditions identified in the fifth amended pleading were dangerous, including issues of merging, additional signage, a median barrier, roadway lighting, the need for additional shoulder, obstructions of motorists' views, previous collisions, and the impact of any lower speed. Mr. Copp also

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[2] Specifically, plaintiffs make a number of evidentiary objections to evidence in defendant's Separate Statement, which they have raised in a separate motion as required pursuant to California Rules of Court, rule 3.1354(b), as discussed in the next section of this order (focusing on evidence in the declaration of Robert Copp and Corie Hancock). At the same time in the opposition Separate Statement, plaintiffs have objected to evidence which is not subject to a separately filed motion, such as that contained in Issue No. 5. The court overrules all the latter objections as violations of *Hodjat* and the above-mentioned Rule of Court.

addressed plaintiff's expert report (attached as Exhibit P) from G. Gsell and Company, LLC, which plaintiffs fail to reference in their opposition Separate Statement.

The court overrules all 25 evidentiary objections advanced by plaintiff as to Mr. Copp's declaration. None of the objections has merit. Mr. Copp can rely on the information he has identified as relevant, which includes hearsay, provided the evidence is reliable and of the type experts in the field reasonably rely upon in forming their opinions. (Evid. Code, § 801.) That appears to be the case in each instance. The statements are not speculative or irrelevant, and do not lack foundation, given they are the basis of his expert opinion. The fact Mr. Copp lacks personal knowledge of the facts is not dispositive (for that is the essence of expert testimony). None of the challenged statements is inadmissible as oral testimony offered to the prove the content of the writing, as the writing has been offered in the defendant's exhibits. The opinions offered by Mr. Copp are admissible and appropriately given by an expert.

b) Corie Hancock's Declaration and Exhibits

Defendant has included the declaration of Corie Hancock, who is a "District 5 Claims Officer" for the California Department of Transportation, who is familiar with defendant's record keeping policies and procedures. Exhibits F, G, H, I, J., K, L, M, O, Q, R, S, W, X, Y, Z, and BB are attached to the declaration. Plaintiff has advanced 15 evidentiary objections, objecting to Exhibits F, G, H, I, J, K, L, M, O, Q, S, W, X, Y, and Z, claiming lack of foundation, authentication, personal knowledge, violations of the rule of completeness, and admission of "double hearsay" (as to objection Nos. 2 and 3). Mr. Hancock's declaration satisfies the requirements for admission of all challenged records – generated by Caltrans in their normal record keeping – under the business records exception to the hearsay rule pursuant to Evidence Code section 1271. A qualified witness need not be the custodian; he need only have sufficient knowledge about the record preparation, which Mr. Hancock has shown. (*Unifund CCR, LLC v. Dear* (2015) 243 Cal.App.4th Supp. 1, 7.) The "rule of completeness" pursuant to Evidence Code section 356 is not a bar to information but allows plaintiff to admit more evidence if desired. The court overrules plaintiff's "double hearsay" objections because no analysis is provided; plaintiff offers no explanation why the entire document involves "double hearsay."

Defendant also offers two motions raising evidentiary objections to plaintiffs' evidentiary proffer in opposition. The first motion involves three (3) objections to statements made in plaintiff's attorney Isaac Toveg's declaration, and two (2) evidentiary objections to the declaration by plaintiff's expert Gary Gsell. The second motion involves 31 objections to the contents of plaintiff's Separate Statement. The court overrules the five evidentiary objections to the declarations of Isaac Tovey and Gary Gsell, as the objections are not material to resolution of the motion. (*Reid v. Google* (2010) 50 Cal.4th 512, 532.) The court overrules defendant's 31 objections to plaintiff's opposition Separate Statement, as the court has addressed the improprieties of plaintiff's opposition Separate Statement.

4) Legal Background

To establish liability under Government Code[3] section 835, a plaintiff must show: "(1) 'that the property was in a dangerous condition at the time of the injury'; (2) 'that the injury was proximately caused by the dangerous condition'; (3) 'that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred'; and (4) either (a) that a public employee negligently or wrongfully 'created the dangerous condition' ***or*** (b) that '[the] public entity had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.' " (*Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 653.) This provision expressly authorizes ***two different forms*** of dangerous conditions liability: an act or omission by a government actor that *created* the dangerous condition (§ 835, subd. (a)); or, alternatively, failure "to protect against" dangerous conditions of which the entity had notice (*id*., subd. (b)). The term "protect against" is statutorily defined to include, among other things, "warning of a dangerous condition." (§ 830, subd. (b); *Tansavatdi, supra,* at p. 653; see also p. 662 [for failure to warn, plaintiff must establish the public entity had actual or constructive notice that the approved designed resulted in a dangerous condition].)

A dangerous condition is one that "creates a substantial risk of injury" when the property is "used with due care in a manner in which its reasonably foreseeable that it will be used." (§ 830, subd. (a); *Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) "A dangerous condition exists when public property [1] 'is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself,' or [2] possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347–1348) citing *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148–149.) Conversely, section 830.2 states a condition is not dangerous "if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used."

The Government Code also provides numerous statutory exceptions that limit claims involving a dangerous condition. "[S]ection 830.6 [design immunity] immunizes liability for having created a dangerous traffic condition under section 830.5, subdivision (a) [the first form of dangerous property discussed above] but does not necessarily immunize liability for failing to warn of a *known* dangerous traffic condition under section 835, subdivision (b) [the second form of dangerous condition discussed above]." (*Id.* at p. 660; see p. 657 [design immunity for a dangerous condition does not necessarily shield the state from liability for a failure to warn of the same dangerous condition]; at p. 666 ["we find nothing illogical" in concluding that "while

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[3] All further statutory references are to the Government Code unless otherwise indicated.

section 830.6 shields public entities from liability for the design of the physical features of a roadway, those entities retain a duty to warn of known dangers that the roadway presents to the public].) Thus, "a plaintiff seeking to impose liability for failure to warn of an immunized design element must prove the public entity had notice that its design resulted in a dangerous condition." (*Ibid.*)

Three things must be shown for design immunity under section 830.6: "(1) [a] causal relationship between the plan and the accident; (2) discretionary approval of the plan prior to construction; [and] (3) substantial evidence supporting the reasonableness of the design." ' " (*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 939.) The first two elements, causation and discretionary approval, involve factual questions to be resolved by a jury, unless the facts are undisputed. (*Alvis v. County of Ventura* (2009) 178 Cal.App.4th 536, 550.) The third element, the existence of substantial evidence supporting the reasonableness of the plan or design, is a legal matter for the court to decide. (*Cornette v. Department of Transportation (2001) 26 Cal.4th 63,* 66.) "The rationale for design immunity is to prevent a jury from second-guessing the decision of a public entity by reviewing the identical questions of risk that had previously been considered by the government officers who adopted or approved the plan or design." (*Id.* at p. 69.)

Finally, the burden of proof for summary judgment when the motion is filed by defendant is settled. " 'To secure summary judgment, a moving defendant may prove an affirmative defense, disprove at least one essential element of the plaintiff's cause of action [citations] or show that an element of the cause of action cannot be established [citations]. [Citation.] The defendant "must show that under no possible hypothesis within the reasonable purview of the allegations of the complaint is there a material question of fact which requires examination by trial." [Citation.] [¶] The moving defendant bears the burden of proving the absence of any triable issue of material fact, even though the burden of proof as to a particular issue may be on the plaintiff at trial. [Citation.] . . . Once the moving party has met its [prima facie] burden, the opposing party bears the burden of presenting evidence that there is any triable issue of fact as to any essential element of a cause of action.' " (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1485; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859-851 [moving party bears initial burden to make a prima facie showing of the nonexistence of any triable issue of material fact; if this burden is carried, the opposing party must show the existence of a triable issue of material fact].) Courts should resolve all doubts in favor of the nonmoving party. (*Ochoa, supra,* at p. 1485.)

5) Merits

The court does not need to address all arguments advanced by defendant in order to resolve the merits of the summary judgment motion. Instead, the court will focus on four arguments, which in the court's view are dispositive.

a) Are There Disputed Issues of Material Fact to Show that There was a Dangerous Condition on Public Property as a Condition Precedent to Liability under either Section 835 Subdivision (a) (dangerous condition that was designed by defendant) or Subdivision (b) (dangerous condition and failure to warn)? ***No.***

Defendant contends as a predicate matter – either to section 835, subdivision (a) concerning a dangerous design condition or to section 835, subdivision (b) concerning a known dangerous condition and failure to warn – that the undisputed evidence shows the accident site ***was not in a dangerous condition*** at the time of decedent's accident, meaning plaintiff cannot establish any liability theory at trial. That is certainly the opinion of expert Robert Copp, who indicated that the subject collision location had no physical defects and was not in a dangerous condition at the time of the collision. Maintenance records showed that the roadway was routinely maintained. There were no blind curves or overgrown bushes blocking views of the warning signs as that approached the curve, the signing and traffic warning devices in existence on the day of the subject collision, were adequately visible to motorists operating with due care, and properly alerted the motorists to the end of the passing lane and provided them with needed information to adjust and anticipate the merger. In addition, applicable engineering standards do not require additional traffic control devices such as guardrails, larger signs, or any change in the transition at the end of the passing lane and the posted speed sign was proper and reasonable, and no curve warning advisory signs for a slower speed into the curve at the subject collision location were warranted. Based on this evidence, defendant has satisfied its prima facie burden to show no dangerous condition existed, shifting the burden to plaintiff to create a disputed issue of material fact.

In their opposition Separate Statement, plaintiff disputes with **evidence** only the following issues:

- **Issue No. 8** (the roadway surface at the time of the accident was clear and dry wit no obstructions), by reference to Exhibit 1, which is a picture taken by the reporting officer at the scene of the accident to show a slight gathering of dust and some loose stones on the "drainage culvert," highlighted by a handwritten notation (plaintiff claims the picture shows "lots of rocks, gravel, dirt, etc."];
- **Issue No. 14** (No witnesses or first responders reported that any of the traffic signs at the accident location were either missing, damaged or obstructed), by reference to the deposition testimony of CHP Officer Charles Hodgdon;
- **Issue No. 17** (Caltrans Highway Design Manual in use during the accident's location construction required approximately 150 meters of stopping sight distance for a speed of 88 kilometers per hour and approximately 590 meters of passing sight distance for a speed of 88 kilometers per hour), by reference to defendant's evidentiary proffer – Exhibit L (1995 Caltrans Highway Design

Manual), Exhibit 1 (Declaration of Robert Copp), and Exhibit 3 (Declaration of Corie Hancock).

- **Issue No. 18** (The stopping sight distance and the passing sight distance at the accident location was more than the minimum required sight distances in effect at the time of the accident), by reference to defendant's evidentiary proffer – Exhibit L (1995 Caltrans Highway Design Manual), Exhibit 1 (Declaration of Robert Copp), and Exhibit 3 (Declaration of Corie Hancock).

None of plaintiff's evidence as identified in the opposition Separate Statement establishes a disputed issue of material fact that a dangerous condition existed at the time of the accident, at least sufficient to create disputed issues of material fact in the wake of Mr. Copp's expert opinion. (*Chamblin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 226 [responsive evidence that gives rise to no more than mere speculation is not sufficient to establish a triable issue of material fact].) An issue of fact can only be created by a conflict of ***evidence***; it is not created by speculation, conjecture, imagination, or guess work. (*Brown v. Ransweiller* (2009) 171 Cal.App.4th 516, 525.) In each instance, all plaintiff has presented is speculation and conjecture about whether a dangerous condition existed.

For example, regarding Issue No. 8, while the picture relied upon by plaintiffs shows the presence of some dirt, it does not indicate a dangerous condition. Plaintiffs fail to address the fact that the photographs reviewed by Mr. Copp essentially cover the same matter in the picture offered by plaintiff. Significantly, plaintiff makes no reference to his own expert's declaration, Mr. Gary M. Gsell, which is attached to Mr. Toveg's declaration but not referenced in the opposition Separate Statement. Mr. Gsell's declaration does not indicate that the area highlighted in the picture reflects a "dangerous condition" of the road as defined in section 830, subdivision (a).

The same is true for plaintiff's evidence offered as to Issue No. 14. The evidence consists entirely of the deposition testimony of CHP Officer Charles Hodgton (Exhibit E to defendant's evidentiary proffer). According to the transcript the road surface was dry and the posted limit for this area was 55 miles per hour. He saw "signs in the location where the two lanes become one," recalled "no issues with the signs" or anything unusual about them, and recalled no foliage covered them. Nothing in this testimony creates a disputed issue of fact that a dangerous condition existed.

The evidence offered by plaintiff to rebut Issue Nos. 17 and 18 is no different. Exhibit L consists of copies of Caltrans' 1995 Highway Design Manual with specific excerpts, focusing on Table 201.1 called "Sight Distance Standards." Plaintiffs claim cursorily in their opposition Separate Statement that the 1995 Highway design is over 30 years old and "needs to be updated," but provides no ***evidence*** this is true. The excerpt is not evidence of a dangerous condition. Plaintiffs' allegation (or at least the inference plaintiff wishes the court to draw) is speculative and amounts to nothing more than conjecture. Paragraph 30 of Robert Copp's

declaration provides no solace to plaintiff, for in that paragraph Mr. Copp simply indicates that the accident site comports with Table 201.1 of the Highway Design Manual, as follows: "A stopping sight distance of 500 feet and passing sight distance of 1950 feet is required by HDM Table 201.1, which requires approximately 150 meters of stopping sight distance at 88 kilometers per hour and approximately 590 meters of passing sight distance at 88 kilometers per hour" and these distances "are clearly visible" via the photos in Exhibit Z. Mr. Copp indicates the accident site complied with the safety contours outlined in the Highway Manual, and there is no ***evidence*** that these guidelines are now inappropriate or improper. Plaintiffs reference to Corie Hancock's declaration and Exhibit L, which are excerpts from the Caltrans Highway Manual Design, adds nothing to the calculus. Again, nothing in the document creates an evidentiary conflict about the existence of a dangerous condition.

The only evidence of a *possible* issue about dangerousness is arguably contained Mr. Gsell's declaration, in which he opines in paragraphs 8 and 9 that the "police report indicated that the vehicle, upon hitting the open channel caught and was spun across the roadway into opposing traffic"; and "it is common practice to place small guard rails over open areas. If the car had not caught and spun it, the vehicle would not have been at the impact location." As noted, plaintiffs do not rely on this declaration in their opposition Separate Statement at all. At best, Mr. Gsell's declaration is speculative, offered without explanation, and is therefore insufficient to establish a triable issue of material fact. (*Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 226.) The inferences from available evidence must be reasonable, and must give rise to more than speculation, conjecture, imagination, or guesswork. (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647.)

The court determines that summary judgment is appropriate as to the first and third causes of action because there are no disputed issues of material fact that there was a dangerous condition.

b) Is Defendant Immune for Liability under Section 835, subdivision (a) Based on Design Immunity per section 830.6? **Yes.**

Even if the court assumes arguendo that there are disputed issues of material fact about the existence of a dangerous condition as a predicate for any theory of dangerous condition and further, pursuant to section 835, subdivision (a) that defendant's employees negligently designed and/or created the dangerous condition, defendant has presented undisputed evidence that it is immune from liability pursuant to section 830.6. As noted above, a public entity may shield itself from liability by claiming design immunity under section 830.6 by showing the existence of three elements: (1) a causal relationship between the plan and the accident; (2) discretionary approval of the plan prior to construction; and (3) substantial evidence supporting the reasonableness of the design. (*Stufkosky v. Department of Transportation* (2023) 97 Cal.App.5th 492, 496; see also *Tansavatdi, supra,* 14 Cal.5th at p. 653.) "Design immunity is often raised on a motion for summary judgment or nonsuit, thereby enabling the trial court to find the defense

established as a matter of law. [Citation.] 'The first two elements, causation and discretionary approval, may only be resolved as issues of law if the facts are undisputed.' " (*Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929, 946, quoting *Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 940.)

In its Separate Statement, defendant identifies undisputed issues of material fact Issue Nos. 31 to 50. Plaintiffs in their operative pleading concede the necessary or required causal connection between the adopted plan and the accident. (*Stufkosky, supra,* 97 Cal.App.5th at p. 497 [evidence of causal connection is not necessary when the complaint clearly alleges the required casual connection].) This point is outlined in Issue No. 31, which plaintiffs only partially dispute (and otherwise seem to agree that the fifth amended complaint pleads causation between any negligent design and the accident). Thus, the first element of design immunity has been established undisputedly as a result.

As for the second element of design immunity, which must show defendant's discretionary authority to approve the plan prior to construction, the rules are settled. "Discretionary approval ' "simply means approval in advance of construction by the legislative body or officer exercising discretionary authority." ' [Citation.] It is satisfied by showing the plan or design was *either* (1) 'approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval' *or* (2) 'prepared in conformity with standards previously so approved.' [Citations.] If the relevant facts are undisputed, the issue of discretionary approval may be resolved as a matter of law." (*Kabat v. Department of Transportation* 107 Cal.App.5th 651, 661-662, quoting § 830.6; *Hampton v. County of San Diego, supra,* 62 Cal.4th at p. 350; *Grenier v. City of Irwindale, supra*, 57 Cal.App.4th at p. 940.) " 'Discretionary approval need not be established with testimony of the people who approved the project. Testimony about the entity's discretionary approval custom and practice can be proper even though the witness was not personally involved in the approval process.' [Citations.] 'A detailed plan, drawn up by a competent engineering firm, and approved by [the public entity's] engineer in the exercise of his or her discretionary authority, is persuasive evidence of the element of prior approval.' " (*Kabat v. Department of Transportation, supra*, 107 Cal.App.5th at pp. 661-662.)

In Issue No. 32 of its Separate Statement, defendant alleges that the designs involving the merger of the two lanes, the asphalt drainage culvert, the placement of the signs, the curvature of the roadway, the shoulder width, and the speed limit setting were approved prior to the construction "by licensed engineers in their discretionary authority . . ." This is supported by the declaration of Robert Copp, who stated that Caltrans' authority to design roadways is delegated to its employed licensed civil engineers and consultants, and all relevant documents and plans he reviewed about the accident site were approved prior to construction by licensed engineers in the exercise of their discretionary authority, and projects were built or constructed according to the approved plans. Plaintiffs in their response to Issue No. 32 do not dispute defendant's evidence that shows *either* the plans were approved in advance of the construction

by some an employee exercising discretionary authority to give such approval or the plans were prepared in conformity with standards previously so approved. Instead, in response, plaintiffs state: "Just because they were approved does not make them safe condition [sic] nor lack of dangerous conditions." This is not enough to overcome the clear import of defendant's evidence. There are no disputed issues of material fact concerning the second element of design immunity. (*Stufkosky, supra*, at p. 498.)

The third element of design immunity exists if the court determines there is any substantial evidence upon the basis of which (1) a reasonable public employee could have adopted the plan or design or the standards therefor; or (2) a reasonable legislative body or other body or employee could have approved the pan or design of the standards therefor. (§ 830.6; *Stufkosky, supra*, 97 Cal.App.5th at p. 499.) "Any substantial evidence" may consist of an expert opinion of a civil engineer as to the reasonableness of the design. (*Ibid*.) Defendant has submitted the declaration of Robert Copp who reviewed all plans concerning the design of the roadway (Dec. ¶¶ 25 to 36), and all the documents he reviewed are part of the record before the court. He concluded the "design of the roadway that existed on the day of the subject collision including sight distance, sign placement, lane end taper (transition)," and roadside overside drains "were reasonable." Mr. Copp noted there were two projects completed in the years before the subject collision. In the first project (05-376504), two passing lanes were constructed, and Mr. Copp agreed that the "curve at the subject collision was built to standard for a two-lane highway and was appropriately not considered for design exception for additional signing. He also agreed the designs for overside drains "were designed per the Standard Plans" and the design was reasonable. A grate would not be used in this location and an "open outside drain is reasonable design for this location." This is substantial evidence sufficient to satisfy this element. (*Stufkosky, supra*, at p. 500.) Defendant has satisfied its prima facie burden to show design immunity insulates defendant from liability under section 835, subdivision (a), shifting the burden to plaintiff to create a disputed issue of material fact.

Plaintiffs manifestly have failed to satisfy that burden. While plaintiffs "dispute" or partially dispute all Issue Nos. 31 to 50, plaintiffs offer essentially only evidentiary objections (which are improper in a separate statement); plaintiffs actually provide evidence to controvert Issue Nos. 39 and 40, which are the same statements of undisputed fact made to Issue Nos. 17 and 18, discussed above, with the same evidence offered by plaintiffs there. Not only does the evidence fail to create a disputed of issue material fact about the existence of a dangerous condition, it also fails to create any disputed issue of material fact about the third element of design immunity. The court concludes that substantial evidence shows a reasonable public employee would have adopted the design plans as offered even without the features and changes plaintiff contends should have been considered and included, and plaintiffs have failed to present sufficient evidence to create a disputed issue of material fact. (*Stufkosky, supra*, 97 Cal.App.5th at p. 500.)

Summary Judgment is appropriate as to first and third causes of action predicted on the negligent design of a dangerous condition pursuant to section 835, subdivision (a).

c) Is Summary Judgment Appropriate for any Claim Predicated on Section 835, Subdivision (b), Because there are no Disputed Issues of Material Fact as to Whether Defendant had Actual or Constructive Notice of any Dangerous Condition*?* ***Yes.***

Pursuant to section 835, subdivision (b), plaintiff must prove that the public entity had actual or constructive notice that the approved design resulted in a dangerous condition, and that the dangerous condition qualified as a concealed trap (i.e., would not have been reasonably apparent to, and would not have been anticipated by a person exercising due care, and the absence of a warning was a substantial factor in bringing about the injury). (*Id*. at pp. 661-662.)

For actual notice, there must be some evidence that defendant's employees had knowledge of the particular dangerous condition in question – it is not enough to show that the public entity's employees had general knowledge the condition can sometimes occur. (*Martinez v. City of Beverly Hills* (2021) 71 Cal.App.5th 508, 519.) As a general rule, other accidents may be used to show notice of a dangerous condition. The evidence must relate to accidents which are similar and occur under substantially the same circumstances. A court may consider the other side of the coin – the absence of prior incidents or accidents – in evaluating notice to the public entity. A public entity carries its burden on summary judgment to show that it lacked actual notice by submitting evidence that it had not received any reports or complaints about prior similar incidents. (*Id.* at p. 521.) A public entity has constructive notice of a dangerous condition only if the evidence establishes the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. When the defect lacks sufficient conspicuity to impute notice, courts may determine the defect is not obvious as a matter of law. (*Id.* at p. 524.) The absence of any prior incidents is relevant for both actual and constructive notice. (*Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 243.

The evidence reveals that defendant was never placed on actual notice of any defect. Robert Copp, in his declaration, explained he analyzed the "collision history for five years before the subject collision, including collision document through the Traffic Accident Surveillance and Analysis System (TASAA), which is the Caltrans' database combining traffic collision reports prepared by CHP with Caltrans' highway inventory, giving rise to Tables B, C, and Wet Table C (for five years before the subject collision) (all included as part of the record). Table C and Wet Table C "did not identify any potential investigation locations near the subject collision site." Of the 15 individual traffic collision reports he reviewed, five collisions involved multiple vehicles while ten were solo vehicle collisions. Each collision involved property damage only or included a minor injury. No collision, apart from the subject collision, were a cross-centerline collision. Finally, one collision "had some minor similarity to the subject collision while

travelling in the opposite direction . . . One vehicle attempting to pass while travelling southbound on SB 1, crossed the double yellow line at one point and sideswiped a car going in the same direction." Defendant has presented sufficient evidence to show it did not have actual notice.

Plaintiffs identify no evidence in their opposition Separate Statement to rebut Mr. Copp's testimony. Nor does the record establish any triable issue of material fact regarding actual or constructive notice. There were no prior accidents that would have given rise to any awareness of the alleged defect or a need to investigate the alleged danger now claimed. There is no evidence that anything malfunctioned, and there is nothing offered to suggest routine maintenance put defendant on constructive notice of any defect. Simply put, nothing identified by plaintiffs in opposition suggests anything conspicuous about any danger sufficient to support actual or constructive notice.[4]

The court grants summary judgment as to the first and third causes of action based on a failure to warn theory pursuant to section 835, subdivision (b).

d) Is Summary Judgment Appropriate Because Undisputed Issues of Material Fact Indicate that Defendant Had No Duty to Provide Lighting at the Accident Site*?* ***Yes.***

In the fifth amended complaint, plaintiff alleges that improper lighting was a dangerous condition at the time of the accident. (¶¶ 16, 19.) Although not a prominent part of the operative pleading, the failure to provide adequate lighting appears as an adjunct to and reinforcement of the first and third causes of action, and as a result will be addressed separately.

The case law is clear. "[T]he general rule is that ' "[i]n the absence of a statutory or charter provision to the contrary, it is generally held that a municipality is under no duty to light its streets even though it is given the power to do so, and hence, that its failure to light them is not actionable negligence." ' " (*Plattner v. City of Riverside* (1999) 69 Cal.App.4th 1441 1444; see also *Stathoulis v. City of Montebello* (2008) 164 Cal.App.4th 559, 569, fn. 4; *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 133; *Antenor v. City of Los Angeles* (1985) 174 Cal.App.3d 477, 483.) "[D]arkness is a naturally occurring condition that the city is under no duty to eliminate." (*Plattner*, at p. 1445.) Notwithstanding this general rule, " ' "[a] duty to light, and the consequent liability for failure to do so, may ... arise from some peculiar condition rendering lighting necessary in order to make the streets safe for travel." ' " (Id. at p. 1444.)

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[4] This determination obviates the need to address whether design immunity per section 830.6 applies to any failure to warn theory per section 835, subdivision (b), as articulated in *Stufkosky, supra*, 97 Cal.App.5th at p. 501, and whether signage immunity applies per section 830.8, as raised in defendant's Separate Statement.

In *City of San Diego v. Superior Court* (2006) 137 Cal.App.4th 21 the court addressed whether a government agency was liable because it could have made the physical condition of the property safer if lights had been added. In that case, a car turning left on a city street at dusk was struck by an approaching car engaging in an illegal street race and driving without headlights. (*Id.* at p. 26.) It was undisputed the street was straight with unobstructed visibility, illegal street races frequently took place on the street, and the intersection in question was not well lit at night. (*Id.* at pp. 27, 30–31.) The Court of Appeal concluded there was no dangerous condition as a matter of law: "We cannot conclude the roadway was inherently defective at the time of this accident. Despite the lack of lights, there is no claim that if used by all drivers in the manner intended there is some inherent defect in the roadway where the accident took place." (*Id.* at p. 30.) As for the absence of lighting, the court found that "without a showing of previous accidents caused by poor lighting, we are led to conclude that the lighting is sought as a preventative safety measure. As such, it does not describe a defective physical condition." (*Id.* at p. 31.)

City of San Diego appears dispositive here. The root problem with plaintiff's claim is the same root problem identified in *City of San Diego* – the absence of street lighting does not amount to a dangerous condition of public property. In the apt words of *Plattner,* darkness is simply a natural condition. If darkness were a condition of property that would have to be ameliorated, the burden on government entities would be incalculable. It may be that a condition of public property, when coupled with a lack of street lighting, constitutes a dangerous condition. But that cannot be the case here, as there is no evidence there was a dangerous condition in the first place. Without a showing of previous accidents caused by poor lighting, plaintiff's claims cannot go forward.

Nothing offered in plaintiffs' opposition Separate Statement points to any disputed issues of material fact on this issue. Plaintiffs for the most part simply advance evidentiary objections. In fact, the only evidence plaintiffs identify as creating a disputed issue of material fact is regarding Issue No. 66, which reads as follows: "Before the collision, Hanson's vehicle moved to the right shoulder, and brake lights illuminated. The vehicle then rotated counterclockwise and was propelled back across the lanes and struck the vehicle carrying the decedent." Plaintiffs partially dispute this, claiming "defendant failed to mention that Hanson's tires got caught in the Drainage culvert and then rotated clockwise," citing to Exhibit B, the "Statement of Evidence: CHP Traffic Collision Report Number 9755-22—00050." However, this does not suggest that defendant had a duty to light the area because of an otherwise preexisting dangerous condition.

Accordingly, summary judgment is appropriate.

e) Evidentiary Sanctions and Impact on Present Motion

The court's ultimate determination – that summary judgment is appropriate as to the first and third causes of action – is bolstered by the fact plaintiffs would not be able to create disputed issues of material fact with evidence that should have been disclosed pursuant the court's October

1, 2025, order, but was not. Based on the court's October 1, 2025, ruling, the following evidence (directly relevant to critical issues at play in resolving the motion for summary judgment) would not have been admissible by plaintiff for this purpose:

1) documents and/or people that support any claim that the roadway suffered insufficient traction or friction;

2) documents that support any claim that material used to construct or maintain the roadway was improper;

3) any documents that support the argument that the curvature and geometry of the roadway was dangerous;

4) any documents that support the claim of "improper signage";

5) any documents that support any claim there was an obstruction of the motorist's view at the accident site;

6) any documents that support a reduction of speed at the site of the collision was warranted or required;

7) any documents that support a claim that trees at the accident site were not properly trimmed; and

8) documents that identify any previous accidents caused by poor lighting at the accident site.

While it seems clear to the court that plaintiffs have not presented any material evidence on any critical issue, it also seems clear to the court that plaintiffs could not do so even if such evidence existed, following the court's finding of discovery abuse. This simply reinforces the court's decision to grant summary judgment.

Summary:

The court strikes plaintiff's untimely opposition to the Motion for Termination Sanctions.

The court denies defendant's request for termination sanctions. The court concludes that monetary sanctions will not cure the deficiency, but grants defendant's motion to impose evidentiary sanctions, which are sufficient to cure the abuse problems. This also impacts the trajectory of the summary judgment motion before the court.

The court concludes that it has no authority to address Issue No. 7 raised by defendant in its Separate Statement, as its Notice of Motion fails to request summary adjudication. The court also finds that plaintiff's Opposition Separate Statement contains improper evidentiary objections, both to issues of undisputed facts and to underlying evidence offered in support without a separate motion raising the evidentiary objections. As to those defects, the court overrules all objections. The court also finds that at times plaintiffs, in their opposition Separate Statement, dispute

defendant's claims without any evidentiary support and, sometimes based only on the operative pleading, which is improper.

The court overrules all evidentiary objections raised by plaintiffs in their two motions challenging the declaration/exhibits of Robert Copp and Corie Hancock. The court also overrules both sets of defendant's evidentiary objections, for the reasons discussed in the body of this order.

The court grants defendant's summary judgment motion as to the first and third causes of action (the only two causes of action that impact defendant), because 1) there are no disputed issues of material that a dangerous condition on public property existed as a predicate for any theory of liability per section 835, subdivision (a) or (b); 2) even if the court assumes arguendo there are disputed issues of material fact to show a dangerous condition there are disputed issues of material fact to show defendant was responsible for any negligent design pursuant to section 835, subdivision (a), the undisputed evidence shows defendant is immune pursuant to the design immunity statute per section 830.6; 3) as to any theory for failure to warn pursuant to section 835, subdivision (b), the undisputed evidence shows that defendant did not have either actual or constructive notice of any existing danger or defect; and 4) the undisputed evidence before the court shows defendant did not have a duty to provide lighting, as no dangerous condition existed. The court's conclusions in each instance are buttressed and supported by the impact of its evidentiary sanctions order (even though plaintiff has failed to point to any evidence that would in any event show a disputed issue of material fact on any critical issue).

Defendant is directed to provide a proposed order and judgment for signature.

This leaves the second cause of action as the only one remaining for trial, and the parties should be prepared at the Case Management Conference to discuss how this case will move forward on this cause of action (if it can).