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

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; APPLICATION FOR STAY OF ALL PROCEEDINGS AND/OR STAY OF DISCOVERY; AND MEMORANDUM OF POINTS AND AUTHORITIES

STAY REQUESTED BY MAY 20, 2026

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SUPERIOR COURT CASE NUMBER: 25STCV00832

APPELLANT/ PETITIONER: State of California, by and through the State of California Department of Parks and Recreation

RESPONDENT/ REAL PARTY IN INTEREST: Respondent: Super. Ct. for the County of Los Angeles RPI: Dan Grigsby, et al.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*): State of California

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 20, 2026

Aaron D. Pennekamp
(TYPE OR PRINT NAME)

/s/ Aaron D. Pennekamp
(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

Under Government Code sections 850 and 850.2, "public entities owe no duty to persons or property damaged by fire." (*People ex rel. Grijalva v. Super. Ct.* (2008) 159 Cal.App.4th 1072, 1078.) Section 850 provides that "[n]either a public entity nor a public employee is liable for failure . . . to provide fire protection service." Section 850.2 similarly provides that public entities that have "undertaken to provide fire protection service" are not "liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." The Legislature's purpose in adopting these provisions was to grant the government "broad immunity from liability for injuries resulting in connection with fire protection service." (Gov. Code, § 850, Law Revision Commission coms.; see also *Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 335 [describing the "'*broad* immunity'" in Sections 850 and 850.2, original italics].)

The superior court elected to apply Sections 850 and 850.2 differently, however. The plaintiffs in this case seek to hold the State liable for their damages stemming from the January 2025 Palisades Fire—the most destructive fire in the history of the City of Los Angeles, and among the most destructive fires in recorded California history. According to plaintiffs' complaint, that fire was the result of the reignition of smoldering embers from a smaller fire partially on public land several days earlier—a fire that the local fire department deemed "fully contained." (1 PE 109 [Master Compl. ("MC"), ¶ 65].) At bottom, plaintiffs'

theory of liability is that the State "failed to provide proper fire protection to its property." (1 PE 204 [MC, ¶ 367].)

The "sweeping" grant of governmental immunity in Sections 850 and 850.2 for fire-related damages (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 412) should have led the superior court to grant the State's demurrer. Indeed, the absence of a legal duty to provide fire protection services necessarily means there can be no tort liability stemming from the State's alleged failure to provide such services. The superior court nevertheless overruled the State's demurrer in relevant part, concluding that the parties should engage in additional factual development and summary judgment proceedings about *whether* and *how* the State could have better responded to the particular threat of smoldering embers on its property.

That decision was legal error warranting writ relief. The State's immunity defense does not depend on additional discovery concerning the Palisades Fire or the State's response to that fire. The only question relevant to the State's governmental immunity defense is whether plaintiffs' claimed injuries arise from an alleged "failure . . . to provide fire protection service" or failure to provide "sufficient personnel, equipment or other fire protection facilities." (Gov. Code, §§ 850, 850.2.) Although the answer to that question is plainly yes, the superior court's order will force the State to endure additional litigation, including costly discovery, summary judgment briefing, and perhaps trial—a situation that would, in essence, render the Legislature's chosen immunity structure meaningless. And it will unnecessarily

prolong uncertainty among all parties and the public about the State's potential liability for billions of dollars in damages. In other circumstances involving claims of governmental immunity, appellate courts have not hesitated to grant writ relief; otherwise, "the benefits of [the State's immunity] defense would be effectively lost." (*City of Stockton v. Super. Ct.* (2007) 42 Cal.4th 730, 747, fn. 14.) Indeed, the denial of governmental immunity provides one of the most compelling grounds for appellate writ review.

This Court should therefore grant the State's petition. Given the immediate prospect of additional, unnecessary discovery and litigation costs while the State's petition is pending, the State respectfully requests that the Court issue a stay of all proceedings involving the State in the superior court by May 20, 2026. And the State requests that the Court issue a writ of mandate directing the superior court to grant the State's demurrer without leave to amend.

PETITION

1. Petitioner the State of California ("the State"), by and through the California Department of Parks and Recreation, brings this petition to seek a writ of mandate, prohibition, or other appropriate relief directing the Superior Court for the County of Los Angeles to sustain, in full, the State's demurrer to the revised master complaint in *Grigsby, et al. v. City of Los Angeles, et al.* (Los Angeles County Super. Ct. No. 25STCV00832). The petition also seeks a stay of all superior court proceedings in *Grigsby* involving the State pending this

Court's determination of the petition. The basis for the State's stay request is discussed in Section IX of this petition. (See *infra*, at pp. 22-24.)[1]

I. JURISDICTION AND STANDING

2. This Court has jurisdiction under Code of Civil Procedure sections 1085 and 1103 to hear petitions for writ of mandate and prohibition that seek review of a superior court's pre-trial ruling.

3. The State has a beneficial interest in this proceeding because the respondent superior court overruled in part its demurrer raising statutory immunity defenses, thus allowing some of plaintiffs' claims against the State to proceed.

II. AUTHENTICITY OF EXHIBITS

4. All exhibits accompanying this Petition are true and correct copies of original documents on file with the respondent superior court.

5. The exhibits are incorporated herein by reference as though fully set forth in this petition and are paginated consecutively in the concurrently filed Petitioner's Exhibits

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[1] Under the governing procedural rules, pleadings of public entities like the State and its agencies "need not be verified." (Code Civ. Proc., § 446, subd. (a).) That general rule "exempts public entities from the requirement of verifying . . . a petition for a writ of mandate." (*Los Angeles County Dept. of Children & Family Services v. Super. Ct. (Paul C.)* (1998) 62 Cal.App.4th 1, 9, fn. 7; see also *Epstein v. Super. Ct.* (2011) 193 Cal.App.4th 1405, 1409 ["Ordinarily an answer to a petition for an extraordinary writ, like the petition itself, must be verified," but "no verification is required where an answering defendant is" the State or a public agency.].)

("PE"). The exhibits are referenced by their volume and, where applicable, by page number (*e.g.*, "[volume number] PE [page number]").

III. THE PARTIES

6. Petitioner the State of California is among the defendants in the underlying *Grigsby* action.

7. Respondent is the Superior Court of the State of California for the County of Los Angeles (the Honorable Samantha P. Jessner), which sustained in part and overruled in part the State's demurrer.

8. Real Parties in Interest ("plaintiffs") are individuals and other legal entities who have sued the State and other defendants in an attempt to recover their damages stemming from the Palisades Fire. (See, e.g., 1 PE 4-5 [caption listing named plaintiffs].) Plaintiffs' counsel in *Grigsby* estimates that plaintiffs exceed 10,000 individuals and/or legal entities. (See 1 PE 93 [MC, ¶ 9].)

IV. TIMELINESS

9. On February 19, 2026, the respondent superior court sustained in part and overruled in part the State's demurrer to the revised master complaint in *Grigsby*. This non-statutory petition is timely filed within sixty days of that decision. (See *Lab. & Workforce Development Agency v. Super. Ct.* (2018) 19 Cal.App.5th 12, 24 [absent statutory deadline, courts generally consider writ petitions filed within 60 days of the entry of order].)

V. PENDING APPEALS OR WRITS

10. There are currently no pending appeals in this case. On March 27, 2026, the City of Los Angeles, another defendant in the *Grigsby* action, filed a writ petition with this Court. That petition has been docketed as *City of Los Angeles v. Superior Court* (Case No. B353410).

VI. RELEVANT FACTS AND PROCEDURAL HISTORY

11. Just after midnight on January 1, 2025, a brush fire was reported in the Pacific Palisades, near Skull Rock on the Temescal Ridge Trail. (1 PE 107 [MC, ¶ 62].) This fire was named the "Lachman Fire." (*Ibid*.)

12. Shortly after 3:30 a.m. that day, the Los Angeles Fire Department ("LAFD") reported that its personnel had made significant progress in containing the Lachman Fire and—just before 5:00 a.m.—announced that the fire was fully contained. (1 PE 109 [MC, ¶ 65].) The LAFD incident report filed at 4:46 a.m. that day states: "Firefighters completed the hose line around the perimeter of the fire and it is fully contained. Some resources will be released as the mop up operation continues to ensure no flare ups. No structures damaged and no injuries reported. Fire held at eight acres. No further updates anticipated." (*Ibid*.)

13. The plaintiffs' revised master complaint does not allege that the Lachman Fire evinced any visible indication of smoke, flame, or smoldering embers in the days immediately following January 1, 2025. On the morning of January 7, 2025, however, a 911 caller reported a vegetation fire in the same general area, and LAFD again responded to the scene. (1 PE 116-117 [MC, ¶ 85].) Ultimately, the fire spread from there and

led to devastation in the Pacific Palisades and beyond. (1 PE 91, 116-117 [MC, ¶¶ 1, 85].) This second fire came to be known as the "Palisades Fire." (*Ibid.*)

14. In October 2025, the U.S. Attorney's Office for the Central District of California announced the arrest of an individual named Jonathan Rinderknecht, who has been charged with starting both the Lachman Fire and the Palisades Fire. (1 PE 113 [MC, ¶ 75 & fn. 10]; see also 1 PE 71-74 [federal indictment].) Plaintiffs allege that the Palisades Fire was a "holdover fire" from the Lachman Fire, and that the Palisades Fire ignited from a rekindling of the embers remaining from the Lachman Fire. (1 PE 113, 114-115 [MC, ¶¶ 74, 77].)

15. On January 13, 2025, plaintiffs filed their initial complaint arising out of damages they allegedly sustained as a result of the Palisades Fire. Following several rounds of amendment, plaintiffs filed their operative revised master complaint on December 1, 2025. The revised master complaint asserts 54 claims against a litany of defendants, including the State (through its Department of Parks and Recreation), the City of Los Angeles, the County of Los Angeles, various utility and telecommunications companies, a local water district, the parent organization of the Getty Villa in Pacific Palisades, and a local mobile home park. (See 1 PE 93-99 [MC, ¶¶ 11-47].) Plaintiffs' counsel estimate that the revised master complaint encompasses the legal claims of over 10,000 individuals and/or legal entities. (1 PE 93 [MC, ¶ 9].)

16. As relevant here, the revised master complaint alleged four causes of action against the State: two causes of action relating to the Lachman Fire (dangerous condition of public property and public nuisance, which are listed as counts one and three); and two causes of action relating to alleged overgrown brush on other parcels of land owned by the State (dangerous condition of public property and public nuisance, which are listed as counts two and four). (See 1 PE 203-210 [MC, ¶¶ 362-408].)

17. Plaintiffs' dangerous condition of public property claim relating to the Lachman Fire alleges that the State "failed to provide proper fire protection on its property." (1 PE 204 [MC, ¶ 367].) The revised master complaint further alleges that, between January 1 and 7, 2025, 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." (1 PE 109 [MC, ¶ 68].)

18. Plaintiffs' public nuisance claim concerning the Lachman Fire "is premised on the dangerous condition caused by the Lachman Fire [burn] scar." (2 PE 462; see also 1 PE 206-207 [MC, ¶¶ 378-390].)

19. The State filed a demurrer to the plaintiffs' revised master complaint. As relevant to the present petition, which concerns only the plaintiffs' counts related to the Lachman Fire, the demurrer argued that the complaint did not adequately allege that that Lachman Fire burn scar constituted either a

"dangerous condition of public property" within the meaning of Government Code section 835 or a public nuisance. (See 1 PE 24-27, 34-35.) The demurrer further argued that regardless of the sufficiency of plaintiffs' allegations, the State is immune from liability for those claims as a matter of law under Government Code sections 850 and 850.2. (See 1 PE 30-34, 35.) The State also demurred to the plaintiffs' counts related to overgrown brush on public property, which are not at issue in this petition. (See 1 PE 34-35.)

20. Sections 850 and 850.2 provide "broad" and "sweeping" immunity for governmental activities related to fire protection services. (See 1 PE 30-31 [quoting *Cairns*, *supra*, 62 Cal.App.4th at p. 335, and *Cochran*, *supra*, 155 Cal.App.3d at p. 413].) The State's demurrer argued that plaintiffs' theory that the State "failed to provide proper fire protection on its property" fell squarely within the scope of these immunity statutes because that theory merely challenged the adequacy of the State's response to the Lachman Fire. (1 PE 31; see also 2 PE 327 [demurrer reply citing plaintiffs' allegation at 1 PE 109 (MC, ¶ 68) that the State should have "post[ed] a fire watch" or inspected the area "with a thermal imaging camera"].)

21. Plaintiffs argued in response that Sections 850 and 850.2 apply only to governmental "decisions that make firefighting more difficult," and that the statutes are categorically inapplicable when the State permits "a dangerous fire condition to exist on its property." (2 PE 302-303.) Plaintiffs' argument relied almost exclusively on a single appellate decision, *Vedder v.*

County of Imperial (1974) 36 Cal.App.3d 654. (See 2 PE 300-303.) In *Vedder*, the Fourth District Court of Appeal held that Sections 850 and 850.2 did not apply to claims arising from a particular "dangerous condition" on public property: the storage of gasoline and other highly flammable materials in an unsafe manner at a county airport. (See 36 Cal.App.3d at pp. 660-661.)

22. Respondent superior court heard the State's motion on February 10, 2026, and issued a decision sustaining in part and denying in part the demurrer on February 19, 2026.

23. The superior court sustained the demurrer as to the revised master complaint's two causes of action based on alleged overgrown brush on state land (counts two and four). But the court overruled the demurrer as to plaintiffs' causes of action based on the Lachman Fire (counts one and three). (See generally 2 PE 446-463.) With respect to those latter counts, the court concluded that the revised master complaint adequately alleged a "dangerous condition of public property" under Government Code Section 835, and that Sections 850 and 850.2 do not provide the State with immunity concerning that claim. (See 2 PE 451, 460.) The court also overruled the State's demurrer as to plaintiffs' public nuisance claim stemming from the Lachman Fire, apparently reasoning that the claim survives because it is derivative of plaintiffs' Lachman Fire dangerous condition on public property claim. (2 PE 462 [claim survives because "the State fail[ed] to show that Plaintiffs' claim for dangerous condition on public property fails"].)

24. The State does not seek writ review of the superior court's determination that the revised master complaint adequately alleges that the Lachman Fire burn scar was a "dangerous condition of public property" under Government Code section 835, or that the stating of that claim allowed the Lachman Fire public nuisance claim to survive. The only issue raised in this petition is whether the superior court erred in rejecting the State's defense to those dangerous condition and public nuisance claims based on Sections 850 and 850.2.[2]

25. Regarding that defense, the superior court reasoned that the relevant issue under those provisions is whether Plaintiffs' "allegations [are] simply 'couched' . . . in language of a dangerous condition but, in actuality, are allegations regarding immunized conduct [i.e.] the failure to provide fire protection services related to the smoldering embers" at the Lachman Fire burn scar. (2 PE 459.)

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[2] The State's demurrer raised several additional defenses, including a defense based on the natural condition immunity provided in Government Code section 831.2. (See 1 PE 33-34; see also 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."].) The State recognizes that the California Supreme Court's decision in *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 835, forecloses the State's natural condition immunity defense, and thus it is not seeking mandamus from this Court as to that defense. However, the State contends that *Milligan* was wrongly decided, and—for purposes of potential later appellate review—it preserves that defense as an alternative ground for overturning the superior court's demurrer order.

26. The superior court declined to resolve that issue at the demurrer stage of the litigation, explaining that the Fourth District's decision in "*Vedder* supports Plaintiffs' theory," and that the court needed to develop a "factual record . . . regarding smoldering embers." (2 PE 459, 460.) Specifically, the court concluded that resolving the State's immunity claim required additional facts concerning, for example, "how [smoldering embers] 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." (2 PE 460)

27. Given its order on the State's demurrer, the superior court on March 26, 2026, issued a case management order that lifted the prior stay on discovery regarding the State. (See 2 PE 472.) The order thus authorizes plaintiffs to propound discovery requests on the State, "including but not limited to interrogatories, requests for production, requests for admission, third-party subpoenas, and requests for inspection." (2 PE 472-473.)

VII. BASIS FOR WRIT RELIEF AND INADEQUACY OF APPELLATE REVIEW

28. Writ review is necessary to correct the superior court's erroneous decision denying the State's invocation of immunity under Government Code Sections 850 and 850.2,

thereby permitting a group of over 10,000 plaintiffs to pursue claims against the State stemming from the Palisades Fire.

29. The Government Claims Act provides that "[a] public entity is not liable for a [tortious] injury" "[e]xcept as otherwise provided by statute." (Gov. Code, § 815, subd. (a).) The California Supreme Court has repeatedly held that "under the Government Claims Act (Gov. Code, § 810 et seq.), there is no common law tort liability for public entities in California." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) Instead, "such liability must be based on statute." (*Ibid.)* And any such statutory liability "is subject to any immunity of the public entity provided by statute." (Gov. Code, § 815, subd. (b).)

30. A petition for writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) An appeal in the ordinary course of litigation is an inadequate legal remedy if the "issues presented are of great public importance and require prompt resolution." (*Cal. Privacy Protection Agency v. Super. Ct.* (2024) 99 Cal.App.5th 705, 719, internal quotation marks and citation omitted; see also *People v. Super. Ct. (Perez)* (1995) 38 Cal.App.4th 347, 351, fn. 3. [writ relief appropriate for "legal issues of statewide importance in need of immediate resolution"].) Here, the petition satisfies that standard, for several reasons.

31. As the precedents of our State's high court make clear, writ review of an order overruling a demurrer is "clearly appropriate" where, as here, the demurrer raises a significant

issue of law, and "the benefits of the [governmental immunity] defense would be effectively lost if defendants were forced to go to trial." (*Stockton*, *supra*, 42 Cal.4th at p. 747, fn. 14 [citing cases]; see also, e.g., *County of Santa Clara v. Super. Ct.* (2024) 14 Cal.5th 1034, 1040 [writ review granted following overruling of county's demurrer raising governmental immunity defenses].)

32. This petition concerns the significant legal issue of the interaction between Government Code section 835 (which allows for government liability based on dangerous conditions on public property) and Sections 850 and 850.2 (which immunize government entities for conduct related to the provision—or lack thereof—of firefighting services). That is a "legal issue[] of statewide importance in need of immediate resolution." (*Perez, supra*, 38 Cal.App.4th at p. 351, fn. 3.) The superior court's order, which fundamentally misunderstands the scope of immunity under Sections 850 and 850.2, illustrates the need for appellate clarification of those important provisions. The superior court's decision to overrule the State's demurrer in relevant part also raises the specter of unnecessary—and costly—discovery and other litigation in this case, as well as potentially billions of dollars in State liability for damages stemming from the Palisades Fire.

33. Further, resolution of the issue presented in the State's favor would simplify later proceedings in this exceedingly complex case. That is because it would fully dispose of all of plaintiffs' claims against the State—including not just plaintiffs'

dangerous condition claim, but also their public nuisance claim—as well as numerous other cross-claims.[3]

34. Finally, writ review would serve the policies of the Government Claims Act. As the superior court recognized, the Government Claims Act reflects a "deep[]" policy preference that government entities should not be subject to litigation except as clearly authorized by the Act. (2 PE 460 [citing *Cairns*, *supra*, 62 Cal.App.4th at p. 340].)

35. Absent writ review, a decision sustaining the State's immunity defense at summary judgment or trial would benefit the State only after years of complicated and expensive litigation—thereby entirely defeating the purpose of the immunity. The underlying *Grigsby* action is a complex case involving dozens of causes of action by thousands of plaintiffs against many defendants. Discovery alone will take years, and final judgment even longer.

36. In such circumstances, ordinary appellate review would not fully vindicate the State's rights, and the State has no "plain, speedy, and adequate" remedy other than the relief sought in this petition. (Code Civ. Proc., § 1086.) "Where there is no

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[3] Other defendants in *Grigsby* have filed cross-complaints against the State. Those cross-complaints seek only to apportion liability among defendants as to plaintiffs' causes of action and do not assert additional bases of liability against the State. Thus, resolution of the State's immunity defense in its favor will dispose of its potential liability in full in this case. (See *Grijalva*, *supra*, 159 Cal.App.4th at p. 1078 [Sections 850 and 850.2 foreclose any "[c]omparative fault" inquiry based on failure to provide firefighting services].)

direct appeal from a trial court's adverse ruling, and the aggrieved party would be compelled to go through a trial and appeal from a final judgment, a petition for writ of mandate is allowed." (*Fair Employment & Housing Com. v. Super. Ct.* (2004) 115 Cal.App.4th 629, 633 [review of a decision overruling a demurrer via petition for writ of mandate]; see also *Olson v. Cory* (1983) 35 Cal.3d 390, 400 [avoiding "unnecessary trial proceedings" can be a basis for granting writ relief].)

VIII. ISSUE PRESENTED

37. Government Code section 850 broadly provides that "[n]either a public entity nor a public employee is liable for failure . . . to provide fire protection service." And Section 850.2 provides that public entities cannot be "liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." The issue presented is whether the immunities described in Sections 850 and 850.2 bar plaintiffs' dangerous condition and public nuisance claims seeking damages for injuries that allegedly occurred because the State "failed to provide proper fire protection to its property." (1 PE 204 [MC, ¶ 367].)

IX. APPLICATION FOR IMMEDIATE STAY

38. The State respectfully requests a stay of all trial court proceedings involving the State—or, at a minimum, a stay of all discovery involving the State—pending resolution of this

petition.[4] The State requests that such a stay be entered by May 20, 2026 (30 days from the filing date of this petition) to give this Court the opportunity to review the parties' preliminary briefing prior to ruling on the stay request.

39. In writ of mandate cases involving overruled claims of governmental immunity, courts routinely grant stays pending writ review. (See, e.g., *City of Pasadena v. Super. Ct.* (2017) 12 Cal.App.5th 1340, 1345-1346 [Government Claims Act defense]; *Regents of the Univ. of Cal. v. Super. Ct.* (2024) 102 Cal.App.5th 852, 857 [stay of discovery in case involving Regents' constitutional immunity defense]; cf. *Curtis Engineering Corp. v. Super. Ct.* (2017) 16 Cal.App.5th 542, 545 [stay issued during pendency of writ proceeding involving statute-of-limitations defense].)

40. Courts will issue such stays to protect a petitioning defendant from being subjected to costly, time-consuming discovery that would prove ultimately unnecessary if the petitioner's legal defense is meritorious. (See *Big Valley Band of Pomo Indians v. Super. Ct.* (2005) 133 Cal.App.4th 1185, 1189-90 ["An immunity defense is effectively lost if an immune party is forced to stand trial or face the other burdens of litigation."].)

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[4] This Court has the power to issue a stay only as to the State, which would not affect plaintiffs' ability to pursue their claims as to other defendants. (See *People v. Super. Ct. (Mitchell)* (2024) 17 Cal.5th 228, 251 ["[T]he Court of Appeal may order a temporary stay of proceedings in the trial court, either in whole or in part, upon the filing of a writ petition."].)

41. Here, the State's claim to immunity under Sections 850 and 850.2 will fully resolve all of plaintiffs' claims against the State in this case. The State therefore should not be required to continue to litigate plaintiffs' claims in superior court while this petition is pending. Moreover, staying all state-related proceedings is unlikely to be disruptive to plaintiffs' case. The litigation is still in its early stages, a trial date has not yet been set, and discovery has only just commenced. (See generally 2 PE 465-501.) A stay of proceedings involving the State thus balances the State's and the plaintiffs' interests: the State would be protected from unnecessary, burdensome discovery; and the plaintiffs would remain free to pursue their case as to other defendants.

PRAYER FOR RELIEF

WHEREFORE, petitioner respectfully prays that this Court:

1. Stay all proceedings involving the State in *Grigsby, et al. v. City of Los Angeles, et al.* (Los Angeles County Superior Court No. 25STCV00832), pending the disposition of this petition.

2. Alternatively, stay all further discovery involving the State in *Grigsby* pending the disposition of this petition.

3. Issue a peremptory or alternative writ of mandate or other appropriate writ directing the respondent superior court to vacate its February 19, 2026, order on the State's demurrer, and directing the superior court to issue an order sustaining, in full, the State's demurrer without leave to amend.

4. Alternatively, issue an order directing the respondent superior court to show cause why its February 19, 2026, order on the State's demurrer should not be vacated and an order sustaining, in full, the State's demurrer without leave to amend entered.

5. Award petitioner its costs in bringing this petition under rule 8.278 of the California Rules of Court.

6. Award such other relief as may be just and proper.

Respectfully submitted,

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April 20, 2026

MEMORANDUM OF POINTS AND AUTHORITIES

This case warrants an immediate stay and writ relief to prevent unnecessary and intrusive discovery, summary judgment proceedings, and trial on invalid legal claims from which the State is immune. The plaintiffs in this case seek to hold the State liable for damages resulting from its alleged "fail[ure] to provide proper fire protection to its property" at the Lachman Fire burn scar. (1 PE 204 [MC, ¶ 367].) But Government Code sections 850 and 850.2 preclude exactly that type of claim. As those statutes make clear, the State cannot be "liable for failure . . . to provide fire protection service." (Gov. Code, § 850; see also *id.*, § 850.2.) The superior court therefore erred as a matter of law when it declined to sustain the State's demurrer on governmental immunity grounds, and the State should not have to undergo additional costly litigation before its "absolute" immunities under Sections 850 and 850.2 are vindicated. (*Id.*, § 850, Law Revision Commission coms.)

I. WRIT RELIEF IS CRITICAL TO PREVENT UNNECESSARY LITIGATION CONCERNING CONDUCT FOR WHICH THE STATE IS IMMUNE FROM LIABILITY

The State's request for writ relief is well supported. The touchstone of writ relief is the lack of an adequate legal remedy. (Code Civ. Proc., § 1086.) No such legal remedy exists in cases, like this one, that raise an important legal issue "in need of immediate resolution." (*People v. Super. Ct. (Perez)* (1995) 38 Cal.App.4th 347, 351, fn. 3.) "Where there is no direct appeal from a trial court's adverse ruling, and the aggrieved party would be compelled to go through a trial and appeal from a final

judgment, a petition for writ of mandate is allowed." (*Fair Employment & Housing Com. v. Super. Ct.* (2004) 115 Cal.App.4th 629, 633.) "Such a situation arises where the trial court has improperly overruled a demurrer." (*Ibid.*) And the California Supreme Court has explained that writ review is "clearly appropriate," where the demurrer raises a significant issue of law and "the benefits of [an immunity] defense would be effectively lost if defendants were forced to go to trial." (*City of Stockton v. Super. Ct.* (2007) 42 Cal.4th 730, 747, fn. 14 [citing cases]; see also *County of Santa Clara v. Super. Ct.* (2024) 14 Cal.5th 1034, 1040 [writ review granted following overruling of county's demurrer raising immunity defense].)

That is this case. The State's demurrer and petition raise a significant legal issue; namely, the proper scope of governmental immunity under Government Code sections 850 and 850.2. (See, e.g., *Big Valley Band of Pomo Indians v. Super. Ct.* (2005) 133 Cal.App.4th 1185, 1189-90 [suggesting that the resolution of an immunity defense is "a significant issue of law" that makes "interlocutory review . . . appropriate"].) The State asked the superior court to apply those sections—which, on their face, immunize public entities from liability "for any injury resulting from the failure to provide . . . fire protection" (Gov. Code, § 850.2; see also *id.*, § 850)—to bar plaintiffs' claims for damages stemming from the Palisades Fire. But the court declined to do so—a decision that, if allowed to stand, could improperly limit an immunity that the Legislature intended to be "broad" and "absolute." (*Id.*, § 850, Law Review Commission coms.)

Writ relief is especially appropriate here because the demurrer concerns the State's statutory immunity. As several courts have recognized, "[a]n immunity defense is effectively lost if an immune party is forced to stand trial or face the other burdens of litigation." (*Big Valley Band of Pomo Indians*, *supra*, 133 Cal.App.4th at p. 1189; see also *City of Stockton*, *supra*, 42 Cal.4th at p. 747, fn. 14 [citing cases].) And that is certainly true, here. This litigation is extraordinarily complex, involving approximately 10,000 plaintiffs and potentially billions of dollars in damages. The State should not be forced to bear the expense of defending against such claims when it is immune from liability as a matter of law under Sections 850 and 850.2.

II. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE STATE IS IMMUNE FROM LIABILITY FOR PLAINTIFFS' FIRE-RELATED CLAIMS

Not only is writ review appropriate as a procedural matter, reversing the superior court's demurrer order is necessary on the merits. The superior court legally erred when it declined to sustain the State's demurrer based on the immunities afforded by Government Code sections 850 and 850.2—as numerous appellate decisions from California courts confirm. And although the superior court believed that one decision from the Fourth District "support[ed] Plaintiffs' theory" of liability (2 PE 459), that decision cannot bear the weight that plaintiffs place on it—as several California appellate courts have since explained. This Court should therefore grant the State's petition and issue a writ of mandate directing the superior court to sustain the State's demurrer in full.

A. Sections 850 and 850.2 immunize the State from plaintiffs' particular claims as a matter of law

The superior court should have sustained the State's demurrer in full because the State is immune from liability for plaintiffs' dangerous condition and public nuisance claims. Under the Government Claims Act, "[a] public entity is not liable for a [tortious] injury" "[e]xcept as provided by statute." (Gov. Code, § 815, subd. (a).) Even where a statute allows for public entity liability, that liability is "subject to any immunity of the public entity provided by statute." (*Id.*, § 815, subd. (b).) Put another way, statutory immunity provisions "prevail over all sections imposing liability." (*Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 334, internal quotation marks omitted.) And "sovereign immunity provisions are to be construed broadly." (*Varshock v. Dept. of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, 642 [citing cases and construing Gov. Code, § 850.4].)

The immunities most relevant to this petition are described in Government Code sections 850 and 850.2. Under Section 850, "[n]either a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service." And under Section 850.2, "[n]either 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." As the Court of Appeal has explained, "[t]hese sections provide for a *broad* immunity from liability for injuries resulting in connection

with fire protection service." (*Cairns*, *supra*, 62 Cal.App.4th at p. 335 [original italics; internal quotation marks omitted].)

Courts have applied these provisions to immunize government entities in myriad situations involving damage from fire, including: where a utility district's firefighters partially contained a forest fire but demobilized before full containment, allowing that fire to burn out of control (*People ex rel. Grijalva v. Super. Ct.* (2008) 159 Cal.App.4th 1072, 1075-1076, 1078); where a city and county closed a road for maintenance, preventing firefighters from responding to a fire (*Cairns*, *supra*, 62 Cal.App.4th at pp. 333, 335); where a city failed to provide a fire extinguisher in a city-owned residential unit (*Puskar v. City & County of San Francisco* (2015) 239 Cal.App.4th 1248, 1250-1251, 1254); where city firefighters abandoned their posts and therefore did not timely respond to a fire (*City & County of San Francisco v. Super. Ct.* (1984) 160 Cal.App.3d 837, 838-839); and where a city allegedly failed to adequately inspect a factory that handled highly combustible materials (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 408-409, 412-413).

Thus, as interpreted by the appellate courts, Sections 850 and 850.2 foreclose governmental liability both for claims challenging general policy choices about how and whether to provide fire protection services *and* for claims challenging individual tactical decisions in response to specific threats of fire. And those statutes apply to claims based on the provision of firefighting services to the general public *and* to claims based on a government entity's management of its own property.

The claims at issue here fall well within the broad statutory text, as applied by those precedents. The gravamen of plaintiffs' complaint is that the State is liable for damages stemming from the Palisades Fire because it allegedly "failed to provide proper fire protection to its property." (1 PE 204 [MC, ¶ 367].) Specifically, plaintiffs allege that the State allowed a dangerous condition (namely, underground embers from the Lachman Fire) to exist on its property "without providing any fire protection," and that the State should have used thermal imaging cameras or infrared devices to ensure that there were no remaining embers or hot spots on its property that could have rekindled following the Lachman Fire. (1 PE 109, 205 [MC, ¶¶ 68, 370, 372].) But those claims rely on a theory of liability that the law forecloses: The State simply cannot be liable for plaintiffs' injuries "resulting from [an alleged failure] to provide or maintain sufficient personnel, equipment or other fire protection facilities" that might have prevented the Palisades Fire. (Gov Code, § 850.2; see also *id.*, § 850 [providing immunity for claims concerning an alleged "failure . . . to provide fire protection service"].)

Appellate decisions fully support that straightforward application of Sections 850 and 850.2. In *Grijalva*, for example, real parties in interest attempted to avoid paying the full amount of the California Department of Forestry and Fire Protection's firefighting costs associated with the 2003 Piru Fire, arguing that the Department negligently allowed "the blaze to grow from 1200 acres to 64,000 acres, vastly increasing those costs." (159 Cal.App.4th at p. 1075.) Quite like the plaintiffs' claims in the

present case, the real parties argued that although the Department's firefighters initially contained 90 percent of the fire, they negligently "failed to douse the flames completely," which allowed the fire to "burn[] out of control." (*Id.* at p. 1076.)

The Court of Appeal rejected the real parties' affirmative defense. Relying on Sections 850 and 850.2, the court explained that "the Government Code immunizes public entities from liability caused by the failure 'to provide fire protection service,'" as well as "the failure to 'provide or maintain sufficient personnel, equipment or other fire protection facilities.'" (*Grijalva*, *supra*, 159 Cal.App.4th at p. 1078 [quoting Gov. Code, §§ 850, 850.2].) And that is true "even where that failure is caused by the firefighters' negligence or willful misconduct." (*Ibid.*) The upshot is that "public entities owe *no duty* to persons or property damaged by fire" (*ibid.*, italics added)—an understanding of the scope of Section 850 and 850.2 that should have resolved the present case in the State's favor. After all, "[i]n the absence of a duty" to provide fire protection services *at all*, "there can be no tort liability" stemming from the State's alleged failure to provide those services in connection with the Palisades Fire. (*Ibid.*, internal quotation marks omitted.)[5]

[5] The California Supreme Court is currently considering a petition for review that challenges an aspect of *Grijalva* not at issue here: whether Government Code sections 850 and 850.2 confer immunity from comparative negligence defenses in suits (unlike this one) brought by the State. (See *Pacific Gas & Elec. Co. v. Super. Ct.*, Case No. S295366.)

Nor does it matter that the plaintiffs in this case "couched their allegations" in the "language of a dangerous condition of public property" claim pursuant to Government Code Section 835. (*Cairns*, *supra*, 62 Cal.App.4th at p. 335.) Section 835 claims—like all other theories of public entity tort liability—are "subject to any immunity of the public entity provided by statute." (Gov. Code, § 815, subd. (b).) The claim is therefore subject to the immunity provisions in Sections 850 and 850.2. As a result, where a dangerous condition claim against the government seeks damages arising from a fire, courts must look at "the context of the plaintiffs' allegations" to determine whether the alleged dangerous condition actually "relates to 'fire protection services'" within the meaning of Sections 850 and 850.2. (*Cairns*, at p. 335.) If the "asserted causes of action based on dangerous condition of public property . . . [are] in reality for failure to provide fire protection service," then the court must dismiss the plaintiffs' claims. (*Id.* at pp. 332-333; see also *id.* at pp. 335-336.)

The decision in *Cairns* is instructive. (62 Cal.App.4th at p. 334-336.) There, the Court considered dangerous condition and nuisance claims brought by plaintiffs whose homes were damaged by a fire in part because the city and county had closed a road, which prevented firefighters from reaching the scene. (See *id.* at pp. 332-333.) The Court noted that "the only reason" the public road was "allegedly dangerous [was] that the continued closure of [the road] made ingress for firefighters more difficult, if not impossible." (*Id.* at p. 335.) That larger context meant that the plaintiffs' claims implicated "precisely the sort of

decision left to policymakers' absolute discretion" under Sections 850 and 850.2. (*Ibid.*) As the Court explained, those statutes make clear that questions like "[w]hether fire protection should be provided at all" or "the extent to which fire protection should be provided[] are political questions which are committed to the policy-making officials of government." (*Ibid.*, internal quotation marks omitted.)

Here, as in *Cairns*, the context of plaintiffs' dangerous condition and nuisance claims establishes that their complaint is really about the State's alleged failure to provide more (or better) fire protection services. That is, the only reason the State's property presented an allegedly dangerous condition was that—in plaintiffs' view—the State failed to detect or monitor the smoldering embers left over from the LAFD's initial response to the Lachman Fire, which created a risk that the embers might reignite into a full-blown fire. (See 1 PE 109 [MC, ¶ 68, alleging that the State did not do enough "to ensure that there were no embers, hot spots or residual heat remaining in the vegetation"].) But as Sections 850 and 850.2 establish, the State's decisions concerning, for example, "the extent to which fire protection services should be provided" are committed to "policymakers' absolute discretion" and should not be second-guessed "by judges or juries" resolving tort claims. (*Cairns*, *supra*, 62 Cal.App.4th at p. 335, internal quotation marks omitted.)

Legislative history confirms this conclusion. The California Law Revision Commission's commentary on Sections 850 and 850.2 explains that those statutes were meant "to provide for a

broad immunity from liability for injuries resulting in connection with fire protection service." (Gov. Code, § 850, Law Revision Commission coms., italics added.) The Commission's commentary further explains that "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 . . . fire protection facilities." (*Ibid.*, italics added.) The reason: "Whether fire protection should be provided at all, and the extent to which fire protection should be provided, are political decisions," and "[t]o permit review of these decisions by judges and juries would remove the ultimate decision-making authority from those politically responsible for making the decisions." (*Ibid.*)

This commentary deserves "substantial weight" on the scope of immunity, because the California Supreme Court has determined that the Commission's commentary is "reflective of the Legislature's intent" regarding these very immunity statutes. (*Varshock*, *supra*, 194 Cal.App.4th at pp. 647-648, internal quotation marks omitted.) Notably, the Supreme Court found it significant that the Commission's commentary on Sections 850 and 850.2 "rejected suggested limitations on immunity for negligent fire protection," instead adopting a rule of "absolute immunity" regardless of any government negligence. (*Heieck & Moran v. City of Modesto* (1966) 64 Cal.2d 229, 233, fn. 3, internal quotation marks omitted.) Because that "absolute immunity" plainly covers the dangerous condition and nuisance claims at issue here, this Court should grant the State's petition.

B. The superior court's rationale for overruling the State's demurrer does not withstand scrutiny

Despite the broad language in Sections 850 and 850.2 and the authority of cases like *Grijalva*, *Cairns*, *Varshock*, and others, the court below overruled the State's demurrer in relevant part. The superior court justified its order based on a single, 50-year-old decision from the Fourth District Court of Appeal and a series of factual questions that the court believed required additional development. (See 2 PE 455-460 [citing *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654, 660-661].) But neither explanation justifies the denial of the State's demurrer.

1. *Vedder* does not support the decision below

a. Even on its own terms, *Vedder* does not support the superior court's decision. In *Vedder*, plaintiffs sued a county to recover damages to their property caused by a fire at the county's airport. (See *Vedder*, *supra*, 36 Cal.App.3d at p. 657.) They claimed that the county had created a dangerous condition by "stor[ing] . . . large amounts of gasoline and other highly combustible chemicals" on the property, and by failing to provide the "special equipment" necessary "to prevent or control gasoline fires." (*Id.* at p. 659.) Although the trial court granted the county's demurrer based on Sections 850 and 850.2, the Court of Appeal reversed, holding that those sections "should not be applied . . . where [a public entity] has permitted a dangerous fire condition to exist on [its] property," and the "lack of fire protection is a . . . factor . . . contributing to the existence of [that] dangerous condition." (*Id.* at pp. 660-661.)

But as later decisions have recognized, the decision in *Vedder* depended on the particular nature of the claim in that case. (See, e.g., *Puskar*, 239 Cal.App.4th at p. 1255; *Cairns*, *supra*, 62 Cal.App.4th at p. 336.) The central issue in *Vedder* was not whether the county had a legal duty to suppress a fire or whether its fire-suppression efforts were sufficient; instead, the court's analysis focused on whether gasoline storage at a county airport was a dangerous condition in the first place—the absence of fire response equipment being a key factor in making a determination *about the safety of the storage*. (See 36 Cal.App.3d at p. 659 [describing plaintiffs' allegation that defendant's "property was in a dangerous condition" because "storage of large amounts of gasoline . . . created a severe risk of fire and/or explosion" and defendant had "*no* means available to prevent or control gasoline fires"].) That case therefore says nothing about cases like this one, which seeks to hold the State liable for damages arising directly out of its policy decisions concerning "the extent to which . . . fire protection is in fact provided" to the public. (*Id.* at p. 660.)

Other appellate courts have distinguished *Vedder* on exactly this ground. For example, *Puskar*—which both distinguished and criticized *Vedder*—explained that, "[i]n *Vedder*, the alleged dangerous condition of the property was not the lack of firefighting or fire protection equipment on the premises." (*Puskar*, *supra*, 239 Cal.App.4th at p. 1255.) Instead, "[i]t was the storing, or permitting the storage, of gasoline and other highly combustible chemicals on the premises in an unsafe

manner." (*Ibid.*) Put differently, the "[l]ack of fire protection was just a '*factor* . . . contributing to the existence of a dangerous condition,' not the dangerous condition itself.'" (*Ibid.*, italics added [quoting *Vedder*, *supra*, 36 Cal.App.3d at p. 661]; see also *Foley Investments, L.P. v. Alisal Water Corp.* (2021) 72 Cal.App.5th 535, 547, fn. 6 [distinguishing *Vedder* because that case involved "providing services unrelated to fire protection, which are not subject to fire protection immunity"].)

Here, by contrast, plaintiffs' alleged dangerous condition is nothing more than the *fire itself*. That fire was started by a third party through no fault of the State. (See *supra*, at pp. 12-13.) And the operative complaint's allegation of a state role in the existence of the alleged dangerous condition is explicitly tied to the extent to which the State provided fire protection services at the scene of the Lachman Fire burn scar. That is the only conceivable meaning of plaintiffs' allegations that the State is liable for their damages because it "failed to provide proper fire protection on its property" and allowed a dangerous condition to exist on its property "without providing any fire protection." (1 PE 204-205 [MC, ¶¶ 367, 372].) But the cases establish that the State's fire protection policy choices fall squarely within the immunities described in Sections 850 and 850.2. (See, e.g., *Puskar*, *supra*, 239 Cal.App.4th at pp. 1256-1257; *Cairns*, *supra*, 62 Cal.App.4th at pp. 335-336; *Grijalva*, *supra*, 159 Cal.App.4th at p. 1078.) In other words, *Vedder* is not on-point, and the superior court erred in relying on it as a reason to overrule the State's demurrer.

b. Even if *Vedder* were not so far off-point, however, the superior court's (and plaintiffs') reliance on that case suffered from another flaw. As subsequent appellate authority makes clear, *Vedder* cannot be properly read as somehow limiting the scope of the State's fire protection immunity under Sections 850 and 850.2. (See *Puskar*, *supra*, 239 Cal.App.4th at p. 1255.) Although plaintiffs' opposition to the State's demurrer attempted to rely on *Vedder* to sidestep the "broad" immunity provided by those sections, their arguments on this score were legally erroneous in at least two respects.

First, plaintiffs cited *Vedder* for the proposition that the immunities in Sections 850 and 850.2 "'must be strictly construed'" such that the government cannot be immune from liability "'unless the Legislature has clearly provided for it.'" (2 PE 300 [quoting *Vedder*, *supra*, 36 Cal.App.3d at p. 660].) But that strict-construction rule ignores the "general rule that sovereign immunity provisions are to be construed broadly." (*Varshock*, *supra*, 194 Cal.App.4th at p. 642.) It also ignores that the Legislature intended these immunity provisions in particular to be broad. As the commentary to Sections 850 and 850.2 makes clear, the Legislature established a "broad" and "absolute" immunity concerning fire protection services. (*Id.*, § 850, Law Revision Commission coms.) And numerous appellate courts have interpreted those provisions "broadly," emphasizing their "sweeping" nature. (*Cochran*, *supra*, 155 Cal.App.3d at p. 412; see also, e.g., *Cairns*, *supra*, 62 Cal.App.4th at p. 335.)

That "broad" understanding of the scope of immunity under Sections 850 and 850.2 is consistent with the California Supreme Court's understanding of how government tort liability works. (See, e.g., *Teter v. City of Newport Beach* (2003) 30 Cal.4th 446, 448-451.) In *Teter,* the Court considered a negligence claim brought by a prisoner against a city. Although the prisoner argued that "[u]nder the [Government Claims Act] . . . liability is the rule and immunity the exception," the Court made clear that the prisoner was "quite wrong about that." (*Id.* at p. 451.) As the Court explained, the "Act provides that '[e]xcept as otherwise provided by statute,' '[a] public entity is not liable for an injury,'" and thus the intent of that Act "is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances." (*Ibid.* [quoting Gov. Code, § 815; some internal quotation marks omitted].)

Here, plaintiffs' claims fall well outside the Legislature's "rigidly delineated circumstances" for government liability. As described above, plaintiffs seek to hold the State liable for its alleged failure "to provide proper fire protection on its property" at the Lachman Fire burn scar. (1 PE 204 [MC, ¶ 376]; see also *supra*, at pp. 12-14.) But that is exactly what Sections 850 and 850.2 prohibit. The Legislature has decided that "the extent to which fire protection should be provided" or "[w]hether fire protection should be provided at all" are decisions that must be left to the State's policymakers, and thus they cannot be liability

questions to be resolved by "judges and juries." (Gov. Code, § 850, Law Revision Commission coms.)

Plaintiffs' argument based on *Vedder* rested on another error, too. They highlighted *Vedder*'s language assuming that Sections 850 and 850.2 should not "'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*.'" (2 PE 287 [quoting *Vedder*, *supra*, 36 Cal.App.3d at pp. 660-661, original italics].) As a result, plaintiffs argued, government actors are immune from liability when they make decisions about providing—or not providing—"'fire protection to the public generally,'" but not when they have "'permitted a dangerous fire condition to exist on [their own public] property.'" (2 PE 300-301 [quoting *Vedder*, *supra*, 36 Cal.App.3d at pp. 660-661, boldface omitted].)

But Sections 850 and 850.2 "contain[] no such limitation." (*Puskar*, *supra*, 239 Cal.App.4th at p. 1255 [citing and disagreeing with *Vedder*].) Instead, those sections were written broadly and plainly encompass fire-related incidents arising from dangerous conditions on public lands.[6] (See *supra*, at pp. 34-35.) And "decisions regarding whether, when, and how to provide fire protection facilities, personnel, or equipment[]" are not "any less

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[6] The superior court appeared to acknowledge that plaintiffs wrongly tried to limit the scope of Sections 850 and 850.2 to non-public-land dangerous conditions. (See 2 PE 458 [noting that the court "believes [the State] is correct" "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"].)

policy decisions . . . when the facilities, personnel, or equipment will directly benefit those occupying or using public property . . . than when they will benefit members of the general public occupying or using private property." (*Puskar*, *supra*, 239 Cal.App.4th at pp. 1255-1256.) The court in *Puskar* therefore correctly held that Sections 850 and 850.2 barred a plaintiff's dangerous condition claim, despite the fact that the dangerous condition existed on the government defendants' own property. (See *id.* at pp. 1256-1257.) Because *Vedder* concerned quite different claims, and because plaintiffs' arguments based on *Vedder* were legally erroneous, the superior court incorrectly denied the State immunity to which it is entitled.

2. The State's immunity defense does not depend on further factual development

The superior court also declined to grant the State's demurrer because—in its view—the record required additional factual development before the court could resolve the State's invocation of Sections 850 and 850.2. As the court saw things, it could not answer the immunity question without additional facts related to smoldering embers, including, for example, "how they are handled, what risks they present, policies and practices regarding maintenance or surveillance of smoldering embers . . ., factors that influence the treatment of smoldering embers . . ., training regarding smoldering embers, equipment needed to address smoldering embers, [and] responsibility to address smoldering embers." (2 PE 460.)

But those factual questions have no bearing on the issue of the State's immunity under Sections 850 and 850.2. The relevant

questions for purposes of immunity are *not* whether (or how) the State should deal with smoldering embers and how dangerous those embers are. The relevant question is instead whether dealing (or not dealing) with smoldering embers is the kind of "decision which [is] committed to the policy-making officials of government" by Sections 850 and 850.2. (*Cairns*, *supra*, 62 Cal.App.4th at p. 335, internal quotation marks omitted.) The answer to that question depends not on any facts, but on the text of the statutes.

Indeed, the factual record that the superior court apparently intends to develop would run directly counter to the Legislature's purposes in adopting Sections 850 and 850.2. The court's proposed factual questions concern such issues as the State's "training," "policies," and "practices" related to smoldering embers, as well as the kinds of "factors" that might influence the State's decision to "treat[] smoldering embers." (2 PE 460.) But those questions necessarily invite a judge or jury to pass judgment on the State's firefighting policy choices—the exact scenario that the Legislature sought to avoid in adopting Sections 850 and 850.2. (See Gov. Code, § 850, Law Revision Commission coms.; *State v. Super. Ct. (Wanda Nagel)* (2001) 87 Cal.App.4th 1409, 1414 [examining Section 850.4 immunity and concluding that the Legislature did not want courts to second-guess "the wisdom" of firefighters' choices].) This Court should not countenance such a direct intrusion on "policymakers' absolute discretion" concerning fire protection services. (*Cairns*, *supra*, 62 Cal.App.4th at p. 335.) And writ review is the only way to

prevent further proceedings from undermining the Legislature's clear intent in enacting Sections 850 and 850.2.

CONCLUSION

The petition for writ of mandate should be granted. The Court should also stay all proceedings in the superior court concerning the State—or, at a minimum, further discovery involving the State—pending resolution of this writ petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF; APPLICATION FOR STAY OF ALL PROCEEDINGS AND/OR STAY OF DISCOVERY; AND MEMORANDUM OF POINTS AND AUTHORITIES uses a 13-point Century Schoolbook font and contains 9,360 words.

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