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8 **MARY R. COULTON**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 ELIZABETH QUINN, as an individual and a
12 trustee of the Ayres Quinn Family Living
13 Trust; CAROLINE AYERS, as an individual
14 and a trustee of the Ayres Quinn Family
15 Living Trust; GREG GRUSZYNSKI, an
16 individual

17 Plaintiffs,

18 vs.

19 MARY R. COULTON, an individual,
20 ELYSA STEIN, an individual, NEIL
21 STRAGHALIS, an individual, and DOES 1-
22 50, inclusive

23 Defendant.

24

RELATED CROSS-ACTION

Case No.: CGC-23-606844

) **DEFENDANT MARY COULTON'S**
) **MOTION IN LIMINE NO. 16 FOR AN**
) **ORDER EXCLUDING CLAIMS FOR**
) **STRICT LIABILITY OR NEGLIGENCE**
) **PER SE BASED ON CIVIL CODE**
) **SECTION 832**

) **Date: October 7, 2024**

) **Time: 9:30 a.m.**

) **Dept.: TBD**

) Complaint filed: May 30, 2023

) Trial Date: October 7, 2024


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

2 PLEASE TAKE NOTICE THAT ON **October 7, 2024 at 9:30 a.m.** of the above-
3 referenced Court located at 400 McAllister Street San Francisco, California 94102, Defendant
4 Mary Coulton (“Defendant”) will move this Court for an *in limine* order excluding Plaintiffs
5 from asserting claims for strict liability or negligence per se based on Civil Code Section 832.

6 This motion is made pursuant to Evidence Code §§ 312, 350, 351, 352, 402, 403, 453,
7 and 801-804, and Civil Code Section 832. Defendant’s motion is based upon this Notice, the
8 Memorandum of Points and Authorities attached hereto, and the Declaration of Scott Radcliffe in
9 Support of Motion *in Limine* No. 16 and the exhibits attached to the index of exhibits in support
10 of Defendant’s motions in limine.

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12 Dated: September 30, 2024

ALVES RADCLIFFE LLP

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16 By: SCOTT E. RADCLIFFE
17 Attorney for Defendant
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1 **I. INTRODUCTION**

2 It is anticipated that Plaintiffs will seek to establish a claim of strict liability and/or
3 negligence per se based on Civil Code Section 832. Neither apply. The standard for determining
4 liability for a claim of removal of lateral support¹ is for negligence only. (See Platts v.
5 Sacramento Northern Ry. (1988) 205 Cal.App.3d 1025 at footnote 2.) It further requires
6 Defendant be the cause of the alleged removal and that Defendant's conduct resulted in the wall
7 failure. (Id. see also and (See Lee v. Takao Bldg. Development Co. (1985) 175 Cal.App.3d 565,
8 569.) The wall failed during a record rainstorm. It is undisputed, and there is no evidence that,
9 Defendant removed any lateral support or that she caused the wall failure.

10 Lastly, Plaintiffs cannot assert a negligence per se claim. Plaintiffs cannot establish
11 Defendant violated any statute or that the requirements for negligence per se apply.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **II. ANALYSIS**

14 **A. A Motion *In Limine* is the Proper Procedures By Which a Court May Limit the**
15 **Introduction of Evidence During Trial**

16 In limine motions are designed to facilitate the management of a case, generally by
17 deciding difficult evidentiary issues in advance of trial." (Amtower v. Photon Dynamics, Inc.
18 (2008) 158 Cal. App. 4th 1582, 1593.) 'The usual purpose of motions *in limine* is to preclude the
19 presentation of evidence deemed inadmissible and prejudicial by the moving party. A typical
20 order *in limine* excludes the challenged evidence and directs counsel, parties, and witnesses not
21 to refer to the excluded matters during trial (Id.) "The advantage of such motions is to avoid the
22 obviously futile attempt to un-ring the bell in the event a motion to strike is granted in the
23 proceedings before the jury." (Id.) Courts have inherent power, separate from any statutory
24 authority, to control the litigation before them and to adopt any suitable method of practice, even
25 if the method is not specified by statute or by the Rules of Court. (Id.)

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¹ "Support is lateral when the supported and supporting lands are divided by a vertical plan." (See Marin
Municipal Water Distr. v. Northwestern Pac. R. Co. (1967) 253 Cal.App.3d 83, 89.)

1 **B. A Negligence Standard applies**

2 It is anticipated that Plaintiffs will attempt to argue that Civil Code § 832 provides for
3 strict liability. It does not.

4 The applicable standard for a finding of liability is negligence, not strict liability. (See
5 Platts v. Sacramento Northern Ry. (1988) 205 Cal.App.3d 1025, 1030 and footnote 2² [“The
6 owner or possessor of this land is not liable under the rule stated in this Section **unless he was an**
7 **actor in the withdrawal of support.**”) This has been confirmed by a number of other cases as
8 well. (See Lee v. Takao Bldg. Development Co. (1985) 175 Cal.App.3d 565, 569 [“to recover
9 judgment against an owner **it is essential to show that he or she is guilty of some act of**
10 **negligence in connection with the lateral support** of the adjoining property. Other jurisdictions
11 are in accord in **finding liability only where the party has acted to remove the support.**”]; see
12 also Sager v. O’Connell (1944) 67 Cal.App.3d 27, 32 [““The **sole fault of appellants, if any**
13 **exists, lies in negligently** permitting the lateral support to weaken.”]; see Sprecher v. Adamson
14 (1981) 30 Cal.2d 358, 371 [“The trend in the law is in the direction of **imposing a duty of**
15 **reasonable care** upon the possessor of land with regard to natural conditions of land... The
16 proper test to be applied to the liability of the possessor of land ... is whether in the management
17 of his property he has **acted as a reasonable [person]** in view of the probability of injury to
18 others... It must also be emphasized that the **liability imposed is for negligence**... The question
19 is whether in the management of his property, the possessor of land has **acted as a reasonable**
20 **person** under all the circumstances.”].)

21 In this case, there is no allegation, ***nor any evidence to suggest***, that Defendant removed
22 any lateral support. This is not a removal of lateral support case to begin with since the wall
23 failed during a heavy rainstorm. Plaintiffs’ own expert Patrick Shires confirms this as he testified

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25 ² FN 2 states, “Civil Code section 832 has been interpreted to relax the common law rule of absolute liability
26 for the withdrawal of lateral support only. This statute frees the adjoining owner from the common law liability,
27 provided certain notice conditions are met and the negligence of the excavation is not the proximate cause of the
28 damage. This statute has been held *not* to amend the common law rule of absolute liability for the removal of subjacent
support. (See Marin Mun. Water Dist. v. Northwestern Pac. R.R. Co., *supra*, 253 Cal.App.2d at pp. 94–95.) The statute
does not affect the rules imposing liability on the actor who removes the support.

1 the cause of the wall failure was due to heavy rain fall and the buildup of hydrostatic pressure
2 from the accumulation of rainwater on Plaintiffs' side of the wall. (See IE, Exhibit 4 at p.
3 142:19-143:17) At best, Plaintiffs' claims are for ordinary negligence although they still have no
4 evidence to support that claim either.

5 Section 832 applies *only* in the context of when there is excavation which is not at issue
6 in this case. (See First National Bank v. Village (1891) 92 Cal.96, 99 [*"The purpose of the*
7 *section, in its broadest scope, was to enable the excavator to relieve himself from liability"*; see
8 also McIvor v. Mercer-Fraser Co. (1946) 76 Cal. App. 2d 247, 252 [*"Information as to the depth*
9 *and extent of the excavation may be necessary to afford the landowner an opportunity to protect*
10 *his premises."*]) Subsections 1 through 4 of C.C. Section 832 all refer to excavation work.

11 Defendant moved for a motion for judgment on the pleadings in August 2024. Although
12 the Court denied the motion finding that there were sufficient allegations for a negligence claim,
13 the Court stated, "*Excavation is not an issue in this case, so the exceptions provided for in CC*
14 *832 are not applicable."* (Defendant request the Court take judicial notice of the Court's ruling
15 on August 14, 2024 pursuant to Evid. Code Sections 452, 453)

16 It is anticipated that Plaintiffs will argue two cases support their position: the eighty year
17 old case of Sager v. O'Connell (1944) 67 Cal.App.3d 27, 32 and the sixty year old case of
18 Puckett v. Sullivan (1961) 190 Cal.App.2d 489, 495; a case which involves excavation which is
19 not at issue here. Ironically, these cases support Defendant not Plaintiff. Both cases state that
20 liability for damages requires a finding of negligence.

21 **C. Negligence per se does not apply**

22 It is anticipated that Plaintiffs will seek a negligence per se instruction based on Civil
23 Code § 832. This is improper for two main reasons. First, as stated above, § 832 and the listed
24 exceptions do not apply since there is no evidence or claims Defendant removed any support.
25 Second, Plaintiffs cannot meet the elements required for negligence per se.

26 The negligence per se doctrine, as codified in Evidence Code section 669, creates a
27 presumption of negligence if four elements are established:
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(1) the defendant violated a statute, ordinance, or regulation of a public entity;
(2) the violation proximately caused death or injury to person or property;
(3) the death or injury resulted from an occurrence of the nature of which the statute, ordinance, or regulation was designed to prevent; and
(4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.” (See Galvez v. Frields (2001) 88 Cal.App.4th 1410, 1420.) The first two elements are questions of fact, while the latter two are questions of law. (See Spates v. Dameron Hosp. Assn. (2003) 114 Cal. App. 4th 208.)

As stated above, § 832 does not apply as the statute applies *only* in the context of excavation and was intended to enable an excavator to relieve himself from liability. (See First National Bank v. Village (1891) 92 Cal.96, 99 [*“The purpose of the section, in its broadest scope, was to enable the excavator to relieve himself from liability”*]; see also McIvor v. Mercer-Fraser Co. (1946) 76 Cal. App. 2d 247, 252 [*“Information as to the depth and extent of the excavation may be necessary to afford the landowner an opportunity to protect his premises.”*]) Here, there is no excavation and Plaintiffs do not fall within the class of individuals the statute was designed to protect. Similarly, the statute was not designed to prevent the types of circumstances at issue in this case, again, especially where there is no excavation at issue. Lastly, Plaintiffs have no expert testimony to establish that Defendant violated any statute. Thus, a negligence per se claim is not appropriate in this case.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully request the Court grant her Motion in Limine No. 16 for an Order excluding claims for strict liability based on civil code section 832

Dated: September 30, 2024

ALVES RADCLIFFE LLP


By: SCOTT E. RADCLIFFE
Attorney for Defendant

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PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action. My business address is: 2377 Gold Meadow, Way, Suite 100, Gold River, CA 95670. On the date indicated below, I caused to be served the following document(s):

1. DEFENDANT MARY COULTON'S MOTION IN LIMINE NO. 16 FOR AN ORDER EXCLUDING CLAIMS FOR STRICT LIABILITY OR NEGLIGENCE BASED ON CIVIL CODE SECTION 832

(XXX) (PERSONAL SERVICE) I CAUSED THE FOREGOING DOCUMENTS TO BE PERSONALLY DELIVERED TO THE PERSON(S) LISTED AT THE ADDRESSES BELOW.

(XXX) (E-MAIL) COMPLYING WITH CODE OF CIVIL PROCEDURE SECTION 1010.6, MY ELECTRONIC BUSINESS ADDRESS IS SRADCLIFFE@ALVESRADCLIFFE.COM AND I CAUSED THE ABOVE REFERENCED DOCUMENT(S) TO BE ELECTRONICALLY SERVED VIA EMAIL TO THE INDIVIDUALS LISTED BELOW. I DID NOT RECEIVE, WITHIN A REASONABLE TIME AFTER THE TREANSMISSION, ANY ELECTRONIC MESSAGE OR OTHER INDICATION THAT THE TRANSMISSION WAS UNSUCCESSFUL.

Attorneys for Plaintiffs Quinn & Ayres	
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Steven A. Blum Gary Ho. Blum, Collins & Ho LLP 707 Wilshire Blvd., Suite 4880 Los Angeles, CA 90017 T: (213) 572-0410 E: Blum@blumcollins.com E: Ho@blumcollins.com	
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I, Scott Radcliffe, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 30, 2024, in Gold River, California.



SCOTT RADCLIFFE