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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

**INDIVIDUAL PLAINTIFFS'
OPPOSITION TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEMURRER BY DEFENDANTS CITY OF
LOS ANGELES ACTING BY AND
THROUGH THE LOS ANGELES
DEPARTMENT OF WATER AND
POWER AND CITY OF LOS ANGELES**

Date: February 5, 2026

Time: 1:45 p.m.

Dept.: 7

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

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE COURT CANNOT TAKE JUDICIAL NOTICE OF THE LADWP 2024**
3 **WILDFIRE MITIGATION PLAN.**

4 Plaintiffs oppose the Request for Judicial Notice related to the 2024 Wildfire Mitigation
5 Plan, filed by Defendants City of Los Angeles and Los Angeles Department of Water and Power
6 (“LADWP”) in relation to their Demurrer to the Master Complaint. In the Master Complaint,
7 Plaintiffs contend the following with respect to the powerline related issues:

8 (1) That LADWP negligently failed to de-energize the Royal Monte-Grande 1 line;

9 (2) That LADWP tried but negligently failed to de-energize Distribution Station 29 in the
10 Palisades Village; and

11 (3) LADWP’s electrical circuits caused its equipment to spark spot fires.

12 LADWP claims immunity for its failure to de-energize its powerlines during the Palisades
13 Fire. LADWP contends that its decision with respect to de-energizing the powerlines was a
14 discretionary act made pursuant to a LADWP “Wildfire Mitigation Plan” (“WMP”) policy as
15 mandated by the Legislature in Pub. Util. Code § 8387(b)(1). Of note, LADWP highlights the fact
16 that the Master Complaint included quotes from the WMP and provided a link to the WMP on the
17 LADWP website.

18 **A. LADWP’s Interpretation of Section 820.2 Is Overbroad – Only**
19 **“Discretionary” Decisions Are Subject to Immunity; Not “Ministerial”**
20 **Decisions**

21 LADWP contends that under Gov. Code § 820.2, a public entity is not liable “for any
22 injury resulting from [a public employee’s] act or omission where the act or omission was the
23 result of the exercise of the discretion vested in him, whether or not such discretion be abused.”
24 Gov Code § 820.2. LADWP essentially contends that because it created the 2024 Wildfire
25 Mitigation Plan, any decision it made with respect to de-energizing the powerlines during the
26 Palisades Fire was subject to immunity because it was a discretionary decision made pursuant to
27 an agency policy. However, this is a misapplication of the law. The Wildfire Mitigation Plan,
28 mandated by Public Utilities Code § 8387, created enforceable duties. While the statute grants
discretion to develop protocols, once adopted, compliance with those protocols becomes

1 ministerial. *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499. Here, the negligent acts
2 alleged in the Master Complaint were all ministerial and not subject to immunity.

3 In its Request for Judicial Notice, LADWP notes that the Plaintiffs quoted and provided a
4 link to the 2024 Wildfire Mitigation Plan (“2024 WMP”). However, the 2024 WMP is not
5 admissible through a Request for Judicial Notice just because the Plaintiffs quoted/provided a link
6 to the same in the Master Complaint. Documents referred to in a Complaint, but not incorporated
7 or attached to it, are only properly the subject of judicial notice where they are “not reasonably
8 subject to dispute” and are “capable of immediate and accurate determination.” (Evid. Code §
9 452(h)). Here, LADWP makes no attempt to explain how the 2024 WMP is not reasonably
10 subject to dispute – indeed, the documents’ inclusion in the Master Complaint makes it the very
11 subject of dispute. Plaintiffs could have attached the WMP to its Master Complaint, but did not.

12 **B. Determining Whether or Not The Alleged Acts of LADWP Regarding De-**
13 **Energizing Powerlines Were “Ministerial” V. “Discretionary” Is A Question**
of Fact That Can’t Be Adjudicated at This Stage

14 Plaintiffs dispute LADWP’s argument that the Wildfire Mitigation Plan constitutes a
15 “policy” and that acts made pursuant to it are automatically rendered “discretionary” and subject
16 to immunity under Gov Code § 820.2. Just because the document exists doesn’t mean it rises to
17 the level of government policy to which immunity attaches. Further, Plaintiffs contend that the
18 acts alleged in the Master Complaint are “ministerial” and not subject to immunity. The legal
19 determination of these issues cannot be completed until after the parties have conducted discovery
20 into the WMP and the acts that it allegedly carried out in compliance with the WMP.

21 Evidence Code § 453 provides that a trial court may take judicial notice of any matter
22 specified in Evidence Code § 452 if a party requests it. And while several categories of
23 documents are properly subject to judicial notice, a court is not permitted to judicially notice the
24 truth of statements contained within those documents. *See Sosinsky v. Grant* (1992) 6 Cal.App.4th
25 1548, 1562-1569 (court may not take notice of contents of court records, only the existence of
26 noticeable documents); *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 (taking
27 judicial notice is not the same as accepting the truth of a document’s contents); *Ragland v. U.S.*
28 *Bank Nat’l Ass’n* (2012) 209 Cal.App.4th 182, 193-194 (same).

1 The purpose of judicial notice is to allow the expedited introduction of otherwise
2 admissible evidence. *Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 656, 578. It does not
3 render judicially noticeable documents exempt from the rules of relevance, hearsay and
4 foundation. Further, the party requesting judicial notice bears the burden of proving that each
5 document is properly a subject of judicial notice. Evid. Code § 453(b); *see also Whispering Pines*
6 *Mobile Home Park, Ltd. v. City of Scotts Valley* (1986) 180 Cal.App.3d 152, 162 (court can deny
7 judicial notice if sufficient information is not provided by moving party).

8 Here, LADWP improperly seeks to introduce a 75-page document in support of its
9 pleading challenge for the sole purpose of establishing the truth of the statements contained within
10 the document – that LADWP had a Wildfire Mitigation Plan that constitutes agency policy
11 regarding whether and when to de-energize its powerlines.

12 The Court should deny LADWP’s Request for Judicial Notice because: (1) this document
13 is outside the four corners of the Master Complaint, (2) LADWP seeks to have the Court make an
14 evidentiary finding that the 2024 WMP constitutes a LADWP policy within the meaning of the
15 Government Code; and (3) Plaintiffs have not had an opportunity to conduct any discovery about
16 the WMP nor the acts taken by LADWP pursuant to the WMP thereby prejudicing Plaintiffs
17 significantly on whether the subject acts were “discretionary” v. “ministerial” under California
18 law.

19 The Court should also refuse to take judicial notice of the WMP because it is irrelevant at
20 this stage of the pleadings. This is a Demurrer and the Court must accept as true the statements in
21 the Master Complaint. The issue of whether or not the WMP constitutes LADWP policy for
22 purposes of applying Gov Code § 820.2 is a question of fact that is not proper for adjudication on
23 a Demurrer. Because the document is being introduced to prove the evidentiary basis of
24 LADWP’s purported defenses (and thereby controvert Plaintiffs’ factual allegations) the document
25 lacks any utility at this stage of the proceedings. LADWP must wait to address this issue until an
26 MSJ or trial after discovery has been completed (for the most part, discovery has not even begun
27 in this case and defendants have resisted Plaintiffs request to open all discovery).

28 “Judicial notice may not be taken of any matter unless authorized or required by law.”

1 (Evid Code § 450.) A precondition to judicial notice in either its permissive or mandatory form is
2 that the matter to be noticed must be relevant to the material issue before the Court. *Silverado*
3 *Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307. Here,
4 the only matter before the court is LADWP's demurrer which is not an evidentiary hearing.

5 A demurrer tests the pleading alone; a court cannot sustain a demurrer on the basis of
6 extrinsic matter not appearing on the face of the pleading except for matters subject to judicial
7 notice. *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 864. A court can properly take judicial
8 notice of the existence of a document, but it can only take judicial notice of the truth of the
9 contents of the document if the document contains judicially determined findings of fact and
10 conclusions of law or include court orders and judgments. *Id.* at 865. The 2024 WMP does not
11 constitute a judicially determined finding of fact/conclusion of law; therefore, the Court cannot
12 take judicial notice of the truth of the contents of the WMP.

13 "Taking judicial notice of a document is not the same as accepting the truth of its contents
14 or accepting a particular interpretation or meaning. On a demurrer a court's function is limited to
15 testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure
16 for determining the truth of disputed facts. The hearing on demurrer may not be turned into a
17 contested evidentiary hearing through the guise of having the court take judicial notice of
18 documents whose truthfulness or proper interpretation are disputable." *Fremont Indem. Co. v.*
19 *Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114. "For a court to take judicial notice of
20 the meaning of a document submitted by a demurring party based on the document alone, without
21 allowing the parties an opportunity to present extrinsic evidence of the meaning of the document,
22 would be improper. A court ruling on a demurrer therefore cannot take judicial notice of the
23 proper interpretation of a document submitted in support of the demurrer." *Id.* at 114-115.

24 It is immaterial that the extrinsic matter – if determined by the factfinder to be true – might
25 defeat the cause of action, because a demurrer is not concerned with a party's ability to prove the
26 allegations of the pleading. *Bach, supra*, 207 Cal.App.3d at 866 & fn.5.) In ruling on a demurrer
27 or motion to strike, it is error to take judicial notice of the contents of an ordinary document
28 because "A court cannot by means of judicial notice convert a demurrer into an incomplete

1 evidentiary hearing in which the demurring party can present documentary evidence and the
2 opposing party is bound by what that evidence appears to show.” *Fremont Indemnity Co., supra*,
3 148 Cal.App.4th at 115.

4 Consistent with the Court’s ruling in *Fremont*, LADWP’s Request for Judicial Notice
5 should be denied because LADWP has improperly requested that the Court take judicial notice “of
6 the meaning” of the 2024 WMP (that it constitutes LADWP “policy” within the meaning of the
7 Government Code) based on the document alone, without allowing the parties an opportunity to
8 present extrinsic evidence of the meaning of the document. Plaintiffs would be unfairly
9 prejudiced if the Court admitted such evidence without permitting the parties the opportunity to
10 conduct any discovery into this evidentiary issue.

11 **C. The Fire Map Attached as Exhibit “B” to Defendants’ Request Should Be**
12 **Excluded as Being Improperly Used to Argue a Factual Issue at The Pleading**
Stage

13 Here, LADWP seeks to have the Court take Judicial Notice of extrinsic evidence in the
14 form of a screenshot from the Public Utilities Commission Fire Threat Map so it can debate
15 whether or not LADWP had an affirmative duty to block the reclosers at the time of the Palisades
16 fire. More specifically, LADWP argues that the duty to block the reclosers was not triggered by
17 the Wildfire Mitigation Plan because it contends that the Pacific Palisades was in a Tier 2 zone
18 instead of a Tier 3 zone and attached an unintelligible map in support of same. Of note, said map
19 is inapposite to multiple other CPUC maps that identify the Pacific Palisades area as a “Very High
20 Fire Hazard Zone”. This argument not only improperly addresses allegations outside the 4 corners
21 of Plaintiff’s complaint, but it also presents a question of fact as to whether or not the areas at
22 issue were in a Tier 2 or Tier zone which would have mandated the blocking of the reclosers by
23 LADWP.

24 Furthermore, LADWP’s argument conspicuously omits its additional duty under the
25 Wildfire Mitigation Plan re Tier 2 zones which states that, “the blocking specific reclosers within
26 Tier 2 will be determined on a condition or incident-based basis.” Here, Plaintiffs have clearly
27 pled that the circumstances in the Pacific Palisades on the morning of January 7, 2025, prove that
28 LADWP negligently failed to complete its ministerial task of blocking the subject reclosers.

1 Regardless, of the contents of the Wildfire Mitigation Plan, LADWP's attempt to turn its
2 Demurrer into a Motion for Summary Judgment with extrinsic evidence before Plaintiffs have had
3 any opportunity to conduct discovery regarding the contents of same is improper and should be
4 rejected by the Court.

5 **II. CONCLUSION:**

6 For the reasons stated herein, Defendants' Request for Judicial Notice should be denied in
7 its entirety.

8 Dated: December 18, 2025

ROBERTSON & ASSOCIATES, LLP

9 By: /s/ Alexander Robertson, IV
10 Alexander Robertson, IV

11 Dated: December 18, 2025

FOLEY BEZEK BEHLE & CURTIS, LLP

12 By: /s/ Roger N. Behle, Jr.
13 Roger N. Behle, Jr.
14 Robert A. Curtis

15 Dated: December 18, 2025

BOYLE LAW PC

16 By: /s/ Kevin R. Boyle
17 Kevin R. Boyle
18 Matthew J. Stumpf

19 Dated: December 18, 2025

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WOOD LAW FIRM

20 By: /s/ Peter McNulty
21 Peter McNulty
22 E. Kirk Wood

23 *Liaison Counsel for Individual Plaintiffs*
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

6 On December 18, 2025, I served true copies of the following document(s) described as
7 **PLAINTIFFS' OPPOSITION TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF**
8 **DEMURRER BY DEFENDANTS CITY OF LOS ANGELES AND LOS ANGELES**
9 **DEPARTMENT OF WATER AND POWER** on the interested parties in this action as follows:

10
11 **BY ELECTRONIC TRANSMISSION:** Pursuant to Court Order Authorizing Electronic
12 Service, I provided the document(s) listed above electronically on the CASE ANYWHERE
13 Website to the parties on the Service List maintained on the CASE ANYWHERE Website for this
14 case. Case Anywhere is the on-line e-service provider designated in this case.

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

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

18
19 
20 _____
21 Maria Alegria
22
23
24
25
26
27
28