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No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE STATE OF CALIFORNIA, BY AND THROUGH THE STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES,

Respondent,

DAN GRIGSBY, ET AL.,

Real Parties in Interest.

Los Angeles County Superior Court, Case No. 25STCV00832
The Honorable Samantha P. Jessner, Judge
Department 7; Telephone Number (213) 310-7007

EXHIBITS TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

Exhibits 5 through 9, Volume 2 of 2, Pages 278 to 501

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COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

PALISADES FIRE LITIGATION

DAN GRIGSBY, et al.,

Plaintiff,

vs.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, et al.,

Defendants.

AND ALL RELATED CASES

Lead Case No. 25STCV00832

INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY THE STATE OF CALIFORNIA

Date: February 5, 2026
Time: 1:45 p.m.
Dept.: 7

Assigned for All Purposes to:
Hon. Samantha Jessner, Dept 7

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I. INTRODUCTION

All landowners in California have a non-delegable duty to maintain their property in a reasonably safe condition that will not harm others. This applies to private landowners and public landowners, including the State of California and its State Parks division (collectively, the "State"). In its Demurrer, the State disclaims its duties as a landowner, citing the immunities set forth in the Government Claims Act (Gov. Code, § 810 et seq.). But the law in California is that governmental immunity statutes "should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on *property which it owns and manages itself*, particularly where it has permitted a dangerous fire condition to exist on the property." *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 660-61 (emphasis added). Indeed, Government Code § 835 codifies the State's "duty *not* to maintain public premises in a dangerous condition." *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133 (emphasis added).[1] Moreover, Government Code § 818.6 creates a carve-out for the inspection immunity, making clear that such immunity does not apply to land owned by the State. And there is a longstanding common law duty of all landowners to reasonably manage their property so as not to allow a fire to escape from their land.[2] All of these duties are imposed on the State as landowner, and none have anything to do with "the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." Gov. Code, § 850.2. These duties exist to prevent exactly what happened here; it is a well-known phenomenon that one fire can lead to a future fire if the land is not properly inspected for embers burning underground.

Plaintiffs have properly alleged that the State permitted a dangerous fire condition (a burn

[1] See also *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809 (public entity owes a duty on land when "a private owner under similar circumstances would owe the persons using the premises a duty of care."); *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 716 ("[T]he entity's liability may be predicated on its failure to take protective measures to safeguard the public from dangers that may not necessarily be of the entity's own creation").

[2] Indeed, the California State Parks' own Operations Manual expressly requires that in the case of a wildfire that *has burned* on State Park land, the State is required close the area and keep it closed until appropriate State representatives—not the LAFD, contractors, or third parties—inspect the land to rectify any public safety issues.

scar with smoldering embers) to exist on public property owned and managed by the State, and that that dangerous condition was the cause of the Palisades Fire. Nevertheless, the State suggests that it is immune from this lawsuit solely because the dangerous condition may have been created by an arsonist and because damages were caused by a fire. Neither argument is supported by law. The State's overbroad claim of immunity is unsupported by the statutory language, legislative history or case law, and therefore must be rejected. The allegations in the Individual Plaintiffs' Master Complaint ("MC") are more than adequate to overcome the State's Demurrer. The State's Demurrer should be overruled and Plaintiffs' claims allowed to proceed.

II. LEGAL STANDARD AND SYNOPSIS OF FACTUAL ALLEGATIONS

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." Code Civ. Proc., § 452. The Court must "give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context." *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501 (citations omitted). Our Supreme Court has reiterated that to sustain a demurrer "'there must be an obvious failure of the pleadings to state a cause of action[.]'" *Green v. Obledo* (1981) 29 Cal.3d 126, 144 (quoting *Terry Trading Corp. v. Barsky* (1930) 210 Cal. 428, 438). For purposes of ruling on a demurrer, material facts properly pleaded in the complaint must be taken as true. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.[3] With that in mind, the facts alleged in the MC in support of the first four causes of action against the State can be summarized as follows:

At 12:07 a.m. on January 1, 2025, a brush fire was reported near Skull Rock on the Temescal Ridge Trail in Pacific Palisades. The New Year's Eve fire was named "the Lachman Fire." (MC, p. 17, ¶ 62.) At 4:48 a.m., LAFD firefighters reported that they had completed a hose line around the fire and had it "fully contained." (MC, pp. 17-19, ¶¶ 63-65.)

The Lachman Fire burned land in Topanga State Park, public property owned and managed

[3] While the Court may take judicial notice of the fact that a criminal complaint was filed in the action *United States of America v. Jonathan Rinderknecht*, USDC Case No. 2:25-cr-833-AH, as alleged at MC, p.23, ¶¶ 75-76, the Court may not accept as true of any of the factual allegations set forth in that complaint or any related filings. *See Day v. Sharp* (1975) 50 Cal.App.3d 904, 914; *Fremont Indemnity Co v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-15.

by the State of California. (MC, pp. 23-24, ¶¶ 74-76; p. 114, ¶¶ 366-367.) State Parks was notified of the fire shortly after it occurred on January 1, 2025. (MC, p. 19, ¶ 67.)

From January 3 through January 6, 2025, the National Weather Service ("NWS") issued repeated warnings of a "life-threatening, destructive, widespread windstorm" with "extreme" and "particularly dangerous" fire conditions expected to arrive in Los Angeles County on Tuesday January 7, 2025. (MC, pp. 1-14, ¶¶ 51-56.)

The State of California was on notice that the impending high winds, in combination with severe drought conditions, lack of brush clearance, and the absence of prepositioned resources, made the burn scar and unextinguished embers from the Lachman Fire extremely dangerous, posing a significant risk of rekindling into a new fire on its property on January 7, 2025. (MC, pp. 14-16, ¶¶ 57-61; pp. 25-26, ¶¶ 79-84; pp. 114-115, ¶¶ 367-371.)

Nevertheless, despite notice of the extremely dangerous conditions on its land, the State of California took no affirmative steps to protect against or mitigate the risk of a new fire igniting on January 7, 2025. (MC, pp. 19-21, ¶¶ 68-70; pp. 114-115, ¶¶ 367-371.)

Members of the public who hiked through the Lachman Fire burn scar reported seeing smoke still smoldering from the ground on January 1, 2025 after firefighters had left the area. (MC, p. 21, ¶ 70).[4]

When the winds began to pick up on the morning of January 7, 2025, the embers from the Lachman fire rekindled and fueled a new fire, known as the "Palisades Fire." (MC, p. 25, ¶ 78.) The Palisades Fire ultimately destroyed 6,837 homes and businesses, damaged another 973 structures, killed at least thirteen (13) people, and caused injuries to civilians and firefighters. As many as 5,058 single family homes, 135 multi-family residences, 361 mobile homes, 101

[4] Indeed, since the filing of the MC, the *Los Angeles Times* reported that another hiker videotaped smoke smoldering up from the ground in the Lachman Fire burn scar on January 2. https://www.latimes.com/california/story/2025-10-26/could-the-state-have-done-more-to-prevent-the-palisades-fire. Further, the *Los Angeles Times* has also reported that firefighters were ordered to leave the smoldering burn scar on January 2 before a "mop up" had been completed. https://www.latimes.com/california/story/2025-10-30/firefighters-ordered-to-leave-smoldering-palisades-burn-site.

commercial buildings, 51 school structures and 6 church structures were destroyed by the Palisades Fire. (MC, p. 1, ¶ 1.)

The State did not close Topanga State Park, inspect its property and/or monitor the situation, such as using thermal imaging cameras at the Lachman Fire burn scar after the fire was reportedly contained on January 1 until January 7 when embers rekindled and ignited the Palisades Fire.[5] (MC, p. 19, ¶ 68.)

The Palisades Fire was ignited as a direct and proximate result of a foreseeable danger — rekindled smoldering embers left over from the Lachman Fire — on public property owned and managed by the State of California. (MC, pp. 23-24, ¶¶ 74-77.)

III. ARGUMENT

A. The Government Must Not Maintain Its Property in a Dangerous Condition.

"Government Code § 835[6] imposes a duty on public entities not to maintain property in a 'dangerous condition.'" *Zelig, supra*, 27 Cal.4th at 1134. A dangerous condition is defined in

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[5] The State had a non-delegable duty to close that portion of Topanga State Park burned in the Lachman Fire "until appropriate Department staff [had] inspected the area and rectified any public safety, property or resource protection issues." *See* State of California Department of Parks and Recreation Operations Manual, Natural Resources, § 0313.2.1.3 https://www.parks.ca.gov/pages/21299/files/DOM%200300%20Natural%20Resources.pdf

[6] Section 835 provides: "a public entity is 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 . . . (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." *See also* CACI No. 1100.

Section 835.2 states: "(a) A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character. (b) A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that 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. On the issue of due care, admissible evidence includes but is not limited to evidence as to: (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property. (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition."

Government Code § 830 as "a condition of property that creates a substantial . . . risk of injury." Liability may be imposed on the public entity "when there is some defect in the property itself and a causal connection is established between the defect and the injury." *Zelig*, 27 Cal.4th at 1135. "A public entity may be held liable for a 'dangerous condition' of public property only if it has *acted unreasonably* in creating or failing to remedy or warn against the condition. . . ." *Metcalf v. County of San Joaquin* (2006) 42 Cal.4th 1121 (quoting Cal. Law Revision Com. com., reprinted at West's Ann. Cal. Gov. Code foll. § 830 (2025 ed.), p. 298) (italics added by the Supreme Court); *see also Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 653 (duty to warn of a dangerous road condition); *Baldwin v. State of California* (1972) 6 Cal.3d 424, 436-37 (liability is determined based on the reasonableness of the action or inaction).

This rule is in accord with the longstanding duty of landowners to "maintain land in their possession and control in a reasonably safe condition." *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674. "[T]he duty of care encompasses a duty to avoid exposing persons to risks of injury that occur off site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite." *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158 (quoting *Barnes v. Black* (1999) 71 Cal. App. 4th 1473, 1478). "The general rule is stated as follows: 'A possessor of land is required to make reasonable use of his premises which causes no unreasonable harm to those in the vicinity, either by reason of the character of the use itself or because of the manner in which it is conducted.'" *Reid & Sibell, Inc. v. Gilmore & Edwards Co.* (1955) 134 Cal.App.2d 60, 66 (quoting *Prosser on Torts* at 601). The California Supreme Court has "found that landowners have a duty to prevent hazardous natural conditions arising on their property from escaping and causing injury to adjacent property." *Kesner*, *supra*, 1 Cal.5th at 1158 (citing *Sprecher v. Adamson Cos*. (1981) 30 Cal. 3d 358, 368). Section 835 imposes similar liability on the State.

The Master Complaint alleges all the necessary elements of a claim based on a dangerous condition on government property. *See* CACI No. 1100. The burn scar and smoldering embers within it were located on State property. Burn scars are widely known to pose a risk of rekindling, especially in combination with the dry, windy conditions and unmaintained vegetation, that existed

on and leading up to January 7, 2025. As the MC alleges, the California State Fire Training Student Manual 2013 for Wildlife Urban Interface Environment states: "Remember it is common that hot material could still be found on large fires months after the fire was controlled." (MC, p. 25, ¶ 79.) State officials were notified of the existence of multiple hotspots on January 1, 2025. Yet, despite having multiple warnings of an impending extreme wind event, dry conditions, the lack of any nearby fire protection, and reports of smoke smoldering on its land, over the next six days the State did nothing to lessen the risk of a new fire starting, nor did it take any steps to close the area of its land burned in the Lachman Fire. At the core of the State's fault, it failed to inspect its land or remedy the public safety hazard posed by smoldering embers.[7] The burn scar did in fact rekindle and start a new fire on January 7, leading to the devastating fire that killed at least 13 people and destroyed thousands of homes.

B. <u>A Dangerous Condition May Be Created By a Third Party.</u>

The State spends a considerable portion of its argument suggesting that it cannot be held liable for a dangerous condition created by an illegal act of a third party. There is no legal support for this novel theory, and, like the public entity defendant in *Vedder*, the State's "argument misconstrues the theory of [P]laintiffs' pleading." *Vedder*, *supra*, 36 Cal.App.3d at 660.

As noted above, Plaintiffs have not alleged that the State's property at Topanga State Park was in a dangerous condition *before* January 1. Rather, the dangerous condition was permitted to exist after January 1 when the Lachman fire was reported to be fully contained and then abandoned, with the full knowledge of State Parks officials. (MC, p. 114, ¶ 367.) The State allowed the ground to continue to smolder with debris and embers and to rekindle six days later. (MC, pp. 114-15, ¶¶ 372, 376.) "Most obviously, a dangerous condition exists when public property is physically damaged, deteriorated, or defective. . . ." *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148. Here, the State's land was physically damaged and deteriorated by the Lachman Fire burn scar and the smoldering embers. These smoldering embers, which the State allowed to remain on its land for days after the Lachman Fire, constituted a dangerous condition of public

[7] As required by the State's own Operations Manual. *See supra* footnote 8.

property.

There is no California case suggesting the defendant must be solely responsible for the creation of the dangerous condition, nor even that the defendant must be solely responsible for the damages. The State's liability is rooted in notice of the dangerous condition and the State's failure to take reasonable corrective. *See* CACI No. 1100 (essential factual elements for dangerous condition of property); *see also McGillivray v. Hampton* (1919) 39 Cal.App. 726, 728 ("a person is liable not only where he negligently sets out fire on his own ground, but also for negligently suffering any fire to extend beyond his own land." (internal quotation marks omitted)).

Indeed, in *Vedder*, the court held: "One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others. 'If an injury is produced by the concurrent effect of two separate wrongful acts, each is a proximate cause of the injury. . . .'" *Vedder*, *supra*, 36 Cal.App.3d at 660, (citing *Taylor v. Oakland Scavenger Co.* (1938) 17 Cal.2d 594, 602). Case law explains why this Court must reject the State's position in this respect. In *Reid & Sibell, supra*, 134 Cal.App.2d 60, the defendant argued it could not "be held liable for merely contributing to the spread of a fire not caused, in the first instance, by its act or omission." *Id*. at 65. The court rejected this argument in the face of evidence supporting "that the large quantity of paint thinner kept in the basement by [defendant] substantially increased the difficulty of fighting the fire; caused it to flare up again and again after being under control; and caused it to spread." *Id*. at 64-65. Just as the defendant in *Reid & Sibell* "was negligent as creating an unreasonable risk to the other occupant of the building," Plaintiffs sufficiently allege that the State's total failure to monitor its land "created a reasonably foreseeable risk" that embers would "smolder, burn and re-ignite from a holdover fire on its property." *Compare id*. at 65, *with* MC, p. 115, ¶ 375; *see also* 22 Am.Jur. 603 ("If the owner of premises allows them to remain in such a condition as to constitute a danger to other property in case of fire, this negligence will make him liable for damages done to such other property by an accidental fire starting on his premises, although he has no connection with its origin."); *accord Arnhold v. United States* (9th Cir. 1960) 284 F.2 326 (railroad had non-delegable duty to prevent spread of fire, even if started by strangers).

The State mistakenly relies on *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, which is readily distinguishable. In *Cerna,* the court held, after reviewing all the evidence on summary judgment, that an ordinary traffic intersection was not in a dangerous condition. "The trial court… concluded that the risk created by the identified features of the intersection was of such a minor, trivial, or insignificant nature that no reasonable person would conclude that the condition created a substantial risk of injury." *Id.* at 1348. This case presents the exact opposite scenario. No reasonable person could ever conclude that the risk of the unattended burn scar and smoldering embers rekindling on a day where winds posed an extreme fire danger was so "minor, trivial, or insignificant" that it did not pose a substantial risk of injury. The allegations in paragraphs 79-83 of the MC, including the California State Fire Training Student Manual, make that clear. In any case, the issue presents myriad questions of fact and is clearly not one that can be determined against Plaintiffs on demurrer. *Cf. Fackrell v. City of San Diego* (1945) 26 Cal.2d 196, 206 ("Whether a given set of circumstances creates a dangerous or defective condition is primarily a question of fact.").

C. <u>Smoldering Embers in the Burn Scar on State Land Was the Dangerous Condition That Caused the Palisades Fire.</u>

As alleged in the MC, the burn scar from the Lachman Fire on January 1, 2025, created a glaring defect in the Topanga State Park property which posed a threat of starting a new fire when winds increased on January 7. (MC, pp. 114-115, ¶¶ 369-370.) Numerous cases have affirmed liability when a fire believed to have been extinguished is allowed to rekindle and spread to neighboring properties. *See, e.g., Richter v. Larabee* (1933) 136 Cal.App. 16 (grass fire put out, still smoking, then rekindled into new fire); *Kennedy v. Minarets Western Ry. Co.* (1928) 90 Cal.App. 563 (smoldering log covered with dirt rekindled and started new fire after two or three days); *Young v. San Joaquin Light Power Co.* (1927) 83 Cal.App. 585 (fire left smoldering spread to rubbish pile and started a new fire); *Paiva v. California Door Co.* (1925) 75 Cal.App. 323 (fire left smoldering in a tree stump for a day or two sparked new fire); *McGillivray v. Hampton* (1919) 39 Cal.App. 726 (hay fire put out, left smoldering, rekindled). The burn scar, and its smoldering embers, therefore constituted an obviously dangerous condition, a defect in the property for which

there is no immunity.

Cases in which the proximate cause of the fire was not smoldering embers in a burn scar are easily distinguishable. For example, in *Avedon v. State of California* (2010) 186 Cal.App.4th 1336, the plaintiffs alleged that the State was responsible for a wildfire ignited by a bonfire inside a cave in Malibu State Park, arguing that the State "maintained its property in a dangerous condition by allowing easy and unrestricted vehicular access to" the cave. *Id*. at 1341. The court applied the rule that "third party conduct by itself, *unrelated to the condition of the property*, does not constitute a 'dangerous condition' for which a public entity may be held liable." *Id*. (emphasis added) (quoting *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 810). Because there was "no inherent defect in the property itself," plaintiffs could not "allege facts establishing a causal connection between the defect and the injuries sustained," precluding "a cause of action for dangerous condition of public property." *Id*. at 1342, 1344.

By contrast, a claim for dangerous condition of government property resulting in a fire can be maintained if the dangerous condition was a known defect — in in this case, a burn scar with visible smoldering embers from a fire — which proximately caused the fire on the property. The language of the *Cerna* opinion cited by the State (*see* Demurrer at p. 14) is completely congruent with this principle. "A dangerous condition exists when public property is physically damaged, deteriorated or defective. . . ." *Cerna*, *supra*, 161 Cal.App.4th at 1347.

D. <u>State Parks Knew and Should Have Known About the Dangerous Condition Within the Burn Scar on Its Land.</u>

The MC alleges that the State had actual and constructive notice of the Lachman fire and the danger it posed on January 1, 2025, six days before the start of the Palisades Fire. (MC, pp. 19, ¶ 66-67, p. 115, ¶¶ 371-73.) Indeed, the MC even cites the State's own "incident Log indicating that CA STATE PARKS was notified by telephone of the Lachman Fire, Incident #42 on January 1, 2025 at 00:27:14." (MC, p. 19, ¶ 67; *see also* MC, pp. 115-16, ¶ 376 ("The State and its employees had actual and constructive knowledge of the dangerous condition in time to have taken measures to protect against it. Specifically, the employees of the State knew or should have known of the 'Particularly Dangerous Situation' and 'Extreme Fire Conditions' forecasted by the NWS days prior

to January 7, 2025 and that any embers not fully extinguished from the Lachman fire could start a dangerous wildfire.").)[8]

Plaintiffs also allege that the State was or should have been aware of the great danger posed by the burn scar from the Lachman Fire, citing various experts as well as a California State Fire Training Manual. "When the fire has been contained, the real work begins. If not all the material near the fireline is extinguished, you run the risk of the fire rekindling and escaping." (MC, pp. 25-26, ¶¶ 79-84.) Nothing further is required at this pre-discovery, pleading stage. *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 (plaintiff's allegation that "RTD knew assaults regularly occurred on this bus route" was sufficient to establish duty and no immunity requiring reversal of judgment of dismissal on demurrer). The cases cited by the State are readily distinguishable and were in any event decided only after discovery and the presentation of evidence on summary judgment or after trial. In *State of California v. Superior Court of San Mateo County* (1968) 263 Cal.App.2d 396, a toddler wandered into a fire pit. With regard to actual notice, there was no evidence presented "that the employees had knowledge of the particular dangerous condition in question." *Id*. at 399. Further, "there was no evidence (direct or circumstantial) that the danger was obvious nor that the situation had existed for any particular length of time before the accident." *Id.* at 399-400; *see also Sambrano v. City of San Diego* (2001) 94 Cal. App. 4th 225 (fire ring was not itself a dangerous condition and city had no notice of any danger). By contrast, the exhaustive Master Complaint already pleads both the knowledge and notice conditions.

Indeed, the cases cited by the State illustrate that the question of knowledge, actual or constructive, cannot be fairly decided on demurrer. In *Heskel v. City of San* Diego (2014) 227 Cal.App.4th 313, unlike in this case, the plaintiff did not even contend that the City had actual notice of the protruding metal post that tripped plaintiff. On the issue of constructive notice, the City presented several uncontroverted declarations from workers who had been in the area and had not

[8] The State recently admitted it had a representative at the Lachman Fire burn scar on January 1. https://x.com/GovPressOffice/status/1995589628699836922 ("State Parks never said, in court or otherwise, that the department did not have a representative at the Lachman Fire burn scar on Jan. 1.").

noticed the condition, "creat[ing] a reasonable inference that the condition was not obvious." *Id*. at 318. In the absence of any countervailing evidence, the court granted summary judgment. *Id*. at 321.

Strongman v. County of Kern (1967) 255 Cal.App.2d 308 concerned a nonsuit granted after trial because the plaintiff failed to present evidence "proving the condition that caused plaintiff's injuries, the missing plank, existed for any length of time prior to the accident." *Id*. at 314. Again, the court did not address actual notice, as the issue was "the sufficiency of evidence relied upon to prove constructive notice[.]" *Id*. at 313. And the trial court decided the issue after discovery and the presentation of evidence at trial, not on demurrer.

The State fails to acknowledge that "[t]he questions of whether a dangerous condition could have been discovered by reasonable inspection and whether there was adequate time for preventive measures are properly left to the jury." *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 843 (collecting cases). "Appellate courts have upheld jury verdicts finding constructive notice and imposing liability on governmental defendants in a variety of factual contexts." *Id.* The State's narrow view of constructive notice does not square with the examples the Supreme Court has cited with approval, including all the following:

- *Erfurt v. State of California* (1983) 141 Cal.App.3d 837 (defendant had constructive notice of the dangerous condition—the glare of the rising sun reflected off the surface of a road—even though that condition had existed only 20 days a year during the 10 years since it constructed the road);
- *Straughter v. State of California* (1976) 89 Cal.App.3d 102 (public entity had constructive notice of the existence of ice on a highway even though the defendant's witnesses had testified that they had not seen ice on the highway prior to the accident, and icy conditions had begun developing less than four hours before the accident);
- *Lorraine v. City of Los Angeles* (1942) 55 Cal.App.2d 27 (city had constructive notice of a sidewalk hole which was only 18 inches long and 7 inches wide and had existed for at least a month);
- *Levine v. City of Los Angeles* (1977) 68 Cal.App.3d 481 (city had constructive notice of danger even when it received no complaints about narrowing of the road in the three years preceding the accident).

As alleged in the MC, the State knew that Topanga State Park was a breeding ground for destructive wildfires. (MC, p. 14, ¶ 57.) The State knew that the dense vegetation in the Park had not been burned for more than 47 years. (MC, p. 16, ¶ 61.) And the State knew that the Lachman

Fire occurred on January 1. (MC, p. 16, ¶ 67.) The State knew all of this, along with acknowledging that "it is common that hot material could still be found on large fires months after the fire was controlled." (MC, p. 25, ¶ 79.) Video and photographic evidence from local residents showed embers from the Lachman Fire smoldering underground — a condition that the State had six days to discover on its own land. (MC, pp. 21-23, ¶¶ 69-75.)

Despite the foregoing authorities and the allegations that establish constructive notice, the State contends that Plaintiffs fail "to establish constructive notice because [they do] not allege that the embers in the root structure were obvious a sufficient time before the re-ignition occurred for Parks employees to have discovered them." (Demurrer at p. 19.) But the State offers no authority for the proposition that the MC fails, as a matter of law, to allege "that the condition and its dangerousness were sufficiently obvious that [the State], in the exercise of due care, should have discovered them." *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 780, citing Gov.Code, § 835.2, subd. (b).

After producing just one massively redacted document showing its notice of the dangerous condition Plaintiffs allege, the State now seeks to deny Plaintiffs "an opportunity to furnish additional and more exact information[.]" *Dahlquist v. State* (1966) 243 Cal.App.2d 208, 212. This Court should reject the State's attempt to claw back the "relaxation of rigidity in application of the rules relating to the sufficiency of complaints, even those where public entities are involved." *Id*. Construing the MC liberally, Plaintiffs' allegations reasonably infer that the smoldering embers "existed for such length of time and [were] of such conspicuous character that *a reasonable inspection* would have disclosed them." *Kotronakis v. City and County of San Francisco* (1961) 192 Cal.App.2d 624, 630 (emphasis added). It would be a grave error for the Court to sustain a demurrer on the issue of whether the State knew or should have known about the danger posed by the smoldering embers left on the burn scar, given the evidence of actual as well as constructive notice already marshalled in the MC. The courthouse doors should not be closed to the Plaintiffs at this juncture.

E. There Is No Governmental Immunity For Permitting A Dangerous Condition to Exist on Public Property.

1. Immunity Extends Only To Fire Protection Services.

The California Government Code provides for immunity for the failure to provide fire protection services. Notably, the immunity statutes do not say that the government is immune for any claim for damages caused by fire.[9] Rather, the limited statute applies to "services" provided to third parties "in fighting fires."[10] As a result, the government cannot be held liable for the acts or omissions of fire department employees with regard to fire protection services provided to the public **while fighting fires**. See *People ex rel. Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072, 1078 (the immunities shield public entities from liability based on "firefighting methods or tactics they employ"); *City of San Francisco v. Superior Court* (1984) 160 Cal.App.3d 837, 842 (firefighters are immune while they are "fighting fires"); *Varshock v. Dept. of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635 (same); *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147 (same); *Heimberger v. City of Fairfield* (1975) 44 Cal.App.3d 711 (same). Here, the Plaintiffs do not allege that the State performed any firefighting activities on the Lachman Fire.[11]

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[9] Section 850 provides: "Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service." Section 850.2 provides: "Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." Section 850.4 provides "Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or . . . for any injury caused in fighting fires."

[10] The definition of "services" is work provided to another person or entity. However, no one provides "services" to himself. *Pitney-Bowes, Inc. v. State of California* (1980) 108 Cal.App.3d 307, 315, n. 5 (*Black's Law Dictionary* defines service as "[d]uty or labor to be rendered by one person to another").

[11] Indeed, the State recently denied that it was responsible for, or in control of, firefighting activities on the Lachman Fire:

"State Parks personnel being on scene in no way means they were responsible for, or in control of, firefighting activities. Nor were they responsible for determining the fire was fully contained… State Parks never hinders an active firefighting response, and firefighting decisions are up to the responding agency. In this instance, the fire in question was deemed by LAFD to be fully contained a few hours after is was started by an arsonist." https://dailycaller.com/2025/12/01/audio-

Logically, "fire protection services" do not extend to State Park's failure to remove a known defect or dangerous condition that could start or cause a wildfire on its own property.[12] *See Vedder*, *supra*, 36 Cal. App. 3d 654. In such cases, the law requires that the property owner, whether or not it is a government entity, maintain its property in a condition that it does not pose a risk of danger to its neighbors. *See, e.g.*, *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609 (city negligently allowed a fire to spread for a city dump); *Pittam v. City of Riverside* (1932) 128 Cal.App. 57 (same).

2. Fire Protection Immunity Does Not Apply When A Public Entity Owns the Land and Allows a Dangerous Fire Condition on that Land.

The decision in *Vedder v. Cty. of Imperial*, 36 Cal. App. 3d 654 (1974) is particularly instructive under the circumstances present here. In *Vedder*, the court considered a case in which the plaintiff sought to recover damages from a fire that occurred at the Imperial County Airport due to an allegedly dangerous condition caused by the storage of gasoline and other highly combustible chemicals on the property. A demurrer was sustained on the grounds of immunity pursuant to Gov. Code § 850 and 850.2. The Court of Appeal reversed the trial court, writing:

> We also conclude the provisions of Government Code sections 850 and 850.2 are not applicable to the facts pleaded. The sections are designed to provide immunity to a public entity from the consequences which might otherwise result from its political decision to provide, or not to provide, fire protection to the public generally, and the extent to which such fire protection is in fact provided.
> The statutes must be strictly construed, and governmental immunity should not be decreed unless the Legislature has clearly provided for it. **They should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition**

reportedly-shows-palisades-fire-broke-out-on-state-property.

The State insists it has no responsibility for firefighting or fire suppression decisions, yet simultaneously seeks the benefit of firefighter immunity, an immunity available only to those performing firefighting functions. The State cannot both disclaim the role and claim the privilege.

[12] An exception to this rule might possibly be a controlled burn or backfire that was started as part of a fire protection plan. But that question is "not free from doubt." See *Anderson v. U.S.* (1995) 55 F.3d 1379, 1383 n.3 ("We need not, and do not, decide whether a California public entity would be immune under the facts of this case [controlled fire in national forest escaped and burned portion of residential neighborhood]. We only note that the issue is not free from doubt.").

> **to exist on the property**. In that situation, lack of fire protection is a proper factor to be considered as contributing to the existence of a dangerous condition on the property

Vedder, 36 Cal.App.3d at 660-61 (emphasis added) (citations omitted). The court held that liability could be established even though the public entity was not principally responsible for starting the fire. "One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others." *Id*.

3. *Vedder* Is Good Law.

The two cases relied on by the State on this issue reaffirm that *Vedder* is good law. Those cases dealt with facts distinguishable from the facts in *Vedder*, leading those courts to find immunity. The important factual distinction for those courts was whether the alleged dangerous condition is an impediment to firefighting versus the cause of the fire itself. Plaintiffs here allege only the later.

In *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, plaintiffs alleged that a closed roadway in Malibu created a dangerous condition that prevented fire crew from fighting a fire which destroyed plaintiffs' properties. The court held that the public entities were immune, distinguishing the case from *Vedder*:

> Although plaintiffs couched their allegations in language of a dangerous condition of public property, the only reason the condition was allegedly dangerous is that the continued closure of Rambla Pacifico made ingress for firefighters more difficult, if not impossible. . . . Plaintiffs misplace reliance on *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 111 Cal.Rptr. 728, which is distinguishable. . . . Here, defendants did not store flammable materials on the closed Rambla Pacifico road; the closed road was not in itself a fire hazard; the condition of the road did not cause the fire. Defendants' failure to repair and reopen a damaged closed road merely to have it available as an alternative fire road is, in these circumstances, a failure to provide fire protection service or fire protection facilities within the immunities of sections 850, 850.2, and 850.4.

Cairns, 62 Cal.App.4th at 335-36. What distinguishes *Vedder* and the allegations against the State in the MC from *Cairns* is that the defect in the property or dangerous condition – the smoldering embers in the burn scar— actually started and **caused** the Palisades Fire, rather than merely upsetting firefighting efforts. Applying *Cairns* to the matter would necessitate overruling *Vedder*.

Likewise, in *Puskar v. City & Cty of S.F.* (2015) 239 Cal.App.4th 1248, a Yosemite forest ranger sued after burning himself because a fire extinguisher had been removed from his residential unit and not replaced, alleging the absence of a fire extinguisher in the residence constituted a dangerous condition of public property. Again, the court granted the public entity immunity, distinguishing *Vedder*:

> In *Vedder*, the alleged dangerous condition of the property was not the lack of firefighting or fire protection equipment on the premises. It was the storing, or permitting the storage, of gasoline and other highly combustible chemicals on the premises in an unsafe manner, that is, without any means of preventing or controlling a fire. Lack of fire protection was just a "factor contributing to the existence of a dangerous condition," not the dangerous condition itself. (*Vedder*, supra, 36 Cal.App.3d at p. 661.) The defendants' immunity under section 850.2 for failure to provide fire protection equipment did not extend to liability for the creation or maintenance of a fire hazard on the property, exacerbated by the failure to provide firefighting equipment. [. . .]
> Here, unlike *Vedder*, the only alleged dangerous condition of the property was the absence of a fire extinguisher from the residence at the time of the incident. **There were no allegations of unsafe storage of flammable materials, defects in the stove plaintiff was using, or any other condition of the property itself that contributed to the occurrence of the fire.**

Puskar, *supra*, 239 Cal.App.4th at 1255-56 (emphasis added).[13] The Court in *Puskar* made the distinction that *Vedder* applies to cases in which a dangerous condition is maintained on public property, resulting in a fire. Under *Puskar,* as in *Cairns*, decisions that make firefighting more difficult, like the closure of a road or the failure to provide a fire extinguisher, cannot give rise to liability. There is a difference between starting a fire and impeding the response to a fire. Only the latter concerns fire protection services for which the Government Code provides immunity.

The *Vedder* case, despite having been distinguished, is undisturbed after fifty years and remains valid precedent. In California, the law is that the firefighting immunities do not immunize

[13] The *Puksar* court stated in *dicta* that it had a limited disagreement with the rationale of *Vedder* "to the extent it suggests immunity under sections 850 and 850.2 does not attach when the public entity's decision is not a 'political decision to provide, or not to provide, fire protection to the public generally,' but a decision about property 'it owns and manages itself.'" *Puskar*, 239 Cal.App.4th at 1255 (quoting *Vedder*, 36 Cal.App.3d at 660–61). This disagreement is inapposite here because in this case the condition of the property itself caused the fire, and the alleged dangerous condition is not merely a decision about the provision of fire protection services on the State's property.

a government entity that permits a dangerous fire condition to exist on its property.

F. <u>There Is No Natural Condition Immunity.</u>

The State's reliance on other immunity provisions are misplaced, charitably stated. For example, Gov. Code § 831.2 provides immunity for "natural conditions of an unimproved public property." The burn scar created by an arson fire, still smoldering with burning embers, was not a "natural condition" of the State's property. (MC, p. 9. ¶ 26.) Further, the California Supreme Court has held that section 831.2 does not apply to injuries on adjacent properties. For example, the natural condition immunity did not preclude municipal liability for injuries sustained by a private landowner from falling limbs of trees located on adjacent government property. *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 834 ("We conclude that the natural condition immunity of section 831.2 is inapplicable to injuries caused to nonusers on adjacent property."). This is because every property owner has a duty to use and maintain its property in a manner that does not injure neighboring properties. See *Kesner*, 1 Cal.5th at 1158 (discussed above at III.A.).

G. <u>There Is No Inspection Immunity.</u>

Nor can the State rely on inspection immunity. In *Cochran v. Herzog Engraving Co.* (1984) 155 Cal. App. 3d 405, the plaintiff claimed the City was under a duty to inspect **private property** and recommend adequate fire safety measures. The Court applied immunity to the claims. "Government Code section 818.6 grants absolute immunity from liability for any 'negligent inspection' of private property to determine if such property constitutes a hazard to health or safety, whether or not the duty to inspect is construed as 'mandatory' or 'discretionary.'" *Id.* at 411. As set forth in Gov. Code § 818.6, "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, **other than its property** (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety." Gov. Code § 818.6 (emphasis added). Therefore, the holding in *Cochran* is not a bar to the claims against the State for allowing the Palisades Fire to start **on its own property**. Such claims are expressly excluded from the immunity provided by Gov. Code § 818.6. Indeed, by implication section 818.6 confirms a public entity's legal duty to inspect adequately when it is the

owner of the property, in accordance with Gov. Code § 835's requirement that public entities keep their properties free of dangerous conditions that should have been discovered. Further, as discussed below, Health & Safety Code § 13007 codifies the common law principal that landowners have a duty to not allow fire to escape their land and cause harm to others.

Inspections of **private property** are precisely the type of fire protection **services** that are also covered by sections 850 and 850.2. Such services to third parties, even if negligently performed, cannot lead to governmental liability. But just as section 818.6 expressly excludes from immunity the duty to inspect the government's own property, the use of the word "services" in section 850 must be construed to exclude from any immunity the failure to maintain its own property free from known defects which could cause a fire or allow it to spread to its neighbors. Both the holding in *Vedder* and the language of *Zelig* (in the context of police protection immunity) are consistent with this reading of the immunity statutes.

H. Police Protection Immunity Is Irrelevant to This Case.

Plaintiffs do not allege that the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1. Therefore, the State's argument concerning Gov. Code § 845 (Demurrer at p. 23) is irrelevant. The MC concerns what the State did and did not do **after** the Lachman Fire was contained, *e.g.*, leaving an obvious and known dangerous condition on its property that six days later rekindled into the devastating Palisades Fire. Police protection immunity has no bearing on that question.

I. It Would Be Wrong to Hold That the State Cannot Be Liable For Injuries Caused By Fire.

The State's argument for immunity would result in the State **never** being liable for any damages caused by fire. So, for example, if there is a gas-fueled heater in a government building, and an inspection says it is seriously broken and likely to cause a fire in the near future, the State's reading of the immunities would allow the government to ignore the warning and allow the heater to start a fire with zero consequences — no liability for the damages caused, no exception. That is not the law.

Indeed, there are many published opinions holding California government entities liable for

damages caused by fire escaping their property. For example, in *Pittam v. City of Riverside* (1932) 128 Cal.App. 57, and *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609, courts addressed the question whether a government entity may be held liable for allowing a fire to escape from a city dump where trash was burned. Both cases were decided under the Public Liability Act (precursor to the Government Claims Act) and the common law of sovereign immunity that existed prior to the enactment of Gov. Code § 850 in 1963. The decisions in each case hinged on whether the dangerous condition was known by officials having authority to remedy the condition within a reasonable amount of time. In *Pittam,* the court explained as follows:

> If the proper municipal authorities had notice of a dangerous or defective condition of the dumping ground prior to the fire and permitted such condition to continue for an unreasonable time; if the fire which consumed respondent's property had spread or was carried from a fire on the dumping ground burning at a place, or one of the places, where fires were to be kindled in accordance with the plan of operation established by the municipal authorities and in operation at the time of the destruction of respondent's property; and if the fire was not spread from one wrongfully started by another agency such as trespassers on the city property, then we are of the opinion that a dangerous or defective condition of the public grounds, works or property of the city of Riverside existed which would render it liable for damages to the property of respondent.

Pittam, 128 Cal.App. at 65.

Addressing a similar situation of a fire that escaped a city dump, the Court in *Osborn v. City of Whittier* (1951) 103 Cal.App.2d 609 reversed with directions to overrule a demurrer, finding that a claim could be stated under the Public Liability Act.

> The complaint contains factual allegations of all the elements essential to a cause of action under the Public Liability Act: (1) facts showing a dangerous condition of public property; (2) actual knowledge of the dangerous condition by persons having authority to remedy the condition; (3) the lapse of a reasonable time after knowledge within which to remedy the condition, or to take such action as might be reasonably necessary to protect the public against the dangerous condition; (4) failure to remedy the dangerous condition; (5) the dangerous condition was a proximate cause of the damage; and (6) presentation of a verified claim within ninety days.

Osborn, 103 Cal.App.2d at 620.

There is no evidence that the Legislature intended to alter or limit the law of government liability for dangerous conditions when it enacted the Government Claims Act in 1963. Rather, that

enactment was necessitated solely by a momentous decision of the California Supreme Court in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211, discarding altogether the common law of sovereign immunity. At that time, former Government Code § 53051 of the Public Liability Act already provided for claims based on a dangerous or defective condition of public property. As the decisions in *Pittam* and *Osborn* demonstrate, such claims could be made when a known dangerous condition allowed a fire to escape public land and damage private property. The enactment of the Government Claims Act in 1963 was intended to retain the principles of fire protection immunity that then existed, not broaden them. 4 Cal. Law Revision Comm. Rep. p. 828 ("There are strong policy reasons for retaining the large measure of the [fire protection] immunity that now exists."); 4 Cal. Law Revision Comm. Rep., p. 848, West's Annotated California Codes, § 830 ("This does not change the pre-existing law relating to cities, counties and school districts.").

Indeed, more recently in a 1992 opinion involving the State itself, the State was held liable for damages caused by fire escaping State land. *See McKay v. State of California* (1992) 8 Cal.App.4th 937, 938 ("In this case we hold that Health and Safety Code section 13007 permits recovery of lost profits from a business connected to property that is damaged by a negligently set fire.").[14] *McKay*, along with *Pittam* and *Osborn*, demonstrate that the State can be held liable for damages caused by a fire that escapes State property. The State's overreaching immunity arguments are contrary to this longstanding California law and should be rejected.

J. Cases Concerning a Dangerous Condition That Causes a Fire Should Be Decided On The Facts

The import of the *Vedder, Cairns,* and *Puskar* decisions is that liability attaches when the public property *itself* was in a dangerous condition at the time of injury. All of the cases could be decided, not by immunity, but rather by evaluating whether there was a sufficiently hazardous condition. In *Cairns* and *Puskar,* there was no known inherently dangerous condition at the precise

[14] In *McKay*, the State conceded liability under Health and Safety Code section 13007 even though the *Vedder* Court held that government entities are not covered by the Health and Safety Code's definition of "persons." *See Vedder*, *supra,* 36 Cal.App.3d at 662; *McKay*, *supra*, 8 Cal.App.4th at 938. The State presumably made this concession as it would have been liable under common law dangerous condition principles regardless.

location where the fire occurred. In other words, the closed road was not itself ordinarily dangerous, nor was the cabin without a fire extinguisher. These conditions only became dangerous when **a fire started independently of the claimed dangerous condition of the property**, an occurrence that was not immediately foreseeable about which the government had no prior notice or warning. There was no specific reason to think that any damage would result from a closed road or a missing fire extinguisher in those locations at any particular time. Thus, there was no reason to find that the government should have ameliorated the condition of the road or the cabin prior to the incident. That is not the case with the Palisades Fire.

In the present case, the precise location and timing of the impending danger was known in advance. The danger posed by the burn scar of rekindling a devastating new fire in that precise location was known to authorities and immediately foreseeable. Under those circumstances, State officials had a duty to take reasonable steps to warn the public and stop the occurrence of a new, highly dangerous fire in the place where it was most likely to happen. Since members of the public could visibly see smoke coming up out of the ground in the Lachman Fire burn scar on January 1 and 2, so too could have State Park rangers have seen the smoke produced by the smoldering embers that remained on the State's land in the days following the Lachman Fire.

In *Vedder*, as in the old city dump fire case, *Osborn,* the court reversed the sustaining of a demurrer, because the plaintiffs had pled sufficient facts to allow them to prove that there was a known dangerous condition that started a fire in a known location. In other words, the city officials knew there was a defect in the property (gasoline storage without any accompanying fire protection) that could cause a dangerous fire to start. In *Cairns* and *Puskar*, by contrast, the plaintiffs could not possibly have proven dangerous condition liability, as the alleged defects (a closed road or missing fire extinguisher) could never by themselves have caused a fire.

In many respects, this case is much stronger than *Vedder*. In *Vedder*, the danger was caused by permitting the storage of gasoline without adequate fire protection. There was no specific known danger, just the potential that at some unknown time a fire could possibly be sparked near enough to the gasoline to cause great damage. In the case of the Palisades Fire, there was a known and particularized risk caused by an obvious defect in the State's property, namely, the large burn scar

left by the Lachman Fire and the continuing dry conditions and impending wind event. Similar to *Vedder*, Plaintiffs allege the complete absence of any ability to contain a fire if the embers in the burn scar rekindled because of the State Park's vast dry chaparral landscape.

Plaintiffs do not allege that the State had an obligation to protect against any fire anywhere from any cause, only that the State had the duty to take steps to rectify an obvious and known danger in this particular spot on its land (the Lachman Fire burn scar) and on these specific dates (January 1-7), when it was known to be most dangerous. It is one thing to find that the State has no obligation to put out a fire it did not cause; it is quite another to say that the State can knowingly leave smoldering embers on its property unattended for days, ready to rekindle, when it was expressly warned of a high wind event and extreme fire danger. Under those circumstances, the State had a duty to act and cannot claim a responsibility-free zone. The State's argument would swallow the dangerous-condition statute.[15]

All the defenses raised in the demurrer are questions of fact for a jury. Indeed, it is possible that after discovery the State will concede liability, and merely try the case on damages, as happened in *McKay, supra,* 8 Cal.4th 937. This case must be allowed to proceed to discovery so that the important factual questions can be fully investigated and answered. *Cf. Dahlquist, supra*, 243 Cal.App.2d at 212 (declining to affirm the demurrer sustained in dangerous condition case in part because "the doors of discovery . . . would be closed to plaintiffs")

IV. THE NUISANCE CAUSES OF ACTION SHOULD BE ALLOWED TO PROCEED.

Defendant argues that *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379 mandates the dismissal of a nuisance cause of action if the same facts are used as the basis of an

[15] An analogous situation arises under the design immunity statute. In *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, the California Supreme Court held that design immunity did not bar all potential claims resulting from a dangerously designed feature of a roadway. Rather, although Gov. Code § 830.6 "shields public entities from liability for injuries resulting from the design of the physical features of a roadway, they nonetheless retain a duty to warn of known dangers that the roadway presents to the public. . . . '[S]ection 830.6 was not intended to allow government entities to remain silent when they have notice that a reasonably approved design presents a danger to the public.'" *Tansavatdi*, 14 Cal.5th at 647, affirming *Cameron v. State of California* (1972) 7 Cal.3d 318.

action for a dangerous condition of public property. This is incorrect. First, *Longfellow* concerned a claim that was dismissed because the government entity did not own the property at the time of the injury, so its alternative ground for decision was unnecessary. However, second, the *Longfellow* court's reasoning has been severely criticized and not followed. In *Paterno v. State of California* (1999) 74 Cal.App.4th 68, the court explained:

> "The Tort Claims Act bars liability against public entities "Except as otherwise provided by statute[.]" (Gov.Code, § 815.) The act provides liability for a dangerous condition of public property. (Gov.Code, § 835.) **But the California Supreme Court has held Civil Code section 3479 is a statute that provides liability against public entities which maintain nuisances. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 932–937, 101 Cal.Rptr. 568, 496 P.2d 480.).** With undue qualification, a leading treatise states: "If the facts warrant, *it appears* that a plaintiff may sue for damages based on a dangerous condition of real property [and nuisance] arising from the same condition, although design immunity ... may bar relief if its elements are established by sufficient evidence. [Citations.]" (Van Alstyne et al., *Cal. Gov. Tort Liability Practice* (Cont.Ed.Bar 1992) General Liability and Immunity Principles, § 2:106, p. 195, *italics added*.) The qualification we italicize is based on an anomalous decision, *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 192 Cal.Rptr. 580 (*Longfellow*), which, in an alternate holding, concluded that if a count may be stated for a dangerous condition of public property, the same facts cannot be used to allege a nuisance count. (Id. at p. 384, 192 Cal.Rptr. 580.) **This does not follow logically. That a given set of facts fortuitously supports liability on two legal theories is not a principled reason to deny a party the right to pursue each theory.** (See *Pfleger v. Superior Court* (1985) 172 Cal.App.3d 421, 429–432, 218 Cal.Rptr. 371 (*Pfleger*) [criticising *Longfellow*].)"

Paterno, 74 Cal.App.4th at pp. 103-103 (emphasis added).

As in *Paterno*, the court in *Pfleger* similarly examined and declined to follow *Longfellow*, finding its "language" rejecting a plaintiff's to recover under theories of nuisance and dangerous condition "internally inconsistent." *Pfleger*, 172 Cal.App.3d at 429. Relying on other cases distinguishable from *Longfellow*, the court reasoned that to find "the Legislature must be presumed to have impliedly prohibited a cause of action for nuisance against a public entity . . . would be too great an exercise of judicial imagination. . . . " *Id*. at 432. The court thus permitted the plaintiffs to bring causes of action for dangerous condition and nuisance simultaneously.

Additionally, the State argues that because it is authorized to maintain Topanga State Park, nothing it does with the park can be a nuisance, citing Civil Code § 3482 and *Avedon v. State of*

California. As discussed above, *Avedon* concerned a claim that merely providing public access to Malibu Creek State Park could be grounds for a claim of dangerous condition and nuisance. Neither claim was viable because public access alone was neither dangerous nor a nuisance, nor was it the proximate cause of any injury. *Avedon* does not stand for the proposition that no claim for nuisance may ever be made against a State Park.

Further, section 3482 does not give blanket immunity for all government activity. The statute is narrowly construed and applies only to actions which are expressly and clearly authorized. *Otay Land Co., LLC. V. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 846-47. The State cites no statute or regulation that expressly permits the maintenance of park land in an obviously dangerous condition, with a smoldering burn scar left unattended, surrounded by wild and overgrown chaparral, during a period of extreme fire danger. Here, the essential elements of a nuisance claim have been pled in the Master Complaint, and the State does not contend otherwise. Nor can the State overcome the black letter law which unambiguously holds that "the general rule of governmental immunity provided in [the Tort Claims Act] alone does not preclude a nuisance action against a government entity founded on Civil Code section 3479." *Barnhouse v. City of Pinole* (1982) 133 Cal.App.3d 171, 195, n. 14 (citing *Nestle, supra*, 6 Cal.3d 920).

The State fails to articulate a single valid claim of immunity that would entitle the State to resolve this case based on the content within the Master Complaint's four corners. The nuisance claims, as well as the government tort claims, should proceed to a merits-based decision.

V. CONCLUSION

For all of the foregoing reasons, the demurrers to the causes of action alleged in the Master Complaint against the State of California should be overruled in their entirety.

Dated: December 18, 2025

ROBERTSON & ASSOCIATES, LLP

By: */s/ Alexander Robertson, IV*
Alexander Robertson, IV

Dated: December 18, 2025

FOLEY BEZEK BEHLE & CURTIS, LLP

By: */s/ Roger N. Behle, Jr.*
Roger N. Behle, Jr.
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Dated: December 18, 2025

BOYLE LAW PC

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Dated: December 18, 2025

MCNULTY LAW FIRM
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By: */s/ Peter McNulty*
Peter McNulty
E. Kirk Wood

Liaison Counsel for Individual Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 24025 Park Sorrento, Suite 100-1, Calabasas, CA 91302.

On December 18, 2025, I served true copies of the following document(s) described as **INDIVIDUAL PLAINTIFFS' OPPOSITION TO DEMURRER BY THE STATE OF CALIFORNIA** on the interested parties in this action as follows:

BY ELECTRONIC TRANSMISSION: Pursuant to Court Order Authorizing Electronic Service, I provided the document(s) listed above electronically on the CASE ANYWHERE Website to the parties on the Service List maintained on the CASE ANYWHERE Website for this case. Case Anywhere is the on-line e-service provider designated in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 2025, at Los Angeles, California.

Maria Alegria

EXHIBIT 6

Reply to Opposition to Demurrer by Defendant State of California to the Master Complaint (1/15/26)

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Attorneys for Defendant State of California, acting by and through the State of California Department of Parks and Recreation (also erroneously sued herein as California Department of Parks and Recreation)

Electronically FILED by Superior Court of California, County of Los Angeles 1/15/2026 1:35 PM David W. Slayton, Executive Officer/Clerk of Court, By E. Davis, Deputy Clerk

Exempt from filing fee (Gov. Code § 6103.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAN GRIGSBY, an individual; KAREN GRIGSBY, an individual; GRIGSBY FAMILY TRUST; DAN GRIGSBY, as Trustee of the GRIGSBY FAMILY TRUST; KAREN GRIGSBY, as Trustee of the GRIGSBY FAMILY TRUST; ROBERT FLUTIE, an individual; ABUNDANT SUCCESS, LLC d/b/a FLOUR CAFE AND PIZZERIA; ANDREA LOEWEN, an individual; JEFFREY BAZYLER, an individual; DANIEL CORREA DE TOLEDO, an individual; AIDA GARCIA-TOLEDO, an individual; JOHN FERBAS, an individual; KATHIE FERBAS, an individual; ASHLEY FERBAS, an individual; FERBAS FAMILY TRUST; JOHN FERBAS, as Trustee of the FERBAS FAMILY TRUST; KATHIE FERBAS, as Trustee of the FERBAS FAMILY TRUST: PETER PARTAIN, an individual; LISA PARTAIN, an individual; MILES PARTAIN, an individual; MARCUS PARTAIN, an individual; YELENA ENTIN, an individual; ANNA ENTIN, an individual; YELENA ENTIN LIVING TRUST; YELENA ENTIN, as Trustee of the YELENA ENTIN LIVING TRUST; BORIS YERUHIM, an individual; ALLA YERUHIM, an individual; YERUHIM FAMILY TRUST; BORIS YERUHIM, as Trustee of the YERUHIM FAMILY TRUST; ALLA

Case No. 25STCV00832
And All Related Cases

REPLY TO OPPOSITION TO DEMURRER BY DEFENDANT STATE OF CALIFORNIA TO THE MASTER COMPLAINT

Date: February 5, 2026
Time: 1:45 p.m.
Dept: 7

Honorable Samantha Jessner

RES ID: No hearing reservation required. Hearing date specially set by the Court.

YERUHIM, as Trustee of the YERUHIM FAMILY TRUST; KRISTIN ARMFIELD, an individual; KRISTIN ARMFIELD TRUST; KRISTIN ARMFIELD, as Trustee of the KRISTIN ARMFIELD TRUST, Plaintiffs, v. CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, a government entity; CITY OF LOS ANGELES, a government entity; CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a government entity; STATE OF CALIFORNIA; and DOES 1 through 50, inclusive, Defendants.
AND ALL RELATED CASES.

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Introduction

The State of California, acting by and through the State of California Department of Parks and Recreation (State Parks) submits the following reply which further shows that the demurrer should be sustained without leave to amend. As a general matter, the Opposition incorrectly cites to and relies on multiple cases involving private entity premises liability cases that were not statutory actions brought under the Government Claims Act. (See e.g. Opp., p. 5:11-24.) However, as discussed in the moving papers, "there is no common law tort liability for public entities in California; instead, such liability must be based on statute." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) The intent of the Act is to "confine potential governmental liability to rigidly delineated circumstances." (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.) For sake of brevity and continuity, this reply follows the order of the arguments set forth in the moving papers.

1) The Demurrer Should be Sustained Without Leave to Amend as to the Dangerous Condition Causes of Action

a. The Demurrer Should be Sustained Without Leave to Amend Because the Allegations of the Master Complaint Fail to Establish a Dangerous Condition Within the Meaning of Government Code Section 830

The Opposition effectively concedes that State Parks cannot be held liable for the fire started by the arsonist on January 1, 2025, stating "plaintiffs do not allege that the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1." (Opp. p. 18:14-15.) In this regard, plaintiffs concede that they "have not alleged that the State's property at Topanga State Park was in a dangerous condition *before* January 1." (Opp. p. 6:17-18 (emphasis in the Opposition).)

However, the Opposition also concedes that the reignition on January 7 was a result of rekindled smoldering embers left over from the fire started on January 1. (Opp., p. 7-8, Master Complaint (MC) ¶¶ 77-78.) The Master Complaint refers to this smoldering ember as a "firebrand" that "continued to smolder within the root structure of the vegetation." (MC, ¶ 75; citing the criminal complaint - *U.S.A. v. Rinderknecht*, USCD Case No. 2:25-mj-06103-DUTY, fn. 10, Ex. A to the Req. for Jud. Notice.) In this regard, the criminal complaint refers to the

Palisades fire as a continuation of the Lachman fire "meaning that they were essentially the same fire that burned and/or smoldered continuously." (Ex. A ¶ 9, including fn. 1.)[1] The arsonist was charged with setting "the fire known as the Lachman fire and Palisades fire." (Ex. B to Req. for Jud. Notice.)

Thus, plaintiffs' opposition and allegations show that the rekindling that occurred on January 7 was a continuation of the same fire started on January 1. Therefore, since the fire started by the arsonist on January 1, for which plaintiffs concede State Parks is not liable, continued as the same fire that reignited on January 7, it follows that, pursuant to *Zelig v. County of Los Angeles*, (2002) 27 Cal.4th 1112, the reignition on January 7 is not a dangerous condition for which State Parks can be liable.

It is well established that "public entities generally are not liable for failing to protect individuals against crime." (*Id.* at p. 1126.) The *Zelig* Court emphasized that "liability is imposed only when there is some defect in the property itself and a causal connection is established between the defect and the injury." (*Id.* at p. 1135.) Plaintiffs allege a smoldering ember in the burn scar as the dangerous condition at issue. (Opp., p. 8:15-16.) However, the burn scar and any underground residual ember therein were directly caused by the arsonist starting the fire on January 1. But for the act of arson, there would have been no burn scar or underground residual ember that could have reignited on January 7. Thus, a causal connection between a separate physical defect in the park property itself cannot be established.

The court in *Avedon v. State of California*, (2010) 186 Cal.App.4th 1336, held that third parties wrongfully starting a wildfire in a State Park did not constitute a dangerous condition for which State Parks could be held liable. (*Id*. at p. 1344.) Here, the conduct of the arsonist in

[1] As discussed in the Request for Judicial Notice, consideration of statements in the criminal complaint are appropriate on a demurrer. A court "may consider documents referred to in the complaint" in considering a motion to dismiss in federal court. (*Dreiling v. Am. Exp. Co* (9th Cir. 2006) 458 F.3d 942, 946, fn.2.) "Documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." (*Branch v. Tunnell* (9th Cir. 1994) 14 F.3d 449, 454.)

starting the fire on January 1 clearly was unrelated to the condition of the Topanga State Park property itself and therefore does not constitute a dangerous condition, as a matter of law.

In addition, the underlying premise of plaintiffs' allegations are that State Parks should have stationed personnel up in the area of the fire from January 1 through 7 to inspect and monitor for possible embers in the root structure of the vegetation that could potentially rekindle. However, "a lack of human supervision and protection is not a deficiency in the physical characteristics of public property." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1352.) Thus, State Parks' personnel not engaging in this type of fire protection activity cannot be construed as a physical defect in the park property.

b. The Demurrer Should be Sustained Without Leave to Amend because the Allegations of the Master Complaint Fail to Establish Actual or Constructive Notice, as a Matter of Law

Even assuming that the rekindling that occurred on January 7 could be construed as a separate fire or condition of the property, the Master Complaint fails to sufficiently allege actual or constructive notice. First, plaintiffs' allegations fail to establish actual notice because it is not enough to show that State Parks' employees may have had a general knowledge that a fire can sometimes occur under the alleged conditions, including the presence of a burn scar and the possibility of a holdover fire in the area. "There must be some evidence that the employees had knowledge of the particular dangerous condition in question." (*State of California v. Superior Court of San Mateo County* (1968) 263 Cal.App.2d 396, 399.) In *State of California*, the court held that, as a matter of law, a general knowledge that people left hot coals on the beach could not provide actual notice of the particular hot coals on the beach that the 2 1/2 year old plaintiff sat in. (*Id.* at p. 399-400.) Here, general knowledge that an underground ember could have remained somewhere in the eight acre burn area could not provide actual notice of the particular ember that reignited on January 7.

With regard to constructive notice, plaintiffs' allegations are clearly insufficient. As discussed in the moving papers, every fact material to the existence of a public entity's statutory liability "must be pleaded with particularity." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App. 5th 129, 138.) Plaintiffs have not done so.

The Opposition generally references the entire burn scar area and the possibility of underground embers located in it. However, the existence of a burn scar by itself would not provide constructive notice that a fire would occur. Every wildland fire that occurs in the State of California leaves some form of a burn scar. The potential that there may be an underground ember in a burn scar that may reignite into a fire does not reasonably mean that a rekindling of an ember in a burn scar will occur. To assume otherwise would mean that every wildland fire burn scar throughout the state would constitute constructive notice of a dangerous condition.

With regard to constructive notice of the underground ember that caused the rekindling on January 7, there is no allegation in the Master Complaint that there was any visible indication of any flame, smoke or smoldering embers in the burn scar area from January 2 up until the report of the rekindling of the fire on January 7. In addition, the Los Angeles Fire Department (LAFD) had notified State Parks on January 1 that the fire was fully contained at approximately 4:48 a.m. and that it was extinguished. Furthermore, plaintiffs fail to explain how the existence of smoldering on January 1, the day the fire was started, could provide notice of the burning ember that reignited on January 7, when there is no allegation of any visible indication of smoke or smoldering from January 2 until the reignition on January 7.

In addition, plaintiffs' allegation generally referencing the entire burn scar, which comprised approximately eight acres, as potentially providing notice of the underground ember that reignited on January 7 is excessively vague and overbroad. This point is illustrated by referencing the satellite photo at page 24 of the Master Complaint showing the outline of the January 1 burn scar in red. The origin point of the rekindling on January 7 is shown with a yellow dot to the south of the southern perimeter of the burn scar area. Thus, as an example, the existence of some obvious indication of smoldering or smoke at the northern end of the burn scar could not logically provide constructive notice of the ember that caused the reignition at the southern end of the burn scar on January 7. In other words, plaintiffs must allege that there was some obvious indication of smoke or smoldering in a specific area that could reasonably be construed as causing the rekindling at the yellow dot origin point shown to the south of the southern perimeter of the burn scar. They have not done so.

Furthermore, the Master Complaint fails to allege that the underground ember that caused the reignition on January 7 was obvious. "A claim for constructive notice has *two* threshold elements. A plaintiff must establish that the dangerous condition has existed for a sufficient period of time and that the dangerous condition was obvious. (*Heskel v. City of San Diego* (2014) 227 Cal.App.4th 313, 320, (citation omitted and emphasis in original).) Plaintiffs appear to concede the necessity of making this allegation as the opposition includes the general and conclusory assertion that the burn scar and its smoldering embers constituted an obviously dangerous condition. (See e.g. Opp., p. 8:27-28.) However, the Master Complaint fails to contain this required allegation.

Plaintiffs' citation to *Carson v. Facilities Development Co.*, (1984) 36 Cal.3d 830, for the concept that the question as to whether a dangerous condition could have been discovered by reasonable inspection may present an issue of fact bypasses the required threshold showing that an obvious danger existed. (*Id.* at p. 842; citing *State of California, supra,* 263 Cal.App.2d at p. 400.) In this regard, the *State of California* court held that "the primary and indispensable element of constructive notice is a showing that the *obvious condition existed a sufficient period of time before the accident*." (*Id.* at p. 400, (emphasis in original).) The method of inspection is secondary. (*Id.*) In other words, the issue as to whether was a reasonable inspection system in place does not come into play until and unless an obvious dangerous condition has been properly alleged.

c. The Demurrer Should be Sustained Without Leave to Amend Because Parks is Immune from Liability, as a Matter of Law

Plaintiffs incorrectly assert that the fire protection immunity does not apply to preclude liability for a dangerous condition on a public entity's own property. In *Prokop v. City of Los Angeles,* (2007) 150 Cal.App.4th 1332, the court made clear that a Government Code section 835 action based on a dangerous condition of a public entity's property is subject to any immunity provided by statute to the public entity. (*Id.* at pp. 1337-1338.) The court in *New Hampshire Ins. Co. v. City of Madera,* (1983) 144 Cal.App.3d 298, noted that causes of action premised on a

dangerous condition of property theory under Government Code section 835 are subject to the immunity statutes under sections 850 through 850.4. (*Id.* at p. 305.)

In *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, the Second District Court of Appeal affirmed the sustaining of a demurrer without leave to amend holding that a dangerous condition cause of action based on a closed County owned road that resulted in fire damage to plaintiffs' homes was precluded by the immunity under Government Code sections 850, 850.2 and 850.4. (*Id.* at pp. 333-334.)

Plaintiffs also incorrectly assert that the immunity under sections 850 and 850.2 only applies to services provided while fighting fires. *Cairns* did not involve providing of any fire protection while fighting a fire or otherwise. The plaintiffs alleged that the County failed to repair and reopen the subject road that served as a fire access road, which had been closed for many years, before the subject fire started. (*Id.* at pp. 333, 335.) The court held that, "defendants' failure to repair and reopen a damaged closed road merely to have it available as an alternative fire road is, in these circumstances, a failure to provide fire protection service or fire protection facilities within the immunities of sections 850, 850.2, and 850.4." (*Id.* at p. 336.) (See also *Cochran v. Herzog Engraving* (1984) 155 Cal.App.3d 405, 412-413 [Govt. Code sections 850, 850.2 and 850.4 precluded liability based on pre-fire inspection that failed to find dangerous condition that caused fire].)

Plaintiffs' argument that the immunity under section 850 and 850.2 applies only to active firefighting activity is based on cases such as *Varshock v. Department of Forestry & Fire Protection*, (2011) 194 Cal.App.4th 635, which addressed immunity under Government Code section 850.4 finding this immunity is limited to an act or omission while responding to or combating an actual fire. (*Id.* at p. 643.) However, State Parks is not asserting immunity under section 850.4. *Varshock* did not address the immunity under sections 850 or 850.2.

City and County of San Francisco v. Superior Court, (1984) 160 Cal.App.3d 837, cited by plaintiffs, addressed immunity under section 850.4 and 850, and supports application of section 850 immunity in this case. (*Id.* at p. 842.) There, plaintiffs' real property caught fire and an individual ran approximately 300 feet directly to defendant's firehouse to report the fire.

However, the personnel at this firehouse had left to participate in an improper dinner gathering at another firehouse. This unauthorized absence from the firehouse delayed the response to the fire resulting in extensive damage to the subject real property. (*Id.* at pp. 838-839.)

The court, noting that section 850.4 provides immunity to employees while they are fighting fires, held: "However, even if section 850.4 could be so narrowly construed as to apply to actions only after the firemen reached the fire, the immunity of section 850 would apply for then the acts of the firemen must be viewed as a failure 'to provide fire protection service.'" (*Id.* at p. 842.) Thus, not providing any fire protection by not responding to a fire scene is covered under section 850 immunity.

People ex rel. Grijalva v. Superior Court, (2008) 159 Cal.App.4th 1072, also supports application of the immunity under section 850 in this case. In *Grijalva*, firefighters initially had a brush fire 90 percent contained but failed to douse the flames completely and instead began to demobilize its firefighting resources resulting in the fire later burning out of control. (*Id.* at pp. 1075-1076.) The *Grijalva* court ordered that the underlying motion for judgment on the pleadings should have been granted without leave to amend because the immunity statutes preclude liability based on the fire protection service, personnel, equipment or other fire protection facilities, "they provide, *or do not provide*." (*Id.* at p. 1078; citing Gov.Code, §§ 850, 850.2, 850.4 (emphasis added).) Thus, not providing fire protection by deciding not to remain at a fire scene to monitor for a possible rekindling is covered by section 850 immunity.

In addition, in attempting to distinguish *Cochran*, plaintiffs incorrectly assert that State Parks is relying on the inspection immunity of Government Code section 818.6, which it is not. In fact, the *Cochran* court held that the "sweeping" language of Government Code sections 850, 850.2 and 850.4 also precluded liability:

> "Aside from the immunity provided by Government Code section 818.6, the trial court cited and relied on three other immunity statutes: Government Code sections 850, 850.2 and 850.4. The language of these provisions is sweeping, and they have been broadly construed by the courts in this state to provide immunity under circumstances quite similar to those before us. We find that these statutes are applicable here, and provide further immunity for the City in the instant case."

(*Cochran*, supra, 155 Cal.App.3d at pp. 412-413.)

The *Cochran* court further noted that, "Government Code sections 850 and 850.2 protect public entities from liability by providing governmental immunity for an unreasonable failure to maintain sufficiently adequate fire-protection service, even when a public entity has undertaken to provide such service." (*Id.* at p. 413.) The clear inference from this statement, consistent with the Law Revision Comment to section 850, is that the immunity under section 850 precludes liability when a public entity has not undertaken to provide fire protection.

Furthermore, the allegations upon which the *Cochran* court determined that immunity under sections 850 and 850.2 precluded liability are similar to the asserted bases for liability against State Parks in this case. The *Cochran* plaintiffs asserted that the City of San Mateo had a duty to inspect the location that burned in order "to correct or remedy any hazardous conditions liable to cause fire, and to require the use of adequate protective measures, including suitable fire detecting and extinguishing devices; and that the breach of these duties subjected it to liability." (*Id.* at p. 410.)

Similarly, here, plaintiffs allege that State Parks had a duty to inspect the burn scar area to correct or remedy a hazardous condition in the form of an underground ember that was liable to cause fire, and to use adequate protective measures, including suitable fire detecting devices such as a thermal imaging device, and that the breach of these duties subjects State Parks to liability. However, *Cochran* makes clear that liability is precluded under section 850 based on these allegations.

Furthermore, plaintiffs' strained effort to analogize the facts of *Vedder v. City of Imperial*, (1974) 36 Cal.App.3d 654, to the facts presented here lacks merit. Comparing the storage of large quantities of highly combustible gasoline at an airport without special equipment for gasoline fires to undeveloped land with naturally growing chaparral and vegetation in a State Park defies logic and common sense. As discussed in the moving papers, the *Cairns* court correctly distinguished *Vedder* from the facts in that case which apply equally to the facts in this case. (*Cairns, supra,* 62 Cal.App.4th at p. 336.)

An additional distinguishing factor from *Vedder* is that, in that case, there was no means available at the County airport where the fire occurred to control a gasoline fire. (*Vedder,*

*supra,*36 Cal.App.3d at p. 659.) Here, there were means to control the subject brush fire in that LAFD handled the fire response, including mop-up, and advised that the fire was extinguished. (MC, ¶ 371, p. 115:8.)[2] Here, plaintiffs essentially allege that State Parks should have provided additional fire protection by inspecting the burn scar area after LAFD completed its work to locate the underground ember that caused the reignition on January 7.

Plaintiffs attempt to distinguish *Cairns* by asserting, without any authority, that this case involves "the smoldering embers in the burn scar- [that] actually started and caused the Palisades Fire, rather than merely upsetting firefighting efforts." (Opp. p. 15:25-28.) The plain language of section 850 and 850.2 contain no such limitation and such an asserted interpretation is clearly inconsistent with the "broad" immunity conferred by section 850 and 850.2. The *Cairns* court noted that "these sections provide for a *broad* immunity from liability for injuries resulting in connection with fire protection service." (*Id.* at p. 335, (emphasis in original).)

> "Sections 850 and 850.2 provide an absolute immunity from liability for injury resulting from failure to provide fire protection or from failure to provide enough personnel, equipment or other fire protection facilities. *Whether fire protection should be provided at all*, and the extent to which fire protection should be provided, are political decisions which are committed to the policy-making officials of government."

(*Id.*; quoting Gov. Code, § 850, Law Revision Commission Comments, (emphasis added).)

Plaintiffs also attempt to distinguish *Puskar* v. *City and County of San Francisco*, (2015) 239 Cal.App.4th 1248, by asserting, without recitation to any authority, that the fire protection immunities are limited only to decisions that make firefighting more difficult or impede the response to a fire. (Opp., p. 16:17-19.) However, there is no case law remotely suggesting that fire protection immunity is limited to actions that impede the response to a fire or make fire fighting more difficult. As discussed above, this assertion is entirely inconsistent with the plain language of the statutes and applicable case law which makes clear that the fire protection immunity under section 850 applies where no fire protection is provided at all.

[2] As discussed in the moving papers, the area of the subject fire was within a local agency responsibility area. (See Pub. Resources Code §§ 4125-4127.)

Here, as discussed above, LAFD handled the fire response on January 1 and advised State Parks that it was extinguished. Clearly, State Parks not providing further fire protection by inspecting for underground embers, with or without a thermal imaging device, to essentially recheck the work of LAFD after it completed its work, as plaintiffs allege should have been done, is a decision that falls within the "whether fire protection should be provided at all" language of the Law Revision Commission Comment to section 850. Therefore, the immunity under Government Code Section 850 applies and bars this action as against State Parks.

In addition, the *Puskar* court's criticism of the *Vedder* decision is well taken. In this regard, the *Vedder* court's incorrect statement that these immunity statutes "must be strictly construed" is at odds with the *Cairns* holding that "these sections provide for a *broad* immunity from liability." (*Cairns supra,* 62 Cal.App.4th at p. 335, (emphasis in original).) That the *Vedder* court incorrectly construed the immunity statutes is confirmed by the California Supreme Court decision in *Teter v. City of Newport Beach*, (2003) 30 Cal.4th 446. In *Teter*, the plaintiff asserted that, under the Government Claims Act, liability is the rule and immunity the exception. The *Teter* Court rejected this assertion stating that "plaintiff is quite wrong about that." (*Id*. at p. 451.) The court reiterated its statement in *Zelig* that the intent of the Act is "not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances." (*Id.*) In this regard, at noted by the *Cairns* court, immunity provisions will, "as a general rule prevail over all sections imposing liability." (*Cairns, supra,* 62 Cal.App.4th at p. 334.)

Plaintiffs also rely on *Pittam v. City of Riverside*, (1932) 128 Cal.App. 57, and *Osborn v. City of Whittier*, (1951) 103 Cal.App.2d 609, but both cases are distinguishable based on *Stang v. City of Mill Valley,* (1952) 38 Cal.2d 486, because, contrary to the facts in *Pittam* and *Osborn*, the public entity defendant in *Stang* did not create the fire causing the damage to plaintiffs' property. (*Id.* at p. 489.) In *Pittam*, the City of Riverside operated a dumping and burning ground for trash where it intentionally burned trash in a "burning area." (*Pittam, supra,* 128 Cal.App. at p. 58.) In *Osborn*, the City of Whittier operated a rubbish disposal dump wherein it intentionally burned

rubbish on a continual basis. (*Osborn, supra,* 103 Cal.App.2d at p. 612.) The *Stang* court affirmed the sustaining of a demurrer finding no liability under the Public Liability Act:

> "As the maintenance and operation of a fire department is so distinguished as a governmental function for the public good, it is 'well settled that a municipal corporation is not responsible for the destruction of property within its limits by a fire which it did not set, merely because, through the negligence or other default of the corporation or its employees, the members of the fire department failed to extinguish the fire."

(*Stang, supra,* 38 Cal.2d at pp. 489-490.) The *City and County of San Francisco* court referenced this passage from *Stang* as a basis for no liability prior to the enactment of the Government Claims Act in 1963 and proceeded to evaluate the applicable statutory immunities after the enactment of the Act. (*City and County of San Francisco, supra,* 160 Cal.App.3d at p. 840.) As discussed above, the court found that the immunity of section 850 precluded liability based on the failure of fire personnel to respond to the subject fire due to leaving their firehouse which "must be viewed as a failure to provide fire protection service." (*Id.* at p. 842.)

McKay v. State of California, (1992) 8 Cal.App.4th 937, does not apply to the facts of this case as it addressed recoverable damages under Health and Safety Code section 13007 that permits recovery for damages due to a negligently set fire such as a controlled-burn fire that damages adjacent property. *McKay* did not involve a dangerous condition or nuisance cause of action. (*Id.* at p. 938.)

With regard to the police protection immunity under Government Code section 845, plaintiffs assert that, based on their concession that State Parks cannot be liable for the arsonist starting the fire on January 1, this immunity does not apply. However, as discussed above, plaintiffs' allegations indicate that the fire that was started by an arsonist on January 1 was never completely extinguished due to an underground ember that reignited on January 7. Thus, the criminal arson was continuing and therefore the failure to discover this ongoing crime would be covered by the police protection immunity.[3]

[3] State Parks Rangers are peace officers under Penal Code section 830.2, subdivision (f) and Public Resources Code section 5008.

In addition, to the extent the allegations that State Parks personnel should have gone up to the fire area after January 1 to recheck the work of the LAFD by searching with a thermal imaging device looking for the underground ember that caused the reignition on January 7, this would involve State Parks' Rangers and therefore the additional immunity for police protection would also apply.

Plaintiffs' Opposition also asserts that State Parks should have closed Topanga State Park in the area of the January 1 burn scar. (Opp. p. 4:3-5, fn. 5.) There is no such allegation in the Master Complaint. Plaintiffs also misstate the section from the Department Operations Manual on which they rely by omitting the first sentence which states: "All or a portion of a park unit *may* be closed when an unwanted wildland fire is threatening or burns on Department lands." (State Parks Operations Manual, Natural Resources, § 0313.2.1.3, p. 03-48[4], (emphasis added).) Furthermore, plaintiffs have not and cannot explain how not closing the Park relates to providing fire protection service by searching with a thermal imaging device for the underground ember that reignited on January 7. Nevertheless, even if a decision not to close the Park could be construed as a basis for liability, said decision would be covered by the police protection immunity.

2) <u>The Demurrer Should be Sustained as to the Nuisance Causes of Action Without Leave to Amend</u>

State Parks' argument that a nuisance cause of action cannot be stated when the claim is based on an alleged dangerous condition of public property is based on two Second District Court of Appeal cases, *Longfellow v. County of San Luis Obispo*, (1983) 144 Cal.App.3d 379 and *Mikkelsen v. State of California* (1976) 59 Cal.App.3d 621. The *Longfellow* court held that plaintiffs have no cause of action under a nuisance theory where the action is based on a claim of a defective condition of public property stating: "We deem it proper in this case where the action is based on a claim of a defective condition of public property to follow the reasoning of the

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[4] <https://www.parks.ca.gov/pages/21299/files/DOM%200300%20Natural%20Resources.pdf>

Mikkelsen court and find the plaintiffs have no cause of action under a nuisance theory." (*Id.* at p. 384, following *Mikkelsen*.)

The *Mikkelsen* court noted that none of the cases that had allowed a nuisance action to proceed against a public entity at that point in time, involved a dangerous condition cause of action. (*Mikkelsen, supra,* 59 Cal.App.3d at p. 627.) The court declined to allow the plaintiffs to proceed on a nuisance cause of action, in addition to a dangerous condition cause of action, because to do so would thwart the legislative purpose of the dangerous condition immunities by allowing maneuvering with the rules of pleadings and procedure in pleading on a theory of nuisance or negligence. (*Id.* at p. 630 [Design immunity under Government Code section 830.6 cannot be avoided by pleading a cause of action in nuisance.].)

However, plaintiffs argue that these Second District Court of Appeal holdings should not be followed based on a Third District Court of Appeal case, *Paterno v. State of California,* (1999) 74 Cal.App.4th 68, and a First District Court of Appeal case, *Pfleger v. Superior Ct.*, (1985) 172 Cal.App.3d 421. The *Paterno* court, relying on *Pfleger* disagreed with *Longfellow* calling it "an anomalous decision." (*Paterno, supra,* 74 Cal.App.4th at pp. 103-104.) The *Paterno* court did not distinguish *Longfellow*.

Thus, there is a conflict on this issue between districts. "As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (9 Witkin, Cal. Proc. 6th Appeal § 518 (2025), quoting *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315, fn 4.) In addition, State Parks submits that the court should follow *Longfellow* and *Mikkelsen* as they are the better reasoned opinions. In this regard, numerous cases addressing dangerous condition cases have held that, "the sole statutory basis for imposing liability on public entities as property owners is Government Code section 835." (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139, quoting *Cerna, supra,* 161 Cal.App.4th at p. 1347; see also, *Summerfield v. City of Inglewood* (2023) 96 Cal.App.5th 983, 993, *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438-439.)

In addition, the immunity under Civil Code Section 3482 precludes a nuisance cause of action against State Parks because it is expressly authorized by statute to operate Topanga State

Park. Here, the underlying premise of plaintiffs' allegations are that State Parks' allowance of naturally occurring growth of chaparral and other vegetation in its operation of Topanga State Park constitutes a nuisance. In this regard, the specific statutory authority for State Parks to operate the Park states that:

> "State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other similar values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California . . "

(Pub. Resources Code, § 5019.53.) "Each state park shall be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established." (*Id.*) Thus, State Parks is authorized by statute to operate the Park which includes specific authorization to allow naturally occurring growth of chaparral and other vegetation in its operation of the Park.

In *Avedon*, as alleged here, the nuisance claim was premised on State Park's "maintaining a dangerous condition of public property which allowed a severe fire risk to persist." (*Avedon*, supra, 186 Cal.App.4th at p. 1345.) The *Avedon* court held that a nuisance cause of action against State Parks was precluded by Civil Code section 3482 because it was authorized by statute to operate Malibu Creek State Park wherein it was, pursuant to Public Resources Code section 5001 et seq., to administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public. (*Id.*) The court concluded that State Parks' allowing access to the cave where the fire started and the road near the cave, fell squarely within its statutory authority to operate the park and therefore a nuisance claim could not be predicated on these actions. (*Id.*)

Similarly, here, State Parks' allowing naturally occurring growth of chaparral and other vegetation in its operation of Topanga State Park falls squarely within its statutory authority to operate the park precluding a nuisance claim. (See also *Pekarek v. City of San Diego* (1994) 30 Cal.App.4th 909, 917-918 [operation of ice-cream trucks on city's streets permitted by ordinance cannot give rise to a nuisance claim].)

In addition, even if a cause of action for nuisance could be stated, which it cannot, the immunities discussed above as precluding the dangerous condition causes of action also preclude the nuisance causes of action. (*Cairns, supra*, 62 Cal.App.4th at pp. 332, 334-335; see also *Schooler v. State of California* (2000) 85 Cal.App.4th 1004, 1012 [Nuisance theory of liability against State fails because the existence of an immunity precludes any duty to abate a nuisance].)

Conclusion

For the reasons set forth above and in the moving papers, State Parks respectfully requests that the court sustain the demurrer in its entirety without leave to amend.

Dated: January 15, 2026

Respectfully Submitted,
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DECLARATION OF SERVICE

I declare: I am employed in the City of Los Angeles, County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Room 1700, Los Angeles, California 90013. On January 15, 2026, I served the documents named below on all interested parties in this action as follows:

1. **REPLY TO OPPOSITION TO DEMURRER BY DEFENDANT STATE OF CALIFORNIA TO THE MASTER COMPLAINT**

BY ELECTRONIC SERVICE THROUGH THE CASE ANYWHERE SYSTEM: I caused service of such documents through the Case Anywhere system. The court has authorized electronic service in this action through Case Anywhere, the designated online electronic service provider in this case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 15, 2026.

/s/ Sandra Dominguez
Sandra Dominguez

EXHIBIT 7

Certified Demurrer Hearing Transcript (2/10/26)

Hearing Transcript

Case Number: 25STCV00832
Date: February 10, 2026

In the matter of:

PALISADES FIRE CASE

HEARING

DEMURRER HEARING

CERTIFIED COPY

Reported by:
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PE 337

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR COUNTY OF LOS ANGELES

DEPARTMENT 7 HONORABLE SAMANTHA JESSNER, JUDGE

PALISADES FIRE LITIGATION	LEAD CASE NO. 25STCV00832
DAN GRIGSBY, ET AL.,	
PLAINTIFFS,	
VS.	
CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, ET AL.,	
DEFENDANTS.	
AND ALL RELATED CASES.	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY; FEBRUARY 10, 2026

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COURT REPORTER PRO TEMPORE

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(AS REFLECTED IN THE CLERK'S MINUTE ORDER)

M A S T E R I N D E X

SESSIONS

PAGE

TUESDAY; FEBRUARY 10, 2026
P.M. SESSION 4

CASE NUMBER: 25STCV00832
CASE NAME: GRIGSBY V. CITY OF LOS ANGELES
LOS ANGELES, CALIFORNIA; TUESDAY; FEBRUARY 10, 2026
DEPARTMENT: 7 HONORABLE SAMANTHA JESSNER, JUDGE
REPORTER: YOLANDA TANNER, CSR NO. 12785
TIME: AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS WERE
HELD IN OPEN COURT:)

THE CLERK: DEPARTMENT 7 IS NOW IN SESSION.

THE COURT: OKAY. GOOD AFTERNOON. WE ARE HERE ON THE PALISADES FIRE CASES.

THE REPORTER: GOOD AFTERNOON.

THE COURT: WE HAVE A REPORTER PRESENT.

I'M GOING TO ASSUME THAT THE COURTROOM ASSISTANT HAS REGISTERED EVERYBODY'S NAMES AND -- WITH THE EXCEPTION OF THOSE WHO ARE GOING TO ADDRESS THE COURT, EVERYBODY ELSE DOESN'T HAVE TO SAY THEIR -- STATE THEIR APPEARANCES.

SO WE TALKED A LITTLE BIT LAST TIME WE WERE TOGETHER ON AN EX PARTE ABOUT THE FACT THAT THE COURT, OBVIOUSLY, WILL HEAR ARGUMENT, BUT WHAT I WANT TO MAKE SURE THAT WE DO IS -- OR THAT YOU DO IS THAT YOU HAVE ONE PERSON ADDRESS THE COURT ON AN ISSUE. SO, FOR EXAMPLE, IF -- YOU KNOW, THERE'S A DEFENSE ARGUMENT, I DON'T WANT MORE THAN ONE LAWYER TALKING ABOUT THE SAME ISSUE, IF THAT MAKES ANY SENSE.

(L.A. COURT CONNECT INTERRUPTION IN THE PROCEEDINGS)

THE COURT: EVERYONE WHO IS APPEARING REMOTELY, IF YOU CAN MAKE SURE THAT YOU'RE MUTED, THAT WOULD BE MUCH APPRECIATED.

SO THE TENTATIVE WAS SUPPOSED TO BE PROVIDED TO YOU THIS MORNING. SO MY APOLOGIES. WE HAD A TECHNICAL ERROR. AND I HAVE BEEN TOLD THAT YOU HAVE ENOUGH TIME TO LOOK AT IT, BUT IF YOU NEED MORE TIME, CERTAINLY LET ME KNOW.

IT IS ABOUT 2:00. LAST TIME WE WERE TOGETHER, I ALSO SUGGESTED THAT THE PARTIES TALK ABOUT HOW MUCH TIME YOU NEEDED TO ADDRESS THE COURT, KEEPING IN MIND THAT THERE WAS VERY, VERY EXTENSIVE BRIEFING. SO IT'S NOT GOING TO BE THE GREATEST USE OF YOUR TIME JUST TO REPEAT EVERYTHING THAT YOU SAID IN THE PAPERS. WHAT I WAS THINKING IS THAT WE'D START WITH THE STATE'S DEMURRER, MORE SPECIFICALLY I WOULD HEAR FIRST FROM THE MOVING PARTY, THEN OBVIOUSLY TURN TO PLAINTIFFS, AND THEN GO BACK TO THE MOVING PARTY. AND WHAT I HAD IN MIND IS WE'D HEAR -- OR I'D HEAR ARGUMENT ON THE STATE'S DEMURRER FROM ABOUT 2:00 TO 3:00.

AND THEN WE'D GO TO THE CITY'S DEMURRER FROM 3:00 TO 4:00. AND THEN TALK ABOUT SOME OTHER ISSUES. I WILL NOT ISSUE MY RULING FROM THE BENCH TODAY. I WANT TO HEAR THE ARGUMENTS. AND I WILL JUST SET IT FOR, PROBABLY, MOST LIKELY, A NONAPPEARANCE CASE REVIEW FOR THE ISSUE ON SOME OF THE FINAL RULINGS.

SO I'M GOING TO START -- IF THAT ALL WORKS FOR EVERYBODY, I'M GOING TO START WITH MR. LAKE, ASSUMING THAT YOU ARE GOING TO TAKE IT FOR THE STATE.

MR. LAKE: YES, YOUR HONOR.

THE COURT: AND SO DO YOU WANT ME TO TELL YOU WHEN YOU'RE NEARING 20 MINUTES, 30 MINUTES? HOW DO YOU WANT TO BREAK UP THE HOUR IS MY QUESTION.

MR. BRIAN: I HOPEFULLY WON'T SPEND MORE THAN 10 OR 15 MINUTES EVEN THOUGH --

THE COURT: I LOVE IT.

MR. LAKE: -- I'VE BEEN KNOWN TO BE LONG-WINDED. I'LL TRY NOT TO BE.

THE COURT: OKAY.

MR. LAKE: AND I APOLOGIZE IN ADVANCE. I JUST REVIEWED THE TENTATIVE, AND SO IF I'M REPEATING SOME OF THE POINTS THAT --

THE COURT: DON'T WORRY.

MR. LAKE: -- HAVE BEEN CLARIFIED ALREADY, I APOLOGIZE, BUT WE'LL TRY TO HIT ON THE MAIN POINTS.

FIRST OFF, WITH REGARD TO THE EXISTENCE OF A DANGEROUS CONDITION, IT CAN BE DETERMINED AS A MATTER OF LAW THERE WAS A REFERENCE IN THE TENTATIVE STATING THAT THERE -- WE DID NOT CITE PARTICULAR AUTHORITY FOR THAT PROSPECT. THE TWO CASES PRIMARILY ON WHICH THAT IS BASED IS THE ZELIG CASE AND THE AVEDON CASE.

ZELIG IS MORE GENERALLY FOR THE PROSPECT THAT PUBLIC ENTITY CANNOT BE LIABLE FOR THE IMPROPER ACTS OF A THIRD PARTY, IN PARTICULAR IN THAT CASE, WAS A

CRIMINAL ACT. AND, OF COURSE, WE HAVE THE CRIMINAL ACT OF ARSON HERE.

SECOND CASE THAT IS MORE DIRECTLY ON POINT IS THE AVEDON CASE. THAT WAS THE CORRAL CANYON FIRE THAT OCCURRED AT MALIBU CREEK STATE PARK.

LOOKING AT THE TENTATIVE RULING, THE COURT DISTINGUISHED, SOMEWHAT, THE FACTS THERE, BUT AS -- FIRST, I'D LIKE TO JUST KIND OF DISCUSS A FEW PRELIMINARY FACTS THAT I THINK ARE PRETTY CLEAR THAT GRAVITATE TO THE COURT'S FINDING NO DANGEROUS CONDITION. THAT ARE --

THE COURT: CAN I JUST MAKE CLEAR, FOR THE RECORD. I'M HEARING "AVDON," BUT I THINK WHAT YOU MEAN IS AVEDON IS THAT WHAT YOU'RE TALKING ABOUT WHEN YOU'RE TALKING ABOUT ZELIG AND AVEDON?

MR. LAKE: YES. SORRY, I HAVEN'T BEEN PRONOUNCING IT --

THE COURT: YES. SORRY. I JUST WANTED TO -- I THOUGHT --

MR. LAKE: YES.

THE COURT: GO AHEAD.

MR. LAKE: A-V-E-D-O-N.

THE COURT: OKAY.

MR. LAKE: PACIFIC NORTHWEST PRONUNCIATION.

THE COURT: EMPHASIS IS ON THE WRONG SYLLABLE; RIGHT? OKAY.

MR. LAKE: SO FIRST OFF, BASED ON THE ALLEGATIONS IN THE CONCESSIONS IN THE OPPOSITION,

PLAINTIFFS CONCEDE THAT THE STATE CANNOT BE LIABLE FOR THE ARSON FIRE THAT WAS SET ON JANUARY 1. THEY ALSO CONCEDE, VERY IMPORTANTLY, IS THAT BEFORE JANUARY 1, THE SUBJECT PROPERTY UP IN TOPANGA STATE PARK WAS NOT DANGEROUS. THAT'S FOR OBVIOUS REASONS. WE'RE TALKING ABOUT WILDLY OCCURRING, NATURAL PLANTS. WHAT THEY ALSO CONCEDE IS THAT -- AND THIS IS BASED ON THE ALLEGATIONS IN THE MASTER COMPLAINT -- IS THAT WHAT -- WE HAVE THIS REIGNITION ON JANUARY 7, WHICH RESULTED IN THIS TERRIBLE CATASTROPHE, BUT THAT IT WAS CAUSED BY AN EMBER SOMEWHERE IN THE BURN SCAR THAT CONTINUES TO SMOLDER. SO ESSENTIALLY, THE FIRE WAS NEVER PUT OUT EVEN THOUGH THE L.A. FIRE HAD ADVISED THE STATE AND STATE PARKS THAT IT HAD BEEN FULLY EXTINGUISHED. THAT GOES MORE TO THE NOTICE ISSUE.

SO WHEN WE TALK ABOUT THE LIABILITY FOR WRONGFUL ACTS OF THE THIRD PARTY OR CRIMINAL ACTS OF A THIRD PARTY, WE'RE TALKING ABOUT THE ACT OF AN ARSONIST. IT'S THE SAME FIRE. THE FIRE WAS NEVER PUT OUT.

AND AS THE LAW MAKES CLEAR, THERE ALSO HAS TO BE A DEFECT IN THE PROPERTY ITSELF. AND IF -- THAT DEFECT IN THE PROPERTY ITSELF HAS TO HAVE A CAUSAL RELATIONSHIP TO THE DAMAGE THAT WAS EVENTUALLY CAUSED. SO THE OPPOSITION MAKES CLEAR THAT THAT DEFECT -- AND I THINK THAT'S DISCUSSED THROUGHOUT THE TENTATIVE -- IS THE SO-CALLED DEFECT AT ISSUE IS THE BURN SCAR.

BUT AS THEY CONCEDE PRIOR TO JANUARY 1, THERE

WAS NO BURN SCAR. THERE WAS NO DEFECT. WHAT CREATED THE BURN SCAR? THE ARSONIST. SO, THEREFORE, THE SO-CALLED PHYSICAL DEFECT IN THE PROPERTY ITSELF WAS 100 PERCENT CAUSED BY THE ACT OF ARSON.

SO THAT, AS A LOGICAL MATTER -- UNLESS YOU ENGAGE IN SOME KIND OF CIRCULAR REASONING OF GYMNASTIC LOGIC -- THAT CANNOT HAVE A CAUSAL RELATIONSHIP TO A SPECIFIC PHYSICAL DEFECT IN TOPANGA STATE PARK ITSELF.

IN OTHER WORDS, BUT FOR THE ARSONIST ACT THERE WOULD HAVE BEEN NO BURN SCAR; THEREFORE, NO DANGEROUS CONDITION.

THE NEXT POINT, THEN, TURNING TO -- BACK TO AVEDON.

THE COURT: SORRY.

MR. LAKE: SO IT LOOKS LIKE IN THE TENTATIVE THE COURT DISTINGUISHED BASED ON THE FACT THAT IT WAS TALKING ABOUT ACCESS TO MALIBU CREEK STATE PARK, THE ALLEGATION THERE WAS THAT PROVIDED ACCESS OF SOME ERRANT INDIVIDUALS WHO EVENTUALLY STARTED THAT FIRE.

WE WOULD ARGUE THAT THAT'S NOT A DISTINGUISHING FACTOR. THE KEY FACTOR UNDER ZELIG AND AVEDON IS THAT IT'S THE WRONGFUL CONDUCT OF A THIRD PARTY THAT CAUSED THE FIRE.

SO, YES, IN AVEDON, IT WAS A DIFFERENT SITUATION. IT WAS THE FAILURE TO PUT UP A ROAD OR TO BLOCK ENTRY TO THE PARK. HERE, THE SAME SITUATION IS ESSENTIALLY FAILURE TO BLOCK AN ARSONIST FROM GETTING UP INTO TOPANGA STATE PARK. BUT, AGAIN, THE KEY

HERE -- THERE CANNOT BE LIABILITY FOR WRONGFUL THIRD PARTY CONDUCT.

SO OUR VIEW IS THAT THE AVEDON CASE IS ON ALL FOURS HERE AND WOULD LEAD TO A CONCLUSION OF NO DANGEROUS CONDITION AS A MATTER OF LAW.

IF I MAY MOVE ON TO THE NOTICE ISSUE. SO EVEN ASSUMING, IF THIS COULD BE CONSTRUED AS A SEPARATE FIRE AND THE BURN SCAR ITSELF COULD BE CONSTRUED AS A DANGEROUS CONDITION, THERE WAS NO ACTUAL OR CONSTRUCTIVE NOTICE.

THE COURT: HOLD ON ONE SECOND.

GO AHEAD WITH REGARD TO NOTICE. GO AHEAD. ACTUAL OR CONSTRUCTIVE.

MR. LAKE: YES. SO I MAY HAVE MISSED IT IN THE TENTATIVE, BUT IT APPEARS THE COURT DID NOT FIND ACTUAL NOTICE, BUT THEN THERE'S AN ISSUE AS TO WHETHER THERE'S CONSTRUCTIVE NOTICE. IS THAT -- I BELIEVE THAT'S INCORRECT INTERPRETATION. I'M SURE PLAINTIFFS' COUNSEL WILL CORRECT ME IF I'M WRONG ON THAT.

AGAIN, JUST TO KIND OF -- A COUPLE OF UNDERLYING ALLEGATIONS IN THE COMPLAINT. L.A. FIRE ADVISED STATE PARKS THAT THE FIRE WAS EXTINGUISHED. THAT'S IN THE FACE OF MASTER COMPLAINT AS IS THE FACT THAT THEY WERE NOTIFIED THAT THE MOP-UP WAS ONGOING. THIS WAS ON JANUARY 1, AND L.A. FIRE IS WORKING TO MAKE SURE THERE'S NO REKINDLING OR THE MOP-UP IS GOING TO BASICALLY MAKE SURE THERE IS NOTHING PERSISTING OUT THERE. THAT IS POINT ONE. AND I THINK IT'S --

REASONABLY COULD BE INFERRED THAT STATE PARKS WOULD BE REASONABLY RELIANT ON THAT.

BUT THE NEXT PART OF IT IS THERE IS NO ALLEGATION IN THE MASTER COMPLAINT THAT THERE WAS ANY VISIBLE SIGN OF SMOKE OR EMBERS OR ANYTHING AFTER JANUARY 1. NOW THE ALLEGATION, AGAIN, IS THAT L.A. FIRE WAS OUT THERE DOING THEIR MOP-UP ON JANUARY 1. SO WHETHER OR NOT THERE WAS SMOKE ON JANUARY 1, REASONABLY IT CANNOT BE CONSTRUED AS PROVIDING NOTICE OF A REKINDLING, SEVEN DAYS LATER IN SOME OTHER PART OF THIS 8-ACRE LOCATION.

NOW, ONE THING THAT THE TENTATIVE HINGED ON IS THAT THE PLAINTIFFS' OPPOSITION MENTIONED THAT THE CONDITION UNDER THE CIRCUMSTANCES WAS "OBVIOUS."

THAT'S NOT ALLEGED IN THE MASTER COMPLAINT, AND THAT'S A REQUIRED ALLEGATION. WE CITE THE HESKEL CASE THAT TALKS ABOUT THE DUAL REQUIREMENT. STATE -- STATE OF CALIFORNIA VERSUS SUPERIOR COURT OF SAN MATEO, AND THAT'S THE CASE OF WHICH IS -- CERTAINLY CAN HAVE SOME APPLICATION HERE BECAUSE IT TALKS ABOUT A POOR TWO-A-HALF-YEAR-OLD KID THAT SAT IN A BEACH FIRE AND WAS SEVERELY BURNED. AND THE COURT THERE FOUND THERE WAS NO CONSTRUCTIVE NOTICE BECAUSE THERE WAS NOTHING OBVIOUS.

SO, AS WE INDICATED IN OUR REPLY, THE FACT THAT THEY HAVE INDICATED IN THEIR OPPOSITION THAT THIS WAS OBVIOUS, THAT WAS OBVIOUS SEEMS TO BE A CONCESSION THAT THEY NEED TO ALLEGE THAT. BUT I THINK THE CASE

LAW CLEARLY SHOWS IT HAS TO BE IN THE MASTER COMPLAINT.

NOW, IS THAT SOMETHING THAT THEY COULD HAVE AMENDED THE COMPLAINT TO ADDRESS? PERHAPS THEY COULD. BUT AS FAR AS THE WAY THE MASTER COMPLAINT STANDS NOW, IT DOES NOT COMPLY WITH THE STRICT REQUIREMENTS FOR ESTABLISHING CONSTRUCTIVE NOTICE.

NOW, IF I COULD SHIFT TO THE FIRE PROTECTION IMMUNITY. I THINK WHAT I'M READING FROM THE COURT'S TENTATIVE IS THAT THERE IS TOO MANY FACTUAL SCENARIOS SURROUNDING THE ISSUES FOR WHICH -- THAT BASICALLY WOULD PREVENT THE COURT FROM APPLYING FIRE PROTECTION IMMUNITY UNDER GOVERNMENT CODE 850 AT THE DEMURRER STAGE.

SO I THINK THE LEAD CASE THAT SUPPORTS US IS THE CAIRNS CASE. I PROBABLY MISPRONOUNCED THAT AS WELL. IT'S C-A-I-R-N-S. AND THAT INVOLVED -- I THINK THE TENTATIVE CORRECTLY NOTED THAT FIRE PROTECTION IMMUNITY DOES APPLY TO DANGEROUS CONDITION ON PUBLIC ENTITY'S PROPERTY AS WAS THE CASE IN CAIRNS. THAT INVOLVED A FIRE ROAD. THIS WAS THE MALIBU FIRE IN 1993. IT INVOLVED -- BASICALLY THAT THEY CLOSED A ROAD AND IT PRECLUDED ACCESS WHICH CAUSED MULTIPLE ADJOINING RESIDENCES TO BURN.

AND THE COURT BASICALLY FOUND THAT THAT WAS ON ALL FOURS, AND SPECIFICALLY CAIRNS AND -- ALL THESE -- THERE'S PREVIOUSLY CITED COCHRAN, CITY AND COUNTY OF SAN FRANCISCO, GRIJALVA , PUSKAR -- THEY ALL

TALK ABOUT THE -- THAT THE IMMUNITY IS BROAD. THAT IT'S A VERY BROAD BASED IMMUNITY.

AND THE LAW REVISION COMMISSION COMMENT TO SECTION 850 IS -- VERY STRONGLY MAKES THE CASE. I'M JUST GO TO READ -- I'M JUST GOING TO PARAPHRASE FROM IT.

SECTION 850 AND 850.2, PROVIDE ABSOLUTE IMMUNITY FROM LIABILITY. SKIPPING DOWN TO THE NEXT SENTENCE. WHETHER FIRE PROTECTION SHOULD BE PROVIDED AT ALL IS SOMETHING THAT IS LEFT TO A PUBLIC POLICY DECISION. THE EXACT LANGUAGE IS, POLICY-MAKING OFFICIALS OF GOVERNMENT. MEANING, IT'S OUTSIDE THE AMBIT OF THE GOVERNMENT CLAIMS TORT ACTION.

SO WHAT ARE THE -- WHAT ARE THE ISSUES OF FACT THAT MIGHT PRECLUDE IT? WE THINK THAT IT'S BASED ON THE ALLEGATIONS IN THE MASTER COMPLAINT.

AT THIS POINT, THERE IS ENOUGH THERE, AND BECAUSE THAT -- FIRST OFF, THE MASTER COMPLAINT USES THE EXACT LANGUAGE, FAILURE TO PROVIDE FIRE PROTECTION SERVICES. THAT APPEARS A FEW TIMES IN THE MASTER COMPLAINT THAT IS CITED IN OUR INITIAL MOVING PAPERS. AND WHAT THEY HAVE CLEARLY ALLEGED IS ESSENTIALLY THAT -- I BELIEVE WE DON'T NEED TO SPECIFICALLY CITE A CASE THAT IS EXACTLY FACTUALLY ON POINT. INFERENCES CAN BE MADE ABOUT THE ALLEGATIONS IN THIS ACTION, AND THAT IS THAT WHAT THEY ARE BASICALLY ALLEGING IS THAT L.A. FIRE WENT OUT THERE, PUT OUT THE FIRE, SAID IT WAS OUT, AND THEN THEY LEFT.

AND THAT BASICALLY THEN -- THE UNDERLYING BASIS OF THE ALLEGATION IS THAT -- AND IT'S CLEAR FROM THE CIRCUMSTANCES OF THE ALLEGATION -- IS THAT SOMEONE FROM STATE PARKS WAS SUPPOSED TO GO BACK OUT THERE AND CONDUCT A FURTHER INQUIRY OF WHETHER IT'D NEED MONITORING. THERE'S ONE ALLEGATION THAT THEY SHOULD HAVE BEEN OUT THERE KEEPING AN EYE ON IT. HOW THAT WOULD ACTUALLY, AS A PRACTICAL MATTER, APPLY TO COVERING EVERY STATE PARK IN SOUTHERN CALIFORNIA IS -- PROBABLY DEFIES LOGIC.

BUT THAT IS NOT THE LAW. THE LAW HERE IS THAT IT'S A BROAD IMMUNITY. WHAT THEY'RE CLEARLY ALLEGING IS THAT SOMEONE FROM STATE PARKS SHOULD HAVE GONE UP AND BASICALLY DOUBLE-CHECKED THE WORK OF L.A. FIRE AND BASICALLY ENGAGED IN A FIRE PROTECTION INSPECTION. AND AS THEY CLEARLY ALLEGE MULTIPLE TIMES IS THEY SHOULD HAVE USED SOME KIND OF THERMAL IMAGING DEVICE, WHICH IS AN ALLEGATION THAT THAT'S SOMETHING STATE PARKS EVEN HAS. STATE PARKS IT'S NOT CAL. FIRE OR SOMETHING LIKE THAT.

SO OUR VIEW IS THAT THERE IS ENOUGH THERE TO FIND THAT THE FIRE PROTECTION IMMUNITY, BECAUSE IT IS VERY BROAD -- AND ESSENTIALLY WHAT THEY'RE ALLEGING IS WE SHOULD HAVE PROVIDED FIRE PROTECTION IMMUNITY THAT'S A QUOTED RIGHT FROM THE MASTER COMPLAINT, AND WE DIDN'T DO. AND AS THE LAW REVISION COMMISSION NOTE MAKES CLEAR, FAILURE -- EXCUSE ME -- FAILURE TO PROVIDE ANY FIRE PROTECTION AT ALL IS COVERED BY THE

IMMUNITY.

I DON'T THINK I NEED TO GO TOO MUCH INTO THE VEDDER CASE. I THINK WE'VE COVERED THAT AT LENGTH IN THE -- IN THE MOVING AND THE REPLIED PAPERS, UNLESS THE COURT HAS SOME QUESTIONS ON THAT, BUT CLEARLY VEDDER IS DISTINGUISHABLE. IT'S ALSO WRONGLY DECIDED. IT -- IT BASICALLY HELD -- AND THAT WAS THE PUSKAR CASE THAT CRITICIZED IT, AND VEDDER IS FROM -- WHAT? -- 1973, '74, WE'RE TALKING ABOUT GASOLINE FIRE IN AN AIRPORT. I DON'T KNOW HOW YOU CAN EVER TRANSLATE THAT TO WILD OCCURRING PLANTS. THERE IS NO GASOLINE STORED AT A PARK, AND BY THE WAY THERE ALSO WAS FIRE PROTECTION PROVIDED THAT WAS -- AS WE HAD NOTED THE -- IN OUR REQUEST FOR JUDICIAL NOTICE, THE FIRE PROTECTION MAP SHOWS A -- A LOCAL FIRE PROTECTION AREA, AND THAT'S WHY L.A. FIRE WOULD HAVE BEEN COVERING IT. THERE WAS FIRE PROTECTION.

SO AGAIN, THE ALLEGATIONS HERE THAT WE SHOULD HAVE PROVIDED MORE FIRE PROTECTION. BUT, AGAIN, SHIFTING BACK TO VEDDER, IT'S -- IT WRONGLY HELD THAT THE IMMUNITY SHOULD BE STRICTLY CONSTRUED, I THINK CASES -- ESPECIALLY IN THE SECOND DISTRICT COURT OF APPEAL CASE CAIRNS CLEARLY HAS CONTRADICTED THAT -- AND CORRECTLY SO -- THE FINDING IN VEDDER.

AND THEN, IF I MAY, I'M GOING TO -- IF I MAY RESERVE MY -- MY TIME TO RESPOND.

THE COURT: SURE.

MR. LAKE: AS FAR AS THE NUISANCE CAUSES OF

ACTION, IT MIGHT BE MORE EFFICIENT TO RESPOND TO THE PLAINTIFFS. THANK YOU.

THE COURT: OKAY. THANK YOU.

MR. BOYLE: GOOD AFTERNOON, YOUR HONOR. KEVIN BOYLE ON BEHALF OF THE PLAINTIFFS, AND I'LL BE VERY BRIEF. RECENTLY -- AS AN INITIAL MATTER, WE SUBMIT ON THE TENTATIVE. WE THINK THE COURT DID AN EXCELLENT JOB. I'LL JUST RESPOND VERY BRIEFLY TO SOME OF MR. LAKE'S POINTS.

I THINK AS THE COURT HAS FIGURED OUT THE MAIN PROBLEM WITH THE STATE'S DEMURRER IS THAT IT'S DEMURRING TO A COMPLAINT THAT'S NOT OUR COMPLAINT. IT IS -- IT IS -- IT IS CLAIMING WE ALLEGE THINGS THAT WE DID NOT ALLEGE. FOR EXAMPLE, MR. LAKE JUST SAID WE CONCEDE THAT THE STATE CANNOT BE LIABLE FOR THE ACTIONS OF A CRIMINAL. WE DO NOT CONCEDE THAT. WE JUST DIDN'T PLEAD IT.

SIMILARLY THE -- OH, SIMILARLY HE TALKS ABOUT THE FIRE WAS NEVER PUT OUT, AND AGAIN THAT'S A FACTUAL MATTER. THAT'S NOT A DEMURRER. IT'S NOT A MATTER OF LAW. AND IT'S ALSO IRRELEVANT BUT -- BUT HE -- IT'S SORT OF -- THE WHOLE DEMURRER IS A STRAW MAN. THEY'RE SAYING, PLAINTIFFS ARE ALLEGING THIS, AND THEY CAN'T WIN ON THAT. BUT WE'RE NOT ALLEGING ANYTHING THAT MR. LAKE JUST SAID WE WERE. IT'S VERY CLEAR IN BLACK AND WHITE IN OUR COMPLAINT. THE COURT DID A GREAT JOB OF DISTINGUISHING ALL THE CASES.

AND THE FACT OF THE MATTER IS THE VEDDER CASE

IS EXACTLY ON POINT. THE STATE'S REPEATED COMMENT THAT WE ALLEGED -- FIRE -- NOT PROVIDING FIRE PROTECTION SERVICES, THAT LANGUAGE IS WORD FOR WORD OUT OF VEDDER. AND VEDDER SAYS SPECIFICALLY, WHEN A GOVERNMENT IS A LANDOWNER, NONE OF THE IMMUNITIES APPLY. SO THE COURT RIGHTFULLY APPLIED VEDDER. VEDDER HAS NOT BEEN OVERRULED. THE PUSKAR COURT DID NOT OVERRULE VEDDER. THE PUSKAR COURT ACTUALLY APPROVED THE MAIN HOLDING OF VEDDER.

IT DID DISAGREE WITH ONE OF -- ONE OF THE RATIONALES, BUT IT DIDN'T DISAGREE WITH THE OVERALL RATIONALE. AND THE RATIONALE IT DISAGREED WITH WAS ABOUT POLICY, AND WE'RE NOT ALLEGING ANY PROBLEMS WITH ANY POLICY. SO ONCE AGAIN, A STRAW MAN ARGUMENT BY THE STATE.

VEDDER HAS BEEN LAW FOR 50 YEARS WITH GOOD REASON, BECAUSE IF THIS -- IF THIS FIRE -- THE STATE IS ALSO INSINUATING HERE THAT, OH, IT WOULD BE IMPOSSIBLE FOR THE STATE TO MONITOR ITS OWN PARKS. THIS WASN'T OUT IN THE MIDDLE OF NOWHERE. THIS WAS RIGHT BY THE PALISADES HIGHLANDS. I MEAN, YOU COULD ACCESS IT ON HIKING TRAILS AND ON A ROAD AND PARK AT A CUL-DE-SAC. THAT'S WHERE EVERYBODY ACCESSED IT FROM. THIS WAS NOT SOME REMOTE AREA. AND IT WAS A SMALL BURN SCAR, 8-ACRES.

IN THE LIMITED DISCOVERY THE COURT HAS ALLOWED US TO DO SO FAR, EVIDENCE HAS COME TO LIGHT THAT THE EMBERS WERE READILY VISIBLE TO ANYONE WITH OR

WITHOUT THERMAL IMAGING. AT THE RIGHT TIME WHEN THE PROVISIONAL CONFIDENTIALITY IS LIFTED, EVERYONE WILL LEARN THAT ANYBODY WITH A LEG, A FOOT COULD HAVE FOUND THESE EMBERS.

THE EVIDENCE HAS ARISEN THAT THE STATE PARKS REP TOLD L.A. FIREFIGHTERS THAT THEY SHOULD BE PATROLLING THE AREA FOR DAYS. THAT WILL BE EVIDENCE IN THE CASE. AND THEY WOULD DO THAT BECAUSE THEY HAVE TO. IF THIS LAND WERE PRIVATE LANDOWNER OWNED BY YOUR HONOR, OR MYSELF, OR ANYONE ELSE, THEY'D BE ON THE HOOK. THERE IS NO ARGUMENT THAT THEY'RE NOT. THAT'S HOW THE LAW HAS ALWAYS BEEN IN CALIFORNIA. LANDOWNERS HAVE A DUTY TO MAKE SURE NO DANGEROUS CONDITION EXISTS AND CONTINUES ON ITS PROPERTY THAT WOULD LEAD TO A FIRE ESCAPING. THAT'S ALWAYS BEEN THE LAW.

THEN THE GOVERNMENT IMMUNITIES CAME INTO EFFECT, AND THEN VEDDER SAID, WELL, NO GOVERNMENT IMMUNITIES WERE NOT INTENDED TO APPLY AND OVERRULE THE LONGSTANDING LAW THAT A LANDOWNER HAS A DUTY TO KEEP ITS PROPERTY SAFE. SO THE STATE IS TRYING TO HAVE ITS CAKE AND EAT IT TOO.

AND I DON'T -- I MEAN, I HATE TO SAY THIS, BUT THE WAY THEY READ OUR COMPLAINT, IT'S EITHER INCOMPETENCE OR JUST OUTRIGHT OBFUSCATION. BUT I SEE NO OTHER WAY, AND WE THINK THE COURT IS ABSOLUTELY CORRECT.

UNLESS YOUR HONOR HAS ANY SPECIFIC QUESTIONS FOR THE PLAINTIFFS, WE WOULD SUBMIT ON THE TENTATIVE.

THE COURT: SO LET ME ASK YOU A COUPLE QUESTIONS, ALTHOUGH ADMITTEDLY YOU'VE PROBABLY ALREADY RESPONDED.

SO MR. LAKE SAID IN HIS INITIAL ARGUMENT SOMETHING THAT, IF IT WAS IN THE BRIEFING, IT WASN'T MADE THIS CLEAR. BUT HE SAID, YOU KNOW, THE FIRE THAT -- HE CHARACTERIZED THE BURN SCAR AND THE EMBERS AS A FIRE THAT WAS NEVER PUT OUT. AND SO I THINK WHAT HE WAS GETTING TO WAS, YOU KNOW, ANY ATTENTION PAID SUBSEQUENTLY TO THE FIRE THAT WAS NEVER PUT OUT WAS THE PROTECTION OF FIRE SERVICES WHICH IS IMMUNIZED CONDUCT. SO HE SORT OF CLARIFIED A THEORY ON THE STATE'S PART.

WHAT IS YOUR RESPONSE TO THAT ARGUMENT?

MR. BOYLE: AS AN INITIAL MATTER, WE'RE HERE ON DEMURRER AND AS A FACTUAL ARGUMENT THAT WILL BE THE SUBJECT OF LAY WITNESSES AND EXPERT WITNESS TESTIMONY. THAT'S MORE APPROPRIATELY DEALT WITH AT THE SUMMARY JUDGMENT OR TRIAL STAGE. IT'S NOT A DEMURRER ISSUE, ONE.

TWO, PROTECTION OF FIRE SERVICES IS NOT IMMUNIZED WHEN THE GOVERNMENT OWNS THE LAND. AND THAT'S WHAT THE VEDDER CASE HAS HELD. THAT'S BEEN A LAW IN CALIFORNIA FOR FAR OVER 50 YEARS, REALLY. IT WAS UNDER THE COMMON LAW AND THEN CLARIFIED IN VEDDER THAT THE GOVERNMENT CLAIMS ACT PROVIDED IMMUNITIES TO NOT TAKE AWAY THAT DUTY FROM GOVERNMENT LANDOWNER.

SO IT'S A -- IT'S A FACTUAL ARGUMENT, ONE;

AND TWO, IT'S WHOLLY IRRELEVANT TO WHAT WE'RE CLAIMING.

WAS THAT HELPFUL?

THE COURT: YOU ADDRESSED THE QUESTION.

MR. BOYLE: OKAY. AND I WILL SAY -- OH, AND, YOU KNOW, THE STATE HAS, YOU KNOW, THROWN A LOT OF SHADE HERE ON THE L.A. FIRE DEPARTMENT. I DON'T KNOW WHAT THAT HAS TO DO WITH OUR DEMURRER. SOCAL GAS SEEMS TO THINK THE STATE IS AT FAULT. THE CITY ITSELF JUST SUED THE STATE. SO, YOU KNOW, BY THE STATE TRYING TO LAY IT ALL ON LAFD, I DON'T KNOW WHERE THAT GETS IT. PARTICULARLY WHEN WE'RE HERE TO TALK ABOUT THE ALLEGATIONS THE VICTIMS HAVE MADE AGAINST THE STATE. SO I DON'T UNDERSTAND ALL HIS TALK ABOUT THE LAFD OTHER THAN THIS IS TO TRY TO DIVERT BLAME FROM THE STATE.

THE COURT: LET ME ASK YOU ANOTHER QUESTION WHICH HAS TO DO WITH THE ALLEGATIONS RELATED TO ACTUAL OR CONSTRUCTIVE NOTICE. THE COURT INCLUDED SORT OF A LISTING, IF YOU WILL, OF THOSE ALLEGATIONS IN THE AMENDED MASTER COMPLAINT. AND THERE IS, I BELIEVE, INCLUDED IN THE COMPLAINT A PHOTO OF THAT SMOKE EMANATING FROM THE BURN SCAR. BUT I BELIEVE THE DATE OF THAT PHOTO IS JANUARY 1ST, AND I THINK IN YOUR OPPOSITION YOU INCLUDE A FOOTNOTE THAT ESSENTIALLY NOTES THAT, YOU KNOW, ADDITIONAL DISCOVERY HAS BEEN ADDUCED IN THE MEANTIME, CONSISTENT WITH WHAT YOU SAID A FEW MINUTES AGO, ANYBODY WITH LEGS COULD SEE THOSE

EMBERS IN THE DAYS THAT FOLLOWED.

SO DO YOU -- LET ME FIGURE OUT HOW I WANT TO PHRASE THIS QUESTION.

WHY DON'T YOU ADDRESS WHAT IS ACTUALLY IN THE MASTER COMPLAINT NOT WHAT COULD BE WITH REGARD TO THE ISSUE OF ACTUAL OR CONSTRUCTIVE NOTICE?

MR. BOYLE: YES, YOUR HONOR. THE COMPLAINT ALLEGES THAT THE STATE KNEW OR SHOULD HAVE KNOWN ABOUT THE DANGEROUS CONDITION ALL THE WAY FROM JANUARY 1ST, JANUARY 2ND, JANUARY 3RD, 4TH, 5TH, 6TH, AND 7TH. IT IS A SIX-DAY PERIOD OF PARTICULARLY -- YOU KNOW, THAT -- THAT ALONE IS A SUFFICIENT TIME PERIOD. WE'VE ALLEGED THAT THEY HAD ACTUAL NOTICE, AND I KNOW MR. LAKE SAID THAT THE COURT DIDN'T ADDRESS ACTUAL NOTICE, BUT ON PAGE 17 OF YOUR HONOR'S TENTATIVE RULING, IT GOES INTO WHERE THE PLAINTIFFS DID ALLEGE ACTUAL NOTICE. AND AFTER THAT YOU ADDRESS CONSTRUCTIVE NOTICE.

BUT OUR COMPLAINT ALLEGES NOTICE SO MANY DIFFERENT WAYS ALL THE WAY FROM JANUARY 1ST THROUGH THE 7TH. AND THEN YOU TAKE IT ON WITH THE OTHER FACTORS THAT WERE GOING ON. THE STATE KNEW ABOUT THE HEAVY WIND THAT WAS COMING. THE STATE KNEW THAT THERE WAS UNBURNED FUEL ACTUALLY IN THE LONG FIRE BURN SCAR AND ALONG THE EDGES OF THE BURN SCAR. WHICH, YOU KNOW -- WHICH MAKES VEDDER IN MY OPINION, YOU KNOW, EVEN MORE APPLICABLE.

AND THIS CASE IS STRONGER THAN VEDDER BECAUSE

HERE THE STATE MAINTAINED NOT ONLY FUEL FOR THE FIRE, BUT IT MAINTAINED THE ACTUAL IGNITION SOURCE OF THE FIRE IN THE FORM OF THESE EMBERS.

AND, YOU KNOW, IN TERMS OF THE PATROLLING, THE STATE DID ACTUALLY SEND SOME PEOPLE AROUND. THEY JUST DIDN'T FOLLOW THEIR OWN RULES. AND, YOU KNOW, THIS IS A FACTUAL MATTER THAT WE'LL GET TO LATER, BUT IT ACTUALLY -- THERE IS A LEGAL ELEMENT TO IT BECAUSE THERE'S A -- THE STATE -- TO THE EXTENT THEY DIDN'T HAVE A COMMON LAW STATUTORY DUTY, WHICH WE ALLEGED THEY DID, THE STATE PUT A DUTY ON ITSELF IN ITS OPERATIONS MANUAL WHERE IT SAYS THAT IF THERE'S A WILD FIRE IN A STATE PARK, THE STATE -- THE STATE PARKS WILL CLOSE THE PARK TO CONDUCT AN APPROPRIATE INSPECTION, AND THEY DID NOT DO THAT HERE.

AND WE DON'T, YOU KNOW, WE'RE NOT -- WE DON'T CARE ABOUT WHETHER THEY CLOSED THE PARK OR NOT CLOSED THE PARK OTHER THAN THEY GAVE THEMSELVES A DUTY TO. BUT THEY HAVE TO CONDUCT THE APPROPRIATE INSPECTION, AND IT WOULD HAVE BEEN SO EASY HERE. JUST TAKE A LITTLE, YOU KNOW, HIKE AROUND THE 8-ACRE BURN SCAR. AND, YOU KNOW, THEY JUST DIDN'T DO IT, WHETHER OUT OF LAZINESS OR WHO KNOWS WHAT.

BUT THEY HAVE A DUTY TO ACT REASONABLY AND THEY DIDN'T ACT REASONABLY. JUST LIKE ANY PRIVATE LANDOWNER -- AND IN FACT, YOU KNOW, THE STATE HAS FAR MORE RESOURCES THAT APPLY TO LANDOWNER. SO THE FACT THAT THEY DIDN'T DO THIS IS UNACCEPTABLE. AND, YOU

KNOW, I THINK THEY NEED TO FACE REALITY HERE AND ACTUALLY READ OUR COMPLAINT FOR WHAT IT ALLEGES AND NOT WHAT THEY WOULD LIKE IT TO HAVE ALLEGED.

THE COURT: SO WITH REGARD TO THE ARGUMENT THAT THEY GAVE THEMSELVES THE DUTY TO INSPECT, HOW DOES THAT NOT RUN HEADLONG INTO THE COCHRAN CASE?

MR. BOYLE: THE COCHRAN CASE?

THE COURT: YEAH, WHICH WAS A CASE, 1948, MAGNESIUM WAS STORED AT A PRINTING BUSINESS. DOES THAT RING ANY BELL?

MR. BOYLE: YES.

THE COURT: AND I THINK ULTIMATELY -- AND, YOU KNOW, LIKE MOST OF THE CASES THAT WERE CITED IN BOTH DEMURRERS, THERE WERE VERY FEW OF THEM THAT WERE DECIDED ON DEMURRER. THIS WAS AN MSJ IN COCHRAN, AND ULTIMATELY THE COURT CONCLUDE THAT THERE WAS 850 AND 850.2 IMMUNITY BASED UPON THIS INSPECTION IMMUNITY.

I'M JUST TRYING TO SQUARE YOUR ARGUMENT THAT THEY SHOULD HAVE INSPECTED WITH -- IT'S REALLY ACTUALLY GOVERNMENT CODE 818.6 THAT CLOAKS THE GOVERNMENT IN AN INSPECTION IMMUNITY.

DO YOU GET WHAT I'M TRYING TO ASK?

MR. BOYLE: I DO, AND I'LL BE HONEST, YOUR HONOR, I HAVEN'T PUT A WHOLE LOT OF THOUGHT TO THE COCHRAN CASE BECAUSE I JUST FEEL LIKE IT'S TOTALLY NOT APPLICABLE AT ALL, BUT I BELIEVE THAT INSPECTION DUTY IS -- THEY HAVE THE "IMMUNITY" TO INSPECT, ESSENTIALLY, RAW LAND. THIS -- WE'RE NOT TALKING

ABOUT RAW LAND HERE. WE'RE TALKING ABOUT LAND THAT HAS BEEN CHANGED BY THE WILDFIRE BURN SCAR AND EMBERS.

IN THE COCHRAN CASE, YOU KNOW, WE'RE NOT SAYING, HEY, GO INSPECT THE ENTIRE STATE PARK AND MAKE SURE, YOU KNOW, THERE IS NOTHING WRONG. WE'RE SAYING, HEY, YOU KNEW ABOUT THIS FIRE. IT WAS SMOLDERING. PEOPLE WERE CALLING 911 AS LATE AS JANUARY 3RD, AND THEY DIDN'T DO ANYTHING.

SO THAT IS WHY I THINK THE INSPECTION IMMUNITY DOES NOT APPLY HERE. AND, YOU KNOW, THE STATE WOULDN'T HAVE GIVEN ITSELF THAT DUTY IF IT WASN'T LEGALLY REQUIRED TO.

ANY -- AND, AGAIN, ANY PRIVATE LANDOWNER WOULD HAVE TO DO THIS. I THINK PEOPLE DON'T REALLY UNDERSTAND THAT. IF YOUR HOUSE CATCHES ON FIRE AND THE LAFD COMES AND PUTS YOUR HOUSE OUT AND LEAVES, THEY DON'T HANG AROUND TO MAKE SURE EVERYTHING IS -- SMOLDERING EMBERS ARE OUT. THAT'S ON YOU. THAT'S ON THE LANDOWNER. YOU HAVE TO MAKE SURE AND MONITOR IT, EVEN THOUGH YOU HAVE NO TRAINING IN THAT, YOU DON'T HAVE THE RESOURCES TO DEAL WITH THAT, YOU HAVE TO DO IT. AND GUESS WHAT? VEDDER, WHICH IS LAW, SAID THE STATE HAS TO TOO.

THE COURT: OKAY. ANYTHING ELSE YOU WANT TO DISCUSS?

MR. BOYLE: NO, YOUR HONOR. THANK YOU VERY MUCH FOR YOUR VERY HARD WORK ON THIS TENTATIVE ORDER, AND WE REALLY APPRECIATE IT.

THE COURT: OKAY. MR. LAKE, I THINK WE'RE BACK TO YOU.

MR. LAKE: THANK YOU. I'LL TRY TO BE BRIEF.

IF I MAY, YOUR HONOR.

THE COURT: UH-HUH.

MR. LAKE: FIRST OFF, I DON'T THINK WE'RE THROWING ANY SHADE ON L.A. FIRE AT ALL. I THINK IF YOU CAREFULLY LOOK AT WHAT I'VE SAID, WE'RE TALKING ABOUT STATE RESPONSIBILITY AREAS VERSUS LOCAL RESPONSIBILITY AREAS. THEY WERE THE FIREFIGHTING ENTITY THAT WAS BASICALLY SUPPOSED TO RESPOND TO IT.

WE HAVEN'T SAID ANYTHING, NOR WILL WE, ABOUT THE PROPRIETY OR WHY THEY DID OR DID NOT CATCH THE UNDERGROUND HIDDEN EMBER THAT REIGNITED, BUT IT IS PERTINENT BASED ON THE ALLEGATIONS WHEN AN AGENCY LIKE L.A. FIRE TELLS PARKS, THE FIRE IS OUT. THAT'S A REASONABLE THING TO RELY ON, AND THAT'S IN THE MASTER COMPLAINT.

I ALSO WANTED TO POINT OUT THAT I THINK YOUR HONOR CORRECTLY NOTED THAT MUCH OF MR. BOYLE'S ARGUMENT ARE BASED ON THINGS NOT ON THE MASTER COMPLAINT.

THERE SEEMS TO BE A LOT OF ADDING OF THINGS AND, AGAIN, THAT SHOULD BE CONSTRUED AS A REQUEST TO AMEND THE COMPLAINT. AND HE REFERENCED THAT WE SEEM TO BE PULLING SOME OF THESE THINGS -- SOME OF THESE ALLEGATIONS OUT OF WHOLE CLOTH, FOR EXAMPLE, THAT THE STATE CANNOT BE LIABLE FOR ARSON FIRE. WELL, THAT'S

CONCEDED IN THE OPPOSITION AT PAGE 18, LINES 14 AND 15.

NOW, AS FAR AS THE -- ALSO, THAT SUPPOSEDLY WE PULLED OUT AND MADE UP SOMEHOW THAT THE -- WE'RE TALKING ABOUT AN EMBER THAT CONTINUED TO SMOLDER IN THE ROOT STRUCTURE. WELL, THAT IS ALLEGED IN THE MASTER COMPLAINT PARAGRAPH 75. I BELIEVE I'M QUOTING, FAILED TO DISCOVER AN EMBER, QUOTE, CONTINUE TO SMOLDER IN THE ROOT STRUCTURE.

SO REALLY THE LOGICAL INFERENCE FROM THAT ALLEGATION IN THE MASTER COMPLAINT ON ITS FACE IS THAT IT WAS A NONOBVIOUS OCCURRENCE. THERE IS NO ALLEGATION, AGAIN, THAT THERE WAS SOMETHING VISIBLE -- READILY VISIBLE.

AND, AGAIN, MR. BOYLE KEPT TALKING ABOUT PRIVATE LANDOWNERS. WELL, THIS ISN'T A PRIVATE LANDOWNER CAUSE OF ACTION. THIS IS UNDER THE GOVERNMENT CLAIMS ACT, AND THERE ARE VERY SPECIFIC REQUIREMENTS FOR ESTABLISHING AND STATING THE CAUSE OF ACTION.

AGAIN, ONE OF THOSE BEING THAT IT WAS OBVIOUS. AND LET ME JUST, IF I MAY, JUST TALK ABOUT THE NOTICE ISSUE. WE'RE TALKING ABOUT, AS YOUR HONOR CORRECTLY NOTED, THE PHOTO THAT THEY SHOWED ON THE MASTER COMPLAINT WAS TAKEN ON JANUARY 1.

AND OUR ARGUMENT IS THAT JUST BECAUSE THERE MIGHT HAVE BEEN SOMETHING APPARENT ON JANUARY 1, IT'S TOO VAGUE TO ESTABLISH NOTICE OF SOMETHING THAT

OCCURRED SEVEN DAYS LATER.

IN ADDITION, WE'RE TALKING ABOUT LOCATION HERE AS WELL. AS NOTED IN OUR REPLY, THE PHOTO IN THE MASTER COMPLAINT THAT WAS TAKEN FROM THE CRIMINAL COMPLAINT SHOWS AN IGNITION POINT AT THE SOUTHERN END OF THE BURN SCAR.

AND SO THERE'S NO ALLEGATION THAT THERE WAS ANY -- A PARTICULAR LOCATION OF ANYTHING THAT WAS OBVIOUS WAS ANYWHERE NEAR THAT COULD HAVE SOME CAUSAL RELATIONSHIP TO REIGNITION IN THAT SPOT.

IN OTHER WORDS, YOU'VE GOT THIS 8-ACRE BURN AREA AND JUST A GENERAL ALLEGATION THAT, HEY, IT WAS OBVIOUS ON THE FIRST, BUT IT DOESN'T SAY WHERE IT WAS.

BECAUSE IF THAT OCCURRED AT THE VERY NORTHERN OF THE BURN SCAR, THAT COULD HAVE NO RATIONAL RELATIONSHIP TO THE REIGNITION THAT OCCURRED 8-ACRES LATER.

SO, AGAIN, OUR ASSERTION, AGAIN, IS NOT -- THEY DON'T ALLEGE THAT IT WAS OBVIOUS THAT -- EVEN WITH THE FACTUAL ALLEGATIONS, JUST AREN'T ENOUGH UNDER THE GOVERNMENT CLAIMS ACT.

NOW, SHIFTING BACK TO VEDDER, IT APPEARS FROM MR. BOYLE'S COMMENTS THAT THE PLAINTIFFS ARE ESSENTIALLY HANGING THEIR HAT ON THE VEDDER CASE. AND ONE WAY TO ILLUSTRATE THAT IS THAT THEY ARE NOT ALLEGING ANY LIABILITY FOR THE L.A. FIRE NOT DISCOVERING THAT HIDDEN EMBER. I THINK THAT COULD BE READ AS A CONCESSION THAT THE FIRE PROTECTION IMMUNITY

PROTECTED THEM.

AND BASED ON MR. BOYLE'S COMMENTS IS THAT THE DIFFERENCE -- AND THIS IS WHERE VEDDER CAME IN IS VEDDER SAID, BUT IF IT'S ON STATE PROPERTY, THEN YOU CAN'T BE LIABLE. IN OTHER WORDS, VEDDER DOESN'T APPLY. FIRE PROTECTION IMMUNITY PROTECTS THE STATE IN THIS CASE.

I AM NOT GOING TO REHASH. I THINK WE'VE TALKED VERY MUCH AT LENGTH ABOUT HOW VEDDER DOES NOT APPLY, AND IT'S WRONGLY DECIDED.

FINALLY, WITH REGARD TO COCHRAN, THAT YOUR HONOR MENTIONED THAT THE CASE, AS FAR AS MENTIONING INSPECTION IMMUNITY, WHICH IS UNDER GOVERNMENT CODE 818.6, AS WE NOTE IN OUR REPLY, THAT WE'RE NOT HANGING OUR HAT ON GOVERNMENT CODE 818.6, BUT THE COCHRAN CASE INITIALLY FOUND IMMUNITY UNDER 818.6 IN THAT CASE, BUT THEN IT WENT ON AND SAID IMMUNITY ALSO APPLIES UNDER THE FIRE PROTECTION IMMUNITY UNDER 850 -- GOVERNMENT CODE 850. AND THAT IS WHERE THAT DOES, AGAIN, NOT THE INSPECTION IMMUNITY, FIRE PROTECTION IMMUNITY. COCHRAN ALSO FAVORS APPLICATION OF IT FOR THE STATE IN THIS CASE. THANK YOU.

THE COURT: THANK YOU, MR. LAKE.

MR. BOYLE, ANYTHING ELSE YOU WANT TO SAY?

MR. BOYLE: VERY, VERY BRIEFLY. THANK YOU, YOUR HONOR.

JUST A COUPLE OF QUICK POINTS HERE. AND I THINK THIS ILLUSTRATES PERFECTLY THE STATE'S TACTIC IN

THIS LITIGATION SO FAR.

MR. LAKE JUST GOT UP HERE AND SAID THAT THE PLAINTIFFS CONCEDED THAT THE STATE COULD NOT BE LIABLE FOR SOMETHING CAUSED BY AN ARSONIST, AND HE SPECIFICALLY CITED PARAGRAPH -- I'M SORRY -- PAGE 18, LINES 14 AND 15 OF THE PLAINTIFFS' COMPLAINT.

LET ME JUST READ YOU EXACTLY WHAT THAT SAID.

THE COURT: I THINK HE SAID PAGE 18 OF YOUR OPPOSITION.

MR. BOYLE: THAT'S WHAT I -- THAT'S WHAT I MEANT. I'M SORRY.

THE COURT: OKAY.

MR. BOYLE: SO, YEAH. LET ME READ -- I APOLOGIZE. HE DID SAY PAGE 18, LINES 14 AND 15 OF OUR OPPOSITION. AND HE SAID THAT WE CONCEDED THIS.

HERE IS WHAT WE ACTUALLY SAID, PLAINTIFFS DO NOT ALLEGE THAT THE STATE IS LIABLE BECAUSE IT DID NOT STOP AN ARSONIST FROM STARTING THE LOCKLIN FIRE ON JAN 1. THAT'S WHAT WE SAID.

I DON'T SEE HOW THAT IS ANY CONCESSION THAT THE STATE CANNOT BE LIABLE. WE JUST DIDN'T PLEAD THAT. SO THAT'S ONE POINT, AND --

THE COURT: MEANING, YOU DID NOT PLEAD THAT THAT IS A BASIS FOR LIABILITY FOR THE STATE.

MR. BOYLE: CORRECT. RIGHT.

THE COURT: THAT'S WHAT YOU MEAN WHEN YOU SAY THAT.

MR. BOYLE: YEAH, BUT WE DIDN'T CONCEDE THAT

THAT'S THE LAW. WE, IN FACT, I BELIEVE IN OUR -- ELSEWHERE IN OUR OPPOSITION, WE SAY THAT WE'RE NOT CONCEDING THAT THAT'S THE LAW, BUT IT DOESN'T MATTER HERE BECAUSE THAT'S NOT A CLAIM WE ARE EVEN MAKING.

(L.A. COURTCONNECT INTERRUPTION IN THE PROCEEDINGS)

THE COURT: LET ME GO OFF RECORD FOR A SECOND.

(OFF THE RECORD)

THE COURT: SORRY TO INTERRUPT YOUR FLOW. GO AHEAD.

MR. BOYLE: OH, THAT'S ALL RIGHT, YOUR HONOR.

I THINK THAT RIGHT THERE, THAT ARGUMENT RIGHT TO THE COURT DIRECTLY IS CLEARLY JUST WRONG IS -- IS JUST PERFECT FOR WHAT THE STATE IS DOING HERE IN ITS ENTIRE DEMURRER. SAYING THAT WE'RE DOING SOMETHING THAT WE'RE NOT ACTUALLY DOING.

THEN A COUPLE MORE QUICK POINTS, AS FAR AS ACTUAL AND CONSTRUCTIVE NOTICE, I'LL DIRECT ALSO THE COURT'S ATTENTION -- BECAUSE I DIDN'T SEE IT CITED IN THE TENTATIVE, BUT PARAGRAPH 84 OF THE MASTER COMPLAINT CLEARLY PLEADS ACTUAL AND CONSTRUCTIVE NOTICE THAT THERE WAS A DANGEROUS CONDITION THAT INCREASED THE RISK FOR A FUTURE FIRE. SO PARAGRAPH 84, IT'S CLEAR AS DAY IN THERE.

AND THEN, FINALLY, LET'S GO TO COCHRAN REALLY QUICK. COCHRAN DOES NOT APPLY HERE BECAUSE WE'RE TALKING ABOUT THE PUBLIC LAND. AND, IN FACT, GOVERNMENT CODE SECTION 818.6 SPECIFICALLY EXCLUDES

THAT ON GOVERNMENT LAND. SO IT'S EVEN MORE THAN WHAT I SAID WHEN YOU WERE ASKING ABOUT COCHRAN, WHEN I SPOKE AT FIRST.

IT LITERALLY EXPRESSLY, IN THE TEXT OF 818.6 ITSELF, OTHER THAN ITS PROPERTY. IT SAYS, OTHER THAN ITS PROPERTY. SO CLEARLY COCHRAN IN 818.6 --

THE COURT: AND I DIDN'T MEAN TO SORT OF SURPRISE WITH YOU COCHRAN.

MR. BOYLE: NO, BUT THANK YOU FOR --

THE COURT: I JUST NEEDED TO UNDERSTAND HOW THE DISCUSSION IN COCHRAN RELATED TO -- ASSUMING YOU ARE MAKING THIS ALLEGATION, YOU KNOW, THAT THERE WAS SOME DUTY TO GO BACK IN THAT SEVEN-DAY PERIOD, AND, I CALL IT, CHECK ON THE CONDITION. OTHERS CALLS IT, INVESTIGATE OR MONITOR. SO THANK YOU FOR CLARIFYING THAT.

MR. BOYLE: OKAY. YOUR HONOR, THANK YOU AGAIN. APPRECIATE IT.

THE COURT: OKAY. NOTHING ELSE FROM THE STATE?

MR. LAKE: ONE THING. JUST MAKING SURE. IF I MAY.

WHEN WE TALK ABOUT THAT THE -- AND I BELIEVE IN THE REPLY, WE USED THE WORD TODAY "EFFECTIVELY CONCEDED" THAT WE CAN'T BE LIABLE FOR THE ARSON FIRE, BUT THAT'S NOT THE MAIN POINT. THAT'S BASICALLY DOVETAILING IT TO THE UNDERLYING POINT IS THAT EFFECTIVELY IT'S THE SAME FIRE. IT WAS NEVER PUT OUT.

IF WE'RE NOT LIABLE FOR THE INITIAL ARSON THAT STARTED ON JANUARY 1 AND THE FIRE CONTINUED, AGAIN, DOVETAILING INTO THE ZELIG AND AVEDON CASE. THOSE -- BASICALLY INTO FIRES THAT WAS A CRIMINAL THIRD ACT, THAT BASICALLY IS THE SAME FIRE. WE CAN'T BE LIABLE. THANK YOU.

THE COURT: THANK YOU.

OKAY. ANYTHING ELSE FROM PLAINTIFF ON THE STATE'S DEMURRER?

MR. BOYLE: NO, YOUR HONOR. THANK YOU.

THE COURT: OKAY. THANK YOU BOTH FOR YOUR ARGUMENT.

LET ME NOW TURN TO THE CITY AND THE LADWP WITH REGARD TO ARGUMENT ON THE CITY'S DEMURRER.

MR. LEVIN: THANK YOU, YOUR HONOR. DANIEL LEVIN FOR THE CITY AND THE LADWP.

YOUR HONOR, I WANT TO FOCUS IN ON -- PRIMARILY ON ONE PART OF THE TENTATIVE, AND THAT IS THE SIXTH CAUSE OF ACTION, THE INVERSE CONDEMNATION CLAIM WITH RESPECT TO THE WATER SYSTEM.

AND, YOUR HONOR, I WANT TO CONVINCE YOU TO CHANGE YOUR TENTATIVE ON THAT POINT. AND SO LET ME PREFACE THIS BY SAYING, I UNDERSTAND THAT THERE ARE A LOT OF FACT ALLEGATIONS IN THE COMPLAINT ABOUT THE RESERVOIR, ABOUT THE WATER SYSTEM. WE DISAGREE WITH A LOT OF THOSE FACT ALLEGATIONS. WE CAN HAVE A DISPUTE ABOUT THAT, BUT I DON'T WANT TO TALK ABOUT THAT.

I WANT TO STEP BACK AND TALK ABOUT A BASIC

LEGAL QUESTION THAT CAN AND IT SHOULD BE DECIDED ON THE DEMURRER, AND THAT IS, IS THERE A CLAIM -- A CONSTITUTIONAL TAKINGS CLAIM IN CALIFORNIA WHEN A WATER SYSTEM DOESN'T PROVIDE ENOUGH WATER TO FIGHT A FIRE.

SO IS THAT A CLAIM UNDER THE CALIFORNIA CONSTITUTION? AND, YOUR HONOR, THE ANSWER IS NO. IT IS NOT A CLAIM UNDER THE CALIFORNIA CONSTITUTION. THERE IS NO PRECEDENT IN CALIFORNIA OR FRANKLY ANYWHERE -- ANYWHERE IN THE COUNTRY THAT HAS EVER RECOGNIZED THIS CLAIM, EVER.

WHAT WE DO HAVE, YOUR HONOR, IS OVER A CENTURY AGO AND CONTINUING UP THROUGH TODAY, THE SUPREME COURT AND THE COURTS OF APPEALS HAVE CONSISTENTLY SAID THERE IS NO CLAIM FOR THE FAILURE OF A WATER UTILITY TO SUPPLY WATER FOR FIREFIGHTING.

AND, YOUR HONOR, I GET THAT THOSE WERE TORT CASES. THEY DIDN'T HAVE TAKINGS CLAIMS IN THEM. BUT LET ME SAY TWO THINGS ON THAT POINT THAT ARE IMPORTANT, AND FRANKLY, YOUR HONOR, I DON'T THINK THE TENTATIVE TAKES INTO ACCOUNT.

NUMBER ONE, IN NEIHAUS, LEADING CASE, CALIFORNIA SUPREME COURT TAKES ON THIS ISSUE, AND IT LOOKS AT CONSTITUTION, AND IT SAYS THERE IS NOTHING IN THE CONSTITUTION THAT SUPPORTS THIS CLAIM.

NOW, I GET IT, YOUR HONOR, THEY DIDN'T BRING A TAKINGS CLAIM. THEY DIDN'T NEED ONE. BUT, FRANKLY, THE CALIFORNIA SUPREME COURT LOOKS TO THE CALIFORNIA

CONSTITUTION -- THIS IS ABOUT 20 YEARS AFTER THE CONSTITUTION WAS AMENDED TO BROADEN THE TAKINGS CLAUSE, AND IT SAYS WE DON'T SEE ANYTHING IN THERE THAT WOULD SUPPORT THE CLAIM. THAT'S ONE.

NUMBER TWO, THERE IS A DOCTRINE OF INTERPRETATION THAT YOU DON'T HIDE ELEPHANTS IN MOUSE HOLES. AND, YOUR HONOR, MAYBE THERE WAS AN ELEPHANT ALL ALONG SITTING OUT ON THE SIDELINES THAT WOULD HAVE SAID, ALL OF THESE CASES, THEY MAY NOT BE WRONG IN THEIR NARROW WAY, BUT THEY ARE WRONG ON THE BASIC PREMISE OF CAN YOU SUE OR NOT. AND, YET, CASE AFTER CASE IS BEING DISMISSED. THEY ARE BEING DISMISSED UNDER COMMON LAW, AND THEN THEY ARE DISMISSED ON THE BASIS OF STATUTORY IMMUNITIES.

AND A CONSTITUTIONAL CLAIM, IF IT EXISTS, TRUMPS ALL OF THAT. THE LEGISLATURE HAS NO POWER TO STOP IT. IT CAN ENACT ALL THE IMMUNITIES IT WANTS THAT WOULD OTHERWISE APPLY HERE, AND THERE IS CLEARLY IMMUNITY IN 850.4 THAT APPLIES HERE BECAUSE IT IMMUNIZES FIREFIGHTING -- FIREFIGHTING INFRASTRUCTURE. BUT ALL ALONG THERE WAS A CLAIM SITTING THERE.

SO, YOUR HONOR, EITHER NOBODY SAW THE ELEPHANT OR, YOUR HONOR, I WOULD SUGGEST THERE IS NO ELEPHANT. THERE IS NO CONSTITUTIONAL CLAIM HERE.

AND SO LET ME THEN TURN TO THE CONSTITUTION AND TO THE INVERSE CLAUSE ITSELF, THE INVERSE CLAIM ITSELF. SO WE KNOW, AND THE TENTATIVE GOES THROUGH CITY OF OROVILLE AND TALKS ABOUT THE BASIC RULE. THE

QUESTION IS, DID THE PUBLIC IMPROVE IT? WAS IT INHERENTLY DANGEROUS TO PRIVATE PROPERTY? DID THAT DANGER MATERIALIZE? THAT'S THE WORD OROVILLE USES. AND DID THE PROPERTY DAMAGE -- AND I'LL QUOTE FROM OROVILLE -- DID IT ARISE FROM THE INHERENT DANGER OF THE PUBLIC IMPROVEMENT.

AND SO LET'S TALK FOR A MINUTE ABOUT WHAT IS THE BEDROCK INVERSE CLAIM IN CALIFORNIA. THE BEDROCK INVERSE CLAIM IS THE GOVERNMENT GOES AND BUILDS A PUBLIC IMPROVEMENT. IT DIGS A SUBWAY TUNNEL. IT DIGS A SUBWAY TUNNEL. IN THE COURSE OF DIGGING THE TUNNEL, THE GROUND AROUND THE TUNNEL SUBSIDES, CAUSES PROPERTY DAMAGE. THAT'S AN INVERSE CLAIM.

THAT'S NOT -- AND THERE ARE OTHER EXAMPLES. BUT THAT'S NOT WHAT THIS CASE IS. RIGHT? THIS CASE -- THE PLAINTIFFS SAY IN THEIR OPPOSITION ON PAGE 2, THE EXTERNAL FORCE, THE OUTSIDE FORCE OF A FIRE CAUSED THE DAMAGE. WHAT THEY'RE SAYING IS THE PUBLIC UTILITY -- THE PUBLIC IMPROVEMENT, THE WATER SYSTEM, DIDN'T DO ENOUGH TO STOP IT -- RIGHT? -- IT WASN'T AVAILABLE TO STOP IT. AND IT'S NOT JUST TO STOP IT. IT WASN'T ENOUGH TO HELP FIREFIGHTERS TO STOP IT. BECAUSE, OF COURSE, YOU NEED THE FIRE DEPARTMENT TO USE THE WATER TO STOP IT.

SO IT'S SAYING THE PUBLIC IMPROVEMENT WAS NOT OF THEIR THEORY. WE CAN DEBATE THE FACTS HERE. BUT THEIR THEORY, AS ALLEGED, PUBLIC IMPROVEMENT WASN'T THERE WHEN THE FIRE DEPARTMENT NEEDED IT TO FIGHT THE

FIRE. OKAY? THAT'S NOT AN INVERSE CLAIM. THERE'S ONE AREA -- AND I'LL GET TO THAT IN A SECOND. THERE IS ONE AREA WHERE THE COURT HAS SAID -- SUPREME COURT HAS SAID YOU CAN BRING AN INVERSE CLAIM IF A PUBLIC IMPROVEMENT FAILED TO FUNCTION AS INTENDED. THAT'S THE BEL AIR LINE OF CASES. THAT'S WHY THE PLAINTIFFS SPENT A LOT OF TIME IN THEIR OPPOSITION TALKING ABOUT THAT BECAUSE IT'S THE BEST LINE OF CASES FOR THEM. I GET IT. AND I'M GOING TO COME BACK IN A SECOND TO WHY THOSE DON'T APPLY.

BUT OUTSIDE OF THAT CONTEXT, THOSE FLOODING CASES, THERE IS NO CASE ANYWHERE THAT SAYS A PUBLIC IMPROVEMENT THAT DOESN'T WORK TO STOP DAMAGE FROM SOME OUTSIDE FORCE, HERE A FIRE, IS A CONSTITUTIONAL TAKING. ALL OF THE LAW GOES THE OTHER WAY -- ALL OF THE TORT LAW. SO WHAT YOU HAVE HERE IS THE CONSTITUTION COMING OVER THE TOP AND SAYING ESSENTIALLY IT TRUMPS ALL OF THAT LAW. IT TRUMPS ANYTHING THE LEGISLATURE HAS DONE OR COULD DO TO PROTECT MUNICIPALITIES FROM THIS LIABILITY. AND HERE WE ARE, THERE IS -- EITHER IT'S STRICT LIABILITY OR IT'S THE REASONABLENESS STANDARD IF WE'RE OUT IN THE WORLD OF BEL AIR.

NOBODY HAS DONE IT EVER, YOUR HONOR. AND WHAT I'M SUGGESTING IS THAT, IF THE PLAINTIFFS WANT A BRAND-NEW RULE OF LAW, THEY SHOULD TAKE THAT UP TO THE SUPREME COURT AND NOT GET IT HERE.

SECOND POINT -- AND I'M GOING TO COME BACK TO

THE BEL AIR CASES IN JUST A MINUTE. SECOND POINT ON THIS, THE TENTATIVE SAYS, OKAY. WE UNDERSTAND YOU MADE SOME POLICY ARGUMENTS, AND I THINK YOU (INDISCERNIBLE) AND NODDED AND SAID MAYBE THEY HAVE SOME FORCE, WHICH WE APPRECIATE. BUT THAT'S FOR, LIKE, ANOTHER DAY. WE'LL GET TO THAT. HERE IS WHAT I SUGGEST, YOUR HONOR. WELL, HERE IS WHAT I'M SAYING.

THE COURT: THAT'S NOT EXACTLY HOW I SAID IT.

MR. LEVIN: I'M TAKING LIBERTY, YOUR HONOR.

(CROSS-TALK)

MR. LEVIN: BUT HERE'S -- HERE'S -- BUT I THINK THE TENTATIVE DOES SAY WE CAN TAKE THOSE UP ANOTHER DAY. THIS IS FOR LATER AFTER THE FACT DISCOVERY. AND HERE IS WHAT I WOULD SAY, WHEN THE SUPREME COURT HAS INTERPRETED THE TAKINGS CLAUSE, AND THE CUSTOMER CARE CASE LAYS THIS OUT. AND THIS IS A THRESHOLD INTERPRETATION OF THE TAKINGS CLAUSE, NOT A FACT ABOUT AN ISSUE, BUT A QUESTION OF HOW DO YOU INTERPRET THE CONSTITUTION. IT HAS SAID, OKAY. YOU LOOK AT THE TEXT. AND THEN YOU LOOK AT THE HISTORY AND TO THE POLICY. AND THAT'S A QUESTION OF CONSTITUTIONAL INTERPRETATION NOT REALLY -- NOT A QUESTION OF SORT OF A FACTFINDER MAKING FACT FINDINGS.

AND AS A MATTER OF CONSTITUTIONAL INTERPRETATION, THIS CLAIM DOESN'T MAKE SENSE. IN FACT, IT WOULD HAVE ENORMOUS, ENORMOUS RAMIFICATIONS IN CALIFORNIA. SO HISTORY, ONE. 1879, THEY AMEND THE TAKINGS CLAUSE TO EXPAND IT SOMEWHAT FROM AFFIRMATIVE

EMINENT DOMAIN AND TO DAMAGE CLAUSE BY THE PUBLIC IMPROVEMENT. AT THAT TIME -- AND WE TALKED ABOUT THIS IN OUR BRIEF -- AT THAT TIME THE RULE EVERYWHERE IN THE COUNTRY IS WATER UTILITIES ARE NOT LIABLE FOR FAILING TO PROVIDE WATER. THAT IS THE BACKGROUND RULE. THERE IS NOTHING, NOTHING IN THAT HISTORY THAT SUGGESTS THE -- THE CONSTITUTION -- THE AMENDMENT TO THE CONSTITUTION WAS INTENDED TO CHANGE THAT. THAT'S HISTORY.

POLICY. SO WE'LL TALK ABOUT THE POLICY, BUT THE SUPREME COURT HAS ALREADY TALKED ABOUT THE POLICY. SO THIS IS NOT JUST ME ADVOCATING. THE SUPREME COURT IN NIEHAUS TAKES ON THIS POLICY QUESTION, AND I GET IT. IT TAKES GUARD ON THE TORT CONTEXT, BUT POLICY IS POLICY. AND WHAT IT SAYS IS IT WOULD BE CATASTROPHIC FOR MUNICIPAL UTILITIES TO BE LIABLE FOR FIRE DAMAGE, BECAUSE RATES ARE NOT SET TO MAKE WATER UTILITIES THE INSURER OF FIRE DAMAGE. THAT'S WHAT THE SUPREME COURT SAID. IT SAID IT 100 YEARS AGO, AND IT'S STILL TRUE, MAYBE EVEN MORE TRUE, TODAY. BUT THAT'S WHAT WOULD HAPPEN HERE.

LET'S BE REALLY CLEAR, IT'S NOT JUST THESE PLAINTIFFS WHO ARE HERE TODAY, WHO ARE THE INDIVIDUAL PLAINTIFFS. DOZENS OF INSURANCE COMPANIES ARE LINED UP BEHIND THEM AND HAVE ALREADY SUED. AND THEIR THEORY IS THEY TOO SHOULD BE REINSURED BY THE WATER UTILITY. THAT WOULD BE A BIG, BIG CHANGE IN WHO PROVIDES FIRE INSURANCE IN THE STATE OF CALIFORNIA.

THE ONE TIME THAT THE SUPREME COURT LOOKED AT THIS AND THEY LOOKED AT IT PRETTY CLOSELY, SUPREME COURT SAYS THAT IS A BAD IDEA. AND SO, YOUR HONOR, THAT IS ONE OF THE THINGS YOU LOOK AT WHEN YOU'RE INTERPRETING THE TAKINGS CLAUSE.

I TOLD YOU I'D COME BACK TO THESE BEL AIR LINE OF CASES BECAUSE IT'S IMPORTANT. I'M GOING TO SAY TWO THINGS ABOUT THE BEL AIR LINE OF CASES. I HAVE A SIMPLE ANSWER, AND THEN I HAVE THE MORE FULSOME ANSWER, BUT I WANT TO START WITH THE SIMPLE ONE. AND THE SIMPLE ONE IS, THE SUPREME COURT HAS ALREADY HELD THAT LINE OF CASES HAS FAILED TO FUNCTION AS INTENDED BY THE CASES, IS CONFINED TO THE, QUOTE, UNIQUE CONTEXT OF FLOOD CONTROL CASES.

THAT WAS THE HOLDING OF OROVILLE. OROVILLE -- PLAINTIFFS SAY -- IN THEIR OPPOSITION BRIEF THEY SAY, WELL, YOU KNOW, THIS CASE IS ABOUT WATER. THIS CASE IS ABOUT WATER. OROVILLE WAS ABOUT WATER. IT WAS ABOUT A SEWER SYSTEM AND THE SUPREME COURT SAYS, NO, YOU DO NOT GET TO APPLY BEL AIR IN THE FAIL TO FUNCTION CASES.

I MEAN, IT OVERRULES OTHER COURT OF APPEAL DECISIONS THAT HAVE DONE SO, FOOTNOTE 3. WHICH BRINGS ME -- AND I RECOGNIZE THAT PLAINTIFFS NOD AT THIS -- OUTSIDE OF ALL NON-PRECEDENTIAL CASE, AND I'LL SAY IT, IT APPLIED TO BEL AIR IN THIS CONTEXT. IT DID IT 10 YEARS BEFORE OROVILLE. AND I'LL SUBMIT, YOUR HONOR, THAT, IF IT HAD BEEN PUBLISHED, IT WOULD HAVE BEEN

EXPRESSLY OVERRULED IN OROVILLE LIKE THE OTHER PUBLISHED CASES, IF IT HAD GONE DOWN THIS ROUTE.

THE COURT: YOU'RE TALKING ABOUT ASSOCIATION OF CALIFORNIA WATER AGENCIES?

MR. LEVIN: YES. THE FEDERAL CASE TALKS ABOUT ANOTHER CASE AND ANOTHER CASE.

THE COURT: ARE YOU SAYING THIS IS --

MR. LEVIN: I JUST -- IT'S OUT THERE. IT EXISTS IN THE WORLD. IT'S NOT PRECEDENT. IT'S WRONG.

THE COURT: WHAT DO YOU MAKE OF IT, THOUGH?

MR. LAKE: WHAT DO I MAKE OF IT?

THE COURT: YEAH, SO -- SO -- SO, YOU KNOW, IT WILL NOT COME AS A SURPRISE TO EVERYONE TO HEAR THAT IT WAS CERTAINLY INTERESTING TO ME, THE PROCEDURAL HISTORY OF IT.

MR. LEVIN: SO HERE IS WHAT I'LL SAY ABOUT IT, YOUR HONOR --

THE COURT: NOT PRECEDENTIAL, BUT EVIDENCE OF SOMETHING.

MR. LEVIN: YEAH, I'LL SAY TWO THINGS. IT ADOPTED BEL AIR, THE FAIL TO FUNCTION TEST. IN -- IN THE CONTEXT IT SAID, WELL -- IT WAS A MUCH MORE CONFINED SET OF FACTS, RIGHT, YOUR HONOR? IT WAS -- IT WAS -- PUMPS HAD BEEN MISWIRED. THEY DIDN'T WORK.

THE COURT: RIGHT.

MR. LEVIN: AND SO THERE WAS NO WATER IN THIS SUBDIVISION. IN ANY EVENT, IT SAYS, WELL, IT FAILED TO FUNCTION AS INTENDED, CITE BEL AIR AND SOUNDS LIKE

A TAKINGS CLAIM. OKAY. THAT'S FINE.

WE GET TO OROVILLE -- THE TRIAL COURT AND THE COURT OF APPEAL IN OROVILLE IN 2019 -- SO IT'S LIKE 10 YEARS LATER -- DO THE SAME THING. AND THEY SAY, OKAY. THE SEWER SYSTEM SOUNDS LIKE IT FAILED TO FUNCTION AS INTENDED BECAUSE IT BACKED UP AND FLOODED THIS DENTIST'S OFFICE BECAUSE THERE WERE ROOTS IN THE SEWER SYSTEM. AND IT COMES TO THE SUPREME COURT AND THE SUPREME COURT SAYS, NO. IT OVERRULES IT. IT SAYS BEL AIR DOES NOT APPLY OUTSIDE OF THE UNIQUE CONTEXT OF FLOOD CONTROL. AND THAT ANSWERS THE QUESTION. SO RIGHT OR WRONG AT THE MOMENT, IT'S WRONG NOW. AND IF THEY WANT TO GO BACK TO THE SUPREME COURT AND SAY, WELL, OROVILLE IS JUST TALKING ABOUT SEWER SYSTEMS. YOU CANNOT READ OROVILLE THAT WAY. BUT IF THEY WANT TO READ OROVILLE THAT WAY, THEY SHOULD TAKE THAT TO SACRAMENTO.

THE COURT: WHAT DO YOU MAKE OF THE PROCEDURAL DIFFERENCES WITH BEL AIR AND OROVILLE. OROVILLE WAS AN MSJ?

MR. LEVIN: RIGHT.

THE COURT: BEL AIR WAS A TRIAL.

MR. LEVIN: RIGHT.

THE COURT: AND HERE WE ARE AT A DEMURRER.

MR. LEVIN: WHAT I WOULD SAY, YOUR HONOR, IS THEY SET THE LEGAL RULE. THAT IS -- THE BASIC LEGAL RULE IS WHAT IS A TAKING, AND IT IS TRUE THAT THOSE CASES SET IT IN CONTEXT OF A BACK RECORD, SURE. BUT

WE WILL TAKE ALL OF THE ALLEGATIONS AT THIS POINT AS TRUE; RIGHT? WE'RE GOING TO DISPUTE THEM IF WE GET THERE. THE STATE OF CALIFORNIA CAME OUT WITH A REPORT RECENTLY BASICALLY SAYING THEY WERE WRONG. WE'LL GET THERE IF WE GET THERE.

BUT FINE, LET'S TAKE THE ALLEGATION AS PLEADED. THEY SAY IF THE RESERVOIR HAD BEEN ONLINE IT WOULD HAVE BEEN DIFFERENT. THEY WOULD HAVE BEEN ABLE TO FIGHT THE FIRE DIFFERENTLY. IT'S STILL -- THE BASIC QUESTION IS THE SAME -- THAT IS, IS THE FAILURE OF A PUBLIC IMPROVEMENT TO BE AVAILABLE WHEN FIREFIGHTERS WANT TO USE IT? IS THAT A CONSTITUTIONAL TAKING? IT'S JUST NOT, YOUR HONOR.

AND THINK OF WHERE WE GO FROM THIS. ALMOST ANY FIRE THAT BURNS DOWN A STRUCTURE, YOU'D BE ABLE TO ALLEGE SOMETHING WAS WRONG. SOMETHING WAS WRONG WITH PUBLIC INFRASTRUCTURE. A ROAD WASN'T WIDE ENOUGH TO GET THE FIRE TRUCK THERE FAST ENOUGH. THE TRAFFIC LIGHT THING THAT CHANGES FROM RED TO GREEN DIDN'T WORK WELL ENOUGH. THE FIRE TRUCK COULDN'T GET THERE FAST ENOUGH. THE HOSES DIDN'T WORK ON THEM. THE HYDRANT WAS BROKEN. THE HYDRANT WAS DAMAGED. ALL OF A SUDDEN, EVERY SINGLE ONE OF THOSE IS A TAKINGS CLAIM.

SO THE IDEA THAT WE'RE GOING TO CONFINE THIS TO ONE LIST OF SERIOUS INCIDENTS. WE GET IT. WE UNDERSTAND. BUT THE IDEA THAT WE'RE GOING TO CONFINE THIS FOR SORT OF ONE TIME ONLY OR ONE SERIOUS EVENT ONLY, I JUST DON'T SEE HOW, YOUR HONOR. THIS IS

OPENING UP A DOOR TO A WORLD THAT IN CALIFORNIA, FOR THE LAST 100 YEARS, NO CASE -- EXCEPT THIS ONE THAT WE TALKED ABOUT -- NO CASE HAS EVER WALKED THROUGH.

AND I THINK THE ANSWER TO THAT, YOUR HONOR, IS WHERE IT CAME BACK WHERE IT BEGAN. CASE AFTER CASE AFTER CASE HAS SAID, LET'S THROW THESE CLAIMS OUT. NO ONE HAS BROUGHT A CONSTITUTIONAL CLAIM, BECAUSE IT'S NOT A CONSTITUTIONAL CLAIM. IF ANYTHING, IT'S A NEGLIGENCE-TYPE OF CLAIM. AND YOU CAN'T BRING THAT. FIRST, BECAUSE OF THE COMMON LAW DOCTRINES AND SECOND BECAUSE OF THE IMMUNITIES.

SO WE REALLY ARE ON THIS ONE ON UNCHARTED TERRITORY ON THIS. I TALK ABOUT SOME OF THE OTHER CLAIMS, I HAVE ARGUMENTS, AND I HAVE BRIEFS AND ALL THESE THINGS, BUT THIS ONE, YOUR HONOR, THERE IS JUST A REALLY IMPORTANT JUST THRESHOLD LEGAL ISSUE. THIS JUST DOESN'T FIT THE MOLD OF A TAKINGS CLAIM. AND IF THEY WANT TO STRETCH IT AND THEY WANT TO GO, THEY SHOULD GO UPSTAIRS TO THE COURT OF APPEALS AND MAKE THAT ARGUMENT.

THE COURT: WELL, SOMEBODY SHOULD.

MR. LEVIN: SOMEBODY SHOULD. BUT, YOUR HONOR, LET ME SAY IT THIS WAY: I THINK --

THE COURT: I SOMEBODY WILL.

MR. LEVIN: BUT I DON'T THINK THE ANSWER, YOUR HONOR, TO BE -- I MEAN, I TAKE YOUR POINT, BUT I THINK THE ANSWER IS, THERE HAS TO BE SOMETHING IN THE ORDER THAT SAYS HERE IS SOME PRECEDENT THAT ENDORSES

THIS. AND ALL THEY HAVE, I MEAN, IN TERMS OF CASES IS BEL AIR, AND THEN THE SUPREME COURT COMES AND SAYS, NO, YOU CAN'T DO THAT. AND JUST SORT OF SAYING, WELL, I CAN CITE THIS -- I CAN CITE THE BASIC LAW AND SORT OF SAY, WELL, THERE WAS A PUBLIC IMPROVEMENT, AND THEY ALLEGED SOME KIND OF CAUSAL CONNECTION THAT, YOU KNOW, IF IT WOULD HAVE WORKED DIFFERENTLY, THIS DAMAGE MIGHT NOT HAVE HAPPENED. THAT'S EXACTLY WHAT BEL AIR IS SAYING YOU CAN'T DO.

I MEAN, IT SAYS IT'S NOT JUST ABOUT ONE POSSIBLE CAUSAL CONNECTION. IT SAYS IT HAS TO BE THE INESCAPABLE OR UNAVOIDABLE CONSEQUENCE OF THE IMPROVEMENT. AND THAT DOESN'T MAKE SENSE HERE IN THIS CONTEXT WHEN YOU'RE TALKING NOT ABOUT AN IMPROVEMENT ITSELF CAUSING THE DAMAGE. YOU'RE TALKING ABOUT THE IMPROVEMENT NOT BEING AVAILABLE TO ASSIST IN TRYING TO MITIGATE THE DAMAGE.

THIS IS A REALLY, REALLY DIFFERENT THEORY. AND I SUBMIT, IF YOU WANT TO COME IN AND HAVE A REALLY, REALLY DIFFERENT THEORY, YOU WANT TO BE THE APPELLANT MAKING THAT ARGUMENT NOT THE ONE SAYING, WELL, WHY NOT, LET'S TRY IT. I REALLY THINK THAT'S NOT THE WAY IT SHOULD GO BECAUSE THERE IS NOTHING -- AND WE CAN POINT TO CASE AFTER CASE AFTER CASE WHERE THESE CLAIMS DIDN'T GO FORWARD IN DIFFERENT WAYS.

SO WE THINK THE LAW ON THIS, YOUR HONOR, IS JUST DECIDEDLY ON OUR SIDE. I APPRECIATE YOU LISTENING TO THAT. I'M GOING TO SAY TWO OTHER THINGS

ABOUT THE PLAINTIFF IF I CAN.

THE COURT: UH-HUH.

MR. LEVIN: ALTHOUGH I'M HAPPY TO ANSWER THE QUESTIONS ON THIS.

VERY BRIEFLY, ONE, YOUR HONOR, I NOTICED THAT THE BRUSH CLEARANCE CLAIM -- THEY HAVE THESE CLAIMS ABOUT THESE VACANT LOTS. AND IF I READ IT RIGHT, AND I CONFESS I DID NOT READ THE STATE'S TENTATIVE VERY CAREFULLY, THE COURT SUSTAINED THE TENTATIVE AND STATES IT OVERRULED OURS, WHICH I THOUGHT WAS --

THE COURT: YEAH, THE ARGUMENT --

MR. LEVIN: -- A POTENTIAL TENSION.

THE COURT: SO IT'S INTERESTING THAT YOU BRING THAT UP BECAUSE, YOU KNOW, THE COURT SPENT A LOT OF TIME PREPARING THESE TENTATIVES, AND THERE WERE A LOT OF ARGUMENTS. AND I DID RECOGNIZE THAT I MAY BE TALKING OUT OF BOTH SIDES OF MY MOUTH. BUT THE ARGUMENTS WERE DIFFERENT, SO -- BUT TELL ME -- TELL ME --

(CROSS-TALK)

MR. LEVIN: SO LET ME BE VERY BRIEF ON THIS ONE, YOUR HONOR. AND I REALLY DO -- I WANT TO FOCUS YOUR ATTENTION ON THE WATER BECAUSE I THINK IT'S THE MOST IMPORTANT ISSUE AT QUESTION.

BUT, YOUR HONOR, I'LL SAY ON THE BRUSH CLEARANCE, HERE'S HOW WE SAW IT. THERE ARE THESE LOTS DOWN IN THE CASTEMAR AREA. THEY ALLEGE THEY WERE OVERGROWN BRUSH. STEP ONE OF THIS IS THERE IS NO DUTY

TO CHANGE LAND IN ITS NATURAL STATE.

AND THEY SAY, OKAY. WELL, THERE'S A MANDATORY DUTY TO CLEAR BRUSH. OKAY.

BUT NUMBER ONE, THAT MUNICIPAL STATUTE ACTUALLY DOESN'T APPLY TO THE CITY. IT APPLIES TO INDIVIDUALS IN HOUSES. SO THERE'S NOT A MANDATORY DUTY ON THE CITY TO CLEAR BRUSH. THE CITY DOES AS A MATTER OF FIREFIGHTING GO OUT AND CLEAR BRUSH WHEN PEOPLE RAISE IT, BUT THAT'S THEN A FIREFIGHTING FUNCTION. AND THAT'S CLEARLY UNDER THE FIREFIGHTING DUTIES.

SO THE QUESTION IS WITHOUT SOME STANDALONE MANDATORY DUTY, YOU END UP -- EITHER IT'S NATURAL CONDITION IMMUNITY IF NO ONE DOES ANYTHING OR IF YOU TAKE IT ON, WHICH THE CITY DOES, AND IT GOES OUT AND SENDS FIREFIGHTERS TO DO THIS, IT'S FIREFIGHTING IMMUNITY. YOUR HONOR, THAT'S OUR ARGUMENT IN A NUTSHELL.

THE COURT: OKAY.

MR. LEVIN: LAST POINT, ONE MORE TIME. SO I UNDERSTAND WHY CAUSATION IS A DIFFICULT ISSUE TO TALK ABOUT ON DEMURRER.

LET ME SAY THIS ABOUT CAUSATION. WE'RE GOING TO HAVE -- AND I'M NOT REALLY GOING TO TRY TO TALK YOUR HONOR OUT OF THE TENTATIVE ON CAUSATION, BUT I'M GOING TO MAKE REALLY PRACTICAL POINT.

I'D LIKE TO TALK ABOUT IT, BUT I'M GOING TO MAKE A PRACTICAL POINT ABOUT THIS WHICH IS, THE

TENTATIVE AT ONE POINT SAYS, WELL, THEY INCORPORATE BY REFERENCE 300 PLUS OF PARAGRAPHS OF FACT ALLEGATIONS. IT IS TRUE. THERE ARE 300 PLUS PARAGRAPHS OF FACT ALLEGATIONS THAT ALLEGE DOZENS OF DIFFERENT CLAIMS. MOST OF THEM REALLY DISCREET THINGS: A POWER POLE HERE, A LOT HERE. SOME OF IT OWNED BY THE CITY; SOME OF IT OWNED BY OTHER DEFENDANTS WHO AREN'T HERE. DIFFERENT THINGS HAPPENED AT DIFFERENT PLACES AT DIFFERENT TIMES.

AND THEN THEY SAY ALL OF THIS CAUSED EVERYBODY'S DAMAGE. AND THAT IS FROM A VERY PRACTICAL CASE MANAGEMENT LITIGATION STANDPOINT. VERY HARD TO DEAL WITH BECAUSE DO WE NOW HAVE 15,000 POTENTIAL CLAIMS ALL MAKING A CLAIM ABOUT A SINGLE POLE IN MALIBU THAT SPARKED? THAT CANNOT BE. THAT IS NOT A WAY TO MOVE A CASE TOWARDS ANY KIND OF RESOLUTION IN ANY RESPECT.

AND SO MAYBE WE CAN DEAL WITH FACT SHEETS, MAYBE THERE'S WAYS TO DEAL WITH IT. WE SUGGESTED A DISMISSAL WITHOUT PREJUDICE, BUT THERE ARE OTHER TOOLS. I REALLY URGE THE COURT AND EVERYONE TO THINK ABOUT THIS ISSUE BECAUSE IT'S NOT WHAT THE CASE IS -- BUT I UNDERSTAND IT'S GOING TO GO FORWARD IN SOME FASHION OR ANOTHER -- IT IS NOT GOING AWAY, AND IT'S NOT GOING TO BE CONDUCIVE TO ANY KIND OF EFFICIENT MANAGEMENT IF EVERYONE IS SUING EVERYONE OVER EVERYTHING. I DON'T KNOW.

YOUR HONOR, I HOPEFULLY HAVE A FEW MINUTES

THAT I'VE SAVED FOR REBUTTAL. THANK YOU.

THE COURT: SURE. OKAY. WHO IS GOING TO TAKE IT FOR THE PLAINTIFF?

MR. ROBERTSON: I WILL, YOUR HONOR.

GOOD AFTERNOON, YOUR HONOR, ALEX ROBERTSON CO-LEAD LAW COUNSEL FOR THE PLAINTIFFS.

THE COURT: GOOD AFTERNOON.

MR. ROBERTSON: FIRST, I WANT TO THANK THE COURT FOR A VERY THOUGHTFUL THOROUGH TENTATIVE. WE APPRECIATE THAT, AND IT COMES TO NO SURPRISE THAT WE'RE SUBMITTING TO THAT TENTATIVE, BIT I WANT TO RESPOND TO SOME OF THE POINTS BECAUSE -- IN ADDITION TO ANY QUESTIONS THAT THE COURT HAS.

AS THE COURT HAS POINTED OUT ON ITS TENTATIVE IN ITS COMMENTS, WE'RE HERE ON A DEMURRER, NOT SUMMARY JUDGMENT, NOT TRIAL.

THE PLAINTIFFS HAVE ADEQUATELY PLED A CLAIM FOR INVERSE CONDEMNATION ON THE WATER CLAIMS BASED ON THE FOUR ELEMENTS THAT HAVE BEEN SET FORTH BY THE SUPREME COURT OF OROVILLE, WHICH REQUIRES A DELIBERATELY DESIGNED AND CONSTRUCTED AND MAINTAINED PUBLIC IMPROVEMENT THAT PRESENTS AN INHERENT RISK WHICH SUBSTANTIALLY CAUSES THE PLAINTIFFS' PROPERTY DAMAGE.

AND MR. LEVIN BROUGHT UP A LOT OF POLICY ARGUMENTS. THE PARADE OF HORRIBLES AS THE COURT HAS POINTED OUT IF THE COURT'S TENTATIVE ORDER BECOMES THE FINAL ORDER.

MEMBER OF THE PUBLIC: CAN YOU MAKE IT LOUDER, PLEASE. I'M SORRY. CAN YOU PLEASE TURN UP THE VOLUME, PLEASE, SOMEONE.

THE COURT: OKAY. SO IF YOU ARE HERE IN THE AUDIENCE, YOU CANNOT JUST YELL OUT. OTHERWISE, YOU WILL BE POLITELY ASKED TO LEAVE. OKAY?

APPARENTLY THERE'S A REQUEST, MR. ROBERTSON, FOR YOU TO SPEAK LOUDER.

MR. ROBERTSON: SO I HEARD.

THE COURT: YEAH. HOLD THAT MIC CLOSE.

MR. ROBERTSON: THANK YOU, YOUR HONOR. I'LL LEAN IN.

THE COURT: OKAY. SO WERE YOU SAYING THAT -- YOU WERE TALKING ABOUT THE POLICY ARGUMENTS THAT MR. LEVIN WOULD LIKE THE COURT TO DECIDED TODAY.

MR. ROBERTSON: AND SO POLICY ARGUMENTS SHOULD BE LEFT TO LEGISLATURE, AND FACTUAL ISSUES ABOUT CAUSATION SHOULD BE LEFT FOR SUMMARY JUDGMENT AND TRIAL.

BUT WHAT THE CITY IS REALLY ARGUING IS NOT THAT WE HAVEN'T SUFFICIENTLY PLED FACTS TO STATE AN INVERSE CONDEMNATION CAUSE OF ACTION. WHAT THEY'RE REALLY ARGUING IS THAT INVERSE SHOULDN'T APPLY TO THIS TYPE OF A PUBLIC IMPROVEMENT.

THE SYSTEMATIC FAILURE OF THE WATER SUPPLY SYSTEM. THAT'S A POLICY ARGUMENT.

THE NIEHAUS AND UKIAH CASES THAT THEY CITE TO AS SAYING THERE IS NO RECOGNIZED CLAIM FOR FAILURE TO

SUPPLY WATER FOR FIREFIGHTING. BOTH OF THOSE WERE BREACH OF CONTRACT CASES.

BOTH THE PLAINTIFF AND THE DEFENDANTS WERE PRIVITY OF CONTRACT, AND THERE THE COURT -- ALTHOUGH IT'S A 114-YEAR-OLD DECISION, THE COURT WAS STRUGGLING TO TRY TO FIND THE DUTY.

AND SO IN THE DEMURRER, THE CITY HAS LATCHED ONTO THAT DUTY ARGUMENT AND TRIED TO IMPORT A DUTY ELEMENT INTO INVERSE CONDEMNATION, WHICH THE SUPREME COURT OF OROVILLE NEVER SAYS THERE HAS TO BE A DUTY.

THE ARGUMENT THAT MR. LEVIN HAS BROUGHT UP SAID, WELL, IF THIS CASE IS ALLOWED TO GO FORWARD ABOUT THE LACK OF WATER, THEN THERE IS NO GUARDRAILS WHATSOEVER IN ANY PUBLIC IMPROVEMENT -- A STREET, ET CETERA, COULD BE A SUBJECT TO AN INVERSE CLAIM.

BUT THE SUPREME COURT SPECIFICALLY SET THOSE GUARDRAILS UP IN THE OROVILLE DECISION AND SAID, IN ORDER TO AVOID THIS UNLIMITED LIABILITY, THIS PARADE OF HORRIBLES, WHICH, BY THE WAY, WAS RAISED IN THAT CASE, THE PLAINTIFFS HAVE TO PLEA AND HAVE TO SHOW THAT THE PUBLIC IMPROVEMENT CREATED AN INHERENT RISK, EITHER IN THE DESIGN OR THE MAINTENANCE OF THE PUBLIC IMPROVEMENT THAT SUBSTANTIALLY CAUSED THE PLAINTIFFS' PROPERTY DAMAGE.

THOSE ARE THE GUARDRAILS, YOUR HONOR. THERE HAS TO BE AN INHERENT RISK.

AND THE PLAINTIFFS IN THE MASTER COMPLAINT HAVE PLED AD NAUSEAM IN THE 185-PAGE MASTER COMPLAINT

TWO DIFFERENT TYPES OF INHERENT RISKS.

THE FIRST WAS IN THE DESIGN. AND WE HAVE ALLEGED THAT THE DESIGN OF THE WATER SUPPLY SYSTEM FOR PACIFIC PALISADES RELIED UPON THE SANTA YNEZ RESERVOIR BEING FULL. AND THAT WAS TO BALANCE THE SYSTEM BECAUSE THE WATER IS COMING ALL THE WAY FROM THE STONE CANYON RESERVOIR OVER IN BRENTWOOD AND BEING PUMPED THROUGH THIS WESTGATE TRUNK LINE, THIS PIPELINE THAT COMES ALL THE WAY DOWN SUNSET AND GOES UP TO PALISADES DRIVE TO A HIGHER ELEVATION. AND THERE IS PUMPING STATIONS THAT ARE REQUIRED TO THEN PUMP THAT WATER UP TO THE THREE STORAGE TANKS. TWO OF WHICH WERE RIGHT NEXT TO WHERE THIS FIRE STARTED -- THE PALISADES FIRE STARTED.

AND THE DESIGN HAD AN INHERENT DEFECT IN THAT IF YOU REMOVE THE 117 MILLION GALLONS OF THAT RESERVOIR, IT GUARANTEES THE SYSTEM IS GOING TO FAIL IN A HIGH-WATER DEMAND EVENT, LIKE A FIRE.

AND WE ALLEGE THAT SPECIFICALLY, AND THE COURT NOTES THAT. IT CITES TO IT IN ITS TENTATIVE ORDER.

SO THAT'S THE FIRST INHERENT RISK, WHICH WAS IN THE DESIGN.

THE SECOND TYPE OF INHERENT RISK. BY THE WAY, WE ONLY NEED TO ALLEGE ONE, BUT HERE WE'VE ALLEGED TWO.

THE SECOND TYPE OF INHERENT RISK WAS THE MAINTENANCE PLAN. AND MASTER COMPLAINT ALLEGES IN

DETAIL PROBLEMS WITH THE PLAN FOR THE FLOATING COVER WHICH REPEATEDLY TORE. THE PLAN THAT THE CITY ELECTED TO PURSUE TO DRAIN THE RESERVOIR INSTEAD OF CATCHING THESE TEARS IN THEIR INCIPIENT STAGES SO THEY COULD BE PATCHED WITHOUT DRAINING THE RESERVOIR.

WE'VE ALLEGED THE PLAN TO FORGO THE ANNUAL UNDERWATER INSPECTIONS. AND, IN FACT, THEY CHANGED THE PLAN AND SAID, WE'LL JUST DO IT EVERY THREE YEARS BECAUSE WE HAVEN'T DONE IT THE THREE YEARS BEFORE THE FIRE. THAT'S A PLAN. THAT'S A MAINTENANCE PLAN.

AND AS THE SUPREME COURT SAID IN OROVILLE, IF THE PUBLIC ENTITY ACCEPTS THE RISKS OF THOSE IN INHERENT PROBLEMS IN THE DESIGN OR MAINTENANCE IN THE PUBLIC IMPROVEMENT AND THOSE INHERENT RISKS SUBSTANTIALLY CAUSED THE PLAINTIFFS' PROPERTY DAMAGE, A CONSTITUTIONAL TAKING OCCURS. IMMUNITIES DON'T APPLY TO A CONSTITUTIONAL TAKINGS CLAIM.

AT THE PLEADINGS STAGE, WE HAVE SATISFIED OUR BURDEN UNDER OROVILLE. THE CITY DOES NOT WANT TO TALK ABOUT THE SIMPLE AVO CASE, BUT IT'S PROBABLY THE MOST ON POINT CASE, I THINK, TO WHERE WE ARE AT TODAY AT THE PLEADINGS STAGE.

SIMPLE AVO AROSE FROM THE 2017 THOMAS FIRE. THE MASTER COMPLAINT -- HAD A MASTER COMPLAINT IN THAT MASS TORT CASE. THAT MASTER COMPLAINT HAD, FRANKLY, VERY CONCLUSORY ALLEGATIONS ABOUT BOTH INHERENT RISK AND SUBSTANTIAL CAUSATION. AND THE COURT OF APPEAL IN REVIEWING THE COURT'S RULING ON THE DEMURRER HELD THAT

THE PLAINTIFFS HAD ADEQUATELY PLED THE OROVILLE ELEMENTS IN THOSE FAIRLY SIMPLY CONCLUSORY ALLEGATIONS.

IN SIMPLE AVO, THE MASTER COMPLAINT ALLEGED THE ABOVE DESCRIBED DAMAGE TO PLAINTIFFS' PROPERTY WAS LEGALLY AND SUBSTANTIALLY CAUSED BY THE ACTIONS OF SOUTHERN CALIFORNIA EDISON IN THEIR INSTALLATION, OWNERSHIP, OPERATION, USE, CONTROL, MANAGEMENT, AND/OR MAINTENANCE OF THE ELECTRICAL DISTRIBUTION SYSTEM FOR PUBLIC USE.

AND THE HOLDING IN SIMPLE AVO SAID, THESE ALLEGATIONS ARE SUFFICIENT TO ALLEGE SIMPLE AVO'S DAMAGES WERE SUBSTANTIALLY CAUSED BY THE DEFENDANT DUE TO ITS OLD AND IMPROPERLY MAINTAINED ELECTRICAL DISTRIBUTION SYSTEM. THAT'S SIMPLE AVO PAGE 307.

I WOULD SUBMIT THAT OUR MASTER COMPLAINT GOES WAY BEYOND THOSE CONCLUSORY ALLEGATIONS. AS THE COURT HAS POINTED OUT IN THE PROPOSED ORDER.

WE ALLEGE VERY SPECIFIC PROBLEMS: INHERENT RISKS IN BOTH THE DESIGN AND MAINTENANCE PLAN OF THE WATER DISTRIBUTION SYSTEM. AND WE ALSO ALLEGE SUBSTANTIAL CAUSATION, WHICH IS REALLY FACT INTENSIVE. AND HERE WE ARE IN THE PLEADING STAGE 13 MONTHS AFTER THE FIRE, AND, AS THE COURT KNOWS, THERE'S A STAY ON DISCOVERY, AND WE HAVEN'T EVEN BEEN ABLE TO ENGAGE IN THAT DISCOVERY PROCESS.

SO BASED ON THE FACTS THAT WE HAVE ALLEGED, WE HAVE CHECKED ALL THE BOXES REQUIRED BY THE SUPREME

COURT TO PLEAD AN INVERSE CAUSE OF ACTION FOR THE FAILURE OF THE CITY'S WATER SUPPLY SYSTEM.

I'M HAPPY TO TAKE ANY QUESTIONS THE COURT MAY HAVE.

THE COURT: WELL, LET'S LIST -- I'M GOING -- THIS IS GOING TO BE A TERRIBLE PLAY ON WORDS, BUT LET'S TALK ABOUT THE ELEPHANT IN THE ROOM -- OKAY -- WHICH IS THIS HUNDRED-PLUS YEARS OF NO ISSUANCE BY ANY COURT OF A CASE THAT SUPPORTS YOUR THEORY, WHICH IS THAT A -- AS THE ALLEGATIONS STAND -- AND TO USE THE DEFENSE'S METHOD OF CHARACTERIZING IT -- THAT THIS PUBLIC IMPROVEMENT, THE WATER SYSTEM -- THE DESIGN OF THE WATER SYSTEM ULTIMATELY FAILED, AND, AS A RESULT, THERE WAS NOT ENOUGH WATER TO FIGHT THIS FIRE. AND THERE IS NO CASE THAT HAS BEEN ISSUED. NO OPINION THAT HAS BEEN ISSUED. NO COURT HAS HELD THAT THAT FAILURE TO PROVIDE WATER FOR FIREFIGHTING CONSTITUTES A TAKING UNDER THE CONSTITUTION.

SO ADDRESS, YOU KNOW, THIS GAP, IF YOU WILL. BIG GAP IN TERMS OF WHAT -- YOU KNOW, I DON'T THINK ANY OF US DISAGREE WITH THE ARGUMENT THAT THIS COULD HAVE GREAT RAMIFICATIONS IN A GLOBAL WARMING WORLD -- RIGHT -- AN INCREASINGLY HOT WORLD. SO WHY DON'T YOU ADDRESS THAT.

MR. ROBERTSON: SURE. I'D BE HAPPY TO, YOUR HONOR. FIRST, THE CITY CAN'T POINT TO A SINGLE CASE THAT HAS HELD THAT INVERSE DOES NOT APPLY TO A MUNICIPAL AGENCY'S FAILURE OF ITS WATER SUPPLY SYSTEM.

SO THERE IS NO CASE THAT SAYS YOU CAN; THERE IS NO CASE THAT SAYS YOU CAN'T.

SO I THINK WE'RE ON AN EVEN PLAYING FIELD, BUT IT'S NOT SURPRISING, TO ME AT LEAST, THAT THERE HASN'T BEEN A PRIOR CASE DEALING WITH A COMPLETE FAILURE OF A MUNICIPAL AGENCY'S WATER SYSTEM BECAUSE WHAT THE CITY DID WAS UNPRECEDENTED.

TO DESIGN A SYSTEM THAT WOULD FAIL IF YOU TOOK THE RESERVOIR OUT OF LINE, OUT OF PLAY AND TO FORGO A MAINTENANCE PLAN TO UPKEEP AND ENSURE THAT SYSTEM WOULD WORK IN A HIGH-WATER-DEMAND SYSTEM.

THE CITY MADE -- TOOK A CALCULATED RISK AND REMOVED 97 PERCENT OF THE WATER SUPPLY SYSTEM FOR PACIFIC PALISADES FOR A YEAR BEFORE THIS FIRE HAPPENED. AND THE SUPREME COURT ADDRESSED THIS PRECISE QUESTION. THE CITY SAYS WE SHOULDN'T BE MADE AN INSURED.

AND THE SUPREME COURT IN OROVILLE SAID IT MAY BE SENSIBLE IN SOME SENSE FOR A PUBLIC ENTITY TO FORGO REGULAR MONITORING AND REPAIR AND INSTEAD ADOPT A WAIT-UNTIL-IT-BREAKS PLAN OF MAINTENANCE TO SAVE ON THE COSTS OF IMPOSING THE MONITORING SYSTEM, BUT THE DAMAGES THAT RESULT FROM THE INHERENT RISKS POSED BY THE PUBLIC ENTITY'S PLAN SHOULD BE SPREAD TO THE COMMUNITY THAT BENEFITS FROM THE LOWER COSTS INSTEAD OF LEAVING THE PROPERTY OWNERS WHO ARE ADVERSELY AFFECTED BY THE PUBLIC ENTITY'S CHOICE TO SHOULDER THE BURDEN ALONE.

IT'S THIS COST-SPREADING POLICY THAT THE SUPREME COURT SAID HAS TO APPLY IN THE CONTEXT OF CONSTITUTIONAL TAKING.

HERE, IF THE CITY TAKES THE CALCULATED RISK TO FORGO A PROPER PLAN OF MAINTENANCE, IF THE CITY TAKES THE RISK IN THE DESIGN OF ITS WATER DESIGN SYSTEM THAT IT MIGHT FAIL IF YOU DRAIN THE RESERVOIR, THEN THE COST SAVINGS THAT THE RENT PAYERS GOT TO ENJOY FOR THOSE INHERENT RISKS BEING TAKEN BY THE CITY. THEY BENEFITED FROM THAT.

BUT TO PLACE THE BURDEN OF 7,000 HOMES BURNING DOWN IN THIS FIRE AND 12 LIVES BEING LOST -- TO PLACE THAT BURDEN ON THE SHOULDERS OF THE AFFECTED PROPERTY OWNERS, THE FIRE VICTIMS, THAT GOES AGAINST THE CONSTITUTIONAL TAKING, THE JUST COMPENSATION CLAUSE, AND THE CALIFORNIA CONSTITUTION.

IT'S THE WHOLE REASON THE SUPREME COURT HAS CREATED THIS BODY OF LAW TO PROTECT PRIVATE PROPERTY OWNERS FROM HAVING TO SHOULDER THAT BURDEN.

THE COURT: WELL, ISN'T THE REBUTTAL TO THAT, THAT'S WHY THERE ARE INSURANCE COMPANIES? SO --

MR. ROBERTSON: SURE, BUT THE CITY DOESN'T GET TO BENEFIT FROM THE PRIVATE CONTRACT OF INSURANCE THAT A HOMEOWNER MAY DECIDE TO TAKE OUT OR THE POLICY LIMITS OF THAT THE INSURANCE OR THE RISK THAT AN INSURANCE COMPANY MIGHT CANCEL THEM FOUR MONTHS BEFORE THE PALISADES FIRE HAPPENED. THAT'S ALL A MATTER OF CONTRACT BETWEEN THE HOMEOWNER AND THAT INSURANCE

COMPANY.

THE CITY DOESN'T GET TO SAY, HEY, WE'RE GOING TO SAVE MONEY ON THE DESIGN OF THE WATER SUPPLY SYSTEM. WE'RE GOING TO SAVE MONEY BY NOT FOLLOWING A PROPER PLAN OF MAINTENANCE AND THEN GET OFF SCOT-FREE WHEN THAT PUBLIC IMPROVEMENT FAILS SIMPLY BECAUSE A HOMEOWNER MAY OR MAY NOT HAVE HAD THE WISDOM TO BUY A POLICY OF INSURANCE.

AND, BY THE WAY, THOSE INSURANCE COMPANIES WHO WERE HERE TODAY ARE SUBROGATION PLAINTIFFS, AND THEY ARE COMING AFTER THE CITY AND THE RESPONSIBLE PARTIES AS WELL FOR REIMBURSEMENT OF WHAT THEY HAVE TO PAY OUT UNDER SUBROGATION LAWS.

THE COURT: WELL, FIRST OF ALL, THAT'S NOT UNIQUE TO THIS CASE, AND SECONDLY --

MR. ROBERTSON: IT'S NOT. IT'S THE MECHANISM THAT'S IN PLACE.

THE COURT: -- IT'S NOT SORT OF -- IT'S NOT WITHIN THE 358 PARAGRAPHS OF THE 200-PAGE COMPLAINT, BUT I UNDERSTAND FROM A -- I THINK WE'RE GETTING BEYOND SORT OF THE LOGICAL PARAMETERS OF THE POLICY ISSUE THERE.

I DON'T THINK I HAVE ANY OTHER QUESTIONS FOR YOU AT THIS TIME, MR. ROBERTSON, BUT IF YOU HAVE ANYTHING ELSE YOU'D LIKE TO SAY AT THIS JUNCTURE, PLEASE DO SO.

MR. ROBERTSON: I'D JUST LIKE TO CONCLUDE, YOUR HONOR, THAT I THINK THE PLAINTIFFS HAVE

ADEQUATELY MET OUR BURDEN AT PLEADINGS STAGE, SATISFIED THE REQUIREMENTS TO PROVE TO THE COURT AS ESTABLISHED IN THE OROVILLE CASE, AND THAT THE COURTHOUSE DOORS SHOULD REMAIN OPEN TO THE VICTIMS AS WE BEGIN DISCOVERY TO FIND OUT HOW THIS HAPPENED AND HOPEFULLY KEEP IT FROM HAPPENING AGAIN. THANK YOU.

THE COURT: THANK YOU.

MR. LEVIN.

MR. LEVIN: THANK YOU, YOUR HONOR.

MR. ROBERTSON MENTIONED THE SIMPLE AVO CASE AND NOTED THAT I DIDN'T TALK ABOUT IT, BUT LET ME START THERE BECAUSE IT ILLUSTRATES THE DIFFERENCE BETWEEN A RECOGNIZED TAKINGS CLAIM AND THIS CASE, WHICH ISN'T A RECOGNIZED TAKINGS CLAIM.

SO SIMPLE AVO WAS A CASE WHERE A POWER LINE SPARKED AND STARTED A FIRE, AND THE COURT OF APPEALS SAID THAT IS A TAKING INVERSE CLAIM UNDER CALIFORNIA LAW.

BUT IN THAT CASE, THE ALLEGATION WAS THE POWER LINE STARTED THE FIRE. THAT'S NOT THE ALLEGATION HERE, AND I -- THEY HAVE A LOT OF ALLEGATIONS, AND I'M GOING TO TAKE EVERY SINGLE ONE OF THEM AS TRUE FOR TODAY.

BUT THEY ARTICULATED JUST NOW IN TWO THEORIES THAT THEY ALLEGE, AND I'LL TRY DO JUSTICE TO THEM. I AM NOT TRYING TO CHANGE WHAT MR. ROBERTSON ARTICULATED. HE SAID IT WAS DESIGNED IN A WAY -- THE RESERVOIR WAS DESIGNED OR THE WATER SYSTEM WAS

DESIGNED IN A WAY THAT WASN'T ADEQUATE TO PROVIDE ENOUGH WATER FOR A FIRE OF THIS MAGNITUDE AND THAT THERE WAS AN OVERALL PLAN OF MAINTENANCE. WE DISPUTE WHETHER THEY ALLEGED THAT, BUT LET'S SAY THEY DO. AN OVERALL PLAN OF MAINTENANCE THAT WAS GOING TO MAKE THE SYSTEM UNAVAILABLE FOR A FIRE.

THAT IS FUNDAMENTALLY DIFFERENT FROM SAYING THE IMPROVEMENT FAILED IN A WAY THAT STARTED A FIRE THAT DAMAGED PROPERTY. THERE'S A WHOLE HUGE STEP IN THE MIDDLE.

AND WHAT I SUBMITTED, I WANT TO GO TO THE ELEMENTS OF TAKINGS. LET'S GO AWAY FROM ALL THE POLICY ARGUMENTS, EVERYTHING ELSE, AND JUST SAY THAT IS NOT AN INHERENT RISK OF THE PUBLIC IMPROVEMENT IN WAY THE COURTS HAVE RECOGNIZED.

AND I GET THAT "INHERENT RISK" IS SORT OF A BROAD TERM, AND YOU CAN SORT OF JAM A LOT OF STUFF INTO IT. IT'S LIKE, WELL, THE RISK THAT AN IMPROVEMENT MIGHT NOT WORK -- I MEAN, BUT THAT'S NOT WHAT THEY ARE TALKING ABOUT IN ANY CASE WHERE THEY SAY -- THE ONLY CASES WHERE THEY SAY THE RISK THAT THE IMPROVEMENT WOULD NOT WORK, THAT'S ANOTHER WAY OF SAYING FAILED TO FUNCTION AS INTENDED, WHICH IS BEL AIR.

AND WE DO HAVE A CASE RIGHT ON POINT: OROVILLE THAT SAYS BEL AIR DOES NOT APPLY OUTSIDE THE UNIQUE CONTEXT OF WATER RIGHTS CASES. SO WHEN THEY SAY WE DON'T HAVE A CASE, THAT'S WRONG.

TO GET TO THEIR THEORY, YOU HAVE TO -- HAVE TO GO THROUGH BEL AIR. AND THE SUPREME COURT HAS SAID, NO, YOU CAN'T DO THAT.

SO WE DO HAVE A CASE THAT SAYS, NO -- THAT SAYS THERE'S A STOPPING POINT, AND WE'VE CROSSED IT HERE IN THIS CASE.

AND I SAID BEFORE, YOUR HONOR, I WOULD SAY TWO THINGS ABOUT THE BEL AIR, AND I -- THE SIMPLE ANSWER IS OROVILLE SAYS YOU CAN'T USE IT.

I DO WANT TO MAKE ONE POINT ABOUT THE BROADER ANSWER TO BEL AIR, WHICH IS WHAT THE FLOOD CASES ARE DOING -- AND THEY'RE LONG, AND THERE'S A BUNCH OF THEM OVER A COURSE OF A COUPLE DECADES IN THE SUPREME COURT, BUT EVENTUALLY IN LOCKLIN, THEY GET TO THE POINT OF HARMONIZING TORT DUTIES AND CONSTITUTIONAL TAKINGS.

AND, YOUR HONOR, I UNDERSTAND THEY'RE NOT TRIANGULARLY. ONE IS THE CONSTITUTION; ONE IS TORT. BUT IN LOCKLIN, IT'S A LONG OPINION. THEY GO THROUGH THIS -- THERE'S TORT CLAIMS AND TAKINGS CLAIMS, AND THEY GO THROUGH THE TAKINGS CLAIM -- EXCUSE ME -- THE TORT CLAIM, AND THEY SAY THE MODERN RULE NOW FOR THESE WATER -- THESE FLOODWATER CASES IS A RULE OF REASONABLENESS.

THE SUPREME COURT SAYS IN LOCKLIN A PROPERTY OWNER CAN BE LIABLE IF THEY'VE DONE THINGS THAT ARE UNREASONABLE WITH FLOODWATERS. I'M PARAPHRASING. BUT THAT'S ESSENTIALLY THE HOLDING.

AND THEN IT MOVES TO THE TAKINGS CLAIM, AND IT HARMONIZES IT. IT SAYS, IN THIS FAILED FUNCTION IN THIS BEL AIR WORLD, WE'RE GOING TO HAVE THE SAME REASONABLE STANDARD. SO IT'S ITS OWN SPECIES OF TAKINGS CLAIM. IT'S THE ONLY TYPE OF TAKINGS CLAIM THAT APPLIES THIS REASONABLENESS TEST.

AND THE SUPREME COURT IS EXPLICITLY, EXPRESSLY HARMONIZING TORT AND CONSTITUTIONAL LAW, EVEN THOUGH THEY'RE NOT TRIANGULARLY DIFFERENT.

BUT WHAT THE PLAINTIFFS ARE SAYING IS WHAT YOUR HONOR SHOULD DO IS SAY, I'M GOING PUT THESE TWO THINGS IN TENSION. UNDISPUTED HERE TODAY, THERE IS NO TORT DUTY TO PROVIDE WATER TO FIGHT A FIRE, BUT THAT THE CONSTITUTIONAL RULE SHOULD BE ABSOLUTELY CONTRARY. IT SHOULD TRUMP THE TORT RULE IN A WAY THAT THE LEGISLATURE HAS NO POWER TO OVERRULE.

SO MR. ROBERTSON SAYS, OH, THESE POLICY ARGUMENTS ARE FOR THE LEGISLATURE. THAT'S NOT REALLY MUCH SOLACE HERE ON OUR SIDE OF OUR TABLE BECAUSE THESE CONSTITUTIONAL CLAIMS TRUMP THAT. AND IN FACT, THIS IS NOT JUST ME TALKING. THAT'S WHAT THE SUPREME COURT COMMENTS ABOUT IN CUSTOMER CARE, WHERE IT SAYS THERE'S A DANGER TO THE EXPANSION OF TAKINGS LAW BECAUSE IT IS UNFIXABLE BY THE LEGISLATURE. SO THIS IS NOT JUST SORT OF, WELL, WE CAN GO HAVE POLICY DISCUSSIONS SOMEWHERE ELSE. THIS IS ABOUT HAVING TO INTERPRET THE CONSTITUTION, WHICH BRINGS ME TO THE LAST POINT.

THE COURT: BEFORE YOU MOVE ON, FLESH THAT OUT A LITTLE BIT FOR ME. THE "THAT" IN THAT SENTENCE IS YOUR STATEMENT THAT IN CUSTOMER CARE, THE SUPREME COURT SAID THERE'S A DANGER TO THE EXPANSION OF TAKINGS LAW BECAUSE IT'S UNFIXABLE BY THE LEGISLATURE?

MR. LEVIN: RIGHT. SO HERE'S WHAT -- CUSTOMER CARE -- IT WAS -- IT WAS A CLAIM -- ESSENTIALLY, THEY WERE TRYING TO CONVERT A SORT OF POLICE MISCONDUCT TYPE CLAIM INTO A TAKINGS CLAIM. THE SUPREME COURT SAYS, NO, YOU CAN'T DO THAT, AND FOR A LOT OF REASONS. BUT ONE OF THE THINGS IT SAYS, WELL, BUT THERE IS IMMUNITIES FOR ALL THIS CONDUCT. AND IT SAYS, BUT IF THERE'S A TAKINGS CLAIM -- IF THIS IS -- WE CONSTITUTIONALIZE THIS, WE'RE OVERRIDING AND NULLIFYING WHAT THE LEGISLATURE DOES IN A WAY THAT'S IRRECONCILE -- THE LEGISLATURE CANNOT FIX, CANNOT CHANGE -- RIGHT? -- BECAUSE NOW THERE'S A -- WE NEED A CONSTITUTIONAL AMENDMENT TO ADDRESS IT. IT SORT OF TRUMPS THE LEGISLATIVE POWER.

SO THAT'S WHAT -- IT'S ONE THING IN THE FLOOD CONTROL CONTEXT WHERE YOU'RE NOW ALIGNING ESSENTIALLY THE BACKGROUND TOWARD COMMON LAW RULES AND CONSTITUTIONAL RULES. IT WOULD BE QUITE DIFFERENT HERE WHERE YOU'RE PUTTING THE TWO INTO DIRECT CONFLICT IN A WAY THAT THE LEGISLATURE CAN'T FIX EVEN IF IT WANTED TO, WHICH TAKES ME TO THEN THIS POINT ABOUT THE RATE PAYERS BENEFITTING AND THE COST SPREADING RATIONALE.

THERE IS A LIMIT TO THE COST SPREADING RATIONALE. YOU CAN MAKE THIS ARGUMENT IN ANY CASE. YOU KNOW, SOME INDIVIDUAL OR GROUP OF INDIVIDUALS WERE HARMED. IT WOULD BE BETTER TO SPREAD THAT COST TO A BROAD AMOUNT OF PEOPLE.

AND MR. ROBERTSON SAYS, WELL, THE RATE PAYERS HAVE BENEFITED FROM LOW RATES BECAUSE THE RATES DON'T ACCOUNT FOR THE RISKS IN THE WATER SYSTEM. THAT IS A REMARKABLE AND TRANSFORMATIVE IDEA IN CALIFORNIA BECAUSE I DON'T THINK -- I THINK THERE ARE MANY DAILY DUE RATE PAYERS WHO WOULD NOT AGREE THAT THE RATES HAD BEEN LOWER OR THAT THEY BENEFITED. THIS IS WHAT THE SUPREME COURT WAS WERE WORRIED ABOUT IN NIEHAUS. SO AGAIN, IT'S NOT JUST ME. THIS THE SUPREME COURT RECOGNIZING THIS.

THIS WOULD CHANGE -- IF YOU REALLY TOOK THIS ALL AWAY, THIS WOULD CHANGE -- WATER RATES WOULD HAVE TO INCLUDE THE COST OF WHAT IF THE SYSTEM DOESN'T WORK.

LAST POINT, AND IT'S A LITTLE BIT OF SUBPOINT ON THIS. IT IS ONE THING IN THE WATER CASES WHERE THE FLOOD CONTROL CASES WOULD SAY, IF THE IMPROVEMENT DOESN'T FUNCTION AS YOU INTENDED IT, SO THE LEVEE BREAKS AND THERE'S A FLOOD, YOUR FLOOD CONTROL CHANNELS DON'T WORK, AND THERE'S A FLOOD, IN THAT CONTEXT YOU CAN BRING A FAIL TO FUNCTION CLAIM.

BUT IN THE PATERNO CASE, THE COURT SAYS THERE'S AN OUTSIDE LIMIT TO THIS. EVEN IN THAT

CONTEXT, WHAT YOU CANNOT ARGUE IS THAT THEY MADE A DECISION TO BUILD THE LEVEE TOO LOW. THAT IS YOU CAN'T GO BACK AND SECOND GUESS AND SAY, WELL, YOU SHOULD HAVE JUST BUILT A DIFFERENT PROJECT. BUT WHAT I HEARD THE PLAINTIFF SAY, AT LEAST IN PART TODAY, IS THAT THAT IS EXACTLY WHAT THEY ARE ALLEGING. WE SHOULD HAVE BUILT A DIFFERENT WATER IMPROVEMENT PROJECT, EVEN IN THE FLOOD -- EVEN IN BEL AIR, YOU CAN'T MAKE THAT ARGUMENT.

THAT WOULD BE -- TO SAY THAT THE CONSTITUTION SOMEHOW MANDATES HOW MUNICIPALITIES BUILD PUBLIC IMPROVEMENTS, NO COURT HAS EVER, EVER ENDORSED A RULE LIKE THAT. IT WOULD BE TOTALLY TRANSFORMATIVE OF POLICY DECISION MAKING IN THE STATE. YOU WOULD HAVE TO ASK YOURSELF, DID WE BUILD THIS HIGH ENOUGH -- YOU KNOW, THIS DAM HIGH ENOUGH, THIS ROAD WIDE ENOUGH TO WITHSTAND SOME SORT OF LATER CONSTITUTIONAL CLAIM? THERE IS JUST NOTHING ANYWHERE THAT WOULD SUPPORT THAT THEORY. THAT IS A BREAKING POINT EVEN IN THE FLOOD CASES, AND LIKE I SAID, WE DON'T GET TO THEM.

SO I REALLY DO THINK -- I KNOW THERE'S A LOT YOUR HONOR. I KNOW THERE'S A LOT OF ISSUES. I GET IT. I'M GOING TO TRY TO BE REALLY -- AS CONCISE AS I CAN WITH THE POINT I'M TRYING TO MAKE TODAY, WHICH IS THIS CASE IS DIFFERENT, THE WATER CASE IS DIFFERENT FROM A NORMAL INVERSE CASE BECAUSE THE PUBLIC IMPROVEMENT DID NOT CREATE THE FIRE, DID NOT START THE FIRE. THE THEORY IS THAT IT DIDN'T DO ENOUGH TO HELP

FIREFIGHTERS STOP IT. THAT'S DIFFERENT AND NEW. THAT TAKES YOU INTO THE WORLD OF BEL AIR, FAILED TO FUNCTION AS INTENDED. BUT THE WORLD OF BEL AIR IS CONFINED TO FLOOD CONTROL CASES. AND WE KNOW THAT NOT JUST BECAUSE I'M SAYING IT BUT BECAUSE THE SUPREME COURT SAID IT IN OROVILLE. THAT IS THE SIMPLEST A TO B OF WHY WE WIN.

AND WE HOPE YOUR HONOR CONSIDERS THAT AND TAKES BACK THE TENTATIVE, AND WE APPRECIATE YOU DOING SO.

THE COURT: LET ME ASK YOU THIS QUESTION: WHAT ARE THE REASONS THAT THERE IS THIS UNIQUE BODY OF LAW RESERVED FOR FLOOD CONTROL? IS -- THE CASES TALK ABOUT THE COMMON ENEMY. WHY ISN'T FIRE AKIN TO A COMMON ENEMY?

MR. LEVIN: SO I THINK, YOUR HONOR, THE COMMON ENEMY -- THIS TAKES ME TO THE POINT ABOUT -- THAT I WAS MAKING ABOUT LOCKLIN. THE COMMON ENEMY DOCTRINE GOES WAY BACK INTO THE -- I DON'T KNOW, SOME WAY BACK INTO THE COMMON LAW, PROBABLY BACK TO ENGLAND SOMEWHERE.

THE COURT: UH-HUH.

MR. LEVIN: AND WHAT IT SAYS -- AND IT HAS CHANGED OVER TIME BY THE WAY, BUT BASICALLY WHAT IT SAYS IS LANDOWNERS HAVE SOME ABILITY TO PUSH OFF FLOOD WATERS IN A WAY THAT PROTECTS THEIR LAND EVEN IF HURTS SOMEBODY ELSE'S LAND. AND THAT RULE EVOLVES OVER TIME, AND IT BECOMES A LITTLE MORE FAVORABLE TO THE

PEOPLE WHO WERE BEING HARMED DOWN THE STREAM. AND IT EVENTUALLY LANDS ON -- THE COMMON ENEMY DOCTRINE EVENTUALLY LANDS ON YOU HAVE TO BE REASONABLE. THAT'S WHERE IT LANDS. THE LOCKLIN GOES THROUGH THE WHOLE HISTORY, AND THAT'S BASICALLY WHERE IT LANDS.

AND SO WHEN THE SUPREME COURT LOOKS AT THIS AND THINKS ABOUT FLOOD CONTROL PROJECTS, IT DRAWS THIS ANALOGY, AND IT HARMONIZES THE TWO. BUT IN THE FIRE CONTEXT, THERE IS NO SIMILAR THEORY. IN THE FIRE CONTEXT, THE RULE HAS ALWAYS BEEN OTHERWISE. IT'S ALWAYS BEEN WATER UTILITIES THAT UNDERTAKE TO PROVIDE WATER DON'T HAVE A DUTY TO MAKE IT AVAILABLE. EVEN IN WHEN, YOU KNOW, THERE WERE NEGLIGENCE ALLEGATIONS IN NIEHAUS AND UKIAH.

AND SO IT WASN'T JUST IN -- THERE WAS CONTRACTORS. THERE WAS CUSTOMERS, BUT THERE WAS A THEORY THAT THERE WAS NEGLIGENCE THERE. AND THEY SAY THERE IS NO DUTY. THERE'S NO TORT DUTY. AND THEY SAY -- NIEHAUS SAYS EXPLICITLY BECAUSE THEY CAN FIND NOTHING IN STATUTE OR THE CONSTITUTION, YOU CANNOT BRING A TORT CLAIM IN CALIFORNIA FOR THE FAILURE TO PROVIDE WATER.

AND SO I THINK WHAT YOU'D BE GETTING HERE, RATHER THAN SORT OF SOME HARMONY BETWEEN DOCTRINES IN DIFFERENT AREAS, YOU'D BE GETTING A BREAK. AND THAT'S NOT A ROAD THAT COURTS HAVE GONE DOWN IN OTHER AREAS.

THE COURT: OKAY. THANK YOU.

MR. LEVIN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. MR. ROBERTSON, DO YOU WANT TO BE HEARD?

MR. ROBERTSON: THANK YOU, YOUR HONOR. BRIEFLY.

SO THE CITY CREATED THE DANGER ARGUMENT THAT MR. LEVIN JUST MENTIONED. IT IGNORES A LONG LINE OF SUPREME COURT DECISIONS WHICH INVOLVE PROPERTY DAMAGE NOT CAUSED BY THE DANGER OF THE IMPROVEMENT ITSELF, BUT BY THE INHERENT RISKS CREATED BY THE DELIBERATE DESIGN, CONSTRUCTION, AND MAINTENANCE OF THE PUBLIC IMPROVEMENT.

AND THIS LINE OF CASES FROM THE SUPREME COURT INCLUDES A FLOOD CONTROL PROJECT, THAT'S THE BUNCH CASE; A RAPID TRANSIT SYSTEM, HOLTZ, H-O-L-T-Z; AND STREET CONSTRUCTION IN THE BACICH CASE, B-A-C-I-C-H.

IN THOSE CASES THERE WAS NOTHING INHERENTLY DANGEROUS ABOUT THE FLOOD CONTROL LEVEE, THE RAPID TRANSIT SYSTEM, OR THE PUBLIC STREET WHICH CAUSED DAMAGE TO PRIVATE PROPERTY.

INSTEAD, THE SUPREME COURT FOUND IT WAS AN INHERENT RISK PRESENTED BY THE DESIGN AND MAINTENANCE OF THESE IMPROVEMENTS WHICH SUBSTANTIALLY CAUSED THE DAMAGE.

THESE INHERENT RISKS INCLUDE THE LEVEE WOULD FAIL AND CAUSE FLOODING, THE UNDERGROUND CONSTRUCTION WOULD CAUSE LOSS OF SUBJACENT LATERAL SUPPORT, AND THE STREET CONSTRUCTION WOULD BLOCK ACCESS TO A LANDOWNER'S PROPERTY.

IN SHORT, THE CREATED DANGER REQUIREMENT THAT THE CITY IS ARGUING CAN BE FOUND NOWHERE IN THIS LINE OF SUPREME COURT JURISPRUDENCE INTERPRETING A CONSTITUTIONAL TAKING.

AS I'VE EXPLAINED, ONE OF OUR TWO THEORIES OF THE INHERENT RISK GOES BY THIS PUBLIC IMPROVEMENT IS PLAN OF MAINTENANCE.

AND, AGAIN, I GO BACK TO THE SUPREME COURT'S HOLDING IN OROVILLE AND SAYS, IF THE PUBLIC ENTITY MAKES A POLICY CHOICE TO BENEFIT FROM COST SAVINGS FROM DECLINING TO PURSUE A REASONABLE MAINTENANCE PROGRAM, INVERSE CONDEMNATION PRINCIPLES COMMAND THE COROLLARY OBLIGATION TO PAY FOR DAMAGES CAUSED WHEN THE RISKS ATTENDING THOSE COST SAVING MEASURES MATERIALIZE.

THAT'S EXACTLY, PRECISELY, WHAT WE HAVE PLED IN THE MASTER COMPLAINT, AND AT PLEADING STAGE, WE WIN. HAPPY TO ANSWER ANY QUESTIONS.

THE COURT: OKAY. THANK --

MR. LEVIN: YOUR HONOR, AS A MOVING PARTY CAN I JUST BRIEFLY RESPOND TO THAT, AND I DON'T MEAN TO BELABOR THIS.

THE COURT: SURE. SURE. OKAY.

MR. LEVIN: EVERY CASE THAT HE CITES SUPPORTS US. IN HOLTZ, THEY ARE DIGGING A SUBWAY TUNNEL, AND THE LAND NEXT DOOR COLLAPSES, PUBLIC IMPROVEMENT CAUSED THE DAMAGE. IN BACICH, THEY -- THEY BUILD A ROAD, AND ALL OF A SUDDEN, YOU CAN'T ACCESS THE

PROPERTY NEXT DOOR, THE BUILDING OF THE ROAD CAUSED THE DAMAGE. IN BUNCH, THE LEVEE BREAKS AND FLOODS A BUNCH OF STUFF. THE PUBLIC IMPROVEMENT CAUSED THE DAMAGE. OUR POINT, THEY CAN SAY THE WORDS OVER AND OVER. THEY SAY IT'S AN INHERENT RISK. BUT OUR POINT HERE IS THAT THIS CASE IS QUALITATIVELY DIFFERENT. IT'S NOT A QUESTION OF PLEADINGS. AS THEY PLEAD IT, EVERY SINGLE FACT THEY ALLEGE IS QUALITATIVELY DIFFERENT. THE PUBLIC IMPROVEMENT HERE DID NOT START THE FIRE, DID NOT CAUSE THE FIRE. WHAT THEIR THEORY IS IS THAT IT WASN'T AVAILABLE TO HELP IN MITIGATING THE FIRE -- OR IN PREVENTING THE FIRE, TO HELP IN THE FIRE RESPONSE. THAT'S DIFFERENT FROM ALL THOSE CASES.

SO THAT'S THE DISTINGUISHING LINE THAT WE TRIED TO GO THROUGH THE LAW ON IT, BUT THAT'S THE KEY POINT.

THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

MR. ROBERTSON, I ASSUME YOU HAVE NOTHING ELSE? IS THIS DONE?

MR. ROBERTSON: NO, YOUR HONOR.

THE COURT: OKAY. SO I WANT TO THANK ALL THE LAWYERS FOR NOT ONLY YOUR ARGUMENTS TODAY, BUT ALSO THE ARGUMENTS THAT YOU SUBMITTED IN THE PLEADINGS. SO AS I SAID I WANTED TO LISTEN TO THE ARGUMENTS AFTER HAVING CONSIDERED THE PLEADINGS BEFORE I FINALIZED THE RULINGS, WHICH I WILL DO AND I DO NEED TO MAKE SURE THAT I AM NOT BEING INCONSISTENT WITH REGARD TO THE

TWO DEMURRERS AND THE BRUSH CLEARANCE ISSUES, SO I NEED TO GO BACK TO THOSE.

SO WHAT I'M INCLINED TO DO, AND I'M HAPPY TO HEAR FROM THE LAWYERS AS TO HOW YOU WANT TO PROCEED GOING FORWARD IS I CAN PROBABLY ISSUE THE RULINGS SOMETIME NEXT WEEK. I KNOW THAT THERE ARE OTHER ISSUES THAT YOU WANT TO TALK ABOUT, NAMELY DISCOVERY. SO THERE ARE A COUPLE OF THINGS THAT WE CAN DO. WE CAN CONTINUE THE STATUS CONFERENCES, THE STATUS CONFERENCE IN THESE CASES TO A COUPLE OF WEEKS FROM NOW. WE CAN TALK ABOUT THINGS TODAY. YOU CAN MEET AND CONFER ON ISSUES, AND THEN WE CAN RECONVENE.

AND I ALSO AM AWARE OF THE FACT THAT WITHOUT SORT OF, GOING THROUGH WHAT HAS HAPPENED WITH REGARD TO THIS CASE SINCE THE FILING, THERE ARE MANY OTHER DEFENDANTS THAT HAVE NOT HAD AN OPPORTUNITY TO CHALLENGE THE COMPLAINT. SO THERE ARE A LOT OF THINGS THAT NEED TO BE DISCUSSED IN TERMS OF WHERE WE GO FROM HERE.

SO WHAT WOULD PLAINTIFFS LIKE TO DO IN TERMS OF A NEXT HEARING AND WHEN?

MR. ROBERTSON: ALEX ROBERTSON AGAIN FOR THE PLAINTIFFS. THANK YOU FOR INDICATING THE COURT WILL ISSUE ITS FINAL ORDER NEXT WEEK. AS YOU KNOW --

THE COURT: HOPEFULLY THIS WEEK, BUT I HAVE A LOT OF TO DO. SHORT WEEK.

MR. ROBERTSON: WE'RE ANXIOUS TO GET MOVING THIS CASE FORWARD AND ANXIOUS TO BEGIN DISCOVERY AS

THE COURT NOTED.

WE'RE HAPPY TO MEET AND CONFER WITH THE DEFENDANTS ABOUT AN ORDERLY DISCOVERY PLAN AND PROPOSE A CASE MANAGEMENT ORDER WHICH WILL GOVERN AN ORDERLY DISCOVERY PLAN. WE'VE DONE THAT VERY WELL WITH OUR WILDFIRE CASES AND VERY WELL WITH THE L.A. FIRE CASE, SO I HAVE NO DOUBT WE'D BE ABLE TO DO THAT.

THERE ARE A COUPLE OF PRESSING ISSUES, THOUGH, THAT I WOULD JUST LIKE TO FLAG FOR THE COURT WHETHER WE ADDRESS IT NOW OR IN THE NEAR FUTURE. AS WE POINTED OUT, IN THE STATUS CONFERENCE REPORT, THERE'S THE COURT ORDERED DEPOSITIONS OF LAFD FIREFIGHTERS THAT WE TOOK AND COMPLETED RECENTLY. THE CITY HAS PROVISIONALLY DESIGNATED 100 PERCENT OF THOSE DEPOSITIONS INCLUDING THE IDENTITIES OF THE WITNESSES AS CONFIDENTIAL.

NOW, GRANTED, THE PROTECTIVE ORDER IN THIS CASE GIVES ANY PARTY THE RIGHT TO PROVISIONALLY DESIGNATE MATERIALS THAT THEY IN GOOD FAITH BELIEVE ARE CONFIDENTIAL FOR A 30-DAY PERIOD TO ALLOW THEM TO REVIEW THE OFFICIAL TRANSCRIPT AND THEN MAKE A FINAL DESIGNATION. WE BELIEVE -- I ATTENDED ALL OF THOSE DEPOSITIONS. THERE IS NOTHING IN THE FIRE FIREFIGHTERS' TESTIMONY WHO ARE FACT WITNESSES ABOUT THE LOCKMAN FIRE, WHAT THEY DID ON THE MOP UP OF THE LOCKMAN FIRE. THERE IS NOTHING CONFIDENTIAL IN ANY OF THAT TESTIMONY. SO WE DON'T THINK THAT THE CITY'S PROVISIONAL DESIGNATION MEETS THAT GOOD FAITH

REQUIREMENT.

BUT WE'D LIKE A DEADLINE FOR THE CITY TO MAKE THAT FINAL DETERMINATION SOONER THAN LATER BECAUSE IMPORTANT INFORMATION CAME TO LIGHT IN THOSE DEPOSITIONS THAT WE THINK THE PLAINTIFFS AND FRANKLY THE PUBLIC HAVE A RIGHT TO KNOW. AND IT DIRECTLY BEARS ON -- ON THIS CASE. AND SO I KNOW THE CITY HAS 30 DAYS. WE'VE MET AND CONFERRED. THEY'VE INDICATED THAT THEY DON'T INTEND TO RUN THE CLOCK OUT TO THE FULL 30 DAYS, BUT THEY HAVEN'T SAID WHEN THEY ARE GOING TO MAKE THAT FINAL DECISION AND WHAT MATERIAL, IF ANY, IS GOING TO BE DESIGNATED AS CONFIDENTIAL. BUT WE'D LIKE TO GET SOME CLARITY ON THAT TODAY IF POSSIBLE.

THE COURT: OKAY. SO THAT'S ONE ISSUE. LET ME ASK A QUICK QUESTION BEFORE I HEAR FROM MR. LEVIN ON THAT ISSUE, OR I THINK IT'S GOING TO BE MR. FRAMM. AND THIS IS GOING TO ANOTHER SUBJECT. SO THERE WERE, I DON'T KNOW, EIGHT CASES THAT I HAD TO RECUSE FROM.

MR. ROBERTSON: YES.

THE COURT: THEY NEED TO BE REASSIGNED.

MR. ROBERTSON: YES.

THE COURT: HAVE THEY BEEN FILED?

MR. ROBERTSON: SO AS THE COURT HAS PROBABLY SEEN FROM THE DOCKET, IT'S BEEN VERY BUSY LATELY.

THE COURT: YEAH.

MR. ROBERTSON: THE PLAINTIFFS HAVE ALL BEEN BUSY FILING SHORT FORM COMPLAINTS.

THE COURT: OKAY.
MR. ROBERTSON: I CAN'T REPRESENT TO THE COURT WHETHER THOSE EIGHT PLAINTIFFS HAVE FILED YET OR NOT --
THE COURT: OKAY.
MR. ROBERTSON: -- BUT I ALSO CAN FLAG THAT FOR EVERYBODY.
THE COURT: OKAY. CAN YOU JUST FLAG THAT BECAUSE I DON'T WANT THAT RECUSAL TO LEAVE THOSE CASES SORT OF UNASSIGNED. SO -- BUT I WASN'T CLEAR AS TO WHAT THE STATUS OF THAT WAS.
MR. ROBERTSON: SURE. AND THOSE SHORT-FORM COMPLAINTS HAVE BEEN FILED, BUT THEY HAVEN'T NECESSARILY ALL BEEN SERVED ON CASEANYWHERE YET.
THE COURT: RIGHT.
MR. ROBERTSON: THERE'S THOUSANDS OF THEM.
THE COURT: OKAY.
MR. ROBERTSON: HOW WOULD YOU -- THE COURT LIKE US TO COMMUNICATE WHEN THOSE CASES WERE FILED SO ADMINISTRATIVELY THEY CAN BE REASSIGNED?
THE COURT: YOU COULD LET ME KNOW WITH A ONE OR TWO LINER ON CASE ANYWHERE, JUST SO I KNOW ENOUGH TO KNOW THAT THEY WERE FILED AND THEN THEY CAN BE REASSIGNED.
MR. ROBERTSON: VERY GOOD. WE'LL NOTIFY -- POST ON CASE ANYWHERE WITH A CASE NAME AND A CASE NUMBER.
THE COURT: PERFECT. YEAH. OKAY.

MR. FRAM: THANK YOU, YOUR HONOR. NICHOLAS FRAM FROM MUNGER TOLLES & OLSON FOR THE CITY OF LOS ANGELES AND LADWP.

ON THE FIRST ISSUE THAT MR. ROBERTSON MENTIONED, COORDINATION OF DISCOVERY, WE AGREE THAT WE NEEDED A CASE MANAGEMENT ORDER TO COORDINATE EVERYTHING NOT ONLY AMONG THE PLAINTIFFS, BUT, AS YOUR HONOR NOTED, THERE ARE A NUMBER OF NEW DEFENDANTS. I THINK IF YOUR HONOR WOULD POLL THE GALLERY, YOU'D GET A LOT OF HANDS AS TO WHO REPRESENTS A NEW DEFENDANT HERE. AND SO WE THINK THAT WE NEED SOME TIME TO WORK THAT OUT AND -- BUT AS MR. ROBERTSON NOTED, WE'VE WORKED TOGETHER ON THAT IN THE PAST, AND SO I THINK WE'LL BE ABLE TO COME TO SOMETHING THAT IS REASONABLE IN THE NEXT COUPLE OF WEEKS, SO --

THE COURT: OKAY.

MR. FRAM: -- WE WOULD ASK THAT THE DISCOVERY STAY REMAIN UNTIL THAT ORDER IS SUBMITTED TO THE COURT. BUT IF YOUR HONOR WANTED TO PUT AN OUTSIDE DATE TO SUBMIT THE ORDER AND COME BACK FOR A CASE MANAGEMENT CONFERENCE WE CAN DO THAT.

ON THE DEPOSITION DESIGNATION ISSUE, MR. ROBERTSON IS RIGHT, WE'RE NOT HERE TO RUN OUT THE CLOCK THAT THE PROTECTIVE ORDER ALLOWS EITHER SIDE TO DESIGNATE DEPOSITIONS AS CONFIDENTIAL SO THAT THEY CAN WORK THROUGH THEM. AS YOUR HONOR MIGHT RECALL, YOU ORDERED THESE DEPOSITIONS FOR THE PURPOSE OF PRESERVING MEMORIES, AND SO THAT'S WHAT THE

DEPOSITIONS ARE DOING.

THERE ARE SOME, YOU KNOW, NOT INSIGNIFICANT CONCERNS AROUND DEPONENT'S SAFETY, YOU KNOW, THAT WE NEED TO WORK THROUGH AND WORK THROUGH WITH OUR CLIENT, AND SO, YOU KNOW, WHEN WE -- WHEN WE PROVIDE THE FINAL DESIGNATIONS FOR WHAT WE BELIEVE IS CONFIDENTIAL, IF THERE'S A DISPUTE ABOUT THAT, WE CAN BRING IT UP AT THAT POINT. BUT THAT'S NOT RIPE YET BECAUSE WE'RE STILL IN THE PROVISIONAL PHASE.

I THINK THE MOST RECENT DEPOSITION -- WELL, THE FIRST DEPOSITION WAS ALMOST A MONTH AT THIS POINT. SO WE'RE PROBABLY COMING UP -- AND I'D SAY BY THE TIME WE COME BACK TO THE COURT, IF WE COME BACK CLOSER TO THE END OF THE MONTH OR EARLY IN MARCH, I THINK MOST OF THESE ISSUES WOULD HAVE RESOLVED THEMSELVES.

THE COURT: OKAY. WELL, I THINK THAT THE ONLY -- THE THING THAT MR. ROBERTSON WAS ASKING FOR WAS AN INDICATION OF A TIME FRAME WITHIN WHICH YOU WOULD LET HIM KNOW. AND I GUESS WHAT I'M HEARING IS YOU HAVE 30 DAYS TO MAKE THAT DECISION. WHY ISN'T THAT --

MR. FRAM: 30 DAYS IS WHAT OUR TIME FRAME IS, AND IF WE CAN DO IT FASTER, WE'LL DO IT WILL FASTER BEYOND THAT I DON'T THINK --

THE COURT: SO IS THERE A REASON THAT YOU'RE LOOKING FOR SOMETHING OTHER THAN THE 30-DAY DEADLINE TO WHICH YOU ALREADY AGREED?

MR. ROBERTSON: YES, YOUR HONOR. THE COURT

KNOWS THIS CASE IS OF SIGNIFICANT INTEREST TO THE PLAINTIFFS AND TO THE COMMUNITY. AND AS RECENT REPORTING HAS INDICATED WITH THE EDITS TO THE LAFD'S AFTER-ACTION REPORT, THE DEPOSITION TESTIMONY WE GOT DIRECTLY ADDRESSES THAT IMPORTANT ISSUE. AND SO WE THINK THAT, YOU KNOW, CABINING THESE DEPOSITIONS FOR 30 DAYS FROM THE DATE THE FINAL TRANSCRIPT IS, THEY ARE RUNNING THE CLOCK OUT. AND THERE'S A GOOD FAITH REQUIREMENT, AND WE HAVEN'T HEARD A SHOWING THAT OF GOOD FAITH FOR THE PROVISIONAL DESIGNATION OF 100 PERCENT OF THIS TESTIMONY FROM -- WHICH ARE ESSENTIALLY FACT WITNESSES.

THE COURT: WELL, WHAT -- I THINK WHAT'S HAPPENING HERE IS YOU AGREED TO 30 DAYS, AND NOW YOU'RE ASKING TO CHANGE THAT.

MR. ROBERTSON: NO, WE AGREED TO 30 DAYS. WE'RE NOT WALKING AWAY FROM THAT.

THE COURT: OKAY.

MR. ROBERTSON: WHAT WE'RE HIGHLIGHTING IS THAT THERE'S A GOOD FAITH REQUIREMENT.

THE COURT: YOU THINK THEY ARE BEING DESIGNATED AS CONFIDENTIAL WITHOUT -- YOU KNOW, AS YOU JUST SAID, AND NOT ACTING IN GOOD FAITH.

MR. ROBERTSON: RIGHT.

THE COURT: AND I DON'T KNOW THAT THERE IS ANYTHING THAT I CAN DO ABOUT THAT TODAY. YOU KNOW, THERE IS A -- YOU AGREED TO THIS. THEY ARE AVAILING THEMSELVES OF THE AGREEMENT. IF THERE IS SOME, YOU

KNOW, FEELING THAT THERE IS THE -- THE MUNGER TOLLES & OLSON FIRM IS NOT ACTING IN GOOD FAITH, THEN THAT'S PROBABLY A BIGGER CONVERSATION FOR ANOTHER DAY. AND, YOU KNOW -- I CAN WELL IMAGINE THAT THESE THINGS ON BOTH SIDES ARE VERY COMPLICATED AND VERY COMPLEX, AND I CAN ALSO SORT OF LOOK AT THIS AS IT'S NOT REALLY SOMETHING I'M READY TO DIVE INTO TODAY.

MR. ROBERTSON: I UNDERSTAND. IF WE CAN GET SOME REPRESENTATION, IF THEY ARE NOT GOING TO RUN THE CLOCK OUT FOR THE FULL 30 DAYS, HOW LONG DO THEY NEED TO TAKE TO MAKE THAT FINAL DESIGNATION?

THE COURT: WELL, MR. FRAM, IF YOU WANT TO ADDRESS THAT.

MR. FRAM: I -- I DON'T HAVE -- YOUR HONOR, I DON'T HAVE A DEPOSITION BY DEPOSITION CHART HERE IN FRONT OF ME FOR HOW LONG IT'S GOING TO TAKE TO GO THROUGH ALL OF THEM. WE'RE GOING TO DO THIS IN GOOD FAITH. THERE ARE SIGNIFICANT PUBLIC SAFETY ISSUES THAT WE HAVE TO NAVIGATE WITH THE CLIENT -- LIKE, THE CITY, AND SO WE'RE GOING TO WORK THROUGH THAT. WE HAVE OUR 30 DAYS TO DO IT. I THINK THAT'S WHY WE PUT THEIR 30 DAYS IN THE ORDER. IF WE DO IT FASTER, WE'LL DO IT FASTER. BUT AS YOUR HONOR RECALLS, THESE DEPOSITIONS WERE TAKEN TO PRESERVE MEMORY NOT SO THAT THEY COULD GO STRAIGHT TO THE MEDIA, WHERE SOME OF THESE STATE PARK'S DEPOSITION HAPPENED. WE CITED THAT IN THE CASE MANAGEMENT CONFERENCE STATEMENT, SO...

THE COURT: NO DOUBT. BUT, YOU KNOW, THAT'S

NEITHER HERE NOR THERE, GIVEN SORT OF THE DEFINITION OF WHY SOMETHING SHOULD BE CONFIDENTIAL. BUT I UNDERSTAND WHAT EVERYBODY IS SAYING.

SO OKAY. HERE IS WHAT I'M UNDERSTANDING IS THAT I'M GOING TO SET A DATE FOR TO YOU COME BACK BUT SOME THINGS NEED TO HAPPEN IN THAT TIME FRAME. NUMBER ONE IS ON ME. IS THAT I NEED TO ISSUE THESE FINAL RULINGS. AND THEN, I THINK IF WE'RE GOING TO HAVE A MEANINGFUL DISCUSSION THE NEXT TIME WE CONVENE, YOU WILL NEED TO HAVE PROVIDED ME WITH AS CLOSE AS YOU CAN TO A MUTUALLY AGREED UPON CASE MANAGEMENT ORDER.

SECONDLY, I DO NEED TO KNOW WHAT IT IS THAT IS HAPPENING WITH REGARD TO THE OTHER DEFENDANTS' POSITIONS VIS-A-VIS ANSWERING OR OTHERWISE RESPONDING TO THE COMPLAINT. BECAUSE AS I UNDERSTAND IT, THIS CASE SO FAR WAS PROCEEDING WITH JUST THESE TWO DEMURRERS THAT, OF COURSE, HAD BEEN FILED AND THEN THEY WERE REFILED. SO THERE'S SORT OF A BIGGER ISSUE IN TERMS OF GETTING THIS CASE AT ISSUE, AND THAT BIGGER ISSUE IS THE FACT THAT THE OTHER DEFENDANTS HAVE NOT HAD AN OPPORTUNITY TO DO WHAT THEY ARE GOING TO DO VIS-A-VIS THE COMPLAINT.

SO THOSE ARE TWO MAJOR AREAS AND OBVIOUSLY A SUBSECTION OF THE FIRST MAJOR AREA IS A DISCOVERY PLAN THAT WOULD BE PART OF THE CASE MANAGEMENT ORDER. SO GIVEN THAT THERE ARE A LOT OF THINGS THAT YOU NEED TO TALK ABOUT NOTWITHSTANDING THE FACT THAT YOU HAVE DONE THIS BEFORE IN OTHER CASES, I'M THINKING THREE OR FOUR

WEEKS. DOES THAT WORK FOR EVERYBODY? OKAY.

MR. FRAM: YOUR HONOR -- YEAH. NICK FRAM FOR THE CITY. THAT MAKES SENSE, BUT WE HAVE DONE THIS IN OTHER CASES, BUT THIS CASE IS SOMEWHAT UNIQUE IN THE NUMBER OF OTHER DEFENDANTS THAT ARE -- IT'S NOT THE ONLY CASE THAT'S HAD MULTIPLE DEFENDANTS, BUT THE TYPICAL FIRE CASE HISTORICALLY HAS NOT HAD THIS.

THE COURT: OKAY. SO I AM OUT THE WEEK OF MARCH 9TH, OTHERWISE I'D BE LOOKING AT THAT WEEK. IS THERE A DATE IN THE WEEK OF MARCH 16TH -- LET ME ACTUALLY BE A LITTLE BIT MORE SPECIFIC IN TERMS OF WHEN I CAN BRING YOU BACK IN.

HOW ABOUT...

MR. ROBERTSON: IS IT POSSIBLE TO DO IT EARLIER, YOUR HONOR, THE WEEK OF MARCH 2ND OR 3RD?

THE COURT: ALL RIGHT. WE MADE IT THIS FAR WITHOUT TECHNOLOGICAL ISSUES.

(OFF RECORD.)

THE COURT: OKAY. SO YOU WANT TO COME IN THE FIRST WEEK OF MARCH. SO I AM DARK ON THE 5TH, RETURNING EARLY MORNING THE 6TH. LET ME SEE. HOW ABOUT MARCH 3RD AT 1:45?

MR. ROBERTSON: WORKS FOR PLAINTIFFS, YOUR HONOR.

THE COURT: OKAY. I'M GOING TO TAKE SILENCE AS THAT THAT WORKS.

MR. LEVIN: SORRY. I HAVE A HEARING IN RENO, NEVADA THAT DAY.

THE COURT: OKAY. I COULD ALSO DO --
MR. LEVIN: WHAT ABOUT THE 6TH?
THE COURT: -- MARCH 4TH. THE 6TH I HAVE ANOTHER MATTER IN THE AFTERNOON. I COULD GIVE MARCH 4TH IN THE AFTERNOON, ARE YOU BACK FROM RENO?
MR. LEVIN: I'M GOING TO BOSTON FOR A WEEK ON THE 5TH. SORRY.
THE COURT: HOW ABOUT -- IT'S EITHER GOING TO HAVE TO BE THE 4TH, THE 5TH, OR THE 18TH OF THE MONTH -- WHAT DID I SAY? THE 3RD OR THE 4TH OR THE 18TH?
CAN SOMEBODY HANDLE THAT FOR YOU, OR IS THAT NOT PREFERABLE?
MR. LEVIN: I WOULD HAVE TO CHECK WITH PEOPLE WHO ARE NOT HERE, YOUR HONOR. I CAN DO THAT.
THE COURT: OKAY. WHY DON'T WE JUST GO WITH THE 18TH. AND IF IT TURNS OUT THAT YOU CAN MAKE YOURSELF AVAILABLE ON -- IS IT THE 3RD?
MR. LEVIN: THE 3RD.
THE COURT: THEN LET ME KNOW, AND I'LL ADVANCE IT TO THE 3RD, BUT FOR NOW LET'S JUST GO WITH THE 18TH AT 1:45 AND IT WILL GIVE YOU EVEN MORE TIME TO HAMMER OUT WHAT I ASSUME ARE GOING TO BE SOME SUBSTANTIAL ISSUES.
HOLD ON. OKAY. THAT MAKES SENSE. OKAY. SO IT'S NOT AT ALL HELPFUL TO STAFF WHEN I SORT OF SAY THE 18TH, BUT LET ME KNOW IF THE 3RD WORKS BECAUSE THERE IS A HUGE AMOUNT OF WORK INVOLVED GIVEN THE

NUMBER OF CASES IN MOVING THINGS FROM ONE DATE TO ANOTHER. SO LET'S GO WITH THE 18TH AS A DATE CERTAIN AT 1:45.

OKAY. AND THAT IS FOR ALL THE CASES THAT ARE ON CALENDAR TODAY. ALL RIGHT. I WANT TO THANK EVERYBODY ONE AGAIN.

MR. LAKE: YOUR HONOR, CAN I MAKE ONE CLARIFICATION?

THE COURT: YEAH, GO AHEAD.

MR. LAKE: JUST REAL BRIEFLY, THIS IS REGARDING THE RECENT DISCOVERY ORDER VIS-A-VIS STATE PARKS BASED ON EX PARTE APPLICATION. THE PARTIES HAD SUBMITTED A PROPOSED ORDER ON FEBRUARY 3, AND THE COURT HASN'T SIGNED IT YET. IT GIVES US 15 DAYS TO RESPOND. I JUST WANT TO MAKE SURE -- OUR ASSUMPTION IS THAT THE -- TYPICALLY THE COURT -- THE DATE THE COURT SIGNS IT WILL BE THE EFFECTIVE DATE, FEBRUARY 3. AND IF THAT -- I JUST WANT TO MAKE SURE IT DOESN'T REVERT BACK TO THE DATE OF THE HEARING JANUARY 28, BECAUSE IN THAT CASE WE WOULD NEED MORE TIME TO RESPOND. IN OTHER WORDS, WE NEED UNTIL FEBRUARY 18TH TO GET THE RESPONSES. MR. ROBERTSON'S INDICATED THAT'S OKAY.

THE COURT: OKAY. ARE YOU SURE YOU FILED IT? SOMETIMES PEOPLE PUT THINGS ON CASE ANYWHERE AND FORGET TO FILE IT, BECAUSE I HAVEN'T SEEN IT.

MR. ROBERTSON: YES, YOUR HONOR. PLAINTIFFS DID FILE PROPOSED ORDER AFTER MEETING AND CONFERRING.

THE COURT: OKAY. IT'S A PROPOSED ORDER WITH REGARD TO THE DISCOVERY FILED ON FEBRUARY 3RD. WHY DON'T YOU DO THIS, COULD YOU DELIVER A HARD COPY OF IT TOMORROW?

MR. ROBERTSON: HAPPY TO, YOUR HONOR.

THE COURT: OKAY. THERE'S -- A, THERE ARE A LOT OF THINGS, YOU KNOW, IN TERMS OF FILING. B, GIVEN THE NUMBER OF MATTERS RELATED TO FIRES IN THE LOS ANGELES AREA, OUR PERSONNEL ARE VERY BEHIND IN TERMS OF GETTING THINGS INTO THE SYSTEM. THERE'S ONLY SO MANY OF THEM.

MR. ROBERTSON: UNDERSTOOD, YOUR HONOR. WE'RE HAPPY TO PROVIDE THE COURT A HARD COPY IN YOUR CHAMBERS TOMORROW..

(CROSS-TALK)

THE COURT: THE ORDER I HAD SIGNED CALLS FOR THE PARTIES TO SUBMIT AN ORDER. THAT'S SO EFFICIENT.

MR. ROBERTSON: WE'LL DELIVER.

THE COURT: YEAH, WHY DON'T YOU GO AHEAD AND DELIVER IT, AND I'LL LOOK FOR IT TOMORROW, AND I'LL SIGN IT, AND IT SOUNDS LIKE, YES, IT WILL BE -- THE TIME FRAMES WILL START RUNNING FROM THE DATE I SIGN IT. IS WHAT YOU WERE ASKING?

MR. LAKE: YES.

THE COURT: OKAY.

MR. ROBERTSON: PLAINTIFFS AGREE TO THAT.

MR. LAKE: THANK YOU VERY MUCH. I APPRECIATE IT.

THE COURT: OKAY. I'LL LOOK FOR THAT ORDER.

THE CLERK: ACTUALLY, I FOUND IT, YOUR HONOR. I'LL SEND IT TO YOU.

THE COURT: THANK YOU. I GOT IT. YOU DON'T NEED TO DELIVER IT.

OKAY. THANK YOU VERY MUCH. YOU HAVE A GOOD ONE.

(THE PROCEEDINGS ADJOURNED AT 4:11 P.M.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR COUNTY OF LOS ANGELES

DEPARTMENT 7 HONORABLE SAMANTHA JESSNER, JUDGE

PALISADES FIRE LITIGATION	LEAD CASE NO. 25STCV00832
DAN GRIGSBY, ET AL.,	
PLAINTIFFS,	
VS.	
CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, ET AL.,	
DEFENDANTS.	
AND ALL RELATED CASES.	

I, YOLANDA TANNER, OFFICIAL COURT REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 84, COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED CAUSE ON TUESDAY; FEBRUARY 10, 2026.

DATED THIS 13TH DAY OF FEBRUARY, 2026.

_____ ,CSR 12785

YOLANDA TANNER,
COURT REPORTER PRO TEMPORE

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EXHIBIT 8

Order re Defendant State of California's Demurrer to the Master Complaint (2/19/26)

E-Served: Feb 19 2026 10:44AM PST Via Case Anywhere

FILED
Superior Court of California
County of Los Angeles
02/19/2026
David W. Slayton, Executive Officer / Clerk of Court
By: A. Morales Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAN GRIGSBY, et al.,
Plaintiffs,

v.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, a government entity; CITY OF LOS ANGELES, a government entity; CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a government entity; STATE OF CALIFORNIA; SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation; EDISON INTERNATIONAL, a California corporation; CHARTER COMMUNICATIONS, a Delaware corporation; FRONTIER COMMUNICATIONS, a Delaware corporation; AT&T, Inc., a Delaware, corporation; COUNTY OF LOS ANGELES, a government entity; LAS VIRGENES MUNICIPAL WATER DISTRICT, a public utility; SEMPRA ENERGY, a California corporation; SOUTHERN CALIFORNIA GAS COMPANY, a California corporation; J. PAUL GETTY TRUST, a California charitable trust; MOUNTAIN RECREATION AND CONSERVATION AUTHORITY, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 25STCV00832

[~~TENTATIVE~~] ORDER RE DEFENDANT STATE OF CALIFORNIA'S DEMURRER TO THE MASTER COMPLAINT

Hearing Date: February 10, 2026
Hearing Time: 1:45 p.m.
Dept.: 7

Defendant State of California acting by and through the State of California Department of Parks and Recreations (the "State") demurs to the master complaint. The Individual Plaintiffs Dan Grigsby, et al. who consist of "individuals and other legal entities who were, at all relevant times, homeowners, renters, business owners, and other individuals and entities who suffered and/or continue to suffer personal injuries (including but not limited to physical injuries from smoke and other toxic substance inhalation and exposure, as well as burn and heat injuries, and other physical injuries suffered during evacuation, and emotional distress), property losses, and/or other damages from the Palisades Fire and are estimated to number in excess of 10,000 individuals and/or other legal entities[,]" (Revised Master Complaint ¶ 9), oppose the motion.

For the reasons explained below, the Court SUSTAINS IN PART and OVERRULES IN PART the State's demurrer to the Revised Master Complaint.

I. Procedural History

This is the lead action for cases relating to the Palisades Fire. Plaintiffs allege that Defendants' conduct contributed to the Palisades Fire which resulted in the destruction of 6,837 homes and businesses, damage to another 973 structures, the death of 13 people, and caused injuries to civilians and firefighters.

On January 13, 2025, Plaintiffs filed the initial complaint. On October 8, 2025, Plaintiffs filed a Master Complaint asserting 53 causes of action. On December 1, 2025, Plaintiffs filed the operative Revised Master Complaint asserting 54 causes of action. In relevant part, Plaintiffs assert four causes of action against the State for: two causes of action relating to the Lachman Fire burn scar (dangerous condition of public property and public nuisance – causes of action 1 and 3) and two causes of action related to overgrown brush on parcels of land owned by the State (dangerous condition of public property and public nuisance—causes of action 2 and 4).

II. Master Complaint Allegations

In relevant part the Master Complaint alleges that:

The State operates the largest park system in the United States including Topanga State Park. (Revised Master Complaint ¶¶ 11, 366.) The State also owns numerous

vacant lots in the Pacific Palisades "including but not limited to APN 4416-002-901, APN 4416-002-902, APN 4416- 002-903, 4416-018-900, APN 4416-004-900, 4416-027-904, and APN 4416-004-901." (*Id*. ¶ 393.)

On January 1, 2025, at approximately 12:07 a.m. the Lachman Fire was reported near Skull Rock on the Temescal Ridge Trail within Topanga State Park in the Pacific Palisades. (*Id*. ¶¶ 62, 76.) By 4:48 am, the Los Angeles Fire Department reported that it had fully contained the Lachman Fire. (*Id*. ¶ 63.) The State "did not inspect its property, post a fire watch or use a thermal imaging camera at the Lachman Fire site after the reported containment of the fire to ensure that there were no embers, hot spots or residual heat remaining in the vegetation." (*Id*. ¶ 68.)

After being contained, the Lachman Fire left smoldering embers which reignited with the winds picking up on January 7, 2025. (*Id*. ¶¶ 69-78.) On January 7, 2025, the Palisades Fire erupted near where the Lachman Fire had burned six days prior. (*Id*. ¶ 85.)

Due to the Lachman Fire, the State was aware "that the fuel moisture levels, relative humidity and heavy vegetation growth in that area were conducive to dangerous wildfires and were a threat to neighboring homeowners in Pacific Palisades[.]" (*Id*. ¶ 66.) The State was also aware of the possibility of embers from the Lachman Fire rekindling and igniting a new fire and of the heightened fire risk from the Santa Ana Winds. (*Id*. ¶ 48, 77-83.)

The City of Los Angeles's brush clearance ordinances require the removal and maintenance of vegetation within 100 feet of buildings and makes a violation of these brush clearance ordinances a public nuisance. (*Id*. ¶¶ 291-293.) The overgrown brush on the State's property contributed to the spread and intensity of the Palisades Fire. (*Id*. ¶ 294.)

III. Request for Judicial Notice

The State requests judicial notice of the following:

A. The Criminal Complaint, filed 10/2/25, in the action *United States of America v. Jonathan Rinderknecht*, USDC Case No. 2:25-cr-833-AH

B. The Criminal Indictment, filed 10/15/25, in the action *United States of America v. Jonathan Rinderknecht*, USDC Case No. 2:25-cr-833-AH

C. The California Wildland Fire Coordinating Group (CWCG) California Direct Protection Area (DPA) Map as of Nov. 12, 2025

D. The California State Parks' map of an area showing Topanga State Park as of November 12, 2025

As the court may take judicial notice of court records and government records, (See Evid. Code, § 452(c), (d)), the State's uncontested request for judicial notice of the criminal complaint and criminal indictment in *United States of America v. Jonathan Rinderknecht*, USDC Case No. 2:25-cr-833-AH is GRANTED. However, the Court does not take judicial notice of the truth of assertions within these records. (See *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Because the court may take judicial notice of facts not reasonably subject to dispute such as an online map's view of an area, the State's uncontested request for judicial notice of the California Wildland Fire Coordinating Group (CWCG) California Direct Protection Area (DPA) Map and the California State Parks' map of an area showing Topanga State Park is GRANTED. (See Evid. Code, § 452(h); see also *People v. Bratton* (2023) 95 Cal.App.5th 1100, 1105 [taking judicial notice of a Google Maps view of an area].)

IV. Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal 3d 311, 318.) No other extrinsic evidence can be considered (i.e., no "speaking demurrers"). (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.)

A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal. App. 4th 740, 747.) When considering demurrers, courts "give the complaint a reasonable interpretation, and read it in context." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) In a demurrer proceeding, the defects

must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994.) "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed." (*SKF Farms v. Superior Ct.* (1984) 153 Cal. App. 3d 902, 905.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn*, *supra*, 147 Cal.App.4th at p.747.)

V. Analysis

A. Dangerous Condition of Public Property Claims (Causes of Action 1 and 3)

The State contends that the Court should sustain its demurrer to the first and third causes of action for dangerous conditions on public property because (1) Plaintiffs fail to allege a dangerous condition within the meaning of Government Code section 830, (2) Plaintiffs fail to allege actual or constructive notice of the dangerous condition, (3) the State is immune from liability pursuant to Government Code sections 850 and 850.2, and (4) the State is immune from liability pursuant to Government Code sections 845 and 831.2.

"A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, § 815(a).) Thus, "[a] public entity like the [State] is generally immune from liability, except as provided by statute. (Gov. Code, § 815, subd. (a).)" (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 126, Fn. 4.) Because "all government tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)

"'The sole statutory basis for imposing liability on public entities as property owners is Government Code section 835.'" (*City of Los Angeles v. Superior Court* (2021) 62 Cal.App.5th 129, 139.) "To establish liability under section 835, a plaintiff must prove that, at the time of injury, a dangerous condition existed on public property, that it created a reasonably foreseeable risk of the kind of injury suffered, and that it proximately caused

the injury." (*Restivo v. City of Petaluma* (2025) 111 Cal.App.5th 267, 274.) "A plaintiff must also prove that a public employee's negligence or misconduct created the dangerous condition, or that the public entity had actual or constructive notice of the condition a sufficient time before the injury to protect against it." (*Id*. at p.275.)

Dangerous Conditions (Lachman Fire Scar)

A " '[d]angerous condition' means 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." (Gov. Code, § 830(a).) "A plaintiff's allegations, and ultimately the evidence, must establish a *physical* deficiency in the property itself." (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.) "Most obviously, a dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself." (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.) In addition, "public property has also been considered to be in a dangerous condition 'because of the design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use.'" (*Id*. at p.149 [italics removed].)

"The existence of a dangerous condition ordinarily is a question of fact, but the issue may be resolved as a matter of law if reasonable minds can come to only one conclusion." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133.) "Accordingly, if the facts pleaded by the plaintiff as a matter of law cannot support the finding of the existence of a dangerous condition within the meaning of the statutory scheme, a court may properly sustain a demurrer to the complaint." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 440.)

Here, Plaintiffs' claims for dangerous condition on public property are premised on the allegations that (1) the burn scar from the Lachman Fire six days earlier was a dangerous condition in Topanga State Park that resulted in the Palisades Fire (the first cause of action); and (2) the State owns numerous vacant lots in the Pacific Palisades

that had overgrown brush in violation of the City of Los Angeles's brush clearance ordinances (the third cause of action). (Revised Master Complaint ¶¶ 367-372, 393.)

In the days after the Lachman Fire was contained, the Lachman Fire burn scar area was still smoldering underground. (Revised Master Complaint ¶¶ 69-70, 75.) Plaintiffs allege that it was these smoldering embers that started the Palisades Fire six days later. (*Id*. ¶ 74.) Moreover, Plaintiffs allege that risks from a burn scar rekindling and starting a fire are common. (*Id*. ¶¶ 79-83.) For example, Plaintiffs allege that "in October 2024 investigators concluded that the deadly 2023 Maui fire likely reignited from winds carrying an ember into a dry gully. Other rekindling fires include the devastating Oakland fire of 1991 which destroyed 3,000 homes, and which started when a 7-acre fire from the previous day was rekindled by strong winds." (*Id*. ¶ 83.) Thus, a smoldering portion of Topanga State Park is "physically damaged … in such a way as to foreseeably endanger those using the property itself." (*Bonanno, supra,* 30 Cal.4th at p.148.)

The State primarily relies on *Avedon v. State of California* (2010) 186 Cal.App.4th 1336, in arguing that Plaintiffs have not sufficiently alleged a dangerous condition.

In *Avedon,* a wildfire that started as a bonfire inside a cave at Malibu Creek State Park destroyed more than 50 homes and damaged many others. (*Id.* at p.1339.) The homeowners sued the State for dangerous condition of public property and for public nuisance. (*Ibid*.)

"According to [the homeowners] the cave and the surrounding area ha[d] been popular for late-night parties and bonfires for decades." (*Id*. at p.1339.) In their first cause of action for dangerous condition of public property, the homeowners alleged that "the State maintained a dangerous condition by allowing access to the cave, when it could have placed bars or other barriers to block the entrance." (*Id.* at p.1340.) "The second cause of action alleged that the State created the nuisance of a severe fire hazard by allowing unrestricted and easy access to the top of Corral Canyon Road and the cave, resulting in the fire damage to [the homeowners'] property." (*Ibid*.) The trial court sustained the State's demurrer without leave to amend. (*Ibid*.)

The Court of Appeal affirmed. (*Id.* at p.1346.) With regard to the homeowners' claim for dangerous condition of public property, the Court of Appeal noted that the allegations "suggest[ed] no inherent defect in the property itself. [The homeowners] ma[d]e no claim that the cave, the fire road, or the parking lot was unsafe." (*Id*. at p.1342.) Rather, "[t]he dangerous conditions alleged [we]re the lack of barriers to prevent vehicular access and parking near the cave, and the lack of a barrier to prevent entry into the cave itself. The purpose of these barriers was not to protect individuals from any danger or defect of the property, but to prevent third parties from lighting bonfires in the cave. Barring the entrance to the cave might have prevented third parties from building a bonfire inside the cave, but it would not have prevented them from building a bonfire outside the cave, thereby presenting the same (or even greater) risk of a brush fire. Similarly, blocking nearby vehicular access with a gate might have impeded entry from that particular location, but it would not have prevented individuals from entering the park, or from bringing firewood and alcohol into the park." (*Id*. at p.1342.) Thus, "the absence of barriers did not increase or intensify the risk of injury." (*Ibid*.) Accordingly, the Court of Appeal concluded that "in the absence of a defect in the property, [the homeowners] c[ould not] allege facts establishing a causal connection between the defect and the injuries sustained." (*Id*. at p.1344.)

With regard to the nuisance claim, the Court of Appeal noted that the claim was based on the same theory and facts as the claim for dangerous condition of public property. (*Id*. at p.1345.) The Court of Appeal reasoned that because the homeowners "c[ould not] proceed on their claim for dangerous condition of public property, it follow[ed] that the nuisance claim which mirror[ed] that cause of action also c[ould not] proceed." (*Ibid*.)

Here, there are *some* similarities to *Avedon*. The Revised Master Complaint suggests that the Lachman Fire may have been caused by a third party. (Revised Master Complaint ¶ 75.) In fact, the United States Attorney's Office, Central District of California, has brought charges against an individual for starting the Lachman fire. (Request for Judicial Notice "RJN" Exs. A-B [Criminal Complaint and Criminal Indictment].) However,

unlike *Avedon*, Plaintiffs' claim based on a dangerous condition of public property is not premised on the fact that the State failed to stop this third-party from starting the Lachman Fire. Rather, Plaintiffs allege that the smoldering from the Lachman Fire's burn scar – a physical damage to Topanga State Park – caused the harm.

The State also argues that the property at issue is naturally occurring growth of plants and other vegetation in a natural habitat in a state park which is a natural condition of land and there is no physical characteristic in such a natural habitat that creates a fire. Rather, it is the wrongful act of a third person who is now charged with arson for starting the fire on January 1 that started the fire.

Plaintiffs respond by explaining that they have not alleged that the State's property at Topanga State Park was in a dangerous condition before January 1 but the dangerous condition was permitted to exist after January 1 when the Lachman fire was reported to be fully contained and then abandoned with full knowledge of public officials. Citing *Bonanno v. Central Contra Costa Transit Authority* (2003), 30 Cal.4th 139, 148, Plaintiffs argue that a dangerous condition exists when public property is damaged, deteriorated, or defective and "[t]hese smoldering embers, which the State allowed to remain on its land for days after the Lachman Fire, constituted a dangerous condition of public property." Plaintiffs also rely on *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654. In *Vedder*, the complaint alleged that the city and county permitted other defendants to maintain gasoline dispensing equipment on airport premises with knowledge that there were no means available to prevent or control gasoline fires. The court held that: "One who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others. 'If an injury is produced by the concurrent effect of two separate wrongful acts, each is a proximate cause of the injury.'" *Id.* at 660 (citing *Taylor v. Oakland Scavenger Co.* (1938) 17 Cal.2d 594,602. The State, in reply, asserts that plaintiffs' effort to analogize the facts to *Vedder* is "strained" because comparing the storage of large quantities of highly combustible gasoline at an airport without special equipment for gasoline fires to

undeveloped land with naturally growing chaparral and vegetation in a State Park defies logic and common sense. The State also argues that plaintiffs are essentially alleging that State Parks should have provided additional fire protection by inspecting the burn scar area after the LAFD completed its work to locate the underground ember that caused the reignition on January 7.

At the pleadings stage, the Court finds that Plaintiffs have adequately pleaded a dangerous condition, that is, the burn scar from the Lachman fire on January 1, 2025, created a known defect in the Topanga State Park property -- visible smoldering embers from a fire -- which posed a threat to starting a new fire when winds increased on January 7 and proximately caused injury to Plaintiffs. Plaintiffs sufficiently allege that the Lachman Fire Burn scar was a dangerous condition for purposes of the first cause of action. The Court cannot say, at this stage of the proceedings, as a matter of law based on the authorities cited, that the condition as alleged was not a dangerous condition i.e. a defect in the property or a physical deficiency. Therefore, the State's demurrer to the first cause of action on the grounds that Plaintiffs fail to allege a dangerous condition is OVERRULED.

Dangerous Conditions (Overgrown Brush)

As to the third cause of action, Plaintiffs fail to sufficiently allege that the overgrown brush was a dangerous condition.

In relevant part, Plaintiffs allege that the State owned various unimproved lots in the Pacific Palisades with overgrown brush in violation of the City of Los Angeles's brush clearance ordinances on January 7, 2025. (Revised Master Complaint ¶¶ 287, 291-294, 393.) The City of Los Angeles's brush clearance ordinances require the removal and maintenance of vegetation within 100 feet of buildings and makes a violation of these brush clearance ordinances a public nuisance. (*Id*. ¶¶ 291-293.) Plaintiffs allege that the overgrown brush on the State's property contributed to the spread and intensity of the Palisades Fire. (*Id*. ¶ 294.) Thus, Plaintiffs' allegations are that the overgrown brush on the State's unimproved lots in the Pacific Palisades constituted a dangerous condition because the overgrown brush was a public nuisance in violation of law.

The State argues that a nuisance cause of action cannot be stated when the claim is based on an alleged dangerous condition of public property and cites two Second District Court of Appeal cases, *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379 and *Mikkelsen v. State of California* (1976) 59 Cal.App.3d 621. Plaintiffs, on the other hand, argue that the Second District Court of Appeal holdings should not be followed based on a Third District Court of Appeal case, *Paterno v. State of California* (1999) 74 Cal.App.4th 68, and a First District Court of Appeal case, *Pfleger v. Superior Ct.* (1985) 172 Cal.App.3d 421. There is a split of authority; the Court will follow the opinions issued by the Second District Court of Appeal, meaning the Court is persuaded that a nuisance cause of action cannot be stated when the claim is based on an alleged dangerous condition of public property as is Plaintiffs' operative theory here.

Furthermore, the overgrown brush was not a nuisance as a matter of law. The immunity under Civil Code section 3482 precludes a nuisance cause of action against the State because it is expressly authorized by statute. "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Civ. Code, § 3482.) Pursuant to the judicially-noticed map, each of these unimproved lots owned by the State are part of the Topanga State Park. (Revised Master Complaint ¶ 287; compare RJN Ex. D [California State Parks map of area showing Topanga State Park].) The State is authorized to operate Topanga State Park pursuant to Public Resources Code section 5001 *et seq*. Under Public Resources Code section 5003, the State "shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public." (Pub. Resources Code, § 5003.) This includes maintaining the flora of Topanga State Park consistent with the legislature's stated purpose of state parks. "The purpose of state parks shall be to *preserve* outstanding natural, scenic, and cultural values, indigenous aquatic and *terrestrial fauna and flora* …. Each state park shall be managed as a composite whole in order to restore, protect, and *maintain its native environmental complexes* to the extent compatible with the primary purpose for which the park was established." (Pub. Resources Code, § 5019.53 [italics added].)

Because Plaintiffs claim that the overgrown brush on the State's property was a dangerous condition as a result of being in violation of the law and constituting a public nuisance and the overgrown brush on State property was not a violation of law or a nuisance, Plaintiffs fail to allege that the overgrown brush was a dangerous condition.

Accordingly, the State's demurrer to the third cause of action on the grounds that Plaintiffs fail to allege that the overgrown brush was a dangerous condition is SUSTAINED without leave to amend.

Actual or Constructive Notice (Lachman Fire Scar)

As noted above, to state a claim under Government Code section 835, "[a] plaintiff must also prove that a public employee's negligence or misconduct created the dangerous condition, or that the public entity had actual or constructive notice of the condition a sufficient time before the injury to protect against it." (*Restivo, supra,* 111 Cal.App.5th 267 at p.275.) "A public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character." (Gov. Code, § 835.2(a).) "A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that 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." (Gov. Code, § 835.2(b).)

The State argues in Reply that with regard to constructive notice of the underground ember that caused the rekindling on January 7, there is no allegation in the Master Complaint that there was any visible indication of any flame, smoke or smoldering embers in the burn scar area from January 2 up until the report of the rekindling of the fire on January 7. The State further argues that the LAFD notified State Parks that the fire was fully contained and extinguished and that Plaintiffs fail to explain how the existence of smoldering on January 1 could provide notice of the burning ember that reignited on January 7, where there is no allegation of any visible indication of smoke or smoldering from January 2 until reignition on January 7. The State asserts, without citing any

authority, that "plaintiffs must allege that there was some obvious indication of smoke or smoldering in a specific area that could reasonably be construed as causing the rekindling at the yellow dot origin point to the south of the southern perimeter of the burn scar."

In the operative complaint, Plaintiffs allege that the State had actual knowledge of the Lachman Fire as the State "was notified by telephone of the Lachman Fire, Incident #42 on January 1, 2025 at 00:27:14." (Revised Master Complaint ¶ 67.) Plaintiffs then allege that "[t]he State and its employees had actual and constructive knowledge of the dangerous condition in time to have taken measures to protect against it. Specifically, the employees of the State knew or should have known of the 'Particularly Dangerous Situation' and 'Extreme Fire Conditions' forecasted by the NWS days prior to January 7, 2025 and that any embers not fully extinguished from the Lachman Fire could start a dangerous wildfire." (*Id*. ¶ 376.) Plaintiffs assert in Opposition that "Since members of the public could visibly see smoke coming up out of the ground in the Lachman Fire burn scar on January 1 and 2, so too could have State Park rangers have seen the smoke produced by the smoldering embers that remained on the State's land in the days following the Lachman Fire." Plaintiffs do not cite to the Complaint in connection with this assertion, however, earlier in the Opposition, they cite paragraph 70 which discusses a hiker seeing smoke still smoldering on the ground on January 1 after the LAFD left the area.

The allegations set forth that the State had constructive knowledge that the embers from the Lachman Fire could rekindle a later fire – especially with increased wind conditions. Moreover, as these allegations involve the State's knowledge, less particularity is required. (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611 ["'A plaintiff "need not particularize matters 'presumptively within the knowledge of the demurring' defendant. [Citation.]' [Citation.]" [Citation.]' This includes matters such as a defendant's knowledge or notice or intent."].)

Relying on *State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396, the State contends that Plaintiffs' allegations are insufficient. However, the principle issue in *State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396 was

"whether, *under the rules governing the disposition of motions for summary judgments* ([Citation]), there was any substantial evidence in petitioner's supporting depositions from which it could be inferred that the state had the actual or constructive notice indicated in sections 835 and 835.2 of the Government Code as a prerequisite to the imposition of liability." (*State v. Superior Court for San Mateo County* (1968) 263 Cal.App.2d 396, 398.) Thus, this case does not constitute authority for what is sufficient to *plead* actual or constructive knowledge for purposes of Government Code section 835 at the pleading stage. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1043 ["It is axiomatic that cases are not authority for propositions that are not considered."].)

For these reasons, the State's demurrer to the first cause of action on the grounds that Plaintiffs fail to allege actual or constructive knowledge is OVERRULED.

Actual or Constructive Notice (Overgrown Brush)

As to the third cause of action arising from the overgrown brush on State property, Plaintiffs fail to allege actual or constructive knowledge. Plaintiffs allege that one of the Plaintiffs complained to the City of Los Angeles about overgrown brush on these lots, but there is no allegation that the State was notified of the overgrown brush. (Revised Master Complaint ¶ 288.) Further, there is no allegation that the State knew or should have known about the dangerous character of this overgrowth. (Gov. Code, § 835.2.)

Accordingly, the State's demurrer to the third cause of action is SUSTAINED on the additional ground that Plaintiffs fail to allege actual or constructive knowledge.

Immunity Under Government Code sections 850 and 850.2

The State contends that it is immune from liability for the first cause of action under Government Code sections 850 and 850.2. "These sections 'provide for a *broad* immunity from liability for injuries resulting in connection with fire protection service. [¶] Sections 850 and 850.2 provide an absolute immunity from liability for injury resulting from failure to provide fire protection or from failure to provide enough personnel, equipment or other fire protection facilities. Whether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions which are committed to

the policy-making officials of government.'" (*Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 335.) However, these statutes "should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition to exist on the property." (*Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 660–661.)

The parties offer many arguments in connection with the 850 and 850.2 immunity issue. The Court will endeavor to parse and address them. Plaintiffs argue that there is no governmental immunity for permitting a dangerous condition to exist on public property and that immunity only extends to fire protection services. Plaintiffs further argue that the immunity statutes do not say that the government is immune from any claim for damages caused by fire; instead immunity is limited to acts or omissions of fire department employees with regard to fire protection services provided to the public while fighting fires. Here, plaintiffs assert, they do not allege that the State performed any firefighting activities on the Lachman Fire; LAFD did. Plaintiffs argue that logically, "fire protection services" do not extend to the State's failure to remove a known defect or dangerous condition that could start or cause a wildfire on its own property and the law requires that the property owner, whether or not it is a governmental entity maintain its property in a condition that it does not pose a risk of danger to its neighbors.

Plaintiffs rely heavily on *Vedder* which holds that liability can be established even though the public entity was not principally responsible for starting the fire when the public entity failed to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition to exist on the property.

The facts of *Vedder* are discussed above. For the claim of dangerous condition of public property, the plaintiffs in *Vedder* alleged that the dangerous condition was "that normal airport operations and the operation of businesses involving storage of large amounts of gasoline and other highly combustible chemicals created a severe risk of fire and/or explosion; gasoline fires are controlled only by use of special equipment; [and] [the defendants] 'caused, permitted and encouraged' such operations with full knowledge that

there were no means available to prevent or control gasoline fires." (*Vedder, supra,* 36 Cal.App.3d at 659.) The Court of Appeal reasoned that "[o]ne who negligently stores gasoline and other highly combustible chemicals on his property, or knowingly permits such negligent storage, may be liable to others for a fire-incurred loss even though the fire was actually started by the negligent conduct of others." (*Id*. at 660.)

The Court of Appeal further concluded that Government Code sections 850 and 850.2 were inapplicable because "[t]he statutes must be strictly construed … [and] [the defendants] should not be applied to allow a public entity to escape responsibility for damages resulting from its failure to provide fire protection on property which it owns and manages itself, particularly where it has permitted a dangerous fire condition to exist on the property. (*Id*. at 660-661.)

As to the nuisance claim, the Court of Appeal noted that "[a] fire hazard constitutes a public nuisance." (*Id*. at 661.) The Court further noted that it was "clear that plaintiffs [we]re contending the public nuisance on the airport property resulted from a combination of permitting the storage of gasoline and other highly combustible chemicals and not requiring or providing adequate fire protection facilities. The Government Code sections respondents rely upon are not intended to provide immunity under these circumstances, nor do they preclude consideration of a lack of fire protection in determining whether a public nuisance in fact existed." (*Ibid*.)

The State urges the Court to follow *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 1340, and *Puskar v. City and County of San Francisco* (2025) 239 Cal.App.4th 1248. Plaintiffs distinguish these two cases by arguing that the important distinction for those courts was whether the alleged dangerous condition is an impediment to firefighting (e.g. a closed fire road in *Cairns* and a missing fire extinguisher in *Puskar*) versus the cause of the fire itself which plaintiffs allege is the case here (the smoldering embers in the burn scar). Plaintiffs insist that there is a difference between starting a fire (consistent with the allegations in this case) and impeding the response to a fire (like *Cairns* and *Pulskar*).

In Reply, the State argues that Plaintiffs incorrectly assert that the fire protection immunity does not apply to preclude liability for a dangerous condition on a public entity's own property which the Court believes is correct. The issue, however, is whether the alleged dangerous condition is, in the particular circumstances alleged, a failure to provide fire protection service or facilities and therefore falls within the immunities in sections 850, 850.2 and 850.4, which was the case in *Cairns* and *Puskar* but not in *Vedder*.

The State also points out that *Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, a case upon which Plaintiffs rely for the proposition that immunity only applies when liability is based on an act or omission while responding to an actual fire, is inapposite because the State is not asserting immunity under section 850.4. The State also asserts that the following cases cited by Plaintiffs support a finding of immunity here: *City and County of San Francisco v. Superior Court* (1984) 160 Cal.App.3d 837 (fire on real property, individual ran 300 feet to firehouse to report the fire but firefighters were at an "improper" dinner at another firehouse causing delay in addressing fire – 850 and 850.4 immunities apply; *People ex rel. Grijalva v. Superior Court* (2008) 159 Cal.App.4th 1072 (firefighters had brush fire 90% contained but failed to douse flames completely resulting in fire later burning out of control – 850, 850.2, and 850.4 immunities apply).

Plaintiffs also argue that the State cannot rely on inspection immunity. 818.6 doesn't apply to failing to inspect its own property. However, the State points out in Reply that it is not relying on 818.6 inspection immunity and *Cochran v. Herzog Engraving* (1984) 155 Cal.App.3d 405 makes clear that the "sweeping" language of sections 850, 850.2, and 850.4 preclude liability. The State argues that the allegations upon which the *Cochran* court determined that section 850 and 850.2 immunities precluded liability are similar to the asserted bases for liability here. The *Cochran* plaintiffs asserted that the City of San Mateo had a duty to inspect the location that burned in order "to correct or remedy any hazardous conditions liable to cause fire, and to require the use of adequate protective measures, including suitable fire detecting and extinguishing devices; and that

the breach of these duties subjected it to liability." (Reply at 14 citing *Cochran* at 410). The State points out that here Plaintiffs allege that the State had a duty to inspect the burn scar area to correct or remedy a hazardous condition – the underground embers – that was likely to cause fire, and to use adequate protective measures, including suitable fire detecting devices such as a thermal imaging device, and the failure to do so subjects the State to liability. But, *Cochran*, a case upon which Plaintiffs rely, makes clear that liability is precluded under section 850 based on these allegations here.

The State further argues that LAFD handled the fire response on January 1 and advised the State that the fire had been extinguished. "Clearly, State Parks not providing further fire protection by inspecting for underground embers, with or without a thermal imaging device, to essentially recheck the work of LAFD after it completed its work, as plaintiffs allege should have been done, is a decision that falls within the "whether fire protection should be provided at all" language of the Law Revision Commission Comment to section 850." (Reply at 16). Therefore, the State concludes, section 850 immunity applies and bars the action against the State.

After attempting to make sense of and analyze the many pages of arguments in the briefing, the issue with regard to 850 and 850.2 immunity seems to be this: notwithstanding a sufficiently alleged dangerous condition on public property (the smoldering embers at the burn scar resulting from LAFD's response to the Jan. 1 Lachman Fire which later reignited on January 7), are the allegations simply "couched" (*see Cairns* at 463) in language of a dangerous condition but, in actuality, are allegations regarding immunized conduct ie the failure to provide fire protection services related to the smoldering embers in the burn scar between Jan. 1 and Jan. 7 which resulted in reignition)? *Vedder* supports Plaintiffs' theory; *Cairns* and *Pulskar* support the State's theory that the allegations amount to the failure to provide fire protection services to the smoldering embers at the burn scar which is immunized conduct.

On demurrer, the Court cannot find, as a matter of law, that the allegations regarding the smoldering embers at the Lachman Burn Scar come within the immunities set forth in sections 850 and 850.2, i.e. they constitute the provision of fire protection

services. Put differently, a factual record must be developed regarding smoldering embers, including, but not limited to, how they are handled, what risks they present, policies and practices regarding maintenance or surveillance of smoldering embers after a fire has been extinguished or controlled, factors that influence the treatment of smoldering embers (e.g. winds, geography), training regarding smoldering embers, equipment needed to address smoldering embers, responsibility to address smoldering embers, how they are characterized vis-à-vis the definition of "fire," etc. While the Court is acutely aware of the policy deeply imbedded in the law and statutes that under the Government Claims Act, liability is the rule and immunity the exception and immunity provisions will, "as a general rule prevail over all sections imposing liability" (*Cairns* at 334), the Court is also sensitive to the strong policy preference in California for deciding cases on their merits based on a full factual record (e.g. a summary judgment motion) rather than via a demurrer, which resolves cases on assumed facts without trial.

For these reasons, the State's demurrer to the first cause of action pursuant to Government Code sections 850 and 850.2 is OVERRULED.

Immunities Under Government Code sections 845 and 831.2

The State further contends that it is immune from liability as to the first cause of action pursuant to Government Code sections 845 and 831.2.

Government Code section 845 "grants a general immunity for failure to provide police protection or for failure to provide enough police protection. Whether police protection should be provided at all, and the extent to which it should be provided, are political decisions which are committed to the policy-making officials of government." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1142.) "[T]he decision whether and how to equip and deploy available police personnel falls within the immunity provided by Government Code section 845." (*Id*. at p.1144.)

Here, there is no allegation that the State failed to provide police protection. In fact, Plaintiffs plainly state in their Opposition that they do not allege the State is liable because it did not stop an arsonist from starting the Lachman Fire on January 1. Plaintiffs state that the Revised Master Complaint concerns what the State did and did not do after the

Lachman Fire was contained "e.g. leaving an obvious and known dangerous condition on its property that six days later rekindled into the devastating Palisades Fire."

Nonetheless, the State addresses the issue in Reply. Although it is not entirely clear, the State seems to argue that the criminal arson was continuing and therefore the failure to discover this ongoing crime would be covered by the police protection immunity. The State cites no authority for this assertion.

Like 845 immunity, the parties briefly, comparatively speaking, address the issue of immunity pursuant to section 831.2 – natural condition immunity. Under the natural condition immunity, public entities are immune from liability for injury caused from natural conditions from any unimproved public property. (Gov. Code, § 831.2 ["Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach."].) "*Section 831.2* provides for absolute immunity and prevails over the liability provisions of the Government Claims Act." (*Alana M. v. State of California* (2016) 245 Cal.App.4th 1482, 1487.) "[T]he Legislature intended section 831.2 to '"continue and extend"' existing law, and, therefore, the natural condition immunity should not be construed narrowly." (*Ibid*.) Thus, "[t]he natural condition immunity applies even 'where the public entity had knowledge of a dangerous condition which amounted to a hidden trap.'" (*Id*. at p.1488.)

However, as Plaintiffs point out, the burn scar was not a natural condition of the State's property and the natural condition immunity does not apply to injuries that occurred on adjacent properties. (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 835 ["We conclude that the natural condition immunity of section 831.2 is inapplicable to injuries caused to nonusers on adjacent property."].) Because Plaintiffs' injuries – the numerous houses burning down – occurred outside of the Topanga State Park, the natural conditions immunity of Government Code section 831.2 is inapplicable.[1]

[1] As far as the Court can discern, the State does not address this argument in Reply.

Accordingly, the State's demurrer to the first cause of action pursuant to Government Code sections 845 and 831.2 is OVERRULED.

B. Public Nuisance Claims (Second and Fourth Causes of Action)

"Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." (Civ. Code, § 3479.) "A nuisance is considered a 'public nuisance' when it 'affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.'" (Civ. Code, § 3480.)

Here, the second cause of action for public nuisance is premised on the dangerous condition caused by the Lachman Fire scar. (Revised Master Complaint ¶¶ 378-390.) Similarly, the fourth cause of action for public nuisance is premised on the overgrown brush on the State's unimproved properties in the Pacific Palisades. (*Id*. ¶¶ 396-408.)

The State contends that because the second and fourth causes of action are derivative of the first and third causes of action, respectively, and therefore are deficient in the same way the first and third causes of action are deficient. However, as discussed above, as to the first cause of action, the State fails to show that Plaintiffs' claim for dangerous condition on public property fails. Accordingly, the State's demurrer to the second cause of action is OVERRULED.

With respect to the third cause of action premised on the overgrown brush, because Plaintiffs' claims for dangerous condition on public property fail, Plaintiffs' claim for public nuisance must also fail. (*Avedon, supra,* 186 Cal.App.4th at p.1345 [finding that because the facts and theories for the dangerous condition and public property and public nuisance claims were identical, "appellants cannot proceed on their claim for dangerous condition of public property, it follows that the nuisance claim which mirrors that cause of action also cannot proceed."].)

In addition, "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Civ. Code, § 3482.) Pursuant to the judicially-noticed map, each of these unimproved lots owned by the State are part of the Topanga State Park. (Revised Master Complaint ¶ 287; compare RJN Ex. D [California State Parks map of area showing Topanga State Park].) The State is authorized to operate Topanga State Park under Public Resources Code section 5001 *et seq*. Under Public Resources Code section 5003, the State "shall administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoyment of the public." (Pub. Resources Code, § 5003.) This includes maintaining the flora of Topanga State Park consistent with the legislature's stated purpose of state parks. "The purpose of state parks shall be to *preserve* outstanding natural, scenic, and cultural values, indigenous aquatic and *terrestrial fauna and flora* …. Each state park shall be managed as a composite whole in order to restore, protect, and *maintain its native environmental complexes* to the extent compatible with the primary purpose for which the park was established." (Pub. Resources Code, § 5019.53 [italics added].)

Accordingly, the State's demurrer to the fourth cause of action for public nuisance is SUSTAINED without leave to amend as discussed herein.

VII. Conclusion

The Court SUSTAINS Defendant State of California acting by and through the State of California Department of Parks and Recreations' Demurrer to the Revised Master Complaint as to the Third and Fourth Causes of Action WITHOUT LEAVE TO AMEND. The State's Demurrer is otherwise OVERRULED.

Dated: 02/19/2026

Samantha Jessner/Judge

SAMANTHA P. JESSNER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 9

Case Management Order No. 3 (3/26/26)

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Liaison Counsel for Individual Plaintiffs

(Additional counsel listed in Exhibit B)

FILED
Superior Court of California
County of Los Angeles
03/26/2026
David W. Slayton, Executive Officer / Clerk of Court
By: A. Morales Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

PALISADES FIRE LITIGATION

DAN GRIGSBY, et al.,

Plaintiff,

vs.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, et al.,

Defendants.

AND ALL RELATED CASES

Lead Case No. 25STCV00832

[~~PROPOSED~~] CASE MANAGEMENT ORDER NO. 3

Assigned for All Purposes to:
Hon. Samantha Jessner, Dept 7

Action Filed: January 13, 2025
Trial Date: Not set

WHEREAS, the Court has designated the above listed action as the Lead Action for all related cases (a current list of which is included as **Exhibit A**) (each a "Palisades Fire Case," and collectively the "Palisades Fire Litigation");

WHEREAS, the Court has designated the Lead Action and all related cases as complex within the meaning of the California Standards of Judicial Administration for Complex Litigation Section 3.10, and California Rule of Court ("Rule") 3.400 (specifically, Rule 3.400(b)(2), (b)(3), and (b)(4)), and Rule 3.502;

WHEREAS, the Court has consolidated the Palisades Fire Cases for pre-trial purposes only;

WHEREAS, Liaison Counsel for Individual Plaintiffs filed a Master Complaint on October 8, 2025, and a Revised Master Complaint on December 1, 2025, in the Lead Action ("Revised Master Complaint");

WHEREAS, Liaison Counsel for Individual Plaintiffs, Proposed Liaison Counsel for Subrogation Plaintiffs, Proposed Liaison Counsel for Public Entity Plaintiffs (collectively, "Plaintiffs"), and Counsel for Defendants listed in **Exhibit B** (together with Plaintiffs, the "Parties") met and conferred and are in agreement for an order to be entered by the Court based upon the stipulation below ("CMO 3"), but all Parties are retaining and reserving their rights to seek a modification of CMO 3 by mutual agreement should it prove problematic or unworkable in practice due to unforeseen issues;

NOW THEREFORE, the Parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

I. GENERAL PROVISION

Nothing in this CMO 3, except for the limited lifting of the stay of discovery, as described below in Section IV.A, is intended to or does supersede the Case Management Order filed on April 23, 2025 ("CMO 1") or the Case Management Order, filed on December 2, 2025 ("CMO 2") in this matter, unless otherwise noted.

II. ORGANIZATION OF SUBROGATION AND PUBLIC ENTITY PLAINTIFFS GROUPS

A. Subrogation Plaintiffs Liaison Counsel

Subrogation claimants include the insurance companies seeking subrogation for paid damages (hereinafter "Subrogation Plaintiffs"). Currently, the Subrogation Plaintiffs in the Palisades Fire Litigation are represented by multiple law firms and have brought multiple cases. The law firms and subrogation cases are listed in **Exhibit C**. These cases are hereby related to the Lead Action, to the extent they have not been related already. Counsel for Subrogation Plaintiffs in any future actions must promptly relate them to the Lead Action.

The Subrogation Plaintiffs, after meeting and conferring, have designated Howard Maycon and David Brisco of Cozen O'Connor as Subrogation Plaintiffs' liaison counsel in the Palisades Fire Litigation.

B. Subrogation Plaintiffs' Steering Committee

Subrogation Plaintiffs, after meeting and conferring, have agreed to form a Steering Committee, which shall work in collaboration with Liaison Counsel to conduct discovery and prepare the Subrogation Plaintiffs' cases for trial. The following individuals shall serve on this Steering Committee:

Dana Meyers and Phil Berens, Cozen O'Connor

Tim Carey, Stutman Law

Zachary Marks, Denenberg Tuffley

Sally Noma, Noma Law

C. Public Entity Plaintiff Liaison Counsel

The City of Malibu is currently the only Public Entity Plaintiff. It is represented by Quinn Emanuel Urquhart & Sullivan, LLP, which will serve as interim Public Entity Plaintiff Liaison Counsel. Should other Public Entity Plaintiffs file suit, they will meet and confer with counsel for the City of Malibu regarding appointment of Public Entity Plaintiff Liaison Counsel.

The City of Malibu action is hereby related to the Lead Action, to the extent it has not been related already. Public Entity Plaintiffs in any future actions must promptly relate their action(s)

to the Lead Action.

D. Role of Liaison Counsel

Subrogation Plaintiffs and Public Entity Plaintiffs' respective Liaison Counsel shall have the duties and responsibilities of a spokesperson and coordinator generally.

Liaison Counsel will not have the authority to make decisions to bind significant issues in the cases of others. The designation of Liaison Counsel confers no benefits or right to attorney's fees or other rights.

Each attorney in this case is representing their own client(s), and the designation of particular attorneys as Liaison Counsel confers no rights or responsibilities from a lawyer to people who are not their clients. The purpose is purely for there to be a smaller group of people within the three Plaintiff groups with whom defense counsel can coordinate to move the case along and keep the Court and their respective groups informed of the progress in filings and during Court proceedings.

Should Defendants need an extension of time to take an act (for example an extension on a filing or deposition), Defense Counsel may rely upon a communication from Subrogation Plaintiffs' Liaison Counsel to bind the entire group of Subrogation Plaintiffs, and a communication from the Public Entity Liaison Counsel to bind the entire group of Public Entity Plaintiffs.[1] Liaison Counsel for Subrogation Plaintiffs is instructed to attempt to meet and confer with all Subrogation Plaintiffs as time permits but Liaison Counsel for Subrogation Plaintiffs may bind the Subrogation Plaintiffs' group to extensions when there are time constraints that do not allow a meeting of the entire group. Liaison Counsel for Public Entity Plaintiffs is instructed to attempt to meet and confer with the Public Entity Plaintiffs as time permits but Liaison Counsel for Public Entity Plaintiffs may bind the Public Entity group to extensions when there are time constraints that do not allow a meeting of the entire group.

Following a Status Conference, or other hearing, Liaison Counsel shall coordinate and

[1] Defense Counsel may similarly rely on upon communications from the Liaison Counsel for the Individual Plaintiffs to bind the entire group of Individual Plaintiffs, as set out in CMO 1.

prepare a Notice of Ruling to be e-served on the Parties via Case Anywhere of any matters at the Status Conference or hearing that need to be addressed via a Notice of Ruling.

Liaison Counsel shall also take responsibility for the Plaintiff groups in working with Defendants to prepare joint reports to the Court, subject to the ability of counsel for any plaintiff to set forth a different position in the joint report if counsel does not agree with the position set forth by the other plaintiffs in the joint report.

Liaison Counsel shall organize briefing on common issues amongst the Plaintiff groups.

E. Newly Added Parties

All cases that are related to the Lead Action in the future, and all Parties (including all Plaintiffs) that may file suit, be sued, or be joined in the future, shall be bound and regulated by the provisions of this Order; all previous and future Case Management Orders in the Lead Action; the Stipulation and Protective Order governing Confidential and Highly Confidential Designations signed by the Court in the Lead Action on June 24, 2025 ("June 24, 2025 Protective Order"); and any future protective orders entered by the Court in the Lead Action. Copies of this, previous, and future Case Management Orders, as well as the June 24, 2025, Protective Order and any future protective orders, are available on Case Anywhere. All Parties appearing in this action after the date of this Case Management Order is entered shall have thirty (30) days to comply with the terms of all prior Case Management Orders that have been entered. Any new Party to an action related to the Lead Action will have the right to file an objection to the contents of this Order within 15 days of their case being related to the Lead Action.

III. PLEADINGS MATTERS

A. Response Deadline For The State Of California And City Of Los Angeles

On February 19, 2026, the Court entered Rulings on Demurrers Filed by State of California and City of Los Angeles ("City and State Demurrer Orders"). In the interest of judicial economy, the City and State Demurrer Orders are deemed to apply to all Palisades Fire Cases filed by all Individual Plaintiffs, all Subrogation Plaintiffs and all Public Entity Plaintiffs, and to future actions filed by Plaintiffs that become related to the Lead Action. Any appellate decision regarding the City and State Demurrer Orders will be deemed to apply to all pending and future

Palisades Fire Cases. The State of California and the City of Los Angeles shall file Answers, respectively, to the Individual Plaintiff Revised Master Complaint by **March 31, 2026**.

B. The Remaining Defendants' Responses to the Revised Master Complaint

Other than the State of California and the City of Los Angeles, the remaining Defendants named in the Revised Master Complaint have not yet responded to that complaint.[2] To facilitate a manageable volume of demurrers for the Court to consider and resolve at any one time, there will be multiple rounds of responses filed by the remaining Defendants, listed below.

Schedule. The response dates and briefing schedules for the Defendants are as follows:

(1) Round 1: Sempra and Southern California Gas Co., filed demurrers and a motion to strike on February 20, 2025; the County of Los Angeles, Los Angeles Waterworks District No. 29, and Mountains Recreation and Conservation Authority shall respond to the Revised Master Complaint by **March 31, 2026**. The Individual Plaintiffs shall respond to any Round 1 motions by **May 29, 2026**, and any reply shall be filed by **June 26, 2026**. The demurrers shall be heard on **July 15, 2026**, at 1:45 p.m. Any orders on these motions will apply in all other actions filed by Plaintiffs related to the Lead Action.

(2) Round 2: All other Defendants who have not yet responded to the Revised Master Complaint (i.e., AT&T, Inc.,[3] Biggs Realty, Charter Communications,[4] Edison International, Frontier Communications,[5] J. Paul Getty Trust, Las Virgenes Municipal Water District, Pacific Palisades Bowl Mobile Estates, LLC, Pacific Palisades Bowl Mobile Estate DEL, LLC, Southern

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[2] On February 20, 2026, Defendants Sempra and the Southern California Gas Company filed demurrers and a motion to strike. Those motions were set for hearing on June 23, 2026, but the Court will move the hearing to July 15.

[3] AT&T Inc. contends that it has been improperly named in this lawsuit. AT&T Inc. does not consent to jurisdiction or venue in this Court, does not agree it can or should respond to discovery in this matter, and expressly reserves all substantive and procedural defenses, including but not limited to Cal. Civ. Proc. Code § 418.10.

[4] The parties will be filing a stipulation substituting Spectrum Pacific West, LLC for Charter Communications shortly.

[5] Frontier California Inc., erroneously sued as Frontier Communications, states that it has been improperly named in this lawsuit and reserves all rights.

California Edison Company, and Victor Martinez and Associates) shall respond by **May 29, 2026**. If the initial response is a motion and/or demurrer, then the Individual Plaintiffs shall respond to that motion and/or demurrer by **July 31, 2026**, and any reply shall be filed by **August 31, 2026**. The responsive motion or demurrers shall be heard on **September 23, 2026**, at 1:45 p.m. Any orders on these motions or demurrers will apply in all other actions filed by Plaintiffs related to the Lead Action.

C. Responses to Additional Causes of Action Asserted by Individual Plaintiffs

Certain individual plaintiffs, in their Notices of Adoption or separate complaints, have asserted various additional causes of action against one or more Defendants, beyond the causes of action asserted in the Revised Master Complaint ("Additional Causes of Action"). The Parties will meet and confer on a schedule for pleading-stage motion practice regarding such Additional Causes of Action, which the Parties anticipate will occur after Round 2 pleading stage motion practice, as described in the preceding section.

D. Additional Requirements Regarding Pleadings

Service of Process: Unless arrangements have been made with a Defendant to accept service of newly filed complaints in another manner or a Defendant agrees to accept a complaint by returning a Notice and Acknowledgement of Receipt (either via email or by posting on Case Anywhere), all service of newly filed complaints must be made through means prescribed by the Code. Service of newly filed complaints through Case Anywhere is not valid.

Appearances in other Palisades Fire Cases: An appearance by a Defendant in this Lead Action shall constitute an appearance by that Defendant in any related Palisades Fire Case naming that Defendant. Defendants appearing in this Lead Action may, but are not required to, file separate appearances in any related Palisades Fire Case. All Palisades Fire Cases, other than this Lead Action, remain stayed. No responsive pleadings, demurrers, or any motions shall be filed in any other Palisades Fire Cases while those cases remain stayed without leave of this Court issued through this Lead Action.

Complaints Filed by Subrogation Plaintiffs, Public Entity Plaintiffs, and Individual Plaintiffs Not Adopting the Revised Master Complaint: Because Subrogation Plaintiffs, and Public

Entity Plaintiffs cannot adopt the Individual Plaintiffs' Revised Master Complaint, and because certain Individual Plaintiffs might not adopt the Individual Plaintiffs' Revised Master Complaint, any Defendant must respond to each such complaint individually. All Defendants' obligations to respond to such complaints remain stayed until further order of the Court.

Cross-Complaints: Pending resolution of the challenges to the Individual Plaintiffs' Revised Master Complaint that certain Defendants may still bring, and pending further efforts to meet and confer and order of the Court, no Party shall file cross-complaints against another Party. The Parties contemplate that once such claims are brought, they will be brought as "Master Cross-Complaints" in the Lead Action that will be incorporated automatically into each case related to the Lead Action. Cross-Complaints include complaints brought by affiliates of Defendants. Notwithstanding the foregoing, if a Party believes it is required to assert a cross-claim against a governmental entity Defendant to comply with a limitations period, it may do so. All Cross-Complaints already filed as of the date of this CMO 3, or filed after the date of this CMO 3, are stayed, and no cross-Defendant is obligated to respond to any Cross-Complaint, until further order of the Court.

IV. DISCOVERY SERVED BY PLAINTIFFS ON DEFENDANTS

A. Partial Lifting of Discovery Stay

As discussed below, the stay on discovery served by Plaintiffs on the State of California and City of Los Angeles ***only*** is lifted as of March 31, 2026, when their answers are due. As to the remaining Defendants, to facilitate a structured and orderly administration of discovery, discovery shall remain stayed until the Court rules on that Defendant's demurrer/motion or, if no demurrer/motion is filed, until the Defendant files its answer to the Revised Master Complaint.

Nothing in this Order precludes any party from moving to stay discovery based on the filing of a writ petition or other reason, or precludes any Party from proposing phasing of discovery.

B. Written Discovery Served by Plaintiffs on Defendants

Discovery requests, including but not limited to interrogatories, requests for production, requests for admission, third-party subpoenas, and requests for inspection, must be coordinated

among and by Plaintiffs' Liaison Counsel. Specifically, no Plaintiff may serve any written discovery that will not be propounded as a Master Set or third-party subpoena issued by Plaintiffs' Liaison Counsel, without first seeking leave of court by noticed motion.

In addition, for the absence of doubt, each Plaintiff group, including Subrogation Plaintiffs, Individual Plaintiffs, and Public Entity Plaintiffs shall be able to serve their own sets of discovery on the Defendants, while making efforts to avoid duplication in discovery served.

V. DISCOVERY ON INDIVIDUAL PLAINTIFFS

Discovery as to specific Individual Plaintiffs' claims shall take place in stages as described below.

A. Individual Plaintiffs' Registration with Data Services Provider

The Parties are meeting and conferring regarding the retention of a data services provider (the "Data Services Provider") to track and aggregate certain data, including but not limited to, Plaintiffs Fact Sheets, Liability Questionnaires, and Damages Questionnaires. The Data Services Provider shall provide reports to the Court and Liaison Counsel for Individual Plaintiffs and Defendants on the last court day of each month. Any Individual Plaintiff with a case on file and related to the Lead Case as of the entry of this Case Management Order is required to register in the Data Services Provider's Palisades Fire Litigation Portal within 30 days of the entry of this Order, or within 30 days of the date that it becomes active, whichever is later. Information about how to ask questions of the Data Services Provider will be posted on Case Anywhere. The Parties will meet and confer regarding the initial information needed to register with the Data Services Provider.

B. Stage 1: Individual Plaintiff Fact Sheets and Liability Questionnaires

Individual Plaintiffs and Defendants shall meet and confer regarding the forms of (a) the Individual Plaintiff Fact Sheets and (b) the Individual Plaintiff Liability Questionnaire (collectively, the "Initial IP Discovery"), which will be completed by each Individual Plaintiff – either individually or together with other members of the same household. The Initial IP Discovery shall be created within the Data Services Provider portal created for the Palisades Fire Litigation. The Data Services Provider will also be responsible for provision of the Initial IP

Discovery to Defendants. Any Individual Plaintiff may amend or supplement their responses to the Initial IP Discovery without leave of this Court until the close of fact discovery applicable to their individual action.

For any Individual Plaintiff already related to the Palisades Fire Litigation, one fifth of each plaintiff firm's client households must serve complete and verified Initial IP Discovery every 90 days, starting 90 days after the Data Services Provider's portal is open, until all Individual Plaintiffs have served complete and verified Initial IP Discovery. Although any bellwether process will be addressed in a future case management order, no bellwethers shall be picked until all plaintiffs have served complete and verified Initial IP Discovery.

Any Individual Plaintiff whose complaint is deemed related after the date of this Order shall complete the Initial IP Discovery within 90 days of the date that their action is deemed related to the Palisades Fire Litigation.

C. Stage 2: Individual Plaintiff Damages Questionnaire, Document Checklist, and Other Discovery

Individual Plaintiffs and Defendants will meet and confer upon the timing and form of an Individual Plaintiff Damages Questionnaire and Document Checklist, which will be completed and verified by each Individual Plaintiff. The Individual Plaintiff Damages Questionnaire and Document Checklist shall be created within the Data Services Provider portal created for the Palisades Fire Litigation. Any Individual Plaintiff may amend or supplement their responses to the Damages Questionnaire and Document Checklist without leave of this Court until the close of fact discovery applicable to their individual action.

Defendants may propound any additional discovery allowed under the California Code of Civil Procedure, including depositions of Individual Plaintiffs, after that specific Plaintiff's case is set for trial.

D. Deficient Initial IP Discovery and Individual Plaintiff Damages Questionnaires

Individual Plaintiffs who fail to serve complete Initial IP Discovery or an Individual Plaintiff Damages Questionnaire by their respective due dates, and whose counsel has not sought and received an extension from Defendants for the submission in question prior to its due date,

shall be referred to in this Order as Overdue Plaintiffs.

Defendants shall notify counsel for Overdue Plaintiffs by email about the delinquency and state that the late submission is due within 15 calendar days of receipt of that notification. Overdue Plaintiffs shall be required to complete, verify, and serve upon Defendants (via the Data Services Provider) cured responses within 15 days of receipt of Defendants' notification regarding the delinquency.

In each CMC Statement, starting after the first tranche of Initial IP Discovery is due, Defendants shall include a list of all Overdue Plaintiffs (if any) who did not cure after the lapse of the 15-day notification period and may request an Order to Show Cause for failure to comply and why sanctions should not issue. The Court may set a hearing on the OSC, with Defendants giving notice of the OSC. Seven (7) court days before the OSC hearing, Overdue Plaintiffs shall file with the Court a response and evidence showing good cause why sanctions should not be issued. No reply from Defendants need be filed unless requested by the Court. Upon review of each Overdue Plaintiff's response to the OSC, the Court shall inform Defendants whether any Overdue Plaintiff shall be removed from the upcoming OSC, and Defendants shall give notice. Otherwise, the Overdue Plaintiff shall appear at the OSC and address with the Court the failure to comply with discovery deadlines and why sanctions should not issue.

E. Written Discovery Served by Defendants on Plaintiffs

In addition to IP-specific discovery described in Sections V.B and V.C, above, Defendants may serve master sets of written discovery on Liaison Counsel for Individual Plaintiffs, Liaison Counsel for Subrogation Plaintiffs, and Liaison Counsel for Public Entity Plaintiffs in "Master Sets." Plaintiffs shall respond to each Master Set of written discovery jointly by serving a Master Response (i.e., one set of Master Responses for Subrogation Plaintiffs, one set of Master Responses for the Individual Plaintiffs, and one set of Master Responses for the Public Entity Plaintiffs).

Master responses shall be deemed adopted and binding, unless an Individual Plaintiff, Subrogation Plaintiff, or a Public Entity Plaintiff serves an objection to the respective master response within 35 days. Any Plaintiff who serves an objection to any Master Response must

serve their own response to the specific discovery requests within 30 days of stating their objection.

The stay on serving written discovery on Plaintiffs is lifted as of April 30, 2026.

VI. SUBROGATION PLAINTIFF DISCOVERY

A. Compilation of Claims Damages Data

Subrogation Liaison Counsel shall produce to Defense counsel a compilation of claims damages data, as an Excel spreadsheet, which lists the names, addresses, policy numbers, dates of loss, claim numbers, amounts paid, and open reserves (as that information is available) as to each of the subrogated claims for which they are seeking reimbursement (hereinafter the "List of Claims"). Subrogation Plaintiffs will provide the first List of Claims by June 30, 2026. Thereafter, updates will be provided by the end of each subsequent quarter.

Because it is an unverified compilation of claims data prepared by counsel, the List of Claims shall be designated confidential and subject to the mediation privilege. Defendant recognizes that Liaison Counsel for Subrogation Plaintiffs is communicating with other Plaintiffs Subrogation Counsel representing insurers, taking data in different formats, and compiling that data. By producing the List of Claims under the mediation privilege, Subrogation Liaison Counsel does not waive any work product protection or other privilege applicable to the compilation of the List of Claims. This List of Claims produced by Subrogation Liaison Counsel shall not be the subject of formal discovery.

The List of Claims, and all updates shall not be verified. However, should verifications be needed, the Parties can meet and confer regarding verified data.

B. Claim File Matching

The Parties anticipate there will be a number of named Individual Plaintiffs who have also filed insurance claims. The Parties have met and conferred and recognize that those Individual Plaintiffs have certain rights pertaining to the production of their insurance claim files, and thus matching of Individual Plaintiffs to the Claims in order to provide their claim file is necessary before claim file production can begin. This process is known as "Claim File Matching." Based on the number of named and anticipated Individual Plaintiffs and number of anticipated insurance

claims, the Parties recognize Claim File Matching cannot begin until (1) Individual Plaintiffs have registered into the Data Services Provider Portal, creating an Initial "IP List"[6], (2) the first List of Claims[7] is compiled by Subrogation Plaintiffs, and (3) the Initial IP List is provided to Subrogation Plaintiffs by Individual Plaintiffs and matched by the Subrogation Plaintiffs, to the extent possible, to the List of Claims.

The Parties will further meet and confer regarding the Claim File Matching completion date after the List of Claims is created and provided to the Defendants under mediation privilege, and after the Initial IP List is provided to Subrogation Plaintiffs (the "Initial Matching Completion"). The Parties will then advise the Court of the anticipated date of the Initial Matching Completion. Individual Plaintiffs will provide Subrogation Plaintiffs with an updated IP List on the last court day of each month. The IP List shall include names of Individual Plaintiffs organized into households, loss location address, insurance carrier, claim number and insurance policy number. The List of Claims is maintained by Subrogation Plaintiffs and shared only with the Defendants. The List of Claims shall not be provided to the Individual Plaintiffs or the Data Services Provider.

C. Claim File Production

Upon the Initial Matching Completion, the Subrogation Plaintiffs will begin to produce matched closed claim files to Defendants within 45 days on a rolling basis, and pursuant to the Protective Order. The Parties stipulate, and the Court orders, that any claims related to Individual Plaintiffs who are listed on the IP List will receive a copy of their claim file prior to production to the Defendants, and Individual Plaintiffs shall have 15 days from receipt of the file to review before the file is released to Defendants. These matched claim files will be provided to counsel for the Individual Plaintiffs through the Data Services Provider. Individual Plaintiffs shall bear the cost(s) for the production of claim files through the Data Services Provider. Individual Plaintiffs

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[6] The IP List shall include names of Individual Plaintiffs organized into households, loss location address, insurance carrier, claim number and insurance policy number.

[7] The List of Claims in maintained by Subrogation Plaintiffs and shared only with the Defendants, the List of Claims shall not be provided to the Individual Plaintiffs or the Data Services Provider.

waive any objection to the release of their claim file to Defendants if it is not raised prior to the 15-day hold.

Defendants may request the production of particular closed or open matched claims files earlier in time in specific instances, and the Defendants and Subrogation Plaintiffs will meet and confer on any such request. Subrogation Plaintiffs are free to produce any unmatched claim files beginning November 1, 2026. If Defendants request any unmatched claim file prior to November 1, 2026, Subrogation Plaintiffs will advise Individual Plaintiffs' Liaison Counsel of the request, and are free to produce the claim file(s) to Defendants if Subrogation Plaintiffs do not receive information related to a potential matched insured for the claim file(s) within 15 days. The Parties agree that absent a request for a specific claim file, claim files which are not matched to an Individual Plaintiff shall not be produced.

VII. PUBLIC ENTITY PLAINTIFF DAMAGES DISCOVERY

Public Entity Plaintiffs and Defendants will meet and confer, at an appropriate time, on a mutually agreeable process for sharing damages documentation. Public Entity Plaintiffs and Defendants will report to the Court on the status of these discussions as part of a future Case Management Order.

VIII. DEPOSITIONS

A. Depositions of Defendants and Third Parties

The Parties will cooperate in the notice and taking of depositions as follows:

After following the requirements outlined below, Notices of Deposition will be served via Case Anywhere. All depositions noticed by the Parties will be scheduled through an agreed-upon court reporting service ("Court Reporting Service"). The Court Reporting Service shall maintain a master service list of counsel of record in this Action and shall serve notice of the scheduling of all depositions on the Parties.

For future depositions conducted with notice as prescribed in this Order, a witness may be deposed only once in the Lead Action in the capacity in which they are providing their testimony, except by order of the Court based on a showing of good cause or by agreement of all interested parties. The Parties will meet and confer regarding deponents who have already sat for deposition

as of the date this order is entered.

All interested parties shall meet and confer in good faith no later than three court days in advance of any deposition's scheduled date to discuss the amount of time each questioning party reasonably anticipates needing during the deposition so that the interested parties can reasonably allocate anticipated time amongst all questioning parties.

Liaison Counsel for Individual Plaintiffs will designate one (1) attorney to question each deponent, and no other Individual Plaintiffs' attorneys will question that deponent (though Individual Plaintiffs' attorneys who are not questioning the deponent may provide proposed questions to the questioning attorney). Subrogation Plaintiffs may nominate one (1) attorney to question each deponent. Public Entity Plaintiffs may nominate one (1) attorney to question each deponent. Notwithstanding any other provisions of law, in no event shall all Plaintiffs questioners, combined, question a deponent for more than seven hours on the record.

One attorney for each Defendant may question each deponent.

All Parties are entitled to conduct any deposition in-person, and counsel for the deponent may request that any deposition be conducted in person. If any such request is made, the Parties shall meet and confer. Otherwise, the default is that all depositions shall be noticed with a remote option via Zoom, Teams, or similar platform providing both audio and visual communication with the witness.

B. Depositions of Plaintiffs

The Parties shall meet and confer regarding procedures for depositions of Plaintiffs at a later stage of discovery. However, within 30 days of the entry of this order, Liaison Counsel for the Individual Plaintiffs shall identify any Individual Plaintiff who may may need to have their testimony preserved due to heath considerations or other extenuating circumstances. The Parties agree that Individual Plaintiffs who present such concerns may be deposed before the Parties devise an agreed deposition protocol for the Individual Plaintiffs.

C. PMQ Depositions

The Parties shall meet and confer in good faith regarding mutually agreeable dates, times and locations for depositions for any Person Most Qualified ("PMQ") under CCP § 2025.230 and

shall factor the needs of any third party counsel and witnesses; depositions shall not be unilaterally noticed. The Parties shall also meet and confer in good faith concerning the scope of the PMQ deposition(s), taking into account the opposing party's objections to the notice, if any.

The noticing Party or Parties reserve the right to seek the Court's guidance to resolve any outstanding issues related to the scope of the deposition following the completion of the deposition(s). The opposing Party reserves the right to serve objections, if any, to the notice of deposition per § 2025.410(a) and (b), and to raise objections during the deposition(s) as needed. The Parties agree that any non-privileged documents used to educate the witness on the topic of the deposition, or that the witness intends to rely on to provide testimony, must be produced in response to any deposition notice will be provided 72 hours prior to the start of the deposition, unless such documents were already produced in the litigation. The Parties agree to meet and confer further regarding procedures to streamline PMQ depositions (e.g., timing of other document productions and disclosing name of PMQ designee). There is a maximum of 20 PMQ topics on which any Party must prepare one or more witnesses.

All Parties shall be given the opportunity to question the PMQ witness after the noticing Party has completed their questioning. If another Party seeks to question the witness on topics other than those designated, that Party shall issue its own PMQ deposition cross-notice pursuant to the requirements of this section, and shall coordinate in good faith with the Party that originally noticed the deposition and counsel for the witness to minimize duplication in deposition topics to be covered by the PMQ witness within a reasonable time (no shorter than twenty-one days) before the date of the deposition. The additional topics noticed by an additional Party are subject to the 20-topic maximum described above, and the Party producing the PMQ witness reserves all rights to object to topics noticed and any additional topics noticed by an additional Party.

IX. THIRD-PARTY DISCOVERY

The Parties will attempt to coordinate the service of any Subpoenas Duces Tecum to any third party for production of documents and testimony. Notice of any such subpoena shall be effectuated through Case Anywhere. A copy of any and all documents obtained through subpoenas shall be provided to all Parties within 15 days of receipt, with notice to all Parties as

provided herein. Nothing in this Order requires that the Parties agree on any such subpoena, merely that they attempt to coordinate. Any Plaintiff who wishes to serve third party discovery shall comply with the coordination provisions in Section IV.B above.

X. PRODUCTION OF DOCUMENTS

A. Production Mechanics

Defendant productions will be provided to all other Parties through bilateral document transfers. Defendant productions will be provided to Plaintiffs by providing them to the Plaintiffs' Liability-Only Document Repository (see below). Productions may be made by secured FTP or by mailing hard drives.

B. ESI Protocol

The Parties shall meet and confer and file an Electronically Stored Information Protocol ("ESI Protocol") within sixty (60) calendar days of the Court signing and entering this CMO. If the Parties cannot come to mutually agreed upon language for a joint Electronically Stored Information Protocol ("ESI Protocol"), the Parties will submit separate proposals. The Parties anticipate that the ESI Protocol will contain the following features:

(a) Metadata Fields. The Parties anticipate the ESI Protocol will require production of electronically stored documents to contain the following metadata, when available: Custodian, File Name, Subject, From, To, CC, BCC, Date, family information. The ESI Protocol may require additional metadata, and the Parties reserve the right to modify ESI related provisions contained herein.

(b) Privilege Logs. The ESI Protocol shall specify the content and timing of privilege logs. The Parties agree that communications between the any Party and its outside counsel or work product generated on and after January 7, 2025 need not be logged.

(c) Naming Convention for Plaintiff Productions. The ESI Protocol will specify naming conventions for Individual Plaintiff Fact Sheets, Liability Questionnaires, Damages Questionnaires, and Document Checklists, and Bates numbering for Individual Plaintiff document productions.

C. Plaintiff Document Repository

Individual Plaintiffs and Subrogation Plaintiffs will maintain a shared online Liability-Only Document Repository on Everlaw (the "Liability-Only Repository). The Liability-Only Repository will contain copies of all documents produced by any Party or third party related to liability issues in the Palisades Fire Litigation. The documents will be maintained by Plaintiffs' third-party administrator company in the native format and will be text-searchable (i.e., OCRed). The third-party administrator company shall upload each document in the Liability-Only Repository. All documents produced will comply with the terms of the ESI Protocol.

XI. PROTECTED COMMUNICATIONS

The Court recognizes that cooperation among counsel and the Parties is essential for the orderly and expeditious resolution of the Action. The Parties agree that the following communications shall be presumptively subject to California's common interest doctrine, and thus shall not waive the attorney-client privilege or the protection afforded to an attorney's work product: (1) communications between and among counsel for the Individual Plaintiffs, Subrogation Plaintiffs and Public Entity Plaintiffs relating to actions undertaken by such Parties against Defendants/Cross-Defendants and (2) communications between and among counsel for Defendants/Cross-Defendants relating to this litigation.

Nothing contained in this provision shall be construed to limit the rights of any Party or counsel to assert the attorney-client privilege or attorney work-product doctrine, nor to challenge such an assertion. To be clear, nothing in this provision shall be construed to expand the scope or protection of attorney-client privileged or attorney work-product protection. As among the Parties to these related actions, the fact of communication among Plaintiffs or Defendants/Cross-Defendants, pursuant to this paragraph, shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct, nor shall it constitute evidence of approval or ratification of any allegedly wrongful conduct by any other Party.

XII. PRESERVATION OF EVIDENCE

The Parties are cognizant of their obligations to preserve material under California Law, and are taking reasonable steps to fulfill those obligations.

XIII. DISCOVERY DISPUTE RESOLUTION

Parties agree without the need for a stipulation to use their best efforts to meet and confer remotely or in person to resolve any discovery disputes. Conferences by Zoom, or other videoconferencing methods, or telephone may be conducted when appropriate.

Parties also agree without the need for a stipulation that once the Parties have met and conferred and reached an impasse, they shall notify the Court in accordance with the Court's informal discovery conference protocols and procedures. A Party need not obtain permission from the other to declare an impasse, so long as one good faith meet and confer session has been held.

XIV. EXPERT WITNESSES

Notwithstanding the Code of Civil Procedure or the Rules of Court:

1. An expert described in Code of Civil Procedure Section 2034.210(b) whose deposition is noticed shall, no later than five court days before his or her deposition, produce any materials or category of materials, including electronically stored information, called for by the deposition notice, except to the extent the Parties have agreed that such materials are not subject to production as set out in this Section or otherwise.

2. Neither a Party nor testifying expert witness need produce or disclose drafts of any report or disclosure prepared by the testifying expert witness, regardless of the form in which the draft is recorded.

3. Neither a Party nor testifying expert witness need produce or disclose communications between the Party's attorney and the testifying expert witness, regardless of the form of the communications, except to the extent that the communications: (i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that the Party's attorney provided and that the expert relied upon in forming the opinions to be expressed; or (iii) identify assumptions that the Party's attorney provided and that the expert relied upon in forming the opinions to be expressed.

4. This order does not modify the scope or application of any work product protection, or any other privilege, except as they may pertain to expert witnesses, and only to the extent stated.

IT IS SO ORDERED.

Dated: March 26, 2026

Samantha Jessner/Judge

Honorable Samantha Jessner
Judge of the Superior Court

Exhibit A – List of Cases

As of March 16, 2026; subject to change.

Caption	Case No.
Grigsby, et al. v. City of Los Angeles, et al.	25STCV00832
Pratt, et al. v. City of Los Angeles, et al.	25STCV01720
Gonzalez, et al. v. Los Angeles Department of Water and Power, et al.	25STCV01325
Kohanim v. Los Angeles Department of Water and Power, et al.	25STCV01074
Angeledes v. City of Los Angeles, et al.	25STCV02616
Csombo, et al. v. City of Los Angeles, et al.	25STCV03587
Sammartino, et al. v. City of Los Angeles, et al.	25STCV04627
Afshar, et al. v. City of Los Angeles, et al.	25STCV06359
Holzman, et al. v. City of Los Angeles, et al.	25STCV07152
Hinds, et al. v. City of Los Angeles, et al.	25STCV07449
Parodi, et al. v. City of Los Angeles, et al.	25STCV07459
Boyle Law PC, et al. v. City of Los Angeles, et al.	25STCV08248
De Robertis, et al. v. City of Los Angeles, et al.	25STCV07863
Helmintoller, et al. v. City of Los Angeles, et al.	25STCV08053
Perkal, et al. v. City of Los Angeles, et al.	25STCV08363
AFN Development, et al. v. City of Los Angeles, et al.	25STCV08270
Smith, et al. v. City of Los Angeles, et al.	25STCV08564
Marr, et al. v. City of Los Angeles, et al.	25STCV09869
Morrissey, et al. v. City of Los Angeles, et al.	25STCV09858
Lippin, et al. v. City of Los Angeles, et al.	25STCV10322
Lobl, et al. v. City of Los Angeles, et al.	25STCV10479
Laurient, et al. v. City of Los Angeles, et al.	25STCV10431
Silver, et al. v. City of Los Angeles, et al.	25STCV10609
Schwartz, et al. v. City of Los Angeles, et al.	25STCV11012
Sallus, et al. v. City of Los Angeles, et al.	25STCV11311
McCormick, et al. v. City of Los Angeles, et al.	25STCV11452
Shipley v. LADWP, et al.	25SMCV01798
Roberts v. LADWP, et al.	25SMCV01795
Golpa v. LADWP, et al.	25SMCV01797
Amaya v. LADWP, et al.	25SMCV01801
Gonzales v. LADWP, et al.	25SMCV01794
Steiner, et al. v. LADWP, et al.	25SMCV01800
Sanchez v. LADWP, et al.	25SMCV01796
Gandhi, et al. v. City of Los Angeles, et al.	25STCV11721
Aston, et al. v. City of Los Angeles, et al.	25STCV13368
Parikh, et al. v. City of Los Angeles, et al.	25STCV12335
Carroll, et al. v. City of Los Angeles, et al.	25STCV12780
Grant, et al. v. City of Los Angeles, et al.	25STCV12779
Baldwin, et al. v. City of Los Angeles, et al.	25STCV14743
Onofre-Vasquez, et al. v. City of Los Angeles, et al.	25STCV13368
Janneck, et al. v. City of Los Angeles, et al.	25STCV14020
Kern, et al. v. The City of Los Angeles, et al.	25STCV13967
Raskin, et al. v. City of Los Angeles, et al.	25STCV14098

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Abrahams, et al. v. City of Los Angeles, et al.	25STCV15180
Adams, et al. v. City of Los Angeles, et al.	25STCV15118
Cabe, et al. v. City of Los Angeles, et al.	25STCV15291
Bird, et al. v. City of Los Angeles, et al.	25STCV15780
Thompson, et al. v. City of Los Angeles, et al.	25STCV15417
S. Silver, et al. v. City of Los Angeles, et al.	25STCV15521
Klimaszewski, et al. v. City of Los Angeles, et al.	25STCV16802
Oswald, et al. v. City of Los Angeles, et al.	25STCV16756
Evans, et al. v. City of Los Angeles, et al.	25STCV17087
Stefanis v. City of Los Angeles, et al.	25STCV17629
Hoffman, et al. v. City of Los Angeles, et al.	25STCV20231
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Adhami, et al. v. City of Los Angeles, et al.	25STCV24661
Colmenares, et al. v. City of Los Angeles, et al.	25STCV24662
Gauri, et al. v. City of Los Angeles, et al.	25STCV24708
Lamore, et al. v. City of Los Angeles, et al.	25STCV24712
Nelson, et al. v. City of Los Angeles, et al.	25STCV24714
Tamamian, et al. v. City of Los Angeles, et al.	25STCV24732
Booke, et al. v. LADWP, et al.	25SMCV03966
Amar, et al. v. City of Los Angeles, et al.	25STCV25558
Diermenjian, et al. v. City of Los Angeles, et al.	25STCV26230
Darvish, et al. v. City of Los Angeles, et al.	25STCV29260
Mochizuki, et al. v. City of Los Angeles, et al.	25STCV29265
Lusinchi, et al. v. City of Los Angeles et al.	25STCV32461
Turner, et al. v. City of Los Angeles, et al.	25STCV32533
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Schoenberg, E.R., et al. v. State of California, et al.	25STCV23198
Petropoulos v. City of Los Angeles, et al.	25TSCV33190
Makoff, et al. v. City of Los Angeles, et al.	25STCV33183
Schoenberg, C., et al. v. City of Los Angeles, et al.	25STCV33234
Czernin v. City of Los Angeles, et al.	25STCV33241
Schoenberg, L., et al. v. City of Los Angeles, et al.	25STCV33174
Kellen, et al. v. City of Los Angeles, et al.	25STCV33480
Schlei, et al. v. City of Los Angeles, et al.	25STCV33435
Ephraim, et al. v. City of Los Angeles, et al.	25STCV33353
Feuerlicht, et al. v. City of Los Angeles, et al.	25STCV33584
Schoenberg, F., et al. v. City of Los Angeles, et al.	25STCV33545
Port, et al. v. City of Los Angeles, et al.	25STCV33620
Afsar, et al. v. City of Los Angeles, et al.	25SMCV06091

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Anderson, et al. v. City of Los Angeles, et al.	25STCV34345
Kraft, et al. v. City of Los Angeles, et al.	25SMCV05922
Lujan, et al. v. City of Los Angeles, et al.	25STCV35582
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Forrest, et al. v. City of Los Angeles, et al.	25STCV35920
Fisher, et al. v. City of Los Angeles, et al.	25STCV36417
Aflalo, et al. v. City of Los Angeles, et al.	25STCV36436
Deiter, et al. v. City of Los Angeles, et al.	25STCV36476
Aurora Point, LLC v. City of Los Angeles, et al.	25SMCV06673
Orion Indemnity Company, et al. v. City of Los Angeles, et al.	25STCV37686
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Minium, et al. v. City of Los Angeles, et al.	25STCV38572
Finocchio, et al. v. City of Los Angeles, et al.	25STCV37646
Andron, et al. v. City of Los Angeles, et al	25STCV37263
Xie, et al. v. City of Los Angeles, et al	25STCV37625
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Seltzer, et al. v. City of Los Angeles, et al	25STCV37294
Burke, et al. v. City of Los Angeles, et al.	25STCV37403
Mc Leod, et al. v. City of Los Angeles, et al	25STCV37785
Bachner, et al. v. City of Los Angeles, et al	25STCV37927
Rush Air Services v. City of Los Angeles, et al.	25STCV37663
Kho, et al. v. City of Los Angeles, et al.	25STCV38179
Jones, et al. v. City of Los Angeles, et al.	25STCV38381
Murray, et al. v. City of Los Angeles, et al.	25STCV38563
Abrams, et al. v. City of Los Angeles, et al.	255STCV38584
Gilbert, et al. v. State of California, et al.	5STCV38530
Gundlach, et al. v. City of Los Angeles, et al.	25STCV37807
Valentine, et al. v. City of Los Angeles, et al.	25STCV37407
Kerr, et al. v. City of Los Angeles, et al.	25STCV37526
Rockwell, et al. v. City of Los Angeles, et al.	25STCV37501
Mackie, et al. v. City of Los Angeles, et al.	25STCV38388
Wagner, et al. v. City of Los Angeles, et al.	25STCV38596
Elliott, et al. v. City of Los Angeles, et al.	25STCV36689
Boren, et al. v. City of Los Angeles, et al.	25STCV38594
Clemens, et al. v. City of Los Angeles, et al.	25STCV38327
Jernigan, et al. v. City of Los Angeles, et al.	25STCV38054
Spiller, et al. v. City of Los Angeles, et al.	25STCV37910
Lichtenberg, et al. v. City of Los Angeles, et al.	25STCV37971
Rand-Lewis, et al. v. City of Los Angeles, et al.	25STCV38642
Baker, et al. v. City of Los Angeles, et al.	25STCV38592
Sykes, et al. v. City of Los Angeles, et al.	25STCV38481
Boich, et al. v. City of Los Angeles, et al.	25STCV38716
Ahern, et al. v. City of Los Angeles, et al.	25STCV38458
California Fair Plan Association v. City of Los Angeles, et al.	25STCV37770
Las Brisas HOA, et al. v. City of Los Angeles, et al.	25STCV38485

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DWellGood, LLC, et al. v. City of Los Angeles, et al.	25STCV38588
Chu, et al. v. City of Los Angeles, et al.	25STCV38162
Aldrovandi, et al. v. City of Los Angeles, et al.	25STCV38673
O'Neill, et al. v. City of Los Angeles, et al.	25STCV37898
Tchakerian, et al. v. City of Los Angeles, et al.	25STCV38690
Gabayan, et al. v. City of Los Angeles, et al.	25STCV38737
Aldon, et al. v. City of Los Angeles, et al.	25STCV38641
Braveman, et al. v. City of Los Angeles, et al.	25STCV38612
Venkov, et al. v. City of Los Angeles, et al.	25STCV37674
Alvarenga, et al. v. City of Los Angeles, et al.	26STCV00844
Stipanovich, et al. v. City of Los Angeles, et al.	25SMCV06829
Champion, et al. v. City of Los Angeles, et al.	25STCV38334
Keighley, et al. v. City of Los Angeles, et al.	25STCV38631
Landau, et al. v. City of Los Angeles, et al.	25STCV38765
Saget Living Trust, et al. v. City of Los Angeles, et al.	26STCV01259
Sunset Housing Solutions, L.P. et al. v. City of Los Angeles, et al.	26STCV01506
Alarab, et al. v. City of Los Angeles, et al.	25STCV38685
Michelle and David Taub Family Trust, et al. v. City of Los Angeles, et al.	25STCV38680
Alpert, et al. v. City of Los Angeles, et al.	25STCV38764
Brumbach, et al. v. City of Los Angeles, et al.	26STCV01019
Boechat, et al. v. City of Los Angeles, et al.	26STCV01015
Bar, et al. v. City of Los Angeles, et al.	25STCV38692
Abu Shanab, et al. v. City of Los Angeles, et al.	25STCV38722
Hartford Fire Insurance Company v. Los Angeles Department of Water and Power	26CHCV00159
Fishman, et al. v. Los Angeles Department of Water and Power	26CHCV00144
Kovner, et al. v. City of Los Angeles, et al.	26STCV01575
Troum, et al. v. City of Los Angeles, et al.	26STCV00707
Harlan v. City of Los Angeles, et al.	26SMCV00970
Babcock, et al. v. City of Los Angeles, et al.	25STCV38703
Haden, et al. v. City of Los Angeles, et al.	25STCV38766
Baum, et al. v. City of Los Angeles, et al.	25STCV38781
Ameli, et al. v. City of Los Angeles, et al.	25STCV38833
Branson-Clark, et al. v. City of Los Angeles, et al.	26STCV01596
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Davies, et al. v. City of Los Angeles, et al.	26STCV00883
Durghalli, et al. v. City of Los Angeles, et al.	26STCV00928
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Engel, et al. v. City of Los Angeles, et al.	26STCV00547
Farmer v. City of Los Angeles, et al.	26STCV00550
Giess, et al. v. City of Los Angeles, et al.	26STCV00563
Hoiles, et al. v. City of Los Angeles, et al.	26STCV00569
Shirazi, et al. v. City of Los Angeles, et al.	25STCV38876
Holiday v. City of Los Angeles, et al.	26STCV00573
Cassidy, et al. v. City of Los Angeles, et al.	26STCV04097
Jacob, et al. v. City of Los Angeles, et al.	26STCV00671

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Horowitz, et al. v. City of Los Angeles, et al.	26STCV00588
Idelson, et al. v. City of Los Angeles, et al.	26STCV00593
Kaler, et. al v. City of Los Angeles, et al.	26STCV00601
Keshtkar, et al. v. City of Los Angeles, et al.	26STCV00605
Kling v. City of Los Angeles, et al.	26STCV00610
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Lattimore, et al. v. City of Los Angeles, et al.	26STCV00621
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Lemel, et al. v. City of Los Angeles, et al.	26STCV00627
Mahallati, et al. v. City of Los Angeles, et al.	26STCV00631
Blake, et al. v. City of Los Angeles, et al.	26STCV00635
Marsh, et al. v. City of Los Angeles, et al.	26STCV00640
Mashamesh v. City of Los Angeles, et al.	26STCV00692
Pittluck, et al. v. City of Los Angeles, et al.	26STCV00697
Ryan-Foster, et al. v. City of Los Angeles, et al.	26STCV01210
Aflatouni, et al. v. City of Los Angeles, et al.	25STCV38623
Alexander, et al. v. City of Los Angeles, et al.	25STCV38629
Hine, et al. v. City of Los Angeles, et al.	26STCV01286
Besson, et al. v. California Fair Plan Association, et al.	26STCV00708
Moore, et al. v. City of Los Angeles, et al.	26STCV00727
Armandpour, et al. v. City of Los Angeles, et al.	25STCV38632
Chesne, et al. v. City of Los Angeles, et al.	25STCV38635
O'Connell, et al. v. City of Los Angeles, et al.	26STCV00729
Sangerman, et al. v. City of Los Angeles, et al.	26STCV00719
Prieto, et al. v. City of Los Angeles, et al.	26STCV00733
Spezzotti, et al. v. City of Los Angeles, et al.	26STCV00507
Rafique v. City of Los Angeles, et al.	26STCV01008
Connolly, et al. v. City of Los Angeles, et al.	26STCV00759
O'Donnell, et al. v. City of Los Angeles, et al.	26STCV01817
Entin, et al. v. City of Los Angeles, et al.	25STCV38614
Vodolazhskaya, et al. v. City of Los Angeles, et al.	26STCV01091
Goetz, et al. v. City of Los Angeles, et al.	26STCV01126
Burelli, et al. v. City of Los Angeles, et al.	26STCV00513
Fay, et al. v. City of Los Angeles, et al.	26STCV00527
Bateman, et al. v. City of Los Angeles, et al.	26STCV01007
Lari-Joni, et al. v. City of Los Angeles, et al.	26STCV01339
Cohen, et al. v. City of Los Angeles, et al.	26STCV01335
Thrasher, et al. v. City of Los Angeles, et al.	26STCV01026
Songhorian, et al. v. City of Los Angeles, et al.	26STCV01244
Vaughn, et al. v. City of Los Angeles, et al.	26STCV01268
Wong, et al. v. City of Los Angeles, et al.	26STCV01272
Wisner, et al. v. State of California, et al.	26STCV00422
Evans, et al. v. City of Los Angeles, et al.	25STCV17087
Yonekura, et al. v. City of Los Angeles, et al.	26STCV01037
Blanchard, et al. v. City of Los Angeles, et al.	26STCV01042
Juha, et al. v. City of Los Angeles, et al.	26STCV01045
Ryan, et al. v. City of Los Angeles, et al.	26STCV01048

Caption	Case No.
Kanner, et al. v. City of Los Angeles, et al.	26STCV01278
Salo, et al. v. City of Los Angeles, et al.	26STCV01369
Heidt, et al. v. City of Los Angeles, et al.	26STCV01337
Lipsky, et al. v. City of Los Angeles, et al.	26STCV01199
Nichols, et al. v. City of Los Angeles, et al.	26STCV01220
Jaklitsch, et al. v. City of Los Angeles, et al.	26STCV01224
Godsey, et al. v. City of Los Angeles, et al.	26STCV01070
Cutter, et al. v. City of Los Angeles, et al.	26STCV01073
Torin, et al. v. City of Los Angeles, et al.	26STCV00646
Wilson, et al. v. City of Los Angeles, et al.	26STCV01077
Songhorian, et al. v. City of Los Angeles, et al.	26STCV01044
Luckinbill, et al. v. City of Los Angeles, et al.	26STCV01081
Sheard, et al. v. City of Los Angeles, et al.	26STCV01084
Ashwood, et al. v. City of Los Angeles, et al.	26STCV01086
Weber v. City of Los Angeles, et al.	26STCV01093
Wenger, et al. v. City of Los Angeles, et al.	26STCV01096
Egbewunmi, et al. v. City of Los Angeles, et al.	26STCV01103
Lang, et al. v. City of Los Angeles, et al.	26STCV00920
Sack, et al. v. City of Los Angeles, et al.	26STCV00924
Vo, et al. v. City of Los Angeles, et al.	26STCV00968
Eastman, et al. v. City of Los Angeles, et al.	26STCV00974
Shafai, et al. v. City of Los Angeles, et al.	25STCV38627
Devane, et al. v. City of Los Angeles, et al.	26STCV00690
Tevlovski, et al. v. City of Los Angeles, et al.	26STCV00983
McCune, et al. v. City of Los Angeles, et al.	26STCV01305
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Rovello, et al. v. City of Los Angeles, et al.	26STCV00987
Selna, et al. v. City of Los Angeles, et al.	26STCV01284
Nader v. City of Los Angeles, et al.	26STCV01189
Kamin, et al. v. City of Los Angeles, et al.	26STCV01146
Estrada, et al. v. City of Los Angeles, et al.	26STCV01161
Mestres, et al. v. City of Los Angeles, et al.	26STCV01363
Cawood Butler, et al. v. City of Los Angeles, et al.	26STCV01425
Friedman, et al. v. City of Los Angeles, et al.	26STCV01522
Rappaport, et al. v. City of Los Angeles, et al.	26STCV01433
Garrett, et al. v. City of Los Angeles, et al.	26STCV01438
Nitti, et al. v. City of Los Angeles, et al.	26STCV01450
Stevenson, et al. v. City of Los Angeles, et al.	26STCV01371
Rocker, et al. v. City of Los Angeles, et al.	26STCV01654
Barad, et al. v. City of Los Angeles, et al.	26STCV01515
Mehra, et al. v. City of Los Angeles, et al.	26STCV01529
Nickels, et al. v. City of Los Angeles, et al.	26STCV01535
Mallow, et al. v. City of Los Angeles, et al.	26STCV01737
Martin, et al. v. City of Los Angeles, et al.	26STCV01731
Ryan-Lopez, et al. v. City of Los Angeles, et al.	26STCV01767
Brew, et al. v. City of Los Angeles, et al.	26STCV01686
Vista Del Mar Townhomes Association, et al. v. City of Los Angeles, et al.	26STCV01689

Caption	Case No.
Rhames, et al. v. City of Los Angeles, et al.	26STCV01682
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Evans, et al. v. City of Los Angeles, et al.	26STCV01701
Nash, et al. v. City of Los Angeles, et al.	26STCV01706
Bastendorf, et al. v. City of Los Angeles, et al.	25STCV38729
McMillan III, et al. v. City of Los Angeles, et al.	26STCV01710
Kervin, et al. v. City of Los Angeles, et al.	26STCV01720
Roostaeian, et al. v. City of Los Angeles, et al.	26STCV01792
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Ogle, et al. v. City of Los Angeles, et al.	26STCV01801
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Almanza, et al. v. City of Los Angeles, et al.	26STCV01924
Pokrywka, et al. v. City of Los Angeles, et al.	26STCV01764
Perez, et al. v. City of Los Angeles, et al.	26STCV01831
Gipsman, et al. v. City of Los Angeles, et al.	26STCV01736
Mallen, et al. v. City of Los Angeles, et al.	26STCV01815
Meller, et al. v. City of Los Angeles, et al.	26STCV01832
Ruhman, et al. v. City of Los Angeles, et al.	26STCV01931
Mass, et al. v. City of Los Angeles, et al.	26STCV01798
Rodmand, et al. v. City of Los Angeles, et al.	26STCV01802
Karadjian, et al. v. City of Los Angeles, et al.	26STCV02754
Adler, et al. v. City of Los Angeles, et al.	26STCV01810
Abrahams, et al. v. City of Los Angeles, et al.	26STCV01828
Dersh, et al. v. City of Los Angeles, et al.	26STCV01893
Marks, et al. v. City of Los Angeles, et al.	26STCV01852
Landsberg, et al. v. City of Los Angeles, et al.	26STCV01882
Brittain, et al. v. City of Los Angeles, et al.	26STCV01877
Goldstein, et al. v. City of Los Angeles, et al.	26STCV01871
Pfizenmaier, et al. v. City of Los Angeles, et al.	26STCV01899
Clearmountain, et al. v. City of Los Angeles, et al.	26STCV01910
Forbath, et al. v. City of Los Angeles, et al.	26STCV02057
Rothman, et al. v. City of Los Angeles, et al.	26STCV02215
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American Family Connect Property and Casualty Insurance Company, et al. v. City of Los Angeles, et al.	26STCV04532
AGCS Marine Insurance Company, et al. v. City of Los Angeles, et al.	26STCV04508
Arch Specialty Insurance Company, et al. v. City of Los Angeles, et al.	26STCV04459
Great Lakes Insurance SE, et al. v. City of Los Angeles, et al.	26STCV03157
Faynsod, et al. v. City of Los Angeles, et al.	26STCV03141
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Peters, et al. v. City of Los Angeles, et al.	26STCV0e119
Xu, et al. v. City of Los Angeles, et al.	26STCV01863
City of Malibu v. State of California, et al.	26STCV05031
Srinivasan, et al. v. City of Los Angeles, et al.	26STCV03351
Boltiansky, et al. v. City of Los Angeles, et al.	26STCV03416
Standish, et al. v. City of Los Angeles, et al.	26STCV03372
Price, et al. v. City of Los Angeles, et al.	26STCV03114

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A.K., a minor v. City of Los Angeles, et al.	26STCV01159
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21247 PCH, LLC, et al. v. AT&T, et al.	25STCV38573
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Ures, et al. v. City of Los Angeles, et al.	25STCV38755
Barrymore, et al. v. City of Los Angeles, et al.	25STCV38719
Ghane Family Trust v. City of Los Angeles, et al.	26STCV00758
Ghane Family Trust v. City of Los Angeles, et al.	26STCV01263
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Tucker v. City of Los Angeles, et al.	26STCV00711
Tucker v. City of Los Angeles, et al.	26STCV01309
Cohen, I. J., et al. v. City of Los Angeles, et al.	25STCV38795
Schwarz, et al. v. City of Los Angeles, et al.	25STCV38801
Blake v. City of Los Angeles, et al.	26STCV00811
Markoff, et al. v. City of Los Angeles, et al.	25STCV38608
O'Sullivan, et al. v. City of Los Angeles, et al.	25STCV38613
Miller, et al. v. City of Los Angeles, et al.	25STCV38589
Evtuhov, et al. v. City of Los Angeles, et al.	25STCV38636
Baldecchi, et al. v. City of Los Angeles, et al.	25STCV38648
Khodayari, et al. v. City of Los Angeles, et al.	25STCV38468
Lurie v. City of Los Angeles, et al.	26STCV01059
Furst v. City of Los Angeles, et al.	26STCV00984
Lake/Major Productions, Movie Maven v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	26STCV01503
Ovsiowitz Revocable Family Trust v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	25STCV38854
Alarcon, et al. v. City of Los Angeles, et al.	25STCV38587
The Johnson Haberfield Trust Dated May 16, 2016 v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	25STCV38691
Djalali, et al. v. City of Los Angeles, et al.	25STCV38452
Alti, et al. v. City of Los Angeles, et al.	25STCV38639
Morris, B., et al. v. City of Los Angeles, et al.	25STCV38320
Clemens, R. v. City of Los Angeles, et al.	25STCV38609
Chiamulon v. City of Los Angeles, et al.	25STCV38646
Albert, et al. v. City of Los Angeles, et al.	25STCV38862
Dam, et al. v. City of Los Angeles, et al.	25STCV38768
Navon v. City of Los Angeles, et al.	25STCV38784
Macdonald, R. v. City of Los Angeles, et al.	25STCV38787
Kellen, J. v. City of Los Angeles, et al.	25STCV38812

Caption	Case No.
Harwood v. City of Los Angeles, et al.	25STCV38816
Guy Barlow, as trustee of The John Neville Barlow and Francies Margaret Barlow 2021 revocable family trust, et al. v. City of Los Angeles, et al.	25STCV38822
Bakhani, et al. v. City of Los Angeles, et al.	25STCV38859
Cole, C., et al. v. City of Los Angeles, et al.	25STCV38825
Agha, et al. v. City of Los Angeles, et al.	25STCV38864
Lasky, et al. v. City of Los Angeles, et al.	25STCV38863
Ruocco, et al. v. City of Los Angeles, et al.	25STCV38881
Becker, et al. v. City of Los Angeles, et al.	25STCV38843
Calkins, et al. v. City of Los Angeles, et al.	25STCV38780
Ardalan, et al. v. City of Los Angeles, et al.	25STCV38873
McGeagh, et al. v. City of Los Angeles, et al.	26STCV01638
Goldstein, D., et al. v. City of Los Angeles, et al.	25STCV38815
Alexander, E., et al. v. City of Los Angeles, et al.	26STCV01629
Bass, et al. v. City of Los Angeles, et al.	25STCV38841
Kim, K., et al. v. City of Los Angeles, et al.	25STCV38804
Smith, D., et al. v. City of Los Angeles, et al.	26STCV01611
Lerner, et al. v. City of Los Angeles, et al.	26STCV01603
Bradley, et al. v. City of Los Angeles, et al.	25STCV38810
Lane, et al. v. City of Los Angeles, et al.	26STCV01591
Druss, et al. v. City of Los Angeles, et al.	25STCV38807
Sturgis, et al. v. City of Los Angeles, et al.	25STCV38436
Farasatpour, et al. v. City of Los Angeles, et al.	25STCV38819
Relles, et al. v. City of Los Angeles, et al.	25STCV38733
Howarth, et al. v. City of Los Angeles, et al.	25STCV38798
Applebaum, et al. v. City of Los Angeles, et al.	26STCV00850
Babashi v. City of Los Angeles, et al.	26STCV00858
Bresnahan, et al. v. City of Los Angeles, et al.	26STCV01016
Griffiths, et al. v. City of Los Angeles, et al.	25STCV38361
J.M., a minor, by and through Adrian Mardyks, as guardian ad litem v. City of Los Angeles, et al.	26STCV00778
Rafique v. City of Los Angeles, et al.	26STCV00735
Trust of Annette Rossilli, et al. v. City of Los Angeles, et al.	26STCV00763
Sykes, E., et al. v. City of Los Angeles, et al.	26STCV01266
C.C., et al. v. City of Los Angeles, et al.	26STCV00664
Cohen, J., et al. v. City of Los Angeles, et al.	26STCV00795
Riach, et al. v. City of Los Angeles, et al.	26STCV01671
Scilacci Jr., et al. v. City of Los Angeles, et al.	26STCV01958
Gruen, et al. v. City of Los Angeles, et al.	26STCV02145
Gallagher, et al. v. City of Los Angeles, et al.	26STCV02189
Londono, et al. v. City of Los Angeles, et al.	26STCV02206
Williams, T., et al. v. City of Los Angeles, et al.	26STCV02207
Hafford, et al. v. City of Los Angeles, et al.	26STCV02295

Caption	Case No.
Archipley, et al. v. City of Los Angeles, et al.	26STCV02226
Gould, et al. v. City of Los Angeles, et al.	26STCV02267
Schiro, et al. v. City of Los Angeles, et al.	26STCV02271
Nudleman, et al. v. City of Los Angeles, et al.	26STCV02277
Kanner, et al. v. City of Los Angeles, et al.	26STCV02284
Ofiesh, et al. v. City of Los Angeles, et al.	26STCV02384
Seibel v. City of Los Angeles, et al.	26STCV02467
Skiba, et al. v. City of Los Angeles, et al.	26STCV02407
Ponty, et al. v. City of Los Angeles, et al.	26STCV02419
Elliott, K., et al. v. City of Los Angeles, et al.	26STCV02429
Griffith, M., et al. v. City of Los Angeles, et al.	26STCV02444
Awrabi, et al. v. City of Los Angeles, et al.	26STCV02491
Light, et al. v. City of Los Angeles, et al.	26STCV02510
Banks, et al. v. City of Los Angeles, et al.	26STCV02613
Sugarman, et al. v. City of Los Angeles, et al.	26STCV02678
Ryan, D. A., et al. v. City of Los Angeles, et al.	26STCV02529
Garcia, J. v. City of Los Angeles, et al.	26STCV02651
Kunkle, et al. v. City of Los Angeles, et al.	26STCV02556
Svendsen, et al. v. City of Los Angeles, et al.	26STCV02538
Keohohou v. City of Los Angeles, et al.	26STCV02623
Karadjian, et al. v. City of Los Angeles, et al.	26STCV02706
McGuire, C., et al. v. City of Los Angeles, et al.	26STCV02560
Grisby, et al. v. City of Los Angeles, et al.	26STCV02573
Shaw, et al. v. City of Los Angeles, et al.	26STCV02594
Brown, J. , et al. v. City of Los Angeles, et al.	26STCV02502
Ali, A., et al. v. City of Los Angeles, et al.	26STCV02733
Panajotovic, et al. v. City of Los Angeles, et al.	26STCV02739
Anderson, D. v. City of Los Angeles, et al.	26STCV02748
Hutton, et al. v. City of Los Angeles, et al.	26STCV02765
Davis, et al. v. City of Los Angeles, et al.	26STCV02876
Collins, P., et al. v. City of Los Angeles, et al.	26STCV02969
Rogers, et al. v. City of Los Angeles, et al.	26STCV02848
Chong, et al. v. City of Los Angeles, et al.	26STCV02855
Polidoro, et al. v. City of Los Angeles, et al.	26STCV02926
Boghosian, et al. v. City of Los Angeles, et al.	26STCV02871
Rand, A., et al. v. City of Los Angeles, et al.	26STCV02894
Higbie, et al. v. City of Los Angeles, et al.	26STCV03010
Lavia Jr., et al. v. City of Los Angeles, et al.	26STCV03000
Sarkisian, et al. v. City of Los Angeles, et al.	26STCV03453
Baird v. City of Los Angeles, et al.	26STCV02980
Allen-Attar, et al. v. City of Los Angeles, et al.	26STCV03030
Knapp, et al. v. City of Los Angeles, et al.	26STCV03052

Caption	Case No.
Johnson, L., et al. v. City of Los Angeles, et al.	26STCV03073
Andrews, E., et al. v. City of Los Angeles, et al.	26STCV02912
Brill, et al. v. City of Los Angeles, et al.	26STCV02942
Turtle, et al. v. City of Los Angeles, et al.	26STCV02955
Stack, et al. v. City of Los Angeles, et al.	26STCV02961
McConnell, et al. v. City of Los Angeles, et al.	26STCV03302
Geller, et al. v. City of Los Angeles, et al.	26STCV03136
Berman, et al. v. City of Los Angeles, et al.	26STCV03198
Bowen, et al. v. City of Los Angeles, et al.	26STCV03192
Kennedy, et al. v. City of Los Angeles, et al.	26STCV03183
Crystal, et al. v. City of Los Angeles, et al.	26STCV03174
Klein, et al. v. City of Los Angeles, et al.	26STCV03145
McInerney , et al. v. City of Los Angeles, et al.	26STCV03167
Fishkin, et al. v. City of Los Angeles, et al.	26STCV03160
Kraber, et al. v. City of Los Angeles, et al.	26STCV03338
Casement, et al. v. City of Los Angeles, et al.	26STCV03333
Meredith v. City of Los Angeles, et al.	26STCV03310
Mikrut v. City of Los Angeles, et al.	26STCV03319
Hunter, A., et al. v. City of Los Angeles, et al.	26STCV03425
Thorne, C., et al. v. City of Los Angeles, et al.	26STCV03421
Curtis v. City of Los Angeles, et al.	26STCV03446
Farazha v. City of Los Angeles, et al.	26STCV03442
Eglee v. City of Los Angeles acting by and through The Los Angeles Department of Water and Power	26STCV03437
Chay-Fairty v. City of Los Angeles, et al.	26STCV03430
Call v. City of Los Angeles, et al.	26STCV03459
Lara Metzger v. City of Los Angeles, et al.	26STCV03238
Branch v. City of Los Angeles acting by and through The Los Angeles Department of Water and Power	26STCV03527
Cohen, M. v. City of Los Angeles, et al.	26STCV03420
Goldsher v. City of Los Angeles acting by and through The Los Angeles Department of Water and Power	26STCV03472
Frank v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	26STCV03406
Lang v. City of Los Angeles, et al.	26STCV03486
Baffa v. City of Los Angeles, et al.	26STCV03492
Gottlieb v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	26STCV03501
Carey v. City of Los Angeles, et al.	26STCV03526
Smigla v. City of Los Angeles, et al.	26STCV03267
Rene Bell v. City of Los Angeles acting through the Los Angeles Department of Water and Power	26STCV03577
Bari v. City of Los Angeles, et al.	26STCV03592
Becker v. City of Los Angeles, et al.	26STCV03282

Caption	Case No.
Sharpe v. City of Los Angeles, et al.	26STCV03292
Wunderlich Schlaff v. City of Los Angeles, et al.	26STCV03830
Assouad v. City of Los Angeles, et al.	26STCV03966
Baram, et al. v. City of Los Angeles, et al.	26STCV03892
Balakrishnan v. City of Los Angeles, et al.	26STCV03821
Gordon v. City of Los Angeles, et al.	26STCV03775
Grove v. City of Los Angeles, et al.	26STCV03994
Terman v. City of Los Angeles, et al.	26STCV03986
Ginestro v. City of Los Angeles, et al.	26STCV03981
Einbinder v. City of Los Angeles, et al.	26STCV03726
Farzin Kabaei, et al. v. City of Los Angeles, et al.	26STCV03599
Anna Hsu, et al. v. City of Los Angeles, et al.	26STCV03544
Achen v. City of Los Angeles, et al.	26STCV03967
Tang v. City of Los Angeles, et al.	26STCV03959
Fisher, F. v. City of Los Angeles, et al.	26STCV04380
Lambrecht v. City of Los Angeles, et al.	26STCV03939
Binder, T. v. City of Los Angeles, et al.	26STCV03936
Sacks, E. v. City of Los Angeles, et al.	26STCV03927
Collins, G. v. City of Los Angeles, et al.	26STCV03922
Axelrod v. City of Los Angeles, et al.	26STCV03871
Leis v. City of Los Angeles, et al.	26STCV03853
Sigworth v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power	26STCV03928
Park v. City of Los Angeles, et al.	26STCV03404
Francis, et al. v. City of Los Angeles, et al.	26STCV03951
Adler, B., et al. v. City of Los Angeles, et al.	26STCV04098
Adeyemi, et al. v. City of Los Angeles, et al.	26STCV03826
Zasloff, et al. v. City of Los Angeles, et al.	26STCV04257
Guterman, et al. v. City of Los Angeles, et al.	26STCV03955
Mortimer, et al. v. City of Los Angeles, et al.	26STCV07279
Burch, et al. v. City of Los Angeles, et al.	26STCV07466
Robert C. Mortier, special administrator of the Estate of Charles Crooks Mortimer aka Charels C. Mortimer v. City of Los Angeles, et al.	26STCV07608
Grimberg, et al. v. Department of Water and Power of Los Angeles	26SMCV00050
Ayati, et al. v. Department of Water and Power of Los Angeles	26SMCV00042
Ivener, et al. v. Department of Water and Power of Los Angeles	26SMCV00044
Weil v. Department of Water and Power of Los Angeles	26SMCV00046
Papp, et al. v. City of Los Angeles, et al.	ECU004487
Papp, et al. v. City of Los Angeles, et al.	26SMCV00085
Papp, et al. v. City of Los Angeles, et al.	26STCV00725

Exhibit B – List of Defense Counsel

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Exhibit C

LIST OF SUBROGATION CASES FILED

1. *Orion Indemnity Company, et al. v. City of Los Angeles, et al*., Case No. 25STCV37686.
2. *AGCS Marine Insurance Company, et al. v. City of Los Angeles, et al.,* Case No. 26STCV04508.
3. *American Family Connect Property and Casualty Insurance Company, et al. v. City of Los Angeles, et al.,* Case No. 26STCV04532.
4. *The Cincinnati Insurance Company, et al. v. City of Los Angeles, et al.*, Case No. 26STCV02743.
5. *California Fair Plan Association v. City of Los Angeles, et al.,* Case No. 25STCV37770.
6. *Great Lakes Insurance SE, et al. v. City of Los Angeles, et al*., Case No. 26STCV03157.
7. *Fortegra Specialty Insurance Company, et al. v. City of Los Angeles, et al*., Case No. 26STCV04154.
8. *Arch Specialty Insurance Company, et al. v. City of Los Angeles, et al.,* Case No. 26STCV04459.